

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Michele Leuthauser
Plaintiff

v.

United States of America
- and -
Unknown Transportation Security
Administration Officer
Defendants

Case No. 20-CV-_____

COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

- 1) Plaintiff Michele Leuthauser (“LEUTHAUSER”) was a ticketed passenger attempting to travel through Las Vegas-McCarran International Airport (“LAS”) on June 30th, 2019.
- 2) Passengers traveling through LAS must submit to a security screening by the U.S. Transportation Security Administration (“TSA”)
- 3) The TSA maintains specific standards as to how its screeners are to conduct “pat-down” body searches of travelers in order to minimize the invasiveness of searches on passengers.
- 4) Defendant Unknown Transportation Security Administration Officer (“TSO”), a TSA employee hired to conduct passenger screening, intentionally and for the purpose of humiliating and dominating LEUTHAUSER, but for no security reason and in violation of TSA policy, escalated a normal pat-down into a checkpoint body cavity search by inserting her fingers inside of LEUTHAUSER’s vagina, effectively sexually assaulting LEUTHAUSER in the middle of an airport.

JURY TRIAL

- 5) LEUTHAUSER demands a trial by jury on all issues so triable.

PARTIES

- 6) Plaintiff LEUTHAUSER is a natural person living in Las Vegas, NV.
- 7) Defendant United States of America is the sovereign nation and is the proper defendant for torts alleged through the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*
- 8) Defendant TSO is a Transportation Security Officer with the U.S. Transportation Security Administration and is sued here in her individual capacity pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and under an alternative theory that her conduct so grossly deviated from that of the requirements of her employment that she is liable as a private citizen under state tort law. TSO's true name will be added to an amended complaint once identified.

JURISDICTION & VENUE

- 9) Personal jurisdiction is proper because all defendants work and, upon belief, reside, within the State of Nevada.
- 10) Subject-matter jurisdiction is proper over the constitutional claim because it arises under federal law. *See* 28 U.S.C. § 1331.
- 11) Subject-matter jurisdiction is proper over the tort claims brought against United States of America pursuant the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*
- 12) Subject-matter jurisdiction is proper over the state law tort claims brought directly against TSO under the Court's supplemental jurisdiction. *See* 28 U.S.C. § 1367.

- 13) Venue is proper because the incident that gave rise to the complaint occurred within the District of Nevada.

ALLEGATIONS OF FACT

- 14) On June 30th, 2019, at or around 9:00 AM, LEUTHAUSER arrived at LAS.
- 15) LEUTHAUSER possessed a valid boarding pass for a flight departing LAS later that day.
- 16) LEUTHAUSER approached the TSA screening line, as was required of her as a prerequisite to boarding her flight, and presented a valid photo identification and her boarding pass.
- 17) LEUTHAUSER was directed into a body scanner for screening, and complied with that request.
- 18) LEUTHAUSER was not in possession of any prohibited items.
- 19) Notwithstanding her compliance and the absence of prohibited items, LEUTHAUSER was informed by the operator of the body scanner that the body scanner alarmed on her and that she would need to submit to a “groin search.”
- 20) The body scanner operator called out for assistance.
- 21) TSO responded to that call by approaching LEUTHAUSER.
- 22) TSO informed LEUTHAUSER that she must follow her to a private room for private screening.
- 23) TSA policy actually calls for this sort of “resolution pat-down” (“resolving” a body scanner alarm) to occur in the public area unless requested otherwise by the passenger.
- 24) LEUTHAUSER followed TSO’s instructions and accompanied her into a private room.
- 25) An additional screener also entered the private room with LEUTHAUSER and TSO.

- 26) Inside the private room, TSA provides floor mats with footprints on them to indicate where a traveler should put their feet during a pat-down search.
- 27) Despite having her feet on the foot prints, TSO insisted that LEUTHAUSER spread her legs in an abnormally wide manner – far wider than the foot prints dictated.
- 28) There was no security purpose fulfilled by forcing LEUTHAUSER to spread her legs wider.
- 29) Upon belief, the true purpose behind TSO's command to LEUTHAUSER to spread her legs wider was to humiliate and dominate LEUTHAUSER, and to provide greater access to fondle LEUTHAUSER's vulva for TSO's self-gratification.
- 30) TSO then proceeded to start the pat-down by sliding her hands along the inside of LEUTHAUSER's thighs.
- 31) TSO, while sliding her hand up the inside of LEUTHAUSER's legs, moved her hands directly onto LEUTHAUSER's vulva, touching LEUTHAUSER with the front of her fingers.
- 32) TSO then pressed against the thin material of LEUTHAUSER's leggings to insert her finger between LEUTHAUSER's labia and inside of her vagina.
- 33) TSO proceeded to rub her hand against LEUTHAUSER's genitals, including her clitoris, using the front of her hand.
- 34) TSA procedure neither requires nor allows screeners to insert their hands inside of the bodies of travelers, nor to in any way conduct a body cavity search, nor to make front-of-hand contact with the genitals of travelers, nor to spend time stimulating the clitoris of women, during ordinary resolution pat-downs such as this one.
- 35) TSA Transportation Security Officers, including upon belief TSO, are trained as to these procedures.

