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## United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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June 15, 2023

### VIA ELECTRONIC TRANSMISSION

The Honorable Joseph R. Biden, Jr.  
President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President:

We write regarding the pending nomination of Javier Ramirez to be Director of the Federal Mediation and Conciliation Service (FMCS). Upon Mr. Ramirez's re-nomination at the beginning of the 118<sup>th</sup> Congress, staff on the U.S. Senate Health, Education, Labor, and Pensions (HELP) Committee learned from numerous whistleblowers of alleged Equal Employment Opportunity (EEO) complaints involving Acting Director Gregory Goldstein and Mr. Ramirez. The whistleblowers allege that Mr. Ramirez was heavily involved in the recent reorganization of FMCS in his capacity as Deputy Director of Field Operations and that, as a result of the reorganization, several FMCS employees of color were passed over for newly created senior management roles in favor of individuals more supportive of Mr. Ramirez's "vision" for the agency.<sup>1</sup>

On March 24, 2023, we wrote to the Director of the Office of Personnel Management (OPM) and FCMS's EEO Director "requesting copies of all EEO complaints and affidavits filed against Mr. Ramirez and Acting Director Goldstein."<sup>2</sup> We emphasized that it was "critical that FMCS produce information regarding [the EEO complaints] so that the Committee may fulfill its constitutional role and properly assess the merits of Mr. Ramirez's nomination, as well as his

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<sup>1</sup> In October 2022, FMCS published a notice in the Federal Register that the agency had performed a reorganization. *See* Federal Mediation and Conciliation Service Internal Reorganization, 87 Fed. Reg. 63,776 (Oct. 20, 2022). The notice did not provide any specific details about the reorganization, and instead offered a vague statement that the agency implemented the reorganization "to optimize client services, internal communications, and agency resources." *Id.*

<sup>2</sup> Letter from Sens. Bill Cassidy & Mike Braun to Kiran A. Ahuja, Director, Office of Personnel Mgmt. & Laquetta D. Jones-Bigelow, Director, Equal Emp. Opportunity, Fed. Mediation & Conciliation Serv. (Mar. 24, 2023), <https://www.politico.com/f/?id=00000187-1ea8-d418-a1df-7fec12e80000>.

fitness to serve as Director.”<sup>3</sup> The letter also sought answers to a number of questions, including an account of when FMCS informed OPM of its restructuring efforts.

On April 7, 2023, FMCS transmitted a letter, signed by FMCS’s EEO Director, in response to our request for copies of the EEO complaints and affidavits. In its response, FMCS confirmed that there are four EEO complaints filed and addressed to Acting Director Goldstein and that, in all four cases, Mr. Ramirez among others have been named as the management officials responsible for the actions or decisions that harmed the complainants.<sup>4</sup> FMCS’s response also explained that it is usually “unable to provide unredacted copies of all EEO complaints and affidavits *unless* the complainants consent to their release.”<sup>5</sup> However, in this case, “FMCS [had] received consent from all four (4) individuals” and would “make the documents available for review at a mutually agreed upon time and place.”<sup>6</sup>

On April 10, 2023, HELP Committee staff emailed FMCS to confirm receipt of its April 7, 2023 letter and requested the production of electronic copies of the EEO complaint and affidavits. In response, on April 17, 2023, FMCS transmitted a second letter declining to fulfill our request for electronic copies of the EEO complaints and affidavits, citing the “highly sensitive nature” of the documents and “active litigation.”<sup>7</sup> FMCS also claimed a responsibility to “establish and use controlled environments” based on the agency’s “Privacy Act Program.”<sup>8</sup> FMCS’s General Counsel subsequently told HELP Committee staff that FMCS would allow staff to review the documents only in hard-copy form, with agency personnel present and in the room, and that these “controls” were necessary to comply with the Privacy Act.

On May 4, 2023, during a scheduled teleconference, HELP Committee staff asked FMCS to explain its decision to implement “controls” over the EEO complaints and affidavits. In addition to the Privacy Act, FMCS’s General Counsel cited several statutes and regulations, none of which allow an agency to refuse a request for electronic versions of documents and insist on being physically present in the room for the review.<sup>9</sup> FMCS’s General Counsel also suggested that these “controls” were necessary in order to prevent the documents from being reviewed by third parties.

