Trump Administration's Watchlist Data Overstates Terror Threat

Harsha Panduranga

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Many have already pointed out the serious methodological flaws contained in last week's report from the Departments of Justice (DOJ) and Homeland Security (DHS). To buttress the president's xenophobic and costly anti-immigration proposals, like the travel ban, the report rests on a bedrock of questionable statistics manipulated to frame foreign-born people – including American citizens – as "serious and persistent terror threat[s]."

I want to focus on its use of data referencing the terrorist watchlist – officially the Terrorist Screening Database, or "TSDB." The report offers that "in fiscal year 2017, DHS had 2,554 encounters with individuals on the terrorist watchlist," which allegedly "reflect the challenges faced by the United States and demonstrate the necessity to remain vigilant and proactive in our counterterrorism posture." If there is evidence reflecting those challenges, it's certainly not going to be found in those 2,554 encounters. That number is at best ambiguous and unreliable, and may very well prove the opposite of what the Trump administration is alleging.

First, it's important to consider the number in context. In fiscal year 2016 – the last year for which data has been released – U.S. Customs and Border Protection (CBP) processed more than 390 million travelers at ports of entry. Assuming a roughly 4 percent drop in travel over the past year, a liberal estimate of the impact of the president's immigration policies, this would mean about 374 million travelers were processed in 2017. That means 0.000683 percent, or about 1/146,000 travelers would have been on the terrorist watchlist (a fraction close to what the Cato Institute found in a similar analysis).

But the number of encounters that truly presented a security threat was likely much lower. Even ardent proponents of the travel ban have publicly said the watchlist captures far too many people without affording them due process. Referring to the watchlist during debate over bills that would have prevented people on it from buying guns, House Speaker Paul Ryan (R-Wis.) declared, "In this country we do not take away people's constitutional rights without due process." Also as part of the gun control debate, Sen. Tom Cotton (R-Ark.) called the list "notoriously inaccurate." They weren't the only ones: When he was running for president in

2016, Donald Trump said that "A lot of people are on the list that really maybe shouldn't be on the list," a sentiment then echoed almost verbatim by now-Attorney General Jeff Sessions.

The president and his allies are right on that point. As an Intercept analysis of government watchlist guidance documents shows, the list has broad criteria for inclusion and doesn't require "concrete facts" to support nominations to it. Real life examples of false positives are risible. The watchlist has caused traveling difficulties for people ranging from the late Sen. Edward Kennedy, to civil rights icon John Lewis, to an eight-year old (American) child. Court filings have shown that about 99 percent of nominations to the watchlist – which now contains more than 1 million people – have been accepted in recent years. Nonetheless, it's very difficult to be removed from the list, even though DHS has recognized over-listing is enough of a problem to have started a (procedurally flawed) program meant largely to provide redress for it.

Further, the report says that known or suspected terrorists were only denied entry "[w]here consistent with the law," hinting at legal protections applicable to Americans, since CBP officers typically have broad discretion to refuse admission to the country to non-U.S. persons. Though Americans make up a small percentage of the watchlist, counting them inflates the number of relevant encounters. Cases concerning Americans clearly don't involve people that can be barred from entering the U.S., based on security assessments or otherwise, so their apparent inclusion in numbers used to justify the need for tighter immigration controls isn't appropriate. And it's possible that American encounters are overrepresented. If there's no legal basis for detention or other action against a person suspected to be on the list, as often is the case with U.S. citizens, the same person could account for multiple encounters – like Senator Kennedy's five encounters in a roughly one-month span.

Lastly, the meaning of "encounter" has consequences for the level of threat it reflects, and the Trump administration has failed to clarify the term's definition. That DHS had "2,554 encounters with individuals on the terror watchlist" is ambiguous in two ways. First, it's unclear whether "encounters" include only interactions DHS had with people *actually* on the overbroad list, as opposed to those suspected – but not verified – to be matches. According to the Terrorist Screening Center, which manages the watchlist, an "encounter" is defined as cases in which "an individual is identified…as…a *potential* match to an identity in the Terrorist Screening Database." This includes "positive [and] inconclusive" matches. Taken literally, this would mean that a DHS interaction with a *known* terrorist, a person wrongly put on a watchlist, an unconfirmable match, and a person whose name resembled someone on a list – like Senator Kennedy's –would all uniformly be classified as "encounters," despite those scenarios having vastly different security implications.

Second, encounters can happen at various stages of travel. According to DOJ, they can be "face-to-face," like when a person speaks with a Customs and Border Protection ("CBP") officer or attempts to board an aircraft, or "paper-based," such as during review of a passport or visa application. Indeed, an "encounter" as a measure of threat is less immediate if it means DHS reviewed a visa application or electronic travel authorization request submitted overseas, or stopped a person from boarding a plane in Europe. To the contrary, such encounters would

indicate that the robust system of security checks, as highlighted in a recent Brennan Center report, is functioning as it should to identify threats before they reach American shores.

It's possible the report is narrowly interpreting "encounter" with respect to these ambiguities. For example, the report categorizes attempted entries by "air, sea, [and] land," so it's possible certain paper-based encounters are being left out. But the term isn't defined in the report, and narrower readings conflict with how the term is typically defined in DOJ and FBI documents, as well as seeming inconsistent with the administration's disingenuous inflation of risk metrics in other parts of the report.

In other words, no guidance is provided as to what *does* count, and it's hard to make sense of the number without it. That said, we should evaluate the "2,554 encounters" statistic in light what we already *do* know about the risk international terrorism poses to the U.S. homeland – as one study shows, murders by foreign-born terrorists are so infrequent that, with the exception of the 9/11 attacks, they are functionally counted as zero as a proportion of the nation's murder rate.