



Written Statement of the
Liberty Coalition

Aaron Titus
Privacy Director, Liberty Coalition and
Attorney, J.C. Neu & Associates

On

**“Terrorists and Guns:
The Nature of the Threat and Proposed Reforms”**

Before the

Senate Committee on Homeland Security and
Government Affairs

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Chairman Lieberman, Ranking Member Collins and Members of the Committee.

The Liberty Coalition (<http://www.libertycoalition.net>) works to organize, support, and coordinate bipartisan public policy activities related to civil liberties and basic rights. We work in conjunction with more than 80 partner organizations from across the political spectrum¹ that are interested in preserving

¹ The Liberty Coalition does not speak for its Coalition Partners. Liberty Coalition Partners currently include: Alliance for Patient Safety, American Association for Health Freedom, American Association of Small Property Owners, American Civil Liberties Union, American Families United, American Policy Center, Americans for Tax Reform, Amnesty International, Andrew Jackson Society, Appeal for Privacy Foundation, Arab American Institute, Association of American Physicians and Surgeons, Bill of Rights Defense Committee, Bob Barr, former Member of Congress, and Chairman and CEO of Liberty Strategies, LLC, Boston Tea Party, Campaign For Liberty, Center for Financial Privacy and Human Rights, Chicago Committee to Defend the Bill of Rights, Citizens Against Government Waste, Citizens for Health, Citizens in Charge Foundation, Clinical Social Work Federation, Common Cause, Competitive Enterprise Institute, Concerned Foreign Service Officers, (CARCLE) Congress Against Racism and Corruption in Law Enforcement, Cyber Privacy Project, Criminal Justice Policy Foundation, Citizen Outreach, Citizens Committee for the Right to Keep and Bear Arms, Center for Liberty & Community, Defending Dissent Foundation, Democrats.com, DownsizeDC.org, Drug Policy Alliance, Educator Roundtable, Ethics in Government Group, Electronic Frontier Foundation, Electronic Privacy Information Center, Equal Justice Alliance, Fairfax County Privacy Council, First Amendment Foundation, The Freedom and Justice Foundation, Government Accountability Project, International Center for the Study of Psychiatry and Psychology (ICSPP), Institute for Liberty, International Association of Whistleblowers, The Libertarian Party, Libertarian Party of Texas, Liberty Dollar, Meyda Online Info Security, Privacy, and Liberties Studies, Mothers Against the Draft, MoveOn.org Political Action, The Multiracial Activist, Muslim Public Affairs Council, National Coalition of Mental Health Professionals and Consumer, National Coalition of Organized Women (NCOW), National Iranian American Council, National Judicial Conduct and Disability Law Project, Inc., National Security Whistleblowers Coalition, National Whistleblowers Center, Natural Solutions Foundation, New Grady Coalition, New York Tax Reform Organization, OpenCarry.org, Pain Relief

the Bill of Rights, personal autonomy and individual privacy. The Liberty Coalition does not speak on behalf of these organizations, and my testimony today may not reflect the position of any single Coalition Partner.

We are saddened, alarmed, and angered by gun violence and terrorist acts, such as the incident in Times Square a few days ago. We can all agree that the world would be better if we each beat our proverbial swords into plow-shares and spears into pruning-hooks. But that day has not yet arrived. Guns and other weapons do exist, and managing them is a matter of public concern. Reasonable minds may and do come to differing conclusions about gun control, gun safety, and whether gun ownership makes people safer.² The Liberty Coalition takes no official position on "gun control" *per se*. However, we are very alarmed at legislative attempts, though well-intentioned, which strip away individual Constitutional protections.

