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February 15, 2017

James B. Comey, Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, D.C. 20535-0001

Dear Director Comey:

I write again to ask you to freeze New York reporting to the FBI/NICS in the category of 18 U.S.C. §922(g)(4) for those allegedly “involuntarily committed to a mental institution” and for an audit of every record submitted to this category.

For the past four years, I have been putting together the documentation that NY is falsely reporting patients as having been “involuntarily committed” when, in fact, people have voluntarily sought either mental health or medical treatment. I have represented multiple persons in handgun license hearings, every one of whom has been cleared of the false allegation of “involuntary commitment” made against them by the NYS Police.

Enclosed is a flowchart of how the data flows in NY. Each office and agency has admitted under oath in cases for which I represent the plaintiffs that no investigation is conducted into the veracity of any allegation of “involuntary commitment.” It is the official position of the NY Attorney General’s Office that once a mental health allegation is made that “no” due process is owed to the individual.

Even when we win a license hearing and obtain a written judicial ruling that expressly states there is no evidence that the individual was “involuntarily committed,” the State of New York fails to correct the erroneous record with the FBI/NICS. I have two federal lawsuits pending under 18 U.S.C. §925A to seek relief directing the State to correct the record. I have a growing group of additional clients who will likely need to seek the same relief.

The NYS Office of Mental Health is training medical professionals that there is no distinction in their reporting between “voluntary” and “involuntary” treatment. The jump from NYS OMH to the NYS Division of Criminal Justice Services and then to the NYS Police is literally criminalizing persons seeking mental health treatment. How? Because

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if the allegation by the NYS Police were true, the person would then be a walking federal felon.

There is serious confusion on the ground here in New York. This State has accepted more than \$14 million in NICS Improvement Amendments Act funding since 2007, and it rolled out its reporting program in 2013. NY has gone from near zero records to over 463,000 records in four years.


Those reported are not being notified. The few people who are my clients are handgun permit holders, who were notified through *ex parte, sua sponte* orders of the court at the point of armed confiscation of permits and all firearms, including long guns. Any patient who tries to get a copy of the reporting information from their medical provider is being told it is mandatory reporting, go ask the State. Anyone who then contacts the State is being told the information is "HIPAA protected" and cannot be divulged.

Adding to the confusion is a new mental health reporting provision passed in 2013 under NY Mental Hygiene Law §9.46. It is a different and much lower legal threshold than 18 U.S.C. §922(g)(4). Even judges are confusing the two provisions. Now that I have amassed sufficient documentation, I am speaking, training attorneys and judges, and publishing as fast as I can.

The fact remains that your help is needed. You are, right now, sitting on corrupted data in the NICS Index as a direct result of New York's disregard for our civil rights. You also stand a chance that the same error is being perpetuated in other states. A simple review of the 2016 year-end state-by-state data demonstrates 4.486 million records in the "involuntary commit/mental defective" category, but less than half as many in the felony category. That one point alone should be tipping off your agency that something is wrong with the inbound data.

Please contact me with any questions you may have about this continuing request. I am available to travel to your offices to present on this subject if that would be of assistance.

Respectfully,

  
Paloma A. Capanna