

Congress of the United States

Washington, DC 20515

December 20, 2023

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Troy A. Miller
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229

The Honorable Alejandro Mayorkas
Director
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528-0525

The Honorable David P. Pekoske
Administrator
Transportation Security Administration
601 12th Street South
Arlington, Virginia 22202, US

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigations
935 Pennsylvania Avenue NW,
Washington, DC 20535

The Honorable Avril Haines
Director of National Intelligence
Office of the Director of National Intelligence
1500 Tysons McLean Drive
McLean, VA 22102

The Honorable Ken Wainstein
Under Secretary for Intelligence & Analysis
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Christine Abizaid
Director
National Counterterrorism Center
1500 Tysons McLean Drive
McLean, VA 22102

Dear Secretary Mayorkas, Attorney General Garland, Director Wray, Administrator Pekoske, Commissioner Miller, Director Haines, Under Secretary Wainstein, and Director Abizaid:

We write to request information about the status of and standards for the Terrorist Screening Dataset¹ (TSDS, or “terrorist watchlist”), the redress process for seeking removal from the dataset, and any steps your agencies are taking to address anti-Muslim discrimination stemming from the watchlist system. We have ongoing concerns about the reliability of the list and the extent to which due process and civil rights principles are adhered to in the course of placing and retaining individuals on the list.

¹ The Terrorist Screening Dataset was previously called the Terrorist Screening Database (TSDB). See Department of Homeland Security, “Privacy Impact Assessment for the Amtrak Rail Passenger Threat Assessment,” April 11, 2023, p. 1 n. 1, <https://www.dhs.gov/sites/default/files/2023-06/privacy-pia-tsa050a-amtrak-june2023.pdf>.

Background on the Terrorist Watchlist

In response to 9/11, the terrorist watchlist was created in September 2003.² Its aim was to consolidate one dozen disparate agency watchlists into a centralized list for tracking known and suspected terrorists.³ The watchlist is managed by the Federal Bureau of Investigation's (FBI) Threat Screening Center (TSC), previously called the Terrorist Screening Center.⁴ TSC coordinates with the Transportation Security Administration (TSA) to also maintain subsidiary lists, including the "No Fly" list for travelers prohibited from flying, and the "Selectee" list for those subject to enhanced screening before boarding.⁵ The watchlist also contributes to other screening lists used by TSA and U.S. Customs and Border Protection (CBP) at airports and borders.⁶

Federal agencies, law enforcement, and some foreign governments can nominate names to be watchlisted.⁷ Nominations are reviewed by the FBI (for domestic terrorism) or the National Counterterrorism Center (for international terrorism),⁸ and approved names are sent to TSC for placement on the watchlist.⁹ Portions of the list are then distributed to other federal agencies, over 18,000 law enforcement agencies, over 500 private entities, and around 60 foreign governments.¹⁰ These entities use the watchlist in a range of ways that restrict watchlisted individuals' air, land, and sea travel,¹¹ as well as access to immigration benefits,¹² financial

² American Civil Liberties Union, "Exhibit 7: Overview of the U.S. Government's Watchlisting Process and Procedures," January 2018, p. 1, https://www.aclu.org/sites/default/files/field_document/ex_7_elhady_-_overview_of_watchlisting_system_-_4-27-18_cover.pdf.

³ *Id.* at 3; Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458 § 1016 (2004) (codified at 6 U.S.C. § 485).

⁴ U.S. Department of Justice, Federal Bureau of Investigations, "National Crime Information Center (NCIC) Technical and Operational Update (TOU) 21-3," June 11, 2021, p. 2-1, <https://isp.idaho.gov/bci/wp-content/uploads/sites/3/2021/06/TOU-21-3.pdf>.

⁵ National Counterterrorism Center, "Watchlisting Guidance," March 2013, p. 51, 54, <https://s3.documentcloud.org/documents/1227228/2013-watchlist-guidance.pdf>.

⁶ United States Senate Committee on Homeland Security & Governmental Affairs, "Misabeled as a Threat: How the Terrorist Watchlist & Government Screening Practices Impact Americans," December 2023, p. 19-21, https://www.hsgac.senate.gov/wp-content/uploads/Misabeled-as-a-Threat_Public_Report-2.pdf.

⁷ Brennan Center for Justice, "Overdue Scrutiny for Watch Listing and Risk Prediction," Rachel Levinson-Waldman and José Guillermo Gutiérrez, October 19, 2023, p. 2, <https://www.brennancenter.org/our-work/policy-solutions/overdue-scrutiny-watch-listing-and-risk-prediction#:~:text=Programs%20that%20determine%20people's%20ability,adopt%20transparency%20and%20accountability%20measures>.

⁸ American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, "Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing," April 2016, p. 3-4, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf.

⁹ *Id.* at p. 17.

¹⁰ Congressional Research Service, "The Terrorist Screening Database: Background Information," June 17, 2016, p. 7, <https://crsreports.congress.gov/product/pdf/R/R44529/7>; The Intercept, "One Man's No-Fly List Nightmare," Murtaza Hussain and Pedro Armando Aparicio, May 30, 2021, <https://theintercept.com/2021/05/30/no-fly-list-terrorism-watchlist/>; *Elhady v. Kable*, 391 F. Supp. 3d 562, 570 (E.D. Va. 2019).

¹¹ Congressional Research Service, "The Terrorist Screening Database: Background Information," June 17, 2016, p. 3, <https://crsreports.congress.gov/product/pdf/R/R44529/7>.

