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July 5, 2016

NICS Comments
Social Security Administration
3100 West High Rise Building
6401 Security Boulevard
Baltimore, MD 21235-6401

Re: United States Justice Foundation Comments to the
Social Security Administration on: "Implementation of the NICS
Improvement Amendments Act of 2007"
Federal Register, Vol. 81, No. 87 (May 5, 2016)

Dear Sirs:

These Comments of the United States Justice Foundation are filed in response to the Social Security Administration's above-referenced Proposed Rulemaking regarding "Implementation of the NICS Improvement Amendments Act of 2007."

The United States Justice Foundation ("USJF"), located in Ramona, California, is a legal defense and educational organization, founded in 1979. More information about USJF can be found at www.usjf.net.

For several years, attorneys for the United States Justice Foundation have been assisting military veterans and their families in defending themselves against the Veterans Administration ("VA") program under which bureaucrats arbitrarily declare many veterans to be incompetent to handle their own financial affairs, often in the context of awarding disability benefits.

After the VA determines that a veteran is entitled to disability benefits, the VA often will appoint a fiduciary to handle the veteran's benefits and the fiduciary receives a fee paid by the veteran. The declaration of incompetence and appointment of a fiduciary is then followed by the VA placing of the veteran on the FBI's NICS list of those individuals prohibited from

legally purchasing a firearm, based on the VA's theory that he has been "adjudicated as a mental defective."

USJF has raised serious constitutional issues with this procedure, because first and foremost, it infringes on the Second Amendment right to keep and bear arms of these veterans who served honorably, and does so without any legitimate due process being given to these veterans.

Before their Second Amendment rights are unilaterally taken from them by bureaucratic action, the veterans receive a letter from the VA informing them that the VA is considering declaring them incompetent due to physical or mental disabilities. These disabilities are often not delineated in the original letter, and the veterans are instructed, erroneously, that the burden of proof is on them to prove that they are competent. USJF maintains that this effort to shift the government's duty to show sufficient predicate for the loss of constitutional rights to the veteran constitutes a violation of the Fifth Amendment.

Further, USJF has evidence in writing that some veterans are being declared incompetent because of minor PTSD, minor depression, and other such conditions, allowing their spouses to pay the family bills, or even having their monthly bills paid automatically by the bank. None of these so-called "disabilities" appear to be grounds for being declared incompetent, much less put on the NICS list under the category of being a mental defective.

Nevertheless, thousands of veterans are on the NICS list as persons prohibited from owning firearms, despite the fact that there has been no formal adjudication by any "lawful authority" — much less any court — that these veterans are, in fact, mentally defective. The VA has decided that virtually any employee of the VA — including unqualified, ill-trained, and badly supervised independent contractors — is a "lawful authority" that can adjudicate the mental competency of veterans. As a result, the Senate Judiciary Committee, chaired by Senator Charles Grassley has found that a staggering 99.3 per cent of the people on NICS under the category of being mentally defective are veterans.

Most of these veterans have never been examined by a psychologist, a psychiatrist, or in some cases even a physician. Yet, they have been classified for life as being mentally defective, and once again the burden of proof is on them to prove they do not belong on NICS. This deprivation of constitutional rights constitutes an abuse of the NICS system and the Constitution.

Now, SSA is proposing to apply this same illegal and unconstitutional process to tens of thousands more Americans — senior citizens — in approximately the same manner that the VA has already used to disarm thousands of our veterans. A review of the regulations reveals that virtually identical criteria to that of the VA is going to be used by the Social Security

Administration to declare disability recipients incompetent, and then add them to the NICS under the category of being “mental defective.”

As is the case with the VA’s so-called “adjudication process” the proposed SSA regulations contain confusing and ambiguous definitions of who constitutes a “representative payee,” the criteria for appointing such a payee, and why the appointment of such a payee automatically classifies a Social Security Disability Insurance beneficiary as mentally defective for the purpose of NICS.

It also appears that the adjudication of a recipient as being mentally defective can be made by any federal bureaucrat working for the SSA, and they can make the decision without any medical professional being involved. The often vague and sometimes generalized criteria for this adjudication process described in the proposed regulations clearly denies the basic elements of due process to the affected Social Security beneficiaries.

The burden of proving they are competent and/or not mentally defective falls squarely on the Social Security beneficiary. This means the bottom line for Social Security recipients is the same as that for veterans. They are being denied their right to keep and bear arms protected by the Second Amendment without due process of law.

The proposed regulations should be withdrawn.

Sincerely yours,

/s/

Michael Connelly
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