DON'T TOUCH MY HAIR: AN ANALYSIS ON HOW TRANSPORTATION SECURITY ADMINISTRATION TECHNOLOGY DISCRIMINATES AGAINST WOMEN OF COLOR

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ABSTRACT

This Article examines how Transportation Security Administration (TSA) screening technologies and practices disproportionately impact Black women, particularly through intrusive hair pat-downs. It situates these practices within a broader history of technological bias, arguing that both flawed design and unchecked officer discretion contribute to discriminatory outcomes. Despite prior reforms and oversight, complaints and data reveal persistent inequities and limited accountability through existing civil rights and judicial avenues. The Article ultimately proposes legislative solutions, including strengthened enforcement under Title VI and expansion of the CROWN Act, as necessary pathways to address systemic discrimination and protect the civil liberties of women of color in air travel.

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INTRODUCTION

If you've ever flown in an airplane, the ritual is familiar: line up for identification, throw away any liquids, place your bags on the conveyor belt, remove electronics, take your keys out of pockets, shed belts and shoes, and finally shuffle into the imaging scanner. For many passengers the Transportation Security Administration, or more prominently known as TSA, process ends there.[1] For many Black women,[2] however, it continues. TSA officers then use their blue latex gloved hands to graze fingers through braids, locs, or natural curls, ostensibly in search of contraband. The officers make you wait, review the screen, perhaps check again. Passenger screening has become an expected formality when flying, but for Black women especially,

1. *See* Aviation and Transportation Security Act, Pub. L. No. 107-71, § 114, 115 Stat. 597 (2001).

2. "Black" in this Article intends to encompass any persons of any African or African American lineage, and "women" is not intended to be exclusionary of non-binary or transgendered persons. Further, this author acknowledges that "men" of color can also experience the same hair discrimination, and in no way intends to minimize those parallel experiences. Rather, this Article will focus on women's experiences with great hope that future scholarship will address other intersections.

hair pat-downs are becoming increasingly concerning. "*Weren't they supposed to stop searching Black women's hair*?"[3]

Complaints about TSA targeting Black women's hair date back to at least 2011.[4] TSA has refuted the allegations and insists that *all* passengers are subject to thorough screenings with potential additional screenings for "clothing, headgear[,] or hair."[5] Despite the agency's denial of targeting Black women's hair, in April 2014, the American Civil Liberties Union of Northern California ("ACLU-NC") filed a complaint alleging that TSA practiced unreasonable and discriminatory searches on the basis of race.[6] At the heart of the Complaint, the plaintiff argues that the United States Constitution forbids unreasonable searches and selective enforcement based on race, which equally applies to TSA.[7] Even with recognized exceptions for airport screening,[8] searches must still be narrowly tailored to genuine security

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3. Tatiana Walk-Morris, *Why Is the TSA Still Searching Black Women's Hair?*, COSMOPOLITAN (Apr. 24, 2018, at 11:01 ET), https://www.cosmopolitan.com/lifestyle/a18666534/tsa-black-women-hair-searches/ [https://perma.cc/A69Y-GNRL]; *see also* Julia Craven, *TSA Says It Will Stop Touching So Many Black Women's Hair*, HUFFPOST (Apr. 3, 2015, at 15:13 ET), https://www.huffpost.com/entry/tsa-hair-pat-downs_n_6996790 [https://perma.cc/TN4E-2RK6] (explaining that, following a complaint filed by the American Civil Liberties Union ("ACLU-NC") of Northern California about Black women being targeted, TSA amended its policy and provided for training regarding hair pat-downs).

4. Joe Sharkey, *With Hair Pat-Downs, Complaints of Racial Bias*, N.Y. TIMES (Aug. 5, 2011), https://www.nytimes.com/2011/08/16/business/natural-hair-pat-downs-warrant-a-rethinking.html [https://perma.cc/A5R2-B6RP].

5. *Id.*

6. *See id.*; *Civil Rights Complaint on Behalf of Malaika Singleton Against the TSA*, ACLU N. CAL. (Jan. 12, 2015) [hereinafter ACLU Article], https://www.aclunc.org/our-work/legal-docket/civil-rights-complaint-behalf-malaika-singleton-against-tsa [https://perma.cc/N842-ZKQG].

7. Complaint Letter from Alan Schlosser, Legal Dir., Am. C.L. Union N. Cal., & Novella Coleman, Staff Att'y, Am. C.L. Union N. Cal., to Kimberly Walton, Assistant Adm'r, Transp. Sec. Admin., on Behalf of Dr. Malaika Singleton (Apr. 3, 2014) [hereinafter ACLU Singleton Complaint Letter], https://www.aclunc.org/sites/default/files/2014.04.03%20ACLU%20Complaint%20Ltr%20to%20K.Walton%20re%20M.Singleton%20%28with%20Attach.A%29_redacted.pdf [https://perma.cc/K9AS-7VVR].

8. TSA screening is permitted under the administrative search exception. *See, e.g.*, United States v. Aukai, 497 F.3d 955, 960 (9th Cir. 2007) (quoting United States v. Davis, 482 F.2d 893, 908 (9th Cir. 1973)) ("[A]irport screening searches[] . . . are constitutionally reasonable administrative searches because they are 'conducted as part of a general regulatory scheme in furtherance of an administrative purpose, namely, to prevent the carrying of weapons or explosives aboard aircraft, and thereby to prevent hijackings.'").

threats, a standard undermined by TSA's lack of clear policies.[9] In the absence of objective rules, officers are left to exercise subjective judgment, increasing the risk that racial stereotypes shape who is searched and in what way.[10] As a result of the Complaint, TSA committed to: provide nationwide employee trainings with a focus on hair pat-downs of African American passengers; incorporate their standards into broader passenger-engagement training; and monitor all airports for potential discriminatory impacts.[11]

Yet, this agreement was made in 2015, and women are still alleging racial discrimination in hair pat-downs as of the late 2010s and early 2020s.[12] In fact, reports show that "complaints filed with TSA by passengers alleging racial discrimination in hair pat-downs rose from 73 [complaints] in 2017 to 105 [complaints] in 2018."[13]

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9. United States v. Davis, 482 F.2d 893, 908 (9th Cir. 1973), *overruled in part by*, *Aukai*, 497 F.3d at 955 ("[TSA screening] does not exceed constitutional limitations provided . . . [it] is no more extensive nor intensive than necessary, in the light of current technology, to detect the presence of weapons or explosives, [and] it is confined in good faith to that purpose."). *Davis* was overruled insofar as it predicated the "reasonableness" of the search on passenger consent. *See Aukai*, 497 F.3d at 962.

10. *See Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy: Hearing Before the Subcomm. on the Const., C.R., and C.L. of the H. Comm. on the Judiciary*, 111th Cong. 39 (2010) (statement of Amardeep Singh, Program Director, Sikh Coalition).

11. Resolution Letter from Bryan W. Hudson, Pol'y Advisor, Transp. Sec. Admin., to Novella Coleman, Staff Att'y, Am. C.L. Union N. Cal., re: Complaint of Dr. Malaika Singleton at 1 (Jan. 12, 2015) [hereinafter TSA Resolution Letter], https://www.aclunc.org/sites/default/files/2015.01.12%20Singleton%20TSA%20resolution_0.pdf [https://perma.cc/25RN-SJ2S].

12. *See, e.g.*, Brenda Medina & Thomas Frank, *TSA Agents Say They're Not Discriminating Against Black Women, but Their Body Scanners Might Be*, PROPUBLICA (Apr. 17, 2019, at 05:00 ET), https://www.propublica.org/article/tsa-not-discriminating-against-black-women-but-their-body-scanners-might-be [https://perma.cc/DNM5-7ELF] (noting complaints of hair discrimination against Black air travelers); Sharelle Burt, *Black Women Share How TSA Still Goes Through Their Hair During Inspections*, TRAVEL NOIRE (Jan. 10, 2019, at 15:29 ET), https://travelnoire.com/black-women-share-how-tsa-still-messes-with-your-hair-when-going-through-security/ [https://perma.cc/T9LV-J636] (same); Mary Forgione, *TSA Apologizes to Native American Traveler After an Agent Grabbed Her Braids and Said 'Giddyup'*, L.A. TIMES (Jan. 16, 2020, at 12:36 PT), https://www.latimes.com/lifestyle/story/2020-01-16/can-tsa-search-your-hair-just-ask-the-women-with-the-braids? [https://perma.cc/4EGD-XWFP] (same); Kimberly Atkins Stohr, *The Skies, and TSA, Still Aren't Friendly to Those with Black Hairstyles*, BOS. GLOBE (Sep. 9, 2022), https://www.bostonglobe.com/2022/09/09/opinion/skies-tsa-still-arent-friendly-those-with-black-hairstyles/? [https://perma.cc/ZR8K-U5B4] (same).

13. Medina & Frank, *supra* note 12.

Post-2019, TSA has not published updated statistics on hair-related pat-down complaints.[14] However, the Government Accountability Office (GAO) Report shows data indicating that race-based screenings continue to rise in civilian complaints with 1,175 filed in 2019 alone.[15] However, this does not account for specific hair-related complaints due to TSA's fragmented data collection system.[16]

Even so, this figure likely represents only a small fraction of the women impacted by hair pat-downs because most women are not even aware that these incidents can be reported.[17] To make matters worse, the women who have indeed reported their complaints often have been dismissed, leaving no formal paper trail to follow the incident.[18] So we have to ask— was TSA's commitment to the ACLU even implemented in the first place, or was it simply not an effective resolution?

Following the Complaint and proposed resolution, an array of other women shared similar experiences.[19] ProPublica, an independent investigative journalism platform with eight Pulitzer Prizes under its belt,[20] asked readers to share their experiences with hair searches at airports.[21] Out of the 720 responses recorded (90% from women), "313 identified as white only, 311 as Black only[,] and 96 as other ethnicities such as Latino, Asian American, Middle Eastern, American Indian[,] or Alaskan

14. *See TSA Has Policies That Prohibit Unlawful Profiling but Should Improve Its Oversight of Behavior Detection Activities: Hearing Before the Comm. on Homeland Sec.*, 116th Cong. (2019) (statement of William Russell, Acting Director, Homeland Security and Justice).

15. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105201, TSA SHOULD ASSESS POTENTIAL FOR DISCRIMINATION AND BETTER INFORM PASSENGERS OF THE COMPLAINT PROCESS 34 (2022) [hereinafter GAO 2022], https://www.gao.gov/assets/d23105201.pdf [https://perma.cc/L549-3RP9].

16. *See id.* at 35.

17. Walk-Morris, *supra* note 3.

18. *See, e.g.*, Sharkey, *supra* note 4 (reporting on the TSA's failure to respond to complaints); *see also* Medina & Frank, *supra* note 12 ("A senior TSA official said in an interview that hair pat-downs are not discriminatory and are done when a body scanner indicates that a passenger has an object in his or her hair. . . . She added that the agency has found no evidence of discrimination in hair pat-downs or any pattern that pointed to a particular airport.").

19. ACLU Singleton Complaint Letter, *supra* note 7; TSA Resolution Letter, *supra* note 11; Medina & Frank, *supra* note 12.

20. *Awards*, PROPUBLICA, https://www.propublica.org/awards [https://perma.cc/C5Q4-GTZW] (last visited Mar. 26, 2026).

