

**Before the  
TRANSPORTATION SECURITY ADMINISTRATION  
DEPARTMENT OF HOMELAND SECURITY**

**Washington, DC 20590**

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Secure Flight Program )  
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TSA-2007-38572  
**COMMENTS OF THE  
IDENTITY PROJECT  
(IDP)  
AND JOHN GILMORE**

The Identity Project (IDP)

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

A project of the First Amendment Project

1736 Franklin St., 9th Floor

Oakland, CA 94612

October 22, 2007

The Identity Project submits these comments in response to the Notice of Proposed Rulemaking (NPRM) published at *72 Federal Register* 48356-48391 (August 23, 2007), docket number TSA-2007-28572, "Secure Flight Program".

Under this NPRM, the Transportation Security Administration (TSA) proposes to impose a new requirement, for which there is no statutory basis, that each would-be passenger on any common-carrier domestic or international airline flight operating to, from, or between any point in U.S. territory, or overflying U.S. airspace, request and receive two forms of permission from government agencies before being allowed to receive a boarding pass, board an aircraft, or travel: first, a government-issued personal travel credential ("Verifying Identity Document"); and second, an explicit, individualized, per-passenger, per-flight advance "clearance" message from the TSA to the airline.

In addition, the TSA proposes to require would-be air travelers to submit to third-party private commercial search and interrogation by airlines. Would-be travelers would be required, whenever the TSA so orders, to provide specified information ("Full Name") to airlines and present specific tangible objects (ID documents) for inspection and copying by these unregulated, private commercial third parties.

The TSA has entirely failed, in the NPRM, to give any consideration to the fundamental rights of travel, movement, and assembly implicated by this proposed "permission to travel" system and the proposed requirements for submission to third-party search and interrogation. The TSA has failed to show (or even to attempt to show) that the proposed rules satisfy the substantive and procedural standards applicable -- under international human rights treaties, the

First Amendment to the U.S. Constitution, the Airline Deregulation Act of 1978, and the Privacy Act of 1974 -- to regulations burdening the exercise of these fundamental rights.

Finally, the TSA has failed to recognize most of the costs of the proposed rules, including the costs they would impose on those who are unable to travel, or have to postpone their travel, because they are unable to obtain, or to obtain in time, either of the two forms of proposed prerequisite government permissions (an acceptable travel credential and a TSA “clearance” message to the airline). The TSA also fails to recognize the costs the proposed rules would impose on travelers by compelling them to provide valuable personal information (including “full names” and the contents of travel ID documents) to airlines and other third parties who would be free to use, sell, or “share” this information for their profit, without compensation to those compelled by government order to turn over this informational property. And because the TSA both ignores these substantial costs and fails to acknowledge that a substantial portion of common-carrier air travelers are freelancers, sole proprietors, and other individual “small economic entities” within the meaning of the Regulatory Flexibility Act, the TSA has failed to conduct the economic impact analysis required by that Act.

The proposed rules are illegal and should be withdrawn, in their entirety. If the TSA or other government agencies seek to compel the provision of personal information by a specific would-be traveler, to compel third parties to provide information about a would-be traveler, or to compel a would-be traveler to submit to search of their person for tangible documents providing evidence of their identity, the TSA should request authorization for such searches or interrogatories from competent judicial authorities in the form of warrants or subpoenas. If the TSA has sufficient evidence that a particular person poses a sufficient danger to warrant a

government order restricting their movements, they should present that evidence to a judge with a motion for a restraining order, injunction, or arrest warrant. And if the proposed rules are not entirely withdrawn, the analyses required by Constitutional and international law, the Airline Deregulation Act, the Privacy Act, and the Regulatory Flexibility Act must be conducted and published for additional comment before the proposed rules or any similar rules are finalized.

## **I. ABOUT THE IDENTITY PROJECT**

The Identity Project (IDP), <<http://www.PapersPlease.org>>, provides advice, assistance, publicity, and legal defense to those who find their rights infringed, or their legitimate activities curtailed, by demands for identification, and builds public awareness about the effects of ID requirements on fundamental rights. IDP is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

## **II. FREEDOM OF DOMESTIC AND INTERNATIONAL TRAVEL, MOVEMENT, AND ASSEMBLY ARE FUNDAMENTAL AND PROTECTED RIGHTS.**

The central defect of this proposal is the TSA's failure to recognize that freedom of travel, movement, and assembly are fundamental and protected *rights*, not privileges granted by governments.

