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Washington, DC 20548

March 7, 2016

The Honorable Dianne Feinstein
United States Senate

Subject: Update on Firearm and Explosives Background Checks Involving Terrorist
Watchlist Records

As you requested, this letter updates information on firearm and explosives background checks involving terrorist watchlist records that we presented in our May 2010 testimony and most recently updated in March 2015.¹ Under the Brady Handgun Violence Prevention Act and implementing regulations, the Federal Bureau of Investigation (FBI) and designated state and local criminal justice agencies use the FBI's National Instant Criminal Background Check System (NICS) to conduct checks on individuals before federal firearms licensees (gun dealers) may transfer any firearm to an unlicensed individual.² Also, to assist the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the FBI conducts NICS background checks on individuals seeking to obtain a federal explosives license or permit.³ Under federal law, there is no basis to automatically prohibit a person from possessing firearms or explosives because they appear on the terrorist watchlist.⁴ Rather, there must be a disqualifying factor (i.e., prohibiting information) pursuant to federal or state law, such as a felony conviction or illegal immigration status.

Approximately 23.1 million background checks were run through NICS during calendar year 2015, of which the FBI's NICS Section processed about 9 million transactions and state and local agencies processed about 14.1 million transactions. In response to a recommendation in our January 2005 report, the FBI began processing all NICS background checks involving terrorist watchlist records in July 2005—including those that were initially generated via state

¹See GAO, *Terrorist Watch List Screening: FBI Has Enhanced Its Use of Information from Firearm and Explosives Background Checks to Support Counterterrorism Efforts*, GAO-10-703T (Washington, D.C.: May 5, 2010); and GAO, *Update on Firearm and Explosives Background Checks Involving Terrorist Watch List Records* (Washington, D.C.: Mar. 6, 2015).

²Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

³See Safe Explosives Act, Pub. L. No. 107-296, 116 Stat. 2135, 2280 (2002) (Title XI, Subtitle C of the Homeland Security Act of 2002), as amended.

⁴The FBI's Terrorist Screening Center maintains the U.S. government's consolidated terrorist watchlist, which contains information about individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and terrorist activities. Applicable records from the watchlist are searched during NICS background checks.

operations—to ensure consistency in handling.⁵ According to FBI officials, while the NICS Section processes all transactions involving terrorist watchlist records, states that initially generated them are required to report the final disposition of every transaction to NICS, including whether the transaction was allowed to proceed or was denied.

If the NICS Section cannot complete a background check within 3 business days and make a final determination (i.e., proceed or denied) the gun dealer may transfer the firearm (unless state law provides otherwise). However, the NICS Section can continue to research the transaction for potentially prohibiting information—for up to 90 days—at which time information related to the transaction is to be destroyed to comply with federal record retention requirements.⁶ While the NICS Section is required to destroy the records, the FBI is notified when an individual on the terrorist watchlist attempts to purchase a firearm and can use information obtained from the NICS transaction to support investigations and other counterterrorism activities.

This update provides FBI statistics for calendar year 2015. Specifically, from January 2015 through December 2015, FBI data show that individuals on the terrorist watchlist were involved in firearm-related background checks 244 times, of which 223 (about 91 percent) of the transactions were allowed to proceed and 21 were denied.⁷ According to FBI data, there were no explosives-related background checks involving individuals on the terrorist watchlist during calendar year 2015. Overall, since NICS started checking against terrorist watchlist records in February 2004, FBI data show that individuals on the terrorist watchlist were involved in firearm or explosives background checks 2,477 times, of which 2,265 (about 91 percent) of the transactions were allowed to proceed and 212 were denied, as shown in table 1.⁸

Of the 2,477 total transactions, 2,474 involved firearm-related background checks and 3 involved explosives checks. The 3 explosives checks all occurred before March 2010 and the transactions were allowed to proceed. The FBI does not know how often a firearm was actually transferred or if a firearm or explosives license or permit was granted, because gun dealers and explosives dealers are required to maintain but not report this information to the FBI.

⁵See, GAO, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005).

⁶According to NICS Section officials, to comply with federal record retention requirements, the NICS Section destroys these records after 88 days.

⁷As of February 29, 2016, the FBI was continuing to research 7 of the 223 transactions for potentially prohibiting information, so the possibility existed that some of the 7 transactions could still be denied. We discussed the sources of the 2015 data with FBI officials and determined that the data were sufficiently reliable for the purposes of this update.

⁸Because of an issue with a computer programming change, the FBI could not provide complete statistics for certain NICS transactions that were initiated by state and local agencies during calendar years 2011 and 2012.

Table 1: Number of Firearm or Explosives Background Checks Involving Individuals on the Terrorist Watchlist, February 2004 through December 2015

Calendar year	Valid matches	Allowed to proceed ^a	Denied
2004 (beginning in February)	48	43	5
2005	149	141	8
2006	179	153	26
2007	287	259	28
2008	246	228	18
2009	272	250	22
2010	272	247	25
2011	142 ^b	130	12
2012	153 ^b	137	16
2013	256	240	16
2014	229	214	15
2015	244	223 ^d	21
Total	2,477^c	2,265	212

Source: GAO analysis of FBI data.

^aThe FBI does not know how often a firearm was actually transferred or if a firearm or explosives license or permit was granted, because gun dealers and explosives dealers are required to maintain but not report this information to the FBI.

^bBecause of an issue with a computer programming change, the FBI could not provide complete statistics for certain NICS transactions that were initiated by state and local agencies during calendar years 2011 and 2012.

^cThe total number of NICS transactions with valid matches to the terrorist watchlist from February 2004 through December 2015 does not include complete statistics for calendar years 2011 and 2012. Of the 2,477 total transactions, 2,474 involved firearm-related background checks and 3 involved explosives checks.

^dAs of February 29, 2016, the FBI was continuing to research 7 of the 223 transactions for potentially prohibiting information, so the possibility existed that some of the 7 transactions could still be denied.

Of the 21 NICS transactions involving individuals on the terrorist watchlist that were denied during calendar year 2015, FBI data show that the reasons for denials included felony conviction, under indictment, adjudicated mental health, fugitive from justice, controlled substance abuse, and state prohibitors.

If you or your staff have any questions about this update, please contact me at (202) 512-9627 or maurerd@gao.gov.

Sincerely yours,



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