

Preventing Child Abduction in Air Travel Act of 2026

Anticipated challenges, responses, and drafting defects

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ADVERSARIAL LEGAL REVIEW

Preventing Child Abduction in Air Travel Act of 2026

Discussion draft of October 4, 2026 · Review dated October 7, 2026

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Internal working paper. Not legal advice. Not for distribution without the bill text.

I. Purpose and method

This paper argues against the draft. It states the strongest challenges that litigants, agencies, airlines, and advocacy groups would raise; rates each; predicts the likely result; and sets out the response and, where warranted, an amendment. Section references are to the discussion draft of October 4, 2026. Authorities were checked against primary sources where available; items that could not be confirmed are identified in Part X.

Risk ratings: High means a provision is likely to be invalidated, enjoined, or to defeat the program in practice unless amended. Moderate means a credible challenge or opposition that will require a response and probably an amendment. Low means the challenge is likely to fail on existing law.

II. Bottom line

No provision is likely to be held unconstitutional on its face. The serious exposures are operational and statutory, and all are curable by amendment:

- 1. Automatic restraining orders.** In California, Arizona, Colorado, and parts of Texas, an order barring either parent from removing a child from the State arises automatically on the filing or service of any divorce, parentage, or custody case. Each is a “qualifying order” under sec. 3(11)(C)(i). The program would be open to enrollment in every such case, which invites tactical use and could exceed TSA’s capacity to verify orders. This is the most important defect.
- 2. Judicial review.** The draft does not say which court reviews a TSA instruction to withhold a boarding pass. Whether 49 U.S.C. § 46110 applies is unclear, and the No Fly List litigation shows that this question alone can consume years.
- 3. Missing-child holds.** Sec. 4(d)(3)(B) permits a boarding hold with no court order. Most NCIC missing-child entries are runaways, some of whom are fleeing abuse. The comparison also reaches passengers aged 18 to 20 because of how the draft defines a missing child record.
- 4. Conflicting orders.** The bracketed default in sec. 5(b)(4) has TSA keep enforcing the first order filed, which may not be the order entitled to enforcement under the Parental Kidnapping Prevention Act (PKPA).
- 5. Foreign carriers.** Comparing data from EU carriers on international departures against State custody orders may exceed the purposes allowed by the 2012 EU–US PNR Agreement.

Part IX lists eleven amendments. With them, the draft should withstand challenge and is easier to defend in committee.

III. Summary of challenges

#	CHALLENGE	LIKELY RAISED BY	RISK	LIKELY OUTCOME	RESPONSE / AMENDMENT
1	Automatic and standing orders qualify; enrollment in every divorce or custody case in several States	TSA; family law bar; airlines; civil liberties groups	High	Not a constitutional defect; program capacity exceeded; open to tactical use	Exclude automatic and standing orders (Amend. 1)
2	No designated court for review of TSA instructions	Affected travelers; ACLU	Moderate	Split litigation between district courts and courts of appeals	Express review provision (Amend. 2)
3	Procedural due process for restrained adults and misidentified travelers	Restrained parents; misidentified passengers	Low	Survives under Mathews; Kashem upheld weaker procedures	Tighten provisional enrollment (Amend. 3)
4	Right to travel	Restrained parents	Low	Fails; no right to a particular mode, and the court order already restricts travel	None needed
5	Fourth Amendment: data comparison and boarding holds	Civil liberties groups; parents	Low (comparison); Moderate (missing-child hold)	Comparison upheld; warrantless hold under 4(d)(3)(B) vulnerable as applied	Narrow 4(d)(3) (Amend. 4)
6	Parental liberty (Troxel)	Parents	Low	Fails; the bill enforces orders and imposes a minimal attestation	None needed

