

RECOMMENDED ACTION MEMO

Agency: Department of Justice
Topic: Shifting Federal Law Enforcement Priorities to Focus on Illegal Gun Trafficking
Date: November 2020

Recommendation: The next administration should discontinue the Operation Relentless Pursuit and Operation Legend initiatives and shift federal law enforcement resources toward investigations and prosecutions of individuals responsible for illegal gun trafficking.

I. Summary

Description of recommended executive action

The Trump administration has implemented a draconian “tough on crime” approach that surges federal law enforcement into communities through initiatives such as Operation Relentless Pursuit and Operation Legend. Not only does this approach harm communities—particularly communities of color—by perpetuating over-policing and mass incarceration, it has also been proven not to be particularly effective in reducing gun violence. In contrast, federal law enforcement has lagged far behind when it comes to addressing the supply side of gun violence by developing effective enforcement initiatives to target illegal gun trafficking.

The next administration should terminate Operation Relentless Pursuit and Operation Legend, redirect federal grant dollars to support community-based violence intervention programs, and focus federal law enforcement efforts on illegal gun trafficking.

Overview of process and time to enactment

The next attorney general can issue new guidance to all Department of Justice component agencies immediately after being sworn in. A separate memo offering recommendations for the president’s FY 2022 budget request offers guidance on how to reallocate federal grant dollars.

II. Current state

The Trump administration instituted a harmful and ineffective “tough on crime” approach to gun violence

From the earliest days of his campaign, Trump signalled that a strict “tough on crime” approach would be a hallmark of his administration—founded primarily on the false assertion that criminal gangs of immigrants were driving high rates of violent crime. This approach has had a broad footprint across the administration. In the Department of Justice, it has been marked by aggressive enforcement initiatives. In December 2019, Attorney General Barr launched one such initiative—Operation Relentless Pursuit (ORP). ORP is a joint initiative of the Bureau of

Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and the US Marshal's Service that surged federal law enforcement resources to seven cities identified as experiencing elevated violent crime rates (Albuquerque, Baltimore, Cleveland, Detroit, Kansas City, Memphis, and Milwaukee) and "bulked up" federal task forces that work with state and local law enforcement.¹ In May 2020, the Department of Justice announced that \$61 million in grant funding through the Community Oriented Policing Services and Bureau of Justice Assistance programs had been released to ORP target cities, \$51 million of which was used to hire an additional 217 police officers.²

In July 2020, Attorney General Barr announced a second similar initiative to surge federal law enforcement resources to cities experiencing an increase in violent crime, Operation Legend (OL).³ OL began in Kansas City, Missouri and was expanded to include Chicago, Albuquerque, Cleveland, Detroit, Milwaukee, St. Louis, Memphis, and Indianapolis. In the first two months of this initiative, more than 2,000 people were arrested, 476 of whom were charged with federal offenses, primarily for firearm and drug-related crimes.⁴

Civil rights groups and advocates for criminal justice reform strongly oppose this type of federal law enforcement initiative, arguing that this approach will further exacerbate over-policing and mass incarceration of communities of color. A July 2020 letter signed by dozens of racial justice and civil rights organizations, Civil Rights Corps, and The Leadership Conference on Civil and Human Rights explained the harms caused by ORP:

Operation Relentless Pursuit replicates the most devastating aspects of the Violent Crime Control and Law Enforcement Act of 1994, which flooded America's streets with cops and dramatically increased incarceration rates, especially in Black and Brown communities. ORP funds a similar influx of police officers and federal agents, bolsters prosecutors' offices, and incentivizes additional federal criminal prosecutions by requiring departments receiving funds to investigate and prosecute certain federal crimes, such as drug trafficking and gang involvement. These actions are not constructive ways to achieve true public safety but serve only to continue the legacy of systemic racism and criminalization of minority communities.⁵

¹ Department of Justice, Office of Public Affairs, "Attorney General William P. Barr Announces Launch of Operation Relentless Pursuit," December 18, 2019, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-launch-operation-relentless-pursuit>.

² Department of Justice, Office of Public Affairs, "Justice Department Releases \$61 Million in Awards to Support Efforts to Combat Violent Crime in Seven U.S. Cities," May 11, 2020, <https://www.justice.gov/opa/pr/justice-department-releases-61-million-awards-support-efforts-combat-violent-crime-seven-us>.

