

**United States Senate**  
WASHINGTON, DC 20510

September 12, 2022

Attorney General Merrick Garland  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Garland,

I write to request an update on the Department of Justice's implementation of the Bipartisan Safer Communities Act (BSCA). President Biden signed the BSCA into law over two months ago on June 25, 2022, and many of the core provisions of the law went into effect immediately. Since the BSCA's passage, the country has experienced an alarmingly high number of shootings, many of which have gripped the public's consciousness. As I have noted, the BSCA contains several commonsense reforms which could have prevented some of these acts of violence had Congress acted sooner. Now that the BSCA is law, we cannot afford to waste any time implementing the law's life-saving provisions. I have outlined some of the most important provisions within the Department's jurisdiction below. Please provide an update on the Department's implementation of the BSCA, addressing each of the following areas, by September 30, 2022.

- The BSCA created a new \$750 million funding source through the Edward Byrne Memorial Justice Assistant Grant program for state implementation of Extreme Risk Protection Order (ERPO) programs and other forms of crisis intervention; \$150 million of these funds are available for fiscal year 2022. ERPO programs, which currently exist in 19 states and the District of Columbia, are crucial tools for communities to prevent gun violence. As the recent tragedies in Buffalo and Highland Park illustrated, many states still have work to do to ensure the effective implementation of their ERPO programs.

The drafters of the BSCA intended that every state that currently has these programs in place be eligible for federal funding to enhance their implementation. The Department is responsible for crafting guidelines on the use of these funds, consistent with the drafters' intent, and ensuring that these funds are quickly delivered to states. **I would appreciate an update on the Department's distribution of these funds along with any rulemaking or advisory guidance about eligibility and how states may use these funds.** The drafters of the BSCA also intended for this funding to be made available for a broad array of implementation efforts and for the Department to conduct research into the efficacy of these programs. **I would appreciate an update on the guidance, resources, and technical assistance the Department will be providing to funding recipients on eligible uses and best practices for implementing ERPO programs, and the data collection necessary to research efficacy.**

- The BSCA closed the "boyfriend loophole" for convicted domestic violence abusers who are or were in dating relationships. Now, it is illegal for these individuals to purchase or possess firearms. This is an incredibly important change in the law because domestic violence victims are five times more likely to be killed when abusive partners have access to a gun and a woman is as likely to be killed by a dating partner as a spouse. The Department, including the Federal Bureau

of Investigation (FBI), must immediately implement and enforce this change in the law to protect victims of domestic violence.

The Department should begin a rulemaking process immediately with the goal of protecting as many victims as possible under the law and clarifying that a person will not regain their firearm rights if they have an intervening misdemeanor conviction that contains an element of force, threatened use of force, or threatened use of a deadly weapon. Consistent with the text of BSCA, the Department should interpret the three-factor test for identifying a dating relationship in a manner consistent with the test in the Violence Against Women Act. The Department should also interpret “recently” broadly to ensure the definition of covered relationships encompasses as many victims of domestic violence as possible. **I would appreciate an update on the Department’s interpretation of these provisions.**

The Department should develop guidance for National Instant Criminal Background Check System (NICS) operators to ensure that convictions for misdemeanor crimes of domestic violence by dating partners or former dating partners properly lead to denials, and law enforcement officers and United States Attorneys across the country should be trained on the updated class of prohibited firearm possessors. In particular, **I would appreciate an update on how NICS intends to treat misdemeanor convictions in the over 30 states that have included dating relationships in their domestic violence laws.** Similarly, the Department should coordinate with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to ensure that federal firearm licensees and other firearm sellers are aware of this new restriction on sales. Every firearm sold to an individual with a demonstrated history of violence against intimate partners is a potential tragedy waiting to happen which, thanks to this critical legislation, we can now prevent. **Please provide an update on the Department’s efforts to implement this provision of the BSCA and keep firearms out of the hands of convicted domestic abusers.**

- The BSCA created a new enhanced review process for background checks conducted on buyers younger than 21 years old. This new process requires NICS to contact in-state records custodians and conduct an in-depth search for evidence that a prospective buyer has a criminal or mental health history that Congress has determined poses a real risk of violence and should prohibit gun ownership. This new process is compulsory for 10 years, and every background check pursuant to a sale that is processed by NICS without these additional steps violates the law.

