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May 19, 2021

VIA EMAIL

Phillip Brest, Chief Nominations Counsel, Senate Judiciary Committee Chairman Richard J. Durbin
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Michael Fragoso, Chief Nominations Counsel, Senate Judiciary Committee Ranking Member Charles E. Grassley
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Re: Nomination of Ronald L. Davis, of California, to be Director of the United States Marshals Service, Nomination Number: PN275-117

Dear Mr. Brest and Mr. Fragoso:

Enclosed is a letter on behalf of current and former African American Deputy U.S. Marshals and Detention Enforcement Officers represented by my firm in *Fogg v. Garland*, EEOC No. 570-2016-00501X; Agency Case No. M-94-6376. As the Senate considers Ronald Davis' nomination as the next Director of the U.S. Marshals Service, we would greatly appreciate the Judiciary Committee considering and acting on their concerns about race discrimination at the agency. Please let me know if you have any questions.

Sincerely,

David Sanford

May 19, 2021

The Honorable Richard J. Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

As the Senate considers the nomination of Ronald L. Davis for Director of the United States Marshals Service (USMS), we write, as current or former Deputy U.S. Marshals and Detention Enforcement Officers, to ask that you request that Mr. Davis and the USMS commit to addressing long-standing issues of race discrimination at the Agency. These issues are at the center of *Fogg v. Garland*, the longest-running employment discrimination class action in U.S. history. **We urge the Committee to ask Mr. Davis to commit to personally investigating the claims in the lawsuit, seek to resolve them, and regularly update the Committee on his progress.**

Fogg v. Garland includes **over 700** current and former African American Deputy U.S. Marshals (DUSMs) and Detention Enforcement Officers (DEOs) who have experienced racism in hiring, promotions, and headquarters assignments. Since the case began in 1994 with a class action charge filed by Deputy U.S. Marshal Matthew Fogg at the Equal Employment Opportunity Commission, the USMS has refused to remedy its discriminatory practices despite a long, well-documented history of racism at the agency:

January 1977: Assistant Attorney General Peter R. Taft published a report finding discrimination against Black Deputy U.S. Marshals in promotions, assignments, training, and other practices, and recommended several remedies.

August 1992: An Ad Hoc Committee appointed by the Director of the U.S. Marshals Service found racial disparities in hiring that confirmed the accuracy of the perception of a **“a good old boy network” that discriminated against African Americans.**

March 1996: The Department of Justice Office of Inspector General issued a report about the annual gathering of law enforcement personnel known as the “Good Ol’ Boy Roundup” that occurred for over a decade. The Inspector General found “substantial credible evidence” of blatantly racist signs reading “n***** checkpoint” and “any n*****s in that car?” and other activities. The OIG found that **44 past and present DOJ employees, including Marshals Service employees, had attended at least one roundup.**

1998: In an annual report to the EEOC, USMS acknowledged that the Department of Justice Civil Rights Division concluded that the USMS’ hiring examination was racially discriminatory. DOJ’s review of USMS hiring practices concluded that **“the current [Deputy hiring] examination has been found to have significant adverse impact on African-Americans.”** Later EEOC reports reveal that no new hiring

exam was developed until 2001 and that, despite the new hiring exam, **there continued to be an under-representation of African Americans in the USMS workforce.**

April 1998: A jury awards Deputy U.S. Marshal Matthew Fogg \$4 million in his individual race discrimination trial. The presiding federal judge and jury heard testimony about a “**U.S. Marshals Service . . . that has labored in substantial racial turmoil for at least a decade, and in which racial identities are keenly felt. The perception is pervasive on the part of African–American members of the Marshals Service that they are less highly regarded and more is expected of them than of their white peers.**” The judge found that this testimony “constituted sufficient evidence to support the jury's finding that Fogg had been exposed to a hostile racial environment.”

October 2008: African American DUSMs David Grogan and James Brooks file a class action complaint in federal court which is eventually subsumed by the *Fogg* class action. Evidence in the case revealed:

- Statistically significant racial disparities in the promotion of African American Deputies to GS-13, GS-14, and GS-15 management positions.
- The Agency’s own expert confirmed that African Americans were significantly under-represented in promotions.
- Significant racial disparities across Marshals Service headquarters divisions. Analysis showed that African American Deputies were statistically significantly less likely to hold positions in the **prestigious and coveted Investigative Operations and Tactical Operations Divisions which were 95% white.** The racial make-up of these divisions remains identifiably white.

July 2012: After years of litigation, the EEOC Office of Federal Operations reverses a previous class certification denial and concludes that “**the practices at issue affect the whole class and not only a few employees.**”

November 2015: The EEOC Office of Federal Operations concludes that “**there is evidence of both centralized control over these promotional decisions, as well as evidence of an Agency-wide discriminatory policy.**”

February 2017: The EEOC Administrative Judge affirms that the class includes African American DUSMs and DEOs subjected to “**policies and practices regarding promotions, including reassignments and transfers, Headquarters assignments, and hiring and recruitment from January 23, 1994 to present.**”

Despite all of this evidence, the USMS has never resolved these allegations of racism after 27 years of litigation at the EEOC and in federal court. The USMS’ position contrasts with other federal law enforcement agencies, such as the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, and the Secret Service, that have acted to resolve class action race discrimination cases brought at about the same time as *Fogg*.

We are deeply proud to have served our country in the oldest and most storied federal law enforcement agency. Every day, we have protected the federal judiciary, apprehended fugitives, and ensured the smooth functioning of courts, among other functions. **We are dismayed that the USMS’ history of race discrimination threatens the integrity and reputation of an agency with such a critical role to play in our country. It is imperative that Mr. Davis finally put an end to the USMS’ refusal to acknowledge and address race discrimination at the agency.**

Mr. Davis has acknowledged that structural racism and “institutional deficiencies” have harmed both communities of color and law enforcement officers of color. He has confronted structural racism as a police chief and Department of Justice Official. We can think of no more important task for Mr. Davis as Director than to finally confront and dismantle long-standing, documented systemic racism at the Marshals Service by resolving the issues raised by the class in *Fogg*. We ask only that you hold Mr. Davis and the USMS accountable by requesting that he personally investigate the claims in *Fogg*, seek to resolve them, and regularly update the Committee on his progress.

Thank you for your consideration.

Sincerely,

Damon Adams of North Carolina
Senior Inspector, Deputy U.S. Marshal
Served in SC/DC, E/NC, HQ
Employee of the USMS from 2003–Present

Drew Arthur of Texas
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