



Under stop-and-frisk, New York police officers were empowered to detain and search people for often-vague pretexts. The policing practice primarily targeted Black and Brown communities. The NYPD admitted that nine out of 10 New Yorkers stopped-and-frisked were innocent.

In 1994, California passed Proposition 187, which denied public benefits, including college scholarships, to undocumented people. Prop 187 also required social workers to report any individual *suspected of being undocumented* to the authorities.



Anti-Muslim Discrimination

Source: American Civil Liberties Union (ACLU)

Available at: <https://www.aclu.org/issues/national-security/discriminatory-profiling/anti-muslim-discrimination>

Equality and religious freedom are our bedrock values. They are enshrined in our Constitution and are not mere formalities to be discarded in difficult times. Yet recently, we have seen a politics of fear used to justify discrimination against Muslims. This has resulted in unwarranted surveillance, unlawful profiling, and exclusionary immigration policies targeting people based on their faith, nationality, or national origin.

Such discriminatory policies have been accompanied by a worrying rise in hateful rhetoric, which has severe consequences.

At a time when hate crimes are down overall, they are up against American Muslims.



The ACLU works to fight anti-Muslim discrimination on a number of fronts. Included among our top priorities are fighting unconstitutional surveillance programs that entrench discrimination without keeping us safe; opposing discriminatory immigration policies that target refugees and travelers with any tie to the Muslim world; and resisting politics of hate that target mosques and the free expression of religion.

Religious Freedom

From religiously motivated discrimination and attacks on existing and proposed Islamic centers to misguided congressional hearings, Muslims in America are being unfairly targeted simply for exercising their basic constitutional right to religious liberty.

The ACLU has taken action on multiple fronts to protect religious freedom, one of America's most fundamental liberties. These efforts include challenging bans on state-court consideration of Sharia and international law; defending mosques and documenting attacks on them; and fighting discrimination against American Muslims in public accommodations, employment, and prisons.

Discriminatory National Security Profiling

The government uses discriminatory profiling as official policy in the national security context in multiple ways. The FBI has collected racial and ethnic information and “mapped” minority American communities around the country based on crude stereotypes about which groups commit different types of crimes. The TSA scrutinizes passengers for signs of deception or “mal-intent” using a program that lacks a scientific basis, is wholly ineffective, and has given rise to numerous allegations of racial and religious profiling. The federal government encourages law enforcement agencies and ordinary citizens to report information according to a loose, unduly broad standard for “suspicious activity reporting,” which turns ordinary people against their neighbors, targets First Amendment-protected activity, and results in harassment and unwarranted surveillance of American Muslims.



The ACLU has pushed back on all of these fronts. We have unearthed thousands of pages of documents detailing the surveillance programs that target American Muslim communities; repeatedly taken the government to court to challenge such programs; lobbied in Congress; and more.

Immigration Discrimination

Following the terrorist attacks in Paris in November 2015, a new wave of anti-Muslim sentiment rose up across the country. Governors declared they would refuse to accept Syrian refugees within their state borders. The House of Representatives passed a bill designed to halt the resettlement of Syrian and Iraqi refugees to the United States. Congress tightened controls in the visa waiver program by passing a law that enshrines discrimination against dual nationals of Iran, Iraq, Sudan, or Syria, or anyone who has visited those countries in recent years — including the relatives of American citizens wanting to visit family.



The ACLU has worked actively to oppose these measures. We sued the governor of Indiana to stop attempts to suspend resettlement of Syrian refugees, claiming the governor's actions violate the U. S. Constitution and federal law. We are representing the International Rescue Committee in litigation to prevent Texas from barring the resettlement of Syrian refugees in Texas. And we have actively lobbied Congress to oppose changes with discriminatory effects to the visa waiver program.

“Countering Violent Extremism”

The federal government's “Countering Violent Extremism,” or “CVE” initiative focuses overwhelmingly on American Muslim communities, stigmatizing them and casting unwarranted suspicion on innocuous activity. The series of programs call on law enforcement, social service providers, teachers, and members of religious communities to identify individuals who might have extreme or “radical” views, under the assumption that they are at risk of committing violence. To many, that's known as spying.