Today's hearing examines two bills, S.1317 "Denying Firearms and Explosives to Dangerous Terrorists Act of 2009" and S.2820, "Preserving Records of Terrorists & Criminal Transactions Act of 2009" ("PROTECT Act of 2009"). In reality, these two bills should be re-named the "Gun Owners Are Probably Terrorists Act," and the "National Firearm Registry Act," respectively. Collectively these bills strip citizens of their enumerated Constitutional Right to Bear Arms without any meaningful due process, and create a national firearms registry. The same Constitutional Due Process provided by the 5th and 14th Amendments that prevents Congress from incarcerating a citizen based on mere suspicion also prevents Congress from revoking a citizen's Second Amendment right to bear arms. For that and other reasons, the Liberty Coalition opposes these bills.

More importantly, today's discussion misses the point entirely. This committee should not spend time debating whether to take away Terrorists' guns, bombs, cell phones, cars, or other instruments of terrorism. If a person is a dangerous terrorist, then he should be thrown in jail. As a felon, convicted terrorists should not, and cannot under current law, own guns.

The only things a real, convicted terrorist should own are an orange jumpsuit and a pair of leg chains, but S.1317 is based on the assumption that all

Network, People for the American Way, Patient Privacy Rights Foundation, Privacy Activism, Pullins Report, Reason Foundation, Republican Liberty Caucus, Rutherford Institute, Semmelweis Society International, Inc., The 3.5.7 Commission, Townhall, U.S. Bill of Rights Foundation, VelvetRevolution.us, Veterans Affairs Whistleblowers Coalition, Virginia Citizens Defense League, Inc., and The Woodhull Freedom Foundation.

² This point is demonstrated no better than references to a wealth of reputable research cited in the *District of Columbia v. Heller* dissent.

individuals on terrorist watch lists are terrorists. Unfortunately, the details of terror watch lists are kept secret within the Executive Branch, and it is impossible to tell whether the assumption is correct. If it is true, that is if each person on a terror watch list is really a dangerous terrorist as this bill suggests, then this committee should stop talking about taking away terrorists' guns, and start throwing each and every person on a terror watch list in jail, effective immediately.

How S.1317 Works

A person may be added to one of more than a dozen Federal watch lists, tip-off lists or terrorist watch lists based on "reasonable suspicion" of terrorist activity. Other reasons for adding a person include , mistake or misidentification, or if a terrorist steals a person's identity. An innocent citizen placed on the list will have no administrative recourse to ensure that he or she is removed from a list.

When a citizen of the United States, fully protected by the Constitution applies to purchase a firearm, his or her personal information is run through the National Instant Criminal Background Check System (NICS), and the name is run against several databases to ensure that he is not a convicted felon, drug addict, fugitive, or has some other monitored restriction or legal disability. In addition, the person's name will be run against one or more terrorist watch lists. If the system returns an initial match, the result will be delayed, and NICS personnel will investigate further. If S.1317 becomes law and the match is confirmed, then NICS will return a "Denied" signal to the gun dealer, and the purchase will be denied.³ Furthermore, the personal information of the individual will be kept on file indefinitely.⁴

Under current law, a citizen has the right to know exactly why he was denied the purchase of a firearm. With this information, the person can correct the record or appeal the decision. However, Under S.1317, the person will only receive "actual notice of the Attorney General's determination," if the Attorney General determines that such notice would not likely "compromise national

³ "The Attorney General may deny the transfer of a firearm under section 922(t)(1)(B)(ii) of this title if the Attorney General—(1) determines that the transferee is known (or appropriately suspected) to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, or providing material support or resources for terrorism; and (2) has a reasonable belief that the prospective transferee may use a firearm in connection with terrorism." S. 1317 p. 2, lines 14-24.

⁴ GAO, *Gun Control and Terrorism, FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005), 33.

security."⁵ Due to the secret nature of the watch lists, the Attorney General may determine that simply tipping off the person that they are on a terror watch list may compromise national security, thus rendering the notice clause illusory. In that case, the person would receive a "Denied" signal from NICS, with no further information about the reason for the denial, nor with any recourse to obtain the reason for denial.

