

FBI Documents Fail to Reveal How the "No Fly" List Makes Americans Safer

ACLU of Northern California's Analysis of FBI's FOIA Response

December 3, 2003

The Federal Bureau of Information (FBI) recently released, for the first time, documents about the federal government's "no fly" list. The documents, which number 94 pages, were released nearly a year after two Bay Area activists, Jan Adams and Rebecca Gordon, made Freedom of Information Act (FOIA) requests on December 12, 2002. Adams and Gordon were told that their names were on the "no fly" list on August 7, 2002 when they went to San Francisco International Airport for an American Trans Air flight to Boston via Chicago. Since September 11, the "no fly" list has resulted in the stopping and questioning of hundreds of passengers at San Francisco International Airport, and likely thousands of passengers at airports across the country.

Like documents released this summer by the Transportation Security Administration (TSA), nothing in the FBI's documents demonstrates how the "no fly" list makes Americans safer. Quite to the contrary, the documents suggest troubling inadequacies with the government's management of the "no fly" list, and raise the question of whether federal authorities understand – or even have – set criteria for using the list. Moreover, the FBI continues to withhold basic information about the list, including how a person erroneously placed on the list can get her name off of the list.

FBI Documents Suggest That the Government May be Widely Disseminating the List Internationally and Domestically

FBI documents reveal that the "no fly" list is maintained by the TSA, but that "the content is generated by FBI, CIA, and probably other intel agencies." See Attachment 1 (copy of September 30, 2002 email labeled FBI00019). Internal FBI email communications suggest that the agency considered and may be distributing "no fly" list information to embassies around the world, local police officers across the country, and the U.S. military. Despite this wide distribution, the documents also reveal that, long after the "no fly" list was already in use, FBI officials themselves may not have understood what criteria are used to place a name on the list. In other words, the government may be widely disseminating the "no fly" list both internationally and domestically, even though the public, and maybe even the government itself, does not know how a name is placed on the list.

- In June, 2002, several months after the deployment of the "no fly" list, an FBI counter-terrorism official in the Civil Aviation Security Program "was not able to identify the criteria, for one, as to what makes one a 'known' vs. a 'possible' threat to aviation, and other issues re interviewing passengers on the basis of the list, etc." See Attachment 2 (copy of June 27, 2002 email labeled FBI00052). If an FBI aviation counter-terrorism official cannot identify these criteria, why was the

list nevertheless being used to stop numerous passengers across the country? If the FBI now knows the criteria, why can't it reveal even a basic description of the criteria to the American public?

- "No fly" list names may be placed in databases that are distributed to local police across the country, as well as embassies across the world. See Attachment 3 (copy of August 7, 2002 email labeled FBI00053). According to the FBI documents, "it is very likely that a lot, if not all of the names are in TECS and Visa/Viper" databases. TECS, Treasury's Enforcement Communications Systems, is a computerized information system designed to identify individuals suspected of involvement in violations of federal law. TECS is also a communications system permitting message transmittal between Treasury law enforcement offices and other national, state, and local law enforcement agencies. Visa Viper gathers information from embassies to create a central watch list of suspected terrorists that is available to consular officials around the world.
- In August, 2002, FBI officials contemplated directly distributing the "no fly" list internationally to embassies across the world. At the same time, the FBI had made "no decisions" about whether "no fly" list names should be placed into NCIC, the National Crime Information Center database – a database accessed *millions* of times per day by local police during routine traffic stops. Imagine if ordinary Americans incorrectly placed on the "no fly" list were hassled during routine traffic stops and treated like potential terrorists. See Attachment 3 (copy of August 7, 2002 email labeled FBI00053).
- In October, 2002, a year after the "no fly" list was deployed, an FBI contact in Vienna states: "I have read many e-mails back and forth on the topic of dissemination and nothing seems clear. I assume the US military can have a copy of the list." See Attachment 4 (copy of October 10, 2002 email labeled FBI00049). Is the "no fly" list being distributed to the US military? International distribution to the U.S. military could have potentially dire consequences for innocent Americans who have been erroneously placed on the list and who are detained by authorities overseas.

