(1 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-1, Page 1 of 26

No. 14-16840

### IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KAMALA D. HARRIS, in her official capacity as the Attorney General of California, *Defendant-Appellant*,

v.

JEFF SILVESTER, et. al., *Plaintiffs-Appellees*.

Appeal from the United States District Court for the Eastern District of California, No. 1:11-cv-02137-AWI-SKO (Hon. Anthony W. Ishii, Judge)

### APPELLEE'S RESPONSE IN OPPOSITION TO APPELLANT'S URGENT MOTION TO STAY ENFORCEMENT OF JUDGMENT

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December 19, 2014

(2 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-1, Page 2 of 26

# TABLE OF CONTENTS

I. INTRODUCTION	
II. ARGUMENT	
	To Make The Required Threshold Showing That obable
	To Make A Strong Showing That She Is Likely To s
U	iod Laws Burden Conduct Protected By The Second
2. The Waiting Per	iod Laws Fail Intermediate Scrutiny
C. Plaintiffs Will Su	affer Irreparable Injury From A Stay 17
D. The Public Intere	est Weighs Heavily Against A Stay 18
III. CONCLUSION	

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-1, Page 3 of 26

# TABLE OF AUTHORITIES

# Cases

Coalition for Economic Equity v. Wilson 122 F.3d 718 (9th Cir. 1997),	
<i>Douglas v. Indep. Living Ctr. of S. Cal, Inc.</i> — U.S. —, 132 S.Ct. 1204 (2012)	5
Heller v. District of Columbia 670 F.3d 1244 (D.C. Cir. 2011)	14, 15
Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly 572 F.3d 644 (9th Cir. 2009)	5
Lair v. Bullock 697 F.3d 1200 (9th Cir. 2012)	2
<i>Leiva-Perez v. Holder</i> 640 F.3d 962 (9th Cir. 2011)	
McCutcheon v. Fed. Election Comm'n 134 S.Ct. 1434 (2014)	15
Nken v. Holder 556 U.S. 418 (2009)	2, 3, 10
Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc. 762 F.2d 1374 (9th Cir. 1985)	
<i>Peruta v. Cnty. of San Diego</i> 742 F.3d 1144 (9th Cir. 2014)	12, 15, 17
Rufo v. Inmates of Suffolk County Jail 502 U.S. 367 (1992)	9

Stone v. City and Cnty. of San Francisco968 F.2d 850 (9th Cir. 1992)10
United States v. Chester 628 F.3d 673 (4th Cir.2010)15
United States v. Chovan 735 F.3d 1127 (9th Cir. 2013)15
United States v. Hovsepian 422 F.3d 883, 885 (9th Cir.2005)
Ward v. Rock Against Racism 491 U.S. 781 (1989)15
Other Authorities
Fed. R. Civ. P. 52(a)(6)
Governor's Budget Summary 2014-15 (Jan. 10, 2014), app'x. 39, 41

#### I.

#### **INTRODUCTION**

The District Court in this case heard three days of evidence at trial, received extensive post-trial briefing, and issued a 56-page order supporting its conclusions. The District Court gave the Attorney General 180 days to modify its background check process to comply with the order, despite the court's express factual finding (based on the testimony of a senior Department of Justice ("DOJ") technology employee) that such modifications would be "simple."

More than 100 days after that order, the Attorney General has filed an urgent motion to stay. In the meantime, the DOJ has shown no urgency whatsoever in complying with the order. Rather, it argues that the IT employees who could make the necessary changes to its system are assigned to "other critical projects," so it would prefer to avoid the hassle of complying with the order until after the appeal runs its course. The District Court was incredulous: "The Court does not know how Defendant or the BOF prioritizes projects, but dealing with an unconstitutional law should be towards the top of the list."

In any event, the "urgent" motion in this Court rehashes—albeit with a far greater emphasis on the merits—arguments that were considered and

rejected below. Critically, the DOJ has failed to meet its threshold burden of demonstrating that it will be irreparably harmed by the Court's judgment. Neither the administrative burden of processing applications nor the cost of upgrading its computer systems to account for the change in the waiting period law justifies a stay. Indeed, DOJ's current position contradicts the District Court's finding of fact that such a computer fix would be "simple." Defendant has similarly failed to demonstrate that the "balance of hardships tip sharply in [her] favor," such that a stay pending the appeal is warranted.

Finally, a stay is not appropriate in light of the significant burden imposed on Respondents—and other law abiding Californians—due to the infringement of their constitutional rights, and the fact that continued enforcement of an unconstitutional law is against the public interest.

#### II.

#### ARGUMENT

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009). "It is instead an exercise of judicial discretion that is dependent upon the circumstances of the particular case." *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken*, 556 U.S. at 433) (citation omitted and internal punctuation altered for clarity). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken*, 556 U.S. at 433-34.

In determining whether to grant a stay pending appeal, the Court considers the following four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 434.

Not all four factors are created equal, though: If the party seeking a stay fails to show that irreparable harm is probable, none of the other factors are considered. *Leiva-Perez v. Holder*, 640 F.3d 962, 965, 968 (9th Cir. 2011) (if movant does not show that "irreparable injury is the more probable or likely outcome," "then a stay may not issue, regardless of the petitioner's proof regarding the other stay factors.") (citing *Nken*, 556 U.S. at 433-45). The Attorney General cannot meet this burden.

### A. DOJ Has Failed To Make The Required Threshold Showing That Irreparable Harm Is Probable

The Attorney General cannot show that irreparable injury is probable in the absence of a stay. This alone requires denial of the motion. *Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (if the moving party fails to meet the "minimum showing" of a likelihood of irreparable injury, a court "need not decide whether [the movant] is likely to succeed on the merits.").

The Attorney General argues that the State is irreparably harmed on two fronts. First, she claims the State is irreparably harmed by the enjoinment of a duly enacted law (Mot. Stay at 14-15). Second, she claims that is harmed by the fiscal and administrative burdens associated with compliance—that it will be "expensive and time-consuming" for the State to comply with the District Court's order. Both arguments fail.

1. Enjoining the application of a state law—after a finding that such application is unconstitutional—does not, in and of itself, constitute irreparable harm. Defendant cites Coalition for Economic Equity v. Wilson, 122 F.3d 718, 719 (9th Cir. 1997), for the statement that "it is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined." (Mot. Stay at 14-15.) This Court long ago rejected this statement as dicta, however, warning that it could be used to eviscerate the balance of harms analysis. *Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644, 658 (9th Cir. 2009) (affirming injunction preventing implantation of Medi-Cal reductions required by statute), vacated and remanded on other grounds sub nom. *Douglas v. Indep. Living Ctr. of S. Cal., Inc. of Cal., Inc.*, — U.S. —, 132 S.Ct. 1204, (2012). Specifically, this Court

### explained:

... [A] state may suffer an abstract form of harm whenever one of its acts is enjoined. To the extent that is true, however, it is not dispositive of the balance of harms analysis. If it were, then the rule requiring "balance" of "competing claims of injury," would be eviscerated. Federal courts instead have the power to enjoin state actions, in part, because those actions sometimes offend federal law provisions, which, like state statutes, are themselves "enactments of its people or their representatives."

572 F.3d at 658 (citations omitted).

Were it otherwise, a stay would be presumed appropriate in *every case* where a district court finds an as-applied constitutional violation under state law.<sup>1</sup> Indeed, arguing that California is injured simply by virtue of being prevented from applying its law to a class of its citizens—and the district court's judgment should be stayed as a result—is a snub to the federal judicial power. No district court takes lightly its power to enjoin the application of a state law; in the rare cases when that happens, the district court's judgment does not come to this Court with the presumption that it "harms" the State.

<sup>&</sup>lt;sup>1</sup> To the extent *Coalition for Economic Equity* needs further distinguishing, over and above this Court's limiting in *Indep. Living Ctr. of S. Cal.*, we note that it involved a facial challenge to a state statute. *See Coalition for Economic Equity v. Wilson*, 110 F.3d 1431, 1435 (9th Cir. 1997) (plaintiffs sought pre-implementation relief from proposition on grounds that it violated the equal protection clause and federal civil rights laws). Here, by contrast, the District Court found that California's 10-day waiting period regime violates the Second Amendment rights as applied to narrowly defined groups.

2. Spending time and money to fix a law found unconstitutional as applied to plaintiffs is not the basis for a stay, particularly where the District *Court made a factual finding that the fix would not be difficult.* The State has similarly failed to demonstrate that the burdens of compliance constitute "irreparable" harm. Notably, the Lindley Declaration admits that the DOJ has "staff with the proper skills and training to work on these systems and databases." (Decl. of Stephen Lindley, ¶ 15.) He states that these staff members "are presently assigned to other critical projects," but he admits that, if reassigned, they could make the required changes within the 180 days allowed by the District Court. Id. (DOJ may risk missing statutory deadlines in other projects "if these IT staff members are required to be pulled off of those projects to change BOF's applications and databases within 180 days"). Because the DOJ prefers not to reassign these IT specialists, however, Mr. Lindley "believe[s] that [DOJ] will have to contract with outside vendors" to do the work, and that will take more time. Id.

The District Court was not moved by the DOJ's attempt to elevate its own staffing preferences over compliance with the judgment:

Defendant (through Chief Lindley's declaration) acknowledges that she has computer personnel who could modify the system. *See* Lindley Dec. ¶ 15. The problem is that Defendant believes that other projects are deserving of greater priority. *See id.* There is no description of what these critical projects are or when the deadlines might be, nor is there an explanation of why outside

contractors cannot be utilized for some of those projects, nor is there an explanation of why computer personnel from different departments or agencies cannot be utilized. A bench trial has concluded, and a law that is actively being enforced has been found to be unconstitutional. The Court does not know how Defendant or the BOF prioritizes projects, but dealing with an unconstitutional law should be towards the top of the list. It is true that redirecting personnel may cause difficulties, but there is not enough before the Court for it to conclude that Defendant probably would suffer irreparable harm from such redirection.

Silvester v. Harris, 2014 WL 6611592 at \*3 (E.D. Cal. Nov. 20, 2014) ("Order

Denying Stay").

Moreover, the Attorney General's argument concerning the burden of compliance directly contradicts the District Court's finding of fact that the electronic portion of the Department of Justice's background check could be modified to make a "simple" check to determine whether an applicant falls into one of the three newly exempt classes. Silvester v. Harris, 2014 WL 4209563 at \*18 (E.D. Cal. Aug. 25, 2014). This finding of fact was based on the testimony of DOJ witness Steve Buford, Assistant Chief of the DOJ's Bureau of Firearms. Mr. Buford was responsible for reengineering the DOJ's background check system when the manual system was automated. Id.; see also id. at \*36 n.43 (directing Attorney General's "attention to the testimony Assistant Bureau Chief Buford and the 'simple' checks within AFS to determine if an individual has a firearm, has a valid CCW license, or has a valid COE."). Mr. Buford explained that "[i]t [the DROS background check system] could check to say yes or no whether a person has a COE or whether a person has a CCW. That's a simple check. It's a yes-or-no answer." (Trial Tr. at 279:22-24.)

The DOJ has now changed its tune and suggests that the fix will be far more complicated than the architect of the system said it would be.<sup>2</sup> (As set out in the attached Declaration from Don Kilmer, trial counsel for plaintiffs in the District Court, the DOJ's declarations suffer from many additional defects.) DOJ's post-trial declarations are obviously insufficient to support a conclusion that the District Court's factual finding was clearly erroneous.<sup>3</sup> If, nevertheless, the Court is inclined to indulge DOJ's effort to dispute that finding, Respondents should be provided an opportunity to pursue expedited discovery and submit further briefing before a ruling.

The DOJ's logistical arguments are also at odds with the evidence at

<sup>&</sup>lt;sup>2</sup> When DOJ moved for a stay, Mr. Buford was kept on the sidelines. The Court noted his absence. *See* Order Denying Stay at \*3, n.3 ("The Court notes that Assistant Bureau Chief Steve Buford was heavily involved in the background check system design and process, .... No declaration from Assistant Bureau Chief Buford was submitted by Defendant.") (citation omitted).

<sup>&</sup>lt;sup>3</sup> The District Court's finding of fact "must not be set aside unless clearly erroneous," and this Court "must give due regard to the trial court's opportunity to judge the witnesses' credibility." Fed. R. Civ. P. 52(a)(6). *See also United States v. Hovsepian*, 422 F.3d 883, 885 (9th Cir.2005) (this Court "may not disturb the district court's findings of fact unless [it] ha[s] the definite and firm conviction that the court has made a mistake.").

trial regarding the money available to the DOJ for just this sort of problem. Indeed, the DOJ has significant funds appropriated to it that may be used for the purposes of complying with the Order without any further legislative or executive involvement. Under the Budget Act alone DOJ has \$26,228,000 appropriated to it for purposes inclusive of the DROS system and its operation/maintenance, and the Firearms Safety and Enforcement Special Fund eclipsed \$20 million.<sup>4</sup> *See also* Trial Tr. at 426:6-23 (Dealer's Record of Sale System generated \$24 million in excess funds).

Despite all of this, the District Court left the door cracked open for the DOJ: "If additional information shows that outside vendors are necessary, and that they require additional time, and assuming that Defendant exercises due diligence in attempting to follow the Court's injunction, the Court will likely grant requests for additional time for Defendant to comply." Order Denying Stay at 6.<sup>5</sup>

<sup>&</sup>lt;sup>4</sup> The Budget Act of 2014 (SB 852) appropriated \$22,736,000 from fund 0460 (Dealer's Record of Sale special fund) and \$3,492,000 from fund 1008 (Firearms Safety and Enforcement Special Fund) to the DOJ for firearms-related expenditures. *See* Governor's Budget Summary 2014-15 (Jan. 10, 2014), app'x. 39, 41, online at http://www.ebudget.ca.gov/2014-15/pdf/BudgetSummary/FullBudgetSummary.pdf; Governor's Proposed Budget 2014-15, Department of Justice Budget at 1, 6, online at http://www.ebudget.ca.gov/2014-15/pdf/GovernorsBudget/0010/0820.pdf. <sup>5</sup> Of course, "financial constraints may not be used to justify the creation or perpetration of Constitutional violations." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 (1992). As this Court recognized

In any event, while it may be preferable (and, indeed, more efficient) for the State to upgrade its databases and alter its processes to comply with the Court's order, it is not necessary that it do so in order to begin substantially complying with the order. For example, the DOJ could allow an individual to provide a copy of their current certificate of eligibility or concealed-carry license, along with proof of a firearm in the Automated Firearms System, at the time of purchase. The DOJ could then instruct firearms dealers to process those transactions in the same way dealers currently process applications from other categories (such as curio and relic license holders) that are currently exempt from the waiting period. See Cal. Penal Code § 26000 et seq. and § 27000 et seq. Such a solution would have minimal financial or administrative impact on the DOJ, and it could be implemented while DOJ pursues whatever permanent fix it desires.

