

2016/08: The Orlando massacre: Should the United States ban suspected terrorists from buying guns?

What they said...

'We have to make sure that people that are terrorists or have even an inclination toward terrorism cannot buy weapons, guns'

Donald Trump, presumptive Republican presidential nominee

'They're blaming you, the (National Rifle Association) for the terrorist attack in Orlando and taking advantage of this tragedy to push their gun control agenda while emotions run high'

National Rifle Association message to members

The issue at a glance

On June 12, 2016, a gunman killed 49 people and injured 53 others inside Pulse, a gay nightclub in Orlando, Florida, United States. It was the deadliest mass shooting by a single gunman and the deadliest terrorist attack in the United States since the September 11 attacks in 2001.

The assailant was Omar Mateen, a 29-year-old American. In a 9-1-1 call shortly after the attack began, Mateen swore allegiance to the leader of the Islamic State of Iraq and the Levant (ISIL) and later told a negotiator he was 'out here right now' because of American bombing campaigns in Iraq and in Syria. The Central Intelligence Agency (CIA) has issued a statement claiming it found no links between ISIL and Mateen.

Immediately after the attack the United States President, Barack Obama, renewed his calls for those on terrorist watch lists to be denied legal access to guns. Similarly, the presumptive Republican presidential nominee, Donald Trump, also called for a ban on potential terrorists buying guns.

Four bills were put to the United States Senate, two seeking more rigorous background checks on gun buyers and two calling for various restrictions on suspected terrorists purchasing guns. Democrats staged a 26-hour sit-in to ensure the bills would be debated and voted on.

On June 20 all four bills were defeated in the Senate. The controversy surrounding United States gun laws and in particular limiting the access of potential terrorists to guns continues.

Background

Much of the information found below has been abbreviated from a Wikipedia entry titled 'Gun law in the United States'. The full text can be accessed at https://en.wikipedia.org/wiki/Gun_law_in_the_United_States

United States gun laws

Gun laws are found in a number of United States federal statutes. These laws regulate the manufacture, trade, possession, transfer, record keeping, transport, and destruction of firearms, ammunition, and firearms accessories. They are enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

The right to keep and bear arms is protected by the Second Amendment to the United States Constitution.

Second Amendment

In the United States the right to keep and bear arms is protected by the Second Amendment to the Constitution. While there have been vigorous debates on the nature of this right, there was a lack of clear federal court rulings defining the right until two relatively recent United States Supreme Court cases.

An individual right to own a gun for personal use was affirmed in the landmark District of Columbia v. Heller decision in 2008, which overturned a handgun ban in the Federal District of Columbia. In the Heller decision, the court's majority opinion said that the Second Amendment protects 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'

However, in delivering the majority opinion, Justice Antonin Scalia wrote on the Second Amendment not being an unlimited right: 'Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues. The Court's opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.'

The four dissenting justices argued that the majority had broken prior precedent on the Second Amendment, and took the position that the Amendment refers to an individual right, but in the context of militia service.

In the McDonald v. City of Chicago decision in 2010, the Supreme Court ruled that, because of the incorporation of the Bill of Rights, the guarantee of an individual right to bear arms applies to state and local gun control laws and not just federal laws.

The Supreme Court has not ruled on whether or not the Second Amendment protects the right to carry guns in public for self defense.

Federal appeals courts have issued conflicting rulings on this point. For example, the United States Court of Appeals for the Seventh Circuit ruled in 2012 that it does, saying, "The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside." [13] But the Tenth Circuit Court ruled in 2013 that it does not, saying, "In light of our nation's extensive practice of restricting citizen's freedom to carry firearms in a concealed manner, we hold that this activity does not fall within the scope of the Second Amendment's protections." More recently, the Ninth Circuit Court ruled in its 2016 decision *Peruta v. San Diego County* that the Second Amendment does not guarantee the right of gun owners to carry concealed weapons in public.

Eligible persons

The following persons are eligible to possess and own firearms within the United States:

- a. US citizens
- b. permanent resident aliens
- c. non-immigrant aliens admitted into the United States for lawful hunting or sporting purposes or if the non-immigrant alien falls under one of the following exceptions:
 - i. possesses a valid hunting license or permit issued by any US state
 - ii. an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or is en route to or from another country to which that alien is accredited
 - iii. an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State
 - iv. a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business has received a waiver from the Attorney General as long as the waiver petition shows this would be in the interests of justice and would not jeopardize the public safety under 18 U.S. Code § 922(y)(3)(c)

Deadliest mass shootings in the United States between 1982 and 2016

(The data shown below has been extracted from the Mother Jones Internet site. Mother Jones is a United States-based, non-profit news organisation which features independent, investigative reporting. The report from which this information has been drawn can be accessed at <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>)

Please note, we have included only those shootings which resulted in ten or more deaths.

In 2010, according to the United Nations Office on Drugs and Crime, 67% of all homicides in the U.S. were conducted using a firearm. In this year alone there were 30,470 firearm-related deaths. 30,000 is approximately the number of people who die annually in the United States through misuse of firearms.

