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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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August 11, 2017

**VIA ELECTRONIC TRANSMISSION**

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Sessions:

This letter follows multiple inquiries I have sent to the Department and the U.S. Marshals Service (USMS) in the last few months regarding wasteful spending, dangers to officer safety, and reprisal within the USMS. I have yet to receive any response to any of my letters, the first of which I sent in March. That letter expressed deep concern regarding the actions of USMS leadership in retaliating against an employee who made protected disclosures to my office almost immediately after he did so, and to interfere with the Committee's oversight.<sup>1</sup>

Instead of responding to my inquiries, the agency has apparently expended significant time and resources to craft misleading statements dismissing and smearing the efforts of its employees to assist with the Committee's oversight and legislative efforts.

Most recently, my office and others requested the views of the Federal Managers Association (FMA) regarding legislation we are currently considering related to hiring at the USMS. Over the last two and a half years, my office has received calls and e-mails from more than 100 current and former USMS employees, a significant portion of which relate to hiring and promotion practices within the agency. Pursuant to our constitutional responsibilities and particularly in light of these concerns, we have a clear

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<sup>1</sup> 18 U.S.C. § 1505 (Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress" "[s]hall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.").

obligation to carefully consider this issue and the best ways to address it. We are appreciative of FMA's willingness to share the views and concerns of its members.

Thus, it was with great disappointment that I received the attached letter yesterday from the President of the FMA, and learned that Members' efforts to ensure we are fully informed on an important legislative matter appear to have resulted in the agency's complaints against the individuals who agreed to assist. As the attached letter and exhibits indicate, the FMA believes these complaints are an effort to intimidate that organization and its members and discourage communication with Congress.

As you know, such communication is protected by law.<sup>2</sup> Moreover, it is not the province of the Acting Director of the USMS to dictate or control what information Members of Congress may receive and consider in determining how best to exercise their constitutional power to legislate.<sup>3</sup> Any action, such as that taken here, seeking to impede or interfere in these matters is unacceptable. I trust that this behavior will no longer continue under your leadership.

Please provide a written reply letting me know what steps you are taking to correct this problem and ensure that Justice Department components do not attempt to interfere with communications with the Committee.

Sincerely,



cc: The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary

The Honorable Orrin Hatch  
Committee on the Judiciary

The Honorable Christopher Coons  
Committee on the Judiciary

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<sup>2</sup> U.S. Const. amend. I; 5 U.S.C. § 2302; 5 U.S.C. § 7211 (2012) ("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."); Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, div. E, title VII, 129 Stat. 2475, § 713, (2015); Letter from Susan A. Poling, Gen. Counsel, U.S. Gov't Accountability Office to Charles E. Grassley, Chairman, S. Comm. on the Judiciary, Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, and Bob Goodlatte, H. Comm. on the Judiciary re: GAO Op. B-325124 (Apr. 5, 2016) (*available at* <http://www.gao.gov/assets/680/676341.pdf>).

<sup>3</sup> U.S. Const. art. I, § 1.



## United States Marshals Service

Chapter 373

[fma.usmarshals@gmail.com](mailto:fma.usmarshals@gmail.com)

August 10, 2017

The Honorable Charles E. Grassley, Chairman  
United States Senate  
Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

Dear Mr. Chairman:

For the better part of the past 2 ½ years, your Committee has increased its important oversight function of the U.S. Marshals Service (USMS). We understand more than 100 employees have contacted your office to share individual experiences of questionable management practices, some that have prompted additional inquiry in the form of letters, floor speeches, and press releases by the Committee. One recent example was a manager who initially made legitimate and repeated attempts, working within his USMS chain-of-command, to raise serious concerns involving officer safety. His appeals were apparently ignored until the Committee issued a letter to the USMS Acting Director, prompting immediate action on the replacement of some 1,800 units of expired or expiring body armor. The USMS manager's calls for action and your subsequent intervention will save the lives of Deputy U.S. Marshals.

