

ALSTON & BIRD

ALSTON & BIRD'S REPORT TO THE U.S. SOCCER FEDERATION

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I. Introduction

The U.S. Soccer Federation, Inc. (“U.S. Soccer”) engaged Alston & Bird LLP in December 2022 to conduct an investigation (the “Investigation”) into an allegation of past misconduct by Gregg Berhalter, then Head Coach of the U.S. Men’s National Team (“USMNT”). As the Investigation proceeded, U.S. Soccer directed Alston & Bird to expand the scope of the Investigation to consider whether Claudio Reyna, a former USMNT player, U.S. Soccer official, and Major League Soccer (“MLS”) executive, may have engaged in any potential misconduct with respect to his outreach to and interactions with U.S. Soccer officials and staff. The Investigation was led by Alston & Bird partners Jenny Kramer, Chris Marquardt, and BJay Pak, and supported by firm associates Chris Borchert and Alexandria Isom.

This report documents the scope, methodology, results, and findings of the Investigation.

II. Scope of Investigation

The Investigation was limited in scope, and addressed two related issues.

Issue #1: Alston & Bird was initially engaged to focus on an allegation, brought to the attention of U.S. Soccer on or about December 11, 2022, that Mr. Berhalter physically assaulted his then girlfriend and now wife, Rosalind Santana Berhalter, in 1992, when they were both freshmen on the varsity soccer teams at the University of North Carolina at Chapel Hill (“UNC”) (the “1992 Incident”). As part of that work, we sought to determine if there is any evidence to demonstrate (i) that Mr. Berhalter engaged in similar conduct at any other time in the last 31 years; or (ii) that Mr. Berhalter improperly withheld any information about the 1992 Incident from U.S. Soccer when he was considered for, and hired as, the USMNT Head Coach.

Issue #2: After the Investigation began, we were asked to expand the scope of the Investigation to examine whether the interactions between Mr. Reyna and his wife Danielle Egan Reyna, on the one hand, and representatives of U.S. Soccer, on the other, violated any applicable regulations.

III. Information Considered

During the course of the Investigation, Alston & Bird obtained and reviewed various sources of information, including materials and information available in the public record; emails, text messages, and other documents voluntarily provided by witnesses; and public statements made by individuals involved in the relevant events. Alston & Bird also conducted voluntary interviews of 16 witnesses, some of whom were interviewed more than once. At the beginning of each interview, we gave a routine *Upjohn* warning to the witness. At the conclusion of each interview, we asked each witness if there was any other information he or she believed we should know for purposes of gathering all relevant facts. Alston & Bird did not possess the requisite legal authority to subpoena witnesses, to compel them to answer questions or produce documents, or to require anyone to disclose information. Consequently, some witnesses declined to be interviewed (or re-interviewed) or to otherwise participate in the Investigation. Alston & Bird did, throughout the course of the Investigation, have sufficient access to information and witnesses in order to make informed findings and conclusions as set forth in this report.

This report is not an all-encompassing account of the Investigation. Moreover, to the extent we report or quote from interviews conducted, we do so without endorsing the veracity of those statements.

IV. Executive Summary

1. As background, Investigation witnesses described a pattern of periodic outreach by Mr. Reyna to U.S. Soccer officials and staff from in or around 2016 through the end of 2022, the purpose of which was to convey certain complaints and comments about U.S. Soccer's treatment of his children, including primarily his son, USMNT player Gio Reyna. Witnesses reported that Mr. Reyna's past actions involved attempts to influence decisions by U.S. Soccer officials and staff concerning his children on issues ranging from travel arrangements to the impact of on-pitch refereeing decisions.

2. The USMNT's first game of the 2022 FIFA World Cup took place on November 21, 2022. Gio Reyna did not play in that game. Witnesses indicated that Mr. and Mrs. Reyna (also a former U.S. Women's National Team player) attended the game along with friends and family members of many other players, and further indicated that the Reynas were dissatisfied with U.S. Soccer coaches and officials as a result of the game. Witnesses also informed us that, on separate occasions in the days that followed, Mr. and Mrs. Reyna each made a vague comment to U.S. Soccer officials suggesting they knew damaging information about Mr. Berhalter that U.S. Soccer did not know. Witnesses further indicated that the Reynas provided no details to U.S. Soccer at those times, however.

3. The USMNT was eliminated from the 2022 FIFA World Cup on December 3, 2022. Three days later, on December 6, 2022, Mr. Berhalter spoke at a leadership conference in New York. During that conference, Mr. Berhalter shared an anecdote about an unnamed player at the 2022 World Cup who did not meet the USMNT's expectations. On December 11, 2022, media outlets published reports stating that Mr. Berhalter's anecdote involved Gio Reyna.

4. On December 11, 2022, Mr. Reyna sent a series of text messages to then U.S. Soccer Sporting Director Earnie Stewart regarding Gio Reyna and the recent media coverage regarding Mr. Berhalter's comments at the leadership conference. As set forth in Paragraph 1 above, this was not the first time Mr. Reyna had texted Mr. Stewart or other U.S. Soccer officials about Gio. That same night (December 11, 2022), Mr. Stewart spoke with Mr. and Mrs. Reyna by phone to listen to their concerns as reflected in Mr. Reyna's text messages. During the Investigation, Mr. Stewart explained that, near the end of an hour-long phone call with the Reynas, Mrs. Reyna alleged that Mr. Berhalter had physically assaulted his then girlfriend and now wife, Rosalind Santana Berhalter, in the 1990s. At the time of the alleged assault, Mr. Berhalter, Mrs. Berhalter (then, Ms. Santana), and Mrs. Reyna (then, Ms. Egan) were all freshmen varsity soccer players at UNC. According to Mr. Stewart, Mrs. Reyna told him on December 11, 2022, that Mr. Berhalter "beat the shit out of" Mrs. Berhalter during their freshman year of college.

5. Later that same night (December 11, 2022), Mr. Stewart reported this allegation to U.S. Soccer's Senior Counsel. That report, in turn, resulted in this Investigation.

6. The Investigation confirmed a physical assault by Mr. Berhalter against Mrs. Berhalter in January 1992 outside a bar/nightclub in Chapel Hill, North Carolina, called *Players*. Specifically, the facts obtained through interviews demonstrate that Mr. and Mrs. Berhalter were both 18 years old and drinking alcohol on the night in question; they began to argue inside the bar; they left the bar together and continued to argue; once outside, Mrs. Berhalter hit Mr. Berhalter in the face; Mr. Berhalter pushed her to the ground and kicked her twice; Mr. Berhalter was tackled by a passerby, not known to either of the Berhalters; and Mrs. Berhalter got up and left. No police report was filed; no complaint or arrest was made; and no medical attention was sought by Mrs. Berhalter. Both during the Berhalters' interviews in this Investigation, as well as in their joint public statement issued on January 3, 2023, Mr. and Mrs. Berhalter acknowledged the fact of this assault.

7. The Investigation did not uncover evidence that contradicts Mr. or Mrs. Berhalters' account of the 1992 Incident in any material way. Mr. and Mrs. Berhalter each agreed to participate in an interview as part of the Investigation; each attended their interview alone; and each cooperated fully during the Investigation. During Mr. Berhalter's voluntary interview, which occurred prior to any public statements being made about this Investigation and before he had been informed about the subject matter of the Investigation, Mr. Berhalter immediately acknowledged the 1992 Incident and took full responsibility for his actions. His description of the incident was consistent in all material ways with Mrs. Berhalter's separate independent account of the incident as described in her interview. It was also consistent with the accounts provided by several other witnesses to whom Mr. and Mrs. Berhalter had reported the 1992 Incident in the days immediately following that incident.¹

8. The Investigation revealed the absence of any evidence or indication that Mr. Berhalter engaged in similar violent acts at any other point in time. Based on the information obtained, we conclude that the 1992 Incident was an isolated event, and we find no evidence to suggest that Mr. Berhalter has engaged in similar misconduct at any other time. The interviews we conducted, including interviews with Mrs. Berhalter and her family members, lead to the conclusion that Mr. Berhalter never assaulted Mrs. Berhalter again, and the Investigation revealed no evidence to suggest that he has engaged in violence against another person at any time prior to or thereafter. In addition, the initial source of information about the 1992 Incident (Mrs. Reyna), who by all

¹ The only witness statement that seemed to deviate, at least in part, from the others was contained in the public statement issued by Mrs. Reyna on January 4, 2023. Prior to publishing that statement, Mrs. Reyna had two brief phone conversations with Alston & Bird as part of the Investigation. During the first call, Mrs. Reyna denied participating in a call with Mr. Stewart on December 11, 2022, and denied raising the 1992 Incident to Mr. Stewart during that call. During the second call, which took place shortly after the first, Mrs. Reyna recanted her prior comments; acknowledged that she did speak by phone with Mr. Stewart on December 11, 2022; acknowledged that she informed Mr. Stewart of the 1992 Incident; explained that she did not personally witness the fight; and indicated that she knew of no other fights between Mr. and Mrs. Berhalter after the 1992 Incident. Several days after these interviews, on January 3, 2022, the Berhalters issued their joint public statement acknowledging the 1992 Incident. The following day, on January 4, 2023, Mrs. Reyna issued her own public statement confirming that she informed U.S. Soccer about the 1992 Incident. In that statement, Mrs. Reyna asserted that Mr. Berhalter's public statement "minimized the abuse" that occurred on that night. Alston & Bird made multiple unsuccessful attempts to interview Mrs. Reyna again after she released that public statement. Alston & Bird also made multiple unsuccessful attempts to interview Mr. Reyna. As a result, this report does not include or otherwise reference Mr. Reyna's perspective when completing the Investigation, and we did not have the opportunity to ask follow-up questions to Mrs. Reyna.

accounts remained close friends with Mrs. Berhalter during the 30-year period from 1992 through 2022, also confirmed that she knew of no other fights or acts of alleged abuse by Mr. Berhalter.

9. Based upon information obtained during the Investigation, we also found nothing to indicate that Mr. Berhalter improperly withheld the fact of the 1992 Incident, or any other information, from U.S. Soccer at any time. Although multiple witnesses explained that the 1992 Incident was known to several people at the time, no one filed a complaint, report, or any formal action against Mr. Berhalter with respect to those events. As a result, there exists no police report, nor did the 1992 Incident lead to an arrest or any interaction with law enforcement, courts, or disciplinary committees at UNC or elsewhere. In addition, and in light of the absence of any contrary action or record of the 1992 Incident, none of the questions posed to Mr. Berhalter during the U.S. Soccer hiring process would have required him to disclose information regarding the 1992 Incident, nor would any standard background check run in connection with that process have revealed the incident. There is no basis to conclude that Mr. Berhalter misled U.S. Soccer about the 1992 Incident at any time.

10. Our interview and interactions with Mr. Berhalter during this Investigation, and the substance of his public statement on January 3, 2023, demonstrate that he acknowledges his culpability and his need to be accountable for his actions in January 1992. More critically, perhaps, the witnesses we interviewed confirmed that Mr. Berhalter acknowledged his culpability and his need to be accountable the day after the incident occurred in 1992. The witnesses further confirmed that Mr. Berhalter immediately self-reported the assault to his head coach² at UNC the day after the 1992 Incident occurred, and, of his own accord, took steps to prevent it from happening again. As noted, we found no evidence to suggest that Mr. Berhalter engaged in similar behavior again.

11. Based on the facts obtained throughout the Investigation, the legal analysis conducted by Alston & Bird leads us to conclude that the fact of the 1992 Incident does not prevent an employer from employing Mr. Berhalter. Given that the 1992 Incident occurred approximately 31 years ago, and given the lack of information or any evidence contradicting witness accounts or suggesting any similar conduct after that 1992 Incident, there is no basis to conclude that employing Mr. Berhalter would create legal risks for an organization.

