

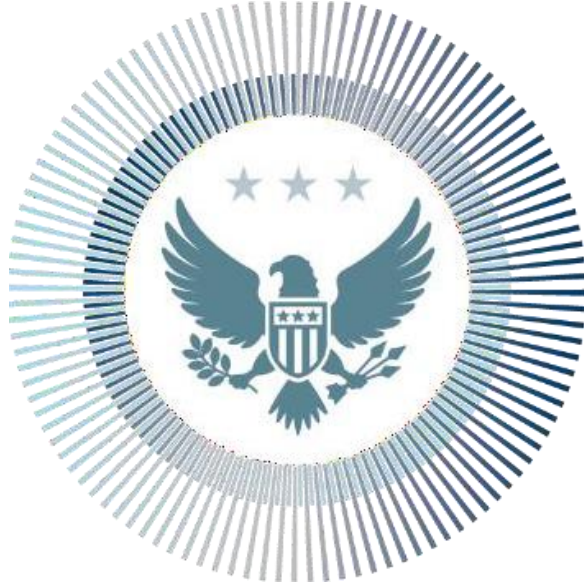


THE
PRIVACY AND CIVIL LIBERTIES
OVERSIGHT BOARD



REPORT ON
THE TERRORIST WATCHLIST
January 23, 2025

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THE
PRIVACY AND CIVIL LIBERTIES
OVERSIGHT BOARD

TERRORIST WATCHLIST
REPORT AND RECOMMENDATIONS

JANUARY 23, 2025



Privacy and Civil Liberties Oversight Board

Sharon Bradford Franklin, Board Chair

Edward W. Felten, Board Member

Travis LeBlanc, Board Member

Beth A. Williams, Board Member

The Board acknowledges with gratitude the staff members who worked on this project, including Cameron Brown, Jennifer Fitzpatrick, Clare Garvie, Laura Grasso, Wesley S. McCann, Tatjana Naquin, Alexa Potter, Saleela Salahuddin, John Tran, and other current and former staff members.



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I. EXECUTIVE SUMMARY

The Terrorist Watchlist¹ is an important tool used by federal, state, and local government agencies that was set up in response to the terrorist attacks on September 11, 2001 (9/11) to aggregate and share information about known or suspected terrorists (KSTs) who pose a threat to homeland security.² The U.S. Government's Terrorist Watchlisting Enterprise is guided by the Watchlisting Advisory Council (WLAC), an informal interagency body composed of representatives from the federal agencies that participate in the U.S. terrorism watchlisting enterprise, which provides a forum for these agencies to discuss and coordinate certain matters related to terrorist watchlisting. The Terrorist Watchlisting Guidance helps standardize the watchlisting community's nomination and screening processes.³ The guidance was formalized in July 2010 to address vulnerabilities identified in the nominations process in the Terrorist Screening Center's (TSC) 2009 watchlist protocol, which was a predecessor to the Watchlisting Guidance.⁴

¹ The Terrorist Watchlist is currently known as the Terrorist Screening Dataset (TSDS). It was previously known as the Terrorist Screening Database (TSDB). *See* FED. BUREAU OF INVESTIGATION, FBI PRIVACY THRESHOLD ANALYSIS (PTA): THREAT SCREENING SYSTEM (2022), at 2. Any reference to the Terrorist Watchlist, TSDB, or TSDS should be understood to mean the same thing. TSDS is a dataset contained within the Threat Screening System (TSS). TSS contains additional datasets of national security threat actors in response to National Security Presidential Memorandum 7 (NSPM-7). *See* National Security Presidential Memorandum – 7, Memorandum on Integration, Sharing, and Use of National Security Threat Actor Information To Protect Americans, DAILY COMP. PRES. DOC. 201700722 (Oct. 4, 2017), <https://www.govinfo.gov/content/pkg/DCPD-201700722/pdf/DCPD-201700722.pdf> [hereinafter NSPM-7]. These additional categories of national security threat are not within the scope of the PCLOB's project on the Terrorist Watchlist.

² U.S. GOV'T ACCOUNTABILITY OFF., GAO 08-110, TERRORIST WATCH LIST SCREENING: OPPORTUNITIES EXIST TO ENHANCE MANAGEMENT OVERSIGHT, REDUCE VULNERABILITIES IN AGENCY SCREENING PROCESSES, AND EXPAND USE OF THE LIST (2007), at 1–2, <https://www.gao.gov/assets/gao-08-110.pdf>.

³ *See* WATCHLISTING CMTY., 2023 WATCHLISTING GUIDANCE (2023) [hereinafter 2023 Watchlisting Guidance].

⁴ U.S. GOV'T ACCOUNTABILITY OFF., GAO 12-476, TERRORIST WATCHLIST, ROUTINELY ASSESSING IMPACTS OF AGENCY ACTIONS SINCE THE DECEMBER 25, 2009, ATTEMPTED ATTACK COULD HELP INFORM FUTURE EFFORTS (2012), at 10, <https://www.gao.gov/assets/gao-12-476.pdf>.



Congress⁵ and the Intelligence Community (IC)⁶ have credited the Watchlist for facilitating the apprehension and arrest of KSTs.⁷ But others have criticized the Watchlist for its size⁸ (currently consisting of approximately 1.1 million persons) and complained that it lacked accuracy, fairness, and transparency.⁹ Contesting placement on the Terrorist Watchlist can also be challenging to individuals erroneously placed on the Watchlist, as they lack access to the classified information the government used to place them on the list.

As of August 26, 2024, the Terrorist Watchlist contained records of approximately 1.1 million persons, the overwhelming majority of whom are foreign nationals; under 6,000 (roughly half of 1%) of those were U.S. persons.¹⁰ Further, when TSC believes or assumes an individual is a U.S. person but cannot fully confirm U.S. person status, TSC will extend the

⁵ See generally *The Progress and Pitfalls of the Terrorist Watchlist: Field Hearing of the H. Comm. on Homeland Sec.*, 110th Cong. (2007) [hereinafter *Hearing on the Progress and Pitfalls of the Terrorist Watchlist*]; see also *Watching the Watch List: Building an Effective Terrorist Screening System: Hearing Before the S. Comm. on Homeland Sec. and Governmental Aff.*, 110th Cong. (2007).

⁶ *TSC's Role in the Interagency Watchlisting and Screening Process: Hearing Before the Subcomm. on Transportation Sec. of the H. Comm. on Homeland Sec.*, 113th Cong. (2014) (Oral Statement of Christopher M. Piehota, Dir., Fed. Bureau of Investigation, Terrorist Screening Ctr.) [hereinafter *Piehota Statement*]; *Five Years After The Intelligence Reform And Terrorism Prevention Act: Stopping Terrorist Travel: Hearing Before the S. Comm. on Homeland Sec. and Governmental Aff.*, 111th Cong. (2009) (Statement for the Record of Timothy J. Healy, Dir., Fed. Bureau of Investigation, Terrorist Screening Ctr.).

⁷ See *Hearing on the Progress and Pitfalls of the Terrorist Watchlist*, *supra* note 5; see also Classified Briefings to the PCLOB Staff by Representatives from the TSC, Transportation Security Administration (TSA), Customs and Border Protection (CBP), and Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (Aug. 2017) (discussing successful use of the Terrorist Watchlist and collaboration between the operational elements of each agency to apprehend a KST at a United States port of entry).

⁸ See, e.g., E.D. Cauchi & Imtiaz Tyab, *U.S. Terrorist Watchlist grows to 2 million people—nearly doubling in 6 years*, CBS NEWS (Dec. 14, 2023), [https://www.cbsnews.com/news/us-terrorist-watchlist-grows/#:~:text=%22Those%20%20million%20people%20who,watchlisting%20policy%20for%20President%20Biden;AM.C.L.UNION,U.S.GOVERNMENTWATCHLISTING:UNFAIRPROCESSANDDEVASTATINGCONSEQUENCES\(2014\),https://www.aclu.org/sites/default/files/assets/watchlist_briefing_paper_v3.pdf](https://www.cbsnews.com/news/us-terrorist-watchlist-grows/#:~:text=%22Those%20%20million%20people%20who,watchlisting%20policy%20for%20President%20Biden;AM.C.L.UNION,U.S.GOVERNMENTWATCHLISTING:UNFAIRPROCESSANDDEVASTATINGCONSEQUENCES(2014),https://www.aclu.org/sites/default/files/assets/watchlist_briefing_paper_v3.pdf).

⁹ See, e.g., Andrew Cohen, *It's About Time a Federal Judge Declared the 'Terrorist Watchlist' Unconstitutional*, BRENNAN CTR. FOR JUST. (Sept. 6, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/its-about-time-federal-judge-declared-terrorist-watchlist>; PROMOTING ACCURACY AND FAIRNESS IN THE USE OF GOVERNMENT WATCHLISTS, THE CONST. PROJECT (2007), at 41–42, <https://epic.org/wp-content/uploads/privacy/pdf/WatchLists030907.pdf>; *Hearing on the Progress and Pitfalls of the Terrorist Watchlist*, *supra* note 5 (Statement of Bennie G. Thompson, Chairman, H. Comm. on Homeland Sec.) (“We have heard the stories about the false hits against the list, including my good friend Congressman John Lewis as well as young children of some of my own staff. We can do better, and we have to do better than to have a system that flags United States Congressmen and 2-year-olds as potential terrorists.”); see also Rachel L. Swarns, *Senator? Terrorist? A Watch List Stops Kennedy at Airport*, N.Y. TIMES (Aug. 20, 2004), <https://www.nytimes.com/2004/08/20/us/senator-terrorist-a-watch-list-stops-kennedy-at-airport.html> (discussing how one of the Terrorist Watchlist’s most publicized errors was when airline agents more than once tried to block Senator Edward M. Kennedy from boarding airplanes because his name resembled an alias used by a suspected terrorist who had been barred from flying in the United States).

¹⁰ Terrorist Screening Ctr. Correspondence with the PCLOB (Aug. 26, 2024); Terrorist Screening Ctr. Correspondence with the PCLOB (Aug. 20, 2024).



same protections to those individuals as it does to U.S. persons, including when they apply for redress.

Individuals may seek travel-related redress for a variety of reasons, ranging from an inability to print a boarding pass to believing their travel difficulties are due to their presence on the Watchlist. Across the range of Department of Homeland Security (DHS) Traveler Redress Inquiry Program (TRIP) applications filed for all types of travel-related difficulties, DHS reports that about 2% of DHS TRIP petitioners can be matched to a Watchlist record.¹¹ In 2022, of the 370 people who filed complaints stating that they believed they were on the Watchlist, only 9 actually were.

The Privacy and Civil Liberties Oversight Board (“the PCLOB” or “the Board”) voted in late 2016 to initiate oversight of the Terrorist Watchlist. As described on the PCLOB’s website, “[t]he Board is reviewing the operation of the TSDB [Terrorist Screening Database], commonly referred to as the Terrorist Watchlist, a database containing information on known and suspected terrorists, including U.S. persons, which the U.S. Government uses to populate various terrorist screening systems. The Board is examining, among other things, the standards for placing individuals on the Watchlist and the procedures followed to add and remove individuals.”¹²

The Board conducted a multi-year review of the Terrorist Watchlist to gain insight into the Watchlist’s operations and offer recommendations to further improve privacy and civil liberties and promote transparency. During the time covered by the PCLOB’s review, agencies involved in the Watchlist’s operation have taken steps to improve privacy and civil liberties safeguards. The Board, in concluding this project, offers seven recommendations, discussed in more detail in the report, tailored to further improve data integrity, prioritize and enhance existing measures for the review of U.S. person records contained within the Terrorist Watchlist (under 6,000 as of August 26, 2024), promote transparency, and improve existing redress procedures.

¹¹ Terrorist Screening Ctr. Briefing to the PCLOB (Jan. 28, 2024).

¹² U.S. Priv. and C.L. Oversight Bd. *Current Oversight Projects*, <https://www.pclob.gov/OversightProjects> (last visited Jan. 14, 2025). Shortly after the vote, the Board entered a 20-month period in which the Board had too few Senate-confirmed members to constitute a quorum. During the sub-quorum period, the PCLOB’s staff proceeded with the previously authorized work pertaining to the Terrorist Watchlist, including briefings with TSC officials, information gathering and review, and follow-up engagements with the TSC, National Counterterrorism Center (NCTC), CBP, TSA, Federal Bureau of Investigation (FBI), and the Office of the Director of National Intelligence (ODNI). Shifting Board priorities, another subsequent sub-quorum period, and impacts caused by the global COVID pandemic further postponed the finalization of this project.



- **Recommendation #1:** Continue to re-evaluate the sufficient identifying information standards in conjunction with periodic reviews of watchlisting standards. Monitor and assess with what frequency, and in what contexts, the new application of the descriptive information as a criterion to meet the sufficiently identifying information standard 1) permits the listing of individuals at the nominating stage who otherwise could not be added to the Watchlist, and 2) enables additional verification of individuals' identities during encounters with government personnel.
- **Recommendation #2:** To ensure the Terrorist Watchlist information is accurate, thorough, and reliable, the agencies involved in the Watchlist's operation should: 1) refine what they consider current information in their watchlisting standards and 2) regularly and periodically review the Watchlist, including retroactively applying any revised standard to each watchlisted individual.
- **Recommendation #3:** Investigate and develop metrics to gauge how effective the expanded use of mitigating information has been in improving the accuracy, reliability, or credibility of Terrorist Watchlist records, including whether such revised policies have had a beneficial or detrimental effect on national security.
- **Recommendation #4:** Prioritize and enhance existing measures for the review and purging of U.S. person records, as appropriate, to ensure that U.S. person information in the Terrorist Watchlist is thorough, accurate, and current.
- **Recommendation #5:** Publish annual transparency reports to Congress, oversight bodies, and the public to promote accountability and public understanding of the Terrorist Watchlist, including the redress process.
- **Recommendation #6:** Improve the DHS Traveler Redress Inquiry Program redress process for cases related to the Terrorist Watchlist by committing to: 1) reasonable timelines for resolving Transportation Security Administration (TSA) Selectee and TSA No Fly redress applications; 2) clearly informing applicants of their ability to hire counsel and evaluating the feasibility of permitting redress applicants to be represented by security-cleared counsel; and 3) providing a second level of review to U.S. persons on the Selectee List who are repeatedly sent to secondary screening.
- **Recommendation #7:** Improve the DHS Traveler Redress Inquiry Program by strengthening notice requirements for cases involving U.S. persons on the Selectee List who have repeatedly been sent to secondary screening.



II. BOARD MEMBERS' SEPARATE STATEMENTS SUMMARY

Separate Statement of Chair Sharon Bradford Franklin and Board Member Edward Felten: Chair Sharon Bradford Franklin and Board Member Edward Felten wrote a separate statement explaining that they joined the Board's report in full but wrote in response to the Separate Statement of Board Member Beth Williams. Specifically, they disagreed with her characterization of Recommendation 7 and explained how the recommendation is carefully crafted to improve civil liberties safeguards without unduly increasing national security risks. Recommendation 7 urges that notice requirements for DHS TRIP should be strengthened for cases involving U.S. persons on the Selectee List who have repeatedly been sent to secondary screening. Chair Franklin and Board Member Felten explained how the Board carefully tailored this recommendation to apply to a limited population, considered the fact that such a population likely could reasonably infer they were on the Watchlist already, and determined that the value of increased transparency and providing a meaningful opportunity to challenge one's Watchlist status outweighed the national security risk in these situations.

Separate Statement of Board Member Travis LeBlanc: Board Member LeBlanc joined in the report and all recommendations and wrote separately to explain that Recommendation 7 should have gone further to encourage notice and redress measures for individuals from "qualifying states" under E.O. 14086. Individuals from those countries, including the European Union and certain other close U.S. allies, are afforded notice and redress in highly-related contexts. Board Member LeBlanc also emphasized the importance of a redress system that is efficient and accessible to the traveling public. The Board's recommended redress improvements will improve public safety and national security by ensuring that government time and resources are not wasted on individuals who should not be on the Watchlist.

Separate Statement of Board Member Beth A. Williams: Board Member Beth A. Williams joined in the Report with the exception of Recommendation 7. She submitted a Separate Statement highlighting key findings of the Report and emphasizing three points. First, amidst today's heightened terrorist threats, an effective Terrorist Watchlist is more crucial to the protection of U.S. national security than ever. Second, Board Member Williams underscored the importance of a strong, highly-functional redress process to correct mistakes and misidentifications in the Terrorist Watchlist. She urged expansion of and improvement to the redress process, especially for U.S. persons, to strengthen privacy and civil liberties protections and to ensure that individuals have an opportunity to challenge their inclusion on the Watchlist if they believe such inclusion is in error. Third, Board Member Williams dissented from the Board's Recommendation 7, which would allow suspected terrorists to confirm whether or not they are on the Watchlist. Such a recommendation, she explained, is unsupported by the findings of the Report and unnecessary given a redress process that is meaningful and available to all. She concluded that, because it could help terrorists better achieve their goals and evade detection, the recommendation is both misguided and dangerous.



III. INTRODUCTION¹³

History in Brief

Prior to 9/11, there was no central repository of terrorism information, and instead, nine separate federal agencies maintained twelve separate watchlists. Due to restrictive information sharing policies and practices, these agencies could not easily exchange terrorism information.¹⁴ This inability to share terrorism information effectively was found to have contributed to the U.S. failure to prevent 9/11;¹⁵ consequently, the U.S. Government created the Terrorist Watchlist enterprise.¹⁶ The Terrorist Watchlist enterprise, also referred to as the watchlist community, is multi-layered and complex. It consists of several federal agencies¹⁷ charged with defending the nation against terrorism and protecting U.S. borders.

¹³ Member Beth A. Williams served as the Assistant Attorney General for the Office of Legal Policy (OLP) at the United States Department of Justice (DOJ) from August 2017 to December 2020. Upon her confirmation to the PCLOB, Member Williams sought advice from the PCLOB's General Counsel and Acting Designated Agency Ethics Official (collectively referred to as the DAEO) concerning whether she was required to recuse herself from the watchlisting report, based on having been named in her former official capacity as a defendant in *Jardaneh v. Garland, et al.*, (previously captioned as *El Ali v. Barr*), a civil action in the District of Maryland challenging the legality of the Federal Government's Terrorism Screening Database (TSDB) and related watchlists. Member Williams informed the DAEO that although she understood that personnel under her supervision at OLP had taken part in Watchlist Advisory Council (WLAC) meetings, she did not recall personally or substantially participating in any watchlisting matters. Based on Member Williams's representations, and limited materials available to the Office of General Counsel at the time, the DAEO determined that recusal was not legally required. Subsequently, the DAEO reviewed further court filings not available to the DAEO at the time of the initial decision, including factual admissions made by the government concerning OLP's role representing DOJ in the WLAC. The DAEO has determined that the information from the court filings does not contradict Member Williams's statement that she did not personally participate in watchlisting matters. Nor do the filings change the determination of the DAEO that recusal is not legally required, because even if an individual has previously participated personally and substantially in a matter as a government employee, recusal is not legally required where that individual now serves in another government role. 5 C.F.R. § 2641. Subsequent to receiving the DAEO's analyses, Member Williams chose not to recuse herself.

¹⁴ U.S. DEP'T OF JUST., OFF. OF THE INSPECTOR GEN., REVIEW OF THE TERRORIST SCREENING CENTER (2005), at i–ii, <https://oig.justice.gov/reports/FBI/a0527/final.pdf> [hereinafter 2005 DOJ OIG Audit Report].

¹⁵ NAT'L COMM. ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT (2004), at 416–17, <https://govinfo.library.unt.edu/911/report/911Report.pdf>.

¹⁶ David Park, *The Watchlist: Improving the Transparency, Accuracy, Efficiency, and Accountability of the Terrorist Screening Database*, NAVAL POSTGRADUATE SCH. (2018), <https://apps.dtic.mil/sti/pdfs/AD1069685.pdf> (providing historical context on the genesis of the Watchlist enterprise).

¹⁷ These agencies include the Central Intelligence Agency (CIA), DHS (inclusive of representation from headquarters, CBP, and TSA), Department of Treasury, Department of State, Department of Defense (DoD), DOJ, FBI, National Security Agency (NSA), NCTC, and the TSC.



Following 9/11, the U.S. Government stood up new counterterrorism entities, most notably the National Counterterrorism Center (NCTC)¹⁸ and the TSC¹⁹ to centralize the nation's counterterrorism approach, streamline information sharing, and improve the U.S. Government's overall capability to detect, deter, and defend the country against terrorism.²⁰

NCTC was initially formed in May 2003 under the name of the Terrorist Threat Integration Center (TTIC). It was tasked with developing comprehensive terrorist threat assessments through the integration and analysis of terrorist information collected domestically and abroad.²¹ To fulfill this requirement, NCTC created a classified database of terrorist information, known as the Terrorist Identities Datamart Environment (TIDE), to serve as the U.S. Government's central repository of information on international terrorist identities.²²

Soon after, in September 2003, the President issued Homeland Security Presidential Directive 6, *Directive on Integration and Use of Screening Information to Protect Against Terrorism* (more commonly referred to as HSPD-6), which outlined the U.S. Government's requirement that terrorist identity information in TIDE be used for security screening.²³ This directive required agencies to share terrorist information with local, state, federal, territorial, and tribal governments, as appropriate, for security screening purposes. It also mandated that certain private entities and foreign governments have access to this terrorist information to conduct screenings for homeland security.²⁴ The U.S. Government created the Terrorist Watchlist to facilitate broader information sharing by providing terrorist identity information deemed unclassified for screening purposes only to the relevant entities, without disclosing classified derogatory information that resided in TIDE.²⁵

The Terrorist Watchlist enterprise continued to evolve over time through the issuance of several Presidential Directives, Executive Orders, Interagency Memoranda of Understanding, and the Watchlisting Guidance. The Watchlisting Guidance was initially developed in 2010 by the WLAC, an inter-agency body co-chaired by the TSC and the NCTC and composed of

¹⁸ See Exec. Order No. 13,470, 3 C.F.R. § 13470 (2008) (revoking Exec. Order No. 13,354 and amending Exec. Order No. 12,333); see also Exec. Order No. 13,354, 3 C.F.R. § 13354 (2004).

