

**SECOND CHANCES AND THE SECOND AMENDMENT: A SMARTER
WAY TO REBOOT § 925(C)**

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Introduction

In February of this year, we [published](#) a call for the government to relaunch the federal Gun Control Act’s [§ 925\(c\) petition process](#), which empowers anyone subject to a federal restriction (“disability”) on their ability to purchase or possess firearms to apply to the Department of Justice for restoration of their gun rights. The § 925(c) program has been inactive since 1993, when Congress first [prohibited](#) the [Bureau of Alcohol, Tobacco, Firearms, and Explosives](#) (ATF) from spending any funds on reviewing § 925(c) applications. We argued that giving people who had committed felonies or been involuntarily committed a pathway to restoring their gun rights not only would better tailor our efforts to reduce gun violence but also would help insulate gun regulation from constitutional attack.

The Trump Justice Department has moved with some dispatch to relaunch the program—using a workaround we suggested in our piece:

[I]t might be possible for the Attorney General to act unilaterally to reinitiate processing and making [§] 925(c) determinations. The appropriation limitations only apply to the ATF In contrast, the text of [§] 925 refers to the Attorney General as the person empowered to make the determination. This creates the potential for the Attorney General to designate non-ATF members of the Justice Department to investigate [§] 925(c) applications and make relief recommendations to the Attorney General.

The Justice Department is pursuing this approach, first in March 2025 [repealing the regulation](#) delegating § 925(c) review to the ATF, and more recently on July 22 [proposing new rules](#) to govern the application process and delegating the task of reviewing applications and making recommendations to the [Office of the Pardon Attorney](#) within the Department of Justice.

We commend the Attorney General for moving to resurrect the § 925(c) program. We initially had some concerns with the March

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Delegation Withdrawal announcement, which included an intent to come forward with a new regulation. That [announcement](#) suggested that the Justice Department would start from “a clean slate on which to build a new approach to implementing 18 U.S.C. § 925(c) without the baggage of no-longer-necessary procedures.” We worried that a clean-slate approach might remove from the application information crucial to determining the dangerousness of applicants and lead to unwarranted restoration of gun rights. The devil is in the details.

The [just-proposed rules](#) have largely alleviated our concerns. The proposed application requirements in fact do not start from scratch but usefully build on the [preexisting program requirements](#). Any reasonable program is likely to give rise to some mixture of Type I errors (wrongly rejecting applications of non-dangerous people) and Type II errors (wrongly approving applications of dangerous people). Any § 925(c) process should be periodically reevaluated for untoward impacts, but we are reasonably confident that the proposed rules avoid the Scylla of [restoring guns rights to thousands of dangerous felons](#) and Charybdis of [denying restoration](#) to people who [don’t pose any elevated risk](#) to community safety. Any sizeable restoration of gun rights will [inevitably](#) lead to some instances of gun violence. But that in itself is not a reason to reject the relaunch of the § 925(c) program—especially because the new regulation is admirably (and expressly) crafted to help insulate the categorical gun provision from constitutional attack.

In this short Essay, we propose several improvements to the proposed regulation. The remainder of this comment is divided into three parts—which, like [the epic spaghetti western](#), comments on the good, the bad, and the ugly parts of the proposed rule. Part I (“The Good”) discusses the many useful innovations of the rule. Part II (“The Bad”) discusses several ways the proposed rule could and should be improved. And Part III (“The Ugly”) discusses several questionable assumptions employed in the July 22 notice of proposed rulemaking (NPRM).

I. The Good

The proposed regulation, unlike its predecessors, usefully creates different presumptions of eligibility for different classes of applicants. People who have been convicted of violent crimes (including sex offenses) or related offenses of threats of violence, stalking, terrorism, witness tampering, or are placed on sex offender registries [are permanently presumed](#) to be ineligible for relief “absent extraordinary circumstances.” The permanent presumption responds powerfully to concerns that the prior § 925(c) program was too open to restoring gun

rights of individuals who had been convicted of violent felonies. As the NPRM [states](#):

One 1992 study found that, out of 100 randomly selected felons to whom ATF granted relief, [5] had been convicted for felony sexual assault, 11 for burglary, 13 for distribution of narcotics, and 4 for homicide. Another analysis revealed that ATF granted relief, for example, to an applicant who had fatally shot his cousin while intoxicated and to an applicant who untruthfully failed to disclose his nine-year-old convictions for burglary and brandishing a firearm. Unsurprisingly, given that applicants received relief even after committing violent and serious felonies, “too many . . . felons whose gun ownership rights were restored went on to commit crimes with firearms.”

