

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

September 15, 2023

The Honorable Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Assistant Attorney General Clarke:

The Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government are conducting oversight of the Biden Administration's weaponization of the Department of Justice, including the Civil Rights Division.¹ On August 24, 2023, the Department filed a lawsuit against Space Exploration Technologies Corporation (SpaceX) that appears to be a continuation of the Biden Administration's weaponization of the law-enforcement apparatus against individuals and entities it dislikes.² In addition, the Civil Rights Division has pursued a double standard in enforcing laws that protect Americans' civil rights. These matters deserve scrutiny.

Freedom of speech is among the most important rights guaranteed to every American and Mr. Musk's acquisition of Twitter—now X—revitalized this fundamental freedom in the digital town square. Since Elon Musk purchased Twitter last year, the Biden Administration has used the levers of the Executive Branch to target him.³ For example, the Federal Trade Commission used the pretext of an existing consent decree to ramp up an investigation into Twitter, which included unprecedented, unconstitutional demands about the company's communications with journalists.⁴

¹ See FBI Whistleblowers: What Their Disclosures Indicate About the Politicization of the FBI and Justice Department, Report of Judiciary Comm. (Nov. 4, 2022).

² *Justice Department Sues SpaceX for Discriminating Against Asylees and Refugees in Hiring*, Office of Public Affairs, U.S. DEPT. OF JUSTICE, (Aug. 24, 2023).

³ See, e.g., *The Weaponization of the Federal Trade Commission: An Agency's Overreach to Harass Elon Musk's Twitter*, Report of Judiciary Comm. and Select Subcomm. on the Weaponization of the Fed. Gov't (Mar. 7, 2023); Ryan Tracy, *FTC Twitter Investigation Sought Elon Musk's Internal Communications, Journalist Names*, WALL ST. J. (Mar. 8, 2023).

⁴ *The Weaponization of the Federal Trade Commission: An Agency's Overreach to Harass Elon Musk's Twitter*, Report of Judiciary Comm. and Select Subcomm. on the Weaponization of the Fed. Gov't (Mar. 7, 2023).

The Department's lawsuit against SpaceX is yet another egregious example of how the Biden Administration is weaponizing the federal government against its own citizens. The lawsuit alleges that SpaceX engages in discriminatory hiring practices to the detriment of asylees and refugees.⁵ In support for its allegations, the Department relied on a series of job postings that SpaceX shared from 2018 to 2022 in which the company specified that it could hire only U.S. citizens and green card holders. The lawsuit also cited to a June 2020 tweet by Mr. Musk stating that "U.S. law requires at least a green card to be hired at SpaceX, as rockets are advanced weapons technology."⁶ However, it was not until April 2023 that the Department clarified that a company's attempt to comply with export control laws, which restrict companies from sharing sensitive information and technology with individuals from other countries, is not a defense to hiring only citizens or green card holders.⁷ Whereas the Department chose to resolve similar allegations with other companies short of litigation, it notably has not done the same with SpaceX.⁸ Finally, it is particularly concerning for the Department to allege that SpaceX has engaged in discriminatory practices by hiring U.S. citizens and green card holders to perform sensitive national security-related work when the Department, too, has citizenship and residency requirements for its employees.⁹

We are also deeply concerned about the Civil Rights Division's double standard in enforcing the Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act") in a manner that robustly protects pro-abortion activists and facilities while essentially ignoring attacks on pro-life advocates, facilities, and churches.¹⁰ This dereliction bears a striking resemblance to the Department's failure to prosecute pro-abortion activists for remonstrating outside the homes of Republican-appointed Supreme Court justices after a draft of the Court's opinion in *Dobbs v. Jackson Women's Health Organization*¹¹ was leaked to the media.¹² The pro-abortion demonstrators' conduct violated 18 U.S.C. §§ 1503 and 1507, yet the Department has taken no

⁵ *Justice Department Sues SpaceX for Discriminating Against Asylees and Refugees in Hiring*, Office of Public Affairs, U.S. Dept. of Justice, Aug. 24, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-spacex-discriminating-against-asylees-and-refugees-hiring>.

⁶ Elon Musk (@elonmusk), Twitter (June 16, 2020, 3:24 PM), <https://twitter.com/elonmusk/status/1272973320586055682?lang=en>.

⁷ *How to Avoid Immigration-Related Discrimination when Complying with U.S. Export Control Laws*, Civil Rights Division, Dept. of Justice (Apr. 2023), <https://www.justice.gov/crt/page/file/1579981/download>.

⁸ *See Justice Department Secures Agreement with General Motors and Announces a New Resource to Help Employers Avoid Immigration-Related Discrimination When Complying with Export Control Laws*, Office of Public Affairs, Dept. of Justice (Apr. 18, 2023), <https://www.justice.gov/opa/pr/justice-department-secures-agreement-general-motors-and-announces-new-resource-help-employers>; *see also Justice Department Secures Agreement with IT Staffing and Services Company for Posting Discriminatory Job Advertisements*, Office of Public Affairs, Dept. of Justice (May 17, 2023), <https://www.justice.gov/opa/pr/justice-department-secures-agreement-it-staffing-and-services-company-posting-discriminatory>.

⁹ *Entry-Level (Honors Program) and Experienced Attorneys - Conditions of Employment*, Dept. of Justice, <https://www.justice.gov/legal-careers/entry-level-and-experienced-attorneys-conditions-employment>.

¹⁰ *See generally Revisiting the Implications of the FACE Act: Hearing Before the H. Comm. on the Judiciary's Subcomm. on the Const. and Limited Gov.*, 118th Cong. (2023).

¹¹ 142 S.Ct. 2228 (2022).

¹² Rebecca Shabad & Gary Grumbach, *Abortion rights activists protest outside conservative Supreme Court justices' homes*, NBC NEWS (May 9, 2022).

action against them.¹³ You are in the best position to inform Members about the politically motivated enforcement of the FACE Act and related civil rights issues.

In addition, we are interested in examining the Department's conformity to the Supreme Court's watershed ruling in *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc., v. University of North Carolina, et al.*, (“*SFFA*”), where the Court held that racial preferences in university admissions policies violate the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.¹⁴ As you are aware, this decision ended almost 50 years of racial discrimination in higher education admissions.¹⁵ In so holding, the Court unequivocally rejected the race-based approach advocated by the Department.¹⁶ Your testimony is especially important in this regard given your open hostility to the colorblind approach that *SFFA* enshrines and the Civil Rights Division began pursuing during the Trump Administration.¹⁷ At the time, you called the Department's desire to investigate and sue universities for the kind of racial discrimination that *SFFA* now prohibits “deeply disturbing” and “a dog whistle that could invite a lot of chaos and unnecessarily create hysteria among colleges and universities who may fear that the government may come down on them for their efforts to maintain diversity on their campuses.”¹⁸ These comments do not inspire confidence that you will ensure the Civil Rights Division adheres to the requirements of the Equal Protection Clause and Title VI.

Finally, on September 8, 2023, New Mexico Governor Michelle Lujan Grisham issued an emergency public health order banning certain New Mexicans' right to carry firearms for 30 days.¹⁹ In 2022, the Supreme Court explained that the Second and Fourteenth Amendments guarantee Americans' right to carry a firearm outside the home.²⁰ As such, Governor Grisham's emergency order, by prohibiting New Mexicans from lawfully carrying a firearm outside their homes while they are in Bernalillo County,²¹ appears to be a clear Constitutional violation.²²

¹³ Andrew C. McCarthy, *DOJ's politicized double-standard for prosecuting protesters*, THE HILL (June 10, 2022).

¹⁴ 143 S.Ct. 2141 (2023).

¹⁵ *See id.* at 2163-64

¹⁶ *See* Brief for the United States as Amicus Curiae Supporting Respondents, *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College*, No. 20-1199 (U.S. Aug. 1, 2022). *But see* Brief for the United States as Amicus Curiae Supporting Appellant and Urging Reversal, No. 19-2005 (1st Cir. 2020) (where the Trump Department of Justice's Civil Rights Division urged the U.S. Court of Appeals for the First Circuit to reverse the district court's decision that upheld Harvard's discriminatory admissions regime, reasoning that Harvard failed to meet its constitutional burden under strict scrutiny—the position that the Supreme Court ultimately adopted in *SFFA*).

¹⁷ Charlie Savage, *Justice Dept. to Take on Affirmative Action in College Admissions*, N.Y. TIMES (Aug. 1, 2017).

¹⁸ *Id.* (internal quotation marks omitted).

¹⁹ *See* Press Release, Gov. Michelle Lujan Grisham, Governor announces statewide enforcement plan for gun violence, fentanyl reduction – Plan includes 30-day suspension of concealed, open carry in Albuquerque and Bernalillo County (Sept. 8, 2023) [hereinafter “Grisham Press Release”].

²⁰ *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S.Ct. 2111, 2122 (2022).

²¹ *See* Grisham Press Release, *supra* note 19.

²² In *Bruen*, the Court held, “When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that

The Honorable Kristen Clarke
September 15, 2023
Page 4

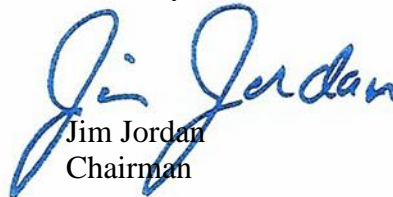
Although the Department has been quick to challenge certain Republican-led states, there is no indication that the Civil Rights Division will act—at all—to uphold the Second Amendment rights of New Mexico residents.²³

In order for the Committee to conduct its oversight responsibilities of the Civil Rights Division, we ask that you appear for a hearing in the near future to allow Members to better understand the Department’s allegations of discriminatory hiring practices by SpaceX, its double standard in enforcing the FACE Act, how it intends to conform to *SFFA*, how the Department plans to ensure New Mexico residents may freely exercise their Constitutional rights, and related matters. Please ask your staff to contact Committee staff at (202) 225-6906 to confirm your attendance at this hearing.

The Committee on the Judiciary has jurisdiction to oversee the activities of the Department of Justice pursuant to Rule X of the Rules of the House of Representatives.²⁴ In addition, H. Res. 12 authorized the Committee’s Select Subcommittee on the Weaponization of the Federal Government to investigate “how executive branch agencies work with, obtain information from, and provide information to . . . other government agencies to facilitate action against American citizens, including the extent, if any, to which illegal or improper, unconstitutional, or unethical activities were engaged in by the executive branch . . . against citizens of the United States” and “issues related to the violation of the civil liberties of citizens of the United States.”²⁵

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” 142 S.Ct. at 2129-30. There is no public health exception to the Constitution, and there is certainly no historical tradition of banning firearms outside the home by public health fiat.

²³*Cf. id.* at 2156 (“The constitutional right to bear arms in public for self-defense is not ‘a second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’”) (citation omitted).

²⁴ Rules of the U.S. House of Representatives, R. X, 118th Cong. (2023).

²⁵ H. Res. 12 § 1(b)(1).