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THE PROGRESS AND PITFALLS OF THE TERRORIST WATCH LIST

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THE PROGRESS AND PITFALLS OF THE TERRORIST WATCH LIST

Thursday, November 8, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The committee met, pursuant to call, at 10:11 a.m., in Room 311, Cannon House Office Building, Hon. Bennie G. Thompson [chairman of the committee] presiding.

Present: Representatives Thompson, Dicks, DeFazio, Lowey, Norton, Etheridge, Cuellar, Carney, Clarke, Green, Perlmutter, Pascrell, King, Souder, Rogers, Reichert, McCaul and Bilirakis.

Chairman THOMPSON. The Committee on Homeland Security will come to order. The committee is meeting today to receive testimony on the progress and pitfalls of the terrorist watch list. I want to welcome our witnesses.

When most people hear about the terrorist watch list, they think of flying and of the no-fly list they hear about on TV. Many probably think about getting the dreaded "S" on their boarding pass, which means they get secondary screening.

But the watch list is much broader than that. It is used by many consumers beyond the TSA, including the Customs and Border Protection, the Department of State and other Federal, State, local, territorial and tribal law enforcement agencies.

The title of today's hearing really says it all: Progress and Pitfalls. In the almost 4 years since the Terrorist Screening Center was created, we have seen some real progress and taken multiple different watch lists and combining them into one functional list. And we stopped some really bad people from getting into our country. For these feats, Director Boyle and his employees are to be commended. But we have also seen the pitfalls of maintaining such a list. We have seen it grow exponentially, and we have heard growing concerns about the quality of some of the data. And we received reports from the GAO and from the Department of Justice's inspector general that raises serious issues that must be resolved if the watch list is to continue and expand.

We have heard the stories about the false hits against the list, including my good friend Congressman John Lewis as well as young children of some of my own staff. We can do better, and we have to do better than to have a system that flags United States Congressmen and 2-year-olds as potential terrorists.

Every day the watch list impacts real people who are traveling by air, land and sea. An accurate watch list keeps our Nation safe and keeps the bad guys out. An inaccurate and incomplete list cre-

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ates more and more list misidentification, which in turn create fear and frustration.

The American people will support the watch list if there is accountability, if they are confident that mistakes are being fixed and there is real redress process. If there is accountability, they will trust it being done right, not fear that they are being monitored by Big Brother. Conversely, if there is no accountability, the watch list will instill fear, and fear is not security. Quite the opposite. Fear is the lack of security. If the people lose faith, the watch list will go the way of color-coded terror alerts and become fodder for late-night comedians rather than reassurance that the United States Government is protecting its people. It will be viewed as a placebo, not protection.

The 9/11 recommendations bill that became law this year took an important step toward creating some accountability. It created an Office of Appeals and Redress within the Department of Homeland Security. That office is supposed to establish and administer a timely and fair process for airline passengers who believe they have been impacted because they have been misidentified against the no-fly or selectee watch list. Yet to date, the Department has not related what progress has been made in creating this important office. Hopefully today we will get some answers, because an effective watch list is a critical part of our Nation's security.

I look forward to hearing from our witnesses on how we can improve the watch list, facilitate effective redress, and avoid more pitfalls down the road.

Without objection, I would also like to insert two items into the record, a letter I received last night from Secretary Chertoff concerning DHS's TRIP program, and a statement from the Asian Law Caucus.[1]

Chairman THOMPSON. The Chairman now recognizes Mr. Reichert, who will deliver the Republican opening statement.

Mr. REICHERT. Thank you, Mr. Chairman. I was handed the Ranking Member's opening statement just a few minutes ago, so it is my pleasure to share his thoughts with the witnesses and the committee.

In its final report, the 9/11 Commission indicated that consolidation of terrorist watch lists should be a priority for the Federal Government. Prior to the release of the 9/11 Commission's report, the President recognized the urgent need for action and issued Homeland Security Presidential Directive 6, requiring the creation of a consolidated terrorist watch list. The Terrorist Screening Center was born of this initiative.

Every month the Federal Government and local law enforcement officials screen some 270 million individuals against the new consolidated watch list. Since the TSC's establishment in December of 2003, frontline screeners using this watch list encountered known or reasonably suspected terrorists 53,000 times.

The watch list is imperfect, but the employees of the screening center are working aggressively to continuously improve the data. The bottom line here is the watch list stops would-be terrorists from entering the United States. According to Customs and Border

[1] See Committee file.

Protection on March 27, 2005, a CBP officer identified an individual who is a possible match to two terrorist-related records. The ID resulted in a local JTTF arresting the passenger, who was later charged with conspiring to provide material support to terrorists and conspiracy to kill, kidnap or maim persons. Similarly, CBP denied entry of a Palestine Liberation Organization weapons smuggler. The suspect was later charged with conspiracy to traffic in explosive devices and firearms. We hope to explore additional examples during today's hearing.

Some are concerned that the terrorist watch list is too expansive, that there might be too many persons on the list. I hope we can provide some clarity today as to how exactly that happens.

And finally, some are concerned that the redress process is moving too slow to remove individuals from the watch list. I would be more concerned if we were too quick to remove known or suspected terrorists from the watch list. A careful, methodical approach is necessary to ensure we don't prematurely remove suspects from the terrorist watch list.

Ultimately, no one at the table, no one at this dais can say that the terrorist watch list doesn't work. No one can say it hasn't prevented known or suspected terrorists from entering the United States, and I believe it has saved lives.

I look forward to hearing from our witnesses today on the successes of the Terrorist Screening Center and look forward to its continued successes as it matures and improves.

I yield back.

Chairman THOMPSON. Thank you very much.

Chairman THOMPSON. Other members of the committee are reminded that under committee rules, opening statements may be submitted for the record.

[The information follows:]

PREPARED OPENING STATEMENT OF THE HONORABLE GINNY BROWN-WAITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I want to thank the Chairman for holding this hearing today.

The Terrorist Watch List is an invaluable weapon in our fight against terrorism. It is critical that law enforcement officials have the capability to screen those who enter and exit this country, and those who board our airplanes.

I applaud the significant progress the Terrorist Screening Center has made to date, and acknowledge the key role the Terrorist Watch List has played in preventing another terrorist attack on American soil after 9/11.

While I understand that the application of the Terrorist Watch List has led to frustration for some due to misidentifications and delays, we must keep in mind the enormous scope of the task the Terrorist Screening Center has been given. Properly screening the more than 270 million people entering or exiting the United States each month will continue to require the patience and understanding of all Americans.

Americans should be reassured to hear that of those 270 million people who enter and exit America each month, agencies encountered individuals who were positively matched to watch list records on average 1,268 times per month. On several occasions, the positive match to the list resulted in terror-related arrests, or prevented a suspected terrorist from entering the United States.

Of course, there are ways to improve the efficiency and accuracy of the watch list, and I support a responsible approach to addressing these improvements. I look forward to today's testimony, and to continuing to work with all branches of the federal government to ensure the safety of all Americans.

Thank you.

Chairman THOMPSON. I would like to welcome our witnesses today. Our first witness is Mr. Glenn Fine, inspector general of the Department of Justice. Before joining the OIG, Mr. Fine was an assistant U.S. attorney in Washington, D.C., United States Attorney's Office.

Our second witness is Ms. Eileen Larence, a Director at the Government Accountability Office. She has extensive experience assessing various homeland security issues.

Our third witness today is Leonard Boyle, the Director of the Terrorist Screening Center. Director Boyle has an extensive career in public service, having spent nearly two decades as a police officer, Federal prosecutor, and as the commissioner of Connecticut's Department of Public Safety.

Welcome, Commissioner.

Our fourth witness is Kathleen Kraninger, who was appointed by Secretary Chertoff in July of 2006 to serve as a first Director of the Department of Homeland Security's Screening Coordination Office.

Without objection, the witnesses' full statements will be inserted in the record.

I now ask each of the witnesses to summarize their statement for 5μminutes, beginning with Inspector General Fine.

STATEMENT OF GLENN A. FINE, INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF JUSTICE

Mr. FINE. Mr. Chairman, members of the committee, thank you for inviting me to testify on the terrorist watch list screening system.

For the past several years, the Department of Justice Office of the Inspector General has examined the work of the Terrorist Screening Center, a multiagency effort administered by the FBI to integrate U.S. Government terrorist watch lists into a consolidated database. Prior to the establishment of the TSC, the Federal Government's terrorist screening system was fragmented, relying on at least a dozen separate watch lists maintained by a variety of Federal agencies.

In June 2005, the OIG issued our first audit of the TSC's operations. This audit found that the TSC had made significant strides in developing a consolidated terrorist watch list database, but we also found weaknesses in various areas of TSC operations, including information in the consolidated database that was not complete or accurate. Last month we completed a follow-up review, examining the TSC's progress and improving its operations. This audit found that the TSC has continued to make significant progress in important areas. However, we also concluded that the watch list continues to have significant weaknesses, and that the information in the watch list database was not complete or fully accurate.

These weaknesses can have enormous consequences. Inaccuracies in watch list data increase the possibility that reliable information will not be available to frontline screening agents, which could prevent them from successfully identifying a known or suspected terrorist. Inaccurate watch list information also increases the chances of innocent persons being stopped or detained because of misidentification.

For these reasons we believe it is critical that the TSC and the agencies providing watch list data to the TSC to further improve the accuracy of the information. In my testimony today I would like to make five brief observations about needed improvements.

First, the TSC still maintains two versions of the watch list database. While the TSC is developing an upgraded, consolidated database that will eliminate the need to maintain parallel systems, the two databases were not identical in content when we tested them, which they should be.

Second, we found that not all watch list records were being sent to downstream screening databases. We discussed this issue with TSC officials, who agreed with our findings and began correcting these omissions.

Third, we concluded that the TSC needs to further improve its quality assurance efforts for ensuring the accuracy of the watch list records. We recognize that it is impossible to completely eliminate the potential for errors in such a large database; however, we identified continuing inaccuracies in records that had already undergone the TSC's routine quality assurances processes.

Fourth, we found that the TSC's efforts to resolve complaints from individuals about their possible inclusion on the watch list have improved since our previous audit, and the TSC has created a dedicated unit to handle redress complaints; however, the TSC's redress activities were not always timely. Moreover, the high percentage of complaints requiring modification or removal from the watch list is a further indicator that the watch list data needs continuous monitoring and attention.

Fifth, we found that the TSC does not have a policy or procedures to proactively use information from encounters with individuals to reduce watch list misidentification. Considering that nearly half of all encounters referred to the TSC call center are negative for watch list match, we recommend that the TSC consider misidentification a priority and develop strategic goals and policies for mitigating misidentification, particularly for individuals who are repeatedly misidentified.

In total, our report made 18 recommendations to further improve the TSC's watchlisting process. These recommendations include making improvements to the quality of the watch list data, revising the FBI's watch list nominations process, and developing goals, measures and timeliness standards related to redress procedures. In response, the TSC agreed with the recommendations and stated that it would take corrective action.

In sum, the TSC does deserve credit for creating and implementing a consolidated watch list and for making significant progress in improving the watch list and screening processes. However, our reviews have found continuing weaknesses in some of these processes. We believe it is critical that the TSC further improve the quality of its data and its redress procedures. While the TSC has a difficult task and has made significant progress, we believe it needs to make additional improvements.

That concludes my statement, and I would be pleased to answer any questions.

Chairman THOMPSON. Thank you for your testimony.

[The statement of Mr. Fine follows:]

PREPARED STATEMENT OF GLENN A. FINE

I. Introduction

Mr. Chairman, Ranking Member King, and Members of the Committee on Homeland Security:

I appreciate the opportunity to testify before the Committee on the terrorist screening system and watchlist process. For the past several years, the Department of Justice Office of the Inspector General (OIG) has examined the work of the Terrorist Screening Center (TSC), which is a multi-agency effort administered by the Federal Bureau of Investigation (FBI). Created in 2003, the TSC integrates U.S. government terrorist watchlists into a consolidated database and provides 24-hour, 7-day a week responses to federal, state, and local governments to assist in screening for individuals with possible ties to terrorism. Prior to the establishment of the TSC, the federal government's terrorist screening system was fragmented, relying on at least a dozen separate watchlists maintained by different federal agencies.

In June 2005, the OIG issued its first audit of the TSC's operations. Our 2005 audit found that the TSC had made significant strides in becoming the government's single point-of-contact for law enforcement authorities requesting assistance in identifying individuals with possible ties to terrorism. However, we also found weaknesses in various areas of TSC operations, including that the TSC had not ensured that the information in the consolidated terrorist watchlist database was complete and accurate.

In September of this year, we completed a follow-up review examining the TSC's progress in improving its operations and addressing certain recommendations in our 2005 audit. Our follow-up review found that the TSC had continued to make progress in several important areas. For example, the TSC had enhanced its efforts to ensure the quality of watchlist data, had increased staff assigned to data quality management, and had developed a process and a separate office to address complaints filed by persons complaining that they are included on the terrorist watchlist by mistake.

Yet, we also determined that the TSC's management of the watchlist continues to have significant weaknesses, and that the data in the watchlist database was not complete or fully accurate.

Thus, while the TSC is a critical participant in the government's counterterrorism effort and TSC employees deserve credit for creating a consolidated watchlist, weaknesses remain in the TSC's operations and watchlisting process. These weaknesses can have enormous consequences. Inaccurate, incomplete, and obsolete watchlist information can increase the risk of not identifying known or suspected terrorists, and it can also increase the risk that innocent persons will be stopped or detained. For these reasons, we believe it critical for the TSC, and the agencies providing information for inclusion in the consolidated watchlist database, to further improve the accuracy of the data and their efforts to remove inaccurate information.

In this statement, I provide further details on these conclusions. First, I briefly provide background on the operation of the TSC. I then summarize the findings of the two OIG reports on the TSC's operations. Finally, I note for the Committee ongoing reviews by our office and other Inspectors General in the Intelligence Community that are further examining the watchlist nomination process.

II. Background

A. Creation of the TSC

Prior to the establishment of the TSC, the federal government relied on many separate watchlists maintained by different federal agencies for screening individuals who, for example, apply for a visa, attempt to enter the United States through a port-of-entry, attempt to travel internationally on a commercial airline, or are stopped by a local law enforcement officer for a traffic violation.

Homeland Security Presidential Directive-6 (HSPD–6), signed on September 16, 2003, required the creation of the TSC to integrate the existing U.S. government terrorist watchlists and provide 24-hour, 7-day a week responses for agencies that use the watchlisting process to screen individuals. HSPD–6 mandated that the TSC achieve initial operating capability by December 1, 2003.

Following the issuance of HSPD–6, the Attorney General, the Director of Central Intelligence, and the Secretaries of the Department of Homeland Security (DHS) and the Department of State entered into a Memorandum of Understanding (MOU) describing the new TSC organization and the level of necessary cooperation, including the sharing of staff and information from the four participating agencies. The MOU stipulated that the Director of the TSC would report to the Attorney General through the FBI. As a result, the FBI administers the TSC, although the Principal Deputy Director of the TSC must be an employee of the DHS.

Since fiscal year (FY) 2004, the participating agencies have shared responsibility for funding and staffing the TSC. For fiscal year 2007, the TSC had a budget of approximately $83 million and a staffing level of 408 positions.

B. The TSC's Role in the Watchlist Process

When a law enforcement or intelligence agency identifies an individual as a potential terrorist threat to the United States and wants that individual watchlisted, the source agency nominates that person for inclusion in the consolidated watchlist maintained by the TSC. As additional information is obtained that either enhances the identifying information or indicates that the individual has no nexus to terrorism, the record should be updated or deleted.

The TSC shares the information contained in its Terrorist Screening Database by exporting or sending data "downstream" to other screening systems, such as the State Department's Consular Lookout and Support System (CLASS), DHS's Interagency Border Inspection System (IBIS), the Transportation Security Administration's (TSA) No Fly list, the FBI's Violent Gang and Terrorist Organization File (VGTOF) within its National Crime Information Center (NCIC) system, and others. Watchlist information is then available for use by U.S. law enforcement and intelligence officials across the country and around the world.

Law enforcement or intelligence personnel routinely encounter individuals as part of their regular duties. For example: (1) DHS agents of the U.S. Customs and Border Protection agency examine individuals at various U.S. ports-of-entry and search IBIS to determine if a person can be granted access to the United States, (2) State Department officials process visa applications from non–U.S. citizens wishing to visit the United States and search CLASS to determine if the individual should be granted a U.S. visa, and (3) state and local law enforcement officers query the FBI's NCIC system to review information about individuals encountered through the criminal justice system. These databases and lists contain terrorist watchlist records to assist screening agents in identifying persons that the U.S. government has determined are known or suspected terrorists.

When a name appears to be a match against the terrorist watchlist, requestors receive a return message through their database informing them of the preliminary match and directing them to call the TSC. When a call is received, TSC staff in the 24-hour call center assist in confirming the subject's identity.

These matches may be actual watchlist subjects, individuals misidentified to a terrorist identity, or someone mistakenly included on the watchlist. In responding to such a call, TSC Call Center staff search the consolidated database and other databases to determine if a terrorist watchlist identity match exists.

Records within the consolidated watchlist database also contain information about the law enforcement action to be taken when encountering the individual. This information is conveyed through "handling codes" or instructions—one handling code for the FBI and one for the DHS. The FBI's handling codes are based on whether there is an active arrest warrant, a basis to detain the individual, or an interest in obtaining additional intelligence information regarding the individual. DHS handling instructions provide screeners with information on how to proceed with secondary screening of the individual.

Between the TSC's inception in December 2003 and May 2007, the TSC has documented more than 99,000 encounters for which its call center was contacted. TSC data shows that 53.4µpercent of these calls were determined to be a positive match to a terrorist watchlist identity in the consolidated database. In those cases, the TSC contacted the FBI, which is responsible for initiating any necessary law enforcement action. In 43.4 percent of the encounters, it was determined that the individual did not match the watchlisted identity. In the remaining 3.2 percent of the encounters, the TSC Call Center staff could not definitively determine if the match was positive or negative and therefore forwarded these calls to the FBI.

Since creation of the TSC in December 2003, the number of records in the consolidated watchlist database of known or suspected terrorists has significantly increased. According to TSC officials, in April 2004 the consolidated database contained approximately 150,000 records. It is important to note that because multiple records may pertain to one individual, the number of individuals in the database is fewer than the total number of records.

TSC data indicate that by July 2004 the number of records in the consolidated database had increased to about 225,000, representing approximately 170,000 individuals. In February 2006, the TSC reported that the database contained approximately 400,000 records. Most recently, information we obtained from the TSC indicates that the consolidated database contained 724,442 records as of April 30, 2007. According to the TSC, these records relate to approximately 300,000 individuals.

III. The OIG's June 2005 Audit of the TSC

In June 2005, the OIG issued an audit of the TSC's operations. As mentioned previously, the OIG review found that the TSC had made significant strides in becoming the government's single point-of-contact for assistance in identifying individuals with possible ties to terrorism. The TSC began operating as the nation's centralized terrorist screening center by the mandated December 1, 2003, date. Several months later, the TSC began using a terrorist screening database that contained consolidated information from a variety of existing watchlist systems.

Yet, while the TSC had deployed a consolidated watchlist database, the OIG report found that the TSC had not ensured that the information in that database was complete and accurate. For example, the OIG found that the consolidated database did not contain names that should have been included on the watchlist. In addition, the OIG found inaccurate or inconsistent information related to persons included in the database.

Due to its rapid start-up and the need for personnel with adjudicated security clearances, the TSC had been heavily dependent upon staff and supervisors detailed from participating agencies who generally worked at the TSC for only 60 to 90 days. Moreover, due to the temporary assignments of call center supervisors, the TSC had difficulty developing and implementing standard oversight procedures for call center personnel, and at times provided incorrect instructions to call center staff. This lack of sufficient training, oversight, and general management of the call screeners left the call center vulnerable to errors, poor data entry, and untimely responses to callers. We also found problems with the TSC's management of its information technology, a crucial facet of the terrorist screening process.

The OIG report also concluded that the TSC needed to better address instances when individuals were mistakenly identified as a "hit" against the consolidated database (also referred to as misidentifications). Finally, the audit found that the TSC would benefit from formalizing its strategic planning efforts, enhancing its outreach efforts to inform the law enforcement and intelligence communities of its role and functions, and expanding its ability to assess the effectiveness and performance of the organization. The OIG report provided 40 recommendations to the TSC to address areas such as database improvements, data accuracy and completeness, call center management, and staffing. The TSC generally agreed with the recommendations and said it had, or would, take corrective actions.

IV. The OIG's September 2007 Follow-up Audit on TSC Operations

In September 2007, the OIG issued a follow-up audit assessing the progress of the TSC in improving its operations. Our audit examined the TSC's efforts to ensure that accurate and complete records were disseminated to and from the watchlist database in a timely fashion and the TSC's efforts to ensure the quality of the information in the watchlist database. The review also examined the TSC's process to respond to complaints raised by individuals who believe they have been incorrectly identified as watchlist subjects.