In sum, the Attorney General has not made a sufficient showing to warrant a stay. "[S]imply showing some 'possibility of irreparable injury' fails to satisfy the [irreparable harm] factor." *Nken*, 556 U.S. at 434-35 (citations omitted). Because the Attorney General has failed to meet her burden of demonstrating that irreparable injury is likely in the absence of a stay, the

long ago, "federal courts have repeatedly held that financial constraints do not allow states to deprive persons of their constitutional rights." *Stone v. City and Cnty. of San Francisco*, 968 F.2d 850, 858 (9th Cir. 1992).

Court "need not decide whether [she] is likely to succeed on the merits." *Oakland Tribune, Inc.*, 762 F.2d at 1376.

## B. DOJ Has Failed To Make A Strong Showing That She Is Likely To Succeed On The Merits.

DOJ claims it has satisfied the "likelihood of success factor" because (1) the case is a matter of first impression, and the appeal therefore raises "serious legal questions," or, alternatively (2) it has a likelihood of succeeding on the merits because it disagrees with the District Court's decision. (Mot. at 5-14.)

On the first point, the Attorney General argues that the "novelty" of the question presented is sufficient to support a stay. In other words, the appeal presents "serious legal questions." But in making this claim, she omits (as she did when she requested a stay from the District Court) a critical point concerning the applicable legal standard: In order for a stay to issue based on the "serious questions" at issue in the appeal, the stay applicant must demonstrate that "the balance of hardships tips sharply in [its] favor." *See Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011). The Attorney General cannot make this showing for the reasons discussed throughout this brief.

The Attorney General's second argument also fails, as she has failed to make a "strong showing" that she is likely to succeed on the merits. On this score, the Attorney General devotes the bulk of her brief—nearly nine full pages—to relitigating each and every aspect of the District Court's decision. (Mot. at 6-14.)

Of course, Respondents disagree. The District Court correctly held that the Waiting Period Laws violate the Second Amendment as applied to individuals who either (1) already lawfully possess a firearm as confirmed in the State's Automated Firearms System, (2) possess a valid Carry Concealed Weapon license, or (3) who possess a valid Certificate of Eligibility.

In reaching this decision, the court below applied the Ninth Circuit's two-step inquiry for analyzing Second Amendment challenges. *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014); *Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1150 (9th Cir. 2014). Under that test, a court first asks "whether the challenged law burdens conduct protected by the Second Amendment." *Jackson*, 746 F.3d at 960. Then, if a law burdens Second Amendment conduct, the court examines the severity of burden imposed to determine what level of constitutional scrutiny to apply—the more severe the burden, the higher the level of scrutiny. *Id.* As the District Court explained here:

Whether intermediate or strict scrutiny applies depends on: (1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law's burden on the right. Generally, a regulation that threatens a core Second Amendment

right is subject to strict scrutiny, while a less severe regulation that does not encroach on a core Second Amendment right is subject to intermediate scrutiny.

*Silvester*, 2014 WL 4209563 at \*26 (citations omitted). The District Court correctly applied this framework.

## 1. The Waiting Period Laws Burden Conduct Protected By The Second Amendment.

The Waiting Period Laws burden the Second Amendment right to keep and bear arms. As the court put it, "[o]ne cannot exercise the right to keep and bear arms without actually possessing a firearm," and due to the waiting period, a "purchased firearm cannot be used by the purchaser for any purpose for at least 10 days." *Id.* at \*27. Furthermore, the waiting period "may cause individuals to forego the opportunity to purchase a firearm, and thereby forego the exercise of their Second Amendment right to keep and bear arms." *Id.* 

The District Court then found that the State failed to show the Waiting Period Laws "fall[] outside the scope of Second Amendment protections as historically understood or fit[] within one of several categories of longstanding regulations that are presumptively lawful." *Id.* The court further stated "[t]here is *no evidence* to suggest that waiting periods imposed by the government would have been accepted and understood to be permissible under the Second Amendment" at the relevant time (either 1791 or 1868). *Id.* at 27. (emphasis added). The urgent motion fails to unearth any evidence to

fill that void.

The motion claims that the Waiting Period Laws fall outside the Second Amendment under *Heller*'s admonition that "longstanding prohibitions on the possession of firearms by felons or the mentally ill" remained "presumptively lawful." *District of Columbia v. Heller*, 554 U.S. 570 at 626-27 & n.26 (2008). There are at least two problems with this argument: First, by the DOJ's own admission, the Waiting Period Laws "facilitate" the prohibition, Mot. at 8, whereas *Heller* stated only that the prohibitions *themselves* fell outside the Second Amendment. Second, the entire point of the litigation below was that, once the plaintiff classes were determined not to be one of those prohibited persons, sometimes in as little as one minute, they should not have to wait another nine days, 23 hours, and 59 minutes to complete the purchase of their gun.

### 2. The Waiting Period Laws Fail Intermediate Scrutiny.

The District Court found that the Waiting Period Laws did not pass intermediate scrutiny, <sup>6</sup> specifically, that the State failed to establish a

<sup>&</sup>lt;sup>6</sup> "Although courts have used various terminology to describe the intermediate scrutiny standard, all forms of the standard require (1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective." *United States v. Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2013) (citing *United States v. Chester*, 628 F.3d 673, 683 (4th Cir.2010)).

"reasonable fit"<sup>7</sup> between the 10-day waiting period and the three objectives the State claimed were served by the law: (1) providing sufficient time to conduct a background check; (2) providing a cooling off period to prevent people from performing impulsive acts of violence; and (3) allowing law enforcement time to investigate straw purchases.

1. *Time to Conduct a Background Check*. Because the time it actually takes to complete a background check varies—"background checks can be completed anywhere from 1 minute to 10 days," *Silvester*, 2014 WL 4209563 at \*30—there is no longer a justification to apply the full 10–day waiting period when the background check is completed prior to ten days. *Id.* at 32, 34, 35.

<sup>&</sup>lt;sup>7</sup> "To pass muster under intermediate scrutiny," the government "must establish a tight 'fit' between the [challenged regulations] and an important or substantial governmental interest, a fit 'that employs not necessarily the least restrictive means but ... a means narrowly tailored to achieve the desired objective." *Heller v. District of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir. 2011) (citation omitted). The narrow tailoring requirement means that the scope of the regulation must be "in proportion to the interest served." *McCutcheon v. Fed. Election Comm'n*, 134 S.Ct. 1434, 1456 (2014) (citation omitted). To that end, a regulation must not "burden substantially more [protected conduct] than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism*, 491 U.S. 781, 788 (1989); *see also Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1177-78 (9th Cir. 2014) (criticizing other Circuits for failing to properly apply this standard).

2. *Providing a Cooling Off Period*.<sup>8</sup> The District Court further held that the State failed to establish a fit between the Waiting Period Laws and providing a "cooling off period," based on several reasons. First, "a waiting period of at least 1-day will naturally occur" for the large majority of purchases." *Id.* at 31.

As for those who already possess a firearm, the Court explained that the Waiting Period Laws are an ill fit. "If a person already possess a firearm, then that person will generally have access to that firearm and may commit impulsive acts of violence with it. [¶] There is *no evidence* that a 'cooling off period' ... prevents impulsive acts of violence by individuals who already possess a firearm." *Id.* (emphasis added).

And as to those who have a concealed carry license, the State failed to produce evidence "regarding unlawful firearm violence" or "suicide attempts by concealed carry license holders. *Id.* at 33. Furthermore, the Court reasoned that "[t]he nature and unique requirements of CCW licenses are such that it is unlikely that CCW license holders would engage in impulsive acts of

<sup>&</sup>lt;sup>8</sup> "The rationale behind the 'cooling off period' is to prevent individuals from performing impulsive acts of violence to others or to themselves. The 'cooling off period' seeks to limit a person's access to a firearm." *Silvester*, 2014 WL 4209563 at \*31.

violence." *Id.* Therefore, "[i]mposing the 10–day waiting period as a cooling off period on a CCW license holder is speculative and its effects appear remote at best." *Id.* at 34. DOJ's rehash of the arguments below does not justify a stay.

3. *Investigating Straw Purchases*. The final justification offered by the State was that the Waiting Period Laws gave law enforcement additional time to investigate straw purchases.<sup>9</sup> The District Court rejected this argument, first observing that there was no evidence that this was the Legislature's intent when it enacted the Waiting Period Laws, then faulting the Attorney General for failing to adequately link straw purchase investigations to the waiting period law. *Id.* at 32. "Applying the full 10–day waiting period to all transactions for purposes of investigating a straw purchase, in the absence of any reason to suspect that a straw purchase is in fact occurring, is too overbroad." *Id.* (citing *Peruta*, 742 F.3d at 1177).

# C. Plaintiffs Will Suffer Irreparable Injury From A Stay.

The Attorney General argues that Respondents must be able to show more than "abstract" injury, and challenges Respondents to demonstrate

<sup>&</sup>lt;sup>9</sup> "A 'straw purchase' is a purchase that a non-prohibited person makes for someone who is prohibited from owning and possessing a firearm. Straw purchases are prohibited under federal law, and may implicate California law." *Silvester*, 2014 WL 4209563 at \*21 (citations omitted).

"concrete injury to themselves." (Mot. at 17.) This demonstrates a troubling disregard of Respondents' Second Amendment rights, and fails to appreciate the nature and magnitude of the harm suffered by Respondents. The deprivation of constitutional rights "for even minimal periods of time" "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Latta v. Otter*, --- F.3d ----, 2014 WL 5151633, \*3 (9th Cir. 2014) (citing *Elrod*); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). The abridgement of constitutional rights diminishes us all.

#### D. The Public Interest Weighs Heavily Against A Stay

Respondents' interests are not the only interests at stake here, as the four-factor test also requires consideration of the constitutional rights of others. The public interest weighs heavily against a stay, which would result in the continued enforcement of an unconstitutional law against thousands of California residents. Courts uniformly recognize that the enforcement of an unconstitutional law is against the public interest. *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010) ("[T]he public, when the state is a party asserting harm, has no interest in enforcing an unconstitutional law."); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional law is always contrary to the public interest."); *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003) ("[N]either the Government

nor the public generally can claim an interest in the enforcement of an unconstitutional law.") (citation and international quotation marks omitted). *Cf. Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (upholding preliminary injunction in free speech case, and noting that "the ongoing enforcement of the potentially unconstitutional regulations would infringe not only the free expression interests of plaintiffs, but also the interests of other people subjected to the same restrictions.") (internal citation, quotation marks and ellipsis omitted).

Put simply, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (quoting *Sammartano v. First Judicial Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002)).

Finally, there is no threat to public safety if a stay is not issued, as DOJ's comprehensive background check must be completed before any person in the newly exempt classes can take possession of a firearm. Additionally, California's Armed and Prohibited Persons System provides a safety net by allowing law enforcement the ability to identify and confiscate weapons from people who become prohibited persons. (*See* Decl. of Don Kilmer, ¶¶ 20-27.)

# III.

### CONCLUSION

For the reasons set forth above, Appellant's urgent motion to stay enforcement of judgment should be denied.

Respectfully submitted,

Dated: December 19, 2014

Benbrook Law Group, PC

By: <u>/s/ Bradley A. Benbrook</u> Bradley A. Benbrook Counsel for Plaintiffs-Appellees Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-1, Page 25 of 26

# **CERTIFICATE OF COMPLIANCE**

1. This brief complies with the page limit of Fed. R. App. P.

27(a)(d)(2) because it does not exceed 20 pages.

2. This brief complies with the typeface requirements of Fed. R. App.

P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6)

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Dated: December 19, 2014

Benbrook Law Group, PC

By: <u>/s/ Bradley A. Benbrook</u> Bradley A. Benbrook Counsel for Plaintiffs-Appellees

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 19, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. Dated: December 19, 2014 Benbrook Law Group, PC

> By: <u>/s/ Bradley A. Benbrook</u> Bradley A. Benbrook Counsel for Plaintiffs-Appellees

(27 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-2, Page 1 of 14

No. 14-16840

#### IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KAMALA D. HARRIS, in her official capacity as the Attorney General of California, Defendant-Appellant,

v.

JEFF SILVESTER, et. al., Plaintiffs-Appellees.

Appeal from the United States District Court for the Eastern District of California, No. 1:11-cv-02137-AWI-SKO (Hon. Anthony W. Ishii, Judge)

### **DECLARATION OF DONALD KILMER IN SUPPORT OF APPELLEE'S RESPONSE IN OPPOSITION TO APPELLANT'S URGENT MOTION TO STAY ENFORCEMENT OF JUDGMENT**

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Counsel for Plaintiffs-Appellees

December 19, 2014

#### **DECLARATION OF DONALD KILMER**

I, Donald Kilmer, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I was lead trial counsel for the Plaintiffs-Appellants in the above-entitled action and if called and sworn as a witness, I could and would competently testify thereto.

2. The testimony and exhibits cited herein are part of the trial record in this case. For the convenience of the Court, I have attached copies of trial exhibits to this declaration, but I have not included the portions of the trial transcript referenced throughout. We will provide copies of such testimony at the Court's request.

3. Mitch Matsumoto was a witness during the 3-day trial in this matter. He works for the Department of Justice ("DOJ") Bureau of Firearms in the Purchaser Clearance Unit as a Criminal Identification Specialist III. He testified that for the year 2013 the state's system received more than 960,000 requests for background checks in connection with a gun sale and that total denials for the same time period was 7,371, or less than 1 percent. [TX Matsumoto 331:12-332:14; *see also* Exhibit AP]

4. Plaintiffs reserved (*i.e.*, temporarily mooted) their 14th Amendment equal protection claim, which is predicated on California's

2

statutory exemptions from the 10-day waiting period law for certain other categories of gun buyers. Those exemptions are (all statutory references are to the Penal Code):

Certain law enforcement transactions. §§26950, 27050, 27055, 27060, 27065 (exempting §26815); §§27600, 27605, 27610, 27615, and 27650 (exempting §27540).

2. A dealer who delivers a firearm other than a handgun at an auction or similar event. §§26955 (exempts from §26815); §27655 (exempts from §27540).

3. Dealer-to-dealer transfers of firearms. §§27110 and 27125 (exempts from §26815); §§27710, and 27725 (exempts from §27540).

4. Transfers of firearms by a dealer to him or herself. §§26960 and 27130 (exempts from §26815); §§27660 and 27730 (exempts from §27540.)

5. Transactions between or to importers and manufacturers of firearms. § 27100 (exempts from § 26815); § 27700 (exempts from §27540).

6. Persons with a "short barrel rifle" or "short barrel shotgun" permit pursuant to § 33300. §§ 26965 and 21740 (exempts from § 26815); §§ 27665 and 27740 (exempts from § 27540).

