



Homeland
Security

June 13, 2011

Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

Re: **CRCL 11-05-05**

Dear Mr. Hasbrouck:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL), dated May 20, 2011, and received by this office on May 20, 2011. You are seeking:

- (1) Any records pertaining to the designation of the Department of Homeland Security (DHS) Officer for Civil Rights and Civil Liberties as the single contact officer responsible for overall coordination of the implementation of Executive Order by the DHS, including but not limited to any orders or directives formalizing such a designation and any communications between the Office for Civil Rights and Civil Liberties (CRCL) and the Office of the Secretary of Homeland Security or other DHS components or other executive offices or departments regarding such a designation, the need or potential need for such a designation, and/or the absence of such a designation.
- (2) Any public notices promulgated by CRCL pertaining to the designation of the Officer for Civil Rights and Civil Liberties as the single contact officer responsible for overall coordination of the implementation of Executive Order by the DHS.
- (3) Any information distributed to DHS components pertaining to the designation of the Officer for Civil Rights and Civil Liberties as the single contact officer responsible for overall coordination of the implementation of Executive Order by the DHS.
- (4) Any records pertaining to any prior designation of such a single contact officer for implementation of Executive Order 13107 by the DHS, since the creation of DHS.
- (5) Any records pertaining to responsibility for implementation of Executive Order 13107 by DHS and/or DHS components prior to the first designation of such a single contact office for implementation of Executive Order 13107 by DHS.

(6) Any policies, procedures, communications, or other records pertaining to the handling by CRCL of complaints of alleged violations by the DHS or DHS components of U.S. obligations pursuant to international human rights treaties received prior to the designation of the Officer for Civil Rights and Civil Liberties as the single contact officer for implementation of Executive Order by the DHS.

(7) Any policies, procedures, directives, instructions, or advice for use within CRCL or by other DHS components pertaining to the receipt, processing, investigation, referral, logging, reporting, and/or response to complaints of alleged violations by the DHS or DHS components of U.S. obligations pursuant to international human rights treaties, including but not limited to those pertaining to complaints received in the course of DHS and/or component rulemakings, complaints received by DHS components, and complaints received through the "Traveler Redress Inquiry Program" (TRIP).

(8) Any logs, docket lists, reports, or similar records that have been generated from the "CRCL database" or otherwise by or for the use of CRCL pertaining to complaints of alleged violations by the DHS or DHS components of U.S. obligations pursuant to international human rights treaties, including but not limited to any reports that identify such complaints as a category of complaints to DHS, or that pertain to the number of such complaints, the DHS components by which they been received or to which they pertain, which provisions of which treaties have they alleged to have been violated, how they have been handled, what the disposition of them has been, what (if any) response has been provided to the complainants, how much time has elapsed between receipt and response to complaints, and/or how many such complaints remain pending.

A search of CRCL for documents responsive to your request produced a total of 408 responsive pages. As a result of discussion between agency personnel and members of our staff, as a matter of administrative discretion, I am releasing 408 pages. I have determined that 379 pages of the records are releasable in their entirety, 25 pages are partially releasable, and 4 pages are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(5) and (b)(6).

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that [portions of] the responsive documents qualify for protection under the

- **Deliberative Process Privilege**

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

- **Attorney-Client Privilege**

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to

facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need to contact our office again about this matter, please refer to **CRCL 11-05-05**. This office can be reached at 202-357-7672.

Sincerely,

Fernando Pineiro Jr.
FOIA Officer

Attachment: 408 pages



**Homeland
Security**

September 11, 2006

MEMORANDUM FOR: Secretary Chertoff
FROM: Daniel W. Sutherland *Daniel Suther U*
SUBJECT: Designation of Single Contact Officer under Executive Order
13107 – Implementation of Human Rights Treaties

The purpose of this memorandum is to request that you designate the Officer for Civil Rights and Civil Liberties as the "single contact officer" for coordinating Departmental implementation of Executive Order (EO) 13107 – Implementation of Human Rights Treaties (Dec 10, 1998) (attached). This EO requires that all Executive Departments maintain a current awareness of U.S. international human rights obligations relevant to the performance of each Department's function and mission. The EO covers the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights (ICCPR), and other relevant treaties. Finally, the EO requires the head of each agency to "designate a single contact officer who will be responsible for overall coordination of the implementation of this order" (Sec. 2(a)).

Currently, the Department prepares responses to such international reports in an ad hoc manner. There is no single point of contact to organize the Department's participation on these international civil and human rights reports


Under 6 U.S.C. § 345, the Officer for Civil Rights and Civil Liberties is responsible for assisting the Secretary by:

- providing proactive advice on DHS policies that relate to civil rights and civil liberties;
- reviewing DHS policies and procedures to ensure that civil rights are protected; and,
- overseeing compliance with all legal requirements (including international obligations) relating to civil rights (6 U.S.C. §§ 345(a)(3)&(4)).

As a result of this statutory language, the Office for Civil Rights and Civil Liberties has taken an active role on these issues in the international arena. For example, the Officer represented DHS as a key part of the U.S. delegation to the Organization for Security and Cooperation in Europe's meeting on "Human Rights and the Fight against Terrorism."

The Office for Civil Rights and Civil Liberties has strong relationships across all DHS headquarters elements and components, and therefore will be able to lead the efforts to develop coordinated and fully-vetted DHS positions. Of course, the handling of such reports or issues will include coordination with the specific component or components involved. The Office of Policy (including the Office of International Affairs) specifically endorsed this approach. Additionally, we acknowledge that the General Counsel, operating through the Associate General Counsel for Legal Counsel, retains exclusive and final authority over any legal issues implicated here; *i.e.*, the precise contours of the Department's obligations under international human rights law and the various treaties described within the Executive Order, consistent with DHS Delegation 0400.2 ¶ 2(B)(1) (Sept. 14, 2004), and all other applicable Management Directives and Delegations, and will consult with the Office of General Counsel at all appropriate times.

I therefore recommend that the Secretary designate the Officer for Civil Rights and Civil Liberties as the single DHS contact officer with respect to civil and human rights treaties under EO 13107.

Approve/date  9/22/06 Disapprove/date _____
Modify/date _____ Needs discussion/date _____

**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:	COMMENTS: 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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(b) (6)

From: (b) (6)
Sent: Thursday, January 20, 2011 9:12 AM
To: (b) (6)
Cc:
Subject: RE: CRCL Complaint Number 11-01-DHS-0044

Office of Inspector General

U.S. Department of Homeland Security



**Homeland
Security**

The below information has been reviewed and is returned for whatever administrative action or inquiry you consider appropriate. Should any administrative or personnel action result from your response to this information, you are requested to report the final result of that action within 30 business days of its conclusion.

If your review of this matter discloses evidence of previously unreported criminal misconduct that is reportable under Management Directive 0810.1, you are required to notify this office of that information before any additional investigative steps are taken.

From: (b) (6)
Sent: Friday, January 14, 2011 6:22 PM
To: (b) (6)
Cc: (b) (6)
Subject: CRCL Complaint Number 11-01-DHS-0044

Hi (b) (6)

Summary of new complaint for your review:

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 years. Mr. Hasbrouck's concerns relate to the Privacy Act, the Regulatory 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.]

Thank you.

(b)

(b) (6)

Policy Advisor

Office for Civil Rights and Civil Liberties

U.S. Department of Homeland Security

(b) (6)

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

January 18, 2011

Edward Hasbrouck
1736 Franklin Street, 9th Floor
Oakland, California 94612
edward@hasbrouck.org

Re: Complaint No. 11-01-DHS-0044

Dear Mr. Hasbrouck:

The Department of Homeland Security's Office for Civil Rights and Civil Liberties (CRCL) received your complaint on October 21, 2010. Thank you for contacting us with your concerns. CRCL reviews and assesses information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security.

The issues you raise are very important to us, and we would like to inform you how your complaint will be processed by this Office. Initially, we will send your complaint to the DHS Office of the Inspector General for review. If the Inspector General declines to accept the complaint, it will be returned to CRCL for an appropriate response. Once CRCL opens a formal complaint, either we or the appropriate DHS component will conduct an investigation into your concerns. CRCL will contact you with the anticipated course of investigation for your complaint and will ultimately notify you of the outcome.

Please be advised that our complaint process does not provide individuals with legal or procedural rights or remedies. Accordingly, CRCL is not able to obtain any legal remedies or damages on your behalf. Instead, we use complaints like yours to find and address problems in DHS policy and its implementation. If you believe your rights have been violated, you may wish to consult an attorney. There may be time limitations that govern how quickly you need to act to protect your interests.

If you have not already done so, please provide CRCL with your complete contact information, including a phone number, e-mail, and mailing address if available. You may contact CRCL by email at crcl@dhs.gov, by facsimile at 202-401-4708, by phone at 866-644-8360, 866-644-8361 (TTY), or by mail at the following address:

Department of Homeland Security
Office for Civil Rights and Civil Liberties
Compliance Branch
245 Murray Lane, SW
Building 410, Mail Stop 0190
Washington, DC 20528

For additional information about CRCL's roles and responsibilities, see our website at <http://www.dhs.gov/crcl>.

If you are filing a complaint on behalf of an individual, please provide CRCL with the express written consent of the individual if you would like to be informed about the resolution of this complaint. When communicating with CRCL about this matter, please include the complaint number noted at the top of this letter. Thank you again for contacting the Office for Civil Rights and Civil Liberties. Communications like yours are essential to our ability to carry out our role of supporting the Department's mission to secure the nation while preserving individual liberty, fairness, and equality under the law. We look forward to working with you to address your concerns.