#	CHALLENGE	LIKELY RAISED BY	RISK	LIKELY OUTCOME	RESPONSE / AMENDMENT
7	Fifth Amendment: compelled attestation	Criminal defendants	Low	Fails under Byers; regulatory, directed at all adults	None needed
8	18 U.S.C. § 1001 extended to statements to airlines	Judiciary Committees; defense bar	Low (legal); Moderate (referral)	Existing case law already covers it	Delete sec. 6(e) (1) (Amend. 5)
9	Federalism, domestic relations, conflicting orders	States; family law bar	Moderate	Domestic relations exception not triggered; the first-filed default conflicts with the PKPA	Revise 5(b)(4) (Amend. 6)
10	Tribal orders	Non-member parents	Low	Usually fails; contested only for some non-member parents	Jurisdiction check at verification (Amend. 7)
11	Anti-commandeering	States	Low	Fails; no duty is imposed on State officers	None needed
12	NCIC access	FBI CJIS; privacy groups	Low	Cured by express statutory authority in sec. 4(c)(2)	Cite 28 U.S.C. § 534 (Amend. 8)
13	Implementation by non-public security directives (SSI)	Civil liberties groups; airlines	Moderate	Notice-and-comment arguments; public-access objections	Public rule for criteria and redress (Amend. 9)
14	Privacy Act; Paperwork Reduction Act	Privacy groups; OMB	Low	Manageable through a SORN and OMB clearance	PRA timing clause (Amend. 9)

#	CHALLENGE	LIKELY RAISED BY	RISK	LIKELY OUTCOME	RESPONSE / AMENDMENT
15	Airline liability and immunity scope	Airlines (A4A)	Moderate	Airlines will seek broader immunity	Extend 11(c) to good-faith reports, excluding discrimination (Amend. 10)
16	EU-US PNR Agreement purpose limits	EU carriers; European Commission	Moderate	Conflict for international departures on EU carriers	Limit scope or carve out (Amend. 11)
17	Profiling and discrimination	Civil rights groups	Low (legal); Moderate (political)	Sec. 6(f) and 49 U.S.C. § 40127 answer it	Keep 40127 claims outside immunity
18	Efficacy: evasion, small scale, no evidence base	Opponents generally	Moderate (political)	Not a legal defect; addressed by design and sec. 12 data	Talking points in Part VII
19	Drafting defects found in review	—	Moderate	Will be raised by Legislative Counsel or opponents	Amend. 3, 4, and Part VIII

IV. Constitutional challenges

A. Procedural due process

Argument. A restrained parent, or a traveler wrongly matched, loses the ability to fly with a child and has a protected liberty interest in the care of the child. Withholding a boarding pass on an automated match, with review after the fact, risks error. The 72-hour provisional enrollment in sec. 4(b)(5)(B) acts on an unverified certification. Orders issued without notice (sec. 4(b)(6)) are enforced for up to 21 days before the restrained party is heard.

Response. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the inquiry weighs the private interest, the risk of error and the value of added safeguards, and the government's interest. The deprivation here rests on a judicial order. The restrained party was, or will be, heard in the issuing court. The draft adds human confirmation of every match (sec. 4(c)(4)), written notice (sec. 5(a)), a 24-hour redress decision (sec. 5(b)(2)), and prompt effect for any later court order (sec. 5(b)(3)). In *Kashem v. Barr*, 941 F.3d 358 (9th Cir. 2019), the Ninth Circuit upheld the revised DHS Traveler Redress Inquiry Program (DHS TRIP) for No Fly listings, which offers less process than this draft and rests on no court order. The government interest is the immediate protection of a child from removal in violation of a court order.

Weak point. Provisional enrollment on a law enforcement agency's certification alone. Any State, local, or Tribal law enforcement agency could trigger a 72-hour hold without verification.

Likely outcome. The program survives. An as-applied challenge to a provisional enrollment that proves wrong has a fair chance.

Amendment 3. Limit expedited provisional enrollment to certifications by a court or a prosecuting attorney, or by a law enforcement agency that attaches the order. Reduce the provisional period to 24 hours.

B. Right to travel

Argument. Denying air travel burdens the right to interstate travel recognized in *Saenz v. Roe*, 526 U.S. 489 (1999), and, for international departures, the liberty interest in *Kent v. Dulles*, 357 U.S. 116 (1958).

Response. *Gilmore v. Gonzales*, 435 F.3d 1125 (9th Cir. 2006), held that the Constitution does not guarantee travel by any particular mode. *Elhady v. Kable*, 993 F.3d 208 (4th Cir. 2021), and *Beydoun v. Sessions*, 871 F.3d 459 (6th Cir. 2017), held that watchlist-related delays and added screening did not infringe the right to travel. The person affected here is already bound by a court order restricting the child's travel; the bill only enforces it. International travel may be regulated within the bounds of due process: *Haig v. Agee*, 453 U.S. 280 (1981); *Califano v. Aznavorian*, 439 U.S. 170 (1978).

