

United States Senate

WASHINGTON, DC 20510

June 23, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington DC 20510

The Honorable Charles Schumer
Democratic Leader
United States Senate
Washington DC 20510

Dear Leaders McConnell and Schumer:

As the Senate considers future coronavirus relief packages, we write to express our support for robust funding to ensure that all background checks that have been delayed will be completed and that additional robust funding is appropriated to the Federal Bureau of Investigation's (FBI) National Instant Criminal Background System (NICS) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in an effort to strengthen public safety during the pandemic.

Before the outbreak of COVID-19, the FBI's FY'21 budget request to Congress included additional resources for NICS due to the increased volume of gun sales that required a NICS background check. The FBI noted at the time that "the volume of calls, complexity of the work, and introduction of new mandates, such as the Fix NICS Act, require[s] the FBI to request additional resources."¹ Similarly, the ATF requested additional funding from Congress in its FY'21 budget request to enhance their investigative capacities, support the Department of Justice's (DOJ) violent crime priorities, and to support state and local law enforcement firearm crime investigations.²

With the onset of the coronavirus quarantine, an estimated 5.9 million firearms were sold in the US between March and May 2020³⁴—an 80 percent increase over the same time last year⁵. The surge in gun sales—which is often estimated based on the number of background checks conducted—has raised legitimate concerns that the system may not have the resources to adequately process these required checks. Both the FBI and ATF made clear that they needed additional resources to fulfill their statutory obligations before this recent surge of gun purchases. We must ensure that the background check system is not overwhelmed and that federally prohibited persons do not obtain access to firearms.

¹U.S. Department of Justice, Federal Bureau of Investigations, "FY 2021 Authorization and Budget Request to Congress," (February, 2020), *available at* <https://www.justice.gov/doj/page/file/1246311/download>

² U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, "FY 2021 Authorization and Budget Request to Congress," (February, 2020), *available at* <https://www.justice.gov/doj/page/file/1246271/download>

³ Jurgen Bruer, "Demand and supply of commercial firearms in the United States" *The Economics of Peace and Security Journal* [Online], Volume 8 Number 1 (22 April 2013)

⁴ U.S. Department of Justice, Federal Bureau of Investigations, "NICS Firearm Checks: Month/Year by State and Type," (June 2020) *available at* https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year_by_state_type.pdf/view

⁵Stephanie Pagonis, "Gun Sales Break May Record Amid Coronavirus Pandemic, Riots," *FOXBusiness*,(June 2, 2020), *available at* <https://www.foxbusiness.com/lifestyle/gun-sales-may-record-coronavirus-riots>

While most background checks are completed instantly, approximately ten percent of checks require additional time to complete and three percent are delayed more than three business days.⁶ Federal law allows a sale to proceed by default after three business days without the completion of a background check, allowing some individuals that are prohibited from purchasing a firearm to obtain a weapon. Using data from previous years, it is estimated there were at least 35,000 potential default proceed sales in March 2020 alone.⁷ But given the unprecedented, record-breaking surge in gun sales the country witnessed—a surge that continued into April and May—it is expected that this number is much higher. One gun dealer estimated that the number of delayed sales is 8 times higher than in normal times.⁸

If sales are allowed to proceed without a completed background check due to backlogs in the NICS system, potentially dangerous individuals who are federally prohibited from owning weapons may be able to purchase firearms. Five years ago, we saw the horrific results of a prohibited purchaser obtaining a gun through a default proceed sale when Dylann Roof, a white supremacist, killed nine African-American worshippers at Emanuel AME Episcopal Church in Charleston, South Carolina. Based on FBI data, nearly 9,000 people who cannot legally own a gun, such as domestic abusers and felons, were able to acquire a firearm between 2017 and 2018 because their background checks took more than three days.⁹ These almost 9,000 delays occurred when the background system was functioning without the strain of a coronavirus surge.

