

SECRET//CANADIAN EYES ONLY



**National Security
and Intelligence
Review Agency**

**Office de surveillance des
activités en matière de sécurité
nationale et de renseignement**

Review of the Passenger Protect Program and *Secure Air Travel Act*

NSIRA // Review 24-06 // May 23, 2025

SECRET//CANADIAN EYES ONLY

Table of Contents

List of Abbreviations	ii
Executive Summary	iii
1. Introduction.....	1
Authority.....	1
Scope of the Review	1
Methodology	2
Review Statements.....	3
2. Background.....	3
3. Findings, Analysis, and Recommendations.....	5
Listing Decisions	5
Nomination and Recommendation Processes	5
Grounds for Listing	8
Initial Grounds	8
Continued Existence of Grounds	9
Assessing Grounds in the Absence of New Information	15
Administration of the 90-Day Review	16
Centralized Screening.....	20
Positive Matches.....	20
National Security Threat Assessments	21
Risks of Complicity in Mistreatment by Foreign Entities	24
Impacts on Travellers.....	26
Administrative Recourse	27
4. Conclusion	28
Annex A. SATA List Size over Time	30
Annex B. Benefits of Centralized Screening	31
Facilitated Travel.....	31
Air Carrier Oversight	31
Information Security	32
Annex C. Findings and Recommendations.....	33

SECRET//CANADIAN EYES ONLY

List of Abbreviations

ACA	<i>Avoiding Complicity in Mistreatment by Foreign Entities Act</i>
CTN	Canadian Travel Number
CBSA	Canada Border Services Agency
CSIS	Canadian Security Intelligence Service
GAC	Global Affairs Canada
GC	Government of Canada
GBA Plus	Gender-based Analysis Plus
IRCC	Immigration, Refugees and Citizenship Canada
JUS	Department of Justice Canada
NSIRA	National Security and Intelligence Review Agency
PPAG	Passenger Protect Advisory Group
PPP	Passenger Protect Program
PS	Public Safety Canada
RCMP	Royal Canadian Mounted Police
SATA	<i>Secure Air Travel Act</i>
SATR	<i>Secure Air Travel Regulations</i>
TC	Transport Canada

SECRET//CANADIAN EYES ONLY

Executive Summary

This review assessed whether the Passenger Protect Program (PPP), commonly known as Canada's "no-fly list," complies with its governance and legislative framework; and, within this context, whether the Government of Canada (GC) treats individuals reasonably and fairly. The report follows the process lifecycle for individuals who have been nominated for listing under the *Secure Air Travel Act* (SATA) through to activities that follow when a listed person purchases a ticket on a commercial flight and, if denied boarding, seeks recourse to have their name removed from the list.

NSIRA observed that recent program changes have resolved many enduring public concerns relating to the PPP's operation. In particular, the GC's centralized screening system for vetting air passengers against the SATA list has yielded tangible benefits for travellers and security; and Public Safety Canada (PS), as the PPP's lead department, has institutionalized steps to minimize unjustified infringements on travellers' mobility rights when issuing directions that would prevent a listed person from engaging in SATA-related threat activity.

Most of the concerns raised in this review relate to how the Minister of Public Safety established grounds for the continued SATA listing of individuals over time. The SATA requires that the Minister review the list every 90 days to determine whether the grounds for which each person's name was added to the list still exist and, consequently, whether the person should remain listed. While all currently-listed people met the SATA's listing threshold at the time of their addition to the list, NSIRA observed deficiencies in how the Minister's delegate decided to relist these people in subsequent reviews of their cases.

In this respect, NSIRA identified two areas where PS Ministerial delegates may not have complied with the SATA. Administratively, there were six instances between the SATA's coming into force and the start of this review where the Minister's delegate did not review the list every 90 days. More substantively, the Minister's delegate renewed the listing of six currently-listed people without having necessary grounds. Beyond these instances of possible non-compliance, NSIRA observed a general lack of clarity—and in some cases disagreement—between PPP partners surrounding when to consider a person's delisting, and on what basis. This was true for decisions regarding each person's listing status every 90 days and for decisions on applications for administrative recourse. Disagreement was particularly acute when establishing grounds for the continued listing of people who were not subject to active GC intelligence collection or investigation. Such people account for [REDACTED] # [REDACTED] of the current list.

15(1)(d)

Across the entire process lifecycle under review, NSIRA observed an overall lack of program coherence. Decisions taken at the listing stage often did not align with

SECRET//CANADIAN EYES ONLY

decisions taken in relation to listed people who had purchased tickets on commercial flights or with decisions taken upon recourse. NSIRA did not observe evidence of any oversight or feedback mechanisms that would focus attention on these areas of misalignment—let alone efforts to reconcile them.

Nevertheless, NSIRA observed that the GC did generally treat individuals reasonably and fairly within the context of the PPP. PS actions taken when a listed person was scheduled to fly, in practice, limited unnecessary restrictions on their mobility. These actions reflected the most current available information in a given case and, in doing so, constituted an important safeguard against the shortcomings that NSIRA observed regarding decisions to relist certain individuals. Actual actions taken did not, however, fully eliminate risks of unreasonable or unfair treatment: the assessments that inform them remain burdened—as with listing decisions and decisions upon administrative recourse—by a lack of clear and consistent guidance regarding SATA-related threat indicators; and do not appropriately identify or mitigate risks of listed peoples' mistreatment by foreign entities. The rate at which listed people did not ultimately travel, even when they were not subject to a direction to deny boarding under the SATA, also signals risks of unfair treatment. PS has not sought to develop an informed understanding of the PPP's operational impacts on these travellers.

The report's findings highlight gaps in PS's coordination and leadership on this file. PS's challenge function is weakened by an out-of-date governance framework that diffuses responsibility for supporting listing decisions across departments who are not equipped to perform such functions; disagreement on the nature of related departmental assistance; a lack of transparency in Ministerial decision-making; and under-developed policy guidance that increases the GC's risk of non-compliance with the SATA and directions issued under the *Avoiding Complicity in Mistreatment by Foreign Entities Act*. These issues are compounded by a lack of rigour in processes supporting the SATA's administration, including the Minister's legislated review of the list every 90 days.

In light of these findings, NSIRA made ten recommendations aimed at reinforcing a principled, coordinated approach across PPP functions.

SECRET//CANADIAN EYES ONLY

1. Introduction

Authority

1. This review was conducted under the authority of paragraph 8(1)(a), paragraph 8(1)(b), and subsection 8(2.2) of the *National Security and Intelligence Review Agency Act* (NSIRA Act).

Scope of the Review

2. This review sought to determine whether the Passenger Protect Program (PPP) complies with its governance and legislative framework; and, within this context, whether the Government of Canada (GC) treats individuals reasonably and fairly.
3. The review included all eight departments with roles in PPP governance and operations: Public Safety Canada (PS), the Canada Border Services Agency (CBSA), the Canadian Security Intelligence Service (CSIS), Global Affairs Canada (GAC),¹ Immigration, Refugees and Citizenship Canada (IRCC), the Department of Justice Canada (JUS),² the Royal Canadian Mounted Police (RCMP), and Transport Canada (TC).
4. The review focused on the PPP's implementation at the start of the review (March 28, 2024). It considered past practices, dating back to the *Secure Air Travel Act* (SATA)'s coming into force, insofar as they informed the review's analysis of relevant cases and current implementation.
5. The report follows the process lifecycle for individuals who have been nominated for listing under the SATA through to activities that follow when a listed person purchases a ticket on a commercial flight and, if denied boarding, seeks recourse to have their name removed from the list (see Figure 1). In doing so, it encompasses all touchpoints between regular PPP operations and individuals (both general air travellers and individuals listed under the SATA), as well as related processes that contribute to program efficacy. NSIRA did not review the

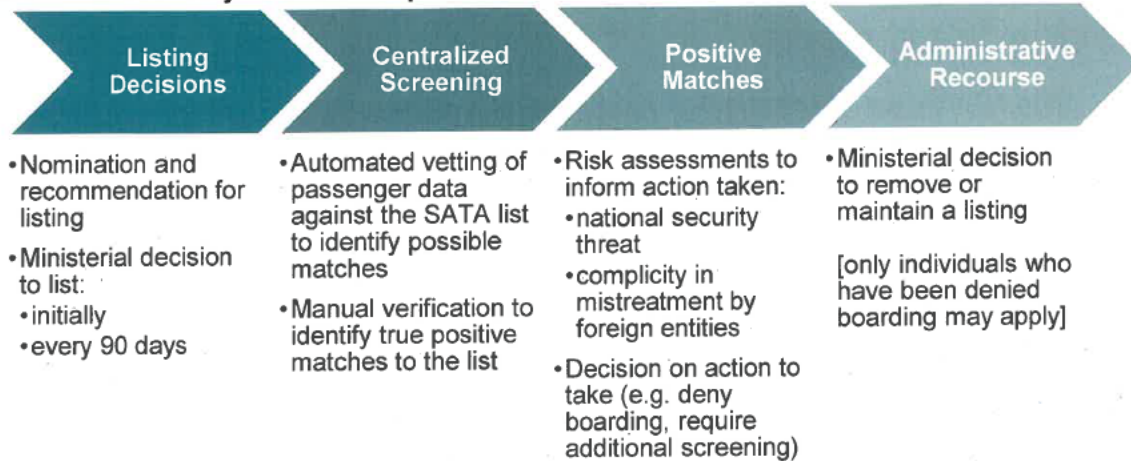
¹ The report does not discuss GAC's role, which is limited to operational activities that exist outside of the process lifecycle described in Figure 1, below. GAC's activities include providing consular support to Canadian citizens who have been denied boarding abroad; participating in interdepartmental efforts to manage the return to Canada of Canadians facing travel barriers under the *Secure Air Travel Act* (SATA); and supporting the screening of air passengers against the SATA list for GC-chartered flights in international emergencies.

² The report does not directly address JUS activities, as these are exercised in practice by PS's Legal Services Unit.

SECRET//CANADIAN EYES ONLY

processes by which individuals may appeal administrative recourse decisions to the Federal Court.

Figure 1. Process lifecycle of a listed person



6. GC departments do not collect information or intelligence specifically for SATA purposes. Instead, they support SATA listing decisions with information derived from their primary investigative mandates. This review, however, did not examine any GC activities that precede a person's nomination to the list, such as decisions to nominate some people and not others, or original decisions to investigate those people.

