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August 4, 2003

The Honorable Tom Ridge
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Ridge:

We are writing to express our deep concern that, more than a year and a half since the terrible events of September 11, 2001, you still have not addressed one of the top intelligence breaches leading to these attacks – the failure to coordinate terrorist "watch lists."

The House and Senate Select Committees on Intelligence recently issued their *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001.* This report highlights the lack of coordination among federal agencies that maintain these criminal and terrorist watch lists, as well as a culture of secrecy that prevents the rapid sharing of this critical information with all who need it, including state and local officials. The report concludes that the watch list problem is among the "most glaring examples of incomplete information sharing" leading to the September 11 attacks.

Although you and President Bush have promised personally and repeatedly to take action – and despite congressional direction to do so – the Administration has passed off this responsibility among numerous offices, agencies, and task forces. In addition, GAO has issued an extremely troubling report, stating that the White House has provided "no direction" on this issue, according to the federal agencies involved.

Bush Administration officials have claimed that "the situation is not as bad as it appears on the face." Yet GAO also found that federal agencies still "do not have a consistent and uniform approach to sharing watch list information," that they continue to operate "in isolation from each other," and that they have "inconsistent and limited sharing" of watch list information.

In light of the fact that nearly two years have passed since the September 11 attacks, we would like to know the answers to three simple but critical questions: (1) who is responsible for consolidating criminal and terrorist watch lists; (2) what is your plan for fixing this problem; and (3) when will this problem be solved?

Joint Inquiry of the Intelligence Committees

After the events of September 11, it became clear that federal agencies responsible for countering terrorism were not communicating effectively. Subsequent investigations revealed that the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) failed to "connect the dots" regarding critical information that may have prevented or at least alerted officials to ongoing terrorist activity.

One of the most publicized incidents involved the failure of the CIA and FBI to share terrorist "watch list" information in a timely manner about two of the September 11 hijackers living in San Diego in 2001.[1] Watch lists are critical to preventing known or suspected terrorists and criminals from entering the country, apprehending them once inside the country, and arresting them when they try to leave.

In a report released on July 24, 2003, the House and Senate Select Intelligence Committees confirmed that "information flow" among federal agencies before September 11 was "less than complete."[2] More precisely, the Committees found "difficulty in obtaining data for watchlisting purposes from the FBI National Crime Information Center, in spite of ten years of negotiations with the Bureau for access."

With respect to the two September 11 hijackers living in San Diego, the Committees noted significant problems with sharing terrorist watch list information in a timely manner. According to the Committees:

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[1] *Agencies Still Fail to Share Information, Reports Say,* New York Times (Apr. 30, 2003); *see also Terrorism "Watch List" Was No Match for Hijackers,* Washington Post (Sept. 23, 2001).

[2] *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001,* House Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence (Dec. 2002) (released July 24, 2003) (online at http://a257.g.akamaitech.net/7/257/2422/24jul20031400/www.gpoaccess.gov/serialset/creports/pdf/fullreport.pdf).

> September 11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi provide perhaps the most glaring examples of incomplete information sharing . . . . As is demonstrated in other sections of this report, the CIA had reportable information about these men long before it asked that they be "watchlisted" in August 2001.
>
> As Director of Central Intelligence George Tenet testified before the Committees:
>
> The fact that this did not happen – aside from questions of CTC [Counter-Terrorism Center] workload, particularly around the period of the disrupted Millennium plots – pointed out that a whole new system, rather than a fix at a single point in the system, was needed.

Failure To Consolidate Terrorist Watch Lists

More than a year and a half after the September 11 attacks, the Bush Administration is still failing to adequately coordinate critical information about terrorist suspects. In April, GAO issued a report stating that the federal government's use of terrorist watch lists remains "decentralized," "diffuse," and "nonstandard."[3]

According to GAO, nine federal agencies maintain 12 different terrorist watch lists. Seven agencies have different policies and procedures for sharing information in these watch lists. Two agencies reviewed have no policies or procedures whatsoever for sharing watch list information with anyone outside their own agencies. GAO found that only half of these agencies share watch list information with state and local governments, and only one-fourth share this information with private entities. GAO also listed these problems:

- the watch lists use three different types of operating systems;
- nine systems have software applications that do not comply with open standards to allow the exchange of data among different systems;
- five system databases do not have a data dictionary to foster meaningful understanding of data from other agencies; and
- seven systems are not connected to a network outside their agencies.

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[3] U.S. General Accounting Office, *Information Technology: Terrorist Watch Lists Should Be Consolidated To Promote Better Integration and Sharing* (Apr. 2003) (GAO-03-322).

GAO stated that federal agencies still "do not have a consistent and uniform approach to sharing watch list information" and that existing activities "are not supported by systems with common architectures." Instead, agencies continue to work "in isolation from each other," resulting in "inconsistent and limited sharing."

Shifting Responsibility for Coordination

It appears the failure to coordinate terrorist watch lists has been caused by an absence of effective leadership and accountability. Responsibility for coordinating terrorist watch lists has been transferred repeatedly among various offices, agencies, and task forces over the past year and a half. In particular, responsibility for consolidating these lists has shifted from the White House, to the FBI, back to the White House, to the Department of Homeland Security, and most recently to a new interagency task force.

