

1,000 hours. My financial circumstances, however, simply do not permit me to incur additional attorneys' fees in this matter.

In order to conserve costs, therefore, I find it necessary to represent myself in this matter, at least for the time being. As the case proceeds to hearing, if my financial circumstances improve, I may wish to retain counsel to assist me in presenting my defense. For now, however, and for the foreseeable future, I am unable to afford representation and wish to proceed on a pro se basis. I am unemployed, my life savings has been virtually wiped out, and I have no means to continue paying for legal representation in this matter.

In order to accommodate me as a pro se litigant, I respectfully request that the deadline be extended one day in order to allow me the necessary time to recover my files from Avery Dooley Post & Avery and to prepare the necessary submissions. I have been working very diligently on my witness proffers, statement of facts, and list of exhibits, so Your Honor may be assured that I do not seek any unnecessary delay in this case. I pledge to continue making my best efforts to abide by all filing deadlines, but I honestly believe, in good faith, that I require additional time in order to finalize the pre-hearing submissions, which are lengthy and require a very substantial commitment of time and effort.

Thank you in advance for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. MacLean". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Robert J. MacLean
The Appellant

agencies in order to muzzle, intimidate, and retaliate against field operating Federal Air Marshals (“FAMs”) who were outspoken about their dangerous operational procedures that placed national security and public safety in jeopardy. When former FAM Director Quinn and his staff in headquarters routinely ignored and disparaged field FAMs who wanted to give them their prospective suggestions on how to remedy the dangerous problems, Appellant and current Federal Air Marshal (“FAM”) Frank Terreri peaceably formed a united voice with the Federal Law Enforcement Officers Association (“FLEOA”) -- a nonpartisan, non-bargaining unit, professional association representing approximately 40,000 current and retired federal law enforcement officers – “*to petition*” higher authorities in “*Government*” for “*redress*” of FAMs, airline passengers, and the public’s “*grievances.*” Appellant and FAM Terreri’s off-duty FLEOA activities were so popular, that they immediately signed on for membership approximately 2,000 dues paying field FAMs. Current U.S. Treasury Assistant Inspector General and former Immigration & Customs Enforcement (“ICE”) / Office of Professional Responsibility (“OPR”) Washington DC Intake Director details Appellant and FAM Terreri’s accomplishments in his May 12, 2009 letter to congress. (EXHIBIT 5) Annual dues are currently \$105. FLEOA National President and U.S. Department of Justice Senior Special Agent Jon Adler will also stipulate to these facts in his willing testimony at the hearing.

2. Appellant’s removal was discriminatory, disparate treatment, and a prohibited personnel practice

Appellant argues that his removal was discriminatory, disparate treatment, and a prohibited personnel practice due to his status as one of the two **founding** members and the **second-ranking** FLEOA FAMS Agency Chapter Executive Board Officer – specifically the Executive Vice President -- from the month after his July 29, 2003 disclosure until his removal on August 11, 2006. (Ex. 1A, Par. 11)

Appellant will present the cases of clear retaliation of six other FLEOA FAMS Agency Chapter Executive Board Officers and another FAM who was a FLEOA member who attempted to form the “Federal Air Marshal Association” (“FAMA”):

- 1) **Frank Terreri**, President, FLEOA; current FAM (**Ex. 29, Par. 5**); a subject of constant ICE/OPR investigation personally ordered by Mr. Quinn (**Ex. KK**); willing witness
- 2) **Spencer Pickard**, Vice President of Legislative Affairs, FLEOA; former FAM (**Ex. B**); forced out after making disclosures on ABC News 20/20 Program “Problem in the Sky?” on May 17, 2006; willing witness
- 3) **Philip Jeffrey Black**, Vice President of Policy & Ethics, FLEOA; co-founding member of the Federal Air Marshal Association (“FAMA”); subject of never-ending investigations; current FAM (**Ex. C**) (**Ex. KK**); willing witness
- 4) **Marc Parsons**, Vice President, Eastern Region, FLEOA; former FAM fired for frivolous charges (**Ex. D**); willing witness
- 5) **George Randall Taylor**, Vice President of Congressional Affairs & Labor Relations, FLEOA; current FAM; willing witness
- 6) **Matthew H [REDACTED]** Vice President of Membership Affairs, FLEOA; current FAM; former U.S. Navy sailor, former Drug Enforcement Administration Special Agent of five years. FAM [REDACTED] also was the subject of cursory investigations, being removed from active duty and subjected to psychological evaluations with the

Employment Assistance Program (“EAP”) (**Exhibit E**); willing witness

- 7) **Terry Babb**, Co-founder of FAMA; former FAM; another subject investigated by Mr. Quinn’s ICE/OPR investigations of off-duty activities (**Ex. 4, Pg. 3, Par. 4**) (**Ex. CC**) (**Ex. KK**)

FLEOA was the lone professional, nonpartisan, non-bargaining unit organization that first petitioned the Agency, the Department of Homeland Security (“DHS”), and eventually congress to address the FAMS operational procedures that routinely endangered public safety and national security.

Appellant will present the evidence of three other FAMs -- two of them from his field office who made flagrantly egregious disclosures. All three FAMs were charged with the same charge as the Appellant, “Unauthorized Disclosure of Sensitive Security Information (“SSI”).” Two of the FAMs had their removals mitigated down to **suspensions no longer than 14 days** (**Ex. MM, Pg. 9, Par. 5**), and one of them received a **five-day** suspension. (**Ex. LL, Pg. 6, Par. 4**)

Atlanta FAM Anthony Rine’s August 18, 2006 global disclosure case mirrors Appellant’s: FAM Rine disclosed on a public Internet forum frequented by FAMs and anyone else on the planet, that Atlanta/United Kingdom FAMS missions **had been and were continuing** to be cancelled (**Ex. F**). FAM Rine made his disclosure only **EIGHT DAYS AFTER** a plot to explode liquid Improvised Explosive Devices (“IED”) on U.S., United Kingdom, and Canada flights was foiled. An Agency press release specifically details *“a plot to use liquid explosives to blow up transatlantic flights headed to the United States and Canada was foiled by [United Kingdom] authorities.”* FAMs are tasked with and receive extensive training in order to neutralize IEDs during flight.