21. Medina & Frank, *supra* note 12.

Native, or mixed."[22] The survey revealed that most Black women and women of color received hair pat downs described as intrusive, disrespectful, and intentionally targeting them.[23] For instance, one woman reported being searched on three separate occasions before passing through a body scanner; each time she was searched she had a different hairstyle.[24] *So what exactly is the protocol for deciding who to search?*

This Article explores the discriminatory effects of technology broadly, before turning to the racially discriminatory impact of Transportation Security Administration (TSA) screening procedures and body imaging technology on African American women, with a particular focus on the routine and intrusive practice of hair pat-downs. Although a 2015 agreement between the TSA and the ACLU promised reforms—including improved agent training and monitoring of hair search complaints—subsequent years have seen a rise in complaints, raising concerns about the efficacy and enforcement of such measures.[25]

The Article argues that both human discretion and technology design contribute to ongoing violations of privacy and equal protections, especially for women with natural or protective hairstyles such as locs, braids, and afros. Grounded in historical context, in Part I, the Article first explores how bias in technology has long marginalized people of color—from photography standards to facial recognition systems and automated soap dispensers. Narrowing the lens, Part I then discusses how TSA body scanning systems often flag voluminous or textured hair as a security threat, prompting discretionary searches that disproportionately target Black women without clear or consistent policy justification.[26] These practices highlight not only racial bias but may also violate constitutional protections against unreasonable searches.

22. *Id.*

23. *Id.*

24. *Id.*

25. TSA Resolution Letter, *supra* note 11; Medina & Frank, *supra* note 12.

26. *See* GOA 2022, *supra* note 15, at 18–19; Medina & Frank, *supra* note 12.

Part II examines the accountability shortcomings in seeking meaningful relief through civil rights complaints, as illustrated in the ACLU complaint when promises of retraining and monitoring prove ineffective.[27] These shortcomings exemplify the issues with voluntary compliance, weak enforcement mechanisms, and broad officer discretion. Part II then turns to addressing the limitations in seeking relief through the judiciary. Court challenges, as noted in *Scruggs v. Nielsen*, often fail at the threshold due to standing issues.[28] In response, Part III considers pathways to reform. It first examines how existing civil rights law, specifically within Title VI of the Civil Rights Act, should be used to enforce anti-discrimination compliance at airport security or withhold federal funding. Then it turns to legislative solutions in the expansion of the CROWN Act to cover TSA screening practices. Ultimately, the paper concludes by underscoring that without any meaningful congressional action, TSA policies and technologies will continue to perpetuate racial discrimination under the guise of security, eroding the civil liberties of women of color in air travel and reinforcing systemic inequities in federal surveillance practices.

I. UNTANGLING THE PROBLEM

A. Discrimination in Technology

As no surprise, TSA's imaging system technology is not the first time technology has discriminated against darker skinned individuals. Tracing back to film photography, there has been a long history of technology being made with specific ethnic groups in mind, often privileging those with fairer skin tones.[29] Early film and motion picture technology, for example, was

27. ACLU Singleton Complaint Letter, *supra* note 7; TSA Resolution Letter, *supra* note 11.

28. Scruggs v. Nielsen, No. 18 CV 2109, 2019 WL 1382159, at *5 (N.D. Ill. Mar. 27, 2019).

29. *See* Sarah Lewis, *The Racial Bias Built into Photography*, N.Y. TIMES (Apr. 25, 2019), https://www.nytimes.com/2019/04/25/lens/sarah-lewis-racial-bias-photography.html [https://perma.cc/9S3H-FYYL].

calibrated to white skin tones.[30] One of the most famous pioneers of film, Kodak Eastman, used his fair-skinned, dark-haired model, Shirley, as the face to meter the printed color stock.[31] Thus, the "Shirley card" established the benchmark that defined the so-called ideal image.[32] As prints became mass-produced, "Shirley cards" were sent to every technician around the country, and later the world, to calibrate machines and adjust filters until the test print matched the standard before processing photos.[33] In fact, the film chemistry that affects color balance couldn't even process yellow, brown, or reddish skin tones until the 1970s.[34] Shockingly, film photography only improved thanks to the chocolate and furniture industry.[35] Both industries required color advertisements to detail a spectrum of brown tones, tones that inadvertently could not be captured while using the "Shirley cards."[36] By the 1980s, Kodak finally revised their film emulsions and released Gold Max, which was described as having a better range of color representations.[37] Kodak, not wanting to bring attention to their film's faults, advertised that this 'upgrade' had the ability to take a picture of a "dark horse in low light."[38] In other words, dark oak furniture,

30. *Light and Dark: The Racial Biases That Remain in Photography*, NPR: CODE SWITCH (Apr. 16, 2014, at 15:35 ET), [hereinafter *Light and Dark*] https://www.npr.org/sections/codeswitch/2014/04/16/303721251/light-and-dark-the-racial-biases-that-remain-in-photography [https://perma.cc/LN4A-RFTJ].

31. *Id.*; Lewis, *supra* note 29.

32. *See Light and Dark*, *supra* note 30.

33. Maggie Wessling, *The "Shirley Card" Legacy: Artists Correcting for Photography's Racial Bias*, NAT'L GALLERY OF ART (Apr. 7, 2023), https://www.nga.gov/stories/articles/shirley-card-legacy-artists-correcting-photographys-racial-bias [https://perma.cc/B6S4-RQ6Y]; *see also* Lewis, *supra* note 29 (explaining how the Shirley cards' use in color calibration perpetuated bias).

34. Kaitlyn McNab, *Why the Myth That Dark Skin Is Hard to Photograph Persists*, ALLURE (Nov. 2, 2021), https://www.allure.com/story/photographing-darker-skin-tones [https://perma.cc/A249-AZ5R].

35. Ainissa Ramirez, *How 20th Century Camera Film Captured a Snapshot of American Bias*, TIME (July 24, 2020, at 16:44 ET), https://time.com/5871502/film-race-history/ [https://perma.cc/5KHQ-F4P2].

36. *Id.*

37. Kai McNamee, *Shirley Cards*, 99% INVISIBLE (July 7, 2015), https://99percentinvisible.org/episode/shirley-cards/ [https://perma.cc/L52T-5NYQ].

38. Ramirez, *supra* note 35.

milk chocolate, and now, darker skinned people, can finally be photographed correctly.

Shortly thereafter, like most things in the late 20th century, technology began to evolve. As film photography developed, so did the start of digital photography.[39] Though we are a long way away from the 1950s when Kodak first introduced the "Shirley card," the ramifications of the benchmark image that only reinforced whiteness as the default for photography accuracy are still being felt.[40] The shift from "Shirley cards" opened the door to digital photography and a new range of issues with it.

Today, digital camera sensors and web camera algorithms are faulty in identifying and recognizing darker faces.[41] The legacy of those choices continues to persist today, as modern cinematography still struggles with accurately lighting darker-skinned faces.[42] As technology continues to evolve, these flaws are not confined to only photography and film—they spill over into our everyday lives. The benchmarked image that propelled Kodak to the spotlight has only since reinforced a pattern of exclusion, even in the most mundane tasks.

Spanning from motion-activated faucets and dryers that fail on darker skin tones but work on lighter ones,[43] to Google's image recognition systems that misidentify Black people as

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39. *See The Evolution of Cameras: From Film to Digital*, CHI. J. (Apr. 15, 2025, at 14:20 ET), https://thechicagojournal.com/the-evolution-of-cameras-from-film-to-digital/ [https://perma.cc/M8K2-EL76].

40. Ramirez, *supra* note 35.

41. *See id.*

42. *See* Xavier Harding, *Keeping 'Insecure' Lit: HBO Cinematographer Lighting Black Faces*, MIC (Sep. 6, 2017), https://www.mic.com/articles/184244/keeping-insecure-lit-hbo-cinematographer-ava-berkofsky-on-properly-lighting-black-faces [https://perma.cc/BMP3-ZLG6]. Ava Berkofsky—director of photography for HBO's comedy-drama series *Insecure*—discusses this topic in detail. *Id.* Berkofsky explains that "conventional" filming practices set skin tones to around 70 IRE. *Id.* An IRE is the unit used to measure brightness, ranging from zero to seventy. *Id.* This industry standard applied to darker skin tones will over-brighten the image, resulting in visuals similar to older sitcoms like *The Fresh Prince of Bel-Air*. *Id.*

43. Xiao Qi Ren & Helen Heacock, *Sensitivity of Infrared Sensor Faucet on Different Skin Colours and How It Can Potentially Effect Equity in Public Health*, BCIT ENV. PUB. HEALTH J., Aug. 2022, at 1.

gorillas, technology demonstrates bias on a daily basis.[44] In a striking example captured in a viral video in 2015, an African American guest at a Marriott hotel was unable to use the automatic soap dispensers because the dispenser was unable to sense his hands.[45] His friend, a white male, then attempted to use the dispenser and was seamlessly able to.[46] Online audiences have opined on alternative explanations for this incident, such as the user's hand being under the sensor at an incorrect angle.[47] However, a more plausible explanation is found in the light technology used in devices such as automatic faucets.[48] Most common automatic faucets rely on infrared LED bulbs that emit invisible light, which is then reflected back to a sensor.[49] Soap dispensers operate similarly: when a hand passes under the sensor, the reflected light completes a circuit that triggers the release of soap.[50] If the surface of the hand absorbs the light instead of reflecting it—an outcome more common with darker skin tones—the sensor fails to detect the hand, and the dispenser does not activate.[51] Dispensers are similar in that, in order to work properly, they would need to be able to compensate for skin tones by adjusting and increasing the sensor technology, performing to the equivalent of using ISO and exposure in photography.[52]

44. Connor Dougherty, *Google Photos Mistakenly Labels Black People 'Gorillas'*, N.Y. TIMES (July 1, 2015, at 19:01 ET), https://archive.nytimes.com/bits.blogs.nytimes.com/2015/07/01/google-photos-mistakenly-labels-black-people-gorillas/ [https://perma.cc/V4VK-BUQX].

45. TEEJMAXIMUS, *Whites Only – Part Two* (YouTube, Sep. 2, 2015), https://youtu.be/gKUTDAvmNtA (demonstrating racial bias in automated soap dispensers through a social experiment).

46. Max Plenke, *The Reason This 'Racist Soap Dispenser' Doesn't Work on Black Skin*, MIC (Sep. 9, 2015), https://www.mic.com/articles/124899/the-reason-this-racist-soap-dispenser-doesn-t-work-on-black-skin#.ehb5djXTE [https://perma.cc/7CSN-6B58].

47. *Id.*; *see also* Comment, @johncundiss9098, *on* TEEJMAXIMUS, *Whites Only – Part Two* (YouTube, Sep. 2, 2015), https://www.youtube.com/watch?v=gKUTDAvmNtA&lc=Ugjc5uM0sXV3K3gCoAEC [https://perma.cc/3E3K-BA9L] (commenting "On second thought. The black guy just needs to hold his hand still long enough instead of waving it all over").

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

When left uncorrected, bias in technology can influence more damaging software designs, a notorious example being Google's image recognition system mischaracterizing Black people as gorillas.[53] In 2015, the tech giant was criticized when an image-recognition algorithm auto-tagged photos of Black people as "gorillas."[54] Instead of addressing the systematic issue resulting in the mislabeling, Google instead simply removed all search results for primates on Google searches.[55] In 2018, Wired Magazine conducted a follow-up study to analyze Google's image labeling technology.[56] In the study, which tested more than 40,000 images of animals, photos accurately tagged images of pandas and poodles, but consistently returned no results for the great apes and monkeys—despite accurately finding baboons, gibbons and orangutans.[57] Google later confirmed that the terms were removed from searches and image tags as a direct result of the 2015 incident, explaining that the "[i]mage labeling technology is still early and unfortunately it's nowhere near perfect."[58]

The consequences of Google's image labeling can have even more troubling blind spots, especially as technology becomes more prevalent in emerging fields, like automated vehicles.[59] A 2019 study conducted by researchers at Georgia Tech University found that self-driving cars are less prone to recognizing darker-skinned pedestrians.[60] According to researchers,

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53. Dougherty, *supra* note 44.

