

Request No. 05950842 (November 13, 1997). It is undisputed that the Complainant was involved in two separate incidents within ten days which ultimately resulted in formal complaints being filed against the Complainant by airline employees as well as the generation of a police report. ROI Exhibits F2, F12a, and F13c. The Agency maintains that this alone is the reason why the Complainant was removed from the field pending an investigation of the incidents. AJ Exhibit 2. Further, the only reason that the Complainant was unable to place a bid during the annual bid and rotation process is because the Complainant was under investigation for the above incidents, as is the standard policy according to the written guidelines for bid, rotation and placement. ROI Exhibit F18a at 278.

The evidence further establishes that individuals of all ages, races and national origins were deemed ineligible to bid rotation due to a pending investigation. ROI, G4, p. 217. The Agency did not initiate the series of actions which occurred to the Complainant herein. These actions were the result of the Complainant's own conduct which precipitated several complaints by airport employees on two separate occasions, all within ten days of each other. Once the Agency received these complaints, it was under an obligation to investigate the charges and complaints against the Complainant. Complainant has not shown that his race, color, national origin or age were factors in the Agency actions herein.

Title VII was not meant to give the Commission the power to substitute its judgment in personnel matters for the judgment of the Agency. *Milton v. Weinberger*, 696 F.2d 94 (D.C. Cir. 1982); *Shapiro v. Social Security Administration*, EEOC Request No. 05960403 (December 6, 1996). Absent evidence of unlawful discrimination, the decision to put the Complainant on desk duty while investigating these incidents falls within the realm of a personnel action and not within the purview of Title VII or the ADEA. Further, it is also consistent with established Agency policy.

Given the declarations made by the Agency officials, the Complainant himself, and the undisputed facts of record, the Agency has established legitimate, non-discriminatory reasons for its conduct. Further, the Complainant has not presented any evidence either through the ROI or through any of his subsequent responses to any of the Agency's motions, which establishes that the Agency's stated reasons for its actions are pretextual.

V. CONCLUSION

For the foregoing reasons, I conclude that the Complainant has not established by a preponderance of the evidence that he was discriminated against on the basis of his race, color, national origin and/or age in violation of Section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16 (“Title VII”) and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 633(a) (“ADEA”) when, on November 12, 2008, he was removed from field duties with the Anti-Terrorism Contraband Enforcement Team, assigned to desk duties, and not permitted to work overtime in the field; on January 21, 2009, he was notified that his bid rotation was denied; and, on February 19, 2009, he was assigned to passenger control. Therefore, the Agency’s motion for summary judgment is hereby granted.

NOTICE

EEOC regulations require the Agency to take final action on the complaint by issuing a final order within forty calendar days of receipt of the hearing file and this decision. The Agency’s final order shall notify the Complainant whether or not the Agency will fully implement this decision, and shall contain notice of the Complainant’s right to appeal to the Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for such appeal or lawsuit. The Complainant may appeal to the Commission within thirty calendar days of receipt of the Agency’s final order concerning its implementation of this decision. If the final order does not fully implement this decision, the Agency must also simultaneously file an appeal to the Commission in accordance with 29 C.F.R. §1614.403, and append a copy of the appeal to the final order. A copy of EEOC Form 573 must be attached to the final order.

The Complainant may not appeal to the Commission directly from this decision unless the Agency has not issued its final order within forty calendar days of its receipt of the hearing file and this decision. If the Complainant is filing a direct appeal under these circumstances, a copy of the Administrative Judge’s decision should be attached to the appeal. The Complainant should furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission, and should certify to the Commission the date and method by which such service was made on the opposing party.

All appeals to the Commission must be filed by mail, personal delivery or facsimile to the following address:

Director
Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 19848, Washington, D.C. 20036
Fax No. (202)663-7022

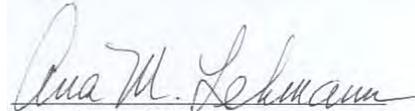
Facsimile transmissions over ten pages will not be accepted.

COMPLIANCE WITH AN AGENCY FINAL ACTION

An Agency's final action that has not been the subject of an appeal to the Commission or civil action is binding on the Agency. See 29 C.F.R. §1614.504. If the Complainant believes that the Agency has failed to comply with the terms of a final action, the Complainant shall notify the Agency's EEO Director, in writing, of the alleged noncompliance within thirty calendar days of when the Complainant knew or should have known of the alleged noncompliance. The Agency shall resolve the matter and respond to the Complainant in writing within thirty days. If the Complainant is not satisfied with the Agency's attempt to resolve the matter, the Complainant may appeal to the Commission for a determination of whether the Agency has complied with the terms of its final action. The Complainant may file such an appeal within thirty calendar days of receipt of the Agency's determination or, in the event that the Agency fails to respond, at least thirty-five calendar days after Complainant has served the Agency with notice of the alleged noncompliance. A copy of the appeal must be served on the Agency. The Agency may submit a response to the Commission within thirty calendar days of receiving the Complainant's notice of appeal.

November 16, 2010

Date issued



ANA M. LEHMANN

Administrative Judge

EEOC Miami District Office

One Biscayne Tower, Suite 2700

Miami, Florida 33131

Tel: (305) 808-1778

a.lehmann-efilebox@eeoc.gov

Exhibit 4



**Homeland
Security**

***Complaint of Kenneth Humphrey v. Janet Napolitano,
Secretary, Department of Homeland Security***
Agency Number HS-09-CBP-003066
EEOC Number 510-2009-00241X

DEC 05 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth Humphrey
1750 Northeast 191st Street, D209
Miami, FL 33179

Dear Mr. Humphrey:

This is the Department of Homeland Security's (DHS) Final Order on the above-referenced Equal Employment Opportunity (EEO) complaint. You alleged that U.S. Customs and Border Protection (CBP) discriminated against you on the bases of race (African-American), color (Black), and age (DOB: [REDACTED]/45) when:

1. On November 12, 2008, you were removed from field duties with the Anti-Terrorism Contraband Enforcement Team, assigned to desk duties, and not permitted to work overtime in the field.
2. On January 21, 2009, you were notified that your bid rotation was denied.
3. On February 19, 2009, you were assigned to passenger control.

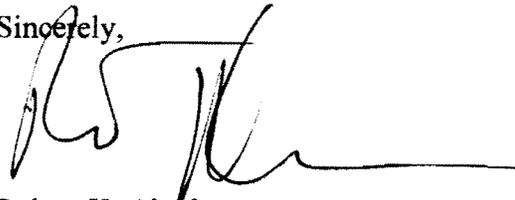
On November 16, 2010, an Administrative Judge (AJ) from the Miami District Office of the Equal Employment Opportunity Commission (EEOC) issued a decision on the complaint without a hearing, pursuant to 29 C.F.R. § 1614.109(g). The AJ concluded you failed to prove you were discriminated against as alleged. On November 29, 2010, this Office received the AJ's decision.

Initially, this Office finds that the AJ's issuance of a decision without a hearing was procedurally appropriate. *See Petty v. Dep't of Def.*, EEOC Appeal No. 01A24206 (July 11, 2003); *see also Murphy v. Dep't of the Army*, EEOC Appeal No. 01A04099 (July 11, 2003). Specifically, the AJ correctly determined that an "appropriate factual record (*i.e.*, one which contains all the information necessary to enable an accurate adjudication of the complaint on its merits)" had been developed. *Petty*, EEOC Appeal No. 01A24206. The AJ also ensured that the party opposing the ruling (*i.e.*, Complainant) was given: (1) ample notice of the proposal to issue a decision without a hearing; (2) a comprehensive statement of the allegedly undisputed material facts; (3) the opportunity to respond to such a statement; and (4) the chance to engage in discovery before responding, if necessary. *See Petty*, EEOC Appeal No. 01A24206; *see also Administrative Judge Handbook*, Chapter 5.

Upon a complete review of the entire evidentiary record, this Office also finds that the AJ correctly issued a decision without a hearing because you failed to establish genuine issues of fact on several elements essential to your case and on which you bear the burden of proof. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Because the record does not contain a genuine issue of material fact, this Office finds that a reasonable factfinder could not return a verdict for the party opposing summary judgment, and the Agency is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The AJ's decision will be fully implemented as the final action in this matter. If you are dissatisfied with this decision, you have the right to file an appeal with EEOC according to the instructions at Enclosure (1). The appeal form is at Enclosure (2).

Sincerely,



Robert K. Abraham
Acting Deputy Officer, and Director for
Equal Employment Opportunity and Diversity Programs
Office for Civil Rights and Civil Liberties
Department of Homeland Security

Encl: (1) Appeal Rights
(2) EEOC Form 573

cc: Ana M. Lehmann
Administrative Judge
EEOC – Miami District Office
1 Biscayne Tower
2 South Biscayne Boulevard, Suite 2700
Miami, Florida 33131

Carolyn Sarnecki, Esq.
U.S. Customs and Border Protection
909 Southeast First Avenue
Miami, FL 33131
(Via email)

Executive Director, Office of Diversity and Civil Rights
U.S. Customs and Border Protection
Ronald Reagan Building, Room 3.3D
1300 Pennsylvania Avenue, NW
Washington, DC 20229
(Via email)

CSB

NOTICE OF APPEAL RIGHTS

You have the right to appeal to the Equal Employment Opportunity Commission (EEOC) or to file a civil action in an appropriate United States District Court.

All time periods are given in calendar days. If a time period expires on a Saturday, Sunday or Federal holiday, you may file on the next business day. If an attorney represents you, the time periods begin to run from the date that your attorney receives this decision.

FILING AN APPEAL WITH EEOC

You have the right to appeal this decision to EEOC within 30 days of the day you receive this final decision. File your appeal, and any supporting statement or brief, by mail addressed to:

**U.S. Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013**

Or by personal delivery to:

**U.S. Equal Employment Opportunity Commission
Office of Federal Operations
131 M Street, NE
Suite 5SW12G
Washington, DC 20507**

Or by facsimile to (202) 663-7022.

At the same time you file an appeal with EEOC, you must also send a copy of your appeal, and any supporting statement or brief, to:

**Associate Chief Counsel (Administration)
Office of the Chief Counsel
U.S. Customs and Border Protection
Ronald Reagan Building, Room 4.4B
1300 Pennsylvania Avenue, NW
Washington, DC 20229**

And to:

**Executive Director, Office of Diversity and Civil Rights
U.S. Customs and Border Protection
Ronald Reagan Building, Room 3.3D
1300 Pennsylvania Avenue, NW
Washington, DC 20229**

And to:

**Department of Homeland Security
Office for Civil Rights and Civil Liberties / MS0191
245 Murray Lane, SW
Bldg 410
Washington, DC 20528**

In your appeal to EEOC, you must state the date and method (for example, by certified mail or hand delivery) by which a copy of the appeal was sent to the Executive Director, Office of Diversity and Civil Rights, U.S. Customs and Border Protection. You should use the attached EEOC Form 573, Notice of Appeal/Petition, to file your appeal. EEOC will dismiss your appeal if you do not file it within the time limits.

FILING A CIVIL ACTION

You also have the right to file a civil action in an appropriate United States District Court within 90 days after you receive this final decision if you do not appeal to EEOC, or within 90 days after receipt of the EEOC's final decision on appeal. You may also file a civil action after 180 days from the date of filing an appeal with EEOC if there has been no final decision by EEOC.

If your claim is based on age discrimination, you should seek the advice of an attorney if you wish to file a civil action after expiration of the time limits noted above. The courts disagree about when a civil action must be filed and may permit an age discrimination complaint to be filed two years or more from the date of the alleged discrimination.

You must also comply with the following instructions:

- (1) You must name Janet Napolitano, Secretary, Department of Homeland Security, as the defendant. Failure to provide her name and official title may result in dismissal of your case.
- (2) If you decide to file a civil action and if you do not have, or cannot afford, the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend the time in which to file a civil action. Both the request and the civil action must be filed within 90 days of the date you receive the agency or EEOC final decision.

