



U.S. Department of Justice

*United States Attorney
District of New Mexico*

*Post Office Box 607
Albuquerque, New Mexico 87103*

*Telephone: (505) 346-7274
Facsimile: (505) 346-7296*

July 28, 2020

The Honorable Timothy M. Keller
Mayor of the City of Albuquerque
Post Office Box 1293
Albuquerque, New Mexico 87103

Re: Operation Legend

Dear Mayor Keller:

I am in receipt of the letter from the City dated July 24, 2020, signed by Samantha Hults. I am pleased to see the City's continued endorsement of the successful partnerships with our state and local law enforcement counterparts that have contributed to an increase in federal prosecutions.

As you know, I have already made several public statements explaining that the agents coming to Albuquerque as part of Operation Legend will be working toward the exclusive goal of stemming the unrelenting epidemic of violent crime in our city. Of course, these statements mirror much of what I previously told you about Operation Legend when I reached out and spoke to you on the telephone last Tuesday, before the President's announcement of the operation on Wednesday, and the public commentary thereafter.

To repeat, under Operation Legend, federal agents in Albuquerque will be engaged in the type of crime fighting investigative activities in which federal agents are well-trained and in which they already engage on a daily basis. As Attorney General Barr took pains to make clear at the White House, the additional federal agents will be conducting "classic crime fighting" activities that federal agents have carried out around the country for decades,¹ including in

¹ Attorney General Barr specifically stated:

It is important to stress that the operations we're talking about are the standard anti-crime fighting activities we have been carrying out around the country for decades. We will be adding federal agents to the task forces. These are street agents that are investigators who will be working to solve murders, and to take down the violent gangs, and they'll be working shoulder to shoulder with our state and local colleagues. This is a different kind of operation, obviously, than the tactical teams we use to defend against riots and mob violence, and we will continue to confront mob violence. But the operations we are discussing today are very different, they are classic crime fighting.

Albuquerque. The plan is to use additional federal agents to supplement those agents already stationed in Albuquerque, and to augment our existing anti-violent crime federal task forces.

As we have discussed, no one should confuse or equate Operation Legend with the events unfolding in Portland, Oregon. Portland is not an Operation Legend City, and Operation Legend was not conceived or announced in response to the events in Portland. As I informed you in the course of our telephone conversation last Tuesday, Operation Legend is not directed at protecting federal monuments, policing assemblies, or enforcing immigration laws. Operation Legend is instead focused on the same goal that has long been a priority for my office: to identify and remove the most dangerous violent offenders from our communities.

One reason that Albuquerque was selected for Operation Legend is because, according to statistics published by the FBI, Albuquerque's violent crime rate is 3.7, or *nearly four times* the national violent crime rate. While we have been eagerly awaiting current, year-to-date statistics, I am sure you will agree that the pace of lethal shootings in Albuquerque from 2019 into 2020 is concerning. Of course, in 2019, the City experienced a record high number of homicides.² Now in 2020, in one weekend this month alone, APD has opened four separate homicide investigations.³ And a survey of APD officers at the beginning of this year suggested that those surveyed believed Albuquerque's crime problem was "getting worse."⁴

Albuquerque was also selected for Operation Legend because of victims like Jacqueline Vigil, the mother of two New Mexico State Police Officers, who was senselessly gunned down in the early morning hours of November 19, 2019, while leaving her driveway to go to the gym. Her husband, Sam Vigil, spoke on her behalf at the announcement of Operation Legend at the White House. Mr. Vigil expressed his appreciation for Operation Legend and explained why he thinks the federal effort is needed in Albuquerque. I have enclosed a transcript of his remarks.

Unfortunately, our state and local law enforcement counterparts have been unable to turn the tidal wave of crime in Albuquerque on their own. A meaningful part of the problem is systemic and well-known to those who work in law enforcement. In an interview with the *Albuquerque Journal*, for example, Second Judicial District Attorney Raul Torrez frankly

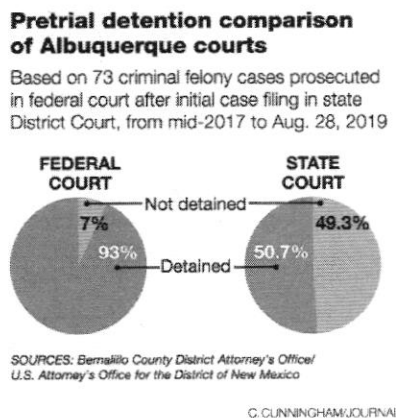
² See Ryan Boetl, *APD Reports Record 82 Homicides for 2019*, ALBUQUERQUE JOURNAL, Dec. 31, 2019, <https://www.abqjournal.com/1405615/apd-reports-record-82-homicides-for-2019.html>.

