

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

July 26, 2016

The Honorable Michael Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Inspector General Horowitz:

The Committee on Homeland Security and Governmental Affairs is examining the Justice Department's decision to add—and, later, to remove—Omar Mateen from the Terrorist Screening Database (TSDB, and most often referred to as the “terrorist watchlist”). The Committee's oversight of the Federal Bureau of Investigation's (FBI) investigation of Omar Mateen has raised several important issues that merit further review. I appreciate your assistance with this important inquiry.

The FBI's previous investigation of Mateen

According to the FBI, Mateen was placed on the TSDB in 2013.¹ Inclusion in the TSDB—the consolidated list of all known or suspected terrorists—requires that the Federal Government have “minimum identifying criteria”² for the individual and “reasonable suspicion to establish that the individual is a known or suspected terrorist.”³ Mateen was also placed on the narrower Selectee List, a subset of the TSDB.⁴

According to the FBI, Mateen's colleagues reported him to the FBI when Mateen worked as a contract security guard at the St. Lucie County Courthouse in Florida.⁵ In response, the FBI initiated a preliminary investigation into Mateen's potential connections with terrorism.⁶ Due to Mateen's self-proclaimed association with specific terrorist groups, he was placed on the TSDB

¹ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016); see also Reuters, *Orlando Shooting: Omar Mateen's Wife May Have Known of His Plans*, NEWSWEEK (June 14, 2016), <http://www.newsweek.com/omar-mateen-orlando-shooting-wife-isis-noor-salman-ar-15-gay-nightclub-470449>.

² TSC, *Watchlisting Guidance*, (2015), 1.5.1 (U), 1.5.2 (U).

³ Def.'s Mot. For Partial Summ. J, *Mohamed v. Holder*, 1:11-CV-00050 (E.D. VA Dec. 9, 2014) (Dkt. No. 158-1 at ¶ 15, Decl. of G. Clayton Grigg, Dep. Dir. For Operations, Terrorist Screening Center).

⁴ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016); *Orlando shooting*, *supra* note 1.

⁵ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016).

⁶ *Id.*

in 2013 during the FBI's preliminary investigation.⁷ During the preliminary investigation, the FBI did not review Mateen's social media accounts, but it did use confidential informants and other means to attempt to substantiate Mateen's assertions.⁸ The FBI learned that Mateen twice travelled to the Middle East in 2011 and 2012, respectively.⁹ The FBI twice interviewed Mateen.¹⁰ It has been publicly reported that Mateen initially lied to law enforcement about telling his colleagues he was connected to terrorist organizations, and later admitted this to law enforcement.¹¹ The FBI closed the preliminary investigation after ten months.¹²

After the FBI completed its preliminary investigation of Mateen, he was removed from the TSDB.¹³ According to the FBI and news sources, Mateen was taken off of the TSDB in March 2014, within days after the FBI closed the investigation because it could not substantiate Mateen's alleged connections to terrorism.¹⁴

In the summer of 2014, after Mateen was removed from the TSDB, the FBI again turned its attention to him when Moner Mohammad Abu-Salha, an American from Mateen's local mosque, blew himself up in a terrorist attack in Syria.¹⁵ Shortly thereafter, Mohammed A. Malik, Mateen's friend from the same mosque, reported him to the FBI. Malik told the FBI that Mateen admitted to watching videos of Anwar al-Awlaki, credited to have radicalized the Fort Hood shooter and others, and called the videos "very powerful."¹⁶ The FBI interviewed Mateen once more in July 2014, this time about his connection to the suicide bomber.¹⁷ Mateen reportedly denied having watched the videos.¹⁸

⁷ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016); *see also* Eric Lichtblau & Matt Apuzzo, *Orlando Gunman Was on Terror Watchlist, F.B.I. Director Says*, N.Y. TIMES (June 13, 2016), <http://www.nytimes.com/2016/06/14/us/omar-mateen-fbi.html>.

⁸ *Id.*

⁹ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016).

¹⁰ *Id.*

¹¹ Del Quentin Wilber, *The FBI investigated the Orlando mass shooter for 10 months — and found nothing. Here's why*, LA TIMES (July 14, 2016), <http://www.latimes.com/nation/la-na-fbi-investigation-mateen-20160712-snap-story.html>.