12. As set forth in Paragraph 1 above, witnesses described a pattern of periodic outreach from Mr. Reyna to U.S. Soccer officials and staff to advocate for his children, including while Gio Reyna participated in the U.S. Soccer Development Academy. Facts provided by Investigation witnesses suggest that this conduct occurred from in or around 2016 through 2022, while Mr. Reyna served in leadership positions at New York City FC and Austin FC, two MLS clubs.³ By virtue of holding those positions, we understand that Mr. Reyna was responsible for administrative matters in a “club,” and was thus an “official” for purposes of the FIFA Code of Ethics.

² Multiple witnesses in this Investigation, including Mrs. Berhalter herself, indicated that Mrs. Berhalter also reported the incident to her own head coach on the day after it occurred.

³ On January 26, 2023, Mr. Reyna resigned as Sporting Director of Austin FC and assumed a Technical Advisor role for the club. “Claudia Reyna Resigns as Sporting Director; Reyna to Continue with Austin FC as Technical Advisor,” *Austinfcc.com* (Jan. 26, 2023), <https://www.austinfcc.com/news/claudio-reyna-resigns-as-sporting-director-reyna-to-continue-with-austin-fc-as-t>.

13. We understand from media reports that two facts were well-known in soccer circles in early December 2022 when the USMNT lost in the Round of 16 at the 2022 FIFA World Cup: (1) Mr. Berhalter's contract as Head Coach of the USMNT was set to expire on December 31, 2022; and (2) U.S. Soccer had not announced a decision on whether it would offer him a contract extension.⁴ Although this was not confirmed by the Reynas, information obtained during the Investigation suggests that when the Reynas contacted Mr. Stewart on December 11, 2022, and informed him about the 1992 Incident, they would have known those two facts. Facts gathered from the Investigation witnesses further inform that, when the Reynas spoke to Mr. Stewart on that night, (1) they disclosed information about Mr. Berhalter to U.S. Soccer that Mrs. Reyna had known for decades; and (2) the information was disclosed at a time when it would be expected to discourage or otherwise influence the organization from offering a contract extension to Mr. Berhalter. Mr. Stewart explained during the Investigation that he believed the Reynas made this disclosure to him so that U.S. Soccer would not hire Mr. Berhalter for another term.

14. After the fact of this Investigation was made public, some media reports characterized the Reynas' actions as "blackmail."⁵ As a legal matter, we do not arrive at the same conclusion. Blackmail or extortion is the act of obtaining property by compelling or inducing a person to deliver such property by means of instilling in him a fear that, if the property is not so delivered, the actor or another will cause some form of harm to the person. Based on the facts gathered to date, we do not conclude that the Reynas' actions rise to the level of or would otherwise result in a conviction for extortion. We obtained no information that could suggest that the Reynas demanded to receive something of value in exchange for not disclosing information about Mr. Berhalter to others.

15. Based on the facts obtained throughout the Investigation, we conclude that Mr. Reyna's communications with U.S. Soccer officials did not violate any U.S. Soccer policies. The facts gathered during the Investigation might raise a question, however, about whether Mr. Reyna's communications with U.S. Soccer officials are violative of the FIFA Code of Ethics and its rule against Abuse of Position. Whether FIFA would consider an official of another club speaking to U.S. Soccer employees in the specific context of advocating for his own children to be a potential violation of its Code of Ethics is a question that Alston & Bird is not in a position to assess.

⁴ See, e.g., Jeff Carlisle, *USMNT boss Gregg Berhalter weighs up Europe move amid new contract talk – sources*, ESPN (Dec. 7, 2022), <https://www.espn.com/soccer/united-states-usa/story/4827699/usmnt-boss-gregg-berhalter-interested-in-european-club-options-amid-new-contract-talk-sources>; Nicholas Mendola, *USMNT reportedly opens contract talks with Gregg Berhalter; Good or bad idea?*, NBC SPORTS (Dec. 8, 2022), <https://soccer.nbcsports.com/2022/12/08/usmnt-reportedly-opens-contract-talks-with-gregg-berhalter-good-or-bad-idea/>.

⁵ See, e.g., Jeremy Layton, *Former US soccer star Claudio Reyna, wife exposed in alleged Gregg Berhalter World Cup blackmail scheme*, NY POST (Jan. 4, 2023), <https://nypost.com/2023/01/04/claudio-reyna-wife-exposed-in-alleged-gregg-berhalter-world-cup-blackmail-attempt/>; Benjamin Hart, *The U.S. Soccer Blackmail Story Is Really Something*, INTELLIGENCER (Jan. 5, 2023), <https://nymag.com/intelligencer/2023/01/the-u-s-soccer-blackmail-story-is-really-something.html>.

V. Background

A. The Key Players

1. Gregg Berhalter

Gregg Berhalter served as the USMNT Head Coach from 2018 until his contract expired on December 31, 2022. Before that, he coached the Columbus Crew SC, an MLS club, from 2013 to 2018. From 2011 to 2013, Mr. Berhalter coached Hammarby IF, a Swedish club.

Mr. Berhalter enjoyed a 17-year career as a professional soccer player. He played for 15 years in Europe and finished his career in 2011 after playing two seasons with the LA Galaxy. He also played on the USMNT from 1994 to 2006 alongside Claudio Reyna and participated in the 2002 and 2006 FIFA World Cups.

Mr. Berhalter grew up in northern New Jersey and attended Saint Benedict's Preparatory School in Newark, New Jersey, where he was a teammate of Mr. Reyna. After high school, Mr. Berhalter attended UNC to play Division 1 soccer.

Mr. Berhalter and Mr. Reyna met when they were 11 or 12 years old. They played soccer together on a club team coached by Mr. Reyna's father. Mr. Berhalter told us that he and Mr. Reyna became "best friends growing up" and were "really close."

2. Rosalind Santana Berhalter

Rosalind Santana Berhalter met Gregg Berhalter on the first day of their freshman year at UNC. Mrs. Berhalter played on the UNC Women's Soccer team. She was also teammates, roommates, and close friends with Mrs. Reyna. During the Investigation, Mrs. Berhalter explained that she and Mrs. Reyna "have a really close-knit relationship"; she noted that Mrs. Reyna was in her wedding, and that their families have grown up together. Mrs. Berhalter married Mr. Berhalter in 1999.

3. Claudio Reyna

Claudio Reyna is a former captain of the USMNT and widely considered one of the greatest American soccer players ever. After graduating from Saint Benedict's Prep with Mr. Berhalter in 1991, Mr. Reyna attended the University of Virginia, where he led the Men's Soccer team to an NCAA championship in each of his three seasons. Mr. Reyna then played professional soccer in Europe from 1994 to 2007, before returning to the United States to play one year for the New York Red Bulls, an MLS club. Mr. Reyna also played on the USMNT from 1994 to 2006 and participated in the 1994, 1998, 2002, and 2006 FIFA World Cups.

Between 2010 and 2013, Mr. Reyna worked for U.S. Soccer as the technical director for youth soccer. In 2013, he was appointed Sporting Director of New York City FC. In early 2019, Mr. Reyna was a candidate and interviewed for the USMNT General Manager position with U.S. Soccer, though he was not selected for that role. In late 2019, Mr. Reyna left New York City FC to become the Sporting Director of Austin FC. On January 26, 2023, Mr. Reyna resigned as Sporting Director and assumed a technical-advisor role with the club.

4. Danielle Egan Reyna

Danielle Egan Reyna met Mr. and Mrs. Berhalter during their freshman year at UNC, where she played on the Women's Soccer team from 1991 to 1994. In 1993, Mrs. Reyna made six appearances for the U.S. Women's National Soccer Team. During the Investigation, Mrs. Reyna explained that Mrs. Berhalter was her "best friend for 30 to 40 years." Mrs. Reyna married Mr. Reyna in 1997.

5. Gio Reyna

Gio Reyna is Mr. and Mrs. Reynas' 20-year-old son. In 2015, Gio joined the academy team for New York City FC, where he played until 2019. He then began his professional soccer career playing for Borussia Dortmund, a German club, where he currently plays.

Gio first joined the USMNT roster in 2020 and remained on the roster through the 2022 World Cup. He is widely considered one of the best young soccer players in the world.

B. The Organizations

1. U.S. Soccer

U.S. Soccer governs professional and amateur soccer in the United States, including the Men's and Women's national teams, MLS, National Women's Soccer League ("NWSL"), youth organizations, beach soccer, futsal, Paralympic and deaf national teams. U.S. Soccer is governed by a board of directors that administers the organization's affairs. The national council is the representative membership body of U.S. Soccer, and it elects the President and Vice President, each of which are unpaid elected positions with four-year terms. U.S. Soccer's Secretary General serves as Chief Executive Officer of U.S. Soccer and oversees day-to-day operations. From 2000 until 2019, U.S. Soccer's CEO was Daniel Flynn. Will Wilson succeeded Flynn in March 2020, and as of September 26, 2022, J.T. Batson now serves as CEO.

The MLS represents the top professional soccer league in both the United States and Canada.⁶ The league consists of twenty-nine teams; twenty-six of which are in the United States with the remaining three in Canada.⁷

2. FIFA

The Federation Internationale de Football Association ("FIFA") is the international federation governing all of association football.⁸ FIFA comprises 209 members and is arguably the most

⁶ About Major League Soccer (Mar. 18, 2021), mlssoccer.com, www.mlssoccer.com/post/2018/01/01/about-major-league-soccer.

⁷ *Id.*

⁸ FIFA Soccer's World Governing Body, ussoccer.com, <https://www.ussoccer.com/history/organizational-structure/fifa> (last visited March 7, 2023).

prestigious sports organization in the world.⁹ U.S. Soccer is a national association member of FIFA and serves as the official National Governing Body (“NGB”) for the sport of soccer in the United States.¹⁰ Member countries of FIFA must also be members of one of the six regional confederations. Accordingly, the United States is a member of the Confederation of North, Central America, and Caribbean Association Football (“Concacaf”).¹¹

3. SafeSport

The United States Center for SafeSport (“SafeSport”) is a 501(c)(3) nonprofit organization created by Congress in 2017. SafeSport’s mandate is to prevent, investigate, and resolve sexual abuse and misconduct involving minors and amateur athletes in Olympic and Paralympic sports in the United States.

U.S. Soccer is governed, in part, by the SafeSport Code for the U.S. Olympic and Paralympic Movement (the “SafeSport Code”).¹² Among other things, the SafeSport Code identifies categories of conduct (or alleged conduct) over which SafeSport has exclusive and discretionary jurisdiction.¹³ The Code also sets forth reporting requirements for covered individuals, including employees and board members of an NGB, such as U.S. Soccer, as well as anyone “[w]ithin the governance or disciplinary jurisdiction of an NGB.”¹⁴

C. The Applicable Policies

1. U.S. Soccer Policies

Alston & Bird conducted a review of U.S. Soccer’s Bylaws, Policy Manual, Employee Handbook, Code of Conduct, Whistleblower Policy, and Conflict of Interest Policy.

We specifically analyzed U.S. Soccer’s Employee Handbook and Code of Conduct.

2. FIFA and USOPC¹⁵ Policies

We reviewed and analyzed FIFA’s Code of Ethics and the USOPC Code of Conduct.

3. SafeSport Policies

We reviewed and analyzed the SafeSport Code.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² SAFESPORT CODE FOR THE U.S. OLYMPIC & PARALYMPIC MOVEMENT (“SAFESPORT CODE”) §§ II, VIII.I, available at <https://uscenterforsafesport.org/wp-content/uploads/2022/02/2022-SafeSport-Code.pdf>.

¹³ *Id.* §§ IV.A-B.

¹⁴ *Id.* §§ VIII.J; X.

¹⁵ “USOPC” stands for the United States Olympic and Paralympic Committee.