Likely outcome. The challenge fails.

C. Fourth Amendment

Argument (comparison). Matching passenger records against NCIC and an enrollment database is a suspicionless search of every traveler's data for ordinary law enforcement purposes, outside the special-needs rationale for airport screening.

Response. Passengers provide the data to a regulated carrier under a published federal requirement, and the comparison discloses nothing beyond a match. *Carpenter v. United States*, 585 U.S. 296 (2018), is expressly narrow and does not reach ordinary business records of this kind. Airport screening is an administrative search: *United States v. Aukai*, 497 F.3d 955 (9th Cir. 2007) (en banc). The government will also argue that protecting children subject to protective court orders is a special need distinct from general crime control.

Argument (missing-child hold). Sec. 4(d)(3)(B) lets TSA have a boarding pass withheld, at police request and without any court order, for up to four hours so that an officer can respond. For a 16- or 17-year-old traveling alone, this works as a federally directed detention pending police contact.

Response and weakness. Withholding a boarding pass is not a seizure; the passenger may leave the airport (Gilmore). That answer is weaker for an unaccompanied minor whom police are on the way to meet, and it is weakest where the record is a runaway entry. NCMEC reports that 92 percent of its 2025 cases were endangered runaways. A hold may return a youth fleeing abuse to the home they left.

Likely outcome. The comparison is upheld. As-applied challenges to holds in runaway cases are credible and politically damaging.

Amendment 4. Limit sec. 4(d)(3)(B) holds to records entered as family or non-family abduction, or where a law enforcement officer certifies a specific threat to the child's safety. Runaway entries trigger notification only. Restrict the sec. 4(c)(1)(B) comparison to minor passengers (see Part VIII).

D. Parental liberty

Argument. *Troxel v. Granville*, 530 U.S. 57 (2000), protects parents' decisions on the care, custody, and control of their children. Requiring a parent to attest before flying with the parent's own child intrudes on that interest.

Response. The attestation is a one-time electronic statement with no notarization or documentation (sec. 6(c)). It makes no decision about the child. The program acts only on orders already entered by a court in a proceeding where the parent was entitled to be heard.

Likely outcome. The challenge fails.

E. Self-incrimination

Argument. A restrained parent must either attest falsely, exposing himself to penalty, or decline and disclose the restriction.

Response. A regulatory disclosure directed at the public at large, not at a “highly selective group inherently suspect of criminal activities,” does not violate the Fifth Amendment: *California v. Byers*, 402 U.S. 424 (1971) (plurality opinion). Sec. 6 applies to every adult traveling with a minor. A person may decline to attest; the only consequence is that the trip does not proceed.

Likely outcome. The challenge fails.

F. Federalism and domestic relations

Argument. Custody is reserved to the States. A federal agency enforcing custody orders intrudes on that domain, and the domestic relations exception counsels against federal involvement.

Response. The exception covers only the issuance of divorce, alimony, and custody decrees: *Ankenbrandt v. Richards*, 504 U.S. 689 (1992). The bill issues no decree and bars TSA from determining custody (secs. 4(d)(5), 13(1)–(3)). Regulating carriage by air is within the commerce power. The bill imposes no duty on State officers. It requires notification of police but does not direct them to act, so *Printz v. United States*, 521 U.S. 898 (1997), and *Murphy v. NCAA*, 584 U.S. 453 (2018), do not apply.

Weakness: conflicting orders. Under the PKPA, 28 U.S.C. § 1738A, only a decree made consistently with the Act’s jurisdictional rules is entitled to enforcement in other States. *Thompson v. Thompson*, 484 U.S. 174 (1988), held that the PKPA creates no federal cause of action to decide which of two conflicting decrees is valid. The bracketed default in sec. 5(b)(4)(B) keeps the enrollment in place, which in effect has TSA enforce the first-filed order, possibly against the decree the PKPA favors. Sec. 5(b)(4)(C) disclaims the choice while (B) makes it.

Likely outcome. The structure survives. The first-filed default is vulnerable as applied and will be criticized by the family law bar.

