

Appellant argues that his removal was discriminatory, disparate treatment, and a prohibited personnel practice initiated because of Appellant's status as one of the two **founding** members and the **second-ranking** Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Chapter Executive Board Officer and as the Chapter's Executive Vice President from the month after his July 29, 2003 until his removal.

Appellant and his FLEOA FAMS Chapter President, Frank Terreri's leadership signed up approximately 2,000 dues-paying Federal Air Marshals between 2003 and 2006.

FLEOA was the lone professional, nonpartisan, non-bargaining unit organization that first petitioned the Agency and subsequently Congress to address the FAMS operational procedures that routinely endangered public safety and national security.

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 Chapter Executive Board have all been **"revised"**:

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

"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"

Page 22:

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

2. U.S. Court of Appeals for the Ninth Circuit September 2008 decision:

*“[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)*

3. Fourth Amendment of the Constitution

Appellant argues that former FAMS Director Thomas D. Quinn directed a task force within agency’s headquarters dedicated to tracking the **off-duty** Internet traffic of FLEOA FAMS Chapter Executive Board Officers. This task force was headed by FAMS Headquarter’s (HQ) Policy Compliance Special Agent in Charge and FAMS Policy Compliance Assistant Special Agent in Charge in order to **illegally** obtain personal Internet Provider (IP) addresses.

Former FAMS Director Quinn’s rancorous February 11, 2006 memorandum (EXHIBIT 4) to former Immigration & Customs Assistant Secretary Michael Garcia requested a more comprehensive investigation of Appellant’s off-duty Internet usage, directly accusing Appellant and his FLEOA FAMS Chapter Executive Board of being “disgruntled,” “malicious,” “obscene,” “irresponsible,” “abusive,” a “*de facto labor organization*,” and that Appellant and the FLEOA FAMS Chapter Executive Board

“provid[ed] our terrorist adversaries with an up-to-date one-stop-shopping library of information great damage to the security of the civil aviation system, the personal safety of FAMS and of the flying public.” 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 during 2006 discovery.

Upon information and belief, the Department of Homeland Security / Office of Inspector General (DHS/OIG) and the Immigration & Customs Enforcement / Office of Professional Responsibility (ICE/OPR) found no classified information or SSI contained in the Internet message board posts -- just outspoken citizens concerned with the FAMS dangerous operational procedures. It can be reasonably inferred that DHS/OIG’s rejection of former FAMS Director Quinn’s request, and the fact that his ICE/OPR investigation request of Appellant was checked off as **“ALLEGATION UNSUBSTANTIATED,”** did not sit well with FAMS Director Quinn and his staff who dedicated significant taxpayer resources to ferret out those who were speaking out about their dangerous operational procedures, instead of spending those resources to prevent more terrorists from hijacking more planes.

In the former ICE/OPR Intake Director’s -- Matthew L. Issman -- May 12, 2009 letter to congress, Mr. Issman states that Appellant and his three fellow FLEOA FAMS Chapter Executive Officers *“at no time did they disclose classified or critical-sensitive information.”* Mr. Issman forwarded his letter to the Project On Government Oversight to post on its public website: <http://POGOarchives.org/m/wi/fams-letter-20090512.pdf>
(EXHIBIT 5)

Mr. Issman is currently [REDACTED]
[REDACTED] and has declared himself to be a “willing witness” for this proceeding.

[REDACTED]

One notable article written by Ms. Hudson, was a December 8, 2004 piece titled, **“Dress code wearing thin on air marshals.” (EXHIBIT 7)** The article chronicles an extremely embarrassing but yet jocular incident involving former Director Thomas D. Quinn:

“Thomas Quinn, director of the Federal Air Marshal Service (FAMS), paid a surprise visit to Ronald Reagan Washington National Airport on Thanksgiving to thank the law-enforcement officials for their holiday work. He reportedly was angered when nearly 30 marshals deplaned and only one was dressed satisfactorily.”

2006 Appellant Interrogatory No. 5.

“Interrogatory No. 5.

Please state the name, address and title of all individuals who conducted and/or were involved in the investigation into the allegations against the Appellant, including the names of each and every individual who questioned or was questioned, interrogated or was interrogated, requested or provided information regarding the Appellant, in any way.”

See Appellant’s 2006 Interrogatories **(EXHIBIT 8)**

Agency’s Response to Interrogatory No. 5 (EXHIBIT 9)

See Agency File at Tab 4(J). (EXHIBIT 10)

Appellant’s Argument

Tab 4(J) does not contain all of the responsive information in the Agency's care, custody, or control. For instance, the Agency has not included in its response any of the information contained in Former FAMS Director Thomas D. Quinn's February 11, 2006 ICE/OPR investigation request indicated above. In addition, the Agency has not included in its response the 2005 575-page Immigration & Customs Enforcement / Office of Professional Responsibility (ICE/OPR) San Diego Field Office Report of Investigation of FAMS Las Vegas Field Office senior managers, and FAMS headquarters senior executives. This investigation was conducted throughout 2005 and supervised by Associate Special Agent in Charge of the ICE/OPR San Diego Field Office, [REDACTED]. [REDACTED]

Appellant is introducing a November 7, 2007 Immigration & Customs Enforcement (ICE) Freedom of Information Act (FOIA) response (ICE/FOIA control # 08-FOIA-140) (**EXHIBIT 11**) mailed to current Las Vegas FAM [REDACTED]. [REDACTED] was a fellow Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Executive Board Officer.

Appellant is introducing an April 20, 2009 email correspondence (**EXHIBIT 12**) from FAM [REDACTED] former Las Vegas Field Office Supervisory FAM [REDACTED]: [REDACTED] states that:

The [Immigration & Customs Enforcement] OPR investigation was buried. The OPR [Associate Special Agent] in charge of the investigation was [REDACTED], and he personally told me that after he sent the final report to DHS HQ, [former FAMS Director Thomas D.] Quinn's buddy [former DHS Deputy Secretary] Michael Jackson buried the report. I filed a FOIA for the report and no surprise, I was denied the 555 pages in the report. I have attached my FOIA documents. You can give them to anybody you wish. They can't deny the 555 page report exists now. Maybe [U.S. Senator Jon] Kyl or [U.S. Senator John] McCain can get a copy. Just give them my documents. I also attached my complaint to [ICE] OPR

which started the whole investigation. You have my permission to give it to anyone you feel could use it.

Las Vegas Field Office Special Agent in Charge David Knowlton, Las Vegas Field Office Assistant Special Agent in Charge Gregory Korniloff, and FAMS Director Thomas D. Quinn all abruptly resigned after this 2005 ICE/OPR investigation. Las Vegas FAM [REDACTED] is still actively employed and the Agency has since been unable to justify any discipline against FAM Black.

Despite his valiant effort to not admit that former FAMS Director Quinn or his FAMS HQ staff was intimately involved in his decision to remove Appellant, in his August 2, 2006 deposition (**EXHIBIT 13**), **former** Special Agent in Charge of the FAMS [REDACTED] [REDACTED] made it obvious that he was not involved in the decision to remove Appellant, and it was all orchestrated by the FAMS HQ Policy Compliance Unit managers, Special Agent in Charge [REDACTED] and Assistant Special Agent in Charge [REDACTED] long before Appellant transferred from the Las Vegas FAMS office in October 2004.

During questioning by Appellant's representative, [REDACTED] acted clueless about the activities of FLEOA FAMS Chapter activities; Appellant finds that extremely hard to believe [REDACTED]'s testimony when FLEOA FAMS Chapter President Frank Terreri had been assigned to [REDACTED] office since January 2002. Appellant also finds it hard to believe this when [REDACTED] ordered two FAMS Los Angeles Field Office Assistant to the Special Agent in Charges to the the home of Frank Terreri's to strip him of his service-issued weapon and credentials on his front lawn. This incident will be later described in a May 25, 2006 U.S. House of Representatives Committee on the Judiciary report that was on national television on May 17, 2006.

