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ISSUE: Terrorist Watch List Redress Activities  
DEPARTMENT/AGENCY: Department of Homeland Security; Department of Justice, Office of the Director of National Intelligence, National Counterterrorism Center, and Terrorist Screening Center (primary leads)  
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BRIEF SUMMARY:  
At the request of the Board, for the past sixteen months Vice Chairman Alan Raul has undertaken coordinating the efforts of relevant Federal departments and agencies to establish a formalized, unified, and simplified redress procedure for individuals with adverse experiences with the government’s watch list or during screening processes. Both government officials and non-governmental advocacy experts repeatedly raised this issue as an area where the Board could bring focus, organization, and prioritization. The resulting draft Memorandum of Understanding (MOU) is a constructive and positive step intended to secure a commitment from these agencies that participate in the watch list process to engage actively in and support the redress process.

This memorandum discusses the history of the Board’s interest in and efforts to advance a watch list redress procedure, and how the MOU will operate once fully executed. It also summarizes a number of watch list redress activities presently underway at the Department of Homeland Security as provided for in the 2006 Rice-Chertoff initiative.
TERRORIST WATCH LIST REDRESS MOU:

A. History of Board Issue Interest

In April, 2006, the Board requested that its Executive Director canvas National Security Council (NSC) and Homeland Security Council (HSC) staff for suggestions on relevant programs, policies, and issues over which they believed the Board could provide valuable advice, oversight and assistance. Terrorist watch list redress issues were among those identified. It was noted by NSC and HSC staff that there were fourteen such government watch lists and that there was presently no formal method to remove names or to correct inaccurate or incomplete information contained in those lists.

Concerns over watch list redress issues were also raised by Anthony D. Romero and Caroline Fredrickson of the American Civil Liberties Union, and by Jerry Berman, Leslie Harris and James Dempsey of the Center for Democracy and Technology when they met with Chairwoman Dinkins and Vice Chairman Raul on April 27 and May 3, 2006, respectively. Then-Member Lanny Davis was particularly interested in this issue given his previous experience with a pro bono client in private practice that experienced difficulties associated with one of the various watch lists.

At the Board’s third meeting on May 9, 2006, (a teleconference executive session), staff presented the Board with a number of issue options for the Board’s attention, including watch list redress. The Board unanimously agreed to pursue the matter and at the Board’s fifth meeting on May 17, 2006, Chairwoman Dinkins asked Vice Chairman Raul to lead the Board’s efforts.

As you know, the full Board has held several formal meetings in which this issue has been discussed. It was initially briefed by then Terrorist Screening Center (TSC) Director Donna Bucella on June 26, 2006. On January 31, 2007, the Board visited with DHS Secretary Michael Chertoff at his office in Federal Triangle and among the issues discussed was watch list redress procedures. He encouraged the Board’s efforts. Finally, the Board met on April 26, 2007 with the new TSC Director Leonard Boyle. The Board took that opportunity to commend the dedicated efforts of TSC Privacy Officer Lyn Rahilly.

B. Board Efforts to Advance the MOU

The TSC is charged with maintaining the U.S. government’s consolidated terrorist watch list, which contains the identifying information of all known or appropriately suspected terrorists. It works with the National Counterterrorism Center (NCTC), which serves as the U.S. Government’s central repository for information on international terrorist identities, known as the Terrorist Identities Datamart Environment (TIDE). The TIDE database includes, to the extent permitted by law, all information the U.S. Government possesses on the identities of individuals known or appropriately suspected to be or to have been involved in activities constituting, in preparation for, in aid of, or related to international terrorism.
The establishment of TIDE marked a major milestone in the nation's counterterrorism efforts, compiling into one database information on all known and suspected international terrorists. Before 9/11, watch listing efforts were spread across multiple databases managed by multiple agencies, a significant vulnerability in the nation's efforts to defend against terrorist attack.

Each day, TIDE sends the TSC a sensitive but unclassified subset of terrorist identifiers to populate the U.S. Government's consolidated watch list. This consolidated watch list, in turn, supports efforts to screen, detect, and interdict the travel of known and suspected terrorists here and overseas. These screening efforts encompass the work of consular officers at embassies, Customs and Border Patrol (CBP) personnel, law enforcement organizations across the United States, and foreign and domestic air carriers that fly to the United States. So an applicant for a State Department visa is checked against the watch list at a consulate overseas. At U.S. ports of entry, a border crosser's passport, visa, or driver’s license is also checked against the CBP’s subset of the consolidated watch list. And at a routine traffic encounter inside the United States, a suspect’s identity is checked against the Terrorist Screening Database (TSDB) through the National Crime Information Center. Finally, airline screening personnel review passenger lists for all flights traveling to the United States to identify individuals who are believed to be a threat to civil aviation or the homeland or who should have additional screening prior to boarding a plane.

