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

ROHAN RAMSINGH,
Petitioner

v.

TRANSPORTATION SECURITY ADMINISTRATION
Respondent

No. 21-1170

PETITION FOR REVIEW

Pursuant to 49 U.S.C. § 46110, Rohan Ramsingh petitions the Court for a review of an order of the United States Transportation Security Administration ("TSA") issued June 23rd, 2021. The order, a final decision in a civil penalty proceeding, bears agency docket number 20-TSA-0041 and is attached to this petition as Exhibit A.

By way of background, Petitioner was charged by TSA with interference with a TSA screener at an airport pursuant to 49 C.F.R. § 1540.109. An administrative law proceeding was held during which the parties agreed that the conduct alleged by the government to violate § 1540.109 was limited to failure to comply with screening processes. Petitioner produced evidence that he was, in fact, medically *unable* to comply with screening, and this evidence was not challenged by the agency and was accepted by the administrative court.

Notwithstanding, the administrative court found: 1) that passive non-compliance, unaccompanied by any active resistance or disruption, constitutes interference sufficient to violate § 1540.109, 2) that no *mens rea* is required to violate § 1540.109, and 3) that the existence of a medical condition that limits one's ability to comply with screening orders is not a defense to a § 1540.109 charge. Petitioner hereby challenges these findings and the ultimate conclusion that he is liable for a violation of § 1540.109.

Dated: Washington, D.C.
August 10th, 2021

Respectfully submitted,

/s/Jonathan Corbett

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CERTIFICATE OF SERVICE

I, Jonathan Corbett, hereby certify that I have obtained consent from the following party to effect service via e-mail, and on August 10th, 2021, I served the petition in this action on the following party via e-mail:

Transportation Security Administration
Attn: Jose "Bill" Hernandez, Esq.
Supervisory Field Counsel
bill.hernandez@tsa.dhs.gov

Dated: Washington, D.C.
August 10th, 2021

Respectfully submitted,

/s/Jonathan Corbett

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Before the
DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTSRATION

IN THE MATTER OF:	)	Docket Number:
	)	
ROHAN RAMSINGH	)	**20-TSA-0041**
	)	
Respondent	)	

FINAL DECISION AND ORDER

Mr. Rohan Ramsingh (Respondent) appeals the Initial Decision of the Administrative Law Judge (ALJ) issued on March 4, 2021, holding that Respondent violated 49 C.F.R. §1540.109 and assessing a civil penalty in the amount of $680.00.[1] For the reasons set forth below, the appeal is denied and the Initial Decision is upheld.

Procedural History

On June 18, 2020, TSA filed a Complaint against Respondent alleging that he interfered with screening personnel in the performance of their duties in violation of 49 C.F.R. §1540.109 and assessed a civil penalty in the amount of $2,050. On July 16, 2020, Respondent filed a Motion to Dismiss for Insufficiency. On August 13, 2020, TSA filed a Response to the Motion to Dismiss. On September 10, 2020, the ALJ issued an Order Denying the Motion to Dismiss the Complaint for Insufficiency. On September 20, 2020, Respondent submitted his Answers to the Complaint. On February 2, 2021, the parties filed cross Motions for Decision. On March 1, 2021, the parties filed replies in opposition to the other party's Motion for Decision. On March 4, 2021, the ALJ issued his Initial Decision granting TSA's Motion for Decision and Denying Respondent's Motion for Decision.[2] On March 4, 2021, Respondent filed a Notice of Appeal to the TSA Final Decision Maker.

[1] TSA proposed a civil penalty of $2,050. The ALJ mitigated this penalty amount to $680.00.
[2] No hearing was held on this matter. The ALJ decided the matter based on the record produced by the parties.

