

RESOLUTION CALLING FOR THE SUBMISSION TO THE HOUSE OF REPRESENTATIVES OF CERTAIN INFORMATION IN THE POSSESSION OF THE ATTORNEY GENERAL REGARDING NICS INDICES SELF-SUBMISSION FORMS

DECEMBER 13, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
 submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 1477]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 1477) calling for the submission to the House of Representatives of certain information in the possession of the Attorney General regarding NICS Indices Self-Submission Forms, having considered the same, reports favorably thereon with amendments and recommends that the resolution as amended be agreed to.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	3
Committee Consideration	3
Committee Votes	3
Committee Oversight Findings	5
Committee Estimate of Budgetary Effects	5
New Budget Authority and Congressional Budget Office Cost Estimate	5
Duplication of Federal Programs	5
Performance Goals and Objectives	5
Advisory on Earmarks	5
Section-by-Section Analysis	5
Minority Views	5

The amendments are as follows:

Strike all after the resolving clause and insert the following:

That Attorney General Merrick Garland is requested to furnish to the House of Representatives not later than 14 days after the adoption of this resolution, in a com-

plete and unredacted form, a copy of any documents, records, reports, memos, correspondence, or other communication either generated or received by the office of Attorney General Merrick Garland that refers to information regarding NICS Indices Self-Submission Forms, how the determination to distribute the forms was made, and the reasoning for distributing the forms from January 1, 2016, through the present date.

Amend the title so as to read:

A resolution Calling for the submission to the House of Representatives of certain information in the possession of Attorney General Merrick Garland regarding NICS Indices Self-Submission Forms.

Purpose and Summary

H. Res. 1477 is a non-binding resolution of inquiry that requests Attorney General Merrick Garland provide certain documents to the House of Representatives relating to NICS Indices Self-Submission Forms. Representative Andrew Clyde (R-GA) introduced the resolution on November 16, 2022. It currently has no co-sponsors.

Background and Need for the Legislation

I. BACKGROUND ON RESOLUTIONS OF INQUIRY

Under the rules and precedents of the House, a resolution of inquiry is used to obtain information from the executive branch. A resolution of inquiry is directed to the President of the United States or the head of a Cabinet-level agency, requesting facts within the control of the executive branch.¹ As a “simple resolution,” designated by “H. Res.,” a resolution of inquiry does not carry the force of law. “Compliance by the executive branch with the House’s request is voluntary, resting largely on a sense of comity between co-equal branches of government and a recognition of the necessity for Congress to be well-informed as it legislates.”²

House rules afford resolutions of inquiry a privileged parliamentary status. A Member files a resolution of inquiry like any other legislation. The resolution is then referred to the proper committee of jurisdiction and the committee may: (1) report the resolution either favorably or unfavorably; or (2) choose not to report the resolution. If the committee does not report the resolution to the House within 14 legislative days of its introduction, however, a motion to discharge the resolution from committee can be made on the House floor.³

II. NEED FOR THE LEGISLATION

This resolution requests that Attorney General Merrick Garland provide the House with complete and unredacted copies of any documents, records, reports, memos, correspondence, or other communication either generated or received by the Office of Attorney General Merrick Garland that refers to information regarding NICS Indices Self-Submission Forms, how the determination to distribute the forms was made, and the reasoning for distributing the forms from January 1, 2016, through the present date.

¹ Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947–2011*, CONG. RES. SERV. R40879 (May 15, 2012).

² *Id.* at 2.

³ House rule XIII, clause 7.

The resolution relates to an FBI form that allows an individual to voluntarily relinquish their rights to own or possess a firearm based on their lack of mental capacity. It has been said that the submission of this form results in the individual's entry into the FBI's National Instant Criminal Background Check System, or "NICS," as a prohibited person who is federally barred from possessing a firearm, and that an individual may not be able to remove their name from NICS system. Representatives in support of the resolution indicated that that FBI stopped using the form in 2019.

Without more information before this Committee regarding this form, the Committee cannot take an informed position on the resolution. There may be legitimate reasons to investigate the use of the NICS form. However, the Committee has had several hearings and markups on firearms-related issues, and no Member raised a single issue or asked any questions about these forms. Moreover, the resolution requests records that date back to three different presidential administrations, with four different Attorneys General—suggesting that time is not of the essence. Members are free to request this information directly from the Department of Justice's Office of Legislative Affairs and have other means at their disposal to obtain the requested information. Because a Resolution of Inquiry is not the best vehicle for obtaining this information, particularly in the waning days of this Congress, the Committee reported the resolution with no recommendation.

