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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 6, 2021

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Garland:

Are concerned parents domestic terrorists or not?

This letter follows up on our letter to you of October 7 in which we called on you to make clear to the nation's parents and educators that it is not the job of the federal government to silence those who question local school boards. In light of a disturbing new revelation about the FBI's Counterterrorism Division following your directive, we call on you to withdraw your October 4 memorandum and make abundantly clear through words and actions that no arm of the government, including the offices under your command, may be used to chill criticism of local government officials. By involving the FBI's Counterterrorism Division in this matter, that is exactly what you have done.

Recently a whistleblower at the Department of Justice provided to the U.S. House Judiciary Committee a copy of an internal DOJ email containing "A Joint Message from Criminal Investigative Division & Counterterrorism Division."¹ That email stated that the FBI's Counterterrorism and Criminal Divisions created the threat tag, "EDUOFFICIALS," to track "instances of related threats" about school administrators, school board members, teachers, and staff.² This followed your October 4 memorandum alleging 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."³ In that memo, you directed the FBI and the various United States Attorneys to hold meetings with "federal, state, local, Tribal, and territorial leaders in each federal judicial district within 30 days" in order to "facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff..."⁴ And as you well know by now, you issued this directive in response to a September 29 letter from the National School Boards Association (NSBA) to President Biden, which compared impassioned parents to domestic terrorists.⁵ The NSBA has since

¹ Email from Carlton Peeples, Acting Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, to FBI_SACS et al. (Oct. 20, 2021, 10:02 EDT), hereinafter and attached hereto as Exhibit 1.

² *Id.*

³ Memorandum from Attorney Gen. Merrick Garland, Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff (Oct. 4, 2021), at <https://www.justice.gov/ag/page/file/1438986/download>.

⁴ *Id.*

⁵ Letter from Viola M. Garcia, President, and Chip Slaven, Interim Executive Director & CEO, National School Boards Association, to Joseph R. Biden, President of the United States (September 29, 2021), at <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf> (hereinafter September 29 NSBA letter).

apologized for its September 29 letter.⁶

You testified on October 27 to the Senate Committee on the Judiciary that your October 4 memorandum was only about violence and threats of violence, and you specifically said, “The Constitution protects spirited debate, and I don’t believe there’s anything in [that memorandum] that could be read to intimidate mothers and fathers.”⁷ You confirmed that parents are exercising their Constitutional rights when they speak before their local school boards and even get upset and yell what they really believe.⁸ You testified that it would be unreasonable to read your October 4 memorandum as chilling those rights.⁹

However, it should be abundantly clear to you now that no matter what your claimed intention was at the time of issuing that memo, the subsequent reaction of American parents and the public shows it has had a clear chilling effect on them. Since you issued your October 4 memorandum, all of us have received hundreds of letters and emails from our constituents who are angry and concerned about the idea that the FBI will be tracking what they say at local school board meetings. Despite your testimony to the contrary, these parents have good reason to be concerned. The attached Joint Message from the FBI’s Criminal and Counterterrorism divisions naturally leads normal, loving, and impassioned parents to wonder whether the FBI’s *Counterterrorism Division* – an eyebrow raising fact that cannot be emphasized enough – will be reviewing and storing videos of them speaking at school-board meetings. Speaking in public is a nerve-racking experience for most people. Undoubtedly many of them will now just skip it. When that happens, democracy is failing. Other parents will be even more nervous speaking their minds and will not be as clear as they would like to be when speaking. All of this is an outrageous tipping of the scales in the marketplace of ideas in favor of school officials, who just happen to be a major constituency of the political party that currently controls the White House and the Department of Justice.¹⁰ And you have now enlisted the FBI’s Counterterrorism Division as muscle in that marketplace of ideas.

No matter how you might rationalize this, the FBI’s Counterterrorism Division should never have had anything to do with school-board meetings. Congress has received multiple whistleblower reports from within the Department of Justice about the DOJ and FBI processes that have taken place since you issued your October 4 memorandum. It is not just the public and Congress that are concerned about introducing national-security tools into local-government debates. It is also dedicated, career public servants—the very same people you said in your confirmation hearing that you would listen to when leading the Department.

⁶ Letter from NSBA Board of Directors to NSBA Members (Oct. 22, 2021), at <https://www.nsba.org/-/media/letter-to-nsba-membership-oct-22-2021.pdf?la=en&hash=F1B1348E2B4071132A992687120409BF0D72C3C7> (hereinafter October 22 NSBA letter).

⁷ Department of Justice Oversight Hearing before the Senate Committee on the Judiciary (testimony of Attorney General Merrick Garland), at <https://www.c-span.org/video/?515521-1/attorney-general-garland-testifies-senate-judiciary-committee-oversight-hearing> (3:41:45).

⁸ *Id.* at 3:42:25.

⁹ *Id.* at 1:15:05.

¹⁰ See Teachers Unions, Open Secrets, at <https://www.opensecrets.org/industries/indus.php?ind=11300> (“Teachers unions have steadily amped up their political involvement: From 2004 to 2016, their donations grew from \$4.3 million to more than \$32 million -- an all-time high. Even more than most labor unions, they have little use for Republicans, giving Democrats at least 94 percent of the funds they contributed to candidates and parties since as far back as 1990, where our data begins.”)