Preventing acts of violence is a laudable goal, but there is no evidence that CVE programs are effective – and much evidence that they threaten basic freedoms and are counter-productive. They are based on discredited theories of purported radicalization to violence, even though decades of research has failed to identify reliable indicators that can be used to predict who will commit a violent act.



To make matters worse, because CVE programs target American Muslim communities, these communities are stigmatized as inherently suspect and singled out for monitoring based on their faith. CVE programs have been rejected by American Muslim communities in the cities in which they are being implemented. They threaten the rights to equality and freedom from discrimination, along with the freedoms of speech, thought, and religion. They are hardly conducive to supporting communities and creating a space for differing viewpoints.

Social Media Monitoring

Calls are on the rise to compel technology companies to report potential “terrorist activity” on their platforms to the government and to close the accounts of those engaged in such activity. While social media companies should and do notify the government if they learn that a user is threatening immediate violence, it would be a mistake to expect or require social media companies to act as arms of the national security state. Not only would it be impossible for them to monitor all of the speech on their platforms, but they inevitably would report protected speech to the government, which would cause the government to scrutinize such speech and would chill legitimate expression.



The government has a long history of invoking national security as a justification for the suppression of speech that shouldn't be suppressed. But censorship of speech is never a good idea. It strips us of our most powerful tool to combat hateful ideas: the ability to identify them and respond with better ideas.

Watchlists

The U.S. government maintains a massive watchlist system that risks stigmatizing hundreds of thousands of people — including U.S. citizens — as terrorism suspects based on vague, overbroad standards and secret evidence. The consequences can be devastating, from repeated questioning and harassment by law enforcement officials to an indefinite ban on air travel. To make matters worse, the network of watchlists has been found to be riddled with errors, and watchlisted individuals don't have a meaningful way to correct errors and clear their names.

The ACLU is seeking reform of this broken watchlisting system in a variety of ways. We filed a landmark challenge to the No Fly List in which a federal judge struck down the government's redress process, ruling that it “falls far short of satisfying the requirements of due process” and is “wholly ineffective.” Unfortunately, the revised redress process the government put in place also violates due process, and we have challenged that as well. The ACLU continues to advocate for broad reform of the entire watchlisting system, consistent with the Constitution.

ACLU and NYCLU Statement on Controversy over New York City Islamic Center

Source: American Civil Liberties Union

Available at: <https://www.aclu.org/aclu-and-nyclu-statement-controversy-over-new-york-city-islamic-center>

Religious freedom is one of America's most fundamental liberties, and a central principle upon which our nation was founded. For hundreds of years, even in the face of opposition, religious pluralism and tolerance have sustained and helped to define our nation. Still today, we must continue to boldly oppose religious discrimination rooted in cultural stereotyping, and resist those who seek to trade away our most precious values for political advantage.

We applaud those government officials who have stood up for religious liberty and defended the right of private citizens to build a mosque and community center in lower Manhattan. These officials have rightly understood that we must always — especially in times of controversy — vigilantly uphold our core values, including a faith community's right to build a house of worship, whether a mosque, a church, or a synagogue. The horrific events of 9/11 call on all of us to keep a close watch over our fundamental freedoms. When we violate one group's freedom, everyone's liberty is at stake.

Throughout America's history, almost every religious group, including Jews, Protestants, Catholics and Muslims, has been the target of discrimination. Tolerance and fairness have generally prevailed, but only after principled voices have transcended the fear and hatred.

The American Civil Liberties Union has defended the right of all religious denominations — from majority faiths to marginalized religions — to establish places of worship, and for Americans to pray, or not, as they choose. We will continue that fight now. Preventing Muslims or any other group from freely practicing their faith is unconstitutional and goes against the very core of American freedom. Americans must ensure that our political leaders know that discrimination is a losing proposition and that adherence to the Constitution is not optional. We must not let those who seek to undermine our nation succeed by forcing us to betray our most fundamental American liberties.

Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling

Source: American Civil Liberties Union

Available at: <https://www.aclu.org/issues/national-security/privacy-and-surveillance/mapping-fbi-o?redirect=feature/mapping-fbi>

The Federal Bureau of Investigation is collecting racial and ethnic information and “mapping” American communities around the country based on crude stereotypes about which groups commit different types of crimes. Nationwide, the FBI is gathering reports on innocent Americans' so-called “suspicious activity” and sharing it with unknown numbers of federal, state and local government agencies.

In response, the ACLU's “Mapping the FBI” initiative seeks to expose misconduct, abuse of authority, and unconstitutional profiling and other violations of Americans' rights and liberties across the country.

As our nation's predominant law enforcement agency, the FBI should be tracking true threats, not wasting resources and inappropriately mapping American communities on the basis of race, ethnicity, national origin, or religion. Law enforcement programs based on evidence and facts are more effective than a system based on racial stereotypes or mass suspicion.

Yet, in the decade since 9/11, long-standing safeguards on the FBI's investigative and intelligence collection activities have been erased, allowing it to engage in racial and ethnic profiling and to initiate intrusive investigations with little or no suspicion of wrongdoing.

Taken together, the changes in the FBI's authority have vastly expanding its ability to engage in unlawful and abusive surveillance of innocent Americans.

The ACLU is working in the courts, in Congress and in communities to expose the ways in which the FBI's expanded authority threatens civil rights and civil liberties. Our work includes:

- **Unleashed and Unaccountable:** Shortly after James B. Comey was sworn in to lead the FBI in September 2013, the ACLU published “Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority.” This report documents the extraordinary expansion of FBI power since 2001, including abuses against racial and religious minorities, immigrants, and protest groups. It establishes a foundation for reform with recommendations to ensure FBI respect for civil liberties.
- **Eye on the FBI:** Consolidating information obtained through ACLU records requests, lawsuits and reports, the ACLU's “Eye on the FBI” alerts provide regular and detailed analysis of FBI activities that pose a threat to civil liberties. These activities include the use of factually incorrect and bigoted biased counterterrorism materials and FBI racial profiling.

- **Racial and Ethnic Mapping:** [34 ACLU affiliates](#) have filed public records requests to uncover how the FBI is using racial and ethnic demographic information and data about “ethnic-oriented” business and facilities to “map” and investigate local communities. ACLU affiliates in [Michigan](#), [New Jersey](#) and [Northern California](#) are in federal court to enforce their records requests and secure information for the public.
- **eGuardian:** The ACLU has sued the FBI and the Justice Department to learn more about an FBI monitoring and information-sharing program known as “eGuardian,” through which the bureau collects so-called [“Suspicious Activities Reports”](#) (SARs) from local, state and federal law enforcement agencies nationwide.
- **Spy Files:** This ACLU effort paints a comprehensive picture of the vast and expanding infrastructure of surveillance in the U.S. today by local, state and federal law enforcement—including the FBI. Documents obtained by the ACLU show that through this de facto domestic intelligence system, our government is monitoring and recording Americans' First Amendment-protected beliefs and activities.
- **FBI Interviews:** The ACLU is working to educate individuals and community organizations across the country about their rights when encountering law enforcement. Over the past two years, the FBI has significantly increased its use of “voluntary” interviews – especially within specific racial, ethnic, and religious communities – often encouraging interviewees to serve as informants in their communities.

Looking Forward to International Visits from Friends and Family in 2016? Better Hope They're Not Dual Nationals of Certain Countries

By: Joanne Lin
December 2015

Source: American Civil Liberties Union

Available at: <https://www.aclu.org/blog/national-security/looking-forward-international-visits-friends-and-family-2016-better-hope?redirect=blog/washington-markup/looking-forward-international-visits-friends-and-family-2016-better-hope>

December is the time for decking the halls, hitting the malls, and celebrating the holiday season with family and friends — many of whom are flying in from all over the world.