Sincerely,



Jeffrey S. Blumberg
Director, Compliance Branch
Office for Civil Rights and Civil Liberties

Privacy Act Statement

Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, the Office for Civil Rights and Civil Liberties (CRCL) is authorized to investigate complaints and information from the public about possible violations of civil rights or civil liberties related to DHS employees, programs, or activities. A federal law, called the Privacy Act, says we must explain how we protect your information while processing your complaint. CRCL may disclose certain information from your complaint if we are required by law to do so or if there is no privacy impact. For example, we send reports to Congress every three months about complaints submitted by the public. Those reports describe the types of complaints, and do not include personal information. To read our past reports, go to www.dhs.gov/CRCL. To learn more about the Privacy Act, go to the Federal Information Center, www.pueblo.gsa.gov.

From: Schlanger, Margo
Sent: Thursday, December 02, 2010 11:05 PM
To: 'Edward Hasbrouck'
Subject: RE: (Fwd) Re: Complaints of human rights violations by DHS

Dear Mr. Hasbrouck --

I'm not sure what happened to your October 21 emails; I'm tracking that down. But thanks for resending.

It was not clear to us that you intended your comments, offered in response to several notices of proposed rulemaking, to be considered as complaints. We appreciate your clarification.

You will hear more from us soon.

Best,
Margo Schlanger

Margo Schlanger
Officer for Civil Rights and Civil Liberties U.S. Department of Homeland Security
202-357-7765 (NOTE: NEW NUMBER)
margo.schlanger@dhs.gov
<http://www.dhs.gov/crcl>

-----Original Message-----

From: Edward Hasbrouck [<mailto:edward@hasbrouck.org>]
Sent: Wednesday, December 01, 2010 3:33 PM
To: Civil Liberties; CRCL
Cc: Schlanger, Margo J
Subject: (Fwd) Re: Complaints of human rights violations by DHS

We have received no acknowledgment or response to the attached e-mail (also sent by USPS in hardcopy) answering your questions, and still have received no confirmation that our complaints have been docketed and no response to our question regarding which of these complaints you had already received on referral from the respective DHS components.

Please advise the status of these complaints.

Sincerely,

Edward Hasbrouck

----- Forwarded message follows -----

From: Edward Hasbrouck <edward@hasbrouck.org>
To: "Civil Liberties" <Civil.Liberties@dhs.gov>, CRCL@dhs.gov

Subject: Re: Complaints of human rights violations by DHS
Date sent: Thu, 21 Oct 2010 11:12:17 -0700

Attached please find our reply to your e-mail message of August 25, 2010.
Please reply to confirm your receipt of the attached letter.

Sincerely,

Edward Hasbrouck

On 25 Aug 2010 at 12:57, "Civil Liberties" <Civil.Liberties@[dhs.gov](mailto:Civil.Liberties@dhs.gov)>> wrote:

Subject: RE: Complaints of human rights violations by DHS
Date sent: Wed, 25 Aug 2010 12:57:10 -0400
From: "Civil Liberties" <Civil.Liberties@[dhs.gov](mailto:Civil.Liberties@dhs.gov)>
To: <edward@hasbrouck.org>

> Mr. Hasbrouck,
>
>
>
> Please review the attached document. If you have any questions,
> please feel free to contact our office at 1-866-644-8360 or CRCL@dhs.gov.
>
> Thank You,
>
> Office For Civil Rights and Civil Liberties

Attachments:
DHS-OCRCL-21OCT2010.pdf
DHS-OCRCL-13AUG2010.pdf
DHS-OCRCL-10AUG2010-attach.pdf

----- End of forwarded message -----

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment
Project <<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably
to assemble" (U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders
of each state. Everyone has the right to leave any country, including his own,
and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."

(United Nations Human Rights Committee, General Comment No. 27)

(b) (6)

From: Edward Hasbrouck [edward@hasbrouck.org]
Sent: Wednesday, February 02, 2011 7:26 PM
To: CRCL
Subject: your reference number 11-01-DHS-0044

Categories: Forwarded within Compliance Branch

Thank you for your e-mail message today regarding our nine complaints to which you have assigned your reference number 11-01-DHS-0044.

We are mystified as to what "efficiency" is gained by assigning one reference number to nine complaints, merely on the basis of the fact that they were submitted by the same organization, even though they were submitted to different DHS components over a period of more than three years, and relate to discrete actions by different DHS components.

We trust, however, that you will properly include these as nine complaints of distinct violations of the ICCPR in the DHS portion of the next US report to the U.N. Human Rights Committee on U.S. compliance with the ICCPR, and in other reports on complaints received by DHS such as those to agencies of the European Union (including in reviews of DHS handling of PNR data), and that you will properly identify the dates when the respective complaints were received by those DHS components.

We are concerned by the statement in your message today that, "We received your complaints on August 10, 2010." That suggests that *none* of these nine complaints was properly referred to you earlier than that date by the various DHS components to which they were submitted between 2006 and 2009.

This is particularly troubling as it suggests that other similar pending complaints may still not have been referred to your office by DHS components, even though they were properly filed in the form, manner, and docket duly designated by those components for filing of objections related to the actions giving rise to those complaints -- presumably including those based on incompatibility with US treaty obligations, since no separate docket was ever designated for such objections.

Will your investigation of our complaints automatically include investigation of the failure of the respective components to refer them to you, or do we need to file separate complaints with your office concerning this, in order to have those failures investigated by your office?

If so, since the language in our letter to you of August 10, 2010, "[W]e 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" was inefficiently clear to you, please advise *exactly* what more unambiguous language we should use in any future complaints to ensure that they are promptly recognized, docketed, acknowledged, and acted on as such complaints.

If your office or DHS has promulgated any instructions concerning the form, manner, or docket for filing of such complaints, please let us know.

Please also advise us of when your office was designated as DHS point of contact responsible for responding to complaints of human rights violations by DHS, and what instructions were given, and when, to DHS components regarding their duty to refer such complaints to your office as the DHS office designated pursuant to Executive Order 13107..

Knowing when your office was so designated, and when and how DHS components were advised of this and of their duty to refer such complaints to your office, would help us understand the nature and scope of the problem of those components having failed to refer our complaints to you.

Sincerely,

Edward Hasbrouck

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment Project
<<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably to assemble"
(U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."
(United Nations Human Rights Committee, General Comment No. 27)

(b) (6)

From: Edward Hasbrouck [edward@hasbrouck.org]
Sent: Monday, January 31, 2011 1:56 PM
To: CRCL
Subject: Re: CRCL Complaint no. 11-01-DHS-0044

Categories: Forwarded within Compliance Branch

Thank you for your e-mail message of January 18, 2011, regarding "Complaint No. 11-01-DHS-0044." It is unclear from your letter to which of our pending, unacknowledged and unanswered complaints it refers.

We called your office today to try to get clarification, but were told that the only way to communicate with you is by e-mail, and that no one would assist us or discuss this with us by phone. But your letter of January 18, 2011, said, "You may contact CRCL ... by phone at 866-644- 8360." If this is not your policy, then the statement in your letter is disingenuous at best, misleading at worst. Either your policy should be changed, or your boilerplate (and your Web site) should be changed to accurately represent your policy not to answer your phone, rather than creating a misleading false impression of accessibility.

From the statement in your letter that our complaint was received by you on October 21, 2010, and from your reference to our "complaint" in the singular, we infer that it refers to the complaint in our letter of October 21, 2010, that we had received no confirmation of docketing of our previous complaints, including nine complaints copies of which were forwarded to your office on August 10, 2010, all of which had been submitted by us to, and received by, received by DHS components on earlier dates, and should have been referred by them to your office.

We *still* have received no confirmation that any of those nine prior complaints you received on August 10, 2010 (or earlier on referral) has been docketed by you as a complaint, or the reference numbers assigned to any of them by you in your docket of complaints of human rights treaty violation by DHS and DHS components.

We are concerned by the statement in your letter that, "CRCL reviews and assesses information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security."

This statement suggested that you may have mis-docketed our complaints. Our complaints are in a distinct category. Each of the nine complaints you received from us on August 10, 2010 (or earlier on referral) is a complaint of violations of international human rights treaty obligations, and should be docketed as such for purposes of reporting, including U.S. reports to the U.N. Human Rights Committee pursuant to the ICCPR.

Please confirm:

(1) that your office is, in fact, the office designated as the DHS point of contact for Executive Order 13107 (or if not, what office is), as we were informed on July 22, 2010, by Ms. Stephanie Stoltzfus, Director of the TSA Office of Traveler Specialized Screening & Outreach, but as to which designation we can still find no public or official announcement;

(2) that you received the nine complaints we forwarded to your office on August 10, 2010;

(3) what date you first received each of these complaints, either through our forwarding them to you on August 10, 2010, or earlier on referral;

(4) that *each* of these nine complaints has been docketed by you *as a complaint of violations of international human rights treaty obligations by DHS or DHS components*; and
(5) the nine reference numbers assigned to these nine complaints in that docket.

Sincerely,

Edward Hasbrouck

On 18 Jan 2011 at 18:47, "CRCL" <CRCL <Crcl@dhs.gov>> wrote:

Subject: CRCL Complaint no. 11-01-DHS-0044
Date sent: Tue, 18 Jan 2011 18:47:04 -0500
Priority: Urgent
From: "CRCL" <Crcl@dhs.gov>
To: <edward@hasbrouck.org>

> Dear Mr. Hasbrouck:
>
> Please see the attached letter from this Office. Please disregard the
> letter we sent you earlier today, which has a typo in the date of our
> letter. Thank you.
>
> Sincerely,
>
> Office for Civil Rights and Civil Liberties
>
> U.S. Department of Homeland Security

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment Project
<<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably to assemble"
(U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."
(United Nations Human Rights Committee, General Comment No. 27)

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 1, 2011

Via electronic mail

Edward Hasbrouck
edward@hasbrouck.org

Re: Complaint Number 11-01-DHS-0044

Dear Mr. Hasbrouck:

Thank you for your email correspondence to the Department of Homeland Security's Office for Civil Rights and Civil Liberties (CRCL), dated February 2, 2011, March 3, 2011, and March 17, 2011, and for your recent phone messages. We apologize for the delay in responding. We are currently reviewing your previously submitted complaint and follow-up correspondence and will advise you in writing of the outcome of this review. Thank you for your patience during this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Blumberg".

