

OVERSIGHT OF THE DEPARTMENT OF JUSTICE

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED SEVENTEENTH CONGRESS FIRST SESSION

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OVERSIGHT OF THE DEPARTMENT OF JUSTICE

WEDNESDAY, OCTOBER 27, 2021

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to notice, at 10:04, in Room 106, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chairman of the Committee, presiding.

Present: Senators Durbin [presiding], Leahy, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, Padilla, Ossoff, Grassley, Graham, Cornyn, Lee, Cruz, Sasse, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. Good morning. This hearing will come to order. We've had three oversight hearings this year in the Senate Judiciary Committee, including the Committee's first FBI oversight since 2019. Next month, the first Department of Homeland Security oversight hearing since January 2018. Today, we're holding the first Department of Justice oversight hearing since October 18th, 2017.

That was the only time during the 4-year Trump administration this Committee held an agency-wide Department of Justice oversight hearing. Annual oversight hearings were the norm under the Obama administration. I am pleased to restore this tradition. I thank Attorney General Garland for appearing today.

You were confirmed by the Senate in March on a bipartisan basis and took the helm of the Justice Department at a precarious moment. Under Attorney General Barr and his predecessors, the Department often played the role of President Trump's personal law firm.

Time and again, Trump appointees overrode the professional judgment of the Department's nonpartisan career attorneys to advance the President's agenda. Their efforts took a dark and dangerous turn in the waning months of the Trump term when DOJ political appointees aided President Trump's Big Lie efforts to challenge the integrity of our election.

First, Attorney General Barr cast aside decades-old policy, designed to prevent the Department from impacting elections. He directed U.S. Attorneys and the FBI to investigate the election fraud claims of nonetheless Rudy Giuliani, after these claims had been summarily discredited and disproven by countless State election of-

ficials. Barr repeatedly, publicly, and baselessly claimed that mail voting would be rampant to fraud, a charge he himself rejected when the votes were actually counted.

After he lost the 2020 election, President Trump found another Justice Department ally in Jeffrey Clark, a mid-level political appointee who became the President's Big Lie lawyer.

Clark pushed the Department of Justice leaders to overturn the election, and when they refused, he plotted with President Trump to replace them. Trump and Clark brought the Department to the brink and were thwarted only after the threat of mass resignations across the Department of Justice.

I commend those Department of Justice attorneys, many of whom were Trump appointees who, at that critical moment in history, resisted President Trump and his plot to attack our democracy.

The events this Committee described in our recent Subverting Justice Report were among the most brazen examples of President Trump attempting to bend the Department of Justice to his will and his agenda. They were the natural culmination of 4 years of attacks—4 years of attacks on the Department of Justice.

There is straight line from these events to the violent insurrection in the Capitol building on January 6th. When Trump and his allies could not prevail in court and lost case after case after case claiming voter fraud, they took their Big Lie to the Justice Department. And when they didn't prevail there, they dispatched an angry mob to storm the Capitol to stop us from counting the electoral votes.

I commend the many agents and prosecutors who were working day in and day out to bring these violent insurrectionists to justice. I hope the Department will be just as steadfast in pursuit of those who encouraged and incited the attack, and those who would prevent the American people and their representatives from uncovering the truth.

I am sorry that the Republican Senate Leader refused to join the bipartisan commission that was proposed to investigate the January 6th insurrection attack. I look forward to hearing from the Attorney General this morning about the work that is underway to combat the growing threat of domestic violent extremism.

The Department cooperated with our Committee's investigation into the Jeffrey Clark scheme, and it deserves credit for doing so. Over the course of several months, the Department provided documents, authorized testimony, and resolved executive privilege issues, enabling us to uncover on a bipartisan basis, I might add, just how close we came to a full-blown constitutional crisis.

Attorney General Garland, when you appeared before us in February, you acknowledge, and I quote, "Great respect for belief in the oversight role of the Committee." You committed your Department to, quote "be as responsible"—pardon me—"as responsive as we possibly can to comply with information request."

I commend you for the steps you've taken, but I believe I speak for all of my colleagues in saying there is still room for improvement when it comes to Department responses. The Department must deliver on its mission to ensure fair and impartial justice.

Let me give you an example. In the closing days of the Trump administration, the Department's Office of Legal Counsel issued a memo wrongly declaring, in my estimation, that Federal inmates released to home confinement under the bipartisan CARES Act must return to the Federal Bureau of Prison's custody following the COVID-19 emergency. In fact, the CARES Act includes no such requirement. These nonviolent inmates are already home and are overwhelmingly reintegrating into community with success.

On April 23d, I sent you a letter, joined by Senator Booker, urging you to rescind this memo. Six months later, 6 months later, we still have not received a response.

Another example: in November 2020, the Trump administration published a rule discouraging inmates from completing programs under the First Step Act to reduce their chances of reoffending. This was a major measure that was undertaken, the First Step Act, by combining a prison reform measure that was cosponsored by Senator Cornyn and Senator Whitehouse with a sentencing measure cosponsored by Senator Grassley and myself and signed into law by the President.

Senator Grassley and I sent you a letter on May 5th urging the Department to reject the proposed rule and instead enact a rule consistent with the goal of the First Step Act, of reducing recidivism. It's been 5 months. In fact, more than 5 months. We still haven't received a response.

The First Step Act allowed the Bureau of Prisons to grant compassionate release in extraordinary and compelling circumstances, such as a once-in-a-century global pandemic. Under the Trump administration, listen to these numbers, the Bureau of Prisons denied all but 36—36 of 31,000—31,000 compassionate release petitions filed during the pandemic.

In the first 6 months of the Biden administration, the Bureau of Prisons approved just nine compassionate release requests. This is extraordinary. When the infection rate in the Bureau of Prisons was six to seven times the national infection rate, and the death rate equally appalling, when compassionate release requests were received, 31,000 of them, only 36 were allowed.

Meanwhile, the pandemic has been devastating in our Bureau of Prison facilities. Two hundred sixty-five inmates have died, including six within the last few weeks. The death of a 42-year-old man in August came after the Department of Justice denied his compassionate release request.

Republicans and Democrats worked together to pass the First Step Act, to make our justice system fairer and our community safer. These reforms are only as good as their implementation.

Attorney General Garland, as you come before this Committee, the right to vote and to have the votes of every American counted is under attack like no time in decades. This year alone, State legislators have introduced more than 425 bills, making it more difficult for Americans to vote, particularly people of color. Nineteen States have enacted 33 of these laws. Some of these laws set new limits on voting by mail. Others cut hours for polling locations. All of them—all of them are designed to achieve the same outcome, make it more difficult to vote.

At the same time, Big Lie proponents are pushing new laws to give partisan State legislators the ability to overturn election results they don't agree with. They are ousting local election officials who faithfully apply the law and oversaw an election that Trump's own Department of Homeland Security called the most secure in American history. Their efforts coincide with an unprecedented increase in violent threats toward State and local election officials.

I'd like to add at this point, about these violent threats, it is rife across America. Those of us who are airline passengers know what the flight attendants are facing with thousands of confrontations, even violent confrontations, over wearing masks on aircraft. I've sent a letter to you joined by others saying this has to be taken seriously. These assaults in the so-called name of liberty are unacceptable.

Your October 4th memo, relative to schools and school board officials and their own peril, at this point, I think should be mentioned. I have heard statements from members of this Committee which I think are really inconsistent with reality.

Those who think the insurrectionist mob of January 6th was merely a group of tourists visiting the Capitol ignore the pillaging, the deaths, and the serious injuries to over 100 law enforcement officials. And those who argue that school board meetings across America are not more dangerous and more violent than in the past are ignoring reality.

I went on and just typed in this morning "school board violence" on one of the search engines. Page after page is coming up. In my State of Illinois, Minden, Illinois, is a small rural town in Adams County, the western part of our State that I have represented for almost 40 years. It is a quiet, solid community. Yet they had their own instance at a school board meeting where an individual had to be arrested because he had threatened violence against the school board members over masks in schools, for example.

That story is repeated over and over again. The State of Minnesota. Senator Klobuchar knows this story well. The State of Idaho. We are seeing violence at these school board meetings at an unprecedented number. I don't believe—I think you made it clear that you don't believe that we should infringe on free speech. Free speech does not involve threats and violence, period. We ought to join with local law enforcement officials to protect the school board members who are being intimidated in this way.

I want to close by mentioning an issue I said to you personally. I'm honored to represent the city which you grew up in, and which I now visit with great frequency obviously, and that's the city of Chicago. The gun violence situation there is intolerable. Intolerable. We're not the only city in America by any means that's facing this. We need to have your assurance that there is a concerted, determined effort to deal with gun violence at the Federal level coordinating our effort with the State and local officials. With that in mind, I hope we can reach some agreement to do so very quickly.

Let me hand it off now to the Ranking Member, Senator Grassley.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Thank you, Chairman Durbin.

This Committee has a constitutional obligation to ensure that the Department complies with the laws that we write and execute those laws according to our intent.

In the performance of our constitutional duty, we write letters, seeking answers and records from the Department and its component agencies to better understand what they're doing. Likewise, the entire executive branch, not just DOJ, has an obligation to respond to congressional oversight requests.

Today, I can say with confidence that under General Garland's leadership, the Department has failed across the board to comply with this Committee's Republican oversight request, and I appreciate very much Chairman Durbin pointing out a letter that he and I wrote. Five months, haven't received an answer. If my name being on that letter has any reason it hasn't been responded to, I'll take my name off of that letter.

In contract, General Garland, you've provided Democrat colleagues with thousands of pages of materials. Moreover, President Biden has politicized and inserted himself into the Department policymaking, notably directing the end of compulsory process for reporter records and criminal leak investigations, and most recently inserting himself when he said the Department should prosecute anyone who defies compulsory process from the January 6 Committee.

At your confirmation hearing, I read to you what I told Senator Sessions at his confirmation hearing for being Attorney General, this: quote, "If Senator Feinstein," who then was Ranking Member, "If Senator Feinstein contacts you, do not use this excuse as so many people use that if you are not a chair of a committee, you do not have to answer the questions. I want her questions answered just like you would answer my questions," end of quote that I gave to Senator Sessions. You said to me at your hearing, quote "I will not use any excuse to not answer your questions, Senator" end of quote. You have failed to satisfy that statement.

Example. I've asked the Department for records relating to Hunter Biden's October 2018 firearm incident where his gun ended up in a trash can near a school. That's a firearm incident. Your ATF used the Federal Freedom of Information Act to refuse producing those records when that law doesn't even apply to the Congress.

I've also asked for information relating to Chinese nationals linked to the communist Chinese regime that are connected to the Biden family. One individual, Patrick Hull, was not just linked to Chinese regime. He was apparently connected to that country's intelligence service. Hunter Biden reportedly represented him for \$1 million.

Even though the Department already made public in court filings that DOJ possesses FISA information relating to Patrick Hull, in response you stated, quote "Unfortunately, under the circumstances described in your letter, we are not in a position to confirm the existence of the information that is sought if it exists in the Department's possession." Well, let me emphasize. Well, you al-

ready made it public in a court filing. You're telling me you can't even confirm its existence.

With respect to the criminal investigation of Hunter Biden, Senator Johnson and I wrote to you twice this year regarding a person named Nicholas McQuaid. Mr. McQuaid was employed at a law firm until January 20th, 2021, when he was hired to be then acting Assistant Attorney General for the Department's Criminal Division. Before he was hired, he worked with Christopher Clark, who Hunter Biden reportedly hired to work on his Federal criminal case a month before President Biden's inauguration.

The Department hasn't disputed any of these facts. However, you refuse to confirm whether Mr. McQuaid recused from the Hunter Biden case. That seems to be a pretty simple thing to say one way or the other. The son of the President of the United States is under criminal investigation for financial matters. A senior attorney under your command has apparent conflicts with that matter. Your refusal to answer just threshold questions casts a very public cloud over the entire investigation, a cloud that you should easily do away with if you were—were just a little bit transparent.

When I placed holds on your nominees for the Department's failure to comply with Republican oversight requests, I said either you run the Department of Justice, or the Department runs you. Right now, looks like the Department of Justice is running you.

Since your confirmation, in less than a year, the Department has moved as far left as it can go. You've politicized the Department in ways it shouldn't be. Case in point, your infamous school board memo. You publicly issued this memo merely 5 days after the National School Board Association wrote a letter to President Biden. Incredibly, they asked the Department to use the antiterrorist Patriot Act against parents speaking their minds to local school officials.

The School Board Association has since apologized for that letter, but not before the Department relied on their letter to mobilize Federal law enforcement in State and local matters.

Meanwhile, actual violent crime is on the rise in the country. Your memo treats parents speaking freely to be worthy of the Department's heavy investigation and prosecutorial hand. You've created a task force now, a task force that includes the Department's Criminal Division and National Security Division to potentially weaponize against parents. Your memo also creates a special training and guidance for local school boards and school administrators to recognize threats against them. According to your memo, these threats including—include an undefined category of, quote "other forms of intimidation and harassment."

The last thing the Justice Department and FBI need is a very vague memo to unleash their power, especially when they've shown zero interest in holding their own accountable. I don't—let's not forget about Obama-Biden administration FISA abuse during Crossfire Hurricane, abuses that the Department and the FBI for years denied even to be possible. Then you allowed a disgraced former FBI official off the hook, paying him hundreds of thousands of dollars in taxpayers' money when the Inspector General determined that he lied to investigators seven times. Yes, seven times over the course of three different occasions.

Or the FBI's and the Department's total failure to protect hundreds of kids from abuse by Larry Nassar, and then cover it up. When we had a bipartisan hearing to learn about those courageous survivors, your Deputy Attorney General didn't even show up.

Getting back to the National School Board Association matter, these parents are trying to protect their children. They're worried about divisive and harmful curricula based upon Critical Race Theory. They're speaking their minds about mask mandates. This is the very core of constitutionally protected speech, and free speech is deadly to the tyranny of government and is the lifeblood of our constitutional republic.

To say your policies are outside of the mainstream would be an understatement. Mothers and fathers have a vested interest in how schools educate their children. They are not, as the Biden Justice Department apparently believes them to be, national security threats.

What is a national security threat is things like MS-13. What is a national security threat is like our open southern borders. What is a national security threat is the Federal Government's failing to adequately vet individuals from Afghanistan. I suggest that you quickly change your course, because you're losing credibility with the American people, and with this Senator in particular. Thank you.

Chair DURBIN. Thanks, Senator Grassley. We now turn to the Attorney General for his testimony. First, welcome Honorable Merrick Garland to testify before the Senate Judiciary Committee.

For the information of the Members, the mechanics are as such. After I swear in Attorney General Garland, he will make his opening statement. Then we'll go to a round of questions. Each Senator will have 7 minutes. I'm going to try to hold folks close to that number so everybody can be accommodated. If there is a request, we may have a second round of questions of 3 minutes per Senator.

Attorney General Garland, would you please stand to be sworn in.

[Witness is sworn in.]

Thank you. Let the record reflect that the Attorney General answered in the affirmative. Please proceed with your opening statement.

STATEMENT OF HON. MERRICK GARLAND, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Attorney General GARLAND. Good morning, Chairman Durbin, Ranking Member Grassley, and distinguished Members of this Committee. Thank you for the opportunity to appear before you today.

In my address to all Justice Department employees on my first day in office, I spoke about three co-equal priorities that should guide the Department's work: upholding the rule of law, keeping our country safe, and protecting civil rights.

The first core priority, upholding the rule of law, is rooted in the recognition that to succeed and retain the trust of the American people, the Justice Department must adhere to the norms that have been part of its DNA since Edward Levi's tenure as the first post-Watergate Attorney General. Those norms of independence

from improper influence, of the principled exercise of discretion, and of treating like cases alike are what define who we are as public servants.

Over the last 7 months that I have served as Attorney General, the Department has reaffirmed and, where appropriate, updated and strengthened its policies that are foundational for these norms.

For example, we strengthened our policy governing communications between the Justice Department and the White House. That policy is designed to protect the Department's criminal and civil law enforcement decisions and its legal judgments from partisan or other inappropriate influences.

We also issued a new policy to better protect the freedom and independence of the press by restricting the use of compulsory process to obtain information from or records of members of the news media.

The second core priority is keeping our country safe from all threats, foreign and domestic, while also protecting our civil liberties. We are strengthening our 200 joint terrorism task forces, the essential hubs for international and domestic counterterrorism cooperation across all levels of government nationwide. For fiscal year 2022, we are seeking more than \$1.5 billion, a 12 percent increase for our counterterrorism work.

We are also taking aggressive steps to counter cyber threats, whether from nation states, terrorists, or common criminals. In April, we launched both a comprehensive cyber review, and a ransomware and digital extortion task force. In June, we seized a \$2.3 million ransom payment made in Bitcoin to the group that targeted Colonial Pipeline.

Keeping our country safe also requires reducing violent crime and gun violence. In May, we announced a comprehensive violent crime strategy, which deploys all of our relevant Departmental components to those ends. We also launched five cross-jurisdictional strike forces to disrupt illegal gun trafficking in key corridors across the country. And to support local police departments and help them build trust with the communities they serve, our fiscal year 2022 budget requests over \$1 billion for grants.

We are likewise committed to keeping our country safe from violent drug trafficking networks that are, among other things, fueling the opioid overdose epidemic. Opioids including illicit fentanyl caused nearly 70,000 fatal overdoses in 2020. We will continue to use all of our resources to save lives.

Finally, keeping our country safe requires protecting its democratic institutions, including the one we sit in today, from violent attack. As this Committee is well aware, the Department is currently engaged in one of the most sweeping investigations in its history in connection with the January 6 attack on the Capitol.

The Department's third priority is protecting civil rights. This was a founding purpose when the Department was established in 1870. Today, the Civil Rights Division's work remains vital to safeguarding voting rights, prosecuting hate crimes, ensuring constitutional policing, and stopping unlawful discrimination.

This year, we doubled the size of the Civil Rights Division's voting section, and our fiscal year 2022 budget seeks the largest ever increase for the division, totaling more than 15 percent. We have

appointed Department-wide coordinators for our hate crimes work. We have stepped up our support for the community relations service. We are also revitalizing and expanding our work to ensure equal access to justice.

In addition to these core priorities, another important area of Department focus is ensuring economic opportunity and fairness by reinvigorating antitrust enforcement, combatting fraud, and protecting consumers. We are aggressively enforcing the antitrust laws by challenging anticompetitive mergers and exclusionary practices. In fiscal year 2022, we are seeking a substantial increase in funds for the division.

We likewise stood up a COVID-19 fraud enforcement task force to bring to justice those who defraud the Government of Federal dollars meant for the most vulnerable among us.

In sum, in 7 months, the Justice Department has accomplished a lot of important work for the American people, and there is much more to be done. Thank you for the opportunity to testify this morning. I look forward to your questions.

[The prepared statement of Attorney General Garland appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Attorney General.

Hardly a day goes by in the city of Chicago that someone isn't killed with a firearm. The cases are heartbreaking. Little boys and girls, standing on their porches and going to school. On August 7th, the Chicago Police Officer Ella French and her partner, Officer Carlos Yanez were conducting a routine traffic stop in the city. The person in the car opened fire. Officer French, age 29, was murdered, and Officer Yanez was severely wounded.

I never saw such an outpouring of emotions in the city. I went down to Rita High School on the South Side near Beverly where they had the memorial service. There were hundreds, if not thousands, of women and men in uniform and just ordinary citizens standing, waiting for their turn to pay tribute to Ella French for what she had done for her city.

Two days later, we found out from the U.S. Attorney's Office that the gun used to murder her was obtained from Indiana through a straw purchase. That's when a person who can clear a background check buys a gun at a federally licensed gun dealer and gives it to someone who cannot clear it. What are we going to do about this? What is going to be done at the Federal level to show that we're taking this seriously? Ours isn't the only city that is facing this challenge, and we've got to act, and act soon.

Attorney General GARLAND. Mr. Chairman, I am as concerned as you are, and as I'm sure all Members of this Committee are, about the rise of violent crime all across the country.

I was in Chicago, as you know, almost the exact time that the officer that you speak of was killed. I have gone to meet with the families of an ATF agent who was killed on duty, and I have stood on the Mall for the candlelight vigils for many other police officers who were killed in the line of duty.

The Justice Department is doing everything possible with respect to violent crime. In May of this year, I launched the Violent Crime Initiative, which brings together all of our law enforcement on the

Federal level to meet with, to coordinate with, cooperate with State, local, tribal, territorial law enforcement to fight this issue.

Our Federal agencies, DEA, ATF, Marshals, and the FBI, are all deeply involved in this. Our programs, Project Safe Neighborhoods, continue in all these ways, and we are looking for large amounts of money to provide in grants to police departments.

Specifically with respect to the gun trafficking that you're speaking about, as you know, Chicago is one of the task force cities that we have announced for purposes of tracing this gun trafficking problem, and we are doing so and finding the straw purchasers and arresting them, as well.

I could not agree more that this is a serious, serious problem that needs the attention of the entire country's law enforcement, and the Justice Department is very much involved in the fight.

Chair DURBIN. I'm going to be meeting with those Federal law enforcement agencies to talk about the strike force and what they're doing, how they're cooperating with State and local law enforcement. I hope to do it maybe even this week on a private basis, and then see what more I can do. I think we all have a responsibility when it comes to this issue.

Let me ask you about the home confinement issue. We all know under the CARES Act there was an allowance for that possibility. We know that since March of last year, more than 33,000 inmates have been released to home confinement, including those released under the CARES Act expanded authority. Less than 1 percent of those inmates have been returned to BOP facilities for any rules violation.

Do you agree that recalling the thousands of individuals who have successfully transitioned back into society would be contrary to the purpose of home confinement, which is to allow an individual, quote "a reasonable opportunity to adjust to and prepare for reentry of that prisoner in the community"?

Attorney General GARLAND. Senator, I very much agree that the home confinement program has proven successful, that it both relieved the pressure on the prisons with respect to COVID-19 pandemic, but also gave people an opportunity to adjust themselves to their communities. You are right that we have seen very few violations of the conditions. I'm very strongly in favor of being able to continue this program.

Chair DURBIN. I'm hoping that we can get a definitive reversal of the OLC opinion that was dropped on the desk as President Trump left office and make it very clear what will happen if and when, and I pray that's soon, the COVID-19 emergency is lifted.

I'd like to move to another topic which has already been addressed by myself and Senator Grassley. I really invite the Members of this Committee, if you don't believe me, type "school board violence" into your computer and take a look at what's happening. It's happening all across the country. In my State, as I mentioned, a 30-year-old man arrested and charged with battery, disorderly conduct after striking a school board member at meeting.

California, father yelling profanities at an elementary school principal. His daughter calmed him down. He later returned to confront the principal and struck a teacher in the face who attempted to intervene.

Ohio, a school board member sent a threatening letter saying, “We’re coming after you.” After the board member posted the letter on Facebook, the president of the Board of Education for a nearby district reported his board had received similar threats.

Pennsylvania, person posted threats on social media which required the police to station outside each of that district’s school. Local law enforcement is investigating the person who made the treats and will maintain a police presence at schools and school board meetings for the foreseeable future.

In Texas, a parent physically assaulting a teacher, ripping off her mask. It goes on and on and on. These are not routine people incensed or angry. These are people who are acting out their feelings in a violent manner over and over again, the same people we see on airplanes and other places, same people, some of whom we saw here on January 6th.

When you responded as quickly as you did to that school board request, did you have second thoughts after they sent a follow-up letter saying they didn’t agree with their original premise in their first letter?

Attorney General GARLAND. Senator, I think all of us have seen these reports of violence and threats of violence. That is what the Justice Department is concerned about. It’s not only in the context of violence and threats of violence against school board members, school personnel, teachers, staff. It’s an a rising tide of threats of violence against judges, against prosecutors, against secretaries of State, against election administrators, against doctors, against protestors, against news reporters. That’s the reason that we responded as quickly as we did when we got a letter indicating that there were threats of violence and violence with respect to school officials and school staff.

That’s the reason. That’s what we are concerned about. That’s part of our core responsibility. The letter that we—was subsequently sent does not change the Association’s concern about violence or threats of violence. It alters some of the language in the letter, language in the letter that we did not rely on and is not contained in my own memorandum. The only thing the Justice Department is concerned about is violence and threats of violence.

Chair DURBIN. Senator Grassley.

Senator GRASSLEY. Yes. Before I ask my question, I’d like permission to introduce in the hearing record a letter from the Iowa Association of School Boards disagreeing with the National School Boards Association request for intervention from Federal agencies and law enforcement and other concerns that they have. Yes.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator GRASSLEY. General Garland, regarding your October 4th school board memo, last week you said the memo was for law enforcement audience, despite it being on your public website as a press release. As a result of your memo, local school officials and parents may not speak up in these meetings out of fear that the Federal Government will do something to them. That’s a poisonous, chilling effect.

Apparently that letter wasn’t actually supported by organization, but was sent by two unauthorized staff. Last week, the organiza-

tion disavowed it. Since you and the White House based your memo on this delegitimized letter, I assume you're going to revoke your extremely divisive memo that you said was instigated because of that letter. That's a question.

Attorney General GARLAND. Senator, the memo which you refer to is one page. It responds to concerns about violence, threats of violence, other criminal conduct. That's all it's about. All it asks is for Federal law enforcement to consult with, meet with local law enforcement to assess the circumstances, to strategize about what may or may not be necessary, to provide Federal assistance if it is necessary.

Senator GRASSLEY. Presumably, you wrote the memo because of the letter. The letter is disavowed now. So you're going to keep your memo going anyway, right? Is that what you're telling me?

Attorney General GARLAND. Senator, I have the letter from NSBA that you're referring to. It apologizes for language in the letter, but it continues its concern about the safety of school officials and school staff. The language in the letter that they disavow is language that was never included in my memo, and never would have been. I did not adopt every concern that they had in their letter. I adopted only the concern about violence and threats of violence, and that hasn't changed.

Senator GRASSLEY. Who in the Justice Department was responsible for drafting your polarizing October 4th memo?

Attorney General GARLAND. I signed the memo, and I worked on the memo.

Senator GRASSLEY. The press release accompanying your memo mentions that the National Security Division will get involved in school board investigations.

Is the Justice Department National Security Division really necessary for keeping local school boards safe if parents aren't domestic terrorists? If the Patriot Act isn't being used, why is the National Security Division involved at all? This kind of looks like something that would come out of some communist country expansive definition of national security.

Attorney General GARLAND. The memo is only about violence and threats of violence. It makes absolutely clear in the first paragraph that spirited debate about policy matters is protected under our Constitution. That includes debate by parents criticizing school boards. That is welcome. The Justice Department protects that kind of debate. The only thing we're concerned about, Senator, is violence and threats of violence against school officials, school-teachers, school staff, just like we're concerned about those kind of threats against Senators, Members of Congress, election officials.

In all of those circumstances, we are trying to prevent the violence that sometimes occurs after threats.

Senator GRASSLEY. Your memo stated that the Justice Department is opening dedicated lines of communication for threat reporting, assessment, and response. What is the Department doing with tips it receives on this dedicated line, and what are you doing with those parents who have been reported?

Attorney General GARLAND. The FBI gets complaints, concerns from people around the country for all different kinds of threats and violence. That's what this is about. A place where people who

feel that they've been threatened with violence can report that. These are then assessed, and they are only pursued if, consistent with the First Amendment, we have a true threat that violates Federal statutes or that needs to be referred to a State or local government or local law enforcement agency for their assistance.

Senator GRASSLEY. On the other hand, are there criminal investigations being opened for instances where school officials are trying to assess private data of parents with opposing views on Critical Race Theory?

Attorney General GARLAND. I don't know about that, but the Justice Department certainly does not believe that anybody's personal information should be accessed in that way. If there is a Federal offense involved, or a State or local offense involved, then of course those should be reported.

Senator GRASSLEY. The nonpartisan Justice Department Inspector General established that Andrew McCabe lied under oath to FBI investigators. He lied under oath to the Justice Department Inspector General. It should also be noted that McCabe leaked government information to the media, and then called the New York and Washington FBI field offices and blamed them for the very leaks that he caused.

Under your leadership, instead of punishing him, the Department reinstated his retirement, expunged his records as part of the settlement. He will reportedly receive \$200,000 of retirement back pay, and his attorney will reportedly receive \$500,000 in legal fees. It seems to me that that's beyond incredible.

General Garland, did you authorize the McCabe settlement? If you—not, who did?

Attorney General GARLAND. Senator, the McCabe settlement was the recommendation of the career lawyers litigating that case based on their prospects of success in the case. The case did not involve the issues about lying. It involved a claim that he was not given amount of time necessary to respond to allegations. The litigators concluded that they needed to settle the case because of the likelihood of loss on the merits of that claim.

The Inspector General's report still stands. There is no—we have not questioned in any way the Inspector General's findings. The reference with respect to false statements was made to the Justice Department in the previous administration and declined in the previous administration. The only issue here was an assessment of litigation merits.

Senator GRASSLEY. Short follow-up. Do you agree with the taxpayer—since you didn't, somebody else authorized it—do you agree with the taxpayer picking up a multimillion-dollar bill for someone that lied under oath to Government officials?

Attorney General GARLAND. I think the assessment made by the litigators was that the bill to the taxpayers would be higher if we didn't resolve the matter as it was resolved.

Senator GRASSLEY. Thank you, Mr. Chairman.

Chair DURBIN. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. Attorney General Garland, good to see you and thank you for being here. I'm sure the Members of the Committee are eager to discuss with you what the Justice Department is doing, what could be done better.

I'll just say this. After four tumultuous years in which the former President viewed the Justice Department as his personal law firm, I'm pleased the Department is again living up to the most fundamental principle in our American justice system that no one—no body is above the law. That's certainly what I learned about the Justice Department when I was in law school. That's the experience I'd had with it for years as a prosecutor and as a litigator.

I was dismayed seeing what was happening the past 4 years, and I thank you, Attorney General, for bringing the Department back from the brink. There's still a lot to be done, but I think the Americans should take comfort that the rule of law is again being enforced.

It's hard to overstate how urgently we must act to protect American's constitutional right to vote. There is reason for alarm. Many states are rapidly moving to restrict access to the ballot for tens of thousands of Americans of all walks of life. In the wake of the *Shelby County* and this year's *Brnovich* decision, the Department's tools to stem this tide of voter suppression have been greatly diminished. I know you're doing whatever you can to defend the right to vote.

How does congressional inaction in responses to these Supreme Court decisions limit the ability of the Department to protect Americans' constitutional right to vote?

Attorney General GARLAND. Thank you for that question, Senator. The right to vote is central pillar of our democracy, and as I've said many times, it's the central pillar that allows all other rights to proceed from it.

The Justice Department was established in part to protect the rights guaranteed under the 13th, 14th, and 15th Amendment to vote. The Voting Rights Act gave us further authorities in that respect.

We are doing, as you say, everything we can. We have doubled the size of the Voting Rights section. We brought a Section 2 case. There are limitations on our authority that the Supreme Court has imposed, one of which is the elimination of Section 5 of the Voting Rights Act, which provided an opportunity to do preclearance reviews so that we did not have to review each matter on a one-by-one basis. That was *Shelby County* as you pointed out. Recently in the *Brnovich* case, a narrowing of what we regarded as the meaning of Section 2 and our authorities under Section 2.

Both of those could be fixed by this Congress, and if they were, it would give us considerably greater opportunity and ability to ensure the sacred right to vote.

Senator LEAHY. Didn't the Supreme Court make it very clear that we could fix that if the Congress wanted to?

Attorney General GARLAND. That's correct. In the opinions they've indicated these were matters that could be fixed by the Congress.

Senator LEAHY. I hope we will, because I think it's very important that all Americans be protected in their right to vote. I know my own State of Vermont, we take that very seriously.

We have the bipartisan VOCA fix to stay in the Crime Victims Fund Act of 2021. It's been signed into law. A major piece of this legislation requires funds collected and deferred in non-prosecution

agreements be deposited into the Crime Victims Fund, which had been projected to reach a 10-year low. Since this bill has become law, have any funds from deferred or non-prosecution agreements been deposited into the Crime Victims Fund, and if not, why not?

Attorney General GARLAND. Senator, the VOCA fix was something we sought, and we're grateful for your support for and for your introduction of. We acted immediately after it was passed, and something like north of \$200 million has already been deposited in the fund thanks to that act. We now project that the fund should be liquid all the way through the end of 2022.

Senator LEAHY. Thank you. We can review it after that, because I think you and I would both agree we want to have long-term sustainability in this fund.

Attorney General GARLAND. Absolutely.

Senator LEAHY. Let's work together on that.

There's been some discussion here and elsewhere about the Larry Nassar investigation. Chairman had these very impressive gymnasts who testified before us. It was heart wrenching listening to them. They talked about how they were seeking accountability, and I could not help but think how brave they were to testify.

The Justice Department initially declined to bring charges against the disgraced FBI agents involved in the investigation. I was concerned, and I said at the time that I've seen many people prosecuted for lying to FBI agents. Here you had two FBI agents who lied to FBI agents. One was fired, the other resigned. No prosecutions.

Is the Department now reviewing that decision not to prosecute, and do you have any update with regard to that review?

Attorney General GARLAND. Senator, I think heart wrenching is not even strong enough as a description of what happened to those gymnasts and to the testimony they gave. I believe Deputy Attorney General Monaco said at her hearing that we are reviewing this matter. New evidence has come to light, and that is cause for review of those matters that you're discussing.

Senator LEAHY. I hope you will because, as I said, I've seen so many prosecutions of somebody for lying to the FBI agent, and I understand that. When an FBI agent lies to an FBI agent, they should also face the same that anybody else does. Thank you very much, Mr. Chairman.

Chair DURBIN. Thank you, Senator Leahy.

Senator GRASSLEY. Mr. Chairman, could I put something in the record from 17 State attorney generals expressing their disagreement with the Department's October 4th memorandum and ask that that memorandum be withdrawn?

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. Mr. Attorney General, are you aware of the caravan of about 3,000 people approaching the State of Texas?

Attorney General GARLAND. I have read about it in the news media, yes. I didn't know—I think it's south of Mexico City is what I read. Is that what you're talking about?

Senator GRAHAM. Yes. They're apparently headed toward Texas. What would you tell these people?

Attorney General GARLAND. I would tell them not to come. The job of the Justice Department has to do with prosecution and with the way in which the asylum and removal claims are adjudicated.

Senator GRAHAM. All right. You would tell them not to come?

Attorney General GARLAND. It depends on why they are coming.

Senator GRAHAM. If they're coming to make asylum claims, what would you tell them?

Attorney General GARLAND. Well, look. The Department of Homeland Security is the agency that is responsible for border control.

Senator GRAHAM. Right. Right. I get that. You're the Attorney General of the United States. Do you think our asylum laws are being abused?

Attorney General GARLAND. The asylum laws are statutes passed by the Congress.

Senator GRAHAM. Yes. Do you think they're being abused?

Attorney General GARLAND. I think this is a—that question is one that has to be evaluated on a one-by-one basis in each—

Senator GRAHAM. Have you talked to the—when is the last time you've been to the border?

Attorney General GARLAND. I think a week ago, maybe 10 days ago.

Senator GRAHAM. Did they tell you anything about asylum claims being made by people that are mostly economic claims, not asylum claims? Did they mention that to you?

Attorney General GARLAND. I don't recall exactly. I think it's fair—

Senator GRAHAM. You don't recall being told by the Border Patrol that they're overwhelmed, they can't hold the line much anymore that we've had 1.7 million people apprehended, and the big magnet, the pull factor is the way the catch and release program around asylum, that didn't stick out to you?

Attorney General GARLAND. That was not a discussion that I had when I was at the border.

Senator GRAHAM. Who did you talk to?

Attorney General GARLAND. I was at the border at Nogales and spoke to a Border Patrol—

Senator GRAHAM. Yes, I was there about 6 months ago. They never mentioned to you the pull factors of illegal immigration?

Attorney General GARLAND. This was a review of what they were doing at the border with respect to—

Senator GRAHAM. It's a simple question. They never mentioned to you that they've got a problem with being overrun by asylum seekers?

Attorney General GARLAND. I know from reading the news media that Border Patrol agents feel that way.

Senator GRAHAM. I mean, it's not about reading the paper. You were there talking to them.

Attorney General GARLAND. I don't recall that's—I don't want to—

Senator GRAHAM. Okay.

Attorney General GARLAND [continuing]. Tell you about a conversation that I'm not sure happened.

Senator GRAHAM. Yes, I'm just stunned that you can't recall that. Let's talk about Afghanistan. The Secretary—Undersecretary for Defense Policy, Mr. Kahl, said, "While ISIS-K poses more of a short-term external threat, Al Qaeda could regain the ability to launch attacks outside of Afghanistan within a year or two." Do you agree with that?

Attorney General GARLAND. I agree that Al Qaeda has always presented and continues to present a persistent threat to the United States homeland.

Senator GRAHAM. Well, no. The question is what's changed? You say always. Has any recent event changed the likelihood of an attack?

Attorney General GARLAND. I don't know——

Senator GRAHAM. You don't know that we withdrew from Afghanistan?

Attorney General GARLAND. I know we withdrew. I don't know whether the withdrawal will increase the risk from Al Qaeda or not. I do know——

Senator GRAHAM. You're the Attorney General of the United States. Secretary Wray testified openly twice that due to the lack of ability to have eyes and ears on the ground, and the unreliability of the Taliban, that an attack on the United States within 6 months, a year, is far more likely after a withdrawal. You're not aware that he said that?

Attorney General GARLAND. The job of the Justice Department and the job of the FBI is to protect against those kind of attacks in the homeland.

Senator GRAHAM. Does it make sense that that would be a dynamic of our withdrawal? Do you trust the Taliban to police Al Qaeda and ISIS on our behalf?

Attorney General GARLAND. I do not trust the Taliban.

Senator GRAHAM. Matter of fact, they have openly told us they will not work with us regarding containing the Al Qaeda-ISIS threat. Are you aware of that?

Attorney General GARLAND. I think there has been inconsistent statements, but——

Senator GRAHAM. No, no. They just literally said that.

Attorney General GARLAND. I think there have been inconsistent statements, but their statements are not anything that we can rely on.

Senator GRAHAM. When they tell you to your face we're not going to help you, do you think they're kidding? Do you think they really will help us, but they're just telling us to our face that they won't?

Attorney General GARLAND. Senator, I think ISIS-K, Al Qaeda, associated forces are and continue to be——

Senator GRAHAM. We're talking about the Taliban. The Taliban has told the United States they will not work with our counterterrorism forces when it comes to Al Qaeda or ISIS. What response should we have regarding the Taliban when they say that?

Attorney General GARLAND. I think we have a number of different tools available.

Senator GRAHAM. Like what?

Attorney General GARLAND. We have economic sanctions. They need money from the United States for humanitarian and other reasons. This is a——

Senator GRAHAM. The leverage over the Taliban is whether or not we'll give them money.

Attorney General GARLAND. Senator, the job of the Justice Department is protecting—using the FBI and the National Security——

Senator GRAHAM. The National Security Division is part of our counterterrorism operation, right?

Attorney General GARLAND. It is one——

Senator GRAHAM. Has anybody from the National Security Division briefed you about the increased likelihood of attack emanating from Afghanistan after our withdrawal?

Attorney General GARLAND. Every day, I'm briefed by the FBI——

Senator GRAHAM. No, my question is specific. Has anybody briefed you about the increased likelihood of an attack emanating from Afghanistan by ISIS or Al Qaeda because of our complete withdrawal?

Attorney General GARLAND. We are worried about the risk of attack by ISIS-K——

Senator GRAHAM. I know. It's one thing to be worried. Has anybody told you the likelihood of an attack is greater because of our withdrawal or not?

Attorney General GARLAND. There are different views about the degrees of likelihood. That doesn't change our posture. We just all are being protective.

Senator GRAHAM. It doesn't change your posture if you go from a possibility of being attacked to a 6-month to a year time window of being attacked.

Attorney General GARLAND. We have asked for substantial additional funds for our counterterrorism operations in light——

Senator GRAHAM. Is that in light of the withdrawal from Afghanistan?

Attorney General GARLAND. That's in light of a lot of changing circumstances in the world with respect——

Senator GRAHAM. Let me just put a fine point on this. Secretary Wray has told the world that ISIS and Al Qaeda in Afghanistan present a threat to our homeland. The Taliban has told us they're not going to help us when it comes to policing these groups. The Department of Defense has said we're 6 months to a year away from a possible attack by ISIS and Al Qaeda. Just seems to me there's not a sense of urgency about this.

Attorney General GARLAND. There is a sense of urgency. This is——

Senator GRAHAM. What have you done specifically—and I'll end with this. Specifically, what have you done since with our withdrawal in Afghanistan to deal with this new threat?

Attorney General GARLAND. We have strengthened and increased the efforts of our joint terrorism task forces. I have met with them.

Senator GRAHAM. Literally, what have you done?

Attorney General GARLAND. I'm telling you.

Senator GRAHAM. Just put it in writing. Just write down what you've done.

Attorney General GARLAND. I'll be happy to have our staff assess what—

Senator GRAHAM [continuing]. I've told you and return it.

Chair DURBIN. Thank you, Senator Graham. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman. Welcome, Attorney General Garland.

Two topics. The first is executive privilege. We've been through a rather bleak period with regard to executive privilege. I think you could call it the anything goes period, in which any assertion of executive privilege, no matter how fanciful or preposterous, was essentially allowed to stand in very significant departure from the law that has been out there for years regarding executive privilege.

At the same time that the substance of executive privilege was being expanded beyond recognition, the procedure for evaluating executive procedure determinations was completely ignored. And this is a procedure that was established by President Reagan's White House.

We now have a situation in which there is very substantial destruction and disarray in the area of executive privilege determinations. As you know, under the Reagan memo, the Department of Justice had a role kind of as an arbiter to be the honest broker between whatever executive agency was objecting and whatever congressional committee was pursuing information. That role completely fell apart in the last administration, and it needs to be rebuilt in some predictable fashion.

The role of the courts has become highly problematic because delay is very often dispositive in these matters, and the courts are now a haven for delay with respect to executive privilege determinations. I think we need to look at that as well.

Senator Kennedy and I had a hearing on this executive privilege problem in our Court Subcommittee. The Department of Justice was not represented at that hearing, but I would like to ask you to detail somebody from the Department of Justice to talk to Senator Kennedy and me about this executive privilege problem, and work with us on trying to figure out a solution, making the role of the Department of Justice more clear and transparent and perhaps embodying it in rule or regulation or law, and trying to figure out how to accelerate at the courts a way to get quicker decisions, because otherwise, as I said, delay is just dispositive, and we lose, not because we're wrong, but because we're delayed.

Would you have somebody be our point of contact on that, please? When I say detail, I don't mean onto our payroll, you know. I just mean as a point of contact.

Attorney General GARLAND. Yes. Absolutely. Of course.

Senator WHITEHOUSE. Great. Thank you. Next, I've been pursuing the question of the Department's investigation into January 6 since pretty early days, starting with a letter in January 8th that asked about the resources that were being deployed into this investigation and whether a task force—a prosecution task force was being set up and so forth and then another letter February 24th with regard to domestic extremist violence groups' potential role.

We've learned a little bit more now, and we've learned that there was a lot of money sloshing around in the background behind the January 6 rally and behind the raid, the riot in the Capitol.

For instance, we know that the Bradley Foundation, which is a big funder, gave money to Turning Point USA and to Public Interest Legal Foundation. It gets even more interesting because Turning Point USA has a twin called Turning Point Action, 501(c)(3), 501(c)(4) combo, which also got money from the Judicial Crisis Network to support the so-called Italygate—debunked Italygate theory. At the same time, the Public Interest Legal Foundation had as its director Mr. Eastman, who was cranking out his fanciful memo for President Trump how to overturn the election.

The Judicial Crisis Network is the same thing from a corporate standpoint as something called the Honest Elections Project, which was bringing a fanciful case in Pennsylvania regarding election fraud. The Judicial Crisis Network was also funding RAGA, the Republican Attorney Generals Association, which was making robocalls to get people to come to the riot.

I don't know what's going on behind all of that, but I am hoping that the due diligence of the FBI is being deployed, not just to the characters who trespassed in the Capitol that day and who engaged in violent acts, but that you're taking the look you would properly take at any case involving players behind the scenes, funders of the enterprise, and so forth in this matter as well, and there has been no decision to say we're limiting this case just to the people in the building that day. We're not going to take a serious look at anybody behind it.

Attorney General GARLAND. Senator, I'm very limited as to what I can say—

Senator WHITEHOUSE. I understand that.

Attorney General GARLAND [continuing]. Because we have a criminal investigation going forward.

Senator WHITEHOUSE. Please tell me it has not constrained only to people in the Capitol.

Attorney General GARLAND. The investigation is being conducted by the prosecutors in the U.S. Attorney's Office and by the FBI Field Office. We have not constrained them in any way.

Senator WHITEHOUSE. Great. The old doctrine of follow the money, which is a well-established principle of prosecution is alive and well.

Attorney General GARLAND. It's fair to say that all investigative techniques of which you are familiar, and some maybe that you're not familiar with because they post-date your time, are all being pursued in this matter.

Senator WHITEHOUSE. Thank you. Thank you, Chairman.

Senator LEAHY. [Presiding.] Thank you very much. Senator Cornyn.

Senator CORNYN. Thank you. Good morning, Mr. Attorney General. On September the 29th, 2021, as you know, the National School Board Association wrote a letter to the President asking him to address the disruptions, the confrontations that we've seen at local school boards across the country, parents expressing their concerns about not only the curriculum, but also just generally the education of their children in public schools. Would you agree that

parents have a fundamental right to be involved in their children's education?

Attorney General GARLAND. Absolutely. This is the job of parents to be involved, and this is the role of the First Amendment to protect their ability to be involved. That's why my memo begins by saying that we respect the right to spirited debate about curriculum, about school policies, about anything like that.

Senator CORNYN. It's not just a good idea. It's actually protected by the Constitution of the United States. Would you agree?

Attorney General GARLAND. Absolutely.

Senator CORNYN. On October the 4th, a few days later, less than a week later after the National School Board Association wrote this letter, the Justice Department issued the memo that's already been discussed. Why did this rise to the level of a Federal concern as opposed to being addressed at the local and State level?

Attorney General GARLAND. This arises out of repeated reports of violence and threats of violence, not only with respect to school boards and school officials and teachers, but as I mentioned earlier, also with respect to secretaries of State and election administrators, judges, prosecutors, Senators, Members of Congress.

The Justice Department has two roles here. We assist State and local law enforcement in all ways, and we enforce Federal laws which prohibit threats of violence by telephone, by email.

Senator CORNYN. You as a longtime Federal judge with a distinguished legal career, you understand that not every crime, assuming it is a crime, is a Federal crime, correct?

Attorney General GARLAND. Absolutely.

Senator CORNYN. Some of these things, unless there is some nexus to interstate commerce or to the Federal Government, they're largely within the purview of the State and local law enforcement authorities, correct?

Attorney General GARLAND. I think you put that correctly. We have authority with respect to the mail, with respect to the internet, with respect to telephones.

Senator CORNYN. Right. We're going to give you the example, if somebody says to the school board member, if you do that, I'm going to meet you outside and punch you in the nose, is that a Federal offense or—

Attorney General GARLAND. No, that's not a Federal offense.

Senator CORNYN. I agree. I agree.

Attorney General GARLAND. There's nothing in this memo suggesting that it is.

Senator CORNYN. Why in the world would you cite the National Security Division in this memo as being one of the appropriate entities of the Department of Justice to investigate and perhaps prosecute these offenses?

Attorney General GARLAND. My memo itself doesn't mention the National Security Division. It is mentioned in another memo that was released by the Department. The National Security Division, like all the other law enforcement components, cooperates with and is involved in discussions about how to go forward on different kinds of matters.

They were involved, for example, in the election threats. They were involved in the threats against judges and prosecutors. They

were involved in the hate crimes threats cases. It's just a natural part of our internal analysis.

Senator CORNYN. Let me ask you. Did you see the National School Board Association letter to President Biden before you issued your memorandum on October the 4th?

Attorney General GARLAND. Yes, I did, and that was part of the reason. Their expression at the beginning of that memorandum of—

Senator CORNYN. They raised—they raised some of the concerns that you voiced here today, correct?

Attorney General GARLAND. They raised some of them. They raised others that I don't agree with and were not included in my memo.

Senator CORNYN. You're aware that on October the 22d, the National School Board Association apologized for its letter. You're aware of that, aren't you, sir?

Attorney General GARLAND. I am, but—

Senator CORNYN. It said—it went on to say, "we regret and apologize for the letter. There was no justification for some of the language in the letter". They've acknowledged that, "the voices of parents should be and must continue to be heard when it comes to decisions about their children's education, health, and safety".

You did not apologize for your memorandum of October the 4th, even though the National School Board Association did. Why didn't you rescind that memorandum and apologize for the memorandum?

Attorney General GARLAND. A core responsibility of the Justice Department, as I said in my opening, is protecting Americans from violence and threats of violence.

Senator CORNYN. You just said not every act of violence is a Federal crime, correct?

Attorney General GARLAND. Right. Not every bit of street crime and the kind of violence that we've been talking about earlier today is also a Federal crime. We assist State and locals to help them in their investigations of these kind of matters. Every single day, in non-Federal matters, we are partners with our State and local partners.

Senator CORNYN. Mr. Attorney General, you've acknowledged that parents have a right—a constitutional right to be heard on the education of their children in public schools. Can you imagine the sort of intimidation, the sort of bullying impact that a memorandum from the Department of Justice would have, and how that would chill the willingness of parents to exercise their rights under threat of Federal prosecution? Did you consider the chilling impact your memorandum would have on parents exercising their constitutional rights?

Attorney General GARLAND. The only thing this memorandum is about is violence and threats of violence. It opens with a statement—

Senator CORNYN. My question is did you consider the chilling effect this would have on parents' constitutional rights?

Attorney General GARLAND. To say that the Justice Department is against violence and threats of violence—

Senator CORNYN. Did you consider the chilling effect your memorandum might have on parents exercising their constitutional rights? I think you can answer that yes or no.

Attorney General GARLAND. What I considered, which I wanted the memorandum to assure people that we recognize the rights of spirited debate, and so that's—

Senator CORNYN. Mr. Attorney General, you're a very intelligent and accomplished lawyer and judge. You can answer the question.

Attorney General GARLAND. I did not—

Senator CORNYN. Did you consider the chilling effect that this sort of threat of Federal prosecution would have on parents' exercise of their constitutional rights to be involved in their children's education?

Attorney General GARLAND. I don't believe it's reasonable to read this memorandum as chilling anyone's rights. It's about threats of violence, and it expressly recognizes the constitutional right to make arguments about your children's education.

Senator LEAHY. As Senators are going back and forth for votes during this time, we're going to have to try to keep to the—

Senator CORNYN. Let the record reflect the Attorney General refused to answer the question.

Senator LEAHY. Let the record reflect that the Senator from Texas was allowed to go over his allotted time. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much. Just to confirm something, Mr. Attorney General, can you confirm to this Committee as you did earlier before the House Judiciary Committee that the purpose of the memo that you were just discussing with Senator Cornyn is to have meetings to discuss whether there is a problem, to discuss strategies, to discuss whether law—local law enforcement needs assistance or doesn't need assistance? Is that the purpose of it?

Attorney General GARLAND. Yes. I thank you for making that point, Senator. I say that in the memo that the purpose of the memo is to convene meetings with Federal, State, and local, tribal leaders, and to facilitate discussions of strategies for addressing threats to assess the question and to open lines of communication about such threats.

Senator KLOBUCHAR. Thank you. I want to move to some other threats. That is a hearing that actually Senator Blunt and I had yesterday. It was a bipartisan hearing. We both called witnesses. It was before the Rules Committee. It was with both Republican and Democratic election officials, the attorney general of Arizona, a Republican local official in Philadelphia. They told stories that horrified Senators on both sides of the aisle.

The Philadelphia election official commissioner, local election official, had been sent letters basically saying that they were going to kill him and his three kids, naming the kids, as well as putting his house and his address out there. Katie Hobbs, the attorney general of Arizona, received a voicemail saying, "I am a hunter and I think you should be hunted. You will never be safe in Arizona again."

Could you talk about what's going on with threats against election workers? By the way, we had the Republican Secretary of State from Kentucky talked about the fact that it has been dif-

ficult. They are losing—in many jurisdictions across the country, they don't have enough election workers because people are afraid. We don't have to discuss at length where these threats are coming from. I just want to have election officials. I want to have a functioning democracy. Can you provide an update on the election threats task force and talk about the kind of threats we're seeing to election officials?

Attorney General GARLAND. Yes, Senator. Very much like the circumstances with respect to the school boards, when the National School Board Association wrote us a letter advising of threats of violence and violence, earlier this year we received communications from the National Association of Secretaries of State and the National Association of Election Administrators raising concerns about threats of violence and violence in that area.

In that, soon thereafter, I met virtually unfortunately because of the pandemic with a large number of election administrators and secretary of states where they recounted the kind of threats that you're talking about. That led us to establish a task force which again coordinated efforts between the Federal law enforcement agencies, U.S. Attorney's offices, and State and local law enforcement across the country.

It is the case that many of those kind of threats can be handled by State and local law enforcement and should be, where they're capable of doing that. The Federal Government has an important role, as you say, in protecting our democracy and protecting its threats against public officials. That is an ongoing task force evaluating threats in that particular area.

Senator KLOBUCHAR. Thank you. Thank you. To another area, as Chair of the Competition Policy and Antitrust Subcommittee, I've urged the Justice Department to make antitrust enforcement a top priority. We recently had a nominations hearing for Jonathan Kanter. That seems to be moving ahead. I support the Division's enforcement efforts, including I know they're preparing for 18 trials, which is the most in decades.

Could you talk about the antitrust budget? Senator Grassley and I have passed a bill with the support of the Members of this Committee to add some additional resources to the Antitrust Division. Senator Lee and I have held numerous very informative hearings about various issues related to antitrust. Could you talk about what's happening there?

Attorney General GARLAND. Yes. The Justice Department is very much committed. As I said, it's a key focus of our attention, antitrust enforcement, because it's essential for the consumer well-being and for the well-being of our citizens.

We have aggressively moved in this area. We've already stopped a merger of two of the top three largest international insurance brokers. We have, as you say, continued—we are in the middle of trials—criminal trials with respect to price fixing and market allocation. We have the ongoing matter involving exclusionary conduct in the Google case. We are looking—we have investigations and attention in many areas from healthcare to agriculture to allocations within labor markets.

Senator KLOBUCHAR. Could I just ask you? We were talking about the criminal cases. Could giving the antitrust agencies au-

thority to seek substantial civil fines for Sherman Act violations help enforcers deter anticompetitive conduct?

Attorney General GARLAND. I'm sorry. I didn't—

Senator KLOBUCHAR. Civil fines. Would that be helpful?

Attorney General GARLAND. Yes. Having the ability to seek civil fines as well would be helpful. Of course, if we succeed in a criminal case, the follow-on civil cases become quite easy, as I know from my own antitrust practice. We are down in the number of attorneys in the Antitrust Division considerably, and we need an expansion. That's why we've asked for a 9-percent increase, a total increase of \$201 million in our fiscal year 2022 budget.

The number of mergers has skyrocketed, and the number of people we have in the Division evaluating those mergers has decreased. We need help in that regard.

Senator KLOBUCHAR. Thank you. I really appreciate the bipartisan work we've done in this Committee on that front.

Last question. In July, the Department announced that it was adopting a new policy that restricts the use of compulsory process to obtain information from members of the news media acting within the scope of news gathering activities, an issue we discussed, you and I discussed at your confirmation hearing. As a part of that announcement, you asked the Deputy Attorney General to undertake a review process to further explain, develop, and codify the policy. Can you provide an update on the steps the Deputy Attorney General has taken to ensure that the new policy is implemented?

Attorney General GARLAND. Yes. Issuing a memo is good, and it controls the Justice Department now. The next step though is to have a regulation, which will give us some greater permanence. The next step after that would be legislation, which the Justice Department supports. What the Deputy Attorney General is doing now is trying to formulate the general outlines of my memorandum into a regulation, which can replace the current pretty detailed regulations that we have. That's what she's involved in right now.

Senator KLOBUCHAR. Excellent. Thank you very much.

Chair DURBIN. [Presiding.] Mr. Attorney General, we had promised you a 5-minute break at 11:30. We can either take it right now, or I can have Senator Lee and Coons ask. Up to you.

Attorney General GARLAND. I'm happy to go ahead with Senator Lee and Coons.

Chair DURBIN. Let's proceed. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thank you, Attorney General Garland, for being here.

Mr. Attorney General, I've been concerned in recent weeks by some steps that have been taken by the Biden administration, steps that I fear represent a significant amount of overreach. You know, 7 weeks ago you had President Biden giving a speech in which he promised to enlist the assistance of corporate America, all of corporate America with more than 99 employees, in firing people who don't get vaccinated.

I'm vaccinated. I've encouraged everyone close to me to get vaccinated. I don't think it's the role of the Federal Government to do that. He's threatening to cripple employers by imposing absolutely punishing fines on them, and they're now doing his dirty work,

even before this act of overreach has been reduced to an order that could be litigated, litigation that I believe would end the same way *Youngstown Sheet & Tube v. Sawyer* ended.

You know, about a month after that we had your October 4th memorandum in which you direct the Department of Justice and the FBI to intervene in what, as far as I can tell, is a State and local issue. That is a series of issues involving how parents advocate for their children with their local school boards. I also believe that in doing that—doing that through the Department of Justice, doing it in the way that you did it, directing the assistance, enlisting the help of all 94 U.S. Attorneys, therefore every satellite office of the Department of Justice nationwide, to do it in a way that I think has a natural tendency to chill free speech in this area.

I question seriously the role of the Federal Government in protecting people at local school board meetings from their neighbors. It is, after all, most of the time, State law, not Federal that's at play when there is criminal activity. Federal crimes are a subset of crimes generally.

You've referenced several times today that your letter covered only violence and threats of violence, and yet the very opening line of your memo says, "In recent months, there's been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, school board members, teachers, and staff who participate in the vital work of running our Nation's public schools." You referred to this over and over again, and that's a pretty broad statement. I believe this has a tendency to chill free speech, free speech that is exercised at the State and local level typically by neighbors, by parents, to local school boards.

In hindsight, would you agree that a natural consequence of your memo could be chilling free speech, protected speech by parents protesting local school board policies?

Attorney General GARLAND. Senator, the memo is aimed only at violence and threats of violence. It states on its face that vigorous debate is protected. That is what this is about, and that is all this is about.

Senator LEE. What about harassment and intimidation? Are those Federal crimes?

Attorney General GARLAND. They are Federal crimes.

Senator LEE. Are you referring to like witness tampering intimidation under 18 U.S.C. § 1512 or what—

Attorney General GARLAND. I'm referring to 18 U.S.C. § 2261(a), which makes it a crime with intent to injure, harass or intimidate, placing a person in reasonable fear of serious bodily injury through communications over the internet. Likewise, 47 U.S.C. § 223(a), making telephone calls with intention to harass.

I want to be clear though that those only are within—I take your point. Those are only within what is permitted by the First Amendment. The Supreme Court has been clear about that, too. In the *Virginia v. Black* case, the court explained when intimidation is not protected by the Constitution, and that is when it is made with the intent of placing the victim in fear of bodily harm or death. That's what we're concerned about here.

Senator LEE. One of the things that concerns me is, you know, we've got 17 attorneys general led by Attorney General Todd

Rokita in Nevada and joined by a total of 17 attorneys general including Sean Reyes, the fantastic attorney general of the State of Utah. They've weighed in and they've said that there is not a barrage of accusations. There's no unusual flood of accusations of threats of violence against school board members. Nothing unusual, nothing that they can't handle at the State and local level. Normally, things like this against State and local officials involving State and local government entities like school boards are not Federal.

In response to a series of questions before the House Judiciary Committee including some questions asked by Congressman Jim Jordan from Ohio, you were asked your factual predicate for your October 4th memorandum and for your conclusions in this regard. You answered before that Committee that your factual predicate for that was the October 22nd memorandum from the National School Board Association.

The National School Board Association, as has been mentioned, has since withdrawn that memo. Yet you said that was the factual predicate. Given that that was the factual predicate and that it's rescinded its memo, saying that there was no justification for some of the language that they used in that letter, will you rescind your memo?

Attorney General GARLAND. Senator, best of my recollection, I said that the impetus for the letter—for my memorandum was that letter and also reports of this kind of activity.

Senator LEE. What reports?

Attorney General GARLAND. I said again, at the time that they were news reports that had been published. I think that some of the other Senators here have described some of those news reports, and we've certainly seen subsequently more news reports and more statements by board members of threats to kill them.

Senator LEE. Congressman Chip Roy of Texas said—raised in that same hearing the issue of a 14-year-old girl in a school bathroom being sexually assaulted in Loudoun County. You indicated in response to that that you weren't aware of that. In the 6-days before you testified before the House Judiciary Committee, have you become familiar with the publicly reported details of that case?

Attorney General GARLAND. Yes, I have read about the case. Yes.

Senator LEE. If you were unfamiliar with the supposed instances of threats of violence and intimidation that the National School Board Association cited in the letter, then how did you determine that intervention by the FBI and the DOJ was necessary that that was the right approach?

Attorney General GARLAND. The right approach in the letter is to meet with local law enforcement. That's what we've asked for is to meet, to assess the situation, to see what their needs are, to strategize, and to open lines of communication.

I'm hopeful that many areas of local law enforcement will be well able to handle this on their own. This is what the Justice Department does every day, to consult with our local and State partners, and see whether assistance is necessary. Of course, we continue to have our own Federal responsibilities with respect to communications by the internet and on social media, telephone, through the

mail. I'm hopeful that we will not be needed in this area that our State and local partners will be able to handle these threats.

Senator LEE. My time is expired. I just want to state for the record as I close that my staff and I went through every news source raised by the National School Board Association. There's no explicit death threat. I choose here to reiterate my concern that not every outburst or expression of concern by neighbors, among neighbors, at a local school board meeting warrants a Federal investigation. Certainly doesn't warrant the involvement of 94 U.S. Attorneys in a way that threatens, intimidates, and tends inevitably to chill First Amendment activity. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Lee. Senator Coons. Just 1 second.

Senator GRASSLEY. Mr. Chairman, one more request for introduction of a letter from another attorney general on rescinding the memorandum, this one from Ohio Attorney General Yost.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator Coons.

Senator COONS. Thank you, Chairman Durbin, Ranking Member Grassley. Thank you, Attorney General Garland.

As you well know, oversight of the executive branch is an important part of the duties of this body. I just want to commend the Chair and Ranking for prioritizing this, and you for your time here. While at times challenging, this process is key to fulfilling our constitutional responsibilities, and we know that we have substantial work to do to restore confidence in our democratic institutions. I think your engagement here today is a key part of that, so thank you for your diligent and thorough answers to the questions that are being presented today.

Let me just start with a question about some characterizations that are being made here and in other settings about the trajectory of the Biden administration in terms of responding to violent crime. Some are asserting that the Department of Justice is focused on defunding the police or hamstringing or undermining law enforcement.

As an appropriator, my impression instead is that the President requested an additional \$388 million for the COPS Hiring Program, an increase of \$200 million over the previous year. The CJS approps that was just posted includes \$100 million for new community violence intervention programs. The Biden administration ensured that over \$350 billion previously available grants under the CARES Act could be used to hire more law enforcement personnel at the State and local level, even beyond pre-pandemic levels.

Could you just speak briefly to how these different programs and initiatives are, in fact, designed to prevent violent crime, designed to support our State and local partners, and how these investments could work to assist, support, and protect law enforcement in conducting their obligations and duties in our communities in an appropriate way?

Attorney General GARLAND. Yes, Senator. I would just add one more pile of requests there, which was for over \$500 million for the Byrne JAG grants, which also go directly to State and local law enforcement.

Yes. Look, we are very concerned about violent crime. This is an area which is again primarily the responsibility of State and local law enforcement, but nonetheless has bipartisan support, and has had this since the 1990's for Federal Government involvement to help prevent.

As a consequence, we have historically since then, and accelerating now, lashed up with our State and local partners in task forces and joint organizations in every city and every community in the United States to help our local law enforcement protect their communities against violence. We also have Federal, obviously, laws which help us in this regard. These include money that we've requested for DEA, for ATF, for the FBI, for the Marshals Service, all increases to allow us to support these circumstances.

Senator COONS. As we've discussed before, my hometown is one where I was responsible for local law enforcement when I was an elected county official. We appreciate these additional investments and the partnership with Federal law enforcement, and think it's an important part of our work to combat violent crime all over this country.

I want to turn to immigration. You've been asked by a number of my colleagues about it. There seem to be some who think that anything we do to help migrants will necessarily make the border less secure, more chaotic, but I disagree. I think it is possible for us to reduce multi-year court backlogs, improve access to counsel, improve the humanitarian aspects of handling migrants, and build a system that is orderly, consistent with rule of law, more humane, and more fair.

I'd love to understand how we in Congress can help you through legislation, as well as through funding to reduce immigration court backlogs, improve access to counsel, improve the process, and also contribute to securing our southern border. Do you have thoughts you care to share briefly, or would you be willing to share those with us in writing?

Attorney General GARLAND. I'll be happy to have the Department get back to you in writing. I will say we have requested additional funds so that we can put an additional 600 personnel including 100 immigration judges into our Executive Office of Immigration Review so that we can do the kind of acceleration that you're talking about. We've made a number of internal changes with respect to the way cases are handled in order to accelerate that.

We do need more money in that respect, and I've made that plea already to the Appropriations Committee. Be happy to get back to you in more detail.

Senator COONS. Just superficially, is it your understanding that when applicants for asylum have access to counsel or to legal counseling, the odds that they return for their final disposition and the odds that they will have a fair and appropriate process go up?

Attorney General GARLAND. I certainly think the odds that they have a fair and appropriate process would go up. It seems quite logical that the odds of them returning for their proceedings would go up because they would know they would have that opportunity. I don't know any of the statistics about that.

