

International Civil Liberties Monitoring Group
Coalition pour la surveillance internationale des libertés civiles
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The Honourable John Baird
Minister of Transport, Infrastructure and Communities
Tower C – 330 Sparks Street
Ottawa, Ontario K1A 0N5

Dear Minister,

I am writing to you on behalf of the Ottawa-based International Civil Liberties Monitoring Group to seek assurances that Canada will strongly oppose new U.S. air regulations – Secure Flight – which will have very negative consequences for Canadian travellers and visitors to Canada.

Under this controversial program – six years and numerous privacy scandals in the making – the U.S. will decide which passengers will be able to board a plane flying over its airspace, including those who are not planning to enter the U.S.

These measures set to come into force next year, will have a serious impact on the sovereignty of Canada and Canadians' right to privacy, as your predecessor, the Honourable Lawrence Cannon, rightly stated a year ago. On November 22, 2007, he urged the U.S. to exempt from Secure Flight all domestic flights and all flights between Canada and a third country that overfly the U.S.

However the Bush administration, which unveiled the final rules for this program in late October 2008, ignored Canada's request and exempted only flights that "transit the airspace of the continental United States between two airports or locations in the same country, where that country is Canada or Mexico."

Canada's sovereignty is at stake. These regulations mean that the U.S. will *de facto* decide who gets to travel to and from Canada, since the vast majority of Canadian flights to and from Europe, the Caribbean and South America overfly American airspace. This creates a very real possibility that the Charter rights of Canadians, and their right to privacy, will be violated. It also raises serious questions about the ability of Canada to concretely implement truly independent visa, immigration, refugee and trade policies.

.... / p. 2

Disclosure of personal information to the Department of Homeland Security (DHS) on passengers travelling to certain destinations – particularly Cuba – could lead to unpleasant consequences. For example, this information could be used to identify Canadian companies who do business with Cuba or penalize travellers who have visited Cuba by subsequently refusing them entry in the U.S. How will Canada ensure that the U.S. not use the Secure Flight program to apply its *Helms-Burton Act*, which imposes penalties on foreign companies that do business with Cuba?

The privacy implications of Secure Flight are important. Travellers will have to provide their name, gender, date of birth and travel redress number (if they have one) when they book their flights. This information will be relayed to DHS and the U.S. Customs and Border Protection – preferably 72 hours in advance – who will in turn issue “boarding pass result” back to the airline. The “result” will instruct the airline to issue an unrestricted boarding pass, deny permission to travel, or issue an enhanced screening requirement (SSSS). These regulations will give access to the U.S. to a whole subset of information – including Advance Passenger Information – on air passengers who are not entering the U.S. but merely overflying its airspace.

Currently, Canada-based airlines flying to and from the U.S., are responsible for checking the passenger manifests against the “U.S. no fly list”. Under Secure Flight all passenger names and personal information will be screened by DHS which will have access to entire personal data files. Consequently, it is misleading to claim that Secure Flight is a “security” program, as it has all the characteristics of a general infrastructure of surveillance and control of every air passenger, whether his or her name is on a watch list or not. As Mike Skrobica, interim president of the Association of Transport Association of Canada (ATAC) recently stated, this new program amounts to “loss of personal information, and sets a nasty precedent.”

Under Secure Flight, passengers may also be subject to screening at random or because of their behaviour or travel patterns, and the U.S. will be allowed to match names not only to so-called terrorist lists but also against “other government databases, such as intelligence or law enforcement databases.”

The published regulations are extremely worrisome both for what they state as well as for what they fail to address. There is nothing outlining the applicable standards or how decisions will be made to issue these new travel credentials nor are there any mechanisms for travellers to find out why they are denied permission to fly. And, none of these decisions are subject to any due process or judicial review.

The U.S. Secure Flight program will have a very harmful impact on Canadian travellers and visitors to Canada. The ICLMG calls on you to strongly and quickly oppose these measures. Canadians expect their government to protect the sovereignty of their country and uphold their rights.

Sincerely,

(original signed by G. Barr)

Gerry Barr
Co-Chair the International Civil Liberties Monitoring Group
President CEO Canadian Council for International Co-operation

c.c.: Martha Hall Findlay, Liberal Party of Canada Transport Critic
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