Jeffrey S. Blumberg
Director, Compliance Branch
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

From: [CRCL](#)
To: ["edward@hasbrouck.org"](mailto:edward@hasbrouck.org)
Subject: CRCL Follow-up Letter
Date: Friday, April 01, 2011 12:23:00 PM
Attachments: [CRCL Follow-Up Letter to Hasbrouck 4-1-2011.pdf](#)

Re: Complaint No. 11-01-DHS-0044

Dear Mr. Hasbrouck:

Thank you for your recent email messages and phone messages to the Office for Civil Rights and Civil Liberties. Please see the attached letter from this Office, dated April 1, 2011.

Sincerely,

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

From: (b) (6)
Sent: Thursday, January 06, 2011 3:55 PM
To: Schlanger, Margo
Cc: (b) (6)
Subject: Hasbrouck complaint

Dear Margo,
Complainant's (Hasbrouck's) concerns (with the Rules and SORNS) relate to the Privacy Act, the Regulatory Flexibility Act, the Airline Deregulation Act, the US Constitution, international treaties (including the ICCPR and NAFTA), and the relevant agencies' jurisdictions, among others. (b) (6) and I have taken a closer look at those concerns related to U.S. obligations under *international human rights law* (IHRL).

(b) (5)
[Redacted]

(b) (5)
[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- FYI: Complainant requested, *inter alia*, that
- 1) CRCL publicize/raise awareness of CRCL's IHRL authority both within and outside DHS.
 - 2) CRCL improve its communication with complainants regarding the handling and "docketing" (or not) of their complaints.
 - 3) IHRL-related complaints be tracked across DHS for inclusion in USG international treaty reporting.

(b) (5)
[Redacted]

Best regards,

(b) [REDACTED]

(b) (6)

From: (b) (6)
Sent: Tuesday, January 18, 2011 9:22 AM
To: (b) (6)
Cc: (b) (6); Blumberg, Jeffrey; (b) (6)
Subject: RE: Hasbrouck complaint

Thanks again (b) (6)

The new Complaint number of the Hasbrouck complaint is **11-01-DHS-0044**. That number will be included on all future correspondence pertaining to this matter, including an acknowledgment letter being sent to Mr. Hasbrouck today.

Last Friday I sent the IG a summary of this complaint. The IG will reply within five business days to say whether they decline to keep the matter. Assuming that they will decline, Compliance will start drafting retention documents this week.

(b)

(b) (6)

From: (b) (6)
Sent: Thursday, January 13, 2011 12:57 PM
To: (b) (6)
Subject: FW: Hasbrouck complaint

DELIBERATIVE

(b) (6)
Here is the analysis.
Hope it's helpful!

(b)

(b) (6)
DHS / CRCL

From: (b) (6)
Sent: Thursday, January 06, 2011 3:55 PM
To: Schlanger, Margo
Cc: (b) (6)
Subject: Hasbrouck complaint

Dear Margo,
Complainant's (Hasbrouck's) concerns (with the Rules and SORNS) relate to the Privacy Act, the Regulatory Flexibility Act, the Airline Deregulation Act, the US Constitution, international treaties (including the ICCPR and NAFTA), and the relevant agencies' jurisdictions, among others. Cyrena and I have taken a closer look at those concerns related to U.S. obligations under *international human rights law* (IHRL).

(b) (5)

(b) (5) [Redacted]

(b) (5) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

FYI: Complainant requested, *inter alia*, that

- 1) CRCL publicize/raise awareness of CRCL's IHRL authority both within and outside DHS.
- 2) CRCL improve its communication with complainants regarding the handling and "docketing" (or not) of their complaints.
- 3) IHRL-related complaints be tracked across DHS for inclusion in USG international treaty reporting.

(b) (5) [Redacted]

Best regards,

(b) [Redacted]

DRAFT notes

(b) (5)



DRAFT notes

(b) (5)



DRAFT notes

(b) (5)



DRAFT notes

(b) (5)



(b) (5)



(b) (6)

From: (b) (6)
Sent: Thursday, January 13, 2011 12:55 PM
To: (b) (6)
Subject: FW: CRCL complaint question
Attachments: Hasbrouck Complaint summary_12 16 10(2).docx

DELIBERATIVE

(b) (6), hi again –
Here is our summary of Hasbrouck’s multi-faceted complaint.
Will send the more recent analysis next.
Thanks,

(b) (6)

(b) (6)
Policy Advisor, Immigration Section
Office for Civil Rights & Civil Liberties
U.S. Department of Homeland Security

(b) (6)

www.dhs.gov/crcl

COMPLAINTS SUMMARY: EDWARD HASBROUCK, THE IDENTITY PROJECT

CRCL Database Contact Number: DHS-11-0052 (solely to track CRCL correspondence).

I. Complainant's 11 Requests to CRCL

Complainant is Edward Hasbrouck of The Identity Project. On August 10, 2010, he wrote to the DHS Office for Civil Rights and Civil Liberties (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 Complainant. On October 21, 2010, Complainant confirmed his intention that his comments serve as the basis of his complaint. In these communications, Complainant has made 11 separate requests. These are:

- 1) That CRCL publicize its authority under EO 13107 so that future complaints alleging violations of international human rights treaty obligations by DHS may be properly directed to CRCL.
- 2) That CRCL inform him when the Officer was designated as the DHS single contact officer under EO 13107.
- 3) That CRCL docket all nine of his complaints. The complaints include eight (summarized below) alleging violations, variously, of the U.S. Constitution, U.S. statutes (including, e.g., the Privacy Act), and provisions of the USG's international obligations under the International Covenant on Civil and Political Rights and other international treaties, and one related to TSA's understanding of its obligation to investigate complaints of violations of human rights treaties.
- 4) That CRCL clarify which, if any, of his eight complaints alleging violations of U.S. international treaty obligations CRCL failed to receive on referral from another DHS component agency pursuant to CRCL's authority under EO 13107.
- 5) That CRCL describe the steps it is taking to ensure that all other such complaints are promptly referred to CRCL.
- 6) That CRCL provide him the reference or tracking numbers for each of his docketed complaints.
- 7) That CRCL investigate each of his complaints, correct violations that are substantiated, and impose sanctions and/or refer criminal violations for prosecution where necessary.
- 8) That CRCL inform him of (a) the disposition of his complaints, (b) whether these dispositions are administratively final, and (c) if there are further appeals mechanisms.

- 9) That CRCL include mention of his complaints in any DHS-related sections of the USG's next submission to the UN Human Rights Committee related to the ICCPR.
- 10) That CRCL inform other relevant USG departments and agencies of his complaints (and others like them that allege violations of international human rights treaties) so that the same may be included in reports to the UN, foreign governments, and/or the public.
- 11) That CRCL review and, if necessary, correct TSA's understanding of DHS obligations with respect to investigation of complaints alleging violations of the USG's international human rights treaty obligations.

II. Nine Specific Complaints

Complainant has submitted nine separate issues as complaints. One issue concerns the handling of a complaint submitted by Complainant to TSA's Office for Civil Rights & Liberties. The remaining eight issues concern alleged violations, in varying combination, of the U.S. Constitution, U.S. statutes and various provisions of international treaties, including but not limited to the International Covenant on Civil and Political Rights (ICCPR). His primary (but not sole) concerns are privacy, freedom of movement and travel, and the discriminatory impact of DHS practices on certain populations.

A. TSA's complaints investigations

Complainant is dissatisfied with TSA's understanding and handling of his complaint alleging that the June 2008 TSA Screening Management SOP discriminated on the basis of national origin in violation of the TSA Civil Rights Policy Statement, the U.S. Constitution, and Article 12 of the ICCPR, which protects individuals' freedom of movement. Complainant requests that CRCL review and, if necessary, correct TSA's understanding of its obligation to investigate complaints that allege violations of the international treaties to which the United States is a party.

B. Allegations that six Proposed Rules and two proposed Systems of Records violate U.S. international treaty obligations, the U.S. Constitution, and U.S. statutes.

Between July 2006 and December 2008, Complainant submitted comments to six Notices of Proposed Rule-Making (NPRMs) and two Systems of Records Notices (SORNs) published in the Federal Register by DHS. Since he submitted these comments, final rules have been issued for all of the Proposed Rules, and the Systems of Records have gone into effect. Complainant requests that CRCL now accept the substance of these comments as complaints and investigate and resolve the issues raised. Generally, in his comments to each NPRM or SORN, Complainant alleges that the proposed rule or system of records violates individual rights to freedom of movement and/or travel (under ICCPR Article 12), freedom of assembly (under the First Amendment to the U.S. Constitution and ICCPR Article 21), and non-discrimination (under, variously, the Charter of the Organization of American States, NAFTA, and the U.S. Constitution). In several of his comments, Complainant also variously alleges that DHS has administratively violated the Privacy Act, the Regulatory Flexibility Act, and the Airline Deregulation Act. Each complaint is summarized in greater detail in the attached Annex.

ANNEX

To his August 2010 correspondence to CRCL, Complainant attached his previously-submitted comments to six NPRMs and two SORNs. These documents vary from ten to 36 pages in length. Summaries of each complaint are provided here for the reader's ease of reference. Please note that Complainant is never mentioned by name in the final rule discussions of comments that are described below.

