



Henderson v. U.S.
Supreme Court Summary and Analysis

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Henderson v. U.S.

On May 18, 2015, Justice Elena Kagan issued the opinion of the U.S. Supreme Court in [*Henderson v. U.S.*](#) which was highlighted in [BWJP's e-newsletter](#) of October 22, 2014. The case dealt with the status of firearms that an individual surrendered to law enforcement, as opposed to firearms seized as evidence or for forfeiture purposes, when that individual subsequently becomes a "prohibited" person under federal law (18 U.S.C. §922(g)). What may a court do with those surrendered firearms, and may the prohibited person have any say in it? In a unanimous opinion, the Supreme Court decided that a prohibited person retained the right to alienate their property interest in their firearms, and specifically, that prohibited persons retained the authority to direct transfer of the firearms to a third party or for sale on the open market. In reviewing and approving such transfers, however, courts have an obligation to ensure that any transfers to third parties will effectively remove such firearms from the prohibited person's possession or use and that the third party is not subject to any prohibitions on their own possession or use. The court may implement safeguards to guarantee against any prohibited person's possession (be it actual or constructive) of the firearms. Such safeguards can include affidavits executed by all involved individuals, criminal history checks on proposed third parties, or a third party's physical presence and testimony at a hearing regarding the transfer. If a court, however, feels that any implemented safeguards will be inadequate to prevent the prohibited person's possession or use, the court retains the authority to deny that specific transfer. Additionally, the right of transfer includes the option for the prohibited person to sell such surrendered firearms. Although no specifications are spelled out in the opinion, presumably such a process would be administered and conducted by the law enforcement agency in current possession of the firearms, with profits transferred to the individual. It thus behooves law enforcement agencies, prosecutors and courts to develop policies to address these scenarios.

Questions to consider:

3rd party transfers

- How will prohibited persons designate the 3rd party to receive the firearms? Will this be in writing and, if so, what information must be provided in order to ensure such a transfer does not violate any federal, state or tribal prohibitions?
- Who will receive notice of such a transfer request and how? Prosecutor's office, local law enforcement agency, any victim who has registered for rights notifications?
- How will the court set up and operate hearings to determine such transfers are legally permitted and what safeguards will be sufficient? Who all will have the opportunity to be present at such hearings and to be heard by the court? Will the court take testimony from any party or other individual? What weight will be given to safety concerns voiced by an agency or a victim?

- What procedures will courts and law enforcement agencies need to create regarding the 3rd party's collection of any transferred firearms?
- If storage fees have accumulated for the surrendered firearms, how will the court address those? Who will be held liable for such costs and will surrendered firearms be transferred with or without such costs being paid?

Transfer by sale

- How will the prohibited person notify law enforcement of their wish to have surrendered firearms sold? Will this notification be in writing and what information will be required?
- Who will receive notice of the prohibited person's decision to sell the surrendered firearms?
- Will the court decide to hold a hearing on such requests or simply provide a written authorization for such sales? Will the court choose to remove itself entirely from the transfer process when it involves a decision to sell on the open market?
- What sorts of requirements should law enforcement agencies, prosecutors and courts create for individuals or businesses who may be designated to sell such surrendered firearms? The Supreme Court's ruling only provides for "sale on the open market," without any further detail of what the sale will look like or how it should be administered. Should such transfers for sale be limited to firearms dealers with federal firearms licenses?
- Are there such local dealers available in the community who will assist in facilitating this process? Will such dealers want a fee for their services?
- Will the prohibited person have any authority to veto or otherwise direct the details of the sale, for example if he feels the sale price is insufficient?
- What kind of accounting records will law enforcement need to utilize to document such sales and the transfer of profits to the prohibited person?
- If storage fees have accumulated for the surrendered firearms, will those be paid prior to any sale or simply be paid from the profits made upon the sale, with any remaining funds going to the prohibited person?

Additional questions about *Henderson v. U.S.*, or other questions related to the implementation and enforcement of firearm prohibitions may be directed to BWJP's Technical Assistance Project at DVFirearmsTA@bwjp.org.