Yet most Americans don't know that Congress is poised to pass a law that will make it harder for many Europeans, Asians, Australians, and others to visit the U.S. In response to the November terrorist attacks in Paris, Congress and the White House hastily cobbled together a bill to tighten controls in the visa waiver program (VWP) and assured its passage by tacking it onto the [must-pass government funding bill](#). What will be the net result of this rushed visa waiver bill, drafted on the heels of the terrorist attacks in Paris? A new law that enshrines discrimination against dual nationals of Iran, Iraq, Sudan, or Syria, who live in VWP countries.

Established decades ago, the VWP facilitates international tourism, trade, and business among 38 countries. In 2014, more than 20 million travelers arrived here through the VWP, including more than [13 million](#) from Europe. While here, these travelers [“generated \\$190 billion in economic output and supported nearly one million American jobs,”](#) according to the U.S. Travel Association.

Reciprocity is the hallmark of the VWP. Under the VWP, all citizens can travel, visa-free, to VWP countries. The VWP allows British tourists to come to the U.S. visa-free, and in turn, American college students can go to Europe visa-free. The VWP allows Japanese high-tech executives to travel to Silicon Valley, and American executives to fly to Tokyo — on short notice.

The visa waiver bill folded into the government spending bill, however, could fundamentally shake up international travel. Starting in 2016, citizens of VWP countries will lose their visa-free travel privileges if they are dual nationals of Iran, Iraq, Sudan, or Syria. This revocation of travel privileges will apply to many [dual nationals](#)— even if they have never set foot inside Iran, Iraq, Sudan, or Syria.

What will be the impact of the new visa waiver law? A German citizen, who has lived in Berlin her entire life, will lose her visa-free privileges if her father is an Iranian citizen — even if she herself has never been to Iran. Two-hundred-thousand people moved to Germany following the 1979 Iran revolution, including many who were exiled. They and their children became German citizens, but under Iranian law they will never lose their Iranian citizenship — thus making them dual nationals.

Starting in 2016, these German-Iranian dual nationals will need to apply for visitor visas, pay a [\\$160 fee](#), attend an interview at a U.S. consulate, and pass additional background checks before coming to the U.S. They will need to clear these extra hurdles if they're coming to the U.S. for any visitor purpose — whether to attend a family reunion, tour the Grand Canyon, or attend petroleum industry meetings in Texas.

As the German ambassador to the U.S. recently [said](#), “Is that the group you want to target? Do you want to target the people who were exiled by the mullahs and penalize them?”

Practically speaking, the new visa waiver law will create two tiers of travelers in VWP countries: (1) those who can continue to come here visa-free and (2) those who can't because they're dual nationals of Iran, Iraq, Sudan, or Syria. There is no justification for such differential treatment. That's rank discrimination based on nationality and parentage. And it's wrong and un-American.

The new law will also strip visa-free privileges from anyone who has been to Iran, Iraq, Sudan, or Syria since March 2011. This includes weapons inspectors examining Iran nuclear facilities, social workers interviewing Kurdish refugees in Iraq, physicians treating patients in Darfur, and human rights investigators documenting atrocities committed by ISIL.

In the wake of the terrorist attacks in Paris, it is understandable that Congress and the White House are beefing up VWP security. But this could be done without enshrining discrimination against people based on their nationality and parentage. The ACLU [calls upon](#) Congress and the White House to fix the discriminatory visa waiver travel restrictions, thereby safeguarding America's security without sacrificing civil liberties.

What's Wrong with Radicalization?

Source: American Civil Liberties Union

Available at: <https://www.aclu.org/other/qa-myth-radicalization?redirect=qa-myth-radicalization>

The word “radicalization” is commonly used in public and policy discourse, but what people mean by it varies and there’s no single agreed-upon definition.

The problem is that government policies and programs are based on a theory of “radicalization” that assumes a process through which people turn to violence because of radical or extreme beliefs. This theory is unscientific and discredited — and government programs based on it result in monitoring or suppression of First Amendment-protected beliefs and ideas.

