

Terrorist Watchlist

- It is unacceptable to deny Americans their Second Amendment rights without due process because they were placed on a government list or their name is similar to a name on the terrorist watch list.
- There are major problems with how names are added to the list and errors are rampant. If placed onto the secretive list erroneously, it is difficult to be removed.
- It is easier to be placed on the Terrorist Watchlist than the No-Fly list, although there is no Constitutional right to fly.
- If such a law were enacted, the list would serve as a Terrorist Notification system, as terrorists could find out whether they are on the list simply by attempting to purchase a firearm. The current system more appropriately allows law enforcement the chance to scrutinize suspected individuals.
- We all support the goal of preventing domestic terrorism. Dangerous terrorists and criminals should be included on law enforcement wanted lists or should be charged with a crime. Either action would prohibit these individuals from purchasing firearms.

The National Shooting Sports Foundation (NSSF), the trade association for the firearm industry, opposes any legislation which attempts to prevent law abiding citizens from purchasing a firearm simply because they were placed on a government list without due-process or their name is similar to a name on the terrorist watch list.

Unconstitutional: The proposals would give the U.S. attorney general unfettered discretionary power to deny American citizens their constitutionally protected right to keep and bear arms. According to one such bill, in order to prohibit a purchase, the attorney general would only be required to

“appropriately suspect” engagement in conduct related to terrorism and have a “reasonable belief” that the individual may use a firearm in connection with terrorism.ⁱ

The proposed legislation also violates an individual’s Fifth Amendment right to due process under the law by allowing the attorney general to prevent firearms purchases by suspected individuals, thus treating suspected people as if they were already convicted.

Terrorist Watch List Prone to Errors: The nation’s consolidated terrorist watch list is the Terrorist Screening Database (TSDB), which is maintained by the Terrorist

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Screening Center (TSC) of the FBI. One subset of the TSDB is the Transportation Security Administration (TSA) No-Fly List.

The watch list, which contained more than 1.1 million identities, including aliases, as of the end of 2008, is fraught with errors. A 2009 Department of Justice audit of the terrorist watch list nominating process found that several major problems with the nomination practices including names not added that should have been, former subjects of closed investigations that were supposed to have been removed years ago, and deceased individuals.ⁱⁱ In 72 percent of the cases reviewed, the individuals were not removed “in a timely manner.”

The FBI may nominate individuals to the watch list that aren’t the subject of a terrorist investigation. More than 62,000 watch list records were created through this process. The audit found “the controls over these types of nominations to be weak or nonexistent.”ⁱⁱⁱ Since these proposals would prevent anyone whose name appears on the list from purchasing a firearm, even individuals, such as the late Senator Ted Kennedy, who merely

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have similar names to one on the list, would be prevented from exercising their constitutional right.^{iv} Considering the list reportedly includes or has included at least 72 employees of the U.S. Department of Homeland Security and several members of Congress from both sides of the aisle, it is hard to argue that the list is accurate enough to justify denying fundamental civil liberties.^v

Current System Works

There are already methods in place to prevent terrorists and criminals from legally purchasing firearms. More than 95 percent of people on the watch list are automatically prohibited from purchasing firearms because they are not American citizens or legal U.S. residents. The citizens that appear on the watch list would only be allowed to purchase a firearm if they meet the current guidelines and pass a

mandatory FBI background check.^{vi} The FBI checks its Violent Gang and Terrorist Organization File for every background check. Federal law already bars felons, unlawful drug users and those with misdemeanor domestic violence convictions from purchasing firearms.

Terrorist Notification System

These proposals are unlikely to prevent a terrorist attack, as most would-be terrorists are either not on the list before they commit crimes, or are prohibited from purchasing firearms under existing law. However, the proposals would hand terrorists a useful tool: a government-run terrorist notification system.

According to a 2005 Department of Justice (DOJ) letter to the Senate majority leader, the DOJ strongly opposes such a system since it would “jeopardize ongoing investigations” and “would alert

[a suspect] that he or she is on the watch list.” Even the TSC cited a 2010 Washington Post article in its reason for opposing such a system, saying “There are legitimate law enforcement reasons for keeping the list secret: Disclosure of such information would tip off known or suspected terrorists, who could then change their habits or identities to escape government scrutiny.”

Merely being suspected or simply having a name that is similar to someone who is suspected should not be enough to deny any American any fundamental right. Legislative attempts to prohibit the purchase of firearms by anyone on the terrorist watch list are overly broad infringements on Americans’ constitutional rights and attempt to solve a problem that doesn’t exist by using a method that wouldn’t work and would provide a tool to terrorists.

i Denying Firearms and Explosives to Dangerous Terrorists Act of 2011, S. 34, 112th Cong. § 2(a)(1) (2011). The same bill also attempted to set forth new evidentiary guidelines for cases brought by individuals attempting to redress their placement on the terrorist watch list and stop the government’s violation of their second amendment rights. The bill permitted the attorney general to withhold evidence used to prevent a purchase and present only selectively edited versions of documents. Subject to limited exceptions, only the judge deciding the appropriateness of the attorney general’s suspicion would be able to view the full documents. Despite being able to access the full information, the judge may not use any information learned to override the attorney general’s decision (at § 2(j)(1)(C))

ii U.S. Department of Justice, Office of the Inspector General, Audit Division, “The Federal Bureau of Investigation’s Terrorist Watchlist Nomination Practices,” Audit Report 09-25 (2009).

iii Id. at v

iv Senator Kennedy was stopped multiple times in airports and prevented from boarding a plane since his name was similar to a name on the terrorist watch list.

v See for example: Kredon, Adam, “72 DHS Employees on Terrorist Watch List,” The Washington Free Beacon, Dec. 6, 2015. <http://freebeacon.com/national-security/72-dhs-employees-on-terrorist-watch-list/>

And “Ban guns for those on the watch list? Not so fast, critics say,” FoxNews.com, Dec. 8, 2015. <http://www.foxnews.com/us/2015/12/08/ban-guns-for-those-on-watchlist-not-so-fast-critics-say/>

vi Proponents of this proposal point to a 2010 Government Accountability Office report saying that 650 individuals on the terrorist watch list were allowed to purchase firearms in 1,119 transactions. Each and every one of the 1,119 transactions was concluded only after a successful FBI background check. The transactions that were allowed to proceed did so, just as they should have, because the FBI confirmed that the purchasers were not criminals. Some erroneously refer to these successful transactions as a loophole in the current system. The transactions are instead an indicator that the terrorist watch list had led to American citizens being improperly suspected of being a criminal at least 1,119 times.



11 Mile Hill Road
Newtown, CT 06470-2359
T: 203.426.1320
F: 203.426.1087
nssf.org