Individuals in this large class of offenders can still apply, but the regulation suggests that their applications will be routinely denied.

Individuals convicted of other felonies are subjected to temporary terms of presumed ineligibility. The proposed rulemaking reasonably justifies the time-limited presumption on the well-known tendency of offenders to become less violent as they age. Under the proposed rules, individuals convicted of drug distribution felonies and domestic violence misdemeanors are subject to a [10-year presumption of ineligibility](#), and all other gun-disabling felonies are subject to a [5-year presumption of ineligibility](#). It is important to note that the clock for these time-limited presumptions of ineligibility [only begins to run](#) when the felon has not only completed any jail sentence but also “any [other] part of a sentence (including probation, parole, supervised release, or other supervision).” Given the long-lived nature of [some post-conviction supervised release conditions](#), this detail of implementation might substantially increase the number of recent felons presumed ineligible.

The proposed rules also do a good job of responding to some of the Supreme Court’s concerns with the categorical restrictions of gun rights for felons and people involuntarily committed. As detailed in our [earlier piece](#), several Justices have [expressed concern](#) with the permanent and non-individualized nature of these restrictions. The proposed rulemaking, by creating a potential pathway for restoration of gun rights, makes the legal disability less permanent. Even felons subject to the permanent presumption might have their guns rights restored if they can show extraordinary circumstances. And the rulemaking explicitly [adopts a “holistic” approach](#): “[T]he Attorney General is not limited to a ‘categorical approach’ that looks only at the elements of the applicant’s underlying offenses” [The NPRM emphasizes](#) that rebooting § 925(c) makes the categorical restrictions of the Gun Control Act less susceptible to constitutional attack:

[S]ome courts have expressly recognized that [§] 925(c) would alleviate any such constitutional concerns, absent the proviso prohibiting ATF from carrying it out. . . . [A] functional [§] 925(c) process would render much of this litigation [challenging the constitutionality of [§] 922 restrictions] unnecessary and ensure that individuals meeting the relevant criteria may possess firearms under federal law in a manner consistent with the Second Amendment, while still protecting public safety.

The proposed regulations ensure an individualized consideration of an applicant's dangerousness.

Finally, the proposed rules usefully retain many of the core application requirements of the [previous § 925\(c\) petition process](#)—including, for example, [the requirement that applicants submit sworn affidavits](#) from three people “not related to the applicant by blood or marriage” and who have “known the applicant for at least three years,” each attesting that the applicant, *inter alia*:

- (A) Has not committed any crime, other than routine traffic or parking infractions, or similarly minor offenses, within the past five years;
- (B) Is not an unlawful user of or addicted to any controlled substance . . . including marijuana, regardless of whether the controlled substance has been legalized or decriminalized for medicinal or recreational purposes in the state where the applicant resides;
- (C) Does not regularly abuse alcohol or other intoxicants, including prescription drugs;
- (D) Is not currently suffering from a mental health condition that would impair the applicant's judgment or behavior;
- (E) Is a person of good character and has a good reputation in the community;
- (F) Has not threatened to use violence, or attempted to do so, toward any person regardless of whether the authorities were notified; and
- (G) Would not pose a danger to public safety, to family members, or to intimate partners if permitted to possess a firearm.

The proposed regulation also includes useful innovations. Applicants [are required to submit FBI-certified fingerprint cards](#) or their equivalent as a way to help uncover any subsequent criminal behavior. And the applicant [would now also be required to attest](#) that they have “notified, through an appropriate form, the chief law

enforcement officer of the locality in which the applicant is located that the applicant is seeking relief through this section” so that the officer has an opportunity to object or provide the Department with more information. We also support the innovation that the Attorney General [retains the discretion to revoke](#) any previously granted relief from disability upon appropriate notice if the Attorney General “determines the applicant willfully subscribed as true any material matter that the applicant did not believe to be true or if the applicant willfully omitted requested information”—although this feature may go beyond what is contemplated by the statute, which only speaks of the Attorney General’s ability to restore gun rights.

