

LINDSEY O. GRAHAM, SOUTH CAROLINA
 JOHN CORNYN, TEXAS
 MICHAEL S. LEE, UTAH
 TED CRUZ, TEXAS
 JOSH HAWLEY, MISSOURI
 THOM TILLIS, NORTH CAROLINA
 JOHN KENNEDY, LOUISIANA
 MARSHA BLACKBURN, TENNESSEE
 ERIC SCHMITT, MISSOURI
 KATIE BOYD BRITT, ALABAMA
 ASHLEY MOODY, FLORIDA

RICHARD J. DURBIN, ILLINOIS
 SHELDON WHITEHOUSE, RHODE ISLAND
 AMY KLOBUCHAR, MINNESOTA
 CHRISTOPHER A. COONS, DELAWARE
 RICHARD BLUMENTHAL, CONNECTICUT
 MAZIE HIRONO, HAWAII
 CORY A. BOOKER, NEW JERSEY
 ALEX PADILLA, CALIFORNIA
 PETER WELCH, VERMONT
 ADAM B. SCHIFF, CALIFORNIA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

April 15, 2025

VIA ELECTRONIC TRANSMISSION

The Honorable Doug Collins
 Secretary
 Department of Veterans Affairs

Dear Secretary Collins:

Over the past decade, I've consistently written to the Department of Veterans Affairs (VA) about the reporting of veterans to the National Instant Criminal Background Check System (NICS).¹ I have raised concerns with respect to the government ensuring that constitutional due process is followed when the fundamental, Second Amendment rights of veterans are at issue.² My most recent letter dated May 6, 2024, requested updated data with respect to how the VA has handled the reporting of veterans to NICS in the past several years, including the time period after the enactment of the Consolidated Appropriations Act of 2024.³ The Biden-Harris VA failed to respond to that letter.

The most recent data the VA provided to me was on July 18, 2022, in response to my May 5, 2022, letter.⁴ That data revealed that from calendar year 2018 through 2021, the VA added over 103,000 veterans to the NICS adjudicated mental health category, only changed roughly 12,600 veterans' status to "[c]ompetent," had multiple cases adjudicated de novo for failing to act within the required time period, and received 8,865 challenges to assignment of a fiduciary with over 6,000 of those challenges succeeding.⁵ Also, VA disclosed it does not track how many veterans appealed to federal court for removal from the adjudicated mental health category, how much money it remitted to

¹ Letter from Sen. Charles E. Grassley, Chairman, Senate Judiciary Committee, and Johnny Isakson, Chairman, Committee on Veterans Affairs, to Robert McDonald, Secretary, Department of Veterans Affairs, (Mar. 16, 2016), https://www.grassley.senate.gov/imo/media/doc/2016-03-16_ceg_isakson_to_va_veterans_gun_ban.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Senate Judiciary Committee, to Denis McDonough, Secretary, Department of Veterans Affairs, (May 5, 2022), https://www.grassley.senate.gov/imo/media/doc/grassley_to_veterans_affairs_nics_list.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Senate Budget Committee, to Denis McDonough, Secretary, Department of Veterans Affairs, (May 6, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_va_nics.pdf.

² Press Release, Sen. Charles E. Grassley, *Veterans, Dependents Account for Disproportionate Share of 'Mental Defective' Category on Gun Ban List*, (Apr. 15, 2015), <https://www.grassley.senate.gov/news/news-releases/veterans-dependents-account-disproportionate-share-mental-defective-category>; Letter from Sen. Charles E. Grassley, to Mark Kirk, Chairman, and Jon Tester, Ranking Member, Appropriations Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, (Mar. 17, 2016), <https://www.grassley.senate.gov/news/news-releases/grassley-stands-veterans-second-amendment-rights>; Letter from Sen. Charles E. Grassley, to Jeff Sessions, Attorney General Nominee, Presidential Transition Office, (Jan. 12, 2017), (on file with Comm. staff).

