

# U.S. GOVERNMENT WATCHLISTING:

Unfair Process and Devastating Consequences

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### *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 way to contest one’s designation as a potential terrorist and ensure that the U.S. government, and all other users of the information, removes or corrects inaccurate records. The result is that innocent people can languish on the watchlists indefinitely, without real recourse.

A bloated and unfair watchlist system does not make us secure, and the ACLU has long called for fundamental reform. If the government is to use watchlists, it must institute narrow, specific criteria for placing individuals on them; apply rigorous procedures for reviewing, updating, and removing erroneous entries; and limit the use of such lists such that they do not amount to punishment without charge. Individuals must be provided with a meaningful, participatory process by which they can challenge their inclusion on a watchlist before a neutral decision-maker. Ultimately, Congress and the Obama

administration must rein in what the Ninth Circuit Court of Appeals has called “a vast, multi-agency, counterterrorism bureaucracy that tracks hundreds of thousands of individuals”<sup>1</sup>—a bureaucracy that remains secret and unaccountable to the public or the individuals that it targets for blacklisting.

### Individual Cases: No Fly List

Marine veteran Abe Mashal’s inclusion on the No Fly List made it impossible for him to work for clients of his specialized dog training business who lived beyond driving distance, resulting in the loss of significant business income. FBI agents told Mashal that he would be removed from the No Fly List if he agreed to become an informant.<sup>1</sup>

Steven Washburn, an Air Force veteran and New Mexico resident, was prevented for years from being with his wife—a Spanish citizen who was unable to secure a visa to travel to the United States—because of his status on the No Fly List.<sup>2</sup>

Kevin Iraniha, an Iranian-American peace activist, was barred from flying home to San Diego from Costa Rica, where he was studying at the UN-accredited University for Peace. Iraniha and his father, both of whom were told they had been placed on the No Fly list, endured hours of interrogation on their religion, Iraniha’s travel to Muslim countries, and his views on Palestine and U.S. foreign policy.<sup>3</sup>

In April 2012, inclusion on the No Fly List prevented Air Force veteran Saadiq Long from flying from Qatar to his childhood home in Oklahoma to visit his mother, whose health had been deteriorating due to congestive heart failure.<sup>4</sup>

<sup>1</sup> *Latif v. Holder*, Case No. 10-cv-750, Dkt. No. 92-9 (D. Or. Mar. 22, 2013).

<sup>2</sup> *Id.*, Dkt. No. 92-13.

<sup>3</sup> NBC News, *California student takes the long way home to US after ‘no fly’ designation* (June 7, 2012).

<sup>4</sup> CAIR-Oklahoma, *CAIR officials: Man sentenced to life without air travel* (Feb. 14, 2013).

## ***What Is the Government’s System of Watchlisting?***

In 2003, President Bush directed that the government consolidate its approach to screening known or suspected terrorists,<sup>2</sup> which eventually resulted in the creation of bloated watchlist system that contains the identities of significant numbers of people who are neither known nor appropriately suspected terrorists. The FBI’s Terrorist Screening Center (TSC) is the hub of this system. It maintains a master watchlist called the Terrorist Screening Database (TSDB),<sup>3</sup> and information from the TSDB flows to various other watchlists and databases, including the following:

- The No Fly List (maintained by the TSC), a subset of the TSDB that identifies individuals who are prohibited from flying to, from, or over U.S. territory.<sup>4</sup>

- The Selectee List (also maintained by the TSC), another subset of the TSDB that identifies individuals who are subjected to additional questioning, inspection, and screening before being allowed to board flights to, from, or over U.S. territory.
- The Consular Lookout and Support System (“CLASS”), maintained by the State Department to identify individuals who may be ineligible for a visa or passport.<sup>5</sup>
- TECS (formerly the Treasury Enforcement Communications System), maintained by Customs and Border Protection (CBP) within the Department of Homeland Security (DHS). TECS is the primary system CBP uses to determine whether persons seeking to enter the country are admissible.<sup>6</sup> According to the Government Accountability Office—the independent, nonpartisan agency that investigates how the government spends taxpayer dollars—TECS is also used by approximately 20 other federal agencies, ranging from the Internal Revenue Service to the Drug Enforcement Administration.<sup>7</sup>
- The Known or Appropriately Suspected Terrorists file (KST), a subset of the TSDB maintained by the TSC for dissemination nationwide to federal, state, and local law enforcement through the National Crime Information Center database.