Methodology

7. The review relied on primary documents and explanations provided by the reviewed departments, including details of individual cases. It tailored relevant sample frames to the specific activities under review, given available data.
8. The review's analysis of listing decisions focused on the period immediately preceding the start of the review. As such, it reflects [REDACTED] individuals who appeared on the list as of January 26, 2024 (the "current list"); and [REDACTED] individuals who were delisted in the 90-day period ending on that date (the "current listing cycle"). NSIRA also reviewed [REDACTED] listings made under exigent circumstances (i.e. in less than 72 hours) between 2019 and the start of the review. Annex A contextualizes this sample with an overview of SATA list size over time.

15(1)(d)
16(1)(c)

SECRET//CANADIAN EYES ONLY

9. The review based its analysis of decisions relating to air travellers who were positively matched to the SATA list, and to administrative recourse, on the totality of such cases between the SATA's coming into force and the start of the review.³

Review Statements

10. The NSIRA Act grants NSIRA rights of timely access to any information in the possession or under the control of a department (except for Cabinet confidences) and to receive from the department any documents and explanations NSIRA deems necessary. NSIRA monitors cooperation with access requests, including the completeness and accuracy of disclosures, which inform its overall assessment of a department's responsiveness in each review.⁴
11. CBSA, CSIS, GAC, IRCC, JUS, the RCMP, and TC met NSIRA's expectations for responsiveness during this review. PS only partially met NSIRA's expectations in this respect. PS was proactive in highlighting relevant information for NSIRA's consideration and providing NSIRA with direct access to certain PPP information holdings. It also ensured ready availability of subject matter experts to respond to NSIRA inquiries. However, the quality and timeliness of formal responses to requests for information were uneven and at times hindered the review's progress.

2. Background

12. The PPP, launched in 2007, encompasses what is commonly referred to as Canada's "no-fly list." Prior to the SATA, the program derived its authority from the *Aeronautics Act*, which permitted the Minister of Transport to list individuals who posed an "immediate threat to aviation security."
13. The SATA came into force on August 1, 2015, providing a standalone legislative framework for the PPP; legislating responsibility for its administration and enforcement to the Minister of Public Safety ("the Minister"); and creating mechanisms for administrative recourse and appeals of listing decisions. The SATA also broadened the criteria for listing—under paragraphs 8(1)(a) and 8(1)(b), respectively—to include individuals for whom the Minister has reasonable grounds to suspect will threaten transportation security or travel by air for the purpose of

³ NSIRA identified these cases based on PS and TC responses to requests for information as well as records available to NSIRA through direct access to PS information holdings.

⁴ NSIRA's "Expectations for Responsiveness in Reviews" are online at <https://nsira-ossnr.gc.ca>.

SECRET//CANADIAN EYES ONLY

- committing terrorism offences. The SATA's listing criteria thus removed the requirement that threats be "imminent" or solely related to "aviation" security.
14. The Minister may list any person that meets the SATA's listing criteria, irrespective of their nationality. The list includes both Canadians and non-Canadians. The *Secure Air Travel Regulations* (SATR), in turn, define the flights for which the list must be applied. Such flights include Canadian domestic flights and international flights that depart from or arrive in Canada, when they are conducted by specific regulated air carriers and meet certain requirements relating to aircraft size. In practice, such flights are operated by both Canadian and foreign air carriers.
 15. In 2019, the *National Security Act, 2017* made amendments to the SATA that enabled the GC to make program changes that responded to enduring public concerns, including those raised by civil liberties groups. These changes include a centralized GC screening system to vet passenger manifests against the list, which moderated concerns for privacy, information security, and efficacy associated with air carriers' former responsibility for screening functions; and the Canadian Travel Number (CTN) redress mechanism. Individuals who believe they face airport delays on account of false positive matches to the SATA list can now apply to receive a CTN—a unique identifier that differentiates them from SATA-listed individuals with a similar name—to prevent such delays.
 16. The Federal Court rendered a decision regarding the SATA's constitutionality in 2022.⁵ The Federal Court found that although the SATA scheme infringed on mobility rights protected by the *Canadian Charter of Rights and Freedoms* ("the Charter"), these infringements were justified under section 1 of the Charter. The Federal Court also found that the administrative review and appeal mechanisms established under the SATA were conducted in accordance with the principles of fundamental justice, such that SATA-related limits on the appellants' security of the person rights were lawful.
 17. The Federal Court rendered two related decisions regarding appeals under the SATA in 2022, determining in both cases that the Minister's listing decision was reasonable.⁶ The Federal Court of Appeal dismissed appeals of these decisions in 2024, noting that several of the SATA's features "show careful tailoring to minimize the impairment of rights and freedoms."⁷

⁵ *Brar v. Canada (Public Safety and Emergency Preparedness)* 2022 FC 1168.

⁶ *Brar v. Canada (Public Safety and Emergency Preparedness)* 2022 FC 1163 and *Dulai v. Canada (Public Safety and Emergency Preparedness)* 2022 FC 1164.

⁷ *Singh Brar v. Canada (Public Safety and Emergency Preparedness)* 2024 FCA 114 at para 19.

SECRET//CANADIAN EYES ONLY

3. Findings, Analysis, and Recommendations

Listing Decisions

Nomination and Recommendation Processes

Finding 1. NSIRA found that Public Safety Canada has not updated governance documents to reflect roles and responsibilities for supporting the Minister in making SATA listing decisions.

Finding 2. NSIRA found that the misalignment between the Passenger Protect Program's governance documents and current practice has created gaps in accountability for supporting the Minister in making SATA listing decisions.

18. PS maintains overall responsibility for administering and enforcing the PPP. In the current listing process, CSIS and the RCMP—as “nominating agencies”—submit case briefs to PS regarding individuals who they wish to be considered for listing, relisting, or delisting, as required given new information and intelligence. PS makes a recommendation to the Minister based on the grounds laid out in case briefs and its own assessment of those grounds. If listing is recommended, PS also recommends actions for the Minister to take should the individual attempt to board a flight. When considering new or complex cases, PS benefits from advice provided by its Legal Services Unit and an interdepartmental meeting forum, known as the Passenger Protect Advisory Group (PPAG). PPAG is chaired by PS, and includes CBSA, CSIS, IRCC, the RCMP, and TC as members.
19. While the Minister makes listing decisions based on nominating agencies' updates, the SATA also includes a positive requirement for the Minister to review the list every 90 days to determine whether the grounds for which each individual was listed still exist. Since 2022, PS has supported this requirement through a secretarial consultation with nominating agencies. CSIS and the RCMP review their cases internally, de-conflict between themselves, and provide updated case briefs to PS whenever their assessments have changed.⁸ The nominating agencies' internal reviews support PS's preparation of a 90-day relisting memorandum (“90-day memo”) for signature by the Minister, which affirms the full

⁸ The RCMP provides PS with an independent assessment of whether each case continues to meet the SATA listing threshold. [REDACTED]

15(1)(d)

SECRET//CANADIAN EYES ONLY

SATA list. The most recent case brief in each person's file is made available to the Minister upon request.

20. The Minister almost always delegates their decisions under SATA to departmental officials (the "Minister's delegate"). This delegation is made via a formal delegation instrument, which identifies several positions that may each exercise the Minister's authority in respect of different sections of the Act. These positions range in rank from working-level operational personnel to the Deputy Minister. PS's internal PPP governance framework does not comprehensively establish the conditions under which one position or another would exercise the Minister's authority. In practice, however, decisions relating to listing are usually made by the Senior Assistant Deputy Minister, National and Cyber Security Branch.
21. The PPP's interdepartmental governance framework is established in a 2019 Memorandum of Understanding and its annexed PPAG Terms of Reference. While in current practice only CSIS and the RCMP serve as nominating agencies, these documents affirm that CBSA, IRCC, and TC share equal responsibility for nominating individuals to the list. The documents also set a framework to make recommendations for all listing decisions by consensus amongst PPAG members. Although this consensus-based approach was PPAG practice until 2022, now PPAG only considers those listing decisions that relate to new or complex cases. Other recommendations are now made secretarially, based on PS engagement with CSIS or the RCMP, as the case may be.
22. Given the roles and responsibilities documented within PPP governance documents, PS's 90-day memos include an attestation that reads:

We, the representatives of the Passenger Protect Advisory Group member organizations, attest that we have reviewed our holdings relating to the *Secure Air Travel Act* (SATA) List in the last 90 days, and further that we have provided recommendations and assessments to the Minister of Public Safety on all of our cases in accordance with paragraph 8(2) of the SATA.

The attestation includes space for signature by Directors General at CBSA, CSIS, PS, the RCMP, and TC. PS does not prompt IRCC to sign this attestation, given a 2021 arrangement between the two organizations that IRCC would exercise "observer" status within the PPAG, and no longer contribute to recommendations for listing or delisting. IRCC's observer status remains unreflected, however, in the PPP Memorandum of Understanding and PPAG Terms of Reference.

23. Although contributing to case brief assessments and related recommendations would be consistent with the authorities granted to them under section 10 of the SATA, CBSA and TC confirmed to NSIRA that they do not currently exercise such functions or maintain any internal policy to support their conduct. Their signature of the PPAG attestation within 90-day memos does not, therefore, reflect any

SECRET//CANADIAN EYES ONLY

substantive undertaking. Their continued identification, along with IRCC, as nominating agencies within PPP governance documents may therefore be misleading. More importantly, it obscures processes and accountabilities relating to the secretarial approach adopted by PS, CSIS, and the RCMP for this purpose in 2022. CBSA, IRCC, and TC are not, in current practice, fulfilling all roles and responsibilities set out for them within the PPP's written governance framework. CSIS and the RCMP are carrying the load without the interdepartmental contributions that the governance documents imply.