¹⁹ 2005 DOJ OIG Audit Report, *supra* note 14; FED. BUREAU OF INVESTIGATION, TERRORIST SCREENING CTR., MEMORANDUM OF UNDERSTANDING ON THE INTEGRATION AND USE OF SCREENING INFORMATION TO PROTECT AGAINST TERRORISM (2003), <https://irp.fas.org/news/2003/09/tscmou.pdf>; Homeland Security Presidential Directive/HSPD-6 on Integration and Use of Screening Information to Protect Against Terrorism, 2 PUB. PAPERS 1174-75 (Sept. 16, 2003) [hereinafter Homeland Security Presidential Directive/HSPD-6].

²⁰ The Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458, 118 Stat. 3638 (2004); Homeland Security Presidential Directive/HSPD-6, *supra* note 19.

²¹ Off. of the Dir. of Nat'l Intel., Nat'l Counterterrorism Ctr., *History*, <https://www.dni.gov/index.php/nctc-who-we-are/history> (last visited Jan. 14, 2025).

²² OFF. OF THE DIR. OF NAT'L INTEL., NAT'L COUNTERTERRORISM CTR., TERRORIST IDENTITIES DATAMART ENVIRONMENT (TIDE) (2020),

https://www.dni.gov/files/NCTC/documents/news_documents/TIDE_Fact_Sheet_Oct2020.pdf.

²³ Homeland Security Presidential Directive/HSPD-6, *supra* note 19.

²⁴ *Id.*

²⁵ 2005 DOJ OIG Audit Report, *supra* note 14.



representatives from the federal agencies²⁶ that participate in the U.S. Government’s terrorism watchlisting. The guidance was developed to address weaknesses in the Terrorist Watchlist Enterprise, which were exposed by the attempted attack against Northwest Airlines by Umar Farouk Abdulmutallab²⁷ in December 2009. The Watchlisting Guidance “lays out a standard framework, with minimum derogatory standards, and minimum identifying criteria, to ensure the watch listing community has a standard to determine an individual’s eligibility for presence on the watch list. [It] also provides the specific criteria needed to ensure proper identification during screening.”²⁸ The Watchlisting Guidance has been updated four times in the intervening years, most recently in 2023.

As of August 2024, the Watchlist contains records of approximately 1.1 million persons; fewer than 6,000 (roughly half of 1%) of those are U.S. persons.²⁹ Further, when TSC believes or assumes an individual is a U.S. person but cannot fully confirm U.S. person status, TSC will extend the same protections to those individuals as it does to U.S. persons, including when they apply for redress.

Methodology

In conducting this project, the PCLOB identified agencies and other stakeholders that play important roles in the watchlisting process to gather information and learn directly from those contributing to the Terrorist Watchlist and those utilizing it, to include TSC, NCTC, Customs and Border Patrol (CBP), and TSA. During the PCLOB’s project, PCLOB staff engaged with these agencies’ leadership, mission staff, and legal and privacy officers. However, the most significant part of the PCLOB’s investigation focused on the TSC, given its central role as a primary aggregator and administrator of the Terrorist Watchlist. The PCLOB supplemented its information gathering with open-source research, in addition to that provided by government entities.

Following completion of the Board’s report, the PCLOB submitted the report for accuracy and classification review. The Board appreciates the assistance of the many agency personnel who

²⁶ These agencies include the CIA, DHS (i.e., DHS headquarters, CBP, and TSA), Department of Treasury, Department of State, DoD, DOJ, FBI, NSA, NCTC, and the TSC.

²⁷ On December 25, 2009, a Nigerian national, Umar Farouk Abdulmutallab, attempted to detonate an explosive device while onboard flight 253 from Amsterdam to Detroit. The device did not explode but instead ignited, injuring Mr. Abdulmutallab and two other passengers. The flight crew restrained Abdulmutallab, and the plane safely landed. Abdulmutallab was not on the U.S. Government’s Terrorist Watchlist but was known to the U.S. Intelligence Community. Press Release, President Barack Obama, Off. of the Press Sec’y, *White House Review Summary Regarding 12/25/2009 Attempted Terrorist Attack* (Jan. 7, 2010), <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/white-house-review-summary-regarding-12252009-attempted-terrorist-attack>; see U.S. DEP’T OF HOMELAND SEC., TRANSPORTATION SEC. ADMIN., REMEMBERING THE PAST, INFORMING THE FUTURE (2022), https://www.tsa.gov/sites/default/files/mission_hall_exhibit_final_508.pdf; *Flight 253: Learning Lessons from An Averted Tragedy: Hearing Before the H. Comm. on Homeland Sec.*, 111th Cong. (2010).

²⁸ OFF. OF THE DIR. OF NAT’L INTEL., INFORMATION SHARING ENVIRONMENT 2017 ANNUAL REPORT TO CONGRESS (2017), at 10,

https://www.dni.gov/files/documents/FOIA/2017_Information_Sharing_Environment_Annual_Report.pdf.

²⁹ Terrorist Screening Ctr. Correspondence with the PCLOB (Aug. 26, 2024).



participated in this process to enable the PCLOB to confirm the absence of any classified or controlled unclassified information and to release the report in its current form. However, the PCLOB also sought public release of further unclassified information, beyond what now appears in this report, which would have informed the public about some critical aspects of the watchlisting process and procedures. In particular, the PCLOB sought clearance to release additional statistics, or at least approximate numbers, regarding the composition of the Terrorist Watchlist, including the numbers of U.S. persons, information concerning the operation of the DHS TRIP process, and further details and terms included in the Watchlisting Guidance.

All of this additional information is unclassified, although much is marked as Law Enforcement Sensitive (LES) or Sensitive Security Information (SSI). The agencies have discretion to downgrade such information, and the PCLOB welcomes the decision to clear a great deal of information for public release. Unfortunately, however, the PCLOB did not receive permission to release further important information publicly. As a result, the Board was at times obligated to cut or revise portions of its report and elsewhere to rely on substitute language to stand in for technical terminology. The Board regrets any confusion this may cause where the omitted or substituted language conflicts with the public's understanding of the watchlisting process. The PCLOB will be providing omitted information to Congress to accompany this public report. This will enable Congress to be more fully informed as it considers this important national security program, including whether additional public transparency is appropriate.



IV. TERRORIST WATCHLIST TIMELINE

On September 16, 2003, the President directed the Attorney General in HSPD-6 to “establish an organization to consolidate the U.S. Government’s approach to terrorism screening and provide for the appropriate and lawful use of Terrorist Information in screening processes.”³⁰ Terrorist Information was specifically defined to mean “individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.”³¹

Concurrent with the signing of HSPD-6, the Memorandum of Understanding on the Integration and Use of Screening Information to Protect Against Terrorism (TSC MOU) established the TSC to consolidate the U.S. Government’s approach to terrorism screening and provide for the appropriate and lawful use of terrorist information, a term clarified by the inclusion of terrorist identifiers in a subsequent agreement of the parties.³² Under HSPD-6 and the TSC MOU, the TSC was to develop and maintain a database, to the extent permitted by law, that contained the most thorough, accurate, and current information possible about a KST. HSPD-6 requires that its implementation be consistent with the Constitution and applicable laws, including those protecting the rights of all Americans. The TSC created the Terrorist Watchlist to meet these goals. The Terrorist Watchlist consolidated the U.S. Government’s terrorism screening databases into a single integrated identities database.

Executive Order 13354 created the NCTC to serve as the primary organization in the U.S. Government for analyzing and integrating all intelligence possessed or acquired by the U.S. Government pertaining to terrorism and counterterrorism, excepting purely domestic counterterrorism information.³³ The FBI is the primary organization responsible for investigating purely domestic terrorism.³⁴

An addendum to the TSC MOU (Addendum B), finalized on January 18, 2007, introduced the term “Terrorist Identifiers” to describe more clearly the type of terrorism information—including photographs, fingerprints, or other biometric data—that the NCTC and the FBI receive from interagency partners.³⁵ The TSC MOU directs interagency partners to provide all

³⁰ Homeland Security Presidential Directive/HSPD-6, *supra* note 19.

³¹ *Id.*

³² *Memorandum of Understanding on the Integration and Use of Screening Information to Protect Against Terrorism*, *supra* note 19.

³³ See Exec. Order No. 13,470; Exec. Order No. 13,354; 2023 Watchlisting Guidance, *supra* note 3; U.S. DEP’T OF JUST., FACT SHEET, THE TERRORIST SCREENING CENTER (2003), https://www.justice.gov/archive/opa/pr/2003/September/03_ag_505factsheet.htm.

³⁴ Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 7211–7214, 118 Stat. 3638, 3825–32 (2004); see Exec. Order No. 13,470; Exec. Order No. 13,354.

³⁵ National Security Presidential Directive/NSPD-59, Homeland Security Presidential Directive/HSPD-24, Directive on Biometrics for Identification and Screening to Enhance National Security, 1 PUB. PAPERS 757-60 (June 5, 2008) [hereinafter National Security Presidential Directive/NSPD-59]. DOJ, in coordination with the Department of State,



international terrorist information in their possession, custody, or control to the NCTC, and all purely domestic terrorist information to the FBI. The TSC MOU defines purely domestic terrorism information as information about U.S. persons with no links to foreign intelligence, counterintelligence, or international terrorism.³⁶

Pursuant to HSPD-6, the NCTC is mandated to provide the TSC with access to all appropriate information or intelligence in the NCTC's custody, possession, or control that the TSC requires to perform its functions. To enhance information sharing, the President issued Executive Order 13388, *Further Strengthening the Sharing of Terrorism Information to Protect Americans* (E.O. 13388). E.O. 13388 requires the head of each agency that possesses or acquires terrorism information promptly to give access to that information to the head of each other agency that has counterterrorism functions, subject to certain exceptions.³⁷

The NCTC's TIDE serves as the single source for the Terrorist Watchlist, except for purely domestic terrorism information. The FBI provides purely domestic information from its Sentinel system directly to the TSC for inclusion on the Terrorist Watchlist. TIDE currently contains the biographic identifiers, biometric identifiers such as facial images, biometric reference numbers, and derogatory information on known or suspected international terrorists. The FBI's Sentinel database system contains supporting information regarding purely domestic terrorists. The Terrorist Watchlist contains the identifiers exported from TIDE and the identifiers of domestic terrorists exported by the FBI. As a result, the Terrorist Watchlist contains the U.S. Government's comprehensive Watchlist of both international and domestic terrorist identifiers,³⁸ as illustrated in the graphic below.

On August 27, 2004, the President issued HSPD-11 calling for comprehensive terrorist-related screening procedures in support of homeland security, at home and abroad.³⁹ HSPD-11 establishes a U.S. policy to enhance terrorist-related screening "through comprehensive, coordinated procedures" and to do so "in a manner that safeguards legal rights, including freedoms, civil liberties, and information privacy guaranteed by federal law." HSPD-11 built upon HSPD-6 and expressly recognized that the Attorney General established the TSC to enable U.S. Government officials to check individuals against a consolidated database. The directive explained that other screening activities underway within the NCTC and DHS further strengthen the ability

DHS, and DoD, developed a plan to recommend actions and timelines for enhancing the existing identification and screening processes by expanding the use of biometrics.

³⁶ 2005 DOJ OIG Audit Report, *supra* note 14.

³⁷ Proclamation No. 13388, 70 Fed. Reg. 62023 (Oct. 25, 2005) (directing federal agencies to enhance their sharing of information on suspicions of terrorism).

³⁸ National Security Presidential Directive/NSPD-59, *supra* note 35.

³⁹ Homeland Security Presidential Directive/HSPD-11 on Comprehensive Terrorist-Related Screening Procedures, 2 PUB. PAPERS 1763 (Aug. 27, 2004).



of the U.S. Government to protect the people, property, and territory of the United States against acts of terrorism.⁴⁰

In 2017 and 2019, the President released two National Security Presidential Memoranda (NSPM-7 and NSPM-9). NSPM-7 directed information sharing of national security threat information other than KST information. NSPM-9 created the National Vetting Center to streamline the use of intelligence for operational decisions.⁴¹

⁴⁰ *Id.*

⁴¹ Off. of the Dir. of Nat'l Intel., Nat'l Counterterrorism Ctr., *Inside NCTC* (2024), https://www.dni.gov/files/NCTC/documents/features_documents/InsideNCTC-2024.pdf.



V. THE TSC AND THE TERRORIST WATCHLIST

The TSC is a multiagency organization, administered by the FBI, whose primary responsibility is to maintain and operate the Terrorist Watchlist in support of domestic and international terrorist screening and vetting.⁴² The TSC shares information from the Terrorist Watchlist with U.S. Government agencies that conduct counterterrorism screening. The TSC serves as a bridge between law enforcement, homeland security, and the IC, as well as trusted international partners in more than 80 countries.⁴³ The TSC's 24-hour operations center supports terrorist screening processes by determining whether a person being screened is a positive match to the Terrorist Watchlist. Additionally, the TSC also exports some of the information from the Terrorist Watchlist to the FBI's National Crime Information Center (NCIC) system to make it accessible to law enforcement officers at local, state, tribal and territorial levels.⁴⁴

The TSC maintains the Terrorist Watchlist and acts as an aggregator of data and an encounter management center. As such, TSC has limited insight into investigations and operational after-actions. Also, the TSC ensures that U.S. Government screening partners, including law enforcement and IC agencies, have the data and near real-time encounter management support to resolve encounters of positively identified watchlisted individuals, further investigations, and act within their own authorities regarding operational mitigation and/or apprehension. Offering near real-time encounter management support helps gather additional information on watchlisted individuals and confirms when positively identified watchlisted individuals have attempted to conduct activities such as boarding planes, seeking entry into the country, or gaining unescorted access to sensitive sites. As a result, screening agencies can act accordingly on these encounters in which an individual is positively identified as a match. Encounter management can also highlight relationships between watchlisted individuals, which enables intelligence collection on potential networks.⁴⁵

Operational coordination is a key component of the TSC's watchlisting process. Depending on the type of encounter, the TSC's operation center notifies the field and other operational stakeholders in near real-time of the encounter, and provides any intelligence collected during the event. When open FBI investigations exist, case agents are notified as appropriate of encounters and can benefit from awareness and additional information collected at the time of such encounters.⁴⁶

⁴² FED. BUREAU OF INVESTIGATION, TERRORIST SCREENING CTR., OVERVIEW OF THE U.S. GOVERNMENT'S TERRORIST WATCHLISTING PROCESS AND PROCEDURES AS OF APRIL 2024 (2024), at 1, <https://www.fbi.gov/file-repository/terrorist-watchlisting-transparency-document-april-2024-050224.pdf/view>.

⁴³ Terrorist Screening Ctr. Correspondence with the PCLOB (Oct. 21, 2024).

⁴⁴ U.S. DEP'T OF HOMELAND SEC., NATIONAL PREVENTION FRAMEWORK, SECOND EDITION (2016), at 21, https://www.fema.gov/sites/default/files/2020-04/National_Prevention_Framework2nd-june2016.pdf.

⁴⁵ Terrorist Screening Ctr. Correspondence with the PCLOB (Nov. 2022).

⁴⁶ *Id.*



VI. THE WATCHLISTING ADVISORY COUNCIL (WLAC)

The WLAC helps guide the U.S. Government’s watchlisting policy. The WLAC is an informal inter-agency body. The WLAC is co-chaired by the TSC and the NCTC and composed of representatives from the federal agencies that participate in the U.S. Government’s terrorism watchlisting enterprise. These agencies include the CIA, DHS (including CBP and TSA), Department of Treasury, Department of State, DoD, DOJ, FBI, and NSA. The WLAC typically meets on a quarterly basis and will hold ad hoc meetings as necessary.⁴⁷ The WLAC does not itself have any statutory or legal authority.⁴⁸ However, the WLAC serves as a “forum” to discuss:

- 1) Questions from member agencies about how specific provisions of the Watchlisting Guidance should be interpreted or implemented,
- 2) Technical issues arising from the exchange of Watchlist-related information between and among member agencies; and
- 3) Whether portions of the Watchlisting Guidance should be changed or updated.⁴⁹

The TSC and the WLAC periodically review and recommend updates to the Watchlisting Guidance by soliciting input from member agencies and drafting proposed language through a consensus-driven process.⁵⁰ The National Security Council (NSC) then reviews the proposed updates. Upon approval by the NSC, those Watchlisting Guidance updates go into effect. The WLAC issued the fifth iteration of the Watchlisting Guidance in August 2023. To date, the WLAC has not publicly released the Watchlisting Guidance because the guidance contains law enforcement and sensitive security information.

⁴⁷ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 2022).

⁴⁸ Terrorist Screening Ctr. Correspondence with the PCLOB (Dec. 2025).

⁴⁹ Herring Decl. Ex. 1, *Jardaneh v. Garland*, No. 8:18-CV-02415-PX (D. Md. Sep. 14, 2021).

⁵⁰ Groh Dep. Ex. E, *Jardaneh v. Garland*, No. 8:18-CV-02415-PX.



TERRORIST WATCHLISTING REQUIREMENTS: IDENTIFYING CRITERIA AND THE REASONABLE SUSPICION STANDARD

VII. TERRORIST WATCHLISTING REQUIREMENTS: IDENTIFYING CRITERIA AND THE REASONABLE SUSPICION STANDARD

In order to be added to the Terrorist Watchlist, a KST must meet 1) the sufficient identifying information standard, and 2) the reasonable suspicion standard.⁵¹ Both are necessary in order to add a KST nominee to the Watchlist, unless the record to be included in the Watchlist falls under the exceptions to the reasonable suspicion standard, discussed below.

A. No Fly, Selectee, and Expanded Selectee Lists

The nominations to the TSA No Fly and Selectee Lists, which are subsets of the Terrorist Watchlist, must satisfy additional criteria beyond that required for inclusion on the Terrorist Watchlist. These are the only two subsets of the broader Terrorist Watchlist that have their own minimum substantive derogatory criteria requirement in addition to satisfying the reasonable suspicion standard, and these two lists also have the most stringent minimum biographic inclusion criteria of the entire Terrorist Watchlist. The No Fly and Selectee Lists have stricter requirements than other subsets because of their specific goals: securing commercial aviation by either denying boarding or conducting enhanced security screening of KSTs.⁵²

Although individuals on TSA's No Fly List may purchase a plane ticket, these individuals will not be issued a boarding pass for a commercial airline flight. When individuals on the No Fly List arrive at an airport ticket counter to attempt to check in for their flight, they undergo an identity verification process and, if TSA confirms the identity of the passenger as a match to the No Fly List, TSA prohibits the airline from providing a boarding pass to the individual. On the other hand, individuals on TSA's Selectee List will be issued a boarding pass indicating to security screeners that these individuals have been designated for enhanced screening prior to boarding a flight.⁵³ U.S. persons constitute only a small percentage of individuals on the No Fly and Selectee Lists.

⁵¹ 2023 Watchlisting Guidance, *supra* note 3.

⁵² U.S. DEP'T OF HOMELAND SEC., OFF. OF THE INSPECTOR GEN., OIG-09-64, ROLE OF THE NO FLY AND SELECTEE LISTS IN SECURING COMMERCIAL AVIATION (2009), at 3, https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIGr_09-64_Jul09.pdf.

⁵³ Terrorist Screening Ctr. Correspondence with the PCLOB (Jan. 8, 2025).



TERRORIST WATCHLISTING REQUIREMENTS: IDENTIFYING CRITERIA AND THE REASONABLE SUSPICION STANDARD

Individuals who are not on the No Fly or Selectee List also can be selected for enhanced security screening for a variety of reasons, including when TSA assesses that these individuals may present an elevated risk to aviation security.⁵⁴ TSA also vets against additional TSDS records, known as Expanded Selectees, which may result in enhanced screening or other security measures.⁵⁵ Lastly, individuals with no connection to the Watchlist at all may also be sent to enhanced screening for other reasons, such as part of TSA’s randomized security checks.⁵⁶

B. Sufficient Identifying Information

In addition to having to contain derogatory information that meets the reasonable suspicion standard as described below, a Terrorist Watchlist nomination must include sufficient identifying information to enable a government screener to determine whether the individual they are screening is a match to a record in the Terrorist Watchlist. New additions to the TSDS must include minimal identifying and substantive information. Once the reasonable suspicion standard is met, analysts must have the ability to distinguish a specific terrorist’s identity from others. Thus, minimum biographic criteria must exist.

In 2023, the watchlisting community included important updates to the approach in prior guidance on what combination of identifying information would be sufficient. In most respects, this update requires additional identifiers to accompany an individual’s name. It also includes a new application of descriptive information to meet the sufficiently identifying information standard. As of May 2024, these updated identification criteria have been applied to the entire Watchlist.

C. Reasonable Suspicion

A KST nomination must also satisfy the reasonable suspicion standard.⁵⁷ This standard is satisfied when “based on the totality of the circumstances, there is reasonable suspicion that a person is engaged, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of terrorism and/or terrorist activities.”⁵⁸ This standard applies to foreigners and U.S. persons alike.⁵⁹

⁵⁴ U.S. DEP’T OF HOMELAND SEC., TRANSPORTATION SEC. ADMIN., DHS/TSA/PIA-018(I), PRIVACY IMPACT ASSESSMENT UPDATE FOR SECURE FLIGHT SILENT PARTNER AND QUIET SKIES (Apr. 2019), https://www.dhs.gov/sites/default/files/publications/pia-tsa-spq018i-april2019_1.pdf.

⁵⁵ CONG. RSCH. SERV., AVIATION SECURITY MEASURES AND DOMESTIC TERRORISM THREATS (2021), at 1, <https://crsreports.congress.gov/product/pdf/IF/IF11731/>.

⁵⁶ Terrorist Screening Ctr. Correspondence with the PCLOB (Jan 8, 2025).

⁵⁷ TERRORIST SCREENING CTR., TSC TRANSPARENCY DOCUMENT (2024), at 3; 2023 Watchlisting Guidance, *supra* note 3.

⁵⁸ TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 3.

