



## **Prosecution of Short-Term Lenders Mimics 'Operation Choke Point' Program**

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The U.S. Department of Justice (DOJ) has filed a series of criminal charges against short-term lending companies, accusing the unrelated firms of violating the Racketeer Influenced Corrupt Organization (RICO) Act, a federal law passed with the intention of combating organized crime.

The prosecutions align with the goals of Operation Choke Point, a DOJ program using banking regulations to try to shut down industries disfavored by the government, such as firearm sales and short-term lending. Operation Choke Point was officially ended in January 2015, but federal government actions mimicking the program's modes of operation and goals continue.

In April 2016, U.S. government prosecutors announced the existence of three separate criminal cases against the owners of short-term lending companies. The prosecutors claim the lenders were attempting to evade state laws restricting loans by falsely claiming affiliations with Native American tribal governments, which are exempt from the relevant financial restrictions.

### **Questionable Intentions**

Brian Knight, a senior research fellow at the Mercatus Center at George Mason University, says RICO shouldn't be used to "punish" businesses.

"If a defendant is using fraudulent structures to con people, then prosecution would be consistent with RICO's intent," Knight said. "On the other hand, if RICO is being used to punish otherwise legal ventures just to inflict the process of a criminal trial as the punishment, intimidate

legitimate businesses into settlement, or exploit technical violations that normally wouldn't draw prosecutorial attention and don't result in actual harm to consumers, that would be a problem."

**'Refrain from Restricting'**

Knight says voluntary exchanges of money, including short-term lenders' services, should not be criminalized.

"Absent fraud, coercion, or something else that prevents a person from being able to make a free decision, the government should generally refrain from restricting people's options," Knight said.

Walter Olson, a senior fellow at the Cato Institute, says government doing too much in the pursuit of protecting consumers actually puts them at greater risk of harm.

"Driving [businesses] underground will very often make it worse," Olson said. "It will mean outright violence, at worst, or extralegal sanctions for those who aren't paying their debt. You might find you like extralegal sanctions less than you like things they can currently do, like ruining your credit rating."