³ See Edmundo Carrillo, *Albuquerque Launches Four Homicide Investigations*, ALBUQUERQUE JOURNAL, July 12, 2020, <https://www.abqjournal.com/1475244/apd-launches-four-homicide-investigations.html>.

⁴ See Jackie Kent, *Albuquerque Mayor, Police Union Differ on "Operation Legend"*, KRQE (July 23, 2020), <https://www.krqe.com/news/albuquerque-metro/albuquerque-mayor-police-union-differ-on-operation-legend/> (67% of APD officers surveyed in January 2020 perceived that the crime rate in Albuquerque was "getting worse").

declared that prosecutors in his office “are unable to reliably take those dangerous folks off the streets through the state system.”⁵

One of the problems identified by DA Torrez is how frequently prosecutors in his office are unable to have the most dangerous offenders detained pre-trial in the state system, as compared to the federal system. Indeed, you may recall that in the same article quoting DA Torrez above, the *Albuquerque Journal* published the following chart illustrating DA Torrez’s concerns:



In DA Torrez’s words: “It should get people’s attention when you have a 93% detention rate on the north side of Lomas (the location of Albuquerque’s federal courthouse) and with the same set of defendants you get a 49% (detention rate) on the south side of Lomas (the site of the state district courthouse).”⁶ In DA Torrez’s view of the state system, the “most effective strategy” they have “[i]n terms of focusing on the most dangerous people” is to solicit my office’s support to adopt state cases for federal prosecution.⁷

My office’s commitment to this fight is not new. Throughout my tenure as U.S. Attorney, we have consistently been taking tangible actions to reduce the number of violent criminals roaming the streets of Albuquerque. Indeed, my office, in partnership with dedicated federal agents and state and local law enforcement, has a long history of leading the fight against alleged

⁵ See Colleen Heild, *DA Pushes Violent Crimes to Federal Court System*, ALBUQUERQUE JOURNAL, Sept. 2, 2019, <https://www.abqjournal.com/1361179/da-pushes-violent-crimes-to-federal-court-system-ex-tougher-sentences-detention-rules-keep-many-offenders-locked-up.html>.

⁶ *Ibid.*

⁷ *Ibid.*

cartel activity,⁸ drug trafficking,⁹ violent repeat offenders,¹⁰ and those alleged to be involved in violent activities including gang violence,¹¹ rape,¹² sex trafficking,¹³ and kidnapping.¹⁴ Since mid-2017 alone, my office has also brought federal charges against more than 250 defendants that the DA's office has asked us to review for federal adoption.

The efforts of the prosecutors in my office also appear to be making some difference. For example, we charged a number of serial robbers in Albuquerque under the federal Hobbs Act. In commenting upon the dramatic drop in city robberies for the period from July 2018 to July 2019 that corresponded with our federal Hobbs Act prosecutions, APD Chief Michael Geier stated: "Now we get them on federal charges [and] they're sitting in federal prison ... [w]e saw those numbers just drop."¹⁵

⁸ See, e.g., Mike Gallagher, *The Cartels Next Door, Cartels' Roots Run Deep in NM*, ALBUQUERQUE JOURNAL, Feb. 24, 2017, <https://www.abqjournal.com/947731/cartels-roots-run-deep-in-nm.html>.

⁹ See, e.g., Elise Kaplan, *Murder Suspects Face Federal Trafficking Charges*, ALBUQUERQUE JOURNAL, Oct. 23, 2017, <https://www.abqjournal.com/1082111/murder-suspects-face-federal-charges-in-drug-trafficking-organization.html>.

¹⁰ See, e.g., Colleen Heild, *FBI, Local Partner Team Up Against Violent Repeat Offenders*, ALBUQUERQUE JOURNAL, June 29, 2019, <https://www.abqjournal.com/1334863/fbi-local-partners-team-up-against-violent-repeat-offenders.html>.

¹¹ *Ibid.* (Describing 4-year-old federal investigation that led to the arrest and conviction of more than 100 members and associates of the highly violent Sindicato de Nuevo Mexico (SNM) prison gang, who were apprehended in prison and on the streets of Albuquerque and elsewhere. The operation also solved at least seven cold case murders.)

¹² See, e.g., Elise Kaplan, *Suspected Serial Rapist May Face Federal Charges*, ALBUQUERQUE JOURNAL, Aug. 30, 2019, <https://www.abqjournal.com/search?q=suspected+serial+rapist+may+face+federal+charges> (describing claimed actions of alleged serial rapist who is now facing federal kidnapping charges from the U.S. Attorney's Office).

