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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 28, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

According to the State Department's Trafficking in Persons Report, "[t]hose who patronize the commercial sex industry form a demand which traffickers seek to satisfy."¹ In February, 180 victims' advocacy groups told this Committee that "[t]he elimination of sex trafficking is fundamentally linked to targeting the demand for commercial sex. Any effort to prevent sex trafficking must focus on the sex buyers and facilitators."² I am writing to express my concern that the Department of Homeland Security (DHS) may not be taking adequate steps to deter its own employees from buying sex and thereby contributing to this demand.

Earlier this month, news outlets reported that at least two Federal Air Marshals employed by the Transportation Security Administration (TSA) were under investigation for engaging in sexual activity with prostitutes and for recording those acts on government-issued cell phones.³ TSA investigators reportedly discovered video-footage of this misconduct while examining the cell phone of one of the employees during a separate investigation of a worker's compensation claim.⁴ DHS' accidental discovery of this misconduct raises a question as to whether there are other cases of such misconduct that have gone undetected.

This report follows the 2012 findings of the Justice Department's Office of Inspector General (OIG) and the Department of Homeland Security's (DHS) OIG that U.S. Secret Service (USSS) employees in Colombia paid women for sexual encounters.⁵ In response to this incident,

¹ U.S. Department of State, Trafficking in Persons Report (June 2008), 24.

² Letter to Sen. Charles E. Grassley, Chairman, and Sen. Patrick J. Leahy, Ranking Member, Sen. Comm. on the Judiciary (Feb. 23, 2015), <http://sharedhope.org/wp-content/uploads/2015/02/JVTA-support-letter-2015.pdf>.

³ Alicia A. Caldwell, "At least 2 US air marshals implicated in prostitution probe," *Associated Press*, Sept. 16, 2015, <http://bigstory.ap.org/article/7cdcd0aa04b94faeaab70bde88e9339f/least-2-us-air-marshals-implicated-prostitution-case>; see also Rene Marsh, "Federal Air Marshals allegedly solicited prostitutes," *CNN*, Sept. 17, 2015, <http://www.cnn.com/2015/09/17/politics/air-marshals-prostitutes-hearing/> [hereinafter "CNN Article."].

⁴ CNN Article.

⁵ Memorandum from Charles Edwards, Acting Inspector General, U.S. Department of Homeland Security, to the Hon. Janet Napolitano, Secretary, U.S. Department of Homeland Security, (Sep. 26, 2012), at 1-3; see also Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Joe Lieberman, Chairman, and Sen. Susan Collins, Ranking Member, Sen. Comm. on Homeland Sec. and Gov. Affairs (Dec. 20, 2012), at 3.

USSS issued new guidance and policies governing the off-duty conduct of its employees, but did not explicitly ban the procurement of commercial sex.⁶

According to the Office of the Attorney General, regardless of whether prostitution is legal or tolerated in a particular jurisdiction, “soliciting prostitutes creates a greater demand for human trafficking victims and a consequent increase in the number of minor and adult persons trafficked into commercial sex slavery.”⁷ Further, according to the State Department:

It is the position of the U.S. government that the procurement of commercial sex can fuel the demand for sex trafficking. . . . [A] victim of sex trafficking may not appear to be under duress, given that coercion and threats of violence are often used to hold people in servitude [A]ssumptions based on appearances as to whether or not an individual is 18 years old are frequently erroneous, as many brothel managers and pimps dress minors to look older.⁸

Given the gravity of these concerns, a bright line rule is needed to warn all DHS employees, not just the Secret Service, to steer well clear of contributing to the demand for human trafficking, regardless of whether prostitution is legal or tolerated in a particular jurisdiction. To achieve true deterrence, a sufficiently serious penalty must be attached to a violation of that rule.

Anything short of termination for employees who violate the policy is not zero tolerance. The failure to adopt such a zero tolerance policy may send a message to would-be johns, pimps, and human traffickers, that the U.S. Department of Homeland Security tolerates employees who solicit prostitutes.

Accordingly, please provide responses to the following questions by October 9, 2015:

1. Under Title 5 of the United States Code, federal employees are entitled to certain federal civil service protections.⁹ None of these protections preclude DHS from adopting a zero tolerance policy that requires a minimum penalty of *proposed* termination for all DHS employees who are determined to have engaged in the solicitation of prostitution, without exception. Such a policy would not prevent affected employees from replying to the proposal, furnishing exculpatory evidence, appealing unfavorable decisions, or from exercising any of the other due process rights enumerated above. Accordingly, would you consider adopting such a policy? If not, please explain why not.

⁶ Memorandum from Charles Edwards, Deputy Inspector General, U.S. Department of Homeland Security, to the Hon. Mark Sullivan, Director, U.S. Secret Service, (Jan. 24, 2013), at 13-14.

⁷ U.S. Department of Justice, Office of the Attorney General, Memorandum for all Department Personnel, Prohibition on the Solicitation of Prostitution (Apr. 10, 2015).

⁸ U.S. Department of Justice, Office of Inspector General, *Review of Policies and Training Governing Off-Duty Conduct by Department Employees Working in Foreign Countries* (Jan. 2015), at 40.

⁹ These protections include (1) advance notice of the proposed personnel action; (2) the right to reply to proposed discipline; (3) the right to furnish evidence to refute allegations; (4) representation by counsel; (5) a written decision and reasons supporting it from the Department; and (6) the right to appeal to the Merit System Protection Board (MSPB) and ultimately, a right of judicial review of the MSPB decision.

2. Will you establish a Department-wide policy making clear that soliciting, procuring, or accepting commercial sex is prohibited? If so, will you clarify that this rule applies at all times during an individual's employment, including while off duty or on personal leave, and applies regardless of whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic?
3. According to reports, the two Federal Air Marshals involved in the prostitution allegations have been placed on an indefinite suspension without pay, pending an active investigation by TSA.¹⁰ Reportedly, a third employee has resigned from the agency.¹¹
 - a. On what date did TSA initiate an investigation into these allegations?
 - b. Was the OIG ever notified of these allegations? If so, when? If not, why not?
 - c. For what alleged misconduct was the now-retired employee investigated?
 - d. On what date did the third employee resign from the Department?

Please number your responses according to their corresponding questions. Should you have any questions, please contact Jay Lim of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable John Roth
Inspector General
U.S. Department of Homeland Security

¹⁰ CNN Article.

¹¹ CNN Article.