

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

DUY T. MAI,  
*Plaintiff-Appellant,*

v.

UNITED STATES OF AMERICA;  
UNITED STATES DEPARTMENT OF  
JUSTICE; BUREAU OF ALCOHOL,  
TOBACCO, FIREARMS, AND  
EXPLOSIVES; FEDERAL BUREAU  
OF INVESTIGATION; WILLIAM P.  
BARR, Attorney General;  
CHRISTOPHER A. WRAY, as  
Director of the Federal Bureau of  
Investigation; REGINA  
LOMBARDO, as Acting Director  
of the Bureau of Alcohol,  
Tobacco, Firearms, and  
Explosives,  
*Defendants-Appellees.*

No. 18-36071

D.C. No.  
2:17-cv-00561-RAJ

OPINION

Appeal from the United States District Court  
for the Western District of Washington  
Richard A. Jones, District Judge, Presiding

Argued and Submitted December 11, 2019  
Seattle, Washington

Filed March 11, 2020

Before: Susan P. Graber and Ronald M. Gould, Circuit  
Judges, and David A. Ezra,\* District Judge.

Opinion by Judge Graber

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### **SUMMARY\*\***

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#### **Civil Rights**

The panel affirmed the district court's dismissal of a 42 U.S.C. § 1983 complaint containing an as-applied Second Amendment challenge to 18 U.S.C. § 922(g)(4), which prohibits plaintiff from possessing firearms due to his involuntary commitment in 1999 to a mental institution for more than nine months after a Washington state court found plaintiff to be both mentally ill and dangerous.

Plaintiff argued that § 922(g)(4)'s continued application to him despite his alleged return to mental health and peaceableness violated the Second Amendment. The panel held that, assuming (without deciding) that § 922(g)(4)'s prohibition burdens Second Amendment rights, intermediate scrutiny applied. The panel also held that the prohibition on the possession of firearms by persons, like plaintiff, whom a

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\* The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

state court has found to be both mentally ill and dangerous is a reasonable fit with the government's indisputably important interest in preventing gun violence. Scientific evidence supported the congressional judgment that those who have been committed involuntarily to a mental institution still pose an increased risk of violence even years after their release from commitment. The panel therefore concluded that Section 922(g)(4)'s continued application to plaintiff did not violate the Second Amendment.

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### COUNSEL

Vitaliy Kertchen (argued), Tacoma, Washington, for Plaintiff-Appellant.

Abby C. Wright (argued) and Michael S. Raab, Appellate Staff; Brian T. Moran, United States Attorney; Joseph H. Hunt, Assistant Attorney General; Civil Division, United States Department of Justice, Washington, D.C.; for Defendants-Appellees.

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### OPINION

GRABER, Circuit Judge:

Plaintiff Duy Mai recently sought to buy a firearm, but federal law barred him from doing so. A number of years ago, Plaintiff was committed involuntarily, for more than nine months, to a mental institution after a Washington state court found him to be both mentally ill and dangerous. Title 18 U.S.C. § 922(g)(4) prohibits the possession of firearms by those, like Plaintiff, whom a state court committed

involuntarily to a mental institution. Plaintiff concedes that the statutory prohibition on his possession of firearms during the period of his commitment was constitutional under the Second Amendment. But Plaintiff here brings an as-applied challenge to § 922(g)(4), arguing that its *continued* application to him despite his alleged return to mental health and peaceableness violates the Second Amendment. We hold that, assuming (without deciding) that § 922(g)(4)'s prohibition burdens Second Amendment rights, intermediate scrutiny applies. We also hold that the prohibition on the possession of firearms by persons, like Plaintiff, whom a state court has found to be both mentally ill and dangerous is a reasonable fit with the government's indisputably important interest in preventing gun violence. Scientific evidence supports the congressional judgment that those who have been committed involuntarily to a mental institution still pose an increased risk of violence even years after their release from commitment. Section 922(g)(4)'s continued application to Plaintiff does not violate the Second Amendment. We therefore affirm the district court's dismissal of this action.

#### BACKGROUND<sup>1</sup>

In October 1999, a Washington state court committed Plaintiff involuntarily for mental health treatment after he threatened himself and others. The state court determined that Plaintiff was *both* mentally ill *and* dangerous. Plaintiff's

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<sup>1</sup> Because we are reviewing the dismissal of a complaint, we accept as true its well-pleaded factual allegations. *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480, 487 (9th Cir. 2019).

commitment lasted more than nine months,<sup>2</sup> ending in August 2000. Plaintiff was seventeen years old at the time of commitment, and his commitment spanned his eighteenth birthday.

Since his release from commitment in 2000, Plaintiff has earned a GED, a bachelor's degree, and a master's degree. He is gainfully employed and a father to two children. According to the complaint, he no longer suffers from mental illness, and he lives "a socially-responsible, well-balanced, and accomplished life."

As a result of Plaintiff's involuntary commitment, Washington law prohibited him from possessing a firearm. Wash. Rev. Code § 9.41.040(2)(a)(iv). Washington law, though, allows persons to petition for relief from that prohibition if they meet certain conditions. *Id.* § 9.41.047(3)(a). In 2014, Plaintiff successfully petitioned a Washington state court for relief. The court found, pursuant to the requirements of Washington law, that "(1) [Plaintiff] is no longer required to participate in court-ordered inpatient or outpatient treatment; (2) [Plaintiff] has successfully managed the condition related to his commitment; (3) [Plaintiff] no longer presents a substantial danger to himself, or the public; and (4) [t]he symptoms related to the commitment are not reasonably likely to recur." *See id.* § 9.41.047(3)(c) (requiring those findings). Accordingly, the relevant state law no longer prohibits Plaintiff from possessing a firearm.

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<sup>2</sup> The record strongly suggests that a state court committed Plaintiff involuntarily three separate times during the nine-month period in 1999 and 2000. The complaint is ambiguous on this point. Because the number of commitments does not alter the analysis, we assume that a state court committed Plaintiff involuntarily only once, for a period of nine months.

But, as a result of his involuntary commitment, *federal* law prohibits Plaintiff from possessing a firearm. Title 18 U.S.C. § 922(g)(4) bars individuals who have been “committed to a mental institution” from possessing firearms.<sup>3</sup> Federal regulations make clear that the prohibition does not apply to “a person in a mental institution for observation or a voluntary admission to a mental institution.” 27 C.F.R. § 478.11. Involuntary commitments comport with due process only when the individual is found to be *both* mentally ill *and* dangerous. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Additionally, commitments under state-law procedures that lack robust judicial involvement do not qualify as commitments for purposes of § 922(g)(4). *United States v. Rehlander*, 666 F.3d 45, 47–49 (1st Cir. 2012). We agree with the parties that Plaintiff’s involuntary commitment by the Washington state court—which found Plaintiff to be both mentally ill and dangerous—qualifies as a “commitment” for purposes of § 922(g)(4). Section 922(g)(4), then, bars Plaintiff from possessing a firearm.

Federal law provides two potential avenues for relief from the § 922(g)(4) bar but, as explained below, neither avenue is currently available to Plaintiff.

First, under 18 U.S.C. § 925(c), Plaintiff may apply to the United States Attorney General “for relief from the disabilities imposed by Federal laws with respect to the . . .

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<sup>3</sup> “It shall be unlawful for any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution . . . [to] possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(g)(4).

possession of firearms.”<sup>4</sup> Beginning in 1986, that provision extended to persons who had been involuntarily committed to a mental institution. Firearms Owners’ Protection Act, Pub. L. 99-308, § 105, 100 Stat. 449 (1986). The Attorney General may, but is not required to, grant relief “if it is established to his satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” *Id.*; see *United States v. Bean*, 537 U.S. 71, 77 (2002) (noting the discretionary nature of the decision and observing that relief

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<sup>4</sup> Section 925(c) provides, in relevant part:

A person who is prohibited from possessing . . . firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the . . . possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. . . . Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

may be denied “even when the statutory prerequisites are satisfied”).

That statutory option, however, is currently foreclosed to Plaintiff and all others. Since 1992, Congress has prohibited the use of funds “to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. [§ 925(c).” *Bean*, 537 U.S. at 74–75 (alteration in original) (quoting Treasury, Postal Service, and General Government Appropriations Act, 1993, Pub. L. No. 102-393, 106 Stat. 1729, 1732 (1992)); see also *id.* at 75 n.3 (citing later appropriations acts with the same prohibition); *Hatfield v. Barr*, 925 F.3d 950, 952 (7th Cir. 2019) (“[S]ince 1992 Congress has withheld funds to implement § 925(c).”). Congress defunded the program because, among other reasons, determining eligibility had proved to be a “very difficult and subjective task which could have devastating consequences for innocent citizens if the wrong decision is made.” S. Rep. No. 102-353, at 19 (1992). Accordingly, unless Congress chooses in the future to fund the federal program, any application by Plaintiff for relief pursuant to § 925(c) would be futile. See *Bean*, 537 U.S. at 76 (holding that, while funding is withheld, judicial review is also unavailable).

Plaintiff’s second potential avenue for relief is through a state program that qualifies under 34 U.S.C. § 40915. To qualify, the state’s program must “permit[] a person who, pursuant to State law, . . . has been committed to a mental institution, to apply to the State for relief from the disabilities imposed by” 18 U.S.C. § 922(g)(4) and other laws. *Id.* § 40915(a)(1). The program also must provide



that a State court, board, commission, or other lawful authority shall grant the relief, pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities . . . , and the person’s record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.

*Id.* § 40915(a)(2). Finally, the program must allow a person to petition the state court “for a de novo judicial review of [a] denial.” *Id.* § 40915(a)(3). For a person granted relief under a qualifying state program, § 922(g)(4)’s prohibition on the possession of firearms does not apply. *Id.* § 40915(b).

