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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 27, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice

Dear Attorney General Garland:

An unsettling pattern has emerged from the Department of Justice (DOJ) whereby criminal referrals by the Department of Justice, Office of Inspector General (OIG), against DOJ employees for making materially false statements are rarely prosecuted. Meanwhile, those same charges are frequently prosecuted when it is DOJ who brings the same charges against the American public. Even though federal law, codified in 18 U.S.C. § 1001, makes no distinction between making false statements to federal agencies, DOJ, Congress, or the Inspector General, it appears that in practice, DOJ rarely enforces this statute when DOJ employees are found to have committed the offense.¹

The most shocking example of this pattern occurred recently when DOJ refused to prosecute two former FBI agents who made several materially false statements to the OIG about their conduct in the investigation of Larry Nassar.² As you know, FBI Director Christopher Wray admitted that the FBI, and those two agents in particular, completely failed the victims.³ The supervisory agent was fired by the FBI for “violating the FBI’s policies by making false statements and failing to properly document complaints by the accusers.”⁴ Yet, despite a criminal referral from the OIG, the DOJ refused to prosecute the two agents for the same crime that they routinely prosecute hundreds of American people for each year.⁵

¹ 18 U.S.C. § 1001.

² U.S. Dep’t of Justice, Off. of Pub. Aff., *Federal Officials Adhere to Prior Decision Related to Nassar Investigation* (May 26, 2022), <https://www.justice.gov/opa/pr/federal-officials-adhere-prior-decision-related-nassar-investigation>.

³ See Christopher Wray, *Dereliction of Duty: Examining the Inspector General’s Report on the FBI’s Handling of the Larry Nassar Investigation*, FBI (Sept. 15, 2021), <https://www.fbi.gov/news/testimony/dereliction-of-duty-examining-the-inspector-generals-report-on-the-fbis-handling-of-the-larry-nassar-investigation-091521>.

⁴ Paul LeBlanc, *Washington Post: FBI fires agent accused of failing to properly investigate Larry Nassar*, CNN (Sept. 14, 2021), <https://www.cnn.com/2021/09/14/politics/larry-nassar-fbi-investigation-michael-langeman/index.html>.

⁵ See *U.S. v. Stewart*, 323 F. Supp.2d 606 (2004); See also *U.S. v. Flynn*, 411 F. Supp. 3d 15 (2019); See also *U.S. v. Stone*, 394 F. Supp. 3d (2019); See also *U.S. v. Oaker*, 924 F. Supp. 232 (1996); See also *U.S. v. Bowser*, 318 F. Supp. 3d 154 (2018).

According to data obtained by my office from the DOJ OIG, some examples of DOJ's refusal to prosecute its own, which I outline below, raise serious concerns:⁶

1. The OIG substantiated the allegation that the subject made inaccurate statements in a report of investigation, an affidavit, and in sworn testimony about events the subject witnessed while conducting surveillance of a drug transaction. The subject admitted that they provided false information. **The United States Attorney's Office (USAO) declined prosecution.**
2. The OIG substantiated the allegation that the subject received approximately \$350,000 in worker's compensation disability payments in excess of what the subject should have been paid, due to the fact that they failed to report to the Department of Labor earnings from outside employment as an attorney. The subject declined to be interviewed by the OIG. **The USAO declined prosecution.**
3. The OIG substantiated allegations that the subject was paid military leave for military training that the subject did not attend. The OIG further found that the subject submitted fraudulent memos to both the BOP and their military unit in regard to the training. The subject admitted they did not attend the military training, but denied submitting false memoranda. **The USAO declined prosecution.**
4. The OIG substantiated the allegation that the subject provided false statements to the OIG about the sale of a property during the OIG's investigation of mortgage fraud allegations against the subject. **The USAO initially accepted the case for prosecution of the subject, but ultimately declined.**
5. The OIG substantiated the allegation that the subject submitted fraudulent disability claims related to injuries the subject purportedly sustained while on active military duty in Afghanistan. In an interview, the subject admitted they never served in Afghanistan and agreed to withdraw his disability claims. Since the subject withdrew the claims before they were processed, they never received any benefits related to those claims. **The USAO initially accepted the case for prosecution, but ultimately declined to prosecute.**
6. The OIG substantiated an allegation that a task force officer made false statements in a report of investigation and during grand jury testimony about the location of drugs seized during a search warrant. The OIG also found that two other subjects made false statements under oath about the drug seizure during compelled OIG