7. Persons who have an assault weapons permit pursuant to section 30500, *et seq.* §21740 (exempts from §26815); §27740 (exempts from §27540).

8. Persons who have a machinegun permit pursuant to section 32650 *et seq.* §§26965 and 27140 (exempts from §26815); §§27665 and 27740 (exempts from §27540).

3

9. Persons who have a machinegun license pursuant to section
32700. §26965 (exempts from §26815); § 27665 (exempts from §27540).

10. Persons who have a destructive device permit pursuant to section 18900. §26965 (exempts from §26815); §27665 (exempts from §27540).

11. Persons with curio and relic collector's licenses issued by the Bureau of Alcohol, Tobacco, Firearms and who have a valid Certificate of Eligibility issued by the California Department of Justice and only when purchasing curio and relic firearms. §26970 (exempts from §26815); §27670 (exempts from §27540).

12. Transactions regarding firearms serviced or repaired by a gunsmith. §27105 (exempts from §26815); §27705 (exempts from §27540).

13. Dealer sales to persons residing out-of-state. §27115 (exempts from §26815) and §27715 (exempts from §27540).

14. Deliveries to wholesalers. §27120 (exempts from §26815);§27720 (exempts from §27540).

15. Loans by dealers who operate target facilities. §27135 (exempts from §26815); §27735 (exempts from §27540).

16. Certain loans of firearms for use as props. §27000 (exempts from §26815); §27745 (exempts from §27540).

17. Loans to consultants or evaluators. §27005 (exempts from §26815); §27750 (exempts from §27540).

18. Lawful transactions involving cane guns, firearms that are not immediately recognizable as firearms, undetectable firearms, wallet

guns, unconventional pistols, and zip guns. §21740 (exempts from §26815); §27740 (exempts from §27540).

5. The testimony at trial from Assistant Bureau Chief Buford indicates that all background checks access a database called the Automated Firearms System (AFS). The bulk of the records contained in the AFS system are the state's Dealer's Record of Sale (DROS) that have occurred (at least with respect to handguns) since 1991. [TX Buford 234:20 - 235:21] Furthermore, the AFS system is available through the California Law Enforcement Telecommunication System (CLETS) on a 24/7, 365 days per year basis. It is also available to police officers (who have the equipment) in the field to alert them to the possibility of the presence of a firearm during any public safety service call. [TX Buford 250:18 - 253:14]

6. From the testimony taken and exhibits admitted at trial: The National Instant Criminal Background Check System (NICS) is administered by the U.S Department of Justice, Federal Bureau of Investigations. As of 2011, the federal NICS system had achieved an availability rate of better than 99.87%, and a 91.52% Immediate Determination Rate. Individual states may opt out of the national system (yet still have access to the national database) by demonstrating that their own system meets or exceeds the requirements mandated by federal law. California is such a state. *See generally* Exhibit BO, and the testimony of

5

Steven Buford, Assistant Bureau Chief at the DOJ Bureau of Firearms. [TX Buford 163:2 - 286:25]

7. The current computerized DROS process starts with an electronic transmission of the gun buyer's information (which includes information on the transaction firearm) to the DOJ. [TX Buford 171:20]

8. Then the information is run through a DMV verification to ensure accurate identification information of the DROS applicant. [TX Buford 171:21-172:3]

9. Next, the DROS application is run through the Automated Firearms System ("AFS") to insure that the firearm in question is not reported lost or stolen. [TX Buford 173:10 - 175:15] The application is then processed through multiple databases to determine if the buyer belongs to a category of prohibited persons. [TX Buford 175:24 - 176:3] Those databases include: The Automated Criminal History System (ACHS) [TX Buford 176:9]; The California Restraining Order and Protective Order System (CARPOS) [TX Buford 182:20]; The Wanted Persons System (WPS) [TX Buford 184:5]; The Mental Health Firearms Prohibition System (MHFPS) [TX Buford 185:20]; The Consolidated Firearms Information System (CFIS) [TX Buford 189:3]; and, finally, California checks the federal government's National Instant Criminal Background Check System (NICS) [TX Buford 191:2].

 California currently has four determinations made by the DROS/Background Check System: (1) approved (the sale and delivery may proceed subject to the WPL), (2) delayed (further investigation is necessary),
 (3) denied (the person is prohibited under federal or state law from acquiring/possessing a firearm), and (4) "undetermined." [TX Buford 231:25-232:15]

11. Assistant Bureau Chief Buford admitted during trial that "it is possible for a DROS application to make it through all of the databases that we just mentioned without there being any hits at all[.]" These DROS applications are called "auto approvals." Such "auto approvals" make up about 20 percent of all DROS applications processed by the Department. [TX Buford 198:5-15]

12. That means that during the year 2013, when more than 960,000 DROS applications were processed by the Department, at least 192,000 DROS applications were "auto-approved." The testimony at trial from Buford and Orsi was consistent that "auto-approvals," which make up more than 20% of all DROS determinations, can take place within one hour [TX Buford 240:5] and in as little time as one minute. [TX Orsi 308:17]

7

13. Additional testimony was provided that the DROS/Background Check System is capable of accessing the AFS database, which reliably keeps track of previous handgun purchases since 1996 and long gun purchases since January 1, 2014. [TX Graham 387:4-6, 442:3-443:8]

14. Assistant Bureau Chief Buford further testified that the DROS/Background system can generate a response as to whether an applicant also has a Concealed Carry Weapon (CCW) permit and/or a Certificate of Eligibility (COE) and/or whether that person also has gun in the AFS system. [TX Buford 280:16-24]

15. Furthermore, both a CCW and COE (two of the three categories of gun buyers whose rights are affected by the status quo) generate a unique criminal justice identification record that is based on the unique set of fingerprint records on file for that individual. That unique identification record is known as a Criminal Identification Index record or CII. The existence of a CII speeds up the process of identifying a person when the California Department of Justice makes an inquiry about them. [TX Buford 243:6-24] [TX Matsumoto 327:22]

16. Stephen Lindley, Chief of the Firearms Bureau, testified at508:9:

Q. Why not simply release firearms upon approval?

8

(35 of 120)

A. Because we have the 10-day waiting period as a cooling-off period as well.

Q. All right, so the only thing that's stopping you from releasing a firearm upon approval of the background check is the statute, and the statute is based upon we still want a coolingoff period.

A. Once the background is approved?

Q. Yes.

A. Yes.

17. Defendants' Exhibit AR was admitted into evidence without objection. [TX 140:15-24] The exhibit consists of emails between Bureau of Firearms Chief Lindley and DOJ staff. The emails are dated between July 2012 and January 2014. They consist primarily of requests by Matsumoto for overtime to process firearm background checks.

18. The emails demonstrate that the DOJ routinely approves

overtime and expenditure of resources to address temporary demand for running their DROS/Background check system. For purposes of fashioning a temporary system that would substantially comply with the Trial Court order, Exhibit AR shows the DOJ has ready access, in real time, to information showing how many DROS/Background checks are autoapproved and how many require further investigation. Thus, DOJ has the capability of treating gun buyers who qualify for any one of the 18 statutory exemptions from the 10 day wait in exactly the same way as the District Court's order requires. 19. Defendants' Exhibit AS was admitted into evidence without objection. [TX 140:15-24] The Exhibit consists of spreadsheet showing a <u>Summary of DROS Actual Revenues and Expenditures</u> for the years 2000 through 2011. For every year since 2004, Total Revenues generated by the system exceeded Expenditure. In some years that surplus exceeded \$3 million.

20. Finally, the State of California is unique in other ways relating to the control of firearms by prohibited persons. In effect, California has a safety net system that is designed to confiscate guns from persons who become prohibited after previously having been approved for a gun purchase. (This by definition includes all *Silvester*-exempt gun-buyers.)

21. That system is the Armed and Prohibited Persons System (APPS). Its specific purpose is to identify people who are known to the State of California to have a firearm who then have a subsequent prohibiting event (conviction, mental health hold, restraining order, etc.) and, therefore, should not have a gun. [TX Graham 420:11-16.] [TX Orsi 307:7-12]

22. The APPS database updates itself every day with data from the DOJ databases relating to firearms (except for NICS [TX Lindley 476:12]) and generates reports for further investigation if it obtains a match as described in the DROS background check. [TX Orsi 304:4-23]

10

23. The APPS system is funded (currently with \$24 million)through the fees paid by California gun buyers through their DROS fees.[TX Graham 426:6-23]

24. Put simply, where the DROS Background check is designed stop somebody from getting a firearm, the APPS system is designed to get a firearm from somebody who has become prohibited. [TX Lindley 497:10-15]

25. People who obtain CCW permits and COE certificates complete the extra step of submitting full live scan fingerprints to the Defendants in order to make themselves easily identifiable. Both the CCW (no more than 2 years, Penal Code § 26220) and the COE [annually, TX Combs 61:8] must be renewed on a regular basis.

26. Deputy Bureau Chief Buford testified that because the DOJ monitors COEs and CCWs, these licenses are subject to a procedure called "rap-back." [TX Buford 221:21- 225:17] The "rap-back" system is a process for positive identification of a person based on the fingerprints that are already on file with the DOJ. The rap-back system notifies DOJ of the arrest of any person with fingerprint records on file. Bureau of Firearms Chief Lindley explained, starting at TX 492:7:

A. We have a system which, in laymen's term, is called a rapback system. Q. Can you explain what that is?

A. Based on the person's submitted fingerprints, if their name comes up through the criminal history system as being arrested, that goes into the system and would flag. So I'll use myself as an example.

Q. All right.

A. Let's say that last night, I was arrested for domestic violence. Taken down to county jail, my fingerprints were rolled. This morning, DOJ would have been notified by our own system that I was arrested for domestic violence, which potentially could be a prohibiting offense if I'm convicted or plead guilty to it. So that allows that agency to take some action, especially since I'm a police officer, maybe to remove me from the field, put me on admin leave, but they're notified of that arrest.

[...]

A. Rap-back is designed for people that we have fingerprints on. People that go into APPS, we might not necessarily always have fingerprints on them because they're contained in different databases. Like our mental health database, restraining order database, or the wanted persons database. Rap-back mainly deals with the people who are in the criminal history system, and the CII number and that information goes in and is part of he criminal history. So if you ran a criminal history on me, you'll only find that I have the CII number and the two agencies that I used to be employed with. DOJ, which I'm currently, and National City previously.

27. In sum, the evidence at trial shows that these "safety-net"

systems literally operate around the clock to identify and confiscate weapons

from people who become prohibited persons.

I declare under penalty of perjury under the laws of the United States

and California that the foregoing is true and correct and that this declaration

was executed in San Jose, California on December 19, 2014.

/s/ Donald Kilmer

Donald Kilmer Attorney for Plaintiff-Appellants

### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 19, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. Dated: December 19, 2014 Benbrook Law Group, PC

> By: <u>/s/ Bradley A. Benbrook</u> Bradley A. Benbrook Counsel for Plaintiffs-Appellees

(41 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-3, Page 1 of 3

# EXHIBIT AP

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-3, Page 2 of 3

#### DEALER RECORD OF SALE STATISTICS

#### 08/29/2013 Through 08/29/2013

OFFENSE CODE DENIALS:		DROS PROCESSED:	•
ASSAULT	5	TOTAL DROS RECEIVED	2,397
BURGLARY (INCLUDES RSP)	3		
DANGEROUS DRUGS/NARCOTICS	1	HANDGUNS	· 1 <b>,</b> 077
FORGERY/FRAUD	2	LONG GUNS	1,320
MENTAL HEALTH	1	· · · · · · · · · · · · · · · · · · ·	
OTHER (YES ANSWER, ETC.)	9	PAWN REDEMPTION HANDGUNS	13
VEHICLE CODE VIOLATIONS	2	PAWN REDEMPTION LONG GUNS	8
WEAPONS	3		-
SUMMARY OF DENIALS:		DENIALS BY FIREARM TYPE:	
	1	HANDGUNS	16
DOMESTIC VIOLENCE RESTRAINING ORDER	Ţ	LONG GUNS	10
FEDERAL BRADY PROHIBITION**	8		
FELONY CONVICTION	7	PAWN DENIALS BY FIREARM TYPE:	
JUVENILE PROHIBITION	1		
MENTAL HEALTH	6	PRIVATE PARTY SALES:	
MISDEMEANOR	2	LONG GUNS	. 94
OTHER	1	HANDGUNS	192
		DENIALS	1
TOTAL	26		
		PEACE OFFICERS (CERT LIST EXEMPT):	
30-DAY REJECT DENIALS: 30-DAY REJECTS		HANDGUNS	59
JU-DAT REJECTS	2	DENIALS	· 0
		CURIO & RELIC:	
		HANDGUNS	. 97
			21

DENIALS



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AG002049 Silvester v. Harris

### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-3, Page 3 of 3

## DEALER RECORD OF SALE STATISTICS

01/01/2013 Through 12/31/2013

*		•		"
•	OFFENSE CODE DENIALS:	· · · · ·	DROS PROCESSED:	•
•	ARSON ASSAULT	20 2,026	TOTAL DROS RECEIVED	960,179
	BURGLARY (INCLUDES RSP)	322	HANĎGUNS	422,030
	DANGEROUS DRUGS/NARCOTICS	1,191	LONG GUNS	538,149
•	FORGERY/FRAUD	130		
	HOMICIDE (INCLUDES MANSLAUGHTER)	17	PAWN REDEMPTION HANDGUNS	5,772
	KIDNAP	2	PAWN RÉDEMPTION LONG GUNS	4,155.
	MENTAL HEALTH	201		
	NON IMMIGRANT ALIEN	72	DENIALS BY FIREARM TYPE:	· .
•	NON-STAT MENTAL	8	HANDGUNS	3,725
	OTHER (YES ANSWER, ETC.)	2,513	LONG GUNS	3,646
	ROBBERY	75		
	SEX CRIMES	65	PAWN DENIALS BY FIREARM TYPE:	•
	THEFT	238	LONG GUNS	57
	VEHICLE CODE VIOLATIONS	298	HANDGUNS	60
	WEAPONS	198		00
	SUMMARY OF DENIALS;		PRIVATE PARTY SALES:	*
	SUMMARY OF DEMALS;		LONG GUNS	44,375
•	CONDITION OF PROBATION	95	HANDGUNS	75,554
	DOMESTIC VIOLENCE RESTRAINING ORDER	460	DENIALS	633
	FEDERAL BRADY PROHIBITION**	2,291		•
	FELONY CONVICTION	2,297	PEACE OFFICERS (CERT LIST EXEMPT):	
	JUVENILE PROHIBITION	329	HANDGUNS	22,838
	MENTAL HEALTH	802	DENIALS	6
	MISDEMEANOR	926		
	OTHER	171	CURIO & RELIC:	·
		· · ·	HANDGUNS	
	TOTAL	7,371	HANDGUNS	36,040
	<b>30-DAY REJECT DENIALS:</b>		DENIALS	552
	30-DAY REJECTS	0.017		
		2,814		
		:		· .
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(44 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 1 of 51

# **EXHIBIT AR**

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Page 1 of 2

Reply Reply To All Forward Send To Me View Images Print

🖻 Email

From: Stephen Lindley To: Mitch Matsumoto Subject: Re: DROS Statistics

Messaga Comment Headers

Approved.