According to the government, “approximately thirty States” have created qualifying programs. *See also* Bureau of Justice Statistics, *State Profiles: NICS Act Record Improvement Program (NARIP) Awards FY 2009–2018*, <https://www.bjs.gov/index.cfm?ty=tp&tid=491> (providing state-by-state information suggesting that thirty states and one tribe have qualifying programs). As noted above, Washington law provides a mechanism for persons to petition for relief from the state-law prohibition on the possession of firearms. But that mechanism does not qualify under § 40915 because, among other reasons, the factual findings required by Washington law differ from the factual findings required by § 40915. Washington law requires a finding that the person “no longer presents a *substantial danger* to himself or herself, or the public.” Wash. Rev. Code § 9.41.047(3)(c)(iii) (emphasis added). By contrast, the federal standard requires a determination that “the person will not be likely to act in a

manner *dangerous* to public safety.” 34 U.S.C. § 40915(a)(2) (emphasis added). Additionally, § 40915(a)(2) requires a finding that granting “relief would not be contrary to the public interest,” while Washington law requires no such inquiry. In other words, the federal standard is more stringent than the Washington standard. Accordingly, unless Washington chooses in the future to create a program that meets the requirements of § 40915, Plaintiff has no avenue for relief from § 922(g)(4)’s prohibition.

Plaintiff filed this action in 2017 after he was denied the purchase of a firearm because of § 922(g)(4). He alleges that the Department of Justice; the United States Attorney General; the Federal Bureau of Investigation; and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (collectively, “the government”) violated his Second Amendment right to bear arms and his Fifth Amendment right to due process by prohibiting him from possessing firearms.

The government moved to dismiss the complaint for failure to state a claim. The district court granted that motion, holding that § 922(g)(4) is categorically constitutional under the Second Amendment and, alternatively, that § 922(g)(4) satisfies intermediate scrutiny. The court also rejected Plaintiff’s due process claim. Plaintiff then sought leave to amend the complaint, which the court denied as futile. Plaintiff timely appeals.

#### STANDARD OF REVIEW

We review *de novo* a district court’s decision to grant a motion to dismiss, *Nayab*, 942 F.3d at 487, as well as a challenge to the constitutionality of statutes, *United States v. Torres*, 911 F.3d 1253, 1257 (9th Cir. 2019). “When a

district court determines that further amendment would be futile, we will affirm the district court's dismissal on this basis if it is clear, upon de novo review, that the complaint could not be saved by any amendment." *Curry v. Yelp Inc.*, 875 F.3d 1219, 1228 (9th Cir. 2017) (internal quotation marks omitted).

### DISCUSSION

As this case reaches us, Plaintiff advances only his Second Amendment claim. He argues that the Second Amendment requires that he be allowed to possess firearms notwithstanding his earlier involuntary commitment. He does not specify the standard by which federal courts should measure whether persons, like Plaintiff, are sufficiently rehabilitated for purposes of the Second Amendment. Notably, though, Plaintiff does not seek the application of the substantive standards defined in 34 U.S.C. § 40915. He has never asserted, for example, an equal-protection claim that, because persons in thirty other states benefit from programs applying § 40915's substantive standards, he too is entitled to relief or to an opportunity to meet those standards. Nor has he advanced, on appeal, an argument that due process demands the same results. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (holding that arguments not raised in the opening brief are forfeited). We therefore do not consider whether those theories have merit, and we turn to the only claim on appeal: whether the Second Amendment requires that Plaintiff be allowed to possess firearms.

The "Second Amendment protects the right to keep and bear arms for the purpose of self-defense." *McDonald v. City of Chicago*, 561 U.S. 742, 749–50 (2010). But the right is "not unlimited." *District of Columbia v. Heller*, 554 U.S.

570, 595 (2008). The Supreme Court clarified that its recognition of the Second Amendment right does not “cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626–27; accord *McDonald*, 561 U.S. at 786. Those prohibitions are “presumptively lawful.” *Heller*, 554 U.S. at 627 n.26.

Applying the lessons from *Heller* and *McDonald*, we have adopted a two-step inquiry for assessing whether a law violates the Second Amendment. *Torres*, 911 F.3d at 1258. “This test ‘(1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny.’” *Id.* (quoting *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013)).

Whether § 922(g)(4)’s prohibition on the possession of firearms by persons who have been committed to a mental institution comports with the Second Amendment is an issue of first impression in this circuit. But we are guided by our previous decisions in related contexts. *See, e.g., id.* at 1264 (holding that § 922(g)(5)’s prohibition on the possession of firearms by unlawful aliens survives intermediate scrutiny); *Chovan*, 735 F.3d at 1142 (holding that § 922(g)(9)’s prohibition on the possession of firearms by persons previously convicted of a domestic violence misdemeanor survives intermediate scrutiny); *United States v. Vongxay*, 594 F.3d 1111, 1118 (9th Cir. 2010) (holding that § 922(g)(1)’s prohibition on the possession of firearms by felons comports with the Second Amendment).

Decisions by the Third and Sixth Circuits addressing § 922(g)(4) also inform our analysis. Those courts have addressed challenges remarkably similar to Plaintiff's challenge here and have reached opposite conclusions. In both *Beers v. Attorney General*, 927 F.3d 150, 152 (3d Cir. 2019), *petition for cert. filed*, \_\_ U.S.L.W. \_\_ (U.S. Jan. 9, 2020) (No. 19-864), and *Tyler v. Hillsdale County Sheriff's Department*, 837 F.3d 678, 683–84 (6th Cir. 2016) (en banc), a state court had committed the plaintiff many years ago to a mental institution but, according to the plaintiff, he was now free of mental illness. In both cases, the plaintiff argued that, as applied to him, § 922(g)(4)'s prohibition violated the Second Amendment.

The Third Circuit rejected the claim, concluding that § 922(g)(4) did not burden conduct protected by the Second Amendment. *Beers*, 927 F.3d at 159. Accordingly, the plaintiff's alleged return to mental health was irrelevant to the constitutional analysis. *Id.*

By contrast, the Sixth Circuit reversed the district court's dismissal of the claim and remanded for further proceedings. *Tyler*, 837 F.3d at 699. The court first concluded that § 922(g)(4) burdened Second Amendment rights and that intermediate scrutiny applied. *Id.* at 688–93. The court then held that § 922(g)(4) did not survive intermediate scrutiny as applied to the plaintiff because the government had failed to show that a *lifetime* prohibition on the possession of firearms was a reasonable fit with the goals of reducing crime and suicide. *Id.* at 693–99.

We turn, then, to our own analysis.

A. *Asking Whether § 922(g)(4) Burdens Second Amendment Rights*

We first ask whether the statute at issue “burdens conduct protected by the Second Amendment.” *Torres*, 911 F.3d at 1258 (quoting *Chovan*, 735 F.3d at 1136). This inquiry “requires us to explore the amendment’s reach based on a historical understanding of the scope of the Second Amendment right.” *Id.* (internal quotation marks and brackets omitted). A law does not burden Second Amendment rights “if it either falls within one of the ‘presumptively lawful regulatory measures’ identified in *Heller* or regulates conduct that historically has fallen outside the scope of the Second Amendment.” *Id.* (some internal quotation marks omitted).

The government has presented a strong argument that both of those inquiries support the conclusion that § 922(g)(4) does not burden Second Amendment rights. The Supreme Court identified as presumptively lawful the “longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Heller*, 554 U.S. at 626. In *Vongxay*, 594 F.3d at 1114–15, we held that § 922(g)(1)—the federal prohibition on the possession of firearms by felons—fell within *Heller*’s “presumptively lawful” category. Like the federal prohibition as to felons, § 922(g)(4) had been on the books for decades when the Court decided *Heller*. Similarly, historical evidence supports the view that society did not entrust the mentally ill with the responsibility of bearing arms. *See, e.g., Beers*, 927 F.3d at 157–58 (summarizing the historical evidence).

Plaintiff responds by re-framing the inquiry. He concedes that a prohibition as to those persons who are *presently* mentally ill and dangerous does not implicate the Second

Amendment. But he reads both *Heller* and the historical evidence as limited to that circumscribed category: those who are presently mentally ill. He urges us to agree with the Sixth Circuit that “historical evidence . . . does not directly support the proposition that persons who were once committed due to mental illness are forever ineligible” to possess a firearm. *Tyler*, 837 F.3d at 689.

We need not decide which perspective better comports with the historical evidence. Instead, we follow the “well-trodden and ‘judicious course’” taken by our court in many recent cases. *Pena v. Lindley*, 898 F.3d 969, 976 (9th Cir. 2018) (quoting *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013)), *petition for cert. filed*, \_\_ U.S.L.W. \_\_ (U.S. Dec. 28, 2018) (No. 18-843). We assume, without deciding, that § 922(g)(4), as applied to Plaintiff, burdens Second Amendment rights.

