



Written by [Joe Wolverton, II, J.D.](#) on October 30, 2019

AG Bill Barr Quietly Reveals Plan to Establish Federal Pre-Crime Unit

In an unannounced memorandum, U.S. Attorney General William Barr informed all U.S. attorneys that he's established a "national disruption and early engagement program" that will identify mass shooters before they commit a crime.

Promising to "identify, assess, and engage potential mass shooters before they strike," Barr committed the "full attention of the U.S. government" to "preventing these types of attacks."



This program is nothing more or less than a pre-crime unit, tasked with scouring the data collected by the many federal agencies that keep every American under constant surveillance.

Barr promises his underlings that together they will work "shoulder to shoulder" to "disrupt individuals who are mobilizing toward violence."

There are several legal and constitutional impediments to AG Barr's planned pre-crime program.

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First, in the United States, a person cannot be charged and tried for a crime unless *mens rea* and *actus rea* are established as facts.

Mens rea and *actus rea* are critical elements of criminal law that have existed for centuries in American and English law. The terms are taken from the Latin maxim: '*Actus non facit reum nisi mens sit rea*' (a person is not guilty of an act unless his mind is also guilty).

Put simply, *mens rea* means a guilty thought (an intent to do something), and the *actus rea* is the act itself.

The relationship of these two aspects of criminal behavior are summarized succinctly by attorney Jordan Rickards:

In any criminal case, the action, as well as the intention, must be established for a person to be charged with a crime. The degree and the kind of causation must also be considered. Also, all legitimate defenses, mitigating factors, and extenuating circumstances must be taken into account for a criminal charge to be determined.

The principles of *mens rea* and *actus rea* are part of the Modal Penal Code (MPC), which was developed by the American Law Institute in 1962. The modal law represents a seminal work that has greatly influenced criminal law in the US.

In light of this legal reality, William Barr's proposed pre-crime program is *prima facie* a violation of one of the most sacrosanct Anglo-American legal maxims.

It should go without saying that the point of the necessity that the government prove that a person not



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only wanted to commit a crime, but that he actually committed it is a fundamental protection of the right of all people to presumed innocent and to make it appropriately difficult for the government to arrest and jail people on nothing more than a presumption, or, to say it as Barr wrote in his memo, to arrest and jail people who have done nothing more than “mobilize toward violence.”

Next, there is the constitutional obstruction to Barr’s plan.

The Fifth Amendment to the U.S. Constitution guarantees that “no person shall ... be deprived of life, liberty, or property, without due process of law.”

This amendment is a protection of a timeless principle of liberty and justice. In fact, due process as a check on monarchical power was included in the Magna Carta of 1215. This list of grievances and demands codified the king’s obligation to obey written laws or be punished by his subjects. Article 39 of the Magna Carta says: “No freemen shall be taken or imprisoned or disseised [dispossessed] or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.”

Over the years, the Magna Carta was occasionally revised and amended. In 1354, the phrase “due process of law” appeared for the first time. The Magna Carta as amended in 1354 says: “No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law.” This fundamental restraint on the royal presumption of the power to lop off heads on command was incorporated by our Founders in the Bill of Rights, particularly in the Fifth Amendment.

Later in the memo, Barr notes that the people who commit mass shootings typically “exhibit symptoms of mental illness and/or have substance abuse problems.”

This is another way of describing President Donald Trump’s “red flag” program.

Just days after the mass shootings in El Paso, Texas, and Dayton, Ohio, left 31 people dead, President Donald Trump reversed his earlier position and called on state and federal lawmakers to pass so-called red flag laws.

Red flag laws — also known as Extreme Risk Protection Orders (ERPO) — allow a judge to revoke a person’s right to own firearms, and law enforcement to confiscate that person’s firearms, if family members or other people close to that person believe him to be dangerous to himself or others and report him. As of August 5, 17 states and the District of Columbia have passed some form of “red flag” restriction on gun ownership.

In a statement issued by the White House, President Trump declared that in the wake of the horrific violence witnessed in El Paso and Dayton, he has instructed federal law-enforcement agencies to “do a better job of identifying and acting on early warning signs” of potential mass murderers, and toward that end he has ordered that the federal government in partnership with social-media companies “develop tools that can detect mass shooters before they strike.”

It should be obvious that such tyrannical efforts to stop crime before it happens should be opposed by all men who prefer liberty — no matter how dangerous — to a country where the government claims to keep the people safe by stopping crime before it starts.

Finally, there was a time when Americans called such attempts to control crime an abrogation of their God-given right to be free from forfeiting their life, liberty, and property without forcing the government to go through a legal process due to all children of God. This belief was expressed in a



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letter written by John Jay in 1778 in opposition to British despotism.

It is the undoubted Right and unalienable Privilege of a Freeman not to be divested, or interrupted in the innocent use, of Life, Liberty or Property, but by Laws to which he has assented, either personally or by his Representatives. This is the Corner Stone of every free Constitution, and to defend it from the Iron Hand of the Tyrant of Britain, all America is now in arms; every Man in America being most deeply interested in its Preservation. Violations of this inestimable Right, by the King of Great Britain, or by an American Quarter Master; are of the same Nature, equally partaking of Injustice; and differing only in the Degree and Continuance of the Injury.

So, it seems that in the days to come, President Trump will have to answer a question of immense import to the future of freedom in the United States. The question he'll be faced with is which is mightier: Bill Barr or the Bill of Rights.

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