



Department of Justice

STATEMENT FOR THE RECORD OF

**DANIEL D. ROBERTS
ASSISTANT DIRECTOR
CRIMINAL JUSTICE INFORMATION SERVICES
FEDERAL BUREAU OF INVESTIGATION**

BEFORE THE

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

ENTITLED

**“TERRORISTS AND GUNS: THE NATURE OF THE THREAT AND
PROPOSED REFORMS”**

PRESENTED

MAY 5, 2010

Statement for the Record
Daniel D. Roberts
Assistant Director, Criminal Justice Information Services
Federal Bureau of Investigation

“Terrorists and Guns: The Nature of the Threat and Proposed Reforms”
U.S. Senate Committee on Homeland Security and Governmental Affairs
May 5, 2010

Good morning Chairman Lieberman, Ranking Member Collins and Members of the Committee. It is my pleasure to address you today regarding the FBI’s efforts to respond to attempted purchases of firearms from licensed dealers and applications for firearms and explosives permits from state agencies by Known or Appropriately Suspected Terrorists (KSTs) listed on the nation’s consolidated watch list.

First, I want to make it clear that the FBI takes a proactive approach to investigating persons suspected of being involved or associated with terrorism. Our Joint Terrorism Task Forces are engaged every day, across the country, in following up leads, monitoring intelligence, and otherwise pursuing information about suspected terrorists who may be trying to obtain the means by which they or their associates can do harm to this country and its citizens.

Our efforts to identify watchlisted KSTs attempting to obtain firearms includes, but is not limited to, use of the National Instant Criminal Background Check System (NICS) process. The Brady Handgun Violence Prevention Act of 1993 (Brady Act) requires a Federal Firearms Licensee (FFL) to contact the NICS before any firearm transfer to a non-licensee, so the NICS can perform a background check to determine whether the receipt of a firearm by the prospective transferee would violate federal or state law. (Applicants for explosives-related licenses or alternate firearms permits are also subject to NICS checks.) Background checks are initiated through one of three NICS Contracted Call Centers, a state designated state Point-of-Contact, or through the NICS E-Check Web site via the Internet.

Once the descriptive information for the proposed transferee is entered, the NICS conducts a name search for matching records in three databases. The databases are the National Crime Information Center (NCIC), which contains, among other things, information on wanted persons and protection orders; the Interstate Identification Index (III), which contains criminal history records; and the NICS Index, which contains the names and information concerning persons subject to one or more of the disqualifiers contained in the Brady Act. The NICS Index includes individuals who have been determined to be prohibited from possessing a firearm by federal law for reasons that are not reflected in the NCIC or III systems. If the transferee indicates that he or she is not a U.S. citizen, then the NICS also queries databases of the Department of Homeland Security, U.S. Immigration and Customs Enforcement, to ensure that the transferee’s immigration status does not preclude them from obtaining a firearm.

One of the files queried by the NICS contained within the NCIC is the KST File. The KST File is populated by the Terrorist Screening Center (TSC) with descriptive identities maintained on

persons who are known terrorists or for whom there is a reasonable suspicion that they are terrorists. This file is a subset of the full consolidated watchlist managed by the TSC, known as the Terrorist Screening Database or TSDB. The TSDB also exports other subsets to other authorized screening points—such as the No-Fly list used at U.S. and foreign airports. Any NICS query that results in a “hit” in the KST File automatically causes that transaction to be transferred to a NICS Legal Instruments Examiner (Examiner).

Following the hit in the KST, the NICS Contracted Call Center provides to the FFL the NICS Transaction Number (NTN) and transfers the call to a NICS Examiner while the FFL remains on the phone. Upon transfer, the NICS Examiner, located at the FBI Criminal Justice Information Services (CJIS) Division in Clarksburg, West Virginia, then compares the data on the NICS search screen to the subject’s information to determine whether the hit is, in fact, a valid match. If the hit appears to be a valid match, the NICS Examiner informs the FFL the transaction is delayed for further research and transfers the transaction to the NICS Command Center. The FFL is not informed that the reason for the initial delay is because of a potential KST match. If the NICS Examiner in the NICS Command Center discovers independent reasons to deny the transaction – for example, a record of a felony conviction, the FFL will be informed of the denial, but research on the KST hit will continue. If there are no independent reasons for denial, the transaction will be delayed, the FFL will be advised of the delay, and the process below will be followed. In this case, the FFL is not permitted to transfer the firearm until after three business days from the date the transaction was created.

