

United States Senate

WASHINGTON, DC 20510

March 7, 2022

The Honorable Ronald L. Davis
Director
U.S. Marshals Service
1215 S. Clark St.
Arlington, VA 22202

Dear Director Davis:

On May 26, 2021, we sent a letter to your predecessor regarding our ongoing investigation into the Department of Commerce's (the Department) now defunct Investigations and Threat Management Service (ITMS) and a follow up letter on November 30, 2021.¹ Your office responded to these letters with both a briefing that took place on July 13, 2021, and a letter dated February 11, 2022.² Our findings indicate that ITMS misled the U.S. Marshals Service (USMS) in an effort to acquire special deputy marshal authorities for its employees and engaged in a pattern of chronic abuse of those authorities, as well as the USMS Special Deputation program itself.³ We write today with additional questions and request that the USMS provide a list of agencies which, like ITMS, are utilizing the Special Deputation program to provide security for government facilities.⁴

The USMS Special Deputation program provides temporary and limited law enforcement authorities to individuals authorized by the USMS and is utilized in two main ways: 1) the deputation of local law enforcement officers in an effort to apprehend particularly violent or elusive fugitives; and 2) to provide federal agencies with limited law enforcement authorities for

¹ Letter from Sen. Roger Wicker, Ranking Member, S. Comm. on Com., Sci., and Transp., and Sen. Charles Grassley, Ranking Member, S. Comm. on the Judiciary, to Donald W. Washington, Dir., U.S. Marshals Serv. (May 26, 2021), <https://www.commerce.senate.gov/services/files/2F09349F-6461-4185-A7C6-EC77ABE1BB2D>; See Letter from Sen. Roger Wicker, Ranking Member, S. Comm. on Com., Sci., and Transp., and Sen. Charles Grassley, Ranking Member, S. Comm. on the Judiciary, to Donald W. Washington, Dir., U.S. Marshals Serv. (Nov. 30, 2021), <https://www.commerce.senate.gov/services/files/A9254D66-AB80-46F8-93BD-24E31336163C>; See also Press Release, Dep't of Commerce, U.S. Department of Commerce Accepts Findings and Recommendations from Investigations and Threat Management Service Review (Sept. 3, 2021), <https://www.commerce.gov/news/press-releases/2021/09/us-department-commerce-accepts-findings-and-recommendations>.

² Letter from William Delaney, Chief, Office of Cong. and Public Affairs, U.S. Marshals Serv. to Sen. Roger Wicker, Ranking Member, S. Comm. on Com., Sci., and Transp., at 2, (Feb. 11, 2022), <https://www.commerce.senate.gov/services/files/1A33A19A-0280-426F-BA86-C142E00A1BE4>.

³ Letter from Sen. Roger Wicker, Ranking Member, S. Comm. on Com., Sci., and Transp., and Sen. Charles Grassley, Ranking Member, S. Comm. on the Judiciary, to Donald W. Washington, Dir., U.S. Marshals Serv. at 2, (May 26, 2021), https://www.grassley.senate.gov/imo/media/doc/wicker_grassley_to_us_marshallcommercedeputationitms.pdf.

⁴ Memorandum from George Lee, Office of Sec., Dep't of Com., to Rich Yamamoto, Dir. of Sec., Dep't of Com. at 9, (Apr. 13, 2005), <https://www.commerce.senate.gov/services/files/7F85FBCD-446C-4798-AC5A-9237DFC79F47> ("derives authority that is 'valid only while providing security for the DOC building and critical assets'").

the purpose of protecting federal buildings and their employees.⁵ ITMS was granted special deputations for its employees for the sole purposes of **protecting** the Secretary and *critical assets* associated with protecting the Secretary but, USMS “never intended to grant ITMS the ability to initiate criminal or counterintelligence operations, only to provide physical protection.”⁶ ITMS, however, corrupted this limited authority to conduct unauthorized criminal investigations and improperly used counterintelligence tools to gather information about foreign nationals and, alarmingly, U.S. citizens.⁷ ITMS managed to operate unchecked and without effective oversight for almost a decade.⁸

According to a report from the Department’s Office of Inspector General (DOC OIG), ITMS employees “felt their [marshal special] deputation did not cover them to conduct investigations, and they were limited to conducting protective details.”⁹ The former head of ITMS, George Lee, expressed a similar opinion in a memorandum that he wrote to the Department’s head of security in 2005.¹⁰ Additionally, our documents reveal that in 2017, USMS sent a referral to the DOC OIG expressing concerns over ITMS conducting investigations under the special deputation.¹¹ In spite of this information, ITMS continued to violate the parameters of their special deputation authorities and presumably lied to or misled the USMS into renewing their special deputation every subsequent year.