Senator COONS. Understood. On intellectual property, as you know, a long concern of mine, I just briefly wanted to mention back

in December 2019, DOJ Antitrust issued a statement jointly with NIST and the Department of Commerce and the U.S. Patent and Trademark Office recognizing that when a patent involved in voluntary standard setting efforts—these are typically global efforts around critical communications technologies and others—that all legal remedies should be available when a patent is infringed. That policy ensures competition, incentivizes participation in standard setting activities, and plays a vital role in bringing the benefits of innovation to Americans. It's also critical for our global competition with China and other countries.

I'm hearing DOJ has imminent plans to abandon that position or reverse it and replace it with one that does not embrace the availability of all remedies. Given that there are nominees in process likely now for both AAG for Antitrust and now for Patent and Trademark Office, would you commit to waiting until there are Senate-confirmed leaders in these positions before a change in policy?

Attorney General GARLAND. I would love to have Senate-confirmed leadership in the Antitrust Division, and everything you can do to make that go swifter would be greatly appreciated. I have to say this is a bit outside the area of my own expertise, but I assume any such thing would have to come through me before it would be announced. Nothing like that has come to my office yet.

Senator COONS. I'd welcome the opportunity to stay in communication with it.

My last quick question relates to the Office for Access to Justice, which has in the past under our previous administration been a leader in debtors' prisons and the criminalization of poverty. Tomorrow, this Committee will hold a vote on the Driving for Opportunity Act, a bipartisan bill I'm leading with Senator Wicker and a number of Members of this Committee, and it will make progress in terms of ways in which a decades-old practice of stripping people of their driver's licenses for unpaid court-related fees or fines, which advances the criminalization of poverty, will be reversed.

Could you say just a moment about the plans for the Office of Access to Justice and your view about the importance of continued progress in criminal justice reform?

Attorney General GARLAND. Yes, Senator. Equal justice under law is inscribed in the pediment above the Supreme Court and is a core principle of American democracy. You can't have equal justice under law if you don't have access to justice. For much of my career as a judge, and even before that, even before being in the Justice Department, and in addition, even as a lawyer in private practice, I've been concerned about getting access to attorneys, lawyers, so that people who need help with their individual circumstances can have assistance.

The President issued an executive order on this. We have—and there is a report—I'm not positive whether it's public, but I believe it is—with respect to reinvigorating the roundtable, whose job it is to address this question, of which I believe I'm a co-chair. I asked for review within the Department, and we have determined that we should stand up once again, an independent within the Department, Office of Access to Justice. We have enough money to do that in the very short term. Not to talk too much about requests for

money, but our fiscal year 2022 budget request does ask for a significant appropriation so that we can stand up a staff and get that office going.

Senator COONS. Great. Thank you, Mr. Attorney General. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Coons. The Committee is going to stand in recess for 5 minutes. When we return, Senator Cotton is up if he is here. If not, Senator Kennedy.

[Whereupon the Committee was recessed and reconvened.]

Chair DURBIN. Senate Judiciary Committee will resume. Senator Cotton is recognized.

Senator COTTON. Judge Garland, on May 11th, Tony Fauci testified that his agency, quote “has not ever and does not now fund gain-of-function research in the Wuhan Institute of Virology.” Last week, his agency admitted that they had in fact funded gain of research in the Wuhan Institute of Virology. Are you investigating Tony Fauci for lying to Congress?

Attorney General GARLAND. The longtime rule in the Justice Department is not to discuss pending investigations, potential investigations.

Senator COTTON. Okay. That’s fine. That’s fine. Do you believe Tony Fauci was truthful when he said his agency had never funded gain-of-function research?

Attorney General GARLAND. This is outside of my scope of knowledge.

Senator COTTON. Okay. Let’s turn to your outrageous directive, siccing the feds on parents at school boards across America. When you crafted that October 4th memo, did you consult with senior leadership at the FBI?

Attorney General GARLAND. My understanding was that the memo or the idea of the memo had been discussed with the FBI before it got——

Senator COTTON. Did anyone at the FBI express any doubt or disagreement or hesitation with your decision to issue that memo?

Attorney General GARLAND. No one expressed that to me.

Senator COTTON. No one?

Attorney General GARLAND. To me. No one expressed that to me. No.

Senator COTTON. Because of a lot of them had contacted us, and they said they did, Judge.

Attorney General GARLAND. I’m sorry?

Senator COTTON. A lot of FBI officials have contacted my office and said that they oppose this decision.

Attorney General GARLAND. I doubt any of them spoke to me about it because I didn’t speak to—no one had mentioned it to me.

Senator COTTON. All right. All right. Judge, you’ve repeatedly—repeatedly dissembled this morning about that directive. For instance, about the National Security Division, Chuck Grassley asked you a very simple question, why you would sic the National Security Division of the Department of Justice on parents. John Cornyn asked you the same thing. You said it wasn’t in your October 4th memorandum. It was in another office’s memorandum. It wasn’t another office’s memorandum, Judge. It was in a press release from your office. Right here in front of me, October 4th, 2021, for imme-

diate release. You were going to create a task force that includes the National Security Division. What on earth does the National Security Division have to do with parents who are expressing disagreements at school boards?

Attorney General GARLAND. Nothing in this memorandum or any memorandum is about parents expressing disagreements with their school boards. The memorandum makes clear that parents are entitled and protected by the First Amendment to have vigorous debates. The Justice Department is not interested in that question at all.

Senator COTTON. Okay. Even in that case, what is the National Security Division, Judge—these are the people that are supposed to be chasing jihadists and Chinese spies. What does the National Security Division have to do with parents at school boards?

Attorney General GARLAND. This is not, again, about parents at school boards. This is about threats of violence.

Senator COTTON. Okay. Let me turn to that, because you've said that phrase repeatedly throughout the morning. Violence and threats of violence. Violence and threats of violence. We've heard it a dozen times this morning.

As Senator Lee pointed out, the very first line in your October 4th memorandum refers to harassment and intimidation. Why do you continue to dissemble in front of this Committee that you are only talking about violence and threats of violence, when your memo says harassment and intimidation?

Attorney General GARLAND. Senator, I said in my testimony that it involved other kinds of criminal conduct, and I explained to Senator Lee that the statutory definitions of those terms and the constitutional definitions of those terms involve threats of violence.

Senator COTTON. Okay. Let's look at one of those statutes you cited. Section 223. That statute covers the use of not just telephones, but telecommunications devices to annoy—to annoy someone. Are you going to sic your U.S. Attorneys and the FBI on a parents' group if they post on Facebook something that annoys a school board member, Judge?

Attorney General GARLAND. The answer to that is no, and the provision that I was particularly drawing his attention was 2261(a), which was to engage in—

Senator COTTON. I wasn't talking about 2261(a). I know you mentioned that. You also mentioned 223. That's what I mentioned.

Attorney General GARLAND. Yes. But the only—

Senator COTTON. Okay. Judge, you also told Senator Klobuchar that this memorandum was about meetings and coordination. Meetings and coordination. I have in my hand right here that I'll submit to the record, a letter from one of your U.S. Attorneys to all of the county attorneys, to the attorney general, to all sheriffs, to the School Board Association of his State, in which he talks about Federal investigation and prosecution.

[The information appears as a submission for the record.]

It's not about meetings. It's not about coordination. It's about Federal investigation and prosecution. Did you direct your U.S. Attorneys to issue such a letter?

Attorney General GARLAND. I did not. I have not seen that letter. My memo—

Senator COTTON. It's got three pages—it's got three pages of spreadsheet about all the Federal crimes that a parent could be charged with to include the ones you cited.

Attorney General GARLAND. My memorandum——

Senator COTTON. Did Main Justice make this spreadsheet, Judge?

Attorney General GARLAND. I don't have any idea. My memorandum speaks specifically about setting up meetings, and I'll just read it again. Convene meetings——

Senator COTTON. Judge, we've all read your memorandum.

Attorney General GARLAND. Then you know what——

Senator COTTON. We've also heard you dissemble about your memorandum. I have, and the record now shows, one of your U.S. Attorneys sending out a letter about Federal prosecution investigation and lists in detail the Federal statutes for which you could be prosecuted.

Judge, you talked a lot about intimidation and harassment. Have you issued a memorandum like your October 4th memorandum about Black Lives Matter riots from last summer?

Attorney General GARLAND. Are you talking about summer of 2020? In the summer of 2020, there were——

Senator COTTON. A lot of crimes committed. People haven't been caught for those crimes yet.

Attorney General GARLAND. There were a lot of prosecutions, and they were under the previous administration. A lot of prosecutions——

Senator COTTON. Okay. Judge, what about this? It is no doubt—even though parents at school boards aren't within Federal jurisdiction, there's no doubt that Federal officials are. You keep saying Senators. Have you started an investigation into the harassment of Senator Kyrsten Sinema in a bathroom, in a bathroom, because she won't go along with the Democratic Party's big tax-and-spend agenda? That is a sitting United States Senator being harassed in a bathroom.

Attorney General GARLAND. I don't know whether the Senator has referred the matter to the Justice Department or not.

Senator COTTON. You've cited as the basis for that directive the National School Board Association's letter of September 29th. Was that directive being prepared before September 29th, before the School Board Association letter was issued?

Attorney General GARLAND. I don't believe so. Certainly I didn't have any idea.

Senator COTTON. It was only prepared—okay. I think that answers the question.

Attorney General GARLAND. I already answered that question before.

Senator COTTON. You keep citing the school board letter and news reports.

Attorney General GARLAND. That's right.

Senator COTTON. One of the news reports cited in that letter which you presumably mean is from Loudoun County, Virginia. Scott——

Attorney General GARLAND. No, that is not what I was talking about. I'm talking about——

Senator COTTON. You keep citing news reports, and that's the most prominent news report that anyone in America has seen. That refers to Scott Smith, whose 15-year-old daughter was raped. She was raped in a bathroom by a boy wearing girl's clothes. The Loudoun County School board covered it up because it would have interfered with their transgender policy during Pride Month.

That man, Scott Smith, because he went to a school board and tried to defend his daughter's rights, was condemned internationally. Do you apologize to Scott Smith and his 15-year-old daughter, Judge?

Attorney General GARLAND. Senator, anyone whose child was raped is the most horrific crime I can imagine and is certainly entitled and protected by the First Amendment to protest to their school board about this. That is——

Senator COTTON. He was cited by the School Board Association as a domestic terrorist, which we now know that letter and those reports were the basis for your——

Attorney General GARLAND. No. No, Senator. That's wrong.

Senator COTTON. This is shameful. Judge, this is shameful. This testimony, your directive, your performance is shameful. Thank God you are not on the Supreme Court. You should resign in disgrace, Judge.

Chair DURBIN. General Garland, do you want to complete your answer on——

Attorney General GARLAND. Okay. I wasn't sure there was a question there, but let me be clear. The news reports I'm talking about were not the news reports in that letter. They were other news reports that everybody here has heard about, subsequent reports that everybody has heard about. There is nothing in this memorandum, and I wish if Senators were concerned about this, they would quote my words. This memorandum is not about parents being able to object in their school boards. They are protected by the First Amendment. As long as there are no threats of violence, they are completely protected.

Parents can object to their school boards about curriculum, about the treatment of their children, about school policies. All of that is 100 percent protected by the First Amendment, and there is nothing in this memorandum contrary to that. We are only trying to prevent violence against school officials. Thank you.

Chair DURBIN. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. I'd like to insert into the record the Washington Post article by Salvador Rizzo that is entitled The False GOP Claim that the Justice Department is Spying on Parents at School Board Meetings. I'd like to insert this article into the record.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator HIRONO. It's good to see you, Mr. Attorney General.

Attorney General GARLAND. Thank you, Senator.

Senator HIRONO. I will quote from the first sentence of your memo. "In recent months there has been a disturbing spike in harassment, intimidation, and threat of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our Nation's public schools." This is a fact.

We have all seen the news coverage of people actually threatening to hurt school board members for going about their jobs. That is a fact.

When I listen to my Republican colleagues going on about the intent of this memo, I'm again reminded of they often take the position that we should all not believe what we see with our own eyes. It's like characterizing the January 6 insurrection as just a bunch of tourists visiting the Capitol. Give me a break.

We now see our Supreme Court weaponized to support the position of the most conservative causes. We see a rush to the Supreme Court on cases involving abortion rights, gun rights, LGBTQ rights, voting rights, union rights. Thank you, Mr. Attorney General, for making the protection of our civil rights one of the Department's core priorities.

I want to turn to the need to combat hate crimes. It's been about 5 months since President Biden signed the COVID-19 Hate Crimes Act into law, and I sent a letter to you last month requesting an update on the Department's implementation of the act and its efforts to reduce hate crimes and hate incidents, yet another thing that we have all seen with our own eyes, the rise in hate crimes during this period of the pandemic.

Mr. Attorney General, would you briefly describe the actions that you and the Department have taken thus far to implement the COVID-19 Hate Crimes Act?

Attorney General GARLAND. Yes. Thank you, Senator. Even before the act, I had issued a memorandum within the Department to assess how we were dealing with hate crimes and to better organize the manner in which we were doing that. Then we're grateful that the Congress passed the COVID-19 Hate Crimes Act.

Since then, I issued a subsequent memorandum based on what the Associate Attorney General and the Deputy Attorney General had provided in terms of the Department's progress under that act. I believe we have now implemented everything that was required of us in the act, but that of course doesn't mean we've solved hate in America. We have done the things that the statute has asked us to do. I've appointed a coordinator for all hate crimes matters. I've appointed an expeditor in the Civil Rights Division's criminal section to expedite our investigations. We've established a task force of Federal law enforcement and U.S. Attorney's Offices meeting with State and local law enforcement to coordinate, to explain, to develop strategies with respect to hate crimes. We've had trainings for State and local territorial and tribal law enforcement to help them recognize these circumstances.

We've asked—we've established a language coordinator, a facilitator, so that our memorandum and press releases in these regards can be translated appropriately. We've asked for considerable additional funds in our appropriations so that we may give more money to State and locals, tribal, and territorial law enforcement to assist in these matters.

Senator HIRONO. I appreciate the efforts you have taken, and I think that this will result in of course some factual information about the extent of hate crimes and incidents in our country so that we can better prevent and prosecute as appropriate.

You've been asked before, I think in the House hearing, about the China initiative. If we end the China initiative, will we no longer go after economic espionage and IP theft by China?

Attorney General GARLAND. There are two issues here that we always have to keep uppermost in our mind. One is that the People's Republic of China is a serious threat to our intellectual property. They represent a serious threat with respect to espionage. They represent a serious respect with respect to cyber incursions and ransomware in the United States, and we need to protect the country against this, and we will, and we are bringing cases in that regard.

The other thing that always has to be remembered is that we never investigate or prosecute based on ethnic identity, on what country a person is from or came from or their family.

Senator HIRONO. Thank you. I'm sorry. Were you done?

Attorney General GARLAND. That's all right. Yes.

Senator HIRONO. The reason I ask about the China initiative is that under the previous administration which instituted this so-called initiative that there appears to have been racial profiling, which basically ruined the lives of a number of Chinese people. I want to give an example.

The Justice Department, previous administration, dragged Dr. Anming Hu, a professor at the University of Tennessee, through a 2-year espionage investigation causing him to lose his job. At the end of the investigation, DOJ lacked any evidence of espionage, and instead charged Dr. Hu with wire fraud and false statements for apparently failing to disclose his association with a Chinese university on a NASA grant application.

His trial ended in a mistrial, after which a juror said she was, quote "pretty horrified by the lack of evidence" end quote. When DOJ sought a new trial, the District Court granted Dr. Hu's motion for an acquittal, finding no harm to NASA and no evidence that Dr. Hu knew NASA's funding restriction applied to Chinese universities.

I would say from your answer that regardless of whether we have something called the Chinese initiative, you have no intention of not paying attention to espionage and other bad acts by China. I'd say we should get rid of this initiative that results in racial profiling. Thank you, Mr. Chairman.

Chair DURBIN. Senator Kennedy.

Senator KENNEDY. Good morning, General.

Attorney General GARLAND. Good morning, Senator.

Senator KENNEDY. General, I'm looking at this letter from one of your U.S. Attorneys from October this year where you wrote to the Montana attorney general, all the county attorneys, and all the sheriffs in his jurisdiction suggesting ways that parents could be prosecuted for appearing at school board meetings in accordance with your directive. One of the suggestions made by your U.S. Attorney is parents can be prosecuted for repeated telephone calls, not threatening anyone, just on the theory that repeated telephone calls could be harassment. Really?

Attorney General GARLAND. Senator, I haven't seen that memorandum. I've tried to express as clearly as I can here—

Senator KENNEDY. I heard you, General. This is one of your U.S. Attorneys.

Attorney General GARLAND. Again, I haven't seen——

Senator KENNEDY. Isn't that special? General, you're just a vessel. Let me tell you what I'm talking about. With respect to the National School Boards Association letter, you're just a vessel, aren't you?

Attorney General GARLAND. I'm not sure what you mean by that, but I signed this memorandum. I worked on this memorandum, and this memorandum is my memorandum. It is not the memorandum of the National School Boards.

Senator KENNEDY. Let me tell you what I mean. We know that the National School Board Association was upset because parents were coming to school board meetings to object to the teaching of Critical Race Theory. We know that in drafting the letter, the National School Board Association collaborated with the White House for several weeks. They worked on it together. We know that the National School Board Association—once the White House and the Association were happy with the letter, the National School Board Association sent the letter to the White House, and the White House promptly called you and said sic the FBI on parents at school board hearings.

That's what I mean. The White House is the prophet here. You're just the vessel. Isn't that correct?

Attorney General GARLAND. Senator, I did not speak with anyone from the White House while I worked on this memorandum. This memorandum reflects my views that we need to protect public officials from violence and threats of violence, while at the same time protecting parents' ability to object to policies in schools that they disagree with.

Senator KENNEDY. Right. I get that. I've heard your testimony. Were you worried that you would be fired if you didn't issue the memorandum?

Attorney General GARLAND. Senator, I'm not—I decided on this memorandum on my own. I don't care. I said from the very beginning I've taken this job to protect the Department of Justice to make independent determinations with respect to prosecutions and investigations, and I will do that. I am not concerned about getting fired.

Senator KENNEDY. Okay. Sorry to interrupt, General, but I don't have much time. When you got the letter from the White House that prompted your memorandum to give the FBI new duties and making sure our parents aren't dangerous domestic terrorists, you didn't investigate before you issued your memorandum the incidences cited in the letter, did you?

Attorney General GARLAND. Look, I took the statement by the National Association, which represents thousands of school board members, when they said that they were facing violence and threats of violence, and when I saw in the news media reports——

Senator KENNEDY. Yes, but you didn't investigate the incidents in the letter, did you?

Attorney General GARLAND. No. This is the first step. This is an assessment step. It comes before investigations.

Senator KENNEDY. Right. Before you issued your memo, you didn't investigate the incidents.

Attorney General GARLAND. The memo is intended to begin assessments. It is intended to ask——

Senator KENNEDY. In fact, most of the incidents in the letter did not involve threats of violence, did they?

Attorney General GARLAND. I think that's correct. Most of them did not, and they would not be covered by either Federal or State law. I agree with that. They would be protected by the First Amendment. Threats of violence are not covered by the——

Senator KENNEDY. Can we agree that we have thousands, tens of thousands, maybe hundreds of thousands of kids growing up today who are more likely to commit a crime and go to jail than own a home and get married?

Attorney General GARLAND. I don't know about the comparative statistics. I do know there are too many people who are committing crime.

Senator KENNEDY. One of the reasons for that is lack of parental involvement, isn't it?

Attorney General GARLAND. I think parental involvement is essential. I think it's the key both to bringing up good kids——

Senator KENNEDY. Why do you want to issue a memorandum listing incidents that you didn't investigate that anybody who has any fair-minded knowledge of the world knows is going to have a chilling effect on parental involvement with respect to what their kids are learning at school?

Attorney General GARLAND. I just want to be clear again, Senator. My memorandum did not list any of those incidents.

Senator KENNEDY. Come on, General. We both know this had a chilling effect. You don't think there are parents out there in the real world that said, "Oh, my God. Maybe we shouldn't go to the school board meeting. There will be FBI agents there." This isn't la-la land.

Attorney General GARLAND. I tried to make clear, as clear as I could, and now I have subsequently made clear in every public statement on the map.

Senator KENNEDY. Your actions made it clear, General. Let me ask you one last question. When men follow a United States Senator who happens to be a female into a women's room to harass her about her beliefs, why is that just part of the process, as President Biden says, but when a parent goes to a school board meeting to protest that her child is being taught that babies can be White supremacists is subject to FBI prosecution?

Attorney General GARLAND. The description that you just gave that parent is not subject to FBI investigation, and there's nothing in this memorandum that suggests this. We protect United States Senators against threats of violence.

Senator KENNEDY. You did a good job with Senator Sinema.

Attorney General GARLAND. Within the last month, we have indicted somebody who made threats of violence against both Alaska U.S. Senators. Recently, we just indicted somebody else who made threats on——

Senator KENNEDY. Can I ask one more, Mr. Chairman? Can I, Mr. Chairman?

Senator HIRONO. [Presiding.] Can you wrap up please, Senator Kennedy?

Senator KENNEDY. I'm sorry.

Senator HIRONO. Could you wrap up? I am chairing this hearing now.

Senator KENNEDY. Oh, yes, ma'am. I will. I'm just going to ask one last one.

What led you to conclude, before you issued your memorandum siccing the FBI on parents, that law enforcement at the State and local level couldn't handle it?

Attorney General GARLAND. Let me be clear, Senator. We did not sic the FBI on parents. That's not what this memorandum is about. Nor did we conclude that local law enforcement is unable to deal with the problem. The purpose of this memorandum is for our Federal law enforcement to engage with State and local and determine whether they need assistance.

Senator KENNEDY. You don't think this had any chilling effect whatsoever on parents out there?

Attorney General GARLAND. The memorandum expressly says at the beginning that it is aimed at violence and threats of violence, and expressly says that robust public debate about school policies are protected.

Senator KENNEDY. Right. Right. I like you, General, a lot. But on this issue, you've turned into someone you said you wouldn't be.

Senator HIRONO. Senator Kennedy. I recognize Senator Booker. Please proceed.

Senator BOOKER. General, I want to start with an area of bipartisan accord that seems to be what we're getting toward.

Today is the 35th anniversary of the Anti-Drug Abuse Act which established vastly different sentences for crack and powder cocaine. We are seeing a wonderful convergence in Congress, most recently in the House of Representatives, where you have this wide bipartisan vote. I'm not sure if there's been a bigger bipartisan vote this year, where 149 Republicans voted along with almost all the Democratic caucus to address this disparity.

The effect of that law was 100 to 1. The work of again bipartisan Senators here, led by Senator Durbin, negotiated the Fair Sentencing Act which was a change of that disparity from 100 to 1 to 18 to 1.

Senator Durbin and I now have introduced something called the EQUAL Act, which has already been passed by the House. We've got Republicans and Democrats on board. Tillis, Leahy, Paul, Graham, as well as my colleague, Senator Ossoff, on my side of the aisle.

The President, Biden, publicly supported the bill, and again, I just think this should be an area that's an obvious accord. I really want to know your opinion. Do you agree that it's time to end the sentencing disparity between crack and powder cocaine, especially given the disparate impact it has on people of color? If you believe that, why do you believe that?

Attorney General GARLAND. Yes, I do believe that, and the Justice Department supports that bill and supports equal treatment of crack and powder cocaine. The Sentencing Commission has, over the last decade, maybe more than that, produced a series of reports

which undercut what was supposed to be the scientific basis for the distinction between the two, and it's made quite clear that there is no warrant basis for distinguishing between the two. So, once that is undercut, there can be no grounds for that.

On the other side, not only are there no grounds for it. It clearly does have a disparate impact on communities of color, also clearly recognized by the Sentencing Commission statistics. You have that kind of circumstances, there's no justification for this, and we should end this.

Senator BOOKER. I appreciate that. One last just clarification. While there is a lot of unanimous support for this on both sides of the aisle, a lot of support for it on both sides of the aisle, there are some people that worry about it somehow affecting crime or crime rates. Could you discuss your opinion of that perspective?

Attorney General GARLAND. I think powder cocaine is as dangerous with respect to crime rates as crack cocaine, both of which have now been unfortunately overtaken by fentanyl and the opioids. Both of those are bad problems from respect of crime, but equalizing penalties for crack and powder should have no difference with respect to our ability to fight violent crime or drug crime.

Senator BOOKER. Thank you, sir. I appreciate that, you saying it for the record.

Can I revisit what Senator Durbin brought up at the top? This is a letter that he and I sent you regarding the people that are currently on home confinement. In the last days of the Trump administration, on January 15, 2021, the Justice Department's Office of Legal Counsel issued a memo arguing that the BOP must reincarcerate everyone on the CARES Act home confinement at the end of the covered emergency period if they do not otherwise qualify for home confinement.

These are folks that were pretty extremely scrutinized beforehand. They've been returned to their communities. They have been reengaging with family, with children. They have—are folks that are not showing any criminal activity or any problems.

Senator Durbin and I really believe, and we are urging the Department of Justice to rescind this Trump era memo which incorrectly concludes that people who have been released to home confinement and who have abided by the conditions of the relief must be torn away from those families and go back to BOP custody.

I just really would love to know where you stand on this issue. To me, it's an issue of justice. It's an issue of restorative justice. It's an issue of compassion and understanding the collateral consequences of ripping people back and putting them in prisons unnecessarily, not to mention the cost to taxpayers. Clearly, I have my opinion, but I'd like to hear yours.

Attorney General GARLAND. Look, I agree with you. It would be a terrible policy to return these people to prison after they have shown that they are able to live in home confinement without violations. As a consequence, we are reviewing the OLC memorandum that you spoke about. We are also reviewing all other authorities that Congress may have given us to permit us to keep people on home confinement. As you know, we are also, and the President, is reviewing the extent of his clemency authority in that respect.

Senator BOOKER. How long should we expect that review before you make a determination?

Attorney General GARLAND. I can't say exactly.

Senator BOOKER. Are we talking 6 months or less than 6 months?

Attorney General GARLAND. I'm not exactly sure how long that will take. It may require rulemaking, and so that may take more time. We can be sure that it will be accomplished before the end of the CARES Act provision, which extends until the end of the pandemic. We are not in a circumstance where anybody will be returned before we have completed that review and implemented any changes we need to make.

Senator BOOKER. Okay. Then in regards to just compassionate release in general, will the Department of Justice consider filing motions for individuals on home confinement who reside in judicial districts like the 11th Circuit, where courts have interpreted compassionate release statutes to cover only medical, age, and family circumstances grounds?

Obviously, there's still a pandemic and we know that putting people into environments greatly increases their chances. I'm concerned about restrictions on compassionate release in places like the 11th Circuit.

Attorney General GARLAND. This is something I haven't thought about, Senator. I guess the Bureau of Prisons, which is the agency that decides those questions, has to have a uniform policy across the country. I hadn't thought of the possibility of making distinctions based on which circuit, because you're quite correct. The different circuits have different views about the scope of compassionate release. I'll take that back for consideration, if it's all right with you.

Senator BOOKER. All right. I have some concerns about First Step Act implementation, which I'll ask in writing to you. I want to be respectful of my colleague, my friend, the Senator from the great State of Oklahoma.

Senator SASSE. Ouch.

Senator BOOKER. I'm sorry, sir. Forgive me. Omaha.

Senator SASSE. Omaha's not a State, brother.

Senator BOOKER. I'm sorry. Where are you from, sir?

Senator SASSE. We used to be able to beat Stanford in football, and we will return.

Chairwoman, thank you. Sorry. Cory's not as funny as I thought he would be there.

Attorney General, I know you're tired of talking about the memo.

Attorney General GARLAND. I'm not.

Senator SASSE. Did you say you're not?

Attorney General GARLAND. I'm happy to answer any questions you have, Senator.

Senator SASSE. I think most of us and most of the American people are just sort of flabbergasted if your answer is you have no regrets about this memo. Is that what you're telling us? You think this was wise.

Attorney General GARLAND. Senator, the obligation of the Justice Department is to protect the American people against violence including threats of violence, and that particularly includes public of-

ficials. I think that is still a concern for the Department. This memo doesn't do anything more than ask our law enforcement to consult with State and local law enforcement to determine whether they need assistance in this regard, and whether there are any Federal jurisdictional issues involved. We recognize it's the right—

Senator SASSE. General, you and I both know that it is political hackery that brought that topic to your desk, not reality. I am strongly against all violence against everyone in public life and all threats of violence. You have not at any point here given us any data that show why this would in any way be a Federal priority at this time.

The Chairman—he's not here right now, but Chairman Durbin has repeatedly talked about how this morning he Googled it and is pretty convinced there must be lots of threats. Can you help us understand why so many states are disconnecting their organizations from the National Association of School Boards? You are aware that the National Association of School Boards has recanted of the memo, correct? You know they've rejected their own letter to you. Are you aware of that?

Attorney General GARLAND. I read their letter. Their letter doesn't recant their concerns about safety. It recants some of the language in their letter—

Senator SASSE. We're all for safety.

Attorney General GARLAND [continuing]. Which I did not adopt. The language that they have recanted, I never adopted and never would adopt.

Senator SASSE. Why did the Ohio School Boards Association sever their relationship with the National School Boards Association?

Attorney General GARLAND. I don't know and I—

Senator SASSE. Why did the Missouri School Boards Association sever their relationship with the National School Boards Association? Why did the Pennsylvania School Boards Association sever their relationship with the National School Boards Association? Because this was political hackery, the kind of stuff you told us when you were seeking confirmation that you would be against.

You had the audacity to begin your opening statement today by telling us one of your big three priorities was to make sure communications between the White House and the Justice Department were not politicized. The last three administrations in a row have politicized the Department of Justice, the three including you now.

You told us one of your priorities in running DOJ was to reject the kinds of politicization we saw in the Trump DOJ and in the Obama DOJ. You told us that was one of your priorities. You wrote a memo here that came from political staffers who have been rejected by their organization coordinating with the White House to try to exaggerate a threat so that they could make sure parents felt intimidated. You've told us—I wouldn't use the exact language Senator Kennedy used about that you were a vessel, but one of two things is true here. Either you were just a vessel of political com staffers at the White House, or you yourself are in favor of politicizing the DOJ.

You told one of my colleagues a minute ago that you've not read the memo from the U.S. Attorney from Montana. I'll read it to you if you want, or I'll bring it to you, and you can read it. This is one of your direct reports. It's an insane letter. The U.S. Attorney from Montana takes as predicate for why he's doing what he's doing your memo. On October 14th, he sends a list of all the counterterrorism statutes that should be considered to be used against parents who are upset about things that might be happening at their school boards.

Maybe there's lots of specific evidence of violence being threatened against school board members in Montana, but his memo, or his response to your memo, includes a letter where he says that anonymous telecommunications harassment, repeated telephone calls, or repeated harassing communications should be things that are potentially brought up as the basis for Federal charges against parents. Do you agree with this letter of October 14th?

Attorney General GARLAND. Senator, I'm going to say again, this is aimed at violence and threats of violence, and I don't care whether they come from the left or from the right or from up or from down. I don't care if they're in favor of curriculum or against a particular kind of curriculum. We can imagine all these kind of arguments against school boards coming from either the left or the right. It doesn't matter.

Arguments against school boards are protected by the First Amendment. Threats are not protected by the First Amendment. We received a letter from the National Association of School Boards. No reason to believe—

Senator SASSE. No, you didn't receive an anonymous letter. White House political staff co-wrote it with this organization, which is why the organization has rejected it. You know these facts now to be true, and yet you still won't disavow your memo. Why? You didn't receive some objective neutral letter because all these people were being threatened. You are responding to a political campaign to politicize the Department of Justice. How big is the threat that American parents pose right now?

When you lead a big organization, you have 100,000 plus employees, you have a lot of violence to go after. Are parents at school boards one of the top three concerns you face right now?

Attorney General GARLAND. This memorandum is not about parents at school boards. It doesn't matter whether they are parents or anyone else. It has to do with threats against public school teachers, public school officials. It is not political—

Senator SASSE. I'm against all those threats. I want to know what the data is.

Attorney General GARLAND. I don't need data in order to assess any—

Senator SASSE. To respond to a political staffer's campaign out of the White House.

Attorney General GARLAND. The purpose of this memorandum is to get our law enforcement to assess the extent of the problem. If there is no problem, if States and local law enforcement are capable of handling the problem, then there is no need for our involvement. This memo does not say to begin prosecuting anybody. It

says to make assessments. That's what we do in the Justice Department. It has nothing to do with politics.

Senator SASSE. Will you report back to this Committee with what you find about these threats? Because what you just said, I completely agree with. We are against violence against public officials. You and I agree. We are against threats of violence against public officials. You and I agree. We are for local police powers investigating local crimes, and there are definitely yokels and idiots that make threats against lots of people in public life. I don't minimize it. You shouldn't minimize it. You're not minimizing it. We both believe, and in your heart of hearts, I'm pretty sure you believe that local law enforcement is more than able to handle some one idiot or 12 idiots at school board meetings.

You made it a Federal issue, and I don't have any idea why. At no point today have you offered us a shred of data. My question is, will you pledge you will report back to this Committee with the results of your investigation about how big of threat the American parent class is to school boards in the country?

Attorney General GARLAND. I will be happy to get a report back to you, but this is not about the American parent class.

Senator SASSE. I know. It's about the politicization of DOJ, and you decided to submit as a vessel, and you know better.

Attorney General GARLAND. I'm sorry, but I don't agree with that, Senator.

Senator BLUMENTHAL. Thank you, Senator Hirono. Welcome to our Committee, Mr. Attorney General. Let me just begin by thanking you and your team for the sense of integrity and transparency that you've brought to the Department of Justice after a time when the rule of law in the greatest law enforcement agency in the history of the world was gravely threatened by a lack of that dedication and commitment. I think it's very important, what you have done, even though we may have differences of opinion. We may disagree. Nobody can doubt your commitment to the rule of law.

I want to ask you about a matter. I know you're familiar with it. Last month, the Committee held a hearing on the FBI's mishandling of the Nassar investigation, Larry Nassar, who was convicted of the most heinous kind of abuse with respect to young athletes and gymnasts particularly. Four brave women shared their stories with us. They showed up to tell those stories in spite of the very grave obstacles.

The Inspector General concluded that two FBI agents made false statements during their investigation into Nassar and to the IG himself, the Inspector General, during an investigation. The FBI agents lied. He referred those cases to the Department of Justice.

What I'd like to ask is that the Department of Justice now in effect show up by providing an explanation of whatever its decision is with respect to the prosecution of those agents. The Deputy Attorney General announced that the Criminal Division was conducting a new review, as you know, and that new information has come to light.

While we wait for that review to be completed, what I'm seeking from you is a commitment that you will explain the decision when it's made. I recognize as a former prosecutor that declinations typically are not explained, but the Justice manual itself says that in

criminal civil rights cases, quote “It is often the practice to send case-closing notification letters in cases closed with indictment or prosecution,” because cases, quote “often spark intense public interest, even when they’re not prosecuted,” and that such letters are, quote “particularly encouraged in cases of police misconduct and other cases involving law enforcement officer subjects” end quote. In this case, we have exactly that situation, and I’m asking for a commitment that you will provide an explanation for your decision.

Attorney General GARLAND. Senator, this is a hard problem for us. The part of the manual that you’re talking about is about violations of the Civil Rights Act, and what we’re talking about here are false statements.

Needless to say, if the results of this review is prosecution that will become public. On the question of how much or whether and how much we can say, if all we do is decline, I’m just going to have to take that back for consideration. I take your point, and I will think about it very carefully, as will the Criminal Division.

Senator BLUMENTHAL. I understand you’re not ruling it out, but I’m going to continue to press for an explanation. I think the gymnasts deserve it, so does the American public. I hope that you will make a decision to provide a full and complete explanation, because I think the credibility of the decision will largely depend on it.

Let me just say, in my view, we need to do more than focus on the FBI agents that the Inspector General referred for prosecution, because this failure was an institutional failure. Institutional to the FBI, to USA Gymnastics, and the entire Olympic system. It was an institutional breakdown. To date, there’s been no accountability for anyone in power.

To that end, I am announcing that in the Commerce Subcommittee that I chair, the Subcommittee on Consumer Protection, we’re going to continue the work that Senator Moran and I began years ago. We literally began years ago with the investigation and Olympics reform legislation. We’re going to engage in further oversight of United States Olympic and Paralympics Committee, the national governing bodies, and SafeSport to ensure their purported commitment to safety is not an empty promise. The gymnasts have asked us. They deserve it. We’re going to fulfill that obligation.

In my view, the Department of Justice has to do more as well. Given the FBI’s gross mishandling of the Nassar investigation, I believe a new review of all of the information related to Nassar and the USOPC, more broadly, is warranted here because there are other examples of potential misconduct that deserve a fresh look.

For instance, Senator Moran and I referred the former CEO of the USOPC to the Department of Justice for potentially perjuring himself before our Subcommittee in 2018. We don’t know what, if anything, the Department did with that referral. We’ve heard virtually nothing. In addition, the former U.S. Attorney for the Southern District of Indiana, whose office was involved in the Nassar investigation, is now representing one of the disgraced FBI agents. He’s representing one of the FBI agents referred for prosecution. I don’t know whether that’s a violation of ethical rules or some other kinds of Department of Justice policies, but it raises significant questions, and the Department should have an interest in them.

I hope that we can expect more from you by way of explanation, and I hope that we can count on you for a new review of the information related to the Nassar investigation, USA Gymnastics, and USOPC to determine whether there are additional cases where prosecution is necessary to hold wrongdoers accountable.

Attorney General GARLAND. The institutional failure that you speak of is quite apparent. I thought that the testimony by the gymnasts was, as I said, heart wrenching, and they were courageous.

The FBI Director has adopted all of the recommendations of the Inspector General and is putting them into effect. In addition, we have adopted new regulations, new authorities in the Department, to be clear that if the FBI is investigating a case of assault on a child and determines that it no longer has—doesn't have jurisdiction, it immediately inform the relevant State or local prosecutors and law enforcement—this is what didn't happen in the Nassar circumstance—and ensure that that is done so that the State and local will be able to continue.

Likewise, with respect to transfers from one FBI office to another, another failure in that case that those be monitored to ensure that those transfers occurred. We take this extremely seriously. What happened is just awful. You have the commitment of the Justice Department, and of the FBI Director and of the FBI to make these kinds of institutional changes to ensure that this doesn't happen again.

Senator BLUMENTHAL. I appreciate those points. As you well know because of your own long and impressive record as a prosecutor, there's nothing like accountability, individuals being held accountable to send a message, particularly a deterrent message, to an institution. Thank you, Madam Chair.

Chair DURBIN. [Presiding.] Thank you, Senator Blumenthal. I have a list from the Republican side, and this is the order they've given me—correct me if I'm wrong—Tillis, Blackburn, Hawley, and Cruz. We have two Democratic Senators who have not asked at this point. We'll wait and see if they arrive. Senator Tillis. Senator Tillis, I don't know if your mic's on.

Senator TILLIS. Better?

Chair DURBIN. Better.

Senator TILLIS. You may regret it. Mr. Attorney General, thank you for being here.

You know, in response to the memo, I know you've repeatedly said this is not about parents. 15 years ago, I was PTA president at my daughter's high school, participated in a lot of school board meetings, and I still watch it on public access back in Mecklenburg County when I'm home.

The basis for your memo was substantially the letter that you all received. Is that correct?

Attorney General GARLAND. That was an important part of it. Yes, Senator.

Senator TILLIS. Do you think there was an empirical—I've seen some of the widely reported situations in some school board meetings, but is there really any empirical basis for—I've seen a lot of raucous school board meetings. I've participated in them.

Is there really any empirical basis? Did the DOJ do any real work outside of the public reporting to say that there's a disturbing trend that required the kind of what we consider to be overreach on behalf of the DOJ?

Attorney General GARLAND. As I've explained, what we looked at was the letter from an organization that represents thousands of school board members and school boards, and public reports of threats of violence. Even since then, I have further read quite expressed threats of violence have been reported.

Senator TILLIS. I think that—Mr. Attorney General, I want to try and keep in time in deference to my colleagues behind me.

Attorney General GARLAND. Yes. I'm sorry.

Senator TILLIS. But I do—I know that you've said it's not about the parents. When the DOJ releases the memo, and I think even more importantly, the press statement, I think that it does have a chilling effect on parents being willing to go and express their concerns with the direction the school board's going.

When all the sudden you think that your words in this list of crimes that the Department has sent I guess to at least the State of Montana, others, it could have a chilling effect on people who legitimately have a concern and they want to express it, but now they may think that they come crosswise with the FBI.

I do believe that it will have a chilling effect on people whose right they have to go in, express their concerns like the Loudoun County, a ridiculous overreach. I think that it will have that effect, because the full force of the FBI is now something a parent has to think about before they go before a school board meeting to express their concerns and they get frustrated. Like I said, they've been raucous for decades, and they will be raucous for decades to come.

I really do believe that you should seriously consider rescinding, revising a statement out there that concerns me for the parents that I want to show up at school board meetings and have the school boards held accountable.

The other thing that we should talk about are the numerous examples of school board members getting caught saying audacious things. There's one thing you've seen over the past year. Think about some of the provocative statements that they've said. They thought they were behind closed doors, but they were on the internet, basically ridiculing parents and pretending like they had ball control over their children's education and their future. We've got to get more parents engaged, and I think that the effect of the DOJ action is the exact opposite of that.

Most of my colleagues have covered my concerns, and I agree with those that are expressed on my side of the aisle.

In response to Senator Graham on immigration, you said that you did go visit the border. It sounds like you were down there mainly from the perspective of your role in the DOJ. I understand that Homeland Security is primarily responsible, but I would encourage you to go back down there, and maybe we could share with you our itinerary to talk about why I do believe it should be a great concern to the DOJ.

We've got almost one and a half million asylum cases on the docket now, and it takes years to complete them. About 80 percent of them are adjudicated as not having a valid claim. Doesn't that

data lead you to suggest that the asylum system is being abused? I mean, that's data from the DOJ.

Attorney General GARLAND. Senator, I don't know for sure about the data. The purpose of asylum adjudication is to adjudicate asylum.

Senator TILLIS. I understand that. But—

Attorney General GARLAND. People have—the statute allows them to make these—this is a statutory question. I'm the Justice Department.

Senator TILLIS. I'm not an attorney. I'm not an attorney. You're an accomplished judge. I'm looking at this just from a practical standpoint. When the data says that over almost two million people have crossed the border illegally since January, and it is 80 percent likely that they're not going to have a valid asylum claim, how any reasonable person couldn't look at that and say something is being abused here. It's a gateway to get into this country, drift into the shadows, and virtually never leave the country.

Here's the one that I'm most concerned with, and why I think a briefing with the same people that we met with at the border—many of the people on this Committee were there when I was—hundreds of got-aways a day getting across the border. Got-aways are not ones that want to be processed through asylum. They want to evade detection. They want to drift in. How on earth can we assume that there's anything but a malign purpose for them trying to evade detection? Otherwise, you just get into the system. You're going to be here for years. You're going to abuse the asylum system. They're skirting it to the tune of a couple of hundred a night, and this has been going on for months.

We have thousands of people who came into this country. When the cartels set a pick, they'll send about 50 people over to engage the border control so that they can send another couple of hundred into our society. There are drug traffickers. There are human traffickers. There are gun smugglers. There are gang members. They're coming in by the thousands every month. That is a DOJ problem. That is a crime in our communities problem. It's actually making the Hispanic communities—the majority of which are coming over are Hispanic—those communities less safe.

I would really encourage you to go back to the border and look at it from the perspective of your role as Attorney General, and the hundreds and the thousands of illegals who are coming across our border every day, many of them drifting in and evading detection, and making our communities less safe.

I do have a number. I've got intellectual property, a number of implementation issues that I'm going to submit for the record.

Mr. Garland, we have a problem at the border, and the DOJ has to engage and recognize that part of that problem you're going to have to fix. We've got to stop the \$13 million a day that the cartels are getting for human trafficking. That's a documented number. We've got to stop the tons of fentanyl and drugs that are poisoning Americans because we have an out-of-control border situation. This is a law enforcement issue. I understand it's an immigration issue. We have to get you I think read up, the same way that we were the last time we were at the border. I'd really encourage you to go back down there again, talk with the people on the ground, and un-

derstand why this is going to make your job more difficult, and it's already making America much less safe. Thank you, Mr. Chair.

Chair DURBIN. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. Let me begin with a comment before I get to a few issues and a few questions, particularly in light of recent comments from some of my colleagues about immigration, migration, what is, what isn't happening.

I'm going to start by recognizing Senator Coons' remarks earlier, who asked you about what you're doing to address the backlog in immigration courts, right? One of the best, most smart approaches to tackling unlawful migration is to improve the effectiveness, the efficiency of lawful migration. It's not just investing in immigration courts, but access to counsel.

I just want to add that these are issues that my office hears about on a very regular basis. I was heartened that you'll be asking for additional resources to address those issues. This is certainly an area where money is needed to improve the processing of immigration cases while ensuring due process.

To my questions. First, a response that I and several of my colleagues have been waiting on since April 15th when I and seven other Members of Congress sent you a letter concerning the Department's funding and oversight of predictive policing tools, which are deployed by law enforcement throughout the country.

As we highlighted in that letter, and I'm happy to provide an additional copy to you, we're concerned that the Department of Justice may be devoting precious taxpayer resources to ineffective tools and encouraging local law enforcement to also devote resources to unproven strategies. Worse still, those tools may be perpetuating a vicious cycle of discriminatory policing against historically marginalized groups.

Because we have not yet received a response, we do not know, for example, what, if any, conditions there are by the Department of Justice on the agencies and departments who deploy predictive policing tools with the aid of Federal funds. I find this unacceptable.

Attorney General Garland, it's been over 6 months since our letter was sent to the Department of Justice, and we have yet to receive an official response. Can you explain the delay and when we can expect a response?

Attorney General GARLAND. I can't explain the delay. I don't know what the reason is, but I will immediately take this back and be sure that the Office of Legislative Affairs responds to your letter.

Senator PADILLA. Okay. We'll get you another copy of that letter before we leave here today.

Next issue. As most, I believe we should all, agree, we need an open and competitive economy that also works for workers. We talk a lot about entrepreneurship, capitalism, consumer protection, but we need an economy that also works for workers, and this demands the Department of Justice's attention to combat artificially suppressed compensation, employer collusion, and increasing inequality. You know, for example, noncompete clauses or no-poach agreements limit the ability of many workers throughout our economy to switch to better paying opportunities or start their own busi-

nesses in a number of sectors. Antitrust protection for labor organizing does not yet explicitly extend to gig economy workers who are classified as independent contractors by their employers. Corporate consolidation can limit the pool of companies in a labor market competing to attract and retain workers.

Attorney General Garland, what is the Department of Justice doing to ensure that there is competition in our labor markets, and is this yet another area where the Department needs additional resources to fulfill the mission laid out by President Biden?

Attorney General GARLAND. Thank you for the question. The Justice Department's Antitrust Division agrees—I don't know if you can hear either—agrees that competition in labor markets is as much a part of the antitrust laws as competition in product markets or consumer markets. We have a number of investigations involved in those areas that you're talking about. We have a criminal case, all public. On the no-poaching issue, we've brought cases and investigations regarding allocations of labor markets.

I think I can fairly say we agree with you, this is an area of concern and it's an area of Antitrust Division focus. The Antitrust Division does need more money and more lawyers, and economists, and investigators. It was down substantially, one of the lowest headcounts in quite a number of years, and we very much need to build that back. That's why our fiscal year 2022 appropriations request asked for a substantial increase in money for the Antitrust Division.

Senator PADILLA. Okay. Wonderful. I look to supporting those requests for additional resources.

Finally, in the time remaining, yet another topic. Earlier this month, this Committee released a report detailing former President Trump's scheme to pressure the Department of Justice and overturn the will of the people who voted for now-President Joe Biden so that he could serve again as President. The report outlined behavior that follows a pattern and practice of intimidation, coercion, and outright bullying by the former President's administration.

If we don't hold these bad actors accountable, we face the possibility of eroding public trust in our institutions. Americans are looking for accountability, and they're looking to you, Attorney General, as the leader of your agency to administer justice.

My question is this: Are you willing to recommit yourself to pursuing every possible avenue and every possible lead for holding those accountable who have used public office to undermine and demean our democracy?

Attorney General GARLAND. As a general matter, the answer of course is yes. I don't want to talk about specific investigations except to point out what's already been stated publicly on the record, which is a component of the Justice Department, although an independent one. The Inspector General is examining the matters about which you're speaking. I have full confidence that he will advise me and the Department of what he finds, and we will then take appropriate action.

Senator PADILLA. Okay. Thank you. Just in closing, I would hope that that would include review and consideration of allegations documented in a recent Rolling Stone article where participation in the buildup on January 6th and on January 6th, was not limited to

just White House officials but actual Members of Congress as well. Thank you. Thank you, Mr. Chair.

Chair DURBIN. Thank you. We're going to recognize Senator Blackburn, then take a 5-minute break, return, and we have Senator Ossoff, Senator Hawley, Senator Cruz.

I just say to the two or three members who have said they might be interested in a 3-minute round, please be here. You have to be physically present, because this has been a long day for all of us who have stayed here most of the time, particularly for the Attorney General.

Senator Blackburn, and then a 5-minute break.

Senator BLACKBURN. Thank you, Mr. Chairman. General Garland, thank you for being with us today.

I have to tell you that it is with much disappointment that I have watched the DOJ be so politicized and the way things have been carried out, when you look at the memo to parents. You've heard a lot about that today, and it's because we're hearing a lot about that. I just have to ask you, knowing that you really helped bring to justice those that caused the Oklahoma City bombing. Would you really honestly put parents in the same category as a Terry Nichols or a Timothy McVeigh?

Attorney General GARLAND. My God. Absolutely not.

Senator BLACKBURN. Then why would you ever release a memo? I mean, did you write that memo? Did staff write that memo? What would have led you to do this? It is so over the top.

Attorney General GARLAND. Senator, there's nothing in the memo that in any way draws any comparison to anything like that. This memo is about violence and threats of violence. It's not address—

Senator BLACKBURN. Sir, I have to tell you that that may be your opinion. You know, many times, perception is reality. Reading that memo myself, Tennesseans reading that memo, what they found in that memo, what they heard you say, was if you show up and you question these school boards, you will be deemed a domestic terrorist. You could be investigated by the FBI.

I mean, the FBI has a lot of other things that they should be focusing on. The FBI should be there looking at issues like China. The Knoxville FBI has been very concerned about China. Give me a little update. What's the status of the China initiative at DOJ?

Attorney General GARLAND. Senator, we regard People's Republic of China as an extraordinarily serious and aggressive threat to our intellectual property, to our universities, to our—

Senator BLACKBURN. Okay. You're stonewalling me on that. We all know they are an aggressive threat.

Attorney General GARLAND. We continue to investigate—

Senator BLACKBURN. Okay.

Attorney General GARLAND [continuing]. PRC efforts to—

Senator BLACKBURN. Do you see them as an adversary?

Attorney General GARLAND. I see them as adversarial with respect to our ransomware, with respect to hacking our—

Senator BLACKBURN. Okay.

Attorney General GARLAND. With respect to our counterintelligence, respect to counterespionage, and all those ways.

Senator BLACKBURN. We know that over the last several months, the last 9 months, several espionage prosecutions of researchers have been dropped or charges have been dismissed, including those of a UT professor at UT Knoxville, and of course the Huawei case is there. This is in spite of the fact that Director Wray recently testified that the FBI opens a new Chinese espionage investigation every 12 hours.

Are there apparent failures of the initiative? Is it a lack of leadership? Or is it a compromise position with the administration? Is it incompetence?

Attorney General GARLAND. Every case is evaluated on its own with respect to the law and the facts. We continue to open cases involving the People's Republic of China daily, as the director said. We will not in any way let up our concerns about Chinese——

Senator BLACKBURN. Okay. All right. I want to move on. I'm glad to know you're not going to go soft on China, because this administration is going soft on China.

On your directive going back to the School Board Association and the directive that you sent us, the NSBA has apologized. Are you planning to apologize to the parents of this country, moms and dads?

Attorney General GARLAND. There is nothing in this memorandum that any parent should be concerned about.

Senator BLACKBURN. There is a lot that parents should be concerned about it.

Let me ask you about the Durham investigation, because 44 Senators joined me in a letter that we sent to you in August, and we still have not received a written response from you on the status of the Durham investigation. Will you provide for me a written status report of the Durham investigation?

Attorney General GARLAND. The particular aim I think of the letter asked about the budget. As I said at the House Committee, Mr. Durham is continuing. The only way he could——

Senator BLACKBURN. We asked for a status update. We also asked that the report be made public, available to the public on the completion of the work. Will that be made public?

Attorney General GARLAND. On both of those questions, his budget has been approved, as I already announced.

Senator BLACKBURN. Okay.

Attorney General GARLAND. With respect to the report, I would like as much as possible to be made public. I have to be concerned about Privacy Act concerns and classification. Other than that, the commitment is to provide a public report. Yes.

Senator BLACKBURN. Can you guarantee this Committee that Special Counsel Durham has free rein to proceed wherever his investigation takes him without any political or otherwise undue influence or interference?

Attorney General GARLAND. No, there will be no political or otherwise undue interference with Mr. Durham's investigation.

Senator BLACKBURN. Okay. Susan Hennessey was recently hired to work in your National Security Division. This is a troubling hire because of her political bias. She has made several comments that show she is incapable of working impartially on sensitive matters

within the National Security Division, particularly on the Durham investigation.

For example, December 1st, 2020. Ms. Hennessey stated, and I am quoting, “Durham has made abundantly clear that in a year and a half, he hasn’t come up with anything. I guess this kind of partisan silliness has become characteristic of Barr’s legacy, but unclear to me why Durham would want to go along with it.”

How can the American people be certain that she is going to be fair and impartial when she is on the record making those statements? Has she retracted that statement? Do you intend to ask her to retract that statement?

Attorney General GARLAND. I have to confess. I don’t think I’ve even ever met Ms. Hennessey, and she has nothing whatsoever to do with the Durham investigation.

Senator BLACKBURN. You may want to look at her. She is there in your National Security Division, and she is very much opposed to this.

I want to thank you for your time. I am going to send a couple of questions to you for more complete answers. I associate myself with the comments by my colleagues that the border issues have turned every town into a border town, and every State into a border State. The amount of drugs, the amount of trafficking that is flowing in here, talking to local law enforcement, the way they’re looking at the cartels. Mr. Attorney General, there is a lot that needs to be done to secure this—this country, and the parents of the kiddos in our school, they are not the problem. There are other problems that need your attention.

Chair DURBIN. Thank you, Senator Blackburn. The Committee will stand in recess for 5 minutes.

[Whereupon the Committee was recessed and reconvened.]

Chair DURBIN. The Committee will resume. Senator Hawley.

Senator HAWLEY. Mr. Chairman, did you call on me or Senator Ossoff?

Chair DURBIN. Oh, I’m sorry. I——

Senator HAWLEY. I’m happy to go, but——

Chair DURBIN. I didn’t see Senator Ossoff. I apologize. Senator Ossoff, then Senator Hawley.

Senator OSSOFF. Thank you, Senator Hawley. Thank you, Mr. Chairman. Attorney General, nice to see you. Thanks for joining us.

Last week, the Senate passed legislation that I introduced alongside Chair Durbin and Ranking Member Grassley, the Prison Camera Reform Act, to reduce violence and civil rights abuses in BOP facilities by overhauling a security camera system that IG Horowitz has found as outdated, unreliable, as well as the means of preserving and recording the footage from those systems.

Do you agree that these reforms are necessary, and should this bill become law, will you commit to prioritizing the implementation of the requirements it imposes upon the BOP?

Attorney General GARLAND. Yes and yes.

Senator OSSOFF. Thank you, Attorney General. Like to discuss with you staffing issues at the Bureau of Prisons. Earlier this year, the GAO, which as you know is a nonpartisan independent watchdog, concluded that BOP lacks a reliable method for assessing the

scope of staffing issues, or the impact on incarcerated populations and staff of staffing issues at BOP facilities.

Do you agree the inability to reliably measure this problem impedes BOP's ability to address gaps, for example, shortages of medical staff, shortages of personnel who will help implement the First Step Act and anti-recidivism programs, as well as makes it more difficult for Congress to respond? Will you commit to working with my office to help identify where there's gaps in planning or budgeting, or personnel management, or the authorities that BOP has?

Attorney General GARLAND. Yes, Senator. I met with the Comptroller General about this—the various of his reports, and this one in particular. I agree this is a serious problem with the Bureau of Prisons. The Deputy Attorney General has been working on this problem for quite some time now, as she has repeat meetings with the Bureau of Prisons to go over this issue with respect to staffing and assessment. I'd be happy to have somebody on our staff meet with your staff.

Senator OSSOFF. Thank you, Attorney General. The Inspector General has determined that BOP lacks a clear and consistent policy for the use of solitary confinement in BOP facilities. Has BOP to your knowledge issued such a policy?

Attorney General GARLAND. I don't know the answer to that.

Senator OSSOFF. Okay. Will you work with my office to determine whether they have and what may need to be done to ensure that they do?

Attorney General GARLAND. Of course.

Senator OSSOFF. Thank you, Attorney General. Question about commercial data and its use in DOJ investigations. In 2018, the Supreme Court issued its *Carpenter v. United States* decision that government agents must obtain a warrant before collecting cell phone data that showed the location of a device over a 7-day period. Of course, this data is widely available for many U.S. persons on commercial markets through data brokers and other technology companies.

To your knowledge, do any Federal agencies currently purchase data, or any DOJ components currently purchase data or contract for services that provide device location data from commercial vendors? Is this data used in investigations or prosecutions?

Attorney General GARLAND. I don't believe that we purchase location data, but I'll be happy to look into that and get back to you on that, as well.

Senator OSSOFF. I'd be grateful, because I think there are serious Fourth Amendment concerns there.

Would like to discuss the FISA process with you. In its report last month, the Office of the Inspector General noted that DOJ and FBI still had work to do to implement the IG's recommendations to strengthen the review process for FISA applications to ensure they contain accurate information. While this has unfortunately become a partisan issue over the last few years, it's fundamentally an issue of privacy, due process, and the integrity of the Foreign Intelligence Surveillance Court and the applications it receives.

The IG's report notes that the FBI has not significantly changed the process by which a supervisor such as the Assistant Attorney General from National Security Division reviews and documents

the factual assertions made in FISA applications. I discussed this issue with Matt Olsen when he was before the Committee for his confirmation.

What steps is the DOJ taking to make substantive changes to the FISA review process and comport with the IG's recommendations?

Attorney General GARLAND. I completely agree that this should not be a partisan issue. FISA, on the one hand, is extraordinarily important tool for our ability to protect the country against foreign enemies. On the other hand, it's a tool that has to be dealt with the most extreme care because we have to protect American citizens from unwarranted surveillance and nonjudicial surveillance.

I take the Inspector General's report extraordinarily seriously. I believe the one you're talking about though refers back to events from 2020 and 2019. Regardless, we take this very seriously, and the FBI Director does as well.

The National Security Division of the Department reviews what the FBI is doing with respect to FISAs routinely, audits and analyzes them to be sure that they are following the correct rules. We intend to continue that kind of intensive review to ensure that internal regulations and requirements of the FISC are maintained.

Senator OSSOFF. Thank you, Attorney General. I believe there is within the last couple of months some additional recommendations or concerns expressed by the IG about the implementation of changes pursuant to his prior conclusion, so——

Attorney General GARLAND. I think this is the Woods files that you're talking about. Again——

Senator OSSOFF. That's correct.

Attorney General GARLAND [continuing]. I quite agree that this has to be done better. As I think he said, it's a work in progress, and there is certainly considerably more room for improvement, and we are focused on making those improvements.

Senator OSSOFF. Okay. Please know that there's bipartisan concern about seeing those improvements implemented.

Attorney General GARLAND. As there should be.

Senator OSSOFF. Final question for you about press freedom, Mr. Attorney General. You issued a memo in July prohibiting the Department from using subpoenas, court orders, or warrants to obtain information on the confidential sources of reporters. This new policy as you defined it offers broad protections for members of the news media but does not qualify or define with specificity who qualifies as members of the news media.

Is there a specific interpretation of that phrase that's been issued in internal Department guidance?

Attorney General GARLAND. The answer to that is no. We have discussed this with representatives of the news media continuously, and as part of our review for purposes of turning this memorandum into a regulation, we are continuing to discuss this. As you can imagine, it's very difficult to make that kind of definition.

Senator OSSOFF. Very important to get it right?

Attorney General GARLAND. I'd completely agree.

Senator OSSOFF. I think my staff will likely ask yours for a briefing on the progress of your deliberations, and perhaps we'll weigh in.

Thank you for your service, Attorney General, and for your responses, and I yield back.

Chair DURBIN. Thank you, Senator Ossoff. Senator Hawley.

Senator HAWLEY. Thank you very much, Mr. Chairman.

Attorney General Garland, on October 4th, you issued an unprecedented memo that involves the Department of Justice and the FBI and local school districts, local school boards, nothing like it in our country's history. It was based, you've testified, on this letter from the National School Board Association that we now know the White House was involved in writing. They've retracted the letter. They've apologized for the letter. They say they regret the letter. You won't retract the memo and said earlier that you have no regrets.

You've defended yourself repeatedly today before this Committee by saying, well, you're focused on violence. Now of course, we've seen the memo from your own Justice Department advising State and local and other prosecutors about all of the different Federal causes of action that they can bring against parents that are not about violence. They're about harassment and intimidation. I'm looking here at this memo. It identifies no fewer than 13 possible Federal crimes involving harassment and intimidation including making annoying phone calls.

Do you think a parent who makes a phone call to a school board member that she has elected, that that school board member deems annoying, should be prosecuted, General Garland?

Attorney General GARLAND. No, I don't. The Supreme Court has made quite clear that the word intimidation with respect to the constitutional protection is one that directs a threat to a person with the intent of placing the victim in fear of bodily harm or death.

Prosecutors who investigate these cases know the Supreme Courts. This is a very famous leading case in—

Senator HAWLEY. Prosecutors do, but parents don't, General Garland. Do you think that a parent who looks at the 13 different Federal crimes that your Justice Department has identified they might be subject to and prosecuted for, like making annoying phone calls, do you think that they're going to feel that they're welcome to speak up at a school board meeting?

How about this one? They could be prosecuted for using the internet—I guess that would be Facebook—in a way that might cause emotional distress to a victim. Is that a crime of violence?

Attorney General GARLAND. Senator, I haven't seen the memo that you're talking about—

Senator HAWLEY. Why haven't you?

Attorney General GARLAND [continuing]. I don't—and even from the description, it doesn't sound like it was addressed to parents. But if you—

Senator HAWLEY. No, it wasn't addressed to parents. It was addressed to prosecutors. That's the problem. Why haven't you seen the memo?

Attorney General GARLAND. I don't know why I haven't. I don't look at every—I do not get every memo that every U.S. Attorney sends out. If you're—

Senator HAWLEY. Wait a minute. I just want to be sure I understand this. This is a memorandum that collects 13 different Federal crimes parents could be charged with. It has United States Department of Justice on the top of it. You're telling me you haven't seen it?

Attorney General GARLAND. Who's the memo from, Senator?

Senator HAWLEY. The United States Department of Justice, United States Attorney for the District of Montana.

Attorney General GARLAND. I have not seen a memo from the District of Montana.

Senator HAWLEY. Not high enough priority for you?

Attorney General GARLAND. That's not the question. I don't—

Senator HAWLEY. It is the question. Answer my question. Is it not a high enough priority for you when you're threatening parents with 13 different Federal crimes? These aren't crimes of violence. You've testified today you're focused on violence. That's not what your U.S. Attorneys—they work for you—that's not what they're saying. You haven't seen it because it's not a high enough priority, or what?

Attorney General GARLAND. It's not a question of priority. No one has sent me that memo, so I haven't seen it.

Senator HAWLEY. What do you mean, no one has sent you the memo? You run the United States Department of Justice, do you not?

Attorney General GARLAND. There are 115,000 employees of the Department of Justice.

Senator HAWLEY. Indeed. You are in charge of every one of them. This was a sufficiently important case that you issued a memo. You, over your signature, issued a memo involving the FBI and the Department of Justice in local school boards, local school districts. Your U.S. Attorneys are now threatening prosecution with 13 different crimes. It's not a high enough priority for you? It got lost in the mix?

Attorney General GARLAND. Again, I've never seen that memo. It wasn't sent to me.

Senator HAWLEY. That's what concerns me, General Garland.

Attorney General GARLAND. It wasn't sent to me. I hope you will assure your constituents that what we are concerned about here is violence and threats of violence. That's the best way—

Senator HAWLEY. That only leads me to conclude—General Garland, all I can conclude from this is either that you're not in control of your own Department, or that more likely what I think to be the case is, is that you knew full well that this is exactly the kind of thing that would happen.

When you issued your memo, when you involved the Department of Justice and all of its resources, and the FBI and all of its resources, in local school boards and local school districts, you knew that Federal prosecutors would start collecting crimes that they could use against parents. You knew they would advise State and local officials that these are all of the ways parents might be prosecuted. You knew that that was the likely outcome, and that's exactly what's happened.

We're talking about parents like Scott Smith who's behind me over my shoulder. This is a father from Loudoun County, Virginia.

Here he is at a school board meeting. He was forcibly restrained. He was assaulted. He was arrested. Why? Because he went to an elected school board meeting. He's a voter, by the way. He went to an elected school board meeting to raise the fact that his daughter was assaulted, sexually assaulted in a girls' restroom by a boy. This is what happened to him.

You testified last week before the House that you didn't know anything about this case. I find that extraordinary, because the letter that you put so much weight on, the letter that's now been retracted, it cites this case. It cites Mr. Scott's case directly. There's a news article cited in the letter. It's discussed in the letter. You testified you just couldn't remember it. Maybe this will refresh your memory.

Do you think people like Scott Smith, do you think parents who show up to complain about their children being assaulted ought to be treated like this man right here?

Attorney General GARLAND. Parents who show up to complain about school boards are protected by the First Amendment.