Amendment 6. On a showing of conflicting orders, TSA (i) suspends boarding holds, (ii) continues law enforcement notifications to the agencies named by each party, and (iii) resumes holds only on a further order of a court identifying itself as the court with exclusive continuing jurisdiction, or on agreement of the parties.

G. Tribal orders

Argument. Sec. 3(11)(A) includes orders of tribal courts. The PKPA definition of “State” in 28 U.S.C. § 1738A(b)(8) does not include Indian tribes, and tribal jurisdiction over non-member parents is contested.

Response. Federal law gives full faith and credit to tribal orders in Indian child custody proceedings (25 U.S.C. § 1911(d)) and to tribal protection orders (18 U.S.C. § 2265). Excluding tribal courts would leave children in Indian country without the protection available elsewhere.

Amendment 7. At verification, TSA confirms with the issuing court that it asserts jurisdiction over the restrained individual. Where a restrained individual is not a tribal member and the order is not entitled to

full faith and credit under § 1911(d) or § 2265, notification proceeds and boarding holds require a confirming State or federal order.

H. Equal protection and profiling

Argument. Trafficking-recognition practices lead staff to target families whose members appear to be of different races. *MacCarthy v. Southwest Airlines, Inc.*, No. 1:23-cv-01975 (D. Colo.), alleges exactly that for a 2021 domestic flight.

Response. The bill's operative triggers are court orders and NCIC records, not appearance. Sec. 6(f) bars carriers from demanding proof of relationship or denying travel on perceived relationship. Sec. 9 ties reporting to 49 U.S.C. § 40127. The good-faith immunity in sec. 11(c) covers only compliance with TSA instructions, not staff-initiated reports.

Likely outcome. No facial defect. The program must keep any immunity extension (Amendment 10) away from discrimination claims.

V. Statutory and administrative challenges

A. Automatic and standing orders

This is the most consequential issue and was not identified in the drafter's notes.

- **California.** Every summons in a dissolution case carries an order restraining both parties from removing the minor child from the State without the other party's written consent or a court order (Cal. Fam. Code § 2040(a)(1)). Parentage cases carry the same restraint (§ 7700). The order is effective on service and enforceable statewide until judgment (§ 233).
- **Arizona.** A preliminary injunction issued by the clerk in every dissolution, legal separation, and annulment case bars removing a child from the State without written consent or court permission (A.R.S. § 25–315(A)(1)(b)(ii)).
- **Colorado.** An automatic injunction on filing and service of a dissolution or legal separation petition restrains both parties from removing a child from the State without consent or court order (C.R.S. § 14–10–107(4)(b)(I)(C)).
- **Texas.** County standing orders in many districts bar removing children from Texas during divorce and parent-child proceedings, for example the standing order of the 51st, 119th, 340th, and 391st District Courts.

Consequences. Each is an order “issued by a court of competent jurisdiction” that “prohibits the removal of a child from a State” (sec. 3(11)). Either parent in any pending case in those jurisdictions could enroll the child. Because the restraint binds both parents equally, enrollment would block the enrolling parent too, unless TSA clears the travel under sec. 4(e). Clearance turns on the other parent's written consent, which TSA cannot verify at an airport. Verification under sec. 4(b)(3) would require TSA to confirm summons-based orders, which no judge signed, in a very large number of cases. Opponents will cite this to show that the program will be used tactically in ordinary divorces.

Amendment 1. Amend sec. 3(11) to exclude an order that (i) arises by operation of law, rule, or standing order on the filing or service of a proceeding, or (ii) applies by its terms to the parties in a class of cases. A qualifying order must name the child and be signed by a judge or judicial officer after a determination in the individual case. Optionally, require that the order expressly address air travel, removal from the State, or the surrender of the child's travel documents.

B. Judicial review

Argument. An aggrieved traveler can sue in district court under the Administrative Procedure Act, or must petition a court of appeals under 49 U.S.C. § 46110. Section 46110 covers orders the TSA Administrator issues “in whole or in part under this part, part B, or subsection (l) or (s) of section 114” of title 49. A TSA instruction under sec. 4 of this Act is issued under a free-standing statute, not under title 49.

Why it matters. Ibrahim v. DHS, 538 F.3d 1250 (9th Cir. 2008), split review of the No Fly List between the district court (placement by the Terrorist Screening Center) and the court of appeals (TSA's implementing Security Directive). Kashem v. Barr, 941 F.3d 358 (9th Cir. 2019), later sent substantive challenges to the court of appeals after TSA took over final orders. Section 46110(a) requires a petition within 60 days. Under § 46110(c), the court of appeals reviews on the agency record, and TSA's findings are conclusive if supported by substantial evidence. The record of a 24-hour redress decision will be thin.

Amendment 2. Add a review provision. One option makes final redress decisions under sec. 5(b) reviewable in district court on an expedited basis, with the court able to take evidence. The other channels review to the court of appeals under § 46110 and requires the Administrator to compile a record adequate for review. The first option is preferable because the underlying disputes involve State court orders and facts outside TSA's records. Also state that nothing in the section limits the authority of the court that issued the qualifying order.

C. Implementation by order and security directive

Argument. Sec. 4(g) allows TSA to implement the program by order or by amending airline security programs. Security directives and program amendments are Sensitive Security Information (SSI) under 49 CFR part 1520 and are issued without public notice and comment (49 CFR §§ 1544.105, 1544.305). The criteria for enrollment, matching, and redress would then be secret.

Response. Operational security details justify some confidentiality, and the statute itself states the enrollment criteria and the redress process. The rules that bind the public, however, should be public.

Amendment 9 (part). Require the enrollment criteria, notice, redress, and retention rules to be issued by regulation after notice and comment. Interim final rules may be allowed for the first 12 months. Airline technical requirements may remain in security programs.

D. Privacy Act and Paperwork Reduction Act

Argument. The Secure Flight system of records notice, DHS/TSA-019 (80 Fed. Reg. 233, Jan. 5, 2015), describes watchlist matching. Using the same data to enforce State custody orders is a new purpose. Privacy groups will challenge any routine use that is not clearly within the statute.

Response. Sec. 5(c)(2) limits use to the program, and sec. 5(c)(5) requires a new or modified notice and a privacy impact assessment before launch. The statute supplies the authority. Damages exposure is limited because Privacy Act "actual damages" require proven pecuniary loss: FAA v. Cooper, 566 U.S. 284 (2012).

Paperwork Reduction Act. The sec. 6 attestation is a "collection of information" from ten or more persons (44 U.S.C. § 3502(3)(A)(i)) and needs OMB clearance. Without a statutory schedule, clearance can delay the effective date.

Amendment 9 (part). Either exempt the sec. 6 attestation from subchapter I of chapter 35 of title 44, or direct OMB action within a fixed period.

E. NCIC access

Argument. TSA is not a criminal justice agency for every purpose, and FBI CJIS rules limit dissemination of NCIC data.

Response. The Attorney General may exchange records with “authorized officials of the Federal Government” (28 U.S.C. § 534(a)(4)), and dissemination to federal agencies “authorized to receive it pursuant to federal statute” is permitted (28 CFR § 20.33(a)(2)). Sec. 4(c)(2) is that statute. Section 534(b) cancels exchange if records are disseminated outside the receiving agency; sec. 5(c)(1) bars disclosure to private parties, which is consistent.

Amendment 8. Cite 28 U.S.C. § 534 in sec. 4(c)(2) and state that TSA access is for the purposes of this Act only.

F. Section 1001

Argument. Sec. 6(e)(1) extends a felony to statements made to private airline staff and brings the Judiciary Committees into the referral.

Response. It probably adds nothing. “Jurisdiction” under § 1001 is read broadly: *United States v. Rodgers*, 466 U.S. 475 (1984). False statements made to private parties satisfy it when made under a federal regulatory requirement. *United States v. Gibson*, 881 F.2d 318 (6th Cir. 1989), involved false invoices to a coal supplier of the Tennessee Valley Authority. *United States v. Wolf*, 645 F.2d 23 (10th Cir. 1981), involved false certifications between private parties required by Department of Energy regulations. An attestation required by TSA regulation would be treated the same way.

Amendment 5. Delete sec. 6(e)(1). Rely on existing law and the civil penalty in sec. 11(b). This narrows the referral and removes the most likely Judiciary objection.