II. The Bad

While there is much to admire in the proposed § 925(c) rules, it is not a perfect document. This Part describes four sets of revisions that might be made to the document—concerning suicide, involuntary commitment, additional evidence-based information, and eligibility presumptions.

A. Suicide

Gun suicide is an important public health concern [comprising more than half of all gun fatalities](#). Restricting access to firearms [reduces overall suicide rates](#) because guns are among the most lethal commonly used means. But the terms “suicide” or “self-harm” never appear in the twelve-page NPRM. The proposed rules should be improved by adding these concerns to required affidavit disclosures of the applicant and three non-relative acquaintances. For example, these affiants might be required to attest (in addition to [what is already proposed](#)) that the applicant would not “pose a danger to public safety, [to himself or herself,] to family members, or to intimate partners if permitted to possess a firearm.” Because past suicide attempts and suicidal ideation [are known to elevate the risk of self-harm](#), these affiants should also be required to certify that the applicant has not attempted suicide or spoken to another about the possibility of committing suicide. The proposed rule already [discusses](#) the threat of violence “toward *any person*” but needs to make clear that that includes threats of self-harm.

B. Involuntary Commitment

The proposed regulation [imposes an additional requirement](#) for applicants who have been involuntarily committed that should be amended:

[A]n applicant who has been adjudicated a mental defective or committed to a mental institution will not be granted relief unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, to be no longer suffering from a mental disorder, and to have had all rights restored.

As a substantive matter, the requirement that the applicant must have been found to be “no longer suffering from a mental disorder” should be removed. Many individuals who suffer from a chronic mental disorder will continue to suffer from the disorder whether or not they pose an elevated risk of harming themselves or others. So too the phrase “and to have had all rights restored” should be deleted. After [the Virginia Tech massacre](#), Congress passed the [NICS Improvement Amendments Act](#) (NIAA), which offered states substantial grants to provide the FBI with better information about people who have been involuntarily committed. But to qualify for the NIAA grants, states [had to provide a “relief from disability” \(RFD\) procedure](#) which would restore gun rights if the state applicant showed that they “will not be likely to act in a manner dangerous to public safety” and granting “relief would not be contrary to the public interest.” The carrot incentives of federal grants [have been effective in inducing a majority of states](#) to institute mental-health RFD programs:

Before 2008, only a handful of states had RFD programs . . . [A]s of April 2017, thirty-two states have enacted relief programs meeting the federal criteria.

The proposed regulation [expressly states](#) that RFD programs are the exclusive avenue for restoration in states that have RFD programs. If an applicant can meet the same substantive dangerousness standard for restoration set forth in proposed regulation subsection (d), they should be entitled to relief. Requiring restoration in states that do not have RFD programs sets a nearly impossible bar because the only other path to restoration is a pardon by the executive. On the other hand, the “restored to mental competency” requirement makes sense for at least one category of applicant: individuals [barred](#) from firearm possession by virtue of having been found incompetent to stand trial in criminal proceedings. In sum, the quoted sentence above should be revised to read as follows:

[A]n applicant who has been adjudicated a mental defective ~~or committed to a mental institution~~ will not be granted relief unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, ~~to be no longer suffering from a mental disorder, and to have had all rights restored.~~

With these revisions, a criminal defendant barred because they were found incompetent to stand trial must show both a lack of dangerousness and restoration of mental competency in order to have their gun rights reinstated.

C. Presumptions

The NPRM [specifically requested feedback](#) “regarding the felony offenses that should be presumptively disqualifying; the felony offenses that should be presumptively disqualifying until a specific length of time; and the appropriate length of time after which the former offenses should not be presumptively disqualifying.” In response, we think it is important that the final rule clarify that the burden should always be on the applicant [to show both that](#) they “will not be likely to act in a manner dangerous to public safety” if allowed to possess firearms and that granting relief from federal firearm disabilities “would not be contrary to the public interest.” So as a formal manner, all offenses should begin with a presumption of ineligibility. The rule should distinguish between those applications where gun rights will only be restored after showings of “extraordinary circumstances” and those where the applicant will be held to a lesser presumption of ineligibility. This clarification will also address the appropriate presumption for those applicants, whose disability is not based on a past conviction, who are currently unaddressed by the proposed rule—such as [§ 922\(g\)\(6\)](#) applicants (dishonorable discharge) and [§ 922\(g\)\(7\)](#) applicants (renounced citizenship).

