CBP RETURNS SEIZED KING AIR, BUT QUESTIONS PERSIST

News / Business aviation

Bethany, Okla.-based American Jet Charter recently reclaimed its King Air E90 after U.S. Customs and Border Protection (CBP) held the aircraft for 72 days. The CBP's Office of Air and Marine seized the aircraft, N48W, at McAllen Miller International Airport in Texas on September 6, saying the pilot was "in the process of smuggling" seven illegal aliens.

Jim Hensley, who founded American Jet Charter 30 years ago, told AIN he had flown the aircraft from its base at Wiley Post Airport in Bethany to McAllen to pick up seven passengers per a client booking. "I did a normal boarding procedure," he said, adding that nothing about the trip was unusual at that point. As Hensley was beginning to taxi out, ATC told him that CBP officials had asked to speak to him.

Hensley halted on the ramp and was met by a CBP agent, who he said appeared "surprised" that he had stopped. Hensley then instructed his passengers to wait while he responded to the agent.

Thus began what Hensley described as five hours of questioning about the trip. He was interrogated about the nature of the trip, where the passengers came from and why he did not

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determine whether they were documented.

Hensley said the interrogation surprised him because the trip originated in the U.S. and was to end in the U.S. He maintained to the CBP agent that he conducted the trip according to FAA regulations, and since the aircraft did not weigh more than 12,500 pounds it was not beholden to the security and background checks of the Twelve-Five protocols. Hensley also questioned how he was to determine whether the passengers were illegal aliens. When the trip involves a charter picking up a passenger in the U.S. and dropping off in the U.S, he said, “there are no rules to require that.”

Hensley noted that the booking was paid for in cash and that he receives about a half-dozen cash trips a year, some with regular customers traveling to places such as Las Vegas.

AIRCRAFT SEIZED

After hours of interrogation, the agent told Hensley he was free to go, and no charges were filed. However, the agent informed Hensley that he was seizing the airplane. While it wasn’t clear to Hensley under what authority the CBP was seizing his airplane, he bought an airline ticket and flew home to Oklahoma. “I never once thought I’d have to go home on the airlines.”

The CBP, meanwhile, released a statement saying the inspecting agents determined that all seven passengers on the airplane were in the U.S. illegally and that the pilot was released “pending further investigation.” The agency confirmed it had seized the airplane. “This is another example of the excellent work being done by the agents of the McAllen Air and Marine Branh to prevent the smuggling of people and drugs from the Rio Grande Valley into the interior of the U.S.,” said director of air operations William Durham.

After returning home, Hensley contacted his insurance company and attorneys. He found his insurance company helpful and received good news: he was covered for events like this. Hensley also found an attorney who had experience with such government seizures, and he learned something about seizures: “The lawyer told me that [CPB believed] if I was upside down on the airplane or if I was doing something illegal, I would just walk away from it.”

But neither was true in his case, Hensley stressed. He had operated the King Air on behalf of its owner for a number of years before buying it outright three years ago. He had since invested $400,000 to re-engine the aircraft, and it was not an asset he was willing to walk away from and permit the government to keep.

His attorney worked with the U.S. attorney’s office in Houston on the release of the aircraft, and on November 6 the U.S. attorney’s office was set to remit the aircraft back to American Jet Charter. But just as that was to happen, Hensley learned that the CBP refused to release the aircraft until he signed a hold-harmless agreement and agreed to cover the expenses of the seizure.

On the advice of his attorney, Hensley refused. After more discussions with the U.S. attorney’s office, the CBP relented and on November 17 it released his airplane.

“My attorney told me that was quick for this type of case,” Hensley said. One thing playing in his favor, he said, was that this had been a civil seizure rather than a criminal seizure. But even with insurance covering some costs, American Jet Charter was without use of the airplane for nearly three months. Trips already booked on the aircraft had to be reassigned. “Every day it sat there, it was costing money,” he said.

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QUESTIONS FOR INDUSTRY WORKING GROUP

With his airplane now back in Oklahoma, Hensley is left to ponder the seizure. He believes the CBP “overstepped its authority.”

Hensley has contacted some of the associations on the issue, including the National Air Transportation Association. The event raises several questions that are worthy of consideration by the recently formed CBP/industry working group, said Bill Deere, NATA senior v-p for government and external affairs. Among them, he said, are: “What are the regulations under which the agency inserts itself into domestic aircraft operations? Are they consistent with the underlying law? Most important, what can each side do to raise understanding and reduce the likelihood of situations like this occurring again?”

According to the American Immigration Council, CBP agents can search for noncitizens on any “railway car, aircraft, conveyance or vehicle” that is “within a reasonable distance from any external boundary of the U.S.” Reasonable is described as within 100 nm of an external boundary. Located at the southern tip of the Rio Grande Valley, McAllen is a border town with Mexico.

But less clear are the regulations about aircraft seizure in cases where the pilot is not responsible for determining the immigration status of passengers–such as trips that begin and end in the U.S.

Pilot responsibilities were at the center of a case dubbed “Air Cocaine,” in which two French pilots were held liable for drugs found aboard their aircraft. The charter pilots maintained they were unaware that the packages aboard their aircraft contained drugs and that they were not responsible for checking them. The International Federation of Airline Pilots’ Associations backed that contention. A Dominican Republic tribunal did not take that position, ruling, instead, that the flight was a private one and the pilots were responsible for the cargo.

In 2013, after receiving more than 40 reports of the CBP detaining and searching general aviation aircraft flying within the U.S., the Aircraft Owners and Pilots Association enlisted the help of Congress. That culminated in a meeting between AOPA president Mark Baker and the then recently appointed CBP commissioner Gil Kerlikowske. Shortly after that sitdown, the CBP said it planned to be more judicious in such events.

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