

United States Government Accountability Office Washington, DC 20548

May 21, 2009

The Honorable John Conyers, Jr. Chairman Committee on the Judiciary House of Representatives

The Honorable Robert C. Scott Chairman Subcommittee on Crime, Terrorism, and Homeland Security Committee on the Judiciary House of Representatives

The Honorable Frank R. Lautenberg United States Senate

Subject: Firearm and Explosives Background Checks Involving Terrorist Watch List Records

This letter formally transmits the enclosed briefing in response to your request. Specifically, you requested that we update our January 2005 report entitled, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127 (Washington, D.C.: Jan. 19, 2005).

Under the Brady Handgun Violence Prevention Act and implementing regulations, the Federal Bureau of Investigation (FBI) and designated state and local criminal justice agencies use the FBI's National Instant Criminal Background Check System (NICS) to conduct checks on individuals before federal firearms licensees (gun dealers) may transfer any firearm to an unlicensed individual.¹ Also, to assist the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the FBI conducts NICS background checks on individuals seeking to obtain a federal explosives license or permit.² Under current law, there is no basis to automatically prohibit a person from

¹ Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

 $^{^{\}rm 2}$ See Safe Explosives Act, Pub. L. No. 107-296, 116 Stat. 2135, 2280 (2002) (Title XI, Subtitle C of the Homeland Security Act of 2002), as amended.

possessing firearms or explosives because they appear on the terrorist watch list.³ Rather, there must be a disqualifying factor (i.e., prohibiting information) pursuant to federal or state law, such as a felony conviction or illegal immigration status.

In response to your request, this report addresses (1) the number of NICS background checks involving terrorist watch list records, the related results, and the FBI's current procedures for handling these checks and (2) the extent to which the FBI has taken action to collect information from NICS background checks involving terrorist watch list records and share this information with counterterrorism officials to support investigations and other counterterrorism activities. To conduct this work, we reviewed relevant laws, regulations, policies, and procedures related to NICS background checks on individuals attempting to purchase firearms or obtain a firearm or explosives license or permit. We also obtained data on NICS background checks that resulted in valid matches with terrorist watch list records from February 2004 (when NICS started checking against terrorist watch list records) through February 2009. We discussed the sources of data with FBI officials as well as the policies and procedures that FBI officials used to maintain the integrity of the data, and determined that the data were sufficiently reliable for the purposes of this review. We also reviewed FBI policies and procedures for collecting and sharing information related to NICS background checks involving terrorist watch list records, and interviewed officials from relevant FBI components.

In summary, from February 2004 through February 2009, FBI data show that 963 NICS background checks resulted in valid matches with terrorist watch list records; of these matches, approximately 90 percent were allowed to proceed because the checks revealed no prohibiting information and about 10 percent were denied. Regarding FBI procedures for handling these checks, in response to a recommendation in our January 2005 report, the FBI began conducting all NICS background checks involving terrorist watch list records in July 2005—including those generated via state operations—to ensure consistency in handling.⁴ Moreover, in April 2005, the FBI issued guidance to its field offices on the availability and use of information collected as a result of NICS background checks involving terrorist watch list records to help support investigations and other counterterrorism efforts. In April 2007, the Department of Justice (DOJ) provided legislative language to Congress that would give the Attorney General discretionary authority to deny the transfer of firearms or the issuance of a firearm or explosives license or permit when a NICS background check reveals that the purchaser is a known or suspected terrorist and the Attorney General reasonably believes that the person may use a firearm or explosives in connection with terrorism. A related bill was introduced in the 111th Congress and is currently pending (H.R. 2159). Neither DOJ's proposed legislative language nor the related bill include provisions for the development of guidelines further delineating the circumstances under which the Attorney General

³ The FBI's Terrorist Screening Center maintains the U.S. government's terrorist watch list, which contains information about individuals "known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism." Applicable records from the watch list are searched during NICS background checks.

⁴ GAO-05-127.

could exercise this authority. In October 2007, we reported that agencies that use terrorist watch list records to screen for potential terrorists use applicable laws or other guidelines as a basis for determining what related actions to take, if any, such as the criteria that are used for determining which subjects of watch list records should be precluded from boarding an aircraft.⁵ Further, Homeland Security Presidential Directive 11 requires that terrorist watch list records be used in a manner that safeguards legal rights, including freedoms, civil liberties, and information privacy guaranteed by federal law.⁶ Guidelines delineating how the Attornev General could use any new authority would help DOJ and its component agencies (1) provide accountability and a basis for monitoring to ensure that the intended goals for, and expected results of, the screening are being achieved and (2) ensure that terrorist watch list records are used in accordance with requirements outlined in the Presidential directive. In response to our questions, DOJ was noncommittal on whether it would develop guidelines if legislation providing the Attorney General with discretionary authority to deny firearms or explosives transactions involving subjects of terrorist watch list records was enacted.

GAO is not making any recommendations to DOJ related to this report. However, if Congress moves forward with legislation that provides the Attorney General with discretionary authority to deny the transfer of a firearm or the issuance of a firearm or explosives license or permit to the subject of a terrorist watch list record, Congress should consider including provisions that require the Attorney General to establish guidelines delineating under what circumstances such authority could be exercised. For additional information on a summary of the results of our work, see slides 14 through 19.

DOJ did not comment on the findings or matter for congressional consideration in this report. The FBI and ATF provided technical comments, which have been incorporated where appropriate.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the Attorney General and the Directors of the FBI and ATF, appropriate congressional committees, and other interested parties. This report will also be available at no charge on our website at <u>http://www.gao.gov</u>. If you or your staff have any questions about this report, please contact me at (202) 512-8777 or larencee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key

⁵ See GAO, Terrorist Watch List Screening, Opportunities Exist to Enhance Management Oversight, Reduce Vulnerabilities in Agency Screening Processes, and Expand Use of the List, GAO-08-110 (Washington, D.C.: Oct. 11, 2007).