¹³ See, e.g., Celia Raney, *Three Members of Sex Trafficking Ring Plead Guilty in ABQ*, ALBUQUERQUE JOURNAL, Oct. 21, 2019, <https://www.abqjournal.com/1381313/three-members-of-sex-trafficking-ring-plead-guilty-in-abq.html>.

¹⁴ See, e.g., Katy Barnitz, *Feds Take Over Deadly Kidnapping Case*, ALBUQUERQUE JOURNAL, May 31, 2018, <https://www.abqjournal.com/1179054/trio-charged-federally-in-deadly-kidnapping.html> (describing how state murder case against defendants Mariah Ferry and Chase Smothermon involving alleged dismemberment and mutilation of kidnapping victim was being taken over by the U.S. Attorney's Office).

¹⁵ See Jessica Dyer, *ABQ Crime Remains on Downward Trend*, ALBUQUERQUE JOURNAL, July 1, 2019, <https://www.abqjournal.com/1335502/crime-declining-in-albuquerque-new-numbers-show.html> (correlating drop in robberies with increase in cases filed by the U.S. Attorney's Office).

Against the above backdrop, Ms. Hults makes a series of proclamations in her letter on behalf of the City explaining that federal agents are not welcome here. Most of these proclamations relate to First Amendment protected activities that I have already addressed, as noted above, both to you personally on the telephone, and in other public statements before the City's letter was sent to me.¹⁶

Of course, the City's letter also includes more blanket statements, such as its proclamation that "[t]he City of Albuquerque does not welcome federal agents hiding their identity and the identity of the agencies for which they work." The City's letter also asks for a written commitment from my office that "whenever detaining or arresting individuals in Albuquerque, all federal agents will ... wear uniforms that conspicuously identify the agency for which they work."

Please understand that most federal law enforcement agents working in Albuquerque do not have uniforms or drive marked cars, although they generally wear some identifying article of clothing, such as a raid jacket, when executing search or arrest warrants. (This is also true of many of their state and local counterparts who work alongside them.) Indeed, many of the law enforcement operations that federal agents carry out in Albuquerque are successful precisely because they are undercover operations.

The City also references the Court Approved Settlement Agreement (CASA) to further suggest that certain terms of the CASA should extend to federal agents working in Albuquerque. Again, that request primarily seems to relate to First Amendment activities, which I have already addressed. In any event, as you are well familiar, the CASA is the direct result of the federal Complaint brought in November 2014 against the City under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, that alleged a "pattern or practice of use of excessive force by APD officers that deprives persons of rights, privileges, or immunities, secured and protected by the Fourth Amendment." Complaint at 1. The Complaint specifically alleged that APD officers shot and killed approximately twenty individuals from 2009 to 2012. *Id.* at 3. The Complaint further contended that the "majority of these shootings were unconstitutional."¹⁷

¹⁶ See e.g., Press Release, U.S. Attorney's Office, Attorney General William P. Barr Joins President Donald J. Trump to Announce Expansion of Operation Legend (July 22, 2020), <https://www.justice.gov/usao-nm/pr/attorney-general-william-p-barr-joins-president-donald-j-trump-announce-expansion/>; Elise Kaplin and Matthew Reisen, *President: Operation Legend Will Target Violent Crime*, ALBUQUERQUE JOURNAL, July 22, 2020, <https://www.abqjournal.com/1478481/trump-35-agents-coming-albuquerque-for-operation-legend.html> ("Any effort to compare Operation Legend to what's going on in Portland is baseless and misguided," [John Anderson] said. "There is no connection between those two. The federal law enforcement resources that are being deployed are directed at reducing gun violence; they are not directed at arresting or controlling protesters; they are not being directed at restricting anyone's right to protest. ... They are not being directed at immigration enforcement, and they are not being directed at protecting statues. It's limited to the exclusive goal of eliminating the scourge of gun violence.")

¹⁷ The Complaint further alleged that APD officers used deadly force: (i) "against individuals known or suspected of having mental illness and experiencing mental health crisis"; (ii) "in circumstances

In the wake of the Complaint, the Albuquerque City Council unanimously endorsed imposing the terms of the CASA upon the City and its police force. The City also asked the federal court to retain jurisdiction under the CASA until such time as the City has achieved full and effective compliance with its terms, which as you know, has yet to occur.

I do not find it appropriate for the City to suggest that the terms of the CASA, which are predicated upon its own alleged unconstitutional pattern and practices outlined in the Complaint, should apply equally to federal agents working in Albuquerque who lack any comparable history to that of the City. Instead, federal agents working in Albuquerque will follow the same federal guidelines they have been successfully following to conduct their work in our district for years. And any APD task force officers working with them can continue to work under the same terms and conditions under which they are successfully working on the task forces.

