



ELECTRONIC PRIVACY INFORMATION CENTER

Testimony and Statement for the Record of

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“TSA Oversight Part 1: Whole Body Imaging”

Before the

House Committee on Oversight and Government Reform
Subcommittee on National Security

March 16, 2011
2154 Rayburn House Office Building.

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the TSA's body scanner program. My name is Marc Rotenberg and I am the Executive Director of the Electronic Privacy Information Center (EPIC) and Adjunct Professor at Georgetown University Law Center, where I teach information privacy law.

EPIC is a non-partisan research organization, focused on emerging privacy and civil liberties issues. EPIC has been involved in the airport body scanner issue for a long time. In 2005, EPIC published the first report that examined the privacy and health impacts of the TSA's proposed body scanner technology.¹ Since that time we have pursued a wide range of open government lawsuits, consulted with experts and advocates, organized public conferences, received complaints from the traveling public, and worked with other organizations that share our concerns about this program.²

We want to thank the committee for holding this hearing today. This is an important issue for the American public. We also want to thank you, Mr. Chairman, for your leadership on this issue and the sponsorship of bipartisan legislation that would prevent the TSA from deploying body scanners for primary screening. That bill passed the House in 2009 with more than 300 votes in favor.

In my statement this morning I will outline the privacy objections to the TSA's body scanner program, describe the documents we have obtained under the Freedom of Information Act (FOIA), and discuss the need for Congress to take decisive action. Based on the documents we have obtained, the views of experts, the concerns of Americans, and the extraordinary cost to the American taxpayer, it is our view that (1) the body scanner program should be suspended, and (2) the TSA should conduct a rulemaking so the public will have the opportunity to express its views on this program.

The EPIC FOIA Requests

Over the last several years, EPIC has pursued a series of FOIA requests to learn more about the body scanner devices. We believe it is essential when discussing this technology to understand the actual operation of the devices. When we say that there are ongoing privacy risks to American travelers and that the TSA has not done enough to safeguard privacy, we are not speculating. We are pointing to facts about the devices that

¹ EPIC, "Spotlight on Surveillance: Transportation Agency's Plan to X-Ray Travelers Should Be Stripped of Funding" (June 2005), <http://epic.org/privacy/surveillance/spotlight/0605/>.

² See, e.g., EPIC, "Whole Body Imaging Technology and Body Scanners ('Backscatter' X-Ray and Millimeter Wave Screening)," <http://epic.org/privacy/airtravel/backscatter/>; EPIC, "EPIC v. DHS (Suspension of Body Scanner Program)" http://epic.org/privacy/body_scanners/epic_v_dhs_suspension_of_body.html; EPIC, "EPIC v. Department of Homeland Security - Body Scanners" http://epic.org/privacy/airtravel/backscatter/epic_v_dhs.html; and EPIC, "The Stripping of Freedom: A Careful Scan of TSA Security Procedures" (Public Conference) (Jan. 6, 2011), <http://epic.org/events/tsa/>. EPIC also maintains a webpage where travelers can fill out a Body Scanner Incident Report (http://epic.org/bodyscanner/incident_report/).

are known to the TSA that the agency has been reluctant to discuss with Congress or the American public.

Design of TSA Body Scanner Devices

Following two FOIA lawsuits against the agency, EPIC received the TSA's procurement specifications for body scanners – that is to say, the operational requirements that the agency set out for the vendors – TSA contracts with L3 and Rapiscan, and hundreds of traveler complaints made to the TSA regarding the body scanners.

There are two key points about the design of the devices. First, the TSA required that body scanners have the capability to store, record, and transmit images of the naked human body. These machines have high capacity hard drives and the ability to transfer files via USB. The procurement specification documents also revealed security holes in the body scanner machines, notably that they run a form of Windows XP and are connected to the viewing booth via Ethernet. The TSA procurement specifications document also made it clear that the “privacy filters” can be turned off.

Second, the procurement specification documents revealed that the machines are not designed to detect powdered explosives.³ The design specifications refer to the detection of “weapons,” “explosives,” “liquids,” and “anomalies.” They aim to locate dense, non-metallic materials that metal detectors might not otherwise detect.

This is significant because the last two attacks on commercial aircraft – the “shoe bomber” and the “trouser bomber” – have involved the use of PETN, a powdered explosive. In fact, the trouser bomber went through one of the few airports in the world that was at the time equipped with a body scanner device.

