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' REPLY IN SUPPORT OF THEIR CONCISE STATEMENT OF MATERIAL FACTS

Plaintiffs Rebecca Brown, Stacy Esposito, and Matthew Berger (collectively, "Plaintiffs"), by and through their counsel, hereby file this Reply in support of their Concise Statement of Material Facts.[1]

Response To Defendants' Recurring Objections

Objection No. 1: Defendants object to Plaintiffs' Statement of Material Facts for failing to be concise and further ask this Court to strike the "High-Level Conclusions" and "TSA's Mission" sections of Plaintiffs' Statement. Defendants' arguments are without merit, and their objections fail. First, the length of Plaintiffs' Statement reflects the fact-intensive nature of proving the existence of a policy Defendants deny having. In addition to bearing the burden of marshaling the evidence required to prove the existence of Defendants' disclaimed policy, Plaintiffs must also provide the

[1] To assist the Court's review, Plaintiffs' supporting citations include, wherever possible: (1) the exhibit number associated with the exhibits that Plaintiffs submit in support of their Cross-Motion for Summary Judgment ("Ex. XX"); (2) the precise page of the administrative record that Defendants submitted in connection with their Motion for Summary Judgment ("ARXX"); (3) the precise page and line number associated with deposition transcripts ("Tr. (Ex. ___) at XX:XX"); (4) the name of the cited document; and (5) explanatory parentheticals. Most citations to the administrative record ("AR") do not include an exhibit number so as not to duplicate copies. *See* ECF 158 (Joint Motion to Modify Scheduling Order and to Grant Leave for Provisional Filing under Seal).

necessary context and background information to understand that evidence. Plaintiffs' Statement does that, and nothing more.

Second, Defendants identify no case that supports their requested sanction. *Johnson v. Wash. Metro. Area Transit Auth.*, simply held that courts do not accept conclusions masquerading as facts. 314 F. Supp. 3d 215, 216 (D.D.C. 2018). Plaintiffs agree, which is why Plaintiffs' Statements are always supported by specific references to the record. Defendants' next citation is even further afield, as *Williams v. Ct. Servs. & Offender Supervision Agency for D.C.*, concerned a *pro se* litigant who, after being previously warned by the court not to, nevertheless submitted a statement "replete with argument, speculation, conjecture, and assumptions," where the few included facts were either irrelevant or lacking references to specific parts of the record, such that accepting his statement would have required the "Court to thoroughly analyze nearly 3,000 pages of exhibits to determine whether his statements present issues of material fact precluding summary judgment." 110 F. Supp. 3d 111, 115–16 (D.D.C. 2015). The section of Plaintiffs' Statement that Defendants request be struck, by contrast, includes a handful of statements that synthesize the complex policies and practices of TSA, all of which are supported by specific references to the record. Accordingly, Defendants' First Objection is without merit and should be overruled.

Objection No. 2: Defendants' second recurring objection also fails. Defendants cite the section of Plaintiffs' Statement concerning "Rebecca Brown's Interactions with TSA" as its one example that allegedly shows that Plaintiffs' Statement fails to identify facts that are material to Plaintiffs' motion. Yet, proving the existence of a disclaimed policy is a fact-intensive endeavor, and Plaintiff Rebecca Brown's firsthand experiences are material evidence to that end. This is particularly true given that Plaintiffs must show that the policies or practices being alleged are widespread, rather than an isolated occurrence. Defendants' objection should thus be overruled.

High-Level Conclusions

1. When TSA screeners discover cash during security checkpoint screening, they are required to assess whether they believe the cash is any of "evidence of crimes unrelated to transportation security," "evidence of criminal activity," or "evidence of suspected criminal activity," and then TSA policy requires TSA screeners to seize the cash and "[m]aintain control of the suspicious item" (the cash) while TSA notifies law-enforcement officers ("LEOs"). Management Directive (MD) 100.4 § 6.C(1) (Ex. 2) at AR8 (Under header "C. Possible Criminal Activity": "Administrative and special needs searches may not be conducted to detect **evidence of crimes unrelated to transportation security**. However, if such evidence is discovered, TSA personnel shall refer it to a supervisor or a law enforcement official for appropriate action . . . . Examples of criminal wrongdoing include possession of illegal drugs, possession of child pornography, and **money laundering** (i.e., transferring illegally gained money through legitimate channels so that its illegal source is untraceable).") (emphasis added); SOP Ch. 12, § 1 ("Evidence of Criminal Activity") (hereinafter "'Suspicious' Item SOP") (Ex. 1) at AR161 ("If standard screening uncovers **evidence of criminal activity**, TSA officers must: 1. **Maintain control of the suspicious item.** [. . .] 3. **Notify an STSO, who will notify a LEO**.") (emphasis added); Deposition Transcript of TSA's Designated Rule 30(b)(6) Representative Paul Leyh, June 15, 2022 (Volume I) ("Leyh Tr.") (Ex. 3) at 199:10–14 ("Q: In addition to drugs, drug paraphernalia or child pornography, are there other items that could be potential evidence of criminal activity? A: Yes, well, cash as, again, as outlined in what the SOP is."); *see also* SOP, Ch. 13 ("LEO Notification") at AR164 ("***Overview:*** STSOs must notify a LEO when they discover or [are] notified of: . . . F. Evidence of any suspected criminal activity . . . G. Large amounts of currency that meet the specifications described in the **Possible Evidence of Criminal Activity.**") (emphasis in original, underlined text appears in blue and is an apparent hyperlink to SOP

Ch. 12); SOP, Ch. 15 ("STSO Duties"), § 1 at AR171 ("5. Notify a LEO when **evidence of suspected criminal activity** is discovered while screening an individual or their property.") (emphasis added).

DEFENDANTS' RESPONSE: Denied. TSA policy directs screeners to notify law enforcement when "large amounts of currency," SOP, Ch. 12, § 2 (AR161), or "cash in very large quantities," MD 100.4, § 6(C)(2), appears to be "indicative of criminal activity," MD 100.4, § 6(C)(2), or "appears to relate to criminal activity," SOP, Ch. 12, § 2(3)(b) (AR161). TSA policy does not address all "cash," as Plaintiffs' statement suggests. Nor does TSA policy direct TSA screeners to "seize the cash and '[m]aintain control'" of cash. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize the currency. Specifically, where no law enforcement notification is made, the SOPs direct that "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. See also Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]once the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); id. at 240:17-21 ("And then if CBP/immigration . . . have been notified but . . . are not present at the completion of the security screening[,] then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: As indicated by its inclusion in the "High-Level Conclusions" section, SUMF ¶ 1 is a summary statement of undisputed material facts in the evidentiary record, each aspect of which is individually established in the SUMF paragraphs that follow. Plaintiffs have already included detailed citations to the evidentiary record supporting this summary statement and hereby incorporate our individual replies (below) to Defendants' denials on each of these points.

2. TSA has a policy of extending or prolonging the screening of travelers at security screening checkpoints who are traveling with "large amounts of currency" or "bulk currency," terms which are undefined and therefore open-ended, but are often understood to mean $10,000 or more in cash. Management Directive (MD) 100.4 § 6.C(2) (Ex. 2) at AR9 ("TSA should notify CBP and/or law enforcement authorities pursuant to its local standard operating procedures that the individual possesses a sum of currency that appears to exceed $10,000."); Screening Policies for Standard

Operating Procedures (SOPs), Chapter 12, § 2 ("Discovery of Large Amounts of Currency") (hereinafter "Cash SOP") (Ex. 1) at AR161–63 ("2. Discovery of Large Amounts of Currency"); Deposition Transcript of TSA's Designated Rule 30(b)(6) Representative, Brandi Phillips, June 17, 2022 ("Phillips Tr.") (Ex. 6) at 74:23–75:22 (testifying that a large amount of currency that appears to relate to criminal activity and requires law enforcement involves a threshold of, "I believe," $10,000); Phillips Tr. (Ex. 6) at 186:13–23 ("Q: . . . [U]nder A it says, 'If the currency appears to exceed $10,000.' Do you see that? A: Yes. Q: Is that what constitutes bulk currency or a large amount of currency? A: In the context of this document, yes."); Leyh Tr. (Ex. 3) at 121:15–23 (identifying "$10,000 internationally" as a threshold value at which TSA Screeners treat currency differently); Deposition Transcript of TSA's Designated Rule 30(b)(6) Representative Paul Leyh, March 18, 2025 (Volume II)[2] Leyh Tr. (Ex. 4) at 292:6–20 (testifying that it "looks like" "Bulk cash over $10,000" was "what started" a TSA event notification); Deposition Transcript of Kimberly Lambert, TSA Human Resources Specialist, February 11, 2025 ("Lambert Tr.") (Ex. 10) at 25:14–21 (identifying "some rule about 10,000" in response to a question about "TSA screening policies related to screening travelers with large amounts of currency"); Deposition Transcript of Brenna Murphy, TSA Director of Vetting Programs in Enrollment Services, January 28, 2025 ("Murphy Tr.") (Ex. 8) at 207:11–208:7 ("[T]he intent is that we are looking for a currency appearing to be over the $10,000."); AR203–05 (listing "Bulk Currency - $10,000 or more (in/out of U.S.) as an "Incident Type"); Brown Decl. (Ex. 14) at ¶¶ 11, 26–29 (describing how TSA questioned Ms. Brown after TSA discovered she was traveling with approximately $80,000 in cash); Esposito Decl. (Ex. 12) at ¶¶ 29–30, 32, 34–35, 37–41 (describing how TSA questioned Ms. Esposito and her husband after TSA discovered they were traveling with

[2] Paul Leyh was deposed twice: on June 15, 2022, and on March 18, 2025. The second deposition transcript begins on page 252 because the second deposition was a continuation of the first deposition. The first deposition transcript is Exhibit 3. The second is Exhibit 4.

approximately $40,000–45,000 in cash); Berger Decl. (Ex. 13) at ¶¶ 19, 21, 27–28, 31, 33–36 (describing how TSA questioned Mr. Berger after TSA discovered that he was traveling with approximately $55,000 in cash).

DEFENDANTS' RESPONSE: Denied. The evidence cited establishes that TSA policies direct screeners to notify law enforcement where bulk currency appears to relate to criminal activity. MD 100.4 § 6.C(2) (AR9); SOPs, Ch. 12, § 2 (AR162-63). None of the evidence cited establishes that TSA has a policy of extending or prolonging the screening of travelers at security screening checkpoints who are traveling with "large amounts of currency" or "bulk currency." TSA has no such policy. To the contrary, MD 100.4 expressly states that "[a]s a general matter, there should be no reason to ask questions of the passenger about currency, although there may be times when questions are warranted by security needs." MD 100.4 § 6(C)(2) (AR9). Further denied insofar as the Statement suggest that collecting information from travelers extends the administrative search or seizure because the record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015).

PLAINTIFFS' REPLY: As indicated by its inclusion in the "High-Level Conclusions" section, SUMF ¶ 2 is a summary statement of undisputed material facts in the evidentiary record, each aspect of which is individually established in the SUMF paragraphs that follow. Plaintiffs have already included detailed citations to the evidentiary record supporting this summary statement and hereby incorporate our individual replies (below) to Defendants' denials on each of these points.

3. After discovering a traveler is traveling with cash deemed "suspicious" for a non-transportation security reason or with any amount of cash a screener deems a "large" amount of cash, TSA has a policy of (1) extending or prolonging administrative searches and seizures for non-transportation security purposes; and (2) detaining and searching travelers and their property after administrative searches end. Leyh Tr. (Ex. 3) at 98:9–19 (explaining TSA will examine cash to "see if there is a relationship to it with any criminal activity"); Leyh Tr. (Ex. 3) at 103:3–8, 104:1–9 & 105:12–23 (reading an internal newsletter distributed to TSA employees in September 2021 that states, "What do you think of TSA's effort to help prevent illegal bulk cash and criminal activity?"); Leyh Tr. (Ex. 3)

at 114:6–12 (explaining TSA looks at large amounts of currency for a "potential tie to any sort of criminal activity"); Leyh Tr. (Ex. 3) at 121:15–23 (explaining TSA "look[s] at" a cash value of "$10,000 internationally"); Leyh Tr. (Ex. 3) at 122:15–123:14 (acknowledging that Screeners are supposed to find out, and in fact ask, if travelers are traveling internationally when Screeners find more than $10,000); Leyh Tr. (Ex. 3) at 194:20–24 ("Q: Potential association with criminal activity is what would mean the passenger is not cleared into the sterile area and free to leave the screening checkpoint? A: Yes, and – yes."); Leyh Tr. (Ex. 3) at 196:24–197:23 (acknowledging TSA's "Suspicious" Item SOP requires a Screener to maintain control of a suspicious item, meaning the Screener "would keep the bag on the screening side of the checkpoint"); Leyh Tr. (Ex. 3) at 199:10–21 ("Q: In addition to drugs, drug paraphernalia or child pornography, are there other items that could be potential evidence of criminal activity? A: Yes, well, cash as, again, as outlined in what the SOP is. Q: And Part 1 here instructs TSA officers to maintain control of the suspicious item, right? A: Correct. Q: Why maintain control of the item if it is not a prohibited item? A: Because there could be a relation to criminal activity with it."); Leyh Tr. (Ex. 3) at 200:2–11 ("Q: So the purpose of maintaining control of the item is what? A: Is to be able to call law enforcement and have law enforcement come and you turn it over to them so that they can make a determination if there is any association of criminal activity. Q: Maintaining control of the suspicious item does not advance a transportation security purpose, is that right? A: That's correct, it does not.") Leyh Tr. (Ex. 3) at 200:12–16 ("Q: And obviously if a TSA officer is maintaining control of a suspicious item then the traveler is not free to leave with that item, right? A: That's correct."); Leyh Tr. (Ex. 3) at 201:24–25 ("When there is the potential for criminal activity the passenger is not cleared to leave."); Leyh Tr. (Ex. 3) at 221:3–5 ("What we want to ensure is that there is no criminal activity associated with these large amounts of currency."); Deposition Transcript of Eric Chin, TSA Assistant Federal Security Director for Screening at Washington Dulles International Airport, May 13, 2022 ("Chin Tr.") (Ex. 5) at 163:1–4

("Q: Okay. So the TSO is supposed to determine the value of the amount of the bulk cash that they find. A: Yes."); Chin Tr. (Ex. 5) at 171:12–16 ("Q: But with respect to currency, they are supposed to look at the denomination of the currency as they're flipping through it; is that correct? A: Yes."); Chin Tr. (Ex. 5) at 172:20–173:20 (acknowledging a supervisor is "supposed to inquire whether the traveler is traveling domestically or internationally" after a Screener encounters a traveler who is carrying $10,000, including by checking a boarding pass and having a conversation with the traveler); Phillips Tr. (Ex. 6) at 145:18–23 ("Q: And so maintain control of the property is what a TSA screener is taught to do when they encounter evidence, possible evidence of criminal activity? MS. TULIS: Objection. Form. A: Yes."); Brown Decl. (Ex. 14) at ¶¶ 17–21, 25–29, 30–37, 39–42, 48–50, 69 (describing how Screeners questioned Ms. Brown, told her to turn over her travel documents, told Ms. Brown to wait, and held onto her carry-on luggage until after she answered law enforcement's questions, even though Ms. Brown didn't have any prohibited items); Esposito Decl. (Ex. 12) at ¶¶ 32–36, 41–44, 61 (describing how a Screener questioned Ms. Esposito, told her to wait, and called over a sheriff's deputy, even though Ms. Esposito didn't have any prohibited items); Berger Decl. (Ex. 13) at ¶¶ 30–34, 37, 42, 45–46, 67 (describing how a Screener questioned Mr. Berger, requested his travel documents, photographed his travel documents and the cash, and called over law enforcement, even though Mr. Berger didn't have any prohibited items); Shapiro Decl. (Ex. 11) at ¶¶ 20–24, 42–55; Shapiro Decl. Ex. A (Ex. 11) at ¶¶ 12(c), 15–16, 21, 25, 31.

DEFENDANTS' RESPONSE: Denied. The quoted parts of TSA's written policy establish that TSA policies direct screeners to notify law enforcement where bulk currency appears to relate to criminal activity. MD 100.4 § 6.C(2) (AR9); SOPs, Ch. 12, § 2 (AR162-63). None of the cited evidence establishes that TSA has a policy of extending the screening of travelers at security screening checkpoints who are traveling with "large amounts of currency" or "bulk currency." TSA has no such policy. To the contrary, MD 100.4 expressly states that "[a]s a general matter, there should be no reason to ask questions of the passenger about currency, although there may be times when questions are warranted by security needs." MD 100.4 § 6(C)(2) (AR9). Further denied insofar as the Statement suggest that collecting information from travelers extends the administrative search or seizure because the record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no

need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015). Nor does TSA have a policy of detaining either travelers with large amounts of currency or those travelers' possessions. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10- 15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration . . . have been notified but . . . are not present at the completion of the security screening[,] then you return the property to the individual and the individual is then cleared to leave."). Further denied because whether TSA "detains" a traveler or their bags is a question of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo.").

PLAINTIFFS' REPLY: As indicated by its inclusion in the "High-Level Conclusions" section, SUMF ¶ 3 is a summary statement of undisputed material facts in the evidentiary record, each aspect of which is individually established in the SUMF paragraphs that follow. Plaintiffs have already included detailed citations to the evidentiary record supporting this summary statement and hereby incorporate our individual replies (below) to Defendants' denials on each of these points.

4. When TSA screeners detect "suspicious" currency, "large amounts of currency," or "bulk currency" at security screening checkpoints and notify a LEO, TSA has a policy of collecting that traveler's currency and documents for no transportation security purpose, thereby extending or prolonging the traveler's detention for no transportation security purpose. MD 100.4, § 6.C(1) (Ex. 2) at AR8 ("TSA officers must complete an Incident Report whenever law enforcement is notified."); SOP Ch. 1, § 3 at AR120–21 ("Incident Reporting") ("TSA Form 414, *Incident Report*, located in Airport Information Management (AIM), is required for all incidents that require a report as described in

Operations Directive (OD) 400-18-2 Series, Reporting Security Incidents to the Transportation Security Operations Center (TSOC) and/or that occur during TSA screening operations . . . ."); Cash SOP (Ex. 1) at AR162–63 (Step 3.a(2), "Check the individual's travel documents to determine whether the individual is traveling outside the United States"; Step 6 (directing the STSO to "[p]rovide the individual's name and flight information" to the Coordination Center); Steps 7–8 (directing the Coordination Center to "[p]rovide the individual's name, flight information, and airport code" to the ICE Bulk Cash Smuggling Center and CBP, respectively); Cash SOP (Ex. 1) at AR 166 ("4. Reporting Requirements") (requirement, if "a LEO has been notified," for the STSO to "[c]omplete a TSA Form 414, Incident Report for each instance of LEO notification within 24 hours of the event"); Shapiro Decl. (Ex. 11) at ¶¶ 20–21, 43–54; Shapiro Decl. Ex. A (Ex. 11) at ¶¶ 15, 21; *see also* SUMF ¶¶ 1, 48, 52–57, 59.

DEFENDANTS' RESPONSE: Denied. TSA does not have a policy of detaining travelers with large amounts of currency, or collecting those travelers' currency. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10- 15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave."). Further denied that TSA's policies extend or prolong the detention of travelers for no transportation security purpose. None of the cited evidence establishes that the information is not collected *during* the lawful administrative search. In any event, whether collecting that information constitutes a search or extension of an existing search is a question of law. Collecting that information does not for the reasons explained in Defendants' Combined Reply in Support of Defendants' Motion for Summary Judgment on Counts I and II and Opposition to Plaintiffs' Cross-Motion for Summary Judgment. Further denied insofar as the Statement suggest that collecting information from travelers extends the administrative search or seizure because the record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick,

Federal Security Director, to Sterling Payne, dated Mar. 25, 2015). Denied because whether TSA "detains" a traveler or their bags is a question of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo.").

PLAINTIFFS' REPLY: As indicated by its inclusion in the "High-Level Conclusions" section, SUMF ¶ 4 is a summary statement of undisputed material facts in the evidentiary record, each aspect of which is individually established in the SUMF paragraphs that follow. Plaintiffs have already included detailed citations to the evidentiary record supporting this summary statement and hereby incorporate our individual replies (below) to Defendants' denials on each of these points.

5. TSA has a policy or policies of engaging in general law enforcement unrelated to transportation security. *Compare* "Suspicious" Item SOP, Ch. 12 § 1 (Ex. 1) at AR161 ("If standard screening uncovers evidence of criminal activity, TSA officers must . . . [m]aintain control of the suspicious item."), *with* Leyh Tr. (Ex. 3) at 197:16–23 ("Q: And what does maintain control mean? A: Maintain control means that they would keep the bag on the screening side of the checkpoint. Q: And that would be to prevent the traveler from leaving with their bag, is that right? A: From grabbing their bag and going with it, yes."); Leyh Tr. (Ex. 3) at 200:2–11 ("Q: So the purpose of maintaining control of the item is what? A: Is to be able to call law enforcement and have law enforcement come and you turn it over to them so that they can make a determination if there is any association of criminal activity. Q: Maintaining control of the suspicious item does not advance a transportation security purpose, is that right? A: That's correct, it does not."); SOP Ch. 13 ("LEO Notification") at AR164 ("STSOs must notify a LEO when they discover or [are] notified of . . . F. Evidence of any suspected criminal activity. [or] G. Large amounts of currency that meet the specifications described in the Possible Evidence of Criminal Activity."); Leyh Tr. (Ex. 3) at 114:6–12 (explaining TSA looks at large amounts of currency for a "potential tie to any sort of criminal activity"); Leyh Tr. (Ex. 3) at 121:15–23 (identifying "$10,000 internationally" as a threshold value at which TSA Screeners treat currency

differently); Leyh Tr. (Ex. 3) at 194:20–24 ("Q: Potential association with criminal activity is what would mean the passenger is not cleared into the sterile area and free to leave the screening checkpoint? A: Yes, and – yes."); Leyh Tr. (Ex. 3) at 199:18–21 ("Q: Why maintain control of the item if it is not a prohibited item? A: Because there could be a relation to criminal activity with it."); Leyh Tr. (Ex. 3) at 201:24–25 ("When there is the potential for criminal activity the passenger is not cleared to leave."); Leyh Tr. (Ex. 3) at 221:3–5 ("What we want to ensure is that there is no criminal activity associated with these large amounts of currency."); Chin Tr. (Ex. 5) at 163:1–4 ("Q: Okay. So the TSO is supposed to determine the value of the amount of the bulk cash that they find? A: Yes."); Chin Tr. (Ex. 5) at 172:20–173:20 (acknowledging a supervisor is "supposed to inquire whether the traveler is traveling domestically or internationally" after a Screener encounters a traveler who is carrying $10,000, including by checking a boarding pass and having a conversation with the traveler); Chin Tr. (Ex. 5) at 179:2–16 (acknowledging Screeners at Dulles International Airport ask travelers "if they have declared the cash"); Chin Tr. (Ex. 5) at 203:6–8 ("Q: In some circumstances, would TSA retain control of the bag until CBP or MWAAPD arrives? A: Yes"); Chin Tr. (Ex. 5) at 204:14–18 ("Q: Okay. What if CBP cannot get there within five minutes? A: They ask us to take a picture of the boarding pass, the ID, and the cash, and send them on their way."); Chin Tr. (Ex. 5) at 205:15–20 ("Q: Okay. Does TSA, when they're notifying CBP about a traveler who has more than $10,000, is traveling internationally and that money is undeclared, does TSA always take a picture of the boarding pass, ID and cash? A: I believe so."); Phillips Tr. (Ex. 6) at 145:18–23 ("Q: And so maintain control of the property is what a TSA screener is taught to do when they encounter evidence, possible evidence of criminal activity? MS. TULIS: Objection. Form. A: Yes."); *compare* Leyh Dep. Ex. 3 (Ex. 3) at TSA02171 ("What do you think of TSA's efforts to help prevent illegal bulk cash and criminal activity?"), *with* Leyh Tr. (Ex. 3) 103:3–8 ("Q: This document, could you describe for me what it is? A: Yes. It's an internal document that's more of a newsletter type of document. Q: And is it distributed

to TSA employees? A: To, yes, to TSA employees, yes."); *see also* Simons Dep. Ex. 6 (Ex. 9) at 23 (tracking "bulk cash" as part of "End of Year Accomplishments" in 2019); Simons Dep. Ex. 6 (Ex. 9) at TSA_ESI_00003674 (requesting information regarding "Bulk Cash" for FY19); Brown Decl. (Ex. 14) at ¶¶ 21, 26–29, 31–34, 39–41 (detailing the questioning, instruction to turn over travel documents, instructions to wait, and maintaining control of carry-on luggage and the cash); Esposito Decl. (Ex. 12) at ¶¶ 35, 37–39, 41–45 (detailing the questioning, instructions to wait, calling a sheriff's deputy, and maintain control of carry-on luggage); Berger Decl. (Ex. 13) at ¶¶ 32–40, 42, 45–50 (detailing the questioning, photographing, calling over law enforcement, and maintaining control of travel documents).

DEFENDANTS' RESPONSE: Denied. TSA policy expressly prohibits screeners from engaging in general law enforcement unrelated to transportation security. MD 100.4 instructs that "[a]dministrative and special needs searches may not be conducted to detect evidence of crimes unrelated to transportation security." MD 100.4 § 6(C)(1) (AR8). TSA's screening SOP instructs similarly. SOP Ch. 12, Overview (AR161) ("Screening of property is conducted for security purposes. TSOs are not authorized to conduct searches for purposes of discovering illegal items such as drugs, drug paraphernalia, or child pornography, or to conduct searches that require warrants on behalf of law enforcement agencies, unless otherwise directed by a lawfully executed warrant specifically issued to TSA."). TSA screeners fully comply with that policy. *See* Pls.' Ex. 4, Leyh Dep. Tr. 360:7-18 ("Q. Did any of the field offices say they were searching for illegal items like drugs or drug money? A. No. Q. Were they clear that they were not? A. They're very clear in -- in that – in that that's not the mission. That's not what they're there for. They're there for . . . searching for, again, things that – that are of concern, like IEDs, prohibited items, anything that's going to be, you know, the security of the airplane.").

PLAINTIFFS' REPLY: As indicated by its inclusion in the "High-Level Conclusions" section, SUMF ¶ 5 is a summary statement of undisputed material facts in the evidentiary record, each aspect of which is individually established in the SUMF paragraphs that follow. Plaintiffs have already included detailed citations to the evidentiary record supporting this summary statement and hereby incorporate our individual replies (below) to Defendants' denials on each of these points.

TSA's Mission

6. TSA's statutorily delineated mission is transportation security. Leyh Tr. (Ex. 3) at 99:14–100:2, 109:10–16; MD100.4 (Ex. 2) at AR1 ("This directive establishes TSA policies to enhance the security of domestic and international commercial travel in the United States.").

DEFENDANTS' RESPONSE: Denied to the extent the Statement suggests that the determination of "TSA's mission" is susceptible to proof through statements of fact. TSA's "mission" is a purely legal issue as a question of statutory construction. TSA has many statutorily-delineated missions set forth in 49 U.S.C. § 114 and 49 U.S.C. § 44901, *et seq*. To be sure, the vast majority of those missions pertain to transportation security. But TSA carries out other functions, including providing reports to appropriate congressional committees, *see e.g.*, 49 U.S.C. § 44901*(l)*(4).

PLAINTIFFS' REPLY: Defendants do not dispute that TSA's understanding of its own mission, as expressed in binding Rule 30(b)(6) testimony is that its mission is transportation security. TSA "designate[d]" Mr. Leyh "to testify on its behalf." Fed. R. Civ. P. 30(b)(6). Accordingly, Mr. Leyh's testimony is admissible against TSA such that TSA cannot "retract [his] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, Mr. Leyh's testimony establishes that TSA's mission is transportation security. *See* Leyh Tr. (Ex. 3) at 99:14–100:2 (describing TSA's mission as "ensur[ing] the safe transportation of passengers and goods throughout the country"); *id.* at 100:5–6 ("Our mission is security-focused. It's security-focused.").

7. TSA's mission does not include discouraging travelers from carrying large amounts of cash while traveling. Leyh Tr. (Ex. 3) at 109:17–21.

DEFENDANTS' RESPONSE: Denied to the extent the Statement suggests that the determination of "TSA's mission" is susceptible to proof through statements of fact. TSA's "mission" is a purely legal issue as a question of statutory construction.

PLAINTIFFS' REPLY: TSA "designate[d]" Mr. Leyh "to testify on its behalf." Fed. R. Civ. P. 30(b)(6). Accordingly, Mr. Leyh's testimony is admissible against TSA such that TSA cannot "retract [his] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, Mr. Leyh's testimony establishes that TSA's mission does not include discouraging travelers from carrying large amounts of cash while traveling. *See* Leyh Tr. (Ex. 3) at 108:4–8 ("Q Does TSA's mission include discouraging travelers from heading to the airport with a huge wad of cash? MS. TULIS: Objection, form. THE WITNESS: No."); *id.* at 109:17–21.

8. TSA's mission does not include detecting, investigating, or preventing criminal activity that is unrelated to transportation security. Leyh Tr. (Ex. 3) at 100:7–15, 111:24–112:9, 174:13–175:19, 235:1–13; Chin Tr. (Ex. 5) at 243:24–244:2; Specialized Screening SOP ("Discovery of illegal items") at AR26 ("The purpose of screening is not to detect evidence of general criminal wrongdoing.").

DEFENDANTS' RESPONSE: Denied to the extent the Statement suggests that the determination of "TSA's mission" is susceptible to proof through statements of fact. TSA's "mission" is a purely legal issue as a question of statutory construction.

PLAINTIFFS' REPLY: TSA "designate[d]" Mr. Leyh "to testify on its behalf." Fed. R. Civ. P. 30(b)(6). Accordingly, Mr. Leyh's testimony is admissible against TSA such that TSA cannot "retract [his] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a

result, Mr. Leyh's testimony establishes that TSA's mission does not include detecting, investigating, or preventing criminal activity that is unrelated to transportation security.

TSA's Screening Process

9. TSA conducts transportation security screenings at checkpoints to control entry to the "sterile area" of an airport; these checkpoint screenings are warrantless administrative searches and seizures purportedly for the sole purpose of ensuring transportation security by detecting threat items or other prohibited items, such as most liquids over 3.4oz. MD 100.4 (Ex. 2) at AR 1–8 (defining terminology and discussing administrative searches); SOP Ch. 3 ("Definitions") at AR138 (defining "Prohibited Items" as "Items that are not allowed to be transported in accessible property, on an individual's person, or in checked baggage."); SOP Ch. 3 ("Definitions") at AR142 (defining "Sterile Area"); SOP Ch. 3 ("Definitions") at AR143 (defining "Threat Items"); SOP Ch. 4 at AR145 ("Access") ("TSA controls who may access the sterile area of an airport through the screening checkpoint."); *see also* SOP App'x A at AR177 ("Prohibited Item Discovery") ("Prohibited[sic]/Permitted Items List."); SOP Ch. 3 ("Definitions") at AR 136 (defining "Non-Complaint LGA" as "LGA not contained in a single, clear, plastic, quart-size, re-sealable bag with individual containers of no more than 3.4 ounces (100 ml) each by volume"); TSA Br. 3–5.

DEFENDANTS' RESPONSE: Admitted except insofar as "purportedly" is intended to suggest that TSA screeners conduct these warrantless administrative searches and seizures for other purposes.

PLAINTIFFS' REPLY: As Defendants do not deny this Statement, Plaintiff's Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

10. Checkpoint screenings are conducted by Transportation Security Officers (TSOs), overseen by Supervisory Transportation Security Officers (STSOs) (collectively "Screeners"), neither of whom are law-enforcement officers. MD 100.4 § 4 (Ex. 2) at AR 1 ("DEFINITIONS"); *compare*

("D. Checkpoint Screening") (Ex. 2) at AR2 and ("BB. Transportation Security Officer (TSO)") (Ex. 2) at AR4, *with* ("EE. TSA Law Enforcement Officer") (Ex. 4) at AR4 and § 6.G (Ex. 2) at AR11 ("G. Law Enforcement Searches"); SOP, Ch. 3 ("Definitions") at AR134 ("Lead Transportation Security Officer (LTSO) . . . [is a] TSO designated by TSA management or a STSO to have additional duties and responsibilities. At some airports, an LTSO does the job of STSO. STSO, when used in the SOPs, also refers to an LTSO who has been authorized to perform STSO functions."); AR142 ("STSO"); AR144 ("TSO"); SOP Ch. 4 ("Access") at AR145 ("Only TSOs, LTSOs, or STSOs may conduct security checkpoint screening"); *see also* TSA Br. 4–5.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

11. TSA's administrative searches are not supposed to be "conducted to detect evidence of crimes unrelated to transportation security." MD 100.4, § 6.C(1) (Ex. 2) at AR8.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

12. TSA policy also states: "The only TSA personnel who should engage in law enforcement activities are TSA law enforcement officers (e.g., Office of Inspection Criminal Investigator or FAMs acting in accordance with their authorities under 49 U.S.C. § 114(p))." MD 100.4 § 6.G (Ex. 2) at AR11 ("G. Law Enforcement Searches").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

13. Even though TSA's mission does not encompass general law enforcement, TSA has formal policies regarding the discovery of potential criminal activity during screening. AR8–9 ("Possible Criminal Activity"); AR161–66 ("Chapter 12 Possible Evidence of Criminal Activity"); *see, e.g.*, AR9 ("When currency appears to be indicative of criminal activity, TSA will report the matter to the appropriate authorities.").

DEFENDANTS' RESPONSE: Denied to the extent the Statement suggests that the determination of "TSA's mission" is susceptible to proof through statements of fact. TSA's "mission" is a purely legal issue as a question of statutory construction. Further denied to the extent the Statement suggests that TSA's formal policies regarding the discovery of potential criminal activity "encompass general law enforcement." Admitted that TSA has formal policies regarding the discovery of potential criminal activity during screening.

PLAINTIFFS' REPLY: TSA "designate[d]" Mr. Leyh "to testify on its behalf." Fed. R. Civ. P. 30(b)(6). Accordingly, Mr. Leyh's testimony is admissible against TSA such that TSA cannot "retract [his] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, Mr. Leyh's testimony establishes that TSA's mission does not include general law enforcement. *See* SUMF ¶¶ 6–8.

14. Management Directive (MD) 100.4 has a section entitled "Possible Criminal Activity, which provides a nonexclusive list of "factors indicating that cash is related to criminal activity": "the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment." (Ex. 2) at AR9. That list is disjunctive. *Id.*

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

15. TSA has adopted a series of formal policies regarding actions that Screeners are required to take when they encounter a large amount of currency during transportation security screening, including in 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"). MD 100.4 (Ex. 2) at AR1–11; AR12–13 (OD 400-54-6); AR30-98 (SOPs); TSA Administrative Record Index Nos. 1–5 ("Published Policies").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

16. TSA uses the terms "large amount of currency," "bulk currency," "bulk cash," "cash in very large quantities" (and variations thereof) interchangeably in its formal policies and other communications to describe large amounts of cash, currency, or money. *See, e.g.*, Leyh Tr. (Ex. 3) at 126:10–23; MD 100.4 (Ex. 2) at AR9; AR12 ("OD-400-54-6: Discovery of Currency During the Screening Process"); AR26 ("Discovery of large amounts of currency"); AR190–91 (using three variations in the same document); AR209–10 (same); AR214 (four variations); AR218 (four variations); TSA MSJ Ex. K (Subject Line: "Bulk Cash"); Chin Tr. (Ex. 5) at 242:3–9 ("Q: So, the terms large amount of cash, large amount of currency, bulk cash, and bulk currency all mean the same thing at TSA? MS. TULIS: Objection. Form. Q: You may answer. A: My understanding of it is, it's all the same thing.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

17. MD 100.4 is a directive from the TSA Administrator about TSA screening policies with two paragraphs specifically addressing "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 discovery of large amounts of currency during screening. MD 100.4 (Ex. 2) at AR8–9.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

18. The presence of even one of MD.100.4's "factors indicating that cash is related to criminal activity" is sufficient for a screener to decide that "cash is related to criminal activity." Murphy Tr. (Ex. 8) at 97:14–102: 15; *see also* Murphy Tr. (Ex. 8) at 100:2–18 ("Q: So you might only have one of these factors, but that might be enough to indicate that cash is related to criminal activity. Correct? MS. TULIS: Objection. Form . . . . A: – possible. I said it's possible. Q: And so one factor is potentially enough to indicate criminal activity. Right? A: It could."); Murphy Tr. (Ex. 8) at 102:5–15 ("Q: It lists four factors. Right? You already testified to that. It lists four factors? A: Yes. Q: And you also testified that this doesn't say you need all four factors. Right? A: That's correct. Q: And in fact, any one factor could be sufficient to indicate that cash is related to criminal activity. Correct? MS. TULIS: Objection. Form. A: It could. It could include.").

DEFENDANTS' RESPONSE: Denied. The cited testimony states that, in certain circumstances, "it's possible" that the presence of one of those four factors could be "enough to indicate that cash is related to criminal activity." Pls.' Ex. 8, Murphy Dep. Tr. 100:2–18. The cited testimony does not support the Statement's suggestion that the presence of one factor is necessarily or always sufficient.

PLAINTIFFS' REPLY: The text of MD 100.4 demonstrates that each of the four listed indicators of criminal activity are independently sufficient for a Screener to determine that cash is evidence of criminal activity. *See* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment.").

Furthermore, TSA official Brenna Murphy, who helped develop the SOPs based on MD 100.4, acknowledged that any of the four indicators listed in MD 100.4 "could be sufficient to indicate that cash is related to criminal activity." *See* Murphy Tr. (Ex. 8) at 102:5–15. Ms. Murphy was TSA's section chief (or branch manager) of screening procedures for nearly a decade, where she oversaw the team that developed and revised TSA's security screening SOPs. Murphy Tr. (Ex. 8) at 25:10–23, 26:8–24, 29:13–19, 30:21–31:7. An employee may testify concerning a policy or practice of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted); Fed. R. Evid. 801(d)(2)(D). Thus, because Murphy was testifying about her understanding and application of TSA policy, and the application of TSA's Cash Screening Policies fell within Murphy's scope of employment as the former section chief of screening procedures, her testimony is admissible evidence that any one of the four factors is sufficient to indicate that cash is related to criminal activity.

19. The "quantity" of the cash is alone sufficient for a Screener to decide that the "cash is related to criminal activity." The "packaging" of the cash is alone sufficient for a Screener to decide that the "cash is related to criminal activity." The "circumstances of discovery" of the cash is alone sufficient for a Screener to decide that the cash is "cash is related to criminal activity." The "method by which the cash is carried, including concealment" is alone sufficient for a Screener to decide that the cash is "cash is related to criminal activity." *See* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights,

factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."); *see also* Murphy Tr. (Ex. 8) at 100:2–18 ("Q: So you might only have one of these factors, but that might be enough to indicate that cash is related to criminal activity. Correct? MS. TULIS: Objection. Form . . . . A: – possible. I said it's possible. Q: And so one factor is potentially enough to indicate criminal activity. Right? A: It could."); Murphy Tr. (Ex. 8) at 102:5–15 ("Q: It lists four factors. Right? You already testified to that. It lists four factors? A: Yes. Q: And you also testified that this doesn't say you need all four factors. Right? A: That's correct. Q: And in fact, any one factor could be sufficient to indicate that cash is related to criminal activity. Correct? MS. TULIS: Objection. Form. A: It could. It could include.").

DEFENDANTS' RESPONSE: Denied. The cited testimony states that, in certain circumstances, "it's possible" that the presence of one of those four factors could be "enough to indicate that cash is related to criminal activity." Pls.' Ex. 8, Murphy Dep. Tr. 100:2–18. The cited testimony does not support the Statement's suggestion that the presence of one factor is necessarily or always sufficient.

PLAINTIFFS' REPLY: Defendants respond by disputing the characterization of TSA Official Brenna Murphy's testimony, even though Ms. Murphy acknowledged that any of the four indicators listed in MD 100.4 "could be sufficient to indicate that cash is related to criminal activity." *See* Murphy Tr. (Ex. 8) at 102:5–15. Moreover, Defendants ignore the text of MD 100.4, which is Plaintiffs' primary support for this Statement. *See* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Because Defendants do not deny that any of the four indicators of criminal activity set forth in the Statement (and in MD 100.4 § 6.C(2)) are independently sufficient for a Screener to decide that the cash is related to criminal activity, and because Defendants cite no record evidence to the contrary, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.a–b, 56.E.

20. MD 100.4 states TSA's concern that bulk cash can shield explosive materials and other threat items. MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("Sometimes currency discovered at the screening checkpoint will need to be screened to clear it to enter sterile areas (or other secure areas). For example, cash in very large quantities may shield explosive materials and other threat items."); [redacted]

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

21. [redacted]

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

22. MD 100.4 is implemented by SOP Chapter 12 (formerly Chapter 16), "Possible Evidence of Criminal Activity," which has two numbered sections corresponding to the two paragraphs in MD 100.4. *See* (Ex. 1) at AR161–63.

DEFENDANTS' RESPONSE: Admitted that SOP Chapter 12 provides additional detail regarding the application of MD 100.4. Denied that the "two numbered sections correspond[] to the two paragraphs in MD 100.4." MD 100.4 contains more than two paragraphs, and while the SOPs generally implement MD 100.4, there are not paragraphs that correspond directly between the two documents.

PLAINTIFFS' REPLY: To clarify, the two numbered sections in SOP Chapter 12 (formerly Chapter 16), "Possible Evidence of Criminal Activity," correspond to the two numbered sections in Section 6.C of MD 100.4, "Possible Criminal Activity." *Compare* MD 100.4 §§ 6.C(1)–(2) (Ex. 2) at AR8, *with* SOP Ch. 12 §§ (1)–(2) (Ex. 1) at AR161.

23. Section 1 of SOP Chapter 12—the "Suspicious" Item SOP—is titled "Evidence of Criminal Activity" and contains step-by-step instructions for what Screeners should do "if standard screening uncovers evidence of criminal activity," including instructing them to "maintain control of the suspicious item." (Ex. 1) at AR161–63.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

24. Section 2—the Cash SOP—is titled "Discovery of Large Amounts of Currency" and contains step-by-step instructions for what Screeners should do when they encounter a large amount of currency during screening, including making LEO notifications. (Ex. 1) at AR161–63.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

25. If Screeners find indicia of criminal activity under either section of SOP Chapter 12, they must notify a LEO. "Suspicious" Item SOP, SOP Ch. 12 § 1 (Ex. 1) at AR 161 ("Notify an STSO, who will notify a LEO."); Cash SOP, SOP Ch. 12, § 2 (Ex. 1) at AR162–163; SOP, Ch. 13 at AR164

("LEO Notification") ("***Overview:*** STSOs must notify a LEO when they discover or [are] notified of: . . . F. Evidence of any suspected criminal activity . . . G. Large amounts of currency that meet the specifications described in the **Possible Evidence of Criminal Activity.**") (emphasis in original, underlined text appears in blue and is an apparent hyperlink to SOP Ch. 12); SOP, Ch. 15 ("STSO Duties"), § 1 at AR171 ("STSOs must . . . 5. Notify a LEO when **evidence of suspected criminal activity** is discovered while screening an individual or their property.") (emphasis added).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

26. Making a LEO notification under SOP Chapter 12 requires Screeners to provide certain information to the Coordination Center and law-enforcement agencies, including the ICE Bulk Cash Smuggling Center, and, for travelers with a destination outside the United States, CBP. AR162 ("6. If discovery of currency during screening leads to a LEO notification, the STO must: a. Notify the Coordination Center (CC). b. Provide the individual's name and flight information. 7. The CC must immediately: a. Notify the ICE Bulk Cash Smuggling Center . . . b. Provide the individual's name, flight information, and airport code.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

27. The information reported to LEOs is typically gathered from a passenger's ID and boarding pass, sometimes by photographing, photocopying, or scanning those documents. *See* Leyh Tr. (Ex. 3) at 232:16–233:12 ("They could send the Coordination Center a message, they could call them with the information. They could make a copy of it, any one of those are ways that they could do it."); *see also* Leyh Tr. (Ex. 3) at 245:1–246:6 (discussing photographing and photocopying a driver's

license, passport, and boarding pass); Chin Tr. (Ex. 5) at 204:14–18 ("Q: Okay. What if CBP cannot get there within five minutes? A: They ask us to take a picture of the boarding pass, the ID, and the cash, and send them on their way."); Chin Tr. (Ex. 5) at 205:15–20 ("Q: Okay. Does TSA, when they're notifying CBP about a traveler who has more than $10,000, is traveling internationally and that money is undeclared, does TSA always take a picture of the boarding pass, ID and cash? A: I believe so.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

28. TSA policies also require that screeners complete an Incident Report, TSA Form 414, any time they make a LEO notification. MD 100.4 § 6.C(1) (Ex. 2) at AR8 ("TSA officers must complete an Incident Report whenever law enforcement is notified."); SOP Ch. 13 § 4 ("Reporting Requirements") at AR166 ("If a LEO has been notified, the STSO must: 1. Complete a TSA Form 414, Incident Report, for each instance of LEO notification within 24 hours of the event."); Leyh Tr. (Ex. 3) at 241:11–14, 242:8–11, 243:22–244:4.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

29. Completing an Incident Report, TSA Form 414, typically involves collecting information or documents from travelers, sometimes including taking photographs or making scans/photocopies of documents. Leyh Tr. (Ex. 3) at 242:8–11, 244:20–247:23; *see* Leyh Ex. 8 (TSA Form 414, "Incident Report."); Chin Tr. (Ex. 5) at 204:14–18, 205:15–20 (discussing photographing an ID and boarding pass); Shapiro Decl. (Ex. 11) at ¶¶ 20–22, 44.

