

**Written Statement of
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Before the United States Senate Committee on the Judiciary

**Hearing on
“The Gun Violence Epidemic: A Public Health Crisis”
28 November 2023**

Chairman Durbin, Ranking Member Graham, and Members of the Committee thank you for the opportunity to address you today. Gun violence and violent crime generally are perhaps the most serious issues facing law enforcement. In light of the recent historic spike in the murder rate and other violent crime, it is critically important to explore the causes for the increases and to identify solutions. I commend this Committee for its work in this area.

By way of background, I served with the U.S. Department of Justice for thirty-three years. Between 2017 and 2019, I served in the U.S. Department of Justice as Associate Deputy Attorney General and Director of Law Enforcement Affairs. In that capacity, I was assigned to lead two of the Department’s priority programs—violent crime reduction and strengthening the Department’s relationship with state and local law enforcement. For thirty years prior to that assignment, I served as a federal prosecutor handling a wide range of matters including RICO, white-collar crime, multi-million-dollar fraud, public corruption, violent crime, and Organized Crime Drug Enforcement Task Force cases. For eight years, I was assigned to serve as the chief of the Criminal Division, overseeing federal prosecutors in three offices. I also served three terms as president of the National Association of Assistant US Attorneys. Prior to joining the Department of Justice, I worked as a police officer for seven years.

This is not the first time, or even the first time in recent history, that our nation has faced spiraling violent crime rates. In the mid-1980s, crime was skyrocketing. In fact, violent crime had more than tripled in the previous two-and-a-half decades. Drug dealers and other violent criminals controlled many neighborhoods. In the city where I served as a police officer, innocent victims, some as young as two years old, were killed in drive-by shootings. Law-abiding citizens throughout the country watched their communities being destroyed by crime, and they demanded change. The crisis to be addressed then—and now—is not a health crisis but a crime crisis.

Congress responded by passing bipartisan legislation that gave the law enforcement community the tools needed to address the problem. That legislation took the form of statutes designed to incarcerate and send an unmistakable message to gun-toting drug traffickers and other violent criminals. Congress also passed legislation that limited judicial discretion and ensured that like situated criminals would be treated similarly. One example was the Armed Career Criminal Act of 1984. That statute, codified at 18 U.S.C § 924(e), set a mandatory minimum term of fifteen years imprisonment for felons who possessed firearms if they had previously been convicted of certain crimes three or more times.

The theory underlying these legislative acts was simple: put criminals in prison and crime will go down.

Federal prosecutors went to work with their federal, state, and local law enforcement partners and began identifying and prosecuting the most serious offenders in their communities. To the surprise of no one, the approach worked. By 1991, as increasing numbers of criminals went to federal prison, the crime trend was reversed, and crime rates began to drop. Over the next two decades, drug traffickers and other violent criminals went to prison in increasing numbers, and crime rates went down nearly every year. By 2014, violent crime rates were half of what they once were. Murder, rape, robbery, and aggravated assault were reduced to levels not seen since the 1960s. Chart 1 below reflects the rise in the federal prison population, and Chart 2 reflects the corresponding drop in violent crime.