Thus, the contents of the TSDB—the master government watchlist—reach myriad government agencies and impact many areas of peoples’ lives. Information from the TSDB is not only shared widely within the federal government and among state and local law enforcement agencies, but also exported to “several non-federal governmental watch lists”<sup>8</sup> (we do not know which jurisdictions or for what purpose) and at least 22 foreign governments.<sup>9</sup>

### ***How Many People Are Included on Terror-Related Watchlists?***

The government has not revealed exactly how many individuals are included on any given watchlist, but according to the National Counterterrorism Center (NCTC), the consolidated terrorist watchlist contained approximately 875,000 people as of December 2012.<sup>10</sup> Whatever the precise number of listed individuals, it is clear that the TSDB has grown substantially over time, from about 158,000 records in June 2004 to over 1.1 million records in May 2009 (although the number of unique persons on the watchlist is less than the total number of records).<sup>11</sup> It is also clear that thousands of U.S. persons are listed in the TSDB at any given time.<sup>12</sup>

The No Fly List and the Selectee List are smaller subsets of the TSDB, but their growth in recent years has been “breathtaking,” according to a researcher who has tracked the size of the watchlists.<sup>13</sup> The Associated Press reported in February 2012 that the No Fly List alone had more than doubled in the previous year, and that there were approximately 21,000 individuals on that list, including roughly 500 U.S. citizens and lawful permanent residents.<sup>14</sup>

### ***What Standard Must Be Met for Inclusion on Government Watchlists?***

**We don’t know.** We know only the standard for inclusion in the TSDB, and that standard is not only so confusing as to be meaningless, but also expansive enough to encompass a range of innocent and First Amendment-protected conduct. Prior to 2007, no uniform standard existed for nominations to the TSDB; each nominating agency simply followed its own standard.<sup>15</sup> Now DHS maintains that only known

or reasonably suspected terrorists may be included in the TSDB.<sup>16</sup> The TSC defines a “reasonably suspected terrorist” as “an individual who is reasonably suspected to be, or have been, engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and terrorist activities based on articulable and reasonable suspicion.”<sup>17</sup>

On its face, this standard is baffling and circular: it essentially defines a suspected terrorist as a suspected terrorist. The standard is certainly not sufficient to ensure that a person is truly a threat. It lacks any requirement that an individual knowingly engage in wrongful conduct, and it permits weak speculative inferences.<sup>18</sup> Indeed, the phrases “related to” and “in aid of” are broad enough to include First Amendment-protected speech and association, or conduct that is entirely unwitting. Mere proximity to a suspected terrorist should not make one a suspected terrorist, but that is what the standard allows. And it is not at all clear what separates a reasonable-suspicion-based-on-a-reasonable-suspicion from a simple hunch.

#### *Individual Cases: Selectee List and Border Questioning*

In August 2009, Bollywood star Shah Rukh Khan underwent lengthy, intrusive questioning by U.S. border officials, apparently because his name appeared on a watchlist. Khan was visiting the United States to promote a film concerning racial profiling of Muslims in the United States.<sup>1</sup>

Journalists have undergone intrusive questioning and searches at the border for no apparent reason other than their religion or ethnic background. On the Media producer Sarah Abdurrahman was detained, along with family members and friends, for over five hours without explanation, while officers searched their cars and cell phones. HuffPost Live producer Ahmed Shihab-Eldin says he is held and questioned for hours every time he returns to the United States from abroad.<sup>2</sup>

Erich Scherfen, a commercial pilot and veteran of the Gulf War, was placed on the Selectee List after a co-worker told the state police that Scherfen had retrofitted the family car to carry bombs. In reality, Scherfen had simply removed a broken back seat from the car. Scherfen was suspended from his job, and he and his wife were repeatedly subjected to humiliating questioning, searches, and detention for hours when they attempted to fly or cross the border.<sup>3</sup>

<sup>1</sup> *Bollywood star Shah Rukh Khan detained at US airport*, The Telegraph (Aug. 17, 2009).

<sup>2</sup> Harrison Jacobs, *American Muslim Reporter Describes ‘Dehumanizing’ Treatment at US Border*, Business Insider (Sept. 24, 2013). Ahmed Shihab-Eldin, *Davos to Detention: Why I Hate Coming Home to the America*, The WorldPost (Jan. 28, 2014).