[REDACTED] has since been "reassigned" and is currently [REDACTED]
[REDACTED]

Appellant argues that his removal was discriminatory, disparate treatment for being the second ranking Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Executive Board Officer, as the Chapter's Executive Vice President from August 2003 until his removal.

Furthermore, Appellant has not received the August 11, 2004 Action Memorandum re: Request for Investigation of Certain Federal Air Marshal Service (FAMS) Employees, to Mr. Clark Kent Ervin, Inspector General of Department of Homeland Security. This request was for an investigation specifically into Appellant.

Former FAMS Director Quinn and/or the Transportation Security Administration (TSA) / Office of Chief Counsel (OCC) was ordered by MSPB Administrative Judge Philip D. Reed to produce the August 11, 2004 document sent to the DHS Inspector General at Former FAMS Director Quinn's September 28, 2006 deposition at TSA Headquarters in Arlington, VA. Without reason, this document nor any other related documents was produced at the deposition.

Administrative Judge Philip D. Reed's order (**EXHIBIT 14**):

"I find that Mr. Quinn may have personal knowledge or documents that are reasonably calculated to lead to the discovery of admissible evidence pertaining to the issues presented in this appeal, see 5 C.F.R. § 1201.73(a)9 (scope of discovery); e.g., whether there was undue pressure to remove the appellant for reasons other those stated in the decision letter; and whether the appellant's allegedly protected disclosures influenced that decision in any way."

The only document produced during the September 27-28, 2006 depositions, was an unsigned one-page sheet of paper with notes regarding an incident on or about December 24, 2001 (**EXHIBIT 15**): Appellant was on a nighttime Washington DC FAMS mission flight partnered with a FAM who left his Agency-issued weapon in the front lavatory without

Appellant's knowledge. A child passenger found the FAMS weapon and surrendered it to a flight attendant. The flight attendant gave Appellant's partner back his FAMS weapon before landing. Appellant's partner never reported the incident, but the airlines contacted the Federal Aviation Administration about the incident, and appellant subsequently found out.

Las Vegas Special Agent in Charge [REDACTED] initially suspected that appellant knew about the incident but failed to report it. Appellant denied ever having any knowledge of the incident and was eventually not disciplined and promoted to the highest grade in his position after eight months.

Appellant assumes his partner was confronted with the airline's report and decided to finally tell the truth and recant his initial story that Appellant may have known about the extremely embarrassing incident he tried to cover-up.

Other than to "muddy the waters," to this day, Appellant is still bewildered as to why agency attorneys produced this unsigned sheet of notes of a 2001 incident during the September 27-28, 2009 hearings and not the documents ordered by Honorable Reed.

2006 Appellant Request for production No. 8.

"Please provide any and all documents contained in all investigations of appellant, including, but not limited to, all documents the Agency intends to use as evidence at the hearing of this matter."

Agency's Response

"The Agency objects to this request on the grounds of irrelevancy. Without waiving this objection, the Agency answers as follows: see Conduct Incident Report at 130 to 149."

Appellant's Argument

As demonstrated above, the Agency has additional responsive documents, such as the August 11, 2004 Action Memorandum re: Request for Investigation of Certain Federal Air Marshal Service (FAMS) Employees and the 575-page Immigration & Customs Enforcement / Office of Professional Responsibility (ICE/OPR) San Diego Field Office Report of Investigation of FAMS Las Vegas Field Office senior managers,

and FAMS headquarters senior executives. That document, and any document concerning an Agency investigation into Appellant, is relevant and material to his defense that the Agency's removal is discriminatory, disparate treatment, and a prohibited personnel practice taken by virtue of being a FLEOA FAMS Chapter Executive Officer.

2006 Appellant Request for Production No. 12

“Please provide a complete copy of the text-message that the Agency charges Appellant with having disclosed to the media. Please include in your production any notices that may have accompanied the text-message indicating that it was sensitive security information.”

Agency Response:

“TSA does not have any non-privileged documents responsive to this request.”

Appellant's Argument:

The Agency removed Appellant on the charge of “Unauthorized Disclosure of Sensitive Security Information,” thereby making the contents of the text-message part of the subject matter involved in the pending action. Appellant's Request for Production No. 12, therefore, seeks relevant information. To the extent that the Agency has responsive but privileged documents, Appellant requests sufficient information about the documents to enable judicial review of the invocation of privilege. To the extent that the Agency has responsive but unprivileged documents, the present Motion to Compel seeks them. To the extent that the Agency has no responsive documents, Appellant requests that the Agency propose stipulations on the contents of the text-message in question.

2006 Request for Production No. 25

“Please provide a complete copy of the investigative report, as well as any and all supporting documents, related to any investigation of an Agency employee, other than Appellant, charged with disclosing sensitive security information. Please include in your production any and all Notices of Proposed Discipline and Notices of Discipline issued to any Agency employee, other than Appellant, charged with disclosing sensitive security information. Please also include complete copies of any investigative file for an employee other than Appellant who is alleged to have disclosed the contents of the text message regarding Remain Overnight missions.”

Agency Response:

“The Agency objects to this request on the grounds of irrelevancy, overbreadth, and privacy. Without waiving these objections, the

Agency responds as follows: it appears that, except for Appellant, TSA has not removed a Federal Air Marshal for the unauthorized disclosure of Sensitive Security Information from January 2003 to the date of this response.”¹

Appellant’s Argument:

Appellant’s Request for Production No. 25 is relevant to his defense that the Agency’s removal action constitutes discrimination / disparate treatment. The Agency’s answer, while not irrelevant to the request, is not entirely responsive. Appellant’s Request for Production No. 25 seeks to discover documents related to any employee whom the Agency has charged with disclosing, or who is alleged to have disclosed, Sensitive Security Information. The Agency’s answer does not speak to this issue, but rather states that it has not removed any employee for that charge, other than Appellant.

Upon information and belief, the Agency has charged at least three FAMs, other than Appellant, with unauthorized disclosure of SSI, while imposing a penalty more lenient than removal. The fact that the Agency fails to discipline other FAMs as harshly as it disciplined Appellant is relevant and material to his defenses that the removal action was discriminatory, disparate treatment, and a prohibited personnel practice. In addition, the materials surrounding the Agency’s other disciplinary actions for alleged violations of the SSI regulations are relevant to a determination of the strength of the Agency’s interest in restricting the information that Appellant allegedly disclosed, an element of the analysis for adjudicating Appellant’s First Amendment defense.

One of those FAMs is [REDACTED], who received a 5-day suspension in connection with an "Unauthorized Disclosure of SSI" disciplinary action case. FAM [REDACTED] was stationed at the Las Vegas office, the same office Appellant made his July 2003 disclosure and where his subsequent ICE/OPR began on September 9, 2004. Appellant made the disclosure that is the subject of this litigation.

¹ The Agency supplemented this response, as well, but without producing any documents pursuant to that supplemental response.

Upon information and belief, FAM [REDACTED], a married man, was disciplined for informing flight attendants which flights he was on in order for them to fly standby with him during FAMS missions and spend the evenings with him at his hotels. FAMS [REDACTED]'s light punishment stands in stark contrast to Appellant's removal and the documents supporting that action are reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, the Agency has failed to disclose REDACTED documents related to the Las Vegas FAM [REDACTED] "Unauthorized Disclosure of SSI" disciplinary action case. FAM [REDACTED] proposed **REMOVAL** was mitigated by the agency to a 13-day suspension.

