



Brady Statute Data: Persons who are Illegally or Unlawfully in the United States

Report submitted to the
Bureau of Justice Statistics
and the
Alaska Department of Public Safety

by

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Introduction

This project is a component of the National Criminal History Improvement Program (NCHIP). It is funded by the United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, grant number 96-RU-RX-K026.

The purpose of this Advanced State Awards program (ASAP) project is to determine the feasibility of identifying and assembling information on persons other than felons who are prohibited from purchasing firearms under 18 U.S.C. 922 (g) and (n), as amended by the Violent Crime Control and Law Enforcement Act of 1994. The information on the non-felons covered by the act would be added to the Alaska Public Safety Information Network (APSIN) used by the Alaska Department of Public Safety for background checks prior to the purchase or sale of handguns. The APSIN system was created in the early 1980s as a computerized criminal history database for use by law enforcement agencies across the state.

Currently, state law enforcement agencies do not obtain data on three of the following four non-criminal categories of individuals prohibited by the above federal law from obtaining guns: adjudicated mental defectives and involuntary mental commitments; individuals subject to any court order restraining them from threatening or committing acts of domestic violence or abuse; those who are an unlawful user of, or addicted to, any controlled substance; and aliens illegally in the United States.

This is the fourth in a series of Alaska Justice Statistical Analysis Unit reports describing how each category can be defined within an Alaska context and discussing the possible procedures, problems and solutions associated with data collection. At the conclusion of this project a summary report will be written that will synopsize the four components of the project.

The first, second and third reports focused on adjudicated mental defectives and involuntary mental commitments, those subject to domestic violence restraining orders and persons who are unlawful users of or addicted to any controlled substance. The fourth of these four non-criminal classifications to be examined is that of **aliens illegally in the United States**.

Background

In Alaska, Brady checks are conducted by a designated (local) Chief Law Enforcement Officer (CLEO) anytime someone tries to purchase a handgun from a licensed dealer. Currently, there are

thirty-nine CLEO's across the state, who perform background checks. However, given Alaska's population disbursement the majority of requests are handled by three departments: the Alaska State Troopers (who perform checks for many of the outlying areas), the Fairbanks Department of Public Safety, and the Anchorage Police Department. The procedures vary from agency to agency but the records used to conduct a check are the same. Two computerized systems are primarily used. The first is the state criminal history database which includes information on felony convictions, wanted fugitives, domestic violence restraining orders and domestic violence misdemeanor convictions (because of a state constitutional provision granting a right to privacy, mental health commitments are not kept in the system). The second is the national records of the National Crime Information Center (NCIC). If a local law enforcement agency is completing the check, local records are also reviewed.

Law enforcement agencies are given five days (not including holidays) to complete the record review and make a decision whether to approve or deny the application. If the application is approved, the application and all internal records created are destroyed within twenty days. If the application is denied, the length of retention of the records is up to each individual agency. Some larger agencies like the Anchorage Police Department retain the applications and all corresponding paperwork indefinitely. Other, smaller police departments only keep the applications for a few months. If the application is denied, no reason for denial is given to the dealer. It is up to the individual to contact the law enforcement agency within twenty days for the specific reasons.

Definitions

In September 1996 the Bureau of Alcohol, Tobacco and Firearms published revisions to the proposed definitions associated with the Brady Act in 61 FR 47095. Comments on the proposed regulations were requested and in June 1997 ATF published the final definitions (62 FR 34634-02), along with the comments. The INS stated that the original definition published for an illegal alien did not adequately reflect the terminology used in the Immigration and Nationality Act (INA). Therefore, for the purposes of Brady, the definition of an illegal alien was changed to reflect the more precise legal terms used in the INA. The final definition can be found in 27 CFR 178.11 and reads as follows:

Alien illegally or unlawfully in the United States. Aliens who are unlawfully in the United States are not in valid immigrant, nonimmigrant or parole status. The term includes any alien—

- (a) Who unlawfully entered the United States without inspection and authorization by an immigration officer and who has not been paroled into the United States under section 212 (d) (5) of the Immigration and Nationality Act (INA);
- (b) Nonimmigrant whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted;
- (c) Paroled under INA section 212 (d) (5) whose authorized period of parole has expired or whose parole status has been terminated; or
- (d) Under an order of deportation, exclusion, or removal, or under an order to depart the United States voluntarily, whether or not he or she has left the United States

INS Records Availability

The Immigration and Naturalization Service is responsible for determining the status of people entering the country and maintaining records on their authorized period of stay.

There are three primary databases maintained by the INS: the Central Index System (CIS), the Deportable Alien Control System (DACs), and the Nonimmigrant Information System (NIIS). All three systems can be accessed by the regional INS office and are used for investigations and tracking of aliens. Additionally, the regional INS office maintains hard copy files, called "A" files, on persons being investigated locally. These are generally kept in the regional office records section but can at any time be requested from any other INS office or the Federal Records Center in Washington, D.C.

In addition to the three databases used by the INS, a fourth database was created for use by state and federal agencies that use public monies to provide benefits such as unemployment insurance and welfare. This database called the "Verification Information System" (VIS) allows agencies to determine if the applicant for public benefits is a qualified non-citizen eligible to receive them. This database contains information on approximately 50 million non-citizens in the United States and is updated daily.

Each regional office, with authorization from the main office in Washington, D.C., has the ability to allow access to the VIS system. At this time only two state law enforcement agencies, Connecticut and Georgia, have tried to obtain a direct connection with their regional INS office. Though Connecticut was still in the process of connecting to the system, the Georgia Crime Information Center has been connected to the INS regional office for two years.