The starting point for this rulemaking *should* be the First Amendment “right of the people ... to assemble”, and Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which set the standards for freedom of movement as a protected right.

As a treaty to which the U.S. is a party, the ICCPR takes precedence over Federal statutes, and has also been given effect through the Airline Deregulation Act of 1978, which requires the TSA to “consider the public right of freedom of transit”, a right defined by the ICCPR. All Federal agencies have been ordered by Presidential Directive to familiarize themselves with, and act in accordance with, the ICCPR. And the government of the U.S., in its reports on compliance with the ICCPR, has certified to the United Nations Human Rights Committee that all such agencies do, in fact, consider the ICCPR in relevant rulemakings – but the TSA has entirely failed to do in this case.

We described the basis for these rights in Constitutional and international human rights treaty law in detail in our comments in the preceding and related rulemaking by the Customs and Border Protection (CBP) division of the Department of Homeland Security (DHS), in which the CBP first proposed the requirement for prior government permission (“clearance”) to travel by air. See “Comments of the Identity Project, et al., 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, USCBP-2005-0003” (October 12, 2006), available at <<http://hasbrouck.org/IDP/IDP-APIS-comments.pdf>>. We hereby incorporate those comments by reference, in their entirety, in these comments and this docket.

On the same day that this NPRM was published, the CBP published a final rule purporting to impose this permission (“clearance”) requirement for international flights, effective

February 19, 2008. “Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels; Final Rule, USCBP–2005–0003”, *72 Federal Register* 48345, August 23, 2007.

We note that the CBP's purported “responses” to the comments received in that rulemaking, as published with the final rule, failed to acknowledge, much less to respond to in any way, any of our comments with respect to the rights to freedom of movement under the ICCPR and other international treaties, the “common carrier” and “public right of transit” clauses of the Airline Deregulation Act of 1978, and other statutes.

Our objections on grounds of international human rights treaty law stand unrebutted, and preclude the CBP from putting into effect any final rule requiring government permission to travel, or the TSA from finalizing these proposed rules requiring government permission to travel. Until the responsible agencies have published, and provided an opportunity for public comment on, the analysis required by those treaties and statutes, including how the proposed rules satisfy the substantive and procedural standards required by the ICCPR for administrative regulations that burden the exercise of protected rights of movement and assembly, Secure Flight rules cannot be finalized.

In particular, the standards applicable under the ICCPR require that the CBP and/or TSA must show, before finalizing or putting into effect any such regulation, why any legitimate purpose of the proposed rule could not be served by measures that would impose less of a burden on protected rights, such as existing legal mechanisms to restrict the travel, movement, and assembly of demonstrably dangerous individuals, or obtain information about criminal suspects, through judicial restraining orders, injunctions, warrants, or subpoenas. There is no evidence in

this docket that the CBP, TSA, or any other Federal law enforcement agency have ever even attempted to try using judicial due process for these purposes, before abandoning it in favor of secret administrative fiat and presumptive denial of travel, movement, and assembly.

### **III. THE PROPOSED RULES WOULD REQUIRE EACH WOULD-BE AIR TRAVELER TO OBTAIN PRIOR PERMISSION FROM GOVERNMENT AGENCIES TO TRAVEL.**

The NPRM misleadingly describes the proposed rules as being concerned with “comparing” watch lists with commercial data from airline reservations, in order to “identify” suspects. But the essence of the proposed rules is neither comparison nor identification but a default prohibition on travel, with exceptions made only for those who obtain prior government permission or for whom the TSA chooses, in its standardless, secret “discretion”, to make exceptions to the default prohibitions.

The core of the proposed rule, obscured by the euphemistic language of “screening” and “matching”, is a two-fold requirement for each would-be traveler by airline common carrier to obtain two forms of permission from government agencies before being allowed to travel.

Under the first of the proposed permission requirements, everyone would be forbidden to travel by air without having first obtained a government-issued credential (“Verifying Identity Document”) consisting either of a passport issued by a foreign government or a document issued by a Federal, state, or tribal government agency that includes a “Full Name” (self-referentially

defined as the name that appears on a Verifying Identity Document), date of birth, and photograph:

1560.105 Denial of transport or sterile area access...

(c) Request for identification. (1) In general. If TSA has not informed the covered aircraft operator of the results of watch list matching for an individual by the time the individual attempts to check in, or informs the covered aircraft operator that an individual has been placed in inhibited status, the aircraft operator must request from the individual a verifying identity document....

