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<p>1 merchandise. So how did I get picked for 2 being one of the persons involved in stealing 3 from Sunglass Hut, that they would come out 4 and inspect my vehicle. 5 Q. So you think they discriminated 6 against you because of your race? 7 A. That's what I filed, basically. 8 Q. When you filed the claim of 9 discrimination against Continental, did you 10 also assert race discrimination? 11 A. Sure did, yeah. 12 Q. What was the nature of that race 13 discrimination claim? 14 A. Basically I put in for promotions 15 that I thought I was qualified for and had 16 background and had experience for and they 17 kept giving it to white males that were less 18 experienced and less qualified than I thought 19 I was for the position. 20 Q. And I don't know if I asked you this, 21 but did you file any claims of discrimination 22 while at American Airlines? 23 A. No. 24 Q. With the exception of the garter belt 25 and the sunglasses, were there any other</p>	<p>1 It was -- I can't spell Pergamon. I forgot 2 how to spell it. SAS was the corporation 3 division of Pergamon Press. There was a -- I 4 think Maxwell was a competitor or printing 5 competitor with Murdoch -- Murdoch of Fox 6 News. I think, it was his competitor, 7 Maxwell, that I worked for. 8 Q. Where is this company located? 9 A. The branch that I worked for went out 10 of business. After I was let go, they went 11 out of business. They folded because I -- it 12 was a poorly-run operation that I was involved 13 with. 14 Q. Was it in Miami, Florida? 15 A. It was in Coconut Grove -- the 16 headquarters. The office was in Coconut 17 Grove. 18 Q. Why were you let go? 19 A. There was a dispute how they were 20 handling personnel. I was told -- I was a 21 manager and I was told that I need to hire 22 people that had Midwestern dialect, that I 23 could not hire anybody with an accent and I 24 need to only hire people with Midwestern 25 dialect. They did not want anyone answering</p>
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<p>1 disciplinary issues while you were employed at 2 Federal Express? 3 A. Never. Never. Never. I got that 4 suspended situation voided and I got my 5 backpay because it was unjust management. 6 Headquarters said that it was unjust that they 7 suspended me for that. 8 Q. Just to be clear, no letters of 9 reprimand, suspension? 10 A. Never. Never. Never. 11 Q. With Continental Airlines -- 12 A. Never. Never. 13 Q. Let me just be clear. 14 No suspensions? 15 A. Never. 16 Q. No reprimands? 17 A. Never. 18 Q. With the exception of Continental 19 Airlines, Federal Express and CBP, have you 20 filed any other claims of discrimination 21 against any other employers you had? 22 A. I think in 1989 I filed a complaint. 23 Q. Who did you file that complaint 24 against? 25 A. It was a branch of Pergamon Press.</p>	<p>1 the phone with an accent. 2 Q. And you didn't comply and they fired 3 you? 4 A. I tried to hire the best people. 5 There was conflicts with the owner, the senior 6 management of that division and myself. I was 7 let go. She let me go. 8 Q. Your claim of discrimination against 9 Pergamon Press was in response to your 10 termination? 11 A. Yeah. 12 Q. And you asserted race discrimination? 13 A. I asserted that they only wanted to 14 hire people who were sort of Anglo inclined, 15 who had Anglo dialect and Anglo inclinations. 16 I was only the black -- I was a manager, but I 17 was the only black there. 18 Q. Any disciplinary issues while you -- 19 A. They terminated me. 20 Q. With the exception of the 21 termination, any other disciplinary actions? 22 A. No, no. 23 Q. What was their reason for terminating 24 you? 25 A. They gave none. I don't know the</p>

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<p>1 reason they gave in court, but they basically</p> <p>2 gave nothing that was substantial. They</p> <p>3 folded pretty much after they terminated me.</p> <p>4 The company was canceled. The contract was</p> <p>5 folded.</p> <p>6 Q. From all the companies we've</p> <p>7 discussed here today, did you file any other</p> <p>8 claims of discrimination against any other</p> <p>9 employers?</p> <p>10 A. I don't think so.</p> <p>11 Q. With the exception of the EEO</p> <p>12 complaint that you filed in December of 2008,</p> <p>13 had you ever filed any other EEO complaint of</p> <p>14 discrimination against CBP?</p> <p>15 A. Uh-uh.</p> <p>16 (Defendant's Exhibit No. 1 was marked</p> <p>17 for identification.)</p> <p>18 BY MR. MACCHIAROLI:</p> <p>19 Q. I'm showing you what's been</p> <p>20 pre-marked as Humphrey Exhibit 1. I'm going</p> <p>21 to ask you to take a look at it.</p> <p>22 No need to read it, but if I ask a</p> <p>23 specific question about a section, and you</p> <p>24 would like to read that section, by all means,</p> <p>25 I'll give you the time to read that section</p>	<p>1 than the Anglo and other white Hispanics.</p> <p>2 That was the gist of my conversation with the</p> <p>3 EEO.</p> <p>4 Q. Directing your attention to claims</p> <p>5 presented, Number 14, it talks about the issue</p> <p>6 you had on November 12, 2008, where you were</p> <p>7 removed from the Anti-terrorism Contraband</p> <p>8 Enforcement Team.</p> <p>9 Do you see that?</p> <p>10 A. On Line 14, you said --</p> <p>11 Q. Yes, Question 14, the second to last</p> <p>12 line in your answer.</p> <p>13 A. Are we on the first page?</p> <p>14 Q. After Question 14, claims presented.</p> <p>15 A. Okay.</p> <p>16 Q. It says, near the end of that</p> <p>17 section --</p> <p>18 A. "Denied overtime opportunities on</p> <p>19 January 21st."</p> <p>20 Q. Right. Do you see that?</p> <p>21 A. And it says, and on January 21st, he</p> <p>22 learned he will be placed in passenger</p> <p>23 processing.</p> <p>24 Q. Do you see that, sir?</p> <p>25 A. Yeah.</p>
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<p>1 and to flip over the document.</p> <p>2 Mr. Humphrey, can you identify</p> <p>3 Humphrey Exhibit 1 as the EEO counselor's</p> <p>4 report in the EEO case that you filed against</p> <p>5 CBP in December of 2008?</p> <p>6 A. This looks like it. I couldn't</p> <p>7 verify it as the exact same printout that's on</p> <p>8 file -- that's on record with the EEO. It's</p> <p>9 just scanned. It looks like a similar</p> <p>10 complaint.</p> <p>11 Q. And you actually attached this</p> <p>12 document to your complaint?</p> <p>13 A. I don't know if it's the exact</p> <p>14 word-for-word line. I don't know if it's been</p> <p>15 altered, but it looks similar to the one I've</p> <p>16 attached.</p> <p>17 Q. Looking over this document, does this</p> <p>18 document adequately reflect the complaints</p> <p>19 that you made to the EEO counselor?</p> <p>20 A. I basically stated that I was being</p> <p>21 retaliated against, so --</p> <p>22 Q. I don't see the word "retaliation."</p> <p>23 A. I mentioned that I -- we were being</p> <p>24 -- blacks and browns were being retaliated and</p> <p>25 harshly abused in situations that were graver</p>	<p>1 Q. Isn't that the claim that you</p> <p>2 presented to the EEO counselor?</p> <p>3 A. That was one of the claims.</p> <p>4 Q. Now, you received a copy of this</p> <p>5 report; did you not?</p> <p>6 A. I think I had to file the EEOC</p> <p>7 complaint.</p> <p>8 Q. Right, but ultimately you received a</p> <p>9 copy of this document?</p> <p>10 A. Uh-huh.</p> <p>11 Q. You never filed any kind of letter to</p> <p>12 the EEO investigator, Mr. Abddeen, saying that</p> <p>13 this counselor's report was inaccurate?</p> <p>14 A. It's basically summarizing and</p> <p>15 doesn't say everything that was brought up in</p> <p>16 the interview, but it basically summarized the</p> <p>17 gist of what we were saying.</p> <p>18 Q. Do you think that Mr. Abddeen did a</p> <p>19 poor job summarizing?</p> <p>20 A. I think he just did a summary,</p> <p>21 synopsis. I don't think he can just go out</p> <p>22 and use a dictation, like the stenographer is</p> <p>23 doing, and just completely printout a</p> <p>24 dictation of what was said. There was no</p> <p>25 dictation done.</p>

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<p>1 document how my employment situation was</p> <p>2 altered.</p> <p>3 Q. Are you done, Mr. Humphrey?</p> <p>4 A. You asked me to -- you told me to</p> <p>5 talk. You told me to talk. I'm talking and</p> <p>6 now I'm talking and you told me to stop.</p> <p>7 Q. Are you done?</p> <p>8 A. Okay, I'll stop.</p> <p>9 Q. Okay.</p> <p>10 A. If you want me to cut my answers</p> <p>11 short, I'll cut them short.</p> <p>12 Q. I don't even know what question you</p> <p>13 are answering at this point, Mr. Humphrey.</p> <p>14 A. I'm answering the questions that I</p> <p>15 have a right to give you my point of view. If</p> <p>16 you agree with it, fine; if you don't agree</p> <p>17 with it, fine.</p> <p>18 Q. Well, I'm want to get your point of</p> <p>19 view on Humphrey Exhibit 4.</p> <p>20 Take a look at Humphrey Exhibit 4.</p> <p>21 (Defendant's Exhibit No. 4 was marked</p> <p>22 for identification.)</p> <p>23 THE WITNESS: I don't want to read</p> <p>24 that.</p> <p>25 BY MR. MACCHIAROLI:</p>	<p>1 submitted.</p> <p>2 Q. Mr. Humphrey, do you recall coming</p> <p>3 into encounter with a Mr. Ernesto Vega on</p> <p>4 November 2, 2008?</p> <p>5 A. I recall running a background check.</p> <p>6 My partner and I ran a background check on</p> <p>7 this individual. He had a long rap sheet of</p> <p>8 conflicts with law enforcement that put us on</p> <p>9 alert.</p> <p>10 Q. When did you learn that he had this</p> <p>11 long rap sheet?</p> <p>12 A. Immediately. Immediately. That was</p> <p>13 the first thing we encountered, that he had a</p> <p>14 tremendous rap sheet of conflicts with law</p> <p>15 enforcement, that he was arrested a number of</p> <p>16 times.</p> <p>17 Q. Let's just back up. I'm just trying</p> <p>18 to understand this event. You stopped this</p> <p>19 individual on November 2nd?</p> <p>20 A. We stopped two individuals.</p> <p>21 Q. You stopped two individuals on</p> <p>22 November 2, 2008.</p> <p>23 A. Uh-huh.</p> <p>24 Q. Why did you stop them?</p> <p>25 A. Just doing a check as they were</p>
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<p>1 Q. Sir --</p> <p>2 A. I'll give it to her. I don't want to</p> <p>3 read this garbage.</p> <p>4 Q. Just so we are clear, you are</p> <p>5 referring to Humphrey Exhibit 4, which is the</p> <p>6 letter by Ernesto Vega, a Continental Airlines</p> <p>7 technician. And that's a complaint against</p> <p>8 you, sir.</p> <p>9 A. Uh-huh.</p> <p>10 Q. And you consider this complaint to be</p> <p>11 garbage?</p> <p>12 A. You know when they showed me this</p> <p>13 complaint? In May 2009. That's the first</p> <p>14 time I ever saw this complaint is in the EEO</p> <p>15 file that was presented to me, by my request</p> <p>16 for an EEO case.</p> <p>17 They showed me this complaint in May</p> <p>18 2009. I never knew the name of this</p> <p>19 individual. I never knew the complaint. I</p> <p>20 never knew the grounds of the complaint.</p> <p>21 November 2, 2008, was this incident</p> <p>22 that you are talking about. This incident was</p> <p>23 not in the file that they sent for</p> <p>24 investigation. They never sent this incident</p> <p>25 for investigation. This was not even</p>	<p>1 coming through the gate, the security gate.</p> <p>2 Q. Was this a random check?</p> <p>3 A. A check for warrants and outstanding</p> <p>4 warrants and any other conflicts and checking</p> <p>5 for contraband.</p> <p>6 Q. Did you ask them for their Social</p> <p>7 Security Number?</p> <p>8 A. No, I don't care about their Social</p> <p>9 Security Number.</p> <p>10 Q. Do you see in this letter from Mr.</p> <p>11 Vega, it says: He then asked me for my Social</p> <p>12 Security Number, to which I replied, I don't</p> <p>13 carry and I don't" --</p> <p>14 A. Yeah, but if management had only</p> <p>15 talked to my partner, they would have realized</p> <p>16 it was my partner who asked for the Social</p> <p>17 Security Number. I had no conversation with</p> <p>18 this dude. I never talked to this dude.</p> <p>19 Q. Okay.</p> <p>20 A. I had no conversation. My partner</p> <p>21 had his ID in his hand. My partner asked him</p> <p>22 for this information. My partner was the one</p> <p>23 that encountered this individual. My partner</p> <p>24 was the one that this individual snatched his</p> <p>25 ID out of my partner's hand and started</p>

