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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 28, 2021

BY ELECTRONIC TRANSMISSION

The Hon. Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Attorney General Garland:

I am writing in response to your letter stating that your Department has opted not to pursue a civil rights investigation into government-run nursing homes in several states concerning their COVID-19 response. I call for you to reconsider that decision, in light of multiple media reports suggesting that obstruction of justice may have occurred.

As has been widely reported, approximately a year ago, your Department sought information from four states about the number of COVID-19 infections and deaths in public nursing homes. These requests for data from New York, New Jersey, Pennsylvania and Michigan came on the heels of media reports suggesting that state officials in one such jurisdiction, New York, even may have engaged in a cover up, by effectively concealing the actual number of COVID-19 related fatalities in its nursing homes.¹ Serious questions remain to this day about whether governors in these four jurisdictions helped fuel the COVID-19 related death toll in nursing homes through the issuance of executive orders pressuring nursing homes to accept patients regardless of their COVID-19 status.²

¹ Max Hauptman, "DOJ declines to investigate Cuomo's handling of covid-19 in nursing homes," The Washington Post, (July 24, 2021) (citing January report by New York's attorney general, finding that nursing home data published by the New York health department "may have been undercounted by as much as 50 percent" and "many nursing home facilities did not properly isolate residents who had tested positive for the coronavirus or screen employees for potential infections"), *available at* <https://www.washingtonpost.com/nation/2021/07/24/cuomo-coronavirus-investigation/>. See also Hannah Knowle, Fenit Nirappil, and Jane Gottlieb, "New York Gov. Andrew Cuomo draws bipartisan ire for withholding data on nursing home deaths," The Washington Post (Feb. 12, 2021), *available at* <https://www.washingtonpost.com/nation/2021/02/12/cuomo-new-york-nursing-home-deaths-coronavirus/>.

² See, e.g., Kim Barker and Amy Julia Harris, "'Playing Russian Roulette': Nursing Homes Told to Take the Infected," N.Y. Times (Apr. 24, 2020) (citing "state guideline [that] says [nursing homes](#) cannot refuse to take patients from hospitals solely because they have the [coronavirus](#)"), *available at* <https://www.nytimes.com/2020/04/24/us/nursing-homes-coronavirus.html>.

It is particularly concerning that DOJ's Civil Rights Division, which has the ability to investigate misconduct in public nursing homes, has abandoned the investigation into the New York governor's actions when Federal prosecutors are actively pursuing the matter. For example, the media has reported that the FBI and a U.S. Attorney's Office "launched a probe into Cuomo's order on nursing homes and allegations that his administration under-reported COVID-19 deaths in the facilities in a purported effort to avoid political fallout."³

The Civil Rights Division seems more focused on opposing common-sense voter integrity provisions than protecting the elderly. In fact, the Civil Rights Division was willing to pull out all the stops to file one such lawsuit in Georgia days before the Supreme Court issued a ruling squarely affirming two related Arizona voting provisions, but it seems to lack the resources to protect the most frail and vulnerable in states like New York. As others have noted, it would be a grave injustice to those who perished in these facilities during the pandemic to neglect to fully explore this matter, after the issuance of executive orders inconsistent with geriatricians' advice and federal guidance.⁴ Accountability is important under these circumstances--not only to help prevent similar missteps in the future, but also to maintain public confidence in the Department.

Thank you for your consideration.

Sincerely,



Charles E. Grassley
Ranking Member

³ Brendan J. Lyons and Emilie Munson, "DOJ declines to investigate New York's public nursing facilities," The Times Union (July 23, 2021), available at <https://www.timesunion.com/state/article/DOJ-declines-to-investigate-New-York-s-public-16336218.php>.

⁴ See, e.g., Jill Terreri Ramos, "New York's nursing home policy was not fully in line with CDC," Politifact (Jun. 13, 2020), available at <https://www.politifact.com/factchecks/2020/jun/13/andrew-cuomo/new-yorks-nursing-home-policy-was-not-line-cdc/>; Mark Miller, "Scalise blasts 'unconscionable' DOJ move to drop Cuomo nursing home investigation, Fox News (July 25, 2021), available at <https://www.foxnews.com/politics/scalise-blasts-unconscionable-doj-move-to-drop-cuomo-nursing-home-investigation>; Max Hauptman, *supra* note 1.