

Edward Hasbrouck
1130 Treat Ave.
San Francisco, CA 94110
415-824-0214
edward@hasbrouck.org

July 14, 2011

FOIA/Privacy Act Officer
Office of Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, D.C. 20528

(by postal mail and by e-mail to "CRCL@dhs.gov")

**Privacy Act of 1974:
Request for Amendment of Records**

Dear FOIA/Privacy Act Officer:

This is a request for amendment of records pursuant to the Privacy Act, 5 U.S.C. § 552a.

In response to my FOIA request CRCL 11-05-05 , you provided me with copies of records, portions of which are included in a system of records subject to the Privacy Act, "Department of Homeland Security/ALL-029: Civil Rights and Civil Liberties Records System of Records".

The records pertaining to me and included in that system of records include the attached "Complaint Summary Form", which describes nine complaints submitted by me to DHS on behalf of the Identity Project, and other docket and log records and reports derived from this form and repeating information on it.

According to this form, these complaints were "Received by DHS: October 25, 2010", and "Received by CRCL: October 25, 2010". These dates are not accurate, and I request that these records be amended to correct these dates.

As the third page (truncated, with the fourth and any subsequent pages apparently improperly withheld) of the "Complaint Summary Form" correctly acknowledges, "Mr. Hasbrouck originally wrote to CRCL ... by letter dated December 11, 2009, which CRCL received on December 30, 2009".

My letter of December 11, 2009, a copy of which is also attached, unambiguously stated, "Please reply to confirm your receipt and docketing of this complaint as a complaint of a civil rights violation and a complaint of violation of the ICCPR, in accordance with Section 3 of Executive Order 13107 ."

It is therefore clear that – whether or not it was docketed or acted on at that time -- this particular complaint among those described in the "Complaint Summary Form" was in fact received by DHS and received by CRCL, as a civil liberties complaint and a complaint of violation of the ICCPR (an international human rights treaty) no later than December 30, 2009, not on October 25, 2010.

But this is only one of nine complaints described on the "Complaint Summary Form". As the first page of that form accurately states, "On August 10, 2010, Mr. Hasbrouck wrote to CRCL to lodge nine separate complaints of civil and human rights violations with CRCL as the DHS single contact office for implementation of international human rights treaties under Executive Order (EO) 13107."

That letter of August 10, 2010, a copy of which is attached, unambiguously stated, "In case they have not already been forwarded to you by their recipients at the respective DHS component agencies, we have attached copies of our pending unacknowledged and unanswered complaints of violations of the International Covenant on Civil and Political Rights (ICCPR) by DHS and DHS component agencies. With respect to each of these complaints, we specifically request that you: (1) If you have not done so already, enter each of these complaints in your docket of complaints of violations of human rights treaties by DHS." Regardless of whether CRCL acted on these complaints at that time, it is beyond question that CRCL in fact received them, unambiguously identified as complaints, at that time.

Thus, as these documents, including CRCL's own statement of the facts on the "Complaint Summary Form", make clear, eight of these nine complaints (not counting the one which, as discussed above, had already been received by DHS and CRCL not later than December 30, 2009) were all received by CRCL as complaints not later than August 10, 2010, not on October 25, 2010.

I therefore request that the dates of receipt of these nine complaints by CRCL be amended to accurately show that one was received by CRCL on December 30, 2009, and the other eight on August 10, 2010 (unless any of them were received earlier by CRCL on referral from DHS components).

As for the dates of receipt by DHS (rather than by CRCL), eight of these nine complaints (again, not counting the one received by DHS and CRCL on December 30, 2009) had previously been submitted to, and received by DHS, in rulemaking dockets on various dates between between 2006 and 2009, at dates as listed in the list of attachment to my letter of August 10, 2010.

Accordingly, I request that the dates of receipt by DHS for the these eight complaints be amended to accurately show the dates that they were received by DHS components in the respective rulemaking dockets, as stated in the list of attachments to my letter of August 10, 2010.

