whether the passenger paid cash and bought a one-way ticket (though not all the factors are public). This system has been in place since the 1990s, but is considered rudimentary and inadequate by the government.

The absence of a **positive profiling** system in the United States is not through lack of intent. Since 2002, the Bush Administration has been pushing for the creation of a new system for such profiling. However, implementation is still highly uncertain, and for very good reasons.

This report looks into the challenges encountered by the Bush Administration in its efforts to establish a mass-surveillance scheme. These challenges are a mix of technological, political, legal, and social influences that have prevented the development of a profiling scheme. We wonder why, despite the internal policy struggles in the U.S., these policies seem to be re-appearing as uncontroversial elsewhere.

As the European Union and its Member States implement schemes for mass surveillance of movement and at borders, policy-makers must learn from prior mistakes in judgement rather than merely replicating them.

Timeline for Profiling Problems

2002 - The Rise of CAPPS II and the Rise of Delays

- In February 2002, the media reported that the U.S. government was working on a system for pulling together travel histories and a potentially wide array of other personal information on each traveller, and using data mining and predictive software to evaluate potential terrorist threats among the general population. Under the system, dubbed CAPPS II, each flyer would be assigned a code of red, yellow, or green, which determined their treatment at security.[1]
- The system immediately created a firestorm as critics on both the left and the right, as well as in

- The same month, consumer activists began an online campaign urging citizens to "Boycott Delta" because the airline was reportedly helping the TSA test CAPPS II. Delta eventually withdrew its co-operation with the government in this area.

- In August 2003, having received fierce criticism for the sweeping nature of its January Federal Register proposal, the TSA issued a new notice attempting (unsuccessfully) to address some of the criticism the agency had received. The new notice expanded the scope of the system to include not just terrorists but also domestic criminals.

- In September 2003, it was revealed that a U.S. carrier, Jet Blue, had "voluntarily" turned over to a contractor working for the government data on 5 million of its customers, sparking a public uproar and several lawsuits against the company.

- Also in September 2003, Congress passed legislation prohibiting CAPPS II from being implemented until the General Accounting Office, the investigative arm of Congress, had certified that the system meet basic criteria of effectiveness and fairness.

2004 - The Fall of CAPPS II and Continuing Legal Challenges

- In January 2004, the TSA announced that, since no airlines would voluntarily hand over their passenger records to the government for the purposes of testing and experimentation with the CAPPS II program, it was planning to compel them to hand over their records.

- Also in January 2004, the TSA said it expected to roll out CAPPS II in the summer of 2004. Government sources, however, told reporters that the system was nowhere near ready.[4]

- Also in January 2004, the Washington Post revealed that Northwest Airlines had shared millions of traveller records with the government to use in "data mining" threat-detection experiments.[5]

- Despite this uncertainty, in April 2004, the European Commission signed an agreement with U.S. allowing for the transfer of Europeans' data to the government – meaning that at a practical level, the private data of Europeans was now more exposed to the U.S. government than that of American citizens, despite the Europeans' purportedly stronger privacy laws.

- In February 2004, the General Accounting Office (GAO) warned that CAPPS II was not sufficiently protecting the privacy of individuals. The GAO found that the TSA failed 7 of the 8 tests set out by Congress for basic effectiveness and respect of privacy, including failures to provide for due process, a minimum

- In May 2004, it was discovered that American, United and Northwest Airlines had each turned over millions (up to a year's worth) of customer records to the FBI, which sifted through the data in the hopes of detecting terrorist attacks. [6]

- In July 2004, Homeland Security Secretary Tom Ridge announced that CAPPS II was being dismantled. The acting head of the TSA, David Stone, meanwhile, announced that the TSA was working on "reshaping" the CAPPS II program.

- In August 2004, the TSA announced the launch of a passenger profiling program entitled "Secure Flight." The renamed program was largely a re-branded version of CAPPS II, except that it would not, according to descriptions by TSA officials, use computer algorithms to rate individuals' "threat to aviation," and would not expand its scope beyond terrorism. It did, however, draw on personal information held by private-sector databases, expand the personal information required in making a reservation, utilise secret, unreliable government terrorist watch lists, and lack meaningful due process protections.

- Also in August 2004, Senator Edward M. Kennedy revealed at a committee hearing that he had been stopped and questioned at U.S. airports five times because his

- In June 2005, the DHS's Chief Privacy Officer announced that she was investigating the use of private-sector commercial databases by the Secure Flight program, which the TSA was prohibited from doing without public notice under the Privacy Act's ban on secret databases. In response, the TSA rushed a post-hoc public notice into the Federal Register.[11]

- In July 2005 the GAO issued a report finding used in violation of the federal Privacy Act during testing of Secure Flight in 2004.

- Also in July 2005 the head of Secure Flight said that the go

- In June 2006, the GAO reported that the TSA had still not completed the steps it had agreed to take as a result of the previous GAO report.[19]
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Conclusions

- No comprehensive identity-based passenger screening system exists in the United States.
- Attempts to create such a program have foundered for several years.
- The attempt to build such a program has