24. In addition to obscuring processes and accountabilities at the framework level, the misalignment between current practice and the PPP's governance documents has had practical impacts. The current list, signed by the Minister's delegate, identified CBSA as the applicable nominating agency for one listed person. CBSA maintains that it has continued to review its information holdings in respect of this person every 90 days. Nevertheless, and despite CBSA efforts to provide a material update in 2020, NSIRA did not observe evidence that the Minister's delegate had substantively reconsidered this case's merits since the CBSA's last approved case brief update in 2019.⁹
25. PS provided NSIRA with contradictory information regarding its understanding of CBSA's role and ownership of this case: while PS initially explained that CBSA was no longer a nominating agency, and that any cases CBSA encountered would be forwarded to CSIS or the RCMP for further investigation (which did not occur in this case), more recent correspondence maintained CBSA's responsibility as a nominating agency both in relation to this case and more broadly. NSIRA assesses that the misalignment between current practices, which are CSIS- and RCMP-centric, and formal governance documents, which treat CBSA as an equal nominating agency, has contributed to a void in accountability for supporting the Minister's continued relisting of this person.¹⁰
26. While the governance documents' inclusion of CBSA, IRCC, and TC as nominating agencies is problematic, so too is their failure to identify PS as a possible nominating agency. This exclusion puts into question the propriety of PS taking on

⁹ The final two sentences of this paragraph have been revised from the original, which stated: "CBSA, however, had not done any work to support this listing since its last case brief update in June 2019, given its understanding—expressed unequivocally to NSIRA—that it was no longer a SATA nominating agency."

¹⁰ The final sentence of this paragraph has been revised from the original, which stated: "Confusion surrounding CBSA's role allowed a void in accountability for supporting the Minister, in relation to this case, to go undetected and unchecked for nearly five years. As a result, the Minister relisted this person in successive 90 day reviews, without any substantive reconsideration of the case's merits."

SECRET//CANADIAN EYES ONLY

the nominating agency role to keep individuals on the list in cases where it disagrees with CSIS or RCMP assessments in favour of delisting. The current list identifies PS as a nominating agency in four such cases, despite PS's stated position that it lacks the intelligence collection powers necessary to perform the role.

27. Separately, the PPAG Terms of Reference crystalize an out-of-date approach for applying Gender-based Analysis Plus (GBA Plus) in support of listing decisions that was not reflected in current practice. PS's currently-proposed update to GBA Plus for listing decisions is addressed under Finding 7.
28. PS initiated consultations to update the PPP Memorandum of Understanding in 2022, but a new version has yet to be finalized.

Recommendation 1. NSIRA recommends that Public Safety Canada prioritize updating Passenger Protect Program governance documents to align with current practices, including by clarifying roles and responsibilities for supporting the Minister in making SATA listing decisions.

Grounds for Listing

Initial Grounds

Finding 3. NSIRA found that all currently-listed individuals met the "reasonable grounds to suspect" threshold in respect of SATA paragraphs 8(1)(a) or 8(1)(b) at the time of their addition to the SATA list.

29. During the period under review, case briefs and new listing memos documented the Minister's reasonable grounds to suspect that each listed person met the applicable threshold(s) under the SATA, paragraph 8(1)(a) or 8(1)(b), upon their initial listing. The case briefs relied upon threat indicators regarding the specific individual's intent and capability to carry out the acts referenced in subsection 8(1), and not solely their association with terrorist entities. NSIRA was satisfied that CSIS and RCMP process documents require case briefs to include available exculpatory information that could negate these indicators.
30. Listings approved under exigent circumstances also documented the Minister's "reasonable grounds to suspect" at the time of listing, even when full case briefs were not approved until weeks later. In these cases, PS justified the exigency at listing given imminent travel by the proposed listed person. NSIRA did not observe any evidence to suggest that exigency was used to circumvent procedural safeguards for weak cases. Instead, exigent processes accelerated decision-making for strong cases, when operationally warranted.

SECRET//CANADIAN EYES ONLY

31. The approval of new listings appears uncontentious. Within the sample reviewed, NSIRA did not observe any instances where the Minister's delegate disagreed with a PS recommendation to add a new person to the list, nor instances where PS disagreed with the nominating agency contemplating a new listing. All individuals nominated for listing were, ultimately, listed.

Continued Existence of Grounds

Finding 4. NSIRA found that the Minister's delegate may not have complied with the SATA subsection 8(1) when they renewed the listing of six individuals without having necessary grounds. These relistings comprise:

- two individuals that the delegate had previously decided to delist, with no new information to justify a reversal of that decision;
 - one individual whose most recent case brief clearly expressed the nominating agency's assessment that the SATA's listing threshold was not met; and
 - three individuals based on grounds that were unrelated to the SATA's listing thresholds.
-

32. Subsection 8(2) of the SATA requires that the Minister review the list every 90 days to determine whether the grounds for which each person's name was added to the list under subsection (1) still exist. NSIRA expected to find that such determinations would be based on a substantive review of each case, including indicators tied explicitly to the relevant legal thresholds, and without influence of irrelevant factors.

33. In the current listing cycle, however, the Minister's delegate relisted two individuals that the delegate had previously lawfully delisted given an absence of grounds. There was no new information to support reversing the earlier delisting. In one of these cases, the individual had been delisted two days prior. While their delisting was counted in the 90-day memo's summary of listing decisions taken in the preceding 90 days, their name was not removed from the list of individuals that the Minister's delegate signed. In the other case, the individual had been delisted in 15(1)(d) [date] but their listing was renewed in every 90-day memo since.¹¹

34. In a third case within the current listing cycle, the Minister's delegate relisted an individual whose most recent case brief update clearly stated and substantiated the nominating agency's position that there were no longer reasonable grounds to

¹¹ Operationally, PPP partners implemented the lawful delistings of these two people. They did not implement the subsequent relisting decisions, which were apparently made in error. Accordingly, these two people could not have been subject to restrictions on their mobility or security rights as a result of the error.

SECRET//CANADIAN EYES ONLY

suspect the individual met the SATA's listing threshold. PS's recommendation to relist this individual did not include any justification for its disagreement with the nominating agency's assessment.

35. The Minister's delegate also included in the current list three individuals based on grounds that were unrelated to the lawful thresholds established under the SATA, subsection 8(1). In all three instances, PS accepted nominating agency assessments that the individuals were [REDACTED] and therefore could not themselves pose a threat. PS recommended their relisting on the grounds that [REDACTED]

15(1)(d)

16(1)(c)

[REDACTED]
[REDACTED] the Minister's authority to mitigate such risks is governed by the [REDACTED]
[REDACTED] It is unlawful to use the SATA list for reasons unrelated to the threat posed by the specific listed person.

Finding 5. NSIRA found that the Minister's delegate did not document their reasons for disagreeing with recommendations to remove individuals from the SATA list, which hindered nominating agencies' ability to improve the quality of their assessments relating to the continued existence of grounds for SATA listing.

36. While new listings appeared uncontentious, NSIRA observed disagreements amongst PPP partners surrounding relisting versus delisting: namely, how to interpret the SATA's listing thresholds and establish continued existence of grounds over time. Within the sample of currently-listed individuals, NSIRA identified nine cases where PS disagreed with a nominating agency assessment, and a further two cases where the Minister's delegate disagreed with a PS recommendation. In these cases, nominating agencies were disposed to delist, whereas PS and—to an even greater extent—the Minister's delegate preferred relisting.
37. Where PS disagreed with nominating agency assessments or related recommendations, it typically (with the exception of the third case referred to under Finding 4) inserted its justification for doing so within case briefs.¹² When the Minister's delegate did not approve a recommendation regarding the continued

¹² PS informed NSIRA during the factual accuracy consultation for this review that it has discontinued this practice. In current practice, when PS disagrees with a nominating agency assessment or recommendation, it provides a rationale for the disagreement within the accompanying memorandum for decision, and not within the case brief itself.

SECRET//CANADIAN EYES ONLY

existence of grounds, however, they did not document their reasons for doing so or otherwise relay these reasons to nominating agencies.

38. This lack of communication persists despite active nominating agency interest in obtaining such information. In a July 2023 PPAG meeting, for instance, CSIS requested that PS provide a rationale in cases where Ministerial decisions diverge from nominating agency recommendations. CSIS suggested that such rationales could inform its own internal processes and preparation of assessments to support the Minister. The record of decision from this meeting documents PS's position that sharing a rationale would be "unlikely to happen [...] since the courts have given [the Minister] decision-making powers under SATA."
39. The Minister's authority to make listing decisions does not limit or constrain their ability to provide nominating agencies with their rationale for doing so. To the contrary, documenting the reasons for decisions that diverge from supporting assessments, and sharing these reasons with nominating agencies, would explain the grounds on which listing decisions are taken and help nominating agencies support the Minister in making future decisions when similar considerations are at play.

Recommendation 2. NSIRA recommends that, in cases where the Minister or their delegate does not approve a recommendation for relisting or delisting an individual under the SATA, the reasons for their disapproval be clearly documented and relayed to the relevant nominating agency.

Finding 6. NSIRA found that the Government of Canada applied threat indicators inconsistently when conducting analysis for SATA listing and delisting decisions.

40. While paragraph 8(1)(b) of the SATA restricts listings to individuals who may travel by air for the purpose of committing terrorism offences (which are, by definition, politically-, religiously-, or ideologically-motivated), paragraph 8(1)(a) is agnostic as to the nature of an individual's motivation for engaging or attempting to engage "in an act that would threaten transportation security." Despite this apparent breadth, case briefs were inconsistent in their treatment of non-terrorist motivations under paragraph 8(1)(a).
41. Within the sample reviewed, NSIRA identified two case briefs that relied upon an absence [REDACTED] as a reason for delisting individuals who otherwise—[REDACTED]—posed a risk to air transportation security. In a third case, however, PS applied the opposite reasoning. In this case, it relied on the absence of "information to suggest an

15(1)(d)
16(1)(c)

15(1)(d)
16(1)(c)

SECRET//CANADIAN EYES ONLY

- [REDACTED] as a reason to relist an individual for whom the nominating agency attributed past threat activity to [REDACTED]
42. NSIRA also observed inconsistencies in PPP partners' willingness to accept indicators of [REDACTED] in their weighting of exculpatory and derogatory information when assessing terrorist motivations. In two cases, for example, PS recommended relisting despite CSIS's supporting assessment citing numerous indicators of [REDACTED] as sufficient to justify delisting. In a third case, PS relisted an individual based on an RCMP assessment that rejected the "low risk" results of a [REDACTED] risk assessment conducted by another RCMP unit, given [REDACTED]
[REDACTED]
43. More generally, NSIRA observed that PS tended to reject nominating agency assessments that favoured delisting when those assessments did not include [REDACTED] Such rejections occurred even in cases where the nominating agency had indicated that [REDACTED] Where [REDACTED] information (like indicators of [REDACTED] was included, PS tended to assess it as insufficient [REDACTED]
44. NSIRA observed further inconsistencies in how case briefs accounted for indicators that directly contributed to a listed person's ability to carry out the acts set out in subsection 8(1):
- [REDACTED] – case briefs inconsistently assessed the level of proof required to contemplate delisting individuals who [REDACTED]: while presumption was sometimes sufficient, definitive proof was sought in other cases.
 - [REDACTED] – case briefs inconsistently assessed the impact of an individual's [REDACTED], despite constant facts relating to the [REDACTED]
[REDACTED]
 - [REDACTED] – case briefs inconsistently assessed the impact of other tools [REDACTED]
[REDACTED]
[REDACTED]
45. PPP partners were also inconsistent in assessing how "nexus to Canada" impacted a listed person's intent and capability to carry out these acts. Nominating agencies frequently cited a lack of nexus to Canada, including a lack of legal status in Canada, as a factor [REDACTED]
[REDACTED]

SECRET//CANADIAN EYES ONLY

15(1)(d)
16(1)(c)

██████████ While PS sometimes accepted such assessments, in other cases it relied upon lack of status in Canada as an explicit reason ██████████.