⁶ The White House, *Homeland Security Presidential Directive/HSPD-11*, *Subject: Comprehensive Terrorist-Related Screening Procedures* (Washington, D.C.: Aug. 27, 2004).

contributors to this report were Eric Erdman, Assistant Director; David Alexander, Christopher Currie, Geoffrey Hamilton, Linda Miller, and Debra Sebastian.

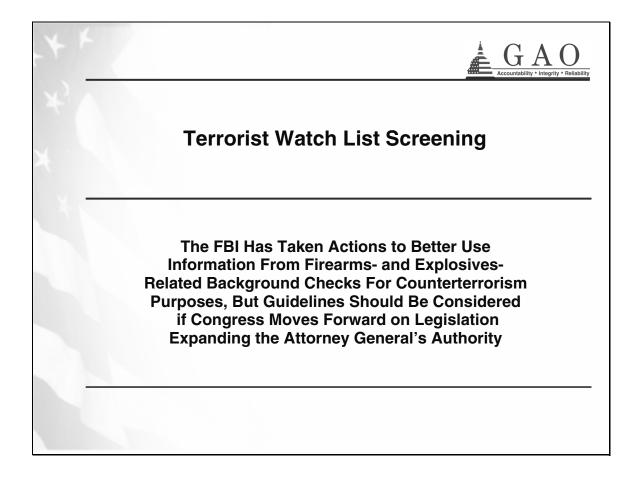
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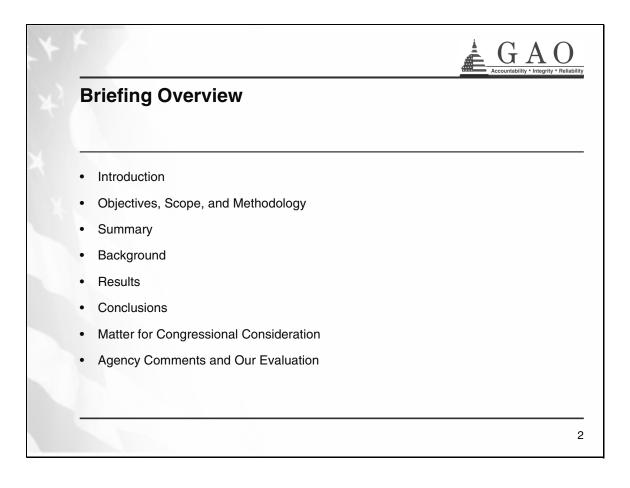
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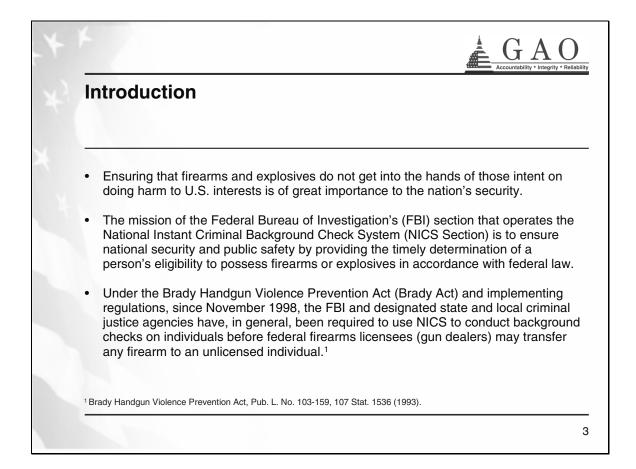
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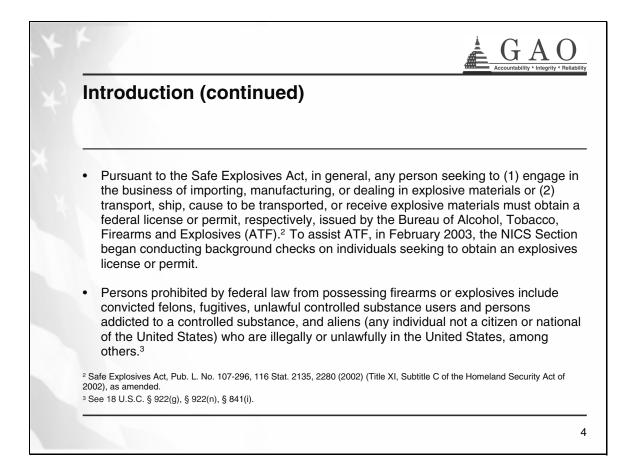
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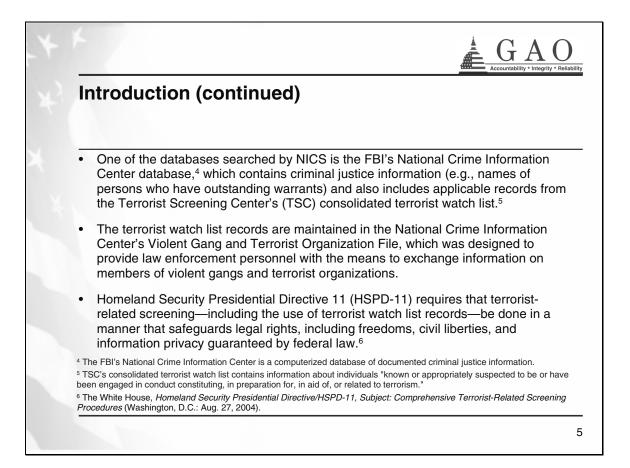
Terrorist Watch List Screening