(d) Failure to obtain identification. If a passenger or non-traveling individual does not present a verifying identity document when requested by the covered aircraft operator, in order to comply with paragraph (c) of this section, the covered aircraft operator must not issue a boarding pass or give authorization to enter a sterile area to that individual and must not allow that individual to board an aircraft or enter a sterile area, unless otherwise authorized by TSA.

Government-issued travel credentials would be required only when the TSA (secretly) orders the airline to require them. But the NPRM does not say who will decide when, or with respect to which would-be passengers, the TSA will issue such orders; what criteria or procedures they will use in making such decisions; or how would-be passengers can obtain judicial review of such decisions.

Absent any recognition of a presumptive right to travel, any substantive standards or procedural due process for ID document demands, and any right of judicial review, the TSA could issue such orders to airline to demand ID documents of any or all would-be passengers on any or all flights. Since the "clearance" messages will be transmitted to the airlines in secret, unbeknownst to would-be travelers, and will be specific to each flight, no one will be able to know, in advance, whether they will be required to show government ID credentials to the airline to board any particular flight. All passengers will therefore have to be prepared, each time they want to travel by air, to display such credentials to the airlines. The proposed rules should thus



be evaluated as rules requiring all would-be air travelers to show acceptable government-issued credentials to air common carriers for all air travel.

Everyone has a right to travel, and airlines are required as common carriers to transport all would-be passengers. But nothing in the proposed rules, or any other Federal statute or regulation, entitles everyone to a “Verifying Identity Document”. Passports and drivers’ licenses, for example, can be withheld for many reasons that do not constitute grounds for denial of freedom of movement. Since they have not previously been required as a prerequisite for the exercise of fundamental and protected rights, their issuance has not been treated as a matter of right. But under the proposal, if no government agency chooses to issue you with such a credential, or if you don’t qualify for one, you can’t fly. (Unless the TSA, in its secret and standardless administrative “discretion”, decides to allow you this “privilege” on a one-time basis, revocable at any time.)

If you don’t already have such an ID document, obtaining one can take a month or more, during which time you wouldn’t be able to fly. In most states, successful applicants for new or replacement driving licenses and state identification cards (new applicants and those whose documents have been lost or stolen) are issued temporary paper documents on the spot, which do not contain photographs and thus would not satisfy the requirements in the proposed rules for “Verifying Identity Documents”. Plastic cards with photographs are sent later, in several weeks to a month.

Since the paper non-photo documents are valid for the purposes for which they are issued (e.g. operating motor vehicles), there is no reason to provide an expedited means of obtaining a state photo ID more quickly, and in most cases none exists. Even if one qualifies, it's generally

impossible to obtain a new or replacement state ID document satisfying the proposed rules in less than several weeks.

Most U.S. citizens don't have passports, and obtaining a passport currently takes three weeks or more even by expedited service. See “Comments of the Identity Project, et al., Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere, USCBP-2007-0061” (August 27, 2007), available at <<http://hasbrouck.org/IDP/IDP-WHTI-comments2.pdf>>.

The burden would be most severe on residents of Alaska, where there is no passport office. The nearest passport office is in Seattle, which most residents of Alaska can only reach by flying (or by driving through Canada, which, under the CBP's new final rules requiring U.S. passports for citizens to travel between the U.S. and Canada, they can't do unless they already have a passport).

So the overall effect of the ID requirement would be that people who don't happen to have such documents, have never previously needed them for the other purposes for which they are issued, don't qualify for any of them, or lose them or have them stolen, will be forbidden to travel by air for up to a month or more. (Again, unless the TSA, in its secret and standardless administrative “discretion”, decides to allow them this “privilege” on a one-time basis, revocable at any time.)

Under the second of the proposed permission requirements, airline common carriers would be forbidden, by default, from allowing any would-be passenger to board a plane except those with respect to whom the airline has requested and received explicit, individualized, per-

passenger, per-flight prior permission from the TSA in the form of a “matching results” or “clearance” message:

1560.105 Denial of transport or sterile area access...

(b) Watch list matching results. A covered aircraft operator must not issue a boarding pass or other authorization to enter a sterile area to a passenger or a non-traveling individual and must not allow that individual to board an aircraft or enter a sterile area, until TSA informs the covered aircraft operator of the results of watch list matching for that passenger or non-traveling individual, in response to the covered aircraft operator’s most recent SFPD [Secure Flight Passenger Data] submission for that passenger or nontraveling individual.

