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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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June 8, 2022

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

Dear Attorney General Garland:

Since 2015, the American people have been appalled by the firsthand accounts of reprehensible acts committed by Larry Nassar against U.S. Olympic athletes, many of whom were minors.¹ However, it has come to light only more recently that Special Agents with the Federal Bureau of Investigation (FBI) failed to investigate these matters.² In July 2021, the Department of Justice Office of Inspector General (DOJ OIG) released a report finding that these Special Agents had in fact lied under oath and falsified evidence to hide their own investigative failures. Despite criminal findings from an independent investigative body, the Department of Justice (the Department) confirmed last month that it will not bring charges against the offending agents.³ This decision is egregious and severely calls into question the Department's judgment.⁴ I am particularly concerned this lack of accountability will further erode confidence in law enforcement among victims of sexual abuse, making it less likely abuse will be reported in the future. At minimum, the

¹ See Tracy Connor, *Dr. Larry Nassar, Accused of Abuse by Olympic Gymnast, Is Fired*, NBC (Sept. 20, 2016), <https://www.nbcnews.com/news/us-news/dr-larry-nassar-accused-abuse-olympic-gymnast-fired-n651461>.

² See OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUST., INVESTIGATION AND REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S HANDLING OF ALLEGATIONS OF SEXUAL ABUSE BY FORMER USA GYMNASTICS PHYSICIAN LAWRENCE GERARD NASSAR, Rep. No. 21-093, at 75 (July 2021) (available at <https://oig.justice.gov/sites/default/files/reports/21-093.pdf>); *Dereliction of Duty: Examining the Inspector General's Report on the FBI's Handling of the Larry Nassar Investigation: Hearing Before the S. Comm. on the Judiciary*, 117 Cong. (2021) (available at <https://www.judiciary.senate.gov/meetings/dereliction-of-duty-examining-the-inspector-generals-report-on-the-fbis-handling-of-the-larry-nassar-investigation>); *Hearing on Renewing and Strengthening the Violence Against Women Act: Hearing Before the S. Comm. on the Judiciary*, 117 Cong. (2021) (available at <https://www.judiciary.senate.gov/meetings/renewing-and-strengthening-the-violence-against-women-act>).

³ *Supra* note 2 (finding that Special Agents made materially false statements and omitted material information, with reckless disregard for accuracy); U.S. DEPT. OF JUST., *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>.

⁴ See Niels Lesniewski, *Senators Call Decision Not to Prosecute FBI Agents in Larry Nassar Case 'Infuriating'*, ROLL CALL (May 26, 2022), <https://rollcall.com/2022/05/26/senators-call-decision-not-to-prosecute-fbi-agents-in-larry-nassar-case-infuriating/>; Jason Chaffetz, *Biden's G-Men Go Rogue*, FOX NEWS (June 6, 2022), <https://www.foxnews.com/opinion/biden-department-justice-fbi-merrick-garland> (“[The lack of accountability within federal law enforcement] may also help explain why DOJ has a deepening problem with public perception and low morale. There are many committed professionals at the 110,000-person agency, but when those who cut corners are allowed to thrive and suffer no consequences, it sends a message.”).

Department should explain its rationale and brief the Committee regarding Deputy Attorney General Lisa Monaco's review of the Department's decisions not to bring charges.⁵

The Department's lack of candor and action on behalf of the victims is inexcusable.⁶ For several years now, the Senate, through multiple committees, continues to investigate sexual abuse within the Olympic community. Senators have been briefed by both DOJ OIG and SafeSport and have held hearings with Olympic athletes who are calling for accountability.⁷ Last year, Aly Raisman voiced the frustration of many survivors when she rebuked the Department's leadership for refusing to participate in the Judiciary Committee's hearing on the failures of the Nassar investigation.⁸

During the Judiciary Committee's *Hearing on Renewing and Strengthening the Violence Against Women Act*, Deputy Attorney General Lisa Monaco stated the Department would review its decision not to bring charges against the Special Agents. She told the Judiciary Committee that "new information" had since come to light that necessitated additional time for review.⁹ Given the overwhelming amount of incriminating evidence against these Special Agents, it is deeply disturbing that the Department is choosing not to take steps to hold its own accountable, especially following the string of well-documented "inexcusable, unacceptable failures," which the Department itself has confirmed.¹⁰ A period of 17 months elapsed from the time the FBI was first informed of Nassar's abuses to his eventual arrest.¹¹ This period allowed Nassar to continue abusing approximately 70 young athletes under the guise of medical treatment while Special Agents were derelict in their duties and failed to investigate these claims properly.¹²

⁵ *Supra* note 2, at 56:02 (statement of Hon. Lisa O. Monaco, Deputy Attorney General, Department of Justice) ("I can inform the Committee today that the recently confirmed Assistant Attorney General for the Criminal Division is currently reviewing this matter, including new information that has come to light . . . I want the [Senate Judiciary Committee], and frankly I want the survivors, to understand how exceptionally seriously we take this issue and believe that this deserves a thorough and full review.").

⁶ *Supra* note 3.