- 36) Upon belief, the true purpose behind TSO's actions was to humiliate and dominate LEUTHAUSER, and to fondle LEUTHAUSER's vulva for TSO's self-gratification.
- 37) LEUTHAUSER experienced symptoms of severe emotional distress, including symptoms of panic, anxiety, fear, racing heart, shortness of breath, uncontrollable shaking, and nausea.
- 38) After re-gaining control over her body, LEUTHAUSER retracted and indicated her distress, and a supervisor was summoned.
- 39) The supervisor dismissed TSO and completed the pat-down.
- 40) LEUTHAUSER was not found to be in possession of any prohibited items.
- 41) LEUTHAUSER immediately contacted airport police before leaving the checkpoint area.
- 42) Airport police advised LEUTHAUSER that TSA was outside of their jurisdiction and therefore they could not take a report.
- 43) LEUTHAUSER was a frequent flyer who was required to regularly (in excess of once per month) travel for work.
- 44) LEUTHAUSER continues to experience symptoms of severe emotional distress, including symptoms of panic, anxiety, fear, racing heart, shortness of breath, uncontrollable shaking, and nausea, whenever reminded of the incident described herein.
- 45) LEUTHAUSER was advised by a medical professional that she should discontinue her travel job as part of recovery from the emotional distress caused by TSO.
- 46) LEUTHAUSER followed this advice and lost 3 months of time at her job.
- 47) However, even after 3 months, as a result of this continued emotional distress, LEUTHAUSER has not been able to continue to fly for work.
- 48) It was therefore necessary for LEUTHAUSER to resign her position
- 49) LEUTHAUSER did resign her position.

- 50) LEUTHAUSER has since taken up a new job that does not require travel, at a significant pay cut.
- 51) Plaintiffs presented an FTCA claim to TSA on September 5th, 2020, alleging damages to \$1,000,000 stemming from the above facts.
- 52) TSA denied this claim on September 26th, 2020, by indicating that it would not consider the claim without additional documentation for which they were not entitled.

CLAIMS FOR RELIEF

Count 1 – Fourth Amendment to the U.S. Constitution

Unreasonable Search (Against TSO)

- 53) The Fourth Amendment to the U.S. Constitution prohibits “unreasonable searches and seizures,” and in general, a warrant or an exception to the warrant requirement is required before the government may conduct a search without the consent of the searched.
- 54) The “administrative search doctrine” allows the government to conduct some level of limited warrantless searches under the theory that the searches are aimed at a public safety concern rather than uncovering evidence of criminality (or, in the alternative, under the theory that by presenting one’s self at the TSA checkpoint, one is consenting to the search).
- 55) However, the administrative search doctrine allows only for extremely limited searches un furtherance of a regulatory scheme.
- 56) No court has ever approved a body cavity search under the administrative search doctrine.
- 57) No regulatory scheme required or allowed a body cavity search in this instance.
- 58) TSA policy expressly forbids body cavity searches by passenger screening employees.

- 59) The search of LEUTHAUSER's vagina was therefore conducted without consent, warrant, the blessing of the administrative search doctrine, or authorization by government policy whatsoever, and therefore was unreasonable.
- 60) To the extent that the search exceeded TSA policy, TSO did so for the purpose of sexually gratifying TSO and/or humiliating and dominating LEUTHAUSER.
- 61) Given clear and unambiguous policy and training to the contrary, as well as the well-defined limitations of the administrative search doctrine, no reasonable TSA screener would have thought that they were allowed to put their fingers inside of the vagina of a passenger during a standard body scanner resolution pat-down.
- 62) LEUTHAUSER's constitutional rights were thus knowingly and intentionally violated.
- 63) Defendant TSO is thus liable for damages stemming from her unconstitutional search of LEUTHAUSER's person.

Count 2 – Civil Battery

via the Federal Tort Claims Act (Against United States of America)

- 64) TSO inserted her fingers into LEUTHAUSER's vagina.
- 65) TSO was not authorized by law to do so.
- 66) LEUTHAUSER did not consent for TSO to do so.
- 67) This contact was made by TSO intentionally.
- 68) A reasonable person would consider such contact to be highly offensive.
- 69) LEUTHAUSER did consider this contact to be highly offensive.
- 70) LEUTHAUSER suffered injuries, including emotional distress, as a result of this contact.
- 71) Sufficient notice was presented to, and denied by, United States of America as required by the Federal Tort Claims Act.