#### B. *Determining the Appropriate Level of Scrutiny*

We next “determine the appropriate level of scrutiny to apply.” *Torres*, 911 F.3d at 1262. “[L]aws burdening Second Amendment rights must withstand more searching scrutiny than rational basis review.” *Id.* The precise level of heightened scrutiny depends “on (1) how close the law comes to the core of the Second Amendment right and (2) the severity of the law’s burden on the right.” *Chovan*, 735 F.3d at 1138 (internal quotation marks omitted). “[T]here has been near unanimity in the post-*Heller* case law that, when considering regulations that fall within the scope of the Second Amendment, intermediate scrutiny is appropriate.” *Torres*, 911 F.3d at 1262 (internal quotation marks omitted). Strict scrutiny applies only to laws that both implicate a core

Second Amendment right and place a substantial burden on that right. *Id.*

As Plaintiff recognizes, intermediate scrutiny applies here. “[T]he core of the Second Amendment is ‘the right of law-abiding, responsible citizens to use arms in defense of hearth and home.’” *Chovan*, 735 F.3d at 1138 (quoting *Heller*, 554 U.S. at 635). In *Chovan*, we concluded that, regardless of present-day rectitude, a person convicted long ago of a domestic-violence misdemeanor was not a “law-abiding, responsible citizen.” *Id.* That same logic extends here: Regardless of present-day peaceableness, a person who required formal intervention and involuntary commitment by the State because of the person’s dangerousness is not a “law-abiding, responsible citizen.” Section 922(g)(4)’s prohibition thus falls well outside the core of the Second Amendment right. *Id.*

We recognize that the burden that § 922(g)(4)’s prohibition places on Plaintiff is “quite substantial.” *Id.* Unless Congress or the Washington legislature enacts a program relieving him from § 922(g)(4)’s prohibition, the law “amounts to a ‘total prohibition’ on firearm possession for [Plaintiff]—in fact, a ‘lifetime ban.’” *Id.* But we agree with the Sixth Circuit that, “[l]ike the other provisions of § 922(g), § 922(g)(4) does not burden the public at large; it burdens only a narrow class of individuals who are not at the core of the Second Amendment—those . . . previously involuntarily committed.” *Tyler*, 837 F.3d at 691. Just as intermediate scrutiny applies to the other lifetime bans in § 922(g), so too does intermediate scrutiny apply to § 922(g)(4)’s prohibition. *See, e.g., Chovan*, 735 F.3d at 1138 (applying intermediate scrutiny to § 922(g)(9)’s prohibition on the possession of firearms by those previously convicted of the misdemeanor



of domestic violence); *see also Tyler*, 837 F.3d at 691–92 (collecting cases from other circuits that have applied intermediate scrutiny to lifetime bans imposed by § 922(g)).

In conclusion, we join the Sixth Circuit—the only other circuit court to have addressed the issue—in holding that intermediate scrutiny applies here. *Tyler*, 837 F.3d at 690–92.

### C. *Applying Intermediate Scrutiny*

To satisfy intermediate scrutiny, the government’s statutory objective must be “significant, substantial, or important,” and there must be a “reasonable fit” between the challenged law and that objective. *Silvester v. Harris*, 843 F.3d 816, 821–22 (9th Cir. 2016) (internal quotation marks omitted). “A statute need not utilize the least restrictive means of achieving its interest in order to withstand intermediate scrutiny.” *Torres*, 911 F.3d at 1263 (internal quotation marks omitted). “Instead, the statute simply needs to promote a substantial government interest that would be achieved less effectively absent the regulation.” *Id.* (brackets and internal quotation marks omitted).

Here, two important interests support § 922(g)(4)’s ban on the possession of firearms by those who were involuntarily committed to a mental institution: preventing crime and preventing suicide. *See Washington v. Glucksberg*, 521 U.S. 702, 730–35 (1997) (recognizing the government’s “unquestionably important” interest in preventing suicide); *Schall v. Martin*, 467 U.S. 253, 264 (1984) (“The legitimate and compelling state interest in protecting the community from crime cannot be doubted.” (internal quotation marks omitted)); *Torres*, 911 F.3d at 1263 (holding that the

government's interests in crime control and public safety are "important"). We agree with the Sixth Circuit that those two interests "are not only legitimate, they are compelling."<sup>5</sup> *Tyler*, 837 F.3d at 693.

Congress' reasoning is straightforward. Firearms undoubtedly exacerbate acts of violence to others. *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015). Firearms also greatly increase the risk of death by suicide. *See, e.g.*, Matthew Miller & David Hemenway, *Guns and Suicide in the United States*, 359 New Eng. J. Med. 989, 990 (2008) ("A suicide attempt with a firearm rarely affords a second chance. Attempts involving drugs or cutting, which account for more than 90% of all suicidal acts, prove fatal far less often."); *id.* at 991 (discrediting as "invalid" the specious belief that "anyone who is serious enough about suicide to use a gun would find an equally effective means if a gun were not available"); *id.* (concluding that "the availability of lethal means . . . can make the difference between life and death").

In enacting § 922(g)(4) and related restrictions, "Congress sought to . . . keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society." *Dickerson v. New Banner Inst., Inc.*, 460 U.S. 103, 112 (1983) (quoting *Lewis v. United States*, 445 U.S. 55, 63 (1980)), *superseded in other part by statute, as stated in Logan v. United States*, 552 U.S. 23, 27–28 (2007); *accord Small v. United States*, 544 U.S. 385, 393 (2005); *Lewis v. United States*, 445 U.S.

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<sup>5</sup> Because we determine that § 922(g)(4) is a reasonable fit for the government's interest in preventing suicide, we need not and do not address whether the statute is also a reasonable fit for the government's interest in preventing crime.

55, 63 (1980); *Scarborough v. United States*, 431 U.S. 563, 572 (1977). Put more succinctly, “Congress’ intent in enacting [§] 922(g) and [related laws] was to keep firearms out of the hands of presumptively risky people.” *Dickerson*, 460 U.S. at 112 n.6. Accordingly, although § 922(g)(4)’s prohibition takes effect as a result of a *past* event, the statute “target[s] a *present* danger, i.e., the danger posed by [those who previously have been involuntarily committed to a mental institution] who bear arms.” *Vartelas v. Holder*, 566 U.S. 257, 271 (2012) (emphasis added).

The Second Amendment allows categorical bans on groups of persons who presently pose an increased risk of violence. *See, e.g., United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc) (“[S]ome categorical disqualifications are permissible: Congress is not limited to case-by-case exclusions of persons who have been shown to be untrustworthy with weapons . . .”). For example, we upheld the constitutionality of § 922(g)(9)’s ban on the possession of firearms by domestic violence misdemeanants because that category of persons has a high rate of domestic violence recidivism and because the use of firearms by domestic abusers causes more deaths. *Chovan*, 735 F.3d at 1140–41. And we upheld the constitutionality of § 922(g)(5)’s ban on the possession of firearms by unlawful aliens because that category of persons has “an inherent incentive to . . . evade law enforcement” and, if armed, “could pose a threat to immigration officers or other law enforcement.” *Torres*, 911 F.3d at 1264.

Similarly, in enacting § 922(g)(4), Congress determined that, like felons and domestic-violence assailants, those who have been involuntarily committed to a mental institution also pose an increased risk of violence. As we explain below,

scientific evidence amply supports that congressional judgment. Section 922(g)(4)'s prohibition is therefore a reasonable fit for the government's laudable goal of preventing gun violence.

Plaintiff does not challenge that conclusion as a general matter. Indeed, he concedes that § 922(g)(4)'s prohibition justifiably applied to him originally. Instead, Plaintiff brings an as-applied challenge only. He argues that the *continued* application of the prohibition to him is *no longer* justified because of the passage of time and his alleged mental health and peaceableness in recent years. For the reasons that follow, we disagree.

1. *Scientific Evidence Reasonably Supports Congress' Judgment.*

The scientific evidence cited by the government shows an increased risk of violence for those who have been released from involuntary commitment. For example, the authors of one meta-analysis surveyed the available scientific literature that studied the relationship between a history of mental illness and the risk of suicide. E. Clare Harris & Brian Barraclough, *Suicide as an Outcome for Mental Disorders: A Meta-Analysis*, 170 Brit. J. Psychiatry 205 (1997) [hereinafter *Suicide Meta-Analysis*]. The authors found that studies of persons released from involuntary commitment reported a combined "suicide risk 39 times that expected."<sup>6</sup> *Id.* at 220 (emphasis added). That extraordinarily increased risk of

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<sup>6</sup> The authors defined the "expected" rate of suicide as either the rate calculated by the authors of the individual study or the background rate for the general population of the relevant country, controlling for years of the study, age, and gender. *Suicide Meta-Analysis, supra*, at 205.

suicide clearly justifies the congressional judgment that those released from involuntary commitment pose an increased risk of suicide.

Plaintiff correctly points out that the scientific evidence is not a perfect match for his circumstances. For example, although suicide risk following release from commitment is extremely high, the risk “seems highest” initially and “diminishes thereafter.” *Id.* at 223. Furthermore, the studies followed the outcomes of those released from involuntary commitment for up to 8.5 years, whereas Plaintiff was released from involuntary commitment two decades ago. Channeling the Sixth Circuit’s analysis, Plaintiff urges us to conclude that the government’s cited studies are insufficient to support the congressional judgment that he poses an increased risk of suicide. *Tyler*, 837 F.3d at 695–96.

We disagree. In assessing congressional judgment, “we do not impose an ‘unnecessarily rigid burden of proof,’ and we allow [the government] to rely on any material ‘reasonably believed to be relevant’ to substantiate its interests.” *Pena*, 898 F.3d at 979 (quoting *Mahoney v. Sessions*, 871 F.3d 873, 881 (9th Cir. 2017)). That standard applies because “we are weighing a legislative judgment, not evidence in a criminal trial.” *Id.* Thus, we do not require “scientific precision.” *Id.* at 984. We ask only whether the evidence “fairly supports” Congress’ “reasonable” conclusions. *Id.* at 979–80 (quoting *Jackson v. City of San Francisco*, 746 F.3d 953, 969 (9th Cir. 2014)); *see also Jackson*, 746 F.3d at 969 (holding that, even if the relevant science were “an open question,” that conclusion “is insufficient to discredit [a legislative body’s] reasonable conclusions”). When empirical evidence is incomplete, we “must accord substantial deference to the predictive

judgments of Congress.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665 (1994). “Sound policymaking often requires legislators to forecast future events and to anticipate the likely impact of these events based on deductions and inferences for which complete empirical support may be unavailable.” *Id.*

Scientific studies show an ever-present increased risk of violence for those who were committed involuntarily, even well after they are released. We cannot conclude that, because no one apparently has published a study beyond 8.5 years after the participants’ release from involuntary commitment, Congress may not infer that the increased risk of violence continues after that time period. Importantly, the studies did not show merely a slight increase in risk for those involuntarily committed; the studies reported “a suicide risk *39 times* that expected.” *Suicide Meta-Analysis, supra*, at 220 (emphasis added). It was well within Congress’ legislative discretion to predict that the increased risk would not plummet to *zero* in later years.

