No. _____

IN THE

Supreme Court of the United States

ROHAN RAMSINGH,

Petitioner

v.

TRANSPORTATION SECURITY ADMINISTRATION,

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a TSA requirement that disabled travelers submit to a search that is medically contraindicated, no matter the severity of the contraindication, offend the constitutional guarantee of substantive due process?

2. Does TSA's construction of a regulation prohibiting "interference" with their screeners to include passive non-compliance contradict the Court's decisions regarding statutory interpretation and unconstitutionally vague laws?

PARTIES TO THE PROCEEDING

Petitioner is Rohan Ramsingh, an individual residing in Florida.

Respondent is the U.S. Transportation Security Administration, a sub-agency of the U.S. Department of Homeland Security.

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OPINIONS BELOW

This case began as an administrative law proceeding initiated by the Transportation Security Administration ("TSA") with case number 20-TSA-0041. The opinions of the administrative law judge is attached as Appendix A, and of the TSA final decisionmaker as Appendix B, both held for the agency.

Petitioner timely petitioned the Court of Appeals pursuant to 49 U.S.C. § 46110(a). The opinion of the D.C. Circuit dismissing Petitioner's petition is attached as Appendix C. The opinion of the same denying a petition for rehearing and rehearing *en banc* is attached as Appendices D. The case number in the Court of Appeals was 21-1170.

JURISDICTION

The Court of Appeals denied a timely petition for rehearing and rehearing *en banc* on September 23rd, 2022. Jurisdiction was proper in the Court of Appeals pursuant to 49 U.S.C. § 46110(a).

This Court has jurisdiction under 28 U.S.C. § 1254(1) .

STATUTORY PROVISIONS INVOLVED

The regulation in question is reproduced in Appendix E.

STATEMENT OF THE CASE

A. Factual Background

In the days after the attacks of September 11th, 2001, Congress created Respondent U.S. Transportation Security Administration, and since then it has been the familiar face of airport security, conducting passenger screening on approximately two million people daily. TSA regulations prohibit "interference" with its security screeners under pain of civil penalty in excess of $13,000. 49 C.F.R § 1540.109

Petitioner Rohan Ramsingh is a U.S. citizen and disabled veteran of the U.S. armed forces. He has two service-connected injuries relevant to this case: a shoulder injury and post-traumatic stress disorder (PTSD) resulting from military sexual trauma (MST). These conditions are well-documented by the Veterans Health Administration and the government rates his disability at 100%.

Ramsingh's injury causes challenges with respect to some screening procedures implemented by TSA. First, Ramsingh cannot undergo screening by a "body scanner" because it requires holding one's arms above one's head for several seconds, and Ramsingh's shoulder injury prevents that. Second, Ramsingh cannot be "patted down" in his groin area without running a substantial risk of triggering his PTSD.

On November 23rd, 2019 at Tampa International Airport, TSA policy and Ramsingh's disabilities clashed. TSA screeners asked Ramsingh to go through a body scanner, and he explained his injury and his inability to complete screening in that manner. Appendix, 26a. Screeners began alternative screening procedures and, eventually, advised Ramsingh that they needed to pat him down. Ramsingh asked if they could avoid his groin during the pat down and explained his PTSD, but TSA insisted that there was no available alternative and that he must comply. Without engaging in disruptive behavior or interrupting the screening process for any other passenger, Ramsingh declined. TSA summoned local police and Ramsingh was led out of the airport.

Subsequent to these events, TSA initiated a civil penalty proceeding in its administrative law court, asking Ramsingh to pay $2,050 for violation of 49 C.F.R § 1540.109 ("No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter.").

B. Proceedings in the Administrative Law Court

In the administrative law court, the factual basis was subject to almost no dispute: Ramsingh provided substantial documentary evidence from government-employed doctors as to his disabilities, as well as his own testimony. The authenticity and severity of his

disabilities were entirely unchallenged by the government. Appendix, 11a.

Instead, parties took competing positions on the law. The government took the position that: 1) mere noncompliance is sufficient to constitute interference under § 1540.109, and 2) that this was essentially a "strict liability" offense for which even medical inability was no defense. In his defense, Ramsingh argued that under any normal definition of "to interfere," one must take some action, and that even if one could "interfere" by doing nothing, medical inability must be a defense[1].

In review of the government's "Motion for Decision" (equivalent to a motion for summary judgment in the federal district courts), the administrative law judge found in favor of the agency, except as to the penalty amount, which was reduced to $680. Appendix 14a ("an individual's bona fide medical condition does not invalidate the requirement to complete screening."). Petitioner timely requested review within the agency, and TSA's final decisionmaker adopted the administrative court's finding in full. Appendix 30a (anything "that might distract or inhibit a screener from effectively

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[1] The rules of the administrative court do not allow constitutional challenges to be raised. Notwithstanding, Ramsingh did mention the substantive due process issue to ensure the preservation of his appeal.

performing his or her duties" constitutes interference).

C. Proceedings in the Court of Appeals

Petitioner filed a petition for review in U.S. Court of Appeals for the District of Columbia Circuit on August 10th, 2021. The Court of Appeals has jurisdiction to "orders" of TSA pursuant to 49 U.S.C. § 46110(a).

In his opening brief, Ramsingh argued that the agency proceeding gave "interference" a definition that is too broad, and argued that the regulation must make allowances for medical issues. That is, fining someone for not doing something that they cannot do, or for not doing something that they can do, but to do so would risk causing some quantum of injury, would violate substantive due process (or, to avoid a constitutional question, the regulation should be interpreted as implicitly allowing such a defense). In response, the government re-iterated its position in the court below.

After full briefing and oral arguments, the panel found in favor of the government.

As to the definition of "interference," the D.C. Circuit adopted a definition it used in a different circumstance the prior year: "to interpose in a way that hinders or impedes: comes into collision or be in opposition." Appendix 55a, *citing Judge Rotenberg Educ. Ctr., Inc. v. FDA*, 3 F.4th 390, 396 (D.C. Cir.

2021). Using that definition, and providing deference to TSA's interpretation of the word, it held that "Ramsingh's conduct objectively interfered with TSA operations." *Id.* at 60a.

At to TSA's refusal to consider medical conditions as a defense, it found that no *mens rea* is implied in a public safety regulation silent on the matter, that the statute is not so vague as to not provide notice as to what conduct is proscribed, and that the agency's position does "not approach the level of egregiousness or outrageousness needed to establish a violation of substantive due process." *Id.* at 67a.

REASONS FOR GRANTING THE PETITION

Surely the Constitution provides some limit on how much pain, suffering, and risk of serious medical injury the U.S. Transportation Security Administration may cause to members of the general public at an airport checkpoint in furtherance of their mission to secure the nation's airspace.

Petitioner Rohan Ramsingh is a disabled American veteran who was fined by TSA for failing to complete a TSA search that would have triggered a serious medical episode. An administrative law judge for the agency denied Ramsingh the opportunity to prove this because, it found, no matter how devastating the consequences, "an individual's bona fide medical condition does not invalidate the requirement to complete screening." Appendix 14a.

TSA's position that no medical condition excuses compliance with TSA orders is the quintessential egregious, outrageous, and shocking government conduct for which substantive due process requirements provide a safeguard. Recent Supreme Court precedent has drawn into question the boundaries, and survival, of the substantive due process doctrine. *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U. S. ____ (June 24th, 2022)). The Court should take this opportunity to ensure that substantive due process has meaning, or, if it no longer does, to pronounce it dead such that

Congress may legislate appropriate safeguards to fill the void.

TSA's position also relies on an overly broad interpretation of statutory language, the result of which is a statute that proscribes a wide range of innocent conduct and is unconstitutionally vague. This contradicts a decision of this Court interpreting a substantially similar regulation, as well as the Court's jurisprudence on vagueness. *District of Columbia v. Little*, 339 U.S. 1 (1950); *Chicago v. Morales*, 527 U.S. 41 (1999). The Court should take this opportunity to enforce these solid precedents.

*I. This Case Presents a Vehicle for the Court to Set the Post-*Dobbs *Boundaries of Substantive Due Process*

"The 5th amendment to the Constitution of the United States declares, that no person shall be deprived of life, liberty, or property, without due process of law." *Bloomer v. McQuewan*, 55 U.S. 539, 553 (1852). "So-called 'substantive due process' prevents the government from engaging in conduct that 'shocks the conscience,' *Rochin v. California*, 342 U.S. 165, 172 (1952), or interferes with rights 'implicit in the concept of ordered liberty,'" *Palko v. Connecticut*, 302 U.S. 319, 325-326 (1937)." *Herrera v. Collins*, 506 U.S. 390, 435-36 (1993) (Blackmun, J., *dissenting*). The "adjudication of substantive due process claims may call upon the Court in interpreting

the Constitution to exercise that same capacity which, by tradition, courts always have exercised: reasoned judgment." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 849 (1992) (overruled[2] on other grounds by *Dobbs*).

The Court has previously held that substantive due process "does not guarantee due care on the part of state officials; liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). But, on the other hand, "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Id.* (holding also that reckless conduct or deliberate indifference may be sufficient to state a substantive due process claim).

The undisputed facts of the administrative proceeding demonstrate that: 1) Ramsingh had a medical injury that would be aggravated by complying with the order of TSA's screeners, 2) Ramsingh clearly declared that medical injury to the screeners and explained why following TSA's order would aggravate that injury, and 3) TSA ordered that he must follow their order notwithstanding the fact that it would aggravate his injury. This is the government

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[2] *Dobbs* did not abrogate substantive due process, but merely found that abortion was not one of the liberty interests that it protects.

attempting to *intentionally* cause injury because they believe it to be justified by their rules and regulations, and then issuing a penalty because they were unsuccessful in causing that injury. Both the agency and the Court of Appeals held that TSA may do this regardless of the severity of the injury they have ordered.

But if penalizing Americans living with disabilities for non-compliance with an order of the TSA that would aggravate their medical condition, no matter how severe[3] the consequences, does not "shock the conscience," then what does?

And if one does not have a right implicit in the concept of "ordered liberty" to refrain from doing something that will cause them serious injury, what

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[3] TSA prevailed in a summary judgment-type motion wherein the administrative law court held that medical condition is *never* a defense, no matter how severe the injury TSA demands be suffered may be. Appendix 14a. This, Petitioner never had an opportunity to demonstrate how serious of an injury he faced, had he complied. Notwithstanding, triggering a PTSD episode can cause suicidality, homicidal episodes, disassociation, panic attacks, and flashbacks causing the individual vividly to relive the trauma (*e.g.*, being raped) that may persist for hours. *See* Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"), § 309.81. The panel's framing of Ramsingh's medical condition as mere "discomfort" is as incorrect as it is offensive.

liberty interests are actually available under these rights?

The Court should take this opportunity to clarify what is left of substantive due process. In *Dobbs*, Justice Thomas made clear his view that "we should eliminate [substantive due process] from our jurisprudence at the earliest opportunity." *Dobbs* at *Thomas Dissent*, *7. And, if substantive due process no longer includes a right to avoid (without penalty) a government airport security screener intentionally inflicting an injury on a member of the public for the purpose of strictly complying with a federal regulation, then Justice Thomas is absolutely right: this doctrine is dead and should be so-declared such that Congress may legislate accordingly.

On the other hand, the majority of the Court in *Dobbs* was still willing to "ask what the Fourteenth Amendment means by the term 'liberty,'" *Dobbs* at *11, and to protect those liberty interests under substantive due process. A historical analysis can be accomplished during briefing, should the Court grant *certiorari*, but it takes not a constitutional scholar to understand that the government may not intentionally injure its citizens outside of circumstances where that injury is justified.

"Ordered liberty sets limits and defines the boundary between competing interests." *Id.* at *31. Ramsingh has a liberty interest in avoiding injury to his body, and TSA has an interest in protecting the

nation's transportation system from attack. The exact line between what TSA may ask of the public during security screenings may be subject to a balancing test. Surely, the Constitution would not allow TSA to force a screening procedure that comes with a substantial risk of death, and likely the same for a procedure that would cause serious bodily injury. But would it be constitutional for TSA to force a screening that inflicts minor bodily injury? Or pain without lasting injury? Or a screening that merely runs a 10% risk of causing injury? The exact placement of this line should be determined by a lower court in the first instance, but the court below upheld TSA's position that no medical condition is a defense to TSA's regulation, and that is a position that is morally and legally intolerable. If substantive due process is still alive, the Court should grant *certiorari* to direct the court below to define the boundary between the competing interests. And, if it is no longer alive, the Court should grant *certiorari* to say so.

II. The Court Has Held That "Non-Compliance" and "Interference" Are Not Synonyms, and Holding Otherwise Creates Vagueness Prohibited by Chicago v. Morales

TSA does not have a regulation that explicitly prohibits general failure to follow an order; instead, Petitioner was charged with "interference" with the duties of a TSA screeners. TSA argued, and the

administrative and appeals courts both accepted, that one who does not follow orders has "interfered" with TSA.