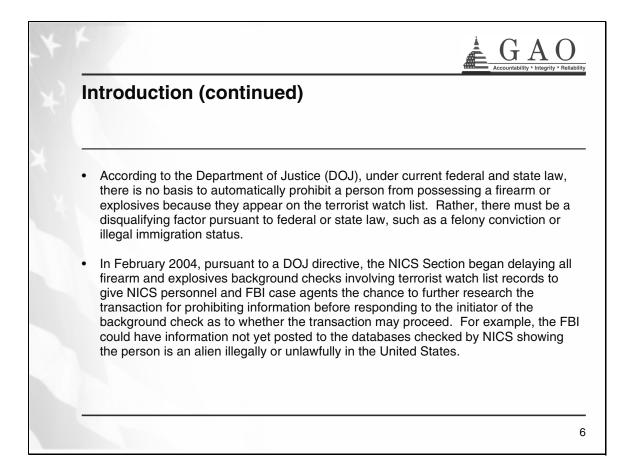


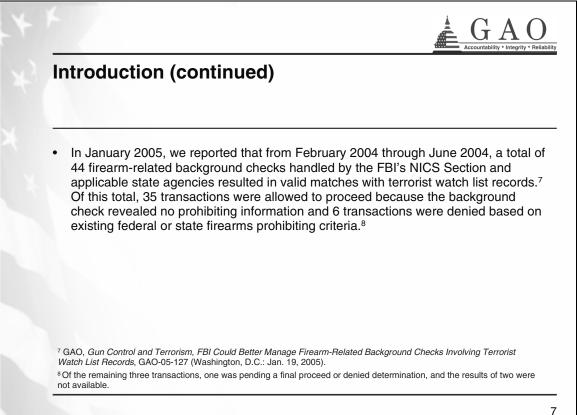


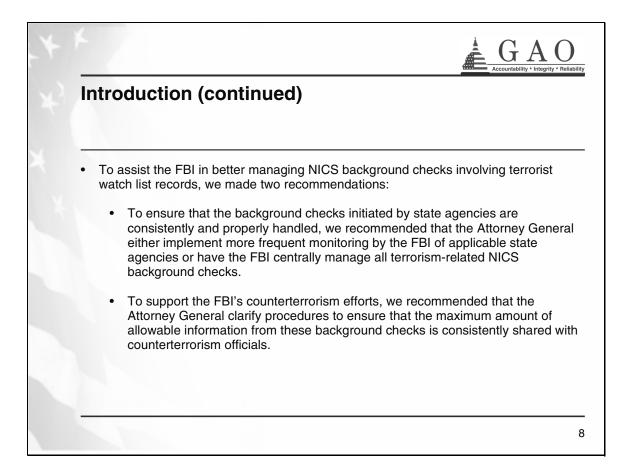


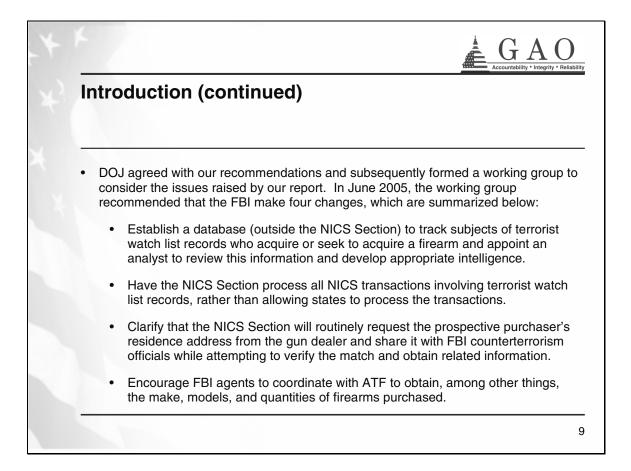


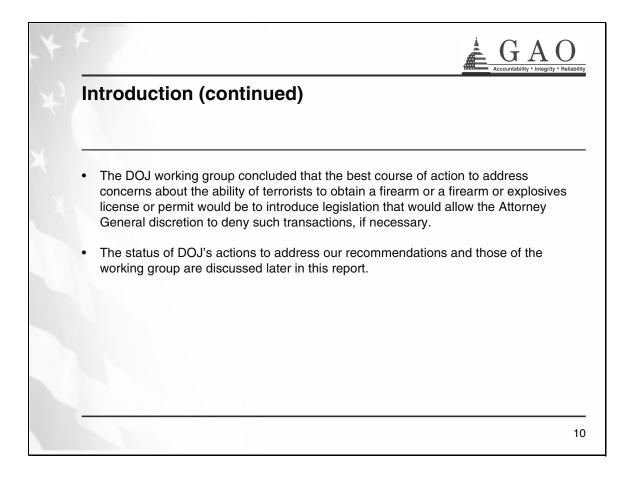


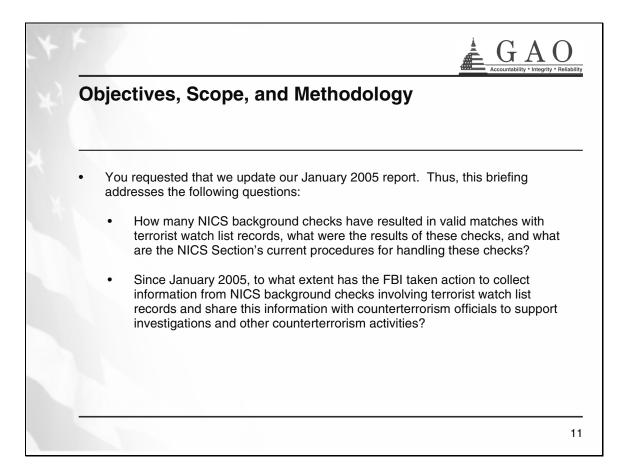