<sup>3</sup> Mike McIntire, *Ensnared by Error on Growing U.S. Watch List*, New York Times (Apr. 6, 2010).

That’s just the standard we know about: What we don’t know about the standards for placing individuals on watchlists easily eclipses what we do know. For instance, we do not know:

- 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.<sup>19</sup> 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.”<sup>20</sup>
- 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 quality or credibility of the intelligence.<sup>21</sup> Absent uniform, high-level assessment of that intelligence, watchlisting decisions are left to the discretion of unknown intelligence personnel and are insulated from review by the bureaucratic layers that are built into the system.

*Individual Cases: Rahinah Ibrahim*

Rahinah Ibrahim, a Stanford PhD student and Malaysian citizen, was prevented from boarding a flight in San Francisco, handcuffed (despite being wheelchair-bound at the time), and held in a detention cell for hours in January 2005 based on what turned out to be a bureaucratic error by the FBI that placed her on the No Fly List. The government fought to avoid correcting the error for years, even invoking the state secrets privilege in an unsuccessful effort to prevent judicial scrutiny. She was permitted to leave the country, but to this day, she has been barred from returning, even though the government admits that she should not have been placed on the No Fly List.<sup>1</sup>

<sup>1</sup> *Ibrahim v. Dep’t of Homeland Security*, Case No. C06-00545 WHA at 8, 9-11 (N.D. Cal. Feb. 6, 2014).

***Have People Been Watchlisted Based on Mistakes or Incorrect Information?***

Yes. Well-publicized cases such as that of Rahinah Ibrahim (see text box) have confirmed that watchlist entries result from blatant errors. Government audits suggest that these kinds of errors may occur at an alarmingly high rate.

- A March 2008 report by the Department of Justice Inspector General described numerous weaknesses in FBI watchlisting procedures and concluded that “the potential exists for the

watchlist nominations to be inappropriate, inaccurate, or outdated because watchlist records are not appropriately generated, updated or removed as required by FBI policy.”<sup>22</sup>

- A year later, in May 2009, the same Inspector General found that 35 percent of the nominations to the lists were outdated, many people were not removed in a timely manner, and tens of thousands of names were placed on the list without an adequate factual basis.<sup>23</sup>
- A review by the TSC determined that 45 percent of the watchlist records related to redress complaints were inaccurate, incomplete, outdated, or incorrectly included.<sup>24</sup>

When flawed or unreliable information makes its way into the watchlist database, it tends to stay there. Agencies have paid far greater attention to putting people on watchlists than to reviewing or purging of erroneous or outdated information. In short, there is every incentive to place individuals on a watchlist, but little incentive to clear them. And even if bad information is removed from one list, it may remain on other lists to which it was previously exported. As U.S. District Judge William Alsup noted, “[o]nce derogatory information is posted to the TSDB, it can propagate extensively through the government’s interlocking complex of databases, like a bad credit report that will never go away.”<sup>25</sup>

#### Individual Cases: Notable Watchlist Failures

Nobel laureate and former South African President Nelson Mandela was included on U.S. terrorist watchlists until 2008, when he was finally removed from the lists by an act of Congress.<sup>1</sup>

Numerous other public figures, including former Sen. Ted Kennedy, Rep. John Lewis, and the musician formerly known as Cat Stevens, have all experienced repeated travel complications because they are either watchlisted or share names with those on watchlists.<sup>2</sup>

<sup>1</sup> *Mandela off U.S. terrorism watch list*, CNN.com (July 2, 2008).

<sup>2</sup> Am. Civ. Liberties Union, *Unlikely Suspects*, available at [www.aclu.org/technology-and-liberty/unlikely-suspects](http://www.aclu.org/technology-and-liberty/unlikely-suspects).

### ***What Are the Consequences for Individuals Who Are Included on a Watchlist?***

The consequences of inclusion on a watchlist can be devastating and profound. Depending on the watchlist(s) on which individuals appear, they may be effectively banned from commercial air travel and experience uncertainty and significant delays in returning home to the United States from overseas. Others may be subjected to clandestine surveillance at home or abroad, experience invasive inspections and screening at airports and border facilities, or they may be stopped and questioned repeatedly by law enforcement officers, apparently without reasonable suspicion.