Appellant made his disclosure three days after the Federal Bureau of Investigation (“FBI”), the Department of State, the DHS, and the Saudi Arabia government had issued suicide hijacking threat warnings stemming from foiled terrorist plots. (Ex. 17) Unlike FAM Rine, Appellant’s July 29, 2009 disclosure was **FIVE days BEFORE** Agency’s operational plan would have gone into effect as documented by in DHS Inspector General Clark Kent Ervin’s November 2004 report (Ex. 31, Pg. 4, Par. 4). [REDACTED]

The deciding official wrote in the Appellant’s April 10, 2006 “Notice of Removal” that Appellant “*had no prior discipline,*” (Ex. H, Pg. 2, par. 4, lines 1-4) and stated in his August 2, 2006 deposition that he was “*doing the **GOOD WORK** he had been doing*” and “*did not cause **any problems** for [his] office.*” (emphasis added) (Ex. 13, Pg. 8, sub Pg. 26, lines 10-16; Pg 27, lines 1-5)

Well over a year after his retirement, former Director Quinn continue to make disparaging comments about the Appellant and his fellow FLEOA FAMS Agency Chapter Executive Board Officers. Mr. Quinn bitterly accused them of being “*disgruntled amateurs,*” “*insurgents,*” “*terrorists.*” (Ex. JJ, Pg. 4, Par. 4; Pg. 5, Par. 1 & 2)

3. U.S. Court of Appeals for the Ninth Circuit’s September 16, 2008 decision on petition challenging Agency’s retroactive UNCLASSIFIED SSI labeling of Appellant’s July 29, 2003 potential “good faith belief” disclosure and “lack of clarity of [Agency’s] 2003 [SSI] regulations”

*“[Appellant, Robert] MacLean may still contest his termination before the [Merit Systems Protection Board], **where he may raise the Whistleblower Protection Act (WPA) of 1989 and contend that the lack of clarity of the [Transportation Security Administration]’s 2003 ‘sensitive security information’ regulations** is evidence MacLean disseminated the text message under a **good***

faith belief the information did not qualify as ‘sensitive security information’.” (emphasis added) MacLean v. Department of Homeland Security, 543 F.3d 1145 (9th Cir. 2008); **(EXHIBIT 3, Pg. 13006, Par. 3; Pg. 13007, Pg. 1)**

a) Appellant’s “good faith belief” he had to make a disclosure that protected national security and public safety

Foiled terrorist plots prompted urgent suicide hijacking warnings issued by the FBI, Department of State, DHS, and the Saudi Arabia government several days before the Agency planned to remove FAMs from long distance, nonstop flights in order to save money associated with FAMs requiring hotel lodging after completing a maximum duty day. According to the July 26, 2003 DHS warning titled **“Potential Al-Qaeda Hijacking Plot in the U.S. and Abroad”** disseminated to all Agency and commercial airline personnel, hijackers planned to exploit U.S. visa and airport security screening loopholes in order to smuggle weapons hidden in camera equipment onto aircraft and overtake them for suicide missions to attack European, Australian, and U.S. east coast targets. **(Ex 18, Pg. 3, Par. 3)**

The DHS Office of Intelligence & Analysis / Directorate for Preparedness / Homeland Infrastructure Threat & Risk Analysis Center’s (“HITRAC”) issued a report on June 16, 2006 that confirmed the foiled hijack plot that resulted in the July 26, 2003 DHS Advisory. **(Ex. 26, Pg. 5, Par. 1 & 3)**

The DHS’s July 26, 2003 warning that suicide hijackers would exploit an immigration loophole by applying for Transit Without Visa program (“TWOV”) and the International-to-International transit program (“ITI”) visas. Applying for these visas did not require consular screening.

On August 2, 2003, both the DHS and the Department of State issued press releases that they were immediately suspending these two visa programs because of “[r]ecent specific intelligence indicates that terrorist groups have been planning to exploit these transit programs to gain access to the U.S. or U.S. airspace without going through the consular screening process. The steps announced today are designed to augment security against possible terrorist threats and to protect U.S. citizens and foreign nationals who fly into and out of the United States.” (emphasis added) (Ex. I “eye”, Pg. 1, Par. 4)

The suicidal terrorists would also exploit an airport security screening loophole by flying into U.S. airports from countries with more vulnerable security screening. Some U.S. airports did not require new screening procedures of transiting foreign passengers unless they had to change flights and cross terminals having to go through a new security screening checkpoint, two such airports with single, centralized screening points are Denver International (“DEN”) and Washington DC Dulles International (“IAD”). For instance: A suicide hijacker could begin his journey at Mexico City International MEX airport where he would be initially security-screened. The hijacker then takes a direct flight into Washington DC Dulles International IAD, an airport with one central security screening checkpoint between one central security screening area and every gate to all aircraft. The hijackers knew that they would not have to worry about having to go through another process of security screening. To make his plan even easier, the terrorist could choose a subsequent flight that uses the same aircraft, which would continue onto another destination and never have to leave the aircraft for another flight leaving the same airport. Since Appellant’s disclosure, Agency and other international law enforcement agencies, airport authorities, and airline companies have implemented measures to ensure passengers are screened again when changing planes in transit.

Once in flight, the suicidal terrorists would use their smuggled weapons, over-power a flight crew, neutralize the pilots, and fly the aircraft into high-value

targets in Europe, Australia, and the U.S. In an move the Appellant had never witnessed during his U.S. Air Force enlistment as a nuclear weapons technician witnessing the fall of the Soviet Union -- between July 26, 2003 and July 29, 2003, a former Assistant Director of the FBI and the current Special Agent in Charge (“SAC”) of Appellant’s field office in Las Vegas, SAC David Knowlton, mandated that all FAMS attend unprecedented one-on-one threat briefings regarding these suicide hijacking warnings. SAC Knowlton considered this threat so serious, that these mandatory briefings could not be conducted via text message, via email, or over the phone, but only in person by an Operations Security Assistant, a Federal Air Marshal detailed to the Operations Branch, an Assistant to the Special Agent in Charge, an Assistant Special Agent in Charge, or himself. SAC Knowlton ordered FAMS to attend the meetings expeditiously regardless of being off duty or on Regular Day Off status. Former Las Vegas FAM and current probationary DHS [REDACTED] Special Agent [REDACTED] [REDACTED] will testify that he was one of several FAMS tasked with conducting these emergency face-to-face briefings in the Operations Branch inside the Las Vegas FAMS Field Office. Special Agent [REDACTED] [REDACTED] also tasked with disseminating the text message that Agency has retroactively marked as “Sensitive Security Information” (“SSI”).

