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July 5, 2017

VIA ELECTRONIC TRANSMISSION

David Harlow
Acting Director
United States Marshals Service
United States Department of Justice
Washington, D.C. 20530

Dear Acting Director Harlow:

On April 26, 2017, you testified before the House Committee on the Judiciary's Subcommittee on Crime, Terrorism, Homeland Security, and Investigations. In your written testimony, you stated that "in 2014 we researched and developed a program for the cyclical replacement of body armor, which ensures that all body armor is replaced on a 5-year cycle to take advantage of advances in protective technologies."¹ The U.S. Marshals Service (USMS) awarded a 5-year, \$12.49 million contract in February 2016 for this purpose.

The USMS supplies operational employees with body armor kits. The kits include multiple items, such as carriers (vests), concealable vests (worn under the clothes), ballistic inserts (soft body armor, designed to withstand pistol-caliber ammunition), and ceramic rifle plates (designed to withstand rifle rounds). The armor expires every five years. An April 16, 2014, "Body Armor Committee Meeting" memorandum to then-Assistant Director of the Training Division William Fallon memorializes the USMS "replacement plan for body armor, ballistic shields, and TASERs®," designed "to normalize the budget process to ensure the ability to replace this critical equipment on a regular basis."² According to that memorandum, most operational employees received their current equipment in Fiscal Years 2011 and 2012, and that equipment, such as ballistic panels and plates, "would need to be replaced by 2017."³

¹ See also Memorandum from David Anderson, Deputy Assistant Director, Training Division, U.S. Marshals Service to William T. Fallon, Assistant Director, Training Division, U.S. Marshals Service, *Body Armor Committee Meeting Memo* (Apr. 16, 2014).

² *Id.*

³ *Id.* at 2-3.

Despite this 5-year cycle replacement plan, according to documents obtained by the Committee, the USMS began replacing only two items from the operational employees' armor kits—ballistic inserts (soft armor) and concealable vests—in November 2014. The USMS largely has not replaced other equipment in those kits, such as the rifle plates. According to documents obtained by the Committee, as of February 2017, the USMS had replaced only 1,761 ballistic inserts and vests. The USMS has more than 3,900 operational employees, most with armor expiration dates in 2016 and 2017.

Accordingly, more than 1,400 operational U.S. Marshals Service employees reportedly were wearing expired soft body armor at the end of June. At the time of the April hearing, more than 2,000 were scheduled to be wearing expired armor by the end of 2017. According to the USMS Congressional Budget Justification for FY 2017, tests of the expired soft body armor “resulted in 11 penetrations out of 84 shots taken, and sufficient back-face deformation,” which “would create significant blunt force trauma to the person wearing the armor.”⁴

Information about the amount of expired body armor worn by operational employees was compiled at the request of the Assistant Director for the Training Division for the express purpose of raising body armor as a “mission challenge” in a call with you in February 2017. But when a member of the House Subcommittee asked you about expired equipment on April 26, you stated you were not aware of it.⁵

Your written testimony to the House Judiciary Committee also states that the USMS “ensure[s] that all personnel receive officer safety training on a continuous basis” and remarked on several training courses including “Deputy Trauma Medicine.” These remarks echo those of Associate Director for Operations William Snelson at the USMS headquarters opening on December 15, 2016, an event attended by the Deputy Attorney General. ADO Snelson stated at that time that *all* operational staff have attended the Deputy Trauma Course. He also said “every deputy” has been issued a “trauma kit” for medical emergencies, along with “countless” task force officers.

However according to documents obtained by the Committee and contrary to the public statements, numerous operational and task force employees have not attended this course and have not received trauma kits. Moreover, two critical elements in those kits expired at least two years ago. These failures to fully support USMS personnel have allegedly been raised—repeatedly—to agency leadership to no avail.

During the hearing, you mentioned the need to “refocus” the agency’s budget and “reprogram priorities.” The agency’s budget justifications for FY 2017 and FY 2018 asked for approximately \$1.3 million for body armor replacement. However, leadership was reportedly told that \$1.3 million per year would be insufficient to carry out the agency’s 5-year cycle

⁴ United States Marshals Service, FY 2017 Performance Budget, President’s Budget, Salaries & Expenses and Construction Appropriations at 72 (Feb. 2016), available at: <https://www.justice.gov/jmd/file/821041/download>; see also Body Armor Committee Meeting Memorandum at 2.