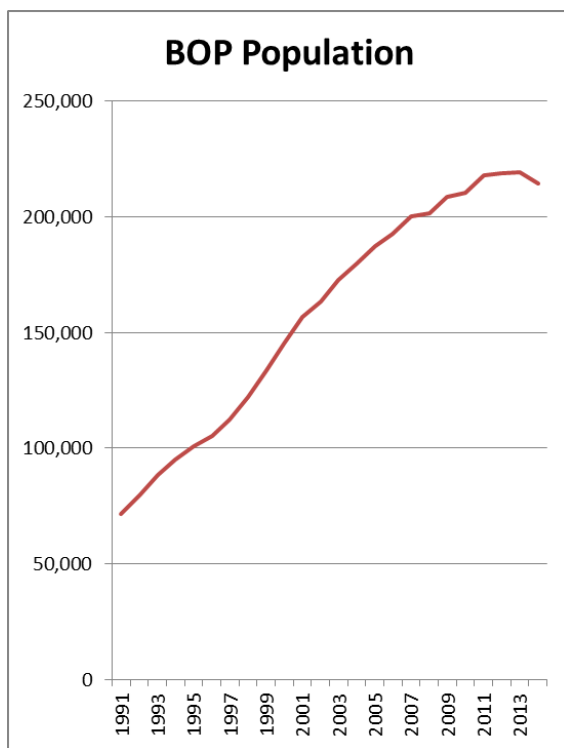


Chart 1

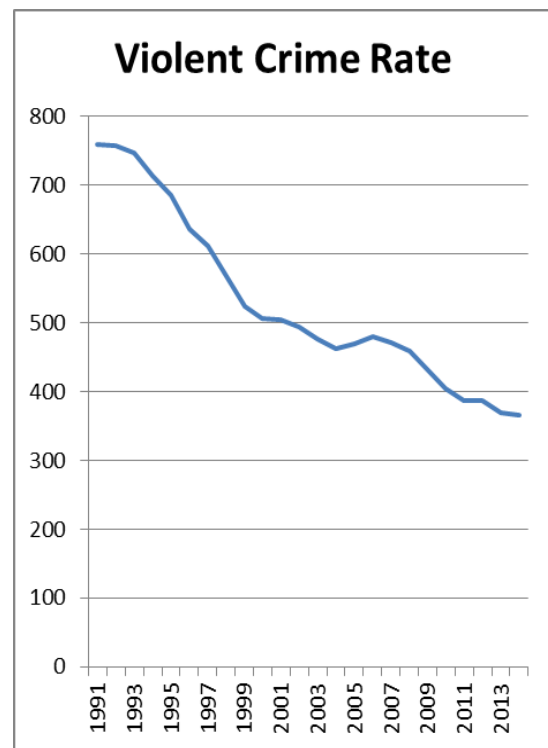


Chart 2

Through the events described below, however, the federal criminal justice system has slowly and incrementally been weakened, and predictably, in 2015 violent crime rates began to rise again. The first easily identifiable event weakening the federal criminal justice system was a 2010 memo from then-Attorney General Eric Holder. Prior to the Holder memo and dating back to Attorney General Civiletti (in President Carter's administration), federal prosecutors had been instructed to charge and pursue the most serious readily provable offense (MSRP). This standard ensured that congressional priorities were pursued and the laws were enforced fairly and uniformly across the country without regard to the offender's individual characteristics.

The Holder memo, in contrast, directed all federal prosecutors to limit the use of congressionally enacted mandatory minimum sentences against drug traffickers. The impact of this memo and other policy decisions by the Department of Justice were later analyzed by the

Pew Research Center and summarized in an article published in March 2017 as follows:

Federal prosecutors filed criminal charges against 77,152 defendants in fiscal year 2016, according to the Administrative Office of the U.S. Courts. That's a decline of 25% since fiscal 2011, when 102,617 defendants were charged, and marks the lowest yearly total since 1997.¹

Similarly, on 16 December 2022, Attorney General Garland issued two memos to federal prosecutors. In the first memo, he abandoned the MSRP standard (which had been reinstated by Attorney General Sessions) in favor of each prosecutor exercising their discretion in charging mandatory minimums.² Although the nation finds itself mired in the worst drug epidemic in our history, in the second memo, the Attorney General emphasized that “[t]his policy [of not pursuing the most serious readily provable charge] *applies with particular force in drug cases.*”³

Ironically, this policy of not pursuing the most serious readily provable offense against drug dealers was implemented because, as the memo explains, it is “consistent with the priority the Department has placed on focusing its prosecutorial resources on combatting violent crime.”⁴

The policy of going light on drug traffickers to allow the Department to focus on “violent crime” has at least three glaring flaws. First, drug trafficking *is* inherently and necessarily violent from top to bottom. Street-level traffickers deal with a clientele desperate to obtain their product, whether it is fentanyl, heroin, methamphetamine, crack cocaine, cocaine, or some other controlled substance. Traffickers unwilling or unable to use violence and threats of violence to protect their product and the large sums of money generated from the sale of that product, quickly find themselves out of business or worse. Those further up the distribution chain (those dealing with quantities of illicit drugs worth hundreds of thousands and even millions of dollars or the cash proceeds from the sale of those drugs) have an even greater need and incentive to engage in violence to protect their interests. And their violent acts are not pretty: they range from beheadings to drive-by shootings, which often result in the death or maiming of innocent bystanders, including children.

