

The Justice Department Should Investigate and Prosecute Organized Riots as Organized Crime

Lora Ries and Charles D. Stimson

KEY TAKEAWAYS

State and federal governments have a responsibility to prosecute criminals for breaking state and federal laws.

Violent riots end in cities where law enforcement, reinforced by the National Guard when needed, protects citizens and property and prevents violence.

Prosecutions should be based solely on the law, the facts, and the need to protect public safety, not the partisan political preferences of those in power.

The rioters committing violent crimes in various cities across the country are, according to the U.S. Department of Justice (DOJ), both well-organized and well-funded. They can and must be stopped and held to account. America has seen the violence end in cities where a significant law enforcement presence, reinforced by the National Guard when needed, protects citizens and property and prevents violence. This requires political will on the part of local and state leaders. In addition, those who are breaking state and federal laws must face the consequences in the form of criminal prosecutions to end the violence and prevent future riots.

As the U.S. Departments of Justice and Homeland Security conduct joint operations to investigate the current civil unrest, they should investigate and arrest those who violate federal criminal law. Specifically, they need to target the leaders of the organizations that are instigating such mayhem.

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Protect Citizens, Property, and Businesses

The primary responsibility for protecting cities and maintaining law and order rests with local and state governments. In addition, the bulk of America's law enforcement officers are at the local and state levels.¹ The federal government has the statutory authority to protect federal property, including federal courthouses, and federal government employees as it did in Portland, Oregon, this summer.² Law enforcement officers from the Departments of Homeland Security and Justice have protected the Mark O. Hatfield federal courthouse, the Immigration and Customs Enforcement building, and other federal property in Portland while being physically attacked, burned, and blinded by anarchist rioters.³

The federal government can also make the National Guard available to state and local law enforcement to stop riots. It is critical to note, however, that a state's governor needs to request such federal assistance.⁴ The activation of the National Guard has proven to be effective in Minneapolis and in Kenosha, where the riots stopped soon after the Guard's arrival.⁵ Requesting such assistance requires an acknowledgement by state and local politicians that protecting their citizens and property is more important than political opposition to the President, who oversees those federal resources.

In Portland, where the riots have continued for far longer than in any other city, Mayor Ted Wheeler and Oregon Governor Kate Brown continue to refuse offers of federal help and continue to restrict local law enforcement from dealing effectively with this threat to their own citizens' property, businesses, and lives.⁶ These politicians must make protecting their citizens their number one priority and activate the National Guard to end the needless destruction, injury, and death.

In addition to protecting people and property, both state and federal governments have a responsibility to prosecute criminals for breaking state and federal laws. Although police have arrested several rioters during these past three months, prosecutions are necessary to hold people accountable for their actions and punish them if convicted. This will send a strong message to others who may be considering joining the mayhem. This is important, because video evidence and arrest records demonstrate that some rioters, who have not been held accountable, have moved from city to city to cause violence using repeated tactics.⁷

Their movement and the places they go are not random. Rather, this appears to be part of an organized effort to cause chaos and destruction across the country, all for political gain. Someone is funding these riots and rioters. This needs to stop, and the federal government has the resources to fully investigate this, hold the leaders accountable, and punish them once they are convicted.

Federal prosecutors can start to work their way up the criminal enterprise chain by arresting and prosecuting lower-level thugs and then cutting deals with them that include their cooperation in order to find out who is above them in this criminal hierarchy.

Prosecute Under Anti-Riot Act and RICO

The DOJ should prosecute those who are organizing, participating in, and funding this violence under the Anti-Riot Act (18 U.S.C. § 2101) as well as the Racketeer Influenced and Corrupt Organization Act (RICO) (18 U.S.C. § 1961).

The Anti-Riot Act criminalizes interstate travel with “intent to incite a riot; or “to organize, promote, encourage, participate in, or carry on a riot; or to commit any act of violence in furtherance of a riot.”⁸ Many of those arrested during the riots are individuals who came from outside the city and state in which they were rioting.⁹ The Washington, D.C., Metropolitan Police have arrested rioters who were also arrested in the Portland and Kenosha riots, for example.¹⁰ If those same perpetrators came to the District of Columbia for the purpose of rioting or inciting riots, they may be guilty of violating the Anti-Riot Act, which carries a maximum possible punishment of five years in federal prison.

Federal prosecutors should also consider investigating and prosecuting rioters, the riots’ organizers, and their funders under the RICO statute. RICO cases are more complicated to make than Anti-Riot Act cases are. However, RICO prosecutions are critical to ending the violence created by organizations such as Antifa and Black Lives Matter Global Network.

