

MEMBER DAY HEARING

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

FRIDAY, OCTOBER 22, 2021

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MEMBER DAY HEARING

Friday, October 22, 2021

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC

The Committee met, pursuant to call, at 9:07 a.m., in Room 2141 Rayburn House Office Building, Hon. Jerrold Nadler [Chair of the Committee] presiding.

Present: Representatives Nadler, Jackson Lee, Scanlon, Dean, Jordan, Gohmert, Buck, Johnson of Louisiana, Fischbach, and Bentz.

Staff Present: Aaron Hiller, Deputy Chief Counsel; David Greengrass, Senior Counsel; John Doty, Senior Advisor; Moh Sharma, Director of Member Services & Outreach and Policy Advisor; Jordan Dashow, Professional Staff Member; Cierra Fontenot, Chief Clerk; John Williams, Parliamentarian and Senior Counsel; Gabriel Barnett, Staff Assistant; Atarah McCoy, Staff Assistant; Merrick Nelson, Digital Director; Katy Rother, Minority Deputy General Counsel and Parliamentarian; Ella Yates, Minority Member Services Director; Andrea Woodard, Minority Professional Staff Member; and Kiley Bidelman, Minority Clerk.

Chair NADLER. The House Committee on the Judiciary will come to order.

Without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to this morning's Member Day hearing, which we are holding pursuant to section 3(a) of House Resolution 8.

Before we begin, I would like to remind Members that we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that Members might want to offer as part of our hearing today. If you would like to submit written materials, please send them to the email address that has been previously distributed to your offices, and we will circulate the materials to Members and staff as quickly as we can.

I would also like to remind all Members that guidance from the Office of Attending Physician states that face coverings are required at all meetings in an enclosed space, such as Committee hearings, except when you are recognized to speak. This includes all Members waiting to testify.

In the interest of time, I have a very eloquent opening statement which I will put in the record.

[The statement of Chair Nadler follows:]

CHAIR NADLER FOR THE RECORD

**Member Day Hearing in the House Committee on the
Judiciary**

**Friday, October 22, 2021, at 9:00 a.m.
2141 Rayburn House Office Building**

Opening Statement:

Today we have the opportunity to hear the views of our colleagues on both sides of the aisle about their legislative interests and priorities on matters within our jurisdiction.

The Judiciary Committee is responsible for a broad array of issues, including the federal judiciary, criminal justice, administrative procedure, bankruptcy, civil rights and civil liberties, constitutional amendments, immigration, intellectual property, antitrust, and much more.

Already, on a bipartisan basis, we have passed legislation to combat the rising cost of prescription drugs, enhance competition in

digital markets, promote fairness in sentencing, and protect consumers from counterfeit products sold online.

The Committee has also passed a number of significant bills on the House Floor, including legislation to protect voting rights, provide legal protections and a path to citizenship for Dreamers, reform policing, enhance gun safety, ensure that LGBTQ Americans are protected under the civil rights laws, provide a path for ratification of the Equal Rights Amendment, and reauthorize the Violence Against Women Act.

We have also enacted critical legislation to ensure accurate data collection regarding hate crimes and expedite Justice Department review of hate crimes related to COVID-19, as well as legislation to shore up and strengthen the Crime Victims Fund.

In addition, our subcommittees have held hearings examining a wide range of issues, including: ways to revive competition across a range of industries; corporate abuses of the bankruptcy code; measures

to promote diversity, ethics, and transparency throughout the federal courts; federal drug policy; the need for bold immigration reforms; various criminal justice reforms; and copyright policy.

This is just a small sampling of what the Committee has accomplished this year and we will continue to have an active and varied agenda over the rest of this Congress. I look forward to hearing from my colleagues on matters of interest to them to help inform this work. The House of Representatives is fortunate to have a broad and diverse array of views among its Members and I know that this Committee's work will be strengthened by hearing from our colleagues.

Chair NADLER. Mr. Gohmert, do you have an interesting—eloquent opening statement?

Mr. GOHMERT. Yes. I would just ask it to be entered into the record.

Chair NADLER. Which will be entered into the record.

[Not provided]

Chair NADLER. Our first Witness is the Honorable Matt Rosendale.

**STATEMENT OF THE HON. MATTHEW M. ROSENDALE,
AN AT-LARGE REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MONTANA**

Mr. ROSENDALE. Thank you so much, Mr. Chair.

I want to thank Chair Nadler, Ranking Member Jordan, and Members of the Judiciary Committee for allowing me to testify about my legislative priorities within the Committee's jurisdiction.

Our Nation is currently dealing with multiple crises that your Committee is uniquely qualified to address. First, I would like to speak about the humanitarian, public health, and national security emergency taking place at our southern border.

On his very first day in office, President Biden began to systematically dismantle the successful immigration policies of the Trump Administration. He stopped construction of the border wall system, brought back Obama-era catch-and-release policies, undermined Interior enforcement, and attempted to end migrant protection protocols commonly known as the "Remain in Mexico" policy.

That is why I have introduced H.R. 1259, the REMAIN in Mexico Act, which would codify the Trump Administration's "Remain in Mexico" policy.

Under this successful policy, illegal aliens who arrived at our southern border and claimed asylum were returned to Mexico while they wait for asylum claims to be adjudicated if they did not meet the "credible fear" test.

This effectively ended the Obama Administration's catch-and-release policy, led many who made frivolous claims to return to their country of origin, and acted as a strong disincentive for foreign nationals to make the treacherous journey to our country.

The Biden Administration's attempts to end this policy and gut other Trump-era border policies have led to record-breaking numbers of illegal aliens flooding our country, putting American citizens at risk. That is why I believe it is critical the Committee take up the REMAIN in Mexico Act and put a stop to this unfortunate and avoidable calamity.

Next, I would like to speak to the refugee crisis created by President Biden's botched withdrawal from Afghanistan, which led to the Administration evacuating over 100,000 Afghan nationals, who they have begun to resettle across our Nation.

These Afghans have not gone through the traditional 14-step, 18-month vetting process required to get a Special Immigrant Visa. In fact, most evacuees did not help our Nation and are not eligible for an SIV. Most do not have refugee status. They were simply paroled into the interior of our country by Secretary Mayorkas and resettled across our Nation.

This is why I have introduced H.R. 5572, the SECURE America Act. The SECURE America Act would ensure thorough refugee vetting prior to admission, end the authority of the Secretary of Homeland Security to parole aliens into our country, and reclaim and expand the authority of Governors—

Chair NADLER. Can I ask you a question here? Would you yield for a question?

Mr. ROSENDALE. Sure.

Chair NADLER. Just very quickly. With respect to the 100,000 or so Afghans who are now already in the country, what would you do with them?

Mr. ROSENDALE. I am on my way to that, Mr. Chair. I think that they have not been vetted and they should be returned.

Chair NADLER. To Afghanistan?

Mr. ROSENDALE. I do think that they should be returned to Afghanistan or neighboring countries that share their cultures—Uzbekistan, Tajikistan, and other areas that they could assimilate much easier and, also, return to their native country once there is stability there. It would be better for all involved, Mr. Chair.

Chair NADLER. Thank you.

Mr. ROSENDALE. Thank you.

The SECURE America Act would ensure thorough refugee vetting prior to admission, end the authority of the Secretary of Homeland Security to parole aliens into the country, and reclaim and expand the authority of Governors and Congress over the process of admission and resettlement of these refugees.

We cannot compromise the security of our Nation in the name of empathy, or we will continue to see instances of violence by Afghan evacuees like we have already seen at Fort McCoy, Fort Bliss, and most recently in Missoula, Montana.

I believe the SECURE America Act must be immediately taken up to ensure our immigration system preserves and protects our national security and our American way of life.

Finally, I would like to address the surge of violent crime throughout the Nation.

According to a report released by the Federal Bureau of Investigation several weeks ago entitled, “Crime in the United States 2020,” last year the number of homicides and non-negligent manslaughter nationwide increased by 29.4 percent and aggravated assault offenses rose by 12.1 percent. Reports indicate the widespread violence and bloodshed has sadly continued into this year.

This violence is clearly enabled by jurisdictions throughout the country considering, and in many cases adopting, measures to defund or disempower law enforcement.

The failure of American cities to enforce the rule of law is why I introduced H.R. 3217, the Lawless Cities Accountability Act. My bill would defund cities and other municipalities that disempower or defund law enforcement, enabling anarchy and lawlessness.

It is the responsibility of government to protect the lives and property of all American citizens from unlawful acts of violence and destruction. The Federal Government should not allow taxpayers’ dollars—

Chair NADLER. Yeah.

Mr. ROSENDALE. —to fund jurisdictions that fail to enforce the rule of law and protect their citizens.

Chair NADLER. The time of the gentleman has—

Mr. ROSENDALE. I urge the Committee to take up these important pieces of legislation, and I would yield back. Thank you so much for your time.

[The statement of Mr. Rosendale follows:]

Thank you, Mr. Chairman.

I want to thank Chairman Nadler, Ranking Member Jordan, and members of the Judiciary Committee for allowing me to testify about my legislative priorities within the committee's jurisdiction. Our nation is currently experiencing multiple crises that your committee is uniquely positioned to address.

First, I would like to speak about the humanitarian, public health, and national security emergency taking place at our Southern Border.

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This effectively ended the Obama Administration's catch-and-release policy, led many who made frivolous claims to return to their country of origin, and acted as a strong disincentive for foreign nationals to make the treacherous journey to our country.

The Biden Administration's attempts to end this policy and gut other Trump-era border policies have led to record breaking numbers of illegal aliens flooding our country—putting American citizens at risk. That's why I believe it is critical the committee take up the REMAIN in Mexico Act and put a stop to this unfortunate and avoidable calamity.

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These Afghans have not gone through the traditional, 14 step, 18-24 month vetting process required to get a Special Immigrant Visa (SIV). In fact, most evacuees did not help our nation and are not even eligible for a SIV. Most do not have refugee status. They were simply paroled into the interior of our country by Secretary Mayorkas and resettled across our nation.

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Homeland Security to parole aliens into the country, and reclaim and expand the authority of Governors and Congress over the process of admission and resettlement of refugees.

We cannot compromise the security of our nation in the name of empathy—or we will continue to see instances of violence by Afghan evacuees like we have seen at Fort McCoy and Fort Bliss.

I believe the SECURE America Act must be immediately taken up to ensure our immigration system preserves and protects our national security and our American way of life.

Finally, I would like to address the surge in violent crime throughout our nation.

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This violence is clearly enabled by jurisdictions throughout the country considering—and in many cases adopting—measures to defund or disempower law enforcement.

The failure of many American cities to enforce the rule of law is why I introduced H.R. 3217, the Lawless Cities Accountability Act. My bill would defund cities and other municipalities that disempower or defund law enforcement—enabling anarchy and lawlessness.

It is the responsibility of government to protect the lives and property of all American citizens from unlawful acts of violence and destruction. The Federal Government should not allow taxpayer dollars to fund jurisdictions that fail to enforce the rule of law and protect their citizens. That is what my Lawless Cities Accountability Act aims to prevent.

I urge the committee to take up these important pieces of legislation to address these crises. I thank you for your time and consideration, and I would yield back.

Chair NADLER. Thank you.

The gentleman yields back.

I forgot to read the obvious, which is that all Witnesses should note that their written statements will be entered into the record in their entirety, and, accordingly, they should summarize their testimony in 5 minutes.

We will now hear from the gentleman from Florida, Mr. Deutch.

STATEMENT OF THE HON. THEODORE E. DEUTCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DEUTCH. Thank you, Mr. Chair.

Thanks for the opportunity to speak about the American Music Fairness Act, a bill that I introduced with Congressman Issa from California. This bill will make a long-overdue change to pay performing artists a small piece of the massive profits made by big radio stations that play their songs.

Frankly, it is ridiculous that this isn't already happening. We expect every other business to pay for their raw materials. Restaurants pay for produce. Builders pay for lumber. Corporate radio stations should pay for the music that they play.

AM-FM radio makes a profit by selling advertising around music and other content. When you tune in to sing along with your favorite song or catch up on local sports, you also hear ads. You hear ads for local car dealerships; you hear ads for local furniture stores.

Talk radio stations pay their hosts, and sports radio stations pay for play-by-play. DJs are paid to entertain, inform, introduce songs that bring in listeners. Songwriters are paid for the music and the lyrics. The artists singing and the musicians playing those songs, they are not paid at all.

The excuse that we often hear from radio broadcasters is that exposure is enough, that that is the payment. This isn't the 1960s. Every creator knows that exposure isn't how they pay the bills.

Technology has changed a lot since the start of AM-FM radio, and we all know that publicity from radio airplay isn't how an artist breaks out into the mainstream. Most mainstream radio plays a small rotation of hits, rather than breaking a wide range of new or independent artists.

I would caution anyone who might suggest to legendary artists like Dionne Warwick that promotion is fair compensation when her songs, like "I'll Never Fall in Love Again," are played on radio. She has over half a million Twitter followers. She doesn't need exposure. She needs to be paid fairly for her artistry.

Congress fixed one injustice for pre-1972 recordings 3 years ago with the Music Modernization Act, but those rights still don't apply when the songs are played on radio. Dionne Warwick should have been paid in 1969 and she should be paid today when her songs are played on the radio.

Here is the thing: It is only in America that we have this problem. Countries around the globe collect royalties for American artists, but even those royalties never make it—they never make it to our artists because we refuse to reciprocate. This costs American artists \$200 million every year in royalties outside the U.S.

My bill would ensure that U.S. artists get paid for domestic radio play and allow U.S. artists to finally collect their international royalties.

As we sit in this hybrid remote hearing, we should all be reminded of the hardship that artists have faced through the pandemic as tours were postponed, venues were shuttered. Even as we stayed closer to home, we still got to enjoy the music on the radio—internet, satellite, and AM–FM. Now, satellite and digital music services are required to pay both performers and songwriters. It is only AM–FM radio that does not pay performing artists.

Sometimes I hear that my bill is a threat to local radio. Small local radio stations pay only a nominal annual fee under the American Music Fairness Act, and the smallest stations would pay 2 cents per day to have access to this content.

I value my local broadcasters. I want to ensure that they thrive in communities across the country. I refuse to accept a corporate giveaway that hurts artists as necessary to protect small, local, and independent broadcasters.

The American Music Fairness Act will finally ensure that artists are justly paid. It will help the thousands of musicians who are struggling to make ends meet, whether their songs were hits many years ago or they are just starting out today. Fixing this deeply unfair system is the least we can do for the recording artists, for those musicians who have enriched our lives with their music.

This has been an extraordinarily difficult time in our country throughout this pandemic. I think for so many of us, it is music that helped get us through this. It is only appropriate that we finally bring some fairness to the issue of the music business and make sure that these artists are paid for the incredible work that they provide to all of us.

I thank the Chair, Ranking Member, and yield back.

[The statement of Mr. Deutch follows:]

**Testimony of the Honorable Theodore E. Deutch
October 21, 2021
Member Day Hearing
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515**

Thank you for allowing me this opportunity to speak about the American Music Fairness Act – a bill I and Congressman Issa from California have introduced.

Under the American Music Fairness Act, performing artists would see a small piece of the massive profits made by big radio stations for their creative work.

Of course, the ridiculous part is that this is not already happening. No other business in the world claims they should make a profit without paying for the raw materials they use – grocery stores pay for produce, builders pay for lumber, and corporate radio should pay for music.

The business model of AM-FM radio is pretty simple. It makes a profit by selling advertising around the music and other content it airs. You tune in to sing along with your favorite songs or catch up on local sports teams and you also hear ads for car dealerships or furniture stores in your area. But, because of a loophole in our copyright laws, AM-FM radio doesn't pay a cent to the performers who made the songs they play. The musicians, vocalists, recording artists, and labels whose hard work and creativity attract listeners and generate massive revenues for AM-FM radio stations get absolutely nothing -- while the AM-FM radio stations make billions each year.

For me, the system we have now is just so clearly stacked against performers there is no possible way of saying that it is fair to American artists. AM-FM radio pays their talk radio hosts for the entertainment and commentary; and, by selling ads during those shows, AM-FM radio can afford to pay these hosts quite well. AM-FM radio has long been required to pay songwriters, but they pay absolutely nothing to the artists who bring recordings to life – unequal treatment that simply makes no sense. And AM-FM radio pays the DJs who introduce the songs they play. So, if you are listening to music over AM-FM radio, the person who wrote the song is getting paid, the person telling you the name of the song is getting paid, but the person singing it is not.

It is only in America that we have this problem. Every industrialized country except the United States has a performance right. In fact, other countries actually collect royalties for American artists, but those royalties are never actually paid because we refuse to collect royalties for international artists here. So, because the US does not have this right in our laws, American artists are not eligible to collect royalties for their music when it is played on the radio overseas. This discriminatory treatment costs American artists an estimated \$200 million every year in royalties outside the US. Establishing an AM-FM performance right would change that at last. The American Music Fairness Act would ensure that US artists get paid for the domestic radio

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play of their music and having a performance right in US law will also allow US artists to finally collect their international royalties as well.

Even in the US, it is only AM-FM radio that does not pay performers. Satellite radio and digital music services are required to pay both performers and songwriters. So, the American Fairness Act would require that AM-FM radio broadcasters pay for the music they play just like everyone else does.

This problem has existed for decades, rationalized by the dubious claim that artists got free publicity when their music was played on the radio. However, anyone who listens knows that most mainstream radio mainly plays a small rotation of hits rather than breaking a wide range of new or indie artists. With the rise of internet and satellite radio – which do pay artists and have broader, deeper playlists that feature many more upcoming stars – the claim that promotion is a substitute for fair play is even more specious. For older, legacy artists, the ‘promotion’ argument falls even flatter. Legacy artists don’t need AM-FM radio to promote them. They need a system not rigged against them. They need for someone who profits from using their work to pay for it.

And as we sit in this hybrid remote hearing, we are all reminded that we are in a very different world than we were two years ago. For a significant part of the past year and a half, our beloved local venues were shuttered. There was no one touring in a pandemic. And no performers were able to make money from touring. But as we stayed closer to home, we still got to enjoy the music we could not go out to hear live. We streamed all those artists, and we listened to the radio – internet, satellite, and AM-FM. But for the music played on AM-FM radio, our favorite artists got nothing.

Establishing the performance right has a bipartisan history that predates my time in Congress. My co-lead Rep. Issa was here during the 111th Congress, when bills establishing a terrestrial performance right passed the House and Senate Judiciary Committees by large bipartisan majorities.

Sometimes I hear that my bill is a threat to local radio. But this debate has never been about local radio. Small local radio stations would not be harmed by the American Music Fairness Act. I value my community broadcasters and want to ensure that they are free to continue to be a thriving part of local communities across the country, but I refuse to dress up an unfair subsidy for all AM-FM radio in the guise of supporting the local radio we all love.

The American Music Fairness Act would exempt out small local radio stations – as have prior versions of performance rights bills. So, small, local radio would be free to continue their businesses unharmed by the changes. Specifically, Under the American Music Fairness Act, local AM/FM stations with annual revenue below \$1.5 million and whose parent companies’ annual revenue is below \$10 million would only pay \$500 a year, covering all the music they play for a little more than a dollar a day. Public, college, and other noncommercial stations would pay only \$100 a year. And the smallest stations, those most in need of protection with revenue under \$100,000 annually, would pay just \$10 a year. The small payments will acknowledge there is value to every song on the radio, without creating significant burden.

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The broadcasters have become experts in muddying the waters of this issue, but the core question has not changed: is the current system fair to performers. Congressman Issa and I are taking that very simple question to our colleagues. And the only fair answer to that question is clearly – no, it is not.

I hope that the American Music Fairness Act will finally allow us to fix this unfair treatment.

I will close just by saying that the American Music Fairness Act will finally ensure that artists are justly paid. It will help the thousands of musicians who are struggling to make ends meet – whether their songs were hits many years ago or they are just starting out today. Fixing this deeply unfair system is the least we can do for the recording artists who have given us all so much.

Chair NADLER. Thank you, Mr. Deutch.

I would be remiss if I didn't point out that this bill is identical to the Fair Pay Fair Play Act introduced over a dozen years ago by then-Congresswoman Marsha Blackburn and me, and the nominal fee a local broadcaster would pay is limited to \$10 a year.

So, we will give this—I would like to see this pass as fast as possible. I have wanted to see it pass as fast as possible for at least a dozen years. So, thank you very much.

Ms. Wagner, you are next.

**STATEMENT OF THE HON. ANN WAGNER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MISSOURI**

Ms. WAGNER. I thank the Chair and I thank the Committee for having this hearing today.

Protecting children from exploitation is one of the most important responsibilities we all share as public officials. It is our job to ensure that the communities we represent are aware of the potential dangers facing children, that laws are properly enforced against those facilitating trafficking and abuse, and that survivors are given the support necessary to help them break free from exploitation.

In July of 2020, President Joe Biden stated that he would prevent human trafficking across the globe by strengthening the rule of law. However, through the first 7 months of the Biden Administration, over 112,000 unaccompanied children crossed our southern border, more than in all 2019 and 2020 combined.

These minors are at the highest risk of being trafficked and exploited, and the criminal networks facilitating their abuse are making tens of millions of dollars. The Administration's open-border policies caused this humanitarian disaster, and the lawlessness must be stopped.

The prevalence of human trafficking and sexual exploitation is not only increasing at the border but in communities across our country as well. The pandemic has forced our children into isolation, where they are seeking out social interaction through the internet. Traffickers know this, and they have ramped up their grooming activity online, tricking oftentimes vulnerable children into trusting them and sending explicit photos and videos, then using that sensitive material to extort the minors into engaging in sexual acts, both online and in person.

Among the worst facilitators of this exploitation is the website *OnlyFans.com*. In just this year alone, OnlyFans has been connected to human trafficking, selling child sexual abuse material, kidnapping, sexual battery, sexual servitude, extortion, and child rape.

I would like to submit for the record this letter outlining these crimes in detail.

Chair NADLER. Without objection.

[The information follows:]

THE HON. ANN WAGNER FOR THE RECORD

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Congress of the United States
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October 21, 2021

The Honorable Himamauli Das
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
2070 Chain Bridge Road
Vienna, VA 22182

VICE RANKING MEMBER
COMMITTEE ON
FINANCIAL SERVICES
RANKING MEMBER
SUBCOMMITTEE ON DIVERSITY AND
INCLUSION
SUBCOMMITTEE ON INVESTOR PROTECTION,
ENTREPRENEURSHIP,
AND CAPITAL MARKETS
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FOREIGN AFFAIRS
SUBCOMMITTEE ON EUROPE, EURASIA,
ENERGY, AND THE ENVIRONMENT
SUBCOMMITTEE ON ASIA, THE PACIFIC,
AND NONPROLIFERATION

Acting Director Das,

As public officials, we must do everything in our power to ensure children and vulnerable individuals are protected from harm and sexual exploitation. In 2021, the website OnlyFans.com (OnlyFans) has been linked to multiple severe crimes committed against women and children. The financial sector plays an integral role in combatting human trafficking and other criminal activity, and I am gravely concerned about “assurances” made between OnlyFans and its financial partners. It is the responsibility of the Financial Crimes Enforcement Network (FinCEN) to safeguard our financial system from illicit use. As Vice Ranking Member of the House Committee on Financial Services, I request that FinCEN, together with the appropriate federal regulators, conduct an immediate and thorough investigation of the agreements made between OnlyFans and its financial partners, specifically focusing on the “assurances” that preceded OnlyFans’ decision to continue allowing the sale of sexually explicit content.

Serious sex crimes involving OnlyFans have been occurring across the United States throughout 2021. These crimes include human trafficking, selling Child Sexual Abuse Material (CSAM), kidnapping, battery, and child rape. In January 2021, a couple in Miami, Florida, was arrested and charged with human trafficking, possession of a sexual performance by a child, and promoting the sexual performance by a child after allegedly selling explicit videos of a 16-year-old girl on OnlyFans.¹ In June 2021, a man in Tampa, Florida, was arrested and charged with extortion, felony battery, false imprisonment, and a slew of other offenses after allegedly kidnapping a woman and threatening to beat her if she did not create an OnlyFans account and upload videos of her having sex with the kidnapper and another woman.² In June 2021, a man in Boston, Massachusetts, was arrested and charged with aggravated rape of a child, trafficking of a person for the purposes of sexual servitude, extortion, and possession and distribution of CSAM after allegedly selling videos on OnlyFans of him sexually assaulting an underage girl. When the minor pleaded with her

¹ CBS4 Miami. January 29, 2021. “Hialeah Couple Hit With Human Trafficking Charges.” <https://miami.cbslocal.com/2021/01/29/hialeah-couple-faces-human-trafficking-charges/>

² FOX13 Tampa Bay. June 5, 2021. “Clearwater man kidnaps, beats woman, threatens more violence unless she opens OnlyFans account, police say.” <https://www.fox13news.com/news/clearwater-man-kidnaps-beats-woman-threatens-more-violence-unless-she-opens-only-fans-account-police-say/>

trafficker to take the videos off OnlyFans, he reportedly said he would only do so if the minor performed more sexual acts.³ In August 2021, a man in Miami, Florida, was arrested and charged with human trafficking of a minor, sexual performance by a child, aggravated child abuse, and sexual battery after allegedly branding an underage female with a tattoo and selling videos of him having sex with the minor on OnlyFans.⁴ In September 2021, a man in McHenry County, Illinois, was arrested and charged with felony non-consensual dissemination of private sexual images after allegedly selling explicit photos on OnlyFans of a woman without her consent.⁵ These depraved crimes with which OnlyFans is indisputably connected are occurring month after month in communities across our country.

Not only is the prevalence of these horrific crimes shocking and unacceptable, media investigations have also highlighted a possible “tolerance” of this illegal content by OnlyFans. In August 2021, *BBC* published an investigatory report finding that users who break OnlyFans’ terms of service are not automatically shut down, but rather must post “at least five examples of illegal content” before the account is “escalated,” and accounts with more subscribers are given additional warnings. In this report, one OnlyFans moderator indicated that he “frequently” encountered content “where he fears people may be being exploited,” but OnlyFans’ policies “contain no requirements for moderators to raise concerns around exploitation.” Significant concerns certainly exist, as an agent for Homeland Security Investigations stated in the article that he “finds between 20-30 child abuse images a week” that have “clearly originated on OnlyFans.”⁶

As you may know, on August 10, 2021, I led a bipartisan coalition of over 100 Members of Congress calling on the Department of Justice (DOJ) to investigate the prevalence of CSAM, missing or abducted children, and solicitation on OnlyFans.⁷ This letter specifically requested DOJ to investigate the policies, or lack thereof, that OnlyFans employs to prevent, reduce, and respond to CSAM on its platform as well as report the presence of missing or abducted children found in content on the website. While OnlyFans stated that it has “a zero tolerance policy relating to Child Sexual Abuse Material (CSAM)” on its platform,⁸ the findings of the *BBC* investigation and the recurring sex crimes throughout the year refute that assertion.

Just over a week after the letter was sent to DOJ, OnlyFans announced that it would prohibit sexually explicit conduct on its website starting October 1, 2021.⁹ OnlyFans publicly stated that this policy change was necessary to “secure banking and payment services” in order to “ensure the

³ Sean Philip Cotter, *Boston Herald*, June 18, 2021, “Brockton coach accused of posting child rape on OnlyFans ordered to stay out of Boston.”

<https://www.bostonherald.com/2021/06/18/brockton-coach-accused-of-posting-child-rape-on-onlyfans-ordered-to-stay-out-of-boston/>

⁴ Miami Dade County State Attorney’s Office, August 13, 2021, “For Immediate Release: Man Charged with Trafficking 15-Year-Old.”

<https://miamisao.com/for-immediate-release-man-charged-with-trafficking-15-year-old/>

⁵ Sam Borcia, *Lake & McHenry County Scanner*, September 13, 2021, “Woodstock man arrested for selling woman’s sexually explicit images, posting them on Twitter and OnlyFans.” <https://www.lakemchenrystanner.com/2021/09/13/woodstock-man-arrested-for-selling-womans-sexually-explicit-images-posting-them-on-twitter-and-onlyfans/>

⁶ Noel Titheradge, *BBC News*, August 19, 2021, “OnlyFans: How it handles illegal sex videos – BBC investigation.”

<https://www.bbc.com/news/uk-58255865>

⁷ Congresswoman Ann Wagner, August 10, 2021, “Congresswoman Ann Wagner Leads Bipartisan Coalition Calling For DOJ To Investigate OnlyFans for Child Exploitation.” <https://wagner.house.gov/media-center/press-releases/congresswoman-ann-wagner-leads-bipartisan-coalition-calling-for-doj-to>

⁸ Samantha Cole, *VICE*, August 12, 2021, “The Congresswoman Behind FOSTA Is Coming for OnlyFans.”

<https://www.vice.com/en/article/4avpc3/ann-wagner-fosta-onlyfans-csam-doj-letter>

⁹ Lucas Shaw, *Bloomberg*, August 19, 2021, “OnlyFans to Bar Sexually Explicit Videos Starting in October.”

<https://www.bloomberg.com/news/articles/2021-08-19/onlyfans-to-block-sexually-explicit-videos-starting-in-october>

long-term sustainability of the platform.”^{10,11} The Chief Executive Officer of OnlyFans, Tim Stokely, gave an interview on August 24, 2021, in which he claimed that OnlyFans was forced to change its policies due to “unfair” treatment by banks, saying financial institutions would cite certain risks associated with the website and “refuse our business.”¹²

However, just one day after this interview, OnlyFans reversed its decision to ban sexually explicit content, announcing that the company had “secured assurances necessary to support our diverse creator community and have suspended the planned October 1 policy change.”¹³ This dramatic shift is extremely disturbing and raises serious questions about the details of these “assurances.” If an agreement was made between OnlyFans and financial institutions to shield businesses from scrutiny or liability for sex crimes involving OnlyFans, it would constitute a severe breach of public trust and possible violation of federal anti-money laundering statutes and regulations.

Given FinCEN’s role in enforcing the Bank Secrecy Act, I request you conduct an immediate and thorough investigation of the “assurances” OnlyFans secured with its financial partners. This investigation should provide answers to the following:

- 1) Which financial institutions were involved in the agreement made with OnlyFans that led to its suspension of policy changes pertaining to sexually explicit content?
- 2) What specific “assurances” did OnlyFans “secure” from these financial partners?
- 3) Did these “assurances” involve the manner in which OnlyFans would report instances of illegal content on its site such that the financial institutions would be protected from public scrutiny and/or legal action?
- 4) Did these “assurances” involve how the financial institutions would respond to instances of illegal content sold on OnlyFans and/or Suspicious Activity Reports (SARs) filed against OnlyFans?

Due to the prevalence and depravity of the crimes in which OnlyFans is involved, I look forward to your prompt and detailed response.

Sincerely,



Ann Wagner

Member of Congress

¹⁰ @OnlyFans. *Twitter*. August 21, 2021. <https://twitter.com/OnlyFans/status/1429117407340240902?s=20>

¹¹ Ryan Browne. *CNBC*. August 20, 2021. “Porn made OnlyFans a powerhouse. Now it’s banning sexual content after pressure from banks.” <https://www.cnbc.com/2021/08/20/onlyfans-bans-sexually-explicit-content.html>

¹² Patricia Nilsson. *Financial Times*. August 24, 2021. “OnlyFans founder blames banks for ban on porn.” <https://www.ft.com/content/7b8ce71c-a87a-440e-9f3d-58069ca0480b>

¹³ @OnlyFans. *Twitter*. August 25, 2021. <https://twitter.com/OnlyFans/status/1430499277302816773?s=20>

Ms. WAGNER. My office has been in contact with Federal agents, local detectives, and victim advocacy groups that are all sounding the alarm about the website and others like it.

Homeland Security Investigations Special Agent Austin Berrier told us he sees up to 50 files of child sexual abuse material per day, Mr. Chair, that have originated on OnlyFans. This is absolutely unconscionable.

On August 10, I led a very bipartisan letter with over 100 Members of Congress calling on the Department of Justice to investigate this website, and after 73 days I have yet to receive a response. In that time, the media has reported multiple crimes related to OnlyFans, including human trafficking of a minor and aggravated child abuse. The Department of Justice must Act and stop this from happening to our children.

With these horrific crimes on the rise, we must give law enforcement the tools to support survivors. That is why I have also introduced H.R. 1527, the Homeland Security Investigations Victim Assistance Act, a bipartisan bill that would expand HSI's Victim Assistance Program. This vital program provides trained specialists who work alongside law enforcement to help trafficking survivors assist investigators in apprehending their abuser.

I strongly urge this Committee to pass this legislation and to help survivors get the justice that they deserve. It is my sincere hope that this Committee will join me in the fight against trafficking and force the Administration to take substantive and immediate action to protect children at the border and across the United States.

I thank you, and I yield back, Mr. Chair.

[The statement of Ms. Wagner follows:]

**Congresswoman Ann Wagner (MO-02) testimony for House Judiciary Committee
(10.22.21)**

Protecting children from exploitation is one of the most important responsibilities we all share as public officials. It is our job to ensure that the communities we represent are aware of the potential dangers facing children, that laws are properly enforced against those facilitating trafficking and abuse, and that survivors are given the support necessary to help them break free from exploitation.

In July of 2020, Joe Biden stated that he would “prevent human trafficking across the globe by strengthening the rule of law”. However, through the first seven months of the Biden Administration, over 112,000 unaccompanied children have crossed our southern border—more than all of 2019 and 2020 combined. These minors are at the highest risk of being trafficked and exploited, and the criminal networks facilitating their abuse are making tens of millions of dollars. The Biden Administration’s open border policies caused this humanitarian disaster, and the lawlessness must be stopped.

The prevalence of human trafficking and sexual exploitation is not only increasing at the border, but in communities across the country as well. The pandemic has forced our kids into isolation, where they are seeking out social interaction through the internet. Traffickers know this and have ramped up their grooming activity online, tricking vulnerable children into trusting them and sending explicit photos and videos, then using that sensitive material to extort the kids into engaging in sexual acts—both online and in person.

Among the worst facilitators of this exploitation is the website, OnlyFans.com. In just this year alone, OnlyFans has been connected to human trafficking, selling Child Sexual Abuse Material, kidnapping, sexual battery, sexual servitude, extortion, and child rape. My office has been in contact with federal agents, local detectives, and victim advocacy groups that are all sounding the alarm about this website and others like it. One agent with Homeland Security Investigations told us he sees up to 50 files of Child Sexual Abuse Material per day that have originated on OnlyFans. This is absolutely unconscionable.