The citizen may never know why he or she was denied a firearms permit, if the Attorney General determines that the mere disclosure of the determination may compromise national security.⁶ The citizen may ask why he or she was denied,⁷ but the Attorney General is not required to answer or correct erroneous information within the system.⁸ Consequently, the citizen will be unable mount a meaningful appeal to the Attorney General's decision. Further, even if the Attorney General explains the reason for the denial, the citizen would have no way to know that their right to appeal expires after 60 days after the notice.⁹

Assuming that the citizen appeals the decision in court, things only get harder and more confusing. First, the citizen must rely on summaries or a redacted version of the documents upon which the Attorney General made his decision.¹⁰ Neither the citizen nor his attorney has a right to see or rebut the evidence presented against him. Not even the court may consider the unredacted documents to determine whether the Attorney General acted reasonably in denying the firearms permit.¹¹

⁵ S. 1317 p. 13, lines 6-10.

⁶ "any information upon which the Attorney General relied for this determination may be withheld from the petitioner, if the Attorney General determines that disclosure of the information would likely compromise national security."

⁷ S. 1317, p. 13, lines 1-5.

⁸ S. 1317, p. 13, lines 6-9.

⁹ "The petition shall be filed not later than 60 days after the petitioner has received actual notice of the Attorney General's determination under section 922A or 922B of this title." S.1317, p. 11 lines 7-8.

¹⁰ "To make this showing, the United States may submit, and the court may rely upon, summaries or redacted versions of documents containing information of the disclosure of which the Attorney General has determined would likely compromise national security. Upon request of the petitioner or the court's own motion, the court may review the full, undisclosed documents ex parte and in camera. The court shall determine whether the summaries or redacted versions, as the case may be, are fair and accurate representations of the underlying documents. The court shall not consider the full, undisclosed documents in deciding whether the Attorney General's determination satisfies the requirements of section 922A or 922B." S.1317, p. 11. *See also* S.1317, p. 9 line 1; p. 9, lines 15-24.

¹¹ *Ibid.*

A citizen will lose his appeal if the Attorney General can prove, by a preponderance of the evidence,¹² not that the individual poses a risk, or that the person is a terrorist, or even that the person is under investigation; rather, the Attorney General must only demonstrate that the person has been placed a terror watch list.

Once that has been proven, a process which affords the citizen no due process, no right to appeal, nor guarantees any reasonable notice or information to the actual fact that the citizen is on a terror watch list, the appeal is over and the citizen loses his Second Amendment Right to Bear Arms. The individual will not have a chance to introduce evidence of mistaken identity, abuse of Executive discretion or mount any other meaningful defense.

In other words, S.1317 allows the Attorney General to unilaterally revoke a person's Second Amendment Right to Bear Arms by a bald assertion of terrorist inclinations, founded on "suspicion"¹³ and "reasonable belief," thus rendering the notion of a citizen's right to appeal illusory and impotent.

Effect on Gun Dealers

The bill also reduces Due Process protections for gun dealers. S. 1317, strips gun dealers of their right to appeal a revoked license in court, and replaces it with the right to notice and hearing before the Attorney General.¹⁴

Terror Watch Lists

Need for Secret Government Investigations

The nature of criminal and terrorist investigations necessitates that certain information be kept confidential. The Liberty Coalition does not oppose confidential criminal and terrorist investigations, or even targeted, focused lists of individuals of interest. But what S.1317 misunderstands is that "investigation" is not "guilt," and "suspicion" is not "conviction."

¹² "The court shall sustain the Attorney General's determination upon a showing by the United States by a preponderance of evidence that the Attorney General's determination satisfied the requirements of section 922A or 922B, as the case may be." S. 1317, p. 11, line 7.

¹³ Note that S.1317 generally uses the term "appropriately suspected." "Appropriately suspected" has no definition in the Act, nor in federal statute, nor in case law. It is the opinion of the Liberty Coalition that "appropriately suspected" is legally indistinguishable from "suspected," and is probably a euphemism for appearance on a terror watch list.