NOTICE OF APPEAL/PETITION TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OFFICE OF FEDERAL OPERATIONS
P.O. Box 77960
Washington, DC 20013

Complainant Information: (Please Print or Type)

Complainant's name (Last, First, M.I.):	
Home/mailling address:	
City, State, ZIP Code:	
Daytime Telephone # (with area code):	
E-mail address (if any):	

Attorney/Representative Information (if any):

Attorney name:	
Non-Attorney Representative name:	
Address:	
City, State, ZIP Code:	
Telephone number (if applicable):	
E-mail address (if any):	

General Information:

Name of the agency being charged with discrimination:	
Identify the Agency's complaint number:	
Location of the duty station or local facility in which the complaint arose:	
Has a final action been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint?	<input type="checkbox"/> Yes; Date Received _____ (Remember to attach a copy) <input type="checkbox"/> No <input type="checkbox"/> This appeal alleges a breach of settlement agreement
Has a complaint been filed on this same matter with the EEOC, another agency, or through any other administrative or collective bargaining procedures?	<input type="checkbox"/> No <input type="checkbox"/> Yes (Indicate the agency or procedure, complaint/docket number, and attach a copy, if appropriate)
Has a civil action (lawsuit) been filed in connection with this complaint?	<input type="checkbox"/> No <input type="checkbox"/> Yes (Attach a copy of the civil action filed)

NOTICE: Please attach a copy of the final decision or order from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the EEOC Administrative Judge's decision. Any comments or brief in support of this appeal **MUST** be filed with the EEOC **and** with the agency **within 30 days** of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the EEOC at the address above.

Signature of complainant or complainant's representative:	
Date:	

PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)

1. **FORM NUMBER/TITLE/DATE:** EEOC Form 573, Notice of Appeal/Petition, January 2001
2. **AUTHORITY:** 42 U.S.C. § 2000e-16
3. **PRINCIPAL PURPOSE:** The purpose of this questionnaire is to solicit information to enable the Commission to properly and efficiently adjudicate appeals filed by Federal employees, former Federal employees, and applicants for Federal employment.
4. **ROUTINE USES:** Information provided on this form will be used by Commission employees to determine: (a) the appropriate agency from which to request relevant files; (b) whether the appeal is timely; (c) whether the Commission has jurisdiction over the issue(s) raised in the appeal, and (d) generally, to assist the Commission in properly processing and deciding appeals. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a data base for statistical purposes.
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION:** Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

Send your appeal to:

The Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, D.C. 20013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 11-cv-20651-LENARD/O’SULLIVAN

_____)
KENNETH D. HUMPHREY,)
)
<i>Plaintiff,</i>)
v.)
)
JANET NAPOLITANO, Secretary,)
United States Department of Homeland)
Security, <i>et al.,</i>)
)
<i>Defendants.</i>)
_____)

ORDER

This cause is before the Court on Defendants’ Motion to Dismiss. After consideration of the Motion, it is hereby

ORDERED:

1. Sovereign immunity bars Plaintiff’s claims against the Equal Employment Opportunity Commission (EEOC). Accordingly, Defendant EEOC is TERMINATED as a party to this action;

2. Counts I-V of Plaintiff’s Complaint are DISMISSED for failure to state a claim.

DONE AND ORDERED in chambers at Miami, Florida, this ____day of _____ 2011.

 JOAN A. LENARD
 UNITED STATES DISTRICT JUDGE

copies provided:

Christopher Macchiaroli, AUSA (*via CM/ECF*)

Plaintiff Kenneth D. Humphrey (*via First-Class Mail*)
PO Box 42-1502
Miami, Florida 33242-1502

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-20651-CIV-LENARD/O'SULLIVAN

[CONSENT]

KENNETH D. HUMPHREY,

Plaintiff,

v.

JANET NAPOLITANO, Secretary,
United States Department of Homeland
Security, et al.,

Defendants.

_____ /

ORDER

THIS MATTER is before the Court on the Defendant's Motion to Dismiss (DE# 14, 4/27/11). After hearing argument and carefully considering the pleadings, the Court file and the applicable law, the undersigned recommends that the Defendant's Motion to Dismiss (DE# 14, 4/27/11) be GRANTED in part on the grounds set forth below.

Accordingly, it is

ORDERED AND ADJUDGED that

1. Counts I (race discrimination), III (age discrimination) and V (conspiracy to obstruct justice) are dismissed without prejudice;
2. Counts II (retaliation) and IV (False Claims Act and Whistleblower Act) are dismissed with prejudice in this Court due to the plaintiff's failure to exhaust his administrative remedies; and
3. Counts I through V are dismissed with prejudice as to the defendant, EEOC, only.

BACKGROUND

The *pro se* plaintiff, Kenneth D. Humphrey, was employed as a U.S. Customs and Border Protection Officer from January 2000 to May 2010. On December 8, 2008, the plaintiff logged an EEO claim against Department of Homeland Security's ("DHS") actors initiating adverse actions against him regarding a November 12, 2008 activity. On February 22, 2009, he filed a formal EEOC Complaint relating to conduct that took place in November 2008. On March 18, 2009, his employer notified him that the following claims were accepted for investigation:

Whether Customs and Border Protection discriminated against Complainant, CBP Officer, GS-1895-11, assigned to the Miami International Airport, Miami, FL based on his race/national origin/color (African American/Black) and age (Date of Birth: April 26, 1945) when: (1) on or around November 12, 2008, he was removed from field duties with the Anti-Terrorism Contraband Enforcement Team (AT-CET), assigned desk duties and not permitted to work overtime in the field; (2) on or around January 21, 2009, he was notified that his bid rotation was denied; and (3) on February 1, 2009, he was assigned to Passenger Control.

In its claim construction letter, CBP notified the plaintiff that "[i]f he disagree[d] with the issues" identified, he was to notify the CBP "in writing within 15 days" and "[i]f no response was received," CBP would "assume that [the plaintiff] agree[d] with the issues and w[ould] proceed with the investigation of the complaint." Def.'s Motion to Dismiss, Ex. 2, CBP's Mar. 18, 2009 Ltr. (DE# 14-1 and 14-2, 4/27/11). The plaintiff did not respond to the CBP's claim construction letter, offered no amendments to his formal EEO complaint, and proceeded with administrative litigation of his EEO claims. On June 9, 2009, he was permitted to request an official EEOC hearing. On November 16, 2009, an administrative judge from the Miami District of the EEOC issued a decision without a hearing that determined that the plaintiff failed to prove his claims. DHS issued a Final Order on December 5, 2010, that adopted the administrative judge's

findings.

On February 25, 2011, the plaintiff filed the present action against Janet Napolitano, Secretary, U.S. Customs and Border Protection (“CBP”), Department of Homeland Security, and Jaqueline A. Berrien, Chair, U.S. Equal Employment Opportunity Commission (“EEOC”). (DE# 1, 2/25/11). In his complaint, the plaintiff alleges five counts. Count I alleges discrimination in violation of the Civil Rights Act of 1964, Equal Employment Opportunities and the Civil Rights Act of 1991. Count II alleges retaliation in violation of the provisions of the Civil Rights Act of 1964 and the Federal Employee Anti-Discrimination and Retaliation Act of 2002. Count III alleges age discrimination in violation of the Age Discrimination in Employment Act of 1967 (“ADEA”) and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (“VEVRAA”). Count IV alleges violations of the False Claims Act and the Whistleblower Protection Act of 1989. Count V alleges a conspiracy to interfere with civil rights in violation of the Conspiracy to Obstruct Justice Act. The plaintiff seeks compensatory and punitive damages as well as injunctive relief.

In Defendants’ Motion to Dismiss (DE# 14, 4/27/11), the defendants seek dismissal of the complaint in its entirety. The defendants argue six grounds for dismissal. First, sovereign immunity bars the plaintiff’s claims against the EEOC. Second, the plaintiff fails to state a claim under the False Claims Act because he is not bringing an action on behalf of the United States and has not alleged any fraud committed against the United States. Third, the plaintiff has failed to exhaust his administrative remedies pursuant to the Whistleblower Protection Act of 1989 and even if he did, the plaintiff fails to allege any protected disclosure sufficient to state a whistleblower claim. Fourth, the plaintiff fails to state a claim under the Conspiracy to

Obstruct Justice Act because he fails to allege any facts to support a “conspiracy” by two or more people to discriminate against him or individuals in his racial and/or age classification. Fifth, the plaintiff failed to exhaust his administrative remedies on his claim of retaliation and even if he did, the plaintiff fails to state a claim of retaliation because the plaintiff: 1) fails to allege any retaliatory action post-dating the filing of his EEO complaint; 2) fails to allege any facts by which this Court could conclude that any of the plaintiff’s colleagues, especially CBP’s decision makers, were even aware of his verbal request for EEO counseling and retaliated against him in response; 3) fails to allege any facts that would constitute adverse employment actions; and 4) fails to allege any facts that establish a causal connection between his verbal request for EEO counseling and CBP’s investigation of the events of November 12, 2008, particularly when the plaintiff concedes that the CBP’s investigation commenced prior to the plaintiff’s request for EEO counseling. Sixth, the plaintiff does not state a claim for disparate treatment because the plaintiff fails to allege that similarly situated individuals outside his protected group engaged in similar conduct, but received more favorable treatment under the same circumstances. The defendants contends that all of these grounds warrant dismissal of the plaintiff’s complaint in its entirety.

DISCUSSION

The Standard of Review for a Motion to Dismiss

In deciding a motion to dismiss, the Court’s analysis is generally limited to the four corners of the plaintiff’s complaint and the attached exhibits. Grossman v. Nationsbank, 225 F.3d 1228, 1231 (11th Cir. 2000); Caravello v. American Airlines, Inc., 315 F. Supp. 2d 1346, 1348 (S.D. Fla. 2004). The Court must also accept the plaintiff’s well pled facts as true and construe the complaint in the light most favorable to the

plaintiff. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations omitted); Caravello, 315 F. Supp. 2d at 1348 (citing United States v. Pemco Aeroplex, Inc., 195 F.3d 1234, 1236 (11th Cir. 1999)(en banc)). To survive a motion to dismiss, the complaint must contain factual allegations that are “enough to raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). In a *pro se* action such as this, the Court construes the complaint more liberally than it would pleadings drafted by an attorney. See Hughes v. Rowe, 449 U.S. 5, 9 (1980). “When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” Ashcroft v. Iqbal, __ U.S. __, 129 S. Ct. 1937, 1950 (2009). The issue to be decided by the Court is not whether the plaintiff will ultimately prevail, but “whether the claimant is entitled to offer evidence to support the claims.” Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), *overruled on other grounds* by Davis v. Scheuer, 468 U.S. 183 (1984); Taylor v. Ledbetter, 818 F.2d 791, 794 n.4 (11th Cir. 1987), *cert. denied*, 489 U.S. 1065 (1989).

Analysis

A. Sovereign Immunity Bars the Claims against the EEOC.

The defendants argue that the EEOC should be dismissed as a defendant in this action because the EEOC was not the plaintiff’s employer and the EEOC did not waive sovereign immunity. Motion to Dismiss at 4 (DE# 14-1, 4/27/11). “The United States, as sovereign, is immune from suit save as it consents to be sued.” United States v. Sherwood, 312 U.S. 584, 586 (1941). The “Supreme Court has ruled sovereign immunity shields federal agencies from suit unless that agency waived sovereign immunity.” Reeves v. DSI Sec. Servs., 331 F. App’x 659, 661 (11th Cir. 2009) (citing Dep’t of the Army v. Blue Fox, Inc., 525 U.S. 255, 260 (1999)). In a suit against the

United States, a waiver of sovereign immunity is a “prerequisite for jurisdiction” and “must be unequivocally expressed in statutory text.” United States v. Mitchell, 463 U.S. 206, 212 (1983) and Lane v. Pena, 518 U.S. 187, 192 (1996), respectively. Because the sovereign immunity bars claims against the EEOC, all claims against the EEOC are DISMISSED.

B. Race and Age Discrimination (Counts I and III, Respectively)

Title VII prohibits an employer from discharging or otherwise discriminating against a person based on the person’s race, color, religion, sex, or national origin, or retaliating against an employee for reporting discrimination. See 42 U.S.C. § 2000e, *et seq.* The Age Discrimination in Employment Act (“ADEA”) prohibits age discrimination in employment.

To “establish a *prima facie* case of disparate treatment, Plaintiff must demonstrate that (1) he is a member of a protected class; (2) he was subjected to an adverse employment action; and (3) his employer treated similarly situated employees outside of [his] protected class more favorably than [he] was treated.” Smalley v. Holder, No. 09-21253-CV, 2011 WL 649355 * (S.D. Fla. Feb. 22, 2011) (citing Burke-Fowler v. Orange County, 447 F.3d 1319, 1323 (11th Cir. 2006)). The defendant argues that the plaintiff’s complaint fails to allege that similarly situated individuals outside his protected group engaged in similar conduct, but received more favorable treatment under the same circumstances.