Former “*extreme[ly] concern[ed]*” U.S. Senator Hillary Clinton of New York (**Ex. 23, Pg. 3**), a “*furios*” U.S. Senator Frank Lautenberg of New Jersey (**Ex. J**), U.S. Senator Charles E. Schumer (**Ex. K, Pg. 1, Par. 7; Ex. Q, Par. 10**), U.S. Senator John Kerry (**Ex. M, Pg. 1, Par. 3**), U.S. Congresswoman Carolyn Maloney of New York (**Ex. L**), and U.S. Congressman Hal Rogers of Kentucky (**Ex. M, Pg. 2, Par. 3**) all expressed outrage and forced the Agency to reverse its “*shocking,*” “*incredible,*” “*foolish,*” “*boneheaded,*” “*nonsensical,*” “*sorry episode*” of a operational plan to remove FAMS from nonstop, long distance flights, with the obvious immigration, visa screening, and airport security loophole. U.S. Senator Boxer when even so far as thanking the Appellant and the other sources of the disclosure:

*“I want to **thank the air marshals** who came forward and told the truth about what was going on within their agency and bringing this issue into the spotlight,’ said Sen. Barbara Boxer, D-Calif., during a news conference, ‘because I believe that cutting air marshals was clearly in the mix of budgetary cuts being considered.’” (emphasis added) (Ex. Q, Par. 10)*

TSA’s proposed operational plan to remove FAMs from large and fully-fueled aircraft would have endangered public safety and national security, and was a specific violation of the Aviation & Transportation Security Act signed into law on November 19, 2001, specifically 49 U.S.C. § 44917 ***“Deployment of Federal Air Marshals... [on] nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority.”*** (Ex. 35) The U.S. Government Accountability Office (“GAO”) documented in their March 31, 2004 report, that **for two months**, this plan would have endangered the same aircraft used for the terrorist attacks on September 11, 2001, any flight three hours or longer would have been unprotected. (Ex. 33, Pg. 7, Par. 3 & Pg. 8 Par. 1) The reason Appellant found out about this plan was because FAMS headquarters ordered a text message be sent to all FAMs’ Nokia model 3360 cellular phones informing FAMs to cancel hotel reservations after August 3, 2003 to avoid hotel cancelation fees. The text message ordered FAMs to call the Mission Operations Center (“MOC”) for new scheduling.

Appellant then called his field office to speak with an available supervisor. Assistant to the Special Agent in Charge (“ATSAC”) [REDACTED] fielded to his call. After asking ATSAC [REDACTED] what was truly happening with FAMs schedules, he informed Appellant that the TSA had a budget shortfall and needed to cut costs associated with FAMs lodging in hotels. ATSAC Schofield told Appellant that the decision was made at headquarters and nothing could be done at the field office level.

Appellant subsequently called the DHS Office of Inspector General (“OIG”) hotline. The first person Appellant spoke to asked him where he lived and routed him to a DHS/OIG audit office in San Diego. When Appellant spoke with someone in the DHS/OIG San Diego office and explained to them about the plan, they told him that the DHS/OIG Oakland Field Office was more appropriate to handle his disclosure because they had a criminal investigations division.

When Appellant called the Oakland DHS/OIG Field Office, Appellant spoke with a Special Agent [REDACTED]. When Appellant explained TSA’s plan to remove FAMs from nonstop, long distance flights, he agreed with Appellant that the plan was dangerous and a violation of law, but would not take any action. Before Appellant’s conversation with S/A [REDACTED] ended, he cautioned Appellant from further pursuing a remedy to the plan, and was risking disciplinary action or bringing unwanted attention to himself.

With no options left, Appellant and other DHS employees choose to anonymously contact Brock Meeks, MSNBC’s Chief Washington DC Correspondent from a pay phone using a cash calling card. Appellant choose Brock Meeks because of past honest but responsible reporting he conducted on other aviation security lapses. In Appellant’s conversation with Meeks, Meeks explained to Appellant that other sources across the country confirmed his disclosure. Appellant told Meeks the exact wording of the text message sent to their unsecured Nokia 3360 cellular phones and he verified it was the same text message sent to other FAMs across the country. Meeks told Appellant he would first contact and use quotes from key members in congress so that they could investigate the plan. The story was going to immediately post on the MSNBC.com homepage as its headline story and be aired all day on its TV channel. The story was also aired on CNN TV (**Ex. N, Pg. 5-6**), **Fox News TV (Ex. O)**, and **Public Broadcasting Station (“PBS”) TV (Ex. P, Pgs. 1-3)**.

Appellant understood there was a possibility that disclosing the plan would divulge information that may be harmful if no one in operational leadership positions responded promptly. Given the critical nature of the DHS July 26, 2003 suicide hijacking warning and the unprecedented mandatory one-on-one threat briefings conducted in the Appellant's field office immediately after the warning was disseminated, the violation of a specific law, being ignored by the DHS/OIG, and the history of the Agency senior leadership's ignorance and lack of concern, Appellant had a good faith belief that the threat was real and imminent. The ill conceived cost-saving plan had to be immediately exposed to as many members of congress as possible before it would become fully operational five days later.

As a member of the military and in the course of his federal law enforcement career, Appellant has had directly access to nuclear weapons, TOP SECRET, SECRET and CONFIDENTIAL material since he was 18 years old. **(Ex. S)** Appellant always handled this information with care and the knowledge it could put the public or U.S. security in harm's way. In this instance, Appellant believed the senior leadership of the Agency was endangering the public and national security because they were too ashamed of reporting to congress they had blown their budget on extravagant, needless contracts and cash bonuses for their senior executives -- all of which was documented in Clark Kent Ervin's memoirs regarding his January 2003 to December 2004 tumultuous tenure as DHS Inspector General. **(Ex. T, Pg. 1, Par. 7 & Pg. 2, Par. 6)**

b) Appellant's "[G]ood faith belief the information did not qualify as 'sensitive security information'"

In accordance with the U.S. Court of Appeals for the Ninth Circuit, Appellant argues that he had the **"good faith belief"** that the Agency's dangerous operational plan -- a cover up for their blown budget -- was so serious that its public disclosure would outweigh the potential harm if not disclosed.