If the "Complaint Summary Form" or the logs, databases, and reports derived from it cannot accommodate nine different dates of receipt by DHS for a single complaint, then I request that each of these nine complaints be separately docketed to permit the entry of accurate dates of receipt.

Pursuant to 28 USC §1726, and in compliance with 6 CFR 5.21(d), I declare (certify, verify, or state) under penalty of perjury that I am the person to whom these records pertain, Edward John Hasbrouck, born January 11, 1960, in Cambridge, MA, and currently residing at 1130 Treat Ave., San Francisco, CA 94110, and that the foregoing is true and correct to the best of my knowledge and belief.

Executed in the City and County of San Francisco, CA, USA, on July 14, 2011:

Edward Hasbrouck

**DEPARTMENT OF HOMELAND SECURITY
OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES
COMPLAINT SUMMARY FORM**

To be placed under the first left tab of the complaint folder

Summary Prepared By: (b) (6)	Date Prepared:	January 14, 2010
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Identifying Information

Complainant/Victim's FN:	Edward	MN:		LN:	Hasbrouck
Individual's Alien number:	N/A				
Third Party's FN (Written By):			Third Party's LN (Written By):		
Third Party's Organization:					

If the Complaint file would be more appropriately labeled with a phrase other than an individual complainant's name, type that tagline/name here:

Special Category (check any that apply)

- | | |
|----------------------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> Sexual Abuse (PREA) | <input type="checkbox"/> Deaths – Further Action |
| <input type="checkbox"/> Language Issues | <input type="checkbox"/> Deaths – No Further Action |
| <input type="checkbox"/> Recipients of Federal Financial Assistance | <input type="checkbox"/> Other (please specify) |
| <input type="checkbox"/> Medical Issues | <input type="checkbox"/> ICE OPR Referral to CRCL |
| <input type="checkbox"/> Mental Health Issues | <input type="checkbox"/> CBP Referral to CRCL |
| <input type="checkbox"/> DHS Traveler Redress Inquiry Program (TRIP) | <input type="checkbox"/> DHS OIG Referral to CRCL |

Allegation

Received by DHS:	October 25, 2010	Received by CRCL:	October 25, 2010
Allegation Type:	Civil Right/Civil Liberty		
Incident Date: <i>(If this is a recurring incident or condition, list date range[s]):</i>	N/A	Time of Incident:	N/A
Summary of Allegation(s):	By email, Mr. Edward Hasbrouck of The Identity Project sent his October 21, 2010 letter to CRCL, with attachments, in which he alleges that DHS violated the International Covenant on Civil And Political Rights by promulgating certain regulations and implementing certain systems of records over the past several		

	Flexibility Act, the Airline Deregulation Act, the U.S. Constitution, international treaties (including the ICCPR and NAFTA), and the relevant agencies' jurisdictions, among others. [Background: On August 10, 2010, Mr. Hasbrouck wrote to CRCL to lodge nine separate complaints of civil and human rights violations with CRCL as the DHS single contact office for implementation of international human rights treaties under Executive Order (EO) 13107. CRCL responded seeking clarification, since the Office does not normally receive complaints in the form of previously-submitted comments to DHS-issued Notices of Proposed Rule-Making (NPRMs) and Systems of Records Notices (SORNs), as submitted by Mr. Hasbrouck. On October 21, 2010, Mr. Hasbrouck confirmed his intention that his comments serve as the basis of his complaint. This complaint is being given a DHS complaint number because it involves Offices in DHS Headquarters, including the Office of Policy, as well as TSA and CBP.]
Compliance Director's Recommendation:	<i>COMMENTS:</i> On January 7, 2010, Margo Schlanger, CRCL Officer, directed that this matter be opened as a retained complaint if Jeffrey Blumberg, Director, Compliance Branch, concurred. Blumberg concurred.

Allegation Details

Primary Issue:	Due Processing/Administrative Processing	Primary Basis:	N/A
Secondary Issue:		Secondary Basis:	

Select additional Secondary Issues and Secondary Bases if necessary. Add additional rows to the table above.