Page 73	<p>1 Humphrey Exhibit 5.</p> <p>2 (Defendant's Exhibit No. 5 was marked</p> <p>3 for identification.)</p> <p>4 THE WITNESS: I don't want to see</p> <p>5 that. Please, Chris, I don't want to see</p> <p>6 this garbage. I don't want to see it.</p> <p>7 BY MR. MACCHIAROLI:</p> <p>8 Q. Are you referring to Humphrey</p> <p>9 Exhibit 5, a letter of complaint made by John</p> <p>10 Reinoso of Continental Airlines, maintenance</p> <p>11 department, on November 3, 2008, as garbage?</p> <p>12 A. It is garbage. It is totally</p> <p>13 garbage.</p> <p>14 Q. This is the complaint of the</p> <p>15 individual who was in the golf cart?</p> <p>16 A. That never made it into the</p> <p>17 investigation that they -- the employee that</p> <p>18 they claim they sent. They didn't even send</p> <p>19 these letters up. They didn't even mention</p> <p>20 November 2nd. They never mentioned</p> <p>21 November 2nd when they sent for an</p> <p>22 investigation review to JIC. They never even</p> <p>23 acknowledged this. They never even</p> <p>24 acknowledged November the 2nd, Chris.</p> <p>25 When they requested that I be</p>	Page 75	<p>1 that you are representing didn't even submit</p> <p>2 this. They didn't even submit it, Chris.</p> <p>3 Chris, please give me help. I am asking for</p> <p>4 help.</p> <p>5 Q. Mr. Humphrey, I have questions about</p> <p>6 this document.</p> <p>7 A. The document is meaningless to me.</p> <p>8 Q. Are you going to answer them or not?</p> <p>9 A. I don't know anything about it. What</p> <p>10 are you doing --</p> <p>11 Q. I'm asking you a question.</p> <p>12 A. You can raise your voice all you</p> <p>13 want.</p> <p>14 Q. You're the one raising your voice.</p> <p>15 A. I'm trying to get it through to you</p> <p>16 that these documents have no reference to me.</p> <p>17 Q. Okay. I'm sorry, would you like to</p> <p>18 look at the document?</p> <p>19 A. I've seen the resemblance of those.</p> <p>20 Q. Do you recall when you looked at this</p> <p>21 document that the individual, a gentleman by</p> <p>22 the name of John Reinoso said: At this time,</p> <p>23 Mr. Humphrey pushed me, shoved me against the</p> <p>24 vehicle and was told that I was getting</p> <p>25 arrested and going to jail.</p>
Page 74	<p>1 reviewed for incidents, they had never even</p> <p>2 brought up November the 2nd. Why are we</p> <p>3 bringing up this now? They didn't bring it</p> <p>4 up. Why are you bringing it up? It's trash.</p> <p>5 I got a partner, Flores, that was</p> <p>6 there, that your persons that you're</p> <p>7 representing never even interviewed him.</p> <p>8 Never even asked him his side of the story.</p> <p>9 He is the one that's there, an eyewitness.</p> <p>10 So you take two Continental</p> <p>11 employees' word and you never even ask my</p> <p>12 partner. You never even ask me. You never</p> <p>13 took a statement from me. You never took a</p> <p>14 statement from my partner. And you give me</p> <p>15 two pieces of garbage from Continental</p> <p>16 Airline?</p> <p>17 Q. Mr. Humphrey, looking at Humphrey</p> <p>18 Exhibit 5 --</p> <p>19 A. I don't want to see it. I don't want</p> <p>20 to even look at it. This is garbage. I've</p> <p>21 seen it before in the EEO file.</p> <p>22 Q. Okay.</p> <p>23 I know you are upset, but I have to</p> <p>24 ask the questions.</p> <p>25 A. No, it's ridiculous. Your agency</p>	Page 76	<p>1 Do you deny that statement?</p> <p>2 A. I deny it.</p> <p>3 Q. Did you ever touch him?</p> <p>4 A. I told him to put his hands on the</p> <p>5 cart.</p> <p>6 Q. Did you check for any weapons in his</p> <p>7 possession?</p> <p>8 A. No, no.</p> <p>9 Q. You didn't think there was any risk</p> <p>10 to your safety?</p> <p>11 A. I observed his body. I looked at his</p> <p>12 body when he put his hands on the cart and I</p> <p>13 told him to move his legs because I was about</p> <p>14 to arrest him. I told him to spread his legs.</p> <p>15 Q. Did you ever yank the identification</p> <p>16 badge from his uniform and ask: When he goes</p> <p>17 to Cuba, if he had to go through customs?</p> <p>18 A. No.</p> <p>19 Q. So you think that's a false statement</p> <p>20 as well?</p> <p>21 A. Surely. I think the whole thing is a</p> <p>22 false statement. Both statements that you</p> <p>23 submitted to me are false.</p> <p>24 Q. There is no truth in any of those</p> <p>25 statements whatsoever?</p>

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<p>1 that have 30 years' experience of knowing the</p> <p>2 schemes that those ramp workers utilize, that</p> <p>3 if I have that experience and that I got a</p> <p>4 team of individuals that follows me and know</p> <p>5 if I say something to them and say something</p> <p>6 to the ramp workers, that I'm pretty much</p> <p>7 telling them a fact.</p> <p>8 If I confront a ramp worker, that</p> <p>9 they know that I'm confronting this ramp</p> <p>10 worker with factual information, that I'm not</p> <p>11 just making some false notation, that I'm</p> <p>12 basically telling them, this is a rule, this</p> <p>13 is a mandate, this is how it existed and this</p> <p>14 is how it should exist.</p> <p>15 Q. In the 30 years you have been doing</p> <p>16 this, were you ever wrong in the instructions</p> <p>17 you gave?</p> <p>18 A. I've been wrong all the time. I</p> <p>19 learn from my mistakes all the time. I learn</p> <p>20 from my mistakes every time.</p> <p>21 Q. And still, after 30 years'</p> <p>22 experience, you had two separate altercations</p> <p>23 between November 2nd and November 12th?</p> <p>24 A. I don't understand that question.</p> <p>25 Tell me, what does that question mean?</p>	<p>1 Q. I'm looking at Paragraph 4.</p> <p>2 A. Uh-huh.</p> <p>3 Q. It says, warranted infliction of</p> <p>4 pain.</p> <p>5 What do you mean by that?</p> <p>6 A. That, okay, basically if your intent</p> <p>7 is to do me harm by removing me from the</p> <p>8 field, by denying me the ability to make a</p> <p>9 bid, by denying me the ability to stay in</p> <p>10 AT-CET and sending me -- exiling me to</p> <p>11 passenger processing, the bottom level -- this</p> <p>12 is the worst category for an experienced</p> <p>13 worker to be sent to.</p> <p>14 I was sent to the bottom level to</p> <p>15 work with new recruits that just got out of</p> <p>16 the academy. I mean, I was demoted to the</p> <p>17 level of new employees that have never had any</p> <p>18 experience doing the job, that just graduated</p> <p>19 from the academy. You put me in the same</p> <p>20 environment. This was intentional infliction</p> <p>21 of harm and humiliation and damage to my</p> <p>22 income, to my ability to do the job, to my</p> <p>23 ability to have opportunities of employment,</p> <p>24 to my ability to advance in the job.</p> <p>25 Q. So you were embarrassed?</p>
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<p>1 Q. Sure.</p> <p>2 After 30 years of experience in</p> <p>3 dealing with these airline employees, even</p> <p>4 with that vast experience, you still had two</p> <p>5 altercations within a period of ten days in</p> <p>6 November 2008?</p> <p>7 A. I might have had two altercations</p> <p>8 before in a period of ten days.</p> <p>9 Q. Okay.</p> <p>10 A. I'm sure the fact that -- if I'm on</p> <p>11 the front lines, that you could role a snake</p> <p>12 eyes twice on a dice in a row. That's just</p> <p>13 odds. It's just odds. The odds are that any</p> <p>14 incident or occurrence can happen. There is</p> <p>15 no prediction on incidents not being able to</p> <p>16 happen back to back. There is no probability</p> <p>17 of that not happening.</p> <p>18 Q. I would like to look at your amended</p> <p>19 complaint again, and I'm going to refer to</p> <p>20 some specific paragraphs.</p> <p>21 A. Okay.</p> <p>22 Q. If you don't want to look at it,</p> <p>23 that's fine.</p> <p>24 A. I mean, just go ahead and tell me</p> <p>25 what paragraph.</p>	<p>1 A. Chris, Chris, embarrassment is just</p> <p>2 one part.</p> <p>3 Q. Okay. I'm asking a series of</p> <p>4 questions.</p> <p>5 A. It's just humiliation. It is just</p> <p>6 total humiliation. I mean, I'm looking at my</p> <p>7 co-workers. My co-workers are seeing that I</p> <p>8 have on my uniform -- they see the outstanding</p> <p>9 badges I have on my uniform from Hurricane</p> <p>10 Katrina. They see the outstanding badges I</p> <p>11 have on my uniform for being an expert</p> <p>12 marksman, an expert sharpshooter. They see</p> <p>13 outstanding badges for my ranking, for my</p> <p>14 status.</p> <p>15 And I'm down there with them at entry</p> <p>16 level for recent graduates and I have no</p> <p>17 indications in my file of any adverse</p> <p>18 behavior. I mean, even Dana Martin says that</p> <p>19 she is going to talk to the chief and the</p> <p>20 chief is just blowing her off every time she</p> <p>21 comes to the chief, except when it got to</p> <p>22 Marta Blanco and her Cuban American</p> <p>23 syndication. When that came in, it was just</p> <p>24 Cuban American, Cuban American, Cuban</p> <p>25 American, Cuban American.</p>

