

IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., ET AL., PETITIONERS

v.

JOHN D. ASHCROFT, ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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As the preamble to the Attorney General's regulations makes clear, the audit log is designed to "satisfy[] the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system." 63 Fed. Reg. 58,303 (1998). By auditing the system, the government "can identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, and protect

against the invasions of privacy that would result from such misuse." Ibid. The need for such protection is particularly great given the confidential and valuable information the system provides. As the Attorney General explained:

Auditing the users * * * of the NICS is essential to safeguard the security and privacy of personal information in the system. The NICS will perform background checks that access a tremendous amount of criminal history, mental health, military background, and other information about individuals. * * * Without the capacity to audit the use of the system, there will be no way of determining whether [Federal Firearms Licensees or FFLs] are requesting checks for purposes other than checking on the background of a prospective gun purchaser. Many businesses and individuals would be very interested in having easy access to these government databases through FFLs to do employment or other unauthorized checks.

64 Fed. Reg. 10,262, 10,263 (1999).

The audit log, moreover, helps ensure that information provided by the system is accurate. 63 Fed. Reg. at 58,303-58,304. Decisions to allow a firearm purchase are not fully automated, and thus require officials to review and evaluate records before making a decision. See C.A. App. 110. Review of decisions made by NICS examiners is necessary to ensure that the responsible individuals make correct decisions on whether a transfer is permissible, and to enable supervisors to provide additional training where necessary. See C.A. App. 110-111; 63 Fed. Reg. 58,303-58,304. Audits can also help determine "whether potential handgun purchasers or FFLs have stolen the identity of innocent and unsuspecting individuals or otherwise submitted false identification information, in order to thwart the name check system." 63 Fed. Reg. at 58,303-58,304. Finally, audits are vital to ensuring that the system (including

its software) is working properly from a technical standpoint. /See