DEFENDANTS' RESPONSE: Denied. None of the cited testimony states that completing an Incident Report "typically" involves collecting such information. *See* Pls.' Ex. 3, Leyh Dep. Tr. 244:17-

20 ("I don't know exactly what is going to happen at each incident and what they are going to do with each incident."); *id.* 245:1:4 ("Q. So the driver's license number is something that is collected on this incident report, correct? A. It could be.").

PLAINTIFFS' REPLY: Screeners must "[c]omplete a TSA Form 414, Incident Report for each instance of LEO notification within 24 hours of the event," SOP Ch. 13 § 4(1) (AR166). Section III of that Incident Report contains a variety of fields about the "Individuals Involved" in the incident, such as their name, address, telephone number, gender, driver's license number, passport number, passport country of issue, date the passport was issued, and date of birth. *See* Leyh Ex. 8 at TSA00610 (TSA Form 414, "Incident Report."). When completing an Incident Report, Screeners "would fill out" these data fields. *See* Leyh Tr. (Ex. 3) at 245:1–246:6; *see also* TSA Form 414 Incident Report for Matt Berger (Ex. 31) at TSA02526 (where such information was filled out). Thus, to complete the Incident Report form and fill out the fields calling for the personal information and flight information of the individuals involved, Screeners typically must first collect that information.

30. Travelers are generally required to divest all of their accessibility property (except their clothes)—including their boarding pass (which sometimes resides solely on a passenger's smartphone) and ID—onto the X-Ray conveyor belt before proceeding with individual screening and walking through the metal detector or other scanner. *See* MD 100.4, § 6.E(3)–(4) (Ex. 2) at AR9–10; Shapiro Decl. (Ex. 11) at ¶ 50.

DEFENDANTS' RESPONSE: Denied. The cited TSA policy does not state that passengers place their boarding pass onto the X-Ray conveyor belt. The Shapiro declaration states that it his "understanding, based on [his] personal experience regularly traveling . . . travelers often place those items into bins and/or carry-on luggage which are placed on the X-ray conveyor belt before the passenger enters the metal detector or body scanner." Pls.' Ex. 11, Shapiro Decl. ¶ 50. That declaration, from an individual who does not claim to possess any expertise on TSA policy, provides no basis to conclude that TSA "require[s]" travelers to divest their boarding pass "onto the X-Ray conveyor belt." *See* Defs.' Ex. S, Shapiro Dep. Tr. 16:7-9 ("Q. Any expertise in transportation security administration policies? A. No.").

PLAINTIFFS' REPLY: Defendants' response to this Statement does not mention Plaintiffs' primary support for this Statement: the TSA Management Directive. As that Directive states, "Ordinarily, screening of accessible property at the screening checkpoint begins when an individual places accessible property on the x-ray conveyor belt or hands accessible property to TSA personnel." MD 100.4, § 6.E(3). The Directive further states that "[i]n order to initiate [checkpoint screening of an individual], generally individuals must divest property, including the removal of shoes and outer garments, and/or empty their pockets. Ordinarily, screening of an individual at the checkpoint begins when the individual divests and places such property on the x-ray conveyor belt or hands such property to TSA personnel." *Id.* at § 6.E(4). Defendants' Response suggests that an individual's boarding pass is not property that they would have to "divest" as part of the requirement to "place[] accessible property on the x-ray conveyor belt." MD 100.4, § 6.E(3) (Ex. 2) at AR 10. The Management Directive makes clear that, ordinarily, all property, including property in one's pockets, must be divested before the screening process begins. Defendants cite nothing to refute this. Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

31. During the screening process at TSA checkpoints, TSA can physically search travelers. Chin Tr. (Ex. 5) at 59:9–11.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

32. During the screening process at TSA checkpoints, TSA can physically search travelers' carry-on bags and accessible property. Chin Tr. (Ex. 5) at 59:18–25.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

33. When there is an X-ray alert on a carry-on bag during the TSA screening process, TSA will physically search a traveler's property by performing a bag search. Chin Tr. (Ex. 5) at 170:14–19.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

34. A TSA screener will contact law enforcement if he or she screens a traveler's property and believes there is evidence of criminal activity. Chin Tr. (Ex. 5) at 192:14–18, 194:14–18, 195:18–196:5, 198:23–199:7, 209:4–13; Simons Tr. (Ex. 9) at 153:9–13.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

35. When a TSO believes there is evidence of criminal activity, the TSO notifies a STSO, who in turn notifies law enforcement. Murphy Tr. (Ex. 8) at 147:1–23.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

36. TSA completes its administrative search of a traveler's property when a Transportation Security Officer (TSO) can reasonably determine that the property does not contain undiscovered prohibited items and that the property and its contents have not been tampered with. Phillips Tr. (Ex. 6) at 181:18–20, 183:5–23.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

37. TSA does not physically search a traveler's property without the traveler present. Chin Tr. (Ex. 5) at 178:18–22.

DEFENDANTS' RESPONSE: Denied. TSA may search a traveler's checked baggage without the traveler present.

PLAINTIFFS' REPLY: By way of clarification, this Statement refers only to searches conducted by TSA at the security screening checkpoint.

TSA SOPs: General

38. TSA issues standard operating procedures (SOPs) related to screening. Leyh Tr. (Ex. 3) at 46:25–47:2, 59:6–16; Chin Tr. (Ex. 5) at 120:23–25, 278:9–13.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

39. TSA's SOPs are written for Screeners. Murphy Tr. (Ex. 8) at 114:11–14.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

40. Screeners are required to review and follow TSA's SOPs. Lambert Tr. (Ex. 10) at 112:12–19, 138:19–25; Leyh Tr. (Ex. 3) at 49:11–14; Murphy Tr. (Ex. 8) at 129:23–130:3.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

41. A Screener's direct supervisor is responsible for that Screener's compliance with TSA policies. Lambert Tr. (Ex. 10) at 40:14–18.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

42. TSOs and STSOs have quarterly training on TSA's screening procedures. Chin Tr. (Ex. 5) at 140:11–19; Phillips Tr. (Ex. 6) at 37:23–38:9, 39:2–16.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

43. In practice, TSA does not always follow SOPs at all airports. Leyh Tr. (Ex. 4) at 266:13–267:4, 280:8–14, 339:6–340:25, 369:18–370:3.

DEFENDANTS' RESPONSE: Denied. The cited testimony acknowledges certain "variance[s]," but explains that TSA has taken steps to "reinforce[] . . . what the SOP is and how to follow the SOP and what you should be doing to follow the SOP." Pls.' Ex. 4, Leyh Dep. Tr. 269:24-270:12. Moreover, TSA is responsible for security screening at approximately 440 airports, which is conducted by more than 55,000 screeners. https://www.tsa.gov/news/press/factsheets/tsa- numbers. Accordingly, the cited testimony provides no reason to believe that TSA screeners are not currently following the SOPs at all airports. The evidence in the record indicates that TSA screeners are following TSA policies at all airports. For example, Paul Leyh, the Senior Advisor to the Executive Assistant Administrator for TSA, learned of certain variances at certain airports in the application of TSA's written policies regarding the discovery of bulk currency during passenger screening. *See* Defs.' Ex. D, Leyh Dep. Tr. 264:5-271:4. Upon discovery of those variances, TSA's acting Assistant Administrator for Domestic Aviation Operations, Michael Turner, followed up with the airports to "reinforce what the policy was, and what they needed to do . . . to follow the policy." *Id.* at 271:19-23. To ensure the message was received, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with variances in the application of TSA written policy. See AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.* That message was reinforced through an email sent to all FSDs on May 2, 2025. *See* AR222- 24 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated May 2, 2025). That message explained to the FSDs that "some airports may not be fully adhering to both the letter and spirit of the SOP and TSA MD 100.4 when it comes to discoveries of bulk currency during screening," and directed that notifications should only be made for "[d]iscoveries that appear to have a possible connection to criminal activity" and where "[a]n international traveler appears to be carrying more than $10,000 in bulk currency." *Id.* The message reiterated that "[b]ecause traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold." *Id.* It also explained that "[s]creening personnel should not ask the passenger questions about the currency, except as it relates to security." *Id.* The message also made clear that, even if law enforcement

is notified, "the screening process cannot be extended or delayed for law enforcement to arrive"; instead, if such a notification has been made but law enforcement officers "are not present at the conclusion of the security screening, the individual's property should be returned to them and they are free to leave the screening checkpoint." *Id.* Finally, and further demonstrating that TSA demands adherence to its written policies, the email directed that all FSDs should "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.*

PLAINTIFFS' REPLY: Defendants' Response cites a variety of evidence that confirms that, in practice, TSA does not always follow the SOPs at all airports. *See*, *e.g.*, AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025) (where Mr. Turner emails several airports to "try and clean up some bulk currency issues" relating to TSA officials at those airports "not … fully adhering to both the letter and spirit of the SOP and TSAs MD 100.4 when it comes to discoveries of bulk currency during screening."). Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

44. TSA evaluates TSOs and STSOs on their compliance with TSA policies, including TSA's screening policies and policies about when to contact law enforcement. Chin Tr. (Ex. 5) at 102:16–21, 104:3–6, 104:14–105:8.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

45. TSA's policies regarding encounters with cash during screening include a chapter of its SOPs, a management directive, and an operations directive. Leyh Tr. (Ex. 3) at 87:7–88:6, 91:7–13, 95:7–10; *see* SOP Chapter 12 (Ex. 1); MD 100.4 (Ex. 2); OD 400-54-6 at AR12–13.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

TSA SOPs: Chapter 12, § 1 – 'Suspicious' Item SOP

46. TSA SOP Chapter 12, § 1 (the "Suspicious" Item SOP) is entitled "1. Evidence of Criminal Activity." (Ex. 1) at AR161.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

47. The "Suspicious" Item SOP directs Screeners to "[m]aintain control of the suspicious item" and to "[n]otify an STSO, who will notify a LEO" when "standard screening uncovers evidence of criminal activity." SOP Ch. 12 § 1 (Ex. 1) at AR161.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

48. The "Suspicious" Item SOP, SOP Ch. 12 § 1 (Ex. 1) at AR161, applies to any item Screeners determine to be potential evidence of criminal activity, including cash. Leyh Tr. (Ex. 3) at 199:10–14 ("Q: In addition to drugs, drug paraphernalia or child pornography, are there other items that could be potential evidence of criminal activity? A: Yes, well, cash as, again, as outlined in what the SOP is.").

DEFENDANTS' RESPONSE: Denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15

("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: Defendants' Response does not dispute the truth of this Statement that cash can be potential evidence of criminal activity that constitutes a suspicious item under the "Suspicious" Item SOP. Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

49. The corresponding paragraph to SOP Chapter 12, § 1 "Evidence of Criminal Activity" is MD 100.4, ¶ 6.C(1) (which appears under the header "C. Possible Criminal Activity."). That paragraph of MD 100.4 identifies "money laundering" as an example of "criminal wrongdoing" that may be "evidence of crimes unrelated to transportation security." MD 100.4, ¶ 6.C(1) (Ex. 2) at AR8–9.

DEFENDANTS' RESPONSE: Admitted that MD 100.4, § 6.C(1), so states. Denied that SOP Ch. 12, § 1 is a "corresponding paragraph" to MD 100.4, § 6.C(1). The SOPs implement MD 100.4, but there is not a direct corresponding paragraph between each and every part of the SOPs and MD 100.4.

PLAINTIFFS' REPLY: Although there is not a corresponding paragraph between every part of the SOP and MD 100.4, the two numbered sections in SOP Chapter 12 (formerly Chapter 16), "Possible Evidence of Criminal Activity," do correspond to the two numbered sections in Section 6.C of MD 100.4, "Possible Criminal Activity." *Compare* MD 100.4, §§ 6.C(1)–(2) (Ex. 2) at AR8, *with* SOP Ch. 12 §§ (1)–(2) (Ex. 1) at AR161.

50. Screeners are not trained on how to identify money laundering. Chin Tr. (Ex. 5) at 215:6–8 ("[Q:] Are TSOs or STSOs trained on how to identify money laundering? A: No.").

DEFENDANTS' RESPONSE: Denied. Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep.

Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to the topics of training for screeners in other field offices or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: An employee may testify concerning a policy or practice of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted); Fed. R. Evid. 801(d)(2)(D). Thus, because Chin was testifying about his understanding and application of TSA policy as AFSD for Screening at Dulles International Airport, and the application of TSA's Cash Screening Policies falls within Chin's scope of employment, his testimony is admissible evidence that establishes that Screeners are not trained on how to identify money laundering—even though Chin was not designated under Rule 30(b)(6). As Defendants cite no record evidence that contradicts Chin's testimony, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

51. TSA is unable to identify where training on money laundering would be. Phillips Tr. (Ex. 6) at 143:24–145:6.

DEFENDANTS' RESPONSE: Denied. When asked whether she "believe[s] there are other slides that provide information about how to identify money laundering," Brandi Phillips testified that she could not "tell if money laundering specifically is called out in the other documents that I previously mentioned, which were the training scenario and other slides within this lesson, as well as the screening SOPs." Pls.' Ex. 6, Phillips Dep. Tr. 144:21-145:6.

PLAINTIFFS' REPLY: The cited testimony of Brandi Phillips establishes that TSA is unable to identify where training on money laundering would be. Phillips Tr. (Ex. 6) at 143:24–145:6. As

Defendants cite no record evidence that disputes that fact, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

52. Under the "Suspicious" Item SOP, if a Screener at any time during the screening process comes to believe that a traveler's cash is "evidence of criminal activity," the Screener is directed to: "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). SOP Ch. 12 § 1 (Ex. 1) at AR161.

DEFENDANTS' RESPONSE: Denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: Plaintiffs' Statement accurately reflects the text of the cited portions of the SOP, and Defendants do not argue otherwise. Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

53. Step 3 of the "Suspicious Item" SOP says nothing about returning the "suspicious item," which the Screener has been ordered to "[m]aintain control of" and also to "[n]ot handle . . . further." SOP Ch. 12 § 1 (Ex. 1) at AR161.

DEFENDANTS' RESPONSE: Denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: Plaintiffs' Statement accurately represents the relevant sections of the SOP, and Defendants do not argue otherwise. Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

54. The "Suspicious" Item SOP, SOP Ch. 12 § 1 (Ex. 1) at AR161, means TSA will detain travelers' carry-on bags or other "suspicious" possessions to prevent travelers from leaving the checkpoint with those items. Leyh Tr. (Ex. 3) at 197:13–199:21 (Following TSA's SOP, Screeners "would keep the bag on the screening side of the checkpoint" to prevent the traveler "[f]rom grabbing their bag and going with it."); Leyh Tr. (Ex. 3) at 200:12–16 (traveler is not free to leave with an item that TSA is maintaining control over); Chin Tr. (Ex. 5) at 200:15–16 ("Q: And are they free to take their bag with them? A: No."); *see also* Chin Tr. (Ex. 5) at 198:15–201:13 (overall line of questioning).

DEFENDANTS' RESPONSE: Denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162).

Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave."). Further denied because whether TSA "detains" a traveler or their bags is a question of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo.").

PLAINTIFFS' REPLY: Plaintiffs' Statement accurately reflects the testimony of TSA's witnesses— including TSA's 30(b)(6) witness—and Defendants do not argue otherwise. Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

55. Pursuant to the "Suspicious" Item SOP (Ex. 1) at AR161, Screeners must wait for a LEO to arrive and investigate before they can complete the screening of the suspicious item. Leyh Tr. (Ex. 3) at 204:17–205:5 ("Q: But if they needed to investigate the suspicious item in order to clear the bag they really wouldn't be able to go to step No. 4, complete screening of the accessible property, is that right? A: That's fair, that's fair to say that, yes. Q: And so they would have to wait for a law enforcement officer to arrive, determine what steps to take then, and I suppose if the law enforcement officer arrives and says, no, this is perfectly legal then the TSA screener would complete the screening of the accessible property, is that right? A: That's exactly right.").

DEFENDANTS' RESPONSE: Denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law

enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: Plaintiffs' Statement accurately reflects the testimony of TSA's 30(b)(6) witness, and Defendants do not argue otherwise. Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

56. TSA "[m]aintain[s] control of the suspicious item" (or bags containing "suspicious" items) to aid law enforcement and not for any transportation security purpose. "Suspicious" Item SOP, Ch. 12 § 1 (Ex. 1) at AR161 ("If standard screening uncovers evidence of criminal activity, TSA officers must . . . [m]aintain control of the suspicious item."); Leyh Tr. (Ex. 3) at 197:16–23 ("Q: And what does maintain control mean? A: Maintain control means that they would keep the bag on the screening side of the checkpoint. Q: And that would be to prevent the traveler from leaving with their bag, is that right? A: From grabbing their bag and going with it, yes."); Leyh Tr. (Ex. 3) at 199:15–17 ("Q: And Part 1 here instructs TSA officers to maintain control of the suspicious item, right? A: Correct."); Leyh Tr. (Ex. 3) at 200:2–11 ("Q: So the purpose of maintaining control of the item is what? A: Is to be able to call law enforcement and have law enforcement come and you turn it over to them so that they can make a determination if there is any association of criminal activity. Q: Maintaining control of the suspicious item does not advance a transportation security purpose, is that right? A: That's correct, it does not.").

DEFENDANTS' RESPONSE: Denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item, or to aid law enforcement. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is

discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: Plaintiffs' Statement accurately reflects the testimony of TSA's 30(b)(6) witness, and Defendants do not argue otherwise. Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

57. TSA considers cash to be potential evidence of criminal activity. Leyh Tr. (Ex. 3) at 199:10–14 ("Q: In addition to drugs, drug paraphernalia or child pornography, are there other items that could be potential evidence of criminal activity? A: Yes, well, cash as, again, as outlined in what the SOP is.").

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests that cash is necessarily or always evidence of criminal activity. TSA's screening SOP clearly explains that "large amounts of currency" may sometimes "appear[] to relate to criminal activity" if "for example, the currency may be all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." SOP Ch. 12, § 2(3)(b).

PLAINTIFFS' REPLY: To clarify, TSA provides several non-exhaustive examples of when cash is potential evidence of criminal activity, which include "quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment," MD 100.4 § 6.C(2) (Ex. 2) at AR 9, as well as if the currency is "all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." SOP Ch. 12, § 2(3)(b) (Ex. 1) at AR 162. However, these examples are not exhaustive, and because TSA nowhere provides an exhaustive

definition of the term "appears to relate to criminal activity," there is "no right or wrong" answer to determining when cash "appears to relate to criminal activity." Murphy Tr. (Ex. 8) at 187:02–13. Instead, whether cash is evidence of criminal activity is determined by the Screener's "perception of what's evidence of criminal activity." *Id.*

58. TSA detains travelers **and** their bags by not "clearing" them into the "sterile area" when there is a "potential association with criminal activity." Leyh Tr. (Ex. 3) at 194:20–24; *see also* Leyh Tr. (Ex. 3) at 194:8–195:7 (the broader discussion); Leyh Tr. (Ex. 3) at 201:12–25 ("When there is the potential for criminal activity the passenger is not cleared to leave.").

DEFENDANTS' RESPONSE: Denied because whether TSA "detains" a traveler or their bags is a question of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo."). Further denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency or the traveler in possession of that bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: Plaintiffs' Statement accurately reflects the testimony of TSA's 30(b)(6) witness that TSA detains travelers and their bags by not "clearing" them into the "sterile area" when there is a "potential association with criminal activity." Leyh Tr. (Ex. 3) at 194:20–24. Defendants do not directly deny this fact but deny only that such a detention qualifies as an independent seizure under

the Fourth Amendment. Plaintiffs' Statement is therefore undisputed, as whether the detention described in this Statement qualifies as a seizure under the Fourth Amendment is beyond the scope of this Statement.

59. TSA detains a traveler's bag when Screeners identify a suspicious item indicative of criminal activity. Leyh Tr. (Ex. 3) at 197:13–199:21 (Following TSA's "Suspicious Item" SOP, SOP Ch. 12 § 1 (Ex. 1) at AR161, Screeners "would keep the bag on the screening side of the checkpoint" to prevent the traveler "[f]rom grabbing their bag and going with it."); Leyh Tr. (Ex. 3) at 200:12–16 (traveler is not free to leave with an item that TSA is maintaining control over); Chin Tr. (Ex. 5) at 200:15–16 ("Q: And are they free to take their bag with them? A: No.") & Chin Tr. (Ex. 5) at 198:15–201:13.

DEFENDANTS' RESPONSE: Denied because whether TSA "detains" a traveler or their bags is a question of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo."). Further denied insofar as the Statement is intended to suggest that TSA screeners are directed to seize bulk currency for any period of time beyond the time necessary to determine that the bulk currency does not contain or conceal a prohibited threat item. To the contrary, TSA policy is clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: Plaintiffs' Statement accurately reflects the testimony of TSA's 30(b)(6) witness that TSA detains a traveler's bag when Screeners identify a suspicious item indicative of

criminal activity. Leyh Tr. (Ex. 3) at 197:13–199:21. Defendants do not directly deny this fact but deny only that such a detention qualifies as an independent seizure under the Fourth Amendment. Plaintiffs' Statement is therefore undisputed, as whether the detention described in this Statement qualifies as a seizure under the Fourth Amendment is beyond the scope of this Statement.

TSA SOPs: Chapter 12, § 2 – Cash SOP

60. TSA's Cash SOP contains eight steps for Screeners to follow, in order, when "a large amount of currency is discovered" during screening, but does not define "large amount of currency." (Ex. 1) at AR161–63 ("Discovery of Large Amounts of Currency"); Leyh Tr. (Ex. 3) at 205:6–11 (agreeing that these are "steps"); Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that correct? A: That's correct."); *see* Leyh Tr. (Ex. 3) at 219:5–220:5 (the full line of questioning on steps); *see also* Murphy Tr. (Ex. 8) at 115:4–117:20 (agreeing that the document is a set of steps organized in "if, then" statements); Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right."); Murphy Tr. (Ex. 8) at 117:19–20 ("A: There are steps if the currency appears to be over $10,000."); Murphy Tr. (Ex. 8) at 118:5–6 ("A: There's steps to -- what to do if it exceeds 10,000 -- or appears to exceed 10,000.").

DEFENDANTS' RESPONSE: Admitted that Chapter 12 of TSA's SOP addressing "Discovery of Large Amounts of Currency" contains eight numbered directions, which describe actions that TSA employees must take when they encounter "large amounts of currency." Further admitted that Chapter 12 does not define "large amounts of currency." Denied that each and every one of these numbered directions describes actions "for Screeners to follow." Numbered directions 7 and 8 direct actions to be taken by the "Coordination Center (CC)." *See* SOP Ch. 12 § 2(7) & (8) (AR162). Further denied insofar as the Statement's usage of the word "steps" suggests that each and every one of these actions must be performed each and every time a screener encounters bulk currency, as certain of the numbered directions apply only if, for example, the currency appears to relate to criminal activity or law enforcement has been notified. *See* SOP Ch. 12 § 2 (AR161-62). Further denied insofar as the Statement's usage of the word "steps" suggests that each and every one of these numbered directions are performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Nor does TSA offer any evidence to refute Ms. Murphy's testimony, which is consistent with Mr. Leyh's testimony on this point. Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). Ms. Murphy was TSA's section chief (or branch manager) of screening procedures for nearly a decade, where she oversaw the team that developed and revised TSA's security screening SOPs. Murphy Tr. (Ex. 8) at 25:10–23, 26:8–24, 29:13–19, 30:21–31:7. An employee may testify concerning a policy or practice of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted); Fed. R. Evid. 801(d)(2)(D). Thus, because Murphy was testifying about her understanding and application of TSA policy, and the application of TSA's Cash Screening Policies fell within Murphy's scope of employment as the former section chief of

screening procedures, her testimony is admissible evidence as to whether the eight steps in TSA's Cash SOP are to be followed in sequential order.

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's, both of whom are senior TSA officials with expertise related to TSA's screening policies.

Since TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

To clarify, only Steps 1-6 apply to Screeners. Steps 7 and 8 involve the actions taken by TSA's Coordination Center after a Screener determines that the currency requires a LEO notification (Step 3) and then notifies the Coordination Center of that fact (Step 6). *See* SOP Ch. 12 § 2 (AR161-62).

61. At **Step 1** of TSA's Cash SOP, TSOs must notify an STSO if a "large" amount of currency is discovered. (Ex. 1) at AR161.

DEFENDANTS' RESPONSE: Admitted that the direction numbered one states a TSO must notify an STSO if a "large amount of currency is discovered." SOP Ch. 12 § 2(1) (AR161). Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. ¶¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because

it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). Since TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56(e). As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

62. At **Step 2** of TSA's Cash SOP, Screeners must search the currency for "prohibited items." (Ex. 1) at AR162; *see* AR138 (defining "Prohibited Items").

DEFENDANTS' RESPONSE: Admitted that the direction numbered two directs the screener to "[s]earch the currency for prohibited items." SOP Ch. 12 § 2(2) (AR161). Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps

because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy; Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

63. The first sentence of **Step 3** of TSA's Cash SOP states: "If there are no signs of prohibited items, the STSO must determine if the currency requires [LEO] notifications." (Ex. 1) at AR161.

DEFENDANTS' RESPONSE: Admitted that the direction numbered three so states. SOP Ch. 12 § 2(2) (AR162). Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy; Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

64. Step 3 contains two prongs which require independent investigation by Screeners. *See* (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Admitted that numbered direction three contains two sub-components. Denied that numbered direction three "require[s] independent investigation by Screeners." That direction instructs screeners to take specified actions "[i]f the currency appears to exceed $10,000" or "[i]f the currency appears to relate to criminal activity." SOP Ch. 12 § 2(3) (AR162). Denied that either of those assessments constitutes an "independent investigation," and the Statement identifies no evidence to the contrary. Further denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency

"appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The two prongs of Step 3 require the Screener to determine whether "the currency appears to exceed $10,000," or whether "the currency appears to relate to criminal activity." SOP Ch. 12 § 2(3) (Ex. 1) at AR 162. Logically, a Screener can only determine whether "currency appears to exceed $10,000" or whether "currency appears to relate to criminal activity" by first investigating whether either of those two conditions are satisfied.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy; Plaintiffs' Statement is therefore undisputed and should be admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

65. First, under **Step 3.a**, if the currency "appears to exceed $10,000," Screeners must check the individual's travel documents to "determine whether the individual is traveling outside the United States." (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Admitted that numbered direction three, subpart a, instructs screeners to check the individual's travel documents "to determine whether the individual is traveling outside the United States" "[i]f the currency appears to exceed $10,000." SOP Ch. 12 § 2(3) (AR162). Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy; Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

66. If an individual is traveling outside the United States, Screeners must notify a LEO. (Ex. 1) at AR162 ("If the individual's destination is a non-U.S. location, notify a LEO.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

67. To determine whether the traveler's destination is international, Screeners need both the traveler's boarding pass and ID (to "verify" they're "the person on that boarding pass"). This check is subsequent and in addition to the initial verification made when the traveler first begins the screening process. Chin Tr. (Ex. 5) at 187:2–19.

DEFENDANTS' RESPONSE: Denied. The SOP does not specify what a screener must review to make that determination. Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: TSA's "bulk cash" policies are not limited to the text of the SOP as TSA suggests but extend to any unwritten or informal policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten or informal policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. Thus, the mere fact that the "SOP does not specify what a screener must review to make [the] determination" as to whether a traveler's destination is international does not mean that TSA has no unwritten or informal policy or practice of collecting and reviewing the traveler's boarding pass and ID in order to make that determination. Indeed, the policy identified by Mr. Chin is consistent with the SOP, as it is the

most logical and obvious way by which Screeners can comply with the SOP's mandate to determine whether the traveler's destination is international.

Moreover, an employee may testify concerning a policy or practice of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298–99 (3d Cir. 2007); *Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022); Fed. R. Evid. 801(d)(2)(D). Thus, because Mr. Chin was testifying about his understanding and application of TSA policy, and the application of TSA's Cash-Screening Policies falls within Chin's scope of employment as AFSD for Screening at Dulles International Airport, his testimony is admissible evidence that establishes that, to determine whether the traveler's destination is international, Screeners need both the traveler's boarding pass and ID, and that this check of documents is subsequent and in addition to the initial verification made when the traveler first begins the screening process. Chin Tr. (Ex. 5) at 187:2–19. Because Defendants cite no record evidence that contradicts the testimony of Mr. Chin, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

68. In order to comply with a Screener's command to re-show their travel documents, a traveler must either be allowed to retrieve those travel documents from their accessible property or tell the Screener where they are located so the Screener can search the accessible property themselves. Shapiro Decl. (Ex. 11) at ¶¶ 50–52; *see also* Leyh Tr. (Ex. 4) at 307:15–309:12; Leyh Tr. (Ex. 4) at 311:8–18; Leyh Tr. (Ex. 4) at 317:22–318:1 (describing divestment of personal including boarding pass and ID during screening).

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the recording of that information extends the security screening of a passenger or her luggage. None of the evidence cited supports that conclusion. To the contrary, Shapiro testified that he does not know whether the information is collected while the security screening is still being performed. *See* Defs.' Ex. S, Shapiro Dep. Tr. 27:15-20 ("Q Okay. And if someone is collecting this information while the security screening

is still being performed, it's possible that it doesn't actually extend the security screening at all; correct? A It could be possible.").

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

69. Travelers who are allowed to retrieve the travel documents from their accessible property must retrieve their personal effects from their carry-on bag or bin on the X-ray 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 back to them. Shapiro Decl. (Ex. 11) at ¶¶ 50–52; *see also* Leyh Tr. (Ex. 4) at 307:15–309:12; Leyh Tr. (Ex. 4) at 311:8–18; Leyh Tr. (Ex. 4) at 317:22–318:1 (describing divestment of personal including boarding pass and ID during screening).

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the recording of that information extends the security screening of a passenger or her luggage. None of the evidence cited supports that conclusion. To the contrary, Shapiro testified that he does not know whether the information is collected while the security screening is still being performed. *See* Defs.' Ex. S, Shapiro Dep. Tr. 27:15-20 ("Q Okay. And if someone is collecting this information while the security screening is still being performed, it's possible that it doesn't actually extend the security screening at all; correct? A It could be possible."). Further denied insofar as the Statement suggests the recording of that information extends the security screening of a passenger or her luggage because the record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015).

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

70. If the traveler's destination is international, the Screener must also ask if the traveler has declared their cash with Customs. Chin Tr. (Ex. 5) at 187:25–189:1.

DEFENDANTS' RESPONSE: Denied. The SOP does not direct that a screener must ask the traveler if the traveler has declared their cash with customs. Instead, the SOP directs the screener that, "if the individual's destination is a non-U.S. location," the screener must "notify a LEO." SOP Ch. 12 § 2(3)(a)(3) (AR162). Further denied because Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: An employee may testify concerning a policy or practice of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298–99 (3d Cir. 2007); *Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022); Fed. R. Evid. 801(d)(2)(D). Thus, because Chin was testifying about his understanding and application of TSA policy, and the application of TSA's Cash Screening Policies falls within Chin's scope of employment as AFSD for Screening at Dulles International Airport, his testimony is admissible evidence that establishes that, if a traveler's destination is international, the Screener must also ask if the traveler has declared their cash with Customs. Chin Tr. (Ex. 5) at 187:25–189:1. Because Defendants cite no record evidence that contradicts the testimony of Mr. Chin, Plaintiffs' Statement is undisputed and should be admitted. *See* LCvR 56.C.1.b, 56.E. Moreover, TSA "bulk cash" policies are not limited to the text of the SOP as TSA suggests but extend to any unwritten or informal policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten or informal policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. Thus, the mere fact that the "does not direct that a screener must ask the traveler if the traveler has declared their cash with customs" does not mean that TSA has no unwritten or informal policy or practice of asking if travelers have declared cash that appears to exceed $10,000 with Customs. Indeed, the policy identified by Mr. Chin is consistent with the SOP, as it is the most logical and obvious way by which Screeners can comply with the SOP's command that "currency [that] appears to exceed $10,000 …

may not be transported into or out of the United States unless it has been reported to Customers and Border Protection (CBP)." SOP Ch. 12 § 2(3)(a)(1) (Ex. 1) at AR162.

71. Determining whether a traveler with more than $10,000 is traveling domestically or internationally has no transportation security purpose. Leyh Tr. (Ex. 3) at 123:16–23.

DEFENDANTS' RESPONSE: Denied that the cited evidence is admissible evidence that supports the Statement. Plaintiff, as the proponent of evidence to support its summary judgment motion, bears the burden of establishing its admissibility. *See, e.g.*, *Congress v. Gruenberg*, 643 F. Supp. 3d 203, 215 (D.D.C. 2022) ("a party must (a) cite to specific parts of the record—including deposition testimony, documentary evidence, affidavits or declarations, or other competent evidence— in support of its position") (citing Fed. R. Civ. P. 56(c)(1)); *see also Laningham v. U.S. Navy*, 813 F.2d 1236, 1241 (D.C. Cir. 1987) ("[T]he court must determine first whether the moving party has met its burden of production[.]"). The question that elicited the cited testimony was objected to for form, and was vague and compound.

PLAINTIFFS' REPLY: Plaintiffs have satisfied their burden of establishing the admissibility of the evidence that supports this Statement as Plaintiffs cited to page 123, lines 16-23 of Leyh's "deposition testimony," which is a "specific part[] of the record" that "support[s]" Plaintiffs' Statement. *Congress v. Gruenberg*, 643 F. Supp. 3d 203, 215 (D.D.C. 2022); *see also* Fed. R. Civ. P. 56(c)(1)(A) (requiring "[a] party asserting" an undisputed material fact to cite "to particular parts of materials in the record, including depositions"). Furthermore, the specifically cited portion of Leyh's deposition reveals that Leyh answered "No" in response to the question, "Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally?" Leyh Tr. (Ex. 3) at 123:16–23. Thus, it is an undisputed statement of fact that determining whether a traveler with more than $10,000 is traveling domestically or internationally has "no" transportation security purpose. *Id.*

Furthermore, the question is not compound (domestic or international are binary options, not compound). Nor was the question vague. The deposition had already asked about what a transportation security purpose was within the context of TSA's mission, Leyh Tr. (Ex. 3) at 109:10–

21, and the witness did not express any inability to understand the question. Further, counsel for TSA should not be rewarded for their obstructionist tactics of objecting to nearly every question asked by Plaintiffs' counsel. *See* Leyh Tr. (Ex. 3) at 279–80 (index listing every time the word "objection" appeared in the transcript).

72. Next, under **Step 3.b**, Screeners must notify a LEO if "the currency appears to relate to criminal activity." (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then

sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy; Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

73. If either prong of Step 3 is satisfied, Screeners must make a LEO notification. Making a LEO notification requires collecting information about the traveler pursuant to Steps 6 through 8 of the Cash SOP. (Ex. 1) at AR162–63.

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Defendants do not directly deny this Statement; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990).

And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy; Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

74. To make a notification under either prong of Step 3, Screeners must gather information from the traveler, including information on the traveler's ID and boarding pass to provide to law enforcement, pursuant to Steps 6–8. *See* (Ex. 1) at AR162–63 (under Step 6, "Provide the individual's name and flight information"; under Step 7, "Provide the individual's name, flight information, and airport code"; under Step 8, "provide the individual's name, flight information, and airport code"); Chin Tr. (Ex. 5) at 187:2–19 (Step 3.a).

DEFENDANTS' RESPONSE: Admitted that a screener must gather information from the traveler. Denied that gathering information from the traveler requires collecting information on both the traveler's ID and boarding pass. Further insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Defendants admit that Screeners "must gather information from the traveler" but merely deny that this "requires collecting information on **both** the traveler's ID and boarding pass." (emphasis added). This carefully worded partial denial seems to reflect the fact that Screeners—in the context of collecting a traveler's name and flight information only—may sometimes gather all this information from the traveler's boarding pass, with the traveler's ID being used to verify that the traveler is the person listed on the boarding pass. Chin Tr. (Ex. 5) at 186:18–187:19. Plaintiffs

therefore clarify that, for the purposes of this Statement only, when Screeners gather a traveler's name and flight information for purposes of making a Step 6 notification to the TSA Coordination Center, although Screeners collect both the traveler's ID and the traveler's boarding pass to do so, Screeners sometimes can gather all the required information from the traveler's boarding pass alone, with the traveler's ID being used to simply confirm that the traveler is the person listed on the boarding pass. *See id.*

However, Screeners cannot rely on just a traveler's boarding pass to complete an Incident Report, as that report calls for information beyond that which is found on a traveler's boarding pass, such as the traveler's home address, gender, driver's license number, and date of birth. *See* Leyh Ex. 8 at TSA00610 (TSA Form 414, "Incident Report."); *see also* SUMF ¶¶ 28–29.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's. SUMF ¶ 60; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy;

Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

75. Screeners typically gather information from the traveler by taking photographs or scans of their travel documents (ID and boarding pass) to provide to the Coordination Centers physically or by electronic message, or simply by calling the information into the Coordination Center. *See* Leyh Tr. (Ex. 3) at 232:16–233:12 ("They could send the Coordination Center a message, they could call them with the information. They could make a copy of it, any one of those are ways that they could do it."); *see also* Leyh Tr. (Ex. 3) at 245:1–246:6 (discussing photographing and photocopying a driver's license, passport, and boarding pass); Chin Tr. (Ex. 5) at 204:14–18, 205:15–20 (discussing photographing an ID and boarding pass).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

76. In gathering information as part of the Cash SOP, Screeners sometimes photograph the cash itself. Chin Tr. (Ex. 5) at 204:14–18 ("Q: Okay. What if CBP cannot get there within five minutes? A: They ask us to take a picture of the boarding pass, the ID, and the cash, and send them on their way."); Chin Tr. (Ex. 5) at 205:15–20 ("Q: Okay. Does TSA, when they're notifying CBP about a traveler who has more than $10,000, is traveling internationally and that money is undeclared, does TSA always take a picture of the boarding pass, ID and cash? A: I believe so.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

77. When a traveler's boarding pass and ID are being photographed, scanned, or read aloud to the Coordination Center, that traveler is not free to go. Leyh Tr. (Ex. 3) at 233:13–234:24.

DEFENDANTS' RESPONSE: Admitted that a passenger is not free to leave until the screening process is complete.

PLAINTIFFS' REPLY: Defendants do not deny this Statement or cite evidence; Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

78. Collecting a traveler's boarding pass and ID for pursuant to Cash SOP Steps 3 and 6–8 does not serve any transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct."); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63). Further denied because the cited testimony asks whether *notifying* law enforcement of a potential criminal activity is a transportation security purpose, not whether collecting the passenger's information serves a transportation security purpose.

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order and the information collection and LEO notifications at Steps 3, and 6–8 serves no transportation security purpose. Further, the cited testimony isn't limited to whether notifying law enforcement of a potential criminal activity is a transportation security purpose. Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for **finding out whether** a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.") (emphasis added).

79. The collection of traveler information in the Cash SOP takes place after a traveler has already presented documents to the Travel Document Checker (TDC) when entering the screening checkpoint for purposes of identity and travel verification. MD 100.4 at AR4 (defining "Travel Document Checker" as a TSA employee who checks travel documents and verifies ID "for individuals electing to **access** the screening checkpoint") (emphasis added); MD100.4 § 6.E(2) (Ex. 2) at AR10 (describing the "TDC Podium" as the screening step after the Checkpoint Queue and before the Checkpoint Screening, and noting that travelers may "proceed to the checkpoint" after completing TDC verification); *see also* Leyh Tr. (Ex. 4) at 307:15–309:12 (discussing what a passenger does during

the screening progress); Leyh Tr. (Ex. 4) at 311:8–18 ("Q: Okay. So, during that screening process we were talking about, if there – if all the property goes through the scanner, the person goes through the scanner, there's no alarms, or any additional reason to ask for their ID or boarding pass? A: Correct. Q: Generally, or typically, they would collect their things, and move on without ever having to reshow their boarding pass or ID. A: That's correct."); Leyh Tr. (Ex. 4) at 317:22–318:1 ("Q: Okay. And, we talked about the typical process, if there's no alarms or anything like that, there is – the passenger is typically not asked to present their boarding pass and ID? A: That's correct.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

80. There is no transportation security purpose for making either of the LEO notifications under Step 3.a ("currency appears to exceed $10,000") or Step 3.b ("currency appears to relate to criminal activity"). (Ex. 1) at AR162 (Step 3); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order and that there is no transportation security purpose for the LEO notifications made under Step 3.a or Step 3.b.

81. If there are no signs of prohibited items at Step 2 and no required notifications at Step 3, travelers "are free to go" because "[a]t that point they would have completed screening requirements." Leyh Tr. (Ex. 3) at 225:22–226:23 ("Q: So I am asking what is left to be done at Step 4 to successfully complete the screening requirements if the currency was already searched for prohibited items in Step 2? MS. TULIS: Objection, form . . . . A: So if it does require – if does not require any further – any notifications and it is cleared of all alarms **then they are free to go**. Q: Right. But I am trying to figure out what is left to be done at Step 4. It says if the currency does not require notifications the STSO must return the individual's property and clear him or her into the sterile area after successfully completing screening requirements. That's the part I am trying to figure out. What does it mean after successfully completing screening requirements? A: **At that point they would have completed screening requirements**. Q: Essentially if the currency does not require notifications

then the STSO should return the individual's property and that's the end of the screening? A: That's correct.") (emphasis added).

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

82. If no LEO notifications are required under either Step 3.a or Step 3.b, Screeners then proceed to **Step 4**. *See* (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the

eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

83. At Step 4, the STSO simply "must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

84. Being "cleared" to go into the airport's "sterile area" is the end of the TSA screening process, and the traveler is then free to continue their travel. Leyh Tr. (Ex. 3) at 188:1–4 ("The screening process ends when both the passenger and the passenger's property are cleared to go into the sterile area."); Leyh Tr. (Ex. 3) at 228:7–12 ("Screening is complete when both the passenger and the bag are cleared.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

85. Travelers know they are "cleared" into the sterile area when a TSO indicates they are. Leyh Tr. (Ex. 3) at 188:5–189:2.

DEFENDANTS' RESPONSE: Denied. The cited testimony does not state that "[t]ravelers know they are 'cleared' into the sterile area when a TSO indicates they are." Defendants respectfully refer the Court to the cited testimony for a description of when the screening has concluded. *See* Pls.' Ex. 3, Leyh Dep. Tr. 188:1-189:2.