As part of this FOIA litigation, EPIC also asked the TSA for test images and training manuals. DHS, however, argued that these materials were exempt under several FOIA exemptions, including “high (b)(2)”, an exemption which has since been invalidated by the Supreme Court.⁴

In related FOIA litigation concerning the use of body scanners in U.S. courthouses, we learned that the devices do routinely store images.⁵ In that case, the US Marshals Service acknowledged that one device had generated more than 35,000 images. The US Marshals Service responded to EPIC's FOIA request by providing more than one

³ Several report and articles reach a similar conclusion. *See, e.g.*, Leon Kaufman and Joseph Carlson, An Evaluation of Airport X-ray Backscatter Units Based on Image Characteristics, *Journal of Transportation Security*, <http://springerlink.com/content/g6620thk08679160/fulltext.pdf>; GAO, “Aviation Security: TSA Is Increasing Procurement and Deployment of the Advanced Imaging Technology, but Challenges to This Effort and Other Areas of Aviation Security Remain” (Mar. 17, 2010), <http://www.gao.gov/products/GAO-10-484T>.

⁴ *Milner v. Dep't of Navy*, 09-1163, 2011 WL 767699 (U.S. Mar. 7, 2011).

⁵ EPIC, “EPIC FOIA - Feds Save Thousands of Body Scan Images,” (Aug. 4, 2010), <http://epic.org/2010/08/epic-foia---feds-save-thousand.html>.

hundred images of individuals who entered the federal courthouse in Florida and went through a full body scanner. The popular tech newsletter *Gizmodo* obtained these images and published them widely on the Internet.

Documents obtained by EPIC under the Freedom of Information Act also revealed that the Department of Homeland Security has spent millions of dollars on mobile body scanner technology for possible use at railways, stadiums, and elsewhere.⁶ These body scanners were designed to scan moving pedestrians covertly. In these documents, the federal agency outlined plans to expand the use of these systems to monitor crowds, peering under clothes and inside bags away from airports. After the documents were made public, the TSA announced for the first time that it had no plans to expand the use airport body scanners, specifically. The agency did not however address whether or not it would expand the use of similar backscatter and body scanner technologies.

We are currently seeking further information from the TSA about passenger exposure to radiation emitted by the machines. EPIC filed a FOIA request last summer to determine whether the agency considered any of the medical evidence that suggested a variety of radiation risks to Americans. The agency has moved slowly in response to that request, though a recent article in *USA Today* strongly suggests a real risk that needs to be investigated.⁷

Traveler Complaints

As part of our FOIA requests, TSA also disclosed hundreds of complaints from travelers. The traveler complaints revealed that the agency was not informing travelers of their right to opt-out of the body scanners. Many travelers stated that they were never told that they could opt-out and were simply herded through the machines. Many more also reported that the pat-downs felt overly invasive and retaliatory. Some reported concerns about radiation exposure, especially to children, cancer survivors, and pregnant women.

It is difficult to describe the levels of frustration, anger, and exasperation these complaints reveal. Many people describe the sense of being humiliated by TSA officials. Others thought that the TSA's procedures were nonsensical and ineffective. Several men, who might not have objected to the scanners for themselves, were outraged when they viewed the treatment of their spouse or children.

Here are a few of the excerpts from the documents EPIC obtained:

"I specifically asked the TSA agent, before going through, if the scanner I was being asked to go through was the full body scanner that would show a naked image of me. He specifically told me it was no I now know that it was the

⁶ EPIC, "EPIC FOIA - Homeland Security Spending Millions on Mobile Strip Search Devices," (Mar. 2, 2011), <http://epic.org/2011/03/epic-foia---homeland-security.html>.

⁷ Alison Young and Blake Morrison, "TSA to retest airport body scanners for radiation," *USA Today*, at 3A (Mar. 14, 2011), http://www.usatoday.com/travel/flights/2011-03-11-tsa-scans_N.htm.

scanner. What happened to our constitution and our civil rights against unlawful search and seizure by the government? I'm a police officer and I find this a gross violation of a persons constitutional rights!" – Cynthia W.

"I have never protested anything in my life. But as a result of the body scanners and invasive pat down procedure I will not subject myself or my family to this practice. We canceled all holiday travel plans and reunions. I will also be avoiding all business travel as much as possible." – Derek

"I am six months pregnant. Absolutely nothing was explained to me about why I had to lift my arms and be scanned or if it would be dangerous to my baby I didn't think that airlines procedures would get more belittling and violating than they already were. I see I was wrong. I will not be flying again until these ridiculous policies changes." – Alison K.