¹⁴ S 1317, p. 7, line 14; S. 1317, p. 10, lines 18-22.

The existing lists upon which NICS draws are fundamentally different from terror watch lists. The NICS system already checks the background of gun purchasers against lists of "felons, fugitives, unlawful drug users, and aliens illegally or unlawfully in the United States."¹⁵ What makes these lists effective is that they are based on appropriate and transparent legal standards of due process. In theory, denying a firearm to a person who appears on a list of "convicted terrorists" would not violate due process. However, revoking Second Amendment rights based solely on a list of "suspected terrorists" certainly does violate due process.¹⁶

Weaknesses of Terror Watch Lists

The weaknesses of terror watch lists are numerous and well-documented.¹⁷ The ACLU has entered a statement before this committee which explains in great detail the design flaws, excessive error rates, rapid expansion, and other problems of existing watch lists. I commend to the Committee the ACLU's examination of this important issue.

Watch lists are growing at an unprecedented rate. In January 2005 the most updated version of the Terrorist Screening Database (TSDB) had 237,615

¹⁵ GAO, *Gun Control and Terrorism, FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005), 1.

¹⁶ As vividly illustrated by the film, *Minority Report*.

¹⁷ *Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO Report to Congressional Requesters, GAO-03-322, April 2003; *DHS Challenges in Consolidating Terrorist Watch List Information*, Department of Homeland Security, Office of Inspector General, OIG-04-31, August 2004; *Review of the Terrorist Screening Center (Redacted for Public Release)*, Justice Department, Office of the Inspector General, Audit Report 05-27, June 2005; *Review of the Terrorist Screening Center's Efforts to Support the Secure Flight Program (Redacted for Public Release)*, Justice Department, Office of the Inspector General, Audit Report 05-34, August 2005; *Follow-Up Audit of the Terrorist Screening Center (Redacted for Public Release)*, Justice Department, Office of the Inspector General, Audit Report 07-41, September 2007; *Audit of the U.S. Department of Justice Terrorist Watchlist Nomination Processes*, U.S. Department of Justice, Office of the Inspector General Audit Report 08-16, March 2008; *The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices*, Justice Department, Office of the Inspector General, Audit Report 09-25, May 2009; *Effectiveness of the Department of Homeland Security Traveler Redress Inquiry Program*, Department of Homeland Security, Office of Inspector General, OIG-00-103, September 2009. *DHS Challenges in Consolidating Terrorist Watch List Information*, Department of Homeland Security, Office of Inspector General, OIG-04-31, August 2004; DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL REVIEW OF THE TERRORIST SCREENING CENTER (June 2005), p. 83, available at <http://www.fas.org/irp/agency/doj/oig/tsc.pdf>; DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL FOLLOW-UP AUDIT OF THE TERRORIST SCREENING CENTER (Sept. 2007), pg 12 available at: <http://www.justice.gov/oig/reports/FBI/a0741/final.pdf>; *The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices*, Justice Department, Office of the Inspector General, Audit Report 09-25, May 2009; DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL REVIEW OF THE TERRORIST SCREENING CENTER (June 2005), pg 49, available at <http://www.fas.org/irp/agency/doj/oig/tsc.pdf>;

active records, representing approximately 170,000 unique individuals.¹⁸ By 2009 that number had grown to 1.1 million identities and approximately 400,000 unique individuals.¹⁹ The lack of transparency leaves the public to wonder who these people might be, whether one out of every 750 people in the United States is a suspected terrorist, or whether the drastic increase in the database is due to poor design and over-collection.

Bloated watch lists create more false positives,²⁰ unnecessarily impinge on civil liberties, and have a corrosive effect on security. Focused watch lists can be highly effective security and investigatory tools.

The Liberty Coalition is concerned about the burden that poorly managed watch lists put on ordinary Citizens. Government and press reports are replete with examples of innocent individuals whose lives have been affected or ruined when their names are placed on a secret watch list.