ITMS’s actions went beyond merely violating the parameters of their special deputation. They routinely engaged in activities that were illegal and violated the constitutional rights of multiple individuals. In one instance, ITMS investigated a Chinese-born scientist employed at the Department on charges of espionage, interrogated her for hours, and drafted a criminal referral to federal prosecutors.¹² Officials ultimately dropped the charges after her arrest because the untrained ITMS investigators failed to provide sufficient evidence of wrongdoing. Whistleblowers also claim that ITMS targeted U.S. citizens by regularly performing “intelligence checks” on individuals associated with foreign visitors to the Department’s building. This included querying U.S. persons in classified databases to determine whether they presented a threat to the Department, regardless if there was evidence indicating suspicious or malicious intentions.

⁵ See 28 U.S.C. §§ 561, 566; see also 28 CFR § 0.112; Note that in your Feb. 11, 2022, letter, you state that, “The majority of the approximately 14,000 currently active special deputations are for state and local enforcement officers who serve on federal task forces. (see #1 in text). Currently there are 140 personnel with active special deputations specifically to provide protective services in seven different federal agencies (see #2 in text).” Letter from William Delaney, Chief, Office of Cong. and Public Affairs, U.S. Marshals Serv. to Sen. Roger Wicker, Ranking Member, S. Comm. on Com., Sci., and Transp., at 2, (Feb. 11, 2022), <https://www.commerce.senate.gov/services/files/1A33A19A-0280-426F-BA86-C142E00A1BE4>.

⁶ Letter from William Delaney, Chief, Office of Cong. and Public Affairs, U.S. Marshals Serv. to Sen. Roger Wicker, Ranking Member, S. Comm. on Com., Sci., and Transp., at 2, (Feb. 11, 2022), <https://www.commerce.senate.gov/services/files/1A33A19A-0280-426F-BA86-C142E00A1BE4>.

⁷ S. Comm. on Com., Sci., and Transp., 117th Cong., *Committee Investigation Report: Abuse and Misconduct at the Commerce Department* at 4, <https://www.commerce.senate.gov/services/files/C4ABC46A-7CB0-4D51-B855-634C26E7CF70>; see also DEP’T OF COMMERCE *supra* note 2; but see Memorandum from Peggy Gustafson, Inspector Gen., Dep’t of Com., to Wilbur Ross, Sec’y, Dep’t of Com. at 66, (June 7, 2019), <https://www.commerce.senate.gov/services/files/640BDA8F-A7F0-483C-B541-C1F75DABDE5D>.

⁸ *Id.*

⁹ On file with S. Comm. on Com., Sci., and Transp.

¹⁰ On file with S. Comm. on Com., Sci., and Transp.

¹¹ On file with S. Comm. on Com., Sci., and Transp.

¹² Shawn Boburg, Commerce Department Security Unit Evolved into Counterintelligence-like Operation, WASH. POST (May 24, 2021), <https://www.washingtonpost.com/investigations/2021/05/24/commerce-department-monitoring-itms/>.

Whistleblowers have also informed us that ITMS employees routinely conducted clandestine style searches of the offices of Department employees, with little to no cause. ITMS employees also regularly searched Department servers and employee email accounts to scan for evidence of foreign influence.¹³ This was in addition to an investigation that ITMS conducted on a classroom of elementary school children who petitioned the Secretary to include a certain type of whale on the list of protected marine wildlife, established by the Marine Mammal Protection Act of 1972.

The waste of millions of taxpayer dollars by ITMS's unauthorized criminal investigations into Department employees, foreign nationals, and U.S. citizens requires additional congressional oversight of the Special Deputation program administered by USMS. Congress cannot allow similar behavior by other agencies utilizing the Special Deputation program. As a result, we ask that you respond to the questions posed below and provide your responses no later than March 21, 2022.

1. Did USMS inform ITMS Director George Lee that the ITMS grant of special deputation did not authorize Department employees to initiate criminal or counterintelligence operations or to conduct law enforcement activities unrelated to the protection of the Secretary?
 - a. If yes, do you believe George Lee lied to or otherwise misled the USMS to acquire and renew special deputations for himself and other Department employees?
 - b. If no, why did the USMS not properly convey to George Lee and his associates that the special deputation did not authorize counterintelligence operations or law enforcement activities unrelated to the protection of the Secretary?

2. Additionally, please provide the following:
 - a. A list of all agencies currently using the Special Deputation program to provide protective services to a Director or Secretary, and the total number of Special Deputy Marshals at those agencies.
 - b. A list of every agency that is utilizing the Special Deputation program to provide protective services for critical assets.

¹³ S. Comm. on Com., Sci., and Transp., 117th Cong, *Committee Investigation Report: Abuse and Misconduct at the Commerce Department* at 4, <https://www.commerce.senate.gov/services/files/C4ABC46A-7CB0-4D51-B855-634C26E7CF70>.

In the event that you have any questions, please contact Danny Boatright on Ranking Member Wicker's staff at (202) 224-1251 or Dario Camacho on Ranking Member Grassley's staff at (202) 224-5225. We appreciate your prompt and urgent attention to this matter.

Sincerely,



Roger F. Wicker
Ranking Member
Senate Committee on Commerce,
Science, and Transportation



Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary