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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 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:

I have written several letters to you and to Deputy Attorney General Yates expressing my deep concern over allegations of systemic whistleblower retaliation within the U.S. Marshals Service (USMS). Since I began this inquiry in March, I have received more than 70 reports of retaliation and other forms of waste, fraud, and abuse at the USMS. The alleged retaliation takes many forms and targets all methods of disclosure—including to this Committee.

This letter raises yet another concern of improper handling of whistleblower disclosures. According to information obtained by the Committee, the USMS has sought to silence whistleblowers who are exercising their right to speak to Congress. Attached is a troubling email exchange with the USMS Office of Professional Responsibility (OPR). That office allegedly seized the privileged attorney-client communications and protected congressional disclosures of another whistleblower earlier this year and has refused to discuss what steps, if any, it has taken to ensure that the information would be appropriately safeguarded.<sup>1</sup>

The attached email illustrates that USMS OPR is now attempting to prevent federal employees from having direct communications with Congress. In response to notification that a federal employee has communicated with Congress, USMS OPR official Sharon Duncan responded, “[p]lease do not release anything to anyone other than the [Office of the Inspector General].”

The USMS may prefer not to have disclosures reach this Committee, but the law guarantees that federal employees have the right to communicate with Congress. As you are aware, whistleblower communications with the Committee are protected disclosures, and federal employees have Constitutional rights to express their concerns to Congress under the First Amendment. Denying or interfering with employees’ rights to furnish information to Congress is

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<sup>1</sup> Letter from Charles E. Grassley, Chairman, and Patrick J. Leahy, Ranking Member, U.S. Senate Committee on the Judiciary to Loretta E. Lynch, Attorney General, U.S. Department of Justice (July 31, 2015); Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Charles E. Grassley, Chairman, and Patrick J. Leahy, Ranking Member, U.S. Senate Committee on the Judiciary (Aug. 10, 2015).

also against the law.<sup>2</sup> Federal officials who even attempt to interfere with employees' rights to communicate directly with Congress are not entitled to have their salaries paid by taxpayer dollars.<sup>3</sup> Specifically, Section 713 of the Consolidated and Further Continuing Appropriations Act denies appropriated funds to pay "the salary of any officer or employee of the Federal Government, who . . . prohibits or prevents, or attempts or threatens to prohibit or prevent" another federal officer or employee from communicating with Congress.<sup>4</sup>

As this Committee is an entity "other than the OIG," Ms. Duncan's instruction not to release "anything" seems to be, at the very least, an attempt to prohibit or prevent further such communications.

In the Department's letter of June 24, 2015, to myself and Senator Lankford, Assistant Attorney General Peter Kadzik wrote that the Department shares the view "that whistleblowers provide an important service and are a vital part of ensuring good government and stopping waste, fraud, and abuse."<sup>5</sup> Mr. Kadzik further wrote that "the Department has many measures in place aimed at ensuring that all employees, managers, and supervisors are fully aware of whistleblowers' rights and the Department's responsibilities."<sup>6</sup> Mr. Kadzik cited the "No Fear Act" training required of all new employees, as well as the Department's online resources regarding the Whistleblower Protection Enhancement Act of 2012.<sup>7</sup> He also notes that the Department is conducting an ongoing review of the U.S. Marshals Service human resources programs and will examine training provided to "employees, managers, and supervisors" regarding applicable rights and responsibilities under the whistleblower laws.<sup>8</sup> Finally, the Committee is aware that the USMS very recently has issued whistleblower protection training to its employees.

Those are all good first steps, but they are not enough if the laws and rules regarding whistleblower protection are not actually respected and enforced by Department personnel.

Accordingly, please respond to the following questions by November 4, 2015:

1. Please describe the steps you will take to prevent Ms. Sharon Duncan from further attempting to interfere with a whistleblower's right to speak to Congress.
2. Is Ms. Duncan's salary paid from appropriated funds?

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<sup>2</sup> 5 U.S.C. § 7211 states: "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."

<sup>3</sup> Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 713, 128 Stat. 2129, 2382 (2014), states: 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 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 . . . or . . . disciplines . . . any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions . . . by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress[.]

<sup>4</sup> *Id.*

<sup>5</sup> Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Dep't of Justice, to Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, and James Lankford, Chairman, Subcommittee on Regulatory Affairs & Fed. Mgmt., U.S. Senate Committee on Homeland Sec. & Governmental Affairs (June 24, 2015).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

3. With respect to Mr. Jeffrey Foster specifically and other whistleblowers generally, what steps will you take to ensure that their right to speak with Congress is not infringed?
4. Please provide copies of all USMS policies or written guidance related to employee communications with Congress, including all written communications to USMS employees referencing 5 U.S.C. § 7211 or § 713 of the Consolidated and Further Continuing Appropriations Act (or the parallel restrictions from previous appropriations bills).
5. What steps will you take to evaluate whether the USMS has in this instance, or in other instances, violated appropriations restrictions by paying sums unavailable for the salary of employees who attempt to prevent federal employees from directly communicating with Congress?

I appreciate your continued cooperation and assistance in this matter. If you have any questions, please contact DeLisa Lay of my staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

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

The Honorable Michael E. Horowitz  
Inspector General  
U.S. Department of Justice

The Honorable Carolyn N. Lerner  
Special Counsel  
U.S. Office of Special Counsel