President Bush first gave this responsibility to you. According to President Bush's executive order creating the White House Office of Homeland Security, he charged you with overcoming interagency turf battles by coordinating all executive branch efforts to prepare for terrorist attacks.[4] As GAO observed, these problems were particularly acute with respect to the sharing of terrorist watch list information:

> A key reason for the varying extent of watch list sharing is the cultural differences among the government agencies and private-sector organizations involved . . . . [d]ifferences in agencies' cultures has been and remains one of the principal impediments to integrating and sharing information from watch lists and other information.[5]

When the President appointed you, he directed you to ensure that all executive departments and agencies "have sufficient technological capabilities and resources to collect intelligence and data relating to terrorist activities."[6] He also directed you to ensure that this critical information was "disseminated to and exchanged among appropriate executive departments and agencies responsible for homeland security," and to "promote exchange of such information with and among state and local governments and private entities."[7]

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[4] Executive Order 13228 (Oct. 8, 2001).

[5] GAO-03-322, *supra* note 3.

[6] Executive Order 13228 (Oct. 8, 2001).

[7] *Id.*

In July of last year, the Administration shifted responsibility for consolidating terrorist watch lists to the FBI. After establishing the White House Office of Homeland Security, President Bush issued the *National Strategy for Homeland Security,* which also recognized problems with terrorist watch lists.[8] The *National Strategy* called for increased sharing of watch list information, not only among federal agencies, but also among federal, state, and local governments and private-sector organizations. The *National Strategy* explained:

> Homeland security intelligence and information must be fed instantaneously into the Nation's domestic anti-terrorism efforts. Those efforts must be structured to provide all pertinent homeland security intelligence and law enforcement information – from all relevant sectors including state and local law enforcement as well as federal agencies – to those able to take preventive or protective action.[9]

Although the *National Strategy* directed the FBI to take on these functions, GAO reported later that the FBI transferred this responsibility back to the White House.[10] After accepting this charge for a second time, White House officials said they planned to develop an "enterprise architecture," which was to include a "consolidated watch list that brings together information on known or suspected terrorists."[11]

Unfortunately, federal agencies "reported that they received no direction from the Office of Homeland Security," according to GAO.[12] Lacking instructions from the White House, agencies have continued the status quo and are failing to share this critical information. When GAO tried to contact White House officials about these problems, the White House "did not respond to our inquiries," according to GAO.[13] Because of the White House's refusal to

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[8] White House Office of Homeland Security, *National Strategy for Homeland Security* (July 2002).

[9] *Id.* (emphasis added).

[10] GAO-03-322, *supra* note 3.

[11] *Id.*

[12] *Id.* (emphasis added).

[13] *Id.*

cooperate, GAO was unable to "determine the substance, status, and schedule of any watch list consolidation activities."[14]

President Bush then assigned the watch list consolidation effort to the new Department of Homeland Security. Last year, you and the President proposed, and Congress adopted, the Homeland Security Act of 2002, combining parts of 22 federal agencies and approximately 170,000 federal employees into a new department. Many concerns were raised during consideration of this bill with respect to how smoothly this consolidation process would occur, especially during an ongoing war against terrorism. Indeed, some warned that administrative reorganization tasks could detract from more practical efforts to counter terrorism.[15]

Once the Department was established, one of its most important tasks was to consolidate, analyze, and distribute intelligence information related to homeland security. According to your original proposal for the Department, the new agency "would ensure that information is shared between databases of border management, law enforcement, and intelligence community agencies so that individuals who pose a threat to America are denied entry to the United States."[16]

Since the establishment of the new Department of Homeland Security, many of the duties formerly conducted by the White House have been shifted to the new Department. Indeed, President Bush appointed you to be the new Secretary of Homeland Security. When GAO contacted the new Department about its watch list consolidation efforts, Stephen Cooper, your Chief Information Officer (CIO), informed GAO that the Department indeed had assumed responsibility for consolidating terrorist watch lists.[17]

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[14] *Id.*

[15] *See, e.g.,* Letter from Rep. Henry A. Waxman and Rep. David R. Obey to the Honorable Tom Ridge (July 9, 2002) (citing "the potential for disruption in the nation's war against terrorism"); *see also* U.S. General Accounting Office, *Homeland Security: Proposal for Cabinet Agency Has Merit, But Implementation Will Be Pivotal to Success* (June 25, 2002) (GAO-02-886T) (citing "start up problems and unanticipated consequences that result from the consolidations").

[16] President George W. Bush, *The Department of Homeland Security* (June 2002) (online at www.whitehouse.gov/deptofhomeland/sect3.html).

[17] GAO-03-322, *supra* note 3.

