August 5, 2026

<u>Via Federal eRulemaking Portal and U.S. Mail</u>

The Honorable Todd Blanche,
Acting Attorney General of the United States

Robert Cekada,
Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

c/o: ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Attn: DOJ ATF RIN 1140-AB04

<u>Re:</u> <u>Multistate Comment on Recently Proposed Revisions to Definitions of Mental Health-Related Terms in 18 U.S.C. §§ 922(d)(4) and (g)(4)</u>

Dear Acting Attorney General Todd Blanche and ATF Director Robert Cekada,

The undersigned Attorneys General of the States of New York, Arizona, California, Colorado, Connecticut, Delaware, Hawaiʻi, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and of the District of Columbia ("the States") submit this comment letter in response to the Notice of Proposed Rulemaking ("NPRM" or "proposed rule") by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice ("ATF") in the May 8, 2026 edition of the Federal Register.[1]

[1] *See* DOJ, ATF, *Revising Definitions of "Adjudicated as a Mental Defective" and "Committed to a Mental Institution*," 91 Fed. Reg. 25,166 (May 8, 2026).

Congress enacted the Gun Control Act of 1968 ("the Gun Control Act" or "the Act") because "it was concerned with the widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest." *Huddleston v. United States*, 415 U.S. 814, 824 (1974). The Act prohibits certain categories of people from possessing or otherwise accessing firearms, including anyone "who has been adjudicated as a mental defective or who has been committed to a mental institution." 18 U.S.C. § 922(g)(4). It also prohibits selling firearms to such individuals. *Id.* § 922(d)(4). The Act does not define the terms "adjudicated as a mental defective" or "committed to a mental institution."[2] In 1997, ATF issued a rule defining the terms; ATF defined "adjudicated as a mental defective" broadly to include a person of "marked subnormal intelligence, or mental illness, incompetency, condition, or disease" who is a "danger" to himself or others or who "lacks the mental capacity to contract or manage his own affairs."[3] Meanwhile, Congress amended the Act to require implementation of a searchable database of records on people who are legally prohibited from possessing firearms, and ATF's regulation defined who was entered into the database and thereby alerted gun sellers to prohibited persons under Section 922(g)(4).

But ATF is now proposing to dramatically change its regulatory definitions in ways that would likely eviscerate the "adjudicated as a mental defective" prong of the Act. ATF acknowledges the exceptionally high potential costs of its proposed rule—that it would result in increased access to firearms among those adjudicated to pose a danger based on their mental health, and thereby "increase[] public safety risk," including "potential mass casualty events," as well as create potential "negative impact[s]" on veterans and others at risk of suicide.[4] Even so, ATF fails to identify *any* concrete benefits from its proposed change. It principally justifies its proposed rule based on an issue impacting veterans that Congress has already resolved, *see infra* § I, and otherwise asks public commenters to justify ATF's proposed rule change by providing data on unidentified "other affected persons" who might benefit.[5]

ATF is wrong on the law: its statutory analysis is flawed, and its proposed rule is in excess of its statutory authority and contrary to law because it would undermine Congress's comprehensive statutory scheme and lead to the very dangers that Congress sought to prevent. Notably, many of the undersigned States have for years operated federal firearms disabilities programs pursuant to Congress's statutory scheme, and ATF fails to meaningfully consider the costs of upending these programs.[6] ATF's proposed rule is also arbitrary and capricious because its decision is unreasonable and not reasonably explained. Finally, ATF failed to engage in the procedures required by law. The States urge ATF to withdraw the NPRM, or, at a minimum, to postpone any effective date under 5 U.S.C. § 705 pending judicial review.

[2] The States recognize that these terms are outdated and stigmatizing, and we encourage Congress to enact legislation using less offensive terminology. We note that concerns about stigmatization of people suffering from mental health issues can be addressed in part by a federal relief from disabilities process that prioritizes procedural protections and transparency.
[3] *See* 62 Fed. Reg. 34,634–02 (Jun. 27, 1997), codified in 27 C.F.R. § 478.11.
[4] 91 Fed. Reg. at 25,181-82 & n.42.
[5] 91 Fed. Reg. at 25,180-81.
[6] Some of the undersigned States have received outreach from the federal government regarding their federal firearm disabilities programs and stand by the lawfulness, and indeed, the necessity of these programs.

I. Relevant Background

In 1968, Congress enacted the Gun Control Act,[7] the principal purpose of which—the Supreme Court has recognized—was "'to make it possible to keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.'" *Barrett v. United States*, 423 U.S. 212, 220-21 (1976) (quoting S. Rep. No. 1501, 90th Cong., 2d Sess., 22 (1968)). The Act enumerated categories of individuals prohibited from possessing firearms, including those "adjudicated as a mental defective or committed to a mental institution," 18 U.S.C. § 922(g)(4), but it did not define these terms. The Act's legislative history demonstrates that Congress expressly sought to "maximize the possibility of keeping firearms out of the hands of" people it referred to—in now antiquated language—as "mental incompetents" and "persons with a history of mental disturbances."[8]

Soon after, Congress amended the Act to mandate reporting of individuals prohibited from possessing firearms into a new searchable database—the National Instant Criminal Background Check System ("NICS")—that would include federal, state, local, and tribal records.[9] A few years later, ATF implemented the new reporting requirement in a 1997 final rule, which, for the first time, defined the terms "adjudicated as a mental defective" and "committed to a mental institution."[10] That rule defined "adjudicated as a mental defective" as "[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease" (1) "[i]s a danger to himself or to others; or" (2) "[l]acks the mental capacity to contract or manage his own affairs."[11] The rule further specified that the term "shall include" (1) "[a] finding of insanity by a court in a criminal case" and (2) "persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice."[12] ATF's 1997 final rule also defined the term "committed to a mental institution" as "[a] formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority," other than admission for purposes of "observation" or "a voluntary admission to a mental institution."[13]

Congress amended its statutory scheme again in 2007—in response to its findings that NICS was missing "millions" of critical records, which had permitted two recent shooters with "a prior disqualifying mental health commitment" and "a history of mental illness" that was "disqualifying," respectively, to legally buy the firearms they used to commit their crimes.[14]

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[7] Pub. L. No. 90-618, tit. I § 102, 82 Stat. 1213 (1968).