54. *Id.*

55. *Id.*

56. Tom Simonite, *When It Comes to Gorillas, Google Photos Remains Blind*, WIRED (Jan. 11, 2018, at 07:00 ET), https://www.wired.com/story/when-it-comes-to-gorillas-google-photos-remains-blind/ [https://perma.cc/73PW-WQUP].

57. *Id.*

58. *Id.*

59. *See* Alex Hern, *The Racism of Technology- and Why Driverless Cars Could Be the Most Dangerous Example Yet*, THE GUARDIAN (Mar. 13, 2019, at 12:31 ET), https://www.theguardian.com/technology/shortcuts/2019/mar/13/driverless-cars-racist [https://perma.cc/ZY77-TFHN].

60. *Id.*; *see also* Benjamin Wilson, Judy Hoffman & Jamie Morgenstern, Predictive Inequity in Object Detection 9 (Feb. 21, 2019) (unpublished research paper), https://doi.org/10.48550/arXiv.1902.11097 [https://perma.cc/9EP9-7ZVE] (concluding that standard object detection models more reliably detect individuals with lighter skin tones).

automated vehicles are unable to recognize pedestrians of darker complexion because the standard models for object detection may have a capture bias.[61] Capture bias, as explained by researchers, is when training datasets contain disproportionately fewer images of people with darker skin tones, resulting in models that learn to recognize lighter-skinned pedestrians more effectively.[62] This imbalance in representation means that the system's "standard" of what a pedestrian looks like is not universal, but biased toward lighter complexions.[63]

History shows us that the same problem can simply take on new versions. The "Shirley card," digital camera setting, light-sensor technology, image labeling, capture bias—all share the same problem—that technological design choices were only fitted toward a specific percentage of the population.[64] Following Google's 2015 debacle, the company emphasized its commitment to diversity, revealing that "4% of Google's new hires [in 2015] were black, [and] only 2% of [its] total workforce [was] black."[65] As of 2024, Google's Diversity Report indicates that 5.7% of its U.S.-based employees were Black, while 7.5% were Latino, representing an increase from prior years.[66] Yet, in that same year, the workforce was predominantly white (45.3%) and Asian (45.7%).[67] But with diversity programs now frowned upon by the Trump administration, Google rolled back its commitment to increase diversity.[68] This example highlights a meaningful problem: if diversity is excluded from the design,

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61. Wilson et al., *supra* note 60, at 9.

62. *See id.*

63. *See id.*

64. Lewis, *supra* note 29; Harding, *supra* note 42; Plenke, *supra* note 46; Simonite, *supra* note 56; Hern, *supra* note 59.

65. Lisa Eadicicco, *Google's Diversity Efforts Still Have a Long Way to Go*, TIME (July 1, 2016, at 10:09 ET), https://time.com/4391031/google-diversity-statistics-2016/ [https://perma.cc/PD9E-FLS9].

66. GOOGLE, 2024 GOOGLE DIVERSITY ANNUAL REPORT: DRIVING INNOVATION, BRIDGING GAPS 77 (2024), https://belonging.google/intl/ALL_us/diversity-annual-report/2024/ [https://perma.cc/NE2U-6RZU].

67. Queenie Wong, *Google Ends Hiring Targets Tied to Diversity*, L.A. TIMES (Feb. 5, 2025, at 15:52 PT), https://www.latimes.com/business/story/2025-02-05/google-reportedly-ends-diversity-hiring [https://perma.cc/6T3D-6YRR].

68. *Id.*

implementation, and testing of technology, and there is no requirement or incentive to ensure its inclusion, *what steps remain to address bias in technology*?

B. Discrimination in TSA Technology and Federal Oversight Findings

The legacy of biased technological design is not limited to cameras or sensor systems. These same limitations have been incorporated into most technology, TSA technology included.[69] A history of the technology used by the TSA truly begins in the time immediately following September 11, 2001.[70] By November 2001, President George Bush signed the Aviation and Transportation Security Act ("ATSA"), which created the TSA to oversee transportation security and mandated federal passenger screening among other protocols.[71] TSA began developing a nationwide explosive detection system to comply with the ATSA's December 2002 deadline.[72] No significant changes to the technology occurred until March 2010.[73] TSA began installing full-body scanners, or advanced imaging technology (AIT) units, to detect non-metallic weapons and explosives hidden under clothing.[74] By year's end, about 500 machines had been deployed nationwide.[75]

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69. *See* Medina & Frank, *supra* note 12.

70. *See TSA History: Timeline*, TRANSP. SEC. ADMIN., https://www.tsa.gov/timeline [https://perma.cc/2G6T-RF2C] (last visited Mar. 23 , 2026).

71. *See* Aviation and Transportation Security Act, Pub. L. No. 107-71, § 114, 115 Stat. 597 (2001).

72. *See id.* § 110(d), 115 Stat. at 615 (mandating the deployment of "explosive detection" by December 31, 2002); U.S. GOV'T ACCOUNTABILITY OFF., GAO-05-365, SYSTEMATIC PLANNING NEEDED TO OPTIMIZE THE DEPLOYMENT OF CHECKED BAGGAGE SCREENING SYSTEMS 6–7 (2005) [hereinafter GOA 2005], https://www.gao.gov/assets/gao-05-365.pdf [https://perma.cc/C3DV-6XXN] (reviewing TSA's compliance with ATSA mandates).

73. *TSA History: Timeline*, *supra* note 70.

74. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-484T, TSA IS INCREASING PROCUREMENT AND DEPLOYMENT OF THE ADVANCED IMAGING TECHNOLOGY, BUT CHALLENGES TO THIS EFFORT AND OTHER AREAS OF AVIATION SECURITY REMAIN 5–7 (2010) [hereinafter GOA 2010], https://www.gao.gov/assets/files.gao.gov/assets/gao-10-484t.pdf [https://perma.cc/8UC9-R9Z8].

75. *See id.* at 6; *Statement of John S. Pistole, Administrator, Transportation Security Administration, Before the House Committee on Homeland Security, Subcommittee on Transportation Security, "Authorizing the Transportation Security Administration for Fiscal Years 2012 and 2013"*, (June 1,

In a Congressional Research Service report from September 2012, TSA has documented the decision to change strategies for airport screening.[76] From around 2007–2010 the agency used Whole Body Imaging (WBI) technology, including the millimeter wave system, to scan passengers' bodies.[77] However, the switch to the millimeter wave system sparked backlash because it provided a precise image, which virtually removed passenger clothes to have your most intimate parts displayed before a TSA agent.[78] In 2011, the Electronic Privacy Information Center ("EPIC") challenged the use of AIT technology, arguing that TSA's modification still permitted machines to capture raw nude images.[79] The D.C. Circuit ultimately denied EPIC's petition, but not before TSA faced immense criticism for the potential privacy concerns.[80] In 2012, Congress enacted the FAA Modernization and Reform Act[81] requiring that all AIT screening be equipped with Automatic Target Recognition ("ATR") privacy software.[82] The ATR technology replaced detailed passenger-specific body images with a generic, non-identifiable outline that highlights potential threat areas.[83] Now through the ATR, agents can only see a simplified outline of a figure rather than the actual contours of an individual's body.[84]

2011), https://www.dhs.gov/news/2011/06/01/statement-record-tsa-house-homeland-security-subcommittee-transportation-security [https://perma.cc/335Z-N5XQ].

76. BART ELIAS, CONG. RSCH. SERV., R42750, AIRPORT BODY SCANNERS: THE ROLE OF ADVANCE IMAGING TECHNOLOGY IN AIRLINE PASSENGER SCREENING 1 (2012), https://sgp.fas.org/crs/homesec/R42750.pdf [https://perma.cc/5J9W-CYKZ].

77. *See id.* at 1–2.

78. *See id.*; Andy Greenberg, *TSA Genitalia Jokes Bode Badly for Full-Body Airport Scans*, FORBES (Apr. 24, 2013, at 20:08 ET), https://www.forbes.com/sites/firewall/2010/05/07/tsa-genitalia-jokes-bode-badly-for-full-body-airport-scans/ [https://perma.cc/YVY8-37G8].

79. Elec. Priv. Info. Ctr. v. U.S. Dep't of Homeland Sec., 653 F.3d 1, 2–4 (D.C. Cir. 2011).

80. *See id.* at 6–7, 11.

81. FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11.

82. *Id.* § 826, 126 Stat. at 132–33; DEP'T OF HOMELAND SEC. OFF. OF INSPECTOR GEN., OIG-13-120 (REVISED), TRANSPORTATION SECURITY ADMINISTRATION'S DEPLOYMENT AND USE OF ADVANCED IMAGING TECHNOLOGY 2–3 (2014) [hereinafter OIG 2014 ADVANCED IMAGING REPORT], https://www.govinfo.gov/content/pkg/GOVPUB-HS-PURL-gpo50172/pdf/GOVPUB-HS-PURL-gpo50172.pdf [https://perma.cc/B46H-WLJF].

83. *See id.* at 2 ("Automatic target recognition software addresses privacy concerns by interpreting images and displaying the results on a generic figure . . . .").

84. *See id.*

While this privacy feature reduced concerns over exposing passengers' physical characteristics, it also limited the level of detail provided, raising concerns about the accuracy of detections.[85] To help balance these concerns, in December 2014, TSA introduced: several operational upgrades to the AIT, incorporated revised pat-down procedures, and included specialized screening measures for certain passengers at select domestic and international airports.[86]

After TSA's 2014 AIT revisions, the United States Government Accountability Office (GAO) issued a report to congressional requesters on the updated technology.[87] The 2014 GAO Report ("GAO 2014") was requested to evaluate the effectiveness of the new system, specifically the use of data to improve performance and its progress in detecting concealed explosives, while noting ongoing challenges.[88] Though upgrades were completed to the new ATR software system, the implementation of the system fell behind on milestones in improving detection capabilities, including a testing phase initiated more than a year after schedule.[89] Instead of incorporating scientific research or input from the Department of Homeland Security's Science and Technology Directorate, national labs, and vendors, TSA relied on only vendor-proposed timelines.[90] This reliance and rushed testing were apparent when data indicated that the new systems had higher laboratory false-alarm rates than the prior version.[91]

One might expect that after 2014, TSA would have collected sufficient data to resolve machinery issues that contributed to higher pat-down rates. However, the 2019 GAO Report ("GAO 2019") raised ongoing concerns, specifically citing complaints

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85. *See id.* at 7–8.

86. *TSA History: Timeline*, *supra* note 70.

87. See U.S. Gov't Accountability Off., GAO-14-357, Advanced Imaging Technology: TSA Needs Additional Information Before Procuring Next-Generation Systems (2014) [hereinafter GAO 2014], https://www.gao.gov/assets/gao-14-357.pdf [https://perma.cc/Y9XE-QWDE].

88. *See id.* at 1–3.

89. *Id.* at 19.

90. *Id.* at 23.

91. *Id.* at 13.

of civil rights and civil liberties violations in passenger screening in recent years.[92] In data collected by GAO, between October 2015 and February 2018, TSA received 3,663 passenger screening complaints related to civil rights or civil liberties violations.[93] Further analysis revealed that 2,251 complaints "alleged discrimination or profiling based on personal characteristics," including "pat-downs [because] of race [or] ethnicity," despite not triggering an alarm.[94] Further parsing the data, complaints on sex/gender/gender identity (not including transgender) occurred 271 times; on hair occurred 279 times; on civil rights/civil liberties 316 times; on pat-downs occurred 493 times; and on discrimination/profiling occurred 1,532 times.[95]

From October 2015 through February 2018, TSA's Multicultural Branch received 2,059 complaints.[96] The Multicultural Branch found signs of race discrimination or unprofessional conduct in 1,066 complaints, and recommended "refresher training" at the airports cited.[97] GAO recommended that TSA lacked "specific oversight mechanism[s] to monitor the use of behavior detection activities for compliance with DHS and TSA policies that prohibit unlawful profiling."[98] The Department of Homeland Security agreed, stating that by September 30, 2019, TSA will have revised oversight checklists that include explicit terminology addressing discriminatory profiling.[99]

And yet again, GAO sounded the alarm in its 2022 Report recommending that TSA "strengthen its ability to analyze

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92. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-490T, TSA HAS POLICIES THAT PROHIBIT UNLAWFUL PROFILING BUT SHOULD IMPROVE ITS OVERSIGHT OF BEHAVIOR DETECTION ACTIVITIES 9 (2019) [hereinafter GAO 2019], https://www.gao.gov/assets/gao-19-490t.pdf [https://perma.cc/QL7S-4VQG] (reporting on specific hair-related complaint statistics).