Even the full U.S. Merit Systems Protection Board (“MSPB”) Chairman Neil A. G. McPhie and Vice Chairman Mary Rose who both reviewed Agency’s January 9, 2009 Interlocutory Appeal of Honorable Craig A. Berg’s December 23, 2008 decision, inadvertently had their June 22, 2009 decision posted on the www.MSPB.gov publicly accessible website with every page marked as SSI, along with threatening disclaimers on the bottom of each page declaring “**WARNING: [] Unauthorized release may result in civil penalty or other action.**” This was a particularly confusing action from the MSPB given the Agency retroactively applied the very same SSI label to Appellant’s July 29, 2003 disclosure in order to justify his removal. Although MSPB Chairman McPhie and MSPB Vice Chairman Rose has since had their decision re-posted now without the SSI label, its original release of information marked SSI raises significant questions about Appellant’s good faith belief in the clarity of the Agency’s 2003 SSI regulations, and highlights the Agency’s haphazard approach toward handling sensitive but **UNCLASSIFIED** materials. Agency argues that the Appellant was supposed to know that his original disclosure was SSI, but it is obvious MSPB Chairman McPhie and Vice Chairman Rose themselves are confused about when and how to apply the label.

The full MSPB’s general counsel Chad Bungard told the Center for Public Integrity’s Nick Schwellenbach in a June 24, 2009 article that the marking of MSPB Chairman McPhie and Vice Chairman Rose’s June 22, 2009 decision was due to a “*computer glitch*,” but the Appellant received an SSI-marked and cover-sheeted hard-copy of Chairman McPhie and Vice Chairman Rose’s June 22, 2009 decision in the U.S. Mail on June 26, 2009. Each page of the mailed hard-copy was marked “Sensitive Security Information (SSI)” with all of the nondisclosure “WARNING” disclaimers. With very strict adherence to TSA’s SSI regulations, the Washington DC MSPB stapled to the decision a bright green and blue colored “Transportation Security Administration” cover sheet declaring the document was SSI and “To Be Opened By Addressee Only” red ink stamps all over the Certified U.S. Mail envelope. (Ex. U)

The MSPB and public should be concerned that pseudo-classification labels like SSI have been abused to cover up embarrassing information and to retaliate against Appellant, and future potential whistleblowers.

Two years after Appellant's July 29, 2003 disclosure, the U.S. Government Accountability Office ("GAO") issued on June 2005, a critical report titled, "**Clear Policies & Oversight Needed for Designation of Transportation Security Administration Sensitive Security Information,**" they summarized their findings with the following:

"Monitoring Controls Are Weak ... Specifically, TSA has not established and documented policies and internal control procedures for monitoring compliance with the regulations, policies, and procedures governing its SSI designation process, including ongoing monitoring of the process." (Ex. V, Pg. 34)

The GAO's report provided this excerpt from an Agency internal memorandum given to their auditors during their investigation:

*"Lacking a central policy program office for SSI has led to **confusion and unnecessary** classification of some materials as SSI. Adherence to handling requirements within TSA has been **inconsistent**, and there have been instances where SSI has been **mishandled** outside of TSA. Identification of SSI has often appeared to be ad-hoc, **marked by confusion** and disagreement depending on the viewpoint, experience, and training of the identifier. Strictures on the release of SSI and other SSI policy or handling -- related problems have occasionally frustrated industry stakeholders, Congress, the media, and our own employees trying to work within*

the confines of the restrictions. Significant time and effort has been devoted to SSI issues, and it is not likely that the current approach to addressing such issues can be sustained.” (emphasis added) (**Ex. V, Pg. 5, Par. 5**)

*Understandably, even the GAO erred in this excerpt using the inappropriate terminology of “***classification***” instead of “marking” or “labeling,” when SSI is **UNCLASSIFIED** information.

On June 16, 2009, U.S. Senator Jay Rockefeller of West Virginia and the current Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation introduced a bill (S. 1274) that would limit future abuses of the SSI label. In his press release regarding the bill’s introduction, Senator Jay Rockefeller wrote that his “*legislation makes clear that a federal agency or private company subject to homeland security regulations cannot use the SSI **classification to conceal misconduct, prevent embarrassment, or delay the release of information that the public has every right to know.***” (**Ex. W, Par. 4**) (emphasis added)

*This U.S. Senate press release also made the common mistake using the inappropriate terminology of “***classification***” instead of “marking” or “labeling,” when SSI is **UNCLASSIFIED** information.

4. Appellant counters Agency’s central argument: That his disclosure signaled potential terrorists to attack the nonstop, long distance flights Agency planned to not protect immediately after multiple official hijack warnings

The Agency makes a disingenuous argument that the Appellant’s disclosure of the Agency’s pending operational plan signaled to all terrorists that nonstop, long distance flights would be vulnerable for attack. Given the well documented and

public knowledge that the Agency for over a year had policies and procedures in place that routinely exposed mission FAMs' identities to general passengers -- such as the Agency's male FAMs' military hair grooming standards, Agency's mandatory suit & tie dress code for mission FAMs, Agency's overt airport security screening bypass procedures for mission FAMs, and their obvious pre-boarding mandate in plain view of the general passengers -- it would be elementary for a highly-trained terrorist surveillance team to deduce whether or not FAMs were boarding certain aircraft and where they sat.