FAM [REDACTED] was foolish enough to constantly inform passengers that he was a FAM and then precede to expose whom his mission partners were. Rather than face ridicule and protest from other FAMs stuck flying dangerously with him, FAM [REDACTED] quickly resigned.

Finally, Atlanta FAM [REDACTED] made an "Unauthorized Disclosure of SSI" and received a disciplinary action (REMOVAL mitigated by the agency to a 14-day suspension). FAM [REDACTED] conduct was extremely similar to Appellant's alleged conduct. Several days after the United Kingdom liquid explosives plot, FAM [REDACTED] posted on a public Internet message board called "The UNCENSORED Air Marshal Forum" the fact that FAMS missions had and were continuingly being canceled on United Kingdom/Atlanta flights.

Appellant argues that his removal was discriminatory and disparate treatment for being the second ranking Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Chapter Executive Board Officer, as the Chapter's Executive Vice President from August 2003 until his removal.

In addition, the Appellant seeks to compel the Agency to produce the following documents, which are relevant and material to the facts at issue in this appeal. In particular, these documents are relevant to a determination of the strength of the Agency's withholding the information that Appellant allegedly released, which is an element for adjudicating Appellant's First Amendment defense. Appellant's Interrogatory No. 17 asked the Agency to explain the

reasons why it determined that Appellant's disclosure was not protected under the First Amendment. The Agency's answer was unresponsive, merely pointing Appellant to Agency File Tab 4(A). In light of this unresponsive answer, Appellant is entitled to explore the issue by reviewing the following documents:

1. UN-REDACTED copy of July 23, 2003 Federal Bureau of Investigation (FBI) Bulletin: **"Hijack warning of weapons and explosives smuggled onto aircraft."**

The FBI Freedom of Information Office (FOIA) office has already confirmed the bulletin exists but denies appellant's request to produce the document in a September 20, 2007 letter to appellant (**EXHIBIT 16**).

This the FBI Bulletin is referenced in an August 1, 2003 USA Today news article titled **"U.S. warns of 9/11-style plane attacks"** by Mimi Hall and Kevin Johnson (**EXHIBIT 17**) Here is a relevant excerpt:

*"On Tuesday, the State Department issued an updated 'worldwide caution' to U.S. citizens abroad. The warning cited possible plots involving airlines but also warned of bombings and kidnappings. The warning from Homeland Security was circulated a few days after the **FBI issued a nationwide alert to local law enforcement agencies**. In that bulletin, the **FBI** said terrorists might be experimenting with explosives disguised as children's toys that could be carried onto commercial flights. 'The fear was that terrorists could be packing these toys with some kind of explosive that might avoid detection,' a high-ranking law enforcement official said. The official said fears were heightened after suspiciously altered toys were among items seized in a search of a terror suspect's residence." (emphasis added)*

The fact that the FBI still considers this document as sensitive adds more credence of how serious the agency perceived the hijacking threats prior to appellant's

potential “**good faith belief**” disclosure and his state of mind affected by Saudi Arabian government and three separate U.S. federal agency terrorist hijacking warnings.

In a second FOIA request post-President George W. Bush administration, on Appellant was surprisingly granted by the DHS FOIA office an UN-REDACTED copy of the July 26, 2003 “**Department of Homeland Security (DHS) Advisory, title: Potential Al-Qaeda Hijacking Plot in the U.S. and Abroad**” dated July 14, 2009 (EXHIBIT 18).

In Appellant’s first request, the DHS FOIA responded with a February 7, 2007 version (EXHIBIT 19) of the July 26, 2003 so that was so redacted, the Advisory was essentially blank.

The stark differences in between the two FOIA responses beg the question of why the Agency’s February 7, 2007 version of the July 26, 2003 Advisory was so heavily redacted almost four years after Appellant’s disclosure. Is it obvious that agency considered the threat very real.

The President also expressed his concern of the “real” hijacking threat in this statement he made to the media the day after Appellant’s disclosure (EXHIBIT 20):

“The 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.”

In a November 2, 2008 Associated Press article titled “**Official: Saudis Foiled 2003 Terror Plot,**” (EXHIBIT 21) a Saudia Arabia government official told a Saudia Arabia “government guided” newspaper that:

“...the 2003 plot involved militants who planned to hijack a plane and blow it up over a densely populated city in the United States.

The militants planned to transit through the U.S. to another destination, according to the official. That way, they could avoid applying for the hard-to-get U.S. visas, a requirement for Saudis, the official added.”

2. UN-REDACTED copy of “**Worldwide Caution**” (WC) issued by the Department of State. The WC was directed to U.S. citizens traveling abroad. The WC warning cited possible plots involving airlines and warned of bombings and kidnappings. The WC was issued on or about July 29, 2003.

This State Department WC is referenced in an August 1, 2003 USA Today news article titled “**U.S. warns of 9/11-style plane attacks**” by Mimi Hall and Kevin Johnson (**EXHIBIT 22**) Here is a relevant excerpt:

“On Tuesday, the State Department issued an updated ‘worldwide caution’ to U.S. citizens abroad. The warning cited possible plots involving airlines but also warned of bombings and kidnappings. The warning from Homeland Security was circulated a few days after the FBI issued a nationwide alert to local law enforcement agencies. In that bulletin, the FBI said terrorists might be experimenting with explosives disguised as children's toys that could be carried onto commercial flights. ‘The fear was that terrorists could be packing these toys with some kind of explosive that might avoid detection,’ a high-ranking law enforcement official said. The official said fears were heightened after suspiciously altered toys were among items seized in a search of a terror suspect's residence.” (emphasis added)

Secretary of State Hillary Clinton -- then U.S. Senator -- also expressed her “extreme concern” of the “serious” hijacking threats during Agency’s plan to remove FAMs from “critical flight missions” in an attempt to quietly patch a budget shortfall. Here is a relevant excerpt from her press release the day after Appellant’s disclosure (**EXHIBIT 23**):

“I am writing to express my concern about recent intelligence information reported in the press indicating that there are specific terrorist plots on the East Coast involving United States passenger airlines, and that a loophole in U.S. immigration law may make it easier for terrorists to act.” (emphasis added)

The “loophole in U.S. immigration law” referenced by Secretary of State Clinton is also cited in the November 2, 2008 Associated Press article titled **“Official: Saudis Foiled 2003 Terror Plot.”**)
(EXHIBIT 24)

“I also want to reiterate my extreme concern with the Transportation Security Administration (TSA) proposal, in the face of these serious threats, to cut the number of air marshals by canceling critical flight missions because those missions would have required air marshals to spend the night at a hotel.”

To this date, the Department of State FOIA office has not provided a copy of this document to the appellant. This document and others prove how serious the agency perceived the hijacking threats which influenced appellant’s potential **“good faith belief”** disclosure and appellant’s state of mind affected by a Saudi Arabia government and three separate U.S. federal agency terrorist hijacking warnings.

3. UN-REDACTED copy of this May 18, 2006 report: Homeland Infrastructure Threat & Risk Analysis Center (HITRAC) Strategic Sector Assessment: (U//FOUO) U.S. Aviation

This report is referenced in a June 21, 2006 ABC News article titled **“Three Foiled Hijack Plots Revealed in U.S. Document,”** (EXHIBIT 25) here are a few relevant excerpts from ABC News’ article. It is plainly obvious that this report describes the hijacking threat briefed to the appellant just before his disclosure:

“Al Qaeda terrorists were planning to use cameras to disguise bombs and flash attachments as stun guns in a disrupted hijack plot that targeted the U.S. east coast, Britain, Italy and Australia, U.S. officials say.”

