

**Questions for the Record
Federal Bureau of Investigation**

**Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate**

**“The Fix Gun Checks Act:
Better State and Federal Compliance, Smarter Enforcement”
November 15, 2011**

Questions Posed by Senator Grassley

National Instant Criminal Background Check System (NICS)

1. In briefings, my staff has been informed that if an individual purchasing a firearm has a felony arrest on their record, there is supposed to be a delay on gun purchases while FBI officials do research on the individual to determine whether or not the individual has been indicted, which would prevent the sale from being lawfully made.

Court records show that an arrest warrant for Jacob Wayne Chambers was issued on May 22, 2009 for felonies committed on November 7, 2008. Chambers bought 54 firearms from October 2, 2009 to November 24, 2009. He was arrested on December 18, 2009.

a. News reports have suggested that FBI officials in the NICS Section and ATF in Phoenix communicated whenever suspects in Operation Fast and Furious tried to buy a gun, since an arrest would have triggered a delay.¹ Is this accurate? If so, please indicate the number of times such communications occurred and describe the communications in detail.

Response:

Information responsive to this inquiry is provided separately.

NCIC records do not reflect that an arrest warrant was entered for Jacob Wayne Chambers, on May 22, 2009, in connection with alleged felonies committed on November 7, 2008 in Maricopa County, Arizona. We understand that a court summons was issued for Chambers by the Maricopa County Superior Court on December 18, 2009.

¹ William La Jeunesse and Laura Prabucki, *Feds Silent on How Convicted Felons Bought Guns in ‘Operation Fast and Furious’*, FOX NEWS, Jul. 25, 2011, <http://www.foxnews.com/politics/2011/07/25/feds-refuse-to-explain-why-proper-background-checks-werent-conducted-on-fast>.

b. Are felony arrest warrants entered into the NICS? Please describe the differences in length of purchasing delay for individuals with felony warrants and those with felony arrests on their records.

Response:

The National Crime Information Center (NCIC), National Instant Criminal Background Check System (NICS), and Interstate Identification Index (III) are all searched during a NICS background check. While felony warrants are typically entered into NCIC, some are, instead, entered in NICS. Regardless of where they reside, if a criminal arrest warrant matching to the subject is validated as active, the purchase may be denied at that point, which is usually within three days of the inquiry.

Felony arrests, which reside in III, are not, by themselves, prohibiting. If a NICS check reveals a felony arrest without a corresponding disposition, further research is required before the NICS Section can determine whether a transaction is prohibited. If the arrest resulted in pending felony charges, the purchaser is prohibited from receiving the firearm by 18 U.S.C. § 922(n). If the arrest resulted in a felony conviction, the purchaser is typically prohibited from receiving the firearm by 18 U.S.C. § 922(g)(1) (not every felony conviction is prohibiting). The response times of the agencies from which the FBI seeks record-completing information vary widely. The Brady Handgun Violence Prevention Act of 1993 allows three business days to obtain this information before a Federal Firearms Licensee (FFL) may transfer a firearm.

c. Was there a delay for Chambers each time he tried to purchase a gun in October and November 2009? If so, please describe in detail the length of delay and the actions that FBI took to research the firearm prohibition in each instance.

Response:

The FBI has no record of purchases made by Chambers in October and November 2009. By law, the FBI may not retain the records of any such purchases, or of the NICS checks preceding such purchases, if the NICS checks resulted in anything other than a denial. In the case of a "proceeded" transaction, the FBI is required by 28 C.F.R. § 25.9(b)(1) to destroy all transaction information containing personally identifiable information regarding the transferee within 24 hours of informing the FFL that the transaction may proceed.

2. Sean Christopher Steward purchased 281 firearms between December 7, 2009 and June 23, 2010. According to Arizona court documents, a state injunction against harassment was obtained against Steward on April 8, 2010, prohibiting him from possessing firearms or ammunition. However, Chambers purchased 42 firearms in June 2010.

a. Is there a delay in the NICS system for court-ordered prohibited firearms possessors? How does it differ from those arrested for felonies?

b. Was there a delay for Steward each time he tried to purchase a gun in June 2010? If so, please describe in detail the length of delay and the actions that FBI took to research the firearm prohibition in each instance.

c. Of the 42 firearms Steward purchased after his harassment injunction, how many did the FBI know about before the purchase?

Response to subparts a through c:

It is the FBI's understanding that others in the Department of Justice have reviewed court records and have found that, based upon a petition alleging harassment, a temporary order was issued by a court on April 9, 2010, and was later followed by a restraining order. Neither order contained any restriction on Steward's possession of firearms.

When the databases accessible during a NICS check include information about an order of protection that disqualifies the individual from receiving a firearm under 18 U.S.C. § 922(g)(8), there is no attendant delay in denying that transaction. However, because information about disqualifying protection orders is normally housed in the NCIC, and that information is uploaded by the issuing jurisdiction, there can be a lapse of time between the issuance of the order and its availability in NICS during a background check. If the databases available to NICS indicate that a purchaser is subject to an outstanding order of protection, but not whether that order of protection qualifies as prohibiting under section 922(g)(8), the FBI must attempt to obtain record-completing information from the issuing jurisdiction. As discussed in response to Question 1b, above, the law allows three business days to obtain this information before an FFL may transfer a firearm.

The FBI has no record of purchases made by Steward between April and June of 2010. As noted above, the FBI is not permitted to retain the records of any such purchases, or of the NICS checks preceding such purchases, if the NICS checks resulted in anything other than a denial.

Additional information responsive to this inquiry is provided separately.

d. Did the ATF arrange or seek to arrange for Chambers, Steward, or any other Operation Fast and Furious suspect's instant background check to be processed any differently in order to assist with its investigation? If so, please explain in detail.

Response:

Information responsive to this inquiry is provided separately.

Questions Posed by Senator Klobuchar

3. Does the FBI's Criminal Justice Information Services Division work with states in connection with their NICS reporting requirements?

Response:

As noted in response to Question 1b, above, the NICS searches three national databases managed by the FBI: the III, NCIC, and NICS Index. The FBI's Criminal Justice Information Services (CJIS) Division works with the states relative to their reporting to these databases in order to maximize the accuracy and completeness of the FBI's criminal history records. In addition, following passage of the NICS Improvement Amendments Act (NIAA) of 2007 (Pub. L. No. 110-180 (January 8, 2008)), the FBI established an internal NIAA Task Force and conducted an impact analysis to determine the needs, resources, and potential obstacles associated with compliance by federal, state, and tribal authorities. As a result of this analysis, the FBI is intensifying its outreach efforts with states, tribes, and federal agencies to help them make NIAA improvements. Among these outreach efforts, the FBI:

- Created and disseminated to federal, state, and tribal agencies notifications, training materials, and other resources related to NICS improvements and coordinated teleconferences to provide updates and address outstanding needs;
- Met with state NIAA task forces and regional groups of state agencies (including elements of the mental health community) to help them obtain grant funding through the NICS Act Record Improvement Program;
- Participated in mental health conferences at the state and national levels;
- Assisted states' efforts to submit information to the NICS electronically and provided referrals to help states address technology challenges, legal issues, and audit methodologies related to the NIAA;
- Met with state CJIS Systems Officers and state points of contact to provide NIAA information and updates and responded to over 2,000 requests for guidance on a variety of NIAA issues; and
- Provided easy Internet access to resource information and prepared federal, state, and tribal contact lists to ensure the consistent sharing of information.

4. Do you have any measure of how much it costs states to report the required NICS data to the FBI?

Response:

The FBI does not have access to this information.