It is also duplicitous for the Agency to argue that for an entire two months, the following people would not have discussed or have been alarmed about the fact that FAMs are no longer manning "*nonstop, long distance flights, such as those targeted on September 11, 2001*" in which congress intended "*should be a priority*" for air marshal protection when they passed the **Aviation & Transportation Security Act** ("ATSA") just weeks after the September 11, 2001 Attacks, and immediately after three separate federal agencies and the Saudi Arabia government issued specific suicide hijacking alerts:

- Significant others of FAMs who are used to their routine of reserving hotels and packing for overnight stays away from home and family;
- Flight crews who rely on air marshal protection of the same flights used in the September 11, 2001 Attacks;
- Frequent flyers who are used to seeing the nattily dressed large athletic persons pre-board their aircraft before the families with children, the physically challenged, and the first and business class passengers
- Airline gate agents who facilitate FAMs boarding high-threat flights

Appellant had immediate information and used his knowledge of his profession of obviously realizing that potential terrorists would have found out about the Agency's operational plan from other sources -- slower, but inevitable to realize -- who would have disseminated the information **after the fact**. Had the plan been put into bureaucratic locomotion after the fact, it could have taken weeks to reverse while these aircraft were in fact imminently vulnerable. When going through official channels to address the dangerous plan was unsuccessful, Appellant meticulously used the conduit of a powerful media organization that considered his position and credibility, and got immediate congressional attention and action to reverse the plan long before it became a danger to national security and public safety. Appellant's made his disclosure **five days before** the plan would go operational and did so in a bold and clear manner to congress and the public, so they could instantaneously reverse the Agency's dangerous course.

5. Appellant had no underlying motive when he made his disclosure other than "a good faith belief" to expose fiscal mismanagement, and protect national security and public safety

Appellant had absolutely no motive or "ax to grind" with the Agency prior to his July 29, 2003 disclosure. Appellant had not yet co-founded the FLEOA FAMS Agency Chapter. Prior to him co-founding the FLEOA FAMS Agency Chapter, Appellant never held a position in a professional organization or with his bargaining unit during his tenure as a U.S. Border Patrol Agent. Just nine months prior, Appellant had been promoted to the highest pay grade (SV I-Band) in his position -- a year faster than the vast majority of other FAMS. **(Ex. X)** Appellant had no prior discipline and pending discipline. Appellant made the disclosure anonymously with no vanity or anything else to gain but the ease of carrying out his duties without the worry of him and others not being killed.

6. Appellant alleges that Agency senior leadership violated his Fourth Amendment rights of the U.S. Constitution Bill of Rights to find cause to remove him

Appellant has reasonable suspicion to allege that FAMS Director Thomas D. Quinn directed a task force within Agency's headquarters to compel a private U.S. company to reveal his and other FLEOA FAMS Agency Chapter Executive Board Officers' personal Internet Provider ("IP") addresses without administrative subpoenas, warrants, or USA Patriot Act National Security Letters. Agency senior leadership's alleged actions was a long-standing and desperate attempt to find cause to remove him and his fellow FLEOA FAMS Agency Chapter Executive Board Officers and silence them once and for all. Once they obtained IP addresses, former FAMS Director Quinn and his headquarters task-force dedicated significant time tracking Appellant's and FLEOA FAMS Chapter Executive Board Officers' personal **off-duty** Internet traffic. **(Ex. 4)** By unofficial means, appellant has already discovered that the same private company revealed IP addresses without lawful orders on August 18, 2006, in the proposal to remove Atlanta FAM Anthony Rine. **(Ex. F)** These actions are a violation of the Fourth Amendment. Appellant alleges his and FAM Rine's cases were tracked by the task force headed by FAMS headquarters' ("HQ") Policy Compliance Unit Special Agent in Charge ("SAC") Robert Bond and FAMS Policy Compliance Unit Assistant Special Agent in Charge ("ASAC") Mike Mika in order to obtain personal IP addresses without lawful orders or probable cause that a crime occurred.

Former FAMS Director Quinn's rancorous February 11, 2006 memorandum to former Immigration & Customs Assistant Secretary Michael J. Garcia requested a more comprehensive investigation of Appellant's off-duty Internet usage, accusing Appellant and his FLEOA FAMS Agency Chapter Executive Board of being "*disgruntled,*" "*malicious,*" "*obscene,*" "*irresponsible,*" "*abusive,*" and apart of a "*de facto labor organization.*" Former FAMS Director Quinn's task force even went so far as to obtain the military records of the Appellant's father. Agency

submitted FAMS Director Quinn's February 11, 2006 memorandum and related investigation during 2006 discovery. (Ex. 4)

It is an impossibility that the Agency obtained a warrant, administrative subpoena, or a USA Patriot Act National Security Letter in the FAM Rine Internet message board investigation in **one hour and seven minutes**. (Ex. F, Pg. 13)

Another individual, currently an active duty [REDACTED] FAM, has informed the Appellant, that he along with the **Government Accountability Project's** ("GAP") Legal Director, Thomas Devine, will be filing a complaint with the U.S. Office of Special Counsel ("OSC") and the DHS/OIG. The potentially **CLASSIFIED** complaint will detail his knowledge of FAMS HQ issuing "**Red Letters**" and requesting other federal agencies to conduct intrusive searches of his and other FAMs off-duty, private communications with congress and the media. [REDACTED] FAM stated that he initially discovered this activity in an October 2005 interview with an Immigration & Customs Enforcement ("ICE") / Office of Professional Responsibility ("OPR") Special Agent. The ICE/OPR investigator revealed to [REDACTED] [REDACTED] FAM documents listing his personal off-duty phone records and accused him of releasing unauthorized information to current Washington Times reporter, Audrey Hudson. Copies of [REDACTED] FAM's OSC and DHS/OIG complaints will be hand-delivered and filed with the Appellant's docket in the Washington DC MSPB office prior to October 14, 2009. The U.S. [REDACTED] [REDACTED] and other federal agencies are currently investigating this case.