“The plot was one of three previously unknown al Qaeda hijack plots disrupted before they could be carried out, according to a Department of Homeland Security report obtained by ABC News.

“The plot using cameras and flash attachments was foiled in the summer of 2003, according to the report.”

“Homeland Security officials say it is an example of al Qaeda adapting ‘to increased aviation security by shifting planned suicide hijackings from domestic carriers to international flights...to take advantage of perceived less effective security screening at some foreign airports.’”

“The officials says al Qaeda's "ingenuity was evident" in its attempts to convert camera equipment and other non-threatening items into weapons that could be smuggled onto a plane. It warns such items could be used to bring down an aircraft or ‘to gain access to an airliner flight deck.’”

In a February 2, 2007 DHS FOIA response (Request # PREP07F007) to appellant’s October 16, 2006 FOIA request for this report, DHS FOIA provided a heavily redacted copy of this report -- marked UNCLASSIFIED//FOR OFFICIAL USE ONLY -- (EXHIBIT 26) despite the July 2003 hijacking plot being foiled over three and a half years prior. **Public Law 109-295 (SEC. 525)** states that even UNCLASSIFIED “Sensitive Security Information” labeled documents must be de-marked after three years unless specifically re-marked by the Secretary of DHS:

“(2) That sensitive security information that is three years old and not incorporated in a current transportation security directive, security plan, contingency plan, or information circular”

*“(A) the Secretary or his designee makes a written determination that identifies a rational reason why the information must remain SSI; or
(B) such information is otherwise exempt from disclosure under applicable law”*

To this date, the Department of Homeland Security (DHS) / Office of Intelligence & Analysis FOIA office has not provided a copy of this document to the appellant. This document and others prove how serious the agency perceived the hijacking threats which influenced appellant’s potential **“good faith belief”** disclosure and appellant’s state of mind affected by a Saudi Arabia government and three separate U.S. federal agency terrorist hijacking warnings.

4. May 25, 2006 U.S. House of Representatives Committee on the Judiciary report, UNREDACTED: ***“In Plane [sic] Sight: Lack Of Anonymity At The Federal Air Marshal Service Compromises Aviation And National Security.”***

Contained in this congressional report are a dozen memorandums and incident reports from flying Federal Air Marshals dating back to August 7, **2002** – an entire year prior to Appellant’s July 2003. Their correspondence with FAMS managers pleads them to revise its dangerous dress code, airport security screening checkpoint bypass, and aircraft boarding procedures for flying Federal Air Marshals, because their identities were routinely being exposed to airline employees and general passengers, and of course, potential terrorists.

Also contained in this congressional report is a July 17, 2003 memorandum from the FAMS Atlanta Field Office Special Agent in Charge Ernest “Don” Strange about the

need to revise the FAMS dangerous dress code rules. According to ABC News and the congressional report, SAC Strange was also fired for speaking out.

Being in the first 2001 class of 35 Federal Air Marshals to graduate after the September 11, 2001 Attacks until his July 29, 2003 disclosure, Appellant was an active flying Federal Air Marshal with an unblemished record and already at the top grade in his position; he was not assigned office or airport ground duties. The congressional report reflects how the appellant and his fellow officers were concerned of not just for their own safety, but the safety of the flying public with these inane and dangerous procedures in place. As reported in the January 2009 U.S. Government Accountability Office report (**EXHIBIT 27**), these procedures were eventually revised long after the appellant was proposed for removal. These dangerous procedures that were in effect for over a year prior to the appellant's disclosure prove how serious the Saudi Arabia government FBI, the Department of State, and agency's hijacking threat briefings and warnings were prior to his potential "good faith belief" disclosure and state of mind.

Here is an unofficial excerpt obtained from a non-government website of this congressional report in which Chairman F. James Sensenbrenner's Committee found it "troubling" that Director Thomas D. Quinn kept current Los Angeles Field Office Federal Air Marshal Frank Terreri from going back to duty for six weeks despite ICE/OPR completely exonerating him. FAM Terreri was the President of the Federal Law Enforcement Officers Association Federal Air Marshal Service Chapter from August 2003 to present day:

"What is troubling to the Committee, however, is Terreri's removal from flight status because, as the Committee understands, it is extremely unusual to remove someone from active duty during an investigation of an allegation that a Federal Air Marshal has violated a policy in a manner that does not threaten national security, in fact, the Committee is aware that Terreri was not the only Federal Air Marshal being investigated in this matter, yet he was the only one removed from night status. It is this

type of disparate disciplinary action that appears to be retaliatory, especially considering Terreri's written requests to effect policy changes at FAMS headquarters.

Additionally, Terreri was removed from night status in October of 2004 but not permitted to return to normal duties until April 22, 2005, even though he had been cleared of all accusations by ICE Office of Professional Responsibility (OPR) on March 9, 2005 (see Appendix 13). The Committee is concerned by the [6-WEEK] delay in time between when OPR made its finding and when Terreri was permitted to return to active duty”.

Moreover, as part of the rationale for finding no evidence of wrongdoing on the part of Terreri, OPR found that the ICE Office of the Principal Legal Advisor (OPLA) concluded that ADM 3700 is unenforceable as written because it was found to be overinclusive and excessively restrictive of protected speech. (emphasis added)

In the case this report is marked UNCLASSIFIED “Sensitive Security Information.” **Public Law 109-295 SEC. 525** states that UNCLASSIFIED “Sensitive Security Information” labeled documents must be de-marked after three years unless specifically re-marked by the Secretary of DHS.

Appellant argues that his along with FAM Terreri’s First Amendment rights were violated, and Appellant’s removal was discriminatory, disparate treatment for being the second ranking Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Chapter Executive Board Officer, as the Chapter’s Executive Vice President from August 2003 until his removal.

5. Atlanta FAM [REDACTED] “Unauthorized Disclosure of SSI” disciplinary action case (REMOVAL mitigated by the agency to a 14-day suspension) – Several days after the

United Kingdom liquid explosives plot, posted on a public Internet message board called “The UNCENSORED Air Marshal Forum” the fact that FAMS missions had and were being canceled on United Kingdom/Atlanta flights.

In agency’s June 10, 2006 response to appellant’s **“Request for production of documents No. 11”**

Appellant objects to agency’s misleading response:

“Request for production of documents No. 11

Please provide a complete list of employees whom the Agency has charged with and/or investigated for Unauthorized Disclosure of Sensitive Security Information, or any substantially similar charge, from January 2003 through the present. Please include in your answer a description of the information each such employee allegedly disclosed.

The Agency objects to this request on the grounds of irrelevancy, overbreadth, and privacy. Without waiving these objections, the Agency responds as follows: it appears that, except for Appellant, TSA has not removed a Federal Air Marshal for the unauthorized disclosure of Sensitive Security Information from January 2003 to the date of this response.”

According to a July 22, 2009 Center for Public Integrity article titled **“TRANSPARENCY: Secrets in the Sky: A Tale of Two Air Marshals” (EXHIBIT 28)**

Note that [REDACTED]’s -- Special Agent in Charge of FAMS Policy Compliance Unit, name comes up again in the article. [REDACTED] directed the task force in reference to former FAMS Director Quinn’s February 11, 2006 memorandum to ICE.

“ The fired federal air marshal is Robert MacLean. Another federal air marshal, ██████████, who was responsible for the same type of violation, described in the above paragraph, was not fired. The offense in both cases: disclosure of ‘sensitive security information.’ But whereas ██████████ was spared serious discipline, MacLean suffered termination despite his role in reversing a policy that potentially put airline passengers at risk.”