Standard of Review

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

Regulation in Question

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

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

> "Section 1540.109 is a new requirement prohibiting any person from interfering with, assaulting, threatening, or intimidating screening personnel in the performance of their screening duties. This section was proposed in the January 2000 screening company NPRM and received no negative comments. The rule prohibits interference that might distract or inhibit a screener from effectively performing his or her duties." This rule is necessary to emphasize the importance to safety and security of protecting screeners from undue distractions or attempts to intimidate. Previous instances of such distractions have included verbal abuse of screeners by passengers and certain air carrier employees.
>
> A screener encountering such a situation must turn away from his or her normal duties to deal with the disruptive individual, which may affect the screening of other individuals. The disruptive individual may be attempting to discourage the screener from being as thorough as required. The screener may also need to summon a checkpoint screening supervisor and law enforcement officer, taking them away from other duties. Checkpoint disruptions potentially can be dangerous in these situations. This rule supports screeners' efforts to be thorough and helps prevent individuals from unduly interfering with the screening process.

> This rule does not prevent good-faith questions from individuals seeking to understand the screening of their persons or their property. But abusive, distracting behavior, and attempts to prevent screeners from performing required screening, are subject to civil penalties under this rule.

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

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

ALJ Initial Decision.

The ALJ identified the relevant issues in the case as:

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

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

Throughout their filings, to include their cross Motions for Decision and Respondent's Opposition to TSA's Motion for Decision, the parties have put forward different interpretations of the term "interference." Respondent, having entered the TSA checkpoint and presented himself for screening, alarmed the Explosive Trace Detection (ETD) test for possible explosives. In order to resolve this explosive alarm, TSA procedures require their officers to conduct a pat-down of the person. Respondent argued that he did not refuse the pat-down, he was unable to comply. Respondent argued that his non-compliance resulted from a medical condition that prevented him from completing the screening process. He argued that he did not yell, curse, threaten or touch anyone during this incident. He argued that the checkpoint remained open and passenger screening continued at all times. He did not create a spectacle that distracted passengers and no delays were caused. He argued that his non-compliance with the requirement to complete the screening process, without more, is not interference.

TSA argued that Respondent entered the airport security checkpoint and presented himself for screening. TSA argued that once the screening process has begun, individuals are required to complete the screening process. Respondent's hands alarmed for explosive trace

materials. In order to clear that positive test for explosive material, TSA officers are required by procedure to conduct a pat down of the person that alarmed. TSA argued that Respondent refused to allow TSA to conduct the required pat-down following the positive test for explosives. TSA argued this refusal constituted interference with screening.

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

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

Issues Decided by Final Decision Maker

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

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

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

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

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

Findings

Finding 1

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

On November 23, 2019, Respondent entered the TSA checkpoint on Airside C at Tampa International Airport and presented himself and his accessible property for screening. After placing his accessible property on the X-ray unit, Respondent attempted to go through the Walk Through Metal Detector (WTMD), however he was directed by a TSO to proceed through the Advanced Imaging Technology (AIT) machine. Respondent informed the TSO he could not lift his arms and the TSO directed him to go through the WTMD. As part of this screening, the TSO conducted an Explosive Trace Detection (ETD) test of Respondent's hands. The ETD test of Respondent's hands alarmed positive for possible components of explosives and the TSO requested the assistance of a supervisor. Two supervisory TSOs (STSO) responded and determined that TSA procedure required ETD testing of Respondent's accessible property and a pat-down of his person to clear the alarm. A STSO informed Respondent that TSA procedures dictated that a pat-down search was necessary to resolve the positive ETD alarm. Respondent declined the pat-down search. The STSO offered to Respondent to conduct the pat-down search in a more private area of the checkpoint. Respondent continued to decline submitting to a pat-down search due to his medical condition. Respondent informed the STSOs that he has a diagnosis of Post-Traumatic Stress Disorder (PTSD) resulting from military service. The STSO continued to request Respondent complete the pat-down with private screening and Respondent continued to decline and stated that he "could just leave" and "you can't detain me." The STSO informed Respondent that if he continued to refuse to complete the pat-down, TSA would have to call the police for assistance on the scene. Respondent replied, "fine call them." Respondent continued to refuse to allow a pat-down and was eventually escorted away from the checkpoint by Tampa Airport Police. Respondent's behavior required additional TSA employees to respond to the scene and spend time addressing his refusal to complete screening. Respondent's behavior at the checkpoint did not cause delay in the screening process at the TSA checkpoint.