I. Proposed Rules

Documents Required for Travelers Arriving in the United States at Air and Sea Ports-of-Entry From Within the Western Hemisphere, 71 Fed. Reg. 46155 (proposed Aug. 11, 2006), docket no. USCBP-2006-0097. Final Rule published at 71 Fed. Reg. 68412 on Nov. 24, 2006. This proposed rule would require all U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico departing from or entering the United States from within the Western Hemisphere at air and sea ports of entry to present a valid passport. (Note that the final rule differs from the NPRM in that the documentation requirements are applied only to travelers arriving in the United States by air. The requirements for travelers arriving by sea will be addressed in a separate rule.)

In his comments, Complainant alleges that the rule, by restricting the free movement of people in the Western Hemisphere, violates U.S. obligations under: (1) ICCPR Article 12, Section 4 (providing that “no one shall be arbitrarily deprived of the right to enter his own country”); (2) ICCPR Article 12, Sections 2 and 3 (providing, respectively, that “[e]veryone shall be free to leave any country, including his own,” and that this right “shall not be subject to any restrictions except those which ... are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others”); (3) ICCPR Article 21 (prohibiting restrictions on the right of peaceful assembly except as necessary for national security or public safety); (4) NAFTA (requiring no less favorable treatment of Mexican and Canadian service providers than that accorded U.S. service providers); and (5) the Charter of the Organization of American States (requiring the State to respect individual rights, which Complainant interprets to include customary international human rights law such as Article 13(2) of the Universal Declaration of Human Rights, providing that “[e]veryone has the right to leave any country, including his own, and return to his country”).

The final rule associated with this NPRM was published November 24, 2006. Complainant's concerns were briefly addressed in the final rule's discussion of comments, as follows: “By requiring a valid passport as an entry document, DHS and DOS [the Department of State] are not denying U.S. or non-U.S. citizens the ability to travel to and from the United States. Requiring sufficient proof of identity and citizenship through presentation of a passport or other acceptable document upon entry to the United States is fully within DHS and DOS's authority pursuant to 8 U.S.C. 1182(d)(4)(B) and 1185(b).”

Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere, 72 Fed. Reg. 35088 (proposed June 26, 2007), docket no. USCBP-2007-0061. Final Rule published at 73 Fed. Reg. 18384 on Apr. 3, 2008. This proposed rule extends the documentation requirements for

travelers entering or leaving the United States at air ports of entry, described in the regulation above, to those at sea and land ports of entry. In the sea and land context, however, travelers may present “passport cards” or other specified government-issued travel documents in addition to passports when asked for identification.

In his comments, Complainant re-alleges each of the violations of international law that he raised with regard to 71 Fed. Reg. 46155 above concerning air ports-of-entry, and he further contends that these violations are not mitigated by adding other forms of identification as acceptable travel documents. Complainant also asserts that CBP failed to meaningfully respond to his concerns with 71 Fed. Reg. 46155 in the associated final rule’s discussion of comments (see above for more detail). According to Complainant, CBP’s first response (noted above) that requiring a passport as an entry document does not prevent individuals’ travel is simply not true, and CBP’s second assertion (also noted above) regarding DHS and DOS statutory authority is irrelevant to CBP’s need to consider “whether that authority is constrained by other statutes or international treaties.”

The final rule associated with this NPRM was published on April 3, 2008. In this final rule’s discussion of comments, in response to Complainant’s renewed allegations and his charge that CBP failed to meaningfully address his earlier comments, CBP again stated that, “DHS and DOS are not denying U.S. or non-U.S. citizens the ability to travel to and from the United States by requiring an appropriate document for admission. Pursuant to 8 U.S.C. 1182(a)(7)(A) and 1185, DHS and DOS have authority to require sufficient proof of identity and citizenship via presentation of a passport or alternative document when seeking entry to the United States.” CBP further added that: “By requiring a valid passport or other alternative document for entry to the United States from within the Western Hemisphere, DHS and DOS are eliminating a historical exemption of the requirement that all U.S. citizens and other travelers must possess a passport to enter the country.”

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, 71 Fed. Reg. 40035 (proposed July 14, 2006), docket no. USCBP-2005-0003. Final Rule published at 72 Fed. Reg. 48320 on Aug. 23, 2007. This proposed rule requires that DHS check electronic manifest information for passengers and crew on board commercial aircraft and other commercial vessels arriving in and departing from the United States (with certain exceptions) against a government terrorist watch list prior to departure of the aircraft or vessel.

In his comments, Complainant alleges that the proposed rule violates both the U.S. Constitution and the ICCPR. Complainant argues that the rule creates a prior restraint on the Constitutional right to travel, and unconstitutionally burdens the exercise of First Amendment freedoms, in that travel and movement are often necessary to assemble and petition the government. Complainant asserts that the rule also violates ICCPR Article 12, Section 4 (“no one shall be arbitrarily deprived of the right to enter his own country”) as applied to U.S. citizens wishing to return home from overseas; ICCPR Article 12, Sections 2 and 3 (“everyone shall be free to leave any country, including his own” and “[this right] shall not be subject to any restrictions except those ... necessary to protect national security”) as applied to anyone wishing to leave the United States; and ICCPR Article 21 (“right of peaceful assembly”) as applied to persons wishing to travel in order to peacefully assemble. In addition, Complainant contends that the proposed rule is not authorized by any of the statutes cited as authority for its promulgation, in that “these statutes contain a variety of requirements for reporting, provision of

information, presentment for inspection and customs clearance on arrival, and the transportation of cargo. But none of these statutes contains any provision authorizing the CBP to issue orders prohibiting the transportation of certain would-be passengers.”

The final rule associated with this NPRM was published on August 23, 2007. In the discussion of comments in the final rule, CBP disagreed that the rule restricts the free movement of persons in violation of the First Amendment, as (a) the regulation was within the authority of CBP pursuant to the Aviation Transportation Security Act, the Enhanced Border Security and Visa Entry Reform Act, and the Intelligence Reform and Terrorism Prevention Act; and (b) the Supreme Court has recognized that the right to travel abroad is not an absolute right and that the government may place reasonable restrictions on the right to travel in order to protect this compelling interest (*Haig v. Agee*, 453 U.S. 280 (1981)). The discussion of comments did not address Complainant’s allegations that the proposed rule violated the ICCPR, or his allegation that the rule exceeds CBP’s statutory authority.

Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program; Interim Final Rule and Solicitation of Comments, 73 F.R. 32440 (June 9, 2008), docket no. USCBP-2008-0003. This rule requires that aliens from Visa Waiver Program (VWP) countries intending to travel to the United States by air or sea provide certain biographical information to CBP electronically via ESTA before departure, rather than on the paper Nonimmigrant Alien Arrival/Departure Form (Form I-94W) upon arrival at air and sea ports of entry.

In his comments, Complainant alleges that: (1) the rule exceeds CBP’s statutory authority because 8 U.S.C. 1187 requires only that travelers “electronically provide ... information” before applying for admission to the United States, whereas the rule requires travelers both to “provide the data elements specified” and to “receive a travel authorization” before applying; (2) the rule improperly asserts U.S. and CBP jurisdiction over foreign soil by applying the travel requirement at the point of departure; (3) the rule violates ICCPR Article 12, Section 2 (providing that “[e]veryone shall be free to leave any country, including his own”) in its application to individuals seeking to leave a country to travel to the United States; (4) the rule violates the Charter of the Organization of American States (requiring States to respect individual rights, which Complainant interprets to include customary international human rights law such as Article 13(2) of the Universal Declaration of Human Rights, providing that “[e]veryone has the right to leave any country, including his own, and return to his country”) in making “travel authorization” a condition of departure from any country; and (5) the rule violates the Airline Deregulation Act of 1978 (requiring that airlines operating international service to and from the United States be licensed as “common carriers”), in that a “common carrier” is by definition required to accept all passengers who purchase tickets and the rule attempts to restrict that body of passengers by imposing additional travel authorization requirements.

General Notice that the rule would be implemented in January 2009 (“The Electronic System for Travel Authorization: Mandatory Compliance Required for Travel Under the Visa Waiver Program”) was published at 73 Fed. Reg. 67354 on Nov. 13, 2008. In this notice, neither DHS nor CBP discussed comments to the Interim Rule. The notice, in a footnote, mentioned only that “The comment period for the interim final rule expired on August 8, 2008. CBP is in the process of analyzing the comments received.”

United States Visitor and Immigrant Status Indicator Technology Program (“US-VISIT”); Enrollment of Additional Aliens in US-VISIT, 71 Fed. Reg. 42605 (proposed July 27, 2006), docket no. DHS 2005-0037. Final Rule published at 73 Fed. Reg. 77473 on Dec. 19, 2008.

The US-VISIT program, administered by CBP, requires immigration officers to collect digital fingerprints and photographs from lawful permanent residents, individuals seeking admission on immigrant visas, refugees and asylees, certain Canadian citizens who receive a form I-94 at inspection or who require a waiver of inadmissibility, individuals paroled into the United States, and individuals applying for admission under the Guam Visa Waiver Program at ports of entry. This proposed rule extends the US-VISIT requirements to all aliens other than those specifically exempted and Canadian citizens applying for admission as tourists or on business.

Complainant alleges that US-VISIT violates ICCPR Article 10 (rights of persons deprived of their liberty) by stigmatizing detained non-citizens through fingerprinting and photographing in full view of others. Complainant also alleges that the US-VISIT rule violates ICCPR Article 12 (right to freedom of movement) because it does not adequately conform to that Article’s national security exceptions. Complainant further alleges that the US-VISIT rule violates ICCPR Article 21 (right of peaceful assembly) because the ICCPR applies to all persons regardless of status and covers travelers’ rights to assemble internationally, and US-VISIT does not adequately justify the necessity of its requirements under Article 21’s national security and public safety exception. Complainant is also concerned by US-VISIT’s 100-year storage of fingerprints and photos, the possibility of flawed identifications in attempted apprehensions of suspected criminals, the need to create a new Privacy Impact Assessment (PIA) and Systems of Record Notice (SORN) for the new rule, and the need to further explore the rule’s impact on small entities under the Regulatory Flexibility Act. Complainant argues that the proposed rule should be withdrawn entirely. If it is not entirely withdrawn, then Complainant requests that DHS issue a new PIA and other assessments required under the Regulatory Flexibility Act and that DHS accept public comments on these assessments prior to publishing a final rule.

