



**U.S. Department of Justice**

**Federal Bureau of Investigation**

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*Washington, D.C. 20535-0001*

March 6, 2017

Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter dated January 23, 2017, concerning the January 6, 2017, shooting at the Fort Lauderdale-Hollywood International Airport by Esteban Santiago. In particular, your letter requests a detailed explanation how submissions are made to the National Instant Criminal Background Check System (NICS).

As you are aware, an individual may be denied a firearm purchase under any of the Federal prohibiting categories or based upon a State firearm prohibition. One of these prohibitions is the mental defective prohibition. According to Title 18, U.S.C. Section 922 (g)(4), a person must meet one of the following criteria to be considered mentally defective:

1. A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease is a danger to himself or to others or lacks the mental capacity to contract or manage his own affairs.
2. A person found to be insane by a court in a criminal case.
3. A person found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.
4. A person formally committed to a mental institution if by a court, board, commission, or other lawful authority (including commitment involuntarily, commitment for mental defectiveness or mental illness, or a commitment for other reasons).

Individuals may be reported to NICS by a criminal justice agency, law enforcement agency, or mental health facility that has been given a NICS Originating Agency Identifier for the sole purpose of submitting mental health entries into the NICS Index. If one of these qualifying agencies reports an individual to NICS under the mental defective category, it is the responsibility of that agency to pre-determine the subject's eligibility. Medical information is not collected or required by the FBI and agencies are discouraged from submitting it. Though source documentation about the individual is not shared with the FBI, the submitting agency is asked to maintain it to support appeal cases and data quality audits. Modes of submission by agencies, whether voluntary or statutorily required, include electronic submission primarily via

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the NCIC interface. A qualified agency, including mental health facilities, may also use the Law Enforcement Enterprise Portal (LEEP) or the NICS E-Check system to contribute to the NICS Index. Though NICS will, on occasion, receive inquiries from mental health professionals, police officers, family and friends, and others seeking to place individuals into the NICS Index, entries may only be made by qualified entities. Therefore, concerned individuals are advised to contact any agency which maintains documentation that the person in question is unable to possess a firearm under federal or state law.

Once an individual has been entered into the NICS Index, the individual's name and identifying descriptors will be cross-checked in a search of the NICS. The NICS is a computerized system designed to immediately determine if a person is disqualified from possessing or receiving firearms by conducting a search of available records. As mandated by the Brady Handgun Violence Prevention Act of 1993, Federal Firearms Licensees (FFL) are required to use the NICS to determine whether a prospective firearm transfer would violate state or federal laws. When a FFL initiates a NICS transaction, three national databases are name-searched for possible matches. These databases include the National Crime Information Center (NCIC), which contains records of interest relevant to NICS searches such as wanted persons and protection orders. The NICS will also searches the Interstate Identification Index (III), which contains criminal history records, and the NICS Index, which holds information provided by local, state, tribal, and federal agencies of persons prohibited from receiving firearms under federal or state law. The NICS Index contains prohibiting information which may not be found in the NCIC or the III.

You also inquired about the FBI's role after it refers an individual to local law enforcement; per Department of Justice and FBI policy, the FBI can initiate an assessment to determine if there is a federal violation. If during the course of the assessment a federal nexus is identified, the FBI may open a predicated investigation. Conversely, if there is no indication that a federal violation has occurred, the FBI can then refer the individual to the local authorities. Once referred, local law enforcement possesses jurisdiction over the matter and will determine future investigative steps. Though jurisdiction remains with the locals, the FBI may provide assistance if it is requested. As with all cases, if the local authorities uncover a federal nexus throughout the course of their investigation into the matter, the FBI may then open its own case while continuing to work alongside the local authorities.

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While we cannot provide you with investigative details pertaining to this specific case, please know the FBI is continuing to collect all available facts and evidence on the circumstances surrounding this matter and is expending tremendous amounts of time and resources to do so. As always, thank you for your continuing support of the FBI. I hope this information will be helpful to you.

Sincerely,



Gregory A. Brower  
Assistant Director  
Office of Congressional Affairs

1 - Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510