Senator HAWLEY. Do you think that they ought to be prosecuted in the different ways that your U.S. Attorneys are identifying?

Attorney General GARLAND. If what they're doing is complaining about what the school board is doing, policies, curriculum, anything else that they want to, as long as they're not committing threats of violence, then they should not be prosecuted, and they can't be.

Senator HAWLEY. Let me ask you about this. Several of my Democrat colleagues have today, just today in this hearing, multiple times, have compared parents who show up at school board meetings like Mr. Smith here, have compared them to criminal rioters. Do you think that's right? Do you think that a parent who shows up at a school board meeting who has a complaint, who wants to voice that complaint, and maybe she doesn't use exactly the right grammar, you think they're akin to criminal rioters? Do you agree with that?

Attorney General GARLAND. I do not, and I do not remember any Senator here making that comparison.

Senator HAWLEY. Oh, really? These people are just like the folks who came here on January 6th and the riot at the Capitol?

Attorney General GARLAND. I don't think they were referring to the picture that you're showing there.

Senator HAWLEY. I certainly would hope not, but they were referring to parents who go to school board meetings. Mr. Smith is a parent who went to the school board meeting.

I'll leave it at this, General Garland. You have weaponized the FBI and the Department of Justice. Your U.S. Attorneys are now collecting and cataloging all the ways that they might prosecute parents like Mr. Smith because they want to be involved in their children's education, and they want to have a say in their elected officials. It's wrong. It is unprecedented, to my knowledge, in the history of this country, and I call on you to resign. Thank you, Mr. Chairman.

Chair DURBIN. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

For 8 years under Barack Obama, the Department of Justice was politicized and weaponized. When you came before this Committee

in your confirmation hearing, you promised things would be different. I asked you specifically, quote “Will you commit to this Committee that under your leadership, the Department of Justice will not target the political opponents of this administration?” Here was your answer, quote. “Absolutely. It’s totally inappropriate for the Department to target any individual because of their politics or their position in a campaign.” That was your promise just a few months ago. I’m sorry to say you have broken that promise.

There is a difference between law and politics. General Garland, you know the difference between law and politics. Law is based on facts. It is impartial. It is not used as a tool of political retribution. This memo was not law. This memo was politics.

On Wednesday, September 29th, the National School Board Association wrote a letter to the President asking the President to use the Department of Justice to target parents that were upset at Critical Race Theory, that were upset at mask mandates in schools, to target them as domestic terrorists.

On the face of the letter, the letter was in repeated consultation with the White House, an explicit political consultation with the White House. That was on Wednesday, September 29th. Five days later, on Monday, so right after the weekend, boom. You pop out a memo, giving them exactly what they want.

By the way, I understand that. In politics that happens all the time. An important special interest wants something. Sir, yes, sir. We’re going to listen to them.

Let me ask you ask you something, General Garland. In the letter, which you told the House of Representatives was the basis for this abusive memo targeting parents, how many incidents are cited in that memo?

Attorney General GARLAND. I have to look back through the memo. I can’t count it.

Senator CRUZ. Okay. You don’t know. How many of them were violent?

Attorney General GARLAND. Again, the general report—

Senator CRUZ. How many of them were violent, do you know?

Attorney General GARLAND. I don’t know.

Senator CRUZ. You don’t know. There’s a reason you don’t know. Because you didn’t care, and nobody in your office cared to find out.

I did a quick count just sitting here during this hearing. I counted 20 incidents cited. Of the 20, 15 on their face are nonviolent. They involve things like insults. They involve a Nazi salute. That’s one of the examples. My God, a parent did a Nazi salute at a school board because he thought the policies were oppressive. General Garland, is doing a Nazi salute on an elected official, is that protected by the First Amendment?

Attorney General GARLAND. Yes, it is.

Senator CRUZ. Okay. Fifteen of the 20 on the face of it are not violent. They’re not threats of violence. They’re parents who are unhappy. Yet miraculously, when you write a memo, the opening line of your memo, “In recent months there has been a disturbing spike in harassment, intimidation, and threats of violence.” You know what? You didn’t look and nobody on your staff looked. Did you even look up the 20 instances?

Attorney General GARLAND. Look, as I testified, the decision to make—to send a memo is for an assessment—

Senator CRUZ. Did you look up the 20 instances?

Attorney General GARLAND. I did not read—

Senator CRUZ. Did anyone on your staff look them up?

Attorney General GARLAND. I don't know the answer, but it's not all of the memo.

Senator CRUZ. Of course you don't. General, there's a reason. Look. You started your career as a law clerk to Justice Brennan. You've had many law clerks during the year, during your time as a judge. I was a clerk to Chief Justice Rehnquist. I'll tell you what. If I drafted an opinion for the Chief Justice and walked in and it said, "There's a disturbing pattern of violence." "Well, Ted, how do you know that?" "Well, I've got an amicus brief here who claims it." You would fire a law clerk who did that.

You're the Attorney General of the United States. This was not a Tweet you sent. This is a memo to the Federal Bureau of Investigations saying go investigate parents as domestic terrorists.

Attorney General GARLAND. That is not what the memo says at all. It does not—

Senator CRUZ. Is it what the letter says?

Attorney General GARLAND. That is not what my—

Senator CRUZ. Is it what the letter says?

Attorney General GARLAND. I don't care what the letter says. What I said—

Senator CRUZ. You don't care? You said it was the basis of your memo. You testified under oath before the House of Representatives the letter was the basis of your memo. You don't care about the letter?

Attorney General GARLAND. The letter and public reports of violence and threats of violence. My memo says nothing about domestic terrorism. It says nothing about parents committing any such things. My memo is an attempt to get an assessment of whether there is a problem out there that the Federal Government needs to—

Senator CRUZ. The letter on its face says the actions of the parents could be the equivalent to a form of domestic terrorism.

Attorney General GARLAND. That is wrong, and that—

Senator CRUZ. Asks the President to use the Patriot Act in regards to domestic terrorism directed at parents.

Attorney General GARLAND. You'll note—

Senator CRUZ. This was the basis of your memo.

Attorney General GARLAND. My memo—

Senator CRUZ. The Department of Justice, when you're directing the FBI to engage in law enforcement, you're not behaving as a political operative because a political ally of the President says, "Hey, go attack these parents because we don't like what they're saying." Department of Justice, you did no independent research on what was happening, did you?

Attorney General GARLAND. The memo has nothing to do with partisan—

Senator CRUZ. Did you do independent research?

Attorney General GARLAND. The memo has—

Senator CRUZ. Did you do independent research?

Attorney General GARLAND. The memo has nothing to do with partisan politics.

Senator CRUZ. You're not answering that question. You've testified you know nothing about the violent sexual assault that happened in Loudoun County, even though it's one of the bases in this letter.

Attorney General GARLAND. I read about it since then.

Senator CRUZ. Okay. You told the House last week you knew nothing about it.

Attorney General GARLAND. I did not know at the time, no.

Senator CRUZ. Okay. This week, the court concluded that a 14-year-old girl was violently raped by a boy wearing a skirt in the girls' restroom. The school district covered it up, released the boy, sent him to another school, where he violently raped another girl. The father, who Mr. Hawley just showed you, was the father of the first girl. He was understandably—do you understand why a parent would be upset when your daughter is raped at school, the school board covers it up, and then lies to you and claims there have been no assaults, we have no instances of assaults in our bathroom? That was a flat out lie as the court concluded this week. Do you understand why the parent would be upset?

Attorney General GARLAND. Absolutely, and as any expressions of upset are completely protected by the First Amendment.

Senator CRUZ. Except you just called him a domestic terrorist.

Attorney General GARLAND. I never called him that. That's not correct.

Senator CRUZ. This letter calls him a domestic terrorist. You based a direction to the FBI, an official direction from the Attorney General on this letter. I'll tell you what. The NSBA is so embarrassed of this letter, they've apologized for it and retracted it, but you don't apparently have the same willingness to apologize and retract what you did.

Let me ask you something else. A big part of this letter is that they're upset about parents not wanting Critical Race Theory taught. Your son-in-law makes a very substantial sum of money from a company involved in the teaching of Critical Race Theory. Did you seek and receive a decision from an ethics advisor at the Department of Justice before you carried out an action that would have a predictable financial benefit to your son-in-law?

Attorney General GARLAND. This memorandum is aimed at violence and threats of violence.

Senator CRUZ. I just asked a question. Did you see an ethics opinion?

Attorney General GARLAND. It has no predictable——

Senator CRUZ. Did you seek an ethics opinion?

Attorney General GARLAND. It has no——

Senator CRUZ. Did you seek an ethics opinion? Judge, you know how to ask questions and answer them. Did you seek an ethics opinion?

Attorney General GARLAND. You asked me whether I sought an ethics opinion about something that would have a predictable effect on something. This has no predictable affect in the way that you're talking about.

Senator CRUZ. If Critical Race Theory is taught in more schools, does your son-in-law make more money?

Attorney General GARLAND. This memo has nothing—

Senator CRUZ. If Critical Race Theory is taught in more schools, does your son-in-law make more money, yes or no?

Attorney General GARLAND. This memorandum has nothing to do with Critical Race Theory or any other kind of curriculum at—

Senator CRUZ. Will you answer if you sought an ethics opinion? Will answer if you sought an ethics opinion?

Attorney General GARLAND. I am answering the best I can.

Senator CRUZ. Yes or no. Did you seek an ethics opinion?

Attorney General GARLAND. This memorandum has nothing—

Senator CRUZ. Did you seek an ethics opinion?

Attorney General GARLAND. This memorandum has nothing to do with Critical Race Theory.

Senator CRUZ. General, are you refusing to answer if you sought an ethics opinion?

Attorney General GARLAND. I'm telling you that there's no possible—

Senator CRUZ. You're saying no. Just answer it directly. You know how to answer a question directly. Did you seek an ethics opinion?

Attorney General GARLAND. I'm telling you that if I thought there was any reason to believe there was a conflict of interest, I would do that. I cannot imagine a conflict of interest.

Senator CRUZ. Why do you refuse to answer the question? Why won't you just say no?

Attorney General GARLAND. I'm sorry.

Senator CRUZ. You're not going to answer the question?

Attorney General GARLAND. I'm sorry. Ask the question again.

Senator CRUZ. Did you seek an ethics opinion?

Attorney General GARLAND. I'm saying again, I would seek an ethics opinion—

Senator CRUZ. No is the answer, correct?

Chair DURBIN. Senator, your time is up.

Senator CRUZ. Let the record reflect the Attorney General refuses to answer whether he sought an ethics opinion, and apparently ethics are not a terribly high priority in the Biden Justice Department.

Attorney General GARLAND. I don't think that's a fair reflection of what I said.

Senator CRUZ. Then answer the question.

Chair DURBIN. Senator, you've gone way beyond any other Senator's time. I think you ought to be at least respectful of other Senators at this point.

Senator CRUZ. Mr. Chairman, do you know the answer, whether he sought an ethics opinion?

Chair DURBIN. I think you have exchanged that so many times, we know where we stand.

We have a request for 3-minute rounds, and I have one from Senator Hirono and Senator Lee and Senator Booker. I'm sorry. First of course, Ranking Member Grassley. We're going to stick to 3 minutes. It's been 4 hours since the Attorney General's been in

that chair with a couple breaks, and I think we should try to wrap up if we can.

Senator GRASSLEY. Request to put something in the record. A Wall Street Journal editorial titled about the domestic terrorist parents. The article notes that the October 4th DOJ memo should be formally rescinded.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator GRASSLEY. Yes. General, after a great deal of pressure from victims and Congress, I know that you're taking another look at the Department's disgusting decision not to prosecute employees for lying to government officials in the Nassar investigation. Do you anticipate that the Department will similarly expunge the records of these employees just like McCabe or could—continue to give them get out of jail free cards as you've done so far?

Attorney General GARLAND. As I said, Senator, we are reviewing the decisions with respect to the alleged false statements. That review is being done by the Criminal Division.

Senator GRASSLEY. Okay. Beginning in the summer of 2020, American cities began to see appalling and unprecedented spike in violent crime, murders, and gang violence as liberal politicians operated under the rallying cry of Defund the Police. This movement translated into over 1,200 deaths in 2020 alone. In the summer of 2020, then Attorney General Barr instituted Operation Legend as a way to combat the rising spike in violent crime.

By any measure, this surge in Federal agents was a resounding success. By December 2020, over 6,000 arrests had been made. Over 2,600 firearms had been taken off of streets, and approximately 467 people had been arrested for homicides.

Given the clear success of Operation Legend, why is the Department seemingly directing its efforts toward school board meetings, but not toward real threats or real acts of violence that happen every day in American citizens? A simple question. Does Operation Legend still exist?

Attorney General GARLAND. My understanding was Operation Legend was directed at violence over the summer of 2020. We have addressed another surge of Federal prosecutorial and law enforcement efforts. This last summer, we have stepped up the amount of money we're giving to State and locals, and we have increased our joint task forces together.

I visited Federal and State law enforcement in New York and in Chicago and in Los Angeles and in San Francisco, all aimed at violent crime in those areas. And we've asked for considerable additional money, about \$1 billion in grants, to fund State and local police in fiscal year 2022. So, I think that's—I hope that answers your question.

Senator GRASSLEY. Okay. Only four packers, JBS, Tysons, Cargill, and National Beef, control more than 80 percent of the cattle market. These companies hold a tremendous amount of market power. The Justice Department issued civil investigative demands in May 2020, but we've yet to learn anything from this investigation.

Could you provide an update, and can you commit to expediting this investigation so that our cattle producers know whether there are any antitrust violations?

Attorney General GARLAND. I can't discuss specific investigations. We have longstanding policies against that. I can tell you that the Antitrust Division is aggressively concerned with competition in the market that you described. We are also in frequent consultation with the Agriculture Department with regard to the Packers and Stockyards Act. We regard this as an area where we have to be very much concerned about exclusionary behavior and anti-competitive behavior.

Senator GRASSLEY. Thank you.

Chair DURBIN. Thanks, Senator Grassley. Senator Hirono. Senator, I think your mic's not turned on.

Senator HIRONO. One thing I have to say as we listen to, I don't know, going on hour three, is that the Republicans, once they focus on something, they just stick with it.

It is amazing to me that there is all this mischaracterizing of the Attorney General's memo, as well as a letter from the acting U.S. Attorney of Montana and his letter is also totally mischaracterized as to what the focus of the Attorney General's letter is.

I would like to submit for the record the acting U.S. Attorney of Montana's letter.

Chair DURBIN. Without objection.

[The information appears as a submission for the record.]

Senator HIRONO. As I said, it's pretty—it's kind of amazing but not unusual that my Republican colleagues will continue to focus on something that the Attorney General has to continue to testify for the last 3 hours or whatever it is that his letter is being mischaracterized. They will focus on that until the nth degree.

At the same time, you know, what is a real problem is the fact that we have 530 voter suppression bills that have been introduced in 47 states, the vast majority by Republican legislatures, and people's votes are literally being stolen through these voter suppression actions. Do we hear word one about the fact that this is happening all across the country that voter suppression, stealing of votes is happening?

Does a single Republican even care about that? No. Let's let that sink in that they talk about all of these, the memos they're totally mischaracterizing, and yet what is actually happening in voter suppression, not a peep.

I want to ask you, Mr. Attorney General. *Shelby County* pretty much gutted the Voting Rights Act, and then followed by *Brnovich* wherein the majority opinion suddenly comes up with all these guideposts that the Justice Department now has to prove in order to protect our right to vote. Can you just tell us what the impact of the Supreme Court's *Shelby County* and *Brnovich* decisions have been on the Justice Department's ability to protect our right to vote? Is there something we can do? Are there tools that we can provide through congressional action that will enable you to protect our right to vote?

Attorney General GARLAND. Yes, Senator. The right to vote is a fundamental pillar of American democracy. The Voting Rights Act is one of the greatest statutes that was ever passed. It enabled the

Justice Department to protect people's right to vote, and to prevent against discrimination based on race and ethnicity with respect to patterns or practices, with respect to voting.

In *Shelby County*, the Supreme Court took out the most important tool we have, which was Section 5, which allowed preclearance by the Justice Department, or alternatively, allowed the State to go to Federal court to get clearance. That left us with a circumstance of having to examine each case one by one with the burden on the Justice Department.

One thing that the Congress could do is put Section 5 back in place as the Supreme Court indicated could be done with the appropriate legislative record.

Second, *Brnovich* interpreted Section 2, a statutory section, in a way that the Justice Department disagrees with as we made clear in our papers. I'm not saying anything we didn't say in our Supreme Court argument. They narrowed it in a way that we think was not consistent with congressional intent, and which makes our ability to challenge discriminatory changes in voting much more difficult.

Congress could again fix that by bringing back Section 2 to what Congress originally intended and making that clear in statutory language. Both of those changes would be enormously important from the point of the Justice Department's success in protecting the right to vote.

Chair DURBIN. Thank you, Senator.

Senator HIRONO. Well—I'm sorry.

Chair DURBIN. Thank you, Senator.

Senator HIRONO. Mr. Chairman, it's clear that we will have to do those things that the Attorney General recommends to protect people's right to vote without a single Republican going in that direction. That's how pathetic it all is. Thank you.

Chair DURBIN. Thank you, Senator. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Attorney General Garland, I find it deeply concerning that you still haven't cited a single example of a true threat of violence. If I'm understanding this correctly, and I've been here for most of this hearing—I've had to step out to vote a couple of times—but I think you seem to admit you didn't do any independent research outside of receiving the September 29th National School Board Association letter.

One of the things, I find that perplexing and quite troubling, this came in—it was sent on September 29th. I believe that was a Wednesday. The following Monday, just days later, just barely over a weekend, you responded with your memo relying on the NSBA memo.

I submit, as a Member of the Judiciary Committee with oversight responsibility over your Department, I submit requests for information all the time. It takes time. I understand that. Sometimes it takes months to get a response back. I'm always grateful when I do get a response back, especially when it's a response that contains meaningful information. I understand that people are busy, and they've got a lot of stuff to comply with.

If one association can send one letter without any independent research on your part, and within days, barely over a weekend, get not just a response, but an action memo signed by the Attorney

General of the United States, I think that's weird. I think that makes me really uncomfortable, especially when the National School Board Association, as I understand it, or those associated with it, had publicly stated that they'd been coordinating with officials at the White House on this for weeks. It doesn't feel right. Doesn't seem right to me.

Last week, two of our counterparts on our House counterpart Judiciary Committee asked you a little bit about the number of people entering the United States illegally. About 1.3 million have entered the United States illegally this year. That's a lot. That's a lot of people. Of those 1.3 million, I'm quite confident based on my own past experience as a Federal prosecutor, I'm quite confident that some non-insignificant portion of those will have previously been deported. As you know, under 8 U.S.C. § 1326, that is a felony Federal offense, illegal reentry after previous deportation.

Since they've asked you about that, have you had a chance to identify how many prosecutions have been brought for illegal reentry this year? I'd be curious about that. I'd also be curious as to whether there's anything analogous to your October 4th memo. Is there anything calling out concerns that you've got over illegal reentry?

Attorney General GARLAND. On that question, the 1.3 million are arrests I think made by CBP. They are referred. CBP, the Customs and Border Patrol, makes a decision about whether to put those people into removal proceedings or to refer them to the Justice Department for prosecution.

We have this year charged thousands of cases, thousands of criminal cases, with respective violations of the Immigration laws with respect to crossing of borders. I don't have the exact number. We can get you that exact number, but the number is in the thousands.

Senator LEE. My time is expired. I express the concern because when the Department becomes focused on things that are not part of its business, namely harassing, threatening, intimidating moms and dads in America, on chilling their ability to express their concerns to their neighbors, their friends, and those who represent them on a school board, they sometimes lose focus on the things that only the Federal Government can do, like controlling our border from the dangerous effects of illegal immigration generally, and illegal reentry in particular. Thank you.

Chair DURBIN. I take it Senator Cruz and Cotton are seeking 3-minute rounds? Is that correct? All right. Senator Booker, as well. Senator Booker.

Senator BOOKER. The October 4th memo reads, "In recent months, there's 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." Is that true?

Attorney General GARLAND. Yes, sir.

Senator BOOKER. I mean, it is true.

Attorney General GARLAND. It is true. I'm—

Senator BOOKER. I have a list of very disturbing incidents. In Texas, a parent physically assaulted a teacher. August 18th, 2021. In Pennsylvania, a person posted threats on social media which re-

quired police to station outside of a school district, law enforcement investigating the person. I could keep going. Ohio, a school board member was threatening letter that began with we are coming from you. Domestic terrorism in the United States, sir, has it been more from overseas, radical terrorists since 9/11, or more from homegrown terrorists, most of them being right-wing extremists? Which has been greater since 9/11?

Attorney General GARLAND. I'm going to be careful about that. The threats that we face with respect to terrorism, none of those descriptions have to do with terrorism. The threats that we face in the United States come both from foreign terrorists and——

Senator BOOKER. A church in South Carolina. A synagogue in Pennsylvania. A school, Parkland. A school, Newtown. Has there been threats and violence against schools in the United States of America?

Attorney General GARLAND. There have been, yes.

Senator BOOKER. Coming from what types of groups?

Attorney General GARLAND. They come from domestic groups.

Senator BOOKER. From domestic groups.

Attorney General GARLAND. Yes.

Senator BOOKER. Has there been a long, pages long list of what my staff could grab, been threats and violence against school officials in the United States of America in the last year?

Attorney General GARLAND. I obviously haven't seen the list, but it accords with my recollections, but——

Senator BOOKER. Let me accord your recollection with the letter that I've heard so much about that I pulled it to read it. You say literally, threats—excuse me—spirited debate about policy matters is protected under the Constitution. I'm quoting one of my colleagues today. Does that sound like harassing and intimidating moms and dads? You affirm at the top of your letter that spirited debate is allowed, while spirited debate about policy matters is protected under the Constitution. That protection does not extend to threats and to violence that we have been watching on our TV screens, intimidating people, threatening to hurt them, taking physical action.

You know what? You did not call for the DOJ and the FBI to monitor school board meetings, did you?

Attorney General GARLAND. No, I did not.

Senator BOOKER. You did not call for anyone to invoke the Patriot Act, did you?

Attorney General GARLAND. No, I did not.

Senator BOOKER. Sir, what you called is for the DOJ to convene meetings to discuss strategies for addressing those threats.

Attorney General GARLAND. That's correct.

Senator BOOKER. Is that intimidating moms and dads going to school board meetings?

Attorney General GARLAND. I can't see how that can be interpreted as——

Senator BOOKER. Sir, I know something about law enforcement intimidation. It stems from growing up as a Black man in America. I know what it feels like to be pulled over, to be accused of stealing things, to every time I drive over the George Washington Bridge

as a teenager, to know I had to put extra time because I was being pulled over by law enforcement.

If someone's to read the actual letter, you are literally saying as the leader of the highest law enforcement office in the land that you protect spirited debate. That you think though, given the climate of school violence in America—I've met with victims from Parkland.

Mr. President, I'm sorry. I have watched Republican after Republican go over time, and I know you're gently banging that gavel, but I've watched all today, my colleagues violate what you said at the beginning was a strict time limit. I would ask you to afford me two more minutes.

Chair DURBIN. Is there objection? No objection.

Senator BOOKER. Have you met with Parkland survivors?

Attorney General GARLAND. I met with survivors at the White House.

Senator BOOKER. Yes or no?

Attorney General GARLAND. I believe they—

Senator BOOKER. You've met with survivors of school violence. Have you—

Attorney General GARLAND. I think I met with the Parkland families.

Senator BOOKER. Yes. Do you have a responsibility—in a climate of threats and violence taking place at schools, do you have a responsibility to convene strategy meetings to try to make sure we do not have eruptions of violence in a country? Is that a responsibility of the Federal Government?

Attorney General GARLAND. Yes, our job is to protect Americans.

Senator BOOKER. Did you specifically say anything in this election—letter that can be seen as harassing moms and dads and parents, or did you explicitly say that the Constitution protects spirited debate?

Attorney General GARLAND. I specifically said the Constitution protects spirited debate, and I don't believe there's anything that's in this letter that could be read to intimidate mothers and fathers.

Senator BOOKER. I'm not talking about the outrage machines that seem to fuel our politics on both sides. I'm talking about the actual letter here, sir that you wrote. You're a goodhearted person. Is there anything in this letter that could specifically lead a goodhearted parent who is against mask mandates, who somehow believes that the teaching of racial discrimination is repugnant to them, is there anything in this letter that would prevent them from going and speaking to it and yelling and being upset and letting their elected officials know what they really believe? Is there anything in the actual print of this letter that could be seen to lead that type of intimidation?

Attorney General GARLAND. No, Senator. All of those things are protected by the Constitution.

Senator BOOKER. Will you say that one more time?

Attorney General GARLAND. All of those things are protected by the Constitution.

Senator BOOKER. I hope that you will do your law enforcement work. There's too much violence in this country. There's been too many domestic terrorist attacks. I don't want to have the next

hearing here be about some incident. I hope that you continue to convene your strategy sessions, to protect parents and children and school officials from any kind of the heinous violence that we have seen way too much of in this country, and that we all bear a responsibility for stopping.

Thank you, Mr. Chairman, for the allowance of the extra time.

Chair DURBIN. Thank you, Senator. Senator Cruz.

Senator CRUZ. We talked just a minute ago about the difference between law and politics. We heard some impassioned political speeches, but also a question that just was asked by my friend from New Jersey. Is there anything in this memo to tell a parent that they're being targeted for harassment and intimidation?

I would note that the letter from the school boards cited 20 instances, 15 of which were nonviolent. The letter from the school board described them as domestic terrorism. Within days, the Department of Justice snapped to the commands of the special interest and issued a memo, a directive to the Department of Justice, and a directive to the FBI. This is again where law matters. The opening sentence describes a disturbing spike in harassment, intimidation, and threats of violence.

You spent a long time as a judge. When you have three things listed, am I correct that anyone interpreting that, reading it, would conclude that harassment and intimidation are something different than threats of violence given that you listed each of the three out separately? Is that consistent with the canons of construction?

Attorney General GARLAND. The memorandum is addressed to professional prosecutors——

Senator CRUZ. I asked you a question, not who it was addressed to.

Chair DURBIN. Senator, at least let him respond.

Senator CRUZ. No, not when he answers a non sequitur. If he wants to answer——

Chair DURBIN. He may respond any way——

Senator CRUZ. Okay. You're taking my time now. This is not coming out of my time. When I ask a question, he could answer.

Chair DURBIN. Listen. We've given you more time than any other Senator.

Senator CRUZ. Mr. Chairman, when I ask a question——

Chair DURBIN. Listen. All I'm asking is allow him to respond.

Senator CRUZ. Mr. Chairman, when I ask a question, he can answer the question, but he's proceeding to ask a total non sequitur. I asked about the canons of construction on the——

Chair DURBIN. Please let him respond.

Senator CRUZ. I'll ask the question again. The opening line of the memo specifies harassment, intimidation, and threats of violence. Is it correct under the ordinary canons of construction that a legal reader would understand that harassment and intimidation means something different from threats of violence? Is that correct?

Attorney General GARLAND. A legal reader would know *Virginia v. Black*, the Supreme Court definition of intimidation, and a legal reader would know 18 U.S.C. § 2261(a), the definition of harassment.

Senator CRUZ. Would a parent?

Attorney General GARLAND. This was not addressed to parents.

Senator CRUZ. You know parents read it. You're the Attorney General of the United States. You said you can't think of anything harassing. You directed the G-men, the FBI to go after parents. All right. Let's move on to a different topic.

We've sadly seen that you're willing to use the enforcement power of the Department of Justice to target those who have political views different than you, even if it's a mom at a PTA meeting. Let's try the other side. Are you willing to enforce the law fairly against people who are political allies of the President?

At a Senate hearing in May, Dr. Fauci said, quote "The NIH has not ever and does not now fund gain-of-function research in the Wuhan Institute of Virology." That was under oath, under testimony.

On October 20th, the NIH Principal Deputy Director in writing directly contradicted it. Those two statements cannot be true. As you know, Section 1001 of Title 18 makes it a Federal crime to knowingly make false statements to Congress.

As the Department of Justice investigating Dr. Fauci for lying to Congress, and will you appoint a special prosecutor to do so?

Attorney General GARLAND. I'm going to say again, the memorandum that I issued is not partisan in any way. It has nothing to do with what I agree with or I don't agree with. I don't care whether the threats of violence come from the left or the right. With respect—

Senator CRUZ. Could you answer the question I asked?

Attorney General GARLAND [continuing]. To the second question, we don't comment on criminal investigations or other investigations if—

Senator CRUZ. Amazingly, when it's the political enemies of the administration, you comment loudly in a memo. Let me ask one other question.

Attorney General GARLAND. They're not asking—you weren't—

Senator CRUZ. President Biden recently said in a national town hall that police officers who decline to get vaccinated should be fired. Do you agree with President Biden on that?

Attorney General GARLAND. I think that all police—look. I stood on the stage at the Mall where the 700 and some police officer died this year were commemorated.

Senator CRUZ. Let me try again. Do you agree with the President? It's a yes or no. You've asked questions as a judge. You know how to get a yes or no. Do you agree with the President, yes or no?

Attorney General GARLAND. A large percentage of the law officers who died this year died from COVID-19.

Senator CRUZ. Do you agree with President Biden that police officers who decline to get vaccinated should be fired, yes or no?

Attorney General GARLAND. If they had been vaccinated, they wouldn't have died.

Senator CRUZ. Is that a yes, you do agree with the President?

Attorney General GARLAND. Not one police officer—

Senator CRUZ. In Chicago, a third of the police officers did not file their vaccination status. Do you think Chicago should fire a third of its police officers when murder rates and crime rates are skyrocketing?

Attorney General GARLAND. This is a determination that the city of Chicago will have to make.

Senator CRUZ. Do you agree with the President? The President said yes. Do you agree with him? You are the chief law enforcement officer of the United States. Do you agree with Joe Biden saying fire police officers despite skyrocketing crime rates?

Attorney General GARLAND. That is a question—that is one of State law there and will have to be decided by the State.

Senator CRUZ. You have no view on whether we should fire cops?

Chair DURBIN. Senator, your time is expired.

Senator CRUZ. You used 2 minutes of it.

Chair DURBIN. No, I certainly did not. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman, and thank you again for being here, Mr. Attorney General.

I'm going to shift topics to an issue that I know you're familiar with, the 9/11 families and the State secrets privilege. I want to just say that I was encouraged and pleased when President Biden issued an executive order requiring the Department of Justice to complete a review of documents sought by those 9/11 survivors. As you well know, they are in court now taking advantage of JASTA, the overwhelmingly approved measure that gives our Federal courts jurisdiction over their claims for the harm they suffered when their loved ones were killed during the 9/11 attack.

I was glad to see that the FBI has released at least one document on the 20th anniversary of the 9/11 deaths. I still am focused on the State secrets privilege, the invocation of it in past years before this administration, the overuse of it. In fact, the Trump Justice Department failed to provide any meaningful justification for withholding these documents from the 9/11 families. I think we see now that there was no justification.

I know the Department's review is ongoing, and that you will continue to disclose I hope as much information as possible, as swiftly as possible.

Just to address the Department's use of the privilege more broadly, the memo requires the Department of Justice to provide periodic reports to Congress identifying the cases where the privilege is invoked and explaining the basis for invoking it. I sent a letter earlier this month to you about this reporting requirement because this Committee has received only two reports, in 2011 and 2015, and in the 6-years since, the Department of Justice has failed to provide such reports.

Just to come to the point, I am respectfully asking for a commitment that you will provide these periodic reports to Congress and review the Department's policies with respect to its invoking the State secrets privilege so as to comply with the 2009 memo. I may have gone too quickly over the various actions of the Department, but I'm referring to the 2009 memo which requires those periodic reports. In the 8 seconds that I have left and——

Attorney General GARLAND. Yes. The answer to both questions is yes. We are currently reviewing that memo, and if anything, we will strengthen it. We do intend to make periodic reports, and it is not a periodic report to have not made a response since 2015, I assure you. We intend to do that, yes.

Senator BLUMENTHAL. Thank you very much.

Chair DURBIN. Thank you, Senator Blumenthal. Senator Cotton.

Senator COTTON. Judge, I want to return to our exchange this morning. As I've reflected on it, you made a shocking admission. You issued this memo siccing the feds on parents at school boards on Monday, October 4th. You acknowledge that there was no effort in the Department of Justice, no initiative to draft this memo or create these task forces before Wednesday, September 29th, when the National School Board Association issued that letter. Is that correct?

Attorney General GARLAND. I don't know. All I know is that the first time I started working on this was after receiving the letter. That's all I—

Senator COTTON. From your standpoint, you are not aware of any effort in the Department of Justice before that letter was sent on September 29th.

Attorney General GARLAND. I think it's fair to say, as you're suggesting that this letter and what the other public notices of violence against school board members and teachers are what form the basis for this memorandum. Yes.

Senator COTTON. This memo is dated October 4th with your signature on it. Did you sign it on October 4th?

Attorney General GARLAND. I did.

Senator COTTON. Four intervening days, two of which were weekend days.

Attorney General GARLAND. Yes.

Senator COTTON. I'd say that sets a land speed record for the Federal Government.

Attorney General GARLAND. When we—

Senator COTTON. Chuck Grassley pointed out that you have not responded to letters of his that have been outstanding for months. How is it the Department of Justice was able to move so rapidly on a single letter from a special interest group that has now repudiated that letter, said it regrets sending the letter, and apologize to its members for sending the letter? How did your Department move so fast on this matter?

Attorney General GARLAND. When an organization that represents thousands of school board members—

Senator COTTON. I would say they purport to represent thousands, because State school boards across the country have been repudiating them and trying to withdraw their membership. That's why the National School Board Association withdrew its own letter. Who brought this to your attention?

Attorney General GARLAND. May I answer the question?

Senator COTTON. I'm asking you a question now. Who brought this to your attention?

Attorney General GARLAND. You asked me a question. May I answer the question? The question is why speed. The answer is when we get reports of violence and threats of violence, we need to act very swiftly. I would have hated it to have gotten this letter, and then acts of violence occurred in the interim before we were able to act.

Senator COTTON. Okay, Judge. There were—

Attorney General GARLAND. The only act here is assessing the circumstances. That's all there is here. We can't wait until somebody dies. That's why we did this.

Senator COTTON. Okay. You keep citing media reports. There were 24 incidents in that letter. As you've heard today, almost all of them were nonviolent. They weren't all threats of violence.

Attorney General GARLAND. Those are not the media reports I was referring to.

Senator COTTON. You said earlier it was news reports. Okay. What other reports that you saw about potential violence at school boards were you basing this memo on?

Attorney General GARLAND. I don't recall them specifically, but I have now again seen since that time people saying that they're repeating what they have said before, that they were threatened—

Senator COTTON. That's all post-talk. It's all after the fact. It doesn't go near your frame of mind on October 4th. Who brought this to you? Who brought this memo to you and asked you to sign it?

Attorney General GARLAND. Nobody brought the memo to me and asked me to sign it.

Senator COTTON. Someone had to bring it to your attention. Hey, Judge. We're about to sic the feds on parents.

Attorney General GARLAND. I'm sorry. No one said we're about to sic the feds on parents. That's not an accurate description.

Senator COTTON. Was this an initiative of Lisa Monaco?

Attorney General GARLAND. This memorandum went through the normal processes within the Department, and I worked on it myself and I signed it.

Senator COTTON. Someone is a proponent. Someone was a proponent. I bet you didn't write the first draft of this. Where did it come from? Did it come from Lisa Monaco?

Attorney General GARLAND. I didn't write the first draft, but I did work on this memorandum, and it represents my views and it represents my reading of the materials.

Senator COTTON. Did it come from Vanita Gupta's office?

Attorney General GARLAND. Look. I'm not going to discuss—

Senator COTTON. Is this Matt Klapper's initiative?

Attorney General GARLAND. I'm not going to discuss the internal workings of the Justice Department here. This memorandum reflects my view, and I stand behind it, and I continue to stand behind it.

Senator COTTON. Are you aware—are you aware of conversations between members of your Department of Justice and the White House leading up to that letter from the School Board Association?

Attorney General GARLAND. I am sure—there were no conversations with me. I'm sure there were conversations. It's perfectly appropriate when the White House receives a letter calling for law enforcement response across the board, not with respect to a specific case, for the White House to have conversations with the Justice Department.

Senator COTTON. Are you aware of conversations between your Department of Justice officials and White House officials and the members of the School Board Association all cooperating together,

which is why you were able to move in 4 days, Judge? Four days, two of which were weekends.

Attorney General GARLAND. As I said, I am sure there were conversations with the White House. I have no idea whether there were conversations with the School Board Association.

Senator COTTON. I bet we're going to find out there were, and if it doesn't happen now, it'll happen in 15 months when Republicans are in charge again.

Attorney General GARLAND. There's nothing wrong with there being such conversations. Let me be clear again. This is not a request to investigate any particular person or prosecute any particular person. In the same way you ask me to worry about violence in the streets, it's perfectly appropriate for the White House to urge me to worry about violence in the streets. Same way they're perfectly appropriate for the White House or any other organization to urge me to worry about election threats.

There's nothing that I know—knew about this organization to suggest that it is any way partisan. It's a National School Board Association. I certainly never in my mind viewed that as a partisan organization.

Senator COTTON. Now that they've repudiated their letter, why won't you just say you made a mistake? Why won't you say you made a mistake and you relied on bad information?

Attorney General GARLAND. Because they didn't repudiate their letter. They repudiated language in the letter which I did not adopt and don't agree with. Their concerns are about safety in the schools and about violence, and this is a core concern of the Justice Department. That's why.

Chair DURBIN. Thank you. Senator Blackburn has asked for 3 minutes, and I will conclude with my own 3 minutes after that. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Attorney General Garland, you just told me that you don't think you ever met Susan Hennessey. Did you hire Susan Hennessey?

Attorney General GARLAND. Look, I have signoff authority for everybody, I suppose, in the Justice Department.

Senator BLACKBURN. I am not—have you had—

Attorney General GARLAND. That's the best I can answer with respect to that. The question you were worried about, Senator, and I understand, had to do with Durham. As I explained, she has nothing to do with the Durham investigation.

Senator BLACKBURN. Okay. Were you unaware of her comments before you hired her?

Attorney General GARLAND. Again that—

Senator BLACKBURN. You don't know. Okay.

Attorney General GARLAND. I hire 115,000 people in the Justice Department. I don't know.

Senator BLACKBURN. I'm fully aware of that. It's amazing to us that those 115,000 people can't investigate things like crime on the border, can't investigate crime on the streets.

You know, I'm going to return to this memo of October 4th. The memorandum cites harassment, intimidation, and threats of violence. What I'd like to know is who chose that language, harassment, intimidation, and threats of violence? You've said this re-

flected your views, but it's become apparent that you did not write this memo yourself.

I would like to know who came up with that language. Was that yours or was that submitted language?

Attorney General GARLAND. I don't know whether—let me put it this way. This is language that law enforcement officers are—very well understand. It is contained in the Federal statute and in the Supreme Court opinion.

Senator BLACKBURN. Okay. In the House Judiciary Committee last week, you said you were concerned only about true threats. Are you going to revise your memorandum to make it clear that you—this applies only to true threats of violence instead of classifying parents in this country with domestic terrorists such as Timothy McVeigh and Terry Nichols?

The other thing I would like to know, you said to me earlier that your memo was based on the NSBA letter and the news reports. You've said there was not a lot of independent research done by you and your staff. If you would please submit to us for the record the news reports that you're referencing so that we will be able to have that as a frame of reference. Also, we would love to know who actually did write that memo and how they came up with the idea of calling parents domestic terrorists.

One other thing I've got for you, do you agree with the Supreme Court that the Second Amendment is a civil right? If so, what is your Civil Rights Division doing to ensure it is being protected?

Attorney General GARLAND. Just to back up on some of the questions. The memo doesn't say anything about domestic terrorism or calling parents domestic terrorists.

I do agree the Second Amendment is part of the Bill of Rights and is therefore a civil right. The Civil Rights Division has some generalized authorities, but it also has specific statutory authorities. I don't know whether there is a specific statutory authority with respect to the Second Amendment that has been given by Congress to the Civil Rights Division. I'm not aware of one. There may be, but I'm not aware of it.

Senator BLACKBURN. Okay. We can depend on you and your Department of Justice to stand in support of the Second Amendment. Is that what you're saying, to defend it?

Attorney General GARLAND. Yes, of course. The Second Amendment is part of the Bill of Rights.

Senator BLACKBURN. Okay. Thank you. That's what we would like to know, and I'll look forward to the other submissions in writing. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator. Mr. Attorney General, thank you for your patience. You have been sitting in that chair with a couple breaks for four and a half hours. Many of these colleagues of mine have had ample opportunity to ask questions, and then come back and ask some more, sometimes the same questions.

I would just like to make this observation. I understand completely why you issued that memo, and I wish my colleagues would reflect for a single moment as to why that memo is important, not just for school board members, but to send a message across America that there's a line we're going to draw when it comes to political expression. When you say words, when you wave your arms, that's

all protected. When you threaten someone with violence or engage in acts of violence that is never going to be protected and shouldn't be.

It isn't that long ago that Gabby Giffords, one of our colleagues in the House, was gunned down in Arizona. Her husband is now serving as our colleague in the U.S. Senate. I don't know the political bent of the person who shot her. It's basically irrelevant. We should never countenance that as adequate or proper political expression.

Steve Scalise, the Republican Congressman from Louisiana, was gunned down on a baseball practice field by someone from my State who I believe was identified with the left in politics. It doesn't make any difference. It was an outrage that that good man has suffered as much as he has because of it.

We have the story in Great Britain, David Amess, who goes to a town meeting and is stabbed to death in his constituency in England. For goodness sakes, can't we, even if we disagree on issues to a great degree, agree with the premise that anyone who engages in violence or threats of violence has stepped over the line whether they come from the right or the left?

I think that's what you were trying to say in your memo about the school boards. Like you, I have never heard the School Board Association identified as a great, strong special interest group. I haven't seen that in the years I've been in Congress. There are many great, strong special interest groups.

I would just say to you thank you for doing that. It was the right thing to do. It has been mischaracterized and distorted, not only today, but since then. I think we can prove by our actions that we are not trying to stifle free speech, but only saying to people we're going to draw a line.

I found it fascinating that at least one of the people who was criticizing you today and talking about the situation on January 6 was actually cheering the demonstrators on on January 6, and there's ample evidence of that. I would think we've got to draw a line that accepts in this civilized society, we are going to be respectful of one another, even if we disagree politically.

I thank you for your testimony. Would you like to have a closing comment?

Attorney General GARLAND. No. Thank you, Senator. I appreciate your remarks though. Thank you.

Chair DURBIN. Thank you very much. The Committee stands adjourned.

[Whereupon, at 2:30 p.m., the hearing was adjourned.]

[Additional material submitted to the record follows.]

Witness List
Hearing before the
Senate Committee on the Judiciary

“Oversight of the Department of Justice”

Wednesday, October 27, 2021
Dirksen Senate Office Building Room 106
10:00 a.m.

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
Washington, D.C.



Department of Justice

STATEMENT OF

MERRICK B. GARLAND
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

AT A HEARING ENTITLED

"OVERSIGHT OF THE UNITED STATES DEPARTMENT OF JUSTICE"

PRESENTED

OCTOBER 27, 2021

Good morning Chairman Durbin, Ranking Member Grassley, and distinguished members of this Committee. Thank you for the opportunity to appear before you today to discuss the priorities and work of the Justice Department.

On my first day in office, I spoke to all Department employees about three co-equal priorities that should guide our work: upholding the rule of law; keeping our country safe; and protecting civil rights. These remain the Department's core priorities:

First, upholding the rule of law. The rule of law is the foundation of our democracy. The essence of the rule of law is that like cases are treated alike. That there not be one rule for Democrats and another for Republicans; one rule for friends, another for foes; one rule for the rich and another for the poor; or different rules depending on one's race or ethnicity. The integrity of our legal system is premised on adherence to the rule of law.

Second, keeping our country safe. Every person living in this country expects and deserves that their government protect them against a wide range of threats – from international and domestic terrorism to cyber-attacks to violent crime and drug trafficking. As our country's chief law enforcement officer, I am committed to supporting law enforcement at all levels as they work to protect our country from these threats, while also zealously guarding civil liberties and ensuring our own accountability to the American people.

And third, protecting civil rights. The essence of equal justice under law is that all persons are protected in the exercise of their civil rights. Many still face discrimination in voting, housing, education, employment, and the criminal justice system; experience hate- and gender-based violence; and disproportionately bear the brunt of the harm caused by economic crises, pandemic, pollution, and climate change. Protecting civil rights was a founding purpose of the Justice Department and remains an urgent priority today.

In my testimony this morning, I will address each of these core and co-equal priorities in more detail.

I. UPHOLDING THE RULE OF LAW

The first core priority – upholding the rule of law – is rooted in the recognition that, to succeed and retain the trust of the American people, the Justice Department must adhere to the norms that have been part of its DNA since Edward Levi's tenure as the first post-Watergate Attorney General. Those norms – of independence from improper influence; of the principled exercise of discretion; and of treating like cases alike – define who we are as public servants.

In the seven months I have served as Attorney General, the Justice Department has reaffirmed and, where appropriate, updated and strengthened policies that are foundational for longstanding Departmental norms.

For example, we strengthened our policy governing communications between the Justice Department and the White House, and the White House did the same. That policy is designed to

protect the Department's criminal and civil law enforcement decisions and its legal judgments from partisan or other inappropriate influences.

We also issued a new policy to better protect the freedom and independence of the press. A free press is vital to the functioning of a democratic system under the rule of law. The Justice Department strongly values a free press, and we are committed to protecting the First Amendment and the journalists who rely on it to keep the American people apprised of the workings of their government.

The policy we adopted in July restricts the use of compulsory process to obtain information from, or records of, members of the news media. To further protect members of the news media in a manner that will be enduring, I asked the Deputy Attorney General to undertake a review to further explain, develop, and codify the policy into Department regulations. The Department also remains strongly supportive of congressional legislation to protect members of the news media.

II. KEEPING OUR COUNTRY SAFE

The Justice Department's second core priority is keeping our country safe. The Department is committed to doing everything in its power to protect the American people from all threats, foreign and domestic, while also protecting our civil liberties.

Our nation continues to face a multitude of serious and evolving threats, ranging from foreign terrorism to domestic terrorism and from cybercrime to violent crime. These threats are as complex as at any time in our history. And the consequences of not responding to them have never been greater.

Congress has provided critical resources for the Department to strengthen its national security and law enforcement capacities, to focus our efforts on disrupting threats to our country, and to build deeper and even more effective partnerships, both here at home and around the world. Today I would like to highlight five significant areas of the Justice Department's efforts to keep our country safe: (A) counterterrorism; (B) cybersecurity; (C) reducing violent crime; (D) addressing drug trafficking networks and overdose deaths; and (E) protecting our democratic institutions.

A. Countering Foreign and Domestic Terrorism

Last month marked the 20th anniversary of the attacks of September 11, 2001. That day is forever seared into our memories; nothing can change the profound way the events of September 11 affected us – individually, as a government, and as a nation. At the Justice Department, we commemorated this anniversary by rededicating ourselves to doing all we can to protect the American people from terrorism in all its forms – whether originating from abroad or at home – and to doing so in a manner that is consistent with our values and the rule of law.

Twenty years after the attacks of September 11, the Justice Department remains acutely aware of the serious and evolving threat posed by international terrorism. The FBI is the lead federal law enforcement agency for investigating and preventing acts of both international and domestic terrorism, and as the Director reaffirmed in testimony before a congressional committee last month, “[p]reventing terrorist attacks, from any place, by any actor, remains the FBI’s top priority.”¹

Foreign terrorist organizations have not stopped their efforts to carry out attacks against us here in the United States. The dedicated professionals of the Justice Department work every day to deter and disrupt such threats. As a Department, we will never underestimate the risk of another devastating attack by foreign terrorists.

Our whole-of-Department commitment includes our 94 U.S. Attorneys’ offices; our law enforcement components, including the FBI; our grant-making offices; and our litigating divisions, including the National Security Division, the Civil Rights Division, and the Criminal Division. We are strengthening our 200 Joint Terrorism Task Forces, the essential hubs for both international and domestic counterterrorism cooperation across all levels of government nationwide. And together with partners across the federal government, we are working to counter the threat of Weapons of Mass Destruction (WMD), including by preventing terrorist groups and lone offenders from acquiring these materials either domestically or internationally. For FY22, we are seeking more than \$1.5 billion – a 12% increase – for our counterterrorism work.

We remain vigilant in the face of the continuing danger of attacks by foreign terrorist organizations, while also recognizing that some threats have evolved significantly since 9/11. As the FBI and Department of Homeland Security have assessed, we face a serious threat from “lone offenders, often radicalized online, who look to attack soft targets with easily accessible weapons.”² We continue to see a rise in what the FBI calls “homegrown violent extremism” – individuals in this country who become exposed to and inspired by radical ideologies espoused by foreign terrorist organizations.

In March, the Intelligence Community (IC), in a report drafted by the Department of Homeland Security, the FBI, and the National Counterterrorism Center under the auspices of the Office of the Director of National Intelligence, assessed that domestic violent extremists “pose an elevated threat” in 2021.³ The IC assessed that “racially or ethnically motivated violent extremists and militia violent extremists present the most lethal [domestic violent extremist] threats.”⁴ In the FBI’s view, the top domestic violent extremist threat we face comes from

¹ Christopher Wray, Director, Federal Bureau of Investigation, *Statement Before the House Homeland Security Committee* (Sept. 22, 2021), <https://www.fbi.gov/news/testimony/worldwide-threats-to-the-homeland-20-years-after-911-wray-092221#Statement-for%20HJC%20Record>.

² Federal Bureau of Investigation and Department of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism* (May 2021), <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf>.

³ Office of the Director of National Intelligence, *Domestic Violent Extremism Poses Heightened Threat in 2021* (March 1, 2021), <https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf> [hereinafter “IC Report”].

⁴ *Id.*

“racially or ethnically motivated violent extremists, specifically those who advocate for the superiority of the white race.”⁵ The IC assessed that the militia violent extremist threat also “increased last year and that it will almost certainly continue to be elevated throughout 2021.”⁶

In all our efforts, the Justice Department is guided by our commitment to protecting civil liberties. In our country, espousing an extremist ideology is not itself a crime. Nor is expressing hateful views or associating with hateful groups. But when someone tries to promote or impose an ideology through acts of violence, those acts can be among the most dangerous crimes we confront as a society. Regardless of the motivating ideology, we will use every appropriate tool at our disposal to deter and disrupt such acts and to bring their perpetrators to justice.

B. Countering Cyber Threats and Cybercrime

Keeping our country safe also requires countering cyber threats – whether from nation-states, terrorists, or common criminals. In recent years, a widening range of cyber actors has posed a significant and increasing threat to our national security, economic security, and personal security. In the last year alone, nation-states – including the PRC, Russia, Iran, and the DPRK – have used cyber operations to target U.S. COVID-19 vaccines and research, compromise our networks and supply chains, steal our intellectual property, and sow divisions to undermine our democracy. At the same time, cyber criminals have launched ransomware attacks that have targeted our critical infrastructure, businesses, schools, hospitals, and medical centers, putting patients’ lives at an increased risk amidst the worst pandemic in more than a century.

In April, the Justice Department launched a comprehensive strategic cyber review, aimed at improving our ability to investigate and prosecute state-sponsored cyber threats, transnational criminal groups, infrastructure and ransomware attacks, and the use of cryptocurrency and money laundering to finance and profit from cyber-based crimes.

Over the past six months, we have developed and implemented improvements on several fronts, including with respect to ransomware attacks. The FBI is currently investigating over 100 different types of ransomware, each of them with scores of victims. To tackle this threat strategically, we also launched the DOJ Ransomware and Digital Extortion Task Force, which is bringing all our tools to bear to protect the American people from the rise in ransomware, to pursue accountability, and to deliver justice for victims. In June, for example, the Department seized and recovered for the victim a \$2.3 million ransom payment that had been made in bitcoin to the group known as DarkSide that targeted Colonial Pipeline, causing gas shortages along the East Coast. And we are aggressively pursuing the entire ransomware ecosystem to disrupt and deter such attacks.

Earlier this month, the Department announced the creation of a National Cryptocurrency Enforcement Team, which will draw on the Department’s established expertise in investigating and prosecuting criminal misuse of cryptocurrency to pursue cases against cryptocurrency

⁵ Christopher Wray, Director, Federal Bureau of Investigation, *Statement Before the Senate Judiciary Committee* (March 2, 2021), <https://www.fbi.gov/news/testimony/oversight-of-the-federal-bureau-of-investigation-the-january-6-insurrection-domestic-terrorism-and-other-threats>.

⁶ IC Report.

exchanges, infrastructure providers, and other entities that enable criminal actors to profit from abusing cryptocurrency platforms. In addition, the Department's Civil Cyber-Fraud Initiative will use the False Claims Act to both enforce civil fines on government contractors and grant recipients as well as protect whistleblowers.

To ensure our efforts continue to be robust and fully coordinated across the Justice Department in the years to come, we established new guidelines regarding investigations and cases related to ransomware and digital extortion, and we launched a new Cyber Fellowship program, which will help develop a new generation of prosecutors and attorneys equipped to handle emerging national security threats.

The Administration strongly supports congressional action to require victim companies to report significant incidents and the Department stands ready to engage with Congress regarding the minimum elements of a cyber incident reporting bill. Mandatory incident reporting would greatly assist federal efforts to defend the nation against cyber threats, pursue the actors responsible for them, and respond and share information to protect the private sector.

C. Combating Violent Crime

Protecting our communities from violent crime and gun violence is also essential to keeping our country safe.

That is why in May of this year the Justice Department launched a comprehensive violent crime strategy, which harnesses all our relevant Departmental components and resources to those ends. We have deployed a whole-of-Department approach to address this challenge, which engages not only the Justice Department's 94 U.S. Attorneys' offices, but also our law enforcement components (the ATF, DEA, FBI, and U.S. Marshals Service), our grant-making components (the Office of Justice Programs (OJP), the Office of Community Oriented Policing Services (COPS), the Office for Victims of Crime (OVC), and the Office on Violence Against Women (OVW)), and our litigating divisions, including the Criminal Division.

Last month, the FBI released its final crime data for 2020 and confirmed what our law enforcement community saw on the front lines every day: substantial increases in murder and aggravated assault rates between 2019 and 2020. In 2020, the United States witnessed a nearly 30% increase in the murder rate; 77% of those homicides were committed with a firearm.

Community-led efforts are vital to preventing violence before it occurs. That is why we are strengthening Project Safe Neighborhoods, a cornerstone initiative that brings together law enforcement and community stakeholders to develop solutions to pressing violent crime problems.

To support local police departments and help them build trust with the communities they serve, our FY22 budget requests over \$1 billion in grants.

The Justice Department has also made available funding, through over a dozen grant programs, that can be used to support evidence-based community violence intervention strategies

at all stages – from the earliest violence interruption strategies to post-conviction reentry services.

In addition, the FBI is making available cutting-edge analytical tools to support state and local law enforcement efforts to identify the most violent offenders. And earlier this month, the Department announced that our COPS Office is awarding \$33 million in Community Policing Development (CPD) grants that will support, among other things, continuing the COPS Office Collaborative Reform Initiative Technical Assistance Center (CRI-TAC).

We also know that an effective violent crime reduction strategy must address the illegal trafficking of firearms. The Department is currently undertaking a comprehensive new study of firearms trafficking that will help agents, prosecutors, and policymakers tackle criminal gun trafficking. In recent months, the Department has proposed rules to address the proliferation of “ghost guns” that are increasingly recovered from crime scenes and to clarify that pistols equipped with certain stabilizing braces are subject to the same statutory restrictions as easily concealable short-barreled rifles.

As the Deputy Attorney General testified before this Committee earlier this month, the Justice Department is hopeful that the Senate will act swiftly to reauthorize and strengthen the Violence Against Women Act (VAWA). Among other things, VAWA reauthorization is an opportunity to help reduce homicides by strengthening federal firearms laws, including by closing the so-called “boyfriend loophole” that leaves countless victims at risk.

The Justice Department has also stepped up efforts to hold gun dealers that break the rules accountable for their actions and crack down on the illegal use and trafficking of firearms. In July, the Department of Justice launched five cross-jurisdictional strike forces to reduce gun violence by disrupting illegal firearms trafficking in key corridors across the country. We have also cracked down on transnational weapons trafficking networks operating in the U.S. and Mexico through the DEA’s Special Operations Division, which has worked with partners across government to investigate, arrest, and prosecute hundreds of network members responsible for trafficking thousands of weapons.

D. Addressing Drug Trafficking Networks & Overdose Deaths

The Justice Department is committed to keeping our country safe from violent drug trafficking gangs and cartels. These criminal networks are fueling the overdose epidemic in our country. Opioids, including illicit fentanyl, caused nearly 70,000 fatal overdoses in 2020. Last week, the Centers for Disease Control and Prevention’s National Center for Health Statistics reported that during the 12 months between March 2020 and March 2021, more than 96,000 Americans died from drug overdoses. The pervasiveness of these illicit drugs, and the fatal overdoses that too often result, is a problem that cuts across our entire country, from small towns to big cities.

The Justice Department will continue to use all the resources at our disposal to save lives. We will continue to investigate and prosecute the sources of supply, including transnational drug trafficking networks and Mexican cartels. And we will continue investigating precursor

chemical suppliers from the PRC and elsewhere and continue targeting illicit Internet distributors, especially on the Dark Web. To these ends, the Department has continued Operation Synthetic Opioid Surge, which operates in 10 high-impact areas with the country's highest overdose death rates. The districts participating in the program have seen a decline in opioid overdoses.

In addition, following the confirmation of a new Administrator this summer, DEA has stepped up its efforts nationwide to target the criminal drug networks flooding the U.S. with deadly, fentanyl-laced fake pills. Between August 3 and September 30, 2021, the DEA – working in concert with federal, state, and local law enforcement partners – seized 1.8 million fentanyl-laced fake pills, enough to kill more than 700,000 Americans, and arrested 810 drug traffickers in cities, suburbs, and rural communities spanning the United States.

E. Protecting Our Democratic Institutions

Finally, keeping our country safe includes protecting its democratic institutions. The Justice Department is currently engaged in a complex and resource-intensive investigation, one of the largest and most expansive in our history: the investigation of the January 6 attack on the Capitol. The violence we witnessed that day was an intolerable assault, not only on the Capitol and the brave law enforcement personnel who sought to protect it, but also on a fundamental element of our democracy: the peaceful transfer of power.

In response to that attack, the Justice Department has undertaken an extraordinary effort to ensure that the perpetrators of criminal acts on January 6 are held accountable. The prosecution efforts are being led by the U.S. Attorney's Office for the District of Columbia with assistance from U.S. Attorney's Offices across the country. The Department's senior leadership is kept informed and consulted on a frequent basis. To date, 55 of 56 FBI field offices have opened investigations. Citizens from across the country have provided more than 200,000 digital media tips, and the FBI continues to request the public's assistance in identifying individuals sought in connection to the January 6 attack. And in less than 300 days, approximately 650 defendants have been arrested in nearly all 50 states for their roles in the attack.

I have great confidence in the prosecutors who are undertaking these cases. They are doing exactly what they are expected to do: make careful determinations about the facts and the applicable law in each individual case.

III. PROTECTING CIVIL RIGHTS

The Justice Department's third core priority is protecting civil rights. This was a founding purpose when the Justice Department was established in 1870. We began our work during Reconstruction to enforce the rights promised by the Thirteenth, Fourteenth, and Fifteenth Amendments. This required confronting the racist conduct of the Ku Klux Klan and others who used terror and violence to keep Black Americans from exercising their civil rights. Today, 151 years after the Department's founding, far too many still face discrimination in voting, housing, and the criminal justice system; and disproportionately bear the brunt of the harm caused by pandemic, pollution, and climate change.

A. Reinvigorating Civil Rights Enforcement

The Civil Rights Act of 1957 created the Department's Civil Rights Division, with the mission of upholding the civil and constitutional rights of all Americans. Today, the Division's work remains vital, including bringing cases to safeguard voting rights, prosecute hate crimes, and end unlawful discrimination.

1. Voting Rights.

The right to vote is the cornerstone of our democracy, the right from which all other rights ultimately flow. In signing the 1982 reauthorization of the Voting Rights Act, President Reagan stated: "The right to vote is the crown jewel of American liberties, and we will not see its luster diminished." And in signing the 2006 reauthorization, President Bush stated that, "[t]he right of ordinary men and women to determine their own . . . future lies at the heart of the American experiment."

But in recent years, the protections of federal voting rights law have been drastically weakened. The Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), effectively eliminated the preclearance protections of the Voting Rights Act, which had been the Department's most effective tool to protect voting rights over the past half-century. Since that decision, there has been a dramatic rise in legislative efforts that will make it harder for millions of citizens to cast a vote that counts. So far this year, states have enacted more than two dozen new laws that make it harder for eligible voters across the country to vote. We stand ready to work with Congress to provide all necessary support as you consider federal legislation to protect voting rights – legislation that would provide the Department with the tools it needs.

In the meantime, the Department of Justice will not stop working to protect the rights to which all eligible voters in our country are entitled. Since June, we have doubled the number of attorneys in the Civil Rights Division's enforcement staff for protecting the right to vote. We are scrutinizing new laws that seek to curb voter access, and where we see violations, we will not hesitate to act. We are also scrutinizing current laws and practices to determine whether they discriminate against Black voters and other voters of color. In June, the Department sued Georgia over its new election law, Senate Bill 202, on the ground that it infringes on the rights of Black voters. And because this redistricting cycle is the first since 1960 to proceed without the key preclearance provisions of the Voting Rights Act, the Department has published new guidance to make clear the voting protections that apply to all jurisdictions as they redraw their legislative maps.

In addition, consistent with the policy and directives set forth in Executive Order 14019, the Department has supported access to voter registration for all eligible individuals in federal custody or individuals leaving federal custody.

Finally, we have launched a task force to address the rise in threats against election officials. Since the creation of the task force, the Criminal Division's Public Integrity Section has trained staff in the offices of all 94 U.S. Attorneys and in all 56 FBI field offices nationwide on election threats.

2. Hate Crimes.

Although the Justice Department's work to address unlawful acts of hate has a deep history, it remains an immediate and pressing challenge that constantly requires new thinking. The FBI's Hate Crime Statistics for 2020 showed a significant increase in reported hate crimes and indicated that the majority were motivated by race and ethnicity. Black Americans remain the group most often targeted; one of the starkest trends in the 2020 data is that reported anti-Asian hate crimes rose 70%.

In March, I directed an expedited internal review to determine how the Department could deploy all the tools at its disposal to counter the rise in hate crimes and hate incidents. While that review was nearing completion, Congress passed the COVID-19 Hate Crimes Act and the Jabara-Heyer No Hate Act.

With the insights from our internal review and the authorities in the new laws, the Justice Department is working tirelessly to confront hate crimes and hate incidents. The FBI has elevated criminal civil rights matters – which includes hate crimes – to its highest-level national threat priority. This makes confronting unlawful acts of hate a focus for each of the Bureau's 56 field offices and increases the resources the FBI commits to the issue. We have also appointed Department-wide coordinators for our hate crimes work, and the Civil Rights Division is expediting its review of federal hate crimes.

Every level of government must improve incident reporting and data collection. And language access remains a key barrier to reporting. To address this gap at the federal level, the Department will establish a full-time Language Access Coordinator.

Our response to unlawful acts of hate must go beyond criminal prosecutions and maximize our non-criminal resources. Among other things, the Department has prioritized revitalizing the Community Relations Service (CRS), known as America's Peacemaker. In the past year, CRS has facilitated many community-based sessions focused on hate crimes and hate incidents. These sessions help targeted communities identify and access the resources and support they need.

3. Unlawful Discrimination.

This year, the Department has, among other things, fought housing discrimination by challenging discriminatory lending practices. It has protected persons with disabilities by enforcing the Americans with Disabilities Act. We have been on the front lines of combating discrimination on the basis of gender identity and sexual orientation, consistent with Executive Order 13988. And we are currently undertaking a complete review of our Title VI implementation and enforcement, to ensure that we are supporting grant recipients in using federal funds consistent with anti-discrimination law.

B. Ensuring Support & Accountability for Law Enforcement

The Justice Department's commitment to trust and accountability is why an important part of both our civil rights program, and our strategy to reduce violent crime, is to foster trust and legitimacy between law enforcement and the communities we serve. The Department is taking steps to ensure transparency and trust in our own law enforcement components.

In June, the Department's federal law enforcement components were instructed to develop plans specific to their unique missions to expand the use of body worn cameras to their federal agents. Today, our law enforcement components are wearing body worn cameras in select cities during Phase I of our implementation program. In September, the Department issued the first ever Department-wide directive limiting the use of chokeholds and no-knock warrants.

The Justice Department is also dedicating substantial resources to supporting state and local law enforcement accountability. In each of the approximately 18,000 local law enforcement agencies in our country, dedicated law enforcement officers put themselves in harm's way to protect others. The Justice Department is uniquely aware of the challenges faced by those who serve. And we recognize the complex issues that make their already difficult jobs even harder. We know that most law enforcement officers do their difficult jobs honorably and lawfully. Good officers welcome accountability because accountability is an essential part of building trust with the community, and public safety requires public trust.

The Justice Department is charged with ensuring that the constitutional and federal statutory rights of all people are protected. In recent months, the Department has initiated pattern-or-practice investigations of police departments in Minneapolis, Louisville, and Phoenix. These investigations focus on whether the departments engage in systemic violations of the Constitution or federal law. This includes assessing, among other things, whether the departments have a pattern or practice of using excessive force, engaging in discriminatory policing, retaliating against individuals for exercising First Amendment rights, or improperly detaining people with behavioral disabilities.

