



October 29, 2010

John S. Pistole
Administrator
Transportation Security Administration (TSA)
601 South 12th Street
Arlington, VA 20598

**Re: New TSA Policy Based on the Installation of
Advanced Imaging Technology (AIT) at U.S. Airports**

VIA CERTIFIED US MAIL

Dear Mr. Pistole:

We write to you today to thank your staff for taking the time to meet with UNITED SIKHS, Sikh Coalition, and SALDEF on September 21, 2010. Although we are deeply disappointed at the projected results of the proposed new screening policy, we wanted to clarify going forward how our community, and those similarly situated, would be affected.

Overview: The current form of primary screening is metal detection. However, the threat of non-metallic objects has created the need for new security measures. After the lack of success in using metal detectors and “Puffer Machines,” TSA is now in the process of a nationwide roll-out of Advanced Imaging Technology (AIT).

Post 9/11 & Pre AIT Policy on Religious Head Coverings: After three Sikh civil rights organizations: UNITED SIKHS, Sikh Coalition, and SALDEF, reported unclear, inconsistent, and unfair application of TSA operating procedures, which resulted in the profiling of specific minority communities who wear religious headwear, a new set of procedures was issued by TSA in October 2007.

If a Sikh, after passing through primary screening without setting off the metal detector was selected for secondary screening, at the discretion of a Transportation Security Officer (TSO), the individual was to be **provided three options** for screening the turban:

- 1) A self-patdown of the turban followed by swabbing of the fingers of the individual and checking for chemical residue, also called, Explosive Trace Detection (ETD); or
- 2) A TSO would pat down the turban; or
- 3) A private area for the screening of the turban (consistent with the first two options).

Unfortunately, these policies were never uniformly implemented and have had limited success. First, each of the three options were not always communicated to Sikh travelers. Second, the discretionary nature of screening procedures coupled with a lack of training resulted in the profiling of Sikhs at many airports. Third, Sikh children (as young as 2 years of age) who wear “patkas”¹ have been subject to secondary screenings at an increasing and alarming frequency. Moreover, what was explicitly communicated to the Sikh organizations as a *discretionary* policy, with respect to secondary screenings of turbans, has been widely implemented as a mandatory policy.² Finally, the TSA policy failed to address a simple question: why are turbans (classified as “bulky clothing” according to TSA procedures) being specifically screened with higher scrutiny than other clothing items that would also be considered “bulky” according to TSA policy. These problems are exacerbated by the TSA’s complete lack of any auditing mechanisms to determine if their policies are being implemented consistently and correctly. The lack of auditing, coupled with problems of monitoring the correct implementation of TSA policies, has resulted in the racial and religious profiling of the Sikh community at U.S. airports.

Implementation of AIT and its Effect on those Wearing Religious Head Coverings: As AIT roll-out continues throughout the country, metal detectors will be phased out as the primary form of screening. Instead, AIT will supplant metal detectors as the primary screening mechanism. AIT is currently, and for the foreseeable future, a voluntary option for primary screening. If one opts out of AIT screening, they would be subject to a rigorous “prison” style pat-down, which includes the physical touching by a security officer (with the palm of the hand) of every part of one’s person.

The AIT machines are supposed to be monitored by both a screening officer and imaging operator. The imaging operator is supposed to be in an isolated room viewing the AIT image and making a determination if an anomaly exists that would require additional screening. If there is an anomaly that appears on the image, the screening officer would be told of the quadrant on the body in which the anomaly exists and the screening officer would then pat-down only that area of the passenger’s body. If no anomaly was detected, the screening officer still retains the discretion to conduct additional screening.

TSA had originally conveyed to SALDEF and the Sikh Coalition that AIT would solve the problems of secondary screenings that Sikhs were facing under the metal detector screening process. However, we were greatly disturbed to learn that almost ten years after 9/11, the

¹ The patka, also described as a bandana with four strings, covers the young child’s head completely including the top-knot. It is tight fitting against the head, has no folds, and would even under the broadest of definitions not constitute a clothing or headwear that is bulky.

² Letters submitted directly to Margo Schlanger and Kimberly Walton, TRIP complaints filed on TSA website, and Sikh Coalition Quarterly Aviation Reports reflect this reality.

screening policies for Sikhs have only become more extreme. Instead of the **secondary screenings** that Sikhs were forced to undergo at airports with metal detectors, AIT would now impose **tertiary screening**. Below is our understanding, based on the meeting, of how the AIT screening process would function.

Screening Policy for Sikhs Using AIT

It was made clear in the meetings that Sikhs who wear turbans³ and enter the AIT machine would be mandatorily subject to additional screening.

- 1) Sikhs, like all passengers, would be subject to **AIT as the primary form of screening**, unless they opt-out. If they proceed with AIT screening:
 - a. Any turban that had “folds” of cloth would most likely be considered an anomaly by the imaging operator.
 - b. Even if a turban was not considered an anomaly by the imaging operator and the Sikh individual clears AIT, the screening operator has been instructed that all “non form-fitting headwear” is subject to additional screening. It was clearly indicated to us in the meeting that **all of the turbans worn in the room would be considered “non form-fitting headwear,” despite the significant variation in size, thickness, and form of each turban.**
 - c. Thus, all Sikhs who wear turbans, whether because their turbans are considered anomalies by the imaging operator or “non form-fitting headwear” by screening officers, will be **mandatorily subject to additional screening**.
- 2) Irrespective of whether the turban triggers an anomaly or not, Sikhs would then be subject to a **secondary screening for explosives through the Electronic Trace Detection (ETD)** process. Sikhs would then be presented with the three options of: (1) self pat-down; (2) TSO pat-down; or (3) private screening of the turban where either of the first two options can be conducted.
- 3) Finally, it was conveyed to us that because AIT detects non-metallic threats only,⁴ therefore, Sikhs would be subject to a **tertiary form of screening by hand wand** to detect any metallic threats within the turban.

