

Hon. Amy. L Solomon  
Principal Deputy  
Assistant Attorney General of the United States  
U.S. Department of Justice  
Office of Justice Programs  
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Washington, D.C. 20530-0001

Director Karlhlon F. Moore  
U.S. Department of Justice  
Office of Justice Programs  
810 7<sup>th</sup> Street, NW  
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July 17<sup>th</sup>, 2023

Dear Assistant Attorney General Solomon and Director Moore:

The Department of Justice appears to have weaponized the *Bipartisan Safer Communities Act* to illegally fund ineligible “red flag” laws and bribe pro-gun states into passing gun confiscation laws. Therefore, we, the undersigned Members of Congress, write to you today to demand accountability for the Department of Justice’s willful violation of the plain text of the statute, Congressional intent, states’ rights, and the Bill of Rights. The Bureau of Justice Assistance must swiftly correct this gross misuse of *Bipartisan Safer Communities Act* grant programs and instead respect the Second Amendment and due process rights of American citizens.

The 117<sup>th</sup> Congress passed the *Bipartisan Safer Communities Act*, creating the Byrne State Crisis Intervention Program to fund controversial Extreme Risk Protection Order programs—otherwise known as unconstitutional “red flag” gun confiscation orders or GCOs—at the state level. The legislation’s stated intent was not to “force[] states who use grant funding for ‘red flag’ laws to comply with strict and comprehensive due process requirements.”<sup>1</sup> This was the intent of the 117<sup>th</sup> Congress, given that every “red flag” gun confiscation law in this nation lacks sufficient and constitutional due process protections for gun owners.<sup>2</sup> For this reason, the statute states that “extreme risk protection order programs [...] must include, at a minimum”<sup>3</sup> certain due process protections which are not in effect in a single state’s existing “red flag” law statutes.<sup>4</sup>

Since the passage of the *Bipartisan Safer Communities Act*, no states have revised their statutes to comply with the “due process” requirements imposed by the 117<sup>th</sup> Congress. Nevertheless, the Bureau of Justice Programs has funded every state that applied with a “red flag” gun confiscation law on the books *without* enforcing Congress’ “due process” requirements.<sup>5</sup> The federal government should have no part in funding state level gun confiscation programs which violate the due process rights of gun owners.

Furthermore, the *Bipartisan Safer Communities Act*’s intent was not to “require or incentivize states to adopt red flag laws.”<sup>6</sup> It is also unlawful to use federal grants to pay for lobbying efforts to influence the adoption of any legislation or law.<sup>7</sup> To avoid any confusion, Idaho, Montana, and Wisconsin explicitly

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<sup>1</sup> Cornyn. [The Bipartisan Safer Communities Act](#). “MYTH: This measure creates a national, federal red flag law and forces states who don’t have them to adopt them”.

<sup>2</sup> Swearer. “[Raising Red Flags on Federal Red Flag Gun Laws](#)”. *The Heritage Foundation*. June 3<sup>rd</sup>, 2022.

<sup>3</sup> 34 U.S.C. 10152.

<sup>4</sup> Johnston. “[‘Red Flag’ Gun Confiscation Laws in the Bipartisan Safer Communities Act](#)”. *Gun Owners of America*. “

<sup>5</sup> Bureau of Justice Assistance. “[BJA FY 2022- 2023 Byrne State Crisis Intervention Program Formula Solicitation](#)”. *Department of Justice*.

<sup>6</sup> Cornyn. [The Bipartisan Safer Communities Act](#). “MYTH: This measure creates a national, federal red flag law and forces states who don’t have them to adopt them”.

<sup>7</sup> 18 U.S.C. 1913.

disavowed the use of any grant funding to promote or implement “red flag” laws,<sup>8</sup> since they do not have such a law on the books. These three states appear to be the only states without “red flag” laws that are clearly in compliance with the requirements enacted by the 117<sup>th</sup> Congress.

Disturbingly, several states and territories without “red flag” laws on the books have been granted funding for the creation and implementation of such programs—including Arizona, Arkansas, Kansas, Minnesota, and West Virginia.<sup>9</sup> It is unclear for what lawful purpose these approved grants could be used. It appears that this *Bipartisan Safer Communities Act* grant program is being used by the federal government to influence states into enacting “red flag” gun confiscation laws.<sup>10</sup> According to Bureau of Justice Assistance senior policy advisor Tammy Brown:

*“if the state does not have [a “red flag”] law in place, it could be [used for] media campaigns or public service announcements that would encourage the state to incorporate that type of law. So it’s really assisting those grantees that are looking at either improving implementation of their existing law or educating to potentially create that law within their state.”<sup>11</sup>*

And it appears that this federal bribery program is well underway. Minnesota did not have a “red flag” gun confiscation law when the Department of Justice announced the approval of a grant to the Minnesota Department of Public Safety “for the creation and/or implementation of extreme risk protection order (ERPO) programs” on February 14<sup>th</sup>, 2023.<sup>12</sup> Minnesota Governor Tim Walz signed a “red flag” gun confiscation order program into law less than 100 days later.<sup>13</sup> Minnesota’s example proves that this *Bipartisan Safer Communities Act* program is a federal bribe to influence state governments into enacting gun confiscation laws.