VI. The 1992 Incident: Findings of Fact

A. Sources of Information about the 1992 Incident

The evidence obtained throughout the course of the Investigation has revealed that no one filed a police report or an internal complaint at UNC at or around the time of the 1992 Incident, and, to our knowledge, no other written record exists with information about what happened on the night in question. Accordingly, we were not able to locate any source documents from the 1990s (or later) with information about the 1992 Incident. For that reason, our conclusions about what occurred outside of the *Players* nightclub in January 1992 are based entirely on interviews we conducted during the Investigation and are informed, to a lesser degree, by the press releases published by the Berhalters and Reynas in January 2023.

B. Interviews about the 1992 Incident

1. Information from the Earnie Stewart Interviews

We interviewed Earnie Stewart on December 20th (when he was serving as Technical Director for U.S. Soccer) and on January 23rd (after he had announced his departure from the organization). His statements were consistent during both interviews. Mr. Stewart provided the following information:

On December 11th, Mr. and Mrs. Reyna had a phone call with Mr. Stewart. The phone call took place at 7:28 p.m. and lasted approximately one hour. At the time of this call, Mr. Stewart was the Technical Director of U.S. Soccer. He was Mr. Berhalter's boss.

The call was prompted by text messages Mr. Reyna sent Mr. Stewart that day about comments Mr. Berhalter recently made at a leadership conference concerning Mr. Reyna's son, Gio. After reading the text messages, Mr. Stewart agreed to call Mr. Reyna to discuss the situation. Mr. Stewart spoke with Mr. and Mrs. Reyna.

According to Mr. Stewart, near the end of the call, Mrs. Reyna told him that Mr. Berhalter had an altercation with his then girlfriend, Mrs. Berhalter, in the 1990s. Mr. Stewart said that Mrs. Reyna told him, "Gregg beat the living shit out of her [Mrs. Berhalter] in a back alleyway." Mr. Stewart said Mrs. Reyna told him Mr. Berhalter did this because he saw Mrs. Berhalter dancing with a football player earlier that night in a bar.

Mr. Stewart explained that Mrs. Reyna told him during this call that "everyone" knew about this incident at the time it happened. She apparently said that "all" their ex-teammates on the UNC soccer team knew about the 1992 Incident at the time. According to Mr. Stewart, Mrs. Reyna also told him that (1) she and her husband were not intending to make this information public, but (2) they were thinking about starting to spread the story to others privately.¹⁶

¹⁶ During the 2022 World Cup, Mr. and Mrs. Reyna each made at least one comment to U.S. Soccer employees that, in retrospect, appears to have presaged this phone call. On November 22nd, the day after the Wales game, Mrs. Reyna told an employee that she (Mrs. Reyna) could make one phone call to the media to damage Mr.

According to Mr. Stewart, the Reynas did not provide any other details about the 1992 Incident during this call. Mr. Stewart understood from Mrs. Reyna, however, that the 1992 Incident was a one-time incident. She said nothing to suggest that a physical altercation between the Berhalters ever happened again.

Mr. Stewart told the Reynas he would need to report this information to others at U.S. Soccer. In his interview, he informed us that the Reynas did not seem shocked to hear that he intended to report the allegation. He also confirmed that the Reynas did not walk back the allegation, nor did they ask him not to report it. Mr. Stewart explained that he believed the Reynas disclosed the allegation to him so that U.S. Soccer would not hire Mr. Berhalter for another term.

On the same night of the call, as was his obligation to do, Mr. Stewart immediately reported this information to Alison Kocoras, Senior Counsel at U.S. Soccer. Among her other responsibilities, Mrs. Kocoras manages U.S. Soccer's Participant Safety program. The next day, Mr. Stewart reported the information to U.S. Soccer's Chief Legal Officer and CEO.

2. Information from the Alison Kocoras Interview

Alison Kocoras was interviewed on February 1st. She confirmed that Mr. Stewart contacted her on the night of December 11th and provided the following information:

Shortly after the conclusion of his phone conversation with the Reynas, Mr. Stewart called Mrs. Kocoras. Mrs. Kocoras estimates that Mr. Stewart called her at approximately 9:30 p.m. on the night of December 11th.

According to Mrs. Kocoras, Mr. Stewart reported that Mrs. Reyna had just told him that Mr. Berhalter "beat the shit" out of Mrs. Berhalter 30 years ago. Mrs. Kocoras stated that Mr. Stewart told her "beat the shit out of her" was Mrs. Reyna's direct quote.

Mrs. Kocoras also said that Mr. Stewart reported that Mrs. Reyna: (1) told him she would never "go public" with this information, but (2) added that, privately, she was going to start talking about this information to other people.

3. Information from the Gregg Berhalter Interview

Mr. Berhalter voluntarily submitted to an interview on December 20th. He was alone for the interview. Prior to the interview, U.S. Soccer informed Mr. Berhalter that it had received an allegation about him that requires the organization to conduct an investigation to be led by outside counsel, and that he needed to make himself available to meet with us. U.S. Soccer did not, however, provide Mr. Berhalter with any details about the allegation that had been made against him.

Berhalter's positive image. Two days later, on November 24th, the Reynas met with the U.S. Soccer General Manager of USMNT, and Mr. Reyna told him, "you guys don't even know what we know about Gregg."

After some preliminary background questions, we told Mr. Berhalter that the allegation against him claimed there was a physical assault of his now wife in the early 1990s when they were dating. Before we could finish our statement and formulate a question, Mr. Berhalter said unsolicited and directly: “That absolutely happened.” He then went on to tell us about an incident that happened during his freshman year of college when he and Mrs. Berhalter had been dating for around 4 months.

Mr. Berhalter explained that, in January of 1992, during their freshman year at UNC, he and Mrs. Berhalter were at a nightclub in Chapel Hill called *Players*. They were both inebriated and they started arguing inside the club. He recalled that he believes he was jealous about something, but he could not remember the specific details surrounding the argument. As the argument escalated, they went outside together and were screaming at each other. According to Mr. Berhalter, Mrs. Berhalter then pushed him and scratched his face. In response, Mr. Berhalter pushed Mrs. Berhalter to the ground and kicked her twice in the upper leg area. At that point, a bystander unknown to the Berhalters tackled him. Mrs. Berhalter got up and left.

Mr. Berhalter explained that no police report was ever filed, and no complaints were submitted to UNC. He said that Mrs. Berhalter was not injured; did not seek medical attention; and, to his recollection, went to the next soccer practice without incident.

Mr. Berhalter said he tried to talk to Mrs. Berhalter the next day to apologize, but that Mrs. Reyna “shut it down.” Mr. Berhalter told us he wrote Mrs. Berhalter an apology note and made her a music mixtape. He explained that he and Mrs. Berhalter split up for seven months and did not interact again until the start of the following school year in September 1992. He said Mrs. Berhalter called him and they got back together.

Mr. Berhalter told us that he self-reported this incident to the Men’s Soccer head coach at UNC, Elmar Bolowich, and also self-reported this incident to his academic counselor. He then sought counseling about the incident, and, of his own accord, decided to do community service at a women’s teenage correctional facility in Durham. No one required him to pursue counseling or community service.

Mr. Berhalter told us that “the whole athlete student body at UNC knew about” the 1992 Incident. He said that everyone affiliated with soccer at UNC – the Women’s Soccer head coach, the Men’s Soccer head coach, and all the soccer players – knew about it. Mr. Berhalter explained that it was not easy for him to talk about it at the time, but it was not hidden. He felt ashamed, he told us, but determined that all he could do was to build up his credibility and prove that what he did that night outside of *Players* was not him.

Mr. Berhalter told us that nothing like that incident in January 1992 ever happened again. In response to our questions, he said there was never another incident of physical violence with Mrs. Berhalter, and there has never been an incident of physical violence with any other woman.

He closed the interview with an offer to arrange for us to interview Mrs. Berhalter.

4. Information from the Rosalind Berhalter Interview

We interviewed Mrs. Berhalter the next day, December 21st. She too was alone for the interview. Because we had interviewed her husband the day before, Mrs. Berhalter knew the topic that we would be covering during the interview.

Mrs. Berhalter described the 1992 Incident in detail. She told us the following: The incident happened in January 1992. She was at the *Players* nightclub with several players from her UNC soccer team. Both Mr. Berhalter and Mrs. Reyna were there. She and Mr. Berhalter were drinking a lot. At around midnight, they were arguing. They left the club together, went across the street, and got into a screaming fight. At that point, she told us, “I hit him in the face. I don’t recall exactly how. He pushed me down. He kicked me. And, out of nowhere, someone appeared and threw him to the ground.” At that point, she went back into *Players*, found Mrs. Reyna, and the two returned to her dorm room.

Mrs. Berhalter did not seek medical attention because, she explained, she was not injured. She did not file a police report. She did not file any type of complaint within the UNC system.

The next day, Mrs. Berhalter called her parents and told them what had happened. She went to the next soccer practice and did not take any time off from participating as a member of the team. She also reported the incident to Anson Dorrance, the head coach of the Women’s Soccer team at UNC, on the day after the 1992 Incident. During her interview she explained that she felt safe, and she knew she was not in harm’s way.

Mrs. Berhalter told us that, after the incident, Mr. Berhalter “disappeared for the rest of the semester.” She said he sought counseling, talked to his parents, sought self-help, and stopped going to “athlete places” anymore. Mr. Berhalter sent her flowers and an apology note, and she didn’t see him again until the beginning of their sophomore year. At that point, they went on dates and reunited as a couple.

Mrs. Berhalter went on to state that no incident like this ever happened again with Mr. Berhalter and that, at the time of the interview, they were on the eve of celebrating 25 years of marriage. In response to our questions, she said there was not a single physical fight or any improper contact after the 1992 Incident.

5. Information from the Danielle Reyna Interviews

After several attempts to speak with Mrs. Reyna, we had two brief calls with her on December 29th.

At the start of the first phone conversation, Mrs. Reyna made clear that she did not want to speak with us. We asked her if she and Mr. Reyna had a phone conversation with Mr. Stewart on December 11th at 7:28 p.m. In response, Mrs. Reyna told us, “I will not confirm anything.” She said she would not get involved because, as she explained, “I have cleaned my mind.”

We asked Mrs. Reyna again if she had a phone call with Mr. Stewart in December to make a report about Mr. Berhalter. She told us: “I’m not saying I did that. I am not saying anything. I won’t confirm or deny that I made that allegation to Earnie.” We asked her if she was on the phone with Mr. Stewart in December, and she said, “I deny we were on a phone call.” We asked, then, if she was denying the she and Mr. Reyna had a phone call with Mr. Stewart, and she said, “Yes, I am denying this whole thing.” She then told us that she didn’t speak to Mr. Stewart about anything; that she did not remember; and that there is nothing else she could share with us. She closed by telling us that she had nothing else to say, and that “if you want to close it, you can close it.” The call ended.

Very shortly after the first call ended, Mrs. Reyna called back. She began the second call by saying, “I did say it,” in reference to the call with Mr. Stewart. She explained that she had a phone conversation with Mr. Stewart and told him that “there was an incident our freshman year I had to deal with” involving Mr. and Mrs. Berhalter. We asked for details about the incident. She said: “There was a physical fight. I wasn’t there. I didn’t observe the fight.” She confirmed the fight was “between Gregg and his wife.” When we asked what actually happened, she said, “I didn’t observe it.” She explained that she had talked about it with Mrs. Berhalter when it happened, “but I don’t know who hit whom. I was told there was a fight – that was it.”

Mrs. Reyna confirmed that no police report was filed. She said she was not aware of any disciplinary complaint to UNC. She said: “Rosalind said there was an altercation. They got back together. They put it to bed. We never talked about it again once they got back together. She never talked about it again.”

Mrs. Reyna said there were no other physical fights between Mr. and Mrs. Berhalter. She said she knows nothing about any other fights or acts of abuse. As she phrased it, “I honestly, truly believe that Gregg never had an incident like that with Rosalind again. I truly believe he has never done it again – it was just a particular situation.”