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Make no mistake about it—there are those who would be perfectly happy with the federal government, now including the FBI’s Counterterrorism Division, scaring people out of criticizing local school boards. A big part of this problem, which you either do not understand or are complicit in, is that too many people nowadays equate ideas they do not like with violence. Many are effectively taught that anything or anybody that hurts their feelings with words or ideas can be sanctioned so as to effectively make those hurt feelings go away. That is the gist of NSBA’s September 29 letter to President Biden, which neither its state school-board-association members nor its own board of directors even approved. Read it again. Read the news stories in the footnotes of that letter and notice how many of the school-board meetings that the NSBA complained about did not actually involve any sort of serious criminal activity. When taken as a whole, that letter was not concerned about actual physical violence and true threats of violence as much as it was frustrated by people harshly criticizing school boards.¹¹ It was a shameless request for the federal government to stop people from making them feel bad in school-board meetings. Its complaint about the group Turning Point USA “spreading misinformation that [school] boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19”¹² was particularly galling in this regard. By now involving the FBI’s Counterterrorism Division in this effort, even if you personally believe that division would never cross a line into silencing criticism of local governments, you have given life to the idea that dissidents are synonymous with terrorists. This is a common tactic of third-world dictatorships, but it should never be FBI practice.

Parents and other citizens who get impassioned at school-board meetings are not domestic terrorists. You may believe that, but too many people involved in this issue seem to think harsh words can be criminalized. Getting the FBI’s Counterterrorism Division involved in the matter only makes this worse—dramatically worse. Therefore, we call on you to work with us in coming to a resolution on this matter. We need you to make clear in very simple terms that violence and true threats of violence are well-defined, discreet ideas in the law and do not include harsh tones and strong criticisms that might make local school-board officials feel disrespected or uncomfortable. There is no other way to communicate this to the American people other than by unequivocally withdrawing your October 4 memorandum.

You may contact John Schoenecker on Ranking Member Grassley’s staff at (202) 224-5225 with any questions you may have about this letter and its request.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary



Lindsey O. Graham
United States Senator
Committee on the Judiciary

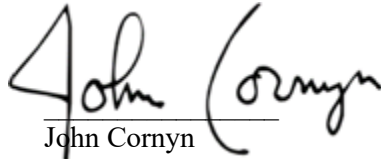
¹¹ See generally Letter from Republican Members of the Senate Committee on the Judiciary to Merrick Garland, Attorney General, U.S. Department of Justice (Oct. 7, 2021), at https://www.grassley.senate.gov/imo/media/doc/2021-10-07_sjc_to_doj_school_boards.pdf.

¹² September 29 NSBA letter at 5.

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John Cornyn
United States Senator
Committee on the Judiciary



Michael S. Lee
United States Senator
Committee on the Judiciary



Ted Cruz
United States Senator
Committee on the Judiciary



Ben Sasse
United States Senator
Committee on the Judiciary



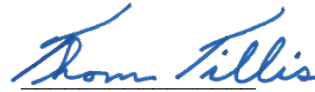
Josh Hawley
United States Senator
Committee on the Judiciary



Tom Cotton
United States Senator
Committee on the Judiciary



John Kennedy
United States Senator
Committee on the Judiciary



Thom Tillis
United States Senator
Committee on the Judiciary



Marsha Blackburn
United States Senator
Committee on the Judiciary

From: Peeples, Carlton L. (INSD) (FBI) <[REDACTED]>
Sent: Wednesday, October 20, 2021 10:02 AM
To: FBI_SACS <[REDACTED]>
Cc: Greenberg, Jay (CID) (FBI) <[REDACTED]>; Shivers, Calvin A. (CID) (FBI) <[REDACTED]>;
Cohen, Brian M. (CID) (FBI) <[REDACTED]>; Langan, Timothy R. Jr. (CTD) (FBI) <[REDACTED]>;
Vorndran, Kevin (CTD) (FBI) <[REDACTED]>
Subject: Guidance: Threat to violence against School Administrators --- UNCLASSIFIED

Classification: UNCLASSIFIED

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All,

On October 04, 2021, the Attorney General forwarded a memorandum addressing a spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff. The memorandum directed each United States Attorney, in coordination with the FBI, to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district within 30 days of the issuance of the memorandum.

We share an obligation to ensure all individuals are able to do their jobs without threats of violence or fear for their safety. This can only be accomplished with effective coordination internally between relevant Divisions and through effective coordination and engagement with our law enforcement partners and United States Attorney Offices.

As a result, the Counterterrorism and Criminal Divisions created a threat tag, EDUOFFICIALS, to track instances of related threats. We ask that your offices apply the threat tag to investigations and assessments of threats specifically directed against school board administrators, board members, teachers, and staff. The purpose of the threat tag is to help scope this threat on a national level and provide an opportunity for comprehensive analysis of the threat picture for effective engagement with law enforcement partners at all levels. When evaluating potential threats, we ask that you attempt to identify the following:

- a) Is there a federal nexus?
- b) Are there potential federal violations that can be investigated and charged?
- c) What's the motivation behind the criminal activity?

EXHIBIT
1

We appreciate your attention to this matter and welcome any engagement to identify trends, strategies, and best practices to accomplish discouraging, identifying, and prosecuting those who use violence, threats of violence, and other forms of intimidation and harassment pertaining to this threat.

On behalf of,

AD Timothy R. Langan Jr.
Counterterrorism Division

AD Calvin A. Shivers
Criminal Division

Respectfully,
Carlton Peeples
A/Deputy Assistant Director
Criminal Investigative Division
[REDACTED]

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