On August 10th, I led a letter with over 100 Members of Congress calling on the Department of Justice to investigate this website, and after 73 days I have yet to receive a response. In that time, the media has reported multiple crimes related to OnlyFans, including the human trafficking of a minor and aggravated child abuse. The Department of Justice must act and stop this from happening.

With these horrific crimes on the rise, we must give law enforcement the tools to support survivors. That is why I introduced H.R. 1527, the *Homeland Security Investigations Victim Assistance Act*, a bipartisan bill that would expand HSI’s Victim Assistance Program. This vital program provides trained specialists to work alongside law enforcement to help trafficking survivors assist investigators in apprehending their abuser. I strongly urge this committee to pass this legislation to help survivors get the justice they deserve.

It is my sincere hope that this committee will join me in the fight against trafficking and force the Biden Administration to take substantive and immediate action to protect kids at the border and across the United States.

Chair NADLER. Thank you very much.

For Members who were not here when I made this announcement, I would remind all Members that guidance from the Office of Attending Physician states that face coverings are required for all meetings in an enclosed space, such as Committee hearings, except when you are recognized to speak. This includes all Members waiting to testify.

Ms. Schrier?

**STATEMENT OF THE HON. KIM SCHRIER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WASHINGTON**

Ms. SCHRIER. Thank you, Chair Nadler, and thank you, Ranking Member Jordan, for hosting this Member Day today. I appreciate the opportunity to testify about my priorities as Representative of Washington State's Eighth Congressional District.

I want to start by thanking the Members of the Judiciary Committee for your work on many of the issues that are most important to me and to my constituents, including voting rights, farm-worker visa reform, and addressing the backlog of green card applicants, among others.

I am joining you today to speak specifically about my priorities around public safety and policing reforms.

In the last year, our country has had even more painful reminders of racial bias present in all our institutions that carries particularly deadly consequences in law enforcement. Meanwhile, there has been an increase in violent crime and homicide. This year, King County, Washington, has already seen more gun violence than in all 2020.

I do not believe in defunding the police and have never supported any effort to do so. It is wrongheaded and counterproductive to public safety. As we continue to discuss policing reform, it is really important to support police departments with the resources they need to do their jobs well and safely.

Over the past year, I have had the privilege to ride with local police officers and hear their perspectives on how to keep our communities safe and build trust with communities of color. I believe that if people and other elected officials would just pause to listen, we could make policing work really well for everyone.

I ask this Committee to continue work to address the following priorities for my constituents in the Eighth District and addressed in previous legislation passed by this body.

My proposed amendment to the Commerce, Justice, and Science government funding bill would help police departments pay for body-worn cameras, an expensive instrument that both law enforcement and community Members strongly support. There would be a special emphasis on smaller departments, which seldom can afford the thousands of dollars needed to purchase body cameras or the resources and personnel to manage the footage.

The second amendment I put forward in that bill would increase funding that police departments can use to hire mental health professionals. During ride-alongs and conversations with police departments throughout my district, I constantly hear from officers that their jobs would be so much easier if there were more mental health services in our communities. Pairing an officer with a social

worker or other trained mental health professional can provide better service to all community Members—victims, perpetrators, and people who just need help that haven’t committed any crime.

In addition to these two issues, I want to highlight several other commonsense reforms that remain priorities in my district.

Programs that build community relationships with police departments renew trust in these institutions, keeping both officers and community Members safer. In Auburn, Washington, the police department has created a diverse Police Advisory Committee to provide feedback and recommendations to the chief. Community-based programs like this help build trust and understanding and empower community Members to engage with police in ensuring public safety.

While the vast majority of police officers work hard to serve the community equitably and with compassion, there must be accountability for those who don’t, whether by gratuitous violence, corruption, or other inappropriate behavior. A national database that tracks these bad actors will help ensure that they are not rehired elsewhere after demonstrating that they are clearly unfit to serve.

Finally, as I mentioned, my priority is to ensure that all law enforcement have the resources they need to do their jobs well, and one critical component of that is access to training. All departments should have access to the training they need in de-escalation, in the proper use of nonlethal tactics, and best practices for engaging with specific populations and more.

These commonsense reforms will make our communities safer and support our law enforcement professionals to do their best work and serve their communities.

Thank you for your leadership and your attention to the needs of my district, and I yield back the balance of my time.

[The statement of Ms. Schrier follows:]

Congresswoman Kim Schrier, WA-08
Judiciary Member Day Remarks
October 22, 2021

Thank you Chairman Nadler, Ranking Member Jordan, for hosting this member day today.

I appreciate the opportunity to testify about my priorities as representative of Washington state's 8th congressional district. I want to start by thanking the members of the Judiciary Committee for your work on many of the issues that are most important to me, and to my constituents, including voting rights, farm worker visa reform, and addressing the backlog of green card applicants among others.

I am joining you today to speak specifically to my priorities around public safety and policing reforms. In the last year, our country has had more painful reminders of racial bias present in all our institutions that carries particularly deadly consequences in law enforcement. Meanwhile, there has been an increase in violent crime and homicide. This year, King County has already seen more gun violence than in all of 2020.

I do not believe in defunding the police, and have never supported any effort to do so. That is wrongheaded and counterproductive to public safety. As we continue to discuss policing reform, it is important to support police departments with the resources they need to do their jobs well.

Over the past year, I have had the privilege to ride with local police officers and hear their perspectives on how to keep our communities safe and build trust with communities of color. I believe that if people and other elected officials would just pause to listen, we could make policing work better for everyone. I ask this Committee to continue to work to address the following priorities of my constituents in the 8th district, and addressed in previous legislation passed by this body.

My proposed amendment to the Commerce, Justice, and Science government funding bill would help police departments pay for **body-worn cameras**, an expensive investment that both law enforcement and their communities strongly support. There would be a special emphasis on smaller departments, which seldom can afford the thousands of dollars needed to purchase body cameras, or the resources and personnel to manage the footage.

The second amendment I put forward in that bill would increase funding that police departments can use to hire **mental health professionals**. During ride-alongs and conversations with police departments throughout my district, I consistently hear from officers that their jobs would be easier if there were more mental health services in our communities. Pairing an officer with a social worker or other trained mental health professional can provide better service to all community members—victims, perpetrators, and people who need help but have not committed any crime.

In addition to these two issues, I would like to highlight several other common sense reforms that remain a priority for my district:

Programs that build **community relationships** with police departments renew trust in these institutions, keeping both officers and community members safer. In Auburn, WA, the police department has created a diverse Police Advisory Committee to provide feedback and recommendations to the Chief. Community-based programs like this help build trust and

understanding, and empower community members to engage with police in ensuring public safety.

And while the vast majority of police officers work hard to serve the community equitably and with compassion, there must be **accountability** for those who don't, whether by gratuitous violence, corruption, or other inappropriate behavior. A national database that tracks these bad actors will help ensure they are not re-hired elsewhere after demonstrating they are unfit to serve.

Finally, as I mentioned, my priority is to ensure that all law enforcement departments have the resources they need to do their jobs well—and one critical component is access to **training**. All departments should have access to training they need in de-escalation, proper use of non-lethal tactics, best practices for engaging with specific populations, and more.

These common-sense reforms will make our communities safer and support our law enforcement professionals to do their best work. Thank you for your leadership and attention to the needs of my District. I yield back the balance of my time.

Chair NADLER. The gentlelady yields back, and we thank her for her testimony.

Mr. Bilirakis?

STATEMENT OF THE HON. GUS M. BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BILIRAKIS. Thank you, Mr. Chair. I appreciate it. I want to thank Ranking Member Jordan, distinguished Members of the Committee, and, of course, specifically my good friend Louie Gohmert. It is an honor to speak before the Committee this morning.

One of my longstanding commitments as a Member of Congress has been to promote the culture of life. I have cosponsored and voted for measures that respect the sanctity of human life and encourage alternatives to abortion. I have also voted against legislation that would have allowed public funds to be used for abortions and will continue to do so.

I am proud to join my good friend from Missouri, Ann Wagner, as well as 200 of my colleagues in supporting H.R. 619, the Born-Alive Abortion Survivors Protection Act.

H.R. 619 requires that healthcare practitioners who are present at the live birth exercise skill, care, and diligence to preserve the life and health of a child who survived an attempted abortion with the same degree of care that would be offered to any other child born prematurely at the same gestational age.

After those efforts, the healthcare worker must transport—

Chair NADLER. Would the gentleman yield for a question?

Mr. BILIRAKIS. Yes.

Chair NADLER. Isn't that already the law in every State? If a baby is born alive and you don't take proper care, that is murder under the laws of every State, I think.

Mr. BILIRAKIS. Well, this is what the bill states, and—

Chair NADLER. What I am saying, isn't that already the law?

Mr. BILIRAKIS. Yeah, it is—at this particular time, there can be birth—abortions after birth. This is what is my understanding. We want to prevent that from happening anywhere in the United States.

This bill also gives the mother a civil cause of action and protection from prosecution, recognizing that women are the second victims of abortion and promoting the dignity of motherhood.

I also want to say that, again, if it is already going on, why not put it in law and codify it?

I urge the Committee to advance this important, lifesaving bill through a vote of the full House, because I would hope we can all agree that a child born alive has a right to live.

Another top priority of mine is supporting our law enforcement officers. During my time in Congress, I have worked with local law enforcement agencies to ensure they have the support they need to properly protect and serve our communities. I routinely meet with Pasco and Pinellas County and Hillsborough County sheriff's offices and local police agencies to hear how they are working to keep our communities safe and how the Federal Government can be of assistance to them.

Through these meetings, I have brought community leaders together with local law enforcement. It is critical that law enforce-

ment and local residents have an open line of communication to understand the issues that each face and how they can best work together. This is something that is vitally important, and I am proud to be able to facilitate these types of discussions.

I am committed to ensuring the safety and security of all communities by opposing efforts to defund the police, increasing funding for better police training, community policing, and equipment, including body cameras. Let me be clear for the record: I have never and will never support defunding the police.

Unfortunately, our Nation has seen an uptick in attacks on law enforcement officers. In fact, the National Fraternal Order of Police—that 51 law enforcement officers—they have said that 51 law enforcement officers were shot, 13 of whom died, and 40 ambush-style attacks as of June 30, a 91-percent jump from the same time last year. It is really awful. In all of 2020, there were 48 ambush-style attacks, which left 60 officers wounded, 12 fatally, according to the group's 2020 summary.

I am a cosponsor of two pieces of legislation that address the safety of our law enforcement officers: H.R. 3080, the Back the Blue Act; and H.R. 3079, the Protect and Serve Act.

The Back the Blue Act establishes new criminal offenses for killing, assaulting, and fleeing to avoid prosecution for killing a judge, law enforcement officer, or public safety officer.

The Protect and Serve Act, which was introduced by my good friend, fellow Floridian, and former Duval County sheriff, John Rutherford, establishes a new criminal offense for knowingly assaulting a law enforcement officer and causing serious bodily injury, or attempting to do so, in circumstances that affect interstate commerce.

My colleagues on the other side of the aisle say they are capable of supporting the police and the safety of their communities. Let's come together and do that. If there are no objections, let's get on this bill, and let's pass this bill on the floor of the House and send it to the United States Senate so we can save lives.

I urge this Committee to protect law enforcement officers and advance these critical pieces of legislation to the floor for a vote.

I would like to thank the Chair—thank you so much—the Ranking Member, Members of the Committee, again, for inviting me to testify today. I yield back the balance of my time.

[The statement of Mr. Bilirakis follows:]

Chairman Nadler, Ranking Member Jordan, distinguished members of the Committee, thank you for holding this Bipartisan Member Day Hearing—it is an honor to speak before the Committee this morning.

One of my longstanding commitments as a member of Congress has been to promote a culture of life. I have cosponsored and voted for measures that respect the sanctity of human life and encourage alternatives to abortion. I have also voted against legislation that would have allowed public funds to be used for abortions and will continue to do so. I am proud to join my good friend from Missouri, Ann Wagner, as well as 200 of my colleagues in supporting H.R. 619, the Born-Alive Abortion Survivors Protection Act. H.R. 619 requires that health care practitioners who are present at the live birth exercise skill, care, and diligence to preserve the life and health of a child who survived an attempted abortion with the same degree of care that would be offered to any other child born prematurely at the same gestational age. After those efforts, the health care workers must transport and admit the child to a hospital. This bill also gives the mother a civil cause of action and protection from prosecution, recognizing that women are the second victims of abortion and promoting the dignity of motherhood. I urge the committee to advance this important lifesaving bill to a vote of the whole House, because I would hope, we can all agree that a child born alive has a right to live.

Another top priority of mine is supporting our law enforcement officers. During my time in Congress, I have worked with local law enforcement agencies to ensure they have the support they need to properly protect and serve our communities. I routinely meet with the Pasco and Pinellas County Sheriff's Office's and local police agencies to hear how they are working to keep our communities safe, and how the federal government can be of assistance to them.

Through these meetings, I have brought community leaders together with local law enforcement. It is critical that law enforcement and local residents have an open line of communication in order to understand the issues that each face and how they can best work together. This is something that is vitally important, and I am proud to be able to facilitate these types of discussions. I'm committed to ensuring the safety and security of all communities by opposing efforts to defund the police, increasing funding for better police training, community policing, and equipment, including body cameras. Let me be clear for the record: I have never and will never support defunding the police.

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The Back the Blue Act establishes new criminal offenses for killing, assaulting, and fleeing to avoid prosecution for killing a judge, law enforcement officer, or public safety officer. The Protect and Serve Act, which was introduced by my Good Friend, fellow Floridian, and former

Duval County Sheriff John Rutherford, establishes a new criminal offense for knowingly assaulting a law enforcement officer and causing serious bodily injury (or attempting to do so) in circumstances that affect interstate commerce. My colleagues on the other side of the aisle say they are capable of supporting the police and the safety of their communities. Let's come together and do that, so we can save lives. I urge this committee to protect law enforcement officers and advance these critical pieces of legislation to the floor for a vote.

I would like to thank the Chairman, Ranking Member, and Members of the Committee again for inviting me to testify today, and I yield back.

Chair NADLER. The gentleman yields back.
 Mr. BILIRAKIS. Thank you.
 Chair NADLER. Ms. Jackson Lee?

**STATEMENT OF THE HON. SHEILA JACKSON LEE, A
 REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Ms. Jackson Lee. Good morning, Chair, and to the Ranking Member. Thank you so very much for this opportunity to present at the Members Day.

Let me, because of my good friend who is here, simply acknowledge a tragedy in my congressional district area and to offer sympathy to the family of Deputy Kareem Atkins, who was killed, Deputy Barthen, and Deputy Garrett, both of whom were shot.

I say this in sincere sympathy to those family Members and to emphasize, in the time that I have been here in the United States Congress, on this Committee, I have never seen anything but support and advocacy for the men and women of the law enforcement community. We will continue to do so, and I will continue to join you, Mr. Chair and Ranking Member, to do that, because they are our protectors and they do protect and serve.

We have certainly tried to work on a number of issues, which I will highlight as well. I think we have been, over the years, concerned about victims, crime, and the way to ensure that justice in this Nation is fairly distributed and that, as Dr. King has said, it would roll down like righteous waters, as I paraphrase.

So, let me offer issues that we have actually moved forward on, and I will be brief in that, and then hope that we can move forward again as well.

We were successful in marking up H.R. 40, the Commission to Study and Develop Reparation Proposals for African Americans Act, which I am so delighted to see the enormity of support, including over 300 organizations from all backgrounds in our community, in particular, the understanding that this is a historical framework that studies the trajectory of slavery, which lasted longer than the country is old, and to be able to discuss the way forward, which I think is extremely important.

Just about a week ago, I spent time at a Jewish synagogue in Illinois, and the enthusiasm of understanding was overwhelming. I know that that will be the case as we move forward on that legislation to the floor.

H.R. 1280 was the George Floyd Justice in Policing Act that has been worked on extensively by all Members of this Committee, including my colleague and friend Congresswoman Karen Bass. My point on this legislation is that there are many elements in this legislation that I think we can work together on.

I hope, as we continue to discuss with our colleague and others that we will look at, in particular, the George Floyd Justice in Policing Act that was introduced. It was called the George Floyd Law Enforcement Integrity Act that Jason Crow joined me on to end racial profiling, which should be particularly important to focus on. We can come together on ensuring that our law enforcement has all the tools that they need, particularly in the backdrop of Police Week last week.

We did a stupendous job working on the Violence Against Women Act. We put the most profound legislation forward, starting back in 2017–2018. It was a hard-fought battle, but we worked to make sure that we balanced all the legislation that others were interested in, including the money for—at that time, \$291 million—for DNA kits to help backlog in law enforcement. We had outreach to community-based organizations that were effective in dealing with bringing down violence.

This month is Domestic Violence Month, and I am wearing the purple colors to emphasize that. The Violence Against Women Act was a vital and is a vital part of this effort. According to the National Coalition Against Domestic Violence, nearly 20 people per minute are physically abused by an intimate partner.

So, working with the Senate, I am looking forward to this Committee helping to push forward the Violence Against Women Act to final passage.

We are working and did work on the John Robert Lewis Voting Rights Act. I thought I would emphasize that, simply because our work was stupendous, and we, frankly, need to look to the aspects of the other body to be able to help move that. I would put on this record, though this is not something that we could enact, but I do think a rolling filibuster would be appropriate for all the voting-rights laws that we would have.

Let me also emphasize the spike in murders and gun violence. It should be evident that we are seeing a spike in violence and the device of purpose is a gun. So, I hope the storage bill can be passed.

Chair NADLER. The time of the gentlelady has expired.
[The statement of Ms. Jackson Lee follows:]

CONGRESSWOMAN SHEILA JACKSON LEE (TX-18)**STATEMENT BEFORE THE
JUDICIARY COMMITTEE****MEMBER DAY HEARING****FRIDAY, OCTOBER 22, 2021**

As a Senior Member of this Committee, and Chair of the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, I would like to thank Chairman Nadler for his ongoing leadership and fearless championing on issues of vital import to the America people. I appreciate the opportunity to engage with all members of this Committee once again, and to advocate further for African Americans, women, voters, and victims of gun violence.

I. H.R. 40, the “Commission to Study and Develop Reparation Proposals for African Americans Act”

On April 13, 2021, for the first time, H.R. 40 passed out of this Committee and is now heading to the floor of the House. H.R. 40 will create the framework for a national discussion on the enduring impact of slavery and its complex legacy to begin the necessary process of atonement. The goal of these historical investigations is to bring American society to a new reckoning with how our past affects the current conditions of African Americans and to make America a better place by helping the truly disadvantaged

In 1989, my predecessor as the most senior African American on the Judiciary Committee, the Honorable John Conyers, a past Chairman of the Committee, introduced H.R. 40, legislation that would establish a commission to study and develop proposals attendant to reparations. Though many thought it a lost cause, John Conyers believed that a day would come when our nation would

need to account for the brutal mistreatment of African-Americans during chattel slavery, Jim Crow segregation and the enduring structural racism endemic to our society.

This past year, we witnessed nightly civil disobedience in the streets of America in memory of countless acts of the inequality and cruelty visited upon young African American men and women no longer with us in body but forever with us in memory. Now, more than ever, the facts and circumstances facing our nation demonstrate the importance of H.R. 40 and the necessity of placing our nation on the path to reparative justice.

While it might be convenient to assume that we can address the current divisive racial and political climate in our nation through race neutral means, experience shows that we have not escaped our history. Though the Civil Rights Movement challenged many of the most racist practices and structures that subjugated the African American community, it was not followed by a commitment to truth and reconciliation. For that reason, the legacy of racial inequality has persisted, and left the nation vulnerable to a range of problems that continue to yield division, racial disparities, and injustice.

By passing H.R. 40, Congress can start a movement toward the national reckoning we need to bridge racial divides. We owe it to those who were ripped from their homes those many years ago an ocean away; we owe it to the millions of Americans who were born into bondage, knew a life of servitude, and died anonymous deaths, as prisoners of this system. We owe it to the millions of descendants of these slaves, for they are the heirs to a society of inequities and indignities that naturally filled the vacuum after slavery was formally abolished 154 years ago.

We owe it to them to bring H.R. 40 to the floor for a vote, so that the Senate can subsequently vote on it and we can get H.R. 40 to the President's desk for signature.

II. H.R. 1280, the “George Floyd Justice in Policing Act”

As the Chair of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security and a senior member of the Committee on the Judiciary, as an original cosponsor of the legislation, and the author of several of its key legislative provisions, I am pleased to speak today about the House’s historic passage of the H.R. 1280, the *George Floyd Justice In Policing Act of 2021*, which marks a defining point in our country.

The horrifying killing of George Floyd on May 25, 2020 by a Minneapolis police office shocked and awakened the moral consciousness of the nation. Untold millions saw the terrifying last 8:46 of life drained from a black man, George Floyd, taking his last breaths face down in the street with his neck under the knee of a police officer who, along with his three cohorts, was indifferent to his cries for help and pleas that he ‘can’t breathe.’ The civil disobedience witnessed nightly in the streets of America were also in memory of countless acts of the inequality and cruelty visited upon young African American men and women no longer with us in body but forever with us in memory.

The times we find ourselves in demand that action be taken, and that is precisely what the Democratic majority in the House did in passing the *George Floyd Justice in Policing Act of 2020*. I worked tirelessly to pass this bold legislation not just as a senior member of Congress, but also as a mother of a young African American male who knows the anxiety that all African American mothers feel until they can hug their sons and daughters who return home safely, and on behalf of all those relatives and friends who grieve over the loss of a loved one whose life and future was wrongly and cruelly interrupted or ended by mistreatment at the hands of the police.

The *George Floyd Justice in Policing Act of 2021* is designed to destroy the pillars of systemic racism in policing practices that has victimized communities of color for decades, and is

long overdue. No longer will the American people be subjected to practices that encourage systemic mistreatment of persons because of their race. This legislation puts the Congress of the United States on record against racial profiling in policing and against the excessive, unjustified, and discriminatory use of lethal and force by law enforcement officers against persons of color.

It is true all lives matter, they always have. But Black lives matter too, and in so many other areas of civic life, this nation has not always lived up to its promise. Every African American parent, and every African American child, knows all too well 'The Talk' and the importance of abiding by the rules for surviving interactions with the police.

The overriding purpose and aim of the *George Floyd Justice in Policing Act of 2021*, is to weed out and eliminate systemic racism in police practices. I am particularly pleased that the *George Floyd Justice In Policing Act* includes the *End Racial Profiling Now Act*, which I introduced to ban the pernicious practice of racial profiling, as well as the the bipartisan and bicameral *George Floyd Law Enforcement Trust and Integrity Act*, which I introduced with Congressman Crow of Colorado as H.R. 1570.

Effective enforcement of the law and administration of justice requires the confidence of the community that the law will be enforced impartially and that all persons are treated equally without regard to race or ethnicity or religion or national origin. As the great jurist Judge Learned Hand said: "If we are to keep our democracy, there must be one commandment: thou shalt not ration justice."

Equal justice is the proud promise America makes to all persons; the *George Floyd Justice in Policing Act of 2021* will help make that promise a lived reality for African Americans, who have not ever known it to be true in the area of community-police relations. I am proud that this bill has been passed by the House, but it is currently languishing in the Senate. The Senate must

vote on and pass this bill, because only when Black Lives Matter can it truthfully be said that all lives matter.

III. H.R.1620, the “Violence Against Women Act Reauthorization Act”

H.R. 1620, the Violence Against Women Reauthorization Act (“VAWA”) is a product born of meticulous and thoughtful research and countless engagement with those on the ground, who have worked intimately on these issues daily. We began this long journey, and hard-fought battle under the leadership of Republicans, who at the time refused to engage or put forward their own version of VAWA when it expired in 2018 while they held the majority.

But we continued to push forward on behalf of all victims and survivors to reauthorize the Violence Against Women Act (VAWA) of 1994. As we all know, VAWA is a landmark piece of legislation first enacted in 1994 and signed into law by President Bill Clinton as part of the Violent Crime Control and Law Enforcement Act of 1994. This legislation was enacted in response to the prevalence of domestic and sexual violence, and the significant impact of such violence on the lives of women.

Statistics have revealed that these form of violence impact us all. In the United States, an estimated 10 million people experience domestic violence every year, and more than 15 million children are exposed to this violence annually. According to the National Coalition Against Domestic Violence, nearly 20 people per minute are physically abused by an intimate partner. Additionally, nearly 1 in 4 women and 1 in 9 men experience severe intimate partner physical violence, sexual violence, and/or partner stalking with injury.

Today, in Texas, 35.1 percent of women and 34.5 percent of men are subjected to domestic violence. This is why it is imperative that the Senate signs the House-passed reauthorization bill so that President Biden can sign it into law. Enough is enough.

Congress has reauthorized VAWA three times—in 2000, 2005, and 2013—with strong bipartisan approval and overwhelming support from Congress, states, and local communities. During each reauthorization, Congress has made various meaningful improvements to the Act to meet the varied and changing needs of survivors. VAWA expired on September 30, 2018 and the Senate is called upon by the survivors to reauthorize it now.

IV. H.R. 4, the “John R. Lewis Voting Rights Advancement Act”

This Committee has held multiple hearings to examine voting rights and the repeated attacks the Voting Rights Act has suffered at the hands of the Supreme Court. With the House passage of H.R. 4, the “*John Lewis Voting Rights Advancement Act*,” Congress took a giant step in correcting the grievous injury inflicted upon the nation by the Supreme Court in its horrific twin decisions of *Shelby County v. Holder* and *Brnovich v. DNC*, which combined had the effect of neutering the preclearance provisions of Section 5 and the congressionally mandated broad scope of Section 2.

With the solid protections against ‘retrogression’ that are embedded in H.R. 4, even the most subtle and outrageous vote suppression efforts like Texas S.B. 7 will yield to the command of H.R. 4, which creates a new coverage formula for preclearance based on “current conditions.” This formula hinges on a finding of repeated voting rights violations in the preceding 25 years. States and political subdivisions that qualify for preclearance will be covered for a period of 10 years, but if they have a clean record during that time period, they can be extracted from coverage. As I have stated many times, for those states that earn their way into preclearance, it is only fair and right that they also earn their way out.

H.R. 4 also establishes “practice-based preclearance,” which would focus administrative or judicial review narrowly on suspect practices that are most likely to be tainted by discriminatory intent or to have discriminatory effects, as demonstrated by a broad historical record.

I am here today to remind the nation that the need for Senate passage of H.R. 4 is urgent because the right to vote – that “powerful instrument that can break down the walls of injustice” – faces grave threats. The threat stems from the decision issued in June 2013 by the Supreme Court in *Shelby County v. Holder*, 570 U.S. 193 (2013), which invalidated Section 4(b) of the VRA, and paralyzed the application of the VRA’s Section 5 preclearance requirements. Not to be content with the monument to disgrace that is the *Shelby County* decision, the activist right-wing conservative majority on the Roberts Court, on July 1, 2021, issued its evil twin, the decision in *Brnovich v. DNC*, 594 U.S. ___, No. 19-1257 and 19-1258 (July 1, 2021), which engrafts on Section 2 of the Voting Rights Act onerous burdens that Congress never intended and explicitly legislated against.

Were it not for the 24th Amendment, I venture to say that this conservative majority on the Court would subject poll taxes and literacy tests to the review standard enunciated in *Brnovich v. DNC*. According to the Supreme Court majority, the reason for striking down Section 4(b) of the Voting Rights Act was that “times change.” Now, the Court was right; times have changed. But what the Court did not fully appreciate is that the positive changes it cited are due almost entirely to the existence and vigorous enforcement of the Voting Rights Act.

In the same way that the vaccine invented by Dr. Jonas Salk in 1953 eradicated the crippling effects but did not eliminate the cause of polio, the Voting Rights Act succeeded in stymieing the practices that resulted in the wholesale disenfranchisement of African Americans and language minorities but did eliminate them entirely. The Voting Rights Act is needed as much

today to prevent another epidemic of voting disenfranchisement as Dr. Salk's vaccine is still needed to prevent another polio epidemic.

As Justice Ruth Bader Ginsburg stated in *Shelby County v. Holder*, "[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet. That is why the Voting Rights Act is still needed and that is why the Senate must pass H.R. 4, the "*John Lewis Voting Rights Advancement Act*."

V. H.R. 130, the "Kimberly Vaughan Firearm Safe Storage Act"

In May of this year, as Chairwoman of the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, I convened a hearing on the plague of gun violence in this nation. In the time since this hearing, many more American lives have been heartbreakingly, and unnecessarily, lost to gunfire. In 2021 alone, there have been 35,778 deaths due to gun violence, and there have been 571 mass shootings.

Our nation's current circumstances have exacerbated the problem: throughout the pandemic, gun sales have surged, with more children at home with firearms that have not been properly secured. On top of these frightening dynamics, there has been an uptick in firearm-fueled violent crime that has left families and communities torn and afraid.

The statistics are sobering: on average, 316 people are shot every day, with over 100 killed and 64 dying by suicide. Each one of these deaths leaves a hole in the fabric of their family and community.

As with so many other tragedies, children often bear the brunt of gun violence. On a daily basis, 8 children are victims of family fire due to an improperly stored or misused gun found in their home. Additionally, guns account for nearly half of all suicide deaths, and in the majority of

children's gun suicides, the guns were stored in the child's place of residence or the residence of a relative or friend.

We cannot allow this to continue in our country. This is why safe storage of guns is critical to our public safety, and why I have introduced H.R. 130, the "*Kimberly Vaughan Firearm Safe Storage Act*." This bill will regulate the proper storage of firearms and ammunition for residences with children under the age of 18 or a residence with a person who is ineligible to own a firearm.

Needless gun violence and deaths must be addressed, and I encourage all members of this esteemed Committee to continue working towards ending the scourge of gun violence in our nation.

Chair NADLER. Ms. Greene?

STATEMENT OF THE HON. MARJORIE TAYLOR GREENE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Ms. GREENE. Thank you for having me today. I really appreciate you hearing my request.

I have introduced House Res. 57. These are articles of impeachment on President Biden for abuse of power in regard to his willingness to use his position of power to aid his son, Hunter Biden, in their business dealings.

I have also introduced another article of impeachment on President Biden, which is H. Res. 597. This has to do with the national security crisis that President Biden has created with regards to the extreme threat at the southern border.

I have introduced House Res. 598, articles of impeachment on President Biden in regard to the failure in Afghanistan.

I have introduced House Res. 596, articles of impeachment on President Biden for the COVID eviction moratorium and his willingness to use his position to try to do what he shouldn't be doing. We have three branches of power.

Now, this is not an issue that is just important to me; this is an issue that is important to the American people. You see, the American people, in polling just recently—there is a range, between 60 percent of Americans that say that Joe Biden should be impeached, but it goes as high as 83 percent of Republicans think President Biden deserves to be impeached, 58 percent of independents and 40 percent of Democrats agreeing that President Biden should be impeached for his failures to the American people as President.

Let's talk about some of those failures. We can talk about the border alone. You see, here we have—and let's just talk about criminals coming across the border. U.S. Border Patrol has apprehended 9,728 illegal aliens with criminal records just in fiscal year 2021, in comparison to only 2,438 in 2020. This is a 325.8-percent increase in migrant encounters. It is up to 1.7 million migrants at the U.S.-Mexico border in fiscal year 2021, which ended in September. This is a massive increase in President Biden's failures to provide security for the American people.

Also, Border Patrol agents arrested 353 illegal aliens with sex-related criminal convictions, and many of them had prior convictions for crimes involving a minor. In the same period in 2020, agents apprehended 58. In 2019, they apprehended 58 in total—I am sorry—55 in 2020, 58 in 2019, but 353 in 2021. That is a massive increase.

Let's talk about these types of convictions. These convictions include forcible sexual assault, sexual assault of a child under 14, sexual conduct with a person under 13, statutory rape, second-degree sexual assault of a child, and lewd acts with a minor.

Del Rio Sector in Texas, they have seen a 3,166-percent increase in arrests of convicted sex offenders compared to the same timeframe last year.

This is a threat to the American people, and Joe Biden is failing on his job.

We could go on and on with the statistics and the numbers, but I think plenty of people have done that already, so let's talk about, what is the Presidential oath of office?

Joe Biden swore an oath. He said, "I do solemnly swear that I will faithfully execute the Office of President of the United States, and I will, to the best of my ability, preserve, protect, and defend the Constitution of the United States." He is failing to uphold his oath.

Article IV, section 4, says that the U.S. guarantees each State against invasion. Joe Biden is failing the American people by refusing to uphold the law and the Constitution.

Afghanistan is where it really hurt. article III, section 3, Joe Biden could be guilty of treason. Our law says that levying war against the U.S., adhering to the enemies of the U.S., and giving aid and comfort is treason. President Biden did that by arming the Taliban with our taxpayer-funded U.S. equipment and weapons. He abandoned Americans in Afghanistan and seems to have no interest in getting them back. Only worse, he failed to ignore the intel that there was going to be an ISIS bomber, and 13 of our soldiers were killed.

I ask this Committee to bring my articles of impeachment forward in hearings and markup.

I thank you very much for your time.

Chair NADLER. The gentlelady yields back.

Ms. Dean?

STATEMENT OF THE HON. MADELEINE DEAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Ms. DEAN. Thank you, Chair Nadler, and Ranking Member, for hosting today's Member Day hearing.

I have had the pleasure of serving on this Judiciary Committee for the last 3 years, where we have done important work on behalf of our constituents, our rule of law, and our Nation. In these last 3 years, I can confidently say this Committee and its staff have met the moment. How?

Well, in our first hearing, Mr. Chair, as you well know, in the 116th Congress, we talked about the issue, the urgent issue, of gun violence. It was the first hearing on gun violence in decades. We listened to victims and passed universal background checks to protect communities from senseless gun violence.

We worked to change the conversation around addiction, to treat it as the disease that it is, to save lives by passing legislation to end the criminalization of addiction and to tackle the issue of opioid overdose.

We advanced legislation to protect the sanctity of the right to vote, as 17 Republican-led States across this country implemented restrictive voting laws.

We crafted and passed the George Floyd Justice in Policing Act.

This Committee has had tough conversations, yet we didn't descend into the cult-like chaos of fealty to one man who disregarded our rule of law and could not grasp that the Constitution did not give him unlimited power to pressure foreign leaders to support his election, to openly violate the Emoluments Clause, and to incite a deadly insurrection because his ego could not accept the defeat.