The FBI Refuses to Reveal Basic Information About the "No Fly" List

Although the FBI documents suggest broad international and domestic distribution of the "no fly" list, the FBI refuses to give the public basic information about the "no fly" list, like whether First Amendment activity is a reason for someone's name being placed on the list. The FBI refuses to release this information even though the FOIA requests by Gordon and Adams specifically asked for it.

Among other things, the public still does not know:

- Is First Amendment protected activity a reason for placing somebody's name on the "no fly" list? The fact that the FBI lacks documents about this question is

particularly troubling given a recent *New York Times* report that the FBI has collected extensive information about anti-war demonstrators and a recently revealed FBI internal memo instructing local law enforcement to monitor demonstration activities.

- Does the FBI or TSA track "no fly" stops? According to TSA documents released earlier, TSA does not track the number of times passengers like Jan Adams and Rebecca Gordon have been stopped because of the "no fly" list, and the FBI does not appear to track this information either. How can we know if the "no fly" list makes us safer if the government doesn't even know how many people are stopped because of the list?
- Does the FBI or TSA communicate with airlines, airports, and local police about the "no fly" list? If the federal government does not regularly coordinate with these entities, how can the government monitor or correct problems with the "no fly" list?
- How can a person whose name is erroneously placed on the "no fly" list get her name off the list? The FBI and TSA documents reveal that both agencies were aware of numerous press accounts of passengers erroneously being stopped and questioned in connection with the "no fly" list. If the FBI and TSA are aware of this problem, why don't the agencies have publicly-available protocols for people to get their names off the "no fly" list? TSA's newly developed ombudsman process does not solve this problem because it doesn't provide any way for passengers to actually get their names off the "no fly" list or to determine why they were placed on the list in the first instance. Political activists, who find themselves on the list, would still not know why and have any real opportunity to have their names removed.

The released documents suggest that the "no fly" list and the information it is based on flow back and forth between law enforcement, intelligence agencies and perhaps even the military. There appears to be no process for systematically fixing mistakes and the uses of the lists.

It is time for the FBI and TSA to tell the public what it deserves to know about the "no fly" list. When potentially thousands of innocent travelers are being subjected to unwarranted searches and detentions because of how the list was compiled or is being administered by the federal government, the public is entitled to information that would allow them to understand and deliberate on whether the lists improve security or are just a waste of government resources. No public debate or government accountability is possible so long as the FBI and TSA continue to keep the public in the dark.

###

From: [redacted]
To: [redacted]
Date: 9/30/02 8:01PM
Subject: Re: No-Fly Question

b7C

H [redacted]

I didn't see this article so thanks for sending. The TSA maintains the No Fly List, but the content is generated by FBI, CIA and probably other intel entities. I'll read the article in depth tomorrow.

[redacted]

>>> [redacted] 9/30/02 9:47:51 AM >>>
[redacted]

Re the attached article. Who does "maintain" or is "responsible" for the no-fly list?

No-Fly Blacklist Snares Political Activists

The San Francisco Chronicle

By Alan Gathright

September 28, 2002

SAN FRANCISCO, CA -- A federal "No Fly" list, intended to keep terrorists from boarding planes, is snaring peace activists at San Francisco International and other U. S. airports, triggering complaints that civil liberties are being trampled.

And while several federal agencies acknowledge that they contribute names to the congressionally mandated list, none of them, when contacted by The Chronicle, could or would say which agency is responsible for managing the list. One detainment forced a group of 20 Wisconsin anti-war activists to miss their flight, delaying their trip to meet with congressional representatives by a day. That case and others are raising questions about the criteria federal authorities use to place people on the list -- and whether people who exercise their constitutional right to dissent are being lumped together with terrorists. "What's scariest to me is that there could be this gross interruption of civil rights and nobody is really in charge," said Sarah Backus, an organizer of the Wisconsin group. "That's really 1984-ish."

