

## II. CBP HAD LEGITIMATE NON-DISCRIMINATORY REASONS FOR CONDUCTING AN INVESTIGATION INTO PLAINTIFF'S CONDUCT

Under the *McDonnell Douglas* framework, if a plaintiff establishes a *prima facie* case of discrimination, the burden shifts to the employer to articulate a legitimate and nondiscriminatory reason for its actions. *See Joe's Stone Crabs*, 296 F.3d at 1272. If the employer does so, the presumption of discrimination is rebutted, and the burden of production shifts back to the plaintiff to offer evidence that the employer's alleged reason was pretext for unlawful discrimination. *Id.* "The employer's burden under the second prong of the test is *exceedingly light* and merely requires that the employer proffer a legitimate nondiscriminatory reason." *Bradley v. Pfizer, Inc.*, No. 11-11132, 2011 WL 3962824, at \*2 (11th Cir. Sept. 9, 2011) (quoting *Meeks v. Computer Assocs. Intern.*, 15 F.3d 1013, 1019 (11th Cir. 1994)) (emphasis added) (punctuation omitted). To meet the "burden under the third part of the test, [a] plaintiff must disprove all legitimate nondiscriminatory reasons proffered by the employer." *Bradley*, 2011 WL 3962824, at \*2 (citing *Crawford*, 482 F.3d at 1308) (emphasis added).

If "the proffered reason is one that might motivate a reasonable employer, an employee must meet that reason head on and rebut it, and the employee cannot succeed by simply quarreling with the wisdom of that reason, or showing that the decision was based on erroneous facts." *Burgos-Stefanelli v. Sec'y, U.S. Dep't of Homeland Sec.*, 410 F. App'x 243,

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(A86)). Consistent with *Gross*, summary judgment should be entered for Defendant because Plaintiff subjectively believes that his race was a motivating factor in his treatment. *See, e.g., Culver v. Birmingham Bd. of Educ.*, 646 F. Supp. 2d 1270, 1271-72 (N.D. Ala. 2009) ("The only logical inference to be drawn from *Gross* is that an employee cannot claim that age is a motive for the employer's adverse conduct and simultaneously claim that there was any other proscribed motive involved."); *Belcher v. Serv. Corp. Int'l*, No. 2:07-cv-285, 2009 WL 3747176, at \*3 (E.D. Tenn. Nov. 4, 2009) ("*Gross* arguably makes it impossible for a plaintiff to ultimately recover on an age and a gender discrimination claim in the same case[.]") (citation omitted); *Speer v. Mountaineer Gas Co.*, No. 5:06CV41, 2009 WL 2255512, at \*7 n.6 (N.D. W. Va. Jul. 28, 2009) ("Here, [plaintiff] has alleged both his age and his union activities as reasons for the allegedly discriminatory actions taken by [Defendant]. Therefore, his age discrimination claims are also subject to dismissal on this basis.").

247 (11th Cir. 2011) (quoting *Chapman v. AI Transport*, 229 F.3d 1012, 1030 (11th Cir. 2000)) (punctuation omitted). Put another way, an employer's "reason is not pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason." *Saunders v. Emory Healthcare, Inc.*, 360 F. App'x 110, 114 (11th Cir. 2010) (citation omitted); *accord Tarmas v. Sec'y of Navy*, 433 F. App'x 754, 761 (11th Cir. 2011) ("A reason is not pretextual unless it is shown both that the reason was false, and that discrimination or retaliation was the real reason.") (citation omitted).

During this analysis, federal courts do not sit "as a super-personnel department that reexamines an entity's business decisions." *Porter v. Am. Cast Iron Pipe Co.*, 427 F. App'x 734, 736 (11th Cir. 2011) (quoting *Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466, 1470 (11th Cir. 1991)) (punctuation omitted). An "employer may take an employment action 'for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.'" *Delgado v. U.S. Dep't of Transp.*, 709 F. Supp. 2d 1360, 1369 (S.D. Fla. 2010) (quoting *Nix v. WLCY Radio/Rahall Comm's*, 738 F.2d 1181, 1187 (11th Cir. 1984)); *accord Damon v. Fleming Supermarkets of Florida, Inc.*, 196 F.3d 1354, 1361 (11th Cir. 1999) ("We have repeatedly and emphatically held that a defendant may terminate an employee for a good or bad reason without violating federal law. We are not in the business of adjudging whether employment decisions are prudent or fair.") (citations and punctuation omitted).

In this case, for the following reasons, the undisputed evidence in the record establishes that Defendant's temporary assignment of Plaintiff to desk duty pending an investigation was an appropriate response to Defendant's conduct. **First**, Plaintiff was involved in two separate altercations with non-CBP employees within a ten-day period, one of which prompted the response of the Miami-Dade Police Department. *See* SMF Nos. 2-11. **Second**, at least four separate individuals raised complaints regarding Plaintiff's conduct. *Id.*

*Third*, the nature of the complaints involved: (i) the wrongful detention of individuals — including other law enforcement personnel — (ii) the physical harassment of individuals; (iii) the violation of protocol; and (iv) allegations of discriminatory treatment of employees of Hispanic national origin. *Id.* **Finally**, CBP should be entitled to investigate allegations of employee wrongdoing without the fear of being subjected to a claim of discrimination. *See Rademakers*, 2009 WL 3459196, at \*2.

Consistent with existing precedent, Defendant is entitled to summary judgment because the record establishes that Defendant had legitimate non-discriminatory reasons for Plaintiff's temporary assignment to desk duty and Plaintiff has failed to show that Defendant's reasons for its decision were false and that discrimination was the true motivation. *See, e.g., Bentley*, 2011 WL 5119522, at \*3 (affirming summary judgment for defendant because plaintiff "did not show that [defendant's] legitimate reasons for firing her — [*i.e.*] fraud and dishonesty and violating the leave policy — were a pretext for the unlawful discrimination"); *East*, 2011 WL 3279197, at \*7 (affirming summary judgment for defendant on decision to place plaintiff on unpaid administrative leave on allegation that plaintiff started false rumors that the fire chief had been misusing funds because defendant, "even if mistaken, acted on his honestly held belief that [plaintiff] had engaged in misconduct warranting unpaid administrative leave"); *Diaz v. Transatlantic Bank*, 367 F. App'x 93, 97 (11th Cir. 2010) (affirming summary judgment for defendant because Plaintiff failed to provide any evidence or any reasonable argument as to why [the Court] should view [Defendant's] reason for dismissal as pretext").

