



Department of Justice

STATEMENT OF
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BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ENTITLED
“FIVE YEARS AFTER THE INTELLIGENCE REFORM AND TERRORISM
PREVENTION ACT: STOPPING TERRORIST TRAVEL”

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Director
Terrorist Screening Center
Before the Senate Homeland Security
and Governmental Affairs Committee
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Good morning Chairman Lieberman, Ranking Member Collins and members of the Committee. Thank you for the opportunity to discuss the Terrorist Screening Center (TSC) and its role in combating terrorist travel.

Over the past six years, the TSC has become a powerful tool to fight terrorism and integrate the law enforcement and intelligence communities by consolidating terrorist information into a single Terrorist Watchlist. We are continuing to move forward to enhance our partners' ability to combat terrorism by improving the U.S. Government's approach to terrorist screening and safeguarding civil liberties in the process. Our interagency watchlisting and screening efforts have matured into a true information sharing success, and with your continued support we hope to improve upon our initiatives to provide critical terrorist identity information to our domestic and foreign partners for terrorist screening purposes. Let me begin by telling you about where we are today and where we want to be in the future.

Overview

Established in 2003, the TSC is a multi-agency center that connects the law enforcement communities with the Intelligence Community by consolidating information about known and suspected terrorists into a single Terrorist Screening Database, which is commonly referred to as the "Terrorist Watchlist." The TSC facilitates terrorist screening operations, helps coordinate the law enforcement responses to terrorist encounters developed during the screening process, and captures intelligence information resulting from screening.

Of paramount significance is the TSC's success in making this critical information accessible to the people who need it most – the law enforcement officers who patrol our streets, the Customs and Border Protection Officers who protect our borders, and our other domestic or foreign partners who conduct terrorist screening every day. In the six years since we began operations, the Terrorist Watchlist has become the world's most comprehensive and widely shared database of terrorist identities. The current terrorist watchlisting and screening enterprise is an excellent example of interagency information sharing whose success is due to the superb collaborative efforts between the TSC, the FBI, the Department of Homeland Security (DHS), the Department of State, the Department of Defense, the National Counterterrorism Center (NCTC) and other members of the Intelligence Community.

Operating in the Interagency and International Environment

Issued on September 16, 2003, Homeland Security Presidential Directive (HSPD) 6 directed the Attorney General to establish an organization to consolidate the U.S. Government's approach to terrorist screening and provide for the appropriate and lawful use of terrorist information in screening processes. That organization, the TSC, became operational on December 1, 2003. The TSC is administered by the FBI with support from the DHS, the

Department of State, the Department of Defense and others in the Intelligence Community. Staffed with personnel from these agencies, the TSC's single strategic goal is to enhance our partners' ability to combat terrorism. In order to do so, we provide those who conduct terrorist screening operations throughout the world with a thorough, comprehensive and consolidated listing of all known or suspected terrorists. We strive to maintain the highest-quality data concerning known or suspected terrorists to aid in the identification process. We ensure the timely dissemination of terrorist identity data and that prompt notification is made when a known or suspected terrorist has been identified through a screening process. We also ensure that privacy is protected and civil liberties are safeguarded throughout the entire watchlisting and screening process.

The identities contained in the Terrorist Watchlist originate from credible information developed by our intelligence and law enforcement partners or by our trusted foreign partners. Federal departments and agencies submit nominations of known or suspected international terrorists to the NCTC for inclusion in the NCTC's Terrorist Identities Datamart Environment (TIDE) database. These nominations are reviewed and then forwarded to the TSC for final adjudication and inclusion in the Terrorist Watchlist. In a similar process, nominations of domestic terrorists are provided to TSC directly by the FBI.