“10:17 a.m. – Under a screenname inspired by his boss’ name, ‘ArnieCole,’ federal air marshal ██████████ posts a message to the public website Uncensored Air Marshal Forum, ‘Atlanta has decided there are too many 3-leggers [flights with multiple stops] being left uncovered, so there will be no more UK flights from there. I’m sure one of the other offices will get to pick up the slack.’”

“10:31 a.m. – ██████████ a deputy chief of staff at the Federal Air Marshal Service, e-mails fellow employees ██████████ and ██████████ ██████████ a link to the message on the Uncensored Air Marshal Forum.”
(emphasis added)

“10:53 a.m. – ██████████, a special agent-in-charge of the Federal Air Marshal Service policy compliance unit, e-mails ██████████ ██████████ and others with the subject line “Clear SSI violation.” SSI stands for “sensitive security information.” ██████████ suggests the removal of the message from the website “ASAP” and a Transportation Security Administration investigation into the posting.” *(emphasis added)*

“11:28 a.m. – Someone with the screenname ‘New_Director’ deletes the message ‘for OPSEC,’ or operational security.”

12:00 p.m. – The TSA’s computer forensic unit is asked to locate the person who posted the message.

1:07 p.m. – David Cayam of Prospero Technologie, the company that hosts the Forum, is “contacted and asked to provide the subscriber information for the person who posted SSI.”

2:22 p.m. – Cayam gives TSA the IP address of where the message originated.

“From there, the TSA tracked the posting to the Palm Beach Hilton Hotel, obtained the names of the four air marshals scheduled to be there and determined only two were staying there at the time of the posting.”

[REDACTED]

It is important to note that Appellant had no prior disciplinary history prior to his removal.

Agency should have provided appellant any “Unauthorized Disclosure of SSI” disciplinary case under Rule 26 of Federal Rules of Civil Procedure. Agency could have redacted the documents of names, but instead it chose to hide three eye-popping cases, which clearly prove the discriminatory and disparate punishment of appellant.

Appellant argues that his removal was discriminatory and disparate treatment for being the second ranking Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Executive Board Officer, as the Chapter’s Executive Vice President from August 2003 until his removal.

6. December 14, 2006 affidavit from a CURRENT Transportation Security Administration (TSA) Federal Air Marshal Service (FAMS) Las Vegas Field Office (LASFO) supervisory Federal Air Marshal (FAM)

SEE ITEM 12

7. February 16, 2007 addendum to the affidavit of CURRENT Transportation Security Administration (TSA) Federal Air Marshal Service (FAMS) Las Vegas Field Office (LASFO) supervisory Federal Air Marshal (FAM) Dated December 14, 2006 Regarding the Equal Employment Opportunity Complaint of [this LASFO FLEOA FAMS EBO]

A CURRENT Las Vegas Field Office Federal Air Marshal (FAM) provided appellant with these excerpts from these two very disturbing Equal Employment Opportunity (EEO) affidavits. The current Federal Air Marshal's motivation is that he believes – and appellant agrees -- it will assist appellant in proving the reckless witch-hunt of the appellant and his fellow Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Executive Board officers.

Appellant confirms that the FAM in the report who was retaliated against is [REDACTED] [REDACTED] FAM [REDACTED]'s saga is quite well known by the FAMS HQ. FAM [REDACTED] was the #3 ranking officer of the Federal Law Enforcement Officers Association (FLEOA) Federal Air Marshal Service (FAMS) Executive Board, as our Vice President of Ethics. FAM [REDACTED] has been public about the whistleblower retaliation he has endured:

During former FAMS Director Thomas D. Quinn's September 28, 2006, he discussed how much of a problem FAM Black was.

Appellant was also a Las Vegas Field Office FAM in which the Special Agent in Charge and his Assistant Special Agent in charge referred him for disciplinary action for whistleblowing on NBC Nightly News with Tom Brokaw in their September 9, 2004

program. Appellant was also the second ranking FLEOA FAMS Executive Board Officer as Executive Vice President of the FLEOA FAMS Chapter. The #1 officer was FAM Frank Terreri who also suffered whistleblower retaliation as our FLEOA FAMS Chapter President. Here is one of many press releases about what happened to FAM Terreri (**EXHIBIT 29**):

This FAM redacted the names in this report to protect other officers' privacy and to avoid any retaliation that is prevalent in the FAMS.

This FAM will provide the government with his identity only if he is guaranteed Whistleblower Protection Act protection.

Here are excerpts the two Department of Homeland Security Office [REDACTED] documents appellant would like to request the agency produce:

December 14, 2006 affidavit from a CURRENT Transportation Security Administration (TSA) Federal Air Marshal Service (FAMS) Las Vegas Field Office (LASFO) supervisory Federal Air Marshal (FAM)

Affidavit certified by [REDACTED]

Page 3 of 10

"It was a denigrating, insulting action [the LASFO Special Agent in Charge (LASFO SAC)] had taken against [a Federal Law Enforcement Officers Association (FLEOA) FAMS Chapter Executive Board Officer (FLEOA FAMS EBO)]"

Page 4 of 10:

"The seizing of all property was specific to [this LASFO FLEOA FAMS EBO]. Some equipment has been seized, but not to the extent of what occurred with [this FLEOA FAMS EBO]. Everything was taken away from [this LASFO FLEOA FAMS EBO]. For him to come to the office he has to call ahead to me and make an appointment. When he gets to the office he is given a visitor's badge and is required to sign the log. The procedure was embarrassing for [this LASFO FLEOA FAMS EBO] and not applied consistently."

"[The LASFO SAC] initially accused [another LASFO FAM #2] of releasing ["Sensitive Security Information" (SSI)] information to the media. After it was determined that [LASFO FAM #2] was not the source of the leak, [The LASFO SAC] then began focusing his attention on [this LASFO FLEOA FAMS EBO]. [The LASFO SAC] told me that it was extremely personal regarding [this LASFO FLEOA FAMS EBO]. The actions taken by [The LASFO SAC] concerning [this LASFO FLEOA FAMS EBO] were not in the best interest of the agency. Former Secret Service Agent [and former supervisory LASFO FAM] stated that [The LASFO SAC] was one of the most unprofessional... (continued on Page 5 of 10)

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(continued from Page 4 of 10) "...supervisors he had ever had the displeasure of meeting he was upset that [The LASFO SAC] seemed to arbitrarily blame FAMs for serious issues and then showed no remorse for his erroneous accusations."

"[the LASFO Assistant Special Agent in Charge] in the presence of former [The LASFO SAC] subjected me to threats of physical

violence due to an issue regarding [this LASFO FLEOA FAMS EBO]."

"[The LASFO SAC] stated that [this LASFO FLEOA FAMS EBO] was 'beating them on every turn' in explanation of [the LASFO Assistant Special Agent in Charge] unprofessional demeanor and admitted that neither himself nor [the LASFO Assistant Special Agent in Charge] had my expertise in these areas."

"[another LASFO FAM #3] and [another LASFO FAM #4] reported to me that they thought that [The LASFO SAC] had suggested to them that they take care of..." (continued on Page 6 of 10)

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(continue from Page 5 of 10) "...problem FAMS in the office. They both stated that they thought that [The LASFO SAC] meant to kick [this LASFO FLEOA FAMS EBO's] ass. They had also reported this incident to [another LASFO Supervisory FAM #3], but felt that [another LASFO Supervisory FAM #3] did not take the threat seriously. I reported the incident to [Immigration & Customs Enforcement / Office of Professional Responsibility] investigator [REDACTED] in San Diego, California.

[The LASFO ASAC] also said [the LASFO SAC] considered [this LASFO FLEOA FAMS EBO] to be a security risk, and that he was not suitable for a light duty assignment in operations.

