



**Lying & Buying:**

**Using False Information to Obtain Firearms**

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**Prepared for Rep. Henry A. Waxman**

**Minority Staff Report  
Special Investigations Division  
Committee on Government Reform  
U.S. House of Representatives**

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## **EXECUTIVE SUMMARY**

The goal of the Brady Act is to prevent felons, children, and other restricted persons from obtaining guns. To achieve this goal, the Act requires firearms dealers to contact the National Instant Criminal Background Check System (NICS) prior to any sale to determine whether prospective buyers have criminal records and therefore are ineligible to make purchases.

This report presents the results of an investigation into the effectiveness of the criminal background check system. Specifically, it examines whether individuals can bypass NICS background checks by providing false information to obtain weapons. As part of this investigation, undercover agents from the General Accounting Office (GAO) fabricated false identifications and attempted to use them to buy guns from dealers in five states: Virginia, West Virginia, Montana, New Mexico, and Arizona.

The GAO undercover agents were successful in purchasing firearms with false identification in all five states. Their success rate was 100%. In no instance did NICS background checks detect that the GAO agents were using false identifications, and in no instance did a gun dealer refrain from selling weapons to the agents. The agents purchased guns formerly used by police, as well as rifles, handguns, semi-automatic weapons, and high-capacity ammunition magazines with up to 32 rounds. The report from GAO is attached as Exhibit 1 to this report.

GAO concluded that there is a major flaw in the national background check system. According to the GAO report, the system as currently implemented “cannot ensure that the prospective purchaser is not a felon or other prohibited person whose receipt and possession of a firearm would be unlawful.” The NICS background check performs only a “negative” check, which means it determines only whether there is a criminal record for the name provided. The NICS background check does not require a “positive” check to determine whether the name is real, or whether the name belongs to the person buying the gun. In other words, by using fictitious identities, undercover investigators bypassed entirely the criminal background check system.

Providing false information to bypass NICS background checks appears to be a significant problem. According to a June 2000 report issued by the U.S. Department of Treasury, 13% of gun trafficking investigations conducted by the Bureau of Alcohol, Tobacco, and Firearms (ATF) from July 1996 to December 1998 involved individuals accused of “providing false information to acquire firearms.” During this period, ATF conducted nearly 200 investigations into the use of false information to acquire weapons.

The minority staff investigated three specific instances of the use of false information to purchase weapons. In the first case, a felon and his accomplice used false drivers licenses to purchase dozens of semiautomatic pistols in an interstate gun-running ring for drug dealers. In the second case, a 16-year-old in Colorado used a false identity to purchase a 9 mm handgun, which the youth then used to shoot a police recruit. In the third case, a parolee in Louisiana provided false information to purchase a weapon, which he then used to kill another person. In

none of these cases should the transaction have been permitted under the Brady Act. All three cases illustrate the potentially severe consequences that can occur when weapons are purchased without a positive identification check.

Some states go beyond the requirements of NICS background checks and impose additional restrictions on gun purchases. For example, some states require the completion of firearm safety or training courses, approval of license applications by local police commissioners or chiefs of police, waiting periods of up to two weeks, or fingerprinting. This report did not assess the effectiveness of the gun control laws in states that require these types of additional measures.

## **I. BACKGROUND**

### **A. National Instant Criminal Background Check System**

One of the fundamental purposes of federal gun laws is to keep felons, children, and other restricted persons from possessing guns. Under the current system, the primary method for achieving this goal is to prevent these individuals from buying guns. When prospective purchasers seek to buy guns from licensed dealers, they must fill out a form with identifying information, including name, date of birth, sex, race, and state of residence. Purchasers also must indicate that they have no felonies or other disqualifying conditions.

In the past, dealers used an honor system in which they accepted at face value the representations of prospective buyers. Little further action was required on the part of dealers. In 1993, Congress acted to improve the verification and enforcement of these standards through the Brady Handgun Violence Prevention Act.<sup>1</sup> The goal of this law was to require licensed firearms dealers to conduct criminal background checks and verify the age and identity of persons seeking to buy guns. Congress believed that background checks would keep guns out of the hands of criminals, youths, and others not legally entitled to possess them.