[8] 114 Cong. Rec. 13,647, 21,784 (1968).

[9] *See* Brady Handgun Violence Prevention Act of 1993, Pub. L. No. 103-159, 107 Stat. 1536, (1993), codified in 18 U.S.C. § 922.

[10] *See* 62 Fed. Reg. 34,634–02 (Jun. 27, 1997), codified in 27 C.F.R. § 478.11.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180 § 2, 121 Stat. 2559-60 (2007). Based on contemporaneous reporting of these well-publicized shootings, one shooter had been hospitalized with paranoid schizophrenia, and the other had been found by a court to be mentally ill and potentially dangerous. *See, e.g.*, Bruce Lambert, *L.I. Man Convicted in Killing Of a Priest and a Parishioner*, N.Y. Times (June 25, 2003) (describing Peter

Congress was clear that the "[m]ental health terms . . . 'adjudicated as a mental defective' and 'committed to a mental institution' have the same meanings [in the 2007 amendment] as in section 922(g)(4)" of the Gun Control Act.[15] Congress repeatedly used the phrase "mental health" interchangeably with "mental defective."[16] Some gun rights advocates opposed the Act at the time because they asserted "under these amendments, any veteran who was or had been diagnosed with PTSD and was found to be a 'danger to himself or others would have his gun rights taken away . . . forever.'"[17]

Congress paired enhanced reporting with significant procedural protections designed to ensure that Section 922(g)(4)'s prohibition would be imposed fairly and remain subject to meaningful review. For federal adjudications, Congress required agencies to provide oral and written notice of the consequences of an adverse determination and the availability of relief.[18] Congress also barred federal agencies from reporting adjudications based solely on a medical finding of disability when the individual had no opportunity for a hearing before a court or other lawful authority.[19] And Congress required both federal and qualifying state programs to provide a meaningful avenue for relief from disabilities.[20] In addition, Congress created a state-federal system permitting each State to operate a firearm rights restoration program that reviews each case to determine whether an applicant remains dangerous and presents a public safety threat.[21] If the state program finds that the individual meets the federal standard for rights restoration, the disqualifying event is expunged.[22] Thirty-three states, including twelve of the signatories of this letter, have implemented such ATF-approved programs,[23] while other signatories have their own state programs for individualized firearm rights restoration.[24]

J. Troy who was convicted of murdering a priest and a parishioner at Our Lady of Peace Roman Catholic Church); Ned Potter and David Schoetz, *Va. Tech Killer Ruled Mentally Ill by Court; Let Go After Hospital Visit*, ABC News (April 18, 2007) (describing the findings in court documents for a detention order involving Seung-Hui Cho before his mass shooting on the Virginia Tech campus).

[15] *Id.* § 3, 121 Stat. 2561.

[16] *Id.* §§ 2, 3, tit. I § 101, tit. III § 301, 121 Stat. 2560-63, 2571.

[17] *See* Cong. Rsch. Serv., *Gun Control, Veterans Benefits, and Mental Incompetency Determinations* R44818 at 8 (Sept. 7, 2021) (quoting Larry Pratt, "Veterans Disarmament Act to Bar Vets from Owning Guns," PrisonPlanet.com, September 23, 2007, http://www.prisonplanet.com/articles/september2007/230907Disarmament.htm).

[18] Pub. L. No. 110-180, tit. I § 102, 121 Stat. 2564.

[19] *Id.* §§ 101, 105, 121 Stat. 2559, 2562–63, codified in 34 U.S.C. § 40915(a).

[20] *Id.* §§ 103, 105, 301, 121 Stat. 2567-71. Individuals can submit evidence and secure review of an adverse determination by an independent decisionmaker. *See* ATF, *Certification of Qualifying State Relief from Disabilities Program*, Form 3210.12, items 4–7.

[21] *See* 34 U.S.C. § 40915(a)(2).

[22] *Id.* § 40915(b).

[23] *See* ATF, NICS Improvement Amendments Act of 2007: List of Qualified State Relief of Disability Programs, *available at* https://www.atf.gov/firearms/docs/guide/nicsactlist7-7-210pdf/download.

[24] *See, e.g.*, Mich. Comp. Laws § 28.424; Wash Rev. Code §§ 9.41.041, 9.41.047. An alternative individualized process is available pursuant to 18 U.S.C. § 925(c). In response to the Justice Department's recent proposed rulemaking regarding the federal restoration program, *see* DOJ, *Application for Relief from Disabilities Imposed by Federal Laws With Respect to the Acquisition, Receipt, Transfer, Shipment, Transportation, or Possession of Firearms*, 90 Fed. Reg. 34,394 (July 22, 2025), several States submitted a letter outlining their support of the intent of the initiative, as well as their belief that DOJ should add additional provisions to ensure transparency in its decision-making process, and to ensure that the public receives notice of each adjudication "together with the reasons therefor," 18 U.S.C. § 925(c). *See* States' Response to Dkt. No. OAG191 dated Oct. 20, 2025.