PLAINTIFFS' REPLY: The cited testimony supports the statement. Mr. Leyh was asked, "how does a passenger **know that they have been cleared to go into the sterile area**?" to which Mr. Leyh responded that a passenger is "cleared to go" after (1) "they go through either the AIT or walk through the metal detector" and are "cleared by the officer," and (2) their bag "goes through the X-ray and either it doesn't alarm and/or it alarms and the alarms are cleared and the bag is given back to the passenger[.]" Leyh Tr. (Ex. 3) at 188:5–16 (emphasis added). As a follow-up question, Mr. Leyh was asked, "[s]o if someone doesn't have any luggage, any carry-on luggage and they just walk through the AIT screener/the metal detector and are **waived on by the TSO**, they have completed screening?" to which Mr. Leyh responded in full, "That's correct." *Id.* at 188:17–21 (emphasis added). In both situations, the TSO indicates that the passenger is cleared into the sterile area.

86. If a traveler or their carry-on bag "alerts" during screening, they complete the screening once the Screener clears the alarm by searching for any prohibited item. Leyh Tr. (Ex. 3) at 189:3–191:10; *see also* AR129 (definition of "Clear (No Threat)"); *see generally* MD 100.4 § 6.E(3)–(4) (Ex. 2) at AR10 (describing initiation and completion of checkpoint screening of accessible property and individuals, respectively).

DEFENDANTS' RESPONSE: Denied. The screening is complete when the applicable directives for screening passengers and accessible property has been fulfilled. *See* SOP Ch. 5 (General) C ("When an individual demonstrates a decision to enter a screening area, or to submit property for screening,

screening of the individual must be completed. Once that screening has been completed, an individual may return to the public area, or continue to the next screening area.").

PLAINTIFFS' REPLY: TSA "designate[d]" Mr. Leyh "to testify on its behalf." Fed. R. Civ. P. 30(b)(6). Accordingly, Mr. Leyh's testimony is admissible against TSA such that TSA cannot "retract [his] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Nor does TSA offer any evidence refuting this Statement, but instead quotes from a more general, but nonetheless consistent, statement from Chapter 5 of the SOP. Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

87. If a LEO is 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. *See* Leyh Tr. (Ex. 3) at 227:7–10 ("Q: Step 5 seems to follow from Step 3 because there has been a law enforcement notification, is that right? A: That's correct."); Leyh Tr. (Ex. 3) at 233:19–24 ("Q: Could . . . screening be completed before the STSO completes this step, Step 6? A: No, because that step is part of the notification for the law enforcement."); Leyh Tr. (Ex. 3) at 239:2–12 (after Step 6, "the Coordination Center will notify as in Step 7 and Step 8"); Leyh Tr. (Ex. 3) at 238:18–239:1 (Step 8); *see also* (Ex. 1) at AR162–63 (Steps 3–8).

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto.*

Ins. Co. v. New Horizont, Inc., 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

88. **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. (Ex. 1) at AR162; Leyh Tr. (Ex. 3) at 226:24–227:10 (agreeing that Step 5 relates "to a situation in which law enforcement or some specific law enforcement organization has been notified").

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

89. **Step 6** requires the STSO to notify TSA's Coordination Center and "[p]rovide the individual's name and flight information." (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

90. Step 6 does not serve any transportation security purpose. Leyh Tr. (Ex. 3) at 235:1–13 ("Q: This Step 6 where the STSO is in some manner communicating information from the boarding pass and ID of the traveler to the Coordination Center, what transportation security purpose does that serve? MS. TULIS: Objection, form. THE WITNESS: It serves to notify law enforcement of a potential criminal activity. BY MR. ALBAN: Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct."); *see also* SUMF ¶ 80 (TSA admitting there's no transportation security purpose to notifying a law enforcement officer when "currency appears to relate to criminal activity").

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63). Further denied insofar as the information collected can serve transportation security purposes. *See, e.g.*, Defs.' Ex. T, DHS-CEM-0002-17, TSA02158 (describing Department of Homeland Security requests for information collected in the course of regular duties pertaining to bulk cash couriers for Al Shabaab terrorist organization).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order and that Step 6 does not serve a transportation security purpose.

In any event, TSA's newly cited evidence does not establish that Step 6, which requires the STSO to notify TSA's Coordination Center and "[p]rovide the individual's name and flight information," (Ex. 1) at AR162, serves a transportation security purpose. Instead, TSA's newly cited evidence generally discusses money service businesses that are purportedly "using bulk cash to **transport currency oversees for eventual transfer** to Al Shabaab in Somalia." Defs.' Ex. T, DHS-CEM-0002-17, TSA02158 (emphasis added). That hypothetical downstream outcome says nothing about threats to transportation security, like explosives and firearms. *See* MD 100.4 § 6(A)(1) (AR6) ("TSA conducts all administrative and special needs searches … to detect the presence of threat items."); MD 100.4 § 4(Z) (AR4) (defining the term "Threat Items" as "[a]ny potentially hazardous items that pose a risk to transportation security, such as explosives, incendiaries, and items that could be used as weapons or otherwise transformed into a threat.").

91. At **Step 7**, TSA's Coordination Center must then "immediately" call the ICE Bulk Cash Smuggling Center—a second LEO notification—and "provide the individual's name, flight information, and airport code." (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

92. Like Step 6, Step 7 does not serve any transportation security purpose. Step 7's purpose is to notify law enforcement of potential criminal activity. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, it is? A: That's correct."); *see also* SUMF ¶ 80 (TSA admitting there's no transportation security purpose to notifying a law enforcement officer when "currency appears to relate to criminal activity").

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." Further admitted that notifying law enforcement requires collecting the information detailed later in Chapter 12. Further denied insofar as the information collected can serve transportation security purposes. *See, e.g.*, Defs.' Ex. T, DHS-CEM-0002-17, TSA02158 (describing Department of Homeland Security requests for information collected in the course of regular duties pertaining to bulk cash couriers for Al Shabaab terrorist organization).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential

order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order and that Steps 6 and 7 serve no transportation security purpose.

In any event, TSA's newly cited evidence does not establish that Step 7, which requires TSA's Coordination Center to "immediately" call the ICE Bulk Cash Smuggling Center and "provide the individual's name, flight information, and airport code," (Ex. 1) at AR162, serves a transportation security purpose. Instead, TSA's newly cited evidence generally discusses money service businesses that are purportedly "using bulk cash to **transport currency oversees for eventual transfer** to Al Shabaab in Somalia." Defs.' Ex. T, DHS-CEM-0002-17, TSA02158 (emphasis added). That hypothetical downstream outcome says nothing about threats to transportation security, like explosives and firearms. *See* MD 100.4 § 6(A)(1) (AR6) ("TSA conducts all administrative and special needs searches … to detect the presence of threat items."); MD 100.4 § 4(Z) (AR4) (defining the term "Threat Items" as "[a]ny potentially hazardous items that pose a risk to transportation security, such as explosives, incendiaries, and items that could be used as weapons or otherwise transformed into a threat.").

93. At **Step 8**, if the traveler's destination is outside the United States, TSA's Coordination Center "must also immediately notify CBP"—a third LEO notification—"and provide the individual's name, flight information, and airport code." (Ex. 1) at AR163.

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential

order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

94. Step 8 serves no transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 (Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, it is? A: That's correct."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–21 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct.").

DEFENDANTS' RESPONSE: Denied insofar as the Statement's usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63). Further denied insofar as the information collected can serve transportation security purposes. *See, e.g.*, Defs.' Ex. T, DHS-CEM-0002-17, TSA02158 (describing Department of Homeland Security requests for information collected in the course of regular duties pertaining to bulk cash couriers for Al Shabaab terrorist organization).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order, and that Step 8 serves no transportation security purpose.

In any event, TSA's newly cited evidence does not establish that Step 8, which requires TSA's Coordination Center to "immediately notify CBP" if the traveler is traveling internationally, and further "provide the individual's name, flight information, and airport code," (Ex. 1) at AR163, serves a transportation security purpose. Instead, this "Department of Homeland Security Collection Emphasis MESSAGE" indicates that TSA is collecting this information and making this LEO notification for general DHS law-enforcement purposes, specifically to "address intelligence gaps related to bulk cash deliveries," not for anything related to transportation security. Defs.' Ex. T, DHS-CEM-0002-17, TSA02158. To that end, it generally discusses money service businesses that are purportedly "using bulk cash to **transport currency oversees for eventual transfer** to Al Shabaab in Somalia." *Id.* (emphasis added). That hypothetical downstream outcome says nothing about threats to transportation security, like explosives and firearms. *See* MD 100.4 § 6(A)(1) (AR6) ("TSA conducts all administrative and special needs searches … to detect the presence of threat items."); MD 100.4 § 4(Z) (AR4) (defining the term "Threat Items" as "[a]ny potentially hazardous items that pose a risk to transportation security, such as explosives, incendiaries, and items that could be used as weapons or otherwise transformed into a threat.").

How TSA Treats Cash

95. It is legal to fly with any amount of cash. Leyh Tr. (Ex. 3) at 92:5–7; Deposition Transcript of Michael Simons, TSA Director of Strategic Communications, February 3, 2025 ("Simons Tr.") (Ex. 9) at 156:9–12; AR9 ("Traveling with large amounts of currency is not illegal"); *see also* AR12; AR190; AR209; AR214; AR218; AR224; AR231 ("traveling with bulk currency is not itself problematic").

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests it is always or necessarily legal to fly with any amount of cash. There are circumstances in which it is illegal to fly with a certain amount of cash. For example, it is a federal crime punishable by a term of imprisonment of up to five years to knowingly conceal more than $10,000 in currency or other monetary instruments when traveling internationally to intentionally evade reporting requirements. 31 U.S.C. § 5332; *see also* 31 U.S.C. § 5316 (detailing reporting requirements). Further denied because the legality of flying with cash is a question of law not susceptible to a statement of material fact.

PLAINTIFFS' REPLY: Plaintiffs' cited evidence supports the statement. *See, e.g.*, Leyh Tr. (Ex. 3) at 92:5–7 ("I think we are all aware it is perfectly legal for anybody to fly with cash, right?"). As Defendants cite no record evidence, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. Further, Plaintiffs' statement is that "[i]t is legal to fly with any amount of cash"—not, as Defendants appear to misconstrue, that it's *always* legal to fly with cash *no matter any further circumstances*. The statute that TSA cites is illustrative. 31 U.S.C. § 5332 doesn't provide that traveling with cash is illegal; it provides that it is illegal to (1) knowingly conceal; (2) more than $10,000 in cash; (3) when traveling internationally; (4) with the intent to evade reporting requirements. *See* 31 U.S.C. § 5332(a)(1).

96. Cash is not a prohibited item while traveling. Leyh Tr. (Ex. 3) at 167:9–11, 183:25–184:5; AR3–4; AR138; AR143; AR177–183; Phillips Tr. (Ex. 6) at 91:17–18; Phillips Tr. (Ex. 6) at 93:6–8, Phillips Tr. (Ex. 6) at 94:21–22; Phillips Tr. (Ex. 6) at 172:19–22 ("currency itself is not a threat, bulk currency or an amount of currency is not a threat to transportation security").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

97. Cash is not a threat item or a threat to transportation security. Phillips Tr. (Ex. 6) at 91:22–92:4, 92:23–93:8, 172:13–22.

DEFENDANTS' RESPONSE: Admitted that cash itself is not a threat item or a threat to transportation security. However, large amounts of currency "may shield explosive materials and other threat items," and is searched accordingly. MD 100.4 § 6(c)(2) (AR9).

PLAINTIFFS' REPLY: As Defendants do not deny this Statement nor cite evidence, Plaintiff's Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a–b, 56.E. In any event, Plaintiffs' statement references "cash itself."

98. TSA X-ray machines can detect "bulk cash," which appears as an orange rectangular square on the X-ray viewer. Chin Tr. (Ex. 5) at 163:19–164:19, 165:12–18.

DEFENDANTS' RESPONSE: Denied. TSA X-ray machines can detect organic mass, which bulk currency appears as. *See* Pls.' Ex. 5, Chin Dep. Tr. At 216-18-25. Further denied because Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: It's unclear what evidence Defendants are citing to in opposition because "216-18-25" doesn't correspond with Plaintiffs' Exhibit 5. Because TSA does not cite record evidence in its refutation, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1b, 56.E. In any event, Defendants offer a distinction without an apparent difference. TSA X-ray machines *can* detect "bulk cash" because bulk cash appears as an orange rectangular square on the X-ray viewer. *See* Chin Tr. (Ex. 5) at 163:19–164:19 ("Q. . . . Is there some rough measure that TSOs or STSOs are trained to use to determine **whether it's worth investigating as bulk cash**? A. Yeah. So I can't say [an] exact number, but **the way it would come up on X-ray** is, like, if it's a pack

of hundreds or a pack of one dollar bills. If it's a hundred dollar or one dollar bills of $50 dollars in one dollar bills. It comes in **as an orange, rectangular square**, same as, like, a small book.") (emphasis added).

Further, an employee may testify concerning a policy, practice, or custom of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298–99 (3d Cir. 2007); *Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022); Fed. R. Evid. 801(d)(2)(D). Thus, because AFSD Chin was testifying about how TSOs or STSOs are trained, and training TSA Screeners falls within AFSD Chin's scope of employment as an AFSD, his testimony is admissible evidence that establishes that TSA X-ray machines can detect "bulk cash"—even though AFSD Chin was not designated under Rule 30(b)(6).

99. TSA X-ray machines will alert to "bulk cash" as organic matter no matter where it is in a carry-on bag if there is sufficient organic mass. Chin Tr. (Ex. 5) at 216:18–25.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

100. TSA searches through "large" amounts of cash that it encounters during the screening process to determine whether it conceals a prohibited item. Leyh Tr. (Ex. 3) at 96:23–97.

DEFENDANTS' RESPONSE: Denied. "TSA" does not "search[]" anything. If cash alarms, TSA screeners will search through the "large" amounts of cash to determine whether it contains or conceals a prohibited item. *See See* MD 100.4 § 6(C)(2) (AR9) ("cash in very large quantities may shield explosive materials and other threat items").

PLAINTIFFS' REPLY: TSA screeners act on behalf of TSA, so TSA *does* search through "large" amounts of cash that it encounters during the screening process to determine whether it conceals a prohibited item. *See* Leyh Tr. (Ex 3) at 96:12–97:6 (framing the question as "when **TSA screens**

travelers and their accessible property" before later asking whether there is "anything else they would be looking for besides a prohibited item when they are going through large amounts of currency"); *see also* SUMF ¶ 40 ("Screeners are required to review and follow TSA's SOPs.").

101. Screeners are supposed to examine currency they encounter in the screening process to determine the amount of "bulk cash," including by looking at the denominations of the bills as they're flipping through it. Chin Tr. (Ex. 5) at 163:1–13, 171:12–16.

DEFENDANTS' RESPONSE: Denied. The SOP does not direct screeners "to examine currency they encounter in the screening process to determine the amount of 'bulk cash.'" Rather, the SOP directs that, "[i]f the currency appears to exceed $10,000," the screener should take certain actions. SOP Ch. 12 § 2(3)(a) (AR162). The cited testimony does not support the Statement. To the contrary, the witness clearly testified that any determination of value was to be made "[a]s" the screener is "reviewing it for explosive." Pls.' Ex. 5, Chin Dep. Tr. 163:7-8. At no point in the cited testimony does the witness state that a screener is supposed to "examine currency . . . to determine the amount of 'bulk cash.'" Further denied because Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: The SOPs aren't the only TSA source that "direct[s] screeners" to act. In any event, the testimony supports the statement. Chin Tr. (Ex. 5) at 171:12–16 ("Q. But with respect to currency, they are **supposed to look at the denomination of the currency as they're flipping through it**; is that correct? A. Yes.") (emphasis added); *Id.* at 163:1–14 ("Q. Okay. So if a TSO or STSO finds organic matter and that organic matter turns out to be bulk cash, are they trained on what to do in that instance? A. Yes. Q. What are they supposed to do in that instance? A. **They need to flip through it** to ensure there's no SSI – I don't want to say SSI, but sheet explosive in there. Q. And if there is no explosive in the bulk cash, what are they trained to do then? A. **Depending on the amount of cash**, we'd refer to an STSO first, to look at it . . . .") (emphasis added).

Further, an employee may testify concerning a policy, practice, or custom of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v.*

Philadelphia Hous. Auth., 497 F.3d 286, 298–99 (3d Cir. 2007); *Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022); Fed. R. Evid. 801(d)(2)(D). Thus, because AFSD Chin was testifying about TSA screeners' searches, and supervising TSA screeners' searches falls within AFSD Chin's scope of employment, his testimony is admissible evidence even though he was not designated under Rule 30(b)(6).

102. TSA examines "large" amounts of cash that it encounters through the screening process to investigate criminal activity that is unrelated to transportation security. *See* Leyh Tr. (Ex. 3) at 98:9–19; Leyh Tr. (Ex. 3) at 114:6–12 (describing "large amounts of currency" as money "that could be a . . . potential tie to any sort of criminal activity"); Leyh Tr. (Ex. 3) at 220:23–221:5.

DEFENDANTS' RESPONSE: Denied. Individual screeners examine "large amounts of cash" because "cash in very large quantities may shield explosive materials and other threat items." MD 100.4 § 6.C(2) (AR9). Further denied because individual screeners do not "examine[]" anything "to investigate criminal activity that is unrelated to transportation security." TSA policy expressly prohibits screeners from engaging in general law enforcement unrelated to transportation security. MD 100.4 instructs that "[a]dministrative and special needs searches may not be conducted to detect evidence of crimes unrelated to transportation security." MD 100.4 § 6(C)(1) (AR8). TSA's screening SOP instructs similarly. SOP Ch. 12, Overview (AR161) ("Screening of property is conducted for security purposes. TSOs are not authorized to conduct searches for purposes of discovering illegal items such as drugs, drug paraphernalia, or child pornography, or to conduct searches that require warrants on behalf of law enforcement agencies, unless otherwise directed by a lawfully executed warrant specifically issued to TSA."). TSA screeners fully comply with that policy. *See* Pls.' Ex. 4, Leyh Dep. Tr. 360:7-18 ("Q. Did any of the field offices say they were searching for illegal items like drugs or drug money? A. No. Q. Were they clear that they were not? A. They're very clear in -- in that – in that that's not the mission. That's not what they're there for. They're there for . . . searching for, again, things that – that are of concern, like IEDs, prohibited items, anything that's going to be, you know, the security of the airplane.").

PLAINTIFFS' REPLY: That TSA screeners examine "large" amounts of cash to search for explosive materials and other threat items does not mean that TSA screeners *only* examine "large" amounts of cash for that purpose. Indeed, TSA policy requires TSA screeners to engage in practices related to bulk cash that don't have a transportation security purpose. *See, e.g.*, SUMF ¶¶ 78, 89–94. Plaintiffs' cited evidence, which is from TSA's Rule 30(b)(6) witness, backs this up. *See, e.g.*, Leyh Tr.

(Ex. 3) at 220:23–221:5 ("Q. I am asking what is the transportation security purpose of doing the things in Step 3? Ms. Tulis: Objection, form. BY MR. ALBAN: Q. You may answer. A. **What we want to ensure is that there is no criminal activity associated with these large amounts of currency.**") (emphasis added). Further, TSA screeners do not "fully comply" with TSA's claimed policy of not engaging in law enforcement unrelated to transportation security. *See, e.g.*, SUMF ¶¶ 196–97, 221–22.

103. Screeners are not supposed to ask travelers questions about cash except for transportation security purposes. MD 100.4 § 6.C(2) (Ex. 2) at AR9; Cash SOP (Ex. 1) at AR161 ("Do not ask questions of the individual about the currency except as it relates to security."); Murphy Tr. (Ex. 8) at 258:19–260:3.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

104. TSA field offices (airports) have had policies of asking questions about cash that go beyond transportation security purposes. *See* Leyh Tr. (Ex. 4) at 369:18–370:3 (acknowledging that at least two field offices did not understand the SOP to require them to limit their "questions about the cash" to security related issues only); Brown Decl. (Ex. 14) at ¶¶ 20, 33; Esposito Decl. (Ex. 12) at ¶ 38; Berger Decl. (Ex. 13) at ¶ 31; Shapiro Decl. (Ex. 11) at ¶¶ 59, 66 (additional examples).

DEFENDANTS' RESPONSE: Denied that TSA field offices have had any such "policies." Certain field offices have, at times failed to comply with TSA SOPs. However, the evidence in the record indicates that TSA screeners are currently following TSA policies at all airports. For example, Paul Leyh, the Senior Advisor to the Executive Assistant Administrator for TSA, learned of certain variances at certain airports in the application of TSA's written policies regarding the discovery of bulk currency during passenger screening. *See* Defs.' Ex. D, Leyh Dep. Tr. 264:5-271:4. Upon discovery of those variances, TSA's acting Assistant Administrator for Domestic Aviation Operations, Michael Turner, followed up with the airports to "reinforce what the policy was, and what they needed to do . . . to follow the policy." *Id.* at 271:19-23. To ensure the message was received, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with

variances in the application of TSA written policy. See AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.* That message was reinforced through an email sent to all FSDs on May 2, 2025. *See* AR222-24 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated May 2, 2025). That message explained to the FSDs that "some airports may not be fully adhering to both the letter and spirit of the SOP and TSA MD 100.4 when it comes to discoveries of bulk currency during screening," and directed that notifications should only be made for "[d]iscoveries that appear to have a possible connection to criminal activity" and where "[a]n international traveler appears to be carrying more than $10,000 in bulk currency." *Id.* The message reiterated that "[b]ecause traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold." *Id.* It also explained that "[s]creening personnel should not ask the passenger questions about the currency, except as it relates to security." *Id.* The message also made clear that, even if law enforcement is notified, "the screening process cannot be extended or delayed for law enforcement to arrive"; instead, if such a notification has been made but law enforcement officers "are not present at the conclusion of the security screening, the individual's property should be returned to them and they are free to leave the screening checkpoint." *Id.* Finally, and further demonstrating that TSA demands adherence to its written policies, the email directed that all FSDs should "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.*

PLAINTIFFS' REPLY: Plaintiffs' cited evidence supports the Statement. While TSA contests that its field offices had these policies, TSA points to no record evidence to contest Plaintiffs' extensive evidence, so Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. Instead of focusing on what has happened ("have had policies"), TSA focuses on what it claims is "currently" happening in airports. But even then, TSA is wrong. *See, e.g.*, SUMF ¶¶ 196–97, 221–22. As recently as March and May 2025, TSA provided "guidance" to "try and clean up some bulk currency issues" because certain airports "may not be fully adhering to both the letter and spirit of the SOP and TSA[']s MD 100.4 when it comes to discoveries of bulk currency during screening." SUMF ¶¶ 221–23 (citing AR222–24, AR231–32). There is zero record evidence to indicate what has been done in response to these 2025 emails and TSA has produced nothing subsequent to Michael Turner's May 2, 2025 email in response to Plaintiffs' repeated requests for documents regarding compliance with TSA's screening policies. Alban Decl. (Ex. 33) ¶ 37. Notably, TSA cites no supporting record evidence in support of its claim that "the evidence in the record indicates that TSA screeners are

currently following TSA policies at all airports." As Defendants cite no record evidence refuting the Statement, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

105. TSA does not have a definition of "bulk cash," "bulk currency," "large amounts of cash," or "large amounts of currency," leaving individual Screeners to decide for themselves on a case-by-case basis what qualifies. Phillips Tr. (Ex. 6) at 168:6–8 ("Q: Is large amount of currency defined? Did you see that when you were looking through? A: A specific definition, no."); Phillips Tr. (Ex. 6) at 185:5–186:12 (acknowledging Chapter 16 of the SOPs doesn't define "large amounts of currency," "bulk currency," "bulk cash," and "large amounts of cash"); Phillips Dep. Ex. 8 (Ex. 6) at TSA002296–99 (a training document with the title "Bulk Currency Discovery" that doesn't define "bulk currency"); Leyh Tr. (Ex. 3) at 113:7–21, 115:4–116:3, 117:22–118:2, 125:23–126:5, 128:15–25; Chin Tr. (Ex. 5) at 163:14–18, 269:2–17; Phillips Tr. (Ex. 6) at 98:3–99:5, 185:5–6, 185:25–186:23; Murphy Tr. (Ex. 8) at 51:9–17, 53:21–55:1, 91:11–93:19, 182:10–15, 184:15–18, 185:3–6, 186:1–9, 203:4–204:8, 205:23–207:2, 213:17–23, 214:8–15; Lambert Tr. (Ex. 10) at 140:12–141:21 (TSA subject matter expert on TSA disciplinary action would not recommend disciplinary action for TSO who did not "correctly" interpret the undefined phrase "large amount of currency" and would instead recommend that TSA "shor[e] the gap" by defining the phrase); *see also* AR51 (n.b., however, that SOP Chapter 4 defines "Bulk Alarm" and "Bulky Clothing").

DEFENDANTS' RESPONSE: Admitted that TSA does not define "bulk cash," "bulk currency," "large amounts of cash," or "large amounts of currency" in either MD 100.4 or the SOPs. Denied that TSA leaves "individual screeners to decide for themselves on a case-by-case basis what qualifies." None of the cited evidence supports that Statement.

PLAINTIFFS' REPLY: As Defendants cite no record evidence refuting the Statement, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, the lack of definitions in TSA's written policies necessarily requires that TSA screeners decide

for themselves what qualifies. The evidence Plaintiffs cited supports this reality. *See, e.g.*, Leyh Tr. (Ex. 3) at 113:7–21 (Rule 30(b)(6) witness testifying that "large amounts of currency" means "it could be a stack of cash, it could be piles of cash, it could be cash artfully concealed" and that TSA screeners "are going to look at it and say, make a determination, is that a large amount of cash," which "**could be a denomination, it could be 2,000, it could be 5,000, it could be 7,000**") (emphasis added); *id.* at 116:1–3 ("**each incident is its own incident, and the STSO is going to make a determination** on what they see") (emphasis added); *id.* at 125:7–14 (when asked for a definition of "bulk currency or bulk cash as it is used by TSA," TSA's Rule 30(b)(6) witness testified, "if you are looking for a definitive number on that **I can't give you a number**") (emphasis added).

106. TSA's training documents for screeners do not define "large amounts of currency" or "bulk currency." Phillips Tr. (Ex. 6) at 146:1–14, 147:1–15, 148:1–14.

DEFENDANTS' RESPONSE: Denied. The cited testimony states that the specific slides that were presented to the witness do not define a large amount of currency. Pls.' Ex. 6, Phillips Dep. Tr. 146:1–14, 147:1– 15, 148:1–14. The cited testimony does not state that all TSA training documents for screeners do not define "large amounts of currency" or "bulk currency."

PLAINTIFFS' REPLY: Defendants cite no record evidence that the cited trainings are not reflective of TSA training at large, so Plaintiffs' statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, Plaintiffs' cited evidence indicates the documents reflect TSA training for Screeners regarding the discovery of currency during TSA screening. Phillips Tr. (Ex. 6) at 145:24–146:4 ("Q. If you could look to Slide 50, please? Large Amounts of Currency? **This is training on what happens when a TSA screener finds large amounts of currency in accessible property. Correct? A. Yes.**") (emphasis added); *id.* at 147:1–5 ("Q. And you just said this slide describes what TSA screeners should do when they believe they have encountered large amounts of currency. Right? A. Yes.").

107. Because TSA training documents for screeners do not define "large amounts of currency" or "bulk currency," and because there is no right or wrong answer for defining these terms, TSA cannot reasonably discipline Screeners who interpret those phrases in any manner. Lambert Tr. (Ex. 10) at 140:12–141:21 (TSA subject matter expert on TSA disciplinary action would not recommend disciplinary action for STSO who did not correctly interpret the undefined phrase "large amount of currency" and would instead recommend that TSA "shor[e] the gap" by defining the phrase).

DEFENDANTS' RESPONSE: Denied. The cited testimony states that the specific slides that were presented to the witness do not define a large amount of currency. Pls.' Ex. 6, Phillips Dep. Tr. 146:1–14, 147:1– 15, 148:1–14. The cited testimony does not state that all TSA training documents for screeners do not define "large amounts of currency" or "bulk currency." Further denied because whether TSA can "reasonably discipline" screeners who interpret those phrases "in any manner" is a question of employment law not susceptible to proof through a Statement of fact.

PLAINTIFFS' REPLY: Defendants cite no record evidence that the cited trainings are not reflective of TSA training at large, so Plaintiffs' statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, Plaintiffs' cited evidence indicates the documents reflect TSA training for Screeners regarding the discovery of currency during TSA screening. Phillips Tr. (Ex. 6) at 145:24–146:4 ("Q. If you could look to Slide 50, please? Large Amounts of Currency? **This is training on what happens when a TSA screener finds large amounts of currency in accessible property. Correct? A. Yes.**") (emphasis added); *id.* at 147:1–5 ("Q. And you just said this slide describes what TSA screeners should do when they believe they have encountered large amounts of currency. Right? A. Yes."). Further, Plaintiffs' cited testimony establishes that TSA would not recommend disciplinary action if an STSO does not correctly interpret the undefined phrase "large amount of currency." Lambert Tr. (Ex. 10) at 140:12–141:21.

108. None of TSA's witnesses can define the terms "bulk cash," "bulk currency," "large amounts of cash," or "large amounts of currency." Leyh Tr. (Ex. 3) at 125:12–14 ("[I]f you are looking

for a definitive number on that I can't give you a number."); Leyh Tr. (Ex. 3) at 125:19 ("There is a lot of variations on it."); Leyh Tr. (Ex. 3) at 126:4–5 ("I can't clearly define it because of the varying dependencies on it."); Leyh Tr. (Ex. 3) at 128:3–5 ("I don't know because that not part of either our – as best as I can recall that's not either part of our SOP, MD and our OD."); *but see* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("TSA should notify CBP and/or law enforcement authorities pursuant to its local standard operating procedures that the individual possesses a sum of currency that appears to exceed $10,000."); *see also* Murphy Tr. (Ex. 8) at 15:18–17:13 (testifying that using the words "bulk cash" and "bulk currency" interchangeably doesn't make sense and isn't clear); Murphy Tr. (Ex. 8) at 50:20–52 ("Q: Do you know what bulk currency is in the context of the security screening SOPs? A: I would need to look at the document."); Murph Tr. (Ex. 8) at 53:1–55:16 (testifying that she doesn't know what the words "bulk cash" and "bulk currency" mean without looking at a document and "without speculating"); Phillips Tr. (Ex. 6) at 71:19–72:11 (stating a belief that "bulk currency" and "large amount of currency" is defined in either TSA training documents or the SOP); Phillips Tr. (Ex. 6) at 98:25–99:15 (stating a Screener should consult "the screening policies SOPs or the training documents" to learn what the terms "bulk cash," "bulk currency," "large amounts of cash," and "large amounts of currency" mean).

DEFENDANTS' RESPONSE: Denied. The cited testimony resists defining "bulk currency" or "bulk cash" by reference to a "definitive number." Pls.' Ex. 3, Leyh Dep. Tr. 125:12-14. None of the cited testimony states the terms cannot be defined or indicates that the witnesses are unable to provide that testimony.

PLAINTIFFS' REPLY: Defendants cite no record evidence where TSA witnesses can define those terms, so Plaintiffs' statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, Defendants admit there's no definition of those terms. TSA Resp. to SUMF ¶ 105 ("Admitted that TSA does not define 'bulk cash,' 'bulk currency,' 'large amounts of cash,' or 'large amounts of currency' in either MD 100.4 or the SOPs."). Consistent with TSA's admission, TSA's Rule 30(b)(6) witness also testified that he "can't give . . . a number," Leyh Tr. (Ex. 3) at 125:12–14,

and that there are "a lot of variations on it," *id.* at 125:19. Plaintiffs' other cited evidence shows that TSA's witnesses cannot define those terms, despite the numerous opportunities to do so.

109. When TSA's witnesses explained what they thought the terms "bulk cash," "bulk currency," "large amounts of cash," or "large amounts of currency" meant, their interpretations varied, ranging from values potentially as low as $100 to $2,000, up to $10,000 or more, or alternatively the actual physical bulk (organic mass) of the cash, which could potentially include a stack of 100 one-dollar bills. Leyh Tr. (Ex. 3) at 113:7–118:2 (discussing what "large amounts of currency" means to TSA); Leyh Tr. (Ex. 3) at 113:19–21 ("[I]t could be a stack of cash, it could be piles of cash, it could be cash artfully concealed . . . . A large amount of cash could be a denomination, it could be 2,000, it could be 5,000, it could be 7,000."); Leyh Tr. (Ex. 3) at 115:7–20 ("Q: It sounds like you are saying large amounts of currency can mean large volumes of currency or it could mean a large quantity of bills, is that right? A: It could be either/or. Q: And so a large amount of currency could be based on the amount of organic mass of the currency, is that right? A: It's a possibility. Q: And so a stack of $1 bills could have a sufficient mass to be considered a large amount of currency even if the actual value of those bills is not particularly high, is that right? A: It could be."); Chin Tr. (Ex. 5) at 269:13–17 ("Q: Okay. So, to your understanding, this is consistent with the meaning of bulk cash because there could be bulk cash both above and below $10,000; is that right? A: Yes."); Murphy Tr. (Ex. 8) at 112:4–7 ("Large amounts of currency is what appears to be large amounts of currency. You notify a supervisor. And then the supervisor will triage whether it meets or appears to be over $10,000."); Murphy Tr. (Ex. 8) at 113:2–5 ("Q: So my question then is, does the term 'large amount of currency' refer only to currency that appears to exceed $10,000? A: No."); Murphy Tr. (Ex. 8) at 205:23–206:14 (stating "every situation can be different" when Screeners make individual determinations as to what constitutes a "large amount of currency").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

110. TSA equates "large amounts of currency"—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. *Compare* Cash SOP (Ex. 1) at AR161–62, *with* Leyh Tr. (Ex. 3) at 116:5–116:15 (where TSA's designated 30(b)(6) witness on TSA's screening policies is asked about whether a stack of 100 one-dollar bills could be considered "a large amount of currency," and testified that it "depend[s] on what they see with them," 116:9, including whether it was "artfully concealed," 116:11, or "rolled up into something else that would draw some suspicion, let's say," 116:12–13, and concluding "so all $100 are not equal because of what the circumstances are with each of them," 116:13–15), *and with* Leyh Tr. (Ex. 3) at 117:22–118:2 (same witness testifying that "whether a stack of 100 $1 bills is considered a large amount of currency depends on other factors beyond just the stack of bills including the circumstances of how it is stored in the luggage or how it is wrapped"); *see also* Leyh Tr. (Ex. 3) 113:7–17 (asked what "large amounts of currency" means at TSA in the context of airport security screening and the then-current version of the Cash SOP, same witness answers "it could be cash artfully concealed"); Phillips Dep. Ex. 6 (Ex. 7), Slide 22 at TSA0324 ("Checked Baggage with Physical Search Lesson Plan, Version 5.0 (11/27/18)," "Instructor Actions" for "Slide 22: Evidence of Criminal Activity," lists "[l]arge amounts of currency" as an example of "evidence of criminal activity"); Phillips Tr. (Ex. 7) at 160:10–161:19 (acknowledging that TSA describes, in standard lesson plan training slides, "large amounts of currency" as an example of "evidence of criminal activity").

DEFENDANTS' RESPONSE: Denied. TSA policies are explicit that large amounts of currency will not always "appear[] to relate to criminal activity." To the contrary, MD 100.4 states that "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." MD 100.4 § 6.C(2)

(AR9). The SOP likewise states that the currency appears to relate to criminal activity if, "for example, the currency may be all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." SOP Ch. 12 § 2(3)(b) (AR162). Further denied because the examples of TSA training materials cited all concern checked baggage. *See* Pls.' Ex. 7, Phillips Dep. Ex. 6 Slide 22 at TSA0324 ("Checked Baggage with Physical Search Lesson Plan, Version 5.0 (11/27/18)," "Instructor Actions" for "Slide 22: Evidence of Criminal Activity," lists "[l]arge amounts of currency" as an example of "evidence of criminal activity"). These training materials are not applicable to Chapter 12 of the SOP concerning the discovery of large amounts of currency during screening at a passenger checkpoint. *See* SOP Ch. 6 (General) (AR153) ("Checked Baggage must undergo screening, as described in the *Checked Baggage (CB) SOP*.").

PLAINTIFFS' REPLY: That TSA written policy lists factors or examples for whether cash appears to be related to criminal activity does not mean that TSA does not equate "large amounts of currency" with "appears to relate to criminal activity." As Defendants cite no record evidence on this point, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, Plaintiffs' cited evidence supports the Statement.

And while TSA takes issue with the training materials that Plaintiffs cite, TSA's use and understanding of the phrase "large amounts of currency" in the context of airport security screening speaks to how TSA and its Screeners use and understand the phrase in that context. Since both passenger screening and checked-baggage screening involve screening of passenger baggage, TSA's training materials on how to understand the phrase "large amounts of currency" in one airport screening context (checked baggage) indicates how TSA Screeners are likely to understand the phrase in a very similar airport screening context (carry-on baggage). TSA offers no reason for why it would consider "large amounts of currency" as an example of "evidence of criminal activity" when discovered in a checked bag but not in a carry-on bag; such a policy would be illogical and absurd. Instead, this training document indicates how TSA institutionally views "large amounts of currency" as contraband and trains its Screeners accordingly.

111. There's no way to determine what the correct interpretation of "bulk currency" or "large amounts of currency" is. Murphy Tr. (Ex. 8) at 186:1–9; *see also* Murphy Tr. (Ex. 8) at 25:4–23

(describing Brenna Murphy's former role as TSA's section chief of screening procedures); Murphy Tr. (Ex. 8) at 26:8–18 (describing how Brenna Murphy helped develop and revise security screening SOPs when she was the TSA section chief of screening procedures).

DEFENDANTS' RESPONSE: Denied. The cited testimony does not state that "there's no way to determine what the correct interpretation of 'bulk currency' [or] 'large amounts of currency' is." Rather, it states that will be assessed in a case-by-case basis by the individual TSOs and STSOs. *See* Pls.' Ex. 8 at 186:1-9.

PLAINTIFFS' REPLY: Defendants cite no record evidence to the contrary, so Plaintiffs' statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, TSA doesn't define the terms in either its written policies or its training. *See* SUMF ¶ 105 (written policies), ¶ 106 (trainings). Nor could TSA define the terms through its witnesses, as those witnesses' interpretations varied. *See id.* at ¶ 108 (no definition), ¶ 109 (varied interpretations). Plaintiffs' cited testimony further supports that there's no way to determine what the correct interpretation of those terms is. Murphy Tr. (Ex. 8) at 186:1–9 ("Q. Sure. If – there's no – because SOP Chapter 16 does not define the terms 'bulk currency' or 'large amounts of currency,' **if one TSO decides that those terms mean one thing and another TSO determines they mean something different, there's no way to determine who's right or what the correct interpretation of that policy is, is there? A. That's correct.**") (emphasis added).

112. The phrase "appears to relate to criminal activity" in Step 3.b of the Cash SOP is undefined in the SOP (or elsewhere by TSA). Certain characteristics are listed as examples that are each independently sufficient for cash to "appear[] to relate to criminal activity": "all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP (Ex. 1) at AR 161–62.

DEFENDANTS' RESPONSE: Denied. Example "characteristics" are one way of defining a term.

PLAINTIFFS' REPLY: As Defendants cite no record evidence in support of their denial, including any evidence of where this phrase is defined in the SOP (or elsewhere by TSA), Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, Step 3.b of the Cash SOP uses the word "example" but doesn't define "appears to relate to criminal activity." Cash SOP (Ex. 1) at AR 162 ("If the currency appears to relate to criminal activity (for example . . . .").

113. Although the phrase "appears to relate to criminal activity" in Step 3.b of the Cash SOP is undefined, TSA training materials for checked-baggage screening describe "large amounts of currency" as an example of "evidence of criminal activity." *See* Phillips Tr. (Ex. 6) at 160:10–161:19 (acknowledging that TSA describes, in training slides, "large amounts of currency" as an example of "evidence of criminal activity"); Phillips Tr. (Ex. 6) at 167:21–168:8 (acknowledging there's no definition of "bulk currency" and "large amount of currency" in the training slides); Phillips Dep. Ex. 7 (Ex. 6) at TSA00324 (listing "[l]arge amounts of currency," without any additional evidence, as an example of "evidence of criminal activity" in TSA training slide for baggage screener); Phillips Dep. Ex. 8 (Ex. 6) at TSA002296–99 (a training document with the title "Bulk Currency Discovery" that doesn't define "bulk currency").

DEFENDANTS' RESPONSE: Denied. Example "characteristics" are one way of defining a term. Further denied insofar as the Statement suggests that TSA training materials for checked-baggage screening are relevant to Chapter 12 of the screening SOP for passenger screening checkpoints. To the contrary, that document states that there is a distinct SOP for checked-baggage screening. *See* SOP Ch. 6 (General) (AR153) ("Checked Baggage must undergo screening, as described in the *Checked Baggage (CB) SOP*.").

PLAINTIFFS' REPLY: As Defendants fail to fully deny or refute the Statement, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E. TSA's use and understanding of the phrase "large amounts of currency" in the context of airport security screening speaks to how TSA and its Screeners use and understand the phrase in that context. Since both

passenger screening and checked-baggage screening involve screening of passenger baggage, TSA's training materials on how to understand the phrase "large amounts of currency" in one airport screening context (checked baggage) indicates how TSA Screeners are likely to understand the phrase in a very similar airport screening context (carry-on baggage). TSA offers no reason for why it would consider "large amounts of currency" as an example of "evidence of criminal activity" when discovered in a checked bag but not in a carry-on bag; such a policy would be illogical and absurd. Instead, this training document indicates how TSA institutionally views "large amounts of currency" as contraband and trains its Screeners accordingly.

114. TSA training instructs Screeners that "[l]arge amounts of currency" is "evidence of criminal activity." *See* Phillips Dep. Ex. 6 (Ex. 7), Slide 22 at TSA0324 ("Checked Baggage with Physical Search Lesson Plan, Version 5.0 (11/27/18)," "Instructor Actions" for "Slide 22: Evidence of Criminal Activity," lists "[l]arge amounts of currency" as an example of "evidence of criminal activity" (with no other qualifiers) as part of the agency's Checked Baggage with Physical Search training course, which is designed to "provide the general knowledge and skills necessary to conduct checked baggage screening"); Phillips Tr. (Ex. 7) at 160:10–161:19 (admitting TSA describes, in standard lesson plan training slides, "large amounts of currency" as an example of "evidence of criminal activity").

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests that TSA training materials for checked- baggage screening are relevant to Chapter 12 of the screening SOP for passenger screening checkpoints. To the contrary, that document states that there is a distinct SOP for checked- baggage screening. *See* SOP Ch. 6 (General) (AR153) ("Checked Baggage must undergo screening, as described in the *Checked Baggage (CB) SOP*.").

PLAINTIFFS' REPLY: As Defendants fail to fully deny or refute the Statement, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E. TSA's use and understanding of the phrase "large amounts of currency" in the context of airport security screening

speaks to how TSA and its Screeners use and understand the phrase in that context. Since both passenger screening and checked-baggage screening involve screening of passenger baggage, TSA's training materials on how to understand the phrase "large amounts of currency" in one airport screening context (checked baggage) indicates how TSA Screeners are likely to understand the phrase in a very similar airport screening context (carry-on baggage). TSA offers no reason for why it would consider "large amounts of currency" as an example of "evidence of criminal activity" when discovered in a checked bag but not in a carry-on bag; such a policy would be illogical and absurd. Instead, this training document indicates how TSA institutionally views "large amounts of currency" as contraband and trains its Screeners accordingly.

115. It is commonly accepted within TSA that amounts over $10,000 satisfy the definition of "bulk cash," "bulk currency," "large amounts of cash," or "large amounts of currency," including by reference in a key TSA incident reporting form. But that is not a minimum threshold; a Screener can decide that any amount less than $10,000 is "bulk cash," "bulk currency," "large amounts of cash," or "large amounts of currency." *See, e.g.*, AR205 (TSA Form 414); TSA MSJ Ex. E at TSA_ESI_00004756; TSA MSJ Ex. J at TSA_ESI_00003692; TSA Form 414 Incident Report for Matt Berger (Ex. 31) at TSA02523 (TSA Form 414 Incident Report for lead Plaintiff Matt Berger, identifying type of incident as "Bulk Currency - $10,000 or More").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

116. Iterations of TSA's "Incident Report" entitled "TSA Form 414" list "Bulk Currency - $10,000 or more (in/out of U.S.) as an "Incident Type." *See* AR203–05 (TSA Form 414); AR40–41 (describing the circumstances in which a TSA Form 414 is required).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

117. TSA screeners examine cash that they encounter in the screening process to determine if the cash is related to criminal activity. Leyh Tr. (Ex. 3) at 98:9–19.

