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*LEGISLATIVE TESTIMONY*

“How Bump Stocks and Other Conversion Devices are Amplifying the Gun Violence Epidemic”  
Hearing before the U.S. Senate Committee on the Judiciary  
November 13, 2024

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Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee:

Thank you for the opportunity to appear before you today. My name is Zack Smith, and I currently serve as a Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.<sup>1</sup> Before joining the Heritage Foundation, I served for several years as an Assistant United States Attorney, worked in private practice, and clerked for the Hon. Emmett R. Cox on the U.S. Court of Appeals for the Eleventh Circuit.

### **Not a Gun Violence Epidemic But a Crime Epidemic**

Fundamentally, today’s hearing is a solution in search of a problem. Or more accurately, it’s the wrong solution aimed at the wrong problem. Contrary to the title of today’s hearing, there is not a gun violence epidemic in our country. There is a violent crime epidemic.<sup>2</sup> And unfortunately, too many elected leaders are refusing to take the simple, yet necessary, steps needed to combat this crime epidemic: funding the police and prosecuting criminals.

### **Ideological Underpinnings of Soft-on-Crime Policies**

But why are elected leaders reluctant to take these commonsense steps? Unfortunately, too many have bought into the twin myths that our criminal justice system is systemically racist (It’s not) and that we have a mass incarceration problem, or lock up too many people, in our country (We don’t).<sup>3</sup>

At bottom, both claims can trace their origins back to something known as the Prison Abolition Movement. Angela Davis, a leading proponent of this movement, asks those who read her book, *Are Prisons Obsolete?* to “imagine a world without prisons.”<sup>4</sup> She argues that few, if any, people should be locked up. She has claimed that “prisons are racist institutions” designed to be “a black

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<sup>2</sup> Cully Stimson & Zack Smith, Crime Rates are High, No Matter What the Media Says, *The Daily Signal* (Jan. 26, 2024), <https://www.dailysignal.com/2024/01/26/crime-rates-continue-explode-blue-cities-despite-medias-narrative-contrary/>

<sup>3</sup> See, e.g., Zack Smith, The Myth of Mass Incarceration Remains Strong—Despite All Evidence to the Contrary, 25 *Fed. Soc. Rev.* 42 (2024), <https://fedsoc.org/fedsoc-review/the-myth-of-mass-incarceration-remains-strong-despite-all-evidence-to-the-contrary>.

<sup>4</sup> Cully Stimson & Zack Smith, The Myth of Mass Incarceration, Leg. Mem. No. 353, The Heritage Found. (May 29, 2024), <https://www.heritage.org/sites/default/files/2024-05/LM353.pdf> (citing Angela Davis, *Are Prisons Obsolete?* (2003)).

hole into which the detritus of contemporary capitalism is deposited.”<sup>5</sup> And she has claimed—without support—that “enormous numbers of people are in prison simply because they are, for example, black, Chicano, Vietnamese, Native American, or poor.”<sup>6</sup>

These claims are easily debunked. But many have called for policy choices to be made based on these faulty assumptions. The Brennan Center for Justice has called for the prison population to be reduced by up to 39 percent.<sup>7</sup> The ACLU has called for a 50 percent reduction in the number of people locked up in our nation’s jails and prisons.<sup>8</sup> And one academic has even proposed policies that would result in an “85 percent drop” in the number of people behind bars.<sup>9</sup>

These proposals are astounding because most people behind bars today are serving time in prison for committing violent crimes. As I have explained elsewhere, “The vast majority of people in prison are serving time in state prisons . . . [And t]he vast majority of state prisoners are there after being convicted of a violent crime, including things like murder, manslaughter, rape or sexual assault, robbery, or aggravated assault, among others. According to 2022 statistics, those convicted of violent crimes make up 62.9 percent of all state prisoners.”<sup>10</sup> So reducing the prison population by 50 percent—or more—necessarily means not locking up or releasing from prison clearly violent criminals.

We also know that not everyone who commits a violent crime has been arrested. Of those arrested, not all are prosecuted. Of those prosecuted, not all are convicted. And of those convicted, not all are sent to prison. On top of that, data shows that many more violent crimes occur than are even reported to police.<sup>11</sup> So the violent crime problem is even worse than many report.

Pointing out the fact that the United States locks up more people than other countries is also inapposite. Sadly, the United States has a much higher violent crime rate than many other countries, which our higher prison population reflects. And while there are a number of economic and sociological theories for why the United States suffers from this higher crime rate, it’s clear that promoting policies that will not hold offenders—particularly violent offenders accountable—only exacerbates the problem.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 6-7.