Consequences vary depending on the specific watchlist on which an individual is included:

- Inclusion on the No Fly List imposes particularly heavy burdens on listed individuals.<sup>26</sup> People on the No Fly List are stigmatized as suspected terrorists, barred from commercial flight altogether, and have been detained, interrogated, surveilled, and subjected to long-term investigation. U.S. District Judge Anthony Trenga concluded that “placement on the No Fly List is life defining and

life restricting across a broad range of constitutionally protected activities and aspirations; and a No Fly List designation transforms a person into a second class citizen, or worse.”<sup>27</sup>

- Individuals on the Selectee List are subjected to additional screening and questioning every time they seek to board an airplane—and can be subjected to delays, humiliation, and improper questioning about the First Amendment-protected beliefs and associations—no matter how many times they have been through such screening and cleared security.
- Inclusion in CLASS may preclude issuance of a visa to a non-citizen, or it may complicate a U.S. citizen’s ability to obtain or renew a passport.
- A watchlist notation in TECS may mean denial of permission to enter the United States, along with detention, invasive screening, and questioning by border officials. CBP has also shared watchlist-related information with ship captains, who have then denied listed individuals permission to board ocean-going vessels.
- Inclusion in KST may mean prolonged traffic stops or other encounters with police, after which local police become aware of the listed person’s inclusion on a federal watchlist, while the listed person remains unaware of her watchlist status.
- Under the secret Controlled Application Review and Resolution Program (CARRP), U.S. Citizenship and Immigration Services denies or delays the citizenship applications of anyone who appears in the TSDB—i.e., anyone USCIS considers “known or suspected terrorists.”<sup>28</sup>

Another major but seldom acknowledged consequence of inclusion on a watchlist is the increased likelihood of investigation by the FBI. While investigation of suspected threats based on credible intelligence may be valid, mere inclusion in the TSDB (which, as noted above, is based on information of variable quality) should not be enough to prompt an investigation. Yet that apparently happens routinely: according to the TSC’s own materials, the TSC “serve[s] as the originator or impetus for many new FBI preliminary investigations and full FBI counterterrorism investigations.”<sup>29</sup> Because the threshold for opening an FBI investigation is very low,<sup>30</sup> someone who has been wrongly or mistakenly watchlisted may find herself subjected to an intrusive and lengthy investigation by the FBI. Such an investigation not only places its subject under serious stress but also opens the door to pretextual prosecution, pressure to become an informant, or deportation for reasons unrelated to terrorism.<sup>31</sup>

Inclusion on a watchlist can also have serious secondary consequences, such as an inability to obtain employment, either because employment requires travel or a visa, or because the government shares the fact of an individual’s inclusion on a watchlist with a prospective employer, such as a government contractor. Watchlisted individuals have reported to the ACLU that they have been unable to procure commercial or professional licenses, and—to the extent that travel is required—watchlisting may prevent an individual from reuniting with family or friends, or pursuing educational opportunities at a location of one’s choosing.

Watchlisting consequences can be even more pernicious abroad, where individuals may be more vulnerable to abuse by authorities. U.S. citizens and non-citizens who have been denied boarding on aircraft—presumably because they are included on the U.S. No Fly List—have reported that foreign security services have detained, interrogated, and in some cases abused them.<sup>32</sup> Some U.S. citizens have

experienced significant delays in exercising their absolute right to return to the United States, either because they have been prohibited from boarding U.S.-bound airplanes or because U.S. embassy personnel abroad have seized their passports. Numerous individuals who have been stranded abroad also report that the FBI has used their apparent inclusion on a watchlist as a means of pressuring them to become informants on their communities.<sup>33</sup>

Finally, the stigma, humiliation, fear, and uncertainty that come with the knowledge that one has been placed on a watchlist can hardly be overstated. Stigmatization as a suspected terrorist is one of the worst labels our government can place on an individual—it is one of the cruelest consequences of inclusion on a watchlist.

#### *Individual Cases: KST, State and Local Law Enforcement*

The Denver police department compiled detailed information on people engaging in protected political activity, including a Quaker peace-advocacy group and a gun rights lobbying organization. When a Denver man who was a member of the gun rights group subsequently had a fender-bender, a routine police check of the National Crime Information Center database showed that the man was listed as a member of a terrorist organization, even though his record had previously been expunged from the Denver database after a lawsuit brought under the Freedom of Information Act.<sup>1</sup>

Francisco Martinez, a civil rights lawyer and activist in the Chicano movement, was stopped by local law enforcement in multiple states because he had been watchlisted, despite having been cleared of terrorism-related charges decades earlier. The federal government paid Martinez over \$100,000 in 2007 to settle lawsuits arising out of the stops.<sup>2</sup>

In 2008, Maryland State Police placed 53 nonviolent political activists into state and federal databases, with labels indicating that they were terror suspects. During a hearing, it was revealed that these individuals and organizations had been placed in the databases because of a surveillance operation that targeted opponents of the death penalty and the Iraq war.<sup>3</sup>

<sup>1</sup> Anya Bernstein, *The Hidden Costs of Terrorist Watch Lists*, 61 *BUFF. L. REV.* 461, 466-67 (2013).

