



Department of Justice

STATEMENT OF

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BEFORE THE

**COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
U.S. HOUSE OF REPRESENTATIVES**

**AT A HEARING ENTITLED
OVERDUE OVERSIGHT OF THE CAPITAL CITY: PART II**

PRESENTED

MAY 16, 2023

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Matthew M. Graves
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Good morning, Chairman Comer, Ranking Member Raskin, and members of this Committee. I am honored to make an appearance before this Committee to discuss the public safety mission of the United States Attorney's Office (USAO or Office) for the District of Columbia (D.C.) and to represent the dedicated men and women of USAO who work tirelessly to prosecute crime and protect the American people from acts of violence.

The USAO for D.C. is unique among the 94 United States Attorney's Offices across the nation by virtue of our size and our varied responsibilities of prosecuting both federal crime and most local crime committed by adults in D.C. We have a dedicated and talented team of prosecutors, victim advocates, and support staff who have a deep commitment to doing justice for victims, defendants, and the community. They work relentlessly in pursuit of justice for the people of the United States and D.C. Every day, they meet with the families of people who have been killed by senseless acts of violence, the victims who have had their lives altered irrevocably, and the community members who have experienced the trauma of witnessing violence. They also have worked diligently through an unprecedented series of crises since March 2020 and, despite these crises, have been able secure more than 1,300 felony indictments for violations of D.C. law and more than 3,100 guilty pleas in felony cases for violations of D.C. law during that timeframe. I am deeply proud of their dedication to public service, and I am privileged to lead them as the United States Attorney for D.C.

Prosecutions of Local Crime in the District of Columbia

Given the role of our Office as the local prosecutor of most crime committed by adults in D.C., I want to describe how our Office's Superior Court Division (Division) operates and how its operations differ so dramatically from the way our Division focuses on federal criminal violations operates. The Superior Court Division has roughly 170 Assistant United States Attorneys and approximately 60 additional essential personnel. Since being sworn into Office, I have reallocated our resources internally to increase the number of prosecutors in the Superior Court Division by approximately 10% from the 156 prosecutors the Division had when I was first briefed on the Division's staffing levels. Our Superior Court Division prosecutes thousands

of cases every year in the Superior Court of the District of Columbia (D.C. Superior Court), ranging from misdemeanors such as unlawful entry, threats, and destruction of property; to felony gun and drug possession; to violent felonies such as carjackings, robberies, burglaries, homicides, and sexual assaults. The prosecutors who serve in the Superior Court Division are in court and the grand jury almost every day, and the Division takes hundreds of cases to trial each year. As of May 1, 2023, the Division was actively prosecuting more than 2,300 felony cases in D.C. Superior Court.

The Superior Court Division is divided into five sections. Our Homicide Section is responsible for the investigation and prosecution of homicides committed in D.C. Our Sex Offense and Domestic Violence Section prosecutes crimes against intimate partners and family members, child abuse, and sexual violence and assault. Our Major Crimes Section prosecutes acts of violence against a person, including carjacking and shootings, or crimes that may result in long-lasting and debilitating injuries. Our General Crimes Section prosecutes a high volume of non-violent felonies and misdemeanors, such as firearms possession, drug distribution, thefts, failures to appear in court, and simple assaults. Our Division's newest section, the Early Case Assessment Section (ECAS), was formed under the last administration in 2019 to dedicate more resources to the intake of new cases into our higher-volume sections. Attorneys in this section work with law enforcement—particularly the Metropolitan Police Department (MPD)—to review arrests, make charging decisions, and determine if there are factual or legal issues that will preclude us from proving our case beyond a reasonable doubt. Body-worn camera footage from law enforcement officers and the proliferation of surveillance footage, in particular, make vastly more information available at this early stage and greatly increase the time it takes to fully investigate any individual case, even a misdemeanor. By dedicating more resources up front—before we charge a case—we can focus on prosecuting viable cases, not on cases that we will later be forced to dismiss because we, for instance, lack essential witnesses or admissible evidence. This dedication of resources at the charging stage has become even more valuable as recent changes in the law have affected our ability to bring charges in certain types of cases.