This level of violence is only exacerbated by our unsecured southern border through which Mexican cartels flood our country with fentanyl, cocaine, and methamphetamine and engage in violence to protect their multibillion-dollar criminal enterprises.

Second, the policy of not pursuing mandatory minimum sentences against drug traffickers also overlooks the extraordinary destruction fentanyl, heroin, and other controlled substances have on our nation. According to the National Institutes of Health, “More than 106,000 persons in the U.S. died from drug-involved overdose in 2021.”⁵ Even beyond the tragedy of these deaths, the destructive nature of the drug dealers’ trade is perhaps best

¹ [Federal prosecutions at lowest level since 1997 | Pew Research Center](https://www.pewresearch.org/short-reads/2017/03/28/federal-criminal-prosecutions-fall-to-lowest-level-in-nearly-two-decades/), <https://www.pewresearch.org/short-reads/2017/03/28/federal-criminal-prosecutions-fall-to-lowest-level-in-nearly-two-decades/>

² [Attorney General Memorandum - General Department Policies Regarding Charging Pleas and Sentencing \(justice.gov\)](https://www.justice.gov/attorney-general/2022/12/16/attorney-general-garland-issues-two-memos-to-federal-prosecutors)

³ [Attorney General Memorandum - Additional Department Policies Regarding Charges Pleas and Sentencing in Drug Cases \(justice.gov\)](https://www.justice.gov/attorney-general/2022/12/16/attorney-general-garland-issues-two-memos-to-federal-prosecutors) (emphasis added).

⁴ *Id.*

⁵ [Drug Overdose Death Rates | National Institute on Drug Abuse \(NIDA\) \(nih.gov\)](https://www.nida.nih.gov/news-events/drug-overdose-death-rates)

summarized in the following famous quote from the Fifth Circuit Court of Appeals' opinion in *Terrebonne v. Butler*:

Except in rare cases, the murderer's red hand falls on one victim only, however grim the blow; but the foul hand of the drug dealer blights life after life and, like the vampire of fable, creates others in its owner's evil image—others who create others still, across our land and down our generations, sparing not even the unborn.⁶

Third, the policy of not aggressively pursuing drug traffickers overlooks the fact a significant percentage of crime, including violent crime, is committed by those addicted to fentanyl, heroin, and other opioids and controlled substances peddled by the drug traffickers.

In short, drug dealing is a violent offense, and the harm it is causing to Americans should not be minimized. Drug traffickers should be pursued and prosecuted aggressively.

A second easily identifiable event weakening the federal criminal justice system occurred at the same time as the implementation of the earlier mentioned Holder memo. President Obama dramatically changed the clemency process and beginning in January 2013, the Department of Justice actively began soliciting clemency petitions from criminal defense attorneys and federal prisoners. The Clemency Project, assisted by lawyers and advocates (including the Federal Defenders, the American Civil Liberties Union, Families Against Mandatory Minimums, the American Bar Association, and the National Association of Criminal Defense Lawyers), reportedly processed tens of thousands of petitions for clemency. Dozens of drug trafficking kingpins, career offenders, and other violent offenders were released from prison early under this program.

Notably, but not surprisingly, several of the offenders released early under the Obama clemency project and the other early release programs went on to commit violent crimes, including murders, kidnapping,⁷ and drug trafficking. In one case, the convicted drug dealer killed three people randomly on the streets of Fresno, California, in what the police concluded was a hate crime.⁸ In another, the convicted drug dealer brutally stabbed to death his ex-girlfriend and her seven- and ten-year-old daughters.⁹

In addition to policies of the Department of Justice and President Obama's clemency program, in a series of decisions throughout this period and continuing to the 2022 opinion of *Wooden v. United States*,¹⁰ the Supreme Court significantly narrowed the reach of two key

⁶ *Terrebonne v. Butler*, 820 F.2d 156, 157-58 (5th Cir. 1987).