TSC accepts nominations into the Terrorist Watchlist when they satisfy two requirements. First, 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 a watchlisted terrorist. Second, the facts and circumstances pertaining to the nomination must meet the "reasonable suspicion" standard of review established by terrorist screening Presidential Directives. Reasonable suspicion requires "articulable" facts which, taken together with rational inferences, reasonably warrant a determination that an individual is known or suspected to be or has been engaged in conduct constituting, in preparation for, in aid of or related to terrorism and terrorist activities, and is based on the totality of the circumstances. Due weight must be given to the reasonable inferences that a person can draw from the facts. Mere guesses or inarticulate "hunches" are not enough to constitute reasonable suspicion.

Most of the individuals on the Terrorist Watchlist are not U.S. citizens, but are terrorists living and operating overseas. The Terrorist Watchlist is made up of approximately 400,000 people. The reasonable suspicion standard includes known or suspected terrorists ranging from suicide bombers to financiers. The "No Fly" list has its own minimum substantive derogatory criteria requirements which are considerably more stringent than the Terrorist Watchlist's reasonable suspicion standard. In order to be placed on the "No Fly" list, a known or suspected terrorist must present a threat to civil aviation or national security. Consequently, the "No Fly" list is a very small subset of the Terrorist Watchlist currently containing approximately 3,400 people, of those approximately 170 are U.S. persons. On a daily basis, the TSC receives between 400 and 1,200 unique additions, modifications or deletions of terrorist identities. It is through this nomination and review process that the TSC strives to maintain a thorough, accurate and current database of known or suspected terrorists for lawful and appropriate use in the screening process.

The Terrorist Watchlist is utilized by law enforcement, intelligence and other U.S. Government agencies including Department of Homeland Security and Department of State as well as foreign partners who conduct terrorist screening operations. The screening process leverages thousands of our law enforcement officers and other governmental partners to help identify, detect and deter terrorists. Terrorist screening occurs throughout the world at our embassies, ports of entry, and international postal and cargo facilities. Terrorist screening occurs during police stops, during special events, when a HAZMAT license is issued, or when a gun is purchased.¹ Screening occurs when passports or visa applications are processed, as well as when citizenship and immigration applications are processed. Select foreign partners use a subset of the Terrorist Watchlist when they conduct screening operations abroad.

Our Tactical Operations Center runs 24 hours a day and receives approximately 150 calls a day. They determine whether individuals encountered are a positive match to a watchlisted known or suspected terrorist. All positive matches, which are approximately 30-40% of all reported encounters, are forwarded to the FBI's Counterterrorism Division for an appropriate law enforcement response. The response could range from arresting the subject, if there is an outstanding federal warrant, to merely gathering additional intelligence information about the subject. During FY2009, the TSC processed over 55,000 "encounters" from federal, state, local, tribal and territorial screening agencies and entities. Of those encounters, over 19,000 were a positive match to a watchlisted known or suspected terrorist.²

Most encounters provide valuable intelligence to the FBI case agent. Each provides information regarding the specific time, place, geographic location and circumstances of the encounter with the watchlisted individual. During an encounter, additional biographic or biometric identifiers for the watchlisted individual might be discovered, new derogatory information could be obtained or additional terrorist associates could be identified. Throughout FY2008 and FY2009, the number of daily encounters steadily increased. We expect the number of daily encounters will continue to increase as new screening partners join our national and international enterprise.

In conjunction with Department of State, we have completed bilateral terrorist screening agreements with 17 foreign governments. Furthermore, we have provided additional screening support for certain international events, such as the World Games. Over the past two years, our outreach teams have coordinated with all 72 state and local fusion centers. In response to requests from state, county and local law enforcement agencies, terrorism-related information is now electronically available online via Law Enforcement Online (LEO). It is also available to the Regional Information Sharing System (RISS), and the Homeland Security State and Local Intelligence Community of Interest (HS-SLIC). To provide situational awareness, TSC now notifies fusion centers when encounters occur within their area of responsibility or when encounters occur with cases that originated from their area of responsibility. We also provide coast-to-coast briefings and training to both police dispatchers and law enforcement officers

¹ In fact, based on figures from a GAO report from 2004 to 2009, less than 1,000 background checks resulted in positive matches to the Terrorist Watchlist with less than 100 individuals (or approximately 10% of the total) being prevented from purchasing a weapon.

