

STATEMENT OF  
**NICHOLAS M. GESS**  
ASSOCIATE DEPUTY ATTORNEY GENERAL  
BEFORE THE  
COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
CONCERNING  
LAW ENFORCEMENT AUTHORITY FOR THE INSPECTORS GENERAL

Mr. Chairman, Senator Lieberman, Members of the Committee, thank you for giving me the opportunity to appear before you today on behalf of the Administration. I am a career Assistant United States Attorney from Yarmouth, Maine, on detail to the Office of Deputy Attorney General Eric H. Holder, Jr. My responsibilities include this issue.

We have submitted to the Congress a legislative proposal that would provide statutory enforcement authority to qualifying investigative personnel of the 23 Presidentially-appointed Inspectors General to exercise law enforcement powers – primarily the authority to carry a firearm while conducting official duties. At the same time, our proposal provides for oversight of the exercise of those law enforcement powers by the Attorney General, our Nation's chief law enforcement officer.

Mr. Chairman, we seek statutory authorization for investigative agents of the specified Inspectors General to do exactly what they have been doing for many years under designations afforded them by the U.S. Marshals Service (USMS) as Special Deputy United States Marshals. Beginning in the mid-1980's, the Department of Justice approved these deputations on a case-by-case basis. However, as the role of the Inspector General has evolved, the need for such appointments became so consistent, and the volume of the requests so large, that "blanket" deputations evolved. Since 1995, virtually all criminal investigators in the offices of the 23 covered Inspectors General have exercised law enforcement authorities in cases under office-wide deputations. Thus, the grant of statutory law enforcement authority would not extend new authorities to IG personnel, but would merely recognize the authorities that are already in place.

This authority is needed because IG investigative agents are engaged in law enforcement activities along with their colleagues in other Federal agencies, as well as at the state and local levels. While this is an important piece of what makes law enforcement work so well and which has contributed to historic drops in crime, it also means that these IG personnel are at personal risk and have a legitimate need to carry

a firearm, just as their colleagues do. We cannot countenance a situation in which they are at special risk for lack of authority.

We have reached a point where we are now providing deputations to over 2,500 Inspector General personnel. To put this in perspective, there are approximately 2,800 Deputy U.S. Marshals. The USMS simply lacks the resources to process and monitor all of these individuals -- who do not report to the USMS for any practical purpose. We can no longer ask the USMS to undertake a program that confers authority but does not come with concomitant supervision and control. Accordingly, effective January 31, 2001, the Inspectors General who are subject to blanket deputations will no longer be provided with such deputations. We have selected that date, because it falls close to the end of the year. We had intended to select the end of the year but did not want to cause administrative disruptions during the holiday season when resources are especially thin.

In our view, the authority and the responsibility ought to rest in the same place: with the Inspectors General. The Inspectors General have an exemplary record, and there is little concern that they will abuse any authority that they are provided. The fact remains, however, that law enforcement authority is a serious matter, and that the public has a right to expect rigorous oversight. In that regard, our proposal would provide the Attorney General with authority to promulgate regulations governing the exercise of law enforcement authority by the IG community. Those who comply with standard norms to which all Federal law enforcement is subjected have nothing about which to be concerned. But, as I said before, the public expects accountability in law enforcement operations. In our view, the solution, as proposed in our draft legislation, is to establish government-wide standards for hiring, training and conduct that could result in the loss of authority if not observed.

By way of example, an individual who exercises law enforcement authority must be properly trained and there should therefore be minimum training standards. In that regard, we hold our own Department of Justice law enforcement agents from agencies such as the FBI, DEA, U.S. Marshals and INS, to policies governing domestic terrorism investigations, undercover operations, the use of deadly force, major narcotics purchases and electronic surveillance. The Inspector General community should, as well. Our legislative proposal will assure that not only does this occur, but that it does so in a uniform and accountable fashion, which should enhance the public's confidence in the law enforcement officers who serve it.

The Department of Justice -- through its U.S. Marshals Service -- has been happy to assist its colleagues in Federal law enforcement by providing special deputation authority. However, the process has become so burdensome that it threatens the effectiveness of our Nation's first Federal law enforcement agency and diverts resources from its high-threat trials, judicial security, asset forfeiture, witness protection, and domestic and international terrorism-related missions. We cannot allow that to continue. Yet we are also keenly appreciative of the risks faced by our IG colleagues. Accordingly, we ask the Committee to act promptly and favorably on our legislative

proposal and to undertake all necessary efforts to protect the lives of Federal law enforcement officers.

That concludes my remarks. I would be pleased to answer any questions you may have about this matter.