In conducting this audit, we interviewed more than 45 officials and reviewed numerous TSC documents. To evaluate the accuracy and completeness of the consolidated watchlist, we analyzed the consolidated database as a whole, and reviewed the number of records in the database and any duplication that existed within those records. We also tested individual records for accuracy and completeness, as well as the timeliness of any related quality assurance activities.

Overall, our follow-up audit found that the TSC had enhanced its efforts to ensure the quality of watchlist data, had increased staff assigned to data quality management, and had developed a process and a separate office to address complaints filed by persons seeking relief from adverse effects related to terrorist watchlist screening. In these areas, we credited the TSC for significant progress in improving its operations.

However, we also determined that the TSC's management of the watchlist has significant continuing weaknesses. For example, our review revealed instances where known or suspected terrorists were not appropriately watchlisted on screening databases that frontline screening agents (such as border patrol officers, visa application reviewers, or local police officers) use to identify terrorists and obtain instruction on how to appropriately handle these subjects.

Even a single omission of a terrorist identity or an inaccuracy in the identifying information contained in a watchlist record can have enormous consequences. Inaccuracies in watchlist data increase the possibility that reliable information will not be available to frontline screening agents, which could prevent them from successfully identifying a known or suspected terrorist during an encounter or place their safety at greater risk by providing inappropriate handling instructions for a suspected terrorist. Furthermore, inaccurate, incomplete, and obsolete watchlist infor-

mation increases the chances of innocent persons being stopped or detained during an encounter because of being misidentified as a watchlist identity.

Our review also found that, due to technological differences and capabilities of the various systems used in the watchlist process, the TSC still maintains two interconnected versions of the watchlist database. The TSC is developing an upgraded consolidated database that will eliminate the need to maintain parallel systems. However, in the meantime these two databases should be identical in content and therefore should contain the same number of records. Yet, we discovered during our review that these two systems had differing record counts.

We also found that the number of duplicate records in the TSC database has significantly increased. Multiple records containing the same unique combination of basic identifying information can needlessly increase the number of records that a call screener must review when researching a specific individual. In addition, when multiple records for a single identity exist, it is essential that the identifying information and handling instructions for contact with the individual be consistent in each record. Otherwise, the screener may mistakenly rely on one record while a second more complete or accurate record may be ignored. Furthermore, inconsistent handling instructions contained in duplicate records may pose a safety risk for law enforcement officers or screeners.

In addition, we found that not all watchlist records were being sent to downstream screening databases. Our testing of a sample of 105 watchlist records revealed 7 watchlist records that were not exported to all appropriate screening databases. As a result of the TSC's failure to export all terrorist watchlist records to screening databases, watchlisted individuals could be inappropriately handled during an encounter. For example, a known or suspected terrorist could be erroneously issued a U.S. visa or unknowingly allowed to enter the United States through a port-of-entry. We discussed these records with TSC officials who agreed with our findings and began correcting these omissions.

Our review also found that the TSC did not have a process for regularly reviewing the contents of the consolidated database to ensure that only appropriate records were included on the watchlist. TSC officials told us that they would perform a monthly review of the database to identify records that are being stored in the database that are not being exported to downstream systems. We also believe it is essential that the TSC regularly review the database to ensure that all outdated information is removed, as well as to affirm that all appropriate records are watchlisted.

Our review determined that because of internal FBI watchlisting processes, the FBI bypasses the normal terrorist watchlist nomination process for international terrorist nominations and instead enters international nominations directly into a downstream screening system. This process is not only cumbersome for the TSC, but it also results in the TSC being unable to ensure that consistent, accurate, and complete terrorist information from the FBI is disseminated to frontline screening agents in a timely manner. As a result, in our report we recommended that the FBI and TSC work together to design a more consistent and reliable process by which FBI-originated international terrorist information is provided for inclusion in the consolidated watchlist.

We concluded that the TSC needs to further improve its efforts for ensuring the quality and accuracy of the watchlist records. We found that since our last report the TSC had increased its quality assurance efforts and implemented a data quality improvement plan. In general, we believe the actions the TSC has taken to improve quality assurance are positive steps. We also recognize that it is impossible to completely eliminate the potential for errors in such a large database. However, continuing inaccuracies that we identified in watchlist records that had undergone the TSC's quality assurance processes underscore the need for additional actions to ensure the accuracy of the database.

For example, the TSC completed a special quality assurance review of the TSA's No Fly list, which reduced the number of records on the list. Our review of a sample of records examined during of this special review process identified virtually no errors. In contrast, our examination of the TSC's routine quality assurance reviews revealed continued problems. Specifically, we examined 105 records subjected to the TSC's routine quality assurance review and found that 38 percent of the records we tested continued to contain errors or inconsistencies that were not identified through the TSC's routine quality assurance efforts. Thus, although the TSC had clearly increased its quality assurance efforts since our last review, it continues to lack important safeguards for ensuring data integrity, including a comprehensive protocol outlining the TSC's quality assurance procedures and a method for regularly reviewing the work of its staff to ensure consistency.

Our audit also expressed concerns that the TSC's ongoing quality assurance review of the consolidated watchlist will take longer than projected by the TSC. At

the time of our audit field work in April 2007, the TSC was continuing its efforts to conduct a record-by-record review of the consolidated watchlist and anticipated that all watchlist records would be reviewed by the end of 2007. However, the watchlist database continues to increase by more than 20,000 records per month and as of April 2007 contained over 700,000 records. Given this growth and the time it takes for the TSC's quality assurance process, we believe the TSC may be underestimating the time required to sufficiently review all watchlist records for accuracy.

With regard to addressing complaints from individuals about their possible inclusion on the watchlist, we found that the TSC's efforts to resolve complaints have improved since our previous audit. In 2005, the TSC created a dedicated unit to handle such matters. The TSC also helped to spearhead the creation of a multi-agency Memorandum of Understanding (MOU) focusing on watchlist redress (Redress MOU) and developed comprehensive redress procedures. Currently, frontline screening agencies such as the DHS and the State Department receive complaints from persons seeking relief related to the terrorist watchlist screening process. Matters believed to be related to a terrorist watchlist identity or to an encounter involving the watchlist are forwarded to the TSC. The TSC Redress Office conducts an examination of the watchlist records, reviews other screening and intelligence databases, and coordinates with partner agencies for additional information and clarification. The TSC determines if any records need to be modified or removed from the watchlist, ensures these changes are made, and notifies the referring frontline screening agency of the resolution. The frontline screening agency is then responsible for responding to the complainant.

To test the TSC's redress procedures, we selected 20 redress complaints received by the TSC between January 2006 and February 2007 and reviewed the corresponding files to determine if the TSC followed its redress procedures.

We found that in each of the sampled cases the TSC complied with its redress procedures, including reviewing the applicable screening and intelligence databases, coordinating with partner agencies, and reaching appropriate resolutions.

However, we also noted that the TSC's redress activities identified a high rate of error in watchlist records. The high percentage of records in the redress process requiring modification or removal points to deficiencies in the terrorist watchlisting process. We believe that the results of the TSC's redress reviews are a further indicator that watchlist data needs continuous monitoring and attention.

In addition, we believe the TSC needs to address the timeliness of redress complaint resolutions. We reviewed TSC files and statistics for closed redress matters to examine the efficiency of redress reviews. This data revealed that it took the TSC, on average, 67 days to close its review of a redress inquiry. Our review of redress files indicated that delays were primarily caused by three factors: (1) the TSC took a long time to finalize its determination before coordinating with other agencies for additional information or comment, (2)μnominating agencies did not provide timely feedback to the TSC or did not process watchlist paperwork in a timely manner, and (3) certain screening agencies were slow to update their databases with accurate and current information.

TSC officials acknowledged that it has not developed response timeframes for redress matters with its partner agencies. While the Redress MOU states that one of the goals of the redress process is to provide a timely review, the MOU does not define what constitutes a reasonable timeframe. Because the TSC is central to resolving any complaint regarding the content of the consolidated terrorist watchlist, we recommended that the TSC organize the U.S. government's effort to develop timeliness measures for the entire watchlist redress process.

In addition, we found the TSC does not have any policy or procedures to proactively use information from encounters to reduce the incidence and impact of watchlist misidentifications. For example, the TSC could program its tracking system to automatically generate a quality assurance lead for the TSC to perform a review of watchlist records that have been the subject of a certain number of encounters with individuals that were not a positive match to the watchlist record. Moreover, the TSC's strategic plan does not include goals or actions associated with reducing the incidence of misidentifications or the impact on misidentified persons other than that covered by a formal redress process. Considering that nearly half of all encounters referred to the TSC Call Center are negative for a watchlist match, we recommended that the TSC consider misidentifications a priority and develop strategic goals and policy for mitigating the adverse impact of the terrorist screening process on non-watchlist subjects, particularly for individuals who are repeatedly misidentified as watchlist identities.

In total, our report made 18 recommendations to further improve the TSC's watchlisting process and the quality of the watchlist data. These recommendations include making further improvements to increase the quality of watchlist data; re-

vising the FBI's watchlist nominations process; and developing goals, measures, and timeliness standards related to the redress process. In response, the TSC agreed with the recommendations and stated that it would take corrective action.

V. Ongoing Reviews of Watchlist Nomination Process

The OIG is currently conducting a separate audit examining the watchlist nominations processes in the Department of Justice. This audit is examining the specific policies and procedures of Department components for nominating individuals to the consolidated watchlist. The audit also is reviewing the training provided to the individuals who are involved in the nominating process. The Department components we are reviewing include the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the United States Marshals Service.

We are conducting this review in conjunction with other Intelligence Community OIGs, who are examining the watchlist nomination process in their agencies. The OIG reviews, which are being coordinated by the OIG for the Office of the Director of National Intelligence, include OIGs in the Departments of State, Treasury, Energy, Homeland Security, and others.

VI. Conclusion

In conclusion, the TSC deserves credit for creating and implementing a consolidated watchlist and for making significant progress in improving the watchlist and screening processes. However, our reviews have found continuing weaknesses in some of those processes and in the quality of the data in the consolidated database. We believe it is critical that the TSC further improve the quality of its watchlist data and its redress procedures. Inaccurate, incomplete, and obsolete watchlist information can increase the risk of not identifying known or suspected terrorists, and it can also increase the risk that innocent persons will be repeatedly stopped or detained. While the TSC has a difficult task and has made significant progress, we believe it needs to make additional improvements.

That concludes my statement and I would be pleased to answer any questions.

Chairman THOMPSON. I now recognize Ms. Larence to summarize her statement for 5 minutes.

STATEMENT OF EILEEN LARENCE, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. LARENCE. Thank you, Mr. Chairman and members of the committee. I am pleased to be here this morning to summarize our work on the use of the terrorist watch list to screen individuals for threats to homeland security.

Mr. Chairman, as you and Mr. Fine noted, learning from the lessons of 9/11, the government now has one consolidated master repository of records on individuals with known or potential ties to terrorism. Agencies such as State, Customs and Transportation Security use the watch list to screen people applying for a visa, crossing our borders, making airline reservations or even being stopped for traffic violations.

Our review of this screening shows that the terrorist watch list is an important counterterrorism tool, but one that can pose adverse effects on the public that need to be addressed, and one that can be strengthened by reducing vulnerabilities and providing for greater effectiveness and accountability.

To elaborate, in a report last September 2006, we assessed how often individuals are mistakenly identified as being on the watch list. While the total number of times this has happened is unknown, the Terrorist Screening Center is aware of this happening about 50,000 times to date, and the individuals were often stopped, questioned and sometimes searched, usually because their name is a close match to someone actually on the list or because computers cannot match names exactly.

We also found that agencies were taking action to help these individuals get through screening more quickly and implementing redress processes to address these complaints. But to provide for more consistency in these processes and the way misidentified individuals are treated, agencies should share information they obtain that helps to resolve misidentification more quickly and prevent them in the future.

In a recent report issued last month, we addressed four other fundamental questions about the watch list. First, how do people get on and off the list? Intelligence agencies, the FBI and others nominate individuals for the list based on a relatively low bar so that they do not miss anyone that could pose a threat. Generally, agencies look to see whether the information they have on a person provides a reasonable suspicion that the person has known or potential links to terrorism. Sometimes the information is pretty limited, so agencies subjectively decide whether to list someone using criteria and review processes as safeguards. If an FBI investigation or new information shows an individual does not have links to terrorism, the person is to come off the list.

The Terrorist Screening Center says it has removed at least 100,000 records from the list so far, but it is still growing, about 20,000 records a month, and now has about 880,000 records.

The second question our report identified is how often do agencies encounter someone on a list, and what happens to them? As of today airlines or agencies encountered people on the watch list about 62,000 times, most often within the United States, and frequently by State and local law enforcement. Because of limited information, agencies often, but not always, have the basis to automatically arrest, deport or deny a person on the list a visa, entry to the country or air travel. In fact, most often the person is questioned and released. Agencies use this questioning to determine if the person is a threat, monitor the person's movements, and update intelligence and investigative files.

The third question our report addresses is whether there are potential vulnerabilities in agencies' use of the watch list. Because agencies have different missions and computer systems, they do not check travelers against all names on the list. CBP checks against the most names, and airlines against the fewest. Agencies also know that individuals on the list have passed undetected through their screening processes. For example, people on the no-fly list who were supposed to be denied board having boarded aircraft, and people on the watch list have crossed the border without being detected. We have recommended that agencies assess and correct any such screening vulnerabilities, and they agreed.

Finally, our report asked whether the government is using the list most effectively. Agencies have made significant progress since 9/11 in using this tool, but have not identified all possible screening opportunities. DHS also has not yet implemented guidelines to help private sector owners or operators of critical infrastructure, such as chemical facilities, use the list to screen employees for threats, and we have recommended that the DHS do so.

Further, while each agency owns a parochial piece of the watch list process, no one entity is accountable governmentwide for how well the overall process is working. Who is managing the growth

of the list, making sure that vulnerabilities are addressed, and reviewing the results of screening to determine if it is working as intended while protecting civil liberties?

We have recommended that DHS collaborate with relevant agencies to develop a more current strategic plan and investment strategy for ensuring the most effective use of the watch list, and the Department agreed. We have also recommended that the Assistant to the President for Homeland Security and Counterterrorism ensure that a single entity, such as an interagency council, be given the authority to manage screening governmentwide, but the White House has not yet responded.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions.

Chairman THOMPSON. Thank you for your testimony.

[The information follows:]

United States Government Accountability Office

GAO

Testimony before the Committee on Homeland Security, House of Representatives

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TERRORIST WATCH LIST SCREENING

Recommendations to Promote a Comprehensive and Coordinated Approach to Terrorist-Related Screening

Statement of Eileen R. Larence, Director
Homeland Security and Justice Issues

GAO-08-253T

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November 2007

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Highlights

Highlights of GAO-08-253T, a testimony before the Committee on Homeland Security, House of Representatives

TERRORIST WATCH LIST SCREENING

Recommendations to Promote a Comprehensive and Coordinated Approach to Terrorist-Related Screening

Why GAO Did This Study

The Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC) maintains a consolidated watch list of known or appropriately suspected terrorists and sends records from the list to agencies to support terrorism-related screening.

This testimony discusses (1) standards for including individuals on the list, (2) the outcomes of encounters with individuals on the list, (3) potential vulnerabilities in screening processes and efforts to address them, and (4) actions taken to promote effective terrorism-related screening.

This statement is based on GAO's report (GAO-08-110). To accomplish the objectives, GAO reviewed documentation obtained from and interviewed officials at TSC, the FBI, the National Counterterrorism Center, the Department of Homeland Security, and other agencies that perform terrorism-related screening.

What GAO Recommends

GAO recommends several actions to promote a comprehensive and coordinated approach to terrorist-related screening. Among them are actions to monitor and respond to vulnerabilities and to establish up-to-date guidelines, strategies, and plans to facilitate expanded and enhanced use of the list.

The departments that provided comments on the report generally agreed with GAO's findings and recommendations.

To view the full product, including the scope and methodology, click on GAO-08-253T. For more information, contact Eileen Larence at (202) 512-8777 or larencee@gao.gov.

What GAO Found

The FBI and the intelligence community use standards of reasonableness to evaluate individuals for nomination to the consolidated terrorist watch list. In general, individuals who are reasonably suspected of having possible links to terrorism—in addition to individuals with known links—are to be nominated. As such, being on the list does not automatically prohibit, for example, the issuance of a visa or entry into the United States. Rather, when an individual on the list is encountered, agency officials are to assess the threat the person poses to determine what action to take, if any. As of May 2007, the consolidated watch list contained approximately 755,000 records.

From December 2003 through May 2007, screening and law enforcement agencies encountered individuals who were positively matched to watch list records approximately 53,000 times. Many individuals were matched multiple times. The outcomes of these encounters reflect an array of actions, such as arrests; denials of entry into the United States; and, most often, questioning and release. Within the federal community, there is general agreement that the watch list has helped to combat terrorism by (1) providing screening and law enforcement agencies with information to help them respond appropriately during encounters and (2) helping law enforcement and intelligence agencies track individuals on the watch list and collect information about them for use in conducting investigations and in assessing threats.

Regarding potential vulnerabilities, TSC sends records daily from the watch list to screening agencies. However, some records are not sent, partly because screening against them may not be needed to support the respective agency's mission or may not be possible due to the requirements of computer programs used to check individuals against watch list records. Also, some subjects of watch list records have passed undetected through agency screening processes and were not identified, for example, until after they had boarded and flew on an aircraft or were processed at a port of entry and admitted into the United States. TSC and other federal agencies have ongoing initiatives to help reduce these potential vulnerabilities, including efforts to improve computerized name-matching programs and the quality of watch list data.

Although the federal government has made progress in promoting effective terrorism-related screening, additional screening opportunities remain untapped—within the federal sector, as well as within critical infrastructure components of the private sector. This situation exists partly because the government lacks an up-to-date strategy and implementation plan for optimizing use of the terrorist watch list. Also lacking are clear lines of authority and responsibility. An up-to-date strategy and implementation plan, supported by a clearly defined leadership or governance structure, would provide a platform to establish governmentwide screening priorities, assess progress toward policy goals and intended outcomes, consider factors related to privacy and civil liberties, ensure that any needed changes are implemented, and respond to issues that hinder effectiveness.

United States Government Accountability Office

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Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss our report on U.S. efforts to develop and use the terrorist watch list to screen for known or suspected terrorists who pose a threat to homeland security. The list is an important tool in the government's overall efforts to combat terrorism.

The Terrorist Screening Center (TSC) is responsible for maintaining the watch list and providing for its use during agency screening processes. TSC receives the vast majority of its watch list records from the National Counterterrorism Center, which compiles information on known or suspected international terrorists from executive branch departments and agencies. In addition, the Federal Bureau of Investigation (FBI) provides TSC with information on known or suspected domestic terrorists who operate primarily within the United States, such as Ted Kaczynski (the "Unabomber"). TSC consolidates this information into its watch list database and makes records available for a variety of screening purposes, such as the screening of visa applicants and the screening of airline passengers. When an individual on the watch list is encountered during screening, several entities—TSC, the screening agency, investigative agencies, and the intelligence community—can be involved in deciding what action to take, if any.

My testimony today discusses (1) the standards agencies use for including individuals on the list, (2) the outcomes of encounters with individuals on the list, (3) potential vulnerabilities in agencies' watch list screening processes and efforts to address them, and (4) actions taken to promote effective terrorism-related screening.

This statement is based on the report we issued in October 2007.[1] To accomplish our report objectives, we reviewed procedural guidance, statistics, and other relevant documentation obtained from and interviewed officials at TSC, the FBI, the National Counterterrorism Center, the Department of Homeland Security, and other agencies that perform terrorism-related screening. Specifically, at the Transportation Security Administration, we examined the prescreening of airline passengers prior to their boarding a flight; at U.S. Customs and Border

[1]GAO, *Terrorist Watch List Screening: Opportunities Exist to Enhance Management Oversight, Reduce Vulnerabilities in Agency Screening Processes, and Expand Use of the List*, GAO-08-110 (Washington, D.C.: Oct. 11, 2007).

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Protection, we examined the screening of travelers entering the United States through ports of entry; and at the Department of State, we examined the screening of visa applicants. We conducted our work in accordance with generally accepted government auditing standards.

Summary

In summary, we found the following:

- The National Counterterrorism Center and the FBI rely upon standards of reasonableness in determining which individuals are appropriate for inclusion on TSC's consolidated terrorist watch list. In general, individuals who are reasonably suspected of having possible links to terrorism—in addition to individuals with known links—are to be nominated. As such, inclusion on the list does not automatically prohibit an individual from, for example, obtaining a visa or entering the United States. As of May 2007, TSC's watch list contained approximately 755,000 records.