Gun Violence in the District of Columbia

Unfortunately, D.C. has not been immune from what many parts of the country are experiencing: a devastating proliferation of illegal firearms and increases in certain types of violent crime. While most violent felonies remain at historically low levels, the number of shootings and homicides in D.C. began increasing in 2018. These numbers increased significantly during the pandemic. For context, 30% of violent crimes were committed with a firearm ten years ago. In 2022, almost 60% of violent crimes were committed with a firearm. With respect to firearm recoveries, MPD recovered just over 2,300 illegal firearms in 2021; that number jumped to nearly 3,200 in 2022. D.C. has also experienced, consistent with national trends, massive spikes in machine gun conversion switches and privately manufactured firearms, which are commonly referred to as “ghost guns.” D.C. went from single-digit ghost gun recoveries in 2018 to 461 ghost gun recoveries in 2022. Recoveries of machine gun conversion switches, which readily convert a semi-automatic weapon into a fully automatic weapon, rose over 340% between 2021 and 2022. The exponentially increasing presence of illegal firearms is a substantial headwind in our work to reduce shootings. When both parties are armed with a

firearm, self-defense becomes a significant barrier to prosecuting gun cases. Carjackings in D.C. have also more than doubled during the pandemic.

When looking specifically at gun violence, our Office uses an evidence-based approach to proactively target those who law enforcement believes are driving gun violence and arrest them for the crimes they are committing. As part of the Attorney General's efforts to combat violent crime, our Office participates in Project Safe Neighborhood (PSN). PSN uses the intelligence gathered in our proactive investigations to determine whether we should prosecute in federal court individuals arrested for possessing an illegal firearm who have a prior felony conviction. The implementation of this program has led to our Office charging more of these types of cases in federal court than we otherwise would have. Incidentally, this was the one policy change I have made since assuming office that increased local declination rates: the way this decision is reflected in our data systems, we *decline* prosecution in local court in favor of prosecution in federal court.

Law Enforcement Strategy for Reducing Gun Violence. Faced with the surge in shootings and homicides, our Office is focused on partnering with law enforcement and the community to combat this surge. We are concerned with the increases in these categories of violent crimes, grieving every loss of life in this city, and recognizing that one homicide is one too many. We know that a relatively small percentage of our fellow citizens is driving a substantial portion of the violence in our community and that much of the community-based gun violence is focused on a relatively few discrete areas around D.C. Accordingly, we affirmatively focus time and resources to address the people and places that are driving gun violence. We are constantly working with our law enforcement partners and drawing on best practices recommended by national experts focused on combating community-based violent crime. This allows us to focus on policing and prosecuting both “hot spots”—that is, places where crime is disproportionately occurring—and people who have been identified by law enforcement as disproportionately likely to engage in future acts of violence. We have seen that this strategy can greatly impact violence in the areas where we focus. For example, in the aftermath of relatively recent sustained law enforcement operations of “hot spots” where we charged in federal court between a dozen or two dozen individuals per operation, we saw marked reductions in various violent crime metrics, including dramatic reductions in calls for the sound of gunshots and instances of violent crime. Further, we work closely with MPD and our federal partners on the Carjacking Task Force, which has improved information-sharing and coordination between our agencies and led to the apprehension and prosecution of adults committing carjackings.

We have complete agreement and buy-in on this strategy: MPD, federal law enforcement partners, and our Office have all assigned agents, officers, and prosecutors to support these efforts; we are confident that we will be able to reverse the trends we have seen build with respect to shootings, with the help and partnership of the community.

Challenges Facing the Criminal Justice System in the District of Columbia

It is important to recognize the unprecedented, challenging circumstances of the past three years, as the effects are still felt today. The primary challenges include the COVID-19 pandemic and D.C. Department of Forensic Sciences' (DFS) loss of accreditation.

COVID-19. The COVID-19 pandemic had an enormous effect on criminal justice system operations, as it did on most systems in our country. While crime did not stop in March 2020, our ability to move cases forward through the criminal justice system largely did. For example, a person charged with a felony offense must be indicted by a grand jury before being tried in court. For six months in 2020, due to pandemic-required restrictions, there were no sitting grand juries. For another year, pandemic-related restrictions continued to slow down the work of grand juries. As a result, the number of felony cases pending indictment skyrocketed. Further, for a year and a half, there were very few court hearings in felony cases unless an individual was detained, and there were no jury trials at all for more than a year. Misdemeanor bench trials also were largely put on hold. Our Office also spent tremendous resources responding to well over 1,500 motions for compassionate release filed by people who were incarcerated since the pandemic began; nearly 80% of these motions were denied.