June 12, 2016: Orlando nightclub massacre, Orlando, Florida; 49 killed, 53 injured
 Dec 2, 2015: San Bernardino mass shooting, San Bernardino, California; 14 killed, 21 injured
 Sept 16, 2013: Washington Navy Yard shooting, Washington, D.C. ; 12 killed, 8 injured
 Dec 14, 2012: Newtown school shooting (Sandy Hook Elementary School), Newtown, Connecticut; 28 killed, 2 injured
 July 20, 2012: Aurora theater shooting, Aurora, Colorado; 12 killed, 58 injured
 Nov 5, 2009: Fort Hood massacre, Fort Hood, Texas; 13 killed, 30 injured
 April 3, 2009: Binghamton shootings, Binghamton, New York; 14 killed, 4 injured
 April 16, 2007: Blacksburg, Virginia Tech, Blacksburg Virginia; 33 killed, 23 injured
 March 21, 2005: Red Lake Senior High School, Minnesota, Red Lake, Minnesota; 10 killed, 5 injured
 April 20, 1999: Columbine High School, Littleton, Colorado; 13 killed, 24 injured
 Oct 16, 1991: Luby's cafeteria, Killeen, Texas; 24 killed, 20 injured
 Aug 20 1986: United States Postal Service shooting, Edmond, Oklahoma; 15 killed, 6 injured
 July 18, 1984: San Ysidro McDonald's massacre, San Ysidro, California; 22 killed, 19 injured

Terrorist watch lists in the United States

(The information given below on the construction of the various terrorist watch lists in the United States has been drawn from a June 14, 2016 report published in The Daily Signal.

The full text can be accessed at <http://dailysignal.com/2016/06/14/the-terrorist-watchlist-explained/>

The Terrorist Screening Database (TSDB) is the official name for the main United States terrorist watch list; it is maintained by the FBI's Terrorist Screening Center. The terrorist watch list is the central United States' repository of known and suspected terrorists, both foreign and domestic.

The list receives names of suspected international terrorists from the Terrorist Identities Datamart Environment, maintained by the National Counterterrorism Center in connection with the United States intelligence community and security agencies that have information on terrorists. It also receives data on domestic terrorists from the FBI.

The terrorist watch list includes only information used to identify terrorists. The database itself does not include classified

information on terrorists regarding what they have done and how they have been tracked.

From the Terrorism Screening Database, or terrorist watch list, more specific lists are created for different purposes. For example, the no-fly list and the selectee list are used to prevent individuals from traveling or to subject them to greater scrutiny. For an individual to be included on the no-fly list or selectee list, additional evidence of his threat to aviation security and clear identifying information is needed above and beyond the standard of reasonable suspicion.

Another list extracted from the terrorist watch list is the Known and Suspected Terrorist File, or KST file. For someone to be included in the KST file, clear identifying information is needed.

Terrorist watch lists and the right to buy firearms

The National Instant Criminal Background Check System, used to check firearm purchases, draws on the KST file.

Inclusion in the file does not itself prevent a gun purchase, but flags the purchase for further review.

Currently, the individual is allowed to purchase a firearm so long as he is not a felon, adjudicated to be mentally ill, a fugitive from justice, an illegal immigrant, or prohibited from making gun purchases for another statutory reason.

Internet information

On June 27, 2016, Quartz published an opinion piece by Meredith Bennett-Smith titled 'Americans can no longer be trusted with the Second Amendment'

The comment criticises the historical basis for the Secondment Amendment, the manner in which it has been subsequently interpreted and the consequences of wide-spread ownership of semi-automatic assault weapons.

The full text can be accessed at <http://qz.com/714884/we-should-come-for-american-guns/>

On June 22, 2016, Hamodia published an opinion piece titled 'Most People on Terror Watch Lists Can't Buy Guns Anyway'

The comment argues that most of those on the terror watch list are not United States nationals and so are ineligible to legally buy guns.

The full text of this article can be accessed at <http://hamodia.com/2016/06/22/people-terror-watch-lists-cant-buy-guns-anyway/>

On June 22, 2016, Townhall published a background/opinion piece by Connor Hoffman titled 'The Gun Control Debate: Several Arguments Being Made against Using the Terror Watch List'

The article considers a range of arguments made against the terror watch list.

The full text can be accessed at <http://townhall.com/tipsheet/connorhoffman/2016/06/22/the-gun-control-debate-several-arguments-being-made-against-using-the-terror-watch-list-n2182173>

On June 21, 2016, CNN reported on the United States Senate's rejection of four bills, each of which would in some way have regulated or limited citizens' access to guns.

The report is titled 'Senate rejects series of gun measures'

It can be accessed at <http://edition.cnn.com/2016/06/20/politics/senate-gun-votes-congress/>

On June 21, 2016, Vox published a background piece explaining the operation of the no-fly list and how it could be used to restrict gun ownership.

The full text can be accessed at <http://www.vox.com/2015/12/7/9865756/no-fly-list>

On June 20, 2016, FiveThirtyEight published a comment by one of its editors, Andrew Flowers, titled 'The Problems With Using The Terrorist Watch List To Ban Gun Sales'

The comment looks at the shortcomings of using the terrorist watch list to limit gun sales.

