

# United States Senate

WASHINGTON, DC 20510

February 17, 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,

Last week, the *New York Post* reported that Melissa DeRosa, a top aide to Governor Andrew Cuomo of New York, told a group of state lawmakers that Governor Cuomo and his senior staff engaged in a deliberate cover-up regarding New York's nursing home COVID-19 death toll. In a shockingly candid confession, she stated: "We were in a position where we weren't sure if what we were going to give to the Department of Justice, or what we give to you guys, what we start saying, was going to be used against us while we weren't sure if there was going to be an investigation."

According to *The New York Times*, this confession is the latest instance in Governor Cuomo's almost year-long attempt to brush away criticisms that his "policies had allowed thousands of nursing home residents to die of the virus" because such criticisms would undermine "his national image[.]" In the early stages of the pandemic, Governor Cuomo's administration issued a March 25, 2020 directive that likely inhibited the ability of elder care facilities to protect their vulnerable residents by halting or reducing the number of COVID-19 patients admitted to their facilities. While the Cuomo administration has reported these facilities had admitted nearly 6,000 COVID-19 patients directly from hospitals, we now know the Cuomo administration actively concealed the level of admissions and intentionally underreported these admissions in a way that callously and recklessly put facility residents in danger and resulted in an unknown number of deaths. The *Associated Press* now reports that the number of admissions was greater than 9,000 COVID-19 patients—"40% higher than what the state health department previously released[.]"

Governor Cuomo's attempt at damage control was dealt a further blow in a report by New York State attorney general Letitia James. The report stated that the number of COVID-19-related nursing home deaths had been undercounted by as much as 50%, resulting in thousands of COVID-19-related nursing home deaths not being reported properly. Such underreporting hid the truth from the public and policymakers of the dangers posed to elder home residents and, therefore, prevented the kinds of changes in policy that should have been adopted to save lives.

That so many people needlessly lost their lives because of the failed policies of Governor Cuomo's administration—an administration that many have lauded over the past year—is tragic and deserves a full investigation and accounting. These new revelations, however, that Governor Cuomo's administration withheld information from the Department of Justice and intentionally misled federal officials to avoid political accountability is more than irresponsible: it is very

possibly criminal. Those who deliberately withheld—or directed others to withhold—material information from the Department of Justice may be guilty of obstruction of justice, violating the False Claims Act, and numerous other criminal violations.

When Judge Garland testifies before this Committee, we expect him to commit the Department of Justice to fully investigating this cover-up to determine whether any criminal laws were violated and to prosecute any violations. We will also ask him whether he has the resources he needs to fully pursue an investigation, not only into the deaths that occurred in New York but the deaths that occurred in other states that adopted similar directives leading to the admission of COVID-19 infected persons into elder care facilities.

But an investigation by the Department of Justice is rightly conducted behind closed doors and will not provide timely and public accountability for those who played politics with COVID-19 at the expense of the lives of American senior citizens.

That is why we ask you to open an investigation and schedule hearings on this critical issue. The American people deserve to know the extent to which Governor Cuomo and his senior staff violated the civil rights of New York seniors, lied to the Department of Justice about their actions, and violated federal civil and criminal laws in the process. Moreover, hearings will allow this Committee to ensure that the Department of Justice has all the tools and funding that it needs to investigate and prosecute to the extent necessary this tragedy and subsequent cover-up. For example, hearings can help ensure that a qualified professional like Toni Bacon—the acting U.S. Attorney for the Northern District of New York, a career Department of Justice employee and former Elder Justice coordinator—runs this politically sensitive investigation, not an individual with ties to the Cuomo Administration and state party politics, like Audrey Strauss, the acting U.S. Attorney for the Southern District of New York and mother-in-law of Ms. DeRosa.

As you have stated before, the Senate Judiciary Committee through its history has played a critical role in investigating violations of civil rights and overseeing the Department of Justice. Holding hearings on potential federal criminal activity related to the reckless endangerment of American seniors in a global pandemic would send a strong signal that you take Department of Justice oversight and the lives and rights of American seniors seriously.

Sincerely,



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Ted Cruz  
Member, Senate Judiciary Committee

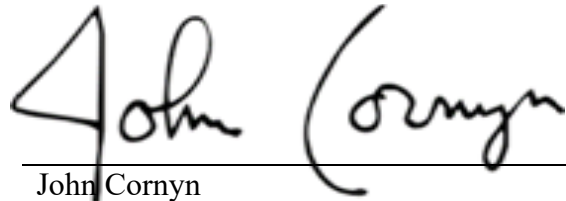


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