The NICS Command Center Examiner who retrieves the KST-related transaction will contact the FFL to gain additional information to assist in the identification of the individual such as the individual’s address, driver’s license, social security number, or alien registration number as applicable. The NICS Command Center Examiner will also contact the TSC to inform them a NICS hit to an NCIC KST record has occurred and to attempt to confirm the transferee’s identity to further validate an accurate match has been made. If a coordinated effort by the TSC and the NICS Section determines the subject of the NTN does not appear to be a match, based on the subject’s name and descriptive information, the NICS Section will continue to research all remaining databases on the transaction and complete the transaction.

If the TSC and the NICS Section determine the subject of the NTN does appear to be a match, then the TSC will forward the information to the Terrorist Screening Operations Unit (TSOU) who, in turn, will forward the information to the Counterterrorism Watch Unit (CT Watch)/Case Agent. Once the CT Watch/Case Agent has been notified, the CT Watch/Case Agent must contact the NICS Section within 72 hours from the time the transaction was made.

Once contact has been made with the CT Watch/Case Agent, the NICS Command Center Examiner advises a match to a KST record has occurred and seeks further information to assist in making a final determination. The CT Watch/Case Agent coordinates with the Joint Terrorism Task Force (JTTF) to provide the NICS Section any additional information the JTTF may have that indicates the KST is prohibited from receiving a firearm or explosives.

The attempt by a KST to buy a firearm or obtain an alternate permit constitutes a positive "encounter." An encounter is simply a contact by a watchlisted person that is reported to the

TSC and, in turn, the FBI's Counterterrorism Division (CTD). There are many other forms of encounters the FBI tracks including, e.g., border checks by U.S. Customs and Border Protection and visa applications at U.S. Embassies abroad. An attempt to purchase a firearm from an FFL resulting in a NICS check is just one form of encounter.

Within the CTD, the first step – performed immediately - is to determine if there is an FBI investigation on the KST. If there is, the FBI Case Agent is immediately notified and placed in direct contact with a NICS Examiner to determine whether there is any information in the case file, or known to the Case Agent, that would disqualify the KST under the Gun Control Act from possessing a firearm. As previously mentioned, contact with the NICS Section is expected to occur within 72 hours, the three business days NICS is permitted to delay the transaction. If there is no investigation, the FBI Case Agent will open one based on the encounter in the United States of a watchlisted KST attempting to possess a firearm and/or explosives. Since this process was initiated in 2004, approximately 1,200 (+) such encounters have occurred and in approximately 90 percent of those, no prohibiting information was found to deny the transfer.

While waiting for this contact/information from the CT Watch/Case Agent, if the NICS Section identifies prohibitive information, in any of the databases searched by the NICS, the transaction is denied. If the NICS Section does not identify prohibitive information in any of its research, the NICS Section must not proceed with the transaction until contact is completed with the CT Watch/Case Agent, regardless of the existence of or lack of other records returned during the search. The NICS Section will await telephone contact with the CT Watch/Case Agent before making a final status determination.

If the CT Watch/Case Agent does not provide any state or federally prohibitive information and no prohibitive information was returned from the query of the NICS databases, then the NICS Command Center Examiner contacts the FFL and changes the transaction status from delay to proceed. If prohibiting information is discovered and the transaction has not been denied for other reasons, then the NICS Command Center Examiner contacts the FFL and changes the transaction status from delay to deny. If the determination cannot be made in three business days, the FFL is entitled by law to transfer the firearm. If prohibiting information is discovered after the three business days and the firearm has been transferred, the Bureau of Alcohol, Tobacco, Firearms and Explosives is contacted and initiates a separate process to retrieve the firearm. In a case involving a watchlisted KST, this would occur in coordination with the JTTF.

Regardless of whether the transaction is given the green light to proceed or is denied, the encounter is noted at the time and its import is assessed in the same manner as all newly discovered pieces of intelligence about the subject of the investigation. In this situation, in a given investigation, the attempt may, in combination with other factors, lead to enhanced investigative methods, such as surveillance. What the attempt to buy a firearm means in a counterterrorism investigation, and as a result the subsequent actions it warrants, necessarily must be evaluated on a case-by-case basis. In addition, this new piece of intelligence is provided to the National Counterterrorism Center and, in turn, to the U.S. Intelligence Community. Federal and state law enforcement partners are also notified as appropriate.

In summary, the FBI, working with its partner agencies through the JTTF, has and will use every lawful and appropriate investigative and analytical tool at its disposal to scrutinize and monitor any attempt by a watchlisted KST to acquire a firearm or obtain an alternate firearm or an explosives permit. While those tools and techniques have their limits, we believe they have been highly effective when dealing with the regulated sale of firearms.