The full text of this comment can be accessed at <http://fivethirtyeight.com/features/the-problems-with-using-the-terrorist-watch-list-to-ban-gun-sales/>

On June 19, 2016, the United States ABC News reported on an interview in which the presumptive Republican presidential nominee, Donald Trump, declared his support for those on the terrorist watch list or the no-fly list being prevented from buying guns.

The full text of this article can be accessed at <http://abcnews.go.com/Politics/donald-trump-inclination-terrorism-shouldnt-buy-guns/story?id=39961668>

On June 17, 2016, the Los Angeles Times published an opinion piece by Timothy Edgar, a visiting fellow at Brown University. The comment is titled 'Guns and the no-fly list: Of course we shouldn't allow suspected terrorists to buy firearms'

Edgar argues that those on suspected terrorist lists should not be legally able to buy firearms. The full text can be accessed at <http://www.latimes.com/opinion/op-ed/la-oe-edgar-watch-list-no-fly-guns-20160617-snap-story.html>

On June 17, 2016, the Los Angeles Times published an opinion piece Charles C.W. Cooke of National Review. The comment is titled 'Guns and the no-fly list: Whatever happened to due process?'

Cooke argues that the basis on which the no-fly list has been established and the relative inability of those on it to

challenge their inclusion make it an inappropriate basis on which to deny gun ownership.

The full text of this comment can be found at <http://www.latimes.com/opinion/op-ed/la-oe-cooke-no-fly-list-guns-fifth-amendment-20160617-snap-story.html>

On June 16, 2016, The Guardian published a news report titled 'Senate filibuster ends as Democrat claims gun control victory' which details the Democrats' bid to force a debate and vote on gun control measures. Though the report ends optimistically, no bills passed the Senate.

The full text can be accessed at <https://www.theguardian.com/us-news/2016/jun/16/enough-senate-filibuster-ends-as-democrat-claims-gun-control-victory>

On June 14, 2016, Business Insider published a background piece titled 'Barack Obama warned of a massive loophole in US gun laws for terrorists just 12 days before the Orlando shootings'

The article refers to President Obama's critical attitude to what he deems deficiencies in the current United States gun laws.

The full text can be accessed at <http://www.businessinsider.com.au/barack-obama-warned-of-a-massive-loophole-in-us-gun-laws-for-terrorists-just-12-days-before-the-orlando-shootings-2016-6>

On January 5, 2016, CNBC reported from the White House of President Obama's plans to toughen the requirements on gun sellers regarding background checks of their customers.

The report is titled 'Obama announces gun control plans: "I believe in the Second Amendment"'

In addition to outlining Obama's plans, the report includes his comments on the extent to which such measures are misrepresented as an attack on personal freedom.

The full report can be accessed at <http://www.cnbc.com/2016/01/05/obama-announces-gun-control-plans-i-believe-in-the-second-amendment.html>

On December 7, 2015, the American Civil Liberties Union (ACLU) published a comment by Hina Shamsi, Director, ACLU National Security Project, titled 'Until the No Fly List Is Fixed, It Shouldn't Be Used to Restrict People's Freedoms' Shamsi argues that until the weaknesses in the No-fly List have been addressed it should not be used to restrict Americans' access to guns.

The full text of this argument can be found at <https://www.aclu.org/blog/speak-freely/until-no-fly-list-fixed-it-shouldnt-be-used-restrict-peoples-freedoms>

On December 3, 2015, CNN published an opinion piece by David Wheeler, a freelance writer and journalism professor at the University of Tampa, which argues that those on terrorist suspect lists should not be legally able to buy firearms in the United States and which blames the NRA and extremists within the Republican Party for allowing this to happen. The piece is titled 'Why does NRA allow guns for terrorists?' It can be accessed at <http://edition.cnn.com/2015/12/02/opinions/wheeler-nra-guns-terrorists/>

On July 24, 2014, The Intercept published a leaked copy of the guidelines employed in the compilation and use of the terrorist watch list. The document is titled 'Watchlisting Guidance' and is dated March 2013. It has been criticised for its inadequacies.

The full text of the guidelines can be accessed at <https://theintercept.com/document/2014/07/23/march-2013-watchlisting-guidance/>

On January 9, 2013, People's World published a comment by Rick Nagin titled 'The Second Amendment Is a dangerous anachronism'

The comment argues that the circumstances which gave rise to the Second Amendment to the United States Constitution no longer pertain and that the guarantee of gun ownership rights is now hazardous and socially irresponsible.

The full text of this article can be accessed at <http://peoplesworld.org/the-second-amendment-is-a-dangerous-anachronism/>

(The United States) Library of Congress keeps overviews, books and articles dealing with the country's Constitutional law.

The library holds and overview of Supreme Court rulings regarding the Second Amendment to the Constitution of the United States. The overview is titled 'United States: Gun Ownership and the Supreme Court'

It begins with an overview of the 2008 Supreme Court ruling that the Second Amendment conferred upon individual United States citizens the right to bear arms.