We have also taken a series of actions to ensure that the remedies for pattern-or-practice violations, including consent decrees, are fair, transparent, and effective. These actions will ensure that consent decree monitors are performing a public service, not seeking to maximize profit, including by capping fees. Monitors will serve set terms, with renewal dependent on an assessment of their performance and cost-effectiveness. Monitorships will not go on indefinitely – they will be subject to a court hearing after no more than 5 years and extended only if the court finds that termination is not warranted.

C. Ensuring Equal Access to Justice

Alongside reinvigorating civil rights enforcement, the Department is revitalizing and expanding our efforts to ensure equal access to justice for all.

Trust in the rule of law – the foundation of American democracy – depends upon the public’s faith that government seeks equal justice. But without access to justice, the promise of equal justice rings hollow.

Over the past 18 months, our country has faced multiple crises – from the worst economic crisis since the Great Depression to the worst pandemic in more than a century. Deep and longstanding inequities in our justice system have been exposed and exacerbated. Far too many Americans have been pushed into poverty, losing their jobs, their homes, and even their lives.

To address these challenges and meet the moment, the Justice Department is taking steps to reinvigorate and expand our access-to-justice work. We look forward to working with Congress to restore a standalone Access to Justice Office within the Department, dedicated to addressing the most urgent legal needs of communities across America. The Office will improve the federal government’s understanding of and capacity to address the most urgent legal needs of communities nationwide. In the meantime, together with the White House Counsel’s Office, the Justice Department has reconvened the 28 departments and agencies across the federal government who comprise the Legal Aid Interagency Roundtable (“Roundtable”). The Roundtable is dedicated to increasing the availability of meaningful access to justice for all, regardless of wealth or status, by advancing the most innovative solutions to closing the justice gap across all levels of government and beyond.

IV. Additional Areas of Departmental Focus

In addition to these core priorities, an important area of Departmental focus is promoting a fair, equitable, and efficient immigration court system, by reducing the immigration backlog and increasing access to legal representation. We are working to onboard a significant number of new immigration judges and staff to process the outstanding cases.

Another important area of Departmental focus is ensuring economic opportunity and fairness by reinvigorating antitrust enforcement, combating fraud, and protecting consumers. We are aggressively enforcing the antitrust laws by challenging anticompetitive mergers and exclusionary practices, and by prosecuting price-fixing and allocation schemes that harm both consumers and workers. And we have stood up a COVID-19 Fraud Enforcement Task Force to bring to justice those who have tried to defraud the government of money intended for the most vulnerable among us.

* * *

In sum, in seven months the Justice Department has accomplished a lot of important work for the American people. And there is much more to be done. Thank you for the opportunity to testify today. I look forward to your questions.

**Written Questions for the Record
Submitted by Senator Patrick Leahy
November 3, 2021**

1. In September the Senate Judiciary Committee held a hearing to examine the Justice Department Inspector General's report on the FBI's unacceptable handling of the Larry Nassar investigation. While the Justice Department initially declined to bring charges against the FBI agents involved in this investigation, I was encouraged to learn that the Department is now reviewing that declination decision based on "new information that has come to light."
 - a. **Attorney General Garland, do you have any updates with regard to that review and its timeline?**
2. Key provisions related to the Foreign Intelligence Surveillance Act (FISA) authorized under the USA FREEDOM Act have expired. Congress must not only reauthorize these authorities but reform them. That includes the pro-civil liberties reforms made by the Lee-Leahy amendment that garnered 77 votes last Congress, would strengthen the amici process, and improve the disclosure of exculpatory evidence in the FISA court system.
 - a. **During your confirmation hearing, you spoke about serious problems with the FISA application process, something we learned from the DOJ Inspector General's recent report. Will you commit to working with Senator Lee and me to pursue FISA reforms to provide greater protections to the civil liberties of all Americans?**

**Merrick Garland
Attorney General
United States Department of Justice
Questions for the Record
Submitted November 3, 2021**

QUESTIONS FROM SENATOR BOOKER

1. According to press reports, President Biden is using his clemency authority to commute the sentences of a subset of people on home confinement. A memo sent on September 10, 2021, from the Bureau of Prisons (BOP) and correspondence with the Office of Pardon Attorney confirmed that the Biden Administration currently is expediting clemency consideration for people on home confinement who have between 18 and 48 months remaining on sentences for nonviolent drug offenses.
 - a. What is the Department of Justice (DOJ) doing to ensure that clemency petitions are quickly reviewed and transferred to the President? What specific aspects of the clemency process have been expedited?
 - b. The Office of the Pardon Attorney has a large backlog of cases—roughly 15,000 petitions for pardon or commutation are currently pending. What is DOJ doing to expedite the clemency petitions pending for people on home confinement under the CARES Act?
2. The decision to limit expedited clemency review will exclude many individuals transferred to home confinement as a result of the CARES Act. While everyone transferred was convicted of a nonviolent offense, many are serving sentences for non-drug-related offenses or have sentences with more than 48 months remaining.

Why are individuals with nonviolent offenses being excluded from clemency review if they have non-drug-related offenses or greater than 48 months remaining on their sentence?
3. One of the pillars of the First Step Act is that it enables individuals who are incarcerated in BOP facilities to, under certain circumstances, earn increased time in pre-release custody—that is, to move from prison to a halfway house or home confinement. This serves both the individuals and society as it encourages participation in recidivism-reduction activities such as educational programs or prison jobs. It has been reported that DOJ in some cases has denied individuals earned time credits because the programs they participated in did not qualify, and that DOJ is reviewing the list of qualifying programs.
 - a. Can you describe the implementation of earned time credits and DOJ’s review of qualifying programs? What are the criteria for determining whether a program qualifies for earned time credits?

- b. Is DOJ making efforts to ensure that the programs are as robust as possible in order to encourage participation and help reduce recidivism?
- 4. BOP recently reopened a comment period for a proposed rule that would revise its procedures regarding time credits. Specifically, the proposed rule would limit eligibility of earned time credits under the First Step Act for D.C. Code Offenders. The First Step Act specifically included people in BOP custody as covered by the First Step Act.

What is DOJ's position on this issue?

- 5. When George Floyd was murdered by a police officer in Minneapolis, thousands of people took to the streets demanding an end to the police violence. Since then I have worked with my colleagues in Congress, with civil rights organizations, and with some of the largest law enforcement organizations in the country to find a common ground to address the historic and systemic issues of police misconduct.

One area of broad agreement is that there is no public data about how many people are killed by police or how often police use excessive force. Law enforcement officials believe there is value in having this data so that they can identify harmful practices and address them. Yet we have no way of knowing the full picture because, unlike with the Uniform Crime Reporting program, there is no uniform system for collecting and reporting data.

In 2015, the Federal Bureau of Investigation (FBI) began developing a national police use-of-force database, and, in 2019, it started collecting data from police departments. The FBI is supposed to make the data public, but right now none of the data from nearly 5,000 departments that have voluntarily reported have been published.

When will the data on use-of-force incidents that DOJ and FBI have collected be made public?

- 6. The data that the FBI currently collects is small. It is limited to uses of force that result in death or serious bodily injury, but that doesn't give us a full picture of the incidents—that is, we want to know whether an officer inappropriately used deadly force even if the person was lucky enough to survive. And we want to know when kids are being mistreated. A study that was released just last week of 3,000 use-of-force incidents across 25 law enforcement agencies found that children under 16 made up more than 50% of those who were handled forcibly, even though they make up 15% of the population. Kids as young as 6 were handcuffed, stun gunned, and pinned to the ground. Those statistics are alarming.
 - a. Does DOJ plan to expand and improve the quality of the data collected?
 - b. Is DOJ working with law enforcement agencies to help facilitate reporting?

7. DOJ grants to law enforcement support law enforcement agencies' efforts to acquire and use new technologies. Civil rights groups have raised concerns that these technologies rely on algorithms that replicate and exacerbate racially discriminatory practices.

How has DOJ exercised oversight and accountability mechanisms to ensure that law enforcement agencies are not using these grant funds on technologies that can effectively exacerbate problems of racial discrimination?

8. Under your tenure, DOJ has opened three pattern-or-practice investigations of police departments, including in Minneapolis, where George Floyd was murdered. The Department has stated that these cases can take anywhere from six months to a year to investigate. There is, however, a case that was opened under 34 U.S.C. § 12601 in December 2016 into the Orange County Attorney's Office and Sheriff's Department systematic violations of defendants' 14th Amendment due process rights that has never been resolved.

What is the status of that case and does DOJ have plans to issue findings? Are there other cases that have remained open this long and do you have a plan for resolving them?

9. President Biden proposed \$5 billion in community violence prevention funding in his Build Back Better plan. This type of investment in addressing the scourge of gun violence is long overdue and I firmly believe that we cannot address the gun violence epidemic solely through law enforcement. Rather we need effective public safety solutions rooted in crime prevention, community health, rehabilitation, and support for crime victims.

What efforts is DOJ making to support community-based violence intervention strategies?

10. In 2006, the FBI issued a report sounding the alarm bell of the infiltration of white supremacists in law enforcement. Among other things the FBI investigation found that, "Although white supremacist groups have historically engaged in strategic efforts to infiltrate and recruit from law enforcement communities, current reporting on attempts reflects selfinitiated efforts by individuals, particularly among those already within law enforcement ranks."¹ It also found that infiltration can jeopardize the safety of law enforcement sources and personnel. More recently, a hack exposed law enforcement officers who are members of the anti-government and nativist group the Oath Keepers. This issue is a serious threat to our national security and to the communities that police are sworn to protect and serve.

What steps is DOJ taking to address the infiltration of law enforcement by white supremacists? And is the Department investigating law enforcement affiliations with white supremacy?

¹ FBI Counterterrorism Division, FBI Intelligence Assessment, White Supremacist Infiltration of Law Enforcement (Oct. 17, 2006), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_Supremacist_Infiltration_of_Law_Enforcement.pdf.

Questions for the Record
 “Oversight of the Department of Justice”
 Ranking Member Charles Grassley
 November 3, 2021

1. Under your leadership, the Department expunged Andrew McCabe’s record of lying to government officials under oath several times over three different occasions. At the October 27 oversight hearing, you stated that it would have cost more to defend McCabe’s termination, specifically saying: “the assessment made by the litigators was that the bill to the taxpayers would be higher if we didn’t resolve the matter as it was resolved.” Please provide all records relating to the referenced assessment.
2. At the October 27 oversight hearing, you stated that Susan Hennessey, an employee in the National Security Division, “has nothing whatsoever to do with the [Special Counsel] Durham investigation.”¹ As you are aware, on June 29, 2021, Senator Johnson and I sent you a letter that raised concerns about Ms. Hennessey’s political bias against the Durham investigation based on negative public comments she made about it and asked whether or not she had been recused from the matter.² In your July 13, 2021, response letter you failed to say that Ms. Hennessey “has nothing whatsoever to do” with Durham’s investigation and failed to answer all of our questions relating to Ms. Hennessey; namely, whether she has been officially recused from the Durham investigation, including whether or not she has any access to Durham investigation records and the report.

As you are also aware, on February 3, 2021, and March 9, 2021, we wrote letters to you with respect to Nicholas McQuaid, the then-Acting Assistant Attorney General for the Criminal Division and current Principal Deputy Assistant Attorney General for the Criminal Division, and his conflicts of interest in the Hunter Biden criminal case.³ In those letters, we specifically raised concerns about the fact that Mr. McQuaid worked with Hunter Biden’s criminal attorney until he was hired by the Biden Administration on January 20, 2021.

On February 19, 2021, and March 23, 2021, you failed to provide adequate responses to answer the threshold questions about whether Mr. McQuaid has or had any role in the Hunter Biden criminal case and whether he has been recused from it. In light of your

¹ *Oversight of the Department of Justice: Full Committee Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Oct. 27, 2021), <https://www.judiciary.senate.gov/meetings/10/20/2021/oversight-of-the-department-of-justice>.

² Letter from Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, & Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to Merrick Garland, Attorney General, U.S. Dep’t of Justice (June 29, 2021), https://www.judiciary.senate.gov/imo/media/doc/grassley_johnson_to_justice_dept_hennesseyconflicts.pdf.

³ News Release, On Day One, Biden Installed Law Partner Of Son’s Defense Lawyer At DOJ Criminal Division, Charles E. Grassley (Feb. 3, 2021), <https://www.grassley.senate.gov/news/news-releases/on-day-one-biden-installed-law-partner-of-sonsddefense-lawyer-at-doj-criminal-division>; see also Letter from Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, & Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to Monty Wilkinson, Acting Attorney General, U.S. Dep’t of Justice (Mar. 9, 2021), https://www.grassley.senate.gov/download/grassley-johnson-to-justice-dept_mcquaid-follow-up.

recent testimony, where you found the ability to publicly state that Ms. Hennessey “has nothing whatsoever to do” with the Durham investigation, there is no basis upon which you can continue to refuse to answer these threshold questions relating to Mr. McQuaid:

- a. Does Mr. McQuaid have anything whatsoever to do with the Hunter Biden criminal matter? If so, please explain.
 - b. Has Mr. McQuaid been recused from the Hunter Biden criminal matter? If so, when? Please provide all records showing that he is recused.
3. Approximately 80% of all economic espionage prosecutions brought by the Justice Department allege conduct that would benefit the communist Chinese government, and there is at least some nexus to China in around 60% of all trade secret theft cases. In November of 2018, the Trump Justice Department responded to these concerns by unveiling the China Initiative. The Initiative focused on identifying priority trade secret theft cases and ensuring that those investigations are fully resourced; developing an enforcement strategy concerning non-traditional collectors—like members of China’s Thousand Talents Program; and identifying opportunities to better address supply chain threats. Director Wray recently testified that the bureau opens around 700 Chinese espionage investigations a year. Under the Biden administration, the Initiative appears to have been dismantled.
- In addition, a number of prosecutions brought under the China Initiative were also recently dismissed by the Biden administration. Over a two-day period in July, five prosecutions of researchers were dropped.⁴ These dismissals came days before Deputy Secretary of State Wendy Sherman traveled to China. A prosecution against a Huawei executive was also resolved with a relatively light deferred prosecution agreement.⁵
- a. Has the Department shut down the China Initiative? If so, why?
 - b. The Biden Justice Department seems to be eager to shed these cases and take a much softer and even supportive approach with China. Is the Justice Department going to pursue economic espionage and other misconduct from China aggressively? If so, what metrics can you show Congress to prove it?
4. Under Attorney General Barr, the Justice Department created Joint Task Force Vulcan to specifically combat the deadly violent gang MS-13. Since President Biden’s inauguration, the Justice Department has seemingly made no mention of Joint Task Force Vulcan. Additionally, because your Department hasn’t responded to my oversight letter from early August about MS-13 and Joint Task Force Vulcan, it’s completely unclear what the Department is doing about MS-13.

⁴ Shawna Chen, *DOJ Drops Cases Against 5 Chinese Researchers*, AXIOS (July 24, 2021), <https://www.axios.com/doj-chineseresearchers-china-initiative-56dc2651-15b6-400d-add1-6f46fca7eb88.html>.

⁵ Aaron Katersky, *US Enters Deferred Prosecution Agreement With Detained Huawei Executive Weng Manzhou*, ABC NEWS (Sept 24, 2021), <https://abcnews.go.com/Business/us-enters-deferred-prosecution-agreement-detained-huaweiexecutive/story?id=80216600>.

- a. Does Joint Task Force Vulcan still exist? If not, why not? If it does exist, what are its current staffing and funding levels, and how do these levels compare to this time last year?
 - b. If the Biden Administration has decided to disband Joint Task Force Vulcan, are there currently any Department-wide task forces or initiatives to replace it? If so, which ones?
5. In September, President Biden issued a vaccine mandate that applies to Executive Branch employees, which includes immigration judges, attorneys, and other employees of the Department of Justice. On September 15, the Department issued a memo stating that all visitors entering DOJ buildings or facilities—except for those entering to “obtain a public service or benefit”—must complete a form attesting that they are fully vaccinated or present a negative COVID-19 test result from within three days prior to entry. Subsequent to that memo, the Executive Office for Immigration Review made a determination that illegal immigrants and their lawyers are visitors entering Department facilities to “obtain a public service or benefit” and are, therefore, exempt from the mandate.
 - a. Why are American employees subject to harsher rules than illegal immigrants and their lawyers?
 - b. Do you agree with one Justice Department official quoted in the media that “a double standard undermines the rationale for the vaccine mandate and puts everyone at risk?”⁶
6. I condemn all forms of domestic terrorism – right or left. Public concerns have been raised about the unequal treatment of those who rioted in the summer of 2020 and those who were present at the Capitol riot on January 6. This concern is echoed by a federal judge assigned to various January 6 cases. U.S. District Court Judge Trevor McFadden questioned why federal prosecutors had not brought more cases against those accused in the 2020 summertime protests, and suggested that DOJ was being too hard on January 6 defendants compared to those who were arrested during the protests following George Floyd’s murder. Further, U.S. District Judge Royce C. Lamberth found that a January 6th defendant’s civil rights had been abused with a severe delay for surgery for a broken wrist and referred the matter to the Attorney General for investigation. By contrast, the Department has dismissed many cases related to the riots at the federal courthouse in Portland, Oregon. In June, I wrote to you regarding the dismissal of more than half of the federal prosecutions regarding the assault on the courthouse. The Department has failed to respond. This can’t be stressed enough: the facts and the law must be applied equally in order for the public to keep faith in it. And the rule of law must stand even for the most unpopular defendants.

⁶ Stephen Dinan, *Illegal Immigrants Exempt From DOJ’s Vaccine Mandate At Deportation Hearings*, THE WASHINGTON TIMES (Oct. 20, 2021), <https://www.washingtontimes.com/news/2021/oct/20/illegal-immigrants-exempt-doj-vaccine-mandate-dep/>.

- a. What are you doing to build the Department's expertise in its neglected, left-wing anarchist extremism program?
 - b. What are you doing to prove that you're treating rioters who attack government buildings the same?
7. On August 31, 2021, the U.S. completed the total withdrawal of American military and diplomatic forces from Afghanistan. There is a concern that Afghanistan will now turn into the same type of safe haven for terrorism that allowed the 9/11 hijackers to plan and train there at will. On September 28, 2021, I sent an oversight letter to the Department about their efforts to identify and stop Afghanistan "traveler" cases, where individuals might travel to Afghanistan and become radicalized against the U.S. Director Wray publicly stated at the Homeland Security Committee's Worldwide Threats Hearing that Afghanistan could become a safe haven.⁷ We must do what we can to ensure that ISIS or other terror groups do not use Afghanistan as a safe haven to recruit and train Americans as radicalized lone wolf terrorists.
 - a. Has the Department seen any uptick in terrorism "traveler" cases to Afghanistan, or anywhere else, since the U.S. withdrawal earlier this summer?
 - b. Has the Department taken any new steps or instituted any new measures since the U.S. withdrawal from Afghanistan to address the possibility of traveler cases abroad given the near certainty that Afghanistan will revert into a pre-9/11 terrorism safe haven?
8. Recently released emails appear to show that Hunter Biden and Joe Biden may have shared joint bank accounts.⁸ Given the fact that Hunter Biden is under criminal investigation by the Department relating to financial matters, what are the conditions under which a special counsel would be warranted? In addition, have you ever discussed the Hunter Biden criminal case with President Biden or anyone in the White House?
9. On July 20, 2021, I wrote a letter to the Department with respect to a July 5, 2016, FBI Electronic Communication (EC) from the Washington Field Office, which showed that the FBI conducted an "assessment" on the non-profit group, Concerned Women for America (CWA). That assessment was publicly reported on July 14, 2021.⁹ The EC noted that the assessment was done "to determine the possibility of fraudulent activity" relating to "embezzlement" and "corporate fraud" and also noted an "[i]ntelligence" aspect to the FBI's review.¹⁰ Much of the EC is redacted; however, the unredacted portions cause serious concern about the FBI potentially targeting CWA without a

⁷ *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11: Full Committee Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 117th Cong. (Sept. 21, 2021), <https://www.hsgac.senate.gov/hearings/threats-to-the-homeland-evaluating-the-landscape-20-years-after-9/11>.

⁸ Fox News Staff, *Turley: There Are Now Serious Questions About A Biden Family 'Influence-Peddling Operation'*, FOX NEWS (Oct 13, 2021), <https://www.foxnews.com/media/joe-hunter-biden-finances-influence-peddling-investigation-turley>.

⁹ Patrick Eddington, *The FBI's Unjustified Targeting of Concerned Women for America*, THE ORANGE COUNTY REGISTER (July 14, 2021), <https://www.ocregister.com/2021/07/14/the-fbis-unjustified-targeting-of-concerned-women-for-america/>.

¹⁰ *Id.*

sufficient basis. For example, the EC notes that part of the predicate for the assessment included the fact that CWA allegedly received a score of 70.45 from Charity Navigator and an alleged two-star rating. The EC also noted that the FBI could not locate any derogatory information on CWA and its officers in what may be searchable government databases, which are blocked by redactions. The EC concludes with a recommendation that the FBI not open an investigation into CWA. The Department has failed to respond to my letter.

- a. Please provide a complete and unredacted copy of the July 5, 2016, FBI Electronic Communication on CWA.
 - b. Please provide a full description of all activities the FBI engaged in with respect to CWA and what the FBI believed to be the authorized purpose to engage in such activity.
 - c. On what date did the FBI begin the assessment of CWA and why? On what date did the FBI close the assessment?
 - d. Please provide all Electronic Communications and related records, including 302s, with respect to CWA.
 - e. Please provide a list of all agencies that the FBI interfaced with during its assessment of CWA.
 - f. For each year dating back to January 1, 2016, how many “assessments” did the FBI perform? Please provide a list for each year and note what type of assessment was conducted and the party subject to the assessment.
10. On June 9, 2021, I wrote to you requesting information relating to the FBI’s relationship with the Department of Commerce’s (DOC) Investigations and Threat Management Service (ITMS). As I noted in my letter, I am concerned about ITMS’s rogue intelligence and law enforcement activity. On September 3, 2021, the DOC Office of General Counsel released a report titled, “Report of the Programmatic Review of the Investigations and Threat Management Service.”¹¹ In the report, the DOC found that ITMS did not possess adequate legal authority to investigate an array of criminal activity it sought to address.¹² For example, ITMS neither had the authority to submit or execute search warrants nor conduct counterintelligence investigations, yet it did so anyway.¹³ As a result of the totality of ITMS’s conduct, the DOC recommended the elimination of the entire ITMS unit and to redistribute the remaining responsibilities to other units within the DOC.¹⁴

¹¹ U.S. DEP’T OF COMMERCE, OFFICE OF THE GENERAL COUNSEL, REPORT OF THE PROGRAMMATIC REVIEW OF THE INVESTIGATIONS AND THREAT MANAGEMENT SERVICE (Sept. 3, 2021), [20210903-ITMS-Report.pdf \(commerce.gov\)](https://www.commerce.gov/20210903-ITMS-Report.pdf).

¹² *Id.* at 7–8.

¹³ *Id.* at 11, 14–15, 24. See also U.S. SENATE COMMERCE COMMITTEE MINORITY STAFF, COMMITTEE INVESTIGATION REPORT: ABUSE AND MISCONDUCT AT THE COMMERCE DEPARTMENT (July 2021), <https://www.commerce.senate.gov/services/files/C4ABC46A-7CB0-4D51-B855-634C26E7CF70>.

¹⁴ U.S. DEPARTMENT OF COMMERCE, OFFICE OF GENERAL COUNSEL, REPORT OF THE PROGRAMMATIC REVIEW OF THE INVESTIGATIONS AND THREAT MANAGEMENT SERVICE, at 7, 24 (Sept. 3, 2021), [20210903-ITMS-Report.pdf \(commerce.gov\)](https://www.commerce.gov/20210903-ITMS-Report.pdf).

On August 27, 2021, the FBI provided a response to my June 9, 2021, letter. In that letter, the FBI stated that it participated in ITMS-led briefings “regarding ongoing cybersecurity concerns and potential investigative cases” with respect to the 2020 Census. However, the letter failed to provide any detail or context with respect to those concerns and cases. In addition, the letter noted that the FBI provided “analytical and investigative assistance to ITMS” but failed to provide any detail with respect to those efforts.

Moreover, the letter also noted that the FBI “passively receives criminal referrals from ITMS,” but failed to provide any documentation or information relating to those criminal referrals. In light of ITMS’s brazen use of false authority to conduct law enforcement and intelligence activity and the clear relationship between the FBI and ITMS, please provide the following information:

- a. A list of all briefings FBI attended with ITMS relating to “ongoing cybersecurity concerns and potential investigative cases” with respect to the 2020 Census. In the list, please provide the date the briefing took place, the title, the subject matter to be discussed, attendees and all supporting documentation. If the FBI participated in briefings or similar activity with ITMS outside the scope of “ongoing cybersecurity concerns” and “potential investigative cases” relating to the 2020 Census, please provide the same information.
 - b. With respect to the FBI’s provision of “analytical and investigative assistance to ITMS,” please describe, in detail, what that assistance was for, when the assistance was provided, what assistance was provided and all supporting documentation.
 - c. With respect to FBI’s statement that it “passively receives criminal referrals from ITMS,” please describe the process and purpose for which the FBI receives these “passive criminal referrals.” In addition, please provide a list of all criminal referrals, passive or otherwise, that ITMS provided to the FBI and a description of the activity that the FBI engaged in with respect to each referral.
11. On June 8 of this year, the news website ProPublica began publishing a series of articles that appear to be based upon confidential taxpayer information that was leaked or hacked from the Internal Revenue Service. Almost immediately, Treasury Secretary Yellen stated that the matter had been referred to the Department of Justice, among other law enforcement entities. With other Senators, I sent two letters to the Department asking for an investigation and asking several questions. The Department of Justice responded to both letters with a single form letter providing no information beyond “Department policy will preclude us from providing your office with any information related to this matter outside the public record.” This response is wholly inadequate and the American taxpayer deserves more accountability.

- a. Do you agree that the leak or hack of confidential taxpayer data from the IRS is a serious issue and the investigation of this matter should be a priority for the Department of Justice and the FBI?
 - b. Do you agree or disagree with the response of the IRS in a letter of September 13 to myself and Senator Crapo that, "We do not yet know whether there has been a data breach or a threat of a data breach"?

- 12. On October 6 of this year, I sent a letter to the Department and to the Bureau of Alcohol, Tobacco, Firearms and Explosives asking questions to follow-up on reporting that ATF had improperly assigned law-enforcement personnel to exclusively administrative positions and that those improperly classified positions could mistakenly qualify for lawenforcement benefits, such as Law Enforcement Availability Pay.
 - a. A document that I included as an attachment to my letter noted that the Office of Personnel Management found that 94 positions had been misclassified. It appears that these positions are within the Human Resources and Professional Development units at ATF. Has the Department of Justice investigated whether this practice of misclassified employees occurred throughout ATF and in other Bureaus? If so, how prevalent is it? If not, why not?
 - b. Reporting on this issue notes that a whistleblower at ATF brought this matter to the attention of his supervisors and believes his employment was terminated as a result. Do you support the efforts of whistleblowers to bring matters of concern to light? Do you and the Department of Justice oppose any effort to retaliate against any whistleblower?

- 13. On June 29, 2021, and August 4, 2021, I worked with Chairman Durbin to send letters to the Director of the Bureau of Prisons asking several questions about the maintenance of accounts that are held on behalf of federal prisoners. These letters were sent in response to reporting that prisoners were not required to satisfy debts such as child support and victim restitution. It was reported that convicted sex criminal Larry Nassar had thousands of dollars flow through his account while making minimal payments towards court ordered restitution. The Department of Justice responded to our letters with a note that it planned reforms. My staff and Chairman Durbin's staff have continued to press for full responses to the questions contained in both letters.
 - a. What is the status of reforms to the administration of prisoner accounts maintained by the Bureau of Prisons? Are prisoners being required to satisfy, based on their ability to pay, their financial obligations? Please provide copies of any new policies or procedures the Bureau of Prisons or the Department have developed to ensure prisoners must satisfy their financial obligations.
 - b. Does the Bureau of Prisons recognize child support judgements that are applicable to federal prisoners and help prisoners to meet those obligations?

- c. Will you ensure that the Department and the Bureau of Prisons regularly update myself and Chairman Durbin regarding efforts to reform the administration of prisoner accounts, and ensure that the BOP fully responds to our letters?
14. On October 6, 2021, Deputy Attorney General Lisa Monaco announced a new civil cyber-fraud initiative to use the False Claims Act to combat new and emerging cyber threats to the security of sensitive information and critical systems.
- a. To what extent is the Department focused on situations involving non-compliance or deficient cybersecurity, as opposed to cases involving an actual breach?
 - b. In terms of initiating its own cases, will the Department be receiving regular reports from the Department of Defense Cyber Crime Center or from the Supplier Performance Risk System?
 - c. Are there particular types of non-compliance that the Department will be mostly focused on?
 - d. How will the Department define “deficient” cybersecurity products and services, and what criteria will it use to trigger an investigation into whether a given product or service is “deficient”?
 - e. Does the Department plan to hire additional personnel or set up a specific task force to bring these specific cybersecurity cases? If so, how many?
 - f. How will the Department calculate damages in these particular cases?
15. This committee held a hearing about serious deficiencies in the FBI’s investigation of Larry Nassar, the disgraced former doctor of USA Gymnastics. Nonetheless, the Department did not send a representative to our important oversight hearing. Director Wray did appear. How do you explain the Department’s refusal to appear? How will victims feel empowered if the Department does not even come to hear their testimony?
16. In July of this year, I wrote to the Department asking that it reopen the investigation of the FBI agents whose egregious misconduct appear to have allowed numerous assaults to continue long after Nassar’s victims first came forward. I was pleased to learn in October the Department agreed to reevaluate those investigations. What is the timeline for your review?
17. The child sexual tourism statute, 18 U.S.C. 2423, contains language that may limit its application in cases where gymnasts were abused overseas. Will you commit to working with my office on a statutory fix to the child sexual tourism statute to ensure evil conduct like Larry Nassar’s never happens again?
18. Regarding your October 4, 2021, memo discussing, “Partnership, among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” (October 4 memo), how many U.S. Attorneys have convened meetings with federal, state, local, Tribal, or territorial leaders to discuss the subject matter of that memo?

19. Prior to issuing your October 4 memo, what analysis did you conduct, if any, to determine how that memo might chill the speech of those who wish to communicate with school officials throughout the United States?
20. What instructions, if any, did you provide the various U.S. Attorneys, or any other Department of Justice personnel, about protecting the First Amendment rights of parents and other citizens who contact their local school officials to express their concerns about school administration when executing your October 4 memo's directions?
21. Since issuing your October 4 memo, how many reports to federal law enforcement have local officials made about communications or other contacts with citizens? What is the Department of Justice's protocol for storing information provided in such reports that involve activity not reasonably suspected of rising to the level of federal criminal activity, including but not limited to the following matters:
 - a. Who stores that information?
 - b. How is it stored?
 - c. How long is it stored for?
 - d. What are the standards for sharing that information with other Department of Justice personnel?
 - e. What are the standards for sharing that information with personnel outside of the Department of Justice?
22. Has the Department of Justice conducted any analysis regarding recruitment and retention efforts of law-enforcement agencies throughout the country over the last year, such as measuring a drop in law-enforcement applicants or an increase in lawenforcement resignations? If so, what are the results of that analysis and the reasons for it?
23. Has the Department of Justice conducted any analysis regarding diminished local police activities in neighborhoods throughout the United States over the last year? If so, what are the results of that analysis and the reasons for it? To what degree have federal lawenforcement officers had to increase their activities on criminal matters that would have otherwise been normally handled by state and local law-enforcement agencies prior to mid-2020?
24. Has the Department of Justice conducted any analysis regarding an increase in shootings targeting law-enforcement officers over the last year? If so, what are the results of that analysis and the reasons for it?
25. Pending legislation would restrict federal grants to anti-bias training for law-enforcement agencies. What is the specific nature of such anti-bias training? In such grant-qualifying anti-bias training, what do law-enforcement officers typically learn? Does such training ever consist of segregating law-enforcement officers by race for the purpose of providing

them different training based on their race? If so, how would such training typically differ for a white law-enforcement officer than it would for a black law-enforcement officer? If so, how would such training typically differ for an Asian law-enforcement officer than it would for a Hispanic law-enforcement officer?

26. How have criminal actors increasingly used drone technology to achieve their ends? How has such technology exposed Americans to greater risk of terrorists attack, and what legislative tools are necessary for DOJ to effectively counter such risks? How has drone technology aided international criminal enterprises in transporting contraband materials into the United States, and what legislative tools are necessary for DOJ to effectively counter such activity?
27. What is the Bureau of Prisons' current policy regarding the quarantining, testing, or other COVID-19 risk mitigation for inmates who are approaching their release dates? What, if any, is the Department's protocol for reducing such mitigations over time?
28. Has the Bureau of Prisons conducted an analysis of the condition of its closed-circuit camera systems at its various facilities, including security failures that might have otherwise been prevented with more updated camera systems and what the technological needs might be for such upgrades? If so, what is the scope and nature of such security failures and what is the nature of the needed technological upgrades?
29. According to Deputy Attorney General Monaco, the Department began a 120 day review of cybersecurity challenges.¹⁵ Reportedly, the review will focus on cybersecurity issues including digital currency, supply chain attacks such as the SolarWinds incident, which compromised nine federal agencies last year, and the ways countries such as China and Russia use cyber operations against other nations. Please share all information and conclusions from that review.
30. The *First Step Act* is the product of bipartisan cooperation and support from government leaders. Passage of this law was a massive achievement; ensuring its sound and effective implementation is also critically important. The Department of Justice carries significant implementation responsibilities.
 - a. As head of the Department of Justice, do you agree that your agency carries great implementation responsibilities and that as Attorney General this responsibility rests on your shoulders?
 - b. What steps have you made, since confirmed as Attorney General, to implement the *First Step Act*?
31. I joined Chairman Durbin in sending you a letter on May 5, 2021, regarding the issue of a proposed rule on earned time credits. This rule, as proposed on November 25, 2020,

¹⁵ Maggie Miller, *Justice Department to Undertake 120 Day Review of Cybersecurity Challenges*, THE HILL (Apr. 30, 2021), <https://thehill.com/policy/cybersecurity/551195-justice-department-to-undertake-120-day-review-of-cybersecurity>.

would limit the incentive structure designed to increase program participation and would undercut the effectiveness of the *First Step Act*. In the letter, we asked that you reevaluate and amend the rule consistent with the *First Step Act*'s goals of incentivizing and increasing program participation and reducing recidivism.

Like I mentioned at the hearing on October 27, we've yet to receive a response to this letter. While the lack of responsiveness by the Department is unacceptable on its own, it's troubling that your silence implies that no changes would be made to this proposed rule.

- a. What feedback has the Department received to this proposed rule?
- b. Will the Department adopt any changes to the rule prior to finalizing it?
- c. When do you anticipate finalizing this rule?

32. On January 15, 2021, the Department of Justice Office of Legal Counsel (OLC) released a memo titled, "Home Confinement of Federal Prisoners after the COVID-19 Emergency." This memo contemplates the eventuality of what happens to Bureau of Prisons inmates released to home confinement under the CARES Act "once the pandemic emergency ends." At that time, "some inmates will have completed their sentences or be sufficiently close to the end to be eligible for home confinement," while others "may have a substantial time to go before becoming eligible." This opinion concludes that when the COVID-19 "covered emergency period" ends, or should the Attorney General revoke the finding, "the Bureau would be required to recall the prisoners to correctional facilities unless they are otherwise eligible for home confinement." If this covered emergency period were to end as of October 18, 2021, 4,813 inmates would be returned to a Bureau of Prisons facility.

It has been publicly reported that the Biden administration has begun asking inmates on home confinement by virtue of the CARES Act to submit commutation applications.¹⁶ These particular inmates fall into a specific category: drug offenders released to home confinement under the CARES Act with four years or less remaining on their sentences.

- a. How many individuals have received a request from the Department to submit a commutation application?
- b. Does the Department intend to expand the scope beyond the subset of those who are released to home confinement under the CARES Act and with less than four years remaining on their sentences?
- c. What is the timeline for reviewing and coming to a decision on these inmates' commutation applications?
- d. Does the Department plan to issue a proposed rule to address this issue? If so, please advise the anticipated contents of such proposed rule.

¹⁶ Sam Stein, *Biden Starts Clemency Process for Inmates Released Due to Covid Conditions*, POLITICO (Sept. 13, 2021), <https://www.politico.com/news/2021/09/13/biden-clemency-covid-inmates-511658>.

33. On September 27, 2021, the Drug Enforcement Administration (DEA) issued a Public Safety Alert warning the American public of the “alarming increase in the lethality and availability of fake prescription pills containing fentanyl and methamphetamine.”¹⁷ Drug trafficking organizations are falsely marketing pills as legitimate prescription pills, and selling them on social media and e-commerce platforms. This is particularly problematic since many of the purchases have been made by teens and youth. DEA Administrator Anne Milgram has stated that social media companies aren’t doing enough to crack down on these counterfeit pills.¹⁸

- a. What is the Department doing to counter the surge of counterfeit pills laced with fentanyl and meth?
- b. Leaders of the law enforcement community have stated that identifying and prosecuting fentanyl analogues – including those hidden in counterfeit pills – is critical and that “serious consequences like mandatory minimums exist to deter and punish the kingpins, their traffickers, and the manufacturers who flood our communities with deadly drugs.”¹⁹ Do you agree that these bad actors need to be deterred?
- c. Representatives from victim awareness groups and those who have lost family members to fentanyl wrote to the Senate Judiciary Committee, noting that, “[d]rug overdose deaths are preventable. . . [and] our government must use every tool to prevent senseless loss of life.”²⁰ Do you agree?

34. At the hearing on October 27, you stated that “powder cocaine is as dangerous with crime rates as crack cocaine.” However, the U.S. Sentencing Commission cites in a recent report that “the rate of weapon involvement varie[s] depending on the type of drug involved, ranging from 38.9 percent in crack cocaine cases to 18.4 percent in marijuana and powder cocaine cases.”²¹ With this data in mind, please explain what you mean by “powder cocaine is as dangerous with crime rates as crack cocaine.” If you are citing different data or information to come to this point, please share it with the Committee.

¹⁷ Public Safety Alert, “Sharp Increase in Fake Prescription Pills Containing Fentanyl and Meth,” U.S. Drug Enforcement Administration (Sept. 27, 2021), <https://www.dea.gov/alert/sharp-increase-fake-prescription-pills-containing-fentanyl-and-meth>.

¹⁸ Kate Snow, ‘I Pill Can Kill’: Officials Warn About Fake Prescription Drugs Laced With Fentanyl, TODAY (Sept. 27, 2021), <https://www.today.com/health/fentanyl-danger-dea-s-anne-milgram-warns-about-fake-prescription-t232227>.

¹⁹ Letter from Federal Law Enforcement Officers Association, National Narcotic Officers’ Associations’ Coalition, Major Cities Chiefs Association, International Association of Chiefs of Police, National Association of Police Organizations, Major County Sheriffs of America, National Sheriffs’ Association, National District Attorneys Association, & Sergeants Benevolent Association, NYPD, to Sen. Dick Durbin, Chairman, and Sen. Chuck Grassley, Ranking Member, S. Comm. on the Judiciary (Sept. 13, 2021), <https://www.fleoa.org/news-story.aspx?id=10004>.

²⁰ Letter from VOID, Alexander Neville Opioid and Outreach Foundation, California Drug Induced Homicide, RADD, Drug Induced Homicide Foundation, Chair of Drug Abuse and Mental Health Committee, Mothers Against Drug Deaths, Environmental Progress, San Franciscans for Peace and Justice, St. Albert Priority, & We Are Not Alone Community, to Sen. Durbin, Chairman, & Sen. Grassley, Ranking Member, S. Comm. on the Judiciary (Sept. 10, 2021) (on file with author).

²¹ U.S. SENTENCING COMMISSION, FISCAL YEAR 2020: OVERVIEW OF FEDERAL CRIMINAL CASES, at 15 (Apr. 2021), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/researchpublications/2021/FY20_Overview_Federal_Criminal_Cases.pdf.

35. In July of this year, multiple media outlets reported on the FBI's role in the capture of Princess Latifa of Dubai. On February 24, 2018, Princess Latifa, daughter of United Arab Emirate (UAE) Prime Minister Sheikh Mohammed bin Rashid al-Maktoum, escaped from Dubai on a US-flagged yacht named "Nostromo." Princess Latifa boarded the "Nostromo" 20 miles off the coast of Muscat, Oman, in international waters after reaching the vessel by dinghy and jet ski and sailing southward in the Indian Ocean for eight straight days.²² The media reported that the FBI appeared to have contacted the U.S.-based internet service provider of the "Nostromo" in an attempt to obtain geolocation data of the yacht in order to share it with the UAE government. The FBI was able to obtain the geolocation data without a search warrant by using a public safety exemption which provides authority in public safety circumstances. Did the FBI provide sensitive geolocation data to the United Arab Emirates government or any other foreign government relating to this matter?

²² Kim Hjelmggaard & Kevin Johnson, *How The FBI Played A Role In The Capture Of Princess Latifa Of Dubai*, USA TODAY (July 12, 2021), <https://amp.usatoday.com/amp/7584218002>.

Senator Lindsey Graham
Questions for the Record for Attorney General Merrick Garland
Attorney General of the United States
U.S. Department of Justice (DOJ) Oversight Hearing - October 27, 2021

1. What is the legal effect of a final order of removal?
2. The current asylum backlog in the Executive Office for Immigration Review is approximately 1.5 million cases. What is your solution for solving this backlog?
3. At your confirmation hearing, I asked you to look into the problem of cartels abusing our asylum laws – have you looked into this problem and what enforcement policies are you implementing to fix it?
4. The National Security Division of the Department of Justice is responsible for combatting national security and cyber security threats facing our region and our nation. Protecting national security and ensuring public safety is the principal responsibility of the Justice Department.
 - a. Are you concerned about the national security risks posed by the situation we left behind in Afghanistan?
 - b. How is the National Security Division and the Joint Terrorism Task Force (JTTF) working to mitigate risks to the United States homeland posed by terrorists in the region of Afghanistan?
 - c. Are you concerned about the security risks posed by the influx of “vetted” Afghan parolees into the U.S.?
 - d. During the Senate Judiciary Committee oversight hearing on October 27, 2021, I asked you what you have done specifically, since the U.S. withdrawal from Afghanistan, to address the new threat to our national security created by that decision. You committed to put in writing what you have done. Please provide that information.
 - e. What is the Department of Justice doing to deter ransomware attacks?
5. What process is the FBI following in its vetting of Afghan evacuees right now, and do you believe the FBI is doing a thorough job? How does the FBI plan to ensure it captures all derogatory information, not just the information that we happen to have in our databases? Will the FBI extensively interview evacuees and/or use something akin to the security advisory opinion process? Please explain.
6. Is the FBI investigating reports of Afghan evacuees engaging in acts of assault, including sexual assault, on U.S. military bases?

7. Why are we paroling Afghan evacuees into the U.S. after a vetting process that takes only days or weeks? Have we learned how to complete a months-long vetting process in only a handful of days?
8. What evidence do you have to support the claim that there has been a disturbing uptick in violence and threats of violence directed at teachers, school board members and school administrators? Please cite specific examples.
9. Was anyone at the Department of Justice a collaborator with the National School Board Association (NSBA) and/or the White House regarding NSBA's letter to President Biden, dated September 29, 2021?
10. Now that the NSBA has apologized for their letter to President Biden, will you retract the memo that was based on that letter?
11. Did you authorize the settlement of Andrew McCabe's wrongful termination law suit? Did anyone at the White House suggest that the Department of Justice should settle?
12. What is the Department of Justice doing to curb the misuse and abuse of Foreign Intelligence Surveillance Act (FISA) applications?
13. Will you commit to allowing Special Counsel Durham to complete his investigation?
14. During your confirmation, you indicated a willingness to look into DEA's non-retrievable exceptions in 40 CFR 266.506. Can you provide a detailed update on how DEA plans to allow stake holders to destroy hazardous waste that meets the non-retrievable standard of destruction through a process other than combustion? What is the timeline for determining this process and what additional steps need to be taken by DEA?

1. General Garland, under what jurisdictional authority is the Department of Justice tasked with protecting local school board members from being annoyed by their neighbors—parents of children who attend the neighborhood schools?
2. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass school board members by calling them too many times?
 - a. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass School Board members by letting their unanswered phone calls continuously ring?
 - b. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass school board members over the phone?
 - c. If you answered “no” to any subpart of question 2, can you please explain why the acting United States Attorney of Montana sent a letter to the Montana Attorney General, all Montana County Attorneys, All Montana Sheriffs, Montana Office of Public Instruction, and the Montana School Boards Association, suggesting these as possible avenues for prosecuting annoying parents upset with decisions made by their local school boards?
3. In the recent Department of Justice oversight hearing, you claimed to have no knowledge of the memo sent by Acting United States Attorney for Montana, Leif Johnson. Have any other US Attorneys or Acting US Attorneys issued similar memos? If so, please provide copies of these communications to this committee.
4. Other than the memo you published on October 4th, what other direction did you give to US Attorneys relative to how they should pursue cases against annoying parents at school board meetings? If you did not intend for US Attorneys to be prosecuting parents for calling their school boards too many times, what additional direction did you give your US Attorneys to make sure they understood the scope of your direction?
5. In the oversight hearing, you clarified to me that while you specifically mentioned “harassment, intimidation, and threats of violence” in your October 4th memo, you only meant for statutes regarding “intimidation” and “harassment” to be pursued by Federal Law Enforcement Officers if the “intimidation” was “made with the intent of placing the victim in fear of bodily harm or death.” Did you make that same clarification in additional communications to your US Attorneys? If so, would you please provide the committee with a copy of those communications?
6. I was alarmed in the recent oversight hearing when I realized you could not—or would not—give the committee any concrete examples of threats of death or bodily harm which formed the basis of your reasoning for sending the October 4th memo. Please list here the “news reports” you relied on to make the decision on

October 4th to involve the Department of Justice in what is a purely state matter—acts of unrest and violence at school board meetings.

7. Who brought the examples you listed in question 6 to your attention? What indication did you have that these instances were beyond the ability of local law enforcement to handle?
8. Please provide the most thorough answers possible to the following questions. None of the information requested should be privileged.
 - a. Did you or any member of your staff meet with the National School Boards Association before you issued the October 4th memo?
 - b. Did you or any member of your staff meet with any other interested outside groups before issuing the October 4th memo?
 - c. Can you describe in detail what steps you took personally, or your staff took, to verify the contents of the National School Boards Association letter?
 - d. What specific death threats were mentioned in the letter? Please provide us the details of the examples you relied upon in issuing your memo.
 - e. What specific, independent investigative efforts did you or your staff undertake—outside of reading the examples cited in the National School Boards memo—to determine whether a legitimate, multi-state, coordinated effort to threaten school board members actually exists? Please be specific.
9. In your October 4th memo, you wrote, “[i]n the coming days, the Department will announce a series of measures designed to address the rise in criminal conduct directed toward school personnel.” Please provide this committee with the details of those pending measures.
10. One of the sources cited by the NSBA in their letter to you is a study done by the Armed Conflict Location & Event Data Project about demonstrations over Critical Race Theory (CRT) in the United States.¹ The NSBA’s purpose in citing this study is to demonstrate that anti-CRT demonstrations pose a threat to school board members. Notably, however, this study concludes that “despite its prominence within mainstream media and in state legislatures, CRT’s effect on demonstration trends within the United States has been limited compared to movements such as Black Lives Matter, Stop Asian Hate, and Cancel the Rents.” Do you agree with this statement? Is the general rise in demonstrations this past year as concerning to you as the rise in demonstrations at school board meetings?
11. If there are credible instances of violence or threats of violence at school board meetings, why is Department “[c]oordination and partnership with local law

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_Fact-Sheet_CRT-Demos_2021.pdf.

enforcement” so “critical” (per the language of your memo) to handling these instances? Has state law enforcement expressed an inability to handle them?

12. Given the National School Board Association’s apology for incendiary language in its letter, and given the fact that local law enforcement has not apparently expressed a need for help in managing school board meetings, why is federal “coordination”—rather intervention—needed at all?

a. Why would federal law enforcement be needed to “discuss[] . . . strategies for addressing threats”? Don’t state and local law enforcement already have strategies in place to do so?

b. You stated in the hearing that federal law enforcement assists state and local law enforcement “every day.” If this kind of assistance occurs routinely, why was the issuance of this memo needed in the first place? Why do federal, state and local law enforcement need to meet to formulate new strategies to address potential violence if they are already doing so on such a regular basis? Isn’t there already a structure in place for federal law enforcement to assist state and local—if needed?

13. The National Security Division was created after the attacks of September 11th to mirror changes made in the FBI to better address external threats against the nation. It combined two sections from the Criminal division – the counterterrorism section and counterespionage section with the Office of Intelligence and Policy Review, the lawyers who submit FISA applications to the FISA Court.

a. Isn’t it true that, among other things, 28 C.F.R. § 0.72(a)(2) provides that the Assistant Attorney General for National Security (AAG/NS) shall “[d]evelop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage enforcement programs”?

b. Why then, in the October 4, 2021 press release accompanying the memorandum, did you include the NSD on a task force to review school violence?

14. Is there evidence of terrorism, espionage, or other intelligence matters involving protests by parents at local school board meetings that would require the attention of the National Security Division? Do you expect to file applications for warrants under the Foreign Intelligence Surveillance Act to surveil these parents?

15. Please list all task forces you have created or appointed since your confirmation as Attorney General.

16. After the tragic death of George Floyd last year, rioters across the country caused up to \$2 billion in damage to private and public property, and over 500 people were

arrested for their involvement.² Is Department of Justice involved in the investigation and prosecution of these individuals where appropriate? How many individuals have been arrested and prosecuted for the months-long attack on the federal courthouse in Portland, Oregon?

17. Would you agree that a state's decision to conduct a *meaningful* audit of an election can help foster faith in the electoral process?

18. I understand many left-wing advocates are pushing less comprehensive "risk-limiting audits which fail to give a complete picture of what could have gone wrong in an election. But many states find those limited audits to be completely unhelpful. Is there any federal law preventing a state from opting to conduct a more extensive audit that might help identify actual problems in the state election process moving forward?

19. What statute gives the Department of Justice authority to oversee how a state conducts a post-election audit?

20. I am very concerned by the May 5, 2021 letter sent to the President of the Arizona State Senate by Pam Karlan, the Principal Deputy Assistant Attorney General of the Civil Rights Division of the Department of Justice. As I read that letter, Ms. Karlan seems to be attempting to "intimidate" Arizona's elected officials from conducting a thorough audit of its election. Is this kind of intimidation of elected state officials concerning to you? Why or why not?

21. In the Department of Justice oversight hearing, you said the Department had charged thousands of cases of criminal illegal crossing this year. Can you please provide the committee with the exact number of prosecutions?

22. Recently, DOJ, in conjunction with the Department of Homeland Security, proposed a rule taking authority from the Executive Office of Immigration Review, which is housed in the Department of Justice, and moving that authority to the U.S. Citizenship and Immigration Services, which is housed in the Department of Homeland Security. Can you identify the authority among agencies which allows them to decide which of the responsibilities given to them by Congress they are going to keep and which they are going to siphon off to other agencies?

23. The Department of Justice website states there are currently 535 immigration judges working as employees of the Department of Justice. These judges have issued 1.2 million final orders of removal which have yet to be enforced by the Department of Homeland Security. Why would the Department of Justice cede authority to DHS

² <https://fee.org/articles/george-floyd-riots-caused-record-setting-2-billion-in-damage-new-report-says-here-s-why-the-true-cost-is-even-higher/>; <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>; <https://nypost.com/2020/09/16/riots-following-george-floyds-death-could-cost-up-to-2b/>.

when it refuses to honor the work the employees of the DOJ do to issue final removal orders?

24. On January 26th President Biden issued an executive order that terminates the use of private contractors with the BOP. Can you provide further guidance on whether this executive order applies to the United States Marshals Service?

25. The January 26th Executive Order states in part that “our current system of mass incarceration imposes significant costs and hardships on our society and communities and does not make us safer.” How does eliminating private prisons reduce mass incarceration? Does the administration have a plan for where inmates housed in private prisons will be relocated to?

26. If the President’s Executive Order applies to the USMS, what will the DOJ do to ensure that the estimated 62,000 USMS detainees continue to receive necessary bed space, transportation, access to the courts, and access to legal representation in accordance with the due process clause?

27. Since President Biden issued the Order, exceptions have been made for privately operated detention facilities that contract with USMS. This includes the Willacy County Regional Detention Facility in Southern Texas, whose contract was extended for an additional six months in September. Do you know of any efforts by the Biden administration to alter the January 26th executive order to provide a permanent solution for these facilities and the detainees being housed there?

**Hearing Entitled, "Oversight of the Department of Justice"
Questions for the Record for the Honorable Merrick Garland
Submitted November 3, 2021**

QUESTIONS FROM SENATOR COTTON

1. On what date did you first begin working on your October 4 memorandum?
2. On what date did the Department first begin drafting your October 4 memorandum?
3. Did the Department provide the White House with any drafts or copies of the October 4 memorandum before it was issued?
4. Please provide the Committee with copies of all public reports on which you relied when crafting your October 4 memorandum.
5. You stated during your testimony that you did not intend for your October 4 memorandum to have a chilling effect on free speech. The Department of Justice regularly issues directives and memoranda without accompanying press releases. If your only purpose was to ask the FBI and U.S. Attorneys to convene meetings and find out more about the alleged school board issues, why did the Department issue a press release on the topic and tout additional forthcoming measures?
6. Please provide a list of all meetings or phone calls that staff of the Department of Justice attended with representatives of the National School Boards Association or the National Education Association since June 1, 2021.
7. Please provide a list of all meetings or phone calls that staff of the Department of Justice attended with anyone outside of the Department of Justice regarding your October 4 memorandum prior to your issuing that memorandum.
8. Did you meet with senior leadership of the FBI about your October 4 memorandum before it was issued?
9. On April 28, 2021, the FBI reportedly served a warrant on Alaskan small business owners Paul and Marilyn Hueper, forcibly entering their home and handcuffing them and two of their guests due to a tip that incorrectly identified Marilyn Hueper as having stolen a laptop from Speaker Pelosi's office on January 6, 2021. A New York woman reportedly has since confessed to stealing the laptop in question. Last month, Senator Sullivan sent a letter to the Department, seeking an acknowledgement and apology from the FBI to the

Huepers for the mistake. Have you responded to that letter? Do you believe that the Huepers deserve an apology for being wrongfully targeted in this enforcement action?

10. In November 2018, the Department of Justice launched the “China Initiative,” which focuses on countering the Chinese Communist Party’s efforts to steal sensitive information and technology from the United States to enhance its own military and economic strength. In November 2020, the Department released a review of progress under the China Initiative, demonstrating strides in countering China’s coordinated campaign. The Department’s webpage for the China Initiative has not been updated since June 2021, and the most recent case example posted on the webpage comes from May 2021. Is the Department of Justice still actively executing the China Initiative?

Questions from Senator Thom Tillis
for Attorney General Merrick Garland on Department of Justice
Oversight

School Board Memo

1. I share the concerns raised by my colleagues about the actions taken by the Justice Department and the Biden Administration to intimidate parents and discourage them from exercising their First Amendment rights. This entire episode is beneath the dignity the Justice Department, and is an affront to the freedom of speech. It is absolutely critical that those responsible for this travesty are held accountable for their actions.
 - a. Who in the Department made the decision to draft this inflammatory memorandum?
 - b. Which individuals signed off on this memorandum before it was issued?
 - c. Did you direct individuals under your supervision to draft this memorandum? If so, when did you direct individuals to draft this memorandum?
 - d. If you did not direct your staff to draft this memorandum, who in the Department was responsible for first proposing this memorandum?
 - e. Who was primarily responsible for drafting this memorandum?
 - f. If you did not direct your staff to draft this memorandum, when did you become aware that it was being drafted? Did you provide any guidance or edits during the drafting of this memorandum?
 - g. Did the Department follow its usual policies and procedures when drafting and approving this memorandum? If not, in which ways did the Department depart from its policies and procedures?
 - h. Has the Department opened any investigations based on this memorandum? Have any arrests been made as a result of this memorandum? If so, what specific criminal statutes were used to charge individuals based on this memorandum?
2. It has been established that the National School Board Association was “in talks over the last several weeks with White House staff” before sending a letter to President Biden regarding threats against school board members. This admission raises many questions about the political nature and motivations behind this memorandum.
 - a. Did any White House staff contact any Department of Justice staff regarding this memo at any time before, during, or after it was drafted? If so, which Department officials were contacted by which White House officials?

- b. Did the White House direct the Department of Justice to issue this memorandum? Did the White House exert *any* influence over the Department of Justice to issue this memorandum?
 - c. Did the White House play any role in the drafting of this memorandum? Did the White House offer any suggested language for this memorandum? Was the White House provided a copy of this memorandum before it was issued, and if so, did the White House provide any edits to the memorandum? If so, which edits were made at the suggestion or direction of the White House?
- 3. On October 13, Secretary of Education Miguel Cardona appointed Viola Garcia to the National Assessment Governing Board. Ms. Garcia is the President of the National School Boards Association, and was a signed author of the now infamous letter which compared parents to “domestic terrorists.”
She wrote to the NSBA Board that the NSBA had “been engaged with the White House and the
Department of Education on these and other issues . .
.”
 - a. Is there any connection between the NSBA letter, the DOJ memorandum, and Ms. Garcia’s appointment to the National Assessment Governing Board?
 - b. Was Ms. Garcia’s nomination predicated on pushing the political agenda against parents, as shown in the DOJ memorandum?
- 4. As you now know, the Acting U.S. Attorney for the District of Montana issued a memorandum to state and local officials outlining a list of “Federal Crimes Involving Harassment, Intimidation, and Threats of Violence.”
 - a. Have any other U.S. Attorney offices in any other district issued similar guidance related to the DOJ memorandum? Please provide copies of any additional guidance issued by other U.S. Attorneys.
 - b. How did the Acting U.S. Attorney for the District of Montana identify these specific statutes to prosecute parents?
 - c. Are these the statutes DOJ intends to use nationwide to prosecute parents for exercising their First Amendment rights?

Immigration

- 5. On July 1, I sent you a letter with seven other Senators related to your decision to vacate two immigration rulings, *Matter of L-E-A* and *Matter of A-B*. In that letter, we raised concerns that your decision to vacate these rulings would encourage more illegal immigration and lead to abuse of the asylum system.
 - a. At this time, my office has not received your response to this letter – when will a response be sent?
 - b. Did DOJ or the Biden Administration conduct an analysis of the impact of vacating *Matter of L-E-A* and *Matter of A-B* on illegal economic migration before taking

this course of action? If so, did this analysis consider the pull factor of drawing more illegal immigrants to the border and enabling the cartels who profit from asylum abuse?

- c. How many asylum seekers currently request asylum based on private criminal activity, and are being denied as a result? How many more asylum seekers would qualify due to the Biden Administration's actions?
 - d. In light of a historic immigration backlog, DOJ requested an additional 100 immigration judges in its FY2022 budget request. If the Biden Administration's promotion of asylum fraud goes through, will DOJ request additional judges to help process the inevitable wave of claims based on private criminal activity?
 - e. Has DOJ or the Biden Administration conducted a cost review to determine how much encouraging fraudulent asylum claims will cost the American taxpayer? What resources may be diverted from DOJ which could otherwise be directed towards protecting public safety and prosecuting dangerous criminals?
 - f. How many individuals have been approved for an asylum claim based on claims which would have been barred before you vacated these rulings?
6. Recently, the Department of Justice and the Department of Homeland Security issued a joint proposed rule to amend asylum processing by allowing USCIS asylum officers to make an initial adjudication.
- g. The proposed rule would still permit applicants to appeal their decision to an immigration judge for consideration. Did DOJ conduct an analysis of any kind to anticipate the likelihood that applicants will appeal their decisions to an immigration judge? In other words, does DOJ believe that most unsuccessful applicants will still appeal a decision to an immigration judge?
 - h. Does DOJ believe that having an initial determination in a non-adversarial asylum hearing will sufficiently prevent improper claims of asylum from being granted? What specific steps will DOJ take to ensure that improper claims are filtered out?
 - i. Did DOJ and DHS conduct an analysis to determine how this proposed rule would improve processing times? If so, can you provide estimates for how quickly an asylum claim would be adjudicated under this rule?
 - j. Did DOJ conduct an analysis of how this proposed rule would impact how quickly immigration judges are able to complete cases? If so, what were the results of that analysis?
7. The immigration court backlog has grown exponentially over the past decade. At this time, there are approximately 1.45 million cases pending before an immigration judge.
- a. What is the average time it currently takes to complete an immigration case before an immigration judge?
 - b. What actions is DOJ taking to reduce the immigration court backlog and more quickly adjudicate immigration cases?

8. Earlier this year, I wrote a letter along with ten of my Senate colleagues regarding DOJ policy on sanctuary jurisdictions. I remain concerned that this policy change will only encourage more states and cities across the country to embrace dangerous sanctuary policies.
 - a. What is DOJ's current position on sanctuary city policies that prohibit state and local governments from cooperating with federal authorities to enforce the law?
 - b. On how many occasions has DOJ been unable to enforce the law and protect public safety due to sanctuary policies? Please be specific about the number of incidents in which sanctuary jurisdictions have declined to comply with DOJ requests.
 - c. How many criminal aliens have been placed in federal custody who were released due to sanctuary policies? In how many instances did these individuals commit crimes during the time between their release and subsequent capture by federal authorities? Please provide specific about the number of arrests and which crimes were committed.
9. With the rampant lawlessness at our southern border, I am concerned that more criminal aliens are making their way into the country, putting public safety at risk. This is further fueled by the smugglers and traffickers who are using the surge at our border as a way to escape capture by our brave Border Patrol agents.
 - a. How many prosecutions of criminal aliens has DOJ pursued since January 20, 2021? How does that compare to prosecutions of criminal aliens during the preceding year?
 - b. How many criminal alien murderers, sex offenders, and drunk drivers were charged or prosecuted by DOJ since January 20, 2021? Please provide a specific breakdown of how many individuals were charged, prosecuted, and convicted.
 - c. Are individuals with convictions or indictments for murder, sex offenses, and drunk driving being placed into expedited removal proceedings before immigration judges? What are you doing to ensure they are expeditiously removed?
 - d. Please provide specific statistics about Americans who have been harmed or killed by criminal aliens since January 20, 2021. Please provide a breakdown of which crimes were committed against American citizens, and what charges were filed against the criminal aliens responsible.

Law Enforcement

10. Our brave, hardworking men and women in blue put themselves in danger each and every day to keep our communities and our families safe. In 2020, 46 law enforcement officers were killed by criminals in the line of duty. Already this year, there have been 61 officers killed by criminals. In addition, the FBI reports that over 60,000 officers were assaulted in the line of duty in 2020.
 - a. This is a shocking increase in assaults against law enforcement officers. What efforts is DOJ taking to investigate, prosecute, and deter violent assaults against the law enforcement community?

- b. How many arrests have been made against those who have assaulted or killed a law enforcement officer in 2021?
- c. How many federal prosecutions have been pursued against the criminals who have assaulted or killed law enforcement officers in 2021? What specific federal statutes have been used to prosecute these crimes and in how many cases?

Bureau of Prisons

- 11. The First Step Act was a historic, bipartisan piece of legislation which seeks to reduce recidivism by encouraging inmate participation in recidivism reduction programming. One key provision is the use of earned time credits as an incentive for inmates to participate in programming.
 - a. According to the proposed rule titled “FSA Time Credits,” inmates are only eligible for credits earned after January 15, 2020. Have First Step Act earned time credits been applied to inmate sentences since January 15, 2020, or are they still being withheld pending the completion of the proposed rule? If earned time credits are being withheld until completion of the proposed rule, how quickly will DOJ be able to apply these credits to inmates?
 - b. Has DOJ applied earned time credits to any inmate sentences for programming which was completed prior to January 15, 2020?
 - c. How significant are waitlists for inmates to access programming, and who will you reduce these waitlists?
- 12. Butner FCI had one of the worst COVID-19 outbreaks in any federal prison, and still ranks as having the most inmate deaths at 32. It was also the only facility where two staff members have died. In total, 1,157 inmates contracted and have recovered from COVID-19, making Butner the fourth highest facility in the country.
 - a. Have all interested staff members been able to access a vaccine? If not, why have they not been able to receive a vaccine, and how is DOJ planning to ensure they have access to a vaccine?
 - b. Are all inmates at Butner FCI eligible for the COVID-19 vaccine?
 - c. How many inmates have been vaccinated against COVID-19?
 - d. Have all inmates who want a vaccine been able to receive one? If not all interested inmates have been able to receive a vaccine, why have they not been able to receive a vaccine and how is DOJ planning to ensure they are able to receive a vaccine?
- 13. On June 29, 2021, I joined a bipartisan letter with my seven of my Senate colleagues to BOP regarding concerns about reports that the inmate deposit fund program operates with little oversight, enables federal inmates to avoid paying child support and other debts, and fails to scrutinize inmate accounts for suspicious and potentially criminal activity. Deputy Assistant Attorney General Joe Gaeta responded on August 24, 2021. He stated that BOP would be implementing reforms, procedures, strengthen monitoring of accounts, and increase communication with law enforcement on suspicious activity.

- a. Can you provide a status update on the policy implementation to ensure the deposit fund program has the necessary oversight?
 - b. What steps does BOP take to screen inmate transactions at Butner FCI for suspicious activity? Does BOP report suspicious activity to the Financial Crimes Enforcement Network?
 - c. Does BOP coordinate with other law enforcement entities such as the U.S. Marshals Service, the relevant U.S. Attorney, or any other law enforcement entity to monitor inmate trust fund accounts to ensure any financial obligation of an inmate is pursued?
14. On September 23, 2021, I sent a bipartisan letter to BOP Director Carvajal with three of my Senate colleagues. The letter highlights the recent reports that BOP is failing to fully implement the First Step Act's medication-assisted treatment (MAT) program and use the appropriated funding by Congress to expand access to opioid treatment medication throughout the federal prison system.
 - a. At this time, I have not received a response to this letter. Can you please provide an update as to when we can expect a response to this letter?
 - b. Can you provide the number of FCC Butner inmates that have been screened for participation in the MAT program? How many inmates are currently eligible to receive treatment through the MAT program?
 - c. How many FCC Butner inmates are currently receiving treatment through the MAT program? What is the total number of inmates that have received treatment through the MAT program since the First Step Act was signed into law?
 - d. What specific actions have you taken to expand access to the MAT program among federal inmates, particularly following the May 2020 Government Accountability Office report titled "Improved Planning Would Help BOP Evaluate and Manage Its Portfolio of Drug Education and Treatment Programs"? What is the status of your compliance with the GAO recommendations related to MAT treatment programs?
 - e. Are there any additional concerns that we should be aware about when it comes to the MAT program or evidence based treatment? What additional funding or authorities would be helpful from Congress in order to fully implement the MAT program?
15. Staffing remains a consistent challenge at BOP facilities across the country. While staff augmentation is a tool in extraordinary circumstances to fill vacant positions, I am concerned this is an unsustainable model and that DOJ and BOP must develop and implement strategies to address staffing shortages.
 - a. How many positions currently remain vacant at FCI Butner? What is the current staff vacancy rate?
 - b. How much has Butner FCI been required to use augmentation to address

staffing? What percentage of the current staff is being forced to perform tasks outside their training or expertise?

- c. Does BOP have a specific plan to address any staff shortages at FCI Butner?
- d. Do you support the use of direct hiring authority by BOP to ease staffing shortages at FCI Butner and nationwide?

Illicit Drugs

16. On September 30, 2021, U.S. Drug Enforcement Administration (DEA) Administrator Anne Milgram announced that a total of 9.5 million fake pills have been seized this year. 1.8 million fake pills were seized and 810 arrests were made nationwide in a two-month operation called "One Pill Can Kill." Administrator Milgram highlighted that the fake pills laced are being produced by Mexican criminal drug networks and being sent to the United States.

- a. What efforts is DOJ taking to stop these illicit networks from distributing fake pills into our communities?
- b. In April 2021, the Raleigh, NC DEA field office representative also provided an alert that fake pills are being advertised to children on Snapchat by drug dealers. The advertisements on social media applications have already led to North Carolina children overdosing. What action is DOJ taking to stop drug dealers from using social media to advertise fake pills or other illicit drugs to our vulnerable children?
- c. What outreach is DOJ and the DEA doing to inform North Carolina parents of the threats of fake pills and illicit drugs in the community?

17. In North Carolina, our law enforcement officers are working tirelessly to stop the spike in illicit drug use and sales. In February 2021, the Caldwell County Sheriff seized 36,000 fentanyl pills. Most recently, in September 2021, New Hanover County Sheriff's office made a bust that led to 2 kilograms of cocaine and 20,000 bags of heroin.

- a. What initiatives is are DOJ and DEA taking to work with North Carolina local and state law enforcement to address the spike in illicit drugs in our streets?
- b. What resources does DOJ have available for North Carolina state and local law enforcement to help tackle the illicit drug problem? Are there any resources that are readily available for North Carolina's rural law enforcement officers?
- c. Does DOJ have any strategies or diversion plans that North Carolina local and state law enforcement can use to confront the spike in illicit drugs and overdoses? How are US Attorneys and other federal officials working with local and state officials to confront overdose deaths?

Crime Victims

18. The State of North Carolina has 35 accredited and 12 provisional Children's Advocacy Centers (CAC). CAC's provide technical support, annual training, assistance with local center development, networking, and contacts with child abuse

professionals across the U.S. Since COVID-19, North Carolina CAC's have seen their VOCA funding diminish. Congress passed the *VOCA Fix Act of 2021* in July to address ongoing concerns about funding for crime victims and to collect funds directly from deferred prosecution agreements.

- a. Has DOJ started implementing the *VOCA Fix Act*? What specific actions has DOJ taken to implement this law? When do you expect the law to be fully implemented?
 - b. Can you please provide the most up to date information about the status of the Crime Victims Fund (CVF)? How much total funding did the CVF collect in FY21? How much of that funding was a result of the *VOCA Fix Act*?
 - c. How much do you estimate the Crime Victims Fund will collect in FY22? How much of that funding do you estimate will be a result of the *VOCA Fix Act*?
 - d. Does DOJ have any additional resources for North Carolina CAC's that need urgent assistance as they wait for VOCA funding?
19. Since COVID-19, North Carolina has seen an increase in violence and dwindling funding. Without the necessary funding, advocate groups cannot provide the necessary assistance to victims. What is DOJ doing to ensure that resources and funding are adequately reaching grantees and advocate groups?
20. In 2012, the U.S. Government Accountability Office (GAO) reported that DOJ lacked visibility over the extent to which its grant programs overlap. Can you give me an update on what DOJ has done or is doing to manage the VAWA grant programs and ensure victims get the necessary resources? Do you believe Congress should combine VAWA grant programs to prevent overlap and ensure funding is efficiently distributed?
21. In 2018, the DOJ Office of Inspector General (OIG) reported that that 42 percent of VAWA grants had not been closed in a timely manner.
- a. What is DOJ doing to ensure that proper audits are conducted so grantees and victims get the necessary resources and funding in an adequate time?
 - b. Do you believe the lack of timely grant closures is an internal problem by DOJ? Or do you think there is a legislative remedy to address this?

US Marshals Detention Space

22. As you may recall, on March 22, 2021, I sent a letter to you regarding the decision to close Rivers Correctional Institution (RCI) in Herford County, North Carolina. The closure of this facility resulted in hundreds of job losses in a very rural part of the state. We have heard from officials in the state concerned about access to detainee bedspace.

Because RCI was closed, U.S. Marshals are required to travel significant distances across the state to transfer individuals for pre-trial detention. I understand there is interest from federal judicial officials, including the local U.S. Marshal, to permit the use of RCI to expand bed space.

- a. Are you aware of such interest from federal officials in the state?

- b. Is DOJ willing to permit the use of RCI as additional bed space for the U.S. Marshals?
- c. Is it DOJ's opinion that President Biden's executive order would prohibit the U.S. Marshals from using this facility? If so, have you raised this issue with President Biden to make clear the public safety interest of having access to these facilities?
- d. Will you commit to working with the U.S. Marshals in North Carolina to ensure they have access to detainee bed space which is practical and protects public safety?

International Parental Child Abduction

23. On October 1, 2021, I sent a letter with Senator Feinstein regarding the issue of international parental child abduction. Your responses to the questions posed in that letter are very important to help Senators consider legislation to improve our nation's response to IPCA crimes.

- a. Can you please provide an update on the status of the October 1, 2021 letter, and when Senator Feinstein and myself can expect a response?
- b. How many individuals have been charged under the IPKCA each year from 2010-2020?
- c. In how many cases has an extradition request been formally presented to a foreign government each year from 2010-2020? In how many of those cases was the individual successfully extradited to the United States?
- d. How many individuals were convicted or pleaded guilty under the IPKCA each year from 2010-2020? Please provide a separate number of convictions and guilty pleas.
- e. What was the average sentence imposed on those convicted or who plead guilty under IPKCA each year from 2010-2020? Please provide a separate average for convictions and for guilty pleas.
- f. In how many of the cases prosecuted each year from 2010-2020 was the abducted child or children successfully returned to the left-behind parent?
- g. Which countries have participated in the *Executive Symposia on Child Exploitation, Human Trafficking, and Model Laws*? How much of the programming is focused on IPCA? Does the Department have adequate funding to conduct additional symposia and address the IPCA crisis?
- h. You provided several examples of presentations and trainings provided to DOJ employees and federal, state, local, and tribal law enforcement officers and prosecutors. Since these trainings appear to have occurred in 2017 and 2018, are there additional trainings planned for 2021 and beyond to raise awareness of resources and authorities to combat IPCA? Will the Department incorporate more voices from left- behind parents into these trainings?
- i. What efforts are being taken to expand outreach and education to civil courts and attorneys to help identify high-risk cases and prevent abduction from occurring?

- j. Are there any additional authorities which Congress can provide to DOJ to assist with its investigation and enforcement of our nation's IPCA laws?

Cybersecurity

- 24. As co-chair of the Senate Cybersecurity Caucus, I am working to elevate the cybersecurity public policy conversation. What are the top priorities that Congress should address to help your agency and the Administration better fight cybersecurity attacks? Are there additional authorities which Congress should provide to assist you in preventing, investigating, and prosecuting cybercrimes?
- 25. We have seen an increase of cyberattacks over the past year, threatening our national and economic security. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue.
 - a. What must be done to improve coordination among the many actors that play a role in combatting cyberattacks, stopping future attacks, and bringing the bad actors to justice?
 - b. Please provide a list of the various components of the Justice Department that address cybersecurity incidents. How are you ensuring that the Justice Department is effectively coordinating within its various areas of expertise to address cyber incidents and cybercrimes?
 - c. How are you ensuring that the Justice Department is effectively coordinating with other government agencies, including CISA and the Secret Service, on these issues?
 - d. How will you increase cooperation between private actors and companies—particularly companies engaged in cutting edge research and development of emerging technologies—and the federal government on these issues?
- 26. Last week, Deputy Attorney General Lisa Monaco spoke about various efforts being pursued by DOJ to combat cyber threats. These were the (1) Comprehensive Cyber Review, (2) Ransomware and Digital Extortion Task Force, (3) Civil Cyber-Fraud Initiative, and (4) the National Cryptocurrency Enforcement Team.
 - a. Please provide a description of the purpose of each of these efforts, and the goals of each effort. How is DOJ measuring success in these efforts?
 - b. What actions have been taken by each of these efforts, and what progress has been made in each to improve cyber threat responses?
 - c. Are there additional efforts that DOJ intends to undertake to combat cyber threats?
- 27. In August, I led the introduction of S. 2629, the Better Cybercrime Metrics Act along with Senators Schatz, Cornyn, and Blumenthal. This important legislation will help improve how we identify and report cybercrimes.
 - a. Do you agree that this legislation is an important contribution in the fight against cybercrime?

- b. Does DOJ support enactment of this legislation?
 - c. If this bill is passed, will you commit to its full implementation as quickly as possible? How would you insure that DOJ components will act quickly to implement its requirements?
- 28. In June, you requested the largest increase in cyber resources for the Justice Department in over a decade, \$1.5 billion, for protecting our nation from cyberattacks and cybercrime. How will you prioritize spending of these resources to minimize fragmentation, overlap, or duplication of efforts between your Department and other federal government agencies?
- 29. In July, we heard from the Department of Justice in our Ransomware hearing that the reluctance to report ransomware incidents and payments made may be driven concerns “including a fear of regulatory action or reputational harm, or of an interruption to business operations.”
 - a. What other reasons are there for the failure to voluntarily report?
 - b. Would you recommend a mandatory reporting scheme?
 - c. If so, what assurances is the Justice Department prepared to give those who report incidents to address these concerns, including harm to reputation, regulatory retaliation, or harms to intellectual property?
 - d. What policies should the government have to safeguard data provided by companies to combat ransomware attacks?
- 30. DHS has implemented hiring practices aimed at recruiting and retaining cybersecurity professionals. Has DOJ taken similar efforts to implement hiring practices directed at the recruitment and retention of cybersecurity professionals? If so, please provide details about these efforts.
- 31. On June 30, the U.S. Government Accountability Office listed 12 open priority recommendations, including two on cybersecurity.
 - a. What progress has the Justice Department made on these priority recommendations to-date?
 - b. With respect to the cybersecurity recommendations, has the Department fully implemented the coordination between its cybersecurity and enterprise risk management (ERM) functions?

32. In July, the Justice Department submitted written testimony annexing proposed language for a draft

“Cybercrime Mitigation Act.” It tracks two sections of the International Cybercrime Prevention Act, S.2139, a bipartisan bill that I cosponsored with Senators Whitehouse, Graham, and Blumenthal.

However, certain provisions were omitted. For example, the proposed Cybercrime Mitigation Act does not create increased penalties for those who damage critical infrastructure computers and does not connect felonious computer fraud and abuse to racketeering activities.

- a. Please explain why provisions that were part of the Cybercrime Prevention Act were not included in the proposal, and specifically address why provisions specifically addressing critical infrastructure would not be helpful.

Antitrust

33. The Justice Department’s Antitrust Division under the previous Administration took the view that the policies of the patent laws and the antitrust law are aligned, with the mutual aim of fostering dynamic competition through innovation. However, in June of this year, Acting Assistant Attorney General Richard Powers stated that the Antitrust Division is rethinking its approach to the intersection of antitrust and intellectual property.

- a. Do you agree that reliable, predictable, quality patent rights promote vigorous, dynamic competition to the benefit of consumers and that the Antitrust Division should continue to support patent rights as a key driver of innovation and a competitive American economy?
- b. Do you agree that universities, companies and small inventors that commit time, resources and capital to engage in risky research and development (R&D) activities to develop the next generation of standards and that seek to be rewarded for their successful innovations to obtain fair and adequate compensation for the use of their patented technologies should be allowed and encouraged to assert their IP rights in good faith without being labeled as “patent trolls” or chilled by threats of antitrust enforcement action or private antitrust litigation?
- c. I understand the Department of Justice is considering revising the 2019 Joint USPTO, NIST and DOJ Policy Statement on Remedies for Standards-Essential Patents subject to Voluntary F/RAND Commitments. Is it doing this independently from the Secretary of Commerce?
- d. I understand the Justice Department’s Antitrust Division plans to provide “clearer guidance on what good faith licensing negotiation looks like and how bad faith conduct can hinder competition.” Will this guidance involve public consultations? Will it involve steps that each party should take, and how quickly it should act, before a court may declare the negotiations to have failed so the SEP holder may enforce remedies? Will it involve consultations with the United States Patent and Trademark Office, NIST, and the Secretary of Commerce? What role will patent policy play in this guidance?
- e. Does the Department of Justice intend to change the Antitrust Division’s policy,

as reflected in that Policy Statement, that antitrust law should not normally play a role in FRAND licensing disputes between SEP holders and potential licensees? Will it wait until it has a Senate-confirmed leader in place before making further changes?

- f. Can you commit that the Department of Justice's Antitrust Division under will treat the non-sham assertion of intellectual property rights and requests for patent remedies provided under federal law as protected by the Noerr-Pennington Doctrine?
34. The Supreme Court has recognized that private standards can have significant procompetitive advantages but that there need to be procedures that prevent the standard-setting process from being biased or manipulated by members with economic interest in stifling competition in violation of section 1 of the Sherman Act. In that context, are you prepared to ensure that the Department of Justice enforces Section 1 aggressively to prevent collusive activity by manufacturers of standards-compliant products that subvert the voluntary consensus-based processes of standards development organizations to deprive patent owners of fair and reasonable compensation for their standards-essential patented technologies?
35. An issue that is particularly important to me is the relationship between IP theft and competitiveness. In 2019, Senator Coons and I sent a letter to the Attorney General applauding the withdrawal of a previous 2013 policy that addressed patented technologies embedded in global standards. We were particularly concerned that the 2013 policy treated patents that are part of global standards differently than other patents in terms of the remedies available for IP theft. My concern is that while the United States is leading at the moment in technologies like 5G, China is becoming more competitive every day. Companies like Huawei with strong support from the Chinese government are challenging our leadership when it comes to innovation. And technological innovation is especially vital to a strong and growing economy.

President Biden has now issued an Executive Order directing the Attorney General and the Secretary of Commerce to reevaluate the current policy and consider returning to an approach of weaker protections for these patents. At the same time, however, the order stresses the importance of the United States maintaining its leadership in 5G.

In that same 2019 letter Senator Coons and I sent, we stressed the importance of coordination throughout the government. Not only the Department of Justice, but also the Patent and Trademark Office and the National Institute of Standards and Technology are responsible for setting policy on technologies embedded in global standards. Yet, the USPTO and NIST do not have confirmed leaders.

- a. Do you believe it is important for there to be confirmed leadership before any drastic changes are made to how this Administration treats patent protections?
- b. How will you specifically take into account global competitiveness with China when it comes to evaluating intellectual property policy?

36. In the copyright space, the Department of Justice has overseen the music consent decrees that have governed the public performance of music for 80 years. Songwriters and publishers have long argued—and I fully agree—that the consent decrees are outdated—especially for the digital age. Following a lengthy review of the consent decrees, the past administration left the consent decrees with ASCAP and BMI untouched.
- a. What are your thoughts about whether and when it would be appropriate to lift the consent decrees?
 - b. Do you believe there should be a free market in music? If not, why not?
 - c. Wouldn't a truly free market in music licensing encourage innovation?
 - d. What is the rationale for allowing some companies to operate outside of consent decrees but not ASCAP and BMI?
37. What is your opinion about whether certain large market players like Google and YouTube have an obligation under antitrust law to make tools like Content ID available on equal terms to all creators?
38. As you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition. And a big area right now where more antitrust scrutiny is likely needed is the technology industry—particularly big internet companies.
- g. How do you think the Department of Justice should approach antitrust enforcement against what we think of as “big tech”?
 - h. How should it coordinate its approach with other agencies—including the Commerce Department and the Federal Trade Commission—that also have competencies with respect to these issues?
 - i. How will the Department approach cross-cutting issues related to data that have antitrust implications but that may also implicate intellectual property, national security, cybersecurity, privacy, and other concerns?
39. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. At the same time, Facebook and Google have repeatedly refused to negotiate in good faith with news publishers for their carrying their content on Facebook and Google. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?

Intellectual Property

40. I understand that the Department of Justice's attention to intellectual property enforcement has been somewhat inconsistent over the years. During the times that IP enforcement has properly been regarded as a high priority, the Department generally had put into place a structure that emphasizes its importance and takes a coordinated approach involving all the stakeholder components. During your nomination hearing, I asked you what type of organizational structure you planned to put in place at DOJ, as well as other steps you will

take, to ensure that protecting American intellectual property will be regarded as a high priority under your leadership.

- a. What steps have you taken so far, and what do you plan to take in the coming year, to enhance the investigation and prosecution of intellectual property crimes?
41. In the past, the Department of Justice has contributed to legislative development updating criminal intellectual property laws, including felony streaming, enhancing penalties for counterfeit military goods, and creating a federal civil cause of action for misappropriation of trade secrets and permitting racketeering charges based on trade secret theft. What can Congress do to further improve the Department of Justice's policies and efforts relating to the prevention and investigation of intellectual property crimes? What are your top priorities with respect to the Justice Department's intellectual property mission?
42. How do you plan to work proactively with the IP Enforcement Coordinator alongside DOJ's sister agencies, especially DHS, to coordinate IP enforcement across the government? In addition, please provide specific information about your plan to combat counterfeit products, online piracy, and copyright crimes, and the theft of trade secrets.
43. The Department of Justice's Computer Hacking and Intellectual Property (CHIP) program in the past Administration placed a high priority on fostering international cooperation and coordination of criminal IP enforcement efforts. Do you intend to continue this tradition? What plans does the Justice Department have for its international enforcement efforts? Does it intend to expand or enhance current programs, including the Intellectual Property Law Enforcement Coordinator (IPLEC) program?
44. Last Congress, Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called "streaming loophole" by giving the Department the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn't allow the Department to target individual streamers, companies pursuing licensing deals in good faith, or internet service providers. This law is what we call a win-win for everyone.
 - a. Have you taken any action to ensure that the Justice Manual is updated to provide guidance on prosecutions under this law? If not, how soon can you update the Justice Manual to provide guidance?
 - b. Will you ensure that such guidance makes clear that—per the plain, clear, and unambiguous words of the statute—that prosecutions should only be pursued against commercial piracy services?
 - c. Have any prosecutions been pursued under the Protecting Lawful Streaming Act? If so, how many? If not, why not?
 - d. What steps is the Department of Justice doing to educate rights holders about the Protecting Lawful Streaming Act and to work with them to enforce their rights?
45. As you likely know, reforming our nation's patent eligibility standards is one of my top priorities. The current state of patent eligibility law is in shambles. The standards are so unworkable that you have judges saying things like a garage door opener is an abstract idea. That's bizarre and well-beyond the scope of what any reasonable person would

conclude. These unworkable standards are having an adverse impact on a number of sectors, from life- sciences and precision medicine to quantum computing, 5G, and artificial intelligence. If the

United States is going to remain the world's leader in innovation, we have to fix this. That's why I'm doing everything I can, from hearings, letters, and draft legislation, to filing an *amicus brief* in the *American Axle* case. But I can't do it alone.

- a. Will you direct the Solicitor General to find appropriate cases on patent eligibility and to urge the Supreme Court to take them up and finally provide clarity in this area of the law?

ATF Administration

1. As of the date of this correspondence, what is the number of FTISB evaluation requests still pending a final determination response from ATF to the requesting party?
2. Of the pending evaluation requests disclosed in response to question 1, how many of them have been pending for over one year?
3. Of the pending evaluation requests disclosed in response to question 2, how many of them have been pending for over two years?
4. Does ATF (including FAT-D and/or FTISB) feel that it is empowered to issue determination letters that are conflicting or are based on conflicting interpretations of governing law or regulation?
5. Does ATF feel that determination letters from FTISB or FAT-D have any precedential effect or implications within the ATF?
6. What is ATF's current processing time for NFA eForm 6's, paper form 6's and paper form 4's, respectively?
7. Does ATF have a realistic goal for when Form 4's will be available for e-filing (i. e. when will eForm 4's be available), and what is that approximate date?
8. What steps is ATF and/or DOJ actively taking to expedite the approval timelines and delays for NFA eForm filings and paper form filings?
9. Does DOJ and/or ATF believe that disabled persons, including disabled firearms enthusiasts, hunters, and sportsmen, are a substantial factor in the nation's present violent crime epidemic?
10. Do DOJ and/or ATF believe that banning (or substantially increasing the regulation of) prosthetic equipment, such as "stabilizing braces" (aka "arm braces") used by disabled firearms enthusiasts, hunters, and sportsmen will have a substantial impact on reducing violent crime in the United States?
11. Has the DOJ or ATF been providing assistance, guidance or advice in support of third-party civil lawsuits against those businesses within the firearms industry?

Senator Marsha Blackburn
Questions for the Record to Hon. Merrick Garland
Attorney General

1. Please identify all individuals who played a role in drafting, reviewing, and approving the October 4th DOJ memorandum concerning “harassment, intimidation, and threats of violence” at school board meetings.
2. You testified that the October 4th DOJ memorandum was based on the NSBA letter and news reports. Please submit, for the record, the news reports you are referencing.
3. In the NSBA letter that you used as justification for the October 4th directive, NSBA noted that “in Virginia, an individual was arrested.” You have previously stated that this was justification for calling in the FBI. Is it standard practice at DOJ to take such dramatic actions based on mere accusations from special interest groups?
4. Will you guarantee to the Judiciary Committee, and make clear to the American people, that the DOJ under your leadership will not interfere with the rights of parents to attend school board meetings and express their concerns?
5. You testified that you didn’t know Susan Hennessey—that you didn’t think you had met her before and that you were not aware of her partisan-charged remarks concerning the Durham investigation. Nonetheless, you assured me that she has no role in or oversight over the Durham investigation. Given your statements about not knowing who Susan Hennessey is, how were you able to guarantee me that she has no role in or oversight over the Durham investigation?
6. Within the DOJ, who has a role in or oversight over the Durham investigation?



Department of Justice

DEPARTMENT OF JUSTICE RESPONSES

To

QUESTIONS FOR THE RECORD FROM
THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE PATRICK LEAHY**

1. In September the Senate Judiciary Committee held a hearing to examine the Justice Department Inspector General's report on the FBI's unacceptable handling of the Larry Nassar investigation. While the Justice Department initially declined to bring charges against the FBI agents involved in this investigation, I was encouraged to learn that the Department is now reviewing that declination decision based on "new information that has come to light."
 - a. Attorney General Garland, do you have any updates with regard to that review and its timeline?

RESPONSE:

As the Deputy Attorney General testified before the Senate Judiciary Committee on October 5, 2021, the Assistant Attorney General for the Criminal Division, Kenneth Polite, undertook a review of the September 2020 decision not to bring federal criminal charges against two former FBI special agents in connection with their involvement in the FBI's investigation of Lawrence Nassar. The Criminal Division's review was led by experienced prosecutors who carefully reviewed and analyzed the evidence gathered in the investigation. On May 26, 2022, the Criminal Division's decision to adhere to its prior decision not to bring federal criminal charges was made public.

The Criminal Division's decision does not in any way reflect a view that the Justice Department condones the conduct of the former agents; nor does it reflect a view that the investigation of Lawrence Nassar was handled as it should have been. As I have testified before Congress, the institutional failures here are unspeakable and quite apparent.

2. Key provisions related to the Foreign Intelligence Surveillance Act (FISA) authorized under the USA FREEDOM Act have expired. Congress must not only reauthorize these authorities but reform them. That includes the pro-civil liberties reforms made by the Lee-Leahy amendment that garnered 77 votes last Congress, would strengthen the amici process, and improve the disclosure of exculpatory evidence in the FISA court system.
 - a. During your confirmation hearing, you spoke about serious problems with the FISA application process, something we learned from the DOJ Inspector General's recent report. Will you commit to working with Senator Lee and me to pursue FISA reforms to provide greater protections to the civil liberties of all Americans?

RESPONSE:

The Justice Department welcomes the opportunity to work with you and Senator Lee on this issue. An important way to maintain the public's trust in the use of the Foreign Intelligence Surveillance Act is to ensure adherence to the civil liberties protections built into the Act.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE CORY BOOKER**

1. According to press reports, President Biden is using his clemency authority to commute the sentences of a subset of people on home confinement. A memo sent on September 10, 2021, from the Bureau of Prisons (BOP) and correspondence with the Office of Pardon Attorney confirmed that the Biden Administration currently is expediting clemency consideration for people on home confinement who have between 18 and 48 months remaining on sentences for nonviolent drug offenses.
 - a. What is the Department of Justice (DOJ) doing to ensure that clemency petitions are quickly reviewed and transferred to the President? What specific aspects of the clemency process have been expedited?
 - b. The Office of the Pardon Attorney has a large backlog of cases—roughly 15,000 petitions for pardon or commutation are currently pending. What is DOJ doing to expedite the clemency petitions pending for people on home confinement under the CARES Act?

RESPONSE:

Individuals on home confinement under the CARES Act for non-violent drug offenses who have between 18 and 48 months remaining on their sentences are eligible for the expedited screening program. However, the Office of the Pardon Attorney continues to accept and process clemency petitions from all eligible individuals. In all cases, clemency review is individualized and includes an assessment based on a totality of relevant and appropriate factors. Individuals who have been identified as meeting the parameters of the expedited screening program who submit commutation petitions using the standard form receive priority consideration. On April 26, 2022, the President granted clemency to 78 individuals, including three pardons and 75 commutations.

In addition, with respect to individuals on home confinement under the CARES Act, on December 21, 2021, the Office of Legal Counsel issued an opinion concluding that section 12003(b)(2) of the CARES Act and the Bureau's preexisting authorities give the Bureau discretion to permit prisoners on extended home confinement to remain there even after the COVID-19 national emergency ends.

In light of that opinion, I have directed that the Department engage in a rulemaking process to ensure that the Department lives up to the letter and the spirit of the CARES Act. The proposed rule is presently under review. The Department will exercise its authority so that those who have made rehabilitative progress and complied with the conditions of home confinement, and who in the interests of justice should be given an opportunity to continue transitioning back to society, are not unnecessarily returned to prison.

2. The decision to limit expedited clemency review will exclude many individuals transferred to home confinement as a result of the CARES Act. While everyone transferred was convicted

of a nonviolent offense, many are serving sentences for non-drug-related offenses or have sentences with more than 48 months remaining.

Why are individuals with nonviolent offenses being excluded from clemency review if they have non-drug-related offenses or greater than 48 months remaining on their sentence?

RESPONSE:

Individuals on home confinement under the CARES Act for non-violent drug offenses who have between 18 and 48 months remaining on their sentences are eligible for the expedited screening program. However, the Office of the Pardon Attorney continues to accept and process clemency petitions from all eligible individuals. In all cases, clemency review is individualized and includes an assessment based on a totality of relevant and appropriate factors.

3. One of the pillars of the First Step Act is that it enables individuals who are incarcerated in BOP facilities to, under certain circumstances, earn increased time in pre-release custody—that is, to move from prison to a halfway house or home confinement. This serves both the individuals and society as it encourages participation in recidivism-reduction activities such as educational programs or prison jobs. It has been reported that DOJ in some cases has denied individuals earned time credits because the programs they participated in did not qualify, and that DOJ is reviewing the list of qualifying programs.
 - a. Can you describe the implementation of earned time credits and DOJ's review of qualifying programs? What are the criteria for determining whether a program qualifies for earned time credits?
 - b. Is DOJ making efforts to ensure that the programs are as robust as possible in order to encourage participation and help reduce recidivism?
4. BOP recently reopened a comment period for a proposed rule that would revise its procedures regarding time credits. Specifically, the proposed rule would limit eligibility of earned time credits under the First Step Act for D.C. Code Offenders. The First Step Act specifically included people in BOP custody as covered by the First Step Act. What is DOJ's position on this issue?

RESPONSE:

On January 13, 2022, the Department of Justice announced that a new rule had been submitted to the Federal Register implementing the Time Credits program required by the First Step Act (FSA) for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be viewed here:

<https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>. In April, the Department released the 2022 FSA Annual Report, which describes application of the new time credits rule at section 2(B)(4). The report can be viewed here: <https://www.ojp.gov/first-step-act-annual-report-april-2022>.

Inmates are eligible to earn time credits retroactively back to Dec. 21, 2018, the date the First Step Act was enacted, subject to a Federal Bureau of Prisons' (BOP) determination of eligibility. Eligible inmates may earn 10 to 15 days of time credits for every 30 days of successful participation in Evidence Based Recidivism Reduction Programs and Productive Activities.

BOP reports that time credits earned through programming by eligible inmates are tracked. The earned credits can be applied toward earlier placement in pre-release custody, such as Residential Reentry Centers (RRC) or home confinement (HC). Additionally, at the BOP Director's discretion, up to 12 months of credit can be applied toward Supervised Release (SR).

BOP advises that implementation of the time credits rule is occurring on a rolling basis, beginning with immediate releases for inmates whose time credits earned exceed their days remaining to serve, are less than 12 months from release, and have a SR term. Accordingly, the BOP reports that it has been transferring eligible inmates out of BOP facilities and into RRC, HC, and SR since the time credits rule was finalized and many more transfers will take place as BOP calculates and applies time credits for eligible incarcerated individuals.

To determine which programs qualified for FSA Time Credits, BOP advises that experts reviewed the scientific literature on each program and assigned them to the appropriate category based on the FSA's statutory definitions. Additionally, an external vendor was used to independently assess programs submitted for consideration by outside entities. BOP reports that it offers a wide variety of programs applicable to the FSA. For instance, more than 80 programs have been approved and published in the FSA Program Guide. All of these approved programs were designed to address one or more of the BOP's 13 defined needs areas.

BOP reports that it has utilized FSA funds to build new programming in areas where there is a high demand. Examples of ongoing work include new programs for inmates with serious mental illness and those requiring structured family engagement. BOP has also been focused on building capacity in its programs through adding staff.

To assess program outcomes, the BOP reports that it has partnered with contract researchers. Three solicitations were announced in 2021, and program evaluation work has commenced. Both long- and short-term metrics are being used to assess not only recidivism impacts, but effects on other variables of interest such as symptom reduction and behavioral change.

5. When George Floyd was murdered by a police officer in Minneapolis, thousands of people took to the streets demanding an end to the police violence. Since then I have worked with my colleagues in Congress, with civil rights organizations, and with some of the largest law enforcement organizations in the country to find a common ground to address the historic and systemic issues of police misconduct. One area of broad agreement is that there is no public data about how many people are killed by police or how often police use excessive

force. Law enforcement officials believe there is value in having this data so that they can identify harmful practices and address them. Yet we have no way of knowing the full picture because, unlike with the Uniform Crime Reporting program, there is no uniform system for collecting and reporting data. In 2015, the Federal Bureau of Investigation (FBI) began developing a national police use-of force database, and, in 2019, it started collecting data from police departments. The FBI is supposed to make the data public, but right now none of the data from nearly 5,000 departments that have voluntarily reported have been published. When will the data on use-of-force incidents that DOJ and FBI have collected be made public?

RESPONSE:

Pursuant to the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521, the Office of Management and Budget (OMB) reviews and approves federal agencies' requests to implement data collection efforts. With respect to the FBI's National Use-of-Force Data Collection, OMB has stipulated that the FBI must achieve participation from law enforcement agencies representing at least 60% of all sworn law enforcement officers in the United States in order to publish data on use-of-force incidents. On May 31, 2022, the FBI released 2021 data based on a participation level of 63%. The FBI also released 2022 first quarter data. See <https://www.fbi.gov/news/press-releases/press-releases/fbi-releases-2021-and-first-quarter-2022-statistics-from-the-national-use-of-force-data-collection>.

6. The data that the FBI currently collects is small. It is limited to uses of force that result in death or serious bodily injury, but that doesn't give us a full picture of the incidents—that is, we want to know whether an officer inappropriately used deadly force even if the person was lucky enough to survive. And we want to know when kids are being mistreated. A study that was released just last week of 3,000 use-of-force incidents across 25 law enforcement agencies found that children under 16 made up more than 50% of those who were handled forcibly, even though they make up 15% of the population. Kids as young as 6 were handcuffed, stun gunned, and pinned to the ground. Those statistics are alarming.
 - a. Does DOJ plan to expand and improve the quality of the data collected?
 - b. Is DOJ working with law enforcement agencies to help facilitate reporting?

RESPONSE:

With respect to efforts to expand and improve data submission by law enforcement agencies, the FBI advises that on January 1, 2021, it fully transitioned to a new system, known as the National Incident-Based Reporting System (NIBRS), to collect and disseminate comprehensive data relative to crimes committed within the United States on an annual basis. The NIBRS collects more comprehensive crime data than the prior system, making it a more effective tool for law enforcement, policymakers, and analysts to understand crime and make better informed decisions. The FBI reports that this transition has provided greater context at the national level to allow the FBI and its contributing agencies to identify and address evolving crime issues.

In July 2021, the FBI made another new system – NIBRS Collection Application (NCA) – available to non-transitioned states and local agencies. NCA enables users to directly enter and submit crime data to the FBI for processing, retention, and publication.

The FBI reports that it continues to focus on stakeholder engagement with state law enforcement agencies to help ensure violent crime and other crime data are available to the law enforcement community and other users. The FBI also advises that it is assisting with state-based data transition efforts by making resources available such as technical assistance, data integration support, training.

7. DOJ grants to law enforcement support law enforcement agencies' efforts to acquire and use new technologies. Civil rights groups have raised concerns that these technologies rely on algorithms that replicate and exacerbate racially discriminatory practices. How has DOJ exercised oversight and accountability mechanisms to ensure that law enforcement agencies are not using these grant funds on technologies that can effectively exacerbate problems of racial discrimination?

RESPONSE:

On the compliance side, each applicant for a Department of Justice grant must certify prior to acceptance of an award (typically, through the Office of Justice Program's (OJP's) "Certified Standard Assurances" and "General Conditions") that it will comply (and it will require any subrecipient to comply) with applicable civil rights laws and nondiscrimination provisions. The Office for Civil Rights (OCR) at OJP enforces these civil rights laws and nondiscrimination provisions by reviewing and investigating administrative complaints received from individuals or groups who believe that they have experienced discrimination from an organization that receives funding from the Department. If, after evaluation and investigation, it is determined that the complaint has merit, the OCR works with the Department funding recipient to remedy the complaint and ensure compliance.

On the programmatic side, OJP's Bureau of Justice Assistance (BJA), in partnership with the National Police Foundation, plans to embark on a series of executive-level discussions with law enforcement practitioners, community-based organizations, researchers, private sector industry, and other privacy experts to develop guidance around the use of new technologies by law enforcement.

8. Under your tenure, DOJ has opened three pattern-or-practice investigations of police departments, including in Minneapolis, where George Floyd was murdered. The Department has stated that these cases can take anywhere from six months to a year to investigate. There is, however, a case that was opened under 34 U.S.C. § 12601 in December 2016 into the Orange County Attorney's Office and Sheriff's Department systematic violations of defendants' 14th Amendment due process rights that has never been resolved. What is the status of that case and does DOJ have plans to issue findings? Are there other cases that have remained open this long and do you have a plan for resolving them?

RESPONSE:

Longstanding policy and practice of the Department generally prevents us from commenting on any investigations beyond the charging and other public documents.

9. President Biden proposed \$5 billion in community violence prevention funding in his Build Back Better plan. This type of investment in addressing the scourge of gun violence is long overdue and I firmly believe that we cannot address the gun violence epidemic solely through law enforcement. Rather we need effective public safety solutions rooted in crime prevention, community health, rehabilitation, and support for crime victims. What efforts is DOJ making to support community-based violence intervention strategies?

RESPONSE:

In FY 2021, the Office of Community Oriented Policing Services (COPS) prioritized applications for jurisdictions that supported Community Violence Intervention (CVI) programs and that sought to hire officers who would engage directly with CVI teams and other community stakeholders. For example, two areas of focus for the 2021 COPS Hiring Program (a \$156 million program) were gun violence reduction and CVI. In addition, the 2021 School Violence Prevention Program (a \$53 million program) prioritized applicants with high rates of gun violence, with an emphasis on wraparound services for students most likely to engage in, or be victimized by, gun violence.

Similarly, last year, OJP reports that it prioritized existing resources to support CVI strategies. OJP also engaged with the field through a series of listening sessions, which are informing the development of a toolkit to assist communities in developing and enhancing CVI strategies. The Department also coordinated with the White House and other federal agencies to develop a series of webinars on CVI. For FY 2023, the President's Budget requests \$250 million for CVI, an increase of \$200 million over the FY 2022 enacted level.

In FY22, the Consolidated Appropriations Act provided \$50 million in Community Based Violence Intervention and Prevention Initiative (CVIPI). On April 19, 2022, OJP released two solicitations seeking applications for CVIPI. These solicitations are intended to prevent and reduce violent crime in communities by supporting comprehensive, evidence-based violence intervention and prevention programs, including efforts to address gang and gun violence, based on partnerships among communities, residents, local government agencies, victim service providers, community-based organizations, law enforcement, hospitals, researchers, and other community stakeholders.

10. In 2006, the FBI issued a report sounding the alarm bell of the infiltration of white supremacists in law enforcement. Among other things the FBI investigation found that, "Although white supremacist groups have historically engaged in strategic efforts to infiltrate and recruit from law enforcement communities, current reporting on attempts reflects self-initiated efforts by individuals, particularly among those already within law enforcement

ranks.”¹ It also found that infiltration can jeopardize the safety of law enforcement sources and personnel. More recently, a hack exposed law enforcement officers who are members of the anti-government and nativist group the Oath Keepers. This issue is a serious threat to our national security and to the communities that police are sworn to protect and serve.

What steps is DOJ taking to address the infiltration of law enforcement by white supremacists? And is the Department investigating law enforcement affiliations with white supremacy?

RESPONSE:

Taking appropriate steps to help ensure that government employees have integrity, are trustworthy, and do not engage in unlawful acts is very important to us. We have internal vetting processes for employees. For instance, the FBI reports that every new applicant to the FBI is thoroughly vetted by the FBI’s Security Division, which conducts a comprehensive Background Investigation in accordance with applicable Executive Orders and ODNI guidelines. The Department is conducting an internal review, working with all of our law enforcement components, to look at these vetting and background check processes. That review is ongoing.

¹ FBI Counterterrorism Division, FBI Intelligence Assessment, White Supremacist Infiltration of Law Enforcement (Oct. 17, 2006), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_Supremacist_Infiltration_of_Law_Enforcement.pdf.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM RANKING MEMBER CHARLES GRASSLEY**

1. Under your leadership, the Department expunged Andrew McCabe's record of lying to government officials under oath several times over three different occasions. At the October 27 oversight hearing, you stated that it would have cost more to defend McCabe's termination, specifically saying: "the assessment made by the litigators was that the bill to the taxpayers would be higher if we didn't resolve the matter as it was resolved." Please provide all records relating to the referenced assessment.

RESPONSE:

As I testified before the Senate Judiciary Committee on October 27, 2021, the Department's settlement with Mr. McCabe was based upon an assessment by experienced attorneys regarding the prospects of success in the case and the likelihood of losing on the merits.

2. At the October 27 oversight hearing, you stated that Susan Hennessey, an employee in the National Security Division, "has nothing whatsoever to do with the [Special Counsel] Durham investigation."² As you are aware, on June 29, 2021, Senator Johnson and I sent you a letter that raised concerns about Ms. Hennessey's political bias against the Durham investigation based on negative public comments she made about it and asked whether or not she had been recused from the matter.³ In your July 13, 2021, response letter you failed to say that Ms. Hennessey "has nothing whatsoever to do" with Durham's investigation and failed to answer all of our questions relating to Ms. Hennessey, namely, whether she has been officially recused from the Durham investigation, including whether or not she has any access to Durham investigation records and the report. As you are also aware, on February 3, 2021, and March 9, 2021, we wrote letters to you with respect to Nicholas McQuaid, the then-Acting Assistant Attorney General for the Criminal Division and current Principal Deputy Assistant Attorney General for the Criminal Division, and his conflicts of interest in the Hunter Biden criminal case.⁴ In those letters, we specifically raised concerns about the fact that Mr. McQuaid worked with Hunter Biden's criminal attorney until he was hired by the Biden Administration on

² *Oversight of the Department of Justice: Full Committee Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Oct. 27, 2021), <https://www.judiciary.senate.gov/meetings/10/20/2021/oversight-of-the-department-of-justice>.

³ Letter from Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, & Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to Merrick Garland, Attorney General, U.S. Dep't of Justice (June 29, 2021),

https://www.judiciary.senate.gov/imo/media/doc/grassley_johnson_to_justice_dept_hennessey_conflicts.pdf.

⁴ News Release, On Day One, Biden Installed Law Partner Of Son's Defense Lawyer At DOJ Criminal Division, Charles E. Grassley (Feb. 3, 2021), <https://www.grassley.senate.gov/news/news-releases/on-day-one-biden-installed-law-partner-of-sons-defense-lawyer-at-doj-criminal-division>; see also Letter from Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, & Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to Monty Wilkinson, Acting Attorney General, U.S. Dep't of Justice (Mar. 9, 2021), <https://www.grassley.senate.gov/download/grassley-johnson-to-justice-dept-mcquaid-follow-up>.

January 20, 2021. On February 19, 2021, and March 23, 2021, you failed to provide adequate responses to answer the threshold questions about whether Mr. McQuaid has or had any role in the Hunter Biden criminal case and whether he has been recused from it. In light of your recent testimony, where you found the ability to publicly state that Ms. Hennessey “has nothing whatsoever to do” with the Durham investigation, there is no basis upon which you can continue to refuse to answer these threshold questions relating to Mr. McQuaid:

- a. Does Mr. McQuaid have anything whatsoever to do with the Hunter Biden criminal matter? If so, please explain.
- b. Has Mr. McQuaid been recused from the Hunter Biden criminal matter? If so, when? Please provide all records showing that he is recused.

RESPONSE:

As the Justice Department explained in letters dated February 19, 2021, March 22, 2021, and February 2, 2022, the then-Acting Assistant Attorney General received ethics and professional responsibility training when he entered service at the Department of Justice. He also signed the Ethics Pledge as required under the Executive Order on Ethics Commitments by Executive Branch Personnel (Executive Order 13989), pursuant to which—as well as pursuant to applicable standards set forth in statutes, regulations, and longstanding Department policies and procedures—he is recused from matters in which he has a financial interest or a personal business relationship, including matters involving his former law firm. Beyond that, we cannot comment about the matters on which particular attorneys work.

3. Approximately 80% of all economic espionage prosecutions brought by the Justice Department allege conduct that would benefit the communist Chinese government, and there is at least some nexus to China in around 60% of all trade secret theft cases. In November of 2018, the Trump Justice Department responded to these concerns by unveiling the China Initiative. The Initiative focused on identifying priority trade secret theft cases and ensuring that those investigations are fully resourced, developing an enforcement strategy concerning non-traditional collectors—like members of China’s Thousand Talents Program; and identifying opportunities to better address supply chain threats. Director Wray recently testified that the bureau opens around 700 Chinese espionage investigations a year. Under the Biden administration, the Initiative appears to have been dismantled. In addition, a number of prosecutions brought under the China Initiative were also recently dismissed by the Biden administration. Over a two-day period in July, five prosecutions of researchers were dropped.⁵ These dismissals came days before Deputy Secretary of State Wendy Sherman traveled to China. A prosecution against a Huawei executive was also resolved with a relatively light deferred prosecution agreement.⁶

⁵ Shawna Chen, *DOJ Drops Cases Against 5 Chinese Researchers*, AXIOS (July 24, 2021), <https://www.axios.com/doj-chinese-researchers-china-initiative-56de2651-15b6-400d-add1-6f46fc97eb88.html>.

⁶ Aaron Katersky, *US Enters Deferred Prosecution Agreement With Detained Huawei Executive Weng Manzhou*, ABC NEWS.

- a. Has the Department shut down the China Initiative? If so, why?
- b. The Biden Justice Department seems to be eager to shed these cases and take a much softer and even supportive approach with China. Is the Justice Department going to pursue economic espionage and other misconduct from China aggressively? If so, what metrics can you show Congress to prove it?

RESPONSE:

The Justice Department remains fully committed to enforcing the criminal laws that protect intellectual property, critical and emerging technology, and other national assets essential to our nation's security and prosperity. And as I testified before the Senate Judiciary Committee on October 27, 2021, the Department places a high priority on countering threats to national assets posed by the government of the People's Republic of China.

To ensure we do so in a way that is consistent with the foundational values of the Justice Department, and make decisions about prosecutions based on the facts and the law, and not based on race, ethnicity, national origin, or any other improper factor, I asked the Assistant Attorney General for the National Security Division to undertake a review of our approach to countering those threats.

In remarks delivered on February 23, 2022, the Assistant Attorney General described the Division's new "Strategy for Countering Nation-State Threats."

- 4. Under Attorney General Barr, the Justice Department created Joint Task Force Vulcan to specifically combat the deadly violent gang MS-13. Since President Biden's inauguration, the Justice Department has seemingly made no mention of Joint Task Force Vulcan. Additionally, because your Department hasn't responded to my oversight letter from early August about MS-13 and Joint Task Force Vulcan, it's completely unclear what the Department is doing about MS-13.
 - a. Does Joint Task Force Vulcan still exist? If not, why not? If it does exist, what are its current staffing and funding levels, and how do these levels compare to this time last year?
 - b. If the Biden Administration has decided to disband Joint Task Force Vulcan, are there currently any Department-wide task forces or initiatives to replace it? If so, which ones?

RESPONSE:

The work of Joint Task Force Vulcan is ongoing and remains an important piece of the Department's comprehensive approach to combating the violent criminal activities of MS-13 and other transnational criminal organizations. The Department's effort to disrupt and defeat MS-13 is also led by experienced and dedicated prosecutors in the Criminal Division's Organized Crime and Gangs Section (OCGS) and numerous United

(Sept 24, 2021). <https://abcnews.go.com/Business/ns-enters-deferred-prosecution-agreement-detained-immigrant-executive/story?id=80216600>.

States Attorneys' offices in districts with MS-13 presence. Examples of the Department's ongoing efforts to combat MS-13 include but are not limited to:

- *United States v. Miguel Diaz*, in which, on April 25, 2022, an MS-13 leader was sentenced to life in prison for racketeering offenses connected to five murders in Maryland and Virginia. See <https://www.justice.gov/opa/pr/ms-13-leader-sentenced-life-prison-racketeering-offenses-connected-five-murders-maryland-and>.
- *United States v. Rivas Moreira, et al.*, in which, on April 7, 2022, seven MS-13 members were charged with racketeering conspiracy and murder in aid of racketeering, along with other crimes, related to the planning and execution of a violent attack against rival gang members that resulted in two deaths, two attempted murders, and a nationwide lockdown of all inmates in the Federal Bureau of Prisons (BOP) for almost a week. See <https://www.justice.gov/usao-edtx/pr/7-ms-13-members-charged-double-murder-inside-federal-penitentiary-beaumont-texas>.
- *United States v. Brayan Torres et al.*, in which, on January 7, 2022, a federal judge in the District of Maryland unsealed a superseding indictment charging nine members of MS-13 with racketeering conspiracy involving murder, extortion and money laundering. See <https://www.justice.gov/opa/pr/nine-ms-13-gang-members-indicted-racketeering-conspiracy>.

The Justice Department is committed to continuing its comprehensive effort to combat MS-13 and other dangerous gangs. The Department regularly reviews its various anti-gang initiatives and, when appropriate, will use lessons learned to improve other initiatives or consider structural or operational revisions to ensure that the Department's efforts to defeat transnational criminal organizations are as effective as possible.

5. In September, President Biden issued a vaccine mandate that applies to Executive Branch employees, which includes immigration judges, attorneys, and other employees of the Department of Justice. On September 15, the Department issued a memo stating that all visitors entering DOJ buildings or facilities—except for those entering to “obtain a public service or benefit”—must complete a form attesting that they are fully vaccinated or present a negative COVID-19 test result from within three days prior to entry. Subsequent to that memo, the Executive Office for Immigration Review made a determination that illegal immigrants and their lawyers are visitors entering Department facilities to “obtain a public service or benefit” and are, therefore, exempt from the mandate.
 - a. Why are American employees subject to harsher rules than illegal immigrants and their lawyers?

- b. Do you agree with one Justice Department official quoted in the media that “a double standard undermines the rationale for the vaccine mandate and puts everyone at risk?”⁷

RESPONSE:

EOIR advises that it is balancing the competing needs of public service and public health. EOIR takes seriously its roles to both protect the health and safety of the individuals within its space while also ensuring all individuals are provided with appropriate due process under the law. In light of EOIR’s need to balance its mission with the public health issues associated with the pandemic, EOIR has adopted a measured approach to the COVID-19 testing and vaccination requirements. EOIR continues to adapt and adjust to new and changing local, state, and federal guidance concerning COVID-19 protocols.

6. I condemn all forms of domestic terrorism – right or left. Public concerns have been raised about the unequal treatment of those who rioted in the summer of 2020 and those who were present at the Capitol riot on January 6. This concern is echoed by a federal judge assigned to various January 6 cases. U.S. District Court Judge Trevor McFadden questioned why federal prosecutors had not brought more cases against those accused in the 2020 summertime protests, and suggested that DOJ was being too hard on January 6 defendants compared to those who were arrested during the protests following George Floyd’s murder. Further, U.S. District Judge Royce C. Lamberth found that a January 6th defendant’s civil rights had been abused with a severe delay for surgery for a broken wrist and referred the matter to the Attorney General for investigation. By contrast, the Department has dismissed many cases related to the riots at the federal courthouse in Portland, Oregon. In June, I wrote to you regarding the dismissal of more than half of the federal prosecutions regarding the assault on the courthouse. The Department has failed to respond. This can’t be stressed enough: the facts and the law must be applied equally in order for the public to keep faith in it. And the rule of law must stand even for the most unpopular defendants.
- a. What are you doing to build the Department’s expertise in its neglected, left-wing anarchist extremism program?
 - b. What are you doing to prove that you’re treating rioters who attack government buildings the same?

RESPONSE:

The Department is committed to investigating, disrupting, and bringing to justice those who engage in violence in violation of federal law, regardless of any underlying ideology. The FBI, working with state and local law enforcement, has opened and continues to pursue investigations involving violent activity. U.S. Attorneys’ offices in multiple jurisdictions have brought charges where the facts show that a federal crime has been

⁷ Stephen Dinan, *Illegal Immigrants Exempt From DOJ’s Vaccine Mandate At Deportation Hearings*, THE WASHINGTON TIMES (Oct. 20, 2021), <https://www.washingtontimes.com/news/2021/oct/20/illegal-immigrants-exempt-doj-s-vaccine-mandate-dep/>

committed. In cases where crimes fall exclusively within state or local jurisdictions, the Department provides regular assistance as appropriate.

The Justice Department has dedicated substantial investigative and prosecutorial resources from components across the Department and in dozens of jurisdictions nationwide to bring charges in numerous cases in connection with violence during the summer and fall of 2020 that was aimed at government institutions.

The Justice Department has and will continue to aggressively pursue those who engage in violent criminal activity such as the destruction of property and violent assaults on law enforcement.

7. On August 31, 2021, the U.S. completed the total withdrawal of American military and diplomatic forces from Afghanistan. There is a concern that Afghanistan will now turn into the same type of safe haven for terrorism that allowed the 9/11 hijackers to plan and train there at will. On September 28, 2021, I sent an oversight letter to the Department about their efforts to identify and stop Afghanistan “traveler” cases, where individuals might travel to Afghanistan and become radicalized against the U.S. Director Wray publicly stated at the Homeland Security Committee’s Worldwide Threats Hearing that Afghanistan could become a safe haven.⁸ We must do what we can to ensure that ISIS or other terror groups do not use Afghanistan as a safe haven to recruit and train Americans as radicalized lone wolf terrorists.
 - a. Has the Department seen any uptick in terrorism “traveler” cases to Afghanistan, or anywhere else, since the U.S. withdrawal earlier this summer?
 - b. Has the Department taken any new steps or instituted any new measures since the U.S. withdrawal from Afghanistan to address the possibility of traveler cases abroad given the near certainty that Afghanistan will revert into a pre-9/11 terrorism safe haven?

RESPONSE:

Combating terrorist threats is one of the Justice Department’s highest priorities. The Department will continue to devote all needed and appropriate resources to respond to a wide range of terrorism threats, including threats posed by those who seek to travel abroad to join terrorist groups.

The FBI reports that it has worked closely with the U.S. Intelligence Community (USIC), Customs and Border Protection, and international partners to track threat reporting emanating from Afghanistan and monitor any travel of FBI subjects and individuals potentially associated with foreign terrorist organizations (FTOs) in the region. The FBI also reports that it monitored our investigations for homegrown violent extremist (HVE) reactions to the Afghanistan withdrawal and worked with the National Counterterrorism

⁸ *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11: Full Committee Hearing Before the S. Comm. on Homeland Security & Governmental Affairs, 117th Cong. (Sept. 21, 2021),* <https://www.hsgac.senate.gov/hearings/threats-to-the-homeland-evaluating-the-landscape-20-years-after-9-11>.

Center (NCTC) and the Department of Homeland Security (DHS) to develop indicators to help identify an increased HVE threat to the United States.

In addition, the FBI advises that it continues to track all threat reporting emanating from Afghanistan for any potential threats to the United States from FTOs in coordination and collaboration with the Intelligence Community. The FBI continues to work with domestic and international partners to track threat reporting from Afghanistan.

8. Recently released emails appear to show that Hunter Biden and Joe Biden may have shared joint bank accounts.⁹ Given the fact that Hunter Biden is under criminal investigation by the Department relating to financial matters, what are the conditions under which a special counsel would be warranted? In addition, have you ever discussed the Hunter Biden criminal case with President Biden or anyone in the White House?

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on or confirming or denying the existence of any investigation.

9. On July 20, 2021, I wrote a letter to the Department with respect to a July 5, 2016, FBI Electronic Communication (EC) from the Washington Field Office, which showed that the FBI conducted an “assessment” on the non-profit group, Concerned Women for America (CWA). That assessment was publicly reported on July 14, 2021.¹⁰ The EC noted that the assessment was done “to determine the possibility of fraudulent activity” relating to “embezzlement” and “corporate fraud” and also noted an “[i]ntelligence” aspect to the FBI’s review.¹¹ Much of the EC is redacted, however, the unredacted portions cause serious concern about the FBI potentially targeting CWA without a sufficient basis. For example, the EC notes that part of the predicate for the assessment included the fact that CWA allegedly received a score of 70.45 from Charity Navigator and an alleged two-star rating. The EC also noted that the FBI could not locate any derogatory information on CWA and its officers in what may be searchable government databases, which are blocked by redactions. The EC concludes with a recommendation that the FBI not open an investigation into CWA. The Department has failed to respond to my letter.
 - a. Please provide a complete and unredacted copy of the July 5, 2016, FBI Electronic Communication on CWA.
 - b. Please provide a full description of all activities the FBI engaged in with respect to CWA and what the FBI believed to be the authorized purpose to engage in such activity.

⁹ Fox News Staff, *Turley: There Are Now Serious Questions About A Biden Family 'Influence-Peddling Operation'*, FOX NEWS (Oct 13, 2021), <https://www.foxnews.com/media/joe-hunter-biden-finances-influence-peddling-investigation-turley>.

¹⁰ Patrick Eddington, *The FBI's Unjustified Targeting of Concerned Women for America*, THE ORANGE COUNTY REGISTER (July 14, 2021), <https://www.ocregister.com/2021/07/14/the-fbis-unjustified-targeting-of-concerned-women-for-america/>.

¹¹ *Id.*

- c. On what date did the FBI begin the assessment of CWA and why? On what date did the FBI close the assessment?
- d. Please provide all Electronic Communications and related records, including 302s, with respect to CWA.
- e. Please provide a list of all agencies that the FBI interfaced with during its assessment of CWA.
- f. For each year dating back to January 1, 2016, how many “assessments” did the FBI perform? Please provide a list for each year and note what type of assessment was conducted and the party subject to the assessment.

RESPONSE:

I understand that the FBI responded to your letter on December 10, 2021. As that letter noted, with respect to your questions regarding particular assessments, longstanding policy and practice of the Department generally prevents us from commenting on or confirming or denying the existence of any investigation or sharing criminal subject or victim information.

10. On June 9, 2021, I wrote to you requesting information relating to the FBI’s relationship with the Department of Commerce’s (DOC) Investigations and Threat Management Service (ITMS). As I noted in my letter, I am concerned about ITMS’s rogue intelligence and law enforcement activity. On September 3, 2021, the DOC Office of General Counsel released a report titled, “Report of the Programmatic Review of the Investigations and Threat Management Service.”¹² In the report, the DOC found that ITMS did not possess adequate legal authority to investigate an array of criminal activity it sought to address.¹³ For example, ITMS neither had the authority to submit or execute search warrants nor conduct counterintelligence investigations, yet it did so anyway.¹⁴ As a result of the totality of ITMS’s conduct, the DOC recommended the elimination of the entire ITMS unit and to redistribute the remaining responsibilities to other units within the DOC.¹⁵

On August 27, 2021, the FBI provided a response to my June 9, 2021, letter. In that letter, the FBI stated that it participated in ITMS-led briefings “regarding ongoing cybersecurity concerns and potential investigative cases” with respect to the 2020 Census. However, the letter failed to provide any detail or context with respect to those

¹² U.S. DEP’T OF COMMERCE, OFFICE OF THE GENERAL COUNSEL, REPORT OF THE PROGRAMMATIC REVIEW OF THE INVESTIGATIONS AND THREAT MANAGEMENT SERVICE (Sept. 3, 2021), [20210903-ITMS-Report.pdf \(commerce.gov\)](https://www.commerce.gov/sites/default/files/2021-09/03-ITMS-Report.pdf).

¹³ *Id.* at 7–8.

¹⁴ *Id.* at 11, 14–15, 24. See also U.S. SENATE COMMERCE COMMITTEE MINORITY STAFF, COMMITTEE INVESTIGATION REPORT: ABUSE AND MISCONDUCT AT THE COMMERCE DEPARTMENT (July 2021), <https://www.commerce.senate.gov/services/files/C4ABC46A-7CB0-4D51-B855-634C26E7CF70>.

¹⁵ U.S. DEPARTMENT OF COMMERCE, OFFICE OF GENERAL COUNSEL, REPORT OF THE PROGRAMMATIC REVIEW OF THE INVESTIGATIONS AND THREAT MANAGEMENT SERVICE, at 7, 24 (Sept. 3, 2021), [20210903-ITMS-Report.pdf \(commerce.gov\)](https://www.commerce.gov/sites/default/files/2021-09/03-ITMS-Report.pdf).

concerns and cases. In addition, the letter noted that the FBI provided “analytical and investigative assistance to ITMS” but failed to provide any detail with respect to those efforts.

Moreover, the letter also noted that the FBI “passively receives criminal referrals from ITMS,” but failed to provide any documentation or information relating to those criminal referrals. In light of ITMS’s brazen use of false authority to conduct law enforcement and intelligence activity and the clear relationship between the FBI and ITMS, please provide the following information:

- a. A list of all briefings FBI attended with ITMS relating to “ongoing cybersecurity concerns and potential investigative cases” with respect to the 2020 Census. In the list, please provide the date the briefing took place, the title, the subject matter to be discussed, attendees and all supporting documentation. If the FBI participated in briefings or similar activity with ITMS outside the scope of “ongoing cybersecurity concerns” and “potential investigative cases” relating to the 2020 Census, please provide the same information.
- b. With respect to the FBI’s provision of “analytical and investigative assistance to ITMS,” please describe, in detail, what that assistance was for, when the assistance was provided, what assistance was provided and all supporting documentation.
- c. With respect to FBI’s statement that it “passively receives criminal referrals from ITMS,” please describe the process and purpose for which the FBI receives these “passive criminal referrals.” In addition, please provide a list of all criminal referrals, passive or otherwise, that ITMS provided to the FBI and a description of the activity that the FBI engaged in with respect to each referral.

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on or confirming or denying the existence of any investigation. However, as a general matter, the FBI is the lead federal agency for investigating cyberattacks and intrusions. The FBI relies on our unique mix of authorities, capabilities, and partnerships to impose consequences against our cyber adversaries. And the Department collects and shares intelligence and engages with victims while working to unmask those committing malicious cyber activities, wherever they are.

The FBI advises that it participated in ITMS-led briefings regarding ongoing cybersecurity concerns and potential investigative cases with respect to the 2020 Census. At that time, the FBI reports that ITMS provided briefings to the working group regarding ongoing cybersecurity concerns and potential investigative cases.

In accordance with the FBI’s Domestic Investigations and Operations Guide, the Attorney General’s Guidelines for Domestic FBI Operations, and other applicable laws and guidance, the FBI predicates investigations of individuals based on an allegation or

information indicating that a federal crime or a threat to national security has occurred or may occur in the future.

The Justice Department respectfully refers you to the Department of Commerce for additional information regarding ITMS.

11. On June 8 of this year, the news website ProPublica began publishing a series of articles that appear to be based upon confidential taxpayer information that was leaked or hacked from the Internal Revenue Service. Almost immediately, Treasury Secretary Yellen stated that the matter had been referred to the Department of Justice, among other law enforcement entities. With other Senators, I sent two letters to the Department asking for an investigation and asking several questions. The Department of Justice responded to both letters with a single form letter providing no information beyond "Department policy will preclude us from providing your office with any information related to this matter outside the public record." This response is wholly inadequate and the American taxpayer deserves more accountability.
 - a. Do you agree that the leak or hack of confidential taxpayer data from the IRS is a serious issue and the investigation of this matter should be a priority for the Department of Justice and the FBI?
 - b. Do you agree or disagree with the response of the IRS in a letter of September 13 to myself and Senator Crapo that, "We do not yet know whether there has been a data breach or a threat of a data breach"?

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on or confirming or denying the existence of any investigation. However, as a general matter, the Justice Department takes seriously any allegation of the disclosure of confidential taxpayer information. The Secretary of the Treasury has testified that the Internal Revenue Service is looking into this matter, as is the Treasury Inspector General for Tax Administration.

12. On October 6 of this year, I sent a letter to the Department and to the Bureau of Alcohol, Tobacco, Firearms and Explosives asking questions to follow-up on reporting that ATF had improperly assigned law-enforcement personnel to exclusively administrative positions and that those improperly classified positions could mistakenly qualify for law enforcement benefits, such as Law Enforcement Availability Pay.
 - a. A document that I included as an attachment to my letter noted that the Office of Personnel Management found that 94 positions had been misclassified. It appears that these positions are within the Human Resources and Professional Development units at ATF. Has the Department of Justice investigated whether this practice of misclassified employees occurred throughout ATF and in other Bureaus? If so, how prevalent is it? If not, why not?
 - b. Reporting on this issue notes that a whistleblower at ATF brought this matter to the attention of his supervisors and believes his employment was terminated as a result. Do you support the efforts of whistleblowers to bring matters of concern to

light? Do you and the Department of Justice oppose any effort to retaliate against any whistleblower?

RESPONSE:

As the Department noted in its April 8, 2022, response to your letter, the Department's Justice Management Division (JMD) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), working with the Office of Personnel Management (OPM), have reviewed the positions that OPM determined ATF had misclassified and concurred that 53 positions were misclassified. ATF's own internal review identified 17 additional positions that were misclassified. Of the misclassified positions, 15 are unencumbered (vacant). JMD and ATF advise that they have been working diligently to implement corrective actions with respect to these 70 positions and continue to work with OPM to resolve classification determinations on the remaining positions identified by OPM.

In addition, the Department has contracted with the National Academy of Public Administration to conduct a review of all law enforcement components within the Department and ensure that positions have been and will continue to be correctly classified.

The Justice Department shares your view that whistleblowers do a great service and provide essential information about violations of law and rules, and about the mismanagement and waste of taxpayer funds. Any retaliation against whistleblowers is intolerable.

13. On June 29, 2021, and August 4, 2021, I worked with Chairman Durbin to send letters to the Director of the Bureau of Prisons asking several questions about the maintenance of accounts that are held on behalf of federal prisoners. These letters were sent in response to reporting that prisoners were not required to satisfy debts such as child support and victim restitution. It was reported that convicted sex criminal Larry Nassar had thousands of dollars flow through his account while making minimal payments towards court ordered restitution. The Department of Justice responded to our letters with a note that it planned reforms. My staff and Chairman Durbin's staff have continued to press for full responses to the questions contained in both letters.

- a. What is the status of reforms to the administration of prisoner accounts maintained by the Bureau of Prisons? Are prisoners being required to satisfy, based on their ability to pay, their financial obligations? Please provide copies of any new policies or procedures the Bureau of Prisons or the Department have developed to ensure prisoners must satisfy their financial obligations.

