# NO BAN FOR NON-VIOLENT FELONS

**DOCKET NO:**
OLP-179
90 Fed. Reg. 13080

**Comments of:**
Gun Owners of America
Gun Owners Foundation
Tennessee Firearms Association
Firearms Regulatory Accountability Coalition

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Springfield, VA 22151
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Robert Hinchman
Senior Counsel, Office of Legal Policy
U.S. Department of Justice
Room 4252 RFK Building
950 Pennsylvania Avenue NW
Washington, DC 20530

**DOJ Rulemaking**

On March 20, 2025, the Department of Justice ("DOJ") published an interim final rule ("IFR") withdrawing its prior delegation of authority to the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to "adjudicate applications for relief from the disabilities imposed by certain firearms laws...."[1] Docket No. OLP-179, 90 Fed. Reg. 13080 (Mar. 20, 2025). The IFR seeks public comment on "all aspects of this rule" by June 18, 2025. *Id.* at 13081.

**Identity of Commenters**

**Gun Owners of America, Inc.** ("GOA") is organized and operated as a nonprofit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code ("IRC"). GOA was formed in 1976 to preserve and defend the Second Amendment rights of gun owners, and has become one of the nation's leading Second Amendment advocacy organizations with more than two million members and supporters nationwide. **Gun Owners Foundation** ("GOF") is organized and operated as a nonprofit legal defense and educational foundation that is exempt from federal income taxes under Section 501(c)(3) of the IRC. GOF is supported by gun owners across the country. **Tennessee Firearms Association** ("TFA") is organized and operated as a nonprofit membership organization that is exempt from federal income taxation under Section 501(c)(4) of the IRC. TFA was formed in 1995 and

[1] *See* https://www.federalregister.gov/documents/2025/03/20/2025-04872/withdrawing-the-attorney-generals-delegation-of-authority.

incorporated in 1996 to restore, preserve, and defend the rights of all citizens as protected by Second Amendment and the Tennessee Constitution. TFA is the leading Second Amendment advocacy organization based in Tennessee. **Firearms Regulatory Accountability Coalition, Inc.** ("FRAC") is a nonprofit association working to improve business conditions for the firearms industry by ensuring the industry receives fair and consistent treatment from firearms regulatory agencies. FRAC serves as the premiere national trade association representing U.S. firearms manufacturers, retailers, importers, and innovators on regulatory and legislative issues impacting the industry in the United States.

## Summary of Comments

These Commenters welcome the change promulgated in the IFR, which demonstrates DOJ's commitment to ending the Second Amendment's treatment as a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees...." *McDonald v. City of Chicago,* 561 U.S. 742, 780 (2010). To that end, DOJ should establish a robust rights restoration process that truly enables "the people" to regain their Second Amendment rights. DOJ's process should seek to minimize the time and costs individuals incur when applying for relief under 18 U.S.C. § 925(c). DOJ's new process should be streamlined, inexpensive, and allow for speedy resolution of restoration applications.

## Comments on Interim Final Rule

### I. The IFR Is a Welcome Change from Decades of Constitutional Abuse.

Ratified in 1791, the Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Yet in spite of this "unqualified command," *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), in the 20th century Congress began enumerating categories of persons prohibited from possessing, shipping, transporting, or receiving firearms or ammunition. Later, Congress passed the Omnibus Crime Control and Safe Streets Act of 1968,

Pub. L. No. 90-351, 82 Stat. 197, which provided that a "prohibited person" could petition the government and regain Second Amendment rights, even after being convicted of certain crimes for which federal law mandates a firearms disability. Initially, availability of this relief was limited to those individuals who were "convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)." *Id.* at 233; *see also* 33 Fed. Reg. 18572 (Dec. 14, 1968). Congress later expanded eligibility for this relief to reach all federal firearms disabilities, and the Attorney General delegated ATF the authority to act upon applications for such relief. Firearms Owners' Protection Act of 1986, Pub. L. No. 99-308, § 105, 100 Stat. 449, 459; *see also* 68 Fed. Reg. 3747 (Jan. 24, 2003). Thus, as amended, 18 U.S.C. § 925(c) now provides that "[a] person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws...."