In response to questions, Mrs. Reyna said she does not believe that Mr. Berhalter is a dangerous person. She stated that she does not believe Mr. Berhalter poses a danger to anyone affiliated with U.S. Soccer.

6. Information from Interview of UNC Men’s Soccer Coach Elmar Bolowich

We interviewed Elmar Bolowich on January 6th. Coach Bolowich was head coach of the UNC Men’s Soccer team at the time of the 1992 Incident. During 1992, Coach Bolowich shared an office with Anson Dorrance, the head coach of the UNC Women’s Soccer team. According to Coach Bolowich, the two coaches worked closely together.

Coach Bolowich recalled that Mr. Berhalter came into his office on what he believed to be the morning after the 1992 Incident to speak with him. Mr. Berhalter was “teary-eyed and remorseful” and started the conversation by saying that he “did something really stupid.” They spoke for 15 to 20 minutes, and Mr. Berhalter proceeded to tell his coach that he had gotten into an argument with Mrs. Berhalter and kicked her; that he apologized to her; that it was very stupid; and that he regretted it. Coach Bolowich did not learn specific details about the fight, but knew that Mrs.

Berhalter was continuing to practice and attend class. Coach Bolowich asked Mr. Berhalter if he had spoken to his parents about the incident, and Mr. Berhalter confirmed that he did. Coach Bolowich then told Mr. Berhalter that it was up to him (Mr. Berhalter) to make amends to Mrs. Berhalter.

Coach Bolowich told us that, after receiving this report from Mr. Berhalter, he spoke to Coach Dorrance about the report on the same day, and that Coach Dorrance said that Mrs. Berhalter had reported the incident to Coach Dorrance herself. Coach Bolowich further explained that Coach Dorrance told him that he appreciated that Mr. Berhalter came in, reported the incident, and didn't try to cover it up.

Coach Bolowich told us that the incident did not trigger any discipline from the coaches, any disciplinary reports to others at UNC, or any police report. Coach Bolowich had been an assistant to Coach Dorrance a few years prior and, as he explained to us, he viewed Coach Dorrance as the leader. Coach Bolowich told us that he relied on Coach Dorrance to learn the "American system." Because of that, and because Mrs. Berhalter was Coach Dorrance's player and the one who was impacted, Coach Bolowich understood that Coach Dorrance would have made any necessary reports. In Coach Bolowich's mind, there was nothing to report because it was "a personal thing" and he had told Mr. Berhalter to apologize and make amends.

7. Information from Interviews of Berhalter / Santana Family Members

In a further effort to gather information about the 1992 Incident and what may have occurred, we interviewed family members of Mr. and Mrs. Berhalter.

We interviewed Delores Berhalter (Mr. Berhalter's mother) on January 10th. She confirmed that Mr. Berhalter called her after the 1992 Incident (she assumes the day after) and told her that he had had a fight with Mrs. Berhalter. She said Mr. Berhalter told her that he kicked Mrs. Berhalter. The information that Delores Berhalter conveyed to us during the interview was consistent with the information provided to us by Mr. and Mrs. Berhalter. In particular, Delores confirmed that she has no knowledge of any similar acts of violence before or after the 1992 Incident.

We interviewed Jay Berhalter on January 19th. Jay is Mr. Berhalter's older brother and a former U.S. Soccer employee. Jay confirmed that Mr. Berhalter called him the day after the 1992 Incident. Jay remembers that Mr. Berhalter told him that he (Mr. Berhalter) was going to talk to his coach at UNC and his parents about what happened. Mr. Berhalter followed up with Jay shortly thereafter to tell him that he (Mr. Berhalter) did, in fact, report the 1992 Incident to his coach and parents.

We interviewed Annette Kelly (Mrs. Berhalter's older sister) on January 20th. She confirmed that Mrs. Berhalter told her family about the 1992 Incident when it happened. Although she remembers that Mrs. Berhalter told them that Mr. Berhalter kicked her, she doesn't remember other details. She confirmed that the 1992 Incident had not been discussed again by the family for over 30 years, until the press reports about this Investigation. She also confirmed her strong belief that no physical incidents have ever happened again.

C. Press Releases about the 1992 Incident

1. The Berhalters' Public Statement

On January 3, 2023, shortly after U.S. Soccer launched this Investigation, Mr. and Mrs. Berhalter issued a joint public statement addressing the 1992 Incident. Their public statement caused the 1992 Incident and this Investigation to become public.

The Berhalter statement read in pertinent part: “During the World Cup, an individual contacted U.S. Soccer, saying that they had information about me that would ‘take me down’ – an apparent effort to leverage something very personal from long ago to bring about the end of my relationship with U.S. Soccer.”¹⁷

The Berhalter statement continued:

In the fall of 1991, I met my soulmate. I had just turned 18 and was a freshman in college when I met Rosalind for the first time . . . We had been dating for four months when an incident happened between us that would shape the future of our relationship. One night, while out drinking at a local bar, Rosalind and I had a heated argument that continued outside. It became physical and I kicked her in the legs.

There are zero excuses for my actions that night: it was a shameful moment and one that I regret to this day. At the time, I immediately apologized to Rosalind, but understandably, she wanted nothing to do with me. I told my parents, family, and friends what happened because I wanted to take full responsibility for my behavior. Rosalind also informed her parents, family, and friends. While the authorities were never involved in this matter, I voluntarily sought out counseling to help learn, grow and improve – one of the most valuable decisions that I ever made. To this day, that type of behavior has never been repeated.

I feared that I lost my soulmate and then out of the blue, seven months later I received a call from Rosalind asking if we could speak in person. We met and discussed how we had grown and decided to rebuild our relationship. Rosalind shared that her family supported this decision and by working through what had happened, we both realized that our love, trust, and respect for each other was stronger than the incident that occurred months earlier . . . The lessons learned from that night over three decades ago became the foundation for a loving, devoted, and supportive relationship, which

¹⁷ Gregg Berhalter (@GreggBerhalter_), TWITTER (January 3, 2023, 2:30 PM), https://twitter.com/GreggBerhalter_/status/1610358071737389057?cxt=HHwWgsC4scuIktsAAAA.

*we honored and celebrated with our 25th wedding anniversary this past weekend . . . We have raised four wonderful children, who are aware of what happened. We are very proud of our marriage, our relationship, the family we have built, and the people we have become.*¹⁸

2. The Reynas' Public Statements

The next day, on January 4, 2023, Mrs. Reyna issued a public statement. She confirmed that she called Mr. Stewart “just after the news broke that Gregg had made negative statements about my son Gio at a leadership conference.” She said she had known Mr. Stewart “for years” and “considered[ed] him to be a close friend.”¹⁹ She said:

*I wanted to let him know that I was absolutely outraged and devastated that Gio had been put in such a terrible position, and that I felt very personally betrayed by the actions of someone my family had considered a friend for decades. As part of that conversation, I told Earnie that I thought it was especially unfair that Gio, who had apologized for acting immaturely about his playing time, was still being dragged through the mud when Gregg had asked for and received forgiveness for doing something so much worse at the same age. Without going into detail, the statements from Gregg yesterday significantly minimize the abuse on the night in question. Rosalind Berhalter was my roommate, teammate and best friend, and I supported her through the trauma that followed.*²⁰

Mr. Reyna also issued a statement. He said: “I support my wife, Danielle, and her statement. I too was upset by Gregg’s comments about Gio after the U.S. was out of the World Cup, and I also appealed to Earnie Stewart on December 11 asking him to prevent any additional comments.”²¹

D. Witnesses Who Did Not Agree to an Interview

1. Anson Dorrance

Coach Dorrance, the legendary head coach of the UNC Women’s Soccer team, had two phone calls with us in which he, in the most cordial way, declined to answer any questions about the 1992 Incident. He told us that “this issue is a personal one that should be resolved within the families, without judgment”; that he “won’t contribute to something in the public eye”; and that “we did not convince him of the need for the conversation.” As a result of his refusal to answer our questions,

¹⁸ *Id.*

¹⁹ Paul Tenorio, *Gio Reyna’s mother reported incident involving Gregg Berhalter and wife to US Soccer*, THE ATHLETIC (January 4, 2023), <https://theathletic.com/4057428/2023/01/04/gregg-berhalter-danielle-claudio-reyna-us-soccer/>.

²⁰ *Id.*

²¹ *Id.*

he did not corroborate (or contradict) the statements from Mr. Berhalter, Mrs. Berhalter, and Coach Bolowich indicating that both Mrs. Berhalter and Coach Bolowich spoke with Coach Dorrance about the 1992 Incident the day after it happened. We also did not have an opportunity to obtain his explanation for why he did not report the 1992 Incident to others at UNC.

2. Claudio Reyna

We made several attempts during January 2023 to interview Claudio Reyna. We were contacted on January 12th by an attorney representing the Reynas and, over the course of multiple phone calls and email messages, we attempted to negotiate dates to conduct an interview of Mr. Reyna and to conduct an additional interview of Mrs. Reyna. Their attorney expressed his desire to give us a “proffer” of information from his clients about the Investigation. After much back-and-forth, we indicated that we would agree to hear his “proffer” as long as he confirmed that any such “proffer” would be in addition to, and not in lieu of, our opportunity to interview the Reynas directly. We did not receive interview dates in response to our emails and, as a result, did not have a chance to speak with Mr. Reyna to get his perspective on issues (or to interview Mrs. Reyna another time to inquire about her claim in the January 4th public statement that the Berhalters’ description of the 1992 Incident “significantly minimized the abuse” that occurred).

E. Impact of Witness Cooperation and Demeanor

1. The Berhalters

We were impressed with Mr. Berhalter’s candor and demeanor during the Investigation. He cooperated fully and extensively with the Investigation and our requests for interviews. We first contacted him with a request for an interview at 3:09 p.m. on December 20th; he responded to our email within 30 minutes; and he immediately agreed to sit for a Zoom interview at 6:00 p.m. that same night. He appeared at the interview alone (i.e., without legal counsel or other advisors), and he answered all the questions we asked him. At the end of the interview, we concluded that Mr. Berhalter appeared to be truthful, forthcoming, and credible. He answered our questions directly, without evading or deflecting the topics we put to him; he expressed regret and shame about what he did in January 1992; and he did not try to sugarcoat his actions. He told us that he realized in 1992 that he had to own responsibility for what he did, and that, in his words, “I still have to own this now.” He gave us names and contact numbers for witnesses we needed to interview to gather additional facts, and he followed up with email messages to determine if there were any other facts he could provide. As far as we could tell, Mr. Berhalter did nothing to impede our investigation or access to information. Similarly, Mrs. Berhalter cooperated fully with the Investigation and gave us no reason to doubt the information she provided.

2. The Reynas

We were less impressed with the Reynas’ cooperation during the Investigation. After several attempts to schedule an interview, we had two brief phone conversations with Mrs. Reyna on December 29th, and we did not succeed in having a follow-up conversation with her – or any conversation with Mr. Reyna – after that. Mrs. Reyna’s story evolved over the course of the Investigation. During our first phone call on December 29th, Mrs. Reyna denied having been on a phone call with Mr. Stewart on December 11th, and claimed that she didn’t speak to him about

anything. She then called back almost immediately the same day and admitted that she did in fact call Mr. Stewart; admitted that she told him there was a “physical fight” between the Berhalters in Chapel Hill their freshman year of college; and stated that she didn’t observe the fight and didn’t know other details. Less than a week later, she published a statement which, through its claim that the Berhalters’ public statements about the incident “significantly minimize the abuse on the night in question,” suggested that she knew other details about the fight. Shortly after those statements were made, we were contacted by an attorney for the Reynas, and we asked for an opportunity to speak to Mr. and Mrs. Reyna. We had several calls and emails with their lawyer about our request for an interview; their attorney offered to give a “proffer” of information on his clients’ behalf; interview dates were never provided; and, at the end of the day, the Reynas did not participate in additional interviews.