7. “Witch-hunt” and removal of Appellant was orchestrated entirely by former FAMS Director Thomas D. Quinn and his headquarters staff, not the Special Agent in Charge of Appellant’s field office who Agency designated as their “Deciding Official”

The Agency attempts to attribute the decision of the removal of the Appellant solely on former SAC Frank Donzanti of the FAMS Los Angeles Field Office and designated him as the “*deciding official*” in Appellant’s removal. Despite the fact that Mr. Donzanti -- a retired U.S. Secret Service (“USSS”) senior manager -- in his August 2, 2006 deposition makes a loyal attempt to take responsibility away from the half-dozen other retired USSS senior managers in FAMS headquarters, Appellant will present overwhelming evidence of former USSS senior executive and FAMS Director Thomas D. Quinn and his headquarters staff consisting of former USSS Special Agent and Assistant Director Kent Jeffries, former USSS Special Agent and Special Agent in Charge of FAMS Policy Compliance Unit, Robert E. Bond, and former USSS Special Agent, and friend of Mr. Quinn for over 14 years, Assistant Special Agent in Charge (“ASAC”) of FAMS Policy Compliance Unit, Mike Mika. Mr. Quinn in his deposition stated that he and ASAC Mike Mika worked together as contractors for foreign clients. **(Ex. CC, Pg. 137, Lines 1-22)** This chummy group of former USSS Special Agent senior managers and executives earning six-figure salaries, wasted countless hours tracking and investigating the activities of field employees who were questioning their dangerous procedures. At taxpayer expense, their internal investigation resulted in a 189-page report submitted directly to Department of Homeland Security DHS Inspector General Clark Kent Ervin and the ICE Assistant Secretary Michael J. Garcia, both of whom declined any further action. The DHS Office of Inspector General (“OIG”) spent only nine duty days reviewing their 189-page complaint before rejecting it. **(Ex. Y)**

In his August 2, 2006 deposition, Mr. Donzanti stated that he learned sometime in July 2005 about the Appellant’s forthcoming admission to ICE/OPR that he was one of the sources of the July 29, 2003 MSNBC article. Yet, Mr.

Donzanti testified in his deposition that the Appellant was “*not trustworthy*” and “*could not trust*” “*couldn’t be counted on,*” and his disclosure was an “*egregious offense*” and “*detrimental to aviation Federal security.*” Mr. Donzanti further states that there “*wasn’t [any other position] available*” for the Appellant. Yet Mr. Donzanti allowed Appellant to continue on active duty, keep his Agency-issued firearm and credentials for an additional **THREE** months, and for **FOUR** months continued to have his managers and Operations Branch email Appellant **DOZENS** of “Sensitive Security Information” labeled FAMS’ mission schedules. The FAMS’ mission schedules detailed FAMS’ names, flight numbers, flight origins and destinations, and on a few, FAMS’ SEATING ARRANGEMENTS -- a detail that is classified as **SECRET** as evidenced in the U.S. House of Representatives May 25, 2006 report, “**In Plane [sic] Sight: Lack Of Anonymity At The Federal Air Marshal Service Compromises Aviation And National Security**” (Ex. Z, Pg. 7 of **Agency Responses, Answer to 2.E**) On several separate occasions, Appellant would even click on “**REPLY ALL**” to make sure his Assistant to the Special Agent in Charge and the rest of the FAMS in the email were aware the Appellant was receiving the group emails to rule out a computer glitch. Finally someone in the Los Angeles FAMS Field Office learned of Appellant’s access to all of these schedules, and in early February 2006, Appellant’s access to the Agency’s secure website was denied. (Ex. AA)

Even the Honorable Philip D. Reed was convinced of former FAMS Director Quinn and FAMS HQ’s intimate involvement in removing the Appellant that he ordered Mr. Quinn and the Agency to produce **189 pages** of documents about his investigations into Appellant’s private off-duty activities.

FAMS headquarters’ time-consuming witch-hunts began long before August 11, 2004, the day when former FAMS Director **personally** submitted 189-pages of a report of investigation of FAMS -- specifically his August 11, 2004 memorandum to DHS/OIG. DHS/OIG’s response to Mr. Quinn request stated “*FAMS employees allegedly involved in a concerted campaign, in coordination with [FLEOA], to*

maliciously and irresponsibly discredit and undermine management officials at the FAMS, to include Director Quinn.” After devoting only nine days to review former FAMS Director Quinn’s 189-page investigation, former DHS Inspector General Clark Kent Ervin’s office declined to pursue the witch-hunt, concluding “*no criminal activities nor serious misconduct issues are alleged.*” FAMS Director Quinn and the Agency failed to produce his 189-page DHS/OIG complaint, in a flagrant violation of Honorable Reed’s August 21, 2006 order. **(Ex. Y, Pg. 13, Par. 1-2)**

Former Director Quinn and his task force of senior executives did not stop there, on February 11, 2005, the task force then sent their 189-page investigation directly to former Assistant Secretary of ICE, Michael J. Garcia. ICE rejected former FAMS Director Quinn’s request with checking off that “**ALLEGATIONS UNSUBSTANTIATED. NO FURTHER ACTION NECESSARY.**” **(Ex. 4, Pg. 8)**

The former ICE/OPR Washington DC Intake Director, Matthew L. Issman will testify about how he and his fellow ICE/OPR senior manager, James Wong, witnessed how desperate “*megalomaniac*” Mr. Quinn and former Deputy Assistant Director Kent Jeffries were “*desperate*” to silence the Appellant and his three fellow FLEOA FAMS Agency Chapter Executive Officers in never-ending “*witch-hunts.*” **(Ex. 5)**

[REDACTED]

If your Honor approves of Appellant’s August 21, 2009 discovery request, Appellant will present a 575-page Report of Investigation composed and drafted by Associate Special Agent in Charge of the ICE/OPR San Diego, James Wong – the investigation is referenced in Assistant Inspector General Issman’s May 12, 2009 letter to congress. Associate SAC Wong’s report will detail the witch-hunts FAMS

headquarters senior executives and the Las Vegas FAMS Special Agent in Charge (“SAC”) David Knowlton and his Assistant Special Agent in Charge (“ASAC”) Gregory Korniloff carried-out against several FLEOA FAMS Agency Chapter Executive Officers. On September 13, 2004, SAC Knowlton with the assistance from ASAC Korniloff, contacted FAMS headquarters to initiate the investigation of Appellant that ultimately led to his removal. Mr. Quinn, Mr. Knowlton, and Mr. Korniloff all abruptly exited the FAMS after James Wong’s investigation. The FAM who received the brunt of SAC Knowlton and ASAC Knowlton’s retaliation was FLEOA FAMS Vice President of Policy & Ethics and current Las Vegas FAM Philip Jeffrey Black. FAM Black who spent many hours forwarding documents and being interviewed by ICE/OPR Associate SAC Wong. FAM Black received a FOIA from ICE regarding the existence of a 575-page report of investigation. **(Ex. BB, Pg. 1, Par 2)**

