

United States Senate

WASHINGTON, DC 20510

May 4, 2020

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Ave NW
Washington, DC 20535

The Honorable Regina Lombardo
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Ave NW
Washington, DC 20226

Dear Director Wray and Acting Director Lombardo,

As we continue to combat the COVID-19 pandemic, we acknowledge the unique challenges you and other federal leaders face in safeguarding our constitutional rights and the rule of law while protecting the public health and safety of our communities. The Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF) each play important roles in securing the Second Amendment right to keep and bear arms that is a fundamental civil liberty of every law-abiding American. We also appreciate that the Department of Homeland Security designated the firearm industry among other essential critical services that should remain open during the pandemic so that law-abiding Americans can continue to exercise their Second Amendment rights during this national emergency.

In response to the pandemic, millions of Americans practicing safe social distancing have lined up outside of firearm retailers in order to purchase firearms. The resulting record-breaking surge has placed significant pressure on the National Instant Criminal Background System (NICS), which helps to ensure that criminals and other prohibited persons cannot gain access to firearms. In 2018, Congress passed the Fix NICS Act to improve the accuracy and completeness of the records in NICS. Last year the Department of Justice announced that the completeness, accuracy and efficiency of the NICS process had significantly improved, and outlined ongoing plans to further strengthen the system. Nevertheless, during this outbreak, we understand that the NICS process has been put to the test. Congress recently provided the federal government with increased resources in order to ensure that federal agencies have the necessary resources to carry out their statutory responsibilities and critical missions, but any changes to federal law must come from Congress, not through agency policies, practices, or fiat.

As our country continues to respond to the pandemic, we are seeking additional information on the impact the coronavirus has had on your agencies and the firearm transfer process so that we

have a clearer picture on where things stand and how we can better assist through the legislative and appropriations process.

NICS Checks in Delayed Status and the Three-Business-Day Waiting Period

Federal law expressly recognizes the right of law-abiding citizens to purchase and possess firearms but bars certain individuals like criminals and the dangerously mentally-ill. NICS was designed to provide a quick and accurate determination about whether a person can lawfully purchase a firearm from a federally licensed firearms dealer. NICS is required and generally is able to provide an “immediate determination” in roughly 90% of all transactions. However, when NICS is unable to make an immediate determination, the law recognizes a short, three business day waiting period for NICS to review the transaction. In such case, NICS provides the dealer with the Missing Disposition Information date (a/k/a “Brady Transfer Date”) at which time a licensed dealer is permitted, but not required, to transfer a firearm, provided the dealer has no reason to believe that the transferee is a prohibited person. By law, the term “business day” excludes weekends and any day that state offices in the state of purchase are closed. Any unreasonable and unnecessary delay beyond the three business days unlawfully impedes the exercise of a person’s fundamental constitutional right.

We understand that the surge in gun purchases has resulted in the immediate determination rate falling below 90% and a significant increase in the number of NICS checks that have been placed into delayed status. We understand further that there have been significant delays in the review and processing of those transactions. We also understand that NICS may be providing Missing Disposition Information to firearm dealers that firearms should not be transferred until well beyond three business days even though state offices are open.

For the time period from March 1 until today, please provide us with an accurate accounting of the number of NICS checks that have been placed in delayed status and the average time that it is taking NICS to resolve those delayed checks. Please also provide an accurate accounting of the number of delayed transactions that have resulted in approved or denied transactions. Finally, please also provide us with greater clarity on how you are determining the Missing Disposition Information date in each state and how that determination is affecting transfers across the country.

ATF Guidance Needed on Expired Drivers Licenses and Identification

When an individual seeks to purchase a firearm from a licensed dealer, the individual must present a valid form of government identification with a picture of the buyer, which is usually a state driver’s license. During this pandemic, some individual licenses have expired in states currently not renewing driver’s licenses. Instead, such states have temporarily extended the validity of these licenses and other registrations. For example, if a consumer were pulled over by the police on their way to the local firearm retailer, they could not be cited for driving with an expired license. In June 2010, ATF provided the following guidance in its Federal Firearm License (FFL) Newsletter: “There has also been some confusion over whether an expired driver’s license can satisfy the [Gun Control Act (GCA)] requirement. If the law of the State that issued the driver’s license provides that a driver’s license is valid after the expiration date, either

for a certain period of time or for a certain category of persons, such as military personnel, then the license qualifies as a valid identification document for GCA purposes for that period of time or for that class of persons. This will not be a common occurrence. If you are not certain of the validity of an expired license in your State, we suggest you contact your State's Department of Motor Vehicles. If you are still uncertain about the validity and acceptance of an expired license for GCA purposes, contact your local ATF office." Does this continue to be the guidance for firearms dealers regarding the legality and appropriateness of accepting such a driver's license during this emergency? If so, has this been communicated to the FFL community?

Firearm Safety and Security

The federal government can work together with firearms owners, licensed dealers, and manufacturers to ensure the safe and secure storage of firearms during this crisis. For instance, federal law expressly provides for firearm dealers to provide handgun purchases with a secure gun storage or safety device, ATF requires licensed dealers to make available to consumers locking devices, and manufacturers have been voluntarily providing locking devices with each new firearm they ship from their factory. The federal government can work in partnership with industry through programs like Project ChildSafe to promote genuine firearms safety through the distribution of safety education messages and free firearm safety kits. Similarly, firearms dealers are often targeted by criminals during national emergencies, and law enforcement can work together with firearms dealers through programs like Operation Secure Store to make well-informed and security-related decisions to deter and prevent the theft of firearms. Please advise how the FBI and ATF are working with gun owners and the firearms industry to promote firearm safety and security.

We appreciate that the current national emergency has brought about unprecedented challenges for the FBI and the ATF, and we appreciate that your agencies are working with significant challenges for staff and resources. We are confident that through your leadership, we can work together to ensure that NICS remains up and running during this crisis and that law-abiding citizens are not deprived of their constitutional right to keep and bear arms, especially during these uncertain times.

Thank you and we look forward to hearing from you.

Sincerely,



JOHN CORNYN
United States Senator

/s/

CHUCK GRASSLEY
United States Senator



TED CRUZ
United States Senator

/s/

TIM SCOTT
United States Senator

/s/

MIKE CRAPO
United States Senator

/s/

THOM TILLIS
United States Senator

/s/

JOHN BARRASSO
United States Senator

/s/

SHELLEY CAPITO
United States Senator

/s/

TOM COTTON
United States Senator



STEVEN DAINES
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DEB FISCHER
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United States Senator

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JAMES RISCH
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JOHN THUNE
United States Senator



TODD YOUNG
United States Senator