Due Process and Redress

Government authorities must be able to maintain the secrecy and confidentiality of investigations.²¹ But with these substantial new powers, adequate Constitutional protections must be built in to address errors and abuses, which will inevitably occur. Among these is an administrative process to be removed from a watch list, a process which does not currently exist. No statute or regulation provides a path for more than the estimated 400,000 individuals who are on a watch list.

Inappropriate Uses for Terror Watch Lists

Terror Watch lists, by their nature, are designed to be over-broad.²² A name on a terror watch list is evidence of a government interest in an individual

¹⁸ DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL REVIEW OF THE TERRORIST SCREENING CENTER (June 2005), pg 49, available at <http://www.fas.org/irp/agency/doj/oig/tsc.pdf>.

¹⁹ *The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices*, Justice Department, Office of the Inspector General, Audit Report 09-25, May 2009.

²⁰ Jeanne Meserve, *Name on government watch list threatens pilot's career*, CNN.com, August 22, 2008, <http://www.cnn.com/2008/US/08/22/pilot.watch.list/index.html?iref=newssearch>; <http://www.aclu.org/technology-and-liberty/unlikely-suspects>; Lizette Alvarez, *Meet Mikey, 8: U.S. Has Him on Watch List*, New York Times, January 13, 2010;

²¹ "Terrorist and criminal watch lists—sometimes referred to as watchout, target, or tip-off lists—are important tools for law enforcement and homeland security purposes." GAO, *Gun Control and Terrorism, FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005), 1.

²² "In general, individuals who are 'reasonably suspected' of having possible links to terrorism—in addition to individuals with known links—are to be nominated for inclusion on the consolidated watch list by the FBI and other

or an investigation, not proof of terrorism. The bald allegation of a suspicion of terrorist sympathies is insufficient evidence to overcome an individual's interest in their Right to Bear Arms. Such a showing would not come close to overcoming even the most basic level of scrutiny.

I understand the inevitability, and the need for confidential government investigations, but an investigation, or a mere "suspicion" as this bill puts it, cannot be grounds for infringing upon or revoking the Constitutionally enumerated Right to Bear Arms. Suspicion is not a conviction.

Second Amendment

Regardless of one's position on gun safety and gun control, the Supreme Court has unambiguously ruled that the Right to Bear Arms is an individual right.²³ As with all Constitutionally protected rights, the Second Amendment is not absolute, and the government may regulate the Right to Bear Arms in a number of circumstances, including prohibiting the carrying of weapons "by felons and the mentally ill, ...in sensitive places such as schools and government buildings, or ... [requiring] conditions and qualifications on the commercial sale of arms."²⁴

The recent Supreme Court decision on the Second Amendment, *District of Columbia v. Heller* does not establish a level of scrutiny for evaluating Second Amendment restrictions. However, "The very enumeration of the right takes out of the hands of government – even the Third Branch of Government – the power to decide on a case-by-case basis whether the right is *really worth* insisting upon."²⁵ Other enumerated individual rights, such as First Amendment Speech protections are subject to at least intermediate scrutiny, which requires that a restriction on that right be based upon "substantial evidence."²⁶

S.1317 would not stand up to intermediate scrutiny, because a mere allegation of a suspicion of terrorist sympathies cannot constitute evidence

members of the intelligence community." GAO, *NICS and Terrorist Watch List Records*, GAO-09-125R (Washington, D.C.: May 21, 2009), 24.

²³ *Dist. of Columbia v. Heller*, 128 S. Ct. 2783, 2797 (2008) ("...we find that [the Second Amendment] guarantee[s] the individual right to possess and carry weapons in case of confrontation.")

²⁴ *Dist. of Columbia v. Heller*, 128 S. Ct. 2783, 2816-17, (2008).

²⁵ *Heller* at 2821 (Emphasis in original).