DEFENDANTS' RESPONSE: Denied. TSA screeners do not "examine" cash "to determine if the cash is related to criminal activity." TSA policy expressly prohibits screeners from engaging in general law enforcement unrelated to transportation security. MD 100.4 instructs that "[a]dministrative and special needs searches may not be conducted to detect evidence of crimes unrelated to transportation security." MD 100.4 § 6(C)(1) (AR8). TSA's screening SOP instructs similarly. SOP Ch. 12, Overview (AR161) ("Screening of property is conducted for security purposes. TSOs are not authorized to conduct searches for purposes of discovering illegal items such as drugs, drug paraphernalia, or child pornography, or to conduct searches that require warrants on behalf of law enforcement agencies, unless otherwise directed by a lawfully executed warrant specifically issued to TSA."). TSA screeners fully comply with that policy. *See* Pls.' Ex. 4, Leyh Dep. Tr. 360:7-18 ("Q. Did any of the field offices say they were searching for illegal items like drugs or drug money? A. No. Q. Were they clear that they were not? A. They're very clear in -- in that – in that that's not the mission. That's not what they're there for. They're there for . . . searching for, again, things that – that are of concern, like IEDs, prohibited items, anything that's going to be, you know, the security of the airplane.").

PLAINTIFFS' REPLY: That a few lines in TSA policy say TSA screeners can't engage in law enforcement unrelated to transportation security does not mean that TSA screeners do not otherwise engage in law enforcement unrelated to transportation security. Indeed, TSA policy requires TSA screeners to engage in practices related to bulk cash that don't have a transportation security purpose. *See, e.g.*, SUMF ¶¶ 78, 89–94. Testimony from TSA's Rule 30(b)(6) witness backs this up. *See, e.g.*, Leyh Tr. (Ex. 3) at 220:23–221:5 ("Q. I am asking what is the transportation security purpose of doing the things in Step 3? Ms. Tulis: Objection, form. BY MR. ALBAN: Q. You may answer. A. **What we want to ensure is that there is no criminal activity associated with these large amounts of currency**.") (emphasis added). Further, TSA screeners do not "fully comply" with TSA's claimed policy of not engaging in law enforcement unrelated to transportation security. *See, e.g.*, SUMF ¶¶ 196–97, 221–22.

118. TSA considers evidence of criminal activity to include cash. Leyh Tr. (Ex. 3) at 199:10–14; Phillips Tr. (Ex. 6) at 102:20–24.

DEFENDANTS' RESPONSE: Admitted that large amounts of currency with certain characteristics can constitute evidence of criminal activity. The witness specified that cash can be evidence of criminal activity "as outlined in . . . the SOP." Pls.' Ex. 3, Leyh Dep. Tr. 199:13-14. Defendants respectfully refer the Court to the SOP for example characteristics of cash that can constitute evidence of criminal activity.

PLAINTIFFS' REPLY: As Defendants do not deny this Statement or cite evidence, Plaintiff's Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a–b, 56.E.

119. A TSA screener will contact law enforcement if he or she screens a traveler's property and believes there is evidence of criminal activity. Chin Tr. (Ex. 5) at 192:14–18, 194:14–18, 195:18–196:5, 198:23–199:7, 209:4–13; Simons Tr. (Ex. 9) at 153:9–13.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

120. When a TSO believes there is evidence of criminal activity, the TSO notifies a STSO, who in turn notifies law enforcement. Murphy Tr. (Ex. 8) at 147:1–23.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

121. TSA does not have a definition of "appears to relate to criminal activity," leaving individual TSA Screeners to decide for themselves what qualifies. Murphy Tr. (Ex. 8) at 187:2–13; *see also* Murphy Tr. (Ex. 8) at 187:11–13 ("There would be no right or wrong. It's a perception of what's evidence of criminal activity.").

DEFENDANTS' RESPONSE: Denied. Example "characteristics" are one way of defining a term.

PLAINTIFFS' REPLY: As Defendants cite no record evidence regarding a definition, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. In any event, the testimony Plaintiffs cite support the Statement. Murphy Tr. (Ex. 8) at 187:2–13("[Q]. I'm talking about a TSO who is trying to interpret the phrase that's used in SOP Chapter 16, 'appears to relate to criminal activity.' And if one TSO or STSO interprets that to mean one thing and another TSO or STSO interprets it to mean something else, there is no way to know who's right. Isn't that so? A. There would be no right or wrong. It's a perception of what's evidence of criminal activity.").

122. Because there's no definition of "appears to relate to criminal activity," TSA's subject-matter expert on employee disciplinary action testified that she would not recommend discipline if a TSA employee failed to correctly interpret this undefined phrase and instead would recommend that TSA "shor[e] the gap" by defining the term. Lambert Tr. (Ex. 10) at 142:4–144:15; *see also* Lambert Tr. (Ex. 10) at 135:7–140:5 (similar answer regarding phrase "evidence of criminal activity" in SOP Ch. 12, § 1 (AR161)); Lambert Tr. (Ex. 10) at 137:7–9 ("I would think if our procedures are not clear, it's difficult to hold employees accountable for them.").

DEFENDANTS' RESPONSE: Denied. Example "characteristics" are one way of defining a term.

PLAINTIFFS' REPLY: As Defendants cite no record evidence regarding a definition, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

123. A TSA screener can consider multiple factors for the purpose of deciding whether cash is evidence of criminal activity, any one of which is enough for the Screener to decide that the cash is evidence of criminal activity. Murphy Tr. (Ex. 8) at 97:14–98:12, 100:16–18.

DEFENDANTS' RESPONSE: Denied. The cited testimony states that, in certain circumstances, "it's possible" that the presence of one of those four factors could be "enough to indicate that cash is

related to criminal activity." Pls.' Ex. 8, Murphy Dep. Tr. 100:2–18. The cited testimony does not support the Statement's suggestion that the presence of one factor is necessarily sufficient.

PLAINTIFFS' REPLY: When asked whether "one factor is potentially enough to indicate criminal activity," Murphy answered, "[i]t could." Murphy Tr. (Ex. 8) at 100:16–18. Plaintiffs clarify that any one of the factors *could* be enough for the Screener to decide that the cash is evidence of criminal activity.

124. To decide whether cash is evidence of criminal activity, the Screener can rely on any one of the following characteristics: the amount of cash, cash in the same domination, cash that's bound by rubber bands, and cash that's in a Ziploc bag. Chin Tr. (Ex. 5) at 235:9–19, 236:7–19, 237:23–238:1.

DEFENDANTS' RESPONSE: Denied. The SOP provides examples of characteristics that can indicate whether currency appears to relate to criminal activity, and Defendants respectfully refer the Court to that document. Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: As Defendants cite no record evidence regarding a definition, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. Further, an employee like AFSD Chin may testify concerning a policy, practice, or custom of his employer when the testimony concerns matters within the scope of that employee's employment. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298–99 (3d Cir. 2007); *Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022); Fed. R. Evid. 801(d)(2)(D).

125. A TSA screener will contact law enforcement if he or she believes a traveler's cash is related to criminal activity under Step 1 of the "Suspicious" Item SOP—regardless of the quantity of cash. Cash SOP (Ex. 1) at AR162 ("If the currency appears to relate to criminal activity . . . the STSO

must then notify a LEO."); Phillips Tr. (Ex. 6) at 190:10–19 ("If the currency appears to be related to criminal activity, we also must notify an LEO."); *see also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("When currency appears to be indicative of criminal activity, TSA will report the matter to the appropriate authorities.").

DEFENDANTS' RESPONSE: Denied insofar as Plaintiffs' usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: The Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60; Leyh Tr. (Ex. 3) at 219:24–220:5 ("Q: And we were calling them steps because it appears this is the order things are supposed to be done in, is that right? A: That's correct."). TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order and that the information collected does not serve a transportation security purpose.

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). SUMF ¶ 60. Since TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

126. A TSA screener seizes a traveler's property that the TSA screener believes is evidence of criminal activity until law enforcement can examine the property. Chin Tr. (Ex. 5) at 200:1–201:4; Phillips Tr. (Ex. 6) at 145:18–23.

DEFENDANTS' RESPONSE: Denied. TSA does not have a policy of detaining travelers with large amounts of currency, or collecting those travelers' currency. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10- 15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave."). Further denied because Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: TSA claims it does not "have a policy of detaining travelers with large amounts of currency, or collecting those travelers' currency." That's wrong. The SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications. That, in turn, necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6–8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence of criminal activity subject

to the "Suspicious" Item SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" after the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item." Moreover, TSA's Rule 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59.

Separately, TSA objects to the use of AFSD Chin's testimony. As AFSD for Screening at Washington Dulles International Airport, AFSD Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298–99 (3d Cir. 2007); *Walsh v.*

Fusion Japanese Steakhouse, Inc., 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022); Fed. R. Evid. 801(d)(2)(D). And AFSD Chin testified that TSA at his airport detains a traveler's bag with "a suspicious item" until the police department "comes to take a look at it." Chin Tr. (Ex. 5) at 200:1–201:4. Moreover, Chin's testimony is consistent with Ms. Phillips's testimony. Phillips Tr. (Ex. 6) at 145:18–23 ("Q. And so **maintain control of the property is what a TSA screener is taught to do when they encounter evidence, possible evidence of criminal activity**? MS. TULIS: Objection. Form. A: Yes.") (emphasis added). And the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990).

127. TSA "maintain[s] control" of evidence of criminal activity, even if the evidence is not a prohibited item. "Suspicious" Item SOP (Ex. 1) at AR161; Leyh Tr. (Ex. 3) at 197:5–23, 198:21–199:21; Murphy Tr. (Ex. 8) at 127:20–128:15.

DEFENDANTS' RESPONSE: Denied. "TSA" does not "maintain[] control" of anything: the procedures for screening contemplate ensuring that all security concerns are resolved before accessible property is returned to a passenger. Nor does TSA have a policy of detaining either travelers with large amounts of currency or those travelers' possessions. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: The SOP provides in relevant part: "If standard screening uncovers evidence of criminal activity, TSA officers must . . . **Maintain control of the suspicious item**." "Suspicious" Item SOP (Ex. 1) at AR161 (emphasis added). So TSA's Screeners, on behalf of TSA, do maintain control of evidence of criminal activity. Defendants cite no record evidence to the contrary, so Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

Further, while TSA separately claims it does not "have a policy of detaining either travelers with large amounts of currency or those travelers' possessions," the SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications. That, in turn, necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence of criminal activity subject to the "Suspicious" Item SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" after the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening

checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item." Moreover, TSA's Rule 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59.

128. A traveler is not free to leave with his or her property that TSA "maintain[s] control" of upon deciding that it satisfies one of the characteristics TSA deems sufficient to be evidence of criminal activity. Leyh Tr. (Ex. 3) at 200:12–16.

DEFENDANTS' RESPONSE: Denied. "TSA" does not "maintain[] control" of anything: the procedures for screening contemplate ensuring that all security concerns are resolved before accessible property is returned to a passenger. Nor does "TSA" "deem[]" anything to be "evidence of criminal activity." Further denied insofar as the Statement suggests TSA maintains control of bulk currency or travelers in possession of bulk currency. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: The SOP provides in relevant part: "If standard screening uncovers **evidence of criminal activity**, TSA officers must . . . **Maintain control of the suspicious item**." "Suspicious" Item SOP (Ex. 1) at AR161 (emphasis added). Further, TSA Screeners determine

whether "currency appears to relate to criminal activity[.]" *Id.* at AR162. Accordingly, TSA's screeners, on behalf of TSA, do maintain control of evidence of criminal activity after determining that item is evidence of criminal activity. Defendants cite no record evidence to the contrary, so Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

Further, while TSA separately claims that it does not maintain control of bulk currency or travelers in possession of bulk currency, that is wrong. The SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications. That, in turn, necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence of criminal activity subject to the "Suspicious Item" SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Furthermore, the SOP does not state that screeners may not maintain control of bulk currency or travelers. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" after the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item." Moreover, TSA's Rule 30(b)(6)

witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59.

129. A traveler is not free to leave a TSA screening checkpoint if a TSA screener believes there is evidence of criminal activity. Leyh Tr. (Ex. 3) at 194:20–24, 201:15–25.

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests TSA maintains control of bulk currency or travelers in possession of bulk currency. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: While TSA claims that it does not maintain control of bulk currency or travelers in possession of bulk currency, that is wrong. The SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications. That, in turn, necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence of criminal activity subject to the

"Suspicious" Item SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Furthermore, the SOP does not state that screeners may not maintain control of bulk currency or travelers. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" after the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item." Moreover, TSA's Rule 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59.

130. A traveler is not free to leave a TSA screening checkpoint if a TSA screener has not cleared the traveler's property. Leyh Tr. (Ex. 3) at 229:9–15, 231:18–21.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

131. For domestic travelers with currency at a TSA screening checkpoint, a TSA screener will "notify law enforcement" if the currency they encounter is "artfully concealed" in a carry-on bag or other accessible property ***regardless of the amount of currency***. Chin Tr. (Ex. 5) at 215:15–24, 217:1–14, 228:12–22; Chin Tr. (Ex. 5) at 218:5–12 ("Q: And so, as you understand it, TSA policy is when TSA screeners find artfully concealed currency during a screening, they will notify law enforcement; is that correct? A: Correct. Q: And does it matter how much cash or currency is discovered? A: No").

DEFENDANTS' RESPONSE: Denied. The SOP provides examples of characteristics that can indicate whether currency appears to relate to criminal activity, which requires notification of law enforcement. Defendants respectfully refer the Court to that document. Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: As Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Because TSA fails to identify any evidence that contradicts AFSD Chin's description of TSA policy, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

Furthermore, TSA policy expressly defines "conceal[ed]" cash as indicative of "criminal activity," and requires screeners to notify law enforcement "if standard screening uncovers evidence of criminal activity," which therefore means that TSA instructs screeners to notify law enforcement upon the discovery of concealed cash. *See* MD 100.4 § 6(C)(2) (Ex. 2) at AR9 (listing "concealment" as a "factor[] indicating that cash is related to criminal activity," and instructing that "[w]hen currency appears to be indicative of criminal activity, TSA will report the matter to the appropriate authorities."); SOP Ch. 12 § 1(3) (Ex. 1) at AR162 ("TSA officers must" "[n]otify an STSO, who will notify a LEO," when "standard screening uncovers evidence of criminal activity.").

132. There is no minimum threshold amount of cash for notifying law enforcement when TSA screeners encounter cash that is "artfully concealed." Chin Tr. (Ex. 5) at 223:11–17.

DEFENDANTS' RESPONSE: Denied. The SOP provides examples of characteristics that can indicate whether currency appears to relate to criminal activity, which requires notification of law enforcement. Defendants respectfully refer the Court to that document. Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: As Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by

employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Because TSA fails to identify any evidence that contradicts AFSD Chin's description of TSA policy, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

Furthermore, TSA policy expressly defines the "concealment" of cash as an independently sufficient "factor[] indicating that cash is related to criminal activity." *See* MD 100.4 § 6(C)(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."); *see also* SUMF ¶ 14.

133. A single bill artfully concealed might not want warrant notifying law enforcement, but five $100 bills (totaling $500) would require a law-enforcement notification. Chin Tr. (Ex. 5) at 225:16–227:10.

DEFENDANTS' RESPONSE: Denied. The SOP provides examples of characteristics that can indicate whether currency appears to relate to criminal activity, which requires notification of law enforcement. Defendants respectfully refer the Court to that document. Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: As Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when

the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Because TSA fails to identify any evidence that contradicts AFSD Chin's description of TSA policy, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

134. After TSA contacts law enforcement regarding cash that is artfully concealed in that traveler's bag, TSA maintains possession of the bag until law enforcement arrives and clears the "alarm." Chin Tr. (Ex. 5) at 229:17–22, 230:16–231:13.

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests TSA maintains control of bulk currency or travelers in possession of bulk currency. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave."). Further, Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: As Defendants do not directly dispute the Statement, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E. Although Defendants do not directly deny this Statement, Defendants make a series of false assertions in support of Defendants' denial of this Statement "insofar as [it] suggests TSA maintains control of

bulk currency or travelers in possession of bulk currency." In fact, the SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications, which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8 (Ex. 1) at AR 161–63; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3 (Ex. 1) at AR 161. As the Cash SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence of criminal activity subject to the "Suspicious" Item SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" *after* the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Ch. 12, § 2, Steps 3, 5 (Ex. 1) at AR 161–62. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4 (Ex. 1) at AR 161. The "Suspicious" Item SOP does not say when or if to release the "suspicious item."

Moreover, as Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies, and the purpose for those policies, "concerned a matter within

the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Defendants cite no record evidence that contradicts AFSD Chin's testimony that "TSA holds on to the bag until law enforcement arrives … and the alarm is cleared." Chin Tr. (Ex. 5) 230:16–231:13. As such, Plaintiffs' Statement is undisputed and should be admitted. *See* LCvR 56.C.1.b, 56.E. Furthermore, AFSD Chin's description of TSA's policies is consistent with the SOP and TSA's other formal, written policies, which define concealed cash as evidence of criminal activity, *see* SUMF ¶¶ 14, 19, and instruct Screeners to "[m]aintain control of the … item" when "standard screening uncovers evidence of criminal activity." "Suspicious" Item SOP, Ch. 12, § 1, Step 1.

Finally, TSA's 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59. Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990).

135. A TSA screener that does not follow TSA's SOPs with respect to evidence of criminal activity could be subject to performance-based or conduct-based action by TSA. Lambert Tr. (Ex. 10) at 135:7–19.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

136. Deciding whether cash is related to criminal activity does not have a transportation security purpose. Chin Tr. (Ex. 5) at 242:10–17; Simons Tr. (Ex. 8) at 109:13–17.

DEFENDANTS' RESPONSE: Denied insofar as Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21. Further denied insofar as Michael Simons testified as the Director of Strategic Communications. Pls.' Ex. 9, Simons Dep. Tr. 14:1-6. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. Further denied insofar as the information collected pertaining to cash that is related to criminal activity can serve transportation security purposes. *See, e.g.*, Defs.' Ex. T, DHS-CEM-0002- 17, TSA02158 (describing Department of Homeland Security requests for information collected in the course of regular duties pertaining to bulk cash couriers for Al Shabaab terrorist organization).

PLAINTIFFS' REPLY: Defendants assertion that "the information collected pertaining to cash that is related to criminal activity can serve transportation security purposes," is not supported by the Department of Homeland Security document they cite, which does not address or even reference TSA but instead concerns DHS's broader efforts to disrupt the illegal funding of certain terrorist organizations. Defs.' Ex. T, DHS-CEM-0002-17, TSA02158. Although preventing the funding of terrorist organizations may serve law-enforcement interests generally, it does not advance any "transportation security purpose" under TSA's statutory authority. As Defendants admit in their Response to paragraph 9 of Plaintiffs' Statement of Undisputed Material Facts, TSA's "sole purpose" for conducting warrantless searches at security screening checkpoints is to "ensur[e] transportation security by detecting threat items or other prohibited items." *See* SUMF ¶ 9. Thus, the phrase

"transportation security purpose" refers to TSA's role in ensuring transportation security by detecting "threat items," which is defined as threats to the method of transportation itself, "such as explosives, incendiaries, and weapons." *See* MD 100.4 § 6(A)(1) (Ex. 2) at AR 6 ("TSA conducts all administrative and special needs searches … to detect the presence of threat items."); MD 100.4 § 4(Z) (Ex. 1) at AR4 (defining the term "Threat Items" as "[a]ny potentially hazardous items that pose a risk to transportation security, such as explosives, incendiaries, and items that could be used as weapons or otherwise transformed into a threat"); *see also* Pls.' Ex. 4, Leyh Dep. Tr. 360:7-18 (describing TSA's "mission" and the purpose for TSA screeners as "searching for … things that … are of concern like IEDs, prohibited items, anything that's going to be, you know, the security of the airplane."). Because determining whether cash is related to criminal activity does not further TSA's purpose of "ensuring transportation security by detecting threat items or other prohibited items," *see* SUMF ¶ 9, Plaintiffs' statement is therefore undisputed.

Furthermore, as Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies, and the purpose for those policies, "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Because TSA fails to identify any

evidence that contradicts AFSD Chin's testimony, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

137. Maintaining control of property that is evidence of criminal activity does not have a transportation security purpose. Leyh Tr. (Ex. 3) at 199:18–200:11.

DEFENDANTS' RESPONSE: Denied. Maintaining control of property that is evidence of criminal activity can have a transportation security purpose depending on the nature of the criminal activity. Maintaining control of a loaded firearm or an explosive device, of course, would constitute maintaining control of property that is evidence of criminal activity and would serve a transportation security purpose.

PLAINTIFFS' REPLY: Defendants cite no record evidence that contradicts the testimony of TSA's 30(b)(6) witness, and Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. By way of clarification, however, this Statement refers to all property other than what TSA defines as "threat items or other prohibited items." *See* SUMF ¶ 9.

138. TSA has solicited feedback from its employees on "TSA's efforts to help prevent illegal bulk cash and criminal activity." Leyh Tr. (Ex. 3) at 102:7–8, 103:3–8, 104:1–9, 105:12–23, 106:14–16; Simons Tr. (Ex. 9) at 108:1–7, 111:14–20.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

139. TSA has communicated to its employees that "heading to the airport with a huge wad of cash may not be a great idea." Simons Tr. (Ex. 9) at 69:7–13, 69:21–23, 70:1–6, 70:24–71:18, 72:3–12, 82:15–16.

DEFENDANTS' RESPONSE: Admitted. The Statement, however, omits that the sentence continues: "especially travelers carrying the money for suspicious deals." Pls.' Ex. 9, Simons Dep. Tr. 70:3-6. The Statement offers no additional context about why this may be so, and Defendants respectfully refer the Court to a full copy of the article referenced.

PLAINTIFFS' REPLY: No reply necessary.

140. As part of TSA's "morale-boosting" efforts, TSA has communicated to its employees the thousands of travelers that TSA has encountered "with suspicious amounts of bulk cash." Simons Tr. (Ex. 9) at 14:1–6, 83:6–14, 92:12–24, 95:20–96:5.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

141. TSA has tracked bulk cash, total LEO referrals, and arrests as part of its tracking of end-of-year accomplishments. Simons Tr. (Ex. 9) at 162:12–165:5.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

142. TSA screeners examine bulk cash to determine if the cash exceeds $10,000 and, if so, investigates whether the traveler reported the bulk cash to U.S. Customs and Border Patrol. Cash SOP (Ex. 1) at AR162 (Step 3.a); Leyh Tr. (Ex. 3) at 98:9–19, 121:15–23, 122:15–123:14; Chin Tr. (Ex. 5) at 172:20–24, 181:10–25.

DEFENDANTS' RESPONSE: Denied. TSA screeners do not "examine bulk cash to determine if the cash exceeds $10,000." Rather, the SOP directs that, "[i]f the currency appears to exceed $10,000," the screener should take certain actions. SOP Ch. 12 § 2(3)(a) (AR162). Nor does the SOP direct that a screener must ask the traveler if the traveler has declared their cash with customs. Instead, the SOP directs the screener that, "if the individual's destination is a non-U.S. location," the screener must "notify a LEO." SOP Ch. 12 § 2(3)(a)(3) (AR162). Further denied because TSA policy expressly prohibits screeners from engaging in general law enforcement unrelated to transportation security. MD 100.4 instructs that "[a]dministrative and special needs searches may not be conducted to detect evidence of crimes unrelated to transportation security." MD 100.4 § 6(C)(1) (AR8). TSA's screening SOP instructs similarly. SOP Ch. 12, Overview (AR161) ("Screening of property is conducted for security purposes. TSOs are not authorized to conduct searches for purposes of discovering illegal items such as drugs, drug paraphernalia, or child pornography, or to conduct searches that require warrants on behalf of law enforcement agencies, unless otherwise directed by a lawfully executed warrant specifically issued to TSA."). TSA screeners fully comply with that policy. *See* Pls.' Ex. 4, Leyh

Dep. Tr. 360:7-18 ("Q. Did any of the field offices say they were searching for illegal items like drugs or drug money? A. No. Q. Were they clear that they were not? A. They're very clear in -- in that – in that that's not the mission. That's not what they're there for. They're there for . . . searching for, again, things that – that are of concern, like IEDs, prohibited items, anything that's going to be, you know, the security of the airplane."). Further denied insofar as Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: TSA's "bulk cash" policies are not limited to the text of the SOP as TSA suggests but extend to any unwritten or informal policies or practices concerning how TSA interacts with passengers found to be carrying "bulk cash," including any unwritten or informal policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. Thus, the testimony of TSA's 30(b)(6) witness that Screeners would, upon the discovery of bulk cash, examine the cash to determine whether the currency appears to exceed $10,000 or more by "look[ing] at" the cash and then drawing conclusions based on that visual examination, *see* Leyh Tr. (Ex. 3) at 129:16–25, is not contradicted by the fact that the SOP does not explicitly state that Screeners must first examine the cash to determine whether "the currency appears to exceed $10,000." SOP Ch. 12 § 2(3)(a) (Ex. 1) at AR162 (instructing Screeners that currency that "appears to exceed $10,000" "may not be transported into or out of the United States unless it has been reported to Customs and Border Protection"). Similarly, the testimony of TSA's 30(b)(6) witness that Screeners, upon finding more than $10,000 during the screening process, "will ask [the traveler] if they are traveling domestically or internationally," Leyh Tr. (Ex. 3) at 122:15–20, is fully consistent with the Cash SOP, Ch. 12 § 2(3) (Ex. 1) at AR162 ("the STSO must determine if the currency requires notifications" including by "determin[ing] whether the individual is traveling outside the United States"). The specific directives in Step 3 of the Cash-Screening SOP, Ch. 12 § 2(3) (Ex. 1) at AR162, are not refuted by general statements in TSA's written policies that TSA's searches are supposed to be limited to threats to transportation security only, *see* SOP Ch. 12, Overview (Ex. 1) at AR161, or the fact that TSA's

30(b)(6) witness acknowledges that TSA's mission is limited to searching for items that pose a threat to the "security of the airplane." Leyh Tr. (Ex. 4) at 360:7-18.

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). As Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies, and the purpose for those policies, "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Consequently, AFSD Chin's testimony that TSA Screeners will, upon discovering currency that appears to exceed $10,000, ask whether the traveler is traveling internationally, Chin Tr. (Ex. 5) at 172:20–173:4, and if so, "ask [the traveler] if they have declared the cash," Chin Tr. (Ex. 5) at 179:3–16; *see also* Chin Tr. (Ex. 5) at 187:25–189:1 (confirming same), is admissible evidence of TSA's policies and practices regarding bulk cash, and is not refuted by the fact that TSA's formal written policies do not explicitly tell Screeners to make such inquires. Indeed, Chin's testimony is entirely consistent with the Cash SOP, which explicitly instructs Screeners that currency that appears to exceed $10,000 "may not be transported into or out of the United States unless it has been reported to Customs and Border Protection (CBP)," and further states that when Screeners encounter travelers with currency that appears to exceed $10,000, Screeners "must …

[c]heck the individual's travel documents to determine whether the individual is traveling outside the United States," and, if so, "notify a LEO." SOP Ch. 12 § 2(3)(a) (Ex. 1) at AR162.

143. If a TSO flips through a traveler's cash and determines that the cash equals $10,000, the TSO notifies a STSO. Chin Tr. (Ex. 5) at 172:20–24, 181:10–25; Leyh Tr. (Ex. 3) at 128:15–129:25.

DEFENDANTS' RESPONSE: Admitted that, pursuant to the SOP, "[i]f a large amount of currency is discovered," a screener is directed to "notify an STSO." SOP Ch. 12 § 2(1) (AR161). Denied insofar as Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: As Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Because TSA fails to identify any evidence that contradicts AFSD Chin's testimony, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

144. A TSO could be subject to performance-based or conduct-based action by TSA for failing to notify a STSO after discovering a large amount of cash. Lambert Tr. (Ex. 10) at 140:12–16.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

145. A TSO can notify a STSO about cash even when the TSO has not yet counted the cash. Chin Tr. (Ex. 5) at 182:7–25, 183:9–19, 184:9–18.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

146. TSA screeners do not have to physically count the cash up to $10,000; the inquiry is based on estimating. Phillips Tr. (Ex. 6) at 169:2–21.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

147. After a TSO notifies a STSO about cash estimated to be $10,000, the STSO places the traveler's cash on a search table and investigates whether the traveler is traveling domestically or internationally by checking the traveler's boarding pass and asking the traveler questions. Chin Tr. (Ex. 5) at 172:20–173:20, 175:25–177:17.

DEFENDANTS' RESPONSE: Denied. The SOP does not state where the cash should be placed when the individual's travel documents are checked. Nor does the SOP direct the STSO to "ask[] the traveler questions." Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: TSA's "bulk cash" policies are not limited to the text of the SOP as TSA suggests but extend to any unwritten or informal policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten or informal policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. Furthermore, as Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric

Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Because TSA fails to identify any evidence that contradicts AFSD Chin's testimony, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

148. If the traveler tells a TSA screener that the traveler is traveling internationally, the STSO will tell the traveler about the U.S. Customs and Border Patrol requirement to declare cash over $10,000 when traveling internationally and then ask if the traveler has declared the cash. Chin Tr. (Ex. 5) at 179:2–16, 187:25–189:8, 190:5–23.

DEFENDANTS' RESPONSE: Denied. The SOP does not direct a TSA screener to ask a traveler where that traveler is travelling. Nor does the SOP direct the STSO to tell the traveler about any requirement. Rather, the SOP directs the STSO to notify law enforcement if the individual's destination is a non-U.S. location. SOP Ch. 12 § 2(3) (AR162). Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: TSA's "bulk cash" policies are not limited to the text of the SOP as TSA suggests but extend to any unwritten or informal policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten or informal policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. Furthermore,

as Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Because TSA fails to identify any evidence that contradicts AFSD Chin's testimony, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

149. If the traveler is traveling internationally and tells the STSO that the traveler has not declared the $10,000 in cash, the STSO will call the TSA coordination center and notify U.S. Customs and Border Patrol and law enforcement. Chin Tr. (Ex. 5) at 190:24–191:4, 202:4–20.

DEFENDANTS' RESPONSE: Denied. The SOP directs the STSO to notify law enforcement if the individual's destination is a non-U.S. location and the large amount of currency appears to exceed $10,000. SOP Ch. 12 § 2(3) (AR162). The SOP also directs the Coordination Center, not to the STSO, to notify U.S. Customs and Border Patrol. *Id.* § 2(8). Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: To clarify, if an international traveler tells the STSO that they have more than $10,000 undeclared, the STSO must take two actions: (1) the STSO must notify a law enforcement officer, SOP Ch. 12 § 2(3) (Ex. 1) at AR162, and (2) the STSO must then provide the individual's name and flight information to the TSA Coordination Center. *Id.* at § 2(6). At that point,

the TSA Coordination Center must then "[p]rovide the individual's name, flight information, and airport code" to both the "ICE Bulk Cash Smuggling Center," *id.* at § 2(7), and Customs Border Patrol. *Id.* at § 2(8); *see also* Chin Tr. (Ex. 5) at 190:24–191:4 (explaining that after an international traveler tells the STSO that they have more than $10,000 undeclared, "we would call our coordination center and they would make the notification to customs"). Furthermore, as Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted).

150. When TSA encounters an international traveler with more than $10,000 undeclared, TSA sometimes retains control of the traveler's bag until U.S. Customs and Border Patrol arrives. Chin Tr. (Ex. 5) at 202:22–204:13; Chin Tr. (Ex. 5) at 203:6–8 ("Q: In some circumstances, would TSA retain control of the bag until CBP or MWAAPD arrives? A: Yes").

DEFENDANTS' RESPONSE: Denied. TSA does not have a policy of detaining travelers with large amounts of currency, or collecting those travelers' currency. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement."

SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave."). Additionally, Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. *See* Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. *See id.* 12:19-21.

PLAINTIFFS' REPLY: As Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning TSA's screening policies "concerned a matter within the scope of his authority," which makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Thus, AFSD Chin's testimony is admissible to prove that TSA sometimes retains control of the traveler's bag until U.S. Customs and Border Patrol arrives. Chin Tr. (Ex. 5) at 202:22–204:13; Chin Tr. (Ex. 5) at 203:6–8 ("Q: In some circumstances, would TSA retain control of the bag until CBP or MWAAPD arrives? A: Yes"). TSA cites no record evidence that contradicts AFSD Chin's testimony, as whether Defendants have a policy of detaining passengers is not the subject of this Statement, and thus TSA's argument that it has no such policy does not respond to, much less refute, this Statement. Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a–b, 56.E.

151. Dulles TSA will retain control of a traveler's bag until U.S. Customs and Border Patrol arrives 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. Chin Tr. (Ex. 5) at 203:9–204:13, 205:21–206:10; *but see* TSA Sampled Narratives (Ex. 23) at 30, AIM Event ID 2363499 (TSA narrative describing August 17, 2018, incident at Washington-Dulles International Airport (IAD) where a traveler waited approximately 30 minutes for LEOs to come to the security screening checkpoint before he was told by an STSO that he could continue to his gate after the STSO was informed that no LEOs would be responding to the security screening checkpoint).

DEFENDANTS' RESPONSE: Denied. TSA does not have a policy of detaining travelers with large amounts of currency, or collecting those travelers' currency. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10- 15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave."). Additionally, Eric Chin testified in his capacity as an Assistant Federal Security Director for Screening at Washington Dulles International Airport. See Pls.' Ex. 5, Chin Dep. Tr. 16:13-15. He was not designated as Rule 30(b)(6) witness, and accordingly, did not testify on behalf of TSA as to what screeners must do at all airports or generally. See id. 12:19-21.

PLAINTIFFS' REPLY: This Statement is about TSA practices at Dulles Airport, not TSA broadly. As Assistant Federal Security Director for Screening at Washington Dulles International Airport, Eric Chin was responsible for "oversee[ing]" the implementation of "all TSA screening at Dulles Airport." *See* Chin Tr. (Ex. 5) at 50:1–17, 55:19–21. Thus, AFSD Chin's testimony concerning screening practices of Dulles TSA "concerned a matter within the scope of his authority," which

makes such testimony admissible evidence to prove the truth of the matter asserted. *See Marra v. Philadelphia Hous. Auth.*, 497 F.3d 286, 298 (3d Cir. 2007), as amended (Aug. 28, 2007) (explaining that an employee's statement of "his opinion regarding company policy" is admissible evidence when the statement "concerned a matter within the scope of his authority"); *see also Walsh v. Fusion Japanese Steakhouse, Inc.*, 585 F. Supp. 3d 766, 775–76 (W.D. Pa. 2022) (holding that statements made by employees concerning matters within the scope of the employees' employment are admissible evidence to prove the truth of the matter asserted). Defendants cite no record evidence that contradicts AFSD Chin's testimony about the screening practices of Dulles TSA but instead make broad claims unrelated to this Statement about whether TSA has a policy of detaining passengers with large amounts of currency. Thus, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.a–b, 56.E.

152. TSA officials are unsure whether a traveler traveling domestically must report cash over $10,000. Murphy Tr. (Ex. 8) at 93:14–96:25, 110:15–24; Simons Tr. (Ex. 9) at 98:2–9, 101:19–102:22 (acknowledging that an internal TSA communication incorrectly stated that "[p]assengers are required to declare any amount of money over $10,000," rather than accurately stating that that reporting requirement only applies to international travelers).

DEFENDANTS' RESPONSE: Denied. No TSA policy states that a traveler traveling domestically must report cash over $10,000. The cited testimony from Brenna Murphy states only that the specific sentence in SOP Chapter 12 regarding reports to law enforcement for amounts over $10,000 does not "specify" whether it applies to either domestic or international travelers. Pls.' Ex. 8, Murphy Dep. Tr. 93:14-96:25. However, the subsequent subpart of that sentence in the SOP states "2) Check the individual's travel documents to determine whether the individual is traveling outside the United States. 3) If the individual's destination is a non-U.S. location, notify a LEO." The testimony of Michael Simons further clarifies that it is not TSA policy to require reporting of cash over $10,000 carried by a traveler traveling domestically. Pls.' Ex. 9, Simons Dep. Tr. 102:17-18 ("That's not our policy.").

PLAINTIFFS' REPLY: This Statement concerns whether "TSA officials are unsure whether a traveler traveling domestically must report cash over $10,000." Plaintiffs' cited evidence—an internal

TSA communication that incorrectly stated that "[p]assengers are required to declare any amount of money over $10,000," and the specific parts of TSA official Brenna Murphy's testimony cited in this Statement—establish that at least some TSA officials are unsure as to whether a traveler traveling domestically must report cash over $10,000. Defendants' arguments do not address, much less refute, this Statement. Plaintiffs' Statement is thus undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

153. TSA's 30(b)(6) witness acknowledged that nothing prohibits an STSO or the TSA Coordination Center from making a non-required LEO notification about a traveler with cash, and the SOP "gives you the leeway to do that" even when you reach Step 4 of the SOP, where the STSO has determined the currency does not require notifications. Leyh Tr. (Ex. 4) at 303:14–307:5 (n.b., the Q&A were mistakenly reversed at 306:11–307:5); Leyh Tr. (Ex. 4) at 319:10–322:19; *see also* Shapiro Decl. (Ex. 11) at ¶ 61; Shapiro Decl. Ex. A (Ex. 11) § 6.1 at 20, AIM Event ID 1909353 (TSA narrative describing TSA at Minneapolis-St. Paul International Airport making two separate "courtesy" notifications to LEOs about a traveler with "bulk cash" in circumstances where they did not complete an incident report or otherwise implement the Cash SOP, indicating these were non-required LEO notifications).

DEFENDANTS' RESPONSE: Denied. The witness subsequently clarified that this testimony regarding non-required LEO notifications was "[o]utside the cash context," and instead referred to "a gun . . . it could be drugs. It could be credit cards. It could be any number of things that – that are non- cash." Pls.' Ex. 4, Leyh Dep. Tr. 368:14-369:17. Further denied insofar as Plaintiffs' usage of the word "Step" suggests that each and every one of these numbered directions must be performed in a sequential order, rather than simultaneously. For example, a screener may assess whether the currency "appears to relate to criminal activity" while simultaneously searching "the currency for prohibited items." *See generally* SOP Ch. 12 (AR161-63).

PLAINTIFFS' REPLY: Although Defendants claim to deny this Statement, they do so by arguing that the "witness subsequently clarified" his testimony. Thus, Plaintiffs' Statement is undisputed, as it accurately reflects the referenced testimony. As to whether the witness recanted or

"subsequently clarified" the testimony accurately reflected in this Statment, Plaintiffs respectfully direct this Court to the Statements immediately following this Statement, which address that separate issue.

Regarding the use of the term "Step," the Statement accurately reflects the testimony of TSA officials—including TSA's 30(b)(6) witness—that the steps outlined in the SOP are to be followed in sequential order. SUMF ¶ 60. TSA cannot "retract [this] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.*

Furthermore, the testimony of multiple government officials is evidence that can establish the existence of an informal policy or custom. *See Bielevicz v. Dubinon*, 915 F.2d 845, 852–53 (3d Cir. 1990). And Ms. Murphy's testimony on this point is consistent with Mr. Leyh's; Murphy Tr. (Ex. 8) at 115:14–17 ("A: The SOP outlines if/then, do what. Q: Right. It's a set of kind of if/then sort of steps. Right? A: Right.") and 115:14–117:9 (full discussion of sequential if/then steps in SOP Ch. 12, § 2). SUMF ¶ 60. Since TSA offers no evidence to refute the sworn testimony of Mr. Leyh and Ms. Murphy, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E As a result, the cited testimony establishes that the eight steps in TSA's Cash SOP are to be followed in sequential order.

154. After a break in the deposition, TSA's 30(b)(6) witness later attempted to recant regarding his testimony about non-required notifications and leeway and claimed he didn't realize he was being asked about non-required notifications to LEOs about cash specifically. Leyh Tr. (Ex. 4) at 368:14–369:11.

DEFENDANTS' RESPONSE: Denied. The witness subsequently clarified that this testimony regarding non- required LEO notifications was "[o]utside the cash context," and instead referred to

"a gun . . . it could be drugs. It could be credit cards. It could be any number of things that – that are non- cash." Pls.' Ex. 4, Leyh Dep. Tr. 368:14-369:17.

PLAINTIFFS' REPLY: Although Defendants claim to deny this Statement, they acknowledge that the witness "subsequently clarified" his earlier testimony, which is just another way of acknowledging that the witness attempted to recant his earlier testimony. Thus, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

155. But TSA's 30(b)(6) witness was testifying about a specific example in an exhibit involving notifications being made about a traveler with cash, Steps 3 and 4 of the Cash SOP, and was directly asked about taking photos of currency and repeatedly testified that could be done as part of a non-required notification. Leyh Tr. (Ex. 4) at 296:1–307:5; Leyh Tr. (Ex. 4) at 319:10–322:19; *see* Leyh Dep. Ex 14 (Ex. 4).

DEFENDANTS' RESPONSE: Denied. The witness subsequently clarified that this testimony regarding non- required LEO notifications was "[o]utside the cash context," and instead referred to "a gun . . . it could be drugs. It could be credit cards. It could be any number of things that – that are non- cash." Pls.' Ex. 4, Leyh Dep. Tr. 368:14-369:17.

PLAINTIFFS' REPLY: Whether the witness "subsequently clarified" his testimony is irrelevant to this Statement, which accurately stated that the "witness was testifying about a specific example in an exhibit involving notifications being made about a traveler with cash, Steps 3 and 4 of the Cash SOP, and was directly asked about taking photos of currency and repeatedly testified that could be done as part of a non-required notification." Leyh Tr. (Ex. 4) at 296:1–307:5; Leyh Tr. (Ex. 4) at 319:10–322:19; *see* Leyh Dep. Ex 14 (Ex. 4). Thus, because Defendants do not address, let alone refute, this Statement, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

156. TSA praises employees who seize cash during screening. Simons Dep. Ex. 1 (Ex. 9) at TSA02171 (Article Title: "TSA Tracks Suspicious Bulk Cash Shipments"); *id.* ("Heading to the airport with a huge wad of cash may not be a great idea, especially travelers carrying the money for suspicious deals."); *id.* ("What do you think of TSA's efforts to help prevent illegal bulk cash and criminal activity?"); Simons Dep. Ex. 2 (Ex. 9) at TSA02168 (Title: "Lotsa Dough"); Simons Ex. 3 (Ex. 9) at TSA02170 (Title: "TSA and DEA: Partners Against Crime"); *id.* (TSA FSD stating, "DEA has long been a valued law enforcement partner of our operation and this recognition is indicative of our strong partnership and collaboration."); Simons Dep. Ex. 4 (Ex. 9) at TSA01346 (August 3, 2016 National Shift Brief: "Within the past three months, officers at Minneapolis Saint Paul International Airport (MSP) have made multiple discoveries of bulk currency during passenger screening operations totaling more than $120,000. Read more about the National Good Catch at MSP in the Break Room Bulletin."); Simons Tr. (Ex. 9) at 136:4–142:17, 143:9–149:25 (testimony regarding Simons Dep. Ex. 4 that Screeners are the audience for the National Shift Briefs and describing the purpose of a "Good Catch"); Simons Tr. (Ex. 9) at 137:16–138:10 ("Q: So this National Shift Brief goes out, I think you said earlier, to airports, and ultimately is designed for being used to brief TSOs before their shift or at the beginning of their shift? MR. THORP: Object to form. Q: You may answer. A: Yes. Q: And this goes out to, like, the coordination center and STSOs. Is that right? A: Basically the coordination centers, and then it's either the STSOs or the LTSOs who read, present, if you will, the briefs. And the coordination centers through, you know -- with direction from the FSDs, may include content that we wouldn't be seeing here. It would be local kind of stuff. You know, Bobby's out today, so we have to have another male, you know, screener, whatever."); Simons Tr. 149:13–18 ("Q: A good catch would typically highlight the discovery of either cash or a weapon or an unusual item. Is that fair? A: Correct. Yeah. I -- I would – I'm trying to rack my brain as to other things, too. We've also had what I guess you would put under -- what we would put under good catches are BOLOs, be on the look-

outs, so an individual. And we have also had a couple of good catches of human trafficking."); Simons Depo Ex. 5 (Ex. 9) at TSA02304 (2016 Break Room Bulletin: "National Good Catch Bulk Currency Discoveries At MSP"); Simons Tr. (Ex. 9) at 150:10–153:13 (discussing Simons Dep. Ex. 5, the "National Good Catch" Break Room Bulleting regarding four "bulk cash" articles at MSP); Simons Tr. (Ex. 9) at 158:6–12 ("Q: And when TSA highlights these sort of national good catches involving bulk currency, the bulk currency is in the title and kind of discussed because that's a topic of interest that will keep TSA screeners' attention. Right? A: It will get them to read this article, yeah. Uh-huh."); *see also* Chin Dep. Ex. 3 (Ex. 5) at TSA01374.