Through the chaos, this Committee has fought to protect our precious Constitution and honor our rule of law. So, yes, because of his blatant disregard for our democracy, he joined a short list of Presidents who were impeached by this body, and he found a way to historically distinguish himself and be impeached twice.

Impeachment is a tool to uphold and defend the Constitution, not a toy to be taken lightly. Contrary to what my colleagues on the other side of the aisle may say, there is no comparison to former President Trump's behavior and President Biden.

Leading up to the first impeachment proceedings, we saw a repeated attempt by the former President to discredit our democracy and a clear abuse of power. To quote impeachment manager Representative Schiff, "President Trump compromised our elections. He will do so again. Truth matters little to him. Decency matters not at all."

He obstructed our ability to conduct oversight and abused the power of his office. The President threatened the American people's right to a fair election, the very foundation of our democracy. That is why we were called to impeach.

I am alarmed but not surprised by the laissez-faire attitude around congressional subpoenas demonstrated this week by former Trump Administration officials. A select few of my Republican colleagues displayed their courage and actually spoke out against the actions of President Trump. However, there is an appalling silence from far too many across the aisle, as they scream over masks but are silent over treason.

For those of you who still doubt the validity of impeachment, ask yourself this: Who called upon the mob? Who continually spread the "big lie" declaring the election was stolen? Who urged his supporters to "stop the steal"? The repeated talking points of the former President and his allies threatened our democracy, and when we survived, he turned to an actual assault on the buildings we sit in today.

January 6th will forever be a stain on our Nation's history. As a violent mob descended on this Capitol, I sat in the Gallery with no idea what would happen next. He desecrated his office, and he invested in a big lie, enticed his supporters with it, and ultimately incited them to the violence that we witnessed on January the 6th.

That is why we were tasked again with impeaching the former President: To uphold the sacred oath we took and to present the facts to the American people. Again, the facts revealed a distinct pattern of behavior.

As Republican President Teddy Roosevelt said, patriotism means stand by country; it does not mean stand by a President or any other public official. So, my colleagues and I will continue the patriotic fight to protect our democracy by uncovering the truth.

My Congressional Subpoena Compliance and Enforcement Act was included in the Protecting Our Democracy Act to apply civil action to Congress against any person who receives but ignores a congressional subpoena. We cannot allow individuals to lift themselves above the rule of law.

When we reflect on our work these last 3 years, I think of the words of our late dear colleague Elijah Cummings: "When we are dancing with the angels, the question will be asked, what did we

do to make sure we kept our democracy intact?" We spent the last 3 years trying to keep our democracy intact. I urge our colleagues across the aisle to join us. That is our solemn oath.

I yield back.

[The statement of Ms. Dean follows:]

Congresswoman Madeleine Dean Testimony for Judiciary Committee Member Day

Thank you, Chairman Nadler and Ranking Member Jordan for hosting today's Member Day hearing.

I've had the pleasure of serving on the Judiciary Committee for the last 3 years — where we've done important work on behalf of our constituents, our rule of law, and our nation.

And in these last 3 years, I can confidently say this Committee and its staff have met the moment.

How?

Well, our first hearing was on the urgent issue of gun violence — the first hearing on gun violence in decades. We listened to victims and passed universal background check bills to protect communities from senseless gun violence.

We worked to change the conversation on addiction — to treat it as the disease that it is. To save lives by passing legislation to end the criminalization of addiction and to tackle the issue of opioid overdose.

And we advanced legislation to protect the sanctity of the right to vote as 17 Republican led states across this country implemented restrictive voting laws.

This Committee had tough conversations — we didn't descend into cult-like chaos in fealty to one man.

One man who disregarded our rule of law, and could not grasp that the Constitution did not give him unlimited power to pressure foreign leaders to support his election; to openly violate the emoluments clause; and to incite a deadly insurrection because his ego could not accept defeat at the ballot box.

Through the chaos, this Committee has fought to protect our precious Constitution and honor our rule of law.

So, yes, because of his blatant disregard for our democracy, he joined a short list of Presidents who were impeached by this body. He found a way to historically distinguish himself and be impeached — twice. Impeachment is a tool to uphold and defend the Constitution. Not a toy to be taken lightly.

Contrary to what my colleagues on the other side of the aisle may say, there is no comparison to former President Trump's behavior and President Biden's behavior.

Leading up to the first impeachment proceedings, we saw a repeated attempt by former President Trump to discredit our democracy and a clear abuse of power. To quote impeachment manager Rep. Schiff, “[President Trump] compromised our elections, and [...] he will do so again [...] Truth matters little to him [...] decency matters not at all.”

He obstructed our ability to conduct oversight, and abused the power of his office. The president threatened the American peoples’ right to a Fair election — the very foundation of our democracy.

That’s why we were called to impeach. I am alarmed, but not surprised, by the *laissez faire* attitude around Congressional subpoenas demonstrated this week by former Trump administration officials.

A select few of my Republican colleagues displayed courage and actually spoke out against the actions of President Trump. However, there is an appalling silence from far too many across the aisle who scream over masks, but are silent over treason.

For those of you who still doubt the validity of the impeachment, ask yourself this, “Who called upon the mob? Who continually spread the big lie — declaring that the election was stolen? Who urged his supporters to ‘stop the steal?’”

The repeated talking points of former President Trump and his allies threatened our democracy through foreign interference, and when we survived, he turned to an actual assault on the buildings we are sitting in today.

January 6th will forever be a stain on our nation’s history. As the violent mob descended on the Capitol, I sat in the gallery — with no idea of what would happen next. As they banged on the doors and chanted, I feared for my life — and the lives of my colleagues, Democrat **and** Republican.

He desecrated the office when he invested in the big lie, enticed his supporters with it, and ultimately incited them to the violence that we witnessed here on January 6th.

That’s why we were tasked again with impeaching former President Trump – to uphold the sacred oath we took — and to present the facts to the American people.

Again, the facts revealed a distinct pattern of behavior — a complete disregard for his duty as Commander in Chief, a disregard for the oath he took, and a disregard for the Constitution of the United States. Facts far too many of my Republican colleagues gleefully ignore for political gain as they proudly call themselves Patriotic Constitutionals.

As Republican President Teddy Roosevelt said: “Patriotism means to stand by the country. It does not mean to stand by the president or any other public official.”

So, my colleagues and I will continue the patriotic fight to protect our democracy by uncovering the truth. My Congressional Subpoena Compliance and Enforcement Act was included in the

Protecting Our Democracy Act to apply civil action by Congress against any person who received, but ignore a congressional subpoena. We cannot allow individuals to lift themselves above the rule of law.

When reflecting on our work the last three years I think of the words of our late dear colleague Elijah Cummings: "When we're dancing with the angels, the question will be asked: What did we do to make sure we kept our democracy intact?"

We've spent the last three years trying to keep it intact. I urge my colleagues across the aisle to join us.

This Committee confronted a grave and tumultuous time. And through it, we created legislation that will protect our democracy and our future generations.

And we will continue to pass vital legislation to address the issues that plague our communities.

Chair NADLER. The gentlelady yields back.
Mr. Meijer?

STATEMENT OF THE HON. PETER MEIJER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. MEIJER. Thank you, Mr. Chair, Mr. Ranking Member, for calling this hearing today and giving Members the opportunity to highlight issues that are important to our constituents and potential solutions that we are working towards to address them.

There is widespread agreement across the political spectrum that our current immigration system is not working the way it should. What we need now is a more thoughtful, deliberate, and bipartisan approach to fixing the many problems currently plaguing that system. Securing our border and reforming a broken legal immigration system should not be mutually exclusive.

It is frustrating that the Biden Administration's failed border policies have made any other immigration-related conversations that much more difficult. We have all witnessed the unprecedented crisis on our southern border since President Biden took office, and I have joined my colleagues on the Homeland Security Committee in demanding the Administration take the necessary steps to address it.

Earlier this year, we traveled to the border to see the situation firsthand and talked to law enforcement officers on the front lines who are dealing with this overwhelming circumstance on a daily basis.

Border security is simply not an issue for southern border States alone. It is one of the most consistent issues I hear from directly from my constituents. They have serious concerns about what they are seeing from this Administration. It is a major concern for Americans across the country, as the impacts of inadequate border policies are felt widely.

Earlier this year, when the Administration was overwhelmed by the number of migrants coming across the border, they were forced to open several emergency intake sites across the country, including in my district in Michigan. Now, we were proud to be able to step up, but, again, this is not an issue for southern border States alone.

Frankly, it is embarrassing that some Members of this body dismiss commonsense border security improvements because of the State of political rhetoric.

Back in April, I was proud to join my colleagues in introducing H.R. 2321, the Border Surge Response and Resilience Act. This bipartisan bill would require DHS and Federal partners to establish a comprehensive plan to manage a border surge before it becomes unsustainable.

The bill would also establish a fund designated solely for implementation of this plan, allowing DHS immediate access to needed resources to address these challenges without waiting months for supplemental appropriations from Congress.

We cannot allow these types of crises to continue, Administration after Administration. Congress needs to take charge and provide clear directives and adequate resources for planning and surge response. This will reduce the risk of future humanitarian emergencies like the one we are seeing today.

Because, frankly, it should not be difficult to both cares deeply about the root causes of migration and advocate for logical and humane policies that would ensure surges of individuals coming across the border does not reach a point where it is out of control and end up having an adverse effect on both local border communities and those vulnerable migrant populations.

The Administration has failed to take responsibility for this crisis or any of the actions necessary to address it. That is why I also join my colleagues in introducing H.R. 4828, the Border Security for America Act, to require DHS to resume construction of the border wall system, deploy effective technology to support Border Patrol operations, and provide more resources to CBP officers and agents on the ground at all U.S. ports of entry.

Maintaining operational control and awareness across the border should not be a partisan issue. Frankly, it is a practical homeland security imperative.

As I have stated before, this Administration's failure to secure the border has made it far more difficult for Congress to advance needed reforms of our legal immigration system. I am proud to have joined my colleagues in several pieces of legislation to address some of these challenges, and I would encourage this Committee to consider these efforts as well.

H.R. 3215, the Temporary Family Visitation Act, would establish a new nonimmigrant visa classification for individuals seeking to temporarily enter the U.S. to visit a relative who is a U.S. citizen or lawful permanent resident. This would ease the current obstacles that prevent families from being able to gather for occasions like holidays, birthdays, graduations, and weddings.

H.R. 3897, the H-2B Returning Worker Exception Act of 2021, would make key reforms to the existing H-2B program by exempting those returning workers from the numerical count, while supporting American employers who are dependent on the seasonal guest worker program and protecting American workers by enhancing anti-fraud and compliance measures.

In Michigan, this is acutely felt in many of our seasonal industries, who are suffering deeply because of the pandemic and suffering doubly because of failures of the H-2B program.

I was also proud to join my friend from Colorado, Mr. Crow, in introducing H.R. 5134, the SAVE Afghan Partners Act of 2021. This bipartisan bill would raise the Afghan Special Immigrant Visa cap and clarify eligibility requirements for those who worked alongside U.S. military and on behalf of the U.S. mission in Afghanistan.

As we continue our efforts to resettle those vulnerable Afghans who have been brought to the U.S. and work to get out those of our allies who were left behind, this bill will be critical to ensure that those who risked their lives for the United States receive the status and benefits they deserve.

There is a lot of room for us to work together on incremental but substantive immigration reform. The current system is riddled with illogical bureaucratic obstacles—

Chair NADLER. The time of the gentleman has expired.

Mr. MEIJER. Thank you, Mr. Chair.

[The statement of Mr. Meijer follows:]

House Judiciary Committee Member Day Hearing
October 22, 2021
Rep. Meijer Testimony

Thank you, Mr. Chairman, and Mr. Ranking Member, for calling this hearing today and giving Members the opportunity to highlight issues that are important to our constituents and potential solutions that we are hoping to work with you on in order to address them.

Immigration has become one of the most divisive and polarizing issues in our current political environment, but it doesn't have to be. In fact, I would go as far as to say that there is widespread agreement across the political spectrum on the fact that our current immigration system is not working how it should be. What we need now is a more thoughtful, deliberate, and bipartisan approach to fixing the many problems currently plaguing that system.

Securing our border and reforming our broken legal immigration system are not mutually exclusive. It is frustrating that the Biden Administration's failed border policies have made any other immigration-related conversations much more difficult. We have all witnessed the unprecedented crisis on our southern border since President Biden took office and I have joined my colleagues on the Homeland Security Committee in demanding that the Administration take the necessary steps to address it. We traveled to the border earlier this year to see the situation firsthand and talk to the law enforcement officers on the frontlines who are dealing with heartbreaking and overwhelming circumstances on a daily basis.

Border security is not simply an issue for southern border states. It has been one of the most consistent issues that I hear about directly from my constituents. They have serious concerns about what they are seeing from this Administration. Border security is a major concern for Americans all over the country, and the impacts of inadequate border policies are felt in every community. Earlier this year, when the Administration was completely overwhelmed by the number of migrants coming across the border, they were forced to open several Emergency Intake Sites across the country to house unaccompanied minor children, including one such site in my district in Michigan.

I strongly encourage Members not to immediately dismiss commonsense border security improvements because of the state of political rhetoric in this country.

Back in April, I was proud to join my colleagues in introducing H.R. 2321, the Border Surge Response and Resilience Act. This bipartisan bill would require DHS and federal partners to establish a comprehensive plan to respond to irregular migration surges, allowing the Department to manage a border surge before it becomes unsustainable. The bill would also establish a fund designated solely for implementation of this plan, allowing DHS to immediately access needed resources to address these challenges without waiting months for supplemental appropriations from Congress.

We cannot allow these types of crises to continue administration after administration. It is time for Congress to take charge and provide clear directives and adequate resources for planning and surge response. This will reduce the risk of future humanitarian emergencies like the one we are seeing today. It should not be difficult to both care deeply about the root causes of migration and also advocate for logical and humane policies that would ensure surges of individuals coming to the border do not get out of control and end up having an adverse effect on both local border communities and vulnerable migrant populations seeking a better life.

The Administration has failed to take responsibility for the crisis or take any of the actions necessary to address it. That is why I also joined my colleagues in introducing H.R. 4828, the Border Security for America Act, to require DHS to resume construction of the border wall system, deploy effective technology to support Border Patrol operations, and provide more resources to CBP officers and agents on the ground at all U.S. ports of entry. Maintaining operational control and awareness across the southern border should not be a partisan issue. It is a practical homeland security imperative.

As I stated before, one of my main frustrations with the Biden Administration's policies regarding the southern border is that they have made it much more difficult for Congress to cooperate on needed reforms to our legal immigration system. I am proud to have joined my colleagues on several pieces of bipartisan legislation to address some of these challenges and I would encourage the committee to consider these efforts as well.

H.R. 3215, the Temporary Family Visitation Act, would establish a new nonimmigrant visa classification for individuals seeking to temporarily enter the United States to visit a relative who is a U.S. citizen or lawful permanent resident.

This would ease the current obstacles that prevent families from being together for special occasions like holidays, birthdays, graduations, and weddings.

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There is a lot of room for us to work together on incremental immigration reform. The current system is riddled with illogical bureaucratic obstacles and penalties, and it also does not sufficiently serve our national economic interests. We should focus on the changes that we can make today, as many of these seemingly small changes will have enormous impacts on many Americans and their family members.

I look forward to continuing to work with all of you on efforts to enhance our border security and reform our broken immigration system, and I encourage the Committee to consider some of the measures that I have highlighted today. There is room for both compassion and security in our immigration policies if we have the political will to find it. Thank you again for the opportunity to speak to the Committee today, and I yield back.

Chair NADLER. Ms. Bourdeaux?

STATEMENT OF THE HON. CAROLYN BOURDEAUX, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Ms. BOURDEAUX. Thank you, Mr. Chair.

Today, I would like to speak about the importance of voting rights.

Georgia has a long history of undermining the right to vote, from the Jim Crow-era tactics of poll taxes, grandfather clauses, literacy tests, to more recent tactics of voter-roll purges, exact-match policies, and partisan gerrymandering. As we know, these policies disproportionately affect voters of color.

My district, Georgia's Seventh, one of the most diverse districts in the country, has been ground zero for many disputes about these tactics, which repeatedly led to litigation. Some of the most longstanding disputes are around voter registration processes, including exact-match policies, purges of voter registration rolls, and Georgia's no-excuse absentee ballot voting process.

In 2016, voting rights organizations sued then-Secretary of State, now-Governor Brian Kemp over the exact-match policy for voter registration, a version of which had been struck down by the Department of Justice in 2009 under their preclearance review process.

The exact-match policy required the information on a voter's registration application to exactly match records kept by the Georgia Department of Driver Services or the Federal Social Security Administration, which meant that typos, data entry errors, or nicknames, such as, someone who used the name "Bill" as a nickname for "William," could jeopardize someone's voter registration.

Georgia has also become one of the Nation's most aggressive voter purge States. In 2017, over half a million voters were purged in one night, many due to Georgia's use-it-or-lose-it policy, which purges voters for not voting in prior elections. These purges continue to this present day.

Gwinnett County, the largest county in my district, has been ground zero for litigation over absentee ballot problems, with ballots rejected for signature mismatch or other technical, administrative issues. In 2019, during early vote, Gwinnett County election officials rejected 1 in 10 vote-by-mail ballots.

After litigation, a Federal judge stepped in to ensure that ballots that were thrown out for signature mismatch were marked as provisional, and voters were given a chance to appeal the decision or confirm their identity.

Even with this intervention, there were several serious problems of absentee ballot processing and inconsistent interpretation of ballot requirements between counties, which led to litigation in the following months and, ultimately, to significant changes in how Georgia administered absentee ballots.

Most notably, in my district, there are two counties. In the more diverse county, small errors, such as filling in today's date next to your signature on the absentee ballot, would cause the ballot to be thrown out. Voters were supposed to put in their birth date. A similar ballot in the less diverse county in my district would be counted and the error treated as an innocent mistake. This county

was much more aggressive about notifying voters when there was an error on their ballot and giving them time to correct it. All this formed the basis of successful litigation.

Georgia dealt with many problems during the Presidential preference, general election, and early-voting period in the 2020 election cycle, leading to significant wait times of up to 12 hours for some voters. These problems made national news, with some of the longest waits occurring in the most diverse Seventh District Gwinnett precincts.

Despite the odds, Georgia had a record-breaking turnout during the general election. This was, in part, due to significant increases in turnout for minority communities, most notably Asian and Hispanic Americans.

However, then Georgia was one of the first States in the country to pass a voter suppression bill, SB 202, after the 2020 general election. In particular, this legislation targets Georgia's no-excuse absentee ballot voting.

SB 202 includes provisions that require voter ID for absentee ballots, limits the use of absentee ballot dropboxes that were critically important to people voting in times of COVID. It bans non-partisan groups from mailing out absentee ballot applications. This bill also forbids the distribution of food or drink to persons waiting in line, sometimes for many hours, to vote.

Perhaps most alarmingly, the bill allows the State Board of Elections to remove a county election board after a performance review, audit, or investigation and install a temporary superintendent—in effect, creating the potential for a partisan takeover of local boards of elections. The State Board has already targeted Fulton County, the largest and one of the most diverse counties in the State, for takeover.

This bill is one of many efforts by the leadership in Georgia to set election policies that limit voting in ways that disproportionately negatively affect voters of color.

I would like to commend the Judiciary Committee on your hard work in crafting H.R. 4, the John Lewis Voting Rights Advancement Act. I look forward to supporting other meaningful reforms, such as the Freedom to Vote Act.

Thank you, and I yield back.

[The statement of Ms. Bourdeaux follows:]

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Congresswoman Carolyn Bourdeaux
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House Committee on Judiciary
Hearing: "Member Day Hearing"
Testimony of Congresswoman Carolyn Bourdeaux (GA-07)
October 22, 2021

Thank you Chairman Nadler and Ranking Member Jordan for the opportunity to submit testimony as part of the House Committee on Judiciary's Member Day Hearing. As you know, I represent the state of Georgia, where the state legislature passed a bill, SB 202, during their 2021 session that threatens the integrity of our voting systems in the state. However, in the years after the United States Supreme Court gutted the Voting Rights Act, this bill is just one of many efforts by the Republican leadership in Georgia to set election policies which limit voting in ways that have a disproportionately negative effect on voters of color in the state. My district, Georgia's 7th, one of the most diverse districts in the country, has been ground zero for many of these disputes.

Some of the most long-standing disputes exist around voter registration processes, including "exact match" policies and voter purges. In 2016, voting rights [organizations sued then-Secretary of State, Brian Kemp](#), over the exact match policy for voter registration. This policy [required the information on a voter's registration application to exactly match records kept by the Georgia Department of Driver Services or the federal Social Security Administration](#). This meant typos, data entry errors, or nicknames – such as someone who uses the name Bill as a nickname for William – could jeopardize someone's voter registration.

These policies disproportionately affect voters of color. When the policy was in full effect, an analysis showed that while more white people applied to vote in Georgia than Black people, Black applicants [comprised 63.6 percent of all cancellations](#). Overall, minority voters were [eight times more likely](#) than white voters to be rejected. Another Associated Press study showed that [76.3 percent of these voters were Black, Asian-American or Latino](#). In response to the lawsuit brought in part by advocacy organizations in the 7th district, Georgia agreed to suspend the exact-match requirement and reinstate every voter whose registration application was cancelled under the policy dating back to October 2014.

Not [but a year after the 2016 litigation, in 2017 the Georgia General Assembly passed legislation to reinstate the "exact match" process](#). Again, 7th district voting rights groups sued. In the summer of 2018, the Associated Press reported that 53,000 voter registration applications were held up, nearly [70 percent](#) of which were Black applicants and [80 percent](#) of which were Black, Latino or Asian American. While under the new law, registrants could still vote, these provisions were widely expected to create problems at precincts when voters showed up and their registration application was noted as being "on hold." Voters who failed to correct the problems with their voter registration could be dropped from the voter rolls.

Beyond the State's "exact match" policy, which limited access to voting and participation in our elections, the Georgia Secretary of State has a history of simply removing registered voters from the voter rolls. Georgia has become one of the most aggressive voter purge states in the nation. In the four years between 2012 and 2016, the Secretary of State [purged a total of 1.5 million voters](#), twice as many as were purged between the 2008 and 2012 election cycles.

In July of 2017, an investigation found that the State [purged](#) over half a million voters [in one night](#). Of those, [107,000 were purged](#) because of Georgia's "use it or lose it" policy, which allows voters to be purged simply for not voting in prior elections. [Nearly 56,000](#) of the purged voters re-registered to vote in the same county they were registered in before they were purged from the rolls. Of those, almost [30,000 re-registered too late to vote](#) in the 2018 election. It is not clear how many of these 30,000 people would have voted in the elections of 2018, but there are [many stories of people](#) showing up to vote and finding that they were no longer registered. These voter purges continue in Georgia to this day.

In addition to problems with voter registration statewide, in 2018, Gwinnett County became ground zero for litigation over absentee ballot problems, with ballots rejected for signature mismatch or for other technical administrative problems. At one point during early vote, [nearly one in 10 vote-by-mail ballots were rejected](#) by Gwinnett County election officials. Signature mismatch received the most attention initially. This occurred when election officials decided that a signature on an absentee ballot did not match the signature on the voter registration form. After litigation, a Federal judge [stepped in](#) to ensure that ballots that were thrown out for signature mismatch were marked as provisional and voters were given a chance to appeal the decision or confirm his or her identity.

But even with this intervention, there were a number of problems with absentee ballot processing and inconsistent interpretation of voting requirements between counties which would be litigated in the following months. For instance, the ballots required voters to fill in their "birth date" next to their signature, but many residents mistakenly put the date they voted. Gwinnett County had adopted a strict interpretation of this provision and ballots with an incorrect date were thrown out. Meanwhile, elections administrators in Forsyth County, the other county in the 7th district, would count such ballots. Additionally, Forsyth County would swiftly notify voters of problems such as signature mismatch or administrative problems in filling out the ballot, while other county administrators – typically those in the busier and more urban counties – took longer.

These discrepancies formed the basis of litigation by the [Coalition for Good Governance](#), Asian Americans Advancing Justice, and the [American Civil Liberties Union](#), which eventually led to a number of reforms on absentee ballots in 2020.

Further problems occurred in Gwinnett county with the mechanics of voting in person. During the 2018 general election, problems with voting machines [forced precincts to have to remain open](#) at the end of the night to ensure that voters had the opportunity to cast their ballot. Wait times often exceeded two hours. The highly diverse Annistown Elementary School precinct near Snellville, Georgia had to remain open until 9:25 p.m. because there were problems with the ExpressPoll machine that checked people in to vote. The Anderson-Livsey Elementary precinct, also near Snellville was also ordered to remain open until 7:30 p.m. because there was a failure

to bring power cords for voting machines. The Harbins Elementary precinct, near Dacula, Georgia was ordered open until 7:14 p.m. Polls typically close at 7:00 p.m.

The problems with in person voting continued into 2020. In 2020, Georgia purchased new voting machines. From the beginning, there was concern as to whether the state would be able to efficiently and equitably deliver these new machines all over the state. During the presidential preference and general primary elections in June of 2020, voters in Gwinnett County who went to the polls on election day were met with chaos. [According to the county spokesman](#), there were a number of polling places that opened at 7 a.m., but they opened without their equipment, or their equipment was not set up and ready to go. In Gwinnett County, between [10.2% and 17.9% of precincts](#) were experiencing some degree of issues when the polls opened on election day. As a result the people who came to vote had to cast 'emergency ballots.'

These problems were repeated during early voting in the 2020 general election, with voters having to [wait up to 11](#) hours in line because of glitches with the voting machines. These problems made national news with some of the longest waits occurring in the very diverse 7th district Gwinnett precincts.

Longer wait times in heavily minority precincts are not only a function of technical problems. An [analysis of wait times](#) in Georgia showed that overall urban and more diverse districts had more voters per precinct, with the metro Atlanta area having half the state's voters but only 38 percent of the state's precincts. Additionally, not only are these urban and more heavily minority precincts populated with more voters, but wait times are particularly long in heavily Black precincts because Black voters have traditionally been less likely to use vote by mail prior to the 2020 election and more likely to vote in person. During the 2018 election, just [11 percent of Black voters cast their ballots by mail](#), compared with 24 percent of white voters.

This is one of the many reasons that the state's most recent attack on vote by mail is so pernicious: vote by mail had the effect of relieving the pressure on precincts and voting in person. Reducing vote by mail will push voters in crowded precincts back into the long lines and long waits which are barriers to voting. Not surprisingly, after a very successful effort to encourage people to vote by mail to avoid COVID, there was a perception among Republican leaders in the state that they would need to restrict absentee ballot voting in order to win elections. In January 2021, the Chair of the Board of Elections in Gwinnett County, a Republican, was recorded as saying that [no-excuse absentee ballot voting should be limited so that Republicans "at least have a shot at winning."](#) Her comments reflected comments made earlier in 2020 by the [Georgia Speaker of the House](#) as well as by [President Trump](#).

The latest elections legislation passed by the Georgia General Assembly, SB 202, includes provisions that, among other things, require a voter ID to use a no excuse absentee ballot, ban third parties from sending out absentee ballot applications, limit the use of absentee ballot drop boxes, allow outside challenges to voter registration and perhaps most alarmingly, allows the State Election Board to remove a county election board after a performance review, audit or investigation and install a temporary superintendent.

This testimony should help illustrate why such provisions are problematic and how they exist in the context of an on-going effort by many Republican leaders in Georgia to increase barriers to voting. These barriers, of course, affect all voters, but disproportionately affect minority and particularly Black voters. As the state curtails access to vote by mail, this will almost certainly have the effect of forcing voters, especially Black voters, back into long lines in under-resourced precincts.

Even more insidiously, Georgia's new law has provisions which would enable partisan lawmakers to take over local boards of elections. They are already preparing to do so in Fulton County where the City of Atlanta is located. This presents an entirely new challenge. Elections administrators set the policy for early vote, for how absentee ballots are counted, for precinct size and ultimately whether voters wait in line for hours to vote - among many other decisions that can affect the fate of an election. If the Georgia General Assembly can take over the election administration process in a majority-minority county, we can no longer be assured of free and fair elections in our state.

This Committee has led the fight for free and fair elections by passing the John Lewis Voting Rights Advancement Act, and we must do everything in our power to ensure this bill or the Freedom to Vote Act is passed into law to prevent voter suppression and election subversion in states like Georgia. There is too much at stake if we do not.

Thank you.

Chair NADLER. The gentlelady yields back.
Mr. Mann?

**STATEMENT OF THE HON. TRACEY MANN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF KANSAS**

Mr. MANN. Chair Nadler, Ranking Member Jordan, and Members of the Committee, I appreciate the opportunity to speak with you today about the judicial priorities for the First District of Kansas, including the U.S. Department of Justice investigation into cattle markets, immigration, and the Second Amendment.

Kansans are good people who carry a pioneering spirit with them, the same way those who settled my State did over 160 years ago. The people of the First District, aptly named the Big First, know each other, look out for each other, and sacrifice for each other.

As Congress becomes increasingly more urban, rural districts like the Big First depend on strong voices in Congress, especially on some of the most significant issues facing our Nation that are situated in the jurisdictional purview of this committee.

The Big First's backbone is agriculture. It is home to more than 60,000 farms and is made up of farmers, ranchers, feed lot managers, nutritionists, ethanol producers, ag lenders, and agribusiness owners who feed, fuel, and clothe the world. It ranks number one in the country for the value of cattle and calf sales, at more than \$9 billion sold annually, and is home to more than 4.4 million cattle and calves.

Cattle producers all over the country are facing challenging market dynamics, and Kansas cattle producers are especially concerned with the historically wide gap between wholesale beef prices and fed cattle prices.

After several disruptive events in the meatpacking industry and the allegations of malfeasance, the U.S. Department of Justice began an investigation into potentially anti-competitive practices. As of today, however, we have not seen any results from this investigation—no real response to our concerns, no real outcomes for ranchers across the country.

U.S. Department of Justice needs to complete the investigation and release these results immediately. Producers in Kansas and across the country deserve to know if the investigation uncovered any issues.

Seven hundred miles south of Kansas is our Nation's southern border and a full-scale crisis created by President Biden and this Administration. President Biden promised citizenship to up to 11 million immigrants, placed a shortsighted moratorium on deportations, rescinded policies that organized and controlled the flow of legal migrants, and halted the construction of the border wall system even though Congress approved all the funds necessary for its completion.

Predictably, the daily average of unaccompanied minors crossing the border has nearly doubled since 2019. Texas migrant facilities are well over 700 percent capacity. The number of migrants testing positive for COVID-19 after being released has nearly doubled. Communities on the border are at risk.

This is a human tragedy, and to stop it, President Biden and the U.S. Department of Homeland Security need to end these disastrous policies, secure our borders, refuse to grant broad amnesty, and develop a legal immigration system that works.

Over the last 9 months, Americans have become used to President Biden's homegrown crises. We are rightfully concerned, especially when it comes to our constitutional rights like the right to bear arms. Our Founding Fathers believed this right to be so integral to freedom that they recorded it as the Second amendment to the Constitution, immediately after the right of free speech. It is a load-bearing wall and cannot be destroyed or diminished.

President Biden recently penned six anti-Second amendment executive actions in one day, banning homemade guns; defining a pistol as a short-barreled rifle, allowing for more regulation; and mandating a report on gun gifting and trading.

In interviews following the announcement, the White House stated, "The President will not wait for Congress to Act before the Administration takes our own steps, fully within the Administration's authority and the Second Amendment."

We can no longer sit idle and watch dozens of Executive Orders from a single Administration attempt to dictate the direction of our country with no input from this Congress. Congress was created to legislate. Governing by Executive Order is not legislating.

Earlier this year, I introduced H.R. 716, the More Accountability is Necessary Now Act, requiring the executive branch to notify the American public and Congress of its intent to issue any new executive order pertaining to the rights of law-abiding Americans to own, carry, and use firearms guaranteed by the Second Amendment. Congress should swiftly pass this legislation.

As your Committee continues to work on legislation like this and other legislation within your circle of control, I ask that you ensure Americans in rural communities are part of the conversation. Their livelihoods are impacted by the decisions that you make in this very room, and when I see others playing fast and loose with their rights, I will always speak up on their behalf.

Thank you again for the opportunity to speak on the issues impacting the First District of Kansas, and I yield back the remainder of my time.

[The statement of Mr. Mann follows:]

**CONGRESSMAN TRACEY MANN, 117th CONGRESS
MEMBER DAY REMARKS
HOUSE JUDICIARY COMMITTEE
OCTOBER 22, 2021**

Chairman Nadler, Ranking Member Jordan, and Members of the Committee, I appreciate the opportunity to speak with you today about judicial priorities from the First District of Kansas, including the U.S. Department of Justice's investigation into cattle markets, immigration, and the Second Amendment.

Kansans are good people who carry a pioneering spirit with them, the same way those who settled my state did over 160 years ago. The people of the First District, aptly nicknamed the Big First, know each other, look out for each other, and sacrifice for each other. As Congress becomes increasingly more urban, rural districts like the Big First depend on strong voices in Congress – especially on some of the most significant issues facing our nation that are situated in the jurisdictional purview of this committee.

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Cattle producers all over the country are facing challenging market dynamics, and Kansas cattle producers are especially concerned with the historically wide gap between wholesale beef prices and fed cattle prices. After several disruptive events in the meatpacking industry and allegations of malfeasance, the U.S. Department of Justice began an investigation into potentially anticompetitive practices. As of today, however, we have not seen any results from the investigation. No real response to our concerns. No real outcomes for ranchers across the country. **The U.S. Department of Justice needs to complete the investigation and release the results immediately. Producers in Kansas and across the country deserve to know if the investigation uncovered any issues.**

700 miles south of Kansas is our nation's southern border, and a full-scale crisis created by President Biden and his administration.

President Biden promised citizenship to more than 11 million immigrants, placed a shortsighted moratorium on deportations, rescinded policies that organized and controlled the flow of legal migrants, and halted the construction of the border wall system, even though Congress appropriated all the funds necessary for its completion. Predictably, the daily average of unaccompanied minors crossing the border has nearly doubled since 2019, Texas migrant facilities are well over 700% capacity, the number of migrants testing positive for COVID-19 after being released has nearly doubled, and communities on the border are at risk.