The plaintiff’s reliance on the Supreme Court’s decision in Staub v. Proctor Hosp., 131 S. Ct. 1186 (2011), does not remedy his pleading deficiency. In Staub, the Supreme Court reversed a judgment as a matter of law on a claim based on the Uniformed Services Employment and Reemployment Rights Act. In Staub, the

Supreme Court explained the liability of an employer for discriminatory animus by supervisors as follows: “[t]he employer is at fault because one of its agents committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision.” *Id.* at 1193. Likewise, the plaintiff’s reliance on EEOC v. BCI Coca-Cola Bottling Co. of La., 450 F.3d 476 (10th Cir. 2006), and Martin v. Toledo Cardiology Consultants, Inc., 548 F.3d 405 (6th Cir. 2008), is misplaced. In these two cases, the appellate courts reversed summary judgments based on findings that fact issues existed on the plaintiffs’ discrimination claims.

None of the plaintiff’s cases address discrimination claims in the context of a motion to dismiss. This Court agrees with the defendant that this pleading deficiency warrants dismissal of the plaintiff’s discrimination claims. See Hopkins v. Saint Lucie County Sch. Bd., 399 F. App’x 563, 566 (11th Cir. 2010) (affirming dismissal of *pro se* complaint alleging disparate treatment when plaintiff “provide[d] no facts that would allow a court to infer that the school district treated those outside the class of African-American males more favorably”); Crawford v. City of Tampa, 397 F. App’x 621, 623 (11th Cir. 2010) (affirming dismissal of *pro se* complaint alleging disparate treatment when plaintiff “failed to identify appropriate comparators whose treatment would indicate race-based disparity”) (citations omitted). The defendant’s motion to dismiss Count I and Count III is GRANTED and the race and age discrimination claims in Counts I and III, respectively, are DISMISSED without prejudice.

C. Retaliation Claim (Title VII) (Count II)

1. Exhaustion of Remedies

The plaintiff has failed to exhaust his remedies to assert a retaliation claim because he failed to include it in his EEO charge and complaint. “[A] federal employee

must exhaust h[is] administrative remedies” before filing a Title VII action. Andrews-Willmann v. Paulson, 287 F. App’x 741, 745 (11th Cir. 2008) (citing Crawford v. Babbitt, 186 F.3d 1322, 1326 (11th Cir. 1999); 42 U.S.C. § 2000e-16(c)). “The purpose of [requiring the] exhaustion of remedies [of administrative remedies] is to give [an] agency the information it needs to investigate and resolve the dispute between the employee and the employer.” Wade v. Sec’y of Army, 796 F.2d 1369, 1377 (11th Cir. 1986).

The plaintiff filed his formal EEO Complaint in February 2009. In March 2009, the defendant provided a claim construction letter that identified the claims accepted for investigation base on the plaintiff’s complaint. The claim construction letter notified the plaintiff that “[i]f [he] disagree[d] with the issues,” he was to notify CBP “in writing within 15 days of the date of receipt of th[e] letter” and “if no response was received,” CBP would “assume that [the plaintiff] agree[d] with the issues and w[ould] proceed with the investigation of the complaint.” The plaintiff did not respond to the claim construction letter, offered no amendments to his formal EEO complaint, and proceeded with an administrative litigation of his EEO claims. The plaintiff never raised the retaliation claim at the administrative level. Because the plaintiff did not exhaust his administrative remedies, the Court grants the defendant’s motion to dismiss the plaintiff’s retaliation claim (Count II). See Paulson, 287 F. App’x at 744, 746 (affirming judgment for the government on plaintiff’s retaliation claim due to failure to exhaust administrative remedies); Ramon v. AT&T Broadband, 195 F. App’x 860, 866 (11th Cir. 2006) (affirming district court’s finding that plaintiff did not exhaust her administrative remedies on her claim of retaliation).

As in Paulson, the plaintiff received a claim construction letter that identified the

type of discrimination he was claiming and the specific actions that were being investigated. Similarly, the plaintiff in Paulson was given an opportunity to object to the characterization of the claims identified in the claim construction letter, but chose not to. As in Paulson, the plaintiff's retaliation claim at bar is subject to dismissal for failure to exhaust his administrative remedies. The defendant's motion to dismiss the plaintiff's retaliation claim (Count II) is GRANTED and the plaintiff's retaliation claim is DISMISSED with prejudice because the time period to exhaust administrative remedies has expired.

D. False Claims Act Claim (Count IV) and Whistleblower Claim (Count IV)

False Claims Act

The False Claims Act ("FCA"), 31 U.S.C. § 3729, et seq., authorizes the United States, or private citizens on behalf of the United States, to recover treble damages from those who knowingly make false claims for money or property upon the United States, or who submit false information in support of such claims. "The purpose of the [FCA] is ... to discourage fraud against the government." See Neal v. Honeywell, 826 F. Supp. 266, 269 (N.D. Ill. 1993), aff'd., 33 F.3d 860 (7th Cir. 1994). The defendant seeks dismissal of the plaintiff's False Claims Act claim (Count IV). The plaintiff is not bringing an action on behalf of the United States and makes no allegations of fraud in his complaint. See Ercole v. LaHood, No. 07-CV-2049 (JFB) (AKT), 2011 WL 1205137, at *13 (E.D.N.Y. Mar. 29, 2011) (dismissing *pro se* federal employee's FCA claim because plaintiff was "not bringing an action on behalf of the United States and ma[de] no allegations of fraud in his complaint"); Mack v. United States Postal Servs., No. 92-CV-0068 (FB), 1998 WL 546624, at *7 (E.D.N.Y. Aug. 26, 1998) (rejecting and dismissing *pro se* federal employee's FCA claim as not having been brought "on behalf of the

government”). The Civil Service Reform Act (“CSRA”), 5 U.S.C. §§ 1213 and 2302, “provide[s] the exclusive remedy for federal employees who suffer retaliation as a result of whistle blowing. ... [F]ederal employees can not assert claims under [the FCA].” Daly v. Dep’t of Energy, 741 F. Supp. 202 (D. Colo. 1990) (citing Premachandra v. United States, 739 F.2d 392 (8th Cir. 1984) (affirming dismissal of plaintiff’s wrongful termination suit under the Federal Tort Claims Act); see Coe v. N.L.R.B., 40 F. Supp. 2d 1049, 1053 (E.D. Wis. 1999) (Title VII of the Civil Rights Act of 1964, as amended, and the CSRA provide the exclusive remedies for federal employees with employment discrimination claims and nondiscriminatory employment claims, respectively). The defendant’s motion to dismiss the FCA claim in Count IV is GRANTED and the False Claims Act claim in Count IV is DISMISSED with prejudice in this Court.

Whistleblower Claim (Count IV)

The Whistleblower Protection Act of 1989 (“WPA”) “provides protection to federal employees against agency reprisal for whistleblowing activities, such as disclosing illegal conduct, gross mismanagement, gross waste of funds, or acts presenting substantial dangers to health and safety.” Hendrix v. Snow, 170 Fed. App’x 68, 78 (11th Cir. 2006) (citing 5 U.S.C. §2302(b)(8)). The “Civil Service Reform Act (“CSRA”) provides the exclusive remedy for claims brought pursuant to the WPA.” Fleeger v. Principi, 221 F. App’x 111, 115 (3d Cir. 2007) (citing Richards v. Kiernan, 461 F.3d 880, 885-86 (7th Cir. 2006); accord Hendrix, 170 Fed. App’x at 78-79.

The CSRA requires the employee to file a claim alleging a WPA violation with the Office of Special Counsel (“OSC”), which investigates the claim. If the OSC finds a violation, it may petition the United States Merit Systems Protection Board (“MSPB”) on behalf of the employee. Hendrix, 170 Fed. App’x at 79 (citing 5 U.S.C. §§ 7703). The

MSPB's decision is appealable to the United States Court of Appeals for the Federal Circuit. Id.; accord Best v. Adjutant Gen., State of Florida, Dept. of Military Affairs, 400 F.3d 889, 891-92 (11th Cir. 2005) (conveying appellate jurisdiction to the "Federal Circuit").

"The only way that an agency decision under the WPA may be reviewed by a federal court, other than the Federal Circuit, is if the plaintiff has filed a 'mixed case' complaint - that is, a complaint that raises, in addition to claims under the CSRA like whistleblowing, issues under various anti-discrimination statutes." Fleeger, 221 F. App'x at 115 (citing 5 U.S.C. § 7703(b)(2)). "Under no circumstances does the WPA grant the District Court jurisdiction to entertain a whistleblower cause of action brought directly before it in the first instance." Id. at 116 (quoting Stella v. Mineta, 284, F.3d 135, 142 (D.C. Cir. 2002)).

1. Exhaustion of Remedies

"When motions to dismiss are based on issues not enumerated under Rule 12(b), such as here, then Federal Rule of Civil Procedure 43(c) governs and 'permits courts to hear evidence outside the record on affidavits submitted by parties.'" Gordon v. Ghaly, Case No. 10-cv-952-Orl-31DAB, 2011 WL 915577 * 3 (M.D. Fla. March 16, 2011)(quoting Brown v. Darr, 2010 WL 1416522, at * 3 (M.D. Ga. 2010) (quoting Bryant v. Rich, 530 F.3d 1368, 1377 n. 16 (11th Cir. 2008)). "[T]he judge may resolve factual questions concerning a plaintiff's alleged failure to exhaust nonjudicial remedies, 'so long as the factual disputes do not decide the merits and the parties have sufficient opportunity to develop a record.'" Id. (quoting Bryant, 530 F.3d at 1376) (footnote omitted).

As in Fleeger and Hendrix, the plaintiff in the present action has failed to exhaust

his administrative remedies because he did not raise a whistleblower claim in his administrative proceedings. In Fleeger, the court dismissed the WPA claim because the plaintiff did not pursue a WPA claim and did not exhaust her remedies. Id. at 115. In Hendrix, the Eleventh Circuit affirmed the district court's summary judgment in favor of the defendant on the plaintiff's WPA claims for failing to exhaust her administrative remedies. Because the plaintiff did not raise his WPA claim before filing his federal action, the undersigned concludes that he failed to exhaust his administrative remedies and dismisses his WPA claim. Even if he did, which he did not, the plaintiff failed to allege any protected disclosure. See Yost v. Dep't of Health and Human Servs, 4 F. App'x 900, 902 (Fed. Cir. 2001) (citing 5 U.S.C. §§ 1221(e)(1), 2302(b)(8)). "A protected disclosure is a disclosure which an employee reasonably believes evidences '(i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.'" Id. at 902 (citing 5 U.S.C. § 2302(b)(8)).

2. No Protected Disclosure

In the present case, the plaintiff failed to allege any protected disclosure or adverse employment action in response to that disclosure sufficient to state a WPA claim. See Floyd v. United States Dep't of Homeland Sec., No. RDB-09-0735, 2009 WL 3614830, at *3 (D. Md. Oct. 27, 2009) (dismissing WPA claim for lack of exhaustion).

The motion to dismiss the plaintiff's Whistleblower claim is GRANTED and the Whistleblower claim in Count IV is DISMISSED with prejudice in this Court.

E. Conspiracy to Obstruct Justice Act (Count V)

The Conspiracy to Obstruct Justice Act has three specific sections: 1) protection

against conspiracies to prevent “officers from performing duties;” 2) protection against conspiracies to intimidate a party, witness or juror from attending or testifying in federal court; and 3) protection against a conspiracy to deprive “persons or rights or privileges.” 42 U.S.C. § 1985 (1)-(3). Plaintiff attempts to state a claim under section 3. In Griffin v. Breckenridge, 403 U.S. 88, 102 (1971), the Supreme Court held that section 1985(3) addresses only those conspiracies which are motivated by “racial, or perhaps otherwise class-based, invidiously discriminatory animus.” Section 1985(3) does not create a general federal tort law. Id. The overt acts in furtherance of the conspiracy must be pled with specificity. Larson v. School Board of Pinellas County, Florida, 820 F. Supp. 596, 600 (M.D. Fla. 1993).