Under the Privacy Act, federal agencies may not disclose certain records “except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.”<sup>10</sup> Given that the individuals who filed the EEO complaints and affidavits provided written consent for their disclosure to HELP Committee staff, FMCS should have promptly produced electronic copies of the EEO complaints and affidavits as requested. However, rather than simply producing the documents as requested, FMCS chose to put in place a host of artificial barriers.

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<sup>3</sup> *Id.*

<sup>4</sup> Letter from Laquetta Jones Bigelow, Esq., Director, Equal Emp. Opportunity & Chief Diversity Officer, Fed. Mediation & Conciliation Serv. (Apr. 7, 2023) (emphasis added).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Letter from Laquetta Jones Bigelow, Esq., Director, Equal Emp. Opportunity & Chief Diversity Officer, Fed. Mediation & Conciliation Serv. (Apr. 17, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *See generally* 5 U.S.C. § 552a.

<sup>10</sup> 5 U.S.C. § 552a(b).

Nonetheless, in the interest of avoiding protracted negotiations with agency counsel, HELP Committee staff agreed to review the requested documents under FMCS's "controls." This review occurred on May 11, 2023. Based on staff's review of the documents, all four EEO complaints include a number of concerning allegations, including racism, harassment, retaliation, and a restructuring effort led by a presidentially-appointed nominee.

The complaints allege that Mr. Ramirez directed and influenced the reorganization of FMCS in coordination with Acting Director Goldstein. In July 2022, FMCS began an internal hiring process for six Field Operations Managers (FOM), a newly created senior management role. Applicants for the role were informed that the selection would be based entirely on a 45-minute interview with a panel of five senior FMCS officials, which included Mr. Ramirez, but did not include Acting Director Goldstein. The candidates were informed that their past performance reviews would be treated with little regard. The selection process also appears to have lacked any neutral hiring criteria, and was instead focused on the applicants' responses to vague and subjective interview questions. These hiring criteria are inconsistent with FMCS's Directive 5202, which governs mediator hiring, promotion, and transfer.<sup>11</sup> Directive 5202 sets forth a host of neutral criteria for mediator promotions, including "[a] summary performance appraisal rating of Fully Successful or higher."

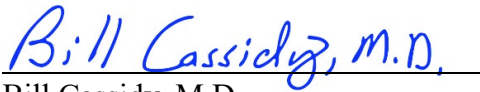
The lack of neutral criteria appears to have cast doubt on the fairness of the FOM hiring process, to the detriment of highly qualified FMCS employees of color. One complainant with seventeen years of experience as a field manager was passed over in favor of an employee with only two years of experience. The complainant alleges that her interview consisted of nine questions, several of which were focused on her views of the agency's "culture" and "vision." Another complainant with a history of excellent performance reviews and nearly ten years of experience at FMCS was not selected for the FOM role. He similarly reported that his interview consisted of just nine questions, including how he would fulfill the "culture" and "vision" espoused by Mr. Ramirez and Acting Director Goldstein. Mr. Ramirez informed the complainant that he was not selected for the position solely based on his answer to a question about FMCS's "strategic plan." A third complainant with a history of excellent performance reviews was passed over in favor of a less qualified candidate. She similarly alleges that her interview involved vague and subjective questions about how she would improve the agency's "morale." After she filed her EEO complaint, FMCS offered to settle her claims with a lump sum payment of nearly \$70,000, only to withdraw that offer hours later.

The decision to institute an internal reorganization and hiring process with little regard for past performance or consideration of neutral criteria violates basic principles of equal opportunity. Without neutral criteria in an internal process, hiring personnel are vulnerable to plausible allegations of bias and discrimination. In light of these concerning developments, our reservations regarding Mr. Ramirez's nomination have only deepened. Until the allegations are resolved, it is our view that the Committee should not move forward with Mr. Ramirez's nomination to be FMCS Director.

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<sup>11</sup> Fed. Mediation & Conciliation Serv. Directives Manual, at 5202:1.

Sincerely,



Bill Cassidy, M.D.  
Ranking Member  
U.S. Senate Committee on Health,  
Education, Labor, and Pensions



Mike Braun  
U.S. Senator

cc: Mr. Gregory Goldstein  
Acting Director  
Federal Mediation and Conciliation Service