The latest method by USMS agency leadership to silence agency managers who communicate with Congress is outlined in a letter dated August 3 from the Acting Director to the national office of the Federal Manager's Association (FMA). We believe the letter was designed to undermine and have a chilling effect on the viewpoints of our officers and membership, all federal employees organized to improve government operations and save taxpayer dollars. Regrettably, the Acting Director did not first discuss his concerns with me or our officers before his staff presumably penned this letter. I have enclosed it for your review.

The USMS FMA has enjoyed a nearly 20-year relationship between our chapter and the USMS, reinforced with a signed, favorably written, long-term "Consultative Agreement" with agency leadership. The objectives of the Agreement are "...improvement of managerial effectiveness and resolution of problems affecting agency operations and employees, including supervisors and managers..." More specifically, the purpose of consultation and communication is for improving:

- a. Agency operations;

- b. Personnel management;
- c. Employee effectiveness;
- d. Exchange of information; and,
- e. Establishment of policies, rules, and regulations.

Managers across the USMS regularly speak with our chapter officers. Views are consolidated and, when appropriate, trends are shared with agency leadership. Some topics in the past have given the Acting Director reason to pause and chart a different course. One example included the surge of protests earlier this year with non-competitively promoting more than 60 operational employees through an accretion of duties exercise. After our chapter sent letters voicing a variety of manager's concerns the agency changed its initial position to use the more transparent competitive process, although more recently may have abandoned the initiative altogether based on a reference to our chapter in one of the Committee's two recent letters on officer safety.

Just last week our chapter shared with our membership the Committee's letter to the GAO requesting an assessment of any relationship in the USMS between the use of internal affairs investigations and disciplinary action, and punishment for reporting wrongdoing. Our chapter previously requested that the USMS Acting Director undertake a similar review in April 2016 that seemingly has seen no meaningful progress.

In his recent letter, the Acting Director refers to "a cordial consultative relationship [between the USMS and FMA]...viewed as mutually beneficial and collaborative, working for the benefit of the Agency and its employees and managers." Conversely, he also suggests our officers are "undermin[ing] significant Agency initiatives." Regrettably, no specific example(s) were provided and I am not aware of any instances in the nearly past two decades of efforts to do so by our officers or members.

It raises questions if the Acting Director is attempting to diminish, control, and intimidate USMS managers who have communicated with Congress and/or provided constructive feedback to agency leadership. I believe our chapter managers may very well be protected as federal employees of the Department of Justice under the Whistleblower Protection Enhancement Act. Surely our right to communicate with Congress is safeguarded?

We raise these points because we speculate your Committee's invitation to provide context and perspective regarding S. 1124 may have been one triggering event prompting the Acting Director's letter. Our Vice-President for Law Enforcement Operations met with Committee staff last month to communicate concerns with the proposed legislation and/or views designed to improve it. The information shared was not meant to "further the personal agenda of certain FMA local officer or officers," as the Acting Director surreptitiously asserts, but rather is the opinions of a larger segment of our managerial workforce. In response, he recently suggested "a small group" opposes the legislation. His assessment, however, is not based in fact.

Regular meetings with agency leadership have improved communication on a variety of viewpoints, designed to strengthen agency operations and save taxpayer dollars. We have consistently conducted ourselves in a manner that supports our mission to provide excellence in public service. Interaction between agency leadership and our officers ceased, however, following our engagement with Congress regarding a topic(s) the Acting Director views as a “significant agency initiative” (excepted service hiring authority). Accordingly, the recent letter to the FMA national office threatening a more formal disassociation with our chapter, its officers, and membership, is perceived to be a form of reprisal and appears to be an effort to interfere with our communication with Congress as federal employees.

We have extended multiple offers to meet with the Acting Director. These efforts, “specifically since May 2017,” have gone ignored. His recent comments to agency managers are troubling and appear to be aimed at having a chilling effect on employees who now risk being publicly scorned for having diverse viewpoints to improve government programs and operations, to include saving taxpayer dollars.

Again, the positions we have taken have been professional with a goal of improving governance at the USMS. Neither our chapter officers, nor any other individual agency manager, who provides information to Congress or any other investigatory agency (*e.g.*, OIG, OSC, GAO, etc.) should be subjected to even the appearance of retaliation, intimidation, or veiled threats—verbal or written, more particularly in a letter threatening to end the agency’s relationship with the FMA. The 2 ½ year written record of Committee oversight involving agency leadership misconduct and retaliatory behavior is alarming. It may explain a recent request to GAO to study conflicts within the USMS disciplinary process.