<sup>8</sup> *Id.*

<sup>9</sup> Smith, The Myth of Mass Incarceration Remains Strong—Despite All Evidence to the Contrary, *supra* note 3, at 45.

<sup>10</sup> Stimson & Zack Smith, The Myth of Mass Incarceration, *supra* note 4.

<sup>11</sup> @tzsmith, X (Sept. 23, 2024, 11:08 AM), <https://x.com/tzsmith/status/1838249084781527256> (thread discussing flaws with FBI crime statistics and the fact that the Justice Department’s Crime Victimization Survey shows much higher violent crime rates).

We also know that “[r]epeat offending is a fact of life with criminals,” with many offenders going on to reoffend again after leaving prison.<sup>12</sup> As noted criminologist Barry Latzer has stated, “[a]side from the seriousness of the crime, nothing affects sentencing severity more than the criminal history of the defendant.”<sup>13</sup> This generally means that when someone repeatedly commits more crimes, their subsequent sentences tend to be—and likely should be—harsher. In states such as California that have adopted three-strike laws, these harsher sentences have increased the prison population. But guess what? These laws are effective at combating crime. As a colleague and I have noted elsewhere:

Professors Daniel Kessler of Stanford University and Steven Levitt of the University of Chicago tested a research model using California’s Proposition 8, which imposed sentence enhancements for a select group of crimes. They found that in “the year following its passage, crimes covered by [three-strikes] fell by more than 10 percent relative to similar crimes not affected by the law, suggesting a large deterrent effect.” More strikingly, they found that “three years after the law [came] into effect, eligible crimes have fallen roughly 20-40 percent compared to non-eligible crimes.” They concluded that California sentence enhancements has a large deterrent effect and “may be more cost-effective than is generally thought.”<sup>14</sup>

Sadly, many elected officials at the local and state levels, as well as federal leaders, have ignored commonsense policies and have instead pushed policies that hurt public safety.

### **Flawed Policing and Prosecution Policies**

Emblematic of these flawed efforts is the support that the current Biden-Harris administration has expressed for policies that would make it more difficult and dangerous for police officers to do their jobs. Vice President Harris explicitly voiced support for defunding the police, and President Biden issued an executive order implementing at the federal level many of the problematic policies put forward in the ill-conceived George Floyd Justice in Policing Act.<sup>15</sup> As I said then:

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<sup>12</sup> Barry Latzer, *The Myth of Overpunishment, A Defense of the American Justice System and a Proposal to Reduce Incarceration While Protecting the Public* 114 (2022).

<sup>13</sup> *Id.*

<sup>14</sup> Zack Smith & Cully Stimson, *The D.C. City Counsel Failed at Criminal Justice Reform—Congress Must Fix It*, Leg. Mem. No. 337, The Heritage Found. At 30 (Jul. 12, 2023), <https://www.heritage.org/sites/default/files/2023-07/LM337.pdf> (citing Daniel Kessler & Steven D. Levitt, *Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation*, Nat’l Bureau of Econ. Res., Working Paper 6484 (March 1998), <https://www.nber.org/papers/w6484>. See also David S. Abrams, *Estimating the Deterrent Effect of Incarceration Using Sentencing Enhancements*, Inst. For L. & Econ., U. Pa. L. Sch., Research Paper No. 11-13 (Jan. 2011), [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?arti-cle=1360&context=faculty\\_scholarship](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?arti-cle=1360&context=faculty_scholarship) (taking a “similar methodological approach to Kessler and Levitt” and finding “evidence for a deterrent effect of sentence enhancements in the form of add-on gun laws”).

<sup>15</sup> See Zack Smith, *Kamala Harris’s Pro-Crime Policies*, Backgrounder No. 3847, The Heritage Found. (Sept. 10, 2024), [https://www.heritage.org/sites/default/files/2024-09/BG3847\\_0.pdf](https://www.heritage.org/sites/default/files/2024-09/BG3847_0.pdf) (discussing Vice President Harris’s

Law enforcement officers throughout the United States are already suffering from low morale, hostility in the media and other elites, crude stereotyping that classifies them all as racists, and increasing crime rates everywhere due to the defund movement and rogue prosecutors who refuse to prosecute the criminals they arrest . . .

. . . As important as what's contained in the executive order is what's not contained in it: It makes no provision to put more cops on the street today. It makes no provision to put more cops on the street in the long run. And it makes no provisions to encourage federal and state prosecutors to increase their prosecutions of violent crimes, drug trafficking, or other crimes that cripple the public's sense of safety and security.<sup>16</sup>

This latter point, prosecutors not prosecuting entire categories of crimes, deserves special attention. The overwhelming majority of prosecutions in the United States take place at the state and local level. In fact, there are over 2,300 local elected prosecutors who maintain primary responsibility for prosecuting crimes ranging from petty theft to violent crimes such as rape, robbery, and murder. And yet today, there has been a concerted effort to fund and empower certain of these prosecutors not to do their jobs.<sup>17</sup> In many cities such as Chicago, Los Angeles, and Philadelphia, just to name a few, violent crime rates have been all too high over the past several years at the same time the local rogue prosecutors pursued soft-on-crime policies.

Fortunately, citizens in cities governed by these rogue prosecutors have recognized the harm these policies have caused and have rebuked and removed from office several of the most high-profile adherents of the movement.<sup>18</sup> And have been supportive of policies that would hold offenders accountable when they break the law.<sup>19</sup>

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positions); see also Zack Smith, George Floyd Justice in Policing Act Would Make Cops' Jobs More Difficult and Dangerous, *The Daily Signal* (Mar. 5, 2021), <https://www.dailysignal.com/2021/03/05/george-floyd-justice-in-policing-act-would-make-cops-jobs-more-difficult-dangerous/>.

<sup>16</sup> Zack Smith, Biden's Executive Order on Policing Misses the Mark, *The Daily Signal* (May 27, 2022), <https://www.dailysignal.com/2022/05/27/bidens-executive-order-on-policing-misses-mark/>.

<sup>17</sup> See Zack Smith & Cully Stimson, *Rogue Prosecutors: How Radical Soros Lawyers Are Destroying America's Communities* (2023) (providing an overview of the ideological underpinnings of the movement, its funding, and the real-world consequences of its policies).

<sup>18</sup> See, e.g., Cully Stimson & Zack Smith, Rogue Prosecutor George Gascon Loses Reelection as LA County District Attorney, *The Daily Signal* (Nov. 6, 2024), <https://www.dailysignal.com/2024/11/06/rogue-prosecutor-george-gascon-loses-reelection-as-la-county-district-attorney/>; Cully Stimson & Zack Smith, Recall of Chesa Boudin in San Francisco Shows Rogue Prosecutor Movement for Failure It Is, *The Daily Signal* (Jun. 8, 2022), <https://www.dailysignal.com/2022/06/08/recall-of-chesa-boudin-in-san-francisco-shows-rogue-prosecutor-movement-for-failure-it-is/>.

<sup>19</sup> Zack Smith, Should States Raise the Felony Theft Thresholds? No., *CQ Researcher* (Nov. 1, 2024) (part of a report on criminal justice reforms and discussing specifically the popularity in California of Proposition 36, which increases penalties for certain repeat offenders among other actions), <https://cqpress.sagepub.com/cqresearcher/report/criminal->

Other rogue prosecutors, though, have been forced to resign in disgrace. Former Biden-appointed U.S. Attorney for Massachusetts Rachael Rollins is a prime example.<sup>20</sup> While serving as the Suffolk County District Attorney in Boston Massachusetts, Rollins put out a list of fifteen crimes someone could commit for which they would not be prosecuted. Under her list, someone could break into your home, possess cocaine, and resist arrest when police arrived, and she would not charge the person with any of those crimes so long as the person said they were seeking shelter or food or something to that effect. Knowing her radical policies, President Biden nominated her to be the U.S. Attorney for Massachusetts. As the members of this committee are aware, when her confirmation stalled, Vice President Harris cast the tie-breaking vote to confirm Rollins. The result? A Justice Department Inspector General report found a number of ethical violations and even referred her for criminal prosecution to the Biden-Harris Justice Department, which it declined to pursue. Ultimately, Rollins had to resign from office.<sup>21</sup>

One simple action that any Justice Department should pursue is an emphasis on felon-in-possession prosecutions—§922(g) cases as they’re colloquially known after the relevant U.S. Code section.<sup>22</sup> This provision makes it illegal for those who have been convicted of a felony (and those who meet certain other qualifying conditions) to possess a firearm. By definition, if someone is convicted of this offense, they already have a felony conviction. They’re disregarding relevant law by illegally possessing a firearm. And from a resource perspective, these cases tend to be straightforward to prosecute and are very effective in targeting individuals who are often drivers of violent crime in their communities. The Justice Department under the Trump Administration prioritized prosecuting these cases—particularly in jurisdictions burdened with rogue prosecutors at the local level—and hopefully will prioritize them again.

