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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 18, 2022

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:

We recently learned that Secretary of Education Miguel Cardona may have requested that the National School Boards Association (NSBA) send its September 29, 2021 letter to President Biden. This is the letter that compared concerned parents to domestic terrorists. The letter was the proximate cause of your October 4, 2021 memorandum directing the FBI and the various U.S. Attorneys to focus on harassment, intimidation, and threats of violence directed at school officials. We first wrote to you about this issue on October 7, 2021 stating that you should make clear to the American people that it is not the role of the federal government to silence those who question local school boards, and then we followed up on that letter on December 6, 2021 to ask why, inexplicably, the FBI's Counterterrorism Division had gotten involved in monitoring local school-board meetings.

The attached email thread, which was recently released by the group Parents Defending Education, appears to show two NSBA officials discussing whether NSBA's emergency procedures for bypassing board approval of official correspondence were followed before sending its September 29 letter to President Biden. In denying that such procedures were followed, one of the officials wrote,

At the time, no, I didn't think the letter fell under an emergency situation, it wasn't characterized that way when Chip told the officers he was writing a letter to provide information to the White House, from a request by Secretary Cardona.¹

We now have reason to believe personnel at the NSBA coordinated its September 29 letter with, or acted at the behest of, the sitting Secretary of Education, as well as White House personnel—in a letter that asks for the PATRIOT Act to be used against American parents.

We are concerned about the prospect of the Secretary of Education requesting that a trade association write a letter to the President of the United States so that you, the Attorney General, might have the requisite cover to deploy federal law enforcement in such a questionable manner. We have the following questions for you regarding this development:

1. When did you first learn about Secretary Cardona's request that the NSBA write its September 29 letter to President Biden? What were the circumstances under which you first learned about Secretary Cardona's request that the NSBA write its September 29 letter to President Biden?

¹ Email from to K. Swett to M. Maraldo (Oct. 6, 2021, 8:02 AM), attached hereto as Ex. 1.

2. Before issuing your October 4 memorandum, did you or anyone else have any communication with Secretary Cardona or anyone else at the Department of Education about the matters at issue in the NSBA's September 29 letter? What was the nature and substance of such communication(s)?
3. Before issuing your October 4 memorandum, did you or anyone else at the Department of Justice have any communication with Secretary Cardona or anyone else at the Department of Education about the matters at issue in your October 4 memorandum? What was the nature and substance of such communication(s)?
4. After issuing your October 4 memorandum, did you or anyone else at the Department of Justice have any communication with Secretary Cardona or anyone at the Department of Education about the matters at issue in your October 4 memorandum? What was the nature and substance of such communication(s)?
5. At a January 11, 2022 hearing, National Security Division Assistant Attorney General Matthew G. Olsen indicated that there have been no known cases of domestic terrorism associated with local school-board meetings. If that is the case, why have you involved the National Security Division in administering the October 4 memorandum?
6. If there are no known cases of domestic terrorism associated with local school-board meetings, why is the Counterterrorism Division of the FBI administering a threat tag entitled EDUOFFICIALS? Who at the Department of Justice tasked the Counterterrorism Division to do so?
7. How many individuals are being tracked under the threat tag EDUOFFICIALS?
8. Please provide copies of all records and emails in your possession reflecting or relating to Secretary Cardona's request that the NSBA write its September 29 letter to President Biden.

Furthermore, we are in receipt of the Department of Justice's one-page response to our letters to you of October 7, 2021 and December 6, 2021, which both concerned the Department's involvement in local school matters. We think that response, dated December 22, 2021 and signed by Acting Assistant Attorney General Peter S. Hyun, is incomplete. It points to statements from your October 4 memorandum discussing how spirited debate is protected by the First Amendment and that it is the Department of Justice's job to ensure the safety of all Americans, but frankly those issues were not the focus of our two letters to you on this matter. Rather, we asked you to withdraw your October 4 memorandum because of the chilling effect it has on the speech of American parents. By involving the National Security Division and the Counterterrorism Division of the FBI in local matters, you have created widespread fear that the national security apparatus of the United States is keeping tabs on them.

Please respond no later than Monday, February 7, 2022. 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 requests.

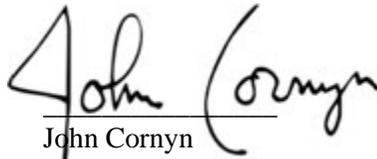
Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary



Lindsey O. Graham
United States Senator
Committee on the Judiciary



John Cornyn
United States Senator
Committee on the Judiciary



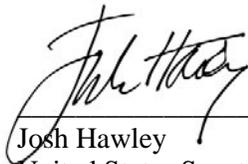
Michael S. Lee
United States Senator
Committee on the Judiciary



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

Statement to President Biden

2 messages

mmaraldo@gmail.com <[REDACTED].com>
To: "Swett, Kristi (UT)" <[REDACTED]>

Tue, Oct 5, 2021 at 8:06 PM

Hi Kristi,

I was wondering if the following Board policy was followed when the statement to President Biden was drafted or sent:

B-17 EXECUTIVE COMMITTEE: EMERGENCY POWERS

When it is not possible or feasible for the Board to meet, the Executive Committee shall have general authority to act for the Board on policy decisions or to make statements on public issues subject to the constraint that the decisions or statements are within the limits of and consistent with the NSBA Beliefs and Policies and Constitution and Bylaws and do not include any action reserved for the NSBA Board by the Illinois Not-for Profit Corporation Act. Such authority to act for the Board shall be taken only when the Executive Committee has declared an emergency and determined that it is not possible or feasible for the Board to meet as an assembled body, by telephone or by mail. To declare such an emergency requires the affirmative vote of all the elected officers and one of the other voting members of the Executive Committee. When the Executive Committee makes policy decisions or statements on public issues under such emergency conditions, action will be valid only when five members of the Executive Committee indicate agreement. The members of the Board shall be advised of any emergency action of the Executive Committee within 24 hours and shall confirm the Executive Committee action at the next regular meeting.

I am very concerned about the process by which the statement was made and the tone that essentially allowed the White House to direct the Attorney General to consider members of our community "domestic terrorists". I agree that we need to focus on civility, and we should be looking to our local law enforcement to protect board members and deal with threats of violence. I would have appreciated an opportunity to work with my fellow board members to give better direction on this very delicate topic.

Thanks,

Marnie

Kristi Swett <[REDACTED]>
To: "mmaraldo@gmail.com" <[REDACTED]>

Wed, Oct 6, 2021 at 8:02 AM

Hi Marnie

I would love to talk with you about the letter when we are all together this weekend.

At the time, no, I didn't think the letter fell under an emergency situation, it certainly was not characterized that way when Chip told the officers he was writing a letter to provide information to the White House, from a request by Secretary Cordona.

In hindsight, I do think our board needs to have a discussion about a screening process for communications which go out from NSBA, that is aligned with our mission, vision and purpose statement. If we (the board) can have a productive conversation to identify guardrails, it will begin to address the communication issues which plagues NSBA.

ISD_PDEPRR

EXHIBIT
1

I am glad we will be together, lets find time to strategize for the upcoming board meeting.

Thanks....

Kristi

From: [REDACTED] >

Sent: Tuesday, October 5, 2021 9:06 PM

To: Kristi Swett <[REDACTED]>

Subject: Statement to President Biden

[Quoted text hidden]

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