³ Department of Justice, Office of Public Affairs, "Attorney General William P. Barr Announces Launch of Operation Legend," July 8, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-launch-operation-legend>.

⁴ Department of Justice, Office of Public Affairs, "Operation Legend: Update on Federal Charges," September 3, 2020, <https://www.justice.gov/opa/pr/operation-legend-update-federal-charges>.

⁵ Leadership Conference on Civil and Human Rights, Civil Rights Corps, "Letter to Chairwoman Maloney, Chairwoman Lowey, and Ranking Members Comer and Granger," July 14, 2020, <https://cdn.buttercms.com/Kmgx7RR7RI2qxUti6alp>.

Researchers and criminal justice experts are also skeptical that this type of approach is actually effective at reducing violent crime, because these initiatives narrowly focus on individual criminal acts and fail to address underlying root causes of violent crime.⁶ Researcher Thomas Abt explained the limitations of this enforcement-only approach:

At the end of the day, you need a balanced, evidence-informed strategy that is not just about a program or two. It's about how multiple programs interact to produce a cumulative effect. We should leverage the soft, supportive power of the federal government a bit more, and the hard power a bit less.⁷

While these initiatives and the inflammatory rhetoric of the Trump administration have been recent developments, the problem of federal law enforcement focusing on individuals for crimes like illegal gun possession—as opposed to larger-scale criminal enterprises facilitating illegal gun trafficking—is longstanding. For example, a recent analysis of the ATF's budget by the Center for American Progress found that, from 2013 through 2020, the agency dedicated disproportionate resources to law enforcement activities focused on “firearms criminal use and possession” and “combating criminal organizations.” During this period, funding for these categories grew from 36% of the overall budget for law enforcement operations in 2013 to 54% in 2020. At the same time, funding for program activities focused on “detering illegal firearms trafficking/violent gun crime” and “diversion of firearms from legal commerce” remained stagnant and only represented between 24% and 27% of the total budget for law enforcement operations.⁸

The ATF's disproportionate focus on individual acts of gun violence is also represented in data on federal prosecutions for gun-related crimes. An analysis of DOJ data by the Transactional Records Access Clearinghouse (TRAC) found 6,526 new weapons-related prosecutions from October 2018 through April 2019, 63% of which were led by the ATF. Sixty-seven percent of these prosecutions were “felon in possession” cases, which charge an individual, who was prohibited from buying or possessing guns because of a previous felony conviction, with possessing a firearm.⁹ Many of these cases involve individuals charged only with illegally possessing a gun or ammunition, not with any additional acts of violence.¹⁰

⁶ Marcia Brown, “Operation Legend Is Another Attempt To ‘federalize’ Policing. Organizers Are Pushing Back.” *The Appeal*, August 13, 2020, <https://theappeal.org/operation-legend-is-another-attempt-to-federalize-policing-organizers-are-pushing-back/>.

⁷ *Id.*

⁸ Chelsea Parsons, Eugenio Weigend Vargas, and Rukmani Bhatia, “Rethinking ATF's Budget To Prioritize Effective Gun Violence Prevention,” Center for American Progress, September 17, 2020, <https://www.americanprogress.org/issues/guns-crime/reports/2020/09/17/490494/rethinking-atfs-budget-prioritize-effective-gun-violence-prevention/>.

⁹ TRAC Reports, “Federal Weapons Prosecutions Continue to Climb in 2019,” June 5, 2019, <https://trac.syr.edu/tracreports/crim/560/>.

¹⁰ Maria Chapa Lopez, “Tampa Man Indicted for Being a Felon in Possession of a Firearm,” U.S. Department of Justice, June 12, 2020, <https://www.atf.gov/news/pr/tampa-man-indicted-being-felon-possession-firearm>; Andrew E. Lelling, “Brockton Man Pleads Guilty to Being Felon in Possession of Firearm,” U.S. Department of Justice, April 14, 2020, <https://www.atf.gov/news/pr/brockton-man>.