F. Findings regarding the 1992 Incident

Based on the totality of the information we collected during the Investigation and the findings we made, we believe the following with respect to the 1992 Incident:

1. In January 1992, Mr. Berhalter and Mrs. Berhalter were at a nightclub called *Players* in Chapel Hill, North Carolina. They were 18 years old, drinking alcohol at the club, and were both inebriated. They had been dating for approximately four months.

2. They got into an argument inside the club when Mr. Berhalter became jealous that Mrs. Berhalter was giving attention to another athlete. They continued arguing when they left the nightclub and got into a physical altercation on a nearby street.

3. The fight became physical when Mrs. Berhalter hit Mr. Berhalter in the face. It escalated when Mr. Berhalter pushed Mrs. Berhalter down and kicked her twice. It ended when a bystander tackled Mr. Berhalter.

4. After Mr. Berhalter was tackled, Mrs. Berhalter got up, left the scene, and ultimately returned to her dorm room.

5. Mrs. Berhalter did not require or seek medical attention.

6. Mrs. Berhalter did not file a police report or a similar disciplinary report with UNC officials. The incident led to no interaction with law enforcement or the courts. It led to no university disciplinary proceedings.

7. UNC coaches were informed about the incident the day after it happened. Mr. Berhalter self-reported his actions to the head coach of the Men’s Soccer team. Mrs. Berhalter reported the incident to the head coach of the Women’s Soccer team. The two head coaches discussed the reports with each other that day. Each coach decided, it seems, that no disciplinary action was warranted.

8. Mr. Berhalter took responsibility for his actions. He immediately self-reported the incident to his head coach and academic counselor. He made efforts to apologize to Mrs. Berhalter. He told his parents and family what happened. He sought counseling. He did volunteer work at a women’s

prison. He stayed away from Mrs. Berhalter, at her request, for approximately seven to eight months, and only began to interact with her again when she reached out to him at or around the fall of the next academic year.

9. Mr. Berhalter and Mrs. Berhalter began dating again in the fall of 1992, approximately seven to eight months after the 1992 Incident. They married in 1997. They now have four children, and they have remained married for 25 years.

10. Mr. Berhalter admits that he pushed and kicked Mrs. Berhalter on this one occasion in January 1992, but denies physically assaulting her ever again. Mrs. Berhalter confirms that Mr. Berhalter never treated her with violence after the 1992 Incident. Mrs. Reyna admits that she has no reason to believe that another similar act of violence ever occurred. No witness could identify another instance of violence by Mr. Berhalter. Based on the totality of our Investigation, there is no information to suggest that Mr. Berhalter engaged in another physical assault against Mrs. Berhalter, or anyone else, in the last 31 years.

VII. Background Checks on Gregg Berhalter

U.S. Soccer is required to conduct background checks under its governing policies.²² Here, U.S. Soccer conducted two background checks on Mr. Berhalter. The first occurred in 2018 when he was hired as the USMNT Head Coach. The second occurred in 2020, consistent with U.S. Soccer's policy of conducting full background checks on all covered individuals every two years. *Id.*²³

The National Center for Safety Initiatives conducted both background checks. The checks had a scope of lifetime for reportable felonies and offenses involving a sexual nature or harm to a minor, and a scope of seven to ten years for misdemeanors. Together, the 2018 and 2020 checks searched seven counties and six federal districts.

Mr. Berhalter also completed voluntary disclosure questionnaires in connection with both background checks. The questionnaires prompted Mr. Berhalter to disclose, among other things, any felony convictions or pending felony charges; convictions or pending charges of "any lesser crime[s] involving force or threat of force against a person"; and convictions or pending charges "of a lesser crime involving harm to a minor." Mr. Berhalter answered no to each question. The Investigation has revealed that the 1992 Incident would not have been responsive to any disclosure questions, and we have no reason to believe Mr. Berhalter's answers were inaccurate, incomplete, or untruthful.

²² See U.S. OLYMPIC AND PARALYMPIC COMMITTEE POLICY, § 4.1 (Background Check Policy); U.S. OLYMPIC AND PARALYMPIC COMMITTEE BACKGROUND CHECK POLICY AND PROCEDURES.

²³ U.S. OLYMPIC AND PARALYMPIC COMMITTEE BACKGROUND CHECK POLICY AND PROCEDURES, II.B.

VIII. The 1992 Incident: Legal Analysis

Mr. Berhalter never should have pushed or kicked Mrs. Berhalter outside of *Players* nightclub in January 1992. The fact that she was his girlfriend at the time obviously does not excuse his act of physical assault and battery. Nor does the fact that he was drunk at the time, or that he was only 18 years old, or that Mrs. Berhalter is his wife today. The physical assault never should have happened.

Our interview with Mr. Berhalter and the substance of his public statement demonstrate that he acknowledges his culpability. He knows that what he did was wrong. Importantly, there is no evidence to suggest that he ever engaged in similar behavior again.

The facts of the 1992 Incident would present several legal issues for Mr. Berhalter and U.S. Soccer had they occurred today. They did not. The analysis therefore requires an inquiry as to whether there is any legal risk to U.S. Soccer related to the 1992 Incident, which occurred more than 25 years before Mr. Berhalter was hired as Head Coach of the USMNT. We believe the short answer to that question is no.

A. Is there Any Risk of Criminal Prosecution for Gregg Berhalter?

No.

Mr. Berhalter's conduct during the 1992 Incident likely constituted the misdemeanor crime of assault on a female. Under N.C. Gen. Stat. § 14-33(C)(2), "any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she assaults a female, he being a male person at least 18 years of age."

"A battery is 'the offensive touching of the person of another without [her] consent, while an 'assault' occurs when a person is put in apprehension of harmful or offensive contact.'" *Howald v. Herrington*, Civil Case No. 1:21-cv-59-MR-WCM, 2022 U.S. Dist. LEXIS 197184, at *9 (W.D. N.C. Oct. 30, 2022) (quoting *City of Greenville v. Haywood*, 130 N.C. App. 271, 275, 502 S.E.2d 430, 433 (1998) (brackets in original)). "Since every battery includes an assault, assault on a female may be proven by finding either an assault on or a battery of the victim." *State v. Clay*, No. COA05-568, 2005 N.C. App. LEXIS 2453, at *6 (N.C. Ct. App. Nov. 15, 2005) (citations and internal quotation marks omitted).

During the Investigation, Mr. Berhalter did not try to claim that his conduct during the 1992 Incident was in any way justified. As a legal matter, we conclude that a justification defense would fail, even though Mrs. Berhalter admitted to hitting Mr. Berhalter in the face before he pushed and kicked her. "One without fault in provoking or continuing an assault is privileged to use such force as is reasonably necessary to protect himself from bodily harm or offensive physical contact." *State v. Bellamy*, No. COA05-35, 2005 N.C. App. LEXIS 2072, at *6 (N.C. Ct. App. Oct. 4, 2005) (quoting *State v. Grant*, 291 S.E.2d 913, 915 (1982)). In *State v. Grant*, the North Carolina Court of Appeals explained: "Where there is no evidence from which a jury could find that defendant reasonably believed himself in need of protection, it would be improper for the court to instruct on justification." *Id.* (affirming trial court's refusal to instruct jury on self-defense where defendant

struck woman after she slapped him and there was no evidence that defendant feared for his safety). Here, Mr. Berhalter admitted to kicking Mrs. Berhalter twice while she was already on the ground, presumably not posing a threat to him.

Notwithstanding the foregoing, Mr. Berhalter is not currently at risk of criminal prosecution for the 1992 Incident because North Carolina imposes a two-year statute of limitations for misdemeanors (with some exceptions not relevant here). N.C. Gen. Stat. § 15-1. In other words, there is no risk of a criminal conviction for the incident that occurred 31 years ago.

B. Were Any U.S. Soccer Policies Violated?

No.

Our investigation determined that no U.S. Soccer policies were violated in connection with the 1992 Incident. U.S. Soccer's Code of Conduct explains that U.S. Soccer is committed to complying with all applicable laws, regulations, and organizational mandates. Although the 1992 Incident likely involved unlawful conduct (i.e., assault and battery under North Carolina law), the 1992 Incident does not violate the Code of Conduct because it occurred 26 years before Mr. Berhalter was hired as Head Coach. *See* Section E below.

U.S. Soccer's Code of Conduct requires "team members" (including employees of U.S. Soccer) to report observed or suspected violations of the code. U.S. Soccer is also governed by the USOPC Code of Conduct, which similarly imposes on covered individuals, including U.S. Soccer employees, an obligation to report code violations or suspected code violations. To the extent the 1992 Incident can be interpreted as a violation of either code, Mr. Stewart satisfied his reporting obligation by reporting the 1992 Incident to U.S. Soccer's Senior Counsel, CEO, and Chief Legal Officer.

In addition (and as noted above), U.S. Soccer also complied with its obligation to conduct background checks on Mr. Berhalter. U.S. Soccer conducted background checks in 2018 and 2020 and did not learn about any information that would have prompted further action or investigation.

C. Were Any SafeSport Rules Violated?

No.

The SafeSport Code requires covered individuals to report to SafeSport (and in some cases, law enforcement) instances related to child abuse; sexual misconduct; misconduct related to SafeSport's process, including incidents of aiding and abetting and abuse of process; and retaliation.²⁴ The 1992 Incident allegation does not appear to fall under these categories of conduct.

The SafeSport Code also requires covered individuals to report to the relevant organization any incidents of "emotional or physical misconduct (including bullying, stalking, hazing, and harassment) prohibited under the Code." The Code further requires that the misconduct "occur[]

²⁴ SafeSport Code, § X.B-D.

within a context that is reasonably related to sport.”²⁵ While the 1992 Incident may not have arisen “within a context that is reasonably related to sport,” Mr. Stewart reported it to U.S. Soccer’s CEO, Chief Legal Officer, and Senior Counsel.

On January 4, 2023, SafeSport received an incident report concerning the 1992 Incident (the “Incident Report”). The Incident Report was submitted by a SafeSport employee and included a link to an ESPN article, titled “US Soccer reveals investigation involving manager Gregg Berhalter.” The Incident Report noted that the SafeSport employee received the link via email.

On January 6, 2023, SafeSport notified U.S. Soccer that it considered the 1992 Incident allegation as falling within its discretionary (and not exclusive) authority. SafeSport also informed U.S. Soccer that it declined to exercise jurisdiction over the 1992 Incident, which meant that U.S. Soccer could “address and resolve the matter pursuant to its applicable policies and procedures.”

D. Were Any FIFA Regulations Violated?

No.

The FIFA Code of Ethics does not appear to apply to the 1992 Incident for at least two reasons. First, Mr. Berhalter was not a covered person at the time of the 1992 Incident and thus was not bound by that code when he engaged in the conduct at issue.²⁶ Second, the scope of the FIFA Code of Ethics is limited to conduct “connected to the field of play that damages the integrity and reputation of football[.]”²⁷ The 1992 Incident bears no connection to the field of play.

E. Does Continued Employment of Gregg Berhalter Present a Risk of Civil Liability for U.S. Soccer?

No.

We analyzed whether continued employment of Mr. Berhalter exposes U.S. Soccer to civil liability. In particular, we considered whether a plaintiff could bring claims for (1) harassment or a hostile work environment; or (2) negligent hiring or retention. We do not believe the facts give rise to these or any similar claims against U.S. Soccer. We are not aware of any legal theory that could hold an employer liable for an incident that (1) occurred more than 25 years before he joined the organization; and (2) was not repeated at any subsequent time.