¹² *Id.*

¹³ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016).

¹⁴ *Id.*; Meghan Keneally & Mike Levine, *FBI Director James Comey defends agency's earlier handling of Orlando shooting*, ABC NEWS (June 13, 2016), <http://abcnews.go.com/US/fbi-director-james-comey-cites-confusion-nightclub-shooters/story?id=39818869>.

¹⁵ Peter Bergen, *The all-American al Qaeda suicide bomber*, CNN, (July 31, 2014), <http://www.cnn.com/2014/07/31/opinion/bergen-american-al-qaeda-suicide-bomber-syria/index.html>.

¹⁶ Mohammed A. Malik, *I reported Omar Mateen to the FBI. Trump is wrong that Muslims don't do our part.*, WASH. POST (June 20, 2016), https://www.washingtonpost.com/posteverything/wp/2016/06/20/i-reported-omar-mateen-to-the-fbi-trump-is-wrong-that-muslims-dont-do-our-part/?hpid=hp_hp-top-table-main_pe-informant-245pm%3Ahomepage%2Fstory.

¹⁷ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016); Del Quentin Wilber, *The FBI investigated the Orlando mass shooter for 10 months — and found nothing. Here's why*, LA TIMES (July 14, 2016), <http://www.latimes.com/nation/la-na-fbi-investigation-mateen-20160712-snap-story.html>.

¹⁸ *Id.*

Subsequently, during the Orlando terror attack in June 2016, Mateen associated himself with radical Islam in phone calls with hostage negotiators.¹⁹ Mateen also pledged his allegiance to radical Islam via social media during the attack.²⁰ Following the attack, the FBI found that Mateen had in fact viewed videos of Anwar al-Awlaki as early as 2010—the earliest indication of Mateen’s potential radicalization, and something he denied to the FBI.²¹

According to the FBI, “[t]he TSC [Terrorist Screening Center, under the FBI] has the final decision authority regarding watchlisting determinations and will add an individual’s name to the TSDB if the nomination meets the applicable standard and the required criteria for inclusion.”²² It is unclear how the FBI made the decision to remove Mateen from the TSDB, despite the concerns that had been raised and his previous false statements to the FBI.

Removal of Mateen from the TSDB prevented law enforcement from obtaining information that could have been used to prevent the Orlando attack

In early June 2016, at the time that Mateen purchased the firearms used in the Orlando terror attack, he was no longer on the TSDB. If Mateen’s name was included at the time that he purchased the firearms, under existing authorities, the Justice Department would have been alerted to the purchases and had an opportunity to potentially stop the attack.

Under Federal law, a licensed firearms seller must contact the National Instant Criminal Background Check System (NICS) before transferring a firearm to certain unlicensed prospective firearm purchasers.²³ The FBI’s NICS Section then has three business days to perform a background check of the individual attempting to purchase the firearm to determine if the transfer would violate Federal or state law.²⁴ Among the files checked by the NICS is the Known or Suspected Terrorist (KST) file, exported from the TSDB.²⁵ If the individual attempting to purchase the firearm is a “match” with the KST file, then the FBI’s Counterterrorism Division is notified of the attempted purchase.²⁶ A “match” with the KST file is not by itself sufficient to warrant denial of the purchase; rather, the individual must meet other Federal or state disqualifying criteria.²⁷

If the individual comes up as a match, the FBI has assured the public that the FBI takes appropriate action to monitor the individual. This includes ensuring that “everybody is in the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² TSC, *Watchlisting Guidance*, (2015), I.1.4(U).

²³ Pub. L. No. 103-159.

²⁴ Fed. Bureau of Investigation, *National Instant Criminal Background Check System, Fact Sheet*. available at <https://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet>, (Accessed July 14, 2016).

²⁵ *Terrorists and Guns: The Nature of the Threat and Proposed Reforms: Hearing before the S. Comm. on Homeland Sec. & Governmental Affairs, 25, 114th Cong.* (2010) (testimony of Daniel D. Roberts, Assistant Dir., Criminal Justice Information Services Division, Fed. Bureau of Investigation, U.S. Dept. of Justice).