### **III. PLAINTIFF CANNOT BRING A CLAIM UNDER THE CONSPIRACY TO OBSTRUCT JUSTICE ACT**

The Conspiracy to Obstruct Justice Act has three specific sections. Section 1 protects against conspiracies to prevent "officer[s] from performing duties." Section 2 protects against conspiracies to intimidate a party, witness, or juror from attending or testifying in

federal court. Section 3 protects against a conspiracy to deprive “persons of rights or privileges.” 42 U.S.C. § 1985(1)-(3). In his Amended Complaint, Plaintiff attempts to assert a claim under section 3. *See* Am. Compl. at ¶¶ 91-93 (D.E. 32).

**A. In The Employment Context, Title VII Preempts Claims Brought Pursuant To The Conspiracy To Obstruct Justice Act**

Title VII “provides the exclusive judicial remedy for claims of discrimination in federal employment.” *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 835 (1976). Accordingly, because the “deprivation of a right created by Title VII cannot be the basis for a cause of action under § 1985(3),” Plaintiff’s Conspiracy to Obstruct Justice claim should be dismissed. *Great Am. Fed. Savings & Loan Ass’n v. Novotny*, 442 U.S. 366, 378 (1979); *see Jimenez v. Wellstar Health Sys.*, 596 F.3d 1304, 1312 (11th Cir. 2010) (“[C]onspiracies to violate rights protected by Title VII cannot form the basis of § 1985(3) suits”) (citing *Great Am.*, 442 U.S. at 378); *Tompkins v. Barker*, No. 10-cv-1015-MEF, 2011 WL 3583413, at \*6 n.5 (M.D. Ala. Jul. 26, 2011) (“To the extent Plaintiff may have intended that his § 1985(3) claim be brought to allege a conspiracy to deprive him of the right to be from discrimination in his employment, such claim is unavailing.”) (citing *Great Am.*, 442 U.S. at 378); *Sherlock v. Montefiore Med. Ctr.*, 84 F.3d 522, 527 (2nd Cir. 1996) (granting 12(b)(6) motion to dismiss 42 U.S.C. § 1985(3) claim that was based on same conduct that was alleged in support of plaintiff’s ADEA claim); *Garcia v. Gloor*, 618 F.2d 264, 271 (5th Cir. 1980) (instructing that “because Mr. Garcia’s claim rests on a violation of Title VII he may not invoke Section 1985(c).”).<sup>9</sup>

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<sup>9</sup> *Accord Lapar v. Potter*, 395 F. Supp. 2d 1152, 1157 (M.D. Fla. 2005) (“First, Plaintiff’s allegations are not properly addressed by 42 U.S.C. § 1985, because the Rehabilitation Act, 29 U.S.C. §§ 791, 794, and 794(a) provides the exclusive remedy for federal government employees seeking damages and relief for work-place discrimination based on disability.”); *Pollock v. Ridge*, 310 F. Supp. 2d 519, 530 (W.D.N.Y. 2004) (“[S]ection 1985(3) cannot be used as a remedy for conduct that violates Title VII”); *Mays v. U.S. Postal Serv.*, 928 F. Supp. 1552, 1560 (M.D. Ala. 1996) (“Here, the conduct alleged by [plaintiff] as a basis for her § 1985 claim is the same conduct related to her termination as a Postal employee that gave rise to her Title VII claims. As discussed *supra*, the Supreme Court in

**B. Plaintiff's Conspiracy Claim Is Barred By The Intracorporate Conspiracy Doctrine**

As stated in *Dickerson v. Alachua County Commission*, the intracorporate conspiracy doctrine bars allegations of conspiracy between agents of the same organization, and applies in private industry and within governmental agencies:

Under the intracorporate conspiracy doctrine, a corporation's employees, acting as agents of the corporation, are deemed incapable of conspiring among themselves or with the corporation. This doctrine stems from basic agency principles that 'attribute acts of the agents of a corporation to the corporation, so that all of their acts are considered to be those of a single legal actor.' The reasoning behind the intracorporate conspiracy doctrine is that it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself, just as it is not possible for an individual person to conspire with himself. . . . This doctrine has been applied not only to private corporations but also to public, government entities.

200 F.3d 761, 767 (11th Cir. 2000) (citation omitted). In *Lapar v. Potter*, the district court applied the intracorporate conspiracy doctrine to the Government in holding that plaintiff could not state a claim under the Conspiracy to Obstruct Justice Act. 395 F. Supp. 2d at 1157 ("Defendants in this action are the United States Postal Service and agents of the United States Postal Service. No outsiders are involved. Thus, as a matter of law, no conspiracy could arise between these Defendants."). In accordance with *Dickerson* and *Lapar*, Defendant is entitled to summary judgment on Plaintiff's Conspiracy to Obstruct Justice Act claim.

**C. Even If Plaintiff Was Permitted To Bring A Claim Under The Conspiracy To Obstruct Justice Act — Which He Is Not — Plaintiff Fails To State A Claim**

To state a claim under § 1985(3), a plaintiff must allege that: "(1) defendants engaged

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*Brown* determined that Title VII is the exclusive judicial remedy for federal employment discrimination. Consequently, [Plaintiff's] § 1985 claim must fail."); *Larson v. School Bd. of Pinellas County, Fla.*, 820 F. Supp. 596, 602 (M.D. Fla. 1993) ("Therefore, the motion to dismiss is granted to the extent that plaintiff's section 1985(3) claim is based upon alleged deprivation of her rights under Title VII.").

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*, 596 F.3d at 1312 (citation omitted). Additionally, the second element requires a plaintiff 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").