This creates problems of both statutory interpretation and of constitutionality that contradict the law as interpreted by this Court.

On the statutory side, the Court has weighed in on what it means to "interfere" with an official in a case involving a D.C. regulation prohibiting persons from "interfering with or preventing any inspection" of a residential apartment for health code violations. *District of Columbia v. Little*, 339 U.S. 1 (1950). The defendant-appellee was charged on the basis of telling the health officer "not to enter her home to inspect" and "refus[ing] to unlock her door." *Id.* at 2. The Court had no trouble concluding that "mere refusal to unlock the door" was "not an 'interference.'" Id. at 4, 5. The Court also took note that the District could have prohibited "refusing to permit" an inspection, which perhaps would have covered the defendant-appellee's conduct, but it did not, and "interference" – as well as "preventing" – simply were not substitutes. *Id.* at 6.

The court below found that *Little* was not instructive for three reasons. First, the panel noted that the regulation in Little was criminal while that here is a civil penalty. The panel neglected to explain the relevance of this distinction as it would relate to statutory interpretation. Both here and in *Little*, a public welfare regulation was implicated and a small

fine was levied; the difference between one being a crime and one being a civil matter is purely nominative. Second, they noted the difference between settings: a home in *Little*, and a "highly regulated public area" in this case. The court below was apparently persuaded by *dicta* in the last paragraph of *Little*, after the regulation had already been interpreted, of the value of privacy in the home. *Little* simply does not stand for the concept that words have different meanings based on whether a statute proscribes conduct in public vs. in private. Third, the panel approved of an out-of-circuit case holding that a logger who continued logging after being ordered to stop had interfered with a Forest Service officer. *United States v. Willfong*, 274 F.3d 1297, 1299, 1302 (9th Cir. 2001). But Ramsingh did not refuse to *stop*, he refused to *continue*. Accordingly, the court below distinguished the precedent of this Court in error. Appendix 59a.

On the constitutional side, interpreting "interference" to be any conduct, or lack thereof, that in any way makes a TSA screener's job less easy, creates just the kind of "absolute discretion to [TSA] to decide what activities constitute" a violation of their regulation that the Court warned us about. *Chicago v. Morales*, 527 U.S. 41, 61 (1999) (*quotation and citation omitted*). Because TSA insists that no *mens rea* is required to violate their regulation, if we use the definition of "interference" adopted by the Court of Appeals, there is simply no principled way to

distinguish between ordinary conduct, or innocent mistakes, that takes some of a screener's time.

For example, if one forgets to remove one's belt and sets off a metal detector, thus necessitating a second trip through the metal detector, this individual has certainly "hindered" or "impeded" the completion of their screening.

The same would go for one who spills their suitcase, thus holding up the line. Or one who asks too many questions, or is discourteous, or demands a supervisor.

TSA has argued that their regulation will not be used against travelers in these "benign" scenarios, but the fact remains that they *could*, at any time, charge someone with interference for any of those actions, and adopting the court below's definition and application, those charges would technically be correctly levied. But, with respect to the late Justice Potter Stewart, the Constitution does not permit this variety of "I know it when I see it" latitude. There can be no doubt that TSA will (and does) wield this charge against those who it feels need a lesson in respecting its authority[4], while ignoring the technical violations

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[4] It is entirely unclear in this case why TSA feels it needs to teach Petitioner a lesson. He was generally courteous and respectful at the checkpoint and has a legitimate medical condition that he incurred serving his country. Regardless, the lesson actually being delivered here is that of agency abuse.

committed by thousands of travelers daily so long as they are otherwise compliant.

Though *Chicago v. Morales* was raised by Petitioner, the Court of Appeals did not directly address it because it found that Ramsingh could not bring a vagueness challenge because "an individual 'who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others,'" and that Ramsingh engaged in conduct that was clearly proscribed. Appendix 63a, *citing Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982). This attempt to evade the mandate of *Chicago v. Morales* escalates the panel's earlier finding that "interference" covers all non-compliance into a finding that interference *clearly* covers all non-compliance. This is simply a bridge too far: although reasonable people may disagree as to whether refusing to act constitutes "interference," refusal certainly does not "clearly" constitute interference, as we have seen in *Little* where the Court found the word did not constitute refusal to permit a search. The Court of Appeals' proposed distinctions – criminal vs. civil context, home vs. public, and the existence of a 9th Circuit case – would not be clear to any lay person, and likely not even most attorneys, even if they were studying the text of 49 C.F.R. § 1540.109 while waiting in the line to show ID at a TSA checkpoint.

What is "clear" is that the court below improperly disregarded *Little*, *Chicago v. Morales*, or both. The Court should grant *certiorari* to enforce its holdings.

CONCLUSION

A fine imposed upon a disabled traveler for being disabled should never have happened. The fact that it has, and that the fine has been upheld, demonstrates that there are serious legal issues for this Court to resolve.

This petition presents a mechanism for the Court to resolve substantial and open areas of law, and even if the $680 fine would not be considered substantial in the grand scheme of the Court's docket, it is substantial to one disabled American veteran, and the Court may be assured that the resolution of this case is important to millions of disabled Americans who wish to fly despite their serious medical conditions.

The Court has also yet to grant *certiorari* to any challenge of TSA abuse in the 20-year history of the agency. This case thus presents an opportunity to set boundaries for a federal agency that interacts with two million Americans daily, while clarifying recently modified law, ensuring that the courts below are faithfully applying the precedents of this Court, and protecting those with disabilities generally.

For the reasons above, this petition for *certiorari* should be granted.

Respectfully,

/s/Jonathan Corbett

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APPENDIX

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UNITED STATES OF AMERICA

DEPARTMENT OF HOMELAND SECURITY

TRANSPORTATION SECURITY ADMINISTRATION

In the Matter of:

ROHAN RAMSINGH

Docket Number:

20-TSA-0041

HON. MICHAEL J. DEVINE

Administrative Law Judge

Respondent

ORDER GRANTING TSA' S MOTION FOR DECISION AND DENYING RESPONDENT' S MOTION FOR DECISION

This matter comes before the undersigned Administrative Law Judge (ALJ) on cross Motions for Decision by the Transportation Security Administration (TSA) and Respondent. Upon review of the record and pertinent authority, TSA's Motion is GRANTED and Respondent's Motion is DENIED. The hearing scheduled to commence on March 9, 2021 is CANCELLED.

I. PROCEDURAL HISTORY

On June 18, 2020, TSA initiated this administrative enforcement action by filing a Complaint against Respondent Rohan Ramsingh. The Complaint alleges that on November 23, 2019, Respondent violated 49 C.F.R. § 1540.109 after he presented himself and his accessible

property for pre-flight screening and inspection at the TSA checkpoint on Airside C, at Tampa International Airport (TPA).

The record before the undersigned Administrative Law Judge (ALJ) includes the Complaint filed by TSA; a Motion to Dismiss the Complaint for Insufficiency filed by Respondent on July 16, 2020; an Order denying the Motion to Dismiss the Complaint for Insufficiency issued September 10, 2020; an Answer submitted by Respondent on September 20, 2020; and the cross Motions for Decision, submitted by both parties on February 2, 2021. In keeping with an Order issued on January 21, 2021, both parties submitted replies in opposition to the other party' s Motion for Decision on March 1, 2021. Accordingly, this matter is ripe for a ruling.

II. ISSUES

TSA and Respondent both argue the undisputed facts entitle them to a decision as a matter of law. The issues are:

1. Are there any remaining disputes of material fact?

2. Did Respondent' s actions interfere with TSA screening personnel in the performance of their screening duties?

3. Did Respondent' s medical condition excuse noncompliance with TSA procedures for aviation passenger screening?

III. UNDISPUTED FACTS

In their cross Motions for Decision, each party has separately asserted "undisputed facts." While each party has asserted some facts that may differ from those asserted by the other party, the alleged factual differences

are not material and not necessary to a decision in this matter. Upon review of the parties' pleadings, I find the following facts are not in dispute.

1. On November 23, 2019, Respondent entered the TSA checkpoint on Airside C at the Tampa International Airport (TPA), and presented himself and his accessible property for screening. (Compl. at Para. 2; Answer admitting).

2. After placing his accessible property on the X-ray unit, Respondent attempted to go through the Walk Through Metal Detector (WTMD), however, he was directed by Transportation Security Officer (TSO) Julio Melendez Ortiz to proceed through the Advanced Imaging Technology (AIT) machine. (Compl. at Para 3; Answer admitting).

3. Respondent informed TSO Melendez Ortiz he could not lift his arms. Therefore, TSO Melendez Ortiz directed him to go through the WTMD. (Compl. at Para. 4; Answer admitting).

4. As part of screening, TSO Melendez Ortiz conducted an Explosive Trace Detection (ETD) test of Respondent' s hands. (Compl. at Para. 5; Answer admitting in part; TSA Mot. for Dec., Ex. 3).

5. TSO Ortiz conducted the ETD of Respondent's hands and it alarmed positive for possible components of explosives and the TSO requested the assistance of a supervisor. (Compl. at Para. 6; Answer admitting in part; TSA Mot. for Dec., Ex. 3 [Paras. 5, 6]).

6. Supervisory Transportation Security Officers (STSOs) Tiffany Pagan and Robert McClelland responded and determined that TSA procedure required ETD testing of

Respondent' s accessible property and a pat-down of his person to clear the alarm. (Compl. at Para. 7; Answer admitting in part; TSA Mot. for Dec., Exs. 4 [Para. 6], 5 [p. 12], 6 [p. 17]).

7. STSO McClelland informed Respondent that TSA procedure dictated that a pat-down search was necessary to resolve the positive ETD alarm. (TSA Mot. for Dec., Ex. 7 [Response to Request for Admission No. 5]; TSA Mot. for Dec., Ex. 4 [Paras. 6-7]).

8. Respondent declined the pat-down search. (Compl. at Para. 8-9, 11-12; TSA Mot. for Dec., Exs. 4 [Paras. 3-9], 5 [pp. 12, 15, 51] 6 [pp. 16-18, 23, 41]; TSA Reply to Mot. for Dec., Ex. 16 [Respondent's Letter of Response, p. 3]).

9. STSO McClelland offered to Respondent to conduct the pat-down search in a more private area of the checkpoint, but Respondent continued to decline submitting to a pat-down search due to his medical condition. (Compl. at Para. 8-9; TSA Mot. for Dec., Ex. 4 [Paras. 7-8]; TSA Mot. for Dec., Ex. 7 [Response to Req. for Adm. No. 3]; TSA Reply to Mot. for Dec., Ex. 16 [Respondent' s Letter of Response, p. 3]).

10. Respondent informed STSOs Pagan, McClelland, and Chaieb that he has a diagnosis of Post-Traumatic Stress Disorder (PTSD) resulting from military service. (Resp. Mot. for Dec., Exs. A and C; TSA Mot. for Dec., Exs. 5 [p. 12], 6 [p. 18] and 8 [Para. 4]; Respondent's Ex. C (affidavit of STSO Chaieb) is the same as TSA Ex. 8).

11. When STSO McClelland continued to request Respondent to complete a pat-down with private screening, Respondent continued to decline and stated that he " could just leave" and " you can' t detain me."

(TSA Mot. for Dec., Ex. 5; Ex. 7 [Response to Req. for Adm. No. 4]).

12. When STSO McClelland informed Respondent that if he continued to refuse to complete the pat-down, TSA would have to call the police for assistance on the scene, Respondent replied, " fine call them." (TSA Mot. for Dec., Ex. 4 [Para. 9]; TSA Reply to Mot. for Dec., Ex. 16 [Respondent' s Letter of Response, p. 3]).

13. Respondent continued to refuse to allow a pat-down and was eventually escorted away from the check point by Tampa Airport Police. (TSA Mot. for Dec., Ex. 7 [Response to Req. for Adm. No. 8]; Ex. 8; TSA Reply to Mot. for Dec., Ex. 16 [Respondent' s Letter of Response, p. 4]).

14. Respondent' s behavior required additional TSA employees to respond to the scene and spend time addressing his refusal to complete screening. (TSA Mot. for Dec., Ex. 4 [Paras. 3, 10-11, 16-18]; Ex. 6).

15. Respondent' s behavior at the checkpoint did not cause a delay in the screening process at the TSA checkpoint. (Resp. Mot. for Dec., Ex. D [p. 28]).

IV. MOTIONS FOR DECISION

The single charge alleged in the administrative enforcement proceeding is that Respondent violated 49 C.F.R. § 1540.109, which states

No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter.

The regulations governing TSA administrative enforcement hearings allow for the filing of motions for decision. The ALJ should grant a motion for decision if the

pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. 49 C.F.R. §

1503.629(f)(5). When the parties file cross-motions for decision, the ALJ must review each of the party' s motions on the merits to determine whether either may be granted. Rossignol v. Voorhor. 316 F.3d 516, 524 (4th Cir. 2003).