As the court reopened, our Office faced the daunting and unprecedented task of ensuring that every case in the backlog was handled justly, while keeping up with the steady influx of arrests happening every day. With the help of MPD and other law enforcement agencies, our prosecutors worked at an unprecedented pace to address the backlog, while treating each case fairly and impartially and ensuring we prioritized the cases that most impacted public safety. Our victim advocates worked around the clock to ensure that victims and witnesses were supported throughout the delay. Through the work of the D.C. Superior Court, our Office, law enforcement, and other stakeholders in D.C., the criminal justice system in D.C. is finally returning to normal operations after several years of unprecedented challenges. By the end of 2022, the number of felony cases pending in D.C. Superior Court returned to pre-pandemic levels. That said, our Office has 60% more indicted homicide cases that are pending trial than we did before the pandemic.

D.C. Department of Forensic Sciences' Loss of Accreditation. In April 2021, the American National Standards Institute (ANSI) National Accreditation Board (ANAB) suspended DFS's accreditation. ANAB fully withdrew DFS's accreditation in all forensic disciplines in May 2021. DFS is D.C.'s independent forensic laboratory that conducted the DNA, fingerprint, firearms, and drug testing for the vast majority of our Office's criminal cases. As a result, one year into the COVID-19 pandemic, our Office faced a second unprecedented challenge in the criminal justice system: the forensics laboratory on which we relied was no longer permitted to perform scientific work, and we could no longer rely on DFS's expert opinions in our pending cases. Forensic evidence is a cornerstone of most violent crime prosecutions, and it is difficult to overstate the catastrophic effect of DFS's loss of accreditation.

First, given the circumstances of DFS's loss of accreditation, our Office spent extraordinary resources ensuring defense attorneys were provided with extensive disclosures in pending cases involving DFS, resulting in a discovery portal with more than 16,000 pages of material. Second, our Office had to hire private laboratories to retest evidence before trial in pending cases to ensure that the forensic evidence presented to juries was reliable. Third, although DFS has contracted with private laboratories across the country to outsource DNA and fingerprint testing needed for criminal cases, our Office then must pay for and arrange the testimony and travel of the private experts for trial. Our Office also has been paying the private

laboratories directly to test evidence needed for trial, particularly in gun cases, given limited outsourcing capacity through DFS. Fourth, DFS eliminated its Firearms Examinations Unit through a reduction-in-force, and therefore our Office must locate and contract directly with private experts for firearms examinations needed to prosecute shooting cases. Finally, DFS's loss of accreditation in April 2021 has had an outsized effect on our ability to prosecute drug offenses, as D.C. could no longer test drug evidence. Fortunately, the U.S. Drug Enforcement Administration generously agreed to test the drug evidence in our most serious felony cases. Although this provided our Office with an avenue to charge drug offenses in Superior Court in limited circumstances, a large gap remained.

This month, D.C. is beginning a contract with a private laboratory to provide drug testing, which should now alleviate some of that gap. It is important to note that we did not have to shoulder this enormous burden on our own. We have worked closely with our local partners to identify solutions, and appreciate the leadership that the Mayor, her Office, the D.C. Council, MPD, and the D.C. Office of the Attorney General have exhibited in trying to identify creative ways of addressing this crisis when faced with an absence of readily identifiable solutions.

Charging Decisions in the Superior Court Division

Our Office is committed to using every tool at its disposal to aggressively prosecute violent crime that we believe we can prove beyond a reasonable doubt at trial. That has been—and will continue to be—the policy and priority of our Office. We welcome the opportunity to discuss the safety of our community, as it is our primary focus. Through our enforcement strategies and charging policies, our Office is fully engaged in addressing the increase in firearm violence that plagues our community. As described above, our Office is fully engaged in addressing a strategic approach to combatting violent crime, and I will provide additional context to fully understand the Fiscal Year (FY) 2022 decrease in the percentage of overall arrests that were charged. With respect to violent crime in FY 2022, our Office charged roughly 90% of all arrests for the most serious violent crimes—homicide, first degree sexual abuse (rape), carjacking, and assault with intent to kill—which is largely consistent with our historical rates.