### **D.C. as an Example Where Congress Can Act**

The District of Columbia, with its unique status, provides insight into what happens when local leaders defund the police and prosecutors refuse to prosecute crimes. Because of the District’s unique status subject to Congress’s control, reforming these problem policies should be a top priority.<sup>23</sup>

As I have noted elsewhere, “Two of the most egregious examples include a recent effort to rewrite the District’s criminal code—an effort so radical that bipartisan majorities of both houses of Congress disapproved it and President Biden signed the disapproval into law—and their recent effort to hamstring the District’s local police force by passing a George Floyd Justice in Policing-

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[justice-reform-backlash-cqresrre20241101?token=7b6a55bc-14b1-4037-9652-9341eda7d4927c64eacb4d1c665a08f6c2f0d1bbd8ac6b172b082cbe57279924971b2ac7456a.](https://www.dailysignal.com/2023/05/19/soros-backed-federal-prosecutor-rachael-rollins-resigns-disgrace/)

<sup>20</sup> Cully Stimson & Zack Smith, Soros-backed Federal Prosecutor Rachael Rollins Resigns in Disgrace, *The Daily Signal* (May 19, 2023), <https://www.dailysignal.com/2023/05/19/soros-backed-federal-prosecutor-rachael-rollins-resigns-disgrace/>.

<sup>21</sup> *Id.*

<sup>22</sup> 18 U.S.C. §922(g).

<sup>23</sup> Smith & Stimson, *The D.C. City Counsel Failed at Criminal Justice Reform—Congress Must Fix It*, *supra* note 15.

style ‘reform’ bill.”<sup>24</sup> But there are other issues too, including with the D.C. U.S. Attorney’s office (which is unique among U.S. Attorney offices because it also functions as the local prosecutor) refusing to prosecute many crimes appropriately and the D.C. Attorney General refusing to prosecute many juvenile offenders.<sup>25</sup> As more fully outlined and explained elsewhere, Congress should take action to make sure D.C.’s Metropolitan Police Department is adequately funded and staffed, take action to ensure the U.S. Attorney is appropriately prosecuting criminals—especially by encouraging the office to focus on §922(g) prosecution, take action to remove authority from the D.C. Attorney General to prosecute juvenile offenders and give that authority to the U.S. Attorney’s Office, take action to comprehensively overhaul D.C.’s criminal code in a responsible manner that would hold offenders accountable and provide justice to victims, and overhaul how the District’s local judges are currently appointed—specifically by abolishing the constitutionally questionable judicial nominating commission that plays an all-too-central role in the process and reigning in sitting local judges who misapply the law or overstep their proper bounds.<sup>26</sup>

### **Two Positive Perspectives on Today’s Hearing**

Despite today’s hearing focusing on the wrong solution to the wrong problem, the Committee does deserve praise for holding today’s hearing for at least two reasons: First, today’s hearing focuses—albeit indirectly—on victims. Too often today, criminals are treated as victims, and the true victims are the forgotten component when discussing crime, violence, and criminal justice reforms.

Second, the Committee deserves praise for considering the problem rather than passing the buck to unelected, unaccountable individuals in administrative agencies to make policy decisions on important issues such as these. In fact, just last term, the United States Supreme Court ruled in the *Garland v. Cargill* case that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) exceeded the authority Congress had given it by trying to ban bumpstocks through a flawed regulatory process.<sup>27</sup> Another case involving potential ATF regulatory overreach is back at the Court this term too.<sup>28</sup> So while this Committee’s time and efforts would be better spent focused on the violent crime epidemic taking place across our country, at least the conversation is taking place here with the American people’s elected representatives.

I appreciate the Committee’s invitation to testify today, and I welcome the Committee’s questions.

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<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., Zack Smith, Juvenile Crime Is Out of Control in Too Many Cities, MSN (Jul. 26, 2024), [available at https://www.heritage.org/crime-and-justice/commentary/juvenile-crime-out-control-too-many-cities](https://www.heritage.org/crime-and-justice/commentary/juvenile-crime-out-control-too-many-cities).

<sup>26</sup> See, e.g., Zack Smith, Chief Judges of DC’s Local Courts Must Answer for Questionable Conduct, The Daily Signal (Oct. 8, 2023), <https://www.dailysignal.com/2023/10/08/chief-judges-d-c-s-local-courts-must-be-made-answer-questionable-conduct/>.

<sup>27</sup> *Garland v. Cargill*, 602 U.S. 406 (2024).

<sup>28</sup> Zack Smith & Jack Fitzhenry, Ghost Guns at SCOTUS: The ATF Once Again seeks an Expansive View of Its Own Authority, The Daily Signal (Oct. 9, 2024), <https://www.dailysignal.com/2024/10/09/how-garland-v-vanderstok-oral-argument-supreme-court-went/> (discussing the pending *Garland v. VanDerStok* case where the U.S. Supreme Court is considering whether the ATF has the power to ban so-called “ghost guns”).