46. The lack of clarity surrounding threat indicators contributed to divergent listing decisions (i.e. relisting versus delisting) in relation to cases with similar fact patterns. In its assessment of these decisions, NSIRA considered individuals' biographic characteristics, including their nationality, age, gender, ethnicity, and religious affiliation. NSIRA did not identify any discernable patterns that would account for the divergences observed. Instead, inconsistencies appeared to stem from gaps in the development and roll-out of sound PS guidance on SATA-related threat indicators.

Finding 7. NSIRA found that Public Safety Canada has not provided clear and consistent guidance to departments regarding SATA-related threat indicators.

47. PS developed guidance in 2022 that included a range of indicators to consider when determining whether to recommend that an individual be delisted. This guidance was designed as an internal tool. To avoid influencing nominating agency assessments, PS did not share it with other PPP partners.¹³

15(1)(f)

48. In response to a request for information from NSIRA, PS wrote that its 2022 guidance was "no longer relevant," given its inclusion of considerations for delisting that did not mitigate the risk posed (e.g. the status of a nominating agency's investigation, ██████████). PS is, accordingly, in the process of replacing this guidance with a fit-for-purpose risk assessment tool that it is developing in collaboration with ██████████ contractor. While this new tool is in development, PS has been applying a ██████████ available list of indicators to inform its internal assessments and recommendations relating to listing decisions.

15(1)(d)
16(1)(c)

49. The indicators contained within this interim list do not, however, clearly align with the SATA's listing threshold. For example, it is unclear how ██████████
██████████
██████████—both of which the list identifies as risk-supporting indicators—relate to the acts set out in subsection 8(1). Furthermore, the list includes additional indicators relating to ██████████ that are not well-suited to an intelligence-based assessment process: available information rarely offers a complete ██████████ picture and—even if it did—would require expert

¹³ In the absence of guidance from PS, CSIS addressed indicators for listing within its own internal policy. RCMP internal guidance does not include indicators or considerations for operationalizing the SATA's legal threshold for listing.

SECRET//CANADIAN EYES ONLY

interpretation. Indeed, PS has signalled to NSIRA that some of these indicators are difficult to assess based on available information.

- 15(1)(d)
16(1)(c)
50. The planned tool draws on structured risk assessment protocols that are, like the interim indicators list, based on the empirical analysis of ████████ terrorists. PS has pursued this approach for its alleged objectivity and structure: it would prompt assessors to consider all relevant indicators and therefore better equip PS to exercise its challenge function vis-à-vis nominating agencies. It would also address GBA Plus requirements.
51. The above-described limitations of the interim indicators list raise concerns for NSIRA regarding the new tool's ability, as currently envisioned, to achieve these aims. These limitations are compounded by a misalignment between the tool's empirical foundation and the SATA's listing criteria. Indicators that have been designed specifically to reflect risks of violent extremism do not reflect the full scope of activities that may warrant listing under the SATA. Paragraph 8(1)(a) does not necessarily engage extremism; and paragraph 8(1)(b)—by virtue of including offenses relating to recruitment, training, and facilitation—does not necessarily engage violence. As such, assessments based on the new tool may under-identify SATA-related risks.
52. Additionally, PS has not consulted nominating agencies on the new tool's development, nor its application of the interim indicators list. Although PS has provided verbal updates to the nominating agencies on the matter, PS explained to NSIRA that it does not believe dedicated consultation of PPP partners is warranted.
53. To improve consistency across decisions for relisting versus delisting, however, it is important that all PPP partners share a common understanding of indicators. Such understanding should extend to the indicators' grounding in relevant legal thresholds, their availability to nominating agencies for inclusion in case briefs, and considerations for their weighting. It is equally important that PS draw on nominating agency methodological expertise in developing related guidance. Doing so would help to ensure that indicators are meaningful markers of an individual's intent and capability to carry out SATA-related threat activity, and that they may be addressed in the context of a risk assessment that is predominantly informed by intelligence. A common understanding of indicators and their utility in PPP risk assessments should neither fetter the Minister's discretion in making listing decisions nor prejudice the nominating agencies' supporting assessments.

15(1)(d)
16(1)(c)

SECRET//CANADIAN EYES ONLY

Recommendation 3. NSIRA recommends that Public Safety Canada leverage nominating agency expertise as it develops guidance on SATA-related threat indicators; and ensure that these indicators align with the SATA's listing threshold. This guidance should apply equally to all Passenger Protect Program partners.

Assessing Grounds in the Absence of New Information

Finding 8. NSIRA found that [REDACTED] (#) [REDACTED] of all individuals currently listed under the SATA are no longer subject to Government of Canada intelligence collection or investigation.

54. CSIS and the RCMP update case briefs when they have new material information to report. However, neither nominating agency collects intelligence specifically for SATA purposes. The information they use in SATA case briefs is incidental to the collection they undertake for other activities under their respective mandates.
55. Case briefs indicated that [REDACTED] (#) [REDACTED] of the current list was no longer under active GC investigation. In other words, the GC was not actively collecting new intelligence on these people. Among those who were not being investigated, [REDACTED] (#) [REDACTED] were last known to reside in Canada. Their location within Canada suggests that they could be investigated if CSIS or the RCMP determined it were appropriate under their respective mandates.
56. Since decisions to investigate may be tied to factors unrelated to the SATA's listing threshold, the absence of investigation or collection activities does not inherently constitute an argument in favour of delisting. For example, the RCMP may stop an investigation if successful prosecution is unlikely. Additionally, both agencies may reasonably allocate their investigative resources as a function of operational priorities. Nevertheless, when listed people are not under active investigation by at least one nominating agency, PS cannot credibly determine whether case brief assessments remain current.
57. An absence of investigation is particularly problematic since PS sometimes insists on the provision of [REDACTED] —in order to recommend delisting. The GC cannot reasonably expect to obtain such information absent investigative actions. Continued listing may be unreasonable in such cases, since there may no longer be grounds to support that decision.
58. The SATA's requirement to re-assess grounds for listing every 90 days is an active requirement. PS cannot passively assume that previously-established grounds for listing remain valid in cases where it does not have access to updated information

SECRET//CANADIAN EYES ONLY

that could invalidate those grounds. In such cases, PS assessments should account for the circumstances under which no new information has been collected, including the nominating agencies' willingness and ability to collect SATA-relevant intelligence under their respective mandates.

Recommendation 4. NSIRA recommends that Public Safety Canada develop case-specific criteria to establish grounds for the continued SATA listing of individuals who are not subject to active Government of Canada intelligence collection or investigation.

Administration of the 90-Day Review

Finding 9. NSIRA found six instances where the Minister's delegate may not have complied with the SATA's subsection 8(2) requirement to review the SATA list every 90 days.

59. Across the nine 90-day cycles that NSIRA reviewed since PS adopted its secretarial approach to conducting 90-day reviews of the SATA list, the Minister's delegate exceeded the legislated timeframe by a small margin (one to six days) on four occasions. From the SATA's coming into force until 2022, when the secretarial approach was implemented, the Minister's delegate reviewed the list on a much shorter cycle: on average, every 51 days. This is because their review of the list was done concurrently with their approval of any ad hoc listing recommendations. In this six year period, the Minister's delegate exceeded the legislated timeframe on only two occasions. In one case, the delay was one day. In the other, the delay was 44 days, given pandemic-related restrictions that hindered classified approvals.
-

Finding 10. NSIRA found that nominating agencies rarely document the outcomes of their 90-day review assessments within SATA case briefs.

60. Nominating agencies only provide written case brief updates to PS when they encounter new information that would warrant a material update. In cases where their 90-day reviews do not identify such information, CSIS and the RCMP include the individuals' names on an "idle list" that affirms they reviewed their holdings and did not identify relevant information. PS relies on these idle lists when preparing the related relist recommendation for the Minister's delegate; the idle lists are not themselves included in the decision package.

61. In each 90-day review, idle lists account for a majority of listed people. Indeed, only

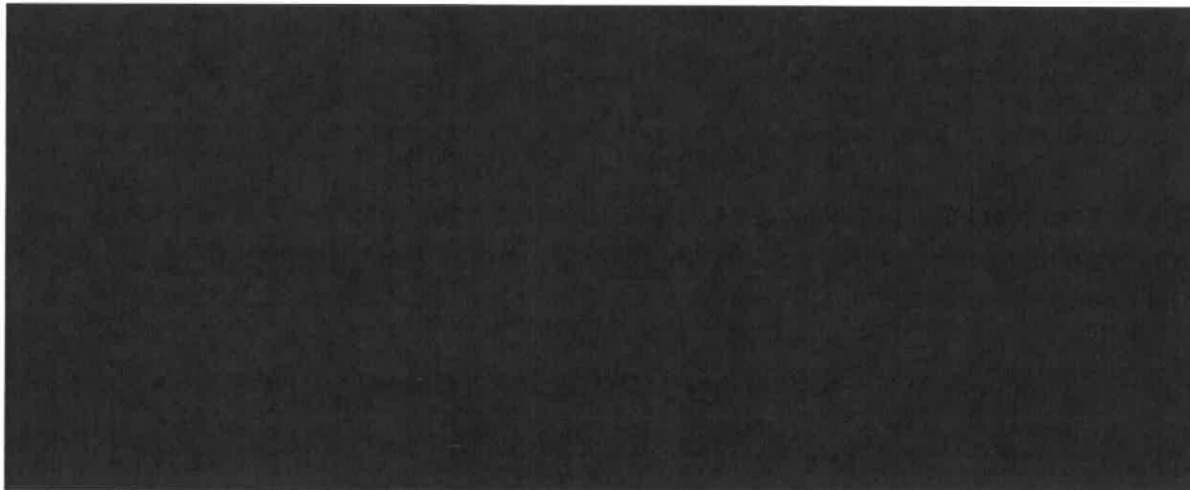
■ (#) of case briefs were updated in the current listing cycle (see Figure 2).