To implement the background check system, the Attorney General established the National Instant Criminal Background Check System (NICS). This system, which is operated by the Federal Bureau of Investigation (FBI), checks identifying information provided by dealers to verify that prospective buyers have no criminal histories. A NICS background check reviews three different federal databases for criminal information:

- the National Crime Information Center Database, which contains records on wanted persons and subjects of protection and restraining orders;
- the Interstate Identification Index, which contains approximately 36 million active criminal histories; and
- the National Instant Criminal Background Check System Index, which contains records of persons prohibited from possessing firearms, including individuals involuntarily committed to mental institutions or adjudicated mentally defective, undocumented immigrants, and individuals dishonorably discharged from the armed forces.

Pursuant to this background check system, licensed dealers call a toll-free NICS telephone number prior to any firearm sale to verify information and search for criminal records. When NICS was created, states were given the opportunity to run their own background checks through NICS. These “point-of-contact” states, as they are called, can check for criminal histories at the state level, as well.

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<sup>1</sup>Pub. L. No. 103-159, 107 Stat. 1536 (1993).

## **B. Results of NICS Background Checks**

NICS background checks examine criminal histories by attempting to match identifying information provided by dealers with identifying information in the criminal history databases. If a check yields no match, NICS immediately advises the dealer that the transaction may “proceed.” The FBI reports that about 71% of all prospective gun purchasers are authorized to make immediate purchases.<sup>2</sup>

If a check yields a clear match, NICS advises the dealer that the purchase has been “denied.” Since attempting to buy a gun as a disqualified person is a crime, some “point-of-contact” states refer all denials to state or local law enforcement agencies for prosecution, although the Brady Act does not require such action. The FBI reports that NICS background checks provide definitive responses of “proceed” or “denied” to 95% of all requests within two hours.<sup>3</sup>

In some cases, the NICS background check returns a “delayed” response. This happens when there are unresolved questions about records. For example, when two people have the same name, the background check may yield multiple matches. At other times, a record may contain incomplete information about criminal activity, such as a felony arrest with no details about the disposition of the case. In these cases, dealers receive a “delayed” response while specially trained examiners try to obtain additional details. In the case of the felony arrest, for instance, examiners may contact the court of jurisdiction to determine whether it resulted in a conviction.

As currently written, the Brady Act permits dealers to proceed with a sale if the NICS background check provides no definitive response within three business days. Thus, in cases of “delayed” responses, NICS allows examiners to gather additional clarifying details only for a limited time. The FBI reports that when background checks take more than 24 hours, purchasers are nearly 20 times more likely to be prohibited than average gun buyers.<sup>4</sup>

## **C. Objective of the Investigation**

Rep. Waxman, the ranking member of the Committee on Government Reform, requested this investigation to assess whether felons, children, and other restricted persons can evade detection by NICS background checks through the use of false identification. As part of the investigation, Rep. Waxman asked the Office of Special Investigations of the U.S. General

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<sup>2</sup>Statement of David R. Loesch, Assistant Director in Charge, Criminal Justice Information Services Division, Federal Bureau of Investigation, before the Senate Committee on the Judiciary (June 21, 2000).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

Accounting Office (GAO) to conduct an undercover investigation into the use of false identifications to buy guns from licensed dealers. He also asked minority staff to research the requirements of NICS background checks and identify specific case studies.

## **II. METHODOLOGY**

GAO agents selected five states in which to conduct their undercover investigation: Virginia, West Virginia, Montana, New Mexico, and Arizona. All of these states implement the Brady Act by requiring NICS background checks. Two of the five states — Virginia and Arizona — are “point-of-contact” states, meaning that they check for criminal histories at both the state and federal levels. Unlike some other states, these five states impose no additional protective measures, such as fingerprinting, waiting periods, or firearm safety courses. The GAO investigation did not assess the effectiveness of the gun control laws in states that require these types of additional measures.

GAO agents used commonly available, off-the-shelf software to make counterfeit drivers licenses for the five states. They invented fictitious identities, including names, dates of birth, and social security numbers, and produced various identifications using a scanner, a color printer, and a laminator. Two special agents acting in an undercover capacity then went to randomly selected gun stores and pawn shops in the five selected states, where they attempted to purchase weapons using counterfeit identifications.

The GAO agents conducted the investigation pursuant to the authority delegated to the Comptroller General under 31 U.S.C. §710 *et seq.*, which allows GAO to conduct investigations requested by members of either House of Congress. Prior to initiating the investigation, the GAO agents contacted both the Department of Justice and the Bureau of Alcohol, Tobacco, and Firearms (ATF). As locations for prospective purchases were selected, the local United States Attorney offices and regional ATF offices were briefed, as well.