¹² American Civil Liberties Union, "Exhibit 7: Overview of the U.S. Government's Watchlisting Process and Procedures," January 2018, p. 5, https://www.aclu.org/sites/default/files/field_document/ex_7_elhady_-_overview_of_watchlisting_system_-_4-27-18_cover.pdf.

services,¹³ employment,¹⁴ licenses, security clearances,¹⁵ and more. The watchlist also impacts access to government buildings; for example, earlier this year a well-respected New Jersey mayor was denied access to the White House for a Ramadan Eid celebration, which he suspects was because of his past placement on the watchlist.¹⁶

An individual seeking to challenge their placement on the list cannot submit a redress inquiry directly to TSC.¹⁷ Instead, they must submit a complaint about a travel experience via the Department of Homeland Security's Traveler Redress Inquiry Program (TRIP) portal, managed by TSA and CBP.¹⁸ DHS forwards watchlist-related TRIP complaints to TSC, which confirms whether the complainant is actually on the watchlist and contacts the relevant nominating agency to gather any new information about the person.¹⁹ TSC then determines whether the information justifies modifying that person's record on the list or removing it altogether.²⁰ TSC has final authority over whether to remove a name from the watchlist, while the TSA Administrator makes the final determination to remove or maintain a name on the No Fly list.²¹

Concerns about the Reliability of the Terrorist Watchlist

The accuracy of the list has long been called into question. A 2007 audit by the Department of Justice's Office of the Inspector General found that almost 40% of the entries it reviewed contained "errors or inconsistencies," and 20% of names needed to be removed from the list altogether.²² A 2008 government audit found that "the potential exists for the watchlist nominations to be inappropriate, inaccurate, or outdated because watchlist records are not

¹³ Brennan Center for Justice, "Overdue Scrutiny for Watch Listing and Risk Prediction," Rachel Levinson-Waldman and José Guillermo Gutiérrez, October 19, 2023, p. 4, <https://www.brennancenter.org/our-work/policy-solutions/overdue-scrutiny-watch-listing-and-risk-prediction#:~:text=Programs%20that%20determine%20people's%20ability.adopt%20transparency%20and%20accountability%20measures>; *El Ali v. Barr*, 473 F. Supp. 3d 479, 497 (D. Md. 2020).

¹⁴ The Intercept, "Blacklisted: The Secret Government Rulebook for Labeling You a Terrorist," Jeremy Scahill and Ryan Devereaux, July 23, 2014, <https://theintercept.com/2014/07/23/blacklisted/>; *El Ali v. Barr*, 473 F. Supp. 3d 479, 497 (D. Md. 2020).

¹⁵ Council on American-Islamic Relations, "Twenty Years Too Many: A Call to Stop the FBI's Secret Watchlist," June 12, 2023, p. 8, <https://www.cair.com/wp-content/uploads/2023/06/watchlistreport-1.pdf>.

¹⁶ Politico, "Muslim New Jersey mayor denied entry to White House plans lawsuit against 'watchlist,'" Daniel Han, September 15, 2023, <https://www.politico.com/news/2023/09/15/muslim-new-jersey-mayor-denied-entry-to-white-house-plans-lawsuit-00116358>; Letter from Representative Bill Pascrell et al. to Secret Service Director Kimberly Cheatle et al., May 2, 2023, https://www.menendez.senate.gov/imo/media/doc/mayor_mohamed_khairullah_letter_final.pdf.

¹⁷ Complaint at 23, *Chebli v. Kable*, No. 21-cv-00937 (D.D.C. April 6, 2021), <https://www.aclu.org/cases/chebli-v-kable-lawsuit-challenging-placement-no-fly-list?document=chebli-v-kable-complaint#legal-documents>.

¹⁸ Department of Homeland Security, "DHS Traveler Redress Inquiry Program (DHS TRIP)," last updated October 4, 2023, <https://www.dhs.gov/dhs-trip>; 49 C.F.R. § 1560.205.

¹⁹ American Civil Liberties Union, "U.S. Government Watchlisting: Unfair Process and Devastating Consequences," March 14, 2014, p. 9, <https://www.aclu.org/documents/us-government-watchlisting-unfair-process-and-devastating-consequences>.

²⁰ U.S. Department of Justice, Office of the Inspector General, Audit Division, "Follow-Up Audit of the Terrorist Screening Center," September 2007, p. 49, <https://oig.justice.gov/reports/FBI/a0741/final.pdf>.

²¹ *Fikre v. Fed. Bureau of Investigation*, 35 F.4th 762, 774 (9th Cir. 2022); *Kashem v. Barr*, 941 F.3d 358, 365 (9th Cir. 2019); American Civil Liberties Union, "Exhibit 7: Overview of the U.S. Government's Watchlisting Process and Procedures," January 2018, p. 9, https://www.aclu.org/sites/default/files/field_document/ex_7_elhady_-_overview_of_watchlisting_system_-_4-27-18_cover.pdf.

appropriately generated, updated or removed as required by FBI policy.”²³ Issues such as name variants, aliases, inconsistent transliteration styles, and a lack of biometrics contribute to the reliability concerns.²⁴ Simple error also plays a role; in one case, an FBI agent testified that he had checked the wrong box, resulting in someone’s placement on the No Fly list.²⁵ According to TSC’s guidance, nominating agencies review their nominations of U.S. persons annually, while TSC biannually reviews U.S. persons’ records on the watchlist for quality assurance.²⁶ But experts have raised concerns that TSC’s review is largely a rubber-stamp exercise to confirm that nominating agencies completed the necessary procedural steps, and not a substantive review of the underlying information’s accuracy.²⁷

Fairness and Constitutional Concerns about the Terrorist Watchlist

Alongside doubts about its reliability, the watchlist has triggered a range of constitutional concerns. These problems have cast doubt on the system’s compliance with Homeland Security Presidential Directive-6 (HSPD-6), which required that the watchlist “be implemented in a manner consistent with the provisions of the Constitution and applicable laws, including those protecting the rights of all Americans.”²⁸

First, the watchlist operates with weak due process safeguards. To nominate a person to the watchlist, an agency need only have “reasonable suspicion” that someone is “known or suspected to be” engaged in terrorist activities²⁹ or conduct “in aid of, or related to” such activities.³⁰ In

²² U.S. Department of Justice, Office of the Inspector General, Audit Division, “Follow-Up Audit of the Terrorist Screening Center,” September 2007, p. iii, 52, <https://oig.justice.gov/reports/FBI/a0741/final.pdf>.