Again, the NPRM does not say who will decide whether to send such messages to airlines, when, or with respect to which would-be passengers; what criteria or procedures they will use in making such decisions; or how would-be passengers can obtain judicial review of such decisions. Even if they have been allowed to travel before, no would-be passenger will be able to know until they try to check in on the day of the flight whether they will be allowed to travel on that flight, or any other flight. Buying a ticket would carry the risk of being unexpectedly and inexplicably denied permission to travel. Each journey by air – even to the other side of the world, or to a place from which there is no other means of return except by air -- would involve a risk of not being permitted to fly home. As we have noted in our prior comments incorporated by reference, these fears are based on the real experiences of U.S. citizens who have been denied the right of return to the U.S. by air common carrier, the only available means.

There is no apparent statutory authority for these components of the proposed rules. The NPRM cites as authority for the proposed rules “49 U.S.C. 114, 5103, 40113, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105”. It’s impossible to tell which of these

sections of statutes is purported to provide the specific authority for orders to common carriers not to allow certain otherwise qualified would-be passengers to board, to require any form of government-issued credential or permission to travel, or for the default prohibition of travel and presumptive prior restraint on travel and assembly embodied in the proposed new regulatory language.

But “matching” passengers' names (if known), or preventing travel by those who have been found (by competent judicial authorities, through the issuance of judicial orders) to pose a danger to aviation does not require, and does not connote any authority for, prohibitory default orders with respect to those who are not matched with watch lists of those against whom such orders have been issued. The NPRM provides no basis for any claim of statutory authority for the proposed rules.

#### **IV. THE INFORMATION COLLECTION REQUIREMENTS IN THE PROPOSED RULES VIOLATE THE PRIVACY ACT.**

The Privacy Act of 1974 imposes specific requirements, not considered in the NPRM and violated by the proposed rules, for the collection of information about activities protected by the First Amendment and for the collection of information through intermediaries.

The Privacy Act at 5 U.S.C. 552a(e)(7) requires that:

Each agency that maintains a system of records shall --... maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

The “Itinerary Information” (including departure and arrival airport codes, flight dates and times, etc.) to be collected and maintained in the Secure Flight records system established under the NPRM and the associated System of Records Notice (SORN), directly describes how individuals exercise rights protected under the first Amendment, including how they exercise their right to assemble: where they assemble, when they assemble, with whom they assemble, and so forth.

Accordingly, itinerary information can be maintained only if “expressly authorized by statute”. There is no such express authorization in any of the statutes cited as authority for the proposed rules.

To the extent that the TSA describes this proposed rules as a “watchlist matching” program, or relies for its authority on statutory sections related to watchlist matching, it clearly fails to have even implicit statutory authorization. The TSA could “match” names or personal data associated with would-be passengers, and inform airlines of matches, without knowing anything about which flight(s) those individuals wish to board. Itinerary data is surveillance data, not identification data.

The Privacy Act at 5 U.S.C. 552a(e)(2) also requires that:

Each agency that maintains a system of records shall --... collect information to the maximum extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

The right to assemble is a right protected under the First Amendment. The right of transit through the navigable airspace (including by air common carrier) and the right of carriage by common carrier (for all persons complying with the published tariff of fares and conditions of carriage) are rights guaranteed under the Federal programs for regulation of air common carriers

pursuant to the Airline Deregulation Act of 1978. Airline passenger screening and TSA checkpoints are Federal programs.

Although the NPRM is silent as to the criteria and standards to be used by the TSA (or other unnamed decision-making agencies or entities) in deciding whether to send “clearance” messages, it appears clear from the NPRM that “Secure Flight Passenger Data”, itinerary information, and other data in Secure Flight records may result in adverse determinations regarding permission to fly.

Yet under the proposed rules, *none* of this data is to be collected from the subject individuals. Instead, it is to be collected from unregulated private commercial third parties: airlines (and, although the NPRM is vague on this point, probably also airlines' agents and contractors).