Federal law enforcement officials deny targeting dissidents. They suggested that the activists were stopped not because their names are on the list, but because their names resemble those of suspected criminals or terrorists. Congress mandated the list as part of last year's Aviation and Transportation Security Act, after two Sept. 11 hijackers on a federal "watch list" used their real names to board the jetliner that crashed into the Pentagon. The alerts about the two men, however, were not relayed to the airlines. The detaining of activists has stirred concern among members of Congress and civil liberties advocates. They want to know what safeguards exist to prevent innocent people from being branded "a threat to civil aviation or national security."

NO ACCOUNTABILITY

And they are troubled by the bureaucratic nightmare that people stumble into as they go from one government agency to another in a maddening search to find out who is the official keeper of the no-fly list. "The problem is that this list has no public accountability: People don't know why their names are put on or how to get their names off," said Jayashri Srikantiah, an attorney with the American Civil Liberties Union of Northern California. "We have heard complaints from people who triggered the list a first time and then were cleared by security to fly. But when they fly again, their name is triggered again."

Several federal agencies -- including the CIA, FBI, INS and State Department -- contribute names to the list. But no one at those agencies could say who is responsible for managing the list or who can remove names of people who have been cleared by authorities. Transportation Security Administration spokesman David Steigman initially said his agency did not have a no-fly list, but after conferring with colleagues, modified his response: His agency does not contribute to the no-fly list, he said, but simply relays names collected by other federal agencies to airlines and airports. "We are just a funnel," he said, estimating that fewer than 1,000 names are on the list. "TSA has access to it. We do not maintain it." He couldn't say who does.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 8-6-03 BY UC60267 NLS/AG/CL
CA#03-1779

[Redacted]

From: [Redacted]
Sent: Thursday, June 27, 2002 1:10 PM
To: [Redacted]
Cc: [Redacted]
Subject: Re: Meet with TSA and FBI Counsel re TSA lists

b7C

Attachment 2

[Redacted] if at all possible I will attempt to attend this. AMC

>>> [Redacted] 06/26 10:50 AM >>>
[Redacted] please set it up as soon as possible, Mon afternoon or Tues. thanks.

>>> [Redacted] 6/26/02 10:47:21 AM >>>
[Redacted] Just let me know when the meeting is going to be, and where.
Thanks
[Redacted]

b7C

>>> [Redacted] 6/25/02 05:00PM >>>
[Redacted] are you available early next week to go over the No Fly and Selectee lists with the TSA Counsel? As I mentioned in a previous email, I spoke with [Redacted] yesterday about the list "basics", but I was not able to identify the criteria, for one, as to what makes one a "known" vs a "possible" threat to aviation, and other issues re interviewing passengers on the basis of the list, etc.

b7C

>>> [Redacted] 6/25/02 1:41:21 PM >>>
[Redacted] called the TSA counsel and he wants to meet w/me, you and [Redacted] to learn more about the watchlists and what we should all do about it. I think that's a good idea. What is your availability this week and next? and can you find out what [Redacted] is?

b7C

[Redacted] Ext [Redacted]

>>> [Redacted] 06/24/02 12:19PM >>>
Attached are two pieces which I've written or contributed to relative to the Watch lists. In [Redacted] wpd, the second "bullet" talks briefly about Project Lookout transitioning into the current Watch lists. [Redacted] wpd is more extensive, and is a combination of answers provided by [Redacted] and me about the TSA lists versus other lists, i.e., the FBI's Terrorism Watch List. Perhaps this will give you some additional info, maybe not....

