



FPC, FPF Argue Secret Government Watchlist is Unconstitutional

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Today, Firearms Policy Coalition (FPC) and Firearms Policy Foundation (FPF) announced their filing of an amicus brief in the important Fourth Circuit case of *Elhady v. Kable*, detailing the numerous rights violations inherent in the unconstitutional Terrorism Screening Database, also known as the ‘terrorist watchlist’, including how it threatens the right to keep and bear arms. The brief is available online at [FPCLegal.org](https://fpclegal.org).

“These secret government watchlists pose a huge threat to the fundamental rights of Americans,” explained FPC Director of Legal Policy and brief co-author Matthew Larosiere. “The government is trying to claim that being placed on such a list doesn’t harm a protected liberty interest, we explain just how wrong that is. From being harassed when traveling internationally, to being subject to delays, or even outright denied the ability to purchase a firearm.”

“These are the types of consequences that generally come with a conviction for a serious crime, not a bureaucratic hand-wave. That these heavy consequences are imposed upon thousands of Americans, without any real Due Process protections, is an embarrassment. The Fourth Circuit should uphold the decision below, and the government should correct course.”

“We are proud to stand among such a diverse group of amici in support of the Constitution and liberty” said Larosiere. “Organizations across the spectrum of interests and viewpoints, from the ACLU, to the Cato Institute, to the Electronic Frontier Foundation all agree that the government’s use of top secret lists deny Americans their rights and is unconstitutional.”

Background

- America’s “war on terror” has spanned roughly two decades, bringing with it warrantless surveillance of Americans, the creation of secret lists, and more.
- The TSDB, or the “watchlist,” is the database from which other lists like the “no-fly” list are built.
- The watchlist is inherently unreliable, with standards so lax it has come to cover around 1.2 Million people.
- People are “nominated” to the watchlist as “known or suspected terrorists” even where there is no evidence the person engaged, or plans to engage, in any criminal activity.
- Inclusion on the watchlist may subject an individual to a litany of civil rights deprivations, including long detentions when traveling, heightened hostility in routine interactions with law enforcement, and deprivations of the right to keep and bear arms.

- Because of the massive restraints on their liberty, 23 Americans who suspected they may be on the watchlist (since, again, it is secret) sued in the Eastern District of Virginia.
- The government contends, among other things, that inclusion on the watchlist does not deprive a protected liberty interest sufficiently.
- The plaintiffs won in the Eastern District of Virginia, and the government is now appealing the decision to the Fourth Circuit.
- FPC and FPF filed as amici curiae to shed light on the seriousness of these constitutional deprivations, especially with respect to the right to keep and bear arms.