²³ Department of Justice, Office of the Inspector General, “Audit Report 08-16: Audit of the Department of Justice Terrorist Watchlist Nomination Processes,” March 2008, <https://oig.justice.gov/reports/plus/a0816/index.htm>.

²⁴ Center for Strategic & International Studies, “Improvements, Questions, and Limits for the Future of Watchlisting,” Timothy Goyer, April 2020, p. 3, https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/200421_Goyer_FutureWatchlisting_WEB%20FINAL.pdf.

²⁵ ProPublica, “The FBI Checked the Wrong Box and a Woman Ended Up on the Terrorism Watch List For Years,” December 15, 2015, <https://www.propublica.org/article/fbi-checked-wrong-box-rahinah-ibrahim-terrorism-watch-list>.

²⁶ American Civil Liberties Union, “Exhibit 7: Overview of the U.S. Government’s Watchlisting Process and Procedures,” January 2018, p. 6, https://www.aclu.org/wp-content/uploads/legal-documents/ex_7_elhady_-_overview_of_watchlisting_system_-_4-27-18_cover.pdf.

²⁷ Brennan Center for Justice, “Overdue Scrutiny for Watch Listing and Risk Prediction,” Rachel Levinson-Waldman and José Guillermo Gutiérrez, October 19, 2023, p. 2, <https://www.brennancenter.org/our-work/policy-solutions/overdue-scrutiny-watch-listing-and-risk-prediction#:~:text=Programs%20that%20determine%20people's%20ability,adopt%20transparency%20and%20accountability%20measures>.

²⁸ National Counterterrorism Center, “Watchlisting Guidance,” March 2013, p. 86, <https://s3.documentcloud.org/documents/1227228/2013-watchlist-guidance.pdf>.

²⁹ The Watchlisting Guidance defines “terrorism and/or terrorist activities” to include “violent acts or acts dangerous to human life, property, or infrastructure that may be a violation of U.S. law, or may have been, if those acts were committed in the United States,” as well as acts that “appear intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government by mass destruction, assassination, kidnapping, or hostage-taking.” National Counterterrorism Center, “Watchlisting Guidance,” March 2013, p. 84, <https://s3.documentcloud.org/documents/1227228/2013-watchlist-guidance.pdf>. This definition also encompasses acts that “facilitate or support” terrorist activities, such as providing a safe house, transportation, communications, funds, and more. *Id.*

practice, this standard results in wide discretion for officers with few meaningful constraints.³¹ It permits the placement of individuals who are not under investigation but are merely “on the radar” of the FBI based on uncorroborated information,³² including based on factors such as “an individual’s travel history, associates, business associations, international associations, [and] financial transactions.”³³ According to a 2014 report, for nearly half of the people on the watchlist, the government had not identified a known terrorist group to which they were allegedly connected.³⁴ Furthermore, the watchlist is in fact “not limited to information about known or suspected terrorists,” but also includes “information about certain non-terrorists”³⁵ (including family members of known or suspected terrorists and certain non-U.S. persons for whom there is not enough derogatory information to meet even the low “reasonable suspicion” standard³⁶). Additionally, analysts face institutional incentives to add names liberally; they operate with a “fear of missing a potential risk, no matter how slight,”³⁷ and essentially no external accountability for nominating a name without reasonable suspicion.³⁸ Alongside analysts, the government relies on predictive technology to identify individuals for potential placement on the list, further raising due process concerns.³⁹ The government has acknowledged

³⁰ *Id.* at p. 33. Note that this 2013 Watchlisting Guidance has been superseded by subsequent guidance documents, most recently published in 2023. See Supplemental Declaration of Steven L. McQueen at ¶ 7, *Jardaneh v. Garland*, 18-cv-02415 (D. Md. Oct. 25, 2023). These more recent versions of the Guidance have not been publicly released but are believed to be substantially similar to the 2013 guidance. See, e.g., Brief of Amicus Curiae Council on American-Islamic Relations in Support of Petitioner at 10 n. 12, *Americans for Prosperity Foundation v. Becerra*, No. 19-251 (S. Ct. February 24, 2021), https://www.supremecourt.gov/DocketPDF/19/19-251/169893/20210224161321178_CAIR%20AFP%20Amicus%20File%20Version.pdf.

³¹ Complaint at 21, *Chebli v. Kable*, No. 21-cv-00937 (D.D.C. April 6, 2021), <https://www.aclu.org/cases/chebli-v-kable-lawsuit-challenging-placement-no-fly-list?document=chebli-v-kable-complaint#legal-documents>; Brief of Jeffrey D. Kahn as Amicus Curiae in Support of Respondents at 11, *Tanzin v. Tanvir*, No. 19-71 (S. Ct. February 12, 2020), https://scholar.smu.edu/cgi/viewcontent.cgi?article=1650&context=law_faculty.

³² American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, “Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing,” April 2016, p. 18-19, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf.

³³ *Elhady v. Kable*, 391 F. Supp. 3d 562, 569 (E.D. Va. 2019).

³⁴ The Intercept, “Watch Commander: Barack Obama’s Secret Terrorist-Tracking System, by the Numbers,” Jeremy Scahill, Ryan Devereaux, August 5, 2014, <https://theintercept.com/2014/08/05/watch-commander/>; see also United States Senate Committee on Homeland Security & Governmental Affairs, “Misabeled as a Threat: How the Terrorist Watchlist & Government Screening Practices Impact Americans,” December 2023, p. 31, https://www.hsgac.senate.gov/wp-content/uploads/Misabeled-as-a-Threat_Public_Report-2.pdf.

