

# The Identity Project

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## Update to the U.N. Human Rights Committee concerning violations of the right to freedom of movement (ICCPR Article 12) by the government of the U.S.A.

The Identity Project (IDP), <<http://www.PapersPlease.org>>, a U.S.-based NGO, submits this update to our submissions to the U.N. Human Rights Committee concerning U.S. interference with freedom of movement, in violation of Articles 12 of the ICCPR.<sup>1</sup>

We regret to inform the Committee that U.S. violations of freedom of movement have significantly worsened in the year since our initial submissions. The following are only some examples of the most egregious new or expanded violations:

1. No U.S. court has reviewed the basis for any “no-fly” order. Only one “no-fly” lawsuit, *Ibrahim v. DHS*, has gone to trial.<sup>2</sup> The U.S. conceded that Dr. Rahinah Ibrahim was not a threat, but was wrongly placed on the “no-fly” list because an FBI agent checked the wrong box on a form. This obvious error was not detected until after Dr. Ibrahim was arrested when she tried to board a flight. Bringing the case to trial cost US\$3.9 million and took nine years. Dr. Ibrahim was denied U.S. permission to travel to the U.S. to attend the trial. The court's order is still partially secret and potentially subject to more appeals and additional costs. The trial court found that Dr. Ibrahim was denied due process of law. But the U.S. continues to claim in this and other ongoing cases that (a) there is no right to travel by air, since people can travel by land or sea, and (b) “no-fly” decisions can be based on “state secrets” which are exempt from judicial review. Dr. Ibrahim's daughter, Ms. Raihan Mustafa Kamal, who was born in the U.S. and is a U.S. citizen, was prevented from traveling to the U.S. from her home in Malaysia to testify at her mother's trial as a result of a message sent to the airline by the Department of Homeland Security (DHS).<sup>3</sup> Rather than requiring the airline to act as a common carrier and respect the right of a U.S. citizen to return to the U.S., the U.S. induced the airline to deny Ms. Mustafa Kamal her rights. The “no-fly” list and other “watchlists” are secret and exempt from the Privacy Act.

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- 1 Contact for this submission: Edward Hasbrouck, consultant to the Identity Project, <[eh@papersplease.org](mailto:eh@papersplease.org)>, telephone +1-415-824-0214.
  - 2 See reports on the trial and court documents at “No-fly trial in San Francisco this week,” <<http://hasbrouck.org/blog/archives/002099.html>> (December 2, 2013).
  - 3 “No-fly trial, day 5, part 2: What happened to the plaintiff’s daughter?”, <<http://papersplease.org/wp/2013/12/07/no-fly-trial-day-5-part-2-what-happened-to-the-plaintiffs-daughter/>> (December 7, 2013)

2. Increasing numbers of U.S. citizens are unable to exercise their right to leave or return to the U.S. because (a) they have been required to complete a new “long form” passport application which asks detailed and intrusive questions which most people are unable to answer (names of all persons present at your birth, dates of all of your mother's pre-natal medical appointments, etc.),<sup>4</sup> or (b) their U.S. passports have been summarily confiscated or revoked.<sup>5</sup>
3. The U.S. has given notice of its intention to compile and use a wider array of personal information (financial data, etc.) in deciding whether to allow individuals to travel by common carrier, and how intrusively to search and question them.<sup>6</sup>
4. In addition to the lifetime travel histories compiled by the DHS<sup>7</sup>, whistleblower Edward Snowden has revealed that the National Security Agency (NSA) has hacked into airline reservation systems to obtain information about travelers, their movements, and their relationships and associations.<sup>8</sup> NSA and DHS records about travelers are exempt from the Privacy Act.
5. In 2011, acting on a 2009 petition by organizations including the Identity Project, an appellate court ordered the Transportation Security Administration (TSA) to conduct a public rulemaking concerning its ongoing requirement that all airline passengers submit to “virtual strip-search” imaging that shows their bodies as though naked. The TSA solicited public comments on its rule, but still has not yet completed the rulemaking so that its decision can be reviewed by the court.<sup>9</sup> Travelers are required by law to “submit” to “screening”, but there is no publicly-disclosed definition of “submit” or “screening”, and no way to determine what is required or forbidden until after sanctions are imposed for violations.

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4 “White House approves new 'long forms' for some passport applicants”, <<http://papersplease.org/wp/2013/08/19/white-house-approves-new-long-forms-for-some-passport-applicants/>> (August 19, 2013)

5 “U.S. Embassy in Sana’a seizing U.S. citizens’ passports”, <http://papersplease.org/wp/2014/02/08/us-embassy-in-sanaa-seizing-us-citizens-passports/>> (February 8, 2014)

6 Susan Stellan, New York Times, “Security Check Now Starts Long Before You Fly”, <<http://www.nytimes.com/2013/10/22/business/security-check-now-starts-long-before-you-fly.html>> (October 22, 2013)

7 See examples of DHS travel dossiers in “Traveler Surveillance, Traveler Intrusion”, <<http://www.papersplease.org/wp/2013/03/30/travel-surveillance-traveler-intrusion-at-the-cato-institute/>> (March 30, 2013)

8 “How the NSA obtains and uses airline reservations”, <<http://papersplease.org/wp/2013/09/29/how-the-nsa-obtains-and-uses-airline-reservations/>> (September 29, 2013)

9 “Comments of the Identity Project: Passenger Screening Using Advanced Imaging Technology, TSA-2013-0004”, <<http://papersplease.org/wp/wp-content/uploads/2013/06/idp-imaging-comments-18jun2013.pdf>> (June 18, 2013)

In light of these increasingly pervasive systems of surveillance, restriction, and permission-based control of movement to, from, and within the U.S., we recommend that the Committee add these questions to its review of U.S. implementation of the ICCPR:

1. Does the U.S. believe that, consistent with the ICCPR, travel by common carrier can be conditioned on prior affirmative government permission? What are the criteria and the procedures for judicial review of travel permission decisions?
2. Does the U.S. recognize a right to leave the U.S.? To travel within the U.S.? A right of U.S. citizens to return to the U.S.? What document requirements or other conditions does U.S. law allow to be placed on the exercise of these rights?
3. Other than by being arrested, and challenging the legality of their arrest, how can travelers to, from, or within the U.S. determine what they are required or forbidden to do, or to submit to, at checkpoints in airports or elsewhere?