However, as the IFR notes, Congress subsequently prohibited ATF from using appropriated funds "to investigate or act upon [individual] applications for relief from federal firearm disabilities." *See* Treasury, Postal Service, and General Government Appropriations Act of 1993, Pub. L. No. 102-393, 106 Stat. 1729; *see also United States v. Bean*, 537 U.S. 71, 75 (2002) (holding that ATF's refusal to act on "applications for relief from Federal firearms disabilities" was not judicially reviewable because of Congress's appropriations bar). Thus, since 1992, individuals have had limited recourse to regain their Second Amendment rights once lost.

Indeed, the restoration options currently available to individuals are either incredibly time-consuming or prohibitively expensive. For example, individuals currently may pursue a presidential or governor's pardon, which may take several years to resolve. Alternatively, individuals may levy as-applied constitutional challenges to firearms disabilities in federal court. But such litigation is expensive to begin with, and made more so by the fact that governmental

defendants invariably will appeal a court's grant of as-applied relief, protracting litigation into years-long and perhaps five- or six-figure dollar affairs.[2] Few have the time or resources to entertain such a proposition.

That is why the Commenters welcome DOJ's willingness to establish a streamlined path forward. Indeed, the IFR represents a much-needed course correction. Throughout the 20th century, the federal government waged war on the people's Second Amendment rights – often across all three branches. In the 1930s and 1960s, Congress hijacked the Commerce and Taxing Clauses to enact atextual restrictions on the Second Amendment that the Founders never would have accepted.[3] In the 1980s and 1990s, Presidents George H.W. Bush and Bill Clinton took unprecedented executive actions against firearms, banning the importation of some while unilaterally reclassifying others under the National Firearms Act.[4] And when individuals sought relief from the courts, they were turned away for lack of standing, as a number of federal courts reinterpreted the Second Amendment to protect only a communal right for a state to maintain its own militia.[5]

The IFR is right to use Section 925(c) as a means to rectify these harms. After all, the provision is fundamentally remedial: it affords "relief from the disabilities imposed by" these overzealous firearms restrictions. 18 U.S.C. § 925(c); *see Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 (2009) (construing statute to give effect to its "remedial purpose"). And the

[2] *See, e.g.*, *Range v. Att'y Gen. U.S.*, 124 F.4th 218, 232 (3d Cir. 2024) ("Range challenged the constitutionality of 18 U.S.C. § 922(g)(1) only as applied to him given his violation of 62 Pa. Stat. Ann. § 481(a). Range remains one of 'the people' protected by the Second Amendment, and his eligibility to lawfully purchase a rifle and a shotgun is protected by his right to keep and bear arms.").

[3] *See, e.g.*, 26 U.S.C. § 5861; 18 U.S.C. § 922(g)(3); *accord United States v. Connelly*, 117 F.4th 269, 282 (5th Cir. 2024) ("§ 922(g)(3) imposes a far greater burden on … Second Amendment rights than our history and tradition of firearms regulation can support").

[4] *See, e.g.*, Charles Mohr, *U.S. Bans Imports of Assault Rifles in Shift by Bush*, N.Y. Times (Mar. 15, 1989); ATF Rul. 94-2 ("The Striker-12/Streetsweeper shotgun has a bore of more than one-half inch in diameter and is not generally recognized as particularly suitable for sporting purposes. Therefore, it is classified as a destructive device for purposes of the National Firearms Act, 26 U.S.C. Chapter 53.").

[5] *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 638 n.2 (2008) (Stevens, J., dissenting) (collecting cases).

provision grants the Attorney General broad discretion to act in "the public interest" by relieving disabilities from those who "will not be likely to act in a manner dangerous to public safety." 18 U.S.C. § 925(c). The use of a "public interest" standard shows that Congress intended to give the Attorney General "broad authority" to relieve individuals of firearms disabilities. *See FCC v. Prometheus Radio Project*, 592 U.S. 414, 416 (2021). The Commenters thus applaud the Attorney General's use of Section 925(c) as a means to restore Americans' Second Amendment rights.

The Trump administration's commitment to rectifying these constitutional abuses is a welcome one, and the Commenters hope that the IFR is just one step towards the Second Amendment's 21st-century restoration as a first-class right.