Meanwhile, for decades, when the Department of Veterans Affairs ("DVA") determined a beneficiary to be "mentally incompetent" under its regulations and appointed a fiduciary, DVA found the veteran was thereby "adjudicated as a mentally defective" within the meaning of Section 922(g)(4). The DVA thus shared these records with NICS, resulting in hundreds of thousands of veterans being prohibited from buying firearms.[25] However, Congress in recent years addressed this issue—as ATF acknowledges—by prohibiting the use of appropriated funds for DVA referrals to NICS based solely on DVA incompetency proceedings, absent a finding that the veteran is also a danger to themselves or others.[26] Congress has also mandated additional procedural protections as part of the DVA competency process.[27]

II. ATF's Proposed New Definitions

ATF justifies its proposed definitions as (1) necessary to ensure that veterans and unidentified "others" are not deprived of their Second Amendment rights, and (2) legally appropriate because the current regulations are broader than the "original public meaning of the terms," and because ATF believes there is too much overlap between the "adjudicated as a mental defective" and "committed to a mental institution" prongs.[28] ATF recognizes that its proposed rule would result in fewer individuals being reported to NICS under the "adjudicated as a mental defective" prong. While ATF identifies no policy concerns with the "committed to a mental institution" prong, it nonetheless proposes significant changes to that prong.

A) "Adjudicated as a Mental Defective"

As detailed above, the 1997 definition reaches individuals adjudicated either to be dangerous or to lack the mental capacity to contract or manage their own affairs and expressly includes criminal court insanity findings and the military-justice findings noted above. *See supra* § I.

ATF's new definition would substantially narrow "adjudicated as a mental defective" as follows:

1) First, an "adjudication" requires numerous procedural protections, specifically—"a court, board, commission, or other lawful authority" must provide the person with:
    - "[a]n in-person or remote hearing before an unbiased adjudicator;"
    - "[a]n opportunity to hear opposing evidence, to present evidence, and to confront adverse witnesses;"
    - "[p]ermission to be represented by counsel;"
    - "[a]n appointed counsel or guardian ad litem when there are reasonable grounds to believe that individuals lack sufficient mental competency to represent themselves or act in their own defense;"
    - "[a]dequate notice of the hearing;" *and*

[25] 91 Fed. Reg. at 25,170-74.
[26] *See id.* at 25,169 n.10.
[27] *See* 21st Century Cures Act, Pub. L. No. 114-255, 130 Stat. 1307 (2016), codified in 38 U.S.C. §5501A; *see also* 38 C.F.R. §§ 3.353(c), (d), & (e), 3.103(a)-(b).
[28] *See* 91 Fed. Reg. at 25,168-74.

- "[i]n a civil proceeding, a burden of proof based on at least clear and convincing evidence."

2) Second, where an "adjudication" has taken place, an individual has been "adjudicated as a mental defective" only if one of the following is true:
    - A court or the convening authority in a court martial has found the person "to be incompetent to stand trial based on a mental disease or defect where there is no reasonable possibility of restoring competence"; *or*
    - A court, board, commission, or other lawful authority has appointed the person a guardian, *and*:
        - the guardian was appointed "because of an intellectual disability"** or "mental illness"; *or*
        - the lawful authority found the person to "have a permanent physical condition, such as dementia, provided the individual[] ha[s] reached the functional capability equivalent to that of a person with an intellectual disability**."

**ATF defines an "intellectual disability" to exist only if a person:

- has "a full-scale IQ score of 45 or below"; *or*
- has "a full-scale IQ score of less than 69 *and* has limitations in multiple adaptive functioning domains such that the person is incapable of living independently"; *or*
- has "cognitive and functional deficits that would be equal to or greater than" those described above, as determined by an adjudicator.[29]

ATF's proposed definition further clarifies that an intellectual disability does not exist "solely because an individual has had a temporary guardian appointed due to a transient physical disability or because an individual has had a fiduciary appointed solely to assist with managing their financial affairs."[30]

ATF's proposed definition is muddled and confusing, but three points seem clear. First, ATF would remove any consideration of dangerousness from the definition of "adjudicated as a mental defective."[31] Second, "mental illness" falls within ATF's definition only if the person has been appointed a guardian because of the mental illness. Third, the person's lack of mental capacity to engage in life activities is relevant only insofar as such condition is permanent (whether because of a "permanent physical condition" or an "intellectual disability") and is extremely severe. Indeed, ATF has raised the bar for a qualifying intellectual disability so high that a person is presumptively within ATF's definition *only if* they have an IQ of 45 or lower, corresponding to a mental age of 3- to 9-years old. For people with an IQ between 46 and 68, corresponding to a mental age of 9- to 12-years-old, the person must also have "limitations in multiple adaptive functioning domains" such that they are incapable of living independently.[32] And people with an IQ higher than 69 are

[29] 91 Fed. Reg. at 25,186-87.
[30] *Id.* at 25,177.
[31] *Id.* at 25,174. ATF would move consideration of dangerousness to the "committed to a mental institution" prong.
[32] *Id.* at 25,176.

not encompassed within ATF's definition at all—regardless of whether they have been found to pose a risk of dangerousness to themselves or others, have been diagnosed with a cognitive impairment resulting in a propensity to violence, or have had a guardian appointed because they are incapable of living independently.