- From December 2003 (when TSC began operations) through May 2007, agencies encountered individuals who were on the watch list about 53,000 times. Many individuals were encountered multiple times. Actions taken in response included arresting individuals and denying others entry into the United States. Most often, however, agencies questioned and then released the individuals because there was not sufficient evidence of criminal or terrorist activity to warrant further legal action. Nevertheless, such questioning allowed agencies to collect information on the individuals, which was shared with law enforcement agencies and the intelligence community.

- Screening agencies do not check against all records in the consolidated watch list, partly because screening against certain records (1) may not be needed to support the respective agency's mission or (2) may not be possible due to the requirements of computer programs used to check individuals against watch list records. Not checking against all records may pose a security risk. Also, some subjects of watch list records have passed undetected through agency screening processes and were not identified, for example, until after they had boarded and flew on an aircraft. Federal agencies have ongoing initiatives to help reduce these potential vulnerabilities.

- The federal government has made progress in using the consolidated watch list for screening purposes, but it has not (1) finalized guidelines for using watch list records within critical infrastructure components of the private sector or (2) identified all appropriate opportunities for

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which terrorist-related screening should be applied. Further, the government lacks an up-to-date strategy and implementation plan—supported by a clearly defined leadership or governance structure—which are important for enhancing the effectiveness of terrorist-related screening.

We have recommended several actions to promote a more comprehensive and coordinated approach to terrorist-related screening. Among them are actions to monitor and respond to vulnerabilities and to establish up-to-date guidelines, strategies, and plans to facilitate expanded and enhanced use of the list. The Department of Homeland Security and the FBI, which provided the Department of Justice's comments on a draft of the report, generally agreed with our findings and recommendations. The Homeland Security Council was provided a draft of the report but did not provide comments.[2]

Background

Pursuant to Homeland Security Presidential Directive 6, the Attorney General established TSC in September 2003 to consolidate the government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes. TSC's consolidated watch list is the U.S. government's master repository for all records of known or appropriately suspected international and domestic terrorists used for watch list-related screening.

When an individual makes an airline reservation, arrives at a U.S. port of entry, or applies for a U.S. visa, or is stopped by state or local police within the United States, the frontline screening agency or airline conducts a name-based search of the individual against applicable terrorist watch list records. In general, when the computerized name-matching system of an airline or screening agency generates a "hit" (a potential name match) against a watch list record, the airline or agency is to review each potential match. Any obvious mismatches (negative matches) are to be resolved by the airline or agency, if possible, as discussed in our September 2006

[2]The Homeland Security Council was established to ensure coordination of all homeland security-related activities among executive departments and agencies and promote the effective development and implementation of all homeland security policies. See The White House, *Homeland Security Presidential Directive/HSPD-1, Subject: Organization and Operation of the Homeland Security Council* (Washington, D.C.: Oct. 29, 2001).

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report on terrorist watch list screening.[3] However, clearly positive or exact matches and matches that are inconclusive (difficult to verify) generally are to be referred to TSC to confirm whether the individual is a match to the watch list record. TSC is to refer positive and inconclusive matches to the FBI to provide an opportunity for a counterterrorism response. Deciding what action to take, if any, can involve collaboration among the frontline screening agency, the National Counterterrorism Center or other intelligence community members, and the FBI or other investigative agencies. If necessary, a member of an FBI Joint Terrorism Task Force can respond in person to interview and obtain additional information about the person encountered.[4] In other cases, the FBI will rely on the screening agency and other law enforcement agencies—such as U.S. Immigration and Customs Enforcement—to respond and collect information. Figure 1 presents a general overview of the process used to resolve encounters with individuals on the terrorist watch list.

[3]Terrorist watch list-related screening can cause travel delays and other inconveniences, which may be inevitable consequences of enhanced homeland security. Nonetheless, as we reported in September 2006, it is important for TSC and screening agencies to provide effective redress for individuals who are inadvertently and adversely affected by watch list-related screening. See GAO, *Terrorist Watch List Screening: Efforts to Help Reduce Adverse Effects on the Public*, GAO-06-1031 (Washington, D.C.: Sept. 29, 2006).

[4]Joint Terrorism Task Forces are teams of state and local law enforcement officials, FBI agents, and other federal agents and personnel whose mission is to investigate and prevent acts of terrorism. There is a Joint Terrorism Task Force in each of the FBI's 56 main field offices, and additional task forces are located in smaller FBI offices.

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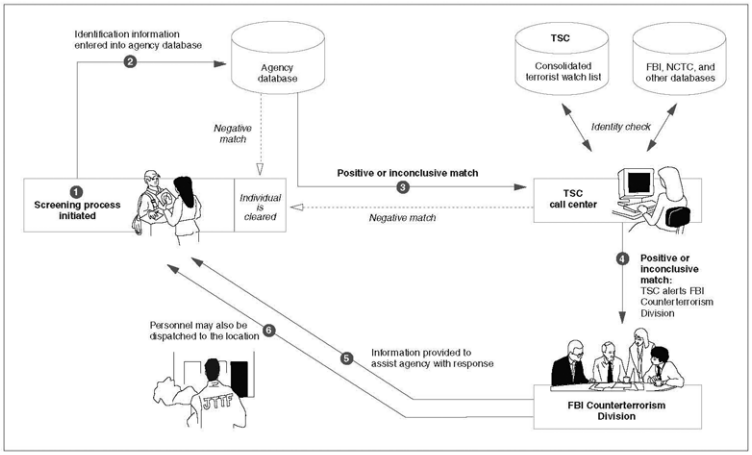
Figure 1: General Overview of the Process Used to Resolve Encounters with Individuals on the Terrorist Watch List



Source: GAO analysis of TSC information.

To build upon and provide additional guidance related to Homeland Security Presidential Directive 6, in August 2004, the President signed Homeland Security Presidential Directive 11. Among other things, this directive required the Secretary of Homeland Security—in coordination with the heads of appropriate federal departments and agencies—to submit two reports to the President (through the Assistant to the President for Homeland Security) related to the government's approach to terrorist-related screening. The first report was to outline a strategy to enhance the effectiveness of terrorist-related screening activities by developing comprehensive and coordinated procedures and capabilities. The second report was to provide a prioritized investment and implementation plan for detecting and interdicting suspected terrorists and terrorist activities. Specifically, the plan was to describe the "scope, governance, principles, outcomes, milestones, training objectives, metrics, costs, and schedule of

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activities" to implement the U.S. government's terrorism-related screening policies.

Agencies Rely upon Standards of Reasonableness in Assessing Individuals for Inclusion on TSC's Watch List

The National Counterterrorism Center and the FBI rely upon standards of reasonableness in determining which individuals are appropriate for inclusion on TSC's consolidated watch list.[5] In accordance with Homeland Security Presidential Directive 6, TSC's watch list is to contain information about individuals "known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism." In implementing this directive, the National Counterterrorism Center and the FBI strive to ensure that individuals who are reasonably suspected of having possible links to terrorism—in addition to individuals with known links—are nominated for inclusion on the watch list. To determine if the suspicions are reasonable, the National Counterterrorism Center and the FBI are to assess all available information on the individual. According to the National Counterterrorism Center, determining whether to nominate an individual can involve some level of subjectivity. Nonetheless, any individual reasonably suspected of having links to terrorist activities is to be nominated to the list and remain on it until the FBI or the agency that supplied the information supporting the nomination, such as one of the intelligence agencies, determines the person is not a threat and should be removed from the list.

Moreover, according to the FBI, individuals who are subjects of ongoing FBI counterterrorism investigations are generally nominated to TSC for inclusion on the watch list, including persons who are being preliminarily investigated to determine if they have links to terrorism. In determining whether to open an investigation, the FBI uses guidelines established by the Attorney General. These guidelines contain specific standards for opening investigations, including formal review and approval processes. According to FBI officials, there must be a "reasonable indication" of involvement in terrorism before opening an investigation. The FBI noted, for example, that it is not sufficient to open an investigation based solely on a neighbor's complaint or an anonymous tip or phone call. If an investigation does not establish a terrorism link, the FBI generally is to

[5]In general, and in this context, a standard of reasonableness can be described as a government agent's particularized and objective basis for suspecting an individual of engaging in terrorist-related activities, considering the totality of circumstances known to the government agent at that time. See, *e.g.*, *United States v. Price*, 184 F.3d 637, 640-41 (7th Cir. 1999); *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

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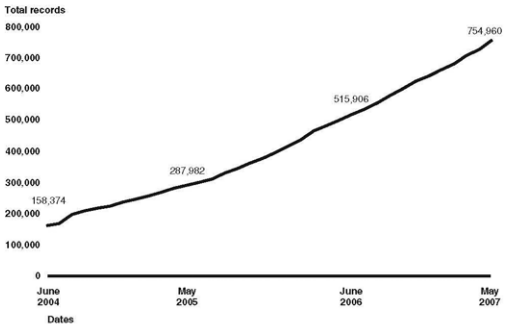
close the investigation and request that TSC remove the person from the watch list. Based on these standards, the number of records in TSC's consolidated watch list has increased from about 158,000 records in June 2004 to about 755,000 records as of May 2007 (see fig. 2). It is important to note that the total number of records in TSC's watch list does not represent the total number of individuals on the watch list. Rather, if an individual has one or more known aliases, the watch list will contain multiple records for the same individual.

Figure 2: Increase in Terrorist Watch List Records, June 2004 through May 2007



Source: GAO analysis of TSC data.

TSC's watch list database is updated daily with new nominations, modifications to existing records, and deletions. Because individuals can be added to the list based on reasonable suspicion, inclusion on the list does not automatically prohibit an individual from, for example, obtaining a visa or entering the United States when the person is identified by a screening agency. Rather, when an individual on the list is encountered, agency officials are to assess the threat the person poses to determine what action to take, if any.

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Agencies Have Had Approximately 53,000 Encounters with Individuals on the Watch List, and Outcomes Indicate the List Has Helped to Combat Terrorism

From December 2003 (when TSC began operations) through May 2007, screening and law enforcement agencies encountered individuals who were positively matched to watch list records approximately 53,000 times, according TSC data. A breakdown of these encounters shows that the number of matches has increased each year—from 4,876 during the first 10-month period of TSC's operations to 14,938 during fiscal year 2005, to 19,887 during fiscal year 2006. This increase can be attributed partly to the growth in the number of records in the consolidated terrorist watch list and partly to the increase in the number of agencies that use the list for screening purposes. Our analysis of TSC data also indicates that many individuals were encountered multiple times. For example, a truck driver who regularly crossed the U.S.-Canada border or an individual who frequently took international flights could each account for multiple encounters. Further, TSC data show that the highest percentage of encounters involved screening within the United States by a state or local law enforcement agency, U.S. government investigative agency, or other governmental entity. The next highest percentage involved border-related encounters, such as passengers on airline flights inbound from outside the United States or individuals screened at land ports of entry. The lowest percentage of encounters occurred outside of the United States.

The watch list has enhanced the U.S. government's counterterrorism efforts by allowing federal, state, and local screening and law enforcement officials to obtain information to help them make better-informed decisions during encounters regarding the level of threat a person poses and the appropriate response to take, if any. The specific outcomes of encounters with individuals on the watch list are based on the government's overall assessment of the intelligence and investigative information that supports the watch list record and any additional information that may be obtained during the encounter. Our analysis of data on the outcomes of encounters revealed that agencies took a range of actions, such as arresting individuals, denying others entry into the United States, and most commonly, releasing the individuals following questioning and information gathering.

- TSC data show that agencies reported arresting many subjects of watch list records for various reasons, such as the individual having an outstanding arrest warrant or the individual's behavior or actions during the encounter. TSC data also indicated that some of the arrests were based on terrorism grounds.

- TSC data show that when visa applicants were positively matched to terrorist watch list records, the outcomes included visas denied, visas

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issued (because the consular officer did not find any statutory basis for inadmissibility), and visa ineligibility waived.[6]

- Transportation Security Administration data show that when airline passengers were positively matched to the No Fly or Selectee lists, the vast majority of matches were to the Selectee list.[7] Other outcomes included individuals matched to the No Fly list and denied boarding (did not fly) and individuals matched to the No Fly list after the aircraft was in flight. Additional information on individuals on the watch list passing undetected through agency screening is presented later in this statement.

- U.S. Customs and Border Protection data show that a number of nonimmigrant aliens encountered at U.S. ports of entry were positively matched to terrorist watch list records. For many of the encounters, the agency determined there was sufficient information related to watch list records to preclude admission under terrorism grounds. However, for most of the encounters, the agency determined that there was not sufficient information related to the records to preclude admission.

- TSC data show that state or local law enforcement officials have encountered individuals who were positively matched to terrorist watch list records thousands of times. Although data on the actual outcomes of these encounters were not available, the vast majority involved watch list records that indicated that the individuals were released, unless there were reasons other than terrorism-related grounds for arresting or detaining the individuals, such as the individual having an outstanding arrest warrant.

Also, according to federal officials, encounters with individuals who were positively matched to the watch list assisted government efforts in tracking the respective person's movements or activities and provided the

[6]In this context, ineligibility waived refers to individuals who were ineligible for a visa based on terrorism grounds, but the Department of Homeland Security approved a waiver for a one-time visit or multiple entries into the United States. In general, waivers are approved when the U.S. government has an interest in allowing the individual to enter the United States, such as an individual on the terrorist watch list who is invited to participate in peace talks under U.S. auspices.

[7]In general, individuals on the No Fly list are to be precluded from boarding an aircraft, and individuals on the Selectee list are to receive additional physical screening prior to boarding an aircraft.

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opportunity to collect additional information about the individual. The information collected was shared with agents conducting counterterrorism investigations and with the intelligence community for use in analyzing threats. Such coordinated collection of information for use in investigations and threat analyses is one of the stated policy objectives for the watch list.

Potential Vulnerabilities in Agency Screening Processes and Agency Efforts to Address Them

The principal screening agencies whose missions most frequently and directly involve interactions with travelers do not check against all records in TSC's consolidated watch list because screening against certain records (1) may not be needed to support the respective agency's mission, (2) may not be possible due to the requirements of computer programs used to check individuals against watch list records, or (3) may not be operationally feasible. Rather, each day, TSC exports applicable records from the consolidated watch list to federal government databases that agencies use to screen individuals for mission-related concerns. For example, the database that U.S. Customs and Border Protection uses to check incoming travelers for immigration violations, criminal histories, and other matters contained the highest percentage of watch list records as of May 2007. This is because its mission is to screen all travelers, including U.S. citizens, entering the United States at ports of entry. The database that the Department of State uses to screen applicants for visas contained the second highest percentage of all watch list records. This database does not include records on U.S. citizens and lawful permanent residents because these individuals would not apply for U.S. visas.

The FBI database that state and local law enforcement agencies use for screening contained the third highest percentage of watch list records. According to the FBI, the remaining records were not included in this database primarily because they did not contain sufficient identifying information on the individual, which is required to minimize instances of individuals being misidentified as being subjects of watch list records. Further, the No Fly and Selectee lists disseminated by the Transportation Security Administration to airlines for use in prescreening passengers contained the lowest percentage of watch list records. The lists did not contain the remaining records either because they (1) did not meet the nomination criteria for the No Fly or Selectee list or (2) did not contain

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sufficient identifying information on the individual.[6] According to the Department of Homeland Security, increasing the number of records used to prescreen passengers would expand the number of misidentifications to unjustifiable proportions without a measurable increase in security. While we understand the FBI's and the Department of Homeland Security's concerns about misidentifications, we still believe it is important that federal officials assess the extent to which security risks exist by not screening against certain watch list records and what actions, if any, should be taken in response.

Also, Department of Homeland Security component agencies are taking steps to address instances of individuals on the watch list passing undetected through agency screening. For example, U.S. Customs and Border Protection has encountered situations where it identified the subject of a watch list record after the individual had been processed at a port of entry and admitted into the United States. U.S. Customs and Border Protection has created a working group within the agency to study the causes of this vulnerability and has begun to implement corrective actions. U.S. Citizenship and Immigration Services—the agency responsible for screening persons who apply for U.S. citizenship or immigration benefits—has also acknowledged areas that need improvement in the processes used to detect subjects of watch list records. According to agency representatives, each instance of an individual on the watch list getting through agency screening is reviewed to determine the cause, with appropriate follow-up and corrective action taken, if needed. The agency is also working with TSC to enhance screening effectiveness.

Further, Transportation Security Administration data show that in the past, a number of individuals who were on the government's No Fly list passed undetected through airlines' prescreening of passengers and flew on international flights bound to or from the United States. The individuals were subsequently identified in-flight by U.S. Customs and Border Protection, which checks passenger names against watch list records to help the agency prepare for the passengers' arrival in the United States. However, the potential onboard security threats posed by the undetected individuals required an immediate counterterrorism response, which in

[6]Of all of the screening databases that accept watch list records, only the No Fly and Selectee lists require certain nomination criteria or inclusion standards that are narrower than the "known or appropriately suspected" standard of Homeland Security Presidential Directive 6.

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some instances resulted in diverting the aircraft to a new location.[9] According to the Transportation Security Administration, such incidents were subsequently investigated and, if needed, corrective action was taken with the respective air carrier. In addition, U.S. Customs and Border Protection has issued a final rule that should better position the government to identify individuals on the No Fly list before an international flight is airborne.[10] For domestic flights within the United States, there is no second screening opportunity—like the one U.S. Customs and Border Protection conducts for international flights. The government plans to take over from air carriers the function of prescreening passengers prior to departure against watch list records for both international and domestic flights. Also, TSC has ongoing initiatives to help reduce instances of individuals on the watch list passing undetected through agency screening, including efforts to improve computerized name-matching programs.

The U.S. Government Has Made Progress in Using the Watch List, but a Strategy and Plan Supported by a Governance Structure Would Enhance Use and Effectiveness

Although the federal government has made progress in using the consolidated watch list for screening purposes, additional opportunities exist for using the list. Internationally, the Department of State has made progress in making bilateral arrangements to share terrorist screening information with certain foreign governments. The department had two such arrangements in place before September 11, 2001. More recently, the department has made four new arrangements and is in negotiations with several other countries.

Also, the Department of Homeland Security has made progress in using watch list records to screen employees in some critical infrastructure components of the private sector, including certain individuals who have access to vital areas of nuclear power plants, work in airports, or transport hazardous materials. However, many critical infrastructure components are not using watch list records. The Department of Homeland Security has not, consistent with Homeland Security Presidential Directive 6, finalized guidelines to support private sector screening processes that

[9]In July 2007, we issued a report that examined federal coordination for responding to in-flight security threats. See GAO, *Aviation Security: Federal Coordination for Responding to In-flight Security Threats Has Matured, but Procedures Can Be Strengthened*, GAO-07-891R (Washington, D.C.: July 31, 2007).

[10]See 72 Fed. Reg. 48,320 (Aug. 23, 2007). The provisions of the final rule take effect on February 19, 2008.

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have a substantial bearing on homeland security. Finalizing such guidelines would help both the private sector and the Department of Homeland Security ensure that private sector entities are using watch list records consistently, appropriately, and effectively to protect their workers, visitors, and key critical assets. Further, federal departments and agencies have not identified all appropriate opportunities for which terrorist-related screening will be applied, in accordance with presidential directives.

A primary reason why screening opportunities remain untapped is because the government lacks an up-to-date strategy and implementation plan—supported by a clearly defined leadership or governance structure—for enhancing the effectiveness of terrorist-related screening, consistent with presidential directives. Without an up-to-date strategy and plan, agencies and organizations that conduct terrorist-related screening activities do not have a foundation for a coordinated approach that is driven by an articulated set of core principles. Furthermore, lacking clearly articulated principles, milestones, and outcome measures, the federal government is not easily able to provide accountability and a basis for monitoring to ensure that (1) the intended goals for, and expected results of, terrorist screening are being achieved and (2) use of the list is consistent with privacy and civil liberties. These plan elements, which were prescribed by presidential directives, are crucial for coordinated and comprehensive use of terrorist-related screening data, as they provide a platform to establish governmentwide priorities for screening, assess progress toward policy goals and intended outcomes, ensure that any needed changes are implemented, and respond to issues that hinder effectiveness.

Although all elements of a strategy and implementation plan cited in presidential directives are important to guide realization of the most effective use of watch list data, addressing governance is particularly vital, as achievement of a coordinated and comprehensive approach to terrorist-related screening involves numerous entities within and outside the federal government. However, no clear lines of responsibility and authority have been established to monitor governmentwide screening activities for shared problems and solutions or best practices. Neither does any existing entity clearly have the requisite authority for addressing various governmentwide issues—such as assessing common gaps or vulnerabilities in screening processes and identifying, prioritizing, and implementing new screening opportunities. Thus, it is important that the Assistant to the President for Homeland Security and Counterterrorism address these deficiencies by ensuring that an appropriate governance structure has clear and adequate responsibility and authority to (a)

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provide monitoring and analysis of watch list screening efforts governmentwide, (b) respond to issues that hinder effectiveness, and (c) assess progress toward intended outcomes.