During the course of our research, we requested the regional INS office to contact their superiors to find out exactly what would be entailed in obtaining a direct connection to the VIS database by law enforcement. The local office has done so numerous times but to date they have not received an answer.

The INS has however allowed direct terminal access to this database by the Alaska Department of Revenue, Permanent Fund Division. Every year residents of Alaska receive a dividend on earnings from state invested oil revenues. In order to receive this money people are required to fill out an application asserting that they are in fact legal residents of Alaska. The division in turn investigates the accuracy of the application that includes a check on residency status through the INS "Verification Information System" (VIS). The check done by the Permanent Fund Division is not as rigorous as what would be required for Brady but it does show that INS records are available.

The INS does not report any information on illegal alien activity to any law enforcement or criminal history database. The only indication in the APSIN system or the FBI database (NCIC) that a person might be an illegal alien would be a notation for an arrest by an INS or Border Patrol

agent. Immigration violators are held in Anchorage pending court appearance in either the Cook Inlet Pretrial Facility or the 6th Avenue Jail. Otherwise persons held for deportation are sent directly to Seattle, Washington.

Determining an Individual's Classification for Brady

Determining whether someone applying to purchase a handgun is classified as an illegal alien is difficult for many reasons. Knowing whether someone has entered the country legally is impossible as the Immigration and Naturalization Service does not report alien status to the state criminal history database or the National Crime Information Center and the INS is not routinely contacted by the state CLEOs for information on an applicant.

Further complicating the situation is that those persons entering the country illegally have been known to purchase fraudulent "green cards" and other official documentation in order to obtain employment or other benefits. Even though the INS has prepared a guide explaining what the commonly used documents look like (Appendix A), they caution that there are other less commonly used documents and earlier revisions of documents not included and that fraudulent documents are also available.

Also, according to William F. McDonald (*National Institute of Justice Journal* No. 232, June 1997), the majority of aliens illegally in the United States (41%) did not enter the country illegally; they instead have allowed their visas to expire. Since they entered the country legally there is no way to determine, at the time their application is filed, if their visa is still valid unless the INS is contacted directly.

The problem stems from the application itself. The application assumes that the purchaser, when filling out the form, will be truthful about his residency status. The application entitled "Statement of Intent to Obtain a Handgun(s)" (Appendix B) requires that Section A of the form be completed by the transferee (buyer). However, the subsection that requests information on place of birth and alien registration number (#4) is optional. The only requirement for identification is "the buyer provide a valid government issued photo identification to the seller that contains the buyer's name, date of birth, and residence." This could mean all that is required is for the buyer to present a driver's license or a state identification card, neither of which lists the residency status of the individual. Each is easily obtainable by a resident alien on a temporary visa or someone with a falsified alien registration card.

Verification Process

As mentioned earlier, we have requested information on what would be entailed for law enforcement to gain access to the INS "Verification Information System" database and have not yet

received an answer. Even though this system is not as complete as it would be to check all three internal databases, connection to this system would be the most fiscally feasible route. It would not require a change in either federal or state statutory law nor would it require the hiring of additional personnel to run the system. Furthermore, there would not be any additional costs associated with upgrading current computer hardware or buying new equipment. The equipment in place now would be adequate because there are several different ways to connect to the system including 3270 terminal emulation, asynchronous dial-in, Touch-tone telephone, PC file transfers and modem-equipped PCs.

If direct access to this system is not obtainable, the only other means to verify whether the applicant for a handgun is an alien is by entry into the other three databases maintained by INS. This would necessitate authorization from the INS national office and the hiring of additional personnel to check the records for each applicant.

This alternative process would require we look up each of the applications processed during a fiscal year. For example, during the Federal Fiscal Year 1996-97 Alaska processed 9,881 applications, averaging approximately 823 applications per month. This would mean an average of 30 checks per day. Access to the system would have to be done either at the regional INS office, requiring INS to find space for an employee to work, or additional monies would have to be spent to install a computer link to the INS system at the Alaska Department of Public Safety. The main Central Index System (CIS) at INS will run slow during hours of peak usage, making the background check slow and cumbersome. It may also be necessary to obtain an individual's "A" file from another region or get copies of birth records or other vital statistics to do a through check, making the time necessary to complete the background investigation longer than the 5 day maximum waiting period. Therefore, the possibility of completing all 30 checks in one day is remote.

This type of access would also require the state to add job duties to a current DPS employee or the INS would have to hire an additional employee to run the background checks. According to the regional INS office, the person would have to be hired for a full time GS-7 position making \$24,734 per year with a 25% cost of living allotment (COLA) of \$6,183, totaling \$30,917 per year in wages.

Conclusion

How efficient is this use of the resources? Looking at the population estimates and actual number of cases handled by the INS, we would not get very much. Alaska is a sparsely populated state with an estimated population of 611,300 (Alaska Population Overview, 1996-97). Also, the total number of illegal aliens is unknown, but the Immigration and Naturalization Service has estimated the undocumented alien population in Alaska to be 3,700 as of 1996 (NIJ Journal, No. 232). Moreover during that same fiscal year 1996-97, the local INS office handled only 354 cases

of suspected illegal aliens. These numbers raise doubts concerning the outlay of the time, money and resources required to check on so few individuals prohibited from potentially purchasing handguns.

If access to the VIS database were available, the minimal expenditure would make this an attractive option. Otherwise, hiring additional personnel and obtaining information through internal records and databases would be time consuming and, overall, not cost effective.

Appendix A

U.S. Immigration and Naturalization Service Guide to Commonly Used Documents Used to Identify Persons Eligible for Benefits Under the Immigration and Naturalization Act

Appendix B

U.S. Bureau of Alcohol, Tobacco and Firearms Statement of Intent to Obtain a Handgun(s)