B) "Committed to a Mental Institution"

Under the 1997 definition, "committed to a mental institution" is defined as "[a] formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority." 27 C.F.R. § 478.11. The definition "includes a commitment to a mental institution involuntarily." *Id.* It also includes "commitment for mental defectiveness or mental illness" or "for other reasons, such as for drug use." *Id.* The 1997 definition "does not include a person in a mental institution for observation or a voluntary admission to a mental institution." *Id.*

ATF's proposed definition would move the word "involuntary" into the definition, to read: "A formal *and involuntary* commitment of a person to a mental institution by a court, board, commission, or other lawful authority."[33] The definition would separate "included types" into a new paragraph and rephrase them to read: "The term includes[34] the following types of commitments to a mental institution:

(1) Commitments resulting from determinations that individuals are a danger to themselves or others based upon mental disease or defect; [and]
(2) Commitments resulting from other reasons, such as for drug use[.]"[35]

ATF would add new "included types" of commitments to the definition, specifically: criminal court proceedings that result in a verdict of insanity or "a determination that a person is incompetent to stand trial . . . if the basis for that determination is a mental disease or defect," and military proceedings that result in a verdict of "not guilty by reason of lack of mental responsibility" under the Uniform Code of Military Justice (UCMJ) art. 50a, or in a finding that a person is "incompetent to stand trial" under UCMJ art. 72b.[36] ATF states that these new "included types" are currently encompassed within the "adjudicated as a mental defective" prong but are more appropriately part of the "commitment to a mental institution" prong.[37] Finally, ATF maintains the clarification that "not included" in the definition are people in a mental institution for observation or for a voluntary admission.[38]

The combined effect of these changes is that a person found not guilty by reason of insanity, but never formally and involuntarily committed, would fall outside both definitions—and outside § 922(g)(4) altogether.

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[33] 91 Fed. Reg at 25,187 (emphasis added). By mandating involuntariness, the proposed rule could invite challenges to commitments entered on a respondent's assent or stipulation following a judicial finding of dangerousness.
[34] While the States oppose the NPRM in its entirety, if ATF declines to withdraw its proposed rule, it should at a minimum clearly state that the list "includes, but is not limited to, the following types of commitments."
[35] 91 Fed. Reg. at 25,187.
[36] *Id.*
[37] *Id.*
[38] *Id.*

III. ATF's NPRM Is Contrary to Law and in Excess of its Authority

ATF's proposed definition of "adjudicated as a mental defective" cannot be reconciled with the comprehensive statutory scheme Congress created with the Gun Control Act and subsequent amendments. Because ATF's interpretation of the "adjudicated as a mental defective" prong is inconsistent with and undermines the function and purpose of Congress's comprehensive statutory scheme, it is contrary to law and in excess of authority in violation of the Administrative Procedure Act ("APA"). *See* 5 U.S.C. § 706(2)(A), (C); *see also City of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (an executive agency lacks authority to override federal statutes).

A) ATF Misconstrues Federal Law

ATF misconstrues federal law when it proposes to limit "adjudicated as a mental defective" to only those people who receive specific procedural protections and suffer from extraordinarily severe and permanent intellectual defects, demonstrated by an IQ associated with a mental age of 3- to 9-years-old, or evidence that they are incapable of living independently. ATF's interpretation of the statute is not the best, or even a plausible, reading of the Act and its amendments. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 399 (2024) (courts must determine the "best" statutory interpretation and agency interpretations are not entitled to deference).

At the threshold, ATF errs by dismissing relevant Supreme Court precedent as "off-topic"[39] and irrelevant to its statutory analysis. *See United States v. Gould*, 163 F.4th 795, 799 (4th Cir. 2026), *cert. denied*, No. 25-7330, 2026 WL 1780101 (U.S. June 22, 2026) (discussing the weight federal courts give to Supreme Court *dicta* in this context). A line of Supreme Court cases has found—including close in time to the Act's enactment—that Congress's "manifest purpose" was "broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous." *Barrett*, 423 U.S. at 216, 218 (relying on Congress's purpose in its holding); *Huddleston*, 415 U.S. at 824 (reviewing legislative history); *see also Bondi v. VanDerStok*, 604 U.S. 458, 462 (2025) (Congress adopted the Act "[s]hortly after the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King, Jr." when it concluded existing gun control measures were insufficient).

Moreover, ATF violates basic rules of statutory interpretation when it fails to consider the broader statutory context, including successive amendments to the Gun Control Act that are part of the comprehensive statutory scheme. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022) (to discern the "ordinary, contemporary, common meaning" of a statute, the words "must be read and interpreted in their context, not in isolation" (cleaned up)). Both the language and structure of that scheme support a broader interpretation of "adjudicated as a mental defective" than what ATF has proposed. For example, in one of its amendments, Congress expressly stated that it intended "adjudicated as a mental defective" to have the "same meaning" as in the original Act, and it used the phrase interchangeably with the term "adjudication related to the mental health of a person."[40] Congress also explained in an amendment that improvements to NICS reporting were necessary because people with "disqualifying" mental illnesses—specifically, paranoid schizophrenia and

[39] *See* 91 Fed. Reg. at 25,171.

[40] Pub. L. No. 110-180, tit. I § 101, 121 Stat. 2562; *see supra* § I.

depression / anxiety—had recently committed mass murders using legally purchased firearms.[41] In addition, as part of its comprehensive statutory scheme, Congress created procedures through which people who recover from impairing mental health conditions may have their gun rights and privileges restored[42]—provisions which make sense *only if* Congress intended the Act's prohibitions to reach individuals with temporary, curable mental health conditions. Finally, as many courts have observed, the legislative history of the Act demonstrates that Congress sought to broadly prevent people at risk of harming themselves or others because of mental illness from accessing firearms. *See, e.g.*, *U.S. v. Chamberlain*, 159 F.3d 656, 660 (1st Cir. 1998) (reviewing legislative history). In short, the statutory structure, language, and legislative history make clear what the Supreme Court found: Congress intended to broadly prohibit people adjudicated to be a danger to themselves or others, or cognitively impaired to contract or manage their own affairs, from possessing firearms in order to keep the public safe. *See U.S. v. Granderson*, 511 U.S. 39, 47 (1994) (courts avoid textual interpretations that would lead to an absurd result).