Closely related studies confirm that suicide risk remains extremely high for those with a history of mental illness, even when studies continue beyond a decade after treatment. “Previously hospitalised patients” were studied for “up to 15 years after discharge from in-patient treatment,” and they had “a suicide risk seven times that expected.” *Id.* at 221. “Community care patients” were studied for up to 12 years, and they had a “suicide risk almost 13 times that expected.” *Id.* “Out-patients” were studied for up to 12 years, and they had “a suicide risk 18 times that expected.” *Id.* Studies that did not differentiate between the types of treatment that patients received were conducted for up to 15 years and reported “a suicide risk 11 times that expected.” *Id.*

In sum, although the scientific evidence suggests that Plaintiff's increased risk of suicide decreases over time, nothing suggests that it ever dissipates entirely.<sup>7</sup> Scientific evidence thus fairly supports the congressional judgment that those who have been involuntarily committed to a mental institution continue to pose an increased risk of violence even many years after their release from commitment. *See Chovan*, 735 F.3d at 1142 (rejecting an as-applied challenge to § 922(g)(9)'s prohibition on a domestic violence misdemeanor because he had not "directly proved that if a domestic abuser has not committed domestic violence for fifteen years, that abuser is highly unlikely to do so again").

Plaintiff has asserted that, because *he* was released from commitment years ago, no longer suffers from mental illness, and has been peaceable in recent years, the Second Amendment requires that he be allowed to possess firearms. But we emphasize that we are assessing congressional judgment about a category of persons, not about Plaintiff himself. As described above, scientific evidence reasonably supports the congressional judgment about that category of persons. We agree with the Sixth Circuit that the Second Amendment does not demand "an individualized hearing" to assess Plaintiff's own personal level of risk. *Tyler*, 837 F.3d at 698 n.18; *see also Torres*, 911 F.3d at 1264 n.6 (holding

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<sup>7</sup> In other contexts, scientific consensus exists that, over time, a particular increased risk dissolves entirely. For example, the American Cancer Society reports that, fifteen years after quitting smoking, a former smoker's "risk of coronary heart disease is that of a non-smoker's." Am. Cancer Soc'y, *Benefits of Quitting Smoking Over Time*, <https://www.cancer.org/healthy/stay-away-from-tobacco/benefits-of-quitting-smoking-over-time.html>. We have located nothing similar in the present context.

that, under intermediate scrutiny, some amount of over-inclusiveness for a firearms prohibition is permissible).

But even if we were to consider his personal situation, Plaintiff's own anecdotal evidence of his psychological evaluations in 2014 confirms what the scientific literature explains: Although his present level of risk is lower than it was around the time of his commitment, his history of mental illness remains a scientifically recognized factor in evaluating his current level of risk. One of Plaintiff's doctors wrote that a history of mental illness is "associated with higher risk of aggression." Plaintiff's results on one psychological test showed less of a risk than "the base rate for individuals with a psychiatric history"; one doctor concluded that he has a "low risk for future violence"; and another doctor concluded that he does not "represent[] a significant suicide risk." But nothing in the record suggests that Plaintiff's level of risk is nonexistent or that his level of risk matches the risk associated with a similarly situated person who lacks a history of mental illness.

## *2. Congress Has Not Reconsidered Its Judgment.*

Congress' 2008 enactment of 34 U.S.C. § 40915 does not affect our analysis. As described above, § 40915 allows states to create their own "relief from disabilities" programs. The Sixth Circuit held that § 40915 "is a clear indication that Congress does not believe that previously committed persons are sufficiently dangerous as a class" to prohibit them from possessing firearms. *Tyler*, 837 F.3d at 697. We understand Congress' enactment of § 40915 differently.

Congress enacted § 40915 as part of the NICS Improvement Amendments Act of 2007 ("NIAA"), 34 U.S.C.



§§ 40902–40941. As its name suggests, the NIAA aimed to improve the National Instant Criminal Background Check System (“NICS”), the federal background-check system that includes a database listing persons who have been disqualified from possessing firearms. *Id.* § 40902. Congress passed the NIAA in response to horrible acts of gun violence by those with a history of mental illness. *Id.* § 40902(8)–(9). All of the NIAA’s substantive provisions other than § 40915 seek to improve the information contained in the federal database. *See, e.g., id.* § 40911 (requiring federal agencies to share information); *id.* §§ 40912–40914 (encouraging states to share information).

The NIAA was a political compromise that included § 40915’s avenue for relief for some of the least dangerous only in exchange for greatly improved enforcement as to all the rest, including the most dangerous.<sup>8</sup> Congress’ statutory extension of grace to some persons as part of a political compromise aimed at preventing gun violence does not affect our constitutional analysis. We do not read the NIAA as disturbing the longstanding congressional judgment—supported by scientific evidence—that those who were

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<sup>8</sup> *See, e.g.,* 153 Cong. Rec. 15,676 (2007) (“In order to move the legislation to the floor, it was necessary to make some accommodations [including the addition of § 40915] to incorporate the concerns of gun owners.” (statement of Rep. Conyers)); *id.* at 15,677 (“This legislation represents a true compromise . . . [with] two diverse groups . . . , the NRA and the Brady Group, coming together to help work out this legislation, and both had some benefits from it.” (statement of Rep. Castle)); *accord* 153 Cong. Rec. 36,338 (2007) (“[T]his compromise legislation . . . respects the rights of gun owners and, at the same time, makes sure that the NICS system will work more effectively.” (statement of Sen. Leahy)).

involuntarily committed to a mental institution pose an increased risk of violence even years after their release.<sup>9</sup>

3. *Section 922(g)(4) Is a Reasonable Fit for Preventing Suicide.*

To meet intermediate scrutiny, the government must demonstrate that § 922(g)(4) is a “reasonable fit” for the goal of reducing gun violence. *Torres*, 911 F.3d at 1263. As described above, Congress reasonably concluded that restricting firearms from persons with an increased risk of violence advances the goal of reducing gun violence. Section 922(g)(4) thus appears to be a “reasonable fit” for the government’s important interest. *See id.* (holding that, to meet intermediate scrutiny, a “statute simply needs to promote a substantial government interest that would be achieved less effectively absent the regulation.” (brackets and internal quotation marks omitted)).

But we also must consider the availability, or unavailability, of avenues of relief from categorical, lifetime bans. *Fisher v. Kealoha*, 855 F.3d 1067, 1071 (9th Cir. 2017) (per curiam); *Chovan*, 735 F.3d at 1142. Plaintiff presently

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<sup>9</sup> Nor could Congress’ extension of grace to some persons alter the meaning of the Second Amendment. Like many constitutional provisions, the Second Amendment establishes a floor below which Congress may not legislate. But if Congress chooses to legislate well above that floor—for example, by allowing categories of persons to possess firearms even though Congress could restrict possession—that legislation has no effect on the meaning of the Second Amendment. *See, e.g., Bracy v. Gramley*, 520 U.S. 899, 904 (1997) (holding that “the Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard” and noting the existence of many laws that legislate above that constitutional minimum).

has no avenue for seeking relief from § 922(g)(4)'s prohibition. Unless Congress funds the “relief from disabilities” program defined in § 925(c) or the Washington legislature creates a “relief from disabilities” program pursuant to § 40915,<sup>10</sup> federal law prohibits Plaintiff from possessing a firearm. This case thus differs from challenges to other lifetime bans imposed by § 922(g), because those provisions allow persons to seek relief from the lifetime ban in certain circumstances. *See, e.g., Chovan*, 735 F.3d at 1142 (noting the avenues for relief, such as a gubernatorial pardon, available to domestic-violence misdemeanants).

Several factors lead us to conclude that § 922(g)(4) nevertheless remains a reasonable fit for the congressional goal of reducing gun violence. First, the governmental interest at stake is compelling. The statute does not merely aim to protect financial interests. Nor is the statute merely a modest, incremental improvement in fighting crime. *See, e.g., Pena*, 898 F.3d at 981–86 (upholding the constitutionality of a law requiring some firearms to “microstamp” identifying information onto discharged bullets). The interest at stake here is preventing horrific acts of violence. Suicide affects not only its immediate victim; family members, friends, and the community as a whole suffer immensely. Even a small decrease in the number of suicides is, therefore, a significant public benefit.

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<sup>10</sup> That possibility is not fanciful. Soon after the Third Circuit rejected the plaintiff's challenge to § 922(g)(4) in *Beers*, 927 F.3d 150, the federal government approved Pennsylvania's state program under § 40915. Petition for cert. 23 (U.S. Jan. 9, 2020) (No. 19-864). The plaintiff in *Beers* is “now licensed to possess a firearm and has obtained one.” *Id.*

Second, as discussed above, the scientific evidence strongly suggests that the increased risk is not tiny. The available studies, though an imperfect match for Plaintiff's precise circumstances, have found that those released from involuntary commitment are 39 times more likely to commit suicide than those not previously committed.

Finally, § 922(g)(4)'s prohibition as to those who were committed involuntarily applies not to persons who *theoretically* might be dangerous at some point in their lives. Instead, it applies only to those who were found, through procedures satisfying due process, *actually* dangerous in the past.<sup>11</sup> By limiting the prohibition to those with a demonstrated history of dangerousness, § 922(g)(4) is more narrowly tailored than other lifetime prohibitions that we have upheld, such as § 922(g)(1)'s prohibition as to felons, both violent and non-violent. *See United States v. Phillips*, 827 F.3d 1171, 1175–76 (9th Cir. 2016) (upholding § 922(g)(1)'s lifetime ban as applied to someone convicted of the “non-violent” felony of misprision).