93. *Id.*

94. *Id.*

95. *Id.* at 8–9.

96. *Id.* at 10 ("TSA's Multicultural Branch is responsible for collecting, monitoring, and adjudicating passenger complaints alleging civil rights and civil liberties violations at the passenger screening checkpoint, including complaints alleging unlawful profiling and discrimination, among other things."). The Multicultural Branch operates within the Office of Civil Rights & Liberties. *Id.*

97. *Id.*

98. *Id.* at 7.

99. *Id.*

passenger discrimination complaints" and "better inform passengers" of the complaint process.[100] As in previous years, TSA has received civil rights complaints that its screening practices disproportionately affect certain groups and characteristics.[101] Specifically, the report highlights concerns that the AIT often triggers alarms on passengers with coarse hair, religious headwear, or prostheses, leading to more frequent pat-downs and additional screening of some passengers more often than others.[102]

TSA officers reported that AIT screening cannot reliably screen coarse hair or heavy braids, often leading to false alerts that subject Black women to pat-downs.[103] Further supporting this experience is testimony in the House Committee on Homeland Security in June 2019.[104] A National Association for the Advancement of Colored People (NAACP) Legal Defense Fund representative testified that AIT technology cannot "distinguish contraband from natural Black hair."[105] Despite stakeholder concerns, TSA has not gathered data to determine whether certain passengers are disproportionately subject to additional screening.[106] Nor has the agency assessed whether its practices align with its own non-discrimination policies, which is a necessary evaluation that could help identify and prioritize essential corrective actions.[107]

The GOA also found that travelers are likely unaware of the agency's complaint system.[108] Stakeholder groups and TSA officials agreed that more public information would be helpful.[109] TSA has taken only "limited steps to proactively inform

100. GAO 2022, *supra* note 15, at 40.
101. *Id.* at 34.
102. *Id.* at 18–19.
103. *Id.*
104. *Id.* at 20–21.
105. *Id.*
106. GAO 2022, *supra* note 15, at 22.
107. *Id.* at 24.
108. *Id.*
109. *Id.*

passengers" about how to file discrimination complaints.[110] In fact, there is no description of the complaint process.[111] While officers can offer information cards and TSA shares general contact information online and on signage, these sources seldom explain the discrimination-complaint pathway.[112] Across 2016–2021, racial profiling/discrimination was the No. 1 complaint basis every year, reaching 1,175 complaints in 2019.[113]

The most recent GAO report on TSA screening technology and practices (GAO 2023) makes plain that, despite years of promises, the very same problems continue to remain prevalent.[114] Again, the GOA explained that TSA must offer "evidence that it has collected data on passenger referrals" and assess whether "screening practices align with its anti-discrimination policies."[115] But no additional reports have been submitted to ensure that compliance data has in fact been reviewed, let alone collected.[116] TSA did, however, compile data and issue its findings on "passenger experiences and potential bias in on-person screening[s]."[117] Yet, no report has been made publicly available.

In a recap of GAO's 2022 report, GAO references that in officer discussion groups at the visited airports, officers said that they have observed AIT machines alarming frequently on certain passengers, further specifying that the "advanced imaging technology cannot adequately screen certain hair types and styles (e.g., heavy braids), which can result in some passengers, including Black women, triggering alarms on the machines."[118]

110. *Id.* at 28.

111. *Id.* at 29.

112. GAO 2022, *supra* note 15, at 28–29.

113. *Id.* at 34.

114. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-107094, TSA COULD BETTER ENSURE DETECTION AND ASSESS THE POTENTIAL FOR DISCRIMINATION IN ITS SCREENING TECHNOLOGIES 15–16 (2023) [hereinafter GAO 2023], https://www.gao.gov/assets/d24107094.pdf [https://perma.cc/GX88-QXSD].

115. *Id.* at 16.

116. *See generally id.* (reporting on most recent data regarding TSA screening issues).

117. *Id.* at 16.

118. *Id.* at 12.

Even further, the report states that according to lead officers interviewed, "anything that differs from the technology's *standard* algorithm will register as a potential threat and trigger an alarm, regardless of race, religion, or other characteristics."[119]And here is the crux of the issue: if Black hair cannot be considered as part of the "standard," then the problem will continue to permeate and affect Black travelers in perpetuity. In 2023, Black hair should in no way be excluded from the *standard* capabilities of government technology and machinery.

TSA full-body scanners were first implemented in 2007 and quickly sparked criticism over privacy concerns, and only five years later, Congress stepped in by enacting the Federal Aviation Administration Modernization and Reform Act.[120] Women of color have been reporting discrimination by TSA practices and equipment for nearly fifteen years and nothing has changed.[121] At what point do we acknowledge that relying on an agency with known discriminatory policies and practices to police itself through self-reporting and voluntary compliance is a fool's errand?

After more than twenty years, the technology hasn't improved. GAO's findings make one thing clear: TSA's screening technology still targets Black women, among others, while the agency avoids collecting the very data that could prove it.[122] The persistence of these issues illustrates not simply technological flaws, but a deeper institutional reluctance to confront how design and implementation choices create unfair burdens. If TSA cannot be held accountable, then *how can travelers subjected to discrimination find relief*?

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119. *Id.* (emphasis added).
120. OIG 2014 ADVANCED IMAGING REPORT, *supra* note 82, at 2–3.
121. *See supra* notes 1–13 and accompanying text.
122. *See supra* notes 92–96, 102–05 and accompanying text.

II. TEASING OUT THE PROBLEM—LIMITATIONS OF REMEDIES THROUGH THE JUDICIAL AND EXECUTIVE BRANCHES

A. Civil Rights Complaints and Limitations

One of the first high-profile complaints against TSA alleging hair discrimination was filed on behalf of Malaika Singleton, Ph.D., a Black female neuroscientist employed by the ACLU-NC.[123] After returning from London as a U.S. delegate to the G8 Dementia Summit, Dr. Singleton was subjected to TSA hair pat-downs on two separate occasions after walking through TSA AIT scanners.[124] Dr. Singleton was sporting her hair in a sisterlocks[125] hairstyle when TSA agents conducted a pat-down by "grabbing and squeezing" her hair.[126]

The complaint alleges that there are unreasonable and racially discriminatory searches by federal employees of the TSA.[127] In such cases, "countless . . . women across the country [are] subject[] to unnecessary, unreasonable[,] and discriminatory hair pat-downs by TSA [agents] after passing through the full body scanner screening."[128] The ACLU-NC made a statement following the complaint that "the humiliating experience of countless black women who are routinely targeted [by] hair pat-downs because their hair is 'different' is not only wrong[]but also a great misuse of TSA agents' time and

123. ACLU Singleton Complaint Letter, supra note 7; *see also* ACLU Article, *supra* note 6 (describing TSA agents' repeated hair pat-down searches of Malaika Singleton at LAX and MSP in December 2013, the absence of a clear security-threat detection policy, and the resulting risk of racially discriminatory enforcement).

124. ACLU Article, *supra* note 6.

125. *See generally* Emily Cronkleton, *What Are Sisterlocks?*, MED. NEWS TODAY (Mar. 29, 2022), https://www.medicalnewstoday.com/articles/sisterlocks/ [https://perma.cc/X4D4-55QB]. Dr. JoAnn Cornwell created Sisterlocks, a natural hair care system free of chemicals or extensions. *Id.* Sisterlocks are a small type of locs, which are thinner, rope-like strands of hair. *Id.* "When forming the locs, a stylist will start at the ends and move upward to the scalp," thus creating a "long-term protective hairstyle that gives hair a break from heat and pulling." *Id.*

126. ACLU Singleton Complaint Letter, *supra* note 7.

127. *Id.*

128. *Id.*

resources."[129] The complaint made the following requests of the TSA and the Department of Homeland Security Office of Civil Rights and Civil Liberties:

> (1) TSA and the DHS Office of Civil Rights and Civil Liberties conduct an audit of TSA screening practices with respect to the "patting down" or inspection of hair with a focus on whether African American women are subject to such inspections on a disproportionate basis; (2) TSA and the DHS Office of Civil Rights and Civil Liberties conduct an audit of full body imaging scanners, and issue findings with respect to their consistency and accuracy, including rates of false positive alerts; (3) TSA adopt a rule against inspection of hair or hair coverings when a traveler has passed through a full body scan without any alert; (4) TSA incorporate into its regular training instruction against disparate treatment of African American women with respect to hair inspection; and (5) TSA train its employees at LAX and MSP (a) not to "pat down" or "inspect" the hair of African American women who have completed a full body scan without alert, (b) on best practices to avoid discrimination against African American women with respect to security inspections generally, and (c) on the application of clear, consistent, and non-discriminatory standards for hair pat downs where there is an applicable body scanner alert.[130]

In response, on January 12, 2015, Bryan Hudson, a TSA policy advisor in the Disability and Multicultural Division, issued a letter memorializing an informal agreement.[131] Pertinent responses include committing to: having TSA officials at the

129. Press Release, ACLU N. Cal., ACLU and TSA Reach Agreement Over Racial Profiling of Black Women's Hair (Mar. 26, 2015), https://www.aclunc.org/news/aclu-and-tsa-reach-agreement-over-racial-profiling-black-womens-hair/ [https://perma.cc/Y29J-KL68].

130. ACLU Singleton Complaint Letter, *supra* note 7.

131. TSA Resolution Letter, supra note 11, at 1–2.

named airports to retrain officers to emphasize race neutrality, specifically during hair pat downs; conducting clarifying onsite training on nondiscrimination principles; and monitoring airports for compliance purposes.[132] Further, the Multicultural Division also committed to "specifically track hair pat-down complaints" from women nationwide to determine whether disparate treatment is occurring at specific airports.[133]

Though an amicable resolution was welcomed by both parties and showcased TSA's willingness to address the concerns, the greater significance of the complaint lay in how it brought national media attention to the issue, allowing for a broader and more public conversation to take place.[134] Specifically, the complaint highlighted two discussion points: (1) the inconsistencies and accuracy issues at hand with the body scanner technology itself and (2) the level of discretion afforded to TSA officers in hair-pat downs and discriminatory judgment on their behalf.[135]

Whether it be the faulty technology or the unchecked discriminatory discretion of TSA officers, this wouldn't be the first-time Black women were targeted for their specific hair styles while traveling.[136] In fact, Dr. Singleton's own lawyer, ACLU Staff Attorney, Novella Coleman, also filed a complaint on her personal behalf in 2012 after having the same experience with TSA squeezing through her protective hair style.[137] When Coleman asked for the reason of the search she was given a plethora of explanations from officers, such as "all passengers with hair extensions were searched" (even though "Coleman wasn't wearing extensions") and that "people [were] searched if they ha[d] 'abnormalities' in their hair."[138]

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132. *Id.* at 1.

133. *Id.*

134. Medina & Frank, *supra* note 12; ACLU Singleton Complaint Letter, *supra* note 7, at 1–2.

135. Medina & Frank, *supra* note 12; ACLU Singleton Complaint Letter, *supra* note 7, at 1–2.

136. *See supra* notes 118–24 and accompanying text.

137. Sharon Bernstein, *Airport Pat-Downs of Black Women's Hairstyles Discriminatory: ACLU*, REUTERS (Mar. 26, 2015, at 20:27 ET), https://www.reuters.com/article/world/us/airport-pat-downs-of-black-womens-hairstyles-discriminatory-aclu-idUSKBN0MN01K [https://perma.cc/8RH6-W739].

138. *Id.*

Similarly, other Black women have shared their experiences on the internet.[139] There have been many discussions on X (formerly known as Twitter),[140] radio segments,[141] and blogposts or news articles[142] on the topic of hair pat-downs. Even celebrities have spoken out about being unable to evade unprompted hair pat down procedures.[143] Famous singer/songwriter, Solange Knowles (and infamous sister to Beyonce) shared with fans that TSA officials in a Miami airport searched her hair.[144]

Yet, since TSA's commitments to Dr. Singleton and the ACLU,[145] reports of discrimination and inappropriate discretion by TSA agents have continued.[146] A particularly egregious incident involved a Native American woman and the Minneapolis St. Paul International Airport in 2020.[147] According to the Los Angeles Times, "Native American activist Tara Houska underwent a hair search at the airport . . . during which the agent

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139. *See infra* notes 140–44 and accompanying text.

140. Sharelle Burt, *Black Women Share How TSA Still Goes Through Their Hair During Inspections*, TRAVEL NOIRE (Jan. 10, 2019), https://travelnoire.com/black-women-share-how-tsa-still-messes-with-your-hair-when-going-through-security [https://perma.cc/FW3G-DJBU].

141. *Here's Why Some Travelers Say TSA's Hair Pat Downs Are Racially Insensitive*, NPR (Nov. 26, 2021, at 12:11 CT), https://www.ualrpublicradio.org/2021-11-26/heres-why-some-travelers-say-tsas-hair-pat-downs-are-racially-insensitive [https://perma.cc/N5EN-D9FS].

142. *See* Taylor Lewis, *TSA Will Stop Searching Black Women's Natural Hair*, ESSENCE (Oct. 27, 2020), https://www.essence.com/news/tsa-will-stop-searching-black-womens-natural-hair/ [https://perma.cc/L4AD-X8H5]; Craven, *supra* note 3; *The TSA Agrees to Stop Searching Women's Hair During Airport Screenings*, BUS. INSIDER (Mar. 26, 2015, at 21:29 ET), https://www.businessinsider.com/tsa-agrees-to-stop-searching-womens-hair-during-airport-screenings-2015-3 [https://perma.cc/4THR-Z36H?type=standard]; Jim Dalrymple II, *The TSA Will Stop Singling Out Black Women for Hair Searches*, BUZZFEED NEWS (Mar. 27, 2015, at 23:01 ET), https://www.buzzfeednews.com/article/jimdalrympleii/the-tsa-will-stop-singling-out-black-women-for-hair-searches [https://perma.cc/M9X3-GQPX]; Ashanté Reese, *My Hair: Threat to National Security*, FEMINIST WIRE (Oct. 18, 2012), https://thefeministwire.com/2012/10/my-hair-threat-to-national-security/ [https://perma.cc/LXT5-TG3J]; Alysia Stevenson, *The TSA Searched My Hair Before a Flight; Turns Out They've Been Doing This to Black Women for Years*, FEMESTELLA (Oct. 25, 2019), https://www.femestella.com/the-tsa-searched-my-hair-before-a-flight-turns-out-theyve-been-doing-this-to-black-women-for-years/ [https://perma.cc/PG35-4JE4].

143. Katia Hetter, *Beyonce's Sister Claims 'Discrim-FRO-Nation'*, CNN (Nov. 15, 2012, at 20:05 ET), https://www.cnn.com/travel/article/solange-knowles-hair-search [https://perma.cc/98PS-THW5].

144. *Id.*

145. *See* TSA Resolution Letter, *supra* note 11.

146. *See, e.g.*, Forgione, *supra* note 12; Stohr, *supra* note 12.

147. Forgione, *supra* note 12.

pulled her braids behind her shoulders and said 'giddyup.'"[148] To imagine this activist being subjected to an "agent pull[ing] her braids behind her shoulders" as the agent laughed and commented while "snap[ping] [her] braids like reins," it is no surprise that Houska describes her experience as humiliating.[149] Similarly, in a 2022 Boston Globe piece, journalist Kimberly Atkins Stohr recounts her personal TSA incident, describing an "aggressive pat down [that] was so intense and invasive that I had to control my tears before boarding the plane for fear that such an emotional reaction would draw further scrutiny."[150]

And so, nearly a decade later, has TSA's commitment to continued technological improvements and retraining officers worked? Stohr asked the agency and received a less than satisfying response from spokesperson Lisa Farbstein.[151] In part, Farbstein says, "[t]he procedures are designed to support TSA's mission to detect and deter threats to our aviation systems, and are reviewed by TSA's Civil Rights & Liberties, Ombudsman, and Traveler Engagement office to ensure compliance with Federal civil rights laws."[152] Stohr then concludes her article with what many of us are thinking:

> This is gaslighting—an attempt to convince people who are subject to discriminatory treatment that they are not, in fact, being discriminated against. TSA has been on notice for at least 11 years that it makes the skies far less friendly for people of color. Change has been delayed far too long.[153]

148. *Id.*
149. *Id.*
150. Stohr, *supra* note 12.
151. *Id.*
152. *Id.*
153. *Id.*

B. Litigation Against TSA

And so, if it is recognized that TSA machinery has not fully eliminated biases and TSA agents have a gross number of discrepancies when applying protocols,[154] then we look to the judiciary for potential relief. However, the judiciary has rarely provided any meaningful relief for TSA-related discrimination claims, let alone ones specifying hair discrimination.[155] Article III of the Constitution grants the judicial branch with the power to "extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made . . . ."[156] But what happens when there can be no viable judicial relief? The cases brought to court regarding hair discrimination by the TSA are few and far between. The amount of caselaw available for claims against TSA for hair discrimination is little to none.[157]

The most analogous case is *Scruggs v. Nielsen*, decided in 2019 in the United States District Court for the Northern District of Illinois.[158] Ms. Scruggs brought her complaint against "unknown TSA agents, Kathleen Petrowsky (the airport's [former] Federal Security Director), the [sitting] Secretary of the Department of Homeland Security, and the United States."[159] Ms. Scruggs, an African American woman, was traveling from Fort Lauderdale Airport in South Florida to O'Hare Airport in Chicago, Illinois.[160] At the security checkpoint, she completed a full-body scan and was immediately taken aside by a TSA officer who then patted down her hair.[161] According to the complaint,

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154. *See* discussion *supra* Part I and Section II.A.

155. *See* Scruggs v. Nielsen, No. 18 CV 2109, 2019 WL 1382159, at *1, *7 (N.D. Ill. Mar. 27, 2019).

156. U.S CONST. art. III, § 2, cl. 1.

157. There are zero search results on Lexis or Westlaw for "Transportation Security Administration" or "TSA" & "hair discrimination."

158. No. 18 CV 2109, 2019 WL 1382159, at *1 (N.D. Ill. Mar. 27, 2019).

159. *Id.*

160. *Id.*; *Facts About the Chicago O'Hare International Airport*, CFG (Aug. 1, 2022), https://charterflightgroup.com/blog/facts-about-the-chicago-ohare-international-airport [https://perma.cc/55W3-ZEYW].

161. *Scruggs*, 2019 WL 1382159, at *1.

Ms. Scruggs reports that at no point did the TSA officer advise that the body scanner displayed anything suspicious nor did the officer explain why they needed to pat-down her hair.[162] The officers then proceeded to perform a chemical scan on Ms. Scruggs, once again without explaining why.[163] Afterwards, a TSA officer escorted Scruggs to a nearby room for the remainder of her detention.[164] Once in detention, TSA officers proceeded to ask harassing questions, denied providing answers to Scruggs's inquiries, and led her to "believe that Chicago police officers were [en route] to arrest her."[165] After some time, she was released from custody, and yet never given an explanation for the search, arrest, or detention.[166] Once the whole fiasco concluded and Ms. Scruggs was returning home from her trip, adding insult to injury, for the second time, she was pulled out of line after the body scan and subjected to another hair pat-down with no explanation.[167] Within the complaint, Scruggs brought a violation of her Fourth and Fifth Amendment rights, amongst other claims.[168] However, before evaluating the merits of her claim, the court concluded that Scruggs "lack[ed] standing to pursue equitable relief on her constitutional claims."[169]

To survive standing, a plaintiff must show an "injury in fact" that is "concrete and particularized" and "actual or imminent"[170] and "plaintiff must allege a 'real and immediate' threat of future violations of their rights."[171] In Ms. Scruggs's case, the court granted the Defense's Motion to Dismiss for lack of standing, finding that "[Ms.] Scruggs [could] not allege a 'real and

162. Complaint at 2, Scruggs v. Nielsen, No. 18 CV 2109, 2019 WL 1382159 (N.D. Ill. Mar. 27, 2019).

163. *Id.*

164. *Scruggs*, 2019 WL 1382159, at *1.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at *4.

169. *Id.* at *6.

170. Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 180 (2000).

171. Scherr v. Marriott Int'l, Inc., 703 F.3d 1069, 1074 (7th Cir. 2013) (quoting City of L.A. v. Lyons, 461 U.S. 95, 102 (1983)).

immediate' threat of future harm."[172] The court declined to reach the merits but, to guide any future amendments, addressed Ms. Scruggs's constitutional claims.[173]

In regard to the Fourth Amendment Violation, the Court acknowledged that the Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . and effects, against unreasonable searches and seizures."[174] But of course, within "particularized" circumstances, there are exceptions when the government has "special needs."[175] Airport security is labeled as a special-needs circumstance,[176] and thus searches within airport security need only be considered reasonable.[177]

The *Scruggs* Court noted that "[t]he complaint [did] not plausibly allege that the search and detention of [Ms.] Scruggs was unreasonable."[178] Nor did the court find that the factual allegations suggested the search and seizure was more than minimally invasive.[179] The court then describes that an unreasonable search and seizure would consist of an unreasonably long detention that would cause a "meaningful delay in Scruggs's travel" plans or an unreasonable intrusive invasion of privacy.[180] Relatedly, the court outright says that "[n]othing about the allegations suggests that the hair pat-downs were unreasonably intrusive or invasive of privacy, and they caused no meaningful delay in Scruggs's travel."[181]

Since Ms. Scruggs's complaint did not allege how long her delay was, the court found that "[t]he absence of any allegation

172. *Scruggs*, 2019 WL 1382159, at *5.

173. *Id.* at *6.

174. U.S. CONST. amend. IV.

175. Chandler v. Miller, 520 U.S. 305, 313 (1997) (quoting Skinner v. Ry. Lab. Execs. Ass'n, 489 U.S. 602, 619 (1989)) ("[P]articularized exceptions to the main rule are sometimes warranted based on 'special needs, beyond the normal need for law enforcement.'").

176. *See* Elec. Priv. Info. Ctr. v. U.S. Dep't of Homeland Sec., 653 F.3d 1, 10 (D.C. Cir. 2011) (evaluating the reasonableness of TSA's "administrative search" conducted during airport screening).

177. *See* Illinois v. Lidster, 540 U.S. 419, 424–27 (2004) (assessing reasonableness of highway checkpoint stops justified by "special law enforcement concerns").

178. *Scruggs*, 2019 WL 1382159, at *6.