While ATF acknowledges that the term "adjudicated as a mental defective" is not susceptible to a single interpretation based on contemporaneous sources,[43] it ignores the best evidence of the text's meaning—Congress's own contemporaneous usage of the term "mental defective." After its passage in 1968, the Gun Control Act was codified in Title 18, Part I, of the U.S. Code. In the same Title, another Part relating to incarcerated individuals included an entire chapter titled "Mental Defectives" that broadly covered—in the language of the time—incarcerated individuals "alleged to be insane or of unsound mind or otherwise defective."[44] In that chapter, Congress used the terms "mental defect" and "mental defective" interchangeably—as catch-all phrases to describe a broad range of mental health conditions.[45] The Immigration Act of the time period also used "mental defective" in a comparably broad way.[46] These contemporaneous Congressional usages of the term support a broader definition than what ATF has proposed.

ATF's arguments to the contrary—primarily relying upon international law and the DSM-I, as well as a few state statutes[47]—do not require a different result. First, ATF fails to consider state statutes that do not support its narrow interpretation.[48] Second, some of ATF's analysis relies

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[41] Pub. L. No. 110-180, § 2, 121 Stat. 2560; *see supra* § I & n.14.
[42] Pub. L. No. 110-180 § 101, 103, 105, 121 Stat. 2563-64, 2567-70; *see supra* § I.
[43] *See* 91 Fed. Reg. at 25,174.
[44] Former 18 U.S.C. §§ 4241–4248 (1964) (ch. 313, "Mental Defectives"), amended and recodified by Pub. L. No. 98-473, tit. II, ch. IV, 98 Stat. 2057 (1984).
[45] *Id.*
[46] *See* ch. 374, 22 Stat. 124; *United States v. Hoy*, 330 U.S. 724, 729 (1947) (observing Congress in amending immigration statutes "left the barriers in effect which barred physical and mental defectives."); *U.S. ex rel. Johnson v. Shaughnessy*, 336 US 806 (1949) (considering challenge to non-citizen's exclusion as "mental defective" where basis was alleged hallucinations and prior bout of insanity); *see also* S. Rep. No. 1515, 81st Cong., 2d Sess., p. 194-95, 340-41.
[47] *See* 91 Fed. Reg. at 25,169-74.
[48] *See, e.g.*, Laws of New York, 1965, Art. 130.00 ("'Mentally defective' means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct" and distinguishing term from "mentally incapacitated" as a result of a narcotic or intoxicating substance); Code of Alabama 1975, Section 13A-6-60(5) ("Mental defective" "means that a person suffers from a mental disease or defect which renders him incapable

on definitions for "mental deficiency," which the agency assumes is equivalent to "mental defective."[49] But Congress chose the term "mental defective," and we must assume Congress meant what it said. Third, while ATF implies that *Heller* requires additional process before deprivation of gun rights, the Supreme Court made clear that nothing in *Heller* "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by . . . the mentally ill." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The Supreme Court, in fact, recently confirmed: "Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms," and "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *United States v. Rahimi*, 602 U.S. 680, 690, 702 (2024). Finally, ATF's reliance on *United States v. Hansel*, 474 F.2d 1120, 1122 (8th Cir. 1973), is misplaced. That case involved evidence at trial demonstrating that the defendant was "found not to have a serious mental disorder" and released without a commitment. *Id. Hansel*'s foray into original meaning is *dicta*, and it relied in substantial part on early medical definitions of a different term. *See id.* at 1123-24.

B) ATF's Definition Would Undermine Congress's Comprehensive Statutory Scheme

Not only is ATF's statutory interpretation flawed, but its proposed rule would undermine Congress's comprehensive statutory scheme in at least three distinct ways—each of which exceeds ATF's authority. *See La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986) (an executive agency "has no power to act . . . unless and until Congress confers power upon it").

First, with the Act and its amendments, Congress expressly sought to keep guns out of the hands of potentially dangerous people, and it identified mass shooters (one hospitalized with paranoid schizophrenia, and the other found to be a danger after being diagnosed depression) as examples of those who are "ineligible" to possess firearms. *See supra* § I. ATF's proposal to limit the definition to purportedly "permanent" conditions defined by particular IQ and functional metrics would omit individuals that Congress deemed to pose a potential danger because of mental illness. It is notable that ATF proposes eliminating consideration of dangerousness as well as a finding of insanity in a criminal case from the "adjudicated as a mental defective" definition. The proposed rule would prohibit those individuals only if they are involuntarily committed to a mental institution. *See supra* § II. ATF proposes these changes even though dangerousness has always been Congress's primary concern. *See supra* § I. Indeed, ATF implicitly recognizes that its proposed definition may create a coverage gap, requesting public comments on "whether there are individuals who are found not guilty by reason of insanity or found in a proceeding to be a danger to themselves or others but are not committed to a mental institution[.]"[50]

Second, Congress's comprehensive statutory scheme is predicated on categorical prohibitions accompanied by procedures permitting gun rights to be restored for individuals who

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of appraising the nature of his conduct"); *see also* Dep't of Treasury, 29 Fed. Reg. 14,213 (Oct. 16, 1964), codified in 26 C.F.R. Part 1 (referencing "mentally defective" person who "has suicidal or other dangerous tendencies").

[49] *See* 91 Fed. Reg. at 25,172-73.

[50] 91 Fed. Reg. at 25,174.

show that they are no longer at risk of harming themselves or others. *See* 18 U.S.C. § 925(c).[51] As ATF implicitly acknowledges, its new definition would substantially change the operation of Congress's scheme by categorically excluding only a narrow group of people with purportedly "permanent" conditions.[52] This would render Congress's rights-restoration processes meaningless because persons with permanent conditions would presumably not be able to show a change in condition sufficient to lift their restrictions.