As Plaintiff has failed to offer *any* facts to support a conspiracy by any individuals with an "invidiously discriminatory animus" towards Plaintiff, summary judgment should be entered for Defendant. *See, e.g., Mickens v. Tenth Judicial Circuit*, 181 F. App'x 865, 876 (11th Cir. 2006) (affirming dismissal of § 1985(3) conspiracy claim because plaintiffs "failed to allege with specificity an agreement between the defendants to deprive the [plaintiffs] of their rights"); *Bell v. Metro. Atlanta Rapid Transit Auth.*, No. 1:10-cv-1117-JEC, 2011 WL 1225899, at \*6 (N.D. Ga. Mar. 30, 2011) (dismissing conspiracy claim when plaintiff included "no allegations" supporting a "discriminatory animus").<sup>10</sup>

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<sup>10</sup> *Accord Artubel v. Colonial Bank Group, Inc.*, No. 8:08-cv-179-T-23MAP, 2008 WL 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"); *Sanders-Alloway v. Mabry*, No. 2:06-cv-0419-MEF, 2008 WL 552648, at \*5 (M.D. Ala. Feb. 27, 2008) (dismissing conspiracy claim when plaintiff failed to allege any facts substantiating an agreement and "no act in furtherance of the conspiracy"); *Leitgeb v. Kelley*, 510 F. Supp. 2d 1227, 1236 (N.D. Ga. 2007) (dismissing conspiracy claim and holding that "[i]n the absence of either an allegation that Defendants agreed to violate their rights, or that the agreement was motivated by class-based animus, a claim for conspiracy, whether to prevent participation in federal court proceedings or to deprive a person of equal protection under the law, fails as a matter of law"); *Cromer v. Crowder*, 273 F. Supp. 2d 1329, 1336 (S.D. Fla. 2003) (entering judgment for defendant on conspiracy claim because record did not "yield any evidence that Defendants concerted to undertake, nor actually took, any discriminatory action").

## CONCLUSION

For all these reasons, Defendant's Motion for Summary Judgment should be granted.

Dated: November 29, 2011

Respectfully submitted,

WIFREDO A. FERRER  
UNITED STATES ATTORNEY

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*Counsel for Defendant*

Of Counsel:

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Office of Associate Chief Counsel  
U.S. Customs and Border Protection  
909 S.E. 1st Avenue, Suite 606  
Miami, Florida 33131

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. First-Class Mail on November 29, 2011 on all counsel or parties of record on the Service List below.

s/Christopher Macchiaroli  
Christopher Macchiaroli  
Assistant United States Attorney

### Service List

Kenneth D. Humphrey  
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Miami, Florida 33242-1502

*Pro-se Plaintiff*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 11-cv-20651-O'SULLIVAN

[CONSENT]

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

**ORDER GRANTING DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT AND ENTERING JUDGMENT**

For the reasons stated in the Court's Memorandum decision granting Defendant's Motion for Summary Judgment (D.E. \_\_\_\_), it is hereby

**ORDERED:**

1. Defendant's Motion for Summary Judgment is granted;
2. Final Judgment is entered in favor of Defendant Janet Napolitano. Plaintiff Kenneth Humphrey shall take nothing by this action and Defendant shall go hence without delay.
3. All outstanding motions are denied as MOOT.
4. The Court reserves jurisdiction over appropriate motions for costs.
5. The Clerk of the Court is instructed to CLOSE this matter;

**DONE AND ORDERED** in Miami, Florida, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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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-cv-20651-O’SULLIVAN

[CONSENT]

_____	)
KENNETH D. HUMPHREY,	)
	)
<i>Plaintiff,</i>	)
v.	)
	)
JANET NAPOLITANO, Secretary,	)
U.S. Department of Homeland Security,	)
	)
<i>Defendant.</i>	)
_____	)

**DECLARATION OF MARTA M. BLANCO**

Marta M. Blanco, under penalty of perjury, pursuant to 28 U.S.C. § 1746, declares as follows:

***Background***

1. I am an over forty (40) year old female of Cuban descent and an employee of U.S. Customs and Border Protection (CBP), a component of the U.S. Department of Homeland Security. Since 2004, I have held the position of Chief of the Anti-Terrorism Contraband Enforcement Team (A-TCET) at Miami International Airport (MIA).

2. In November 2008, I was Kenneth Humphrey’s second line supervisor. My first-line supervisor was Assistant Port Director (APD) Thomas Mattina (Mattina), now retired, and my second-line supervisor was Port Director (PD) Christopher Maston (Maston).

***November 12, 2008 Incident***

3. On November 12, 2008, I was notified by A-TCET Supervisor Marcnel Pierre

(Pierre) — Mr. Humphrey's first-line supervisor — that Mr. Humphrey was involved in an incident with Miami Dade Aviation Department (MDAD) Officer Jose Andino in which the Miami Dade Police Department had to respond. Mr. Pierre summarized the facts as reported to him in an email to me and APD Mattina that day. A copy of Mr. Pierre's November 12, 2008 email is attached hereto as Exhibit 1.

4. In that incident, Mr. Humphrey confiscated the Miami-Dade Airport Security IDs of MDAD Officer Jose Andino, and his MDAD Supervisor Nicholson Pierre, contrary to CBP regulations and policy. Miami-Dade Police were summoned by Supervisor Nicholson Pierre due to the seriousness of the event: Confiscation of the IDs precluded these individuals from working on the ramp in the designated security zones, preventing them from completing their tasks. The Miami-Dade Police issued an Incident Report.

5. During that same encounter, Mr. Humphrey also had a confrontation with American Airlines Crew Chief Mark Bayley-Hay, in which Mr. Humphrey ordered him to take a baby stroller to the jet way. Mr. Bayley-Hay stated that he would be filing a formal complaint against Mr. Humphrey because he did not believe Mr. Humphrey had the authority to order him to do so.

6. Due to the circumstances as reported, I decided that Mr. Humphrey would be removed from the field for the remainder of the evening. My email memorializing that decision is attached hereto as Exhibit 2.

7. I immediately contacted my Supervisor APD Mattina and informed him of what had occurred.

8. On November 13, 2008, while APD Mattina was on leave, I spoke with PD

Maston after the morning Staff Meeting, reminded him of Mr. Humphrey's past incidents — especially the incident of ten days earlier on November 2, 2008 — and informed him that Mr. Humphrey was immediately removed from the field and assigned desk duty. PD Maston agreed with that decision. I then sent an email to APD Mattina updating him regarding my discussion with PD Maston. A copy of that email is attached as Exhibit 3.

9. Based on our discussions on November 13, 2008, the decision was made by PD Maston, APD Mattina, and me to leave Mr. Humphrey on desk duty with the concurrence and guidance of Labor Employee Relations (LER) Specialist Lenny Dorman. I then issued an email message to all A-TCET managers advising them that “Effective immediately Officer Humphrey will be assigned to desk duty; he cannot be assigned to the field either on regular time or overtime.” A copy of my email is attached hereto as Exhibit 4.