179. *Id.*

180. *Id.*

181. *Id.*

of a harmful delay suggests that the detention was brief and merely inconvenient (albeit conducted by rude TSA agents)—a not unreasonable occurrence at an airport."[182] Further, the court acknowledged Ms. Scruggs's argument that TSA officers lacked any grounds to justify additional screening in the first place, which might mean that the search did little to advance public interest or safety.[183] But, that alone, the court opined, was not enough to make the brief intrusion on her liberty unreasonable, especially when compared to the "indisputably grave and important interests" at stake in airport screenings.[184]

Ms. Scruggs brought an amended complaint that same year, but the court once again found that the claim could not meet the standing burden.[185] The court found that Ms. Scruggs could not illustrate a "concrete, non-conjectural threat," nor allege facts showing TSA had a policy of unreasonable detentions or discriminatory hair pat-downs.[186] Most notably, the court further explains that while Ms. Scruggs alleged that other women also experienced the same discriminatory hair pat-downs, "the other experiences are not in sufficient numbers to suggest a policy or create a 'real and immediate' threat that it will happen to Scruggs again."[187] Finally, in addition to downplaying the significance of so many women's experiences, the court then emphasizes that

> [c]hanging [Ms. Scruggs's] hair and suffering from anxiety may be a concrete injury, but the issue here is whether [Ms.] Scruggs has demonstrated a concrete risk that she will be wronged in the same way. That [Ms.] Scruggs has avoided the searches does not establish that she would be

182. *Id.*
183. *Id.*
184. *Scruggs*, 2019 WL 1382159, at *6.
185. Scruggs v. McAleenan, No. 18-CV-2109, 2019 WL 4034622, at *1, *3 (N.D. Ill. Aug. 27, 2019).
186. *Id.* at *2–3.
187. *Id.* at *3.

> searched with a different hairstyle; instead, it demonstrates that the risk is conjectural.[188]

As illustrated by both Scruggs complaints, seeking relief through the court system is difficult and unlikely.[189] A plaintiff faces significant hurdles in even establishing standing in the first place,[190] and if they manage to, they must then face a herculean challenge to prove that the search and seizure imposed on their personal liberty outweighed the compelling public safety interest of airport security.[191] Post-*Scruggs*, there has not been any significant and analogous challenge to TSA through litigation, which further emphasizes that resolution through litigation is not a practical avenue for women seeking relief after experiencing discrimination by the TSA, whether through biased technology or lack of adherence to policy.

III. BRAIDING TOGETHER SOLUTIONS—REMEDYING THROUGH THE LEGISLATIVE BRANCH

Holding the TSA accountable for discriminatory devices and practices is no small task. Yet each personal account of hair pat-downs, whether through online platforms or formal court documents, demonstrates that these experiences are far from isolated.[192] Instead, the widespread and continuous practice of discriminatory TSA hair pat-downs has persisted for years, and is largely unchecked.

As outlined in Parts I and II, discrimination in technology is deeply rooted in current and former technology, but remedies pursued through the executive and judicial branches have proven largely unproductive.[193] But there is still hope in a promising path forward, through the legislative branch. A legislative

188. *Id.*

189. *See* discussion *supra* Section II.B.

190. *See supra* notes 170–73 and accompanying text.

191. *See supra* notes 178–85 and accompanying text.

192. *See supra* notes 136–41; *Scruggs*, 2019 WL 4034622, at *1; *Scruggs v. Nielsen*, No. 18 CV 2109, 2019 WL 1382159, at *1 (N.D. Ill. Mar. 27, 2019); ACLU Singleton Complaint Letter, *supra* note 7.

193. *See* discussion *supra* Parts I–II.

remedy could be found in two forms: first, by way of enforcing compliance for Title VI funded agencies, ensuring that anti-discrimination standards are met and consistent; or, second, by way of enacting federal legislation that expressly prohibits hair discrimination in places of public accommodation, encompassing airport facilities. Given the recent successful implementation of anti-hair discrimination laws across the country, federal legislation targeting TSA's discriminatory practices could likewise be the most effective option.[194]

A. Remedy I: Ensuring Equity Through Title VI

Title VI of the Civil Rights Act of 1964 bars discrimination on the basis of "race, color, or national origin" in "program[s] [and] activit[ies] receiving [f]ederal financial assistance."[195] When enacting the program in 1963, President John F. Kennedy said, "[s]imple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination."[196] The text of Title VI, though short, has a powerful effect once implemented. The true "teeth" of Title VI lies in extension of the nondiscrimination mandate for any and all agencies receiving Title VI financial assistance.[197] If agencies are found to

194. *See* discussion *infra* Section III.B.

195. 42 U.S.C. § 2000d.

196. *Title VI of the Civil Rights Act of 1964*, U.S. DEP'T OF JUST. (Mar. 24, 2025), https://www.justice.gov/crt/fcs/TitleVI [https://perma.cc/9MMA-Y245].

197. *Id.*

be in non-compliance, they must "initiate fund termination proceedings[198] or refer the matter to the Department of Justice."[199]

However, the practical likelihood of such enforcement is contingent on the prevailing administration's interpretation of civil rights law. Under the Trump administration, agency enforcement premised on disparate impact liability is unlikely, as the executive branch has taken the position that disparate impact theory exceeds constitutional and statutory bounds and has directed federal agencies to cease interpreting and enforcing civil rights statutes pursuant to it.[200] As a result, the extent to which federal agencies will pursue Title VI disparate impact claims, including through the withholding of federal funds, remains highly dependent on presidential administration and the jurisdiction in which such claims arise. In fact, the uncertainty surrounding federal agency enforcement is compounded by recent judicial decisions further constraining the viability of disparate impact claims under Title VI. Although disparate impact regulations have historically served as a principal enforcement mechanism for addressing systemic discrimination in federally funded programs, recent federal court rulings have called into question both the scope and enforceability of such regulations.[201]

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198. *Id.* The uncertainty surrounding federal agency enforcement is compounded by recent judicial decisions further constraining the viability of disparate impact claims under Title VI. *See id.* Although disparate impact regulations have historically served as a principal enforcement mechanism for addressing systemic discrimination in federally funded programs, recent federal court rulings have called into question both the scope and enforceability of such regulations. *See id.* In 2024, a federal district court in Louisiana permanently enjoined the enforcement of Title VI disparate impact regulations statewide, concluding that the regulations exceeded statutory authority and conflicted with constitutional limits on agency power. *Id.* These developments underscore that the availability of disparate impact claims under Title VI, and the corresponding threat of fund termination, now varies substantially by jurisdiction and is increasingly shaped by both executive policy choices and judicial skepticism toward administrative enforcement of civil rights protections. *See id.*

199. *See id.*

200. Restoring Equality of Opportunity and Meritocracy, Exec. Order No. 14281, 90 Fed. Reg. 17537 (Apr. 23, 2025) ("It is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.").

201. Judgment at 1, 2, Louisiana v. U.S. Env't. Prot. Agency, No. 2:23-cv-00692 (W.D. La. Aug. 22, 2024), https://earthjustice.org/wp-content/uploads/2024/08/2024.08.22-cain-judgement.pdf [https://perma.cc/JW8Y-79KV]; *see also Louisiana Federal Court Permanently Stops Title*

Amongst the federal agencies in the funding program are the Department of Transportation (DOT), Federal Aviation Administration (FAA) and the Department of Homeland Security (DHS).[202]

For background, the DOT is a cabinet level department reporting to the executive branch, with the FAA operating as an agency within the department itself.[203] Similarly, the DHS is the cabinet level department with TSA being an agency operating within it.[204]

For the DOT and FAA, Title VI regulations are codified at 49 C.F.R. pt. 21.[205] These regulations then extend nondiscrimination requirements to any airport or entity receiving DOT/FAA financial assistance.[206] Significantly, substantial grants are given to both departments under the Airport Improvement Program (AIP), which is the primary source for airport infrastructure.[207] Importantly, the codified rules prohibit not only just overt, intentional discrimination but also facially neutral policies, practices, or "criteria or methods of administration" that have a disparate impact on protected groups.[208] Applied here, even absent discriminatory intent, an airport may be in violation if its policies result in a disparate impact for protected groups.[209] The DHS regulations mirror their DOT/FAA counterparts, codified at 6 C.F.R. pt. 21, and the regulations govern recipients of DHS

VI Protections Statewide, EARTHJUSTICE (Aug. 23, 2024), https://earthjustice.org/press/2024/louisiana-federal-court-permanently-stops-title-vi-protections-statewide [https://perma.cc/6XNE-JA4P].

202. *See Title VI of the Civil Rights Act of 1964*, *supra* note 196.

203. *Creation of the Department of Transportation: A Summary*, U.S. DEP'T OF TRANSP. (July 23, 2019), https://www.transportation.gov/50/creation-department-transportation-summary [https://perma.cc/UWS7-UMXQ].

204. 49 U.S.C. § 114(a) (2024).

205. *See* 49 C.F.R. § 21 (2024).

206. 49 C.F.R § 21.1, 21.3.

207. *See Airport Structure Funding*, AIRPORTS COUNCIL INT'L N. AM., https://airportscouncil.org/advocacy/airport-infrastructure-funding/ [https://perma.cc/39YL-FBJG] (last visited April 8, 2026).

208. 49 C.F.R. § 21.5(b)(2) (2023).

209. See U.S. DEP'T OF JUST., TITLE VII LEGAL MANUAL 8 (2017), https://www.prrac.org/title_vi_repository/doj/2017_title_vi_manual/title_vi_legal_manual_sec_7_impact_final1.pdf [https://perma.cc/BE7N-B7VA].

financial assistance, with enforcement by the Office for Civil Rights and Civil Liberties.[210] DHS receives financial assistance to apply to the many necessary entities that support airport security and operations, including state and local police departments, emergency management teams, community response teams, and mass transit authorities.[211] Further, since the TSA operates under the umbrella of the DHS, there is more of a direct line between the entities to ensure compliance with nondiscrimination regulations.[212]

This framework is pivotal in requiring departments to comply with nondiscrimination as defined in Title VI. Though TSA is a federal agency and not a department directly benefiting from Title VI funding, the airports in which it operates would be bound by Title VI requirements via the DOT/FAA and DHS codified regulations.[213] This framework creates incentive, perhaps even requirements, for federal departments to insist that TSA ensure bias-free technologies and policies at security checkpoints. As a practical matter, the threat of losing financial funding, which is critical for operations at airports or maintaining DHS partnerships, holds a lot of weight. To underscore, compliance with codified regulations is not optional, but rather is a binding condition attached to the receipt of federal financial assistance; however, the application can be nuanced.

Section 601 of Title VI authorizes federal agencies that utilize federal funding, like the DOT/FAA or DHS, to only adopt regulations to ensure recipients of federal resources do not

210. 6 C.F.R. § 21.1, 21.3 (2024).

211. U.S. DEP'T OF HOMELAND SEC., GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE RECIPIENTS 6 (2010), https://www.dhs.gov/xlibrary/assets/crcl_lep_guidance.pdf [https://perma.cc/PBK2-CJHK].

212. *See* U.S. DEP'T OF HOMELAND SEC., PUBLIC ORGANIZATIONAL CHART (2023), https://www.dhs.gov/sites/default/files/2023-11/23_1109_mgmt_dhs-public-org-chart-508.pdf [https://perma.cc/23ZD-JHCQ]. TSA is one of the operational component agencies within DHS, reinforcing that there is a direct supervisory line between TSA activities and DHS governance. *Id.*

213. See 49 C.F.R. § 21.1 (2023) ("The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. . . .").

intentionally discriminate.[214] But Section 602 encourages agencies to create regulations that prohibit intentional discrimination *and* disparate impact discrimination.[215] However, since agencies essentially "opt-in" to Section 602, enforcement of disparate impact discrimination is often lacking in application.[216] Unsurprisingly, voluntary compliance is preferred by agencies since the alternative involves DOJ enforcement.[217]

Compliance mechanisms under Section 602 are either initiated in response to complaints or through directive investigations, as evidenced in memorandums like the GAO Reports.[218] For TSA specifically, the agency has an internal contact center, including the Multicultural and Disability Branches, which receives complaints alleging discrimination on the basis of a protected category.[219] In addition to TSA specific internal reporting systems, the FAA/DOT also has an internal system that reviews compliance and handles complaints of discrimination.[220] Beyond this, DHS also operates its Office for Civil Rights and Civil Liberties, which has additional authority to receive and investigate Title VI related complaints.[221] If complaints indicate that violations are present, even unintentional violations, that's when agencies may initiate corrective action plans to achieve compliance.[222]

214. 42 U.S.C. § 2000d-1 (2018).