⁷ See e.g., *supra* note 2; see also *Athlete Safety and the Integrity of U.S. Sport: Hearing Before the S. Comm. on Com., Sci., and Transp.*, 117 Cong 1 (2020) (statement of then-Chairman Roger Wicker available at <https://www.commerce.senate.gov/2020/2/athlete-safety-and-the-integrity-of-u-s-sport>); *Protecting U.S. Amateur Athletes: Examining Abuse Prevention Efforts Across the Olympic Movement: Hearing Before the S. Comm. on Com., Sci., and Transp.*, 115 Cong. (2018) (available at <https://www.commerce.senate.gov/2018/10/protecting-u-s-amateur-athletes-examining-abuse-prevention-efforts-across-the-olympic-movement>); *Strengthening and Empowering U.S. Amateur Athletes: Moving Forward with Solutions: Hearing Before the S. Comm. on Com., Sci., and Transp.*, 117 Cong. (2018) (available at <https://www.commerce.senate.gov/2018/7/strengthening-and-empowering-u-s-amateur-athletes-moving-forward-with-solutions>); *Young Athletes From Sexual Abuse: Hearing Before the S. Comm. on the Judiciary*, 115 Cong. (2017) (available at <https://www.judiciary.senate.gov/meetings/protecting-young-athletes-from-sexual-abuse>).

⁸ See *Senators, Gymnasts Hold News Conference Following Testimony on Larry Nassar Investigation*, C-SPAN, at 25:08 (Sept. 15, 2021), <https://www.c-span.org/video/?514654-1/senators-gymnasts-hold-news-conference-testimony-larry-nassar-investigation> ("The message by [DOJ leadership] not showing up, to me, sends that child abuse does not matter.").

⁹ See *supra* note 5.

¹⁰ See *supra* note 3 ("[FBI Indianapolis Field Office officials] made numerous and fundamental errors when they did respond to [allegations], and violated multiple FBI policies when undertaking their investigative activity."); see also *supra*, note 2, at 56:02 (statement of Hon. Lisa O. Monaco, Deputy Attorney General, Department of Justice) ("[T]he survivors who testified so bravely last month deserved better than they got from the FBI and [DOJ]. The IG documented inexcusable, unacceptable failures – some of them quite fundamental failures – a lack of urgency, a lack of care for the victims who we have a duty to protect . . .").

¹¹ See *supra* note 3 (finding Nassar abused "approximately 70 or more young athletes" between USA Gymnastics first report of allegations to FBI Special Agents in July 2015, to Nassar's arrest in August 2016.).

¹² See *id.*

The right of Olympic athletes to compete and train in an environment free from abuse of any kind is of the utmost importance. In this instance, young women, mostly minors, were sexually abused by an individual entrusted with their care and well-being. When these abhorrent abuses were reported to SafeSport, the United States Olympic and Paralympic Committee, and USA Gymnastics, they were dismissed. The athletes then took their stories to the FBI, which minimized the abuses and took no action.¹³ Nassar was eventually convicted for his crimes in spite of the FBI's failures. Yet the system that allowed him to perpetuate his abuses remains largely unchanged, and the Special Agents who lied to cover up their inactions have not received any judicial scrutiny.¹⁴

For these reasons, I request the Department provide a briefing to the Commerce Committee on the review process confirming its decisions not to bring charges, including the "new information" that necessitated the review.¹⁵ In addition, we ask that the Department respond to the below questions by June 22, 2022.

1. DOJ OIG estimates that approximately 70 individuals were abused by Nassar after USA Gymnastics reported the Nassar allegations to the Indianapolis Field Office in July 2015.¹⁶
 - a. Does the Department believe this is an accurate number? If not, why not?
 - b. What is the exact number of individuals that Nassar victimized after the FBI first learned of the allegations?
 - c. How many of those individuals were victims of continued abuse that began before the FBI was notified?
 - d. How many victims had their abuse begin after the FBI had been notified?
2. Please explain how an FBI investigation into the abuses perpetrated by Nassar in July of 2015 would not have eliminated, or at least decreased, the statistics provided in the answer to the above question.

¹³ *Supra* note 2, at 2:04 (statement of Aly Raisman, gymnast, USA Gymnastics) ("[W]e have been treated like adversaries by so many organizations and our abuse has been diminished . . . we've been made to feel like we don't matter . . .").

¹⁴ *Supra* note 3.

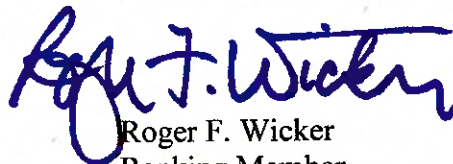
¹⁵ *Supra* note 11.

¹⁶ *Supra* note 2; *but see supra* note 2 (statement of Aly Raisman, gymnast, USA Gymnastics, available at <https://www.judiciary.senate.gov/imo/media/doc/Raisman%20Testimony.pdf>) ("Nassar found more than 100 new victims to molest.").

3. For each of the last three years, how many times has the Department brought charges against the following categories of people for both lying under oath to federal law enforcement or manufacturing evidence and providing it to federal law enforcement?¹⁷
 - a. Non-government employees
 - b. All federal law enforcement officials
 - c. FBI employees

Should you have any questions, please reach out to Danny Boatright of the Senate Committee on Commerce, Science, and Transportation at (202) 224-1251. Thank you in advance for your response to this important matter.

Sincerely,



Roger F. Wicker
Ranking Member
Senate Committee on Commerce,
Science, and Transportation

cc:

The Honorable Lisa Monaco
Deputy Attorney General and
The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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The Honorable Christopher Wray
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935 Pennsylvania Avenue, NW
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¹⁷ 18 U.S.C. § 1001 (a)(2)&(3); see also *Martha Reports to Prison*, CNN MONEY (Oct. 8, 2004), <https://money.cnn.com/2004/10/08/news/newsmakers/marthareport/index.htm>.