A motion for decision under 49 C.F.R § 1503.629 is analogous to a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. The moving party has the burden of showing that no genuine issue of material fact exists and the movant is entitled to a decision as a matter of law. All alleged facts must be considered in the light most favorable to the non-moving party. Anderson v. Liberty Lobby; Inc.. 477 U.S. 242 (1986).

A party may submit affidavits and other evidence in support of a motion for decision. 49 C.F.R § 1503.629(f)(5). Here, both parties submitted exhibits with their respective Motions for Decision and with their replies to the opposing party's Motion for Decision, which exhibits included affidavits, deposition transcripts, pleadings, answers to discovery requests, video footage[1], and

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1 Video evidence may be considered in motions for summary judgment. See e g. Linlor v. Poison. 2018 WL10418979 * 3 (E. D. Va) . There is no audio recording but the video confirms Respondent did not engage in any physical contact with TSA screeners.

Respondent' s letter responding to the TSA investigation of this incident. Neither party has objected to the other party' s supporting exhibits.

A. TSA' s Motion for Decision

TSA' s Motion for Decision and reply included as exhibits the Complaint and Answer; affidavits for Transportation Security Officer (TSO) Melendez Ortiz, Supervisory Transportation Security Officer (STSO) McClelland, STSO Pagan, and STSO Chaieb; deposition excerpts for STSO McClelland and STSO Pagan; an excerpt of the Federal Register; three clips of CCTV video footage1 of the incident in question; excerpts from Respondent's deposition; and a letter of response submitted by Respondent to TSA during the investigation of this matter.

TSA argues that Respondent' s actions constitute a violation of 49 C.F.R. § 1540.109. Respondent does not dispute that he refused to allow a pat-down search to complete screening, but contends it was medically impossible for him to comply. (Resp. Mot. for Dec., pp. 5-8).

TSA established, and there is no dispute from Respondent, that on November 23, 2019, Respondent presented himself and his accessible property for screening at a TSA security checkpoint at Airside C of the Tampa International Airport.[2] There is also no material dispute from

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Respondent' s argument regarding " intent" to interfere with screening ignores the fact that Respondent intentionally presented himself and accessible property for screening at the airport. That is the only intent necessary for this civil penalty matter.

Respondent about the following facts pertaining to the rest of Respondent' s encounter with TSA on that date.

Through the pleadings and video footage; affidavits and deposition transcripts of the TSO and STSOs who were at the scene; and through Respondent' s letter to TSA during the investigation of this matter, Answer to the Complaint, statements in the Motion to Dismiss, and answers to requests for admission, TSA established the following facts. Respondent was allowed to proceed through the WTMD, as opposed to the AIT machine, because Respondent communicated to TSO Melendez Ortiz that he has a medical condition that prevents him from lifting his left arm. TSO Melendez Ortiz also performed an ETD test of Respondent' s hands, which alarmed positive. Due to the positive alarm, STSO Tiffany Pagan was called to the scene, who advised Respondent that because the ETD alarmed positive, TSA would have to perform a pat-down search to resolve the alarm. Respondent refused to undergo a pat-down search. Respondent advised the STSO that he had Post-Traumatic Stress Disorder and did not want people to touch him. Another STSO, Robert McClelland, was called to the scene to assist, and he advised Respondent the pat-down was necessary because it was TSA procedure, but they could perform the pat-down in a more private area if Respondent wished. Respondent insisted he could withdraw from the screening process required to enter the sterile area and leave the security checkpoint, instead of undergo the pat-down. The STSO again stated to Respondent that the pat-down was required due to the ETD alarm. Respondent refused to

allow the pat-down and Tampa Airport Police eventually escorted Respondent from the checkpoint.

There is substantial case law upholding the requirement for persons to complete airport screening once they have begun the process. In United States v. Skipwith. the Fifth Circuit Court of Appeals upheld the reasonableness of an airport security screening procedure that uncovered illicit drugs on the appellant' s person, and rejected the appellant' s contention that he should have been allowed to withdraw from the screening procedure if he no longer desired to go

into the secure part of the airport. 482 F.2d 1272 (5th Cir. 1973). The Skipwith Court stated

Such an option would constitute a one-way street for the benefit of a party planning airplane mischief, since there is no guarantee that if he were allowed to leave he might not return and be more successful. Of greater importance, the very fact that a safe exit is available if apprehension is threatened, would, by diminishing the risk, encourage attempts. Id. at 1281.

The Ninth Circuit Court of Appeals, United States v. Aukai. similarly stated that allowing a person to revoke consent to in-progress airport security screening would afford those with intent to do harm " multiple opportunities to attempt to penetrate airport security by 'electing not to fly' on the cusp of detection until a vulnerable portal is found." 497 F.3d 955, 961 (9th Cir. 2007).

Additionally, the First Circuit Court of Appeals examined the reasonableness of the pat-down in airport security protocol in the context of an individual who was selected

for a pat-down because her medical condition (metallic joint replacement) caused the alarm to go off when she passed through the WTMD. Ruskai v. Pistole. 775 F.3d 63 (Tst Cir. 2014V The Ruskai Court found the pat-down to be reasonable after balancing the government's interest in maintaining the safety of air travel and the individual's liberty interest. Id. The Court reasoned that the fact that an individual had a medical issue did not negate the requirement for the individual to complete screening. IdL at 71 (" ... the fact that a WTMD alerts TSA to Ruskai's metallic implants does not mean that she is less likely to have a nonmetallic weapon. ..").

TSA did not dispute that Respondent has medical conditions (limited use of left arm and PTSD) and acknowledges that Respondent communicated that he had medical conditions to the STSOs at the scene. (TSA Mot. for Dec., Exs. 4-6). TSA asserts that it followed its procedures in addressing Respondent' s concerns in the screening process. However, because of the circumstances of his screening, where he could not pass through the AIT, he was allowed to instead go through the WTMD with an ETD test of his hands. When the ETD hand swab alerted positive, TSA procedure dictated that he undergo a pat-down. (TSA Mot. for Dec., Ex. 7 [Response to Request for Admission No. 5]; TSA Mot. for Dec., Ex. 4 [Paras. 6-7]). TSA contends that Respondent' s refusal to complete screening by allowing the pat-down constituted interference with screening because, after voluntarily submitting to the screening process, he refused to allow TSA personnel to complete their security screening duties. (TSA Mot. for Dec., P 11)

In addition to Skipwith and Aukai, supra. TSA has also referenced a decision issued by the TSA decision maker,[3] In the Matter of John Brennan. 12-TSA-0092 (Sept. 18, 2014) (aff d by the 5th Cir. May 17, 2017), in support of TSA' s argument that refusal to complete screening constitutes " interference" with screening. There, TSA performed ETD testing during screening of a passenger, which alarmed positive. When the TSO informed the passenger that TSA would have to conduct further screening to clear the ETD alarm, the passenger, while standing at the checkpoint, completely disrobed. Because TSA personnel are prohibited by TSA procedure from touching a passenger's bare skin, they could not complete the screening of the passenger. The TSA Administrator found that the passenger violated 49 C.F.R. § 1540.109 by disrobing and thus not allowing TSA to complete the screening procedure. In the absence of a reversal by higher authority, Final Decisions of the TSA Administrator may be considered binding authority. 49 C.F.R. § 1503.6570 X3).

Moreover, the plain meaning of the word " interfere" supports TSA's position that refusal to complete a screening process that is already underway constitutes " interference." Here, once Respondent voluntarily began the screening process and there was an alarm from the ETD test of his hands, Respondent' s refusal to complete the pat-down part of the screening process constituted

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3 The TSA decision maker is the official authorized to issue a final decision and order of the TSA Administrator in a civil penalty action . 49 C.F. R . § 1503.103

interference with the TSA employees' performance of their duties. Respondent' s medical condition did not excuse non-compliance with TSA screening procedures, which required a pat-down search to resolve the ETD alarm. See e.g. Ruskai. supra.

The discussion and analysis above is limited to the undisputed facts of Respondent's refusal to allow TSA to perform a pat-down of his person. The Complaint also alleged Respondent violated 49 C.F.R. § 1540.109 by removing his property from the search table before it was completely screened. (Compl. at Paras. 17, 24-25). I find any dispute as to whether a TSO gave Respondent permission to gather his personal property from the search table is not material to a decision in this matter.[4] Therefore, this decision is limited to applying the law to the undisputed facts of Respondent's actions in refusing the pat-down search necessary to complete screening.

B. Respondent' s Motion for Decision

Respondent' s Motion for Decision included as exhibits excerpts from the deposition transcripts of Respondent, STSOs Pagan and McClelland; the affidavit of STSO Walid Chaieb; and VA medical documentation regarding Respondent' s diagnoses. Respondent argues that there is no dispute he has medical conditions that affected his

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4 See TSA Mot. for Dec., Ex . 4 [Para. 13; TSO McClelland avers he told Respondent he could not retrieve his property until it was screened further]; Ex. 8 [Para. 8 ; TSO Chaieb avers he told Respondent he could retrieve his property from the search table])

ability to undergo screening. He also contends there is no dispute he did not use profanity, yell, or assault a TSA employee, and the operation of the screening station was not affected by Respondent' s refusal to undergo the pat-down. Respondent contends he was medically unable to comply with the pat-down pprocedure and his actions were not an intentional or volitional interference with screening, and thus he is entitled to a decision as a matter of law that he did not interfere with screening.

TSA did not dispute Respondent' s claims to STSOs Pagan and McClelland that he suffers from a condition preventing him from lifting both arms and PTSD, and it does not dispute Respondent' s VA medical documentation, in Exhibit A. The evidence showed that when Respondent advised TSA of his medical condition that prevents him from lifting both arms, TSA had him go through the WTMD instead of the AIT. When the ETD testing of his hands alarmed positive, TSA explained to Respondent that he needed to undergo a pat-down to resolve the alarm. When Respondent advised of his PTSD and refused to allow the pat-down, TSA explained to Respondent that procedure dictated that a pat-down was necessary to clear the alarm, but Respondent continued to refuse to undergo the pat-down. However, as discussed in Ruskai, supra, an individual' s bona fide medical condition does not invalidate the requirement to complete screening. 775 F.3d at 71.

Though Respondent argues that it was an impossibility for him to complete the screening process, other courts that have examined the issue have determined the government may require completion of airport screening procedures once they have begun. See Skipwith. 482 F.2d

1272; see also Aukai. 497 F.3d 955. Congress enacted the Aviation and Transportation Security Act following the terrorist attacks of September 11, 2001, in order to improve airport security. TSA was created and the regulations for screening were promulgated as a result. See 67 Fed. Reg. 8340-8344 (Feb. 22, 2002). (TSA Motion for Decision, Ex. 9). To allow passengers to begin the screening process but then withdraw at any time would allow a person with bad intentions "multiple opportunities to attempt to penetrate airport security . .. until a vulnerable portal is found." Aukai, 497 F.3d at 960-961. The threat of terrorism after September 11, 2001, makes the airport screening process a critical element in the safety and security interest of the traveling public and it cannot be minimized. Respondent voluntarily commenced the screening process and knew that he may be subject to a pat down search. (TSA Reply to Mot. for Dec., Ex. 16 [Respondent' s Letter of Response, p. 6]). It is undisputed that Respondent refused to complete screening. Respondent' s medical conditions do not provide a valid defense to failure to complete screening but may be considered in mitigation.

C. Conclusion

The undisputed facts, as detailed above, show Respondent voluntarily began the screening process and then refused to comply with TSA requirements to resolve the alarm that occurred during Respondent's screening. The plain language of 49 C.F.R. § 1540.109 prohibits individuals from interfering with screening personnel in the performance of their screening duties. The questions presented are 1) whether Respondent' s refusal to complete the screening process may reasonably be

construed as interference with the TSA screening process, and 2) whether Respondent' s medical condition excused noncompliance with TSA procedures.

In other cases where an individual's actions were more aggressive in creating an incident at the checkpoint, causing a delay in the screening process as additional TSA and airline employees needed to be summoned to the scene, TSA has prevailed in proving a violation of 49 C.F.R. § 1540.109. See Rendon v. TSA. 424 F.3d 475.479 (20051: see also Brennan v. U.S. Dent, of Homeland Sec.. Docket # 12-TSA-0092 (Final Decision 2014). TSA' s interpretation of its regulations is entitled to deference if the interpretation is reasonable. Auer v. Robbins. 519 U.S. 452 (1997); Federal Express v. Holowecki, 552 U.S. 389, 399 (2008). In this case, I find TSA' s interpretation of its regulations— that once an individual begins the screening process at the airport, a refusal to complete the screening process constitutes " interference" with the 11screener' s performance of his/her screening duties— reasonable. In view of the undisputed facts and applying the TSA determination in Brennan, supra, I find Respondent' s refusal to complete screening on November 23, 2019, constituted interference. Respondent had the opportunity to seek private screening. Once he voluntarily began the screening process, Respondent' s medical conditions do not provide a defense to excuse his violation of the regulations. See Brennan and Ruskai. supra. However, Respondent' s medical conditions are matters to be considered in mitigation. Accordingly, there is no genuine issue of material fact and TSA is entitled to a decision as a matter of law that Respondent violated 49 C.F.R. § 1540.109.