Conclusions and Recommendations for Executive Action

Managed by TSC, the consolidated terrorist watch list represents a major step forward from the pre-September 11 environment of multiple, disconnected, and incomplete watch lists throughout the government. Today, the watch list is an integral component of the U.S. government's counterterrorism efforts. However, our work indicates that there are additional opportunities for reducing potential screening vulnerabilities, expanding use of the watch list, and enhancing management oversight. Thus, we have made several recommendations to the heads of relevant departments and agencies. Our recommendations are intended to help (1) mitigate security vulnerabilities in terrorist watch list screening processes that arise when screening agencies do not use certain watch list records and (2) optimize the use and effectiveness of the watch list as a counterterrorism tool. Such optimization should include development of guidelines to support private sector screening processes that have a substantial bearing on homeland security, as well as development of an up-to-date strategy and implementation plan for using terrorist-related information. Further, to help ensure that governmentwide terrorist-related screening efforts are effectively coordinated, we have also recommended that the Assistant to the President for Homeland Security and Counterterrorism ensure that an appropriate leadership or governance structure has clear lines of responsibility and authority.

Agency Comments and Our Evaluation

In commenting on a draft of our report, which provides the basis for my statement at today's hearing, the Department of Homeland Security noted that it agreed with and supported our work and stated that it had already begun to address issues identified in our report's findings. The FBI noted that the database state and local law enforcement agencies use for screening does not contain certain watch list records primarily to minimize instances of individuals being misidentified as subjects of watch list records. Because of this operational concern, the FBI noted that our recommendation to assess the extent of vulnerabilities in current screening processes has been completed and the vulnerability has been determined to be low or nonexistent. In our view, however, recognizing operational concerns does not constitute assessing vulnerabilities. Thus, while we understand the FBI's operational concerns, we maintain it is still important that the FBI assess to what extent security risks are raised by not screening against certain watch list records and what actions, if any,

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should be taken in response. Also, the FBI noted that TSC's governance board is the appropriate forum for obtaining a commitment from all of the entities involved in the watch-listing process. However, as discussed in our report, TSC's governance board is responsible for providing guidance concerning issues within TSC's mission and authority and would need additional authority to provide effective coordination of terrorist-related screening activities and interagency issues governmentwide. The Homeland Security Council was provided a draft of the report but did not provide comments.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or other members have at this time.

Chairman THOMPSON. I now recognize Director Boyle to summarize his statement for 5 minutes.

STATEMENT OF LEONARD C. BOYLE, DIRECTOR, TERRORIST SCREENING CENTER

Mr. BOYLE. Thank you very much, Chairman Thompson. Thank you for those kind remarks, and members of the committee.

In the aftermath of September 11, 2001, the American people asked two very pertinent questions of their government: First, how did you allow people who so clearly intended to harm us to enter this country so easily? And secondly, once they were here, why didn't you do more to keep track of them and to find out what their plans were?

It is those two critical gaps that the Terrorist Screening Center has stepped in to fill and has filled in an extraordinary fashion. By consolidating the 12 Federal watch lists that existed prior to 9/11 into a single terrorist screening database, by updating that database every day and exporting it to all of our customers, the Terrorist Screening Center has substantially enhanced the safety of the United States. Now when a State Department consular officer around the world considers a person's application for a visa to enter the United States, that consular officer has electronic access to the entire United States Government Intelligence Community and law enforcement community's best understanding of the persons around the world who mean to harm the United States. That is a factor that that consular officer can take into consideration in deciding whether to issue a visa to that person.

Secondly, if a person seeks to enter the United States at one of our ports of entry from a visa waiver country, a Customs and Border Protection officer now again has access to that same information, the entire Federal Government's best understanding from the Intelligence Community and the law enforcement community of those persons around the world who mean to do us harm, and that CBP officer can consider that information in an effort to determine

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whether that person ought to be allowed to enter the United States.

In both of those instances, those officers, should they get a hit against the database, call the Terrorist Screening Center where we have a 24-hour-a-day 7-day-a-week operation. Our calltakers respond to that call, have electronic access to the entire base of information regarding that person, and can provide that information to that officer so that he or she can make the best informed decision whether that person should be allowed to enter the United States.

Finally, by providing that same information to State, county and municipal law enforcement officers, the Terrorist Screening Center helps to close that second gap. Now we have a force multiplier of 750,000 law enforcement officers, the first line of our defense who have access to that same information so that if, during the course of a routine police encounter, a police officer encounters someone who is suspected of being involved in terrorist activity, that police officer is aware of that, the police officer calls the Terrorist Screening Center and again gets access to the information that he or she needs, A, to protect himself and, B, to gather further information to help us protect the country against that threat. When that call is received at the Terrorist Screening Center, our analysts immediately forward the information to the FBI so that there can be a coordinated law enforcement response.

That being said, it is certainly the case that despite the extraordinary accomplishments that the Terrorist Screening Center has achieved to date, we need to do better. We have accepted the recommendations of the Office of Inspector General and the General Accounting Office. We view them as a road map, a way to help us improve.

I believe a fair assessment of the Terrorist Screening Center shows that the extraordinary mandate that was placed before it in September of 2003 has largely been satisfied, but now, as the organization matures, we have to develop even better processes to make sure that our information is current, accurate and thorough.

We have adopted a number of responses to the Office of Inspector General's report. I will just touch briefly upon a couple of those, and we will be glad to answer any questions that may come about them.

But in the first instance we are in the process of expanding our redress office because we well understand that while we have a solemn obligation to protect the safety of the American public, we have an equally solemn obligation to do so in a way that honors civil liberties and privacy protections. We have established a compliance officer within the Terrorist Screening Center whose responsibility is to make sure that we are complying with processes that we are putting in place consistent with the OIG's recommendations. And finally, we have brought on board a senior DHS official who serves now as our data integrity advisor to ensure that we don't have any gaps within our system that cause some of the data inconsistencies that were identified within by the OIG.

Again, Mr. Chairman, I thank you for the opportunity, and I look forward to answering any questions you might have.

Chairman THOMPSON. Thank you for your testimony.

[The statement of Mr. Boyle follows:]

PREPARED STATEMENT OF LEONARD BOYLE

Good morning Chairman Thompson, Ranking Member King, and members of the Committee. Thank you for the opportunity to discuss the terrorist watch list, or Terrorist Screening Database, and the watchlisting process at large.

Since it began operations on December 1, 2003, the Terrorist Screening Center (TSC) has assumed a critical role in securing our borders and the safety of the American people by providing to the nation's entire screening and law enforcement communities the identities of known and suspected terrorists. As directed by Homeland Security Presidential Directive 6 (Integration and Use of Screening Information), the TSC has combined the 12 previously existing terrorist watchlists and created the United States Government's single consolidated Terrorist Screening Data Base (TSDB). Every day, the TSC provides an updated list of known and suspected terrorists to screeners and law enforcement personnel. The TSC also provides:

(1) A single coordination point for terrorist screening data;
(2) A 24/7 call center to provide identification assistance to screening agencies;
(3) Access to a coordinated law enforcement response for any encounter with a watchlisted person;
(4) A formal process for tracking all positive encounters;
(5) Feedback to the appropriate entities;
(6) A redress process for any individual who believes they have been improperly delayed or otherwise inconvenienced because of the watchlist; and
(7) A process for removing names from the watchlist when it has been determined they do not have a nexus to terrorism.

The TSC has significantly enhanced interagency cooperation in the post-9/11 culture where information sharing is a MUST. In fact, as the GAO report released on October 24, 2007 cites, "The TSC plays a central role in the real-time sharing of information, creating a bridge among screening agencies." The TSC has not only assisted in eliminating historical cultural boundaries between and among the intelligence and law enforcement communities, but also has provided a physical mechanism to ensure information sharing is done in an efficient manner.

As the GAO report correctly notes, while great strides have been made there is still room for improvement in the terrorist screening process. I must echo what my colleagues have said many times: In order to be successful in the war on terrorism, we must constantly improve, determining our weaknesses from within, and correcting them. The TSC's unique position as the U.S. Government's hub for all terrorist identification information allows the TSC to play a critical role regarding the GAO Executive Recommendations, especially with respect to identifying further screening opportunities while serving in a leadership role for the screening community.

TSC Initiatives

In fact, the TSC has already moved forward in a number of areas, which will result in a more complete and efficient screening process.

- TSC is working hand-in-hand with the Transportation Security Administration (TSA) regarding its "Secure Flight" initiative.
- TSC participates in an interagency working group to identify how to better use biometric data to enhance the screening process.
- While maintaining all privacy rules and policies, TSC is undertaking information technology improvements on several fronts, including ways to increase the ease with which our screening and law enforcement customers are able to access the TSDB.
- In late 2005, TSC initiated, and continues to chair, the Federal Identity Matching Working Group, which includes participation by numerous agencies across the U.S. Government. This group establishes guidelines for the standardized measurement of identity matching and provides common test data and tools to enable agencies to effectively evaluate their systems. Additionally, TSC sponsors on-going independent evaluations of commercial and government search engines, separately and in combination with each other. This will result in improved name matching, a key factor in enhancing TSC's screening system, and facilitate creation of a search service that provides direct TSDB access to other screening and law enforcement agencies.

TSC Achievements

One of the TSC's most recent accomplishments is the September 19, 2007 execution of a multi-agency agreement on the terrorist watchlist redress process. The TSC terrorist watchlist redress process, established in January 2005, provides a full and fair review of any watchlist record that is the cause of an individual's complaint. The redress process seeks to identify any data errors and correct them, including

errors in the watchlist itself. The TSC worked with the Privacy and Civil Liberties Oversight Board, and obtained cabinet-level commitments from the heads of participating agencies, to include the Attorney General, Secretaries of State, Treasury, Defense and Homeland Security, the Director of National Intelligence, and the Directors of the National Counterterrorism Center, Central Intelligence Agency, and Federal Bureau of Investigation, to support the redress process with appropriate resources and oversight from senior agency officials. Furthermore, this agreement ensures uniformity in the handling of watchlist related complaints and demonstrates the United States Government's commitment to protecting national security consistent with privacy and civil liberties.

The TSC has also become a premier entity on the forefront of the global war on terrorism by establishing formal information sharing partnerships with our allies. The TSC has thus far signed agreements with six nations. These agreements provide our allies with access to the world's most comprehensive tool to identify terrorists, and we are the beneficiaries of their terrorist identity information. We continue to work with our allies to share information more efficiently, and those information gaps are shrinking rapidly. As a result, it is becoming much more difficult for terrorists and their supporters to hide. By teaming up with our foreign counterparts, we have effectively broadened the net with which known and suspected terrorists are identified and caught.

GAO Report

The recent GAO review of Terrorist Watchlist Screening provided some critical feedback to all agencies involved in the watchlisting process. The TSC is working with our partners in DHS and the FBI to:

- Identify a systemic approach to capitalize on all watchlisting opportunities, including in the private sector and with current and potential international partners;
- Continually review and update terrorist screening strategies; and
- Identify clear lines of responsibility and authority for terrorist screening.

GAO Report—Private Sector Screening

Terrorist screening is currently conducted by an array of agencies protecting our nation's borders and our people from another terrorist attack. HSPD–6, HSPD–11 (Comprehensive Terror Related Screening Procedures) and their resulting initiatives, including the creation of the TSC, have greatly enhanced security at our borders. But simply enhancing border screening is not enough to identify those who may have already successfully assimilated into our culture, become established within our society and placed themselves in positions of trust in the private sector. Such persons would have the ability to carry out attacks on our critical infrastructure that could harm large numbers of persons or cause immense economic damage. Private sector screening is therefore critical to ensuring we identify watchlisted persons working as, or who have access to, critical infrastructure facilities that could be used to harm the American public. HSPD–6 mandates that the terrorist watchlist be made available to support private sector screening processes that have a substantial bearing on homeland security. The TSC is working closely with DHS to finalize guidelines to support private sector screening and to fulfill the mandate of HSPD–6.

GAO Report—Use of the Watchlist

As the GAO report states, TSC customers receive TSDB data that suits their individual agency needs. Which TSDB records are exported to a particular customer depends on that customer's mission, legal authority, resources, and other considerations. For example, U.S. Customs and Border Protection (CBP) receives over 98% of the records in the TSDB to screen against threats at our borders. CBP has by far the broadest criteria concerning TSDB data, and therefore receives the greatest number of TSDB records. Other TSC customers, such as the Department of State (which screens applicants for visas and passports), have different criteria tailored to their mission and screening needs and therefore receive slightly less data. The State Department's visa screening process, for example, does not check against TSDB records on American citizens or Legal Permanent Residents, because they are not required to have a visa to enter the U.S. The TSC also exports nearly two-thirds of the TSDB to the National Crime Information Center (NCIC), where it is made available to federal, state, county, tribal, and municipal law enforcement officers. The TSC also sends a portion of the TSDB to the Transportation Security Administration as the "selectee" and "no fly" lists for use in air passenger screening.

In FY 2006, as indicated in the GAO Report, 269 foreign persons were denied entry to our nation because they were determined to present an unacceptable risk of committing a terrorist act. Thousands of other individuals listed in the TSDB

were encountered at our borders, or within the United States, and their whereabouts were made known to the FBI and other law enforcement agencies. These encounters often yield valuable information not only about the subject's whereabouts, but also his or her associates, interests, and intentions.

These, and all matches to the watchlist, significantly enhance the FBI's ability to accurately assess current threats, to identify intelligence gaps and opportunities, and to further existing investigations. In sum, they help to "connect the dots" and make safer those whom we are sworn to protect. Through data quality assurance methods, an extensive nominations process and the redress process, the TSC continues to work to ensure that its data remains accurate, current and comprehensive, thus efficiently meeting our customers' screening needs.

OIG Report 07–41

In addition to the feedback received from the GAO, the Department of Justice Office of the Inspector General (OIG) recently completed an audit. This audit focused on the data quality of the TSDB, including its nominations and redress processes. The report concluded that the TSC redress process was functioning well by providing appropriate resolutions to individuals' complaints and that the TSC had made significant improvements in its nominations and quality assurance processes since the previous audit in 2005. The report did find areas where the TSC needed to improve, and made 18 recommendations to the TSC and the FBI. The FBI and TSC's concurrent response, with the plan to address each recommendation, is included in Appendix V of the OIG report. The TSC agrees with each of the report's recommendations, and I am pleased to report the TSC has initiated corrective actions on each of these recommendations.

Conclusion

In the four short years since its inception, the TSC has significantly enhanced the safety of the nation and has become a critical player in the war on terrorism. We are committed to achieving new heights, and continuing to make America a safer place through balancing terrorist screening and the rights of our fellow citizens. This can only be accomplished through a continuous process of internal and external review, and eternal vigilance. Chairman Thompson, Ranking Member King, and members of the Committee, thank you again for the opportunity to address this esteemed body, and I look forward to answering your questions.

Chairman THOMPSON. I now recognize Ms. Kraninger to summarize her statement for 5 minutes.

STATEMENT OF KATHLEEN KRANINGER, DIRECTOR, SCREENING COORDINATION OFFICE, DEPARTMENT OF HOMELAND SECURITY

Ms. KRANINGER. Thank you, Mr. Chairman and members of the committee. It is a pleasure to appear before you today. I also appreciate this committee's steadfast support of the Department and the many actions you have taken to improve the Department's effectiveness.

One of the most important tools in the fight against terrorism is the U.S. Government's consolidated terrorist watch list. The implementation and the use of this watch list has enhanced the Department's multilayered programs to detect terrorist travel and to keep dangerous people out of the country. But as has been noted by my colleagues on this panel and in the committee statements, the system is not perfect.

I speak today not as a nominator to the watch list, but as a consumer of TSC's products, and as the largest screening agency and user of the watch list, DHS has a significant interest in ensuring the effective and appropriate application of the watch list in our screening programs. We are as troubled by errors and inefficiencies in the use of the watch list as anyone and for a number of reasons, including the annoyance it causes the traveling public, but, most importantly, because it is a waste of our resources. The time that

we spend looking at someone who is not the right person is time spent not looking in the right place.

I think it is fair to say that we have had a number of successes, though it is an iterative process where we continuously seek ways to improve our operations. I would like to take a moment to outline some of the improvements to date.

Since 9/11, we have instituted a multilayered approach to screening individuals seeking to enter the United States. That starts overseas, as my colleagues have noted, with the Department of State's visa lookout system. It continues with airline checks of passenger information against the no-fly selectee list. That includes capture of data on all travelers to the U.S. through our Advanced Passenger Information System and passenger name records. And, of course, the final check takes place at the port of entry by our Customs and Border Protection officers who determine whether an individual should be admitted to the United States.

Yet we know that these layers can be improved. The 9/11 Commission and Congress have pressed the Department to conduct watch list matching prior to departure in a foreign port. It has been a complex development effort, but we are proud to say that beginning early next year, we will be able to accomplish that through the APIS predeparture system.

APIS predeparture is the first step toward taking over the no-fly and selectee list matching from air carriers. As of today, commercial air carriers are the ones responsible for conducting those checks for all flights.

In August 2007, DHS took a major step forward to address this vulnerability by publishing the Secure Flight notice of proposed rulemaking. Secure Flight will make watchlisting more effective, efficient and consistent, offering improvements in both security and customer service for the traveling public. For example, Secure Flight will utilize realtime watch list information, conduct consistent checks across airlines, provide us the capability to calibrate our screening based on threat information, reduce the impact of false matches on the traveling public, and give us more time to coordinate an appropriate law enforcement response to potential threats.

Despite the progress we have made and the important goals of this program, we are facing a critical funding shortfall. The current funding level under the continuing resolution for Secure Flight is significantly lower than the President's total budget request of $74 million. DHS is working diligently with the administration, with Congress, with this committee to address that issue. However, with the current funding level, DHS will not be able to continue with the program and will have to suspend essential development contracts and refrain from beginning operational testing with the airlines.

Recognizing the impact of screening on the public, particularly without Secure Flight in place, DHS has implemented DHS TRIP, which provides travelers with essential contact to DHS to identify their adverse screening experiences and address them. DHS TRIP collects the minimum personal information necessary to address the particular problem the traveler identified.

Between February 20 and October 26, DHS reported nearly 16,000 requests for redress; 6,600 of those cases cannot be processed yet, and that is primarily because the traveler has not provided a copy of their identification document and the signed Privacy Act notice statement that is required for us to actually process their request. Yet we have successfully adjudicated 7,400 of those cases. Most of those cases result in adding the name of the individual to the TSA cleared list. That cleared list is used by the airlines to distinguish false matches from positive matches when they conduct their watch list matching. But that matching done today, of course, is not as effective as it will be once the government takes over this process with Secure Flight.

Taken together, these measures provide enhanced capabilities and provide a good picture of our progress. We have had a number of successes, and my testimony certainly addresses those successes.

We appreciate the opportunity to be here today. We are constantly seeking ways to improve our processes and respond to GAO and IG reports and this committee's requests, and we definitely appreciate. Any questions that you have, I am happy to respond to. Thank you.

Chairman THOMPSON. Thank you very much.

[The statement of Ms. Kraninger follows:]

PREPARED STATEMENT OF KATHLEEN KRANINGER

INTRODUCTION

Thank you, Chairman Thompson, Ranking Member King, and Members of the Committee for the invitation to appear today. I appreciate this Committee's steadfast support of the Department and your many actions to improve our effectiveness.

At the outset, I would like to acknowledge the strong working relationships we share with the Director of National Intelligence (DNI), the Federal Bureau of Investigation (FBI), the Terrorist Screening Center (TSC), and the National Counterterrorism Center (NCTC), as well as many other federal, state, and local partners working around the clock to protect our country and the American people from terrorist attacks.

None of us alone can keep our nation safe from the threat of terrorism. Protecting the United States is a mission we share and one that requires joint planning and execution of our counterterrorism responsibilities; effective information collection, analysis, and exchange; and the development of integrated national capabilities.

One of the most important tools in the fight against terrorism is the U.S. Government's consolidated Terrorist Watchlist. The implementation and use of the Terrorist Watchlist has enhanced the Department of Homeland Security's (DHS's) screening programs. The use of this single tool across all federal, state and local law enforcement agencies has become one of our most valuable resources in our coordinated fight against terrorist activity. DHS works closely with the FBI and the Office of the DNI to review screening opportunities, implement watchlist enhancements and address potential vulnerabilities. As the largest screening agency, DHS has a significant interest in ensuring the effective and appropriate application of the watchlist in screening programs. This is an iterative process of continual review and improvement. As one example, the Screening Community is focused today on aligning biometric watchlist information in a more automated fashion with biographic records to provide even more efficient screening capabilities.