G. Airline liability and immunity

Current exposure. State-law claims by left-behind parents against airlines are generally preempted by the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1): *Bower v. El-Nady* (1st Cir. 2013) (EgyptAir); see *Morales v. TWA*, 504 U.S. 374 (1992); *Northwest, Inc. v. Ginsberg*, 572 U.S. 273 (2014). A federal mandate could support negligence per se theories; sec. 11(d) forecloses a federal cause of action.

Airline position. Airlines for America will ask for immunity covering sec. 6 attestation handling and staff reports of suspected abduction or trafficking. Existing immunities do not clearly reach those reports. 49 U.S.C. § 44941 covers disclosures relating to air piracy, threats to aircraft or passenger safety, or terrorism. 6 U.S.C. § 1104 covers reports of threats to transportation security or terrorism.

Amendment 10. Extend sec. 11(c) to good-faith reports to law enforcement of a suspected abduction or trafficking of a child, excluding reports made with knowledge of falsity or reckless disregard for the truth (as in § 44941(b) and § 1104). State that the immunity does not apply to claims under 49 U.S.C. § 40127 or other anti-discrimination law.

VI. International and foreign-carrier issues

EU–US PNR Agreement. The 2012 agreement (OJ L 215, Aug. 11, 2012) governs passenger records that EU carriers transfer to DHS. Article 4 limits use to terrorist offences and to other crimes punishable by three or more years’ imprisonment “that are transnational in nature,” with case-by-case exceptions for serious threats. A comparison of EU-carrier passenger data against State custody orders on a flight leaving the United States is not clearly within those purposes. International parental kidnapping under 18 U.S.C. § 1204 carries a maximum of three years and is transnational, so orders barring removal from the United States are the stronger case. Article 26 provided a seven-year term with renewal; the agreement’s status after July 2026 was not confirmed. EU carriers are also subject to the GDPR.

Amendment 11. For international departures operated by a foreign air carrier, limit the sec. 4(c) comparison to qualifying orders that prohibit removal from the United States, and add: “The Administrator shall carry out this section in a manner consistent with international agreements to which the United States is a party.” Direct consultation with the Secretary of State.

Hague Convention. The program supports the 1980 Convention. *Abbott v. Abbott*, 560 U.S. 1 (2010), holds that a ne exeat right is a right of custody under the Convention, which supports honoring orders that restrict a child’s removal.

Freedom of movement. Article 12(3) of the ICCPR permits restrictions provided by law and necessary to protect the rights of others. A restriction imposed by a court order and enforced under a statute meets that standard.

VII. Policy and operational objections

“It will rarely work.” True in raw numbers, and the draft should say so. The CBP program had 317 enrollments in 2024. The domestic program will intercept only travel that is subject to an order, booked on a covered flight, and checked against records before departure. Response: the cost per protected child is low because the program reuses Secure Flight; the bill is scoped to the cases where the government has a court order and can act; sec. 12 produces the data needed to decide whether to go further.

Evasion. A restrained adult can book the child on a separate reservation, use a third party not named in the order, or travel by road. Response: sec. 4(c)(1)(A) still matches the child’s own record; holds based on the restrained adult are a second layer; nothing in federal law reaches road travel. Consider extending sec. 4(c)(3) to reservations made in the same transaction or paid with the same form of payment.

Mission creep. Civil liberties groups will argue that Secure Flight was built for watchlist matching and is being extended to civil enforcement. Response: the bill grants the authority expressly, limits use (sec. 5(c)(2)), sets retention periods (sec. 5(c)(3)), carries over the § 44903(j)(2)(C)(iii) safeguards (sec. 4(c)(5)), and adds no new data collection from passengers.

Domestic violence. Advocates will argue that an abusive parent can use the program to locate or trap a parent fleeing with a child. Response: no location or itinerary disclosure to the enrolling party (sec. 5(c)(1)); protection-order procedures (sec. 5(c)(4)); the 21-day limit on orders issued without notice (sec. 4(b)(6)); Amendment 1 removes automatic orders, the easiest route to tactical use. Congress recognized flight from domestic violence as a defense in 18 U.S.C. § 1204(c)(2).

Runaway and trafficked youth. See Part IV.C and Amendment 4.

Cost and capacity. Verification with courts in all hours is the main cost and will drive the authorization figure. Amendment 1 reduces volume substantially.

