

Statement for the Record
Submitted by The Identity Project
To the Subcommittee on Transportation Security and Infrastructure Protection
Of the US House of Representatives Committee on Homeland Security
Concerning a Hearing on
“Ensuring America's Security: Cleaning Up the Nation's Watchlists”
September 9, 2008
311 Cannon House Office Building
Washington, DC

Chairwoman Jackson Lee and Members of the Committee, thank you for holding this hearing on the terrorist watchlists. The Identity Project submits this statement to urge the Committee to scrutinize closely the watchlists, their uses, and the processes of and reasons for the addition of names.

The Identity Project provides advice, assistance, publicity, and legal defense to those who find their rights infringed, or their legitimate activities curtailed, by demands for identification, and builds public awareness about the effects of identification requirements on fundamental rights. The Identity Project is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources to protecting and promoting First Amendment rights.¹

There are numerous problems with the terrorist watchlists, which we will turn to shortly. The biggest issue is that any watchlists that are to be used as the basis for restriction of rights should be based on judicial orders, not secret administrative determinations.

¹ The Identity Project's previous statements and analyses of the watchlists are available at its Web site, <http://www.papersplease.org>.

The Terrorist Screening Center maintains two terrorist watchlists, the “no fly” and “selectee” lists. Individuals on the “no fly” lists are deemed too dangerous to fly by the U.S. government. Individuals on the “selectee” lists must endure more invasive security screening before they are allowed to fly by the U.S. government. How individual names are added to the list is unknown. The government claims there is a redress process for individuals who are “mistakenly matched” to the watchlists, but it is cumbersome and opaque.²

Also, disturbingly, there were recent reports that the Transportation Security Administration was adding the names of innocent travelers to yet another secret database merely because the people lost, forgot, or refused to show identification to TSA officers at airport security.³ This bears repetition: The TSA added names of travelers (whom TSA allowed to pass through security) to a secret database for the crime of not showing identification to TSA officers.

After being questioned by a reporter about the secret database, the head of TSA, Kip Hawley, said that TSA “will stop keeping records of people who don't have ID if a screener can determine their identity. Hawley said he had been considering the change for a month. The names of people who did not have identification will soon be expunged, he said.”⁴ However, there is no way of knowing if the names are still being recorded or if they have been expunged because the lists and databases

² Department of Homeland Security, Travel Redress Inquiry Program, <http://www.dhs.gov/trip/>; for information on the problems travelers have had with TRIP, see The Identity Project site, <http://www.papersplease.org>.

³ Thomas Frank, *Fliers without ID placed on TSA list*, USA Today, Aug. 13, 2008.

⁴ *Id.*

are secret. The Identity Project urges the Committee to look closely at this recently revealed secret database.

It is unclear how many names are on the terrorist watchlists, but even the Department of Homeland Security agrees that the number is in the hundreds of thousands. A Department of Justice Inspector General report stated that the watchlists included 700,000 names in April 2007 and the lists were growing by 20,000 names per month, which would add up to more than 1 million names today.⁵

However, the Transportation Security Administration contends, “While the exact number of ‘no-flies’ is secret, there are many, many less than 500,000.”⁶ The agency did not point to any documentation, merely asking the public to believe its numbers. The agency also did not estimate the number of individuals on the “selectee” list.

A number of innocent individuals including a nun, Senator Ted Kennedy, and former presidential candidate John Anderson have all been wrongly deemed suspects.⁷ Several innocent individuals have filed lawsuits in order try to stop the harassment they received when they attempt to fly commercially, including a licensed commercial pilot.⁸

⁵ Department of Justice, Office of Inspector General, *Follow-Up Audit of the Terrorist Screening Center, Audit Report 07-41 (Redacted for Public Release)*, Sept. 2007, <http://www.usdoj.gov/oig/reports/FBI/a0741/final.pdf>.

⁶ Transportation Security Administration, Blog: Evolution of Security, *ID Q&A*, July 2, 2008, <http://www.tsa.gov/blog/2008/07/id-q.html>.

⁷ Sara Kehaulani Goo, *Committee Chairman Runs Into Watch-List Problem*, Washington Post, Sept. 30, 2004; Shaun Waterman, *Senator Gets a Taste of No-Fly List Problems*, United Press International, Aug. 20, 2004; Ryan Singel, *Nun Terrorized by Terror Watch*, Wired News, Sept. 26, 2005.

⁸ *Ibrahim v. Chertoff*, No. 06-16727 (9th Cir. Aug. 18, 2008), http://papersplease.org:80/wp/wp-content/uploads/2008/08/ibrahim_v_dhs.pdf; Jeanne Meserve, *Name on government watch list threatens pilot's career*, CNN, Aug. 22, 2008.

Security expert Bruce Schneier recently explained why the watchlists simply do not work.

But even if these lists were complete and accurate, they wouldn't work. Timothy McVeigh, the Unabomber, the D.C. snipers, the London subway bombers and most of the 9/11 terrorists weren't on any list before they committed their terrorist acts. And if a terrorist wants to know if he's on a list, the TSA has approved a convenient, \$100 service that allows him to figure it out: the Clear program, which issues IDs to "trusted travelers" to speed them through security lines. Just apply for a Clear card; if you get one, you're not on the list.⁹

Though they contain these many problems, the watchlists continue to be used every day to delay and detain innocent travelers.

Even if the watchlists are to continue to be used, they must not continue in their present form. Any watchlist that is used as a basis for restriction of civil rights should be based on judicial orders, not secret determinations by the administration.

Respectfully submitted,

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⁹ Bruce Schneier, Chief Security Technology Officer for BT, Op-ed, *The TSA's useless photo ID rules*, Los Angeles Times, Aug. 28, 2008.