To “state a claim under [42 U.S.C.] § 1985(3), a plaintiff must allege: 1) defendants engaged in a conspiracy; 2) the conspiracy’s purpose was to directly or indirectly deprive a protected person or class the equal protection of the laws, or equal privileges and immunities under the laws; (3) a conspirator committed an act to further the conspiracy; and (4) as a result, the plaintiff suffered injury to either his person or his property, or was deprived of a right or privilege of a citizen of the United States.” Jimenez v. Wellstar Health Sys., 596 F.3d 1304, 1312 (11th Cir. 2010) (citing Johnson v. City of Fort Lauderdale, 126 F.3d 1372, 1379 (11th Cir. 1997)). “The core of a conspiracy claim is an agreement between the parties; thus, where the plaintiff fails to allege an agreement, the pleading is deficient and subject to dismissal.” Bailey v. Board of County Comm’rs of Alachua County, Fla., 956 f.2d 1112, 1122 (11th Cir. 1992). To show the second element, the plaintiff must show “some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.” Lucero v. Operation Rescue of Birmingham, 954 F.2d 624, 628 (11th Cir. 1992)

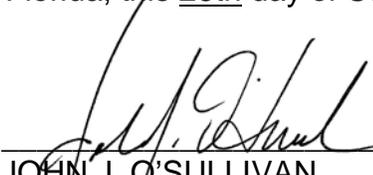
(citation omitted); see Trawinski v. United Techs., 313 F.3d 1295, 1299 (11th Cir. 2002) (requiring allegations supporting an “invidious discriminatory intent”).

The conspiracy claim (Count V of the plaintiff’s Complaint) consists of an incorporation of all prior paragraphs of the Complaint as well as a single additional paragraph that provides a general and conclusory allegation of conspiracy. See, e.g., Complaint ¶¶ 22, 45 that are incorporated into Count V. No injury is alleged in Count V. The “shotgun pleading” is insufficient. “[W]here a plaintiff merely alleges ‘conclusory, vague or general allegations of conspiracy,’ dismissal of the conspiracy claim may be proper.” Mickens v. Tenth Judicial Circuit, 181 F. App’x 865, 876 (11th Cir. 2006) (citing Kearson v. Southern Bell Telephone and Telephone Co., 763 F.2d 405, 407 (11th Cir. 1985)).

Although the plaintiff’s *pro se* Complaint is entitled to a liberal construction by the Court, the allegations fail to allege any facts to support a conspiracy by two or more people with an invidiously discriminatory animus towards him or individuals in his racial and/or age classification. See, e.g., Mickens v. Tenth Judicial Circuit, 181 F. App’x 865, 876 (11th Cir. 2006) (affirming the dismissal of a sub-section 1985(3) conspiracy claim because the plaintiffs “failed to allege with specificity an agreement between the defendants to deprive the [plaintiffs] of their rights”); Artubel v. Colonial Bank Group, Inc., No. 8:08-cv-179-T-23MAP, 2008 3411785, at *13 (M.D. Fla. Aug. 8, 2008) (dismissing conspiracy claim when “complaint fail[ed] to allege facts sufficient to support an inference of race-based animus”). The defendant’s motion to dismiss the plaintiff’s Conspiracy to Obstruct Justice Act claim (Count V) is GRANTED and Count V is DISMISSED without prejudice. The plaintiff may file an amended complaint on or before October 25, 2011. The failure to file an amended complaint on or before

October 25, 2011 will result in the dismissal of this action in its entirety.

DONE AND ORDERED in Miami, Florida, this 28th day of September, 2011.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
All counsel of record
Kenneth D. Humphrey, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20651-CIV-O'SULLIVAN

[CONSENT]

KENNETH D. HUMPHREY,

Plaintiff,

v.

JANET NAPOLITANO, Secretary,
United States Department of Homeland
Security, et al.,

Defendants.

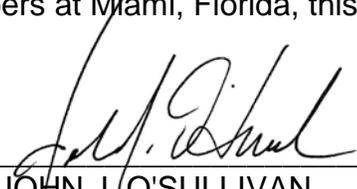
ORDER SETTING PRETRIAL CONFERENCE AND TRIAL DATE

This case is set for trial commencing **Monday, April 2, 2012**, before United States Magistrate Judge John J. O'Sullivan at the United States District Court, 301 North Miami Avenue, Miami, Florida, Fifth Floor. All parties are directed to report to the calendar call at **10:00 AM on Wednesday, March 28, 2012**, at which time all matters relating to the scheduled trial date may be brought to the attention of the Court. A final pretrial conference as provided for by Rule 16, Fed. R. Civ. P., and Rule 16.1(C), S.D. Fla. L.R., is scheduled **Wednesday, March 7, 2012, at 10:30 AM**. A bilateral pretrial stipulation and all other pretrial preparations shall be completed **NO LATER THAN FIVE DAYS PRIOR TO THE PRETRIAL CONFERENCE**. Any and all pretrial motions, including motions for summary judgment, must be filed no later than **Thursday, December 1, 2011**. All parties are required to comply with the Discovery Procedure attached to this Order and all discovery shall be completed on or before **Wednesday,**

November 16, 2011. The failure to engage in discovery pending settlement negotiations shall not be grounds for continuance of the trial date. Mediation shall be completed no later than seventy-five (75) days before the scheduled trial date.

All exhibits must be pre-marked, and a typewritten exhibit list setting forth the number and description of each exhibit must be submitted at the time of trial. For a jury trial, counsel shall prepare and submit proposed jury instructions to the Court. For a non-jury trial, the parties shall prepare and submit to the Court proposed findings of fact and conclusions of law fully supported by the evidence which counsel expects the trial to develop and fully supported by citations to law. The proposed jury instructions or the proposed findings of fact and conclusions of law shall be submitted to the Court no later than one week prior to the pretrial conference. **Counsel shall submit a copy of the proposed jury instructions or proposed findings of fact and conclusions of law as an attachment, in WordPerfect format, to O'Sullivan@flsd.uscourts.gov.**

DONE AND ORDERED in Chambers at Miami, Florida, this **30th** day of September, 2011.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
All counsel on record

Copies mailed by Chambers to:

Kenneth D. Humphrey
PO Box 42-1502
Miami, FL 33242

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

**DISCOVERY PROCEDURE FOR
MAGISTRATE JUDGE JOHN J. O'SULLIVAN**

The following discovery procedures apply to all civil **CONSENT** cases assigned to United States Magistrate Judge John J. O'Sullivan.

If parties are unable to resolve their discovery disputes without Court intervention, Magistrate Judge John J. O'Sullivan will set the matter for a hearing. Discovery disputes are generally set for hearings on Tuesdays and Thursdays in the 5th Floor Courtroom, United States Courthouse, 301 N. Miami Avenue, Miami, Florida.

If a discovery dispute arises, the moving party must seek relief within fifteen (15) days after the occurrence of the grounds for relief, by contacting Magistrate Judge O'Sullivan's Chambers and placing the matter on the next available discovery calendar. Magistrate Judge O'Sullivan's telephone number is (305) 523-5920.

After a matter is placed on the discovery calendar, the movant shall provide notice to all relevant parties by filing a Notice of Hearing. The Notice of Hearing shall briefly specify the substance of the discovery matter to be heard and include a certification that the parties have complied with the pre-filing conference required by Southern District of Florida Local Rule 7.1(a)(3). Generally, no more than ten (10) minutes per side will be permitted.

No written discovery motions, including motions to compel and motions for protective order, shall be filed unless the parties are unable to resolve their disputes at the motion calendar, or unless requested by Magistrate Judge O'Sullivan. It is the intent of this procedure to minimize the necessity of motions.

The Court expects all parties to act courteously and professionally in the resolution of their discovery disputes and to confer in an attempt to resolve the discovery issue prior to setting the hearing. The Court may impose sanctions, monetary or otherwise, if the Court determines discovery is being improperly sought or is not being provided in good faith.

NATURE OF THE CLAIM

2. This is an Amended Complaint brought by Plaintiff, Kenneth D. Humphrey, a 66 year old African-American Customs and Border Protection Officer and U.S. Customs Inspector, employed from January 2000 to May 2010 with the Miami International Airport Field Operations of the U.S. Customs, and Customs & Border Protection of the U.S. Department of Homeland Security.
3. This Amended Complaint is against Defendant Janet Napolitano, Secretary, U.S. Department of Homeland Security. Plaintiff is seeking declaratory, injunctive and other equitable relief, with compensatory and punitive damages, based on Defendant Janet Napolitano willfully allowing continuous leadership cultures and climates in such a discriminatory and retaliatory operational work environment. Plaintiff was placed repeatedly in harms way by patterns of deprivation of Civil Rights by actors of Defendant Janet Napolitano.
4. Defendant should be held liable for unlawful, unnecessary and wanton infliction of pain and financial losses to Plaintiff on the basis of perceived race, color, ethnicity, lineage, or national origin and age of Plaintiff.

JURISDICTION AND VENUE

5. This Court has jurisdiction of the subject matter for this claim under the **Anti-Discrimination** provisions of the CIVIL RIGHTS ACT of 1964 - CRA - Title VII - Equal Employment Opportunities - 42 U.S.C §2000e-2(a), the provisions of the CIVIL RIGHTS ACT of 1964 - CRA - Title VII - Equal Employment Opportunities - 42 U.S.C §2000e et seq., TITLE 42 CHAPTER 21 SUBCHAPTER VI §2000e et seq., the GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991, and the CIVIL RIGHTS ACT OF 1991.

6. This Court has jurisdiction of the subject matter for this claim under the provisions of the AGE DISCRIMINATION in EMPLOYMENT ACT of 1967 - ADEA - 29 U.S.C. Chapter 14 et seq., and provisions of the CIVIL RIGHTS ACT of 1964 - CRA - Title VII - Equal Employment Opportunities - 42 U.S.C §2000e et seq., TITLE 42 CHAPTER 21 SUBCHAPTER VI §2000e et seq., the GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991, and the CIVIL RIGHTS ACT OF 1991.

7. This Court has jurisdiction of the subject matter for this claim under the provisions of the CONSPIRACY TO OBSTRUCT JUSTICE ACT - 42 U.S.C. §Section 1985 - Conspiracy to Interfere with Civil Rights.

8. Venue is properly laid in the District Court for the Southern District of Florida pursuant to 28 U.S.C. {} 1391(b), and 1391(c), since, inter alia, the causes of action asserted arose from or are connected with purposeful acts committed by the Defendant in this District, and the Agency's actors and individual Defendants named (within Complaint and Exhibits) herein are doing business, and therefore reside, in this District.

PARTIES

PLAINTIFF

9. This Amended Complaint is a claim by Plaintiff, Kenneth D. Humphrey (hereinafter referred to as 'Plaintiff'), a former employee of U.S. Customs and Customs & Border Protection, U.S. Department of Homeland Security. Plaintiff as a uniformed Officer of the largest law enforcement organization in the nation took a solemn vow to secure the homeland from terrorists and other threats while facilitating the legitimate trades and travels in and out of the country. Plaintiff's Address - P.O. Box 42-1502, Miami Florida 33242-1502.

DEFENDANT

10. This Amended Complaint is a claim against Defendant Janet Napolitano, Secretary, U.S. Department of Homeland Security (hereinafter referred to as 'DHS'). 'DHS' has as its largest and most complex component - Customs & Border Protection, with a priority mission of keeping terrorists and their weapons out of the country. It also has a responsibility for securing and facilitating trade and travel while enforcing hundreds of U.S. regulations, including immigration and drug laws. DHS's Address - 245 Murray Lane, S.W., Washington D.C. 20528.

COMPLIANCE WITH CONDITIONS

PRECEDENT UNITED STATES

11. Notice of intention to initiate litigation against the Defendant named herein was given and acknowledged in accordance with all conditions precedent to the maintenance of this Complaint. This action is properly brought within the proper time frame since these incidents occurred, with due diligence and discovery for filing of this Complaint.
12. On December 08, 2008, Plaintiff logged an EEO claim of DHS's actors' recently initiating adverse actions against Plaintiff, for a November 12th 2008, activity.
13. On February 22, 2009 Plaintiff filed a formal EEO Complaint with DHS, and got the go ahead to file for an official EEOC Hearing which was done on June 9, 2009.

14. November 16, 2010, the Administrative Judge from the Miami District Office of EEOC, issued a decision without a hearing, expressing that Plaintiff failed to prove claims.

15. DHS then issued its Final Order on December 05, 2010, that EEOC was correct in stating that Plaintiff failed to establish genuine issues of fact.

INTRODUCTION STATEMENT

16. This Civil Rights action is brought to ensure that the promise of equal treatment embodied in federal anti-discrimination laws does not become meaningless guarantees for persons perceived as African, other racial minorities and older workers.