Hearings

The Committee on the Judiciary held no hearings on H. Res. 1477.

Committee Consideration

On December 7, 2022, the Committee met in open session and ordered the resolution, H. Res. 1477, reported without recommendation with an amendment in the nature of a substitute, by a rollcall vote of 21–14, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following rollcall vote occurred during the Committee's consideration of H. Res. 1477:

1. A motion to report H. Res. 1477 with no recommendation was agreed to by a rollcall vote of 21–14. The vote was as follows:

Roll Call No. 3

Date: 12/7/22

COMMITTEE ON THE JUDICIARY
House of Representatives
117th Congress

Subject: Motion to report H. Res. 1477 to the House without recommendation

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrod Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)			
Hank Johnson (GA-04)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)			
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)			
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)			
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)			
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	21	14	

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Tax Expenditures

Neither clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, nor clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, are applicable because this legislation does not provide new budgetary authority or incur costs.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H. Res. 1477 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H. Res. 1477 requests Attorney General Garland to transmit to the House of Representatives documents relating to NICS Indices Self-Submission Forms.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H. Res. 1477 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the resolution as reported by the Committee.

H. Res. 1477, a non-binding resolution of inquiry, requests Attorney General Merrick Garland transmit to the House of Representatives any document relating to NICS Indices Self-Submission Forms, how the determination to distribute the forms was made, and the reasoning for distributing the forms from January 1, 2016, through the present.

Minority Views

H. Res. 1477 requests the Attorney General to provide the House of Representatives with documents generated or received by the Attorney General regarding National Instant Criminal Background Check System (NICS) Indices Self-Submission Forms. This information would assist the Committee in ensuring that law-enforce-

ment agencies are not depriving individuals of their Second Amendment rights without due process.

The Federal Bureau of Investigation (FBI) operates the NICS system, which Congress established in the Brady Handgun Violence Prevention Act of 1992.¹ Federal Firearms Licensees (FFL) must contact the FBI to conduct a NICS check when performing a background check to determine whether a potential purchaser falls within a prohibited category. When the FBI runs a NICS check, it searches three different databases, all maintained by the FBI:

- Interstate Identification Index (III)—a database of criminal history information;
- National Crime Information Center (NCIC)—information on individuals subject to civil protection orders and arrest warrants; and
- NICS Indices—information provided by federal and state agencies that is not included in the III or NCIC, such as information that shows an individual has a mental health history or is an illegal alien.²

NICS provides full service to the FFLs in thirty states, five U.S. territories, and the District of Columbia, while providing only partial service to seven states.³ Thirteen states perform their own checks through NICS.⁴ The FBI reported over 3.5 million NICS checks in April of 2021 and over 4.5 million NICS checks in March of 2021—the most NICS checks in any month ever.⁵ In March 2018, President Trump signed the Fix NICS Act into law, which ensured that relevant state and federal agency records are submitted to the NICS databases in a timely manner.⁶

Between 2016 and 2019, the FBI created and utilized what it termed a “NICS Indices Self-Submission Form.”⁷ By completing and signing the form, a citizen authorized the disclosure of his or her mental health records to NICS Indices, resulting in the denial of the citizen’s right to purchase or possess a firearm.⁸ An FBI spokesperson stated that the form was purportedly “created to provide an avenue for individuals to self-report to the NICS Section when individuals felt they were a danger to themselves or others.”⁹ According to documents acquired through the Freedom of Information Act by Gun Owners of America (GOA), the FBI used these forms on at least 15 occasions.¹⁰ On these occasions, armed FBI agents presented the forms to the individuals, raising the concern that the individuals signed the forms—and surrendered their constitutional rights—under duress.¹¹ Although some individuals who

¹Federal Bureau of Investigation, *National Instant Criminal Background Check System* (NICS), <https://www.fbi.gov/services/cjis/nics> (last visited May 13, 2021).

²Bureau of Justice Statistics, *The NICS Improvement Act of 2007*, <https://www.bjs.gov/index.cfm?ty=tp&tid=49> (last visited May 13, 2021).