DEFENDANTS' RESPONSE: Admitted insofar as the cited evidence establishes that screeners are praised for a variety of "good catches," not just cash that relates to criminal activity.

PLAINTIFFS' REPLY: As Defendants do not dispute this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

157. TSA promotes itself to employees as a "partner" to law enforcement. Simons Depo. Ex. 3 (Ex. 9) at TSA02170 ("TSA and DEA: Partners Against Crime"); Emails from TSA Airports (Ex. 21) at TSA_ESI_0003420–22 (February 10, 2016 email from James Cennamo with the subject line "FW: HSI and TSA MOA (Bulk Currency)," that forwarded an email sent from John Miller to "AFSD-LE ALL" and "FieldsOpsSac_All," that stated, "The message below speaks volumes regarding TSA's partnership and your continued efforts in maintaining those relationships," (at 0003420), and "The MOA was intended to leverage both agencies resources in the spirit of the ONE DHS Initiative. Pursuant to the MOA, TSA will notify HSI if they encounter bulk currency during their security screening process, if it appears that the currency may be criminal proceeds," (at 0003421)); Emails from TSA Airports (Ex. 21) at TSA_ESI_0003424–29 (Memorandum of Agreement between TSA and ICE Concerning Cooperative Investigations).

DEFENDANTS' RESPONSE: Denied. The cited evidence contains passing references to the term "partner" in a handful messages; this evidence does not establish what TSA "promotes" itself as, and no testimony under Rule 30(b)(6) is offered for this purpose. Rather, the cited evidence merely notes specific instances in which law enforcement agencies recognized TSA employees for their role in, for example, "the identification and interdiction of a major criminal organization that allegedly dealt illegal drugs." Pls.' Ex. 9, Simons. Dep. Ex. 3 at TSA02170.

PLAINTIFFS' REPLY: Statements made by TSA employees on matters within the scope of their employment are admissible evidence to prove the truth of the matter asserted. *See* Fed. R. Evid. 801(d)(2)(D). The cited documents are evidence that TSA promotes itself as a partner of law enforcement agencies, and Defendants are incorrect to suggest that such evidence can only come from a 30(b)(6) witness. As Defendants cite no record evidence that contradicts Plaintiffs' Statement, the Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

158. TSA's "partners" at law-enforcement agencies who receive notifications about "bulk currency" from TSA also praise Screeners who notify them about cash to seize. *See, e.g.*, Leyh Dep. (Ex. 4) Ex. 12 at TSA_ESI_00003468 (where, on Dec. 17, 2017, an ICE official emails the Indiana Coordination Center and AFSD-LE Richard Adams after a cash seizure earlier that day based on a TSA notification and writes, "Thank you . . . . [W]e appreciate the excellent support with Indy bulk currency investigations! Without your initiation of these cases the program [would] not exist"); *see also* Leyh Dep. Ex. 17 (Ex. 4) at TSA_ESI_0003420–22 (noting the "successful partnership between ICE/HSI and TSA in the discovery and reporting of bulk cash smuggling" (at 00003421) and forwarding email from HSI leadership, Subject "HIS and TSA MOU Reminder"); Emails from TSA Airports (Ex. 21) at TSA_ESI_00003926 (July 15, 2016 email from Roy W. Gooch to FSD Kevin Frederick TSA, Subject "RE: Bulk Cash," discussing award for AFSD-LE Gary Thompson related to the success of a "Bulk Cash exercise," how HSI Special Agents are "working closely with the local TSA AFSD-LE, and how "the proactive, HIS/TSA/Local LE team approach seems to be extremely effective").

DEFENDANTS' RESPONSE: Admitted that law-enforcement agencies have praised TSA employees for notifications regarding bulk currency that resulted in the seizure of criminal proceeds. The cited exhibit does not, however, contain the word "partners" that appears in quotation marks in the Statement. *See, e.g.*, Pls.' Ex. 4, Leyh Dep. Ex. 12 at TSA_ESI_00003468.

PLAINTIFFS' REPLY: The quoted word "partners" in this Statement refers to TSA's belief that it partners with law enforcement, as reflected in the documents cited in Statement No. 157, such as the TSA document titled, "TSA and DEA: **Partners** Against Crime." Simons Depo. Ex. 3 (Ex. 9) at TSA02170 (emphasis added). As Defendants do not specifically deny this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.E.

159. TSA's "partners" at law-enforcement agencies who receive notifications about "bulk currency" from TSA provide briefings, trainings, and even card-sized "Cash Seizure Field Guides" to TSA Screeners designed to encourage Screeners to actively participate in law-enforcement investigations by reporting any cash they may encounter. *See, e.g.*, Emails from TSA Airports (Ex. 21) at TSA_ESI_00004451–72 (June 29, 2016 email from TSA's Tim Berroyer to other TSA officials including Tim Lavin, cc'ing AFSD-S Jared Babin, with the Subject: "FW: 5000:19 Region 4 Daily 6/29/2016," forwarding a "daily brief for Region 4," which states "Attached is a copy of the PowerPoint slide presentation from last week's ICE-HIS Bulk Cash Encounters Briefing to TSA provided by the ICE-HSI Bulk Cash Unit Chief Joe Burke. Chief Burke point out that since his briefing, there was a great seizure in Detroit a few days ago involving $2.7 million in bulk cash discovery by TSA screeners in Las Vegas" and attaching "PowerPoint Disto TSA Briefing June 22 2016 Rev 2.pdf" (starting at -000044549)); Emails from TSA Airports (Ex. 21) at TSA_ESI_00003949–85 (October 7, 2019 AFSD-LE John Simons email with the subject line "Bulk Cash Reporting" at TSA_ESI_00003949, stating, "I reached out to a number of my counterparts and found that TSA reporting in other locations evaluate each situation and **generally refer all discoveries to the LEO** resulting in a report to the Bulk Cash Smuggling Center") (emphasis added);

id. (the entire email family includes five attachments, including (1) TSA_ESI_00003955, which is a "Cash Seizure Field Guide" published by the HIS's National Bulk Cash Smuggling Center, which includes a currency-measurement ruler, stating that "**Bulk Cash = $10,000 or more**," and also stating that "[d]uring the encounter to be sure to obtain . . . Photographs of the money in the place of discovery, Any Maps/directions you see, Any religious iconography," and also includes an HSI-ICE list of dozens of questions to ask the person carrying bulk cash; and (2) TSA_ESI_00003963, which are National Bulk Cash Smuggling Center training/briefing slides under the heading "TSA Program" that discuss the ICE-HSI cooperation with TSA, reference FY 2016 stats, list "Red Flag Indicators" for bulk cash, and list 13 "Bulk Cash Questions to Ask in the Field") (emphasis added).

DEFENDANTS' RESPONSE: Admitted that law-enforcement agencies have praised TSA employees for notifications regarding bulk currency that resulted in the seizure of criminal proceeds. Denied that any of the cited materials constitute TSA policy, and the Statement provides no evidence to indicate that is the case. Further denied that any of the cited materials are provided to TSA screeners generally, as the cited evidence does not establish that is the case.

PLAINTIFFS' REPLY: Defendants cite no record evidence that disputes this Statement, but instead merely argue that the Statement, on its own, fails to conclusively establish that the conduct described in the Statement constitutes formal TSA policy. Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

160. The "HSI National Bulk Cash Smuggling Center and the Transportation Security Administration" PowerPoint, *see* Emails from TSA Airports (Ex. 21) at TSA_ESI_00003540–58, discusses how "Bulk Cash Smuggling" is "**vulnerable to TSA detection** and HSI's enforcement reach." *Id.* at TSA_ESI_00003541 (emphasis added). The PowerPoint also references the TSA/HIS Memorandum of Agreement, emphasizing that "[t]imely notification to the BCSC is essential" because it "[p]rovides LEO an opportunity to respond and interview the passenger." *Id.* at TSA_ESI_00003545. The PowerPoint further states that "[t]here have been 4,441 persons

encountered transporting $172,975,963 in bulk cash through the airport environment," and "819 individuals" were identified in FY2015 "**as a result of the BCSC/TSA MOA**." *Id.* at TSA_ESI_00003546 (emphasis added). The PowerPoint also reports on several "Success Stories," *id.* at TSA_ESI_00003552–56, and emphasizes "[w]orking together in the spirit of OneDHS provides the best front to combat criminal and terror financing and to accomplish the Department's mission to prevent terrorism, enhance security and build a more resilient nation." *Id.* at TSA_ESI_00003557.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

161. TSA encourages Screeners to treat discovery of "bulk cash," LEO notifications, and even arrests as goals. For several years, TSA even made a custom placemat for its annual end-of-year banquet depicting TSA's accomplishments from the past year, which included stats for "Bulk Currency" incidents, LEO notifications, and arrests. Simons Dep. Exs. 6 & 7 (Ex. 9) (e-mails & spreadsheets for an "End Of Year Accomplishments Placemat"); Simons Tr. (Ex. 9) at 161:18–163:5 (discussing TSA's end-of-year accomplishments placemat and "information to include in that placement"); Simons Tr. (Ex. 9) at 164:1–165:5 (same); Simons Tr. (Ex. 9) at 167:14-22 ("Q: So this is from this end-of-year accomplishments 2019 through August Excel spreadsheet. And it lists discovery of bulk currency $10,000 or more as having 715 incidents. Correct? A: Correct. Q: Do you know why it says $10,000 or more after discovery of bulk currency? A: I do not."); Simons Tr. (Ex. 9) at 168:13-16 ("Q: Okay. All right. And this number, this 715, matches that number that we saw in the email that was listing up above various items. Right? A: Correct."); Simons Tr. (Ex. 9) at 171:21–172:8.

DEFENDANTS' RESPONSE: Denied that any of the evidence cited "encourages Screeners to treat discovery of 'bulk cash,' LEO notifications, and even arrests as goals." The accomplishments referenced are screeners' compliance with TSA policies, including the SOP, which include a variety of initiatives beyond discovery of cash. Performance goals for screeners are itemized in their year-end evaluations, and do not contain references to the discovery or referrals of currency.

PLAINTIFFS' REPLY: It is a reasonable inference that by including the number of bulk cash seizures in a document highlighting "end-of-year accomplishments," Simons Tr. (Ex. 9) at 167:14-22, TSA considers such seizures to be an accomplishment, and thus a goal that Screeners should strive for. Further, as Defendants cite no record evidence, Plaintiffs' statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

162. TSA encourages Screeners to think of traveling with cash as improper behavior, and certain amounts of cash as inherently suspicious, including by distributing articles that falsely suggest that 100% of "bulk cash" incidents are related to serious crime, when that is false given the experience of the named Plaintiffs and many others who have had cash seized but were never even arrested, let alone charged with a crime. Simons Dep. Ex. 1 (Ex. 9) at TSA 02171 ("Heading to the airport with a huge wad of cash may not be a great idea . . . TSA has encountered more than 4,500 passengers with suspicious amounts of bulk cash," and then further claiming that "three quarters of the bulk cash case were linked to illegal drug transactions" while the remaining "25% were related to financing foreign terrorist groups"); *see also* Simons Tr. (Ex. 9) at 92:12–22 (When asked whether the sentence in the TSA article, "TSA has encountered more than 4,500 passengers with suspicious amounts of bulk cash," indicated that it was the cash itself that was suspicious, the Director of Strategic Communications for TSA's Office and Strategic Communications and Public Affairs testified: "So there are amounts that are suspicious. Yes, I can – I can say yes to that."); Simons Tr. (Ex. 9) at 93:22–94:10 ("It's only the amounts of bulk cash that is suspicious, not the passengers themselves."); Simons Tr. (Ex. 9) at 14:1–6 (identifying job title as the Director Strategic Communications for TSA's Office of Strategic Communications and Public Affairs).

DEFENDANTS' RESPONSE: Denied. TSA policy is clear that traveling with large amounts of currency is not necessarily illegal. MD 100.4, for example, directs that "[t]raveling with large amounts of currency is not illegal," but clarifies that "currency discovered at the [] checkpoint will need to be

screened to clear it to enter sterile areas" because "cash in very large quantities may shield explosive materials and other threat items." MD 100.4 § 6(C)(2) (AR9).

PLAINTIFFS' REPLY: The fact that MD 100.4 states that traveling with large amounts of cash is not necessarily illegal does not mean that the TSA does not elsewhere encourage Screeners to think of traveling with cash as improper behavior that is inherently suspicious, as the record evidence cited in this Statement demonstrates. As Defendants cite no record evidence that contradicts this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

163. TSA's public communications celebrate Screeners discovering "bulk cash." Simons Dep. Ex. 8 (Ex. 9) (TSA-written article titled, "Philadelphia officers discover $250,000 hidden in bag" that highlighted TSA screeners' role in uncovering the cash, and quoted a FSD who said he was "very proud of our officers here at Philadelphia," and that their detection of the cash was "a great catch and a testament to [TSA] leadership"); Simons Dep. Ex. 9 (Ex. 9) (June 30, 2015 Tweet by TSA Spokesperson Lisa Farbstein, which contained a photo of a duffel bag with loose cash seized by TSA screeners and stated, "If you had $75,000, is this how you'd transport it? Just asking! #RIC spotted this traveler's preferred method"); Simons Dep. Ex. 9 (Ex. 11) (where TSA responded to Senator Warner's concerns over the June 30, 2015 Tweet by TSA Spokesperson Lisa Farbstein by stating that, "In this case, the photo of the bag in question is distributed to the media had no personal identification on it, thus, the privacy of the traveler was not compromised").

DEFENDANTS' RESPONSE: Admitted that the article contains those statements. Denied as to relevance to this action because the article concerns checked baggage. *See* Pls.' Ex. 9, Simons Dep. Ex. 8 ("As James Blocker reviewed images in the airport's checked baggage screening room . . .").

PLAINTIFFS' REPLY: That TSA celebrates the discovery of bulk cash is relevant to this action because it helps show the existence of an informal practice or custom that encourages Screeners to think of the discovery of bulk cash as an accomplishment or goal, *see* SUMF ¶ 161, which, in turn, is relevant to showing that TSA has an unwritten or informal policy or practice of treating all bulk cash

an inherently indicative of criminal activity justifying the search and seizure of that cash, and thus the accompanying search and seizure of the passenger it belongs to. *See* SUMF ¶¶ 2–4. As Defendants do not specifically deny this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.E.

Extending or Prolonging the Administrative Search

164. TSA does not require probable cause or reasonable articulable suspicion for extending the administrative search and seizure to "[m]aintain control" of a "suspicious" item, to "[c]heck [an] individual's travel documents to determine whether the individual is traveling outside the United States," to notify a LEO, to collect a traveler's name and flight information for purposes of notifying a LEO or the Coordination Center, or to record images of a traveler's travel documents such as photographs, scans, or photocopies. *See* AR1–188.

DEFENDANTS' RESPONSE: Denied that TSA extends the administrative search efforts for any reason other than to determine whether or not a "suspicious" item contains or conceals a prohibited threat item, or that it seizes any items. Further denied insofar as the Statement suggests that TSA has a policy of detaining either travelers with large amounts of currency or those travelers' possessions. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10-15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: In fact, the SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications,

which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8 (Ex. 1) at AR161–63; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3 (Ex. 1) at AR161. As the SOP explicitly states, currency "appears to relate to criminal activity," when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b (Ex. 1) at AR162. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Thus, when cash "appears to relate to criminal activity," it is also "evidence of criminal activity" that triggers the requirements of the "Suspicious" Item SOP, which requires screeners to "[m]aintain control of the suspicious item" while they notify a LEO. SOP Ch. 12, § 1, Steps 1, 3 (Ex. 1) at AR161. Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" *after* the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5 (Ex. 1) at AR162. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4 (Ex. 1) at AR161. The "Suspicious" Item SOP does not say when or if to release the "suspicious item."

Moreover, TSA's 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal

activity, TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59.

165. TSA's Cash-Screening Policies do not mention, let alone require, probable cause or reasonable articulable suspicion. *See* MD 100.4, ¶ 6.C(1)–(2) (Ex. 2) at AR8–9; "Suspicious" Item SOP (Ex. 1) at AR161; Cash SOP (Ex. 1) at AR162.

DEFENDANTS' RESPONSE: Admitted that neither MD 100.4 nor Chapter 12 of the SOP references either the term "probable cause" or "reasonable articulable suspicion." The meaning of those phrases, however, is a question of law. Accordingly, whether TSA policies reference determinations that amount to determinations of "probable cause" or "reasonable articulable suspicion" is therefore a question of law.

PLAINTIFFS' REPLY: As Defendants do not dispute this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

166. TSA defines "Articulable Belief" in SOP Chapter 3 (but not in MD 100.4) as "[a] belief that can be put into words and explained to others and is based on observed facts that suggest an individual or item may be a threat to transportation security." AR128.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

167. A study guide for Screeners has an identical definition of "Articulable Belief" to that in SOP Chapter 3. *See* Phillips Tr. (Ex. 6) at 80:4–82:23 (describing Phillips Dep. Ex. 3 as "a study guide for Basic Training Program Phase II," which includes definitions); Phillips Dep. Ex. 3 (Ex. 6) at TSA02499 (defining "Articulable Belief" as "[a] belief that can be put into words and explained to others and is based on observed facts that suggest an individual or item may be a threat to transportation security"); Phillips Tr. (Ex. 6) at 84:20–86:1 (acknowledging "Articulable Belief" is

defined in the study guide as "[a] belief that can be put into words and explained to others and is based on observed facts that suggest an individual or item may be a threat to transportation security"); Phillips Tr. (Ex. 6) at 86:18–23 (agreeing the study guide is "presented to TSOs to use for training them on TSA training and policies").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

168. The definition of "Articulable Belief" in SOP Chapter 3 does not refer to making any determinations about currency or evidence of criminal activity; instead, it is focused solely on evaluating whether "an individual or item may be a threat to transportation security." AR128.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

169. The "Critical Thinking" section of SOP Chapter 6 explains steps to take "if you have an articulable belief that an individual is hiding a prohibited item or is otherwise a threat to transportation security." AR155.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

170. There is no requirement for Screeners to have an "articulable belief" to take actions to notify LEOs or otherwise investigate or detain cash or traveler under the Cash SOP, the "Suspicious" Item SOP, or any of TSA's Cash-Screening Policies. *See generally* AR Index Nos. 1–5.

DEFENDANTS' RESPONSE: Denied because whether TSA "detains" a traveler or their bags is a question of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo."). Admitted that neither MD 100.4 nor Chapter 12 of the SOP references the term

"articulable belief." Screeners must, however, articulate some basis for determining that bulk currency appears to relate to criminal activity. For example, on October 11, 2018, a Senior Transportation Security Manager issued a Letter of Counseling to a Transportation Security Manager at the Ted Stevens Anchorage International Airport. *See* Defs.' Ex. R, TSA_02162 (Letter of Counseling, dated October 11, 2018). The letter was issued "to counsel" the Transportation Security Manager "regarding [his or her] failure to follow policy" in light of "an incident involving the discovery of bulk currency" that "was not handled in accordance with TSA Screening Policies for SOPs." *Id.* "Specifically, a passenger flying domestically within the borders of the United States, whose checked baggage . . . was discovered to contain approximately $50,000.00 in cash . . . was reported to the HSI Bulk Cash Smuggling Center." Id. The letter indicates that the report was made "because the bag appeared suspicious," but the offending Transportation Security Manager "could not articulate [his or her] suspicious and/or [his or her] rational was inadequate to justify reporting this." *Id.* The letter expressly directed the Transportation Security Manager to comply with TSA policies and procedures, including the Screening Policies for SOPs. *Id.* TSA official Brenna Murphy, who helped develop the SOPs, testified that Screeners are supposed to apply the SOP's "articulable belief" standard for determining whether "currency appears to relate to criminal activity." Murphy Tr. (Ex. 8) at 187:14–188:9.

PLAINTIFFS' REPLY: The Statement accurately states that there is no requirement for Screeners to have an "articulable belief" to take actions to notify LEOs or otherwise investigate or detain cash or traveler under the Cash SOP, the "Suspicious" Item SOP, or any of TSA's Cash-Screening Policies. Defendants attempt to deny this Statement by citing the testimony of Brenna Murphy, but Ms. Murphy had no basis for her assertion that Screeners are supposed to apply the SOP's "articulable belief" standard for determining whether "currency appears to relate to criminal activity." *See* SUMF ¶ 172. Furthermore, Ms. Murphy also testified that there is "no right or wrong" answer to when something "appears to relate to criminal activity," as that is just the Screener's "perception of what's evidence of criminal activity." Murphy Tr. (Ex. 8) at 187:02–14. What's more, it makes no sense for Screeners to apply the SOP's "articulable belief" standard to currency, as the SOP's "articulable belief" standard is focused solely on evaluating whether "an individual or item may be a threat to transportation security." SUMF ¶ 168.

171. TSA official Brenna Murphy, who helped develop the SOPs, testified that Screeners are supposed to apply the SOP's "articulable belief" standard for determining whether "currency appears to relate to criminal activity." Murphy Tr. (Ex. 8) at 187:14–188:9.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

172. TSA official Brenna Murphy could cite no basis for her view that Screeners are supposed to apply the SOP's "articulable belief" standard for determining whether "currency appears to relate to criminal activity." *See* Murphy Tr. (Ex. 8) at 188:10–189:14; *cf.* AR Index Nos. 1–5 (no such requirement appears in TSA's Cash-Screening Policies).

DEFENDANTS' RESPONSE: Denied. TSA official Brenna Murphy expressly stated that the phrase "articulable belief" came from "a different part of the SOP." Pls.' Ex. 8, Murphy Dep. Tr. 189:10.

PLAINTIFFS' REPLY: The Statement accurately states that Ms. Murphy could cite no basis for her view that Screeners should apply the SOP's "articulable belief" standard for determining whether "currency appears to relate to criminal activity." As Defendants admit, the SOP's "articulable belief" is defined as exclusively dealing with threats to transportation security and is not ever referenced or mentioned in Chapter 12 of the SOP or MD 100.4. *See* SUMF ¶¶ 165–66, 168. Rather than disputing this Statement, Defendants merely note that Ms. Murphy admitted that the phrase "articulable belief" came from "a different part of the SOP." This acknowledgement, however, is not a *basis* for Ms. Murphy's view that Screeners are supposed to apply the "articulable belief" standard from a different section of the SOP that deals only with threats to transportation security when determining whether "currency appears to relate to criminal activity." Despite being repeatedly asked, Ms. Murphy could cite no basis for her belief that Screeners should know to apply the SOP's "articulable belief" standard for dealing with threats to transportation security to the section of the SOP dealing with currency. *See* Murphy Tr. (Ex. 8) at 187:14–188:9. Plaintiffs' Statement is thus undisputed and should be deemed admitted. LCvR 56.C.1.a, 56.E.

173. The day after this lawsuit was filed, a TSA email to Indiana TSA officials stressed the importance of following the SOP when cash is discovered and stated in all-caps, extra-large, bolded, italicized, and underlined font:

> ***"AND MOST IMPORTANT THE STSO MUST BE ABLE TO ARTICULATE SOME CONTEXT OF CRIMINAL ACTIVITY, OTHER THAN THE MERE EXISTENCE OF A LARGE AMOUNT OF CURRENCY ON A DOMESTIC FLIGHT BEFORE NOTIFYING A LEO."***

Leyh Dep. Ex. 21 (Ex. 4) at TSA_ESI_00003918 (emphasis and extra-large font for "ARTICULATE" in original). But that email also cites no basis for this requirement and there is none. *Cf.* AR Index Nos. 1–5.

DEFENDANTS' RESPONSE: Denied that there is no basis for requiring an articulable belief. The SOP requires that the large amount of currency "appear[] to relate to criminal activity," and any basis for why articulable, as demonstrated by the examples provided: "for example, the currency may be all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." SOP Ch. 12 § 2(3)(b).

PLAINTIFFS' REPLY: The SOP nowhere states that a Screener must have an articulable belief, *cf.* AR Index Nos. 1–5., or that the examples of what constitutes currency that appears to relate to criminal activity are exhaustive. Indeed, the use of examples suggests that they are just that: examples and not an exhaustive definition of what constitutes currency that appears to relate to criminal activity. Thus, as TSA official Brenna Murphy admitted, the SOP "leaves it to [the Screeners] to decide what evidence appears to relate to criminal activity." Murphy Tr. (Ex. 8) at 185:13–18 ("Q: And because it provides examples and doesn't offer a definition for what appears to relate to criminal activity, SOP Chapter 16 leaves it to TSOs and STSOs to decide what evidence appears to relate to criminal activity. Correct? A: With examples, yes.").

TSA's Data For Screening Incidents Related to Travelers with "Bulk Currency"

174. In response to Plaintiffs' discovery request, Defendant TSA produced a dataset that contained 7,567 United States airport security related screening incidents related to travelers traveling

with "bulk currency" that were recorded between January 15, 2014, and January 15, 2020. Shapiro Decl. (Ex. 11) at ¶ 18; Shapiro Decl. Ex. A (Ex. 11) at ¶ 5. This category of data is referred to as the "TSA Dataset."

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

175. TSA also provided a second category of data for review, which were a sample of the narrative fields from the TSA Dataset of 7,567 incidents involving travelers with "bulk currency." Shapiro Decl. Ex. A (Ex. 11) at ¶ 7; Shapiro Decl. (Ex. 11) at ¶¶ 25–28. This category of data is referred to as the "TSA Sample Narratives."

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

176. Plaintiffs retained Adam Shapiro, Senior Managing Consultant with Berkeley Research Group, LLC, to review and analyze the TSA data. Shapiro Decl. Ex. A (Ex. 11) at ¶¶ 1, 3.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

177. Mr. Shapiro has extensive experience and expertise in data analytics and statistical sampling, as well as in the collection of data and information. Shapiro Decl. (Ex. 11) at ¶¶ 6–7.

DEFENDANTS' RESPONSE: Admitted that Shapiro claims such experience and expertise. Whether he possesses sufficient experience and expertise to qualify as an expert is a question of law.

PLAINTIFFS' REPLY: As Defendants do not specifically deny this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

178. It is Mr. Shapiro's expert opinion that collecting information—which includes recording that information in some manner, such as by taking a photo or writing the information down—is an activity that takes time. Shapiro Decl. (Ex. 11) at ¶ 46.

DEFENDANTS' RESPONSE: Denied. Shapiro testified under oath that this was not an expert opinion, but "more of a common-sense opinion." *See* Defs.' Ex. S, Shapiro Dep. Tr. 25:13-18 ("Q Okay. The second sentence in paragraph 15 says 'Taking the time to collect personal identification information, travel information, and/or information about currency from travelers, extends travelers' time at the security screening checkpoint.' Do you see that? A Yes Q Is that an opinion that you are offering in this case? A Yes. Q Is that an expert opinion? A I think it's more of a common-sense opinion."). Further denied insofar as the Statement suggests that collecting information from travelers extends the administrative search or seizure because the record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015).

PLAINTIFFS' REPLY: Mr. Shapiro testified under oath that he has expertise in collecting information and that, in his expert opinion, collecting information takes time. Defs.' Ex. S, Shapiro Dep. Tr. 139:16-140:02 ("Q Do you have expertise in collecting information? A Yes. Q And that's part of your expertise in data analytics? A Yes. Q Based on your expert opinion, does collecting information take time? A Yes."); *see also* Shapiro Decl. (Ex. 11) at ¶¶ 43–54. Furthermore, an email from a TSA official that merely states that such information hypothetically "can be obtained at the same time the search is taking place," Defs.' Ex. M TSA_ESI_00003930, does not establish that such information collection does, in fact, happen instantly and simultaneously with the search and seizure.

179. It is Mr. Shapiro's expert opinion that if he were tasked with collecting the kind of information collected by TSA screeners during the incidents reported in the TSA Dataset, that it would take him time to do so. Shapiro Decl. (Ex. 11) at ¶ 47.

DEFENDANTS' RESPONSE: Denied. Shapiro testified under oath that this was not an expert opinion, but "more of a common-sense opinion." *See* Defs.' Ex. S, Shapiro Dep. Tr. 25:13-18 ("Q Okay. The second sentence in paragraph 15 says 'Taking the time to collect personal identification information, travel information, and/or information about currency from travelers, extends travelers'

time at the security screening checkpoint.' Do you see that? A Yes Q Is that an opinion that you are offering in this case? A Yes. Q Is that an expert opinion? A I think it's more of a common-sense opinion."). Additionally, Shapiro testified that "he has no expertise in conducting security screenings at airports." Defs.' Ex. S, Shapiro Dep. Tr. 170:1-4 ("Q . . . You have no expertise in conducting security screenings at airports; correct? A Yes."). Accordingly, Shapiro has no basis to offer an "expert opinion" on how TSA screeners collect information. Further denied because the record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015).

PLAINTIFFS' REPLY: Mr. Shapiro testified under oath that he has expertise in collecting information and that, in his expert opinion, collecting information takes time. Defs.' Ex. S, Shapiro Dep. Tr. 139:16-140:02 ("Q Do you have expertise in collecting information? A Yes. Q And that's part of your expertise in data analytics? A Yes. Q Based on your expert opinion, does collecting information take time? A Yes."); *see also* Shapiro Decl. (Ex. 11) at ¶¶ 43–54. Mr. Shapiro further testified under oath that if he "were tasked with collecting information such as personal identification information, travel information, and/or information about currency," that the collection of such information would take time. Defs.' Ex. S, Shapiro Dep. Tr. 141:-02-07. Furthermore, an email from a TSA official that merely states that such information hypothetically "can be obtained at the same time the search is taking place," Defs.' Ex. M TSA_ESI_00003930, does not establish that such information collection does, in fact, happen instantly and simultaneously with the search and seizure. Instead, the record evidence contains numerous examples of travelers remaining at the checkpoint while TSA collects their information. *See* Shapiro Decl. (Ex. 11) at ¶¶ 58, 60, 62–67 (discussing several bulk cash incidents where TSA collected travelers' information and the traveler remained at the security checkpoint for a period of time ranging from 10 minutes to 33 minutes).

180. Mr. Shapiro's analysis of the TSA Dataset revealed that the number of recorded TSA screening incidents related to travelers traveling with "bulk currency" more than doubled from 2016

to 2019, as there were 907 incidents reported for the 2016 year, and 2,064 incidents reported for the 2019 year in the dataset provided by TSA. Shapiro Decl. Ex. A at (Ex. 11) at ¶ 18 ("Figure 1: TSA Dataset Incidents per Year").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

181. An analysis of the TSA Dataset revealed that 91.52% of recorded TSA screening incidents related to travelers traveling with "bulk currency" involved TSA collecting at least one piece of information from travelers. Shapiro Decl. Ex. A (Ex. 11) at ¶ 12(a); Shapiro Decl. (Ex. 11) at ¶ 20.

DEFENDANTS' RESPONSE: Denied. The existence of information in the TSA Dataset does not establish that TSA collected that information. As Shapiro testified, "[i]t could be possible" "that information ended up in that narrative" was "information about the cash" that "was passed back from the LEO after the fact." Defs.' Ex. S, Shapiro Decl. Tr. 116:21:117:2. Shapiro further testified that he does not know whether information was entered "simultaneously with the incident or . . . at the shift . . . [o]r even the next day." *Id.* 117:6-11.

PLAINTIFFS' REPLY: Defendants fail to cite any record evidence to support the speculative claim that the data in the TSA Dataset was collected by a non-TSA source. In fact, the SOP explicitly instructs Screeners to "[p]rovide the individual's name and flight information" to the Coordination Center when the "discovery of currency during screening leads to a LEO notification." SOP Ch. 12 § 6 (AR162). Thus, Screeners must necessarily first collect the information that they must then provide to the Coordination Center. Furthermore, Screeners must "[c]omplete a TSA Form 414, Incident Report for each instance of LEO notification within 24 hours of the event," SOP Ch. 13 § 4(1) (AR166), which further demonstrates that TSA officials are collecting the information that appears in the TSA Incident Report and the TSA Dataset. Moreover, the record evidence demonstrates that Screeners do, in fact, "collect[] all the necessary information to conduct an Incident Report" from travelers. *See* Shapiro Decl. (Ex. 11) at ¶ 60 (discussing the sample narrative for AIM Event ID

2523209, which states that a TSA screener "collected all the necessary information to conduct an Incident Report" for an incident where a traveler with bulk cash was at the checkpoint for 15 minutes).

Furthermore, Defendants' speculation that the information in the TSA Dataset was collected and provided by LEOs, rather than TSA officials, is refuted by the record evidence. As just one example, AIM Event ID 2069397 shows TSA collecting eleven fields of data from a traveler—including the traveler's name, phone number, DOB, street address, city, passport number, passport country, airline, flight number, gate number, and destination airport information—in an incident in which the TSA made a LEO notification, but the responding officer indicated that "she was unable to assist" "due to … other calls currently in progress," which thus left TSA to complete the screening on their own. *See* Shapiro Decl. (Ex. 11) at ¶¶ 64–65 (discussing AIM Event ID 2069397); TSA Sampled Narratives (Ex. 23) at 10 (Sample Narrative for AIM Event ID 2069397). The TSA Dataset for this incident also contains an image file of the traveler's boarding pass and passport, Shapiro Decl. (Ex. 11) at ¶ 65, which strongly suggests that the traveler's boarding pass and passport were photographed by TSA officials, especially considering that the narrative states that the only law enforcement official who responded stated that she was unable to assist. *See* TSA Sampled Narratives (Ex. 23) at 10 (where the narrative for AIM Event ID 2069397 describes the involvement of the only responding officer as "DPS Officer Hicks #841 Arrived at 1752 and due to the other calls currently in progress, she was unable to assist with the process"). Moreover, named Plaintiffs likewise had their travel documents collected by TSA, and, in the case of Plaintiff Matthew Berger, had those documents photographed by TSA. *See* Brown Decl. (Ex. 14) at ¶¶ 21, 25, 31 (documenting how Screeners collected Rebecca's ID and proof of travel arrangements); Berger Decl. (Ex. 13) at ¶ 31, 37, 42 (documenting how Screeners collected Matthew's driver's license and boarding pass, and took photographs of both, as well as Matthew's cash). Thus, given the TSA requirement to collect and provide this information to the Coordination Center, the TSA requirement to collect and report this

information in a TSA Incident Report that must be filed within 24 hours of the incident, and the record evidence that establishes that TSA officials do, in fact, collect this information from travelers (and sometimes photograph the documents from which this information is obtained), Defendants' speculative claim that the information in the TSA Dataset might come from a non-TSA source is insufficient to create a genuine dispute of fact concerning Plaintiffs' Statement.

182. An analysis of the TSA Sample Narratives reveal that TSA sometimes collected information about travelers in incidents where the TSA Dataset did not indicate that any such information was collected. Thus, TSA likely collected information from travelers at an even higher rate than the 91.52% of incidents reflected in the TSA Dataset. Shapiro Decl. (Ex. 11) at ¶ 41.

DEFENDANTS' RESPONSE: Denied. The existence of information in the TSA Dataset does not establish that TSA collected that information. As Shapiro testified, "[i]t could be possible" "that information ended up in that narrative" was "information about the cash" that "was passed back from the LEO after the fact." Defs.' Ex. S, Shapiro Decl. Tr. 116:21:117:2. Shapiro further testified that he does not know whether information was entered "simultaneously with the incident or . . . at the shift . . . [o]r even the next day." *Id.* 117:6-11.

PLAINTIFFS' REPLY: Defendants fail to cite any record evidence to support the speculative claim that the data in the TSA Dataset was collected by a non-TSA source. In fact, the SOP explicitly instructs Screeners to "[p]rovide the individual's name and flight information" to the Coordination Center when the "discovery of currency during screening leads to a LEO notification." SOP Ch. 12 § 6 (AR162). Thus, Screeners must necessarily first collect the information that they must then provide to the Coordination Center. Furthermore, Screeners must "[c]omplete a TSA Form 414, Incident Report for each instance of LEO notification within 24 hours of the event," SOP Ch. 13 § 4(1) (AR166), which further demonstrates that TSA officials are collecting the information that appears in the TSA Incident Report and the TSA Dataset. Moreover, the record evidence demonstrates that Screeners do, in fact, "collect[] all the necessary information to conduct an Incident Report" from travelers. *See* Shapiro Decl. (Ex. 11) at ¶ 60 (discussing the sample narrative for AIM Event ID

2523209, which states that a TSA screener "collected all the necessary information to conduct an Incident Report" for an incident where a traveler with bulk cash was at the checkpoint for 15 minutes).

Furthermore, Defendants' speculation that the information in the TSA Dataset was collected and provided by LEOs, rather than TSA officials, is refuted by the record evidence. As just one example, AIM Event ID 2069397 shows TSA collecting eleven fields of data from a traveler—including the traveler's name, phone number, DOB, street address, city, passport number, passport country, airline, flight number, gate number, and destination airport information—in an incident in which the TSA made a LEO notification, but the responding officer indicated that "she was unable to assist" "due to … other calls currently in progress," which thus left TSA to complete the screening on their own. *See* Shapiro Decl. (Ex. 11) at ¶¶ 64–65 (discussing AIM Event ID 2069397); TSA Sampled Narratives (Ex. 23) at 10 (Sample Narrative for AIM Event ID 2069397). The TSA Dataset for this incident also contains an image file of the traveler's boarding pass and passport, Shapiro Decl. (Ex. 11) at ¶ 65, which strongly suggests that the traveler's boarding pass and passport were photographed by TSA officials, especially considering that the narrative states that the only law enforcement official who responded stated that she was unable to assist. *See* TSA Sampled Narratives (Ex. 23) at 10 (where the narrative for AIM Event ID 2069397 describes the involvement of the only responding officer as "DPS Officer Hicks #841 Arrived at 1752 and due to the other calls currently in progress, she was unable to assist with the process"). Moreover, named Plaintiffs likewise had their travel documents collected by TSA, and, in the case of Plaintiff Matthew Berger, had those documents photographed by TSA. *See* Brown Decl. (Ex. 14) at ¶¶ 21, 25, 31 (documenting how Screeners collected Rebecca's ID and proof of travel arrangements); Berger Decl. (Ex. 13) at ¶ 31, 37, 42 (documenting how Screeners collected Matthew's driver's license and boarding pass, and took photographs of both, as well as Matthew's cash). Thus, given the TSA requirement to collect and provide this information to the Coordination Center, the TSA requirement to collect and report this

information in a TSA Incident Report that must be filed within 24 hours of the incident, and the record evidence that establishes that TSA officials do, in fact, collect this information from travelers (and sometimes photograph the documents from which this information is obtained), Defendants' speculative claim that the information in the TSA Dataset might come from a non-TSA source is insufficient to create a genuine dispute of fact concerning Plaintiffs' Statement.

183. Travelers in over 50% of recorded TSA screening incidents related to travelers traveling with "bulk currency" involved TSA collecting at least 10 pieces of information from travelers. Shapiro Decl. Ex. A (Ex. 11) at ¶ 12(a); Shapiro Decl. (Ex. 1) at ¶ 20.

DEFENDANTS' RESPONSE: Denied. The existence of information in the TSA Dataset does not establish that TSA collected that information. As Shapiro testified, "[i]t could be possible" "that information ended up in that narrative" was "information about the cash" that "was passed back from the LEO after the fact." Defs.' Ex. S, Shapiro Decl. Tr. 116:21:117:2. Shapiro further testified that he does not know whether information was entered "simultaneously with the incident or . . . at the shift . . . [o]r even the next day." *Id.* 117:6-11.

PLAINTIFFS' REPLY: Defendants fail to cite any record evidence to support the speculative claim that the data in the TSA Dataset was collected by a non-TSA source. In fact, the SOP explicitly instructs Screeners to "[p]rovide the individual's name and flight information" to the Coordination Center when the "discovery of currency during screening leads to a LEO notification." SOP Ch. 12 § 6 (AR162). Thus, Screeners must necessarily first collect the information that they must then provide to the Coordination Center. Furthermore, Screeners must "[c]omplete a TSA Form 414, Incident Report for each instance of LEO notification within 24 hours of the event," SOP Ch. 13 § 4(1) (AR166), which further demonstrates that TSA officials are collecting the information that appears in the TSA Incident Report and the TSA Dataset. Moreover, the record evidence demonstrates that Screeners do, in fact, "collect[] all the necessary information to conduct an Incident Report" from travelers. *See* Shapiro Decl. (Ex. 11) at ¶ 60 (discussing the sample narrative for AIM Event ID

2523209, which states that a TSA screener "collected all the necessary information to conduct an Incident Report" for an incident where a traveler with bulk cash was at the checkpoint for 15 minutes).

Furthermore, Defendants' speculation that the information in the TSA Dataset was collected and provided by LEOs, rather than TSA officials, is refuted by the record evidence. As just one example, AIM Event ID 2069397 shows TSA collecting eleven fields of data from a traveler—including the traveler's name, phone number, DOB, street address, city, passport number, passport country, airline, flight number, gate number, and destination airport information—in an incident in which the TSA made a LEO notification, but the responding officer indicated that "she was unable to assist" "due to … other calls currently in progress," which thus left TSA to complete the screening on their own. *See* Shapiro Decl. (Ex. 11) at ¶¶ 64–65 (discussing AIM Event ID 2069397); TSA Sampled Narratives (Ex. 23) at 10 (Sample Narrative for AIM Event ID 2069397). The TSA Dataset for this incident also contains an image file of the traveler's boarding pass and passport, Shapiro Decl. (Ex. 11) at ¶ 65, which strongly suggests that the traveler's boarding pass and passport were photographed by TSA officials, especially considering that the narrative states that the only law enforcement official who responded stated that she was unable to assist. *See* TSA Sampled Narratives (Ex. 23) at 10 (where the narrative for AIM Event ID 2069397 describes the involvement of the only responding officer as "DPS Officer Hicks #841 Arrived at 1752 and due to the other calls currently in progress, she was unable to assist with the process"). Moreover, named Plaintiffs likewise had their travel documents collected by TSA, and, in the case of Plaintiff Matthew Berger, had those documents photographed by TSA. *See* Brown Decl. (Ex. 14) at ¶¶ 21, 25, 31 (documenting how Screeners collected Rebecca's ID and proof of travel arrangements); Berger Decl. (Ex. 13) at ¶ 31, 37, 42 (documenting how Screeners collected Matthew's driver's license and boarding pass, and took photographs of both, as well as Matthew's cash). Thus, given the TSA requirement to collect and provide this information to the Coordination Center, the TSA requirement to collect and report this

information in a TSA Incident Report that must be filed within 24 hours of the incident, and the record evidence that establishes that TSA officials do, in fact, collect this information from travelers (and sometimes photograph the documents from which this information is obtained), Defendants' speculative claim that the information in the TSA Dataset might come from a non-TSA source is insufficient to create a genuine dispute of fact concerning Plaintiffs' Statement.

184. Mr. Shapiro's analysis of the TSA Dataset determined that, in 3,251 of the 7,567 total incidents (42.96%), TSA officials collected and recorded the traveler's phone number. Shapiro Decl. Ex. A (Ex. 11) at Figure 2 at 8. A traveler's phone number is not information that is typically found on a boarding pass or ID. Shapiro Decl. (Ex. 11) at ¶ 21.