***November 2, 2008***

10. Relevant to the decision to place Mr. Humphrey on desk duty was the fact that he was involved in a separate altercation ten-days earlier on November 2, 2008.

11. On that day Mr. Humphrey was involved in a separate altercation with two Continental employees. The Continental employees issued written statements attesting that Mr. Humphrey had (i) detained them for no valid reason; (ii) asked one individual for his social security number and told him that he would stay until he gave him a number or would be arrested; (iii) told the other individual who arrived in a golf cart that “you’re getting arrested” and allegedly ripped his Miami-Dade Aviation ID from his neck; (iv) told the individual sitting in the golf cart to get out of his vehicle, stand with his hands behind his back, spread his legs, lean against the vehicle; (v) told that individual he would be getting

arrested, and (vi) finally asked that if that individual went back to Cuba would he have to go through Customs.

12. In response and prior to the events of 11/12/2008, Mr. Humphrey was required to provide a "statement regarding [his] encounter with [the] Continental employees." The email requesting a report from Mr. Humphrey is attached as Exhibit 5. Mr. Humphrey responded to the email by demanding that CBP provide him the statements of the Continental Airlines' employees prior to him having to respond to their allegations. He also stated that if *he* determined any of the statements were false, he would demand an internal investigation be lodged against the Continental employees and polygraphs be administered.

13. I advised PD Maston of Mr. Humphrey's recent altercations when I briefed him on the events that took place on November 12, 2008.

#### ***Investigation***

14. A decision was made to investigate the events of both 11/2/2008 and 11/12/2008. The matters were referred to the Joint Intake Center for processing.

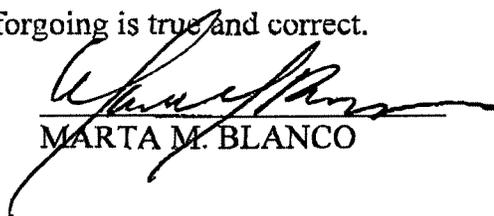
#### ***Alleged Discrimination***

15. Race, color, national origin and/or age were not factors in the decision to investigate the events of 11/2/2008 and 11/12/2008. These events were referred to investigation based upon the allegations and facts as reported.

\* \* \*

I declare under penalty of perjury that the forgoing is true and correct.

Dated: November 23, 2011



MARTA M. BLANCO

## **Exhibit 1**

EXHIBIT F13b

**BLANCO, MARTA M**

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

Mr. Mattina,

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 # 3140, Tel # 305 876 7373) 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 # 994394, 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 to check the flight before it departs to Reagan National Airport. Officer Humphrey told Mr. Andino that he is not 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 # 1028222, 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. Nicholson 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. Nicholson Pierre called MDPD for assistance.

After listening to Miami Dade Police Officer Lopez, Miami Dade Aviation agent Andino, and Miami Dade Aviation agent Nicholson 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 Mark Bayley-Hay, badge # 1022360. Mr. Bayley – 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. Bayley 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) 869-2703

A-000007

**Exhibit 2**

EXHIBIT F14

**BELLO, SERGIO J**

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**From:** BLANCO, MARTA M  
**sent:** Wednesday, November 12, 2008 8:13 PM  
**To:** MATTINA, THOMAS; BELLO, SERGIO J  
**Subject:** Humphrey

I instructed SCBPÖ Pierre to keep Officer Humphrey inside and not to put him out in the field or he could take leave and go home.

## **Exhibit 3**

**BELLO, SERGIO J**

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**From:** BLANCO, MARTA M  
**Sent:** Thursday, November 13, 2008 9:41 AM  
**To:** MATTINA, THOMAS  
**Cc:** BELLO, SERGIO J; RALEIGH, DWIGHT A  
**Subject:** Meeting

After the meeting I spoke with Maston about Officer Humphrey; I reminded him of the past incidents. I informed him that last night we removed him from the field and assigned him to desk duty pending the outcome of the investigations. Maston contacted Major 'Ruben' from MDPD and briefed him on the incident, he was not aware of it. The Major will be forwarding a copy of the MDPD report directly to the Port Director. I also contacted Lenny (LER) and advised him that we were removing this Officer from the field and he agreed. I will be sending a message out to the Supervisors.

Marta M. Blanco  
Chief  
Tactical Operations  
(305) 525-1582 cell  
(305) 869-2712 ofc.

## **Exhibit 4**

**BELLO, SERGIO J**

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**From:** BLANCO, MARTA M  
**Sent:** Thursday, November 13, 2008 9:50 AM  
**To:** DORMAN, LEONARD  
**Cc:** MATTINA, THOMAS; BELLO, SERGIO J  
**Subject:** FW: Officer Humphrey

Lenny,

As per our conversation these were my instructions to the A-TCET Supervisors and Managers,

Marta

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**From:** BLANCO, MARTA M  
**Sent:** Thursday, November 13, 2008 9:46 AM  
**To:** CHATFIELD, PAUL V; PIERRE, MARCNEL; PROKOLYSHEN, STEVEN A; RODRIGUEZ, MARIO ANTONIO;  
SAVAGE, FRANCES A; SKINKIS, HEATHER M; STUMPF, MARK J  
**Cc:** MATTINA, THOMAS; BELLO, SERGIO J; RALEIGH, DWIGHT A  
**Subject:** Officer Humphrey

All,

Effective immediately Officer Humphrey will be assigned to desk duty; he cannot be assigned to the field either on regular time or overtime.

Marta M. Blanco  
Chief  
Tactical Operations  
(305) 525-1582 cell  
(305) 869-2712 ofc.

4/13/2009

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## **Exhibit 5**

**HUMPHREY, KENNETH D**

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**From:** HUMPHREY, KENNETH D **Sent:** Mon 11/10/2008 3:35 PM  
**To:** BELLO, SERGIO J  
**Cc:**  
**Subject:** RE:  
**Attachments:**

Chief Bello;

I am requesting a copy of the complaint or a copy of the issues so that I can identify what matters or person, I can provide a statement concerning. I am also requesting if any accusations that I determine are false accusations, an internal investigation be filed against the person(s) falsely involving CBP Officers, and requesting all parties be administered polygraphs to determine the severity of any false accusations against Federal Officers performing assigned duties.