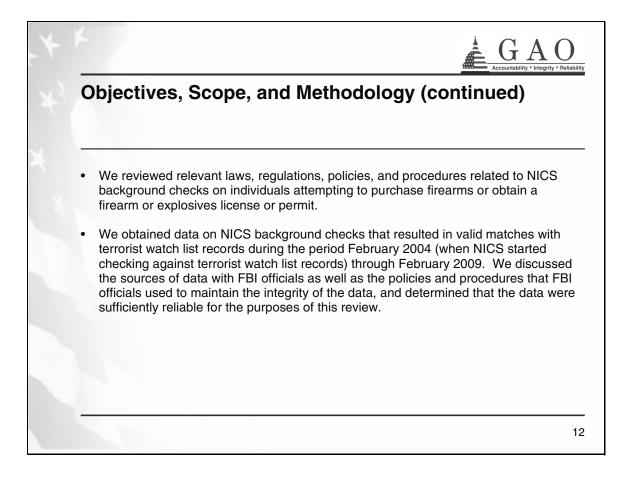


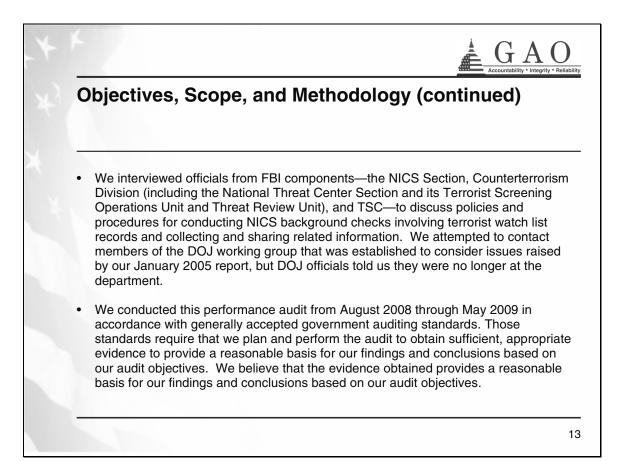


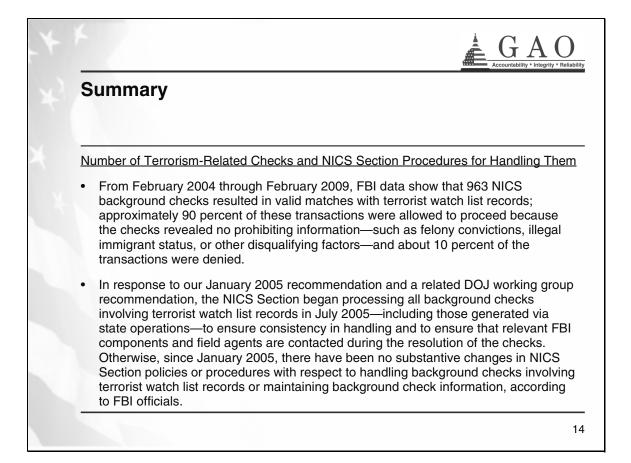


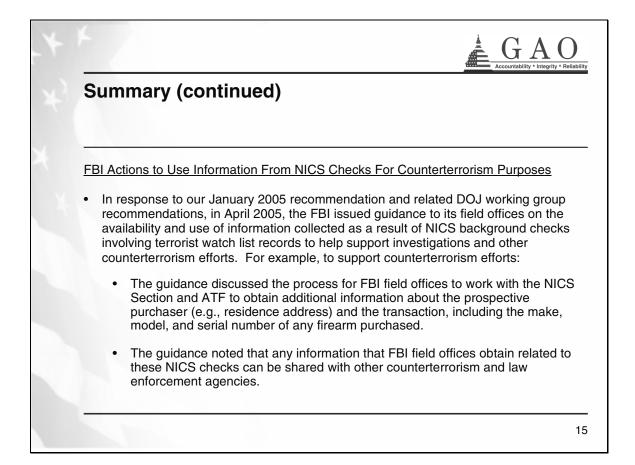


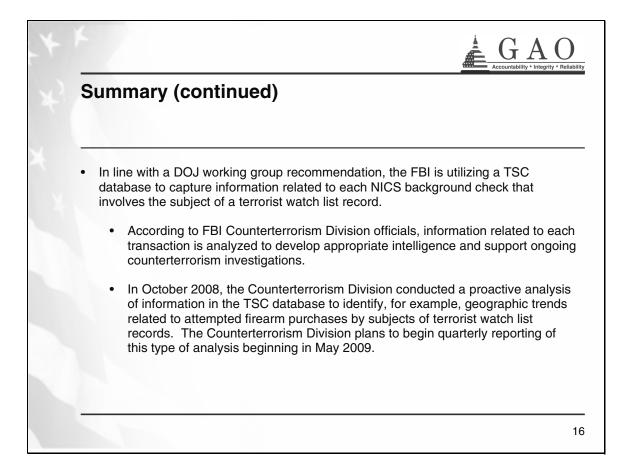


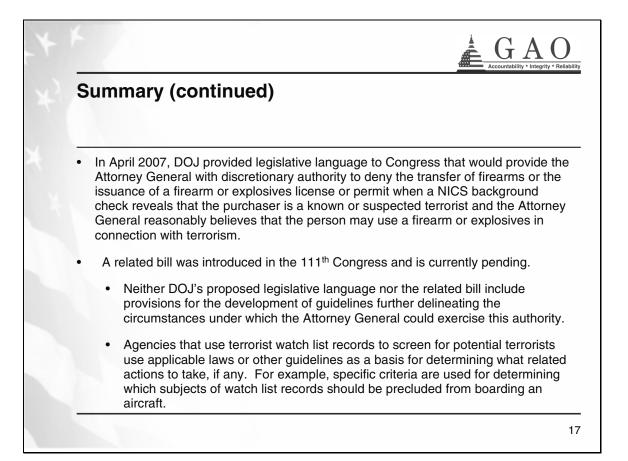