1. Harassment / Hostile Work Environment

We have concluded that the 1992 Incident was unlawful and improper. If it had occurred during the period of Mr. Berhalter’s employment with U.S. Soccer, it would have created significant legal issues for the organization. But, as noted, it occurred 26 years before Mr. Berhalter was hired and we are aware of no evidence to suggest that Mr. Berhalter engaged in any violent, unlawful, or

²⁵ *Id.* §§ IX.D; X.E.

²⁶ *See* FIFA Code of Ethics, §§ 2 and 3.

²⁷ *Id.* § 1.

legally improper behavior at any point during his U.S. Soccer employment. Moreover, the Investigation did not reveal any evidence suggesting that Mr. Berhalter engaged in any behavior while employed by U.S. Soccer that would meet the legal standard for hostile work environment or other discriminatory behavior. To the contrary, each U.S. Soccer employee we interviewed spoke positively about Mr. Berhalter and his demeanor as head coach of the USMNT. Even Mrs. Reyna, who made the report to U.S. Soccer about the 1992 Incident, opined that (1) it was a one-time occurrence, and Mr. Berhalter never had another violent incident after the 1992 Incident; and (2) Mr. Berhalter does not pose a danger to anyone at U.S. Soccer. In light of these facts, there is no basis to conclude that employment of Mr. Berhalter in 2023 presents a risk of civil liability for U.S. Soccer or any other organization.

A hostile work environment claim “requires proof of a workplace ‘permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the plaintiff’s employment and create an abusive working environment.’” *Long v. Aerotek, Inc.*, 162 N.Y.S.3d 521, 523 (3d Dep’t 2022) (citation and brackets omitted)); *see also Summa v. Hofstra Univ.*, 708 F.3d 115, 123-24 (2d Cir. 2013) (“Hostile work environment claims under both Title VII and the NYSHRL are governed by the same standard.”).²⁸ To assess whether a plaintiff has made that showing, courts consider “all the circumstances, including the frequency of the discriminatory conduct, its severity, whether it was physically threatening or humiliating, or a mere offensive utterance, and whether it reasonably interfered with the plaintiff’s work performance.” *Long*, 162 N.Y.S.3d at 523 (citation and brackets omitted). Moreover, the “allegedly abusive conduct must not only have altered the conditions of employment of the employee, who subjectively viewed the actions as abusive, but the actions must have created an ‘objectively hostile or abusive environment – one that a reasonable person would find to be so.’” *La Marca-Pagano v. Dr. Steven Phillips, P.C.*, 12 N.Y.S.3d 192, 194 (2d Dep’t 2015) (citation omitted). The Investigation uncovered no evidence supporting a potential claim for harassment or a hostile work environment, or any similar claim under anti-discrimination laws.

2. Negligent Hiring / Retention

While employers can, under certain circumstances, be held liable for actions taken by an employee under the legal doctrine of *respondeat superior*, *Riviello v. Waldron*, 391 N.E.2d 1278, 1280-81 (1979), they cannot under that theory be held liable unless the employee’s actions were taken during and within the scope of his or her employment, *Cicccone v. City of N.Y.*, 31 N.Y.S.3d 124, 125 (2d Dep’t 2016). The 1992 Incident occurred more than 25 years before Mr. Berhalter was hired by U.S. Soccer. For that reason, the organization could not be subject to liability for what occurred in 1992. Nor could it be subject to liability for any future event based solely on the 1992 Incident.

Under the doctrine of “negligent hiring and retention” employers can, under certain circumstances, be held liable for hiring an employee who presents a foreseeable risk of harm to others. While the elements of a negligent hiring and retention claim can differ slightly across jurisdictions, the gist of the legal doctrine is that an injured party can hold an employer liable if he

²⁸ U.S. Soccer is a New York not-for-profit corporation with its headquarters in Illinois. This report primarily cites New York law. Illinois law is generally consistent with New York law for the points discussed in the report unless noted otherwise.

or she (1) is injured by an employee; and (2) is able to prove that the employer knew or should have known that the employee posed a risk of harm to that individual.

In the case of Mr. Berhalter, our Investigation uncovered no facts to show that U.S. Soccer knew of the 1992 Incident when it hired Mr. Berhalter; no facts to show that similar incidents occurred at any point in the last 31 years; no facts to show that the 1992 Incident has any nexus to the present or to the workplace; and no facts to support a claim that Mr. Berhalter presents a risk of harm to others. Moreover, each U.S. Soccer employee we interviewed spoke positively about Mr. Berhalter, and no witness indicated that Mr. Berhalter in any way presents a danger to others. Based on our Investigation, there is no basis to conclude that the hiring or employment of Mr. Berhalter would subject U.S. Soccer or any other employer to potential liability for negligent hiring and retention tied to the fact of the 1992 Incident.²⁹

IX. The Reynas' Interactions with U.S. Soccer Officials: Findings of Fact

A. Claudio Reyna: Background with U.S. Soccer and MLS

Mr. Reyna is a former captain of the USMNT and widely considered one of the greatest American soccer players ever. Mr. Reyna played professional soccer in Europe from 1994 to 2007, before returning to the United States to play one year for the New York Red Bulls, an MLS club. Mr. Reyna played on the USMNT from 1994 to 2006 and participated in the 1994, 1998, 2002, and 2006 FIFA World Cups.

Between 2010 and 2013, Mr. Reyna worked for U.S. Soccer as the technical director for youth soccer. On May 22, 2013, Mr. Reyna was hired as the Sporting Director of MLS expansion team New York City FC.

In or around January 2019, Mr. Reyna was a candidate for the USMNT General Manager position. During the interview process, the candidates were asked to make Head Coach recommendations for the team. Jay Berhalter, former Chief Commercial Officer for U.S. Soccer and Mr. Berhalter's brother, was on the panel of interviewers for the position. Jay Berhalter informed us that Mr. Reyna recommended Mr. Berhalter to the interview panel as his top choice for the Head Coach position.

After not being awarded the U.S. Soccer General Manager position, Mr. Reyna continued in his role at New York City FC as the Sporting Director until November 2019. On November 21, 2019, Mr. Reyna was named Sporting Director of another MLS expansion team, Austin FC. On January 26, 2023, Mr. Reyna resigned from his role as Sporting Director, with his oversight repurposed to being a technical advisor for the club.

²⁹ In addition, a plaintiff typically cannot pursue common law negligence claims – such as negligent hiring or retention – directly against an employer arising out of negligent conduct of an employee, because such claims are barred by the exclusivity provisions of the relevant state's workers' compensation law. *See, e.g., Ferris v. Delta Air Lines*, 277 F.3d 128, 138 (2d Cir. 2001) (affirming dismissal of negligent retention and supervision claims because such claims "are precluded by the exclusive remedy provisions of New York's Workers' Compensation statute").

B. Claudio Reyna's Interactions with U.S. Soccer Officials – Before the 2022 World Cup

We interviewed [REDACTED] who described several incidents in which Mr. Reyna contacted U.S. Soccer officials to make complaints regarding his sons. [REDACTED] characterized Mr. Reyna's historical outreach as "inappropriate," "bullying," and "mean-spirited." [REDACTED] explained that whenever [REDACTED] received text messages from Mr. Reyna, [REDACTED] would forward them to U.S. Soccer leadership. [REDACTED] added that sometimes other U.S. Soccer officials were copied on Mr. Reyna's text messages. [REDACTED] said it would be typical for Mr. Reyna to send a text message or email "in the heat of the moment" and then follow up with a call to vent about his complaint. The following are some examples provided to us by [REDACTED] and other witnesses.

[REDACTED] informed us that in February 2016, [REDACTED] learned about a complaint Mr. Reyna made to U.S. Soccer officials regarding his son, Gio Reyna. Specifically, [REDACTED] informed us that Mr. Reyna contacted a U.S. Soccer official in an attempt to overturn a red card that his son, Gio Reyna, received in a match. We also obtained an email that reflected this incident and described Mr. Reyna's attempt to persuade a U.S. Soccer official to allow Gio Reyna to play instead of sitting out the next match. We understand from the email that Mr. Reyna was told by a U.S. Soccer official at the time that the league had a consistent policy regarding red cards and did not review or overturn subjective referee decisions.

[REDACTED] also informed us that [REDACTED] received an email from Mr. Reyna in or around July 2018 in which Mr. Reyna complained about a female referee in a match involving Gio Reyna. We obtained an email from Mr. Reyna in July 2018, in which Mr. Reyna stated, "Field, referee everything!! So embarrassing all the way around." Mr. Reyna sent a follow-up email that stated: "And in all honest [sic] can we get real and have male refs for a game like this. Its embarrassing guys. What are we trying to prove? A game like this deserves bett[e]r attention." [REDACTED] circulated the email internally and wrote: "This is truly sad to see. I believe we should regroup internally . . . and decide the path we want to take. After this and his communication last week, this is not appropriate or acceptable."

Mr. Stewart informed us that Mr. Reyna began making complaints to him in November 2019 during the FIFA U-17 World Cup. He said the complaints were about Gio Reyna's lack of playing time, inadequate travel arrangements (specifically, not flying business class), and other instances when U.S. Soccer did not meet Mr. Reyna's standards. Mr. Stewart also provided contemporaneous text messages from this period. Mr. Stewart commented that in his more than 20 years "in this business," he has never had these types of discussions with other players' parents.

Mr. Berhalter said at the FIFA U-17 World Cup in November 2019, Mr. Reyna texted him about the coach, stating, "he's the worst coach." Mr. Berhalter said that "when things don't go great for Gio, [the Reynas] pivot and go into attack mode." Mr. Berhalter said that what occurred at the 2022 FIFA World Cup was similar to what occurred at the U-17 World Cup. Mr. Berhalter provided text messages to us that he received from Mr. Reyna in 2019 and 2020 complaining about Gio Reyna's treatment, travel arrangements, and coaches.

██████████ recounted ██████ experience coordinating travel for the USMNT's first World Cup match on November 21, 2022 against Wales. ██████████ knew the Berhalters and Reynas were close, so their friends and family were assigned to the same bus to travel to and from the game. ██████ noted that Mr. Berhalter had many family members participating in the Friends and Family program, including his parents, both siblings, and Mrs. Berhalter's siblings.

The USMNT tied Wales 1-1. Gio Reyna did not play, and Mr. Berhalter's decision not to play Gio Reyna was controversial. For example, immediately following the match, FOX Sports commentator Alexi Lalas observed on-air: "Everybody is asking, 'Where was Gio Reyna? Why didn't he come on the field?'"³⁰

██████████ explained that FIFA permitted players to visit with their friends and family in the stands after the matches ended. ██████ recalled that, after the Wales match, the USMNT's friends and family members remained in their seats for at least 90 minutes. ██████ further explained that, as people began departing for the busses, Mrs. Reyna said: "I'm not getting back on that bus"; ██████ expressed confusion; and Mrs. Reyna replied: "I don't think you understand. I'm not getting back on *that* bus." ██████████ further explained that ██████ offered the Reynas space on a different bus without the Berhalters' friends and family; that the Reynas accepted; and ██████ stated, "This led to potential drama – everyone in the [friends and family] group saw the switch – but no issues happened." ██████████ reported that ██████ heard in real time "from people running the family program that the Reynas were vocal in their displeasure, and they wouldn't get on the bus."

In his post-match press conference, Mr. Berhalter explained his decision not to play Gio Reyna. "In the phase of the game we were at, we went with Jordan who we felt could give us speed and power."³¹ He added: "It was trying to get [Gio] up to speed. There was some tightness we were guarding against."³² Gio Reyna subsequently told reporters: "[I feel] OK. A little bit of tightness over the last few days. But I played six weeks in a row with [Borussia] Dortmund before . . . I feel great. I feel really good . . . I felt ready to go but it was just [Coach Berhalter's] decision."³³

According to ██████████, Mrs. Reyna approached ██████ the day after the Wales match at a lunch event held for USMNT friends and family members. According to ██████████, Mrs. Reyna brought up their interaction from the stadium and said: "I just want to explain more about what happened last night." ██████████ responded that it was an emotional, high-stress situation and

³⁰ Jake Fenner, *Everybody is asking "where was Gio Reyna?"*, DAILY MAIL (November 21, 2022), <https://www.dailymail.co.uk/sport/football/article-11454553/Alexi-Lalas-questions-USA-didnt-bring-Gio-Reyna-Wales-hold-USMNT-frustrating-1-1-draw.html>.