Thanks for your response, Kenneth D Humphrey, CBPO MIA AT-CET

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**From:** BELLO, SERGIO J  
**Sent:** Mon 11/10/2008 1:55 PM  
**To:** HUMPHREY, KENNETH D  
**Subject:**

CBPO Humphrey,

Please provide me a statement regarding an encounter with Continental employees on Sunday evening (November 2, 2008) as part of Operation "Secure Holiday".

Thank you,

Chief Sergio Bello

Tactical Operations A-TCET

Miami International Airport

305-869-2702 Office

305-525-1595 Nextel

EXHIBIT F12a

ERNESTO VEGA MIA TECHNICIAN

To who it may concern :

custom border patrol

harrasment report:

upon arriving to our office area, below H-7 ,at approximate 10.25 pm Raffi Ozdemirci and I were stopped by two custom & border agents. We were asked to show or airport id and driver license, to which we both complied with. while the officer was verifying our background information on his cell, I asked him to let me go to punch in , his reply was, " have you ever been late ?",I replied, I never been late and never been pull over by custom in all my years working in the miami airport. He then told me that their's always a first time. he then asked me for my ss# , to which I replied , I don't carry it and I don' t memorize it. then he said you will stay un till you give a number or you will be arrested. Shortly after that,co worker, john reinoso drove up to where we were, to ask for assistance on an aircraft. officer humphrey told him to stay away. he then drove off. at that time I told officer humphey that we all work here and just as he does, we come here to do our job and we all have to work together in a friendly way and his reaction was " I'm not here to be friendly" at that point, john drove by and officer Humphrey then ran to the golf cart john was driving, and in a rude way, told him, " your getting arrested" in which john replied, " take it easy officer" officer Humphrey ripped his Id from his neck. at that time officer flores said that I was clear. officer humpherey never read his rights to John and reason for being arrested. I believe those two officers did not behave in a professional manner at their duty. The intent of this letter is to make a report of the CBP officers' approach and style of how they do their job because we were informed that we would be profiled and placed on a watch list. For the record I currently hold a customs clearance id badge for MIA airport..

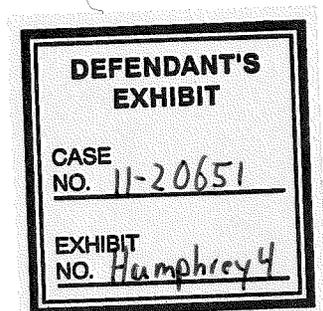
thank you

Ernesto Vega

nov 02 ,2008

Continental airlines technician

A-000016



Nov. 3, 2008

To whom it may concern:

On November 2, 2008 at 10:42 p.m. I John I. Reinoso along with co-workers Raffi Ozdermirci and Ernesto Vega, Continental Airlines employees working on Continental aircraft located at concourse H gate H-5 the night shift, on the way to the office located at gate H-7 ramp side was approached by an individual by the name of Humphrey wearing a blue jumpsuit uniform and Flores the other individual in an unmarked white van with tinted windows and was told by Mr. Humphrey to hand over my identification badge to which I replied as to why since all I wanted to do is request the help of coworkers with aircraft located at gate H-5 that had some maintenance related issues.

As soon as Mr. Humphrey approached the vehicle (golf cart) was told to get off vehicle, stand with hands behind the back and spread legs against the vehicle like a CRIMINAL.

Note: I have already cleared the airport security check point to get access to airport ramp side operations with my airport county identification badge.

At this time Mr. Humphrey pushed me, shoved me against the vehicle and was told that I was getting arrested and going to jail.

When I asked Mr. Humphrey that all I wanted to do was request the help of coworkers his reply was I do not care and I can take your identification badge, arrest you and you will not be working at this airport for at least six months. I felt threatened by his behavior and did complied with his request. All this time I believed they were t.s.a agents and not customs border patrol agents to which Mr. Humphrey got very upset and insulted I believe and told me we are not tsa. We are customs, can you tell by the uniforms. Mr. Humphrey also informed that they conducted a background check on the three of us employees after the fact that Mr. Humphrey yanked the identification badge from my uniform and was asked that when I go to Cuba, if I had to go customs. A very strange comment on his behalf to ~~the~~ which I can only gather that I or Us have been profiled or red flagged with the Customs Department.

This letter is written as a matter of record for future incidents with Customs and Border Patrol Department.

Sincerely

John I. Reinoso

Continental Airlines Maintenance Dept.

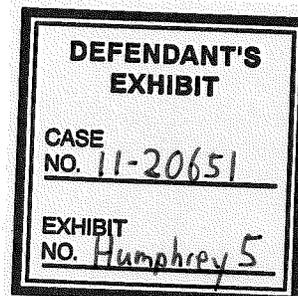


EXHIBIT F13b

**BLANCO, MARTA M**

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

Mr. Mattina,

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 # 3140, Tel # 305 876 7373) 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.

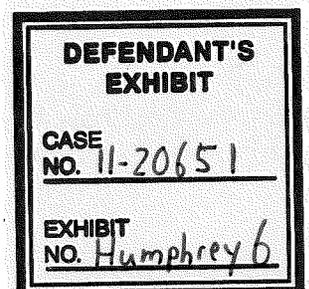
Here is what Miami Dade Aviation Agent Jose Andino told me:

Jose Andino, badge # 994394, 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 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 # 1028222, 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. Nicholson 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. Nicholson Pierre called MDPD for assistance.