⁷ On 13 November 2003 Michael Eugene Bell's sentence was reduced from 219 months to 176 months. After his release, he shot two police officers and committed a string of crimes including kidnapping, possession of methamphetamine, domestic assault, multiple counts of reckless endangerment by a motor vehicle and multiple counts of evading arrest. [Coffee County inmate who shot deputies had troubled past \(tennessean.com\)](#); [TBI Special Agents Investigating Coffee County Shooting that Injured Two Deputies – TBINewsroom.com](#).

⁸ [Fresno shooting: Police chief says killings a hate crime | CNN](#).

⁹ [Crack Dealer Freed Early Under Obama Plan Murders Woman, 2 Kids | Judicial Watch](#); [Man charged with killing woman, 2 daughters had early prison release \(dispatch.com\)](#).

¹⁰ 142 S.Ct. 1063, 595 U.S. --- (2022).

statutory provisions designed to take violent offenders off the streets—18 U.S.C § 924(e) (the Armed Career Criminal Act mentioned above) and 18 U.S.C § 924(c) (a statutory provision that imposes enhanced penalties for offenders who used firearms in drug trafficking and other violent crimes). Although legislation has been proposed to correct legal issues raised in these decisions, none has become law.¹¹

Further directly weakening the federal criminal justice system, the United States Sentencing Commission promulgated a series of significant changes to the Sentencing Guidelines, many of which resulted in more lenient treatment of convicted criminals. One in particular, known as the compassionate release provision, has significantly undermined any finality in sentencing by allowing prisoners to file an unlimited number of motions requesting that the court reduce prisoners’ sentences. This compassionate release provision narrowly passed on a 4-3 party line vote, and will amount to a reintroduction of parole—the very system the Sentencing Reform Act of 1984 abolished in favor of finality and transparency.

Because many of the above changes—statutory, policy, judicial, and Sentencing Guidelines—were often applied retroactively, for over a decade, federal prosecutors have increasingly been compelled to shift their time and resources from dismantling drug trafficking organizations and violent gangs to relitigating the validity of convictions and the propriety of sentences in cases some of which are decades old. Often, this litigation is done well after the evidence has been destroyed, without the availability of the victims or other witnesses, without the original case agent, and it is often handled by a prosecutor unfamiliar with the case and before a judge unfamiliar with the case. Collectively, these changes have undermined the finality of the federal criminal justice system at an unprecedented level.

And the detrimental significance of undermining the finality of federal sentences can hardly be overstated. As summarized in an opinion of the Fourth Circuit Court of Appeals, the Supreme Court has often emphasized the importance of finality:

[I]n [Edwards](#), the Court observed that the principle of finality is “essential to the operation of our criminal justice system.” [141 S. Ct. at 1554](#). Not only would reopened proceedings tax the system of justice with the potential for countless hearings with each new change to a procedural rule, but subsequent hearings could suffer from “lost evidence, faulty memory, and missing witnesses,” to all parties’ detriment. *Id.* (quoting [Allen v. Hardy](#), [478 U.S. 255, 260, 106 S.Ct. 2878, 92 L.Ed.2d 199 \(1986\)](#) (per curiam)). As [Teague](#) stated, “No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.” [Teague](#), [489 U.S. at 309, 109 S.Ct. 1060](#) (plurality opinion) (quoting [Mackey](#), [401 U.S. at 691, 91 S.Ct. 1160](#) (Harlan, J., concurring in part and dissenting in part)).

Wall v. Kiser, 21 F.4th 266, 276 (4th Cir. 2021) (collecting Supreme Court cases).

¹¹ See, e.g., S. 1586, 117th Congress, Restoring the Armed Career Criminal Act.