²⁶ "In particular this Court in First Amendment cases applying intermediate scrutiny, has said that our "sole obligation" in reviewing a legislature's "predictive judgments" is "to assure that, in formulating its judgments," the legislature "has drawn reasonable inferences based on substantial evidence." *Heller* at 2860, J. Breyer Dissenting, *citing Turner*, 520 U.S. at 195.

"substantial" enough to overcome an individual's interest in their Right to Bear Arms.

Due Process

Current Law

Based on the title of S.1317, one would think that convicted terrorists were allowed to own guns. However, nothing could be further from the truth. In reality, "convicted felons [including terrorists], fugitives, unlawful drug users, and aliens illegally or unlawfully in the United States" are prohibited by federal law from receiving firearms.²⁷ Current law recognizes that merely appearing on a terror watch list is not proof of terrorist activities. Consequently, individuals are not prevented from owning, purchasing, or carrying a gun because they appear on a watch list.

Names are added to terror watch lists with a "better safe than sorry" attitude,²⁸ and NICS background checks already flag individuals who appear on terror watch lists, giving investigators additional time to research whether the transaction should be allowed.²⁹ "During presale screening of prospective firearms purchasers, NICS searches terrorist watch list records generated by numerous federal agencies, including the Departments of Justice, State, and Homeland Security."³⁰

S.1317 Due Process

The 5th and 14th Amendments guarantee Due Process of law before an individual liberty interest may be taken away by the Federal or State governments. In our adversarial legal system, the Constitution has always tied the hands of well-meaning government magistrates. The Bill of Rights is highly suspicious of unfettered government power. S.1317, as currently written,

²⁷ GAO, *Gun Control and Terrorism, FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005), 1.

²⁸ "In general, individuals who are 'reasonably suspected' of having possible links to terrorism—in addition to individuals with known links—are to be nominated for inclusion on the consolidated watch list by the FBI and other members of the intelligence community." GAO, *NICS and Terrorist Watch List Records*, GAO-09-125R (Washington, D.C.: May 21, 2009), 24.

²⁹ GAO, *Gun Control and Terrorism, FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005), 2.

³⁰ GAO, *Gun Control and Terrorism, FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005), 3.

demonstrates a basic distrust of the courts and strips away all meaningful Due Process.

While the bill implements a key GAO recommendation that the Attorney General issue guidelines for exercising this new authority,³¹ S.1317 contains so many flaws that any guidelines would be like giving swimming lessons in a rip tide.

Denying the enumerated Constitutional Right to Bear Arms based on a secret list of suspect people is Constitutionally repugnant. The discretionary power to revoke the Second Amendment requires checks, balances, due process, and a meaningful opportunity for redress. S.1317 and S.2820 lack such due process.

In order to satisfy Due Process protections, any bill which limits the Second Amendment must, at a minimum provide: an adversarial proceeding before a neutral arbiter, through which a person may challenge the Attorney General's determination to deny a firearm sale, as well as their inclusion on a watch list; access to and a right to challenge the information on which the decision is based, where the arbiter is unrestricted in the evidence which he or she may consider; and a meaningful administrative procedure for removal from watch lists.

National Firearms Registry

S.2820, "Preserving Records of Terrorists & Criminal Transactions Act of 2009" ("PROTECT Act of 2009"), makes two changes to federal law. First, it requires officials to retain personal information of gun license applicants who appear on a terror watch list for a minimum of 10 years.³² Second, and more importantly, S.2820 substantially weakens privacy protections currently built into NICS, creating a defacto National Firearms Registry.

As stated in a 2005 GAO report, "...the purpose of NICS is to determine the lawfulness of proposed gun transactions, not to provide law enforcement agents with intelligence about lawful gun purchases by persons of investigative

³¹ S. 1317 p. 17, line 21.