After listening to Miami Dade Police Officer Lopez, Miami Dade Aviation agent Andino, and Miami Dade Aviation agent Nicholson 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 Mark Bayley-Hay, badge # 1022360. Mr. Bayley - 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. Bayley 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) 869-2703



A-000018

11/13/2008 09:56 FAX

OFFENSE-INCIDENT REPORT

EXHIBIT F13c

Agency Code	30	Gang Related	N	Agency Report Number	PD 081112533397
Date of Supplement	MIAMI-DADE POLICE DEPARTMENT				Agency Report Number
Original Day Reported	Wed	11/13/2008	Time (int)	1722	Time Dispatched (int)
Time Arrived (int)	1727	Time Completed (int)	2000	Incident Type	1. Felony 2. Traffic Felony
Offense #1	9	Disturbance	Offense #2	2	Disturbance
Incident Location	HIGH INTERNATIONAL AIRPORT MIAMI				Zip
Business Name/Area Identifier	GATE E-22				City
Location Type	01. Residence-Single 02. Apartment/Condo 03. Residence-Other 04. Hotel/Motel 05. Conference Store 06. Gas Station 07. Liquor Sales 08. Bar/Club 09. Supermarket 10. Dept/Discount Store 11. Specialty Store 12. Drug Store/Hospital 13. Bank/Financial Inst. 14. Commercial/Office Bldg. 15. Industrial/Mfg. 16. Storage 17. Gov VPublic Bldg. 18. School/University 19. Jail/Prison 20. Religious Bldg. 21. Airport 22. Bus/Rail Terminal 23. Construction Site 24. Other Structure 25. Parking Lot/Garage 26. Highway/Roadway 27. Park/Woodlands/Field 28. Lake/Waterway 29. Motor Vehicle 30. Other Mobile				21
# OFFENSE	01	# Victim	00	# Offenders	00
V/VW Code	W	Victim Type	0. N/A 1. Juvenile 2. L.E. Officer 3. Adult	Race	N-N/A W-White B-Black U-Unknown
Injury Type	00. N/A 01. Gunshot 02. Stabbed	03. Laceration 04. Unconscious 05. Poss. Broken Bones 06. Poss. Internal Injury	07. Loss of Tooth 08. Burns 09. Abrasions/Scuffs 09. Other	Victim Relationship To Offender	00. N/A 01. Undetermined 02. Stranger
OFFENSE Indicator	1. #1 2. #2	V/VW Code	W	V. Type	1. Adult 2. Juvenile
Address	M.E.D. COMPLEX DOUGLASS GARAGE 1ST LEVEL MIAMI				City
Other Contact Info.	M.E.D. COMPLEX DOUGLASS GARAGE 1ST LEVEL MIAMI				City
OFFENSE Indicator	1. #1 2. #2	V/VW Code	W	V. Type	1. Adult 2. Juvenile
Address	M.E.D. COMPLEX DOUGLASS GARAGE 1ST LEVEL MIAMI				City
Other Contact Info.	M.E.D. COMPLEX DOUGLASS GARAGE 1ST LEVEL MIAMI				City
OFFENSE Indicator	1. #1 2. #2	V/VW Code	W	V. Type	1. Adult 2. Juvenile
Address	M.E.D. COMPLEX DOUGLASS GARAGE 1ST LEVEL MIAMI				City
Other Contact Info.	M.E.D. COMPLEX DOUGLASS GARAGE 1ST LEVEL MIAMI				City

DEFENDANT'S EXHIBIT  
 CASE NO. 11-20651  
 EXHIBIT NO. Humphrey 7

DEPARTMENT OF HOMELAND SECURITY U.S. Customs And Border Protection  <b>TRANSMITTAL AND ROUTING SLIP</b>	SUBJECT OR FILE NO.  <b>HUMPHREY, Kenneth 200903260</b>	SUSPENSE DATE
--	---	---------------

ACTION CODES	1. ACTIONS 2. APPROVAL 3. AS REQUESTED	4. CIRCULATE 5. COMMENT 6. COORDINATE	7. CORRECT 8. FILE 9. INFORMATION	10. INITIAL ATTACHMENT 11. PER CONVERSATION 12. RETURN	13. SEE ME 14. SEE REMARKS 15. SIGNATURE				
TO	DESTINATION	ACTION CODE(s)	INITIALS	OUT DATE	TO	DESTINATION	ACTION CODE(s)	INITIALS	OUT DATE
1	LOFTUS, Diane	1,5			5				
2	ARCE, Javier	6			6				
3	RAMIREZ, Carlos	12			7				
4					8				

**REMARKS:**

Please review the attached case file and provide your decision regarding the appropriate action you wish to proceed with. You will be the Deciding Official on actions ranging from **NO ACTION\*** up to and including an Official Letter of Reprimand (LOR). Should you decide action exceeding an LOR is warranted, you will be the Proposing Official up to and including a Suspension of 14-days. If you believe action beyond a Suspension of 14-days is warranted, your recommendation will be coordinated through the Service Port Director, and if in agreement with your recommendation, will be forwarded to the DRB for review.

Please provide your written decision, proposal or recommendation; complete with your **JUSTIFICATION** (what you base it on), on this CBP-3107, in a memo or via ccmil, along with the original case file, to me in the Service Port Office. Should you have any questions or need any assistance or guidance, please feel free to contact me at (305) 869-2800.

**\*NOTE: PER THE DFO AND LER, IF YOU DETERMINE NO ACTION IS WARRANTED, YOU MUST INCLUDE A STATEMENT FOR THE REASON(S) WHY NO ACTION SHOULD BE TAKEN.**

**DECISION, PROPOSAL, RECOMMENDATION:** No Past Discipline. Incident with Miami-Dade Gate Agents. Referred by Mattina since employee is now assigned to PAX. May consult Mattina for disposition.

Please return to C. Ramirez with recommendation.

Recommend no action.  
 CR 3/11/09

<b>FROM:</b> SPV Carlos Ramirez	<b>OFFICE AND ROOM NO.</b> MIAMI SERVICE PORT OFFICE	<b>PHONE</b> 305-869-2800	<b>DATE</b> 12 March 2009
------------------------------------	---	------------------------------	------------------------------

CBP 3107 (04/03)

Enclosure  
 1

DEPARTMENT OF HOMELAND SECURITY U.S. Customs And Border Protection  <b>TRANSMITTAL AND ROUTING SLIP</b>	SUBJECT OR FILE NO.  <b>HUMPHREY, Kenneth                  200903260</b>	SUSPENSE DATE
--	--	---------------

<b>ACTION CODES</b>	1. ACTIONS 2. APPROVAL 3. AS REQUESTED	4. CIRCULATE 5. COMMENT 6. COORDINATE	7. CORRECT 8. FILE 9. INFORMATION	10. INITIAL ATTACHMENT 11. PER CONVERSATION 12. RETURN	13. SEE ME 14. SEE REMARKS 15. SIGNATURE				
TO	DESTINATION	ACTION CODE(s)	INITIALS	OUT DATE	TO	DESTINATION	ACTION CODE(s)	INITIALS	OUT DATE
1	Mattina, Thomas	1,5			5				
2	BLANCO, Marta	6			6				
3					7				
4	RAMIREZ, Carlos	12			8				

**REMARKS:**  
 Please review the attached case file and provide your decision regarding the appropriate action you wish to proceed with. You will be the Deciding Official on actions ranging from **NO ACTION\*** up to and including an Official Letter of Reprimand (LOR). Should you decide action exceeding an LOR is warranted, you will be the Proposing Official up to and including a Suspension of 14-days. If you believe action beyond a Suspension of 14-days is warranted, your recommendation will be coordinated through the Service Port Director, and if in agreement with your recommendation, will be forwarded to the DRB for review.