³ Letter from Sen. Charles E. Grassley, Ranking Member, Senate Budget Committee, to Denis McDonough, Secretary, Department of Veterans Affairs, (May 6, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_va_nics.pdf. The change in law my 2024 letter referenced was the Consolidated Appropriations Act of 2024. Until the Consolidated Appropriations Act of 2024, which was signed into law on March 9, 2024, veterans were reported to NICS when they were appointed a fiduciary to receive their VA benefits under the determination that they were considered "adjudicated mental defective" for purposes of federal law. Consolidated Appropriations Act, 2024, Pub. Law No. 118-42, Sec. 413. *See also*, 18 U.S.C § 922(d)(4).

⁴ Letter from Denis McDonough, Secretary, Department of Veterans Affairs, to Sen. Charles E. Grassley, Ranking Member, Senate Judiciary Committee, (July 18, 2022), (on file with Comm. staff).

⁵ *Id.*

attorneys representing plaintiffs in cases involving removal from that category, or how many erroneous VA records were removed from NICS.⁶ This data shows the VA can do better to protect veterans' fundamental rights.

I have fought this fight for veterans' Second Amendment rights for years. In addition to the letters I have sent on this issue stretching back almost a decade, in 2017, I spearheaded a Resolution of Disapproval under the Congressional Review Act to repeal an Obama-Biden Administration rule requiring the Social Security Administration to report beneficiaries to NICS for the purpose of firearm restriction.⁷ I introduced bipartisan legislation in 2018 and 2019 to restore veterans' constitutional rights by shifting the burden of proof from the veteran back to the government, requiring that before the VA reports a veteran's name to the Department of Justice for placement on the NICS, the VA must first find that a veteran is a danger to self or others.⁸ I supported the Consolidated Appropriations Act, signed into law on March 9, 2024, which prohibits the use of funds for reporting persons to NICS as mentally defective without a court order confirming that the individuals pose a danger to themselves or others.⁹ Recently, I cosponsored the *Veterans 2nd Amendment Protection Act*, which would make these due process protections permanent and prevent future administrations from undermining veterans' Second Amendment rights.¹⁰

How the VA has handled this matter should be public. To inform Congressional oversight on these matters, please provide updated data with respect to the NICS adjudicated mental health category, no later than April 29, 2025:

1. Total VA-referred active NICS records monthly from Dec. 31, 2021, through April 15, 2025. This year range applies to each subsequent question.
2. For each year, breakouts according to the subcategories listed below, as applicable:

⁶ *Id.*

⁷ Press Release, Sen. Charles E. Grassley, *Grassley Resolution Would Reverse Obama-Era Regulation Limiting Second Amendment Rights Of Social Security Beneficiaries* (Feb. 2, 2017), <https://www.grassley.senate.gov/news/news-releases/grassley-resolution-would-reverse-obama-era-regulation-limiting-second-amendment>. This repeal was signed into law by President Trump on February 28, 2017. Joint Resolution Providing for Congressional Disapproval under Chapter 8 of title 5, United States Code, of the rule submitted by the Social Security Administration relating to Implementation of the NICS Improvement Amendments Act of 2007, 2017, Pub. Law No. 115-8.

⁸ Press Release, Sen. Charles E. Grassley, *Grassley, Ernst And Manchin Introduce Bipartisan Legislation To Restore Veterans' Second Amendment Rights*, (Feb. 6, 2018), <https://www.grassley.senate.gov/news/news-releases/grassley-ernst-and-manchin-introduce-bipartisan-legislation-restore-veterans>; and Press Release, Sen. Charles E. Grassley, *Grassley, Manchin Reintroduce Bipartisan Legislation To Restore Veterans' Second Amendment Rights*, (May 16, 2019), <https://www.grassley.senate.gov/news/news-releases/grassley-manchin-reintroduce-bipartisan-legislation-restore-veterans-second>.