³⁵ U.S. Department of Justice, Office of the Inspector General, Audit Division, “Audit of the Federal Bureau of Investigation’s Management of Terrorist Watchlist Nominations,” March 2014, p. 3 n. 14, <https://www.oversight.gov/sites/default/files/oig-reports/a1416.pdf>.

³⁶ National Counterterrorism Center, “Watchlisting Guidance,” March 2013, p. 23, 164, <https://s3.documentcloud.org/documents/1227228/2013-watchlist-guidance.pdf>.

³⁷ Brennan Center for Justice, “Overdue Scrutiny for Watch Listing and Risk Prediction,” Rachel Levinson-Waldman and José Guillermo Gutiérrez, October 19, 2023, p. 3, <https://www.brennancenter.org/our-work/policy-solutions/overdue-scrutiny-watch-listing-and-risk-prediction#:~:text=Programs%20that%20determine%20people's%20ability,adopt%20transparency%20and%20accountability%20measures; see also CBS News, “The Watchlist: 20 Years of Tracking Suspected Terrorists,” December 14, 2023, 13:20-13:27, https://www.youtube.com/watch?v=GeUnmgwHbgQ>.

³⁸ American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, “Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing,” April 2016, p. 20, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf.

³⁹ The Guardian, “No-fly list uses ‘predictive assessments’ instead of hard evidence, US admits,” Spencer Ackerman, August 10, 2015, <https://www.theguardian.com/us-news/2015/aug/10/us-no-fly-list-predictive->

that, “[b]y its very nature, identifying individuals who ‘may be a threat to civil aviation or national security’ is a predictive judgment intended to prevent future acts of terrorism in an uncertain context.”⁴⁰ And TSC accepts virtually all nominations to the list, rejecting only 1% of nominations.⁴¹

Meanwhile, once a name is added to the list, it is unlikely to be removed.⁴² Although the number of successful TRIP inquiries is unknown, experts believe the number to be low,⁴³ partly because complainants are left to blindly refute the government’s allegations without knowing what they are. Watchlisted individuals are not told why they are on the watchlist, or even whether they are on it. Instead, according to the interagency Watchlisting Guidance, “the general policy of the U.S. Government is to neither confirm nor deny an individual’s watchlist status,”⁴⁴ to avoid terrorist organizations “circumvent[ing] the watchlist’s purpose by . . . determin[ing] in advance which of their members are likely to be questioned or detained.”⁴⁵ And while a court has mandated that individuals on the narrower No Fly list be informed of their status and any unclassified evidence against them, in practice, the information provided is often scant or non-existent.⁴⁶ In theory, individuals can administratively appeal the TSC’s denial of their TRIP complaint (at least when seeking removal from the No Fly list), but few, if any, appeals have been successful.⁴⁷ Instead, people who have ultimately been removed from the list have typically

assessments; Slate, “The U.S. Government Is Putting Americans on Its No-Fly List on a Hunch,” Hina Shamsi, August 12, 2015, <https://slate.com/news-and-politics/2015/08/the-u-s-government-is-putting-americans-on-its-no-fly-list-on-a-hunch-and-it-wont-say-why-they-are-grounded.html>.

⁴⁰ Defs.’ Cross-Mot. for Summ. J., *Latif v. Holder*, 2015 WL 11347548 (D.Or.), p. 18, https://www.aclu.org/sites/default/files/field_document/251%20Defendants%20Cross%20Motion%20for%20Summary%20Judgment_0.pdf.

⁴¹ Congressional Research Service, “The Terrorist Screening Database: Background Information,” June 17, 2016, p. 6, <https://crsreports.congress.gov/product/pdf/R/R44529/7>; Complaint at 22, *Chebli v. Kable*, No. 21-cv-00937 (D.D.C. April 6, 2021), <https://www.aclu.org/cases/chebli-v-kable-lawsuit-challenging-placement-no-fly-list?document=chebli-v-kable-complaint#legal-documents>.

⁴² ProPublica, “The FBI Checked the Wrong Box and a Woman Ended Up on the Terrorism Watch List For Years,” December 15, 2015, <https://www.propublica.org/article/fbi-checked-wrong-box-rahinah-ibrahim-terrorism-watch-list>.

⁴³ See, e.g., American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, “Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing,” April 2016, p. 3-4, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf.

⁴⁴ National Counterterrorism Center, “Watchlisting Guidance,” March 2013, p. 11, <https://s3.documentcloud.org/documents/1227228/2013-watchlist-guidance.pdf>.

⁴⁵ Department of Homeland Security, “Step 1: Should I Use DHS TRIP?,” last updated November 3, 2023, <https://www.dhs.gov/step-1-should-i-use-dhs-trip>.

⁴⁶ Complaint at 23-24, *Chebli v. Kable*, No. 21-cv-00937 (D.D.C. April 6, 2021), <https://www.aclu.org/cases/chebli-v-kable-lawsuit-challenging-placement-no-fly-list?document=chebli-v-kable-complaint#legal-documents>; American Civil Liberties Union, “Exhibit 7: Overview of the U.S. Government’s Watchlisting Process and Procedures,” January 2018, p. 9, https://www.aclu.org/sites/default/files/field_document/ex_7_elhady_-_overview_of_watchlisting_system_-_4-27-18_cover.pdf. Only after a federal judge found the lack of notification unconstitutional did the government begin notifying individuals on the No Fly list of their status, and still only after they attempt to fly. See American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, “Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing,” April 2016, p. 32, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf.