At a subsequent hearing before the House Government Reform Committee on May 8, 2003, however, Mr. Cooper testified that responsibility for coordinating terrorist watch lists had been transferred yet again. When asked who within the Bush Administration was currently responsible for this duty, he replied: "At the moment it is a coalition that includes the Department of Homeland Security, the Terrorist Threat Integration Center, the FBI and the Department of State and members of the intelligence community."[18]

In an exchange highlighting the circular nature of your approach to this problem, Rep. John Tierney asked Mr. Cooper when your Administration would resolve this issue:

> REP. TIERNEY: All this time, after September 11, 2001, we're sitting here saying the White House doesn't accept responsibility for this, the Department of Homeland Security doesn't accept responsibility for this. Some bureaucracy of an amalgamation of different agencies, whatever, it's getting to the point where they are now going to sit down and decide who is going to be in charge? Where is the leadership in that?
>
> MR. COOPER: I think the leadership is working together to further define and refine a true process for an integrated watch list activity.
>
> REP. TIERNEY: You say that with a straight face, which I think is admirable, but does that disturb you somewhat that this is the point that we're at?
>
> MR. COOPER: It is the point that we're at and I think that shortly we will have the definite answers.
>
> REP. TIERNEY: Can you define "shortly" for me?
>
> MR. COOPER: Can I get back to you?

Over two months later, we still have no answer. On July 24, 2003, Bill Parrish, Acting Assistant Secretary for Information Analysis at the Department of Homeland Security, testified before the House Select Committee on Homeland Security. When asked which federal entity ultimately will be responsible for maintaining a coordinated watch list system, he replied:

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[18] House Committee on Government Reform, *Hearings on Out of Many, One: Assessing Barriers to Information Sharing in the Department of Homeland Security,* FDCH Political Transcripts (May 8, 2003) (emphasis added).

> Should that reside in the Department of Homeland Security under our umbrella or is it more appropriate in the FBI? We hope to come to a rapid decision on that in working with the White House.[19]

When asked when Congress could expect this problem to be fully addressed, Mr. Parrish stated: "I think there is a process in place and we're moving fast on this to be able to get this up and running."

Conclusion

Ultimately, GAO has concluded that the current status of terrorist watch list consolidation efforts is "inconsistent with the most recent congressional and presidential direction."[20] Although officials in the Bush Administration claim "the situation is not as bad as it appears on the face,"[21] GAO found that even when sharing is occurring, "costly and overly complex measures have had to be taken to facilitate it."[22] Noting that central leadership is "crucial," GAO concluded that "the degree to which such leadership is occurring, and the substance and status of consolidation and standardization efforts under way, are unclear."[23]

As a result of your back-and-forth efforts, state and local officials have also reported that there has been little progress in making this critical information available to them. At the hearing last week, for example, George Foresman, the Deputy Assistant for Commonwealth Preparedness in the Virginia Governor's Office, was asked for his assessment of the status of terrorist watch list coordination. He first prefaced his response:

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[19] House Select Committee on Homeland Security, Subcommittee on Intelligence and Counterterrorism, *Hearings on Security Information Sharing Capabilities – Vertical and Horizontal Intelligence Communications,* FDCH Political Transcripts (July 24, 2003).

[20] GAO-03-322, *supra* note 3.

[21] *Hearing on Security Information Sharing Capabilities, supra* note 19.

[22] GAO-03-322, *supra* note 3.

[23] *Id.*

> Congressman, this is probably a bad day to ask me this question because we just spent the last week trying to get someone off of a watchlist only to find out it wasn't an FBI watchlist but someone else's watchlist that really wasn't a watchlist.

He then provided his full assessment:

> I think when we critically talk about the 700,000 law enforcement personnel, those at the local level, those at the state level, federal law enforcement personnel, the bottom line is the beat cop on the street is not having access to the information to be able to do a rapid check against it. And while I understand that we're certainly making progress towards planning for integration, I remain fundamentally concerned we don't understand what we're designing because we haven't really mapped out the larger strategic picture as of yet.[24]

Today, the current terrorist watch list system reportedly continues to suffer from major breaches. In a recent investigation, *ABC News* located two suspected terrorists living in the United States who had been on a terrorist watch list since 1995. According to Robert Wright, an FBI agent in the Chicago Counter Terrorism Office, these individuals and a number of others "should have been arrested, should have [been] behind bars, should have had their citizenship stripped, should have been evicted from this country."[25]

For all of the reasons outlined above, we request that you respond to the following questions within 30 days:

(1) Which specific official in your Administration is responsible for coordinating and consolidating all of the criminal and terrorist watch lists throughout the federal government?

(2) What is your detailed plan to effect the coordination and consolidation of these criminal and terrorist watch lists? Please provide a copy of this plan.

(3) By what specific date will these criminal and terrorist watch lists be fully coordinated and consolidated?

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[24] *Hearing on Security Information Sharing Capabilities, supra* note 19.

[25] *Hiding in Plain Sight*, ABC News (June 5, 2003) (online at http://abcnews.go.com/sections/wnt/US/wnt_watchlist030605.html).

Thank you for your assistance in this matter.

Sincerely,

Rep. Henry A. Waxman
Ranking Minority Member
House Committee on Government Reform

Rep. Jim Turner
Ranking Minority Member
House Select Committee on Homeland Security