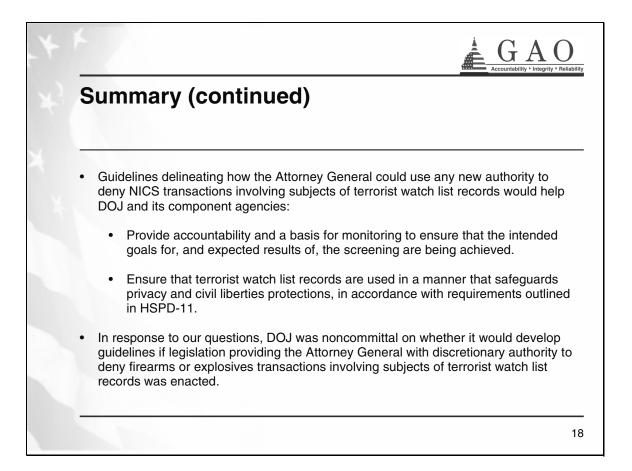


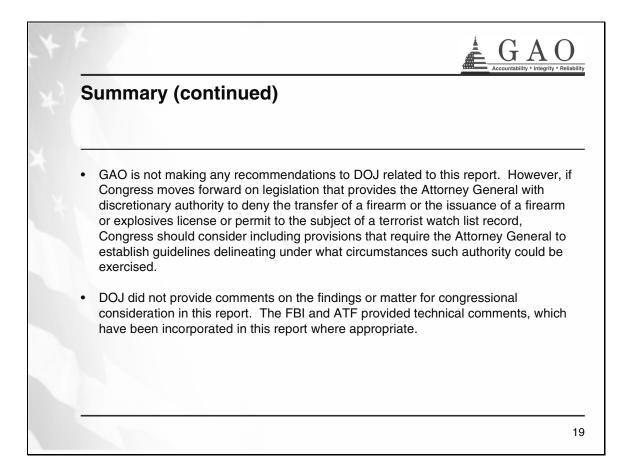


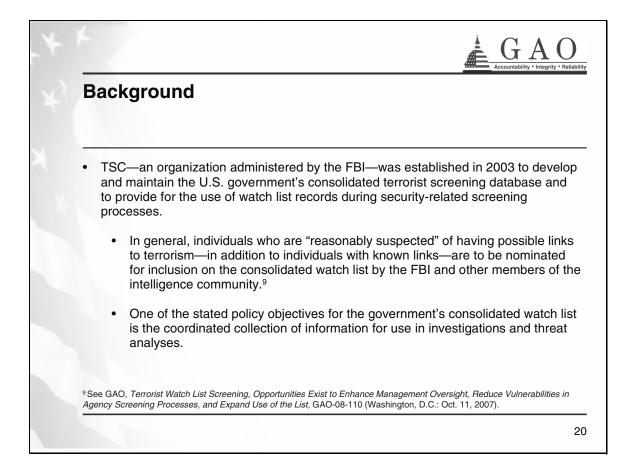


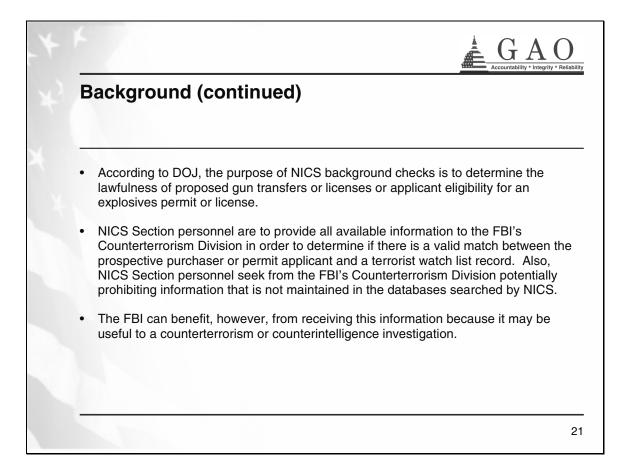


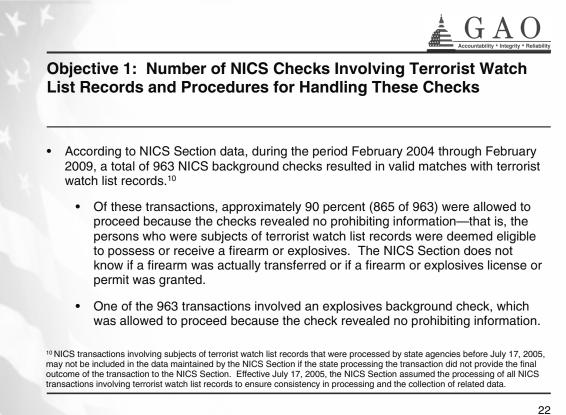


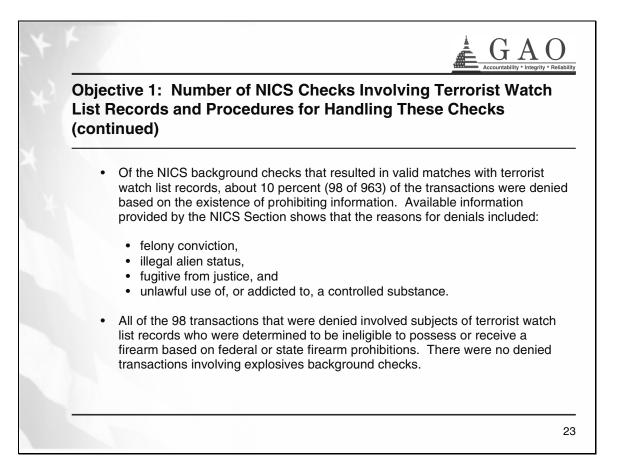


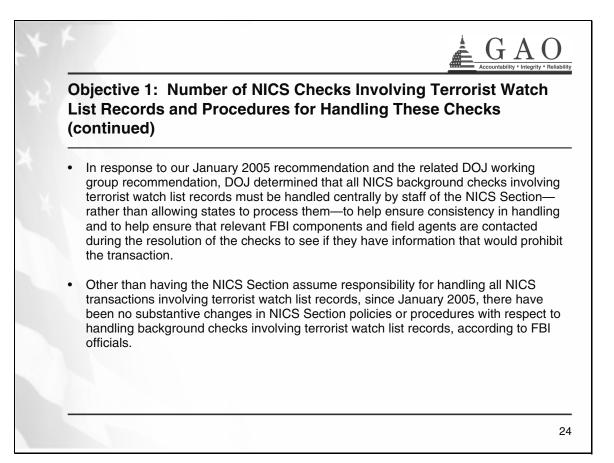


