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July 11, 2024

The Honorable Denis McDonough
 Secretary
 U.S. Department of Veterans Affairs
 810 Vermont Avenue, NW
 Washington, DC 20420

Dear Secretary McDonough:

We write to you today to express our deep concern regarding testimony from the Department of Veterans Affairs (VA) witness during yesterday's House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs legislative hearing. The witness testified under oath that the Department "will not comply" with the proposed *Veterans 2nd Amendment Restoration Act of 2024* if were enacted.¹ Simply put, this is unacceptable. As co-equal branches of government, we trust you agree that the provisions of the bills Congress passes and the president signs into law are not merely suggestions -- they are mandatory.

The *Veterans 2nd Amendment Restoration Act of 2024* mandates the VA to notify the U.S. Attorney General of any transmissions of veterans' personal information to the FBI's National Instant Criminal Background Check System (NICS).² This would apply to any veteran who was assigned a fiduciary to assist them with their VA benefits, but who has not had any judicial court order or finding that they are a danger to themselves or others, which would be improper under current law. As you know, the U.S. Attorney General must update, correct, modify, or remove all such NICS records within 30 days of receiving VA's notice.³ However, this bill does not guarantee that veterans listed in NICS for reasons other than being assigned a fiduciary by the VA will be removed from the NICS list, thus allowing them to purchase firearms.

In VA's July 10th written testimony, the Department stated that if this bill is signed into law, VA "could not comply" because the Department of Justice – an executive branch agency –

¹ [Subcommittee on Disability Assistance and Memorial Affairs Legislative Hearing | House Committee on Veterans Affairs](#)

² NICS was established under the *Brady Handgun Violence Prevention Act of 1993* (Pub. Law. 103-159).

³ 34 U.S.C. § 40901(e)(1)(D).

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has interpreted the law as saying that veterans who have fiduciaries to help them handle their VA benefits, have been “adjudicated as a mental defective” and therefore must be reported to NICS.⁴

As such, at yesterday’s hearing, we asked VA’s witness whether it was indeed the Biden administration’s position that VA would not comply with an Act of Congress because of an executive branch agency’s interpretation of law. Alarming, VA’s witness confirmed **several times** it is VA’s position that it will not comply with this policy if the bill was enacted.

When Congress passes a bill that definitively overturns an executive branch agency’s interpretation of the law, the new law takes precedence, replacing the agency’s interpretation. Simply, Congress makes the law, and executive branch agencies are tasked with enforcing those laws. Separation of powers between Congress, the executive branch, and judicial branch is the bedrock of our nation’s government and democracy, regardless of which political party controls the White House. VA, like all agencies, is constitutionally prohibited from selectively ignoring laws.

Refusal by the VA to execute the will of Congress – and therefore the will of the American people – is a gross overreach of the executive branch and will not be tolerated.

We insist that, by no later than **July 18, 2024**, you submit to us your assurance that if Congress passes the *Veterans 2nd Amendment Restoration Act of 2024*, VA will comply with that Act of Congress.

Should you have any questions regarding this request, please contact committee staff.

Sincerely,



MORGAN LUTTRELL
Chairman
Subcommittee on Disability Assistance and
Memorial Affairs
House Committee on Veterans’ Affairs



ELI CRANE
Member
Subcommittee on Disability Assistance and
Memorial Affairs
House Committee on Veterans’ Affairs

⁴ [HHRG-118-VR09-Wstate-PowersG-20240710.pdf \(house.gov\)](https://www.house.gov/imo/media/doc/HHRG-118-VR09-Wstate-PowersG-20240710.pdf)

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KEITH SELF

Member

Subcommittee on Disability Assistance and
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House Committee on Veterans' Affairs



MATTHEW M. ROSENDALE

Member

House Committee on Veterans' Affairs

cc: The Honorable Chris Pappas, Ranking Member, Subcommittee on Disability Assistance and
Memorial Affairs, House Committee on Veterans' Affairs