This is a human tragedy, and to stop it, President Biden and the U.S. Department of Homeland Security need to end these disastrous policies, secure our borders, refuse to grant broad amnesty, and develop a legal immigration system that works.

Over the last 9 months, Americans have become used to President Biden's home-grown crises. And, we're rightfully concerned – especially when it comes to our Constitutional rights like the right to bear arms. Our founding fathers believed this right to be so integral to freedom that they recorded it as the second amendment to the Constitution immediately after the right to free speech. It is a load bearing wall and cannot be destroyed.

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As your committee continues to work on legislation like this and other legislation within your circle of control, I ask that you ensure Americans in rural communities are part of the conversation. Their livelihoods are impacted by the decisions you make in this room, and when I see others playing fast and loose with their rights, I will always speak up on their behalf.

Thank you again for the opportunity to speak on the issues impacting the First District of Kansas. I yield back the remainder of my time.

Chair NADLER. The gentleman yields back.
Mr. Burchett?

STATEMENT OF THE HON. TIM BURCHETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. BURCHETT. Thank you, Mr. Chair; Ranking Member Gohmert, thank you, sir; other Members.

Mr. Chair, before I read from my prepared remarks, the Lord speaks to me sometimes. Not in an audible voice, but he does speak to me. When COVID broke out, I heard about folks committing suicide, and I prayed and asked God what could we do. I just think suicide is just the worst despair you could have. I have had buddies kill themselves.

So, I woke up in the middle of the night, and I thought, dadgummit, I am going to give my cell phone out, my cell phone number out to folks. People called me from all over the country. I had people calling me from out of the country that were locked in. Some people were just calling to see if there was an actual Congressman that would answer the dadgum phone, and I did. It got so hectic that I called in a buddy of mine who helped me on the campaign to help me, and we referred folks to suicide prevention.

There was a lady was being abused in another State, and it was just all over the country. It was unbelievable, the amount of people. Of course, with the time change, my wife said, baby, "you are going to have to figure out what we are going to do about this, because they were calling in the middle of the night." We took care of that.

God spoke to me again, because I was on the Internet, and I was looking, and I was seeing that we are seeing a lot of kids disappear. A lot of them are Black kids. Nobody seems to be paying a dadgum bit of attention to them, Mr. Chair. That is what I am here to talk to you about. I am going to read you from my remarks now. Just give you that little heads-up to what I was going at.

I want to thank you for giving non-Committee Members the opportunity to testify, Mr. Chair. I come before the Judiciary Committee today to share with you an issue that the Federal Government and, frankly, American society does not give enough attention.

Congress's missing and exploited children program, overseen by the U.S. Department of Justice, makes America a safer place for our children. In the late 1970s, nearly 1.8 million children were reported missing annually. In 2020, that number had fallen to 540,000, according to the Congressional Research Service. This data shows, thanks to this program's improved policing tactics, recovery rates for missing children have exponentially increased.

Unfortunately, this program falls short of serving people of color and primarily Black folks. Existing data indicates minority children are reported missing at a disproportionately higher rate than White children and stay missing longer. In fact, a longitudinal study found that racial differences significantly affect rates of recovery for missing minority children, with Black children remaining missing the longest.

These disparities are largely attributed to socioeconomic background, police resources, and media attention. In areas with low community engagement and limited police resources, children are

more vulnerable and less likely to be recovered. It is a fact. It is why movements like “defund the police” are so dangerous.

Quality media attention on missing-person cases is a proven key to recovery. According to the Department of Justice, intense early media coverage ensures that people will be looking for your child. It is concerning to me that missing White girls receive disproportionately more media attention than Black counterparts.

Look no further than the Gabby Petito case—can’t pronounce her name, but everybody knows who I am talking about—which continues to captivate a national audience. Over the last 2 months or so, you couldn’t turn on the news or scroll through Twitter without hearing about her.

It continues to feel like she is the only missing person in America, but it is very serious that she is missing—and that is so far from the truth. There is no shortage of tragic stories about missing Black folks that people have never heard about. I will use an example from my district in east Tennessee.

A 26-year-old Black female from Knoxville was reported missing on June 28, 2021, and the last time her family heard from her was June 18. This was weeks before Gabby Petito was reported missing on September 11. Thanks to national media coverage, though, Ms. Petito’s remains were found just 8 days after she was reported missing. Compare that to when the remains of the 26-year-old Black female from Knoxville were recovered. She was not found until September 28, 3 months—3 months, Mr. Chair—after she was reported missing. I bet not once over these 3 months you ever heard about her on MSNBC, CNN, FOX News, or the other national media outlets.

The sad reality is that there are thousands of other stories like this one I just described that go completely unnoticed. There is an epidemic of missing Black children, missing Black girls.

I have a little girl. She is 14.

This is unreported by the mainstream news media. The news media is an echo chamber solely focused on news that sells and the ratings from its target audience. Real news, unbiased news, important news has been pushed aside and replaced by—

Chair NADLER. The time of the gentleman has expired.

Mr. BURCHETT. Thank you, Mr. Chair.

[The statement of Mr. Burchett follows:]

Representative Tim Burchett (TN-03)
Statement Before the U.S. House Judiciary Committee “Member Day Hearing”
Friday, October 22, 2021

Thank you Mr. Chairman/Ms. Chairwoman for giving non-committee members the opportunity to testify. I come before the Judiciary Committee today to share with you an issue that the federal government, and frankly, American society, does not give enough attention.

Congress’s Missing and Exploited Children’s programs, overseen by the U.S. Department of Justice, makes America a safer place for our children. In the late 1970s, nearly 1.8 million children were reported missing annually. In 2020, that number had fallen to 540,000, according to the Congressional Research Service.

This data shows that, thanks to this program’s improved policing tactics, recovery rates for missing children have exponentially increased.

Unfortunately, this program falls short of serving people of color. Existing data indicates minority children are reported missing at a disproportionately higher rate than white children - and stay missing longer. In fact, a longitudinal study found that racial differences significantly affect rates of recovery for missing minority children, with black children remaining missing the longest.

These disparities are largely attributed to socio-economic background, police resources, and media attention. In areas with low community engagement and limited police resources, children are more vulnerable and less likely to be recovered. It’s a fact – and it’s why movements like “Defund the Police” are so dangerous.

Quality media attention on missing persons cases is a proven key to recovery. According to the Department of Justice, “intense, early media coverage ensures that people will be looking for your child.” It is concerning to me that missing white girls receive disproportionately more media attention than their black counterparts.

Look no further than the Gabby Petito case, which continues to captivate a national audience. Over the last two months or so, you couldn’t turn on the news or scroll through Twitter without hearing about her. It continues to feel like she is the only missing person in America.

That is so far from the truth. There is no shortage of tragic stories about missing black folks that most people have never heard about. I’ll use an example from my district in East Tennessee.

A 26-year-old black female from Knoxville was reported missing on June 28, 2021 and the last time her family heard from her was June 18. This was weeks before Gabby Petito was reported missing on September 11. Thanks to national media coverage, Ms. Petito’s remains were found just eight days after she was reported missing.

Compare that to when the remains of the 26-year old black female from Knoxville were recovered. She was not found until September 28, three months after she was reported missing. I bet not once over those three months you heard about her on MSNBC, CNN, Fox News, or other national media outlets.

The sad reality is that there are thousands of other stories like the one I just described that go completely unnoticed. There is an epidemic of missing black children – missing black girls – that is unreported by the mainstream news media.

The news media is an echo chamber, solely focused on news that sells and the ratings of its target audience. Real news – unbiased news – important news – has been pushed aside and replaced by sensualized and biased perspectives. It is wrong and racist that the news media is failing to report on this epidemic.

Mr./Ms. Chairman, our federal, state, and local law enforcement agencies cannot do their job without the help of communities and the news media. We must strengthen our law enforcement’s capabilities so they can directly coordinate with the media to ensure fair and unbiased reporting of these missing black girls.

Chair NADLER. Ms. Miller?

STATEMENT OF THE HON. MARY E. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. MILLER of Illinois. Thank you, Chair Nadler.

I am appearing today because I am gravely concerned about Attorney General Merrick Garland's recent memo to the FBI directing them to intimidate and harass parents who show up at school board meetings.

Sadly, one example cited by the National School Board Association was a father who showed up to the school board meeting because his 14-year-old daughter was sexually assaulted in a school bathroom by a boy who was allowed in the girls' room because of the school's transgender policies and activism.

The father was trying to warn board Members and other parents about the real-world implications of the left's radical agenda and the danger posed to teenaged girls, but, tragically, he was arrested and then labeled a domestic terrorist.

This is a chilling and anti-democratic action by the Biden DOJ to use fear, harassment, and intimidation to keep parents from showing up at school board meetings and speaking out against the radical left-wing agenda.

Parents are in charge of their child's education, period—not the experts from the left-wing organizations, not the teachers' unions, and not the Biden Administration—parents.

If the Department of Justice is looking for congressional direction on how they should be using their taxpayer-funded resources, they should start by investigating and prosecuting the human trafficking cartels that have smuggled, unbelievably, 125,000 children across our southern border under this Administration. The children face horrific sexual assaults from cartel predators and coyotes.

The DOJ seems to have a strong preoccupation with prosecuting and persecuting American citizens for engaging in constitutionally protected activities. I would strongly recommend the DOJ focus on keeping Americans safe and prosecuting child traffickers.

Mr. Chair, I seek unanimous consent to enter articles for the record on this topic.

Chair NADLER. Without objection.

[The information follows:]

THE HON. MARY E. MILLER FOR THE RECORD

Letter to WH suggests dad of ‘sexually assaulted’ girl a ‘domestic terrorist’

By [Lee Brown](#) and [Tamar Lapin](#)
October 13, 2021

The father of a girl who was [allegedly sexually assaulted](#) in a Virginia school bathroom should be treated as a domestic terrorist, the National School Boards Association (NSBA) suggested in a pointed letter to the White House — after the distraught dad stormed a local school board meeting and demanded officials take responsibility.

Scott Smith, 48, was filmed being wrestled to the floor and arrested at a June 22 public meeting of the Loudoun County School Board — with his wife yelling, “My child was raped at school and this is what happens!”

“In Virginia, an individual was arrested,” the NSBA wrote, linking to [an NBC Washington report](#) about Smith’s arrest at the meeting.

It was one of the key examples of what the association said proved that “America’s public schools and its education leaders are under an immediate threat” from a “growing number of threats of violence and acts of intimidation occurring across the nation.”

“NSBA believes immediate assistance is required,” the group wrote.



"NSBA specifically solicits the expertise and resources of the US Department of Justice, Federal Bureau of Investigation (FBI), US Department of Homeland Security, US Secret Service, and its National Threat Assessment Center."

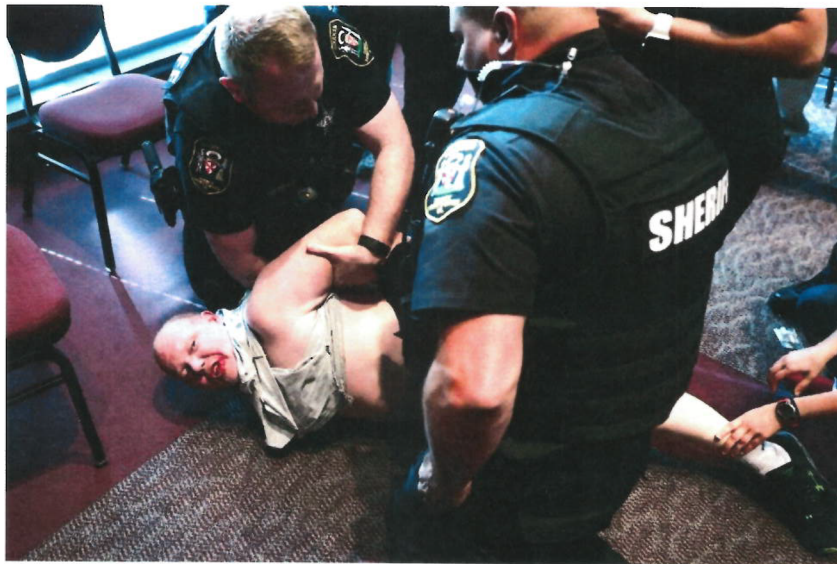
The letter insisted that the "heinous actions" were "equivalent to a form of domestic terrorism and hate crimes."

The letter, which came to light this week, was dated Sept. 29 — just five days before [Attorney General Merrick Garland's controversial decision](#) to get the FBI to investigate the apparent threat.

Smith on Tuesday said that such a clampdown was clearly "wrong."

"That's really scary, that our government will weaponize themselves against parents and they're using my video across the nation to spread fear," he [told Fox News](#).

Smith had [told the Daily Wire](#) that his daughter was attacked at Stone Bridge High School on May 28 by a boy in a school bathroom.



The Loudoun County Sheriff's Office confirmed to The Post that an officer was alerted by school staff about a possible sexual assault on May 28.

Following "a thorough 2-month-long investigation.. to determine the facts of the case," a 14-year-old boy was arrested July 8 and charged with two counts of forcible sodomy, the sheriff's office said.

The case was turned over to the Loudoun County Commonwealth's Attorney's Office, and the proceedings are ongoing. The records are sealed because they involve a juvenile.

The arrest in what appears to be Smith's daughter's case came more than two weeks after his attendance at the heated June school board meeting.

During the meeting, the district superintendent told those present that there wasn't "any record of assaults occurring in our restrooms."

Then, Smith [told local outlet Loudoun Now](#), a woman the family knows discounted his daughter's alleged assault, setting him off.

Video showed deputies trying to pull Smith back from the argument with the woman. They then tackled him to the ground and dragged him outside, leaving him with a bloody lip. He was charged with disorderly conduct and resisting arrest, and later convicted.

Smith was sentenced in August to 10 days in jail, all suspended, contingent on a year of good behavior. He is appealing the verdict, with a court date set for March 2022, Loudoun Now reported.

Smith insisted he went to the meeting to warn other parents about on-campus sexual assaults.

In the statement on Tuesday, the school district said it contacted law enforcement "within minutes" of receiving the report of sexual assault on May 28.

School board members "were not aware of the specific details of this incident" at the time of the June 22 meeting, the statement said.

Smith said he decided to speak out about his daughter's experience after hearing of another attack at a different school earlier this month.

The sheriff's office said a 15-year-old boy was arrested Oct. 6 after allegedly forcing a girl into a classroom at Broad Run High School, "where he held her against her will and inappropriately touched her." He was charged with sexual battery and abduction.

Smith and other local parents claim the suspect in this incident is the same boy who was charged for the alleged May 28 assault, but authorities said they could not confirm that the suspect in both incidents was the same student.

During a school board meeting on Tuesday, parents accused the district of transferring the accused attacker to a different school, putting other students at risk, Loudoun Now reported.



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September 29, 2021

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: *Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators*

Dear Mr. President:

America's public schools and its education leaders are under an immediate threat. The National School Boards Association (NSBA) respectfully asks for federal law enforcement and other assistance to deal with the growing number of threats of violence and acts of intimidation occurring across the nation. Local school board members want to hear from their communities on important issues and that must be at the forefront of good school board governance and promotion of free speech. However, there also must be safeguards in place to protect public schools and dedicated education leaders as they do their jobs.

NSBA believes immediate assistance is required to protect our students, school board members, and educators who are susceptible to acts of violence affecting interstate commerce because of threats to their districts, families, and personal safety. As our school boards continue coronavirus recovery operations within their respective districts, they are also persevering against other challenges that could impede this progress in a number of communities. Coupled with attacks against school board members and educators for approving policies for masks to protect the health and safety of students and school employees, many public school officials are also facing physical threats because of propaganda purporting the false inclusion of critical race theory within classroom instruction and curricula.¹ This propaganda continues despite the fact that critical race theory is not taught in public schools and remains a complex law school and graduate school subject well beyond the scope of a K-12 class.

On behalf of our state associations and the more than 90,000 school board members who govern our country's 14,000 local public school districts educating more than 50 million schoolchildren, NSBA appreciates your leadership to end the proliferation of COVID-19 in our communities and our school districts. We also appreciate recent discussions with White House and U.S. Department of Education staff on many critical issues facing public schools, including threats school officials are receiving.

¹ The Armed Conflict Location & Event Data Project (ACLED), "Fact Sheet: Demonstrations over Critical Race Theory in the United States," July 14, 2021, https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED_FactSheet_CRT-Demos_2021.pdf.

The leading advocate for public education

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In addition, we applaud your actions to restore resources to school districts that have not yet received their education stabilization funding through the Project SAFE (Supporting America's Families and Educators) grant program for coronavirus recovery efforts, including the use of face masks and other precautions to help prevent COVID-19 infections among students and educators. Now, we ask that the federal government investigate, intercept, and prevent the current threats and acts of violence against our public school officials through existing statutes, executive authority, interagency and intergovernmental task forces, and other extraordinary measures to ensure the safety of our children and educators, to protect interstate commerce, and to preserve public school infrastructure and campuses.

While local and state law enforcement agencies are working with public school officials in several communities to prevent further disruptions to educational services and school district operations, law enforcement officials in some jurisdictions need assistance – including help with monitoring the threat levels. As these threats and acts of violence have become more prevalent – during public school board meetings, via documented threats transmitted through the U.S. Postal Service, through social media and other online platforms, and around personal properties – NSBA respectfully asks that a joint collaboration among federal law enforcement agencies, state and local law enforcement, and with public school officials be undertaken to focus on these threats.² NSBA specifically solicits the expertise and resources of the U.S. Department of Justice, Federal Bureau of Investigation (FBI), U.S. Department of Homeland Security, U.S. Secret Service, and its National Threat Assessment Center³ regarding the level of risk to public schoolchildren, educators, board members, and facilities/campuses. We also request the assistance of the U.S. Postal Inspection Service to intervene against threatening letters and cyberbullying attacks that have been transmitted to students, school board members, district administrators, and other educators.

As these acts of malice, violence, and threats against public school officials have increased, the classification of these heinous actions could be the equivalent to a form of domestic terrorism and hate crimes. As such, NSBA requests a joint expedited review by the U.S. Departments of Justice, Education, and Homeland Security, along with the appropriate training, coordination, investigations, and enforcement mechanisms from the FBI, including any technical assistance necessary from, and state and local coordination with, its National Security Branch and Counterterrorism Division, as well as any other federal agency with relevant jurisdictional authority and oversight. Additionally, NSBA requests that such review examine appropriate enforceable actions against these crimes and acts of violence under the Gun-Free School Zones Act, the PATRIOT Act in regards to domestic terrorism, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, the Violent Interference with Federally Protected Rights statute, the Conspiracy Against Rights statute, an Executive Order to enforce all applicable federal laws for the

² The Herald Editorial Board, *HeraldNet*, "Editorial: Mob's actions at school board meeting unacceptable," September 1, 2021, <https://www.heraldnet.com/opinion/editorial-mobs-actions-at-school-board-meeting-unacceptable/>.

³ U.S. Secret Service, National Threat Assessment Center, "Averting Targeted School Violence," March 2021, <https://www.secretservice.gov/sites/default/files/reports/2021-03/USSS%20Averting%20Targeted%20School%20Violence.2021.03.pdf>.

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protection of students and public school district personnel, and any related measure. As the threats grow and news of extremist hate organizations showing up at school board meetings is being reported, this is a critical time for a proactive approach to deal with this difficult issue.

These threats or actual acts of violence against our school districts are impacting the delivery of educational services to students and families, as many districts receive federal funds and subsidies for services to millions of students with disabilities, health screenings and supplemental supports for disadvantaged students, child nutrition, broadband connectivity, educator development, school safety activities, career and technical education, and more. School board meetings have been disrupted in California⁴, Florida⁵, Georgia⁶, and other states⁷ because of local directives for mask coverings to protect students and educators from COVID-19.

An individual was arrested in Illinois for aggravated battery and disorderly conduct during a school board meeting.⁸ During two separate school board meetings in Michigan⁹, an individual yelled a Nazi salute in protest to masking requirements, and another individual prompted the board to call a recess because of opposition to critical race theory.

⁴ Elizabeth Marie Himchak, *Poway News Chief*/ *Rancho Bernardo News Journal*, "Protesters disrupt Poway Unified board meeting, cause its adjournment," September 9, 2021, <https://www.sandiegouniontribune.com/pomeroado-news/news/schools/story/2021-09-09/protesters-disrupt-poway-unified-board-meeting-force-its-ag>.

⁵ Ryan McKinnon, *Sarasota Herald-Tribune*, "Sarasota school board may limit public input after some meetings get disorderly," September 20, 2021, <https://www.heraldtribune.com/story/news/education/2021/09/20/sarasota-school-board-may-limit-public-input-after-meetings-gone-wild/8417784002/>.

⁶ Alia Malik, *The Atlanta Journal-Constitution*, "Anti-mask crowd disrupts Gwinnett school board meeting," May 21, 2021, <https://www.ajc.com/news/anti-mask-crowd-disrupts-gwinnett-school-board-meeting/YO7R6GHJ5DTLEFCQHER7V3GBA/>.

⁷ Julie Wootton-Greener, *Las Vegas Review-Journal*, "School board meeting turns contentious over COVID-19 policies," August 12, 2021, <https://www.reviewjournal.com/local/education/school-board-meeting-turns-contentious-over-covid-19-policies-2418652/>.

⁸ WAVY.com, "Norfolk school officials, police monitoring threats made toward Norview schools," September 21, 2021, <https://www.wavy.com/news/local-news/norfolk/norfolk-school-officials-police-monitoring-threats-made-toward-norview-schools/>.

⁹ WBTV-Charlotte, "Gov. Roy Cooper addresses 'threats, bullying, intimidation' at school board meetings over mask requirements," September 21, 2021, <https://www.wbtv.com/2021/09/21/gov-roy-cooper-address-fight-against-covid-19-north-carolina/>.

¹⁰ WGEM, "Mendon man arrested following disruption at Unity School board meeting," September 2, 2021, <https://wgem.com/2021/09/02/mendon-man-arrested-following-disruption-at-unity-school-board-meeting/>.

¹¹ Steve Neavling, *Detroit Metro Times*, "Nazi salute, insults hurled at chaotic Birmingham schools meeting over mask mandate," August 19, 2021, <https://www.metrotimes.com/news-hits/archives/2021/08/19/nazi-salute-insults-hurled-at-ruckus-birmingham-schools-meeting-over-mask-mandate>.

¹² Kalie Marantette, *WLNS.com*, "Grand Ledge school board goes into recess due to public 'disruption,'" June 16, 2021, <https://www.wlns.com/news/grand-ledge-school-board-goes-into-recess-due-to-public-disruption/>.

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In New Jersey¹⁰, Ohio¹¹, and other states¹², anti-mask proponents are inciting chaos during board meetings. In Virginia¹³, an individual was arrested, another man was ticketed for trespassing, and a third person was hurt during a school board meeting discussion distinguishing current curricula from critical race theory and regarding equity issues. In other states including Washington¹⁴, Texas¹⁵, Wisconsin¹⁶, Wyoming¹⁷, and Tennessee¹⁸, school boards have been confronted by angry mobs and forced to end meetings abruptly. A resident in Alabama, who proclaimed himself as "vaccine police," has called school administrators while filming himself on Facebook Live.¹⁹

¹⁰ Joe Strupp, *Asbury Park Press*, "NJ mask mandate for students sparks school board disruption, suspends meeting," August 26, 2021, <https://www.app.com/story/news/education/in-our-schools/2021/08/26/nj-school-mask-mandate-sparks-disruption-boe/5585283001/>.

¹¹ Maia Belay, *Fox8*, "Sheriff deputies called to tense Nardonia Hills school board meeting due to mask policy," August 31, 2021, <https://fox8.com/news/sheriff-deputies-called-to-tense-nardonia-hills-school-board-meeting-due-to-mask-policy/>.

¹² Pete Bannon, *The Delaware County Daily Times*, "Mask protest brings police to Garnet Valley School Board meeting," August 25, 2021, Updated August 26, 2021, <https://www.delcotimes.com/2021/08/25/mask-protest-brings-cops-to-garnet-valley-school-board-meeting/>.

Brenley Goertzen, *Salon.com*, "Anti-mask mob swarms school board meeting," August 12, 2021, <https://www.salon.com/2021/08/12/anti-mask-mob-swarm-school-board-meeting/>.

¹³ Drew Wilder, Jackie Bensen, Andrea Swalec and NBC4 Washington Staff, *NBCWashington.com*, "'The Meeting Has Degenerated': 1 Arrest, 1 Injury at Loudoun Schools Meeting on Equity," June 22, 2021, Updated June 23, 2021, <https://www.nbcwashington.com/news/local/northern-virginia/loudoun-school-board-transgender-student-policy-race-equity/2708185/>.

Adele Uphaus, *The Free Lance-Star*, "Unruly crowd causes Spotsylvania School Board meeting to adjourn after 13 minutes," August 24, 2021, https://fredericksburg.com/news/local/unruly-crowd-causes-spotsylvania-school-board-meeting-to-adjourn-after-13-minutes/article_1d39b83c-fa43-5626-acca-4e2768a811de.html.

¹⁴ Emily Gilbert, *Whidbey News Times*, "Oak Harbor school board clears the room after audience shouts disrupt meeting," August 13, 2021, <https://www.whidbeynewstimes.com/news/oak-harbor-school-board-clears-the-room-after-audience-shouts-disrupt-meeting/>.

¹⁵ Talia Richman and Brayden Garcia, *The Dallas Morning News*, "'Critical race theory' roils Fort Worth school board meeting as Texas braces for continued fight," June 22, 2021, <https://www.dallasnews.com/news/education/2021/06/22/critical-race-theory-roils-fort-worth-school-board-meeting-as-texas-braces-for-continued-fight/>.

¹⁶ WBAY news staff and Jason Zimmerman, *WBAY.com*, "Oshkosh School Board meeting postponed after protesters disrupt it, argument breaks out," August 25, 2021, Updated August 26, 2021, <https://www.wbay.com/2021/08/25/oshkosh-school-board-meeting-called-off-after-protesters-enter-board-members-walk-out/>.

¹⁷ Margaret Austin, *Wyoming Tribune Eagle* via Wyoming News Exchange, *Pinedale Roundup*, "School board meeting over COVID stopped after disruption," August 4, 2021, <https://pinedaleroundup.com/article/school-board-meeting-over-covid-stopped-after-disruption>.

¹⁸ Jackie Delpilar, *WZTV Nashville*, "Anti-mask protesters show lack of empathy at recent Middle Tennessee school meetings," September 12, 2021, <https://fox17.com/news/local/anti-mask-protesters-show-lack-of-empathy-at-recent-middle-tennessee-school-meetings>.

¹⁹ Aubrey Bailey, *WHNT.com*, "'If you give one more shot, you yourself will be executed.' Alabama man tells Missouri pharmacists," August 24, 2021, <https://whnt.com/news/alabama-news/if-you-give-one-more-shot-you-yourself-will-be-executed-alabama-man-tells-missouri-pharmacists/>.

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Other groups are posting watchlists against school boards and spreading misinformation that boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19.²⁰

In Ohio, an individual mailed a letter to a school board member labeling the return address on the envelope from a local neighborhood association and then enclosing threatening hate mail from another entity.²¹ This correspondence states that, "We are coming after you and all the members on the ... BoE [Board of Education]." This hate mail continues by stating, "You are forcing them to wear mask—for no reason in this world other than control. And for that you will pay dearly." Among other incendiaries, this same threat also calls the school board member a "filthy traitor," implies loss of pension funds, and labels the school board as Marxist. Earlier this month, a student in Tennessee was mocked during a board meeting for advocating masks in schools after testifying that his grandmother, who was an educator, died because of COVID-19.²² These threats and acts of violence are affecting our nation's democracy at the very foundational levels, causing school board members – many who are not paid – to resign immediately and/or discontinue their service after their respective terms.²³ Further, this increasing violence is a clear and present danger to civic participation, in which other citizens who have been contemplating service as either an elected or appointed school board member have reconsidered their decision.

NSBA believes public discussions and transparency by local school board members are important for the safe and effective operations of schools.²⁴ It is vital that public discourses be encouraged in a safe and open environment, in which varying viewpoints can be offered in a peaceful manner. Our children are watching the examples of the current debates and we must encourage a positive dialogue even with different opinions. However, with such acute threats and actions that are disruptive to our students' well-being, to the safety of public school officials and personnel, and to interstate commerce, we urge the federal government's intervention against individuals or hate groups who are targeting our schools and educators.

²⁰ Nick Surgery, *Documented*, "TPUSA launches project targeting school board members," August 20, 2021, <https://substack.documented.net/p/tpusa-school-board-watchlist>

²¹ Lindsey Mills, WBNS, "Disturbing: Worthington school board member receives threats for masks in schools," September 21, 2021, <https://www.10tv.com/article/news/local/worthington-school-board-member-receives-threats-for-masks-in-schools/530f3c0424076b4456b-aad98555397b5427>

²² Kim Bellware, *The Washington Post*, "Student mocked at school board meeting after sharing that his grandmother died of covid-19," September 10, 2021, https://www.washingtonpost.com/nation/2021/09/10/grady-knox-tennessee/?utm_campaign=wp_main&utm_medium=social&utm_source=facebook&fbclid=IwAR29rIKzlY0tz4p0yB5VJDk_n_oij5AJpP6oiEvzJC1oRAYsMMOPb8EvjY

²³ Andy Humbles, *The Nashville Tennessean*, "Jon White resigns as Wilson County School Board member," September 8, 2021, <https://www.tennessean.com/story/news/local/wilson/2021/09/08/jon-white-resigns-wilson-county-school-board-member/5750949001/>

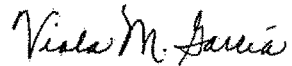
Terri Pederson, *The Daily Citizen*, "Beaver Dam school board member resigns citing safety concerns for family," September 20, 2021, Updated September 21, 2021, https://www.wiscnews.com/bdc/news/local/education/beaver-dam-school-board-member-resigns-citing-safety-concerns-for-family/article_066fc86c-4356-5a00-9940-187e02eb7340.html

²⁴ National School Boards Association and AASA, The School Superintendents Association, "NSBA, AASA Issue Joint Statement Calling for End to Threats and Violence Around Safe School Opening Decisions," September 22, 2021, <https://www.nsba.org/News/2021/end-threats-violence-joint-statement>

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NSBA is committed to working with you and your Administration as a partner to address this crisis affecting America's public schools, and greatly appreciates your prompt attention to our requests. We stand ready to work with you.

Respectfully,



Viola M. Garcia, EdD
President



Chip Slaven, Esq.
Interim Executive Director & CEO



Office of the Attorney General
Washington, D. C. 20530

October 4, 2021

MEMORANDUM FOR DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
DIRECTOR, EXECUTIVE OFFICE FOR U.S. ATTORNEYS
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL *M. Garfield*
SUBJECT: PARTNERSHIP AMONG FEDERAL, STATE, LOCAL, TRIBAL,
AND TERRITORIAL LAW ENFORCEMENT TO ADDRESS
THREATS AGAINST SCHOOL ADMINISTRATORS, BOARD
MEMBERS, TEACHERS, AND STAFF

In recent months, there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools. While spirited debate about policy matters is protected under our Constitution, that protection does not extend to threats of violence or efforts to intimidate individuals based on their views.

Threats against public servants are not only illegal, they run counter to our nation's core values. Those who dedicate their time and energy to ensuring that our children receive a proper education in a safe environment deserve to be able to do their work without fear for their safety.

The Department takes these incidents seriously and is committed to using its authority and resources to discourage these threats, identify them when they occur, and prosecute them when appropriate. In the coming days, the Department will announce a series of measures designed to address the rise in criminal conduct directed toward school personnel.

Coordination and partnership with local law enforcement is critical to implementing these measures for the benefit of our nation's nearly 14,000 public school districts. To this end, I am directing the Federal Bureau of Investigation, working with each United States Attorney, to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district within 30 days of the issuance of this memorandum. These meetings will facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff, and will open dedicated lines of communication for threat reporting, assessment, and response.

The Department is steadfast in its commitment to protect all people in the United States from violence, threats of violence, and other forms of intimidation and harassment.

125,000 children have shown up alone at border on Biden's watch

by [Anna Giaritelli, Homeland Security Reporter](#) |

| October 21, 2021 07:00 AM

More than 125,000 children traveling without parents have shown up along the U.S.-Mexico [border](#) to be taken into custody during the Biden administration, an astronomical figure far beyond precedent.

The child migrant crisis has dogged President Joe Biden throughout his tenure and dragged down his approval ratings. He has tried to overhaul border measures implemented by former President [Donald Trump](#) in an effort to more quickly process migrants and ensure that children are not held in inadequate facilities — even going so far as to [fly them](#) under the cover of night to states far from the border. Republicans charge that, in the process, he has created the aforementioned influx of unaccompanied children. The crisis is far from resolved.

From February through August, 112,433 unaccompanied children were found after crossing the southern border. The Department of Homeland Security has not released official numbers for child arrivals in September or in the first 15 days of October, but rough data from the Department of Health and Human Services reveals approximately 15,000 additional children were encountered by federal law enforcement in that period for a grand total of more than 125,000 children.

The 125,000 arrivals in less than nine months is higher than the 12-month record of 80,000 set in 2019.

Children smuggled to the United States come primarily from poor Central American countries south of Mexico but are now coming thousands of miles away from South American nations. For most, their families paid to move them across borders.

“They’re smuggled but not trafficked, necessarily,” said Theresa Cardinal Brown, managing director of immigration and cross-border policy at the Bipartisan Policy Center think tank in Washington.

Since March, between 14,000 and 19,000 single children have come over the border each month — far above the 3,000 to 6,000 seen in an average month in the past decade. Until this year, the record for children encountered in a single month was 11,861, which was set during the humanitarian crisis in May 2019.

The surge of child migrants came after Biden walked back Trump-era immigration policies, with each change creating a ripple effect at the border.

Before Biden took office, child border crossings were relatively rare. The numbers of monthly arrivals dropped below 1,000 per month at the start of the coronavirus pandemic. In March 2020, at the recommendation of the Centers for Disease Control and Prevention, the Border Patrol began immediately returning all adults and children to their home countries in an effort to avoid filling detention centers with people because the virus could easily spread in close quarters — a policy often referred to as Title 42 expulsions. The measure initially led to far fewer children making the journey to the U.S. because they would not be guaranteed release into the U.S.

In November 2020, U.S. District Judge Emmet Sullivan for the District of Columbia ruled that the Trump administration [could no longer immediately expel children](#). The Biden administration [ordered](#) that no child be returned to his or her home country. It also focused on [more expeditiously releasing children](#) to avoid detaining them for weeks on end.