Among other requirements, the BSCA mandates a pause of up to three business days while NICS makes at least three new contacts to locate and review potentially disqualifying criminal and mental health records. NICS must contact multiple state records repositories within three days along with making contact with the prospective buyer’s local law enforcement agency. As I have noted, this contact is essential for alerting local law enforcement to dangerous members of their community attempting to purchase firearms. Any potentially disqualifying record uncovered triggers an extended window of no more than ten business days to complete the investigation.

Effectively immediately, NICS may not approve any sale to under-21 buyers within 3 days unless those checks have been conducted. The Department and the FBI should immediately update training and guidance for NICS operators to ensure that these checks are conducted effectively and efficiently. Understanding the increased resources these enhanced checks will require, the BSCA appropriated \$100 million for NICS to cover additional staffing and expenses needs. The Department also received \$200 million to make grants to states to improve the availability of records for NICS. **I would appreciate confirmation that NICS is currently processing background checks for under-21 buyers in accordance with law. Further, please provide an**

**update on the Department's implementation of all aspects of the Juvenile Records section of the BSCA, including any relevant rulemaking or advisory guidance in process or completed along with plans for outreach to state and local partners to establish processes for completing the enhanced investigation, as well as additional NICS capacity expansion.**

- The BSCA created new federal straw purchasing and arms trafficking crimes, which the Department has been requesting for many years. The BSCA similarly enhanced criminal penalties for many other firearm violations. Significantly, the bill makes clear that any seller – including federal firearms licensees – may not make sales to any individual they know or have reasonable cause to believe is a straw purchaser or engaged in gun trafficking. This is a critical new tool to hold gun sellers accountable when they sell firearms to individuals that have displayed clear signs they are engaged in unlawful gun trafficking. **I would appreciate an update on how the Department plans to communicate with federal firearms licensees about their responsibilities under the law and what facts would give them reason to believe a purchaser is engaged in unlawful gun trafficking.**

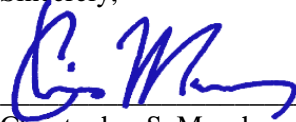
Cumulatively, these new and expanded criminal provisions will afford law enforcement greater power to pursue dangerous, armed criminals and stem the flow of illegal guns from states and cities with lax gun laws into states and cities struggling with rising gun violence. However, as you noted at your confirmation hearing, “it is plain ... that there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country.” Countless studies have confirmed that racial disparities exist in law enforcement and prosecutorial decision-making. As the Department implements these new criminal provisions, it is incumbent on Department leadership to ensure that these new tools and power do not come at the expense of historically over-policed and over-prosecuted communities. The drafters of the BSCA included an explicit directive to the United States Sentencing Commission to consider mitigating factors when developing sentencing guidelines to ensure there are less severe criminal consequences for individuals who have been coerced to participate in a gun trafficking scheme, are themselves victims of domestic abuse, or have a limited role or culpability. **I would appreciate an update on the Department's plans to use these new and expanded criminal penalties to prevent gun violence and illegal gun sales while preventing a disparate impact on historically marginalized communities.**

- The BSCA appropriated \$250 million for a community violence intervention and prevention initiative administered by the Department. The President has been clear that community violence intervention strategies are a key component of keeping our communities safe. These evidence-informed programs have been shown to prevent violence before it occurs and are a critical investment to building safe and healthy communities.

Congress appropriated \$50 million for the Department to fund community violence initiatives in fiscal year 2022 and this new \$250 million in funding is intended to build off that program. The first \$50 million of the BSCA funding is available for fiscal year 2022. It is essential that this funding reach the programs and community leaders that are doing this life-saving work with an application process that is easy to use and that funding be made available for emerging or promising strategies. The Department can go beyond funding to also serve as a convener and capacity-builder for the entire field. **I would appreciate an update on the Department's plans to distribute this funding, including how it will connect to the existing Office of Justice Programs Community Based Violence Intervention and Prevention Initiative and ensure it is efficiently employed to achieve maximum impact.**

The Bipartisan Safer Communities Act is a historic piece of legislation, the first significant federal gun violence prevent legislation in nearly 30 years, but even the best legislation requires diligent implementation and enforcement. I am confident that the Department of Justice, under your leadership, is up to the task. However, we do not have any time to lose. Gun violence continues to devastate communities at rates we have not seen for decades, and the BSCA gave the Department significant new tools to prevent more violence and hold violent criminals accountable to the law. I look forward to hearing from you and to continuing to work together on these issues.

Sincerely,



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Christopher S. Murphy  
United States Senator