The universal-ID alternative. Supporters of the original framework will say the bill is too modest. Response: no federal data show the scale of the problem; DOT estimates about 73 million domestic adult–child passengers a year; South Africa withdrew a comparable requirement for foreign children in 2019; GAO found airlines lack authority to verify custody (GAO-11–602). Sec. 12(c)(6) directs GAO to evaluate the extension.

VIII. Drafting defects identified in review

- 1. Missing child record scope.** Sec. 3(9) adopts records entered under 34 U.S.C. § 41307, which covers persons under 21. Sec. 4(c)(1)(B) compares the information of every passenger, not only minor passengers, against those records, so adults aged 18 to 20 are matched. Fix: limit the definition to records concerning individuals under 18, and limit the comparison to minor passengers.
- 2. Emancipated minors, enlistees, and married minors.** A 17-year-old may enlist with parental consent (10 U.S.C. § 505(a)). Emancipated and married minors have no parent whose consent sec. 6(b)(2) can describe. Fix: exclude from “minor passenger” a member of the Armed Forces and an individual emancipated by court order or by operation of law, or allow self-attestation.
- 3. Lap infants.** Airline sources indicate that Secure Flight data are collected for infants carried on a lap, so the program reaches them. No TSA statement confirming this was found. Confirm before the bill is introduced.
- 4. Clearance of permitted travel.** Sec. 4(e) does not say what evidence of consent TSA accepts. Fix: allow advance clearance by a written consent submitted by the protected party through the enrollment channel, and same-day clearance by that party’s telephone confirmation to TSA.
- 5. Same-reservation matching.** See Part VII (evasion).

IX. Recommended amendments (for version 1.1)

NO.	PROVISION	AMENDMENT
1	Sec. 3(11)	Exclude orders arising automatically or by standing order; require a judge-signed order naming the child.
2	New sec. 5(d)	Express judicial review; expedited district court review preferred.
3	Sec. 4(b)(5)(B)	Provisional enrollment only on certification by a court or prosecutor, or with the order attached; 24 hours.
4	Secs. 3(9), 4(c)(1)(B), 4(d)(3)	Missing-child records limited to under 18; comparison limited to minor passengers; holds only for abduction entries or a certified safety threat.
5	Sec. 6(e)(1)	Delete.
6	Sec. 5(b)(4)	On conflicting orders, suspend holds, continue notifications, resume holds only on a further court order.
7	Sec. 4(b)(3)	Confirm the issuing court's jurisdiction over the restrained individual; tribal-order handling.
8	Sec. 4(c)(2)	Cite 28 U.S.C. § 534; purpose limitation.
9	Sec. 4(g); sec. 6	Public rulemaking for criteria, notice, redress, and retention; PRA exemption or deadline.
10	Sec. 11(c)	Immunity for good-faith reports; excludes discrimination claims and knowing or reckless falsity.
11	Sec. 4(c)	Limit comparisons for foreign carriers on international departures; consistency with international agreements.
—	Secs. 3(8), 4(c)(3), 4(e)	Drafting fixes in Part VIII (emancipated minors and enlistees; same-transaction matching; clearance evidence).

X. Items not verified

- The status of *MacCarthy v. Southwest Airlines* (dismissed, settled, or pending) was not confirmed.
- The reporter citation for *Bower v. El-Nady* (1st Cir. Oct. 2, 2013), believed to be 731 F.3d 85, was not confirmed.
- Whether the EU–US PNR Agreement remains in force after July 2026 was not confirmed.
- Whether a Secure Flight system of records notice later than 80 Fed. Reg. 233 (2015) exists was not confirmed.
- The citation 584 U.S. 453 for *Murphy v. NCAA* and 585 U.S. 296 for *Carpenter* were taken from secondary sources; the official reports show page numbers not yet assigned on the sources checked.
- Nevada and other States with automatic removal restraints were not surveyed; the four jurisdictions listed are confirmed examples, not a complete list.
- No reported decision construing the CBP Prevent Abduction Program was found.

Authorities

Kashem v. Barr, 941 F.3d 358 (9th Cir. 2019). https://assets.aclu.org/live/uploads/legal-documents/85-1._Opinion_by_Judge_Fisher_10.21.19.pdf

Elhady v. Kable, 993 F.3d 208 (4th Cir. 2021). <https://clearinghouse.net/case/16663/>

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