Third, in its amendments to the Act, Congress made clear that it wanted to increase reporting of state records, in part by incentivizing States to digitize their records and automate sharing with NICS.[53] Congress has legislated in this domain twice, each time in direct response to a failure to keep firearms from dangerous people: the NICS Improvement Amendments Act of 2007 after the Virginia Tech and Our Lady of Peace mass shootings,[54] and the Fix NICS Act of 2018 after a comparable reporting failure.[55] Each amendment directs federal and state authorities to expand the submission and verify the accuracy of these records, and each rests on the premise that ATF now abandons: the adjudication is prohibiting and must be reported.[56] But ATF's complicated new definition would likely make reporting to NICS much more cumbersome and delayed—to the extent that States and others are required to assess whether any particular record meets ATF's specific procedural and substantive requirements.

IV. ATF's NPRM is Arbitrary and Capricious

An agency action is arbitrary or capricious where it is not "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *see* 5 U.S.C. § 706(2)(A). An agency must provide "a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted). An action is also arbitrary and capricious if the agency "failed to consider . . . important aspect[s] of the problem" before it. *Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 25 & 33 (2020) (quoting *State Farm*, 463 U.S. at 43). In addition, when an agency "rescinds a prior policy," the agency must, at minimum, "consider the 'alternatives' that are within the ambit of the existing policy," "assess whether there were reliance interests," and "weigh any such interests against competing policy concerns." *Regents*, 591 U.S. at 30. When the new policy implicates "serious reliance interests," the agency must also provide "a more detailed justification than would suffice

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[51] *See also* Pub. L. No. 110-180, §§ 101(c)(2), 105, 121 Stat. 2559 (2008).

[52] *See* 91 Fed. Reg. at 25,182 (Currently prohibited persons "would no longer be prohibited from possessing firearms under the proposed rule unless they were involuntarily committed, found permanently incompetent to stand trial, or had a guardian appointed due to a severe permanent mental illness or 'intellectual disability' as defined by the proposed rule.").

[53] *See, e.g.*, Pub. L. No. 110-180, tit. III § 301, 121 Stat. 2571 (2008).

[54] *See supra* n.14.

[55] The Fix NICS Act followed the Sutherland Springs shooting, in which the Air Force's failure to report the perpetrator's disqualifying domestic-violence court-martial conviction allowed him to pass a NICS background check and purchase a firearm.

[56] *See, e.g.*, Fix NICS Act of 2018, Pub. L. No. 115-141, div. S, tit. VI, 132 Stat. 348 (2018) (directing federal and state implementation plans to "ensure maximum coordination and automation of the reporting or making available of appropriate records to the [NICS] . . . and the verification of the accuracy of those records").

for a new policy created on a blank slate." *FCC v. Fox Tele. Stations, Inc.*, 556 U.S. 502, 515 (2009). Because ATF failed to comply with these procedural requirements, its NPRM is arbitrary and capricious in violation of the APA. *See* 5 U.S.C. § 706(2)(A).

A) Failed to Connect Facts Found to Choices Made

First, ATF failed to connect the facts found with the choices made. Specifically, while ATF's proposed rule reflects a set of choices the agency made, the sheer number of basic questions ATF asks in the NPRM strongly suggests that the agency has not done the basic fact-gathering necessary for reasoned decision making.[57] For example, ATF acknowledges that it lacks basic information about which groups of people are covered by the 1997 definition but would not be covered by the proposed rule, or how many of those people pose a danger to the public.[58] ATF also lacks information about how its proposed rule will impact the States—notwithstanding that more than 99 percent of the records provided to NICS in the "adjudicated as a mental defective or committed to a mental institution" category were provided by States.[59]

Even to the extent that ATF identifies facts it has found, it fails to connect those facts with the choices it has made. As just one example, ATF's decision to include IQ score ranges in its proposed definition finds no support in the sources contemporaneous to the enactment of the Act that ATF claims are the basis for its proposal.[60] ATF's addition of a host of specific procedural requirements, *see supra* § II, similarly finds no support in the 1960s-era sources it relies upon.

B) Failed to Reasonably Explain its Actions

ATF's proposed rule amounts to a solution in search of a problem. ATF spills considerable ink discussing its concerns about the disarming of veterans, and the VA mental competence procedures it deems inadequate.[61] But as the agency acknowledges, Congress has already addressed ATF's concern about veteran disarmament with the appropriations rider,[62] and Congress has also addressed ATF's concern related to Social Security beneficiaries.[63] Congress has also added due process protections to address the concerns ATF raises. *See supra* § I. The agency's sole explanation for its proposed rule is that the changes would "ensure that veterans" and unidentified "other affected persons" who form a "specific segment of the public" can retain their Second Amendment rights when a fiduciary or limited guardian is appointed to manage their financial or

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[57] *See, e.g.*, 91 Fed. Reg. at 25,182-83.

[58] *Id.* at 25,181.

[59] Of 8,213,415 NICS Indices entries in this category, 8,133,151—99 percent—came from States. *See* FBI Criminal Justice Information Services Division, National Instant Criminal Background Check System (NICS) Active Entries in the NICS Indices as of December 31, 2025, https://www.fbi.gov/file-repository/cjis/active-entries-in-the-nics-indices.pdf.

[60] *Compare* 91 Fed. Reg. at 25,186-87, *with id.* at 25,169-74.

[61] *See* 91 Fed. Reg. at 25,169-70, 25,177, 25,179-83, 25,185.

[62] *Id.* at 25,169 n.10. As ATF acknowledges, the VA has determined that incompetency determinations under 38 U.S.C. § 5502 do not meet this standard and has "directed the removal" of such records from NICS when they do not have an independent qualifying basis. *Id.* at 25,170 n.19.

