

United States Senate

WASHINGTON, DC 20510

May 5, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Denis McDonough
Secretary
Department of Veterans Affairs

Dear Secretary McDonough:

Placement on the National Instant Criminal Background Check System (NICS) effectively precludes ownership and possession of firearms. According to the FBI, as of December 31, 2020, 97.9% of all names reported to the NICS list's "mental defective" category by federal agencies were provided by the Department of Veterans Affairs (VA) even though reporting requirements apply to all federal agencies.¹ As you are aware, when veterans are appointed a fiduciary to receive their VA benefits, they are deemed ineligible to receive or possess firearms or ammunition under the determination that they are now considered adjudicated mental defective for purposes of federal law.²

I take the fundamental nature of the Second Amendment very seriously and when our veterans' right to own and possess firearms is at issue, the government must ensure that constitutional due process is followed. In March 2016, I wrote to you with respect to my concerns about the process by which the VA reports veterans to the NICS noting, in part, that during the adjudication process a veteran is not determined to be a danger to self or others yet their firearms can be taken away by the government.³ I also wrote similar oversight letters to the Justice Department and Social Security Administration raising due process concerns.⁴

In light of these concerns, in February 2018 and May 2019, I introduced bipartisan legislation to restore veterans' Second Amendment rights titled, *Veterans' Second Amendment Rights Restoration Act*.⁵ I also drafted and led a Resolution of Disapproval under the Congressional Review Act to repeal a Social Security Administration rule that required that agency to report beneficiaries to the NICS list for purposes of taking away their firearms.⁶ I led

¹ FED. BUREAU OF INVESTIGATION CRIM. JUST. INFO. SERVS. DIVISION, NAT'L INSTANT CRIM. BACKGROUND CHECK SYS. (NICS) SEC., ACTIVE RECS. IN THE NICS INDICES AS OF DEC. 31, 2021 (last visited May 3, 2022), <https://www.fbi.gov/file-repository/active-records-in-the-nics-indices-by-state.pdf/view>. See generally, William J. Krouse and Heather M. Salazar, CONG. RESEARCH SERV., Gun Control, Veterans Benefits, and Mental Incompetency Determinations (September 7, 2021) https://www.everycrsreport.com/files/2021-09-07_R44818_5cc3ffe9bbc36dc5df4349150b5885f4d50f9aec.pdf

² 18 U.S.C § 922(d)(4).

³ Letter from Chairman Charles E. Grassley, S. Comm. on the Judiciary & Chairman Johnny Isakson, S. Comm. on Veterans' Aff., to Secretary Robert A. McDonald, U.S. Dep't of Veterans' Aff. (Mar. 16, 2016), https://www.grassley.senate.gov/imo/media/doc/2016-03-16_ceg_isakson_to_va_veterans_gun_ban.pdf.

⁴ Press Release, Sen. Charles E. Grassley, Grassley Stands Up For Veterans' Second Amendment Rights (Mar. 23, 2016), <https://www.grassley.senate.gov/news/news-releases/grassley-stands-veterans-second-amendment-rights>; Letter from Chairman Charles E. Grassley, S. Comm. on the Judiciary, to Acting Comm'r. Carolyn W. Colvin, Soc. Security Admin. (July 24, 2015), https://www.grassley.senate.gov/imo/media/doc/guns_07-24-15_ceg_to_social_security_admin_gun_ban.pdf.

⁵ Press Release, Sen. Charles E. Grassley, Grassley, Ernst and Manchin Introduce Bipartisan Legislation To Restore Veterans' Second Amendment Rights (Feb. 6, 2018), <https://www.grassley.senate.gov/news/news-releases/grassley-ernst-and-manchin-introduce-bipartisan-legislation-restore-veterans>; Grassley, Manchin Reintroduce Bipartisan Legislation To Restore Veterans' Second Amendment Rights (May 16, 2019), <https://www.grassley.senate.gov/news/news-releases/grassley-manchin-reintroduce-bipartisan-legislation-restore-veterans-second>.

⁶ Press Release, Sen. Charles E. Grassley, Grassley Resolution Would Reverse Obama-Era Regulation Limiting Second Amendment Rights Of Social Security Beneficiaries (Feb. 2, 2017), <https://www.grassley.senate.gov/news/news-releases/grassley-resolution-would-reverse-obama-era-regulation-limiting-second-amendment>.

that repeal to protect the Second Amendment rights of our Social Security beneficiaries. That repeal passed the Senate and House and was signed into law by President Trump on February 28, 2017.⁷

Today, I am writing to request updated data with respect to how the VA has handled the reporting of veterans to the NICS. No later than May 20, 2022, please provide answers to the following with respect to the NICS adjudicated mental health category:

1. Total VA-referred active NICS records annually from Dec. 31, 2017, through December 31, 2021.
2. For each year, breakouts according to the subcategories listed below, as applicable:
 - a. The number of deceased beneficiaries removed from the adjudicated mental health category;
 - a. The number beneficiaries added to the adjudicated mental health category;
 - b. The number of beneficiaries who requested removal from the NICS adjudicated mental health category; and
 - c. The number of beneficiaries who were granted removal from the NICS adjudicated mental health category.
3. For each year, how many adjudicated mental health category removal cases were subject to:
 - a. De novo review, due to the VA failing to act on a request within the statutorily required 365 days; and
 - b. Plaintiffs prevailed against the VA based on a de novo hearing.
4. For each year, when a request for removal from the adjudicated mental health category was denied by the VA, how many beneficiaries appealed to federal court and what was the outcome?
5. For each year, how many beneficiaries:
 - a. Accepted assignment of a fiduciary;
 - b. Challenged the assignment of a fiduciary; and
 - c. Successfully challenged the assignment of a fiduciary.
6. For each year, how much money in fees was remitted by the VA to attorneys representing plaintiffs in cases involving removal from the adjudicated mental health category?
7. For each year, how many erroneous VA records were removed from the NICS?

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

⁷ Press Release, Sen. Charles E. Grassley, Senate Approves Grassley Resolution Protecting Second Amendment Rights For Disabled Americans (Feb. 15, 2017), <https://www.grassley.senate.gov/news/news-releases/senate-approves-grassley-resolution-protecting-second-amendment-rights-disabled>.