The overview can be accessed at <https://www.loc.gov/law/help/second-amendment.php>

In 1996 The Atlantic Online published an opinion piece by Wendy Kaminer, public-policy fellow at Redcliff College, titled, 'Second Thoughts on the Second Amendment'. The piece disputes the right of the individual citizen to bear arms and does so from a conservative perspective. Interestingly it was written 12 years before the Supreme Court ruled that the Second Amendment guaranteed just such a right.

The full text of the comment can be accessed at <http://www.theatlantic.com/past/issues/96mar/guns/guns.htm>

In 1994 Valparaiso University Law Review published an essay by David Vandercoy, Professor of Law, Valparaiso University School of Law, titled 'The History of the Second Amendment'

Vandercoy argues that the historical context and the intentions of the framers of the United States Constitution indicate that the aim of the Amendment was that each individual citizen should be able to own and bear arms.

Interestingly this was written 14 years before the Supreme Court ruled that the Second Amendment guaranteed just such a right.

The essay can be accessed in pdf format at <http://www.constitution.org/2ll/2ndschol/89vand.pdf>

Arguments in favour of suspected terrorists being banned from buying guns

1. It is dangerous to arm those who are considered a national security risk

Those who support banning suspected terrorists from buying firearms argue that this is merely common sense and that the United States already prevents a large group of people who have yet to commit a crime from purchasing firearms because they are considered a risk to public safety.

Timothy Edgar, a visiting fellow at Brown University, has stated, 'Our laws prevent many dangerous people from buying firearms or explosives - even if they have never been arrested or convicted of a crime. We bar habitual drug users, people under restraining orders for stalking and domestic violence, and dishonourably discharged veterans.'

Edgar argues that it is illogical and inconsistent to then allow suspected terrorists to purchase firearms. Edgar contends, 'That makes no sense. When law enforcement and intelligence agencies say they have specific and credible information that a prospective gun buyer may be a terrorist, we should listen to them and block the sale. National security often requires hard choices. This is not one of them.'

Mr Edgar has further noted that terrorists have publically stated their intention to use the United States' easy access to guns in order to mount terrorist attacks. Edgar has observed, 'Today's terrorists have shifted from planning spectacular attacks involving airplanes. They prefer to radicalize followers on the Internet, encouraging easily planned carnage. We knew of this trend long before San Bernardino and Orlando. In a video in 2011, an American-born spokesman for Al Qaeda put it bluntly. "America is absolutely awash with easily obtainable firearms. ... So what are you waiting for?"

On December 3, 2015, CNN published an opinion piece by David Wheeler, a freelance writer and journalism professor at the University of Tampa, in which he argued, '[W]e need every tool possible to fight gun violence, especially in an era when mass shootings have become a regular occurrence and when terrorists use guns as their weapon of choice.'

Wheeler cited an alarming statistic: 'The nonpartisan Government Accountability Office recently released a report showing that from 2004 to 2014, people on terrorism watch lists successfully purchased guns no fewer than 2,043 times.' After the Orlando nightclub massacre of June 12, 2016, in which a man declaring allegiance to ISIL killed 49 people and injured 53 others, President Barack Obama stated, 'This massacre is...a further reminder of how easy it is for someone to get their hands on a weapon that lets them shoot people in a school, or a house of worship, or a movie theatre, or a nightclub. And we have to decide if that's the kind of country that we want to be.'

On June 1, 2016, eleven days prior to the Orlando massacre, President Obama had explained his opposition to people on terrorist watch lists being allowed to purchase firearms.

President Obama stated, 'I've got people who we know have been on ISIL websites, living here in the United States, US citizens, and we're allowed to put them on the "No fly" list when it comes to airlines. But because of the National Rifle Association, I cannot prohibit those people from buying a gun.

This is somebody who is a known ISIL sympathiser. And if he wants to walk into a gun store or gun show right now and buy as many weapons and [as much] ammo as he can, nothing's prohibiting him from doing that, even though the FBI knows who that person is.'

2. The suspected terrorist lists are carefully constructed and allow people a right of appeal

It has been claimed that the accusations made about the unreliability of the lists naming suspected terrorists are exaggerated.

Timothy Edgar, a visiting fellow at Brown University, has stated, 'At the FBI's Terrorist Screening Center, analysts vet the intelligence to see if it is specific enough to meet a standard of "reasonable suspicion." If so, the suspect goes on the list. If there is a threat the suspect will carry out a violent attack, he is placed on the smaller no-fly list, a subset of the TSDB [Terrorist Screening Database]. The list is then shared with agency systems that screen travellers and with the FBI's information system for state and local law enforcement.'

On June 27, 2016, South Carolina Republican Senator Lindsey Graham declared his faith in the no-fly list. Senator Graham stated, 'To get on the no fly-list, the intelligence community, the CIA, NSA, all of the intelligence people, nominate people to be on the no-fly list. The FBI puts you on it and I believe there's a better chance of winning the lottery than getting on this list if you did nothing wrong.'

