

Orlando Nightclub Mass Shooting: Gun Checks and Terrorist Watchlists

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On June 12, 2016, an armed assailant [killed](#) 49 people and wounded over 50 others in an Orlando, FL nightclub. After a three-hour stand-off with police, the assailant was killed by police. It is unknown at this time whether any of the victims may have been killed in the [crossfire](#) between the police and the assailant during a [hostage rescue operation](#). The deceased assailant was armed with a [5.56 caliber Sig Sauer rifle](#) and a [9mm Glock semiautomatic pistol](#).

Assailant's Gun Check

The alleged assailant, 29-year-old Omar Mir Seddique Mateen, acquired these firearms from a federally licensed gun dealer about [two weeks](#) prior to the shooting. In so doing, he underwent and passed a [background](#) check through a computer system administered by the Federal Bureau of Investigation (FBI), known as the National Instant Criminal Background Check System (NICS). In addition, the alleged assailant was employed as a [state-licensed security guard](#) and held a [concealed carry weapons \(CCW\) permit](#). It has been reported that the state-issued security guard license might have allowed the alleged assailant to purchase these firearms with [minimal](#) background check requirements. Neither the Florida-issued security guard license nor his CCW permit would have exempted him from the federally required NICS background check, however.

Gun Checks and Terrorist Watchlists

Pursuant to the Brady Handgun Violence Prevention Act ([P.L. 103-159](#)), in November 1998 the FBI activated NICS for the purposes of determining an individual's firearms transfer and possession eligibility whenever an unlicensed individual seeks to acquire a firearm from a federally licensed gun dealer. Federal law enumerates several grounds that disqualify someone from firearms eligibility. However, being a known or suspected terrorist is not a federal firearms eligibility disqualifier.

[Following the September 11, 2001, terrorist attacks](#), the FBI modified its NICS background check procedures to search an additional file in the National Crime Information Center (NCIC) that includes terrorist watchlist records. Today, this NCIC file is known as the [Known and Appropriately Suspected Terrorist \(KST\) File](#). Since February 2004, information related to the subjects of NICS-generated terrorist watchlist matches has been passed on to the FBI Counterterrorism

Division and special agents in the field who are usually members of Joint Terrorism Task Forces (JTTFs). These FBI agents, in turn, verify the match between the individual and the watchlist record, and they check for information that would prohibit that individual, the prospective transferee, licensee, or permittee, from possessing firearms or explosives (e.g., illegal immigration or fugitive status).

According to the FBI, as of July 31, 2015, the KST included 323,522 persons. The KST is a subset of the Terrorist Screening Database (TSDB), which is a multi-agency effort managed by the FBI-administered Terrorist Screening Center. The TSDB is the U.S. Government's consolidated watchlist of all known or suspected terrorists, whether they are of the international or domestic type. The [TSDB](#) had grown to include over 879,000 persons, and the system had been used by screening agencies to positively identify more than 230,000 persons over 11 years (2004-2014). Over the same time period, according to the Government Accountability Office (GAO), federal firearms-related background checks resulted in 2,233 valid terrorist watchlist matches. Of those checks, 2,043 were allowed to proceed and 190 were denied, but the denials were not based on the watchlist hit.

"Terror Gap" Legislation

In the 114th Congress, Representative Peter King and Senator Dianne Feinstein introduced the Denying Firearms and Explosives to Dangerous Terrorists Act of 2015 ([H.R. 1076](#) and [S. 551](#)). These proposals would give the Attorney General discretionary authority to deny firearms or explosives transfers to persons watchlisted as known or suspected terrorists if she deemed them to be "dangerous terrorists." These bills mirror a legislative proposal developed by DOJ and submitted to Congress in April 2007. First introduced in the 110th Congress, these bills have been dubbed the "Terror Gap" proposal.

On December 2, 2015, the day of the San Bernardino shooting, [President Barack Obama](#) called on Congress to pass legislation that would prevent persons on a "No Fly" terrorist watch list from acquiring a gun. The President may have been referring, at least rhetorically, to the "Terror Gap" proposal. The next day, Senator Feinstein offered the language of [S. 551](#) as an amendment ([S.Amdt. 2910](#)) to the Restoring Americans' Healthcare Freedom Reconciliation Act ([H.R. 3762](#)). The Senate rejected a motion to waive a point of order made against the amendment by roll call vote (45-54). Senator John Cornyn offered a counter amendment ([S.Amdt. 2912](#)) to [H.R. 3762](#) that would require the Attorney General to file an emergency petition with a "competent court of jurisdiction" to prohibit a firearms transfer to an otherwise eligible person. The Cornyn amendment was also ruled out of order.

On December 6, 2015, however, [President Obama](#) again called on Congress "to act to make sure no one on the no-fly list is able to buy a gun" in a nationally broadcasted Oval Office address. On December 7, 2015, Representative Mike Thompson filed a [discharge petition](#) on [H.R. 1076](#). On December 9, 2015, Representative Thompson moved to recommit a bill, the Red River Private Property Protection Act ([H.R. 2130](#)), back to committee with instructions to report the bill back to the House amended with the language of [H.R. 1076](#). The chair ruled this motion out of order because the amendment was not germane to the bill, and the chair's ruling was sustained by a voice vote (246-182), preventing further consideration of this amendment.

On June 15, 2016, [Senator Christopher Murphy](#) filibustered the FY2017 Commerce, Justice, State, Sciences and Related Agencies Appropriations bill ([H.R. 2578](#)) for nearly 15 hours, which may have prompted the Senate leadership to agree to bring the Terror Gap proposal and the "Manchin-Toomey" Comprehensive Gun Background check proposal ([S.Amdt. 2908](#)) to the Senate floor for a vote. For a similar House bill, see the Public Safety and Second Amendment Rights Protection Act of 2015 ([H.R. 1217](#)).