The NPRM fails even to address, much less to satisfy, the TSA's statutory burden under the Privacy Act of showing that *none* of this data could be collected directly from would-be travelers, even when each air traveler interacts directly with TSA staff at a security checkpoint. (That seems implausible: If the purpose of watchlist matching is to execute warrants or subpoenas against individuals on watch lists, the ideal time to do so would seem to be when they are face to face with the TSA officers who would execute those orders.) Such an analysis must be conducted and published for public comment in a revised NPRM before any third-party information collection requirement can lawfully be finalized.

The unlawful requirement in the NPRM that would-be air travelers provide information to private commercial third parties would have serious, costly, and potentially dangerous

consequences, exemplifying the reasons for the statutory presumption in the Privacy Act against government-compelled provision of personal information to third parties.

**V. THE INFORMATION COLLECTION REQUIREMENTS IN THE PROPOSED RULES VIOLATE CONSTITUTIONAL DUE PROCESS REQUIREMENTS.**

The proposal would require would-be travelers to display their ID to airlines whenever the TSA orders. But, since the orders to require a particular would-be traveler to show ID documents to the airline would be given to the airlines in secret, members of the public will have no way to verify whether a demand for ID or refusal of transportation is actually based on government orders. This violates due process.

Similarly, the identification requirement itself is secret and is designated “Sensitive Security Information” (SSI). See *Gilmore v. Gonzales* 435 F3d 1125. The Secure Flight proposal here states that the TSA is “considering strengthening the identification requirements at the security screening checkpoint. For example, TSA may consider requiring individuals to present a form of identification to be able to proceed through the checkpoint and enter a sterile area.” How will the American people know whether the TSA has acted on its “consideration” and therefore requires individuals to present a form of identification to enter a sterile area if the rule is itself held secret? Signs posted at security checkpoints already state that identification is required, yet this proposal here states otherwise. Which is true and how do we know? This

evasive behavior by those tasked to protect our nation purposely circumvents the rule of law, which itself is our best protection against an abuse of power.

## **VI. VERIFICATION OF WHO IS ACTING AS TSA IS PROBLEMATIC.**

It is not possible for the general public to know when and how the TSA is exercising its authority. In response to specific, documented written complaints from the signatories of these comments about demands for ID documents being made by persons in airports falsely claiming to be TSA employees, the TSA's Privacy Officer has specifically refused to provide any information as to how travelers can verify the *bona fides* of persons in airports claiming to be TSA employees or claiming to be acting on authority of orders from the TSA, or what recourse is available (through what point of contact) to travelers from whom ID documents or information are demanded under false pretenses. TSA's Freedom of Information Act (FOIA) Office has argued that, if any such information exists, it is exempt from disclosure to the public under FOIA. Edward Hasbrouck, "Unanswered Questions at Dulles Airport", June 6, 2006, <<http://hasbrouck.org/blog/archives/001065.html>>; Edward Hasbrouck, "Dialogue with the TSA Privacy Officer", July 16, 2006, <<http://hasbrouck.org/blog/archives/001081.html>>; Edward Hasbrouck, "TSA Says Their Press Releases Are Secret", October 27, 2006, <<http://hasbrouck.org/blog/archives/001167.html>>. This does not make traveling safer, instead it creates the ability for nefarious individuals to illegally cloak themselves in TSA's authority and perhaps then undermine security.



As a result, the proposed rules would vastly increase the danger to air travelers by leaving them hopelessly at the mercy of any identity thief in an airport who claims, unverifiably, to be an airline or TSA contractor acting on (secret) TSA orders to demand, “Your papers, please!”

The proposed rules would impose no restrictions whatsoever on airlines or other travel companies (or their agents, contractors, intermediaries, service providers, computerized reservation systems, etc.) to whom would-be travelers would be required by government order to provide personal information and display documents from which additional information could be copied, as a condition of the exercise of fundamental rights and travel by Federally licensed common carrier.

## **VII. THE INFORMATION COLLECTION REQUIRMENTS IN THE PROPOSED RULES WOULD BE A DATA WINDFALL FOR THE AIRLINES.**

In the absence of any restrictions on the use or retention of this data by airlines, the data involuntarily obtained from travelers would become the sole legal property of the airlines, which they could keep forever, use, sell, or “share” with anyone, anywhere in the world, for any purpose.

This involuntary government-coerced transfer of personal information from travelers to travel companies would be an unconstitutional “taking” of billions of dollars worth of informational property from travelers, without due process or compensation.