The probability that a law-abiding United States gun buyer would be mistakenly prevented from buying a gun has been said to be very low. It has been claimed that there is roughly a 1-in-89,000 chance a background check conducted since 2013 would see someone flagged in the terror watch list.

Senator Graham also noted that those who believe they had been placed on the list inappropriately were able to challenge this. The Senator stated, 'If you find yourself on the list, and you're denied buying a gun because you're on this list, within 14 days you can file a petition in District Court anywhere in the country, and within 14 days the judge has to decide. The burden of proof is on the Government, the proof that you should be on the list based on credible evidence

and if the Government loses it has to pay your attorney fees. So within two weeks of filing a petition, you'll have your rights restored if you're on the list wrongfully.'

The Department of Homeland Security (DHS) has a redress process for those who believe their travel within the United States or across the national border has been unjustly impeded.

The DHS Internet site states, 'The Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP) is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs-like airports and train stations-or crossing U.S. borders. This includes: watch list issues; screening problems at ports of entry; situations where travelers believe they have been unfairly or incorrectly delayed, denied boarding or identified for additional screening at...transportation hubs.'

3. The right to bear arms is a dangerous anachronism

Critics of the United States' citizens' supposed Constitutional right to bear arms argue that the circumstances that may have legitimised such a right no longer apply. Further, they argue, circumstances are now such that this disputed right may in fact put United States' citizens at even greater risk.

Critics have noted that the circumstances which gave rise to the Second Amendment that 'the right of the people to keep and bear Arms, shall not be infringed' no longer pertain.

It has been argued that the 'right' was given as a means of enabling the states to establish citizen militia in order to quell civil unrest. On January 9, 2013, Rick Nagin wrote, 'The new nation in 1787 had no standing army and the propertied gentlemen who wrote the Bill of Rights feared the uprisings of citizens, such as had occurred in the Shays' Rebellion the previous year, and wished to give the states power to mobilize citizens to crush them.'

Nagin went on to explain, 'That's why the amendment reads: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."'

As an example of the operation of the Amendment toward the quelling of civil unrest, Nagin states, 'Under his presidency in 1794 Washington used the combined militia of several states to suppress the Whiskey Rebellion in Western Pennsylvania.'

It has also been suggested that the newly formed United States, a confederacy of formerly independent states, was wary of a centralised government's power and wanted to give the states a means of defending themselves against possible future tyranny. Thus it allowed states to form citizen militias to protect their rights (at least in part against an over-reaching future federal government).

Wendy Kammerer, a contributing editor of *The Atlantic* and a public-policy fellow at Radcliffe College, has explained this position in this manner, 'There is little dispute that one purpose of the Second Amendment was to ensure that the people would be able to resist a central government should it ever devolve into despotism.'

Critics maintain that these conditions no longer apply. The United States has armed forces as well as police forces to defend its citizenry from external attack and from civil unrest. Further the federation is now well-established and there is no longer the same fear (other than among a lunatic fringe) that a centralised government might strip citizens of their freedom.

It has also been argued that the development of high-powered automatic and semi-automatic weapons and the advent of terrorist threats have made the Second Amendment 'right' a danger rather than a protection.

On June 27, 2016, following the Orlando massacre, Meredith Bennett-Smith, one of the editors of *Quartz*, wrote, 'The Constitution is supposed to protect Americans' right to life, liberty, and the pursuit of happiness. But right now, the Second Amendment ensures that killers have the right to end the lives of innocents in movie theaters, shopping malls, elementary schools and now gay bars.'

4. Gun ownership prohibitions on those on watch lists would be imposed with care

Some of the proposals put to Congress to deny guns to terrorist suspects deliberately ensure that these prohibitions would only occur after appropriate consideration.

The most prominent of these has been put by Democrat Senator Dianne Feinstein of California. Feinstein's measure would have allowed the attorney general to use the Terrorist Screening Database to deny gun sales to a suspected or known terrorist, if there is 'a reasonable belief that the applicant may use a firearm in connection with terrorism.'

Feinstein's bill would alert authorities when anyone who had been on a watch list in the past five years tried to buy a weapon, but would not automatically bar the sale.

This is a significant extension on merely barring those on a watch list as it would include a wider group of people of potential terrorist significance. However, it is not an automatic block as the decision as to whether an individual should be prohibited from buying a weapon would ultimately be taken by the attorney general's department on a case by case basis.

A somewhat similar proposal has been put by Republican Senator from Texas, John Cornyn. Cornyn stressed that his proposal kept the presumption of innocence. His measure would let the government delay a gun sale to a suspected terrorist for 72 hours. Within this time, prosecutors would need to go to court and convince a judge there was probable cause in order to permanently block the sale.

Senator Cornyn stated, 'The role of the courts is to be an independent third party and evaluate those so the government doesn't abuse its authority.' (Democrats have argued that 72 hours is too short and does not give the Justice Department enough time to block the sale.)

In the event, on Monday 20, 2016, four gun control bills (including Feinstein's and Cornyn's) were voted down in the United States Senate.