I would also like take this opportunity to address the additional issue of the Department of Justice's approximately \$10 million federal grant award package that is currently pending in your office. Specifically, I have read an Instagram post that Chief Geier recently posted, in which he states the following:

While we welcome any additional resources to fight violent crime, the President promised help in the past and has not yet followed through. We are still waiting on the \$10 million Operation Relentless Pursuit funding that was promised last year to help us with our goal to hire more officers and to bring in additional federal law enforcement agents to assist us in our crime fighting efforts. While I will try to remain optimistic, I won't hold my breath until we see all this actually come to fruition.

I have also read a KRQE article posted on July 23, 2020, in which you are quoted as saying, "We've had a lot of challenges where the federal government will work with us, say, 'Yes' to a program and then either the check never comes in the mail, *which is the case with we think roughly \$10 million with this past operation.*"¹⁸

where there is no imminent threat of deadly or serious bodily harm"; (iii) "where persons pose only a minimal threat" to officers and others; and (iv) "where [the] officers' own conduct escalates situations and contributes to the need to use force." Complaint at 3. In addition, the Complaint alleged that APD engaged in a pattern or practice of using force that is less than lethal in an unconstitutional manner. *Id.* at 4.

¹⁸ See Jackie Kent, *Albuquerque Mayor, Police Union Differ on "Operation Legend"*, KRQE (July 23, 2020), <https://www.krqe.com/news/albuquerque-metro/albuquerque-mayor-police-union-differ-on-operation-legend/> (emphasis added).

As you know, these funds are the same Community Oriented Policing Services (COPS Office) funds that I have been imploring the City to accept for several months now.¹⁹ As further enticement for the City to accept these funds, the Department of Justice even waived the standard 25% local match that generally accompanies COPS Hiring Program (CHP) funds. So I am confused by statements, like those identified above, that clearly suggest to the public that the City has said “Yes” to these funds, but that the Department of Justice has failed to honor its promise to deliver them.²⁰

My office, of course, issued a press release on May 11, 2020, announcing that these very funds had been awarded to the City.²¹ COPS Office Director Phil Keith then sent the City the grants award package, dated June 25, 2020, which he addressed to Chief Geier and the City of Albuquerque’s Chief Administrative Officer, Sarita Nair. In the package, Mr. Keith first congratulated the APD on being awarded the CHP funds. The award package further instructed, in bold lettering on the first page, that the City needed to officially accept the awarded funds within 45 days of receipt of the award package. To date, the COPS Office has received no communication from the City accepting the award.

Obviously, no federal funds can be sent to Albuquerque unless the City officially accepts the award. In other words, the ball has very much been in the City’s court for more than a month. So it is confusing to the public, and certainly unfair to the Department of Justice, for any City official to represent or suggest that the Department has somehow failed to follow through on its promise to get these funds to Albuquerque, or that anyone at the Department has failed to mail a check to the City for which it has been waiting.

Finally, I invite you to join me in calling upon community leaders not to demonize or mischaracterize the work of federal agents, many of whom have risked their lives on behalf of the people of Albuquerque in an effort to get our violent crime epidemic under control. As the City also acknowledges in its letter to me, the APD is currently partnered with several federal agencies to fight violent crime, and gun crimes in particular, in the City. I am sure that you will agree that uninformed and inflammatory rhetoric or demagoguery toward the brave men and women of law enforcement is unfairly denigrating and serves no constructive purpose. While

¹⁹ See, e.g., Elise Kaplan, City Officials: Blocked DOJ Funding “Political Extortion”, ALBUQUERQUE JOURNAL, Feb. 12, 2020, <https://www.abqjournal.com/1420099/city-officials-blocked-doj-funding-political-extortion.html>.

²⁰ Undoubtedly in reliance upon such statements from the City, a similar message has even been repeated on national television. ABS News, “*This Week*” Interviewer with New Mexico Governor, YOUTUBE (July 26, 2020), <https://m.youtube.com/watch?v=XHz69JqDJ6Q> (stating that “They have not provided the federal funding that was promised to Albuquerque to police and crime initiatives.”).

²¹ See Press Release, U.S. Attorney’s Office, U.S. Department of Justice Awards City of Albuquerque \$9.7 Million to Support Local Efforts to Combat Violent Crime (May 11, 2020), <https://www.justice.gov/usao-nm/pr/us-department-justice-awards-city-albuquerque-97-million-support-local-efforts-combat>.

The Hon. Timothy M. Keller

July 28, 2020

Page 8

reasonable minds can disagree and debate the actions and role of law enforcement, baseless and derogatory monikers have no place in any such debate. I am concerned that such derogatory language could easily incite undeserved invective and violence targeted at federal agents, all of whom are faithful public servants, including those who are leaving their families during a pandemic to help the people of Albuquerque. I hope that you agree.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Anderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

John C. Anderson
United States Attorney