The final rule associated with this NPRM was published on December 19, 2008. In the final rule’s discussion of comments, DHS devoted four paragraphs to responding to Complainant’s allegations of violations of ICCPR Articles 10, 12, and 21. DHS noted that the ICCPR was ratified with various reservations and understandings, and that the final US-VISIT rule does not violate any of its binding provisions. DHS argued that Article 10 of the ICCPR does not apply in the border management context, and in any case, the US-VISIT process is not degrading or inhuman. DHS also argued that US-VISIT simply records departure from the United States, and does not restrict it; moreover, exit registration is generally understood by other signatory countries to be consistent with the ICCPR. DHS further argued that nearly all governments regularly inspect people crossing their international borders, and that the final rule does not violate U.S. obligations under the ICCPR.

Secure Flight Program, 72 Fed. Reg. 48356 (proposed Aug. 23, 2007), docket no. TSA-2007-28572. Final Rule published at 73 Fed. Reg. 64018 on Oct. 28, 2008. This proposed rule would implement TSA’s Secure Flight program, under which TSA receives passenger and certain non-traveler information in advance of travel, checks this against the No-Fly and Selectee sections of the USG’s consolidated terrorist watchlist, and transmits results back to aircraft operators.

In his comments to the NPRM, Complainant alleged that the proposed rule violated ICCPR Articles 12 (right to freedom of movement / travel) and 21 (peaceful assembly), and that

the proposed rule burdened individual rights under the First Amendment to the Constitution, the Privacy Act of 1974, and the Airline Deregulation Act of 1978. Complainant also alleged that TSA failed to consider the costs to travelers for the rule's implementation, and that TSA failed to conduct the economic assessments required under the Regulatory Flexibility Act to protect "small economic entities" such as smaller airlines and sole proprietor travelers.

The final rule associated with this NPRM was published on October 28, 2008. In the final rule's discussion of comments, TSA addresses comments that appear to respond to Complainant's concerns, although Complainant and his organization are not named. This comments section responds to alleged violations of ICCPR Article 12, the Regulatory Flexibility Act, and required passenger cost considerations. In response to concerns that the rule restricts travel, movement, and assembly, TSA cited its responsibility to protect the compelling interests of national transportation security; TSA also noted that the Secure Flight program does not violate individuals' right to travel, since case law dictates that individuals do not have a constitutional right to travel by a single mode or even the most convenient mode of travel. In the comments section of the final rule, TSA also provided assessments of costs to passengers associated with providing additional information and costs to small airline carriers associated with required communications with the Secure Flight Initiative. Finally, throughout the comments section, TSA addressed various Privacy Act-related concerns from the public.

II. Systems of Records Notices

DHS/CBP-006, Automated Targeting System (ATS), 71 Fed. Reg. 64543 (proposed Nov. 2, 2006). At issue is the SORN for the Automated Targeting System (ATS). ATS, an intranet database tool, facilitates CBP's collection, analysis, and dissemination of information useful in identifying and targeting individuals who may be unlawfully entering the United States, or attempting to unlawfully transport illegal materials into the United States.

Complainant's comments as discussed here are supplemental to earlier comments he submitted in response to the SORN. The earlier comments, however, are not included in Complainant's transmission to CRCL. In the set of comments available to CRCL, Complainant alleges that new information about ATS disclosed in a *Time* magazine article, and not previously disclosed in the SORN, raises the following additional privacy violations: (1) CBP's use of ATS to bar individual from the country exceeds the purpose stated in the SORN, rendering the SORN invalid; (2) the Privacy Act (5 U.S.C. 552a(e)(2)) is violated by ATS because information that may be used negatively to affect an individual's rights or benefits is not, to the maximum extent practicable, collected directly from the individual; and (3) the ICCPR is violated because the ATS impedes individuals' freedom of movement (Article 12). Complainant alleges that, although the United States has reported to the United Nations Human Rights Committee that federal agencies are required to consider rights protected by the ICCPR when propagating new rules, DHS has failed to do so here. Given the above alleged violations, Complainant asks that ATS be shut down.

The final rule for ATS was published at 75 Fed. Reg. 5487 on February 3, 2010. In the final rule's discussion of comments, CBP addressed several comments related to the Privacy Act and the SORN process itself. CBP also briefly addressed Complainant's concerns related to the Airline Deregulation Act and the ICCPR; it notes that neither "purports to restrict or otherwise

affect CBP's use of ATS to carry out CBP's mission to protect the United States against terrorism and enforce U.S. laws."

DHS/CBP-007, Border Crossing Information (BCI), 73 Fed. Reg. 43457 (proposed July 25, 2008). At issue is the SORN for the Border Crossing Information (BCI) system of records. BCI is a database into which CBP logs personal identifying information of all entrants to the United States, including biographical information, a photo, itinerary-related details, and the time and location of the border crossing.

In his comments to the SORN, Complainant alleges that the BCI SORN is fundamentally flawed because it mistakenly concludes that the Treasury Enforcement Communications System (TECS) SORN from 2001 gave prior notice of the collection of third-party commercial travel itineraries and records. Complainant argues that the TECS SORN gave limited notice about information collected from government sources and from travelers themselves, and did not provide notice about retention of itineraries and records obtained from airlines and commercial carriers. Additionally, Complainant asserts that BCI is a relabeling of the ATS system and is illegal for the same reasons: (1) the Privacy Act (5 U.S.C. 552a(e)(2)) is violated by ATS because information that may be used negatively to affect an individual's rights or benefit is not, to the maximum extent practicable, collected directly from the individual; and (2) the ICCPR is violated because the ATS impedes an individual's freedom of movement secured by Article 12. Complainant also alleges that the collection of this information is a criminal offense because it was first collected without a SORN in place. Last, Complainant argues that BCI will make transparency difficult because travelers will now have to make multiple requests for their records from multiple databases. Given these alleged violations, Complainant requests that the BCI SORN be withdrawn and all records expunged.

The final rule for BCI was published at 75 Fed. Reg. 5491 on February 3, 2010. The final rule's discussion of comments addressed several concerns related to the Privacy Act and other legal and constitutional concerns. The discussion did not, however, address alleged violations of the ICCPR.

From: Blumberg, Jeffrey
To: Schlanger, Margo (b) (6)
Cc: (b) (6)
Subject: Re: January 6 phone conversation with Edward Hasbrouck of The Identity Project
Date: Friday, January 07, 2011 6:24:41 PM

(b) (5)

From: Schlanger, Margo
Sent: Friday, January 07, 2011 06:14 PM
To: (b) (6)
Cc: (b) (6)
Subject: RE: January 6 phone conversation with Edward Hasbrouck of The Identity Project

DELIBERATIVE

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks,
Margo

Margo Schlanger
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
202-357-7765
margo.schlanger@dhs.gov
<http://www.dhs.gov/crcl>



**Homeland
Security**

From: (b) (6)

Sent: Friday, January 07, 2011 4:56 PM

To: Schlanger, Margo

Cc: (b) (6)

Subject: January 6 phone conversation with Edward Hasbrouck of The Identity Project

Margo,

This is to summarize a phone conversation I had yesterday with Edward Hasbrouck of The Identity Project, who called the CRCL hotline around 2:45 p.m. Martina Dent, who received the call, asked for assistance in handling it, and I agreed to speak with Mr. Hasbrouck.

Mr. Hasbrouck said that he has not yet received a letter from CRCL informing him how we are handling his 10/21/2010 correspondence that he says he provided in response to our August 2010 letter requesting more information. In the call, he asked for a complaint or tracking number that he can use for reference. He said that he last heard from CRCL when he received a December 2, 2010 email from you, in which you stated that CRCL would follow up with him in writing.

I told Mr. Hasbrouck several times that his correspondence is under review and that CRCL will send him a response in writing. Mr. Hasbrouck asked repeatedly whether his complaint has been logged in and what its tracking number is. He asked whether it's being tracked as a matter that's reported in statistics to Congress as a complaint. I said I'm not at liberty to provide that information. I did say once that we logged in his correspondence in a database and that it has a number, but I said I cannot give him a tracking number. (b)

(b) (5) Mr. Hasbrouck said there should be eight tracking numbers for his "eight complaints" about abuses of human rights treaties. He asked something to the effect of, "Doesn't your System of Records Notice require you to log in complaints?" I said I have no comment on that.

Mr. Hasbrouck also said the following:

He has written to DHS numerous times over the past several years about his concerns, and no one has acknowledged that his correspondence has been logged in as a complaint or reported to Congress as a complaint.

He confirmed last summer (from sources he did not specify) that "several DHS reports" he asked about have no record of his complaints.

It took many months for TSA OCRL to inform him to contact CRCL, during which time TSA took no action on his complaints, and now CRCL is not properly acting on his complaints, either.

Mr. Hasbrouck said that I was being evasive, and that he will file a FOIA request to get the information he wants. Our conversation ended around 3 PM.

(b) (5)

(b) (5)

In December 2010, CRCL input Mr. Hasbrouck's correspondence in Entellitrak as Contact# **DHS-11-0052**. Previously, before we had Entellitrak, his correspondence was logged in ECT/IQ as a Correspondence matter (**#861126**).

Below is the narrative summary in Entellitrak :

By email, Mr. Edward Hasbrouck of The Identity Project provided his October 21, 2010 letter to CRCL, with attachments, in which he alleges that DHS has violated the International Covenant on Civil And Political Rights by promulgating certain regulations and implementing certain systems of records over the past several years. 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, requesting more information from him.

