Homeland Security assigns terror scores to travelers

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WASHINGTON (AP) -- Without their knowledge, millions of Americans and foreigners crossing U.S. borders in the past four years have been assigned scores generated by U.S. government computers rating the risk that the travelers are terrorists or criminals.

The travelers are not allowed to see or directly challenge these risk assessments, which the government intends to keep on file for 40 years.

The government calls the system critical to national security following the September 11, 2001, terrorist attacks. Some privacy advocates call it one of the most intrusive and risky schemes yet mounted in the name of anti-terrorism efforts.

Virtually every person entering and leaving the United States by air, sea or land is scored by the Homeland Security Department's Automated Targeting System, or ATS. The scores are based on ATS' analysis of their travel records and other data, including items such as where they are from, how they paid for tickets, their motor vehicle records, past one-way travel, seating preference and what kind of meal they ordered.

The use of the program on travelers was quietly disclosed earlier this month when the department put a notice detailing ATS in the Federal Register, a fine-print compendium of federal rules. The few civil liberties lawyers who had heard of ATS and even some law enforcement officers said they had thought it was only used to screen cargo.

The Homeland Security Department called the program "one of the most advanced targeting systems in the world" and said the nation's ability to spot criminals and other security threats "would be critically impaired without access to this data."

Privacy advocates cry foul

But to David Sobel, a lawyer at the Electronic Frontier Foundation, a group devoted to civil liberties in cyberspace: "It's probably the most invasive system the government has yet deployed in terms of the number of people affected."

Government officials could not say whether ATS has apprehended any terrorists. Based on all the information available to them, federal agents turn back about 45 foreign criminals a day at U.S. borders, according to Homeland Security's Customs and Border Protection spokesman Bill Anthony. He could not say how many were spotted by ATS.

"Homeland Security ought to focus on the simple things it can do and stop trying to build these overly complex jury-rigged systems," said Barry Steinhardt, an American Civil Liberties Union

lawyer, citing problems the agency has had developing a computerized screening system for domestic air travelers.

That data-mining project -- now known as Secure Flight -- caused a furor two years ago in Congress. Lawmakers barred its implementation until it can pass 10 tests for accuracy and privacy protection.

In comments to the government about ATS, Sobel said, "Some individuals will be denied the right to travel and many the right to travel free of unwarranted interference."

Sobel said in the interview that the government notice also raises the possibility that faulty risk assessments could cost innocent people jobs in shipping or travel, government contracts, licenses or other benefits.

The government notice says some or all of the ATS data about an individual may be shared with state, local and foreign governments for use in hiring decisions and in granting licenses, security clearances, contracts or other benefits. In some cases, the data may be shared with courts, Congress and even private contractors.

Travelers denied access

"Everybody else can see it, but you can't," Stephen Yale-Loehr, an immigration lawyer who teaches at Cornell Law school, said in an interview.

But Jayson P. Ahern, an assistant commissioner of Customs and Border Protection, said the ATS ratings simply allow agents at the border to pick out people not previously identified by law enforcement as potential terrorists or criminals and send them for additional searches and interviews.

"It does not replace the judgments of officers" in reaching a final decision about a traveler, Ahern said in an interview Thursday.

This targeting system goes beyond traditional watch lists, Ahern said. Border agents compare arrival names with watch lists separately from the ATS analysis.

In a privacy impact assessment posted on its Web site this week, Homeland Security said ATS is aimed at discovering high-risk individuals who "may not have been previously associated with a law enforcement action or otherwise be noted as a person of concern to law enforcement."

Ahern said ATS does this by applying rules derived from the government's knowledge of terrorists and criminals to the passenger's travel records.

Ahern declined to disclose any of the rules, but a Homeland Security document on data-mining gave this innocuous example of a risk assessment rule: "If an individual sponsors more than one fiancee for immigration at the same time, there is likelihood of immigration fraud."

Ahern said ATS was first used to rate the risk posed by travelers in the late 1990s, using personal information about them voluntarily supplied by air and cruise lines.

A post-9/11 law vastly expanded the program, he said. It required airline and cruise companies to begin in 2002 sending the government electronic data in advance on all passengers and crew bound into or out of the country. All these names are put through ATS analysis, Ahern said. In addition, at land border crossings, agents enter license plates and the names of vehicle drivers and passengers, and Amtrak voluntarily supplies passenger data on its trains to and from Canada, he said.

In the Federal Register, the department exempted ATS from many provisions of the Privacy Act designed to protect people from secret, possibly inaccurate government dossiers. As a result, it said travelers cannot learn whether the system has assessed them. Nor can they see the records "for the purpose of contesting the content."

Toby Levin, senior adviser in Homeland Security's Privacy Office, noted that the department pledged to review the exemptions over the next 90 days based on the public comment received. As of Thursday, all 15 public comments received opposed the system outright or criticized its redress procedures.

The Homeland Security privacy impact statement added that "an individual might not be aware of the reason additional scrutiny is taking place, nor should he or she" because that might compromise the ATS' methods.

Nevertheless, Ahern said any traveler who objected to additional searches or interviews could ask to speak to a supervisor to complain. Homeland Security's privacy impact statement said that if asked, border agents would hand complaining passengers a one-page document that describes some, but not all, of the records that agents check and refers complaints to Custom and Border Protection's Customer Satisfaction Unit.

Homeland Security's statement said travelers can use this office to obtain corrections to the underlying data sources that the risk assessment is based on, but not to the risk assessment itself. The risk assessment changes automatically if the source data changes, the statement explained.

"I don't buy that at all," said Jim Malmberg, executive director of American Consumer Credit Education Support Services, a private credit education group. Malmberg said it has been hard for citizens, including members of Congress and even infants, to stop being misidentified as terrorists because their names match those on anti-terrorism watch lists. He noted that while the government plans to keep the risk assessments for 40 years, it doesn't intend to keep all the underlying data they are based on for that long.

Homeland Security, however, is nearing an announcement of a new effort to improve redress programs and the public's awareness of them, according to a department privacy official, who requested anonymity because the formal announcement has not been made.

The department says that 87 million people a year enter the country by air and 309 million enter by land or sea..