⁵⁹ Terrorist Screening Ctr. Correspondence with the PCLOB (Aug. 20, 2021).



TERRORIST WATCHLISTING REQUIREMENTS: IDENTIFYING CRITERIA AND THE REASONABLE SUSPICION STANDARD

The watchlisting community, when defining terrorism and/or terrorist activities, combines elements from various federal definitions. Terrorism and terrorist activities involve:

- (1) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) or domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to an aircraft (including a threat of piracy, or a threat to airline, passenger, or civil aviation security);
- (2) a threat of committing an act of domestic terrorism (as defined in 18 U.S.C. § 2331(5)) with respect to the Homeland;
- (3) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 2331(1)) against any U.S. Government facility abroad and associated or supporting personnel, including U.S. embassies, consulates and missions, military installations (as defined by 10 U.S.C. § 2801(c)(4)), U.S. ships, U.S. aircraft, or other auxiliary craft owned or leased by the U.S. Government; or,
- (4) a threat of engaging in or conducting a violent act of terrorism and who is operationally capable of doing so.⁶⁰

Terrorist activities may also include material support for and facilitation of international terrorism.

Nominating agencies must rely on “articulable intelligence or information,” and have “an objective factual basis” to conclude that the nomination satisfies the reasonable suspicion standard; “[m]ere guesses or hunches are not sufficient.”⁶¹ Further, the watchlisting community prohibits nominations solely based solely on race, ethnicity, national origin, religious affiliation, or on engaging in constitutionally protected activity.⁶² If a nomination includes a request to place the person on the No Fly or Selectee Lists, as discussed above, the nomination must also satisfy those Lists’ additional requirements.⁶³

The watchlisting community recognizes exceptions to the reasonable suspicion standard that enable records to be nominated and accepted in the Watchlist. For example, the TSDS also includes identifying information of some individuals who are connected to, or associated with, a known or suspected terrorist but who may not themselves meet the reasonable suspicion standard.⁶⁴ These records are exported to State and DHS for the limited purpose of supporting screening functions. They are only permitted to be provided for other purposes, or to other departments and agencies, as approved through established interagency processes.

⁶⁰ TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 3.

⁶¹ *Id.*

⁶² *Id.* at 4; Piehota Statement, *supra* note 6.

⁶³ Piehota Statement, *supra* note 6.

⁶⁴ TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 5–6.



VIII. INFORMATIONAL QUALITY STANDARDS

To maintain thorough, accurate, and current terrorism screening information, the TSDS is subjected to ongoing quality control measures to ensure nominations continue to satisfy the criteria for inclusion, and that information offered in support of the nomination is reliable and current. Quality control measures include reviews and evaluations by the nominating agency, the NCTC or the FBI, and the TSC to verify each nomination meets the appropriate criteria for inclusion in the TSDS and any appropriate subset list. These reviews and evaluations provide a means to identify any changes to the information over time that could affect eligibility for continued inclusion.⁶⁵

For example, each nominating agency must have internal procedures to correct or update its information. These procedures include reviewing and issuing retractions of or corrections to information that may have been used to support a nomination. The TSC regularly reviews data in the TSDS to ensure the underlying information supports continued inclusion and performs audits to confirm the data in the TSDS is thorough, accurate, and current. For each record in the TSDS, all available information is reviewed to evaluate whether the record still meets the standard for inclusion. Additionally, a TSDS review occurs following each screening encounter resulting in a potential match to a TSDS record.⁶⁶ From 2016 to 2022, the TSC reviewed over 3 million records, averaging around 438,000 records annually.⁶⁷

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Terrorist Screening Ctr. Telephone Briefing to the PCLOB (July 2021).



IX. CONSTITUTIONALLY PROTECTED ACTIVITIES

Race, ethnicity, national origin, religious affiliation, and First Amendment-protected activity cannot be the sole basis for nomination to the Watchlist.⁶⁸ First Amendment-protected activities include: 1) the exercise of free speech—that is, lawfully conveying a message or an idea through words or deeds; 2) the exercise of religion; 3) freedom of the press; 4) freedom of peaceful assembly; and 5) the right to petition the government for redress of grievances.⁶⁹

Constitutionally protected activities must be viewed in the context in which they occur and considered in totality with all available and relevant information, including derogatory information and substantive mitigating information.⁷⁰ If a nominator is concerned about whether the activity in question is constitutionally protected, the nominator should consult with their department or agency legal counsel.⁷¹ The right of protected free speech under the U.S. Constitution applies to U.S. persons wherever they are located and to non-U.S. persons located inside the United States.⁷²

Despite these safeguards, the PCLOB assesses there is a lack of public transparency regarding how First Amendment-protected activities are considered in context and alongside derogatory information that, when taken together, result in an individual being watchlisted. TSC has asserted that the lack of transparency is motivated by several security reasons: public disclosure regarding who is on the Watchlist, or the reasoning why, could give known or suspected terrorists information that may assist them in developing strategies to circumvent security screening.⁷³ Disclosure could also compromise ongoing investigations by giving the individual an opportunity to gauge whether they are of investigative interest and cause that person to alter behavior, destroy evidence, take new precautions against surveillance, or change the level of terrorism-related activity in which they are engaged.⁷⁴ And the derogatory information considered alongside First Amendment protected activity may also be classified.⁷⁵ Nonetheless, this opacity may cause concern that constitutional rights are being impacted.

⁶⁸ 2023 Watchlisting Guidance, *supra* note 3; *see also* TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 4.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Terrorist Screening Ctr. Correspondence with the PCLOB (Oct. 21, 2024).

⁷⁴ *Id.*

⁷⁵ *Id.*



Since at least 2006, there have been a number of allegations regarding the improper placement of journalists⁷⁶ on the Watchlist due to their engagement in First Amendment-protected activities.⁷⁷ Persons may be on the Watchlist appropriately—independent of these protected activities. The PCLOB generally does not review individual cases and, thus, the PCLOB has not investigated whether those alleged placements were or were not appropriate. Nevertheless, such allegations could have a chilling effect on journalistic investigations and other First Amendment-protected activity,⁷⁸ as well as undermine public confidence in the fairness of the Watchlist.⁷⁹

Further, the potential chilling effect and the issues with public confidence may be exacerbated by some allegations that CBP and TSA engaged in inappropriate security screening conduct, such as questioning individuals about their political and religious beliefs.⁸⁰

⁷⁶ Filmmaker Laura Poitras alleged that she was put on the Watchlist after the 2006 release of her documentary about the occupation of Iraq and that her removal in 2012 was prompted by exposure from other journalists and complaints to DHS from documentarians. Compl. at 3-4, *Poitras v. U.S. Dep't of Homeland Sec.*, 303 F. Supp. 3d 136, 148 (D.D.C. 2018) (No. 15-1091 BAH). However, in a FOIA case brought by Poitras to obtain records related to her status on the Watchlist, the court found that the government's withholding and redaction of certain documents as law enforcement records under FOIA was permissible because "the FBI has established that its investigation [of Poitras] was realistically based on a legitimate concern that she may have been either an intentional or unwitting tool to film or otherwise document an ambush that resulted in the death of one American soldier and serious injury to several others." *Poitras*, 303 F. Supp. 3d at 154. Separately, reporter Drew Griffin alleged that he was placed on the No Fly List after publishing a piece that was critical of TSA, although DHS Secretary Michael Chertoff said that he did not believe Griffin was on the list and that it might have been a case of misidentification. *Formal calls for probe into reporter's name on no-fly list*, CENT. NEWS NETWORK (July 17, 2008), https://web.archive.org/web/20150619044001/http://cnn.com/2008/US/07/17/watchlist.chertoff/index.html?_s=PM:US; *The Challenge of Aligning Programs, Personnel, and Resources to Achieve Border Security: Hearing Before the H. Comm. on Homeland Sec.*, 110th Cong. 55-56 (2008).

⁷⁷ See also *Chebli v. Kable*, No. 1:21-cv-00937-JEB (D.C. Cir. 2021) and *Fikre v. Fed. Bureau of Investigation*, 35 F.4th 762, 766 (9th Cir. 2022), *aff'd Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234 (2024) (both alleging that they were placed on the Watchlist because they refused to be an informant for law enforcement).

⁷⁸ For example, a Muslim man who alleged that CBP officers' questioning of his religion resulted in him being put on the Watchlist stated that he stopped openly practicing his religion in the hopes that he would be removed from the Watchlist. Compl. at 102, 112, *Khairullah v. Garland*, No. 23-CV-30095 (D. Mass. filed Sept. 18, 2023).

⁷⁹ The lack of transparency about the treatment of First Amendment-protected activities may compound these problems. For example, reports regarding Laura Poitras (*see supra* at 76) have continued over a decade after the incidents at issue. See, e.g., Esther Zuckerman, *Nan Goldin and Laura Poitras: All the Beauty and the Bloodshed*, N.Y. TIMES (Nov. 16, 2022), <https://www.nytimes.com/2022/11/16/movies/nan-goldin-laura-poitras-all-the-beauty-and-the-bloodshed.html>; Rafa Sales Ross, *IDFA Quest of Honor Laura Poitras Talks About Being Put on a Terrorist Watchlist*, *Free Press*, *Jafar Panahi*, VARIETY (Nov. 12, 2022), <https://variety.com/2022/film/global/idfa-laura-poitras-1235431050/>.

⁸⁰ *El Ali*, F. Supp. 3d. at 496; Irina D. Manta & Cassandra Burke Robertson, *Secret Jurisdiction*, 65 Emory L.J. 1313, 1325 (2016). In one instance, the plaintiffs allege a watchlisted individual was asked "whether he is Sunni or Shia Muslim, whether his wife wears a hijab, [and] whether he attends Islamic religious ceremonies." Compl. at 102, 112, *Khairullah v. Garland*, No. 23-CV-30095. The PCLOB has not investigated the accuracy of these allegations but includes these references here to describe the possible chilling effect of such public reports.



Currently, those seeking redress are not entitled to disclosure of whether or which First Amendment activities played a role in their nomination to the Terrorist Watchlist.⁸¹ Only U.S. persons barred from air travel get a confirmation that they are on the No Fly List, and if requested, receive additional information supporting their inclusion, but watchlisting standards do not indicate whether such additional information would disclose any First Amendment-related reasons for being listed.⁸²

⁸¹ See, e.g., Eric Halliday & Rachael Hanna, *Adding Domestic Extremists to the No-Fly List*, LAWFARE (May 19, 2021), <https://www.lawfareblog.com/adding-domestic-extremists-no-fly-list> (positing that First Amendment challenges could be absent from prominent watchlisting cases “likely because the plaintiffs do not know and cannot determine whether their speech played a role in their inclusion in these lists or databases.”).

⁸² DHS TRIP Correspondence with the PCLOB (Apr. 25, 2024).



X. TERRORIST WATCHLIST PROCESSES

Terrorist watchlisting involves several processes: nominations of individuals to TIDE; export of terrorist identity information from TIDE to the Terrorist Watchlist for security screening; modifications of records to supplement with additional information or correct errors; and removal of records from the Watchlist when warranted. Further, in the terrorist watchlisting process, the term “nomination” refers not only to submissions of newly acquired terrorist identities information, but also to modifications of existing records, and when required, removals of records.⁸³ The TSC reviews approximately 1,200 records daily, including weekends and holidays, averaging around 438,000 records annually.⁸⁴

A. Nominations

Under the TSC MOU, NCTC provides international terrorist information from its holdings to the TSC on an ongoing basis.⁸⁵ NCTC provides this information either as a nomination for inclusion in the Terrorist Watchlist or as a request for the modification or deletion of an existing Terrorist Watchlist record. The NCTC’s TIDE contains information beyond the information that meets the minimum substantive derogatory and identifying criteria for nominations to the Terrorist Watchlist.⁸⁶ Therefore, before the NCTC’s submission to the TSC, the NCTC and the nominating agency must both ensure that the nomination to be submitted meets those required standards for inclusion in the Terrorist Watchlist⁸⁷ or a recognized exception to the reasonable suspicion standard.⁸⁸ These are the records of individuals who are connected to or associated with terrorists but who may not themselves meet the reasonable suspicion standard.⁸⁹

Nominators must take into consideration any aggravating or mitigating factors that may contextualize or attenuate an individual’s association to terrorism.⁹⁰ Federal departments and agencies submit nominations of known or suspected international terrorists to the NCTC for inclusion in NCTC’s TIDE database. NCTC reviews TIDE entries and transmits entries to TSC that include sufficient identifiers and are supported with information that meet the reasonable suspicion watchlisting standard described below. Similarly, the FBI collects, stores, and forwards

⁸³ Terrorist Screening Ctr. Briefing to the PCLOB (Jan. 2017).

⁸⁴ Terrorist Screening Ctr. Telephone Briefing to the PCLOB (July 2021).

⁸⁵ *Memorandum of Understanding on the Integration and Use of Screening Information to Protect Against Terrorism*, *supra* note 19.

⁸⁶ NCTC Briefing to the PCLOB (March 2018) (concerning NCTC’s mission, legal authorities, and an overview of TIDE).

⁸⁷ *Id.*

⁸⁸ WLAC Meeting with the PCLOB (Jan. 2025).

⁸⁹ TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 2. Requirements for nomination to the Terrorist Watchlist are met when: (1) derogatory information is sufficient to satisfy the reasonable suspicion standard as articulated in the Watchlisting Guidance, and (2) biographic and biometric information are sufficient to identify the watchlisted person.

⁹⁰ *Id.* at 3.



information to the TSC relating to domestic terrorists that may have connections to international terrorism.

Before placing any information into the TSDB, the TSC utilizes a multi-level review process to ensure that the nomination meets the criteria for inclusion. Generally, nominations to the TSDB must satisfy two requirements. First, the facts and circumstances pertaining to the nomination must meet the reasonable suspicion standard of review. Second, the biographic information associated with a nomination must contain sufficient identifying data so that a person being screened can be matched to or disassociated from another watchlisted individual.⁹¹

The TSC reviews each nomination to ensure it meets the watchlisting standard before the record’s inclusion in the Watchlist. During the review process, a TSC analyst is tasked to review every request to add, modify, or delete a Watchlist record to ensure the accuracy of records and the removal of inaccurate records from the Watchlist.⁹² TSC processes approximately 1,200 records a day, including weekends and holidays.⁹³

The table below illustrates total requests to be added to Terrorist Watchlist and rejections from 2016–2022, broken down by fiscal year.⁹⁴

YEAR	ALL NOMINATIONS	ACCEPTED ADD NOMINATIONS	REJECTED NOMINATIONS
2016	383,900	181,800	3,300
2017	525,400	161,900	7,500
2018	343,000	176,600	5,000
2019	379,400	231,900	9,100
2020	375,100	106,500	5,700
2021	419,000	90,200	6,100
2022	244,400	79,700	7,400

B. Modification and Removal Nominations

TSC categorizes nominations as: 1) addition nominations (or new nominations), 2) modification nominations, and 3) deletion nominations.⁹⁵ An overwhelming majority of modification nominations serve to bolster records with additional information. In some circumstances, this may involve the provision of new derogatory information dated after the subject’s initial watchlisting that affects their Watchlist status (e.g., new derogatory information

⁹¹ Piehota Statement, *supra* note 6.

⁹² FED. BUREAU OF INVESTIGATION, TERRORIST SCREENING CTR., TSC NOMINATIONS AND DATA INTEGRITY UNIT STANDARD OPERATING PROCEDURES (2018).

⁹³ Terrorist Screening Ctr. Briefing to the PCLOB (May 2017).

⁹⁴ Terrorist Screening Ctr. Correspondence with the PCLOB (Jan. 2025).

⁹⁵ In some instances, TSC also combines different types of nominations and refers to those as “merge nominations.”



warrants an upgrade from Selectee to No Fly status).⁹⁶ Deletion nominations facilitate the removal of individuals from the Watchlist.⁹⁷

Each nominating agency must have internal procedures to correct or update its information. These procedures include reviewing and issuing retractions or corrections of information that may have been used to support a nomination. When a record is determined to no longer meet the criteria for inclusion in the TSDS, it is removed. This often occurs when new information refutes or discredits the original nomination, or when updates to watchlisting policies affect eligibility for inclusion in the TSDS.⁹⁸

C. Data Export

Only the TSC’s personnel have direct access to the TSDS. Each screening agency’s particular “mission, legal authorities, and information technology requirements” determine the data it receives; thus, each screening agency receives their relevant and appropriate export from the TSDS.⁹⁹

The agencies that receive TSC’s information include DHS for transportation and border screening, the Department of State for passport and visa screening, the FBI’s Criminal Justice Information Services Division for law enforcement screening through the NCIC, and certain foreign partners, as illustrated in the below table.

AGENCY EXPORTS ¹⁰⁰		
AGENCY	DATABASE	SCREENING PURPOSE
State Dept.	CCD CLASS ¹⁰¹	A name check system for U.S. visa and passport applications. It contains millions of records, only a small fraction of which have a nexus to terrorism. The TSC provides names and identifiers of known or suspected terrorists for inclusion in CLASS.

⁹⁶ Terrorist Screening Ctr. Correspondence with the PCLOB (Oct. 22, 2024).

⁹⁷ Terrorist Screening Ctr. Correspondence with the PCLOB (Oct. 30, 2024).

⁹⁸ TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 6.

⁹⁹ Piehota Statement, *supra* note 6.

¹⁰⁰ This list is illustrative but not comprehensive.

¹⁰¹ The acronyms stand for the Consular Consolidated Database (CCD), which feeds the Consular Lookout and Support System (CLASS).



AGENCY EXPORTS ¹⁰⁰		
AGENCY	DATABASE	SCREENING PURPOSE
CBP	TECS ¹⁰²	Information-sharing platform that allows users to access different databases. TECS users can access temporary and permanent enforcement, inspection, and operational records relevant to the antiterrorism and law enforcement mission of CBP and numerous other federal agencies that it supports.
FBI	NCIC	A repository for the FBI’s terrorism lookouts. Federal, state, and local law enforcement agencies query this database. The database is also linked to TECS, allowing TECS users access to the Threat Screening Center File.
TSA	TVS ¹⁰³	Conducts vetting of applicants for credentialed individuals in critical transportation sectors and infrastructure, which provides information to law enforcement and intelligence communities to mitigate threats.
TSA Secure Flight	No Fly	A list of individuals who are prohibited from boarding an aircraft or accessing the sterile area of a U.S. airport. The list has the most stringent substantive derogatory and identifying criteria for inclusion.
	Selectee	A list of individuals who are to receive additional physical screening prior to boarding an aircraft. Second only to No Fly, this list has the most stringent substantive derogatory and identifying criteria for inclusion.
	Expanded Selectee	TSA may designate passengers for enhanced screening who meet the reasonable suspicion standard for TSDB inclusion and for whom the TSDB record contains a full name and date of birth. This is known as the “Expanded Selectee List.” Individuals on the Expanded Selectee List are subject to the same enhanced screening as those on the Selectee List. The difference between the Selectee List and the Expanded Selectee List is that the former requires additional substantive derogatory criteria. The identities of those on the No Fly List, Selectee, and Expanded Selectee Lists are protected as SSI.

¹⁰² The acronym originally stood for the Treasury Enforcement Communications Systems (TECS), which was a computer-based information system designed to identify individuals and businesses suspected of involvement in violations of federal law. It was transferred to DHS and is now referred to as TECS.

¹⁰³ The acronym stands for Transportation Vetting Systems.



AGENCY EXPORTS ¹⁰⁰		
AGENCY	DATABASE	SCREENING PURPOSE
Foreign Partners		HSPD-6 ¹⁰⁴ directs the U.S. Government to share certain terrorism information with foreign partners for counterterrorism screening.

D. Screening and Encounters

An encounter is an event in which an individual is identified during a screening process to be a potential match to an individual in the TSDS. An encounter can be a face-to-face interaction (e.g., inspection at a U.S. port of entry, visa interview, or traffic stop by local law enforcement), electronic (e.g., Electronic System for Travel Authorization (ESTA) application or a visa application), or paper-based (e.g., review of a visa petition). When an encounter occurs, the department, agency, or encountering officer contacts the TSC to confirm whether the individual matches the record in the TSDS. If the individual is confirmed to match the record in the TSDS, each encountering agency will take appropriate action, according to its internal procedures and policies and consistent with the application of its expertise and regulatory and statutory requirements, to serve its mission.¹⁰⁵

¹⁰⁴ Homeland Security Presidential Directive/HSPD-6, *supra* note 19.

¹⁰⁵ TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 5.



XI. U. S. PERSON RECORDS

Special handling is warranted for U.S. persons who are nominated to the Watchlist. A formal process, including a required annual review by nominating agencies, has been implemented to facilitate compliance with guidance and accommodate proper interagency coordination.¹⁰⁶

¹⁰⁶ *Id.* at 6.



XII. CONSEQUENCES OF BEING WATCHLISTED

The direct consequences of being watchlisted vary across screening agencies and are specific to the agencies’ mission needs and systems used that include data exported from the Watchlist, as illustrated in the table below:¹⁰⁷

AGENCY	POTENTIAL EFFECTS ON WATCHLISTED INDIVIDUALS
TSA (No Fly)	Impact: Loss of right to travel by air for flights to, from, and over the United States. When the subject attempts to fly, they will be denied boarding.
TSA (Selectee)	Impact: Secondary screening prior to boarding a flight and a Federal Air Marshall may be on board aircraft during flight.
TSA (Expanded Selectee)	Impact: Secondary screening prior to boarding a flight.
FBI (NCIC)	Impact: Possible further questioning if encountered by law enforcement. Officers encountering the subject will be instructed to call TSC, which will direct the officer to either keep the encounter short or question the subject in order to obtain more intelligence.

Anecdotal testimonies reported by civil liberties advocates point to additional potential consequences, such as being shunned socially, denied employment, or subjected to harsher treatment when encountering the criminal justice system or law enforcement.¹⁰⁸ The PCLOB has not independently investigated these allegations, however.

¹⁰⁷ WLAC Correspondence with the PCLOB (Jan. 8, 2025).