17. This Amended Complaint shows great discrepancies, when DHS managerial actors discriminating conclusions were drawn by readily embracing data that confirmed their preconceived ideas that were rigorously held even though evidence did not fit with their views.

18. The "CAT's PAW" practices by DHS were from the influential discriminatory actions of managers who harbored unlawful discriminatory animus towards Plaintiff, imputed in all DHS decision-maker's decisions from which invalid extrapolations abuses were allowed, violating Title VII.

19. DHS's decision makers should not be able to hide behind each others blind approvals based on biased supervisors reports, which played substantial "CAT's PAW" roles, in

Plaintiff's suffering from the intentional discriminations and the added inflictions of great financial losses.

20. DHS should be made liable for discrimination and retaliation when it relied on the comments, discriminatory attitudes, discriminatory reports, recommendations and other actions, that caused the adverse employment "CAT's PAW" practice activities by DHS managerial actors, taken against Plaintiff.

21. EEOC backlogged failures makes agencies like DHS able to continue with discriminatory business practices as usual. DHS is bringing in more new hires every year into a brutal work environment, meaning more EEO/EEOC complaints, more mishandle EEOC reviews with negative determinations for Complainants, and therefore more Complaints reaching for resolutions in Federal District Courts (A NEVER ENDING CYCLE).

STATEMENT OF FACTS

22. On November 12th 2008, Plaintiff was removed from field operations duties after Plaintiff stopped Miami Dade Aviation airport employees causing a severe breach of Federal Regulations.

23. One employee called the airport police for stoppage of the Federal Violations proceedings being conducted by Plaintiff in reference to a **SEVERE FEDERAL SECURITY BREACH** perpetrated by the airport employees.

24. Not until the 3rd of December 2008, was Plaintiff told by Chief Blanco (witness by Chief Bello), a vague reason about some unnamed incident of November 2nd 2008 and the November 12th 2008 incident, as the **reasons made by "Higher Ups" in Management**, for removal of Plaintiff from field operations duties since the date of November 12th 2008.

25. November 12th 2008, was the start of the final hatchet issue of discriminatory and retaliatory actions stemming from bias supervisory decisions by DHS's actors, since the unusual and unfair DHS "CAT's PAW" practices against Plaintiff begun in 2005.

26. The filing of an EEO Grievance on December 8th 2008, by Plaintiff, did not provide notice to the degrees of the inflictions from continued discriminatory actions by DHS's actors that were to follow.

27. On January 21st 2009, Plaintiff was given first notice the BID, ROTATION, AND PLACEMENT request Plaintiff submitted (January 1st 2009), was disallowed due to a secretive "investigation" being conducted.

28. Plaintiff called Labor and Employee Relations (LER) on January 26th 2009, to hear an Official state "yes", there is an ongoing investigation but no request to remove Plaintiff

from field operations duties was ever made by their office (this was found to be a "CAT's PAW" method in practice).

29. The first of February 2009, Plaintiff was forced into transfer, to work demoted at the bottom rung with entry level DHS officers.

30. On February 16th 2009, Plaintiff was placed in OJT practice on the floor in Passenger Control (different branch job functions), with less than two weeks training, without the updated knowledge base for new job functions possessed by recent Academy Graduates.

31. During the interview for the U.S. Customs Inspector's job (Winter 1999), Plaintiff promised that if hired, Plaintiff would provide services worth in support, beyond the salary that would be paid.

32. January 3rd 2000, Plaintiff swore "So help me God" the Oath of Office to protect the Constitution against all enemies and faithfully discharge the duties of the office hired into.

33. 'Exhibit A-A', showed how Defendant's actors:

- credibility was non-existence about the ploy of conducting an investigation. This email was a verification of the continuous disparate

treatments and abuses toward Plaintiff, with all disparate treatments being intended, and since no investigation actually existed, just elaborate ploys.

34. 'Exhibit B-B', is the EEO Counselor's Report established that Plaintiff on December 08, 2008, started the EEO process for which the EEO Counselor was obligated to inform Plaintiff's Management immediately of issues being claimed.

- page 4 shows how the APD only after many delays, afforded a meeting with EEO on January 14, 2009, after the forwarding of a Request for an Investigation of Plaintiff, on January 13th or 14th, 2009 by AT-CET Management and LER.

35. 'Exhibit C-C', shows the guidelines for all Federal Agencies that are:

- owed as a duty to all employees by the actors of Federal Agencies in investigations.
- not to be breached in duties by Federal Employers against employees with the false claims of the conducting of an investigation.

- not to have the breach of duties by Federal Employers in causing injuries to employees with false claims of conducting an investigation.
- not to **QUICKLY** cause employees to suffer damages, before **FINDING** an investigation was never appropriate.

36. 'Exhibit D-D', is the report showing a synopsis stating on January 14th, 2009, that the Joint Intake Center(JIC) received an allegation:

- with no mention of any incident of November 2nd, 2008.
- no copy of a Police Report of Jose Andino as a non-accuser of any abuses (Exhibit 'N3').
- page 3, 'Exhibit D-D', has Miami Dade Aviation Supervisor-Nicholson Pierre, the claimer of abuse, only passing up the stance of initiator by encouraging the Police Report (Exhibit 'N3') to be written on his subordinate-Jose Andino.
- the third page 'Exhibit D-D', also included American Airlines Crew Chief Bayley-Hay, claiming Plaintiff gave an order, when in reality Plaintiff only stated that a 20 minutes

wait by a family in the jet-way-bridge, was way too long a wait for a baby stroller.

37. 'Exhibits A1, A2, A3, A4, & A5', verified Plaintiff's support recognized before the 2006-2009 DHS's AT-CET leadership group was in placed. **AT-CET Management in the 2001-2004 era recognized Plaintiff's duties, and management's duties owed to Plaintiff with lawful employment practices.**

38. No full-staff meetings were ever conducted between 2006-2009. The AT-CET workforce, due to favoritism promoted by management, began to **FLATLINE** as it related to performing job functions. No methods existed to inform the 3 working shifts of officers - we were not to enforce safety rules or Federal Regulations which seems to be at the issues of this Complaint. Each shift operated blindly of the others.

39. The AT-CET workforce under the management from 2006-2009, fell into combinations of 4 groups:

- I. either the "CUBAN-AMERICAN SYNDICATE",
- II. the "ANGLO-AMERICAN FEDERATION",
- III. the "RING OF UNDER 40 YEARS OF AGE",
- IV. and the smallest number of AT-CET members, the "BLACK or BROWN FACTION".

40. 'Exhibit B', is news clipping of about 1 of 100 percent of schemes being practiced by airport personnel. The AT-CET workforce FLATLINERS were reluctant to confront the heavily unionized, mostly 20-year-employment (average) airport ramp-working veterans.

41. Plaintiff was not made aware during 2006-2009, that if airport workers might complain, that Plaintiff should violate "Oath", and not challenge worker's scheming, for fear of being harmed by the selective bias DHS's AT-CET managerial actions (Defendant's actors owed a duty not to harshly mistreat Plaintiff, if unfounded statements by airport workers arose).

42. AT-CET Management in the 2001-2004 era never breached their duty to Plaintiff when unfounded claims by airport workers arose as Plaintiff showed just as much experience in the work settings as the most senior unionized airport workers.

43. 'Exhibits C1, C2, and C3', shows the "Strike Force" mentality pledge in place before the 2006 DHS AT-CET management groups came into operations. From 2006-2009, Plaintiff's shift was making approximately 90% of all contraband drug seizures. The other shifts FLATLINED and

stopped challenging any airport worker's suspicious activities.

44. 'Exhibit D' is the unsigned, undated fake award to humiliate and use Plaintiff as a joke. This was given in a major staff meeting in front of over 65 unit officers(**of other ethnicities than Plaintiff**) by DHS AT-CET leadership from a designed plan developed by **(CUBAN-AMERICAN SYNDICATE)** Officer Acosta and Chief Blanco. (this was the last full-staff meeting to be held by unit, which dated approximately 2005-2006). **This breach by AT-CET leadership was one of disparate treatments to cause Plaintiff injury.**

45. 'Exhibits E1, E2, E3, & E4', violation proceedings initiated by Plaintiff, with an investigation complaint initiated by an airport worker, with no removal from duties of Plaintiff. These proceedings showed how the proper policy procedures were conducted before the 2006-2009 DHS's AT-CET management group took hold. **The 2001-2004 era AT-CET management group never breached their duties and placed any prohibitions on Plaintiff's performing job functions fairly and professionally.**

46. 'Exhibit F', is the proper Inspector's General Directive to be followed in order to prevent DHS's "CAT's PAW" practices. **Not one member of the CUBAN-AMERICAN SYNDICATE,**

the ANGLO-AMERICAN FEDERATION, or the UNDER 40 RING would have Defendant's actors breach their duties and cause injury and damages as inflicted by the initiation of the 'SINGULAR INFLUENCE' false investigation like this disparate treatment done to Plaintiff.

47. 'Exhibit G', the Joint Intake Center Guide to be followed also to prevent DHS's "CAT's PAW" practices. Defendant's actors (AT-CET Management) failed in their duties owed to Plaintiff, and with the disparate treatment of claiming a false investigation. This 'SINGULAR INFLUENCE' caused Plaintiff severe injuries and damages against all the DHS/CBP policies in placed -as also with this 'Exhibit G'.

48. 'Exhibit H', Reportable Misconduct Guide designed to eliminate abuses by DHS's "CAT's PAW" practices as in this discriminatory/retaliatory Complaint. ONLY AFTER PLAINTIFF'S EEO CLAIMS ON DECEMBER 08, 2008, WAS A MEASURE TO PROVIDE THE COVER-UP BY DHS'S AT-CET MANAGEMENT, FILED ON JANUARY 14, 2009. This improper filing giving cover-up to Defendant's actors in their breaches of duties to Plaintiff was AT-CET management's numerous examples of further disparate treatments by inflicting even more injuries and damages to Plaintiff.

49. 'Exhibit I1', shows Security Violation Report initiated by Plaintiff as always on the frontlines(not a FLATLINER), and therefore suffering more DISPARATE IMPACTS from the biasness of DHS's AT-CET management 2006-2009, particular employment practices that breached their duties as they related to the over-40, Black and Brown faction.

50. 'Exhibits I2, I3, I4, & I5', shows Security Violation Report initiated by Plaintiff in a usual leadership role, with confirming witnesses support against the biased preconceived DHS supervisor's claims about Plaintiff being the abuser of the Violator. {The bias ANGLO-AMERICAN FEDERATION AT-CET supervisor never took a statement from Plaintiff or the 3 additional AT-CET officer witnesses on the scene before accusing Plaintiff as the abuser from just the statement of the violator. The other AT-CET officer witnesses (1-CUBAN AMERICAN, 1-ANGLO AMERICAN, 1-BLACK/BROWN AMERICAN, and all the UNDER 40 RING) were in shock and volunteered on their own to submit true accounts of the incident}.

51. Plaintiff's leadership during the period 2006-2009, was writing approximately 90% of Security Violation Reports (**as a frontliner and not a FLATLINER**).

52. 'Exhibits J1, J2, & J3', shows very high qualifications for promotions (with negative results after 3 different positions applied and interviewed for each of the 3 times), plus requests for training positions and special duties placements, all denied to Plaintiff, but given repeatedly to under 40 and non- black or brown personnel with less ratings.

(Never in the history of DHS/CBP has any NON-BLACK/BROWN under 40 personnel with the score as in 'Exhibit J1', interview for 3 promotional positions and be denied all 3. Approvals had to be given by AT-CET's CUBAN-AMERICAN SYNDICATE management or the AT-CET's ANGLO-AMERICAN FEDERATION management in order for Plaintiff to be promoted for the 2005-2007 openings). THIS WAS TOTALLY AGE/RACIAL DISPARATE TREATMENT, a series of breaches by Defendant's actors that did not meet any of the duties owed Plaintiff but in fact caused great/severe injuries and damages to Plaintiff.

53. Black and Brown Officers (two as managers) were removed from the team for the slightest infractions, not by chance, being the smallest population ethnic group

withstanding, could anything other than discriminatory biasness be the leading cause.

54. 'Exhibits K1, & K2', Plaintiff was made to work in unsafe settings with personnel that failed qualifications (nervous breakdown at firing range, and another - threaten a police officer for writing a ticket for an automobile accident) but overlooking these incidents, they still were given favorable standings that were denied Plaintiff, because they were ANGLO-AMERICAN FEDERATION/UNDER-40-RING AT-CET officers.