In sum, we hold that § 922(g)(4)'s prohibition on those who have been involuntarily committed to a mental institution is a reasonable fit for the important goal of reducing gun violence. The district court therefore correctly granted the government's motion to dismiss. Because the factual allegations in the proposed amended complaint do not affect our analysis, the district court correctly denied, as futile, Plaintiff's motion for leave to amend the complaint.

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<sup>11</sup> As applied to Plaintiff, a state court found him dangerous at least once, and possibly three times. *See supra*, note 2.


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CONCLUSION

The federal prohibition on Plaintiff's possession of firearms because of his past involuntary commitment withstands Second Amendment scrutiny. Those who are no longer mentally ill, but who were committed involuntarily years ago, unquestionably pose less of a risk of violence now than when a state court found them to be mentally ill and dangerous. But scientific evidence reasonably supports the congressional judgment that they nevertheless still pose an increased risk of violence. The Second Amendment allows Congress to further its goal of preventing gun violence by barring Plaintiff from possessing a firearm.

We emphasize that we reach only Plaintiff's Second Amendment challenge and that our holding is limited to § 922(g)(4)'s prohibition on those who have "been committed to a mental institution." We emphatically do not subscribe to the notion that "once mentally ill, always so." We accept, as we must and as we have no reason to doubt, that Plaintiff is no longer mentally ill. We decide only that § 922(g)(4)'s application to him withstands Second Amendment scrutiny.

**AFFIRMED.**



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Promising practices by states for improved record reporting

The BJS website now has information on promising practices by several states for improved record reporting to the National Instant Criminal Background Check System (NICS). This information responds to requirements in the NICS Improvement Amendments Act of 2007 (P.L. 110-180) and the recent GAO Report, *Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks* (GAO-12-684). The promising practices involve identifying, collecting, maintaining, automating, and transmitting information that determines whether a person is prohibited by federal or state law from possessing or receiving a firearm, and that improves the availability of these records to national systems. Several practices focus on how to improve reporting of mental health information while others address how to determine relevant records, how to facilitate broader coordination, or other process improvement efforts.

[Arizona](#) — Creating a SharePoint Site to Coordinate NICS Work

[Arizona](#) — Creating County Record Briefs Focused on the Completeness of Criminal History Records for NICS Disqualifying Data

[Connecticut](#) — Using Visual Flow Charts to Document "As Is" Data Flow

[Florida](#) — Identifying Disqualifying Mental Health Dispositions

[Illinois](#) — Improve Tracking of Involuntary Commitments

[New Jersey](#) — Civil Commitment Automated Tracking System (CCATS)

[New York](#) — Automate Communication Between Mental Health Record Holders and NICS Index


[New York](#) — Establish a Misdemeanor Crime of Domestic Violence Through Legislation


[Oregon](#) — Implementing Live Scan Devices in Courts to Improve Record Matching

[Texas](#) — Conducting Training & Outreach with Court Clerks

[Virginia](#) — Automate Mental Health Record Transfer to Repository

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NICS Act Record Improvement Program (NARIP) Awards FY 2009-2018

State	2009-2013	2014	2015	2016	2017	2018	2009-2018
Alabama	\$800,000	\$770,000	\$349,000	\$509,176			\$2,428,176
Alaska		\$75,600		\$527,189		\$653,825	\$1,256,614
Arizona	\$2,252,411	\$769,332	\$1,708,556	\$1,117,414		\$1,682,178	\$7,529,891
Connecticut	\$4,900,000						\$4,900,000
Delaware		\$90,000	\$74,000	\$72,000	\$86,625	\$247,475	\$570,100
Florida	\$8,634,143	\$233,580	\$1,952,919		\$406,035	\$1,554,420	\$12,781,097
Hawaii			\$401,249	\$818,076			\$1,219,325
Idaho	\$3,666,617		\$203,400			\$98,047	\$3,968,064
Illinois	\$4,359,500						\$4,359,500
Indiana	\$2,031,000	\$950,000	\$1,491,240			\$330,737	\$4,802,977
Iowa		\$407,397					\$407,397
Kentucky	\$1,907,609			\$84,363	\$68,898		\$2,060,870
Louisiana	\$1,128,631	\$1,165,559	\$1,950,000	\$770,829	\$1823,477	\$1,442,625	\$7,281,121
Maryland	\$159,627	\$796,850	\$2,496,514	\$323,373	\$332,302	\$201,823	\$4,310,489
Massachusetts				\$491,565			\$491,565
Missouri	\$2,323,737	\$920,000	\$1,160,260	\$691,356	\$621,935	\$850,830	\$6,568,118
Nebraska	\$825,288	\$509,961	\$785,449	\$398,774	\$180,668	\$235,899	\$2,936,039
Nevada	\$921,932	\$235,477	\$274,466	\$303,378	\$565,870	\$635,009	\$2,936,132
New Jersey	\$3,632,891		\$1,179,000				\$4,811,891
New York	\$10,130,501	\$1,254,127	\$2,936,045	\$2,481,605	\$1,655,375	\$6,307,342	\$24,764,995
North Dakota	\$297,267	\$223,200	\$280,995		\$257,273	\$178,518	\$1,237,253
Oklahoma				\$1,203,288	\$1,000,000	\$1,652,813	\$3,856,101
Oregon	\$4,542,109	\$579,835	\$367,104	\$664,446	\$865,614	\$848,741	\$7,867,849
South Carolina		\$1,494,330	\$916,991	\$599,556	\$803,276		\$3,814,153
Tennessee			\$1,378,097			\$606,023	\$1,984,120
Texas	\$1,906,150						\$1,906,150
Utah	\$400,000		\$800,000	\$500,000		\$507,132	\$2,207,132
Virginia	\$764,100		\$149,222	\$1,065,681	\$986,409	\$1,548,873	\$4,514,285

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West Virginia	\$1,800,000	\$967,365	\$1,750,151	\$1,879,885	\$2,540,923	\$1,202,617	\$10,140,941
Wisconsin	\$3,481,372		\$90,396				\$3,571,768
Tulalip Tribe of WA				\$333,841		\$193,178	\$527,019
Total Award	\$60,864,885	\$11,442,613	\$22,695,054	\$14,835,795	\$11,194,680	\$20,978,105	\$142,011,132
Average Award	\$2,766,586	\$673,095	\$1,031,593	\$741,790	\$746,312	\$1,048,905	\$4,581,004
Median Award	\$1,969,305	\$769,332	\$858,496	\$563,373	\$621,935	\$644,417	\$3,814,153

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State-by-State Summaries for FY 2018 NICS Act Record Improvement Program (NARIP)

Commonly used acronyms:

- AFIS — Automated Fingerprint Identification System
- CCH — Computerized Criminal History
- CHRI — Criminal History Record Information
- GJXDM — Global Justice Exchange Data Model
- IAFIS — Integrated Automated Fingerprint Identification System
- III — Interstate Identification Index
- NCIC — National Crime Information Center
- NFF — National Fingerprint File
- NGI — Next Generation Identification
- NIBRS — National Incident-Based Reporting System
- NIEM — National Information Exchange Model
- NIST — National Institute of Standards and Technology
- NICS — National Instant Criminal Background Check System
- NSOR — National Sex Offender Registry
- XML — Extensible Markup Language

The following provides a description of activities under NARIP grants for each of the states receiving funds in alphabetical order.

**Alaska** (\$653,825) The Alaska Department of Public Safety (DPS) will conduct three projects related to the improvement of record submissions to NICS. 1) Reporting MCDV to NICS: the Alaska DPS and the Alaska Court System (ACS) are working in collaboration to improve the accuracy and availability of records for MCDV. The ACS is Alaska's source for felony and misdemeanor domestic violence dispositions and criminal competency records. The current ACS for processing of felony, MCDV, and criminal competency cases is paper-based, inefficient, and varies from court to court. This manual system has contributed to data gaps and inaccuracies in disposition reporting at the state and national levels. AK DPS will contract with a vendor to reprogram APSIN (the state repository) to record qualifying MCDV convictions, forward qualifying convictions to the NICS, and maintain contributed records. The ACS project will create an electronic and fully automated process from the filing of a criminal case through disposition, to support DPS entry of information needed in III and the NICS indices without having to re-enter critical disposition information. 2) Identifying MCDV Convictions: AK DPS will hire four Criminal Justice Technician II temporary full time positions to research police reports, charging documents, and conviction records of all misdemeanor assault convictions to determine their applicability to the federal prohibition of firearms, those that met the federal criteria will be flagged for easy NICS identification. Each analyst on average processes approximately 200 conviction records per month. 3) ACS Electronic Forms: the ACS will use funds for the design and development of electronic forms to make it possible for judicial officers to issue dispositions electronically, in real time, from the bench, and to hire a Programmer Analyst to assist with the project.

**Arizona** (\$1,682,178) The Arizona Criminal Justice Commission (ACJC), will administer three projects: 1) NICS Task Force and Project Management: ACJC will continue the multi-agency planning and oversight with the NICS Record Improvement Task Force. The ACJC will contract a project management and system analyst to provide a strategic framework, through targeted recommendations, for executive and legislative actions to improve the state's position in preventing prohibited possessors from obtaining firearms. The Task Force will continue efforts to address procedural, technological, privacy areas, and policy issues surrounding submission, access, and the reporting of NICS information. 2) Develop an Automated System for Conditions of Release: ACJC will work with the AZ Administrative Office of the Courts (AZAOC) to develop a comprehensive integrated system to automate Conditions of Release once they have been issued by the court. The conditions that contain a prohibition of a firearm will be transmitted to NICS and local law enforcement. Steps to complete the automation systems include: developing a repository for capturing court records when a condition of release has been ordered that prohibits a firearm or no contact; transmitting to NICS when a condition of release is ordered that prohibits a firearm; developing an interface so law enforcement agencies will have access to records when a condition of release has been ordered; developing an interface between AZ Department of Public Safety's (AZDPS) message switch to handle requests and responses; and providing training and technical assistance. 3) Update AZ Criminal History Records: The AZDPS is the Central State Repository (CSR). The CSR will create and process gap-fill arrests for approximately 5,000 AZ criminal history records. The CSR will offer overtime to qualified staff member to research records, generate disposition reports for the AZ courts, create gap-filler arrests, and update the criminal history record. CSR staff will research the pending Superior Court cases for which the Clerks of the Court have never received a disposition report and any additional cases supplied by any AZ court or identified by CSR staff. Further steps include identifying or creating an associated arrest and provide the courts with a final disposition report to complete and forward back to CSR for entry into the AZ CCH file.

