

United States Senate

WASHINGTON, DC 20510

August 13, 2021

The Honorable Dick Durbin
Chairman, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

Dear Chairman Durbin,

In February, nine members of this Committee sent you a letter asking you “to open an investigation and schedule hearings” into whether state governors, and especially Governor Cuomo of New York, violated the civil rights of seniors by sending individuals with COVID-19 to nursing home facilities.¹ We have yet to receive a response from you.

Congressional oversight is needed to ensure the protection of seniors’ civil rights and to seek justice for seniors in long-term care facilities who lost their lives to COVID-19, given the Department of Justice’s Civil Rights Division’s recent announcement that it will not “open a CRIPA [Civil Rights of Institutionalized Persons Act] investigation of any public nursing facility within New York, Pennsylvania, or Michigan at this time.”² This decision not to pursue potential civil rights violations in states with high-profile Democrat governors raises serious concerns that the Biden administration is acting based on politics, not the law.

There is ample basis to investigate the nursing home response in New York, Pennsylvania, Michigan, and New Jersey, particularly in light of the billions of dollars that Congress appropriated for the COVID-19 response. These four states pressured nursing homes to accept patients with active COVID-19 infections who were being discharged from hospitals at the height of the pandemic. Moreover, these states did so despite directions from the Centers for Disease Control and Prevention (CDC) that hospitals should not discharge patients with a COVID-19 diagnosis to a long-term care facility unless “the selected long-term care facility [is] able to safely care for a patient recovering from the virus by implementing all recommended infection control procedures.”³ By discharging patients to long-term care facilities, the states likely increased the case rate or fatality risks for nursing homes. And then, to cap it off, there is significant evidence that Governor Andrew Cuomo of New York and his senior staff engaged in a cover-up to minimize the death toll in these facilities.

¹Letter from Ted Cruz, Senator, Texas, to Dick Durbin, Senator, Illinois (Feb. 17, 2021), *available at* <https://www.cruz.senate.gov/files/documents/Letters/2021.02.17%20--%20Letter%20to%20Durbin%20for%20Investigation%20into%20NY%20Coverup%20-%20FSVdocx.pdf>.

² Letter from Department of Justice to Representative Steve Scalise of Louisiana (July 23, 2001), *available at* <https://wnyt.com/wnytimages/Scalise-letter.pdf>.

³ 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/>.

We need to understand what happened and the extent to which these states violated federal law. That is why nine members of this Committee previously asked you to schedule a hearing on these issues. It is also why, on March 12, four members of this Committee and Senator Tim Scott, as the Ranking Member of the Select Committee on Aging, sent a letter to Attorney General Garland asking him to “investigate whether any such state directives were inconsistent with guidelines or requirements for participation in Federal programs and determine whether there was a cover-up or obstruction of justice by public officials who were the subject of DOJ’s investigation.”⁴

At the time we called for a hearing in February, our purpose was to promote transparency for the American people on this issue and to determine whether “the Department of Justice has all the tools and funding that it needs to investigate and prosecute to the extent necessary this tragedy.” Now, with the Department’s decision not to open a CRIPA investigation, a hearing is needed for those same reasons, as well as to ensure that the Department is acting impartially and in accordance with the law.

As part of our duty to oversee the Department of Justice, we need to know, for example, why the Department has decided not to pursue a CRIPA investigation, who made that determination, and whether that decision was made in consultation with the White House. Indeed, these questions are all the more important considering that the Civil Rights Division under Kristen Clarke has been extraordinarily aggressive in pursuing actions against political opponents, but appears to have taken a markedly different approach with regard to this investigation. We also need to know whether political considerations are interfering with any criminal investigation being conducted by the U.S. Attorney’s Office for the Eastern District of New York.

Grieving families deserve more than silence from this Committee: they deserve answers and accountability. We should hold a hearing on whether New York, Pennsylvania, Michigan, and New Jersey violated seniors’ civil rights by sending COVID-19 patients to nursing homes, whether any of these states lied about COVID-19 deaths, and whether the Department of Justice is thoroughly and impartially investigating these matters.

Sincerely,



Ted Cruz
Member, Senate Judiciary Committee



Chuck Grassley
Ranking Member, Senate Judiciary
Committee

⁴ Letter from Republican Senators, to Merrick Garland, U.S. Attorney General (March 12, 2021), *available at* <https://www.cruz.senate.gov/files/documents/Letters/NursingHomeLetterAttorneyGeneralBidenAdmin12Mar2021%5b5%5d.pdf>.

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Lindsey Graham
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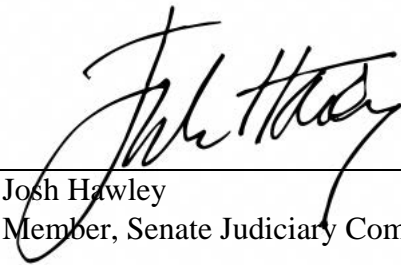
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