55. The 'Exhibits K1 & K2', of the ANGLO-AMERICAN FEDERATION, and UNDER 40 RING, AT-CET employee, violated sleeping on over-time duty (found by an ANGLO-AMERICAN AT-CET manager), had a nervous breakdown on the firing range (a date after this 'K1' memo about officer safety was submitted). All witnesses were required to provide statements followed by a real investigation and evaluation, and this officer was never inflicted with DHS's AT-CET management's prohibition of disparate treatments as was Plaintiff.

56. Another ANGLO-AMERICAN FEDERATION, and UNDER 40 RING, AT-CET employee, violated prohibited behaviors for DHS/CBP AT-CET, by hitting an airline's vehicle with a government vehicle and attempting to fight with the police officer who showed up on the scene and began writing the AT-CET officer a

violation ticket. The disagreement became so heated that the police officer had to call his shift commander to the scene and also an AT-CET manager was summons to resolve the heated dispute. Later, only a governmental vehicle accident form was completed with no prohibitions of disparate treatments ever inflicted on the said AT-CET employee. The said employee was continuously awarded all the opportunities that Plaintiff had previously applied for.

57. 'Exhibits L1, & L2', Plaintiff requested for weeks for fair treatments as others, to receive medical work-related injury pay. Plaintiff was reprimanded for both the requests of 'Exhibits K & L', and was told by Chief Blanco (witness by Chief Bello [both CUBAN-AMERICAN SYNDICATE's Leadership]) in late summer 2008, that Plaintiff would be allowed to remain on the Anti-Terrorism/Contraband Enforcement Team (AT-CET) only if Plaintiff stopped memo/email complaints. Defendant's actors breached their duties owed to Plaintiff with these and other patterns and practices of Discriminations-unfavorable to the AT-CET BLACK and BROWN FACTIONS.

58. 'Exhibits M1, M2, & M3', Plaintiff was never given any "Due Process" or a "Right to Know" of any accusers until the EEO Investigative File was presented to Plaintiff in late May

2009. Never still to this date, has DHS supervisors interviewed either ANGLO-AMERICAN/UNDER-40-RING male partner-officers with Plaintiff as witnesses of either the November 2nd or 12th 2008 incidents.

59. Adverse actions were dealt to Plaintiff in a discriminatory-retaliatory fashion without ever talking to either partner officers with Plaintiff on each scene (November 2nd or 12th, 2008).

60. No AT-CET records exist for any of the CUBAN-AMERICAN SYNDICATE, the ANGLO-AMERICAN FEDERATION and UNDER-40-RING of AT-CET Officers that were ever subjected to any of the Breaches, false implementations of investigations and uncommon agency practices as done to Plaintiff.

61. 'Exhibits N1, N2 & N3', shows by the Police Report faxed to AT-CET management on November 13th, 2008, that Plaintiff was only performing SWORN DUTIES, against a major breach by an airport personnel changing strictly secured doors, to allow international arriving passengers to evade entering the Customs Federal Inspection Stations (A SEVERE BREACH). The fact that DHS's actors had this Police Report since

November 13th 2008, and still breached their duties to Plaintiff by showing intended disparate treatments of prohibited employment practices, was unlawful practices of intentional torts.

62. No COMPARATIVE TREATMENT EVIDENCE exists in DHS/CBP's or AT-CET archives, of any CUBAN-AMERICAN SYNDICATE employee, ANGLO-AMERICAN FEDERATION employee, or any of the RING of UNDER-40 employees - suffering such unlawful employment actions as those toward Plaintiff from just the speaking out about favoritism beginning around 2005.

63. 'Exhibits 01, 02, 03, 04, 05, & 06', show DHS's AT-CET managerial "CAT's PAW" practices failed to follow any policies, rules, regulations or procedures, before the dealing of severe adverse-action decisions against Plaintiff. The above exhibits shows how the 'SINGULAR INFLUENCE' WAS ABLE TO CAUSE INTENDED CONSEQUENCES at the hands of DHS's AT-CET MANAGERS with a DISCRIMINATORY ANIMUS.

64. 'Exhibit P', Plaintiff repeatedly requested a "RIGHT TO KNOW", to no avail. DEFENDANT'S ACTORS SHOWED **NO CONCERNS OF OWING ANY DUTIES TO PLAINTIFF.**

65. 'Exhibits Q1, Q2, & Q3', again shows adverse actions against Plaintiff was taken without any of DHS's Leaders at any levels making a signed legal determination other than the practice of "CAT's PAW" activities.

66. **DEFENDANT'S ACTORS BREACHES CAUSED PLAINTIFF INJURY AND DAMAGES SUFFICIENTLY SEVERE ENOUGH TO PERVASIVELY ALTERED THE CONDITIONS OF PLAINTIFF'S EMPLOYMENT.**

67. 'Exhibits R1 & R2', proves the BID denial was a grave adverse action done under the pretense of an (**unauthorized-nonexistence**) investigation. Plaintiff performing sworn duties was placed on an investigation list with possible child molesters, spousal abusers, weapons violators, drug suspect employees, etc...

68. **THE ABOVE AND FOLLOWING NOTED TANGIBLE EMPLOYMENT ACTIONS BY DEFENDANT'S ACTORS WERE INTENTIONAL TORTS TO DISSUADE AND DISCOURAGE OTHERS FROM EVER VOICING CONCERNS OF FAVORITISM ACTIVITIES AND DISPARATE ACTIONS IN DHS/CBP AT-CET OPERATIONS.**

69. 'Exhibits S1, S2, & S3', demonstrates the denial of equal opportunities by DHS AT-CET managerial main directives enforcers (ALL CUBAN-AMERICAN SYNDICATION OFFICERS). Income was immediate reduced by 1/3, by the actions started with these DHS actors.

70. PLAINTIFF SUFFERED GREAT ECONOMIC AND CAREER HARM FROM THE LEADERSHIP OF THE CUBAN & ANGLO-AMERICAN SYNDICATIONS IN DHS/CBP AT-CET BY ORDERS, TO SERVE INJURY AND DAMAGE TO PLAINTIFF AND ALSO AS DISSUASION TO OTHERS FROM VOICING THE CONCERNS OF DYSFUNCTION ABOUT OPERATIONAL FAVORITISMS SINCE 2005.

71. 'Exhibits T1 & T2', highlights adverse opportunities in job placements and the harassments with DHS managerial threaten disciplinary actions, claiming Plaintiff yelled in an email because of typing with a Capital Letter format. Plaintiff's passwords are all in capital letters, so sometimes the emails were always continued in that manner.

72. DEFENDANT'S ACTORS BREACHED THEIR DUTIES WITH EMPLOYMENT SANCTIONED ADVERSE ACTIONS -WHICH OFFICIALLY CHANGED PLAINTIFF'S EMPLOYMENT STATUS AND SITUATION: BY A HUMILIATING DEMOTION, AN EXTREME CUT IN EARNINGS AND A TRANSFER IN POSITION TO CONTINUED UNENDURABLE WORKING ASSIGNMENTS.

73. 'Exhibit U1, U2, & U3', more adverse actions against Plaintiff because of not listing on BID submittal, 100 total noted skill descriptions labeling each as experiences. Plaintiff listed stating "experiences of 8 recent years in all aspect of the job functions and skill levels for the same job just recently removed from". This BID was for placement in the same job that Plaintiff was unfairly removed from.

74. **THE TANGIBLE EMPLOYMENT ACTIONS OF CONTINUOUS DENYING BIDDING REQUESTS, CONSTITUTED SIGNIFICANT CHANGES IN EMPLOYMENT STATUS, RESPONSIBILITIES, AND BENEFITS THAT PLACED PLAINTIFF DAILY AT GREATER EMPLOYMENT DISADVANTAGES.**

75. 'Exhibits V1 & V2', more adverse actions against Plaintiff after repeatedly being denied request for vacation leave approvals, so the state of being sick from the HORROR AND TRAGEDY SUFFERINGS, was now a penalty situation.

76. **THE TANGIBLE EMPLOYMENT ACTIONS BY DEFENDANT'S ACTORS CONTINUED TO MAKE A HOSTILE WORK ENVIRONMENT FOR PLAINTIFF IN ORDER TO BE DISSUASIVE TO OTHERS WHO VOICED CONCERNS ABOUT DISPARATE TREATMENTS OF OLDER BLACK AND BROWN FACTIONS AT DHS/CBP OPERATIONS.**

REQUISITES FOR RELIEF

77. By reason of the factual allegations set forth above, actual controversies now exists between Plaintiff and Defendant. A declaration from this Court that Defendant actions violated Plaintiff's rights is therefore necessary and appropriate.

78. A declaration is requested from this Court showing the scope of Title VII Anti-discrimination provision, which makes it unlawful to have discriminations take place against Plaintiff in ways that affected employment; altered the workplace conditions, compensations, terms, or privileges because of race, color, national origin, or age.

79. Also being sought is a declaration from this Court that Defendant's retaliatory and discriminatory conduct has resulted in irreparable harm to Plaintiff, including but not limited to violations of Plaintiff's legal rights. Plaintiff had no plain, adequate, or complete remedy during the EEOC protracted Hearing process to address the wrongs described herein.

CLAIMS FOR RELIEF

COUNT I

- **Anti-Discrimination provisions of the CIVIL RIGHTS ACT of 1964 - CRA - Title VII - Equal Employment Opportunities - 42 U.S.C § 2000e-2(a), the provisions**

of the CIVIL RIGHTS ACT of 1964 - CRA - Title VII -
Equal Employment Opportunities - 42 U.S.C §2000e et
seq..., TITLE 42 CHAPTER 21 SUBCHAPTER VI §2000e et
seq..., the GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991, and
the CIVIL RIGHTS ACT OF 1991.

80. Paragraphs 1 through 33, inclusive, are adopted for this count.

81. The averments of paragraphs 34-39, 42, 44, 46-48, 50, 52-60, and 62-76 are incorporated by reference.

82. DHS "Cat's PAW" method practice as shown is this Complaint was disparate approaches of not conducting and properly documenting some form of independent inquiry or investigation **BEFORE** taking adverse employment actions against Plaintiff. Just by the DHS's actors simply asking ALL witnesses versions of events, would've shown the above employment decisions were not racially or age discriminations. DHS should have had EEOC begun some enforced incentives from numerous previous Complainants, a practice to hear both sides of the story before taking an adverse employment action against Plaintiff (a member of a protected class), that would really have shown non-discriminations.

83. Plaintiff's reassignment of job duties was materially adverse circumstances of being humiliating demoted to the lowest status, and worst work settings after the filing by Plaintiff of an EEO charge. Retaliations in this Complaint is showing a CAUSAL NEXUS between all the DHS decision-makers decisions from managerial' discriminatory animus for adversely affecting Plaintiff, before and greatly after the EEO record filing, as shown in Exhibits of the biased DHS managerial' discriminatory reports and recommendations.

COUNT II

AGE DISCRIMINATION in EMPLOYMENT ACT of 1967 - ADEA - 29 U.S.C. Chapter 14 et seq., the provisions of the CIVIL RIGHTS ACT of 1964 - CRA - Title VII - Equal Employment Opportunities - 42 U.S.C §2000e et seq., TITLE 42 CHAPTER 21 SUBCHAPTER VI §2000e et seq., the GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991, and the CIVIL RIGHTS ACT OF 1991.

84. Paragraphs 1 through 33, inclusive, are adopted for this count.

85. The averments of paragraphs 34-39, 42, 44, 46-48, 50, 52, 54-60, and 62-76 are incorporated by reference.

86. Being Black, Brown and Older in Miami U.S. Customs and Border Protection; any officer, or other personnel are subjected to receiving 10 times the punishments and 1/10 of the rewards given.

87. From the 2009 DHS Annual Employee Survey results, the U.S. Customs and Border Protection personnel nationwide stated in responses:

a. Barely 15% of respondents rated Customs favorably in having pay raises depend on how well employees perform their jobs.

b. Barely 30% rated Customs favorably on informing employees about reasons behind decisions that affect them.

c. 30% rated Customs favorably on promotions in my work unit are based on merit.

d. On it goes with approximately the same ratings that slackers are never dealt with, recognition for performance differences is never dealt with in meaningful way, and DHS does not reward Supervisors for effectively managing people.

88. This Complaint highlights that DHS managers never considered a need for undertaking necessary evaluations of any EEOC likelihoods, in finding them at fault for either or both disparate impact and disparate treatment discrimination claims.