In many cities, gun violence has remained consistent or elevated in comparison to other violent crime or even increased despite stay-at-home orders.¹⁰ There are also reports that domestic violence incidents have increased during this pandemic.¹¹ Ensuring that prohibited individuals are not armed must be a top priority for law enforcement; given the limited number of ATF agents to retrieve firearms, additional resources are needed to ensure this happens.¹²

Another issue that compounds the problem, is an FBI regulation that requires all delayed background check records be purged from the system within 90 days, completed or not.¹³ Each year, hundreds of thousands of delayed background checks are deleted before they are ever

⁶ “How COVID-19 has Made a Federal Background Check Loophole Even Deadlier,” EverytownResearch.org, June 10, 2020, *available at* <https://everytownresearch.org/covid-default-proceed/>.

⁷ *Ibid.*

⁸ Craig Anderson, “Demand for Guns Slows Background Checks,” Delaware State News, (April 29th, 2019), *available at* <https://delawarestatenews.net/coronavirus/demand-for-guns-slows-background-checks/>

⁹ U.S. Department of Justice, Federal Bureau of Investigations “National Instant Criminal Background Check System 2017 Operations Report,” *available at* <https://www.fbi.gov/file-repository/2017-nics-operations-report.pdf/view>; U.S. Department of Justice, Federal Bureau of Investigations, “National Instant Criminal Background Check System 2018 Operations Report,” *available at* <https://www.fbi.gov/file-repository/2018-nics-operations-report.pdf/view>

¹⁰ Daniel Ness, “Shootings Are a Glaring Exception to the Coronavirus Crime Drop,” The Trace, (April 29th, 2020), *available at* <https://www.thetrace.org/2020/04/coronavirus-gun-violence-stay-at-home-orders/>.

¹¹ Amanda Taub, “A New Covid-19 Crisis: Domestic Abuse Rises Worldwide,” The New York Times, (April 6, 2020), *available at* <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>.

¹² U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, “Fact Sheet - Facts and Figures for Fiscal Year 2018,” (May, 2019), *available at* <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2018>

¹³ 28 CFR § 25.9(b)(1)(ii).

completed.¹⁴ At this point, at least 10,000 uncompleted checks from the first two weeks of March 2020 may now have been deleted and will never be completed.

The risk to public safety is that background checks that are delayed more than three business days are much more likely to be eventually denied. If these delayed denials are allowed to proceed due to backlogs in the NICS system, individuals who are federally prohibited from owning weapons and are a danger to the community may be able to purchase firearms. Every background check that has been delayed due to this surge needs to be completed, and every gun mistakenly sold to a prohibited person must be retrieved. We should suspend the FBI regulation so that all background checks during the surge will be completed. The Administration's request makes clear that additional support is needed to allow the FBI to complete the background checks and ATF to investigate the expected surge in default proceed sales and, where necessary, retrieve firearms. Keeping guns out of the hands of individuals who should not have them will help strengthen public safety and save lives.

We know that you have many priorities to consider as our nation addresses COVID-19 and we stand ready to work with you to protect our communities. Thank you for considering this request.

Sincerely,

/s/ Chris Van Hollen
Chris Van Hollen
United States Senator

/s/ Edward J. Markey
Edward J. Markey
United States Senator

/s/ Richard Blumenthal
Richard Blumenthal
United States Senator

/s/ Sherrod Brown
Sherrod Brown
United States Senator

/s/ Kirsten Gillibrand
Kirsten Gillibrand
United States Senator

/s/ Tammy Duckworth
Tammy Duckworth
United States Senator

/s/ Mazie K. Hirono
Mazie K. Hirono
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

¹⁴ Joshua Eaton, "FBI Never Completes Hundreds of Thousands of Gun Checks," Roll Call, (December 3, 2019), available at <https://www.rollcall.com/2019/12/03/fbi-never-completes-hundreds-of-thousands-of-gun-checks/>

/s/ Thomas R. Carper
Thomas R. Carper
United States Senator

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator

CC: Senator Richard Shelby
Senator Patrick Leahy