⁵ *Oversight of the Federal Bureau of Prisons and the U.S. Marshals Service: Hearing of the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations of the House Committee on the Judiciary* (Apr. 26, 2017) (statement of David Harlow, Acting Director, U.S. Marshals Service).

replacement plan. This amount is also about half the annualized amount allocated under the February 2016 contract for body armor. The plan reportedly would actually have required approximately \$10 million to replace all the equipment purchased in 2011-2012. This suggests the agency knowingly underfunded the plan, resulting in expired armor that the agency knew had a significant failure rate.

These funds also fall under the agency's lump sum appropriations for salaries and expenses, and it appears the agency has had discretion to reallocate funds in that account to pay for the body armor replacement. Apparently, the agency chose not to do so. And only recently, after being informed that an employee communicated these concerns to the Committee, and after they were raised in the House hearing, has the agency made efforts to provide additional funds.⁶

The USMS is also, however, set to "establish[] a new [Regional Fugitive Task Force] structure."⁷ According to the Federal Managers Association, that new "structure" was originally planned as an across-the-board promotion for potentially more than 60 operational employees, doing essentially the same job as numerous deputy marshals around the country. After the FMA raised concerns about the method of elevating these roles, the USMS decided to advertise them through the traditional hiring process consistent with merit system principles.

It is troubling that the agency was ready to expend the funds to promote 60 people with no competition, while ignoring pleas to replace body armor with a 13% failure rate currently worn by thousands of operational employees across the agency whose daily job it is to apprehend violent fugitives.

In addition to the records requested in my letter of March 27, 2017, please also provide by July 19, 2017, all Marshals Service records relating to expired officer safety equipment or to the future expiration of officer safety equipment, including body armor, trauma kits, helmets, shields, tasers, and any other equipment, from 2016 to the present. Please do not wait to produce the information requested on March 27 until you have gathered the information requested in this letter. Please also answer the following questions, numbering your responses in accordance with the corresponding questions.

1. When you testified before the House Judiciary Committee:
 - a. Were you aware that USMS employees were wearing and/or carrying expired equipment? In your answer, please explain when you first learned of it.
 - b. Were you aware that many more were set to be wearing and/or carrying expired equipment in the coming months and year? In your answer, please explain when you first learned of it.

⁶ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to Jeff Sessions, Attorney General, U.S. Dep't of Justice and David Harlow, Acting Director, U.S. Marshals Service (Mar. 27, 2017); <https://www.justice.gov/file/968196/download>.

⁷ Letter from David Harlow, Acting Director, U.S. Marshals Service to David Barnes, Chapter President, Federal Managers Association (May 4, 2017).

- c. Did you have a call or meeting in February 2017, or at any other time, with senior staff where the Assistant Director for the Training Division raised funding issues for body armor replacement?
2. Please provide all slides and other records prepared for Quarterly Performance Reviews from January 2014 to the present that mention body armor or other officer safety equipment.
3. Who else among senior leadership in the Marshals Service knew that concerns had been raised regarding expired equipment? When were they first made aware of these issues? What was the response to those concerns?
4. Why has the Marshals Service for so long failed to fund its body armor replacement reprogram?
5. Has the agency informed its employees that they are carrying expired equipment and disclosed to them its demonstrated failure rate? When? If not, why not?
6. Why did the Marshals Service request only \$1.3 million for body armor replacement in FY 2017 and FY 2018?
7. When did the Department of Justice determine to request an additional \$12 million for body armor and for SOG training? How much will actually be allocated toward replacing body armor? Trauma kits?

Thank you for your cooperation in this important request. Please contact DeLisa Lay of my Committee staff with any questions at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman

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

The Honorable Trey Gowdy
Chairman
Subcommittee on Crime, Terrorism, Homeland Security and Investigations
House Committee on the Judiciary

The Honorable Sheila Jackson Lee
Ranking Member
Subcommittee on Crime, Terrorism, Homeland Security and Investigations
House Committee on the Judiciary

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice

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

Adam Miles
Acting Special Counsel
Office of Special Counsel