215. *Id.* § 2000d-2.

216. *See id.*

217. *See* U.S. DEP'T OF JUST., *supra* note 209, at 46 ("Where a recipient does not fully cooperate with an agency's request for information, and compliance cannot be achieved voluntarily, the agency may refer the matter to the Department of Justice for judicial enforcement. Agencies should consider establishing additional requirements for certain recipients to provide information routinely to assist in monitoring compliance with the Title VI disparate impact regulations.").

218. *See* GAO 2022, *supra* note 15, at 34.

219. *Id.* at 12.

220. *Airport Nondiscrimination Compliance (Title VI, LEP)*, FED. AVIATION ADMIN. (Jan. 6, 2026), https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/non_disc_pr [https://perma.cc/WJA9-5JXX].

221. *See* GAO 2022, *supra* note 15, at 12–13; *see also* Memorandum from Dep't of Homeland Sec. Sec'y Napolitano to Component Heads, *The Dep't of Homeland Sec.'s Commitment to Discriminatory Law Enf't and Screening Activities* (Apr. 26, 2013) (providing regulatory guidance on DHS's nondiscrimination policy in "investigation, screening, and enforcement activities").

222. *See* GAO 2022, *supra* note 15, at 24–25.

Simply put, since TSA receives federal funds through umbrella departments like the FAA/DOT and DHS, the FAA/DOT and DHS can in fact withhold funding or involve the DOJ to address the evident concerns of discrimination on the basis of race.[223] The problem is that these departments rarely withhold funding.[224] But they *could*. And herein lies the heart of the issue: these departments could withhold much needed funding and force TSA to comply with Title VI nondiscrimination bars under Section 601, even if that discrimination is unintentional through Section 602, but they don't for political, practical, or administrative reasons.[225]

Funding cut-offs could be an incredible tool to require TSA to be compliant. However, it would be amiss to not note that the termination of federal funding is often characterized as the "nuclear option" in civil rights enforcement.[226] And while terminating federal funds is widely regarded as a drastic enforcement measure, Congress nevertheless embedded this authority within Title VI as a necessary backstop.[227] The statute reflects an understanding that voluntary compliance and corrective guidance may be insufficient where discriminatory practices are entrenched or ongoing.[228] In such cases, the withdrawal of federal funding serves not as a punitive end in itself, but as a means of vindicating the statute's core objective: ensuring that federal dollars do not subsidize discrimination.[229] The severity of the

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223. *See id.* at 12.

224. Olatunde C.A. Johnson, *Lawyering That Has No Name: Title VI and the Meaning of Private Enforcement*, 66 STAN. L. REV. 1293, 1328 n.194 (2014) (citing 42 U.S.C. § 2000d-1) ("Termination of funds is rare in Title VI's enforcement regime. The statute emphasizes that suspension or termination is a last resort when voluntary compliance efforts are unsuccessful.").

225. *See* Eloise Pasachoff, *Agency Enforcement of Spending Clause Statutes: A Defense of the Funding Cut-Off*, 124 YALE L.J. 248, 286 (2014).

226. *See id.* at 260.

227. *See id.* at 283–84.

228. 42 U.S.C. § 2000d-1 (2018) ("In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action.").

229. *See id.*

remedy is therefore justified by the magnitude of the constitutional and statutory interests at stake.

Nonetheless, discrimination during airport screening, whether through formal policy, tools utilized, or misused practices, has become a convenient way discrimination continues to go under the radar, intentionally or unintentionally. It's clear that voluntary enforcement mechanisms have been lackluster over the past decade, and both the FAA/DOT and DHS should aggressively enforce compliance by limiting funds to achieve a viable resolution. Ultimately, if those federal departments fail to take corrective action by limiting those funds, Congress has the authority to step in and fill gaps.[230] As noted by the Congressional Research Service:

> Title VI has gone largely unchanged in the 50 years since it became law. As this report has explained, the debates over the statute have therefore centered on how the courts have read its two central provisions—Sections 601 and 602—and how federal [departments] have gone about enforcing them. But Congress has the ultimate say over how Title VI works—rooted not only in its legislative power but in its authority to oversee the statute's use by federal agencies.[231]

Individuals, scholars, and organizations alike have documented or reported TSA's discriminatory technologies and practices for more than a decade, making it a well-defined problem.[232] Yet, until federal departments or Congress choose to step in, a well-defined problem will continue to remain a problem half solved.

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230. JD S. HSIN, CONG. RSCH. SERV., R45665, CIVIL RIGHTS AT SCHOOL: AGENCY ENFORCEMENT OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, at 22 (2019).

231. *Id.*

232. *See, e.g.*, Sharon Bernstein, *Airport Pat-Downs of Black Women's Hairstyles Discriminatory: ACLU*, REUTERS (Mar. 26, 2015, at 20:27 EDT), https://www.reuters.com/article/world/us/airport-pat-downs-of-black-womens-hairstyles-discriminatory-aclu-idUSKBN0MN01K/ [https://perma.cc/VEM6-WRYA].

B. *Remedy II: Legislative Pathways to Reform*

Enforcing Title VI funding requirements is not the only thing the legislative branch can do to comb through TSA's discriminatory practices as it relates to women of color and hair discrimination. A movement calling legislative representatives to action has taken leaps and bounds in the past few years. Yet, to fully understand the momentum behind recent legislative momentum around hair discrimination, a discussion on the historical laws and cultural movements around hair should be noted.

Laws enacted around hair or hairstyles are scattered throughout American history. In the 1700s, enacted by the Spanish colonial government in Louisiana, the Edict of Good Government, or Tignon Laws, required free Black women to cover their hair to identify their enslaved lineage.[233] Tignon laws were enforced for nearly twenty years, up until the Louisiana Purchase in 1803.[234] In 1873, the Queue Ordinance of 1873, also called the Pigtail Ordinance, sought to outlaw the wearing of long braids by men, a "Chinese custom that dates back to the Han and Ming Dynasties."[235] The ordinance was ultimately vetoed by San Francisco's mayor and was deemed unconstitutional.[236] Culturally, and decades later, the Black pride movements of the 1960s and 1970s celebrated the afro hairstyle and launched it into the symbol of resistance.[237] By the 1980s a noteworthy case for hair discrimination occurred in New York in 1981, *Rogers v. American Airlines*.[238] Renee Rogers, a Black flight attendant, sued her employer after the airline mandated that

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233. Jameelah Nasheed, *When Black Women Were Required by Law to Cover Their Hair*, VICE (Apr. 10, 2018, at 15:39 ET), https://www.vice.com/en/article/black-womens-hair-illegal-tignon-laws-new-orleans-louisiana/ [https://perma.cc/N2EJ-JWXX].

234. *Id.*

235. Ruhshona Sheva, *Sarcasm, Equality, and Perseverance: The Importance of the Chinese Question*, N.Y. HIST. (May 30, 2023), https://www.nyhistory.org/blogs/sarcasm-equality-and-perseverance-the-importance [https://perma.cc/E6PU-HFQ6].

236. *Id.*; *see* Ho Ah Kow v. Nunan, 12 F. Cas. 252 (C.C.D. Cal. 1879).

237. *See* Nasheed, *supra* note 233.

238. *See generally* Rogers v. Am. Airlines, Inc., 527 F. Supp. 229 (S.D.N.Y. 1981) (considering whether an airline can prohibit an employee from wearing a certain hairstyle).

black women could not wear their hair in a cornrow[239] style.[240] The court found that cornrows were not protected under Title VII of the Civil Rights Act because "[a]n all-braided hair style is an 'easily changed characteristic,' and, even if socioculturally associated with a particular race or nationality, is not an impermissible basis for distinctions in the application of employment practices by an employer."[241] After *Rogers*, other cases went on to cement the false idea that hair is a mutable, aesthetic choice rather than a protected racial characteristic.[242]

Fast forwarding to the recent years, in December 2019, groundbreaking legislation was enacted to combat the narrowed understanding of Title VII protections not extending to hair styles intertwined with the Black identity.[243] In July 2019, California's Governor signed S.B. 188 after the California Legislature unanimously passed the bill known as Creating a Respectful and Open Workplace for Natural Hair, also known as the CROWN Act.[244] The CROWN Act expanded the definitions of "race" under the California Fair Employment and Housing Act and Education Code to include traits historically associated with race, including but not limited to, hair texture and protective[245] hairstyles.[246] In 2019, California became the first state to

239. *Cornrow*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/cornrow [https://perma.cc/RX35-TENT] (last visited Mar. 24, 2026) ("[Cornrows is defined as] a hairstyle in which the hair is divided into cornrow sections arranged in rows.").

240. *Rogers*, 527 F. Supp. at 231.

241. *Id.* at 231.

242. *See, e.g.*, EEOC v. Catastrophe Mgmt. Sols., 852 F.3d 1018, 1023 (11th Cir. 2016) ("A hairstyle, even one more closely associated with a particular ethnic group, is a mutable characteristic."); Pitts v. Wild Adventures, Inc., No. 7:06-CV-62-HL, 2008 WL 1899306, at *6 (M.D. Ga. Apr. 25, 2008) ("Dreadlocks and cornrows are not immutable characteristics, and an employer policy prohibiting these hairstyles does not implicate a fundamental right.").

243. *See* Javier F. Garcia, *California's CROWN Act Expands Discrimination Protections for Natural Hair*, PERKINS COIE (July 29, 2019), https://www.perkinscoie.com/insights/update/californias-crown-act-expands-discrimination-protections-natural-hair [https://perma.cc/9AAD-62SY]; S.B. 188, 2019–2020 Gen. Assemb., Reg. Sess. (Ca. 2019).

244. Garcia, *supra* note 243.

245. Natasha L. Domek & Lauren J. Blaes, *A Heads Up on the CROWN Act: Employees' Natural Hairstyles Now Protected*, NAT'L L. REV. (Aug. 22, 2019), https://www.natlawreview.com/article/heads-crown-act-employees-natural-hairstyles-now-protected [https://perma.cc/LE39-TLFA] ("Protective hairstyles include, but are not limited to 'braid, locks, and twists.'").

246. CAL. GOV'T CODE § 12926(w); CAL. EDUC. CODE § 212.1(b) (2019).

provide explicit statutory protection against discrimination based on natural or protective hairstyles.[247] Quickly following suit, by 2020 New York, New Jersey, Maryland, Washington, Colorado, Virginia and Pennsylvania quickly enacted their own state CROWN Acts.[248] Impressively, by 2025, twenty-eight states have enacted their own state iterations of the CROWN Act.[249] Some municipalities have even enacted their own local CROWN Act despite having no state-wide legislation, like Austin, Texas, and Charlotte, North Carolina.[250] The CROWN Act is important because it fills a necessary gap in legislation. The federal 2022 Crown Act proposal was initiated to address gaps in civil rights protections.[251] Legislators framed the CROWN Act as a necessary corrective to ensure that race-based discrimination statutes explicitly cover traits inextricably linked to racial identity, particularly hair.[252]

Though rooted in history, it is evident that hair-based discrimination continues to persist today. According to a 2023 CROWN Research Study on the systemic social and economic impact of hair bias and discrimination against Black women in the workplace, race-based hair discrimination still drastically

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247. *See* Jacqueline Laurean Yates, *National Crown Day: 13 States Have Passed Laws to Ban Natural Hair Discrimination*, ABC NEWS (July 2, 2021, at 12:56 ET), https://abcnews.go.com/GMA/Style/national-crown-day-states-passed-laws-ban-natural/story?id=71574191 [https://perma.cc/3C9B-VS92].