³¹ Jeff Carlisle (@JeffreyCarlisle), TWITTER (November 21, 2022, 4:57 PM), <https://twitter.com/JeffreyCarlisle/status/1594812189944123394>

³² Jake Fenner, *Everybody is asking "where was Gio Reyna?"*, DAILY MAIL (November 21, 2022), <https://www.dailymail.co.uk/sport/football/article-11454553/Alexi-Lalas-questions-USA-didnt-bring-Gio-Reyna-Wales-hold-USMNT-frustrating-1-1-draw.html>.

³³ Henry Bushnell, *Why was USMNT star Gio Reyna held out of World Cup opener? He 'felt 100%' but Gregg Berhalter felt otherwise*, YAHOO! SPORTS (November 21, 2022), <https://sports.yahoo.com/why-was-usmnt-star-gio-reyna-held-out-of-world-cup-opener-he-felt-100-but-gregg-berhalter-felt-otherwise-024235817.html>

that ■ didn't need to hear anything else. ■ explained that ■ has kids of ■ own and that ■ understood the situation: "Things happen, no problem." ■ explained that Mrs. Reyna then said to ■: "No, it's so much more than that. You're talking about 40 years of history between us, for something like this to happen"; and then said something along the lines of, "Once this tournament is over, I can make one phone call and give one interview, and his cool sneakers and bounce passes will be gone." ■ told us that ■ struggled to recall the direct quote, but ■ understood Mrs. Reyna to be telling ■ that Mr. Berhalter has a "cool guy" image that she could quickly end. ■ told us: "The vibe was like, I can take him down."

■ told us ■ assumed Mrs. Reyna was upset because she may have felt Mr. Berhalter lied in his post-match press conference about Gio Reyna's health. ■ said ■ interaction with Mrs. Reyna lasted approximately three minutes and that nobody else participated in the conversation. ■ told us ■ had no other meaningful interactions with the Reynas during the World Cup.

Mr. Berhalter identified the Wales match as an inflection point in Mrs. Berhalter's relationship with Mrs. Reyna. Before that match, he said, Mrs. Berhalter and Mrs. Reyna spoke on the phone daily. "They had talked every day for decades. And it ended immediately." He said in the stands after the match, surrounded by the other families, "they didn't speak."

Mr. Berhalter added: "There were 150 people in the Friends and Family program at this year's World Cup. All were having a great time – except for five people who were absolutely miserable. Those five were cursing, acting horribly. It was the Reynas."

Mr. Stewart told us that during the 2022 FIFA World Cup, he and others received complaints via text message from Mr. Reyna. For example, Mr. Stewart received a text message from Mr. Reyna on November 21, 2022, after the USMNT's first World Cup match against Wales, in which Gio Reyna did not play. Mr. Reyna texted Mr. Stewart: "What a complete and utter fucking joke. Our family is disgusted in case you are wondering. Disgusted at how a coach is allowed to never be challenged and do whatever he wants."

We also spoke with former U.S. Soccer General Manager of the USMNT Brian McBride. Mr. McBride told us that he received text messages from Mr. Reyna about Gio Reyna's playing time and role on the USMNT. Mr. McBride said he began receiving the complaints when he assumed the General Manager role in January 2020.

Specifically, Mr. McBride shared with us a text message he received from Mr. Reyna on November 21, 2022, after the USMNT's World Cup match against Wales, that said: "Our entire family is disgusted, angry, and done with you guys. Don't expect nice comments from anyone in our family about US Soccer. I'm being transparent to you not like the political clown show of the federation."

Mr. McBride also explained that he and Mr. Stewart met with the Reynas on November 24, 2022, a day before the USMNT's World Cup match against England. Mr. McBride said that the purpose of the meeting was to help the Reynas understand the decision about Gio Reyna's playing time. Mr. McBride commented that such a meeting would not typically occur with parents of

players, but they agreed to it as a courtesy to Mr. Reyna given their long friendship and history as former teammates. Mr. McBride informed us that, during the meeting, Mr. Reyna stated, “you guys don’t even know what we know about Gregg,” but offered no additional details.

██████████ said █████ was aware of the text messages that Mr. Reyna was sending to other people in U.S. Soccer during the 2022 FIFA World Cup, and █████ has seen at least one from Mr. Stewart because Mr. Stewart showed █████. ██████████ said, ██████████ █████ was involved in U.S. Soccer’s discussions about the text messages Mr. Reyna sent Mr. Stewart and Mr. McBride. ██████████ said the Reynas’ complaints and behavior was not affecting the decisions regarding Gio Reyna’s role on the USMNT at the 2022 World Cup.

E. Gregg Berhalter’s Comments at HOW Institute for Society Summit on Moral Leadership

The USMNT was eliminated from the World Cup on December 3, 2022, after losing to the Netherlands in the Round of 16. Gio Reyna played in two of the USMNT’s four matches: He did not play against Wales or Iran; he played 7 minutes against England; and he played 45 minutes against the Netherlands. Three days later, Mr. Berhalter spoke at the HOW Institute for Society’s Summit on Moral Leadership (the “Summit”) in New York City. The Summit was marketed as a “one-day, in-person summit bringing together diverse leaders from varied fields – including business, government, education, non-profits, the military, religion, sports, media and entertainment – to stimulate and inspire fresh thinking and concerted actions to help answer the most vital questions we face as a society.”³⁴ Participants of the Summit included the President and CEO of Walmart, the 14th Vice President of the Philippines, the Under Secretary of the Air Force, the Dean of Stanford University School of Medicine, the Editor in Chief of the Harvard Business Review, and numerous other high-profile speakers. Participants of the Summit were instructed that all discussions were conducted under the Chatham House Rule.³⁵

During his presentation, Mr. Berhalter discussed strategies for handling difficult decisions around performance. He then gave an example:

In this last World Cup, we had a player that was clearly not meeting expectations on and off the field. One of 26 players, so it stood out. As a staff, we sat together for hours deliberating what we were going to do with this player. We were ready to book a plane ticket home, that’s how extreme it was. And what it came down to was, we’re

³⁴ The HOW Institute for Society Summit on Moral Leadership, <https://thehowinstitute.org/summit/> (last visited March 7, 2023).

³⁵ The Chatham House Rule states: “When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” According to the Chatham House website, the rule “helps create a trusted environment to understand and resolve complex problems. Its guiding spirit is: share the information you receive, but do not reveal the identity of who said it.” Chatham House Rule, CHATHAM HOUSE, *available at* <https://www.chathamhouse.org/about-us/chatham-house-rule#:~:text=When%20a%20meeting%2C%20or%20part,other%20participant%2C%20may%20be%20revealed.>

*going to have one more conversation with him, and part of the conversation was how we're going to behave from here out.*³⁶

Mr. Berhalter went on to describe how he instructed the player to apologize to the entire team. He explained how the player apologized, and then each teammate “stood up one by one and said, ‘Listen, it hasn’t been good enough. You haven’t been meeting our expectations of a teammate and we want to see change.’” Mr. Berhalter concluded: “And from that day on there were no issues with this player.”

F. Press Coverage of Gregg Berhalter’s Comments

On December 11th, *The Athletic* published a report that Gio Reyna had struggled with a “lack of effort” at the World Cup and had nearly been sent home. Anonymous sources told *The Athletic* that, after apologizing to his teammates, “the issues with Reyna ended there.”³⁷

On that same day, a partial transcript of Mr. Berhalter’s remarks, “lightly edited for space and clarity,” was made public even though Mr. Berhalter said he believed his account was “off-the-record.” An editor’s note added to the transcript that evening stated: “Berhalter’s comments were at a gathering held under the Chatham House Rule and were not meant to be public, but were erroneously greenlit for publication by someone representing the event organizers.” Sports media quickly concluded the player Mr. Berhalter was referencing was Gio Reyna. For example, Yahoo! Sports reported that day: “According to multiple reports, the first by MLSsoccer.com’s Tom Bogert, the player was Gio Reyna.”³⁸

The next day, Gio Reyna issued a public statement from his Instagram account. The statement read in full:

I hoped not to comment on matters at the World Cup. It is my belief that things that happen in a team setting ought to remain private. That being said, statements have been made that reflect on my professionalism and character, so I feel the need to make a brief statement.

Just before the World Cup, Coach Berhalter told me that my role at the tournament would be very limited. I was devastated. I am someone who plays with pride and passion. Soccer is my life, and I believe in my abilities. I fully expected and desperately wanted to

³⁶ Kevin J. Delaney, *Leadership Tips from the US Men’s Soccer Head Coach*, CHARTER (December 11, 2022), <https://www.charterworks.com/leadership-tips-from-the-us-mens-soccer-head-coach/>.

³⁷ Paul Tenorio and Sam Stejskal, *Gio Reyna apologized to USMNT during World Cup for his lack of effort, sources say*, THE ATHLETIC (December 11, 2022), <https://theathletic.com/3991695/2022/12/11/gio-reyna-usmnt-gregg-berhalter/>.

³⁸ Henry Bushnell, *Gregg Berhalter says he almost sent USMNT player – reportedly Gio Reyna – home during World Cup*, YAHOO! SPORTS (December 11, 2022), <https://sports.yahoo.com/gregg-berhalter-says-he-almost-sent-usmnt-player-reportedly-gio-reyna-home-during-world-cup-234625787.html>.

contribute to the play of a talented group as we tried to make a statement at the World Cup.

I am also a very emotional person, and I fully acknowledge that I let my emotions get the best of me and affect my training and behavior for a few days after learning about my limited role. I apologized to my teammates and coach for this, and I was told I was forgiven. Thereafter, I shook off my disappointment and gave everything I had on and off the field.

I am disappointed that there is continuing coverage of this matter (as well as some highly fictionalized versions of events) and extremely surprised that anyone on the U.S. men's team staff would contribute to it. Coach Berhalter has always said that issues that arise with the team will stay "in house" so we can focus on team unity and progress. I love my team, I love representing my country, and I am focusing now only on improving and growing as a soccer player and a person. I hope that going forward each person involved in U.S. Soccer focuses only on what is in the best interest of the men's national team so we can enjoy great success at the World Cup in 2026.

G. Apparent Motivations for the Reynas' Report to U.S. Soccer

In her second interview, Mrs. Reyna explained that she reported the 1992 Incident to Mr. Stewart because she "was emotional and angry." She explained that they "were all friends" and she "felt very let down by US Soccer." She said that she was "in a very upset state" when she talked to Mr. Stewart on December 11, 2022. Specifically, Mrs. Reyna said she brought up the incident to Mr. Stewart in their phone call on December 11th because Mr. Berhalter has put her in two situations where he hurt two people she "loved beyond words" and she "can't believe a man has done that twice." Mrs. Reyna said she was referring to the fight Mr. Berhalter had with Mrs. Berhalter and the "public outing [of] Gio." She explained further that she told Mr. Stewart about the 1992 Incident because he is a friend and she wanted him to understand her feelings.

In her public statement, Mrs. Reyna confirmed she made the report and called Mr. Stewart "just after the news broke that Gregg had made negative statements about [her] son Gio at a leadership conference."³⁹ She said she had known Mr. Stewart "for years" and "considered[ed] him to be a close friend." She said:

I wanted to let him know that I was absolutely outraged and devastated that Gio had been put in such a terrible position, and that I felt very personally betrayed by the actions of someone my family had considered a friend for decades. As part of that conversation, I told Earnie that I thought it was especially unfair that Gio, who had

³⁹ Doug McIntyre (@BydougMcIntyre), TWITTER (January 4, 2023, 4:04 PM), <https://twitter.com/ByDougMcIntyre/status/1610743933729968147>.