<sup>2</sup> Ellen Nakashima, *Terror Suspect List Yields Few Arrests*, *Wash. Post* (Aug. 25, 2007).

<sup>3</sup> Lisa Rein, *Md. Police Put Activists' Names On Terror Lists*, *Wash. Post* (Oct. 8, 2008).

### ***What Redress Procedures Are Available for Watchlisted Individuals?***

Individuals who believe they have been incorrectly watchlisted currently have only one option for seeking redress: the DHS Traveler Redress Inquiry Program (DHS TRIP). The “redress” offered by that program is utterly inadequate. At no point does the government officially confirm or deny that a person has been placed on a watchlist, even after government action makes watchlist status blatantly clear.

DHS TRIP is intended as a single point of contact for individuals who have experienced difficulties with travel, screening, or crossing U.S. borders. An aggrieved traveler submits an inquiry form to DHS, which determines whether the inquiry appears related to the TSDB. If so, the inquiry is referred to the TSC, which determines whether the traveler is an exact match to an individual listed in the TSDB. Where the traveler appears to be a match, TSC contacts the agency that originally watchlisted a person to determine whether the individual's current watchlisting status is appropriate. TSC then notifies the agency that encountered the individual (such as the Transportation Security Administration) of the results of the inquiry, and that agency sends a letter to the traveler.

The letter does not reveal whether the individual is, or ever was, on a watchlist, or any reasons for the individual's status. Indeed, the letter reveals little other than that "we have conducted a review of any applicable records in consultation with other federal agencies as appropriate, and it has been determined that no corrections or changes are warranted at this time." The letter may include a "Redress Control Number" that the individual is to use when attempting to travel or board an aircraft in the future, but it is never clear that using that number will resolve or improve the problem the traveler had in the first place. And while watchlisted individuals have a statutory right to have the DHS TRIP determination reviewed by a federal court of appeals, that review is based on an agency record to which the watchlisted person has no access at all, and cannot meaningfully challenge.

Thus, DHS TRIP merely reflects and perpetuates the government's policy of denying listed individuals even the most basic information about the reasons for their inclusion on a watchlist, without a hearing or opportunity to clear their names and restore their liberties.

### ***What Should Be Done to Fix the Watchlisting System?***

The ACLU has long called for major changes to the government's system of watchlists, including the following measures:

- Improvements in the accuracy of the lists. Federal agencies need clear, uniform, narrowly-written standards that detail the specific evidentiary requirements for placing a person on a list. Bloated watchlists waste screeners' time and divert their energies from looking for true threats.
- A rigorous process for fixing mistakes. Routine, comprehensive audits must result in the removal of outdated or inaccurate information, and where no longer warranted, watchlist entries must be purged.
- Meaningful redress for erroneously listed individuals. Individuals must be permitted to contest the basis for their inclusion on a watchlist, including meaningful access to evidence used against them, before a neutral decision maker.
- Limitations on the ways in which watchlists can be used. Grave threats to our country will not be averted by using watchlists to deny employment, withhold commercial or professional licenses, or otherwise disadvantage and isolate listed individuals.

### ***Conclusion***

If the government is to maintain watchlists, they must be targeted at genuinely dangerous individuals. As implemented, however, the government's watchlisting system amounts to an unchecked exercise of

power over innocent citizens and non-citizens alike. Countless individuals have been placed on watchlists based on intelligence of unknown reliability and according to standards that that are either secret or so broad as to be formless. Placement on such watchlists can entail life-altering consequences without any meaningful mechanism for determining, let alone contesting, one's watchlisting status. Fundamental changes to this system—including narrow listing standards, rigorous review, and meaningful redress procedures—are long overdue.

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<sup>1</sup> *Ibrahim v. Dep't of Homeland Sec.*, 669 F.3d 983, 988-89 (9th Cir. 2012).