248. 2019 N.Y. Laws 95; 2020 Va. Acts 107 (H.B. 1514); 2020 Va. Acts 152 (S.B. 50); S.B. 3945, 218th Leg. (N.J. 2019); 2020 Md. Laws 474; H.B. 2602, 66th Leg., 2019 Reg. Sess (Wash. 2020); H.B. 1048, 72nd Gen. Assemb., 2d Reg. Sess. (Colo. 2020); 2025 Pa. Laws 54 (HB 0439).

249. CROWN Coalition, *About*, THE OFFICIAL CROWN ACT, https://www.thecrownact.com/about [https://perma.cc/UKB4-KHBB] (last visited Mar. 26, 2026).

250. AUSTIN, TEX., ORDINANCE NO. 20220609-043 (2022); CHARLOTTE, N.C., CODE § 12-83 (2022) (ordinance effective Jan. 1, 2022, adding "natural hairstyle" to protected classes in employment).

251. *See* CROWN Act of 2022, H.R. 2116, 117th Cong. (2022) (instituting definitions of race and national origin to effectuate the comprehensive scope of federal civil rights laws and address courts' narrow interpretations that have left gaps in protection from hair discrimination).

252. *See Booker, Collins Reintroduce Bipartisan CROWN Act to Ban Hair Discrimination*, CORY BOOKER (Feb. 26, 2025), https://www.booker.senate.gov/news/press/booker-collins-reintroduce-bipartisan-crown-act-to-ban-hair-discrimination [https://perma.cc/RK2B-JCJY] ("Although existing federal law prohibits discrimination on the basis of race, several federal courts have narrowly construed those protections to permit schools, workplaces, and federally funded institutions to discriminate against people of color who wear certain types of natural or protective hairstyles.").

affects hiring practices and daily workplace interactions.[253] The study produced some jarring statistics, including that Black women's hair is more than twice as likely to be perceived as unprofessional; "Black women with coily/textured hair are [twice] as likely to experience microaggressions in the workplace than Black women with straighter hair," "[o]ver [20%] of Black women" between the ages of "[twenty-five and thirty-four] have been sent home from work because of their hair," and "[25%] of Black women believe they have been denied a job interview because of their hair, which is even higher for women under [thirty-four] (1/3)."[254]

The CROWN study focuses on workplace hair-discrimination, but that very discrimination is not solely confined to boardrooms and interviews. Those same biases are likely present no matter where a woman travels, or rather, even at the checkpoints before she travels. As described, TSA checkpoints are places where women regularly report similar discriminatory practices, humiliation, and aggressions to those noted at workplaces.[255] Though no formal study has occurred, the absence of comprehensive data should not be misconceived as the absence of a harm. Just as the CROWN Act was originally conceived to address discrimination in employment and education, a potential solution to remedy TSA hair-discrimination would be an expansion of the Act.

Senator Cory Booker, a leading congressional sponsor of the federal CROWN Act, summed up the distress of citizens with natural hair styles in a few words:

> Nobody should face harassment or discrimination based on their natural hair, and the CROWN Act is an effort to heal a systemic bias that tells Black people that who they inherently are is

253. CROWN Coalition, CROWN Act Research Studies, THE OFFICIAL CROWN ACT, https://www.thecrownact.com/research-studies [https://perma.cc/WHW6-ZBZ5] (last visited Mar. 23, 2026).

254. *Id.*

255. *See For Girls of Color Who Have Been Violated by the TSA*, ACLU OHIO (May 13, 2015), https://www.acluohio.org/news/girls-color-who-have-been-violated-tsa [https://perma.cc/9ML7-4RPX].

> wrong . . . . Prejudice against Black hair demeans an important foundation of our identity and cultural heritage. It's time that the long and storied history of implicit and explicit biases against natural hair comes to an end. Black hair is beautiful in all of its forms and styles, and we must ensure individuals are free to express their cultural identities without fear of prejudice or bias.[256]

As noted, representatives had previously proposed to enact a federal CROWN Act in 2022 and succeeded in House efforts but failed to gain Republican support in the Senate.[257] The 2025 reintroduction of the Act is "a bipartisan effort" that seeks to "ban discrimination against individuals based on their hairstyle or hair texture due to their race" and "protect individuals from hair discrimination while participating in federally assisted programs, housing programs, public accommodations, and schools."[258]

But, in the face of Diversity, Equity, and Inclusion drawbacks, it is unlikely the 2025 proposal will pass in Congress, and even if it does, it is unlikely the Trump administration will support the bill.[259] Representative Bonie Watson Coleman, the Democrat leading the charge in the House, acknowledges "[the] environment we are currently functioning in. [...] I can't tell you what's going to happen, but I can tell you that we'll stand behind this bill and the reason for it until we get it passed."[260] But

256. Watson Coleman, *Senator Booker Reintroduce CROWN Act to Fight Racial Discrimination*, REPRESENTATIVE WATSON COLEMAN (May 1, 2024), https://watsoncoleman.house.gov/newsroom/press-releases/rep-watson-coleman-senator-booker-reintroduce-crown-act-to-fight-racial-discrimination [https://perma.cc/A2CZ-A4HM].

257. Chandelis Duster, *Congress Reignites a Bipartisan Effort to Ban Hair Discrimination*, NPR (Mar. 12, 2025, at 09:09 ET), https://www.npr.org/2025/03/12/nx-s1-5324544/crown-act-reintroduced-2025 [https://perma.cc/9CZ6-XJPY].

258. *Id.*

259. *See* Tracy Richelle High, Julia M. Jordan & Ann-Elizabeth Ostrager, *President Trump Acts to Roll Back DEI Initiatives*, HARV. L. SCH. F. ON CORP. GOV. (Feb. 10, 2025), https://corpgov.law.harvard.edu/2025/02/10/president-trump-acts-to-roll-back-dei-initiatives/ [https://perma.cc/UP8T-EAL8] (describing multiple executive orders signed in January 2025 directing federal agencies to eliminate diversity, equity, and inclusion programs, rescind affirmative-action-related requirements, and promote "[m]erit-[b]ased" hiring).

260. Duster, *supra* note 257.

this does signal an important cultural shift as it comes to hair discrimination. There is now a cultural and legislative priority to ensure hair discrimination is checked.

* * *

If the 2025 CROWN Act is not passed, there is still hope for future proposals. Should Congress ultimately adopt the CROWN Act at the federal level, it could be drafted to extend protections into the public-accommodations context, including airport terminals. A useful legislative analogue exists in the structure the Americans with Disabilities Act (ADA).[261]

The ADA was enacted with the purpose of "provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[262] While the statute's definition of "public accommodations" broadly encompasses facilities such as terminals, depots, and stations used for public transportation, it expressly excludes transportation "by aircraft."[263] Nevertheless, while airports are categorically exempt from ADA "public accommodations" coverage, they need not be.[264] Other ADA regulations require airports, as state owned "public entities," to make their facilities and services readily accessible to people with disabilities.[265] Also, the Department of Justice's ADA Title III Technical Assistance Manual suggests that private air terminals are still "commercial facilities."[266] Therefore, the regulatory scheme still ensures some equal treatment for disabled people in certain airports, despite the ADA's statutory exclusion of aircraft transportation.[267]

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261. *See* 42 U.S.C. § 12101.

262. ADA Amendments Act of 2008, Pub. L. No. 110-325, §2(a)(1), 122 Stat. 3553 (2008).

263. 42 U.S.C. § 12181(7)(G); 42 U.S.C. § 12181(10).

264. *See* Office of Aviation Consumer Protection, *Airline Passengers with Disabilities Bill of Rights*, U.S. DEP'T OF TRANSP. (Feb. 5, 2025), https://www.transportation.gov/airconsumer/disabilitybillofrights [https://perma.cc/2XMZ-2BUL].

265. *See* 49 C.F.R. § 27.71(a); 28 C.F.R. § 35.130; PHILA. INT'L AIRPORT, PHILADELPHIA INTERNATIONAL AIRPORT AMERICANS WITH DISABILITIES POLICY, https://www.phl.org/drupalbin/media/ADA%20Policy%20-v3%20EL%20Edit.pdf [https://perma.cc/MC4U-S2FW] (describing Philadelphia airport's obligations under the ADA as a "public entity").

266. *ADA Title III Technical Assistance Manual,* U.S. DEP'T OF JUST. C.R. DIV. (Nov. 1, 1993), https://www.ada.gov/resources/title-iii-manual/ [https://perma.cc/89U5-XPXZ]; *see also* 28 C.F.R. § 36.102(c)-(d).

267. *Id.*; 42 U.S.C § 12181(7)(g), (10); 28 C.F.R. § 36.104.

Importantly, this framework underscores that airport coverage under federal civil rights law is not automatic, but the product of deliberate statutory design.[268] Unlike the ADA, Title II of the Civil Rights Act of 1964 does not presently include airports within its definition of public accommodations.[269] Accordingly, extending CROWN Act protections to airport terminals would require an affirmative legislative or regulatory intervention whether through (1) express language in the CROWN Act itself; (2) a stand-alone amendment to Title II; or (3) implementing regulations that interpret Title II to encompass airport facilities. The ADA's approach therefore serves not as proof of existing coverage, but as a structural blueprint for how Congress could craft public-accommodations protections under the CROWN Act in a manner that would meaningfully reach airport terminals and, by extension, TSA screening practices conducted within those spaces.

CONCLUSION

Conclusively, discrimination by TSA practices and policies is a lived reality for many people of color every time they arrive at an airport.[270] A countless number of women have felt targeted, powerless, and humiliated time and time again.[271] So much so that the magnitude of this experience could not be fully encapsulated in this paper alone. And yet, as prevalent as it is, there is little to no current redress or visible avenue to justice.[272] It is an issue that no one has yet been afforded the opportunity to articulate before a court, but one that is easy to experience when traveling.[273] The intertwined repercussions of TSA technology and TSA pat-down practices illustrate a larger problem

268. *ADA Title III Technical Assistance Manual, supra* note 266.

269. *See Americans with Disabilities Act Title II Regulations*, U.S. DEP'T OF JUST. C.R. DIV. (Jun. 24, 2024), https://www.ada.gov/law-and-regs/regulations/title-ii-2010-regulations/ [https://perma.cc/PKH6-SPA6].

270. *See supra* Section I.B.

271. *See supra* Part I.

272. *See supra* Part III.

273. *See* ACLU Article, *supra* note 6; ACLU Singleton Complaint Letter, *supra* note 7.

of complacency by the government in a much larger issue— a continued violation of protected rights.

Whether rooted in flawed technological design or a narrow testing base, allowing the problem to persist is an injustice not just to the individuals affected by the experience but also to the capabilities and promise of the technology itself. Innovation should make life easier, better even. Instead, our technological advances as applied to the TSA have made some lives more difficult.[274] A proposed path forward would be that instead of forcing individuals to solely rely on courts for relief, legislative enforcement or action should be the focus of redress.[275] Without such reform, TSA technology and practices will continue to fail in their most basic purpose: to protect and serve the public without bias.

The history of technology and its echoes in current innovation remind us that technology was never neutrally created. Disproportionately, people of color are faced with discrimination inherent in the technology we hold to such high standards. In the past, these discriminations looked like disadvantages in film photography, but in the present, it looks like technology preventing people of color from traveling freely. If we don't address these technologies or practices with discriminatory impacts, how will communities of color continue to be affected? After all, technology is here to stay—but how it evolves, is up to us.

274. *See supra* Section I.A.

275. *See supra* Section III.B.