



**U.S. Department of Justice**  
**Office of Legislative Affairs**

Office of the Assistant Attorney General

Washington, D.C. 20530

February 13, 2007

The Honorable Frank R. Lautenberg  
United States Senate  
Washington, D.C. 20510

Dear Senator Lautenberg:

This is in response to your letter to Attorney General Gonzales and FBI Director Mueller, dated November 1, 2006, in which you ask about the status of the Department of Justice's response to the January 2005 Government Accountability Office (GAO) report relating to the sale of firearms to individuals listed as known or suspected terrorists in the FBI's Violent Gang and Terrorist Organization File (VGTOF).

The GAO report highlighted the fact that persons included in the VGTOF database are able to legally acquire firearms from Federal Firearms Licensees (FFLs). The VGTOF is part of the FBI's National Crime Information Center (NCIC) and is therefore included in the databases checked by the FBI's National Instant Background Check System (NICS) when an FFL submits a background check request on a gun buyer under the Brady Handgun Violence Prevention Act of 1993 (the Brady Act). Being listed in a terrorist watch list does not prohibit a person from lawfully acquiring or possessing a firearm under federal law. As you note in your letter, the GAO found that some NICS transactions yielded a hit on the VGTOF, but unless the individual was otherwise prohibited from receiving or possessing a gun, the transactions were allowed to proceed by the NICS. The GAO report noted that the NICS had made changes in 2004 to its procedures so that counterterrorism agents were consulted about a person listed in the VGTOF seeking to buy a gun to determine whether those agents have prohibiting information about the individual that is not yet contained in the automated databases checked by the NICS. The report also noted a number of ways in which NICS procedures might be further enhanced in this regard.

Shortly after the GAO issued its report, a working group was formed within the Department of Justice to consider the issues raised by the report. The working group developed a set of proposed changes to the administration of the NICS and its interaction with counterterrorism officials in cases involving NICS VGTOF hits. The Attorney General directed the adoption of these administrative changes, and in conformance with the recommendations of the working group, the FBI has made all the administrative changes recommended by the working group relating to NICS checks that hit on records in the VGTOF. The changes are:

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- Establishing a separate FBI database, outside the Criminal Justice Information Services Division (within which the NICS Section operates) to track persons in VGTOF who acquire or seek to acquire a firearm and appointing an analyst to review such information and develop appropriate intelligence. Data is maintained in this database only in cases of a confirmed match between the prospective purchaser and the person in VGTOF.
- Having the FBI's NICS Section process all VGTOF hits, rather than allowing the point-of-contact states to process VGTOF hits. This change was made to ensure consistency in handling and appropriate contact with relevant FBI components and field agents.
- Clarifying that in the case of each NICS VGTOF hit, the NICS will request from the firearms dealer the prospective purchaser's address and share that information with FBI counterterrorism officials while attempting to verify the match and obtain related information. (Previously, the NICS did not obtain and provide the address routinely, but only when asked to do so by the field agent.) If the prospective purchaser is not the person listed in VGTOF, then no information on the transaction, including the purchaser's address, is retained, except as otherwise allowed by law and policy.
- Encouraging FBI agents, whenever a NICS VGTOF hit relates to a JTTF criminal investigation and in other appropriate circumstances, to request through the JTTF that ATF agents review the Form 4473 at the gun dealer's location and advise the FBI of the makes, models, and quantities of firearms purchased.

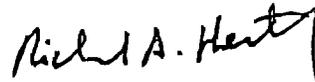
The working group also made other recommendations that remain under consideration within the Department.

The criteria for prohibiting the possession or receipt of a firearm are established by 18 U.S.C. § 922(g) and (n) and state law. Inclusion in the VGTOF does not necessarily indicate that a person is prohibited from possessing a firearm under these criteria. Absent one or more of the prohibiting criteria, there is currently no legal basis for denying a firearm purchase based merely on inclusion in VGTOF. At the same time, there are circumstances in which it may be counterproductive to mandate the denial of a firearm transfer to an individual in VGTOF, such as when such a denial might compromise an ongoing investigation or intelligence-collection operation. These concerns were summarized in a letter dated July 26, 2005, from William Moschella, Assistant Attorney General for Legislative Affairs, to Senate Majority Leader Bill Frist. A copy of that letter is enclosed.

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I hope that you find this update on the Department's response to the GAO report helpful.  
Please do not hesitate to contact me if you have any additional questions.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

Enclosure