V. ULTIMATE FINDINGS OF FACT OF FACT AND CONCLUSIONS OF LAW

1. TSA and the undersigned Administrative Law Judge have jurisdiction over the subject matter and the parties to this administrative proceeding. 49 U.S.C. §§ 114 and 46301; 49 C.F.R. Parts 1503 and 1540.

2. Respondent voluntarily entered the TSA checkpoint at Tampa International Airport and presented himself for screening on November 23, 2019, but he refused to complete the screening process.

3. Respondent' s refusal to complete the screening process on November 23, 2019 at Tampa International Airport interfered with TSA screening personnel in the performance of their duties and constitutes a violation of 49 C.F.R. § 1540.109.

4. Pursuant to 49 U.S.C. § 46301(a)(5)(A)(ii) and 28 U.S.C § 2461 (Civil Penalties Inflation Adjustment Act Improvements Act of 2015), Respondent is subject to a civil penalty not to exceed $13,669 for each violation of 49 C.F.R. § 1540.109.

VI. SANCTION

TSA proposes a civil penalty of $2,050 as an appropriate sanction in this matter. In TSA civil penalty enforcement actions, ALJs, as finders of fact, have the authority to assess a civil penalty. See 49 C.F.R. § 1503.655(a). TSA rules of practice do not require the ALJ to adopt the penalty amount proposed in the Complaint. In re Dunn. 2009 WL 1638648 (June 3, 2009). While TSA's Complaint may set forth a proposed penalty amount, the ALJ has discretion to issue a penalty in an amount he or she finds appropriate. See 49 C.F.R. §§ 1503.609(b) and 1503.655(a).

TSA publishes Enforcement Sanction Guidance Policy (Sanction Guidance) for certain violations of transportation security regulations, found at https://www.tsa.gov/sites/default/files/enforcement sanction guidance policy.pdf. The purpose

of the Sanction Guidance is to promote consistency in enforcement. Id. at 1. The Sanction Guidance in effect at the time of this incident provides a suggested penalty range of $2,050 - $5,330 for non-physical interference with screening. See Attachment A . Since the penalty schedule in the Sanction Guidance is not part of the published federal regulations, it is not considered binding authority. However, TSA' s documented policy in this regard reflects " a body of experience and informed judgment to which courts and litigants may properly resort for guidance." See Skidmore v. Swift, 323 U.S. 134 (1944). As such, the penalty schedule is afforded a certain " measure of respect" in determining the appropriate sanction in this case. See Federal Express v. Holowecki. 552 U.S. 389, 399 (2008).

There is no dispute in the record that Respondent refused to comply with requirements to complete screening and thereby interfered with screening personnel, in violation of 49 C.F.R. § 1540.109. Based on the facts presented in the record, I find that TSA's proposed civil penalty of $2,050 is within its listed Sanction Guidance for violation of 49 C.F.R. § 1540.109. However, other parts of the sanction guidance that describe situations similar to the instant case, such as

entering a sterile area without submitting to screening, have a range of sanctions from $680.00 to $4,100.00. I have also considered in mitigation that Respondent' s

medical issues played a role in his failure to comply with screening, and further that Respondent has no history of non-compliance with TSA regulations. After consideration of all of the evidence presented in this matter, I find that a civil penalty of $680.00 is an appropriate sanction for this violation.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, TSA's Motion for Decision is GRANTED .

IT IS FURTHER ORDERED, Respondent's Motion for Decision is DENIED.

IT IS FURTHER ORDERED, Respondent is assessed a civil penalty in the amount of

$680.00 for violating 49 C.F.R. § 1540.109 on November 23, 2019, at Tampa International Airport.

IT IS FURTHER ORDERED, The hearing scheduled to commence on March 23, 2021, is CANCELLED .

PLEASE TAKE NOTE: instructions for filing a Notice of Appeal are attached hereto as Attachment B .

Done and dated March 4, 2021

Baltimore, Maryland

Attachment A - TSA Enforcement Sanction Guidance Policy

Attachment B - Instructions for filing Notice of Appeal

APPENDIX B – Administrative Final Opinion

Before the
DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTSRATION

IN THE MATTER OF:
ROHAN RAMSINGH
Respondent

Docket Number:
20-TSA-0041

FINAL DECISION AND ORDER

Mr. Rohan Ramsingh (Respondent) appeals the Initial Decision of the Administrative Law Judge (ALJ) issued on March 4, 2021, holding that Respondent violated 49 C.F.R.§1540.109 and assessing a civil penalty in the amount of $680,00[1]. For the reasons set forth below, the appeal is denied and the Initial Decision is upheld.

Procedural History

On June 18, 2020, TSA filed a Complaint against Respondent alleging that he interfered with screening personnel in the performance of their duties in violation of 49 C.F.R. §1540.109 and assessed a civil penalty in the amount of $2,050. On July 16, 2020, Respondent filed a Motion to Dismiss for Insufficiency. On August 13, 2020, TSA filed a Response to the Motion to Dismiss. On September 10, 2020, the ALJ issued an Order Denying the Motion to Dismiss the Complaint for Insufficiency. On

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[1] TSA proposed a civil penalty of $2,050. The ALJ mitigated this penalty amountto $680.00.

September 20, 2020, Respondent submitted his Answers to the Complaint. On February 2, 2021, the parties filed cross Motions for Decision. On March 1, 2021, the parties filed replies in opposition to the other party's Motion for Decision, On March 4, 2021, the ALJ issued his Initial Decision granting TSA's Motion for Decision and Denying Respondent's Motion for Decision[2]. On March 4, 2021, Respondent filed a Notice of Appeal to the TSA Final Decision Maker

Standard of Review

TSA's rules of practice in a civil penalty case state that a party may appeal an Initial Decision to the TSA Decision Maker. 49 C.F.R. §1503.657(a). However, a party may appeal only the following issues: (1) whether each finding of fact is supported by a preponderance of theevidence; (2) whether each conclusion of the law is made in accordance with applicable law, precedent, and public policy; and (3) whether the ALJ committed any prejudicial errors during the hearing that support the appeal. 49 C.F.R. §1503.657(b).

Regulation in Question

The ALJ determined Respondent violated 49 C.F.R. §1540.109. The regulation states, "No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter."

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[2] No hearing was held on this matter. The AU decided the matter based on the record produced by the parties

49 C.F.R. §1540.109 was promulgated following the events of September 11, 2001. TSA made clear its interpretation of the interference when it published the regulation on February 22, 2002. The preamble to the Final Rule states:

"Section 1540.109 is a new requirement prohibiting any person from interfering with, assaulting, threatening, or intimidating screening personnel in the performance of their screening duties. This section was proposed in the January 2000 screening company NPRM and received no negative comments. The rule prohibits interference that might distract or inhibit a screener from effectively performing his or her duties." This rule is necessary to emphasize the importance to safety and security of protecting screeners from undue distractions or attempts to intimidate. Previous instances of such distractions have included verbal abuse of screeners by passengers and certain air carrier employees.

A screener encountering such a situation must turn away from his or her normal duties to deal with the disruptive individual, which may affect the screening of other individuals. The disruptive individual maybe attempting to discourage the screener from being as thorough as required. The screener may also need to summon a checkpoint screening supervisor and law enforcement officer, taking them away from other duties. Checkpoint disruptions potentially can be dangerous in these situations. This rule supports screeners' efforts to be thorough and helps prevent individuals from unduly interfering with the screening process. This rule does not prevent good-faith questions from individuals seeking to understand the screening of their persons or their

property. But abusive, distracting behavior, and attempts to prevent screeners from performing required screening, are subject to civil penalties under this rule.

67 Fed. Reg. 8340, 8344 (February 22, 2002)

The preamble also defines "Screening Function" as the inspection of individuals and property for explosives, incendiaries, and weapons.

ALJ Initial Decision.

The ALJ identified the relevant issues in the case as:

(1) Did Respondent's actions interfere with TSA screening personnel in the performance of their screening duties?

(2) Did Respondent's medical condition excuse non-compliance with TSA procedures to complete the screening process once it has begun aviation passenger screening?

Throughout their filings, to include their cross Motions for Decision and Respondent's Opposition to TSA's Motion for Decision, the parties have put forward different interpretations of the term " interference." Respondent, having entered the TSA checkpoint and presented himself for screening, alarmed the Explosive Trace Detection (ETD) test for possible explosives. In order to resolve this explosive alarm, TSA procedures require their officers to conduct a patdown of the person. Respondent argued that he did not refuse the pat-down, he was unable to comply. Respondent argued that his non-compliance resulted from a medical condition that prevented him from completing the screening process. He argued that he did not yell,

curse, threaten or touch anyone during this incident. He argued that the checkpoint remained open and passenger screening continued at all times. He did not create a spectacle that distracted passengers and no delays were caused. He argued that his non-compliance with the requirement to complete the screening process, without more, is not interference.

TSA argued that Respondent entered the airport security checkpoint and presented himself for screening. TSA argued that once the screening process has begun, individuals are required to complete the screening process. Respondent's hands alarmed for explosive trace materials. In order to clear that positive test for explosive material, TSA officers are required by procedure to conduct a pat down of the person that alarmed. TSA argued that Respondent refused to allow TSA to conduct the required pat-down following the positive test for explosives. TSA argued this refusal constituted interference with screening.

With regard to the first issue, the ALJ found that Respondent violated 49 C.F.R. §1540.109 which states: "No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter." The ALJ stated that Respondent voluntarily entered the TSA checkpoint and presented himself for screening, but he refused to complete the screening process. Respondent's refusal to complete the screening process interfered with TSA screening personnel in the performance of their duties.

With regard to the second issue, the ALJ found that once Respondent voluntarily began the screening process,

Respondent's medical conditions do not provide a defense to excuse his violation of the regulations. The ALJ did find that Respondent's medical conditions are matters to be considered in mitigating the proposed penalty. He considered that Respondent's medical issues played a role in his failure to comply with the screening requirements and mitigated the sanction imposed by TSA to $680.00.

Issues Decided by Final Decision Maker

This Final Decision is based upon findings on the following issues:

1. I find that the ALJ's findings of fact are supported by a preponderance of the evidence.

2. I find that the evidence demonstrates that Respondent interfered with TSA screening

personnel in the performance of their screening duties when he failed to comply with TSA requirements to resolve the alarm that occurred during Respondent's screening, thus he violated 49 C.F.R. §1540.109. I find this is in accordance with the applicable law, precedent, and public policy.

3. I find that while there was no hearing in this matter, the procedural process in this proceeding do not demonstrate any prejudicial error to support Respondent's appeal.

4. The assessment of a civil penalty in the amount of $680.00 is appropriate.

Findings

Finding 1

I find that each finding of fact by the ALJ is supported by a preponderance of the evidence. Following the party's filings of Cross Motions for Decision and their Replies in Opposition to the other party's Motion for Decision, the ALJ issued the Initial Decision which included the following findings of fact.

On November 23, 2019, Respondent entered the TSA checkpoint on Airside C at Tampa International Airport and presented himself and his accessible property for screening. After placing his accessible property on the X-ray unit, Respondent attempted to go through the Walk Through Metal Detector (WTMD), however he was directed by a TSO to proceed through the Advanced Imaging Technology (AIT) machine. Respondent informed the TSO he could not lift his arms and the TSO directed him to go through the WTMD. As part of this screening, the TSO.conducted an Explosive Trace Detection (ETD) test of Respondent's hands. The ETD test of Respondent's hands alarmed positive for possible components of explosives and the TSO requested the assistance of a supervisor. Two supervisory TSOs (STSO) responded and determined that TSA procedure required ETD testing of Respondent's accessible property and a pat-down of his person to clear the alarm. A STSO informed Respondent that TSA procedures dictated that a pat-down search was necessary to resolve the positive ETD alarm. Respondent declined the pat-down search. The STSO offered to Respondent to conduct the pat-down search in a more private area of the checkpoint. Respondent continued to

decline submitting to a patdown search due to his medical condition. Respondent informed the STSOs that he has a diagnosis of Post-Traumatic Stress Disorder (PTSD) resulting from military service. The STSO continued to request Respondent complete the pat-down with private screening and Respondent continued to decline and stated that he "could just leave" and "you can't detain me." The STSO informed Respondent that if he continued to refuse to complete the pat-down, TSA would have to call the police for assistance on the scene. Respondent replied, " fine call them." Respondent continued to refuse to allow a pat-down and was eventually escorted away from the checkpoint by Tampa Airport Police. Respondent's behavior required additional TSA employees to respond to the scene and spend time addressing his refusal to complete screening. Respondent's behavior at the checkpoint did not cause delay in the screening process at the TSA checkpoint.

