

Attachment to TSA Claim for Damage, Injury, or Death
Claimant: August Cecelio Rocha

The following is an attachment to August Rocha's TSA Claim for Damage, Injury, or Death, dated March 16, 2023.

BOX 2: REPRESENTATIVES

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BOX 8: BASIS OF CLAIM

The claims of August Rocha against the Transportation Security Administration ("TSA") are based on experiences he had at the Milwaukee Mitchell Airport on May 19, 2022, the Los Angeles International Airport on May 21, 2022, and the Dulles International Airport on October 18 and 19, 2022. Mr. Rocha claims he was discriminated against both based on his disability and transgender status. Mr. Rocha claims damages as a result of that discrimination.

A. Mr. Rocha

Mr. Rocha is a transgender male who uses he/him pronouns. Mr. Rocha is also an individual with disabilities under federal law. Mr. Rocha has Behcet's disease and experiences chronic severe pain. He uses a walker and wheelchair for mobility. He is also an individual with gender dysphoria.

B. May 19, 2022, Experience at the Milwaukee Mitchell Airport

On May 19, 2022, Mr. Rocha and his girlfriend Christine Muller¹ arrived at the Milwaukee Mitchell airport to catch a flight to Los Angeles.² The couple immediately sought out an airport wheelchair and wheelchair assistance to the gate. Mr. Rocha had his foldable walker with him and carried it in his lap while seated in the airport wheelchair and being wheeled through the airport.

When Mr. Rocha arrived at the TSA security checkpoint, he was asked to walk through the TSA scanning machine. Mr. Rocha assumed he would not have a problem with the request as he does have the limited ability to stand and walk a few steps. Mr. Rocha was not given the option of remaining seated in the airport-issued wheelchair while being screened and was not aware he could request the same.

Mr. Rocha wobbled through the body scanner with difficulty. A TSA agent rolled their eyes and snapped, “you should have just stayed in the wheelchair.”

After passing through the body scanner, Mr. Rocha was told he had to pass through a second time because TSA agents had pushed a “wrong button.” Mr. Rocha asked if he could utilize a wheelchair on this second pass through security but was told he could not. After proceeding through the body scanner a second time, Mr. Rocha was directed to wait for a pat-down.

Mr. Rocha immediately requested the ability to sit down while waiting for a pat-down. He repeatedly stated to TSA agents, “I need to be seated,” “I need to take a seat,” and “I have to sit down.” Despite these pleas and requests, TSA agents refused to allow Mr. Rocha to sit.

Mr. Rocha also repeatedly asked that TSA agents give him access to his walker and/or the airport wheelchair in which he had been transported to the security checkpoint. Again, TSA agents refused.

Mr. Rocha’s legs were cramping and burning, he was in pain. and he was becoming increasingly weak. It was obvious that Mr. Rocha was in distress: he was

¹ Christine Muller is a transgender woman who uses she/her pronouns. Ms. Muller is filing her own TSA claim regarding her travel experiences.

² Delta Flight Number 2625 at 6:20 p.m.

sweating profusely and was out of breath. He continued to beg for the ability to sit down or that he be given his walker or a wheelchair. TSA agents continued to ignore and deny Mr. Rocha's requests. One agent stated loudly "We are not wheelchair people, okay ma'am?" (misgendering him) and "We do not deal with this" – while gesturing to him.

Mr. Rocha also overheard TSA agents making comments to other passengers about the line delay, stating that the delay was because "someone was taking their sweet time."

After approximately 20 minutes, Mr. Rocha was finally patted down and his walker was given to him to proceed to the gate. Mr. Rocha requested wheelchair assistance to the gate but was denied that assistance. The agent that had assisted Mr. Rocha to the security area told him the wheelchair was "theirs." No other assistance was offered or provided.

Subsequently, as Mr. Rocha painfully made his way to his gate, he discovered that the brake on his walker had been broken by TSA staff when he was being processed through security.