DHS as a Screening Agency

As you know, U.S. screening efforts start well before individuals arrive in the U.S. Most important, we have a number of information sharing activities with our international allies in the War on Terror. The international community has put significant resources into detecting and tracking terrorist travel across the globe.

Our overseas layers of security related to screening of individuals prior to arrival in the United States include: Department of State (DOS) visa application processing, the Immigration and Customs Enforcement (ICE) Visa Security Units that support DOS screening, and the new Immigration Advisory Program (IAP) that involves screening of travelers by U.S. Customs and Border Protection (CBP) at airports of

departure. Currently, CBP maintains IAP deployments in Amsterdam, the Netherlands, Warsaw, Poland, London, Tokyo-Narita, and Frankfurt, Germany. IAP began in Saudi Arabia in 2003, and expanded to four locations in three countries in 2005. Since January 2007, Visa Security Units have been deployed to four additional locations, with plans to deploy to one additional location in November 2007. Watchlist information supports all of these front line officers in their mission to keep dangerous people out of the U.S.

Information-based screening represents the next and most intensive opportunity for screening to prevent terrorists and terrorist weapons from entering the U.S. Leveraging passenger information from both Advance Passenger Information and Passenger Name Record (PNR) data in advance of arrival allows us to check the terrorist watchlist, criminal wants and warrants, and travel history as well as search for connections between known and unknown terrorists. This year we also reached an important agreement with the European Union that will allow us to continue accessing PNR data while protecting passenger privacy.

While we are conducting these checks prior to arrival, DHS is moving toward its Advance Passenger Information System (APIS) pre-departure requirement to perform watchlist checks in advance of boarding. Published in August 2007, the final rule implements the Intelligence Reform and Terrorism Prevention Act of 2004, which requires that electronic manifest information for passengers onboard commercial aircraft arriving in and departing from the United States, and passengers and crew onboard arriving and departing commercial vessels, be vetted by DHS against a government-established and maintained terrorist watch list prior to departure of the aircraft or vessel.

APIS pre-departure is a first step to taking over the No Fly and Selectee list matching responsibility from air carriers. As you know, since 9/11, the U.S. Government has been making the No Fly and Selectee lists available to commercial air carriers flying into, out of, or within the U.S. for passenger prescreening. A nominating agency can recommend that a known or suspected terrorist (KST) be placed on the No Fly or Selectee list if the individual meets specific criteria for inclusion on that list, consistent with the TSC's No Fly and Selectee Lists Implementation Guidance. TSC is ultimately responsible for deciding whether to place individuals on the No Fly or Selectee Lists, which are subsets of Terrorist Screening Data Base.

Today, commercial air carriers are responsible for conducting checks in advance of boarding pass issuance, and they must notify the Transportation Security Administration (TSA) where there is a match to the No Fly list. TSA then notifies the TSC and the FBI, which coordinate the operational response with law enforcement and other agencies and foreign partners as appropriate. Air carriers must also ensure that a match to the Selectee list is subject to secondary screening prior to boarding an aircraft. Note that there are reasons aside from a Selectee match why an individual may be subject to secondary screening including the Computer-Assisted Passenger Prescreening system and random selection.

DHS is preparing to assume responsibility for No Fly and Selectee watch list matching for both international and domestic air passengers through Secure Flight. In August 2007, DHS took a major step forward by publishing the Secure Flight Notice of Proposed Rulemaking. Secure Flight, as outlined in the proposed rule, will make watchlist matching more effective, efficient, and consistent, offering improvements in both security and customer service for the traveling public. DHS expects Secure Flight to add a vital layer of security to our nation's commercial air transportation system while maintaining the privacy of passenger information. Our watchlist matching capabilities will be significantly enhanced when the government takes over this responsibility from air carriers for a number of reasons including the following:

- DHS uniformly will utilize real-time watchlist information;
- Matching will be uniformly conducted by one process with consistent results applied across airlines;
- The system can be effectively and swiftly calibrated to meet the current threat—for example by increasing the number of potential matches that are generated for an intelligence analyst's review, based on an elevated threat;
- Distribution of the watchlists themselves will be more limited—protecting that sensitive information;
- DHS will have passenger information sooner and will be able to adjudicate potential matches prior to the individual's arrival at the airport, thereby reducing the impact of false matches on the traveling public; and
- DHS will have more time to coordinate an appropriate law enforcement response to potential threats and an enhanced capability to stop known or suspected terrorists before they get to the passenger screening checkpoints.

DHS has made substantial progress on Secure Flight, which will establish a more consistent and uniform prescreening process, resulting in enhanced security and reducing potential misidentification issues for legitimate travelers. Despite this progress, the program faces a critical funding shortfall. The current funding level under the Continuing Resolution is significantly lower than the President' total budget request of $74 million ($53 million plus $21 million in a budget amendment submitted this week). In addition, both the House and Senate appropriations marks do not provide adequate funding to move the program to the next phase, operational testing. DHS is working diligently with the Administration and the Congress to address this issue. However, if the current funding level remains, DHS will not be able to operate the program. In mid-December, we will have to suspend essential development contracts and refrain from beginning benchmark and operational testing with airlines. The lack of funding will severely delay rollout of the program and increase costs and risks.

Once inside the U.S., a variety of terrorist-related screening opportunities exist, requiring the discipline in applying risk-based screening measures to ensure that resources are focused accordingly, threats are appropriately addressed and civil liberties and privacy are upheld. DHS screens immigration benefits applicants and critical infrastructure sector workers, consistent with its legal authority through programs such as the Transportation Workers Identification Credential program.

With our current security layers, we have prevented thousands of dangerous people from entering the United States, including individuals suspected of terrorism, murderers, rapists, drug smugglers, and human traffickers. In Fiscal Year 2007, CBP alone encountered 5,953 positive watchlist matches.

I should also dispel some myths about DHS' information-based screening programs. A person' union membership, sexual orientation, and eating habits are irrelevant to DHS's screening programs. All of DHS's information-based screening systems are designed to match travelers against intelligence and/or enforcement information only. Accordingly, DHS only actively seeks data pertinent to screening. However, while screening arriving international passengers via the Automated Targeting System, we may, at times, receive ancillary information from an air carrier or from the individual concerned that could be considered "sensitive." For example, a carrier may note in reservation data that a traveler is blind and will need help finding his seat or that the travel agency that booked the ticket was UnionPlus. From this ancillary information a person could deduce facts about the traveler. However, very pertinent information may also be stored in the same record—including names and passport data. When DHS does receive sensitive data it is because of the need to collect this other relevant information. In these instances, special, stringent protections are put in place to prevent DHS users from viewing any sensitive information unless there is a specific case-related necessity that has been verified by a senior official. DHS is transparent about the rules it has put in place to prevent sensitive information from being used for screening. We have published them in our System of Records Notice for the Automated Targeting System and have made similar public representations to the European Union.

Factors Relevant to Watchlist Matching Effectiveness

Not only is it important to ensure that the watchlist itself is accurate and appropriate to the screening opportunity, but the robustness of the information that is matched against the watchlist is a key factor in effective screening. What level of assurance do we have in the individual' presented identity? What information is provided? As Director Boyle notes in his testimony, different screening opportunities present different challenges. At the border, CBP has many tools at its disposal to identify and screen individuals entering the U.S.—whereas in the current domestic aviation context, we are currently reliant upon the name matching capabilities of the air carriers.

The use of biographic information in screening including reliance on names to identify known of suspected terrorists, has its limitations. For that reason, DHS is pursuing efforts to enhance the effectiveness of the screening conducted at all opportunities by promoting secure identification and the use of biometrics, where appropriate and feasible. US-VISIT biometrics collection that starts overseas during the visa application process provides a significant layer of security. As we move to 10-print collection, our ability to match that information against latent prints from the battlefield or other locations to identify unknown terrorists increases substantially.

Secure identification also enhances our ability to screen effectively. Identification documents often provide the baseline information for conducting screening. For that reason, DHS is pursuing implementation of the Western Hemisphere Travel Initiative (WHTI) and REAL ID. Both programs are recommendations of the 9/11 Commission, who so aptly noted that "[f]or terrorists, travel documents are as important

as weapons." By requiring secure documents to enter the United States, or board commercial aircraft, we will make it harder for people to use fraudulent credentials to travel or cross our borders, and we will make it easier for our CBP Officers to separate real documents from fake, enhancing our security and ultimately speeding up processing.

Misidentification and Redress

Recognizing the impact of screening on the public, particularly where only name-based checks are conducted, agencies have incorporated redress into their screening programs. DHS has implemented the DHS Traveler Redress Inquiry Program (DHS TRIP), which provides a central gateway for travelers to obtain information about screening and redress as well as a central contact to DHS regarding their adverse screening experiences. Travelers, regardless of their nationality, citizenship or residency, can submit inquiries via website, email, or postal mail. The DHS TRIP Program Office then ensures that the cases are reviewed and resolved, to the extent possible, and that travelers receive an official response. The DHS TRIP Program Office, using its redress management system, assigns redress requests to the Department of State or appropriate DHS agencies, ensures coordination of responses, and is instituting performance metrics to track progress, giving leadership visibility into the types of inquiries DHS receives.

Between February 20, 2007, and October 26, 2007, DHS TRIP recorded 15,954 requests for redress in its redress management system and approximately 7,400 cases have been adjudicated and letters have been sent to the travelers. The majority of TRIP requests that remain in process are awaiting submission of supporting documentation by the traveler.

Once a redress request associated with No Fly and Selectee List matching is processed, the cleared individual is also added to the TSA Cleared List that is provided to air carriers. The Cleared List is currently used by the airlines to distinguish false matches from actual matches as they perform No Fly and Selectee List matching.

For international travel, CBP has implemented a process that automatically suppresses specific lookout matches, including terrorist watchlist matches, in its screening systems when a CBP Officer at a port of entry encounters an individual that CBP has previously determined to be a false positive match. When such an encounter is made, the CBP Officer can make a record of this individual's information into the Primary Lookout Override (PLOR) which is an automated system that automatically suppresses that specific hit the next time that person is encountered, unless new derogatory information has become available. As a result, CBP does not have to resolve the false match each time the person travels. From program inception in February 2006 through September 2007, CBP has created 71,487 PLOR records.

Quality Assurance of the Watchlist

In addition to the efforts described above, TSC analysts also conduct various proactive quality assurance projects with support from DHS. We recently completed a review of all records on the No Fly List and are near completion of a record-by-record review of the Selectee List. Quality assurance projects like the No Fly and Selectee list reviews ensure that the most current, accurate, and thorough watchlist information is 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.

The U.S. Government is doing much to ensure travelers have the opportunity to seek redress and to enhance the effectiveness of the watchlisting process itself. At the same time, it is worth noting what GAO described in its September 2006 report (GAO–06–1031)—that although the total number of misidentifications is significant, they represent a tiny fraction of the total screening transactions that are conducted on the hundreds of millions of travelers DHS encounters each year.

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.

Response to GAO Audit

DHS agrees with many of the findings in the GAO Terrorist Watch List Screening report. DHS takes GAO's recommendations seriously and, in fact, has had ongoing efforts to address them.

GAO recommended that the Secretary of Homeland Security ". . .develop guidelines to govern the use of watchlist records to support private-sector screening processes that have a substantial bearing on homeland security."

In response to this recommendation, DHS is drafting guidelines to establish and support private sector screening for those respective private sector entities that have a substantial bearing on homeland security. These guidelines will prioritize private sector entities by critical infrastructure sector that are necessary for the functioning of our society. For these purposes, critical infrastructure may include, but is not limited to, agriculture, food, water, public health, emergency services, government, defense industrial base, information and telecommunications, energy, transportation, banking and finance, chemical industry and hazardous materials, postal and shipping, and national monuments and icons. In addition to the draft guidelines, DHS anticipates preparing an information collection request under the Paperwork Reduction Act, Privacy Impact Assessment, and System of Records Notice, which would address any DHS private sector screening program.

GAO also recommends that the Secretary of Homeland Security "develop and submit to the President through the Assistant to the President for Homeland Security and Counterterrorism an updated strategy for a coordinated and comprehensive approach to terrorist-related screening as called for in HSPD–1" as well as "an updated investment and implementation plan that describes the scope, governance, principles, outcomes, milestones, training objectives, metrics, costs, and schedule of activities necessary for implementing a terrorist-related screening strategy, as called for in HSPD–11." The updated HSPD–11 report is under development and is forthcoming.

The Screening Community has taken extensive steps since 2004 to enhance terrorist screening and many of those efforts that are specific to the watchlist have been outlined in this testimony. Additionally, at the request of the Assistant to the President for Homeland Security and Counterterrorism, DHS is providing such an update to the Homeland Security Council.

CONCLUSION

On September 11, 2001, no one would have predicted the passage of six years without another terrorist attack on U.S. soil. Some believe our country hasn't suffered another attack because we've been lucky. Others contend the terrorist threat has diminished and we are no longer in danger.

I disagree. Over the past six years, we have disrupted terrorist plots within our own country and we have turned away thousands of dangerous people at our borders. We have also witnessed damaging terrorist attacks against some of our staunchest allies in the war on terror.

I believe the reason there have been no additional attacks against our homeland is because we have successfully raised our level of protection and we have succeeded in frustrating the aims of our enemies. That is not to say our efforts have been flawless or that our work is done. On the contrary, we must move forward aggressively to build on our success to keep pace with our enemies.

Our improvements to passenger and cargo screening, critical infrastructure protection, and intelligence fusion and sharing must continue. While no one can guarantee we will not face another terrorist attack in the next six years, if we allow ourselves to step back from this fight, if we allow our progress to halt, if we fail to build the necessary tools to stay ahead of terrorist threats, then we will most certainly suffer the consequences.

I would like to thank this Committee for your ongoing support for our Department. We look forward to working with you and with our federal, state, local, and private sector partners as we continue to keep our nation safe and meet our responsibility to the American people.

Chairman THOMPSON. I thank the witnesses for their testimony.

I will remind each Member that he or she will have 5μminutes to question the panel. I will now recognize myself for questions.

Director Boyle, there are people on the Web saying that if I am on the list, I can get around it by using a fake ID or changing my name. Is this true? And if so, what protections are in place to close this obvious loophole?

Mr. BOYLE. If a person, Mr. Chairman, successfully adopts another identity, and law enforcement or the Intelligence Community doesn't become aware of it, then that does create a vulnerability and an opportunity for a person to evade screening. That, in fact, is why the number of records in the watch list is as large as it is. As I believe the members of the committee are aware, although

there are 850,000 or 860,000, approximately, records in the terrorist screening database, that represents a far fewer number of human beings because we create a separate record for every alias that a person might use, for every identifier that a person might use, so that if that person has a second passport or uses a second date of birth, that creates a separate record in an effort to catch people who are trying to disguise their identities to circumvent screening and watchlisting.

The ultimate answer to your question, Mr. Chairman, is the greater use of biometrics to try to capture the true identity of persons who are traveling and who are encountered. We are in the process of a long-standing working group with all of our partner agencies to develop a better use of biometrics, the use of fingerprints, facial imaging and other emerging technologies, to try to better capture the true identity of a person. This issue, of course, is one that presents a great deal of challenges, both technological and legal, but they are challenges that we are working through every day in an effort to develop a biometric system.

Chairman THOMPSON. Well, I think we all have heard about biometrics before, but for right now, if Norm Dicks is on the list, and Norm Dicks changes his name, then our present system would have difficulty picking him up; am I correct?

Mr. BOYLE. We have to rely on our sources of information to try to determine that Norm Dicks, in fact, did change his name or in some other way changed his identity so that we could add that record. But if law enforcement or the Intelligence Community doesn't pick up on that name change, yes, that creates a vulnerability.

Chairman THOMPSON. Thank you.

Ms. Kraninger, one of the intents of the 9/11 recommendations was to have a person designated at every airport so that if someone would feel that they should not be on the list, then there will be a redress individual identified so that process could start. Where are we in this process at this point?

Ms. KRANINGER. Earlier this year we did begin conducting redress through a DHS consolidated process through DHS TRIP, and we have—TSA designated as the executive agent of the program, and they manage that program today to accept requests from the public, to address the problems that each individual is having. And it is narrowly tailored to, again, address for privacy reasons the problem that the public identified. So if an individual says that they are having problems with domestic screening, which is the vast majority of the issues that are being raised, then we look at that case, and most likely it results in adding that person's name to the cleared list.

Chairman THOMPSON. Right. But if I go to Reagan National, and I am denied the ability to get on an airplane, who at Reagan National is the redress person?

Ms. KRANINGER. In the case of a no-fly match, that airline cannot actually determine affirmatively whether that person is or is not the match. They actually have to contact TSA immediately upon identifying that person, and law enforcement is called in. The appropriate response is determined right on the scene, because it is a serious matter to actually prohibit someone from boarding a

flight. And so from that respect, it is something that is taken very seriously.

Chairman THOMPSON. Yeah. Well, I think the 9/11 bill mandated that a redress individual would be identified at each airport, and I think the bill passed overwhelmingly. And so what we are just trying to say is where are you along the way of having the individuals identified at airports so that the traveling public would know where to start the process? If they deem themselves not eligible for the list, where can they start?

Ms. KRANINGER. Something that we are working really hard on is communication about DHS TRIP and about the process people have to follow, and that absolutely starts at the airport. We have a sheet we are putting out so that people can start that process and understand it right off the bat.

Chairman THOMPSON. I will say it again. Where are you along the way of identifying someone at every airport to address the redress concerns of the traveling public? I mean, that is all. Do you plan to implement it?

Ms. KRANINGER. Yes, Mr. Chairman. It is a communications effort. And the Federal security director at the airport is responsible for dealing with the cases, such as the one that you noted, where someone is prohibited from boarding a flight. That is their responsibility to address that.

Chairman THOMPSON. The FSD?

Ms. KRANINGER. Absolutely. With the individual, with the appropriate law enforcement and with the airline.

Chairman THOMPSON. Thank you.

Mr. Reichert for 5 minutes.

Mr. REICHERT. Thank you, Mr. Chairman.

Questions for Mr. Boyle, please. On August 25, 2007, there was a front-page article in The Washington Post, "Terrorist Screening Center Is Criticized for Not Resulting in As Many Arrests as Suspected Terrorists."

So without getting into the details, can you confirm if there have been any arrests that have occurred when an individual is found to be on that list?

Mr. BOYLE. Yes, sir. There have. And, in fact, with the opening remarks that you made, you noted a couple examples of arrests that have been made, and there have been many others.

But I do think it is important to point out that the critical value that the Terrorist Screening Center provides is the ability to identify potential threats as they attempt to enter the country or as they are encountered by State and local police officers around the country so that we can gather that information, provide it to the FBI, provide it to State and local law enforcement, so that there is a more comprehensive understanding of the threats that are faced around the country and a better ability to connect the dots, as the phrase has been used.

Mr. REICHERT. So there were known terrorists arrested?

Mr. BOYLE. There have been. Yes, sir.

Mr. REICHERT. Recognizing that we are getting into some very sensitive information, a simple yes or no will do on these next questions. In that same article, a spokesperson for the Terrorist Screening Center indicated that an Egyptian named Omar Ahmed

Ali was prevented from entering the United States because he was on a government terrorist watch list. Is this true?

Mr. BOYLE. Yes, sir.

Mr. REICHERT. Can you confirm that the individual Omar Ahmed Ali is the same individual identified by Qatar and Egyptian sources as having detonated himself on Saturday, March 19, 2005, outside a theater near Doha in an apparent suicide attack?

Mr. BOYLE. Yes, sir.

Mr. REICHERT. Also moving on to the use of the Internet and with some creative Googling that the committee staff has accomplished here, they identified 10 suspected aliases for Osama bin Laden. Let's assume that bin Laden uses two separate birthdates on his travel documentation, and since Interpol currently has a list of 6.7 million lost or stolen passports, let's also assume that bin Laden could have two different passports. He might have more. But let's just say he has got two passports. Would it be true that then the TSC would have some 40 records for this one individual?

Mr. BOYLE. Yes, sir. In fact, there are particular individuals within the terrorist screening database for whom we have dozens of records for the very reason that you point out, because we are concerned about them mixing and matching aliases, alternate dates of birth, et cetera.

Mr. REICHERT. So you are saying there is more than one individual that has numerous records?

Mr. BOYLE. Thousands, sir.

Mr. REICHERT. Thousands.

I just want to make a point here. In my personal experience with my law enforcement background and my career, this makes perfect sense to me in trying to put a list of suspects together or even victims. I worked a serial murder case, one victim having several names, 10 different birthdates, five or six different addresses. This is all I am dealing with on a very small scale compared to what you are trying to deal with. And trying to track the identity of a person with a few number of birthdates, several addresses, license plate number changes, identity changes, different hair colors, those sorts of things, I can really see the difficulty that you have here with the hundreds of thousands of names and the possibilities that you have to deal with.

The computer system that you are using, you are sharing information with other agencies involved in tracking this list; is that correct.