The ALJ in his Initial Decision indicated that each party separately asserted 4"undisputed facts." Despite each party asserting some facts that may differ from those asserted by the other party, the ALJ determined that the alleged factual differences are not material and not necessary in reaching a decision in this matter. TSA in their appeal brief does not dispute any of the ALJ's undisputed findings of fact. Respondent writes in his appeal brief, "The administrative law court found it as undisputed that this constituted Ramsingh " declin[ing]" and refus[mg,]' although Ramsingh explicitly disputed

this in his opposition."[3]This statement refers to the ALJ's finding that Respondent did in fact reRise the pat-down search required to complete the screening process; Undisputed Facts 8, 9, 11, 12.4[4] Respondent argues that just as one would not say that a paraplegic " refused" to stand, Respondent did not " refuse" , but was unable to comply. The evidence, as cited to in the record by the ALJ, supports that Respondent refused and continued to refuse the pat-down search required to clear the positive test for explosive materials. It was admitted that, "'Respondent refused the private screening and continued to refuse to submit to the pat-down stating he "could just leave' and "you can't detain me."[5] Respondent, by his own admission, refused and continued to refuse the pat-down search required to complete the screening process. Accordingly, each finding of fact by the ALJ is supported by a preponderance of the evidence.

Finding 2

The ALJ's conclusions of law were made in accordance with applicable law, precedent, and public policy.

Discussion of Respondent's Issues on Appeal

Respondent's position throughout, from his Motion for Decision to his Appeal Brief has been that mere non-compliance, without more, does not give liability to

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[3] Appeal Brief of Respondent-Appellant Rohan Ramsingh, p.2

[4] Order GrantingTSA's Motion For Decision and Denying Respondent's Motion For Decision, p.3

[5] SA's Motion For Decision, Exhibit 7, Respondent's Response to RequestforAdmission, Number4

interference Respondent argues that his noncompliance is not interference if he was not yelling, using profanity, being belligerent or otherwise disruptive and the checkpoint did not need to be shut down or even slowed down screening for any other traveler. Respondent argues that even if it is found that he interfered with the screening process, his medical conditions made it impossible for him to comply with the requirement to complete screening thus absolving him of liability.

Respondent argues that every English speaker understands that interference requires some kind of action taken to hinder something else. Likewise, he argues that no English speaker would think that refusing to do something could possibly constitute interference.

In support of these claims, he cites to District of Columbia v. Little, 339 U.S. 1 (1950). The Court found that the word interfere in this housing regulation cannot be fairly interpreted to encompass the homeowner's failure to unlock her door and her remonstrances on Constitutional grounds. This case dealt with a regulation that made it a crime to interfere with housing inspectors charged with inspecting homes. The homeowner in that case refused to consent to the

inspectors search of her home, telling the officers, who had no warrant, not to enter her home (remonstrances) and refused to unlock her door. The homeowner was found guilty of a misdemeanor crime. The Little Court wrote that the housing regulation in question did not even prohibit hindering or refusing to permit any lawful inspection.

Unlike, the housing regulation in Little, the Preamble to §1540.109 does elaborate on interference, the regulation prohibits interference that might distract or inhibit a screener from effectively performing his or her duties, (emphasis added). Respondent argues that interference requires some kind of action taken to hinder something else and that the Agency's torture of the English language is due no deference. Citing Perrin v. United States, 444 U.S. 37, 42 (1979)

Respondent argues there is no ambiguity to the meaning of " interfere" and that unless otherwise defined, words will be interpreted as taking their common meaning. In U.S. v. Wilfong, 274 F.3d 1297, 1301 (9th Cir.2001) the Ninth Circuit interpreted the common meaning of interference referencing Webster's New World Dictionary 704 (3d College ed.1998); to interfere is to oppose, intervene, hinder, or prevent. The Ninth Circuit determined that interference has such a

clear, specific and well-known meaning as to not require more than the use of the word itself in a statute. TSA in the Preamble to §1540.109 does elaborate on interference, the rule prohibits interference that might distract or inhibit a screener from effectively performing his or her duties. Inhibit and hinder are synonyms.[6] In addressing potential violations of §1540.109, the Sixth Circuit has stated that by using the term interfere, §1540.109 prohibits only that conduct which poses an actual hindrance to the accomplishment of a specified task.

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[6] "Hinder."Merriam-Webster.com Thesaurus. Merriam-Webster. https://www.merriam-webster.com/thesaurus/hinder . Accessed 19 Jun. 2021.

Rendon v. Transportation Security Administration, 424 F.3d 475, 480 (6th Cir. 2005). In the Preamble to §1540.109, TSA further identifies interference as those situations where,'The screener may also need to summon a checkpoint screening supervisor and law enforcement officer, taking them away from other duties."[7] The Preamble to §1540.109 also indicates, "This rule supports sereoners' efforts to be thorough and helps prevent individuals from unduly interfering with the screening process."[8] Due to Respondent's refusal to complete the screening process, law enforcement officers were called to respond to the checkpoint. Respondent's refusal to complete the screening process prevented TSA from thoroughly performing their duties to clear Respondent's positive alarm for explosives.

The ALJ found that the plain meaning of the word "interfere" supports TSA's position that refusal to complete the screening process that is already underway constitutes interference. I find the ALJ's determination that despite Respondent's alternative understanding of interference, the meaning of the word interference is clear and unambiguous and the common meaning of the word, as discussed above, applies to the case at hand. Respondent's refusal to complete the screening process clearly and unambiguously, interfered with and inhibited the screeners from resolving the positive test for explosives and completing^ the screening process.

Respondent concludes his argument on interference noting TSA demanded a search that was more invasive

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[7] 67 Fed . Reg. 8340, 8344(February22, 2002)
[8] Id.

than Respondent-Appellant had contemplated when he entered the checkpoint queue. Respondent argues although TSA enjoys the platitude that one who enters a checkpoint has agreed to participate in the search process, given that TSA refuses to disclose in advance the nature of the search it intends to conduct the idea that consent or agreement to participate has been given is but a farce.

Respondent may believe that TSA's regulations and policies regarding participating and completing security screening are a farce, but they are the law. Citing the Fifth Circuit, the ALJ discussed the importance of completing the screening process once it had begun:

Such an option would constitute a one-way street for the benefit of a party planning airplane mischief, since there is no guarantee that if he were allowed to leave he might not return and be more

successful. Of greater importance, the very fact that a safe exit is available if apprehension is threatened, would, by diminishing the risk, encourage attempts.

United States v Skipwith, 482 F.2d 1272, 1281 (5th Circuit 1973)

Citing the Ninth Circuit, the ALJ discussed that the airport screening search does not depend on consent but is an administrative search.

[R]evoke consent to an ongoing airport search makes little sense in a post 9/11 world. Such a rule would afford terrorists multiple opportunities to attempt to penetrate airport security by "electing not to fly" on the cusp of detection until a vulnerable portal is found This rule

would also allow terrorists a low-cost method of detecting systemic vulnerabilities in airport security, knowledge that could be extremely valuable in planning future attacks. . . .

Rather, where an airport screening search is otherwise reasonableand conducted pursuant to statutory authority, 49 U.S.C. § 44901, all that is required is the passenger's election to attempt entry into the secured area of an airport. Under current TSA regulations and procedures, that election occurs when a prospective passenger walks through the magnetometer or places items on the conveyor belt of the x-ray machine, (citations omitted)

United States v. Aukai 497 F.3d 955, 960-961 (9th Cir. 2007) (en banc)

Skipwith and Aukai highlight the importance that once an individual elects to begin the screening process, that process has to be completed. The Eleventh Circuit has also spoken to the interplay between the AIT technology and the secondary pat-down as part of the procedures put into place given the threat and improving security.

The [TSA] Administrator, in conjunction with the Director of the Federal Bureau of Investigation, must assess current and potential threats to the domestic air transportation system and take necessary actions to improve domestic air transportation security. . . . The procedure requires the use of advanced imaging technology scanners as the primary screening method at airport checkpoints. If a passenger declines the scanner or alarms a metal detector or scanner during the primary

screening method, he receives a patdown instead, (citations omitted)

Corbett v. Transportation Security Administration, 767 F.3d 1171, 1174 (11th Cir. 2014)

Metal detectors cannot alert officers to nonmetallic threat items or nonmetallic explosives, and the United States enjoys flexibility in selecting from among reasonable alternatives for an administrative search. Id. at 1181. The Corbett court acknowledged that a full-body pat-down intrudes on privacy, but the security threat outweighs that invasion of privacy. They found airport screening is a permissible administrative search; security officers search all passengers,

abuse is unlikely because of its public nature, and passengers elect to travel by air knowing they must undergo a search. Id. citing U.S. Hartwell 436 F.3d 174, 180 (3rd Cir 2006).

The record supports that Respondent understood that when he came to the airport he would have to go through the screening checkpoint.[9] Respondent answered that he uses airports often, a minimum of six times a year and that he previously agreed to a pat-down and that he remembered shaking and crying when the TSA person got near his groin area.[10] I find that the ALJ has correctly applied the law and facts of the case in determining that the Respondent voluntarily elected entry into the security checkpoint and began the security screening process. In

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[9] Complainant's Responseto Respondent' Motionfor Decision, Exhibit 1.

[10] Id . at Exhibit 15, p.2 and p.6, Respondent's

making his election to begin the screening process, the Respondent has used airports often and has previously been patted down. Respondent chose (volitional act) not to finish the screening process after he had alarmed positive for explosives and that this interfered and inhibited the security officers in the performance of their duties.

Respondent also argues that even if interference could be accomplished passively, he challenges TSA's position that no intent is required to violate this regulation. Respondent cites Morissette v. United States, 342 U.S. 246, 252 (1952) for the notion that some level of intent is required in this case. Morissette does not hold such. The issue in Morissette was not whether a governmental regulation required intent, nor was the issue concerning the level of intent a

government regulation requires. Morissette involved a theft, an "infamous" crime and not an administrative security regulation. The issue was whether the trial court erred when it took the ultimate finding of guilt or innocence away from the finder of fact (jury). However, Morrissette does analyze the levels of intent which are instructive to the case at bar.

While many of these duties are sanctioned by a more strict civil liability, lawmakers, whether wisely or not, have sought to make such regulations more effective by invoking criminal sanctions to be applied by the familiar technique of criminal prosecutions and convictions. This has confronted the courts with a multitude of prosecutions, based on statutes or administrative regulations, for what have been aptly called 'public welfare offenses.' These cases do not fit neatly into any of

such accepted classifications of common-law offenses, such as those against the state, the person, property, or public morals. Many of these offenses are not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty. Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their

occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted. In this respect, whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity. Hence, legislation applicable to such offenses, as a matter of policy, does not specify intent as a necessary element. The accused, if he does not will the violation, usually is in a position to prevent

it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities. Also, penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation. Under such considerations, courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime. This has not, however, been without expressions of misgiving.

The pilot of the movement in this country appears to be a holding that a tavern keeper could be convicted for selling liquor to a habitual drunkard even if he did not know the buyer to be such. Later came Massachusetts holdings that convictions for selling adulterated milk in violation of statutes forbidding such sales require no allegation or proof that defendant knew of the adulteration. Departures from the common-law tradition, mainly of these general classes, were reviewed and their rationale appraised by Chief Justice Cooley, as follows: 'I agree that as a rule there can be no crime without a criminal intent, but this is not by any means a universal rule. Many statutes which are in the nature of police regulations, as this is, impose criminal penalties irrespective of any intent to violate them, the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible.

After the turn of the Century, a new use for crimes without intent appeared when New York enacted numerous and novel regulations of tenement houses, sanctioned by money penalties. Landlords contended that a guilty intent was essential to establish a violation. Judge Cardozo wrote the answer: 'The defendant asks us to test the meaning of this statute by standards applicable to statutes that govern infamous crimes. The analogy, however, is deceptive. The element of conscious wrongdoing, the guilty mind accompanying the guilty act, is associated with the concept of crimes that are punished as infamous. Even there it is not an invariable element. But in the prosecution of minor offenses there is a wider range of practice and of power. Prosecutions for petty penalties have always constituted in our law a class by

themselves. That is true, though the prosecution is criminal in form.

Soon, employers advanced the same contention as to violations of regulations prescribed by a new labor law. Judge Cardozo, again for the court, pointed out, as a basis for penalizing violations whether intentional or not, that they were punishable only by fine 'moderate in amount', but cautiously added that in sustaining the power so to fine unintended violations 'we are not to be understood as sustaining to a like length the power to imprison. We leave that question open.