This e-stail was sent from a California Department of Juscice BlackBerry Device. ------Diginal Messege------Frome Mitch Mactumeto

From: Mitch Matsumoto To: Lindley, Stephen company of the Difference To: Buford, stave

Sent: 7/12/1013 5:24:12 AM Subject: DROS Statistics

Good Horning Chief Lindley

We received 1,817 dros on Wednesdey, 511 dros wore auto approved, staff processed 2,195 dros. Currently working on day 5 (355) with a backlog of 5,585 dros. I would like to request 2 days of overtime this weakend to help get the backlog down.

Thanks, Mitch

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#### Quest Software Archive Manager : View Message

Page 1 of 2

ė Reply Reply To All To Mn

🖨 Email

From To: Subject: Stephen Lindley Steve Buford ; Mitch Matsumoto Re: DROS Statistics

Message Comment Headers

OT approved.

This s-sail was sant from a California Department of Jeatloe BlackBerry Device. Froms Nich Matsundte Tor Lindley, Stephen Comparison State State Tor Lindley, Steve Comparison State State

Sent: 8/20/2012 6:39:35 AM Subject: DROS Statistics

Good Norming Chief Lindley

We received 2,514 dros on Friday, 137 dros were suto approved, staff processed 1,205 dros. We received 2,550 dros on Saturday, 450 dros were auto approved, staff processed 2,021 dros. We received 1,150 dros on Sunday, 19 dros were auto approved, staff processed 1,365 dros. Currently werking on day 7 (364) with a backlog of 10,224 droa. Donnette is checking on Sundaya'suto approved count. I would like to ask for 2 hours of overtise during the weekdays.

Thanks, Mitch

(48 of 120)

## Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 5 of 51

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(49 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 6 of 51

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Fron To: CC: Subj		<u>Steve Buford</u> <u>Gerri Kanelos</u> ; <u>Mitch Matsumo</u> Re: DROS State	<u>Stephen Lindlev</u>		Sent:1/21	L/2013 8:45:59 AM	0	• ,
Me	issage nks Gerri	Comment	Headers		· ·		·	].
This	e-mail w	as sent from a	California Depa	rtment of Justic	e BlackBerry Devi	ce.		
Sent To: : Cc:	Steve Bu Mitch Ma		2013 06:09 AM Lindley		•			×
			Sunday, 381 we on day 7 (720).	re auto approve	ed, staff processed	l 1,569 leaving a ba	icklog of	
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	Reply	Reply To All	Forward	Send To Me	View Images	Print		Ē
0	Email			· ·				
From To: CC: Sub;		<u>Steve Buford</u> <u>Gerri Kanelos</u> ; <u>St</u> <u>Mitch Matsumoto</u> Re: DROS Stats	ephen Lindiey ; Vicky Moy ; T	errl Hairston	<b>Sent:</b> 2/2/	2013 8:59:29 AM	0	
Me	essage	Comment .F	leaders					
That	nks Gerril	۰.	•	•				
This	e-mail w	as sent from a Ca	alifornia Depa	rtment of Justice	e BlackBerry Devi	ce,		
Sen		ay, February 02,		.M	649000000000000000000000000000000000000	*****	****	_
Cc:	Mitch Mat	ord; Stephen Lin sumoto; Vicky M DS Stats		ston	·			
We 18,1	received : 96. Curre	3,876 DROS on F ntly working day	riday, 693 we 7 (3,601).	re auto approve	d, staff processed	2,703 leaving a b	acklog of	•
Thar	nks, have	a good weekend	11			* .	•	
Bure		earms, DOJA I	· .		· · ·		· ·	
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# (51 of 120) Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 8 of 51

🖨 Email						•	
Fo:	<u>Stephen Lindley</u> <u>Mitch Matsumoto</u> Re: DROS Statistic	5 ·		<b>Sent:</b> 3/2/	2013 3:39:30 PM	8	
Message	Comment He	aders	-				
hanks Mitch.			. ,				
his e-mail wa	s sent from a Cal	ifornia Depa	rtment of Justic	e BlackBerry Devi	ce.		
	iy, March 02, 201 indley; Steve Buf elos			99000 89 000 98 000 9000 9000 9000 9000			
ood Mornine	g Chief Lindley						
,					• *		
Ve received 3 vorking on da	,856 dros on Frid y 7(419) with a b	ay, 634 dros acklog of 15	were auto appi ,642 dros.	roved, staff proce	ssed 2,531 dros. Cu	urrently	
hanks, Mitch							
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(52 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 9 of 51

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😂 Email	•			•	•		,	•
From: <u>S</u> To: M	tephen Lindley itch Matsumoto			Sent	:6/1/2013	7:34:13 AM	<u>es</u>	
Subject: R	e: DROS Statistics					,	$\mathbf{v}$	
•	Comment Hea	ders		· .				
Thanks Mitch.			, * ,					
This e-mail was	sent from a Calif	ornia Depai	rtment of Justice	e BlackBerry	Device.		•	
From: Mitch M		, 		•				
Sent: Saturday	, June 01, 2013 0	2:32 AM				•		
<b>fo:</b> Stephen Li Subject: DROS	ndley; Steve Bufor	rd	,* * , ,	· ·	•		•	
			•			· · ·		
Good Mroning	Chief Lindley		• •		-			
Ne received 2,	999 dros on Frida	y, 51 dros v	vere auto appro	ved, 29 dros	were dela	aved, staff pro	cessed 1.643	
tros. Currently	working on day 7	(1,233) wit	h a backlog of 1	0,2041 dros			,- · ·	
Thanks,		·. ·					, , ,	
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Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 10-of 51

🖨 Email			•				
From: To: Subject:	Stephen Lindley Mitch Matsumoto Re: DROS Statistic	2S		. <b>Sent:</b> 7/1	7/2013 6:56:20 AM	Ø	
Message	Comment · H	leaders				• •	
Thanks Mitch	<b>).</b>			,	•		
This e-mail w	as sent from a Ca	ilifornia Depart	tment of Justice	e BlackBerry Dev	iće.		
ro: Stephen	Matsumoto Isday, July 17, 20 Lindley; Steve Bu OS Statistics		· · ·	(			
Good Mornir	ng Chief Lindley	ť		;	•		
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	2,360 dros on Tu currently working				were delayed, staff	processed	
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From: To: CC: Subject:	<u>Stephen Lindley</u> <u>Mitch Matsumoto</u> <u>Steve Buford</u> Re: DROS Statistic:	5			Sent:7/1	8/2013 7:	:55:16 AM	• •	Ø	
Message Thanks Mitch.	Comment He	eaders		· .				• .		
ent from my Bla	ckBerry 10 smartphone o	n the Verizon Wi	reless 4G LTE netv	vork. :	۰ ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹ - ۱۹۹۹	and give and and story water to the logical gives a story water to		Ter Three straits, musicadas un		
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Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 12 of 51

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From: To: Subject:	MIt	ch Matsu DROS S	imoto	5			Sent	7/22/20	13 6:52::	17 AM	(	Ì	
Message		omment	He	aders		,	•						
Thanks Mitch			•										
From: M				n the Verizon 1	Wireless 4G LTE	network.				14-14-14 (conserve tabel) (conserve	5.0 mm y again y 200 - 5444 Annal - 1944		
Sent: Mo To: Stepi Subject:	onday, hen Lin	July 22, Idley; St	2013 4 eve Bul				·	•					
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Good Mo	rning C	Chief Lin	dley		•			•	•	•			
						o appro	ved, 55 dro	s were d	lelayed,	staff pro	cessed	1,694	
				n Saturday		ctaff nro	cessed 618	dros M	la racab	od 880 v	drac an		
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(56 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page	Case: 1
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Page 1 of 2

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From To: Subje		Stephen Lindle Mitch Matsumo Re: DROS Stat	oto			. <b>Sent:</b> 7/:	23/2013 7:0	01:15 AM	Ŷ	
	ssage	Comment	Headers	-	•					,
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	*****	ckBerry 10 smartph	one on the Veri	zon Wireless 4G I	.TE network.	yaanad ya da adda da da ayaa da ahay ya da da ay ay da ahay ya				
Sen To: :	t: Tueso Stephen	tay, July 23, 20 Lindley; Steve ROS Statistics		1	•			· · ·	·	•
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3000	iviornii	ng Chief Lindle	:y	•						
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From: To: CC:	Mitch Marc	e Buford Matsumoto ; StPlerre ; Gui	izar Jaggi	llev .	<b>Sent;</b> 7/2.	5/2013 6:29::	34 AM _		Ø	
Subject:	Re: [	DROS Statistic	25							
Message Marc. Gu			eaders	t seems low. Car	n you please check	for problem	n Baltania		. 1	
confirm t	he auto-a	approval cou	int.	Lacentia IOW, Car	· you please check	for problem	is. Mitch	, piease		
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This e-ma	ill was se	nt from a Ca	lifornía Dep	artment of Justi	ce BlackBerry Devi	ice.				
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To: Steph	nen Lindle	uly 25, 2013 ey; Steve But					•	•	•	
Subject:	DROS SI	atistics		•				۰.	1	
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📾 Email		· · ·		·		
From: To: Subject:	<u>Stephen Lindley</u> <u>Mitch Matsumoto</u> Re: DROS Statistics		Sent:7/2	5/2013 6:52:54 AM	Ø	۰.
Message	Comment Headers		,			
Thanks Mitch.	· .		· · ·			
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•	ase: 14-16840, 12/19/2014, ID: 9357098; DktEntry: 17-4, Page 16 of 51	

Quest Software Archive Manager : View Message

Page 1 of 2

From: To: Subject:	Stephen Lindl Mitch Matsum RE: DROS Sta	oto	,		Se	ent:8/6/20	13 1:47:3	1 PM		Ø	, ,
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#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 18 of 51...

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🖨 Email							
To:	Mitch Matsumoto Stephen Lindley FW: DROS Statistic	25		Sent:8/	12/2013 3:46:32	PM	0
Message – Hi Steve	Comment H	eaders	· ·		. <sup>.</sup>		.
Here is the st	ats for this weeke	end.					· .
Fhanks,		. ·					
Mitch			· · · ·				
	y, August 12, 201	.3 4:27 AM					
<b>Fo:</b> Stephen Subject: DRO	OS Statistics				· .		
Good Mornin	g Chief Lindley	· .				• .	•
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dros. We rece 433 dros wer Sunday, 260 d day 4(153) w Thanks, Mitch	eived 2,649 dros o e auto approved, dros were auto ap ith a backlog of 5,	on Saturday, 5 dros were oproved, 2 dr 147 dros.	delayed, staff pr ros were delayed	ocessed 1,721 , staff processe	dros. We receive ed 1,481 dros.Cur	d 1,043 dro rently worl	is on king on
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 From:
 Stephen Lindley
 Sent:8/14/2013 9:41:45 AM

 To:
 Mitch Matsumoto
 Subject:
 RE: DROS Statistics

Message Comment Headers

Thanks Mitch.

From: Mitch Matsumoto Sent: Wednesday, August 14, 2013 6:36 AM To: Stephen Lindley; Steve Buford Subject: DROS Statistics

Good Morning Gerri

We received 2,326 dros on Tuesday, 388 dros were auto approved, 25 dros were delayed, staff processed 2,289 dros. Currently working on day 4(106) with a backlog of 4,015 dros.

Thanks, Mitch

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To:	Stephen Lindley Mitch Matsumoto RE: DROS Statistic	5		<b>Sent:</b> 8/15	/2013 1:53:58 PM	3
Message Thanks Mitch	Comment He	od work!		· •	· · · ·	Ì
From: Mitch Sent: Thursd To: Stephen I Subject: DR(	ay, August 15, 20 Lindley; Steve Buf	13 6:19 AM ord				· ·
Good Mornin	g Chief Lindley					
We received 2 2,330 dros. Ci	2,282 dros on We urrently working o	dnesday, 413 on day 3(113)	l dros were au ) with a backlo	to approved, 25 dro g of 3,696 dros.	os were delayed	, staff processed
Thanks, Mitch					· . ·.	
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Fron To;		<u>Stephen Lindley</u> <u>Mitch Matsumoto</u> Re: DROS Statistic	s .		. <b>Sent:</b> 8/17	/2013 9:57:33 AM	Ø.
	essage	Comment H	eaders		•	·	
Thank	s Mitch.		•				
Sent fi	rom my Bla	ackBerry 10 smartphone	on the Verizon Wi	eless 4G LTE network.			
Sen To:	it: Satur Stepher	h Matsumoto day, August 17, 2 n Lindley; Steve Bi ROS Statistics		•			
Goo	d Morni	ng Chief Lindley	• •		•		
		1 3,090 dros, 953 c orking on day 2(1,				l, staff processed 1,	730 dros.
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	Case:	14-16840,	12/19/2	014, IE	D: 9357098,	DktEntr	y: 17-4,	Page	22	of 5	51
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We recei 1,715 dro	ved 3 os. Cu	,054 dros o rrently wor	n Satur king on	day, 533 d day 3(65)	dros were a 3) with a bi	iuto app acklog o	roved; 7 d f 5,293 dro	ros were is.	e delayed	, staff <sub>l</sub>	oroces	ed .	
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# Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 23 of 51