Congress passed RICO to eradicate organized crime. A violation of the RICO statute requires proof that an organization or “enterprise” has engaged in a “pattern” of “racketeering activity.”¹¹ Under the RICO statute, “racketeering activity” covers an extensive list of crimes, including “any act or threat involving murder, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year,” or any act that is indictable under any one of the dozens of provisions of the U.S. Criminal Code, including “section 1511 (relating to the obstruction of State or local law enforcement).”¹²

The RICO definition of “Enterprise” includes “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”¹³ Prosecutors should be able to prove that both Antifa and Black Lives Matter Global Network meet this definition.

A “pattern of racketeering activity” requires “at least two acts of racketeering activity...the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.”¹⁴ The same rioters causing nightly destruction for three months in Portland alone should easily meet this definition. Prosecutors can also show that rioters are traveling to multiple cities and threatening murder or committing arson.

Prosecute Violations of State Law

Rioters and looters are also breaking multiple state criminal laws, such as laws covering arson, burglary, looting, trespassing, assault and battery, and more. To impose consequences and stop the violence, the criminals likewise need to be prosecuted under state law. Unfortunately, some state and local prosecutors have gone rogue, refusing to do their jobs by prosecuting violations of state law. The district attorney in Portland, for example, announced that:

- Charges that do not involve deliberate property damage, theft, or the use or threat of force against another person will be dropped, “but if there are egregious circumstances or something about the case that stands out, we can always choose to prosecute;”
- Cases that involve resisting arrest or assaulting a public safety officer will be closely scrutinized to determine the person’s intent, and such a review will take into account the “chaos of a protesting environment;” and
- When damage is primarily financial instead of physical, charges will be dropped, and victims will have three months “to make it right.”¹⁵

The result of this warped abuse of prosecutorial discretion is that rioters who are arrested but fall under the rogue prosecutor’s get-out-of-jail-free regime are quickly released back onto the street, only to participate in the next riot. Some perpetrators have multiple arrests and lengthy rap sheets.¹⁶ As America has seen, this abuse of prosecutorial discretion enables the violence to continue, spread, and escalate.

Prosecutors have a solemn responsibility: to do justice. Prosecutions should not be based on the partisan political preferences of those in power, but instead should be based solely on the law, the facts, and the need to protect public safety. The Oregon state police have been vocal on this point, choosing to keep their officers in their respective counties throughout

Oregon rather than return to Portland, because the arrests they make in Portland are rendered null and void by the rogue district attorney who refuses to do his job.¹⁷

The Justice Department should consider withholding discretionary grant money from local prosecutor's offices that refuse to enforce state criminal law. It is also incumbent on the citizens to elect district attorneys who will enforce the laws as written, not as they wish they were written. By now, citizens who voted for rogue prosecutors must see the consequences of their vote and should not make the same mistake next time there is an election for district attorney.

What Needs to Be Done

There are several actions that local, state, and federal officials and agencies can take to end this ongoing violence. Specifically:

- The mayor of Portland and governor of Oregon should request assistance from the National Guard to bring a speedy end to the city's three months of violent riots;
- The Justice Department should investigate and prosecute rioters, their organizers, and their funders under the Anti-Riot Act and the RICO statute; and
- The U.S. Department of Justice should withhold grant money from local prosecutor's offices that refuse to prosecute state criminal violations.

Conclusion

Americans want to be safe in their communities, and they want these riots to end. The National Guard should be activated in any city experiencing riots where local law enforcement needs reinforcements. This need in Portland is urgent—in fact, long overdue. In addition, the Justice Department should use the federal prosecution tools that it has at its disposal to hold the rioters and their leaders responsible and should use its discretionary grant funds to incentivize local prosecutors to apply equal treatment under the law.

Lora Ries is Senior Research Fellow for Homeland Security in the Center for Technology, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation. **Charles D. Stimson** is a Senior Legal Fellow and Manager of the National Security Law Program in the Edwin Meese III Center for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation.