Thus, for diverse but reconcilable reasons, state courts converged on the same result, discontinuing inquiry into intent in a limited class of offenses against such statutory regulations. (Citations omitted)

Morissette v. United States, 342 U.S. 246, 254-58, 72 S. Ct. 240, 245-47, 96 L. Ed. 288 (1952)

A full reading of Morissette does not support Respondent's argument, rather it supports TSA's position that 49 C.F.R. §1540.109 properly prohibits Respondent's actions or inactions in this case. The Morissette Court discusses an increasingly complex and dangerous world calling for detailed regulations meant to affect public health, safety, and welfare. The Court notes that many violations of such regulations do not result in immediate injury to person or property but they do create the danger or probability of the immediate injury which the regulation seeks to minimize. The Court notes that whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity. The Court explains

that legislation applicable to such offenses, as a matter of policy, does not specify intent as a necessary element. The ALJ's analysis of the facts of the case and legal analysis properly determined that no intent is required to violate 49 C.F.R. §1540.109. This regulation is meant to protect the safety and security of the flying public; not just from immediate injury, but also the danger or probability of harm that the regulation seeks to minimize. This is why 49 C.F.R. §1540.109 does belong to aclass of regulations where intent is not required.

Respondent next argues that even if intent is not required there must still be a volitional act In support of this argument, he cites to U.S, v McDonald, 592 F.3d 808,814 (7th Circuit 2010). His reliance hinges on the McDonald Court's discussion that the act of sexual intercourse or contact must be volitional (the perpetrator intended to have sex with the victim), but that there is no intent or mens rea requirement with regard to mistake or misrepresentation of the victims age or the consent of the victim. This case involves the Armed Career Criminal Act (ACAA), a guilty plea to possessing a firearm as a felon, and a conviction for sexual assault of a child and not an administrative security regulation. The McDonald Court looked at whether a strict liability crime constituted a " crime of violence" under the US Sentencing Guidelines. The Court did discuss various levels of intent for criminal activity. It also recognized there are such crimes as driving under the influence which impose strict liability where the offender need not have had any criminal intent at all, nor any purposeful intent, i.e. volition. Similarly, this is why 49 C.F.R. §1540.109 does belong to a class of regulations where intent is not required.

Respondent also argues that even absent an intent requirement, there must be a volitional act and Respondent did not engage in a volitional act, he cites to Haas v. Lavin, 625 F2d. 1384, 1386 n.2 (10th Cir. 1980). This case involves trespass between farmers where one farmer was negligent in tilling his land thereby causing dirt and dust to blow onto his neighbor's propcity. Respondent references a footnote discussing that as long as the invasion (trespass) was due to a volitional act there was a wrong. This footnote cited by Respondent reads, " If, however, there was no act of volition by the actor, he was not liable, as where one is cast [thrown] on another's property by a third party." I find that the ALJ properly concluded that Respondent, by his own volition, elected entry into the security checkpoint and began the security screening process. In making his election to begin the screening process, the record of the case shows that Respondent.has used airports often and has previously been patted down. I find that the ALJ properly concluded that Respondent elected (volitional act) to enter the security screening process, he alarmed positive for explosives, he was informed in order to resolve the alarm he would be required to submit to a pat-down and he refused (volitional act) to get patted down and not complete the screening process.

Without reference to any applicable law, Respondent argues that his medical condition excuses his non-compliance or interference with TSA procedures to complete the screening process once it has begun aviation passenger screening. Referencing the First Circuit, the ALJ reasoned that the fact that an individual had a medical issue did not negate the requirement for the

individual to complete screening. Ruskai v. Pistole, 775 F.3d 63, 71 (1st Cir. 2014).

Referencing the First, Fifth, and Ninth Circuits, the ALJ properly referenced the law and the policy reasons put forth by those Courts for the requirement to complete the security screening process. Ruskai, Skipwith, Aukai. Respondent had already declined the AIT scanner because of one medical condition; he was unable to raise his arms as required by the technology. If an individual declines the scanner and then alarms the WTMD, or tests positive for explosives on

the ETD, the individual must receive a pat-down in order to clear the alarm and complete the screening process. Metal detectors cannot alert officers to nonmetallic threat items or nonmetallic explosives, and while the ETD test for the presence of explosives, a positive test for explosive requires a full-body pat-down to clear the threat. Respondent claims that his medical conditions prevent him from being screened through either the AIT machine or by participating

in a pat-down to resolve an alarm. Thus, the only screening Respondent says he is able to complete is the WTMD and the ETD test for explosives, provided he does not alarm either, because an alarm of either then requires a pat-down. If he alarms either of those he wants to be able to just refuse the rest of screening and walk out of the checkpoint without completing the screening procedure. Respondent's only option would take us back to pre-9/11. Respondent in

this case tested positive for explosives. Respondent's position is precisely the challenge the Ruskai Skipwith and Aukai Courts highlighted in ruling that once an individual elects to begin the screening process, that process has to be completed. What Respondent seeks would require a fundamental change to TSA's security program, a change that would adversely affect TSA's ability to protect the aviation system.

Respondent indicates at the time of his refusal, he offered TSA several alternative solutions to the complete the screening process including: a pat-down that did not include the groin area, going through the AIT machine again and trying to lift his arms to comply.[11] Neither of these alternatives are possible options to resolve his positive test for explosives. TSA did offer Respondent a private screening to resolve the alarm; Respondent refused that offer. Respondent indicates he gave thought to this option, but even if he did not freak out (respond negatively to the pat-down) TSA could say anything to get him in trouble and there would be no cameras in the private screening room to protect him.[12] Respondent also indicates that he would like TSA to look at creating a program where individuals could bring proof of their medical conditions which would allow them to skip these parts of the security process. The First Circuit

has already rejected an individual's proposal of presenting medical documentation as proof that somehow an individual was not a threat. The Court noted the security risks to such a proposal are obvious. Ruskai, supra. at 72.

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[11] Id . at Exhibit 15, p.2 and p.6, Respondent's

[12] Id.

Again, what Respondent seeks would require a fundamental change to TSA's security program, a change that would adversely affect TSA's ability to protect the aviation system. I find that he ALJ's conclusions of law were made in accordance with

applicable law, precedent, and public policy.

Finding 3

I find that while there was no hearing in this matter, the ALJ's analysis of the facts and conclusions of law, and procedural process in this proceeding do not demonstrate any prejudicial error to support Respondents appeal.

Finding 4

I find that the ALJ's assessment of a civil penalty in the amount of $680.00 is appropriate.

Final Decision and Order

Based on the foregoing, Respondent's appeal is rejected. The ALJ's finding that Respondent violated 49 C.F.R. §1540.109 is upheld.

Under TSA's rules of practice, either party may petition the TSA Decision Maker to reconsider or modify a Final Decision and Order, The rules of practice for filing a Petition for Reconsideration are described at 49 C.F.R. §1503.659. A party must file the petition with the TSA Enforcement Docket Clerk not later than 30 days after service of the TSA Decision Maker's Final Decision and Order and serve a copy of the petition on all parties. A party may seek judicial review of the Final Decision and Order as provided in 49 USC §46110.

STACEY D FITZMAURICE

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Date: 2021.06.22 11:59:26

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Stacey Fitzmaurice

Senior Official Performing the Duties of the Deputy Administrator and

TSA Decision Maker

APPENDIX C – D.C. Circuit Panel Opinion

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Rohan Ramsingh

v.

Transportation Security Administration

Jul 15, 2022

No. 21-1170

Rohan RAMSINGH, Petitioner v. TRANSPORTATION SECURITY ADMINISTRATION, Respondent

Jonathan Corbett argued the cause and filed the briefs for petitioner. Kyle T. Edwards, Attorney, U.S. Department of Justice, argued the cause for respondent. With her on the brief were Brian M. Boynton, Acting Assistant Attorney General at the time the brief was filed, and Sharon Swingle, Attorney.

Before: Rogers, Millett, and Katsas, Circuit Judges.

Millett, Circuit Judge: Shortly before Thanksgiving 2019, Rohan Ramsingh, an Army veteran, arrived at the Tampa International Airport to pick up two of his children who were visiting for the holiday. After a swab of Ramsingh's hands tested positive for traces of explosive material, screening personnel from the Transportation Security Administration attempted to perform a full-body pat-down. Citing medical reasons, Ramsingh repeatedly refused to be patted down and was subsequently escorted away from the checkpoint by law enforcement.

The agency assessed Ramsingh a civil penalty for "interfer[ing] with * * * screening personnel in the performance of their screening duties[.]" 49 C.F.R. § 1540.109.

Ramsingh petitioned this court to overturn the penalty on the ground that his refusal to submit to a pat-down, particularly in light of his medical justifications, did not constitute interference under the regulation. Because, on the record in this case, the agency lawfully applied its interference regulation to Ramsingh's conduct, we deny the petition for review.

I

A

Congress has charged the Transportation Security Administration ("TSA") with "safeguard[ing] this country's civil aviation security and safety." Corbett v. TSA , 19 F.4th 478, 480 (D.C. Cir. 2021). The agency has "broad authority" to "identify 'threats to transportation' and take the appropriate steps to respond to those threats." Id. at 480, 486 (quoting 49 U.S.C. § 114(f)(2), (3)).

As relevant here, Congress directed the TSA to "provide for the screening of all passengers and property * * * that will be carried aboard a passenger aircraft[.]" 49 U.S.C. § 44901(a). To that end, TSA promulgated a regulation stating that "[n]o individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property[.]" 49 C.F.R. § 1540.107(a). The "sterile area" is the "portion of an airport * * * that provides passengers access to boarding aircraft and to which the access generally is controlled by

TSA[.]" Id. § 1540.5. Individuals and their property are inspected for, among other things, "weapons, explosives, and incendiaries." Id.

TSA regulations specify that "[n]o person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties[.]" 49 C.F.R. § 1540.109. The aim of Section 1540.109 is to "prohibit[ ] interference that might distract or inhibit a screener from effectively performing his or her duties." Civil Aviation Security Rules, 67 Fed. Reg. 8,340, 8,344 (Feb. 22, 2002). TSA explained that "[t]his rule is necessary to emphasize the importance to safety and security of protecting screeners from undue distractions or attempts to intimidate." Id. "[A]busive, distracting behavior, and attempts to prevent screeners from performing required screening, are subject to civil penalties[.]" Id.

Interference with security personnel that rises to the level of assault is also subject to criminal penalties under 49 U.S.C. § 46503.

B

To ensure that all individuals are fully screened before gaining access to the boarding area, TSA relies on a combination of walk-through metal detectors, Advanced Imaging Technology ("AIT") machines, explosive trace detection tests, and pat-downs. AIT machines can screen for both metallic and non-metallic threats, addressing "a critical weakness in aviation security" that existed when only metal detectors were used. Passenger Screening Using Advanced Imaging Technology, 81 Fed. Reg. 11,364, 11,365 (March 3, 2016). While AIT machines have become

standard in airports across the United States, "[p]assengers generally may decline AIT screening and opt instead for a pat-down." Id.

Other circumstances in which a passenger may be required to undergo a pat-down include "if the screening technology alarms, as part of unpredictable security measures, [or] for enhanced screening[.]" Security Screening , TSA, https://www.tsa.gov/travel/security-screening (last accessed July 7, 2022) ("Pat-Down Screening" drop-down box). A pat-down "may include inspection of the head, neck, arms, torso, legs, and feet[,]" as well as "sensitive areas such as breasts, groin, and the buttocks." Id.

TSA provides limited screening accommodations for those with disabilities and medical conditions, but the agency emphasizes that persons with such conditions must also "undergo screening at the checkpoint." Disabilities and Medical Conditions , TSA, https://www.tsa.gov/travel/special-procedures (last accessed July 7, 2022).

TSA requires that once an individual has begun the screening process, he or she must complete it. See Appendix ("A.") 63–64, 86, 88, 205–206, 290, 296; see also 81 Fed. Reg. at 11,385. Individuals are not allowed to leave partway through. After all, permitting an individual "to revoke consent to an ongoing airport security search makes little sense in a post-9/11 world." United States v. Aukai , 497 F.3d 955, 960 (9th Cir. 2007) (en banc); see A. 296. Letting individuals self-select out of the process once faced with additional screening, in particular, "would afford terrorists multiple opportunities to attempt to penetrate airport security by 'electing not to fly' on the cusp of detection until

a vulnerable portal is found[,]" and would supply terrorists with a "low-cost method of detecting systematic vulnerabilities in airport security, knowledge that could be extremely valuable in planning future attacks." Aukai , 497 F.3d at 960–961 (footnote omitted).

II

A

On November 23, 2019, Ramsingh arrived at the Tampa International Airport, along with his girlfriend and child, to pick up Ramsingh's other two minor children who were arriving unaccompanied on a flight from Houston. After receiving gate passes from the airline, they entered the security checkpoint. When Ramsingh attempted to proceed through the walk-through metal detector, Transportation Security Officer Julio Melendez Ortiz instructed him to go through the AIT machine instead. Ramsingh stated that, due to a shoulder injury incurred during military service, he could not lift both arms above his head, as required by the AIT machine. Officer Melendez Ortiz then permitted Ramsingh to use the walk-through metal detector.