"Behind me was an older woman in a wheelchair. I watched as she was forced to stand on the footprints to be scanned in an unsteady condition. It was an absolutely insane situation." – Anonymous

The Public Petitions

In the spring of 2009, when we became aware that the TSA was planning to deploy the body scanner for primary screening in US airports, we worked with a broad range of organizations across the political spectrum and petitioned Secretary Napolitano to postpone the planned deployment until the public was given the opportunity to express its views on this dramatic change in agency procedure. We asked the DHS to conduct "a 90-day formal public rulemaking process to receive public input on the agency's use of 'Whole Body Imaging' technologies."⁸

The TSA Administrator responded that the TSA thought the program was fine. We did not receive a response to our request for a rulemaking.

In April 2010, not long after EPIC reviewed the documents obtained under the FOIA and fully understood the ability of the devices to store and record images of naked air travelers, we again petitioned the Secretary and asked her to suspend the program. The General Counsel of TSA replied. She denied our request for the public rulemaking from a year earlier but offered no rationale for that decision. She further indicated that the agency would go forward with the program.

EPIC v. DHS

Following the Secretary's failure to respond to our petition for a public rulemaking and our second petition calling for a suspension of the program, EPIC filed a lawsuit against DHS.

⁸ Letter from EPIC and thirty-three organizations to Secretary Janet Napolitano, U.S. Dep't. of Homeland Security (May 31, 2009), http://epic.org/privacy/airtravel/backscatter/Napolitano_ltr-wbi-6-09.pdf.

In the suit, EPIC argues that the program violates the Administrative Procedure Act, the Fourth Amendment, the Privacy Act, the Video Voyeurism Prevention Act, the Religious Freedom Restoration Act, and the agency's own obligation to assess the privacy impact of the technologies it deploys. In our brief, we argue that the Department of Homeland Security "has initiated the most sweeping, the most invasive, and the most unaccountable suspicionless search of American travelers in history."

EPIC also cites the agency's failure to respond to the first EPIC petition and the second EPIC petition, widely supported by a broad coalition of organizations, which challenged the deployment of the devices and called for a public rulemaking. I argued this case last week in the federal appeals court here in Washington.

We don't know what the outcome will be, but our position has not changed: based on the documents EPIC has obtained under the FOIA, the use of the devices for primary screening should be suspended and the public should have a meaningful opportunity to comment on the program.

TSA's History of Inconsistent Statements

The TSA has not been forthcoming with the American public about the operation of these devices. Since TSA began implementing body scanner technology, the agency has frequently made inconsistent or misleading statements to the American public regarding the capabilities of the machines and the risks created by the machines. The agency has substantially changed its policies regarding the machines over time, as well.

When the TSA first rolled out the devices, the TSA provided various assurances. The TSA stated that body scanner machines would not be mandatory for passengers, but rather "a voluntary alternative to a pat-down during secondary screening." The TSA also said that the images were "never stored."⁹

Passengers are not typically required to submit to secondary screening, but are selected for additional screening if they set off a metal detector¹⁰ or wear baggy clothing.¹¹ The DHS's Privacy Impact Assessment of body scanner machines is predicated on the non-mandatory use of the technology for primary screening.¹²

⁹ *TSA Tests Second Passenger Imaging Technology at Phoenix Sky Harbor Airport*, Transportation Security Administration, October 11, 2007, http://www.tsa.gov/press/releases/2007/press_release_10112007.shtm (last visited Mar. 14, 2011); *see also* *X-Ray Backscatter Technology and Your Personal Privacy*, <http://replay.waybackmachine.org/20090228125115/http://www.tsa.gov/research/privacy/backscatter.shtm> (last visited Mar. 14, 2011) (stating "Backscatter is a voluntary option for passengers undergoing secondary screening as an alternative to the physical pat down procedures").

¹⁰ *How to Get Through the Line Faster*, http://www.tsa.gov/travelers/airtravel/screening_experience.shtm (last visited Mar. 14, 2011).

¹¹ *TSA's Head-to-Toe Screening Policies*, Transportation Security Administration, October 15, 2007, http://www.tsa.gov/press/happenings/sop_facts.shtm (last visited Mar. 14, 2011).

¹² *Privacy Impact Assessment for TSA Body scanner machines*, DHS, October 17, 2008, http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_wbi.pdf (stating "Individuals will be able to choose to undergo [body scanner machine] screening in primary [screening].").