(The incoming correspondence from Mr. Hasbrouck and CRCL's outgoing letters to Mr. Hasbrouck are also in Entellitrak.)

(b)

(b) (6)

Policy Advisor
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

(b) (6)

(b) (6)

From: Blumberg, Jeffrey
Sent: Monday, December 06, 2010 11:41 AM
To: (b) (6)
Cc: (b) (6)
Subject: FW: CRCL complaint question
Attachments: DHS-OCRCL-10AUG2010-attach.pdf

Per discussion on 12/06/10 + consultation with I-Team log v intelligence as a Correc matter for now for track will decide later whether to convert to complain

Hi (b) (6)

I think we have a large file on this one. Per Margo, we need to do two things:

- Open a complaint so that we can track. (I team is really taking the lead at this point) (let's do a very short synopsis for our system just highlighting the basic complaints)
- Can we try to track down a 10/21 email that was supposedly sent to us by the complainant.

Thanks,

Jeff

From: (b) (6)
Sent: Friday, December 03, 2010 4:07 PM
To: (b) (6)
Cc: (b) (6)
Subject: CRCL complaint question

Hi (b) (6)

(b) (5)

(b) (5)

Can you help us figure out whether each of the proposed rules and/or systems of records noted below has been finalized?

Notices of Proposed Rulemaking (NPRMs):

- United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"); Enrollment of Additional Aliens in US-VISIT, 71 Fed. Reg. 42605 (proposed July 27, 2006), docket no. DHS 2005-0037;
- Documents Required for Travelers Arriving in the United States at Air and Sea Ports-of-Entry From Within the Western Hemisphere, 71 Fed. Reg. 46155 (proposed Aug. 11, 2006), docket no. USCBP-2006-0097-0001 (as well as the associated Regulatory Assessment, "The Western Hemisphere Travel Initiative Implemented in the Air and Sea Environments," docket no. USCBP-2006-0097-0002);
- Passenger Manifests for Commercial Aircraft Arriving in and Departing From the United States; Passenger and

2006), docket no. USCBP-2005-0003-0003 (as well as the associated Regulatory Assessment, docket no. USCBP-2005-0003-0005);

- Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere, 72 Fed. Reg. 35088 (proposed June 26, 2007), docket no. USCBP-2007-0061-0001 (as well as the associated Regulatory Assessment, "The Western Hemisphere Travel Initiative Implemented in the Land Environment," docket no. USCBP-2007-0061-0002);
- Secure Flight Program, 72 Fed. Reg. 48356 (proposed Aug. 23, 2007), docket no. TSA-2007-28572; and
- Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program, 73 Fed. Reg. 32440 (proposed June 9, 2008), docket no. USCBP-2008-2003 (as well as the associated Regulatory Assessment, docket no. USCBP-2008-0003-0003).

System of Records Notices (SORNs):

- DHS/CBP-006, Automated Targeting System (ATS), 71 Fed. Reg. 64543 (proposed Nov. 2, 2006);
- DHS/CBP-007, Border Crossing Information (BCI), 73 Fed. Reg. 43457 (proposed July 25, 2008), docket no. DHS-2007-0040.

(b) (5) [Redacted]

Please don't hesitate to call or email with any questions. My cell and desk numbers are below. If I am unavailable (I'm out of the office on Monday and Tuesday), you may also speak with (b) (6) [Redacted], cc:ed here.

Thanks in advance for your help.

Best,
(b) (6) [Redacted]

(b) (6) [Redacted]
Policy Advisor, Immigration Section
Office for Civil Rights & Civil Liberties
U.S. Department of Homeland Security

(b) (6) [Redacted]

www.dhs.gov/crci

(b) (6)

From: (b) (6)
Sent: Thursday, February 03, 2011 12:02 PM
To: (b) (6)
Cc: Blumberg, Jeffrey; (b) (6)
Subject: Hasbrouck add'l summary
Attachments: Hasbrouck TSA complaint summary memo.docx

*I uploaded
this email
attachment*

(b) (6)

(b) (6)
Please find attached one additional summary of an issue raised by Mr. Hasbrouck in the complaint he submitted to CRCL in August / October 2010. Margo requested this memo be placed in his file in the Compliance Branch for everyone's reference.

Hope this is helpful.

Thanks!

(b) (6)

(b) (6)
Policy Advisor, Immigration Section
Office for Civil Rights & Civil Liberties
U.S. Department of Homeland Security

(b) (6)

www.dhs.gov/crcl



**Homeland
Security**

January 24, 2011

MEMORANDUM FOR:

(b) (6)

Policy Advisor, Immigration Section
Office for Civil Rights and Civil Liberties

FROM:

(b) (6)

Program Analyst, Immigration Section
Office for Civil Rights and Civil Liberties

SUBJECT:

Summary of Hasbrouck Complaint re: TSA's 2008 Screening
Management Standard Operating Procedures

Background

On August 10, 2010, Edward Hasbrouck of The Identity Project sent a letter to CRCL attaching complaints alleging violations, variously, of the U.S. Constitution, U.S. statutes, and provisions of the USG's international obligations under the International Covenant on Civil and Political Rights (ICCPR) and other international treaties. You asked me to summarize the portion of his complaint dealing with a TSA "Screening Management SOP" posted on the internet in 2009.

Summary

In December 2009, a May 2008 version of the TSA "Screening Management Standard Operating Procedure" (SOP) was accidentally released over the internet. This 94-page SOP established procedures for screening individuals and luggage, and covered a broad range of topics ranging from staffing guidelines to the operation of metal detectors and explosives trace equipment. In Appendix 2, the SOP addressed travel documents and ID checking procedures, stating in particular that:

If the individual's photo ID is a passport issued by the Government of Cuba, 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.

(TSA Screening Management SOP, Appendix 2A-2.C.1(b)(iv), attached to Hasbrouck's complaint.)

According to Complainant, this provision imposes a more intrusive search on some individuals, on the explicit and exclusive basis of national origin. Complainant alleges that this requirement violates:

- (1) the TSA Civil Rights Policy Statement (specifically, its indication that “the public we serve are to be treated in a fair, lawful, and nondiscriminatory manner, without regard to ... national origin”);
- (2) DHS’s “statutory and Constitutional obligations”; and
- (3) ICCPR Article 12 (providing that “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence,” and that “[e]veryone shall be free to leave any country, including his own”).

Complainant does not clarify or further explain his allegation that the SOP violates DHS’s “statutory and Constitutional obligations.”

A letter from TSA’s Office of Civil Rights & Liberties to Complainant (dated July 22, 2010), as well as TSA press releases and Congressional testimony from December 2009, indicate that the version of the SOP to which Complainant refers was outdated and no longer in effect in December 2009.

Information for passengers, posted on the TSA website, indicates that the list of 12 countries referenced by Complainant was superseded in December 2009 by an interim list of “14 countries of concern,” which news articles have reported to include Afghanistan, Algeria, Iraq, Lebanon, Libya, Nigeria, Pakistan, Saudi Arabia, Somalia, Yemen, Cuba, Iran, Sudan, and Syria. (*See, e.g.,* <http://www.cnn.com/2010/TRAVEL/01/03/tsa.measures/index.html>.) However, this “14-country policy” was discontinued in April 2010, when TSA issued new screening guidance that extended enhanced, intelligence-based security measures to all passengers from all countries. (*See* Q&A to Press Release from TSA: “Secretary Napolitano Announces New Measures to Strengthen Aviation Security,” April 2, 2010, *available at*: http://www.tsa.gov/travelers/airtravel/guidance_international_flights.shtm.)

The new screening guidance issued in April 2010 does not appear to be publicly available.

(b) (6)

From: (b) (6)
Sent: Friday, August 27, 2010 10:28 AM
To: (b) (6)
Cc: (b) (6)
Subject: FW: Complaints of human rights violations by DHS
Attachments: Identity Project Correspondence.doc.pdf

FYI.

(b) (6)
DHS / CRCL

From: (b) (6)
Sent: Wednesday, August 25, 2010 12:59 PM
To: (b) (6)
Subject: FW: Complaints of human rights violations by DHS

For your records

From: Civil Liberties
Sent: Wednesday, August 25, 2010 12:57 PM
To: 'edward@hasbrouck.org.'
Subject: RE: Complaints of human rights violations by DHS

Mr. Hasbrouck,

Please review the attached document. If you have any questions, please feel free to contact our office at 1-866-644-8360 or CRCL@dhs.gov.

Thank You,

Office For Civil Rights and Civil Liberties

(b) (6)

From: McKenney, William
Sent: Friday, August 27, 2010 9:17 AM
To: (b) (6)
Cc: (b) (6)
Subject: RE: Material from Identity Project-Edward Hasbrouck

(b) (6)

Can you send a copy of the response to me and (b) (6)

Bill

Bill McKenney
Director for Review and Compliance
Office for Civil Rights and Civil Liberties
Department of Homeland Security

(b) (6)

From: (b) (6)
Sent: Thursday, August 26, 2010 8:17 PM
To: Schlanger, Margo J; McKenney, William P
Cc: Gersten, David
Subject: Re: Material from Identity Project-Edward Hasbrouck

Our response to Mr. Hasbrouck's recent 167-page submission went out yesterday (b) (6). Our letter sought clarification as to whether he attached the incorrect documents, or he would actually like his NPRM comments to be considered complaints. I imagine he will be emailing (b) (6) shortly.

Sent using BlackBerry

From: Schlanger, Margo <Margo.Schlanger@dhs.gov>
To: McKenney, William <William.Mckenney@dhs.gov>
Cc: Gersten, David <David.Gersten@dhs.gov>; (b) (6)
Sent: Thu Aug 26 17:49:31 2010
Subject: RE: Material from Identity Project-Edward Hasbrouck

I had already received this by email from him, and (b) (6) had written a letter – I'm not sure if it went out. CC'ing her to update us all.