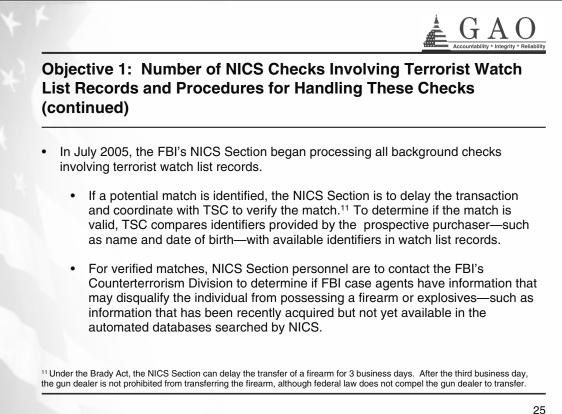


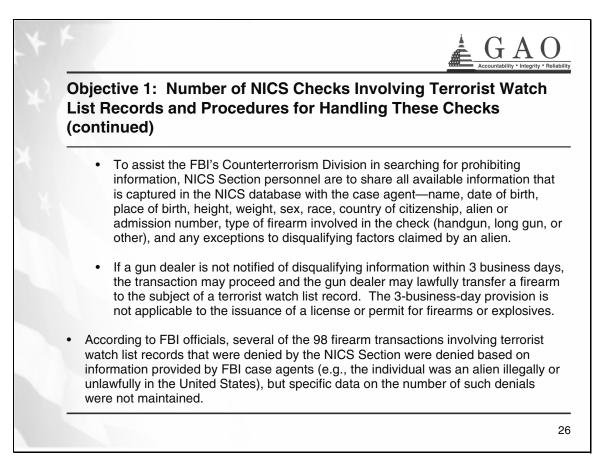


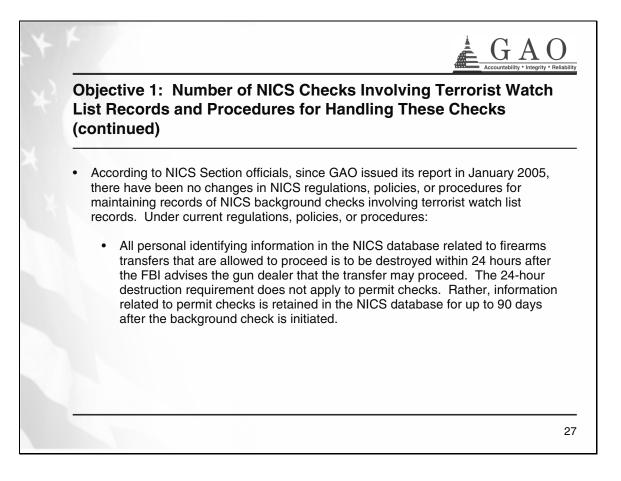


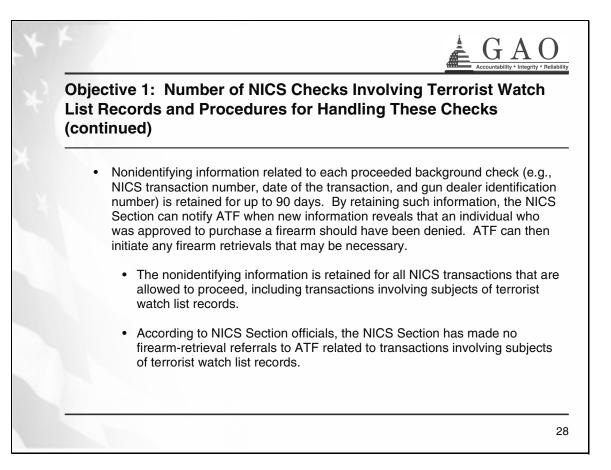


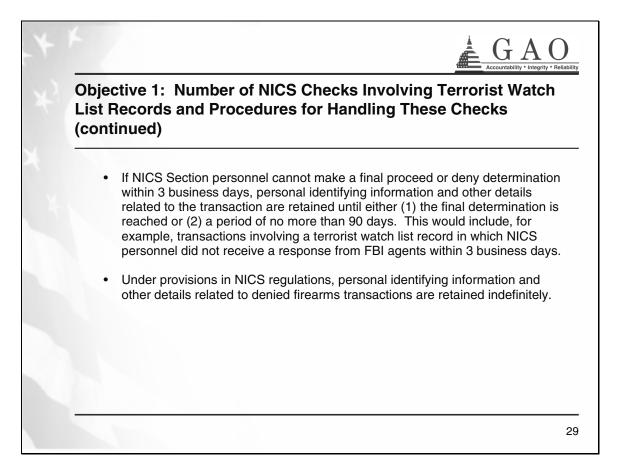


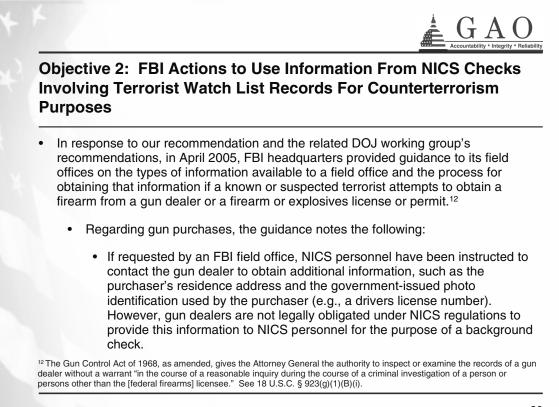