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9	Email		•	, ,	· · ·		
Fron To: Subj	ect: .	<u>Stephen Lindley</u> <u>Mitch Matsumoto</u> RE: DROS Statis	2	•	<b>Sent:</b> 9/23	/2013 9:27:08 AM	0
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Sent Fo: S	: Monda Stephen	Matsumoto ay, September 2 Lindley	3, 2013 5:03 A			n demonstrativ (M)	· · ·
	Steve Bu	OS Statistics					•
3000	l Morníi	ng Chief Lindley			· ·		
dros. proc	. We rec essed 2,	eived 3,184 dro 997 dros. We re	s on Saturday, eceived 1,254 d	666 dros were a Iros on Sunday, 2	uto approved, 6 c	re delayed, staff pro lros were delayed, s o approved, 7 dros of 7,520 dros.	taff
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Case: 14-16840,	12/19/2014,	ID: 9357098,	DktEntry: 17-4,	Page 24 of 51	
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To: Mitc	<u>ohen Lindley</u> . <u>h Matsumoto</u> DROS Statistics			Sent:9/24	/2013 7:15:31 AM	8
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Thanks Mitch			• •		• •.	•
Sent from my BlackBer		n the Verizon Wire	eless 4G LTE network.		<del></del>	
From: Mitch Ma Sent: Tuesday, To: Stephen Lind Cc: Steve Buford	September 24, Jiey	2013 6:41 A	Μ			
Subject: DROS				• •	•	
Good Morning C	hief Lindley	,	:		• .	
We received 1,92 2,697 dros. Curre					vere delayed, staff pro	cessed
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From: To: Subject:	<u>Stephen Lindley</u> <u>Mitch Matsumoto</u> Re: DROS Statist	ics	•	<b>Sent:</b> 9/27	7/2013 7:19:05 AM	Ċ	ð
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Thanks Mitch							
	BlackBerry 10 smartphone	e on the Verizon Wi	reless 4G LTE network.	*******			
Sent: Frid To: Steph	tch Matsumoto lay, September 27, en Lindley DROS Statistics	.2013 6:19 AM	1 . . ·				
Good Mor	ning Chief Lindley	,					
	ed 2,398 dros on Ti				were delayed, st	aff process	ed
2,429 dros	. Currently workin	g on day 3(1,2	10) with a backlo	g of 4,917 dros.			
Thanks, Mitch		•					
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Fron To; Subj		<u>Stephen Lind</u> Mitch Matsur Re: DROS St	noto; s	Steve E	<u>auford</u>		• .			Sen	t:10/	1/201	3 7:5	7:43	AM			Ø	
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We 1 2,39	received 5 dros. (	1,968 dros c Currently wo	on Mor rking o	nday, : on day	367 <sup>.</sup> dr 3(1,71	o's we 10) w	ere aut ith a b	to app ackloj	orove g of 4	d, 40 ,136 (	dros dros.	were	dela	yed,	stafi	f pro	cess	ed	
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#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 27 of 51

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Fron To: CC: Subj	n: ect:	<u>Stephen Lindley</u> <u>Mitch Matsumoto</u> <u>Steve Buford</u> Re: DROS Statistic			<b>Sent:</b> 10/	3/2013 10:39:48 AM	0
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Sen To: Cc:	it: Thurs Stephen Steve Bi	n Matsumoto Iday, October 3, 2 I Lindley uford ROS Statistics	013 6:25 ÅM		• •		и. — Чел Чел Раски сило сило на
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Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 28 of 51

#### **Praneel Singh**

<sup>s</sup>rom: \_ant: To: Cc: Subject: Praneel Singh Monday, October 28, 2013 7:27 AM Stephen Lindley; Steve Buford Mitch Matsumoto DROS Daily Report

On Friday we received 2,551 DROS, 426 were auto approved, staff processed 1,754 with 41 being delayed, on Saturday we received 2,773 DROS, 525 were auto approved, staff processed 1,663 with 5 being delayed, on Sunday we received 1,010 DROS, 251 were auto approved, staff processed 1,224 with 0 being delayed leaving a back log of 3,599. Currently working on day 3 (708).

*Prangel Singh* CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-9755 Fax # 916-9755 Praneel Singh

<sup>c</sup>rom: ∦ent: To: Cc: Subject: Praneel Singh Tuesday, October 29, 2013 7:07 AM Stephen Lindley, Steve Buford Mitch Matsumoto DROS Daily Report

On Monday we received 1,747 DROS, 339 were auto approved, staff processed 1,679 with 21 being delayed leaving a back log of 3,330. Currently working on day 3 (1,128).

1

Prancel Singh CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-227-Fax # 916-227-

(73 of 120)

#### ase: 14-16840, 12/19/2014 ID: 9357098 DktEntry: 17-4, Page 30 of 51

Praneel Singh

From: Sent: To: Cc: Subject: Praneel Singh Wednesday, October 30, 2013 7:05 AM Stephen Lindley; Steve Buford Mitch Matsumoto DROS Daily Report

On Tuesday we received 2,187 DROS, 359 were auto approved, staff processed 2,349 with 28 being delayed leaving a back log of 2,819. Currently working on day 2 (1,070).

1

*Pranzel Singh* CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-Fax # 916-Fax # 916-

(74 of 120)

#### -16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 31 of 51

Praneel Singh

√rom: Sent: To: Cc: Subject:

100

Praneel Singh Friday, November 01, 2013 7:12 AM Stephen Lindley; Steve Buford Mitch Matsumoto DROS Daily Report

On Thursday we received 1,926 DROS, 321 were auto approved, staff processed 1,630 with 17 being delayed leaving a back log of 3,425. Currently working on day 3 (76).

1

Pranzel Singh CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-2000 Fax # 916-2000

#### 16840, 12/19/2014, ID. 9357098, DktEntry: 17-4, Page 32 of 51

Praneel Singh			· · · ·
rom:	Praneel Singh	1	
Sent:	Wednesday, December 11, 2013 8:28 AM		
То:	Stephen Lindley; Steve Buford		1
Cc:	Mitch Matsumoto		
Subject:	Daily DROS Report		
			•

On Tuesday we received 3,389 DROS, 589 were auto approved, staff processed 2,193 with 32 being delayed leaving a back log of 9,623. Currently working on day 5 (50).

*Prancel Singh* CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916 Fax # 916

(76 of 120)

#### Case: 14-16840, 12/19/2014, ID. 9357098, DktEntry: 17-4, Page 33 of 51

#### Praneel Singh

rom: Sent: To: Cc: Subject: Praneel Singh Thursday, December 12, 2013 7:27 AM Stephen Lindley; Steve Buford Mitch Matsumoto; Terri Hairston Daily DROS Report

On Wednesday were received 3,391 DROS, 626 were auto approved, staff processed 2,176 with 34 being delayed leaving a back log of 10,247. Currently working on day 5 (1,193).

1

Prancel Singh CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-Fax # 916-

(77 of 120)

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 34 of 5

#### **Praneel Singh**

'rom:Praneel SinghSent:Friday, December 13, 2013 7:16 AMTo:Stephen Lindley; Steve BufordCc:Mitch Matsumoto; Terri HairstonSubject:Daily DROS Report

On Thursday were received 3,482 DROS, 582 were auto approved, staff processed 2,558 with 35 being delayed leaving a back log of 10,785. Currently working on day 5 (206).

1

*Prancel Singh* CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-Fax # 916-

(78 of 120)

#### **Praneel Singh**

From:	
Sent:	
To:	
Subject:	

Praneel Singh Thursday, December 26, 2013 7:25 AM Stephen Lindley; Steve Buford Daily DROS Report

On Tuesday we received 2,487 DROS, 462 were auto approved, staff processed 1,765 with 36 being delayed, on Wednesday we received 24 DROS, 0 was auto approved, staff processed 1,034 with 0 being delayed leaving a back log of 15,359. Currently working on day 7 (1,795).

1

Prancel Singh CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-2020 Fax # 916-2020

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 36 of 51

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	· · · · · · · · · · · · · · · · · · ·
From:	Praneel Singh
Sent:	Tuesday, December 31, 2013 6:34 AM
Го:	Stephen Lindley; Steve Buford
Cc:	Terri Hairston
Subject:	Daily DROS Report
-	

On Monday we received 5,229 DROS, 1,118 were auto approved, staff processed 3,739 with 58 being delayed leaving a back log of 19,944. Currently working on day 8 (397).

1

Drangel Singh CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-Fax # 916-

#### Praneel Singh

From: Sent: To: Cc: Subject: Praneel Singh Wednesday, January 01, 2014 10:41 AM Stephen Lindley; Steve Buford Terri Hairston Daily DROS Report

On Tuesday we received 7,135 DROS, 347 were auto approved, staff processed 3,917 with 57 being delayed leaving a back log of 20,601. Currently working on day 6 (2,403).

Prancel Singh CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916 Fax # 916

(81 of 120)

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 38 of 51

#### Praneel Singh

From: Sent: To: Cc: Subject: Praneel Singh Thursday, January 02, 2014 6:50 AM Stephen Lindley; Steve Buford Terri Hairston Daily DROS Report

On Wednesday we received 293 DROS, 1,276 were auto approved, staff processed 1,608 with 11 being delayed leaving a back log of 21,409. Currently working on day 7 (525).

1

*Drangel Singh* CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-2400 Fax # 916-2400

(82 of 120)

#### ase: 14 16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 39 of 51

#### Praneel Singh

From: Sent: To: Cc: Subject: Praneel Singh Friday, January 03, 2014 7:36 AM Stephen Lindley; Steve Buford Lisa ODonnell; Terri Hairston Daily DROS Report

On Thursday we received 1,671 DROS, 297 were auto approved, staff processed 3,341 with 28 being delayed leaving a back log of 19,240. Currently working on day 7 (1,149).

*Prangel Singh* CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916-

Fax # 916-x

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 40 of 51

Mitch Matsumoto

From:	Mitch Matsumoto
Sent	Saturday, January 11, 2014 2:21 AM
To:	Stephen Lindley
Cc:	Steve Buford
Subject:	DROS Statistics

#### Good Morning CHief Lindley

We received 2,319 dros on Friday, 383 dros were auto approved, 31 dros were delayed. Currently working on day 7(824) with a backlog of 9,570 dros.

1

#### Thanks

Mitch

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 41 of 51

Mitch Matsumoto

Sent: To: Subject:	Mitch Matsumoto Monday, January 13, 2014 S Stephen Lindley RE: DROS Statistics	:32 AM		. <i>*</i> •	
			•		
			•	•	
Ut chi-the u		•			

Hi Chief Lindley

I'm waiting for a response from Koy Saefong, Gulzar Jaggi explaing why the incoming dros is not showing up in our backlog report. We received over 15,000 dros this weekend and the count is only showing 7000. I know there was a gun show this wekend and there is another show this weekend. I will let you know what I find out.

Thanks Mitch	•		· · ·		
iviten			•	· .	
From: Stephen Lindley		a A a faith an	<u>مەر بەر مەر بەر بەر بەر بەر بەر بەر بەر بەر بەر ب</u>	م مار المراجع الم ا	و مستقلمات ما الاستفادية و المارية المارية و المارية من الموسية المارية و المارية و المولية المستقلة و الم

			-		
Sent: Monday, January 13, 2014 8:54 AM	-				
To: Mitch Matsumoto					
Subject: RE: DROS Statistics	•				
	•				

5,000 on a Sunday...what happened?

From: Mitch Matsumoto				
Sent: Monday, January 13, 2014 6:21 AM				
To: Stephen Lindley				
Cc: Steve Buford	•			
Subject: DROS Statistics				
		•		

#### - Good Morning Chief Lindley

We received 4,413 dros on Friday, 383 dros were auto approved, 31 dros were delayed, staff processed 3,105 dros. We received 5,128 dros on Saturday, 446 dros were auto approved, 22 dros were delayed, staff processed 3,204 dros. We received 5,290 dros on Sunday, 173 dros were auto approved, 6 dros were delayed, staff processed 1, 415 dros. Currently working on day 5(958) with a backlog of 7,417 dros.

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Thanks,

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 42 of 51

	* • · ·	•	•
	•		
Mitch Matsumoto		•	

From:	Mitch Matsumoto
Sent:	Monday, January 13, 2014 11:56 AM
То:	Stephen Lindley
Cc:	Steve Buford
Subject:	DROS Statistics Amended

Good Morning Chief Lindley

We received 2,319 dros on Friday, 383 dros were auto approved, 31 dros were delayed, staff processed 3,105 dros. We received 2,634 dros on Saturday, 446 dros were auto approved, 22 dros were delayed, staff processed 3,204 dros. We received 961 dros on Sunday, 173 dros were auto approved, 6 dros were delayed, staff processed 1, 415 dros. Currently working on day 5(958) with a backlog of 7,417 dros. These are the correct statistics.

#### Thanks, Mitch

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 43 of 51

#### Mitch Matsumoto

From: Sent:	Mitch Matsumoto Tuesday, January 14, 2014 6:29 AM	
To:	Stephen Lindley	
Cc: Subject:	Steve Buford DROS Statistics	

#### Good Morning Chief Lindley

We received 1,643 dros on Monday, 294 dros were auto approved, 32 dros were delayed, staff processed 2,695 dros. Currently working on day 4(1,810) with a backlog of 6,083 dros.

1.

#### Thanks, Mitch

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 44 of 51

Mitch Matsumoto

# From:Mitch MatsumotoSent:Wednesday, January 15, 2014 6:18 AMTo:Stephen LindleyCc:Steve BufordSubject:DROS Statistics

Good Morning Chief Lindley

We received 1,952 dros on Tuesday, 293 dros were auto approved, 41 dros were delayed, staff processed 3,139 dros. Currently working on day 4(924) with a backlog of 4,606 dros.

Thanks, Mitch

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 45 of 51

Mitch Matsumoto		
From: Sent: To: Cc: Subject:	Mitch Matsumoto Thursday, January 16, 2014 7:05 AM Stephen Lindley Steve Buford DROS Statistics	

Good Morning Chief Lindley

We received 1,868 dros on Wednesday, 278 dros were auto approved, 32 dros were delayed, staff processed 2,684 dros. Currently working on day 3(346) with a backlog of 3,498 dros.

#### Thanks, Mitch

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 46 of 51

Mitch Matsumoto						والمحمدين ومقابلات والمحافظ
From: Sent: To: Cc: Subject:	Mitch Matsumoto Friday, January 17, 2014 6:50 AM Stephen Lindley; Steve Buford Lisa ODonnell DROS Statistics					
· ·	•					-
Good Morning Chief Lindley			·		·	
We received 1 961 dros on Th	ursday, 383 dros were auto approved, 2	E droc wore dolowed	staff processed 1 005 d	rac Currently way	rking on day 2/22	7) with a
backlog of 3,428 dros.	ursday, 565 uros were auto approveu, 2	5 dios were delayed,	stan processed 1,905 u	ios. currentiy wo	King on day 5(55	7 j With a
Thanks,			•			
Mitch .	· · · · ·		、			
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#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 47 of 51

IVUICO MATSUMOTO	Mitch	Matsumoto
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		· ·
From:	Mitch Matsumoto	
Sent:	Tuesday, January 21, 2014 6:58 AM	
То:	Stephen Lindley	•
Cc:	Steve Buford; Lisa ODonnell	
Subject:	DROS Statistics	

Good Morning Chief Lindley

We received 2,380 dros on Friday, 350 dros were auto approved, 31 dros were delayed, staff processed 1,575 dros. We received 2,795 dros on Saturday, 424 dros were auto approved, 4 dros were delayed, staff processed 3,063 dros. We received 963 dros on Sunday, 155 dros were auto approved. We received 1,818 dros on Monday, 307 dros were auto approved. No overtime Sunday & Monday. Currently working on day 4(881) with a backlog of 5,229 dros.