Endnotes

1. There are more than 17,000 state and local law enforcement agencies in the United States. International Association of Chiefs of Police, "Types of Law Enforcement Agencies," <https://www.discoverpolicing.org/explore-the-field/types-of-law-enforcement-agencies> (accessed September 4, 2020).
2. The Department of Homeland Security, Federal Protective Service, has the responsibility to "protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government...and persons on the property." 40 U.S.C. § 1315(a).
3. Steven Nelson, "Federal Officers in Portland Suffered 113 Eye Injuries from Lasers, DHS Official Says," *New York Post*, August 4, 2020, <https://nypost.com/2020/08/04/federal-officers-in-portland-suffered-113-eye-injuries-from-lasers-dhs> (accessed September 4, 2020).
4. An exception to this is the Insurrection Act, which allows the President to deploy federal troops against the will of local authorities in certain circumstances. The Act is rarely used, however, and is a tool of last resort. See Jake Horton, "Does Trump Have the Right to Send in Federal Forces?" BBC News, September 2, 2020, <https://www.bbc.com/news/world-us-canada-52893540> (accessed September 4, 2020).
5. Jeramey Jannene, "Evers Pulls National Guard from Milwaukee," *Urban Milwaukee*, June 9, 2020, <https://urbanmilwaukee.com/2020/06/09/evers-pulls-national-guard-from-milwaukee/> (accessed September 4, 2020); Maddie Burakoff, "Timeline: Scaled up Law Enforcement Presence in Kenosha," Spectrum News 1, August 27, 2020, <https://spectrumnews1.com/wi/madison/news/2020/08/27/timeline--scaled-up-law-enforcement-presence-in-kenosha> (accessed September 4, 2020).
6. Lorenz Duchamps, "Portland Mayor Ted Wheeler Rejects Federal Help as Rioters Continue to Burn Buildings," *The Epoch Times*, August 29, 2020, https://www.theepochtimes.com/portland-mayor-ted-wheeler-rejects-federal-help-as-rioters-continue-to-burn-buildings_3480779.html (accessed September 4, 2020).
7. Tyler Olson, "Where Are the Rioters Coming from? Data Shows Mix of Locals and Out-of-Staters Converging on Cities," Fox News, September 2, 2020, <https://www.foxnews.com/politics/where-are-rioters-coming-from-data-shows> (accessed September 4, 2020); Jennifer Smith, "REVEALED: BLM Protester Arrested for Recklessly Driving His Spray-Painted Van in DC Was Also at Portland and Kenosha Riots—as Police Say They're Investigating If Groups Are Being 'Funded' to Travel to Hot-Spots," *Daily Mail*, updated September 4, 2020, <https://www.dailymail.co.uk/news/article-8685967/BLM-protester-arrested-DC-Kenosha-Portland-riots.html> (accessed September 4, 2020). One man arrested at a Portland riot for interfering with a police officer was released the next day when the charges were dismissed. He then is alleged to have stabbed two people to death one week later. Hannah Ray Lambert, "Records: Suspect Arrested at Protest One Week Before Deadly Stabbing," KOIN, September 1, 2020, <https://www.koin.com/news/crime/records-suspect-arrested-at-protest-one-week-before-deadly-stabbing> (accessed September 4, 2020).
8. 18 U.S.C. § 2101(a)(1)–(3).
9. Zachary Evans, "Most Suspects Arrested in Kenosha Riots Live Outside City, According to Police," *National Review*, August 31, 2020, <https://www.nationalreview.com/news/most-suspects-arrested-in-kenosha-riots-live-outside-city-according-to-police/> (accessed September 4, 2020).
10. Smith, "BLM Protester Arrested for Recklessly Driving His Spray-Painted Van in DC Was Also at Portland and Kenosha Riots."
11. 18 U.S.C. § 1962(c).
12. 18 U.S.C. § 1961(1).
13. 18 U.S.C. § 1961(4).
14. 18 U.S.C. § 1961(5).
15. Jemima McEvoy, "Many Arrested in Portland Won't Be Prosecuted, DA Says," *Forbes*, August 11, 2020, <https://www.forbes.com/sites/jemimamcevoy/2020/08/11/many-arrested-in-portland-wont-be-prosecuted-da-says/#2488d1fd254b> (accessed September 4, 2020).
16. Joe Hoft, "WOW: Two BLM Criminals with Prior Arrest Records Bumped Into Each Other Rioting in Kenosha, Wisconsin—An Hour Later They're Both Dead," *The Gateway Pundit*, August 27, 2020, <https://www.thegatewaypundit.com/2020/08/wow-two-blm-criminals-prior-arrest-records-bumped-rioting-kenosha-wisconsin-hour-later-dead-video/> (accessed September 4, 2020); Lambert, "Records: Suspect Arrested at Protest One Week Before Deadly Stabbing."
17. Gillian Flaccus, "Sheriffs Reject Governor's Plan to Curb Portland Violence," Associated Press, August 31, 2020, [https://apnews.com/c7b27a4f21c011b45172e8266346ae06#:~:text=\(AP\)%20%E2%80%94%20Sheriffs%20from%20two.supporter%20of%20President%20Donald%20Trump](https://apnews.com/c7b27a4f21c011b45172e8266346ae06#:~:text=(AP)%20%E2%80%94%20Sheriffs%20from%20two.supporter%20of%20President%20Donald%20Trump) (accessed September 4, 2020).