As for the appropriate length of time for the presumption, the rule might be amended to make individuals who have been convicted of a DUI, DWI, or alcohol-related offense presumptively ineligible for five years. Both [alcohol use](#) and [alcohol-related convictions](#) are significant predictors of future firearms crimes. Seventeen states and the District of Columbia [restrict firearm access for alcohol abusers](#). The Consortium for Risk-Based Firearm Policy [recommends a weapons ban](#) for anyone convicted of two or more DWIs or DUIs in a period of five years.

The final rule might also make individuals who are on the Terrorist Watch List or who have been found by a magistrate to be under “reasonable suspicion” of terrorism presumptively ineligible for five years. Several mass shootings have been committed by individuals [that had previously been placed on the Terrorist Watch List](#). For the same reason that New Jersey, for instance, [prohibits individuals convicted of “terroristic threats”](#) from purchasing firearms, the final rule should use this factor for presumptive ineligibility.

The final rule should also be amended to remove the permanent presumption of ineligibility for alien applicants disabled by [§ 922\(g\)\(5\)](#).

The proposed regulation's [justification for this presumption](#) is unpersuasive:

Individuals subject to the prohibition in 922(g)(5) (unlawfully present aliens or certain aliens admitted on nonimmigrant visas) would also be presumptively disqualified because “unlawful aliens are not part of ‘the people’ to whom the protections of the Second Amendment extend,” *United States v. Sitladeen*, 64 F.4th 978, 987 (8th Cir. 2023).

Even if “unlawfully present aliens” and certain people admitted on [nonimmigrant visas](#) are not protected by the [Second Amendment](#), they still enjoy the statutory rights created by [§ 925\(c\)](#), which give anyone subject to a federal gun disability the right to apply to the Attorney General for relief. The Eighth Circuit’s conclusion that these people are not part of “the people” covered by the Second Amendment is not a reason to presume that they are “likely to act in a manner dangerous to public safety.” Notwithstanding President Trump’s repeated assertions to the contrary (e.g., “[The Democrats have flooded our Nation with Criminal Invaders](#)”), [there is no credible evidence](#) that undocumented residents pose a heightened risk of violent crime.

D. Additional Evidence-Based Information

In addition to better tailoring the presumptions of ineligibility, the proposed rule can be strengthened by requiring applicants to provide additional evidence-based information that can aid a holistic determination of whether they pose a risk to themselves or others. For example, it is laudable that the proposed regulation [retains the requirement](#) that applications from people who have been involuntarily committed must include “a current certification from a licensed mental health professional that the applicant does not pose a danger to the community if permitted to possess a firearm.” But this requirement should be part of all applications regardless of the cause of the federal disability. This mental health certification can help assure that gun rights will not be restored to an applicant with an elevated risk of violence.

The regulation should also require all applicants, regardless of the cause of the disability, to provide evidence of a current drug test indicating whether the applicant has not recently used prohibited narcotics. Millions of Americans are likely ineligible² under federal law to purchase or possess firearms because of their unlawful use of

² See IAN AYRES & FREDERICK E. VARS, WEAPON OF CHOICE: FIGHTING GUN VIOLENCE WHILE RESPECTING GUN RIGHTS 129 (2020).

controlled substances. It is appropriate that the regulation [requires the three affiants to certify](#) that the applicant is “not an unlawful user of or addicted to any controlled substance.” But the regulation might usefully go beyond trusting these certifications by verifying that the applicant is currently drug free. An applicant who cannot stop using long enough to pass a drug test is more likely to be disqualified as “addicted” under [§ 922\(d\)\(3\)](#).

The final rule should also require the applicant and the three non-relative affiants to provide the following additional pieces of information that are relevant to assessing the applicant’s potential dangerousness:

- Has the applicant been charged with any violent crimes?
- Has the applicant ever attempted suicide or voiced suicidal thoughts to others?
- Has the applicant ever been a member of a gang or criminal enterprise?
- Has the applicant experienced or shown signs of paranoid delusions and threatening hallucinations?
- Has the applicant ever been voluntarily admitted to a mental health facility or subject to an involuntary psychiatric hold?
- Has the applicant ever been admitted to a substance abuse treatment program?
- Has the applicant ever been subject to a “[Red Flag](#)” or [Extreme Risk Protection Order \(ERPO\)](#)?