RESPONSE:

I share your concern and agree that inmates must not be permitted to use Bureau of Prisons accounts to engage in unlawful activity or avoid obligations like court-ordered restitution. That is why in August 2021, the Deputy Attorney General issued a directive to the Bureau of Prisons to implement appropriate reforms to its current policies and

procedures that would strengthen monitoring and reporting of these accounts, as well as identify funds that should be encumbered for financial obligations.

Implementation of this directive is underway. As one step in addressing these issues, the Bureau of Prisons issued additional guidance to wardens on account monitoring and is currently revising its Program Statement regarding the Inmate Financial Responsibility Program. In addition, the Department is evaluating appropriate BOP policies and procedures with respect to offsets. The Department also continues to consult with the Department of Treasury on this, as appropriate.

The Department's leadership is working closely with the Bureau of Prisons to continue to identify areas for improvement and to implement reforms.

- b. Does the Bureau of Prisons recognize child support judgements that are applicable to federal prisoners and help prisoners to meet those obligations?

RESPONSE:

The Bureau of Prisons advises that it recognizes all verifiable child support judgments. BOP advises that—in an effort to help meet prisoners meet those obligations—once staff verify child support orders sent to the Bureau, BOP staff will meet with the inmate to develop a plan to make payments for all obligations owed on the federal case and child support.

- c. Will you ensure that the Department and the Bureau of Prisons regularly update myself and Chairman Durbin regarding efforts to reform the administration of prisoner accounts, and ensure that the BOP fully responds to our letters?

The Bureau of Prisons advises that it is committed to responding to your inquiries and is working to gather the information and data you have requested.

14. On October 6, 2021, Deputy Attorney General Lisa Monaco announced a new civil cyber-fraud initiative to use the False Claims Act to combat new and emerging cyber threats to the security of sensitive information and critical systems.
 - a. To what extent is the Department focused on situations involving non-compliance or deficient cybersecurity, as opposed to cases involving an actual breach?
 - b. In terms of initiating its own cases, will the Department be receiving regular reports from the Department of Defense Cyber Crime Center or from the Supplier Performance Risk System?
 - c. Are there particular types of non-compliance that the Department will be mostly focused on?
 - d. How will the Department define “deficient” cybersecurity products and services, and what criteria will it use to trigger an investigation into whether a given product or service is “deficient”?
 - e. Does the Department plan to hire additional personnel or set up a specific task force to bring these specific cybersecurity cases? If so, how many?

f. How will the Department calculate damages in these particular cases?

RESPONSE:

The Justice Department recognizes that most entities and individuals who do business with the government abide by contract terms and obligations, and that cyber intrusions may result even when a contractor has a robust monitoring, detection, and reporting system. However, when contractors knowingly fail to implement and follow required cybersecurity requirements or misrepresent their cybersecurity practices or capabilities, False Claims Act (FCA) enforcement is an important part of the federal response.

The goal of the initiative is to hold accountable those entities that put government information or assets at risk by knowingly providing deficient cybersecurity products or services, misrepresenting their cybersecurity practices or protocols, or violating obligations to monitor and report cybersecurity breaches. Thus, a violation may arise in the context of an actual breach, but a breach is neither necessary nor sufficient for FCA liability.

The Department is collaborating closely with its Department of Defense partners on the Initiative, including identifying the best ways to share information to support the objectives of the Initiative.

As noted above, the initiative is designed to hold accountable those entities that put government information or assets at risk. We anticipate focusing in particular on contractors and grantees who knowingly: fail to comply with statutory, regulatory, or contractual cybersecurity standards; misrepresent their cybersecurity practices to induce or retain a contract or grant; or fail to monitor or report cybersecurity breaches or other incidents.

As in other areas of FCA enforcement, the Department will assess the deficiency of cybersecurity products and services on a case-by-case basis by looking to the requirements set by statutes, regulations, contracts, and grants, and assessing the materiality of those requirements. The Department anticipates initiating investigations based on a variety of sources, including tips, whistleblower complaints, agency referrals, and self-disclosures, where the information received indicates that a FCA violation may have occurred.

The Department will rely on the personnel in its Civil Division, Commercial Litigation Branch (Fraud Section), and in the United States Attorneys' offices to pursue these matters and is committed to ensuring that they have the necessary resources to do so. The Department also anticipates relying on the expertise and resources of its federal partners, as well as outside experts and consultants.

The Department will follow the same approach it uses in other FCA matters and calculate damages based on the loss sustained by the government on a case-by-case basis.

15. This committee held a hearing about serious deficiencies in the FBI's investigation of Larry Nassar, the disgraced former doctor of USA Gymnastics. Nonetheless, the

Department did not send a representative to our important oversight hearing. Director Wray did appear. How do you explain the Department's refusal to appear? How will victims feel empowered if the Department does not even come to hear their testimony?

RESPONSE:

The Justice Department was represented by the Director of the FBI at the Senate Judiciary Committee's September 15, 2021, oversight hearing concerning the report released by the Justice Department's Inspector General on July 14, 2021, entitled *Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastic Physician Lawrence Gerard Nassar*. The Justice Department's Inspector General, Michael Horowitz, also testified alongside Director Wray at the September 15, 2021, hearing. In addition, on October 5, 2021, the Deputy Attorney General testified before the Senate Judiciary Committee and recognized the many courageous women athletes who have spoken out and testified on behalf of the hundreds of survivors of Larry Nassar's horrific sexual abuse, thanking the Committee and the Inspector General for "bringing to light a system that inexcusably failed [the survivors] and the scores of other survivors."

16. In July of this year, I wrote to the Department asking that it reopen the investigation of the FBI agents whose egregious misconduct appear to have allowed numerous assaults to continue long after Nassar's victims first came forward. I was pleased to learn in October the Department agreed to reevaluate those investigations. What is the timeline for your review?

RESPONSE:

As the Deputy Attorney General testified before the Senate Judiciary Committee on October 5, 2021, the Assistant Attorney General for the Criminal Division, Kenueth Polite, undertook a review of the September 2020 decision not to bring federal criminal charges against two former FBI special agents in connection with their involvement in the FBI's investigation of Lawrence Nassar. The Criminal Division's review was led by experienced prosecutors who carefully reviewed and analyzed the evidence gathered in the investigation. On May 26, 2022, the Criminal Division's decision to adhere to its prior decision not to bring federal criminal charges was made public.

The Criminal Division's decision does not in any way reflect a view that the Justice Department condones the conduct of the former agents; nor does it reflect a view that the investigation of Lawrence Nassar was handled as it should have been. As I have testified before Congress, the institutional failures here are unspeakable and quite apparent.

17. The child sexual tourism statute, 18 U.S.C. 2423, contains language that may limit its application in cases where gymnasts were abused overseas. Will you commit to working with my office on a statutory fix to the child sexual tourism statute to ensure evil conduct like Larry Nassar's never happens again?

RESPONSE:

Yes. The Department looks forward to working with you to ensure that this never happens again.

18. Regarding your October 4, 2021, memo discussing, “Partnership, among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” (October 4 memo), how many U.S. Attorneys have convened meetings with federal, state, local, Tribal, or territorial leaders to discuss the subject matter of that memo?

RESPONSE:

The October 4, 2021, memorandum directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district within 30 days of” the memorandum’s issuance. There are 93 United States Attorneys across the country.

19. Prior to issuing your October 4 memo, what analysis did you conduct, if any, to determine how that memo might chill the speech of those who wish to communicate with school officials throughout the United States?

RESPONSE:

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” These protections clearly and importantly cover debate concerning school board policies.

The memorandum is entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” The Justice Department has a responsibility to keep the American people safe.

20. What instructions, if any, did you provide the various U.S. Attorneys, or any other Department of Justice personnel, about protecting the First Amendment rights of parents and other citizens who contact their local school officials to express their concerns about school administration when executing your October 4 memo’s directions?

RESPONSE:

My October 4, 2021, memorandum is addressed to the Director of the FBI, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and the United States Attorneys. The memorandum makes absolutely clear in the

first paragraph that “spirited debate about policy matters is protected under our Constitution.”

21. Since issuing your October 4 memo, how many reports to federal law enforcement have local officials made about communications or other contacts with citizens? What is the Department of Justice’s protocol for storing information provided in such reports that involve activity not reasonably suspected of rising to the level of federal criminal activity, including but not limited to the following matters:
 - a. Who stores that information?
 - b. How is it stored?
 - c. How long is it stored for?
 - d. What are the standards for sharing that information with other Department of Justice personnel?
 - e. What are the standards for sharing that information with personnel outside of the Department of Justice?

RESPONSE:

The Department takes seriously its obligation to protect the security and privacy of the personal information it stores. Consistent with Section 208 of the E-Government Act of 2002 and Department policy, the Department prepares a privacy impact assessment (PIA) for all of its information systems that contain personally identifiable information. Each PIA explains how personally identifiable information is collected, used, shared, and stored; as well as the security standards that apply to the system. The Department’s PIAs are publicly available, subject to exceptions for “security reasons, or to protect classified, sensitive, or private information contained in an assessment,” as provided for by Section 208(b)(C) of the E-Government Act. DOJ components’ PIAs can be found here: <https://www.justice.gov/opcl/doj-privacy-impact-assessments>.

22. Has the Department of Justice conducted any analysis regarding recruitment and retention efforts of law-enforcement agencies throughout the country over the last year, such as measuring a drop in law-enforcement applicants or an increase in law enforcement resignations? If so, what are the results of that analysis and the reasons for it?

RESPONSE:

The Justice Department’s Bureau of Justice Statistics (BJS) advises that it conducts a Law Enforcement Management and Administrative Statistics survey every four years. Through that survey, BJS asks a nationally representative sample of law enforcement agencies a series of questions, including hires, departures, and different recruiting efforts they undertake. (See questions 18-27 of the survey at https://bjslecs.org/LEMAS_Local_2020_fillable.pdf). The most recent survey was conducted in 2021, and BJS advises that it expects to release the results of this survey by the end of 2022.

23. Has the Department of Justice conducted any analysis regarding diminished local police activities in neighborhoods throughout the United States over the last year? If so, what are the results of that analysis and the reasons for it? To what degree have federal law enforcement officers had to increase their activities on criminal matters that would have otherwise been normally handled by state and local law-enforcement agencies prior to mid-2020?

RESPONSE:

The Justice Department is responsible for enforcing federal law and defending the interests of the United States. While the Department prioritizes supporting our state and local law enforcement partners, the Department respects the jurisdiction and authority of our state and local partners over matters of non-federal criminal law.

24. Has the Department of Justice conducted any analysis regarding an increase in shootings targeting law-enforcement officers over the last year? If so, what are the results of that analysis and the reasons for it?

RESPONSE:

The FBI advises that it publishes data from the Law Enforcement Officers Killed and Assaulted (LEOKA) Data Collection each year to provide information about officers who were killed, feloniously or accidentally, and officers who were assaulted while performing their duties. Under the umbrella of the FBI's Uniform Crime Reporting (UCR) Program, LEOKA data has traditionally been released on FBI.gov on the UCR Publications webpage.

Beginning in May 2021, LEOKA data for 2020 and all future UCR data is released exclusively on the FBI's Crime Data Explorer (CDE) website where data users can access and sort a variety of data.

Over the years, researchers relying on the LEOKA Data Collection have been conducting in-depth research regarding incidents in which officers are killed or assaulted. The published research gives officers a sharper understanding of what types of scenarios and circumstances have resulted in fatalities and assaults. The FBI advises that these articles and publications also contain information obtained through extensive interviews with officers and offenders involved in critical incidents to develop lessons learned, trends, and curriculum development for the FBI's Officer Safety Awareness Training (OSAT). The objective of the Bureau's OSAT, which has been provided to thousands of law enforcement partners in the U.S. and around the world, is to assist law enforcement with identifying issues and circumstances that may contribute to officer deaths and assaults and help prevent them. To address the increase in threats against our nation's law enforcement officers, LEOKA trainers are studying the data with the purpose of shaping future training to help reverse this trend.

In addition, the Department's COPS Office advises that it does include information on shootings targeting law enforcement officers in its annual Blue Alert report to Congress. The most recent report reflects data through 2020 and is available here: https://cops.usdoj.gov/pdf/blue-alert/2021_report.pdf.

25. Pending legislation would restrict federal grants to anti-bias training for law-enforcement agencies. What is the specific nature of such anti-bias training? In such grant-qualifying anti-bias training, what do law-enforcement officers typically learn? Does such training ever consist of segregating law-enforcement officers by race for the purpose of providing them different training based on their race? If so, how would such training typically differ for a white law-enforcement officer than it would for a black law-enforcement officer? If so, how would such training typically differ for an Asian law-enforcement officer than it would for a Hispanic law-enforcement officer?

RESPONSE:

The Department's Office of Legislative Affairs advises that it is not familiar with the legislation you have referenced in your question.

26. How have criminal actors increasingly used drone technology to achieve their ends? How has such technology exposed Americans to greater risk of terrorists attack, and what legislative tools are necessary for DOJ to effectively counter such risks? How has drone technology aided international criminal enterprises in transporting contraband materials into the United States, and what legislative tools are necessary for DOJ to effectively counter such activity?

RESPONSE:

Drones have become a standard item in the international terrorists' toolkit. Al Qaeda, ISIS, and other terrorist groups have long used them for surveillance and kinetic attacks. Explosive-laden drones were used in the attempted assassination of the Prime Minister of Iraq in November 2021. The FBI reports that we have seen threats of a similar nature closer to home, including efforts to weaponize drones to launch attacks in the United States.

The use of drones has also become commonplace in many types of criminal activity within the United States. Traffickers and smugglers commonly use drones in cross-border criminal activities; others use drones to introduce contraband into prisons; and drones can be used to facilitate espionage, cybercrime, and anti-surveillance. Serious threats to public safety now include drone interference with wildfire suppression; the operation of airports and aircraft; and law enforcement, emergency response, and military operations.

Additional legal tools are needed to address the existing and evolving threats in this area. The Preventing Emerging Threats Act, 6 U.S.C. § 124n, is a critically important statute that permits the Departments of Justice and Homeland Security to use certain technological tools to counter the threat of terrorist and criminal drone activity. That statute will expire in October 2022, and it is critical that it be reauthorized and expanded.

In addition, the Justice Department, together with our interagency partners, has submitted legislative proposals to Congress designed to enable us to protect more facilities and assets; to better empower our state and local partners to help counter the threat; and to enhance criminal penalties for those who engage in serious and dangerous misuse of drones.

27. What is the Bureau of Prisons' current policy regarding the quarantining, testing, or other COVID-19 risk mitigation for inmates who are approaching their release dates? What, if any, is the Department's protocol for reducing such mitigations over time?

RESPONSE:

For inmates who have received a complete vaccination series, BOP advises that quarantine is no longer necessary prior to moving to community locations (e.g., full-term release, residential reentry centers, or home confinement). A transfer quarantine will be used for inmates who are not fully vaccinated who are transferring out of the Bureau of Prisons to community locations or to another Bureau facility or other correctional jurisdiction, depending on the COVID-19 operational level of the sending institution.

BOP reports that it has instituted a Modified Operation Matrix that directs institutions on what mitigation strategies they need to have in place. BOP pandemic guidance follows and integrates guidance and direction from the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration, the Department of Justice, and established medical best practices.

28. Has the Bureau of Prisons conducted an analysis of the condition of its closed-circuit camera systems at its various facilities, including security failures that might have otherwise been prevented with more updated camera systems and what the technological needs might be for such upgrades? If so, what is the scope and nature of such security failures and what is the nature of the needed technological upgrades?

RESPONSE:

In response to a 2016 Office of the Inspector General report, the Bureau of Prisons reports that it developed a survey to assess the scope of video surveillance coverage in Bureau institutions, as well as the technology being used. From 2019 to 2021, the Bureau reports that it has invested \$6.7 million in the 45 identified sites with security camera system deficiencies, and that upgrades have been made at all 45 locations. These upgrades include hardware and software upgrades, as well as coverage of entrance/exit points and critical locations throughout the institutions. Additionally, the BOP advises that upgrades of the operating systems at all Bureau facilities have made it possible to increase the storage time of videos and, in many cases, to increase picture quality.

29. According to Deputy Attorney General Monaco, the Department began a 120 day review of cybersecurity challenges.¹⁶ Reportedly, the review will focus on cybersecurity issues including digital currency, supply chain attacks such as the SolarWinds incident, which compromised nine federal agencies last year, and the ways countries such as China and Russia use cyber operations against other nations. Please share all information and conclusions from that review.

RESPONSE:

The ongoing review and related efforts are designed to have three primary lines of effort. The first is to assess how the Department can improve our capability to investigate, prosecute, and disrupt malicious cyber actors and their evolving techniques. The second is to focus on building our resiliency as a Department. And the third is to prepare the next generation of the Department's attorneys and agents who will be going after these threat actors.

The following initiatives are a direct result of the Department's review:

- The Department established a Ransomware and Digital Extortion Task Force.
- In October 2021, Department announced a new Civil Cyber-Fraud Initiative to utilize the False Claims Act to pursue cybersecurity-related fraud by government contractors and grant recipients.
- Also in October 2021, the Department established a National Cryptocurrency Enforcement Team (NCET) to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors.
- The Department has also announced a new DOJ Cyber Fellowship program that is designed to develop a new generation of prosecutors and attorneys equipped to handle emerging national security threats.
- All U.S. Attorneys' offices have been directed to report up the chain to DOJ headquarters any ransomware and digital extortion incidents in the same way we prioritize terrorist incidents. The requirement will allow the Department to make the necessary connections across all cases and investigations to confront and deter the global ransomware threat.
- The Department has also publicly announced the results of enforcement actions. For example, in June 2021, the Department announced that it seized \$2.3 million

¹⁶ Maggie Miller, *Justice Department to Undertake 120 Day Review of Cybersecurity Challenges*, THE HILL (Apr. 30, 2021), <https://thehill.com/policy/cybersecurity/551195-justice-department-to-undertake-120-day-review-of-cybersecurity>.

in bitcoin, representing a significant portion of the proceeds of a ransom payment to bad actors in a group known as DarkSide, which had targeted Colonial Pipeline and resulted in critical infrastructure being taken out of operation. Also, in February 2022, the Justice announced that it seized over \$3.6 billion in cryptocurrency – the Department’s largest financial seizure ever – linked to the 2016 hack of Bitfinex.

- In addition, in November 2021, the Department announced charges against two foreign nationals for deploying Sodinokibi/REvil ransomware to attack businesses and government entities in the United States. Yaroslav Vasinskyi, a Ukrainian national, was arrested for conducting ransomware attacks against multiple victims, including a July 2021 attack against Kaseya, a multi-national information technology software company. The Department also announced the seizure of \$6.1 million in funds traceable to alleged ransom payments received by Yevgeniy Polyanin, a Russian national who was also charged with conducting Sodinokibi/REvil ransomware attacks.

30. The *First Step Act* is the product of bipartisan cooperation and support from government leaders. Passage of this law was a massive achievement; ensuring its sound and effective implementation is also critically important. The Department of Justice carries significant implementation responsibilities.

- a. As head of the Department of Justice, do you agree that your agency carries great implementation responsibilities and that as Attorney General this responsibility rests on your shoulders?

RESPONSE to Question 30a:

Yes. The First Step Act is a critical piece of bipartisan legislation that promised a path to an early return home for eligible incarcerated people who invest their time and energy in programs that reduce recidivism. I am committed to ensuring that the Justice Department does its part to honor this promise.

- b. What steps have you made, since confirmed as Attorney General, to implement the *First Step Act*?

RESPONSE to Question 30b:

The Department of Justice has made, and continues to make, significant progress implementing the *First Step Act*, much of which is described in the Justice Department’s April 2022 First Step Act Annual Report (FSA Report). The 2022 FSA Report can be viewed here: <https://www.ojp.gov/first-step-act-annual-report-april-2022>.

On January 13, 2022, the Department submitted to the Federal Register a final rule implementing the Time Credits program required by the First Step Act for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be

viewed here: <https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>.

The Department also launched a new risk and needs assessment system. By way of background, the First Step Act of 2018 mandated that the Attorney General, in consultation with the Independent Review Committee (IRC), develop and implement a risk and needs assessment system for use with each person in the custody of the Bureau of Prisons. PATTERN is the risk assessment tool created pursuant to these mandates.

The Department's National Institute of Justice commissioned consultants to validate PATTERN. They issued their report in December 2021, recommending that the Department adjust to a modified version of the tool in the near term, version 1.3, which they found to have predictive accuracy. In the 2022 FSA Report referenced above, the Department announced the decision to implement the updated PATTERN 1.3 tool, as well as to change the cut points associated with the tool. The NIJ consultants, collaborating with the Department's subject matter experts, BOP staff, and external stakeholders and experts, will consider further refinements to the tool's inputs and scoring scheme.

In addition, NIJ is also working to improve the Department's First Step Act Implementation efforts working to award a contract in the new calendar year to support the evaluation of a subset of BOP's reentry programs. Findings from the long-term evaluation will support the Bureau as it continues to support the reentry process for individuals under its custody.

Finally, the Bureau reports that it has delivered more than 80 different programs to inmates across the agency based on individual assessment findings. Even with COVID-19 limiting gatherings, BOP reports that, as of June 9, 2022, approximately 75,000 inmates are participating in structured FSA programming. In addition, the Justice Department's FY 2023 request would allow BOP to hire nearly 600 new First Step Act staff.

31. I joined Chairman Durbin in sending you a letter on May 5, 2021, regarding the issue of a proposed rule on earned time credits. This rule, as proposed on November 25, 2020, would limit the incentive structure designed to increase program participation and would undercut the effectiveness of the *First Step Act*. In the letter, we asked that you reevaluate and amend the rule consistent with the *First Step Act's* goals of incentivizing and increasing program participation and reducing recidivism. Like I mentioned at the hearing on October 27, we've yet to receive a response to this letter. While the lack of responsiveness by the Department is unacceptable on its own, it's troubling that your silence implies that no changes would be made to this proposed rule.
 - a. What feedback has the Department received to this proposed rule?
 - b. Will the Department adopt any changes to the rule prior to finalizing it?
 - c. When do you anticipate finalizing this rule?

RESPONSE:

On January 13, 2022, the Department submitted to the Federal Register a final rule implementing the Time Credits program required by the First Step Act for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be viewed here: <https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>.

As explained in the Justice Department's April 2022 First Step Act Annual Report, linked above, the Department made several significant changes to the rule as a result of feedback received during the public comment period. "The final rule eliminates the definition of a day as an 8-hour period, and instead defines a day as a calendar day, allowing eligible inmates to earn 10 to 15 days of time credits for every 30 days of successful participation in EBRR programs and PAs. In addition, subject to BOP's determination of eligibility, inmates will be awarded time credits retroactively to December 21, 2018, the date of enactment of the First Step Act. The rule also explains the circumstances under which an inmate may forfeit time credits, reduces the amount of credits that may be forfeited for any given act, and shortens the period of time over which forfeited credits may be restored. Collectively, these provisions will ensure the broadest possible eligibility and application of time credits."

BOP further reports that implementation of the rule is occurring on a rolling basis, beginning with immediate releases for inmates whose Time Credits earned exceed their days remaining to serve, are less than 12 months from release, and have a Supervised Release term. Some of these transfers have already begun, and many more will take place in the weeks and months ahead as BOP calculates and applies time credits for eligible incarcerated individuals.

32. On January 15, 2021, the Department of Justice Office of Legal Counsel (OLC) released a memo titled, "Home Confinement of Federal Prisoners after the COVID-19 Emergency." This memo contemplates the eventuality of what happens to Bureau of Prisons inmates released to home confinement under the CARES Act "once the pandemic emergency ends." At that time, "some inmates will have completed their sentences or be sufficiently close to the end to be eligible for home confinement," while others "may have a substantial time to go before becoming eligible." This opinion concludes that when the COVID-19 "covered emergency period" ends, or should the Attorney General revoke the finding, "the Bureau would be required to recall the prisoners to correctional facilities unless they are otherwise eligible for home confinement." If this covered emergency period were to end as of October 18, 2021, 4,813 inmates would be returned to a Bureau of Prisons facility. It has been publicly reported that the Biden administration has begun asking inmates on home confinement by virtue of the CARES Act to submit commutation applications.¹⁷ These particular inmates fall into a specific category: drug offenders released to home confinement under the CARES Act with four years or less remaining on their sentences.

¹⁷ Sam Stein, *Biden Starts Clemency Process for Inmates Released Due to Covid Conditions*, POLITICO (Sept. 13, 2021), <https://www.politico.com/news/2021/09/13/biden-clemency-covid-inmates-511658>

- a. How many individuals have received a request from the Department to submit a commutation application?
- b. Does the Department intend to expand the scope beyond the subset of those who are released to home confinement under the CARES Act and with less than four years remaining on their sentences?
- c. What is the timeline for reviewing and coming to a decision on these inmates' commutation applications?
- d. Does the Department plan to issue a proposed rule to address this issue? If so, please advise the anticipated contents of such proposed rule.

RESPONSE:

Individuals on home confinement under the CARES Act for non-violent drug offenses who have between 18 and 48 months remaining on their sentences are eligible for the expedited screening program. However, the Office of the Pardon Attorney continues to accept and process clemency petitions from all eligible individuals. In all cases, clemency review is individualized and includes an assessment based on a totality of relevant and appropriate factors. Individuals who have been identified as meeting the parameters of the expedited screening program who submit commutation petitions using the standard form receive priority consideration. On April 26, 2022, the President granted clemency to 78 individuals, including three pardons and 75 commutations.

In addition, with respect to individuals on home confinement under the CARES Act, on December 21, 2021, the Office of Legal Counsel issued an opinion concluding that section 12003(b)(2) of the CARES Act and the Bureau's preexisting authorities give the Bureau discretion to permit prisoners on extended home confinement to remain there even after the COVID-19 national emergency ends.

In light of that opinion, I have directed that the Department engage in a rulemaking process to ensure that the Department lives up to the letter and the spirit of the CARES Act. The proposed rule is presently under review. The Department will exercise its authority so that those who have made rehabilitative progress and complied with the conditions of home confinement, and who in the interests of justice should be given an opportunity to continue transitioning back to society, are not unnecessarily returned to prison.

- 33. On September 27, 2021, the Drug Enforcement Administration (DEA) issued a Public Safety Alert warning the American public of the "alarming increase in the lethality and availability of fake prescription pills containing fentanyl and methamphetamine."¹⁸ Drug trafficking organizations are falsely marketing pills as legitimate prescription pills, and selling them on social media and e-commerce platforms. This is particularly problematic since many of the purchases have been made by teens and youth. DEA Administrator

¹⁸ Public Safety Alert. "Sharp Increase in Fake Prescription Pills Containing Fentanyl and Meth." U.S. Drug Enforcement Administration (Sept. 27, 2021). <https://www.dea.gov/alert/sharp-increase-fake-prescription-pills-containing-fentanyl-and-meth>.

Anne Milgram has stated that social media companies aren't doing enough to crack down on these counterfeit pills.¹⁹

- a. What is the Department doing to counter the surge of counterfeit pills laced with fentanyl and meth?

RESPONSE to Question 33a:

As I testified before this Committee on October 27, 2021, the Justice Department is committed to keeping our country safe by addressing drug trafficking networks and overdose deaths. To these ends, DEA has stepped up its efforts nationwide to target the criminal drug networks flooding the U.S. with deadly, fentanyl-laced fake pills. On August 3, 2021, DEA launched a nationwide law enforcement effort to address the increase in the availability and lethality of fentanyl-laced fake pills. In the first two months of the effort, DEA worked in concert with federal, state, and local law enforcement partners to seize more than 1.8 million fentanyl-laced fake pills. In 2021, DEA seized more than 20.4 million potentially fake pills. DEA continues to focus its operational efforts on stopping the flow of deadly synthetic fentanyl, methamphetamine, and counterfeit pills into our communities. In addition, in September 2021, DEA launched the One Pill Can Kill public awareness campaign, which included DEA's first Public Safety Alert in six years, to warn the public of the threat of counterfeit pills.

The Justice Department would welcome the opportunity to brief your office on this important issue.

- b. Leaders of the law enforcement community have stated that identifying and prosecuting fentanyl analogues – including those hidden in counterfeit pills – is critical and that “serious consequences like mandatory minimums exist to deter and punish the kingpins, their traffickers, and the manufacturers who flood our communities with deadly drugs.”²⁰ Do you agree that these bad actors need to be deterred?

RESPONSE to Question 33b:

Yes.

- b. Representatives from victim awareness groups and those who have lost family members to fentanyl wrote to the Senate Judiciary Committee, noting that, “[d]rug

¹⁹ Kate Snow, ‘I Pill Can Kill’: Officials Warn About Fake Prescription Drugs Laced With Fentanyl, TODAY (Sept. 27, 2021), <https://www.today.com/health/fentanyl-danger-dea-s-anne-milgram-wants-about-fake-prescription-t232227>.

²⁰ Letter from Federal Law Enforcement Officers Association, National Narcotic Officers’ Associations’ Coalition, Major Cities Chiefs Association, International Association of Chiefs of Police, National Association of Police Organizations, Major County Sheriffs of America, National Sheriffs’ Association, National District Attorneys Association, & Sergeants Benevolent Association, NYPD, to Sen. Dick Durbin, Chairman, and Sen. Chuck Grassley, Ranking Member, S. Comm. on the Judiciary (Sept. 13, 2021), <https://www.fleoa.org/news-story.aspx?id=10004>.

overdose deaths are preventable. . . [and] our government must use every tool to prevent senseless loss of life.”²¹ Do you agree?

RESPONSE:

Yes. Every life lost to a drug overdose is a tragedy.

34. At the hearing on October 27, you stated that “powder cocaine is as dangerous with crime rates as crack cocaine.” However, the U.S. Sentencing Commission cites in a recent report that “the rate of weapon involvement varie[s] depending on the type of drug involved, ranging from 38.9 percent in crack cocaine cases to 18.4 percent in marijuana and powder cocaine cases.”²² With this data in mind, please explain what you mean by “powder cocaine is as dangerous with crime rates as crack cocaine.” If you are citing different data or information to come to this point, please share it with the Committee.

RESPONSE:

The data cited in your question from the Sentencing Commission do indeed indicate that federally prosecuted crack cocaine offenders are more likely to have been in possession of a weapon than federally prosecuted powder cocaine offenders. However, this is not because crack cocaine is inherently a more dangerous drug than powder cocaine.

Evidence suggests that the difference in weapon involvement is less an indicator of the danger associated with the particular drug than it is an indicator of where in the distribution chain the federally prosecuted traffickers are coming from. Sentencing Commission reports have repeatedly shown that federal crack cocaine offenders are more likely to be low-level, retail traffickers compared to federal powder cocaine traffickers, who are more likely to be managers and importers. The Sentencing Commission has also repeatedly reported that street-level dealers generally are far more likely to carry weapons than managers or importers of large-scale drug operations. Drug trafficking can be violent, regardless of the drug involved.

35. In July of this year, multiple media outlets reported on the FBI’s role in the capture of Princess Latifa of Dubai. On February 24, 2018, Princess Latifa, daughter of United Arab Emirate (UAE) Prime Minister Sheikh Mohammed bin Rashid al-Maktoum, escaped from Dubai on a US-flagged yacht named “Nostromo.” Princess Latifa boarded the “Nostromo” 20 miles off the coast of Muscat, Oman, in international waters after reaching the vessel by dinghy and jet ski and sailing southward in the Indian Ocean for

²¹ Letter from VOID, Alexander Neville Opioid and Outreach Foundation, California Drug Induced Homicide, RADD, Drug Induced Homicide Foundation, Chair of Drug Abuse and Mental Health Committee, Mothers Against Drug Deaths, Environmental Progress, San Franciscans for Peace and Justice, St. Albert Priority, & We Are Not Alone Community, to Sen. Durbin, Chairman, & Sen. Grassley, Ranking Member, S. Comm. on the Judiciary (Sept. 10, 2021) (on file with author).

²² U.S. SENTENCING COMMISSION, FISCAL YEAR 2020: OVERVIEW OF FEDERAL CRIMINAL CASES, at 15 (Apr. 2021), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/researchpublications/2021/FY20_Overview_Federal_Criminal_Cases.pdf.

eight straight days.²³ The media reported that the FBI appeared to have contacted the U.S.-based internet service provider of the “Nostromo” in an attempt to obtain geolocation data of the yacht in order to share it with the UAE government. The FBI was able to obtain the geolocation data without a search warrant by using a public safety exemption which provides authority in public safety circumstances. Did the FBI provide sensitive geolocation data to the United Arab Emirates government or any other foreign government relating to this matter?

RESPONSE:

The FBI's practice is not to comment on matters of this nature.

²³ Kim Hjeltnaard & Kevin Johnson, *How The FBI Played A Role In The Capture Of Princess Latifa Of Dubai*, USA TODAY (July 12, 2021), <https://amp.usatoday.com/amp/7584218002>.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE LINDSEY GRAHAM**

1. What is the legal effect of a final order of removal?

RESPONSE:

Upon the entry of a final order by an Executive Office for Immigration Review (EOIR) adjudicator, the noncitizen may be removed from the United States by the Department of Homeland Security. If a noncitizen appeals an administratively final order of removal to a federal circuit court of appeals and that court grants a judicial stay of removal, the removal process does not begin until the circuit court disposes of the appeal.

2. The current asylum backlog in the Executive Office for Immigration Review is approximately 1.5 million cases. What is your solution for solving this backlog?

RESPONSE:

The backlog of cases in the immigration court system is a serious problem that the Department is committed to addressing. The backlog has many causes, and we need to pursue – and are pursuing – a multipronged strategy to address it. EOIR is examining the administrative tools available to them. A critical component of our strategy is the budget. Put simply, EOIR needs more resources in order to adjudicate more cases. The Department appreciates the funding provided by Congress in the past, and we request full consideration of the President's FY23 Budget request, which includes \$1.354 billion for EOIR.

3. At your confirmation hearing, I asked you to look into the problem of cartels abusing our asylum laws – have you looked into this problem and what enforcement policies are you implementing to fix it?

RESPONSE:

Our United States Attorneys and multiple sections within the Criminal Division – including our Human Rights and Special Prosecutions Section and Narcotics and Dangerous Drugs Section – advise that they remain focused on addressing the problem of transnational organized criminal networks who seek to abuse our asylum laws.

The Justice Department also works closely with DHS on issues of asylum fraud, which would include appropriate investigation and prosecution where cartels may be abusing our asylum laws such as by advising migrants to provide false asylum claims to U.S. officials. In particular, the Department works with DHS's fraud protection programs and participates in the DHS Asylum Fraud Working Group. In addition, EOIR's adjudicators continue to report instances of suspected fraud to EOIR's Fraud and Abuse Prevention Program, which actively works with agency partners to deter abuse of the asylum system.

4. The National Security Division of the Department of Justice is responsible for combatting national security and cyber security threats facing our region and our nation. Protecting national security and ensuring public safety is the principal responsibility of the Justice Department.
- Are you concerned about the national security risks posed by the situation we left behind in Afghanistan?
 - How is the National Security Division and the Joint Terrorism Task Force (JTTF) working to mitigate risks to the United States homeland posed by terrorists in the region of Afghanistan?
 - Are you concerned about the security risks posed by the influx of “vetted” Afghan parolees into the U.S.?
 - During the Senate Judiciary Committee oversight hearing on October 27, 2021, I asked you what you have done specifically, since the U.S. withdrawal from Afghanistan, to address the new threat to our national security created by that decision. You committed to put in writing what you have done. Please provide that information.

RESPONSE:

Together with our interagency partners, the Justice Department continues to closely monitor the security situation in Afghanistan. The FBI reports that it continues to track all threat reporting emanating from Afghanistan for any potential threats to the United States from FTOs in coordination and collaboration with our partners across the Intelligence Community. Among other things, DOJ resources supporting the effort have included the following:

- The FBI reports that it has checked databases and helped vet Operation Allies Welcome entrants and deployed agents overseas to assist in conducting interviews at strategically located airports and ports of entry.
- FBI Divisions and field offices report that they have worked with the Unified Command Group on U.S. military bases that temporarily housed relocated individuals and FBI has helped with biometric screening and security interviews, including providing mobile biometric devices for fingerprinting relocated individuals.
- The FBI reports that it collects tips from the public through its 1-800 number and electronic tips website.
- The National Security Division, through its Counterterrorism Section, reports that it works daily with law enforcement partners, including the JTTFs, to investigate threats to the homeland posed by terrorists both domestically and internationally.
- In addition, the FBI reports that it continues to work with interagency partners to ensure that all Afghan parolees, refugees, and immigrants into the United States are vetted and that any identified law enforcement or national security

concerns are appropriately investigated and addressed prior to their admittance to the United States.

- e. What is the Department of Justice doing to deter ransomware attacks?

RESPONSE:

The Department of Justice plays a central and indispensable role in the whole-of-society effort to address ransomware, including by prosecuting and otherwise deterring criminal actors, denying them the illicit profits they seek, and disrupting their use of resources to commit attacks. In addition to holding perpetrators responsible, the information the Department collects informs defensive efforts and helps victims recover.

The Department also contributes to a global environment that better enables ransomware perpetrators to be identified and deterred through operational partnerships and extensive capacity building efforts. The Department's Ransomware and Digital Extortion Task Force is a mechanism to ensure that Department leadership advances and harmonizes numerous efforts across the entire Department to address this serious and growing threat.

5. What process is the FBI following in its vetting of Afghan evacuees right now, and do you believe the FBI is doing a thorough job? How does the FBI plan to ensure it captures all derogatory information, not just the information that we happen to have in our databases? Will the FBI extensively interview evacuees and/or use something akin to the security advisory opinion process? Please explain.

RESPONSE:

The FBI advises that it is closely working with its partners to assist in the resettlement program for Afghan arrivals as part of Operation Allies Welcome and the vetting of refugees and others seeking entrance to the United States more broadly. On August 23, 2021, the FBI established a National Crisis Coordination Center (NC3) command post in support of the FBI's international and domestic response to the evolving situation in Afghanistan. The command post was comprised of FBI Divisions, the Department, and U.S. Intelligence Committee partners. The FBI reports that it continues to maintain information and intelligence exchange with state and local partners as the process continues, and that it anticipates continuing that work as the new arrivals are settled into communities.

As explained above, among other things, DOJ resources supporting the effort have included the following:

- The FBI reports that it has checked databases and helped vet Operation Allies Welcome entrants and deployed agents overseas to assist in conducting interviews at strategically located airports and ports of entry.

- FBI Divisions and field offices report that they have worked with the Unified Command Group on U.S. military bases that temporarily housed relocated individuals and FBI has helped with biometric screening and security interviews, including providing mobile biometric devices for fingerprinting relocated individuals.
- The FBI reports that it collects tips from the public through its 1-800 number and electronic tips website.
- The National Security Division, through its Counterterrorism Section, reports that it works daily with law enforcement partners, including the JTTFs, to investigate threats to the homeland posed by terrorists both domestically and internationally.
- In addition, the FBI reports that it continues to work with interagency partners to ensure that all Afghan parolees, refugees, and immigrants into the United States are vetted and that any identified law enforcement or national security concerns are appropriately investigated and addressed prior to their admittance to the United States.

After biometric and biographic information is collected from the Afghans seeking admission into the United States, the FBI advises that it checks that information against its holdings to identify national security and public safety concerns. As of September 1, 2021, the FBI had assisted in the vetting process for more than 70,000 Afghans seeking entrance to the U.S. since the military drawdown in Afghanistan. Vetting results are shared with interagency partners. In instances where derogatory information is identified, and where warranted, the FBI will conduct further investigation.

6. Is the FBI investigating reports of Afghan evacuees engaging in acts of assault, including sexual assault, on U.S. military bases?

RESPONSE:

As a general matter, the FBI reports that it continues to work with interagency partners in an effort to ensure that Afghan parolees into the United States are vetted and that any identified law enforcement or national security concerns are appropriately investigated. As I explained in my testimony before this Committee, longstanding Department policy and practice generally prevents us from commenting on or confirming or denying the existence of any investigation. However, to date, the Justice Department has made public criminal investigations and charges against four individuals who were evacuated from Afghanistan and paroled into the United States. Two individuals were charged with simple assault under 18 U.S.C. § 113(a)(8); one individual was charged with aggravated sexual abuse under 18 U.S.C. § 2241; and one individual was charged with abusive sexual contact under 18 USC § 2244.

7. Why are we paroling Afghan evacuees into the U.S. after a vetting process that takes only days or weeks? Have we learned how to complete a months-long vetting process in only a handful of days?

RESPONSE:

Decisions about paroling Afghans seeking entry into the U.S. are made by the Department of Homeland Security (DHS), not the Department of Justice. The FBI reports that it assists DHS but does not make final determinations.

8. What evidence do you have to support the claim that there has been a disturbing uptick in violence and threats of violence directed at teachers, school board members and school administrators? Please cite specific examples.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association's letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As we were seeing before the October 4, 2021, memorandum was issued and we have seen since, there has been a disturbing increase in violence and threats of violence against public servants across the country. The Justice Department will not waver in its commitment to keeping these public servants safe.

More broadly, as I explained in a speech on January 5, 2022: "We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe." As I explained during my testimony on October 27, 2021, "A core responsibility of the Justice Department . . . is protecting Americans from violence and threats of violence."

9. Was anyone at the Department of Justice a collaborator with the National School Board Association (NSBA) and/or the White House regarding NSBA's letter to President Biden, dated September 29, 2021?

RESPONSE:

Please see the response to Question 8. As I stated in my congressional testimony on October 21, 2021, no one in the White House or the National School Boards Association had spoken to me about the October 4, 2021, memorandum. As I further stated, "I am sure that the communication from the National [School Boards Association] was discussed

between [] the White House and the Justice Department, and that’s perfectly appropriate,” as the White House is “appropriately concerned about violence.”

10. Now that the NSBA has apologized for their letter to President Biden, will you retract the memo that was based on that letter?

RESPONSE:

I stated in my testimony on October 27, 2021, that the National School Boards Association letter this question appears to reference “apologizes for language in the [original] letter, but it continues its concern about the safety of school officials and school staff. The language in the letter that they disavow is language [that] was never included in my memo and never would have been. I did not adopt every concern that they had in their letter.”

11. Did you authorize the settlement of Andrew McCabe’s wrongful termination lawsuit? Did anyone at the White House suggest that the Department of Justice should settle?

RESPONSE:

As I testified before the Senate Judiciary Committee on October 27, 2021, the Department’s settlement with Mr. McCabe was based upon an assessment by experienced attorneys regarding the prospects of success in the case and the likelihood of losing on the merits.

12. What is the Department of Justice doing to curb the misuse and abuse of Foreign Intelligence Surveillance Act (FISA) applications?

RESPONSE:

The FBI and the Department have taken dozens of corrective measures to help ensure accuracy and completeness in FISA applications, as described in detail in OIG’s September 2021 report. These include new mechanisms and procedures designed to help ensure that FBI personnel provide attorneys in the National Security Division with all information that could undermine a probable cause determination—including information about the reliability of human sources—so that this information can be provided to the Foreign Intelligence Surveillance Court (FISC). Other corrective measures include a variety of new training requirements for FBI personnel and NSD attorneys.

In addition, NSD reports that it has expanded its oversight of FBI FISA applications to include “completeness reviews,” which are intended to ensure that all information that is material to a probable cause determination and contained in the FBI case file is provided to the FISC in an application requesting electronic surveillance or a physical search. And NSD and the FBI report that they have revised internal guidance governing procedures for ensuring the accuracy of applications submitted to the FISC, including by expanding on specific accuracy procedures and adopting new protocols to ensure all applications are accurate and complete.

13. Will you commit to allowing Special Counsel Durham to complete his investigation?

RESPONSE:

Special Counsel Durham's investigation is ongoing and will not be subject to any political or undue influence.

14. During your confirmation, you indicated a willingness to look into DEA's non-retrievable exceptions in 40 CFR 266.506. Can you provide a detailed update on how DEA plans to allow stakeholders to destroy hazardous waste that meets the non-retrievable standard of destruction through a process other than combustion? What is the timeline for determining this process and what additional steps need to be taken by DEA?

RESPONSE:

DEA advises that its regulations provide the legal standard by which DEA registrants must dispose of controlled substances to ensure that those drugs are non-retrievable. DEA regulations do not specify the means by which non-retrievability must be achieved.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE MIKE LEE**

1. General Garland, under what jurisdictional authority is the Department of Justice tasked with protecting local school board members from being annoyed by their neighbors—parents of children who attend the neighborhood schools?

RESPONSE:

Parents who advocate with regard to school board policies are protected by the First Amendment. Moreover, as I stated in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” The October 4, 2021, memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe.

2. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass school board members by calling them too many times?
 - a. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass School Board members by letting their unanswered phone calls continuously ring?
 - b. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass school board members over the phone?
 - c. If you answered “no” to any subpart of question 2, can you please explain why the acting United States Attorney of Montana sent a letter to the Montana Attorney General, all Montana County Attorneys, All Montana Sheriffs, Montana Office of Public Instruction, and the Montana School Boards Association, suggesting these as possible avenues for prosecuting annoying parents upset with decisions made by their local school boards?

RESPONSE:

Parents who advocate with regard to school board policies are protected by the First Amendment. Moreover, as I stated in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.”

The memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe. As I further explained in my congressional testimony last October, there are federal statutes that address violence, as well as threats of violence, including 18 U.S.C. § 2261A. The Supreme Court has explained in *Virginia v. Black* “when intimidation is not

protected by the Constitution and that is when it is made with the intent of placing the victim in fear of bodily harm or death.”

3. In the recent Department of Justice oversight hearing, you claimed to have no knowledge of the memo sent by Acting United States Attorney for Montana, Leif Johnson. Have any other US Attorneys or Acting US Attorneys issued similar memos? If so, please provide copies of these communications to this committee.

RESPONSE:

The October 4, 2021, memorandum you reference is entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

4. Other than the memo you published on October 4th, what other direction did you give to US Attorneys relative to how they should pursue cases against annoying parents at school board meetings? If you did not intend for US Attorneys to be prosecuting parents for calling their school boards too many times, what additional direction did you give your US Attorneys to make sure they understood the scope of your direction?

RESPONSE:

My October 4, 2021, memorandum was addressed to the Director of the FBI, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and the United States Attorneys. As I explained in my congressional testimony last October, “A legal reader would know *Virginia v. Black*, the Supreme Court definition of intimidation, and a legal reader would know 18 U.S.C. § 2261A, the definition of harassment.” As I stated: “[T]he Supreme Court has made quite clear that the word ‘intimidation’, with respect to the constitutional protection, is one that directs a threat to a person with the intent of placing the victim in fear of bodily harm or death.” Indeed, Justice Department employees “are well aware of where the First Amendment line is” as “these are the kinds of statutes that [both prosecutors and members of law enforcement] deal with every single day.”

5. In the oversight hearing, you clarified to me that while you specifically mentioned “harassment, intimidation, and threats of violence” in your October 4th memo, you only meant for statutes regarding “intimidation” and “harassment” to be pursued by Federal Law Enforcement Officers if the “intimidation” was “made with the intent of placing the victim in fear of bodily harm or death.” Did you make that same clarification in

additional communications to your US Attorneys? If so, would you please provide the committee with a copy of those communications?

RESPONSE:

Please see the response to Question 4.

6. I was alarmed in the recent oversight hearing when I realized you could not—or would not—give the committee any concrete examples of threats of death or bodily harm which formed the basis of your reasoning for sending the October 4th memo. Please list here the “news reports” you relied on to make the decision on October 4th to involve the Department of Justice in what is a purely state matter—acts of unrest and violence at school board meetings.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As we were seeing before the October 4, 2021, memorandum was issued and we have seen since, there has been a disturbing increase in violence and threats of violence against public servants across the country. The Justice Department will not waver in its commitment to keeping these public servants safe.

More broadly, as I explained in a speech to Department employees on January 5, 2022: “We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe.” As I explained during my testimony on October 27, 2021, “A core responsibility of the Justice Department . . . is protecting Americans from violence and threats of violence.”

7. Who brought the examples you listed in question 6 to your attention? What indication did you have that these instances were beyond the ability of local law enforcement to handle?

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As I explained, the purpose of the memorandum was “to have meetings to discuss whether there’s a problem, to discuss

strategies, to discuss whether local law enforcement needs assistance or doesn't need assistance."

8. Please provide the most thorough answers possible to the following questions. None of the information requested should be privileged.
 - a. Did you or any member of your staff meet with the National School Boards Association before you issued the October 4th memo?
 - b. Did you or any member of your staff meet with any other interested outside groups before issuing the October 4th memo?
 - c. Can you describe in detail what steps you took personally, or your staff took, to verify the contents of the National School Boards Association letter?
 - d. What specific death threats were mentioned in the letter? Please provide us the details of the examples you relied upon in issuing your memo.
 - e. What specific, independent investigative efforts did you or your staff undertake—outside of reading the examples cited in the National School Boards memo—to determine whether a legitimate, multi-state, coordinated effort to threaten school board members actually exists? Please be specific.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association's letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. This memorandum was entitled "Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff." As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. As I further stated in my congressional testimony last October, the memorandum "reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents' ability to object to policies" they disagree with.

The memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. Specifically, it directed the FBI and the United States Attorneys "to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district." Such meetings were intended to "facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff," and "open dedicated lines of communication for threat reporting, assessment, and response." As I explained in my testimony last October, this is consistent with "what the Justice Department does every day:" "consult with our local and state partners and see whether assistance is necessary." Further, "[t]he purpose of this memorandum [was] to get our law enforcement to assess the extent of the problem, and if there is no problem, if states and local law enforcement are capable of handling the problem, then there [would be] no need for [federal] involvement."

9. In your October 4th memo, you wrote, “[i]n the coming days, the Department will announce a series of measures designed to address the rise in criminal conduct directed toward school personnel.” Please provide this committee with the details of those pending measures.

RESPONSE:

As I explained in a speech to Department employees on January 5, 2022: “We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe . . . In a democracy, people vote, argue, and debate — often vociferously — in order to achieve the policy outcomes they desire. But in a democracy, people must not employ violence or unlawful threats of violence to affect that outcome. Citizens must not be intimidated from exercising their constitutional rights to free expression and association by such unlawful conduct. The Justice Department will continue to investigate violence and illegal threats of violence, disrupt that violence before it occurs, and hold perpetrators accountable. We have marshaled the resources of the department to address the rising violence and criminal threats of violence against election workers, against flight crews, against school personnel, against journalists, against members of Congress, and against federal agents, prosecutors, and judges. In 2021, the Department charged more defendants in criminal threat cases than in any year in at least the last five. As we do this work, we are guided by our commitment to protect civil liberties, including the First Amendment rights of all citizens.”

10. One of the sources cited by the NSBA in their letter to you is a study done by the Armed Conflict Location & Event Data Project about demonstrations over Critical Race Theory (CRT) in the United States.²⁴ The NSBA’s purpose in citing this study is to demonstrate that anti-CRT demonstrations pose a threat to school board members. Notably, however, this study concludes that “despite its prominence within mainstream media and in state legislatures, CRT’s effect on demonstration trends within the United States has been limited compared to movements such as Black Lives Matter, Stop Asian Hate, and Cancel the Rents.” Do you agree with this statement? Is the general rise in demonstrations this past year as concerning to you as the rise in demonstrations at school board meetings?

RESPONSE:

I am unfamiliar with this study.

²⁴ 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_Fact-Sheet_CRT-Demos_2021.pdf.

11. If there are credible instances of violence or threats of violence at school board meetings, why is Department “[c]oordination and partnership with local law enforcement” so “critical” (per the language of your memo) to handling these instances? Has state law enforcement expressed an inability to handle them?

RESPONSE:

Please see the responses to Questions 7 and 8.

12. Given the National School Board Association’s apology for incendiary language in its letter, and given the fact that local law enforcement has not apparently expressed a need for help in managing school board meetings, why is federal “coordination”—rather intervention—needed at all?

- a. Why would federal law enforcement be needed to “discuss[] . . . strategies for addressing threats”? Don’t state and local law enforcement already have strategies in place to do so?
- b. You stated in the hearing that federal law enforcement assists state and local law enforcement “every day.” If this kind of assistance occurs routinely, why was the issuance of this memo needed in the first place? Why do federal, state and local law enforcement need to meet to formulate new strategies to address potential violence if they are already doing so on such a regular basis? Isn’t there already a structure in place for federal law enforcement to assist state and local—if needed?

RESPONSE:

Please see the responses to Questions 7 and 8. In addition, in my testimony on October 27, 2021, I stated that the National School Boards Association letter this question appears to reference “apologizes for language in the [original] letter, but it continues its concern about the safety of school officials and school staff. The language in the letter that they disavow is language [that] was never included in my memo and never would have been. I did not adopt every concern that they had in their letter.”

13. The National Security Division was created after the attacks of September 11th to mirror changes made in the FBI to better address external threats against the nation. It combined two sections from the Criminal division – the counterterrorism section and counterespionage section with the Office of Intelligence and Policy Review, the lawyers who submit FISA applications to the FISA Court.

- a. Isn’t it true that, among other things, 28 C.F.R. § 0.72(a)(2) provides that the Assistant Attorney General for National Security (AAG/NS) shall “[d]evelop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage enforcement programs”?
- b. Why then, in the October 4, 2021 press release accompanying the memorandum, did you include the NSD on a task force to review school violence?

RESPONSE:

The October 4, 2021, memorandum does not mention the National Security Division. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.” As the Assistant Attorney General for the National Security Division stated in his testimony before this Committee in January 2022 when asked about this memorandum, the National Security Division is “available to consult with if the facts warrant.”

14. Is there evidence of terrorism, espionage, or other intelligence matters involving protests by parents at local school board meetings that would require the attention of the National Security Division? Do you expect to file applications for warrants under the Foreign Intelligence Surveillance Act to surveil these parents?

RESPONSE:

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” These protections clearly and importantly cover debate concerning school board policies. As I stated in my congressional testimony on October 21, 2021: “I can’t imagine any circumstance in which the Patriot Act would be used in the circumstances of parents complaining about their children, nor can I imagine a circumstance where they would be labeled as domestic terrorism.” The same would hold equally true with respect to the Foreign Intelligence Surveillance Act.

15. Please list all task forces you have created or appointed since your confirmation as Attorney General.

RESPONSE:

The Justice Department currently maintains over 1,000 task forces that operate across our country and around the world. Over the past year that I have served as Attorney General, the Department has created and maintained a wide range of task forces, including:

- A COVID-19 Fraud Enforcement Task Force that is marshaling the resources of the Department of Justice in partnership with agencies across government to enhance enforcement efforts against COVID-19 related fraud.
- A Ransomware and Digital Extortion Task Force that has helped to lead the Department’s robust response to the threat of ransomware attacks. The Task Force has helped to launch additional coordinated enforcement efforts, including a

National Cryptocurrency Enforcement Team (NCET) to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors and a new Civil Cyber-Fraud Initiative to utilize the False Claims Act to pursue cybersecurity-related fraud by government contractors and grant recipients.

- **Joint Task Force Alpha, a law enforcement task force that is marshaling the investigative and prosecutorial resources of the Department of Justice, in partnership with the Department of Homeland Security (DHS), to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras.**
- **A new Anticorruption Task Force fighting corruption in El Salvador, Guatemala, and Honduras.**
- **An Election Threats Task Force that is addressing the rise in threats against election workers, administrators, officials, and others associated with the electoral process.**
- **A dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress, formed to assess the most prevalent threats and recommend measures to further strengthen the Department's efforts to deter and combat those threats.**
- **Task Force KleptoCapture, an interagency law enforcement task force dedicated to enforcing the sweeping sanctions, export restrictions, and economic countermeasures that the United States has imposed, along with allies and partners, in response to Russia's unprovoked military invasion of Ukraine.**

16. After the tragic death of George Floyd last year, rioters across the country caused up to \$2 billion in damage to private and public property, and over 500 people were arrested for their involvement.²⁵ Is the Department of Justice involved in the investigation and prosecution of these individuals where appropriate? How many individuals have been arrested and prosecuted for the months-long attack on the federal courthouse in Portland, Oregon?

RESPONSE:

The Department is committed to investigating, disrupting, and bringing to justice those who engage in violence in violation of federal law, regardless of any underlying ideology. To these ends, the FBI, working with state and local law enforcement, has opened and continues to pursue investigations involving violent activity. U.S. Attorneys' offices in

²⁵ <https://fbi.org/articles/george-floyd-riots-caused-record-setting-2-billion-in-damage-new-report-says-here-s-why-the-true-cost-is-even-higher/>; <https://www.axios.com/riots-cost-property-damage-276c9bec-a455-4067-b06a-66f9db4cc9c.html>; <https://nypost.com/2020/09/16/riots-following-george-floyds-death-could-cost-up-to-2b/>.

multiple jurisdictions have brought charges where the facts show that a federal crime has been committed. In cases where crimes fall exclusively within state or local jurisdictions, the Department provides regular assistance as appropriate.

The Justice Department has dedicated substantial investigative and prosecutorial resources from components across the Department and in dozens of jurisdictions nationwide to bring charges in numerous cases in connection with violence during the summer and fall of 2020 that was aimed at government institutions. The Justice Department has and will continue to aggressively pursue those who engage in violent criminal activity such as the destruction of property and violent assaults on law enforcement.

17. Would you agree that a state's decision to conduct a *meaningful* audit of an election can help foster faith in the electoral process?

RESPONSE:

The right of all eligible citizens to vote is the central pillar of our democracy, and the Justice Department is committed to ensuring that American elections are secure and reflect the choices made on the ballots cast by eligible citizens. The Department will use all of the authorities at its disposal to zealously guard the right to vote.

While post-election activities are governed, in the first instance, by state law, regardless of the relevant state law, federal law imposes additional constraints on post-election activities with which every jurisdiction must comply. For this reason, in July 2021, the Department issued guidance to ensure states fully comply with federal law constraints related to post-election activities. Among other things, the guidance provides information that will assist states in complying with federal law when preserving and retaining election records.

18. I understand many left-wing advocates are pushing less comprehensive "risk-limiting audits which fail to give a complete picture of what could have gone wrong in an election. But many states find those limited audits to be completely unhelpful. Is there any federal law preventing a state from opting to conduct a more extensive audit that might help identify actual problems in the state election process moving forward?

RESPONSE:

In the first instance, audits are governed by state law. However, any state audit must be conducted in a manner that complies with federal law. For example, states must abide by federal laws requiring the preservation and retention of election materials. Further, states may not conduct an audit in such a way that would violate federal laws that prohibit intimidation of persons for voting or for attempting to vote.

19. What statute gives the Department of Justice authority to oversee how a state conducts a post-election audit?

RESPONSE:

There are federal laws that govern the preservation and retention of election materials and that protect against voter intimidation. For example, the Civil Rights Act of 1960 requires state and local election officials to maintain, for twenty-two months after the conduct of an election for federal office, “all records and papers” relating to any “act requisite to voting in such election...” 52 U.S.C. § 20701. With regard to voter intimidation, Section 11(b) of the Voting Rights Act provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.” *Id.* § 10307(b).

20. I am very concerned by the May 5, 2021, letter sent to the President of the Arizona State Senate by Pam Karlan, the Principal Deputy Assistant Attorney General of the Civil Rights Division of the Department of Justice. As I read that letter, Ms. Karlan seems to be attempting to “intimidate” Arizona’s elected officials from conducting a thorough audit of its election. Is this kind of intimidation of elected state officials concerning to you? Why or why not?

RESPONSE:

There was no intimidation. The May 5, 2021, letter simply provided guidance about federal laws that might bear upon Arizona’s post-election activities.

21. In the Department of Justice oversight hearing, you said the Department had charged thousands of cases of criminal illegal crossing this year. Can you please provide the committee with the exact number of prosecutions?

RESPONSE:

The two most common criminal violations of the immigration laws are 8 U.S.C. § 1326, a felony, and 8 U.S.C. § 1325, a misdemeanor. Over 14,000 defendants were charged in fiscal year 2021 with illegal reentry offenses.

22. Recently, DOJ, in conjunction with the Department of Homeland Security, proposed a rule taking authority from the Executive Office of Immigration Review, which is housed in the Department of Justice, and moving that authority to the U.S. Citizenship and Immigration Services, which is housed in the Department of Homeland Security. Can you identify the authority among agencies which allows them to decide which of the responsibilities given to them by Congress they are going to keep and which they are going to siphon off to other agencies?

RESPONSE:

The Homeland Security Act of 2002 charges the Secretary of the Department of Homeland Security (DHS) “with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens.” 8 U.S.C. §1103(a)(1). Further, the Act transferred from the former Immigration and Naturalization Service to DHS the authority to adjudicate asylum applications, as well as the authority to conduct credible fear interviews and make credible fear determinations in the context of expedited removal. *Id.* § 1225(b)(1)(B); *see also* 6 U.S.C. § 271(b) (providing for the transfer of adjudication of asylum and refugee applications from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services, now USCIS).

With the creation of the DHS, Congress created a system that shares asylum jurisdiction between two Departments. The rule to which you refer is an effort to create a more efficient process that crosses the two Departments.

23. The Department of Justice website states there are currently 535 immigration judges working as employees of the Department of Justice. These judges have issued 1.2 million final orders of removal which have yet to be enforced by the Department of Homeland Security. Why would the Department of Justice cede authority to DHS when it refuses to honor the work the employees of the DOJ do to issue final removal orders?

RESPONSE:

The rule at issue seeks to create a more efficient process between DOJ and DHS.

24. On January 26th President Biden issued an executive order that terminates the use of private contractors with the BOP. Can you provide further guidance on whether this executive order applies to the United States Marshals Service?

RESPONSE:

Executive Order 14006, *Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities*, issued on January 26, 2021, provides that the “Attorney General shall not renew Department of Justice contracts with privately operated criminal detention facilities, as consistent with applicable law.” Consistent with the language of that order, USMS believes that it applies to any privately-operated detention facility where USMS houses pretrial detainees.

25. The January 26th Executive Order states in part that “our current system of mass incarceration imposes significant costs and hardships on our society and communities and does not make us safer.” How does eliminating private prisons reduce mass incarceration? Does the administration have a plan for where inmates housed in private prisons will be relocated to?

RESPONSE:

With respect to Justice Department reviews and evaluations regarding the implementation of Executive Order 14006, including the impact on the justice system, the United States Marshals Service (USMS) reports that its Prisoner Operations Division conducted an assessment of all Intergovernmental Agreements (IGAs) with state and local agencies within proximity of the private facilities under direct contract with USMS. The USMS assessment examined IGA bedspace availability within 150 miles of the affected Federal courthouses to determine whether private facility populations could be absorbed. The Federal Bureau of Prisons (BOP) reports that it conducted a simultaneous review of its facilities proximate to USMS private detention facilities to determine bedspace suitability and availability for USMS needs. BOP has provided over 1,800 beds (over and above bedspace already provided for USMS use) to assist USMS in complying with EO 14006.

26. If the President's Executive Order applies to the USMS, what will the DOJ do to ensure that the estimated 62,000 USMS detainees continue to receive necessary bed space, transportation, access to the courts, and access to legal representation in accordance with the due process clause?

RESPONSE:

The USMS strives to ensure that prisoners in its custody are located as close as practicable to the federal court where they are being prosecuted. Minimizing the distance between the detention facility and the federal court reduces burdens to federal prosecutors, defense counsel, pretrial services, and the prisoners. Additionally, housing prisoners close to their homes affords them greater opportunity to maintain contact with family throughout the course of their legal proceedings. While housing prisoners a greater distance from the federal courts might result in logistical challenges, the USMS will continue to produce prisoners for required court proceedings and attorney meetings. Further, video-conferencing has been used successfully to conduct court proceedings, facilitate attorney-client meetings, and maintain contact with family.

27. Since President Biden issued the Order, exceptions have been made for privately operated detention facilities that contract with USMS. This includes the Willacy County Regional Detention Facility in Southern Texas, whose contract was extended for an additional six months in September. Do you know of any efforts by the Biden administration to alter the January 26th executive order to provide a permanent solution for these facilities and the detainees being housed there?

RESPONSE:

The Justice Department will continue working to implement the Executive Order in a responsible fashion.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE TOM COTTON**

1. On what date did you first begin working on your October 4 memorandum?

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association's letter, dated September 29, 2021, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. I began working on my memorandum sometime after the date of the letter.

2. On what date did the Department first begin drafting your October 4 memorandum?

RESPONSE:

Please see the response to Question 1.

3. Did the Department provide the White House with any drafts or copies of the October 4 memorandum before it was issued?

RESPONSE:

As I stated in my congressional testimony last October, "[n]o one in the White House spoke to me about" the October 4, 2021, memorandum. The memorandum "reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents' ability to object to policies" they disagree with. As I further stated during my October 21, 2021, congressional hearing, "I am sure that the communication from the National [School Boards Association] was discussed between [] the White House and the Justice Department, and that's perfectly appropriate," as the White House is "appropriately concerned about violence."

4. Please provide the Committee with copies of all public reports on which you relied when crafting your October 4 memorandum.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association's letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As we were seeing before the October 4, 2021, memorandum was issued and we have seen since, there has been a disturbing increase in violence and threats of violence against public servants across the country. The Justice Department will not waver in its commitment to keeping these public servants safe.

More broadly, as I explained in a speech on January 5, 2022: “We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe.”

5. You stated during your testimony that you did not intend for your October 4 memorandum to have a chilling effect on free speech. The Department of Justice regularly issues directives and memoranda without accompanying press releases. If your only purpose was to ask the FBI and U.S. Attorneys to convene meetings and find out more about the alleged school board issues, why did the Department issue a press release on the topic and tout additional forthcoming measures?

RESPONSE:

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” Further, the memorandum was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

6. Please provide a list of all meetings or phone calls that staff of the Department of Justice attended with representatives of the National School Boards Association or the National Education Association since June 1, 2021.

RESPONSE:

It is both appropriate and necessary for the Department of Justice to meet with a wide array of stakeholders representing a range of voices. I do not know about all such meetings.

7. Please provide a list of all meetings or phone calls that staff of the Department of Justice attended with anyone outside of the Department of Justice regarding your October 4 memorandum prior to your issuing that memorandum.

RESPONSE:

Please see the response to Question 6.