As a result, the number of children coming over the southern border exploded as parents and smugglers recognized children would not be sent back home. Rep. Filemon Vela, a Texas Democrat, [called on](#) the administration to send back teenagers, but the Democratic administration has not budged.

Not all children who arrive at the border come the same way or for the same reason. Children who come to the border can be put in one of three categories, Brown said: They are sent by family members in their home country to go live with a relative in the U.S., they are sent for by family living in the U.S. who wish to bring the child from outside the U.S. to them, or they have independently chosen to migrate. Smugglers charge roughly \$5,000 to \$10,000 to smuggle one person, a fee that will often be worked off for months or years by the family if they do not have the money upfront.

When minors come across the border, they are taken by Border Patrol agents to regional stations for processing. The stations were built to hold them before they can be transferred to HHS.

HHS runs shelters where children are held until the government can find an adult to release the child to in the country.

The DHS and HHS declined to comment on the whereabouts of the 125,000 children who have shown up at the border since February. The government [reportedly](#) does not know how to contact 1-in-3 released children.

The Biden administration's focus on quickly releasing the children has made the U.S. government into the facilitator for human smuggling, said Andrew Arthur, a former federal immigration judge.

"The reason that the smugglers are sort of abandoning these children is because they know that [the Department of Homeland Security] is going to find [the parent]," said Arthur, resident fellow in law and policy at the conservative Center for Immigration Policy think tank in Washington. "We have helped them perfect their business model. If they simply drop them over the wall then they're not going to get arrested by DHS because they can just flee back to Mexico while DHS is too busy taking care of the kid."

Brown said families are desperate to escape a number of push factors, including poverty, unemployment, climate change, gangs and corruption, and inadequate medical care. It makes the trip to the U.S., an extremely dangerous one for a child in the hands of criminal organizations that facilitate the smuggling, worthwhile.

"The Biden administration has a lot of issues with its border policies," said Brown. "It's trying both to act like it's tough, and act like it's humane all at the same time — mixed messages that don't work for anybody. It's trying deterrence while supposedly putting together some sort of better asylum policy on the U.S. side, which it hasn't done yet. So it's just adding to the already existing horrible backlogs that have been there since the Trump administration."

Ms. MILLER of Illinois. Thank you, and I yield back.
[The statement of Ms. Miller of Illinois follows:]

House Committee on Judiciary
Member Day Hearing

Testimony of the Honorable Mary E. Miller
Member of Congress

October 22, 2021

Thank you, Chairman Nadler and Ranking Member Jordan. I am appearing today because I am gravely concerned by Attorney General Merrick Garland's memo to the FBI directing them to intimidate and harass parents who show up to school board meetings. Sadly, one example cited by the National School Boards Association in their letter to the Biden Administration was a father who showed up to a school board meeting because his 14-year-old daughter was sexually assaulted in a school bathroom by a boy who was allowed in the girls' room because of the school's transgender activism policy. The father was trying to warn board members and other parents about the real-world implications of the left's radical political agenda, and the danger posed to teenage girls, but tragically he was arrested and labeled a "domestic terrorist."

This is a chilling and anti-Democratic action by the Biden DOJ to try to use fear, harassment, and intimidation to keep parents from showing up to school board meetings and speaking out against the radical left-wing agenda being imposed against their wishes. Parents are in charge of their child's education, period. Not "experts" from left-wing organizations. Not the teachers' unions. Not the Biden Administration. Parents.

If the DOJ is looking for Congressional direction on how they should be using their taxpayer-funded resources, they should start by investigating and prosecuting the human trafficking cartels that are smuggling 19,000 children across our southern border each month.

The DOJ seems to have a strong preoccupation with persecuting and prosecuting American citizens for engaging in Constitutionally protected activities. I would strongly recommend they focus on keeping Americans safe, and prosecuting child traffickers would be a good start.

Chair NADLER. The gentlelady yields back.
Mr. Rice?

**STATEMENT OF THE HON. TOM RICE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF SOUTH CAROLINA**

Mr. RICE. Thank you, Mr. Chair, for allowing me to speak to the Committee today.

I come to you to speak about a background-check bill.

After the killings of the nine people in the Emanuel AME Church in Charleston, South Carolina, by a deranged individual, the families of the deceased sued the Federal Government for failure to catch his issues before they issued him a permit to buy the gun.

The case was dismissed on sovereign immunity, but the Federal judge, an Obama appointee, by the way, Gergel, wrote a 20-page opinion about the failure of the background-check system in that case.

I have a copy of that opinion here, and I would like to have it entered in the record.

Chair NADLER. Without objection.

[The information follows:]

THE HON. TOM RICE FOR THE RECORD

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Felicia Sanders, *individually and as legal*) Civil Action No. 2:16-2356-RMG
custodian for K.M., a minor,)
))
Plaintiff,)
))
v.) **ORDER AND OPINION**
))
United States of America,) *This order relates to all consolidated*
) *cases*
Defendant.)
)

This action and fifteen other related actions¹ were filed by surviving victims and the estates of deceased victims who suffered injury or death at the hands of Dylann Roof when he entered a bible study group at Emanuel A.M.E. Church on June 17, 2015, and murdered nine persons with a Glock Model 41 pistol. Under federal law, Roof's narcotics arrest on February 28, 2015, disqualified him from receiving a firearm. Nevertheless, he was able to purchase the Glock pistol from a federally licensed firearms dealer on April 11, 2015 because the FBI's National Instant Criminal Background Check System ("NICS") failed to discover Roof's disqualifying arrest record. Plaintiffs have brought this present action against the United States of America under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671–80, for alleged acts and omissions of federal employees associated with the NICS.

The United States moved to dismiss these actions for lack of jurisdiction and failure to state a claim, asserting that these claims are barred under the discretionary function exception of the FTCA, 28 U.S.C. § 2680(a), the immunity granted federal employees responsible for

¹ The Court consolidated this case with following related cases: Civ. Nos. 2:16-2351-RMG, 2:16-2352-RMG, 2:16-2350-RMG, 2:16-2354-RMG, 2:16-2355-RMG, 2:16-2746-RMG, 2:16-2357-RMG, 2:16-2358-RMG, 2:16-2359-RMG, 2:16-2360-RMG, 2:16-2378-RMG, 2:16-2405-RMG, 2:16-2406-RMG, 2:16-2407-RMG, and 2:16-2409-RMG. (Dkt. No. 23.)

providing information to the NICS, 18 U.S.C. § 922(t)(6)(A), and that Plaintiffs fail to state a claim under South Carolina tort law. Plaintiffs opposed the motion and moved for jurisdictional discovery, arguing the Court required a more complete factual record before addressing the Government's jurisdictional claims. The Court agreed and granted Plaintiffs' motions, authorizing extensive jurisdictional discovery. This was apparently the first instance where any party has had the opportunity to obtain discovery regarding NICS procedures and operations. The Government thereafter renewed its motions to dismiss and the parties briefed the issues. The Court held an evidentiary hearing on March 20, 2018, and the parties were allowed to file additional supplemental materials in the weeks following the hearing. With the completion of jurisdictional discovery and the full briefing of the legal issues involved, the Court now rules on the pending motion to dismiss.

I. Legal Standards

A. The Federal Tort Claims Act

The FTCA authorizes lawsuits against the United States for wrongful acts or omissions of federal employees acting within the scope of their duties in circumstances where a private person would be liable for similar claims in the jurisdiction where the claim arose. 28 U.S.C. § 1346(b). The FTCA's authorization of actions against the United States constitutes a limited waiver of sovereign immunity, the common law doctrine that prohibited claims against the Government. There are, however, significant exceptions to the Government's waiver of sovereign immunity under the FTCA, the most relevant here being the provision that the Government cannot be held liable "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2680(a). The discretionary function exception is grounded on the premise that the judiciary should not "second guess"

policy choices of the Executive Branch through private litigation. 28 U.S.C. § 2680(a); *Berkovitz v. United States*, 486 U.S. 531, 536–37 (1988).

A claim falls within the discretionary function exception if two elements are satisfied. First, the challenged conduct must be the product of a discretionary decision in which the governmental conduct was a matter of judgment or choice. However, if law or policy mandated a particular course of action, the discretionary function exception does not apply. *Berkovits*, 486 U.S. at 536 (“[T]he discretionary function exception will not apply when a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow. In this event, the employee has no rightful option but to adhere to the directive.”). Second, the decision must be “based on considerations of public policy.” This second prong limits the discretionary function exception to the kinds of judgments the exception “was designed to shield.” *Id.* at 536–37.

In this matter, the Court must determine whether the specific alleged negligent acts or omissions of the federal employees or the federal agency, here relating to the processing of the Roof background check, violated a controlling, mandated legal standard in which the federal employees had no choice but to follow. If the alleged acts or omissions violated controlling law or policy, the discretionary function exception would not apply. On the other hand, if the challenged acts or omissions were the product of a policy judgment or discretionary decision by the agency, the claim is subject to being barred. Further, even if the acts or omissions were the product of a discretionary decision of the agency, such acts or omissions must be related to agency policy. For instance, a federal employee may be said to be exercising discretion in operating a motor vehicle, but a dispute over negligent driving resulting in an accident is not

barred by the discretionary function exception because the act in question does not relate to agency policy.

When the Government asserts that a claim is barred by the discretionary function exception, the burden is on the Plaintiff to demonstrate that the Court has subject matter jurisdiction because the discretionary function exception does not apply. All waivers of sovereign immunity should be “strictly construed” in favor of the Government. *Welch v. United States*, 409 F.3d 646, 651 (4th Cir. 2005). “The federal courts have held consistently that they lack subject matter jurisdiction if the discretionary function exception bars the suit.” *Williams v. United States*, 50 F.3d 299, 305 (4th Cir. 1995).

B. Immunity for claims arising under the NICS

The Government asserts that a specific federal statute, 18 U.S.C. § 922(t)(6), grants immunity to the Government arising out of the failure to prevent the sale of a firearm to an ineligible person through the processing of background checks in the NICS. The statute reads as follows:

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

18 U.S.C. § 922(t)(6).

When Congress debated creation of the NICS as part of the Brady Act, there was significant concern that making government actors responsible for vetting gun purchasers would result in voluminous lawsuits when that vetting failed. *See generally Brady Handgun Violence*

Prevention Act: Hearing Before the Subcomm. on Crime and Criminal Justice of the H. Comm. on the Judiciary, 103d Cong. (1993). Congress's clear intent in enacting § 922(t)(6) was to prevent any assumption of monetary liability for the operation of the background check system. *E.g.*, 139 Cong. Rec. 28,529–30 (Nov. 10, 1993) (rejection of amendment offered to deny immunity where the NICS search was not diligent). It is well settled that the United States may assert any defense of immunity “which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.” 28 U.S.C. § 2674; *Lomando v. United States*, 667 F.3d 363, 375–76 (3d Cir. 2011); *Medina v. United States*, 259 F.3d 220, 226 n.2 (4th Cir. 2001). These immunity provisions appear to have had the effect Congress intended because this Court can find no other case where a party has attempted to sue the United States for the alleged failure to prevent the sale of a firearm under the NICS system to an ineligible person.

B. Motion to Dismiss under Rule 12(b)(1) and 12(b)(6)

The Government has moved to dismiss these actions pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. A motion to dismiss under Rule 12(b)(1) represents a challenge to the Court's subject matter jurisdiction. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). A challenge to subject-matter jurisdiction may contend either 1) that the complaint fails to allege facts sufficient to establish subject matter jurisdiction or 2) “that the jurisdictional allegations of the complaint [are] not true.” *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). Where the sufficiency of the jurisdictional allegations in the complaint is challenged facially, “the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction.” *Kerns v. United States*, 585 F.3d 187, 192 (2009). If, however the defendant contends “that the jurisdictional allegations of the complaint [are] not true,” the plaintiff bears the burden to prove

facts establishing jurisdiction and the district court may “decide disputed issues of fact.” *Id.* In that case, because the plaintiff’s allegations are not presumed true, “the court should resolve the relevant factual disputes only after appropriate discovery.” *24th Senatorial Dist. Republican Comm. v. Alcorn*, 820 F.3d 624, 629 (4th Cir. 2016). And where “the jurisdictional facts and the facts central to a tort claim are inextricably intertwined,” so that a challenge to the truth of the jurisdictional facts indirectly challenges the plaintiff’s claims on the merits, “the trial court should ordinarily assume jurisdiction and proceed to the intertwined merits issues.” *Kerns*, 585 F.3d at 193.

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits the dismissal of an action if the complaint fails “to state a claim upon which relief can be granted.” Such a motion tests the legal sufficiency of the complaint and “does not resolve contests surrounding the facts, the merits of the claim, or the applicability of defenses. . . . Our inquiry then is limited to whether the allegations constitute ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (quotation marks and citation omitted). In a Rule 12(b)(6) motion, the Court is obligated to “assume the truth of all facts alleged in the complaint and the existence of any fact that can be proved, consistent with the complaint’s allegations.” *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P’ship*, 213 F.3d 175, 180 (4th Cir. 2000). However, while the Court must accept the facts in a light most favorable to the non-moving party, it “need not accept as true unwarranted inferences, unreasonable conclusions, or arguments.” *Id.* To survive a motion to dismiss, the complaint must set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

II. Factual Background

A. Roof's February 28, 2015 arrest for unlawful possession of a controlled substance

On Sunday, February 28, 2015, at 8:45 p.m., Officer Brandon M. Fitzgerald of the City of Columbia, South Carolina, Police Department received a complaint from the security department at the Columbiana Centre Shopping Mall that a white male wearing all black clothing was entering stores and asking suspicious questions, such as how many associates were then working in the store, when the store closed, and when the employees leave the store. (Dkt. No. 43-5.)

The shopping center lies within Lexington County, South Carolina and the city limits of Columbia. The city limits of Columbia are situated predominantly within adjacent Richland County, but a small portion of the city in and around the Columbiana Centre lies within Lexington County. The Columbia Police Department has jurisdiction over the shopping mall as does the Columbia Municipal Court, but the Solicitor for the 11th Circuit, which has jurisdiction over Lexington County, prosecutes cases from arrests at the shopping mall in the Columbia Municipal Court and those arrests are initially processed at the Lexington County Sheriff's Office.

Officer Fitzgerald made contact with the reported suspect, Dylann Roof, who behaved "very nervously." (*Id.*) Roof said he was visiting stores to apply for jobs, but admitted he had not asked any store for an employment application. (*Id.*) Officer Fitzgerald then conducted a consent search of Roof's person, finding orange square strips in a small white bottle. (*Id.*) Roof initially lied that the strips were breath fresheners, but soon admitted that they were Suboxone, a Schedule III narcotic. (*Id.*) Roof admitted that he had no prescription for Suboxone. (*Id.*) Suboxone is prescribed to treat opioid addiction, FDA, *Buprenorphine Drug Label*, NDA 20-732, 20-733, at 43 (2010), and is often used by heroin addicts to control withdrawal symptoms, Deborah Sontag, *Addiction Treatment with a Dark Side*, N.Y. Times, Nov. 16, 2013, at A1.

Officer Fitzgerald then arrested Roof for illegal possession of a controlled substance. (Dkt. No. 43-5.) Roof was booked at the Lexington County Sheriff's Office. (Dkt. No. 12-3 at 3.) The following day, March 1, 2015, Officer Fitzgerald applied for an arrest warrant from the City of Columbia Municipal Court. In the affidavit, Officer Fitzgerald averred that he received complaints from store owners regarding Roof, that he responded by making contact with Roof and searching his person, that his search discovered what appeared to be Suboxone, that Roof admitted he did not have a prescription, and that poison control confirmed Suboxone is a Schedule III controlled substance. (Dkt. No. 44-6 at 2.) Judge Russell T. Spencer issued the warrant that same day. The warrant states that the offense occurred within the "Municipality of City of Columbia." (*Id.*) The complicated jurisdictional issues arising out of arrests made at the Columbiana Mall contributed to later confusion concerning the location of arrest-related records when Roof's NICS background check was performed.

On March 2, 2015, Roof was served with the arrest warrant issued by the Columbia Municipal Court, and the Columbia Police Department submitted the incident report regarding Roof's arrest to the National Data Exchange ("N-DEX"), an FBI-managed database. (Dkt., No. 43-7); *see also* FBI, *National Data Exchange (N-DEX) System*, <http://www.fbi.gov/services/cjis/ndex>. A second copy of the incident report was submitted to N-DEX by the Lexington County Sheriff's Office on March 3, 2015. (Dkt. No. 43-7.) The Lexington County Solicitor's Office filed a criminal complaint against Roof on March 16, 2015, charging him with possession of a controlled substance in violation of S.C. Code § 44-53-370(c). (Dkt. No. 44-28.) A first offense is a misdemeanor. S.C. Code § 44-53-370(d)(2). The FBI has publicly stated that the information in the Roof incident report was sufficient to establish Roof

was disqualified from possessing a firearm under 18 U.S.C. § 922(g)(3) as a drug user. (*See* Dkt. Nos. 44-2; 43-8 at 29.)

B. Procedures under the NICS

The FBI administers the NICS, which is charged with performing background checks on persons seeking to purchase a firearm from a federally licensed gun dealer. Federal law provides that upon receipt of a request from a gun dealer for approval of a firearm sale, the NICS must respond with “Proceed,” meaning the sale may proceed, “Denied,” meaning the sale may not proceed, or “Delayed,” meaning the sale may not proceed while further inquiries are made. 28 C.F.R. § 25.6(c)(iv)(A)-(C).² The NICS however is authorized to place a request in a delayed status for only three business days, and the gun dealer may proceed with the sale after three business days if a denial has not been issued. *Id.* § 25.6(c)(iv)(B). This tight time window is imposed on a system incredibly stressed by the huge volume of daily inquiries received by NICS, which totaled on average 22,000 per day and 8.2 million per year in 2014. (Dkt. No. 50-1 at 11.)

The initial inquiry from the gun dealer is delivered by telephone or electronically and is assigned to an NICS examiner. The examiners are governed by highly structured Standard Operating Procedures (“SOPs”), which mandate the standards for approval or denial of the firearm sale, what databases the examiners can access and who they may contact for background information. Federal law identifies disqualifying factors for firearm purchases, including a prior felony conviction, a history of domestic abuse, and unlawful use of controlled substances. 28 U.S.C. 922(g). After receipt of an inquiry from a gun dealer, the examiner is directed by the NICS SOPs to three designated databases: the National Crime Information Center (“NCIC”) database, the NICS Index, and the Interstate Identification Index (“III”). The NCIC database

² Thirty states rely on the NICS to perform their background checks, including South Carolina. The other states have established their own background check systems. (Dkt. No. 44-2.)

contains twenty-one “files” of various classes of persons, such as individuals on supervised release, sex offenders, persons subject to protective orders, fugitives, suspected terrorists, and persons who have had prior gun purchase attempts denied. FBI, *About NCIC*, <http://www.fbi.gov/services/cjis/ncic>. The NICS Index contains an FBI maintained list of persons prohibited from possessing firearms, with most of these records submitted by the Bureau of Immigration and Customs Enforcement regarding removable aliens. (Dkt. No. 43-2 at 7.) The III System is an index of persons arrested for felonies or misdemeanors, but the information is very abbreviated and provides little substantive information. (Dkt. No. 43-2 at 6; 43-1 at 11 n.2.)

Notably the NICS examiners are denied access to the FBI-administered N-DEx system, a comprehensive federal database created after 9/11 that contains over 500 million criminal justice records. This database includes incident and arrest records, booking reports, pretrial investigations, supervised release reports, photos and identification records. A vast array of agencies have access to N-DEx, including local law enforcement agencies, campus police, railroad security, probation officers, and prisons. *See* FBI, N-DEx Policy and Operating Manual 1.3.3.

If an examiner obtains sufficient information from initial database inquiries to bring into question a purchaser’s right to own a firearm but not enough to deny the purchase, the examiner is then instructed to contact local law enforcement agencies to obtain additional information. This commonly involves a request for incident reports, court disposition records and other standard criminal justice information. The examiners are directed to reach out to law enforcement agencies by fax transmissions. (Dkt. No. 44-1 at 10.) The local law enforcement agencies, which in most instances already have provided the very same information to the FBI

via N-DEX, have no legal obligation to respond to the NCIS faxes, and the NICS in 2006 abolished the requirement that a second fax be sent out if no response was received. (Dkt. No. 64-1 at 4.) It is hardly surprising that under such a set of procedures, receipt of timely responses from local law enforcement agencies within the three-day window is not perfect, thereby allowing persons to acquire firearms without NICS examiners accessing potentially critical and disqualifying law enforcement records. Ironically, most of these records vainly requested by NICS examiners from local law enforcement agencies by fax are already in the possession of the FBI in the N-DEX system, which is physically located in the same facility as the NICS in Clarksburg, West Virginia. See FBI, *Criminal Justice Information Services (CJIS)*, <http://www.fbi.gov/services/cjis>.

C. Roof's unlawful acquisition of a firearm

On April 11, 2015, Roof went to Shooter's Choice, a federally licensed firearms dealer in West Columbia, South Carolina and sought to purchase a Glock Model 41 semi-automatic pistol. Trial Tr. Vol. IV at 659–74, *United States v. Roof*, Crim. No. 15-472-RMG (D.S.C. Dec. 12, 2016); (Dkt. No. 50-1 at 12). As part of the purchase process, Roof completed ATF Form 4473 and Shooter's Choice contacted NICS by telephone to obtain approval of the purchase. (Dkt. No. 50-1 at 12.)

The telephone call from Shooter's Choice was directed to NICS's Dallas-Fort Worth Call Center. (*Id.*) The call was received by a Customer Service Representative ("CSR"), who entered the information from Roof's ATF Form 4473 into a NICS automated system, which automatically queried three databases regarding Roof: the NCIC database, the NICS Index, and the III database. (*Id.*; Dkt. No. 43-8.) The NCIC database and the NICS Index returned no information on Roof, but the III database provided the following limited information:

Charge Literal	MDP, SCH I B,C,D LSD AND SCH II, COCAINE 3RD/SUB
Statute	(44-53-370(B)(1) SC)
Severity	Felony

(Dkt. No. 43-8 at 8.) The Lexington County Sheriff's Office was listed as the arresting agency.

The III database results contained a number of inaccuracies. First, Roof was arrested for a first offense of simple possession of a controlled substance, Suboxone, a misdemeanor, not a felony. Second, Roof was not arrested for a third or subsequent offense of distributing or manufacturing a Schedule I or II narcotic in violation of S.C. Code 44-53-370(b)(1), a felony punishable by up to thirty years imprisonment. Third, he was arrested by the Columbia Police Department, not the Lexington County Sheriff's Office. These were all clerical errors made by the Lexington County Sheriff's Office when Roof was booked into the Lexington County Detention Center on February 28, 2015. *See* Lexington Cty. Sheriff's Office, *Lexington County statement on Dylann Roof gun purchase*, <http://www.lex-co.com/sheriff/media.aspx?mid=2330>.

Because of the result reported from the III database, the CSR transferred the telephone call from Shooter's Choice to an NICS legal instrument examiner in Clarksburg, West Virginia for additional processing. (Dkt. No. 50-1 at 12.) The examiner received the call at 4:01 p.m. on April 11, 2015. (*Id.*) The examiner confirmed the III database result matched Roof's name, date of birth, height, and weight "and tried to make a quick determination to Proceed, Deny, or Delay the transaction." (Dkt. No. 50-2 at 1.) At 4:04 p.m.—only three minutes after receiving the call—the examiner placed the transaction in a "delayed" status and notified Shooter's Choice that Roof could receive a firearm on April 16, 2015 unless told otherwise by NICS before then. (*Id.*) The transaction was placed in the NICS Delay Queue for further research. (Dkt. No. 50-2 at 1.)

On the next business day, April 13, 2015, another NICS examiner pulled Roof's transaction from the Delay Queue for further research. (Dkt. Nos. 43-8 at 22; 50-2 at 1.) Per standard operating procedures, the examiner first checked internal NICS databases for information about Roof's arrest but found no information beyond what was reported in the III database. (*Id.*)³ The examiner, continuing to follow the standard operating procedures, then checked the Lexington County Court's website and discovered *State v. Dylann Storm Roof*, Case No. 2015A4021600503. (See Dkt. Nos. 43-11; 43-12.) The website accurately identified the pending charge against Roof as "Drugs / Poss. of other controlled sub. in Sched. I to V – 1st offense," a misdemeanor. (Dkt. No. 43-14 at 3.) The website did not name the arresting agency explicitly, but it did name Officer Fitzgerald as the arresting officer with an address of "#1 Justice Square Columbia 29201," which is the headquarters of the Columbia Police Department. (*Id.* at 4.)

The online records available through the court webpage indicated that Roof might be disqualified from a firearm purchase as a drug user, but, per NICS procedures, they were insufficient to establish disqualification. To establish disqualification where there is a recent drug arrest without a conviction, the SOPs require proof that the substance possessed was tested and confirmed to be a controlled substance, or that the arrestee admitted that the substance was a controlled substance. (Dkt. No. 44-29 at 3.) This required the examiner to obtain further details

³ One of the internal NICS databases the examiner checked on April 13, 2015 was the Disposition Document File ("DDF"). The DDF is an internal NICS repository for offense disposition documents obtained from prior NICS background checks. (Dkt. Nos. 44-1 at 8; 44-14 at 17.) Plaintiffs have repeatedly asserted that the incident report for Roof's arrest was available in the DDF. (*E.g.*, Dkt. Nos. 44 at 19; 62 at 27–28; 63 at 1–2.) That assertion is incorrect. The DDF could not contain documents relating to a prior attempt by Roof to purchase a firearm because Roof had never before attempted to purchase a firearm from an FFL. Thus, it is unsurprising that the record produced by the Government at the Court's request conclusively shows that the incident report for Roof's arrest was not in the DDF in April 2015. (See Dkt. Nos. 43-8 at 22; 65-1 ¶¶ 7, 8; 68-1 ¶ 7.)

about the Roof arrest, which were contained in the arresting officer's incident report that the Lexington County Sheriff's Office and the Columbia Police Department each had previously submitted to the FBI via N-DEx. Since the NICS examiners are denied access to the most comprehensive federal criminal justice database, the examiner was unable to obtain the incident report by a simple click of a mouse. Instead, the examiner was compelled to send out faxes in the hope that she could obtain another copy of the previously submitted incident report from the local law enforcement agencies. As the examiner sought to obtain a copy of the Roof incident report, she was initially led astray by the inaccurate information the NICS had obtained from the III database.

The examiner sent an automated fax to the Lexington County Sheriff's Office at 1:58 p.m. on April 13, 2015, requesting a copy of the Roof incident report for March 1, 2015. (Dkt. No. 43-17.) She also sent an automated fax to the 11th Circuit Solicitor's Office 2:00 p.m., requesting the same report. (*Id.*) The Lexington County Sheriff's Office responded to Ms. Conley's fax in approximately two hours, at 4:05 p.m. on April 13, 2015. (*Id.*) The response stated, "No arrest or report for this date. The last arrest was on 2-28-15. Columbia PD will have the report." (Dkt. No. 43-22.)⁴ The 11th Circuit Solicitor's Office never responded to the NICS fax. (Dkt. No. 43-17).

Rather than follow the information provided by the Lexington County Sheriff's Office concerning the location of the Roof incident report, the examiner, following the literal requirements of the NICS standard operating procedures, reviewed a list in the NICS database of all law enforcement agencies operating in Lexington County. The City of Columbia was

⁴ The discrepancy in dates appears to be the date of the incident at Columbiana Mall versus the date of the arrest warrant. The III database reported an incident date of February 28, 2015 and an arrest date of March 1, 2015. (Dkt. No. 43-8 at 28.) The difference in dates does not appear to have caused any confusion as to what incident report was being sought.

erroneously omitted from the list. Reviewing her list of Lexington County law enforcement agencies, she noticed the City of West Columbia and contacted that city in an effort to locate the Roof incident report. (Dkt. Nos. 44-4; 43-3 at 8; 43-6.) The examiner sent an automated fax requesting the incident report to the West Columbia Police Department at 4:07 p.m., April 13, 2015. (See Dkt. Nos. 43-17; 44-1 at 13.). At 8:46 a.m., April 14, 2015, the West Columbia Police Department responded, “Not WCPD warrant. This is not a WCPD arrest.” (Dkt. Nos. 43-17; 43-23.)

After receiving the negative report from West Columbia, the examiner made no effort to contact the Columbia Police Department, an agency which provides law enforcement services for South Carolina’s capital city, because that option was not explicitly provided for in the NICS SOPs. Further, the examiner did not call the Lexington County Sheriff’s Office for further details about its earlier fax response, apparently following the NICS practice of not “promot[ing] directly contacting [agencies] in an affirmative manner.” (Dkt. No. 50-2 at 12.) Instead, the examiner did nothing more. At 7:15 p.m., on April 16, 2015, Roof returned to Shooter’s Choice and obtained the semi-automatic pistol which he would use two months later to murder the pastor and eight parishioners at a Bible study class at Mother Emanuel A.M.E. Church in downtown Charleston.

The examiner made no further effort to follow up about the missing Roof incident report, either before or after the three-day period. This is hardly surprising because, as revealed in the jurisdictional discovery, the NICS practice was to make a single fax inquiry to a law enforcement agency and to attempt no further follow up of any type. (Dkt. Nos. 64-1; 43-1 at 18-19.) This “one and done” practice directly contradicts FBI statements to the public and Congress in NICS operations reports that the NICS “continues to actively seek the missing record information

beyond the three-business-day time frame” and “remains proactive in efforts to enhance criminal history record and disposition reporting.” FBI, National Instant Criminal Background Check System, 2007 Operations 12 (2007); *Id.* 2015 Operations 14 (2015).

III. Discussion

A. Plaintiffs’ claims are barred by the discretionary function exception

The record reveals that the FBI’s background check system is disturbingly superficial, excessively micromanaged by rigid standard operating procedures, and obstructed by policies that deny the overworked and overburdened examiners access to the most comprehensive law enforcement federal database. Reports by the FBI’s Inspection Division and the then FBI Director, James Comey, make much of the fact that the examiners adhered to every policy and procedure of the agency. (Dkt. Nos. 50-1 at 5; 44-2.) The Court finds that is literally correct because the SOPs require the examiners only to send a single automated fax to a law enforcement agency with no expectation or requirement that follow up work be done if the necessary records are not obtained. Since little is required, it was hardly difficult for examiners to complete the modest requirements of the NICS SOPs.

When the Roof examiner was told by the Lexington County Sheriff’s Office that the requested record was in possession of the Columbia Police Department, the NICS SOPs instructed her to look at a contact list of all law enforcement agencies in Lexington County, which she did. When Columbia was not listed, she sent an inquiry to a similarly named City of West Columbia. When West Columbia promptly responded it was not the arresting agency, a reasonable and logical procedure would have been to follow the lead already given that the City of Columbia had the arrest record. A simple Google search would have produced the contact information for the Columbia Police Department. But the NICS SOPs did not address this potential situation and NICS practice prohibited any general internet search. (*See* Dkt. No. 43-3

at 8.) Consequently, the examiner elected to do nothing. This may not have met the most minimal standards of common sense or due care, but the examiner did not violate her agency's policy.

The fault here lies in some abysmally poor policy choices made regarding the operation of the NICS. The most obvious of these poor policy choices was the decision to deny the examiners access to the most comprehensive federal criminal justice database, N-DEx. The Roof incident report was provided to the FBI via N-DEx by two separate local law enforcement agencies, and Roof would not have obtained approval to purchase the murder weapon if the examiner could have accessed the report. This would have also saved the examiner in this transaction, and likely many other examiners in thousands of other transactions, a great deal of time and effort in a system that is already tremendously overburdened.

The Court fully understands that the decision to deny the NICS examiners access to the most comprehensive federal database is a policy choice and the FTCA provides the Government immunity for policy choices (even really bad policy choices) under the discretionary function exception. The Government, nonetheless, argues endlessly and unpersuasively that it was somehow correct in denying its examiners access to this important repository of information. Having carefully reviewed and considered the Government's arguments, the Court finds the offered explanations to be simple nonsense.

The Government argues that access to N-DEx is restricted to law enforcement agencies and the NCIS system is not a criminal justice agency. (Dkt. No. 44-25 at 20). Denial of access to NCIS examiners on this basis makes little sense. The N-DEx Policy and Operating Manual allows the information to be used for criminal investigations, pretrial release investigations, presentence investigations, prison intake, supervised release investigations, and employment

background checks. FBI, N-DEx Policy and Operating Manual 1.3.4. Performing a background check by a branch of the FBI's Criminal Justice Information Services Division to prevent the *unlawful* acquisition of a firearm by a convicted felon, a person under a court protective order, or a user of illegal drugs constitutes quintessential law enforcement activity. This is every bit or more core a law enforcement activity than an employment background check, which is an allowable use of N-DEx.

Further, the Government has repeatedly asserted a "law enforcement privilege" over portions of internal NICS documents that set forth NICS operating procedures, claiming disclosure "would impede or impair the effectiveness of an investigative technique, method or procedure of the FBI." (*E.g.*, Dkt. Nos. 44-4; 64-1.) Those assertions are irreconcilable with the Government's argument that NICS is not a "criminal justice entity." The Court finds the Government's assertion of a law enforcement privilege over NICS operating procedures constitutes an admission that NICS is a criminal justice agency.

The Government further contends that the Code of Federal Regulations prohibits NICS access to N-DEx by providing an exclusive list of databases to be used by NICS. (Dkt. No. 44-14 at 9.) The regulation referenced provides that NICS will, upon receipt of a background check request, "Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records." 28 C.F.R. § 25.6(c)(iii); (*see also* Dkt. No. 44-14 at 13 (confirming that is the regulation he referenced)). That regulation was written before N-DEx existed. *Compare* National Instant Criminal Background Check System Regulation, 63 FR 58303-01, 1998 WL 754140 (Oct. 30, 1998) *with* (Dkt. No. 44-14 at 9 (N-DEx was created in response to 9/11)). The Government's construction of the regulation ignores the plain meaning of "relevant databases" to construe a list of databases in a parenthetical, preceded by "i.e." and written almost twenty years ago, as

prohibiting access to a subsequently created, highly relevant database. The Court finds that argument wholly without legal merit.