Finally, the Department should go beyond [the statutory requirement](#) to “promptly publish[] in the Federal Register” whenever relief is granted “together with the reasons therefor” and also commit to periodic reporting analysis of whether applicants who have been granted relief have subsequently engaged in criminal misconduct—and whether that misconduct involved the use of a firearm.

III. The Ugly

While we support the relaunching of the § 925(c) program (especially if the final regulation includes some of the suggested changes of the preceding part), we end with a few comments on some questionable assumptions and accounting to (a) justify the Department’s proposed \$20 application fee and (b) reduce the Department’s procedural hurdles to promulgate the regulation.

A. The \$20 Fee

The proposed rule reasonably attempts to have the government’s cost of administering the program covered in full by the fees paid by applicants. [The department has estimated](#) that paying 50 full-time-

equivalent personnel (FTEs) at an average salary of \$225,000 together with various technological and other costs will total \$20 million of expense in the program's first year. At an application fee of just \$20, balancing the projected program budget would require 1 million people to apply for relief within the first year. Lo and behold, the Department estimates exactly that: "approximately 1 million people will apply for relief within the first year of the program." This estimate is unreasonably high. There are currently about [31 million people on the NICS background list](#) of people with gun disabilities (including some with state prohibitors who would not have their rights restored by § 925(c) petitions). A more accurate estimate would be closer to 100,000 applications in the first year (and we commit to donating \$10,000 to [the federal government](#) if our prediction turns out to be wrong).

The unreasonably high estimate of first-year applications, if accurate, leads the Department to absurd implications. If we assume that all of the 50 FTEs budgeted to work on this program spend 50 weeks per year and 40 hours per week, then they could only spend, on average, 6 minutes to review an application and make a final recommendation about whether to restore the applicant's gun rights. It would be extremely difficult—in just 360 seconds—to provide the fulsome "holistic" review contemplated by the regulation. By comparison, patent examiners spend on average [about 19 hours](#) to review a patent application. Reasonable people can differ on whether government should spend more or less time on deciding whether to rearm a convicted felon or to dole out a 20-year monopoly, but the 190-fold difference in time spent is telling. The implicit assumption that the Department will devote an average of 6 minutes to an application is just not reasonable.

The proposed regulation usefully [calls on the Department](#) at least once every two years to "evaluate costs and the interim fee charges" and to "adjust the fee amount as necessary." If the goal is to have the fees cover the costs necessary for the Department to responsibly process applications, the \$20 fee will likely need to be raised substantially.

B. Economic Impact

The unreasonably large estimate of first-year applications caused to the Department to make further questionable assumptions in the NPRM. The NPRM notes that regulations having an annual economic impact of more than \$100 million are categorized as "significant regulatory actions" and must satisfy additional regulatory requirements—including an assessment of the costs and benefits of the regulation and additional review by the [Office of Information and Regulatory Affairs](#) (OIRA). To produce an annual impact on private actors less than \$100 million, [the Department estimated](#) that "the application will take approximately 60 minutes to complete." At the

standard 2025 value of an hour of labor of \$47.92, [the Department estimated](#) the “annual labor cost of this rule would be \$47,920,000.” But it is unreasonable to estimate that the application will take only an hour to complete. Recall that an applicant must acquire, inter alia, a fingerprint card, certified copies of relevant court documents, and affidavits from three non-relatives that have known the applicant for multiple years. In addition to the applicant’s labor, the time of the other three affiants should also be accounted for and would drive a more accurate assessment of hours needed per application closer to 10 hours. Of course, if the Department relied on a more reasonable assumption of annual applications, the economic impact might still be below the regulatory trigger of \$100 million.

Conclusion

The Justice Department’s proposed relaunch of the § 925(c) petition process is a welcome and overdue step toward aligning federal firearms restrictions with both individualized justice and constitutional scrutiny. While no regulatory scheme can eliminate all error or risk, the proposed rule offers a thoughtfully crafted framework that balances public safety with the possibility of redemption. Our comment identifies several ways the regulation can be improved—particularly in addressing suicide risk, mental health adjudications, and evidence-based screening. But even as is, the proposal represents a promising restoration of statutory rights, institutional accountability, and regulatory humility. We urge its refinement and adoption.

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