Categories from which to Select Allegation Issues and Bases

Allegation Issue Categories:

- Abuse of Authority/Color of Law
- Conditions of Detention
- Discrimination
- Due Processing/Administrative Processing
- Profiling
- Treatment
- Unaccompanied Minors
- Watch Lists
- Other (please specify)

Allegation Basis Categories:

- Age
- Citizenship (specify)
- Color (specify whether dark, medium or light complexion)
- Detainee
- Disability (mental)
- Disability (physical)
- Harassment
- Inappropriate touching
- Limited English Proficiency
- National Origin (specify)
- Non-Detainee
- Race (specify race)
- Racial Harassment
- Referral to secondary
- Religion (specify religion)
- Retaliation

Sex (specify whether male or female)

Sexual Harassment

Ethnicity (specify ethnicity. "Hispanic/Latino" is a selection in this category.)

Other (please specify)

If the complaint involves an Unaccompanied Minor as a complainant/victim, the Primary Issues is Unaccompanied Minors.]

Involved Parties

Component(s) Referenced:	DHS HQ, CBP, TSA
Individual(s) <i>(list name, title/position, and employment location):</i>	1. Unidentified Employees of DHS HQ (Office of Policy and other Offices) 2. Unidentified CBP Employees 3. Unidentified TSA Employees

Location(s) of Incident(s)

Incident Location Type (check all that apply):

- | | |
|---------------------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> Airport | <input type="checkbox"/> Street Stop |
| <input type="checkbox"/> Airplane | <input type="checkbox"/> Place of Business |
| <input type="checkbox"/> BCIS Facility | <input type="checkbox"/> Residence |
| <input type="checkbox"/> Border and Fixed Checkpoint | <input type="checkbox"/> Detention IGSA |
| <input checked="" type="checkbox"/> Government Building | <input type="checkbox"/> Detention SPC |
| <input type="checkbox"/> Seaport | <input type="checkbox"/> Detention CDF |
| <input type="checkbox"/> Ship | <input type="checkbox"/> Other (please specify) |

Incident Location <i>(list name of airport or port of entry or other location):</i>	DHS offices (various locations)		
City:		State:	

If this complaint involves more than one incident location, list each location separately.

If the alleged incident occurred outside the U.S., identify the city and county where it occurred.

Notes

Notes:	Mr. Hasbrouck initially wrote to CRCL and TSA Office of Civil Rights and Liberties (OCRL) by letter dated December 11, 2009, which CRCL received on December 30, 2009. CRCL replied by letter dated January 22, 2010, advising him that CRCL and TSA OCRL had discussed the matter and that TSA OCRL was preparing a response to his concerns. Mr. Hasbrouck subsequently wrote to CRCL by email on August 10, 2010. CRCL replied by letter dated August 13, 2010.
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The Identity Project

www.PapersPlease.org

1736 Franklin Street, 9th Floor
Oakland, CA 94612
510-208-7744 (office)
415-824-0214 (cell/mobile)

December 11, 2009

Transportation Security Administration
Office of Civil Rights and Liberties (TSA-6)
External Compliance Division
601 S. 12th Street
Arlington, VA 20598

Department of Homeland Security
Office for Civil Rights and Civil Liberties
Review and Compliance
245 Murray Lane, SW
Building 410, Mail Stop #0800
Washington, DC 20528

According to the TSA "Civil Rights Policy Statement" at:
http://www.tsa.gov/assets/pdf/civil_rights_policy.pdf

"[T]he public we serve are to be treated in a fair, lawful, and nondiscriminatory manner, without regard to ... national origin".