8. Did you meet with senior leadership of the FBI about your October 4 memorandum before it was issued?

RESPONSE:

As I stated in my congressional testimony on October 27, 2021, “My understanding was that the memo or the idea of the memo had been discussed with the FBI before” it was issued.

9. On April 28, 2021, the FBI reportedly served a warrant on Alaskan small business owners Paul and Marilyn Hueper, forcibly entering their home and handcuffing them and two of their guests due to a tip that incorrectly identified Marilyn Hueper as having stolen a laptop from Speaker Pelosi’s office on January 6, 2021. A New York woman reportedly has since confessed to stealing the laptop in question. Last month, Senator Sullivan sent a letter to the Department, seeking an acknowledgement and apology from the FBI to the Huepers for the mistake. Have you responded to that letter? Do you believe that the Huepers deserve an apology for being wrongfully targeted in this enforcement action?

RESPONSE:

The FBI advises that Director Wray and the Bureau have responded to Senator Sullivan, including in a reply letter dated May 14, 2021.

10. In November 2018, the Department of Justice launched the “China Initiative,” which focuses on countering the Chinese Communist Party’s efforts to steal sensitive information and technology from the United States to enhance its own military and economic strength. In November 2020, the Department released a review of progress under the China Initiative, demonstrating strides in countering China’s coordinated campaign. The Department’s webpage for the China Initiative has not been updated since June 2021, and the most recent case example posted on the webpage comes from May 2021. Is the Department of Justice still actively executing the China Initiative?

RESPONSE:

The Justice Department remains fully committed to protecting the country against the threats posed by the People’s Republic of China (PRC) – in particular, espionage, cyber intrusions, and theft of intellectual property. As the Assistant Attorney General for the National Security Division said in February, the Department “will be relentless in

defending our country from China,” and will “continue to prioritize and aggressively counter the actions of the PRC government that harm our people and our institutions.” There has been no change in tools or resources allocated to address threats from PRC government policies, including espionage and intellectual property theft.

The Department continues to employ a rigorous, all-tools approach. In addition to opening criminal cases, where appropriate, the Department is actively engaging with and sharing information with the companies, universities, and international and local governments whose technology, innovations, research, and information may be at risk. The Department also chairs the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, which advises the Federal Communications Commission on national security and law enforcement concerns associated with applications for telecommunications licenses meeting certain thresholds of foreign ownership or control.

At the same time, to ensure we do so in a way that is consistent with the foundational values of the Justice Department, and make decisions about prosecutions based on the facts and the law, and not based on race, ethnicity, national origin, or any other improper factor, I asked the Assistant Attorney General for the National Security Division to undertake a review of our approach to countering those threats. In remarks delivered on February 23, 2022, the Assistant Attorney General described the Division’s new “Strategy for Countering Nation-State Threats.”

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE THOM TILLIS**

School Board Memo

1. I share the concerns raised by my colleagues about the actions taken by the Justice Department and the Biden Administration to intimidate parents and discourage them from exercising their First Amendment rights. This entire episode is beneath the dignity the Justice Department, and is an affront to the freedom of speech. It is absolutely critical that those responsible for this travesty are held accountable for their actions.
 - a. Who in the Department made the decision to draft this inflammatory memorandum?
 - b. Which individuals signed off on this memorandum before it was issued?
 - c. Did you direct individuals under your supervision to draft this memorandum? If so, when did you direct individuals to draft this memorandum?
 - d. If you did not direct your staff to draft this memorandum, who in the Department was responsible for first proposing this memorandum?
 - e. Who was primarily responsible for drafting this memorandum?
 - f. If you did not direct your staff to draft this memorandum, when did you become aware that it was being drafted? Did you provide any guidance or edits during the drafting of this memorandum?
 - g. Did the Department follow its usual policies and procedures when drafting and approving this memorandum? If not, in which ways did the Department depart from its policies and procedures?
 - h. Has the Department opened any investigations based on this memorandum? Have any arrests been made as a result of this memorandum? If so, what specific criminal statutes were used to charge individuals based on this memorandum?

RESPONSE:

I issued the memorandum you reference on October 4, 2021. It was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our

Constitution.” These protections clearly and importantly cover debate concerning school board policies.

The October 4, 2021, memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe. The memorandum “reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents’ ability to object to policies” they disagree with. I signed the memorandum, and I worked on it.

2. It has been established that the National School Board Association was “in talks over the last several weeks with White House staff” before sending a letter to President Biden regarding threats against school board members. This admission raises many questions about the political nature and motivations behind this memorandum.
 - a. Did any White House staff contact any Department of Justice staff regarding this memo at any time before, during, or after it was drafted? If so, which Department officials were contacted by which White House officials?
 - b. Did the White House direct the Department of Justice to issue this memorandum? Did the White House exert any influence over the Department of Justice to issue this memorandum?
 - c. Did the White House play any role in the drafting of this memorandum? Did the White House offer any suggested language for this memorandum? Was the White House provided a copy of this memorandum before it was issued, and if so, did the White House provide any edits to the memorandum? If so, which edits were made at the suggestion or direction of the White House?

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As I stated during congressional testimony last October, the memorandum “reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents’ ability to object to policies” they disagree with. I signed the memorandum, and I worked on it. As I also stated in my October 21, 2021 congressional testimony, “[n]o one in the White House spoke to me about” the October 4, 2021 memorandum, although “I am sure that the communication from the National [School Boards Association] was discussed between [] the White House and the Justice Department, and that’s perfectly appropriate,” as the White House is “appropriately concerned about violence.”

3. On October 13, Secretary of Education Miguel Cardona appointed Viola Garcia to the National Assessment Governing Board. Ms. Garcia is the President of the National School Boards Association, and was a signed author of the now infamous letter which compared parents to “domestic terrorists.” She wrote to the NSBA Board that the NSBA

had “been engaged with the White House and the Department of Education on these and other issues . . .”

- a. Is there any connection between the NSBA letter, the DOJ memorandum, and Ms. Garcia’s appointment to the National Assessment Governing Board?
- b. Was Ms. Garcia’s nomination predicated on pushing the political agenda against parents, as shown in the DOJ memorandum?

RESPONSE:

I do not believe that I know Ms. Garcia.

4. As you now know, the Acting U.S. Attorney for the District of Montana issued a memorandum to state and local officials outlining a list of “Federal Crimes Involving Harassment, Intimidation, and Threats of Violence.”
 - a. Have any other U.S. Attorney offices in any other district issued similar guidance related to the DOJ memorandum? Please provide copies of any additional guidance issued by other U.S. Attorneys.
 - b. How did the Acting U.S. Attorney for the District of Montana identify these specific statutes to prosecute parents?
 - c. Are these the statutes DOJ intends to use nationwide to prosecute parents for exercising their First Amendment rights?

RESPONSE:

The October 4, 2021, memorandum was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. This memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe. As I explained in my congressional testimony last October, there are federal statutes that address violence, as well as threats of violence, including 18 U.S.C. § 2261A. The Supreme Court has explained in *Virginia v. Black* “when intimidation is not protected by the Constitution and that is when it is made with the intent of placing the victim in fear of bodily harm or death.”

Parents who advocate with regard to school board policies are protected by the First Amendment. Moreover, as I stated in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.”

Immigration

5. On July 1, I sent you a letter with seven other Senators related to your decision to vacate two immigration rulings, *Matter of L-E-A* and *Matter of A-B*. In that letter, we raised concerns that your decision to vacate these rulings would encourage more illegal immigration and lead to abuse of the asylum system.
 - a. At this time, my office has not received your response to this letter – when will a response be sent?
 - b. Did DOJ or the Biden Administration conduct an analysis of the impact of vacating *Matter of L-E-A* and *Matter of A-B* on illegal economic migration before taking this course of action? If so, did this analysis consider the pull factor of drawing more illegal immigrants to the border and enabling the cartels who profit from asylum abuse?
 - c. How many asylum seekers currently request asylum based on private criminal activity, and are being denied as a result? How many more asylum seekers would qualify due to the Biden Administration's actions?
 - d. In light of a historic immigration backlog, DOJ requested an additional 100 immigration judges in its FY2022 budget request. If the Biden Administration's promotion of asylum fraud goes through, will DOJ request additional judges to help process the inevitable wave of claims based on private criminal activity?
 - e. Has DOJ or the Biden Administration conducted a cost review to determine how much encouraging fraudulent asylum claims will cost the American taxpayer? What resources may be diverted from DOJ which could otherwise be directed towards protecting public safety and prosecuting dangerous criminals?
 - f. How many individuals have been approved for an asylum claim based on claims which would have been barred before you vacated these rulings?

RESPONSE:

On June 16, 2021, I issued decisions vacating decisions in which asylum had been denied to individuals who claimed persecution based on membership in a “particular social group.” *Matter of A-B*-, 28 I&N Dec. 307 (A.G. 2021) and *Matter of L-E-A*-, 28 I&N Dec. 304 (A.G. 2021). “Particular social group” is a complex issue, and consistent with past Attorneys General, I determined that complex questions of immigration law are better addressed in rulemaking. *See Matter of Compean*, 25 I&N Dec. 1, 2 (A.G. 2009). Rulemaking on this issue is consistent with the executive order directing the Secretary of Homeland Security and me to “promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a ‘particular social group’ as that term is used in 8. U.S.C. 1101(a)(42)(A).” Executive Order No. 14010, § 4(c)(ii) (Feb. 5, 2021).

With regard to your questions about funding for immigration judges, it is a priority for the Department to promote a fair, equitable, and efficient immigration court system by reducing the immigration court backlog and increasing access to legal representation. The hiring of additional immigration judges will help increase the Executive Office of Immigration Review's adjudicatory and case processing capacities, which will help

decrease the pending caseload. The Department is committed to ensuring that immigration judges decide cases based on the law and the facts, and that all parties are treated with respect and dignity.

6. Recently, the Department of Justice and the Department of Homeland Security issued a joint proposed rule to amend asylum processing by allowing USCIS asylum officers to make an initial adjudication.
 - a. The proposed rule would still permit applicants to appeal their decision to an immigration judge for consideration. Did DOJ conduct an analysis of any kind to anticipate the likelihood that applicants will appeal their decisions to an immigration judge? In other words, does DOJ believe that most unsuccessful applicants will still appeal a decision to an immigration judge?
 - b. Does DOJ believe that having an initial determination in a non-adversarial asylum hearing will sufficiently prevent improper claims of asylum from being granted? What specific steps will DOJ take to ensure that improper claims are filtered out?
 - c. Did DOJ and DHS conduct an analysis to determine how this proposed rule would improve processing times? If so, can you provide estimates for how quickly an asylum claim would be adjudicated under this rule?
 - d. Did DOJ conduct an analysis of how this proposed rule would impact how quickly immigration judges are able to complete cases? If so, what were the results of that analysis?

RESPONSE:

On March 24, 2022, the Department of Homeland Security and the Department of Justice issued a rule to improve and expedite processing of asylum claims made by noncitizens subject to expedited removal, ensuring that those who are eligible for asylum are granted relief quickly, and those who are not are promptly removed. That rule is available here: <https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>.

The rule advances our efforts to ensure that asylum claims are processed fairly, expeditiously, and consistent with due process. As explained in the rule's preamble, it is the Department's view that "the American public is better served if claims for asylum or related protection that originate through the credible fear screening process [are] adjudicated—fairly and efficiently—not only within section 240 proceedings before IJs but also by asylum officers who specialize in such claims." Indeed, asylum officers are "well-trained in making credibility determinations and assessing evidence," and will be able to "consider evidence relevant to an applicant's claim, including evidence that might be introduced as impeachment evidence in immigration court, and an asylum officer, where appropriate, can ask the applicant questions similar to those that a DHS attorney might ask in immigration court during a cross-examination." As a result, a nonadversarial process "allows for the presentation and consideration of asylum and other protection claims in a manner that is fair and efficient."

While preparing the rule, the Department of Justice and the Department of Homeland Security determined that it was not possible to quantify how many applicants who are unsuccessful before U.S. Citizenship and Immigration Services would ultimately pursue review of the asylum officer's decision by an immigration judge.

The Department of Justice and the Department of Homeland Security anticipate this rule to improve processing times as compared with the procedures in effect without this rule. The Departments anticipate that, under the procedures set out in the proposed rule, most cases referred to the new system would have an initial adjudication within 90 days compared to the many months, or even years, that it would take for the same individual to receive a decision from an immigration court.

The length of time required for an immigration judge to conduct the review proceedings under this rule has not been quantified. However, because each case adjudicated by U.S. Citizenship and Immigration Services is one less case that would have been on an immigration judge's docket, these judges will have additional time to adjudicate cases that would not have been otherwise addressed in the same period of time.

7. The immigration court backlog has grown exponentially over the past decade. At this time, there are approximately 1.45 million cases pending before an immigration judge.
 - a. What is the average time it currently takes to complete an immigration case before an immigration judge?
 - b. What actions is DOJ taking to reduce the immigration court backlog and more quickly adjudicate immigration cases?

RESPONSE:

According to EOIR, as of September 30, 2021, the median length of time across the previous fiscal year to complete a detained case was 47 days, and the median length of time to complete a non-detained case over that same time period was 1,411 days.

The backlog of cases in the immigration courts is a serious problem that the Department is committed to addressing. The backlog has many causes, and we need to pursue – and are pursuing – a multipronged strategy to address it. EOIR is examining the administrative tools available to them. A critical component of our strategy is the budget. Put simply, EOIR needs more resources in order to adjudicate more cases. The Department appreciates the funding provided by Congress in the past, and we respectfully request full consideration of the President's FY23 budget request, which includes \$1.354 billion for EOIR, representing an increase of 78% over the FY 22 enacted level.

8. Earlier this year, I wrote a letter along with ten of my Senate colleagues regarding DOJ policy on sanctuary jurisdictions. I remain concerned that this policy change will only encourage more states and cities across the country to embrace dangerous sanctuary policies.
 - a. What is DOJ's current position on sanctuary city policies that prohibit state and local governments from cooperating with federal authorities to enforce the law?

- b. On how many occasions has DOJ been unable to enforce the law and protect public safety due to sanctuary policies? Please be specific about the number of incidents in which sanctuary jurisdictions have declined to comply with DOJ requests.
- c. How many criminal aliens have been placed in federal custody who were released due to sanctuary policies? In how many instances did these individuals commit crimes during the time between their release and subsequent capture by federal authorities? Please provide specific about the number of arrests and which crimes were committed.

RESPONSE:

The Department's position is set forth in public guidance that was issued on April 22, 2021. See <https://www.ojp.gov/funding/explore/legal-notice>. Relevant Justice Department components advise that they do not maintain data responsive to subparts (b) and (c) of this question.

- 9. With the rampant lawlessness at our southern border, I am concerned that more criminal aliens are making their way into the country, putting public safety at risk. This is further fueled by the smugglers and traffickers who are using the surge at our border as a way to escape capture by our brave Border Patrol agents.
 - a. How many prosecutions of criminal aliens has DOJ pursued since January 20, 2021? How does that compare to prosecutions of criminal aliens during the preceding year?
 - b. How many criminal alien murderers, sex offenders, and drunk drivers were charged or prosecuted by DOJ since January 20, 2021? Please provide a specific breakdown of how many individuals were charged, prosecuted, and convicted.
 - c. Are individuals with convictions or indictments for murder, sex offenses, and drunk driving being placed into expedited removal proceedings before immigration judges? What are you doing to ensure they are expeditiously removed?
 - d. Please provide specific statistics about Americans who have been harmed or killed by criminal aliens since January 20, 2021. Please provide a breakdown of which crimes were committed against American citizens, and what charges were filed against the criminal aliens responsible.

RESPONSE:

The Justice Department makes prosecution decisions based on the individual facts and circumstances of each matter, consistent with the *Principles of Federal Prosecution*. With respect to the placement of individuals into expedited removal proceedings, that is solely a function of the Department of Homeland Security.

Law Enforcement

10. Our brave, hardworking men and women in blue put themselves in danger each and every day to keep our communities and our families safe. In 2020, 46 law enforcement officers were killed by criminals in the line of duty. Already this year, there have been 61 officers killed by criminals. In addition, the FBI reports that over 60,000 officers were assaulted in the line of duty in 2020.
- This is a shocking increase in assaults against law enforcement officers. What efforts is DOJ taking to investigate, prosecute, and deter violent assaults against the law enforcement community?
 - How many arrests have been made against those who have assaulted or killed a law enforcement officer in 2021?
 - How many federal prosecutions have been pursued against the criminals who have assaulted or killed law enforcement officers in 2021? What specific federal statutes have been used to prosecute these crimes and in how many cases?

RESPONSE:

The Justice Department has no more important responsibility than keeping the American people safe, including the men and women who serve our nation as sworn law enforcement officers. Although at this time the Department does not maintain publicly available data that is sufficient to be responsive to your questions, over the past year, the Department has increased its efforts to deter and combat threats to the law enforcement community. For example, in March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judge, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department's capacity to deter and combat those threats.

In addition to the Department's own investigative and prosecutorial efforts, the Department is scaling up our support for state and local law enforcement partners nationwide. For example, the President's FY 2023 budget request seeks dedicated funding for the police, including:

- A total of \$2.83 billion in discretionary and mandatory resources in FY23 for the Community Oriented Policing Service (COPS) to support the hiring of police and sworn law enforcement personnel nationwide and the implementation of community-based strategies to combat violent crime.
- A total of \$6.24 billion in discretionary and mandatory resources in FY23 for the Office of Justice Programs to support critical longstanding Justice Department grant programs – including Byrne Justice Assistant Grants and Project Safe Neighborhoods – as well as new programs that will provide state, local, and Tribal law enforcement partners with additional resources to prevent crime and reduce gun violence.

- In addition, the President is proposing a total of \$30 billion in new mandatory resources to support law enforcement and prevent crime.

Bureau of Prisons

11. The First Step Act was a historic, bipartisan piece of legislation which seeks to reduce recidivism by encouraging inmate participation in recidivism reduction programming. One key provision is the use of earned time credits as an incentive for inmates to participate in programming.
 - a. According to the proposed rule titled "FSA Time Credits," inmates are only eligible for credits earned after January 15, 2020. Have First Step Act earned time credits been applied to inmate sentences since January 15, 2020, or are they still being withheld pending the completion of the proposed rule? If earned time credits are being withheld until completion of the proposed rule, how quickly will DOJ be able to apply these credits to inmates?
 - b. Has DOJ applied earned time credits to any inmate sentences for programming which was completed prior to January 15, 2020?
 - c. How significant are waitlists for inmates to access programming, and how will you reduce these waitlists?

RESPONSE:

The First Step Act is a critical piece of bipartisan legislation that promised a path to an early return home for eligible incarcerated people who invest their time and energy in programs that reduce recidivism. I am committed to ensuring that the Justice Department does its part to honor this promise.

On January 13, 2022, the Department submitted to the Federal Register a final rule implementing the Time Credits program required by the First Step Act for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be viewed here: <https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>. As part of the implementation process, the Federal Bureau of Prisons has begun transferring eligible inmates out of BOP facilities and into either a supervised release program or into Residential Reentry Centers or home confinement.

Under the FSA, eligible inmates may earn 10 to 15 days of time credits for every 30 days of successful participation in Evidence Based Recidivism Reduction Programs and Productive Activities. The earned credits can be applied toward earlier placement in pre-release custody, such as RRCs and HC. In addition, at the BOP Director's discretion, up to 12 months of credit can be applied toward Supervised Release. Inmates are eligible to earn Time Credits retroactively back to Dec. 21, 2018, the date the First Step Act was enacted, subject to BOP's determination of eligibility.

Implementation is occurring on a rolling basis, beginning with immediate releases for inmates whose time credits earned exceed their days remaining to serve, are less than 12 months from release, and have a Supervised Release term. Some of these transfers have

already begun, and many more will take place in the weeks and months ahead as BOP calculates and applies time credits for eligible incarcerated individuals.

With respect to reducing waitlists for inmates to access FSA programming, the Bureau reports that it offers more than 80 programs across sites. Programs are staged at different times throughout the incarceration period for all inmates, and there are varying priorities and needs for different individuals. The Bureau asks inmates to sign up for programs so they can plan cohorts and ensure every inmate gets the programs he or she needs prior to release. The Bureau builds capacity in programming through increasing staffing of its professional program delivery staff (i.e., psychologists).

12. Butner FCI had one of the worst COVID-19 outbreaks in any federal prison, and still ranks as having the most inmate deaths at 32. It was also the only facility where two staff members have died. In total, 1,157 inmates contracted and have recovered from COVID-19, making Butner the fourth highest facility in the country.

- a. Have all interested staff members been able to access a vaccine? If not, why have they not been able to receive a vaccine, and how is DOJ planning to ensure they have access to a vaccine?

RESPONSE to Question 12a:

BOP advises that all Bureau staff have been offered the COVID-19 vaccine.

- b. Are all inmates at Butner FCI eligible for the COVID-19 vaccine?

RESPONSE to Question 12b:

BOP advises that all inmates at FCI Butner have been offered the vaccine and that all newly admitted inmates will be offered the vaccine as part of the health intake and health assessment process.

- c. How many inmates have been vaccinated against COVID-19?

RESPONSE to Question 12c:

The Bureau of Prisons reports that as of April 21, 2022, 588 inmates at FCI Butner have received a complete vaccine series; 2,613 inmates have received a complete vaccine series at the entire Butner Complex; and 93,922 current inmates across the Bureau of Prisons have received a complete vaccine series.

- d. Have all inmates who want a vaccine been able to receive one? If not all interested inmates have been able to receive a vaccine, why have they not been able to receive a vaccine and how is DOJ planning to ensure they are able to receive a vaccine?

RESPONSE to Question 12d:

BOP reports that, as of March 14, 2022, 1,747 inmates in BOP custody have not yet been offered the vaccine. Of those, 1,264 have been in BOP custody for less than four weeks. The Bureau continues to offer inmates the vaccine. Inmates who previously refused the vaccine may still request and receive the vaccine.

13. On June 29, 2021, I joined a bipartisan letter with my seven of my Senate colleagues to BOP regarding concerns about reports that the inmate deposit fund program operates with little oversight, enables federal inmates to avoid paying child support and other debts, and fails to scrutinize inmate accounts for suspicious and potentially criminal activity. Deputy Assistant Attorney General Joe Gaeta responded on August 24, 2021. He stated that BOP would be implementing reforms, procedures, strengthen monitoring of accounts, and increase communication with law enforcement on suspicious activity.
- Can you provide a status update on the policy implementation to ensure the deposit fund program has the necessary oversight?
 - What steps does BOP take to screen inmate transactions at Butner FCI for suspicious activity? Does BOP report suspicious activity to the Financial Crimes Enforcement Network?
 - Does BOP coordinate with other law enforcement entities such as the U.S. Marshals Service, the relevant U.S. Attorney, or any other law enforcement entity to monitor inmate trust fund accounts to ensure any financial obligation of an inmate is pursued?

RESPONSE:

I share your concern and agree that inmates must not be permitted to use Bureau of Prisons accounts to engage in unlawful activity or avoid obligations like court-ordered restitution. That is why in August 2021, the Deputy Attorney General issued a directive to the Bureau of Prisons to implement appropriate reforms to its current policies and procedures that would strengthen monitoring and reporting of these accounts, as well as identify funds that should be encumbered for financial obligations.

Implementation of this directive is underway. As one step in addressing these issues, the Bureau of Prisons issued additional guidance to wardens on account monitoring and is currently revising its Program Statement regarding the Inmate Financial Responsibility Program. In addition, the Department is evaluating appropriate BOP policies and procedures with respect to offsets. The Department also continues to consult with the Department of Treasury on this, as appropriate.

The Department's leadership is working closely with the Bureau of Prisons to continue to identify areas for improvement and implement reforms.

The Bureau advises that it regularly communicates and coordinates with outside law enforcement agencies to report suspicious financial activity through both direct reporting and participation on Justice Department task forces, such as the NJTTF, JTTFs, Vulcan, and Safe Streets.

The Bureau also advises that it provides the U.S. Marshals Service notification of all inmate receipts in excess of \$1,200 on a weekly basis. In addition, BOP reports that it provides the U.S. Marshals Service an inmate excess account balance report for account balances over \$1,200 every six months and upon request.

14. On September 23, 2021, I sent a bipartisan letter to BOP Director Carvajal with three of my Senate colleagues. The letter highlights the recent reports that BOP is failing to fully implement the First Step Act's medication-assisted treatment (MAT) program and use the appropriated funding by Congress to expand access to opioid treatment medication throughout the federal prison system.
 - a. At this time, I have not received a response to this letter. Can you please provide an update as to when we can expect a response to this letter?

RESPONSE:

The Bureau of Prisons advises that it responded to your September 23, 2021, letter on November 12, 2021.

- b. Can you provide the number of FCC Butner inmates that have been screened for participation in the MAT program? How many inmates are currently eligible to receive treatment through the MAT program?
- c. How many FCC Butner inmates are currently receiving treatment through the MAT program? What is the total number of inmates that have received treatment through the MAT program since the First Step Act was signed into law?
- d. What specific actions have you taken to expand access to the MAT program among federal inmates, particularly following the May 2020 Government Accountability Office report titled "Improved Planning Would Help BOP Evaluate and Manage Its Portfolio of Drug Education and Treatment Programs"? What is the status of your compliance with the GAO recommendations related to MAT treatment programs?
- e. Are there any additional concerns that we should be aware of when it comes to the MAT program or evidence based treatment? What additional funding or authorities would be helpful from Congress in order to fully implement the MAT program?

RESPONSE:

BOP reports that as of April 21, 2022, of the current population at FCC Butner, 242 individuals have been screened or are currently being screened for MAT services. BOP reports that as of April 21, 2022, a total of 21 individuals were receiving treatment through FCC Butner's MAT program. BOP advises that a total of 1,611 inmates have received treatment through the MAT program since the First Step Act was signed into law in 2018.

The Bureau reports that it completed a comprehensive and collaborative review of all applicable divisions that would require additional personnel required to support the expansion of MAT. The Health Services Division, Reentry Services Division, and the Correctional Programs Division have worked to determine personnel requirements given the complex nature of delivering MAT services. This review included a review and evaluation of the program requirements for MAT expansion. In addition, the Bureau consulted with several external subject matter experts on MAT services delivery models to incorporate lessons learned and challenges faced by other correctional jurisdictions and/or community clinic operations. The Bureau incorporated this knowledge into agency trainings.

The Bureau advises that it is actively working with the Government Accountability Office regarding the implementation of the recommendations from the report entitled "Improved Planning Would Help BOP Evaluate and Manage Its Portfolio of Drug Education and Treatment Programs." In addition, BOP advises that it is working with DEA and the Substance Abuse and Mental Health Services Administration on a model that would allow the Bureau to provide MAT at all Federal prison facilities. BOP expects this model to become operational in summer 2022.

15. Staffing remains a consistent challenge at BOP facilities across the country. While staff augmentation is a tool in extraordinary circumstances to fill vacant positions, I am concerned this is an unsustainable model and that DOJ and BOP must develop and implement strategies to address staffing shortages.
 - a. How many positions currently remain vacant at FCI Butner? What is the current staff vacancy rate?
 - b. How much has Butner FCI been required to use augmentation to address staffing? What percentage of the current staff is being forced to perform tasks outside their training or expertise?
 - c. Does BOP have a specific plan to address any staff shortages at FCI Butner?
 - d. Do you support the use of direct hiring authority by BOP to ease staffing shortages at FCI Butner and nationwide?

RESPONSE:

Ensuring that BOP facilities are fully staffed by professionals with the necessary skills and expertise to ensure a safe and humane prison system is a priority for the Justice Department. That is why in FY 2023, the President's Budget requests a total of \$8.18 billion for BOP to ensure the health, safety, and wellbeing of correctional staff and

incarcerated individuals. The Justice Department's FY 2023 request would allow BOP to hire more than 700 new correctional officers and nearly 600 new First Step Act staff.

To address staffing shortages and ensure the staffing stability needed to carry out its mission successfully, BOP has focused on recruitment – including recruitment efforts to fill mission critical positions –and retention of staff. As a general matter, in certain appropriate circumstances, the use of direct hiring authority, and recruitment and retention initiatives such as accelerated promotion programs and special salary rates, have been beneficial in addressing staffing shortages at BOP facilities.

BOP reports that as of the pay period ending April 23, 2022, there are 120 vacant positions at the FCC, which is a 9.04% vacancy rate. As of that date, FCC Butner was staffed at its FY22 funding level of 90.36%.

BOP advises that no staff are being forced to perform duties outside of their training or expertise. All staff within the institution are trained as Federal Law Enforcement Officers with primary responsibility for the safety and security of inmates. Consequently, all institution correctional workers receive primary law enforcement pay and retirement. More broadly, BOP reports that through the first half of FY 2022, documented augmentation hours across all BOP facilities have decreased compared to each of the past two fiscal years.

Illicit Drugs

16. On September 30, 2021, U.S. Drug Enforcement Administration (DEA) Administrator Anne Milgram announced that a total of 9.5 million fake pills have been seized this year. 1.8 million fake pills were seized and 810 arrests were made nationwide in a two-month operation called "One Pill Can Kill." Administrator Milgram highlighted that the fake pills laced are being produced by Mexican criminal drug networks and being sent to the United States.
 - a. What efforts is DOJ taking to stop these illicit networks from distributing fake pills into our communities?
 - b. In April 2021, the Raleigh, NC DEA field office representative also provided an alert that fake pills are being advertised to children on Snapchat by drug dealers. The advertisements on social media applications have already led to North Carolina children overdosing. What action is DOJ taking to stop drug dealers from using social media to advertise fake pills or other illicit drugs to our vulnerable children?
 - c. What outreach is DOJ and the DEA doing to inform North Carolina parents of the threats of fake pills and illicit drugs in the community?

RESPONSE:

As I testified before this Committee on October 27, 2021, the Justice Department is committed to keeping our country safe by addressing drug trafficking networks and overdose deaths. To these ends, DEA has stepped up its efforts nationwide to target the

criminal drug networks flooding the U.S. with deadly, fentanyl-laced fake pills. On August 3, 2021, DEA launched a nationwide law enforcement effort to address the increase in the availability and lethality of fentanyl-laced fake pills. In the first two months of the effort, DEA worked in concert with federal, state, and local law enforcement partners to seize more than 1.8 million fentanyl-laced fake pills. In 2021, DEA seized more than 20.4 million potentially fake pills. DEA continues to focus its operational efforts on stopping the flow of deadly synthetic fentanyl, methamphetamine, and counterfeit pills into our communities. In addition, in September 2021, DEA launched the One Pill Can Kill public awareness campaign, which included DEA's first Public Safety Alert in six years, to warn the public of the threat of counterfeit pills. The Justice Department would welcome the opportunity to brief your office on this important issue.

DEA advises that it is focused on combating the drug trafficking threat on social media. Social media has emerged as a flourishing new marketplace to buy and sell counterfeit pills, opioids, and other illicit drugs. Drug traffickers are exploiting their access to Americans through social media to expand their reach, create new markets, and target new clientele. Dismantling illicit social media drug marketplaces is critical to stemming the flow of dangerous drugs into our communities and preventing overdoses.

Finally, DEA values its community partnerships and maintains a robust community outreach program throughout North Carolina. DEA works closely with North Carolina stakeholders to distribute and promote a variety of educational materials and toolkits, including DEA's recently released Public Safety Alert and the One Pill Can Kill public awareness campaign. DEA has partnered with Discovery Education to provide families, teachers, and students with no-cost, science-based digital lessons, virtual field trips, videos, and take-home materials about drug threats.

17. In North Carolina, our law enforcement officers are working tirelessly to stop the spike in illicit drug use and sales. In February 2021, the Caldwell County Sheriff seized 36,000 fentanyl pills. Most recently, in September 2021, New Hanover County Sheriff's office made a bust that led to 2 kilograms of cocaine and 20,000 bags of heroin.
 - a. What initiatives are DOJ and DEA taking to work with North Carolina local and state law enforcement to address the spike in illicit drugs in our streets?
 - b. What resources does DOJ have available for North Carolina state and local law enforcement to help tackle the illicit drug problem? Are there any resources that are readily available for North Carolina's rural law enforcement officers?
 - c. Does DOJ have any strategies or diversion plans that North Carolina local and state law enforcement can use to confront the spike in illicit drugs and overdoses? How are US Attorneys and other federal officials working with local and state officials to confront overdose deaths?

RESPONSE:

DEA's partnerships with state and local law enforcement are critical to stemming the tide of overdose deaths and to fulfilling DEA's mission to strategically identify and investigate the most violent drug traffickers who pose the greatest threat to American public health

and safety. In furtherance of this mission, DEA works on Task Forces with state and local law enforcement in Raleigh, Charlotte, Greensboro, Wilmington, and Asheville, North Carolina, often in collaboration with the High Intensity Drug Trafficking Areas (HIDTA) Program of the Office of National Drug Control Policy.

DEA advises that rural law enforcement have access to DEA intelligence products through EPIC Portal (<https://esp.usdoj.gov>) and the Homeland Security Information Network (<https://www.dhs.gov/homeland-security-information-network-hsin>). State and local law enforcement personnel can also access the Deconfliction and Information Coordination Endeavor (DICE) program via the EPIC Portal to conduct investigative deconfliction queries.

The DEA reports that its offices in North Carolina work daily with local, state, and federal partners to conduct joint investigations and enforcement operations. The DEA in NC utilizes a robust Task Force Officer (TFO) Program, which offers counterparts the opportunity to assign officers/detectives to local DEA offices to facilitate and coordinate investigative efforts. Currently there are 83 state and local officers/detectives assigned to the 5 DEA offices.

In addition to the TFO Program, which uniquely positions DEA to coordinate intelligence and investigations, the DEA in NC works closely with numerous local drug task forces and the NC State Bureau of Investigation to identify additional opportunities to leverage partnerships and combat cartel activity throughout the State of NC and beyond. In these collaborative efforts, the DEA in NC offers investigative expertise and experience as well as the funding required for drug purchases and the legal interception of electronic communication devices (wiretaps).

In addition to DEA's enforcement efforts in North Carolina, DEA advises that it has approved a Tactical Diversion Squad for Raleigh, North Carolina, that will be comprised of special agents, diversion investigators, task force officers and intelligence officers. DEA has provided State Attorneys General, to include the North Carolina AG, with access to customized data reports on suspicious ordering of controlled substances by DEA registrants (i.e., pharmacies, hospitals, practitioners, etc.) in their area of responsibility. Additionally, retail drug distribution reports (i.e., sales from distributors to retail such as pharmacies, hospitals, practitioners, etc.) are publicly available for all states at https://www.deadiversion.usdoj.gov/arcos/retail_drug_summary/index.html. DOJ and DEA are also working closely with their interagency partners to expand access to medication assisted treatment for individuals suffering from opioid use disorder.

Crime Victims

18. The State of North Carolina has 35 accredited and 12 provisional Children's Advocacy Centers (CAC). CAC's provide technical support, annual training, assistance with local center development, networking, and contacts with child abuse professionals across the U.S. Since COVID-19, North Carolina CAC's have seen their VOCA funding diminish. Congress passed the VOCA Fix Act of 2021 in July to address ongoing concerns about

funding for crime victims and to collect funds directly from deferred prosecution agreements.

- a. Has DOJ started implementing the VOCA Fix Act? What specific actions has DOJ taken to implement this law? When do you expect the law to be fully implemented?
- b. Can you please provide the most up to date information about the status of the Crime Victims Fund (CVF)? How much total funding did the CVF collect in FY21? How much of that funding was a result of the VOCA Fix Act?
- c. How much do you estimate the Crime Victims Fund will collect in FY22? How much of that funding do you estimate will be a result of the VOCA Fix Act?
- d. Does DOJ have any additional resources for North Carolina CAC's that need urgent assistance as they wait for VOCA funding?

RESPONSE:

The Department's Office of Justice Programs (OJP) has acted swiftly to implement the VOCA Fix to Sustain the Crime Victims Fund Act of 2021 (VOCA Fix). OJP's Office for Victims of Crime (OVC) has recalculated the formula allocations; developed a procedure for requesting no-cost extensions; and issued 3 bulletins regarding the match waiver, the law enforcement cooperation exception, and community violence intervention support. In accordance with the VOCA Fix, OVC also approved all state and territory no-cost extensions requests. These extensions allow states and territories to continue vital VOCA-funded programs instead of having to defund them.

In August 2021, the Deputy Attorney General notified the Executive Office of United States Attorneys (EOUSA) about the VOCA Fix with a focus on the first provision that redirects any funds (e.g., monetary penalties) from federal deferred prosecution and non-prosecution agreements that would otherwise be deposited in the general fund of the Treasury, to go instead into the Crime Victims Fund to stabilize this funding resource. The Deputy Attorney General directed the EOUSA and the Justice Management Division, in consultation with OJP, to prepare guidance and training to ensure that funds collected pursuant to deferred prosecution agreements and non-prosecution agreements that would otherwise be deposited in the General Fund of the Treasury be deposited in the Fund.

In Fiscal Year 2021, a total of \$774 million was deposited into the Crime Victims Fund (CVF) and balance of the CVF at the beginning of Fiscal Year 2022 was \$3.193 billion. As a direct result of the VOCA Fix, the CVF received \$254 million in deposits in September 2021, of which \$224 million were from new deferred/non-deferred prosecution receipts. The \$254 million deposited into CVF in September 2021 is the largest monthly amount deposited into the CVF in the last four fiscal years.

The Office for Victims of Crime reports that a total of \$417 million was deposited into the CVF so far in fiscal year 2022, of which \$265 million were from new deferred/non-deferred prosecution receipts. As of April 2022, the CVF's balance was more than \$2.9 billion, but OVC anticipates obligating \$2.6 billion of that balance by the end of FY 2022.

Because the VOCA Fix Act has been in effect for less than a year, the Department does not yet have sufficient information to make long-term projections on future deposits from deferred and non-prosecution agreements.

19. Since COVID-19, North Carolina has seen an increase in violence and dwindling funding. Without the necessary funding, advocate groups cannot provide the necessary assistance to victims. What is DOJ doing to ensure that resources and funding are adequately reaching grantees and advocate groups?

RESPONSE:

OVC advises that it supports efforts that help build the capacity of States to effectively manage their VOCA victim assistance and compensation awards. Those programs include State Administering Agencies Support Teams and the OVC VOCA Center, which is a new training and technical assistance center designed specifically to support Victim Assistance and Victim Compensation Administrators in managing and administering their VOCA funding to promote justice and healing for all victims of crime.

20. In 2012, the U.S. Government Accountability Office (GAO) reported that DOJ lacked visibility over the extent to which its grant programs overlap. Can you give me an update on what DOJ has done or is doing to manage the VAWA grant programs and ensure victims get the necessary resources? Do you believe Congress should combine VAWA grant programs to prevent overlap and ensure funding is efficiently distributed?

RESPONSE:

Although this report predated my current tenure at the Department, it is my understanding that, since 2016, the Department of Justice annually examines the extent of overlap within and across the Office of Justice Programs, Office on Violence Against Women (OVW), and the Office of Community Oriented Policing Services to better understand the areas in which the program offices may be awarding funds for similar purposes or targeting the same beneficiaries.

Information from this annual review assists the Department in identifying areas of overlap, enhancing coordination among complementary programs, and channeling funds to priority funding areas. It also enables the Department to mitigate the risks associated with unintended or impermissible duplication resulting from existing overlap.

In connection with the Department's ongoing efforts to streamline its management of grants, the Department has been transitioning over the past year to a unified grants management system for all three grantmaking offices. As the Deputy Attorney General stated in her response to the Questions for the Record from this Committee's October 5, 2021, hearing on Renewing and Strengthening the Violence Against Women Act (VAWA), the Department has not identified a current need to combine VAWA grant programs. The Department has implemented an annual analysis to identify overlap in its grant program solicitations.

In addition, OVW, which administers the Department's VAWA grant programs, has taken steps to minimize potential grant duplication. In particular, OVW has developed a Recommendation Management System, which includes a feature to identify applications to multiple OVW grant programs from the same applicant, allowing OVW program specialists to check during its application review process whether the applications seek to fund duplicative activities.

21. In 2018, the DOJ Office of Inspector General (OIG) reported that that 42 percent of VAWA grants had not been closed in a timely manner.
 - a. What is DOJ doing to ensure that proper audits are conducted so grantees and victims get the necessary resources and funding in an adequate time?
 - b. Do you believe the lack of timely grant closures is an internal problem by DOJ? Or do you think there is a legislative remedy to address this?

RESPONSE:

As the Deputy Attorney General stated in her response to the Questions for the Record from this Committee's October 5, 2021, hearing on Renewing and Strengthening the Violence Against Women Act, each of the Department's grantmaking components responded to the recommendations of the Office of the Inspector General (OIG). The OIG notified the Department on September 8, 2021, that the overall status of the report is now closed.

With regard to OVW specifically, OVW reports that it has remedied the findings regarding individual grant awards and has implemented the recommended policies, including a new policy that requires staff to review the general ledgers of 10% of closed awards. The Department is committed to ensuring the grantmaking components have the tools they need to effectively make, monitor, and close grant awards.

US Marshals Detention Space

22. As you may recall, on March 22, 2021, I sent a letter to you regarding the decision to close Rivers Correctional Institution (RCI) in Herford County, North Carolina. The closure of this facility resulted in hundreds of job losses in a very rural part of the state. We have heard from officials in the state concerned about access to detainee bedspace. Because RCI was closed, U.S. Marshals are required to travel significant distances across the state to transfer individuals for pre-trial detention. I understand there is interest from federal judicial officials, including the local U.S. Marshal, to permit the use of RCI to expand bed space.
 - a. Are you aware of such interest from federal officials in the state?
 - b. Is DOJ willing to permit the use of RCI as additional bed space for the U.S. Marshals?
 - c. Is it DOJ's opinion that President Biden's executive order would prohibit the U.S. Marshals from using this facility? If so, have you raised this issue with President Biden to make clear the public safety interest of having access to these facilities?

- d. Will you commit to working with the U.S. Marshals in North Carolina to ensure they have access to detainee bed space which is practical and protects public safety?

RESPONSE:

The detention space requirements of the United States Marshals for the several judicial districts comprising the State of North Carolina have been acknowledged. USMS officials routinely assess bedspace requirements and availability for the several judicial districts comprising the State of North Carolina.

The Bureau of Prisons determined that it no longer needed the Rivers Correctional Institution to meet its correctional housing requirements. The GEO Group was notified in November 2020 that the BOP would not exercise an option period on the contract. Executive Order 14006 prohibits USMS from establishing any new contracts or agreements for the use of the Rivers Correctional Facility.

Finally, the USMS is actively working to identify government-operated detention space to fulfill the housing requirements of each judicial district comprising the State of North Carolina. Currently, the BOP is providing supplemental housing at one of its correctional facilities located in the State of North Carolina to meet those housing requirements.

International Parental Child Abduction

- 23. On October 1, 2021, I sent a letter with Senator Feinstein regarding the issue of international parental child abduction. Your responses to the questions posed in that letter are very important to help Senators consider legislation to improve our nation's response to IPCA crimes.
 - a. Can you please provide an update on the status of the October 1, 2021 letter, and when Senator Feinstein and myself can expect a response?
 - b. How many individuals have been charged under the IPKCA each year from 2010-2020?
 - c. In how many cases has an extradition request been formally presented to a foreign government each year from 2010-2020? In how many of those cases was the individual successfully extradited to the United States?
 - d. How many individuals were convicted or pleaded guilty under the IPKCA each year from 2010-2020? Please provide a separate number of convictions and guilty pleas.
 - e. What was the average sentence imposed on those convicted or who plead guilty under IPKCA each year from 2010-2020? Please provide a separate average for convictions and for guilty pleas.
 - f. In how many of the cases prosecuted each year from 2010-2020 was the abducted child or children successfully returned to the left-behind parent?
 - g. Which countries have participated in the Executive Symposia on Child Exploitation, Human Trafficking, and Model Laws? How much of the

programming is focused on IPCA? Does the Department have adequate funding to conduct additional symposia and address the IPCA crisis?

- h. You provided several examples of presentations and trainings provided to DOJ employees and federal, state, local, and tribal law enforcement officers and prosecutors. Since these trainings appear to have occurred in 2017 and 2018, are there additional trainings planned for 2021 and beyond to raise awareness of resources and authorities to combat IPCA? Will the Department incorporate more voices from leftbehind parents into these trainings?
- i. What efforts are being taken to expand outreach and education to civil courts and attorneys to help identify high-risk cases and prevent abduction from occurring?
- j. Are there any additional authorities which Congress can provide to DOJ to assist with its investigation and enforcement of our nation's IPCA laws?

RESPONSE:

The Department's Office of Legislative Affairs advises that the Department's response to the letter we received from you and Senator Feinstein was transmitted on March 21, 2022.

As that response noted, from FY 2010 to FY 2020, 127 defendants were indicted in federal court on charges of international parental kidnapping. The Department obtained 42 guilty pleas and 12 guilty verdicts at trial. For defendants convicted at trial, sentences in a given year averaged from approximately 15 to 30 months imprisonment. For defendants who pleaded guilty, sentences in a given year averaged from approximately ten to 21 months imprisonment. There is often a discrepancy between indictments and convictions in a given year because of the time needed to complete a prosecution. This is especially true in cases involving extradition proceedings.

In cases where international parental kidnapping charges are pending (whether in federal or state court), the Department takes appropriate steps that may best lead to return of the taking parent, based on the facts and circumstances of each case, the country involved, and whether we have an extradition treaty with that country. Based on the unique facts of each case, we may request extradition or seek the taking parent's return through other legal means. Since 2010, we have been successful in securing the return of taking parents when extradition was granted, the taking parent waived extradition, or the parent was deported to the United States. The Department does not track whether the child was returned because such return is not part of the criminal proceeding. The Department of State, rather than Department of Justice, plays a role in assisting parents to recover the children pursuant to the Hague Convention on the Civil Aspects of International Child Abduction.

As we previously indicated, the Departments of Justice and State conduct the Executive Symposia on Child Exploitation, Human Trafficking, and Model Laws. This week-long program is designed to improve the capacity of developing countries to address online child sexual exploitation and human trafficking. One day of the program includes training on international parental kidnapping and the Hague Convention. Since 2017, instruction on international parental kidnapping has been offered at five of the six separate week-long symposia. Those five programs were attended by high-level delegations of judges,

prosecutors, and law enforcement officials from 24 different countries in Africa, Central America, and the Caribbean, specifically Burkina Faso, Congo, the Democratic Republic of Congo, Kenya, Mauritania, Namibia, Niger, Rwanda, Senegal, Benin, Gabon, Ghana, Ivory Coast, El Salvador, Guatemala, Honduras, Antigua and Barbuda, Bahamas, Barbados, Belize, Guyana, Jamaica, St. Vincent and The Grenadines, and Trinidad and Tobago. Because these programs are offered through the Department of State's International Law Enforcement Academies (ILEA), we defer to the State Department with respect to your question about funding.

Similarly, given the involvement of the State Department's Office of Children's Issues on prevention of international parental kidnapping, we defer to them on your question about outreach and training to courts and civil attorneys.

We welcome the opportunity to incorporate the voices of left-behind parents at upcoming Department trainings and interagency collaborations, including the National Law Enforcement Training on Child Exploitation, the Federal Task Force on Missing and Exploited Children, and quarterly interagency meetings focused on the prevention of international parental kidnapping that are hosted by the State Department pursuant to the International Child Abduction Prevention and Return Act.

Cybersecurity

24. As co-chair of the Senate Cybersecurity Caucus, I am working to elevate the cybersecurity public policy conversation. What are the top priorities that Congress should address to help your agency and the Administration better fight cybersecurity attacks? Are there additional authorities which Congress should provide to assist you in preventing, investigating, and prosecuting cybercrimes?

RESPONSE:

The Justice Department would be happy to provide assistance on any pending legislation.

25. We have seen an increase of cyberattacks over the past year, threatening our national and economic security. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue.
- a. What must be done to improve coordination among the many actors that play a role in combatting cyberattacks, stopping future attacks, and bringing the bad actors to justice?
 - b. Please provide a list of the various components of the Justice Department that address cybersecurity incidents. How are you ensuring that the Justice Department is effectively coordinating within its various areas of expertise to address cyber incidents and cybercrimes?
 - c. How are you ensuring that the Justice Department is effectively coordinating with other government agencies, including CISA and the Secret Service, on these issues?

- d. How will you increase cooperation between private actors and companies—particularly companies engaged in cutting edge research and development of emerging technologies—and the federal government on these issues?

RESPONSE:

The Department of Justice is committed to working with our federal, state, and local partners to combat cyber threats. Components across the Justice Department – including the Criminal Division, the National Security Division, our U.S. Attorneys’ offices, and the FBI – are working together and alongside our partners at all levels of government to bring to bear all available tools to ensure that we disrupt, investigate, and prosecute ransomware groups and the broader criminal ecosystem that allows them to flourish. To help ensure a coordinated approach, all U.S. Attorneys’ offices nationwide are reporting on ransomware and related criminal infrastructure cases. And the Justice Department’s Ransomware and Digital Extortion Task Force and National Cryptocurrency Enforcement Team bring together dedicated experts from across government to focus on enhancing our capabilities to disrupt the illicit use of digital assets.

The FBI is often a “first responder” to a cyber incident. With Cyber Task Forces located in each of its 54 FBI Field Offices across the country, the FBI is prepared to respond to and investigate cyberattacks and intrusions wherever they may occur. Its agents serve both as investigators and high-tech specialists capable of applying the most current technological know-how to collect evidence at the scene of a cyberattack or intrusion, analyze data forensically, and trace a cybercrime to its origins. Through its Cyber Division located at FBI Headquarters, the FBI provides leadership to its global efforts to investigate cyber threats, whether they stem from criminal or national security actors.

In addition, the Criminal Division’s Computer Crime and Intellectual Property Section (CCIPS) is responsible for implementing the Department’s national strategies in combating computer and intellectual property crimes worldwide by working with other government agencies, the private sector, academic institutions, and foreign counterparts. Section attorneys work to improve the domestic and international legal, technological, and operational infrastructure to pursue network criminals most effectively. Working in support of and alongside the U.S. Attorneys’ offices, CCIPS prosecutes violations of federal law involving cyber intrusions and attacks. The Cybersecurity Unit within CCIPS is designed to prevent computer crime by taking the expertise and knowledge gained through the prosecution of computer crime cases.

The investigation, disruption, and deterrence of national security cyber threats are among the highest priorities of the National Security Division (NSD). NSD has developed a specially trained group of attorneys within Counterintelligence and Export Control Section (CES), who partner with the FBI’s CYD and USAOs across the United States, to investigate, disrupt, and deter malicious cyber activity by nation-state actors or their proxies, or other malicious cyber activity that jeopardize national security.

U.S. Attorneys' offices around the country have decades of experience developing and prosecuting cyber cases, and they have developed strong working relationships with all the federal law enforcement agencies working in their districts. They also work with potential local victims of cybercrimes, such as high-tech companies and public and private entities responsible for critical infrastructure. The U.S. Attorneys' offices and CCIPS jointly established a network of criminal cyber experts more than fifteen years ago currently known as the Computer Hacking and Intellectual Property ("CHIP") coordinator network. Prosecutors within the nationwide CHIP network receive training and resources that help ensure that they are prepared for the newest threats and are conversant in the newest technological trends being exploited by criminals. The CHIP program also aids in the coordination of multi-district prosecutions involving cyber threats.

All components of the Justice Department working on these issues interface regularly with other government agencies, including CISA and the Secret Service. CISA and the FBI collaborate regularly on pending threats. Department prosecutors are intimately involved with the Secret Service's law enforcement work, including its investigations of online crime.

The Department of Justice believes in a whole-of-society approach, and that requires close cooperation and work with the private sector. The FBI regularly engages with the private sector to both identify threats and to identify potential solutions.

26. Last week, Deputy Attorney General Lisa Monaco spoke about various efforts being pursued by DOJ to combat cyber threats. These were the (1) Comprehensive Cyber Review, (2) Ransomware and Digital Extortion Task Force, (3) Civil Cyber-Fraud Initiative, and (4) the National Cryptocurrency Enforcement Team.
- a. Please provide a description of the purpose of each of these efforts, and the goals of each effort. How is DOJ measuring success in these efforts?
 - b. What actions have been taken by each of these efforts, and what progress has been made in each to improve cyber threat responses?
 - c. Are there additional efforts that DOJ intends to undertake to combat cyber threats?

RESPONSE:

The Comprehensive Cyber Review is designed to: (1) assess how we can improve our capability to investigate, to prosecute and disrupt these actors and their evolving techniques; (2) build our own resiliency as a department, as a multinational, global organization when it comes to cybersecurity; and (3) make sure we are doing what we can do to prepare the next generation when it comes to the Department's attorneys and agents to go after these threat actors.

The Ransomware and Digital Extortion Task Force is designed to: (1) in an effort led by DOJ's Computer Crime and Intellectual Property Section, enhance the Department's ability to disrupt, investigate, and prosecute ransomware actors; (2) target the ransomware criminal ecosystem as a whole; (3) strengthen public-private partnerships; (4) work with federal partners; and (5) further international collaboration.

The National Cryptocurrency Enforcement Team will gather the expertise of prosecutors in the Criminal Division along with the U.S. Attorneys' offices to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors.

The creation of the Civil Cyber-Fraud Initiative is a direct result of the Department's ongoing comprehensive cyber review.

All of these efforts take their place alongside the Department's existing and extensive efforts to fight cybercrime. As explained above, the Department of Justice has pursued a programmatic approach to fighting cyber threats since at least 1996, when the Department created the Computer Crime and Intellectual Property Section (CCIPS). CCIPS leads the Ransomware Task Force's effort to disrupt, investigate, and prosecute ransomware and digital extortion activity.

Recent Criminal Division successes in this field include the November 8, 2021, announcement of the indictment and arrest of Yaroslav Vasinskyi, 22, a Ukrainian national, with conducting ransomware attacks against multiple victims, including the July 2021 attack against Kaseya, a multi-national information technology software company; the simultaneous announcement of the seizure of \$6.1 million in funds traceable to alleged ransom payments received by Yevgeniy Polyanin, 28, a Russian national, who is also charged with conducting Sodinokibi/REvil ransomware attacks against multiple victims; the June 8, 2021 announcement of the seizure of over \$2.3 million, a significant portion of the proceeds of a May 8 ransom payment to individuals in a group known as DarkSide, which had targeted Colonial Pipeline resulting in critical infrastructure being taken out of operation; and the February 8, 2022, announcement of the seizure of over \$3.6 billion in cryptocurrency – the Department's largest financial seizure ever – linked to the 2016 hack of Bitfinex.

27. In August, I led the introduction of S. 2629, the Better Cybercrime Metrics Act along with Senators Schatz, Cornyn, and Blumenthal. This important legislation will help improve how we identify and report cybercrimes.
- a. Do you agree that this legislation is an important contribution in the fight against cybercrime?
 - b. Does DOJ support enactment of this legislation?
 - c. If this bill is passed, will you commit to its full implementation as quickly as possible? How would you insure that DOJ components will act quickly to implement its requirements?

RESPONSE:

The Justice Department welcomes the opportunity to work with Congress on legislation to fight cybercrime.

28. In June, you requested the largest increase in cyber resources for the Justice Department in over a decade, \$1.5 billion, for protecting our nation from cyberattacks and cybercrime. How will you prioritize spending of these resources to minimize fragmentation, overlap, or duplication of efforts between your Department and other federal government agencies?

RESPONSE:

The Justice Department structures its budget requests with the aim of reducing duplicative efforts across the Department. For example, the FBI reports that, through its model field office cyber squads, aims to deconflict operations and to reduce the kinds of redundancies contemplated by the question. In addition, the Department frequently coordinates with federal agencies across the federal government, including the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, to ensure alignment on national cyber priorities.

29. In July, we heard from the Department of Justice in our Ransomware hearing that the reluctance to report ransomware incidents and payments made may be driven concerns "including a fear of regulatory action or reputational harm, or of an interruption to business operations."
- a. What other reasons are there for the failure to voluntarily report?

RESPONSE to Question 29a:

We have heard a wide variety of concerns about voluntary reporting, ones that the Department has worked hard to try to address. In addition to the concerns cited in the question, one we very often hear is that companies are concerned that sharing information with the government could waive applicable legal privileges, which is why the Administration supports congressional action to preserve any applicable privileges to promote better sharing.

- b. Would you recommend a mandatory reporting scheme?

RESPONSE to Question 29b:

Yes.

- c. If so, what assurances is the Justice Department prepared to give those who report incidents to address these concerns, including harm to reputation, regulatory retaliation, or harms to intellectual property?

RESPONSE to Question 29c:

The Justice Department has long worked to protect victims and works hard to do so in this area. We protect information shared with us consistent with the law and encourage

Congress to provide further protections to preserve any applicable privileges pertaining to data shared with the federal government.

- d. What policies should the government have to safeguard data provided by companies to combat ransomware attacks?

RESPONSE to Question 29d:

In addition to protections used to secure grand jury secrecy materials, the Department and the FBI use a variety of mechanisms to safeguard data provided by victim companies in cyber cases. These include, for instance, limiting access to the data to only those individuals who must access it for purposes of the investigation; keeping the data offline and in physically secure areas; and seeking court-authorized protective orders where appropriate to further protect the data.

- 30. DHS has implemented hiring practices aimed at recruiting and retaining cybersecurity professionals. Has DOJ taken similar efforts to implement hiring practices directed at the recruitment and retention of cybersecurity professionals? If so, please provide details about these efforts.

RESPONSE:

The Department is currently reevaluating its hiring practices to ensure that it can attract the necessary experienced personnel to fulfill its investigative, prosecutorial, and defensive responsibilities across dynamic cyber matters in light of the competitive market for capable cyber personnel. The Department is working toward developing a targeted strategy to build and maintain a best-in class cyber workforce, in order to execute its mission against current and future cyber challenges.

In addition to more competitive salaries, the Department's cyber workforce strategy is working toward implementing novel means of attracting talent, including by offering junior hires unique opportunities to combat cyber threats. For example, in August 2021, the Department announced the creation of its Cyber Fellows Program. This program will be available to new attorneys and will offer them the opportunity to develop as prosecutors across the Department's offices that specialize in cyber investigations and prosecutions.

- 31. On June 30, the U.S. Government Accountability Office listed 12 open priority recommendations, including two on cybersecurity.
 - a. What progress has the Justice Department made on these priority recommendations to-date?
 - b. With respect to the cybersecurity recommendations, has the Department fully implemented the coordination between its cybersecurity and enterprise risk management (ERM) functions?

RESPONSE:

Below is a status update on the Justice Department's progress in implementing the 12 Priority Recommendations GAO identified on June 30, 2021:

GAO Priority Recommendation #1: GAO recommended that the DEA Administrator develop and implement additional ways to use algorithms in analyzing Automated Reports and Consolidated Orders System (ARCOS) and other data to more proactively identify problematic drug transaction patterns. *See GAO-20-118. Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders.* DEA advises that GAO closed this recommendation in January 2022 in light of the actions DEA took to develop and implement techniques to proactively use algorithms in analyzing ARCOS and other data and identify problematic drug transaction patterns.

GAO Priority Recommendation #2: GAO recommended that the DEA Administrator, in coordination with the Department-wide efforts on data strategy, establish and document a data governance structure to ensure DEA is maximizing its management of industry-reported drug transaction data. *See GAO-20-118. Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders.* DEA advises that GAO closed this recommendation in August 2021 in light of the actions DEA took to establish and document a data governance structure to ensure that DEA is maximizing the management of industry-reported drug transaction data.

GAO Priority Recommendation #3: GAO has recommended that the Deputy Assistant Administrator for the Office of Diversion Control solicit input from distributors, or associations representing distributors, and develop additional guidance for distributors regarding their roles and responsibilities for suspicious orders monitoring and reporting. *See GAO-15-471. Prescription Drugs: More DEA Information about Registrants' Controlled Substances Roles Could Improve Their Understanding and Help Ensure Access.* In its work to implement this recommendation, DEA reports that it is developing a proposed Suspicious Orders regulation.

GAO Priority Recommendation #4: GAO has recommended that the DEA Administrator establish outcome-oriented goals and associated measurable performance targets related to opioid diversion activities, using data it collects, to assess how the data it obtains and uses supports its diversion control activities. *See GAO-20-118. Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders.* To implement this recommendation, DEA reports that its Diversion Control Division is using advanced analytical, targeting, and risk assessment tools to provide and coordinate the collection, analysis, and dissemination of drug-related intelligence to DEA's Diversion Investigators and Special Agents. DEA's Diversion Control Division enhances DEA's investigative capabilities and productivity by examining objective and data-centric information. In addition, DEA reports that it is drafting a "Controlled Prescription Drug Enforcement Strategy" which will detail its strategic planning and identify DEA's outcome-oriented goals and associated measurable performance targets related to opioid diversion activities. DEA reports that it used GAO's findings to develop its Controlled Prescription Drug

Enforcement Strategy. DEA anticipates providing the final strategy to GAO in the summer of 2022 and requesting that it close the recommendation.

GAO Priority Recommendation #5: GAO has recommended that the Director of BOP develop and implement a reliable method for calculating staffing levels at BOP institutions. See GAO -21-12. *Federal Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs*. To assist its efforts to implement this GAO recommendation, BOP reports that it has contracted with an outside consultant, NTT Data Services, to create a new tool that will help BOP make real-time staffing calculations and predictive forecasting for staffing needs. BOP reports that the contractor has completed its Phase 1 tasking (Assessment) which included an assessment of existing BOP methods for calculating staffing levels, staffing processes and associated challenges. BOP further advises that the contractor is now at its backend of its Phase 2 tasking (Analyze) where they have defined comprehensive criteria and categorized mission variables to inform the Automated Staffing Tool Prototype which is currently in development. BOP anticipates that, at the end of June 2022, the contractor will deliver, and test with Correctional Services and HR staff, the Automated Staffing Tool Prototype for the Mid-Atlantic region's Correctional Services department before expanding to additional regions.

GAO Priority Recommendation #6: GAO has recommended that the Director of BOP conduct a risk assessment of its overtime and augmentation use, including identifying risks to staff, inmates, and institution security; and determining actions to respond, as appropriate. See GAO -21-123. *Federal Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs*. To assist its efforts to implement this GAO recommendation, BOP reports that it is working with a contractor, which is currently assessing the use and risk of overtime and augmentation by institution and across the Bureau of Prisons. BOP advises that the contractor has delivered a Risk Analysis of Overtime, Augmentation, and Incentive Payment that analyzed usage and trends of current Overtime, Augmentation, and incentive payments. BOP further advises that the contractor has also analyzed the current Overtime Calculation Tool's functionality and is soliciting input from Subject Matter Experts to develop recommendations for tool enhancement and implementation.

GAO Priority Recommendation #7: GAO has recommended that the Director of BOP should assess the outcomes of the staffing incentives it utilizes by developing performance measures and goals, measuring outcomes against them, and adjusting incentives, as appropriate. See GAO -21-123. *Federal Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs*. To assist its efforts to implement this GAO recommendation, BOP reports that it is working with a contractor, which is working to finalize a "Current State Risk Analysis of Overtime and Incentive Payment Usage." BOP advises that the contractor has delivered a Risk Analysis of Overtime, Augmentation, and Incentive Payment that analyzed usage and trends of current Overtime, Augmentation, and incentive payments. BOP also reports that the contractor is beginning to implement one of its key recommendations: develop a Bureau-

wide incentive framework to standardize usage of incentives, consistent with OPM regulations and DOJ and BOP policy.

GAO Priority Recommendation #8: GAO has recommended that the Justice Department clarify in all current relevant DOJ guidance and communications – including FBI guidance and communications – to whom FBI employees may make protected disclosures and, further, explicitly state that employees will have access to recourse if they experience retaliation for reporting alleged wrongdoing to someone not designated in DOJ’s regulations. *See GAO 15-112. Federal Bureau of Investigation (FBI) Whistleblower Retaliation Complaints Whistleblower Protection: Additional Actions Needed to Improve DOJ’s Handling of FBI Retaliation Complaints.* To implement this recommendation, the Department has conducted an internal review and is developing proposed regulations.

GAO Priority Recommendation #9: GAO has recommended that Director of the Executive Office for Immigration Review (EOIR) should develop and implement a strategic workforce plan that addresses, among other areas, key principles of effective strategic workforce planning, including (1) determining critical skills and competencies needed to achieve current and future programmatic results; (2) developing strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies; and (3) monitoring and evaluation of the agency’s progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic results. *See GAO-17-438. Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges.* To implement this recommendation, EOIR advises that it has begun work on developing a strategic workforce plan, which is intended to align with the Justice Department’s Strategic Plan, which is currently under development, as well as reoccurring workforce needs assessments. EOIR further reports that it is working to update its workforce modelling tool.

GAO Priority Recommendation #10: GAO has recommended that the Justice Department revise DOJ’s process for conducting improper payment risk assessments for Law Enforcement to help ensure that it results in a reliable assessment of whether the program is susceptible to significant improper payments. This should include preparing sufficient documentation to support DOJ’s risk assessments. *See GAO-19-112. Improper Payments: Selected Agencies Need Improvements in Their Assessments to Better Determine and Document Susceptibility.* To implement this recommendation, the Department’s Justice Management Division provided the GAO with a response on June 15, 2022. The response provides a summary of the FY 2022 Improper Payment Risk Assessment which includes the process for conducting the risk assessment, the factors used by the Department in determining whether a program is susceptible to improper payments, and the determination of whether any of the Department’s programs are considered susceptible to improper payments. A consolidation of the results from FY 22 component risks assessments, along with a quantitative comparison of the Department’s actual and estimated improper payments to OMB’s statutory thresholds, is also included.

GAO Priority Recommendation #11: GAO has recommended that the Justice Department develop a cybersecurity risk management strategy that includes the key elements identified in this report. *See GAO-19-384 Agencies Need to Fully Establish Risk Management Programs and Address Challenges.* The Department's Justice Management Division (JMD) reports that it has developed a cybersecurity risk management strategy that includes each of the eight key elements identified in GAO's report. On May 25, 2022, GAO closed this recommendation as implemented.