⁴⁷ American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, “Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing,” April 2016, p. 33, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf.

had to obtain legal representation and file lawsuits.⁴⁸ Some turn to bringing suit after submitting multiple TRIP complaints.⁴⁹

In effect, the watchlist functions as a one-way ratchet with names steadily added and rarely removed. The list has grown over time from roughly 120,000 names when it began, to 300,000 names in 2005, to almost 700,000 in 2013, to 1.16 million in 2017, to approximately 2 million today,⁵⁰ the vast majority of whom are non-U.S. persons.⁵¹

Second, Muslim Americans disproportionately face the risk of being wrongfully placed on the watchlist. Advocates have estimated that as many as 98% of people on the list are Muslim,⁵² and no evidence that the person has committed or will commit a crime is required,⁵³ leading some to refer to the watchlist system as a “Muslim registry.”⁵⁴ Muslim Americans have reported the indignity of feeling like second-class citizens when being escorted for additional screening, forced out of the standard security line with their children, and sometimes placed in handcuffs.⁵⁵ While race, ethnicity, or religious affiliation cannot be the sole factor that lands a person on the

⁴⁸ See, e.g., The Intercept, “One Man’s No-Fly List Nightmare,” Murtaza Hussain and Pedro Armando Aparicio, May 30, 2021, <https://theintercept.com/2021/05/30/no-fly-list-terrorism-watchlist/>.

⁴⁹ CBS News, “The Watchlist: 20 Years of Tracking Suspected Terrorists,” December 14, 2023, 22:03, <https://www.youtube.com/watch?v=GeUnmgwHbgQ>.

⁵⁰ CBS News, “U.S. terrorist watchlist grows to 2 million people — nearly doubling in 6 years,” E.D. Cauchi, Imtiaz Tyab, December 14, 2023, <https://www.cbsnews.com/news/us-terrorist-watchlist-grows/>; Washington Post, “The FBI’s terrorism watch list violates the Constitution, federal judge says,” Timothy Bella, September 5, 2019, <https://www.washingtonpost.com/nation/2019/09/05/fbi-terror-watch-list-unconstitutional/>; Brief of Amicus Curiae Council on American-Islamic Relations in Support of Petitioner at 8, *Americans for Prosperity Foundation v. Becerra*, No. 19-251 (S. Ct. February 24, 2021), https://www.supremecourt.gov/DocketPDF/19/19-251/169893/20210224161321178_CAIR%20AFP%20Amicus%20File%20Version.pdf; The Intercept, “One Man’s No-Fly List Nightmare,” Murtaza Hussain and Pedro Armando Aparicio, May 30, 2021, <https://theintercept.com/2021/05/30/no-fly-list-terrorism-watchlist/>; Council on American-Islamic Relations, “Twenty Years Too Many: A Call to Stop the FBI’s Secret Watchlist,” June 12, 2023, p. 1, <https://www.cair.com/wp-content/uploads/2023/06/watchlistreport-1.pdf>.

⁵¹ American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, “Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing,” April 2016, p. 8, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf; Federal Bureau of Investigations, “Terrorist Screening Center,” p. 2, <https://archives.fbi.gov/archives/about-us/ten-years-after-the-fbi-since-9-11/just-the-facts-1/terrorist-screening-center-1>.

⁵² Council on American-Islamic Relations, “Twenty Years Too Many: A Call to Stop the FBI’s Secret Watchlist,” June 12, 2023, p. 2, <https://www.cair.com/wp-content/uploads/2023/06/watchlistreport-1.pdf>.

⁵³ *Elhady v. Kable*, 391 F. Supp. 3d 562, 569 (E.D. Va. 2019).

⁵⁴ Washington Post, “The FBI’s terrorism watch list violates the Constitution, federal judge says,” Timothy Bella, September 5, 2019, <https://www.washingtonpost.com/nation/2019/09/05/fbi-terror-watch-list-unconstitutional/>; see also The Intercept, Watch Commander: Barack Obama’s Secret Terrorist-Tracking System, by the Numbers,” Jeremy Scahill, Ryan Devereaux, August 5, 2014, <https://theintercept.com/2014/08/05/watch-commander/> (noting that Dearborn, Michigan — where around 40 percent of the population is of Arab descent — was in the top five cities represented on the watchlist alongside New York, Houston, San Diego, and Chicago, despite having a significantly smaller population).

⁵⁵ Am. Compl., ¶¶ 2-3, *Wilwal v. Duke*, No. 17-cv-2835 (D. Minn. Oct. 12, 2017), ECF No. 25, https://www.aclu.org/wp-content/uploads/legal-documents/25.Amended-Complaint-10.12.17_0.pdf.

watchlist,⁵⁶ they can be a factor.⁵⁷ Individuals held for additional questioning have been asked intrusive questions about their religious beliefs and practices.⁵⁸ For example, one watchlisted individual was asked “whether he is Sunni or Shia Muslim, whether his wife wears hijab, whether he attends Islamic religious ceremonies,” and he stopped attending religious services as a result.⁵⁹ Conversion to Islam and study of Arabic have reportedly been considered in watchlisting decisions.⁶⁰ Moreover, watchlisting one person can have a viral effect in Muslim communities, subjecting that person’s acquaintances to increased suspicion⁶¹ and those with similar names to the risk of being the victim of a mistaken identity. Indeed, a watchlist entry need only include a last name and one other detail, such as a first name or date of birth,⁶² and TSA acknowledges that 98% of those who submit TRIP complaints “have no nexus to the terrorist watchlist,” yet many still face disruptions to their travel due to name similarities,⁶³ among other reasons.

Finally, watchlisting exposes individuals to other civil rights violations by DHS officials and law enforcement. Some CBP and TSA officials have reportedly asked individuals about their political beliefs and constitutionally protected political activities during border screening processes.⁶⁴ For example, there are anecdotal reports of CBP officers questioning a provocative

⁵⁶ American Civil Liberties Union, “Exhibit 7: Overview of the U.S. Government’s Watchlisting Process and Procedures,” January 2018, p. 4, https://www.aclu.org/sites/default/files/field_document/ex_7_elhady_-_overview_of_watchlisting_system_-_4-27-18_cover.pdf.