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<p>1 The Cuban Americans are sitting up 2 there watching home videos on the DVD player 3 making overtime duties and Chief Bello is 4 sitting there watching the videos with them 5 and they are both getting overtime duties and 6 I'm out in the field working. They are both 7 watching home videos in the office making 8 overtime. This is just Cuban American, Cuban 9 American, getting paid where they can 10 manipulate their work hours, overtime hours. 11 All Cuban Americans get top overtime hours 12 first, and then everybody else -- 13 Q. You think it's a Cuban American 14 conspiracy? 15 A. All the witnesses that I will bring 16 into trial will tell you that it's Cuban 17 American. It's a Cuban American conspiracy. 18 Cuban American -- you have a Cuban 19 American dictating his own overtime. He sets 20 up -- he allocates overtime for everybody 21 else, but he sets up his work schedule to get 22 the top overtime assignment. He sets up the 23 work schedule for his buddy to get the next 24 top overtime assignment. 25 This goes on week after week after</p>	<p>1 American. 2 Q. So you have problems with Anglo 3 Americans, Cuban Americans -- 4 A. I don't have problems with it. My 5 best friends -- my best co-workers that follow 6 me are Cuban Americans. My best co-workers 7 that follow me are Anglo Americans. My best 8 co-workers that follow me are Hispanic 9 Americans. They all work with me. 10 Q. Let's get back to focus here. 11 Mr. Mattina, over the age of 40? 12 A. Mr. Mattina is the chief. He's the 13 one that got me in this situation. 14 Q. Over the age of 40, sir? 15 A. What does that have to do with this? 16 I mean, tell me, what does that have to do 17 with this? I'm assuming he's over the age of 18 40, but he's the one that put me in this 19 situation. He put me in this environment. He 20 is the one that rubber stamped everything that 21 went on. Marta Blanco is over the age of 40 22 too. 23 Q. Sir, was it your race, was it your 24 age, was it 50 percent, 70/30 percent. I'm 25 trying to understand the discrimination you</p>
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<p>1 week after week, that Cuban Americans get the 2 first choice of overtime assignments and 3 everybody else gets the scraps. I mean, this 4 is consistent. Every worker that's going to 5 be called as a witness will tell you this 6 verbatim. They will not miss the opportunity 7 to tell you this. 8 Q. Mr. Humphrey, Thomas Mattina? 9 A. Who is Thomas Mattina? He is 10 insignificant to me. 11 Q. He is not Cuban American? 12 A. No, he is Italian American. He is 13 Anglo-Saxon. He is just -- the vibrations for 14 his workers under him resist -- this guy is 15 just -- 16 Q. That's the assistant port director. 17 A. But he's insignificant. He is just 18 so insignificant to everyone that works under 19 him, just totally out of touch with what was 20 going on on the ramp. 21 Q. Christopher Mattson? 22 A. He is white. He is calling himself 23 Filipino American, but he is white. 24 Q. Is he a Cuban American? 25 A. No, he's white American. It's Anglo</p>	<p>1 are alleging in this case. 2 A. Okay, let's go. 3 Q. The people who are allegedly 4 discriminating against you are over the age of 5 40. 6 A. What does that have to do with it, 7 because they are over the age of 40? What 8 does that have to do with it? 9 Q. Did they have any discriminatory 10 animus towards older people? If they are -- 11 A. The oldest people, the oldest people 12 -- I'm the oldest person there. I'm the 13 oldest person there. 14 When I asked for a promotion three 15 times, I have a score of 99 percent better 16 than all the other workers there. If my score 17 is 99 percent better than other employees and 18 I go for interview three times and you give it 19 to a young, under 40 employee, what are you 20 telling me? You give it to a white, under 40 21 employee, what are you telling me? That I 22 have a 99 percent score as a supervisor -- 23 over 99 percent of all the other persons that 24 are taking the score -- taking the test, 25 white, black, Anglo, Hispanic. My score is 99</p>

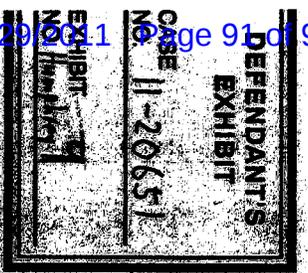
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<p>1 Q. Is this the factual argument you 2 allege where the Department of Justice acts as 3 the arm of retaliation for an agency? 4 A. It acts as a protector of blatantly 5 corrupt players of the various federal 6 agencies. It protects -- the general counsel 7 protects, special counsel protects, and 8 Department of Justice protects corrupt 9 players. 10 Q. Your knowledge of these purported 11 facts, does it derive from your work at CBP? 12 A. It derives from information that has 13 nothing pertaining to this case. 14 Q. Okay. 15 Have I missed on this list, Humphrey 16 Exhibit 8, any other cases you filed in the 17 Southern District of Florida? 18 A. I don't know of any. I can't -- I 19 don't have any knowledge of any cases other 20 than what's here. 21 Q. Okay. 22 Recently, have you filed for 23 bankruptcy? 24 A. I filed for Chapter -- I forgot what 25 chapter it was, but I couldn't meet the</p>	<p>1 second page, so I understand -- 2 A. These are cases or these are just -- 3 Q. These are actually cases where you 4 have been sued. 5 A. Okay. 6 Q. American Airlines Federal Credit 7 Union, do you owe them money? 8 A. That's the house. That's the owner 9 of the house. 10 Q. Jade Winds Association, Incorporated, 11 was that -- 12 A. That's the housing association of the 13 house, of the condo. 14 Q. Were they trying to evict you? 15 A. Uh-huh, they did foreclose on it. 16 Q. Wells Fargo? 17 A. Credit card, I believe. 18 Q. Did they collect on some outstanding 19 payments? 20 A. I think they have a lien. 21 Q. Dade County School Employees Federal 22 Credit Union, that's additional money that you 23 owe to that bank? 24 A. I think they repossessed my car. 25 Q. Citicorp Savings of Florida?</p>
Page 146	Page 148
<p>1 payments, so it was dissolved; it was 2 dismissed. 3 Q. So you were not found to be -- you 4 were not cleared of all your debts? 5 A. Uh-uh. Uh-uh. 6 Q. Your house was foreclosed on? 7 A. Uh-huh. 8 Q. How many condos were foreclosed on? 9 A. How many condos? What you mean 10 condos? 11 Q. I'm sorry; the property you had, was 12 it a condo, was it a house? 13 A. It was a condo. 14 Q. The foreclosure was on this one 15 condo? 16 A. That was my house, primary 17 home/residence. 18 Q. Okay. 19 (Defendant's Exhibit No. 9 was marked 20 for identification.) 21 BY MR. MACCHIAROLI: 22 Q. I'm going to show you what's marked 23 as Humphrey 9. This is a list of all the 24 cases you've had in Miami-Dade County Court. 25 I want to look at some of the cases on the</p>	<p>1 A. Money I owe. 2 Q. Beneficial Florida, Incorporated? 3 A. I don't know them. What year is this 4 that they -- 5 Q. I believe that's all the way back in 6 '88. 7 A. I vaguely remember. I don't know if 8 they changed names or it was bought by another 9 company. I'm not sure. 10 (Defendant's Exhibit No. 10 was 11 marked for identification.) 12 BY MR. MACCHIAROLI: 13 Q. Let me show you Humphrey 10. 14 A. Are we finished with this? 15 Q. Yes, you can put that aside, sir; 16 thank you. 17 This was a judgment for \$3,300. 18 A. That was what you just mentioned, 19 that Wells Fargo. 20 Q. Was this a credit card or your car? 21 A. Credit card. 22 (Defendant's Exhibit No. 11 was 23 marked for identification.) 24 BY MR. MACCHIAROLI: 25 Q. Can you identify Humphrey 11 as --</p>

Page 149	Page 151
<p>1 A. That's the condo, American Airlines 2 Credit Union. 3 Q. And this is the condo you had at 1750 4 Northeast 191st Street? 5 A. Uh-huh. 6 Q. And that condo was foreclosed on and 7 given to the American Airlines Federal Credit 8 Union? 9 A. It was given to the Homeowner's 10 Association first, and then the credit union 11 has proxy over it first. The association has 12 next proxy. 13 Q. And that's the Jade Winds 14 Association? 15 A. Uh-huh. 16 (Defendant's Exhibit No. 12 was 17 marked for identification.) 18 BY MR. MACCHIAROLI: 19 Q. I'm going to show you Humphrey 20 Exhibit 12. 21 Can you identify that as the 22 certificate of title changing the title of the 23 condo to Jade Winds Association? 24 A. Yeah, but the credit union owns the 25 property. They have the title, but the title</p>	<p>1 Q. Do you recall when you applied for a 2 position with American Airlines and 3 Continental Airlines, if you had to identify 4 whether you had been charged with a crime? 5 A. Not that I remember. 6 Q. When you went for a security 7 background check, did you have to be 8 investigated? 9 A. With who? 10 Q. With law enforcement personnel to get 11 credentials? 12 A. What law enforcement personnel are 13 you talking about? 14 Q. The federal government. 15 A. You are talking about Customs and 16 Border Protection? 17 Q. Yes. 18 A. Surely. 19 Q. Did they ask you any questions about 20 prior criminal activity? 21 A. Yeah, I answered. I told them the 22 things I was involved in. 23 Q. Just so we are clear, I'm going to 24 show you Humphrey Exhibit 14. 25 Can you just verify for me that those</p>
Page 150	Page 152
<p>1 is basically the lien. The property is held 2 with the first mortgagor, which is the credit 3 union. 4 (Defendant's Exhibit No. 13 was 5 marked for identification.) 6 BY MR. MACCHIAROLI: 7 Q. This is Humphrey Exhibit 13. 8 Can you identify that as the order 9 granting the motion to dismiss your bankruptcy 10 case without prejudice? 11 A. Okay. 12 Q. Is that true, sir? 13 A. Yeah. 14 Q. Sir, when you applied for employment 15 with the federal government, did you have to 16 identify whether you had ever been charged 17 with a crime? 18 A. I think within ten years or 19 something. 20 Q. Okay, and had you ever been charged 21 with a crime? 22 A. Not within ten years. 23 Q. And you applied in 2000; is that 24 correct? 25 A. I think so. '99, I think.</p>	<p>1 were the criminal -- it's a multi-page 2 document. 3 A. Is it one case or two cases? 4 Q. I think there are three cases there. 5 A. Okay, I don't understand what this 6 is, misdemeanor. I understand the rape part, 7 but I don't understand the misdemeanor. 8 Q. Okay, that's what I was going to ask 9 you. I had pulled that off the Miami Criminal 10 Clerk's Web site. It identified a conviction 11 for a misdemeanor in 1980. 12 Do you know what that conviction was 13 about? 14 A. I have no idea what they are. 15 Q. Do you remember serving probation or 16 a suspended sentence? 17 A. It could have been -- I don't know. 18 I had bad checks. I got stopped for writing a 19 \$50 check to the grocery store a couple of 20 times when I was out of work. I didn't meet 21 the checks for \$50. 22 Q. So you got charged with a 23 misdemeanor, pled -- 24 A. I'm assuming that's what they are. I 25 can't really identify. I'm looking at it, but</p>

