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U.S. Government Watchlisting: Unfair Process and Devastating Consequences

Introduction

The U.S. government today maintains a massive watchlisting system that risks stigmatizing hundreds of thousands of people, including American citizens, as "known or suspected terrorists" based on secret standards and secret evidence, without a meaningful process to challenge error and clear their names. The watchlists in this system are shared widely within the federal government, with state and local law enforcement agencies, and even with foreign governments, heightening the negative consequences for listed individuals. Being placed on a U.S. government watchlist can mean an inability to travel by air or sea; invasive screening at airports; denial of a U.S. visa or permission to enter to the United States; and detention and questioning by U.S. or foreign authorities—to say nothing of shame, fear, uncertainty, and denigration as a terrorism suspect. Watchlisting can prevent disabled military veterans from obtaining needed benefits, separate family members for months or years, ruin employment prospects, and isolate an individual from friends and associates.

Given the gravity of these consequences, it is vital that if the government blacklists people, the standards it uses are appropriately narrow, the information it relies on is accurate and credible, and the manner in which watchlists are used is consistent with the presumption of innocence and the right to a hearing before punishment—legal principles older than our nation itself. Yet the government fails these basic tests of fairness. It has placed individuals on watchlists, and left them there for years, as a result of blatant errors. It has expanded its master terrorist watchlist to include as many as a million names, based on information that is often stale, poorly reviewed, or of questionable reliability. It has adopted a standard for inclusion on the master watchlist that gives agencies and analysts near-unfettered discretion. And it has refused to disclose the standards by which it places individuals on other watchlists, such as the No Fly List.

Compounding this unfairness is the fact that the "redress" procedures the U.S. government provides for those who have been wrongly or mistakenly included on a watchlist are wholly inadequate. Even after people know the government has placed them on a watchlist—including after they are publicly denied boarding on a plane, or subjected to additional and invasive screening at the airport, or told by federal agents that they will be removed from a list if they agree to become a government informant—the government's official policy is to refuse to confirm or deny watchlist status. Nor is there any meaningful

- The Selectee List (also maintained

- The standards for inclusion on either the No Fly List or the Selectee List. Government representatives have acknowledged that "additional derogatory requirements" are required for inclusion on those lists, beyond that which is required for inclusion in the TSDB.[19] To date, the government has refused to disclose those requirements.
- The substantive standards for inclusion of individuals on any of the other watchlists, such as CLASS, TECS, or KST.
- How the various nominating agencies interpret the standard(s) for nomination, how widely those interpretations vary across the intelligence community, or whether any agency has issued guidance elaborating on the standard(s).
- How the TSC interprets the term "terrorism." Indeed, the GAO has noted that "agencies utilizing watch list records recognize various definitions of the term."[20]
- The extent or content of any training of personnel at nominating agencies regarding the standard for inclusion on watchlists.

The permissive standard for labeling someone a terrorist raises serious questions about the reliability of the intelligence underlying government watchlists. That intelligence originates with agencies such as the CIA, NSA, or the Defense Intelligence Agency, but the watchlisting process does not appear to involve rigorous review of the