Other events impacting policing nationally have likewise contributed to increases in violent crime rates. One significant factor has been the so-called “Ferguson effect.” Simply stated, the national anti-police protests and calls to defund the police triggered de-policing—a reduction in proactive discretionary policing. These protests were built around the denigrating and extraordinarily false narrative that police are racially biased and that police departments are systemically racist.¹² Sadly, some members of Congress even joined the defund the police movement.¹³

This false and demoralizing narrative was also perpetuated by the Department of Justice. Between 2009 and 2017, the Department of Justice aggressively used the broad powers of 42 U.S.C. § 14141 to investigate local police departments and to put them under the control of a supposedly independent monitoring team and federal judge. These investigations and ensuing “independent oversight” sometimes lasted a decade or longer, depleted millions of dollars from local budgets, and lined the pockets of the “independent monitoring team.” Often, these investigations and the findings suggesting systemic racism were premised on the use of a baseline that traffic stops, arrests, and other police-citizen encounters should mirror the racial demographics of the community rather than the demographics of the offender base. The false narrative created by the use of this baseline, thus, undermined the trust and confidence in the communities police are dedicated to serving.

There are over 800,000 state and local law enforcement officers in the United States. Their willingness and ability to engage in proactive policing has consistently proved critical to crime suppression as well as the prosecution of federal drug trafficking and firearm laws. Essentially, the commonsense notion (supported by multiple academic studies) is that when police disengage from discretionary enforcement activities, including stop and frisks and officer-initiated arrests, criminals are emboldened, and crime goes up.¹⁴ And anti-police rhetoric has caused other long-term problems. Departments nationwide have experienced record retirements and resignations and are finding it difficult to fill their openings. This, in turn, has caused departments to lower their hiring standards.

Finally, also contributing to the rise in violent crime are the so-called Soros prosecutors.¹⁵ According to one source, in January of this year, “the United States has 70 prosecutors in office linked to left-wing billionaire George Soros.”¹⁶ A report from the Law Enforcement Defense Fund calculated that “Soros-linked prosecutors oversee 20% of the U.S. population, including half of the country’s most populous cities, but more than 40% of all murders.”¹⁷ The

¹² [The "Ferguson Effect" - YouTube](#): An interview with Heather Mac Donald, author of "The War on Cops" from American Forum with host Douglas Blackmon.

¹³ [Which Lawmakers Support Defunding the Police? \(newsweek.com\)](#) (June 2020).

¹⁴ [New Evidence Connects Police Protests and Rising Violent Crime \(city-journal.org\)](#); <https://www.city-journal.org/article/new-evidence-for-the-ferguson-effect> (January 14, 2022).

¹⁵ [George Soros spent \\$40M getting lefty district attorneys, officials elected all over the country \(nypost.com\)](#).

¹⁶ [Map shows how many Soros-linked prosecutors there are around the country — and how many have been removed | Washington Examiner](#).

¹⁷ [Map shows how many Soros-linked prosecutors there are around the country — and how many have been removed | Washington Examiner](#): citing, *LELDF Original Research: Justice For Sale How George Soros put radical prosecutors in power: Justice for Sale - LELDF (policedefense.org)*, <https://www.policedefense.org/leldf-justice-for-sale/> (June 2022).

prosecutorial philosophy of these prosecutors has been described as follows: “This new breed of elected prosecutor proudly refuses to prosecute misdemeanors, including theft, larceny, shoplifting, breaking and entering, malicious destruction of property, possession with intent to distribute any drug, resisting arrest, and dozens of other crimes. And since the gatekeeper to the criminal justice system is the elected district attorney (DA) (not the police chief, the mayor, or the governor), even when people are arrested for those crimes, nothing happens.”¹⁸

The results of this progressive prosecutorial philosophy were summarized in a 2021 article written by Senator Cotton:

The malfeasance of these legal arsonists has contributed to an unprecedented surge in murder nationwide. Last year, the United States suffered a 25 percent increase in murder, the largest single-year rise in history. The murder rate has now reached the highest level since the 1990s. Soros prosecutors are not simply negligent; they are culpable in this disintegration of public safety. Indeed, their jurisdictions have disproportionately contributed to the violent crime wave.