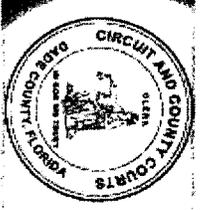
Page 153	<p>1 I can't really identify.</p> <p>2 Q. Since that charge in 1980, have you</p> <p>3 ever been charged with a crime subsequent?</p> <p>4 A. Uh-uh. Uh-uh.</p> <p>5 Q. And the rape, you were acquitted by a</p> <p>6 jury in Miami, of rape?</p> <p>7 A. There was no rape. There was no</p> <p>8 involvement with a female person, but it's --</p> <p>9 it was trumped up charges. There was no rape</p> <p>10 involved.</p> <p>11 Q. But you were charged and a jury</p> <p>12 acquitted you?</p> <p>13 A. I was charged and I was jailed. I</p> <p>14 was incarcerated for eight days or something.</p> <p>15 Q. And you got bail and went to trial</p> <p>16 and succeeded at trial?</p> <p>17 A. They dismissed it. The judge</p> <p>18 dismissed it. It never made it to jury. He</p> <p>19 dismissed it as -- without grounds.</p> <p>20 Q. With the exception of that jail time,</p> <p>21 have you ever served any other jail time?</p> <p>22 A. Maybe in college, I might have got</p> <p>23 arrested overnight for maybe busting</p> <p>24 streetlights or something like that. I'm not</p> <p>25 sure.</p>	Page 155	<p>1 that's all the questions I have for today.</p> <p>2 I'm sorry it was longer than an hour, but</p> <p>3 I appreciate you coming down and coming</p> <p>4 earlier.</p> <p>5 THE WITNESS: I appreciate letting me</p> <p>6 get emotional about some of the answers</p> <p>7 that I --</p> <p>8 MR. MACCHIAROLI: You can't say I</p> <p>9 didn't let you speak. The record reflects</p> <p>10 you had an opportunity to speak.</p> <p>11 THE WITNESS: These are some things</p> <p>12 that are pretty touchy with me and it's</p> <p>13 already a stressful situation that I've</p> <p>14 been through.</p> <p>15 MR. MACCHIAROLI: I understand.</p> <p>16 You have the opportunity to read your</p> <p>17 transcript and make any --</p> <p>18 THE WITNESS: No, I don't want to</p> <p>19 read it, but I apologize to the lady here,</p> <p>20 and thank you for bearing with me.</p> <p>21 (Thereupon, the deposition was</p> <p>22 concluded at 11:29 a.m.)</p> <p>23</p> <p>24</p> <p>25</p>
Page 154	<p>1 Q. Where did you attend college?</p> <p>2 A. In Talladega College, near the</p> <p>3 Talladega Speedway.</p> <p>4 Q. With the exception of the rape charge</p> <p>5 and the breaking of lights when you were a</p> <p>6 college student, was there anything else that</p> <p>7 you were charged with a crime for?</p> <p>8 A. I think I stopped an officer from</p> <p>9 rummaging through my pockets in Miami Springs</p> <p>10 and he arrested me. They dismissed me by the</p> <p>11 time they got me down there. I think it was</p> <p>12 harassment. They dismissed me. By the time</p> <p>13 they took me to jail, they let me go.</p> <p>14 Q. Do you know when this occurred?</p> <p>15 A. I was driving to Miami Springs,</p> <p>16 probably 30, 40 years ago. I'm not sure.</p> <p>17 Q. Anything else, sir?</p> <p>18 A. (Nodding.)</p> <p>19 MR. MACCHIAROLI: I just want to take</p> <p>20 a quick five-minute break to look at my</p> <p>21 notes. I think we are pretty much done,</p> <p>22 but I just want to make sure.</p> <p>23 (Thereupon, a brief recess was</p> <p>24 taken.)</p> <p>25 MR. MACCHIAROLI: Mr. Humphrey,</p>	Page 156	<p>1 CERTIFICATE OF OATH</p> <p>2</p> <p>3 STATE OF FLORIDA:</p> <p>4</p> <p>5 COUNTY OF MIAMI-DADE:</p> <p>6</p> <p>7 I, the undersigned authority, certify</p> <p>8 that Kenneth Humphrey personally appeared</p> <p>9 before me and was duly sworn.</p> <p>10</p> <p>11 WITNESS my hand and official seal on the</p> <p>12 28th of October, 2011.</p> <p>13</p> <p>14 Rinele Abramson</p> <p>15 Notary Public, State of Florida</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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DEFENDANTS EXHIBIT
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Case No.	Case Name	Party	Case No.	Date	Location	Case No.	Date	Location
1988-7668-CC-25	BENEFICIAL FLORIDA INC vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH D	DN 01	3	11/15/1988	4/13/1989		<u>EJUD</u>
13-1988-CC-007668-0000-25	BENEFICIAL FLORIDA INC							
1989-6965-CA-01	CITICORP SAVINGS OF FLORIDA vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH D	DN 01	2	2/16/1989	162980	6/9/1989	<u>EJUD</u>
13-1989-CA-006965-0000-01	CITICORP SAVINGS OF FLORIDA							
1989-5333-CC-26	DADE COUNTY SCHOOL EMPLOYEES FEDERAL CRE vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH D	DN 01	3	7/21/1989	12/5/1990		<u>EJUD</u>
13-1989-CC-005333-0000-26	DADE COUNTY SCHOOL EMPLOYEES FEDERAL CRE							
1989-5333-CC-26	DADE COUNTY SCHOOL EMPLOYEES FEDERAL CRE vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH DELANO	DK 01	3	7/21/1989			
13-1989-CC-005333-0000-26	DADE COUNTY SCHOOL EMPLOYEES FEDERAL CRE							
2008-65602-CA-01	JADE WINDS ASSN INC vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH D	DN 01	23	10/28/2008	12/12/2008		<u>VOLD</u>
13-2008-CA-065602-0000-01	JADE WINDS ASSN INC							
2009-4396-SP-23	WELLS FARGO FINANCIAL BANK vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH D	DN 01	3	2/11/2009	4/1/2009		<u>DJUD</u>
13-2009-SC-004396-0000-23	WELLS FARGO FINANCIAL BANK							
2009-41950-CA-01	JADE WINDS ASSN INC vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH D	DN 01	23	5/29/2009	132799	1/7/2010	<u>EJUD</u>
13-2009-CA-041950-0000-01	JADE WINDS ASSN INC							
2009-78506-CA-01	AMERICAN AIRLINES FED CR UN vs HUMPHREY, KENNETH D	HUMPHREY, KENNETH D	DN 01	2	10/26/2009	132799	2/11/2011	<u>EJUD</u>
13-2009-CA-078506-0000-01	AMERICAN AIRLINES FED CR UN							

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CIVIL DIVISION

Case No.: 11-CV-20651-O' SULLIVAN

FILED by SLC D.C.
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KENNETH D. HUMPHREY, FORMER)
)
CUSTOMS AND BORDER PROTECTION)
)
OFFICER,)
)
Plaintiff,)
)
vs.)
)
JANET NAPOLITANO, SECRETARY,)
)
U.S. DEPARTMENT OF HOMELAND)
)
SECURITY,)
)
Defendant,)

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

1. Introduction

Plaintiff, KENNETH D. HUMPHREY, hereby submits the following response memorandum in opposition judgment to the Defendant's Motion for Summary Judgment. The Court is respectfully referred to the declaration of Plaintiff with Plaintiff's response to defendant's statements of undisputed facts, plus the submittal of additional Plaintiff's statements of existing material

issues. Also submitted in this response by Plaintiff are exhibit parts of: the EEO investigation, and other factual documents.

2. Factual Statement

- a) Plaintiff filed his Original Complaint against DHS and EEOC on February 25, 2011. (D.E.1).
- b) In the Original Complaint, Plaintiff brought several claims against Defendants, including claims for RACE and AGE Discrimination in violations of Title VII with ADEA.
- c) Plaintiff also held a claim of Conspiracy to Obstruct Justice Act in violations of the 5th and 14th Amendments to the United States.
- d) The Court gave an Order of Dismissal on September 28, 2011 (D.E. 29) with the right to Amend.
- e) Plaintiff filed an Amended Complaint against Defendant (DHS) on October 13, 2011. (D.E.32).
- f) The adverse actions at the crux of the Amended Complaint started on November 12th 2008, when Plaintiff was removed from field operations duties after Plaintiff stopped Miami Dade Aviation airport employees causing a severe breach of Federal Regulations.
- g) 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.

- h) 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.
- i) 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.
- j) The first of February 2009, Plaintiff was forced into transfer, to work demoted at the bottom rung with entry level DHS officers.
- k) 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.
- l) 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.
- m) 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.

n) 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.

ARGUMENT

Title VII with respect to race, color, religion, sex, or national origin, and the ADEA with respect to age make it unlawful for an employer "to fail or refuse to hire or to discharge any individual," or otherwise to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment," on any of those bases. 42 U.S.C. § 2000e-2(a)(1); 29 U.S.C. § 623(a)(1). Compare 42 U.S.C. § 2000e-2(a)(2) (1970 ed., Supp. V) with 29 U.S.C. § 623(a)(2).

POINT I

THE DEFENDANT HAS THE BURDEN OF SHOWING THAT THERE ARE NO GENUINE MATERIAL ISSUES OF FACT IN PLAINTIFF'S (non-movant) AMENDED COMPLAINT

The measures with a motion for summary judgment, the Court's function is to determine whether a material factual issue exists, not to resolve any existing factual issues. United States v. Diebold Inc., 369 U.S. 654 (1962). A court may grant summary judgment under Fed.R.Civ.P. 56(c) only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Where, as here, The non-movant bears the ultimate burden to prove at trial that the Defendant

discriminated and retaliated against Plaintiff based on race and age with further hindrance to employment functions.

The non-movant may defeat the summary judgment motion by procuring sufficient specific facts to establish that there is a genuine issue of material fact for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986).