**VIII. THE GOVERNMENT'S SELF-IMPOSED RESTRICTIONS ON DATA RETENTION ARE MEANINGLESS.**

The certainty that airlines will retain all of this information in perpetuity, in order to maximize the marketing and other commercial value of this government-coerced informational windfall, and the ability of the government to obtain it later, on demand, from those airlines or other travel data hosting and aggregation companies including computerized reservation systems, would render meaningless any restrictions on which this data is retained, or for how long, by the government itself.

**IX. THE TSA HAS FAILED TO CONSIDER THE COSTS OF THE PROPOSED RULES.**

According to NPRM, the TSA has provisionally concluded that the proposed rules would not impose significant costs on a substantial number of small economic entities, and thus that the regulatory Flexibility Act does not require a full analysis of these economic impacts before the proposed rules are finalized. We strongly contest this claim. The TSA has failed to consider the largest number of small economic entities affected by the proposed rules: freelancers, sole proprietors, and other small businesses whose employees travel by air. Further, the TSA has failed to consider any of the major categories of costs that the proposed rules would impose on those who are unable to travel, have to postpone travel, or are required to provide valuable information to third parties, without compensation, under government coercion or as a condition

of exercise of fundamental, protected rights.

Many travelers are self-employed freelancers and sole proprietors, and the proposal would have a significant financial impact on a substantial number of these individual “small economic entities” who have to delay air travel until they can obtain prerequisite documents, or are unable to travel because they don’t qualify for any acceptable documents, government agencies don’t choose to issue such documents, or they don’t receive “clearance” to board flights. The costs of the proposal would also include the value of their lost liberties, and the informational property they would be forced to “give” to airlines.

Having to postpone business air travel for a month, because you don't have a passport, have moved to a new state, or your driver's license has been lost or stolen and your temporary driver's license has no photo and thus is not an acceptable “Verifying Identity Document”, could cost thousands of dollars. Being unable to travel by air because you are not “cleared” could require career changes with lifetime per capita economic consequences of hundreds of thousands of dollars. The uncertainty of not knowing whether you would be permitted to travel, or not being able to travel because of the uncertainty of not knowing whether you would be permitted to return home, would impose substantial additional costs on larger numbers of travelers, including small economic entities.

Currently, airlines provide billions of dollars a year worth of transportation to members of “frequent flyer” programs, in exchange for the ability to correlate each member's trips into a travel history for that airline or its marketing partners. Compelling travelers to show government issued ID documents to airlines (who would be “free” to record ID document numbers or other unique identifiers from these documents), the proposed rules would enable airlines and travel

data aggregators to obtain and compile more comprehensive lifetime personal histories for travel on all airlines, without the need to compensate travelers the way they do now. The valuation placed on current frequent flyer programs makes clear that this more detailed data – involuntarily transferred from travelers to the airlines under the proposed rules -- would be worth billions of dollars a year. These rules could have a significant impact on the frequent flyer programs – perhaps making them obsolete. Freelancers and sole proprietors are, of course, disproportionately represented among frequent business air travelers and members of frequent flyer programs. By any measure, these consequences alone would trigger the requirement for a full analysis of economic impacts on small economic entities, pursuant to the Regulatory Flexibility Act, before any rules are finalized.

Similar behavior by DHS, also devoid of a legal explanation and failing to take into account its economic impacts, requiring employee identification verification by employers, ostensibly to curb illegal immigration, has recently resulted in judicial intervention on the matter. See article entitled “Judge Suspends Key Bush Effort on Immigration” at <http://www.nytimes.com/2007/10/11/washington/11nomatch.html?em&ex=1192248000&en=79cc15d64972a11c&ei=5087%0A>

For the reasons herein stated, the proposed rules are illegal and should be withdrawn in their entirety. And if the proposed rules are not entirely withdrawn, the analyses required by Constitutional and international law, the Airline Deregulation Act, the Privacy Act, and the Regulatory Flexibility Act must be conducted and published for additional comment before the proposed rules or any similar rules are finalized.

Respectfully submitted,

The Identity Project (IDP)

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

A project of the First Amendment Project

1736 Franklin St., 9th Floor

Oakland, CA 94612

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Edward Hasbrouck,

Consultant to IDP on travel-related issues

James P. Harrison

Staff Attorney, First Amendment Project

Director, IDP

John Gilmore

Post Office Box 170608

San Francisco, CA 94117