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"I wrote [this LASFO FLEOA FAMS EBO] up for an award based upon Surveillance Detection Reports (SDR) that he wrote. When I submitted the report, [The LASFO ASAC] told me that I didn't have any 'balls.'"

"Was [this LASFO FLEOA FAMS EBO's] appraisal from October 2004 shredded by his former supervisor, [REDACTED] 20.1) If yes, why? 20.2) What action was taken against [this LASFO FLEOA FAMS EBO's first-line supervisor]? Please explain."

"A. This is what I heard. 20.1) This occurred around the time the OPR (Office of Professional [Responsibility](sic) was coming and management was shredding documents like crazy." (emphasis added)

"The shredding had become a focal point of humor in the admin unit. I believe that [LASFO Security Assistant] [REDACTED] could provide relevant information regarding this action." (emphasis added)

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25) Are there any witnesses you care to name who have direct knowledge of the matters at issue? 25.1) If so, please state the name of each and that to which each person can speak.

A. Yes: I know that [another LASFO FAM] was originally accused by [The LASFO SAC] of releasing SSI information to the press.

B. I know this because [Former Secret Service Agent and former supervisory LASFO FAM] told me about the meeting with [The LASFO SAC] regarding [The LASFO SAC]'s false accusations against [another LASFO FAM]. I know that [The LASFO SAC] subsequently accused [this LASFO FLEOA FAMS EBO] of releasing SSI information to the press. **[The LASFO SAC] advised me that his issues with [this LASFO FLEOA FAMS EBO] were personal and that he would not "roll over."** (emphasis added)

H. I know that [The LASFO SAC] and [The LASFO ASAC] **ordered me to make changes** on [Conduct Incident Reports (CIR's)] **that I did not agree with** and submitted these CIR's to headquarters and utilized them as a basis for disciplinary actions. (emphasis added)

K. I heard [The LASFO ASAC] make the statement that someone ought to (Bitch Slap) [this LASFO FLEOA FAMS EBO].

L. I know that [this LASFO FLEOA FAMS EBO first-line] held a **personal grudge** against [this LASFO FLEOA FAMS EBO] and did **everything that he could possibly due to undermine and place discredit** upon [this LASFO FLEOA FAMS EBO]. (emphasis added)

M. I know that the management at the Las Vegas Field Office took no constructive efforts to assist [this LASFO FLEOA FAMS EBO]. All actions taken by management were detrimental to his wellbeing.

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O. **I am ashamed of the lies and personal attacks** that were perpetrated against this FAM by [The LASFO SAC] and [The LASFO ASAC]. (emphasis added)

*S. I know that I am being retaliated against and victimized due to my participation in an on going EEOC complaint. [The LASFO SAC] made it clear that [this LASFO FLEOA FAMS EBO] was a personal issue, and from that point on [this LASFO FLEOA FAMS EBO] did not receive the fair and equitable treatment that he was entitled to as a Federal employee. I am on record with **[Chief Counsell] Francine Kerner of TSA** reporting prior questionable and unjust accusations made by management against [this LASFO FLEOA FAMS EBO]. I informed Ms. Kerner of a previous issue that she resolved in less than an hour regarding the accusations made by management referring to [this LASFO FLEOA FAMS EBO] and outside employment. I again went to her with another issue involving documented paperwork (CIR) written by me, and submitted by [The LASFO SAC] and [The LASFO ASAC] regarding [this LASFO FLEOA FAMS EBO] that was not accurately reported. I was required to write numerous conduct incident reports concerning [this LASFO FLEOA FAMS EBO] that I did not agree with. I advised [The LASFO SAC] and [The LASFO ASAC] that the changes to my memos that they had insisted I make were knowingly and purposefully incorrect. The conduct incident reports were not initiated by me, but at the direction of [The LASFO SAC] and [The LASFO ASAC]. The information that I was directed to include was used as a basis for [this LASFO FLEOA FAMS EBO]'s suspensions. **The disingenuous attitude of the management in the Las Vegas Field Office contributed to the continuing problems that have adversely impacted [this LASFO FLEOA FAMS EBO]'s life and career. I feared for my job and still do. Management at the Las Vegas Field Office has not been held accountable for numerous incidents in this office that has resulted in the loss of approximately one half of the [Federal Air Marshals] originally assigned to the office.** (emphasis added)*

*Affidavit signed December 14, 2007 by current Supervisory LASFO
Federal Air Marshal and [REDACTED]*

**Addendum to the Affidavit of CURRENT Transportation Security
Administration (TSA) Federal Air Marshal Service (FAMS) Las Vegas Field
Office (LASFO) supervisory Federal Air Marshal (FAM) Dated December
14, 2006 Regarding the [REDACTED] Complaint of [this
LASFO FLEOA FAMS EBO]**

Page 1 of 6

*"Unfortunately after I had an incident with [The LASFO ASAC]
where he threatened to smack me between the eyes, I was reluctant to
question anything concerning [this LASFO FLEOA FAMS EBO]."*

Page 2 of 6

*"When this issue arose I brought [this LASFO FLEOA FAMS EBO]'s
SF-7I form to [The LASFO ASAC] and he became upset. He didn't
understand that the CA-7 form supersedes the SF-7I. This is when he
made the statement about smacking me between the eyes."*

Page 3 of 6

*"A. I was given the proposal letter to give to [this LASFO FLEOA
FAMS EBO] and I gave him the letter. I was also told to write a
Conduct Incident Report (CIR). I told [The LASFO SAC] and
[The LASFO ASAC] that what they were requiring me to write was
not correct. I made numerous revisions to the CIR, but they did not
correct it to ensure its accuracy and submitted it anyway."*

*[The LASFO ASAC] wanted a lot of changes to the CIR that I did not agree with. (I included a copy of the CIR with my primary affidavit regarding this complaint) Although the CIR was inaccurate, it was used as the basis for the suspension. **I was required to write so many CIR's on [this LASFO FLEOA FAMS EBO] that I can't recall all of them.** (emphasis added)*

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"[The LASFO SAC] and [The LASFO ASAC] went after [this LASFO FLEOA FAMS EBO] for any and everything."

"Due to my participation in the EEO process he also wrote an e-mail requesting that [another supervisory FAM #4] and [this LASFO FLEOA FAMS EBO's first-line supervisor] provide any derogatory information that they thought [The LASFO ASAC] could use against me."

"TSA Attorney Velasco has not responded to this issue, and gives me pause regarding any future participation in the EEO process."

"45) Is there anything you would like to add?"

"A. I would like to add a quote from [The LASFO SAC], with [The LASFO ASAC] present: 'He was very upset that [this LASFO FLEOA FAMS EBO] appeared to be beating them at every punch.' Thereafter, I ..." (continued on Page 6)

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(continued from Page 5) "...was in the 'dog house' and accused of not being on management's side. I was attempting to explain to management how to proceed on a professional level."

***Affidavit signed February 16, 2007 by current Supervisory LASFO
Federal Air Marshal and [REDACTED]***

Appellant has obtained a portion of the requested documents in unofficial and/or heavily redacted format with the relevant excerpts in this motion to compel for discovery. In the case the MSPB does not grant appellant's requests, and/or the agency cannot produce them, appellant would like to respectfully request that he introduce them at a later date if depositions or documents are obtainable through other means -- such as pending Freedom of Information Act (FOIA) requests.

Depositions of Agency Employees

Appellant requests subpoenas for the following officials:

1. [REDACTED]

Retired Special Agent

Department of Homeland Security / Office of Inspector

Oakland, CA Field Office

300 Frank H. Ogawa Plaza

Suite 275

Oakland, CA 94612

Phone: 510-637-4311

FAX: 510-637-4327

Prior to appellant's July 29, 2003 disclosure, he called a DHS/OIG phone number, gave his location of southern Nevada, and was routed to their San

Diego, CA audit office. When the DHS/OIG San Diego office informed appellant it could not assist him, he was then referred to their Oakland, CA Field Office. Appellant spoke with this [REDACTED] of the DHS/OIG Oakland, CA Field Office over the phone about his potential “good faith belief” disclosure.