15(1)(d)

15(1)(d)

SECRET//CANADIAN EYES ONLY

Figure 2. Number of Currently Listed People by Date of Last Case Brief Update



62. Although CSIS only provides materially-updated case briefs to PS, CSIS does formally update and approve each of its case briefs, internally, every 90 days. In recent practice, these case brief updates include a period of validity: a specific date—tied to the 90-day review cycle—for which the case brief's assessment is considered valid, subject to CSIS's right to change or re-issue its assessment in light of new information. New CSIS case briefs also explain that they supersede the assessments contained within past briefs. Accordingly, in the current listing cycle and on an ongoing basis, CSIS has declined to sign PS's 90-day PPAG attestation on the grounds that its case brief template already states CSIS's compliance obligations. By including a valid assessment and related attestations within each of its case briefs, and submitting updates to PS whenever its assessments materially change, CSIS ensures that its advice to the Minister in respect of each listed person is coherent, accurate, and up-to-date.

Finding 11. NSIRA found that the RCMP's use of an "idle list" to convey the outcomes of its 90-day SATA review assessments has led the RCMP to provide at-times conflicting or inaccurate information in support of the Minister's decisions to relist.

63. The RCMP introduced its idle list in October 2023. According to the RCMP, this marked the first time that the RCMP reviewed each of its cases within a 90-day period. Prior to that date, the RCMP did not actively review its holdings for SATA-relevant information every 90 days. Its signature of the PPAG attestation therefore attributed a false level of confidence and currency to the attestations embedded within case briefs, which state the RCMP's view that the totality of information contained within the case brief constitutes "reasonable grounds to suspect."

15(1)(d)
16(1)(c)

SECRET//CANADIAN EYES ONLY

64. The RCMP's idle list separates those individuals for whom the RCMP "continues to assess" as posing a SATA-related threat from those individuals for whom the investigation has concluded and the RCMP "therefore cannot definitively speak to the status or the nature of the potential threat [they pose]." Of [redacted] individuals who appeared on the RCMP's idle list in the current listing cycle, nearly one third belonged to this second category of individuals who were no longer being investigated.
65. This second category is problematic because the RCMP has not systematically updated its case briefs over time. As a result, the idle list's attestation that the RCMP "cannot definitively speak to" the threat posed by each individual directly contradicts the "reasonable grounds"-affirming attestations embedded within their case briefs. The idle list also entrenches assessment gaps, as there is no mechanism to account for information that is more current than the last case brief on file, but not "new" within 90-day cycles moving forward. The implications of such assessment gaps are particularly severe when case briefs fail to account for the circumstances leading to the closure of an investigation.
66. In one case within the current listing cycle, for instance, the RCMP attested in the idle list that it was unable to speak to the status or nature of the potential threat—but the case brief, last updated in 2019, attested to the RCMP's support for continued listing while the individual [redacted]
[redacted] This individual was eventually delisted, in [redacted] [date] [redacted]
[redacted]
[redacted]
[redacted]
[redacted] The use of the idle list in this instance obscured the RCMP's failure to provide a substantive case brief update, which would have supported delisting, in the intervening [redacted] years.
67. Additionally, the current listing cycle's 90-day memo attributed [redacted] [redacted] to the RCMP that were neither included in the RCMP's idle list nor in a substantive case brief update within the preceding 90 days. Six of these cases are explained by the RCMP's decision not to review the case briefs of individuals for whom it has previously recommended delisting—even if its recommendation was not accepted and the individual remained listed. In these cases, the last case brief on file included a PS justification for the individual's continued listing. NSIRA saw no evidence that any PPP partner had supported the Minister's 90-day review of the other [redacted] [redacted] attributed to the RCMP.
68. The RCMP's signature of the PPAG attestation form attached to the SATA list, coupled with PS's attribution of these cases to the RCMP within the list, obscured the reality that no PPP partner had taken ownership of these cases and performed

SECRET//CANADIAN EYES ONLY

the necessary review of holdings in their respect. By extension, the Minister's delegate could not have been aware that their relisting of these individuals was not grounded in any substantive undertaking.

69. Updating each case brief every 90 days could prevent the types of assessment gaps that NSIRA observed. Doing so could also minimize opportunities for nominating agencies to provide contradictory or perfunctory attestations that obscure related assessments and accountabilities. The quality of related assessments may also improve, as documenting the results of each 90-day review in a running record could prompt reflection on whether a repeated absence of new information might itself warrant a changed assessment. Perhaps most importantly, this practice would reveal instances where no PPP partner has conducted a substantive review within a 90-day period. This means of validating the conduct and substance of nominating agencies' 90-day reviews would support PS's challenge function in the listing process. It would position PS to ensure that the Minister's delegate always has access to the nominating agencies' most current assessments, including any caveats on their ability to provide such assessments.
70. There is no requirement for the Minister (or their delegate) to approve case brief updates. As such, and given that nominating agencies are already reviewing most cases every 90 days, there is no inherent reason why updating each case brief on the same cycle should create a substantial administrative burden.¹⁴

Recommendation 5. NSIRA recommends that the RCMP update each of its SATA case briefs to substantively reflect its current assessments; and that it cease using an "idle list" to convey the outcomes of its 90-day SATA review assessments.

Recommendation 6. NSIRA recommends that all nominating agencies (currently, CBSA, CSIS, PS, and the RCMP) update their SATA case briefs every 90 days to include the outcomes of each 90-day review assessment.

¹⁴ This assessment is true of case briefs that are currently up-to-date. The RCMP has explained to NSIRA that updating each of its case briefs would involve a substantial undertaking, as older case briefs would need to be largely rewritten.

SECRET//CANADIAN EYES ONLY

Centralized Screening

Finding 12. NSIRA found that the Government of Canada's centralized screening system for vetting air passengers against the SATA list has facilitated air travel, improved Transport Canada oversight of air carrier activities, and strengthened Passenger Protect Program information security.

71. Under centralized screening, air carriers transmit pre-check-in passenger data to CBSA at least 72 hours prior to departure. A CBSA-administered system automatically vets this data against the SATA and CTN lists, and transmits possible matches to TC's PPP Operations Centre for manual identity verification. TC's manual verification confirms whether the passenger is truly a positive match to the SATA list, or if they are a "false positive" who can be cleared to fly accordingly. Passengers who are not a match are typically able to obtain their boarding pass without issue. Passengers who are a match (and, exceptionally, any passenger whose match status TC is unable to resolve) trigger PPP positive match procedures and are required to present themselves at the airline check-in counter before they may receive their boarding pass.
72. Although the centralized screening system was operational by the end of 2020, it took over two-and-a-half years to complete the phased onboarding of all air carriers. It was only as of April 2023 that all air travellers on applicable flights were vetted against both the SATA and CTN lists through the GC's centralized screening system. During the transition, carriers who had yet to be onboarded to the centralized system continued the process of vetting their own flight manifests against a copy of the SATA list provided to them by TC, and triggering PPP operational procedures with a call to TC when matches to the list presented themselves at the check-in counter.
73. The implementation of centralized screening has yielded tangible benefits. First and foremost, it has exponentially reduced the number of false positive matches to the list and facilitated air travel accordingly. Second, centralized screening has improved TC oversight of air carrier activities. Importantly, TC is now positioned to identify instances of air carrier non-compliance before any resulting security risks materialize. Finally, centralized screening has eliminated historic risks to the SATA list's information security. Annex B describes these benefits in further detail.

Positive Matches

74. When positive matches are identified through centralized screening, PS's Government Operations Centre leads a two-pronged risk assessment that considers the national security threat posed by the individual's travel, [REDACTED]

15(1)(d)

SECRET//CANADIAN EYES ONLY

15(1)(d)

[REDACTED]
[REDACTED] This assessment informs which of three possible actions that PS personnel in the Government Operations Centre, as the Minister's usual delegate for decisions under section 9 of the SATA, may apply: direct the air carrier to deny boarding; direct the air carrier to ensure that the individual undergoes additional security screening; or allow boarding (i.e. issue no direction). In situations where PS allows boarding, [REDACTED]
[REDACTED] mitigate outstanding risks posed by a listed person.¹⁵

75. SATA-listed travellers may also be subject to flight restrictions imposed by other countries' no-fly lists as well as actions that air carriers undertake independent of PS direction.

National Security Threat Assessments

Finding 13. NSIRA found that national security threat assessments conducted by Public Safety Canada operational personnel in relation to positive matches to the SATA list minimize infringements on travellers' mobility rights.

Finding 14. NSIRA found that actual actions taken by Public Safety Canada when a listed person was scheduled to fly at times contradicted decisions taken at the SATA listing stage; and that there was no systematic feedback mechanism for these actions or their outcomes to inform subsequent SATA relisting decisions.