⁵⁷ U.S. Department of Justice, “Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability,” May 2023, p. 3, 9-10, 12-14, https://www.dhs.gov/sites/default/files/2023-06/Guidance%20for%20Federal%20LEAs%20on%20the%20Use%20of%20Protected%20Characteristics_FINAL%205.25.23_508.pdf; American Civil Liberties Union, “The Watchlisting System Exemplifies the Government’s Post-9/11 Embrace of Biased Profiling,” Hugh Handeyside, September 9, 2021, <https://www.aclu.org/news/national-security/the-watchlisting-system-exemplifies-the-governments-post-9-11-embrace-of-biased-profiling>; *Elhady v. Kable*, 391 F. Supp. 3d 562, 569 (E.D. Va. 2019) (noting that TSC may consider race, ethnicity, religious affiliation, and beliefs); *El Ali v. Barr*, 473 F. Supp. 3d 479, 517 (D. Md. 2020).

⁵⁸ *El Ali v. Barr*, 473 F. Supp. 3d 479, 497, 525-26 (D. Md. 2020).

⁵⁹ Complaint at ¶¶ 540, 623, *Khairullah v. Garland*, No. 23CV30095 (D. Mass. September 18, 2023), https://www.cair.com/wp-content/uploads/2023/09/D.-Mass.-23-cv-30095-dckt-000001_000-filed-2023-09-18.pdf.

⁶⁰ Fox News, “Veterans among Americans suing over fed’s no-fly list,” Joshua Rhett Miller, March 18, 2014, <https://www.foxnews.com/us/veterans-among-americans-suing-over-feds-no-fly-list>; *Elhady v. Kable*, 391 F. Supp. 3d 562, 569 (E.D. Va. 2019).

⁶¹ *El Ali v. Barr*, 473 F. Supp. 3d 479, 494 n. 5 (D. Md. 2020); Brief of Amicus Curiae Council on American-Islamic Relations in Support of Petitioner at 8, *Americans for Prosperity Foundation v. Becerra*, No. 19-251 (S. Ct. February 24, 2021), https://www.supremecourt.gov/DocketPDF/19/19-251/169893/20210224161321178_CAIR%20AFP%20Amicus%20File%20Version.pdf. This trend is amplified by CBP’s practice of searching individuals’ electronics during screenings, retaining contact lists, and reportedly subjecting the contacts of watchlisted individuals to increased scrutiny. See Washington Post, “Customs officials have copied Americans’ phone data at massive scale,” Drew Harwell, September 15, 2022, <https://www.washingtonpost.com/technology/2022/09/15/government-surveillance-database-dhs/>; Interview with Creating Law Enforcement Accountability & Responsibility (CLEAR), City University of New York School of Law, December 8, 2023, on file with the Office of Senator Elizabeth Warren.

⁶² U.S. Department of Justice, Office of the Inspector General, Audit Division, “Audit of the Federal Bureau of Investigation’s Management of Terrorist Watchlist Nominations,” March 2014, p. 3, <https://www.oversight.gov/sites/default/files/oig-reports/a1416.pdf>.

⁶³ Department of Homeland Security, “Step 1: Should I Use DHS TRIP?,” last updated November 3, 2023, <https://www.dhs.gov/step-1-should-i-use-dhs-trip>.

artist who critiqued U.S. policing policies about his art practice,⁶⁵ questioning a pastor who served asylum seekers at the border,⁶⁶ and questioning Palestinians entering the United States in recent weeks about their views on the war in Gaza.⁶⁷ Some officers have also pressured individuals to reveal their passwords in order to search their electronic devices.⁶⁸ Furthermore, watchlisted individuals have reported facing increased police harassment,⁶⁹ and have even been coerced by FBI agents into becoming informants in exchange for their removal from the list.⁷⁰

Given these and other concerns, the watchlisting system is currently undergoing governmental review. The Senate Committee on Homeland Security & Government Affairs recently launched oversight of the watchlist and redress process,⁷¹ while the executive branch's Privacy and Civil Liberties Oversight Board (PCLOB) is currently reviewing the standards for adding and removing individuals to and from the watchlist.⁷²

Questions

⁶⁴ *El Ali v. Barr*, 473 F. Supp. 3d 479, 496 (D. Md. 2020); Irina D. Manta & Cassandra Burke Robertson, *Secret Jurisdiction*, 65 *Emory L.J.* 1313, 1325 (2016).

⁶⁵ Brennan Center for Justice, "Overdue Scrutiny for Watch Listing and Risk Prediction," Rachel Levinson-Waldman and José Guillermo Gutiérrez, October 19, 2023, p. 6, <https://www.brennancenter.org/our-work/policy-solutions/overdue-scrutiny-watch-listing-and-risk-prediction#:~:text=Programs%20that%20determine%20people's%20ability.adopt%20transparency%20and%20accountability%20measures>.

⁶⁶ CBS News, "The Watchlist: 20 Years of Tracking Suspected Terrorists," December 14, 2023, 15:20-17:00, <https://www.youtube.com/watch?v=GeUnmgwHbgQ>.

⁶⁷ Interview with Creating Law Enforcement Accountability & Responsibility (CLEAR), City University of New York School of Law, December 8, 2023, on file with the Office of Senator Elizabeth Warren.

⁶⁸ Council on American-Islamic Relations, "Twenty Years Too Many: A Call to Stop the FBI's Secret Watchlist," June 12, 2023, p. 6-7, <https://www.cair.com/wp-content/uploads/2023/06/watchlistreport-1.pdf>; Letter from Senator Ron Wyden to Commissioner Chris Magnus, September 15, 2022, <https://www.wyden.senate.gov/imo/media/doc/Wyden%20letter%20to%20CBP%20on%20border%20searches%20of%20devices.pdf>; *El Ali v. Barr*, 473 F. Supp. 3d 479, 496 (D. Md. 2020).