For Sikhs or others who **opt-out** of the AIT procedure, it was stated that TSA has to assume that individuals who do not undergo AIT are potentially seeking to bypass what would be perceived as a more thorough screening procedure, and therefore, a rigorous and full pat-down of the body is necessary if an individual opts out of AIT. The procedure for Sikhs who opt-out would look like:

- 1) “Prison” style pat-down (full palm of the hand pat-down of every part of the individual’s person).

³ At the meeting on 9/21/10 there were three Sikhs who wore turbans of differing styles. It was stated that all three styles of turbans would trigger an anomaly.

⁴ Although on TSAs own website it clearly details that both metallic and non-metallic threats are covered by AIT.

- 2) Sikhs would then be subject to a **secondary screening** for explosives through the Electronic Trace Detection (ETD) process. This includes: (1) self pat-down; (2) TSA pat-down; or (3) private screening where either of the first two options can be conducted.

What is clear from the screening policy is that Sikh turbans of all different styles will result in the **mandatory tertiary screening** of Sikhs if they proceed through AIT. If Sikhs opt-out, there will be both a full, rigorous, and highly invasive pat-down plus ETD testing. However, it is still unclear whether Sikh children's "patkas" will also be considered anomalies or "non form-fitting headwear". At the recent inter-agency meeting, Ms. Walton indicated that this is being investigated. Our orgs are working with your Office of Civil Rights and Civil Liberties to conduct a test to provide a concrete answer to this.

Inconsistencies (pre and post AIT): The most glaring inconsistency is that all three Sikh organizations were misled to believe that TSA policies pre-AIT were discretionary and that the profiling of Sikhs would not occur under this discretionary policy as applied to secondary screening. Second, TSA's own website states that the AIT machines are capable of seeing under "layers of clothing" and capable of viewing metallic and non-metallic threat items.⁵ Nevertheless, at our meeting we were told that the machines could not pierce through the folds of a turban and we would be subject to additional hand wand of our turbans even after going through the AIT machines. This simply does not make sense. The inconsistency between what we were told and what we are now being told has tremendously limited our ability to safeguard the civil rights of our community.

Conclusion:

It is our understanding on the basis of the information provided to us by TSA officials at the most recent meeting that Sikhs will be subject to three levels of mandatory screening with the implementation of AIT. This is an impermissible result of the implementation of new technology especially since, to our knowledge, no Sikh has ever been asked to participate in testing of AIT machines to see if AIT could get a clear image through the turban. After subjecting Sikhs to almost four years of additional screening, it is unacceptable that the current technology will substantially increase the burden of Sikhs and lead to even more racial/ religious profiling.

Finally, the implication that the concerns raised by Sikhs are merely related to inconveniences at the airport in the face of national security threats is offensive. We, as Americans, are equally committed to the safety and security of this country. Nonetheless, it is no longer palatable for us to continue bearing the brunt of U.S. airport security policies that disparately impact our community by unnecessarily infringing on our religious freedoms.

We request clarification on whether our understanding of the policy as stated above is correct. It is important that the Sikh community have accurate information about what to expect at the airport.

⁵ TSA: How it Works, http://www.tsa.gov/approach/tech/ait/how_it_works.shtm

As currently explained to us, we believe the policy as stated to us by Margo Schlanger (DHS) and Kimberly Walton (TSA) will seriously impinge on the constitutional liberties of Sikh travelers throughout the United States. We look forward to your reply.

Sincerely,



Amardeep Singh
Director of Programs
The Sikh Coalition
amar@sikhcoalition.org
(212) 655-3095 ext. 83



Hansdeep Singh
Senior Staff Attorney
International Civil and Human Rights Advocate
UNITED SIKHS
hansdeep.singh@unitedsikhs.org
(646) 315-3909



Jasjit Singh
Associate Executive Director
Sikh American Legal Defense and Education Fund (SALDEF)
1413 K Street NW 5th Floor, Washington DC 20005
(202) 403-0245
jasjit@saldef.org

CC:

Senator Joseph Lieberman (via email)

Senator Kirsten Gillibrand (via email)

Janet Napolitano, Secretary of the Department of Homeland Security (DHS) (via first class mail)

Margo Schlanger, Officer for Civil Rights and Civil Liberties (via email at margo.schlanger@dhs.gov)

Kimberly Walton, Special Counselor to the Administrator (via email at Kimberly.Walton@dhs.gov)

Hope E. Goins, U.S. House of Representatives Committee on Homeland Security (via email at hope.goins@mail.house.gov)

Paul Monteiro, Office of Public Engagement (via email at [Darron P. Monteiro@who.eop.gov](mailto:Darron.P.Monteiro@who.eop.gov))

Kiran Ahuja, Executive Director of the White House Initiative on Asian Americans and Pacific Islanders (via email at Kiran.Ahuja@ed.gov)