The ATF has also devoted substantial agency resources to enforcing federal drug laws, regardless of whether the cases have a nexus to gun-related crimes: according to DOJ data obtained by TRAC, 11% of new prosecutions referred by the ATF in June 2020 were for drug or drug trafficking offenses.¹¹

This allocation of ATF resources has resulted in the agency focusing on cases that, while vital to addressing gun-related crime and community safety issues, are already addressed by state and local law enforcement agencies. This is also a missed opportunity for the ATF and other federal law enforcement agencies to focus their unique jurisdiction and resources on the type of cross-jurisdictional criminal activity that is responsible for trafficking firearms into vulnerable communities with high rates of gun violence.

III. Proposed action

The next administration should discontinue the Operation Relentless Pursuit and Operation Legend initiatives and shift federal law enforcement resources toward investigations and prosecutions of individuals responsible for illegal gun trafficking.¹² In addition to these funding shifts, the next attorney general should issue guidance to the United States Attorneys Offices, the FBI, and ATF, urging a focus on illegal gun trafficking.

As former ATF Director Bradley Buckles noted in his foreword to the agency's 2000 report on firearms trafficking, nearly every gun used in a crime was first a legal gun sold through legitimate channels.¹³ Following the first legal purchase, there are many opportunities for individuals to divert guns from the legal market into secondary, illegal gun markets where they are often destined for use in violent crime. Gun trafficking is facilitated by a variety of tactics,

[pleadsguilty-being-felon-possession-firearm](https://www.atf.gov/news/pr/rapid-city-man-sentenced-illegal-possession-ammunition); Ronald A. Parsons Jr., "Rapid City Man Sentenced for Illegal Possession of Ammunition," U.S. Department of Justice, March 5, 2020, <https://www.atf.gov/news/pr/rapid-city-man-sentenced-illegal-possession-ammunition>; Scott W. Brady, "Pittsburgh Felon Charged With Unlawful Possession of a Pistol and Ammunition," U.S. Department of Justice, January 8, 2020, <https://www.atf.gov/news/pr/pittsburgh-felon-charged-unlawfulpossession-pistol-and-ammunition>.

¹¹ TRAC Reports, "Prosecutions for June 2020," July 16, 2020, <https://trac.syr.edu/tracreports/bulletins/jatf/monthlyjun20/fil/>; Craig Carpenito, "Trenton Man Sentenced to 10 Years in Prison for Role in Heroin Trafficking Conspiracy," U.S. Department of Justice, August 27, 2020, <https://www.atf.gov/news/pr/trenton-man-sentenced10-years-prison-role-heroin-trafficking-conspiracy>; U.S. Attorney's Office District of New Jersey, "Passaic County Man Admits Participating in Heroin Conspiracy," August 18, 2020, <https://www.atf.gov/news/pr/passaic-county-man-admits-participating-heroin-conspiracy>; James P. Kennedy Jr., "Jamestown Man Pleads Guilty to Selling Meth," U.S. Department of Justice, August 17, 2020, <https://www.atf.gov/news/pr/jamestown-man-pleads-guilty-selling-meth>.

¹² A separate memo outlining recommendations for the Biden administration's first budget request offers recommendations for how to shift grant funding away from these programs and towards programs focused on community-based violence intervention.

¹³ U.S. Department of the Treasury and Bureau of Alcohol, Tobacco and Firearms, "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers," June 2000, <https://www.hsdl.org/?abstract&did=1622>.

including straw purchasing, complicity from corrupt dealers, theft from gun stores, and sales through unlicensed private sellers that are not required to conduct background checks under federal law.¹⁴

The cross-jurisdictional nature of illegal gun trafficking makes it particularly important for federal law enforcement to take the lead. Gun trafficking is generally an interstate crime, with guns being moved across state lines from states with weaker gun laws to states with stronger laws.¹⁵ There are well-known gun trafficking corridors across the country, the most famous of which is known as the “Iron Pipeline” along Interstate 95 on the east coast, through which guns are trafficked north.¹⁶ According to ATF trace data from 2010 to 2019, 29% of all crime guns submitted for tracing crossed state lines before being used in a crime. In some states, this problem is particularly acute. A recent analysis by the New York State Office of the Attorney General found that from 2010 to 2015, 74% of handguns recovered in connection with crimes in New York, through which I-95 runs, were originally purchased from out-of-state gun dealers.¹⁷ The cross-jurisdictional nature of this crime makes it more difficult for local law enforcement to identify gun trafficking patterns effectively, execute search warrants, and use other investigative tools outside of their jurisdiction.