<sup>2</sup> Homeland Security Presidential Directive—6, Integration and Use of Screening Information to Protect Against Terrorism, 39 WEEKLY COMP. PRES. DOC. 1234 (Sept. 16, 2003).

<sup>3</sup> Fed. Bureau of Investigation, *Terrorist Screening Center*, [www.fbi.gov/about-us/ten-years-after-the-fbi-since-9-11/just-the-facts-1/terrorist-screening-center](http://www.fbi.gov/about-us/ten-years-after-the-fbi-since-9-11/just-the-facts-1/terrorist-screening-center).

<sup>4</sup> See *Ibrahim*, *supra* note 1, at 989.

<sup>5</sup> Dep't of State, Consular Lookout and Support System (CLASS) Privacy Impact Assessment, *available at* [http://foia.state.gov/\\_docs/PIA/96128.pdf](http://foia.state.gov/_docs/PIA/96128.pdf).

<sup>6</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-14-62, BORDER SECURITY: DHS'S EFFORTS TO MODERNIZE KEY ENFORCEMENT SYSTEMS COULD BE STRENGTHENED (Dec. 2013) at 3.

<sup>7</sup> GOV'T ACCOUNTABILITY OFFICE, GAO-08-110, TERRORIST WATCH LIST SCREENING: OPPORTUNITIES EXIST TO ENHANCE MANAGEMENT OVERSIGHT, REDUCE VULNERABILITIES IN AGENCY SCREENING PROCESSES, AND EXPAND THE USE OF THE LIST (Oct. 2007) at 15 n.21.

<sup>8</sup> DEP'T OF HOMELAND SEC. OFFICE OF THE INSPECTOR GEN., OIG-09-64, ROLE OF THE NO FLY AND SELECTEE LISTS IN SECURING COMMERCIAL AVIATION (July 2009) at 16.

<sup>9</sup> See *Latif v. Holder*, --- F. Supp. 2d ---, 2013 WL 4592515 at \*9 (D. Or. 2013).

<sup>10</sup> Nat'l Counterterrorism Center, *Fact Sheet: Terrorist Identities Datamart Environment (TIDE)*, [http://www.nctc.gov/docs/Tide\\_Fact\\_Sheet.pdf](http://www.nctc.gov/docs/Tide_Fact_Sheet.pdf). This number is by no means definitive. The TSC's website indicates that as of September 2011, there were approximately 420,000 people on the TSDB/Terrorist Watchlist. See Fed. Bureau of Investigation, *supra* note 3.

<sup>11</sup> See *Ibrahim*, *supra* note 1, at 989.

<sup>12</sup> Nat'l Counterterrorism Center, *supra* note 10 (stating that "less than one percent"—or approximately 8,750 individuals—of the individuals in TIDE were U.S. persons).

<sup>13</sup> See Anya Bernstein, *The Hidden Costs of Terrorist Watch Lists*, 61 BUFF. L. REV. 461, 461 (2013).

<sup>14</sup> *U.S. No-Fly List Doubles in One Year*, ASSOCIATED PRESS (Feb. 2, 2012).

<sup>15</sup> See DEP'T OF JUSTICE OFFICE OF THE INSPECTOR GEN., AUDIT REPORT 08-16, AUDIT OF THE U.S. DEPARTMENT OF JUSTICE TERRORIST WATCHLIST NOMINATION PROCESSES (Mar. 2008) at 12.

<sup>16</sup> DEP'T OF HOMELAND SEC., *supra* note 8, at 7.

<sup>17</sup> Aff. of Christopher Piehota, *Mohamed v. Holder*, Case No. 1:11-cv-0050, Dkt. No. 22-1 at 6 n.5 (E.D. Va. June 3, 2011).

<sup>18</sup> GOV'T ACCOUNTABILITY OFFICE, *supra* note 7, at 18.

<sup>19</sup> *Mohamed v. Holder, et al.*, Case No. 1:11-cv-50, Dkt. No. 70 at \*4 (E.D. Va. Jan. 22, 2014).

<sup>20</sup> GOV'T ACCOUNTABILITY OFFICE, *supra* note 7, at 2 n.1.

<sup>21</sup> Neither the TSC nor the National Counterterrorism Center (NCTC), which consolidates terrorism-related intelligence, is positioned to assess the credibility of the intelligence underlying nominations to watchlists. The GAO has reported that both NCTC and the TSC generally treat an agency's designation of a watchlist nominee as presumptively valid. See GOV'T ACCOUNTABILITY OFFICE, *supra* note 7, at 20, 22. In fact, as of 2007, the TSC accepted 99 percent of the nominations it received. *Id.* at 22.

