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## U.S. House of Representatives

### COMMITTEE ON VETERANS' AFFAIRS

ONE HUNDRED SIXTEENTH CONGRESS

B-234 LONGWORTH HOUSE OFFICE BUILDING

WASHINGTON, DC 20515

<http://veterans.house.gov>

October 9, 2020

The Honorable Donald J. Trump  
 President of the United States  
 The White House  
 1600 Pennsylvania Avenue NW  
 Washington, DC 20500

Dear Mr. President:

We write to urge you to protect the Second Amendment rights of our nation's veterans when they seek care and benefits from the Department of Veterans Affairs (VA). Accordingly, we respectfully request that you issue an executive order or proposed rule, which would nullify VA's current policy of sending information on VA beneficiaries to the National Instant Criminal Background Check System (NICS), unless a judicial authority has determined they are a danger to themselves or others.

As you know, under the Gun Control Act of 1968 (GCA) an individual "who has been adjudicated as a mental defective or committed to a mental institution" may not possess a firearm or ammunition, which has been shipped through interstate or foreign commerce.<sup>1</sup> Additionally, the GCA makes it a felony to knowingly sell a firearm or ammunition to such individuals.<sup>2</sup> In 1993, the Brady Handgun Violence Prevention Act (Brady Act) was enacted, which required the Attorney General to establish NICS.<sup>3</sup> Federal Firearms Licensees must use NICS to verify that prospective firearm buyers are eligible to purchase such firearm under federal gun control statutes. The Brady Act also allows the Attorney General to secure information from any federal department on individuals whose possession of a firearm would violate the GCA.

Regrettably, the Bureau of Alcohol, Tobacco and Firearms' (ATF) implementing regulations of the GCA erroneously interpreted a person "who has been adjudicated as a mental defective" to include an individual who "lacks the mental capacity to contract or manage his or her own affairs".<sup>4</sup> As a result, VA reports information to NICS on VA beneficiaries – most of whom are veterans – who VA has determined are incompetent for purposes of handling their VA financial benefits and thus, require a fiduciary. Consequently, those beneficiaries lose their constitutional right to bear arms simply because they need assistance managing their VA benefits.

<sup>1</sup> 18 U.S.C. §922

<sup>2</sup> Ibid.

<sup>3</sup> P.L. 103-159

<sup>4</sup> U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, "Definitions for the Categories of Persons Prohibited from Receiving Firearms (95R-051P)," 62 Federal Register 35634-34639, June 27, 1997.

We strongly disagree with VA's policy. We believe that Congress intended an adjudication as a mental defective to be handled by a judicial authority of competent jurisdiction, not a federal employee, and that a VA determination to appoint a fiduciary for a veteran is not sufficient cause to report that individual to NICS. Moreover, we believe a hearing before a judge or magistrate would ensure that veterans are afforded the same due process rights that every other American receives before any action is taken that would deprive him or her of their fundamental constitutional rights. For example, even criminals must be convicted in a court of law before their names are added to the NICS list.

Additionally, we advocate for this policy change because we are concerned that some veterans do not seek VA care or benefits because they fear they will lose their Second Amendment rights if they do. One of the Committee on Veterans Affairs' top priorities this Congress is ending veteran suicide. Tragically, 14 of the 20 veteran and servicemember suicide deaths per day already occur among those who don't go to VA. During a November 2019 legislative hearing on H.R. 3495 several professional groups, including VA psychologists, nurses, and social workers, submitted a statement for the record urging the Committee to correct myths that hinder veterans from seeking VA care. These VA providers assert that "veteran suicide would be significantly reduced by correcting the false belief among many veterans that 'the VA wants to take away our guns.'" We agree and have heard concerns from veterans across the country who refuse to go to VA for this reason. Furthermore, there is no evidence that those who need a fiduciary are a danger to themselves or others. This assumption only reinforces harmful stigmas against those with mental illness, which discourages them from getting the help they need. We believe VA should be focusing on improving access to care for veterans with mental illness and other disabilities instead of reporting law-abiding veterans to the NICS list. VA's current policy does not serve veterans, but rather, creates additional barriers to care and benefits.

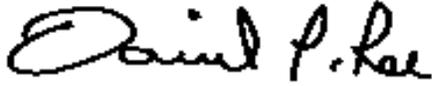
For those reasons, we introduced H.R. 3826, the Veterans 2nd Amendment Protection Act. This bill would prohibit VA from transmitting information on any VA beneficiaries to NICS solely because VA has determined that they require a fiduciary, without the order or finding of a judge, magistrate, or other judicial authority, that the person is a danger to themselves or society. Although we have introduced legislation to fix this issue, we feel this problem could be addressed sooner through the Executive Branch. We believe you may agree with our position provided that you signed into law similar legislation, P.L. 115-8, which vacated the Social Security Administration's (SSA) final rule implementing the NICS Improvement Amendments Act of 2007.<sup>5</sup> As you may recall, this final rule would have allowed SSA to report the name of SSA beneficiaries to NICS if a SSA employee determined that the beneficiary requires a representative payee to manage their social security benefits.

We believe you have the ability to correct the current injustice our veterans are facing. I hope we can all agree that of all the Americans who deserve their constitutional rights, perhaps the most deserving are those who fought to protect them. We appreciate your attention to this important issue and are committed to working with you to ensure the Second Amendment rights of our veterans are protected.

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<sup>5</sup> SSA, "Implementation of the NICS Improvement Amendments Act of 2007," 81 *Federal Register* 91702, December 19, 2016.

Sincerely,



David P. Roe  
Ranking Member  
House Committee on Veterans' Affairs



Chip Roy  
Member of Congress

DPR/ks

cc: The Honorable Robert Wilkie, Secretary, U.S. Department of Veterans Affairs  
The Honorable William Barr, Attorney General, U.S. Department of Justice  
The Honorable Mark Takano, Chairman, Committee on Veterans' Affairs