



Department of Justice

STATEMENT OF

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DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON TRANSPORTATION SECURITY
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

ENTITLED

**“SAFEGUARDING PRIVACY AND CIVIL LIBERTIES
WHILE KEEPING OUR SKIES SAFE”**

PRESENTED

SEPTEMBER 18, 2014

**Statement of
Christopher M. Pihota
Director
Terrorist Screening Center
Federal Bureau of Investigation
Department of Justice**

**Before the
Subcommittee on Transportation Security
Committee on Homeland Security
United States House of Representatives**

**At a Hearing Entitled
“Safeguarding Privacy and Civil Liberties While Keeping our Skies Safe”**

**Presented
September 18, 2014**

Good afternoon Chairman Hudson, Ranking Member Richmond and members of the Subcommittee. Thank you for the opportunity to discuss the Terrorist Screening Center (TSC) and its role in the interagency watchlisting and screening process.

Over the past eleven years, the TSC has played a vital role in the fight against terrorism by integrating terrorist identity information from the law enforcement, homeland security, and intelligence communities into a single identities database known as the Terrorist Screening Database (TSDB), which populates the various terrorist screening systems used by the U.S. Government. Throughout this process, the TSC has remained committed to protecting the American public from terrorist threats while simultaneously protecting privacy and safeguarding civil liberties. As our efforts continue to evolve in response to new threats and intelligence, your support provides us with the tools necessary to continue our mission.

Terrorist Nomination Process

The TSDB, commonly referred to as the Terrorist Watchlist, contains both international and domestic terrorist identity information. The procedure for submitting information on individuals for inclusion on the Terrorist Watchlist is referred to as the nomination process. The nomination process is the most fundamental and singularly important step in the watchlisting process. It is through this process that individuals are added to the Terrorist Watchlist. Nominations originate from credible information developed by our intelligence and law

enforcement partners. These intelligence and law enforcement agencies are referred to as Originators in the watchlisting community because it is through their work that nominations are developed. Federal departments and agencies submit nominations of known or suspected international terrorists to the National Counterterrorism Center (NCTC) for inclusion in NCTC's Terrorist Identities Datamart Environment (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 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.

Reasonable suspicion requires articulable facts which, taken together with rational inferences, reasonably warrant the 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." The reasonable suspicion standard is based on the totality of the circumstances in order to account for the sometimes fragmentary nature of terrorist information. Due weight must be given to the reasonable inferences that a person can draw from the available facts. Mere guesses or inarticulate "hunches" are not enough to constitute reasonable suspicion. In addition, nominations must not be solely based on race, ethnicity, national origin, religious affiliation, or First Amendment protected activity, such as free speech, the exercise of religion, freedom of the press, freedom of peaceful assembly, and petitioning the government for redress of grievances. There are limited exceptions to the reasonable suspicion requirement, which exist to support immigration and border screening by the Department of State and Department of Homeland Security.

Upon receiving the nomination, TSC personnel review the supporting information to assess sufficiency, including accuracy and timeliness. In particular, TSC personnel must make two determinations. First, they evaluate whether the nomination meets the reasonable suspicion

standard for inclusion in the TSDB. This includes determining whether the derogatory information provided with the nomination meets the additional requirements for placing an individual on the No Fly or Selectee list. If a nomination involves a request that an individual be placed on the No Fly or Selectee list, the nomination must meet additional substantive criteria, above and beyond the “reasonable suspicion” requirement for TSDB nominations. Second, they consider whether the biographic information associated with a nomination contains sufficient identifying data so that a person being screened can be matched to or distinguished from a watchlisted individual on the TSDB.

Upon conclusion of the TSC’s review, TSC will either accept or reject the TSDB nomination. If a nomination is accepted, the TSC will create a TSDB record which includes only the “terrorist identifiers” (e.g., name, date of birth, etc.).

Because it is a sensitive but unclassified system, the TSDB does not include substantive derogatory information or classified national security information. This facilitates the sharing of TSDB identifying information with government screening and law enforcement officers, such as U.S. Customs and Border Protection officers at ports of entry and state and local law enforcement officers throughout the United States. In addition, TSC personnel are trained on what information is proper to disclose when responding to an inquiry by a government screening or law enforcement officer, based on the circumstances of the inquiry.