Mr. BOYLE. Yes, sir.

Mr. REICHERT. Kathy, Ms. Kraninger, recognizing the facts and figures that were redacted from a publicly available version of these reports, we won't get into the specifics, but I want to make sure it provides some clarity for the record. Can you tell me with a simple yes or no answer, has the use of the consolidated watch list resulted in any arrests inside the United States?

Ms. KRANINGER. Yes, they have, sir, both at the port of entry with CBP officers and certainly, as Director Boyle indicated, within the United States. There have been arrests for terrorist—and non-terrorist-related reasons.

Mr. REICHERT. I yield back my time.

Chairman THOMPSON. Thank you very much.

We now recognize the gentleman from Washington Mr. Dicks for 5 minutes.

Mr. DICKS. Well, I am trying to get an answer, Ms. Kraninger. And I hope you can give me a better answer than we got last time you were here.

The President signed Homeland Security Presidential Directive 11. Among other things, his directive required the Secretary of Homeland Security in coordination with the heads of appropriate Federal departments and agencies to submit two reports to the President through the Assistant to the President for Homeland Security related to the government's approach to terrorist-related screening. The first report was to outline a strategy to enhance the effectiveness of terrorist-related screening activities by developing comprehensive and coordinated procedures and capabilities. The second report was to provide a prioritized investment and implementation plan for detecting and interdicting suspected terrorists and terrorist activities.

Specifically, the law—the plan was to describe the scope, governance, principles, outcomes, milestones, training objectives, metrics, cost and schedule of activities to implement the U.S. Government's terrorist-related screening policies. Now, Ms. Larence, the GAO says that this hasn't been done; is that correct?

Ms. LARENCE. There was a report that was submitted in November of 2004, but it never came back out of the White House. We are recommending it is time to update those.

Mr. DICKS. Now, Ms. Kraninger, what happened to this report? I called down there at your suggestion, talked to Fran Townsend. She could barely remember this because it was 2004, and she said, I think we sent this report back to Ms. Kraninger to be updated and fixed. There was some corrections made. But you said at the time it went to the White House, and you had no idea what happened to it.

Now, I cannot believe that on a Presidential directive there isn't any action taken—the thing has never been approved, as far as I know, on two important things that relate to the supervision of the Terrorist Screening Center. I mean, as I understand it, nobody—Mr. Boyle only reports to the President of the United States because these plans weren't implemented. I think this is very serious. Can you explain what has happened here between DHS and the White House on Presidential Directive 11?

Ms. KRANINGER. Mr. Dicks, I appreciate the question and the concern. It is something we do take seriously. We did complete the two reports and submit those to the Homeland Security Council. I cannot speak for them in terms of what their reaction is.

Mr. DICKS. They said they sent them back to you.

Ms. KRANINGER. Right.

Mr. DICKS. Is that not right? Is that inaccurate?

Ms. KRANINGER. We do not have a record of that. However, we have been asked to provide an update of that, and recently we did so.

Mr. DICKS. Can we have a meeting between yourself, Ms. Townsend and myself to get this straightened out? I think the committee deserves better than what we have received. I think the President deserves better than what he has received. If this directive was

given by the President of the United States, and nothing has happened since 2004, I mean, that is not acceptable, is it?

Ms. KRANINGER. I would not say that nothing has happened, sir, but I appreciate the concern. I am happy to support——

Mr. DICKS. But the plan hasn't been approved. It hasn't been—it hasn't been approved by anyone. It has just been sent down there.

And, Mr. Boyle, who do you report to? Who has supervision over your agency?

Mr. BOYLE. We are administered by the FBI, and I report through the national security branch to Executive Assistant Director Hulon, ultimately to Director Mueller.

Mr. DICKS. Would if be helpful if the Presidential Directive Number 11 were implemented? Would that give you better guidance to do your job?

Mr. BOYLE. Well, we work very closely with the Department of Homeland Security, sir. We have no problems in dealing with our partner agencies. I believe we have a very clear mandate as to our responsibilities, and which we are discharging. So I have no issues with how we relate to the Department of Homeland Security or with the clarity of directives that we receive.

Mr. DICKS. Ms. Kraninger, going back to you, is there a need for Presidential Directive 11, or is what you are basically saying is, we haven't responded to it; we sent in the reports, we don't know what happened to them, so it doesn't really make any difference?

Ms. KRANINGER. The Presidential Directive did outline a direction to be taken with respect to priorities and opportunities, and we have executed on those with the Terrorist Screening Center, looking at the opportunities we have.

Mr. DICKS. But the plan was supposed to be sent back to the White House and approved, and that has never happened; isn't that correct?

Ms. KRANINGER. That is correct, sir.

Mr. DICKS. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

We will recognize the gentleman from Florida Mr. Bilirakis for 5 minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it.

Ms. Larence, in your written testimony you noted that actions taken in response to encountering watch-listed individuals most often resulted in the questioning and then releasing of those individuals because there was no sufficient evidence of criminal or terrorist activity to warrant further legal action. Do you believe that there is a disconnect between the theoretical purpose of the list and its practical application?

Ms. LARENCE. Sir, the reason that that occurs is the way that agencies nominate individuals to the watch list, the criteria that they use. And what we determined is they are fairly conservative about adding people to the watch list and have a relatively low bar because they want to make sure they don't miss any threats. That is really, we think, a policy call on the Congress's part to determine, you know, where that bar should be.

Mr. BILIRAKIS. How can we justify releasing the majority of encountered individuals if they have met the standards of reasonable-

ness for inclusion on the watch list, which they are reasonably suspected of having possible links to terrorism? Does this indicate a problem or a weakness somewhere in the process? Does anyone else on the panel want to answer that question as well, please?

Ms. LARENCE. People may be added to the watch list because they are undergoing an FBI investigation. And so the links to—the possible links to terrorism are very tenuous, or they might have certain affiliations. And so the FBI is interested in determining whether or not this person poses a threat. So they will put the person on the watch list when they initiate an investigation. If the investigation determines that there is no nexus to terrorism, the person is to automatically come off the list. For that reason there are people on the list where there is no legal reason that we could deny them a visa or deny them entry to the country.

Mr. BILIRAKIS. Anyone else want to take a crack at that?

Mr. FINE. Congressman, one of the purposes that we saw on the watch list was not solely to detain the people who are on it, but to also to get intelligence and information about them. So sometimes when you are in contact with a State or local law enforcement officer or a Department of Homeland Security officer, it is important to find out about that person, to get information about that person, to contact the Terrorist Screening Center, which contacts the FBI. And one of the options, if there is a detention warrant, is to detain them, but other options are to get intelligence, to track them, to get information about their passports, their aliases, where they are going, who they are in contact with. So there is often good uses of that watch list without a detention of that person.

Mr. BILIRAKIS. Thank you.

One last question, Mr. Chairman.

Ms. Kraninger, are there any assurances that people who use the Travel Redress Inquiry Program properly to resolve problems they experience when traveling will not be stopped subsequently for the same reasons they were in the first place, such as having a similar name to someone who is actually on the watch list? And are the majority of redress requests not watch list-related or cases of misidentification? I would like to get those questions answered, please.

Ms. KRANINGER. Certainly.

Of the millions of individuals that we are screening against the watch list every year, the vast majority of those cases are, you know, individuals who successfully go through the screening process. We do catch certain individuals with names that are similar to those on the watch list, and also obviously conduct secondary screening on people for a number of other reasons.

And so we cannot promise that an individual that goes through the redress process will never be secondary screened again, but what we do promise is that we are going to do everything we can, given the limitations of the current process that is run by the air carriers—that we will do everything we can to smooth their travel experience in the future.

And so we do have a current process, and we do work diligently on the each of the cases. And most of the carriers are performing the check against the no-fly and selectee list and using the cleared list to ensure that. But there are a number of individuals that are

caught with misidentification. And we will improve that once Secure Flight is implemented, and we are running the process on the government side consistently across the airlines.

Mr. BILIRAKIS. Thank you.

I have one last question, Mr. Chairman.

I understand that TSA has created a cleared list of frequently misidentified individuals, and that CBP has a system for overriding the watch list flags on these people. Are there privacy or other issues that would prevent the creation of something like a consolidated clear list to expedite the process for people who are frequently detained for secondary screening because of a hit against the system?

Ms. KRANINGER. Yes, Congressman. There are a number of reasons why we don't have a consolidated cleared list per se, the first of which is because we really do want to narrowly tailor the redress to the request that is made, for privacy reasons. We do not share people's information when they identify only a domestic travel issue, which, again, is primarily linked to the fact that we are letting the airlines do the watch list matching at the moment. That is not as effective, and we don't have as much information; so therefore, that is the place we are having most of the issues with respect to misidentification. And so where that is the only problem the individual traveler is having, we don't have the need to share their information with other agencies at that time. So we want to make sure we address the problem they have and not further disseminate their information, though it is certainly protected when we have their information.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Mrs. Lowey. Go quick.

Mrs. LOWEY. Thank you very much, Mr. Chairman.

And just briefly, before I get to my question, I really want to thank the panel. Usually we have people from the Department of Homeland Security who are hiding behind methodology and not giving us the facts, but both Mr. Boyle and Ms. Kraninger have agreed with the findings of GAO and DOJ, and for that we applaud you.

I just want to ask you a question regarding the process. It is my understanding that each screening agency does not check the entire watch list. And there are cases in which some users, such as the Department of State, when screening visa applications, do not need to use the entire list. But the GAO report tells of instances where there were problems as a direct result of the agency not examining the list. Now, examples come to mind of TSA clearing prescreening lists for oversea flights only for CBP to discover after the plane has taken off and is en route to the U.S. that an individual on board is on a watch list. This is clearly unacceptable. The purpose of the terrorist screening database is to have one list, not a TSA list, not a CBP list, not an FBI list, et cetera.

Director Boyle, why don't agencies check against the entire list? Are there technological or financial hurdles? If so, will the administration request sufficient resources in its fiscal year 2009 budget request to close this dangerous loophole?

And I just want to say before you respond, I don't know if it is budgetary. I don't know what it is. I hope you are going to enlighten us. But, frankly, I am very concerned about the threats that we read about, and if it is budgetary, we should be asked for the appropriate amount. There is no excuse, as far as I am concerned, for any agency not to review the combined list.

Could you respond?

Mr. BOYLE. Yes. Thank you very much.

The reason that not all of the agencies receive the entire list is neither budgetary nor technological. It is rather a function of the mission of that particular agency and a balancing of the inconvenience that might be associated with that agency screening against the entire list.

Mrs. LOWEY. Is the inconvenience threatening our safety? Do you think inconvenience is a good excuse?

Mr. BOYLE. No. It is not threatening our safety. And I hasten to add, when I say inconvenience, I don't mean inconvenience to the agency. I mean inconvenience to the public. For example, if the TSA, for purposes of conducting secondary screening at the airports, screened against the entire terrorist screening database, I dare say we would bring air transportation to a halt in the United States.

Mrs. LOWEY. Excuse me, Mr. Boyle. We don't have the technology? Maybe you should call Google or Microsoft. We don't have the technology to do it quickly? I go to an ATM machine, I get my money out. They know who I am and what I am doing. We don't have the technology?

Mr. BOYLE. We have the technology, but in order for us to make a determination that a person is necessary—ought to be secondly screened at an airport, we set a higher standard, a higher threshold for the type of information that would justify that person being subjected to that inconvenience.

Mrs. LOWEY. Why not a visa?

Mr. BOYLE. Visa gets a much larger—they get about 90µpercent of the terrorist screening database, and, in fact, they get all but the United States persons who are part of the database. So the State Department gets close to the entire database. There is only a small portion that it doesn't get because of a lack of specificity of identity for the person who is seeking the application.

Mrs. LOWEY. Well, why don't we let people on flights that CBP has flagged?

Mr. BOYLE. Largely that is a result of the Advanced Passenger Information System that has not yet come into place, but is going to come into place within the next month, whereby instead of these people that are flying from Europe, let's say, to the United States only being identified after the plane leaves Europe, they will now be identified 30 minutes prior to departure from Europe, so we will know before they actually leave that a person who is on the watch list is approaching the United States.

Mrs. LOWEY. When will that be effective?

Chairman THOMPSON. I really hate to cut the gentlelady off.

Mrs. LOWEY. That is all right.

Chairman THOMPSON. We are going to recess the hearing for this one vote, and we will reconvene at 11:30, if that is fine.

Mrs. LOWEY. Thank you.

Chairman THOMPSON. And the gentlelady can continue.

[Recess.]

Chairman THOMPSON. We would like to reconvene the hearing. And Ms. Lowey will continue.

Ms. LOWEY. Thank you very much, Mr. Chairman. And we can pursue that in other discussions, but I did want to get to Presidential Directive 6, which mandates that the terrorist watch list be made available to support private-sector screening processes.

What is the status of your efforts to work with DHS to finalize guidelines for the private-sector screening process outlined in HSPD 6, which was issued more than 4 years ago? In other words, what do you have to go through to know if someone wants a job in an industry that is pretty critical to our defense? Could you respond? Why is it taking this long?

Mr. BOYLE. I believe Ms. Kraninger can best address that question. But the TSC works very closely with the Department of Homeland Security on an everyday basis. We have participated with DHS in helping craft the guidelines for private-sector screening. And I believe Ms. Kraninger can probably best address exactly where that stands.

Ms. LOWEY. So if you can make it clear that people who work in critical infrastructure sites may be on the watch list or may be not—what are we doing now 4 years later?

Mr. BOYLE. Several of the industries that are of greatest concern already screen employees, potential employees, and visitors. Others are still in the process of awaiting the private-sector screening guidelines, which are going to be issued quite soon.

Ms. LOWEY. Do they have access to the screening list? How do they screen?

Mr. BOYLE. The private-sector entities that will be part of the private-sector screening process will have access to the database.

Ms. LOWEY. But you said they are currently screening now.

Mr. BOYLE. Certain components of the infrastructure, such as airports, for example, do have access and do screen against the database.

Ms. LOWEY. Thank you very much. And I would love the answer to that, because I think it is really critical 4 years later.

Thank you, Mr. Chairman, for your indulgence.

Chairman THOMPSON. Thank you very much.

We now recognize Mr. Etheridge for 5 minutes.

Mr. ETHERIDGE. Thank you, Mr. Chairman.

And let me thank each of you for being here.

We talked about and you testified this morning how important the list is, and obviously it is. But there is also a concern that has been raised that I want to pursue just a little bit of those who may get on that list and how they get off if they should not be on that list.

And I raise it because I have been notified by a constituent who alleges that the FBI placed him on the list because the agent had it in for him, so he says. Anyway, he said he was placed on it due to personal disagreements.

My question is this. You have a general list, whether you are there for personal disagreements on not. Once you get on the list,

my question is—the public needs to know there is a clear, straightforward way to have your name taken off the list if, for some reason, you get on the list and you should not be on it.

So my question, Mr. Boyle, to you is this: What procedures are in place to ensure that people are not wrongly placed on the list?

And, number two, how can we make it possible, or do we make it possible, for individuals to contest their placement without compromising national security? Because that is the critical piece we have to have. And would it be possible to have an ombudsman, if that be true in this area, so that we can maintain the critical security we need for this country to make sure that I, as an individual, or anyone else who may be on the list can get off that list?

Mr. BOYLE. Let me answer in the order that you presented the question, sir.

In the first instance, what is the process for a person getting on that list? There is at least a three-layer review before an individual can be placed on the terrorist screening database, and particularly on either the no-fly or——

Mr. ETHERIDGE. Does that also include—I hate to interrupt you—but the FBI who can just put it on there? Do they go through a three-level review as well?

Mr. BOYLE. It will. Because ultimately what has to happen with that record is it goes from the FBI field office supervisor, who in the first instance has to approve, to the FBI Terrorists Records Section here in Washington, which has to approve. And then, even if FBI enters the record directly, it still goes through the National Counter-Terrorism Center and still comes through the terrorist screening database. There is a multi-layer review.

Mr. ETHERIDGE. Okay.

Mr. BOYLE. For a person who finds himself or believes that he is on the list, that is where the redress process comes in. And if that person seeks redress through TSA, in this example, and TSA determines, yes, this person is on the list, the matter then comes to the Terrorist Screening Center, to our redress unit.

We have a very effective unit of several people who are dedicated to do nothing other than handle redress matters. When they get that matter, they conduct a complete, de novo—is the law we call it—review of the nomination to determine whether that person is appropriately on the list.

Mr. ETHERIDGE. How many people have been taken off the list through that process since we have started the process?

Mr. BOYLE. Our redress unit has handled almost 600 matters. I can't tell you off the top of my head how many people were taken off.

Mr. ETHERIDGE. If you can get that, that would be helpful to know. The public needs to know that it is being done, and I think that would be helpful.

Ms. Larence, let me just ask you a question because you did the review. And could you assess how widespread the problem is, if it is a problem, the one I just alleged to? And what checks and balances can be put in place, as much as possible?

And we just heard from Mr. Boyle that there is a three-level—and is that adequate, to make sure that we are doing the job we need to protect our national security? Which, that is job one, and,

number two, that innocent people don't wind up on the list in that process. And do you agree with the assessment of the probability of Mr. Boyle's remedy?

Ms. LARENCE. Yes, that is pretty consistent with what we learned during the course of our review, that if the nomination comes from the Federal Bureau of Investigation, they do have internal controls on that nomination so that, when an investigation is closed, that person has to come off that list if there is no nexus to terrorism.

We also confirmed that people are taken off the list through the Terrorist Screening Center's redress review process. Last year when we took a snapshot of this process, TSC had been asked to review about 112 cases, and about a third of those were people who were mistakenly listed and, in fact, were removed from the list. But about another 20 percent were people that were not, in fact, people on the list.

So I think oftentimes members of the public assume they are on the list but they are not. They just, unfortunately, have a name similar to the person on the list, and so the agencies have to deal with that, because, as you know, they can't tell members of the public to confirm or deny whether they are on the list, for national security reasons.

We don't know the process that the intelligence community uses to determine to what extent nominations they make are taken off the list, because the CIA chose not to talk to us about their process.

Mr. ETHERIDGE. Mr. Chairman, I see my time has expired. But one final question I think would be helpful to the public in maintaining our national security—because if a person thinks they are on the list, I think some of us hear from folks who think they are on the list and may not be. And it sure would be helpful if we had information, that our offices have it or others, and the public has it, that there is a process they did go through to find out if they are on and, if they are on, what process they go through to be taken off if they shouldn't be on it.

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Mr. Souder, for 5 minutes.

Mr. SOUDER. I would like to make a comment before I get to my questions, that we have talked about the difficulty of getting on a watch list. This isn't a watch-list question. But when I first got out of college and settled in Fort Wayne, my distant cousin, Dr. Mark Souder, lived in the same apartment complex. And since I was MES, Mark Edward Souder, I got all his doctor calls and he kept getting my political calls. So we decided we weren't going to live in the same complex. I went back to my hometown and him to his, and moved in next door and there was a Mark Sauder living next to me, spelled S–A. But I was 13733 and he was 13735, so our mail got confused.

So then I came out to Washington to work for Dan Coats, and there was another Mark Souder who got behind in some payments, and I kept getting dunned for his payments. So I went back home and ran for Congress, and there a tax bill got sent to the wrong Mark Souder at a dead letter box, and it became an issue in my campaign that, "I am this Mark Souder; he is this Mark Souder."

My point here, besides—and every Mark Souder in the country, when I do something controversial, ducks for cover, including my wife that says, "I am not married to that one." That, besides being too many Mark Souders in the world, the fact is that the private sector hasn't figured this out either, that I have been dunned by financial, medical. This is a huge problem of identification.

And without biometrics, the problem that the Government has is huge, in that we can talk about the controversies with biometrics, but given the fact that one guy in Ohio had 800 birth certificates stolen, that we see Purdue University has been raided twice now to get IDs because we don't have a clear solution to the immigration problem in the United States. It is not even identity theft, it is just trying to get green card manufacturers with this.

Not to mention that what you are talking about is the proliferation of misspellings, particularly of certain of foreign names. This is a very difficult problem. And the more common your name is, the more difficult the problem is. And we have to have an equitable way to do it. At the same time, if we basically protect that name, then somebody could steal my ID. If I have been on a list, got myself off a list, then it becomes a protected name on the list. Because you say, "No, I am that one." And without biometrics, whether it is fingerprint or eyeball scan, I don't see a clear resolution to this. We are doing Band-Aid resolutions. But biometrics is the only real solution.

I have a Canada question. As we do the list on pre-clearance, how are we progressing with Canada? That is one question. On the North American perimeter, this is a very critical question.

And also, given the fact that we have IBET teams and IMET and all this kind of stuff where we share this intelligence, are there some things being withheld that they couldn't do this? Could you kind of elaborate? Because this is one of our biggest challenges here in pre-clearance.