## II. DOJ Should Craft an Inexpensive and Streamlined Approach to Rights Restoration.

ATF's prior regulation implementing Section 925(c), 27 C.F.R. § 478.144, is notable for what it completely fails to mention – the Second Amendment. But the Second Amendment "does not merely narrow the Government's regulatory power. It is a barrier, placing the right to keep and bear arms off limits to the Government." *United States v. Rahimi*, 602 U.S. 680, 750 (2024) (Thomas, J., dissenting). Because the Second Amendment tolerates only those regulations that are "consistent with this Nation's historical tradition of firearm regulation," *Bruen*, 597 U.S. at 17, consideration of text and historical context must play a role in DOJ's future disposition of Section 925(c) applications. For example, there certainly is no historical tradition of disarming "nonviolent, non-dangerous" persons. *Range*, 124 F.4th at 224; *see also Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting) ("History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns. But that power extends only to people who are *dangerous*."); *United States v. Connelly*, 117 F.4th 269, 277 (5th Cir. 2024) (similar). Likewise, "[n]ot a single Member of the Court" believes that "the Second Amendment allows Congress to disarm anyone who is not 'responsible' and 'law-

abiding.'" *Rahimi*, 602 U.S. at 772-73 (Thomas, J., dissenting). These uncontroversial constitutional principles should guide DOJ's disposition of Section 925(c) applications.

Moreover, ATF's prior regulation was silent regarding the length of time ATF had to issue a decision on an application for relief. Going forward, DOJ should adopt an enumerated timeline for application decisions. Setting a timeframe for expeditious decisionmaking would promote transparency, ensure predictability, and allow denied applicants the opportunity to seek judicial review under Section 925(c), should they choose. *Cf. Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 824 n.9 (2024) (noting agency's unbounded "discretionary decision to decline" to act does not afford "meaningful review"). Indeed, the IFR's stated purpose is to "provide[] the Department 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— *e.g.,* a requirement to file an application "in triplicate...." 90 Fed. Reg. 13083. Removing redundant, moribund requirements and setting a decisional timeline are two sides of the same coin.

Finally, ATF's prior regulation specifically stated that "[r]elief will not be granted to an applicant who is prohibited from possessing *all types* of firearms by the law of the State where such applicant resides." 27 C.F.R. § 478.144(d) (emphasis added).[6] This provision should not be carried over to any new restoration process. For instance, if an individual was convicted of a nonviolent felony, it is likely that any state with a law dispossessing "felons" of Second Amendment rights would consider that individual not entitled to exercise Second Amendment

[6] As justification for this provision, ATF previously claimed that Congress's "legislative intent" was that a prohibited person "should continue to have Federal firearms disabilities unless the person's rights … have been restored by the jurisdiction where the conviction occurred." 53 Fed. Reg. 10481 (Mar. 31, 1998); *see also* at 10487 ("section 921(a)(20) … provides that State law … be determinative of whether a convicted person should continue to be treated as convicted for Federal purposes. If the convicted person is still under State firearms disabilities … the person should be treated as having Federal firearms disabilities"). But this alleged "intent" is not at all evident from the face of the statute, which looks to State law *only* to determine "what constitutes a conviction." 18 U.S.C. § 921(a)(20). Had Congress intended the opposite – to condition Federal restoration on State restoration – then Congress would have enacted such a provision. Rather, Congress carefully chose the restoration mechanism in Section 925(c), which gives express authority over federal disabilities "to the Attorney General" (not the States), who "may grant such relief if it is established to [her] satisfaction" (not the satisfaction of the States). In other words, the plain text of Section 925(c) forecloses ATF's 1988 appeal to "legislative intent."

rights regardless of any relief received under Section 925(c). But that is no reason to withhold Section 925(c) relief from such individuals altogether, and DOJ still should allow these individuals to apply for and be granted federal relief. In such cases, Section 925(c) would not provide complete relief. But some states offer specific pathways to restore rights at the state level following a grant of Section 925(c) relief. *See, e.g.*, 18 Pa.C.S. § 6105(d)(3). Rather than being ineffectual, federal relief would allow such state laws to once again operate as intended. Alternatively, recipients of Section 925(c) relief who remain prohibited under the laws of certain states simply could move to another state that recognizes the federal restoration. Thus, DOJ should grant federal relief even when state relief is not available.

**Conclusion**

The Commenters welcome the change embodied by the IFR, and look forward to providing additional comments when the Department of Justice proposes a program implementing federal relief from disabilities under 18 U.S.C. § 925(c).

Respectfully submitted,

Robert J. Olson