

No, the federal government isn't using the Patriot Act to treat parents like domestic terrorists

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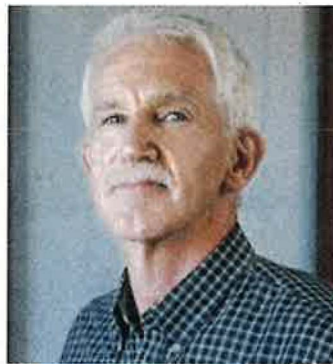
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Anti-vaccine mandate protesters rally outside the garage doors of the Los Angeles Unified School District, LAUSD headquarters in Los Angeles. (AP)



By Jon Greenberg October 22, 2021

If Your Time is short

- A Justice Department task force on criminal threats against school officials involves many offices, including one created by the Patriot Act.

- There are many laws that apply to violence and threats of violence, and the Patriot Act offers little additional legal power.
- Beyond creating the task force, the Justice Department has taken no action against anyone, and concerns that it would employ the Patriot Act are hypothetical.

See the sources for this fact-check

After U.S. Attorney General Merrick Garland told the FBI and every U.S. attorney to pay attention to threats against school officials, top Republicans have charged that the Biden administration is cracking down on parents with legitimate gripes over school policies.

When Garland appeared before the House Judiciary Committee Oct. 21, Rep. Steve Chabot, R-Ohio, said that the Justice Department had unloaded "the full power of the federal law enforcement in this country on involved parents" at the behest of the National School Boards Association. Chabot focused on the Patriot Act.

"I remember clearly that we were ... concerned about potential abuse of this new law enforcement tool," Chabot said Oct. 21. "I can tell you, not in a million years, did we dream that one day, we'd see the Justice Department treat American parents as domestic terrorists."

Is that an accurate take on the Justice Department's actions?

When Sen. Rick Scott, R-Fla., said Garland wanted the FBI to "go after" parents who spoke out against critical race theory, we rated that False. We gave a False rating to viral Instagram posts that said parents had been labeled as domestic terrorists.

Now, we look at whether the Justice Department has invoked the Patriot Act against parents of schoolchildren.

It has not, and Garland responded firmly to Chabot's suggestion.

"I can't imagine any circumstance in which the Patriot Act would be used in the circumstances of parents complaining about their children," Garland said at the hearing. "Nor can I imagine a circumstance where they would be labeled as domestic terrorism."

Chabot spokesman Brian Griffith walked us through why Chabot asserts the Patriot Act is in play, and we gathered the legal insights of several law professors, including a former federal prosecutor, to help sort out the issues.

The Justice Department puts things in motion

On Oct. 4, Garland sent a memo to the FBI, every U.S. attorney and the Justice Department's Criminal Division.

"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," Garland wrote.

Garland told the FBI to hold meetings across the country and bring together leaders at all levels of government to discuss "strategies for addressing threats against school administrators, board members, teachers, and staff, and (to) open dedicated lines of communication for threat reporting, assessment, and response."

Garland's memo makes no mention of the Patriot Act or terrorism, but the Justice Department's press release about the memo listed a number of departmental divisions that would be involved.

"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," the press office wrote.

The Patriot Act connection

Some Republican lawmakers view the National Security Division as a red flag. The division was created by the 2006 reauthorization of the Patriot Act. The change put a number of existing Justice Department offices under one roof. The focus was largely on foreign terrorists, but the original Patriot Act, championed by Republicans, included a definition of domestic terrorism, and that fell within the scope of the new division.

Chabot spokesman Griffith said Garland's words in his memo about "threats of violence or efforts to intimidate individuals based on their views," mirrors the definition of domestic terrorism in federal law. Specifically, the part in Section 802 that talks about "acts dangerous to human life," designed "to influence the policy of a government by intimidation or coercion."

"What Attorney General Garland is saying in that first paragraph is that parents are entitled to express their views under the First Amendment, but should they cross the line and either threaten or attempt to intimidate school board members, they may be guilty of the federal crime of domestic terrorism," Griffith said. "And the main federal law utilized in investigating alleged domestic terrorism is the Patriot Act."

Griffith noted that the National School Boards Association listed the Patriot Act in its letter to the administration. It was one among many laws the association cited.

For over a decade, the Justice Department has dismissed concerns over the broad domestic use of the Patriot Act. The law would be triggered, the department has said, only if there was "criminal wrongdoing that could result in death."

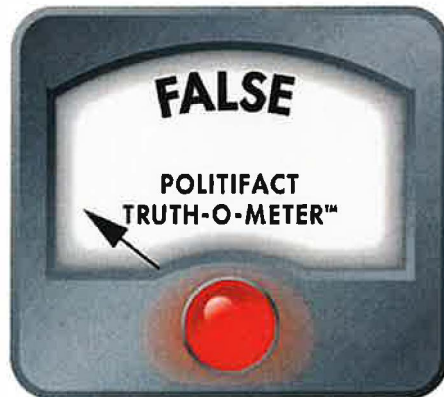
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Ron DeSantis
stated on June 30, 2022 in a press release

The Civics Secures Democracy Act “would allow the Biden administration to buy off states with \$6 billion” if they adopt critical race theory.

 true



The Patriot Act's limited reach

Law professor and former federal prosecutor Daniel Richman at Columbia University said Griffith overstates the significance of the Patriot Act.