## **III. FINDINGS**

### **A. Undercover Agents Were Successful in All States Attempted**

The GAO undercover agents were successful in purchasing firearms with false identifications from licensed dealers in all five states they attempted: Virginia, West Virginia, Montana, New Mexico, and Arizona. Their success rate was 100%. In no instance did NICS background checks detect that the GAO agents were using false identifications, and in no instance did gun dealers refrain from selling weapons to the agents. The GAO report is attached as Exhibit 1 to this report.<sup>5</sup>

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<sup>5</sup>U.S. General Accounting Office, *Firearms: Purchased From Federal Firearm Licensees Using Bogus Identification* (March 2001) (GAO-01-427) (hereinafter *GAO Report*).

## **1. Virginia**

GAO undercover agents were able to buy a Smith & Wesson 9 mm semi-automatic pistol and two 12-round ammunition magazines from a gun store in Richmond, Virginia, using a counterfeit Virginia drivers license. Undercover agents were successful despite Virginia's requirement to check criminal histories at the state level in addition to the federal NICS background checks. Both the state and federal systems returned immediate "proceed" responses, meaning that no criminal records were associated with the fictitious identity presented by the agents. The gun store workers told the undercover agents that the weapon they obtained formerly belonged to a police department in Virginia.

## **2. West Virginia**

GAO agents were able to purchase a Bersa .380 semi-automatic pistol and a box of .380 ammunition from a sporting goods store in Beckley County, West Virginia, using a counterfeit West Virginia drivers license. After an initial "delay" response, a "proceed" response was returned within 24 hours. According to the undercover agents, the primary concern of the salesperson with regard to the initial "delay" response was that he might lose the sale.

## **3. Montana**

In two separate pawn shops in Billings, Montana, GAO agents were able to purchase semi-automatic rifles and ammunition using a counterfeit Montana drivers license. At the first pawnshop, undercover agents were able to buy a Russian SKS 7.62 mm semi-automatic rifle with a bipod and scope, as well as a .22 caliber semi-automatic rifle with a folding stock, scope, and 10-shot magazine. After an initial "delay" response, a "proceed" response was returned within 24 hours. As in the West Virginia case, the GAO agents reported that the main concern of the pawn shop employees was the potential loss of the gun sale.

At a second pawn shop, undercover agents bought ammunition for the rifles without any identification or paperwork. This ammunition included two boxes of 7.62 mm Russian ammunition, one box of .22-caliber ammunition, one 30-round "banana clip," and two additional 10-shot magazines.

## **4. New Mexico**

In an apparently illegal straw purchase, GAO agents were able to purchase an Intratec 9 mm semi-automatic pistol and a 32-shot magazine from a pawn shop in Santa Fe, New Mexico, using a counterfeit New Mexico drivers license. In this instance, the GAO agents reported that they were prompted to engage in this illegal activity in the process of attempting to make their undercover purchase.

According to the GAO report, one undercover agent received a "delay" response when he initially submitted his identifying information for the NICS background check. When he returned later with a second undercover agent, the pawn shop worker proposed that the two agents engage in a straw purchase. He explained that the system still was reporting a "delay"



response for the first agent, but that the second agent could purchase the firearm and transfer it to the first agent.

As explained in the GAO report, federal law prohibits dealers from knowingly selling firearms to individuals who are not buying the weapons for themselves or as gifts. In such cases, dealers are maintaining false sales documentation. The GAO agents accepted the pawn shop worker's suggestion and went through with the straw purchase. They then referred the case to the appropriate law enforcement authorities.

According to the undercover agents, the same pawn shop worker also suggested that they purchase 9 mm, 124-grain Hydra-Shok jacketed hollow-point ammunition because it was "the best ammunition he had in stock to penetrate a bulletproof vest similar to those worn by police officers."<sup>6</sup> The agents bought one box of the hollow-point ammunition.

## **5. Arizona**

GAO agents were able to purchase an Italian .25-caliber semi-automatic pistol, a Spanish half-break .38-caliber 5-shot revolver, and a box of Smith & Wesson .38-caliber ammunition from a gun store in Tucson, Arizona, using a counterfeit Arizona drivers license. The agents were successful despite Arizona's requirement to check criminal histories at the state level in addition to federal NICS background checks. Both the state and federal systems returned immediate "proceed" responses, meaning that no criminal records were associated with the fictitious identity presented by the agents.