<sup>22</sup> DEP'T OF JUSTICE OFFICE OF THE INSPECTOR GEN., *supra* note 15, at 10.

<sup>23</sup> DEP'T OF JUSTICE OFFICE OF THE INSPECTOR GEN., AUDIT REPORT 09-25, THE FEDERAL BUREAU OF INVESTIGATION'S TERRORIST WATCHLIST NOMINATION PRACTICES (May 2009) at vi.

<sup>24</sup> DEP'T OF JUSTICE OFFICE OF THE INSPECTOR GEN., AUDIT REPORT 07-41, FOLLOW-UP AUDIT OF THE TERRORIST SCREENING CENTER (Sept. 2007) at xix.

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- <sup>25</sup> *Ibrahim v. Dep't of Homeland Security*, Case No. C06-00545 WHA, Dkt. No. 701-1 at 26 (Feb. 6, 2014).
- <sup>26</sup> See *Latif*, *supra* note 9, at \*9 (“The realistic implications of being on the No Fly List are potentially far-reaching.”).
- <sup>27</sup> *Mohamed*, *supra* note 19, at \*7. Widespread use of watchlists also exacts society-wide costs that are more difficult to quantify. See, e.g., Peter M. Shane, *The Bureaucratic Due Process of Government Watch Lists*, 75 GEO. WASH. L. REV. 804, 807-08 (2007) (“To the extent that watch lists impede travel or immigration by noncitizens who present no actual threat to the United States, they can exact substantial cultural, political, and economic costs, in both the short and the long term.”).
- <sup>28</sup> See ACLU OF S. CAL., MUSLIMS NEED NOT APPLY: HOW USCIS SECRETLY MANDATES THE DISCRIMINATORY DELAY AND DENIAL OF CITIZENSHIP AND IMMIGRATION BENEFITS TO ASPIRING AMERICANS (Aug. 2013), available at <http://www.aclusocal.org/CARRP/>.
- <sup>29</sup> Fed. Bureau of Investigation, Terrorist Screening Ctr., Partnership for Success! (undated) at notes to slide 10, available at [iaclea.org/visitors/events/conference/TSCpresentation-Condensed.pptx](http://iaclea.org/visitors/events/conference/TSCpresentation-Condensed.pptx)
- <sup>30</sup> See Dep't of Justice, The Attorney General's Guidelines for Domestic FBI Operations, available at <http://www.justice.gov/ag/readingroom/guidelines.pdf> (a “preliminary investigation,” which involves invasive techniques, including surveillance, requires only “information or an allegation” of wrongdoing).
- <sup>31</sup> See generally CTR. FOR HUMAN RIGHTS AND GLOBAL JUSTICE AND ASIAN AM. LEGAL DEF. AND EDUC. FUND, UNDER THE RADAR: MUSLIMS DEPORTED, DETAINED, AND DENIED ON UNSUBSTANTIATED TERRORISM ALLEGATIONS (2011), available at <http://aaldef.org/UndertheRadar.pdf>; see also Petra Bartosiewicz, *Deploying Informants, the FBI Stings Muslims*, THE NATION (June 13, 2012) (recounting pretextual prosecution of a subject of FBI interest for possession of a firearm at a shooting range, and infliction of immigration-related penalties for refusals to serve as informants).
- <sup>32</sup> See *Fikre v. Fed. Bureau of Investigation, et al.*, Case No. 3:13-cv-00899 (D. Or. 2013) (plaintiff alleges he was detained and tortured in the United Arab Emirates at the request of U.S. authorities after he declined to serve as an informant); *Mohamed v. Holder*, Case No. 1:11-cv-0050, Dkt. No. 1 (E.D. Va. Jan. 18, 2011) (plaintiff alleges he was detained and tortured in Kuwait with the knowledge and complicity of FBI officers).
- <sup>33</sup> See *id.*; Third Am. Compl., *Latif v. Holder*, Case No. 3:10-cv-00750, Dkt. No. 83 (D. Or. Jan. 11, 2013); Am. Civil Liberties Union, *The No-Fly List: Where the FBI Goes Fishing for Informants*, <https://www.aclu.org/blog/national-security/no-fly-list-where-fbi-goes-fishing-informants>.