



U.S. Department of Justice

United States Marshals Service

Office of Congressional Affairs

Washington, DC 20530-0001

February 11, 2022

The Honorable Roger Wicker
United States Senator
555 Dirksen Senate Office Bldg
Washington, DC 20510

Dear Senator Wicker,

This responds to your letters to Director Donald Washington dated May 26, 2021, and Director Ronald Davis on November 30, 2021, regarding the Investigations and Threat Management Service (ITMS), a Special Deputation program administered by the United States Marshals Service (USMS) at the United States Department of Commerce (USDOC). USMS initially responded to your May 26, 2021 letter by providing your staff with a briefing on July 13, 2021. We provide this further response to the issues raised in your initial and subsequent letter today.

As you know, after investigating multiple allegations, USDOC's Office of the Inspector General (OIG) concluded that misconduct had taken place by certain USDOC employees who, among other things, exceeded the limited special deputation authorities received from USMS for the purpose of protecting the Secretary of Commerce.¹ Subsequently, the USMS took the appropriate steps to revoke the deputation of 6 specially deputized USDOC personnel. These deputations were cancelled September 30, 2021.

Under 28 C.F.R. § 0.112, the USMS has the authority to administer the Special Deputation program. This authority gives USMS the ability to deputize qualified selected officers to perform the functions of a Special Deputy U.S. Marshal when law enforcement needs so require. To be eligible for special deputation the selected officer must meet multiple requirements, including:

- Officers must have successfully completed a basic law enforcement training program or military equivalent, and/or a basic protective services training program. Those who had a 5-year break in law enforcement service must show proof of completing

¹ Department of Commerce Office of Inspector General ROI 19-0714; *see also* Office of the General Counsel, U.S. Dep't of Commerce, *Report of the Programmatic Review of the Investigations and Threat Management Service* (Sept. 3, 2021), available at www.commerce.gov/sites/default/files/2021-09/20210903-ITMS-Report.pdf.

law enforcement continuing education within the past year of signing an application for special deputation.

- Officers must have at least one year of basic law enforcement experience either at the local, state, or federal level to include general arrest authority and must provide their most recent authorized firearm qualification.
- Officers must read and agree to comply with the deadly force and use of less than lethal device policies of either their sponsoring agency or the Department of Justice.
- Officers must be U.S. Citizens.
- Officers must have no domestic violence convictions.
- Officers cannot be the subjects of current internal investigations by their employer.

The USMS special deputations unit is comprised of two full time government employees and four contractor positions. Our focus is on ensuring that qualified officers are approved for a justified law enforcement need. The majority of the approximately 14,000 currently active special deputations are for state and local law enforcement officers who serve on federal task forces. Currently, there are approximately 140 personnel with active special deputations specifically to provide protective services in seven different federal agencies. USMS currently has 12 special deputations at the USDOC, which provide protective services for the Secretary of Commerce.

To initiate any special deputation, the federal sponsoring agency must submit an application to the USMS. Once the application is received, the USMS coordinates the approval process with both the Department and the sponsoring federal agency. Once approved, but prior to being sworn in as a special deputy, law enforcement officers take an oath and must agree to conditions and limitations of the deputation. USMS does not systematically record application denials as a part of our administrative process.

Once the selected officer is deputized, the sponsoring agency is responsible for overseeing the conduct of the specially deputized officers, and misconduct allegations are the responsibility of the sponsoring agency to adjudicate. The primary reason for this process is because special deputies are not USMS employees. The special deputy's employing agency or the OIG overseeing the sponsoring agency are the only authorized entities to investigate their employee misconduct. If misconduct is substantiated, in most cases the sponsoring agency will request to terminate the special deputation, though USMS also retains the authority to unilaterally terminate a deputation at any time. During our briefing on July 13, 2021, we discussed one USMS interaction with USDOC OIG in 2017 which did not substantiate misconduct, and another in 2020 which was substantiated by USDOC OIG.

USMS is taking actions to safeguard the special deputation process. First, we have amended the special deputation application to require the sponsoring agency to inform USMS when credible allegations resulting in likely disciplinary actions are being contemplated. This should alert us of allegations that might present after the deputation has been approved. Second, we are clarifying and standardizing protective detail authorities to ensure that these special law enforcement mission areas are clear and consistent across the federal government.

In the case of the USDOC, the purpose of special deputations was to provide protective services for the Secretary of Commerce. As the USDOC Office of General Counsel (OGC) found in its internal review, USMS did not intend for its special deputations to give the USDOC authority to initiate criminal or counterintelligence operations, or to conduct any law

enforcement activities unrelated to the protection of the Secretary.² And “in the absence of a shared understanding with USMS on the scope of the deputation, ITMS and the [USDOC] should not have interpreted [USMS’s] deputations to serve as a broad delegation of criminal law enforcement authority.”³

Additionally, you asked about USMS having a definition of “critical assets” as it relates to the authority given to USDOC deputies. USMS defines an *asset* as any resource, person, group, relationship, instrument, installation, process, or supply, at the disposition of an organization for use in an operational or supportive role.⁴ USMS defines a *critical asset* as any asset, as defined above, whose loss or compromise would negatively impact the capability of the Agency to carry out its mission; or may impact the ability of another United States Government department or agency to conduct its mission; or could result in substantial economic loss; or which may impact on the national security of the United States.⁵ As the USDOC OGC concluded in its review, it was not “reasonable to interpret the [USMS] authorization to protect critical assets as extending to the investigation of a broad set of criminal offenses that could implicate any of the Department’s activities,” especially given that the deputations “state[d] in all capital letters that they are for the ‘Protection Detail.’”⁶

We hope this information is helpful. Please contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

William Delaney

William Delaney
Chief, Office of Congressional and Public Affairs

² <http://www.commerce.gov/sites/default/files/2021-09/20210903-ITMS-Report.pdf>, Pg. 9

³ *Id.* at 10.

⁴ USMS Policy Directive 17.23, Insider Threat Program.

⁵ *Id.* at 6.

⁶ <http://www.commerce.gov/sites/default/files/2021-09/20210903-ITMS-Report.pdf>, Pg. 10