For example, this dangerous radicalization theory is being applied to American Muslim communities, most recently in the form of “countering violent extremism” programs. [According to this theory](#), the adoption or expression of “extreme” or “radical” religious ideas or practices places individuals on a path toward terrorism or violence, and there are observable “indicators” that can identify those who are “vulnerable” to “radicalization.” This is false. The ACLU has repeatedly provided statements to Congress — in [2009](#), [2010](#), [2011](#), and [2012](#) — to explain the factual and methodological flaws in reports that promote this radicalization theory. Our [allies](#) have also written reports debunking the theory. As we and others have explained, despite years of study and experience in the United States and elsewhere, researchers have not identified criteria or behavioral indicators that can be used to reliably predict who will commit an act of terrorism or political violence.

Simply put, religious beliefs and practices do not correlate with a propensity toward violence. Instead, the freedom to engage in these activities goes to the core of what it means to be an American. Cloaking American Muslims — or any other belief communities — with suspicion puts at risk the freedom of religion, gives the appearance of official endorsement of one set of religious beliefs over another, and threatens to chill free association and free speech.

What's at stake?

The radicalization myth threatens the fundamental freedoms of American Muslims and all Americans. Government efforts to inquire whether American Muslims — or anyone else — holds “radical” or “extreme” beliefs, however those are defined, stigmatize entire communities and promote a climate of fear and self-censorship. Our values are undermined when people forsake religious exercise, political discussions, and intellectual debate to avoid being branded as extreme or at risk of “radicalization.”

Probing people’s thoughts and beliefs also engenders distrust of the government and undermines the relationship between communities and law enforcement. For example, it can cripple government efforts to demonstrate to Muslims at home and abroad that

the United States seeks to live up to its ideals in its equal treatment of all Americans, including Muslims, and is not engaged in a “war against Islam.”

More broadly, our nation’s founders recognized that radical beliefs that challenge social and political orthodoxies are valuable and necessary for a vibrant society and democracy. That is why First Amendment, which protects the freedoms of belief, religion, speech, and association, occupies a special place in our history and in the Constitution.

Unfortunately, though, government suspicion of beliefs and unsupported theories of “radicalization” are nothing new, and our nation’s history shows they are often used to target minorities or those who dissent. For example, during World War I, Congress banned anti-war speech and the FBI conducted investigations of Americans’ political beliefs to identify purported radicals and opponents. Erroneous theories of eugenics supported racist immigration policies and Jim Crow anti-miscegenation laws for decades. Misguided “red” scares and racism drove abominable policies like blacklists, McCarthyism, and Japanese internment. And the FBI infamously spied on civil rights movement leaders in the name of national security during the J. Edgar Hoover era.

What’s the proper role for law enforcement?

The protections built into the Constitution help ensure that law enforcement officers focus their investigative resources where there is evidence of wrongdoing or criminal activity. The police can conduct an investigation when they have reasonable suspicion to believe that a crime has been, or is being, committed. But the standard for initiating or widening an investigation must be rigorous enough to focus security resources on criminal activity and prevent abuse.

One form of such abuse occurs when officers investigate or monitor people based on their religious beliefs or practices. Former Attorney General Eric Holder rightly stated that “law enforcement has an obligation to ensure that members of every religious community enjoy the ability to worship and to practice their faith in peace, free from intimidation, violence or suspicion. That is the right of all Americans. And it must be a reality for every citizen. In this nation, our many faiths, origins, and appearances must bind us together, not break us apart.”

Too often, though, law enforcement and intelligence have targeted religious, racial, ethnic, or national origin communities for monitoring and suspicion. In the case of American Muslims, “countering violent extremism” initiatives may task communities with reporting to law enforcement about individuals’ radical or extreme beliefs. Although warning law enforcement of threats is indeed a shared civic and social responsibility, it would be illegal, unfair, and impractical for law enforcement officials to require any religious or belief community to prove its loyalty to this country by monitoring or “informing” on its members. To the contrary, American Muslims, like the rest of this country’s citizens, have the right to protest illegal, overzealous or abusive government security measures and to vigorously exercise, and encourage others to exercise, rights guaranteed in the Constitution.

Some in American Muslim communities have also expressed legitimate concerns about whether those who volunteer information to law enforcement will find themselves threatened with legal jeopardy. Individuals should speak to lawyers before talking to law enforcement — and know that refusing to talk to law enforcement without a lawyer is a constitutional right.

