Government Surveillance and Control of Travelers

The Cato Institute
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1. ID requirements ("Papers, Please!")

2. ID-linked "Personal Travel History"

3. "Permission To Travel" control system
   (based on identity and ID-linked history)

4. Default is "NO"
Surveillance of Travel vs. Surveillance of Communications:

SIMILARITIES:

1. Movements of people vs. movements of messages

2. CALEA vs. enforced modifications to travel IT systems
   ($2B+ since 9/11 in costs to travel industry)

3. Suspicionless dragnet capture & retention of data
Surveillance of Travel vs. Surveillance of Communications:

DIFFERENCES:

1. Legal framework for communications surveillance vs. legal framework for travel surveillance

2. How the government uses this data: “passive” surveillance vs. active real-time control
Travel Dataveillance:

3 partially overlapping sets of data required by DHS for each air traveler (depending on whether flight is domestic or intl.)

1. “Passenger Name Record” (PNR) data
2. “Advance Passenger Information System” (APIS) data
3. “Secure Flight Passenger Data” (SFPD)
Domestic vs. International:
different names for systems and datasets,
same essential content and functions

International Travel:

- Advanced Passenger Information System (APIS) data
- Passenger Name Record (PNR) data accessed & “ingested”
- CBP Automated Targeting System (ATS)

Domestic US Travel:

- Secure Flight Passenger Data (SFPD)
- PNR data accessible to TSA but not usually “ingested”
- TSA Secure Flight system
This is how the DHS thought it would work, but the reservations data ecosystem isn't structured like this.
Most airlines don’t host their own PNRs. They outsource this to a third-party “Computerized Reservation System” (CRS) or "Global Distribution System" (GDS).
Because most of the CRSs are based in the USA, data is routinely stored in the USA and accessible to the DHS even for journeys within other parts of the world. And vice versa: Reservations made in the USA, for flights within the USA, are accessible to governments and other entities in other countries. The CRSs are the original globally-accessible data “cloud”.
Where has your travel data gone? (There are no access logs.)
The airline is forbidden to issue a boarding pass unless and until it receives an individualized, per-passenger, per-flight permission message ("boarding pass printing result") from DHS.
49 USC § 40103:

“A citizen of the United States has a public right of transit through the navigable airspace.”

49 USC § 40101:

 “[T]he Administrator ... shall consider ... the public right of freedom of transit through the navigable airspace.”
Secretary of Homeland Security Chertoff on judicial review of no-fly orders:

“We don't conduct court hearings on this.... We're not about to let them do that... because we would be inundated with proceedings."
(Q & A after speech at the Federalist Society, November 17, 2006)

"If you are asking if we would do a court process where we litigate it, I mean, that effectively would shut it down."
(interview with Wired, August 6, 2008)
Contents of ATS records

Categories of ATS data partially disclosed at DHS “discretion” (always incomplete and redacted):

1. Complete copies of PNRs for all international air travel to, from, via, or overflying US territory
2. TECS index (international entry/exit log of crossings of U.S. borders since at least 1992)
3. Optional TECS detail page(s) including secondary inspection notes for each entry or exit
Contents of ATS records

Categories of ATS data never disclosed:

4. "Risk assessments" (per passenger, per flight)
5. Rules used to generate risk assessments
6. Pointers to external databases (govt. & commercial)
   (n.b. Access logs or Privacy Act “accounting of disclosures” can't be disclosed, since they aren't kept.)
Guilt by association? The only contact information in this 2007 PNR from my ATS file is the home telephone number of a friend.
This PNR from my ATS file includes my timestamped IP address, so even a dynamic IP address could be identified. (It also includes my credit card, cellphone number, etc.)
This PNR from my ATS file with CBP includes the details of my travel by train between Paris and Brussels (ZYR). Of course the PNR also shows my seat assignment (41A from CDG to SFO), so relationships between passengers can be analyzed, even if they made reservations and bought tickets separately.
This PNR from my ATS file with CBP includes the details of my travel by bus between Strasbourg (XER) and Frankfurt.
The “OK” (Czech Air) flights were on a separate ticket, and did not connect to flights to or from the US. UA would not be able to see these flights in the CRS – only a CRS user with “root” access would be able to see them. OK does not fly to the US.
Other data in PNRs

- Hotel reservations (How many beds did you and your traveling companion ask for in your hotel room?)

- Special meals (Kosher? Halal?) and special service requests (medical conditions? physical disabilities?)

- Reservations and special service requests for tours, cruises, ground transport, and other travel services

- Billing codes (Which client did a lawyer bill this trip to?)

- Discount codes (What organization are you associated with? What convention are you attending?)
My ATS file includes records of my international travel since 1992.

The first SORN (Federal Register notice) of the existence of ATS was in 2006.
ATS records include passengers on all flights that overfly US territory, even if they don't land in the US. What would happen if Cuba wanted the reservations of everyone who overflies Cuba?
This ATS record contains APIS data for a train trip from New York to Montreal, obtained by CBP from Amtrak's reservation system.
This ATS record describes a crossing of the USA-Canada border by private car. Current ATS records include the license number of the vehicle, obtained from automated license plate readers.
There can be a TECS detail page with free-text notes for each border crossing – even if nothing illegal or suspicious was found. (This example is from a traveler who crossed the border on foot.)
“No penalty issued.”

But my apple and bread are in my permanent ATS file with CBP.
CBP washed my shoes – and made a note about it in my permanent ATS dossier.
What book are you reading?
You read about drugs? About your rights?
That goes in your permanent file.
You attended a computer conference?
You claim to be a computer software “entrepreneur”? That goes in your permanent file.
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