Ms. KRANINGER. Certainly, sir. We do have a robust law enforcement partnership with the Government of Canada. You noted the IBETs and some of the other coordination efforts that are there. It is a very strong relationship.

With respect to the watch list that they use and we use, we do share results, but we do not actually share lists in their totality. And so, that is something that the U.S. Government and particularly the Department of Homeland Security—it has been a consistent issue in our discussions with the Government of Canada and something that we are still pursuing.

Mr. SOUDER. Is there a way? Because I have met, under both Governments, with leaders on this issue and part of the U.S.-Canada parliamentary group, because it would require constitutional changes there. And, quite frankly, in the constitutional changes, they may not break our direction, depending on how that is handled.

Is there a way that, without providing all the raw data, that they could at least have a pop-up so it could be discussed, so that we don't have sovereignty questions, constitutional questions there? Or are we just going to be at a stand-off there? Because they still haven't agreed to do the pre-clearances. Correct?

Ms. KRANINGER. Actually, now that I understand a little bit more your going toward the land pre-clearance discussion——

Mr. SOUDER. But it is airports as well. Because once they get into the country, their citizenship laws are getting better but they were more vague. Therefore, if you get into the North American perimeter, get on a plane in Montreal or cross a land border, if we don't have shared lists, we don't have a North American perimeter.

Ms. KRANINGER. You are absolutely correct, because the goal that we have as a policy matter is that shared perimeter and working in that direction.

With respect to airports, we don't have quite the same sovereignty issue, which is why we do have some effective pre-clearance operations in Canadian airports, and we do have CBP officers there performing the same check they perform in the United States.

Mr. SOUDER. So we get the list prior to the plane living the ground?

Ms. KRANINGER. Yes. But with respect to the pre-clearance notion at land, that is where you get into the sovereignty issues and a number of complications that have meant the U.S. Government has really set that aside and said, you know, there are some serious issues you have to deal with, with respect to your Constitution, and potentially other options such as land swap or something that would accomplish that.

Mr. SOUDER. Thank you.

Chairman THOMPSON. Thank you very much.

Mr. Perlmutter for 5 minutes.

Mr. PERLMUTTER. Thank you, Mr. Chairman.

I have been through about three of these hearings now, and I am still trying to understand the whole setup. And so let us just to go back to basics.

The terrorist watch list, which is created by the Terrorist Screening Center, has some 700,000-plus names on it. Some are aliases and combinations of names. And from that, you distill the no-fly list. Is that right?

Mr. BOYLE. Yes, sir.

Mr. PERLMUTTER. That no-fly list has 30,000, 40,000, 50,000 names on it?

Mr. BOYLE. Somewhere in that area. Records associated with it. Probably fewer human beings. But yes.

Mr. PERLMUTTER. And that list is then disseminated to the TSA and to the airlines?

Mr. BOYLE. Yes, sir.

Mr. PERLMUTTER. And from that, then they look for—and this is a name-driven approach as opposed to a biometric fingerprints or retina scans or birth dates. It is a name-driven system.

Mr. BOYLE. Primarily. Although we do have fingerprints associated with some of the persons, but not all.

Mr. PERLMUTTER. And this goes to the whole panel, just going back to the no-fly list—because I have had the opportunity to hear you all and then be interviewed by a TV station that was concerned about false positives. You know, somebody—and, in that particular TV interview, the name was John Thompson. And John Thompson turned out to be—that name came from somebody who was in-

volved with the IRA or some Irish terrorist organization of some kind or another. And in Colorado, we have at least 20 John Thompsons.

In your reviews, any of you, how many times are we coming up with, sort of, false positives?

And where I am going with this is just, I don't want to have the instance where we have spent so much time, as Ms. Kraninger was saying, going after people who are a 10-year-old soccer player flying from Denver to Kansas City and missing the bad guy.

Mr. Fine, I think your office looked at all this.

Mr. FINE. We did. Of the times that there was an initial match to the watch list and the Terrorist Screening Center was called, approximately 43 percent of the time it was a misidentification, it was not the person. And about 3 percent of the time it was inconclusive. So slightly over 50 percent of the time it was a positive match.

Mr. PERLMUTTER. So the percentage is 43 percent. How many is that? What is the raw number?

Mr. FINE. The raw numbers?

Ms. LARENCE. We had updated information from the Terrorist Screening Center, and, to date, it was about 50,000. But we need to point out that the airlines can often resolve misidentification plane-site. So there could be tens of thousands of other misidentification that aren't called in to TSC that are adversely affecting the public.

Mr. PERLMUTTER. Then we have the redress system, so that if somebody bumps into this, like the John Thompsons in Colorado bumped into it, they call themselves, when they get the secondary screening, because it has happened to them a number of times. They can go to this redress system. And how long does the redress system take?

Ms. KRANINGER. Once we get all the information from the individual, including their identification document copy and their privacy act notice statement, our goal is 30 days. Many of them we are completing much faster than that, if it is a simple misidentification and a domestic screening case.

Mr. FINE. We have found that when the redress got to the TSC level, it was not as timely as that, and it took, on average, 67 days for the TSC to adjudicate the redress complaint.

It wasn't always the TSC's fault. Sometimes it was a problem for them making final decisions. But often it was them not getting information from the nominating agencies quickly, or the downstream screening agencies not changing their databases even after the TSC had made the adjudication.

So, on average, it took 67 days. We thought that was a little long and that they ought to improve on their timeliness and have timeliness measures for their redress efforts. In fact, that is one thing that I would propose for all the screening agencies, to have performance measures on how fast it takes to deal with those complaints and to assess that on a regular basis.

Mr. PERLMUTTER. So let us just, again—coming back to the basics, the basics are we want to have a safe and secure sky. We want our travelers to be safe and secure. We want our Nation to be safe and secure. Yet, we don't want to bring flying to a halt.

Is there a better way to do this than the system that we have devised? And not casting any aspersions on anybody or the work they are performing, is there a better way to do this?

Mr. Boyle?

Mr. BOYLE. Well, obviously, as was pointed out by Mr. Souder, biometrics is the best answer, because that is the one sure way we can identify a particular human being and know whether he is or is not the person who we are concerned about.

I do think, however, that as DHS rolls out the Secure Flight program, which will give them an electronic and automatic override for these misidentified people, there will be substantial relief for those folks who are constantly subjected to misidentification.

Chairman THOMPSON. We are running out of time.

Mr. PERLMUTTER. One more question, softball.

Do we have enough people in your department, Mr. Boyle, or from your point of view, Ms. Larence, in his department or in TSA to do this properly, to really respond to some something that comes up on the computer that says "John Thompson"?

Ms. LARENCE. We didn't look at the staffing levels as part of our review, sir.

Mr. PERLMUTTER. Mr. Boyle?

Mr. BOYLE. We do. We have to add some people to the redress department, as the Inspector General recommended. And we are in the process of doing that, and we will do it.

Mr. PERLMUTTER. Thank you.

Thank you, Mr. Chair.

Chairman THOMPSON. Thank you.

We will recess the hearing until 12:10 to give us time to go vote. There is only one vote, and we will reconvene. I appreciate the indulgence of the witnesses.

[Recess.]

Chairman THOMPSON. We would like to reconvene the hearing.

I recognize the gentleman from New Jersey for 5 minutes.

Mr. PASCRELL. Thank you, Mr. Chairman.

Mr. Boyle, you have admitted in testimony here today, in really shocking but honest fashion, that having a fake alias and documentation can get you part of the terror watch list. And you—that is, the Department—seems oblivious, in my estimation, to any coordination with, for example—and I use this only as an example—Interpol, which has the world's largest database of fake passports.

So that is the general area, Mr. Chairman, I am going to be asking questions on, not only in terms of dealing with Interpol but basically coordinating.

The Interpol's command center is a clearinghouse for international crime and maintains the world's largest database of known terrorists. Eleven thousand names are in that database. Interpol has the world's only database on lost or stolen passports and travel documents. There are more than 15 million of them. And every week 3,000 people try to use one to enter the country illegally. That is pretty alarming.

Ron Noble, the Secretary General of Interpol, has stated that every significant international terrorist attack that has occurred has been linked in some way with either a fraudulent passport, an authentic passport that has been modified or a counterfeit pass-

port. So, by catching the people with stolen passports, Mr. Chairman, you get yourself closer to catching terrorists.

The system has been operational for more than 2 years, but the Department of Homeland Security is just now beginning to phase it in at some border locations. This is in addition to—the Department of Homeland Security has 250,000 employees, yet Mr. Noble says none of them are based at Interpol.

So my question to Director Boyle and Ms. Kraninger is: Do we coordinate our terrorist screening database with Interpol?

And the second question is: Are we actively making changes to our watch lists at the borders, at airports, at seaports, in coordination with the changes being made to the database being maintained by Interpol?

Ms. KRANINGER. Congressman, we do take very seriously, and you are absolutely correct, that the presentation of fraudulent documents is, as the 9/11 Commission noted and as our operations bear out, that that is a very serious and real problem.

At our ports of entry and as part of Customs and Border Protection screening, we actually obtain significant lost and stolen passport information from Interpol but also from other sources. As part of the visa waiver program, all of the VWP countries actually have to provide that information to the U.S. Government.

So, in some respects, we have data that is different and even better than what Interpol has, with respect to lost and stolen documents. It is not perfect. We are, as international governments, working very hard to get better information and make sure we are sharing it in a real-time basis and using it in a real-time basis.

Mr. PASCRELL. Wouldn't that make sense, to put someone from the Homeland Security Department into the operations, as we do with drug interdiction, as we do with many countries, friendly and not so friendly, where we have our people working there, under certain obvious conditions? And why haven't we done this with this organization, which has a very small budget?

By the way, America contributes very little to Interpol, which is strange, but that is not for our discussion today.

Are we going to put somebody there possibly?

Ms. KRANINGER. Yes, sir, we are.

With respect to terrorist screening from Customs and Border Protection—and DHS does have, I believe, two other individuals that are actually placed at Interpol already.

Mr. PASCRELL. Thank you.

Mr. Boyle?

Mr. BOYLE. Sir, we rely on the information that we receive from the law enforcement community. The actual coordination with Interpol or any other organization is not handled by the TSC directly but through our partner agencies, such as FBI, CIA, et cetera. So we rely on those agencies to develop those relationships, get the information, and then we clear it as it arrives at our doorstep.

Mr. PASCRELL. Is that shocking to you, that, in what you said in your testimony, how easy these fake aliases and fake documentations are available to people?

Mr. BOYLE. It is not shocking to me, sir, because, in my experience in law enforcement, I know that identity theft and identity fraud is a serious problem.

Mr. PASCRELL. But we are 6 years after 9/11. And you come before this committee, and in all honesty—I am commending you for your honesty—you are not just coming here to give us good news. But 6 years later, we still do not have an adequate system for protecting what probably is the most important area in protecting this country from terrorists.

We do not, we are never going to have a seamless system. We know that. And we have human mistakes. Nobody is perfect here. But your testimony today doesn't give me much comfort. Give me some comfort.

Mr. BOYLE. I can tell you, sir, that we have a database that is the most comprehensive in the world. Working through the State Department, our other partner agencies, we are getting information, to the extent possible, about people who are trying to change identities, alter identifying information. And we are adding that to the database on a daily basis.

I can't assure you that we are finding every single one. Of course not. But I do know that our partner agencies are working to establish, as much as they possibly can, sources of information that will allow us to determine when a person is trying to use a false identity or a false identifier. And as soon as we get that information, it is being put into the database and being exported to the State Department, Customs and Border Protection, local law enforcement.

Mr. PASCRELL. I have to say one thing, that, at least the TSA recognizes, we have more than one border. A lot of other agencies within Homeland Security, you would think we only have a southern border. The last time I looked at the map, we had many borders. Don't we?

Thank you.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

We now recognize the gentlelady from New York, Ms. Clarke, for 5 minutes.

Ms. CLARKE. Thank you very much, Mr. Chairman.

Living and serving a diverse district of Brooklyn, New York, in a post-9/11 civil society, and since coming to Congress the beginning of this year, I have grown increasingly concerned with the application of the terrorist screening database.

The existence of a comprehensive list of terrorist suspects has become an unfortunate necessity in this day and age. But we must be very vigilant and careful in how this information is handled and applied. As the list grows bigger, I fear it has become a major disruption in the lives of countless innocent individuals, including many people who are not even on the list but just happen to possess a similar name to individuals who are on the list.

I will soon be introducing legislation to address this very issue. If there is going to be a single list of terrorist suspects, there must also be a single Government-wide list of people who have voluntarily given their names and personal information to ensure that they are no longer wrongly harassed and who have been cleared of

any wrongdoing who have been misidentified. This will both improve the quality of life of many people who have been misidentified as terrorist suspects and also improve the quality of our Nation's defenses by reducing the number of false alarms, allowing for greater focus on the actual suspects.

Ms. Larence, in your September 2006 report, you noted that, "It is important for TSC and screening agencies to provide effective redress for individuals who are misidentified to the watch list and adversely affected."

Did your work address the extent to which agencies are sharing redress information in order to reduce misidentification?

Ms. LARENCE. At that time, our work indicated that each agency was pursuing their individual programs. But the Terrorist Screening Center was working with the agencies to develop a memorandum of understanding, so that I think TSC was trying to promote some better consistency across the agencies throughout their process.

Ms. CLARKE. Then let me ask Mr. Boyle, have those memorandums of understanding been executed?

Mr. BOYLE. Yes, they have, Representative Clarke. The memorandum was executed by all partner agencies, I believe, in August or September of this year. So we now have essentially formalized a process that was largely informal prior to that memorandum being signed. And this now commits a senior person at each of those agencies to coordinate and be responsible for an appropriate response any time there is a redress matter that affects that agency.

Ms. CLARKE. Ms. Kraninger, Assistant Secretary Kip Hawley testified before the Subcommittee on Transportation Security and Infrastructure Protection on October 16. I asked Mr. Hawley if other Government agencies could benefit from DHS TRIP. He responded, "Yes, it is important to me to the public to be able to quickly resolve misidentification."

I think the idea of a one-stop shop is an excellent idea. Do you support the idea of using a consolidated cleared list, much the same as a consolidated watch list, which would be used to quickly resolve misidentification?

Ms. KRANINGER. To answer your question directly, I think we have to do a little bit more work to determine whether the consolidated cleared list is something that is going to be the most effective way to do this. And I am absolutely open to looking at that and working with your staff or you, Congresswoman, to figure that out. We have not looked comprehensively at that.

In terms of DHS TRIP serving other agencies, again, we are open to that, as well, if other agencies wanted to approach us on that.

Ms. CLARKE. But wouldn't it seem to you—are you expecting some unintended consequences of consolidating the list?

Ms. KRANINGER. Yes. The one example that I can offer to that is the fact that our process currently in domestic screening and the fact that the air carriers are doing the watch list matching and using the cleared list in an inconsistent way across airlines is what is causing most of the adverse effects and the adverse impact on the traveling public.

And so, given that that is where most of our problem is, it may be that taking information of the vast majority of those people and putting it on the consolidated cleared list is not necessary. Though it is certainly something we will look at.

Ms. CLARKE. I think it is something that we really need to look at, because I don't see how people who voluntarily give their information—we would not set a standard by which anyone who has to use our list—and I am thinking about the future beyond just airline travel. You have agriculture, the use of certain materials that could be bomb-making; the Department of Agriculture would have to use this. You have CBP that could use this list. You have the State Department that uses this list. And it would be really unfortunate for an individual who happens to be a farmer that needs to travel gets caught up on all these lists, and no one is talking to the other.

It would seem to me that this would be something that would assist the public who want to clear their names, who want to be sure that they are cleared, and don't want to have to go through what can really be a psychologically damaging process after a while when your name is not cleared.

Thank you very much, Mr. Chairman.

Chairman THOMPSON. We now recognize the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. And I thank you for convening this hearing.

And thank you, friends, for appearing today. You have a very difficult job. One branch of our Armed Services has as its motto, if you will, "The difficult we do right away. The impossible takes a little longer." You have an impossible task, but we still have to do it.

And if I may, Mr. Chairman, before I go into my statement and my questioning, I have a statement from the National Business Travel Association that I would like to have, with unanimous consent, placed in the record. This is a statement that was just handed to me.

Chairman THOMPSON. Without objection.

Mr. GREEN. Thank you.

[The information follows:]

FOR THE RECORD

SUBMITTED BY THE HONORABLE AL GREEN

PREPARED STATEMENT BY NATIONAL BUSINESS TRAVEL ASSOCIATION

The authoritative voice of the business travel community, the National Business Travel Association (NBTA) represents over 3,000 corporate travel managers and travel service providers who collectively manage and direct more than $170 billion of expenditures within the business travel industry, primarily for Fortune 1000 companies. NBTA is the leading international association to represent the corporate travel community.

The number of NBTA members and their employees traveling on airplanes are at record levels. Of course, the transformation of the aviation security process after 9/11 has led to significantly increased screening of passengers, both biolgraphical and physical. NBTA recognizes the need to protect commercial air travel from terrorist attacks and other risks which would cause immense human and economic costs.

The massive increases in the numbers of individuals placed on government watchlists, especially the No-Fly and Selectee lists operated by the Terrorist Screen-

ing Center and the Transportation Security Administration, has led to an explosive increase in the number of employees at NBTA member companies who have found themselves confused with watchlist entries.

Thus, NBTA was pleased to see the launch of the DHS Traveler Redress Inquiry Program (DHS TRIP), which provides a central gateway for travelers to obtain information about screening and to apply for redress. Unfortunately, the initial results for TRIP show that the problem has far from been solved. NBTA is hopeful this program will live up to the expectations of the American people and alleviate many of the hassles the business travel community is experiencing.

Between February 20, 2007, and October 26, 2007, DHS TRIP recorded approximately 15,900 requests for redress in its management system. Approximately 7,100 of which have resulted in travelers being added to the Cleared List. The majority of DHS TRIIP requests that remain in processing are awaiting submission of supporting documentation by the applicant.

NBTA recently conducted a survey of NBTA members to ascertain the level of awareness about DHS TRIP and guage reaction to the program. In general, travel managers rate as "fair" the ability of security screening programs to effectively identify travelers for secondary screening.

However, where there are watchlist problems, those seeking relief do not know about DHS TRIP, nor do corporate travel managers enough about the program to assist their employees. Sixty-four percent of travel managers surveyed were unaware of DHS TRIP. Only twenty percent have recommended DHS TRIP as a solution to their employees. Ninety-two percent of respondents stated their company did not included information on TRIP in communications to their employees.

Among the small number of respondents who had used TRIP and judged the program's effectiveness, most had favorable results. Thus, it appears that the key is getting information about DHS TRIP into the hands of industry stakeholders and the general public. One survey respondent concluded, "Now that I have read about the program I will disseminate the information to all of our travelers."

To make the redress program effective, DHS should embark on a public relations campaign to inform the travel industry community and members of the general public about the program. DHS should work with air carriers and airport authorities to post signage related to DHS TRIP and to distribute explanatory and enrollment materials directly to travelers. In addition, the Department should redouble efforts to utilize trade associations such as NBTA to distribute information to member and their human resource and travel departments. For example, this week NBTA included a link to DHS TRIP in the daily newsletter that goes to all NBTA members. DHS could significants increase awareness by encouraging those types of links and providing materials tailored for specific segments of the travel industry.

Additionally, recent reports indicate that it takes about forty-four days for DHS to process a redress complaint filed through DHS TRIP. One comment on the NBTA survey noted, "The process is too long and involved to get your name removed from the list. It has taken over 6 months for travelers to be removed and some of them are still fighting." A shorter adjudication process would go a along way toward establishing confidence among travelers in the program.

NBTA urges congress to provide DHS with resources to make DHS TRIIP the effective program it was designed to be by (i) implementing a public relations campaign, (ii) reducing the frequency when those who have been cleared by DHS TRIP are required to undergo secondary screening; and (iii) reducing processing time for redress complaints by increasing the number of examiners.

One person surveyed by NBTA concluded, "Some have given up and just get to the airport early." Until individuals who have sought redress feel that their travel experience has been entirely fixed, the program will not be considered a complete success. NBTA looks forward to working with DHS and the Congress to ensure these measures are implemented to the benefit of the American people and U.S. businesses.

Mr. GREEN. Friends, the Chairman mentioned in his statements the act of changing identity so as to eschew the possibility of being detected. The question that I have for you is, is there a need for a systematic approach to dealing with persons who legally and lawfully change identities, so as to be aware of the change and in some way use this information with reference to your list?

And I suppose, Mr. Boyle, you might be the person to answer this.

Mr. BOYLE. The short answer to your question, sir, I believe, is yes. And, as you know, we have had discussions with the Social Security Administration about being able to determine when it is that a person legally changes his or her name with the Social Security Administration so that we would get that information.

I have to say that, in my own personal experience, persons who have evil intentions in using other identities typically don't want to create a paper trail that leads back to their true identity. So our primary concern is people who adopt identities without any trail back to their true identity.