In addition, the ATF’s role as the only federal agency with jurisdiction to conduct regulatory oversight of the gun industry makes it particularly well-suited to lead on gun trafficking investigations and refer those cases to federal prosecutors. Corrupt retail gun dealers account for a higher volume of guns diverted into the illegal market than any other single trafficking channel.¹⁸ Researchers estimate that, nationwide, approximately 2,000 firearms dealers and pawnbrokers knowingly sell firearms illegally,¹⁹ engaging in behavior such as failing to keep required records, transferring to prohibited persons, making false entries in record books, and conducting illegal out-of-state transfers.²⁰ One of the most important ways the ATF can be alerted to signs of gun dealer complicity in illegal gun trafficking is through regular compliance inspections. Under federal law, the ATF is permitted to conduct one regulatory compliance inspection of each licensee per year, and the ATF has set an internal goal of inspecting all gun

¹⁴ *Id.*

¹⁵ Alex Yablon and Daniel Nass, “Potential Gun Trafficking Hubs Revealed in ATF Data,” *The Trace*, October 24, 2019, <https://www.thetrace.org/2019/10/guntrafficking-hubs-atf-time-to-crime/>.

¹⁶ Aaron Smith, “How the Iron Pipeline funnels guns into cities with tough gun laws,” *CNN Money*, January 19, 2016, <https://money.cnn.com/2016/01/19/news/iron-pipeline-gun-control/index.html>.

¹⁷ New York State Office of the Attorney General, “Target on Trafficking: New York Crime Gun Analysis,” accessed October 29, 2020, <https://targettrafficking.ag.ny.gov/#part1>.

¹⁸ ATF “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers.” See also, Anthony A. Braga, et al., “Interpreting the Empirical Evidence on Illegal Gun Market Dynamics,” *Journal of Urban Health* 89, no. 5 (2012): 779–793.

¹⁹ Garen J. Wintemute, “Firearms Licensee Characteristics Associated with Sales of Crime-Involved Firearms and Denied Sales: Findings from the Firearms Licensee Survey,” *RSF: The Russell Sage Foundation Journal of the Social Sciences* 3, no. 5 (2017): 58–74.

²⁰ ATF “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers.” See also, Anthony A. Braga, et al., “Interpreting the Empirical Evidence on Illegal Gun Market Dynamics,” *Journal of Urban Health* 89, no. 5 (2012): 779–793.

dealers once every three years.²¹ However, current resource limitations have left the agency falling far short of either goal. In 2019, ATF investigators conducted only 13,079 compliance inspections of firearms licensees, meaning that 83% of those licensed by the ATF to manufacture or distribute guns did not receive an inspection that year.²² These inspections are crucially important: in fiscal year 2019, 47% of the licensees inspected were found to have violations, and the violations that were discovered ranged from failure to properly complete the paperwork necessary for crime gun tracing to failure to conduct a background check.²³ Because of the limited resources available for gun dealer compliance inspections, the ATF generally prioritizes inspections of those dealers who are at risk for compliance issues, such as those who have had crime guns traced to them; have experienced theft; or are located near the southern border, where international gun trafficking often occurs, or in communities that have high violent crime rates.²⁴

The next attorney general should clearly articulate that focusing federal law enforcement resources on illegal gun trafficking is a top priority and a key pillar in the administration's approach to reducing gun violence. Personnel and other resources that had been dedicated to Operation Relentless Pursuit and Operation Legend should be redirected to a new national initiative focused on gun trafficking.

²¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, "Congressional Budget Submission Fiscal Year 2020," U.S. Department of Justice, March 2019, <https://www.justice.gov/jmd/page/file/1144651/download>.

²² Bureau of Alcohol, Tobacco, Firearms and Explosives, "Fact Sheet – Facts and Figures for Fiscal Year 2019," June 2020, <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2019>.

²³ *Id.*

²⁴ Bureau of Alcohol, Tobacco, Firearms and Explosives, "Congressional Budget Submission Fiscal Year 2020"; Office of the Inspector General, "Review of ATF's Federal Firearms Licensee Inspection Program," U.S. Department of Justice, April 2013, <https://oig.justice.gov/reports/2013/e1305.pdf>.