C. May 21, 2022, Experience at the Los Angeles International Airport

On May 21, 2022, Mr. Rocha and Ms. Muller arrived at the Los Angeles International Airport to travel back home.³ They were separated at the TSA checkpoint to be patted down. Mr. Rocha was told by a TSA agent he had to wait to be searched because "we don't know what you are so we don't know who should pat you down" (or words to that effect). Mr. Rocha indicated to the TSA agent that he was a male and expressed a preference for a female agent to conduct the pat-down. The agent told him "if you are male you have to have a male pat you down" (or words to that effect). A few minutes later the agent told him "no one wants to touch you" and "[the agents] don't know what you are" (or words to that effect).

The agent, who Mr. Rocha understood to be in some kind of supervisory role, then told him that she would just pat him down herself. During the pat-down, the agent asked Mr. Rocha highly intrusive questions regarding his transition. Although Mr. Rocha does not recall exact words spoken, he recalls the agent asking whether he has had any surgeries and "what he had" (in reference to his genitalia). The agent

³ Delta Flight Number 1190 at 3:50 p.m.

also told August that she could tell he was “on T” (meaning testosterone), because of her experiences with other people who have used testosterone.

After the search, the airport personnel that was providing Mr. Rocha with wheelchair assistance to his gate (and who had witnessed the statement made) opined that he should take legal action over the incident.

D. October 18 and 19, 2022, Incidents at the Dulles International Airport

While Mr. Rocha was travelling through the TSA checkpoint at the Dulles airport on both October 18 and October 19, 2022, male and female TSA agents repeatedly referred to Mr. Rocha as “it” while they argued about who was going to pat him down at the TSA security checkpoint. Mr. Rocha was humiliated as agents stated loudly in front of other travelers “I’m not patting it down; you pat it down!”

On October 18, 2022, Mr. Rocha was caused to miss his flight.⁴ This was the reason for his return on October 19th; he had rescheduled his flight for that day.⁵

BOX 10: NATURE AND EXTENT OF INJURIES

As the result of the above-described events, Mr. Rocha was caused to experience extreme physical and mental distress. Mr. Rocha claims damages based on the violation of his rights under Section 504 of the Rehabilitation Act, 29 U.S. Code § 794 and the Federal Tort Claims Act, among others (and without prejudice to others). Mr. Rocha also claims TSA Policies may have been violated and/or fail to exist to prevent discrimination and further damages from occurring.

A. Section 504

Section 504 provides that:

“[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United

⁴ United Airlines Flight Number 1156 at 5:05 p.m.

⁵ Mr. Rocha does not have or recall the specific flight information for this date; but believes it was before noon.

States Postal Service.”

The purpose of Section 504 is “to eliminate discrimination on the basis of disability and to ensure evenhanded treatment between the disabled and the able-bodied.” *Southeastern Comm. College v. Davis*, 442 U.S. 397, 410, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979).

Mr. Rocha’s rights under Section 504 were denied in at least the following ways:

1. At the Milwaukee airport, TSA agents failed to accommodate Mr. Rocha’s disability-related need for a mobility aid during screening procedures despite his multiple pleas and requests and the obvious nature of his disability.
2. At the Milwaukee airport, TSA agents denied Mr. Rocha equal access to the secure side of the airport checkpoint by refusing to provide him with disability-related wheelchair assistance to his gate when requested and despite the obvious nature of his disabilities.
3. At the Milwaukee, Los Angeles, and Dulles airports Mr. Rocha was misgendered, and subjected to discriminatory treatment and harassment based on his status as a transgender person who has, had, or is perceived as having gender dysphoria.⁶

B. Tort Claims

Mr. Rocha may avail himself of tort remedies in the states in which the TSA conduct complained of took place under the Federal Tort Claims Act. Based on the facts recited above, Mr. Rocha has viable claims in Wisconsin, California and

