



NATIONAL ASSOCIATION FOR GUN RIGHTS

STANDING UP FOR FREEDOM
DEFENDING THE SECOND AMENDMENT

Issue Brief

Abusing “Terror Watch lists” to attack the Second Amendment

Position:
OPPOSE

Overview

Some lawmakers -- aided by anti-gunners in the media -- are reviving a failed legislative proposal to give the Attorney General sweeping new powers to strip law-abiding Americans of their gun rights, without due process, because government bureaucrats have decided to label them “terrorists” and add their names to the so-called “Terrorist Watch” list or “No Fly” list.

Denying Constitutional Rights on the basis of mere suspicion is antithetical to the Constitution and goes against the entire foundation of our legal system.

The National Association for Gun Rights opposes this plan, and will view any action to advance or support it as a direct attack on the Second Amendment rights of all Americans.

This is NOT about protecting Americans from terrorists

- This is about a back door gun ban potentially affecting large classes of Americans, including any “Constitutional conservatives” who have political views that may differ from a sitting Administration.
- Any American merely accused of being or supporting a terrorist would be denied the right to purchase a firearm at a point of sale through the Brady-NICS gun owner registration at the whim of the government bureaucrat who submitted their name to the watch list.
- Actual terrorists who are intent on doing harm will not willingly or voluntarily submit to background checks or other gun control laws any more than domestic criminals do now.
- Terrorist attacks in France last year involved automatic firearms which were still obtained illegally and possessed unlawfully by terrorists in one of the strictest gun control environments in Europe. ¹

NO DUE PROCESS: This proposal would strip Second Amendment rights from law-abiding Americans without any adjudicative process or judicial oversight.

- In 2004, the Intelligence Reform and Terrorism Prevention Act created a centralized “terror watch” database. This act gave all authority to add any name to the list to unelected government bureaucrats, not judges. ²
- Today’s so-called “terror watch list” includes more than just “terrorists.” It includes individuals who are neither involved in any criminal activity nor accused of being involved in such activity. Individuals who are guilty of nothing more than being under suspicion, and in some cases who aren’t even suspected of any wrongdoing are included on the list. ³
- Individuals can be placed on the “terror watch” list simply because the FBI wants to interview them about someone else who may have a connection to terrorism. ⁴
- There doesn’t need to be any evidence, much less proof of wrongdoing. Names can be added to the “watch list” for any reason, or no reason at all. There is no adjudicative procedure, no due process and no appeal afforded to those who are added (even mistakenly) to the list.

¹ <http://www.theguardian.com/world/2015/nov/15/paris-attacks-highlight-frances-gun-control-problems>

² http://www.nctc.gov/docs/pl108_458.pdf

³ <https://theintercept.com/2014/07/23/blacklisted/>

⁴ Denver FBI spokesman Carl Schlaf, “Gun Shoppers on Terrorism Watch List,” Rocky Mountain News, 3/9/2005

Flawed Data is littered with inaccuracies; wrongfully includes names of law-abiding Americans

- Innocent law-abiding Americans are frequently ensnared on the terrorist “watch list.” Some are guilty of no more than having names resembling other suspected terrorists.
- Limited information revealed about the program suggests that as many as 1.1 million names are included on the “watch list,” and approximately 5% or nearly 50,000 were Americans.⁵ An estimated 740,000 are unique individuals, and nearly 300,000 or 40% have no recognized terrorist affiliation at all.⁶
- At least three members of Congress, including the late Senator Ted Kennedy and Congressman Tom McClintock, have been stopped from boarding flights when their names appeared on the “no-fly” list.⁷
- Recently, 73 TSA employees were found to be on the watch list⁸ along with an airline captain, lawyer, and even an eight-year old child.⁹

Guilty until proven innocent

- The “watch list” allows isolated bureaucrats to decide who is and who is not a “suspected terrorist” based on loose standards and even secret evidence. If they say you’re a terrorist, you’re a terrorist.
 - Leaked copies of an official “Watchlisting Guidance” document details the low and largely subjective standards for “reasonable suspicion.” It leaves the final decision to a single nominating agent or nominating agency, not a judicial authority.¹⁰
 - The standards are so low that the government’s guidelines specifically allow for a single, uncorroborated source of information – including a Facebook or Twitter post – to serve as the basis for placing you on this master “watch list.”¹¹
- If the “No Fly, No Guns” proposal becomes law, lone bureaucrats will be able to single out law-abiding Americans and strip them of their Second Amendment rights without any probable cause whatsoever. In some jurisdictions this would even trigger automatic firearms confiscation.
- It’s virtually impossible for wrongfully accused individuals to have their names removed from the “terror watch list.” Individuals wrongfully put on the “terror watch list” are at the mercy of an unknown federal agent and generally must win the cooperation of a federal agent in order to get their names off the list.¹²

A way to persecute political opponents

- **This proposal would let the Attorney General declare any American the Administration doesn’t like or politically agree with a “terrorist” and strip them of their guns right based on mere “suspicion.”**
- In 2009 the Obama Department of Homeland Security under Janet Napolitano released a controversial report warning of the “terror” threats from “right-wing extremists.”¹³
- In 2015, the same Homeland Security Department, under current Secretary Jeh Johnson released another memo again warning of “terror” threats from “right-wing extremists.”¹⁴ The same anti-gun secretary who is now proclaiming that gun control is now a matter of homeland security.¹⁵
- The Obama Administration has repeatedly attempted to use government entities -- including both the DHS and the IRS -- to harass and silence individuals and organizations. Given this repeated abuse of power, law-abiding gun owners have every reason to believe that this President, future Presidents, and the Attorney General would abuse the power to arbitrarily define gun owners as “terrorists” to the fullest extent possible.

⁵ <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/31/AR2009103102141.html>, and http://www.nctc.gov/docs/tidefactsheet_aug12014.pdf

⁶ <https://theintercept.com/2014/08/05/watch-commander/>, and <http://www.theguardian.com/commentisfree/2014/aug/30/terrorist-watch-list-rules-innocent-people>

⁷ <http://www.nytimes.com/2004/08/20/us/senator-terrorist-a-watch-list-stops-kennedy-at-airport.html>, and <http://www.sacbee.com/news/politics-government/capitol-alert/article49066450.html>

⁸ <http://www.newsweek.com/tsa-investigation-finds-73-workers-uss-terrorist-watc-341696>

⁹ <http://www.cnn.com/2008/US/08/19/tsa.watch.list/index.html>

¹⁰ <https://theintercept.com/document/2014/07/23/march-2013-watchlisting-guidance/>

¹¹ <http://www.theguardian.com/world/2014/jul/24/us-terrorism-watchlist-work-no-fly-list> (See also page 34, Sect. 3.6 of “Watchlisting Guidance”)

¹² <http://www.businessinsider.com/spencer-ackerman-how-you-can-be-on-a-terrorist-watchlist-2014-7>

¹³ <http://fas.org/irp/eprint/rightwing.pdf>

¹⁴ <http://www.washingtontimes.com/news/2015/feb/21/dhs-intelligence-report-warns-of-domestic-right-wi/>

¹⁵ <http://www.cbsnews.com/news/orlando-nightclub-shooting-jeh-johnson-gun-control-is-now-a-matter-of-homeland-security/>