³² "If the national criminal background check system indicates that a person attempting to purchase a firearm or applying for a State permit to possess, acquire, or carry a firearm is identified as a known or suspected member of a terrorist organization in records maintained by the Department of Justice or the Department of Homeland Security, including the Violent Gang and Terrorist Organization File, or records maintained by the Intelligence Community... all records generated in the course of the check of the national criminal background check system, including the ATF Form 4473, that are obtained by Federal and State officials shall be retained for a minimum of 10 years." S. 2820, § 2(a).

interest,"³³ but S.2820 changes that. The new law states, "If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall— ... **not less than 180 days after the transfer is allowed**, destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer."³⁴

This means that all personal information of each and every law-abiding citizen who purchases a gun will be saved in a government database for an indefinite period of time, and at least 6 months.

S.2820 disingenuously purports to target terrorists, but in fact is designed to be a National Firearms Registry, generating just 200 new records on "suspected terrorists" annually, and more than 14 million new records³⁵ on law-abiding citizens each year. Once collected, a federal database will retain all personal information, including name, address, social security number (if given), phone number, etc. regarding every legal gun purchase by every law-abiding citizen in the country for at least six months. The information may be used for investigative or other purposes, with no legal requirement to ever delete the information.

The law presents other problems, too. For example, the law provides no notice to the gun purchaser that their personal information is being captured and stored by the Federal Government. The law also makes it unclear whether local gun dealers are now authorized to store sensitive personal information, and under what conditions.

At the very least, S.2820 should be amended to notify each gun purchaser that their personal information will be stored for not less than 6 months in a national gun owner database, that it may be used for any purpose, may be stored in any unsecure warehouse or office desk, and may be accessed and referenced by any person, or potentially placed on a public website.

³³ GAO, *Gun Control and Terrorism, FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005), 15.

³⁴ 18 USC 922(t)(2)(C) as amended by S.2820, § 3(a).

³⁵ Based on average "verified matches" to terror watch lists for 2004-2009 in GAO reports; and CRS data on NICS transactions in 2009.

Summary

Today's debate on whether to take terrorists' guns away misses the point. If a person is a dangerous terrorist, then the Congress should throw them in jail. If everyone on the terror watch list is really a dangerous terrorist as S.1317 asserts, then this committee should introduce legislation to throw each and every person on the terror watch list in jail. But Constitutional due process prohibits incarceration based on mere suspicion. And the Constitution also won't let Congress take away an individual's Second Amendment rights based on mere suspicion.

The logical underpinnings S.1317 dictate that other Constitutionally enumerated rights could be annulled by a simple assertion of terrorist activities. Such legislation might provide that, in addition to disarming people on terror watch lists, the Attorney General would have discretion to prevent anyone on a terror watch list from making inappropriate public speeches, participating in dangerous religious activities or unauthorized terror-related demonstrations. To ensure that people on watch lists and their lawyers do not abuse the court system, anyone on a terror watch list could be denied the right against self incrimination, as well as a right to counsel. To protect national security, sensitive evidence and witnesses would remain secret. If the trial of a citizen on the terror watch list is thrown out on a technicality, the Attorney General would have the right to bring the charges repeatedly, until he or she can secure a conviction.

Terrorist watch lists are fundamentally different from lists of convicts, people adjudicated to be addicted to drugs, illegal aliens, or similar groups. Any type of secret list which is used as prima facie proof of guilt, and deprives a citizen of a Constitutionally enumerated right without due process of law is unconstitutional.

In short, S.1317 should be re-named the "Gun Owners Are Probably Terrorists Act," because it gives the Attorney General the discretion to deny someone the enumerated Constitutional Right to Bear Arms, based on "suspicion" and "belief" of terrorist inclinations. In addition, S.1317 would turn NICS into a defacto National Firearm Registry. It will collect detailed personal information like name, address, phone number, social security number for every person who applies for a gun permit, with no requirement to ever delete the information.

The Liberty Coalition respectfully urges this committee to reject S.1317 and S.2820.