[63] As ATF discusses, Congress disapproved by joint resolution pursuant to the Congressional Review Act of the Social Security Administration's final rule setting forth the procedures for SSA reporting to NICS of beneficiaries with certain "mental impairments." *Id.* at 25,171 (citing Pub. L. No. 115-8, 131 Stat. 15 (2017)). As such, SSA may not reissue the rule in "substantially the same form" unless it is specifically authorized by a subsequent law. 5 U.S.C. § 801(b)(2).

personal affairs."[64] But ATF fails to identify *any* group actually suffering harm under the status quo. Nor does it identify any data on the number of individuals other than veterans who have *ever* been harmed by the 1997 definition.[65] The only remotely concrete problem ATF has identified is *if* a future Congress allows the appropriations rider to expire and eliminates the additional procedural requirements for veterans.[66] But Congress chose this method of addressing its concern and ATF lacks the authority to override Congressional judgment. In any event, ATF's proposed definitions are *far* more narrowing than the impact of Congress's rider. *See supra* § II.

In addition, ATF's "core" and "periphery" interpretation of the contemporaneous definitions[67] is flawed because it assumes what ATF seeks to prove. Upon acknowledging some inconsistency in contemporaneous definitions of the term,[68] ATF assumes that only the narrowest meaning that cuts across all sources—i.e., the "core"—reflects the original understanding of the term.[69] ATF draws this conclusion even as it fails to consider Congress's own use of the phrase "mental defective" in the same Title of the U.S. Code and other federal law. *See supra* § 3(A).

ATF's reliance on IQ scores also finds no basis in Congress's legislative enactments, let alone in the broader record. ATF appears to have extrapolated from the DSM-I's discussion of a different medical phrase to conclude that anyone with an IQ of more than 45 should presumptively have access to firearms. *See supra* § II. Nor does ATF provide any explanation for requiring the "precise criteria" outlined in its regulation or even how it came up with this list.[70] It does not even explain the meaning of the new terms it introduces, such as "multiple adaptive functioning domains."[71] And even ATF acknowledges that the proposed rule "runs the risk of overcorrecting" any concerns the agency has identified.[72]

ATF's proposed changes to the "commitment to a mental institution" definition are similarly arbitrary. ATF's sole explanation for its action is that the agency is "unsure" that the current regulation "correctly demarcated the difference between 'adjudicated as a mental defective' and 'committed to a mental institution.'"[73] But ATF is fixing a problem entirely of its own making: the agency's proposed narrowing definition is—by design—eliminating that category of people covered by the "adjudicated as a mental defective" prong who are not "committed to a mental institution." *See supra* § II. And ATF acknowledges that its new "commitment" definition does not actually solve the overlap problem.[74]

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[64] 91 Fed. Reg. at 25,180.
[65] *See id.* (conceding ATF "does not have a valid set of data" and "welcomes public comment . . . to further estimate the affected population of individuals, veterans or otherwise").
[66] *Id.* at 25,169.
[67] 91 Fed. Reg. at 25,173.
[68] *See* 91 Fed. Reg. at 25,174.
[69] *See id.* at 25,172-74.
[70] 91 Fed. Reg. at 25,187.
[71] *See id.* at 25,176.
[72] *Id.* at 25,182.
[73] *Id.* at 25,174.
[74] *See* 91 Fed. Reg. at 25,168 n.8.

C) Failed to Consider Important Aspects of the Problem

ATF's changes to the "adjudicated as a mental defective" definition undermine the purposes and structure of the comprehensive statutory scheme, including Congress's purpose "to ensure maximum coordination and automation of the reporting or making available of appropriate records to [NICS] . . . and the verification of the accuracy of those records."[75] And, ATF recognizes that the costs of its approach will be "an increase in public safety risk" due to "subset[s] of potentially dangerous persons who would no longer necessarily be prohibited possessors," and with the potential for "mass casualty events."[76] It also recognizes that 70 percent of veteran suicides rely on a firearm.[77] But ATF does not engage in *any* meaningful assessment of the costs of its approach, including how many potentially dangerous people may gain access to firearms, or the costs of the harm they may cause. In marked contrast, ATF estimates the precise costs to individuals who obtain review of disability under the state-federal system Congress created.[78] ATF fails to consider, however, that the actuarial value of a single life lost as a result of increased gun violence would vastly outweigh all the "leisure time" costs the agency has calculated.[79] ATF also fails to display awareness that by narrowing the definitions, it departs from Congress's long-standing system of individualized adjudications of dangerousness under 34 U.S.C. § 40915. *See Food and Drug Admin. v. Wages & White Lion Investments*, 604 U.S. 542, 566 (2025) (agency must display awareness of changing position).

Finally, ATF errs by analyzing its proposed rule in isolation. The NPRM is one of an interlocking set of proposals in ATF's announced regulatory-reform package, several of which independently weaken the records, verification, and reporting systems on which NICS and state law enforcement depend. Announcing the rules as a package while analyzing their costs and public-safety effects one rule at a time impermissibly segments the analysis: the APA requires ATF to consider the cumulative effect of its interlocking rules, and its failure to do so independently renders the proposal arbitrary. *See State Farm*, 463 U.S. at 43.

D) Failed to Consider Serious Reliance Costs and Harms to States

Even as the States contribute the *vast* majority of records to NICS in the "adjudicated as a mental defective or committed to a mental institution" definition—millions of records in total,[80] ATF simply dismisses any costs to the States as a "minimal" "sunk cost" or says the agency lacks information about costs.[81] But States have relied on Congress's comprehensive statutory scheme and the reporting incentives Congress created to develop their current NICS reporting structures. ATF's complicated new definition introducing new, specific procedural and substantive requirements, *see supra* § II, threatens to wholly upend the often-automatic reporting structures

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[75] *See* Fix NICS Act, Pub. L. No. 115-141, div. S., title VI, 132 Stat. 348 (2018).
[76] 91 Fed. Reg. at 25,181-82.
[77] *Id.* at 25,182 n.40.
[78] *Id.* at 25,181 (calculating monetary cost of lost "leisure time").
[79] *See* HHS Standard Values for Regulatory Analysis, 2026 (estimating the value of a statistical life at $14.1 million), available at https://aspe.hhs.gov/sites/default/files/documents/2d83af5823915d81871334ee08ad03d9/Standard-RIA-Values-2026.pdf.
[80] *See supra* n.59.
[81] 91 Fed. Reg. at 25,182.