76. National security threat assessments at the positive match stage help to ensure that directions issued under section 9 of the SATA are tailored to the particular circumstances of a listed person's travel. When conducting these assessments, PS personnel in the Government Operations Centre consider:

15(1)(f)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

15(1)(d)

77. NSIRA identified records relating to [REDACTED] (# [REDACTED]) matches to the SATA list between the SATA's coming into force and March 31, 2024. PS decisions relating to these

15(1)(f)

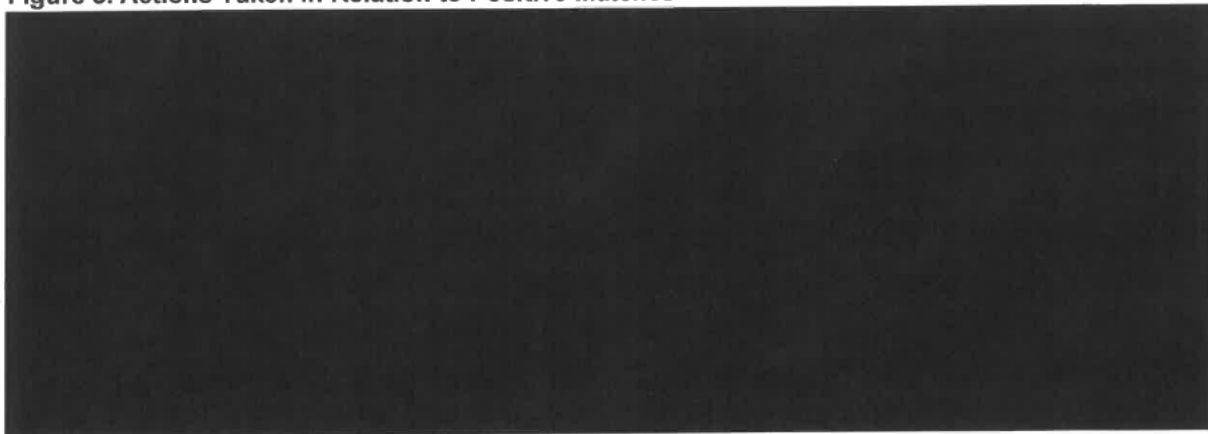
¹⁵ For example, travel may be permitted if [REDACTED]

15(1)(d)

SECRET//CANADIAN EYES ONLY

positive matches aligned with the action recommended within the individual's last approved case brief 86% of the time. Where the actual action taken diverged from the case brief's recommendation, the action taken was almost always more permissive than what was originally recommended. Figure 3 summarizes the actions taken in relation to each positive match for whom PS contemplated issuing direction. Note that roughly **[#]** of these matches appeared on international flights inbound to Canada; **[#]** on international flights outbound from Canada; and **[#]** on domestic flights within Canada.

Figure 3. Actions Taken in Relation to Positive Matches



78. In most cases where PS's actual actions deviated from the actions recommended within case briefs, it was to account for operational factors that the case briefs had not consistently addressed. Namely:

- [REDACTED]
- [REDACTED]
- [REDACTED]

¹⁶

79. In other instances, PS's actual actions deviated from the recommended actions by virtue of information collected at the positive match stage. In this context, NSIRA observed that Ministerial delegates within the Government Operations Centre, at a tactical level, attributed greater weight to information and recommendations provided directly by nominating agencies than the Minister's delegate accorded, strategically, at the listing stage. In two instances relating to a single individual, for example, PS operational personnel issued a more permissive direction to align with in-progress nominating agency efforts to change the case brief recommendation. In

¹⁶ In these instances, [REDACTED] mitigation measures refer to [REDACTED]

15(1)(f)

SECRET//CANADIAN EYES ONLY

three other instances, PS operational personnel overrode a case brief recommendation given changes in the status of criminal charges against the individual that were not reflected in case briefs. NSIRA notes, however, that the status of criminal charges does not inherently signal a change in forward-looking threat, and therefore may not have been an appropriate consideration.

80. The conduct of national security threat assessments at the positive match stage, along with the generally permissive actions actually taken in relation to these matches, suggest that PS is taking care not to infringe on travellers' mobility rights without appropriate justification to do so.
81. Discrepancies between the actual actions taken and the actions that were recommended within case briefs, however, raise questions about which decision—the actual action or approval of the case brief recommendation—was reasonable. Unduly permissive actual actions run the risk of a positive match engaging in the acts that warranted their SATA listing. On the other hand, where permissiveness is justified, the case briefs' more restrictive recommendations may not reflect up-to-date, relevant considerations that would justify such permissiveness. By extension, the listing decisions made on the same basis as these recommendations may also be flawed. In NSIRA's assessment, the problem lies more with the recommendations than with the actions that PS actually took. NSIRA did not observe any evidence to suggest that a listed person did, as a result of permissive actual actions taken, threaten transportation security or travel by air to commit a terrorism offense.
82. PS operational personnel within the Government Operations Centre have delegated authority to decide what, if any, directions to issue on the basis of their assessments. However, the frequency with which the actions they take differ from actions recommended within case briefs raise concerns for NSIRA regarding overall program coherence. Neither operational procedures nor the case brief recommendations themselves incorporate a mechanism to establish agreed-upon conditions under which the recommendations might be suspended in the immediacy of the moment, or to provide oversight of decisions to deviate from them. Additionally, there is no systematic feedback mechanism for actual actions taken at the positive match stage or their outcomes to inform subsequent relisting decisions.

Recommendation 7. NSIRA recommends that Public Safety Canada refine its operational procedures to clarify the circumstances under which the action taken in relation to a positive match may deviate from the actions recommended within SATA case briefs; and include more robust oversight of any such deviations.

SECRET//CANADIAN EYES ONLY

Risks of Complicity in Mistreatment by Foreign Entities

Finding 15. NSIRA found that the Passenger Protect Program does not sufficiently identify and mitigate risks of mistreatment of SATA-listed individuals, as required by directions issued under the authority of the *Avoiding Complicity in Mistreatment by Foreign Entities Act*.

83. Directions issued under the authority of the *Avoiding Complicity in Mistreatment by Foreign Entities Act* (ACA) prohibit GC departments from disclosing information to—or requesting information from—foreign entities if doing so would result in a substantial risk of mistreatment of any individual by any foreign entity. The directions, issued in 2019, also limit how departments may use information that is likely to have been obtained through mistreatment. In order to ensure compliance with these directions, departments must accurately identify instances where their information sharing activities engage mistreatment risk and determine whether any substantial risks can be mitigated.
84. PS has overall responsibility for PPP policy, which includes developing ACA guidance specific for SATA applications. This approach does not, however, displace other departments' statutory responsibilities under the ACA.
85. In its review of departmental implementation of the ACA for 2022, NSIRA observed gaps in PPP policy relating to the assessment of risks associated with information disclosures to air carriers.¹⁷ In 2023, PS developed updated ACA guidance specific for SATA applications to address these gaps. This guidance, however, remains insufficient to support the PPP's compliance with the ACA's provisions for information disclosure, given its incorrect definition of critical concepts and an inadequate risk mitigation strategy.
86. PS has operationalized the ACA concept of "foreign entity" based on the last point of departure of a flight on which a positive match intends to fly. In other words, it captures any air carrier when it is operating abroad. This scoping unnecessarily includes some domestic carriers (who are not foreign entities under the ACA) and, more importantly, excludes foreign carriers when they are operating within Canada.
87. PS's operationalization of "information disclosure" is similarly narrow: it includes only the letter provided to carriers for onward dissemination to travellers who have been denied boarding, advising them of their right to recourse. It does not include the written direction issued to air carriers under the SATA, subsection 9(1),

¹⁷ NSIRA Review 23-04 at p 5.

SECRET//CANADIAN EYES ONLY

instructing them to deny transportation to, or require additional screening of, a specified listed person. Additionally, it does not consider (as a disclosure or request) the exchange of information between TC and air carriers when the centralized screening system prompts the carrier to call the PPP Operations Centre for instruction regarding a possible match. The SATA assigns responsibility for these information exchanges with air carriers to the Minister of Transport.

88. PS's exclusion of foreign air carriers operating in Canada from its definition of "foreign entities" and of PS directions to these carriers from its definition of "information disclosures" has systematically precluded the PPP from considering cases that should be subject to ACA risk assessment. As a result, the PPP did not assess mistreatment risks in relation to 11 directions to foreign air carriers operating Canadian domestic or outbound flights. In more than half of these instances, disclosures were made to the national airlines of countries that, at the time of disclosure, had been rated as high risk for mistreatment by at least one GC department.
89. The incorrect definition of these concepts has also, in turn, led PS to propose an inadequate strategy for mitigating risks under the ACA. Under the new guidance, travellers who are denied boarding abroad would receive an alternate recourse letter that does not explicitly tie their denial to PPP (and, by extension, the GC's threat-related suspicions). This approach does not, however, alter the written directions that TC provides directly to air carriers, which convey the same substantive information that PS has proposed to exclude from recourse letters. The proposed mitigation thus fails to lower the level of mistreatment risk involved in PPP information exchanges and, further, does not provide the traveller with relevant information about their right to recourse under the SATA.

Recommendation 8. NSIRA recommends that Public Safety Canada revise its Passenger Protect Program guidance with respect to the *Avoiding Complicity in Mistreatment by Foreign Entities Act* to:

- address risks relating to the issuance of directions, under subsection 9(1) of the SATA, to foreign air carriers; and
 - consider the availability of mitigation measures to lower such risks below the level of substantial.
-

SECRET//CANADIAN EYES ONLY

Impacts on Travellers

Finding 16. NSIRA found that Public Safety Canada has not sought to develop an informed understanding of the Passenger Protect Program's operational impacts on positive matches to the SATA list other than those who have been subject to direction to deny boarding.

- 15(1)(d)
90. Subsection 15(1) of the SATA allows listed people who have "been denied transportation as a result of a direction made under section 9" to apply to the Minister to have their name removed from the list. PS has interpreted this provision strictly, such that only people who are subject to direction to deny transportation under paragraph 9(1)(a) of the SATA are informed of their right to recourse, via the recourse letter provided to them upon their denial of boarding.
 91. Based on operational reporting and data available to TC as a function of centralized screening, however, NSIRA identified [redacted] instances where positive matches to the SATA list who were not subject to a paragraph 9(1)(a) direction to deny boarding did not ultimately travel. Half of these travellers had been subject to a paragraph 9(1)(b) direction for additional screening, and the other half had not been subject to any direction at all. Collectively, these instances amount to 14% of all positive matches who should have been allowed to fly.¹⁸
 92. PS operational reports do not systematically document the reasons for which people who were positively matched to the list did not travel. Indeed, most do not document any activity subsequent to—or separate from—PS's decision regarding the issuance of directions. In some cases, however, operational reporting indicates that travel may have been disrupted on account of the time taken for PS to deliberate the issuance of direction, or for the conduct of additional screening.
 93. PS does not manage a complete record of all positive matches, actions taken in relation to them, nor the outcomes of those actions—despite the availability of relevant data points collected as a function of centralized screening as well as TC and PS operational activities. The result is that PS has not developed a comprehensive understanding of PPP's operational impacts on positive matches other than those who have been subject to direction to deny boarding.