Also, the party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact. Weinberger v. Hynson, 412 U.S. 609 (1973). If the movant successfully discharges its burden, the burden then shifts to the non-movant to establish, by going beyond the pleadings, that there exist genuine issues of material facts. Matsushita Electric Industrial Co. v. Zenith Radio Corp. 475 U.S. 574, 586-87, 106 S.Ct. 1328, 1355-56, 89 L.Ed. 2d 538 (1986); Clark v. Coats & Clark, Inc. 929 F2d 604, 608 (11th Cir. 1991).

In the granting of summary judgment, this Court must view the issues in a light most favorable to the non-movant as well. Sweat v. Miller Brewing Company, 708 F2d 655 (11th Cir. 1983). In Harrington v. Gainesville Sun Publishing Co., 9 F3d 913 (11th Cir. 1993), the Court reversed the District Court and held that a Plaintiff's burden at summary judgment is met by introducing evidence that could form the basis for a finding of facts which taken in the light most favorable to the non-moving party could allow a jury to find that the Plaintiff has established pretext. In other words, the employer's proffered explanations were not credible or are unworthy of credence. The Plaintiff can also show that a discriminatory reason likely motivated the employer in its employment decision. See also Batey v. Stone, 24 F3d 1330

(11th Cir. 1994), indicating that if a genuine factual dispute exists as to the proffered reason, summary judgment is inappropriate.

POINT II

THE STRONG CLAIMS OF PLAINTIFF'S AMENDED COMPLAINT MUST MEET THE STANDARDS OF REVIEW AND ANALYSIS SET BY THE FOLLOWING CASES:

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 37 L.Ed.2D 668 (1973) Is Controlling Herein and Reeves v. Sanderson Plumbing, 530 U.S. 133 (2000) supports.

1. Plaintiff's Summary Judgment Burden

An issue of material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party, Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986). In addition, in ruling on a motion for summary judgment, a court must resolve all ambiguities and draw all reasonable inferences in favor of the party defending against the motion. Welch v. Celotex Corp, 951 F.2d 1235, 1237 (11 Cir.1992); Hoffman v. Allied Corp, 912 F.2d 1379 (11th Cir. 1990); and Eastway Construction Corp. v. City of New York, 762 F.2d 243, 249 (2d Cir. 1985), cert. denied.

In McDonnell Douglas Corp. v. Green, supra, at 411 U.S. 792, the Supreme Court enunciated a three-prong allocation of proof requirement in the context of a private, nonclass action challenging employment discrimination. It held: The complaint in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. One can show a prima facie case of

discrimination in a variety of ways. However, in a disparate treatment claim. Plaintiff must show that (1) that Plaintiff was a member of a protected class; 2) was qualified for the job; 3) and was treated less favorably than other similarly situated employees outside Plaintiff's protected class and that he suffered an adverse job action Reeves v. Sanderson Plumbing, 2000 WL 743663 (U.S. S. Ct. June 12, 2000). Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997). The burden must now then shift to the employer to articulate some legitimate, non-discriminatory reason for the employer's disparate treatment. See McDonnell Douglas Corp. v. Green, supra, at 411 U.S. 903, 804-805.

2. Standards Regarding Discrimination

The basic standard of Discrimination as it relates to this complaint, revolves around the issues of STAUB v. PROCTOR HOSPITAL, CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT No. 09-400. Argued November 2, 2010—Decided March 1, 2011 is a solid example of the factors in this Plaintiff's Complaint that arose from the adverse employment damages by the hands of Defendant's actors. STAUB v. PROCTOR HOSPITAL presentation is as follows: In construing the phrase "motivating factor in the employer's action," this Court starts from the premise that when Congress creates a federal tort it adopts the background of general tort law. See, e.g., Burlington N. & S. F. R. Co. v. United States, 556 U. S. Intentional torts such as the one here "generally require that the actor intend 'the consequences' of an act, 'not simply 'the act itself.'" Kawaauhau v. Geiger, 523 U. S. 57, 61-62 (1998)., Burlington

N. & S. F. R. Co. v. United States, 556 U. S., (2009) (slip op., at 13-14); Safeco Ins. Co. of America v. Burr, 551 U. S. 47, 68-69 (2007); Burlington Industries, Inc. v. Ellerth, 524 U. S. 742, 764 (1998). Intentional torts such as this, "as distinguished from negligent or reckless torts,... generally require that the actor intend 'the consequences' of an act,' not simply 'the act itself.'" Kawaauhau v. Geiger". (see Foroozesh v. Lockheed Martin Operations Support, Inc., 2006 WL 2924789 (W.D. Pa. October 10, 2006) and Harding v. Cianbro Corp., 2007 WL 1290910 (D. Me. May 2, 2007)).

Courts have recognized the standard that has been expressly or implicitly stated by the many courts beforehand - whether the biased supervisor's "actions caused [or resulted in] the adverse employment action". "E.E.O.C. v. BCI", 450 F.3d at 487(10TH Cir.2006) (citing Lust v. Scaly, Inc., 383 F.3d 580, 584 (C.A.7 2004)). In fact, the Tenth Circuit subsequently utilized the "cat's paw" causal analysis in Young v. Dillon Companies, Inc., 468 F.3d 1243, 1253 (C.A.10 2006), when it noted that a biased investigator can issue reports and recommendations and "thereby cause decision makers who rely on those reports to fire an employee unlawfully - a situation in which the biased investigator uses the supervisor as a cat's paw to effect his or her own biased designs. The "**SINGULAR INFLUENCE**" of this Amended Complaint stems from the similar actions as the basis of - **The Biased Subordinate**: A subordinate bias claim may arise when an individual responsible for the investigation, or a key player in the investigation, makes, or contributes to, a biased report to the ultimate decisionmaker. *E.E.O.C. v. BCI Coca-Cola Bottling Co., 450 F.3d 476 (10th Cir. 2006) (summary judgment

for employer reversed); Downes v. Potter, 2006 U.S. Dist. LEXIS 51132 (E.D. N.Y. July 26, 2006) (employer's motion for summary judgment denied); Roundtree v. Johanns, 382 F. Supp. 2d 19 (D. D.C. 2005) (same); Vantassel v. Brooks, 355 F. Supp. 2d 788 (W.D. Pa. 2005) (same); Harlow v. Potter, 353 F. Supp. 2d 109 (D. Me. 2005).

In the following recent case of NANCY L. NAGLE, v. PAULA MARRON, ROSEMARIE COLETTI, and BARBARA MERLING, COURT OF APPEALS FOR THE SECOND CIRCUIT August Term, 2010 (Argued: March 24, 2011 Decided: December 12, 2011) Docket No. 10-1420-cv.

Some Circuits have held that "an employer cannot shield itself from liability . . . by using a purportedly independent person or committee as the decisionmaker where th[at] decisionmaker merely serves as the conduit, vehicle, or rubber stamp by which another achieves his or her unlawful design." Dedmon v. Staley, 315 F.3d 948, 949 n.2 (8th Cir. 2003). Under this so-called "cat's paw" theory, a final decisionmaker that relies entirely on an improperly motivated recommendation from a subordinate may render the municipality liable because the subordinate, (see also Hill v. Lockheed Martin Logistics, Inc. 15354 F.3d 277 (2004)).

3. Standards Regarding Disparate Treatment:

Plaintiff has established a case of disparate treatment using the following case standard of REEVES v. SANDERSON PLUMBING PRODUCTS, INC. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT No. 99-536. Argued March 21, 2000-Decided June 12, 2000. The ultimate question in every disparate

treatment case is whether the plaintiff was the victim of intentional discrimination. This case instructed the jury that, to show respondent's explanation was pretext, proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive. ("[P]roving the employer's reason false becomes part of (and often considerably assists) the greater enterprise of proving that the real reason was intentional discrimination"). In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." The case of MARTIN v. TOLEDO CARDIOLOGY CONSULTANTS INC., 548 F.3d 405 (6th Cir. November 21, 2008) No. 07-3724. Argued: June 10, 2008. -- November 21, 2008, is the standard as stated by the court, for a comparator to be similarly situated then, an exact correlation is not required by the law of this circuit." So Martin v. Toledo Cardiology Consultants, Inc., rather, the Sixth Circuit has "held that to be found similarly situated, the plaintiff and his proposed comparator must have engaged in acts of 'comparable seriousness.'" But that language should not be read too broadly

because before, in Ercegvoch v. Goodyear Tire & Rubber Co., 154 F.3d 344 (6th Cir. 1998), the Sixth Circuit observed that courts allows for "different circumstances," and, therefore, courts "should make an independent determination as to the relevancy of a particular aspect of the plaintiff's employment status and that of the non-protected employee." (see also St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993); Rice-Lamar v. City of Ft. Lauderdale, FLA., 232 F.3d 836 (11th Cir. 2000), cert. denied 534 U.S 815 (2001).

4. Standards Regarding Retaliation

In THOMPSON v. NORTH AMERICAN STAINLESS, LP CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT No. 09-291. Argued December 7, 2010—Decided January 24, 2011, the expansion of federal anti-retaliation employment law has continued with the U.S. Supreme Court's recent decision in this case. On January 24, 2011, the U.S. Supreme Court followed up its ruling in [Burlington Northern & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006)]^[1], by holding in Thompson that, under certain circumstances, a third-party termination may constitute an unlawful reprisal under Title VII's anti-retaliation provision and that "a person claiming to be aggrieved ... by an alleged employment practice" and who "falls within the zone of interests protected by Title VII" has standing to sue his employer.^[2] Title VII's antiretaliation provision must be construed to cover a broad range of employer conduct. It prohibits any employer action that " 'well might have "dissuaded a reasonable worker from making or supporting a [discrimination] charge," ' " "falls

within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint, "Lujan v. National Wildlife Federation, 497 U. S. 871, 883. Title VII's term "aggrieved" incorporates that test, enabling suit by any plaintiff with an interest "'arguably

[sought] to be protected' by the statutes."

NOTE THE FOLLOWING CASES:

Burlington Northern Santa Fe Railway Company v. White (2006) 548 US 53.

CBOCS West v. Humphries (2008) 553 US 442.

Clark County School District v. Breeden (2001) 532 U.S. 268.

Collazo v. Bristo-Meyers Squibb (CA1 2010) 617 F.3d 39.

Crawford v. Metropolitan Government Of Nashville (2009) 129 S. Ct. 846.

Gomez-Perez v. Potter (2008) 128 S. Ct. 1931.

Jackson v. Birmingham Board of Education (2005) 544 US 167.

Kasten v. Saint-Gobain Performance Plastic Corp. (CA7 2009) 385 F.3d 310.

O'Neal v. Ferguson Construction Co. (CA10 2001) 237 F. 3d 1248.

Robinson v. Shell Oil (1997) 519 US 337.

Sullivan v. Little Hunting Park (1969) 396 US 229.

Thompson v. North American Stainless, LP (CA6 2009) 567 F.3d 804.