The TSA assured travelers that “a security algorithm will be applied to the image to mask the face of each passenger.” The TSA said that the picture generated by body scanner machines “will never be stored, transmitted or printed, and it will be deleted immediately once viewed.”

Moreover, the TSA states that, “to ensure privacy, the passenger imaging technology being tested by TSA has zero storage capability and images will not be printed stored or transmitted. Once the transportation security officer has viewed the image and resolved anomalies, the image is erased from the screen permanently. The officer is unable to print, export, store or transmit the image.”¹³ However, documents obtained by EPIC make clear that not only do the devices store and transmit images, the agency required this functionality as part of its own procurement specifications.

Of course, the TSA has already backtracked from its initial claim that the use of the devices would be voluntary and only for secondary screening. On February 18, 2009 the TSA announced that it would require passengers at six airports to submit to body scanner machines in place of the standard metal detector search.¹⁴ This contradicts previous assurances that body scanner machines are “voluntary.” The TSA's February 18, 2009 statement also indicates that the DHS component may renege on other privacy assurances by “exploring and testing technologies ... in new configurations.”¹⁵ On April 6, 2009, the TSA announced that it plans to expand the mandatory use of body scanner machines to all airports.¹⁶ All passengers must “go through the whole-body imager instead of the walk-through metal detector,” the TSA said.

Systematic Problems with DHS FOIA Processing

Although EPIC has had considerable success obtaining documents relating to this program, we remain concerned that the DHS is not processing FOIA requests as it should. In light of this committee’s jurisdiction for government oversight,¹⁷ we would also like to draw attention to several systemic problems in the DHS’s FOIA practices. EPIC, along with a coalition of organizations and experts who share our interest in open

¹³ TSA: Whole Body Imaging, http://replay.waybackmachine.org/20090314233608/http://www.tsa.gov/approach/tech/body_imaging.shtm (last visited Mar. 14, 2011).

¹⁴ TSA Continues Millimeter Wave Passenger Imaging Technology Pilot, Transportation Security Administration, February 18, 2009, http://replay.waybackmachine.org/20090223120025/http://www.tsa.gov/press/happenings/mwave_continues.shtm (last visited Mar. 14, 2011)

¹⁵ *Id.*

¹⁶ Joe Sharkey, *Whole-Body Scans Pass First Airport Tests*, N.Y. Times, Apr. 6, 2009 available at <http://www.nytimes.com/2009/04/07/business/07road.html>.

¹⁷ Chaffetz to Chair Oversight Subcommittee on National Security, Homeland Defense and Foreign Operations, Office of Congressman Jason Chaffetz, <http://chaffetz.house.gov/press-releases/2010/12/chaffetz-to-chair-oversight-subcommittee-on-national-security-homeland-defense-and-foreign-operation.shtml>.

government, sent Chairman Issa and Ranking Member Cummings a letter highlighting serious problems in the ways that DHS carries out its FOIA mandate.¹⁸

Under a DHS policy in effect since 2006, political appointees have received detailed information about the identity of FOIA requesters and the topics of their requests in weekly reports before FOIA career staff could complete the processing of the requests.¹⁹ The policy requires DHS career staff to provide Secretary Napolitano's political staff with information, including where a requester lives, the requester's affiliation, and descriptions of the requesting organization's mission. EPIC's FOIA requests have been among those redirected to the White House.

This practice is not lawful. The Supreme Court has consistently held that FOIA does not permit agencies to investigate either FOIA requesters or their reasons for submitting requests.²⁰ We object to DHS efforts to circumvent the FOIA process. The effectiveness of FOIA depends on agencies adhering to the principles of open government and transparency.

Conclusion

We fully appreciate the very important responsibility that the TSA has in safeguarding our airports and protecting the travelling public. This is not a dispute about the agency's mission. This is a dispute about how the agency pursues its mission and the impact that it has on the American public. The TSA simply does not have the legal right or the practical need to subject American travelers to invasive and humiliating searches.

We ask that Congress take the following actions:

First, we ask that the Congress move forward with the very important legislation that you introduced and passed with the support of more than 300 House Members that would end the use of body scanners for primary screening. The TSA rushed forward with deployment without adequate testing, authorization, or public input. That legislation would restore accountability for the program.

Second, Congress should require the agency to undertake a public rulemaking so that the public and the experts are given a meaningful opportunity to express their views

¹⁸ Letter from EPIC and twenty-one organizations to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Feb. 15, 2011), http://epic.org/open_gov/foia/Issa_FOIA_Oversight_Ltr_02_15_11.pdf.

