

THE LAWYERS' COMMITTEE
FOR 9/11 INQUIRY, INC.
a 501(c)(3) charitable organization
426 River Mill Road
Jersey Shore, PA 17740
info@lawyerscommitteefor9-11inquiry.org
www.lawyerscommitteefor9-11inquiry.org
www.lcfor911.org

VIA FEDEX DELIVERY, March 12, 2019

Honorable Geoffrey S. Berman
United States Attorney
Southern District of New York
United States Attorney's Office
1 St. Andrew's Plaza
New York City, NY 10007
Telephone: (212) 637-2200

VIA E-MAIL DELIVERY, March 12, 2019

Mr. Ilan Graff, Chief Terrorism and International Narcotics Unit, and
Mr. Michael Ferrara, Chief Terrorism and International Narcotics Unit
U.S. Attorney's Office, Southern District of New York
Michael.Ferrara@usdoj.gov

Re: Unredacted Version of Supplement to Petition to Report Federal Crimes to Special Grand Jury Pursuant to 18 U.S.C. § 3332(a)

United States Attorney Berman, Mr. Graff, and Mr. Ferrara:

The Lawyers' Committee for 9/11 Inquiry, Inc.¹ ("Lawyers' Committee"), a non-profit organization, hereby submits to you this unredacted version of its Supplement to the prior-filed Petition and First Amended Petition of the Lawyers' Committee (Unredacted Petition Supplement). As you are aware, the Lawyers' Committee submitted to your office the redacted version of this Petition Supplement on February 14, 2019 via e-mail and commercial courier (FedEx).

This Unredacted Petition Supplement, and the exhibits thereto, provide additional information regarding certain federal crimes that have been committed within your District. This particular Unredacted Petition Supplement contains more specific information than the prior redacted

¹ The mission of the Lawyers' Committee for 9/11 Inquiry, Inc. is to promote transparency and accountability regarding the events of 9/11, and regarding the events leading to and resulting from 9/11. The Lawyers' Committee believes that the family members of the victims of the tragic crimes of 9/11 have a compelling right to know the full truth of what happened to their loved ones on 9/11, and that Congress and the Department of Justice, in order to do their jobs, have a compelling need to know.

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version regarding persons who may have material information relevant to the federal crimes previously reported by the Lawyers' Committee in the Petition and in the First Amended Petition. Please note that this unredacted version of this Petition Supplement has names and identifying information of persons and corporations included. This unredacted version is being submitted only to the United States Attorney's Office, and we request that this submission be kept confidential to the extent allowed by law.

The Lawyers' Committee respectfully requests that you submit this information (this Unredacted Petition Supplement and its exhibits) to the same Special Grand Jury to which the Petition and Amended Petition with exhibits were submitted, or, in the alternative that such submissions have yet to occur, to the Special Grand Jury that is empaneled or will next be empaneled, together with the First Amended Petition and exhibits thereto. As in regard to our prior submission of our First Amended Petition, this request is made pursuant to the statutory duty imposed on the United States Attorney pursuant to 18 U.S.C. § 3332(a) to present to a special grand jury citizen reports of information regarding federal crimes.

As in regard to our First Amended Petition, this Petition Supplement by the Lawyers' Committee is submitted not only pursuant to 18 U.S.C. § 3332, but also pursuant to the First Amendment to the United States Constitution (right to petition the government for redress), and the constitutional right to report crimes to a grand jury. The Lawyers' Committee also hereby requests, pursuant to 18 U.S.C. § 3332, that you inform any Special Grand Jury to which you submit the Petition, Amended Petition, and/or Petition Supplement, and any successor Special Grand Jury, that the Lawyers' Committee is the source that reported to you this information in this Unredacted Petition Supplement regarding the federal crimes reported in the Lawyers' Committee's First Amended Petition, and provide such Special Grand Jury the contact information for the Lawyers' Committee.

The Lawyers' Committee also offers, in the event that you, as United States Attorney, find that it would be more efficient to do so, to present the information in this Unredacted Petition Supplement and its exhibits, along with the information in the First Amended Petition and its exhibits, directly to the Special Grand Jury via testimony of the Lawyers' Committee's attorneys who prepared this Petition and the expert scientists whose testimony is referenced herein, with your guidance and oversight.

The Lawyers' Committee is willing and prepared to assist either your office or the Special Grand Jury in any inquiry regarding the matters addressed in this Unredacted Petition Supplement and in the First Amended Petition. In this regard, as we have stated in our prior correspondence, we believe it would be helpful and appropriate as a first step for attorneys from the Lawyers' Committee to meet with representatives of your office to discuss this matter further.

