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, in 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"
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
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