¹⁹ See "FOIA Section of the DHS Cabinet Report to the White House Submission Guidelines Updated August 4, 2006,"

http://www.dhs.gov/xlibrary/assets/foia/priv_foia_cabinet_report_submission_guidelines_20060804.pdf and "Guidelines for Reporting on Significant FOIA Activity for Inclusion in the Cabinet Report to the White House July 7, 2009,"

http://www.dhs.gov/xlibrary/assets/foia/priv_cfoiao_memo_cabinet_report_foia_guidelines_20090707.pdf.

²⁰ *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 170 (2004) (stating that "[a]s a general rule, withholding information under FOIA cannot be predicated on the identity of the requester," and *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 771 (1989) (stating that the requester's identity has "no bearing on the merits of his . . . FOIA request").

and the agency is required to consider all of the evidence. The TSA gives the public the opportunity to comment formally on whether to raise the cost for replacing an ID document from \$36 to \$60, but it will not allow the public to comment on the most invasive search technology ever deployed by the US government. It is shameful that the Secretary has rejected a public petition making this request.

Third, oversight must begin on similar DHS programs that threaten the fundamental rights of the American public. Just a few weeks ago, an EPIC lawsuit revealed that the agency is considering mobile body scanners for city streets, office buildings, and stadiums. Is the agency now planning to scan us and our families before we enter ballparks or go to Disneyworld? The American public has the right to tell the government enough is enough.

We thank you again for the opportunity to testify today and look forward to working with the committee.

SENSITIVE SECURITY INFORMATION

OST-ENG-AIT-PROCSPEC-2.11
09/30/09

APPENDIX C USER ACCESS LEVELS AND CAPABILITIES

User access and associated capabilities, based on username, password, and user access level, shall (194) be as outlined in the Access Control Levels Table.

Access Control Levels Table

User Access Level	User	Capabilities
Z	Transportation Security Administration Headquarters Contractor Maintenance Technician (see Note 1) Super User	Logon and Logoff Startup and Shutdown Enable/Disable Image Filters Access Test Mode Export Raw Image Data in Test Mode Upload/Download User Database Create and Modify Accounts (All Users) Download Data (see Note 1) Set and Alter Passwords (All Users) (see Note 1) Modify Baslined or Fielded Software (see Note 1) Access Operating System <u>Note 1:</u> Contractor Maintenance Technicians shall not set or alter passwords and shall download data only without alteration. Contractor "superuser" passwords will be disabled by a Government representative after site acceptance. Only Government approved software changes shall be made to the baslined or fielded software.
1	Federal Security Director Screening Manager Screening Supervisor	All Access Level 2 Capabilities Logon and Logoff Startup and Shutdown Enable/Disable Auto-Detect Highlighting Create/Modify Accounts (Level 2)
2	Lead-In-Charge	All Access Level 3 Capabilities Perform Daily Preventative Maintenance Create and Modify Accounts (Level 3) Access and view AIT system FDRS Database and Reports Access and view AIT system User Database Download AIT system FDRS Data Calibrate system

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

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JA 0251

SENSITIVE SECURITY INFORMATION

OST-ENG-AIT-PROCSPEC-2.11
09/30/09

- 3.0 REQUIREMENTS**
- 3.1 Tier I Requirements**
- 3.1.1 System**
- 3.1.1.1 Detection/Imaging**
- 3.1.1.1.1 System Detection**

The Concept of Operations for the AIT system encompasses a scenario in which an Image Operator (IO) reviews the AIT scanned image and determines if an anomaly is present. For this reason, detection performance for the "AIT system" refers to performance corresponding to the overall performance of AIT imaging and the operator in the loop. The AIT *shall* (1) image passengers without requiring the removal of clothing beyond outerwear. Detection performance requirements are as follows:

3.1.1.1.1.1 Explosives

The AIT system *shall* (2) produce images to enable an operator to determine the presence and location of explosives.

3.1.1.1.1.2 Weapons

The AIT system *shall* (3) produce images to enable an operator to determine the presence and location of weapons.

3.1.1.1.1.3 Liquids

The AIT system *shall* (4) produce images to enable an operator to determine the presence and location of liquids.

3.1.1.1.1.4 Other Anomalies

The AIT system *shall* (5) produce images to enable an operator to determine the presence and location of other anomalies (flat and conformal) (e.g. pagers, wallets, small bottle of contact lens solution, etc.).