A Department of Justice Inspector General's audit report, conducted to investigate the shortcomings of the FBI in Dylan Roof's unlawful acquisition of a firearm, states:

[A] check of the National Data Exchange (N-DEX), an FBI-developed repository of unclassified criminal justice records, would have revealed a prohibiting incident report for the alleged shooter [Dylann Roof], leading INSD [FBI Inspection Division] to recommend the FBI seek to identify and review additional database resources or stakeholders both internal and external to the FBI. FBI officials told us that its NICS Section would need law enforcement approval (by way of the Advisory Policy Board) and a regulation change (28 CFR Part 25) in order to access N-DEX to conduct firearm background checks.

Office of the Inspector General, U.S. Dep't of Justice, *Audit of the Handling of Firearms Purchase Denials Through the National Instant Criminal Background Check System* ii (2016). The purported need for a regulatory change is not credible for the reasons set forth above. The purported need for approval by the CJIS Advisory Policy Board (Dkt. Nos. 44-14 at 51; 44-25 at 35), likewise is not credible. The CJIS Advisory Policy Board was created by the FBI Director in 1994. FBI, *The CJIS Advisory Process*, <http://www.fbi.gov/services/cjis/the-cjis-advisory-process>. The Advisory Board makes recommendations to the Director of the FBI regarding "the philosophy, concept, and operational principles of various criminal justice information systems managed by the FBI's CJIS Division." 28 C.F.R. § 20.35(a). It does not have authority to deny an FBI division access to an FBI-managed criminal information database. *See* 28 C.F.R. § 20.35(d). The Court finds that the Director of the FBI has full authority to allow NICS examiners to access N-DEX. He could do this today.

The NICS SOPs contain many other limitations and restrictions that merit further review by the FBI Director in light of this tragedy. The NICS "one and done" approach to the request of information is not defensible, and there must be a mechanism to follow up if no response is

provided to an initial inquiry. Further, if the background check cannot be completed within three days, the NICS should do as it has promised the public and Congress but failed to do—continue its efforts to locate potentially critical information after the three day period. The system’s continued reliance on faxes is also dubious and outdated, and its prohibition of its examiners accessing general internet search engines seems hopelessly stuck in 1995. If more financial resources and staff are needed to complete the important task of performing background checks, and keeping firearms out of the hands of illegible people, the Director should be candid with Congress regarding the system’s needs and flaws.

The glaring weaknesses revealed in the background check system, however, are the function of distinct policy choices made by the FBI, not violations of specific legal standards. The United States is immune from Plaintiffs’ claims because such policy choices fall squarely within the discretionary function exception. The Government’s motion to dismiss based on the discretionary function exception is granted.

B. The Plaintiffs’ claims are barred by the immunity provisions of 18 U.S.C. § 922(t)(6)

The Court must note from the outset that the Government has blown hot and cold on the issue of whether the specific immunity provisions in the Brady Act, 18 U.S.C. § 922(t)(6), bars the claims of Plaintiffs. The issue was first raised by the Government in its reply brief, then abandoned at oral argument, and asserted again in post-trial briefs. (Dkt. Nos. 50-9; 69 at 63-64; 69 at 27-30). This change of positions is “a distasteful occurrence” and is “not to be encouraged,” *United States v. Wheeler*, 886 F.3d 415, 423 (4th Cir. 2018), but the Court is disinclined to find a waiver of congressionally mandated immunity. Plaintiffs fully briefed this issue and addressed it at the evidentiary hearing, and it is obvious to the Court that a claim of negligence in the operation of the NICS system resulting in a prohibited person obtaining a firearm falls plainly within the scope of the Government’s immunity.

Plaintiffs seek to avoid the immunity provision by arguing that this action is more like an attack on the operations of the agency, rather than the negligence of individual federal employees. This argument cannot survive minimal scrutiny. The Government cannot act other than through its employees. Their conduct gives rise to any negligence claim. Moreover, if this is actually an attack on the policies of the agency, rather than the conduct of individual employees, the claims necessarily are barred by the discretionary function exception. The Government's motion to dismiss based on immunity under 18 U.S.C. § 922(t)(6) provides a second and independent ground to support the Government's motion.

C. South Carolina Tort Law

Because the Court concludes it lacks subject matter jurisdiction over this case, it does not reach the Government's arguments under Rule 12(b)(6) for dismissal on the merits based on South Carolina's public duty rule and other issues of South Carolina tort law.

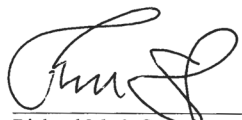
IV. Conclusion

The jurisdictional discovery conducted in this matter provided important information concerning how this tragic failure of the FBI's background check system occurred. The examiner's failure to obtain access to Roof's February 28, 2015 drug arrest incident report was critical. Important contributing factors to this failure includes the denial of access to NCIS examiners to the N-DEX database, the NCIS policy of making a single request for records with no follow up to local law enforcement agencies, and the prohibition against examiners using internet search engines to follow leads. Human error also contributed to this failure, including erroneous entries by the Lexington County Sheriff's Office into federal databases and the omission of the City of Columbia from the NCIS list of Lexington County law enforcement agencies. Perhaps the FBI, learning fully the details of the failure of its system in this tragic

series of events, will promptly take corrective steps to prevent a similar failure of the system in the future.

Despite clear evidence of system failures in the federal background check system, it is manifest that under the well-established standards of the FTCA and the specific immunity provisions contained in Brady Act provide the victims of this tragedy no remedy at law. In exceptional circumstances, Congress may authorize a private bill to provide for compensation to victims where there is no remedy at law. *See, e.g.*, Act for the relief of sixteen employees of the Charleston Naval Shipyard, Private L. No. 98-12, 98 Stat. 3419 (1984) (private bill sponsored by Sen. Strom Thurmond). This is ultimately a determination of Congress. This Court has set forth detailed factual findings that may be of some assistance to Plaintiffs if they wish to petition their Government for a private relief bill. The Government's motion to dismiss is granted.

AND IT IS SO ORDERED.


Richard Mark Gergel
United States District Judge

June 18, 2018
Charleston, South Carolina

Mr. RICE. What glares at you when you read this opinion is about a big omission in the background-check procedure. You see, the FBI maintains three criminal databases, and when they do a background check, for some reason, they only search two of those databases. And the third one is far more thorough and detailed, and it is called the N-DEx system.

I think the reason that they only search two is because, when we did the background-check law in the mid-1990s, the N-DEx system did not exist, and the inertia of the Federal bureaucracy does not allow for changes.

So, if they actually had searched the N-DEx system, they would have discovered that Dylann Roof, who ended up massacring these people in this church, should not have been able to buy a gun.

Now, the FBI will not give me information on other individual cases, but I also suspect that Mr. Cruz, who massacred the people in the Marjory Stoneman High School, would not have been able to buy a gun. In fact, the police had been to his house over 20 times, and I suspect, had they been able to search the N-DEx system, they would have found this, and he would not have been given a background permit.

Also, the individual who went into the church in Texas, who had had issues with domestic violence before, I suspect that if they had looked at the N-DEx system, he would not have been able to buy a gun.

The individual in Ohio who went into Dayton and started shooting downtown, he had had mental issues before. If they had looked at the N-DEx system, I suspect he would not have gotten a permit to buy a gun.

Now, I have a bill here that simply says that, when the FBI does a background check, that they may check the N-DEx system.

Too often when we see tragedies like this, in our immediate reaction, we try to go too far, and we can't find a solution that we can get across the line. There have been numbers of bills that have been put forth by folks on other side of the aisle that go too far. Therefore, nothing has happened; no bills have passed that would solve this problem.

The response by the folks on the left is, well, you know, Republicans don't want to do anything. I can tell you that pretty much everybody agrees that we need to do everything we can to keep guns out of the hands of the mentally ill. This is a very, very straightforward and simple solution.

This bill has 34 cosponsors, including 4 Democrats and 30 Republicans. In fact, Mr. Cohen on this Committee has cosponsored this bill.

This is a very commonsense solution that would have prevented most of these massacres. In fact, if we could prevent one, we could prevent copycats, right? I mean, people read about these things, and they want the notoriety.

So, let's stop pointing fingers. We have to realize we have to get a majority, right? We have to reach consensus. Let's do something we can get across the line.

This would be a real solution that would lift this Congress, that would lift the Federal Government, that would lift our constituents back home and make this country a safer place. This is a bill on

which we can find consensus, and it is real. It would solve a lot of these problems, these terrible tragedies that unfortunately unfold far too often.

With that, Mr. Chair, I yield back.

[The statement of Mr. Rice follows:]

**House Judiciary Committee
Member Day Hearing
October 22, 2021
Testimony by Congressman Tom Rice (R-SC)**

Chairman Nadler and Ranking Member Jordan,

Thank you for providing me the opportunity to testify.

On June 17, 2015, in my birthplace of Charleston, South Carolina, a man walked into a routine Bible study at Emanuel African Methodist Episcopal Church and opened fire with a handgun, killing nine people. I cannot imagine a more horrific crime. Following these vile murders, the families of the victims sued the federal government for allowing this monster to buy a gun. In this case, Charleston Federal District Court Judge Richard Gergel wrote a lengthy opinion in which he exposed the federal background check process and its failures in this circumstance.

As many of you know, when conducting a background check prior to purchasing a firearm, the National Instant Criminal Background Check System (NICS) queries four national data systems for records that could disqualify the applicant from receiving and possessing a firearm. Those are the Interstate Identification Index (III), the National Crime Information Center (NCIC), the NICS Indices, and immigration-related databases maintained by Immigration and Customs Enforcement (ICE). The first three of these systems are maintained by the FBI, but the FBI also maintains a fourth database, the National Data Exchange (N-DEx) system that as they say on their website “complements other well-known FBI systems.” While NICS was activated in 1998, N-DEx was not launched until 2008 and has not been utilized during NICS background checks.

According to Judge Gergel, if the NICS background checker had had the ability to utilize N-DEx, they would have been able to determine that the applicant was not permitted to obtain a firearm. The FBI already had the information that they were faxing local departments to receive. That information was in the N-DEx database, but they were not able to use it.

My bill, the 21st Century NICS Act, H.R. 1518, would close the Charleston Loophole. It would allow the NICS background checker to utilize N-DEx. When an applicant is flagged, the NICS background checker should have access to all four databases. This would not only prevent applicants who are not eligible to obtain firearms from owning them but would also allow those who are eligible to receive them quicker should they be wrongfully flagged. My bipartisan bill has 34 cosponsors, four of which are Democrats. Mr. Cohen, a member of this committee, is one of them. I hope this committee can support bipartisan gun reform.

The second bill I would like to discuss is the Relief for Seasonal Businesses Act, H.R. 4578. This would increase the yearly cap on seasonal H-2B workers to 350,000. Every year, I hear from constituents who need help getting H-2B workers. Every year, the cap is quickly hit and must be raised. This bill would provide a more permanent solution to this problem. We have raised the cap to the number of applicants that are received on a yearly basis so that the necessary

workforce is substantially filled. The second aspect of this bill is that returning workers would not be counted against the cap. H-2B workers are not immigrants – they come to the United States to fill much needed positions and then return to their homes. Businesses in my district are substantially hurt by the uncertainty they face every year applying for H-2B workers. As the hospitality in my district recovers from the pandemic, I urge you to take up this bill to provide them with a stable workforce for the future.

I would also like to mention Rep. Cuellar’s H-2B Returning Workers Exception Act, H.R. 3897. I am a cosponsor of this excellent bill that would ensure returning H-2B workers are not counted against the cap.

I hope the ideas I have outlined are among those your Committee and the House will consider as we move forward. Thank you for your time and attention to this matter. I look forward to our next steps.

Chair NADLER. The gentleman yields back.
Mr. Carter?

STATEMENT OF THE HON. EARL L. "BUDDY" CARTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. CARTER of Georgia. Thank you, Mr. Chair. I appreciate the opportunity to be here today and to share my priorities before the Judiciary Committee.

The work that you do on this Committee is incredibly important, especially now. It is no secret that we have a crisis currently on our southern border, and many Members of this body, including myself, have been down to see it firsthand. It is essential that we act.

That is why I have come to speak in support of two bills that would go towards addressing this disaster. It is a disaster. I have introduced two of these bills, and they were referred to this committee.

The first is H.R. 3848, the Illegal Immigrant Assistance Prohibition Act. As its name suggests, this bill would prohibit discretionary program funds from going to States that provide assistance to illegal immigrants.

While there are a number of carrots that draw people to come to the United States, it is uncontainable to incentivize people to come into the country illegally by providing taxpayer-funded assistance.

Illegal immigrants are already generally prohibited from Federal assistance programs by the Personal Responsibility and Work Opportunity Reconciliation Act. However, States can still provide assistance through their own programs funded by State taxes. This allows for the possibility of a State to use its own tax revenues on programs to assist illegal immigrants while simultaneously leaning on Federal funding for other programs in their budgets.

Recent examples of this kind of spending include California's initiative to provide cash benefits to undocumented Californians and New York's Excluded Worker Relief Fund that will allow for nearly 300,000 undocumented workers in the State to be eligible for lump-sum payments up to \$15,600.

Programs like this can be an attractive draw for someone to enter the United States illegally, which is contrary to Federal immigration policy. States should not be permitted to lean on Federal funding to subsidize parts of its budget while undermining the Federal immigration system. This is especially worrisome as we face a crisis along our southern border.

The second piece of legislation that I would like to discuss is H.R. 4796, the Empowering Law Enforcement Act. While my first bill addresses one of the carrots that attract illegal immigrants, this bill addresses the stick side of things by providing backup to Federal immigration enforcement officials who have been hamstrung by the Biden Administration.

Specifically, this bill would grant State and local law enforcement inherent immigration enforcement authority to investigate, identify, apprehend, arrest, detain, or transfer a migrant that has entered the U.S. illegally.

There were 208,887 border apprehensions in August, a 317-percent increase—317-percent increase—from last year. August was the second straight month with over 200,000 apprehensions. The Department of Homeland Security has warned officials to be prepared for the possibility of 350,000–400,000 illegal border apprehensions in October.

This is a national security threat, and we must be willing to use every policy option to stem the tide, including completing the border wall, reinstituting the “Remain in Mexico” policy, fully reinstituting title 42 health expulsions to protect public health. Passing both H.R. 3848 and H.R. 4796 would go a long way toward stemming this problem, this disaster, that exists at our southern border.

Again, Mr. Chair, thank you for the work that is done on this Committee. Thank you all for your attention on this. These are two important bills to address a disaster at our southern border.

People are concerned about this. This is a health issue. This is a national security issue. It is a humanitarian issue. I appeal to you to please consider these bills. They are important, they are applicable, and they are appropriate for this time.

Thank you, and I yield back.

[The statement of Mr. Carter of Georgia follows:]

Representative Earl L. “Buddy” Carter (GA-01)
Testimony
10/21/2021
House Committee on Judiciary Member Day Hearing

Member Day Testimony

- Thank you, Chairman Nadler and Ranking Member Jordan for having me here today to share my priorities before the Judiciary Committee.
- The work you do on this committee is incredibly important, especially now.
- It is no secret that we have a crisis along our Southern border, and many members -- of this body-- including myself— have been down to see it firsthand.
- It is essential that we act.
- That is why I’ve come to speak in support of two bills that would go towards addressing this disaster, which I have introduced and were referred to this committee.
- The first is H.R. 3848, the Illegal Immigrant Assistance Prohibition Act.
- As its name suggests, this bill would prohibit discretionary program funds from going to states that provide assistance to illegal immigrants.
- While there are a number of “carrots” that draw people to come to the United States, it is uncontainable to incentivize people to come into the country illegally by providing tax-payer funded assistance.
- Illegal immigrants are already generally prohibited from federal assistance programs by the Personal Responsibility and Work Opportunity Reconciliation Act.
- However, states can still provide assistance through their own programs funded by state taxes.
- This allows for the possibility of a state to use its own tax revenues on programs to assist illegal immigrants while simultaneously leaning on federal funding for other programs in their budgets.

- Recent examples of this kind of spending include California’s initiative to provide cash benefits to “undocumented Californians,” and New York’s “Excluded Worker Relief Fund” that would allow for nearly 300,000 undocumented workers in the state to be eligible for lump-sum payments up to \$15,600.
- Programs like this can be an attractive draw for someone to enter into the US illegally, which is contradictory to federal immigration policy.
- States should not be permitted to lean on federal funding to subsidize parts of its budget while undermining the federal immigration system. This is especially worrisome as we face a crisis along our Southern border.
- The second piece of legislation I’d like to discuss is H.R.4796, the Empowering Law Enforcement Act.
- While my first bill addresses one of the “carrots” that attract illegal immigrants, this bill addresses the “stick” side of things by providing backup to federal immigration enforcement officials who have been hamstrung by the Biden Administration.
- Specifically, this bill would grant state and local law enforcement inherent immigration enforcement authority to investigate, identify, apprehend, arrest, detain or transfer a migrant that has entered the U.S. illegally.
- There were 208,887 border apprehensions in August – a 317% INCREASE from last year, and August was the second straight month with over 200,000 apprehensions.
- The Department of Homeland Security has warned officials to be prepared for the possibility of 350,000 to 400,000 illegal border apprehensions in October.
- This is a national security threat, and we must be willing to use every policy option to stem the tide.
- Including completing the border wall, reinstituting the “Remain in Mexico” policy, fully reinstituting Title 42 health expulsions to protect public health, and passing both H.R. 3848 and H.R. 4796.

Chair NADLER. The gentleman yields back.
Mr. Keller?

**STATEMENT OF THE HON. FRED KELLER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. KELLER. Thank you, Chair Nadler, Congressman Gohmert, and Members of the Committee. I thank you for the opportunity to speak with you about an important issue for the people of Pennsylvania's 12th Congressional District and correctional officers across the Nation. It is about reforming the Federal Bureau of Prisons, as I will refer to as the "BOP."

The BOP faces many challenges, some that existed prior to COVID-19 and others that were underscored or made worse by the pandemic. That is why we formed the BOP Caucus, a bipartisan, bicameral group whose mission is to ensure the safety and security of our Federal prisons and improve the conditions for correctional officers, inmates, and the communities in which these facilities are located.

A recent GAO report found that the Bureau of Prisons did not capture or share Bureau-wide the lessons and practices discussed at its teleconferences or have an approach for ensuring facilities apply these lessons in the aftermath of COVID-19.

It is critical that Congress works to bring accountability and transparency within the BOP and holds BOP leadership accountable for their decisions.

Additionally, Congress must enact reform that improves the conditions inside Federal prisons. The BOP's security and radio systems remain obsolete, leading to an influx of contraband and violence.

In 2016, the Office of Inspector General at the Department of Justice published a report identifying major deficiencies and needed upgrades, including blind spots and broken cameras. This is unacceptable. That is why I support the Prison Camera Reform Act of 2021. Senator Ossoff is leading this effort in the Senate, and I look forward to working on similar legislation in the House.

Lastly, BOP's staffing levels continue to plummet while hiring freezes are occurring nationwide. BOP Reform Caucus Members, both Democrats and Republicans, worked to include appropriations language to increase staffing levels.

Despite language from the Appropriations Committee to provide adequate levels, the BOP has remained understaffed and has relied on augmentation and reassignment to make up for its shortfalls. These methods only add to the burdens placed on our correctional officers, the inmates they secure, and the surrounding communities. It is still unknown how excessive overtime hours and dangerous conditions for inmates contribute to officer fatigue.

What is clear from each of these efforts is the fact that we are here to work on these challenges together. I look forward to continuing to work on important issues such as ensuring adequate BOP staffing and improving benefits, ensuring strong implementation of the FIRST STEP Act, and streamlining the BOP's future response to emergencies.

I really appreciate the time that I have had here today. Our team is committed to bringing Republicans and Democrats together to work on meaningful, lasting reform.

With that, I thank you very much and yield back.

[The statement of Mr. Keller follows:]

GOOD MORNING CHAIRMAN NADLER, RANKING MEMBER JORDAN, AND MEMBERS OF THE COMMITTEE. IT IS A PLEASURE SPEAKING WITH YOU ALL TODAY ABOUT AN IMPORTANT ISSUE FOR THE PEOPLE OF PENNSYLVANIA'S 12TH CONGRESSIONAL DISTRICT AND CORRECTIONAL OFFICERS ACROSS THE NATION: REFORMING THE FEDERAL BUREAU OF PRISONS.

THE BOP FACES MANY CHALLENGES, SOME THAT EXISTED PRIOR TO COVID-19 AND OTHERS THAT WERE UNDERScoreD AND MADE WORSE BY THE PANDEMIC.

THAT IS WHY MY OFFICE FORMED THE BOP CAUCUS: A BIPARTISAN, BICAMERAL GROUP WHOSE MISSION IS TO ENSURE THE SAFETY AND SECURITY OF OUR FEDERAL PRISONS AND IMPROVE THE CONDITIONS FOR CORRECTIONAL OFFICERS, INMATES, AND THE COMMUNITIES IN WHICH THESE FACILITIES ARE LOCATED.

A RECENT GAO REPORT FOUND THAT BOP DID NOT CAPTURE OR SHARE, BUREAU-WIDE, THE LESSONS AND PRACTICES DISCUSSED AT ITS TELECONFERENCES OR HAVE AN APPROACH FOR ENSURING FACILITIES APPLY THESE LESSONS IN THE AFTERMATH OF COVID-19. IT IS CRITICAL THAT CONGRESS

WORKS TO BRING ACCOUNTABILITY AND TRANSPARENCY WITHIN THE BOP-AND
HOLDS BOP LEADERSHIP ACCOUNTABLE FOR THEIR DECISIONS.

ADDITIONALLY, CONGRESS MUST ENACT REFORM THAT IMPROVES THE
CONDITIONS INSIDE OF THEIR PRISONS. THE BOP'S SECURITY AND RADIO
SYSTEMS REMAIN OBSOLETE, LEADING TO AN INFLUX IN CONTRABAND AND
VIOLENCE.

IN 2016, THE OFFICE OF INSPECTOR GENERAL AT THE DEPARTMENT OF JUSTICE
PUBLISHED A REPORT IDENTIFYING MAJOR DEFICIENCIES AND NEEDED
UPGRADES WITHIN THE BOP'S SECURITY CAMERA SYSTEM, INCLUDING BLIND
SPOTS AND BROKEN CAMERAS. THIS IS UNACCEPTABLE. THAT IS WHY TODAY, I
EXPRESS MY SUPPORT FOR THE PRISON CAMERA REFORM ACT OF 2021.
SENATOR OSSOFF IS LEADING THIS EFFORT IN THE SENATE, AND I LOOK
FORWARD TO WORKING ON SIMILAR LEGISLATION IN THE HOUSE.

LASTLY, BOP'S STAFFING LEVELS CONTINUE TO PLUMMET WHILE HIRING FREEZES
ARE OCCURRING NATIONWIDE. BOP REFORM CAUCUS MEMBERS, BOTH
DEMOCRATS AND REPUBLICANS, WORKED TO INCLUDE APPROPRIATIONS

LANGUAGE TO INCREASE STAFFING LEVELS. DESPITE LANGUAGE FROM THE APPROPRIATIONS COMMITTEE TO PLUS UP STAFFING LEVELS, THE BOP HAS REMAINED UNDERSTAFFED AND HAS RELIED ON AUGMENTATION AND REASSIGNMENT TO MAKE UP FOR ITS SHORTFALLS.

THESE METHODS ONLY ADD TO THE BURDENS PLACED ON OUR CORRECTIONAL OFFICERS, THE INMATES THEY SECURE, AND THEIR SURROUNDING COMMUNITIES. IT IS STILL UNKNOWN HOW EXCESSIVE OVERTIME HOURS AND DANGEROUS CONDITIONS FOR INMATES CONTRIBUTE TO OFFICER FATIGUE.

WHAT IS CLEAR FROM EACH OF THESE EFFORTS IS THE FACT THAT WE ARE HERE TO WORK ON THESE CHALLENGES TOGETHER.

I LOOK FORWARD TO CONTINUING TO WORK ON IMPORTANT ISSUES SUCH AS INCREASING BOP STAFFING LEVELS AND IMPROVING BENEFITS, ENSURING STRONG IMPLEMENTATION OF THE FIRST STEP ACT, AND STREAMLINING THE BOP'S FUTURE RESPONSE TO EMERGENCIES.

OUR TEAM IS COMMITTED TO BRINGING REPUBLICANS AND DEMOCRATS
TOGETHER TO WORK ON MEANINGFUL, LASTING REFORM. I LOOK FORWARD TO
WORKING WITH BOP LEADERSHIP AND MY COLLEAGUES IN CONGRESS AS WE
STAND UNITED TO IMPROVE TRANSPARENCY, ACCOUNTABILITY AND
OPERATIONS AT THE BOP.

Chair NADLER. The gentleman yields back.

This concludes today's hearing. We thank all our Witnesses for participating.

Without objection, all Members will have 5 legislative days to submit additional materials for the record.

Chair NADLER. Without objection, the hearing is adjourned—just in time, because there are votes on the floor.

Adjourned.

[Whereupon, at 10:30 a.m., the Committee was adjourned.]

APPENDIX

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SUBCOMMITTEES:
COURTS, INTELLECTUAL PROPERTY AND THE INTERNET
IMMIGRATION AND BORDER SECURITY
HOMELAND SECURITY
SUBCOMMITTEES:
RANKING MEMBER
BORDER AND MARITIME SECURITY
TRANSPORTATION SECURITY
SCHOOL VIOLENCE
DEMOCRATIC CAUCUS



CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

**STATEMENT BEFORE THE
COMMITTEE ON THE JUDICIARY**

MEMBER DAY HEARING

OCTOBER 22, 2021

- As a Senior Member of this Committee, and Chair of the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, I would like to thank Chairman Nadler for his ongoing leadership and fearless championing on issues of vital import to the America people.
- I appreciate the opportunity to engage with all members of this Committee once again, and to advocate further for all Americans as we move forward to fix our criminal justice system and address the scourge of gun violence.
- There are four immediate items that I encourage this committee to address.

- First, earlier this year I introduced H.R. 5455, the “*Terry Technical Correction Act*,” which is a bipartisan and bicameral which clarifies that all offenders who were sentenced for a crack cocaine offense before the *Fair Sentencing Act of 2010* can apply for its retroactive application under Section 404 of the *First Step Act*.
- This bill is a response to the recent Supreme Court case which addressed whether low-level offenders should get reduced sentence under First Step Act.
- The Court refused to do so because the First Step Act did not make the Fair Sentencing Act retroactive for low level offenders.
- Earlier this year in *Terry v. United States*, the Supreme Court held that low-level crack offenders, whose conduct did not trigger a mandatory minimum penalty, do not qualify for resentencing under Section 404 of the *First Step Act*.
- The effect of this holding is that individuals convicted of the offenses with the lowest levels of crack cocaine are not eligible for retroactive relief, whereas other offenders are.
- The *Terry Technical Correction Act* reaffirms Congress’s intent to provide retroactive sentencing relief to all individuals convicted of crack cocaine offenses before the *Fair Sentencing Act* took effect, including individuals convicted of the lowest level crack offenses.
- As the Supreme Court noted in *Terry*, I have worked to address the sentencing disparity between crack cocaine and powder cocaine offenses since 2007.
- I am proud that this bipartisan legislation is one more step in our efforts to correct a disparity that has damaged communities of color for generations and stolen years from thousands of individuals and their families.
- Second, I have long worked to reform our broken criminal justice system so that individuals receive equal justice and those incarcerated

receive the treatment, counseling, and support necessary to reenter society without and to reduce recidivism.

- H.R. 4200, the *Residential Substance Use Disorder Treatment Act of 2021*, contributes to each of these objectives by enhancing the capabilities of states and units of local and tribal governments to provide residential substance abuse treatment for incarcerated inmates; preparing inmates for reintegration into a community by incorporating reentry planning activities into treatment programs; and assisting offenders and their communities through the reentry process by delivering community-based treatment and other broad-based aftercare services.
- Specifically, under H.R. 4200, the Residential Substance Use Disorder Treatment Program administered by the Department of Justice is reauthorized for the next five years at \$40 million annually, while making significant improvements to the program, including:
 - encouraging and supporting the expansion of clinically appropriate use of overdose reversal medications and medications for addiction treatment;
 - allowing treatment programs to enroll pretrial detainees;
 - requiring all treatment services to adhere to established clinical standards; and,
 - requiring the appropriate medical personnel in a Residential Substance Use Disorder Treatment funded prison or jail to complete training on clinical issues related to the treatment of addiction in an incarceration setting.
- I am gratified to be joined in this effort by a broad-based national coalition mental health, law enforcement, and criminal justice organizations, including the American Jail Association; Correctional Leaders Association; Major County Sheriffs of America; National Alliance on Mental Illness; National Association of Counties; National Association of Drug Court Professionals; National Criminal Justice Association; National District Attorneys Association; National League of Cities; and the National Sheriffs' Association.

- Third, I encourage this Committee to consider the “*Smarter Sentencing Act*,” which will reduce mandatory minimum sentences for drug trafficking and some importation offenses.
- Specifically, this legislation would:
 - Reduce by about half the mandatory penalties for people convicted of drug trafficking (i.e., 5-, 10-, and 15-year sentences would become 2-, 5-, and 10-year sentences);
 - Reduce by half or more the mandatory penalties for drug couriers convicted of drug importation (i.e., 5-, 10-, and 20-year sentences would become 2-, 5-, and 10-year sentences);
 - Direct the U.S. Sentencing Commission to conform its guidelines with this reform;
 - Direct judges to hear motions from people currently serving applicable sentences, and give the judges power to issue new, reduced sentences under the new law;
 - Require the Attorney General to submit a report on how cost savings from having fewer people in prison can be better invested in other public safety measures; and
 - Require the Attorney General and federal agencies to submit a report to Congress and create a public database outlining all federal criminal offenses, their potential penalties, and the number of recent prosecutions.
- For decades, drug offenses have created dilemmas for the United States' criminal justice system.
- Not all drug crimes are created equal, but with laws in place now, some non-violent drug offenders can face long-term consequences that may impede on their recovery.
- This bill is designed to allow judges to make a sentence fit the crime; while it may not change whether people go to jail, it can change how long they stay there.
- We have attempted a one-size-fits-all method for decades, and it has simply not worked.

- A judge presiding over a courtroom who is in contact with the defendant and who understands the nature and circumstances of the crime is in the best position to determine fairness to both society and the defendant.
- Finally, it is my hope that this Committee will soon consider the “*Juvenile Justice First Act*,” which will reform many of the issues that plague our juvenile justice system.
- Seeking reform requires changing minds and hearts, and that is not always an easy task, but the reform of juvenile justice is not impossible.
- We must take into consideration, childhood trauma and its impact on an already underdeveloped brain when prosecuting, punishing, and incarcerating our youths.
- We must listen to the science, which has shown that adolescence is a distinct development stage that lasts from the mid-teen years into the mid-twenties.
- It tells us that during that time, brains continue to mature and develop throughout childhood and adolescence and well into early adulthood.
- According to ACLU, research has shown that solitary confinement can cause extreme psychological, physical, and developmental harm, resulting in persistent mental health problems or even suicide.
- As such, adolescents do engage in behaviors that are risky and sometimes dangerous.
- The Supreme Court recognize this fact as demonstrated in its line of landmark cases from *Roper v. Simmons*, to *Graham v. Florida*, *J.D.B. v. North Carolina*, *Miller v. Alabama*, and *Montgomery v. Louisiana*, when determining the legal culpability of juveniles facing life without parole sentences.
- Although the conservative majority stated in *Jones v. Mississippi* that it does not overrule *Miller*, this deviation from precedent is a clear reminder

that we must remain committed to enacting legislation that addresses juvenile life without parole effectively.

- The United States stands alone as the only nation that sentences people to life without parole for crimes committed before turning 18.
- Congress has much work to do in addressing this and other issues like juveniles in adult facilities, age appropriate prosecutions, reentry, fines and fees, probation, status offenses and solitary confinement.
- Thank you, I yield back my time.

**House Judiciary Committee
October 21, 2021
Member Day**

Thank you, Chairman Nadler for hosting Member Hearing Day today.

I proudly sponsored the bipartisan H.R. 2923, the Energy Security and Lightering Independence Act of 2021, which will help ensure the continued safe operation of energy liquid-cargo lightering vessels transiting in our ports.

This is because current law does not allow the U.S. State Department to issue visas that exceed a 29-day period while lightering crew work aboard these vessels—those key workers that physically manage the transfer of liquid products from “lighter” ships that operate shallower waters to much larger oceangoing vessels, and vice versa—may range between 60 to 180 days in their crew rotation.

To align with real-world industry norms more closely, the bill authorizes visas of up to 180 days for liquid lightering workers.

Otherwise, the disconnect between the current crewmember visas and their typical employment contracts threatens to leave lightering vessels short-staffed, disrupting both domestic oil exports and the critical feedstock imports for America's refiners and petrochemical industries.

Lightering is vital to the U.S. refining industry and accounts for nearly 50 percent of all crude and natural gas imports into and exports in Texas and the U.S. Gulf Coast.

I look forward to having this legislation come before the Judiciary Committee to make much needed changes so crews of these lightering vessels remain healthy so that these vessels may operate safely and efficiently.

I'm also a proud sponsor of the Virtual Naturalization Act of 2021 (VNA), and I thank Chair Lofgren for co-leading this essential legislation.

For the hundreds of thousands of lawful permanent residents seeking to become U.S. citizens each year, the oath of allegiance—typically administered at an in-person ceremony—is the last step to becoming a U.S. citizen.

When U.S. Citizenship and Immigration Services was forced to suspend in-person services during the early days of the COVID-19 pandemic, citizenship ceremonies were canceled for thousands of individuals whose applications for naturalization had been approved.

Without any procedures to administer naturalization oaths remotely, many individuals were left in limbo for months, unable to complete the citizenship process.

My bill directs the Secretary of Homeland Security to establish procedures to administer remote oath ceremonies.

The bill also makes changes to the Immigration and Nationality Act to clarify that a remote oath ceremony is a permissible alternative to an in-person ceremony, and makes technical changes to

ensure that the Secretary of Homeland Security can administer such oaths and deliver certificates of naturalization efficiently.

Lastly, I applaud President Biden's recent decision to stop the detention of pregnant, nursing, and postpartum migrant women by ICE.

The previous administration's decision to engage in these abhorrent practices was part of a larger anti-refugee, anti-immigrant campaign of cruelty that we are glad to see come to an end.

But while this recent decision by the Biden administration is commendable and welcomed, it is limited and can unfortunately be easily reversed by any future administration.