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We have still not received a reply to our email of November 24, 2018 to your office in which we thanked you for your letter of November 7, 2018. In your November 7, 2018 letter you acknowledged your receipt of our Petition and First Amended Petition and agreed to comply with 18 U.S.C. § 3332. We thank you again for this decision. In our November 24, 2018 email, as we noted in our more recent correspondence of February 14, 2019, we also requested answers to several important questions. Those questions, which we would still like an opportunity to sit down and discuss with you, are:

1. Will the U.S. Attorney's Office provide, or has the U.S. Attorney's Office already provided, to the (same) Special Grand Jury the complete text of the Lawyers' Committee's April 10, 2018 original Petition and July 30, 2018 Amended Petition (now including the accompanying Unredacted Petition Supplement)? Given that 18 U.S.C. § 3332 provides that: "(a) It shall be the duty of each such [special] grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district", and because the Special Grand Jury's performance of this statutory duty in regard to the federal crimes reported by the Lawyers' Committee would be greatly facilitated by being provided the fact and evidentiary details in our petitions and supplements thereto (and greatly hampered without access to those details, which took the Lawyers' Committee some time to compile), we assume the answer to this question is "yes" but would appreciate confirmation from your office in this regard.
2. Will the U.S. Attorney's Office provide, or has the U.S. Attorney's Office already provided, to the (same) Special Grand Jury all of the exhibits referenced in the Lawyers' Committee's April 10, 2018 original Petition and July 30, 2018 Amended Petition, and in the accompanying Unredacted Petition Supplement, which were submitted (and are now being submitted) to your office by the Lawyers' Committee? Again, for the reasons stated above, we assume the answer to this question is "yes" but would appreciate confirmation from your office in this regard.
3. Does your office currently expect that the Lawyers' Committee will be invited or requested to present testimony and/or other evidence directly to the Special Grand Jury? Is it possible that the Special Grand Jury may invite such a presentation from the Lawyers' Committee? The Lawyers' Committee is willing to do so but would request a reasonable amount of advance notice to allow our attorneys and experts to properly prepare.
4. The Lawyers' Committee's investigations into this matter are on-going, and further relevant and material information may be discovered by the Lawyers' Committee that we believe may be helpful to your office and the Special Grand Jury in conducting a full inquiry into the federal crimes reported. We do contemplate, as one example, submitting formal declarations of several experts whose prior work and testimony we summarized, quoted, and cited in our First

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Amended Petition. Is there a particular official within your office to whom you would prefer that any additional submissions on this matter by the Lawyers' Committee be addressed?

5. Will you inform the Lawyers' Committee specifically of when the Special Grand Jury's inquiry into the crimes reported by the Lawyers' Committee is completed, and if not will there be a general public announcement and how would that be made?

We realize that your office is very busy and we do not wish to add to your burden by making these inquiries. Rather, we seek both to be helpful to your office and to the Special Grand Jury given the extent of our own investigation into this matter. Please advise the Lawyers' Committee as soon as possible as to whether you have relayed, and if not when or if you will relay, the information provided in the Lawyers' Committee's First Amended Petition and in this Unredacted Petition Supplement to the (same) Special Grand Jury, whether you would be willing to meet with attorneys from the Lawyers' Committee, and any other actions that you may take or intend to take on the Lawyers' Committee's requests herein.

We understand the need for secrecy relating to actual proceedings that occur before the Special Grand Jury. However, the law does not preclude the U.S. Attorney from providing information to the citizens who have reported the crimes at issue regarding whether their information has been provided to the grand jury and whether they may be called to testify or present evidence to the grand jury. If we hear nothing from your office regarding the status of our First Amended Petition (and its supplements), then we are left to assume the worst, that the U.S. Attorney has not and will not submit our information to the Special Grand Jury. We would prefer to believe the best, based on a status report from your office, rather than assuming the worst based on months of silence.

The Board of Directors of our organization will be meeting again soon to consider how we will proceed on this important matter, including our civil litigation option of filing a federal court petition under the federal mandamus statute and the Administrative Procedures Act (APA), 5 U.S.C. §§ 702, 706. As you are aware, the federal mandamus statute 28 U.S.C. § 1361 provides that "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." As you may also be aware, there has been previous litigation based on the mandamus statute by citizens who sought to compel the U.S. Attorney to comply with the duty imposed on U.S. Attorneys by 28 U.S.C. § 3332(a) to report information about federal crimes provided by the citizens to a special grand jury. As the United States District Court for the Southern District of New York has noted:

18 U.S.C. § 3332(a) creates a duty on the part of the United States Attorney that runs to the plaintiffs, and the breach of that duty gives the plaintiffs standing to

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seek its enforcement. ...

To argue, as the government does ... that the prosecutor has total discretion in deciding what information to present to the grand jury flies in the face of the Act's legislative history. ...

Thus both the language of 18 U.S.C. § 3332(a) and its legislative history indicate that Congress intended to remove the prosecutor's discretion in deciding whether to present information to the grand jury. He retains discretion with respect to how he acts and what he recommends concerning that information.

In re Grand Jury Application, 617 F.Supp. 199, 201, 205-06 (S.D.N.Y. 1985). We are hoping to avoid the necessity of a mandamus litigation. In order to do so, we will need to hear from you.

Thank you for your assistance in this important matter. We fully support all efforts by your office and by the Special Grand Jury to make an objective, diligent, and thorough inquiry into the federal crimes reported in our First Amended Petition, as supplemented by the accompanying Unredacted Petition Supplement.

Respectfully submitted,

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