2. [REDACTED]

Former Full Committee Counsel, U.S. House of Representatives Committee on the Judiciary

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] was the congressional committee counsel appellant and the FLEOA FAMS Chapter Executive Board was in contact with throughout the Committee’s investigation of the Federal Air Marshal Service (FAMS) from 2004 until 2006.

Regarding the May 2006 ABC News 20/20 program titled “**Problem in the Sky?**” and the Committee’s May 25, 2006 House Committee on the Judiciary

report titles **"IN PLANE (sic) SIGHT: LACK OF ANONYMITY AT THE FEDERAL AIR MARSHAL SERVICE COMPROMISES AVIATION AND NATIONAL SECURITY."**

Appellant needs to know more about the Committee's conversations with ABC News Brian Ross and Rhonda Schwartz. Chairman F. James Sensenbrenner declared in his interview with ABC News that "*obviously there [is] something very, very wrong at the top of the Federal Air Marshal Service*" (FAMS) its leadership -- former Directors Thomas D. Quinn and Dana Brown -- are "*arrogant*" and "*it's time for [them] to shape up.*" When Mr. Ross told Chairman Sensenbrenner that the FAMS refused to watch their undercover tape, he responded that "*the attitude at the [FAMS] stinks.*" Brian Ross stated that the "*[FAMS] management stonewalled and mislead the [House] Committee [on the Judiciary's investigation] and unfairly punished the air marshals who spoke out.*" My fellow Federal Law Enforcement Officers Association (FLEOA) FAMS Chapter Executive Board Officer, Federal Air Marshal (FAM) Spencer Pickard was featured whistleblowing on this program. Appellant was another FAM who was working with the Committee's investigation, specifically former Full Committee Counsel Jason Cervenak.

To watch the video of the ABC News 20/20 program:

<http://abcnews.go.com/Video/playerIndex?id=7070437>

3. Thomas D. Quinn

Former FAMS Director

[REDACTED]
[REDACTED]
[REDACTED]

██████████

Appellant suspended former FAMS Director Thomas D. Quinn's deposition due to his refusal to answer questions under advice of the three TSA assistant counsels present throughout. Former FAMS Director Quinn refused to answer invoking "*beyond the scope*" and "*Sensitive Security Information (SSI)*." Director Quinn has been retired for well over three years, so his knowledge of SSI can no longer be marked as such unless the Secretary of DHS does so.

Mr. Quinn also defied the Honorable Philip D. Reed's August 21, 2006 order:

Page 2:

"I find that Mr. Quinn may have personal knowledge or documents that are reasonably calculated to lead to the discovery of admissible evidence pertaining to the issues presented in this appeal, see 5 C.F.R. § 1201.73(a) (scope of discovery); e.g., whether there was undue pressure to remove the appellant for reasons other those stated in the decision letter; and whether the appellant's allegedly protected disclosures influenced that decision in any way. The motion is therefore GRANTED, and a subpoena will issue. See below for instructions pertaining to this motion."

The Honorable Reed is referring to the August 11, 2004 former FAMS Director Thomas D. Quinn's Action Memorandum re: ***"Request for Investigation of Certain Federal Air Marshal Service Employees, to Mr. Clark Kent Ervin, Inspector General of Department of Homeland Security"***

Mr. Quinn needs to give the Appellant details about the allegation by Chairman Sensenbrenner as to why they “mislead and stonewalled” his Committee’s investigation into the retaliation against FLEOA FAMS Executive Board Officers.

Given Mr. Quinn and his staff’s involvement (Special Agent in Charge of FAMS Policy Compliance Unit [REDACTED] and Assistant Special Agent in Charge of FAMS Policy Compliance Unit [REDACTED]) with monitoring Appellant’s private Internet usage and retaliatory actions against the Federal Law Enforcement Officer’s Association (FLEOA) (re: Quinn/Michael Garcia memo dated February 11, 2005)

Appellant needs to depose Mr. Quinn about his extremely disparaging comments to the *Wall Street Journal* in a February 9, 2007 article titled: "SKY PATROL: U.S. Air Marshal Service Navigates Turbulent Times." Director Quinn told the reporter Mr. MacLean and his fellow FLEOA FAMS executive board officers were "*disgruntled amateurs*" "*insurgents*" and "*organizational terrorists*" (EXHIBIT 30)

Appellant was the Executive Vice President for the FAMS chapter of FLEOA from September 2003 until he was removed.

Given appellant’s suspension of FAMS Director Thomas D. Quinn’s deposition, appellant respectfully requests that agency reimburse all stenographer, attorney fees, and travel costs associated.

4. [REDACTED]

FAMS Special Agent in Charge / Policy Compliance Unit / Internet message board tracking manager

1900 Oracle Way
Suite 500
Reston, VA 20190
Office: 703-487-3100
Fax: 703-487-3404

SEE DEPONENT #1

Investigation regarding Quinn/Michael Garcia memo dated February 11,
2005

5. 

FAMS Assistant Special Agent in Charge / Policy Compliance Unit / Internet
message board tracking manager

1900 Oracle Way
Suite 500
Reston, VA 20190
Office: 703-487-3100
Fax: 703-487-3404

SEE DEPONENT #1

Investigation regarding Quinn/ Assistant Secretary of ICE Michael Garcia
memo dated February 11, 2005

6. Robert Bray

Current TSA FAMS Director

1900 Oracle Way
Suite 500
Reston, VA 20190
Office: 703-487-3100
Fax: 703-487-3404

On Bray testified in a House Committee on Homeland Security hearing open to the public, specifically Congressman Bill Pascrell (New Jersey), on July 23, 2009 that he agreed his agency ignored whistleblower complaints which forced FAMS to contact the media. Here is an online YouTube.com video of the hearing as the transcripts are still not available:

<http://www.youtube.com/watch?v=GsxjCs8dwQ4>

In this video, it is very notable in the portion of this video showing the Committee's October 16, 2007 hearing regarding TSA issues, that **less than a minute** after Rep. Pascrell specifically -- by appellant's full name -- asked former TSA Administration Kip Hawley if he was aware of appellant's case, Mr. Hawley stated "*that if its **classified information** that is given out publicly*" it is not a protected whistleblower disclosure (Minute 1:14). Appellant believes that former TSA Administrator Hawley was attempting to mislead and prejudice congress and the public into concluding that the appellant disclosed **classified information**, an act clearly not protected by the Whistleblower Protection Act of 1989.

Despite appellant's case being reported all day long on November 20, 2006 on CNN TV, the Washington Times, the Los Angeles Times, the FRONT PAGE of the New Jersey Star Ledger, the Associated Press, and USA Today,

Former TSA Administrator Hawley and his entire staff testified that they were not aware of appellant's case. Appellant believes Former TSA Administrator Hawley and his entire staff were discriminatory and disparate to avoid embarrassing questions about appellant.

Despite TSA Administrator Hawley promising Rep. Pascrell that he would report back to his committee about appellant's case, he never did.

Director Bray has been in TSA/FAMS Headquarters since May 2003, so appellant is confident he knows more about Mr. Quinn and Mr. Brown's mismanagement and retaliations against the Appellant and his fellow FLEOA FAMS Chapter Executive Officers.

