

Written by Gun Owners
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COMMENTS OF GUN OWNERS OF AMERICA WITH RESPECT TO THE DEPARTMENT OF JUSTICE PROPOSED REVISED RECORD RETENTION POLICY UNDER THE BRADY LAW

Gun Owners of America, a not-for-profit grassroots membership organization representing over 300,000 American gun owners, submits the following comments to Attorney General John Ashcroft with respect to the proposed revised policy concerning retention of NICS records.

In short, we believe that ANY retention of records of firearms owners or purchasers is a violation of the McClure-Volkmer Firearms Owners Protection Act and of other provisions of law.

We do, however, believe that the proposed one-day retention period is less unlawful than -- and therefore a significant improvement over -- the Clinton-era efforts to retain records for 90 and/or 180 days. Therefore, we commend you for taking a step in the right direction.

18 U.S.C. 926 (a)(3) provides, in part:

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.

The Brady Law itself, at 18 U.S.C. 922 (t)(2), requires that "[i]f receipt of a firearm would not violate subsection 922(g) or (n) or State law, the system shall ... destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer."

It is important to note that the Brady Law explicitly prohibits the retention of records for the "fraud-related purposes" proposed by the Clinton administration -- or even the one-day period envisioned by the proposed revised policy. In fact, had proponents of the Brady Bill publicized the fact that the system might be abused in the manner supposedly addressed by the retention period, it is unlikely that the bill could have achieved passage.

Since that time, the Senate has repeatedly gone on record as favoring the "immediate" destruction of the Brady records -- first, in connection with the Smith Amendment, adopted with 69 votes, and subsequently in connection with committee language inserted in successive appropriations bills.

It is not surprising that a Clinton administration which held the law in contempt would ignore the statutory restrictions on the FBI's authority in order to retaliate against the Second Amendment community for its decisive support of anti-Clinton congressional candidates in the 1994 elections.

The American people punished the Clinton camp for its lawlessness and lack of ethics by delivering control of the White House and both Houses of Congress to the Republicans in the 2000 elections.

We, however, have a right to expect better things from George W. Bush and his administration.

We would ask, first, that you consider eliminating entirely the unlawful retention of Brady records. If, in fact, persons are accessing the system unlawfully for illegitimate purposes, this is a problem which needs to be addressed in some other manner.

Second, we would ask that you review your system to insure that information concerning gun owners and firearms transactions is not being retained in any manner whatsoever which would allow it to be retrieved under current technology -- or even under some technology not yet available. This would include, for instance, a review of your "backup" policies.

And finally, because of the increasing militarization of law enforcement in this country, and the growing catalog of FBI and BATF abuses against the civil and constitutional rights of American citizens such as the Waco and Ruby Ridge tragedies¹ (and the subsequent cover-ups), we feel compelled to take this opportunity to reiterate on the absurdity of the FBI and BATF having additional authority over the lives of law-abiding citizens. As you are well aware, these agencies are "out of control" and have lost the trust and confidence of the American people. And this is not just the characterization of GOA, but that of a host of prominent U.S. Senators, Representatives, Judges and other distinguished Americans.

Mr. Ashcroft: You currently occupy your elaborate office on the fifth floor of the Department of Justice building because the American people expected you to honor and uphold the law, where your predecessor did not. We trust and we expect that you will keep faith with the American people who placed you there.

¹ These and many more such FBI and BATF abuses against decent, law-abiding citizens are well documented on the GOA web site.