What's the bottom line?

The government's "radicalization" theory has become a euphemism for religious and ideological profiling. It leads to discrimination and stigmatization, and is fundamentally un-American. Casting suspicion on American faith or belief communities is wrong and does nothing to make us safer.

Turning Tech Companies into Spies Won't Work

By: Lee Rowland
December 2015

Source: American Civil Liberties Union

Available at: <https://www.aclu.org/blog/free-speech/internet-speech/turning-tech-companies-spies-wont-work?redirect=blog/speak-freely/turning-tech-companies-spies-wont-work>

Imagine that before engaging in an attack, a terrorist sent an anonymous handwritten note to a local newspaper. Would politicians scramble to demand that we burn all paper, ban all anonymous mail or install government cameras in every newsroom? Of course not.

Yet following the revelation that one of the San Bernardino murderers pledged support for ISIS on social media, we are seeing a renewed flurry of politicians, both established and aspiring, calling for increased censorship of the Internet. Proposals include demands that companies scrub their platforms of terrorism-related content and a federal bill that would turn social media companies into state-mandated reporters of “terrorist activity.”

These responses are deeply misguided. A good two-step framework for evaluating any policy proposal is to ask: 1) is it consistent with our laws and values and 2) is it effective in achieving its goals? Applied to censorship of online speech, the answer to both questions is an emphatic no.

First, pure censorship of speech is just a very bad idea. Whether it's labeled “hate speech” or “terrorist speech,” silencing speech that is not itself illegal cuts directly against our free speech values (only a very narrow and carefully-defined band of speech is itself illegal, like threats, incitement to violence or child pornography). There's a reason that our First Amendment protects even the vilest speech. It's not just lawyerly paranoia about slippery slopes—it's because transparency itself has immense value. Censorship makes censored speech all the more dangerous because we lose our most powerful tool in combatting evil ideas: the ability to identify them and respond with better ideas.

Mandating tech companies to report on “terrorist activities,” which Sen. Dianne Feinstein (D-Calif.) proposed in a bill she introduced Tuesday, is a flawed idea as well. Social media companies should and do notify the government if they learn that a user is threatening immediate violence. But we should be wary of proposals that go beyond that. Perhaps the most obvious reason is the simplest: online service providers are not experts on terrorism. They're businesses, not intelligence agencies. And there's no magical bright line that separates “good” from “bad” speech, no mystical algorithm possessed by Facebook to figure out exactly what speech—speech that is not already illegal—should be reported to the state.

Let's say you work on the front lines of Facebook's censorship team. Which of these do you report to the feds: someone who retweets ISIS, someone who writes that they sympathize with ISIS's foreign policy goals, someone who "likes" an ISIS Facebook page? How about a page dedicated to a mass murderer? Does it matter whether that murderer's name is James Holmes or Abu Bakr al-Baghdadi? These are not simple decisions. Imagine the pressure of a government mandate on Facebook's censors. There's only one option, really—to report it all. Asking non-experts to help build a massive and meaningless haystack of offensive speech isn't a great counter-terrorism strategy if we ever need to find a needle in a hurry.

More important, it would be terrible for political speech. Speech *supporting* terrorism lives across a razor-thin margin from speech *about* terrorism, foreign policy, drones, the Middle East and Islam. The idea that speaking to such controversial and important policy issues might get you swept into a government dragnet would be enough to chill many from engaging in the sort of speech that's at the heart of the First Amendment.

These concerns aren't merely theoretical. Private companies have a history of censoring speech for reasons that turn out to be misguided. For example, Apple voluntarily blocked applications that permitted users to identify sites of U.S. drone strikes for including "objectionable material." Drone strikes are certainly objectionable. But providing information about our own government's actions is emphatically *not*; our democracy functions best with public oversight and accountability. Apple's decision wrongly cut off access to information critical to a foreign policy debate of immense public concern.

