

Federal guidelines lay out loose criteria for terrorism watch list

Nick Barrickman**26 July 2014**

US officials have adopted procedures that allow virtually anyone to be designated a “suspected” or “known” terrorist by intelligence agencies, subjecting them to increased monitoring.

The “March 2013 Watchlisting Guidance,” produced by the National Counter-Terrorism Center (NCTC), is cryptically-worded and vague, intended to leave government officials with ample leeway to interpret guidelines designating someone a “terrorist.” A copy of the document was obtained by the *Intercept*.

One and a half million people have been placed on the terrorism watch list over the past several years, expanding rapidly under the administration of President Barack Obama. In fiscal 2013, the most recent year provided, so-called “nominations” to the list jumped to 468,749 from 227,932 in 2009.

The analysis of the document in the *Intercept* article notes the destructive impact of being placed in such a database. “Once the US government secretly labels you a terrorist or terrorist suspect, other institutions tend to treat you as one. It can become difficult to get a job (or simply to stay out of jail). It can become burdensome—or impossible—to travel. And routine encounters with law enforcement can turn into ordeals.”

The NCTC document states that an individual need not be linked to terrorist actions or affiliations, but merely “suspected” of being so based upon “the totality of the circumstances.” The document advises government officials to “rely upon articulable intelligence or information which, taken together with rational inferences... is known or suspected to be... related to terrorism and/or terrorist activities.” In other words, an individual may be placed on a federal watch list by just the mere suspicion that he or she may be involved or related in some way to a vaguely-defined

terrorist activity now or sometime in the future.

The document states, “Although irrefutable evidence or concrete facts are not necessary, to be reasonable, suspicion should be as clear and as fully developed as circumstances permit.” Likewise, in another blow to the basic right of due process, the document states that an individual’s appearance on a terrorist watch list will be considered to be “presumptively valid” by the NCTC, only to be challenged if officials manning the database possess “[s]pecific and credible information” stating otherwise.

Intelligence agencies accept hearsay, or other “uncorroborated” forms of evidence against an individual: “Single source information, including but not limited to “walk-in”, “write-in”, or postings on social media sites, however, should not automatically be discounted,” it adds, going on to note, “Instead, the [nominating agency] should evaluate the credibility of the source, as well as the nature and specificity of the information.... assuming the information supports a [reasonable suspicion] that the individual is a [known] or [suspected terrorist] or there is another basis for watchlisting the individual.”

Implicitly acknowledging that these guidelines are inadequate to prevent abuse, the report adds that government intelligence officials “should incorporate processes designed to ensure that nominations are free of errors... have not come from sources known or determined to be unreliable.” What is proposed to combat such practices, however, is not defined.

A Government Office of Accountability (GAO) report, dated May 2012, states that though the expanded guidelines have allowed for an influx of individuals being designated as terrorists, “no entity has acknowledged that it is responsible and accountable for routinely conducting government-wide assessments of

how agencies are using the watchlist to make screening or vetting decisions.”

While the document makes reference to the rights defined in the First Amendment, the terms which define the differences between a legally protected and unprotected act are sufficiently vague enough to include many forms of benign political expression. Among other things, someone who commits “[v]iolent acts or acts dangerous to human life, property, or infrastructure,” that may be intended to “intimidate or coerce a civilian population” or “influence the policy of a government by intimidation or coercion,” fits the definition of a terrorist.

Taken in combination with the “walk-in” clause pertaining to “uncorroborated” evidence, a person taking part in a protest in which property happens to be damaged would fall under the category of “suspected terrorist.” Similarly, a “threat-based expedited upgrade,” implemented by a White House official, can elevate entire groups of people to the designation of terror suspect, allowing for the wholesale profiling of the population indefinitely.

Underlining the arbitrary and unconstitutional methods that make up the “war on terror,” the document asserts that individuals found innocent of any charges may still find themselves on the watchlist: “An individual who is acquitted or against whom charges are dismissed for a crime related to [terrorism] may nevertheless meet the [reasonable] standard and appropriately remain on, or be nominated to, the Terrorist Watchlist.” On top of this, one cannot seek to find out if one is even on a watchlist, as the US government’s “general policy” is to “neither confirm nor deny an individual’s... status.”

The policy allowing the consolidation of hundreds of thousands of people into a national database was first implemented in 2003 under George W. Bush. The Terrorist Screening Center (TSC), operated by the FBI, oversees the Terrorist Screening Database (TSDB) which then collaborates with the much larger Terrorist Identities Datamart Environment (TIDE), the US government’s central pool of information containing identities of persons both international and domestic. The network of agencies with access to the TSDB includes a vast array law enforcement and intelligence bureaus.

The NCTC document was publicly released as a

result of a case brought against the US government by a Virginia man who had been placed on the no-fly list and had suffered harm at the hands of FBI agents upon attempting to return to the US. In opposing the release of the federal guidelines, US Attorney General Eric Holder submitted an affidavit to the court in January, stating that “[t]he Watchlisting Guidance, although unclassified, contains national security information that, if disclosed ... could cause significant harm to national security.”



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