In his September 28, 2006 deposition, former FAMS Director Quinn admitted he launched another investigation of FAM Black’s off-duty private activities. Despite Mr. Quinn’s headquarters investigation, FAM Black was never disciplined for his off-duty activities. **(Ex. CC, Pgs. 131-136)**

Appellant will produce shocking December 12, 2006 and February 16, 2007 affidavits from current Las Vegas Field Office Assistant to the Special in Charge (ATSAC) [REDACTED]. The affidavits were apart of a Equal Employment Opportunity (EEO) investigation involving the FAM Black. ATSAC [REDACTED] details how he was threatened with physical harm, the “*denigrating*” actions taken against FAM Black **(Ex. DD, Page 3 , Par. 13.A)**, that he was forced to file “*inaccurate*” and “*not correct*” Conduct Incident Reports (CIRs) **(Ex. EE, Pg. 3, Par. 38.A)** against FAM Black, and how “*ashamed of the lies and personal attacks that were perpetrated against FAM Black by SAC Knowlton and ASAC Korniloff*” in the Las Vegas Field Office. **(Ex. DD, Page 10, Par. O)**

In a complaint FAM Black sent to ICE/OPR Associate SAC James Wong, he details a heated “tag-team” interrogation in which he was berated by SAC Knowlton and ASAC Korniloff. They were so desperate have him to confess to the release of the one-per-month mandatory Surveillance Detection Report (“SDR”) Las Vegas Field Office emails to MSNBC for Brock Meek’s August 4, 2004 article, that they **threatened him with the USA Patriot Act** if he did not confess -- FAM Black never confessed to the disclosure that the Appellant made and was originally charged for. **(Ex. C, Pg. 24, Lines 18-14)** When the Appellant discovered that FAM Black was tasked with painting walls and washing the field office’s fleet vehicles for punishment, he informed Brock Meeks so that Meeks could tell FAMS headquarters to cease punishing FAM Black with demeaning labor. After former FAMS Director Quinn retired, he went to work for Datamaxx Group, the company contracted to develop the software platform that facilitated the submission of SDRs. **(Ex. FF, Pg. 1, Par. 2)**

The USA Patriot Act was also invoked by Las Vegas Field Office SAC Knowlton days after Appellant’s July 29, 2003 disclosure. When DHS/OIG investigators arrived to investigate -- following a request by U.S. Congressman Jim Turner of Texas -- whether or not the USA Patriot Act was used to threaten FAMS, the DHS/OIG investigators situated their make-shift office directly in front of SAC Knowlton’s office throughout their detail, and SAC Knowlton subsequently debriefed every FAM who spoke to the DHS/OIG investigators. After Appellant again phoned Oakland, CA Field Office DHS/OIG Special Agent [REDACTED] and specifically told him which Las Vegas FAMS in his squad to talk to, the DHS/OIG investigators in Las Vegas never spoke to Appellant nor any other fellow FAMS in his squad. In said meeting, SAC Knowlton told Appellant and his fellow FAMS in his squad that the FAMS transition to ICE was “*on hold,*” and FAMS (series 1801) reclassifying to coveted ICE Criminal Investigator/Special Agents (job series 1811) was indefinitely suspended because of an “*ongoing criminal investigation*” in which the “*USA Patriot Act has been invoked.*” SAC Knowlton suggested to Appellant and his fellow FAMS in his squad: That if they were the

source, or if they knew who the sources were of the July 29, 2003 disclosure to MSNBC, they need to come forward immediately or else they will never be 1811s and be able to transfer as Special Agents/Criminal Investigators with the FBI, DEA, ATF, and Secret Service. Two months later, the FAMS transferred to ICE as scheduled.

8. Inspector Generals, including DHS Inspector General Clark Kent Ervin, were so powerless and lacked independence, that congress had to pass the “Inspector General Reform Act of 2008”

Appointed six months prior, former Inspector General Ervin was the DHS Inspector General at the time Appellant made his July 29, 2003 disclosure:

Former DHS Inspector General Ervin’s November 2004 DHS/OIG report titled, “**Review Of Alleged Actions by Transportation Security Administration to Discipline Federal Air Marshals For Talking to the Press, Congress, or the Public,**” investigated FAMS managers invoking the USA Patriot Act to ferret out the Appellant and the other sources of the July 29, 2003 disclosure documenting that *“that some [FAMs] have been threatened with having the **USA PATRIOT Act** used against them. **Five** [FAMs], from two field offices, said they were threatened with prosecution for disclosing information to the press or public. They said their supervisors’ threats included being led away in handcuffs, being fired and prosecuted, or being subjected to polygraph exams if the leaks continued...”* (Ex. 31, Pg. 8, Par. 3) *“...and **seven** [FAMs] refused to comment on this issue.”* (Ex. 31, Pg. 8, Par. 2) (emphasis added)

A total of 12 federal law enforcement officers with **TOP SECRET** clearances, tasked with thwarting a team of hijackers during a flight, reported or were afraid to report to Office of Inspector General Special Agents that the USA Patriot Act was in fact being abused.

