



A No-Guns List Is Not the Solution

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Can't we all agree that terrorists shouldn't be allowed to buy guns?

After again failing to generate the political will necessary to rewrite the nation's gun laws in the wake of tragedy, President Barack Obama, along with gun control allies in Congress, have been asking that question prominently and loudly.

Last week, Senate Democrats attempted unsuccessfully to bar anyone on the U.S. government's expansive terrorism watch list from purchasing a gun. On Sunday, Obama suggested using the no-fly list the same way. If someone can't get on an airplane, the argument goes, why should they be able to buy a gun?

It's a good sound bite, and we plainly have an interest in keeping guns out of the hands of murderers and terrorists. But the policy reality is not so simple. The terror lists are inherently too inclusive, lacking in due process and susceptible to mistake and misuse as a means of stripping away constitutional rights.

Let's get personal. Is your name on any of the government's terrorism watch lists? Don't be so quick to dismiss the possibility. Have you been critical of the government on social media? Have you criticized the war on terror or war on drugs? Claimed that the Second Amendment is a defense against tyranny? Traveled abroad?

Although the Senate Democrats' legislation was unclear about which terrorism watch list the government would use, the number of names on the various lists range from an estimated 700,000 to more than a million. An estimated 47,000 names occupy the no-fly list championed by Obama.

How do we know who the terrorists are? The government fought the release of details, but leaks show that individuals are nominated for inclusion on the lists by government agents based on "reasonable suspicion" that the person is a threat to engage in terrorism.

How does a person prove they are not a terrorist? It's virtually impossible. A no-flyer doesn't receive the evidence against them or a hearing before being placed on the list. They are not

allowed to confront their accuser. Even getting the government to acknowledge that a person is on the list may require lengthy and expensive litigation. A person on the no-fly list may not even know they are on the list until they're refused service at the airport. A person on the broader terror watch list has no means of finding out. The system is devoid of anything resembling due process, a flaw The New York Times condemned as being intolerable in a free and democratic society and over which the American Civil Liberties Union is currently suing the Obama administration. The no-fly listing procedure has already been declared unconstitutional by at least one federal judge.

Including too many people on the list is inevitable. Nobody wants to explain, after a terrorist attack, why the attacker wasn't in the database. And that overly inclusive quality has manifested itself in absurd ways already. Just a few examples of no-fly denials: the late Democratic Massachusetts Sen. Ted Kennedy, congressman and civil rights hero John Lewis, dozens of people named Robert Johnson, members of the U.S. military and federal air marshals.

The potential for false positives and mistaken identities is not just accepted as collateral damage by these no-gun list proposals; it is the entire point. Anyone who has actually been convicted or is currently charged with terrorism-related crimes is already prohibited from purchasing a firearm under federal law. The people adversely affected by this proposal will inevitably be people against whom the government lacks sufficient evidence to charge.

The fact that a person hasn't been adjudicated as dangerous doesn't preclude them from committing violence, of course. But just how much discretion should the president have in abolishing constitutional rights without charge or trial?

And would it matter?

A highly motivated attacker will be able to skirt even draconian gun laws. Repeated shooting sprees in places like Paris prove as much. And the massive black market for guns in America inherently exists beyond the reach of background checks and gun bans.

This proposal is constitutionally dubious and would inevitably infringe on the rights of innocent Americans without putting a dent in gun crime or denying weapons to terrorists. Gun crime and terrorism are important issues, but a secretive, process-free no-guns list is not a solution to either.

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