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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 23, 2015

**VIA ELECTRONIC TRANSMISSION**

The Honorable Loretta E. Lynch  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Lynch:

On October 23, 2015, I sent a letter describing an apparent instruction by Assistant Chief Inspector Sharon Duncan of the U.S. Marshals Service Office of Internal Affairs, to a federal employee to refrain from any direct communications with this Committee.<sup>1</sup> Among other things, that letter asked what steps the Department would take to prevent Assistant Chief Inspector Duncan from interfering with employees' rights to speak directly to Congress and to determine whether the USMS has violated the relevant statutory and appropriations restrictions. As the Department and the USMS more closely examine these allegations and work to provide a timely and complete response to the October 23, 2015, letter, I have additional questions regarding the USMS "Congressional Affairs" policy.<sup>2</sup>

Specifically, I am concerned that USMS Policy may present employees with an inaccurate or incomplete understanding of the role and responsibility of the Office of Congressional Affairs—as well as their own rights and obligations in communicating with Congress. The policy states:

The Office of Congressional Affairs (OCA) is the only office authorized to communicate with Members of Congress and their staffs on behalf of the USMS. Only the Director, Chief of Staff, Associate Director of Administration, Associate Director for Operations,

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<sup>1</sup> Letter from Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary to Loretta E. Lynch, Attorney General, U.S. Department of Justice (Oct. 23, 2015).

<sup>2</sup> United States Marshals Service Policy Directives, General Management, Section 1.3, Congressional Affairs (Effective 5/1/2009, Last Update 10/05/2010).

or the OCA may authorize exceptions to this directive. If an exception is authorized, the employee meeting with the Member or Staff will submit a written report of the meeting to the OCA within five business days of such meeting...Employees may contact Members of Congress and their staffs to express their personal views on legislation...or seek personal assistance on issues of concern.

Although the policy speaks to employees' ability to communicate "their personal views on legislation... or seek personal assistance on issues of concern," it does not explicitly address protected disclosures or fully explain what it means to speak "on behalf of the USMS." The Committee understands and appreciates the agency's need to coordinate official positions on matters of policy, privilege, and procedure; however, whistleblowers have expressed their own belief and concern that this policy may prevent them from communicating with this Committee or with other Members of Congress. Moreover, evidence suggests that the policy may be contributing not only to employees' but also managers' misunderstanding of the applicable rights and obligations.

In addition to the allegations against USMS OPR described in the October 23, 2015, letter, the Committee has received reports that USMS leadership have affirmatively discouraged direct communication with Members of Congress and their staffs. Some managers' directions apparently have left employees with the impression that *all* communication, *no matter the content*, must be funneled through their chain of command and the Office of Congressional Affairs. The policy thus appears to cause or potentially contribute to a chilling effect on whistleblowers' willingness and ability to disclose waste, fraud, and abuse to Congress.

The USMS policy thus also may deprive Congress of precisely the type of unfiltered information from whistleblowers that is necessary for the Committee's various functions. As noted in previous letters to the Department, 5 U.S.C. § 7211 provides as follows:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

Furthermore, two "anti-gag" appropriations riders prevent the USMS from spending any appropriated funds to enforce such a policy as described by Section 1.3 or to pay the salary of any USMS who attempts or threatens to enforce such a policy. Specifically, one of the appropriations riders prohibits the use of funds to enforce any government nondisclosure policy, form, or agreement that does not make it clear that disclosures to Congress are still allowed.<sup>3</sup> The other "anti-gag" appropriations rider provides, in relevant part, as follows:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who...prohibits or prevents, or attempts or threatens to prohibit or prevent, any other

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<sup>3</sup> Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, (2014) at Div. E, Title VII, Sec. 747.

officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress *in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee* in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.<sup>4</sup>

On February 13, 2015, I sent a letter to the FBI regarding a similar policy that seemed to discourage employees from communicating with Congress.<sup>5</sup> On February 27, 2015, the FBI responded that they had modified the policy, “[R]evising the section that articulates the policy’s purpose to emphasize that it should be read and applied consistent with federal law, including whistleblower protections.”<sup>6</sup>

Hence, by December 7, 2015, please describe what steps the USMS is taking to clarify for its employees and contractors that the aforementioned current policy does not interfere with or prevent an USMS employee or contractor’s statutorily protected right to communicate directly with Congress.

If you have any questions, please contact DeLisa Lay of my Committee staff at (202) 224-5225. Thank you for your cooperation regarding this matter.

Sincerely,



Charles E. Grassley  
Chairman  
Senate Committee on the Judiciary

cc: Patrick J. Leahy  
Ranking Member  
Senate Committee on the Judiciary

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<sup>4</sup> *Id.* at Sec. 713 (emphasis added).

<sup>5</sup> Letter from Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary to FBI Director James Comey (Feb. 13, 2015).

<sup>6</sup> Letter from the FBI’s Office of Congressional Affairs to Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Feb. 27, 2015).