This is why Senator Patty Murray and I reintroduced the bicameral Stop Shackling and Detaining Pregnant Women Act.

As a Member of Congress, I have a responsibility to ensure that we do everything in our power to protect those who seek refuge in the United States from cruelty and mistreatment.

We need permanent protections that apply to all border law enforcement agencies—not just ICE—to protect pregnant women at every step of the way.

That is why I call on Congress to take swift action and bring this legislation to President Biden's desk to codify protections for present and future migrant people.

Thank you again to this distinguished committee for the opportunity to share the importance of taking up these critical pieces of legislation.

Thank you, I yield back.

Good morning Chairman Nadler, Ranking Member Jordan, thank you for the opportunity to highlight issues of great concern to my constituents in North Carolina.

As you know, this committee has jurisdiction over several areas that are crucial to the safety and wellbeing of all Americans. From immigration to gun rights to the wellbeing of our troops, it is important that we get these policies right.

I believe the most pressing issue facing this committee is the crisis at the Southern Border. Since President Biden took office, a record shattering [1.7 million illegal immigrants](#) have been captured at the border. In August, border agents encountered 208,000 migrants, up from just 50,000 in August 2020. I have cosponsored several bills to restart construction on the border wall, codify the Remain in Mexico policy, require E-Verify before hiring workers, and extend Title 42 expulsions. These policies are crucial to regaining operational control of the border and removing incentives for illegal immigration.

In addition, Senator Thom Tillis and I introduced the Justice for Victims of Sanctuary Cities Act. This bill makes sanctuary states and cities pay for their dangerous refusal to enforce the rule of law. While this bill provides compensation to victims of crimes committed by illegal immigrants, it cannot undo the harm. Only Congress can act to stop these preventable crimes. Unfortunately, President Biden and far too many Congressional Democrats are not willing to consider any of these solutions. Preventing these human tragedies should be a bipartisan priority, so I hope that all of my colleagues will reconsider their support for open borders.

This committee also plays an important role in pushing back on executive overreach, especially President Biden's unconstitutional executive orders on gun rights. I have already cosponsored one bill on this subject, the PISTOL Act, and plan on introducing my own bill once the ATF's proposed regulations are finalized. Beyond executive overreach, I also support several bills that expand gun rights in cases where Congress has gone too far. I support repealing outdated regulations that have made it harder for gun makers to innovate their designs for home defense and competitive shooting applications.

In addition, I support my friend and district neighbor Richard Hudson's Concealed Carry Reciprocity Act. I believe that any one of my constituents who have gone through North Carolina's extensive concealed carry licensing process should be able to exercise their rights across our nation.

Finally, I want to highlight a bill that will help correct a persistent problem for service members that were stationed in North Carolina. From the 1950s through the 1980s, thousands of Marines and their families at Camp Lejeune used government-provided tap water that was contaminated with harmful chemicals. Due to a unique provision in North Carolina law, these families cannot use the Federal Tort Claims Act to be made financially whole in court. The Camp Lejeune Justice Act creates a limited federal cause of action to compensate these affected service members and their families. I am proud to stand with Congressmen Cartwright, Murphy, and Price on this bipartisan legislation. I am hopeful this committee will consider this important bill in the near future.

Thank you again for the opportunity to share my concerns today. I yield back.

**Congressman Michael C. Burgess, M.D.
House Committee on the Judiciary Member Day
October 22, 2021**

I would like to thank Chairman Nadler and Ranking Member Jordan for holding this member hearing today. I am here to request changes to our immigration laws to deter unauthorized entry and improve enforcement.

Due to the immigration policies put in place by President Biden's Administration, we are experiencing a crisis at our southern border greater than we've seen in the last 20 years. Customs and Border Patrol has encountered almost 209,000 individuals attempting to cross our southern border without authorization in August alone. For fiscal year 2021, over 1.5 million individuals have been encountered along our southern border so far.

Since 1997, an agreement known as the *Flores Settlement* has prevented children from being held in immigration detention for more than 20 days regardless of whether they arrived with parents or as unaccompanied minors. As a result, children are required to be released but their parents are not. During the Obama administration, and now during the Biden Administration, this has led to “catch and release” whereby immigrants without proper documentation for entry are apprehended and then released into the interior of the United States. Unfortunately, many of these individuals never show up for their future court appointments to adjudicate their immigration cases.

In July, I introduced a Resolution of Inquiry (ROI) to request information on the care of unaccompanied alien children from the Departments of Health and Human Services and Homeland Security.

For over a year, House Democrats have blocked the use of ROIs, citing COVID-19 as an excuse for turning off procedural changes and the 14-day committee markup requirement.

The disgusting reality is that these children are being used as pawns. Smugglers, traffickers, and foreign banks are profiting while enticing hopeless people into sending their children to make the dangerous journey to unlawfully cross our southern border. These bad actors know how to manipulate our laws to their advantage. They coach those without proper documentation on what to say to our border agents in order to claim asylum. This is not only fraudulent, but it also harms those with real asylum claims.

In addition, the Biden Administration has not thoroughly vetted employees and contractors working in Office of Refugee Resettlement shelters and has ceased fingerprint background checks on potential sponsors of unaccompanied children. Congress must be able to conduct oversight to prevent further mistreatment of an already vulnerable population.

Many who seek to come to the United States do so without authorization because they believe we will eventually give them legal status. Most Americans can agree that our immigration system is broken. We have a crisis at the southern border, whether the Administration wants to admit it or not. It is past time to stop demonizing those who seek to enforce our laws along our southern border.

The first step to halting this crisis is to ensure our law enforcement has the resources and capacity to deter illegal entry and activity along our southern border, and to fully enforce our existing laws.

To that end, I request that the Judiciary Committee conduct rigorous oversight over enforcement of our immigration laws. In addition, the House must pass legislation closing the *Flores Settlement* loophole and strengthening our asylum laws, including specific and up-to-date qualifying criteria, to prevent fraudulent cases. Thank you for your consideration of these requests.

I yield back.

The Honorable Salud Carbajal
Representative for California's 24th Congressional District
House Committee on Judiciary Member Day Hearing Testimony

Chairman Nadler, Ranking Member Jordan, and Members of the Judiciary Committee,

Thank you for holding this Member Day hearing today. I appreciate the opportunity to speak about some of my priorities, especially around immigration that you have jurisdiction over. I am grateful for the work the Committee has already done in shepherding passage of the American DREAM and Promise Act, the Farm Workforce Modernization Act, and holding hearings to examine our current immigration policies to reflect our nation's current needs.

While the change in Administration has brought some relief from the zero-tolerance policies that separated families in the previous Administration, we still have much work ahead of us to create a fair immigration system that reflects our values, invest in smarter border security, and keeps families together.

My father immigrated to this country and worked as a farmworker picking specialty crops in Oxnard, California. He instilled in me the value of hard work, and showed me that if you work hard and play by the rules, you can get ahead. As a teenager picking lettuce, onions, and other crops during my summers, I never would have thought that I would one day be a sitting Member of Congress. Nevertheless, I have the opportunity to advocate that we continue to build these ladders of opportunity so others that want to provide a better life for their families can fulfill their American Dream. That is why I was proud to co-lead the effort with Subcommittee Chair Zoe Lofgren to pass the Farm Workforce Modernization Act. And while, we have made significant progress in the House and ensured bipartisan support for this legislation, I urge all the Member of this Committee to continue to support the legislation

But, I also want to bring attention to another issue of utmost importance. That is the issue of separating military families due to how broken our current immigration system works. Our servicemembers who have risked their lives to serve our country and sacrificed so much already deserve our respect and support. Instead, many have been separated from their families due to our current immigration system. There are too many stories of servicemembers from our country who have experienced having their families being torn away due to laws that prevent their parents from living in this country. That is why I have introduced H.R. 454—the Protect Patriot Parents Act. This bill would make parents of military servicemembers eligible to apply for lawful permanent residency.

Unfortunately, this legislation was inspired by the story of my constituent, Cesar Flores, an active-duty member of the U.S. Air Force, whose mother, Juana Flores, was cruelly ripped from him, his daughter, and the rest of his family. Cesar served our country, but our country, in that instance, did not serve him.

While actively serving in the U.S. Air Force, he suddenly had to worry about his mother's well-being after being removed to a country she hasn't called home in over two decades. As a veteran and immigrant, myself, I find it immoral that a person could sign up to serve this country, putting their life on the line, only to come back to a home without their family. This is why I think it is important that this Committee take up my legislation, H.R. 454—the Protect Patriot Parents Act.

Our servicemembers deserve our gratitude and admiration for serving our country. And their families deserve to remain together, not apart. We have a civic responsibility to protect our servicemembers and citizens, their families, and to prevent families from unnecessary suffering because of archaic laws.

As policymakers, it is also upon us to make our immigration system fair. Holding a hearing on the Protect Patriot Parents Act would be an important first step towards this goal.

Thank you for the opportunity to provide testimony and I look forward to working with the Committee on passing legislation to address these issues.

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Testimony of Representative Andrew S. Clyde
House Committee on the Judiciary
Member Day Hearing
October 22, 2021

Chairman Jerrold Nadler and Ranking Member Jim Jordan:

Thank you for allowing me this opportunity to share with you my policy priorities for the Judiciary Committee in the 117th Congress, which includes three bills I have introduced and that have been referred to your committee for consideration – H.R. 1787, H.R. 2076, and H.R. 3965.

Let me begin by saying that I represent a predominately rural district in Northeast Georgia that is comprised of residents who are fervent believers in the rule of law, federalism, and the limited powers vested in the Federal government via the U.S. Constitution. As a retired U.S. Navy Officer and having served law enforcement agencies for almost 30 years, I share my constituents' belief that a limited Federal government works for the people. Checks and balances are required to ensure that neither the Federal government's footprint nor scope exceed the bounds of the Constitution. We, as lawmakers, swore an oath to do just that, more specifically, we made a promise to the American people that we will "support and defend the Constitution of the United States against all enemies, foreign and domestic" and that we will "bear true faith and allegiance to do the same."

Unfortunately, my constituents have witnessed the 117th Congress and the Biden Administration violate multiple promises made to uphold the Constitution. Between the current Administration's willful and flagrant ignorance of our nation's immigration laws that has resulted in more than 1.2 million illegal migrants apprehended at the southern border since February 1, 2021, the White House's decision to knowingly disregard the Supreme Court's determination regarding the unconstitutionality of the Centers for Disease and Control's Eviction Moratorium, and the White House's clear intent to weaponize the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) against law-abiding gun owners who have a right to keep and bear arms as enshrined by the Second Amendment, I'm constantly hearing from constituents that they feel as if the very people entrusted to protect the Constitution are more keen on tearing it down than they are in upholding it. And it is truly telling that this view is held by not just my constituents, but also by so many Americans across the country.

I believe the Judiciary Committee has a unique role to play in restoring Americans' faith in our Federal government, and it is that faith in the Committee's unique role that compelled me to participate in the Committee's Member Day Hearing and to bring to your attention bills I have introduced that would make our government work in the best interest of the people, not against them. Those bills are as follows:

1. H.R. 1787, the Ensuring Second Amendment Freedoms are Executed Timely Act, also known as the ‘Ensuring SAFE-T Act,’ was introduced on March 11, 2021, and has been solely referred to the Judiciary Committee for consideration.

In short, H.R. 1787 would move the needle towards fully restoring Second Amendment rights to all Americans as it seeks to prevent the government from delaying law-abiding gun owners from purchasing a firearm. As it stands, current law requires a licensed federal firearm dealer to wait three *state government business* days after contacting the National Instant Criminal Background Check System before they can transfer a legally purchased firearm to a buyer. My legislation would change the requirement from three *state government business* days to three *calendar* days by adjusting language in Section 922(t)(1)(B) of Title 18 of the United States Code.

By changing the requirement to three calendar days, the ‘Ensuring SAFE-T Act’ makes sure the government cannot drag its heels in processing NICS checks. During the pandemic, I saw first-hand how the closure of state government offices across the country easily infringed upon our right to keep and bear arms. With these offices closed, or purported closed, three business days can turn into weeks or even months before a firearm transfer is completed.

No matter the circumstances, Second Amendment rights do not pause for the whims of bureaucrats. The ‘Ensuring SAFE-T Act’ will make sure no law-abiding U.S. citizen will be denied their right to keep and bear arms just because a government office isn’t open.

2. H.R. 2076, the COVID-19 Border Protection Act, commonly referred to as the ‘CBP Act,’ was introduced on March 19, 2021, and has been referred to Judiciary, Homeland Security, and Foreign Affairs for consideration. H.R. 2076 is a bipartisan piece of legislation that has the support of Ranking Members Jordan, Katko, and McCaul.

As previously noted, the Administration refuses to adhere to our immigration laws, and as a result, our nation has watched a humanitarian crisis unfold along our southwest border that has undoubtedly been exacerbated by the COVID-19 pandemic. Reports have stated that thousands of migrants released by CBP have tested positive for COVID-19. In August, the city of McAllen, Texas stated that more than 7,000 COVID-positive migrants have been released into their town since February.¹ The city of Laredo, Texas recently said that 40% of migrants who have bussed in have tested positive for COVID-19.² These cities have stated that they lack the authority to force these migrants who plan to travel throughout the country to quarantine, only the Federal government can. The inability to identify migrants who have tested positive, and quarantine them, presents additional challenges to the migrant crisis.

¹Melugin, Bill, Shaw, Adam, “Texas border city says more than 7,000 COVID-positive migrants released since February, 1,500 in last week,” 2021 August 04, Fox News, <https://www.foxnews.com/politics/texas-border-city-covid-positive-migrants-released-february-last-week>.

²Giaritelli, Anna, “Forty percent of migrants released in Texas border city test positive for COVID-19, officials say,” 2021 August 11, Washington Examiner, <https://www.washingtonexaminer.com/news/texas-city-officials-40-of-migrants-test-positive-for-covid-19>.

For these reasons, I introduced the bipartisan H.R. 2076, the COVID-19 Border Protection (CBP) Act. This legislation requires the Department of Homeland Security, in consultation with Health and Human Services, to develop a comprehensive strategy to test migrants that are encountered by DHS and HHS officials at the border and quarantine those who test positive. The bill also repurposes \$100,000,000 from the American Rescue Plan Act to ensure that DHS can effectively implement this strategy. These funds were originally designated for multilateral international assistance programs, including the United Nations' Global Humanitarian Response Plan for COVID-19.

I wholeheartedly believe we must do everything in our power to protect our constituents from unnecessary exposure. This legislation is a critical first step in ensuring that these migrants are not infecting more Americans with this deadly disease.

3. H.R. 3965, the Standing Against Houthi Aggression Act, was introduced on June 17, 2021, and has been referred to the Judiciary and Foreign Affairs Committees for consideration.

As you know, Yemen has been engaged in a civil war since 2014. After a failed nationwide attempt to reconcile political differences, the Houthis launched a bloody campaign against the government and seized large swaths of Yemen. To date, over 200,000 people have been killed in Yemen's civil war and 80% of Yemen's population — need humanitarian assistance, but only a fraction of them will receive aid.³ Further exacerbating the crisis is the Iran-backed support of the Houthis, which has allowed Iran to expand its influence by proxy throughout the region.

In January 2021, the Trump Administration formally designated the Houthis as a foreign terrorist organization, and in doing so, then-Secretary of State Mike Pompeo cited attacks targeting civilians as the rationale for the designation. President Biden's Secretary of State, Antony Blinken, rescinded this designation in February 2021 to allow peace negotiations to take place. Sadly, those negotiations have only led to more violence. On June 4th, the Special Envoy for Yemen at the State Department admitted the failures of these negotiations when they stated:

“While there are numerous problematic actors inside of Yemen, the Houthis bear major responsibility for refusing to engage meaningfully on a ceasefire and to take steps to resolve a nearly seven-year conflict that has brought unimaginable suffering to the Yemeni people. Instead, the Houthis continue a devastating offensive on Marib that is condemned by the international community and leaves the Houthis increasingly isolated.”⁴

For these reasons, I introduced H.R. 3965, a bill to reinstate the sanctions that the Trump Administration placed on the Houthis and to redesignate the group as a foreign terrorist

³ Sharp, Jeremy M., Rennack, Diane E., Margesson, Rhoda, Rollins John W.; Yemen: Recent Terrorism Designations, 29 January 2021; CRS;

<https://www.crs.gov/Reports/IN11585?source=search&guid=0e9585349a5946e98e4145ec1329fb2b&index=0>.

⁴ State Department; U.S. Special Envoy for Yemen Lenderking Returns from Travel to Saudi Arabia, Oman, the UAE, and Jordan; 4 June 2021; <https://www.state.gov/u-s-special-envoy-for-yemen-lenderking-returns-from-travel-to-saudi-arabia-oman-the-uae-and-jordan/>.

organization. To achieve lasting peace in Yemen and promote regional stability, we must act against the Houthis.

While I encourage the Judiciary Committee to take up and consider all three of my bills that have been referred to the Committee, I kindly ask the Committee to give prompt consideration to H.R. 2076. That's because Judiciary is the primary Committee of referral, and we must act in a timely manner to identify and quarantine COVID-19 positive illegal migrants who are being transported into the interior of our great nation and are jeopardizing the hard work and investments made by local communities to slow the spread of the virus so they can return to pre-pandemic operations.

Urgent attention to this matter is in order as the Homeland Inspector General recently detailed in a report that the Department's failure to mitigate the spread of COVID-19 poses a threat to our nation's security.⁵ This report comes after Secretary Mayorkas admitted to me earlier this year in a hearing held by the Homeland Security Committee that untested migrants were being released into the country.⁶

What's more, we currently impose greater requirements on American citizens and foreign nationals who are legally entering at points of entry to prove that they are not carriers of the virus than we do those who are entering our country illegally at the southern border. Illegal migrants should not be held to a different standard than American citizens, visa holders, and foreign nationals. This is not a partisan issue, but rather an issue that Republicans and Democrats should be able to work together on to solve this problem that poses an immediate threat to communities across the country and that undermines our border enforcement operations.

Again, I urge the Judiciary Committee to take up and consider H.R. 2076 so that we may work to move the bill through the legislative process promptly and to the floor for a vote in a timely manner to address the ongoing crisis at the southern border and put an end to the disparity in COVID-19 testing requirements to enter the country.

To that end, I thank the Committee for allowing me this opportunity to testify and I look forward to seeing the solutions members of the Judiciary Committee put forward to address the myriad challenges that face our great nation.

Thank you.

Andrew S. Clyde

⁵ Office of the Inspector General of the Department of Homeland Security, "DHS Needs to Enhance Its COVID-19 Response at the Southwest Border," 10 September 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-60-Sep21.pdf>.

⁶ Rep. Clyde questions DHS Secretary Mayorkas about testing migrants caught at the border for COVID-19. YouTube; Posted March 17, 2021. <https://youtu.be/rfL-xATHXbQ>.

October 22, 2021

Written Testimony of Congressman Rick Crawford of Arkansas's First Congressional District
House Committee on the Judiciary
Member Day Hearing

I write today to bring attention to and underscore a couple of initiatives and concerns that I have been particularly keen on addressing.

Above all, one of the United States' main adversaries is the growing power and influence of Big Tech. Obviously, Big Tech and social media has propelled the partisan divide we are seeing today in our federal government and in our society. It is not the only source, but it is nonetheless a powerful source where access to information is skewed and questionable. This is all the more true as Big Tech gatekeepers are increasingly threatening Americans' access to quality local journalism. Not only are large platforms such as Google, Facebook, and Twitter posing major threats to advertising revenues, they exert power over what internet users access and how advertisers reach them.

Local radio and TV stations invest significant resources to keep Americans informed about critical events nationally, and within their local communities. Local media outlets provide firsthand accounts through investigative journalism and factual reporting to provide the most trusted news to communities. In the age of misinformation, this proves an important utility to Americans that are wary of the type of information we disseminate on mainstream media outlets and social media platforms.

Local media broadcasters rely almost entirely on advertising revenues to produce and support local news. Tech giants exert incredible influence on what online content is eligible to be monetized. Big Tech also controls the share of revenue they retain from content providers, who end up bearing the costs of producing the quality journalism that financially benefits Big Tech. Local broadcasters lose nearly \$2 billion annually in advertising revenue by providing content to Google and Facebook news searches alone.

It is not only financially that local broadcasters are affected by Big Tech, but they are also affected by Big Tech algorithms that change search results, favor certain news sources, and steer readers toward controversial, politically motivated content instead of factual journalism. Additionally, Big Tech closing in on local journalism, causing many to be bought out, merge, or run out of business, undoubtedly cripples the job market.

There is little power to negotiate with Big Tech for local broadcasters because the choice remains between publishing their content on large media outlets to hundreds of millions of consumers or be left to rot. Big Tech's own advertising revenue in the world space is sufficient to be able to negotiate advertising revenue shares with local media outlets and help keep them afloat. That is why I support H.R. 1735, the Journalism Competition and Preservation Act (JCPA) to create a four-year safe harbor from antitrust laws for print, broadcast, or digital news

companies to collectively negotiate with Big Tech regarding the terms on which the local news outlets' content may be distributed by online content distributors.

Personally, I have a background in agri-news reporting and broadcasting before getting into politics. When Big Tech wins, local communities lose. The JCPA will go a long way to preserving these important local media outlets while cutting back on the rising influence of Big Tech and their lack of empathy for misinformation and their global dominance over the content we view.

Another pressing issue before the Committee today is the national security crisis at our southern border. It is unfathomable that an all-time high of over 1.7 million apprehensions have already been made at the U.S.-Mexico border this year, but the Biden Administration continues to neglect its responsibilities. We must start chipping away at the border crisis, as it is a national security crisis as much as it is an immigration law and processing crisis.

Millions of Americans have entered the country the legal way and endured the grueling process to become American citizens. I recognize that our immigration system is broken and backlogged by its own inefficiency. Currently there are over 1.4 million pending cases in immigration court that each take an average of just over a year to be processed. We spend a little over \$3 billion per year on detention centers. This results in immigration courts weighed down by compounding cases and exorbitant amounts of taxpayer dollars used to sustain defendants as they wait in line to become American citizens.

We must address and fix this backlog, specifically beginning with the capacity of USCIS processing. Because immigration courts are Article I courts, the Attorney General has the authority to change entry requirements at a moment's notice. Therefore, Congress and the AG must work to solidify a process with clearer entry requirements and to afford USCIS and the immigration courts the resources to work more diligently.

Immigration law certainly is complicated, but it doesn't have to be. If there was a succinct system to vet and review foreigners who wish to enter the U.S. and become citizens, it would likely reduce the number of immigrants attempting to cross the border illegally. Until we receive President Biden and the Democrats' commitments to work with Republicans on this issue, while concurrently addressing the national security crisis at our southern border, our immigration courts and processing standards will remain backlogged and broken.

The issues of Big Tech influence and the national security crisis at our southern border and in our immigration courts, are some of the most important issues facing our nation today, and I remain committed to working with the Committee and my colleagues on solving these issues for the betterment of all Americans. These issues are contentious, but they don't have to be.

I thank you for allowing this submission of testimony.

ASHLEY HINSON
1st DISTRICT, IOWA

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COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES
TRANSPORTATION, AND HOUSING AND
URBAN DEVELOPMENT, AND RELATED
AGENCIES
HOMELAND SECURITY
COMMITTEE ON THE BUDGET

October 22, 2021

Mr. Chairman and Mr. Ranking Member,

I thank you for holding this Member Day hearing and for the opportunity to submit my testimony for the record before the House Judiciary Committee.

As elected representatives, it is absolutely essential that we fight to uphold the values of liberty and justice for all that are enshrined in our founding documents, including the Constitution. One of my top priorities in Congress is to defend the safety and security of Iowa families. Today I want to discuss two issues that fall into this bucket.

Part of looking out for Iowan's safety and security is caring for those who have suffered from violent crimes and working to ensure they have access to critical services to help them and their families recover from a traumatic crime.

In northeast Iowa, we have several excellent non-profit organizations that care for victims of domestic violence, sexual assault, child abuse, and other horrific crimes. I recently held a live conversation with Teresa Davidson from Chains Interrupted, a nonprofit based in Cedar Rapids, Iowa, that combats human trafficking to help inform my constituents about the important services they provide. Chains Interrupted offers counseling and housing programs, educational services, and training to help detect and prevent human trafficking; the organization receives funding through the federal Crime Victims Fund.

However, the funding for these programs has been recently reached critical lows, with the Iowa Crime Victims Fund projected to reach a ten-year low. Providers have been forced to roll back services, and in some cases, close their doors for good.

I was proud to cosponsor the VOCA Fix to Sustain the Crime Victims Fund Act, and am grateful that Congress was able to step in and act so organizations like Chains Interrupted can continue their essential work.

I've met with Iowans who are victims of horrific crimes. Their harrowing stories are the reason why I'm here today, advocating for resources that will help them recover and rebuild their lives.

It is vital that we continue to support programs to combat these horrendous crimes, and I look forward to continued bipartisan cooperation on this front.

Another issue important to the safety and security of Iowans is the preservation of Second Amendment rights.

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The Constitution is clear, and Iowan's Second Amendment rights have been under attack by the Biden Administration ever since he was sworn in to office. By nominating a gun control advocate to the ATF and expanding the National Firearms Act, President Biden has demonstrated his disregard for the Second Amendment.

From pushing policies like universal background checks, indefinite delays on firearm purchases, and red flag laws, Congressional Democrats have followed his lead, seeking to infringe on the rights of law-abiding gun owners time after time. They have brought gun control bills to the House floor that would threaten the ability of Iowans to defend themselves and their families. I believe this is unproductive, and worse -- it is unsafe.

In a time where radicals are pushing proposals to defund the police and a crime wave is sweeping across the nation, it is more important than ever to uphold law abiding gun owners' Second Amendment rights.

It's backwards that some of my colleagues want to make it harder for law abiding Americans to own firearms, rather than cracking down on crime, or supporting the law enforcement officers who keep illegal weapons and criminals off our streets.

I hope we can find common ground on ways to support the safety and security of Iowans and Americans, and I yield back.

House Judiciary Committee Testimony
The Honorable Dusty Johnson
Member Day Hearing
October 22, 2021

Chairman Nadler, Ranking Member Jordan, and Members of the Judiciary Committee,

Thank you for the opportunity to testify before the committee today. I am here to urge the committee to consider my resolution, H.J.Res.11, which proposes a Constitutional amendment requiring that the Supreme Court of the United States be composed of nine justices.

Historically, both parties have agreed that expanding the number of Supreme Court justices bears considerable risk. Earlier this year, Democrats introduced legislation to expand the Supreme Court to thirteen justices. I believe that preserving the integrity of the Supreme Court is necessary, especially during this divisive time in our nation.

I am not alone in this belief; my resolution has reached 178 cosponsors in the House of Representatives, and Senator Cruz's companion resolution (S.J.Res.9) has reached 20 cosponsors in the Senate. Recent polls suggest that a majority of the public similarly does not support expansion of the highest court.

Even Supreme Court justices agree that altering the court is dangerous. The late Justice Ruth Bader Ginsburg called expanding the court beyond nine justices a "bad idea."¹ Justice Stephen Breyer warned lawmakers to "think long and hard" about the risks of expanding the court.² Earlier this year, Justice Breyer said that the court's authority depends on "a trust that the court is guided by legal principle, not politics."³ He added, "Structural alteration motivated by the perception of political influence can only feed that latter perception, further eroding that trust."⁴

Supreme Court justices take an oath to uphold the Constitution in a nonpartisan manner. To hear my fears of court-packing echoed by them further validates my belief that it is necessary to pass H.J.Res.11.

President Biden himself has said he is 'not a fan of court-packing.' Despite the President's constitutional inability to alter the Supreme Court, President Biden established a commission to study changes to the Supreme Court.⁵ Article III, Section 1 states "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." As such, Congress retains exclusive authority to amend or preserve the Supreme Court.

However, even the commission has admitted expanding the court is dangerous. On Thursday, October 14, the commission stated that "the risks of Court expansion are considerable, including that it could undermine the very goal of some of its proponents of restoring the Court's legitimacy."⁶ This

¹ Totenberg, Nina "Justice Ginsburg," NPR. 24 July 2019. [Ruth Bader Ginsburg On Her Health, Opposition To Court-Packing : NPR](#)

² Breyer, Stephen G. "The Authority of the Court and the Peril of Politics," *The Scalia Lecture*, Harvard Law School. 6 April 2021. <https://www.youtube.com/watch?v=bHxTQxDVTdU>

³ Breyer, "The Authority of the Court and the Peril of Politics," *The Scalia Lecture*.

⁴ Breyer, "The Authority of the Court and the Peril of Politics," *The Scalia Lecture*.

⁵ Presidential Commission on SCOTUS, *The White House*. <https://www.whitehouse.gov/pscscotus/>

⁶ Presidential Commission on SCOTUS, *The White House*. 15 October 2021. <https://www.whitehouse.gov/pscscotus/public-meetings/october-15-2021-pcscotus-meeting/>

acknowledgement by the commission makes me hopeful that President Biden and my congressional colleagues will support our efforts to keep the Supreme Court at nine justices. It is critical we preserve the credibility of the judicial branch during this divisive time and maintain the long-standing structure of our nation's highest court.

Thank you again for holding this Member Day Hearing and I look forward to working with the committee on passing my resolution and protecting the independence of our judicial system.

**The Honorable Blaine Luetkemeyer
Ranking Member
Committee on Small Business
Statement for the Hearing Record
Committee on the Judiciary
Member Day Hearing
October 22, 2021**

Good morning, Chairman Nadler and Ranking Member Jordan. I am pleased to provide this statement for the Committee's Member Day hearing record.

As Ranking Member of the Committee on Small Business, I know that there is no more important issue for small businesses, and indeed, all of America, than the recovery from the COVID-19 pandemic. As small businesses continue to regain their footing and operate facing new challenges in the post-COVID environment, they are coping with the added pressures of skyrocketing inflation; labor shortages; higher costs of materials, products, and services; supply chain disruptions; and threats of higher taxes. For small businesses, one constant that remains is the ever-increasing regulatory burden. In a very difficult environment, small businesses are doing their best to meet the needs of their customers and communities, but they continue to be hampered by the cost and burdens of regulatory compliance.

Small businesses comprise 99.9 percent of U.S. businesses, with 46.8 percent of all U.S. employees.¹ However, small business growth, and their potential for job growth, is limited by the cost of regulatory compliance.² According to NFIB, the annual cost per employee of complying with federal regulations is significantly higher for small firms than large firms.³ The burden is heaviest on small businesses because their compliance costs are often not affected by economies of scale,⁴ and the problem has continued to grow for decades.⁵ Recent research tracks the large body of literature that has found regulation is less harmful to large firms because of their scalability in managing the operating costs and compliance risks associated with

¹ OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION (2021), *available at* <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143723/Small-Business-Economic-Profile-US.pdf>.

² NATIONAL ASSOCIATION OF MANUFACTURERS, THE COST OF FEDERAL REGULATION TO THE ECONOMY, MANUFACTURING AND SMALL BUSINESS (2014), *available at* <https://www.nam.org/the-cost-of-federal-regulation/>.

³ NATIONAL ASSOCIATION OF INDEPENDENT BUSINESS, REGULATIONS (2021), *available at* <https://www.nfib.com/advocacy/regulations/>.

⁴ *Supra* note 2.

⁵ *Supra* note 3.

regulation.⁶ According to NFIB’s most recent Small Business Economic Trends survey, “unreasonable government regulations” ranks as the third largest problem for small firms.⁷

In fact, the regulatory burdens imposed by Congress and federal agencies force small business owner to divert already limited resources away from economic expansion toward regulatory compliance costs. Over time, this has restricted the ability of small firms to hire workers and lead an economic recovery. In the COVID economy, the burden has become even heavier as small businesses struggle to stay open amid escalating costs coupled with state and local mandates.⁸

The Regulatory Flexibility Act⁹ (RFA) requires federal regulators to consider the economic consequences of their proposed and final rules on the small businesses they regulate. The RFA is an important law that, if fully complied with in letter and spirit, has the potential to significantly reduce the regulatory burden for small businesses without undermining the protections inherent in statutes.

The premise is simple. If an agency has two ways to achieve its regulatory objectives, it should select the one that imposes the lesser cost on small businesses, since they represent the vast majority of entities subject to federal regulation.¹⁰ Detailed analysis on the impact of regulations is necessary to ensure that regulators are not making irrevocable decisions that will reduce the competitive ability of entrepreneurs. By forcing federal agencies to assess the consequences of their rules, they are less likely to impose unintentional barriers to job creation and economic growth. It is common sense that federal agencies should determine how their rules will affect businesses – businesses that need increased capital to recover from COVID and keep their companies operating rather than comply with the unwieldy dictates of federal agencies.

Our Committee regularly hears testimony from small business owners about the impact that regulations have on small businesses struggling to survive and grow, struggles that are particularly acute in the COVID economy. Despite the importance of the RFA to the small business community, federal agencies routinely ignore its requirements. Testimony has repeatedly demonstrated that agencies are failing to comply with the RFA.¹¹ The result is

⁶ CHARLES W. CALOMIRIS, HARRY MAMAYSKY & RUOKE YANG, MEASURING THE COST OF REGULATION: A TEXT-BASED APPROACH, RESEARCH BRIEFS, CATO INSTITUTE (Aug. 19, 2020), available at https://www.cato.org/sites/cato.org/files/2020-08/RB228_v2.pdf.

⁷ NFIB, SMALL BUSINESS ECONOMIC TRENDS (Sept. 2021), available at <https://www.nfib.com/surveys/small-business-economic-trends/>.

⁸ CBS NEWS, NINE MILLION SMALL BUSINESSES FEAR THEY WON’T SURVIVE PANDEMIC, available at <https://www.cbsnews.com/news/small-business-federal-aid-pandemic/>.

⁹ 5 U.S.C. § 601 et seq.

¹⁰ OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, HOW TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT (Aug. 2017), available at <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf>.

¹¹ See, for example, *Reducing Federal Agency Overreach: Modernizing the Regulatory Flexibility Act: Hearing Before the House Comm. On Small Bus.*, 112th Cong. (testimony of David Squires, Bill Frulla, Craig Fabian, and Rich D. Draper), available at <https://www.congress.gov/event/112th-congress/house-event/LC2621/text?s=1&r=81>; *Improving the Regulatory Flexibility Act: Hearing Before the House Comm. On Small Bus.*, 108th Cong. (testimony of The Hon. Lee Terry, The Hon. Mike Pence, The Hon.

reduced small business competitiveness, which prevents them from expanding and creating additional jobs. This is not a result that we can afford.