States have put in place, requiring burdensome and time intensive reviews of records that will cost States and introduce the very NICS reporting delays that Congress sought to avoid, *see supra* § III(B) & (C). Moreover, ATF's cavalier observation that States "may need to review" their existing records,[82] utterly fails to recognize the costs to the States of needing to review potentially millions of existing records.[83] To do this, States—particularly those that act as a "point of contact" state as defined in 28 C.F.R. § 25.2—would likely have to seek out evidence in a massive number of cases to verify the records in the NICS databases, even as confidentiality protections for mental health records may prevent access. Indeed, in many States, records transmitted to NICS contain only nonclinical identifying information; underlying clinical documents are confidential or impounded by court order; and historical orders often contain no IQ, adaptive-functioning, or burden-of-proof findings at all—so it may not be possible to validate existing state entries against ATF's new criteria, no matter the resources expended. And because the NPRM appears to provide no transition or savings clause for determinations predating the rule, the narrowed definition would govern at the next background check and potentially reach decades of historical records.[84] The result: ATF's proposed rule would shift the burden to States to prove that someone is in fact covered by ATF's narrowed definitions. This is substantively and procedurally arbitrary.

Finally, ATF's proposed rule will—as ATF implicitly concedes—lead to more potentially dangerous people having access to firearms and as a result, more preventable deaths and violence. By narrowing the adjudications and commitments that trigger the federal prohibition, ATF's proposed rule would allow more people, including those found to pose a danger to themselves or others, to pass a background check. The foreseeable result is not merely increased firearm access, but more preventable suicides and other violence. Firearm access is one of the most reliable predictors of suicide risk.[85] Nationwide, 6 out of every 10 gun deaths is a suicide, and 73 Americans die by firearms suicide every day.[86] This risk is especially acute among veterans, as ATF itself has recognized.[87]

The NPRM also asserts, without support, that "this proposed rule would not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government."[88] ATF also fails to engage in the federalism consultation that Executive Order 13132 requires for rules with substantial direct effects on the States—even as the proposed rule would increase the

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[82] 91 Fed. Reg. at 25,182.

[83] *See supra* n.59. The FBI's national data relating to Section 922(g)(4) NICS entries does not distinguish between individuals "adjudicated as a mental defective or committed to a mental institution," and thus it is not clear how many state records are specific to individuals "adjudicated as a mental defective." *See* FBI Criminal Justice Information Services Division, National Instant Criminal Background Check System (NICS) Active Entries in the NICS Indices as of December 31, 2025, https://www.fbi.gov/file-repository/cjis/active-entries-in-the-nics-indices.pdf.

[84] Because the records transmitted to NICS are identifier-level abstracts that never documented paragraph (c)'s procedural elements, recertification would likely require manual retrieval of the underlying court files.

[85] Paige Tetens, *Those Who Serve: Addressing Firearm Suicide among Military Veterans*, Everytown (last updated June 12, 2026), *available at* https://everytownresearch.org/report/those-who-serve/.

[86] Issues: Suicide, Everytown, *available at* https://everytownresearch.org/issue/suicide/.

[87] *See Definition of "Engaged in the Business" as a Dealer in Firearms*, 89 Fed. Reg. 28,968, 29,083 & n.285 (Apr. 19, 2024) (citing DVA data showing that, in 2021, an average of 17.5 veterans died by suicide each day and that firearms were involved in 73.4 percent of suicide deaths among veteran men and 51.7 percent among veteran women).

[88] 91 Fed. Reg. at 25,184; *but see supra* §§ I, III(A) & (B).

number of firearms in the hands of people who pose a danger to themselves or others. State law cannot fill the gap: even where such individuals are disqualified from an in-state license, removal from Section 922's prohibited categories leaves a person free to buy some firearms in other States. And these harms would be irreparable: if currently prohibited individuals are able to pass background checks and purchase firearms, subsequent judicial decisions cannot undo the resulting harms.

E) Failed to Meaningfully Consider Reasonable Alternatives

ATF dismisses the reasonable alternative of taking no action because of what it refers to as the "qualitative burden on the public" of the "unnecessarily broad" definition.[89] But ATF's policy concerns were specific to veterans and Social Security beneficiaries and have already been addressed by Congress. *See supra* § I. ATF fails to explain why any further action is needed. ATF also dismisses the reasonable alternative of limiting any rule change to veterans because of the agency's unsupported "concern[]" that there *may* be "other competency procedures" that have not been addressed by Congress.[90] ATF's reliance on unidentified "others" and metaphysical "qualitative burden[s]" to justify a significant regulatory change is substantively unreasonable.

V. ATF Failed to Observe Procedure Required By Law

ATF's proposal is also defective for failing to perform required analysis. Under the Paperwork Reduction Act, an agency must identify and account for information-collection burdens, 44 U.S.C. §§ 3501–3520, but ATF fails to analyze the burdens imposed on States to retrieve and review decades of underlying court files to determine which existing records satisfy the new procedural and substantive criteria. In addition, ATF's failure to perform the required cost-benefit assessment and the federalism consultation, *see supra* § IV(D), confirm that ATF did not weigh the costs, alternatives, and state-sovereignty interests that reasoned decisionmaking requires. *See State Farm*, 463 U.S. at 43; *Regents*, 591 U.S. at 30.

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The undersigned States therefore urge ATF to withdraw the proposed rule, or, at a minimum, postpone any effective date under 5 U.S.C. § 705 pending judicial review.

Sincerely,

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[89] 91 Fed. Reg. at 25,183.
[90] 91 Fed. Reg. at 25,183.

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