² The watchlisted person being screened may not always be present during the screening encounter. For example, a watchlisted person may apply for immigration benefits by mail and will, therefore, not be present during the screening encounter that takes place at a distant U.S. Citizenship and Immigration Services office.

concerning the importance of notifying TSC of any encounter they have with a watchlisted known or suspected terrorist. Because of the significance of TSC's contribution to fusion centers, the TSC was recognized for its innovative information sharing initiatives at the 2009 National Fusion Center Conference.

The Road Ahead

As we move ahead, the TSC remains focused on fulfilling its Presidential and interagency mandates to share terrorist screening information with our domestic and foreign partners. We have a standing commitment to improve our operational processes, to enhance our human capital and technological capabilities, and to continue to protect Americans while protecting privacy and safeguarding their civil liberties.

Our watchlisting efforts must be predicated upon four basic operational concepts: maintenance of high-quality terrorist identity data, timely dissemination of terrorist identity data, responsive information sharing, and safeguarding civil liberties. We update existing Terrorist Watchlist records as more current information becomes available as a result of screening encounters. This screening process triggers an automatic review of the record, ensuring its accuracy, and determines the continued appropriateness for inclusion into the Terrorist Watchlist. We also continuously conduct reviews of every record already contained within the Terrorist Watchlist to ensure its current accuracy.

Once a known or suspected terrorist is identified and included in the Terrorist Watchlist, we must ensure the timely dissemination of the terrorist identity data to our screening partners. The utility of the watchlisting enterprise is of little value unless the information contained within the Terrorist Watchlist is efficiently disseminated to those who need it the most. The screening agencies throughout the world who attempt to ascertain if a person screened is watchlisted constitute a global network, dedicated to identifying, preventing, deterring and disrupting potential terrorist activity. U.S. Customs and Border Protection uses the Terrorist Watchlist at all 327 ports of entry and all of the 15 pre-clearance offices located in Canada, the Caribbean, and Ireland. They also use the Terrorist Watchlist to conduct screening operations at international mail and cargo facilities. State, local, tribal and territorial law enforcement agencies use the Terrorist Watchlist when conducting police checks. The Transportation Security Administration uses the Terrorist Watchlist when they coordinate the screening of all commercial air passengers traveling on domestic and international flights. Department of State diplomatic posts and passport offices use the Terrorist Watchlist to screen aliens seeking visas, and U.S. persons applying for U.S. passports. Our 17 foreign partners seek access to the Terrorist Watchlist to conduct screening operations in their respective countries.

Throughout the entire watchlisting and screening process the TSC continues to play a significant role in ensuring that civil liberties are safeguarded and privacy is protected. The TSC led the interagency initiative to develop an effective interagency redress process and maintains a separate unit dedicated to resolving redress matters regarding individuals who believe they have been incorrectly watchlisted. The goal of the redress process is to provide a timely and fair review of redress inquiries referred to the TSC. Working closely with our interagency partners, we implemented a Memorandum of Understanding (MOU) on Terrorist Watchlist Redress Procedures that was signed in September 2007. The MOU standardizes interagency watchlist

redress procedures and provides complainants with an opportunity to receive a timely, fair and accurate review of their redress concerns. A traveler or complainant who believes they were inconvenienced as a result of screening can submit a redress complaint through the DHS Traveler Redress Inquiry Program, commonly referred to as DHS TRIP. Pursuant to the interagency Redress MOU, the complaint is reviewed by the agency that received it, and referred to the TSC Redress Unit after it has been determined that there is a connection to the Terrorist Watchlist. Of note, only 0.7% of the DHS TRIP complaints actually have some connection to the Terrorist Watchlist. Of the 0.7% that have a connection to the watchlist, approximately 51% are appropriately watchlisted, 22% have been modified or reviewed prior to redress, 10% were similar names, and 15% were removed or downgraded due to the redress process. Our Redress Unit researches the complaints, coordinates with the agency that nominated the complainant to the Terrorist Watchlist, and, if warranted, corrects any Terrorist Watchlist data that may cause the individual difficulty during a screening process. We review all available information and work with the nominating or originating agency to determine if the complainant's watchlisted status should be modified. Upon the conclusion of our review, we advise DHS TRIP representatives of the outcome so they can directly respond to the complainant. In some cases, we determine that the individual should remain watchlisted, but we may modify the individual's watchlist status (i.e. downgrade the individual from being on the "No Fly" list to the "Selectee" list).