¹⁰⁸ See, e.g., *The Intercept: Terrorist Watchlist Errors Spread to Criminal Rap Sheets*, THE BRONX DEFENDERS (March 16, 2016), <https://www.bronxdefenders.org/the-intercept-terrorist-watchlist-errors-spread-to-criminal-rap-sheets> (discussing the need for greater factual predicates and thresholds—which the sufficient identifying information standards are supposed to ensure—to prevent erroneous placement on the Terrorist Watchlist and to avoid adverse civil liberties impacts, such as improper incarceration or loss of job prospects).



XIII. REDRESS

Individuals who experienced travel difficulties such as denial or delay of airline boarding, denial or delay of “entry into or exit from the United States at a port of entry or border crossing,” or repeated referral to additional (secondary) screening may submit a redress application to DHS. DHS TRIP is the primary point of contact for receiving and reviewing individuals’ redress applications.¹⁰⁹ DHS is not, however, the only agency involved in the redress process—many agencies are involved in assessing a TRIP application. The TSC is the primary agency that handles Watchlist-related applications after they are referred from DHS, as described below.

DHS TRIP

TRIP was launched in 2007 in response to a congressional mandate directing the Secretary of Homeland Security to “establish a timely and fair process for individuals” to seek redress if they “believe they have been delayed or prohibited from boarding a commercial aircraft because they were wrongly identified as a threat” by TSA, CBP, or any other office or component of DHS.¹¹⁰ Travelers need not apply for redress with those individual components; DHS TRIP is the single point of contact for travel difficulties, and provides an opportunity to submit and/or correct information contained in the Watchlist with a qualifying travel difficulty.¹¹¹

Any individual—whether U.S. person or not—can apply for redress via the DHS TRIP web portal or by email. Individuals may submit “any information that may be relevant to the travel difficulties experienced,”¹¹² throughout the duration of their pending application.¹¹³ Additionally, applicants may employ counsel at their own expense during the redress process.¹¹⁴ Individuals may seek redress for a variety of travel-related difficulties, ranging from inability to print a boarding pass to believing their travel difficulties are due to their presence on the Watchlist. Across the range of DHS TRIP applications filed for all types of travel-related difficulties, DHS reports that only about 2% of individuals who file DHS TRIP applications have some connection to the Watchlist.¹¹⁵ In 2022, of the 370 people who filed complaints stating that they believed they were on the Watchlist, only 9 actually were on it.

¹⁰⁹ These applications are referred to interchangeably as “TRIP inquiries,” “TRIP applications,” “redress applications,” or “redress inquiries” regardless of the agencies involved in adjudicating the application because DHS TRIP is the primary point of contact.

¹¹⁰ 49 U.S.C. § 44926(a); *see* Implementing Recommendations of the 9/11 Commission Act, Pub. L. 110-53, 121 Stat. 482, § 1606(a) (Aug. 3, 2007).

¹¹¹ 49 U.S.C. § 44903(j)(2)(C)(iii)(I).

¹¹² Ex. 7 at 7, *Elhady v. Kable*, 933 F.3d 208 (4th Cir. 2021). Note that U.S. persons who question their status on the No Fly List may request and receive information regarding their status, but this does not apply to non-U.S. persons in such scenarios.

¹¹³ Terrorist Screening Ctr. Briefing to the PCLOB (Jan. 28, 2024).

¹¹⁴ 49 C.F.R. § 1560.203 (2023).

¹¹⁵ Terrorist Screening Ctr. Briefing to the PCLOB (Jan. 28, 2024).



A. The DHS TRIP Application Process

The process for handling a DHS TRIP inquiry is as follows: the DHS TRIP office first reviews the application for sufficiency. If more information or documentation is required to review the application, the DHS TRIP office will contact the applicant to supply the missing information. Once the DHS TRIP office considers the application sufficient, the DHS TRIP office determines whether the inquiry concerns the Watchlist, including whether the applicant is a possible match to a watchlisted identity. If the Watchlist is not implicated, the DHS TRIP office will task offices and agencies with equities in the redress inquiry, and after those reviews are completed will resolve the DHS TRIP inquiry with an appropriate final determination letter.¹¹⁶

If the Watchlist is implicated, the DHS TRIP office sends the inquiry to the TSC Redress Office to verify that the applicant is a match to the watchlisted identity. When verifying that the applicant is a match, the TSC Redress Office reviews the available information regarding the applicant's encounter with the screener at the relevant transportation hub. That information may include notes on how a match was determined. However, the TSC Redress Office does not receive documentation on how the screener assessed an individual was on the Watchlist.¹¹⁷

When the DHS TRIP Office sends the inquiry to the TSC Redress Office for identity verification, it also sends the inquiry to any other applicable agencies. Inquiries are sent to agencies other than TSC because those other agencies often own records related to the applicant's Watchlist status.¹¹⁸ Moreover, if the TSC ends up modifying the applicant's Watchlist status, it is important that the other components also review and/or update their records.¹¹⁹ It is also possible that the applicant may have a non-Watchlist related record that the record owner must address.¹²⁰

If the TSC Redress Office determines that the applicant is not a match to a watchlisted identity, TSC informs DHS TRIP. In those misidentification incidents, DHS TRIP will send a letter to the applicant informing them that their experience was most likely caused by random selection or misidentification.¹²¹ The TSC Redress Office will also review inquiries that, after review, are determined not to be related in any way to the Watchlist. The DHS TRIP office then resolves these inquiries either by itself or in conjunction with another agency. If the applicant is a match to the Watchlist, the TSC Redress Office begins conducting Stage One of its review.

¹¹⁶ DHS TRIP Correspondence with the PCLOB (Apr. 9, 2024).

¹¹⁷ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).

¹¹⁸ DHS TRIP Correspondence with the PCLOB (Apr. 25, 2024).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*



1. TSC Stage One Review of Redress Applications

When a traveler's inquiry appears to concern data in the TSDB, DHS TRIP refers the case to the TSC Redress Unit for research into the matter. Upon receipt of a DHS TRIP inquiry, the TSC Redress Unit reviews the available information, including the information and documentation provided by the traveler, and determines 1) whether the traveler is an exact match to an identity in the TSDB; and, if an exact match exists, 2) whether the identity should continue to be in the TSDB or whether the status should be changed (for example, downgraded from No Fly List).¹²²

If the redress inquiry is a match to an identity in the TSDB, the TSC Redress Unit researches the record and underlying derogatory information, coordinates with the agency that nominated the complainant to the Terrorist Watchlist to ensure the information is current and reliable, and, if warranted, updates incorrect or outdated Terrorist Watchlist data that may cause the individual difficulty during a screening process. Upon the conclusion of TSC's review, the TSC Redress Unit advises DHS TRIP representatives of the outcome so they can directly respond to the complainant. In some cases, the TSC determines that the individual should remain watchlisted, but may also modify the individual's Watchlist status accordingly.¹²³

In most cases, the DHS TRIP Office concludes Stage One review by sending the applicant a final decision letter that neither confirms nor denies the applicant's Watchlist status. This marks the end of the redress process. However, if the applicant is a U.S. person on the No Fly List, the DHS TRIP Office issues one of two different types of letters to the applicant. If, at the completion of the Stage One, TSC concludes that the U.S. person should no longer be on the No Fly List, DHS will issue the applicant a letter informing them that "[a]t this time the U.S. Government knows of no reason, related to your inquiry, that you should be unable to fly."¹²⁴ Conversely, if TSC's Stage One review does not result in a determination that the applicant should be removed, then DHS sends the applicant a letter that informs the applicant that they are on the No Fly List and notifies them that they may ask for additional information within 30 days. If the applicant fails to respond within the permitted time, the inquiry is terminated.¹²⁵ If the applicant opts to receive additional information, Stage Two review is initiated.¹²⁶

¹²² Piehota Statement, *supra* note 6.

¹²³ *Id.*

¹²⁴ DHS TRIP Correspondence with the PCLOB (Nov. 20, 2024).

¹²⁵ Since 2015, roughly a third of applicants who receive a notification that they are on the No Fly List (31.3%) have chosen not to respond. The majority, or 67.8% of inquiries, choose to move on from Stage 1 to Stage 2. Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).

¹²⁶ *Id.*; Terrorist Screening Ctr. Briefing to the PCLOB (Jan. 28, 2024).



2. TSC Stage Two Review of Enhanced Redress Applications

Stage Two review of DHS TRIP inquiries continues an “enhanced review.”¹²⁷ As explained, review of DHS TRIP inquiries for applicants who are not U.S. persons maintained on the No Fly List ends after Stage One review. Thus, in order to receive Stage Two of enhanced review, an applicant must: 1) be a U.S. person; 2) be denied boarding due to the applicant’s presence on the No Fly List when holding a valid airline ticket;¹²⁸ 3) properly submit a DHS TRIP inquiry; and 4) remain on the No Fly List following Stage One review.¹²⁹

Stage Two entails a “fresh look” at the information submitted by the applicant, the derogatory and exculpatory information submitted by the nominating agency, and any mitigating information. The TSC Redress Office provides the DHS TRIP Office with unclassified summary indicating why the applicant was placed on the No Fly List.

If TSC concludes after Stage Two review that the U.S. person should no longer be on the No Fly List, DHS will issue the applicant a letter informing them that they have been removed and “will not be placed back on the No Fly List based on currently available information.”¹³⁰ If TSC determines that the applicant should remain on the No Fly List, the DHS TRIP Office sends the applicant a letter identifying the specific criteria under which the individual was placed on the No Fly List, including the unclassified summary provided by the TSC Redress Office.¹³¹ DHS also informs the applicant that they may rebut the information and request additional review within 30 days. If the applicant fails to respond within the permitted time, the inquiry is terminated.¹³² If the applicant submits rebuttal information, Stage Three review is initiated.¹³³

3. TSC Stage Three Review of Redress Applications

Stage Three is the last component of enhanced review. It begins with the TSC Redress Office receiving and reviewing the rebuttal information that has been provided by the applicant to determine if that information has any impact on the derogatory information that the nominating agency originally provided. The nominator also reviews and addresses the rebuttal information provided by the applicant, and is given the opportunity to provide any new, additional or

¹²⁷ TSC implemented the enhanced review process in 2015 after a federal district court tasked the TSC with fashioning a review process that provided notice to U.S. persons on the No Fly List that was reasonably calculated to allow those applicants to “submit evidence relevant to the reasons for their respective inclusions on the No-Fly List” and include that evidence in the record for administrative and judicial review. *Latif v. Holder (Latif III)*, 28 F. Supp. 3d 1134, 1162 (D. Or. 2014).

¹²⁸ The applicant need not specifically allege that they are on the No Fly List in order to receive enhanced review—their presence on the No Fly List suffices. Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).
¹²⁹ *Id.*

¹³⁰ DHS TRIP Correspondence with the PCLOB (Nov. 20, 2024).

¹³¹ *Id.*

¹³² Since 2015, over 80% of applicants did not submit more information. Thus, only about 17% of Stage Two inquiries moved to Stage Three. Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).

¹³³ *Id.*; Terrorist Screening Ctr. Briefing to the PCLOB (Jan. 28, 2024).



exculpatory information. Next, the TSC Redress Office conducts de novo review of all of the information received up until the time of its review and determines whether the information provided by the applicant and the nominator has any impact on the applicant's Watchlist status.

In turn, the DHS TRIP Office forwards the recommendation—including the reasoning, the applicant's complete DHS TRIP file, and all information submitted by the applicant—to the TSA Administrator. Upon review of these materials, the TSA Administrator could determine that more information is needed, in which case they would remand the case to the TSC Redress Office with a request for further information or clarification. Otherwise, the TSA Administrator issues a final order maintaining or removing the applicant from the No Fly List. To date, no Stage Three inquiries reviewed by the TSA Administrator have resulted in an applicant being downgraded or removed from the No Fly List.¹³⁴

Upon the TSA Administrator's resolution of the inquiry, the DHS TRIP Office informs the applicant of the outcome of the order. The letter notifies the applicant of their right to appeal to the D.C. Circuit or court of appeals for the circuit in which the individual resides or has their principal place of business.¹³⁵ If the applicant is retained on the No Fly List, the letter contains the basis for the decision “considering the national security and law enforcement interests at stake.”¹³⁶

B. Redress Inquiry Statistics

The PCLOB has been provided with redress inquiry statistics by DHS TRIP and TSC.¹³⁷ Some of the statistics, as reported by the two agencies, are approximate numbers. For example, DHS TRIP receives approximately 20,000 to 30,000 applications annually,¹³⁸ and sends 400–600 of those to TSC annually. In addition, while DHS provided statistics for Calendar Year (CY) 2022, TSC provided statistics for Fiscal Year (FY) 2023, which accounts for slight discrepancies in numbers.

1. *DHS TRIP Statistics*

Of the 20,000 to 30,000 DHS TRIP applications per year,¹³⁹ less than 2% of those are linked to the Terrorist Watchlist. As shown in the table below DHS TRIP applications include a range of inquiries, such as travelers who were unable to print a boarding pass, as well as travelers who incorrectly believe they are on the Watchlist. Those that are linked to the Watchlist—

¹³⁴ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024). However, before the redress process was amended in 2014, the TSC Redress Office, on only one occasion, removed an applicant from the Watchlist based on review of the available information, including the information that the applicant had submitted at Stage Two review. Terrorist Screening Ctr. Correspondence with the PCLOB (Jan. 8, 2025).

¹³⁵ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 25, 2024); see 49 U.S.C. § 46110(a).

¹³⁶ *Overview of The U.S. Government's Terrorist Watchlisting Process and Procedures as of April 2024*, supra note 42, at 8; see Ex. 7 at 9, *Elhady v. Kable*, 933 F.3d 208.

¹³⁷ The PCLOB did not review the TSC's handling of any individual redress cases as part of this investigation.

¹³⁸ These numbers are estimated, as the number of travelers and submitted inquiries varies.

¹³⁹ These numbers are estimated, as the number of travelers and submitted inquiries varies.



approximately 400 to 600 cases per year, although the reported numbers in certain years fall under 400 or above 600—are sent to the TSC Redress Office. In FY 2023, DHS’s average time closing out all types of DHS TRIP applications was 42 days. Part of that 42-day average includes Stage One cases not involving U.S. persons on the No Fly List, which on average, took about 66 days to close out.¹⁴⁰ Enhanced review cases are not included in this average.

In CY 2022, DHS reported receiving 22,147 cases and closing 20,536 cases (93%) across all categories of DHS TRIP complaints. Applicants requested information from DHS TRIP for a variety of reasons, most often related to flight or customs and border-related incidents. Applicants can check all boxes that apply when requesting information within the DHS TRIP portal. The below table provides a breakdown of these requests by incident type. For flight related requests, “aviation-related screening or incident” was the most common, whereas “entry, immigration, customs, or border incident” was provided as the most common customs or border related request. The table shows the breakdown of incident types captured by these requests as a proportion of all incidents.¹⁴¹

DHS TRIP INQUIRIES BY COMPLAINT, CY2022	
DESCRIPTION	NUMBER OF INQUIRIES
<i>Flight Related</i>	
Aviation-related screening or incident	5,685
Additional pre-board screening	3,310
Received an ‘SSSS’ on boarding pass	3,189
Unable to print boarding pass	2,696
Delayed by an official/agent	1,462
Other incident	883
Denied boarding ¹⁴²	633

¹⁴⁰ DHS TRIP Correspondence with the PCLOB (Nov. 20, 2024).

¹⁴¹ Applicants can check more than one box when submitting a request to DHS TRIP.

¹⁴² The individuals denied boarding were not necessarily prohibited from flying due to their Watchlist status. Air carriers can deny boarding to anyone whose behavior was unruly during previous air travel. Such behavior can range from being inebriated on a flight to assaulting a flight attendant.



DESCRIPTION	NUMBER OF INQUIRIES
<i>Customs/Border Related</i>	
Entry, immigration, customs, or border incident	14,743
Secondary screening clearing U.S. CBP	8,447
Electronic System for Travel Application denied	3,947
Denied entry into the United States	1,532
Got 'X' at kiosk – Automated Passport Control (APC) or Global Entry	1,308
Given an info sheet by a CBP officer	839
Foreign student or exchange visitor	49

2. TSC Redress Statistics

What is described in this section encompasses the entire interagency process; TSC is not solely responsible for resolutions or delays in resolutions of redress applications. As stated above, TSC generally receives 400–600 redress applications a year from DHS TRIP. TSC reportedly succeeds in completing Stage One review of U.S. person No Fly cases in 120 days in at least 90% of cases. Per DHS’s reporting, over the last five years, the median response times for completing Stage One and receiving confirmation of placement on the No Fly List averaged less than six months.¹⁴³ However, TSC has not set a timeline for completing Stage Two and Three reviews, stating that the amount of time varies for each case based on the extent of interagency coordination and examination required.¹⁴⁴ Over the last five years, the median response time for completing Stage Two averaged approximately one year, and completion of Stage Three averaged approximately one year.¹⁴⁵ As of April 2024, the oldest Watchlist-related DHS TRIP inquiry is more than four years old (1,504 days). The next oldest case is nearly three years old (1,023 days), and the next two are each about a year and a half old (592 days and 562 days).¹⁴⁶

¹⁴³ DHS TRIP Correspondence with the PCLOB (Nov. 20, 2024).

¹⁴⁴ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).

¹⁴⁵ DHS TRIP Correspondence with the PCLOB (Nov. 20, 2024).

¹⁴⁶ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).



For Fiscal Years 2022 (from December 7, 2021—the date on which DHS TRIP data migrated to a new software platform—to September 30, 2022) and 2023 (from October 1, 2022 to September 30, 2023), the numbers in the second column in the table below reflects the aggregate number of U.S. persons (U.S. citizens and persons with legal permanent resident status) who had TSDS status at the time they made a DHS TRIP inquiry. Out of that number, the remaining columns in the table below reflect the respective number of individuals who, during the course of the DHS TRIP redress process, had no changes to their Watchlist status made, were removed from the TSDS, or had their TSDS status downgraded.

DHS TRIP OUTCOMES FOR U.S. PERSONS – TSDS				
FISCAL YEAR	TOTAL NUMBER OF DHS TRIP REDRESS INQUIRIES BY U.S. PERSONS ON THE TSDS	NUMBER OF U.S. PERSON TSDS-RELATED INQUIRIES WITH NO CHANGES TO THEIR WATCHLIST STATUS	NUMBER OF U.S. PERSON INQUIRIES REMOVED FROM THE TSDS DURING THE COURSE OF THE REDRESS PROCESS	NUMBER OF U.S. PERSON INQUIRIES DOWNGRADED IN THE TSDS DURING THE COURSE OF THE REDRESS PROCESS
2022 ¹⁴⁷	99	65 (65.6%)	34 (34.3%)	0 (0%)
2023	169	106 (62.7%)	54 (31.9%)	9 (5.3%)

For the combined Fiscal Years 2022 and 2023 (measured from December 7, 2021—the date on which DHS TRIP data migrated to a new software platform—to September 30, 2023), the number in second column in the table below reflects the aggregate number of U.S. persons (U.S. citizens and persons with legal permanent resident status) who had No Fly List status at the time they made a DHS TRIP inquiry. Out of that number, the third and fourth columns in the below table reflect the number of individuals who, respectively, were maintained on the No Fly List at the conclusion of the DHS TRIP redress process, and who were removed from the No Fly List during the course of the DHS TRIP process.

¹⁴⁷ From December 7, 2021 through September 30, 2022.



DHS TRIP OUTCOMES FOR U.S. PERSONS – NO FLY LIST			
FISCAL YEAR	TOTAL NUMBER OF DHS TRIP REDRESS INQUIRIES BY U.S. PERSONS ON THE NO FLY LIST	NUMBER OF U.S. PERSON NO FLY LIST RELATED INQUIRIES MAINTAINED ON THE NO FLY LIST DURING THE COURSE OF THE REDRESS PROCESS	NUMBER OF U.S. PERSON INQUIRIES REMOVED FROM THE NO FLY LIST DURING THE COURSE OF THE REDRESS PROCESS
2022 ¹⁴⁸ & 2023	18	10 (55.5%)	8 (44.4%)

For the Fiscal Years 2017 through 2023 (October 1 to September 30, for each year in question), the second and third columns in the table below reflect, respectively, the total number of DHS TRIP inquiries made by persons (inclusive of both U.S. persons and non-U.S. persons) who were near or exact matches to the TSDS at the time they made the inquiry and the number of individuals who were removed from the TSDS during the course of the DHS TRIP redress process.

The fourth and fifth columns in the table below reflect, respectively (and to the extent such statistics are available) the total number of DHS TRIP inquiries made by persons (inclusive of both U.S. persons and non-U.S. persons) who were near or exact matches to the No Fly List at the time they made the inquiry and the number of individuals who were removed from the No Fly List during the course of the DHS TRIP redress process.

¹⁴⁸ From December 7, 2021 through September 30, 2022.