"The Patriot Act has vanishingly little to do with criminalizing any of this, and is unlikely to provide the legal authority needed to prosecute threats and other forms of intimidation over which DOJ has jurisdiction," Richman said. "A variety of criminal acts that federal enforcers might well categorize as domestic terrorism — because of the motivation or groups involved — are covered by ordinary criminal statutes."

A report from the Congressional Research Service, the nonpartisan policy arm of Congress, also found that the Patriot Act is far from the main weapon in the legal arsenal.

"Numerous federal statutes offer prosecutors options in charging violent and destructive conduct," the July 2 report said.

William Charles Banks, founding director of Syracuse University's Institute for Security Policy and Law, said there's also nothing new about the need to distinguish between expressing deep anger with government workers and making criminal threats.

"The lines that may be crossed are the same ones that law enforcement has had to observe and navigate for most of the last century, since the U.S. Supreme Court said that the First Amendment protects expressive conduct up to the point that it incentivizes imminent lawless action," Banks said. "Likelihood of violence and imminence of it are the two key factors, and they are always fact-sensitive."

Simply put, violence and true threats of violence are against the law, and would be even if the Patriot Act never existed.

Gregory Magarian at Washington University School of Law in St. Louis said Chabot "stretches the statements in the memo and the press release far past their breaking point." Chabot got ahead of himself, Magarian said, because so far the Justice Department has done very little.

"The memo and press release say nothing about whether the DOJ will take particular actions against particular actors or what those actions might be," Magarian said.

Magarian added that while the National Security Division will be part of a task force, that doesn't necessarily mean that the law that created the division will play a key role.

The fear of government overreach

There are grounds to worry about what the federal government might do, said George Mason University law professor Ilya Somin.

"It's not the federal government's job to enforce state and local law," Somin said. "There's no evidence of a need for the Justice Department to get involved where people behave obnoxiously. If people turn to violence, these are matters that states and local governments can handle."

Somin agreed that so far, the federal government "hasn't actually done anything."

"They've made statements that raise concerns," Somin said. "If they have something different in mind, there are ways they could clarify their intentions and quell a lot of that."

Griffith said that the primary concern is about using the surveillance and investigative tools provided under the Patriot Act, not prosecution itself.

"Attorney General Garland oversold the existence of these acts, and that will lead to more surveillance and more investigations than would otherwise occur," Griffith said. "I don't view that as terribly speculative."

Our ruling

Chabot said the U.S. Justice Department is treating "American parents as domestic terrorists" under the Patriot Act.

The Justice Department has moved to create a task force that spans federal, state and local agencies to focus on threats against local school officials. The department's National Security Division is one of many participants in that task force, and it was created through the Patriot Act.

Legal scholars say the Patriot Act plays little role in criminalizing threats of this sort. Many other federal and state statutes apply to violence and threats of violence. The memo and press release from the Justice Department don't mention terrorism or the Patriot Act, and to date, the federal government has not acted against anyone.

There can be a concern about government overreach, but at this point, those concerns are theoretical.

We rate this claim False.

Our Sources

House Judiciary Committee, Hearing with Merrick Garland, Oct. 21, 2021

U.S. Justice Department, Justice Department Addresses Violent Threats Against School Officials and Teachers, Oct. 4, 2021

U.S. Justice Department, Memorandum: Partnership to address threats against school administrators, board members, teachers and staff, Oct. 4, 2021

U.S. Department of Justice, National Security Division, Oct. 21, 2021

U.S. Congress, The Patriot Act, Oct. 26, 2001

Congressional Research Service, Domestic Terrorism: Overview of Federal Criminal Law and Constitutional Issues, July 2, 2021

U.S. Department of Justice, U.S. Patriot Act: Myth vs. reality, April 22, 2009

U.S. Department of Justice, Quotes about the USA Patriot Act, accessed Oct. 22, 2021

American Civil Liberties Union, How the USA Patriot Act redefines "domestic terrorism", Feb. 11, 2003

Wall Street Journal, The Patriot Act Wasn't Meant to Target Parents, Oct. 12, 2021

PolitiFact, No, parents who question school curriculums haven't been labeled domestic terrorists, Oct. 18, 2021

PolitiFact, Rick Scott wrongly warns FBI coming after loud parents at school board meetings, Oct. 11, 2021

Email exchange, Brian Griffith, communications director, Office of Rep. Steve Chabot, Oct. 21, 2021

Email exchange, Gregory Magarian, professor of law, Washington University School of Law in St. Louis, Oct. 21, 2021

Email exchange, William Charles Banks, professor emeritus of law, Syracuse University, Oct. 21, 2021

Interview, Ilya Somin, professor of law, George Mason University, Oct. 22, 2021

Email exchange, Daniel Richman, professor of law, Columbia Law School, Oct. 22, 2021

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