Thanks,

Mitch

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 48 of 51

Mitch Matsumoto		•				
			a			
From:	Mitch Matsumoto					
Sent:	Wednesday, January 22, 2014 6:10 AM					
To:	Stephen Lindley, Steve Buford	•				
Cc.	Lisa ODonnell					
Subject:	DROS Statistics	÷	•			

Good Morning Chief Lindley

We received 2,256 dros on Tuesday, 379 dros were auto approved, 29 dros were delayed, staff processed 1,105 dros. Currently working on day 4(2,297) with a backlog of 6,350 dros.

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Thanks,

Mitch

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 49 of 51

#### Mitch Matsumoto

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From:	Praneel Singh	:
Sent:	Monday, January 27, 2014 6:44 AM	
To:	Stephen Lindley; Steve Buford; Lisa ODonnell	•
Cc:	Mitch Matsumoto	
Subject:	Daily Dros Report	

On Friday we received 3,054 DROS, 443 were auto approved, staff processed 1,550 with 37 being delayed, on Saturday we received 3,405 DROS, 567 were approved, staff processed 1,314 with 4 being delayed, on Sunday were received 1,507 DROS, 265 were auto approved, staff processed 1,280 with 0 being delayed leaving a back log of 8,475. Currently working on day 5 (355).

#### Praneel Singh

CIS III, Supervisor California Department of Justice Bureau of Firearms Phone # 916 Fax # 916

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 50 of 51

Mitch Matcumoto

WITCH Matsullioto		
From:	Praneel Singh	
Sent:	Tuesday, January 28, 2014 7:14 AM	
To:	Stephen Lindley, Steve Buford; Lisa ODonnell	
Cc	Mitch Matsumoto; Terri Hairston	
Subject:	DROS Daily Report	

On Monday we received 2,092 DROS, 435 were auto approved, staff processed 1,527 with 23 being delayed leaving a back log of 8,857. Currently working on day 5 (784).

Prangel Singh CIS III, Supervisor California Department of Justice Bureau of Firearms

Phone # 916-Fax # 916-1

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#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-4, Page 51 of 51

Mitch Matsumoto

, , ,					· · · · · · · · · · · · · · · · · · ·
From:	Peggy Ausmus		*	•	
Sent:	Wednesday, January 29, 2014 12:51 PM				
То:	Mitch Matsumoto	1		•	
Subject:	Over Time			• •	

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Today I worked 1.5 OT

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Peggy Ausmus Dept Law Enforcement Bureau of Firearms Criminal Identification Specialist II



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Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-5, Page 1 of 2

# **EXHIBIT AS**

(96 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-5, Page 2 of 2

ollars in millions

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
										encountral loss with a more room	
Budget		an a	International Constraints	1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 -	ACTOR ROUGH FEIGHERUNG AND FUNKTIONER	and the source of the source o	al destation of the statements	- 10,010	11,693	9,929	***111,23
Fotal Revenues <sup>2</sup>	3,416	7,471	6,907	6,425	10,175	10,441	10,438	11,146	12,597	12,844	13,93
Fotal DROS transactions	365,815	359,301	335,953	300,648	326,293	374,558	367,494	387,226	479,772	478,682	`n∕a
Levin <b>a stati</b> 3 met <sup>- a</sup> ara		7079		8.738			(Section)				an estatut
xpenditures	8,780	7,928	8,482	8,238	8,297	8;667		8,814 .	10,890 -	9,136	

Note: numbers were pulled from the DROS - 0460 Fund Condition Statements.

Footnotes:

<sup>1</sup> Reflects the total expenditure authority displayed in the current year (middle column) Fund Condition Statement in Gov's Budget.

<sup>2</sup> Actual revenues & transfers reported in the prior year (first column) column of Gov's Budget Fund Condition Statement.

<sup>3</sup> Budget numbers reflect what is proposed in the 2010/11 Governor's Budget. Revenues are estimates.

<sup>4</sup> Budget numbers reflects authority as of 7/1/10; revenue are estimates; and there are no prior year actual expenditures to report.

<sup>5</sup> Reflects the number of DROS transactions during the fiscal year.

AG000001 Silvester v. Harris

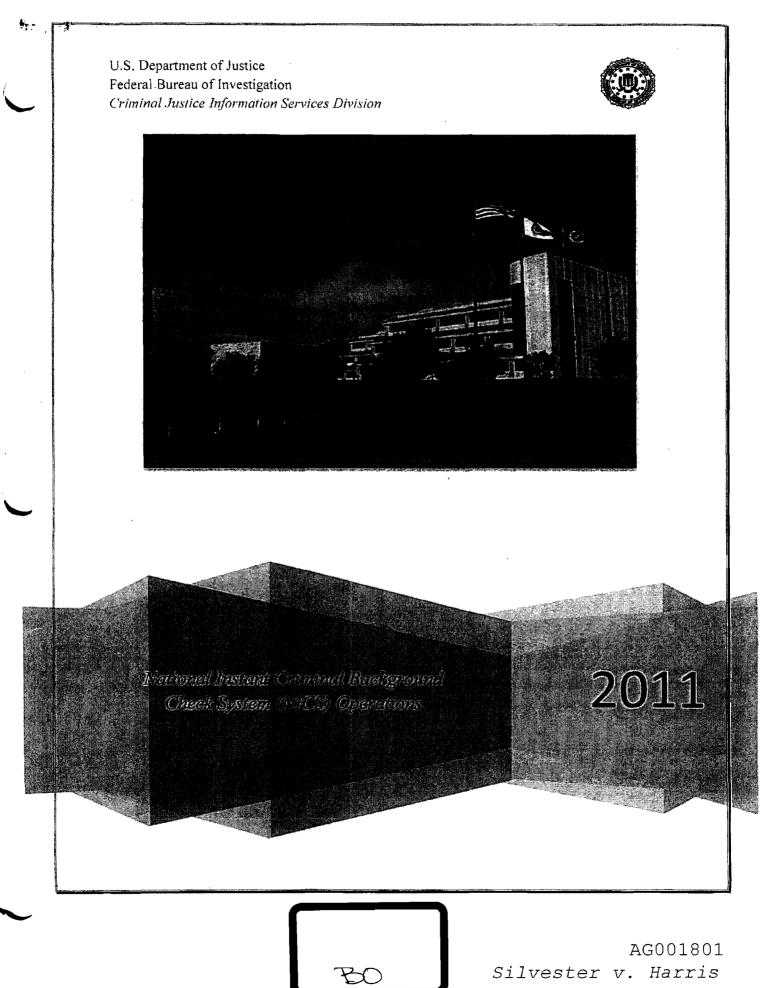
#### (97 of 120)

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 1 of 24

# EXHIBIT BO

#### (98 of 120)

#### Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 2 of 24



# Our Mission

#### FBI ----

The mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

#### <u>Criminal Justice</u> Information Services (CJIS) Division

The mission of the CJIS Division is to equip our law enforcement, national security, and intelligence community partners with the criminal justice information they need to protect the United States while preserving civil liberties.

#### NICS Section

The mission of the NICS Section is to enhance national security and public safety by providing the timely and accurate determination of a person's eligibility to possess firearms and/or explosives in accordance with federal law.

AG001802 Silvester v. Harris

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### **Executive Summary**

The FBI Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section has processed firearm background checks since November 30, 1998. Since that time, the experience gained enhances national security and public safety by identifying, developing, and implementing improvements in support of the NICS Section's mission. Striving to provide effective and efficient service to its customers, highlights of the NICS operations in 2011 include the following:

- From the inception of the NICS on November 30, 1998, to December 31, 2011, a total of 140,882,399 transactions have been processed. Of these, 67,155,452 transactions were processed by the NICS Section and 73,726,947 transactions were processed by state users. Of the 16,454,951 background checks processed through the NICS in 2011, a total of 6,875,625 transactions were processed by the NICS Section and 9,579,326 were processed by state users.
- From November 30, 1998, to December 31, 2011, the NICS Section has denied a total of 899,099 transactions. Denials issued by the NICS Section in 2011 totaled 78,211.
- The NICS Section processed 110,686 explosives transactions. Denials issued by the NICS Section in 2011 totaled 2,558.
- The NICS Section processed 1,071,459 firearms and explosives transactions via the Internet-based NICS E-Check. This number is approximately a 96.67 percent increase over the number of NICS E-Check transactions processed in 2010.
- The number of records maintained in the NICS Index, as of December 31, 2011, totaled 7,310,638, which is an increase of 868,100 records over December 31, 2010.
- The NICS Section achieved a 91.52 percent Immediate Determination Rate, surpassing the U.S. Attorney General-mandated goal of 90 percent or better.
- The NICS Section staff obtained approximately 45,700 final dispositions which were posted to criminal history records and disseminated over 34,260 dispositions to state agencies to assist in updating state records. As of December 31, 2011, the NICS Section staff had obtained approximately 782,000 record-completing dispositions.
- The Voluntary Appeal File (VAF) permits the NICS Section to maintain information about persons to document their eligibility to receive firearms. As of December 31, 2011, the VAF maintained approximately 19,932 entries with an active Unique Personal Identification Number (UPIN). From VAF program inception through December 31, 2011, over 39,000 background checks have been processed using a UPIN.
- The NICS availability averaged 99.87 percent.
- There were 3,166 firearm retrieval referrals forwarded to the Bureau of Alcohol, Tobacco, Firearms and Explosives by the NICS Section.

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Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 5 of 24

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# **Table of Contents**

FBI, CJIS Division, and NICS Section Mission Statementsi
Executive Summary ii
Welcome to the NICS Section
2011 NICS Operations
-NICS Participation
-NICS Availability
-Answer Speed5
-Transfer Process Abandonment Rate
-Immediate Determination Rate
-Transactions Created in the NICS
-NICS E-Check
-NICS Peak Season
-Federal Prohibitors11
-Federal Denials12
-Firearm Retrieval Referrals14
-NICS Appeals14
-VAF14
-Explosives Background Checks
-NICS Index
-Success and Outreach

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## Welcome to the NICS Section...

As a result of the passage of the Gun Control Act of 1968, certain individuals, such as convicted felons, were prohibited from possessing firearms. To strengthen federal firearms regulations, the Brady Handgun Violence Prevention Act of 1993 (Brady Act) required the U.S. Attorney General to establish the National Instant Criminal Background Check System (NICS) for Federal Firearms Licensees (FFL) to contact by telephone, or other electronic means, for information to be supplied immediately as to whether the transfer of a firearm would violate Section 922 (g) or (n) of Title 18, United States Code (U.S.C.), or state law.

The FBI developed the NICS through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Department of Justice (DOJ); and local and state law enforcement agencies. On November 30, 1998, the NICS, designed to immediately respond to background check inquiries for prospective firearm transferees, was activated. For an FFL to initiate a NICS check, the prospective firearms transferee must complete and sign an ATF Form 4473, Firearms Transaction Record. The ATF Form 4473, which collects the subject's name and descriptive data (e.g., date of birth, sex, race, state of residence, country of citizenship), also elicits information that may immediately indicate to an FFL the subject is a prohibited person, thereby negating the need to continue the processing of the background check. When an FFL initiates a NICS background check, a name and descriptor search is conducted to identify any matching records in three nationally held databases managed by the FBI Criminal Justice Information Services (CJIS) Division. The databases searched during the background check process are:

Interstate Identification Index (III): The III maintains subject criminal history records. As of December 31, 2011, the III records accessed and searched by the NICS during a background check numbered 61,302,482.

<u>National Crime Information Center (NCIC)</u>: The NCIC contains data on persons who are the subjects of protection orders or active criminal warrants, immigration violators, and others. As of December 31, 2011, the NCIC records searched by the NICS during a background check numbered 4,985,463.</u>

<u>NICS Index</u>: The NICS Index, a database created specifically for the NICS, collects and maintains information contributed by local, state, tribal, and federal agencies pertaining to persons federally prohibited from receiving or possessing a firearm. Typically, the records maintained in the NICS Index are not available via the III or the NCIC. As of December 31, 2011, there were 7,310,638 records in the NICS Index.

Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE): The relevant databases of the ICE are searched for non-U.S. citizens attempting to receive firearms in the United States. In 2011, the NICS Section and the Point-of-Contact (POC) states (states that have implemented a state-based NICS program) sent 81,669 such queries to the ICE. From February 2002 to December 31, 2011, ICE conducted over 369,145 queries for the NICS.

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AG001805 Silvester v. Harris

## **2011 NICS Operations**

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Criminal History Records of Individuals

#### <u>NCIC</u>

-Wanted Persons -Protection Orders -Immigration Violators -U.S. Secret Service Protection -Foreign Fugitive -Supervised Release -Sexual Offenders -Gang File -Missing Persons -Known or Appropriately Suspected Terrorists

#### NICS Index

Individuals Predetermined as Federally Disqualified In the majority of cases, the results of a background check yield definitive information regarding a subject's eligibility while the FFL is on the phone. However, not all inquiries can be provided a final status during the FFL's initial contact with the NICS Section. Many transactions are delayed because of incomplete criminal history records, e.g., a missing disposition or a missing crime classification status (felony or misdemeanor), which is needed to determine if a transaction may be proceeded or must be denied.

Where a validly matched record is potentially prohibiting but is incomplete, the NICS Section must search for the information needed to complete the record. This process often requires outreach to local, state, tribal, and/or federal agencies (e.g., arresting agencies, court systems). The Brady Act allows the FFL to legally transfer the firearm if the NICS transaction is not resolved within three business days. In some instances, the potentially prohibiting records are completed and the NICS transactions are determined to be denials. The NICS Section notifies the FFL of the denial and determines if the firearm was transferred to the buyer. If it was transferred, the NICS Section transmits this information to the ATF for further handling as a firearm retrieval referral.

Individuals who believe they are wrongfully denied the transfer of a firearm can appeal the deny decision. The "denying agency" will be either the FBI or the state agency serving as a POC for the NICS Section. In the event the denying agency is a POC state agency, the appellant can elect to appeal to either the FBI or the POC.

The provisions for appeals are outlined in Title 28, Code of Federal Regulations (C.F.R.), Part 25.10, and Subsection 103(f) and (g) and Section 104 of Public Law 103-159, Sections 103 and 104.

The Safe Explosives Act, enacted in November 2002 as part of the Homeland Security Act, requires that persons who export, ship, cause to be transported, or receive explosives material in either intrastate or interstate commerce must first obtain a federal permit or license after undergoing a NICS background check. The Safe Explosives Act became effective on

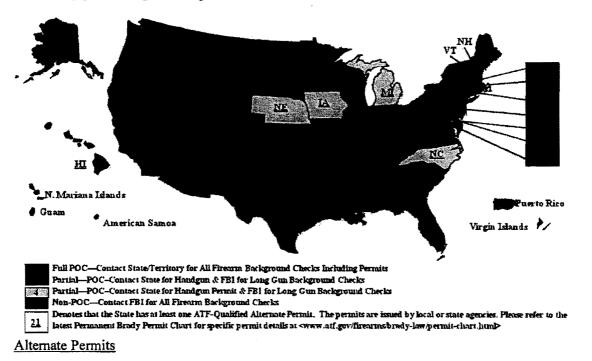
May 24, 2003. Background checks for explosives permits are initiated by the ATF; however, they are processed through the NICS by the NICS Section.