But certainly those who do so legally are also of interest to us, and we would like to be able to get that information to the extent that we can.

Mr. GREEN. The next question has to do with something that I was impressed with. I believe, Ms. Larence, you indicated that the terrorist watch list is something that is accessed at a traffic stop. Did you make that statement, ma'am?

Ms. LARENCE. When a local or State law enforcement person pulls someone over and checks the name of the person stopped, that person's name is checked against the terrorist watch list at the same time.

Mr. GREEN. I am impressed. That is quite a bit of good use of technology, I think, so I am impressed with the way the technology is working.

But it does cause me some degree of concern when I realize that the no-fly list is a subset of the terrorist watch list; and while we can check persons who are entering the airports or going to board planes, we don't check people who are boarding trains.

We have the technology to check a person at a traffic stop, but a person boards a train completely unabated, as I understand it. Now, if I am incorrect, please give me some intelligence on my thoughts.

Mr. BOYLE. I can tell you, sir, that, in general, I believe you are correct about that. I know, in my experience as the Commissioner of Public Safety in Connecticut, we were very concerned about commuter trains. But the fact is that if mass transit is going to exist and is truly going to transport people in a mass fashion expediently, we are never going to be able to do the same sort of screening at train stations that we do at airports or that we do at roadside traffic stops.

At the very least, screening a person's name against the database is going to take several seconds. Those of us who have been on a train platform in New York City or at any other major metropolitan area here in D.C. know it is just not practical to try to screen people before they get on those types of systems of mass transit.

Mr. GREEN. While I understand the difficulty associated with it, is there some alternative to preventing the person? Perhaps what you are saying is it is difficult to screen and prevent. But is there still some intelligence acquired as to who was on that train, in the event something happens to that train?

Mr. BOYLE. For longer transit, I know, from my own personal experience in traveling on Amtrak, you have to verify your identification when you purchase a ticket or at least when you are on the

train. So there is some after-the-fact verification of who was on the train.

But as far as a proactive approach, we really can't rely on screening in the same extent that we do at airports. We have to rely on police departments, bomb-trained dogs, things of that nature.

Mr. GREEN. With my last 20 seconds, if we have a process by which we have this subset called the no-fly list but we don't vet the no-fly list, it is of value but it is not of the same value as it would be if we were vetting it.

And what do I mean by vetting it? Scrutinizing closely so as to eliminate persons who may not be a threat, but those that we prioritize and we say that this person really is someone that we need to look at closely. A vetting process, which gets back to the directive from the President, I believe, we really need to move to that vetting process.

And I will yield back and expect a response, if the Chair will permit it.

Mr. BOYLE. Thank you, sir. And if I may, we, in fact—and I didn't mention this in my opening remarks—in early 2007, did a complete review of the no-fly list. We had all of our analysts review each and every entry on the no-fly list to make a new, fresh determination whether that person should still remain on the no-fly list. And we removed several names because we determined that they were no longer appropriate for no-fly.

Mr. GREEN. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

We now recognize the gentleman from Pennsylvania, Mr. Carney, for 5 minutes.

Mr. CARNEY. Thank you, Mr. Chairman.

I have several questions.

Ms. Kraninger, I am still early in my young professional career here, but one of the first cases I worked on that came to our office was a gentleman who was a longtime Pennsylvania Department of Transportation employee who learned he was on a terror watch list by going just on a domestic flight. He became concerned because he was scheduled to take a family trip to Ireland later that year and didn't want to slow down the process.

I just kind of want to look back to the question Chairman Thompson tried to get an answer to, regarding the initiation of redress at the airports.

The 9/11 bill, as it was signed into law, reads—and if you would permit me to quote—"The office shall establish at each airport at which the Department has a significant presence a process to provide information to air carrier passengers to begin the redress process established pursuant to Subsection A."

Now, as we know, the intent of the language was not to buck the passenger to the Federal security officer, which seems to be what is going on, where the security officer would say, "Yes, we understand it is tough; here is a card or a Web site to go to."

So, please, if we can get an answer on this, how far along is DHS in placing an official, not an FSL but an official, at each of these airports to begin the redress process?

Ms. KRANINGER. In the discussions with staff, and even in the drafting of that legislation and our discussions with it, there is ab-

solutely a need to begin the process at the airport where the individual is——

Mr. CARNEY. So you are saying we haven't done that yet?

Ms. KRANINGER. No, we do.

I am trying to get it, sir. I am sorry. Give me a second here.

That we have a process, and that information should be available to the traveler at the airport so that they understand what is happening.

But the most important thing with respect to use of the watch list and redress is, one, that you are talking about an individual who is going to get to board the flight. They are going to travel that day. And we have to make sure that, with respect to how we manage the watch list and how we accomplish redress, that we do this the right way. And that is, the quality of the process is the important part here, to make sure that we do it right.

And in order to actually accommodate that at the airport, you know, we cannot actually do that. As we have noted, particularly when it comes to someone who may indeed actually be on the watch list, this is an involved process, going back to the nominating agency, determining and reviewing again what the information is that was the basis for that placement on the watch list. So it is something that we really cannot accomplish to the full extent on the spot.

However, when it comes to the case of a close match to a no-fly, that absolutely does have to be addressed at the airport, because you are talking about, now, precluding an individual from traveling that day. And that is something, again, that we do take very seriously, and that law enforcement, along with the airlines, along with the Federal security director, deals with potentially right on the spot with the individual.

And so, they do get that redress in both cases. Either their case is adjudicated and they are allowed to fly, or, again, in the other case, the individual is allowed to travel that day.

Mr. CARNEY. So, in other words, we don't have many people at these airports that are FSOs that are for this redress? I mean, can you give me just a number of how many we have at airports? They are not the FSOs, but they are the ones that are supposed to begin the redress process.

Ms. KRANINGER. There are not individuals who are going to be dedicated to the redress process per se. Every single TSA employee, as well as the airline employees, are part of that process to understand and articulate to the public what the redress process is and what the screening process is. And we have been working to educate them on that.

Mr. CARNEY. Okay. I guess we will have to come back around.

Also, this is for, I think, Mr. Fine. If the laws change to disallow firearm sales to any person on the watch list, and due to that a person is discovered that they are on the watch list when they go to buy, say, a rifle for deer season—which is coming up in my district very, very soon—do you anticipate a lot of litigation on handling this? How do you ensure that the challenge of their inclusion will be met?

I tell you what, you run into some folks who are getting ready for deer season and they are prohibited from getting their 270, they are going to be upset.

Mr. FINE. I am sure they are. Well, we haven't looked at that, and I would only be speculating.

I do want to point out that most of the people on these watch lists are not United States persons. A very small percentage of them are. And so I would anticipate, if people are denied benefits based upon potential inclusion on the watch list, there are going to be ramifications. They are going to seek redress in all sorts of forms, whether it is in the established redress process or in alternative forms as well.

Mr. CARNEY. One more question. Mr. Boyle, do you support the use of the watch list to deny persons specific rights under the Constitution, normally granted under the Constitution, for example, Second Amendment rights?

Mr. BOYLE. I support the use of the watch list for the Government to make the best determination whether, consistent with due-process concerns, a person is appropriately denied a constitutional or statutory right. That is, I don't think that the watch list, for the most part—and it certainly is not an automatic disqualifier in any fashion. But to the extent that the watch list is used to provide an appropriate adjudicator with all of the information that he or she ought to have in making a determination about a person's constitutional rights? Yes, I do support that.

Ms. KRANINGER. So the use of the watch list is fine if somebody is trying to buy a firearm?

Mr. BOYLE. Absolutely. Again, it is fine for the purpose of the adjudicator understanding what information is available about that person. How the adjudicator uses that, the weight that he gives it and the standard by which he compares it to constitutional protections is a matter that, obviously, is in the realm of that adjudicator.

Mr. CARNEY. Ms. Larence, is any one agency ultimately responsible for assuring the quality of the information on the list? Is there anybody who can say, "No, you can't put that person on"? Who does the adjudicating?

Ms. LARENCE. We didn't find—no. That is why we are recommending that an entity be designated with those kinds of authorities.

I think that there are probably differences in the way individual agencies approach nominations, and the inspector generals of the intelligence community are looking at that very issue.

Mr. CARNEY. Thank you.

No further questions. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Since I referenced Congressman John Lewis in my opening statement, can you, for the record, Ms. Kraninger, tell me if we have resolved Congressman Lewis's problem?

Ms. KRANINGER. We have, to the best of our ability, Mr. Chairman. We work closely with his staff and are doing everything we can. He flies most frequently, obviously, on Delta to Atlanta, and we have had conversations with them. And so, that issue has been resolved with respect to Delta. But given the way that each air car-

rier runs the list differently, we cannot promise that his issue is, indeed, fixed forever.

Chairman THOMPSON. And I think you know that is the problem. The minute he uses another carrier, he is stopped. And so part of what we are trying to do is, how do we get somebody who probably half the people in America know is not a bad guy off the list?

Ms. KRANINGER. And, Mr. Chairman, we are open to other ideas. We are doing the best that we can, given the current operating procedures. But we have pushed for and we do believe, as the 9/11 Commission recommended, that the best way to accomplish this and address Congressman Lewis's situation is by taking over the watch-list matching to the Government side and implementing Secure Flight in a way that is consistent across all airlines.

Chairman THOMPSON. So there is no way someone like Congressman Lewis can get off the list completely, at this moment?

Ms. KRANINGER. Well, to be clear, Congressman Lewis is not on the list. But, again, a full determination of the list and looking at it and the scrub continues, in terms of quality assurance of the selectee list.

But the names that are on there are on there because they have been determined to be on there and they are associated with a threat to civil aviation. So the individual who is on the list is someone that needs to remain on the list, and that has been reviewed.

Chairman THOMPSON. So you are saying that is another John Lewis.

Ms. KRANINGER. Essentially, yes, sir.

Chairman THOMPSON. So are we saying that, short of him having a name change, there is no way we can fix it?

Ms. KRANINGER. We have gone through the redress process, and we are able to fix it to the extent that we can. But we cannot promise, because the airlines are running the individual name matching, that there will never be a problem again. And we are doing the best that we can on this, certainly, and welcome any other ideas as to how to approach it.

Chairman THOMPSON. Ms. Larence, can you help us with that?

Ms. LARENCE. I am assuming that he is on the cleared list?

Ms. KRANINGER. Yes.

Ms. LARENCE. And the cleared list goes to all airlines?

Ms. KRANINGER. Yes.

Ms. LARENCE. So why can't each airline use the cleared list?

Ms. KRANINGER. Every airline does use the cleared list. But, again, you are talking about different technologies, different sophisticated systems, different ways of matching that is being conducted today. And that is the reality of the operating environment today.

Chairman THOMPSON. Okay. So you get the question asked now, Ms. Larence.

Ms. LARENCE. I don't understand, sir.

Chairman THOMPSON. You don't understand why he can't be off the list?

Ms. LARENCE. Well, he is not on the list. That Mr. Lewis is not on the list.

Mr. SOUDER. Mr. Chairman, I have a concern, an objection here, that we are coming perilously close to giving tips and that I think some of this might be better handled in a private session. We could

give a copy of Mr. Lewis's Bar ID to everybody at every airport in America. But the problem isn't just Mr. Lewis. He is an example of the problem. So we want to be careful in a public forum in asking that, because we don't want to give people tips.

Chairman THOMPSON. I think the reason I did, Mr. Lewis came to this committee and asked us, "Can you see why I am having trouble every time I get in an airport?" And that is why it is not a secret. We have had that discussion before the committee before.

Mr. SOUDER. But asking how to get it fixed.

Chairman THOMPSON. Not to how to get it fixed. I am saying, do we have a system, and we are talking about redress, and not how, the mechanics. But it is clearly, if we are talking about redress which the 9/11 bill addressed for individuals who might be misidentified, we are just trying to establish whether or not that process is complete.

Ms. KRANINGER. And, Mr. Chairman, if I could, the process is as complete as we can make it today. And, again, we welcome other suggestions from people as to how to improve it further.

Our position with respect to this is that the best way to accomplish consistent, uniform screening and use of the cleared list so that these kinds of situations can be avoided is implementation of Secure Flight and taking the watch-list matching process into the Government so that it is done uniformly.

Chairman THOMPSON. Mr. Perlmutter?

Mr. PERLMUTTER. Just sort of going back to the basics, the basics is it is a name-driven system, and that name-driven system, whether there is Ed Perlmutter—and I understand there are five Ed Perlmutters in the country, and thank goodness they are all good guys.

But because it is a name-driven system, and you have the airlines—because I had this interview from Channel 9. You have the airlines now, even with the cleared list they still are worried that John Lewis is the bad John Lewis, and they still run him through the secondary screening, which they shouldn't, but they do.

So, again, unless we add some factors which then start getting us into privacy issues, we are sort of between a rock and a hard place. And, I mean, everybody can always do a better job. We need to give, sort of, better direction to folks and we have still got to do it all within the ambit of the Constitution. So biometrics is going to be it, but that starts getting so private that a lot of people in my district are going to rebel against that even though it might save them time at the airport.

Chairman THOMPSON. And I guess, Ms. Kraninger, you can probably move us into Secure Flight at this point, if that is the long-term solution to the problem rather than a name-driven list. Do you have an idea when we will be on-line with Secure Flight?

Ms. KRANINGER. Mr. Chairman, we are ready to proceed with operational testing. That is the next step. However, we do lack the funding, given the current funding level under the continuing resolution, to proceed to that step. So we are certainly working diligently within the administration and with the Congress to address that. But we are at a critical funding shortfall at the moment.

Chairman THOMPSON. To your knowledge, do you know if the Department has requested monies to implement this phase of it?

Ms. KRANINGER. Yes, sir, we have. The President's request in fiscal year 2008 was $53 million. And we added to that just this week. The President submitted a budget amendment request that moved to accelerate Secure Flight with an additional $21 million. So the total request is $74 million for fiscal year 2008.

Chairman THOMPSON. And if that is granted, what time line are we looking at?

Ms. KRANINGER. Depending on when that is granted—because, again, we are looking at having to suspend contracts and let contract staff go who are in the development of the system—that is going to challenge us and give us more risks. But certainly if we can get more funding, we expect to begin operations next year.

Chairman THOMPSON. And you know we tried a couple times before with this Secure Flight. Have we resolved the privacy issues around it?

Ms. KRANINGER. We believe that we have. We put a lot of effort and energy into the robustness of the system and in our outreach to the privacy community. The notice of proposed rulemaking and privacy impact assessment and systems of records notices that were released just a couple of months ago were generally well-received, even with the privacy community. There are several quotes that we can provide from individuals who are well-respected who stated that we really heard them.

We did look at the privacy impact and did our best to limit it with the amount of information that we are collecting, balancing that against the efficiency and the real issues that we have talked about today as to how you conduct watch-list matching effectively. But we believe that we have and that we are ready to proceed with operations.

Chairman THOMPSON. Mr. Souder?

Mr. SOUDER. I had a question kind of as a follow-up to Mr. Carney's. And I wanted to ask Mr. Fine, you mentioned earlier, and I think it was confirmed, that over 40 percent of the people on the list shouldn't necessarily be on the list because there were other names, other variations.

What, of that percent, would be U.S. citizens? Did you have that?

Mr. FINE. We didn't look at that.

But I want to be clear. This is not 40 percent on the list, what I was saying. When the Terrorist Screening Center has called and we have somebody we think is a match, and they have to look at their list to see whether it is a match, 43 percent of the times they determined it was not a match, and 50-some percent of the time they determined it was a match.

Mr. SOUDER. So it could be a person calling in didn't read something right. But given that, do we have any idea what is the scope of this problem, how many of these people are citizens versus noncitizens?

Mr. FINE. Of the people on the list, less than 5 percent are U.S. persons.

Mr. SOUDER. And of the misidentification, we don't have any idea.

Mr. FINE. No. We did not drill down into that.

Mr. CARNEY. Will the gentleman yield on that?

Mr. SOUDER. Yes.

Mr. CARNEY. Mr. Fine, of the 5 percent, in raw numbers, how many is that?

Mr. FINE. Well, if there are approximately 800,000 records on the list——

Mr. CARNEY. But that is not 800,000 people. I think the TSC has said there are approximately 300,000 names, although that is not an exact figure. So 5 percent of 300,000.

Chairman THOMPSON. Mr. Souder?

Mr. SOUDER. This is probably the most delicate part of this, particularly as we use this list in other areas. And it is why misidentification like Mr. Lewis's problem is critical. We are all trying to figure out how to resolve it.

I wanted to make two other comments. One is that the pressure here we have is being right is more essential than timeliness, because if one plane blows up, then the whole airline industry shuts down, tourism shuts down, commerce shuts down. Similar things are going to happen. And I almost heard, like, in rail or commuter trains, we have to have somebody blown up before we actually get tougher.

This is the constant tension we have here in Government, between trying to move commerce, move people, free trade, students, foreign students coming in, versus the risk. And it is that risk assessment and the accuracy of the list that is very critical. And we heard some of that in the hearing today.

But I just believe biometrics is the only way to go here. I probably chaired 60 narcotics hearings in my term in Congress, and we have watched them cut off a thumb, as many as two fingers. And that eyeball scan is even more controversial. But we need to realize, if we really are serious about this and if the level of terrorism increases in the United States, there isn't really an alternative to biometrics, because that is the way to be secure that you have the right person in front of you with multiple names.

I also want to say one other thing, because I learned in our narcotics hearings that people who were doing illegal activities watched hearings very closely, and they tried to figure out from testimony and from questions where there were openings. And that anybody watching this hearing, looking at this transcript and so on, should know that sometimes some of the questions and answers can be actually setups. And that we don't always grab the first time, but we test our systems.

So anybody who looks at this today and says, "Oh, I found something," don't bet on it, because we are working on all those apparent openings. It is hard for us to have a transparent hearing on subjects like this without tipping people. But don't make assumptions off of this hearing. I have done this many times in my career. Don't make assumptions off of this hearing.

Chairman THOMPSON. The gentlelady from New York.

Ms. CLARKE. Thank you, Mr. Chairman.

Ms. Kraninger, I wanted to ask whether, since DHS TRIP already shares some of its information within DHS when it is specifically requested, and since there is already a process in place for sending out this type of information, would it be any more difficult for your office to send out your cleared list to other DHS screening agencies on a more regular basis?

Ms. KRANINGER. As a technical matter, no, there would not be.

The one thing that is of note though, too, that makes domestic aviation screening difficult is that there is less information collected on the individual. So in those other screening cases, if you talk about someone applying for immigration benefits or coming across the border, we have an identity document, we have more identifiers that make this less of an issue.

But there is no technical reason why we couldn't share it more broadly.

Ms. CLARKE. And I guess being more frequently, because you would be updating your information as more and more people get cleared from the list. It is my understanding that you have been regularly clearing people from the list. The problem is the lag with other entities, within your own agency. So individuals who may be cleared from no-fly may be coming back in through CBP, and they are flagged again and detained for hours on end.

I think that that within itself is something that can be addressed. It is a quick fix. It is not a major disruption to the process, as it would be to spread it beyond. But even within your own agency, I think that would be of benefit to the people of the United States who are misidentified. Don't you?

Ms. KRANINGER. You are absolutely correct. And we do share it where people are having those issues. And we have seen less of those problems.

The one thing to note is that it is not always a watch-list-related issue, as we have seen. And there are other reasons to pull people over and further scrutinize them, particularly at a port of entry.

Ms. CLARKE. Thank you.

Thank you, Mr. Chairman.

Chairman THOMPSON. Mr. Boyle, for the average person who has been misidentified, can you just say how long you think it would take for someone to go through the process of making an application and getting a clear?

Or it might be Ms. Kraninger's area. I am not sure.

Is it you, Ms. Kraninger?

Ms. KRANINGER. Yes, sir.

Chairman THOMPSON. Just a ballpark figure on the time line.

Ms. KRANINGER. Our goal is 30 days from the time the individual submits their identification document and their privacy act notice statement assigned to us, along with their redress request. So that is our goal.

Our average processing time today is longer, but it is misleading, because the time that we are tracking now, the only time the system can track now—and we are working on upgrading the system—is from the time that they submit their request without documentation, or perhaps with documentation, until the time it is closed. And that average time right now is 44 days.

Chairman THOMPSON. Forty four days.

Ms. KRANINGER. Yes.

Chairman THOMPSON. Ms. Larence, did GAO look at this situation at all?

Ms. LARENCE. We didn't look at the time frames about less. The TRIP program wasn't up and running when we looked at redress last September, sir.

Chairman THOMPSON. Okay.

I thank the witnesses for their valuable testimony and members for their questions.

The members of the committee may have additional questions for the witnesses, and we will ask you to respond expeditiously in writing to those questions.

Hearing no further business, the committee stands adjourned.

[Whereupon, at 12:47 p.m., the committee was adjourned.]