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Watch-List Foes Slam Thinking of 'No-Fly, No-Buy' Gun-Control Plan

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WASHINGTON (CN) — Civil libertarians are quick to voice due-process concerns about denying guns to people on the no-fly list. Their movement has an unlikely symbol in the iconic congressman who led last week's sit-in for gun control.

Before he could get his name removed from the list, Rep. John Lewis was stopped at airports about 40 times in 2004, a representative for the Georgia Democrat's office confirmed in an email. Last week, Lewis rallied fellow House Democrats around the slogan "no fly, no buy," during a dramatic 25-hour sit-in on the House floor that ultimately failed to force a vote on the issue. The legislation is a complicated one for advocates of civil liberties.

"If you ask should terrorists be able to buy guns? Of course they shouldn't," said Ilya Shapiro with libertarian think tank the Cato Institute. "But the devil is in the details."

When it comes to government watch lists, Shapiro summed up the details as Kafkaesque, secretive and vague.

"The problem with all of these lists is that it's unclear how you get on them, and how the government decides to put someone on them," Shapiro said in an interview. "And it's even less clear how you get off."

People sometimes find out when they cannot board a plane, or get repeatedly stopped for extra screening, like Lewis did, but groups like Cato and the American Civil Liberties Union note that most people lack the wherewithal to get off the list.

"There's no set standard way to challenge it," Shapiro said. "You often don't even know you're on one of these lists."

The Senate could yet vote on a bipartisan gun-control compromise put forth by Sen. Susan Collins, R-Maine, to bar people on the no-fly and selectee watch lists.

Though the measure failed last week, its performance in a test vote means the Senate could vote again on it later.

The Collins Amendment contains a provision that would let people challenge denials in an appeals court, and its supporters say the burden will be on the government to substantiate the denial.

But the ACLU says it lacks even basic due-process protections. In a letter to the Senate last

week, the group complained that that the amendment strips U.S. district courts of jurisdiction and relegates challenges to the federal courts of appeal, where petitioners have little opportunity to challenge a "largely secret and one-sided administrative record."

Unavailable to watch-list challengers, according to the letter, are the protections of the Classified Information Procedures Act, which balances the need to protect classified information with a defendant's right to see the evidence against them.

Courts would have the power under the Collins Amendment to let a petitioner access classified information, but the information might remain secret anyway if the attorney general objects, according to the ACLU's June 22 letter.

A Look at the Lists

Chris Anders, senior legislative counsel for the ACLU, said the U.S. government uses three lists to designate known and suspected terrorists: the terrorist-screening database, the no-fly list and the selectee list. The latter pegs people for additional screening at places like airports. The terrorist-screening database, or the master terror watch list, uses the term "appropriately suspected" to describe its designees, and can rely on secret evidence and questionable information to designate someone, Anders said.

"Appropriately suspected is not a legal term used anywhere else," he noted, and falls well short of standards used in the U.S. criminal justice system. Shapiro echoed Anders on that point. "We generally don't allow the government to deprive us of our rights based on something as little as a hunch, or a suspicion based on nothing concrete, that someone might eventually be dangerous or harmful," Shapiro said. "This is where due process comes in."

According to a document released by Sen. Diane Feinstein's office, D-Cal., the terror watch list contains 1 million names, including 5,000 Americans. The no-fly list contains 81,000 names, including about 1,000 Americans, while the selectee list has 28,000 names, including roughly 1700 Americans.

That means fewer than 8,000 American would be impacted by no-fly no buy legislation, but Anders says there is no way to know how many of those 8,000 Americans do not belong on that list.

"Until people actually have a meaningful way to find out that they're on the list and be able to get off the list, we're really not going to know all of the people who might be in that category of wrongly on the list," he said.

A recent CNN poll shows that 85 percent of Americans support barring people on the terror watch list and no-fly list from buying guns.

Although little is known about the identities of Americans on the terror watch list, documents leaked to the Intercept in 2014 name Dearborn, Mich., a town of less than 100,000, as the city with the second-highest concentration of known or suspected terrorists on the terror watch list.

With New York City in the lead, Dearborn is home to the largest percentage of Arab-Americans and Muslims in the United States.

Based on this, Anders called it "a pretty good guess" that the terror watch list contains a disproportionate number of Arab and Muslim Americans.

Profiling Mass Shooters

Maha Hilal, director of the National Coalition to Protect Civil Freedoms, believes in gun control. Since white men have carried out a disproportionate number of the high-profile mass shootings in the United States, however, Hilal emphasized that a no-fly, no-buy law would do little to prevent such individuals from buying guns.

When white men commit mass gun violence, they are presented as mentally ill - there is no systemic issue or pattern associated with it, she noted.

By focusing on a systemic pattern of Muslim crimes, however, Hilal said lawmakers crafted gun-control legislation with no real teeth that people will still rally behind.

"The proposed legislation is not going to end gun violence in America," Hilal said. "We need to sit down - communities and the government - to really discuss why violence is so endemic to the United States."

Anders said the ACLU will continue to oppose gun-control legislation tied to the watch-listing system, until that system is reformed.

Congress would need to set clear and narrow standards for placing people on and off the lists, and provide a due-process mechanism for people to challenge their inclusion on them, he added. Meanwhile, Lewis has vowed to renew no-fly, no-buy efforts when the House returns on July 5. "That is a starting point. It is not the only answer or a perfect answer," a spokesperson from his office said in an email. "But if the inconvenience of some, even Rep. Lewis, is weighed against the lives of the 89 people who die every day due to gun violence and the 297 who are shot every day in this country, there is no comparison."

Federal investigators have yet to tie the recent mass shooting in Orlando to any outside direction, but the Islamic State still claimed responsibility, spiking American fears of more ISIL-inspired mass shootings within U.S. borders.

CIA director John Brennan fanned the flames of such concerns last week, warning the Senate Intelligence Committee that ISIL may attempt to compensate for territorial losses by stepping up guerrilla tactics and high-profile attacks outside of Syria and Iraq.