²⁶ *Id.*

²⁷ *Id.* at 53-54.

loop,”²⁸ by alerting the individual’s FBI case officer or Joint Terrorism Task Force (JTTF) case agent²⁹ so the FBI can contemplate “enhanced investigative methods, such as surveillance,” or other appropriate action.³⁰ The information is also shared with the National Counterterrorism Center, the Intelligence Community, and appropriate Federal and state law enforcement partners.³¹

According to one former FBI official, the act of attempting to purchase a firearm “could be a key piece of evidence for the JTTF agent who is working that case.”³² In sum, “these KSTs get special attention and are immediately dealt with, both at our office in the CJIS [Criminal Justice Information Services] Division as well as at the Counterterrorism Division.”³³ The FBI has confirmed that “[w]hile these tools have their limits, we believe they have been highly effective when dealing with the regulated sale of firearms.”³⁴

Had Mateen been on the TSDB in 2016, the FBI and the Intelligence Community would have been notified that an individual they had investigated for potential connection to terrorism in 2013 and 2014 had now attempted to purchase firearms. This information would have been crucial to Federal investigators, and could have been enough to re-open the investigation and increase surveillance. If this information convinced the FBI to re-open its investigation of Mateen, law enforcement potentially could have uncovered information on social media or elsewhere of Mateen’s radicalization.

Request for further review

After major terrorist events, the Federal Government has conducted reviews of Federal agency actions, inter-agency communications, and decisions made by law enforcement to ensure that policymakers learn from the attack and make any changes that are necessary. The inspectors general of the Intelligence Community, Central Intelligence Agency, Department of Justice, and Department of Homeland Security conducted a review of information handling and sharing after the Boston Marathon Bombing on April 15, 2013.³⁵ Similar work has also included reviewing the Watchlisting Guidance and examining whether the criteria for inclusion on the TSDB is appropriate. For example, after the attempted terror attack by Umar Farouk Abdulmutallab on

²⁸ *Id.* at 33.

²⁹ *Id.* at 33, 35.

³⁰ *Id.* at 54.

³¹ *Id.*

³² *Id.* at 34.

³³ *Id.*

³⁴ *Id.* at 54.

³⁵ INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY, CENTRAL INTELLIGENCE AGENCY, DEPT. OF JUSTICE, & DEPT. OF HOMELAND SEC., UNCLASSIFIED SUMMARY OF INFORMATION HANDLING AND SHARING PRIOR TO THE APRIL 15, 2013 BOSTON MARATHON BOMBINGS, (Apr. 10, 2014), *available at* https://www.dni.gov/files/documents/ICIG_Forum_Boston_Marathon_Bombings_Review_-_Unclassified_Summary.pdf.

December 25, 2009, the Federal Government reviewed its Watchlisting Guidance and issued revised guidance making necessary adjustments in 2010.³⁶

The terrorist attack against innocent Americans in Orlando, Florida—by an individual who was on the TSDB but removed prior to his purchase of the firearms used in the attack—calls for a thorough, independent review of what the FBI did to investigate Mateen and the decision to remove Mateen from the TSDB. It also calls for a thorough review of the Watchlisting Guidance to determine if the criteria are appropriate to balance the evolving nature of the lone wolf and other terrorist threats our nation faces, with the liberties and rights of law-abiding citizens.

The FBI's decision to remove an individual from the TSDB after closing an investigation should not end the FBI's situational awareness of a subject. The circumstances of the Orlando terror attack call for lawmakers and agency executives to consider whether the FBI should be notified when an individual recently investigated for possible ties to terrorism, but for whom insufficient evidence was gathered to immediately prosecute, attempts to purchase firearms. Legislation recently proposed has included a "look-back" provision, which would alert the FBI anytime an individual who had been investigated by the FBI in the last five years tries to purchase a firearm. But such a mandate would likely require a new list to be created by the Justice Department—a list of individuals who are subject to the five-year look-back—that does not fully address the root problem. The Office of Inspector General ought to conduct a review to determine whether the data sources used by NICS for counterterrorism purposes should be modified to address emerging trends in homegrown extremism.³⁷

It is vital that the Office of Inspector General conduct a thorough, independent review because the FBI has tried to restrict information available about the attack. Following the attack, the FBI initially released transcripts of Mateen's conversations with 911 operators that were redacted to remove references to Islamic terrorism.³⁸ After widespread criticism for its censorship, the FBI ultimately released the transcripts without redactions—showing that Mateen had pledged allegiance to Islamic terrorism.³⁹ The FBI has gone so far as to ask local government agencies in Orlando to deny requests for records about the attack, despite Florida's robust sunshine laws.⁴⁰ Similarly, in its interactions with this Committee, although the FBI has

³⁶ U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL, 14-16, AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S MANAGEMENT OF TERRORIST WATCHLIST NOMINATIONS 61 (Mar. 2014), available at <https://oig.justice.gov/reports/2014/a1416.pdf>.