DEFENDANTS' RESPONSE: Denied. The existence of information in the TSA Dataset does not establish that TSA collected that information. As Shapiro testified, "[i]t could be possible" "that information ended up in that narrative" was "information about the cash" that "was passed back from the LEO after the fact." Defs.' Ex. S, Shapiro Decl. Tr. 116:21:117:2. Shapiro further testified that he does not know whether information was entered "simultaneously with the incident or . . . at the shift . . . [o]r even the next day." *Id.* 117:6-11.

PLAINTIFFS' REPLY: Defendants fail to cite any record evidence to support the speculative claim that the data in the TSA Dataset was collected by a non-TSA source. In fact, the SOP explicitly instructs Screeners to "[p]rovide the individual's name and flight information" to the Coordination Center when the "discovery of currency during screening leads to a LEO notification." SOP Ch. 12 § 6 (AR162). Thus, Screeners must necessarily first collect the information that they must then provide to the Coordination Center. Furthermore, Screeners must "[c]omplete a TSA Form 414, Incident Report for each instance of LEO notification within 24 hours of the event," SOP Ch. 13 § 4(1) (AR166), which further demonstrates that TSA officials are collecting the information that appears in the TSA Incident Report and the TSA Dataset. Moreover, the record evidence demonstrates that Screeners do, in fact, "collect[] all the necessary information to conduct an Incident Report" from travelers. *See* Shapiro Decl. (Ex. 11) at ¶ 60 (discussing the sample narrative for AIM Event ID

2523209, which states that a TSA screener "collected all the necessary information to conduct an Incident Report" for an incident where a traveler with bulk cash was at the checkpoint for 15 minutes).

Furthermore, Defendants' speculation that the information in the TSA Dataset was collected and provided by LEOs, rather than TSA officials, is refuted by the record evidence. As just one example, AIM Event ID 2069397 shows TSA collecting eleven fields of data from a traveler—including the traveler's name, phone number, DOB, street address, city, passport number, passport country, airline, flight number, gate number, and destination airport information—in an incident in which the TSA made a LEO notification, but the responding officer indicated that "she was unable to assist" "due to … other calls currently in progress," which thus left TSA to complete the screening on their own. *See* Shapiro Decl. (Ex. 11) at ¶¶ 64–65 (discussing AIM Event ID 2069397); TSA Sampled Narratives (Ex. 23) at 10 (Sample Narrative for AIM Event ID 2069397). The TSA Dataset for this incident also contains an image file of the traveler's boarding pass and passport, Shapiro Decl. (Ex. 11) at ¶ 65, which strongly suggests that the traveler's boarding pass and passport were photographed by TSA officials, especially considering that the narrative states that the only law enforcement official who responded stated that she was unable to assist. *See* TSA Sampled Narratives (Ex. 23) at 10 (where the narrative for AIM Event ID 2069397 describes the involvement of the only responding officer as "DPS Officer Hicks #841 Arrived at 1752 and due to the other calls currently in progress, she was unable to assist with the process"). Moreover, named Plaintiffs likewise had their travel documents collected by TSA, and, in the case of Plaintiff Matthew Berger, had those documents photographed by TSA. *See* Brown Decl. (Ex. 14) at ¶¶ 21, 25, 31 (documenting how Screeners collected Rebecca's ID and proof of travel arrangements); Berger Decl. (Ex. 13) at ¶ 31, 37, 42 (documenting how Screeners collected Matthew's driver's license and boarding pass, and took photographs of both, as well as Matthew's cash). Thus, given the TSA requirement to collect and provide this information to the Coordination Center, the TSA requirement to collect and report this

information in a TSA Incident Report that must be filed within 24 hours of the incident, and the record evidence that establishes that TSA officials do, in fact, collect this information from travelers (and sometimes photograph the documents from which this information is obtained), Defendants' speculative claim that the information in the TSA Dataset might come from a non-TSA source is insufficient to create a genuine dispute of fact concerning Plaintiffs' Statement.

185. Travelers in 42.20% of incidents in the TSA dataset had photos taken and/or recorded attachments that appear to be images of travelers' identification documents, boarding passes, and/or other belongings that were taken during these incidents. Shapiro Decl. Ex. A (Ex. 11) at ¶ 12(b); Shapiro Decl. (Ex. 11) at ¶ 22.

DEFENDANTS' RESPONSE: Denied that the photos were taken and/or record "during these incidents." The existence of information in the TSA Dataset does not establish that TSA collected that information at that time. As Shapiro testified, "[i]t could be possible" "that information ended up in that narrative" was "information about the cash" that "was passed back from the LEO after the fact." Defs.' Ex. S, Shapiro Decl. Tr. 116:21:117:2. Shapiro further testified that he does not know whether information was entered "simultaneously with the incident or . . . at the shift . . . [o]r even the next day." *Id.* 117:6-11.

PLAINTIFFS' REPLY: Defendants fail to cite any record evidence to support the speculative claim that the data in the TSA Dataset was collected by a non-TSA source. In fact, the SOP explicitly instructs Screeners to "[p]rovide the individual's name and flight information" to the Coordination Center when the "discovery of currency during screening leads to a LEO notification." SOP Ch. 12 § 6 (AR162). Thus, Screeners must necessarily first collect the information that they must then provide to the Coordination Center. Furthermore, Screeners must "[c]omplete a TSA Form 414, Incident Report for each instance of LEO notification within 24 hours of the event," SOP Ch. 13 § 4(1) (AR166), which further demonstrates that TSA officials are collecting the information that appears in the TSA Incident Report and the TSA Dataset. Moreover, the record evidence demonstrates that Screeners do, in fact, "collect[] all the necessary information to conduct an Incident Report" from

travelers. *See* Shapiro Decl. (Ex. 11) at ¶ 60 (discussing the sample narrative for AIM Event ID 2523209, which states that a TSA screener "collected all the necessary information to conduct an Incident Report" for an incident where a traveler with bulk cash was at the checkpoint for 15 minutes).

Furthermore, Defendants' speculation that the information in the TSA Dataset was collected and provided by LEOs, rather than TSA officials, is refuted by the record evidence. As just one example, AIM Event ID 2069397 shows TSA collecting eleven fields of data from a traveler—including the traveler's name, phone number, DOB, street address, city, passport number, passport country, airline, flight number, gate number, and destination airport information—in an incident in which the TSA made a LEO notification, but the responding officer indicated that "she was unable to assist" "due to … other calls currently in progress," which thus left TSA to complete the screening on their own. *See* Shapiro Decl. (Ex. 11) at ¶¶ 64–65 (discussing AIM Event ID 2069397); TSA Sampled Narratives (Ex. 23) at 10 (Sample Narrative for AIM Event ID 2069397). The TSA Dataset for this incident also contains an image file of the traveler's boarding pass and passport, Shapiro Decl. (Ex. 11) at ¶ 65, which strongly suggests that the traveler's boarding pass and passport were photographed by TSA officials, especially considering that the narrative states that the only law enforcement official who responded stated that she was unable to assist. *See* TSA Sampled Narratives (Ex. 23) at 10 (where the narrative for AIM Event ID 2069397 describes the involvement of the only responding officer as "DPS Officer Hicks #841 Arrived at 1752 and due to the other calls currently in progress, she was unable to assist with the process"). Moreover, named Plaintiffs likewise had their travel documents collected by TSA, and, in the case of Plaintiff Matthew Berger, had those documents photographed by TSA. *See* Brown Decl. (Ex. 14) at ¶¶ 21, 25, 31 (documenting how Screeners collected Rebecca's ID and proof of travel arrangements); Berger Decl. (Ex. 13) at ¶ 31, 37, 42 (documenting how Screeners collected Matthew's driver's license and boarding pass, and took photographs of both, as well as Matthew's cash). Thus, given the TSA requirement to collect and

provide this information to the Coordination Center, the TSA requirement to collect and report this information in a TSA Incident Report that must be filed within 24 hours of the incident, and the record evidence that establishes that TSA officials do, in fact, collect this information from travelers (and sometimes photograph the documents from which this information is obtained), Defendants' speculative claim that the information in the TSA Dataset might come from a non-TSA source is insufficient to create a genuine dispute of fact concerning Plaintiffs' Statement.

186. The data does not indicate when a traveler entered or exited the screening checkpoint. Shapiro Decl. (Ex. 11) at ¶ 42.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

187. The data reveal that TSA regularly collects information about travelers, their travel plans, and their currency when TSA detects "bulk cash" at airport security screening checkpoints. Shapiro Decl. Ex. A (Ex. 11) at ¶ 15; Shapiro Decl. (Ex. 11) at ¶ 43.

DEFENDANTS' RESPONSE: Denied. The existence of information in the TSA Dataset does not establish that TSA collected that information. As Shapiro testified, "[i]t could be possible" "that information ended up in that narrative" was "information about the cash" that "was passed back from the LEO after the fact." Defs.' Ex. S, Shapiro Decl. Tr. 116:21:117:2. Shapiro further testified that he does not know whether information was entered "simultaneously with the incident or . . . at the shift . . . [o]r even the next day." *Id.* 117:6-11.

PLAINTIFFS' REPLY: Defendants fail to cite any record evidence to support the speculative claim that the data in the TSA Dataset was collected by a non-TSA source. In fact, the SOP explicitly instructs Screeners to "[p]rovide the individual's name and flight information" to the Coordination Center when the "discovery of currency during screening leads to a LEO notification." SOP Ch. 12 § 6 (AR162). Thus, Screeners must necessarily first collect the information that they must then provide to the Coordination Center. Furthermore, Screeners must "[c]omplete a TSA Form 414, Incident

Report for each instance of LEO notification within 24 hours of the event," SOP Ch. 13 § 4(1) (AR166), which further demonstrates that TSA officials are collecting the information that appears in the TSA Incident Report and the TSA Dataset. Moreover, the record evidence demonstrates that Screeners do, in fact, "collect[] all the necessary information to conduct an Incident Report" from travelers. *See* Shapiro Decl. (Ex. 11) at ¶ 60 (discussing the sample narrative for AIM Event ID 2523209, which states that a TSA screener "collected all the necessary information to conduct an Incident Report" for an incident where a traveler with bulk cash was at the checkpoint for 15 minutes).

Furthermore, Defendants' speculation that the information in the TSA Dataset was collected and provided by LEOs, rather than TSA officials, is refuted by the record evidence. As just one example, AIM Event ID 2069397 shows TSA collecting eleven fields of data from a traveler—including the traveler's name, phone number, DOB, street address, city, passport number, passport country, airline, flight number, gate number, and destination airport information—in an incident in which the TSA made a LEO notification, but the responding officer indicated that "she was unable to assist" "due to … other calls currently in progress," which thus left TSA to complete the screening on their own. *See* Shapiro Decl. (Ex. 11) at ¶¶ 64–65 (discussing AIM Event ID 2069397); TSA Sampled Narratives (Ex. 23) at 10 (Sample Narrative for AIM Event ID 2069397). The TSA Dataset for this incident also contains an image file of the traveler's boarding pass and passport, Shapiro Decl. (Ex. 11) at ¶ 65, which strongly suggests that the traveler's boarding pass and passport were photographed by TSA officials, especially considering that the narrative states that the only law enforcement official who responded stated that she was unable to assist. *See* TSA Sampled Narratives (Ex. 23) at 10 (where the narrative for AIM Event ID 2069397 describes the involvement of the only responding officer as "DPS Officer Hicks #841 Arrived at 1752 and due to the other calls currently in progress, she was unable to assist with the process"). Moreover, named Plaintiffs likewise had their travel documents collected by TSA, and, in the case of Plaintiff Matthew Berger, had those documents

photographed by TSA. *See* Brown Decl. (Ex. 14) at ¶¶ 21, 25, 31 (documenting how Screeners collected Rebecca's ID and proof of travel arrangements); Berger Decl. (Ex. 13) at ¶ 31, 37, 42 (documenting how Screeners collected Matthew's driver's license and boarding pass, and took photographs of both, as well as Matthew's cash). Thus, given the TSA requirement to collect and provide this information to the Coordination Center, the TSA requirement to collect and report this information in a TSA Incident Report that must be filed within 24 hours of the incident, and the record evidence that establishes that TSA officials do, in fact, collect this information from travelers (and sometimes photograph the documents from which this information is obtained), Defendants' speculative claim that the information in the TSA Dataset might come from a non-TSA source is insufficient to create a genuine dispute of fact concerning Plaintiffs' Statement.

188. The data reveal that there was delays between the time TSA notified a LEO and the time a LEO responded in 78.05% of the 747 incidents for which there were non-anomalous timestamp data (i.e., incidents for which the timestamp data was complete and did not indicate a negative elapsed time, or was an outlier with elapsed time of more than an hour). Shapiro Decl. Ex. A (Ex. 11) at ¶ 12(c); Shapiro Decl. (Ex. 11) at ¶ 23.

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests that TSA was detaining the traveler while waiting for a LEO to respond. *See* Defs.' Ex. S, Shapiro Dep. Tr. 72:16-18 ("Q. And it's possible that the traveler left the checkpoint before the LEO response? A. It could be possible. Q. So your elapsed time analysis does not identify how long a traveler was delayed waiting for a LEO; correct? A. Ine some instances it could and in some instances it could not.").

PLAINTIFFS' REPLY: As Defendants do not specifically deny this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1a, 56.E. Moreover, the Statement does support the inference that the regular delay reflects TSA's policy of detaining passengers found with cash that TSA considers to be evidence of criminal activity. TSA's 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity

as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity, TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59.

Furthermore, Leyh's testimony is consistent with the SOP, which directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications, which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Thus, when cash "appears to relate to criminal activity," it is also "evidence of criminal activity" that triggers the requirements of the "Suspicious" Item SOP, which requires screeners to "[m]aintain control of the suspicious item" while they notify a LEO. "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" *after* the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the

screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item."

189. The data reveal that there were delays between the incident start time and the time a LEO responded in 90.9% of the 747 incidents for which there were non-anomalous timestamp data (i.e., incidents for which the timestamp data was complete and did not indicate a negative elapsed time, or was an outlier with elapsed time of more than an hour). Shapiro Decl. Ex. A (Ex. 11) at ¶ 12(c); Shapiro Decl. (Ex. 11) at ¶ 24.

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests that TSA was detaining the traveler while waiting for a LEO to respond. *See* Defs.' Ex. S, Shapiro Dep. Tr. 72:16-18 ("Q. And it's possible that the traveler left the checkpoint before the LEO response? A. It could be possible. Q. So your elapsed time analysis does not identify how long a traveler was delayed waiting for a LEO; correct? A. Ine some instances it could and in some instances it could not.").

PLAINTIFFS' REPLY: As Defendants do not specifically deny this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E.

Moreover, contrary to TSA's response, the Statement does suggest and supports the inference that the regular delay reflects TSA's policy of detaining passengers found with cash that TSA considers to be evidence of criminal activity. TSA's 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity, TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59.

Furthermore, Leyh's testimony is consistent with the SOP, which directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications, which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also*

"Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Thus, when cash "appears to relate to criminal activity," it is also "evidence of criminal activity" that triggers the requirements of the "Suspicious" Item SOP, which requires screeners to "[m]aintain control of the suspicious item" while they notify a LEO. "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" *after* the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item."

190. Collecting personal information, travel information, or information about currency from travelers extends travelers' time at the TSA security screening checkpoint. Shapiro Decl. (Ex. 11) at ¶ 53; Shapiro Decl. Ex. A (Ex. 11) at ¶¶ 15–16, 21, 25.

DEFENDANTS' RESPONSE: Denied. Shapiro testified that the analysis he conducted could not establish that a passenger's screening was extended at the TSA security screening checkpoint. Defs.' Ex. S, Shapiro Dep. Tr. 27:15-20 ("Q Okay. And if someone is collecting this information while the security screening is still being performed, it's possible that it doesn't actually extend the security screening at all; correct? A It could be possible."); *see also id.* 71:14-73:15 (explaining that he did not analyze how long a traveler was at the checkpoint, but merely entries in TSA's database); *id.* 74:3-7

("Q . . . But this particular analysis regarding elapsed time does not identify how long a traveler was delayed or even whether a traveler was delayed waiting for the LEO; correct? A Yes.") Additionally, Shapiro testified that "he has no expertise in conducting security screenings at airports." Defs.' Ex. S, Shapiro Dep. Tr. 170:1-4 ("Q . . . You have no expertise in conducting security screenings at airports; correct? A Yes."). Accordingly, Shapiro has no basis to offer an "expert opinion" on whether collecting information extends travelers' time at the TSA security screening checkpoint. Further denied because the record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015).

PLAINTIFFS' REPLY: Mr. Shapiro testified under oath that he has expertise in collecting information and that, in his expert opinion, collecting information takes time. Defs.' Ex. S, Shapiro Dep. Tr. 139:16-140:02 ("Q Do you have expertise in collecting information? A Yes. Q And that's part of your expertise in data analytics? A Yes. Q Based on your expert opinion, does collecting information take time? A Yes."); *see also* Shapiro Decl. (Ex. 11) at ¶¶ 43–54. Furthermore, an email from a TSA official that merely states that such information hypothetically "can be obtained at the same time the search is taking place," Defs.' Ex. M TSA_ESI_00003930, does not establish that such information collection does, in fact, happen instantly and simultaneously with the search and seizure. Instead, the record evidence contains numerous examples of travelers remaining at the checkpoint while TSA collects their information. *See* Shapiro Decl. (Ex. 11) at ¶¶ 58, 60, 62–67 (discussing several bulk cash incidents where TSA collected travelers' information and the traveler remained at the security checkpoint for a period of time ranging from 10 minutes to 33 minutes).

191. When TSA detects "bulk currency" at security screening checkpoints and notifies law enforcement, there is a regular delay before LEOs respond to TSA notifications. Shapiro Decl. (Ex. 11) at ¶¶ 23–24, 55; Shapiro Decl. Ex. A (Ex. 11) at ¶¶ 16, 31.

DEFENDANTS' RESPONSE: Denied. *See, e.g.*, Pls.' Ex. 4, Leyh Dep. Tr. 355:16-23 ("Now, in the case of Seattle, LEOs are right there. They're right – they're right at – the podiums are right next to the checkpoints. So they will come right over.").

PLAINTIFFS' REPLY: TSA's response wrongly conflates a short delay with no delay, even though the distinction is legally significant. Moreover, that a TSA official believes that LEOs "will come right over" at the Seattle airport does not meaningfully refute a statistical analysis of TSA data concerning bulk cash incidents across ***all*** TSA airports, which showed that there is regularly a delay before LEOs respond to TSA notifications. Shapiro Decl. (Ex. 11) at ¶¶ 23–24, 55; Shapiro Decl. Ex. A (Ex. 11) at ¶¶ 16, 31. Thus, Plaintiffs' Statement is undisputed by any credible evidence and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

192. It would be physically impossible to collect the information that TSA screeners are supposed to collect about travelers with "bulk currency"—and do in fact collect, based on the analysis of the TSA dataset—and not spend time doing so. Shapiro Decl. (Ex. 11) at ¶¶ 45–49, 52.

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests that collecting that information extends the time during which a traveler is searched or seized. The record evidence is to the contrary. For example, evidence indicates that collecting such information does not require extending any search or seizure: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015).

PLAINTIFFS' REPLY: Mr. Shapiro testified under oath that he has expertise in collecting information and that, in his expert opinion, collecting information takes time. Defs.' Ex. S, Shapiro Dep. Tr. 139:16-140:02 ("Q Do you have expertise in collecting information? A Yes. Q And that's part of your expertise in data analytics? A Yes. Q Based on your expert opinion, does collecting information take time? A Yes."); *see also* Shapiro Decl. (Ex. 11) at ¶¶ 43–54. Furthermore, an email from a TSA official that merely states that such information hypothetically "can be obtained at the same time the search is taking place," Defs.' Ex. M TSA_ESI_00003930, does not establish that such information collection does, in fact, happen instantly and simultaneously with the search and seizure. Instead, the record evidence contains numerous examples of travelers remaining at the checkpoint

while TSA collects their information. *See* Shapiro Decl. (Ex. 11) at ¶¶ 58, 60, 62–67 (discussing several bulk cash incidents where TSA collected travelers' information and the traveler remained at the security checkpoint for a period of time ranging from 10 minutes to 33 minutes).

TSA Emails Regarding Dallas Love Field (DAL) Airport

193. 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 (OCC) requesting legal advice regarding TSA's bulk cash policies. Leyh Dep. Ex. 15 (Ex. 4) at TSA_ESI_00003390 (redacted email chain); Leyh Dep. Ex. 15 (Ex. 4) at 2 ("Defendant's Feb. 28, 2025 Privilege Log" noting, "Redacted information is confidential request for legal advice regarding TSA's bulk cash policies from TSA counsel (Marsha Davis) and confidential email among TSA employees relaying that legal advice").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

194. Four days later, on September 8, 2015, FSD Williams forwarded that email to her deputies, noting "I spoke with Marsha Davis on the bulk cash issue," and relaying Ms. Davis's legal advice to her top subordinates. Leyh Dep. Ex. 15 (Ex. 4) at TSA_ESI_00003390 (redacted email chain); Leyh Tr. (Ex. 4) at 334:23–337:10 (discussing the people on the email chain and their various positions in TSA leadership at DAL); Leyh Tr. (Ex. 4) at 342:14–19 ("Q: Okay. And in this top e-mail, Amy Williams relayed the legal advice she received from Marsha Davis to her top three subordinates for the screening that we were discussing; correct? A: To these three individuals? A: Yes.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

195. AFSD for Screening Jeffrey Tyler responded to FSD Williams's email that same day, September 8, 2015, asking, "Is there another concern that came up? Do we need to clarify this guidance with the workforce to include the SOP guidance?" TSA's Prod. Re: DAL (Ex. 15) (Feb. 28, 2025) at TSA_ESI_00003432. No written response from FSD Williams appears in TSA's production of electronically stored information (ESI) communications responsive to Plaintiffs' Requests for Production. *See* Alban Decl. (Ex. 33) at ¶ 34 (testifying that he has reviewed the production and has also run several searches in Relativity, an e-discovery platform, for any additional communications responding to the September 2015 email chain at TSA_ESI_00003390 and TSA_ESI_00003432—including all communications from FSD Amy Williams, AFSD James T. Cennamo, AFSD Jeffrey Tyler, and Deputy FSD William Rigden—and no additional documents were produced).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

196. As TSA stipulated, "before September 2015, the Dallas Police Department (DPD) requested that the Transportation Security Administration (TSA) office at Dallas Love Field notify DPD every time bulk cash was discovered during TSA screening operations at Dallas Love Field." TSA's Stipulation (Ex. 17) (May 9, 2025).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

197. Before September 2015, TSA at DAL had a policy of notifying LEOs for every traveler with "any bulk cash, regardless of the amount" dating back to at least 2011, as documented in a series of emails from DAL AFSD James Cennamo. *See* TSA Dallas Love Field Emails (Ex. 15) at

TSA_ESI_00003406–09, 00003412–15, 00003708, 00003711–12, 00004896, 00004897–4920, 00004922–86.

DEFENDANTS' RESPONSE: Denied that TSA had such a policy. The evidence establishes only that certain TSA officials at that airport directed that action. The directions further state: "Do NOT question the passenger – except [as] necessary to resolve any screening issues . . . Do NOT inquire how much money the passenger has . . . Do NOT detain the passenger or give the impression they are being detained . . . Do NOT assist DPD with the interview of the passenger." *See* Pls.' Ex. 15 at TSA_ESI_00003409.

PLAINTIFFS' REPLY: TSA's "bulk cash" policies are not limited to the text of the SOP but extend to any unwritten policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. Here, Defendants first admit that "certain TSA officials at that airport directed that action." The action of notifying LEOs for every traveler with "any bulk cash, regardless of the amount" was directed by the DAL AFSD James Cennamo—one of the highest-ranking TSA officials at the airport. AFSD Cennamo made FSD Amy Williams aware of his instruction via email on multiple occasions, including sharing his view that TSA at DAL was "safely operating within the provisions of the SOP." TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003708, TSA_ESI_00003711–12, TSA_ESI_00003417. FSD Williams did not contradict the directions of AFSD Cennamo. *See generally* TSA Dallas Love Field Emails (Ex. 15). Furthermore, TSA admits that it is unaware of any communications from TSA directing officials at DAL to change its policy on LEO notifications about bulk cash. Leyh Tr. (Ex. 4) at 343:10–25. Finally, TSA's list of other things AFSD Cennamo directed screeners not to do are irrelevant as to whether TSA at DAL had a policy of notifying LEOs for "any bulk cash, regardless of the amount." None of the instructions listed by TSA prevent screeners from determining that a traveler possesses bulk cash and notifying LEOs.

198. In a December 1, 2011, email from AFSD Cennamo to FSD Amy Williams and AFSD Jeffrey Tyler, AFSD Cennamo stated that, "Based on TSA Operations Directive OD-400-54-6, I am recommending we contact local law enforcement on **any bulk cash, regardless of the amount**, to determine if there may be a nexus to criminal activity." TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003711–12 (emphasis added).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

199. In an August 13, 2013, email from AFSD Cennamo to Deputy FSD William Rigden, Cennamo stated that because "we would have no real way of knowing if a passenger traveling out of DAL was actually connecting to an international flight" they therefore "refer **any bulk cash**" found to law enforcement. TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003711 (emphasis added).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

200. In a January 28, 2015, email from AFSD Cennamo to DAL TSA staff, Cennamo stated that "**ALL discovered bulk cash discovered at DAL — regardless of amount — must be immediately referred to local law enforcement** so they can investigate." TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003412–15 (emphasis added).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

201. In a February 4, 2015, email from AFSD Cennamo to "All TSOs, LTSOs, STSOs, TSMs" Cennamo stated that "[w]hen bulk cash is discovered as part of your administrative search, I

wanted to make sure each of you know to: Immediately contact Dallas Police Department Love Field Unit for assistance." TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003406–09.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

202. In a May 1, 2015 email from AFSD Cennamo to FSD Amy Williams, AFSD Cennamo stated that, "[i]n my opinion, we are safely operating within the provision of the SOP" when "[i]n the event a TSO discovers bulk cash, regardless of the amount, regardless if it is in checked baggage or at the screening checkpoint, that 'may' be related to criminal activity, should be referred to the STSO who should notify an LEO." TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003708.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

203. On May 15, 2015, AFSD Cennamo sent an email to FSD Amy Williams, AFSD-S Jeffrey Tyler, and Deputy FSD William Rigden that contained two attachments. TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00004896. The first attachment was an "abbreviated power point presentation pertaining to bulk cash" designed for STSOs (Attachment 1), and the second was a "comprehensive presentation, bulk cash for TSOs," which AFSD Cennamo described as "a good summary of all references to bulk cash from the SOPs." *Id.* AFSD Cennamo stated that he was "available to present" those attachments to "the training staff to ensure a unified message." *Id.*

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

204. Attachment 1 to AFSD Cennamo's May 15, 2015, email was a 23-slide presentation entitled "Bulk Cash Summary For STSOs.pdf." TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00004897–4920. The presentation contains slides where the first two items on a list of "Evidence of Possible Criminal Activity" are "large amount of currency or money laundering" and "currency appearing to be more that [sic] $10,000" (-00004901, -00004903); slides emphasizing that "Large Amount of Currency Is Not Defined" in a sidebar (-00004903); and numerous slides describing or depicting many common methods of storing currency while traveling as examples of "Bulk Currency Related to Criminal Activity," including if the bills are in the "Same [D]enomination," (-00004901, -00004903, -00004910) but so is currency in "Various Denominations" (-00004911), "Rubber Banded" (-00004912), bundled in "Store Bought Bands" (-00004915) but also bundled with "Hand Made Bands" (-00004920) or "Hand Made Labels" (-00004919), "Concealed in Bags" the size of a purse or money pouch (-00004909) and "Concealed in Clothing" (socks) (-00004907).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

205. Attachment 2 to AFSD Cennamo's May 15, 2015, email was a "comprehensive" 63-slide presentation entitled "Bulk Cash for TSOs.pdf." TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00004922–86. The presentation includes slides where the first two items on list of "Evidence of Possible Criminal Activity" are "large amount of currency or money laundering" and "currency appearing to be more that [sic] $10,000" (-00004939, -00004946), slides describing currency in "all the same denomination" or "bundled together by rubber bands" as "factors indicating that currency may be related to criminal activity"(-00004937, -00004943), and more than 35 slides with photos of "bulk cash" as "Past Examples of Currency Related to Criminal Activity" (from -00004949 to 00004985).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

206. TSA is unaware of any communications from TSA directing officials at DAL to change its policy on LEO notifications about bulk cash. Leyh Tr. (Ex. 4) at 343:10–25. No such written communication appears in TSA's production of ESI communications responsive to Plaintiffs' Requests for Production. Alban Decl. (Ex. 33) at ¶ 36 (testifying that he has reviewed the production and has also run several searches in Relativity, an e-discovery platform, for any such document involving DAL or the various top TSA officials at DAL on the September 2015 email chain at TSA_ESI_00003390 and TSA_ESI_00003432—including FSD Amy Williams, AFSD James T. Cennamo, AFSD Jeffrey Tyler, and Deputy FSD William Rigden—and no such document was produced).

DEFENDANTS' RESPONSE: Denied. On March 14, 2025, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with variances in the application of TSA written policy. *See* AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.* That email further stated that, "because traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold, regardless of destination." *Id.* A recipient of this email is Amy Williams, the FSD at DAL. *Id.*; *see also* "TSA Names Amy Williams as Federal Security Director for Dallas Love Field Airport," (May 17, 2010), *available at*: https://www.prnewswire.com/news-releases/tsa-names-amy-williams-as-federal-security-director-for-dallas-love-field-airport-93941234.html.

PLAINTIFFS' REPLY: As explained by Paul Leyh during his Rule 30(b)(6) deposition, the Deputy Assistant Administrator for Domestic Aviation Operations' March 14, 2025 email to the FSDs was created in direct response to ongoing discovery in this case. Leyh Tr. (Ex. 4) at 264:2–266:5 (where Mr. Leyh explains that he created the "field reference sheet," which includes the purported "variance" chart, based on the "documents" provided by Plaintiffs, which Mr. Leyh then used to facilitate his

discussions with officials at the "different airports" they applied to, based on the nature of that airport's respective purported "variance" from the policy); *see also* Leyh Tr. (Ex. 4) at 261:12–17 (where Mr. Leyh states that he created the field reference sheet, which contains the purported "variance" chart, to prepare for his deposition). It remains the case that TSA cannot identify any communications from before this lawsuit directing officials at DAL to change its policy on LEO notifications about bulk cash.

207. TSA's Paul Leyh called AFSD for Screening Jeffrey Tyler in March 2025 and learned DAL Screeners were still notifying a LEO if there was "[b]asically, any amount of currency." Leyh Dep. Ex. 10 (Ex. 4) at 1, 3; Leyh Tr. (Ex. 4) at 339:6–344:7 (testimony about call with AFSD Jeffrey Tyler and purported "variances" at DAL); *see also* Emails from TSA Airports (Ex. 21) at TSA_ESI_00004993–96 (Feb. 9, 2016 email from AFSD James Cennamo to FSD Amy Willams, AFSD-S Jeffrey Tyler, Deputy AFSD-S William Rigden & Victor Musat, Subject: "RE: 400.5 ROUTINE - Discovery of Bulk Currency During the Screening Process," stating: "It appears we are operating within the scope of the requirements"); Emails from TSA Airports (Ex. 21) at TSA_ESI_00003416–18 (November 30, 2016 email from DAL TSA Supervisory Training Specialist David McBride to DAL AFSD for Screening Jeffrey Tyler forwarding James Cennamo Bulk Cash Procedures email from February 4, 2015); Emails from TSA Airports (Ex. 21) at TSA_ESI_00004997 (identifying David McBride's title); Emails from TSA Airports (Ex. 21) at TSA_ESI_00003436 (identifying Jeffrey Tyler's title); Emails from TSA Airports (Ex. 21) at TSA_ESI_00005568–69 (identifying David McBridge and Jeffrey Tyler's titles).

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

and TSA MD 100.4 going forward." *Id.* That email further stated that, "because traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold, regardless of destination." *Id.* A recipient of this email is Amy Williams, the FSD at DAL. *Id.*; *see also* "TSA Names Amy Williams as Federal Security Director for Dallas Love Field Airport," (May 17, 2010), *available at*: https://www.prnewswire.com/news-releases/tsa-names-amy-williams-as-federal-security-director-for-dallas-love-field-airport-93941234.html.

PLAINTIFFS' REPLY: As explained by Paul Leyh during his Rule 30(b)(6) deposition, the Deputy Assistant Administrator for Domestic Aviation Operations' March 14, 2025 email to the FSDs was created in direct response to ongoing discovery in this case. Leyh Tr. (Ex. 4) at 264:2–266:5 (where Mr. Leyh explains that he created the "field reference sheet," which includes the purported "variance" chart, based on the "documents" provided by Plaintiffs, which Mr. Leyh then used to facilitate his discussions with officials at the "different airports" they applied to, based on the nature of that airport's respective purported "variance" from the policy); *see also* Leyh Tr. (Ex. 4) at 261:12–17 (where Mr. Leyh states that he created the field reference sheet, which contains the purported "variance" chart, to prepare for his deposition). It remains the case that TSA cannot identify any communications from before this lawsuit directing officials at DAL to change its policy on LEO notifications about bulk cash.

208. In an email, TSA instructed Screeners at Dallas Love Field to "immediately" notify LEOs about "ALL discovered bulk cash . . . regardless of amount." TSA Ex. I at TSA_ESI_00003415.

DEFENDANTS' RESPONSE: Denied. Assistant Federal Security Director sent an email containing that instruction. As a result, on March 14, 2025, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with variances in the application of TSA written policy. *See* AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.* That email further stated that, "because traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold, regardless of destination." *Id.* A recipient of this email is Amy Williams, the FSD at DAL. *Id.*; *see also* "TSA Names Amy Williams as Federal Security Director for Dallas Love Field Airport," (May 17,

2010), *available at*: https://www.prnewswire.com/news-releases/tsa-names-amy-williams-as-federal-security-director-for-dallas-love-field-airport-93941234.html.

PLAINTIFFS' REPLY: TSA admits that AFSD James Cennamo instructed Screeners at Dallas Love Field to "immediately" notify LEOs about "ALL discovered bulk cash . . . regardless of amount." TSA Ex. I at TSA_ESI_00003415. TSA's "bulk cash" policies are not limited to the text of the SOP but extend to any unwritten policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. AFSD Cennamo is one of the highest ranking TSA officials at the DAL airport, and he made his superior, FSD Amy Williams, aware of his instruction by including her in an email relaying this instruction. *Id.* at TSA_ESI_00003414. Elsewhere, AFSD Cennamo shared his view with FSD Williams that TSA at DAL was "safely operating within the provisions of the SOP" in the way it approached travelers with bulk cash. TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003708, TSA_ESI_00003711–12, TSA_ESI_00003417. FSD Williams did not contradict the directions of AFSD Cennamo.

209. The TSA email to Screeners at Dallas Love Field explains, "TSOs are not in the business of conducting criminal investigations" and "we have no way of knowing if a passenger may be connecting to an international flight at their destination airport, upon departing DAL." TSA Ex. I at TSA_ESI_00003415.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

210. The TSA email to Screeners at Dallas Love Field includes a flowchart, which indicates "Notification to Supervision and LEO" is automatic when "bulk cash" is discovered and states: "LEOs will determine if currency is related to criminal activity or if PAX's final destination is outside

the USA." TSA Ex. I at TSA_ESI_00003419_0001 (also noting the TSO should then obtain the traveler's name and flight information).

DEFENDANTS' RESPONSE: Admitted. As a result, on March 14, 2025, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with variances in the application of TSA written policy. *See* AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.* That email further stated that, "because traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold, regardless of destination." *Id.* A recipient of this email is Amy Williams, the FSD at DAL. *Id.*; *see also* "TSA Names Amy Williams as Federal Security Director for Dallas Love Field Airport," (May 17, 2010), *available at*: https://www.prnewswire.com/news-releases/tsa-names-amy-williams-as-federal-security-director-for-dallas-love-field-airport-93941234.html.

PLAINTIFFS' REPLY: This Statement is admitted. Moreover, TSA's Cash Screening Policies are not limited to the text of the SOP but extend to any unwritten policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten policies or practices that arise out of TSA's implementation of its written Cash Screening Policies. The guidance provided in the flowchart sent to screeners at Dallas Love Field by AFSD James Cennamo was not contradicted by anyone at TSA until five years later when discovery in this case had been well underway. *See* Leyh Tr. (Ex. 4) at 264:2–272:10, 279:9–281:11 323–326:13; Leyh Dep. Exs. 11–13. Furthermore, AFSD Cennamo included FSD Amy Williams in the email containing the flow chart. TSA Ex. I at TSA_ESI_00003414–16. FSD Williams did not contradict AFSD Cennamo's guidance and knew that AFSD Cennamo believed that TSA at DAL was "safely operating within the provisions of the SOP" in the way it approached travelers with bulk cash. TSA Dallas Love Field Emails (Ex. 15) at TSA_ESI_00003708, TSA_ESI_00003711–12, TSA_ESI_00003417. It remains the case that TSA screeners at DAL were notifying LEOs of the presence of "[b]asically any amount of currency," Leyh Dep. Ex. 10 (Ex. 4) at 1, 3; Leyh Tr. (Ex. 4) at 339:6–344:7, that senior TSA officials—including the FSD for DAL and one or more attorneys in TSA's Office of Legal Counsel— were aware of this

practice, and there is no evidence this policy or practice would have ended in the absence of this lawsuit.

TSA's Purported "Variances" and Purported Remedial Efforts

211. On March 18, 2025, during Paul Leyh's Rule 30(b)(6) deposition, TSA produced a chart identifying airports that TSA, as part of its litigation position, now purportedly deemed to be "in variance" from TSA's Cash-Screening Policies. Leyh Dep. Ex. 10 (Ex. 4) ("TSA's 'variance' chart") at 3; Leyh Tr. (Ex. 4) at 265:17–266:5 ("I looked at what the variance was and had a discussion with them."); Leyh Tr. (Ex. 4) at 280:8–14 ("Q: Sure. So, you said over the – the last week, you – in preparation for this deposition, you contacted these airports. A: Right. Q: And then determined that there were some variance from the policy? A: Correct.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

212. TSA's purported "variance" chart identified six different airports or regions (DAL, ELP HOU, Iowa, PVD, SEA) engaged in three different types of purported "variances" from TSA's formal Cash-Screening Policies when screening travelers with "bulk currency": (1) asking travelers questions about their cash (Iowa, PVD), (2) making LEO notifications based on different criteria or at a different "threshold" (Iowa, DAL, HOU, ELP), and (3) not completing the traveler's screening until LEOs arrived (HOU, SEA). Leyh Dep. Ex. 10 (Ex. 4) at 3; Leyh Tr. (Ex. 4) at 266:13–267:3 ("complete screening" means those airports "were not completing the screening until law enforcement arrived"); Leyh Tr. (Ex. 4) at 268:22–269:1 ("Notification threshold" means "when to call LEO notifications"); Leyh Tr. (Ex. 4) at 269:2–12 ("Questions about cash" is about whether the Screener can "ask questions about cash during the screening").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

213. Paul Leyh and TSA Deputy Assistant Administrator Mike Turner spoke with TSA officials at the airports identified in TSA's chart. Leyh Tr. (Ex. 4) at 323:5–8 ("Q: Okay. So, you said that Michael Turner reached out and had a conversation with these airports that are listed here; correct? A: Correct."); Leyh Tr. (Ex. 4) at 271:5–272:2 (discussing the conversations); Leyh Tr. (Ex. 4) at 280:8–14 ("Q: Sure. So, you said over the – the last week, you – in preparation for this deposition, you contacted these airports. A: Right. Q: And then determined that there were some variance from the policy? A: Correct."); *see also* AR231 (a 5:59 p.m. email on Friday, March 14, 2025, from Mike Turner to FSDs to "provide the below guidance as we try and clean up some bulk currency issues," noting that: "It has come to our attention that your airport(s) may not be fully adhering to both the letter and the spirit of the SOP and TSA[']s MD 100.4 when it comes to discoveries of bulk currency during screening"); AR222, 224 (an 8:28 p.m. email on Friday, May 2, 2025, entitled "DAO Weekly 05.0502025" from Mike Turner including an item about currency-screening procedures as one of more than a dozen items in a weekly newsletter-style email).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

214. In other words, these conversations took place as a result of the discovery produced in this litigation that was shared with TSA in advance of Mr. Leyh's deposition, so that Mr. Leyh could prepare "for his deposition." Leyh Tr. (Ex. 4) at 264:2–266:5 (where Mr. Leyh explains that he created the "field reference sheet," which includes the purported "variance" chart, based on the "documents" provided by Plaintiffs, which Mr. Leyh then used to facilitate his discussions with officials at the

"different airports" they applied to, based on the nature of that airport's respective purported "variance" from the policy); *see also* Leyh Tr. (Ex. 4) at 261:12–17 (where Mr. Leyh states that he created the field reference sheet, which contains the purported "variance" chart, to prepare for his deposition). Thus, but for this litigation, these conversations never would have taken place, and this chart would have never been created. *Id.*

DEFENDANTS' RESPONSE: Admitted the conversations took place when preparing Mr. Leyh for his deposition. Denied that the conversations "never would have taken place" otherwise as none of the cited testimony supports that statement.

PLAINTIFFS' REPLY: Mr. Leyh's conversations with the officials at the airports that appeared on his "variance" list were based on "documents" provided by plaintiffs. Leyh Tr. (Ex. 4) at 261:12–17, 264:2–266:5. Those documents would not have been produced without discovery, which would not have taken place without this lawsuit. Without this lawsuit, Mr. Leyh would not have been required to prepare for deposition as TSA's 30(b)(6) witness and thus would not have spoken to the airport officials nor created his "variance" chart in preparation for his testimony. Further, as Defendants cite no record evidence in support of their denial, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

215. TSA's purported "variance" chart indicates there are nearly 20 emails and other documents that Mr. Leyh reviewed about the informal policies, practices, or customs at the flagged airports, many of which were provided by Plaintiffs in advance of Mr. Leyh's deposition. Leyh Dep. Ex. 10 (Ex. 4) at 1–3; Leyh Tr. (Ex. 4) at 264:2–20 (explaining the "field reference sheet" provides a process for Mr. Leyh to review "the airport and the associated documents," including "documents that you – that you all had put together"); *see also* SUMF ¶ 211.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

216. Several of the emails referenced in TSA's purported "variance" chart indicate that practices that TSA labels, as its litigation position, purported "variances" are practices at those airports documented back to at least 2015 (DAL, SEA), 2016 (ELP), 2018 (HOU, Iowa), and 2019 (PVD). Leyh Dep. Ex. 10 (Ex. 4); Emails from TSA Airports (Ex. 21) at TSA_ESI_00003406–09 (DAL), TSA_ESI_00003576 (SEA), TSA_ESI_00003374 (ELP), TSA_ESI_00004657 (HOU), TSA_ESI_00003949 (Iowa), TSA_ESI_00004558–64 (PVD).

DEFENDANTS' RESPONSE: Denied. The cited exhibits do not establish that the variances were practices at those airports. The cited exhibit for SEA, for example, does not concern the variance discussed in Leyh's testimony or, indeed, any departure from the SOP. *See* Pls.' Ex. 21, TSA_ESI_00003576.