We denounce any attempt to retaliate against an employee for communicating with Congress and/or reporting wrongdoing. We appreciate your Committee’s invitation to hear from us and we look forward to ongoing and meaningful dialogue regarding opportunities to improve government operations and programs, and save taxpayer dollars.

The Acting Director has shared with agency managers that the Administration does not intend to nominate him, but another candidate in the near term, to fill the vacant USMS Director’s position. He also clarified on a recent national management conference call that his mandatory retirement date of September 2017 will be extended for a brief period of time pending the arrival of new agency leadership.

We also look forward to working closely with the soon-to-be-named Director that we believe will enjoy a supportive, ongoing, and meaningful relationship with agency managers and our chapter. Of the three documents I have enclosed with this letter, one recently shared with our Vice-President for Law Enforcement Operations, demonstrates the apparent retaliatory behavior by agency leadership when a manager communicates with the Committee. Most troubling, the Acting Director appears to have followed suit towards “certain FMS local officer or officers” who accepted an invitation to share the views—opposing or otherwise—of agency managers on a matter he considers to be a “significant agency initiative.”

We would appreciate you sharing this letter, as well as the enclosures, with the full Committee membership. We believe it offers context and perspective regarding the important, rigorous, and ongoing oversight work of the USMS that has been underway for the past 2 ½ years.

Sincerely,

*Dave Barnes*

Dave Barnes  
President

Enclosure – Letter dated August 3, 2017, from David L. Harlow, Acting Director, U.S. Marshals Service, to Renee M. Johnson, President, Federal Manager’s Association

Letter dated March 27, 2017, from Charles E. Grassley, Chairman, Senate Judiciary Committee, to Jeff Sessions, Attorney General, Department of Justice, and David Harlow, Acting Director, U.S. Marshals Service

Chronological listing of Committee letters, floor speeches, and press releases

cc: Renee M. Johnson, President  
Federal Manager’s Association

Bob Goodlatte, Chairman  
House Committee on the Judiciary

Gene L. Dodaro, Comptroller General  
U.S. Government Accountability Office



**U.S. Department of Justice**

United States Marshals Service

*Office of the Director*

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*Washington, DC 20530-0001*

August 3, 2017

Ms. Renee M. Johnson  
President  
Federal Managers Association  
1641 Prince Street  
Alexandria, Virginia 22314

Re: Federal Managers Association Chapter 373 – United States Marshals Service

Dear Ms. Johnson:

I reach out to you as the head of the national Federal Managers Association (FMA) to assist the United States Marshals Service (USMS) in its recent interactions with Local FMA Chapter 373, associated with the USMS.

Local Chapter 373 has been in existence for more than 10 years, and until recently, USMS leadership has had a cordial consultative relationship with the FMA chapter, to include periodic meetings to discuss issues of interest or concern to its members. We have viewed that relationship as mutually beneficial and collaborative, working for the benefit of the Agency and its employees and managers. However, recent events have prompted me to question whether continued interaction with the FMA will be worthwhile. Specifically, since May 2017, there have been several widely disseminated emails sent, and outside meetings held, under the auspices of the FMA Local Chapter which appear to be designed to undermine significant Agency initiatives and to further the personal agenda of certain FMA local officer or officers. We view these efforts to be contrary to the purpose of any positive consultative relationship or the mutual benefit of the USMS and those employees who are members of the FMA Local Chapter. As such, we question whether any continuing relationship with FMA is viable.

Accordingly, I request a meeting with you and the Chapter President of Local Chapter 373, Mr. David Barnes, to discuss this unfortunate turn of events and to see if there is some way to remedy the current situation and move forward. Should you be amenable to such a meeting, please feel free to contact me at 202-740-1600.

Sincerely,

A handwritten signature in black ink, appearing to read "D. L. Harlow".

David L. Harlow  
Acting Director

cc: Mr. David Barnes  
Chapter President, Local Chapter 373  
Federal Managers Association