DHS TRIP TSDS RELATED INQUIRIES AND REMOVALS – FY2017-2023				
FISCAL YEAR	TSDS- RELATED INQUIRIES	TSDS REMOVALS	NO FLY LIST-RELATED INQUIRIES	NO FLY LIST REMOVALS
2017	300	42		
2018	323	29		
2019	268	50		
2020	306	50		
2021	233	41		
2022	367	63	27	8
2023	535	98	61	20
Total	2,332	373	88	28

TSC reviewed a total of 20 enhanced cases (that is, inquiries submitted by U.S. persons challenging their No Fly List status) in FY 2023.¹⁴⁹ Fourteen of those 20 cases received Stage One review only and those applicants did not request further review of their cases. Six of the 20 cases requested further review and reached Stage Two review. One applicant was maintained on the No Fly List, two were downgraded to a different subset, and three remain under review.¹⁵⁰ None of the cases received Stage Three review in FY 2023. The below table shows the progression of enhanced review cases in FY 2023. Since 2015, roughly 68% of Stage One review cases progress to Stage 2, and about 17% of those Stage Two cases progress to Stage Three review.¹⁵¹

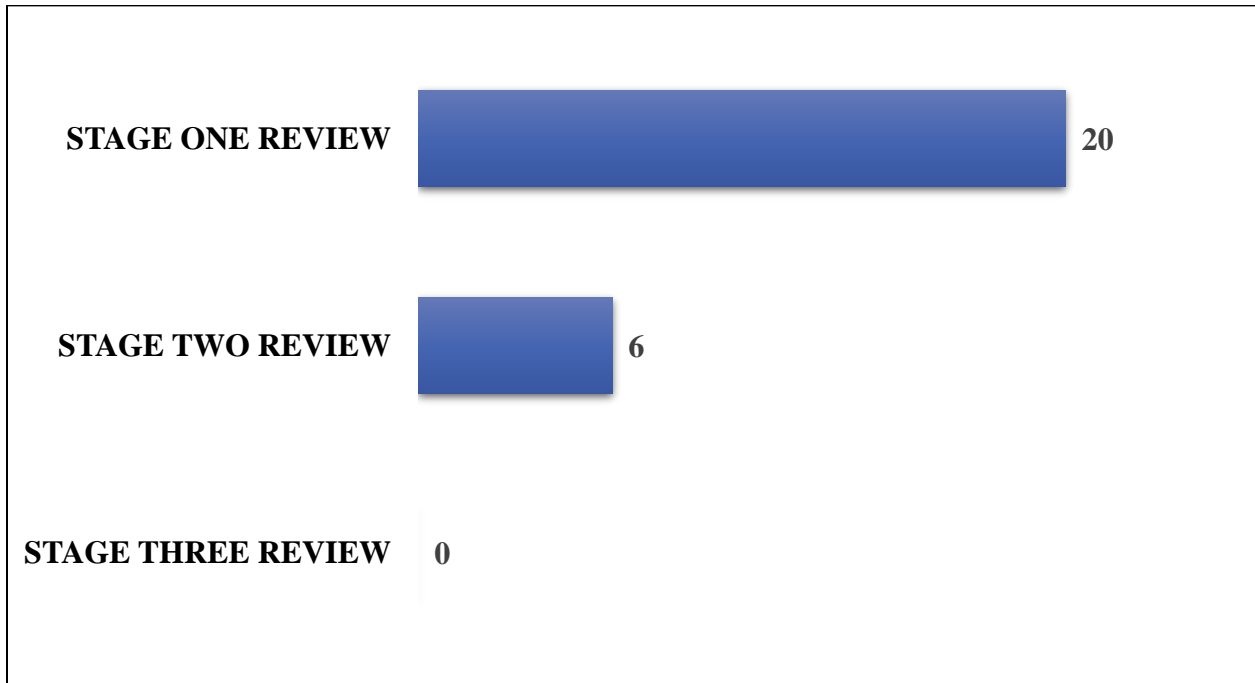
¹⁴⁹ From December 7, 2021 through September 30, 2022.

¹⁵⁰ Terrorist Screening Ctr. Correspondence with the PCLOB (Oct. 21, 2024).

¹⁵¹ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).



PROGRESSION OF ENHANCED REVIEW CASES, FY 2023





XIV. RECOMMENDATIONS

After examining the policies and procedures of the Terrorist Watchlist Enterprise, the Board offers seven recommendations which aim to: ensure regular re-evaluation of the sufficient identifying information criteria for Watchlist inclusion; refine the definition of “current” information for watchlisting purposes and require regular periodic reviews of Watchlist records; investigate and develop metrics to gauge the effectiveness of the expanded use of mitigating information in watchlisting; ensure a more robust review of U.S. persons’ records in the screening database; provide the public with additional transparency about the Terrorist Watchlist and the redress process; improve the timeliness and transparency of the redress process and provide a second level of review to U.S. persons on the Selectee List who are repeatedly sent to secondary screening; and improve the notice requirements of the redress process for U.S. persons.

RECOMMENDATION #1:

Continue to re-evaluate the sufficient identifying information standard in conjunction with periodic reviews of watchlisting standards. Monitor and assess with what frequency, and in what contexts, the new application of descriptive information as a criterion to meet the sufficient identifying information standard 1) permits the listing of individuals at the nominating stage who otherwise could not be added to the Watchlist, and 2) enables additional verification of individuals’ identity during encounters with government personnel.¹⁵²

For an effective screening and vetting process, sufficient identifying information must be broad enough to cover KSTs for whom little identifying information is available. Overly rigorous sufficiently identifying information criteria heightens the risk that persons who pose threats might not be appropriately watchlisted. At the same time, the criteria for listing cannot be so lenient as to 1) facilitate individuals’ erroneous placement on the Terrorist Watchlist, and 2) increase the risk of false positive identity matches. Ensuring that the sufficient identifying information standards are appropriately rigorous helps to eliminate the creation of erroneous watchlisting records, ensure resources are directed to those records that indicate more viable threats, and could reduce the number of cases where travelers are unnecessarily delayed for questioning.

¹⁵² The PCLOB has provided a more detailed version of this Recommendation 1 to the agencies involved in developing and implementing watchlisting standards, as well as to Congress. That version includes further specificity on the recent guidance change to what is considered sufficient identifying information that the Board recommends should be evaluated in operation. Although the information is not classified, some has been marked as Law Enforcement Sensitive (LES). Agencies have discretion to downgrade this information, but have not done so, and the PCLOB did not receive permission for public release of that more detailed description of this Recommendation.



Misidentifications stemming from insufficient identifying information negatively impact travelers. Frontline screeners contact the TSC Call Center any time they encounter an individual whose record is a hit against the Terrorist Watchlist.¹⁵³ As of 2022, roughly 40% of the time that screeners contact the TSC Call Center about a traveler whose name is similar to one in the Terrorist Watchlist, the traveler is not the person actually listed in the Terrorist Watchlist.¹⁵⁴

The PCLOB welcomes the watchlisting community's efforts to strengthen the sufficient identifying information criteria for watchlisting, to improve determinations of whether the individual encountered is a match to a Watchlist record.

The 2023 standards, however, for the first time incorporate the use of a new type of information as part of the sufficient identifying information criteria, which has the potential to expand listings.

Given the novelty of including this type of information for identification, the PCLOB recommends that the government monitor and assess with what frequency, and in what contexts, the inclusion of this criterion 1) permits listing of individuals at the nominating stage who otherwise could not be added to the Watchlist and 2) enables government personnel encountering such an individual to verify that individual's identity when they would not otherwise have been able to do so.

The PCLOB urges that within two years, TSC report to the PCLOB with documentation describing this assessment, including both statistical information and examples. In addition, based on this assessment, the agencies participating in the WLAC should provide further clarification in future Watchlisting Guidance on how this type of information can be used as part of minimum identifying information. Such reporting and clarification will enhance the PCLOB's ability to assess the inclusion of this criterion in the future PCLOB Recommendations Assessment Report covering implementation of the PCLOB's recommendations in this Terrorist Watchlist Report.

The PCLOB further recommends that the watchlisting community continue to conduct in-depth re-evaluations of what constitutes sufficiently identifying information in conjunction with periodic reviews of the Watchlisting Guidance. These re-evaluations should involve leveraging the latest research on identity management and identity resolution.¹⁵⁵

¹⁵³ *Overview of The U.S. Government's Terrorist Watchlisting Process and Procedures as of April 2024*, *supra* note 42, at 5.

¹⁵⁴ From the Terrorist Watchlist's inception in 2003 until 2007, DOJ's OIG found that 43.4% of the names referred to the TSC Call Center were not a match to those identities on the Watchlist. U.S. DEP'T OF JUST., OFF. OF THE INSPECTOR GEN., AUDIT REPORT 07-41, FOLLOW-UP AUDIT OF THE TERRORIST SCREENING CENTER (2007), at vi, <https://oig.justice.gov/reports/FBI/a0741/final.pdf>. As of 2022, that number has remained largely the same: 41% of encounters referred were not a match. Terrorist Screening Ctr. Correspondence with the PCLOB (Nov. 2022).

¹⁵⁵ *See, e.g.*, U.S. Census Bureau, *Record Linkage & Machine Learning*, <https://www.census.gov/topics/research/stat-research/expertise/record-linkage.html> (last visited Jan. 14, 2025); Peter



RECOMMENDATION #2:

To ensure the Terrorist Watchlist information is accurate, thorough, and reliable, the agencies involved in the Watchlist’s operation should: 1) refine what they consider current information in their watchlisting standards and 2) regularly and periodically review the Watchlist, including retroactively applying any revised standard to each watchlisted individual.

HSPD-6 and the TSC MOU require that the federal agencies charged with protecting the homeland from terrorism maintain thorough, accurate, and current information about KSTs.¹⁵⁶ As former TSC Deputy Director Timothy Groh stated: “Without current, reliable, and accurate information in the TSDB, the purpose of sharing information in order to protect the national security of the United States would be defeated.”¹⁵⁷

1) Refine standards for what is considered current information

For watchlisting purposes, each nominating agency considers information to be current if personnel reasonably believe it to be relatively recent.

The PCLOB assesses that information on KSTs may sometimes be outdated because the Watchlisting Guidance prioritizes acquiring new terrorism information over reviewing the existing information that may no longer be accurate. However, older information may of course be relevant to a determination of placement on the Watchlist depending on the circumstances.¹⁵⁸

The PCLOB urges the agencies involved in the Watchlist’s operation seek ways to provide more specificity to standards for assessing information currency, to minimize the likelihood of misidentifying watchlisted persons or maintaining individuals on the Watchlist when there is no longer a reasonable basis for their continued inclusion. The watchlisting community should include these updated standards as a definition in the Watchlisting Guidance when it is next updated. TSC should then review all records to see whether the information in them is current according to that definition and update the records accordingly.

2) Require regular and periodic reviews of the Watchlist

In addition, the WLAC should require regular and periodic reviews of all watchlisted individuals and take corrective action as appropriate. At present, TSC conducts such reviews, but without any regular or established schedule. The Board urges that the WLAC assess the burden of

Christen, *Data Linkage: The Big Picture*, HARVARD DATA SCI. REV. (Nov. 1, 2019), <https://hdr.mitpress.mit.edu/pub/8fm8lo1e/release/4>.

¹⁵⁶ 2023 Watchlisting Guidance, *supra* note 3; Homeland Security Presidential Directive/HSPD-6, *supra* note 19.

¹⁵⁷ Groh Decl. at 6, *Wagafe v. Biden*, No. 17-CV-00094-LK, 2024 WL 2274349 (W.D. Wash. Dec. 1, 2020), ECF No. 341-7.

¹⁵⁸ *See Busic v. Transportation Sec. Admin.*, 62 F.4th 547, 550-51 (D.C. Cir. 2023).



such a review and implement a regular schedule and methodology of review that would be practical for TSC to meet, consistent with TSC's national security mission. Adding a requirement for regular periodic reviews will help further ensure that watchlisting records are accurate, thorough, and reliable. As part of that schedule of reviews, the WLAC should require TSC to apply the updated sufficient identifying information standard retroactively to older records as they are reviewed, as soon as is practicable, to ensure the records are consistent with current guidance. Accordingly, TSC should remove any individuals who no longer qualify for inclusion based on the revised standard, following existing procedures for removal.

RECOMMENDATION #3:

Investigate and develop metrics to gauge how effective the expanded use of mitigating information has been in improving the accuracy, reliability, or credibility of Terrorist Watchlist records, including whether such revised policies have had a beneficial or detrimental effect on national security.

The current guidance establishes that all watchlisting decisions should be sensible, articulable, and must be commensurate with all available information, including an assessment of both derogatory information and substantive mitigating information. The watchlisting community provides personnel with examples of substantive mitigating information.

The PCLOB recommends that the watchlisting community develop and implement a mechanism to measure to what extent the expansion of "substantive mitigating criteria" improves the accuracy, reliability, or credibility of Terrorist Watchlist records, including whether such revised policies have had a beneficial or detrimental effect on national security. This should include regular and periodic audits to review watchlisting decisions and might include developing a mechanism for tagging records that involved consideration of substantive mitigating criteria.

RECOMMENDATION #4:

Prioritize and enhance existing measures for the review and purging of U.S. person records, as appropriate, to ensure that U.S. person information in the Terrorist Watchlist is thorough, accurate, and current.¹⁵⁹

U.S. person information that is shared and processed during the Terrorist Watchlist lifecycle should be handled with particular care. Indeed, the watchlisting community has special

¹⁵⁹ The PCLOB has provided a more detailed version of this Recommendation 4 to the agencies involved in developing and implementing the Watchlisting Guidance, as well as to Congress. Although the information is not classified, some has been marked as Law Enforcement Sensitive (LES) or Sensitive Security Information (SSI). Agencies have discretion to downgrade this information, but have not done so, and the PCLOB did not receive permission for public release of that more detailed description of this Recommendation.



handling procedures for and conducts periodic reviews of U.S. person nominations.¹⁶⁰ Such special handling procedures are critical, but more can be done to ensure that the watchlisting community properly handles U.S. person information and accurately evaluates U.S. person nominations. To facilitate the removal of erroneously watchlisted individuals and outdated listings, and to ensure the Terrorist Watchlist's information accuracy and reliability, the PCLOB recommends a more proactive review of mitigating information in terrorist watchlisting determinations.

U.S. persons have consistently represented less than 0.5% of the total Terrorist Watchlist population,¹⁶¹ currently fewer than 6,000 records.¹⁶² For watchlisting purposes, U.S. persons include U.S. citizens, lawful permanent residents, and anyone whose U.S. person status cannot be fully confirmed.

Although few U.S. person records are in the Terrorist Watchlist, the watchlisting community should prioritize the review of these records, continuously vet underlying reliability of sources of information about U.S. persons, and promptly remove U.S. persons from the Terrorist Watchlist if they no longer meet the requirements for inclusion.

First, the watchlisting community should update the Watchlisting Guidance to formalize the TSC's practice of reviewing U.S. person records every six months for quality control and accuracy, and make it a requirement.¹⁶³ Currently, the watchlisting community requires nominating agencies to review their U.S. person nominations at least annually. Requiring the TSC to review the Terrorist Watchlist's U.S. person records, as they do now by practice, would provide an additional layer of protection against mishandling of U.S. person information and reduce the risk of erroneous watchlisting. The TSC should analyze the results of those reviews to identify weaknesses and significant patterns, which can then be used by the TSC to inform remedial actions, such as additional training and refining quality-control processes and requirements.

Second, the watchlisting community should elaborate on the special handling for U.S. persons who are nominated to the watchlist. As discussed above, watchlisting standards require that legal counsel at nominating agencies must review agencies' U.S. person nominations. The PCLOB recommends that the watchlisting community update these standards to make clear that this legal review must be a separate review in addition to the agencies' usual nomination review.

¹⁶⁰ TSC TRANSPARENCY DOCUMENT, *supra* note 57, at 6.

¹⁶¹ MAJORITY STAFF REPORT, U.S. S. COMM. ON HOMELAND SEC. AND GOVERNMENTAL AFF., MISLABELED AS A THREAT: HOW THE TERRORIST WATCHLIST AND GOVERNMENT SCREENING PRACTICES IMPACT AMERICANS (2023), at 6, 35, https://www.hsgac.senate.gov/wp-content/uploads/Mislabeled-as-a-Threat_Public_Report-2.pdf; PCLOB Staff Calls with the Terrorist Screening Ctr. Through Calendar Year 2021.

¹⁶² WLAC Meeting with the PCLOB (Jan. 2025)

¹⁶³ See Ex. 7 at 6, *Elhady v. Kable*, 933 F.3rd 208; FED. BUREAU OF INVESTIGATION, TERRORIST SCREENING CTR., NOMINATIONS AND DATA INTEGRITY UNIT, IMPLEMENTATION OF TERRORIST WATCHLIST, U.S. PERSON SIX MONTH TIMER (2014).



The PCLOB also recommends that this requirement should be expanded to TSC for its review of U.S. person nominations.

RECOMMENDATION #5:**Publish annual transparency reports to Congress, oversight bodies, and the public to promote accountability and public understanding of the Terrorist Watchlist, including the redress process.**

The watchlisting community should work to increase transparency of the Terrorist Watchlist, including the redress process. As we have stated before, “[t]ransparency is one of the foundations of democratic governance. Our constitutional system of government relies upon the participation of an informed electorate. This in turn requires public access to information about the activities of the government. Transparency supports accountability.”¹⁶⁴

The TSC should create and release annual transparency reports to better inform Congress, TSC’s oversight bodies, and the public about how the U.S. Government operates and manages the Terrorist Watchlist, and what ongoing internal oversight exists to ensure that it is abiding by its own quality assurance requirements. To further transparency efforts, TSC could add the FBI’s Privacy and Civil Liberties Unit and DOJ’s Office of Privacy and Civil Liberties to their existing list of agencies conducting oversight.¹⁶⁵ Since its inception, the Terrorist Watchlist has been the subject of various public reports by entities outside the watchlisting community that describe the general structure and operation of the Terrorist Watchlist,¹⁶⁶ but there are no reports from the TSC or the watchlisting community that contain up-to-date statistics or important information about the operation of the Terrorist Watchlist.

A transparency report would also align with the norms articulated in the Principles of Intelligence Transparency for the Intelligence Community.¹⁶⁷ The first two principles are particularly relevant here:

¹⁶⁴ U.S. PRIV. AND C.L. OVERSIGHT BD., REPORT ON THE TELEPHONE RECORDS PROGRAM CONDUCTED UNDER SECTION 215 OF THE USA PATRIOT ACT AND ON THE OPERATIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT (2014), at 14, https://documents.pclob.gov/prod/Documents/OversightReport/ec542143-1079-424a-84b3-acc354698560/215-Report_on_the_Telephone_Records_Program.pdf.

¹⁶⁵ Fed. Bureau of Investigation, *Terrorist Screening Center*, <https://www.fbi.gov/about/leadership-and-structure/national-security-branch/tsc> (last visited Jan. 14, 2025).

¹⁶⁶ See, e.g., CONG. RSCH. SERV., THE TERRORIST SCREENING DATABASE AND PREVENTING TERRORIST TRAVEL (2016), <https://crsreports.congress.gov/product/pdf/R/R44678>; GAO 08-110, TERRORIST WATCH LIST SCREENING: OPPORTUNITIES EXIST TO ENHANCE MANAGEMENT OVERSIGHT, REDUCE VULNERABILITIES IN AGENCY SCREENING PROCESSES, AND EXPAND USE OF THE LIST, *supra* note 2; 2005 DOJ OIG Audit Report, *supra* note 14.

¹⁶⁷ OFF. OF THE DIR. OF NAT’L INTEL., PRINCIPLES OF INTELLIGENCE TRANSPARENCY FOR THE INTELLIGENCE COMMUNITY, https://www.dni.gov/files/documents/ppd-28/FINAL%20Transparency_poster%20v1.pdf (last visited Jan. 14, 2025).



The Intelligence Community (IC) will:

1. Provide appropriate transparency to enhance public understanding about:
 - a. the IC’s mission and what the IC does to accomplish it (including its structure and effectiveness);
 - b. the laws, directives, authorities and policies that govern the IC’s activities; and
 - c. the compliance and oversight framework that ensures intelligence activities are conducted in accordance with applicable rules.
2. Be proactive and clear in making information publicly available through authorized channels, including taking affirmative steps to:
 - a. provide timely transparency on matters of public interest;
 - b. prepare information with sufficient clarity and context, so that it is readily understandable;
 - c. make information accessible to the public through a range of communications channels, such as those enabled by new technology;
 - d. engage with stakeholders to better explain information and to understand diverse perspectives; and
 - e. in appropriate circumstances, explain why information cannot be made public.¹⁶⁸

A notable example of these principles in practice—and an illustration of the utility of timely statistics—is the ODNI’s Annual Statistical Transparency Report (ASTR).¹⁶⁹ The ASTR, mandated by the Foreign Intelligence Surveillance Act (FISA), “provides statistics and contextual information concerning how the Intelligence Community uses [FISA] and certain other national security authorities,” as well as “the rules that are designed to ensure compliance with the Constitution and laws of the United States.”¹⁷⁰ And while Congress has added reporting requirements over time, it is worth noting that the IC has included information that was not statutorily required to be reported.

¹⁶⁸ *Id.*

¹⁶⁹ Press Release, Off. of the Dir. of Nat’l Intel., *ODNI Releases Annual Intelligence Community Transparency Report* (Apr. 29, 2022), <https://www.dni.gov/index.php/newsroom/press-releases/press-releases-2022/3609-odni-releases-annual-intelligence-community-transparency-report-1692377382>.

¹⁷⁰ OFF. OF THE DIR. OF NAT’L INTEL., ANNUAL STATISTICAL TRANSPARENCY REPORT REGARDING THE INTELLIGENCE COMMUNITY’S USE OF NATIONAL SECURITY SURVEILLANCE AUTHORITIES, CALENDAR YEAR 2021 (2022), at 14, https://www.dni.gov/files/CLPT/documents/2022_ASTR_for_CY2020_FINAL.pdf.



With the IC's Principles of Intelligence Transparency in mind, and ODNI's Annual Statistical Transparency Report as one possible model, subject to national security limitations the PCLOB recommends that the TSC publish an annual transparency report that contains information, including:

- A description of the structure of the TSC;
- The authorities relied on by the TSC in operating the Terrorist Watchlist;
- An explanation of the watchlisting process, including a general description of the requirements to be added and removed from the Terrorist Watchlist (i.e. reasonable suspicion and sufficient identifying information criteria), and any relevant updates since the previous Watchlisting Guidance iteration;
- Notice of new uses of exceptions to the reasonable suspicion standard before they are implemented;
- An overview of the TSC's regularized audit, compliance, and oversight processes;
- An overview of efforts to establish consistent and dedicated oversight of privacy and civil liberties safeguards;
- A discussion of compliance incidents per reporting period and steps taken to mitigate and correct them to prevent recurrence; and
- Statistics, consistent with national security limitations, such as those that disclose the number of:
 - Identities on the Terrorist Watchlist in total and by category (e.g., KSTs, cases involving exceptions to the reasonable suspicion standard) at the end of the last calendar year;¹⁷¹
 - Watchlisted identities on the No Fly List at the end of the last calendar year;
 - Watchlisted identities on the Selectee List at the end of the last calendar year;
 - Watchlisted identities on the Expanded Selectee List at the end of the last calendar year;
 - Identities added to the Terrorist Watchlist in the last calendar year;
 - Identities removed from the Terrorist Watchlist in the last calendar year;

¹⁷¹ However, personally identifiable information or details about specific compliance incidents should not be included.