### **B. Current System Does Not Require a "Positive" Check**

As a result of its undercover investigation, GAO concluded that there is a major flaw in the federal background check system. The manner in which the system is currently implemented, according to the GAO report, "cannot ensure that the prospective purchaser is not a felon or other prohibited person whose receipt and possession of a firearm would be unlawful."<sup>7</sup>

As the report explains, a NICS background check performs only a "negative" check, which means it finds criminal records only for the name provided. The system does not require a "positive" check to determine whether the name is real, or whether the name belongs to the person buying the gun. In other words, by using fictitious identities, undercover investigators bypassed entirely the criminal background check system.

### **C. Providing False Information Appears To Be a Significant Problem**

Providing false information to bypass NICS background checks appears to be a significant problem. According to a June 2000 report issued by the U.S. Department of Treasury,

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<sup>6</sup>GAO Report, *supra* note 5, at 10.

<sup>7</sup>*Id.* at 2.

13% of gun trafficking investigations conducted by the Bureau of Alcohol, Tobacco, and Firearms (ATF) from July 1996 to December 1998 involved individuals accused of “providing false information to acquire firearms.”<sup>8</sup>

Of the 1,530 criminal investigations of firearms traffickers reviewed, 199 cases involved false information. Within these records, ATF did not distinguish between different types of false information. For example, the ATF report did not distinguish between the use of false identification and the use someone else’s identification. In some instances, individuals may even obtain identifications that appear valid because they were issued by government agencies, but nonetheless were obtained fraudulently using false information.

#### **IV. CASE STUDIES**

The minority staff investigated three specific examples of the use of false identification to defeat the NICS background check. Information about these incidents comes from news reports, court records, and interviews. These examples demonstrate the potentially severe consequences that can occur when weapons are purchased without a positive identification check.

##### **A. Interstate Gun-Running Ring for Drug Dealers**

In two related 1998 cases, convicted felon Carlos J. Walker and his accomplice, Eric Ligon, both from Detroit, used fake drivers licenses to buy dozens of guns in Ohio for drug dealers in Michigan. Mr. Walker used phony identification to buy 20 .40-caliber Smith & Wesson semi-automatic pistols on March 24, 1998. He ultimately pled guilty on June 4, 1999, to possessing firearms as a convicted felon. Mr. Ligon purchased 37 semi-automatic pistols from Uncle David’s Pawn Shop in Columbus, using a fake Ohio drivers license. The license was altered to include his picture, but listed the name of “James Brantly.” Mr. Ligon pled guilty to making false statements to a federally licensed firearm dealer and was sentenced to one year in prison on April 16, 1999.

Many of the guns purchased by Mr. Walker and Mr. Ligon were resold to drug dealers and others in Detroit, according to investigators. The chief of the Columbus ATF office said that the guns purchased were “the latest models, not the type you’ll find easily on the street.”<sup>9</sup> During the sentencing of Mr. Ligon, the judge stated that Mr. Ligon had “purchased a veritable arsenal of firearms to take back to Detroit to individuals likely to engage in criminal activity.”<sup>10</sup>

If a “positive” background check had been performed, neither Mr. Walker nor Mr. Ligon would have been able to purchase weapons. Mr. Walker would have been disqualified because

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<sup>8</sup>U.S. Department of Treasury, Bureau of Alcohol, Tobacco, and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, 27 (Table 14) (June 2000).

<sup>9</sup>Robert Ruth, *ATF Agent Says City Is Gun Central*, Columbus Dispatch (Sept. 4, 1998).

<sup>10</sup>2 Receive Jail Time For Bogus ID Cards: U.S. District Court, Columbus Dispatch (Apr. 16, 1999).

he was a felon, and Mr. Ligon would have been disqualified because he was not an Ohio resident.

### **B. Shooting of Police Recruit By 16-Year-Old**

On October 26, 1999, a 16-year-old named Ben Sandoval used false identification to obtain an Intertec 9 mm handgun from EZ Pawn, a pawn shop in Lakewood, Colorado. The identifications used by Mr. Sandoval were Colorado and Florida drivers licenses that belonged to a 24-year-old named “Marvin Alexander Miranda.” Lakewood police reported, however, that they could not locate this person and that their own background checks linked this name to criminal activity in New York.