Margo

Margo Schlanger
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

margo.schlanger@dhs.gov

<http://www.dhs.gov/crcl>



Homeland Security

From: McKenney, William
Sent: Thursday, August 26, 2010 5:47 PM
To: Schlanger, Margo
Cc: Gersten, David
Subject: Material from Identity Project-Edward Hasbrouck

Margo:

Last week I gave (b) a new submission of material from Mr. Hasbrouck (he contacted us regarding the 14 countries months ago), for you to review. In this submission he references you as the Department's POC regarding EO 13107, and therefore would like CRCL to address his claims of violations of the International Covenant on Civil and Political Rights (ICCPR) by DHS and DHS component agencies.

Have you had an opportunity to review the information, and how should we respond? David, I also have a copy if you would like to take a look at it.

Bill

Bill McKenney
Director for Review and Compliance
Office for Civil Rights and Civil Liberties
Department of Homeland Security

(b) (6)



Homeland Security

Edward Hasbrouck, Consultant
The Identity Project
1736 Franklin Street, 9th floor
Oakland, CA 94612
edward@hasbrouck.org

August 13, 2010

Dear Mr. Hasbrouck:

Thank you for your letter dated August 10, 2010 alleging violations of the International Covenant on Civil and Political Rights in regulations issued and systems of records maintained by the U.S. Department of Homeland Security (DHS).

Before we undertake to assess your complaints, we have a clarifying question. Are you asking us to accept as complaints the comments provided by the Identity Project on six Notices of Proposed Rulemaking (NPRMs) and two System of Records Notices (SORNs)? They are:

- United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"); Enrollment of Additional Aliens in US-VISIT, 71 Fed. Reg. 42605 (proposed July 27, 2006), docket no. DHS 2005-0037
- Documents Required for Travelers Arriving in the United States at Air and Sea Ports-of-Entry From Within the Western Hemisphere, 71 Fed. Reg. 46155 (proposed Aug. 11, 2006), docket no. USCBP-2006-0097-0001 (as well as the associated Regulatory Assessment, "The Western Hemisphere Travel Initiative Implemented in the Air and Sea Environments," docket no. USCBP-2006-0097-0002)
- 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, 71 Fed. Reg. 40035 (proposed July 14, 2006), docket no. USCBP-2005-0003-0003 (as well as the associated Regulatory Assessment, docket no. USCBP-2005-0003-0005)
- Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere, 72 Fed. Reg. 35088 (proposed June 26, 2007), docket no. USCBP-2007-0061-0001 (as well as the associated Regulatory Assessment, "The Western Hemisphere Travel Initiative Implemented in the Land Environment," docket no. USCBP-2007-0061-0002)
- Secure Flight Program, 72 Fed. Reg. 48356 (proposed Aug. 23, 2007), docket no. TSA-2007-28572
- Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program, 73 Fed. Reg. 32440 (proposed June 9, 2008), docket no. USCBP-2008-2003 (as well as the associated Regulatory Assessment, docket no. USCBP-2008-0003-0003).

- DHS/CBP-006, Automated Targeting System (ATS), 71 Fed. Reg. 64543 (proposed Nov. 2, 2006).
- DHS/CBP-007, Border Crossing Information (BCI), 73 Fed. Reg. 43457 (proposed July 25, 2008), docket no. DHS-2007-0040.

CRCL does not normally receive complaints in the form of comments to NPRMs or SORNs. Perhaps we received the wrong attachments to your letter? Can you clarify?

Thank you again for your correspondence.

Sincerely,

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security



Homeland Security

JAN 22 2010

Edward Hasbrouck
Radetsky & Hasbrouck
1130 Treat Avenue
San Francisco, CA 94110

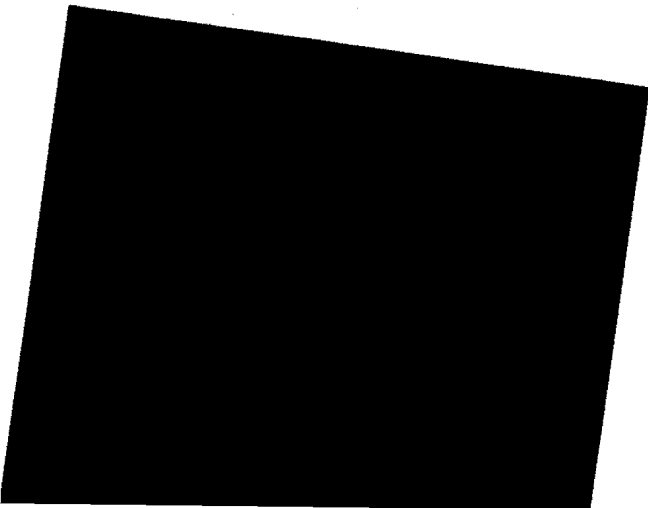
Dear Mr. Hasbrouck:

Thank you for contacting the U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties. We received your correspondence on December 30, 2009. Under 6 U.S.C. 345 and 42 U.S.C. 2000ee-1, this Office is responsible for reviewing and assessing information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of DHS.

In your letter, dated December 11, 2009, addressed to this Office and the Transportation Security Administration Office of Civil Rights and Liberties (TSA OCRL), you express concerns regarding the screening of travelers on the basis of national origin, as it applies to dual U.S. citizens or permanent U.S. residents who are carrying passports from certain countries.

This Office discussed your concerns with TSA OCRL this week, and TSA OCRL advised us that they are preparing a written response to you addressing the issues you raised. The Office for Civil Rights and Civil Liberties has determined that we have no basis for any further action at this time. Further inquiries regarding this matter may be addressed to TSA OCRL. Thank you again for contacting us.

Sincerely,



William P. McKenney

William P. McKenney
Director for Review and Compliance
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

The Identity Project
www.PapersPlease.org

DEC 30 2009

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> appears to be incorrect. I believe that the TSA zip code is now 20598, not 22202.

FEB 15 2003

Office of the Assistant Se

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 22202-4220



Transportation
Security
Administration

Civil Rights Policy Statement

The Transportation Security Administration's (TSA) vision is excellence in transportation security through our people, processes, and technology. With this vision, comes a commitment that all TSA employees and the public we serve are to be treated in a fair, lawful, and nondiscriminatory manner. It is TSA's policy that:

- TSA employees, applicants for employment, and the public we serve are to be treated in a fair, lawful, and nondiscriminatory manner, without regard to race, color, national origin, religion, age, sex, disability, sexual orientation, status as a parent, or protected genetic information.
- TSA's equal employment opportunity policy applies to all personnel and employment programs and management practices and decisions.
- TSA will comply with all applicable Federal laws and Executive Orders regarding civil rights protections.
- TSA has no tolerance for harassment in the workplace or in the treatment of the public we serve.
- TSA will not tolerate reprisal against those who exercise their rights under the civil rights laws.
- TSA will scrutinize processes, review results, and work to remove any barriers that may impede equal opportunity for recruitment, hiring, promotion, reassignment, career development, or other employment benefits.
- TSA will review and analyze from a civil rights perspective how its programs, policies, and operations impact the public we serve.

TSA has achieved much in its first few years of existence but much remains to be done. This includes continued self-analysis and improvement and constant awareness. We must recruit the best; hire, mentor, and retain the best; and provide the best service and security to our customers. Finally, I am committed to integrating our adherence to the nation's civil rights laws and civil liberties into all TSA activities and processes.


Kip Hawley
Assistant Secretary

AVIATION SECURITY

SCREENING MANAGEMENT STANDARD OPERATING PROCEDURES



Transportation
Security
Administration

Transportation Security Administration (TSA) personnel and contractors must use and implement these standard operating procedures in carrying out their functions related to security screening of passengers, accessible property and checked baggage. Nothing in these procedures is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by prospective or actual witnesses or parties. See *United States v. Caceres*, 440 U.S. 741 (1979).

Revision: 3

Date: May 28, 2008

Implementation Date: June 30, 2008

Screening Management SOP

B. Advisements and Assessments

- 1) If passenger flow permits, the TDC may assist with divesting advisements to include: prohibitions regarding liquids, gels, and aerosols; removal of footwear and outer coats/jackets; and separation of electronic equipment from its carrying case in accordance with Screening Checkpoint SOP, Section 2.1.B.5.f.
- 2) When positioned in close proximity to the end of the screening checkpoint divesting tables, the TDC may assist in the queuing of accessible property into the x-ray system if passenger flow permits.

C. Travel Document and ID Checking Procedures

- 1) Authorization to access the sterile area is limited to those categories of individuals listed in Section 1.9.1 of the Screening Checkpoint SOP. For each authorized individual seeking access to the screening checkpoint, the TDC must ask to see the individual's travel document and, if the passenger appears to be 18 years of age or older, a valid form of ID.
 - a. Check the travel document for valid information, for example, departing flight number, correct date, and selectee marking.
 - b. If the TDC determines that the individual appears to be 18 years of age or older, check the individual's ID for the following:
 - i. The ID is either a photo ID issued by a Government authority, an airport issued SIDA or sterile area airport ID card, or aircraft operator issued RAMP or CREW ID. The TDC must verify the photo on the ID is a true representation of the person presenting the ID. If a passenger does not have a photo ID, the TDC may accept two other forms of ID, at least one of which must be issued by a Government authority. See Subsection 4.2.1.B. of this SOP for a description of these ID types. An expired ID is not valid for the purposes of this check.
 - ii. The name on the ID substantially matches the name on the travel document. Initials, common nicknames, or abbreviated names (for example, Beth for Elizabeth, Chuck for Charles) should not preclude acceptance. If the name on the travel document does not substantially match the name on the photo ID, designate and process the individual as a selectee.
 - iii. The ID shows no signs of tampering.
 - iv. 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.
 - v. At screening checkpoints equipped with ultraviolet lights and magnifying loupes, expose the ID to an ultraviolet light (black light) source.
 1. If the correct Federal, State, or local government, airport, or aircraft operator ultraviolet security feature is present, the ID is clear.
 2. If the ID does not contain ultraviolet security features, or the TDC is unfamiliar with the ID's ultraviolet security features, or the ID fluoresces when exposed, use a magnifying loupe to determine if correct micro printing security features are present. If the correct Federal, State, or local government, airport, or aircraft operator micro printing security features are present, the ID is clear.
 3. If the ID does not contain micro printing security features or the TDC is unfamiliar with the ID's micro printing security features, use a magnifying loupe to inspect the ID for signs of tampering and the presence of inkjet dots throughout the ID to include the photograph. If the ID is free of inkjet dots and signs of tampering, the ID is clear.