89. EEOC continues to allow DHS for so long, to disproportionately affect groups similar to Plaintiff. The EEOC process seldom has provided fair opportunities for Pro se Complainants in due deliberations for true reviews where decisions would be based on appropriate and accurate information.

90. No level in all DHS's leadership ladder was Plaintiff ever able to hinder each leader from rubber-stamping the deliberate "CAT's PAW" schemes that were always contrary to Federal Rules and Regulations. No trust in filing any complaints when up and down the leadership ladder of DHS,

discriminatory employment actions of subordinate's bias was always rubber-stamped.

COUNT III

- **CONSPIRACY TO OBSTRUCT JUSTICE ACT - 42 U.S.C. § Section 1985 - Conspiracy to Interfere with Civil Rights.**

91. Paragraphs 1 through 33, inclusive, are adopted for this count.

92. The averments of paragraphs 35-37, 40-43, 45, 49-51, 57-59, 61, and 67 are incorporated by reference.

93. Plaintiff was constantly subjected to DHS's Miami Senior Managerial' selection bias in Plaintiff's performance comparisons which illuminated weaknesses supporting prior reasoning. Plaintiff's units Senior Managers harbored an unlawful discriminatory animus toward Plaintiff and also persons like Plaintiff, which influenced the adverse employment decisions from the misinformation and the failings to provide relevant information. Plaintiff was continuously pressured not to perform duties that Plaintiff swore to undertake.

BASIS FOR EQUITABLE RELIEF

94. Numerous testimonies and documentations exist to confirm that the Defendants were unable and it appeared unwilling to correct issues of this Complaint without this Court's rulings. Plaintiff only sought this Court because no other system, even EEOC Hearings, has any bearings to curtail the improper practices that have existed for years unchecked. At any other level outside of the power of this Court, Defendants have no reasons not to continue operations as usual in the manners that have prevailed long before this Complaint.

RELIEF SOUGHT

95. Wherefore, Plaintiff respectfully requests this Court to enter an Order for judgments and damages against the Defendants, and further relief as follows:

a. Judgments declaring that the actions of Defendants described above constitute Retaliation and Discrimination in violations of the constitutional and statutory Rights of the Plaintiff;

b. A permanent injunction directing Defendants and their directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the illegal Retaliations, and Discrimination conducts

described herein and to prevent similar occurrences in the future;

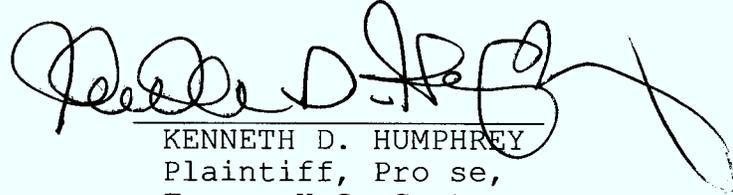
c. Compensatory, pecuniary and/or punitive damages for Plaintiff in the awarding from DHS for the materially adverse circumstances that caused poor health, employment constructive discharge of Plaintiff, huge financial losses to annuities, pensions, credit standings, and personal income, when DHS failed to take great care to assure that Plaintiff was not subject to actions that could only be viewed as RETALIATORY after discrimination claims were made starting in 2005.

96. **Plaintiff therefore now seeks \$5,000,000.00** in relief, requiring Defendant DHS to provide compensations for harmful actions that were designed to make it materially adverse in order to dissuade Plaintiff and others from ever making or filing a discrimination charge or complaint.

97. Plaintiff aver that all statement and allegations are true upon information, belief, and reasonable investigation, and further, that this action is not brought with any purpose to harass or defame Defendants, and further that it is not of any nature that could be called frivolous.

Dated this 13th day of October,
2011,

Respectfully signed and
submitted;



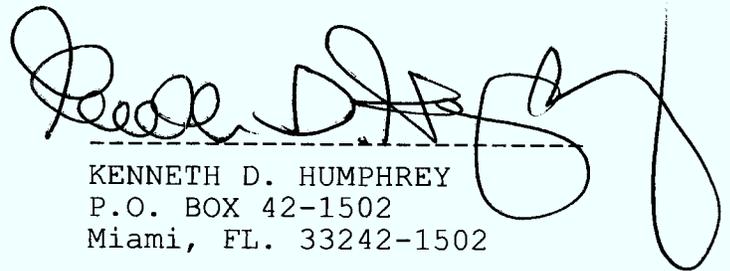
KENNETH D. HUMPHREY
Plaintiff, Pro se,
Former U.S. Customs
and Border
Protection Officer
(305) 682-8854
P.O. BOX 42-1502
Miami, FL. 33242-
1502

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this AMENDED COMPLAINT and EXHIBITS was sent by U.S. Mail this 13th day of October, 2011 to:

CHRISTOPHER MACCHIAROLI
Assistant United States Attorney
United States Attorney's Office
99 N.E. 4th Street, Suite 300
Miami, Florida 33132

Counsel for Defendants



KENNETH D. HUMPHREY
P.O. BOX 42-1502
Miami, FL. 33242-1502

EXHIBIT

A-A

Page 100 36162890191--L 811201993-004 07:57:00 Apr-01-2009 07:57:00

BRESLIN, JOHN H

From: WILLARDSON, STACEY L
Sent: Wednesday, April 01, 2009 11:53 AM
To: BRESLIN, JOHN H
Subject: FW: EEO Complaint of Kenneth Humphrey

Mr. Breslin,

Can you provide me the information relative to the OFO inquiry...see string of emails below. Please give me a call at (510) 637- [redacted] Thank you.

Stacey Willardson
EEO Specialist/Investigator
CBP Complaints Processing Center
1301 Clay Street, Suite 160N
Oakland, CA 94612
(510) 637- [redacted] office
(510) 637- [redacted] fax
stacey.l.willardson@dhs.gov

From: PIGNONE, CHRIS W (IA)
Sent: Wednesday, April 01, 2009 5:43 AM
To: WILLARDSON, STACEY L
Cc: BRESLIN, JOHN H
Subject: RE: EEO Complaint of Kenneth Humphrey

Stacey

IA documented an allegation of unprofessional behavior involving CBPO HUMPHREY under File 200903260. IA did not conduct an investigation; rather, the case was referred to OFO management for inquiry and/or action. A check in our database reflects the case is now closed.

The LER specialist who serviced the case was John Breslin out of Miami. I have taken the liberty of including him on this message in case he can be of some assistance to you.

Chris

From: WILLARDSON, STACEY L
Sent: Tuesday, March 31, 2009 12:24 PM
To: PIGNONE, CHRIS W (IA)
Subject: EEO Complaint of Kenneth Humphrey

Mr. Pignone,

I am currently processing an EEO complaint filed by Kenneth D. Humphrey, a CBP Officer, GS-1895-11, assigned to the Miami International Airport, Miami, FL. It is our understanding that he is the subject of an IA investigation regarding events of November 2 and 12, 2008. Could you please provide the status of this investigation and send us the report, if appropriate? Thank you for your assistance. Please contact me if you have any questions or concerns. I am generally available from 800 am to 330 pm (PST).

Stacey Willardson

000330

EXHIBIT A-A

EXHIBIT

B-B

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U.S. CUSTOMS AND BORDER PROTECTION

EEO Counselor's Report

1. Docket Number: HS-09-CBP-002548-090104
2. Date and method of initial counselor contact: December 08, 2008 (walk in)
3. Complainant's Last Name: Humphrey, First Name: Kenneth, Middle Initial: D
4. Job Title/Series/Grade: CBP Officer, GS-1895-11
5. Duty Station/ Local CBP Office/Headquarters Office: Miami International Airport, Miami Field Office, Office of Field Operations
6. Work Phone No: 305- [REDACTED] Home Phone No: [REDACTED]
Cell Phone No: 305- [REDACTED] Fax No: [REDACTED]
7. Work email address: kenneth.humphrey@dhs.gov
Home email address: [REDACTED]@bellsouth.net
8. Home Address: PO Box 42-1502, Miami, Florida 33242
9. Last Four Digits of Social Security Number: [REDACTED]
10. Representative: No, the Complainant did not name a representative.
11. NOTICE OF RIGHTS AND RESPONSIBILITIES: Was the Complainant advised in writing of his or her rights and responsibilities? Yes, in person on December 08, 2008.
12. Election to participate in ADR: Yes, however due to the parties scheduling conflicts, mediation did not occur. Complainant was informed that mediation could be used during the formal EEO complaint process.
13. Request for anonymity: No, Complainant does not wish to remain anonymous.
14. Claim(s) Presented:

Complainant, CBP Officer, GS-1895-11, assigned to the Miami International Airport, Miami, Florida alleges discrimination on the basis of age (DOB: [REDACTED] 1945) and race (Black/African American) when on or about November 12, 2008, he was removed from the Anti-Terrorism Contraband Enforcement Team (AT-CET), denied overtime opportunities, and on January 21, 2009 learned that he will be placed in passenger processing.

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EXHIBIT B-B

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15. Summary of Facts (Discussion of Claims) Presented by Complainant on (provide date(s) of interview(s)):

On December 08, 2008, Complainant contacted the EO Miami Field Office and the initial interview was conducted. Complainant stated that on November 12, 2008, Marcnel J Pierre, Supervisory CBP Officer, GS-1895-12 assigned to Miami International Airport, Miami, Florida, removed him from the field and place him in the office. Supervisor Pierre stated that Marta M Blanco, Supervisory CBP Officer, GS-1895-13 assigned to Miami International Airport, Miami, Florida ordered the move. On November 27, 2008, Complainant emailed Chief Blanco and Sergio Jesus Bello, Supervisory CBP Officer, GS-1895-13 assigned to the Miami International Airport, Miami, Florida, and asked why he is working in the office. Complainant got a response on December 2, 2008, from Chief Bello, who stated that Chief Blanco would address his concerns. On December 3, 2008, Chief Blanco informed the Complainant that incidents that occurred on November 2, 2008 and November 12, 2008 were responsible for him being moved from the field to the office. The move order came from someone higher up the chain but the Complainant was not told who made the order. The Complainant was not told what incident occurred on November 2, 2008 or November 12, 2008.

The Complainant recalls November 2, 2008, as the day the team was checking every vehicle entering the airport. One vehicle did not want to stop so the Complainant and his partner, [REDACTED], CBP Officer (Canine) GS-1895-11 assigned to Miami International Airport, Miami Florida, stopped the vehicle and checked the passengers' identification. They were Continental Airline employees late for work.

The Complainant recalled the November 12, 2008 incident as follows: A Dade County employee opened a door between the international and domestic jet way bridge without authorization. The Complainant removed the Dade County employee from the security area and noticed two passengers waiting in the area. The passengers stated that they were waiting for a stroller. Complainant stated that the passengers were in the area longer than twenty minutes and that was not normal. When an American Airline employee showed up the Complainant asked for both the Dade County employee and American Airline employee badges and requested them to call their supervisors. The Dade County supervisor showed up first and told the Complainant he did not have the authority to challenge Dade employees. The Complainant asked that supervisor to get his supervisor; the second level supervisor showed up, took the information about the incident from the Complainant, and collected the badges.

After the November 12, 2008 incident, the Complainant was moved to the office without explanation. Complainant stated that since he has been in the office, he only receives overtime on his day off and then only in five-hour blocks; he is no longer allowed to perform overtime duties in the field. Other CBP Officers are given overtime after their shift and usually in eight-hour blocks.

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Complainant stated that race was a factor because African Americans are over penalized for everything they do on the Anti-Terrorism Contraband Enforcement Team (AT-CET). Complainant cited that [REDACTED], Supervisory CBP Officer, GS-1895-12 assigned to Miami International Airport, Miami, Florida; [REDACTED], CBP Officer (Canine) GS-1895-11, assigned to Miami International Airport, Miami, Florida; and [REDACTED] CBP Officer GS-1895-11 assigned to Miami International Airport, Miami, Florida, are all people of African descent and all were removed from the AT-CET. Complainant stated that he could not recall one Caucasian who was removed from the team.

Complainant stated that age because the younger CBP Officers are given overtime, training, and TDY opportunities. He has not been asked in years to attend any training. Complainant stated that assignments are hand picked and he is never informed about the opportunities.

Complainant is claiming age because the younger CBP Officers are given overtime, training, and TDY opportunities. He has not been asked in years to attend any training. Complainant stated that assignments are hand picked and he is never informed about the opportunities.