³⁷ The Justice Department does not need legislative authority to modify the list; it was an executive action, not legislation, that prompted the Justice Department to begin using the TSDB to screen for known or suspected terrorists attempting to purchase a firearm or explosives. *Terrorists and Guns: The Nature of the Threat and Proposed Reforms: Hearing before the S. Comm. on Homeland Sec. & Governmental Affairs*, 33, 114th Cong. (2010) (testimony of Daniel D. Roberts, Assistant Dir., Criminal Justice Information Services Division, Fed. Bureau of Investigation, U.S. Dept. of Justice).

³⁸ Kevin Johnson, *Justice Dept. reverses course on redacting transcript of Orlando gunman*, USA TODAY (June 20, 2016), <http://www.usatoday.com/story/news/nation/2016/06/20/fbi-release-orlando-911-transcripts/86130520/>.

³⁹ *Id.*

⁴⁰ Christal Hayes, *FBI asks agencies who responded to Pulse to deny records requests*, ORLANDO SENTINEL (June 29, 2016), <http://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/os-fbi-letter-law-enforcement-20160629-story.html>.

provided some information, it has sought to limit my ability to conduct oversight by demanding that I only request information about the attack from the FBI.⁴¹

For these reasons, I ask that you, in coordination with any other appropriate Offices of Inspector General and other Federal entities, conduct a thorough review of the circumstances leading up to the Orlando, Florida terror attack, including:

1. The FBI's investigation into Mateen in 2013 and 2014, and the appropriateness of Mateen's inclusion on the TSDB and any subset list(s).
2. The decision to remove Mateen from the TSDB, including how the decision was made, when the decision was made, who made the decision, who reviewed the decision, and ultimately the appropriateness of the decision.

Please include an update on your March 2014 audit and recommendations as it relates to the FBI's process for nominating and removing individuals to and from the TSDB, and particularly your concerns at the time that the FBI was using nomination criteria that is "more restrictive . . . than is generally required by the Watchlist Community,"⁴² and whether an emphasis on timely removal of subjects of terrorism investigations when the investigation is closed hampered, or may have the effect of hampering, law enforcement from identifying and preventing would-be terrorists.⁴³

3. In light of your findings, the appropriateness of the current criteria for inclusion on the TSDB and whether the criteria should be modified.
4. In light of your findings, whether NICS is utilizing the appropriate data sources for counterterrorism information.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."⁴⁴ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs."⁴⁵

⁴¹ Briefing between Fed. Bureau of Investigation and S. Comm. on Homeland Sec. & Governmental Affairs (June 30, 2016).

⁴² U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GEN., 14-16, AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S MANAGEMENT OF TERRORIST WATCHLIST NOMINATIONS 61 (Mar. 2014), <https://oig.justice.gov/reports/2014/a1416.pdf>.

⁴³ *Id.* at 63-64.

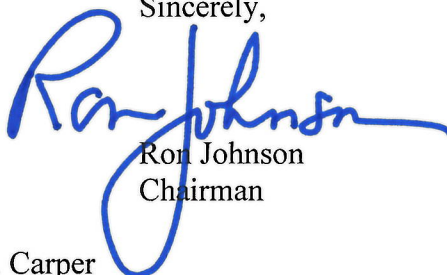
⁴⁴ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

⁴⁵ S. Res. 73 § 12, 114th Cong. (2015).

The Honorable Michael Horowitz
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If you have any questions about this request, please contact Gabrielle D'Adamo Singer or David Brewer of the Committee staff at (202) 224-4751. Thank you again for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Ron Johnson". The signature is fluid and cursive, with a large initial "R" and a long horizontal stroke at the end.

Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member