GAO Priority Recommendation #12: GAO has recommended that the Justice Department fully establish and document a process for coordination between cybersecurity risk management and enterprise risk management (ERM) functions. *See GAO-19-384 Agencies Need to Fully Establish Risk Management Programs and Address Challenges.* The Department's Justice Management Division (JMD) reports that the Department has fully documented the relationship and coordination between cybersecurity risk management practices with the enterprise's risk management functions in the Department's Risk Management Procedures. On April 21, 2022, GAO closed this recommendation as implemented.

32. In July, the Justice Department submitted written testimony annexing proposed language for a draft "Cybercrime Mitigation Act." It tracks two sections of the International Cybercrime Prevention Act, S.2139, a bipartisan bill that I cosponsored with Senators Whitehouse, Graham, and Blumenthal. However, certain provisions were omitted. For example, the proposed Cybercrime Mitigation Act does not create increased penalties for those who damage critical infrastructure computers and does not connect felonious computer fraud and abuse to racketeering activities.
 - a. Please explain why provisions that were part of the Cybercrime Prevention Act were not included in the proposal, and specifically address why provisions specifically addressing critical infrastructure would not be helpful.

RESPONSE:

I understand that the Office of Legislative Affairs has given informal feedback on your bill, and they would be happy to discuss this further with you.

Antitrust

33. The Justice Department's Antitrust Division under the previous Administration took the view that the policies of the patent laws and the antitrust law are aligned, with the mutual aim of fostering dynamic competition through innovation. However, in June of this year, Acting Assistant Attorney General Richard Powers stated that the Antitrust Division is rethinking its approach to the intersection of antitrust and intellectual property.
 - a. Do you agree that reliable, predictable, quality patent rights promote vigorous, dynamic competition to the benefit of consumers and that the Antitrust Division should continue to support patent rights as a key driver of innovation and a competitive American economy?

- b. Do you agree that universities, companies and small inventors that commit time, resources and capital to engage in risky research and development (R&D) activities to develop the next generation of standards and that seek to be rewarded for their successful innovations to obtain fair and adequate compensation for the use of their patented technologies should be allowed and encouraged to assert their IP rights in good faith without being labeled as “patent trolls” or chilled by threats of antitrust enforcement action or private antitrust litigation?
- c. I understand the Department of Justice is considering revising the 2019 Joint USPTO, NIST and DOJ Policy Statement on Remedies for Standards-Essential Patents subject to Voluntary F/RAND Commitments. Is it doing this independently from the Secretary of Commerce?
- d. I understand the Justice Department’s Antitrust Division plans to provide “clearer guidance on what good faith licensing negotiation looks like and how bad faith conduct can hinder competition.” Will this guidance involve public consultations? Will it involve steps that each party should take, and how quickly it should act, before a court may declare the negotiations to have failed so the SEP holder may enforce remedies? Will it involve consultations with the United States Patent and Trademark Office, NIST, and the Secretary of Commerce? What role will patent policy play in this guidance?
- e. Does the Department of Justice intend to change the Antitrust Division’s policy, as reflected in that Policy Statement, that antitrust law should not normally play a role in FRAND licensing disputes between SEP holders and potential licensees? Will it wait until it has a Senate confirmed leader in place before making further changes?
- f. Can you commit that the Department of Justice’s Antitrust Division under will treat the non-sham assertion of intellectual property rights and requests for patent remedies provided under federal law as protected by the Noerr-Pennington Doctrine?

RESPONSE:

On June 8, 2022, the Department of Justice, the U.S. Patent and Trademark Office (USPTO), and the National Institute of Standards and Technology (NIST) announced the withdrawal of the 2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments (2019 Statement). After considering public input on the 2019 Statement and possible revisions, the agencies concluded that withdrawal of the 2019 Statement is the best course of action for promoting both competition and innovation in the standards ecosystem.

As the press release accompanying that announcement explained, “[i]n exercising its law enforcement role, the Justice Department will review conduct by standards essential patent (SEP) holders or standards implementers on a case-by-case basis to determine if either party is engaging in practices that result in the anticompetitive use of market power or other abusive processes that harm competition.” The Antitrust Division expects that this “case-by-case approach will encourage good-faith efforts to reach F/RAND licenses and

create consistency for antitrust enforcement policy so that competition may flourish in this important sector of the U.S. economy.”

Finally, the application of the *Noerr-Pennington Doctrine* – as with many legal doctrines – depends upon the facts of a particular case.

34. The Supreme Court has recognized that private standards can have significant procompetitive advantages but that there need to be procedures that prevent the standard-setting process from being biased or manipulated by members with economic interest in stifling competition in violation of section 1 of the Sherman Act. In that context, are you prepared to ensure that the Department of Justice enforces Section 1 aggressively to prevent collusive activity by manufacturers of standards-compliant products that subvert the voluntary consensus-based processes of standards development organizations to deprive patent owners of fair and reasonable compensation for their standards-essential patented technologies?

RESPONSE:

The Department is committed to enforcing Section 1 when the facts suggest that an antitrust violation may have occurred.

35. An issue that is particularly important to me is the relationship between IP theft and competitiveness. In 2019, Senator Coons and I sent a letter to the Attorney General applauding the withdrawal of a previous 2013 policy that addressed patented technologies embedded in global standards. We were particularly concerned that the 2013 policy treated patents that are part of global standards differently than other patents in terms of the remedies available for IP theft. My concern is that while the United States is leading at the moment in technologies like 5G, China is becoming more competitive every day. Companies like Huawei with strong support from the Chinese government are challenging our leadership when it comes to innovation. And technological innovation is especially vital to a strong and growing economy.

President Biden has now issued an Executive Order directing the Attorney General and the Secretary of Commerce to reevaluate the current policy and consider returning to an approach of weaker protections for these patents. At the same time, however, the order stresses the importance of the United States maintaining its leadership in 5G.

In that same 2019 letter Senator Coons and I sent, we stressed the importance of coordination throughout the government. Not only the Department of Justice, but also the Patent and Trademark Office and the National Institute of Standards and Technology are responsible for setting policy on technologies embedded in global standards. Yet, the USPTO and NIST do not have confirmed leaders.

- a. Do you believe it is important for there to be confirmed leadership before any drastic changes are made to how this Administration treats patent protections?
- b. How will you specifically take into account global competitiveness with China when it comes to evaluating intellectual property policy?

RESPONSE:

As explained in response to Question 33, in keeping with President Biden's July 9, 2021, Executive Order on Promoting Competition in the American Economy, staff from the Antitrust Division, USPTO, and NIST reviewed public comments that the agencies received on the December 6 Draft Policy Statement and concluded that withdrawal of the 2019 Policy Statement "best serves the interests of innovation and competition."

Predictability and certainty about the licensing and enforcement of patent rights is important to patent holders and implementers participating in international standards development, as well as other stakeholders competing and innovating in the United States. The Department will continue to strive to be transparent about how it evaluates conduct that involves the licensing and enforcement of intellectual property, including how it will analyze antitrust concerns associated with that conduct.

36. In the copyright space, the Department of Justice has overseen the music consent decrees that have governed the public performance of music for 80 years. Songwriters and publishers have long argued—and I fully agree—that the consent decrees are outdated—especially for the digital age. Following a lengthy review of the consent decrees, the past administration left the consent decrees with ASCAP and BMI untouched.
- a. What are your thoughts about whether and when it would be appropriate to lift the consent decrees?
 - b. Do you believe there should be a free market in music? If not, why not?
 - c. Wouldn't a truly free market in music licensing encourage innovation?
 - d. What is the rationale for allowing some companies to operate outside of consent decrees but not ASCAP and BMI?

RESPONSE:

The music industry is dynamic, and how consumers access music is constantly evolving. Digital streaming is now most common but new methods of distribution may be common in the future. Given the constantly changing marketplace, the Department has an obligation to ensure its decrees continue to fit the market realities on the ground.

Free markets are the cornerstone of American society, in part because of the innovation benefits that free markets provide. We should strive to achieve and maintain free markets in all industries, including music licensing, wherever possible. However, there have been times when market failures have necessitated the government's involvement in an industry. In such cases, it is important to regularly assess the government's involvement to ensure that it continues to be the appropriate response to market realities.

At the time the Department entered into consent decrees with ASCAP and BMI, both of which had amassed market power, the Department deemed the consent decrees necessary to address certain market failures. The courts agreed with that assessment.

37. What is your opinion about whether certain large market players like Google and YouTube have an obligation under antitrust law to make tools like Content ID available on equal terms to all creators?

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on ongoing litigation.

38. As you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition. And a big area right now where more antitrust scrutiny is likely needed is the technology industry—particularly big internet companies.
- How do you think the Department of Justice should approach antitrust enforcement against what we think of as “big tech”?
 - How should it coordinate its approach with other agencies—including the Commerce Department and the Federal Trade Commission—that also have competencies with respect to these issues?
 - How will the Department approach cross-cutting issues related to data that have antitrust implications but that may also implicate intellectual property, national security, cybersecurity, privacy, and other concerns?

RESPONSE:

Antitrust enforcement is based on a fact-intensive investigation in any industry. “Big tech” is no exception. The Antitrust Division has experience investigating and bringing cases challenging conduct by dominant firms.

Interagency collaboration is vital to effective antitrust enforcement. The Antitrust Division and the Federal Trade Commission regularly communicate when it comes to developing policies and guidance on enforcement across industries, including digital markets. Moreover, President Biden’s Executive Order on Promoting Competition in the American Economy calls on the antitrust enforcers to work closely with other federal agencies to promote competition. The Department looks forward to working with our agency partners to further a fair, open and competitive economy through a “whole of government” approach.

Each component of the Department is tasked with enforcing a different set of laws, but certain issues may implicate multiple policy considerations. It is important that the Department’s approach reflect the entirety and complexity of these cross-cutting issues. The Department has employed for many years an internal process to ensure that the equities of all Department components are reflected in policy and enforcement decisions.

39. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. At

the same time, Facebook and Google have repeatedly refused to negotiate in good faith with news publishers for their carrying their content on Facebook and Google. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?

RESPONSE:

Access to information is essential for a healthy democracy. The Department will continue to enforce the antitrust laws to ensure that dominant firms are not able to use their market power anticompetitively.

Intellectual Property

40. I understand that the Department of Justice's attention to intellectual property enforcement has been somewhat inconsistent over the years. During the times that IP enforcement has properly been regarded as a high priority, the Department generally had put into place a structure that emphasizes its importance and takes a coordinated approach involving all the stakeholder components. During your nomination hearing, I asked you what type of organizational structure you planned to put in place at DOJ, as well as other steps you will take, to ensure that protecting American intellectual property will be regarded as a high priority under your leadership.
 - a. What steps have you taken so far, and what do you plan to take in the coming year, to enhance the investigation and prosecution of intellectual property crimes?

RESPONSE:

Protecting Americans from intellectual property (IP) crimes is a priority for the Department of Justice. These crimes threaten our national security and economic security as well as public health and safety. The Department will leverage the broadest set of tools to prevent intellectual property crimes. Among other things, Justice Department attorneys and agents pursue complex intellectual property crime investigations around the world; train federal, state, and local law enforcement personnel; comment on and propose legislation; initiate and participate in international efforts to combat intellectual property crime; and provide case-based mentoring and litigation support to other law enforcement professionals.

To begin with, the Justice Department is committed to deploying a whole-of-Department approach to enforcing intellectual property rights. Within the Department, the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS) acts as a focal point and force multiplier in the domestic and international prevention, investigation, and prosecution of intellectual property crimes.

Leveraging expertise across the Department's United States Attorneys' offices nationwide, CCIPS coordinates the Computer Hacking and Intellectual Property (CHIP) Network. The CHIP Network is comprised of dedicated federal prosecutors within each of the United

States Attorneys' offices who are specially trained in the investigation and prosecution of IP and computer crimes.

In addition, a dedicated section within the National Security Division focuses on state-sponsored crimes, including the theft of trade secrets and economic espionage. The National Security Division, in partnership with the Criminal Division and United States Attorneys across the country, coordinates the National Security and Cyber Specialist (NSCS) Network. Drawing upon the FBI's Joint Terrorism Task Force model, which has been successful in the counterterrorism realm, this Network consists of federal prosecutors and law enforcement professionals who focus on national security cyber offenses, including the theft of IP and other valuable information.

Preventing intellectual property theft is a priority for the FBI's criminal investigative program. The FBI also brings its wide-ranging expertise to bear in supporting efforts across the Justice Department to disrupt and dismantle international and domestic criminal organizations that steal, distribute, or otherwise profit from the theft of intellectual property. The FBI works to combat these types of crimes by collaborating with the public and private sectors, including third-party entities like online marketplaces, payment service providers, and advertisers to obtain intelligence, gather leads, and identify and disrupt criminal activities.

The Department also works closely with partners across the federal government to prevent the theft of intellectual property and enforce IP laws. For example, over the past year, the Justice Department has worked proactively to foster a productive relationship with the Office of the U.S. Intellectual Property Enforcement Coordinator in the Executive Office of the President. In addition, the Justice Department, including the FBI, works closely with the Department of Homeland Security and federal partners across government to promote successful investigations and prosecutions of intellectual property crimes through the DHS-led National Intellectual Property Rights Coordination Center (IPR Center).

The Justice Department also places a high priority on international cooperation and coordination in our intellectual property enforcement efforts. For more than two decades, the Department has worked to build partnerships with our international law enforcement counterparts through international casework, training, and outreach. These partnerships have been particularly vital in ensuring success in multi-national cases. The Department's international efforts are coordinated – with the support of the State Department – through the International Computer Hacking and Intellectual Property (ICHIP) Network.

The ICHIP Network consists of Justice Department attorneys who are deployed overseas to strengthen the capacity of foreign law enforcement authorities to enforce intellectual property rights and combat cybercrime; develop and deliver training designed to enhance the capacity of foreign counterparts to enforce intellectual property rights and combat cybercrime; and provide expert assistance in support of the U.S. intellectual property and cybercrime policies and initiatives around the world. The work of the ICHIP prosecutors based around the world – including in Europe, Africa, Asia, and Latin America, along with

DC-based legal experts – has led to many successes in obtaining international cooperation on intellectual property enforcement.

The Justice Department also works closely with state and local partners to proactively disrupt intellectual property crimes. Among other things, the Department has offered training and technical assistance on the subject of intellectual crime through the National Association of Attorneys General and the National White Collar Crime Center. These efforts are aimed at improving the capacity of criminal justice systems to address intellectual property enforcement. In addition, in Fiscal Year 2021, the Department's Intellectual Property Enforcement Program awarded grants to state and local jurisdictions – including the North Carolina Secretary of State – to assist in preventing and reducing intellectual property theft and related crime.

41. In the past, the Department of Justice has contributed to legislative development updating criminal intellectual property laws, including felony streaming, enhancing penalties for counterfeit military goods, and creating a federal civil cause of action for misappropriation of trade secrets and permitting racketeering charges based on trade secret theft. What can Congress do to further improve the Department of Justice's policies and efforts relating to the prevention and investigation of intellectual property crimes? What are your top priorities with respect to the Justice Department's intellectual property mission?

RESPONSE:

Experts in the Department continue to monitor developments relating to intellectual property and the criminal law for potential legislative improvements. Although the Department does not currently have any specific legislative proposals relating to intellectual property, we stand ready to provide technical assistance on draft legislation in this area.

42. How do you plan to work proactively with the IP Enforcement Coordinator alongside DOJ's sister agencies, especially DHS, to coordinate IP enforcement across the government? In addition, please provide specific information about your plan to combat counterfeit products, online piracy, and copyright crimes, and the theft of trade secrets.

RESPONSE:

As the response to Question 40 explains in detail, the Justice Department is committed to working closely with partners across the federal government to prevent the theft of intellectual property and enforce IP laws. Over the past year, the Department has worked proactively to foster a productive relationship with the Office of the U.S. Intellectual Property Enforcement Coordinator in the Executive Office of the President. In addition, the Justice Department, including the FBI, works closely with the Department of Homeland Security and federal partners across government to promote successful investigations and prosecutions of intellectual property crimes through the DHS-led National Intellectual Property Rights Coordination Center (National IPR Center).

The Justice Department is pursuing an equally robust approach to combating counterfeit products, online piracy, and copyright crimes, and the theft of trade secrets. Justice Department attorneys and agents also coordinate closely with the National IPR Center on initiatives related to consumer goods, counterfeit microelectronics, government supply chains, the automobile industry, and online sales of infringing goods.

With respect to combating counterfeit products, the Department's health and safety initiative brings together private, state, and federal enforcement resources to address the proliferation of counterfeit goods posing a danger to consumers, including counterfeit and illegally prescribed pharmaceuticals, automotive parts, and military goods. This initiative continues to result in a number of significant prosecutions in connection with counterfeit products.

In addition, the Department has continued to pursue significant, large-scale online piracy operations, resulting in significant prosecutions that have shuttered various online piracy sites. Justice Department prosecutors and the FBI also continue to emphasize the investigation and prosecution of commercial and state-sponsored trade secret theft. This continuing focus has led to the investigation and prosecution of numerous trade secret and economic espionage cases. These areas remain the Department's top domestic priorities in combating intellectual property crime in the future.

43. The Department of Justice's Computer Hacking and Intellectual Property (CHIP) program in the past Administration placed a high priority on fostering international cooperation and coordination of criminal IP enforcement efforts. Do you intend to continue this tradition? What plans does the Justice Department have for its international enforcement efforts? Does it intend to expand or enhance current programs, including the Intellectual Property Law Enforcement Coordinator (IPLEC) program?

RESPONSE:

The Justice Department will continue to pursue active engagement with our foreign counterparts to help ensure effective IP protections across the globe. The primary method for this engagement is through the ICHIP Network, which began with a single attorney in 2006 and has grown steadily into a global network of IP and cybercrime experts today. With support from the Bureau of International Narcotics and Law Enforcement (INL) at the Department of State, the Department now administers a fully staffed network including paired IP and cyber experts posted in Europe, Africa, Asia, and Latin America. The Department looks forward to the addition of at least one ICHIP agent advisor to the Network in the near future.

44. Last Congress, Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called "streaming loophole" by giving the Department the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn't allow the Department to target individual streamers, companies pursuing licensing deals in good faith, or internet service providers. This law is what we call a win-win for everyone.

- a. Have you taken any action to ensure that the Justice Manual is updated to provide guidance on prosecutions under this law? If not, how soon can you update the Justice Manual to provide guidance?
- b. Will you ensure that such guidance makes clear that—per the plain, clear, and unambiguous words of the statute—that prosecutions should only be pursued against commercial piracy services?
- c. Have any prosecutions been pursued under the Protecting Lawful Streaming Act? If so, how many? If not, why not?
- d. What steps is the Department of Justice doing to educate rights holders about the Protecting Lawful Streaming Act and to work with them to enforce their rights?

RESPONSE:

On January 27, 2021, the Justice Department’s Criminal Division issued guidance on the Protecting Lawful Streaming Act (PLSA), 18 U.S.C. § 2319C. That guidance makes clear that the statute applies only to commercial streaming sites.

With respect to enforcement actions taken under 18 U.S.C. § 2319C, while longstanding Department policies and practice generally prevent us from commenting on pending criminal investigations, the Department remains committed to using all available tools, including enhanced penalties under the PLSA, to pursue large-scale illicit streaming sites.

Since the December 2020 enactment of the PLSA, one criminal complaint charging violations of 18 U.S.C. § 2319C has been made public. On October 21, 2021, the United States Attorney for the Southern District of New York announced charges were filed in connection with intrusions into Major League Baseball computer systems as well as the illegal streaming of copyrighted content from MLB, the National Basketball Association, the National Football League, and the National Hockey League. (*See <https://www.justice.gov/usao-sdny/pr/minnesota-man-charged-computer-intrusion-and-illegally-streaming-content-four-major>*).

- 45. As you likely know, reforming our nation’s patent eligibility standards is one of my top priorities. The current state of patent eligibility law is in shambles. The standards are so unworkable that you have judges saying things like a garage door opener is an abstract idea. That’s bizarre and well-beyond the scope of what any reasonable person would conclude. These unworkable standards are having an adverse impact on a number of sectors, from life sciences and precision medicine to quantum computing, 5G, and artificial intelligence. If the United States is going to remain the world’s leader in innovation, we have to fix this. That’s why I’m doing everything I can, from hearings, letters, and draft legislation, to filing an amicus brief in the American Axle case. But I can’t do it alone.
 - a. Will you direct the Solicitor General to find appropriate cases on patent eligibility and to urge the Supreme Court to take them up and finally provide clarity in this area of the law?

RESPONSE:

The Supreme Court called for the views of the Solicitor General in a case regarding patent eligibility, *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, No. 20-891. As a general matter, the Solicitor General approaches decisions about whether to file briefs based on the facts, the law, and the best interests of the United States. The Department will follow that approach in all cases, including cases involving patent eligibility.

ATF Administration

46. As of the date of this correspondence, what is the number of FTISB evaluation requests still pending a final determination response from ATF to the requesting party?

RESPONSE:

ATF reports that, as of May 13, 2022, Firearms Technology Industry Services (FTISB) has 222 evaluation requests pending final determination. These 222 cases are comprised of 105 stabilizing brace and frame or receiver determinations submitted over one year ago; 20 receiver determinations submitted under one year ago; 80 import evaluations less than 60 days old; and 17 domestic evaluations of various types submitted recently. ATF further reports that frame or receiver determinations and stabilizing brace determinations have been delayed because of Department rulemaking on these subjects.

47. Of the pending evaluation requests disclosed in response to question 1, how many of them have been pending for over one year?

RESPONSE:

ATF reports that 102 evaluation requests have been pending for over one year and that approximately 85% of these pending evaluations involve the pending NPRMs.

48. Of the pending evaluation requests disclosed in response to question 2, how many of them have been pending for over two years?

RESPONSE:

ATF reports that 54 evaluation requests have been pending for over two years and that 100% of these pending evaluations involve pending NPRMs.

49. Does ATF (including FAT-D and/or FTISB) feel that it is empowered to issue determination letters that are conflicting or are based on conflicting interpretations of governing law or regulation?

RESPONSE:

ATF advises that differences in objective design features or manufacturer statements about a firearm may result in different classifications for different weapons. Therefore, perceived conflicts are generally the result of substantive differences in design or in evidence of intent. Many perceived conflicts are also attributable to members of the industry “blending” multiple determination letters on distinct weapons or devices in an attempt to gain a competitive advantage.

50. Does ATF feel that determination letters from FTISB or FAT-D have any precedential effect or implications within the ATF?

RESPONSE:

ATF advises that in classifying firearms, FTISB relies upon previous classifications to help ensure that if firearms are classified differently, such classifications are the result of overall configuration, physical characteristics, and objective design features that are relevant under the statutory definitions.

51. What is ATF’s current processing time for NFA eForm 6’s, paper form 6’s and paper form 4’s, respectively?

RESPONSE:

ATF reports the processing time for an electronic submission of Form 6 is 15 days; paper ATF Form 6 submissions are processed in 45 days; and paper ATF Form 4 applications are processed in 10 months.

52. Does ATF have a realistic goal for when Form 4’s will be available for e-filing (i.e. when will eForm 4’s be available), and what is that approximate date?

RESPONSE:

ATF reports that eForm 4’s are now available.

53. What steps is ATF and/or DOJ actively taking to expedite the approval timelines and delays for NFA eForm filings and paper form filings?

RESPONSE:

ATF reports that it is aware of the issues around approval timelines for NFA permit applications and is dedicating additional overtime resources to the research and perfection of pipeline applications. ATF advises that it will continue to surge application processing and that all business processes are being reexamined to maximize the efficiency of paper application handling and to leverage technology where possible.

54. Does DOJ and/or ATF believe that disabled persons, including disabled firearms enthusiasts, hunters, and sportsmen, are a substantial factor in the nation's present violent crime epidemic?

RESPONSE:

ATF advises that it does not maintain data responsive to this question.

55. Do DOJ and/or ATF believe that banning (or substantially increasing the regulation of) prosthetic equipment, such as "stabilizing braces" (aka "arm braces") used by disabled firearms enthusiasts, hunters, and sportsmen will have a substantial impact on reducing violent crime in the United States?

RESPONSE:

In June 2021, the Justice Department published a Notice of Proposed Rulemaking regarding "Factoring Criteria for Firearms with Attached 'Stabilizing Braces.'" See 86 Fed. Reg. 30826 (June 10, 2021). The proposed rule would not prohibit the use of stabilizing braces altogether; instead, it would clarify the circumstances under which stabilizing braces render a weapon subject to the requirements of the National Firearms Act. Specifically, this proposed rule would not impact "stabilizing braces" that are objectively designed and intended as a "stabilizing brace" for use by individuals with disabilities. As the proposed rule makes clear, such stabilizing braces are designed to conform to the arm and not as a buttstock.

56. Has the DOJ or ATF been providing assistance, guidance or advice in support of third-party civil lawsuits against those businesses within the firearms industry?

RESPONSE:

ATF reports that it has not provided assistance, guidance, or advice in support of third-party civil lawsuits against businesses that manufacture, import, sell, or distribute firearms.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE MARSHA BLACKBURN**

1. Please identify all individuals who played a role in drafting, reviewing, and approving the October 4th DOJ memorandum concerning “harassment, intimidation, and threats of violence” at school board meetings.

RESPONSE:

I issued the memorandum you referenced on October 4, 2021, and I worked on the memorandum.

2. You testified that the October 4th DOJ memorandum was based on the NSBA letter and news reports. Please submit, for the record, the news reports you are referencing.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence.

3. In the NSBA letter that you used as justification for the October 4th directive, NSBA noted that “in Virginia, an individual was arrested.” You have previously stated that this was justification for calling in the FBI. Is it standard practice at DOJ to take such dramatic actions based on mere accusations from special interest groups?

RESPONSE:

The October 4, 2021, memorandum was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

As I explained in my testimony last October, this is consistent with “what the Justice Department does every day:” “consult with our local and state partners and see whether assistance is necessary.” As I further stated in my testimony, “[t]he purpose of this memorandum [was] to get our law enforcement to assess the extent of the problem, and if there is no problem, if states and local law enforcement are capable of handling the problem, then there [would be] no need for [federal] involvement...[the] memo does not say to begin prosecuting anybody, it says to make assessments.”

4. Will you guarantee to the Judiciary Committee, and make clear to the American people, that the DOJ under your leadership will not interfere with the rights of parents to attend school board meetings and express their concerns?

RESPONSE:

I have made this clear both to this Committee and to the American people. As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the October 4, 2021, memorandum I issued makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” These protections clearly and importantly cover debate concerning school board policies.

On January 5, 2022, I gave a public speech to Department employees, stating: “The Justice Department will continue to investigate violence and illegal threats of violence, disrupt that violence before it occurs, and hold perpetrators accountable. We have marshaled the resources of the Department to address the rising violence and criminal threats of violence against election workers, against flight crews, against school personnel, against journalists, against members of Congress, and against federal agents, prosecutors, and judges. In 2021, the Department charged more defendants in criminal threat cases than in any year in at least the last five. As we do this work, we are guided by our commitment to protect civil liberties, including the First Amendment rights of all citizens. The Department has been clear that expressing a political belief or ideology, no matter how vociferously, is not a crime. We do not investigate or prosecute people because of their views. Peacefully expressing a view or ideology—no matter how extreme—is protected by the First Amendment. But illegally threatening to harm or kill another person is not. There is no First Amendment right to unlawfully threaten to harm or kill someone.”

5. You testified that you didn’t know Susan Hennessey—that you didn’t think you had met her before and that you were not aware of her partisan-charged remarks concerning the Durham investigation. Nonetheless, you assured me that she has no role in or oversight over the Durham investigation. Given your statements about not knowing who Susan Hennessey is, how were you able to guarantee me that she has no role in or oversight over the Durham investigation?

RESPONSE:

Special Counsel Durham has been conducting his investigation with his own staff. The Department abides by the regulations governing special counsels. *See* 28 C.F.R. § 600.1 et seq.

6. Within the DOJ, who has a role in or oversight over the Durham investigation?

RESPONSE:

Special Counsel Durham has been conducting his investigation with his own staff. The Department abides by the regulations governing special counsels. *See* 28 C.F.R. § 600.1 *et seq.*

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<https://www.wsj.com/articles/about-those-domestic-terrorists-national-school-boards-association-merrick-garland-memo-fbi-11635285900>

OPINION | REVIEW & OUTLOOK

About Those Domestic-Terrorist Parents

Merrick Garland should rescind his misguided school boards memo.

By [The Editorial Board](#)

Oct. 26, 2021 7:03 pm ET



Attorney General Merrick Garland

PHOTO: JIM LO SCALZO/SHUTTERSTOCK

It took a few weeks, but the National School Boards Association has apologized for sending a letter to President Biden suggesting that “threats and acts of violence” at school board meetings might be “domestic terrorism.” The NSBA now admits there was “no justification for some of the language included in the letter,” which could have parents investigated under the Patriot Act for trying to influence what their children are taught.

The retraction comes after tremendous blowback. First came parents at school board meetings with T-shirts saying “Parents are not domestic terrorists.” Then 21 state school board associations distanced themselves from the letter. The Ohio, Missouri and Pennsylvania state associations cut ties altogether.

It turns out that when Chip Slaven, the NSBA interim executive director and CEO, and president Viola Garcia sent the letter, they did so without consulting their own board. But

according to one of Mr. Slaven's emails, they *did* work with White House staff.

The NSBA has owned up to its mistake, but what about the Biden Administration? Days after the NSBA letter was sent, Attorney General Merrick Garland directed the FBI and U.S. Attorneys to intervene—without spelling out the federal authority or hard evidence for what the AG called a “disturbing spike in harassment, intimidation, and threats of violence.” This directive still stands.

Education Secretary Miguel Cardona announced on Oct. 13 that he appointed Ms. Garcia to the National Assessment Governing Board, which oversees the standardized tests known as “the Nation’s Report Card.” This appointment stands too, even after Ms. Garcia’s organization had to apologize for her letter.

Time for Mr. Garland to formally rescind his memo, calling off the FBI, and for Mr. Cardona to consider the message he is sending by elevating Ms. Garcia after she’s shown such poor, partisan judgment.

Appeared in the October 27, 2021, print edition as ‘About Those Terrorist Parents.’



DAVE YOST

OHIO ATTORNEY GENERAL

October 26, 2021

Merrick B. Garland, Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland:

At your hearing before the House Judiciary Oversight Committee last week, you answered questions about the Memorandum you issued on Oct. 4, 2021. The Memorandum announced that the Department would address “a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff” at public schools.

I signed a letter, joined by many of my colleagues from other States, objecting to that Memorandum. As we wrote, the only “spike” in action at schools has entailed concerned parents exercising their First Amendment right to free speech and their First and Fourteenth Amendment rights to direct the upbringing and education of their children. Thus, the Memorandum was understood as threatening consequences to parents engaged in lawful, protected speech.

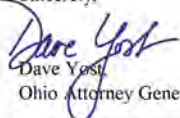
During the hearing, you reported that a letter from the National School Boards Association provided the factual basis for your Memorandum. But on Friday, the Association publicly apologized for the letter, calling it the result of a flawed process.

In light of that, I ask you to rescind the Memorandum.

The Association apology is further evidence that the facts are not what the Department initially understood them to be, and as public servants and parents ourselves, when our initial perceptions are proven wrong, we must adjust accordingly. Or, as one of your predecessors put it: “I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday.”¹

The facts have changed. Your response should, too. By pivoting and rescinding the Memorandum, you would set an example for public servants throughout the country.

Sincerely,


Dave Yost
Ohio Attorney General

¹ *Massachusetts v. United States*, 333 U.S. 611, 639–40 (1948) (Jackson, J., dissenting)



Statement on NSBA Request for Federal Assistance Regarding Threats and Acts of Violence

October 14, 2021—A recent action by the National School Boards Association (NSBA) is generating considerable comment in the press and on social media. The Iowa Association of School Boards (IASB) feels it is important to ensure our members understand the issue that has occurred as well as IASB's position.

On September 29, the Interim Executive Director and the President of NSBA sent a [letter](#) to President Biden to request federal law enforcement assistance to address a growing number of threats of violence or illegal intimidation occurring nationally to school boards and educators. While affirming the commitment of school boards to hear from their communities and the importance of free speech, the letter provided 20 instances of threats, harassment, disruption or intimidation as examples of the concerning trend. NSBA cited several laws that provide authority for federal intervention, and requested that a joint collaboration among federal law enforcement agencies, state and local law enforcement, and public school officials be undertaken to focus on these threats.

On October 4, the U.S. Department of Justice announced that the FBI and U.S Attorney's Offices have been directed to meet in the next 30 days with federal, state and local law enforcement leaders to discuss strategies to address threats, stating that the session will open dedicated lines of communication for threat reporting, assessment and response by law enforcement. The Justice Department also indicated it will launch additional efforts designed to address criminal conduct, and will create specialized training and guidance for local school boards and school administrators.

Organizations, individuals and some media outlets nationally have been highly critical of this effort. Most state the concern that the effort is intended to or will inhibit parental voice or advocacy with their school board. Many are citing language from NSBA's letter that states, "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."

IASB's Position

IASB respectfully disagrees with NSBA's recent decision to request intervention from federal agencies and law enforcement, and the decision by NSBA leadership to tie the request to claims of domestic terrorism and hate crimes. NSBA did not consult IASB before it issued its request.

Iowa school boards value and care deeply about parent views on issues affecting children. School boards are providing forums for public opinion, including civil dissent, as part of full and fair deliberation on public issues. Iowans are largely highly civil, even in heated discussions of controversial issues.

Local law enforcement has been effective in addressing any isolated criminal threats or incidents, including violations of *Iowa Code* 718.3 and 718.4 which relate to willful disturbance of public bodies and harassment of public officers and employees.

IASB government relations staff will be carefully monitoring the ensuing federal actions and working with our Congressional representatives to ensure that any federal action protects the rights of Iowa citizens to have a voice in their public schools. As always, IASB staff will also continue communicating with state lawmakers.

Questions from members may be directed to Lisa Bartusek, Executive Director.



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October 18, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Merrick B. Garland, Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Department of Justice's Suppression of the Free Speech Rights of Parents

Dear President Biden and Attorney General Garland,

Today, we write to you in our capacity as State Attorneys General, chief legal officers for our respective states. Over the last year, as legal officers, we have advised our constituencies of their constitutional right to free speech and encouraged public engagement to voice their opinions on important issues affecting their country, state, and communities, especially parents who have concerns about their children's education. Your recent action seeks to chill lawful dissent by parents voiced during local school board meetings by characterizing them as unlawful and threatening.

On October 4, 2021, Attorney General Garland issued a Memorandum¹ steering the Department of Justice toward combatting what he characterizes as a "disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff", and directs the Federal Bureau Investigation ("FBI"), the United States Attorneys, and the Criminal Division to fan out throughout the United States to put an immediate stop to these activities. However, this Memorandum and the promised "series of measures designed to address" this purported crisis are unnecessary as they:

1. Are based upon a flawed premise, i.e. that there has been a nationwide spike in "threats of violence against school administrators, board members, teachers, and staff";
2. Violate the First Amendment rights of parents to address school administrators, board members, teachers, and staff on educational matters by seeking to criminalize lawful dissent and intimidate parents into silence; and

¹ Office of the Attorney General Memorandum, *Re: Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff*, (October 4, 2021), <https://www.justice.gov/ag/page/file/1438986/download>.

President Joseph R. Biden, Jr.
 Attorney General Merrick B. Garland
 October 18, 2021

3. Intrude on the well-recognized First and Fourteenth Amendment rights of parents and guardians to direct the upbringing and education of their children by intimidating parents away from raising concerns about the education of their children.
1. **The October 4, 2021 Memorandum repeats the canard that “there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff.”**

The October 4, 2021 Memorandum and its statement that “there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff” appears to be based solely on a September 29, 2021 letter from the National School Boards Association (“NSBA”) to President Biden calling for him to invoke “the PATRIOT Act in regards to domestic terrorism,” arguing that as “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.”²

To be sure, anyone who attacks or threatens violence against school administrators, board members, teachers, or staff should be prosecuted. However, in its letter demanding action, the NSBA fails to document a single legitimate instance of violence. And even if it did, there are sufficient criminal and civil remedies already available in all 50 states and territories.

Instead, the letter cites news articles about disruptions (“Protesters disrupt Poway Unified board meeting,” “Anti-mask crowd disrupts Gwinnett school board meeting,” “Grand Ledge school board goes into recess due to public ‘disruption’”); disorderly conduct (“Sarasota school board may limit public input after some meetings get disorderly”); and contentious behavior (“School board meeting turns contentious over COVID-19 policies”) all of which were handled quickly and effectively by local law enforcement. Several articles detail the fallacies contained in the NSBA letter.³ The fact is, the vast majority of incidents that NSBA cites involved disruptive

² National School Board Association Letter, *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* (September 29, 2021), <https://www.nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf?la=en&hash=642B7B91E0029BA4427D0F38D7054A007537160F>.

³ For a detailed analysis of the fallacies in the NSBA letter, see e.g., Max Eden, *Concerned About Your Child's School? You Might Be a Domestic Terrorist*, Newsweek (October 6, 2021 6:30 AM), <https://www.newsweek.com/concerned-about-your-childs-school-you-might-domestic-terrorist-opinion-1635751>, and Lindsay Kornick, *AP's fact check falsely claims NSBA never requested protesting parents to be labeled as 'domestic terrorists'*, Fox News (October 7, 2021), <https://www.foxnews.com/media/ap-factcheck-claims-nsba-never-labeled-parents-domestic-terrorists>.

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and disorderly conduct rather than threats.⁴⁵ In fact, in no known instance, has there been anything like the burning, looting, police assaults, vandalism and other criminal activity that occurred in the summer of 2020. We note that to date your administration has done nothing to bring those thousands of perpetrators to justice and we could not find where the NSBA condemned any of that outright and documented criminal behavior.⁴⁶

Indeed, in its letter, the NSBA seems more concerned about suppressing speech with which it disagrees than real threats of violence. For example, it notes that it is concerned that “[o]ther 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.”⁴⁷

The bottom line is that actual threats and violence towards school administrators, board members, teachers, or staff are rare, and there are already existing criminal and civil legal remedies available if individuals threaten or conspire to commit violence against public officials in person, by U.S. mail, by email or otherwise. A physical assault on a school administrator, board member, teacher, or staff is just that, a criminal assault and will be addressed under state law. Even the NSBA letter itself acknowledges that in the rare instances where there were physical escalations, local law enforcement immediately intervened.

The falsity of the NSBA narrative which forms the basis of the DOJ’s actions are also being challenged by leaders in Congress. For example, Senators Tom Cotton and Josh Hawley questioned Deputy Attorney General (“DAG”) Lisa Monaco in an October 5, 2021 Senate hearing.⁴⁸ During the Senate hearing, DAG Monaco walked back portions of the Memorandum that relied on the NSBA’s domestic terrorism assertions:

⁴⁵ Caroline Downey, *Vast Majority of Incidents Cited by School-Board Group to Justify Federal Intervention Didn’t Involve Threats*, National Review (October 8, 2021 11:04 AM), https://www.nationalreview.com/news/vast-majority-of-incidents-cited-by-school-board-group-to-justify-federal-intervention-didnt-involve-threats/?utm_source=email&utm_medium=breaking&utm_campaign=newstrack&utm_term=25277587.

⁴⁶ One such parent was arrested for “disorderly conduct” after he attempted to bring to the school board’s attention during discussions of their transgender bathroom policy that their daughter has been raped in the girl’s bathroom by a boy “wearing a skirt.” Jennifer Smith, *Loudon County father who was dragged out of work school board meeting reveals his daughter was ‘raped’ in the girls’ bathroom by a ‘skirt-wearing’ male student who was arrested for assaulting the SECOND girl months later – but staff did nothing*, Daily Mail (October 12, 2021 10:19 AM), <https://www.dailymail.co.uk/news/article-10083783/Loudon-County-father-arrested-school-meeting-says-daughter-raped-boy-girls-bathroom.html>.

⁴⁷ NSBA discussed how the protests and pandemic pointed to the need to address systemic racism, but clearly omitted any denouncement of violence. *The Time is Now*, NSBA (August 1, 2020), <https://www.nsba.org/ASBJ/2020/August/the-time-is-now>.

⁴⁸ *Supra*, fn. 2 at 5.

⁴⁹ Michael Ginsberg, *Republicans Pepper Deputy AG With Questions About Treating American Parents AS Domestic Terrorists*, Daily Caller (October 5, 2021 5:00 PM), <https://dailycaller.com/2021/10/05/tom-cotton-josh-hawley-lisa-monaco-memorandum-fbi-local-law-enforcement/>.

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“The association is asking the administration to use the PATRIOT Act, a law that this Congress passed and has repeatedly reauthorized, primarily to stop the threat of Islamic Jihadists, to bring criminal charges for domestic terrorism against parents who attend school boards to oppose things like Critical Race Theory or mask mandates resulting in a recess being called. Ms. Monaco is it domestic extremism for a parent to advocate for their child’s best interests?” Cotton asked.
 “What you have described, no I would not describe as domestic extremism,” Monaco responded after initially dodging the question.⁹

Nevertheless, she continued to defend the DOJ and FBI actions in seeking to intervene in what is a quintessential local issue. We would assure you and DAG Monaco that state and local law enforcement are perfectly capable of handling a ruckus at a school board meeting, as well as more serious threats. They do so every day without the specter of FBI involvement.

Surely the FBI and the Department of Justice have more pressing matters to attend to, like the massive spike in murders in major cities throughout the United States. According to figures released by the FBI, “The United States experienced its biggest one-year increase on record in homicides in 2020,” with an “additional 4,901 homicides in 2020 compared with the year before.”¹⁰ Our country’s law enforcement efforts should be focused on this rise in crime instead of harassing and intimidating parents that petition local governments to better serve their children. These parents want the best for their children and are willing to challenge school leaders who seek to supplant their God-given authority to raise their children according to their values.

2. The October 4, 2021 Memorandum violates American parents’ First Amendment rights by seeking to intimidate parents into silence via the threat of federal agents coming to their homes to “investigate” their attempts to effectively participate in and freely discuss the education of their children.

For many Americans, their first, live personal interaction with their government is with their local public school board. Parents or other taxpayers may be aggrieved by what happened at school and/or they want more information about some issue or school practice. For example, a kindergarten parent is upset their child has to wear a mask in school. The parents targeted for suppression by the NSBA letter and the DOJ Memorandum are not lobbyists or politicians or others used to speaking in public—they are simply ordinary Americans who in many cases are, for the first time, speaking in a public forum to express their concerns. This is likely intimidating to parents. We as a country should celebrate their participation in our system of self-government, not

⁹ See *Id.* Following the hearing. On October 6, 2021, Senator Cotton issued a [letter to Attorney General Garland](#) specifically requesting the information underpinning the DOJ’s reliance on the debunked NSBA’s allegations of widespread threats of violence that undergirded his Memorandum.

¹⁰ Neil MacFarquhar, *Murders Spiked in 2020 in Cities Across the United States*, New York Times (September 27, 2021), <https://www.nytimes.com/2021/09/27/us/fbi-murders-2020-cities.html>. (“The year-to-year increase in homicides from 2019 was the largest since national record-keeping began in 1960.”)

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silence them by accusing them of “domestic terrorism”¹¹ and threaten them with the prospect of the FBI knocking on their door to investigate their activities. “Domestic Terrorism” for the FBI’s purposes is defined as activities that:

- (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) occur primarily within the territorial jurisdiction of the United States

18 U.S.C. § 2331(5). Concerned parents at public school board meetings do not meet this definition of “domestic terrorism.” Using federal security apparatuses to quiet individuals is the hallmark of oppressive regimes and has all the characteristics of McCarthyism.

In *Globe Newspaper Co. v. Superior Ct. for Norfolk Cty.*, the Supreme Court recognized both the vital role that citizen participation in government plays and the guarantee of that participation that the First Amendment provides:

[It] is the common understanding that “a major purpose of that Amendment was to protect the free discussion of governmental affairs,” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). By offering such protection, the First Amendment serves to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government. See *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S., at 587–588 (BRENNAN, J., concurring in judgment). See also *id.*, at 575 (plurality opinion) (the “expressly guaranteed freedoms” of the First Amendment “share a common core purpose of assuring freedom of communication on matters relating to the functioning of government”).

457 U.S. 596, 604 (1982). In *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Emp. Rel. Comm’n*, the Supreme Court specifically noted these protections in the context of school board meetings which are open to the public. 429 U.S. 167, 174–175 (1976).

School board meetings are thus “a ‘designated’ and ‘limited’ public forum: ‘designated’ because the government has ‘intentionally open[ed]’ it ‘for public discourse,’ and ‘limited’ because ‘the State is not required to . . . allow persons to engage in every type of speech’ in the forum.” *Lowery v. Jefferson Cty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009) (citing *Cornelius v. NAACP Legal Defense and Ed. Fund, Inc.*, 473 U.S. 788, 802 (1985); *Good News Club v.*

¹¹ *Supra*, fn. 2 at 2.

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Milford Cent. Sch., 533 U.S. 98, 106 (2001)). While school boards are granted some discretion in these limited public fora, “[a]t the same time . . . we have necessarily recognized that the discretion of the States and local school boards in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.” *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987) (citing *Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982)).

Thus, the parents targeted by the NSBA, the DOJ, and the FBI, have a clearly established First Amendment right to “effectively participate in” school board meetings and express their opinions on issues relating to their children’s education. School boards may not appreciate or agree with parents’ spirited concerns, but the remedy for speech we don’t like is “more speech, not enforced silence.” *U.S. v. Alvarez*, 567 U.S. 709, 728 (2012). “[T]he public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Street v. New York*, 394 U.S. 576, 592 (1969). *See also Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”) The NSBA letter and the subsequent October 4, 2021 Memorandum, however, are clearly designed to, and will have the effect of, suppressing these parents’ First Amendment rights.

The Supreme Court has repeatedly noted that task forces, investigations, and inquiries of the type ordered in the October 4, 2021 Memorandum by their very nature intimidate citizens into foregoing their First Amendment rights. “[W]hen a State attempts to make inquiries about a person’s beliefs or associations, its power is limited by the First Amendment. Broad and sweeping state inquiries into these protected areas . . . discourage citizens from exercising rights protected by the Constitution.” *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971) (citing *Shelton v. Tucker*, *supra*; *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Cf. Speiser v. Randall*, 357 U.S. 513 (1958)).

Just three months ago the Supreme Court reaffirmed the chilling nature that actions of this kind have on Americans’ exercise of their First Amendment rights: “When it comes to ‘a person’s beliefs and associations,’ ‘[b]road and sweeping state inquiries into these protected areas . . . discourage citizens from exercising rights protected by the Constitution.’” *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2384 (2021) (citing *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971)).

3. The October 4, 2021 Memorandum proposing a Federal Task Force to coordinate the fight against parents expressing concerns about their children’s education at school board meetings also violates their First Amendment Rights and also their Fourteenth Amendment rights.

As noted above, the NSBA’s letter focused on disputes between parents and their local schools over educational issues impacting their children such as school boards adopting critical

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race theory curriculum and disagreements over whether young children should be forced to wear masks at school. These are issues where the Supreme Court has clearly and unequivocally held that parents have constitutionally protected rights to advocate about, and indeed, to direct the education of their children.

In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court noted that “this primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition” citing *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) and noting that under *Pierce* “the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.” The Court quoted the following passage from *Pierce*:

“Under the doctrine of *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1146, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” 268 U.S., at 534—535, 43 S.Ct., at 573.

Yoder, 406 U.S. at 233.

These parental rights are also protected under the 14th Amendment: “In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the ‘liberty’ specially protected by the Due Process Clause includes the right . . . to direct the education and upbringing of one’s children.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citing *Meyer* and *Pierce*). “In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

Congress has also recognized the primary role parents play in the education of their children. For example, the United States Department of Education Organization Act’s preamble states that “parents have the primary responsibility for the education of their children, and States, localities, and private institutions have the primary responsibility for supporting that parental role.”¹² The federal government does not have any such role. In the Department of Education

¹² 20 USC § 3401(3)&(4) (Pub. L. 96–88, title I, § 101, Oct. 17, 1979, 93 Stat. 669).

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Organization Act Statement in October of 1979, former President Jimmy Carter reiterated that the “[p]rimary responsibility for education should rest with those States” and warned of the dangers of federal intrusion: “Instead of assisting school officials at the local level, it [the Federal Government] has too often added to their burden.”¹³

Despite the “primary role of the parents” in “direct[ing] the education and upbringing of [their] children” the NSBA letter and the October 4, 2021 Memorandum seek to intimidate parents under the threat of being investigated as “domestic terrorists” from exercising their rights.

To that end we request that you immediately withdraw the October 4, 2021 Memorandum, to immediately cease any further actions designed to intimidate parents from expressing their opinions on the education of their children, and demand that you respect their First Amendment rights to freedom of speech and to raise their children.

Sincerely,



Todd Rokita
Indiana Attorney General



Steve Marshall
Alabama Attorney General



Mark Brnovich
Arizona Attorney General



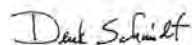
Leslie Rutledge
Arkansas Attorney General



Christopher Carr
Georgia Attorney General

¹³ “Department of Education Organization Act Statement on Signing S. 210 Into Law,” *American Presidency Project*, October 17, 1979, <https://www.presidency.ucsb.edu/documents/departments-education-organization-act-statement-signing-s-210-into-law>.

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Derek Schmidt
Kansas Attorney General



Jeff Landry
Louisiana Attorney General



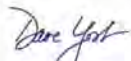
Lynn Fitch
Mississippi Attorney General



Eric S. Schmitt
Missouri Attorney General



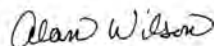
Austin Knudsen
Montana Attorney General



Dave Yost
Ohio Attorney General



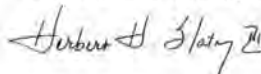
John M. O'Connor
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Alan Wilson
South Carolina Attorney General



Jason R. Ravensborg
South Dakota Attorney General



Herbert H. Slatery, III
Tennessee Attorney General



Ken Paxton
Texas Attorney General



Sean D. Reyes
Utah Attorney General

The Washington Post
Democracy Dies in Darkness

The false GOP claim that the Justice Dept. is spying on parents at school board meetings

By [Salvador Rizzo](#)

Reporter

October 15, 2021 at 3:00 a.m. EDT



"Attorney General Garland is weaponizing the DOJ by using the FBI to pursue concerned parents and silence them through intimidation. Florida will defend the free speech rights of its citizens and will not allow federal agents to squelch dissent."

— **Florida Gov. Ron DeSantis (R), in a tweet, Oct. 5**

"Frankly, I don't think we've ever seen anything like it in American history. ... Are you aware of any time in American history when an attorney general has directed the FBI to begin to intervene in school board meetings — local school board meetings?"

— **Sen. Josh Hawley (R-Mo.), in a Senate hearing, Oct. 5**

"Merrick Garland says he's going to use the Justice Department to spy on parents at school board meetings."

— **Rep. Jim Jordan (R-Ohio), in an interview on Fox News, Oct. 13**

"Who would have ever thought that you would have an American president make a decision to leave Americans behind in Afghanistan now directing the DOJ to try to silence parents and actually separate parents from what their children can do inside schools?"

— **House Minority Leader Kevin McCarthy (R-Calif.), in an interview on Fox News, Oct. 10**

"Now the FBI is trying to silence parents. That's wrong."

— **Glenn Youngkin, Republican nominee for Virginia governor, in a campaign ad, Oct. 13**

Because of a "disturbing spike" in threats directed at public school officials, Attorney General Merrick Garland issued a memorandum this month calling on the FBI and federal prosecutors to meet with local law enforcement agencies and set up "dedicated lines of communication."

Republicans are sounding the alarm over Garland's one-page memo, claiming in interviews, congressional hearings, campaign ads and social media that the Justice Department is cracking down on parents simply for dissenting at their local school board meetings.

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as their forums have turned more vitriolic, and one recently reported a death threat and resigned.

The bottom line is Republicans are reading much more into Garland's memo than it says. The memo focuses strictly on "violence, threats of violence, and other forms of intimidation and harassment" — all of which are crimes — not on parents raising questions or complaints.

The Facts

The Oct. 4 memo, addressed to FBI Director Christopher A. Wray and federal prosecutors, reads in part:

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. ...

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. ...

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. ...

Garland's memo added, "In the coming days, the Department will announce a series of measures designed to address the rise in criminal conduct directed toward school personnel."

In an accompanying news release, the Justice Department said, "Those efforts are expected to include the creation of a task force, consisting of representatives from the department's Criminal Division, National Security Division, Civil Rights Division, the Executive Office for U.S. Attorneys, the FBI, the Community Relations Service and the Office of Justice Programs, to determine how federal enforcement tools can be used to prosecute these crimes, and ways to

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identify and consume threats, how to report threatening conduct to the appropriate law enforcement agencies, and how to capture and preserve evidence of threatening conduct to aid in the investigation and prosecution of these crimes.”

Put it all together, and Garland is calling for 1) strategy meetings between federal and local law enforcement, 2) a task force, 3) dedicated lines of communication for addressing threats, and 4) training and guidance for school officials. The news release says the Justice Department will study “how federal enforcement tools can be used to prosecute these crimes, and ways to assist state, Tribal, territorial and local law enforcement where threats of violence may not constitute federal crimes.” (Most violent crimes are investigated and prosecuted by state and local law enforcement agencies, not federal authorities.)

Some of the Republican officials we asked for comment pointed to a letter from the National School Boards Association (NSBA) that asked President Biden for federal resources to help monitor emerging threats. The letter was dated Sept. 29, days before the attorney general’s memo was released, and made various requests of federal agencies including the Justice Department.

“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,” NSBA officials wrote to Biden.

“School board meetings have been disrupted in California, Florida, Georgia, and other states because of local directives for mask coverings to protect students and educators from COVID-19,” the group’s letter says. “An individual was arrested in Illinois for aggravated battery and disorderly conduct during a school board meeting. During two separate school board meetings in Michigan, 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.”

As noted in the letter, a school board member in Ohio received hate mail that said: “We are coming after you and all the members on the ... BoE [Board of Education]. ... You are forcing them to wear mask — for no reason in this world other than control. And for that you will pay dearly.” That correspondence is being investigated by police.

Days after the NSBA letter was sent, a school board chairman in North Carolina resigned and disclosed that his life had been threatened, WCCB Charlotte reported.

The NSBA letter said some “acts of malice, violence, and threats against public school officials ... could be the equivalent to a form of domestic terrorism and hate crimes.”

“Most disturbingly, on page 4, the NSBA letter references Scott Smith — the Loudoun County, Virginia, parent who was arrested for protesting at a school board meeting in June — implying that his behavior was ‘extremist’ and warranting action from federal law enforcement,” said Christina Pushaw, a spokeswoman for DeSantis. “Smith’s supposed crime? He attempted to protest a Loudoun school’s coverup of his 14-year-old daughter’s sexual assault by a transgender classmate in her school bathroom.”

According to the Loudoun County Sheriff’s Department, in July, more than a month after an alleged assault at Stone Bridge High School on May 28, “a 14-year-old male was arrested in the case with two counts of forcible sodomy.” The

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was handled. "Deputies dragged him to the ground, then outside, where he continued struggling and arguing with them, threatening to kick their teeth out," Loudoun Now reported.

"In citing Mr. Smith's case as an example of behavior that justifies a federal crackdown, the NSBA letter asked the Biden administration to deploy federal law enforcement to silence and intimidate parents who have grave concerns that deserve to be heard," Pushaw said. "The Loudoun County School Board is not the victim in this case."

The NSBA, a nonprofit, has no relationship to the Justice Department. Garland's memo makes no mention of the group, its letter to Biden or the examples it included.

Asked about DeSantis's vow that "Florida will defend the free speech rights of its citizens and will not allow federal agents to squelch dissent," Pushaw said: "At this time, it is too soon to speculate about legal actions, because the DOJ has not yet taken any legal action to infringe upon Floridians' rights following this memo. As you know, the DOJ memo directs the FBI to work with U.S. attorneys and 'convene meeting' in each federal judicial district. ... To be clear, Governor DeSantis is committed to protecting Floridians' rights and will take legal action if future developments warrant that."

A spokesman for Jordan, Russell Dye, said in an email that the only way the Justice Department could use "its authority and resources to discourage these threats, identify them when they occur, and prosecute them when appropriate," as the memo says, was by monitoring parents at school board meetings, as the congressman said.

"The only reasonable explanation is to have the FBI/DOJ watch what parents say at meetings and intimidate them into silence," Dye said. "Pretty easy to understand."

(The FBI simply could get tips from local officials, as Garland's memo envisions.)

Mark Bednar, a spokesman for McCarthy, said existing laws already establish criminal penalties for violence or threats as outlined in the memo. Bednar said the Justice Department's move was heavy-handed and could have a chilling effect on parents who might otherwise speak up about their children's education.

"Localized threats of violence are appropriately handled by local law enforcement," Bednar said. "As such, the real question is why the Biden administration used the power of the federal government to publicly threaten 'a series of measures' aimed at addressing local school board meetings. ... The unnecessary, ominous rhetoric from the DOJ's memo could have a chilling effect on parents' First Amendment engagement with their local schools."

Fair, but McCarthy's comment on Fox News was that Biden was "directing the DOJ to try to silence parents and actually separate parents from what their children can do inside schools." There's no indication Biden himself is directing this, or that the Justice Department will be targeting legitimate speech (free of violence or threats) at these forums.

Garland spokesman Anthony Coley referred us to this line in the Justice Department memo: "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."

Coley also pointed to recent Senate testimony by Deputy Attorney General Lisa O. Monaco, the second-highest-ranking official at the department, and Assistant Attorney General Kristen M. Clarke, the head of the Civil Rights Division.

"Frankly, I don't think we've ever seen anything like it in American history. ... Are you aware of any time in American

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communication to address threats, to address violence — and that's the appropriate role of the Department of Justice, to make sure that we are addressing criminal conduct and violence." (A spokesman for Hawley did not respond to our questions on the record.)

When the same Senate committee met the next day for a different hearing, Clarke said in response to questions from Sen. Ted Cruz (R-Tex.) that parents "have the right to express their view, to challenge the school board, to ask for reforms."

"The attorney general's memo deals with threats against public servants and says the threats against public servants are not only illegal, they run counter to our nation's core values," Clarke said.

Youngkin, the Republican running for Virginia governor, received a "Pants on Fire" rating from PolitiFact this week for claiming his Democratic opponent, Terry McAuliffe, "calls in his friend Joe Biden to actually put the DOJ on Virginia parents." No evidence indicates that Biden or McAuliffe were involved in Garland's decision-making, and both the White House and McAuliffe have denied the allegation.

Nevertheless, Youngkin repeated the claim at an Oct. 13 rally in Culpeper, Va., after he had been fact-checked: "He calls his friend Joe Biden. Joe Biden calls the attorney general. And the attorney general calls the FBI in to silence parents." An abbreviated version of all this has made it into a new Youngkin campaign ad.

Asked about the claim, Youngkin spokesman Matt Wolking said in an email that McAuliffe had refused to take a position on Garland's memo and therefore "admitted he won't stand up for Virginia parents being targeted and intimidated by his party's DOJ."

The Pinocchio Test

These Republicans are turning a one-page memo on public safety into a dystopian plot in which Big Brother erases well-meaning parents for thinking freely.

The reality is school officials are reporting more concerns for their safety — some attendees at their meetings have been arrested for physical violence — and the Justice Department is calling for strategy sessions between federal and local law enforcement, a task force and dedicated lines of communication to address the threats, and training for school board members and others who might be targeted.

Garland's memo doesn't direct the FBI to "spy" on parents, as Jordan claimed. Hawley claimed that, for the first time in American history, the FBI was being told to "intervene" in local school board meetings. That's not accurate.

Dissenting parents would not be "silenced" by the feds under the attorney general's memo, as DeSantis, McCarthy and Youngkin have said. Garland wrote, "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."

McCarthy's spokesman makes a fair point: The Justice Department's action could have a chilling effect on legitimate debate. The department says the federal government could be prosecuting some offences itself or assisting local

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These claims earn Four Pinocchios.

Four Pinocchios

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U.S. Department of Justice

United States Attorney
District of Montana

COPY

Leif M. Johnson
Acting United States Attorney

2601 Second Ave. North, 3200
Billings, Montana 59101

406-247-4630

October 14, 2021

Montana Attorney General,
All County Attorneys,
All Sheriffs,
Montana Office of Public Instruction,
Montana School Boards Association

Re: *Federal Action Regarding Threats Against School Boards, Administrators, Teachers, and School Staff Members*

Dear law enforcement or educational leaders:

In response to a nationwide rise in threats and acts of violence against our educational community, Attorney General Garland has directed the FBI and the United States Attorneys to partner with federal, state, local, and tribal leaders to address the problem. The Attorney General's directive does not seek to hinder anyone's free speech rights under the First Amendment, only to combat lawful threats and other criminal conduct.

I write to you pursuant to the Attorney General's directive. I have enclosed a short summary of federal statutes that may serve as a basis for a prosecution of such threats and violent conduct. If you believe that a person has violated one of these statutes, please feel free to contact the FBI. The FBI and the United States Attorney's Office will then collaborate with any interested parties to determine if a federal investigation and prosecution should commence.

The state of Montana has similar criminal laws against threatening and committing acts of violence against members of our educational community. It may be that an investigation and prosecution under those statutes more appropriately addresses individual cases. Where appropriate, however, the United States Attorney's Office stands ready to help address those cases that require a federal response.

Please feel free to contact me if you have any questions regarding this initiative.

Regards,

LEIF M. JOHNSON
Acting United States Attorney

Federal Crimes Involving Harassment, Intimidation, and Threats of Violence

Threat ¹ & Intimidation Statutes		
1. Conspiracy to Deprive Person of Civil Rights	18 U.S.C. § 241	(1) defendant entered into a conspiracy to injure, oppress, threaten, or intimidate another; and (2) defendant specifically intended by the conspiracy to hinder, prevent, or interfere with another's enjoyment of a right secured by the Constitution or the laws of the United States
2. Interference with Federally Protected Activities	18 U.S.C. § 245	(1) defendant used force or threat of force; (2) defendant willfully injured, intimidated, or interfered with a person, or attempted to do so; (3) defendant acted because of that person's race, color, religion, or national origin; and (4) the defendant acted because that person was engaged in one or more protected activities as defined by 18 U.S.C. §§ 245(b)(2)(A)-(F)
3. Interstate Extortion Threat	18 U.S.C. § 875(b)	(1) defendant knowingly sent a message in interstate or foreign commerce containing a true threat to kidnap or injure another person; and (2) defendant did so with intent to extort money or other thing of value.
4. Interstate Threat to Kidnap or Injure	18 U.S.C. § 875(c)	(1) defendant knowingly sent a message in interstate or foreign commerce; (2) the message contained a true threat to kidnap or injure another; and (3) defendant acted with subjective intent to injure or kidnap another

¹ To trigger a federal threat statute, the communication must be a "true threat," that is, a "threat" in which the speaker intends to communicate a serious expression of an intent to commit an act of unlawful violence to another. See *Virginia v. Black*, 538 U.S. 343 (2003). This requires a showing of a subjective, specific intent to threaten. See, e.g., *United States v. Bagdasarian*, 632 F.3d. 1113 (9th Cir. 2011).

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5. Interstate threat to Injure Property or Reputation	18 U.S.C. § 875(d)	(1) defendant knowingly sent a message in interstate or foreign commerce containing a true threat to damage the reputation of, or the property of, another; and (2) defendant did so with intent to extort money or something of value
6. Mailing Threatening Communications	18 U.S.C. §§ 876(a)-(d)	*Same as §§ 875(a)-(d) but the threat is sent in the mail instead of in interstate or foreign commerce.
7. False Information and Hoaxes	18 U.S.C. § 1038	(1) defendant intentionally conveyed false or misleading information under circumstances in which such information may reasonably be believed; and (2) such information indicated that an activity had taken, was taking, or would take place that would constitute a violation of a specified federal statutes involving: destruction of aircraft or motor vehicles; biological weapons; chemical weapons; nuclear or radiological materials, explosives, firearms, shipping, terrorism, nuclear facilities, or aircraft piracy
8. Interstate Stalking	18 U.S.C. § 2261A(1)	(1) defendant traveled in interstate or foreign commerce, within the special maritime or territorial jurisdiction of the United States or into or out of Indian Country; (2) with intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person; and (3) by such travel, placed the victim in reasonable fear of death or substantial bodily injury, or causes substantial emotional distress to the victim, a member of the victim's immediate family, or the victim's spouse or intimate partner
9. Cybersstalking	18 U.S.C. § 2261A	(1) defendant acted with intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person; (2) defendant used the mail, any interactive computer service, electronic communication service, electronic

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		communication system of interstate commerce, or any other facility of interstate or foreign commerce, and (3) defendant engaged in a course of conduct that places the victim in reasonable fear of death or serious bodily injury to the victim, member of victim's immediate family, or victim's spouse or intimate partner, or caused or attempted to cause or would be reasonably expected to cause substantial emotional distress to victim, member of victim's immediate family, or victim's spouse or intimate partner
Harassment Statutes		
1. Anonymous Telecommunications Harassment	47 U.S.C. § 223(a)(1)(C)	(1) defendant contacted victim by telephone or telecommunications device; (2) the call was made from one state to another state; (3) defendant did not disclose his identity; and (4) defendant acted with intent to annoy, abuse, threaten or harass the victim
2. Repeated Telephone Calls	47 U.S.C. § 223(a)(1)(D)	(1) defendant repeatedly contacted victim by telephone or telecommunications device; (2) the calls were made from one state to another state; (3) by the calls, the defendant caused the victim's telephone to repeatedly or continuously ring; and (4) defendant acted with intent to harass any person at the number called
3. Repeated Harassing Communication	47 U.S.C. § 223(a)(1)(E)	(1) defendant repeatedly contacted victim by telephone or telecommunications device; (2) the calls were made from one state to another state; (3) some conversation ensued during the calls; and (4) defendant acted solely to harass the victim.