

United States Senate
WASHINGTON, DC 20510

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

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20501

The Honorable Richard Shelby
Chairman
U.S. Senate Committee on Appropriations
Washington, DC 20510

The Honorable Patrick Leahy
Vice Chairman
U.S. Senate Committee on Appropriations
Washington, DC 20510

August 5, 2020

Dear Leader McConnell, Leader Schumer, Chairman Shelby, and Vice Chairman Leahy:

We are writing to urge you to include an additional \$20 million for the National Criminal History Improvement Program in the next coronavirus relief package. Reauthorized in the bipartisan Fix NICS Act, this critical funding will help ensure that states and localities, already struggling financially because of the pandemic, are able to maintain accurate records in the face of an unprecedented surge in firearm sales. At a time when domestic violence is on the rise,¹ we must ensure that firearms stay out of the hands of abusers and others seeking firearms illegally.

As the COVID-19 pandemic rages across the United States, the National Instant Criminal Background Check System (NICS) has seen an unprecedented surge in background checks. In March 2020, when many states began to take necessary action to mitigate the spread of the coronavirus, there were more than 3.7 million background check transactions.² This alarming trend has continued in subsequent months. June 2020 was the busiest month in the program's history with more than 3.9 million background check transactions.³ NICS reported its busiest week from March 16 to March 22, 2020; seven of its 10 busiest weeks have occurred between February and June 2020.⁴ Now more than ever, Congress must do everything in its power to support the background check system to ensure guns do not fall into the wrong hands.

During the firearm background check process, the Federal Bureau of Investigation (FBI) or, in point of contact states, state authorities query NICS to determine if a prospective purchaser or

¹ Tyler Kingkade, *Police See Rise in Domestic Violence Calls Amid Coronavirus Lockdown*, NBC NEWS, April 5, 2020, available at <https://www.nbcnews.com/news/us-news/police-see-rise-domestic-violence-calls-amid-coronavirus-lockdown-n1176151>.

² FEDERAL BUREAU OF INVESTIGATION, NICS FIREARM CHECKS: MONTH/YEAR BY STATE, available at https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year_by_state.pdf/view.

³ *Id.*

⁴ FEDERAL BUREAU OF INVESTIGATION, NICS FIREARM CHECKS: TOP 10 HIGHEST DAYS/WEEKS, available at https://www.fbi.gov/file-repository/nics_firearm_checks_top_10_highest_days_weeks.pdf/view

transferee is legally prohibited from purchasing or possessing firearms. Most background checks are completed almost instantaneously; however, incomplete records can extend the time it takes to complete the record check because the case requires more investigation. If a final determination has not been made after three days, federal law allows a gun to be transferred at the Federal Firearm Licensee's discretion—a result known as a “default proceed” transfer.

State and local authorities are responsible for submitting adjudication records to NICS, and most people who fail background checks do so as a result of an adjudication at the state or local level. However, many states and localities struggle to submit complete and timely records to NICS, submitting incomplete records or no records at all for some adjudications. Poor record submission can allow a person who is prohibited by federal, state, or Tribal law from possessing firearms to erroneously pass a background check or obtain a gun without a completed background check. This can lead to the transfer of a firearm to a person who is legally prohibited from purchasing or possessing firearms. Our nation knows all too well that this loophole in federal law can have dangerous consequences: in 2015, an ineligible individual obtained his firearm through a default proceed transfer and committed the horrific mass shooting at Mother Emanuel African Methodist Episcopal Church in Charleston, South Carolina. This is why the “default proceed” rule is also known as the “Charleston loophole.”

New data released through a Freedom of Information Act request made by Everytown for Gun Safety highlights how the danger caused by the “default proceed” rule has been compounded during the COVID-19 pandemic.⁵ In March 2020 alone, it is estimated that at least 1,138 delayed background checks resulted in a firearm being obtained by prohibited purchaser because of this rule. The actual number for this one month may actually be significantly higher given delays in state and local offices. For reference, an estimated 3,960 prohibited purchasers obtained firearms this way in all of 2018.⁶ As law enforcement agencies face shrinking budgets, staffing shortages, and new challenges in the face of this unprecedented pandemic, submitting complete records to NICS may be more burdensome than ever. Given the surge in gun sales, however, it should be a top priority. It is imperative that the records upon which the background check system relies be complete, accurate, and up-to-date. Two years ago we came together in a bipartisan fashion to pass the Fix NICS Act to improve our NICS recordkeeping system and reauthorize NCHIP. To facilitate the timely submission of records into NICS, an extra \$20 million should be included for the National Criminal History Improvement Program in the next supplemental appropriations package. This flexible funding will ensure that states, state and local courts, local governments, and Tribes receive the guidance and resources they need to ensure that NICS operate effectively.

While additional funding for NCHIP is necessary given the current surge in firearm sales during this pandemic, it is only a short-term solution to a systemic problem. Five years ago, we first introduced the Background Check Completion Act, which would close the loophole by requiring a completed background check for every gun buyer who purchases a gun from a federally-

⁵ Betsy Woodruff Swan, *Blocked Gun Sales Skyrocket Amid Coronavirus Pandemic*, POLITICO, July 23, 2020, available at <https://www.politico.com/news/2020/07/23/blocked-gun-sales-skyrocket-amid-coronavirus-pandemic-379452>.

⁶ FEDERAL BUREAU OF INVESTIGATION, 2018 NICS OPERATIONS REPORT at 20, available at <https://www.fbi.gov/file-repository/2018-nics-operations-report.pdf/view>.

licensed gun dealer. In the past five years, thousands of ineligible, dangerous people have been able to skirt around background checks and make illegal firearm purchases. The unprecedented numbers we now see today is a direct result of unjustifiable congressional inaction on this issue. It is beyond time for the Senate to take action and pass this legislation. No check, no sale must be the rule.

Prohibited purchasers put our communities in imminent danger. As gun sales continue to surge, we must provide additional funding to improve the submission of records into NICS in any future pandemic-legislation and work to pass the Background Check Completion Act in the immediate future. With these actions, we can keep firearms out of the hands of people who are prohibited from having them and, most importantly, save lives.

Sincerely,



Richard Blumenthal
United States Senator



Christopher Murphy
United States Senator