TSA procedures require that a traveler who declines AIT screening undergo an explosive trace detection test, so Officer Melendez Ortiz swabbed Ramsingh's hands. See A. 83 (TSA officer stating in an affidavit that "the passenger opted out of the AIT screening," so "his hands were [explosive trace detection tested] pursuant to policy"); A. 204 ("TSA Standard Operating Procedures * * * required that [Ramsingh] receive an Explosive Trace Detection * * * test on his hands."). The test came back positive for possible

components of explosives, which prompted Officer Melendez Ortiz to notify his supervisor.

Supervisory Transportation Security Officer Tiffany Pagan informed Ramsingh that TSA would need to conduct a full-body pat-down and further screening of his property to clear the positive explosives alarm. Ramsingh objected to the pat-down, explaining that he suffers from Post-Traumatic Stress Disorder and Military Sexual Trauma, conditions which would be triggered by a full-body pat-down. Officer Pagan then asked one of her male colleagues, Supervisory Transportation Security Officer Robert McClelland, to assist. While acknowledging Ramsingh's medical concerns, Officer McClelland insisted that there was "no alternative" to a pat-down for resolving an explosive trace detection alarm. A. 83. Ramsingh continued to refuse. Officer McClelland next offered to conduct the pat-down in a private or less crowded area of the checkpoint, but Ramsingh declined.

At some point, Ramsingh indicated that he did not wish to continue with the screening process, stating "I can just leave" and "you can't detain me." A. 83. Officer McClelland acknowledged that TSA could not detain him but advised Ramsingh that if he did not comply with required screening procedures, TSA would have to call law enforcement to the checkpoint. Ramsingh replied "fine, call them." A. 83. The Transportation Security Manager and another officer subsequently arrived at the checkpoint, but they too were unable to convince Ramsingh to submit to a full-body pat-down.

Approximately twenty minutes after the encounter between Ramsingh and TSA personnel began, law enforcement officers arrived and peaceably escorted Ramsingh away from the checkpoint. In the meantime, Ramsingh's girlfriend had picked the arriving children up from their flight.

B

1

TSA does not dispute the legitimacy of Ramsingh's medical conditions and acknowledges that Ramsingh communicated those medical conditions to the TSA officers on the scene. Nevertheless, in May 2020, TSA charged Ramsingh with violating 49 C.F.R. § 1540.109 's prohibition on interfering with security personnel and sought a civil penalty of $2,050.

Ramsingh requested a formal hearing before an Administrative Law Judge ("ALJ"). The ALJ upheld the civil penalty, finding that Ramsingh "refused to allow a pat-down search to complete screening," A. 250, and that "TSA's interpretation of its regulations—that once an individual begins the screening process at the airport, a refusal to complete the screening process constitutes 'interference' with the screener's performance of his/her screening duties"—was "reasonable[,]" A. 256–257.

The ALJ also ruled that Ramsingh's medical conditions did not excuse his noncompliance. The ALJ explained that the security interests served by uniformly requiring travelers to complete screening once the process has begun outweighed Ramsingh's medical concerns, especially because Ramsingh made a "voluntar[y]" choice to initiate

the screening process, knowing "that he may be subject to a pat[-]down[.]" A. 256.

While Ramsingh's medical conditions did "not provide a valid defense[,]" the ALJ "considered [them] in mitigation[,]" along with Ramsingh's lack of prior violations, and reduced the penalty to $680. A. 256.

2

Ramsingh took an administrative appeal, and the TSA affirmed.

The TSA first concluded that the ALJ's findings of fact were supported by a preponderance of the evidence. Ramsingh disputed that he had "refused" the pat-down, arguing that "[j]ust as one would not say that a paraplegic 'refused' to stand, [he] did not 'refuse,' but was unable, to comply." A. 263 (citation omitted). The TSA rejected that argument, pointing out Ramsingh's admission before the ALJ that he had "refused the private screening and continued to refuse to submit to the pat-down[.]" A. 293 (citation omitted).

Next, the TSA affirmed the ALJ's legal conclusion that Ramsingh "interfere[d]" with screening personnel in violation of 49 C.F.R. § 1540.109. The agency ruled that both the plain meaning of the word "interfere" and the purpose of the regulation capture Ramsingh's "refusal to complete the screening process[.]" A. 295. That is because his noncompliance "inhibited the screeners from resolving the positive test for explosives and completing the screening process[,]" and so "prevented TSA [officers] from thoroughly performing their duties[.]" A. 295.

Ramsingh argued that the ALJ erred because Section 1540.109 requires an intentional mens rea . The TSA disagreed, explaining that Section 1540.109 qualifies as a public welfare regulation designed "to protect the safety and security of the flying public[,]" and so no mens rea is necessary. A. 299–300.

At a minimum, Ramsingh insisted, the regulation requires a volitional act, and failing to comply on the basis of medical inability cannot be considered volitional. The TSA disagreed, concluding that Ramsingh engaged in a volitional act by entering the security screening process with knowledge that he might be required to undergo a pat-down, and another volitional act by refusing to be patted down after he tested positive for potential explosives.

With respect to the ALJ's conclusion that Ramsingh's medical conditions did not excuse his interference, the TSA determined that precedent and policy justifications support requiring an individual who begins the screening process to complete it or else be found liable for interference, regardless of the reason for failure to comply. A rule to the contrary, TSA concluded, would "require a fundamental change to TSA's security program * * * that would adversely affect TSA's ability to protect the aviation system." A. 301.

Finally, the TSA agreed that a $680 penalty was appropriate.

Ramsingh has not independently challenged the size of the fine. See Oral Arg. Tr. 12:15–18 ("You haven't independently challenged a sizable fine?" "It's not the size of the fine that's the issue here, no.").

Ramsingh filed a timely petition for review in this court.

III

This court has jurisdiction over Ramsingh's petition for review under 49 U.S.C. § 46110.

In reviewing a petition under Section 46110, we uphold the agency's decision unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[,]" 5 U.S.C. § 706(2)(A), or unsupported by "substantial evidence," 49 U.S.C. § 46110(c) ; see Suburban Air Freight, Inc. v. TSA , 716 F.3d 679, 681 (D.C. Cir. 2013). The arbitrary and capricious standard is "deferential[,]" merely requiring that the agency action be "reasonable and reasonably explained." POET Biorefining, LLC v. EPA , 970 F.3d 392, 409 (D.C. Cir. 2020) (citation omitted).

IV

Ramsingh argues that TSA erred by concluding that (1) he violated 49 C.F.R. § 1540.109 's prohibition on interference merely by failing to comply with the required screening procedures, and (2) his bona fide medical conditions did not excuse noncompliance.

A

1

The central question raised by Ramsingh in this case is whether the TSA reasonably concluded that his refusal to submit to a full-body pat-down after voluntarily entering a screening area "interfere[d]" with the TSA's screening process, within the meaning of 49 C.F.R. § 1540.109. The TSA's conclusion that such interference occurred was

adequately reasoned and supported by substantial evidence. In so holding, we need not accord deference to TSA's interpretation of its regulation under Kisor v. Wilkie , —— U.S. ——, 139 S. Ct. 2400, 204 L.Ed.2d 841 (2019), because, after "exhaust[ing] all the 'traditional tools' of construction[,]" we conclude that the regulation is not "genuinely ambiguous," id. at 2415 (quoting Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc. , 467 U.S. 837, 843 n.9, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)).

TSA regulations do not define "interfere," so we begin with the "ordinary, contemporary, common meaning" of the term. Williams v. Taylor , 529 U.S. 420, 431, 120 S.Ct. 1479, 146 L.Ed.2d 435 (2000) (citation omitted). Webster's New International Dictionary defines "interfere" as "to come in collision[,]" "to be in opposition[,]" and "to run at cross-purposes[.]" Interfere , WEBSTER'S NEW INT'L DICTIONARY 1178 (def. 2) (3d ed. 2002); see also Interfere , WEBSTER'S NEW COLLEGE DICTIONARY 578 (def. 1) (2d ed. 1999) (defining "interfere" as "[t]o come between so as to be an impediment"); Interference , BLACK'S LAW DICTIONARY 818 (def. 2) (7th ed. 1999) (defining "interference" as "[a]n obstruction or hindrance"). Common synonyms for "interfere" include "impede, obstruct, stand in the way of, hinder, * * * [and] hamper." Interfere , THE OXFORD AMERICAN WRITER'S THESAURUS 490 (def. 1) (2004) (formatting modified).

In the same vein, this court has recently defined the "ordinary meaning" of interfere as "to interpose in a way that hinders or impedes: comes into collision or be in opposition." Judge Rotenberg Educ. Ctr., Inc. v. FDA , 3 F.4th 390, 396 (D.C. Cir. 2021) (quoting Interfere ,

Merriam-Webster.com, https://www.merriam-webster.com/dictionary/interfere (last accessed July 7, 2022)). And in a case interpreting Section 1540.109 itself, the Sixth Circuit defined the term "interfere" in the regulation as to engage in "conduct which poses an actual hindrance to the accomplishment of a specified task." Rendon v. TSA , 424 F.3d 475, 480 (6th Cir. 2005) (internal quotation marks and citation omitted).

Given that established meaning, the TSA logically concluded that Ramsingh's conduct interfered with TSA personnel engaged in screening operations. TSA policy requires that whenever an individual triggers a positive explosives alarm, he or she must undergo a full-body pat-down. Ramsingh's repeated resistance to being patted down was "in opposition" to and "r[a]n at cross-purposes" with that policy. Interfere , WEBSTER'S NEW INT'L DICTIONARY , supra . Likewise, his insistence on leaving the checkpoint rather than undergo the pat-down "hinder[ed]" and "impede[d]," Judge Rotenberg Educ. Ctr. , 3 F.4th at 396 (citation omitted), the TSA officers' ability to enforce the requirement that a person who begins screening must see the process through, a policy that TSA has determined to be necessary for maintaining aviation security.

To be sure, Section 1540.109 also covers conduct more aggressive or actively disruptive than Ramsingh's. For instance, the regulation's preamble cites "[p]revious instances" of "verbal abuse of screeners by passengers[.]" 67 Fed. Reg. at 8,344. In Rendon , the petitioner behaved in a "loud and belligerent" manner at a checkpoint, yelling profanities at the TSA officer. 424 F.3d at 477, 479.

Similarly, in In the Matter of John Brennan , 12-TSA-0092 (Sept. 18, 2014), aff'd 691 F. App'x 332 (9th Cir. 2017), when Brennan tested positive for explosives, he stripped naked at the checkpoint and refused to put his clothes back on, requiring TSA employees to close the checkpoint and move bins around to block the public's view, id. at 1–2.

Ramsingh did not physically assault or threaten anyone, yell, use profanity, behave in a belligerent manner, or remove his clothing. Nor did his resistance to the pat-down necessitate closing the checkpoint or cause delays in the screening of other passengers at that checkpoint. But even acknowledging Ramsingh's more mild-mannered behavior, TSA reasonably concluded that Ramsingh nonetheless prevented TSA officers from completing their required screening duties. That was the crux of the interference findings in Rendon and Brennan , and was at the heart of the finding of interference by the TSA here. See Rendon , 424 F.3d at 479 (holding that, whatever Rendon's First Amendment interests, he directly "interfered with the screener's duty to both thoroughly screen passengers and to do so in an efficient manner"); Brennan , 12-TSA-0092, at 3 (concluding that Brennan "presented an actual hindrance to the [officers'] ability to conduct secondary screening and resolve the [explosive trace detection] alarm").

So too here, while Ramsingh remained relatively calm and composed throughout the entire encounter, he prevented TSA personnel from conducting a full-body pat-down in response to a positive explosives alarm and from enforcing the agency's security policy prohibiting individuals from backing out of screening midway.

Ramsingh does not rely on the medical basis for his noncompliance in this first part of his argument about the proper meaning of "interference" in 49 C.F.R. § 1540.109.

Ramsingh argues that he merely engaged in "passive noncompliance," which, "without more, [is] insufficient to constitute interference." Ramsingh Opening Br. 13. In support, he points to District of Columbia v. Little , 339 U.S. 1, 70 S.Ct. 468, 94 L.Ed. 599 (1950). In Little , a District of Columbia regulation made it a misdemeanor to "interfer[e] with or prevent[ ] any inspect[or]" from examining a building reported to be in an unsanitary condition. Id. at 4–5, 70 S.Ct. 468 (citation omitted). The Supreme Court held that the "regulation [could] not fairly be interpreted to encompass" Little's "failure to unlock her door and her remonstrances on constitutional grounds[,]" id. at 7, 70 S.Ct. 468, noting that the regulation did not "impose any duty on home owners to assist health officers to enter and inspect their homes[,]" id. at 6, 70 S.Ct. 468.