Examples of the types of activity that warrant an individual's entry into TIDE and terrorist screening systems include:

- Commission of an international terrorist activity;
- Preparation for or planning of international terrorist activity;
- Collection of information on potential targets for international terrorist activity;
- Collection or solicitation of funds or other items of value on behalf of international terrorist organizations or activity;
- Recruitment of members into international terrorist organizations;
- Provision of material support (e.g., safe houses, transportation, communications, funds, false documentation, weapons, or training) to international terrorist organizations; and,
- Membership in or representation of an international terrorist organization.

While the number of names contained in TIDE has grown since its inception in 2003 from approximately 100,000 to over 500,000, this figure represents every identity associated with individuals entered in the database. This distinction is significant because of the multiple aliases and name variants of terrorism suspects. As a result, the number of actual individuals recorded in TIDE is closer to 400,000. And although TIDE continues to grow, individuals' names are also regularly removed when it is determined
that they no longer meet the criteria for inclusion. As a result, more than 10,000 names were removed from TIDE in 2006.¹

Thirteen months after the TSC began operations, it established a formal watch list redress process. The process allowed agencies that used the consolidated terrorist watch list data during a terrorism screening process (screening agencies) to refer individuals’ complaints to the TSC when it appeared those complaints were watch list-related. The goal of the redress process was to provide timely and fair review of individuals’ complaints and to identify and correct any data errors, including errors in the terrorist watch list itself.

TSC’s redress process consists of a procedure to receive, track, and research watch list-related complaints and to correct the watch list or other data that caused an individual unwarranted hardship or difficulty during a screening process. Throughout 2005, TSC worked closely with screening agencies to establish a standardized process for referral of and response to public redress complaints. TSC also worked with federal law enforcement agencies and the Intelligence Community, each of which may nominate individuals to the watch list, to review the redress complaints of individuals on the terrorist watch list, evaluate whether such persons were properly listed and that the associated information was correct, and make any corrections which were appropriate, including removal of such persons from the watch list when warranted.

In the fall of 2005, TSC undertook to document formally the participating agencies’ mutual understanding of their obligations and responsibilities arising out of the watch list redress process. Competing priorities and proprietary dispositions concerning information within participating agencies, however, slowed progress. On June 20, 2006, Vice Chairman Raul convened a meeting in the Eisenhower Executive Office Building of all relevant agencies and called for a renewed effort to prioritize this project. In attendance were representatives from the Departments of State, Defense, Treasury, Justice, and Homeland Security; the Office of the Director of National Intelligence; the CIA; the FBI; the National Counterterrorism Center; and TSC.

The MOU resulted from a six-month period of negotiations between the participating agencies. Board staff participated in numerous working group meetings either at TSC or by telephone conference between June and November, 2006. On October 26, 2006 the Board posted on its web page a solicitation for public comment on personal experiences with the various watch lists. Vice Chairman Raul convened a final working group meeting on November 30, 2006; in January 2007, a final draft of the MOU was approved and submitted for the signature of the heads of these agencies. The Board posted a public statement on its web page on April 2, 2007 summarizing its

¹ TSC has provided the Board with current numbers of U.S. Persons on the selectee and no fly lists. As these numbers are classified, they are not provided in this public document.
activities regarding watch list redress, and it further reported its activities in its 2007 Annual Report to Congress, released on April 20, 2007.

By July 1, 2007, only the Department of Defense had yet to execute the agreement. We were informed at that time by the DOD Chief Privacy Officer that there was no institutional opposition to the agreement (although there had been initial questioning as to why execution was coming at the agency head level), but rather a cumbersome executive secretariat process of getting the document to Secretary Gates. That Chief Privacy Officer has since retired, but the Board’s Executive Director has been informed by the DOD executive secretariat that the MOU is progressing, albeit slowly, to the Secretary for execution. Vice Chairman Raul suggested that the Board write a letter directly to Secretary Gates requesting the status of the MOU. However, the White House Counsel’s Office has offered first to call the DOD General Counsel and enquire directly.