72) Defendant United States of America is thus liable for damages stemming from a battery by TSO upon LEUTHAUSER via the Federal Tort Claims Act.

Count 3 – Intentional Infliction of Emotional Distress
via the Federal Tort Claims Act (Against United States of America)

73) TSO ostensibly conducted an unauthorized body cavity search¹ of LEUTHAUSER.

74) A body cavity search is a universally humiliating experience, the offensive nature of which is immediately apparent to any human.

75) TSO did, in fact, cause severe emotional distress in LEUTHAUSER, as described *supra* (“panic, anxiety, fear, racing heart, shortness of breath, uncontrollable shaking, and nausea”).

76) Any person – especially one in TSO’s position – would know that inserting her fingers inside the vagina of another with neither cause nor consent would foreseeably cause severe emotional distress.

77) TSO therefore intentionally or recklessly caused the severe emotional distress experienced by LEUTHAUSER.

78) Sufficient notice was presented to, and denied by, United States of America as required by the Federal Tort Claims Act.

¹ To be clear, the four words “unauthorized body cavity search” could be shortened to a single word. The longer phrasing used is only used to emphasize that TSO used her job and her purported authority to accomplish the sexual assault alleged. But we, in this case and as a society, should not lose sight of the fact that “[t]he penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim,” can be described succinctly: rape. *See* U.S. Department of Justice, “An Updated Definition of Rape,” January 6th, 2012, <https://www.justice.gov/archives/opa/blog/updated-definition-rape>

- 79) Defendant United States of America is thus liable for damages stemming from intentional infliction of emotional distress via the Federal Tort Claims Act.

Count 4 – Civil Battery
Against TSO Under State Law

- 80) As an alternative theory to FTCA liability², since TSA rules are clear that the search conducted upon LEUTHAUSER was not permitted, and TSO's conduct was not in furtherance of any government interest but rather her own personal desire to humiliate and dominate LEUTHAUSER, TSO's search of LEUTHAUSER was outside the scope of her employment (and lawful authority) and she should be held liable as a private citizen.
- 81) LEUTHAUSER therefore re-alleges the paragraphs under Count 2 and asks that, in the alternative to holding the government liable under the Federal Tort Claims Act, that the Court hold TSO personally liable for civil battery under Nevada law.

Count 5 – Intentional Infliction of Emotional Distress
Against TSO Under State Law

- 82) As an alternative theory to FTCA liability, since TSA rules are clear that the search conducted upon LEUTHAUSER was not permitted, and TSO's conduct was not in furtherance of any government interest but rather her own personal desire to humiliate and

² The government will have a choice in how it responds to this lawsuit: it may certify that TSO was doing her job under the Westfall Act, 28 U.S.C. § 2679, which (if accepted by the Court) will make proceeding under Counts 1, 2, and 3 appropriate. Or the government may disavow TSO, in which case the case should proceed under Counts 1, 4, and 5. The government's decision to certify, or not to certify, is subject to the Court's review.

dominate LEUTHAUSER, TSO's search of LEUTHAUSER was outside the scope of her employment (and lawful authority) and she should be held liable as a private citizen.

- 83) LEUTHAUSER therefore re-alleges the paragraphs under Count 3 and asks that, in the alternative to holding the government liable under the Federal Tort Claims Act, that the Court hold TSO personally liable for intentional infliction of emotional distress under Nevada law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- i. Actual damages for loss of liberty, unconstitutional search, and any emotional damages stemming therefrom (including damages relating to inability to work her previous job) in an amount to be determined by a jury.
- ii. Punitive damages in an amount to be determined by a jury.
- iii. Cost of the action.
- iv. Reasonable attorney's fees.
- v. Any other such relief as the Court deems appropriate.

Dated: Las Vegas, NV

March 6th, 2020

Respectfully submitted,

/s/

Jonathan Corbett, Esq.
Attorney for Plaintiff (Lead Counsel)
CA Bar #325608 (*pro hac vice* pending)
958 N. Western Ave. #765
Hollywood, CA 90029
E-mail: jon@corbettrights.com
Phone: (310) 684-3870
FAX: (310) 684-3870

/s/

Kristina S. Holman, Esq.
Attorney for Plaintiff (Local Counsel)
NV Bar #3742
3470 E. Russell Road, Suite 202
Las Vegas, NV 89120
E-mail: kholman@kristinaholman.com
Phone: (702) 614-4777
FAX: (702) 487-3128