While we did see a decrease in the percentage of overall arrests that were charged in FY 2022, it is critical to understand that this decrease did not apply to our Office's handling of the most serious violent crimes, which remained relatively constant compared to prior years. Further, we already see that FY 2023 charging rates are higher than FY 2022 rates and we expect 2024 charging rates, in turn, to be higher as well. As explained above, the FY 2022 decrease in arrests that resulted in charges is largely driven by our treatment of non-violent *misdemeanor* offenses, such as unlawful entry and drug possession. There is no question that certain misdemeanor offenses are of particular concern to the community and there are important reasons to prosecute many of them. However, our Office's charging decisions with respect to these non-violent misdemeanor offenses should not be conflated with our Office's strategy to combatting the gun violence that is on the rise.

Our prosecutors review arrests six days a week, every week of the year, including on holidays. These prosecutors make difficult decisions every day as to whether to charge an individual who has been arrested. While law enforcement makes arrests based on a probable

cause standard, we may file criminal charges only when the person's conduct constitutes a criminal offense and when the available evidence will likely be sufficient to obtain and sustain a conviction. It is our duty as prosecutors to carefully review the evidence, weigh a variety of factors, and make the right decision before charging any individual with a crime.

As a general matter, there are various reasons we may not be able to file charges at the time of arrest. For example, there may be insufficient evidence to identify the person who committed the offense; insufficient evidence to prove the commission of an offense; Fourth Amendment issues with the search and seizure of critical evidence (or other constitutional issues); lack of corroboration; witness credibility issues (such as inconsistent statements, intoxication, or substantial bias); witness recantation; witness cooperation issues; and/or significant exculpatory evidence. In cases where we have insufficient evidence to file charges at the time of arrest, we may continue to investigate the case with the ability to file charges at a later date; this is particularly true in the relatively limited number of violent felonies where we do not file charges at the time of arrest.

In FY 2018, the number and percentage of cases charged at arrest began decreasing year over year. The decrease accelerated during FY 2021 and 2022—the time period of the COVID-19 pandemic and DFS's loss of accreditation. As explained earlier, the absence of a D.C. crime laboratory to conduct forensic analysis in criminal cases has impacted our ability to test drug evidence (and charge those cases), conduct timely DNA and fingerprint analysis, and conduct timely firearms examinations.

Another factor in the decreased percentage of charges filed at arrest is the creation of ECAS in 2019 and the increased focus on resources at the charging stage of the case. ECAS has allowed a more comprehensive review of the available evidence, including body-worn camera footage from law enforcement officers, to assess the viability of criminal charges at the earliest stage. When it comes to low-level, non-violent misdemeanors, our Office is more closely assessing whether the facts and circumstances of the case, including the nature of the criminal conduct, merits criminal prosecution, and whether the essential witnesses are willing to cooperate with the prosecution. This Section's earlier review of cases at arrest has also allowed our Office to better assess compliance with new appellate decisions and legislative changes that limit the types of searches and seizures that law enforcement can lawfully conduct, including when a firearm is recovered.

As I previously noted, there are important reasons to prosecute misdemeanors, and we charge thousands of them every year. The conduct giving rise to these arrests—including drug use, unlawful entry, and shoplifting—greatly impact the quality of life of our fellow community members. We are committed to prosecuting these crimes in a way that both reduces the negative impact on the community and tries to address what is typically driving these crimes—mental health issues, substance abuse issues, or a combination of the two. But no one should confuse addressing these public safety issues with a strategy for addressing shootings, gun violence, and carjackings. Our need to dedicate as many resources as we reasonably can to the work we are doing to address violence is why it is absolutely critical that we do not squander precious time and resources charging misdemeanors that a minimal amount of investigation would have revealed we were not going to be able to successfully prosecute.

We have no shortage of important work in our Office. From prosecuting acts of international terrorism to disrupting malign foreign influence schemes to disrupting attempts to circumvent our national security laws, we are responsible for a number of unique prosecutorial obligations. As I repeatedly say whenever speaking about our Office's work, however, nothing is more important or more tangible to our fellow community members than the work we do to address violent crime.

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Mr. Chairman, Mr. Ranking Member, and Members of the Committee, thank you again for the opportunity to be here today to share the work we and our federal and local partners are doing to increase community safety and to keep our community thriving. I am happy to answer any questions you may have.