**Delaware** (\$247,475) The Delaware Department of Safety and Homeland Security (DDSHS) will use funds to match the records by names in the G4 file (mental health prohibitor file) against records in the court's database. The project will address prohibiting mental health records transmitted to the NICS Indices. Presently, in Delaware, persons acting strangely that were arrested and taken to the hospital for evaluation have been coded as mental patients by the arresting officer even before the doctor made his/her determination. This information was coded into the state database and transmitted to NICS as persons prohibited from purchasing a firearm. To address the problem, the Delaware Health and Social Services submitted to Delaware Criminal Justice Information System (DELJIS) the records that needed to be added to the G4 file. This file contains the records that have been validated by Health and Social Services as true commitments. In 2015, the DDSHS received funds to match criminal history records in the state's criminal history repository against the G4 file to check for accuracy and completeness. Funds from the FY 2016 NCHIP program were used to match the records by names in the G4 file against records in the court's database. In FY 2017, the agency sought funds to search the Superior Court's database to validate records of person's having been involuntary committed and to maintain a copy of the record in DELJIS. Under this year's award, research technicians



are being tasked with flagging both the base name and alias names of individuals whose records are being added to the G4 file. Once the records are checked, they are electronically sent to DELJIS, then to the NICS Indices. Funds will be used for the research technicians to write a program that will capture the name information and match it to the State Bureau of Identification (SBI) number to update an individual's record which will automatically trigger a response to the NICS Indices that an update/change has occurred to the record. Delaware will also use funds to add new records to the NICS database of individuals that may have been missed in III or in the FBI database due to lack of fingerprints. Additionally, funds will be used to develop an interface between the SBI case management system and the scheduling database where applicants can schedule a one-time request for service online, eliminating the need to make and answer phone calls. The information gathered will be sent to the FBI for validation, and once verified will be updated in the state's case management system.

**Florida** (\$1,554,420) The Florida Department of Law Enforcement (FDLE) will conduct three projects: 1) Risk Protection Orders and Search Warrants: FDLE will use funds to expand the current eWarrants application to integrate electronic risk protection orders and search and seizure warrants. This will accommodate new requirements outlined in Florida Statute 790.401 that allows the courts, when petitioned by a law enforcement agency, to determine if an individual may pose a significant danger to themselves or the community. A temporary or final signed order requires the respondent to turn over any firearms in their possession, and prohibits them from purchasing, possessing, or receiving, a firearm or any ammunition for the duration of the order. This project is designed to ensure that risk protection order information is exchanged and entered in state and national systems in a timely manner. 2) Mental Health Competency (MECOM) Reporting Assistance for Miami-Dade and six Additional Florida Counties: FDLE will use funds to provide additional resources to Florida's Clerks of Court to support the timely and accurate entry of mental health records into the NICS Indices. The risk of late reporting of mental health records is that an individual who is prohibited from purchasing or possessing a firearm may be approved at the time of the background check if the disqualifying mental health record is not available. The pilot will focus on Miami Dade Clerk of Court and six additional Florida counties to provide at least seven staff members who will be responsible for identifying, researching, and entering of disqualifying mental health records within expected time frames. 3) Historical Disposition Research: FDLE will use funds to continue prior year efforts to complete an evaluation of all Florida counties and their criminal court records for arrest records in the repository missing a disposition. Improving the overall accuracy and completeness of FDLE's criminal history repository, III and responding to firearm background checks in a timely manner is a matter of public safety.

**Idaho** (\$98,047) The Idaho State Police (ISP) will use funds to research missing dispositions. Idaho has missing dispositions in the state criminal history file maintained by the ISP's Bureau of Criminal Identification (BCI). The state criminal history repository receives electronic dispositions from the courts system. There are records in the repository without dispositions. Some of those dispositions are in the courts' system. Other arrests missing dispositions are a result of prosecutor declinations, leaving a naked arrest that will never be disposed by the court. Some of the dispositions come from the court without the transaction control number (TCN) that links them to the corresponding arrest record. Without this critical information, the disposition is unable to connect properly and is placed in a "hold file." These dispositions must be matched manually and requires the use of additional personnel and resources to accomplish.

**Indiana** (\$330,737) The Indiana Criminal Justice Institute will transfer funds to the Indiana Supreme Court, Division of State Court Administration's Trial Court Technology (TCT) Group to improve the number of convictions and the accuracy of the conviction information sent from the courts to the criminal history repository information system called CHRIS maintained by the Indiana State Police (ISP). Indiana statute requires the Clerk of Court to send any criminal conviction information to ISP within thirty days of sentencing. Today, there are three ways ISP receives conviction information: electronically through the prosecutor system; electronically from the courts either from Odyssey, the case management system used by over 282 courts or the Abstracts of Judgments database; and, on paper through the U.S. Mail. TCT will use funds to complete three projects. The first project will target the counties that are already deployed on the new court case management system, but that have not yet deployed the criminal history interface. The second project involves transitioning the Odyssey/CHRIS interface from a legacy interface to a more modern web service interface that mirrors what was recently developed and deployed by the ISP and the Indiana Prosecuting Attorney's Council. The final project includes the purchase and deployment of 10 Livescans in courthouses to improve the quality and completeness of records at the state and national level. All of these projects combined will improve the reporting of records to the NICS.

**Louisiana** (\$1,442,625) The Louisiana Commission on Law Enforcement (LCLE) will partner with the Louisiana Supreme Court and the Louisiana District Attorneys' Association (LDAA) to coordinate the development and the integration of the state's various criminal justice information systems. Funds will be used to improve the completeness, accuracy and timeliness of mental health reporting and restriction data by upgrading the technology within the Louisiana Protective Order Registry (LPOR) database, and conducting workflow analysis and training sessions across law enforcement, district attorney offices, and clerks of court in seven parishes throughout Louisiana. An upgrade to the LPOR database will allow trial courts to electronically file protective orders directly to LPOR and reduce the time and transmission from the trial court to the registry; the development of a public facing web-based front end which will allow external users the ability to enter pertinent data required for generating a petition or protective order; the creation of a standardized data exchange protocol between the registry and external entities; and, an automatic association of images to orders. The LDAA will use funds to conduct workflow analysis and training sessions across law enforcement, district attorneys offices and clerk of courts collectively in seven parishes in Louisiana. In addition, LDAA plans to develop a Data Quality Reporting System of reports to provide feedback to agencies to enable them to monitor themselves for missing/inaccurate data elements with a focus on domestic violence records. LDAA is requesting three FTE's for an 18-month period. The IT Project Manager will be responsible for managing the project and meeting with individual agencies and staff to monitor workflow, conduct analysis, and make modifications. This position will also conduct training and interact with staff to implement workflow modifications and monitor results. The IT Assistant will schedule sessions, assist with analyzing workflow, and perform computer support, networking and database maintenance and backup functions as they relate to this project and the Data Quality Reporting System. The Programmer will be responsible for building the Data Quality Reporting System for parishes to use to view data quality exceptions and communicate deficiencies to staff.

**Maryland** (\$201,823) The Maryland Department of Public Safety and Correctional Services (MD DPSCS) will use funds to research missing disposition and expungement records. Since 2010, approximately 174,000 records have been researched and updated in the state, however, missing disposition cases are submitted to CJIS daily. MD DPSCS will: 1) fund hours for current CJIS Record Recovery staff that are trained and authorized to access the appropriate systems to work after hours and on weekends to recover missing dispositions for 47,853 arrest without disposition cases; and 2) fund overtime for current CJIS Expungement staff that are trained and authorized to access the appropriate systems to work after hours and on weekends to address the expungements backlog created by cases that are forwarded to the Expungement Unit that cannot be closed within the required 60 day timeframe due to missing disposition. There are currently 12,880 records to be processed with 3,184 records over the 60 day timeframe.

**Missouri** (\$850,830) The Missouri State Highway Patrol (MSHP) will administer and monitor the following five projects in collaboration with their partner agencies: 1) Complete Development and Modifications of the Show-Me Courts System: The Office of the State Courts Administrator (OSCA) will continue to develop the new Show-Me Courts case management system. Funds will be used to support two Senior IT Programmers who will work with the Show-Me Courts project team to complete the programming for the system that is necessary for associate and circuit level criminal case processing. The development includes: functionality to allow for the reporting of associated felony and



misdemeanor charges to MSHP; design and development of reporting of circuit felony and misdemeanor charges to MSHP; and continued development of proper reporting to NICS. 2) MSHP Overtime for Researching Missing Dispositions: The MSHP will use funding to support an overtime project for court and prosecutor employees to research missing disposition information. MSHP has identified two types of incomplete records that need to be researched: records that have charges but lack a court case disposition; and records that have an arrest, but no indication if charges were filed or denied. The overtime project will focus on those records that are 10 years old which would increase MO's disposition completion percentage and assist NICS personnel in making firearm purchase determinations. 3) Missouri Office of Prosecution Services (MOPS) Karpel Data Transfer/Interface: Currently, there is no interface between the Prosecuting Reporting System, Karpel, and MULES data from Livescans. MOPS will develop an interface which will allow secure automatic transfer of defendant and charge information for all in-custody arrests in the state through arrest data entered through the Livescan system. The interface will also allow the data to automatically populate the prosecutors' case management system to assure the information is securely and accurately transferred, and eliminate the need for duplicate data entry. 4) MOPS Technology Automation Resource/Sex Offender/Firearms Resource Prosecutor: MOPS will hire a FT Resource Prosecutor (RP) for 1-year who will be responsible for handling Technical Automation, Sex Offender, and Firearms-related questions, issues, and training. The RP will work independently and in coordination with OSCA and MSHP to coordinate the accuracy and completeness of the data transfer relating to criminal history reporting from prosecuting attorneys' offices throughout OSCA and the central repository. 5) MOPS In-House IT Specialist: MOPS will hire an IT Specialist for 1-year to provide technical assistance to prosecutors' office with program and equipment maintenance, addressing interface issues with other criminal justice partners such as the OSCA and law enforcement agencies. The IT Specialist will work with the MOPS case management software provider to address program and technical issues and act as an intermediary between local prosecutor offices and the vendor, Karpel Solutions.

