

Congress of the United States
Washington, DC 20515

July 19, 2019

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW, Suite 4706
Washington, D.C. 20530-0001

Dear Mr. Horowitz,

We write to respectfully request your office investigate the results of Federal Bureau of Investigation (“FBI”) audits of Point of Contact (“POC”) background checks on behalf of FBI’s National Instant Criminal Background Check System (“NICS”). Point of Contact background checks constitute the majority of firearm background checks conducted in the United States, yet there is little information available about how they’re administered.

On April 17, 2019, schools across Colorado’s Front Range were closed due to the threat of an 18-year old woman who had purchased a shotgun in Colorado after flying from her home state of Florida. The woman was reportedly “infatuated” with the Columbine High School massacre and led authorities on an extensive search that ended when she was found dead from an apparent self-inflicted gunshot wound.¹

The Colorado gun shop that sold the woman the shotgun stated she passed the required criminal background check, but a review of federal law shows the transaction should not have been allowed to take place. Individuals are prohibited from buying a rifle or shotgun outside of their state of residence unless “the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States.”² While Colorado allows the purchase of a long gun for individuals ages 18 and older, Florida law mandates an individual must be age 21 or older to purchase any firearm.³ The sale in Colorado of a shotgun to the Florida woman violated this requirement and should have been blocked by a background check.

The Colorado Bureau of Investigation is responsible for running a background check on all firearm sales in the state. According to the Giffords Law Center, this makes Colorado one of 13 states that acts as a POC state for all firearm background checks.⁴ An additional eight states act

¹ <https://www.cnn.com/2019/04/17/us/columbine-threat-search-for-woman/index.html>

² 18 U.S.C. §922(b)(3)

³ Fla. Stat. § 790.065(13)

⁴ <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/nics-reporting-procedures/>

as POC states for handgun background checks only.⁵ For long guns in those eight states and all firearms in non-POC states, the FBI is responsible for running a NICS background check. Despite fewer states acting as POC states than non-POC states, significantly more criminal background checks are conducted through POCs than the FBI directly: in 2017, for example, there were 8,638,264 federal NICS transactions and 16,596,969 state POC transactions.⁶

There is a lack of publicly available information about the effectiveness of POC background checks. In theory, a POC background check should be more thorough than an FBI background check because state and local authorities may be able to search databases for information that may not have been uploaded to FBI databases, such as mental health records or final disposition records. A 2008 study published in the *American Journal of Preventive Medicine* provided support for this theory, finding background checks conducted by local authorities were associated with a 27% lower firearm suicide rate and a 22% lower firearm homicide rate.⁷

Recent data is more troubling. A 2018 Government Accountability Office report found there were approximately 112,000 denials on approximately 8.6 million FBI background checks in fiscal year 2017, but only approximately 69,000 denials on approximately 17 million POC background checks.⁸ Those numbers mean the denial rate for POC background checks was approximately one-third the denial rate for FBI checks. While there are a variety of potential explanations for the discrepancy, the difference between the two denial rates raises the possibility POC states are incorrectly approving a significant number of transfers, as appears to have been the case with the Florida woman in Colorado. Also concerning is a 2016 report authored by your office indicating POC states generally do a poor job of updating the NICS record with information on transactions that are denied or delayed.⁹

FBI conducts POC audits where there is a legitimate need to evaluate whether POC states are properly complying with the regulatory requirements in Title 28, Code of Federal Regulations (C.F.R.), Part 25.¹⁰ The audits include, but are not limited to, evaluations of POC performance related to: (1) the reporting to FBI of all NICS denials and (2) proper application of denial criteria to all NICS transactions.

Unfortunately, FBI audits of POC states are not published. Given the April incident in Colorado and the difference in denial rates between POC and FBI background checks, this lack of accountability is concerning. We write to respectfully request your investigation into FBI audits include an examination of the following:

⁵ Ibid.

⁶ <https://www.fbi.gov/file-repository/2017-nics-operations-report.pdf/view>

⁷ [https://www.ajpmonline.org/article/S0749-3797\(08\)00310-3/fulltext](https://www.ajpmonline.org/article/S0749-3797(08)00310-3/fulltext)

⁸ <https://www.gao.gov/assets/700/694290.pdf>

⁹ <https://oig.justice.gov/reports/2016/a1632.pdf>

¹⁰ <https://www.fbi.gov/file-repository/nics-audit.pdf/view>

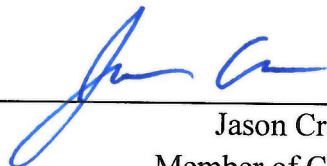
- Provide specific information on how the instance described in this letter, in which an individual wrongly passed the requisite checks, was able to occur and what can be done to ensure this does not happen again.
- When and how often does FBI audit state POCs? What are the criteria for an audit?
- Which of the audited POCs has FBI found are correctly reporting NICS denials to FBI?
- Which of the audited POCs has FBI determined correctly apply federal and state denial criteria?
 - Specifically, which POCs have a high number of sales to prohibited persons?
 - How frequently do sales to prohibited persons occur?
- Which POCs have implemented FBI's recommendations, and which have not?
- Have FBI's recommendations been effective when implemented?
- What is FBI doing to ensure future compliance?
- What have the audits determined regarding POC actions after a delayed denial?
- Specifically, how many illegal firearms have been transferred in delayed denials, and of those, how many have been removed from the prohibited possessors?

Thank you for your time and consideration of this important public safety matter.

Sincerely,



Joe Neguse
Member of Congress



Jason Crow
Member of Congress



Diana DeGette
Member of Congress



Ed Perlmutter
Member of Congress



Scott R. Tipton
Member of Congress