Please provide your written decision, proposal or recommendation; complete with your **JUSTIFICATION** (what you base it on), on this CBP-3107, in a memo or via cmail, along with the original case file, to me in the Service Port Office. Should you have any questions or need any assistance or guidance, please feel free to contact me at (305) 869-2800.

**\*NOTE: PER THE DFO AND LER, IF YOU DETERMINE NO ACTION IS WARRANTED, YOU MUST INCLUDE A STATEMENT FOR THE REASON(S) WHY NO ACTION SHOULD BE TAKEN.**

.....

**DECISION, PROPOSAL, RECOMMENDATION:** Incident with Miami-Dade Gate Agents.

**Please return to C. Ramirez with recommendation or if no further action, to close case.**

<b>FROM:</b>  SPV Carlos Ramirez	<b>OFFICE AND ROOM NO.</b>  MIAMI SERVICE PORT OFFICE	<b>PHONE</b>  305-869-2800	<b>DATE</b>  6 March 2009
--	---	----------------------------------	---------------------------------

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Page 1 of 4

 <p style="text-align: center;"><b>DEPARTMENT OF HOMELAND SECURITY</b> Immigration and Customs Enforcement Office of Professional Responsibility</p> <p style="text-align: center;"><b>REPORT OF INVESTIGATION</b> HB 4200-01 (37), Special Agent Handbook</p>		<b>1. CASE NUMBER</b> 200903260
		<b>PREPARED BY</b> KNOTT, CURSTEN
		<b>2. REPORT NUMBER</b> 001
<b>3. TITLE</b> HUMPHREY, KENNETH/CBP OFFCR/Non-Criminal Misconduct/MIAMI, DADE, FL		
<b>4. FINAL RESOLUTION</b>		
<b>5. STATUS</b> Initial Report	<b>6. TYPE OF REPORT</b> Allegation	<b>7. RELATED CASES</b>
<b>8. TOPIC</b> CBPO at the Miami International Airport allegedly behaved in an unprofessional manner.		
<b>9. SYNOPSIS</b> 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.  This report contains a verbatim excerpt of relevant material received. No spelling or grammatical changes have been made.		
<b>10. CASE OFFICER (Print Name &amp; Title)</b> KNOTT, CURSTEN - Joint Intake Specialist	<b>11. COMPLETION DATE</b> 21-JAN-2009	<b>14. ORIGIN OFFICE</b> Joint Intake Center
<b>12. APPROVED BY(Print Name &amp; Title)</b> JAN BORRIS - JIC Supervisor	<b>13. APPROVED DATE</b> 23-JAN-2009	<b>15. TELEPHONE NUMBER</b> No Phone Number
<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>		
<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>		

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Page 2 of 4

 <p style="text-align: center;"><b>DEPARTMENT OF HOMELAND SECURITY</b></p> <p style="text-align: center;"><b>REPORT OF INVESTIGATION CONTINUATION</b></p> <p style="text-align: center;"><small>HB 4200-01 (37), Special Agent Handbook</small></p>	<p><b>1. CASE NUMBER</b></p> <p>200903260</p>
	<p><b>PREPARED BY</b></p> <p>KNOTT, CURSTEN</p>
	<p><b>2. REPORT NUMBER</b></p> <p>001</p>

**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 # 3140, Tel # 305 876 7373) 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 # 994394, 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

REPORT OF INVESTIGATION  
CONTINUATION

HB 4200-01 (37), Special Agent Handbook

1. CASE NUMBER

200903260

PREPARED BY

KNOTT, CURSTEN

2. REPORT NUMBER

001

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 # 1028222, 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. Nicholson 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. Nicholson Pierre called MDPD for assistance.

After listening to Miami Dade Police Officer Lopez, Miami Dade Aviation agent Andino, and Miami Dade Aviation agent Nicholson 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 Mark Bayley-Hay, badge # 1022360. Mr. Bayley - 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. Bayley 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) 869-2703

<End>

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Page 4 of 4



DEPARTMENT OF HOMELAND SECURITY

REPORT OF INVESTIGATION  
Exhibit List

HB 4200-01 (37), Special Agent Handbook

1. CASE NUMBER

200903260

PREPARED BY

KNOTT, CURSTEN

2. REPORT NUMBER

001

None

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A-000025

**Graves, Karen T (IA)**

---

**From:** BRESLIN, JOHN H  
**Sent:** Tuesday, January 13, 2009 2:58 PM  
**To:** JOINT INTAKE  
**Subject:** HUMPHREY, Kenneth  
**Attachments:** DOC002.PDF

Joint Intake,

This file was sent up back on November 13, 2008. It appears that it may not have made it. I am sending a second time. Any questions feel free to call.

John H. Breslin  
Labor Relations Specialist  
South Florida, Miami  
(305) 810-5101  
Fax (305) 810-5119

**BRESLIN, JOHN H**

---

**From:** DORMAN, LEONARD  
**Sent:** Friday, November 14, 2008 8:49 AM  
**To:** BRESLIN, JOHN H  
**Subject:** FW: CBPO Humphrey Incident  
**Attachments:** RE: ; RE: Investigation; FW: E20 Incident; FW: Officer Humphrey; E20 Incident; FW: Incidents at Gate E22 w/Flt AA1244 ; MIA Customs.pdf; To who it may concern.docx

For your file. Thanks.

---

**From:** BELLO, SERGIO J  
**Sent:** Thursday, November 13, 2008 4:57 PM  
**To:** DORMAN, LEONARD  
**Subject:** FW: CBPO Humphrey Incident

The following was sent to the Intake Center and I faxed them the Police Report.