The ALJ in his Initial Decision indicated that each party separately asserted "undisputed facts." Despite each party asserting some facts that may differ from those asserted by the other party, the ALJ determined that the alleged factual differences are not material and not necessary in reaching a decision in this matter. TSA in their appeal brief does not dispute any of the ALJ's undisputed findings of fact. Respondent writes in his appeal brief, "The administrative law court found it as undisputed that this constituted Ramsingh "declin[ing]" and refus[ing,]' although Ramsingh explicitly disputed this in his opposition."[3] This statement refers to the ALJ's finding that Respondent did in fact refuse the pat-down search required to complete the screening process; Undisputed Facts 8, 9, 11, 12.[4] Respondent argues that just as one would not say that a paraplegic "refused" to stand, Respondent did not "refuse", but was unable to comply. The evidence, as cited to in the record by the ALJ, supports that Respondent refused and continued to refuse the pat-down search required to clear the positive test for explosive materials. It was admitted that, "Respondent refused the private screening and continued to refuse to submit to the pat-down stating he 'could just leave' and 'you can't detain me."[5] Respondent, by his own admission, refused and continued to refuse the pat-down search required to complete the screening process. Accordingly, each finding of fact by the ALJ is supported by a preponderance of the evidence.

Finding 2

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

Discussion of Respondent's Issues on Appeal

Respondent's position throughout, from his Motion for Decision to his Appeal Brief has been that mere non-compliance, without more, does not give liability to interference. Respondent argues that his noncompliance is not interference if he was not yelling, using profanity, being belligerent or otherwise disruptive and the checkpoint did not need to be shut down or even slowed down screening for any other traveler. Respondent argues that even if it is

[3] Appeal Brief of Respondent-Appellant Rohan Ramsingh, p.2
[4] Order Granting TSA's Motion For Decision and Denying Respondent's Motion For Decision, p.3
[5] TSA's Motion For Decision, Exhibit 7, Respondent's Response to Request for Admission, Number 4

found that he interfered with the screening process, his medical conditions made it impossible for him to comply with the requirement to complete screening thus absolving him of liability.

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

In support of these claims, he cites to District of Columbia v. Little, 339 U.S. 1 (1950). The Court found that the word interfere in this housing regulation cannot be fairly interpreted to encompass the homeowner's failure to unlock her door and her remonstrances on Constitutional grounds. This case dealt with a regulation that made it a crime to interfere with housing inspectors charged with inspecting homes. The homeowner in that case refused to consent to the inspectors search of her home, telling the officers, who had no warrant, not to enter her home (remonstrances) and refused to unlock her door. The homeowner was found guilty of a misdemeanor crime. The Little Court wrote that the housing regulation in question did not even prohibit **hindering** or refusing to permit any lawful inspection.

Unlike, the housing regulation in Little, the Preamble to §1540.109 does elaborate on interference, the regulation prohibits **interference** that might distract or **inhibit** a screener from effectively performing his or her duties. (emphasis added). Respondent argues that interference requires some kind of action taken to hinder something else and that the Agency's torture of the English language is due no deference. Citing Perrin v. United States, 444 U.S. 37, 42 (1979) Respondent argues there is no ambiguity to the meaning of "interfere" and that unless otherwise defined, words will be interpreted as taking their common meaning. In U.S. v. Wilfong, 274 F.3d 1297, 1301 (9th Cir.2001) the Ninth Circuit interpreted the common meaning of interference referencing Webster's New World Dictionary 704 (3d College ed.1998); to interfere is to oppose, intervene, hinder, or prevent. The Ninth Circuit determined that interference has such a clear, specific and well-known meaning as to not require more than the use of the word itself in a statute. TSA in the Preamble to §1540.109 does elaborate on interference, the rule prohibits **interference** that might distract or **inhibit** a screener from effectively performing his or her