Finally, censoring and monitoring social media speech simply isn't an *effective* remedy for radicalization. Social media companies are not omniscient—they do not and cannot monitor every bit of speech that is posted on their networks. Even when social media companies are determined to shut down particular speakers or accounts, those speakers can often circumvent the rules and open new accounts faster than companies can keep up. Shutting down the accounts of terrorist organizations would actually deprive the government of an important source of intelligence. And it would certainly deprive Americans of the ability to see and challenge the views of terrorist organizations—without any demonstrable upshot.

It is a grave mistake to expect or require private social media companies to act as arms of the national security state, just as it is a grave mistake to scapegoat the Internet for laying bare the darkest thoughts of the soul. The Internet is made up of ones and zeros. It does not organically create hate. The hate is, sadly, in our human minds and human hearts. Denying that won't get us anywhere in the battle for winning those hearts and minds — but sunlight will. For hundreds of years, we've been a nation that is determined to stay safe *and* free, to hew closely to our values even in times of war, fear, and terror.

So, politicians: don't blame the medium for the message. Especially when the medium—the Internet—may be the greatest asset we have in the fight against terror.

US Government Watchlisting: Unfair Process and Devastating Consequences

Source: American Civil Liberties Union

Available at: <https://www.aclu.org/other/us-government-watchlisting-unfair-process-and-devastating-consequences?redirect=national-security/us-government-watchlisting-unfair-process-and-devastating-consequences>

The U.S. government today maintains a massive watchlisting system that risks stigmatizing hundreds of thousands of people, including American citizens, as “known or suspected terrorists” based on secret standards and secret evidence, without a meaningful process to challenge error and clear their names. The watchlists in this system are shared widely within the federal government, with state and local law enforcement agencies, and even with foreign governments, heightening the negative consequences for listed individuals. Being placed on a U.S. government watchlist can mean an inability to travel by air or sea; invasive screening at airports; denial of a U.S. visa or permission to enter to the United States; and detention and questioning by U.S. or foreign authorities—to say nothing of shame, fear, uncertainty, and denigration as a terrorism suspect. Watchlisting can prevent disabled military veterans from obtaining needed benefits, separate family members for months or years, ruin employment prospects, and isolate an individual from friends and associates.

Given the gravity of these consequences, it is vital that if the government blacklists people, the standards it uses are appropriately narrow, the information it relies on is accurate and credible, and the manner in which watchlists are used is consistent with the presumption of innocence and the right to a hearing before punishment—legal principles older than our nation itself. Yet the government fails these basic tests of fairness. It has placed individuals on watchlists, and left them there for years, as a result of blatant errors. It has expanded its master terrorist watchlist to include as many as a million names, based on information that is often stale, poorly reviewed, or of questionable reliability. It has adopted a standard for inclusion on the master watchlist that gives agencies and analysts near-unfettered discretion. And it has refused to disclose the standards by which it places individuals on other watchlists, such as the No Fly List.

Compounding this unfairness is the fact that the “redress” procedures the U.S. government provides for those who have been wrongly or mistakenly included on a watchlist are wholly inadequate. Even after people know the government has placed them on a watchlist—including after they are publicly denied boarding on a plane, or subjected to additional and invasive screening at the airport, or told by federal agents that they will be removed from a list if they agree to become a government informant—the government’s official policy is to refuse to confirm or deny watchlist status. Nor is there any meaningful way to contest one’s designation as a potential terrorist and ensure that the U.S. government, and all other users of the information, removes or corrects inaccurate records. The result is that innocent people can languish on the watchlists indefinitely, without real recourse.

A bloated and unfair watchlist system does not make us secure, and the ACLU has long called for fundamental reform. If the government is to use watchlists, it must institute narrow, specific criteria for placing individuals on them; apply rigorous procedures for reviewing, updating, and removing erroneous entries; and limit the use of such lists such that they do not amount to punishment without charge. Individuals must be provided with a meaningful, participatory process by which they can challenge their inclusion on a watchlist before a neutral decision-maker. Ultimately, Congress and the Obama administration must rein in what the Ninth Circuit Court of Appeals has called “a vast, multi-agency, counterterrorism bureaucracy that tracks hundreds of thousands of individuals”—a bureaucracy that remains secret and unaccountable to the public or the individuals that it targets for blacklisting.