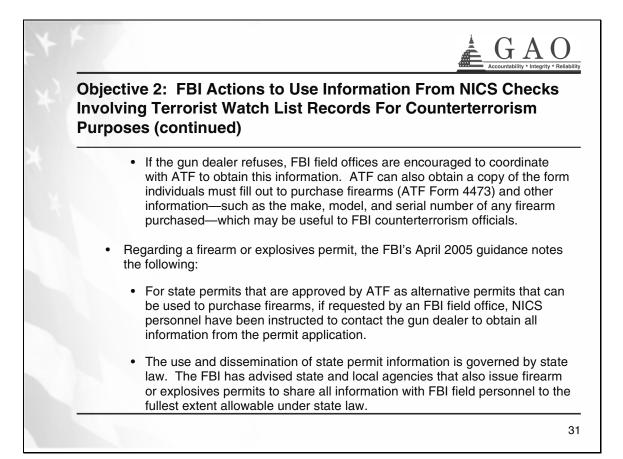


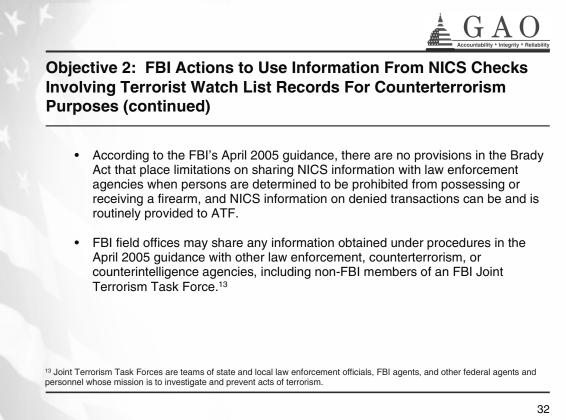


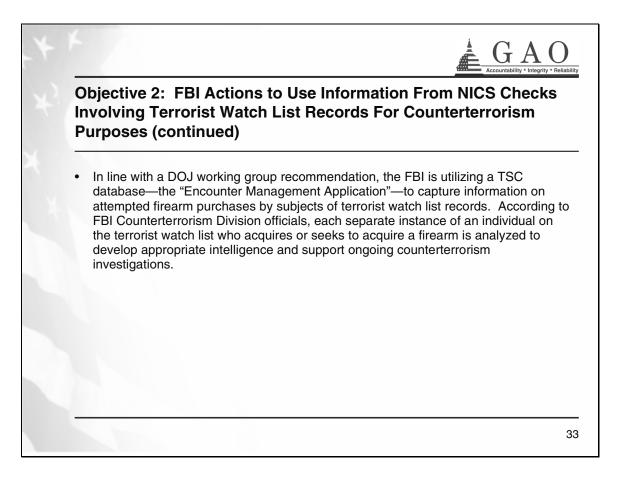


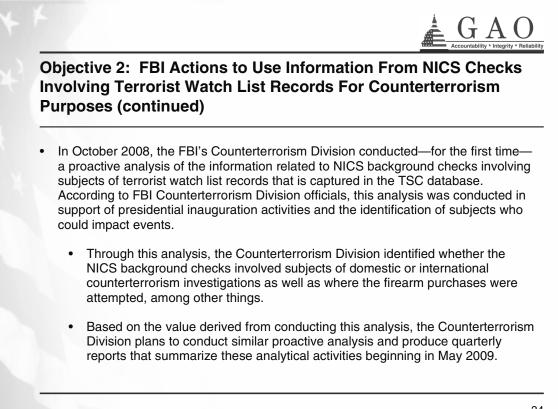


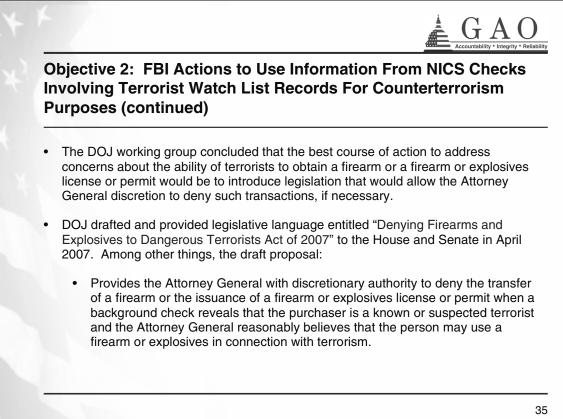


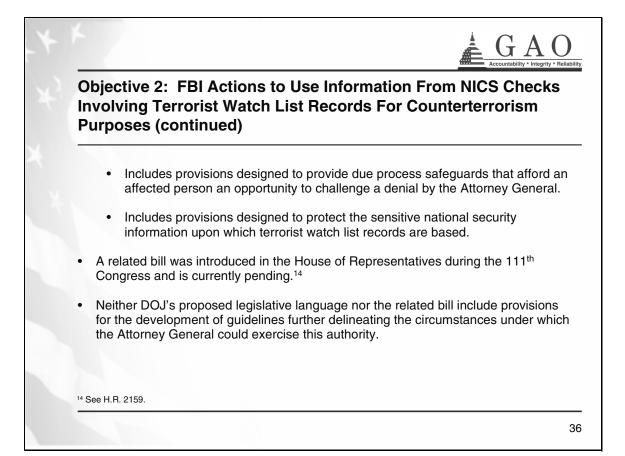