⁶ Individuals have been allowed to proceed on claims of disability discrimination under the ADA and Rehabilitation Act based on the gender dysphoria that accompanied their transgender status. *See e.g., Williams v. Kincaid*, 45 F.4th 759, 769 (4th Cir. 2022) (holding that gender dysphoria is not excluded from the ADA’s protections); *Blatt v. Cabela's Retail, Inc.*, No. 5:14-CV-04822, 2017 WL 2178123, at *4 (E.D. Pa. May 18, 2017) (holding that gender dysphoria is not excluded by the ADA); *Doe v. Pennsylvania Dep't of Corr.*, No. 120CV00023SPBRAL, 2021 WL 1583556, at *9-10 (W.D. Pa. Feb. 19, 2021) report and recommendation adopted, No. CV 20-23, 2021 WL 1115373 (W.D. Pa. Mar. 24, 2021) (holding that plaintiff’s gender dysphoria was not barred under the ADA or Rehabilitation Act). Because the ADA and Rehabilitation Act have identical gender identity disorder carve-outs, and because they are often construed similarly, courts have interpreted case law discussing ADA coverage to be applicable to Rehabilitation Act coverage. *See Doe v. Pennsylvania Dep't of Corr.*, 2021 WL 1583556 at *8 n.5.

Virginia including, but not limited to, negligence and intentional infliction of emotional distress, as well as a claim for the damage done to his walker.

C. Non-Compliance with Existing TSA Procedures

In addition to the claims above, Mr. Rocha believes that the conduct complained of above violates TSA policies, demonstrates a need for new or modified training curricula, and/or highlights the need for agent training. Documents provided in response to a FOIA request submitted by Mr. Rocha's representatives on September 28, 2022,⁷ were so limited and heavily redacted it is impossible to gauge their adequacy or assess whether they were followed in Mr. Rocha's case. Nonetheless it is indicated on the Administration's website that transgender passengers may request that an agent with their gender identity perform their pat-down search. This policy was violated *at a minimum*. And we would hope existing TSA policies require the reasonable accommodation of disabled passengers and prohibit the misgendering of transgender passengers. Assuming such policies do exist, they too were violated.

Additionally, we understand that earlier this year, TSA updated its screening procedures to better serve transgender, nonbinary, and gender-nonconforming travelers through less invasive screening procedures for passengers who trigger the AIT scanner in sensitive areas. TSA also planned to eliminate the gender-based AIT scanner algorithm which often resulted in flagging transgender passengers, like Mr. Rocha for pat-downs simply because their bodies do not conform to the gender-based assumptions built into the algorithm. We cannot confirm, based on the very limited information provided in response to the FOIA request of Mr. Rocha's representatives, that updated screening procedures were finalized or implemented, or whether a gender-neutral algorithm has been developed or deployed. This is a concern.

BOX 12: AMOUNT OF CLAIM

A. Damages Requested

As noted in Mr. Rocha's claim form, he is seeking \$55 in reimbursement for the damage caused to his wheelchair, and \$██████████ in physical and emotional distress damages based on the facts and claims described herein.

⁷ 2022-TSFO-00950

B. Additional Relief Sought.

In addition to monetary relief, Mr. Rocha requests the following non-monetary relief, and asks for a meeting between TSA representatives and his representatives at DREDF and TLDEF to discuss the same.

- 1) Review of TSA's policies regarding the treatment and accommodation of disabled people, and modification of those policies, as necessary;
- 2) Review of TSA's policies regarding the treatment and screening of transgender people, and modification of those policies as necessary;
- 3) Review of TSA's training curriculum on the treatment and accommodation of disabled people, and modification of that curriculum, as necessary;
- 4) Review of TSA's training curriculum on the treatment and screening of transgender people, and modification of those policies as necessary;
- 5) Review of TSA's practices and procedures for policy enforcement and disciplinary consequences regarding misconduct by agents, and modification of those practices and procedures as necessary;
- 6) Training / re-training of TSA agents at the Milwaukee, Los Angeles and Dulles airports on how to serve disabled and transgender passengers; and
- 7) Training / re-training of TSA agents nationwide as necessary and appropriate on how to serve disabled and transgender passengers.