duties. Inhibit and hinder are synonyms.[6] In addressing potential violations of §1540.109, the Sixth Circuit has stated that by using the term interfere, §1540.109 prohibits only that conduct which poses an actual hindrance to the accomplishment of a specified task. Rendon v. Transportation Security Administration, 424 F.3d 475, 480 (6th Cir. 2005). In the Preamble to §1540.109, TSA further identifies interference as those situations where, "The screener may also need to summon a checkpoint screening supervisor and law enforcement officer, taking them away from other duties."[7] The Preamble to §1540.109 also indicates, "This rule supports screeners' efforts to be thorough and helps prevent individuals from unduly interfering with the screening process."[8] Due to Respondent's refusal to complete the screening process, law enforcement officers were called to respond to the checkpoint. Respondent's refusal to complete the screening process prevented TSA from thoroughly performing their duties to clear Respondent's positive alarm for explosives.

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

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

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[6] "Hinder." *Merriam-Webster.com Thesaurus*, Merriam-Webster, https://www.merriam-webster.com/thesaurus/hinder. Accessed 19 Jun. 2021.
[7] 67 Fed. Reg. 8340, 8344 (February 22, 2002)
[8] Id.

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

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

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

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

> [R]evoke consent to an ongoing airport search makes little sense in a post 9/11 world. Such a rule would afford terrorists multiple opportunities to attempt to penetrate airport security by "electing not to fly" on the cusp of detection until a vulnerable portal is found This rule would also allow terrorists a low-cost method of detecting systemic vulnerabilities in airport security, knowledge that could be extremely valuable in planning future attacks. . . .
>
> Rather, where an airport screening search is otherwise reasonable and conducted pursuant to statutory authority, 49 U.S.C. § 44901, all that is required is the passenger's election to attempt entry into the secured area of an airport. Under current TSA regulations and procedures, that election occurs when a prospective passenger walks through the magnetometer or places items on the conveyor belt of the x-ray machine. (citations omitted)

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

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

> The [TSA] Administrator, in conjunction with the Director of the Federal Bureau of Investigation, must assess current and potential threats to the domestic air transportation system and take necessary actions to improve domestic air transportation security. . . . The procedure requires the use of advanced imaging technology

> scanners as the primary screening method at airport checkpoints. If a passenger declines the scanner or alarms a metal detector or scanner during the primary screening method, he receives a pat-down instead. (citations omitted)

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

Metal detectors cannot alert officers to nonmetallic threat items or nonmetallic explosives, and the United States enjoys flexibility in selecting from among reasonable alternatives for an administrative search. *Id.* at 1181. The Corbett court acknowledged that a full-body pat-down intrudes on privacy, but the security threat outweighs that invasion of privacy. They found airport screening is a permissible administrative search; security officers search all passengers, abuse is unlikely because of its public nature, and passengers elect to travel by air knowing they must undergo a search. *Id.* citing U.S. Hartwell, 436 F.3d 174, 180 (3rd Cir 2006).

The record supports that Respondent understood that when he came to the airport he would have to go through the screening checkpoint.[9] Respondent answered that he uses airports often, a minimum of six times a year and that he previously agreed to a pat-down and that he remembered shaking and crying when the TSA person got near his groin area.[10] I find that the ALJ has correctly applied the law and facts of the case in determining that the Respondent voluntarily elected entry into the security checkpoint and began the security screening process. In making his election to begin the screening process, the Respondent has used airports often and has previously been patted down. Respondent chose (volitional act) not to finish the screening process after he had alarmed positive for explosives and that this interfered and inhibited the security officers in the performance of their duties.

Respondent also argues that even if interference could be accomplished passively, he challenges TSA's position that no intent is required to violate this regulation. Respondent cites Morissette v. United States, 342 U.S. 246, 252 (1952) for the notion that some level of intent is required in this case. Morissette does not hold such. The issue in Morissette was not whether a governmental regulation required intent, nor was the issue concerning the level of intent a government regulation requires. Morissette involved a theft, an "infamous" crime and not an administrative security regulation. The issue was whether the trial court erred when it took the

[9] Complainant's Response to Respondent' Motion for Decision, Exhibit 1.
[10] Id. at Exhibit 15, p.2 and p.6, Respondent's

ultimate finding of guilt or innocence away from the finder of fact (jury). However, Morrissette does analyze the levels of intent which are instructive to the case at bar.