The MOU sets forth a multi-agency redress process in significant detail, from receipt of an individual’s complaint to the response sent by the screening agency. Among other things, the MOU establishes obligations for all parties to secure personal information, update and correct their own record systems, and share information to ensure redress complaints are resolved appropriately. Each participating agency must also commit to providing appropriate staff and other resources to make sure the redress process functions in a timely and efficient manner. Finally, to ensure accountability, each agency must designate a senior official who is responsible for ensuring the agency’s full participation in the redress process and overall compliance with the MOU.

The Department of Justice Office of Legal Counsel is presently considering whether the MOU itself may be released to the public in any anticipated roll out activities. Nothing in the report is classified, and the Board has notified OLC that its position is that the MOU should be released. Once the Department of Defense has executed the MOU, the Board will be included in any public roll out activities.

At the encouragement of the Board, once the MOU has been executed and implemented, the participating agencies intend to continue efforts to bring all possible transparency and public understanding to this process. The Board had anticipated participating in these efforts through the remainder of its existence.

RICE-CHERTOFF INITIATIVE:

On January 17, 2006, Secretary of Homeland Security Chertoff and Secretary of State Rice announced the Rice-Chertoff Initiative (RCI) with a vision of secure borders and open doors for travelers to the United States. The RCI vision included a “one stop redress” for travelers to provide a simpler process for addressing perceived watch list misidentification issues and other individual complaints that arise from the traveler’s screening experience. To implement that vision, the Department of Homeland Security (DHS) led an effort with the Departments of State (DOS) and Commerce and the
Terrorist Screening Center (TSC) to establish a central gateway for submission of complaints and appropriate protocols to respond to redress requests. Additional elements of RCI include a more transparent and efficient watch list matching and adjudication process, as well as efforts to ensure the accuracy and timeliness of the information.

Under RCI, DHS and DOS will provide travelers with a single process for addressing perceived watch list misidentification issues and other individual complaints that arise from the traveler’s screening experience, including:

- denied or delayed boarding,
- denied or delayed entry into or departure from the United States at a port of entry, and
- secondary screening.

A. Traveler Redress Inquiry Process (TRIP)

As part of RCI’s efforts to create a one-stop redress process, on February 20, 2007, DHS implemented its Traveler Redress Inquiry Process (TRIP). TRIP provides a central gateway for travelers to get information about screening and redress as well as to contact DHS regarding their adverse experiences. The DHS TRIP Program Office then ensures that the cases are resolved, to the extent possible, and that travelers receive an official response from the screening agency. As part of an interagency governance structure, the DHS Transportation Security Administration, Office of Transportation Security Redress (OTSR) was charged with operating and managing the program for all of DHS. TRIP is managed by the staff of OTSR with the assistance of staff from the various participating DHS components. OTSR’s existing Redress Management System was modified to serve as the DHS redress intake mechanism. The DHS TRIP Program Office, using the DHS TRIP system, assigns redress requests to the appropriate DHS agencies, ensures coordination of responses, and institutes performance metrics to track progress, giving leadership visibility into the types of complaints DHS receives and the status of response.

Between February 20 and June 24, 2007, TRIP received approximately 6,200 requests for redress relief related to watch list clearance procedures. In order to adjudicate requests, DHS must receive copies of the traveler’s passport or other identification documents. The DHS TRIP process clearly outlines this requirement and provides travelers with the means to submit that information by email, fax, or mail. Twenty-percent of the cases for which DHS TRIP has received documentation have been resolved and closed within thirty days of receipt of documentation from the traveler.

The DHS Screening Coordination Office, the DHS TRIP Office, and the screening agencies responsible for addressing redress requests continue to refine the concept of operations for DHS TRIP as well as to consider next phases for enhancing the Department’s redress capabilities.
Board staff has received reports that TRIP is experiencing software problems and requested that the appropriate officials at DHS arrange for Vice Chairman Raul to visit the facilities and talk to relevant employees.

B. Reduce Watch List Misidentifications

According to DHS, one of the most frequently encountered redress requests is that of an individual who has an identical or very similar name or other identifier as an individual who is properly placed on the terrorist watch list. Both TSA and CBP have operational processes in place to address, in large part, biographic-based misidentifications.