⁶⁹ American Civil Liberties Union and Yale Law School Civil Liberties and National Security Clinic, "Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing," April 2016, p. 22, https://www.aclu.org/wp-content/uploads/legal-documents/wirac_9-11_clinic_trapped_in_a_black_box.pdf; The Intercept, "Local Cops Harassed and Threatened U.S. Veteran Because of Terror Watchlist, Lawsuit Says," Murtaza Hussain, January 26, 2023, <https://theintercept.com/2023/01/26/terror-watchlist-police-harassment/>.

⁷⁰ The Intercept, "Pariah: He Declined the FBI's Offer to Become an Informant. Then His Life Was Ruined," Murtaza Hussain, November 30, 2021, <https://theintercept.com/2021/11/30/fbi-informant-watchlist-reputation-damage/>; American Civil Liberties Union, "I Refused to Become an FBI Informant, and the Government Put Me on the No Fly List," Ahmad Chebli, April 6, 2021, <https://www.aclu.org/news/national-security/i-refused-to-become-an-fbi-informant-and-the-government-put-me-on-the-no-fly-list>; *Fikre v. Fed. Bureau of Investigation*, 35 F.4th 762, 766 (9th Cir. 2022).

⁷¹ United States Senate Committee on Homeland Security & Governmental Affairs, "Misabeled as a Threat: How the Terrorist Watchlist & Government Screening Practices Impact Americans," December 2023, https://www.hsgac.senate.gov/wp-content/uploads/Misabeled-as-a-Threat_Public_Report-2.pdf; NBC News, "U.S. watchlists for tracking travelers with possible terror ties risk violating rights and are too broad, Senate report says," Julia Ainsley and Didi Martinez, December 19, 2023, <https://www.nbcnews.com/politics/national-security/terror-watchlists-too-broad-may-violate-travelers-rights-rcna130358>.

⁷² U.S. Privacy and Civil Liberties Oversight Board, "Current Oversight Projects," <https://www.pclob.gov/OversightProjects#:~:text=The%20Board%20is%20reviewing%20the%20operation%20of%20the%20Terrorist%20Screening.populate%20various%20terrorist%20screening%20systems>.

This year marks 20 years since the creation of the watchlist. Yet the same pervasive due process and civil rights critiques that were raised in the first years of the watchlist persist. Meanwhile, even unclassified details surrounding how the system functions remain largely hidden from public view. As the system now enters its third decade, we seek increased public information to help the American people better understand the status of the watchlist and the redress process, and to help Congress meaningfully exercise its oversight role. Please provide answers to the following questions no later than January 9, 2024:

I. Data

1. For each of the last five years, how many individuals have been on the TSDS or “watchlist”?
 - a. How many U.S. persons, including citizens and permanent residents, are on the watchlist?
 - b. How many individuals residing in the United States not as U.S. citizens or permanent residents are on the watchlist?
2. For each of the last five years, how many individuals have been on the No Fly list?
 - a. How many U.S. persons are on the No Fly list?
3. For each of the last five years, how many individuals have been on the Selectee list?
 - a. How many U.S. persons are on the Selectee list?
4. For each of the last five years, how many individuals have been on the Expanded Selectee list?
 - a. How many U.S. persons are on the Expanded Selectee list?
5. For each of the last five years, what has been the median time between a TRIP submission and receipt of a response for:
 - a. A U.S. person on the watchlist?
 - b. A non-U.S. person on the watchlist?
 - c. A U.S. person on the No Fly list?
 - d. A non-U.S. person on the No Fly list?
6. For each of the last five years, what has been the median time for a U.S. person on the No Fly list to:
 - a. Receive confirmation of placement on the No Fly list?
 - b. Receive an unclassified summary of the reasons for their placement on the No Fly list?
 - c. Receive a final order from the TSA Administrator concerning their placement on the No Fly list?
7. For each of the last five calendar years, how many TRIP complaints were referred to TSC for review? For each year, please indicate the number and percentage of complaints that:
 - a. Resulted in removal of the complainant’s record from each of the following: the complete TSDS; the No Fly list.
 - b. Resulted in modification of the complainant’s record on each of the following: the complete TSDS; the No Fly list.
 - c. Involved misidentifications?
8. For each of the past five years, what percentage of administrative appeals of denials of U.S. persons’ TRIP complaints have resulted in removal from the TSDS or No Fly list?

9. For complainants who were removed from the list, what percentage of those were nevertheless flagged for matching a risk-based “rule”?
10. What share of requests to be added to TSDS originate from each of the following:
 - a. Domestic law enforcement activities.
 - b. The U.S. intelligence community.
 - c. Foreign governments.

II. Processes

11. Can individuals in the TSDS whose TRIP complaints are denied administratively appeal that denial? Can individuals on the No Fly list administratively appeal?
 - a. If so, does DHS or TSC inform individuals of their ability to administratively appeal the denial of a TRIP complaint?
12. When an individual is issued a Redress Control Number, is the individual permanently removed from the watchlist or “No Fly” list?
13. Does the government use the past watchlist status of an individual who has been removed from the TSDS, for any purpose?
14. Are there any ways for individuals to challenge their suspected placement on the watchlist other than DHS’s TRIP process or filing suit?
15. What non-governmental entities receive or are eligible to receive copies of, or information from, the watchlist?
16. What role do private contractors play in the vetting or intelligence analysis processes involved in placing an individual in the TSDS or on the No Fly list?
 - a. How many contractors work on any watchlist-related vetting or intelligence processes?
 - b. What percentage of full-time employee (FTE) time does their work represent?
17. What metrics does your department or agency use in any artificial intelligence or predictive technology to recommend, analyze, or execute the addition or removal of names to or from the watchlist or No Fly list?
 - a. Please describe the technologies, the circumstances and details of their use, and any oversight and accountability mechanisms in place.
 - b. Who develops your department’s or agency’s artificial intelligence or predictive tools for recommending or executing the addition or removal of names to or from the TSDS or No Fly list?
18. Does your department or agency purchase data from data brokers or third-party companies for use in artificial intelligence or predictive tools for recommending or executing the addition or removal of names to or from the TSDS or No Fly list? If so:
 - a. Which data brokers or companies has your agency purchased data from?
 - b. How many individuals’ data were purchased through each data broker or company?
 - c. During what time frames was data purchased from each data broker or company?
 - d. Is your department or agency still purchasing individuals’ data through each of these data brokers or companies?
 - e. What data points did each data broker or company provide to your department or agency for individuals whose data was purchased?