5. Even harsher restrictions should be placed on gun ownership than bans on potential terrorists

Defenders of United States' citizens' right to bear arms have argued that the perpetrator of the recent Orlando massacre would not have been prevented from buying weapons even if the law had been changed, as he was not on a terrorist watch list. The shooter, Omar Mateen, had had his name removed from the government's watch list after a 2014 inquiry. As a result, the FBI's Joint Terrorism Task Force would not have been alerted when he sought to buy the weapons he later used and any changed law denying gun ownership to those on a watch list would not have affected him. It has similarly been claimed that the shooter in the 2015 San Bernardino massacre would not have been impeded by a prohibition against gun ownership for those on a watch list.

However, those who would have the law changed argue that what is more concerning is that currently even those on the list can buy powerful weapons. As an instance of this, the parents of the perpetrator of the 2015 San Bernardino massacre which resulted in 14 people dead and 23 injured are able to buy firearms. The husband and wife pledged allegiance to ISIS on Facebook together after their son had committed the mass murder. They were then placed on the FBI's terrorist watch list. Critics of current gun laws are concerned that despite this they are still legally able to buy guns. It has further been suggested that if proposed law reforms would not have stopped either the San Bernardino or the Orlando perpetrator, then perhaps even stricter reforms are needed.

An analysis by Aamer Madhani and Kevin Johnson published in USA Today on June 14, 2016, stated, 'There isn't anything in state or U.S. law that would have prevented the Orlando shooter from legally purchasing the weapons that authorities said he bought just days before he set out to conduct the worst mass shooting in U.S. history.'

There are those who argue that, though a step in the right direction, merely banning those on the terrorist watch lists from buying high-powered weapons is insufficient.

On June 27, 2016, following the Orlando massacre, Meredith Bennett-Smith, one of the editors of Quartz, wrote, 'The fact is that we need fewer guns in the United States. We need to stop selling assault rifles. And if there is no way to do this in a way that satisfies constitutional scholars, we need to change the Second Amendment.'

Arguments against suspected terrorists being banned from buying guns

1. The right to bear arms is guaranteed under the Second Amendment to the United States Constitution

Supporters of the right of each citizen of the United States to own a firearm claim that the strongest guarantee of this supposed right is the Second Amendment to the United States Constitution.

The Second Amendment of the United States Constitution reads: 'A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.'

Those who argue that this Amendment includes not merely a right for states to have armies (here composed of citizen militia) but also a more general right for individual citizens to carry arms in self-defence (including self-defence against a tyrannical government) frequently cite some of the views expressed by the Framers of the United States Constitution.

One of these was George Mason, who stated, 'History has demonstrated that the most effective way to enslave a people is to disarm them.' Similarly Patrick Henry has been quoted as saying, '[T]he great object is that every man be armed Everyone who is able may have a gun.' The last observation is frequently quoted as it appears to stress the importance of individuals being able to carry arms.

In 1994, Constitutional scholar, David Vandercoy, Professor of Law, Valparaiso University School of Law, concluded that the intention of the Second Amendment was that 'the common public purpose of preserving freedom would be served by protecting each individual's right to arms.'

A recent Supreme Court ruling has confirmed that the right to bear arms is held by individuals rather than state-orchestrated militia.

On June 26, 2008, in *District of Columbia v. Heller* (PDF), the United States Supreme Court issued its first decision since 1939 interpreting the Second Amendment to the United States Constitution. The Court ruled that the Second Amendment to the Constitution confers an individual right to possess a firearm for traditionally lawful purposes such as self-defence. It also ruled that two District of Columbia provisions, one that banned handguns and one that required lawful firearms in the home to be disassembled or trigger-locked, violate this right.

The extent to which individual gun ownership has historically been linked to the United States' nation-founding core values means that all attempts to regulate gun ownership tend to be construed as an attack on personal freedom.

In January, 2016, President Obama required gun sellers to institute more rigorous background checks. These were condemned in terms of an attack on individual freedom. House Speaker Paul Ryan stated, 'The president has never respected the right to safe and legal gun ownership that our nation has valued since its founding... His words and actions amount to a form of intimidation that undermines liberty.'

2. Those on suspected terrorist lists have been convicted of no wrongdoing. They are only considered likely to commit a terrorist outrage

Those who oppose the prevention of people on suspected terrorist lists from legally buying guns argue that it is unjust to restrict the freedoms of individuals who have not been proven to have committed a crime.

This position has been put by Charles C.W. Cooke, editor of National Review Online. Cooke has stated, 'In free countries such as the United States, we insist that the government distinguish between those who are "suspected" of lawbreaking and those who have been arrested, charged, convicted, or - at the very least - named in a time-limited warrant that has been signed by a judge.'

Cooke continued, 'It is for this reason that we are happy to detain those who have been accused of, or charged with, a

crime, but do not allow our authorities to arbitrarily imprison those they merely believe are worth watching. It is for this reason that we are comfortable with locking up or imposing penalties upon those who have been found guilty in a court of law, but refrain from doing either of those things on the basis of mere rumour or mistrust. And it is for this reason that we are prepared to inflict permanent restrictions on those who have been convicted of serious crimes, but insist that the innocent must enjoy their full complement of rights.'

