

New York Times

Even Those Cleared of Crimes Can Stay on F.B.I.'s Watch List

September 27, 2011

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WASHINGTON — The Federal Bureau of Investigation is permitted to include people on the government's terrorist watch list even if they have been acquitted of terrorism-related offenses or the charges are dropped, according to newly released documents.

The files, released by the F.B.I. under the Freedom of Information Act, disclose how the police are instructed to react if they encounter a person on the list. They lay out, for the first time in public view, the legal standard that national security officials must meet in order to add a name to the list. And they shed new light on how names are vetted for possible removal from the list.

Inclusion on the watch list can keep terrorism suspects off planes, block noncitizens from entering the country and subject people to delays and greater scrutiny at airports, border crossings and traffic stops.

The database now has about 420,000 names, including about 8,000 Americans, according to the statistics released in connection with the 10th anniversary of the Sept. 11 attacks. About 16,000 people, including about 500 Americans, are barred from flying.

Timothy J. Healy, the director of the F.B.I.'s Terrorist Screening Center, which vets requests to add or remove names from the list, said the documents showed that the government was balancing civil liberties with a careful, multilayered process for vetting who goes on it — and for making

sure that names that no longer need to be on it came off.

“There has been a lot of criticism about the watch list,” claiming that it is “haphazard,” he said. “But what this illustrates is that there is a very detailed process that the F.B.I. follows in terms of nominations of watch-listed people.”

Still, some of the procedures drew fire from civil liberties advocates, including the Electronic Privacy Information Center, which made the original request and provided the documents to The New York Times.

The 91 pages of newly disclosed files include a December 2010 guidance memorandum to F.B.I. field offices showing that even a not-guilty verdict may not always be enough to get someone off the list, if agents maintain they still have “reasonable suspicion” that the person might have ties to terrorism.

“If an individual is acquitted or charges are dismissed for a crime related to terrorism, the individual must still meet the reasonable suspicion standard in order to remain on, or be subsequently nominated to, the terrorist watch list,” the once-classified memorandum says.

Ginger McCall, a counsel at the Electronic Privacy Information Center, said: “In the United States, you are supposed to be assumed innocent. But on the watch list, you may be assumed guilty, even after the court dismisses your case.”

But Stewart Baker, a former Homeland Security official in the Bush administration, argued that even if the intelligence about someone’s possible terrorism ties fell short of the courtroom standard of “beyond a reasonable doubt,” it could still be appropriate to keep the person on the watch list as having attracted suspicion.

Mr. Baker noted that being subjected to extra questioning — or even kept off flights — was different than going to prison.

The guidance memo to F.B.I. field offices says someone may be deemed a “known or suspected terrorist” if officials have “particularized derogatory information” to support their suspicions.

That standard may be met by an allegation that the suspect has terrorism ties if the claim is corroborated by at least one other source, it said, but “mere guesses or ‘hunches’ are not enough.”

Normally, it says, if agents close the investigation without charges, they should remove the subject’s name — as they should also normally do in the case of an acquittal. But for exceptions, the F.B.I. maintains a special file for people whose names it is keeping in the database because it has decided they pose a national security risk even they are not the subject any active investigation.

The F.B.I.’s Terrorist Screening Center shares the data with other federal agencies for screening aircraft passengers, people who are crossing the border and people who apply for visas. The data is also used by local police officers to check names during traffic stops.

The December memorandum lays out procedures for police officers to follow when they encounter people who are listed. For example, officers are never to tell the suspects that they might be on the watch list, and they must immediately call the federal government for instructions.

In addition, it says, police officers and border agents are to treat suspects differently based on which “handling codes” are in the system.

Some people, with outstanding warrants, are to be arrested; others are to be questioned while officers check with the Department of Homeland Security to see whether it has or will issue a “detainer” request; and others should be allowed to proceed without delay.

The documents show that the F.B.I. is developing a system to automatically notify regional “fusion centers,” where law enforcement agencies share information, if officers nearby have encountered someone on the list. The bureau also requires F.B.I. supervisors to sign off before an advisory would warn the police that a subject is “armed and dangerous” or has “violent tendencies.”

The F.B.I. procedures encourage agents to renominate suspects for the watch list even if they were already put on it by another agency — meaning multiple agencies would have to be involved in any attempt to later remove that person.

The procedures offer no way for people who are on the watch list to be notified of that fact or given an opportunity to see and challenge the specific allegations against them.

Chris Calabrese, a counsel with the American Civil Liberties Union, called the watch list system a “Star Chamber” — “a secret determination, that you have no input into, that you are a terrorist. Once that determination is made, it can ripple through your entire life and you have no way to challenge it.”

But Mr. Healy said the government could not reveal who was on the list, or why, because that would risk revealing intelligence sources. He also defended the idea of the watch list, saying the government would be blamed if, after a terrorist attack, it turned out the perpetrator had attracted the suspicions of one agency but it had not warned other agencies to scrutinize the person.

Mr. Healy also suggested that fears of the watch list were exaggerated, in part because there are many other reasons that people are subjected to extra screening at airports. He said more than 200,000 people have complained to the Department of Homeland Security about their belief that they were wrongly on the list, but fewer than 1 percent of them were actually on it.