Extensive measures are taken to ensure the security and the integrity of NICS information. The U.S. Attorney General's regulations regarding the privacy and security of the NICS is available on the Internet at <www.fbi.gov/hq/cjisd/nics.htm>.

# 2011 NICS Operations

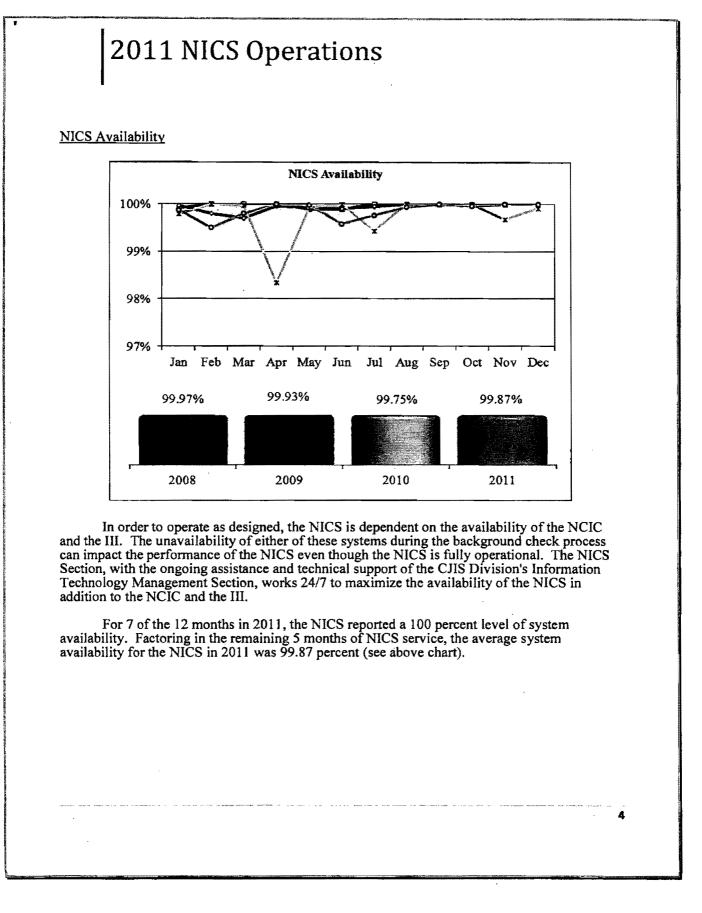
#### **NICS** Participation

Heading into 2012, the NICS Section provides service to 41,334 FFLs conducting business in 37 states, 5 U.S. territories, and the District of Columbia. The FFLs contact the NICS either telephonically or through the NICS E-Check via the Internet to initiate the required background checks. The majority of the calls from the FFLs are received and initially processed via one of the three NICS Contracted Call Centers. For 8 of the 37 states, the NICS Section processes all long gun transactions, while the states conduct their own background checks on handguns and handgun permits. Additionally, 13 states participate with the NICS in a Full-POC capacity by performing all background checks for their states' FFLs.

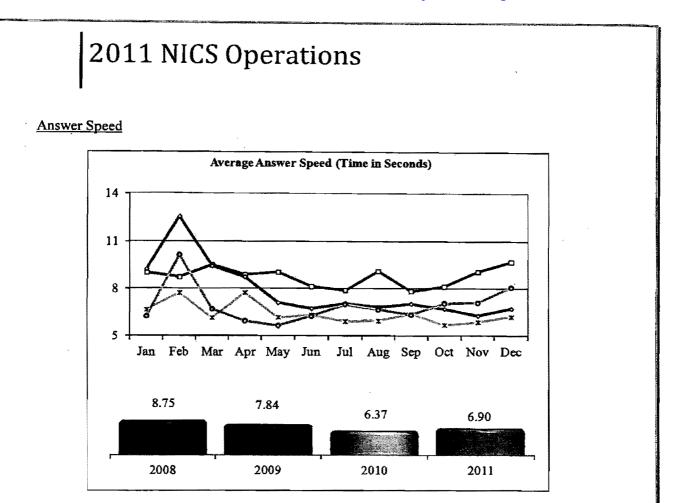


Certain state-issued firearms permits, such as carry concealed weapon permits and permits to purchase, may be qualified by the ATF as permits that suffice in lieu of a NICS background check at the point of sale/transfer. To qualify for an alternate permit, the applicant, in addition to meeting the conditions required by state law, must undergo a NICS background check as part of the permit-issuing/renewal process. The issuing state determines if the subject is eligible to receive a firearm permit, including those given alternate permit status by the ATF. An individual's presentation of an active alternate permit to an FFL when attempting to purchase a firearm precludes the need for the FFL to initiate the otherwise required NICS background check for the permit holder during the life of the permit. However, the renewal of an alternate permit requires a background check be conducted via the NICS as part of the permit renewal process. Permits that qualify in lieu of a NICS background check are required by regulation to be active for no more than a five-year period.

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 9 of 24



AG001808 Silvester v. Harris Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 10 of 24

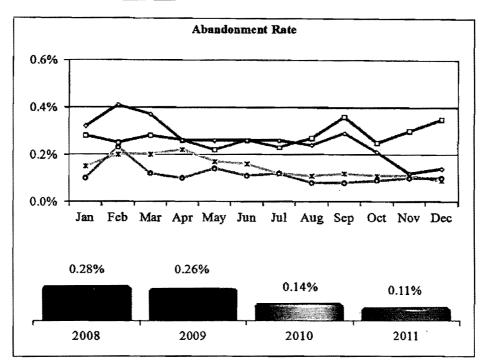


The FFLs serviced by the FBI connect with the NICS via one of the three NICS Contracted Call Centers. The customer service representatives at the NICS Contracted Call Centers enter the prospective firearm transferee's name and descriptive information provided by the FFL into the NICS to initiate the background check search. If no records are matched by the NICS, the NICS Contracted Call Center staff advises the FFL the transfer may proceed. If a background check search returns a match in any of the databases searched during the background check process, the FFL is placed on hold and the call is transferred to the NICS Section at the CJIS Division for review in an attempt to determine the subject's firearms eligibility status while the FFL is still on the telephone. With a continued focus on customer service, the NICS Section strives to address all calls transferred from the NICS Contracted Call Centers in an expeditious manner. Depending on various factors, such as the time of the day, week, or year, the demand placed upon the system and the resources of the NICS Section may all have a direct bearing on service levels.

Many types of call center operations have a target goal of answering 80 percent of calls within 20 seconds. However, the NICS Section's goal is to answer Transfer Process (firearm background check calls transferred from the NICS Contracted Call Center to the NICS Section's Legal Instruments Examiners) calls within 9 seconds. Based on historical data specific to transaction and call volumes, the NICS Section is able to forecast anticipated levels of staffing needed to effectively process incoming work. Accordingly, in 2011, the NICS Section's Transfer Process calls were answered on average in 6.90 seconds.

# 2011 NICS Operations

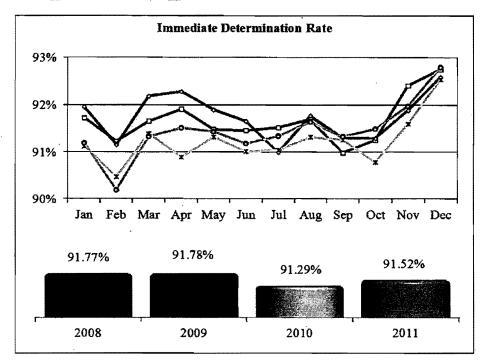
Transfer Process Abandonment Rate



As previously stated, the average time a caller waits for their call to be answered is 6.90 seconds. Depending on the level of incoming calls, the amount of time can fluctuate. As such, there are times when a caller will prematurely terminate or "abandon" a call. Many of the circumstances that prompt a caller to terminate a call are not within the control of the NICS Section. The NICS Section makes every effort to address each call as quickly as possible. Because all calls are valuable, the NICS Section endeavors to limit the level of abandoned calls to less than 1 percent. The NICS Section surpassed this goal and averaged a 0.11 percent abandonment rate in 2011.

# 2011 NICS Operations

Immediate Determination Rate (IDR)



The rate of calls immediately proceeded at the NICS Contracted Call Centers plus the rate of transaction determinations (proceed or deny) provided by the NICS Section's employees while the FFL is still on the telephone comprise the NICS IDR. The U.S. Attorney General requires the NICS Section to maintain a 90 percent or better rate of immediate determinations. The NICS IDR in 2011 averaged 91.52 percent.

AG001811 Silvester v. Harris

#### Transactions Created in the NICS

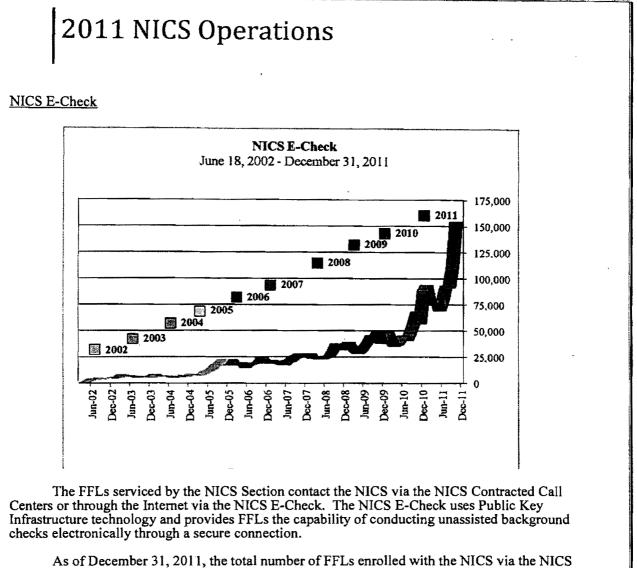
The NICS, from November 30, 1998, through December 31, 2011, has conducted a total of 140,882,399 background checks. In 2011, a total of 16,454,951 background checks were submitted to the NICS. Of these, a total of 6,875,625 transactions were processed by the NICS Section and the remaining 9,579,326 transactions were processed by state users.

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<sup>1</sup> November 30, 1998, through December 31, 1998.

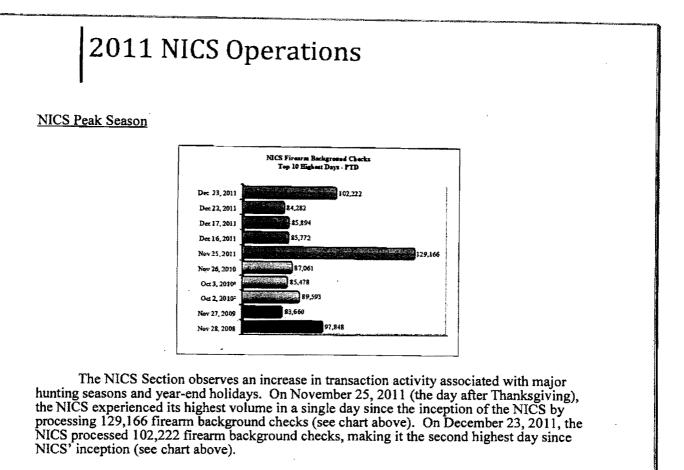
AG001812 Silvester v. Harris

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 14 of 24

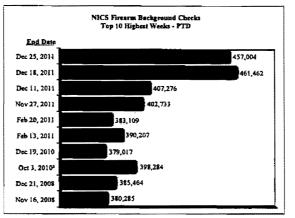


E-Check was 3,212, and the number of users (FFLs and their employees) accessing the NICS E-Check was 3,766. As of December 31, 2011, a total of 3,201,751 firearms and explosives background checks were processed since June 18, 2002, via the NICS E-Check. A total of 1,071,459 NICS E-Check transactions were processed in 2011. Of the 2011 NICS E-Check transactions, 960,793 were firearms inquiries.

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 15 of 24



During the week of December 12-18, 2011, the NICS processed 461,462 firearm background checks, making it the highest week since the inception of the NICS (see chart below).



 $^2$  On October 1-3, 2010, the NICS experienced a high number of background checks based on firearm permit background checks to handle revocations on a quarterly basis by a state. The state's goal of performing 240,000 firearm permit background checks created duplicates and/or multiple transactions causing the NICS statistics to be higher. The NICS Section worked with the state to determine the appropriate procedures to utilize with the NICS for future permit checks.

Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 16 of 24

## 2011 NICS Operations

#### Federal Prohibitors

A deny decision indicates the prospective firearms transferee or another individual with a similar name and/or similar descriptive features was matched with either federally prohibiting criteria or state-prohibiting criteria. Federal law prohibits, from possessing or receiving a firearm, any person who:

18 U.S.C. §922 (g) (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

18 U.S.C. §922 (g) (2) Is a fugitive from justice;

18 U.S.C. §922 (g) (3) Is an unlawful user of or addicted to any controlled substance;

18 U.S.C. §922 (g) (4) Has been adjudicated as a mental defective or committed to a mental institution;

18 U.S.C. §922 (g) (5) Is illegally or unlawfully in the United States;

18 U.S.C. §922 (g) (6) Has been discharged from the Armed Forces under dishonorable conditions;

18 U.S.C. §922 (g) (7) Having been a citizen of the United States, has renounced U.S. citizenship;

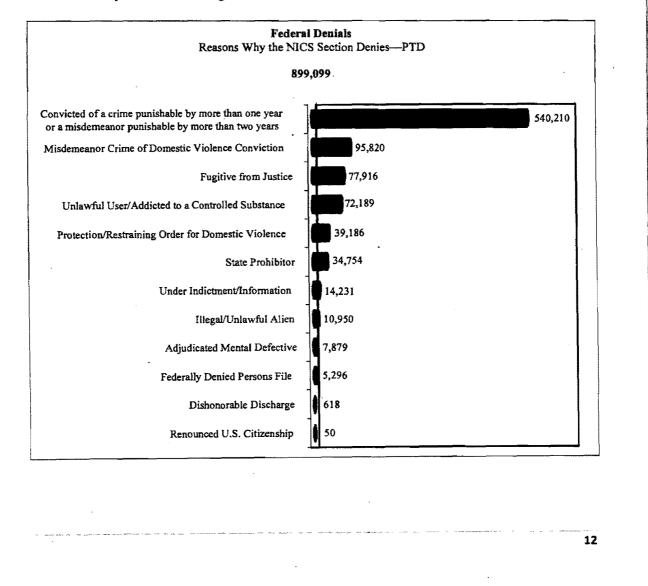
18 U.S.C. §922 (g) (8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner;

18 U.S.C. §922 (g) (9) Has been convicted in any court of a misdemeanor crime of domestic violence;

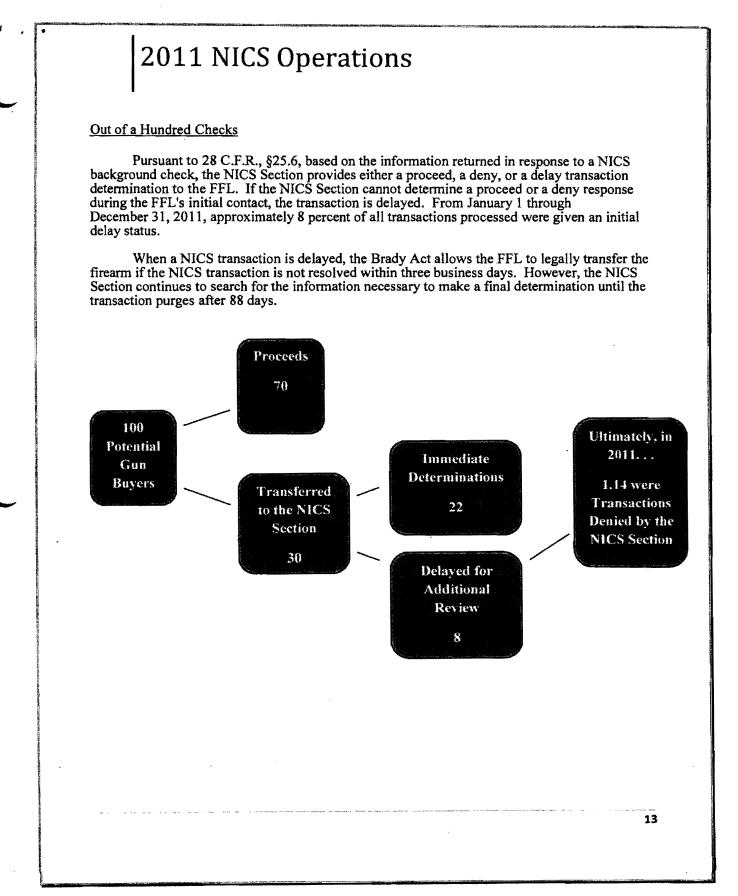
18 U.S.C. §922 (n) Is under indictment/information for a crime punishable by imprisonment for a term exceeding one year.

#### Federal Denials

When a NICS background check matches a record holder to the prospective firearms transferee, the NICS Section determines if a federal prohibitor exists; however, if a federal prohibitor does not exist, the NICS Section employee processing the background check must further review the record match(es) to determine if any applicable state law renders the prospective firearms transferee prohibited. From the inception of the NICS on November 30, 1998, through December 31, 2011, the NICS Section has rendered 899,099 firearms denials. Of these, 78,211 denial decisions were provided in 2011. Historically, as well as specifically in 2011, convictions for crimes punishable by more than one year or a misdemeanor punishable by more than two years is the leading reason for NICS Section denials.



#### AG001816 Silvester v. Harris



AG001817 Silvester v. Harris

#### Firearm Retrieval Referrals

Because of the NICS Section's commitment to public safety and national security, the search for the needed disposition information continues beyond the three business days allowed by the Brady Act. In some instances, the information is subsequently obtained and a final status determined; however, if the final status (determined after the lapse of three business days) results in a deny decision and the NICS Section is advised by the FFL that the firearm was transferred, then the ATF is notified a prohibited person is in possession of a firearm. In 2011, the NICS Section referred 3,166 firearm retrieval actions to the ATF,

#### NICS Appeals and Voluntary Appeal File (VAF)

In 2011, approximately 1.14 percent of the firearm background checks processed by the NICS Section received a final transaction status of deny. Pursuant to the Brady Act, any person who believes they were wrongfully denied the transfer of a firearm, based on a record returned in response to a NICS background check, can request an appeal of the decision. An appeal is defined as "a formal procedure to challenge the denial of a firearm transfer." Pursuant to 28 C.F.R., §25.2--"an individual may request the reason for the denial from the agency that conducted the check of the NICS (the 'denying agency,' which will be either the FBI or the state or local law enforcement agency serving as a POC)." In the alternative, per 28 C.F.R., §25.2, an individual denied by a POC state can elect to submit an appeal to the NICS Section.

Some records used to determine if an individual is eligible to possess or receive a firearm are not complete or up-to-date. As a result, eligible firearm transferees may be subject to lengthy delays or receive erroneous denials even after the completion of a successful appeal. Often, the record-completing information located by NICS Section employees cannot be used to update a criminal history record or an appellant's fingerprints confirm they are not the subject of the prohibiting record initially matched to the received name and descriptors.

The NICS Section processes VAF applications and appeal requests in the order they are received. In 2011, the NICS Section received a total of 17,203 VAF applications and appeal requests. Of those, a total of 1,617 received were submitted by persons denied by POC state agencies. In 2011, the NICS Section's research resulted in the overturn of 3,236 deny transactions.

The primary reason for the overturned deny decisions in 2011 was the appellant's fingerprints not matching the fingerprints of the subject of the firearms-disqualifying record. Another chief reason deny decisions are overturned on appeal pertain to criminal history records that do not contain current and accurate information.

The NICS Section established and implemented the Appeal and VAF Web site in February 2011. By accessing the Web address <www.fbi.gov/nics-appeals>, appellants can electronically begin appealing the reason they were delayed or denied the right to possess or receive a firearm. Additionally, by choosing the option of delay, an applicant can begin the application process for the VAF.

In cases where the matches are refuted by fingerprints, the subject's deny decision may be overturned and the transaction proceeded. However, because the NICS is required to purge all

identifying information regarding proceed transactions within 24 hours of notification to the FFL, in many instances the process must be repeated when the same transferee attempts subsequent firearm purchases and is again matched to the same prohibiting record.

The VAF was implemented in July 2004 to prevent subsequent delays and erroneous denials. Lawful purchasers who have been delayed or denied a firearm transfer may ask the NICS Section to maintain information about them to facilitate future firearms transactions. All applicants approved for entry into the VAF receive a Unique Personal Identification Number (UPIN) which must be provided to the FFL during subsequent firearm background checks. The VAF is checked by the NICS during the background check process only when a UPIN is provided by the FFL. A total of 19,932 lawful firearm transferees received a UPIN and were entered into the VAF since July 2004.

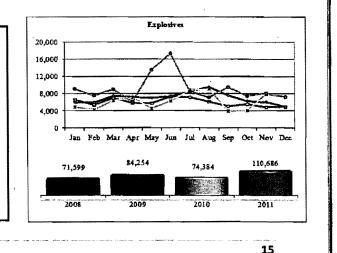
Because of the availability of the VAF, over 39,461 transactions have received an immediate background check determination and expedited the mission of the NICS Section.

#### Explosives Background Checks

The Safe Explosives Act requires a NICS background check as part of the licensing process for any person who transports, ships, causes to be transported, or receives explosives materials in either intrastate or interstate commerce. There are three categories of explosives licenses: responsible persons, employee possessors, and limited permit.

All ATF explosives permit applicants are required to undergo a NICS background check. The Responsible Persons background checks are processed by the NICS Section after the results of fingerprint identification processing have been completed and forwarded by the CJIS Division's Biometric Services Section. All explosives background check results are forwarded to the ATF. The ATF makes the determination as to a subject's eligibility to receive an explosives permit. The Employee Possessor background checks are submitted by the ATF directly, via the NICS E-Check, for processing by the NICS Section.

Since the first explosives background check in 2003, and through December 31, 2011, the NICS Section has processed a total of 590,409 explosives background checks. Of these, the NICS Section processed 110,686 explosives background checks in 2011. Of the explosives background checks processed by the NICS Section in 2011, a total of 2,558 were denied.



#### NICS Index

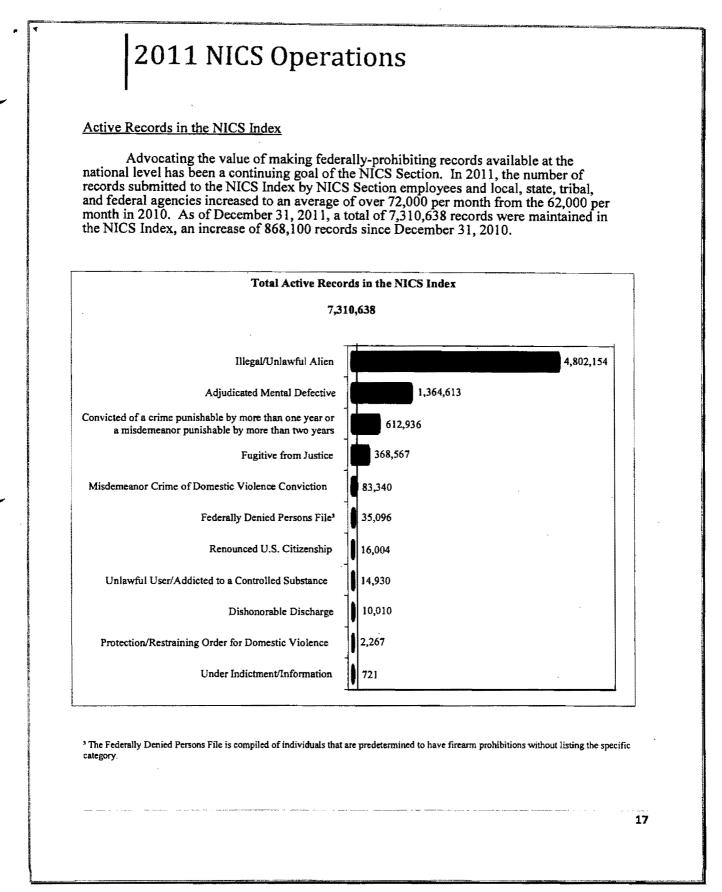
When a NICS background check is conducted, the name and descriptive information of a prospective firearms transferee is searched against the name and descriptive information of subjects of records maintained in the databases searched by the NICS. In addition to the NCIC and the III, a search of the NICS Index is conducted. The NICS Index is a system of records developed by the FBI exclusively for the NICS that collects and maintains records voluntarily submitted by local, state, tribal, and federal agencies of persons who are federally prohibited. Typically, the records submitted to the NICS Index are not available from the NCIC or the III, or may be available but cannot be updated in a manner to readily indicate to a user the existence of a federal firearms prohibition. Making such records available via the NICS Index provides the user with an immediate indication the record, when matched to the prospective firearm transferee, has already been validated to be federally disqualifying. This "pre-validation," in turn, often eliminates an otherwise lengthy review process where research and evaluation are performed to determine if the record is prohibiting and, ultimately, if the subject is eligible to receive or possess firearms.

Since its implementation, the NICS Section has dedicated numerous resources toward populating the NICS Index, specifically by:

- training and educating users of the NICS;
- participating and interacting at various conferences and seminars;
- establishing NICS Liaison Specialists within the NICS Section who, being knowledgeable regarding the NICS processes, are available to provide real-time assistance;
- offering legal services and guidance for states in pursuance of making mental health information available to the NICS; and
- offering technical guidance and support.

16

AG001820 Silvester v. Harris Case: 14-16840, 12/19/2014, ID: 9357098, DktEntry: 17-6, Page 22 of 24



AG001821 Silvester v. Harris

#### Success and Outreach

To assure the long-term growth and viability of the NICS, the staff and management of the NICS Section believe strategic planning is a key to success. The NICS Section places great emphasis not only on current goals but also on planning for the future. Several technical builds were added to the NICS to enhance performance usage for the NICS Section's staff and POC states that perform background checks via the system.

The NICS Section has an outreach initiative to connect with local, state, tribal, and federal agencies regarding the public safety value of sharing criminal history and related records with the NICS. The NICS Section enhances public safety and national security through information sharing and continues to foster a proactive role regarding the submission of record information to the CJIS systems searched during a NICS background check. The NICS Section emphasizes the importance of making record information, such as complete criminal history records and prohibiting mental health adjudications, available on a national level, as well as spotlighting the NICS Improvement Amendments Act of 2007 (NIAA).

To accomplish the aforementioned, the NICS Section supports a multifaceted outreach program. The NICS Section fosters working relationships with various agencies to eliminate the barriers impeding the availability of information at a national level. The following information outlines some of the highlights of the NICS Section's commitment to this endeavor:

- As an ongoing initiative to implement the NIAA, the NICS Section presented information to various agencies throughout 2011. Numerous meetings were coordinated to fulfill NIAA requirements.
- On May 9-13, 2011, the NICS Section hosted its annual NICS User Conference in Dallas, Texas. With 110 persons from local, state, and federal agencies in attendance, the NICS User Conference provided educational, informational, and interactive sessions covering a multitude of topics such as the federal firearm prohibitors, the NICS Index, and the NIAA.

The NICS Section also provided guidance and support to NICS users and partners, in addition to various agencies through other means such as:

- offering its operational expertise to local, state, tribal, and federal agencies;
- offering technological guidance regarding system and connectivity matters; and
- providing information to support the sharing of information in a variety of ways, for example:
  - the Internet;
  - training Webcasts via the Internet;
  - the NIČS User Conference;
  - attending conferences and meetings; and
  - publishing brochures and reports.

Outreach efforts also provided the NICS Section with opportunities to enhance and strengthen relationships with external agencies, broadening the furtherance of public safety, such as with the National Rifle Association, the National Shooting Sports Foundation, and the Brady Campaign to Prevent Gun Violence.

As outreach usually includes an educational element, the NICS Section offers continual support to local, state, tribal, and federal agencies by offering a myriad of training opportunities. The NICS Section identifies, develops, and provides various training and information-sharing regimens to NICS users and numerous law enforcement, judicial, and criminal justice agencies when requested.

The NICS Section offers a catalogue of comprehensive training services specific to topics such as the firearm background check and related processes, the Brady Act, the interpretation and application of federal prohibiting criteria, and the NICS appeal process. In 2011, the NICS Section traveled to 19 states and provided 75 training sessions to over 1,350 professionals, such as judges, court clerks, law enforcement officers, state terminal agency controllers, program technicians, Federal Agents, training instructors, auditing personnel, and sheriffs.

As a result of the information-sharing commitment of the NICS Section and the cooperation of numerous local, state, tribal, and federal agencies, over 782,000 dispositions obtained by the NICS Section employees have been posted to criminal history records since NICS began. Of these, approximately 45,700 dispositions were obtained in 2011.

Additionally, a program total of 151,885 dispositions obtained by NICS Section employees were shared with the states to assist with records maintenance at the state level. Of these, over 34,260 dispositions were obtained in 2011.