According to subsequent interviews with Mr. Sandoval, the pawn shop clerk “obviously knew that I wasn’t the man on the ID.”<sup>11</sup> Because Mr. Sandoval had not memorized the information on the licenses, he referred to them repeatedly while filling out the federal firearm purchase form. Since neither listed place of birth, Mr. Sandoval guessed that it was Florida. In interviews with police, the pawn shop worker said Mr. Sandoval looked to be about “18 or 19.”<sup>12</sup>

Mr. Sandoval’s father later complained that his son would not have been able to obtain the weapon “if EZ Pawn had not made it so easy for a child to buy a gun.”<sup>13</sup> He said his son looks younger than his age, and that “[n]obody in their right mind would look at him and see a 24-year-old and sell him a gun.”<sup>14</sup> A Lakewood detective investigating the case also found it difficult to understand how Mr. Sandoval could have been mistaken for an eligible buyer. “I don’t think he could pass for 21, he’s a little guy,” the detective said.<sup>15</sup>

At the time Mr. Sandoval bought the handgun, he already had an extensive criminal record. He had a juvenile record, including charges of assault and “menacing with a gun,” and he had been in detention for burglary and trespassing.

Ten days after the purchase, Mr. Sandoval was stopped and frisked by 24-year-old Keith Marks, a police recruit at the Lakewood Police Department, in relation to a different case. Although Mr. Sandoval was not the suspect being sought, he suddenly bolted, running across a busy street toward a day care center. Agent Marks knocked down Mr. Sandoval, but also fell himself, at which point Mr. Sandoval drew his weapon and fired twice, striking Agent Marks in

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<sup>11</sup>*Metro Digest*, Denver Post (Dec. 8, 1999).

<sup>12</sup>Detective George McGlynn, *Lakewood Police Department Supplemental Report*, Case No. 99117400 (Dec, 21, 1999).

<sup>13</sup>David Olinger, *Pawnshop Chain Pulls Handguns After Shooting*, Denver Post (Nov. 6, 1999).

<sup>14</sup>Manny Gonzales, *Girl Linked to Shooting of Lakewood Cop By Teen*, Denver Rocky Mountain News (Nov. 6, 1999).

<sup>15</sup>*Id.*

the leg. More than a hundred officers responded, including helicopter and K-9 units, and Mr. Sandoval eventually gave himself up.

#### **D. Killing By Felon**

In April 1999, a convicted felon named Jaron Jerod Ausbon purchased a handgun from the North Sherwood Forest Pawn Shop in Baton Rouge, Louisiana, by using false identifying information on the form required for firearm purchases. When Mr. Ausbon provided an incorrect date of birth, his NICS background check returned a “delayed” response.

Although FBI examiners attempted to gather additional details, the Brady Act’s “three business day” maximum processing time expired, and the pawn shop sold Mr. Ausbon the gun. Mr. Ausbon already was facing other charges, including felony theft, and would not have passed the background check had he provided his correct date of birth or had the pawn shop worker verified it with his drivers license.

About a week later, on May 4, 1999, Mr. Ausbon shot and killed a man using the gun he obtained from the pawn shop. The victim, 21-year-old David Jackson, was washing his truck with a friend at a local car wash when Mr. Ausbon drove through the area and opened fire. The victim was struck five times. Although a friend of the victim drove him toward a hospital, intercepting an ambulance crew on its way to the scene, he was pronounced dead on arrival.

Mr. Ausbon was successfully prosecuted in federal court for second degree murder and sentenced to life in prison. The victim, Mr. Jackson, was survived by his wife and their newborn baby. Sadly, after attending Mr. Ausbon’s trial, Mrs. Jackson leaped to her death from a hotel the day after her deceased husband’s birthday.

In subsequent interviews regarding the case, an ATF official stated that “[t]hey have investigated hundreds of cases in which people prohibited from purchasing weapons — accused and convicted felons, fugitives, abusive spouses, the mentally ill, drug addicts, undocumented immigrants — have succeeded in doing just that.”<sup>16</sup>

#### **V. CONCLUSION**

This report and the undercover GAO investigation indicate that the National Instant Criminal Background Check System has a significant loophole. When gun dealers call in to the system with purchaser information to determine whether prospective gun buyers have criminal records or would be disqualified for other reasons, the system does not check to see if the name provided is real, and it does not check to see if the name belongs to the person buying the gun. As a result, felons, children, and other restricted persons can create and use false identifications to purchase guns. This is not a theoretical problem, but a serious flaw with real consequences.

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<sup>16</sup>Todd Bensman, *Ineligible Gun Buyers Can Beat Check System: Sales OK’d If Process Takes More Than 3 Days*, Dallas Morning News (Sept. 9, 2000).