We have also established protocols to aid individuals who have continuously been misidentified as possible known or suspected terrorists during the screening process because their name is similar to that of a properly watchlisted individual. In these situations, we often determine that their identity is very similar to a known or suspected terrorist. To provide relief, we issue what is called a "Primary Lookout Override," so the individual will not be inconvenienced during future screenings.

Additionally, when the TSC is advised, through media or Congressional inquiries, of individuals who have encountered travel difficulties due to their perceived watchlist status, we review the pertinent watchlist encounter records to determine if the individuals are indeed being misidentified. If they are misidentified, we examine our records to determine if there is any additional information that could be added that would reduce future misidentifications. The TSC neither confirms nor denies that an individual is watchlisted. We do, however, assure the inquiring entity that we have examined applicable Terrorist Watchlist records to ensure they contain current and accurate information, and that we have taken all reasonable measures to reduce any future misidentifications.

The operating procedures that we have implemented to accurately process all watchlisting data, expeditiously respond to terrorist screening encounters, and promptly provide a redress mechanism to resolve watchlisting discrepancies are all designed to enhance our partners' ability to combat terrorism, while simultaneously protecting privacy and safeguarding civil liberties. Our ongoing commitment to maintain high-quality terrorist identity data, to timely disseminate terrorist information, and to share what has been identified during encounters is evidenced by the following projects and initiatives:

Secure Flight: Previously, air carriers were responsible for screening airline passengers. Under the Secure Flight program, the U.S. Government assumes that responsibility. As the Secure Flight program expands, I will ensure that we continue to provide our support for that important effort.

DHS Watchlisting Service (WLS): When the DHS WLS is fully operational, the current process of exporting Terrorist Watchlist data to individual DHS components will be replaced with one daily Terrorist Watchlist export. This initiative will be completed during the FY2010 timeframe.

Biometrics: We are implementing a process to include biometric identifiers to the Terrorist Watchlist. Working with the NCTC and the FBI's Criminal Justice Information Services Division, we anticipate being able to receive, hold and export biometric data, in accordance with HSPD-24.

Gold and Platinum Projects: Our Gold Project proactively notifies the FBI when a known or suspected terrorist that has been nominated by another government agency has been encountered in the United States, so the FBI can take appropriate investigative action. We track these cases very closely to confirm that the applicable FBI field office is cognizant of the terrorist encounter within its jurisdiction and has taken appropriate action. Our Platinum Project identifies known or suspected terrorists who are nominated by other government agencies, but who have a connection to the United States (like a U.S. driver's license) that indicates they might already be located in the United States or might possibly attempt future travel to the United States. We will continue to track the efforts to actually locate these known or suspected terrorists and will not consider the matter resolved until they are found.

Editable Terrorist Watchlist: To ensure that the records TSC exports to our screening partners are as accurate as possible, we are working with the NCTC to expedite daily modifications to the Terrorist Watchlist.

Conclusion

As previously stated, our watchlisting and screening enterprise would not be where it is today without the superb collaborative efforts between the TSC, the FBI, the DHS, the Department of State, the Department of Defense, the NCTC and other members of the Intelligence Community. Chairman Lieberman, Ranking Member Collins and members of the Committee, thank you for the opportunity to address this Committee. I look forward to answering your questions.