> While many of these duties are sanctioned by a more strict civil liability, lawmakers, whether wisely or not, have sought to make such regulations more effective by invoking criminal sanctions to be applied by the familiar technique of criminal prosecutions and convictions. This has confronted the courts with a multitude of prosecutions, based on statutes or administrative regulations, for what have been aptly called 'public welfare offenses.' These cases do not fit neatly into any of such accepted classifications of common-law offenses, such as those against the state, the person, property, or public morals. Many of these offenses are not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty. Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted. In this respect, whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity. Hence, legislation applicable to such offenses, as a matter of policy, does not specify intent as a necessary element. The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities. Also, penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation. Under such considerations, courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime. This has not, however, been without expressions of misgiving.
>
> The pilot of the movement in this country appears to be a holding that a tavern keeper could be convicted for selling liquor to a habitual drunkard even if he did not know the buyer to be such. Later came Massachusetts holdings that convictions for selling adulterated milk in violation of statutes forbidding such sales require no allegation or proof that defendant knew of the adulteration. Departures from the common-law tradition, mainly of these general classes, were reviewed and their rationale appraised by Chief Justice Cooley, as follows: 'I agree that as a rule there can be no crime without a criminal intent, but this is not by any means a universal rule. Many statutes which are in the nature of police regulations, as this is, impose criminal penalties irrespective of any intent

> to violate them, the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible.
>
> After the turn of the Century, a new use for crimes without intent appeared when New York enacted numerous and novel regulations of tenement houses, sanctioned by money penalties. Landlords contended that a guilty intent was essential to establish a violation. Judge Cardozo wrote the answer: 'The defendant asks us to test the meaning of this statute by standards applicable to statutes that govern infamous crimes. The analogy, however, is deceptive. The element of conscious wrongdoing, the guilty mind accompanying the guilty act, is associated with the concept of crimes that are punished as infamous. Even there it is not an invariable element. But in the prosecution of minor offenses there is a wider range of practice and of power. Prosecutions for petty penalties have always constituted in our law a class by themselves. That is true, though the prosecution is criminal in form.
>
> Soon, employers advanced the same contention as to violations of regulations prescribed by a new labor law. Judge Cardozo, again for the court, pointed out, as a basis for penalizing violations whether intentional or not, that they were punishable only by fine 'moderate in amount', but cautiously added that in sustaining the power so to fine unintended violations 'we are not to be understood as sustaining to a like length the power to imprison. We leave that question open.
>
> Thus, for diverse but reconcilable reasons, state courts converged on the same result, discontinuing inquiry into intent in a limited class of offenses against such statutory regulations. (Citations omitted)

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

A full reading of Morissette does not support Respondent's argument, rather it supports TSA's position that 49 C.F.R. §1540.109 properly prohibits Respondent's actions or inactions in this case. The Morissette Court discusses an increasingly complex and dangerous world calling for detailed regulations meant to affect public health, safety, and welfare. The Court notes that many violations of such regulations do not result in immediate injury to person or property but they do create the danger or probability of the immediate injury which the regulation seeks to minimize. The Court notes that whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity. The Court explains that legislation applicable to such offenses, as a matter of policy, does not specify intent as a necessary element. The ALJ's analysis of the facts of the case and legal analysis properly determined that no intent is required to violate 49 C.F.R. §1540.109. This regulation is meant to protect the safety and

security of the flying public; not just from immediate injury, but also the danger or probability of harm that the regulation seeks to minimize. This is why 49 C.F.R. §1540.109 does belong to a class of regulations where intent is not required.

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

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

required to submit to a pat-down and he refused (volitional act) to get patted down and not complete the screening process.