5. Defendant's Burden - Degree of Proof

While the Plaintiff has the ultimate burden of persuasion to prove the alleged discrimination, see Texas Dept. of Cons. Affairs v. Burdine, 450 U.S. 2489, 253, 101 S.Ct. 1089, 1981), nevertheless the Defendant party is required to satisfy an intermediate burden of rebutting a prima facie case of discrimination as established by the Plaintiff pursuant to and under the guidelines mandated, described and otherwise set forth in McDonnell Douglas Corp.. It requires that the "Defendant's

explanation (articulation) of its legitimate reasons must be clear and reasonably specific." Burdine, supra, at 450 U.S. 258, 67 L. Ed. at 2d 218 (emphasis added). Explaining the reason for requiring something more than a bland articulation of legitimate, non-discriminatory justification and requiring, instead, clear and specific justification.

6. Plaintiff's Burden of Proving Pretext

Once the Defendant has articulated a legitimate criterion in a clear and specific manner then the burden shifts to the Plaintiff to prove pretext. Burdine clearly stated that in addition to directly proving a discriminatory motive, a Plaintiff may prevail upon showing that the employer's given legitimate reason is unworthy of credence, that is, that the reason supplied was not the true reason for the unfavorable employment decision. Burdine, supra, 450 U.S. 972; Dister v. Continental Group Inc., 859 F.2d 1108, 1113 (2d Cir. 1988). Therefore, when the employer's non-discriminatory reason is shown to be unworthy of belief, and thus was not the real cause for the adverse action taken, the employer has in substance failed to articulate a valid explanation for discharging an employee and has placed its credibility into question. Dister v. Continental Group, supra. Accordingly, Plaintiff may do this by showing that the legitimate reasons are not the true reasons or there is a factual dispute as to disparate treatment. Reeves v. Sanderson Plumbing. 530 U.S. 133 (2000).

POINT III

MATERIAL ISSUES OF FACT REMAIN CONCERNING PLAINTIFF'S ADVERSE EMPLOYMENT

Disputed Issues of Material Facts Supporting Plaintiff's Claims as an Aggrieved Employee as to Race and Age Discrimination, Thereby Precluding Summary Judgment.

Plaintiff Is An Aggrieved Individual And Suffered An Adverse Action:

1. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 1-There was never an investigation conducted, but only the racketeering ploy that was discriminatory and retaliatory activities by Defendant's actors.

If Defendant's actors had only the practice of asking the Plaintiff and the various partners their versions, Defendant's actors would have known that no verbal altercations occurred. Exhibits M-M and N-N of this Response, shows how the intended trauma occurred instantly to Plaintiff's income, not counting the further trauma of removal from an earned Special Team Job Assignment (A-TCET).

Complaint paragraphs 52-57 and Exhibit G-G of this response can identify the practice that removed almost all Black and Brown Factions from A-TCET, that never could have happen just by

chance. Two Black Supervisors (Kareta Carr and Marcnel Pierre[over 40]), were recommended into transferring very similar as to the Exhibit G-G of this response. The same basis for Jose V _____ [over 40}, Joseph N _____ [over 40], and Jose Q _____.

Exhibit L-L of the response shows Mario R _____ an Anglo-[under 40] assuming Acting Supervisor assignment after receiving numerous airport workers complaints to the same

management of Bello, Blanco and Mattina. Complaint paragraphs 54-55 refers to Christiane R_____ an Anglo-[under 40] supervised by the same management team encountering no hindrances. Paragraph 56 relates to Pedro C_____ an Anglo-[under 40] received all the promotions and assignment that were never approved for Plaintiff's requests by same the management. Too many other Cuban and Anglo-under 40 to list, that only received enhancements, never allowed to Plaintiff.

2. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 2 - Supervisor Marcnel Pierre, who's name was removed for Exhibit L-L of this response, hindered Plaintiff's performance of duties by never allowing Plaintiff nor his partner at the scene on November 12th, 2008 to give their version of the activities before returning the ID's back to the detained airport workers. This action stops the Violation Report similar to the regulations and samples of Exhibits in V-V in this response.

3. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 3 - Exhibit 1 of this Motion of Defendant's has no notations or any mention of ever inquiring to Plaintiff or Plaintiff's partner about the correct version of November 12th, 2008 before interfering with Plaintiff's violation Report completion. For liability, A-TCET members always travel as two or more person teams. For safety reasons, Plaintiff's partner observed at all times the activities on the ramp and never witness any altercations-verbal or otherwise. All statements taken by Supervisor Pierre indicated that

Plaintiff made the necessary statements and ended conversations.

The Police report did not write-up airport worker Pierre as the caller or accuser for the incident, but only the worker that had only 3 lines of communications with Plaintiff. When the Police arrived they found no activity, only Plaintiff completing data for a violation report while awaiting the worker's management arrivals.

4. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 4 - Plaintiff's Exhibits R-R, and all U-U's shows the authorizations that have been enforced for decades by Customs in areas of Enforcement. If Defendant's actors had only asked Plaintiff or Plaintiff's partners, would the full understanding of the security practices employed. In reference to the November 2nd, 2008 incident, if Defendant's actors had only asked Plaintiff's or Plaintiff's partner versions, would Defendant's actors realized that there were multiple airport workers objecting to being stopped, and Plaintiff's partner had difficulty with one individual. If Defendant's actors had only asked for the version about which exact airport workers.

5. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 5 - Plaintiff in May 2009, found out the names and accusations from the EEO Investigative Files in reference to November 2, 2008. If Defendant's actors had only identified the accusers, Plaintiff would have told Defendant's actors that there were 3(three) workers in that

particular group. Plaintiff's partner version would have explained why Plaintiff's partner asked for a Social Security card and what the difficulties were. If only Defendant's had asked by identifying the accusers or even the accusations.

6. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 6 - Is all basically full blown racketeering without any 'RULE OF LAW' or any 'DUE PROCESS'.

Plaintiff's Declaration in this Response highlights the facts that neither of Supervisors or Managers provided Plaintiff an opportunity to provide with partners, the true versions of the noted days activities. Plaintiff was never to receive any answers pertaining to reasons for Plaintiff's lack of 'DUE PROCESS' in employment that started November 12th 2008.

Discrimination, Retaliation, and managerial Racketeering is what took place without any 'DUE PROCESS' or 'RULE OF LAW'.

7. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 7 -

Defendant's actors had no authority to conduct any investigation. Plaintiff's Complaint paragraphs 46-48 are the policies to follow for any major incidents. If Defendant's actors had only asked Plaintiff or any of Plaintiff's partners, there would have been realization of no incidents that have not occurred hundreds of times before, when airport workers try to circumvent the functions of Customs. No investigations can possible occur without collecting testimonies, data notations or versions from witnesses on the scene. No investigation can possibly occur without non-bias data collection or witness

testimonies. Discrimination, Retaliation and Racketeering is what happen at the hands of Defendant's actors. The Bid denial and drastic/traumatic cuts in abilities to work Special Team A-TCET extra duty hours, was nothing but severe hardships for Plaintiff.

8. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 8 - Approximately at 5 year intervals, Plaintiff has filed lawsuits that were non-frivolous in nature, and mostly CLASS ACTIONS and RICO cases in order to attempt the corrections for the 'RULE OF LAW'; the one thing that has made America the least corrupt nation.

9. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 9 - Defendant DHS/CBP is bound to have numerous lawsuits in this Court, contentiously from other federal workers. There are never any efforts for Defendant DHS/CBP to correct their actions. It is only taxpayers' monies. There are no penalties or any incentives to make corrections. So this court can expect to see more taxpayers dollars wasted and more federal workers coming to plea for relief.

10. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 10 - In Torres v. Pisano, 116 F.3d 625, 640 (2nd Cir. 1997), the Second Circuit held that, to show an adverse employment action, an employee must demonstrate "a materially adverse change in the terms and conditions of employment.

The First, Seventh, Tenth, Eleventh and D.C. Circuits all take an expansive view of the types of action that can be considered adverse employment actions. Wyatt v. City of Boston, 35 F.3d 13, 15-16 (1st Cir. 1994) (adverse employment actions include "demotions, disadvantageous transfers or assignments, refusals to promote, unwarranted negative job evaluations and toleration of harassment by other employees") (Emphasis added); Knox v. Indiana, 93 F.3d 1327, 1334 (7th Cir. 1996) (employer can be liable for retaliation if it permits "actions like moving the person from a spacious, brightly lit office to a dingy closet, depriving the person of previously available support services ... or cutting off challenging assignments"); Corneveaux v. CUNA Mutual Ins. Group, 76 F.3d 1498, 1507 (10th Cir. 1996) (employee demonstrated adverse employment action under the ADEA by showing that her employer "required her to go through several hoops in order to obtain her severance benefits"); Berry v. Stevinson Chevrolet, 74 F.3d 980, 986 (10th Cir. 1996) (malicious prosecution by former employer can be adverse employment action).

11. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 11 - Burlington Northern v. White
(Docket No. 05-529) United States Supreme Court Decided June

22, 2006. To be sure, reassignment of job duties is not automatically actionable. Whether a particular reassignment is materially adverse depends upon the circumstances of the particular case, and "should be judged from the perspective of a reasonable person in the plaintiff's position, considering 'all the circumstances.'

The underscored words in the substantive provision—"hire," "discharge," "compensation, terms, conditions, or privileges of employment," "employment opportunities," and "status as an employee"—explicitly limit the scope of that provision to actions that affect employment or alter the conditions of the workplace. No such limiting words appear in the anti-retaliation provision.

The anti-retaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm. As we have explained, the Courts of Appeals have used differing language to describe the level of seriousness to which this harm must rise before it becomes actionable retaliation. We agree with the formulation set forth by the Seventh and the

District of Columbia Circuits. In our view, a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, "which in this context means it well might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'" Rochon, 438 F. 3d, at 1219 (quoting Washington, 420 F. 3d, at 662).

12. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on page 12 - KELLI MIKE, v. PROFESSIONAL CLINICAL LABORATORY, INC., COURT OF APPEALS FOR THE TENTH CIRCUIT No. 11-5030 (D.C. No. 4:09-CV-00363-JHP-FHM) (N.D. Okla)

The essential elements of a negligence claim are: (a) a duty owed by the defendant; (b) a failure to properly exercise or perform that duty; and (c) the defendant's failure to exercise his duty of care is the proximate cause of plaintiff's injuries. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986) In contrast, however, we have held "conduct demonstrating gross negligence or reckless disregard for plaintiffs' civil rights ...

13. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on pages 13-14 - For a comparator to be similarly situated then, an exact correlation is not required by the law of this circuit." Martin v. Toledo Cardiology Consultants, Inc., 548 F.3d 405, 412 (6th Cir. 2008). Rather, the Sixth Circuit has "held that to be found similarly situated, the plaintiff and his proposed comparator must have

engaged in acts of 'comparable seriousness.'" Wright v. Murray Guard, Inc., 455 F.3d 702, 710 (6th Cir. 2006). In Mitchell v. Toledo Hosp., 964 F.2d 577, 583 (6th Cir. 1992), the Sixth Circuit wrote that "to be deemed 'similarly-situated', the individuals with whom the plaintiff seeks to compare his/her treatment must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." However, that language in Mitchell should not be read too broadly because later, in Ercegvoch v. Goodyear Tire & Rubber Co., 154 F.3d 344 (6th Cir. 1998), the Sixth Circuit observed that Mitchell allows for "different circumstances," and, therefore, courts "should make an independent determination as to the relevancy of a particular aspect of the plaintiff's employment status and that of the non-protected employee." Id. at 352.

14. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on pages 15-17 - Ahmed P. Rachid,
Plaintiff-appellant, v. Jack in the Box, Inc., Defendant-
appellee United States Court of Appeals, Fifth Circuit. - 376
F.3d 305 One district court in this Circuit recently described the mixed-motives analysis. "A mixed-motives case arises when an employment decision is based on a mixture of legitimate and illegitimate motives.... If the employee proves the unlawful reason was a motivating factor, the employer must demonstrate that it would have taken the same action in the absence of the impermissible motivating factor." Louis v. E. Baton Rouge

Parish Sch. Bd., 303 F.Supp.2d 799, 801-04 (M.D.La.2003); see also Medlock v. Ortho Biotech, Inc., 164 F.3d 545, 553 (10th Cir.1999) (noting that a mixed-motives analysis applies "where the evidence is sufficient to allow a trier to find both forbidden and permissible motives.") (quotations and citations omitted). Whereas under the pretext prong of the McDonnell Douglas analysis, the plaintiff aims to prove that discriminatory motive was the determinative basis for his termination, under the mixed-motives framework the plaintiff can recover by demonstrating that the protected characteristic (under the ADEA, age) was a motivating factor in the employment decision. See *id.*; *Mooney*, 54 F.3d at 1216-17.

VANDIVER ELIZABETH GLENN, v. SEWELL R. BRUMBY, Appeals from the United States District Court for the Northern District of Georgia (December 6, 2011) COURT OF APPEALS FOR THE ELEVENTH CIRCUIT No. 10-14833 ; A plaintiff can show discriminatory intent through direct or circumstantial evidence.

Gary Millbrook, Plaintiff-appellee, v. Ibp, Inc., Defendant-appellant United States Court of Appeals, Seventh Circuit. - 280 F.3d 1169 Argued September 20, 2001 Decided February 20, 2002

"Evidence indicating that an employer misjudged an employee's performance or qualifications is, of course, relevant to the question whether its stated reason is a pretext masking prohibited discrimination, if the employer made an error too obvious to be unintentional, perhaps it had an unlawful motive for doing so."

CRAWFORD v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE CERTIORARI TO THE UNITED STATES COURT OF

APPEALS FOR THE SIXTH CIRCUIT No. 06-1595. Argued October 8, 2008-Decided January 26, 2009 Some courts hold that an employee asserting a retaliation claim can prove causation simply by showing that the adverse employment action occurred within a short time after the protected conduct. See, e.g., Clark County School Dist. v. Breeden, 532 U. S. 268, 273 (2001) (per curiam) (noting that some cases "accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case"); see also Gorman-Bakos v. Cornell Cooperative Extension of Schenectady Cty., 252 F. 3d 545, 554 (CA2 2001); Conner v. Schnuk Markets, Inc., 121 F. 3d 1390, 1395 (CA10 1997); Dey v. Colt Constr. & Dev. Co., 28 F. 3d 1446, 1458

15. Plaintiff's answering Defendant's Motion for Summary

Judgment statements on pages 18-20 *Qualified Immunity* Although the statutory text of § 1983 provides for no immunities, it has been read "in harmony with general principles of tort immunities" to provide qualified immunity for most government officials.¹² Malley v. Briggs, 475 U.S. 335, 339 (1986) (quoting Imbler v. Pachtman, 424 U.S. 409, 418 (1976)).

"Qualified immunity is 'an entitlement not to stand trial or face the other burdens of litigation.'" Saucier v. Katz, 533 U.S. 194, 200 (2001) (quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)), modified by Pearson v. Callahan, 555 U.S. 223 (2009). It "protects government officials 'from liability for

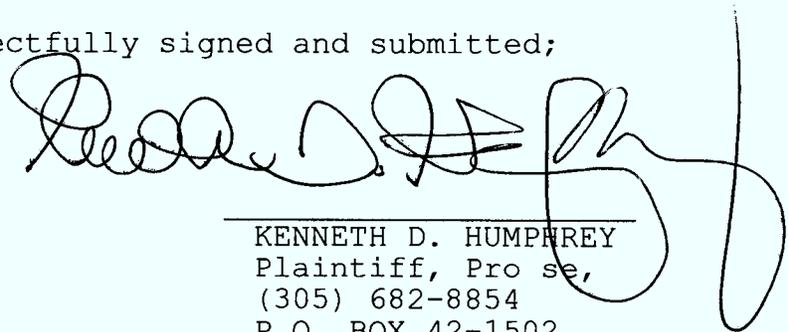
civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson, 555 U.S. at 231 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Id.

CONCLUSION

Plaintiff in asking for justness and equitableness, respectfully submits that the motion for summary judgment and any attached relief be denied in its entirety.

Dated this 16th day of December, 2011,

Respectfully signed and submitted;



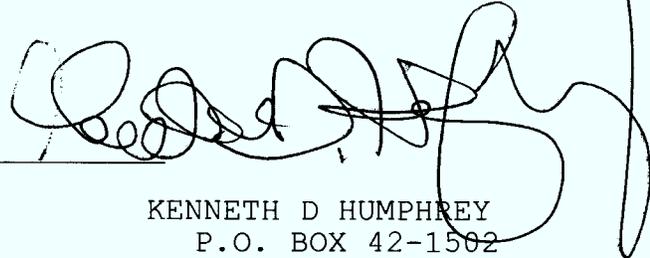
KENNETH D. HUMPHREY
Plaintiff, Pro se,
(305) 682-8854
P.O. BOX 42-1502
Miami, FL. 33242-
1502

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was hand delivered this 16th day of December, 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 Defendant



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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CIVIL DIVISION

Case No.: 11-CV-20651-O' SULLIVAN

KENNETH D. HUMPHREY, FORMER)
)
CUSTOMS AND BORDER PROTECTION)
)
OFFICER,)
)
Plaintiff,)
)
vs.)
)
JANET NAPOLITANO, SECRETARY,)
)
U.S. DEPARTMENT OF HOMELAND)
)
SECURITY,)
)
Defendant,)

ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND DIRECTING ALL PARTIES TO FOLLOW THE ORDERED
PRETRIAL SCHEDULE AND INSTRUCTIONS

ORDER

On this day came on to be considered the motion by Defendant's Counsel for summary judgment on Plaintiff's claims for discrimination in violation of the RACE and Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, et seq. (D.E 32). For the reasons set forth below, DHS/CBP's motion for summary judgment on Plaintiff's RACE, AGE (ADEA), and CONSPIRACY cause of action is hereby DENIED.

Accordingly, Defendant's motion for summary judgment must be **DENIED**.

ORDERED:

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day
of _____, 201__.

JOHN J. O' SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:

All counsel of record

Copies mailed by Chambers to:

KENNETH D. HUMPHREY
P.O. Box 42-1502
Miami, Fl. 33242

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CIVIL DIVISION**

Case No.: 11-CV-20651-O' SULLIVAN

FILED by <u>AL</u> D.C. DEC 16 2011 STEVEN M. LARIMORE CLERK U. S. DIST. CT. S. D. of FLA. - MIAMI
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KENNETH D. HUMPHREY, FORMER)	
)	
CUSTOMS AND BORDER PROTECTION)	
)	
OFFICER,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JANET NAPOLITANO, SECRETARY,)	
)	
U.S. DEPARTMENT OF HOMELAND)	
)	
SECURITY,)	
)	
Defendant,)	

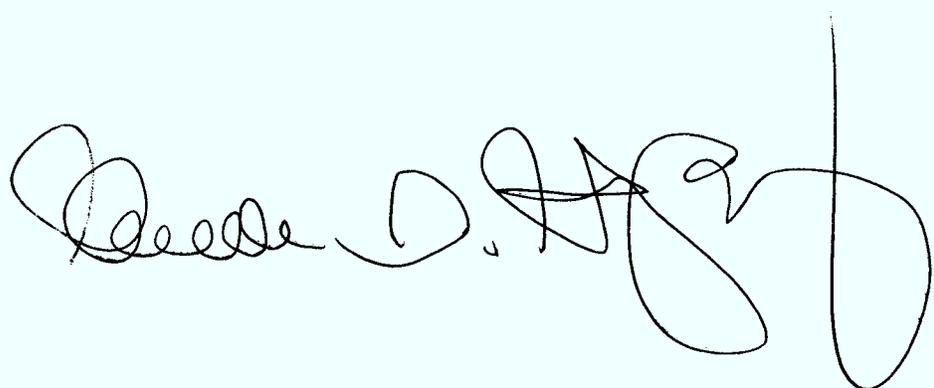
**DECLARATION and EXHIBITS TO PLAINTIFF'S RESPONSE
IN OPPOSITION TO DEFENDANT'S MOTION OF SUMMARY
JUDGMENT**

APPENDIX

PLAINTIFF - KENNETH D HUMPHREY'S DECLARATION	
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<p>UNION REP., SENIOR BID SUPERVISION, and LER REP. EMAIL EXCHANGES IN: X-X 1. RE- PLAINTIFF'S GRIEVANCE OF BID DENIAL OF JANUARY 01,2009 X-X 2/X-X 3. RE- PLAINTIFF'S GRIEVANCE OF BID DENIAL OF SEPTEMBER 05, 2009</p>	<p>X-X</p>
<p>PLAINTIFF'S HEALTH EVALUATION BEFORE TERMINATION OF EMPLOYMENT</p>	<p>Y-Y</p>



A large, stylized handwritten signature in black ink, appearing to read 'David D. H.' followed by a large, loopy flourish.