I have introduced legislation to help those who must comply with regulations to better understand their requirements. H.R. 1507, the Providing Accountability Through Transparency Act of 2021, would require each agency, in providing notice of a rulemaking, to include a link to a 100-word plain language summary of the proposed rule.¹² H.R. 1508, the Guidance Clarity Act of 2021, would require federal agencies to state on the first page of guidance documents that such guidance: (1) does not have the force and effect of law, and (2) is intended only to provide clarity to the public about existing legal requirements or agency policies.¹³ These practical reforms would help to clarify the thousands of pages of often obscure and complicated regulations that are finalized every year. I look forward to working with my colleagues on these bills.

A smart regulatory environment can have benefits. But regulations also have costs, by building barriers to entry, distorting markets, and diverting scarce capital from job creation and growth. These costs are compounded for small businesses because they bear the disproportionate impact of regulations on their operations. By mandating that federal agencies assess the impact of proposed and final regulations on small businesses, the RFA can help to reduce the burden of regulations on small firms. However, federal agencies continue to ignore the letter and the spirit of the RFA. I look forward to partnering with the House Judiciary Committee Members to strengthen the RFA and encouraging federal agencies to comply with its provisions.

Thank you for the opportunity to provide this statement.

Jere Glover, The Hon. Frank Swain, and Jim Morrison, Ph.D.), *available at*

<https://www.govinfo.gov/content/pkg/CHRG-108hrg94113/html/CHRG-108hrg94113.htm>.

¹² H.R. 1507, The Providing Guidance through Transparency Act of 2021, 117th Cong. (2021), *available at* <https://www.congress.gov/bill/117th-congress/house-bill/1507>.

¹³ H.R. 1508, The Guidance Clarity Act of 2021, 117th Cong. (2021), *available at* <https://www.congress.gov/bill/117th-congress/house-bill/1508>.

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Grace Meng
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Congresswoman Grace Meng (NY-06)
Testimony to the House Judiciary Committee Member's Day Hearing
October 22, 2021

Chairman Nadler, Ranking Member Jordan, and distinguished members of the House Judiciary Committee, thank you for this opportunity to discuss several of my priorities, especially those around immigration policy, that are under your committee's jurisdiction. I am grateful for the dedication and commitment the Committee has shown in fighting to ensure our immigration system is welcoming and open to all who wish to come to our nation.

America thrives when our immigration system is thriving. Our nation is strengthened when we assist the efforts of new Americans to integrate, contribute to our economy, and be civically engaged. That is why I urge this committee to consider my New Deal for New Americans Act of 2021, H.R. 1308.

This sweeping legislation, that I introduced with my friends, Congresswoman Pramila Jayapal and Congressman Jesús G. "Chuy" García, will create a more inclusive and welcoming system to help new Americans achieve their American Dream. This bill would establish an initiative to coordinate the federal response to issues that affect the lives of new immigrants and refugees, as well as create grant and integration programs to help new Americans overcome common challenges such as English language proficiency and employment placement.

America aspires to be a beacon of hope and opportunity for those who wish to become new Americans. We must match word with deed. That is why I introduced the National Office of New Americans Act, H.R. 572. This bill would create a new entity in the Executive Office of the President that would be dedicated to coordinating federal, state, and local efforts to help immigrants and refugees integrate and transition to new Americans.

The prior administration consistently attacked our citizenship process through their attempts to end the fee waiver program to make it more difficult for eligible immigrants to apply to become naturalized citizens.

Cost should not be a barrier to immigrants in their pursuit of the American Dream, and attempts to end this successful program are counter to the nation's principles. That is why my friend, Congresswoman Norma Torres and I have introduced the Reduce Financial Barriers to Immigration and Citizenship Act of 2021, H.R. 5319.

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This bill would expand access to fee waivers for the over nine million immigrants who are eligible for citizenship. Additionally, our bill would codify the program so no future administration can infringe on legal pathways to citizenship. Expanding access to naturalization fee waivers has a successful track record of increasing citizenship and subsequent economic benefits among immigrants, especially those with lower incomes and lower levels of educational attainment.

Mr. Chairman, the rich tapestry of our nation that is comprised of diverse cultures, languages, and lived experiences has always been America's strength. Simply put, we must ensure our immigration system continues to promote and build our diversity. Thank you again for the opportunity to testify. I look forward to working with you and the Committee on passing these important legislative priorities and I look forward to answering any questions you may have.

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**Written Testimony of
Rep. Alexandria Ocasio-Cortez (NY-14),
Rep. Adriano Espaillat (NY-13), and
Rep. Grace Meng (NY-6)**

**Before the U.S. House of Representatives
Committee on the Judiciary**

October 22, 2021, 9 AM

Chairman Nadler, Ranking Member Jordan, and Vice Chair Scanlon, thank you for providing this opportunity to share our jurisdictionally relevant legislative priorities with the Committee. We submit testimony today in support of the 9/11 Immigrant Worker Freedom Act, a forthcoming bill that we are co-leading. If enacted, the bill would provide adjustment of status to immigrants who worked, volunteered, or served in other qualifying roles in the recovery efforts after the 9/11 terrorist attacks.

This year, we commemorate the 20th anniversary of the 9/11 attacks. The 9/11 Immigrant Worker Freedom Act – a version of which was introduced in the 115th Congress but did not make it past committee¹ – is overdue by about that many years. Out of the thousands of undocumented immigrants who took part in the recovery efforts, many have already passed away or left the United States. For two decades, remaining immigrant 9/11 workers have remained in the shadows due to their lack of legal immigration status.

By stepping up for our country at a critical moment, these individuals sacrificed their mental, emotional, and physical health. Those hired informally by cleaning companies often worked for months without adequate protective gear in places rife with debris, asbestos, and dust.² None of these workers understood or expected that exposure to these toxic materials – not to mention the unbelievably traumatic nature of the work – would put them at risk of fatal illnesses such as cancer, asbestosis, and other respiratory complications, as well as post-traumatic stress, anxiety and depression. When they eventually did become very ill, few sought out available medical help for fear of deportation.³

¹ H.R. 3250, 115th Cong. (2017).

² Claudia Torrens, *Immigrant Sept. 11 Cleanup Crews Seek Residency as a Reward*, ABC NEWS (Sept. 8, 2021, 6:29 PM), <https://abcnews.go.com/Health/wireStory/immigrant-sept-11-cleanup-crews-seek-residency-reward-79891905>.

³ Erin Billups, *Undocumented Workers Exposed to Toxins During the WTC Cleanup Also Feeling Health Effects 15 Years Later*, NY1 (Sept. 12, 2016, 10:16 AM), <https://www.ny1.com/nyc/bronx/health-and-medicine/2016/09/12/undocumented-workers-9-11-health-outreach>. (“It’s estimated about 6,000 undocumented immigrants took part in the recovery and cleanup efforts after September 11th, but more than two-thirds of them have not accessed the free health care available to them.”)

An estimated 2,000 individuals could be eligible for adjustment of status under this bill.⁴ As legislators, we should work from a keen understanding of how our actions (or absence thereof) affect lives on the ground. Accordingly, we would like to dedicate this written testimony to two individuals whose stories caught my attention in particular.

The first is Ms. Lucelly Gil, who spent six months cleaning debris in lower Manhattan.⁵ She was paid \$60 for every eight hours of work. On top of losing movement in one arm, she has since struggled with breast cancer, gastritis, asthma, and depression. Breast cancer is a common illness for women who worked at the site.⁶ While she received some compensation for her health complications from the federal victims fund, she would have preferred a grant of immigration status.

Then Mr. Franklin Anchahua, who developed heartburn, acid reflux, and breathing problems after he helped clear thick layers of dust from buildings in lower Manhattan.⁷ For ten years, he avoided seeking medical help out of fear of deportation, and instead treated these complications with herbs that his mother shipped from Peru. In his words: “Attorneys who helped us years ago told us we would get immigration papers but, look, 20 years have passed and we have nothing.”

These immigrant 9/11 workers are entitled to every bit of their frustration and disappointment. As Ms. Rosa Duque, who developed breathing complications after her work in the recovery, said: “When we volunteered to go to work they didn’t ask, ‘Are you a citizen?’ ‘Are you a resident?’”⁸ We are certainly not entitled to ask those questions now, when time has made it clear that the courageous first step that these immigrant workers took twenty years ago was only the start of their incredible sacrifice.

So, the solution is simple and entirely in the hands of Congress. The 9/11 Immigrant Worker Freedom Act is our chance to do right by the approximately 2,000 undocumented 9/11 workers who still live in the United States. If it is enacted, these individuals would finally be able to apply for adjustment of status, and receive work authorization during the pendency of that application.

⁴ See generally Cristian Benavides, *New York Congressional Democrats Push to Legalize Undocumented 9/11 Workers*, NBC NEWS (July 12, 2017, 4:26 PM), <https://www.nbcnews.com/news/latino/new-york-congressional-democrats-push-legalize-undocumented-9-11-workers-n782156>.

⁵ 9/11: Ground Zero’s Forgotten Migrant Cleaners Demand Recognition, FRANCE24 (Sept. 6, 2021, 3:32 AM), <https://www.france24.com/en/live-news/20210906-9-11-ground-zero-s-forgotten-migrant-cleaners-demand-recognition>; see also Torrens, *supra* note 3.

⁶ See Moshe Z. Shapiro, et al., *Cancer in General Responders Participating in World Trade Center Health Programs 2003-2013*, 4 JNCI CANCER SPECTRUM pkz090 (2020), <https://doi.org/10.1093/jncics/pkz090>.

⁷ Los ‘Héroes’ Hispanos Olvidados en la Tragedia del 11 de Septiembre de 2001, UNIVISION (Sept. 11, 2021, 7:54 AM), <https://www.univision.com/noticias/politica/9-11-atentados-torres-gemelas-hispanos-sobrevivientes-trabajadores-salud>; Gabe Ortiz, *Two Decades After Sept. 11, Undocumented Recovery Workers Are Still Fighting for Legal Status*, DAILYKOS (Sept. 10, 2021, 3:34 PM), <https://www.dailykos.com/stories/2021/9/10/2051446/-Two-decades-after-Sept-11-undocumented-recovery-workers-are-still-fighting-for-legal-status>.

⁸ FRANCE24, *supra* note 6.

They will be able to live without fear of deportation from the country they helped rebuild in exchange for their long-term health.

We ask for the warm support and cooperation of the Committee on this long-overdue bill. We cannot let these heroes down once again.

Rep. Scott Perry (PA-10)
Testimony for the House Committee on the Judiciary
October 22, 2021

Chairman Nadler, Ranking Member Jordan, Members of the Committee: We are entrusted with a solemn, necessary task – to protect and defend the interests of the American People at home and abroad. For many years, Congress remained obstinate in its preference to ignore the protection of our Southern Border – an issue only sincerely addressed with the election of President Donald J. Trump in 2016. Now that the Biden Administration has taken power, we have seen a complete degradation of our National sovereignty, and it has been the American People – not the Washington D.C. elitist political class – suffering from the consequences of a total lack of leadership.

The United States of America remains, by every conceivable metric, the most generous country in the world. However, this well-earned reputation – earned through the hard work of the American Taxpayer – has been abused by an iconoclast Administration too easily incentivized to undermine existing immigration law. Since January 20, we have not witnessed migration across our Southern Border. We have witnessed invasion. Record numbers of illegal aliens continue to come to America unabated – 213,534 in July, and 208,887 in August – and those are only the ones who were caught. In Fiscal Year 2021, U.S. Customs and Border Protection – an institution commonly maligned by the Biden Administration – reported just under two million apprehensions, representing a more than 200% increase over FY20. The Biden Administration’s complete abuse of the parole program at the Border has led to the release of 160,000 illegal immigrants into the interior of the United States since March 20. Late last month, Secretary Mayorkas indicated that more than 12,000 Haitian migrants being held at Del Rio, Texas, have been released into the interior.

The practical implications of unfettered immigration across our Border are poignantly highlighted by the numerous anecdotes of human suffering – suffering that has all too commonplace. In September, news outlets first reported that the Biden Administration had “lost contact” with up to 40% of migrant children released from its custody. The Justice Department’s own Human Trafficking Prosecution Unit has warned that these children are at risk of being released to labor traffickers: “some of these situations appear to involve dozens of unaccompanied minors all being released to the same sponsor and then exploited for labor in poultry processing or similar industries without access to education.”

The number of encounters with Unaccompanied Alien Children (UACs) has increased by 655.5% from July 2020 to July 2021. In August 2020, 3,103 UACs were apprehended. In August 2021, that number was 18,847, indicating a similar rate of increase. We are seeing children risk their lives in crossing the border, and the Administration is exacerbating the issue by facilitating the use of secret flights to transport UACs and other illegal immigrants around the Country, regardless of immigration or even health status. It is telling that Attorney General Merrick Garland criticized the decision of the State of Texas to ban the transportation of illegal immigrants, as the lack of any vetting procedures on the part of the Administration is almost certain to contribute to a rise in COVID-19 cases in our Country.

It is abundantly obvious to American Citizens that our government must make it more difficult for illegal immigrants to come into our Country, yet the Biden Administration plans to challenge the Migrant Protection Protocols – better known as the Remain in Mexico policy – immediately upon resurrecting the Trump-era policy due to a court order. A new proposed rule from DHS and DOJ gives the Secretary of Homeland Security sweeping authority to offer parole to immigrants claiming credible fear. It also ensures that the number of asylum applications that are accepted will only increase as the current “adversarial” system is largely diminished. The Administration’s plans and proposals, if they come to pass, will continue to incentivize illegal immigrants to invade our Country and lead to further human, drug, and labor trafficking. In May 2021, human traffickers made between 14-15 million dollars a week smuggling men, women, and children across our Border with Mexico. Paramilitary and narco-terrorist cartels are taking full advantage of the chaos sown by this Administration. In the meantime, Border communities and States will continue to have to take matters into their own hands to protect their Citizens and the Nation at large.

Legislative proposals, including H.R. 1901, the Stopping Border Surges Act, and H.R. 5572, the SECURE America Act, are two pieces of legislation that are worthy of this Committee’s consideration. I am proud to be an original co-sponsor of both. The former addresses the humanitarian crisis at our border head-on, confronting the problems stemming from the Flores Settlement Agreement and ensuring that the United States has a humanitarian response to UACs – in contrast to what we’ve seen from this Administration. The latter subjects refugee admission to the Congressional Review Act, bans the Department of Homeland Security’s use of parole authority, gives governors the power to reject refugees from the Federal

government, removes any alien who commits a violent crime, and rescinds LPR status for any such alien. It is also imperative that H.R. 1259, the REMAIN in Mexico Act, is immediately considered and signed into law. This legislation would codify the Migrant Protection Protocols that have proven to be an effective deterrent to illegal immigration.

We have robust legislative solutions to address the Administration's abrogation of responsibility for our National security, and we owe it to the American People – and in particular to those border communities who have cried out for leadership from our Government – to enforce our laws, pursue the aforementioned recommendations, and finally put an end to the manufactured crisis conjured up by the Biden Administration.

In an equally important manner, the integrity of our nation's elections is the bedrock upon which our democracy stands. Unfortunately, Congressional Democrats have proposed policies that would undermine any existing trust in elections and have shrouded those policies with claims of discrimination and vote suppression. If those policies are enacted, they will tarnish our fundamental right to vote in free and fair elections.

The "For the People Act," an ambitiously titled bill which seemingly has been abandoned by Congressional Democrats and the White House due to lack of support, would impose burdensome, one-size-fits-all requirements on state and local jurisdictions while making elections less secure and funneling Taxpayer dollars directly to political candidates.

Policymakers have valid concerns about policies like online voter registration, same-day registration, and automatic voter registration. Online voter registration opens jurisdictions to the possibility of data hacks and registration fraud; given the abysmal track record of state government cybersecurity, state legislatures have clear cause for concern. Putting aside security concerns, same-day registration poses a logistical challenge for election officials, sometimes requiring the procurement of e-poll books or ballot-on-demand printers. Finally, while proponents of automatic voter registration contend that it will increase civic participation, technical and security problems abound. Automatic voter registration programs in California and Illinois inaccurately registered people who had opted out and registered non-citizens. California's program – overseen by then-California Secretary of State Alex Padilla – made over 100,000 voter registration errors.

Despite these numerous concerns, H.R. 1 would mandate these policies for all states.

The problematic provisions don't end there. H.R. 1 would continue to infringe on state sovereignty by forcing states to give felons the right to vote (even when they haven't completed probation or restitution requirement), requires states to count provisional ballots even when they are cast outside of their assigned precincts, and allow vote harvesting by campaign staffers. It would also funnel taxpayer dollars through a donation matching program, donation vouchers, and candidate salaries.

If that wasn't enough, they have also advanced H.R. 4, which would allow unelected Justice Department bureaucrats to overrule state election laws through weaponization of the preclearance process. Democrats would change the very definition of discrimination to a "disparate impact" standard. Instead of simply scrutinizing legislation that was passed with an intent to discriminate, this new definition would use a statistical calculation to determine discrimination, opening more jurisdictions to potential invalidation of election laws.

While election integrity concerns have been conflated with other issues, widespread questions of fraud and abuse have undermined confidence in our electoral system. I've heard firsthand from constituents in the 10th District of Pennsylvania who have completely lost faith in the democratic process. A serious proposal to address these problems would set strong standards for photo identification and prohibit the connection of voting machines to the internet. Furthermore, I have cosponsored legislation by Representative Banks – the Save Democracy Act – which would prohibit automatic voter registration, require current and valid forms of identification, and prohibit drop boxes and ballot harvesting.

As Congressional Democrats push their anti-democratic, overreaching bills, they are overlooking serious election-related reports, such as \$400 million in donations by Mark Zuckerberg for undisclosed election assistance activities. This Committee should be launching a full inquiry into this bankrolling of government election offices and whether it improperly influenced elections or contributed to voter fraud in the 2020 election.

I am grateful to the Committee for providing me the opportunity to speak on the issues of illegal immigration and election integrity today. I look forward to working with you to achieve these objectives.

Congressman David Schweikert Testimony for Judiciary Committee Member Day

Chairman Nadler, Ranking Member Jordan, Members of the Committee, thank you for allowing me this opportunity to speak with you today.

I'd like to talk with you about one of my priorities this Congress, which is finding creative and radical solutions to effectively protecting individuals' personal data on online platforms.

We all know the monopoly Big Tech holds, and their constant influence in our daily lives. As our world continues to shift into a more virtual landscape, and more of our daily lives are spent online, privacy laws must adapt.

Data protection and privacy must be a priority. Our current systems are outdated, and too many individuals and families fall victim to data theft or misuse, without even realizing it. The demand for online transparency from digital platforms has drastically grown, and many of the current data protection laws have not gone far enough to instill the protections and safeguards needed. We need more creative, tangible solutions that put individuals in control of their information.

The solution I propose is to make an individual's online data a property right. This creates concrete and structured ownership of data that allows individuals themselves to hold tech companies accountable, should their rights be violated. The economic value of a person's data is fundamental to protect it as a form of property. Each platform can establish and disclose this information to the user. In doing so, a user will have more robust protections in the case of a breach of information.

This idea presents a forward-thinking solution that guards privacy and protects information from large digital platforms and third-party tracking. It revolutionizes an individual's ability to own their information. It takes radical but necessary steps to address violations of privacy and misuse of personal information.

Advancements in technology and sharing of our personal data has become a permanent facet of our everyday lives. Going forward, nearly all private information will be handed over to companies and digital platforms, either willingly or unwillingly. The power of Big Tech companies to collect, store, and use an individual's data has widened the scope for potential misuse of personal information and diminished the autonomy of Americans' ownership over their privacy.

I recently introduced a bill, H.R. 4240, the User Data Protection Act, that enacts this solution. While this bill does not reside under your committee jurisdiction, it is my hope that the committee will consider these policies that make a person's data their property right.

I strongly urge the committee to consider this idea as you continue your work in online data protection.

Thank you again Mr. Chairman and Ranking Member for holding this hearing.

Congresswoman Norma J. Torres (CA-35)
Testimony to the House Judiciary Committee Member's Day Hearing
October 22, 2021

Chairman Nadler and Chairwoman Lofgren, thank you for hearing from members, especially during this critical juncture for immigration reform. Our nation was founded by immigrants and immigrants continue to be the backbone of our country- the pandemic made their critical role abundantly clear. As an immigrant myself and the Chair of the New Americans Caucus, I care deeply about equitable access to citizenship. It is time to stop vilifying and scapegoating our friends and neighbors. Instead, we must remain focused on making our immigration system more safe, humane, and fair for those who seek to make the U.S. home. You have my unwavering commitment to do so.

I particularly wanted to highlight a few of my immigration priorities:

- Citizenship cannot only be for those who can afford it. Unfortunately, the fees can often be a bottleneck in the long, complicated process for citizenship. My bill with Congresswoman Meng, the “Reduce Financial Barriers to Immigration and Citizenship Act of 2021” (H.R. 5319) would waive fees for naturalization for eligible immigrants and codify fee waivers, removing this financial barrier to earned citizenship. The last four years showed us the extent to which even Lawful Permanent Residents (LPRs) remain vulnerable to deportation and unconstitutional, xenophobic attempts to strip them of their earned path to citizenship. Any immigration reform will not cross the finish line without also ensuring that those who have legal status are also able to naturalize. I implore you to consider naturalization as a critical part of our equitable immigration reforms.
- During the pandemic, we saw naturalizations and other services grind to a halt. The *Heroes Act* allowed for remote citizenship oath ceremonies for eligible immigrants. Resuming naturalization services allowed thousands to become American citizens and the benefits that come with it, at a time when many were deeply impacted by the pandemic. My bill, the “Remote Naturalization Act” (H.R. 4858), looks to extend this policy beyond the pandemic, as often work, health, or other conditions outside of crises may prevent an immigrant from being able to attend an in-person naturalization ceremony. I hope our lessons from the pandemic allow us to continue to make citizenship more accessible.
- Through this year’s appropriations bill, I led 37 of our colleagues in championing a legal representation pilot program. I am proud that the bill included \$50 million for this pilot program for legal representation for children and families, a huge increase from last year’s proposed \$15 million. Immigrants deserve to have their cases heard and understand the complicated, confusing process. We also know immigrants are more likely to show up to court when they have representation. Legal representation helps determine those cases with merit from an early stage, saving judges and appeals attorneys from having to do additional work in an already backlogged system. Legal representation is not just what is fair and just, it is cost-effective and makes our system more effective. I look forward to working with you on avenues to expand and strengthen legal representation for immigrants.

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Thank you again for all of your work on these challenging issues. I know our shared efforts will help meet the moment.

Sincerely,

Norma J. Torres
Member of Congress

The Honorable Claudia Tenney (NY-22)
Member Testimony before the House Judiciary Committee

Thank you, Chairman Nadler, and Ranking Member Jordan for providing Members with the opportunity to share their priorities with the Committee today.

I would like to bring the Committee's attention to legislation that I have sponsored, House Resolution 566. This resolution commemorates the 80th anniversary of the Civil Air Patrol and the organization's commendable contributions to the Nation.

For 80 years, the Civil Air Patrol has played an integral role in supporting critical defense training and homeland security. It is both an Air Force Auxiliary and a public service non-profit that serves thousands of communities across every state.

The organization has undertaken a range of missions that are vital to supporting our local communities. In 2020, for example, Civil Air Patrol saved 130 lives using aircraft, ground teams and technology analysis teams. Throughout the year, the organization provided more than 36,000 volunteer days of COVID-19 support to 41 states including distribution of test kits, PPE, and food among a myriad of other missions. Its COVID-19 response was its largest mass mobilization since World War II.

Civil Air Patrol continues to train interceptor pilots and unmanned aerial vehicle operators under realistic conditions, it supports aerial observation missions and counterdrug operations, provides aerial photo reconnaissance to FEMA, and assists regularly in forest fire patrols. In coordination with the Air Force, Civil Air Patrol has worked to address the national shortage of pilots and aviation professionals through its programs that help youth prepare for military, STEM, and public service careers for the future.

For the past 80 years, Civil Air Patrol's all volunteer force has selflessly served America in times of war and peace to protect and defend their communities, support them in times of disaster and emergencies, and train youth as future leaders and responsible members of their communities.

I hereby urge this Committee to consider this important resolution and join me in commending the Civil Air Patrol for its "80 years of Missions for America" and its outstanding disaster relief, emergency response, Air Force-tasked missions, and cadet and aerospace programs, which every day touch the lives of millions of American citizens.

Thank you again for the opportunity to testify before you today.

October 22, 2021

House Judiciary Committee Member Day

Rep. Michael Waltz Written Testimony

Thank you, Chairman Nadler and Ranking Member Jordan for holding this Members' Day hearing for the House Judiciary Committee. I am testifying today to discuss an issue that is of great concern to this Committee – human trafficking. In doing so, I will again request the Committee to markup, or favorably report H.R. 4070, the *Study To Observe and Prevent (STOP) Human Trafficking Act of 2021*, which has been referred solely to the House Judiciary Committee.

Human trafficking is a multi-billion dollar criminal industry affecting nearly 25 million people worldwide. The National Human Trafficking hotline successfully identified over 63,000 situations of human trafficking from 2007 to 2019, unfortunately these numbers represent only a fraction of the problem in here in the United States as human trafficking is notoriously underreported.

My home state of Florida ranks third behind California and Texas in the number of human trafficking cases reported by state. When discussing the issue of human trafficking with community stakeholders in Florida, many concerns surrounded adult entertainment clubs. These clubs are known to be high-risk locations for human trafficking. Stakeholders often see victims return to work at these venues, furthering the cycle of trafficking, exploitation, and victimization. Despite this, there is a lack of federal data to support what we know to be true of these venues, which significantly limits our ability as lawmakers to protect individuals from these high-risk adult entertainment clubs.

The National Human Trafficking hotline has the largest known data set compiled on sex and labor trafficking in the United States and is frequently cited and referenced for that reason. However, it is important for this Committee to know that the Trafficking Hotline's primary focus is to provide support to trafficking victims and survivors – data collection comes secondary to that support and only when necessary.

I know from firsthand experience that our federal agencies primarily cite the Trafficking Hotline's data and reports when responding to requests for information on domestic human trafficking data. If data is only collected by the Trafficking Hotline when deemed necessary to provide support to victims and survivors, why are our federal departments and agencies relying on the Hotline as a primary source of trafficking data in the United States? What data are these departments and agencies collecting through their own work and investigations? It is clear that in addition to addressing concerns regarding the prevalence of human trafficking at adult entertainment clubs, we must also find a way to improve trafficking data collection at our federal departments and agencies.

That is why I introduced H.R. 4070, the *STOP Human Trafficking Act of 2021* on June 22, 2021. Since then, H.R. 4070 has gained a total of 23 bipartisan cosponsors, including three Members of this Committee. This straightforward bill will require the Attorney General to conduct a study regarding human trafficking at adult entertainment clubs and report the findings to Congress. The Attorney General will conduct the study in coordination with the President's Interagency Task Force to Monitor and Combat Trafficking in Persons and relevant outside human trafficking organizations.

My bill will yield robust data on human trafficking at these high-risk locations by requiring inter-agency coordination as well as coordination with outside groups with anti-human trafficking expertise. In order to effectively conduct this study, federal agencies will have to adjust and update current data collection operations to better monitor domestic trafficking cases and trends.

No individual in the United States, or anywhere else in the world, should be subjected to human trafficking in any form. Congress has the responsibility and power to enact impactful legislation to protect individuals from this modern-day slavery. Such efforts to combat human trafficking have a longstanding history of strong bipartisan support in Congress and this bill is no different.

In closing, I respectfully ask Chairman Nadler and Ranking Member Jordan to hold a markup, or favorably discharge H.R. 4070, the *STOP Human Trafficking Act of 2021*, so that we can better understand the prevalence and patterns of human trafficking and enact legislation to eradicate it.

Thank you.

A handwritten signature in black ink, appearing to read "Michael Waltz", with a stylized flourish at the end.

Michael Waltz

Judiciary Member Day: H.R. 2923 – Energy Security and Lightering Independence Act of 2021
Spk 3 min | Word Count: 282

What: Judiciary Member Day
Where: 2141 RHOB
When: Friday October 22, 2021 @ 9 AM
Topic: Support of H.R. 2923

Chairman Nadler, Vice Chair Dean, and Ranking Member Jordan, thank you for hosting today's Judiciary Committee Member Day hearing.

I testify in support of my Texas colleague Rep. Sylvia Garcia's bill, H.R. 2923, the Energy Security and Lightering Independence Act of 2021. You may remember this bill from last Congress, when I introduced it as the Keeping America's Energy Resources Moving Act of 2020.

This important, BIPARTISAN legislation would allow oil and gas lightering crewmembers to be granted visas for the length of their contracts, up to 180 days. This represents a substantial increase from the 29 days that their C1/D visas are currently limited to.

For those of you not from a coastal district, or who do not have the privilege to be representing the biggest port district in the United States, let me briefly explain what lightering crews do.

They help us to maintain our energy independence—certainly, a source of national pride, irrespective of partisan affiliation. Think about the lightering crews as the "last-mile delivery" team. Because tankers draft too deep to

enter our ports fully loaded with fuel, these smaller—"lighter"—vessels off-load the tankers and bring the fuel into port.

These lightering crews tend to be foreign-crewed and have contracts that last 90-180 days. Under current law, this means that—less than 1/5th into their longest deployment—they could be subject to deportation. This not only wastes the valuable time of our Immigration and Custom Enforcement personnel, but it seriously threatens our energy supply chain.

I respectfully urge this committee to consider H.R. 2923 and to get this much-needed legislation out of committee, so that it may come before the full House of Representatives for a vote.

Testimony of Congressman Bruce Westerman
House Judiciary Committee
Member Day Hearing
October 22, 2021

Thank you, Chairman Nadler and Ranking Member Jordan, for the opportunity to testify at the Judiciary Committee's Member Day hearing. Today, I would like to discuss my bill that would address juvenile sentencing reform.

H.R. 2858 would give federal judges more discretion when sentencing juveniles. It codifies *Miller v. Alabama* and will allow children who have been caught up in the justice system to have a second chance to succeed.

For those who do not know, H.R. 2858, is named after Sara Kruzan who at the age 17 was imprisoned for killing her sex trafficker. Sara was convicted of murder and sentenced to life in prison. Throughout her trial, there was little notice of what Sara had been through as an adolescent. After serving nearly 20 years in prison, in 2013, California Governor Arnold Schwarzenegger commuted Sara's sentence. Unfortunately, Sara's case is only one instance in our country where the law is not malleable enough for sentencing children.

H.R. 2858 provides that juveniles found guilty of crimes against persons who sexually trafficked, abused, or assaulted them shall not be required to serve the mandatory minimum sentence otherwise associated with the crime.

H. R. 2858 also allows judges to consider "the diminished culpability of juveniles compared to that of adults" when sentencing those who committed crimes as juveniles and allows federal judges to depart from mandatory minimum sentences by up to 35 percent if deemed appropriate based on the juvenile's age and prospects for rehabilitation. The presiding judge may also suspend any portion of an otherwise applicable sentence if the circumstances so warrant.

Additionally, it prohibits federal judges from sentencing juveniles to life in prison without parole and brings federal law into compliance with the 2012 Supreme Court decision *Miller v. Alabama*. Juveniles sentenced to life in prison would be guaranteed a parole hearing after serving 20 years.

A bipartisan solution is needed when it comes to juvenile justice reform, and I am proud to sponsor this bill along with Representatives Bass, Cardenas, and Trone.

Thank you for allowing me to testify before your Committee, and I look forward to working with you to see that this important bill becomes law.



**House Committee on the Judiciary
Member Day Hearing
October 22, 2021**

In the November 2020 election, a record-shattering 4.93 million Georgians made their voices heard when they cast their votes. Six weeks later, Georgians did it again, showing up in record numbers for the Senate runoff election that changed the direction of America forever. Taken together, these two elections represent one of the greatest moments for democracy in the history of Georgia—and America.

Since then, we have seen a substantial increase in sustained attacks on our democracy. According to analysis from the Brennan Center, more than 425 bills with provisions that restrict voting access have been introduced in 49 states in the 2021 legislative sessions. This legislation – including S.B. 202, Georgia’s own Jim Crow 2.0 voter suppression law – is designed to make it harder for Americans to exercise their fundamental right to vote.

Georgians are no stranger to voter suppression tactics. Today, we might not be counting jellybeans in a jar, but S.B. 202 has the same purpose—suppressing the voices of people of color and the most marginalized communities.

Let’s be clear — voting is a right, not a privilege for the few. We are a democracy premised on the idea of one person, one vote. Your ZIP code should not determine if you have free and fair access to the ballot box.

With state legislatures and a Supreme Court that are willing to gut voting rights, it is up to Congress to protect people’s vote and voice.

The House has done our job: we have passed H.R. 1: For the People Act, and H.R. 4: John R. Lewis Voting Rights Advancement Act, named in honor of my predecessor, mentor, friend, and civil rights icon Congressman John Lewis.

We need the reforms in both bills to meet the needs of the moment and address the very real threats to our democracy by those who are trying to deny a voice to people who look like me.

While passing both H.R. 1 and H.R. 4 in the House is a big step forward, we have many more steps to go. The House, Senate, and President Biden must work closely together to advance voting rights legislation into law – and quickly.

As we move forward, members must continue working to address the voting rights priorities under this committee’s jurisdiction, including H.R. 4’s modernizations of Section 2 and Section 4 of the Voting Rights Act (VRA) of 1965.

In its disastrous 2013 decision in *Shelby County v. Holder*, the Supreme Court said, “Congress may draft another [federal preclearance] formula based on current conditions.” The original formula had blocked 13 proposed changes in the 18 months before *Shelby*, proving its continued relevance then and the need for Congress to act now. Then, *Brnovich v. DNC* gutted Section 2 of the Voting Rights Act, which prohibited discriminatory voting practices or procedures, further weakening our ability to fight voter suppression.

It is now up to us to restore the most successful and comprehensive civil rights legislation in American history.

To anyone who wonders what they would have done during the civil rights movement—now is your time to find out. You are either on the side of our democracy or you aren’t. The House Committee on the Judiciary must prioritize strengthening voting rights in the areas under its jurisdiction.