- Total persons seeking redress from DHS TRIP in the last calendar year;
- Total DHS TRIP requests referred to the TSC in the last calendar year;
- Numbers broken down by type of all final dispositions of redress complaints referred to the TSC in the last calendar year;
- Identities nominated to the Terrorist Watchlist in last calendar year;
- Number of nominations rejected by the TSC in last calendar year;
- Number of U.S. person identities in each category (e.g., No Fly List, Selectee List, Expanded Selectee List, cases involving exceptions to the reasonable suspicion standard, overall Terrorist Watchlist).

Such transparency reporting would inform the public about the operation of the TSC and the Terrorist Watchlist and the commitment to privacy and civil liberties protections and would promote accountability among the watchlisting community.

RECOMMENDATION #6:

Improve the DHS TRIP process for cases related to the Terrorist Watchlist¹⁷² by committing to: 1) reasonable timelines for resolving TSA Selectee and TSA No Fly redress applications; 2) clearly informing applicants of their ability to hire counsel and evaluating the feasibility of permitting redress applicants to be represented by security-cleared counsel; and 3) providing more robust review for redress applications filed by U.S. persons on the Selectee List who are repeatedly sent to secondary screening.

1) WLAC member agencies should establish reasonable timelines for adjudicating TSA No Fly and TSA Selectee redress applications and require WLAC member agencies to commit to timely coordination and resolution of these applications.

Persons who believe they may be on the Terrorist Watchlist erroneously should receive timely resolution of their applications for redress. Nominations to the Watchlist solely based on race, ethnicity, national origin, religious affiliation, or First Amendment-protected activities are prohibited. An individual could nonetheless be erroneously watchlisted—or improperly placed in

¹⁷² DHS TRIP is a single point of contact that is available to individuals who have experienced a variety of travel-related difficulties in the United States, such as an inability to print a boarding pass, the delay or denial of boarding on an aircraft, a referral to secondary screening at a port of entry, or the denial of Trusted Traveler Programs including TSA PreCheck, Global Entry, SENTRI, and FAST. The DHS TRIP website has two separate redress application processes: DHS TSA TRIP handles traveler inquiries related to domestic travel, and DHS CBP TRIP handles inquiries related to international travelers. The PCLOB's recommendation on redress in this report applies only to applications involving the Watchlist and its subsets.



a heightened subset—due to mistake¹⁷³ or misidentification. While the evidence available to us does not suggest that redress applications are consistently being handled with undue delay, the watchlisting community could improve the redress process by committing to reasonable public timelines for applicants seeking review of their No Fly or Selectee status.

U.S. persons on the No Fly List, in particular, suffer a potentially substantial liberty deprivation by being unable to travel by plane.¹⁷⁴ The government therefore owes U.S. persons a duty to ensure that those persons are not on the list erroneously. Even if resolution of a U.S. person’s redress application is that the applicant is ultimately retained on the Watchlist, all agencies involved in TSC’s review process should commit to timely adjudication of the application.

As discussed above, U.S. persons challenging their inclusion on the No Fly List may receive up to three stages of review (based upon initial resolution and applicant election to proceed to further stages), and all other redress cases referred to TSC receive one stage of review. For the category of U.S. person redress applicants on the Watchlist who are challenging No Fly List status, TSC reported to the PCLOB that it completes Stage One review for 90% of applications within four months.¹⁷⁵ Roughly one third of complaints from U.S. persons challenging No Fly status are resolved at Stage One and end there. For the applicants who choose to proceed to the next level of review, Stage Two, the resolution period is often more than six months.¹⁷⁶ TSC reported to the PCLOB that the oldest Watchlist-related DHS TRIP application still pending has been in process for four years, and the next three oldest have been pending adjudication for one and a half to three years.¹⁷⁷ For context, the total number of applications by U.S. persons on the No Fly List at all of these stages is small. In FY 2023, there were only 20 such applicants. It may be the case that those applications that proceed to Stages Two and Three are the most complex and require a longer time

¹⁷³ For example, a graduate student was improperly added to the No Fly List as a result of an FBI agent incorrectly filling out a form. It took nearly eight years of litigation to contest her Watchlist status and obtain a court ruling correcting the mistake. *Ibrahim v. U.S. Dep’t of Homeland Sec.*, 669 F.3d 983 (9th Cir. 2012).

¹⁷⁴ Courts have specifically held that the No Fly List can cause a deprivation of U.S. persons’ constitutional right to travel in the context of international travel. *See Latif III*, 28 F. Supp. 3d at 1148-49 (explaining that whereas there may be viable alternative methods for traveling domestically, air travel is practically the only method for international travel, and concluding that “Plaintiffs have constitutionally-protected liberty interests in traveling internationally by air”); *Kashem v. Barr*, 941 F.3d 358, 378 (9th Cir. 2019) (noting that plaintiffs have a strong liberty interest in both domestic and international travel, and while they “may not ‘possess a fundamental right to travel by airplane,’ in many instances air travel constitutes the only practical means of traveling across great distances, especially internationally” but finding that “the freedom to travel abroad . . . is subordinate to national security and foreign policy considerations; as such, it is subject to reasonable government regulation.”) (citing *Gilmore v. Gonzales*, 435 F.3d 1125, 1135 (9th Cir. 2006); *Haig v. Agee*, 453 U.S. 280, 306, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981)).

¹⁷⁵ Terrorist Screening Ctr. Correspondence with the PCLOB (Apr. 9, 2024).

¹⁷⁶ Since 2015, 67.8% of Stage One cases move to Stage Two, and 16.9% of Stage Two cases move to Stage Three. For FY 2023, a smaller percentage were in Stage Two; the “enhanced review” numbers (U.S. persons on the No Fly List) were: 14 Stage One cases, six Stage Two cases, and zero Stage Three cases. *Id.*

¹⁷⁷ *Id.*



to investigate, as input or further information is often required from other components or agencies. Nonetheless, these applicants should not have to wait inordinate amounts of time to resolve their applications and should receive formal notification of a projected completion date.

As to other categories of the Terrorist Watchlist, courts have held that persons on the Selectee List are not deprived of a constitutional liberty interest by undergoing extra screening and delays in travel.¹⁷⁸ Nor have courts held that non-U.S. persons on the No Fly List have constitutionally protected interests that are implicated by watchlisting. Nonetheless, the redress process for those cases should also be resolved promptly. Doing so allows applicants who are inappropriately on the Selectee List to travel unencumbered and allows screening agencies to prioritize their resources toward combating actual threats. TSC does not appear to have a goal for completion of redress applications submitted by U.S. persons challenging their Selectee status or for applications submitted by non-U.S. persons challenging any Watchlist subset. (Indeed, TSC did not report to the PCLOB a breakdown of average timelines for resolution for the different categories of applications.)

Therefore, the PCLOB urges the watchlisting community to set and adhere to formal goals for timely adjudication of redress applications, as appropriate for different categories of applicants, and report those goals publicly.

2) DHS TRIP should notify redress applicants, in clear and conspicuously situated language, that they may hire counsel to assist them in the redress process. In addition, the watchlisting community should evaluate the feasibility of permitting security-cleared counsel to represent applicants.

Representation by counsel is already permitted to persons filing redress applications, but applicants are not explicitly informed of this option. Currently, the DHS TRIP website states only that an “authorized representative” may file DHS TRIP requests on an applicant’s behalf and provides a form that authorizes release of information to another person.¹⁷⁹ The PCLOB recommends that DHS TRIP modify this language to notify applicants, in clear and conspicuously situated language, that they may hire counsel to assist them in the redress process. This should be done not only in a highly visible part of the website that DHS TRIP applicants will access—such as the questionnaire that precedes access to the DHS TRIP portal—but should also be reiterated when DHS notifies an applicant that it has received their application.

¹⁷⁸ See *Elhady v. Kable*, 933 F.3rd at 213; *Abdi v. Wray*, 942 F.3rd 1019, 1024-25 (10th Cir. 2019); *Beydown v. Sessions*, 871 F.3rd 459, 469 (6th Cir. 2018).

¹⁷⁹ U.S. Dep’t of Homeland Sec., *Step 2: How to Use DHS TRIP*, <https://www.dhs.gov/step-2-how-use-dhs-trip> (last visited Jan. 14, 2025); see U.S. Dep’t of Homeland Sec., *Form 590: Authorization to Release Information to Another Person*, <https://www.dhs.gov/sites/default/files/publications/dhs-form-590.pdf> (last visited Jan. 14, 2025).



Moreover, the adjudication of DHS TRIP inquiries could be bolstered by the participation of security-cleared counsel for the applicant, should an applicant choose to hire such an attorney. Because applicants are not provided with the classified information that may be relevant to their case, they may be unable to access information that could assist them in contesting their listing. Having a representative who can access classified information on the applicant's behalf—without disclosing the classified information to the applicant—may facilitate appropriate resolution of their case. The PCLOB appreciates that allowing security-cleared counsel to access such information may present challenges for government personnel handling redress cases. However, due to the considerable assistance that cleared counsel might provide applicants, the watchlisting community should explore the feasibility of allowing the participation of security-cleared counsel and report its findings to the PCLOB.

3) TSC should provide more robust review for redress applications filed by U.S. persons on the Selectee List who are repeatedly sent to secondary screening.

Currently, U.S. persons challenging their inclusion on the No Fly List receive up to three levels of review by TSC, including ultimately by the TSA Administrator. Other Watchlist redress cases receive only a single level of review by TSC, however the Board recommends that TSC provide a second level of review to U.S. persons on the Selectee List who have been repeatedly sent to secondary screening—if such an applicant chooses to appeal an initial determination. The Board believes that this would not be a major burden on the TSC particularly based on the current number of U.S. persons on the Selectee List who file unsuccessfully for redress and could choose to appeal an initial determination.

RECOMMENDATION #7:

Improve the DHS Traveler Redress Inquiry Program by strengthening notice requirements for cases involving U.S. persons on the Selectee List who have repeatedly been sent to secondary screening.

The DHS TRIP redress process provides little transparency to complainants. As described above, the only people who may receive any notice regarding their Watchlist status are U.S. persons challenging their inclusion on the No Fly List. Other U.S. persons who may be subject to secondary screening, potentially due to their inclusion on the Selectee List, receive only minimal information about their status on the Watchlist, making it difficult for these complainants to have a meaningful opportunity to challenge that status.

In 2009, DHS's own Inspector General (IG) released a report that provided a comprehensive evaluation of TRIP. One of the DHS IG's main findings was that DHS TRIP "does not provide a desirable level of transparency to redress seekers," writing:



Letter responses to redress-seekers are one of DHS TRIP’s primary means of communication with the public. These responses are not as transparent as they could be about the basis for travelers’ difficulties or Government actions to address them. DHS TRIP generally provides [redress seekers] with minimal information about the Government’s review or adjudication of their inquiries. With few exceptions, redress-seekers receive response letters that do not reveal the basis for their travel difficulties, the action the Government took to address those difficulties, or other steps that they may take to help themselves in the future. This ultimately leaves travelers without a clear understanding of how their travel difficulty arose, whether they are likely to face future problems, and what course of action they might take next.¹⁸⁰

Since that time, DHS has implemented changes to provide notice to U.S. persons challenging their inclusion on the No Fly List as described above. Specifically, the government implemented these procedures to provide notice for U.S. persons on the No Fly List in response to the court’s finding in *Latif v. Holder* (D. Or. 2014) that the previous lack of notice was unconstitutional.¹⁸¹ However, little has changed with regard to notice for other Watchlist redress-seekers since that 2009 report. As a result, the current system still leaves other U.S. person travelers who are subject to secondary screening, in the words of the 2009 IG report, “without a clear understanding of how their travel difficulty arose, whether they are likely to face future problems, and what course of action they might take next.”¹⁸²

We recognize that while U.S. persons should be able to exercise their right to travel freely, the government has national security interests in maintaining secrecy of its Watchlist, so that individuals on the Watchlist are not tipped off to their inclusion. To strike a balance between respecting U.S. persons’ rights and protecting national security interests, we recommend that the government expand the notice requirement beyond U.S. persons challenging their inclusion on the No Fly List and also provide notice (upon submission of a TRIP complaint) to U.S. persons on the Selectee List who have repeatedly been sent to secondary screening. These individuals are already likely to suspect that they are on a watchlist and would not be “tipped off” by receiving confirmation from the government that they are on the Selectee List, as opposed to a “neither confirm nor deny” response.

¹⁸⁰ U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., OIG-09-103, EFFECTIVENESS OF THE DEPARTMENT OF HOMELAND SECURITY TRAVELER REDRESS INQUIRY PROGRAM (2009), at 89, https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG-09-103r_Sep09.pdf.

¹⁸¹ *Latif III*, 28 F. Supp. 3d at 1153–54.

¹⁸² U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., OIG-09-103, EFFECTIVENESS OF THE DEPARTMENT OF HOMELAND SECURITY TRAVELER REDRESS INQUIRY PROGRAM (2009), at 89, https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG-09-103r_Sep09.pdf.



ANNEX A: SEPARATE STATEMENT OF CHAIR SHARON BRADFORD FRANKLIN AND BOARD MEMBER EDWARD W. FELTEN¹

We join the Board’s report in full, but write in response to the Separate Statement of Member Beth Williams. Specifically, we write to disagree with her characterization of Recommendation 7 and to explain how the Recommendation is carefully crafted to improve civil liberties safeguards without unduly increasing national security risks.

The Board conducted a multi-year review of the Terrorist Watchlist program, involving substantial staff commitment and effort during this time. As part of the process of developing both the report and its recommendations, the Board carefully evaluated both the potential national security risks as well as the civil liberties implications. This included multiple briefings and rounds of questions and answers from TSC and other agencies, including TSA, examining the inner workings of the Watchlist and the DHS TRIP redress process, as well as the Watchlisting Guidance—including the rationale for the latest updates to the Watchlisting Guidance in 2023. The Board weighed the potential impact of all recommendations thoroughly before finalizing them.

One of the issues the Board assessed was whether current procedures for notice and redress appropriately balance national security concerns with privacy and civil liberties interests. The Board unanimously agreed that the redress process can and should be improved to provide more robust safeguards for civil liberties, and Recommendation 6 reflects that assessment. A majority of the Board also concluded that, as a policy matter, current procedures do not provide sufficient notice to U.S. persons who file DHS TRIP applications seeking redress related to the Watchlist.

On the national security side of the balance, we recognize that the government has important interests in protecting the secrecy of the Watchlist, to avoid tipping off individuals as to their inclusion and interfering with government investigations. For this reason, we do not recommend that the government provide confirmation of their Watchlist status to individuals on the Selectee List after they are sent to secondary screening once or twice. Yet, travelers who are repeatedly subject to secondary screening will likely already be on alert. Indeed, it would be reasonable for someone who is repeatedly sent to secondary screening, whatever the reason, to expect that they will again be stopped and any risk that they may choose to alter their behavior to evade such security measures is already present. We conclude that confirming for such individuals that they are on the Selectee List would not increase these security risks in any meaningful way.

As for the civil liberties interests at stake, notice is a critical safeguard in the U.S. legal system that enables individuals to pursue meaningful legal challenges in a wide variety of contexts,

¹ We thank the agencies for their work conducting accuracy and classification review of this Watchlist Report and all the separate statements.



and a lack of notice impedes meaningful redress. However, in most instances, individuals will never be able to receive notice of whether they are included on the Watchlist, even where they experience a denial of boarding or repeated secondary screenings and submit a redress application through DHS TRIP. The only exception is the narrow category of U.S. persons who challenge their inclusion on the No Fly List. Most concerning, the U.S. persons who are repeatedly subject to secondary screening due to their presence on the Selectee List never receive such notice.

After careful consideration of the national security and civil liberties implications, we crafted Recommendation 7 to provide additional transparency to a limited subset of U.S. person complainants, who otherwise lack any notice regarding their Watchlist status. Our recommendation is far more nuanced and limited than Member Williams acknowledges in her statement. Although Member Williams reaches different conclusions from her balancing of the national security and civil liberties interests at stake, her arguments about the risks of this limited recommendation are exaggerated and may lead to unnecessary public concern. Ultimately, the majority of the Board agreed that expanding notice to this particular subset of the Selectee population—U.S. persons on the Selectee List who are repeatedly sent to secondary screening and submit applications for redress through DHS TRIP—is both feasible and consistent with U.S. national security interests.

Recommendation 7 is narrowly tailored because it does not apply to the entire Selectee population but only to individuals who: 1) are U.S. persons; 2) have been repeatedly sent to secondary screening; and 3) have filed a relevant DHS TRIP complaint. Indeed, only a small percentage of watchlisted people would be entitled to learn that they were on the Watchlist under this recommendation since as of 2024, fewer than 6,000 U.S. persons were on the Terrorist Watchlist, and only a subset of these were on the Selectee List. In fact, only 99 U.S. persons on the Selectee List applied for redress in 2023, the most recent year for which we have data.² Notably, of the 99 U.S. persons on the Selectee List who sought redress through DHS TRIP in 2023, 16% were removed from the list—and that was only after one stage of review³—showing that redress can be valuable for a significant portion of these Selectees.⁴

Demonstrating the Board’s deliberate approach, we limited this recommendation to U.S. persons. U.S. persons have a recognized right to travel, and even where not constitutionally required, policies that improve notice to U.S. persons increase their ability to protect their rights. Further, we limited the recommendation to U.S. persons who are “repeatedly” sent to secondary screening. The Board considered the fact that as far back as 2009, the DHS IG reported that

² Watchlist Report, *supra*, at pp. 36 tbl.

³ In the Board’s Recommendation 6, we advocate for TSC to provide an additional level of review to U.S. persons on the Selectee list. *See id.* at 48-51.

⁴ Additionally, in 2022 the corresponding numbers were 85 U.S. persons on the Selectee list seeking redress through TRIP, and 15 removals after stage 1 review, or 17.6% removed. *See id.* at 47-48.



“attentive passengers can reasonably infer whether they are on the selectee list,”⁵ in evaluating the risk of whether providing additional notice to individuals on the Watchlist would tip them off. On the other hand, notice to this category of individuals will still assist them in pursuing meaningful redress opportunities. Not only would they be better able to pursue redress through DHS TRIP, but such notice could also better enable them to pursue redress through the courts or other public processes such as complaints to Congress. In addition, rather than dictating a precise number of secondary screenings required to receive such notice, the Board’s use of the term “repeatedly” provides the government with some flexibility in implementing the recommendation.

Thus, the Board carefully tailored Recommendation 7 to apply to a limited population, considered the fact that such a population likely could reasonably infer they were on the Watchlist already, and determined that the value of increased transparency and providing a meaningful opportunity to challenge one’s Watchlist status outweighed the national security risk in these situations.

⁵ U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., OIG-09-103, EFFECTIVENESS OF THE DEPARTMENT OF HOMELAND SECURITY TRAVELER REDRESS INQUIRY PROGRAM (2009), at 92, https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG-09-103r_Sep09.pdf.



ANNEX B: SEPARATE STATEMENT OF BOARD MEMBER TRAVIS LEBLANC

Travel is far more than a weekend leisure activity; it is essential to the lives of billions of commercial air travelers across the globe. In 2024, it is estimated that 9.4 billion travelers will transit the world through commercial aviation.¹ People rely on air travel to obtain life-saving healthcare, conduct international commerce, care for or visit loved ones in remote areas, pursue the opportunity of higher education, and beyond. Without access to air travel, much of this essential travel (especially international, but also domestic) is infeasible, if not impossible. For these reasons, numerous U.S. courts have recognized that Americans have protected liberty interests in traveling by air.² The consequences of being improperly added to the Watchlist and thereby deprived of the liberty of air travel can be devastating.

The Watchlist serves a true national security purpose in preventing terrorist attacks on planes, but the Watchlist can fulfill this goal only if U.S. government suspicion hones in on the correct individuals. There are approximately 1.1 million persons presently on the Watchlist.³ The vast majority are non-U.S. persons. 1.1 million is a lot of people. How long have each of these individuals been on the Watchlist? On what basis were they nominated to the Watchlist? Is their inclusion on the Watchlist consistent with current Watchlist Guidance? These are all questions that go directly to the efficacy of the current Watchlist and the Board's multiyear investigation of it.

It is beyond obvious that individuals who are on the Watchlist will quickly become aware that they are on the Watchlist when they are denied boarding or are informed by an airline employee or law enforcement that they cannot travel. It is also highly likely that air travelers who see "SSSS" on their boarding pass every time they fly and who are subjected to additional screening thereby will also assume that they have been watchlisted. It is critical that the Watchlist contain individuals who are truly threats to homeland security. Thus, I fully concur with Member Beth A. Williams that "[t]o be effective, the Watchlist must be correct. Maintaining a well-functioning redress process is therefore necessary—for both civil liberties and national security reasons—for those who believe they have been misidentified or are otherwise improperly included on the watchlist."⁴ There can be no doubt that a bloated and outdated Watchlist that triggers unnecessary screenings and wastes government time and resources is a disservice to national security as well as civil liberties.

¹ AIRPORTS COUNCIL INT'L, ANNUAL WORLD AIRPORT TRAFFIC REPORT (2023), <https://aci.aero/2023/09/27/global-passenger-traffic-expected-to-recover-by-2024-and-reach-9-4-billion-passengers/>.

² See, e.g., *Latif v. Holder (Latif III)*, 28 F. Supp. 3d 1134, 1149 (D. Or. 2014); *Ibrahim v. U.S. Dep't of Homeland Sec.*, 669 F.3d 983 (9th Cir. 2012).

³ As of August 26, 2024, the Terrorist Watchlist contained records of █████ persons.

⁴ Statement of Member Beth A. Williams, at C-7.