[Redacted]

SSA [Redacted] (fax)
Civil Aviation Security Program, Room 11795
Domestic Terrorism Counterterrorism Planning Section
Counterterrorism Division
[Redacted]

b2

b7C

ALL INFORMATION CONTAINED
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CA# 03-1779

[Redacted]

Attachment 3

From: [Redacted]
Sent: Wednesday, August 07, 2002 1:49 PM
To: b7C
Cc: [Redacted]
Subject: Re: Legat dissem of No Fly List

b2
b5
b7E

All, the No Fly and Selectee lists are controlled by the TSA and as such will be disseminated by that organization. The FBI watch list is not to be disseminated outside of the U.S. intelligence community if that far [Redacted]

[Redacted]

>>> [Redacted] 08/05 6:52 PM >>>
Hi [Redacted]

b7C

This is probably a tricky question depending on to whom you wish to give it and why. If you have an FAA/TSA rep at your embassy, it might be best to discuss this with them and let me know what they say. I've been answering this question for other legats, but each legat's situation may be different.

I think it should be disseminable to liaison contacts responsible for aviation-security matters, meaning the police at the airport who will be interviewing potential matches to the list. You can't conduct the interviews... Beyond that, we have made no decisions as to putting these folks in NCIC, and what to do if they are stopped on a street corner. I am permitted, by TSA regulation now, to disseminate within my agency, and the carriers are permitted to disseminate locally to law enforcement, so if you give it to law enforcement, same thing.

Hopefully, you can look at the purpose of the list, and go from there. Thanks for your question. If you run into problems or other questions, please let me know.

>>> [Redacted] 8/5/02 1:11:06 AM >>>

b7C

Can we disseminate this list to foreign liaison?

[Redacted]

>>> [Redacted] 08/01/02 05:58AM >>>

I've received a couple of questions from Legats about the lists, such as whether the names are in other databases, etc. I'll answer as I can and cc everyone, and then try to compile a comprehensive info sheet at some point. For example, since the FBI is only one contributor to these lists, I cannot say what other databases may contain ALL the names. However, it is very likely that a lot, if not all, of the names are in TECS and Visa/Viper, because those agencies often receive the same info that the FBI receives, and those agencies input names whether they end up on the TSA lists or not. I am hoping that any FBI entity which adds a name to this list also sees to it that the name is added to all the other lists as well.

Please forward this mail as appropriate within your offices and to CP/Duty Agent. Thank you.

b2

** Recipients of this mail have either been designated as Airport Liaison Agents or have duties and responsibilities which necessitate, or are enhanced by, awareness of Transportation Security Administration (TSA - formerly FAA) security information.

These lists and general guidance for FBI response to possible name matches on TSA lists may be found at [Redacted] on the FBI Intranet, and also on LEO, Special Interest Groups, FBI, Member Area. The lists are sorted two ways, alphabetically and by SID (Subject ID) number.**

SSA [Redacted] (fax)
Civil Aviation Security Program, Room 11795
Domestic Terrorism Counterterrorism Planning Section
Counterterrorism Division

b2
b7C

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DATE 8/5/03 BY 60367 NLS/AG/JS
CAF# 03-1779

Attachment 4

From: [redacted]
To: LEGAT VIENNA
Date: Thu, Oct 10, 2002 12:35 PM
Subject: [redacted]

[redacted]

[redacted]

b2
b5
b7C
b7D
b7E

However, you could direct them to one of the following persons who may be able for further assistance:

[redacted]

[redacted] TSA Intelligence Watch [redacted] distributes the lists to me)

Hope this helps somewhat. I've cc'd the TSA Detailee here, [redacted] as he surely might have other names to contact.

[redacted]

>>> Legat Vienna 10/7/02 4:45:23 AM >>>

[redacted]

Additionally, I have read many e-mails back and forth on the topic of dissemination and nothing seems clear. I assume the US military can have a copy of this list. If not, kindly advise.

Thank you,

[redacted]

b7C

CC: [redacted] TSA LIST PROCESS

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