3.1.1.1.2 Privacy

TSA policy dictates that passenger privacy is maintained and protected during passenger screening. To ensure passenger privacy safeguards are in place, AIT systems will prohibit the storage and exporting of passenger images during normal screening operations. When not being used for normal screening operations, the capability to capture images of non-passengers for training and evaluation purposes is needed. To ensure that image capturing maintains passenger privacy, the AIT system will provide two distinct modes of operation: Screening Mode and Test Mode as defined in 3.1.1.3.1.

During Screening Mode, the AIT system *shall* (6) be prohibited from exporting passenger image data, including via STIP. During Test Mode, the AIT system *shall* (7) not be capable of conducting passenger screening.

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

May 31, 2009

Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano,

We the undersigned privacy, consumer rights, and civil rights organizations are writing to you regarding the Transportation Security Administration's announced plan to deploy Whole Body Imaging as the primary means of screening airline passengers in the United States. We strongly object to this change in policy and urge you to suspend the program until the privacy and security risks are fully evaluated.

Whole Body Imaging systems, such as backscatter x-ray and millimeter wave, capture a detailed image of the subject stripped naked. In this particular application, your agency will be capturing the naked photographs of millions of American air travelers suspected of no wrongdoing.

Moreover, the privacy problems with these devices have still not been adequately resolved. Even though a "chalk line" image is displayed to an operator in a remote location and even though the TSA undertook a Privacy Impact Assessment and said that the image-recording feature would be disabled, it is obvious that the devices are designed to capture, record, and store detailed images of individuals undressed.

If the public understood this, they would be outraged -- many on religious grounds -- by the use of these devices by the US government on US citizens. "The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity," said the U.S. Ninth Circuit Court of Appeals in 1958. The law of privacy, according to a federal judge in California in 1976, "encompasses the individual's regard for his own dignity; his resistance to humiliation and embarrassment; his privilege against unwanted exposure of his nude body and bodily functions." Both courts were discussing dignity in prisons, even though other rights of privacy are not accorded inmates.

Further, the TSA repeatedly stated that these systems would only be used for secondary screening of passengers and only as a voluntary alternative to a pat-down search. The fact that the TSA reversed itself on the central question of whether these systems would be voluntary makes obvious the risk that the TSA will later reverse itself on the retention of images.

More must be known about the use of these devices. The American public is directly impacted by the planned use of these systems and should be given an opportunity to express its views.

We ask that the use of "Whole Body Imaging" technology undergo a 90-day formal public rulemaking process to receive public input on the agency's use of "Whole Body Imaging"

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JA 0039

technologies.

In the interim, the agency should suspend the use of Whole Body Imaging to screen all travelers. Individuals who are asked to undergo secondary screening must be fully informed of their right to alternative secondary screening options. Not native English speaking passengers must be informed via multi-lingual oral and written formats that include an image comparable to the size of the image that will be produced by the Whole Body Image technology. Passengers should also have alternatives to the Whole Body Imaging option for secondary screening such as a pat down, or physical search of carry-on bags.

The TSA should also investigate less invasive means of screening airline passengers. The expense of the technology to taxpayers should be considered in light of other less costly means of creating a secure air travel experience.

Finally, we seek a full investigation of the medical and health implications of repeated exposure to Whole Body Imaging technology. The frequency of air travel, medical conditions such as pregnancy, and chronic health conditions, and repeated exposure of TSA and airport personnel stationed in the vicinity of the technology should be assessed. Age, gender, pre-existing medical conditions, and other factors should be evaluated and medical recommendations developed regarding the use of any Whole Body Imaging system.

Sincerely,

American Association of Small Property Owners
American Civil Liberties Union
Americans for Democratic Action
Calegislation
Center for Democracy and Technology
Center for Digital Democracy
Center for Financial Privacy and Human Rights
Constitution Project
Consumer Action
Consumer Federation of America
Consumer Travel Alliance
Consumer Watchdog
Cyber Privacy Project
Discrimination and National Security Initiative
Electronic Privacy Information Center
Fairfax County Privacy Council
Feminists for Free Expression
Gun Owners of America
Identity Project (PapersPlease.org)
Liberty Coalition
National Center for Transgender Equality
National Workrights Institute
Pain Relief Network

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JA 0040

Patient Privacy Rights
Privacy Activism
Privacy Journal
Privacy Rights Clearinghouse
Privacy Times
The Multiracial Activist
The Rutherford Institute
Transgender Law Center
U.S. Bill of Rights Foundation
Woodhull Freedom Foundation
World Privacy Forum

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