



**RELIANCE ON WATCH LISTS CAN THREATEN AMERICANS' SAFETY
REFORM IS CRUCIAL TO STREAMLINE INVESTIGATIONS AND ALLOW
THE INNOCENT TO CLEAR THEIR NAMES**

By Bob Barr and Azizah al-Hibri
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Kiernan O'Dwyer has been stopped by U.S. Customs agents more than 80 times. This figure puts him at the top of a list of travelers red-flagged as a result of government watch lists. O'Dwyer, a veteran pilot for American Airlines, is in notable company. In 2004, Sen. Ted Kennedy (D-Mass.) was delayed at several airports. It took more than three weeks and several personal phone calls to the Homeland Security secretary to have his name removed.

It's not only airline passengers who become ensnared by watch lists. Private businesses are encouraged to screen consumers by using the public Office of Foreign Assets Control watch list, often in cases that go far beyond national security. A report by the San Francisco Lawyers' Committee for Civil Rights shows that the list connects consumers with suspected terrorists on such tenuous bases as a shared middle name. Tom and Nancy Kubbany were denied a mortgage because Tom's middle name matched an alias of one of Saddam Hussein's sons -- despite the fact that Tom was born in Michigan, had never been to Iraq, and is 30 years older than Saddam's son.

A Government Accountability Office report released last week revealed that the Department of Homeland Security may be violating federal laws by failing to inform the public of the methods used to compile watch lists. Some watch lists, when used appropriately, will support our efforts to catch terrorists. But unchecked reliance on these lists poses serious threats to Americans' safety and way of life.

That is why we have joined with the Constitution Project's bipartisan Liberty and Security Committee in proposing meaningful reforms for the use of government watch lists. Our report underscores the importance of implementing reasonable safeguards.

We must be cautious in our use of watch lists. First and foremost, watch lists should not be used as "blacklists" to deny employment or other contracts. The Kubbany's mortgage is far from the only example of a company misusing a watch list. Watch lists are appropriate only when a lengthy investigation is not possible and the potential consequences are extremely grave, as in the case of the no-fly list.





Even when watch lists are appropriate, reforms are necessary to promote fairness and accuracy. Since most people will not know they are on a watch list until they experience some harm, it is crucial to maintain accurate lists in the first place. The system requires serious front-end reform, including clear written standards detailing what evidence is needed to place someone on a list.

Proper investigation, nomination and maintenance procedures are essential. We also need a remedy for cases in which errors are made.

Earlier this month, Chicago witnessed the struggle of someone wrongly placed on a watch list. On May 8, this paper reported that the Chicago Police Department had fired janitor Arif Sulejmanovski after his name was discovered on a watch list. Police soon learned that he was placed on the list during a criminal investigation, and that his entry remains despite a federal investigation finding no ties to terrorist activities. Sulejmanovski is still without his job, and fears his name has been permanently sullied.

The need for reform is crucial and pressing. Without significant reforms to streamline investigations and allow innocent individuals to clear their names, watch lists will continue to tie up law enforcement resources and threaten the rights of Americans without being an effective national security tool.

We recognize that the government has implemented some reforms, including an online redress inquiry program for travelers. But this is not enough. Congress should immediately hold hearings on the matter to hear from law enforcement experts, civil liberties groups, and constitutional scholars about the impact of watch lists.

Watch lists can be useful, but only insofar as they are maintained fairly and used appropriately. Liberty and security are mutually reinforcing; we can and must demand both from our government.

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