³Federal Bureau of Investigation, *National Instant Criminal Background Check System* (NICS), <https://www.fbi.gov/services/cjis/nics> (last visited May 13, 2021).

⁴*Id.*
⁵Federal Bureau of Investigation, *NICS Firearm Background Checks: Month/Year*, https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view (last visited May 14, 2021).

⁶Fix NICS Act of 2017 (Pub. L. 115–141).

⁷Tim Cooper, *FBI Pressures Citizens to Forfeit 2A Rights Via NICS E Check Form*, FREE RANGE AMERICAN, Sep. 21, 2022), <https://freerangeamerican.us/nics-e-check-gun-rights/>.

⁸*Id.* (see form below).

⁹Gabe Kaminsky, *EXCLUSIVE: The FBI Secretly Pressured Americans to Waive Away Their Gun Rights*, DAILY CALLER, (Sep. 6, 2022), <https://dailycaller.com/2022/09/06/fbi-second-amendment-nics/>.

¹⁰*Id.*

¹¹*Id.*

signed the forms allegedly made threats of violence,¹² it is unclear if any of those who signed the forms were arrested, tried, and convicted for making threats.

The Gun Control Act of 1968 specifies who is prohibited from purchasing or possessing firearms.¹³ The identities of those individuals prohibited by law from purchasing or possessing firearms are maintained in the NICS system. The Act, however, does not authorize—nor does it contemplate—an individual self-submitting his or her name into the NICS System. In fact, Democrats are aware of this fact. At the same business meeting during which the Committee considered H. Res. 1477, the Committee also considered H.R. 8361, a bill that would authorize individuals to voluntarily place themselves on a list to prohibit them from purchasing or possessing a firearm.

JIM JORDAN,
Ranking Member.

¹²*Id.*

¹³See 18 U.S.C. 922(g).



NICS Indices Self-Submission Form

(You must SIGN this form in the presence of a licensed physician or a licensed mental-health professional)

Please clearly print your full legal name on the line immediately below:

I, _____, voluntarily request permanent entry into the NICS Indices of the FBI's Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS). **I UNDERSTAND THAT**

COMPLETION & SUBMISSION OF THIS FORM WILL RESULT IN DENIAL OF MY RIGHT TO PURCHASE, TO POSSESS AND TO USE ANY FIREARM. In addition, I understand that once I am in the NICS Indices, I may not be permitted to withdraw my name or information from the NICS Indices.

Please provide the following information about yourself (print clearly):

Any other names ever used: _____

Date of Birth: _____ Place of Birth: _____

Social Security Number _____ Sex (circle) M F

Height _____ Weight _____ Race _____

I have a mental-health condition that may cause me to: (check all that apply):

- _____ Be a danger to myself or to others.
- _____ Lack mental capacity adequately to contract or manage the details of my life.

BY SIGNING THIS FORM, I AUTHORIZE DISCLOSURE OF MY MENTAL HEALTH RECORDS TO THE FBI NICS SECTION AND I WAIVE MY RIGHTS TO PRIVACY UNDER THE PRIVACY ACT OF 1974, THE HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (HIPAA) AND OTHER PERTINENT PROVISIONS OF LAW IN RELATION TO A NICS BACKGROUND CHECK FOR FIREARMS PURCHASE, POSSESSION AND/OR USE, AND TO THIS VOLUNTARY REQUEST FOR MY ENTRY INTO THE NICS INDEX.

My signature: _____

Date: _____

VERIFICATION OF PHYSICIAN OR MENTAL-HEALTH PROFESSIONAL

By my signature below, I verify that I am a licensed physician or licensed mental-health professional who has examined the person whose signature appears above and that, in my professional opinion, he/she understands this form and has adequate mental capacity voluntarily to execute this document. I also verify that the person whose signature appears above signed this document in my presence.

Signature of professional _____ Printed name & title _____ State of licensure & license number _____

Business address: _____

Telephone: _____ Fax: _____

E-mail form and supporting documentation to NICSIndexSubExternal@fbi.gov, then promptly mail the original to: FBI, 1000 Custer Hollow Rd., Clarksburg WY 26306-0001, ATTN: NICS Liaison Specialist. Questions call (844) 265-6716.