*apologized for acting immaturely about his playing time, was still being dragged through the mud when Gregg had asked for and received forgiveness for doing something so much worse at the same age. Without going into detail, the statements from Gregg yesterday significantly minimize the abuse on the night in question. Rosalind Berhalter was my roommate, teammate and best friend, and I supported her through the trauma that followed.*⁴⁰

During the World Cup, as explained above, Mrs. Reyna and Mr. Reyna made vague references to this incident. Mrs. Reyna told [REDACTED] something along the lines of, “Once this tournament is over, I can make one phone call and give one interview, and his cool sneakers and bounce passes will be gone.” And Mr. Reyna told Mr. McBride, “you guys don’t even know what we know about Gregg.”

We know of nothing that would have prevented Mrs. Reyna from making her report to U.S. Soccer at any time prior to December 11, 2022. When she made this report, she had known about the 1992 Incident for more than 30 years, and Mr. Berhalter had been Head Coach for 4 years. We understand from media reports that two facts were well-known in soccer circles in early December 2022 when the USMNT lost in the Round of 16 at the 2022 FIFA World Cup: (1) Mr. Berhalter’s contract as Head Coach of the USMNT was set to expire on December 31, 2022; and (2) U.S. Soccer had not announced a decision on whether it would offer him a contract extension.⁴¹ Although this was not confirmed by the Reynas, information obtained during the Investigation suggests that when the Reynas contacted Mr. Stewart on December 11, 2022, and informed him about the 1992 Incident, they would have known those two facts. Facts gathered from the Investigation witnesses further inform that, when the Reynas spoke to Mr. Stewart on that night, (1) they disclosed information about Mr. Berhalter to U.S. Soccer that Mrs. Reyna had known for decades; and (2) the information was disclosed at a time when it would be expected to discourage or otherwise influence the organization from offering a contract extension to Mr. Berhalter. Mr. Stewart explained during the Investigation that he believed the Reynas made this disclosure to him so that U.S. Soccer would not hire Mr. Berhalter for another term.

The facts also suggest that Mr. Reyna shared Mrs. Reyna’s motivations for making this disclosure to U.S. Soccer. First, the disclosure was made during an hour-long phone call in which he actively participated. Second, the disclosure is consistent with the comment he made to Mr. McBride on November 24th, claiming that U.S. Soccer did not “even know what we know about Gregg.”

⁴⁰ *Id.*

⁴¹ See, e.g., Jeff Carlisle, *USMNT boss Gregg Berhalter weighs up Europe move amid new contract talk – sources*, ESPN (Dec. 7, 2022), <https://www.espn.com/soccer/united-states-usa/story/4827699/usmnt-boss-gregg-berhalter-interested-in-european-club-options-amid-new-contract-talk-sources>; Nicholas Mendola, *USMNT reportedly opens contract talks with Gregg Berhalter; Good or bad idea?*, NBC SPORTS (Dec. 8, 2022), <https://soccer.nbcsports.com/2022/12/08/usmnt-reportedly-opens-contract-talks-with-gregg-berhalter-good-or-bad-idea/>.

X. The Reynas' Interactions with U.S. Soccer: Legal Analysis

A. Were Any Criminal Laws Violated?

No.

Extortion, the proper legal term for blackmail, is defined in New York Penal Law 155.05(2)(e). One commits extortion when he obtains property by compelling or inducing a person to deliver such property by means of instilling in him a fear that, if the property is not so delivered, the actor or another will: (i) cause physical injury to some person in the future; (ii) cause damage to property⁴²; (iii) engage in other conduct constituting a crime; (iv) accuse some person of a crime or cause criminal charges or removal proceedings to be instituted against him or her; (v) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; (vi) cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; (vii) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; (viii) use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; (ix) perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Based on the facts we obtained, we conclude that the Reynas did not engage in conduct which could be characterized as extortion or blackmail under criminal law. The Reynas did tell Mr. Stewart during the December 11th phone call that they were thinking about starting to spread the story about the 1992 Incident to others privately, which might implicate New York Penal Law 155.05(2)(e)(v), but Mrs. Reyna did not demand something in exchange for not disclosing that information. Thus, the first element of this offense is likely not satisfied.

Attempted extortion is also a criminal offense. New York Penal Law § 110.00 defines an attempt to commit a crime as: "[a] person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime." Specifically, the issue is whether under the facts presented, Mrs. Reyna attempted to instill in Mr. Stewart "a fear that" if he did not do something, Mrs. Reyna would cause some harm to U.S. Soccer and Mr. Berhalter by spreading the story about the 1992 Incident to others privately. However, again, the first element of the offense is likely not satisfied because Mrs. Reyna did not demand something in exchange for not disclosing that information.

⁴² A person's contractual right to employment can constitute a property right for purposes of the extortion statute. See *People ex rel. Short v. Warden of City Prison*, 130 N.Y.S. 698, 701 (1st Dep't 1911) (reversing lower court's ruling that a right to employment was not a property right that could be threatened within the meaning of the extortion statute).

B. Were Any U.S. Soccer Policies Violated?

No.

U.S. Soccer's Fraudulent Conduct and Whistleblower Policy in the Employee Handbook encourages all members of the U.S. Soccer community to report possible fraudulent or dishonest conduct. Additionally, the U.S. Soccer Code of Conduct outlines how to report any Code of Conduct concerns for investigation and resolution. Accordingly, U.S. Soccer encourages all complaints and concerns to be submitted in compliance with its policies.

We reviewed U.S. Soccer's Employee Handbook and Code of Conduct and determined that it does not apply to the Reynas because they are not employees of U.S. Soccer. U.S. Soccer only oversees the league system and is responsible for sanctioning professional leagues. However, the leagues themselves are responsible for admitting and administering individual teams.

For example, the U.S. Soccer Code of Conduct states it applies to the following individuals: (1) employees of U.S. Soccer; (2) independent contractors and volunteers serving U.S. Soccer; (3) all employees of U.S. Soccer's consolidated subsidiaries; (4) all National Team Players during play, training or otherwise to the extent they are included on a National Team Roster; and (5) all U.S. Soccer licensed coaches and referees. The Reynas do not fall under any of these categories.

C. Were Any SafeSport Rules Violated?

No.

The SafeSport Code for the U.S. Olympic and Paralympic Movement applies to all individuals who participate in sport within the Olympic and Paralympic Movements. The SafeSport Code defines these individuals as "Participants." This includes a wide range of individuals who participate in the sport in various capacities, including members, license holders, or employees of a NGB or its Local Affiliated Organizations ("LAO"), as well as volunteers, trainers, coaches, athletes, or contracted individuals who have been "authorized, approved, or appointed by an NGB, LAO, or the USOPC to have regular contact with or authority over Minor Athletes." Participants also include those who are otherwise considered to be "within the governance or disciplinary jurisdiction of an NGB, LAO, or the USOPC." Accordingly, this Code applies to Mr. Reyna because the MLS is an affiliate of U.S. Soccer, and Mr. Reyna is an employee of an MLS club. Mr. Reyna served as the Sporting Director of New York City FC and Austin FC and is still responsible for technical matters at Austin FC in his new role as technical advisor.

The Code prohibits the following conduct: (a) Criminal Charges or Dispositions; (b) Child Abuse; (c) Sexual Misconduct; (d) Emotional and Physical Misconduct, including Stalking, Bullying, Hazing, and Harassment; (e) Aiding and Abetting; (f) Misconduct Related to Reporting; (g) Misconduct Related to the Center's Process; (h) Other Inappropriate Conduct; (i) Violation of Minor Athlete Abuse Prevention Policies / Proactive Policies.

We reviewed the Code and determined that the only prohibited conduct that could arguably apply to Mr. Reyna's interactions with U.S. Soccer officials is the prohibition against harassment.

However, we determined that Mr. Reyna most likely did not engage in harassment as defined by the Code. The Code defines harassment as:

Repeated or severe conduct that (a) causes fear, humiliation or annoyance, (b) offends or degrades, (c) creates a hostile environment (as defined above), or (d) reflects discriminatory bias in an attempt to establish dominance, superiority or power over an individual or group based on age, race, ethnicity, culture, religion, national origin, or mental or physical disability; or (e) any act or conduct described as harassment under federal or state law. Whether conduct is harassing depends on the totality of the circumstances, including the nature, frequency, intensity, location, context, and duration of the behavior.

The Code also states that: “[c]onduct may not rise to the level of Harassment if it is merely rude (inadvertently saying or doing something hurtful), mean (purposefully saying or doing something hurtful, but not as part of a pattern of behavior), or arising from conflict or struggle between persons who perceive they have incompatible views or positions.” Accordingly, Mr. Reyna’s conduct likely does not rise to the level of harassment because it was characterized by U.S. Officials as merely rude or mean and only arises from a conflict between persons who have incompatible views or positions related to decisions regarding Mr. Reyna’s children.

D. Were Any FIFA Regulations Violated?

The complaints made by Mr. Reyna may raise a legitimate issue about whether he violated FIFA’s rules and regulations.

As discussed above, the Code applies to “all officials and players.” We conclude based on our understanding of the facts that Mr. Reyna was an “official” while serving as Sporting Director of New York City FC and Austin FC because he was “responsible for” “administrative matters” in a “club.”

Our review of applicable policies suggests that Mr. Reyna’s conduct may have implicated one or more of the following FIFA Code of Ethics rules and regulations:

i. Article 13. General Duties

- 3 – “Persons bound by this Code shall appreciate the impact their conduct may have on FIFA’s reputation, and shall therefore behave in a dignified and ethical manner and act with complete credibility and integrity at all times.”
- 4 – “Persons bound by this Code must refrain from any activity or behaviour or any attempted activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the sections that follow.”

ii. Article 19. Conflicts of Interest

- 1 – “Persons bound by this Code shall not perform their duties (in particular, preparing or participating in the taking of a decision) in situations in which an existing or potential conflict of interest might affect such performance. A conflict of interest arises if a person bound by this Code has, or appears to have, secondary interests that could influence his ability to perform his duties with integrity in an independent and purposeful manner. Secondary interests include, but are not limited to, gaining any possible advantage for the persons bound by this Code themselves or related parties as defined in this Code.”

iii. Article 23. Protection of Physical and Mental Integrity

- 1 – “Persons bound by this Code shall protect, respect and safeguard the integrity and personal dignity of others.
- 3 – “Persons bound by this Code must refrain from all forms of physical or mental abuse, all forms of harassment, and all other hostile acts intended to isolate, ostracise or harm the dignity of a person”

iv. Article 25. Abuse of Position

- 1 – “Persons bound by this Code shall not abuse their position in any way, especially to take advantage of their position for private aims or gains.”

Information obtained during the Investigation suggests that Mr. Reyna participated in conduct in which he attempted to influence U.S. Soccer officials’ decisions related to his children. We were informed that Mr. Reyna voiced periodic complaints to U.S. Soccer officials and staff beginning in or around 2016 through the 2022 World Cup. Information obtained during the Investigation suggests that Mr. Reyna may have used his status as arguably one of the best soccer players in the United States, while also serving in a position that constitutes an “official,” as that term is defined under the FIFA Code of Ethics, to attempt to influence decisions by U.S. Soccer officials and staff concerning his children. The information suggests that he used his direct line of communication with U.S. Soccer officials in an attempt to gain advantages or preferential treatment for his children. For example, there is evidence that Mr. Reyna made complaints to U.S. Soccer officials about his son’s playing time, penalties and suspensions his son received, and selection decisions for U.S. Soccer camps in an attempt to change those outcomes. Whether FIFA would view these acts as a violation in the specific context of an official speaking to U.S. Soccer employees about his children is a question that we are not in a position to assess.