⁶ E-mail from Senior Couns. to the Inspector Gen. at U.S. Dep't of Just. at the Inspector Gen., to Investigative Couns. at U.S. S. Comm. on the Judiciary for Ranking Member Sen. Charles E. Grassley (June 10, 2022, 14:22 EST) (examples reflect referrals made to DOJ within the last five years exclusively for false statements) (on file with author).

interviews. **The USAO declined prosecution of the three subjects, but one of the subjects was prosecuted by the New York County District Attorney's Office.**

7. The OIG substantiated an allegation that the subject made false statements to the OIG under oath about an intimate relationship the subject had with a supervisor. Shortly after the interview, the subject amended their statement by admitting to investigators that the subject had, in fact, been in a relationship with the supervisor. **The USAO declined prosecution.**
8. The OIG substantiated an allegation that the subject provided false information in a memorandum about the subject's knowledge of excessive use of force by another BOP employee. The OIG also found that the subject made false statements in a voluntary OIG interview when the subject denied having copied the memo from a third employee. In a subsequent compelled OIG interview, the subject admitted that the subject had copied the content of their memo from the third employee's memo about the incident. **The USAO declined prosecution.**
9. The OIG substantiated an allegation that the subject obtained an HR-218 card to allow the subject to carry a concealed firearm as a retired officer by making false statements to an administrative employee. The subject falsely claimed the subject had misplaced their HR-218 and requested a replacement when the subject had never been issued a card in the first place because their security clearance had been suspended, making the subject ineligible. The OIG also found the subject made false statements to OIG special agents who served the subject with a subpoena by telling the agents they were not aware that they were not permitted to possess an HR-218 due to the suspended security clearance. The subject was retired when the false statements were made. **The USAO declined prosecution.**
10. The OIG substantiated an allegation that the subject made false entries in an inmate's medical records by indicating the inmate had refused medication when, in fact, that inmate was never offered the medication. In a voluntary interview, the subject admitted that the subject did not provide the proper medication to the inmate and falsified the inmate's medical record. The subject claimed they mistook the victim inmate for another inmate who always refused his medication, and therefore never offered the medication to the victim inmate in the first place. **The USAO declined prosecution.**
11. The OIG substantiated an allegation that the subject falsified a memorandum and an affidavit regarding another employee's use of force against an inmate. In a voluntary interview by the OIG, the subject admitted the subject had made false

statements in the memorandum because the subject felt pressured by their Lieutenant to do so. **The USAO declined prosecution.**

12. The OIG substantiated allegations that two subjects falsified their memoranda regarding the use of force against an inmate by a third correctional officer. Both subjects stated in their initial memos that the inmate made a threatening movement toward the third officer, which caused that officer to use force against the inmate. Both later admitted to falsifying their memos. **One of the subjects pleaded guilty to 18 USC 1018, falsification of an official writing. The USAO declined prosecution of the other subject.**

Laws are meant to deter criminal activity, but when DOJ does not enforce those laws but rather shields their employees from consequences, it has the opposite effect.⁷ It creates a sense of entitlement and signals that DOJ employees are beyond reproach. DOJ employees should be held to a higher standard for making materially false statements to the OIG, not a lower one. DOJ must hold itself to the highest possible standard or else it risks losing the credibility and trust of the American people.

In order to better understand why DOJ has such a bad track record of prosecuting violations of 18 U.S.C. §1001 against its own employees, please answer the following questions by no later than July 14, 2022.

1. In the past 5 years, how many DOJ employees (and employees of its subcomponents) have been prosecuted for violations of 18 U.S.C. §1001?
 - a. How many of these prosecutions were exclusively for violations of 18 U.S.C. §1001 and no other violation?
2. In the past 5 years, how many criminal referrals have the various Inspectors General sent to DOJ for violations of 18 U.S.C. §1001?
 - a. How many of these referrals were exclusively for violations of 18 U.S.C. §1001 and no other violation?
3. In declining to prosecute the FBI agents involved in the Nasser investigation who lied to the Inspector General, DOJ stated that the “Principles of Federal Prosecution require more to bring a federal criminal case”. Please explain why bringing charges for a violation of 18 U.S.C. §1001 is against the Principles of Federal Prosecution.
 - a. Please cite exactly which principle of federal prosecution DOJ believes discourages bringing charges in this case.

⁷ Kit Kinports, *CULPABILITY, DETERRENCE, AND THE EXCLUSIONARY RULE*, 21 WMMBRJ 821 (2013).

4. How many people were referred for prosecution for a violation of 18 U.S.C. §1001 by these two former FBI agents involved in the Nasser investigation while they were employees of the FBI?

If you have any questions, please contact Dario Camacho of Ranking Member Grassley's staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary