



State of West Virginia
Office of the Attorney General
Patrick Morrissey
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April 11, 2024

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland:

Recently, the Biden Administration launched the National Extreme Risk Protection Order Resource Center—a program that pushes for the more aggressive use of so-called “red flag” gun laws. Working under your Department’s umbrella, the Center aids officials in stripping Second Amendment rights using anti-gun laws in certain localities that allow for the seizure of firearms via civil proceedings.¹

The idea that *federal* officials would purport to instruct *state and local* officials on how to implement *state and local* laws is strange enough, especially when the aim is to undermine a *federal* constitutional right. But this Center is a misguided venture for many reasons. The Department must rethink its approach.

Little reliable evidence suggests that red-flag laws work. A comprehensive study by the RAND Corporation found “no qualifying studies” that show a conclusive decrease in incidents like violent crimes, suicide, and other related events.² A similar survey from the Duke Center for Firearms Law found “no impact on total homicide or total suicide.”³ Likewise, another study examining the use of these laws in two States concluded that they “had no significant effect on deaths or injuries from mass public shootings.”⁴ And still another study—focusing on a red-flag law in one California county—“did not find evidence for a county-level reduction in firearm assault or firearm self-harm following implementation of the law.”⁵ Even gun-control advocates admit that red-flag laws do not “significantly predict[] lower suicide and homicide rates.”⁶ The available data, then,

¹ See, e.g., Emily Medeiros, *Biden Administration Launches New Gun-grabbing Scheme*, TEXAS SCORECARD (Apr. 2, 2024), <https://bit.ly/3J6BXeQ>; Katelynn Richardson, *Gun Groups Sound Alarm About New DOJ ‘Red Flag’ Law Center*, DAILY CALLER (Mar. 29, 2024), <https://bit.ly/3U1gtWS>.

² *The Effects of Extreme Risk Protection Orders*, RAND CORPORATION (Jan. 10, 2023), <https://bit.ly/3TJiuB8>.

³ K. Alexander Adams, *Are There Any Red Flags for ‘Red Flag Laws’?*, DUKE CENTER FOR FIREARMS LAW (Aug. 4, 2022), <https://bit.ly/4cKfIOF>.

⁴ John R. Lott & Carl E. Moody, *Do Red Flag Laws Save Lives?*, Working Paper (Dec. 10, 2019), <https://bit.ly/3vGv4hi>.

⁵ Veronica A. Pear, et al., *Firearm Violence Following the Implementation of California’s Gun Violence Restraining Order Law*, JAMA NETWORK OPEN (Apr. 5, 2022), <https://bit.ly/3QciyNF>.

⁶ Joseph Pomianowski & Ling Liang Dong, *Red Flag Laws Are Red Herrings of Gun Control*, WIRED (Sep. 9, 2019), <https://bit.ly/49sKa7L>.

“suggests these laws will likely not save lives.”⁷ Indeed, these laws might *risk* more lives by forcing confrontations between law-abiding citizens and law-enforcement officers.⁸

On the other hand, these laws do create serious and undeniable harms. Most obviously, they empower governmental authorities to suspend fundamental rights under the Second Amendment with no genuine due process—while also stigmatizing persons with mental health issues along the way. Although the specifics vary, “no red flag law enacted thus far has fully protected due process rights of the respondent, and some laws foster atrocious violations.”⁹ Observers have noted how these orders can be issued against persons who show no genuine threat, can be imposed for extended periods of time, and can be sought for reasons as minimal as “overblown political rhetoric on social media.”¹⁰

And it’s not just the Second Amendment that’s at risk. How can officers enter a home and seize a gun without a warrant in a way that’s consistent with the Fourth Amendment? How can *ex parte* proceedings unconnected to any criminal wrongdoing or criminal investigation be good enough under the Fifth and Fourteenth Amendments when they lead to firearms seizures? Both questions have the same answer: They can’t. “By depriving individuals of their property and rights without having been formally charged, arraigned, or convicted of a crime, red flag laws violate these constitutional rights.”¹¹ No wonder that Congress has already called out your Department for funding state-level red-flag programs that fail to meet basic statutory and constitutional requirements.¹²

Given these substantial concerns, one might have at least expected the federal government to step aside and let the States chart their own course. But your Department believes that “one level of government” is not enough.¹³ And Vice President Harris has “challenge[d] every state” to “[p]ass a red flag law,” insisting that the 29 States that haven’t adopted them (let alone the States that have banned them) are in the wrong.¹⁴ She further bemoaned how “only 6 [States] have taken up the offer [from the federal government] ... to help them with the training and the implementation of these red flag laws.”¹⁵ The new “Resource Center” is evidently an effort to strong-arm more States into accepting “help.”