¹⁸ This number likely understates the incidence of impeded travel, given that TC data was only able to systematically identify such instances after air carriers were onboarded to centralized screening.

SECRET//CANADIAN EYES ONLY

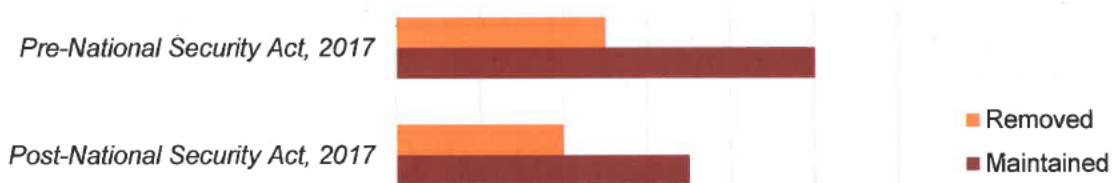
Recommendation 9. NSIRA recommends that Public Safety Canada develop a complete record of all positive matches to the SATA list, actions taken in relation to them, and the outcomes of those actions. Public Safety Canada should use this record to inform its understanding of the Passenger Protect Program's operational impacts on travellers; and to support a systematic mechanism for addressing positive match outcomes in subsequent SATA relisting decisions.

Administrative Recourse

Finding 17. NSIRA found that SATA administrative recourse decisions did not consistently apply, nor clearly interpret, indicators of a listed person's intent and capability to carry out SATA-related threat activity; and that reasons for these decisions were not consistently documented.

94. In the recourse process, PS provides applicants with an unclassified summary of the case against them and offers an opportunity to respond. The Minister must in turn render a decision on the application within a specified timeframe, or a "deemed decision" will apply. Prior to the *National Security Act, 2017*, the deemed decision was to maintain the listing; now, the deemed decision is to remove the listing.
95. Since the SATA's coming into force, the Minister or their delegate rendered an active decision in relation to each application for recourse, and did not default to a deemed decision. Figure 4 summarizes the outcomes of these applications for recourse.

Figure 4. Outcomes of Applications for Recourse



15(1)(d)

96. Decisions pertaining to recourse applications under section 15 of the SATA, however, reflected similar limitations as those that NSIRA observed in relation to listing decisions made under section 8 of the SATA: namely, a lack of clarity surrounding relevant indicators, and a lack of documented rationale for ultimate decisions.

SECRET//CANADIAN EYES ONLY

97. In one case, for example, the Minister's delegate decided to maintain a listing upon recourse, but the individual was proactively delisted by a different Ministerial delegate (exercising authority under section 8 of the SATA) three days later. There was no apparent change in circumstances between the two decisions, nor any documented explanation for their discrepant outcomes.
98. In another case, the Deputy Minister of PS had signed a decision to remove the applicant's name from the SATA list, but the Minister superseded the deputy's decision by signing the identical memorandum with a decision to maintain the listing one day later. Again, there was no documented explanation for the discrepant outcomes. PS could not explain how or why this case was escalated to the Minister, after the Deputy Minister had already issued a decision.

Recommendation 10. NSIRA recommends that individuals exercising the Minister's authority in respect of SATA recourse decisions:

- apply Public Safety Canada guidance on SATA-related threat indicators; and
 - clearly document their reasons for removing or maintaining listed people upon recourse.
-

4. Conclusion

99. On the whole, and despite areas for improvement, program changes made following the coming into force of the *National Security Act, 2017* have resolved many public concerns relating to the PPP's operation. Centralized screening, in particular, has been thoughtfully designed and implemented, with demonstrated benefits for travellers and security. The observed instances of non-compliance with the SATA were few in number and largely administrative in nature.
100. NSIRA's review, however, highlighted incoherence across activities within the PPP process lifecycle. Operational decision making, at the screening stage and in relation to positive matches to the SATA list, did not always align with strategic decisions taken at the listing stage. Listing decisions, similarly, were regularly reversed upon administrative recourse, which resulted in the delisting of over one third of applicants. In one extreme case, a person was delisted through the normal listing process mere days after a decision to maintain their listing upon recourse, despite no apparent change in circumstances. NSIRA did not observe evidence of

SECRET//CANADIAN EYES ONLY

any oversight or feedback mechanisms that would focus attention on these areas of misalignment—let alone efforts to reconcile them.

101. Nevertheless, the GC did generally treat individuals reasonably and fairly within the elements of the PPP process lifecycle and specific cases that NSIRA reviewed. This is because PS actions taken when a listed person was scheduled to fly, in practice, limited unnecessary restrictions on travellers' mobility. These actions reflected the most current available information in a given case and, in doing so, constituted an important safeguard against the shortcomings that NSIRA observed regarding decisions to relist certain individuals. Actual actions taken did not, however, fully eliminate risks of unreasonable or unfair treatment: the assessments that inform them remain burdened—as with listing decisions and decisions upon administrative recourse—by a lack of clear and consistent guidance regarding SATA-related threat indicators; and do not appropriately identify or mitigate risks of listed peoples' mistreatment by foreign entities. The rate at which positive matches to the SATA list did not ultimately travel, even when they were not subject to a paragraph 9(1)(a) direction to deny boarding, also signals risks of unfair treatment. PS has not sought to develop an informed understanding of the PPP's operational impacts on these travellers.
102. The report's findings highlight gaps in PS's coordination and leadership on this file. PS's challenge function, as currently operationalized, is weakened by:
- an out-of-date governance framework that diffuses responsibilities in support of listing decisions across departments who are not equipped to perform such functions;
 - disagreement on the nature of related departmental assistance;
 - a lack of transparency in Ministerial decision-making; and
 - under-developed policy guidance that increases the GC's risk of non-compliance with the SATA and directions issued under the ACA.
- These issues are compounded by a lack of rigour in processes supporting the SATA's administration.
103. The SATA's pre-emptive (as opposed to punitive) outlook makes it such that the Minister and departments are dealing in subjective assessments of risks and likelihoods, not objective certitudes. As the Federal Court of Appeal observed: "[E]xactitude is elusive. The stakes are sky-high. Some leeway is warranted."¹⁹ It is in this context that NSIRA made the review's ten recommendations, aimed at reinforcing a principled, coordinated approach across PPP functions.

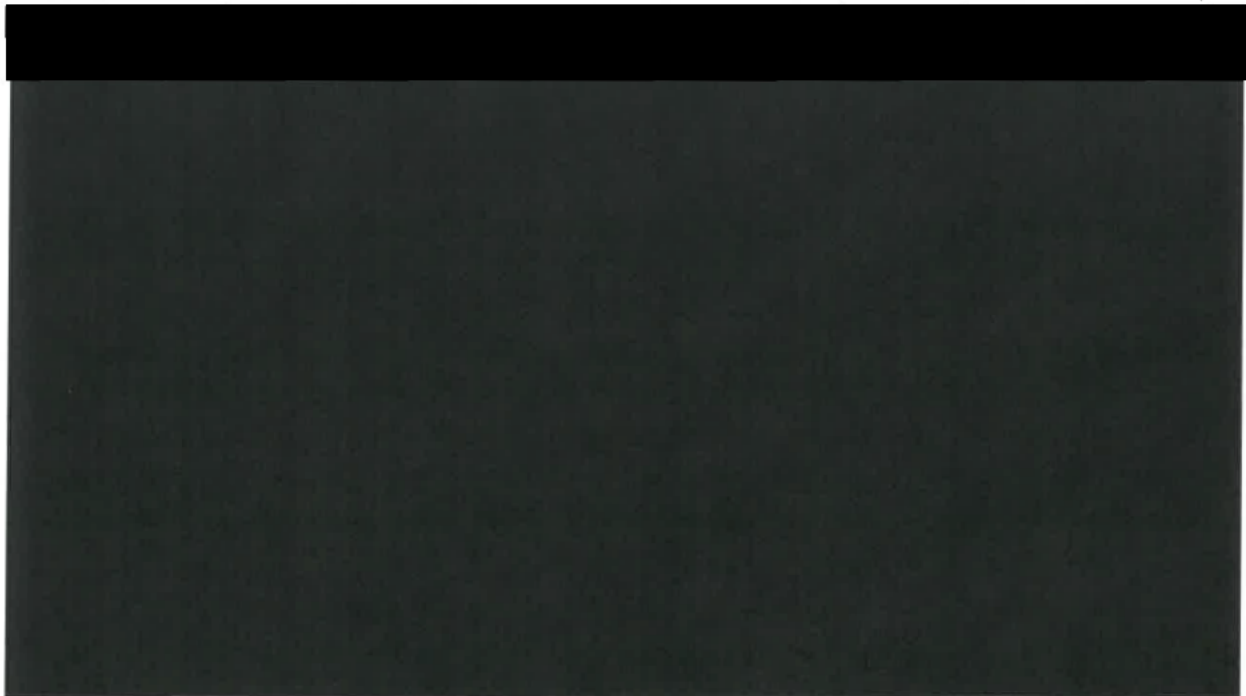
¹⁹ 2024 FCA 114 at para 18.

15(1)(d)

SECRET//CANADIAN EYES ONLY

Annex A. SATA List Size over Time

Figure 5 documents the number of individuals listed under the SATA over time, from the SATA's coming into force to the current listing cycle, as reflected in relisting memoranda signed by the Minister's delegate. The number of delistings has outpaced new listings since PS developed delisting guidance in 2022—a period that coincides with the implementation of the current, secretarial approach to supporting the Minister's 90-day review requirement.²⁰



²⁰ Prior to the secretarial approach, the Minister's delegate approved relistings made on the basis of unchanged case briefs separately from individualized listing decisions based on new or updated case briefs. As NSIRA did not review the outcomes of these individualized recommendations for (re)listing, the figure's representation of list size separates the number of possible listed people (i.e. individuals recommended for [re]listing) from the number of listed individuals that NSIRA was positioned to confirm.