ESKY & HASBROUCK
10 TREAT AVENUE
SAN FRANCISCO, CA 94110

SAN FRANCISCO CA 94110
12 DEC 2009 PM 4:13



CRDS 12/22/2009 07:13:40

Handwritten notes:
12/22/09
12/22/09
12/22/09
12/22/09
12/22/09
12/22/09

(b) (6)

From: Edward Hasbrouck [edward@hasbrouck.org]
Sent: Wednesday, March 02, 2011 5:38 PM
To: CRCL
Subject: (Fwd) your reference number 11-01-DHS-0044

Categories: Forwarded within Compliance Branch

Please confirm that this message was received, as a month has passed and we have received no response.

Sincerely,

Edward Hasbrouck

----- Forwarded message follows -----

From: Edward Hasbrouck <edward@hasbrouck.org>
To: "CRCL" <Crcl@dhs.gov>
Subject: your reference number 11-01-DHS-0044
Date sent: Wed, 02 Feb 2011 16:25:49 -0800

Thank you for your e-mail message today regarding our nine complaints to which you have assigned your reference number 11-01-DHS-0044.

We are mystified as to what "efficiency" is gained by assigning one reference number to nine complaints, merely on the basis of the fact that they were submitted by the same organization, even though they were submitted to different DHS components over a period of more than three years, and relate to discrete actions by different DHS components.

We trust, however, that you will properly include these as nine complaints of distinct violations of the ICCPR in the DHS portion of the next US report to the U.N. Human Rights Committee on U.S. compliance with the ICCPR, and in other reports on complaints received by DHS such as those to agencies of the European Union (including in reviews of DHS handling of PNR data), and that you will properly identify the dates when the respective complaints were received by those DHS components.

We are concerned by the statement in your message today that, "We received your complaints on August 10, 2010." That suggests that *none* of these nine complaints was properly referred to you earlier than that date by the various DHS components to which they were submitted between 2006 and 2009.

This is particularly troubling as it suggests that other similar pending complaints may still not have been referred to your office by DHS components, even though they were properly filed in the form, manner, and docket duly designated by those components for filing of objections related to the actions giving rise to those complaints -- presumably including those based on incompatibility with US treaty obligations, since no separate docket was ever designated for such objections.

Will your investigation of our complaints automatically include investigation of the failure of the respective components to refer them to you, or do we need to file separate complaints with your office concerning this, in order to have those failures investigated by your office?

If so, since the language in our letter to you of August 10, 2010, "[W]e 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" was insufficiently clear to you, please advise *exactly* what more unambiguous language we should use in any future complaints to ensure that they are promptly recognized, docketed, acknowledged, and acted on as such complaints.

If your office or DHS has promulgated any instructions concerning the form, manner, or docket for filing of such complaints, please let us know.

Please also advise us of when your office was designated as DHS point of contact responsible for responding to complaints of human rights violations by DHS, and what instructions were given, and when, to DHS components regarding their duty to refer such complaints to your office as the DHS office designated pursuant to Executive Order 13107..

Knowing when your office was so designated, and when and how DHS components were advised of this and of their duty to refer such complaints to your office, would help us understand the nature and scope of the problem of those components having failed to refer our complaints to you.

Sincerely,

Edward Hasbrouck

----- End of forwarded message -----

Edward Hasbrouck

<edward@hasbrouck.org>

<<http://hasbrouck.org>>

1130 Treat Ave., San Francisco, CA 94110, USA

+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment Project

<<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably to assemble"
(U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."

(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."
(United Nations Human Rights Committee, General Comment No. 27)



Homeland
Security

February 2, 2011

Via Electronic Mail

Edward Hasbrouck
edward@hasbrouck.org

Re: Complaint No. 11-01-DHS-0044

Dear Mr. Hasbrouck:

Thank you for your January 31, 2011, e-mail message to the Office for Civil Rights and Civil Liberties (CRCL). The following are CRCL's responses to the numbered questions and concerns you raised:

1) CRCL is the Office designated as the DHS point of contact for Executive Order 13107, as described on our website. See http://www.dhs.gov/xabout/structure/gc_1270753945508.shtm. The Executive Order itself is also listed as one of our authorities at http://www.dhs.gov/xabout/laws/gc_1273522287782.shtm.

2 and 3) We received your complaints on August 10, 2010. As we informed you by letter dated August 13, 2010, we were initially unclear that you intended each of the attachments you included as a complaint. We received confirmation on this point from you on October 21, 2010, and therefore began to process your complaints at that time.

4) We have docketed your complaints, together, as alleging violations of international human rights by DHS or DHS components. We have chosen to docket all the complaints with one reference number, because that makes our processing of them more efficient. However, we have recorded that you have raised nine separate allegations. As you already know, the reference number we have assigned is 11-01-DHS-0044.

I apologize that no one has been available to discuss this matter with you by phone. Although CRCL can be reached by phone (as described on our website and elsewhere), the processing issues you raise are specific enough that it seemed more appropriate in this case to communicate in writing, to avoid further misunderstanding.

I appreciate your patience with our process. We continue to work diligently on this matter and will follow up with you in writing as our review progresses. If you have any further questions, please feel free to contact CRCL.

Regards,

Jeffrey S. Blumberg

A handwritten signature in black ink, appearing to read 'Jeffrey S. Blumberg'. The signature is fluid and cursive, with a prominent initial 'J' and a long, sweeping horizontal stroke.

Director, Compliance Branch
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

From: [CRCL](#)
To: edward@hasbrouck.org
Subject: CRCL Follow-Up_Hasbrouck
Date: Wednesday, February 02, 2011 3:04:16 PM
Attachments: [CRCL_Follow-Up_Hasbrouck.pdf](#)
Importance: High

Re: Complaint No. 11-01-DHS-0044

Dear Mr. Hasbrouck:

Thank you for your January 31, 2011, e-mail message to the Office for Civil Rights and Civil Liberties (CRCL). Please see the attached letter from this Office, dated February 2, 2011.

Sincerely,

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

ROUTING SHEET

SUBJ. : Edward Hasbrouck
FILE NO. : _____
DATE : 10/29/10

FROM	TO	DATE	Subject	COMMENT
(b) (6)	(b) (6)	10/29/10	correspondence	Review
(b) (6)	file	12/15/10	"	Also attached to this is a mailing envelope from Edward Hasbrouck to CRCL postmarked 10/21/10
(b) (6)				

COMPLAINT CORRESPONDENCE REVIEW

FOR IMMEDIATE ACTION

10/29/10
Date

Edward Hashmonk
Sender/Complainant's Name

Individual's Name (if applicable)

10/26/10
Date of Correspondence

10/26/10
Date Correspondence Received

Component(s) Involved

Human Rights
Primary Issue

Primary Basis

Secondary Issue

Secondary Basis

Other Comments

Action

Reviewer's Initials

Date

Treat as a Complaint:

Treat as Correspondence:

More Information Needed:

Other (describe below):

(b) (6)

From: Edward Hasbrouck [edward@hasbrouck.org]
Sent: Tuesday, October 26, 2010 10:15 AM
To: Civil Liberties; CRCL
Subject: (Resend) Re: Complaints of human rights violations by DHS
Attachments: Attachment information.; DHS-OCRCL-21OCT2010.pdf

----- Forwarded message follows -----

From: Edward Hasbrouck <edward@hasbrouck.org>
To: "Civil Liberties" <Civil.Liberties@dhs.gov>, CRCL@dhs.gov
Subject: Re: Complaints of human rights violations by DHS
Date sent: Thu, 21 Oct 2010 11:12:17 -0700

Attached please find our reply to your e-mail message of August 25, 2010.
Please reply to confirm your receipt of the attached letter.

Sincerely,

Edward Hasbrouck

On 25 Aug 2010 at 12:57, "Civil Liberties" <Civil.Liberties@dhs.gov>> wrote:

Subject: RE: Complaints of human rights violations by DHS
Date sent: Wed, 25 Aug 2010 12:57:10 -0400
From: "Civil Liberties" <Civil.Liberties@dhs.gov>
To: <edward@hasbrouck.org>

> Mr. Hasbrouck,
>
>
>
> Please review the attached document. If you have any questions,
> please feel free to contact our office at 1-866-644-8360 or CRCL@dhs.gov.
>
>
>
> Thank You,
>
>
>
> Office For Civil Rights and Civil Liberties
>
>

----- End of forwarded message -----

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
+1-415-824-0214

Attachment information

The following section of this message contains a file attachment prepared for transmission using the Internet MIME message format. If you are using Pegasus Mail, or any other MIME-compliant system, you should be able to save it or view it from within your mailer. If you cannot, please ask your system administrator for assistance.

----- File information -----

File: DHS-OCRCL-21OCT2010.pdf
Date: 21 Oct 2010, 10:59
Size: 92262 bytes.
Type: Unknown