Without reference to any applicable law, Respondent argues that his medical condition excuses his non-compliance or interference with TSA procedures to complete the screening process once it has begun aviation passenger screening. Referencing the First Circuit, the ALJ reasoned that the fact that an individual had a medical issue did not negate the requirement for the individual to complete screening. Ruskai v. Pistole, 775 F.3d 63, 71 (1st Cir. 2014). Referencing the First, Fifth, and Ninth Circuits, the ALJ properly referenced the law and the policy reasons put forth by those Courts for the requirement to complete the security screening process. Ruskai, Skipwith, Aukai. Respondent had already declined the AIT scanner because of one medical condition; he was unable to raise his arms as required by the technology. If an individual declines the scanner and then alarms the WTMD, or tests positive for explosives on the ETD, the individual must receive a pat-down in order to clear the alarm and complete the screening process. Metal detectors cannot alert officers to nonmetallic threat items or nonmetallic explosives, and while the ETD test for the presence of explosives, a positive test for explosive requires a full-body pat-down to clear the threat. Respondent claims that his medical conditions prevent him from being screened through either the AIT machine or by participating in a pat-down to resolve an alarm. Thus, the only screening Respondent says he is able to complete is the WTMD and the ETD test for explosives, **provided he does not alarm either**, because an alarm of either then requires a pat-down. If he alarms either of those he wants to be able to just refuse the rest of screening and walk out of the checkpoint without completing the screening procedure. Respondent's only option would take us back to pre-9/11. Respondent in this case tested positive for explosives. Respondent's position is precisely the challenge the Ruskai, Skipwith and Aukai Courts highlighted in ruling that once an individual elects to begin the screening process, that process has to be completed. What Respondent seeks would require a fundamental change to TSA's security program, a change that would adversely affect TSA's ability to protect the aviation system.

Respondent indicates at the time of his refusal, he offered TSA several alternative solutions to the complete the screening process including: a pat-down that did not include the

groin area, going through the AIT machine again and trying to lift his arms to comply.[11] Neither of these alternatives are possible options to resolve his positive test for explosives. TSA did offer Respondent a private screening to resolve the alarm; Respondent refused that offer. Respondent indicates he gave thought to this option, but even if he did not freak out (respond negatively to the pat-down) TSA could say anything to get him in trouble and there would be no cameras in the private screening room to protect him.[12] Respondent also indicates that he would like TSA to look at creating a program where individuals could bring proof of their medical conditions which would allow them to skip these parts of the security process. The First Circuit has already rejected an individual's proposal of presenting medical documentation as proof that somehow an individual was not a threat. The Court noted the security risks to such a proposal are obvious. Ruskai, *supra.* at 72. Again, what Respondent seeks would require a fundamental change to TSA's security program, a change that would adversely affect TSA's ability to protect the aviation system. I find that he ALJ's conclusions of law were made in accordance with applicable law, precedent, and public policy.

Finding 3

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

Finding 4

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

Final Decision and Order

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

Under TSA's rules of practice, either party may petition the TSA Decision Maker to reconsider or modify a Final Decision and Order. The rules of practice for filing a Petition for

[11] Complainant's Response to Respondent' Motion for Decision, Exhibit 15, p.3
[12] Id.

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

STACEY D FITZMAURICE

Digitally signed by STACEY D FITZMAURICE
Date: 2021.06.22 11:59:26 -04'00'

Stacey Fitzmaurice
Senior Official Performing the Duties of the Deputy Administrator and TSA Decision Maker

DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTSRATION

IN THE MATTER OF:	)	Docket Number:
	)	
ROHAN RAMSINGH	)	**20-TSA-0041**
	)	
Respondent	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2021, I caused a true copy of the foregoing Final Decision and Order to be served as indicated on the following:

Via Email:
Enforcement Docket Clerk
ALJ Docketing Center
United State Coast Guard
U.S. Customs House, Room 412
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Baltimore, MD 21202-4022
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Dated: 23 June, 2021

RICHARD DIGIACOMO
Legal Advisor to
TSA Decision Maker