The very statutes enacted by Congress have been completely ignored by the Biden Administration. The Department of Justice appears to be willing to hand out grant money for gun confiscation to any state that applies—whether or not they have enacted “due process” protections or even have a “red flag” law in the first place!

We, the undersigned Members of Congress, demand transparency from the Department of Justice and Office of Justice Programs into how states, territories, and D.C. are receiving funds from this program without having qualifying laws on the books. Please respond to the following questions as soon as possible, but no later than August 18<sup>th</sup>, 2023:

- 1) Given that Arkansas has no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$3,210,628 to the Arkansas Department of Finance and Administration for “implementing ERPO programs and providing communication, education, and public awareness of ERPO” in grant 15PBJA-23-GG-00001-BSCI?
- 2) Given that Arizona has no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$6,111,652 to the Criminal Justice Commission of Arizona for

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<sup>8</sup> Bureau of Justice Assistance. “[BJA FY 2022- 2023 Byrne State Crisis Intervention Program Formula Solicitation](#)”. *Department of Justice*.

<sup>9</sup> Bureau of Justice Assistance. “[BJA FY 2022- 2023 Byrne State Crisis Intervention Program Formula Solicitation](#)”. *Department of Justice*.

<sup>10</sup> Gun Owners of America “[Cornyn-Murphy Gun Control’s Disastrous Consequences](#)”.

<sup>11</sup> Fox, Palmer, and Brown. “[FY 2022 Extreme Risk Protective Order and Firearm Crisis Intervention Training and Technical Assistance Initiative Transcript](#)”. *Bureau of Justice Assistance*. December 9<sup>th</sup>, 2022. 6.

<sup>12</sup> “[Justice Department Announces Over \\$200 Million in Investments in State Crisis Intervention](#)”. Office of Public Affairs. February 14<sup>th</sup>, 2023.

<sup>13</sup> Ahmed. “[Minnesota governor signs gun safety measures: red flag law, expanded background checks](#)”. *Associated Press*. May 19<sup>th</sup>, 2023.

“the creation and implementation of... extreme risk protection orders... including: Communication, Education, and Public Awareness” in grant 15PBJA-23-GG-00003-BSCI?

- 3) Given that Kansas has no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$2,698,339 to the Executive Office of the State of Kansas “to create and implement extreme risk protection order programs” in grant 15PBJA-23-GG-00049-BSCI?
- 4) Given that Minnesota had no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$3,723,326 to the Minnesota Department of Public Safety “for the creation and/or implementation of extreme risk protection order (ERPO) programs” in grant 15PBJA-23-GG-00018-BSCI?
- 5) Given that West Virginia has no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$1,755,887 to the West Virginia Division of Administrative Services to “assess the need for and capabilities of implementing... extreme risk protection order (ERPO) programs [and] training for those implementing ERPO programs” in grant 15PBJA-23-GG-00042-BSCI?
- 6) Given that Guam has no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$644,469 to the Department of Administration of the Government of Guam for “the creation and/or implementation of Extreme Risk Protection Order (ERPO) programs” in grant 15PBJA-23-GG-00008-BSCI?
- 7) Given that Puerto Rico has no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$2,274,664 to the Puerto Rico Department of Justice “to finance... Extreme Risk Protection Order (ERPO) programs” in grant 15PBJA-23-GG-00031-BSCI?
- 8) Given that the Virgin Islands have no “Extreme Risk Protection Order” law, for what lawful purpose did the Bureau of Justice Assistance award \$644,469 to the Executive Office of the Government of the U.S. Virgin Islands to “Outreach to community members, stakeholders, municipal leaders, law enforcement agencies, and those engaging with at-risk individuals to raise public awareness about the value of public safety benefits of ERPO laws and programs, and promote the importance of effective implementation of enforcement as well as program development enhancement” in grant 15PBJA-23-GG-00038-BSCI?
- 9) Please provide the oversight rules and practices that the Office of Justice Programs follows in order to ensure that the legally appropriated funds from the *Bipartisan Safer Communities Act* are not being used in violation of the terms of the statute.
- 10) Please provide the criteria that is used to award states with funds from the Byrne State Crisis Intervention Program.

Sincerely,

SIGNATURES

CC: Hon. Merrick B. Garland  
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U.S. Department of Justice  
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