In today's report, the Board has sought to bolster both civil liberties and national security by making recommendations that aim to keep the Watchlist tailored, updated, and accurate. These recommendations will better protect U.S. persons and non-U.S. persons alike. Cleaning up the Watchlist will help government agents save time as well as more efficiently and thoroughly review known or suspected terrorists. Re-reviewing the existing Watchlist against updated standards should help mitigate outdated Watchlist inclusions and their ripple effects (such as misidentifications based upon mistaken watchlisting). More proactive and regular reviews of the Watchlist will ensure that the information is current and reliable overall.

Presently, there are under 6,000 U.S. person records included on the Terrorist Watchlist.⁵ That is approximately 6,000 U.S. persons bearing constitutional rights who the U.S. government has (secretly) determined are known or suspected terrorists who could be denied access to commercial air travel, or who could undergo invasive screening again and again. That's approximately 6,000 U.S. persons whose liberty interests have been deprived without the government needing to present or establish any evidence in a court of law. Invasive searches, extended law enforcement stops, harassment, heightened surveillance, and of course stigmatization are all additional consequences that individuals face as a result of their inclusion on the Watchlist, whether rightfully or not.⁶ While there are important reasons for components of the Watchlist to remain secret, there are also very important countervailing interests undergirding a redress process that permits impacted U.S. persons to notice of their inclusion on the Watchlist, an opportunity to challenge or rebut that determination (with or without counsel of their choosing), and to have the government in a timely manner adjudicate any such challenges.⁷ In today's report, the Board has also included important recommendations to improve the redress process for U.S. persons. The two redress recommendations (Recommendations 6 and 7) are very important and I want to thank my fellow Board members for closely examining the DHS TRIP redress process at my urging.

Though non-U.S. persons do not share in the full suite of American constitutional rights, the President has by Executive Order recently extended some redress protections to individuals from "qualifying states." Executive Order 14086, on "Enhancing Safeguards for United States Signals Intelligence Activities," which was signed by President Biden on October 7, 2022, creates an independent and binding mechanism that permits individuals from qualifying countries (designated by the Attorney General) to seek redress if they believe their personal data was collected through U.S. signals intelligence in a manner that violates U.S. law.⁸ Thus far, the

⁵ There are approximately █████ non-U.S. persons on the Watchlist.

⁶ See, e.g., Ahmad Chebli, *I Refused to Become an FBI Informant and the Government Put Me on the No Fly List*, AM. C.L. UNION (Apr. 26, 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>; *Ibrahim*, 669 F.3d at 983.

⁷ See *Latif III*, 28 F. Supp. 3d at 1161 ("[W]ithout proper notice and an opportunity to be heard, an individual could be doomed to indefinite placement on the No-Fly List.").

⁸ Sec. 4(d) of E.O. 14086 states that a "covered violation" means a violation that:

(i) arises from signals intelligence activities conducted after the date of this order regarding data transferred to the United States from a qualifying state after the effective date of the Attorney General's designation for such state, as provided in section 3(f)(i) of this order;



Attorney General has designated our allies the European Union, Iceland, Lichtenstein, Norway, United Kingdom, and Switzerland as “qualifying countries” under Section 3(f) of E.O. 14086.⁹ Individuals from these countries and regional economic integration organization may “obtain independent and binding review and redress of ‘qualifying complaints’ that their personal information, collected through U.S. signals intelligence, was collected or handled by the U.S. Government in violation of applicable U.S. law.”¹⁰

As the Board’s report lays out, Watchlist nominations come from a variety of intelligence sources, including signals intelligence.¹¹ Signals intelligence information may be processed, used, and shared by the U.S. government for a wide variety of purposes,¹² including informing Watchlist determinations. While E.O. 14086 does not explicitly provide redress for Watchlist determinations, the E.O. would seem to extend to Watchlist nominations and/or determinations insofar as they process or rely upon signals intelligence information of individuals from “qualifying states.”¹³ In this regard, it would be prudent to either extend equivalent Watchlist redress rights to such individuals through DHS TRIP, or to permit them to challenge Watchlist determinations as part of

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- (ii) adversely affects the complainant's individual privacy and civil liberties interests; and
 - (iii) violates one or more of the following:
 - (A) the United States Constitution
 - (B) the applicable sections of FISA or any applicable FISC-approved procedures;
 - (C) Executive Order 12333 or any applicable agency procedures pursuant to Executive Order 12333;
 - (D) this order or any applicable agency policies and procedures issued or updated pursuant to this order (or the policies and procedures identified in section 2(c)(iv)(A) of this order before they are updated pursuant to section 2(c)(iv)(B) of this order);
 - (E) any successor statute, order, policies, or procedures to those identified in section 4(d)(iii)(B)–(D) of this order; or
 - (F) any other statute, order, policies, or procedures adopted after the date of this order that provides privacy and civil liberties safeguards with respect to United States signals intelligence activities within the scope of this order, as identified in a list published and updated by the Attorney General, in consultation with the Director of National Intelligence.

Exec. Order No. 14086, 87 Fed. Reg. 62283, 62283-84, at Sec. 4(d) (Oct. 7, 2022).

⁹ *See id.*

¹⁰ OFF. OF THE DIR. OF NAT’L INTEL., OFF. OF C.L., PRIV., AND TRANSPARENCY, EXECUTIVE ORDER 14086: SIGNALS INTELLIGENCE REDRESS MECHANISM, THE ROLE OF THE ODNI CLPO, https://www.dni.gov/files/CLPT/documents/Fact_Sheets/The_Role_of_the_ODNI_CLPO_FAQs.pdf (last visited Jan. 17, 2025).

¹¹ *See* Watchlist Report, *supra*.

¹² Legitimate objectives include (but are not limited to) protecting against terrorism, espionage, and transnational criminal threats, for example. Exec. Order 14086, *supra* note 8, at Sec. 2(b)(i).

¹³ As the Board’s report states, NCTC’s TIDE is the source for the Terrorist Watchlist, and NCTC is mandated to provide the TSC with access to all appropriate information or intelligence in the NCTC’s custody, possession, or control that the TSC requires to perform its functions. NCTC’s holdings include signals intelligence data, though the Board does not have a breakdown of what types of intelligence Watchlist nominations come from. Further, it appears that Watchlist records do not always contain information regarding where the initial nomination came from, making it a potential challenge to track whether certain nominations were based on signals intelligence or other types of intelligence.



the newly-created E.O. 14086 redress process, where those Watchlist determinations rely on signals intelligence.¹⁴

While I fully support the Board's report and its recommendations, I would have gone further than the Board's Recommendation 7 to encourage notice and redress measures for individuals from "qualifying states" designated by the Attorney General under E.O. 14086.¹⁵ These individuals are afforded notice and redress rights in highly-related contexts and, at least in some circumstances, would seem to be entitled to similar protections under E.O. 14086.

Finally, I share the very serious concerns raised by Chair Sharon Bradford Franklin and Member Ed Felten with regard to Member Williams's careless aspersions about the Board simply because the majority disagreed with her as to the value of notice to the "small" number of U.S. persons who file redress applications as part of the DHS TRIP process.¹⁶ Member Williams dismisses that it is beyond reasonable dispute that these individuals are highly likely to know that they are on the Watchlist when they have been unable to check in for any commercial flights or they have repeatedly seen the letters SSSS on every boarding pass they have received. Notice and an opportunity to challenge government restraints on liberty are basic due process protections and bedrock principles upon which our democracy rests. All but one member of the Board supported Recommendation 7. Two of us were not fully supportive of the final language in Recommendation 7. I would have gone further than the Board; Member Williams would not. However, I am heartened that we reached bipartisan agreement on all the other recommendations and language in the report. That we disagree on one recommendation is not a recipe for doom, gloom, and the end of the country. As General George S. Patton has been credited for saying, "If everyone is thinking

¹⁴ By providing redress to Europeans in particular, this extension could also have the benefit of buttressing the European Union–U.S. Data Privacy Framework and supporting an "adequacy" determination for the United States.

¹⁵ Sec. 3(f) of E.O. 14086 lays out the "*Designation of qualifying state*":

(i) To implement the redress mechanism established by section 3 of this order, the Attorney General is authorized to designate a country or regional economic integration organization as a qualifying state for purposes of the redress mechanism established pursuant to section 3 of this order, effective immediately or on a date specified by the Attorney General, if the Attorney General determines, in consultation with the Secretary of State, the Secretary of Commerce, and the Director, that:

(A) the laws of the country, the regional economic integration organization, or the regional economic integration organization's member countries require appropriate safeguards in the conduct of signals intelligence activities for United States persons' personal information that is transferred from the United States to the territory of the country or a member country of the regional economic integration organization;

(B) the country, the regional economic integration organization, or the regional economic integration organization's member countries of the regional economic integration organization permit, or are anticipated to permit, the transfer of personal information for commercial purposes between the territory of that country or those member countries and the territory of the United States; and

(C) such designation would advance the national interests of the United States.

Exec. Order 14086, *supra* note 8, at Sec. 3(f). Current qualifying states include: the European Union (and its member states), Iceland, Liechtenstein, Norway, the United Kingdom, and Switzerland. U.S. Dep't of Just., Off. of Priv. and C.L., *Executive Order 14086*, <https://www.justice.gov/opcl/executive-order-14086> (last visited Jan. 17, 2025).

¹⁶ Statement of Member Williams, at C-7.



alike, then someone isn't thinking." Vitriolic rhetoric designed to grab headlines is simply not helpful. Moreover, when that language is based on falsehoods, misleading statements, and distortions of the record, it is a disservice to the very people whose privacy and civil liberties we are charged with safeguarding.¹⁷

¹⁷ For example, the declaration of Steven L. McQueen that Member Williams now seeks to rely upon from the *Jardaneh* case is inapposite. Agent McQueen is very clear that his testimony concerns disclosures about an individual's watchlist status made *outside* of the DHS TRIP process. See McQueen Decl., *Jardaneh et al. v. Garland et al.*, Case No. 8:18-cv-02415-PX (D. Md. Apr. 4, 2024), at 2-3 ("I will provide an overview of the [Terrorist Screening Dataset] . . . and explain why an individual's TSDS status (*other than that disclosed through the DHS TRIP process*) should not be disclosed publicly." (emphasis added)). As Member Williams well knows, Recommendation 7 is about the DHS TRIP process.



ANNEX C: SEPARATE STATEMENT OF BOARD MEMBER BETH A. WILLIAMS

I join in the Privacy and Civil Liberties Oversight Board Terrorist Watchlist Report (“Report”) with the exception of Recommendation 7, which I discuss below.¹ I write separately to highlight the key findings of the Report, and to make three further points. *First*, amidst a heightened global threat from multiple regions and groups, the Terrorist Watchlist is more crucial now than ever. *Second*, based on the Board’s review, the current redress process to correct mistakes and misidentifications appears highly functional. Nevertheless, I support expanding and improving the redress process to strengthen privacy and civil liberties protections and to ensure that individuals have a fulsome opportunity to challenge their potential inclusion if they believe such inclusion is in error. *Finally*, the Board’s Recommendation 7—to confirm for suspected terrorists whether or not they are on the Watchlist—is misguided and dangerous. It is also unsupported by the findings of the Report and unnecessary given a redress process that is meaningful and available to all.

The Privacy and Civil Liberties Oversight Board (“the Board”) has now concluded a multi-year review of the Terrorist Watchlist (“Watchlist”), one of the most important tools the United States employs to prevent acts of terrorism. The results describe a watchlisting process that is both functional and privacy and civil liberties protective. The process contains strengthened identity verification requirements, multiple levels of review, and a redress process open to all travelers at U.S. airports, both U.S. persons and non-U.S. persons.

The Board’s findings confirm that the Watchlist is not inordinately impacting U.S. persons:²

- Approximately one-half of one percent of those on the Watchlist are U.S. persons. This amounts to fewer than 6,000 people.³ As reported in 2021, roughly 4,600 of those are U.S. citizens (0.4%).⁴

¹ I wish to thank the PCLOB Staff for their work on this Report across many years, and my counselor, Laurence E. Rothenberg, for his assistance in preparing this separate statement. I also wish to thank the many agency personnel who cooperated in the preparation of this report over several years, and particularly those involved in the final review process for public release, which occurred on an expedited timeline. While the Board requested additional information be publicly released, I understand the agencies were limited in their discretion to make such approvals.

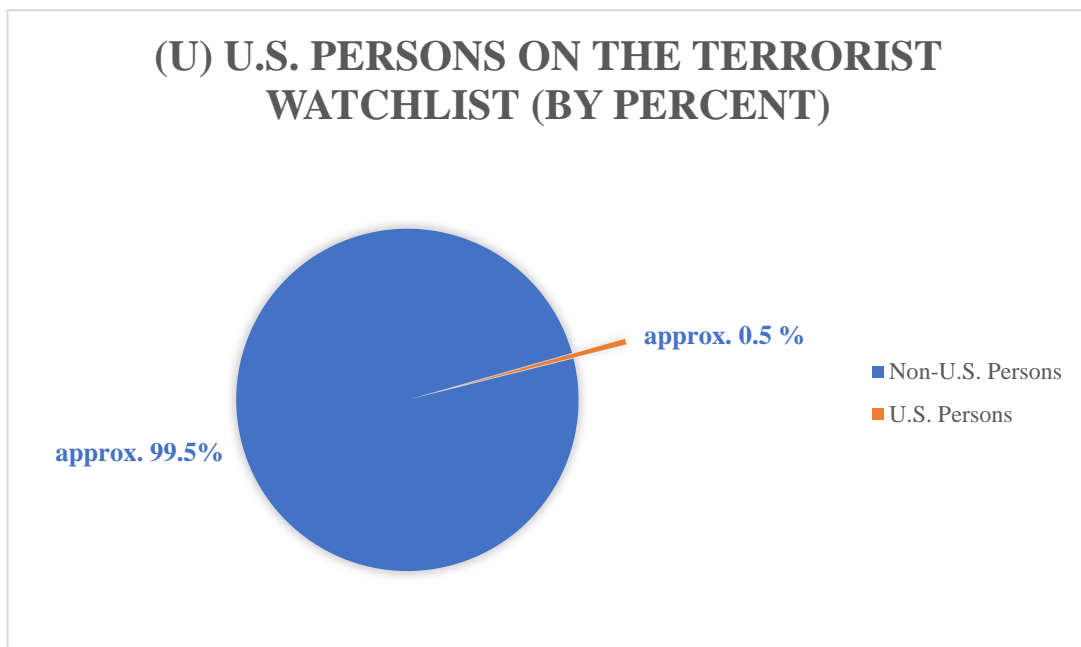
² U.S. persons include U.S. citizens and lawful permanent residents.

³ See Watchlist Report, *supra*, at 8. Further, when the TSC believes or assumes an individual is a U.S. person, but cannot fully confirm U.S. Person status, the TSC will extend the same protections to those individuals as it does to confirmed U.S. persons, including when they apply for redress.

⁴ *Elhady v. Kable*, 933 F.3d 208, 213–14 (4th Cir. 2021).



- The No Fly List, the subset of known or suspected terrorists who are prohibited from boarding an aircraft when flying within, to, from and over the United States,⁵ currently includes a very small percentage of U.S. persons.⁶
- The Selectee List, the subset of watchlisted individuals who are permitted to fly but subject to enhanced security screening, currently includes a very small percentage of U.S. persons records.⁷
- U.S. persons nominated for the Watchlist receive multiple levels of heightened review, and stricter standards for inclusion are applied when deciding to add them to the Watchlist.
- U.S. person records are reviewed three times a year for quality control and accuracy (once by the nominating agency and twice by the TSC).⁸



⁵ U.S. Dep't of Homeland Sec., *DHS Traveler Redress Inquiry Program*, <https://www.tsa.gov/travel/security-screening/travel-redress-program>.

⁶ See Watchlist Report, *supra*, at 15. This absolute number is known to the PCLOB but is not cleared for public release.

⁷ See *id.* at 15. Likewise, this number is known to the PCLOB but is not cleared for public release.

⁸ See *id.* at 27, 44.



The Report also includes several key findings with regard to the Watchlist and redress process more broadly:

- The total number of *individuals* on the Watchlist (approximately 1.1 million persons), while large, is significantly less than the number of *records* (1.8 million) that is frequently cited.⁹
- Although the Watchlist has grown with time and increased globalized threat, requests to add to or otherwise amend the Watchlist have decreased by approximately 50% from 2016 to 2022.¹⁰
- Tens of thousands of records are removed from the Watchlist each year. In 2023, as part of its review and redress processes, the TSC removed approximately 22,100 records from the Watchlist.¹¹
- Roughly 400 to 600 individuals apply for Watchlist-related redress each year, of the hundreds of millions who fly into and out of U.S. airports annually.¹²
- Most people who file redress complaints believing they are on the Watchlist are not, in fact, on the Watchlist. Of the 370 people who applied for redress in 2022 related to a belief they were on the Watchlist, only 9 actually were.¹³
- In FY 2023, DHS's average time closing out all types of DHS TRIP applications was 42 days. Part of that 42-day average includes Stage One cases not involving U.S. persons on the No Fly List, which on average took about 66 days to close out.¹⁴
- In FY 2023, approximately one-third of U.S. persons who applied for Watchlist-related redress had their records modified (e.g., downgraded from No Fly to Selectee) or removed from the Watchlist.¹⁵

⁹ See MAJORITY STAFF REPORT, U.S. S. COMM. ON HOMELAND SEC. AND GOVERNMENTAL AFF., MISLABELED AS A THREAT: HOW THE TERRORIST WATCHLIST AND GOVERNMENT SCREENING PRACTICES IMPACT AMERICANS (2023), at 14, https://www.hsgac.senate.gov/wp-content/uploads/Mislabeled-as-a-Threat_Public_Report-2.pdf (“Because multiple records may relate to one individual, the actual number of individuals in the terrorist watchlist is fewer than the number of records.”). This suggests that the DOJ OIG’s conclusion in 2009 that there is often more than one record for the same individual remains true today. U.S. DEP’T OF JUST., OFF. OF THE INSPECTOR GEN., THE FEDERAL BUREAU OF INVESTIGATION’S TERRORIST WATCHLIST NOMINATIONS PRACTICES (2009), at ii n.4, <https://oig.justice.gov/reports/FBI/a0925/final.pdf>.

¹⁰ See Watchlist Report, *supra*, at 23.

¹¹ See Terrorist Screening Ctr. Correspondence with the PCLOB (Sept. 18, 2024). The TSC removed approximately 20,500 records in CY 2021 and 18,300 records in CY 2022.

¹² See Watchlist Report, *supra*, at 33-34. According to the Federal Aviation Administration, more than 1 billion passengers traveled by air in 2023, a recovery from lower numbers during the COVID pandemic. FED. AVIATION ADMIN., AIR TRAFFIC BY THE NUMBERS (May 2024), at 6, https://www.faa.gov/air_traffic/by_the_numbers/media/Air_Traffic_by_the_Numbers_2024.pdf. However, that figure may include multiple trips by the same individual and does not include unique passengers.

¹³ See Watchlist Report, *supra*, at 29.

¹⁴ See *id.* at 34.

¹⁵ See *id.* at 49.



Additionally, the watchlisting community has made significant privacy and civil liberties improvements in its 2023 inter-agency watchlisting standards, which the Report details. Among other changes, the watchlisting community raised the level of sufficiently identifying information required to include a known person on the Watchlist, helping to prevent misidentification. It also expanded the substantive mitigating criteria that may be used to refute or attenuate an individual's association with terrorism or terrorist activities.

The Board's multi-year investigation found no evidence of major problems with the current structure or operation of the Watchlist with respect to privacy and civil liberties. The adequacy of the watchlisting and redress processes is underscored by the Board's recommendations for improvements, which call for further clarity, increased transparency, and more regular reviews of Watchlist records, rather than any major revisions to the enterprise.

I. An Effective Terrorist Watchlist Is More Crucial Now Than Ever.

"The United States faces a serious threat of a terrorist attack in the months ahead," and the signs are similar to those preceding 9/11.¹⁶ These are the repeated and clear warnings being issued by military leadership—including the commander of U.S. Central Command, responsible for the Middle East and Central and South Asia—foreign policy experts, and current and former leaders of the Intelligence Community. The already-high risk for a potential coordinated attack on the homeland became even greater after the October 7, 2023 Hamas attack on Israel, inspiring "foreign terrorist organizations [to] call for attacks against Americans and our allies."¹⁷

A porous U.S. border compounds this threat. The then-FBI Director testified to Congress in March 2024 that the FBI was investigating "a particular network where some of the overseas facilitators of the smuggling network have ISIS ties that we're very concerned about."¹⁸ The Department of Homeland Security highlighted this danger in its 2024 Homeland Threat Assessment, warning that "[i]ndividuals with potential terrorism connections continue to attempt to enter the Homeland."¹⁹ The Threat Assessment emphasized the increase in non-U.S. persons

¹⁶ Graham Allison and Michael Morrell, *The Terrorism Warning Lights are Blinking Red Again*, FOREIGN AFFAIRS (June 10, 2024), <https://www.foreignaffairs.com/united-states/terrorism-warning-lights-are-blinking-red-again>.

¹⁷ *A Review of the President's Fiscal Year 2025 Budget Request for the Federal Bureau of Investigation: Subcomm. Hearing Before the Sen. Comm. on Appropriations*, 118th Cong. (June 4, 2024) (Testimony of Christopher Wray, Dir., Fed. Bureau of Investigation).

¹⁸ *Worldwide Threats: Hearing Before the Sen. Select Comm. on Intel.*, 118th Cong. at 01:08 (March 11, 2024), <https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-4>.