To uphold the directive in Homeland Security Presidential Directive 6 to maintain “thorough, accurate and current” information, and to protect civil rights and civil liberties, within the TSDB, several quality control measures are continuously applied by nominating agencies, the NCTC, and TSC. These measures include periodic reviews of nominations and TSDB records, including by attorneys, as well as audits of supporting systems to promote the integrity of the information relied upon for maintenance of TSDB records. Nominating agencies have an ongoing responsibility to notify NCTC and TSC of any changes that could affect the validity or reliability of TSDB information. In those cases where modification or deletion of a record relating to international terrorism is required, the nominating agency must notify NCTC, which will process the request and transmit it to the TSC for action. For nominations relating to domestic terrorism, the FBI must follow applicable FBI procedures to request that a FBI-nominated TSDB record be modified or deleted.

Export to Supported Systems

Once a known or suspected terrorist is identified and included in the TSDB, TSC ensures the timely dissemination of the terrorist identity data to our screening partners using encrypted electronic exports. The utility of the watchlisting process is highest when the information is efficiently disseminated to those who need it. The TSC uses subject matter experts, who are experienced analysts and designated agency representatives, to support the U.S. Government watchlisting and screening mission and the screening systems supported by the TSDB. The six major U.S. Government systems supported by the TSDB are: Department of State's Consular Lookout and Support System (CLASS) for passport and visa screening; Department of Homeland Security's (DHS) TECS system for border and port of entry screening; DHS Secure Flight system for air passenger screening (such as against the No Fly and Selectee lists) by the Transportation Security Administration (TSA); DHS Transportation Vetting System for credentialing transportation and critical infrastructure workers; the Department of Defense for base access and screening; and, the FBI's National Crime and Information Center's Known or Suspected Terrorist File (formerly known as the Violent Gang/Terrorist Organization File (VGTOF)) for domestic law enforcement screening. The TSDB data exported to each of these systems is specifically tailored to the mission, legal authorities, and information technology requirements of the department or agency that maintains the system. Accordingly, each system receives a different subset of data from TSDB. In addition, TSC inserts provisions into its information sharing agreements requiring its information-sharing partners to properly protect TSDB-derived information, grant access to or release that information only pursuant to the agreement, and to provide appropriate training to individuals granted access to this information.

Redress

Throughout the entire watchlisting and screening process the TSC plays 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, TSC developed an interagency 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.

For example, travelers who are denied or delayed boarding or entry into the U.S. can submit a redress inquiry through the DHS Traveler Redress Inquiry Program, commonly referred to as DHS TRIP. DHS TRIP provides the public with a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during travel screening at transportation hubs (such as airports and train stations) or during their inspection at a U.S. port of entry. The TSC supports DHS TRIP by helping to resolve complaints that appear to be related to data in the TSDB.

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, 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, downgrade a No Flyrecord).

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.

In addition, when the TSC is advised through press or Congressional inquiries about individuals who have encountered travel difficulties due to their perceived watchlist status, the TSC Redress Unit reviews the pertinent watchlist encounter records. If the person is found to be misidentified, the TSC examines our records to determine if there is any additional information that could be used to reduce future misidentifications. At the conclusion of the process, the

inquiring entity is notified that all reasonable measures to reduce any future misidentifications have been taken.

Finally, as you may know, there are currently a number of pending court cases involving challenges to administration of the No Fly List by plaintiffs who allege they have been wrongly denied boarding on an aircraft. We are currently working with our interagency partners on potential changes to the [existing No Fly List] redress process to ensure that our procedures continue to safeguard civil liberties and privacy. These changes will be made in coordination with other agencies involved in aviation security screening, informed by legal and policy concerns that affect the U.S. Government's administration of the No Fly List and the overarching redress process. In so doing, the U.S. Government will endeavor to increase transparency for certain individuals denied boarding who believe they are on the No Fly List and have submitted DHS TRIP inquiries, consistent with the protection of national security and national security information, as well as transportation security.

Conclusion

The TSC has a standing commitment to protect the United States and its international partners from terrorist threats while protecting privacy and safeguarding civil liberties. Terrorist Watchlisting has been a vital early warning and interdiction tool in the counterterrorism efforts of the United States Government and will continue to serve in this capacity in the future.