**TSA Cleared List** – TSA has implemented a cleared list for individuals who have the same or a similar name or other identifier as someone on the No Fly or Selectee lists. The Cleared List is generated by TSA, through the DHS TRIP Office, and provided to air carriers. The Cleared List is currently applied by the airlines to distinguish false matches from actual matches as they perform No Fly and Selectee list matching. It must be noted that some airlines have implemented the Cleared List more effectively than others; therefore many passengers have experienced continued problems even after being informed by TSA that their issue had been addressed. The system changes and investments required to most efficiently institute the watch list and Cleared List processes vary significantly by carrier. Some have chosen to make the investments, while others—hampered by bankruptcy, antiquated systems, or other reasons—have put less efficient processes in place. Once Secure Flight assumes responsibility for vetting passengers, the understandable lack of consistency in application of the Cleared List should be eliminated. At the same time, there is much that DHS can learn from the air carriers regarding their experiences in operating watch list and Cleared List matching. DHS is engaging the air carriers in that dialogue.

**Customs and Border Patrol (CBP) Primary Lookout Override (PLOR)** – CBP has implemented a process that automatically overrides potential watch list matches in its screening systems when CBP has previously determined the match to be a false positive. PLOR is an automated function of the Treasury Enforcement Communications System for situations where passengers, who are not the subject of derogatory information, are repeatedly stopped because their biographical information (name, date of birth, or document number) is similar or identical to a watch list record. When the passenger is positively identified as not a match to a watch list record, CBP can create a PLOR record that links the name, date of birth and document number to the actual record and automatically overrides that hit unless new derogatory information has become available. As a result, individuals do not have to resolve the false match each time they encounter CBP. Between February 2006 and March 2007, CBP approved 27,151 individuals for PLOR. Subsequently, 25,009 inspections were avoided for these travelers.

**Opportunities for the future** – DHS is currently exploring how sharing of the Cleared List and PLOR results could assist TSA and CBP operations. This analysis includes an assessment of the relevant legal authorities and privacy considerations for data sharing.
Once the Secure Flight program is implemented, additional improvements will be achievable, such as potentially enabling misidentified individuals to print their boarding passes at the kiosk.

**Routine Reviews of Terrorist Screening Database Information** – TSC and the National Counterterrorism Center (NCTC) are leading efforts to improve the quality of watch list information contained in the Terrorist Screening Database (TSDB). First and foremost, every nomination regarding an international terrorist identity is reviewed for quality by analysts at the NCTC before it is passed to the TSC. Nominations to add to or modify a watch list record are also reviewed by TSC analysts for quality and accuracy before any changes are made in the TSDB. Any nominations that do not meet the criteria for watch-listing are rejected by TSC. TSC also reviews watch list records for quality assurance purposes each time there is an encounter or potential encounter with a watch-listed person. And, as explained above, TSC does an in-depth review of relevant watch list records when an individual files a redress complaint through DHS TRIP.

In addition to the efforts described above, TSC analysts also conduct various proactive quality assurance projects. For example, TSC recently completed a review of all records on the No Fly List and has already begun a record-by-record review of the Selectee List. Quality assurance projects like the No Fly and Selectee reviews ensure that the most current, accurate, and thorough watch list information is being made available to DHS and other screening agencies and that records are updated in a timely fashion. Such regular updates both improve the quality of the screening being conducted and decrease the instances of screening misidentifications.

**RECOMMENDATIONS:**

Significant efforts are underway to address the ability of the public, most often travelers, to seek redress of inaccurate or incomplete information on the various watch lists. However, more needs to be done. It may be of interest to note that the Government Accountability Office (GAO) has recognized these efforts. In September, the GAO issued a report (GAO-06-1031) describing the U.S. Government’s initiatives to minimize adverse effects to the traveling public of the use of terrorist watch lists. The report notes that, although the total number of misidentifications is a significant number, they represent a tiny fraction of the total screening transactions that are conducted on the hundreds of millions of travelers each year. The report also recognizes the interagency efforts that are underway to improve the quality of the data maintained by the TSC as well as the initiatives that have been put in place to improve the ability of people to seek redress. The GAO had favorable reviews of these efforts and issued no additional recommendations in its report. The Board is mentioned in this report.

The existing Board could have played a significant role in advancing this issue, as acknowledged by all members of the MOU working group. This issue was a good example of the service which the Board could provide given its White House authority and ability to convene meetings in the White House complex.
We recommend that this report be adopted by the full Board and posted on the Board’s web page. In addition, a copy should be provided with an appropriate cover letter to Secretary of State Rice, Secretary of Homeland Security Chertoff, Director of National Intelligence McConnell, and White House senior staff. The Board should commend their efforts to date, encourage continued focus on redress process and quality, and recommend that the new Board, as mandated by P.L. 110-53, be brought into this process as soon as it is constituted.

AGREE ____ X ____  DISAGREE _________  DISCUSS FURTHER ________

FOR THE BOARD:  Caree Dinkins  DATE:  September 13, 2007______