PLAINTIFFS' REPLY: Each of the emails or the larger threads they belong to can be found in TSA 30(b)(6) witness Paul Leyh's "variance chart." *See* Leyh Dep. Ex. 10 (Ex. 4). The chart identifies the airport involved, relevant emails sent by TSA officials and their Bates numbers, the date the emails were sent, and the nature of the variance. *Id.* In the bottom right-hand corner of the third page of Leyh's variance chart, he created a table entitled "TSA Follow Up." *Id.* The table has two columns one labeled "Correcting Variance from Policy" and the other labeled "Airports." *Id.* Each of the airports identified in this Statement are included in the table along with the purported "variance" associated with them. *Id.* Leyh also identifies Michael Turner as the Acting Assistant Administrator for Domestic Aviation Operations in the table because "all of the airports in the – country report up to Mike as the acting assistant administrator." Leyh Dep. Ex. 4 at 271:12–14. Leyh further explained that "after having conversations with these airports and – and understanding what – what those variances were, [I] talked to Mike and said, at these particular airports, here's what the variance was." Leyh Dep. Ex. 4 at 271:14–18. In other words, TSA's 30(b)(6) witness evaluated the documents produced by plaintiffs, understood that variances existed at the airports identified in his table, and then briefed the Acting Assistant Administrator for Domestic Aviation Operations on the variances so that he could issue his March 14, 2025 email to correct the practices of those airports. TSA

"designate[d]" Mr. Leyh "to testify on its behalf." Fed. R. Civ. P. 30(b)(6). Accordingly, Mr. Leyh's testimony is admissible against TSA such that TSA cannot "retract [his] prior testimony with impunity." *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 212–13 (E.D. Pa. 2008). Here, TSA doesn't offer any new evidence, such as an affidavit, explaining why TSA is contesting Mr. Leyh's testimony at the eleventh hour. *See id.* Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E. As a result, Mr. Leyh's testimony establishes that "variances" existed at the airports he identified in his "variance" chart.

Finally, the email included at Pls.' Ex. 21, TSA_ESI_00003576 from AFSD Joe Meusburger does support the variance described by Paul Leyh—namely, that TSA was not completing screenings where Screeners identified bulk cash until LEOs arrived. *See* Leyh Dep. Ex 4 at 267:19–25 ("Q: Okay. So – okay. I see now. So, Houston and Seattle, they were completing screening. You said while they were – they would not complete the screening until law enforcement would arrive? A: Until the law enforcement arrived. Right."). AFSD Meusberger states that "There is a MOA between CBP and TSA to notify the BCSC when we discover bulk cash. We should continue [t]o call POSPD but then also report to the BCSC with the below information. Homeland Security Investigations (old ICE) [w]ill get notified thru the BCSC for any response. They are asking for bulk cash reports on both domestic and international." His email supports the existence of a variance at SEA airport since, if TSA at SEA was notifying LEOs of all bulk cash discoveries as his email suggests, TSA would maintain control of the cash and not complete the screenings until LEOs arrived.

217. There's no official TSA HQ channel for correcting purported (or actual) "variances" nor a TSA HQ official for whom "the buck stops here" for correcting purported (or actual) "variances." Leyh Tr. (Ex. 4) at 326:10–13; *see also* Leyh Tr. (Ex. 4) at 324:23–326:13 (full line of questioning).

DEFENDANTS' RESPONSE: Denied. The cited testimony states that "[t]he executive director is responsible for the FSDs. So … FSDs report to the executive director. And if – if the executive director is aware of [variances] then I know that the FSD is going to have those discussions with the . . . airports." Pls.' Ex. 4, Leyh Dep. Tr. 325:21-326:1. As evidence of correcting variances, on March 14, 2025, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with variances in the application of TSA written policy. *See* AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.*

PLAINTIFFS' REPLY: When evaluating Mr. Leyh's entire testimony in this line of questioning, he admits that there is no official TSA HQ channel for correcting purported (or actual) "variances" nor a TSA HQ official for whom "the buck stops here" for correcting purported (or actual) "variances." Leyh Tr. (Ex. 4) at 326:10–13 (Q: "Okay. But no official – there's no, like, official channel or the buck stops here with a particular person?" A: Yeah."); *see also* Leyh Tr. (Ex. 4) at 324:23–326:13 (full line of questioning). Further, contrary to TSA's assertion, the Deputy Assistant Administrator for Domestic Aviation Operations' March 14, 2025 email—which was created in response to this lawsuit and the documents produced by Plaintiffs, and sent approximately five years after the start of this lawsuit, and just four days before the deposition of its 30(b)(6) witness—is not evidence of a formal reporting channel within TSA HQ for correcting purported (or actual) "variances." *See* Leyh Tr. (Ex. 4) at 323:5–8, 271:5–272:2, 280:8–14, 264:2–20, 324:23–326:13; *see also* AR231.

218. In the six-year period covered by discovery in this case, only a single Screener was ever disciplined for failing to follow TSA's Cash-Screening Policies—namely, the failure to "articulate" the reasons for believing the cash was suspicious. Letters of Counseling at Anchorage International Airport (Ex. 18) at TSA02160–61 (April 8, 2018 Letter); Letters of Counseling at Anchorage International Airport (Ex. 18) at TSA02162–63 (October 11, 2018 Letter).

DEFENDANTS' RESPONSE: Denied. The evidence cited contains two examples of corrective action, and feedback is given to TSA employees through measures other than formal discipline, such as "a coaching/mentoring discussion about an area that they had concerns about." Pls.' Ex. 10,

Lambert Dep. Tr. 100:19-25. None of the cited evidence establishes that no screener ever received coaching or mentorship regarding the failure to follow TSA's policies regarding large amounts of currency.

PLAINTIFFS' REPLY: TSA was asked to produce: "All Documents and Communications concerning any disciplinary actions actually taken against TSA Personnel for violating any TSA policies, protocols, standard operating procedures, directives, or trainings concerning Air Travelers with Cash" for the six-year period covered by discovery in this case. Defendants' Response to Plaintiffs' Requests for Production of Documents (Ex. 32) at 7. Based on TSA's production, corrective action was only taken with a single screener in the six-year period covered by discovery in this case, as demonstrated by the cited evidence. *See* Letters of Counseling at Anchorage International Airport (Ex. 20) at TSA02160–61 (April 8, 2018 Letter), TSA02162–63 (October 11, 2018 Letter) (each referencing the same March 2018 matter involving a traveler carrying $17,000 in cash). Further, the deposition testimony of Kimberly Lambert does not establish that TSA took any corrective action of any kind with other screeners for failing to follow TSA's Cash-Screening Policies. TSA fails to identify any additional corrective actions in the record that were taken during this six-year period (all of which should have been produced in response to Plaintiffs' request for production.) Accordingly, since Defendants offer no record evidence to contradict Plaintiffs' Statement, it is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

219. The same Screener who was disciplined for failing to follow TSA's Cash-Screening Policies was promoted between the two discipline incidents, which occurred five months apart. Letters of Counseling at Anchorage International Airport (Ex. 18) at TSA02160–61 (April 8, 2018 Letter); Letters of Counseling at Anchorage International Airport (Ex. 18) at TSA02162–63 (October 11, 2018 Letter).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

220. On March 14, 2025, TSA Deputy Assistant Administrator Mike Turner sent an email entitled "Bulk Currency procedures" to five FSD or AFSDs, including Amy Williams at DAL and Jared Babin at ELP. AR231–32.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

221. The March 14, 2025, email from TSA Deputy Assistant Administrator Mike Turner states that it "provide[s] the below guidance" to "try and clean up some bulk currency issues." AR231–32.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

222. The March 14, 2025, email from TSA Deputy Assistant Administrator Mike Turner avers that some airports "may not be fully adhering to both the letter and spirit of the SOP and TSA[']s MD 100.4 when it comes to discoveries of bulk currency during screening." AR231–32.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

223. On May 2, 2025, TSA Deputy Assistant Administrator Mike Turner sent an email noting that Screeners at some airports aren't fully adhering to MD 100.4 and the SOP regarding bulk cash. AR222 (start of the email); AR224 ("It has come to our attention that some airports may not be

fully adhering to both the letter and spirit of the SOP and TSA MD 100.4 when it comes to discoveries of bulk currency during screening.").

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

224. In March 2025 and May 2025, TSA claimed for the first time, in a pair of emails from Deputy Assistant Administrator Mike Turner to FSDs, that Screeners should not just rely on the text of TSA's formal, written policies when implementing those policies, but also the unwritten "spirit of the SOP and TSA MD 100.4." *See* AR224 ("It has come to our attention that some airports may not be fully adhering to both the letter and **the spirit of the SOP and TSA MD 100.4** when it comes to discoveries of bulk currency during screening.") (emphasis added); AR224 ("Please ensure the screening workforce at your airport(s) adhere to the letter and **the spirit of the SOP and TSA MD 100.4** going forward.") (emphasis added).

DEFENDANTS' RESPONSE: Denied. None of the cited evidence supports the assertion that TSA officials have never before directed screeners to rely on both the "letter and spirit of the SOP and TSA MD 100.4."

PLAINTIFFS' REPLY: Defendants do not dispute the timing and content of Deputy Assistant Administrator Mike Turner's email to FSDs. *See* LCvR 56.C.1.a. Defendants only dispute Plaintiffs' characterization that TSA was sharing this information "for the first time." However, Defendants offer no record evidence, such as earlier communications directing screeners to rely on both the letter and spirt of the SOP, to contradict Plaintiffs' Statement. As a result, Plaintiffs' statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

225. The March 2024 and May 2025 emails sent by Mr. Turner, which post-date the filing of this litigation by five years, directly contradict the guidance and internal communications

summarized in the paragraphs above, all of which directly encourage the seizure of bulk cash and extending the seizure of travelers carrying bulk cash. *See* Leyh Tr. (Ex. 4) at 264:2–272:10, 279:9–281:11 323–326:13; Leyh Dep. Exs. 11–13.

DEFENDANTS' RESPONSE: Denied. No TSA "guidance" encourages the seizure of bulk cash or extending the seizure of travelers carrying bulk cash. To the contrary, TSA policies are clear that in all circumstances in which bulk currency is discovered, the screener may not seize either the traveler or the currency. Specifically, where no law enforcement notification is made, the SOPs instruct "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and has arrived, the TSA screener similarly must "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA screeners to "return all property to the individual. The individual may be asked to wait until a LEO arrives, but the individual is free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 2(5)(a) (AR162). In none of those scenarios does a TSA screener seize the traveler or her property. *See also* Pls.' Ex. 3, Leyh Dep. Tr. 218:10- 15 ("[O]nce the screening is complete they are going to turn the bag back over to the passenger and the passenger is allowed to go into the sterile area."); *id.* at 240:17-21 ("And then if CBP/immigration they have been notified but they are not present at the completion of the security screening then you return the property to the individual and the individual is then cleared to leave.").

PLAINTIFFS' REPLY: TSA's "bulk cash" policies are not limited to the text of the SOP, as TSA suggests, but extend to any unwritten policies or practices concerning how TSA interacts with passengers found to be carrying bulk cash, including any unwritten policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. Whether or not TSA wishes to characterize the evidence of the preceding paragraphs as "guidance" is irrelevant. TSA offers no record evidence that refutes Plaintiffs' claims about how TSA implemented its Cash-Screening Policies. Accordingly, it is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

226. An email TSA cites an example of compliance, TSA Br. at 31, TSA Ex. J, instructs Screeners at Dallas Love Field (DAL), to "immediately" notify LEOs about "ALL discovered bulk cash . . . regardless of amount." SUMF ¶ 200. The AFSD explains, "TSOs are not in the business of conducting criminal investigations" and "we have no way of knowing if a passenger may be connecting

to an international flight at their destination airport, upon departing DAL." *Id.* This is reenforced by the attached flowchart which indicates "Notification to Supervision and LEO" is automatic when "bulk cash" is discovered and states: "LEOs will determine if currency is related to criminal activity or if PAX's final destination is outside the USA." SUMF ¶ 210. Because notifying a LEO necessarily involves collecting information from travelers (per the flowchart and Steps 6–8 of the Cash SOP), this informal policy necessarily extends the detention of travelers with "bulk cash." *See also* SUMF ¶¶ 197–202 (citing emails by AFSD Cennamo repeatedly endorsing this policy since 2011).

DEFENDANTS' RESPONSE: Denied that collecting information from travelers extends the detention of travelers with "bulk cash." The record evidence is to the contrary, as the cited email unequivocally states that no detention is permitted: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015). Whether law enforcement is notified has no bearing on whether the TSA screener detains or prolongs the search of any passengers.

PLAINTIFFS' REPLY: Defendants' citation to FSD Kevin Frederick's statement that "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive," Defs.' Ex. M TSA_ESI_00003930, does not refute Plaintiffs' Statement that LEO notification necessarily extends the detention of travelers with "bulk cash," and so the Statement is thus undisputed and should be admitted. *See* LCvR 56.C.1.a, 56.E.

Further, FSD Kevin Frederick's statement is not dispositive as to what actually happens once Screeners believe they have found bulk cash and notify law enforcement in accordance with the SOP. The SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications, which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence

of criminal activity subject to the "Suspicious" Item SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" after the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item."

Moreover, TSA's 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items.

227. Another email TSA cites as an example of TSA officials "repeatedly emphasiz[ing] that the discovery of bulk cash does not provide justification to detain or prolong the search of any passengers," TSA Br. 32, TSA Ex. M, does just the opposite. 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." TSA Ex. M (emphasis added).

DEFENDANTS' RESPONSE: Denied. The cited email unequivocally states that no detention is permitted: "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive." Defs.' Ex. M TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015). Whether law enforcement is notified has no bearing on whether the TSA screener detains or prolongs the search of any passengers.

PLAINTIFFS' REPLY: Defendants' citation to FSD Kevin Frederick's statement that "Whatever information we need for the SIRT report can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until LEOs arrive," Defs.' Ex. M TSA_ESI_00003930, does not refute Plaintiffs' Statement that discovery of "bulk cash" does, in fact, provide justification to prolong the search of any passengers. Plaintiffs' Statement is thus undisputed and should be admitted. *See* LCvR 56.C.1.a, 56.E.

Further, FSD Kevin Frederick's statement is not dispositive as to what actually happens once Screeners believe they have found bulk cash and notify law enforcement in accordance with the SOP.

The SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications, which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence of criminal activity subject to the "Suspicious" Item SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment."). Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency.

Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" after the Screener completes the inquiries, determinations, information collections, and LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12 § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item."

Moreover, TSA's 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items.

228. TSA also cites a March 2016 email involving the AFSD at El Paso (ELP) to demonstrate compliance with what TSA claims are its "written policies prohibiting the detention of passengers traveling with bulk currency," TSA Br 33; TSA Ex. P, but that email also does just the opposite. In the email, a TSA official asks the 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." TSA Ex. P at TSA_ESI_00003705. This endorses the understanding that TSA's policies instruct Screeners to detain travelers with bulk cash for the purpose of collecting the traveler's information or documents necessary to notify LEOs per the Cash SOP. *See* SUMF ¶¶ 4–5, 29–30, 73–80.

DEFENDANTS' RESPONSE: Denied. The cited email unequivocally states: "We can't detain anyone so they are free to go." Defs.' Ex. P. at TSA_ESI_00003705. This email therefore does not establish that TSA policies instruct screeners to detain travelers with bulk cash. The email states the exact opposite. Further denied because whether TSA "detains" a traveler or their bags is a question

of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo.").

PLAINTIFFS' REPLY: Defendants' citation to AFSD Babin's statement that "We can't detain anyone so they are free to go," Defs.' Ex. P. at TSA_ESI_00003705, does not refute Plaintiffs' Statement that TSA's policies instruct Screeners to detain travelers with bulk cash for the purpose of collecting the traveler's information or documents necessary to notify LEOs per the Cash SOP, including AFSD Babin's statement that TSA's policy at El Paso airport is that: "If it looked to be a lot (10 grand or more) we would refer it to the ICE Bulk Cash Smuggling Hotline." TSA Ex. P at TSA_ESI_00003705. Plaintiffs' Statement is thus undisputed and should be admitted. *See* LCvR 56.C.1.a, 56.E.

Furthermore, AFSD Babin's statement is not dispositive as to what actually happens once Screeners believe they have found bulk cash and notify law enforcement in accordance with the SOP. The SOP explicitly directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications, which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash SOP, Ch. 12, § 2, Steps 3, 6-8; *see also* "Suspicious" Item SOP, Ch. 12, § 1, Steps 1, 3. As the SOP explicitly states, currency "appears to relate to criminal activity," which thus makes currency evidence of criminal activity subject to the "Suspicious" Item SOP, when, "for example, the currency [is] all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." Cash SOP, Ch. 12 § 2, Step 3.b. *See also* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment.").

Furthermore, the SOP does not state that screeners may not seize either the traveler or the currency. Instead, Step 5 of the Cash SOP instructs TSA officials to "return all property to the individual" after the Screener completes the inquiries, determinations, information collections, and

LEO notifications mandated by Step 3 of the Cash SOP. *See* Cash SOP, Ch. 12, § 2, Steps 3, 5. Likewise, the "Suspicious" Item SOP indicates that, after TSA officers "[m]aintain control of a suspicious item" and "[n]otify an STSO, who will notify a LEO," "[a]n individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished." SOP Ch. 12, § 1, Steps 1, 3, 4. The "Suspicious" Item SOP does not say when or if to release the "suspicious item."

Moreover, TSA's 30(b)(6) witness on TSA's screening policies, Paul Leyh, testified that cash can be evidence of criminal activity as that term is used in the context of the "Suspicious" Item SOP, *see* SUMF ¶ 57, and that when Screeners encounter suspicious items or other evidence of criminal activity—which includes cash—TSA will detain travelers' carry-on bags or other items to prevent travelers from leaving the checkpoint with those items. *See* SUMF ¶¶ 19, 54–59. Furthermore, TSA screeners following the SOP delay travelers in ways that do not further a transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct."); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to

notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

229. Some airports develop their own operations manual or other guidance for screening procedures, which can happen without oversight from TSA Headquarters. Leyh Tr. (Ex. 4) at 275:1–7 ("Q: Okay. And so, like, generally speaking, individual airports, they can develop these type of manuals regarding screening – screening procedures? A: They can, but – but they – they have to – they have to be in parallel with what the – what the TSA SOP is."); Leyh Tr. (Ex. 4) at 276:25–277:23 (answering "I don't know" to a question about whether an airport must receive authorization or approval from TSA HQ before pushing out a manual).

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests that the "operations manual or other guidance" may in any way contradict the SOP. To the contrary, the cited testimony makes clear that any additional guidance would "have to be in parallel with . . . the TSA SOP." Pls.' Ex. 4, Leyh Dep. Tr. 275:1-7.

PLAINTIFFS' REPLY: Defendants offer no record evidence to contradict the Statement that some airports develop their own operations manual or other guidance for screening procedures, which can happen without oversight from TSA Headquarters. Defendants' 30(b)(6) witness could not say whether airports must receive approval from TSA HQ before putting out their own operations manual. *See* Leyh Tr. (Ex. 4) at 276:25–277:23 (answering "I don't know" to a question about whether an airport must receive authorization or approval from TSA HQ before pushing out a local manual or guidance). Plaintiffs' Statement, therefore, is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

230. Local airport manuals and guidance on how to implement TSA's Cash-Screening Policies are sometimes now deemed, as part of TSA's litigation position, in purported "variance" with TSA's formal Cash-Screening Policies. For example, TSA officials at Chicago O'Hare (ORD), one of

the nation's busiest airports, developed and circulated a QRC (Quick Reference Card) for "bulk cash" incidents that states "if bulk currency is discovered at the checkpoint in the possession of a passenger on a domestic flight, **it can be assumed the STSO believes the issue is sufficiently suspicious**" requiring "local HSI/Bulk currency hotline notifications." Emails from TSA Airports (Ex. 21) at TSA_ESI_00005742–45 (emphasis added). This QRC applies to "all bulk currency both domestic and international." *Id.* at TSA_ESI_00005745.

DEFENDANTS' RESPONSE: Denied. Two of the cited pages are not included in Plaintiffs' submission, TSA_ESI_00005742-43. Additionally, the cited document states "See Operations Directive OD- 400-54-6 for further guidance." Pls.' Ex. 21 at TSA_ESI_00005745. OD-400-54-6 makes clear that local law enforcement authorities may be notified only "[i]f it appears that a large amount of cash may be related to criminal activity," and specifies that "factors indicating that currency may be related to criminal activity include the nature (for example, all the same denomination), package (for example, bundled together by rubber bands or wrapped in cellophane), and circumstances of discovery or method of concealment (for example, hidden in the false bottom of a suitcase." OD-400-54-6 (AR13). Further denied because guidance directing that law enforcement be notified every time a screener encounters bulk currency would be contrary to TSA policy. As evidence, on March 14, 2025, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with variances in the application of TSA written policy. *See* AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.* That email further stated that, "because traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold, regardless of destination." *Id.*

PLAINTIFFS' REPLY: The pages referenced by TSA are emails that have the Quick Reference Card included as an attached file, but Plaintiffs' Statement quotes from the Quick Reference Card itself, and TSA does not deny its authenticity. The direction to "See Operations Directive OD-400-54-6 for further guidance" on the Quick Reference Card appears at the end of a list of "Notes," which itself appears after a list of "Immediate Actions." Emails from TSA Airports (Ex. 21) at TSA_ESI_00005744. The "Immediate Actions" section instructs TSA to issue a series of notifications to law enforcement when it discovers bulk cash and does not qualify this instruction. *Id.* The "Notes" section contains four numbered items, with the direction to "See Operations Directive OD-400-54-6

for further guidance" listed last, as number 4. *Id.* The second list entry, designated by the number 2, states that "[i]f bulk currency is discovered at the checkpoint in the possession of a passenger on a domestic flight, it can be assumed the STSO believes the issue is sufficiently suspicious and IR along with Local HIS/Bulk Currency Hotline notifications required." *Id.* The third list entry, designated by the number 3, states, in relevant part, that the "Local ICE Bulk Currency Unit should be contacted for all bulk currency both domestic and international." *Id.* These are specific directives to Screeners, unlike the general guidance provided in OD-400-54-6, none of which prohibits these actions. *See* AR12–13. Contrary to TSA's representation, OD-400-54-6 does not tell Screeners to "only" notify local law enforcement "[i]f it appears that a large amount of cash may be related to criminal activity." AR13. Rather, the word "only" does not appear; instead, the relevant sentence of OD-400-54-6 simply says: "If it appears that a large amount of cash may be related to criminal activity, the STSO, local law enforcement authorities, and the [ICE] Bulk Cash Smuggling Center must be notified." *Id.* Moreover, as a general matter, specific directives override more general guidance, and, as with any numerical list of instructions or guidance, it is reasonable to infer that the entries designated by the numbers 2 and 3 receive a higher priority than the entry designated by the number 4. Therefore, the record supports Plaintiffs' Statement that TSA officials at ORD were instructing Screeners to notify law enforcement every time they encountered bulk cash.

231. Local airport manuals and guidance on how to implement TSA's Cash-Screening Policies are sometimes now deemed, as part of TSA's litigation position, in purported "variance" with TSA's formal Cash-Screening Policies. For example, TSA's designated Rule 30(b)(6) witness Paul Leyh favorably cited a manual from Indiana airports in his deposition as being consistent with the SOP, Leyh Tr. (Ex 4) at 273:22–274:25, 384:14–24, but that manual provides different, additional instructions to STSOs about both what to look for and additional information to report regarding

"bulk cash." *Compare* Cash SOP (Ex. 1) at AR162 (Step 6), *with* Leyh Dep. Ex. 11 (Ex. 4) at TSA03410–11 (A TSA Indiana Operations Manual, "Possible Criminal Activity Associated with Bulk Cash," Dec. 21, 2002, states its purpose is to "provide expectations for defining 'large amount of currency' as outlined in [the Cash SOP]" and also to provide guidance on the (non-existent) "requirement for STSOs to articulate why it was suspicious during screening at checkpoints. . . ." (p. 1) at TSA03410. The manual also instructs STSOs to assess "Other indicators (within same bag as currency)" and references doing so in "combination with BD [Behavior Detection] SOP indicators," thus incorporating an entirely separate SOP that is not referenced in the Cash SOP. *Id.* The manual further instructs STSOs to "Trust your instinct." *Id.* The manual also requires STSOs providing notifications about "large amount of currency" to provide the Coordination Center with additional information not appearing in the SOP: "Travelers Name, Flight Information, and Why it is Suspicious. For example: where was the currency, how was it packaged, best guess estimated amount, and/or concealed and why is it suspicious?" and followed by a lengthy list of potential scenarios (p. 2) at TSA03411. The manual continues on to state, "[t]he previous 'LEO Referral Worksheet for Bulk Currency' is NO longer required/USED," apparently referencing another local training manual. *Id.*; *see also* Leyh Tr. (Ex 4) at 384:17–24 ("when we looked at . . . their own version of the operations directive . . . that is what they're doing . . . which is consistent with what the SOP is . . . . they're very consistent that they were following the SOP.").

DEFENDANTS' RESPONSE: Denied that the cited evidence establishes that the cited local guidance is a variance from TSA's formal, written policies. None of the cited evidence identifies any inconsistency. To the contrary, testimony establishes that "they're very consistent that they were following the SOP" in reference to the supplemental Indiana guidance. Pls.' Ex. 4, Leyh Dep. Tr. 384:17-24.

PLAINTIFFS' REPLY: Defendants offer no record evidence to contradict the specific citations offered by Plaintiffs' comparing the requirements of the SOP with the instructions provided to

Screeners in the Indiana airport manual. Plaintiffs' statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

232. Another example of local airport guidance directing purported "variance" from TSA's formal Cash-Screening Policies is found in a series of Indiana TSA emails about a bulk cash discovery on December 17, 2017, including an after-action report instructing Screeners to collect more information and documents than the Cash SOP requires. Leyh Dep. Ex. 12 (Ex. 4) at TSA_ESI_00003467–73 (December 19, 2017, email from TSA's Rene Harris to TSA personnel with the subject line "FW: BULK CASH DISCOVERY," attaching "AFTER ACTION REVIEW REPORT TEMPLATE 12-172017.docx; at page 6 of the report at TSA_ESI_00003472, in a table of "Successes" and "How to Ensure Success in the Future," the report recommends "**Ask passenger what the money is for** (?)"; at page 7, TSA_ESI_00003473, the attachment includes a "**List of Needed information for Bulk Cash**" that states to "**Provide at a minimum**" information beyond the passenger's name and flight information, including "DOB[,]" "Estimated dollar amount[,]" "How cash was packaged (separate envelopes, banded in anyway and etc.)[,]" and "Names of TSA personnel involved[,]" and further notes "**If possible, attach the following**: Copy of driver's license[,] Copy of passport[,] Copy of boarding pass[,] and Photos of currency[.]").

DEFENDANTS' RESPONSE: Admitted that guidance directing TSA screeners to ask the passenger questions about the bulk currency unrelated to transportation security would violate TSA policy. TSA policy unequivocally states that screeners are not supposed to ask travelers questions about cash except for transportation security purposes. *See* MD 100.4 § 6(c)(2) (AR9).

PLAINTIFFS' REPLY: As Defendants do not specifically deny this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56E. Moreover, the SOP directs Screeners to make inquiries and determinations about the currency and collect information from the traveler for LEO notifications, which necessarily extends or prolongs the detention of travelers and their currency for reasons unrelated to transportation security. *See* Cash

SOP, Ch. 12, § 2, Steps 3, 6-8. As established by TSA's 30(b)(6) witness, these steps do not further a transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct."); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

233. Jared Babin, the AFSD for Screening (AFSD-S) at El Paso International Airport (ELP) sent an email to all Transportation Security Managers (TSMs), STSOs, CCOs, and the ELP Coordination Center on September 22, 2016, stating: "Effective immediately, all discovered bulk cash that appears to be approximately $10,000 or more will require the STSO to notify the CC who will, in turn, notify EPPD [El Paso PD], CBP, and the ICE Bulk Cash Smuggling Center . . . ." Murphy Dep. Ex. 9 (Ex. 8) at TSA_ESI_00003374.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

234. On December 24, 2016, TSA at EL Paso International Airport (ELP) notified LEOs (EPPD or El Paso PD) regarding "Bulk Cash Over $10,000" with no indication that the incident involved international travel or evidence of criminal activity. Leyh Dep. Ex. 13 (Ex. 4) at TSA_ESI_00003363–64 (December 24, 2016, email from TSM Timothy Lavin to AFSD-S Jared Babin containing an "ELP Event Notification"); *see also* Leyh Tr. at 292:1–305:9 (discussing the December 24, 2016, ELP Event Notification and acknowledging that there was no indication that the traveler was traveling internationally or had currency that appeared to relate to criminal activity).

DEFENDANTS' RESPONSE: Admitted. However, a subsequent email from TSM Timothy Lavin stated: "It isn't artfully concealed or traveling international so technically not an incident." Pls. Ex. 4, Leyh Dep Ex. 13 at TSA_ESI_00003362.

PLAINTIFFS' REPLY: The statement is admitted. The fact that TSM Timothy Lavin sent a subsequent email recharacterizing the incident does not alter the fact that TSA at ELP issued a LEO notification regarding "Bulk Cash Over $10,000" with no indication that the incident involved international travel or evidence of criminal activity. This notification served no transportation security purpose in the first instance. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct."); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security

purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

235. In 2017, TSA's North Dakota region had a policy for "reporting bulk cash": "1. Upon discovery of bulk cash Call [phone number] for the Homeland Security Investigations on call duty agent. a. Do not worry about the amount of currency or if it is concealed in determining if the currency should be reported. Any large amount of currency will be reported, even if you believe it to be in the low thousands. HSI will decide how they want to proceed as currency violations are one of their authorities . . . c. By reporting the discovery of bulk cash as soon as possible, HSI will be able to respond quickly before the individual departs." Emails from TSA Airports (Ex. 21) at TSA_ESI_00003385–86 (April 28, 2017, email from AFSD-LE Jacob Grote to various TSA North Dakota personnel, Subject: "Reporting Bulk Cash" that states the "new procedure for reporting bulk cash" and cautioned against "draw[ing]" attention to the fact we are aware of the bulk cash" or "alerting the individual [that] something is wrong").

DEFENDANTS' RESPONSE: Denied that the region had a "policy." The cited email directs to a "new procedure for reporting bulk cash." Pls.' Ex. 21 at TSA_ESI_00003385–86. The email further clarifies that the notification would not result in any change to the screening procedure for the traveler. It specified: "When we discover bulk cash on an individual, do not try to positively ID this person if doing so will draw attention to the fact we are aware of the bulk cash. If we are only able to provide a description of the individual to HIS, that is acceptable and preferred as opposed to alerting the individual something is wrong." *Id.*

PLAINTIFFS' REPLY: TSA's cash-screening policies are not limited to the text of the SOP but extend to any unwritten or informal policies or practices concerning how TSA interacts with passengers found to be carrying "bulk cash," including any unwritten or informal policies or practices that arise out of TSA's implementation of its formal Cash-Screening Policies. The directions for reporting bulk cash were issued by AFSD-LE Jacob Grote and were not contradicted by any higher-ranking TSA official. The fact that Screeners were instructed to make alerts based on the mere

presence of cash in a way that will not "draw attention to the fact we are aware of the bulk cash" does nothing to alter the fact that alerting LEOs to the mere presence of bulk cash does not further a transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct."); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

236. In December 6, 2019, emails between TSA Iowa AFSDs Nic Menke and John Simons discussed gathering more information from travelers with cash than is required by the SOP: "Every time I have called the TSOC they always have additional questions..So if the TSOC says I need more information the CC says (the SOP doesn't say we are supposed to tell you that) .. come on man🙄" and noting: "There still seems to be a lot of confusion about this reporting activity with our screening operations." Emails from TSA Airports (Ex. 21) at TSA_ESI_00003536–38 (December 2019 email chain between Iowa AFSD-LE & AFSD-S discussing gathering more information from passengers than is required by the SOP).

DEFENDANTS' RESPONSE: Denied. The emails make clear that this was "one instance" of confusion in which "the individual was rude to the [coordination center] and questioned why they called it in." Pls.' Ex. 21 at TSA_ESI_00003536–38. In fact, the most recent email in the chain states "I'm saying this isn't automatically an issue that the supervisor didn't do something or we need to retrain everybody based on one instance."

PLAINTIFFS' REPLY: Defendants' selective quotations from the email chain do not refute Plaintiffs' Statement. As demonstrated by AFSD John Simons' statement that "[t]here still seems to be a lot of confusion about this reporting activity with our screening operators," the incident described in the email chain was not a one-off with respect to confusion over how much information Screeners are supposed to gather. Emails from TSA Airports (Ex. 21) at TSA_ESI_00003536. Further, AFSD Simons' statement that "[e]very time I have called the TSOC they always have additional questions..So if the TSOC says I need more information the CC says (the SOP doesn't say we are supposed to tell you that) .. come on man 😳," demonstrates that TSA at Iowa repeatedly needed to report information beyond what was required by the SOP. *Id.*

237. Further examples of purported "variances" from TSA's formal Cash-Screening Policies are found throughout the 165 responsive, sampled narratives produced by TSA from a random sample of more than 7,500 "bulk currency" incidents in TSA's database from January 15, 2014, to January 15, 2020. *See* TSA Sampled Narratives (Ex. 23).

DEFENDANTS' RESPONSE: Denied. The Statement makes a conclusory and generalized assertion without identifying specific supporting evidence.

PLAINTIFFS' REPLY: Defendants do not address, much less rebut, Plaintiffs' Statement. *See* LCvR 56.C.1.a. Each of the sampled narratives that comprise Exhibit 23 are part of the record. As Plaintiffs demonstrate in the following paragraphs, using specific sample narratives, there are several examples of purported "variances" from TSA's formal Cash-Screening Policies found throughout the 165 responsive, sampled narratives produced by TSA from a random sample of more than 7,500 "bulk

currency" incidents in TSA's database from January 15, 2014, to January 15, 2020. *See* TSA Sampled Narratives (Ex. 23). Plaintiffs respectfully direct the Court to the paragraphs that follow. Further, as Defendants cite no record evidence, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

238. In the random sample incident designated by TSA as AIM Event ID 2363499, on August 17, 2018, at Washington-Dulles International Airport (IAD) the narrative describes a traveler with "bulk currency" waiting approximately 33 minutes (from 19:57 to 20:30) for LEOs to come to the security screening checkpoint before an STSO told him he could continue to his gate (after the STSO was informed that no LEOs would be responding to the security screening checkpoint). TSA Sampled Narratives (Ex. 23) at 30. The narrative also states that an LTSO (Lead Transportation Security Officer) "assisted" the TSO by "speaking to the passenger" who told the LTSO he was traveling internationally with $60,000 and had retired from "working with the State of Maryland" and "cashed out his retirement savings." *Id.* The narrative further states that TSA notified local law enforcement (MWAA-PD, or Metropolitan Washington Airports Authority Police Department) at approximately 20:06 (nine minutes after the incident began), notified CBP (U.S. Customs and Border Protection) at approximately 20:07, and notified ICE (U.S. Immigration and Customs Enforcement) at approximately 20:09. *Id.*; *see also* Shapiro Decl. (Ex. 11) at ¶ 58 (discussing this incident).

DEFENDANTS' RESPONSE: Admitted. The narrative describes a "bag search on Royal Air Morocco passenger . . . flying from IAD to CMN (Casablanca)." Pls.' Ex. 23 at 30. The narrative does not state that a TSA screener posed any questions regarding the currency, or that the passenger did not wait voluntarily for law enforcement to arrive.

PLAINTIFFS' REPLY: As Defendants do not specifically deny this Statement, Plaintiffs' Statement is therefore undisputed and should be deemed admitted. *See* LCvR 56.C.1.a, 56.E. Defendants offer a tendentious interpretation of this narrative which accepts uncritically that the travelers voluntarily provided all of the information and then proceeded to wait at the screening

checkpoint for over 30 minutes until he was told he could go to his gate. To clarify, the narrative clearly indicates that the TSO notified the STSO about the presence of the traveler's cash, who, in turn, notified a LEO. TSA Sampled Narratives (Ex. 23) at 30. And, as a result of the STSO notification, an LTSO spoke to the passenger and obtained additional information about his flight. *Id.* Thus, whether the Screener "posed any questions regarding the currency" is beside the point because TSA Screeners collected information from the traveler based on the mere presence of cash for a LEO notification—which serves no transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct.").

Finally, the traveler's destination does not change the significance of TSA's actions with respect to his cash. Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

239. In the random sample incident designated by TSA as AIM Event ID 2336269, on June 21, 2018, at New York Stewart International Airport (SWF), the narrative indicates that a TSO

discovered "a large amount of currency" ($15,000) in a traveler's pockets during a "pat down" at a TSA security screening checkpoint, and then asked the traveler questions about the currency before notifying an STSO, who asked the traveler about his travel plans before notifying a LEO (Customs). TSA Sampled Narratives (Ex. 23) at 29; *see also* Shapiro Decl. Ex. A § 6.4 (Ex. 11) at 26–28. Although this TSA narrative does not specifically state that the traveler was at the security screening checkpoint for the full duration of the incident, the final sentence states the traveler was "released for flight" at 20:30, approximately 20 minutes after the incident began at 20:10 when a TSO "discovered a large amount of currency in [a] passenger's pockets" during a pat down. TSA Sampled Narratives (Ex. 23) at 29. The TSO then "asked the passenger how much cash he was carrying and the passenger disclosed that he was carrying $15,000." *Id.* The narrative next states that the TSO "then notified" an STSO. The narrative next states that the STSO then "asked the passenger where he was traveling and the passenger disclosed that he was taking an international flight to Dublin, Ireland." *Id.* The narrative next states that the STSO notified a TSM (Transportation Security Manager) at approximately 20:12 and "then notified LGA Coordination Center and Customs." *Id.* The narrative then states that a "Customers Officer" responded at approximately 20:20, ten minutes after the incident began, and spoke with the passenger "who states that he was going on vacation, was traveling with his wife and was unaware that they need to declare since there were two adults traveling." *Id.* The narrative concludes by stating that the "passenger voluntarily completed a declaration form with Customs and was released for flight" at approximately 20:30, which was approximately twenty minutes after the incident began. *Id.*; *see also* Shapiro Decl. (Ex. 11) at ¶¶ 66–68 (discussing this incident).

DEFENDANTS' RESPONSE: Admitted. The narrative describes a traveler "taking an international flight to Dublin, Ireland." Pls.' Ex. 23 at 29.

PLAINTIFFS' REPLY: This Statement is admitted. Further, the traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A:

No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

240. In numerous incidents in the TSA Sampled Narratives, Screeners question travelers about why they are traveling with a "large" amount of cash, contrary to the purported prohibition on doing so in Step 2.a of the Cash SOP (Ex. 1), and the direction of MD 100.4 (Ex. 2) at AR9. *See* SUMF ¶¶ 241–43, 245-46, 248, 298.

DEFENDANTS' RESPONSE: Denied. The Statement makes a conclusory and generalized assertion without identifying specific supporting evidence.

PLAINTIFFS' REPLY: Plaintiffs cite specific SUMF paragraphs which appear below. Each paragraph details a specific incident in which Screeners question travelers about why they are traveling with a "large" amount of cash and are supported by citations to the record. Plaintiffs respectfully direct the Court the paragraphs enumerated in this Statement. Defendants do not rebut Plaintiffs' Statement. Further, as Defendants cite no record evidence, Plaintiffs' Statement is undisputed and should be deemed admitted. *See* LCvR 56.C.1.b, 56.E.

241. In the random sample incident designated by TSA as AIM Event ID 1961088, on August 7, 2016, at John F. Kennedy International Airport (JFK) in New York City, the narrative indicates that an STSO questioned a traveler, and the information provided by the traveler indicates he was questioned about why he was traveling with "bulk currency." TSA Sampled Narratives (Ex. 23) at 8. The narrative states: "After STSO Hilliard questioned the passenger further, he stated that he obtained the money from his produce distribution company, and that he was traveling to Fresno, California to conduct business." *Id.* In this incident, the passenger was at the checkpoint for

approximately 13 minutes after the "bag check" was called on his bag at 15:42, and approximately 11 minutes from when the TSO notified the STSO about the "bulk currency" at 15:44 before TSA notified LEOs at 15:55. *Id.* Some of this time was spent "gather[ing] pertinent information from passenger [name]" and notifying two Transportation Security Managers, as well as notifying the JFK Coordination Center at 15:51. *Id.* The narrative does not record when or if the passenger was cleared into the sterile area. *Id.*

DEFENDANTS' RESPONSE: Admitted. The "Event Type" field indicates the passenger was traveling "from Domestic to International Location." Pls.' Ex. 23 at 8.

PLAINTIFFS' REPLY: This Statement is admitted. Further, the traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

242. In the random sample incident designated by TSA as AIM Event ID 2153024, on May 10, 2017, at George Bush Intercontinental Airport (IAH) airport in Houston, the narrative states an STSO "questioned the purpose of the [traveler's] money." TSA Sampled Narratives (Ex. 23) at 12. The narrative further states that "STSO Erazo gather [name redacted] information and questioned the purpose of the money. [Name redacted] informed Erazo that he was going to Bangkok for 5 months and that was why he had the 12,000 U.S. Dollars." *Id.* The passenger was delayed at the screening checkpoint for approximately 10 minutes after he submitted his bags for X-ray screening at approximately 07:00 and when he was "cleared by TSA to continue on to his flight" at 07:10. *Id.* The

narrative also indicates that, at a minimum, the passenger's name and DOB, along with his flight information, were collected and recorded in the unredacted narrative. *Id.*

DEFENDANTS' RESPONSE: Admitted. The "Event Type" field indicates the passenger was traveling "from Domestic to International Location." Pls.' Ex. 23 at 12.

PLAINTIFFS' REPLY: This Statement is admitted. Further, the traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

243. In the random sample incident designated by TSA as AIM Event ID 2227485, on October 19, 2017, at Seattle International Airport (SEA), a traveler with $10,000 in cash in his pocket was questioned by an STSO about whether he had declared his currency to Customs and "asked why he was carrying the large amount of currency." TSA Sampled Narratives (Ex. 23) at 18; *see also* SUMF ¶ 298 (discussing additional unlawful intrusions in this incident).

DEFENDANTS' RESPONSE: Admitted except for the characterization of "unlawful intrusions," which is presents a question of law that is not susceptible to proof through a statement of fact. The "Event Type" field indicates the passenger was traveling "from Domestic to International Location." Pls.' Ex. 23 at 18.

PLAINTIFFS' REPLY: TSA's administrative searches are not supposed to be "conducted to detect evidence of crimes unrelated to transportation security." MD 100.4, § 6.C(1) (Ex. 2) at AR8; SUMF ¶ 11. TSA's inquiries into how much cash the traveler had, whether he declared it, and what his purposes for carrying the cash were, do not serve any transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a

transportation security purpose, is it? A: That's correct."); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No."). Additionally, the traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25. Plaintiffs' Statement is supported by record evidence and is unrefuted by Defendants, so it is undisputed and should be admitted. *See* LCvR 56.C.1.a–b, 56.E.

244. In the random sample incident designated by TSA as AIM Event ID 2229162 on October 23, 2017, the narrative indicates an STSO directly questioned a passenger about the amount of money he was traveling with: "STSO Ronnette Baptist responded and asked the passenger how much money he was traveling with and he stated $12,000." TSA Sampled Narratives (Ex. 23) at 18.

DEFENDANTS' RESPONSE: Admitted. The "Event Type" field indicates the passenger was traveling "from Domestic to International Location." Pls.' Ex. 23 at 18.

PLAINTIFFS' REPLY: This Statement is admitted. Further, the traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A:

No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

245. In the random sample incident designated by TSA as AIM Event ID 2305423, on April 16, 2018, at Clinton National Airport (LIT) in Little Rock, Arkansas, the STSO's narrative states that he questioned the traveler about why he was traveling with currency. TSA Sampled Narratives (Ex. 23) at 27. The narrative states: "**I questioned [name redacted] [as] to why he was carrying $60,000.00** and passenger [name redacted] stated that the money was for his wife and its cheaper to carry the money on him than to transfer the money." *Id.* (emphasis added). The narrative of the STSO states that a TSO "had control of the carry-on bag." *Id.* The accompanying narrative of the TSO states that: "STSO Marc Anderson came and took control of the passenger while I stayed with the carry-on bag." *Id.* The narrative also indicates that, at a minimum, the passenger's name and DOB, along with his flight information, were collected and recorded in the unredacted narrative. *Id.* There is no indication when the traveler was ultimately "cleared to fly by LEOs." *Id.*

DEFENDANTS' RESPONSE: Admitted. The narrative further states that the passenger was traveling internationally as the passenger "was scheduled to travel . . . with final destination to Pristina, Kosovo (PRN)." Pls.' Ex. 23 at 27.