**Nebraska** (\$235,899) The Nebraska State Patrol (NSP) will conduct three projects: 1) Nebraska NICS Record Improvement Program: the NSP will continue to employ the program manager secured with 2016 NARIP funds. This program manager coordinates efforts among agencies and has developed a plan to measure progress and results. Further, the program manager will continue to engage in outreach to areas of tribal law enforcement, prosecuting attorneys, state correctional facilities, and parole agencies, targeting well-established groups and representatives. The purpose of the task force is to assess completeness and availability of NICS records and ensure all relevant records are being reported. 2) MCDV Automated Reporting Project: NSP has made considerable strides in automating qualifying records for MCDV. Specifically, the new domestic violence system implemented by the state will automatically submit records to NICS while the historical records will still need to be entered. A recent analysis of such records in Nebraska has identified approximately 20,000 historical misdemeanor MCDV records for potential entry into NICS. This project will improve automation and reduce gaps in reporting. 3) Protection Order Project: NSP will continue to develop and enhance the capabilities of the Protection Order Portal. The portal currently has included several features in its development stages, but still faces a significant reporting issue. The inclusion of Douglas County records into NCIC Protection Order File will ensure that Nebraska will reach, and perhaps exceed, the goal of a 90% entry-rate statewide. Making these records available nationally is critical due to the volume of protection order records being issued in Douglas County, and the quantity of existing records available for entry.

**Nevada**(\$635,009) The Nevada Department of Public Safety (NVDPS), Records Bureau will use funds to employ 18 temporary positions to assist Repository staff with data entering missing dispositions into the Nevada CCH as well as III. These positions are critical to the General Services Division's ability to conduct firearms background checks and employment suitability determinations as well as improving access to firearms by law-abiding citizens. In 2013, the Chief Justice of the Nevada Supreme Court directed all the courts to audit their records to make sure they were reporting mental health adjudications and dispositions for entry into NICS. This effort will ensure that final case outcomes will be available in both state and national systems accessed at the NICS. Additionally, this team will help correct inaccurate criminal history conversion data and backfill missing electronic disposition information already in the state's CCH into the III system. This award will supplement those efforts and leverage state and federal funds to identify and match missing dispositions with their corresponding arrests, ultimately, improving the federal reporting of an individual's criminal history record. The focus for these positions are on data entry of missing dispositions, when and if necessary, these positions will also support the data entry and research of individuals with mental health adjudications on their records. The efforts of these positions can be seen in the dramatic increase in records available at the national level. While the state has improved its record reporting over the years they believe there are more gaps to fill and the continuation of the FTE temporary staff will support these efforts and improve records on a local and national level. The proposed tasks are to complete the disposition backlog, enter dispositions into the III system that are currently only in the state CCH due to limited technological capabilities, and correct older conversion records.

**New York** (\$6,307,342) The Division of Criminal Justice Services (DCJS), will use funds for the following projects: 1) Automate Transmission of MCDV: DCJS will automate the identification of MCDV-eligible prohibitors and transmit those to NICS. DCJS will use a pre-defined set of federally prohibiting relationships and known charge convictions that the FBI has determined to meet MCDV criteria. 2) Develop Automated Feed from the CCH to NICS: DCJS will develop an automated feed from the CCH to the NICS "State Disqualifier" Index. This feed will include all individuals convicted of qualifying offenses that would prohibit an individual from possessing a firearm in the state. 3) Improve Order of Protection Reporting: Office of Court Administration (OCA) will automate the transfer of protection order data from the Courtroom Program into WebDVS. The elimination of duplicate data entry will streamline the data entry process, reducing data entry error and delays, and reducing the use of unapproved and outdated order forms. 4) Improve Prosecutor Reporting of MCDV: DCJS will improve the number of MCDV convictions that are reported to the NICS by making programming changes to the Prosecutors Case Management System (PCMS), the on-line case management system used by 53 out of 62 of district attorneys' offices in the state. The changes to the PCMS to flag, generate notice, and track MCDV eligible offenses will ensure that more MCDV convictions are transmitted to NICS. 5) Improve Felony Disposition Reporting: Staff funding will assist in the implementation process including preparing each court for the new Universal Case Management System (UCMS) system by conducting "operational readiness" planning and review, training court staff and judges, and assisting the court during the UCMS "trial period" where the court practices with the new system while still operating on the legacy system. 6) Enhance NICS Reporting System: The Department of Health/Health Research, Inc. (DOH/HRI) will maintain and update its three modes of NICS record reporting: manual, bulk file upload and automated, record reporting processes. DOH/HRI continually monitors the timeliness and completeness of records reported by hospitals, and works with facilities to mitigate errors immediately upon discovery of an issue. 7) Improve Mental Health Record Reporting to NICS: Office of Mental Health (OMH) will undertake quality assurance activities to further ensure the completeness and data integrity of NICS submissions. These activities include the use of other supporting data sources. Comparative analysis will determine if qualifying hospital admissions are being reported and if they are being reported accurately. 8) Law Enforcement Interface with NCIC: The Integrated Justice Portal currently provides users the ability to query person information stored at NCIC. DCJS will develop a portal interface for the update functions, and the supporting business services and integration services to interface with NCIC. State law enforcement personnel will be able to determine whether an individual is considered a prohibited person through the state's NICS Denied Transaction File.

**North Dakota** (\$178,518) The North Dakota (ND) Office of Attorney's General Division of the Bureau of Criminal Investigation (BCI) will fund a NICS Analyst position for 2-years to provide outreach, technical assistance, analysis, and training to local law enforcement and state's attorneys for reporting systems to collect and share protection order, warrant, arrest, and disposition information with NICS. Specifically, the project will address the 2018 NARIP priority area of improving the identification and reporting of domestic violence convictions to NICS by increasing the accuracy and completeness of offense reporting, including domestic violence convictions. BCI identified the need for training and support from previously funded NARIP projects that assessed the overall completeness of records being available to

NICS. Project activities include the development of a strategic outreach plan designed to maximize outreach impact and the execution of the strategic plan which includes the completion of travel to deliver direct training and support to local law enforcement and state's attorneys. By providing a NICS Analyst position solely for outreach and training assistance, it will increase the use of systems available to law enforcement to submit protection orders and warrants to NCIC and increase the percentage of records made available to NICS.

**Oklahoma** (\$1,652,813) The Oklahoma District Attorneys Council will transfer funds to the Oklahoma County District Attorney's Office to purchase and implement a modern case management and reporting software system with the ability to electronically submit timely and accurate charging and case disposition information on approximately 15,000 individuals to the Oklahoma State Bureau of Investigation (OSBI) for inclusion in the national systems. The system will convert 22 years of charging and case disposition information on hundreds of thousands of Oklahoma County criminal prosecutions contained within the antiquated case management software to the new software platform. Once the data extraction and conversion to the new software platform is complete and accurate, data will begin to be electronically submitted to OSBI for inclusion in NICS, including historical charging and case disposition information from 1997 to the present. The Oklahoma District Attorneys Council will also transfer funds to the OSBI to improve the accuracy, completeness, and accessibility of criminal history record information in state repositories and the NICS Indices, focusing efforts on identifying, flagging, and making immediately accessible to NICS the records of persons prohibited from purchasing or possessing firearms for domestic violence convictions and other federal prohibitors.

**Oregon** (\$848,741) The Oregon State Police (OSP) will administer two projects: NICS Reconciliation Team to review and improve the reporting of qualifying records; and the Oregon Judicial Department (OJD) will research, design and implement a solution to improve the uniform crime judgment (UCJ) reporting for courts statewide. NICS Reconciliation Support: OSP will use funds to support a 2018 team consisting of two positions (Information Systems Specialist and Operations and Policy Analyst) over the course of 24 months. The goal of the team is to ensure that all targeted records are made available to NICS either through NCIC, III, or the NICS Indices in a timely manner. OSP will also continue work on the newly established Criminal Arrest Record Disposition System (CARDS) tool built to assist records staff in mining data directly from the courts system for older missing Oregon records that pertain to firearm disqualifying charges. The goal for record completeness is to obtain real-time court disposition actions as soon as they occur and minimize delays in reporting case outcomes. The Information Systems Specialist will serve as the technical SME and liaison between OSP records staff and IT experts within OJD to review data reports, identify deficiencies within the data transfer from OJD to OSP, and develop methods that allow records to be reported directly to the repository without resulting in error. The Operations and Policy Analyst will be responsible for reviewing, revising and developing a better assessment method for determining the current rate of record completeness at the repository level, tracking progress made specific to the NIAA and firearm disqualification categories, ensuring the CARDS tool and Prohibited Person File for disqualified persons are working as designed, and confirming that the objective for court data, including sufficient information regarding convictions for misdemeanor crimes of domestic violence, are met. OJD UCJ Reporting Improvement: OJD will implement new functionality to the existing eCourt system through contract services with Tyler Technologies, Inc. (TTI). The project team, consisting of OJD staff and members of TTI, will review existing issues that hinder data sharing, gather requirements to configure the application, determine scope, develop and implement proposed solutions, write, communicate, and train court staff and stakeholders on updated and new court processes to reach efficiency levels. The project will focus on the development of transferrable codes that identify persons prohibited from purchasing and possessing firearms as a result of a conviction for domestic violence offenses. Currently, the federal firearm restrictions do not directly match to all Oregon statutes which may be considered crimes of domestic violence. The result will be improved automation and integrated transmittal of records to OSP and other public safety agencies to provide quicker, more accurate, and more efficient reporting of qualifying domestic violence convictions relating to state and federal firearm disqualifications.