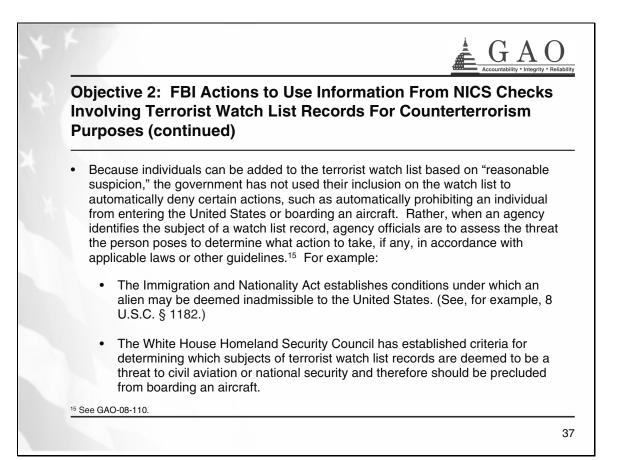


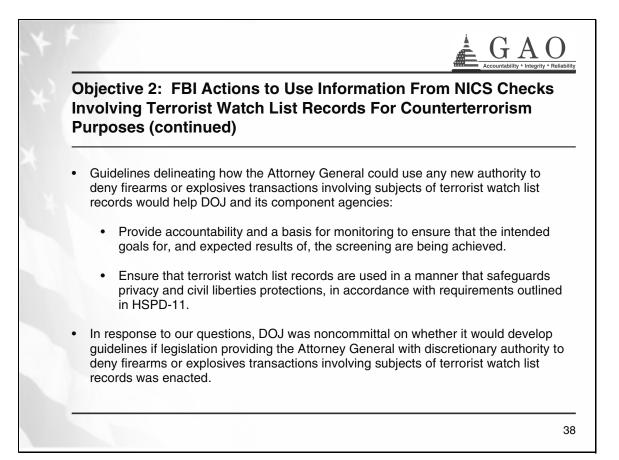


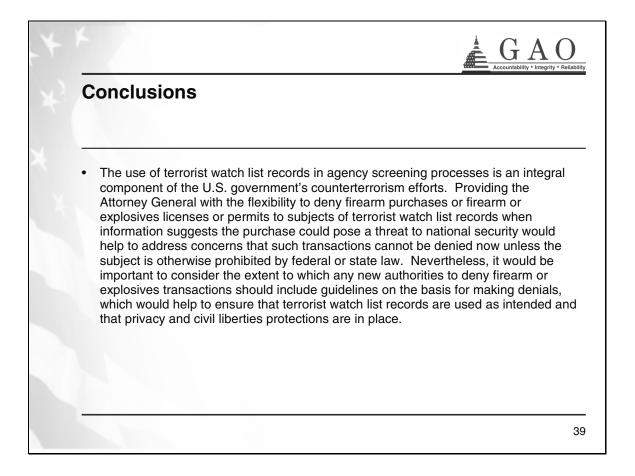


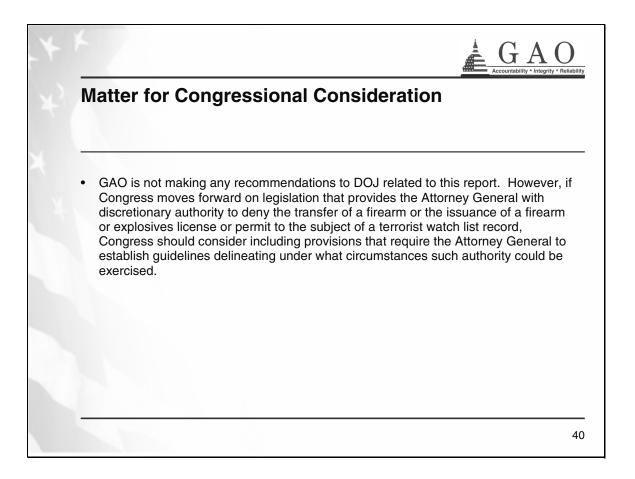


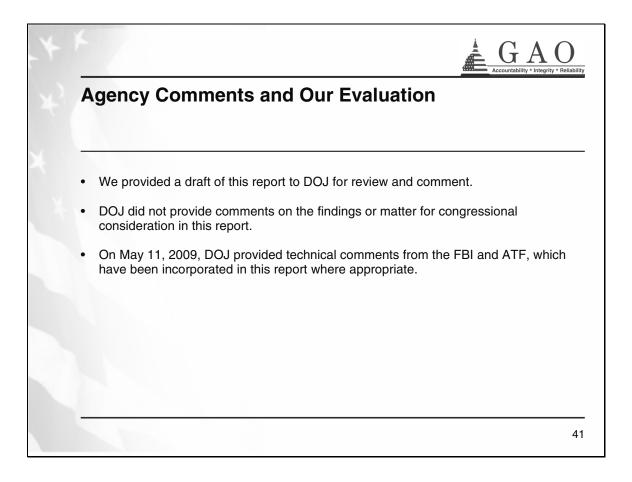












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