7. Asa Hutchinson

Former Undersecretary Department of Homeland Security, Border & Transportation Security

Asa Hutchinson Law Group
The World Trade Center
3300 Market Street, Suite 404
Rogers, Arkansas 72758
479-878-1600

Appellant needs more details about his conversations with U.S. Senators Charles Schumer and Barbara Boxer in reference to the July 31, 2003 San Francisco Chronicle article, "**Air marshal cutbacks denied - White House rejects Democratic criticism**" by Ed Epstein.

The two Senators conversations with Mr. Hutchinson are quoted in several news articles. The Senators actions and investigation forced the TSA to cancel their July 2003 operational plan to remove air marshals from nonstop, long distance flights to save hotel room costs -- beginning on August 3, 2003 as specified in the Department Of Homeland Security / Office of Inspector General November 4, 2004 report (**EXHIBIT 31**) Appellant requests that Mr. Hutchinson provide him with more detailed information regarding his conversations with the two Senators on or about July 30, 2003.

The TSA's former senior executives argue that there was never a plan to remove air marshals from long haul flights, but what Mr. Hutchinson told the Senator about the plan being a "mistake" and what former FAMS Director Thomas D. Quinn testified during his deposition -- that no plan existed. Mr. Hutchinson and Mr. Quinn's comments are totally contrary the U.S. GAO's March 31, 2004 report. The GAO's report goes into great detail of the TSA FAMS's plan to begin removing air marshals from high threat flights beginning on August 3, 2003 [reported in DHS/OIG's November 2004 report] until the end of Fiscal Year 2003 (September 30, 2003).

Excerpt of July 31, 2003 San Francisco Chronicle article titled, **“Air marshal cutbacks denied - White House rejects Democratic criticism”** by Ed Epstein (**EXHIBIT 32**):

“Sen. Charles Schumer, D-N.Y., said he spoke Wednesday with Homeland Security Deputy Secretary Asa Hutchinson about the proposed reductions for the marshals. ‘He said it was a mistake,’ said Sen. Schumer.”
(emphasis added)

This TSA official told Senator Boxer that the plan “was never going to happen” -- the official's comments are totally contrary the U.S. GAO's March 31,

2004 report. The GAO's report goes into great detail of the TSA / FAMS's plan to begin removing air marshals from high threat flights beginning on August 3, 2003 [as reported in DHS/OIG's November 2004 report] until the end of Fiscal Year 2003 (September 30, 2003).

Another excerpt from July 31, 2003 San Francisco Chronicle article titled, **“Air marshal cutbacks denied - White House rejects Democratic criticism”** by Ed Epstein:

*“[Senator] Boxer, who is up for re-election next year, said she had spoken Wednesday with a high-ranking Transportation Security Administration official who **‘said it was never going to happen’**. So I said it was apparent it was, reading between the lines. But he admitted they were going to reprogram money away from training' for the marshals.’” (emphasis added)*

“‘We caught them, and they backtracked,’ [Senator] Boxer said.”

March 31, 2004 U.S. GAO report: *Budget Issues: **Reprogramming of Federal Air Marshal Service Funds in Fiscal Year 2003 (EXHIBIT 33)***

Excerpts from PBS August 4, 2003 story titled "Securing the Skies" **(EXHIBIT 34)**

“MARGARET WARNER: *You mentioned the air marshals. We did deal with one of the controversies last week, which had to do with the overnight stays if they need them. And I gather that they're going to have overnight stays if they need them. **But there was another set of conflicting reports about whether you are still asking Congress to let you take out \$100 million from the air***

marshal program to address your budget shortfall. It was confusing. *The Wall Street Journal said Thursday you were; the Washington Post said you weren't. Are you? (emphasis added)*

ASA HUTCHINSON: *We're not going to do anything to compromise the security and the mission of federal air marshals. We're very committed to that. There has been a budget shortfall in TSA, as a new organization being set up. We're working with Congress for the spend plan really for this year. As we speak, they are continuing to look at that. But the federal air marshals, they were directed immediately to make sure that we fulfill our commitments to the overseas flights.*

MARGARET WARNER: *But I mean are you going to be cutting their budget?*

ASA HUTCHINSON: *The federal air marshals - we're not cutting the security part of it. Now as to whether there is some operational or some administrative programs that may need to be adjusted in order to accomplish the overall spend plan of TSA, we'll work with Congress to accomplish that."*

8. David Adams

Special Agent in Charge, FAMS Legislative Liaison

1900 Oracle Way

Suite 500

Reston, VA 20190

Office: 703-487-3100

Fax: 703-487-3404

Appellant objects to the fact that agency counsel decided to take Mr. Adams into its hallway and coach him in the middle of his deposition.

In his deposition, SAC Adams volunteered and admitted that TSA's plan remove Federal Air Marshals from nonstop, long distance flights was in violation of the Aviation and Transportation Security Act (Public Law 107-71), Title 49 of the United States Code Section 44917 (**EXHIBIT 35**):

“deployment of Federal air marshals on every such flight determined by the Secretary to present high security risks ... [and on] nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority”

Also during his deposition, SAC Adams stated that while he was a Supervisory FAM stationed in the FAMS Washington DC Field Office, he also received the same text message to his Nokia phone that the appellant received stationed at the Las Vegas Field Office; but in agency's April 2, 2007 brief filed with the U.S. Court of Appeals for the Ninth Circuit, it attempts to mislead that only Las Vegas Field Office FAMs received the July 2003 text message therefore his disclosure was too specific and endangered the public (**EXHIBIT 36**).

PAGE 13:

“The message reveals information about a specific type of assignment (remain overnight); it concerns a specific period (July 29 through August 9, 2003); and it applies to [Federal Air] Marshals in a specific location (Las Vegas). The disclosure here is specific three times over--in time, location, and type -- and thus falls well within a reasonable

reading of the categories of information covered by section 1520.7(j).” (emphasis added)

It is clear that the agency is trying to mislead the courts and the MSPB.

Given the fact that appellant and his two representatives caught agency counsel coaching SAC Adams in their headquarters hallway in the middle of his deposition, appellant respectfully requests that agency reimburse all stenographer, attorney fees, and travel costs associated.

9. [REDACTED]

Former Federal Air Marshal (FAM) Las Vegas Field Office

Current Special Agent (S/A) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Special Agent [REDACTED] has expressed to appellant that he is concerned of Department of Homeland Security senior executives retaliating against him for cooperating with appellant’s case against them. [REDACTED] informed appellant that his agency said that it will need to debrief him prior to a deposition or being a witness at a hearing, this concerned [REDACTED] as he is a new employee at FPS and still on probationary status. [REDACTED] is concerned his new managers may be prejudiced given his cooperation.

In reading [REDACTED] June 28, 2009 letter to 11 different members of congress (**EXHIBIT 37**), it is obvious that [REDACTED] and other current federal employees may be very reluctant to cooperate with the appellant given the FAMS history of retaliation against those who speak out. I would like to respectfully request that any federal employee cooperating with the appellant be given protection under the Whistleblower Protection Act of 1989, Civil Service Reform Act of 1978, Federal Employee Protection of Disclosures Act, or the Notification & Federal Employee Anti-discrimination & Retaliation Act of 2002 also know as the “No FEAR Act.”

[REDACTED] appears to be and says he is a “willing witness,” but he insists being given assurance that he will be protected from retaliation.

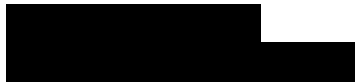
[REDACTED] also requests a formal subpoena be issued by the MSPB and delivered directly to his federal office for his supervisor to physically see.

CERTIFICATE OF SERVICE

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

Electronic Mail

Appellant
Robert J. MacLean



Electronic Mail

Appellant Representative
Peter H. Noone, Esq.
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