**Tennessee** (\$606,023) During the 2015 Legislative Session, Tennessee passed legislation supporting a relief program. The bill established a Relief from Disabilities Program which provides a procedure for persons adjudicated mentally incompetent, not guilty by reason of insanity, mentally defective, or judicially committed to a mental institution to have the disability removed as it relates to the ability to purchase a firearm. The Tennessee Department of Finance and Administration (TDFA) will transfer funds to the Tennessee Bureau of Investigation (TBI) and the Administrative Office of the Courts (AOC) to aid in the state's efforts to improve criminal history records. TBI intends to have staff work overtime to research and manually flag appropriate records with disqualifying charges, and conduct queries of the state's CCH repository to identify and flag persons with past applicable disqualifying charges. Temporary staff will be used to review and submit backlogged dispositions, containing domestic violence related charges, into the state's CCH. TBI also plans to enhance the message switch to run unattended without manual intervention when the server goes offline for either a planned or unplanned outage. AOC's project includes the creation of an automated monitoring system for verifying the timely reporting of mental health records to the NICS Indices by court clerks.

**Utah** (\$507,132) The Utah Commission on Criminal and Juvenile Justice will transfer funds to the Utah Prosecution Council (UPC) for its Prosecution Case Management System project. UPC will use funds to complete phase III of the case management system project by providing the resources needed to help all of Utah's 29 counties connect to a centralized system. Having a uniform case management system in prosecutor offices will allow for the exchange of defendant information, including names and aliases, charges filed, dismissal, acquittal or convictions, sentencing orders, compliance with probation [i.e. non/payment of fines, non/completion of treatment (substance abuse, mental health, domestic violence, etc.)], probation violations, and protective orders issued. Sharing this information will help increase the accuracy of court and criminal history records and help in making records accessible to NICS. Funds will also be transferred to the Department of Public Safety (DPS) to improve the reporting of protective order and mental health information in court records. Of the 14,289 protective orders entered into Utah's local database in the past 12 months, 52% were not able to be entered into the NCIC due to missing data. Missing data is also a problem for the entry of mental health data into the NICS Indices. This effort will involve enhancing the interface between DPS and the Administrative Office of the Courts for the secure transmission of protective order and mental health information to the FBI's national systems.

**Virginia** (\$1,548,873) The Virginia State Police (VSP) will administer and monitor a project to enhance the current Virginia instant criminal background check system (VCheck): 1) POC VCheck System: The VSP will use funds to design and build a new framework and user interface to provide a set of options for the front end of VCheck application. VCheck is used to perform NICS background checks for the purchase of a firearm and is used extensively by internal and external users. The current technology of the VCheck application was developed in 2009 and restricts it from new and advanced features available with the latest technology. The VCheck enhancement is necessary in order to improve the quality of work of the existing VCheck application's performance response time for each transaction; including workflow redesign, auto-generated billing invoices, improved customer support services and technology supportability. VSP will hire contractual IT staff to help create the internal firearms transaction entry screens and background check; gun query functionality; disposition of firearms functionality; seller and dealer modules; and site administration functions. A business analyst will also be contracted to design the renovation of the VCheck system and be responsible for the oversight and operations, including drafting the system requirements to accomplish the project goals.

**Washington** (\$193,178) The Tulalip Tribe of Washington (Tulalip Tribe) will build on the accomplishments achieved through their prior NARIP grant that provided funding for the necessary personnel and hardware to develop and implement an automation plan for current records, and the development and implementation of a plan to automate their historical civil protection orders and criminal dispositions and records. The Tulalip Tribe will use funds to continue evaluating the records, locating the booking information, collecting the dispositional records, verify the data entry fields and entering data into the NICS database systems. While the Tribe does not have the exact numbers of total arrests,

bookings and other records, they estimate that they may have approximately 10,000 court records to evaluate during this process. The staff will review, potentially develop and enter Odyssey software codes, to keep track of these entries. The goals and objectives of the project include: improve identification of convictions of domestic violence to the NICS; maintain and support the NICS Record Improvement Advisory Council and develop regular oversight mechanisms; create parallel systems for prosecutors and Police Department and develop and plan for entry of current dispositions; develop a process to ensure that the can identify any person meeting the requirement to register a mental health prohibitor; and evaluate processes and provide a report summarizing project successes and overview.

**West Virginia** (\$1,202,617) The West Virginia Supreme Court of Appeals will use funds to continue to reduce the backlog of court dispositions and improve the reporting of records of individuals with mental health adjudications. This is an ongoing effort going back to the FY 2014 project. The disposition backlog project and the WV Offender Case Management System (WVOCMS) projects, both play a vital role in the ability of the court to maintain and improve the quality, completeness and availability of records at the state and national levels. While the WV Supreme Court has made significant progress in addressing the backlog of dispositions in the Criminal Record Repository, there still remains several years backlog on disposition reporting. This incomplete record information is of concern due to the increased use of criminal history records for criminal justice, non-criminal justice, and homeland security purposes. The backlog is directly related to staffing and resources available to process the incoming disposition forms being submitted by court clerks throughout the state. The second gap, reporting of indictments to complete the criminal history file, was also identified in the Court's 2014 NCHIP application. To build upon the efforts, the Court will continue to fund the staff and efforts under this project. The WVOCMS is the system that collects all demographic information, family and criminal history, assessment information, fees information, incarceration information, drug testing and other identifying information. The system has the capability to house scanned copies of the pre-sentence report, court orders and indictments and record missing dispositions for the pre-sentence and LS/CMI reports. The WVOCMS is the most accurate electronic system to pull indictment and submit case file data with a disposition and a required prohibitor to the state criminal record repository for inclusion in the criminal history file. The Court will also use funding to upgrade core networking equipment as the current system in place is outdated.

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Publications & Products

**National Instant Criminal Background Check System (NICS)** Press release on awarded amounts to eight state agencies to improve the quality, completeness, and accessibility of records available under the National Instant Criminal Background Check System (NICS).  
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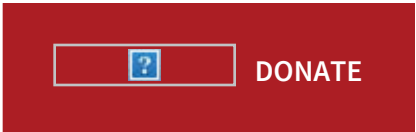
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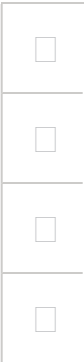
STAY HEALTHY > STAY AWAY FROM TOBACCO

# Benefits of Quitting Smoking Over Time

It’s never too late to quit using tobacco. The sooner you quit, the more you can reduce your chances of getting cancer and other diseases.

Within minutes of smoking your last cigarette, your body begins to recover:

20 minutes after quitting		Your heart rate and blood pressure drop.
12 hours after quitting		The carbon monoxide level in your blood drops to normal.
2 weeks to 3 months after quitting		Your circulation improves and your lung function increases.
1 to 9 months after quitting		Coughing and shortness of breath decrease. Tiny hair-like structures that move mucus out of the lungs (called cilia) start to regain normal function in your lungs, increasing their ability to handle mucus, clean the lungs, and reduce the risk of infection.





**1 year after  
quitting**

The excess risk of coronary heart disease is half that of someone who still smokes. Your heart attack risk drops dramatically.

**5 years after  
quitting**

Your risk of cancers of the mouth, throat, esophagus, and bladder is cut in half. Cervical cancer risk falls to that of a non-smoker. Your stroke risk can fall to that of a non-smoker after 2 to 5 years.

**10 years after  
quitting**

Your risk of dying from lung cancer is about half that of a person who is still smoking. Your risk of cancer of the larynx (voice box) and pancreas decreases.

**15 years after  
quitting**

Your risk of coronary heart disease is that of a non-smoker's.

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These are just a few of the benefits of quitting smoking for good. Quitting smoking lowers your risk of diabetes, lets blood vessels work better, and helps your heart and lungs.

Life expectancy for smokers is at least 10 years shorter than that of non-smokers. Quitting smoking before the age of 40 reduces the risk of dying from smoking-related disease by about 90%.

Quitting while you're younger will reduce your health risks more, but quitting at any age can give back years of life that would be lost by continuing to smoke.

## Are there benefits of quitting that I'll notice right away?

Kicking the tobacco habit offers some rewards that you'll notice right away and some that will show up over time.

Right away you'll save the money you spent on tobacco! And here are just a few other benefits you



may notice:

- Food tastes better.
- Your sense of smell returns to normal.
- Your breath, hair, and clothes smell better.
- Your teeth and fingernails stop yellowing.
- Ordinary activities leave you less out of breath (for example, climbing stairs or light housework).
- You can be in smoke-free buildings without having to go outside to smoke.

Quitting also helps stop the damaging effects of tobacco on how you look, including premature wrinkling of your skin, gum disease, and tooth loss.

Written by    References



The American Cancer Society medical and editorial content team

Our team is made up of doctors and oncology certified nurses with deep knowledge of cancer care as well as journalists, editors, and translators with extensive experience in medical writing.

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## **United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**  
95 Seventh Street  
San Francisco, CA 94103

### **Information Regarding Judgment and Post-Judgment Proceedings**

#### **Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### **Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

#### **Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**

#### **Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)**

##### **(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

##### **B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

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