⁹ The Consolidated Appropriations Act of 2024 requires that "[n]one of the funds made available by this Act may be used by the Secretary of Veterans Affairs under section 5502 of title 38, United States Code, in any case arising out of the administration by the Secretary of laws and benefits under such title, to report a person who is deemed mentally incapacitated, mentally incompetent, or to be experiencing an extended loss of consciousness as a person who has been adjudicated as a mental defective under subsection (d)(4) or (g)(4) of section 922 of title 18, United States Code, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others." Consolidated Appropriations Act, 2024, Pub. Law No. 118-42, Sec. 413. *See also*, 18 U.S.C. § 922(d)(4). This change was necessary because the VA did not determine if a veteran was a danger to self or others before reporting them to NICS.

¹⁰ Press Release, Sen. Charles E. Grassley, *Grassley, Kennedy Fight To Protect Veterans' Second Amendment Rights*, (Feb. 7, 2025), <https://www.judiciary.senate.gov/press/rep/releases/grassley-kennedy-fight-to-protect-veterans-second-amendment-rights>.

- a. The number of deceased beneficiaries removed from the adjudicated mental health category;
 - b. The number of beneficiaries added to the adjudicated mental health category;
 - c. The number of beneficiaries who requested removal from the NICS adjudicated mental health category; and
 - d. The number of beneficiaries who were granted removal from the NICS adjudicated mental health category.
3. For each year, a breakdown of the fiduciary determinations based on:
 - a. Medical evidence; and
 - b. Court order.¹¹
4. Has Veterans Benefits Administration ever determined a beneficiary to be a danger to self or others as part of the fiduciary assignment process? If so, how many?
5. Based on the new danger to self or others reporting standard in the Consolidated Appropriations Act of 2024, has the VA reported any beneficiaries to NICS?
6. For those beneficiaries added to the adjudicated mental health category, for each year provide the number who were unable to manage their financial affairs due to:
 - a. Injury;
 - b. Disease; or
 - c. Age-related illness.
7. For the number of beneficiaries who requested removal from the NICS adjudicated mental health category, for each year provide the reasons for the requests including:
 - a. The removal/confiscation of a firearm;
 - b. The inability to procure a weapon; and
 - c. Evidence that they no longer need a fiduciary to handle their financial affairs.
8. For each year, how many adjudicated mental health category removal cases resulted in:
 - a. De novo review, due to the VA failing to act on a request within the statutorily required 365 days; and
 - b. Plaintiffs prevailing against the VA based on a de novo hearing.
9. Has the VA started to track how many beneficiaries appealed to federal court and what was the outcome? If so, provide data for each year. If not, why not?
10. Provide a list, and any related data, tracking who represents the beneficiaries when an assignment is challenged.
11. For each year, how many beneficiaries:

¹¹ In its July 2022 response letter to me, VA stated NICS “reporting arises solely from the Veterans Benefits Administration,” (VBA) which “determines whether a fiduciary must be appointed to manage the beneficiary’s benefits” upon receipt of “medical evidence or a court order.” Further, “[w]hen VBA determines a VA beneficiary to be unable to manage their financial affairs due to injury, disease, or age-related illness, it discloses that information to NICS....” Letter from Denis McDonough, Secretary, Department of Veterans Affairs, to Senator Charles Grassley, Ranking Member, Senate Judiciary Committee, (July 18, 2022), (on file with Comm. staff).

- a. Accepted assignment of a fiduciary;
 - b. Challenged the assignment of a fiduciary; and
 - c. Successfully challenged the assignment of a fiduciary.
12. Has the VA started to track how much money in fees was remitted by the VA to attorneys representing plaintiffs in cases involving removal from the adjudicated mental health category? If so, provide data for each year. If not, why not?
13. Has the VA started to track how many erroneous VA records were removed from NICS? If so, provide data for each year. If not, why not?¹²

Thank you for your prompt attention to this matter. Should you have any questions, please contact Jace Pimentel of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

¹² VA's claim that it does not track the number of erroneous records removed is surprising considering the Fix NICS Act of 2018 requires that "[t]he head of each Federal department or agency shall submit a certification to the Attorney General..." which must include "the efforts of the Federal department or agency to ensure complete and accurate reporting of relevant records, including efforts to monitor compliance and correct any reporting failures or inaccuracies." Consolidated Appropriations Act, 2018, Sec. 602.