However, according to Appendix 2A-2.C.1(b)(iv) of the TSA "Screening Management SOP" (Revision: 3, Date: May 28, 2008, Implementation Date: June 30, 2008), as posted at fbo.gov, and as we have discussed at:

<http://www.papersplease.org/wp/2009/12/10/tsa-discloses-discriminatory-and-improperly-withheld-procedures/>

"If the individual's photo ID is a passport issued by the Government of Cuba, Iran, North Korea, Libya, Syria, Sudan, Afghanistan, Lebanon, Somalia, Iraq, Yemen, or Algeria, refer the individual for selectee screening unless the individual has been exempted from selectee screening by the FSD or aircraft operator."

As applied to dual U.S. citizens or permanent U.S. residents from these countries traveling domestically within the U.S., this provision of the SOP imposing "selectee

screening" (more intrusive search and/or interrogation) on the overt basis of national origin is, on its face, in flagrant violation of the TSA Civil Rights Policy Statement, statutory and Constitutional obligations, and obligations of compliance with Article 12 of the International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by and binding on the U.S., and which all federal agencies have been specifically instructed to comply with by Executive Order 13107 on Implementation of Human Rights Treaties (61 Federal Register 68991).

Accordingly, the Identity Project requests that appropriate investigation, enforcement, and corrective action be taken against the agency and the personnel responsible for these illegally discriminatory procedures.

Please reply to confirm your receipt and docketing of this complaint as a complaint of a civil rights violation and a complaint of violation of the ICCPR, in accordance with Section 3 of Executive Order 13107:

"Sec. 3. Human Rights Inquiries and Complaints. Each agency shall take lead responsibility, in coordination with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility or, if the matter does not fall within its areas of responsibility, referring it to the appropriate agency for response."

We also specifically request that this complaint be included in your next report of complaints of violations of the ICCPR to the U.N. Human Rights Committee, as is required by Article 40 of that treaty.

If your office is not the office within DHS and/or TSA designated pursuant to Section 3 of Executive Order 13107 as responsible for responding to complaints of violations of human rights treaties including the ICCPR, we request that you refer this complaint to that office (in addition to your own action on this complaint of violation of domestic civil rights law), and inform us of the contact information for that office to which it has been referred and from which we can expect a response.

Should you have any questions or wish further information, please don't hesitate to contact me by phone at 415-824-0214 or by e-mail at <edward@hasbrouck.org>.

Sincerely,

Edward Hasbrouck
Consultant on travel-related civil liberties and human rights issues
The Identity Project

p.s. The address at <[http://www.tsa.gov/what we do/civilrights/travelers.shtm](http://www.tsa.gov/what_we_do/civilrights/travelers.shtm)> appears to be incorrect. I believe that the TSA zip code is now 20598, not 22202.

The Identity Project

www.PapersPlease.org

1736 Franklin Street, 9th Floor
Oakland, CA 94612
510-208-7744 (office)
415-824-0214 (cell/mobile)

August 10, 2010

Margo Schlanger
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528
(by e-mail to <CRCL@dhs.gov>)

Dear Ms. Schlanger:

By letter dated July 22, 2010, Ms. Stephanie Stoltzfus, Director of the TSA Office of Traveler Specialized Screening & Outreach, has informed us that “the Department has designated the Officer for Civil Rights and Civil Liberties as the point of contact for Executive Order 13107”.

The Identity Project is pleased to learn of your designation in this capacity. We would be interested to know when this designation was made, since we can find no record of any previous public announcement of it, and no mention of it in any Federal Register notice or on any DHS website including the sections of the DHS website describing you, your appointment, and your office. Only after more than seven months of correspondence with TSA were we informed by them of your designation, pursuant to Executive Order 13107, as point of contact for complaints of violations of human rights treaties by DHS and DHS component agencies. No other DHS component to whom we have submitted complaints of DHS human rights violations has ever acknowledged or responded to those complaints or referred us to you as point of contact for them.

In case they have not already been forwarded to you by their recipients at the respective DHS component agencies, we have attached copies of our pending unacknowledged and unanswered complaints of violations of the International Covenant on Civil and Political Rights (ICCPR) by DHS and DHS component agencies.

With respect to each of these complaints, we specifically request that you:

- (1) If you have not done so already, enter each of these complaints in your docket of complaints of violations of human rights treaties by DHS;
- (2) Advise us of the reference numbers assigned by you to each of these complaints in your docket of complaints of violations of human rights treaties by DHS;
- (3) Investigate and act on each of these complaints, including correcting the continuing violations, imposing appropriate sanctions for violations (regardless of whether those violations are completed or continuing), and referring criminal violations (such as criminal violations of the Privacy Act by agency employees responsible for knowingly and willfully operating systems of records without valid System of Records Notices having been promulgated) for prosecution;
- (4) Inform us of your determination with respect to the violations complained of and any other violations discovered in the course of your investigation, and of any actions taken on each of these complaints, as well as whether your determinations are administratively final and what, if any, mechanisms have been established or are available for appeal and/or judicial review of any adverse determinations;
- (5) Confirm that each of these complaints, regardless of your determination or action on it, will be included in the accounting of complaints of human rights violations received by the DHS, and in the DHS portion of the next U.S. government report to the U.N. Human Rights Committee on U.S. compliance with the ICCPR, in accordance with U.S. obligations under the ICCPR to make such reports;
- (6) Insure that other relevant executive agencies and U.S. Government departments are aware of this and other complaints of violations of human rights treaties by the DHS and DHS components, so that the existence or non-existence of such complaints is not misrepresented to foreign governments, the public, or others.

We are particularly concerned about this last point because of statements directed to the public and foreign governments erroneously claiming that no such complaints have been made. These false statements suggest either bad-faith intent to deceive the public and foreign governments, or a grave failure of both procedures for internal sharing and external transparency of information about complaints and points of contacts for them.

For example, in “A Report Concerning Passenger Name Record Information Derived from Flights Between the U.S. and the European Union” (December 18, 2008), the DHS Chief Privacy Officer claimed that, “The Privacy Office received no reports of misuse of PNR since the last review, conducted in 2005,” despite at least three formal complaints during that time to DHS by the Identity Project (copies of which are included in the attachments to this letter) that the use of PNR data by the DHS in the “Automated Targeting System” constitutes a violation of Article 12 of the ICCPR.

The most recent of our attached complaints is of violation of the ICCPR, the TSA Civil Rights Policy Statement, and the statutory and Constitutional obligations of DHS and the TSA by provisions of the TSA “Screening Management Standard Operating Procedures” for discriminatory treatment of travelers on the basis of national origin.

With respect to this complaint, Ms. Stoltzfus of the TSA has informed us that, “We were unable to find a human rights violation in your concern as the Standard Operating Procedures referenced were no longer effective in December 2009”.

This statement by Ms. Stoltzfus of the TSA is clearly erroneous and improper. There is no statute of limitations for violations of the ICCPR. Those responsible for violations of human rights treaty obligations, including both individuals and government departments and agencies, are not immune from responsibility and liability to sanctions merely because the violations are no longer ongoing at the time they are complained of.

In practice, a policy or practice of investigating or acting only on complaints of *continuing* violations of human rights treaty obligations, and only if complaints are made while the violations are ongoing, would frustrate most legitimate complaints, and grant *de facto* impunity to the perpetrators within DHS of those violations.

Most complaints of violations human rights treaty obligations by DHS, and by TSA in particular, will of necessity be made only after the fact. TSA checkpoints, where most incidents likely to lead to complaints occur, operate 24/7/365, unlike your office. In most cases it is impossible, and in almost all cases it is impractical, for the victim to file a complaint with your office while the incident and the violation are ongoing.

Even if the DHS complied with the Freedom of Information Act, obtaining copies of DHS policies and procedures would take weeks, by which time any objectionable provisions might well have been superseded or modified. In practice, most requests for such procedures, including those by the Identity Project, have either been ignored entirely or responded to only months after the time limits prescribed by FOIA.

Further frustrating the ability of would-be complainants to obtain current policies and procedures, the FOIA offices of several DHS components, including TSA, have changed their addresses without the promulgation of a valid updated FOIA notice with current addresses. And several DHS components, including TSA and CBP, have changed the addresses of the offices designated by them to receive Privacy Act requests, without promulgating new System of Records Notices (SORNs). This has rendered the current TSA and CBP SORNs invalid, and makes the knowing and willful operation of each such system of records a criminal violation of the Privacy Act on the part of the responsible agency employees. Our complaints of these violations have been ignored. See, for example, our unacknowledged, unanswered, complaint to the DHS Privacy Office and DHS Inspector General of December 16, 2009, available at <<http://www.papersplease.org/wp/wp-content/uploads/2010/06/pa-complaint-16dec2009.pdf>>.

Only if the DHS and its component agencies, including TSA, made their policies and procedures public – as they have vigorously resisted doing – would it be possible for a complaint that policies or procedures violate human rights treaties to be based on the versions of those policies and procedures in effect at the time of the complaint.

We request that you review and correct the TSA's misinterpretation of its obligations and those of DHS with respect to complaints of completed violations of human rights treaty obligations, and act on each of our complaints of human rights treaty violations by the DHS and DHS component agencies, in accordance with your designation as the responsible DHS officer pursuant to Executive Order 13107 and in accordance with U.S. obligations pursuant to Article 40 of the ICCPR.

Please feel free to contact us if we can assist you in your investigation and action on these complaints, or in efforts to correct the problems they reveal.

Sincerely,

Edward Hasbrouck
Consultant on travel-related civil liberties and human rights issues
The Identity Project

cc: Stephanie Stoltzfus
Director, Office of Traveler Specialized Screening & Outreach
Office of Civil Rights and Liberties
Transportation Security Administration
601 S. 12th Street
Arlington, VA 20598
(by e-mail to <Stephanie.Stoltzfus@dhs.gov>)

Attachments:

A. Complaint regarding violation of the ICCPR in “United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT); Enrollment of Additional Aliens in US–VISIT ”, docket number DHS-2005-0037 (August 28, 2006).

B. Complaint regarding violation of the ICCPR in “Documents Required for Travelers Arriving in the United States at Air and Sea Ports-of-Entry From Within the Western Hemisphere ”, docket number USCBP-2006-0097 (September 25, 2006).

C. Complaint regarding violation of the ICCPR in “Passenger Manifests for Commercial Aircraft Arriving in and Departing From the United States; Passenger and Crew Manifests for Commercial Vessels Departing From the United States”, docket number USCBP-2005-0003 (October 12, 2006).

D. Complaint regarding violation of the ICCPR in the creation and operation of the “Automated Targeting System” (ATS), system of records DHS/CBP-006 (December 29, 2006). Note that the Identity Project has also made additional unanswered complaints that the creation and operation of the ATS constitutes a criminal violation of the Privacy Act on the part of the responsible CBP and DHS staff, as available at:

<http://hasbrouck.org/IDP/IDP-ATS-comments.pdf> (December 6, 2006)

<http://hasbrouck.org/IDP/IDP-ATS-comments3.pdf> (September 5, 2007)

E. Complaint regarding violation of the ICCPR in “Documents Required for Travelers Arriving in the United States at Air and Sea Ports-of-Entry From Within the Western Hemisphere”, docket number USCBP-2007-0061 (August 27, 2007).

F. Complaint regarding violation of the ICCPR by the TSA in “Secure Flight Program”, docket number TSA-2007-38572 (October 22, 2007).

G. Complaint regarding violation of the ICCPR in “Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program”, docket number USCBP-2008-0003 (August 8, 2008).

H. Complaint regarding violation of the ICCPR (and the Privacy Act) in the creation and operation of the “Border Crossing Information” (BCI) system of records, DHS/CBP-007 (August 25, 2008).

I. Complaint regarding violation of the ICCPR by the TSA “Screening Management Standard Operating Procedures” for discriminatory treatment of travelers on the basis of national origin (December 11, 2009) and follow-up correspondence with DHS and TSA.