Philadelphia District Attorney Larry Krasner systematically reduced his jurisdiction’s prison population by 30 percent through aggressive criminal leniency policies — and that was before COVID protocols resulted in additional reductions. Predictably, murder in the city skyrocketed over 40 percent after Krasner took office, reaching the highest level in three decades. This year, murder in Philadelphia is on pace to rise another 34 percent.

Other Soros prosecutors have delivered similar results. Last year, murder rose 50 percent in Chicago and 38 percent in Los Angeles. In New York City, murder increased 44 percent and shootings soared 97 percent. In 2020, the murder rate in Baltimore was higher than El Salvador’s or Guatemala’s — nations from which citizens can claim asylum purely based on gang violence and murder. In California, America’s richest and most populous state, murder rose 31 percent.¹⁹

Research has shown, and every police chief and every sheriff in America will tell you that a concentrated small percentage of criminals in a given community commit a significant portion of the violent crime and that those individuals have significant criminal histories.²⁰ Federal prosecutors need to be given the tools—federal statutes with mandatory minimum

¹⁸ [The Soros Rogue Prosecutor Movement and the Insurance Industry | The Heritage Foundation](https://www.heritage.org/crime-and-justice/lecture/the-soros-rogue-prosecutor-movement-and-the-insurance-industry), <https://www.heritage.org/crime-and-justice/lecture/the-soros-rogue-prosecutor-movement-and-the-insurance-industry> (January 2023); *See also* [George Soros spent \\$40M getting lefty district attorneys, officials elected all over the country \(nypost.com\)](https://www.nypost.com/2023/01/04/george-soros-spent-40m-getting-lefty-district-attorneys-officials-elected-all-over-the-country/) (January 2023) (reporting that Soros-backed now former Loudoun County, Virginia Commonwealth Attorney Buta Biberaj announced last week that her office wouldn’t be directly involved in the prosecution of misdemeanor charges — including hit-and-run, eluding police, reckless driving, trespassing, public drunkenness and failure to appear, among others.”).

¹⁹ [Progressive Prosecutors Invite Crime Wave | National Review](https://www.nationalreview.com/2021/07/progressive-prosecutors-invite-crime-wave/) (July 2021).

²⁰ [Stopping the other 99% of gun violence - POLITICO](https://www.politico.com/news/2022/06/21/stopping-the-other-99-of-gun-violence/) (June 2022).

sentences—and they need to be directed to aggressively target those criminals. Take them off the streets and put them in federal prison.

Recent events in Washington, DC suggest that a strong majority of Congress recognizes this fact. Earlier this year an overwhelming and bipartisan majority of the Senate voted to reject the soft on crime policies contained in DC’s Revised Criminal Code, a code revision which would have virtually eliminated mandatory minimum sentences in the District. Included in the 81 votes to reject that pro-crime legislation were both the Senate Majority and Minority Leaders, as well as 15 Members of this Committee.²¹

We also need to quit pretending that drug trafficking is not a violent crime—it is. That means the Department of Justice needs to direct prosecutors to include (not exclude) drug traffickers for prosecution and uniform application of mandatory minimum statutes whenever and to whomever they apply.

It is also critical that we restore finality to the system. The notion that a criminal sentence is only final until a defendant files a motion claiming “extraordinary and compelling reasons warrant . . . a reduction,” or until the Sentencing Commission reduces the guidelines, undermines the confidence of victims, prosecutors, and the public. The constant relitigating of criminal sentences also unnecessarily consumes limited prosecutorial and judicial resources and again distracts from the job at hand.

Finally, rather than unfairly denigrating the institutions and the dedicated officers who serve to protect us, we need to promote an accurate narrative. State and local police officers are the backbone of law enforcement and their partnership in reducing violent crime has long proved central to the Department of Justice’s success in Project Safe Neighborhoods and other violent crime reduction initiatives.

As the above discussion reflects, the federal government has the necessary experience, resources, and ability to reduce violent crime. It just needs resolve.

Thank you for considering these comments. I look forward to your questions.

²¹ [U.S. Senate: U.S. Senate Roll Call Votes 118th Congress - 1st Session.](#)