EXHIBIT

E-E

EXHIBIT F11

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

PERFORMANCE MANAGEMENT PROGRAM
EMPLOYEE PROFICIENCY REVIEW
(For Non-Supervisory Employees)

PART 1 - EMPLOYEE INFORMATION		
1. Name of Employee HUMPHREY, KENNETH D.	2. RATING PERIOD COVERED →	From 10/01/2005
3. Position Title/Series Grade CBP OFFICER GS-1895-11		To 09/30/2006
4. Organization U.S. CUSTOMS AND BORDER PROTECTION A-TCET		
5. Duty Station MIAMI INTERNATIONAL AIRPORT, MIAMI FLORIDA		
6. Reason for Rating <input checked="" type="checkbox"/> Annual Rating of Record <input type="checkbox"/> Other (Specify) →		
PART 2 - CERTIFICATION		
A. Critical Performance Area - Core Competencies; Expectations met by:		
<p>Competency Area #1 - Job Knowledge Properly interprets law, regulation, and agency policy and directives in the performance of their respective duties.</p> <p>Competency Area #2 - Technical Skills Proficient in the technical skills necessary to accomplish their assigned work in an effective and efficient manner. Examples would include use of job-specific equipment, automated systems/databases, research materials, enforcement techniques, manuals, etc.</p> <p>Competency Area #3 - Professionalism Effective application of job knowledge and technical skills. Examples include written and oral communications, leadership, planning and organization, analytical skills and problem solving. Performs duties in a professional manner, interacting with fellow workers and members of the public in a courteous and respectful manner even in the face of provocation or adversity.</p> <p>Competency Area #4 - Working with Others Works constructively and in collaboration with co-workers and personnel from other agencies and organizations toward common goals. Shares information, knowledge and experience with others to accomplish team goals. Assumes personal responsibility for assigned areas. In all work situations, maintains open honest and constructive interactions with co-workers, other agencies, and the public.</p> <p>Competency Area #5 - Ability to Classify, Create and Handle Classified Information (if applicable) Ensures that classified information and material are properly classified and managed. Conducts security assessments to ensure proper classification, handling, accountability, safeguarding and destruction. Initiates requests for security clearances and maintains personnel security records. Attends training and keeps current on handling requirements for classified information. Reports apparent or suspected attempts to access classified information by unauthorized persons and assists in official inquiries.</p>		
B. This is to verify that we have met and discussed how the above competencies apply within our immediate work unit.		
 Supervisor's Signature and Date		 Employee's Signature and Date

PRIVACY ACT NOTICE: The information collected on this form, pursuant to Chapter 43, Title 5, U.S. Code, may be used to make determinations regarding employee job advancement, salary increases, awards, training, and retention in the job and grade. Information and comments obtained from the employee which are included on this form are considered confidential and will not be disclosed outside the U.S. Customs and Border Protection without prior consent, except as required by law or OPM Regulations. The comments provided by the employee may be considered in conjunction with the use of the form, which may include discussion and counseling concerning the employee's job performance.

CBP Form 188A (10/04)

: 00182

000182

EXHIBIT E-E

PART 3 - MID-YEAR REVIEW	
Signatures indicate that a mid-year discussion has taken place.	
<i>[Signature]</i> Supervisor's Signature and Date	<i>[Signature]</i> 4-27-06 Employee's Signature and Date
PART 4 - ANNUAL PROFICIENCY RATING	
<input checked="" type="checkbox"/> SUCCESSFUL	This employee has successfully performed his/her assigned duties and responsibilities in furthering the mission and goals of the U.S. Customs and Border Protection.
<input type="checkbox"/> UNACCEPTABLE	The employee's performance of his/her assigned duties is unacceptable.
<i>[Signature]</i> 04/21/06 Supervisor's Signature and Date	<i>[Signature]</i> 9-21-06 Employee's Signature and Date
_____ Reviewer's Signature and Date (Only necessary if employee performance is unacceptable)	

CBP Form 188A (10/04)

: 00183

000183

EXHIBIT E-E

PART 3 - MID-YEAR REVIEW	
Signatures indicate that a mid-year discussion has taken place.	
<i>James A. Long</i> Supervisor's Signature and Date	<i>James D. Long</i> 4-7-08 Employee's Signature and Date
PART 4 - ANNUAL PROFICIENCY RATING	
<input checked="" type="checkbox"/> SUCCESSFUL	This employee has successfully performed his/her assigned duties and responsibilities in furthering the mission and goals of the U.S. Customs and Border Protection.
<input type="checkbox"/> UNACCEPTABLE	The employee's performance of his/her assigned duties is unacceptable.
<i>James A. Long</i> Supervisor's Signature and Date	<i>James D. Long</i> 9-23-08 Employee's Signature and Date
_____ Reviewer's Signature and Date (Only necessary if employee performance is unacceptable)	

CBP Form 188A (10/04)

: 00187

EXHIBIT E-E 000187

PART 3 - MID-YEAR REVIEW	
Signatures indicate that a mid-year discussion has taken place.	
<u>Mari Dietrich</u> Supervisor's Signature and Date	<u>[Signature] 4-7-09</u> Employee's Signature and Date
PART 4 - ANNUAL PROFICIENCY RATING	
<input type="checkbox"/> SUCCESSFUL	This employee has successfully performed his/her assigned duties and responsibilities in furthering the mission and goals of the U.S. Customs and Border Protection.
<input type="checkbox"/> UNACCEPTABLE	The employee's performance of his/her assigned duties is unacceptable.
_____ Supervisor's Signature and Date	_____ Employee's Signature and Date
_____ Reviewer's Signature and Date (Only necessary if employee performance is unacceptable)	

CBP Form 188A (10/04)

: 00189

000189

EXHIBIT E-E

EXHIBIT

F-F

**Authorization for Examination
And/Or Treatment**

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs



The following request for information is required under (5 USC 5107 et. seq.). Benefits and/or medical services, expenses may not be paid or may be subject to suspension under this program unless this report is completed and filed as requested. Information collected will be handled and stored in compliance with the Freedom of Information Act, the Privacy Act of 1974 and OMB Cir. No. A-108.

OMB No.: 1215-0103
Expires: 10-31-99

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

PART A - AUTHORIZATION

1. Name and Address of the Medical Facility or Physician Authorized to Provide the Medical Service:

2. Employee's Name (last, first, middle)

HAMPNEY, KENNETH

3. Date of injury (mo., day, yr.)

06/12/2008

4. Occupation

CBP OFFICER

5. Description of Injury or Disease:

MULTIPLE NAIL PUNCTURE TO RIGHT HAND

6. You are authorized to provide medical care for the employee for a period of up to sixty days from the date shown in item 11, subject to the condition stated in item A, and to the condition indicated either 1 or 2, in item B.

A. Your signature in item 35 of Part B certifies your agreement that all fees for services shall not exceed the maximum allowable fee established by OWCP and that payment by OWCP will be accepted as payment in full for said services.

B. 1. Furnish office and/or hospital treatment as medically necessary for the effects of this injury. Any surgery other than emergency must have prior OWCP approval.

2. There is doubt whether the employee's condition is caused by an injury sustained in the performance of duty, or is otherwise related to the employment. You are authorized to examine the employee using indicated non-surgical diagnostic studies, and promptly advise the undersigned whether you believe the condition is due to the alleged injury or to any circumstances of the employment. Pending further advice you may provide necessary conservative treatment if you believe the condition may be to the injury or to the employment.

7. If a Disease or Illness is involved, OWCP Approval for issuing Authorization was Obtained from: (Type Name and Title of OWCP Official)

8. Signature of Authorizing Official:

[Handwritten Signature]

9. Name and Title of Authorizing Official: (Type or print clearly)

**STEVEN A. ROBINSON
SUPERVISORY CBP OFFICER**

10. Local Employing Agency Telephone Number:

(305) 869-2700

11. Date (mo., day, year)

06/12/2008

12. Send one copy of your report: (Fill in remainder of address)

13. Name and Address of Employee's Place of Employment:

CUSTOMS AND BORDER PROTECTION
Department or Agency

Miami / A-TCET
Bureau or Office

Local Address (including ZIP Code)

**6601 NW 25th St.
Miami, FL 33122**

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Workers' Compensation Programs

Public Burden Statement

We estimate that it will take an average of 5 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of Workers' Compensation Programs, U.S. Department of Labor, Room S-3229, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE
This form was electronically produced by Ellis Federal Forms, Inc.

Form CA-16
Rev. Jan. 1997

EXHIBIT F-F 1

Attending Physician's Report

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs



1. Patient's name Last: <u>Humphrey</u> First: <u>Henneth</u> Middle: <u>D.</u>			2. Date of Injury mo, day yr. <u>06-12-08</u>	3. OWCP File Number <u>062214543</u>	OMB No. 1215-0103 Expires: 10-31-08
4. What history of injury (including disease) did patient give you? <u>Pl. had multiple puncture wounds which were treated on 6/12/08 - Pl. had reaction to Tetanus toxoid a patient was unable to return to work until 6/18/08</u>					
5. Is there any history or evidence of concurrent or pre-existing injury or disease or physical impairment? (If yes, please describe) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <u>Allergy to latex or substance in Tetanus toxoid</u>					ICD-9 Code
6. What are your findings? (Include results of X-Rays, laboratory reports, etc.) <u>Multiple puncture wounds</u>					
7. What is your diagnosis? <u>Multiple wounds of hand + reaction to Tetanus Toxoid Vaccine</u>					ICD-9 Code
8. Do you believe the condition found was caused or aggravated by an employment activity? (Please explain answer) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
9. Did injury require hospitalization? If no, go to item # 13 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		10. Date of admission mo, day yr.		11. Date of discharge mo, day yr.	
12. Additional Hospitalization required If Yes, describe in "Remarks" (Item 25) <input type="checkbox"/> Yes <input type="checkbox"/> No					
13. What treatment did you provide? <u>Wound Care + Tetanus Toxoid</u>					
14. Date of first examination mo, day yr. <u>6 12 08</u>		15. Date(s) of treatment: mo, day yr. mo, day yr. mo, day yr. <u>6/12/08 6/18/08</u>		16. Date of discharge from treatment mo, day yr. <u>6/18/08</u>	
17. Period of total disability From mo, day yr. Thru mo, day yr. <u>6/12/08 6/18/08</u>		18. Period of Partial Disability From mo, day yr. Thru mo, day yr. <u> </u>		19. Date employee able to resume light work mo, day yr.	
20. Date employee is able to resume regular work mo, day yr. <u>6/18/08</u>		21. Has employee been advised that he/she can return to work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		22. If yes, on what date was he/she advised? mo, day yr. <u>6/18/08</u>	
23. If employee is able to resume only light work, indicate the extent of physical limitations and the type of work that could reasonably be performed with these limitations. (Continue in item #25 if necessary.)				24. Are any permanent effects expected as a result of this injury? If yes, describe in item #25. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
25. Remarks <u>Pl. was not seen between 6/13-6/17 - When he came in - claimed to be was unable to move due to reaction from Tetanus Toxoid - due to some allergic reaction he has to latex or something within the vaccine!</u>					
26. If you have referred the employee to another physician, provide the following: Name Address City State ZIP				Specialty 27. What was the reason for this referral? <input type="checkbox"/> Consultation <input type="checkbox"/> Treatment	
28. I certify that the statements in response to the questions asked above are true, complete and correct to the best of my knowledge. Further, I understand that any false or misleading statements or any misrepresentation or concealment of material fact which is knowingly made may subject me to felony criminal prosecution. Signature of Physician <u>[Signature]</u> Date <u>8/27/08</u>				30. Tax ID Number	
29. Name of Physician Address				31. Do you specialize? <input type="checkbox"/> Yes <input type="checkbox"/> No	

EXHIBIT F-F2