Cooke has concluded in regard to his opponents, that when Democrats 'argue that nobody on the "terror watch list" should be permitted to buy a gun, they are saying in effect that the government should have the power to deprive you of your enumerated constitutional rights purely by entering your name into a database.'

A similar point has been made on December 7, 2015, by Hina Shamsi, Director of the American Civil Liberties Union (ACLU) National Security Project. Mr Shami stated, 'The government has emphasized that it is making predictive judgments that people like our clients - who have never been charged let alone convicted of a crime - might nevertheless pose a threat. That's a perilous thing for it to do. As we've told the court based on evidence from experts, these kinds of predictions guarantee a high risk of error.'

3. There are an unjustifiably large number of people on these lists

The exact number of people on the no-fly list, and the criteria used to put them there, are state secrets, although past travel to certain countries, social media postings, drug use and human error are believed to be factors.

A recurring problem is that people with similar names to suspected individuals have been included on the no-fly list. This is a marked problem given frequent imprecise English translations from languages such as Arabic.

Senator Marco Rubio, a Republican representative for Florida, has stated, 'The majority of the people on the no-fly list are oftentimes people that just basically have the same name as somebody else, who doesn't belong on the no-fly list.'

Drawn up by the FBI in the wake of the 9/11 attacks, the no-fly list is widely held in disrepute. It contains 700,000 names, according to one estimate, and has mistakenly included infants, US military veterans and politicians including Edward Kennedy and John Lewis. Critics describe it as unwieldy, unfocused and inflated.

Opponents of the list argue that until the manner of its compilation is reformed it should not be used to curtail freedoms.

Tim Sparapani, a privacy consultant at SPQR Strategies, has stated, 'It's better for the government to focus on known terrorists and have a tiny list than have a bloated list that comprises hundreds of thousands of individuals and diverts attention and resources away from the target.'

The criteria for inclusion on the terrorist watch list have been widely criticised. In 2013 the guidelines for the compilation and use of the terrorist watch list were leaked. They included the admission that there may be circumstances where people were included on the list without the basis of 'reasonable suspicion' being met. The following advice was given,

'[I]n such situations, the nominating agency can ensure that the information provided is an accurate representation of the information obtained.' Critics have noted that all this asks for is that inadequate information be fully reported.

It has also been noted that the growing number of people on these lists have no genuine means of redress. They cannot effectively challenge their inclusion on these lists.

On December 7, 2015, Hina Shamsi, Director of the American Civil Liberties Union (ACLU) National Security Project stated, 'Unfortunately, the government's new redress process still falls far short of constitutional requirements. In our case, it refuses to provide meaningful notice of the reasons our clients are blacklisted, the basis for those reasons, and a hearing before a neutral decision-maker.'

Additional problems have been noted with the tardy manner in which those needing to be removed from the list have their names deleted. The federal inspector general's office found in 2014 that the FBI was taking too long to remove some names from lists after investigations or suspicion ended. An inspector general report found that 15 percent of people who were previously under investigation, and then cleared, were not removed promptly by the FBI.

4. Many of those on the terror watch list can already be prevented by the federal government from purchasing a gun.

When an individual attempts to purchase a firearm, the National Criminal Background Check System checks the Known and Appropriately Suspected (KST) file-which is taken from the terror watch list-for a possible match. If the individual in question is on the list, then he or she is marked for 'further review' and cannot purchase the firearm if 'a felon, adjudicated to be mentally ill, a fugitive from justice, an illegal immigrant, or prohibited from making gun purchases for another statutory reason'. Since 2004, 212 United States persons named as suspected terrorists on the list failed gun background checks, according to the Government Accountability Office report.

For those who claim that this is a very small number of people to have been banned from buying a gun, critics of stricter limits argue that the number may say more about the imperfect nature of the 'suspected' terrorist list. It is likely that many on this list were allowed to purchase a gun because background checks revealed no legitimate reason why they should be prevented from doing so. A 2009 United States Justice Department audit showed that 35 percent of the people on the list were 'associated with FBI cases that did not contain current international terrorist or domestic terrorism designations' and should have been removed from the list.

However, it has also been noted that most of those on the terrorist watch list are not eligible to purchase guns legally in the United States. With few exceptions, only United States citizens and legal residents in the country on immigrant visas can buy a gun. The FBI estimates that less than one percent of people on watch lists are United States persons, meaning citizens or those living legally in the United States.

The number is imprecise because government terror watch lists are not public, and federal officials have been reluctant to say how many Americans are on the no-fly list. The number also fluctuates as officials add and remove suspected terrorists from the list - which in some cases is done when a list error is discovered. However, the FBI estimates there

are about one million total identities on its consolidated terror watch list and 5,000 or fewer of those people - about 0.5 percent - are United States citizens or legal residents.

5. Banning those on these lists from buying guns would warn them of their suspect status

Those who oppose banning those on the terrorist watch list or the no-fly list from buying guns argue that doing so may actually prove counter-productive and increase the risk posed to the population at large.