Trouble is, nothing in the Bipartisan Safer Communities Act—which you cite as the impetus for this “center”—authorizes your Department to create it in the first place.¹⁶ Funding is supposed to go to “States and units of local government,” not to the Department’s own coffers.¹⁷

⁷ Adams, *supra* note 2.

⁸ Jon Miltimore, *7 Reasons to Oppose Red Flag Guns Laws*, FOUNDATION FOR ECONOMIC EDUCATION (Aug. 10, 2019), <https://bit.ly/49oDPdD>.

⁹ David B. Kopel, *Red Flag Laws: Proceed with Caution*, 45 LAW & PSYCHOL. REV. 39, 85 (2021).

¹⁰ *An Analysis of 18-H 7688 and 18-S 2492, Relating to Extreme Risk Protective Orders*, ACLU (Mar. 2018), <https://bit.ly/4cKkgPD> (cleaned up).

¹¹ Matthew Larosiere & Joseph G.S. Greenlee, *Red Flag Laws Raise Red Flags of Their Own*, 45 LAW & PSYCHOL. REV. 155, 164 (2021).

¹² Correspondence from Sen. Roger Marshall, *et al.* to Hon. Amy L. Solomon, *et al.* (July 25, 2023), <https://bit.ly/49nh9ue>.

¹³ Press Release, *Justice Department Launches the National Extreme Risk Protection Order Resource Center*, DOJ (Mar. 23, 2024), <https://bit.ly/3POgRWk>.

¹⁴ *Remarks by Vice President Harris Highlighting Historic Gun Control Measures*, WHITE HOUSE (Mar. 23, 2024), <https://bit.ly/4aH1RBo>.

¹⁵ *Id.*

¹⁶ John R. Lott, Jr. & Rep. Thomas Massie, *Biden’s Federal ‘Red Flag’ Center Defies The Constitution In More Ways Than One*, THE FEDERALIST (Mar. 27, 2024), <https://bit.ly/3U7FkbS>.

¹⁷ 34 U.S.C. § 10152(a)(1).

And when one looks closer, it's no surprise that so many States want so little to do with this new Center and similar "support" efforts. The center is a "project" of the Johns Hopkins Center for Gun Violence Solutions, an ostensibly non-partisan institution that in fact "strategically advocates" for strict gun-control measures driven by "equity" and left-oriented "policy priorities." It is a successor to an organization (the Educational Fund to Stop Gun Violence) that originally sought to ban all handguns and so-called assault weapons outright; it is now allied with several "progressive" state anti-gun groups.¹⁸ The Hopkins center is co-directed by an individual who describes the landmark decision of *Heller v. District of Columbia* as one enshrining "an individual right to insurrection"—a right that he believes is "damaging ... to democratic values."¹⁹ And the center has since called *NYSRPA v. Bruen* an "arbitrary limitation" that "has facilitated subjective analyses and unconscionable questions."²⁰ Plainly, these are not harmless policy wonks who offer a little well-meaning assistance to States on the ground. Rather, your Department has partnered up with anti-gun ideologues who perceive essential Second Amendment protections to be inconsistent with American values.

In short, your new Resource Center is flawed in multiple, basic ways. We urge you to put an immediate stop to this program. States don't need "help" of this sort from the federal government. We know exactly how to protect our citizens while appropriately respecting Second Amendment rights.

Sincerely,



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Alabama Attorney General



Tim Griffin
Arkansas Attorney General



Christopher M. Carr
Georgia Attorney General



Raúl Labrador
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¹⁸ *Advocacy*, JOHNS HOPKINS CENTER FOR GUN VIOLENCE SOLUTIONS (2024), <https://bit.ly/3TD8cqE>.

¹⁹ CASEY ANDERSON & JOSHUA HORWITZ, GUNS, DEMOCRACY, AND THE INSURRECTIONIST IDEA 3 (2012), <https://bit.ly/3VM7ABL>.

²⁰ CENTER FOR GUN VIOLENCE SOLUTIONS, DEFENDING DEMOCRACY: ADDRESSING THE DANGERS OF ARMED INSURRECTION 16 (Dec. 2023), <https://bit.ly/3U1yLHE>.



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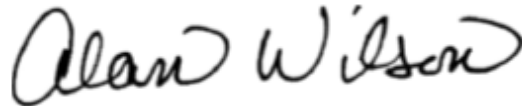
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