---

**From:** BELLO, SERGIO J  
**Sent:** Thursday, November 13, 2008 4:14 PM  
**To:** 'Joint.Intake@dhs.gov'; PACE, JESSICA (IA)  
**Cc:** MATTINA, THOMAS; BLANCO, MARTA M  
**Subject:** CBPO Humphrey Incident

Intake Center,

Attached are the emails concerning the two incidents reported earlier involving CBPO Kenneth Humphrey. The second incident also involved to a lesser degree CEO Alfredo Flores as his partner, but not mentioned in the statements.

The first and last two attachments (Re, Re:Inv, MIA, To Whom) all involve the first incident.

The three "FW" attachments and the "E20" statement all involve last night's incident.

I will fax over the police report separately.

Thank you.

Chief Sergio Bello  
Tactical Operations  
A-TCET Miami Airport  
305-869-2702 Office  
305-525-1595 Nextel  
305-869-2644 Fax

**BRESLIN, JOHN H**

---

**From:** HUMPHREY, KENNETH D  
**Sent:** Monday, November 10, 2008 3:35 PM  
**To:** BELLO, SERGIO J  
**Subject:** RE:

Chief Bello;

I am requesting a copy of the complaint or a copy of the issues so that I can identify what matters or person, I can provide a statement concerning. I am also requesting if any accusations that I determine are false accusations, an internal investigation be filed against the person(s) falsely involving CBP Officers, and requesting all parties be administered polygraphs to determine the severity of any false accusations against Federal Officers performing assigned duties.

Thanks for your response, Kenneth D Humphrey, CBPO MIA AT-CET

---

**From:** BELLO, SERGIO J  
**Sent:** Mon 11/10/2008 1:55 PM  
**To:** HUMPHREY, KENNETH D  
**Subject:**

CBPO Humphrey,

Please provide me a statement regarding an encounter with Continental employees on Sunday evening (November 2, 2008) as part of Operation "Secure Holiday".

Thank you,

Chief Sergio Bello  
Tactical Operations A-TCET  
Miami International Airport  
305-869-2702 Office  
305-525-1595 Nextel

**BRESLIN, JOHN H**

---

**From:** BELLO, SERGIO J  
**Sent:** Thursday, November 13, 2008 2:47 PM  
**To:** MATTINA, THOMAS  
**Cc:** BLANCO, MARTA M  
**Subject:** RE: Investigation  
**Sensitivity:** Confidential

He advised to call Intake on the second incident as well.

Will be doing shortly.

---

**From:** MATTINA, THOMAS  
**Sent:** Thursday, November 13, 2008 2:32 PM  
**To:** BELLO, SERGIO J  
**Cc:** MASTON, CHRISTOPHER D  
**Subject:** Re: Investigation  
**Sensitivity:** Confidential

10-4.

---

**From:** BELLO, SERGIO J  
**To:** MATTINA, THOMAS  
**Cc:** BLANCO, MARTA M  
**Sent:** Thu Nov 13 09:46:19 2008  
**Subject:** FW: Investigation  
FYI - Lenny advised me to contact the Joint intake center due to the alleged abuses. He also suggested I notify Humphrey the manner has been referred for investigation.

Blanco and I are coordinating this incident and last nights. I will forward Lenny last nights and await his response on that one before going to Intake.

---

**From:** BELLO, SERGIO J  
**Sent:** Thursday, November 13, 2008 8:44 AM  
**To:** DORMAN, LEONARD  
**Cc:** MATTINA, THOMAS; BLANCO, MARTA M  
**Subject:** FW: Investigation  
**Importance:** High  
**Sensitivity:** Confidential

Lenny,

Attached are the two statements from the incident involving CBPO Humphrey and CBPO Flores. I will call you later after you have had time to read them.

I wrote the following to CBPO Humphrey and the same to CBPO Flores:  
CBPO Humphrey,

*Please provide me a statement regarding an encounter with Continental employees on Sunday evening*

11/17/2008

A-000029

(November 2, 2008) as part of Operation "Secure Holiday".

Thank you,

Chief Sergio Bello  
Tactical Operations A-TCET  
Miami International Airport  
305-869-2702 Office  
305-525-1595 Nextel

To which he replied on Monday, November 10:

Chief Bello:

I am requesting a copy of the complaint or a copy of the issues so that I can identify what matters or person, I can provide a statement concerning. I am also requesting if any accusations that I determine are false accusations, an internal investigation be filed against the person(s) falsely involving CBP Officers, and requesting all parties be administered polygraphs to determine the severity of any false accusations against Federal Officers performing assigned duties.

Thanks for your response, Kenneth D Humphrey, CBPO MIA AT-CET

---

From: BELLO, SERGIO J  
Sent: Wednesday, November 05, 2008 2:09 PM  
To: MATTINA, THOMAS  
Cc: BLANCO, MARTA M  
Subject: FW: Investigation  
Importance: High  
Sensitivity: Confidential

Second statement attached.

Thank you,

Chief CBPO Sergio Bello  
Tactical Enforcement A-TCET  
Miami International Airport  
(305)869-2702 Office  
(305)525-1595 Nextel

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From: BELLO, SERGIO J  
Sent: Wednesday, November 05, 2008 12:40 PM  
To: MATTINA, THOMAS  
Cc: BLANCO, MARTA M  
Subject: FW: Investigation  
Importance: High  
Sensitivity: Confidential

Another Incident Involving CBPO Kenneth Humfrey:

CEO Alfredo Flores was his partner and the names mentioned in the statement appear on his shift report for Operation Secure Holiday. Dan Sonego (Continental Airlines' Senior Manager Technical Operations for the Southeast Region) will provide another statement from the other individual involved.

Thank you,

Chief CBPO Sergio Bello  
Tactical Enforcement A-TCET  
Miami International Airport  
(305)869-2702 Office  
(305)525-1595 Nextel

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From: SONEGO, Dan [mailto:Dan.Sonego@coair.com]  
Sent: Wednesday, November 05, 2008 11:49 AM  
To: BELLO, SERGIO J  
Cc: Robaina, Freddy  
Subject: Investigation  
Importance: High  
Sensitivity: Confidential

Mr. Bello,

*As we discussed on the phone here is the statement from one of the technicians on the incident which took place on November 2<sup>nd</sup>, 2008.*

*I will forward the other statements as soon as the MIA supervisor sends them to me. I copied the MIA supervisor in on the correspondence so he's in the loop.*

*I appreciate you looking into this.*

**Thanks!**

**Dan**