A month after releasing this report, former DHS Inspector General Ervin was forced out of his position against his desire. Former DHS Inspector General Ervin would later write a book about his tenure titled, “**Where America Is Vulnerable to Attack.**” In his book, he declares that “*Secretary [of DHS, Tom Ridge] would be an adversary, not an ally.*” “*Instead of taking the terrorists on, he would take me on.*” (Ex. G, Pg. 2, Par. 3)

Former DHS Inspector General Ervin writes how his undercover inspection teams passed deadly weapons and explosives through airport security screening. **Prior to Appellant’s July 29, 2003 disclosure**, Mr. Ervin sent a team of undercover investigators to airports around the U.S. to see whether there had been any improvement in the ability of airport screeners to detect concealed guns, knives, and explosives. The investigators found it far easier than it should have been to sneak these weapons past Agency’s screeners. Had they been terrorists, the DHS/OIG teams would have succeeded all too often in bringing these “*instruments of death*” onto airplanes. One of the last things he did as Inspector General in the **late fall of 2004** was to have his staff conduct a second round of undercover tests at the **same** airports to see whether screener performance had improved two years later. The tests were conducted, the results came in, and “*a disturbing conclusion was reached*”. “**No improvement** in screener performance was found.” In addition to screener performance, Mr. Ervin “*remain[ed] concerned*” about what he found regarding the issue of criminal background checks for airport screeners -- he discovered **convicted criminals** within the screener workforce. “*The reality that criminals had been among the ranks of airport screeners raised for [him] the question of whether terrorists might have been, too, and TSA’s laxity in vetting procedures at the time gave me little comfort as to the likelihood of that terrible possibility.*” (Ex. HH, Pg. 2, Par. 11)

Former DHS Inspector General Ervin writes in his book: “*As for air marshals, how effective can they be if their identities can be discerned by the order*

in which they board flights, where they sit on flights, and which hotels they may check into while on the road?” (Ex. HH, Pg. 2, Par. 13 (last) & Pg. 3, Par. 1)

In his May 19, 2007 opinion editorial in the Los Angeles Times about reforming the law in order to give Inspector Generals more independence, he wrote that during his time as DHS Inspector General, beginning six months before Appellant made his disclosure, former DHS Inspector General Ervin “*issued one report after another documenting the misuse of tax dollars as well as the more serious failure, time and again, to close gaping holes in our nation’s security. [Mr. Ervin] too was investigated (for not investigating a matter [he] deemed beyond [his] jurisdiction in [his] previous post as State Department inspector general). No wrongdoing was established, mind you. But the result was that [his] nomination to serve in a permanent capacity ([He had] received a recess appointment) stalled in the Senate, and [he] ultimately lost the support of the [President George W. Bush] White House.*” (Ex. T, Pg. 1, Par. 7)

The **Inspector General Reform Act of 2008** (Public Law 110-409) was co-sponsored by then-U.S. Senator Barack Obama, and signed into law by President George W. Bush.

9. Vice President Richard Cheney declares CIA employees should not be investigated for wrongdoing because they “were directly responsible for the fact that for eight years, we had no further mass casualty attacks against the United States”

The day after Appellant’s July 29, 2003 disclosure, U.S. President George W. Bush declared that “*the [suicide hijacking] threat is a real threat...we obviously don’t have specific data... al-Qaeda tends to use the methodologies that worked in the past... we’re focusing on the airline industry right now and we’ve got reason to do so.*” (emphasis added) (Ex. 20, Pg. 4, Par. 8)

Vice President Cheney vigorously insists that CIA interrogators should not be investigated for allegedly torturing detainees and be left to continue their work because to their credit, there were no terrorist attacks on the U.S. since the September 11, 2001 Attacks, but yet his eight-year administration relentlessly persecuted Appellant and his fellow FLEOA FAMS Agency Chapter Executive Board Officers -- who made valid disclosures -- despite the fact no U.S. planes were hijacked or exploded since September 11, 2001.

On August 30, 2009, Vice President Cheney told Chris Wallace on Fox News cable television this:

*“I guess the other thing that offends the hell out of me, frankly, Chris, is we had a track record now of eight years of defending the nation against any further mass casualty attacks from Al Qaeda. The approach of the Obama administration should be to come to those people who were involved in that policy and say, how did you do it? **What were the keys to keeping this country safe over that period of time?**”* (emphasis added) (Ex. II, Pg. 2, Par. 9)

*“Chris, my sort of overwhelming view is that the enhanced interrogation techniques were absolutely essential in saving thousands of American lives and preventing further attacks against the United States, and giving us the intelligence we needed to go find Al Qaeda, to find their camps, to find out how they were being financed. Those interrogations were involved in the arrest of nearly all the Al Qaeda members that we were able to bring to justice. **I think they were directly responsible for the fact that for eight years, we had no further mass casualty attacks against the United States.**”* (emphasis added) (Ex. II, Pg. 3, Par. 3)

10. Appellant’s disclosures have revised dangerous operational procedures and policies

A January 2009 U.S. Government Accountability report titled, “**AVIATION SECURITY Federal Air Marshal Service Has Taken Actions to Fulfill Its Core Mission and Address Workforce Issues, but Additional Actions Are Needed to Improve Workforce Survey**” (EXHIBIT 2) concluded that it was satisfied that the dangerous safety and security issues brought to light by the Appellant and his FLEOA FAMS Agency Chapter Executive Board have all been **“revised”** and there have been no successful terror attacks or hijackings on U.S. aircraft:

Cover letter of the January 2009 U.S. GAO report:

*“Because the number of air marshals is less than the number of daily flights, FAMS’s operational approach is to assign air marshals to selected flights it deems high risk -- **such as the nonstop, long-distance flights targeted on September 11, 2001.**” (emphasis added) (Ex. 2, Cover Letter “What GAO Found” “B”, Par. 1)*

*“FAMS **revised** its policy for **airport check-in and aircraft boarding procedures** to help protect the anonymity of air marshals in mission status, and FAMS adjusted its flight scheduling process for air marshals to support a better work-life balance” (emphasis added) (Ex. 2, Cover Letter “What GAO Found” “B”, Par. 3)*

Page 22 of the report:

“SECTION TITLED: The Federal Air Marshal Service Modified Its Dress Code and Hotel Policies to Further Protect Air Marshals' Anonymity” (emphasis added)

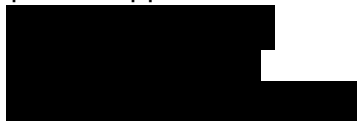
“FAMS management revised the dress code policy and the hotel policy for air marshals in August 2006 and February 2007, respectively” (Ex. 2, Pg. 22, Par. 3)

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Electronic Mail

pro se Appellant



Electronic Mail

Eileen Dizon Calaguas, Esq.
Department of Homeland Security
Attorney-Advisor
TSA Office of Chief Counsel
450 Golden Gate Avenue
P.O. Box 36018
San Francisco, CA 94102

A handwritten signature in black ink, appearing to read "Robert J. MacLean".

Robert J. MacLean September 1, 2009

The Appellant

pro se