¹⁹ U.S. DEP'T OF HOMELAND SEC., OFF. OF INTEL. AND ANALYSIS, HOMELAND THREAT ASSESSMENT 2024 (2023), at 12, https://www.dhs.gov/sites/default/files/2023-09/23_0913_ia_23-333-ia_u_homeland-threat-assessment-2024_508C_V6_13Sep23.pdf ("As of July, approximately 160 non-US persons in the TSDS attempted to enter the United States via the southern border this year, most of whom were encountered attempting to illegally enter between ports of entry. This represents an increase from the approximately 100 encounters in all of FY 2022.



on the Watchlist who were encountered attempting to enter illegally between ports of entry.²⁰ Indeed, the media has reported that more than 400 individuals smuggled through an ISIS-affiliated network in the past three years have been identified as “subjects of concern,” with 150 arrested and the whereabouts of 50 more unknown.²¹ Eight men with reported ISIS ties who crossed through the southern border into the United States were reportedly arrested in June 2024 with the suspicion that they were planning terrorist attacks.²² And there are reports that numerous others with suspected terrorist ties were intercepted at the border during the summer of 2024.²³

Effective border security requires a thorough—and accurate—Watchlist. According to U.S. government statistics, the Border Patrol encountered 172 persons on the Watchlist in Fiscal Year 2023 outside of legal ports of entry, up from 98 persons in 2022, 16 in 2021, and 3 in 2020 and 2019.²⁴ As of mid-September 2024, 102 persons on the Watchlist had already been encountered outside legal ports of entry in the current fiscal year.²⁵ This drastic increase in persons on the Watchlist trying to enter the United States at illegal crossing points should be a cause of concern. It is crucial that when these individuals are encountered, they are correctly identified as potential terrorist threats.

Inclusion in the TSDS ranges from known associates of watchlisted individuals, such as family members, to individuals directly engaged in terrorist activity.”)

²⁰ See *id.*

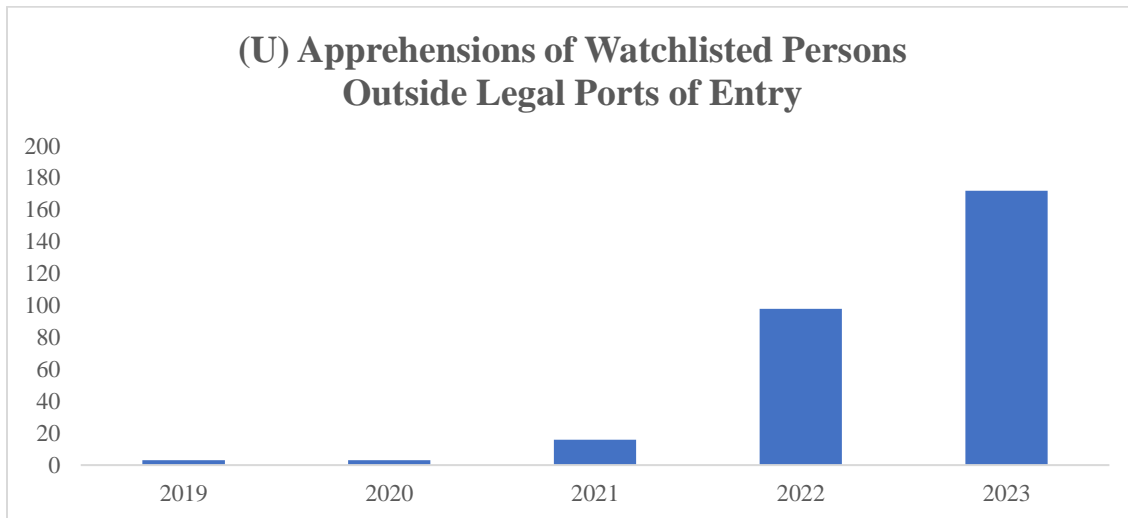
²¹ See Julia Ainsley and Tom Winter, *DHS identifies over 400 migrants brought to the U.S. by an ISIS-affiliated human smuggling network*, NBC NEWS (June 25, 2024), <https://www.nbcnews.com/investigations/dhs-identifies-400-migrants-brought-us-isis-linked-human-smuggling-rcna158777>.

²² See Julia Ainsley et al., *8 suspected terrorists with ISIS ties arrested in New York, L.A., and Philadelphia, sources say*, NBC NEWS (June 11, 2024), <https://www.nbcnews.com/news/us-news/8-suspected-terrorists-possible-isis-ties-arrested-new-york-l-philadel-rcna156635>.

²³ See Jennie Taer, *Palestinian whose name appears on terror watchlist captured at southern border*, N.Y. POST (Aug. 14, 2024), <https://nypost.com/2024/08/14/us-news/border-agents-catch-palestinian-terror-suspect-suspected-of-using-explosives>; Jennie Taer, *3 Palestinian terror suspects caught after crossing border illegally as overwhelmed agents warn: ‘I probably let terrorists in’*, N.Y. POST (July 28, 2024), <https://nypost.com/2024/07/28/us-news/palestinian-terror-suspects-caught-after-crossing-illegally/>; see also U.S. DEP’T OF HOMELAND SEC., OFF. OF INSPECTOR GEN., *OIG-23-31, CBP RELEASED A MIGRANT ON A TERRORIST WATCHLIST, AND ICE FACED INFORMATION SHARING CHALLENGES PLANNING AND CONDUCTING THE ARREST* (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-07/OIG-23-31-Jun23-Redacted.pdf>.

²⁴ See U.S. Customs and Border Prot., *CBP Enforcement Statistics*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

²⁵ See *id.* In one case, media reported that a member of the Somali terrorist group, al-Shabaab, was mistakenly admitted into the United States even though he was on the Watchlist. He was not arrested until a year later. See Jennie Taer, *Exclusive: Terrorist Caught Illegally Crossing The Border Was Allowed To Roam Free For Nearly A Year, Memo Says*, DAILY CALLER (Jan. 29, 2024), <https://dailycaller.com/2024/01/29/exclusive-terrorist-caught-illegally-crossing-border-allowed-roam-free-nearly-year-memo-says>.



II. A Strong Redress Process Is Necessary for Both Civil Liberties and National Security.

To be effective, the Watchlist must be correct. Maintaining a well-functioning redress process is therefore necessary—for both civil liberties and national security reasons—for those who believe they have been misidentified or are otherwise improperly included on the Watchlist. Redress starts with ensuring that its availability is well-publicized and easy to access. I have joined Recommendation 6 to improve the redress process and would go a step further by encouraging DHS TRIP to better publicize the redress process itself, as well as an applicant’s ability to hire counsel.

The Report explains that anyone—whether U.S. person or not—who experiences certain travel difficulties may apply for redress through TRIP. The number of individuals who file redress complaints related to the Watchlist is small, and of those, many are not in fact on the Watchlist at all. Roughly 400 to 600 individuals apply for redress related to the Watchlist each year, of the hundreds of millions who fly into and out of U.S. airports annually.²⁶ As to the latest figures available, of the 370 people who believed they were on the Watchlist, only 9 (2%) actually were.²⁷ For the most part, it also appears that TSC adjudicates these applications relatively promptly,²⁸ and that many people receive the redress they seek. As the Report notes, in FY 2023 approximately one-third of individuals applying for Watchlist-related redress had their records modified or removed.²⁹ This suggests that the review being conducted is meaningful.

²⁶ See Watchlist Report, *supra*, at 33-34.

²⁷ See *id.* at 29.

²⁸ As noted in the Report and above, in FY 2023, DHS’s average time closing out all types of DHS TRIP applications was 42 days. Part of that 42-day average includes Stage One cases not involving U.S. persons on the No Fly List, which on average took about 66 days to close out.

²⁹ See Watchlist Report, *supra*, at 49.



As the Report describes, the Department of Homeland Security revised their redress process in 2015 in response to a decision from a federal district court in Oregon in 2014. The current revised redress process, which provides notice of inclusion to U.S. persons on the No Fly List, has been upheld by the Ninth Circuit.³⁰ The court unanimously concluded that “[g]iven the national security concerns at issue... the government has taken reasonable measures to ensure basic fairness to the plaintiffs and followed procedures reasonably designed to protect against erroneous deprivation of the plaintiffs’ liberty.”³¹

Although no court has held that additional or enhanced process for U.S. persons on the Selectee List is legally required, I join in the Board’s recommendation that TSC should, as a policy matter, provide more robust review of redress applications by these persons. Being consistently pulled aside for additional security screening is, at the very least, an inconvenience to the traveler.³² It also redirects resources away from screening other threats. TSC should ensure that those on the Selectee List are properly identified and appropriately included. Given the relatively small number of U.S. persons currently on the Selectee List who apply for redress, providing a second-level review to this group should help ensure accurate decisions and correct any mistakes without creating undue burden.

III. Recommendation 7—the Recommendation that the Government Should Tell People Whether or Not They Are on the Watchlist—Is Poorly Justified, Misguided, and Dangerous.

In a sharp divergence from the rest of the Report, the Board in Recommendation 7 takes a profoundly misguided turn. The Board recommends that the government tell applicants—including suspected terrorists—whether or not they are on the Watchlist. This Recommendation is dangerous; it is also unnecessary according to the Board’s own reasoning.

³⁰ See *Kashem v. Barr*, 941 F.3d 358, 390 (9th Cir. 2019); see also *Busic v. Transportation Security Administration*, 62 F.4th 547 (D.C. Cir. 2023).

³¹ *Kashem*, 941 F.3d at 390.

³² The Board expresses concern about the potential chilling effect on protected First Amendment-protected activity based on allegations of the improper placement of journalists on the Watchlist. See Watchlist Report, *supra*, at 20. It is noteworthy that the allegations cited are nearly two decades old and have not been validated in court. With regard to filmmaker Laura Poitras, in the subsequent FOIA suit she filed, the court found that the exhibits showed that her Watchlist inclusion was likely because she was under investigation by the FBI based on “her presence at, followed by her dissembling about, a fatal ambush of U.S. soldiers in Iraq” which “raised suspicions about her prior knowledge of, and complicity in, the ambush.” *Poitras v. Dept. of Homeland Security*, 303 F. Supp. 3d 136, 143 (D.D.C. March 29, 2018). The court concluded, “The FBI has established that its investigation of the plaintiff was realistically based on a legitimate concern that she may have been either an intentional or unwitting tool to film or otherwise document an ambush that resulted in the death of one American soldier and serious injury to several others.” *Id.* at 156. As the Board notes, persons may be on the Watchlist appropriately independent of protected activities. Hopefully this Report will assist in defusing any chilling effect the Board fears.



First, the Board fails appropriately to evaluate the national security implications of such a proposal. Before making a recommendation, the Board is obliged to weigh privacy and civil liberties concerns with national security objectives.³³ Here, however, Recommendation 7 discounts the consequences of giving sensitive national security information to people who are appropriately on the Watchlist. Confirming that someone is on the Watchlist could expose and compromise active investigations into terrorist cells or reveal sources and methods.³⁴ It potentially endangers the lives of confidential informants and undercover operatives. It could also allow potential terrorists strategically to limit their contacts with those on the Watchlist, frustrating attempts to uncover plots. This poses clear national security concerns which the Board does not address.

Critically, it also would enable would-be terrorists to alter their plans based on which conspirators are known to the government. It would “facilitate terrorists and terrorist groups in their operations and planning by assisting them in determining which of their potential operatives are listed in the TSDS and which are not.”³⁵ With respect to aviation screening, official confirmation “could result in evasion of matching, as the individual (and/or his associates, or other interested parties) would be armed with the knowledge that enhanced screening and potentially other security measures will ensue based on a reservation with the individual’s name and date of birth. The individual could attempt to manipulate reservation data in an effort to avoid enhanced screening and other security measures.”³⁶ Moreover, “individuals who are selected for enhanced security screening, unlike individuals who are denied boarding, are able to access sterile areas of airports and fly via commercial aviation, which remains a prime target for terrorist groups and individuals intending to perform attacks.”³⁷

Federal courts have recognized these dangers. As the U.S. Court of Appeals for the Fourth Circuit explained recently in *Elhady v. Kable*, “Disclosure would disrupt and potentially destroy counterterrorism investigations because terrorists could alter their behavior, avoid detection, and destroy evidence. For example, if a terrorist group knew that some of its operatives were not in

³³ See 42 U.S.C. § 2000ee(c).

³⁴ Similarly, confirming that an individual is *not* on the Watchlist would allow potential terrorists to receive official confirmation of their status. See Declaration of Steven L. McQueen (“McQueen Decl.”), Dep. Dir. for Operations, Terrorist Screening Ctr., *Jardaneh et al. v. Garland et al.*, Case No. 8:18-cv-02415-PX (D. Md. Apr. 4, 2024), at paragraph 27 (“Disclosure of an individual’s lack of status in the TSDS would also be of considerable value to terrorist groups to confirm which individuals are not the subject of ongoing investigations and who are thus more likely to escape scrutiny. In other words, in the absence of a uniform policy not to confirm or deny anyone’s TSDS status, efforts to reverse engineer information based on what is confirmed would be significantly simplified for those seeking to do harm.”).

³⁵ *Id.* at paragraph 21.

³⁶ *Id.* at paragraph 25.

³⁷ *Id.* at paragraph 26.



the TSDB, it could craft a plan sending these operatives through an airport or border while helping other members avoid detection.”³⁸ To put it plainly: terrorist planners could choose to send a member of a cell who is *not* on the Watchlist, rather than one who is. Under the Board’s recommendation, potential terrorists could receive this useful information from the government upon application.

Second, the Board’s recommendation is not narrowly tailored to meet its goal of increased transparency. In their Separate Statement, Chair Sharon Bradford Franklin and Member Edward Felten argue that because their recommendation applies to a limited set of travelers on the Selectee List rather than all travelers on the List, it is therefore reasonable. But the group of people the Board would notify—U.S. persons on the Selectee List—are among the people *most reviewed* by the government to ensure they are on the list appropriately. Like everyone on the Watchlist, this group must meet both the standards for sufficiently identifying information and the reasonable suspicion standard. However, U.S. persons who are nominated to the watchlist also receive special handling, including a formal process and required annual reviews by nominating agencies and TSC.³⁹ They receive multiple levels of heightened review, and stricter standards for inclusion are applied when deciding to add them to the Watchlist. U.S. person records are reviewed three times a year for quality control and accuracy. Thus, the group to whom the Board would give sensitive national security information is among the persons the U.S. government has the *most confidence* is engaged in or is likely to engage in terrorism.

The Board cites two sources in support of Recommendation 7: a DHS Inspector General Report from 2009, and *Latif v. Holder*, a 2014 case from the federal district court in Oregon. The Board quotes the DHS Inspector General Report for the proposition that there should be more transparency provided to redress seekers. The Board references the Inspector General’s suggestion that DHS TRIP applicants (who comprise a far broader group than just those possibly on the Selectee List) could be given more general information about “how their travel difficulty arose, whether they are likely to face future problems, and what course of action they might take next.”⁴⁰ But the Board recommends only that the applicant be told whether or not he is on the Selectee List. The Board does not mention that the DHS Inspector General—after explaining the government’s security rationales for not disclosing Watchlist status, and referencing a pending case—stated explicitly: “we are *not* recommending further transparency on No Fly and Selectee list status in TRIP response letters.”⁴¹ The Inspector General thus specifically declined to recommend what the Board suggests here.

³⁸ *Elhady*, 933 F.3d at 215.

³⁹ See Watchlist Report, *supra*, at 26.

⁴⁰ See Watchlist Report, *supra*, at 50-51.

⁴¹ U.S. DEP’T OF HOMELAND SEC., OFF. OF THE INSPECTOR GEN., OIG-09-103, EFFECTIVENESS OF THE DEPARTMENT OF HOMELAND SECURITY TRAVELER REDRESS INQUIRY PROGRAM (2009), at 92,



The District of Oregon case does the Board no better. *Latif*, as the Board acknowledges, is about the No Fly List, not the Selectee List. As mentioned above, the government has revised the redress process for U.S. persons on the No Fly List which was at issue in *Latif*, and that revised process has been upheld by the Ninth Circuit.⁴² The No Fly List is different in important ways from the Selectee List. Unlike those on the No Fly List, individuals on the Selectee List are not prevented from flying, but are sent to secondary screening. As the Report explains, travelers may be sent to secondary screening for any number of reasons, including randomly. Presence on the Selectee List subjects persons to similar screening measures as persons not on the Selectee List. For these reasons among others, four unanimous circuit court of appeals panels have held that placement on the Selectee List does *not* infringe the right to travel.⁴³ See *Beydoun v. Sessions*, 871 F.3d 459, 468 (6th Cir. 2017) (“When Plaintiffs’ only allegations amount to delays that many individuals are likely to experience at the airport, it is hard to conclude that the fundamental right to travel has been implicated.”); *Abdi v. Wray*, 942 F.3d 1019, 1031 (10th Cir. 2019) (“Abdi has not alleged that his delays substantially exceed those experienced by many air travelers nor preclude his ability to travel.”); *Elhady*, 933 F.3d at 228 (4th Cir. 2021) (“Most plaintiffs complain of minor delays in airports of an hour or less. These burdens are not dissimilar from what many travelers routinely face, when in standard or enhanced screenings, particularly at busy airports.”); *Ghedi v. Mayorkas*, 16 F.4th 456, 466 (5th Cir. 2021) (“At most, [the Plaintiff’s] allegations lead to a reasonable inference that the Government has inconvenienced Ghedi.”); see also *Proctor v. DHS*, 777 F. App’x 235, 236 (9th Cir. 2019) (“enhanced security screening does not implicate a protected liberty interest”).

https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG-09-103r_Sep09.pdf (emphasis added). It seems unlikely the then-pending case was what prevented the Inspector General from recommending notification of Watchlist status since it does not appear the Inspector General amended his conclusion in the fourteen years since the then-pending case was resolved. See *Rahman v. Chertoff*, 2010 WL 1335434 (N.D. Ill. Mar. 31, 2010).

⁴² *Kashem*, 941 F.3d at 390; see also *Busic*, 62 F.4th at 547. While the Report states that “U.S. persons on the No Fly List, in particular, suffer a potentially substantial liberty deprivation by being unable to travel by plane,” this statement is based on two decisions in the context of *international* travel. See *Latif v. Holder (Latif III)*, 28 F. Supp. 3d 1134 (D. Or. 2014); *Kashem*, 941 F.3d at 378. Both the Ninth Circuit and D.C. Circuit have held that there is no fundamental right to travel by airplane. See *Gilmore v. Gonzales*, 435 F.3d 1125, 1136 (9th Cir. 2006) (“the Constitution does not guarantee the right to travel by any particular form of transportation.”); *Busic*, 62 F.4th at 550 (plaintiff “does not possess a fundamental right to travel *by airplane*,” “[a]nd any interest that [plaintiff] has in air travel is invariably subordinate to national security and foreign policy considerations” (internal quotations and citations omitted)).

⁴³ Each case also found no other pre-existing right that was infringed. See *Beydoun*, 871 F.3d at 469 (“because Plaintiffs could still fly, after passing enhanced screening and experiencing delays, they were not deprived of any previously held rights.”); *Abdi*, 942 F.3d at 1034 (“Abdi has failed to allege that he was actually deprived of any right conferred by state or federal law because of his status on the Selectee List.”); *Ghedi*, 16 F.4th at 467 (“Ghedi must plausibly allege both ‘stigma’ and ‘an infringement of some other interest.’ Ghedi has not plausibly pleaded either.”); *Elhady*, 933 F.3d at 227 (plaintiffs “have not demonstrated that TSDB status has altered their legal status or extinguished rights.”).



Nor does the Board sufficiently explain *why* it is necessary for individuals who have been sent to secondary screening more than once to be informed whether they are on the Selectee List. There are strict requirements for a person to be included on the Selectee List and, as stated above, most individuals who seek redress believing they are on the Watchlist are not actually on it. Individuals on the Selectee List have exactly the same redress opportunities as those not on the Selectee List, including the ability to hire counsel and present mitigating evidence. The Board has made no finding that the current redress process is not meaningful or does not allow for error correction.⁴⁴ Indeed, as discussed above, the evidence points to exactly the opposite conclusion: the current redress process is meaningful. So long as redress is effective and broadly available where warranted, then any advantage of government confirmation of Watchlist inclusion would be marginal.

Third, the Board's rationale is internally inconsistent. The Board attempts to account for security concern by concluding that travelers repeatedly sent to secondary screening "are already likely to suspect that they are on a watchlist and would not be 'tipped off' by receiving confirmation from the government that they are on the Selectee list."⁴⁵ As a threshold matter, this is likely inaccurate, and is supported by nothing more than the Board's conjecture. Many *non*-Selectees are repeatedly subject to secondary screening.⁴⁶ An individual's repeated secondary screening may be "the result of random chance, other risk-based rules prompting enhanced screening not related to the TSDS, or for some other reason entirely."⁴⁷ But the Board's rationale also raises the obvious question: if individuals already know they are on the Watchlist, as the Board concludes, why insist on having the government confirm it? What aid does this give them, when travelers are able to seek redress regardless? The Board does not explain. Nor does it cite any compelling reason why confirmation of inclusion on the Watchlist would improve redress outcomes.⁴⁸ And it certainly does not explain how, even assuming there could be some marginal benefit to confirmation, providing that information justifies the very real national security concerns at issue.

⁴⁴ For clarification, the Statement of Chair Franklin and Member Felten should not be read to suggest that the Board has unanimously agreed that the redress process does not already contain sufficient safeguards for civil liberties. Rather, as a policy matter, we have recommended certain additional review to heighten protections further.

⁴⁵ See Watchlist Report, *supra*, at 52.

⁴⁶ This is why the Board's nebulous definition of "repeatedly" as something more than "once or twice" would be unlikely to tip someone off as to their presence on the Watchlist; it does not accord with the procedures of secondary screening, which are applied routinely to people *not* on the Watchlist.

⁴⁷ McQueen Decl., *supra* note 34, at paragraph 23.

⁴⁸ As discussed above, I join in the Board's recommendation that, as a policy matter, U.S. persons currently on the Selectee List who apply for redress be provided a second-level review in order to help ensure accurate decisions and correct any mistakes.



This is a dangerous recommendation that should provoke public concern. While Member LeBlanc may cast aspersions, the only falsehoods are in his statement.⁴⁹ Because the Board fails to justify Recommendation 7, I respectfully dissent from it.

⁴⁹ The declaration of Steven L. McQueen is directly on point. Agent McQueen is differentiating Selectee disclosures which are made outside the TRIP process from No Fly disclosures made within the TRIP process.