PLAINTIFFS' REPLY: This Statement is admitted. Further, the traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or

internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

246. In the random sample incident designated by TSA as AIM Event ID 2379984, on September 25, 2018, the narrative clearly states that an STSO questioned a traveler with "bulk cash": "**STSO D. Rodriguez proceeded to try and question the passenger** who was evasive with answers. **The passenger stated he could not understand the questions, How much money? and why does he have it?** . . . **STSO D. Rodriguez again tried to ask why he was carrying the money** he stated he doesn't understand what is happening he called TSA who said it was fine for him to carry the money." TSA Sampled Narratives (Ex. 23) at 32 (emphasis added). The narrative indicates the traveler was delayed for approximately 10 minutes at the TSA checkpoint from when the TSO notified the STSO about a passenger with "bulk cash" at 12:07 and when the passenger "continued onto his flight at 12:17." *Id.*

DEFENDANTS' RESPONSE: Admitted. The narrative further states that "HIS returned to the checkpoint at 1:05 and notified STSO R. Salynski that the passengers cash was confiscated due to inconsistency in passengers statements. Passenger did not board his flight." Pls.' Ex. 23 at 32.

PLAINTIFFS' REPLY: No response necessary.

247. In the random sample incident designated by TSA as AIM Event ID 2463887, on April 26, 2019, at the Tampa International Airport (TPA), an STSO demanded a domestic traveler's boarding pass and ID simply because he had more than $10,000, with no further reason provided. TSA Sampled Narratives (Ex. 23) at 41. The narrative states: "STSO McNaughton requested the boarding pass and identification from the passenger as the money contained in the bags was in excess of $10,000.00." *Id.*; *see also* SUMF ¶ 300 (discussing additional unlawful intrusions in this incident).

DEFENDANTS' RESPONSE: Admitted except for the characterization of "unlawful intrusions," which is presents a question of law that is not susceptible to proof through a statement of fact.

PLAINTIFFS' REPLY: TSA's administrative searches are not supposed to be "conducted to detect evidence of crimes unrelated to transportation security." MD 100.4, § 6.C(1) (Ex. 2) at AR8; SUMF ¶ 11. TSA's 30(b)(6) witness testified that collecting a traveler's boarding pass and ID pursuant to Cash SOP Steps 3 and 6–8 does not serve any transportation security purpose. *See* Leyh Tr. (Ex. 3) at 235:10–13 ("Q: But notifying law enforcement of a potential criminal activity is not a transportation security purpose, is it? A: That's correct."); Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No."). Plaintiffs' Statement is supported by record evidence and is unrefuted by Defendants. It is therefore undisputed and should be admitted. *See* LCvR 56.C.1.a-b, 56.E.

248. In the random sample incident designated by TSA as AIM Event ID 2474720, there was a May 23, 2019, "bulk currency" incident where an STSO states that she "questioned" the traveler and the information provided by the traveler indicates she asked about why he was traveling with the

"bulk cash." TSA Sampled Narratives (Ex. 23) at 44. The TSA narrative states: **"I collected the passengers boarding pass and ID and questioned the passenger.** The passenger [name redacted] said that he was heading the Ohio to purchase a vehicle." *Id.* (emphasis added).

DEFENDANTS' RESPONSE: Admitted. The "Event Type" field indicates the passenger was traveling "from Domestic to International Location." Pls.' Ex. 23 at 44.

PLAINTIFFS' REPLY: This Statement is admitted. Moreover, the narrative notes that an STSO "questioned" the traveler and the information provided by the traveler indicates she asked about why he was traveling with the "bulk cash." TSA Sampled Narratives (Ex. 23) at 44. The TSA narrative states: "I collected the passengers boarding pass and ID and questioned the passenger. The passenger [name redacted] said that he was heading the Ohio to purchase a vehicle." *Id.* (emphasis added). The narrative further reports the passenger being on "FLT# AA 4509 CLT-CMH," which is a flight from Charlotte, North Carolina, to Columbus, Ohio. The table therefore misattributes the nature of the travel as being from a "Domestic to International Location." *Id.* The traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

249. In the random sample incident designated by TSA as AIM event ID 2537375, on October 27, 2019, the narrative states: "**STSO Wise questions passenger [name/initials redacted] as to why he is carry[ing] such large sums of cash**, passenger [name/initials redacted] states that he is going to Vegas from LAX driving." TSA Sampled Narratives (Ex. 23) at 51 (emphasis added).

The narrative indicates that the traveler was delayed at the TSA checkpoint for approximately 5 minutes between when his $40,000 in cash was found during a bag search at 06:45, and when "**passenger [name/initials redacted] is allowed to continue to his destination**" at 06:50. *Id.* (emphasis added).

DEFENDANTS' RESPONSE: Admitted. The "Event Type" field indicates the passenger was traveling "from Domestic to International Location." Pls.' Ex. 23 at 44.

PLAINTIFFS' REPLY: This Statement is admitted. Moreover, since the narrative notes that the traveler stated he was "going to Vegas from LAX driving" and was apparently departing from New York's JFK airport (narrative notes that "JFKCC" or JFK Coordination Center was notified) on American Airlines flight AA1, a flight regularly scheduled between JFC and LAX. TSA Sampled Narratives, the table misattributes the nature of the travel as being from a "Domestic to International Location." (Ex. 23) at 51. The traveler's destination does not change the significance of TSA's inquiry about his cash. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

Rebecca Brown's Interactions with TSA

250. On August 26, 2019, at the Pittsburgh International Airport, TSA Screeners pulled Rebecca Brown's carry-on luggage to the side after that luggage went through transportation security screening. Brown Decl. (Ex. 14) at ¶¶ 16–19.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

251. On August 26, 2019, TSA Screeners discovered that Rebecca Brown was carrying, as part of her carry-on luggage, cash that totaled over $80,000. Brown Decl. (Ex. 14) at ¶¶ 9, 11, 16–19.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

252. On August 26, 2019, TSA Screeners asked Rebecca Brown questions about the cash that they discovered. Brown Decl. (Ex. 14) at ¶¶ 26, 28–29.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

253. On August 26, 2019, after discovering Rebecca Brown was carrying cash, TSA Screeners asked Rebecca Brown questions about the amount of cash, the purpose of the cash, and what her plan was for that amount of money. Brown Decl. (Ex. 14) at ¶¶ 26, 28–29.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

254. On August 26, 2019, after discovering Rebecca Brown was carrying cash, a TSA Screener told Rebecca Brown to turn over her ID and proof of travel arrangements. Brown Decl. (Ex. 14) at ¶ 21.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

255. On August 26, 2019, after discovering Rebecca Brown was carrying cash, a TSA Screener collected Rebecca Brown's ID and proof of travel arrangements. Brown Decl. (Ex. 14) at ¶¶ 21, 25, 31.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

256. On August 26, 2019, after discovering Rebecca Brown was carrying cash, a TSA Screener told Rebecca Brown to wait for an LEO to arrive. Brown Decl. (Ex. 14) at ¶ 39.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

257. On August 26, 2019, after discovering Rebecca Brown was carrying cash, TSA Screeners called law enforcement. Brown Decl. (Ex. 14) at ¶ 41.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

258. On August 26, 2019, after discovering Rebecca Brown was carrying cash, TSA Screeners held onto Rebecca Brown's carry-on luggage. Brown Decl. (Ex. 14) at ¶ 40.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

259. On August 26, 2019, TSA Screeners held onto Rebecca's carry-on luggage for approximately 30 minutes. Brown Decl. (Ex. 14) at ¶ 50.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

260. On August 26, 2019, TSA Screeners did not identify any transportation security purpose in connection with Rebecca Brown or the cash that she was carrying. Brown Decl. (Ex. 14) at ¶ 69.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

261. Rebecca Brown was not arrested for, charged with, or accused of any crime related to or arising out of her encounter with TSA at the Pittsburgh International Airport on August 26, 2019. Brown Decl. (Ex. 14) at ¶ 68.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

262. The Drug Enforcement Administration held onto the cash that Rebecca Brown was carrying for approximately seven months before returning the cash to her. Brown Decl. (Ex. 14) at ¶ 65.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

263. TSA has not served Rebecca Brown with TSA's Management Directive 100.4, TSA's Operations Directive 400-54-6, or any version of TSA's Screening Policies for Standard Operating Procedures. Brown Decl. (Ex. 14) at ¶ 81.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

Stacy Esposito's Interactions with TSA

264. On May 19, 2020, Stacy Esposito and her husband were traveling with approximately $40,000–45,000 in cash. Esposito Decl. (Ex. 12) at ¶¶ 28–29.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

265. On May 19, 2020, at the Wilmington International Airport, a TSA Screener pulled Stacy Esposito's carry-on luggage to the side after that luggage went through transportation security screening. Esposito Decl. (Ex. 12) at ¶¶ 28, 32–33.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

266. On May 19, 2020, TSA Screeners discovered that Stacy Esposito was carrying, as part of her carry-on luggage, cash that totaled approximately $38,000. Esposito Decl. (Ex. 12) at ¶¶ 30, 34.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

267. On May 19, 2020, a TSA Screener asked Stacy Esposito and her husband questions about the cash that the TSA Screener discovered. Esposito Decl. (Ex. 12) at ¶ 35.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

268. On May 19, 2020, after discovering Stacy Esposito was carrying cash, a TSA Screener asked Stacy Esposito and her husband about the source of the cash, including where the cash came from. Esposito Decl. (Ex. 12) at ¶ 32.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

269. On May 19, 2020, after discovering Stacy Esposito was carrying cash, a TSA Screener told Stacy Esposito and her husband to wait and motioned for them to stay. Esposito Decl. (Ex. 12) at ¶ 41.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

270. On May 19, 2020, after discovering Stacy Esposito was carrying cash, a TSA screener called a sheriff's deputy, who arrived after one or two minutes. Esposito Decl. (Ex. 12) at ¶¶ 41, 44.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

271. On May 19, 2020, after discovering Stacy Esposito was carrying cash, but before the sheriff's deputy arrived, Stacy Esposito's carry-on luggage remained on a table behind the conveyor belt that is used by TSA. Esposito Decl. (Ex. 12) at ¶ 42.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

272. On May 19, 2020, TSA Screeners did not identify any transportation security purpose in connection with Stacy Esposito or the cash that she was carrying. Esposito Decl. (Ex. 12) at ¶ 64.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

273. Stacy Esposito was not arrested for, charged with, or accused of any crime related to or arising out of her encounter with TSA at the Wilmington International Airport on May 19, 2020. Esposito Decl. (Ex. 12) at ¶ 63.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

274. Stacy Esposito has stopped flying with any significant quantities of cash as a direct result of this experience. But for the TSA's continued adherence to the challenged policies, Stacy Esposito would resume exercising her legal right to fly with cash. Esposito Decl. ¶¶ 69–74.

DEFENDANTS' RESPONSE: Denied. Esposito testified that she does not gamble "big money," and instead plays "penny slots" and "$5, $10 blackjack." Defs.' Ex. B, Esposito Dep. Tr. 58:22-59:4; *id.* at 58:13-16 ("Sadly, it's rare that I win. But I don't win in large amounts. If I win a few hundred dollars, I'm happy and I walk away. So it's never been a windfall for me."). Accordingly, the record refutes her newly-asserted need to travel with over $10,000 in bulk currency.

PLAINTIFFS' REPLY: Defendants do not refute this Statement. First, in context, Defendants' counsel was asking Stacy Esposito about how she and her husband allocate their casino winnings since the cash they bring to the casinos belongs to both of them. Stacy explained that she keeps what she wins for herself, but that she "doesn't gamble big money" and noted that her husband gambles in larger denominations than she does. Defs.' Ex. B, Esposito Dep. Tr. 57:14–59:8 (line of questioning). This does not refute the fact that if TSA's policies regarding "bulk cash" end, she would be ready and able to resume flying commercially to casinos with more than $2,000 in cash to pursue her hobby of

recreational gambling at casinos alongside her husband. Esposito Decl. ¶75. Additionally, Stacy has not asserted a need to travel with over $10,000 in bulk currency. She instead wishes to be able to carry "more than $2000 in cash" as a pot of money for her and her husband to use when they gamble. However, because "bulk cash" is not defined anywhere in TSA's policies, and none of TSA's witnesses can define the terms "bulk cash," "bulk currency," "large amounts of cash," or "large amounts of currency," even an amount under $2,000 cash is not safe from seizure by TSA. *See* Lambert Tr. (Ex. 10) at 140:12–141:21 (TSA subject matter expert on TSA disciplinary action would not recommend disciplinary action for STSO who did not correctly interpret the undefined phrase "large amount of currency" and would instead recommend that TSA "shor[e] the gap" by defining the phrase); *see also* Leyh Tr. (Ex. 3) at 125:12–14 ("[I]f you are looking for a definitive number on that I can't give you a number."); Leyh Tr. (Ex. 3) at 125:19 ("There is a lot of variations on it."); Leyh Tr. (Ex. 3) at 126:4–5 ("I can't clearly define it because of the varying dependencies on it."); Leyh Tr. (Ex. 3) at 128:3–5 ("I don't know because that not part of either our – as best as I can recall that's not either part of our SOP, MD and our OD."); *but see* MD 100.4 § 6.C(2) (Ex. 2) at AR9 ("TSA should notify CBP and/or law enforcement authorities pursuant to its local standard operating procedures that the individual possesses a sum of currency that appears to exceed $10,000."); *see also* Murphy Tr. (Ex. 8) at 15:18–17:13 (testifying that using the words "bulk cash" and "bulk currency" interchangeably doesn't make sense and isn't clear); Murphy Tr. (Ex. 8) at 50:20–52 ("Q: Do you know what bulk currency is in the context of the security screening SOPs? A: I would need to look at the document."); Murph Tr. (Ex. 8) at 53:1–55:16 (testifying that she doesn't know what the words "bulk cash" and "bulk currency" mean without looking at a document and "without speculating"); Phillips Tr. (Ex. 6) at 71:19–72:11 (stating a belief that "bulk currency" and "large amount of currency" is defined in either TSA training documents or the SOP); Phillips Tr. (Ex. 6) at 98:25–99:15 (stating a Screener should consult "the

screening policies SOPs or the training documents" to learn what the terms "bulk cash," "bulk currency," "large amounts of cash," and "large amounts of currency" mean).

275. TSA has not served Stacy Esposito with TSA's Management Directive 100.4, TSA's Operations Directive 400-54-6, or any version of TSA's Screening Policies for Standard Operating Procedures. Esposito Decl. (Ex. 12) at ¶ 76.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

Matthew Berger's Interaction with TSA

276. On November 3, 2015, at the Charlotte Douglas International Airport, TSA Screeners pulled Matthew Burger's carry-on luggage to the side after that luggage went through transportation security screening. Berger Decl. (Ex. 13) at ¶¶ 19, 27–28.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

277. On November 3, 2015, a TSA Screener discovered that Matthew Berger was carrying, as part of his carry-on luggage, cash that totaled about $55,000. Berger Decl. (Ex. 13) at ¶¶ 21, 31.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

278. On November 3, 2015, a TSA Screener asked Matthew Berger questions about the cash that the TSA Screener discovered. Berger Decl. (Ex. 13) at ¶ 31.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

279. On November 3, 2015, after discovering Matthew Berger was carrying cash, a TSA Screener asked Matthew Berger how much money was there and what the money was for. Berger Decl. (Ex. 13) at ¶ 31.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

280. On November 3, 2015, after discovering Matthew Berger was carrying cash, a TSA Screener asked for Matthew Berger to turn over his boarding pass and driver's license. Berger Decl. (Ex. 13) at ¶ 31.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

281. On November 3, 2015, after discovering Matthew Berger was carrying cash, a TSA Screener collected Matthew Berger's boarding pass and driver's license. Berger Decl. (Ex. 13) at ¶ 37.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

282. On November 3, 2015, after discovering Matthew Berger was carrying cash, a TSA Screener photographed the cash and Matthew Berger's driver's license and boarding pass. Berger Decl. (Ex. 13) at ¶ 42.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

283. On November 3, 2015, after discovering Matthew Berger was carrying cash, a TSA Screener called over two LEOs. Berger Decl. (Ex. 13) at ¶ 46.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

284. On November 3, 2015, after discovering Matthew Berger was carrying cash, but before law enforcement arrived, TSA kept Matthew Berger in the transportations security screening area and held onto Matthew Berger's driver's license and boarding pass. Berger Decl. (Ex. 13) at ¶¶ 47–49.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

285. On November 3, 2015, after TSA Screeners discovered Matthew Berger was carrying cash, two LEOs took the cash and Matthew Berger's carry-on luggage, driver's license, and boarding pass, and then escorted Matthew Berger to a small room. Berger Decl. (Ex. 13) at ¶ 50.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

286. On November 3, 2015, about five minutes passed in between the time that Matthew Berger placed his carry-on luggage on the TSA machine and the time he was moved by law enforcement into a small room. Berger Decl. (Ex. 13) at ¶ 51.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

287. On November 3, 2015, TSA Screeners did not identify any transportation security purpose in connection with Matthew Berger or the cash that she was carrying. Berger Decl. (Ex. 13) at ¶¶ 32–33, 67.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

288. Matthew Berger was not arrested for, charged with, or accused of any crime related to or arising out of his encounter with TSA at the Charlotte Douglas International Airport on November 3, 2015. Berger Decl. (Ex. 13) at ¶ 64.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

289. Law enforcement seized the cash and did not return it to Matthew Berger until after he hired an attorney to contest the attempted civil forfeiture of the cash. Berger Decl. (Ex. 13) at ¶¶ 60–61, 63, 72.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

290. Matthew Berger has stopped flying with any significant quantities of cash as a direct result of this experience. But for the TSA's continued adherence to the challenged policies, Matthew Berger would resume exercising her legal right to fly with cash. Berger Decl. ¶¶ 6, 18, 63–67, 81–82.

DEFENDANTS' RESPONSE: Denied. Berger testified that he had used cash less frequently to acquire equipment over his time in the industry, *see* Defs.' Ex. C, Berger Dep. Tr. at 69:3-8, and fails to identify any specific business opportunities that would require him to fly with large amounts of currency.

PLAINTIFFS' REPLY: Defendants do not address, let alone refute, this Statement. Matthew Berger testified at his deposition that it is still "typical of the industry to use cash a method of payment for equipment." Defs.' Ex. C, Berger Dep. Tr. at 68:17–19. ("Q: Is it still the case that vehicles are generally sold or acquired through cash rather than other payment options? A: It is typical of the industry to use cash as a method of payment for equipment."). Even if Matthew Berger uses cash less frequently today as compared to earlier periods of his career, that fact does not establish that he no longer needs cash, or would no longer benefit from using cash to make business purchases. Additionally, Matthew Berger testified at his deposition that his company is currently looking to sell and purchase vehicles, Defs.' Ex. C, Berger Dep. Tr. at 68:17–19, and that he would resume exercising his legal right to fly with cash. Berger Decl. ¶¶ 81–82. However, it is not possible for him to know in advance exactly what sorts of business opportunities will arise and when.

291. TSA has not served Matthew Berger with TSA's Management Directive 100.4, TSA's Operations Directive 400-54-6, or any version of TSA's Screening Policies for Standard Operating Procedures. Berger Decl. (Ex. 13) at ¶ 95.

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

Additional Examples of Unwarranted Detentions, Searches, Seizures, Questioning, and Other Unlawful Intrusions Under TSA's Cash-Screening Policies

292. Other examples of unwarranted detentions, searches, seizures, questioning, and other unlawful intrusions may be found in the 165 responsive, sampled narratives produced by TSA based on a random sampling from TSA's larger dataset of over 7,500 "incidents" involving travelers with "bulk currency" from January 15, 2014, to January 15, 2020. TSA Sampled Narratives (Ex. 23). Notably, these incidents do not include a narrative from the traveler (or other witnesses), but are still

filled with examples of travelers being needlessly detained, searched, separated from their seized property, questioned, and otherwise intruded upon for reasons unrelated to transportation security, as well as many examples of what TSA now calls purported "variances" from its formal Cash-Screening Policies, reflecting how those policies are actually implemented at different airports in 165 responsive, sampled incidents. *See* SUMF ¶¶ 293–302.

DEFENDANTS' RESPONSE: Denied. This Statement is replete with legal conclusions not susceptible to proof through a statement of fact.

PLAINTIFFS' REPLY: Each of the sampled narratives that comprise Exhibit 23 are part of the record. As Plaintiffs demonstrate in the following paragraphs, using specific sample narratives, there are several examples of purported "variances" from TSA's formal Cash-Screening Policies found throughout the 165 responsive, sampled narratives produced by TSA from a random sample of more than 7,500 "bulk currency" incidents in TSA's database from January 15, 2014, to January 15, 2020. *See* TSA Sampled Narratives (Ex. 23). Each of the example narratives that follow involve travelers being delayed by TSA based on the mere presence of "excessive" or "excess" cash. As TSA's 30(b)(6) witness explained, those delays did not further a transportation security purpose. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is

there? MS. TULIS: Objection, form. THE WITNESS: No.") Plaintiffs respectfully direct the Court to the paragraphs that follow.

293. Within TSA Sampled Narratives, there are at least 18 examples of incidents in which the narrative referred to "excessive" or "excess" cash or currency. *See* TSA Sampled Narratives (Ex. 23).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

294. In the random sample incident designated by TSA as AIM Event ID 2069397 on December 24, 2016, at Dallas Fort Worth International Airport (DFW), a traveler with "a large sum of cash" was delayed by screeners for approximately 10 minutes. TSA Sampled Narratives (Ex. 23) at 29. Per the narrative, the incident began at 17:45 when a TSO "observed an alarm on a male passenger in the waistband area." *Id.* The narrative further states that the traveler requested a private screening, at which time he "divested a white bag containing what appear to be over $10,000 in US currency." *Id.* A TSO "completed the screening and called for a supervisor to come to private screening." *Id.* A STSO responded and was informed that "the passenger was traveling internationally with more than $10,000." *Id.* The STSO then made a series of notifications, including to DPS (Department of Public Safety) at 17:49. *Id.* A DPS officer arrived at 17:52, but "due to the other calls currently in progress she was unable to assist with the process." *Id.* Finally, "DPS turned the passenger over to TSA" and "TSA released the passenger into the sterile area" at 17:55. *Id.*; *see also* Shapiro Decl. (Ex. 11) at ¶¶ 64–65 (discussing this incident).

DEFENDANTS' RESPONSE: Denied. Page 29 of Pls.' Ex. 23 does not contain a reference to AIM Event ID 2069397. That AIM Event ID is referenced on page 10, and both the "Event Type" field and the narrative confirm that the "passenger was traveling internationally with more than $10,000." Pls.' Ex. 23 at 10. Further denied because the total period referenced necessarily includes

time spent moving to and conducting alarm resolution procedures in the private screening room. Further denied because the cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive.

PLAINTIFFS' REPLY: Plaintiff's original citation to Ex. 23 should have been to page 10 instead of page 29, as Defendants point out. Defendants nevertheless do not dispute that the traveler discussed in the random sample incident designated by TSA as AIM Event ID 2069397 was delayed by screeners based on the presence of "a large sum of cash." Defendants also do not dispute the duration of the incident as documented. Defendants only object that "the cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive." However, whether the passenger volunteered to wait is immaterial because determining whether a traveler with more than $10,000 is traveling domestically or internationally has no transportation security purpose, and there is also no transportation security purpose for making a LEO notification if the currency appears to exceed $10,000. Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.") As a result, Plaintiffs' description of the sample incident designated by TSA as AIM Event ID 2069397 is not contested by Defendants.

295. In the random sample incident designated by TSA as AIM Event ID 1909353 on May 30, 2016, at Minneapolis-St. Paul International Airport (MSP), the narrative indicates that TSA made two separate "courtesy notifications" to LEOs regarding a passenger with "a large amount of bulk cash possibly exceeding $10,000 USD ($58,000), not artfully concealed" but did not complete a Checkpoint Incident Report. TSA Sampled Narratives (Ex. 23) at 18. This narrative only includes one timestamp but nonetheless appears to have been written chronologically. *Id.* After the STSO discovered the cash, one or more TSA officers collected information regarding the traveler's travel plans ("Passenger is not traveling Internationally") and the amount of currency ($58,000). *Id.* A STSO reported the discovery of the traveler with the cash to the Coordination Center; notifications were made to "APD as a courtesy" and to the Coordination Center at 18:32. *Id.*; *see also* Shapiro Decl. (Ex. 11) at ¶ 61 (discussing this incident).

DEFENDANTS' RESPONSE: Denied. Page 18 of Pls.' Ex. 23 does not contain a reference to AIM Event ID 1909353. That AIM Event ID is referenced on page 7, and contains the quotations repeated in the Statement. Denied that the narrative "appears to have been written chronologically." Nothing in the Statement explains or supports that assertion.

PLAINTIFFS' REPLY: Plaintiff's original citation to Ex. 23 should have been to page 7 instead of page 18, as Defendants point out. Defendants nevertheless do not dispute that the traveler discussed in the random sample incident designated by TSA as AIM Event ID 1909353 was delayed to collect the traveler's travel plans and determine the amount of currency the traveler possessed. Defendants also do not dispute that TSA issued LEO notifications based on the presence of "a large amount of bulk cash possibly exceeding $10,000 USD ($58,000), not artfully concealed". With respect to the chronological order of the narrative, it is a reasonable inference that an incident report narrative is written chronologically. The purpose of an incident report is to accurately record the details of an incident, which, in turn, requires that the factual details of the incident are properly sequenced.

296. In the random sample incident designated by TSA as 2218554, on September 29, 2017, the narrative indicates that an STSO "questioned" a traveler with "bulk banded currency" at a TSA security screening checkpoint, and continued collecting and copying the traveler's boarding pass and ID after additional screening resulted in no alarms. TSA Sampled Narratives (Ex. 23) at 18. The incident began at approximately 18:40, when a TSO "annotated an unidentifiable organic mass in a passenger[']s bag" and a TSO "took the camera bag over to AVS" (Alternate Viewing Station) and discovered "two large plastic bank deposit bags full of bulk banded currency approx. 90,000 dollars American." *Id.* The TSO notified a STSO about discovering the currency, and the STSO then "questioned the passenger" before notifying a LEO. *Id.* The LEO arrived at approximately 18:42 and began questioning the traveler. *Id.* The TSO and STSO performed a "Bag Search" and recorded that "No Alarms resulted from the Additional Screening." *Id.* After that, the STSO "made copies of [name redacted] ID and boarding pass" while the LEO "conducted NCIC." *Id.* The STSO made additional notifications to TSA personnel "while on standby awaiting the results of the NCIC." *Id.* Eventually, the "NCIC came back clear" and the LEO "felt no reason to suspect possible criminal activity." *Id.* The passenger was then "cleared to travel." The narrative lacks a timestamp indicating how long the traveler was at the security screening checkpoint. *Id.*; *see also* Shapiro Decl. (Ex. 11) at ¶ 59 (discussing this incident).

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the passenger was delayed as a result of a non-transportation-security-related search. Nothing in the cited material indicates that the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions. Further denied because nothing in the cited material indicates that the copies were made and the NCIC was conducted after the items were cleared. Further denied because the total period referenced necessarily includes time spent moving to and conducting alarm resolution procedures in the private screening room. Further denied because the cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive.

PLAINTIFFS' REPLY: Defendants do not dispute that, in the random sample incident designated by TSA as 2218554, the narrative indicates that an STSO "questioned" a traveler with "bulk banded currency" at a TSA security screening checkpoint, and continued collecting and copying the

traveler's boarding pass and ID after additional screening resulted in no alarms. TSA Sampled Narratives (Ex. 23) at 18. Defendants dispute that the "the passenger was delayed as a result of a non-transportation-security-related search," and that the "cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive." However, the traveler was clearly delayed for a non-transportation security reason since the narrative indicates that TSA notified the LEO upon discovering the cash, and there is no transportation security purpose for making a LEO notification if the currency appears to exceed $10,000. Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

Additionally, there is no transportation security purpose for collection of traveler information pursuant to the Cash SOP. *See* Leyh Tr. (Ex. 4) at 311:8–18 ("Q: Okay. So, during that screening process we were talking about, if there – if all the property goes through the scanner, the person goes through the scanner, there's no alarms, or any additional reason to ask for their ID or boarding pass? A: Correct. Q: Generally, or typically, they would collect their things, and move on without ever having to reshow their boarding pass or ID. A: That's correct."); Leyh Tr. (Ex. 4) at 317:22–318:1 ("Q: Okay.

And, we talked about the typical process, if there's no alarms or anything like that, there is – the passenger is typically not asked to present their boarding pass and ID? A: That's correct."). As a result, the time the traveler spent answering the LEO's questions, waiting for the STSO to make copies of the traveler's boarding pass and ID, and waiting for the LEO to conduct a NCIC check, each served no transportation security purpose. Finally, whether the traveler volunteered to stay until the LEO arrived is irrelevant because voluntariness on the part of travelers does not determine whether TSA's actions further a transportation security purpose.

297. In the random sample incident designated by TSA as AIM Event ID 2036962, on November 15, 2016, the narrative indicates a traveler was delayed by Screeners at the checkpoint because of "**excessive cash**" and was "interviewed" by screeners who "discovered he was traveling domestic." TSA Sampled Narratives (Ex. 23) at 9 (emphasis added). The narrative does not say when the traveler was released, but he was delayed at least 5 minutes from when the bag search occurred at 10:10 until the Screeners interviewed him and realized he was traveling domestically. *Id.*

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the passenger was delayed as a result of a non-transportation-security-related search. Nothing in the cited material indicates that the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions.

PLAINTIFFS' REPLY: Defendants do not dispute that the traveler discussed in the random sample incident designated by TSA as AIM Event ID 2036962 was delayed by Screeners at the checkpoint because of "excessive cash" and was "interviewed" by screeners who "discovered he was traveling domestic." TSA Sampled Narratives (Ex. 23) at 9. Defendants only deny that "the passenger was delayed as a result of a non-transportation-security-related search." However, determining how much cash a traveler possesses serves no transportation security purpose. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any

transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."). As a result, the traveler discussed in the random sample incident designated by TSA as AIM Event ID 2036962 was delayed by Screeners for a non-transportation security purpose.

298. In the random sample incident designated by TSA as AIM Event ID 2227485, on October 19, 2017, at Seattle International Airport (SEA), a traveler was delayed by Screeners at the checkpoint for at least 15 minutes from when an STSO was notified at 23:15 by a TSO about "$10,000 of American currency" in his pocket until he was "cleared into the sterile area at 23:30." TSA Sampled Narratives (Ex. 23) at 18. During that time, the STSO questioned him about whether he had declared his currency to Customs and "asked why he was carrying the large amount of currency."

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the passenger was delayed as a result of a non-transportation-security-related search. Nothing in the cited material indicates that the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions.

PLAINTIFFS' REPLY: Defendants do not dispute that the traveler discussed in the random sample incident designated by TSA as AIM Event ID 2227485 was delayed by Screeners at the checkpoint for at least 15 minutes from when an STSO was notified at 23:15 by a TSO about "$10,000 of American currency" in his pocket until he was "cleared into the sterile area at 23:30." TSA Sampled Narratives (Ex. 23) at 18. Defendants only deny that "the passenger was delayed as a result of a non-transportation-security-related search." However, during the screening, the STSO questioned him about whether he had declared his currency to Customs and "asked why he was carrying the large amount of currency." Determining how much cash a traveler possesses serves no transportation security purpose. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler

with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."). As a result, the traveler discussed in the random sample incident designated by TSA as AIM Event ID 2227485 was delayed by Screeners for a non-transportation security purpose.

299. In the random sample incident designated by TSA as AIM Event ID 2280397, on February 18, 2018, at Dallas Fort Worth International Airport (DFW), a domestic traveler was detained for 12 minutes and not released until "after" Screeners collected and reported the information required by TSA's Cash-Screening Policies. TSA Sampled Narratives (Ex. 23) at 22. Per TSA's own report: "The amount of the currency **appeared in excess of $10,000 US**. Upon the discovery notification was made to & STSO Christopher Perlman, who in turn notified CC officer Daniel Rodriguez at 1721 and TSM Kenneth Regan at 1722. Passenger [redacted] was allowed to enter into the sterile area at 1730 hours **after** the information was properly documented and reported." *Id.* (emphasis added).

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the passenger was delayed as a result of a non-transportation-security-related search. Nothing in the cited material indicates that the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions. Further noted that the "Event Field" states "Discovery of Bulk Currency from Domestic to International Location." Pls.' Ex. 23 at 22.
Further denied because whether the passenger was detained is a question of law. *See, e.g.*, *United States v. Tehrani*, 49 F.3d 54, 58 (2d Cir. 1995) ("Whether a seizure occurred and, if so, whether it was justified by the requisite showing, are questions of law to be reviewed de novo.").

PLAINTIFFS' REPLY: Defendants challenge the characterization of the traveler discussed in the random sample incident designated by TSA as AIM Event ID 2280397 as being "detained," but Defendants do not dispute the broader point that the traveler was stopped by Screeners for 12 minutes and not released until "after" they collected and reported the information required by TSA's Cash-Screening Policies. TSA Sampled Narratives (Ex. 23) at 22. Defendants primarily deny that "the passenger was delayed as a result of a non-transportation-security-related search." However, TSA's

determination of how much cash a traveler possesses serves no transportation security purpose. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."). Additionally, there is no transportation security purpose for collection of traveler information pursuant to the Cash SOP. *See* Leyh Tr. (Ex. 4) at 311:8–18 ("Q: Okay. So, during that screening process we were talking about, if there – if all the property goes through the scanner, the person goes through the scanner, there's no alarms, or any additional reason to ask for their ID or boarding pass? A: Correct. Q: Generally, or typically, they would collect their things, and move on without ever having to reshow their boarding pass or ID. A: That's correct."); Leyh Tr. (Ex. 4) at 317:22–318:1 ("Q: Okay. And, we talked about the typical process, if there's no alarms or anything like that, there is – the passenger is typically not asked to present their boarding pass and ID? A: That's correct."). As a result, the 12 minute delay the traveler experienced while Screeners "properly documented and reported" his information served no transportation security purpose.

Next, as Defendants note, Plaintiffs should not have referred to the traveler discussed in the random sample incident designated by TSA as AIM Event ID 2280397 as being a domestic traveler. However, that misattribution does not suddenly mean that TSA's interest in the amount of cash the traveler had furthered a transportation security purpose. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or

internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No.").

300. In the random sample incident designated by TSA as AIM Event ID 2463887, on April 26, 2019, at the Tampa International Airport (TPA), a traveler on a domestic flight was delayed by Screeners at the checkpoint for approximately 15 minutes for LEOs to arrive from when an STSO was notified about his bag at 19:50 and the first of two LEOs arrived at 20:05, with the second arriving at 20:08. TSA Sampled Narratives (Ex 23) at 41. Eventually, approximately 28 minutes after the incident began, the traveler was "escorted off the checkpoint for further questioning" by one of the LEOs. *Id.* The traveler's cash was ultimately seized by law enforcement, but the passenger was released. The narrative indicates that the following documents were collected from the traveler: his Sun Country Flight 370 boarding pass, "his State of California Driver License, State of California Identification Card and Ukranian [sic] Passport." *Id.*; *see also* Shapiro Decl. (Ex. 11) at ¶¶ 62–63 (discussing this incident).

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the passenger was delayed as a result of a non-transportation-security-related search. Nothing in the cited material indicates that the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions. Further denied because the cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive.

PLAINTIFFS' REPLY: Defendants do not dispute the series of events or timeline described in the random sample incident designated by TSA as AIM Event ID 2463887. Defendants dispute that "the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions," and asserts that "the cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive." The report indicates that Screeners kept the traveler at the checkpoint for approximately 15 minutes after an STSO was notified of the presence of cash and proceeded to notify an LEO. Then, two LEOs responded and eventually

escorted the traveler off the checkpoint for further questioning approximately 28 minutes after the incident began. The report further indicates that the traveler's cash was ultimately seized by law enforcement, but the passenger was released. Finally, the narrative notes that the traveler's Sun Country Flight 370 boarding pass, State of California Driver License, State of California Identification Card, and Ukrainian Passport were collected from him.

There is no indication that any part of this incident furthered a transportation security purpose. First, the traveler was clearly delayed for a non-transportation security reason since the narrative indicates that TSA notified the LEO upon discovering the cash, and there is no transportation security purpose for making a LEO notification based on a large sum of cash. Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No.").

Second, there is no transportation security purpose for collection of traveler information pursuant to the Cash SOP. *See* Leyh Tr. (Ex. 4) at 311:8–18 ("Q: Okay. So, during that screening process we were talking about, if there – if all the property goes through the scanner, the person goes through the scanner, there's no alarms, or any additional reason to ask for their ID or boarding pass?

A: Correct. Q: Generally, or typically, they would collect their things, and move on without ever having to reshow their boarding pass or ID. A: That's correct."); Leyh Tr. (Ex. 4) at 317:22–318:1 ("Q: Okay. And, we talked about the typical process, if there's no alarms or anything like that, there is – the passenger is typically not asked to present their boarding pass and ID? A: That's correct.").

And finally, whether the traveler volunteered to stay until the LEO arrived is irrelevant because voluntariness on the part of travelers does not determine whether TSA's actions further a transportation security purpose. As a result, the traveler described in the random sample incident designated by TSA as AIM Event ID 2463887 was delayed by TSA for a non-transportation security purpose.

301. In the random sample incident designated by TSA as AIM Event ID 2561625, on January 7, 2020, in Seattle-Tacoma International Airport (SEA), a traveler was delayed at least 11 minutes at the checkpoint from when a TSO requested STSO assistance at 14:22, after having identified his "bulk cash" in a "bag check," before a Port of Seattle Police Officer arrived at the private screening area at 14:33. TSA Sampled Narratives (Ex. 23) at 53. The traveler was not released by TSA into the sterile area until after the police officer "conducted an NCIS check on the passenger to include taking photos of his documents and boarding pass, and was later found with negative findings on the passenger's NCIS check." *Id.* Only then, does the narrative state: "The passenger carry-on was clear and all documents was returned and was later clear to enter the sterile area." *Id.*

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the passenger was delayed as a result of a non-transportation-security-related search. Nothing in the cited material indicates that the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions. Further denied because the cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive.

PLAINTIFFS' REPLY: Defendants do not dispute the series of events or timeline described in the random sample incident designated by TSA as AIM Event ID 2561625. Defendants dispute that

"the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions," and asserts that "the cited evidence does not establish that the passenger did not volunteer to wait for law enforcement to arrive." The narrative indicates that the traveler was delayed at least 11 minutes at the checkpoint from when a TSO requested STSO assistance at 14:22, after having identified his "bulk cash" in a "bag check," before a Port of Seattle Police Officer arrived at the private screening area at 14:33.

TSA's determination of how much cash a traveler possesses serves no transportation security purpose. *See* Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."). Furthermore, the narrative indicates that TSA notified the LEO upon discovering the cash, and there is no transportation security purpose for making a LEO notification regarding a large sum of cash. Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS:

Objection, form. THE WITNESS: No."). And finally, whether the traveler volunteered to stay until the LEO arrived is irrelevant because voluntariness on the part of travelers does not determine whether TSA's actions further a transportation security purpose. As a result, the traveler described in the random sample incident designated by TSA as AIM Event ID 2561625, was delayed by TSA for a non-transportation security purpose.

302. In the random sample incident designated by TSA as AIM Event ID 2523209, on September 15, 2019, in SEA, a traveler was delayed approximately 15 minutes at the checkpoint. TSA Sampled Narratives (Ex. 23) at 50. The narrative indicates the STSO collected information from the traveler who had "a bag carr[ying] bulk cash" ***before*** the bag had been searched "with no alarms." *Id.* ("STSO Nkosi collected all the necessary information required to conduct an Incident Report (IR). The bag search resulted with no alarms."). A LEO was ***already on site*** because there was a different passenger who was also carrying bulk cash. *Id.* An STSO "collected all the necessary information to conduct an Incident Report." *Id.*; *see also* Shapiro Decl. (Ex. 11) at ¶ 60 (discussing this incident).

DEFENDANTS' RESPONSE: Denied insofar as the Statement suggests the passenger was delayed as a result of a non-transportation-security-related search. Nothing in the cited material indicates that the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions.

PLAINTIFFS' REPLY: Defendants do not dispute the series of events or timeline described in the random sample incident designated by TSA as AIM Event ID 2523209. Defendants only dispute that "the passenger was delayed for any period of time beyond that necessary to search the bag and clear the passenger and his possessions." The narrative indicates that the traveler was delayed approximately 15 minutes at the checkpoint by TSA and that the STSO collected information from the traveler who had "a bag carr[ying] bulk cash" before the bag had been searched "with no alarms." *Id.*

At least two factors establish that this delay did not further any transportation security purpose. First, the narrative indicates that TSA notified the LEO upon discovering the cash, and there is no transportation security purpose for making a LEO notification regarding a large sum of cash. Leyh Tr. (Ex. 3) at 101:22–25 ("Q: Is TSA's mission to ensure that international travelers comply with currency reporting requirements? A: No. That's CBP's mission."); Leyh Tr. (Ex. 3) at 123:16–23 ("Q: Is there any transportation security purpose for finding out whether a traveler with more than $10,000 is traveling domestically or internationally? MS. TULLIS: Objection, form. BY MR. ALBAN: Q: You may answer, Mr. Leyh. A: No."); Leyh Tr. (Ex. 3) at 223:15–224:24 ("Q. Part 3A is about essentially notifying CBP customs if there is an international traveler with more than $10,000, is that right? A: That's correct. Q: And there is no transportation security purpose to making that notification, is there? A: That's correct. Q: And Part 3B is about notifying a law enforcement officer if the currency appears to relate to criminal activity, right? A: That's correct. Q: And there is no transportation security purpose to notifying a law enforcement officer when currency appears to relate to criminal activity, is there? MS. TULIS: Objection, form. THE WITNESS: No."). Second, there is no transportation security purpose for collection of traveler information pursuant to the Cash SOP. *See* Leyh Tr. (Ex. 4) at 311:8–18 ("Q: Okay. So, during that screening process we were talking about, if there – if all the property goes through the scanner, the person goes through the scanner, there's no alarms, or any additional reason to ask for their ID or boarding pass? A: Correct. Q: Generally, or typically, they would collect their things, and move on without ever having to reshow their boarding pass or ID. A: That's correct."); Leyh Tr. (Ex. 4) at 317:22–318:1 ("Q: Okay. And, we talked about the typical process, if there's no alarms or anything like that, there is – the passenger is typically not asked to present their boarding pass and ID? A: That's correct."). As a result, the traveler described in the random sample incident designated by TSA as AIM Event ID 2523209 was delayed for a non-transportation security purpose.

Witness Designations and Stipulations

303. Plaintiffs sent Notices of Rule 30(b)(6) Depositions to TSA Defendants designating particular topics for testimony. Plaintiffs' Notices of Rule 30(b)(6) Depositions to TSA (Ex. 26).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

304. TSA Defendants initially designated David Chin as TSA's Rule 30(b)(6) representative but then withdrew him, and instead designated Paul Leyh and Brandi Phillips as TSA's Rule 30(b)(6) representatives on TSA's screening policies and TSA's training for screeners, respectively, in response to Plaintiffs' Notices of Rule 30(b)(6) depositions. Defendants' Designations of Rule 30(b)(6) Representatives (Ex. 27).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

305. TSA Defendants identified a variety of TSA subject matter experts in their Supplemental Initial Disclosures, several of whom were deposed in this case. *See* Defendants' Disclosures (Ex. 28).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

306. TSA Defendants have stipulated to the authenticity of the documents they have produced in this lawsuit. Email from Defendants' Counsel Agreeing to Authenticity of Production (Ex. 29).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

307. TSA Defendants have stipulated to facts regarding the Dallas Police Department request to TSA for LEO notifications for every "bulk currency" incident at Dallas Love Field. TSA Stipulation re Dallas Police Department Request to TSA for LEO Notifications (Ex. 17).

DEFENDANTS' RESPONSE: Admitted.

PLAINTIFFS' REPLY: No reply necessary.

Dated: September 5, 2025.

Respectfully submitted,

INSTITUTE FOR JUSTICE

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CERTIFICATE OF SERVICE

I hereby certify that on September 5 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 the foregoing document 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 document 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