That case, interpreting a different regulation in the constitutionally sensitive context of a governmental entry into the home, is of no help to Ramsingh. For one, Little involved a criminal offense, whereas Section 1540.109 imposes only a civil penalty. Even more relevantly, Ramsingh's interference involved his failure to adhere to required processes in a highly regulated public area into which he voluntarily entered with full notice that he could be subjected to search procedures, including a pat-down. Cf. Little , 339 U.S. at 7, 70 S.Ct. 468 ("The right to privacy in the home holds too high a place in our system of laws to justify a statutory interpretation that would impose a

criminal punishment on one who does nothing more than [Little] did here.") (emphasis added).

Ramsingh, in other words, "affirmatively refused to" complete the screening process at a TSA checkpoint that he freely chose to enter, and he asserted no constitutional objection to the pat-down at the time. United States v. Willfong , 274 F.3d 1297, 1299, 1302 (9th Cir. 2001) (rejecting analogy to Little when a logger was charged with "interfering with [a] forest officer engaged in * * * the performance of his official duties[,]" after "affirmatively refus[ing] to discontinue logging on Forest Service land when ordered to do so by a forest officer") (citation omitted).

2

TSA's reading of "interfere" also comports with the regulation's history and purpose. Section 1540.109 was promulgated in the aftermath of the September 11th attacks and in response to a congressional demand for "increased air transportation security measures." 67 Fed. Reg. at 8,340. The preamble to the final rule explains that Section 1540.109 is written to broadly prohibit any action that poses a risk of "distract[ing] or inhibit[ing] a screener from effectively performing his or her duties." Id. at 8,344. The preamble further explains that:

A screener encountering such a situation must turn away from his or her normal duties to deal with the disruptive individual, which may affect the screening of other individuals. The disruptive individual may be attempting to discourage the screener from being as thorough as required. The screener may also need to summon a checkpoint screening supervisor and law enforcement

officer, taking them away from other duties. Checkpoint disruptions potentially can be dangerous in these situations. This rule supports screeners' efforts to be thorough and helps prevent individuals from unduly interfering with the screening process.

Id.

As a consequence of Ramsingh's noncompliance with screening procedures, a Transportation Security Officer, three Supervisory Transportation Security Officers, and the on-duty Transportation Security Manager had to "turn away from [their] normal duties" for approximately 20 minutes. 67 Fed. Reg. at 8,344. In addition, both the Federal Security Director and Assistant Federal Security Director for the entire Tampa International Airport were involved, diverting their attention from other important matters. Most importantly, TSA was unable to conduct the "thorough" screening of Ramsingh that it has deemed necessary for airport safety, or to enforce its security policy that those who choose to enter a screening area are required to complete the screening process. Id.

In short, Ramsingh's conduct objectively interfered with TSA operations in multiple respects, presenting the type of aviation security concerns addressed by the regulation's prohibition on interference.

B

Ramsingh also contends that the TSA erred because specific intent is required to violate the regulation. Ramsingh is incorrect. First, the regulation is silent as to mens rea . See 49 C.F.R. § 1540.109. So TSA's decision was consistent with the regulatory text.

Second, while silence on mens rea is not dispositive for criminal statutes, Staples v. United States , 511 U.S. 600, 606, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994), here we are dealing with a civil penalty for the violation of an administrative regulation. And not just any regulation, but one designed to promote the public safety and welfare. The regulation's primary purpose is not to punish wrongdoers, but to protect the safety of passengers, airline personnel, and the public more broadly by ensuring that all individuals are thoroughly screened before being permitted into the secure area of an airport. While interfering with TSA screening personnel in the performance of their duties may not result in any "direct or immediate injury to person or property" in a particular case, it "create[s] the danger or probability of" someone being able to sneak a weapon or other dangerous item onto an aircraft, an obvious safety and security risk "which the [regulation] seeks to minimize." Morissette v. United States , 342 U.S. 246, 256, 72 S.Ct. 240, 96 L.Ed. 288 (1952) ; see also Federal Express Corp. v. Department of Commerce , No. 20-5337, slip op. at 24-25 n.5, 27, 39 F.4th 756, 770 n.5, 771-72 (D.C. Cir. July 8, 2022).

When construing statutes dealing with public welfare or regulatory offenses, courts "have inferred from silence that Congress did not intend to require proof of mens rea to establish an offense[,]" Staples , 511 U.S. at 606, 114 S.Ct. 1793, and we can make the same type of inference here. See Morissette , 342 U.S. at 256, 72 S.Ct. 240 ("[L]egislation applicable to such [public welfare] offenses, as a matter of policy, does not specify intent as a necessary element[,]" because "whatever the intent of the violator, the injury is the same[.]"). Given that Section 1540.109 is a public

welfare regulation "meant to protect the safety and security of the flying public[,]" A. 299–300, TSA had no obligation to find specific intent on Ramsingh's part.

Ramsingh objects that TSA's interpretation would produce untenable results, such as fining a passenger who "accidentally drops a bin and delays an x-ray line," or "who spills a bottle of liquid requiring a lane to close for clean-up[.]" Ramsingh Opening Br. 22.

That argument confuses specific intent (i.e. , intent to interfere with TSA screening personnel in the performance of their duties) with general intent (i.e. , intent to engage in the conduct that causes the interference). See 1 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 5.2(e) (3d ed. 2018) (General intent requires "at least an intention to make the bodily movement which constitutes the act which the [offense] requires[,]" whereas specific intent is used "to designate a special mental element which is required above and beyond any mental state required with respect to the actus reus of the [offense].").

We do not understand TSA to have held that no general intent is required to violate Section 1540.109—merely that no specific intent is required. See A. 298–299 (discussing Morissette , public welfare offenses, and "the levels of intent"). And Ramsingh's actions satisfy any general intent requirement. While the traveler who accidentally drops a bin cannot be said to have intended to do so, the record shows that Ramsingh intended to refuse compliance with the pat-down requirement.

C

Next, Ramsingh asserts that, as applied to him, Section 1540.109 is unconstitutionally vague. Not so. An enactment violates the Due Process Clause if it is "so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." Beckles v. United States , —— U.S. ——, 137 S. Ct. 886, 892, 197 L.Ed.2d 145 (2017) (citation omitted); see also United States v. Bronstein , 849 F.3d 1101, 1107 (D.C. Cir. 2017) (An enactment is "unconstitutionally vague if, applying the rules for interpreting legal texts, its meaning specifies no standard of conduct at all.") (formatting modified and citation omitted). In applying this rule, the law has "greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe." Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc. , 455 U.S. 489, 498–499, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982).

Ramsingh posits several hypotheticals in which he claims travelers would lack fair notice that they "interfere[d]" with security personnel, within the meaning of Section 1540.109. For instance, Ramsingh asks whether a passenger who tells a joke to a screener or forgets to remove his or her belt before approaching the metal detector will have sufficiently distracted a screener to be held liable under Section 1540.109.

But imagining scenarios in which application of the regulation might be impermissibly vague is of no help to Ramsingh because an individual "who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." Hoffman Estates , 455 U.S. at 495, 102 S.Ct. 1186.

Especially so because Ramsingh explicitly characterizes his vagueness argument as an as-applied, rather than facial, challenge. See Ramsingh Reply Br. 14.

Ramsingh's burden instead is to show that the regulation is unconstitutionally vague as applied to the facts of his case. He cannot do that.

TSA regulations, in combination with publicly posted guidance, give fair notice that failure to comply with required screening procedures, which can include a pat-down, will constitute prohibited interference. See 49 C.F.R. § 1540.107(a) ("No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person[.]"); id. § 1542.201(b) ("Each airport operator [is] required to * * * [p]ost signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry."); Security Screening , TSA, https://www.tsa.gov/travel/security-screening (last accessed July 7, 2022) ("Pat-Down Screening" drop-down box) ("You may be required to undergo a pat-down procedure if the screening technology alarms, as part of unpredictable security measures, for enhanced screening, or as an alternative to other types of screening, such as advanced imaging technology screening."). Because Ramsingh's conduct is "clearly proscribed" by the regulation, his as-applied vagueness challenge fails. Hoffman Estates , 455 U.S. at 495, 102 S.Ct. 1186 ; see also Rendon , 424 F.3d at 480 (rejecting vagueness challenge to Section 1540.109); Brennan , 691 F. App'x at 332–333 (same).

V

Lastly, Ramsingh insists that, even if noncompliance generally can qualify as interference under Section 1540.109, noncompliance grounded in medical reasons cannot. More specifically, Ramsingh contends that (i) his medical inability to comply rendered his actions non-volitional, and (ii) imposing a fine given his medical conditions violates substantive due process. Neither argument succeeds.

A foundational element of "[t]he general rule of both civil and criminal responsibility is that a person is not liable for a harm done unless he caused it by his action (actus reus)[.]" Western Fuels-Utah, Inc. v. Federal Mine Safety & Health Rev. Comm'n , 870 F.2d 711, 713 (D.C. Cir. 1989). The TSA found that Ramsingh engaged in two volitional acts that support his culpability: (1) electing to enter the security checkpoint and begin the screening process knowing he may be subject to a pat-down, and (2) refusing to be patted down and to complete the screening process. The TSA was wrong as to the first but not the second.

Certainly the first act—entering the screening area and initiating screening—was a voluntary act. But it does not by itself support his liability. Nothing about merely approaching a TSA checkpoint and presenting yourself and your possessions for inspection violates Section 1540.109.

The second act identified by TSA, however, was both volitional and violated Section 1540.109. Ramsingh explained that he considered his options to be (1) allow TSA to conduct the pat-down in public, (2) allow TSA to conduct the pat-down in private, (3) run from the checkpoint, or (4)

continue to refuse and ask for law enforcement. He deliberately chose the fourth option. And that choice contravened the regulation because Ramsingh's refusal to submit to a full-body pat-down prevented TSA officers from carrying out their mandatory screening duties. See 49 C.F.R. § 1540.109.

Ramsingh argues that his refusal was not volitional because, "for medical reasons, he was unable to comply." Ramsingh Opening Br. 24. But Ramsingh specifically admitted in the administrative proceedings that he "refused" to comply with the pat-down requirement. A. 108–109. Whatever his reasons for noncompliance, that refusal, which he selected from among various available courses of action, satisfies the volitional-act requirement.

B

Ramsingh next argues that if his medical inability to comply does not excuse his interference, then the regulation is "sufficiently shocking of the conscience to rise to the level of a deprivation of substantive due process rights." Ramsingh Opening Br. 12. That is incorrect.

To violate substantive due process, governmental action must be "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." County of Sacramento v. Lewis , 523 U.S. 833, 847 n.8, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). Not every unfortunate or regrettable event amounts to a substantive due process violation. "[O]nly the most egregious official conduct can be said to be 'arbitrary in the constitutional sense[.]' " Id. at 846, 118 S.Ct. 1708 (quoting Collins v. City of Harker Heights , 503 U.S. 115, 129, 112 S.Ct. 1061, 117 L.Ed.2d

261 (1992)). Given that demanding standard, TSA's imposition of a $680 fine for Ramsingh's noncompliance with required screening procedures—even if the reason for that noncompliance was his Post-Traumatic Stress Disorder and Military Sexual Trauma—did not infringe Ramsingh's substantive due process rights.

While deliberate indifference to medical needs can violate substantive due process, Lewis , 523 U.S. at 849–850, 118 S.Ct. 1708, the TSA officers did not exhibit such callousness to Ramsingh's medical conditions. They allowed him to go through a metal detector rather than the AIT machine due to his shoulder injury. The pat-down was necessitated by Ramsingh's hand-swipe testing positive for explosive residue. When Ramsingh explained his discomfort with a pat-down, TSA offered to conduct the search in a more private area. While the accommodations provided did not fully meet Ramsingh's medical needs, the TSA officers made a good-faith effort to respect his particular conditions while also performing their security and public-safety duties.

In sum, on this record, TSA's conduct did not approach the level of egregiousness or outrageousness needed to establish a violation of substantive due process.

We note that Ramsingh did not raise, either before the agency or this court, a claim under the Rehabilitation Act, 29 U.S.C. § 794, or any other claim alleging that TSA discriminated against him on the basis of disability. So neither the TSA nor we have had any occasion to address whether TSA's decision comports with federal disability law.

VI

For all those reasons, we deny Ramsingh's petition for review.

So ordered.

APPENDIX D – Rehearing/*En Banc* Denied

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed on September 23, 2022

No. 21-1170

ROHAN RAMSINGH,

PETITIONER

v.

TRANSPORTATION SECURITY ADMINISTRATION

RESPONDENT

BEFORE:

Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker and Childs, Circuit Judges; and Rogers, Senior Circuit Judge

O R D E R

Upon consideration of petitioner's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

/s/Daniel J. Reidy

Deputy Clerk

APPENDIX E –Regulation

49 C.F.R. § 1540.109

Prohibition against interference with screening personnel.

No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter.