

# **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](mailto: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](mailto: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.