Martin Reardon, a former chief of the FBI's Terrorist Screening Operations Center, has claimed, 'closing this loophole really won't make a difference.'

It has been suggested that the potential terrorist, if blocked when attempting to buy a gun, would probably then proceed to buy the gun illegally on the black market. This would mean that the FBI would then be unlikely to have any record of what was bought or by whom.

Currently, though the FBI cannot prevent those on the terrorist watch list from buying a gun, they are aware of the purchase and can monitor the case further.

Martin Reardon explained, '[The agent can] go to the gun store and ask what is it a person is trying to buy? Was there anyone else with them? What did he say? Things like that.'

According to a recent report from the Government Accountability Office, people on the terrorist watch list have tried to buy a gun through a federally licensed dealer almost 2,500 times in the past 10 years; they've been approved in 91 percent of cases. This means that at the least the FBI is aware that they are armed and can keep them under closer surveillance.

If the gun is bought on the black market because the original legal purchase has been blocked, then the buyer is now aware that he or she is under observation and is likely to proceed with even greater care in whatever terrorist activity is being planned. In 2015, 244 background checks involved people on the list. The director of the Terrorist Screening Center from 2009 to 2013 claims, 'It would absolutely, totally ruin the cases that they've got...If a guy knows that he's watch-listed, he's going to act differently.'

Further implications

In 1996, after the Port Arthur massacre, Australia successfully put in place legislation restricting and regulating Australians' gun access and prohibiting certain classes of firearm. Measures of this scope are unlikely to ever be implemented in the United States.

Australia's laws succeeded in casting gun ownership as a privilege for which Australians had to demonstrate both competence and a need. In the United States gun ownership is seen as a right, one to which the population appears to have a particularly strong attachment, so that it is defended with far greater vigour than many of the other rights enshrined within the United States Constitution.

The right to possess firearms and the desire to protect the country against terrorism come together in different ways depending on individual beliefs. On the one hand, whenever a gun outrage occurs within the United States (whether involving formal terrorism or not) those supporting universal gun ownership pose this as a solution, not as part of the problem.

The argument is usually put that if only all or some of those at the scene of the gun attack had been appropriately armed, they would have been able to defend themselves against their assailant. (The fact that the country has substantially unfettered access to guns and yet armed individuals do not succeed in defending themselves in this way has yet to undermine this argument.)

The situation is further complicated by what appears to be an historical belief in the right to armed civil disobedience as a defence against oppression. The Second Amendment appears to give expression to a desire to enable people to defend themselves against the tyranny of a centralised government. The country's political ideology grew out of small-scale communal government centring on church and town councils and in opposition to what came to be seen as subjugation by England. When the country federated there remained a powerful residual suspicion of strong central government which was seen as a threat to individuals' freedom.

The extreme lunatic fringe of such attitudes has prompted a series of domestic terrorist attacks within the United States which well predate those perpetrated or inspired by Muslim extremists. The best-known and most deadly domestic terrorist attack was the Oklahoma City bombing which occurred in April, 1995, and resulted in the deaths of 168 people. It is also possible to see the assassination or attempted assassination of many United States political leaders as a related form of action.

What complicates the situation so tragically is that one of the preconditions for mass killing and the supposed partial solution to mass killing are seen by many Americans as one and the same thing - the right to bear arms.

There has been an attempt to break this impasse since September 11, 2001, and the emergence of a popularly recognised external terrorist danger. A range of anti-terrorist laws, which have restricted the civil liberties of some within the United States (such as the removal of travel rights from those on the no-fly list) have raised the possibility that at least this category of threat might be reduced if potential terrorists were denied legal access to guns. Some conservative-leaning politicians, such as the presumptive Republican presidential nominee, Donald Trump, have given qualified support to such measures. However, these restrictions also seem unlikely to be successful.

When the threat could be seen as purely external and those to whom guns were being denied were categorised as non-American, such restrictions may have had some chance of success. However, the terrorist watch list includes a minority of United States nationals and the criteria for inclusion has been condemned as too vague. Therefore, denying

guns to those on the list can be seen as a threat to the gun ownership rights of the ordinary, potentially-innocent, United States citizen.

It is an indication of how bitter the battle is, that those in favour of stricter gun laws and those opposed have chosen this tiny area over which to dispute. From the point of view of those who wish to prevent gun-related deaths by restricting gun access, the gains to be made are likely to be small. A total of 256 Americans were killed in firearm-related terrorist incidents between 1970 and 2014 (excluding the year 1993), according to the Global Terrorism Database. That is less than six firearm-related terrorist-caused deaths a year. This is a very small number compared to the approximately 30,000 gun-related deaths of all types that currently occur within the United States annually. Equally, denying access to guns to those on the no-fly list (rumoured to be some 47,000 people) would affect very few people. Those who want gun reform appear to be trying to make a gain wherever they can. Those opposed seem determined to hold on to their substantial control of the politics and the law, even though very few people would be affected by the change they are contesting.

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