15(1)(d)
16(1)(c)

SECRET//CANADIAN EYES ONLY

Annex B. Benefits of Centralized Screening

Facilitated Travel

Centralized screening has reduced the number of false positive matches subject to delays in the air travel check-in process. The majority of false positives, including applicants with a CTN, are resolved prior to any attempt by the individual to check in online or at an airport kiosk. Remaining false positives (if they are unable to obtain a boarding pass remotely) are almost always resolved prior to the individual's presentation at the airport check-in counter.

The centralized screening process has, therefore, largely mitigated unintended impacts on travellers due to false positive matches. In 2023, for example, the GC screened over 130 million air travellers against the SATA list via centralized screening. Of these, TC resolved [REDACTED] false positive matches to the list prior to their presentation at the check-in counter. Only the [REDACTED] positive matches that the system identified in this period were subject to any check-in delays on account of SATA-related procedures.

Centralized screening also has the potential to facilitate travel by any true positive matches to the SATA list that the Minister determines should be allowed to travel. The risk assessments conducted in relation to each positive match are now conducted within a 72-hour pre-departure window, instead of when the individual presents themselves at the airport within three hours of departure. This longer window reduces the likelihood that GC risk assessments may lead to travel delays.

Air Carrier Oversight

Centralized screening enhanced coverage of TC's oversight activities vis-à-vis air carrier compliance with the SATR, while minimizing associated resource requirements and mitigating security risks associated with SATR non-compliance.

Prior to centralized screening, the GC could not systematically identify instances where air carriers may have issued a boarding pass to a listed person in contravention of the SATR's provisions for identity verification at check-in.²¹ TC's oversight for this purpose was limited to in-person inspections, one destination per quarter. Now, on-site

²¹ Based on current case brief narratives, NSIRA has incidental awareness of one pre-centralized screening instance on which a listed person flew internationally without prompting an air carrier call to TC that would have triggered PPP protocols. The travel did not come to the GC's attention until [REDACTED]

[REDACTED]

15(1)(d)
16(1)(c)

SECRET//CANADIAN EYES ONLY

inspection is required only in relation to carriers' compliance with the SATR's requirements for identity verification at boarding gates. TC otherwise conducts real-time oversight based on air carrier data provision, with 100% coverage of flights and passengers.

The data collected under centralized screening has therefore made it possible to identify instances of air carrier non-compliance before any resulting security risks materialize. TC has identified two such instances since centralized screening was implemented. In the first instance, [REDACTED]

[REDACTED] cleared the subject to fly. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In the second instance, [REDACTED]

[REDACTED]
[REDACTED] In this instance, TC intervened [REDACTED]

[REDACTED] to enforce a PS
direction to require additional screening.

This new approach to oversight has, concurrently, reduced the incidence of non-compliant air carrier activities warranting enforcement action by more than half.²²

Information Security

The centralized screening system leverages longstanding infrastructure and authorities that had been established for CBSA's existing Interactive Advance Passenger Information and Entry/Exit programs. These established channels eliminated historic risks to the SATA list's information security (including unauthorized use and access) engendered by TC's prior requirement to provide a copy of the list to all air carriers.

NSIRA also observed that the onboarding process itself prompted greater consideration by TC of information security risks associated with air carriers' access to the list. Prior to centralized screening, when an air carrier ceased operations, TC did not carry out any verification activities relating to whether any copies of the list were destroyed. In the transition to centralized screening, TC required that all carriers attest, in writing, to their destruction of all documents and records respecting listed persons. TC expressed its satisfaction to NSIRA that air carriers no longer have access to any copies of the list.

²² Enforcement actions include verbal and written warnings, administrative monetary penalties, and the suspension of Canadian aviation documents.

SECRET//CANADIAN EYES ONLY

Annex C. Findings and Recommendations

NSIRA made the following findings and recommendations in this review:

Listing Decisions

Nomination and Recommendation Processes

Finding 1. NSIRA found that Public Safety Canada has not updated governance documents to reflect roles and responsibilities for supporting the Minister in making SATA listing decisions.

Finding 2. NSIRA found that the misalignment between the Passenger Protect Program's governance documents and current practice has created gaps in accountability for supporting the Minister in making SATA listing decisions.

Recommendation 1. NSIRA recommends that Public Safety Canada prioritize updating Passenger Protect Program governance documents to align with current practices, including by clarifying roles and responsibilities for supporting the Minister in making SATA listing decisions.

Grounds for Listing

Initial Grounds

Finding 3. NSIRA found that all currently-listed individuals met the "reasonable grounds to suspect" threshold in respect of SATA paragraphs 8(1)(a) or 8(1)(b) at the time of their addition to the SATA list.

Continued Existence of Grounds

Finding 4. NSIRA found that the Minister's delegate may not have complied with the SATA subsection 8(1) when they renewed the listing of six individuals without having necessary grounds. These relistings comprise:

- two individuals that the delegate had previously decided to delist, with no new information to justify a reversal of that decision;
- one individual whose most recent case brief clearly expressed the nominating agency's assessment that the SATA's listing threshold was not met; and
- three individuals based on grounds that were unrelated to the SATA's listing thresholds.

Finding 5. NSIRA found that the Minister's delegate did not document their reasons for disagreeing with recommendations to remove individuals from the SATA list, which hindered nominating agencies' ability to improve the quality of their assessments relating to the continued existence of grounds for SATA listing.

Recommendation 2. NSIRA recommends that, in cases where the Minister or their delegate does not approve a recommendation for relisting or delisting an

SECRET//CANADIAN EYES ONLY

individual under the SATA, the reasons for their disapproval be clearly documented and relayed to the relevant nominating agency.

Finding 6. NSIRA found that the Government of Canada applied threat indicators inconsistently when conducting analysis for SATA listing and delisting decisions.

Finding 7. NSIRA found that Public Safety Canada has not provided clear and consistent guidance to departments regarding SATA-related threat indicators.

Recommendation 3. NSIRA recommends that Public Safety Canada leverage nominating agency expertise as it develops guidance on SATA-related threat indicators; and ensure that these indicators align with the SATA's listing threshold. This guidance should apply equally to all Passenger Protect Program partners.

Assessing Grounds in the Absence of New Information

15(1)(d)

Finding 8. NSIRA found that [REDACTED] of all individuals currently listed under the SATA are no longer subject to Government of Canada intelligence collection or investigation.

Recommendation 4. NSIRA recommends that Public Safety Canada develop case-specific criteria to establish grounds for the continued SATA listing of individuals who are not subject to active Government of Canada intelligence collection or investigation.

Administration of the 90-Day Review

Finding 9. NSIRA found six instances where the Minister's delegate may not have complied with the SATA's subsection 8(2) requirement to review the SATA list every 90 days.

Finding 10. NSIRA found that nominating agencies rarely document the outcomes of their 90-day review assessments within SATA case briefs.

Finding 11. NSIRA found that the RCMP's use of an "idle list" to convey the outcomes of its 90-day SATA review assessments has led the RCMP to provide at-times conflicting or inaccurate information in support of the Minister's decisions to relist.

Recommendation 5. NSIRA recommends that the RCMP update each of its SATA case briefs to substantively reflect its current assessments; and that it cease using an "idle list" to convey the outcomes of its 90-day SATA review assessments.

Recommendation 6. NSIRA recommends that all nominating agencies (currently, CBSA, CSIS, PS, and the RCMP) update their SATA case briefs every 90 days to include the outcomes of each 90-day review assessment.

SECRET//CANADIAN EYES ONLY

Centralized Screening

Finding 12. NSIRA found that the Government of Canada's centralized screening system for vetting air passengers against the SATA list has facilitated air travel, improved Transport Canada oversight of air carrier activities, and strengthened Passenger Protect Program information security.

Positive Matches

National Security Threat Assessments

Finding 13. NSIRA found that national security threat assessments conducted by Public Safety Canada operational personnel in relation to positive matches to the SATA list minimize infringements on travellers' mobility rights.

Finding 14. NSIRA found that actual actions taken by Public Safety Canada when a listed person was scheduled to fly at times contradicted decisions taken at the SATA listing stage; and that there was no systematic feedback mechanism for these actions or their outcomes to inform subsequent SATA relisting decisions.

Recommendation 7. NSIRA recommends that Public Safety Canada refine its operational procedures to clarify the circumstances under which the action taken in relation to a positive match may deviate from the actions recommended within SATA case briefs; and include more robust oversight of any such deviations.

Risks of Complicity in Mistreatment by Foreign Entities

Finding 15. NSIRA found that the Passenger Protect Program does not sufficiently identify and mitigate risks of mistreatment of SATA-listed individuals, as required by directions issued under the authority of the *Avoiding Complicity in Mistreatment by Foreign Entities Act*.

Recommendation 8. NSIRA recommends that Public Safety Canada revise its Passenger Protect Program guidance with respect to the *Avoiding Complicity in Mistreatment by Foreign Entities Act* to:

- address risks relating to the issuance of directions, under subsection 9(1) of the SATA, to foreign air carriers; and
- consider the availability of mitigation measures to lower such risks below the level of substantial.

Impacts on Travellers

Finding 16. NSIRA found that Public Safety Canada has not sought to develop an informed understanding of the Passenger Protect Program's operational impacts on positive matches to the SATA list other than those who have been subject to direction to deny boarding.

Recommendation 9. NSIRA recommends that Public Safety Canada develop a complete record of all positive matches to the SATA list, actions taken in relation to them, and the outcomes of those actions. Public Safety Canada

SECRET//CANADIAN EYES ONLY

should use this record to inform its understanding of the Passenger Protect Program's operational impacts on travellers; and to support a systematic mechanism for addressing positive match outcomes in subsequent SATA relisting decisions.

Administrative Recourse

Finding 17. NSIRA found that SATA administrative recourse decisions did not consistently apply, nor clearly interpret, indicators of a listed person's intent and capability to carry out SATA-related threat activity; and that reasons for these decisions were not consistently documented.

Recommendation 10. NSIRA recommends that individuals exercising the Minister's authority in respect of SATA recourse decisions:

- apply Public Safety Canada guidance on SATA-related threat indicators; and
- clearly document their reasons for removing or maintaining listed people upon recourse.