- f. How does your department or agency determine the accuracy for the artificial intelligence predictive tools or to recommend or execute the addition or removal of names to or from the watchlist or No Fly list?
19. Which foreign governments are the TSDS or No Fly list shared with?
 20. Which foreign governments are permitted to refer names for addition to the TSDS or No Fly list?
 21. What factors go into the determination of which foreign governments are allowed to access or add to the TSDS or No Fly list?
 22. Does your department or agency acquire any information used in watchlisting nominations from state, local, tribal, territorial, or private sector sources?
 - a. What percentage of nomination information is acquired from these sources?
 - b. What is your department or agency's process for validating this information?
 - c. What percentage of nominations based on this information are returned or rejected by the TSC or NCTC?
 23. Has the TSC ever completed a comprehensive audit review of all watchlist entries?
 - a. If so, what year was that audit completed?
 - b. Did the audit include a demographic analysis of individuals placed in the TSDS?
 - i. If so, please share the percentage breakdown of the national origin, ethnicity, religious affiliation, or any other demographic data of individuals in the TSDS.
 - c. Will the results of that review be made public?
 24. Beyond the spouses and children of individuals on the watchlist,⁷³ what other categories of "non-terrorists" may be included as exceptions to the reasonable suspicion standard for placement on the watchlist?
 25. What steps does your department or agency take to proactively notify individuals of their right to seek redress?
 26. What steps is your department or agency taking to address reports of anti-Muslim discrimination at airports, land borders, and in the watchlisting system?
 27. What safeguards, if any, are in place to prevent racial or religious profiling in the process of nominating and placing an individual in the TSDS?
 28. Does your department or agency provide any sort of incentive or reward to agents who make a nomination to the TSDS or who make a match to the TSDS?

III. Government Analyses & Guidelines

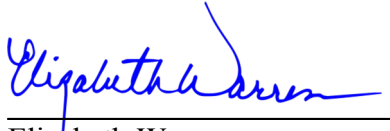
29. What is the government's rationale for not proactively notifying U.S. persons on the No Fly list of their status on the list?
30. What is the government's rationale for not providing individuals on the Selectee List with:
 - a. Confirmation of their placement or removal from the watchlist?
 - b. Description of the reasons for their placement on the watchlist?
 - c. An opportunity to provide rebuttal information to a neutral arbiter?

⁷³ National Counterterrorism Center, "Watchlisting Guidance," March 2013, p. 43, <https://s3.documentcloud.org/documents/1227228/2013-watchlist-guidance.pdf>; The Intercept, "Blacklisted: The Secret Government Rulebook for Labeling You a Terrorist," Jeremy Scahill and Ryan Devereaux, July 23, 2014, <https://theintercept.com/2014/07/23/blacklisted/>.

31. What is the government’s rationale for not providing the counsel of U.S. persons on the No Fly list with access to the classified information allegedly supporting their client’s placement on the list, when the counsel has a security clearance?⁷⁴
32. Please provide any Office of Legal Counsel memoranda or other Department of Justice analyses that assess the legality of the watchlist system, either regarding the TSDS or any subsidiary lists.
33. Please provide any DHS and/or CBP Office of Chief Counsel memoranda that:
 - a. Assess the legality of searches of electronic devices at the border for individuals on the watchlist.
 - b. Present guidance for screening non U.S. persons in the TSDS at airports and land borders.
34. When was the most recent interagency Watchlist Guidance issued? Please share a copy of that guidance.
 - a. What further implementing guidance has your department or agency issued? Please share a copy of any such guidance.

We appreciate your attention to these important matters.

Sincerely,



Elizabeth Warren
United States Senator



André Carson
Member of Congress




Bernard Sanders
United States Senator



Katie Porter
Member of Congress

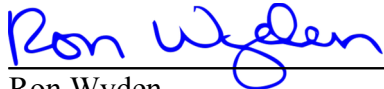
⁷⁴ Ex. D, Opp’n to Motion to File Administrative Record Under Seal and Ex Parte, *Moharam v. TSA*, No. 22-1184 (D.C. Cir. Aug. 28, 2023), Doc. 2014370 (denying request for counsel, including former general counsel to the Director of National Intelligence, to access classified information supporting basis for placement on the No Fly List).



Cory A. Booker
United States Senator



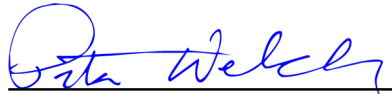
Eleanor Holmes Norton
Member of Congress



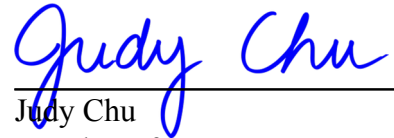
Ron Wyden
United States Senator



Rashida Tlaib
Member of Congress



Peter Welch
United States Senator



Judy Chu
Member of Congress



Barbara Lee
Member of Congress



Madeleine Dean
Member of Congress



Ilhan Omar
Member of Congress