On January 26, 2009, I conducted a follow-up interview with the Complainant, who stated that an additional issue has arisen. The Complainant stated that he learned that on February 1, 2009, he would be reassigned from the AT-CET office to passenger processing, but he did not provide a basis after being asked several times. The Complainant stated that the move from AT-CET to passenger processing would be a decline in prestige. Complainant stated that he could not ascertain who is the responsible management official.

16. Remedies Requested:

Complainant wants to be returned to the AT-CET, provided fair overtime opportunities, given equal opportunities to temporary duty assignments, and wants unwarranted threats of removal to stop.

17. Date of Merit Promotion Hold Request: Not Applicable

18. Was Counselor Contact Within 45 days of Claim(s) Identified Above? Yes

19. Did Complainant File a Union Grievance or an Appeal with the Merit Systems Protection Board on (any of) the Same Claims Raised During this Counseling Session? No

Name and Date of Labor Relations Specialist Consulted Regarding Union Grievance: On March 3, 2009, Leonard Dorman informed me that the Complainant has not filed an individual grievance, but is part of an union grievance that names him as one of the individuals.

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Name and Date of Agency Attorney Consulted Regarding a MSPB Appeal (only if claim involves an adverse action as defined by MSPB): Not Applicable

20. Summary of Management Response(s) to Claims:

On January 14, 2009, I spoke to Thomas Mattina, Assistant Port Director, GS-0340-15 assigned to Miami International Airport, Miami, Florida. APD Mattina stated that the Complainant is under investigation for the events on November 2, 2008 and November 12, 2008. APD Mattina stated that these events were responsible for Miami-Dade Police Department involvement, American Airline involvement, and top members of the Miami Field Office. APD Mattina did not want to go into specifics, but stated that the Complainant knows he is under investigation. APD Mattina stated that the Complainant was pulled from the line pending the investigation. APD Mattina further stated that the collective bargaining agreement states that an employee cannot bid for a position while under investigation; this is why the Complainant was moved to passenger control.

21. Date and Summary of Final Interview:

On February 10, 2009, I conducted the final interview with the Complainant. I reviewed with the Complainant's the issues and restated the facts presented to me during EEO Counseling. Complainant stated that he concurred with the framing of the claims as presented. We discussed management's responses. Complainant stated that he knew he was under investigation but each time he asked for the status of the investigation, he was given no updated information.

Complainant stated that because mediation did occur during the informal process, he would continue to pursue ADR in the formal complaint processing stage. Complainant was advised that counseling had concluded and that he had three options with respect to his complaint, i.e., file formal, withdraw, or take no further action. I informed him of his right to file a formal complaint, and that he had 15 calendar days, from the date he receives the notice of right to file a formal complaint. Complainant stated that he has no new issues to present.

22. Date and Method NORTF Issued (include tracking number, if relevant):

On February 10, 2009, sent via email.

23. Date and Documentation of Receipt of NORTF:

On February 10, 2009, verified by hand written receipt.

24. Potential Witnesses Identified by Parties and Summary of Possible Statements (Include contact information, if available):

Thomas Mattina, Assistant Port Director, GS-0340-15, 6601 NW 25th Street, Miami, Florida, 33122, telephone number 305-869- [REDACTED], and email address

Thomas.Mattina@dhs.gov. APD Mattina thoroughly knows the case information.

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EXHIBIT B-B

EXHIBIT

C-C

**President's Council on Integrity and Efficiency
Executive Council on Integrity and Efficiency**

QUALITY STANDARDS FOR INVESTIGATIONS

Guidelines

Thoroughness—All investigations must be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure pertinent issues are sufficiently resolved and to ensure that all appropriate criminal, civil, contractual, or administrative remedies are considered.

Legal Requirements—Investigations should be initiated, conducted, and reported in accordance with (a) all applicable laws, rules, and regulations; (b) guidelines from the Department of Justice and other prosecutive authorities; and (c) internal agency policies and procedures. Investigations should be conducted with due respect for the rights and privacy of those involved.

Appropriate Techniques—Specific methods and techniques used in each investigation must be appropriate for the circumstances and objectives.

Impartiality—All investigations must be conducted in a fair and equitable manner, with the perseverance necessary to determine the facts.

Objectivity—Evidence must be gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or to resolve an issue.

Ethics—At all times the actions of the investigator and the investigative organization must conform with generally accepted standards of conduct for government employees.

Timeliness—All investigations must be conducted and reported with due diligence and in a timely manner. This is especially critical given the impact investigations have on the lives of individuals and activities of organizations.

Accurate and Complete Documentation—The investigative report findings, and investigative accomplishments (indictments, convictions, recoveries, etc.), must be supported by adequate documentation (investigator notes, court orders of judgment and commitment, suspension or debarment notices, settlement agreements, etc.) in the case file.

Documenting Policies and Procedures—To facilitate due professional care, organizations should establish written investigative policies and procedures via handbook, manual, directives, or similar mechanism.

EXHIBIT C-C

EXHIBIT
D-D

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 <p style="text-align: center;">DEPARTMENT OF HOMELAND SECURITY</p> <p style="text-align: center;">Immigration and Customs Enforcement Office of Professional Responsibility</p> <p style="text-align: center;">REPORT OF INVESTIGATION HB 4200-01 (37), Special Agent Handbook</p>		<p>1. CASE NUMBER 200903260</p>
		<p>PREPARED BY KNOTT, CURSTEN</p>
		<p>2. REPORT NUMBER 001</p>
<p>3. TITLE HUMPHREY, KENNETH/CBP OFFCR/Non-Criminal Misconduct/MIAMI, DADE, FL</p>		
<p>4. FINAL RESOLUTION</p>		
<p>5. STATUS Initial Report</p>	<p>6. TYPE OF REPORT Allegation</p>	<p>7. RELATED CASES</p>
<p>8. TOPIC CBPO at the Miami International Airport allegedly behaved in an unprofessional manner.</p>		
<p>9. SYNOPSIS On January 14, 2009, the Joint Intake Center (JIC), Washington, D.C., received information reporting the alleged misconduct of a Customs and Border Protection Officer (CBPO) in Miami, FL. On November 12, 2008, CBPO Kenneth HUMPHREY, Miami, FL allegedly behaved in an unprofessional manner during an incident involving Miami Dade Aviation Agents at the Miami International Airport.</p> <p>This report contains a verbatim excerpt of relevant material received. No spelling or grammatical changes have been made.</p>		
<p>10. CASE OFFICER (Print Name & Title) KNOTT, CURSTEN - Joint Intake Specialist</p>	<p>11. COMPLETION DATE 21-JAN-2009</p>	<p>14. ORIGIN OFFICE Joint Intake Center</p>
<p>12. APPROVED BY(Print Name & Title) JAN BORRIS - JIC Supervisor</p>	<p>13. APPROVED DATE 23-JAN-2009</p>	<p>15. TELEPHONE NUMBER No Phone Number</p>
<p><small>THIS DOCUMENT IS LOANED TO YOU FOR OFFICIAL USE ONLY AND REMAINS THE PROPERTY OF THE DEPARTMENT OF HOMELAND SECURITY. ANY FURTHER REQUEST FOR DISCLOSURE OF THIS DOCUMENT OR INFORMATION CONTAINED HEREIN SHOULD BE REFERRED TO HEADQUARTERS, DEPARTMENT OF HOMELAND SECURITY. TOGETHER WITH A COPY OF THE DOCUMENT.</small></p> <p><small>THIS DOCUMENT CONTAINS INFORMATION REGARDING CURRENT AND ON-GOING ACTIVITIES OF A SENSITIVE NATURE. IT IS FOR THE EXCLUSIVE USE OF OFFICIAL U.S. GOVERNMENT AGENCIES AND REMAINS THE PROPERTY OF THE DEPARTMENT OF HOMELAND SECURITY. IT CONTAINS NEITHER RECOMMENDATIONS NOR CONCLUSIONS OF THE DEPARTMENT OF HOMELAND SECURITY. DISTRIBUTION OF THIS DOCUMENT HAS BEEN LIMITED AND FURTHER DISSEMINATION OR EXTRACTS FROM THE DOCUMENT MAY NOT BE MADE WITHOUT PRIOR WRITTEN AUTHORIZATION OF THE ORIGINATOR.</small></p>		

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DEPARTMENT OF HOMELAND SECURITY

1. CASE NUMBER

200903260

PREPARED BY

KNOTT, CURSTEN

2. REPORT NUMBER

001

REPORT OF INVESTIGATION
CONTINUATION

HB 4200-01 (37), Special Agent Handbook

10. NARRATIVE

Details of Investigation

On January 14, 2009, the Joint Intake Center (JIC), Washington, D.C., received information reporting the alleged misconduct of a Customs and Border Protection Officer (CBPO) in Miami, FL. On November 12, 2008, CBPO Kenneth HUMPHREY, Miami, FL allegedly behaved in an unprofessional manner during an incident involving Miami Dade Aviation Agents at the Miami International Airport.

The following is a verbatim excerpt of the allegation received by the JIC on January 14, 2009.

<Begin>

From: PIERRE, MARCNEL
Sent: Wednesday, November 12, 2008 7:52 PM
To: MATTINA, THOMAS
CC: BLANCO, MARTA M; BELLO, SERGIO J
Subject: E20 Incident

At approximately 1725 hours, I received a call from CBP Officer Garcia requesting that I come to E20. I drove to E20, and there I saw three Miami Dade Police Officers, a handful of Miami Dade Aviation agents, and some A-TCET officers. CBPO K. Humphrey was talking to two Miami Dade Aviation agents and one police officer. I introduced myself and asked MDPD Officer E. Lopez, the lead officer, (Badge # [REDACTED], Tel # 305 [REDACTED]) to give me an account of what he knows thus far. MDPD Officer Lopez told me that he was called to the scene by Miami Dade Aviation to settle an argument between their agents and CBPO Humphrey. MDPD Lopez stated that he believes that the problem is some kind of misunderstanding between Miami Dade Aviation and CBP.

Here is what Miami Dade Aviation Agent Jose Andino told me:

Jose Andino, badge # [REDACTED], stated that he was assigned to gate E20 to check American Airlines FLT # 1244. According to Mr. Andino, after September 11, 2001, Miami Dade Aviation agents check all aircrafts that will land at Reagan National Airport. Since this flight next stop is to Reagan National Airport, Mr. Andino stated that he went upstairs to do his job. While he was there, Mr. Andino stated that he was approached by Officer Humphrey. According to Mr. Andino, Officer Humphrey asked him what he was doing there. Mr. Andino replied that he is going the check the flight before it departs to Reagan National Airport. Officer Humphrey told Mr. Andino that he is not

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DEPARTMENT OF HOMELAND SECURITY

1. CASE NUMBER

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PREPARED BY

KNOTT, CURSTEN

2. REPORT NUMBER

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REPORT OF INVESTIGATION
CONTINUATION

HS 4200-01 (37), Special Agent Handbook

10. NARRATIVE

supposed to be there, so he needs to give him his I.D. card. Mr. Andino stated that he gave Officer Humphrey his I.D. card and he called his supervisor. Miami Dade Aviation supervisor Nicholson Pierre, badge # [REDACTED], responded to the scene. Mr. Pierre stated that he tried to explain to Officer Humphrey the reason why Mr. Andino was at the jet way. Mr. [REDACTED] Pierre also stated that Officer Humphrey refused to listen to him, and then Officer Humphrey requested his badge also. Mr. Pierre stated that he believed that CBPO Humphrey was going to take his badge number and give it back to him, but Officer Humphrey refused to give back his badge. Mr. [REDACTED] Pierre called MDPD for assistance.

After listening to Miami Dade Police Officer Lopez, Miami Dade Aviation agent Andino, and Miami Dade Aviation agent [REDACTED] Pierre, I made the decision to return both badges to Mr. Andino and Mr. Pierre.

While leaving the scene, I was called by American Airlines crew chief [REDACTED] Hay, badge # [REDACTED]. Mr. [REDACTED] Hay told me that he wants to make a complaint against Officer Humphrey. I asked him why. Mr. Bayley told me that he is the crew chief assigned to E20, and he believes that Officer Humphrey has no right to order him to take a baby stroller to the jet way. Mr. [REDACTED] stated that he will file a formal complaint against CBPO Humphrey.

Marcnel Pierre
Supervisory Customs and Border Protection
Tactical Operations Branch
Miami, Florida
Tel # (305) 869-[REDACTED]

<End>

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EXHIBIT

A