

**U.S EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
OFFICE OF FEDERAL OPERATIONS  
131 M STREET NE  
WASHINGTON, D.C. 20507**

██████████ ██████████

**Complainant**

**v.**

**CHAD F. WOLF, Acting Secretary  
U.S. Department of Homeland Security  
(U.S. Secret Service)**

**Agency**

**EEOC Case No.**

████████████████████

**Agency Case No.**

██

**October 18, 2020**

**REQUEST TO RECONSIDER APPEAL # ██████████ AFFIRMING A  
DECISION FOR SUMMARY JUDGMENT TO THE UNITED STATES  
SECRET SERVICE WITHOUT A HEARING**

**BASIS FOR RECONSIDERATION**

The basis for reconsideration rests on seven prongs. The first is the decision to affirm contains factually incorrect statements contrary to submitted written evidence, and even more egregious is it rewrites the reality of the situation Mr. ██████████ faced without evidence to support its assertions. The second is none of the issues presented to the Commission in the initial appeal were addressed or resolved. The third is Mr. ██████████ has been denied due process as inculpatory evidence has been either withheld or destroyed by

both the United States Secret Service (USSS) and/or the Department of Homeland Security Office of the Inspector General (DHS-OIG). The fourth is an appeal from an Agency's final action shall be based on a de novo review, meaning the case should be looked at with fresh eyes. This appeal failed to do that as it parrots the original decisions of Judge Eates and ignores all the issues presented in the appeal. The fifth is not only does the decision allow the existing numerous inferences which favor of the USSS to stand, it makes additional inferences in favor of the USSS to justify an AFFIRMATION of the appeal, which is impermissible under the law when granting summary judgement. The sixth is for summary judgement to be granted, there must exist no issues of material fact requiring resolution by the fact finder, and significant issues of material fact remain in this case with regard to the validity of the polygraph examination given to Mr. [REDACTED] if his polygraph examination was administered to him differently due to his disability, and if the USSS destroyed or falsified evidence ordered to be produced during discovery which remains under OIG investigation. The seventh is the decision repeatedly makes statements to the effect “Complainant did not provide any evidence” but the Commission was provided ample evidence in all matters, the Commission simply chose to

ignore the evidence produced. Additionally, as will be argued later, at this stage of the proceedings, the burden of proof does not lie with the Complainant, Mr. [REDACTED] but with the Respondent, the USSS.

## **SECTION 1: MATERIALLY FALSE STATEMENTS IN DECISION**

The appeal decision contains no less than seven materially false statements, and for that reason alone the AFFIRMATION of the appeal decision should be overturned, and the case remanded at minimum for a full fact-finding and hearing, or preferably Summary Judgement for Mr. [REDACTED]. When an appellate decision involves a clearly erroneous interpretation of material fact or law, it merits reconsideration.

### **ERRONEOUS STATEMENT NO. 1**

The statement on page 6, paragraph 2, under Sanctions which reads “*the record shows that the defective audio recording was the result of a malfunctioning microphone*” is a materially false statement. The record proves quite the opposite. The USSS Quality Control Worksheet has the signature of Special Agent Edward Alston who certified that the Exam Audio was recorded, and he made random checks of the audio throughout the exam. Agent Alston opted to retire rather than discuss this matter with the Office of the Inspector General (DHS-OIG) who is currently investigating this matter. Further, Agent Alston stumbled and changed his story during his deposition about this matter.

The USSS Quality Control Worksheet also has the signature of Quality Control Supervisor Thomas M. Christopher, who certifies he too made random checks of the audio throughout the exam. If that is not enough, Special Agent Ellen Ripperger also stated when deposed she reviewed the audio file in August of 2016, "I heard me talking to Mr. [REDACTED] about the polygraph exam and the questions that we were going to be going over." Id. page 31, lines 12-14. The Commission made a blanket statement solely based on Special Agent Ripperger's statement that she never destroyed or altered the audio recording of Mr. [REDACTED] polygraph exam, and the copy provided to Complainant was an accurate and complete copy. Why the Commission feels Special Agent Ripperger's statement is more reliable than the written records of Special Agent Edward Alston or Quality Control Supervisor Thomas Christopher is inexplicable. It becomes more suspect why the Commission would accept such testimony as the singular version of the truth when Special Agent Ripperger's statement even contradicts her own testimony under deposition. The Commission is accepting the word of an individual who may have reason not to tell the truth, the reason being it is plausible they may have committed multiple felonies under investigation by DHS OIG including perjury and destruction of evidence. Here the Commission has made numerous inferences in favor of the USSS without any physical evidence. This is impermissible when granting Summary Judgement. The decision to grant

summary judgement in this matter and not offer Mr. [REDACTED] a hearing should be set aside for this reason alone, as only a full fact finding can ascertain if Special Agent Ripperger is telling the truth.

## **ERRONEOUS STATEMENT NO. 2**

The statement on page 6, paragraph 3, under Sanctions which reads “*We find that Complainant did not provide any evidence that the Agency ever had an audible recording of his polygraph exam, or that it had damaged it.*” First, the burden of proof at this stage does not rest with Mr. [REDACTED] but with the USSS. It touts Mr. [REDACTED] failed its polygraph exam as its non-discriminatory reason for retracting its offer of employment, but there is ample evidence USSS did not give Mr. [REDACTED] a valid polygraph exam. The USSS cannot prove it gave Mr. [REDACTED] a valid polygraph because “a proper quality control review requires the audio of the polygraph exam to be reviewed as well.” *Affidavit of Danny Seiler, dated October 4, 2016, Paragraph 8.b.* The USSS by its own admission does not have the audio of Mr. [REDACTED] exam, and thus has failed to provide a non-discriminatory reason for his treatment.

Mr. [REDACTED] provided ample evidence the USSS had an audible recording of his polygraph exam. Apparently, the Commission does not consider the USSS Quality Control Worksheet with two signatures of its employees certifying the

audio was intact and audible throughout the exam as valid evidence. Apparently, the Commission does not consider the statements made by Special Agent Ellen Ripperger during her Deposition about things she heard on the recording she reviewed, but were not present on the recording provided to Mr. [REDACTED] as not evidence. Apparently, the fact the software which recorded Mr. [REDACTED] polygraph examination had not one but two fail-safes, one for indicating low audio was being recorded, and a display that showed a waveform of what was being recorded also was not evidence. It also was not evidence to the Commission that Special Agent Ellen Ripperger testified that both fail-safes indicated a valid audio recording was made of Mr. [REDACTED] exam. A signed affidavit by polygraph expert Danny Seiler stating “*Since 1991 in the approximate 2,500 polygraph examinations that I have given, the microphones have never failed to record the exam; nor have the exams not been recorded for any other reason.*” (Affidavit of Polygraph expert Danny Seiler, Item #4, Oct 3, 2016.) If none of these things constituted evidence, one must wonder what the Commission would deem as evidence.

There was plenty of evidence provided; the government simply ignored all of it because it deemed the ability to interrogate innocent American citizens without any probable cause more important than maintaining a fair justice

system.

### **ERRONEOUS STATEMENT NO. 3**

The statement on page 3, paragraph 4, under Background which reads *“Complainant relied upon the statements of a non-Agency polygraph examiner, who used a different scoring method, but also assessed that Complainant had a significant response to a relevant question on his polygraph exam”* is not true.

Polygraph expert Danny Seiler, who was retained by Mr. [REDACTED] interpreted his response to two questions as inconclusive, he did not find Mr. [REDACTED] has a “significant response” to any questions, including that of serious crimes. Special Agent Ripperger told Mr. [REDACTED] he had failed the question about illegal drug use, but the USSS later admitted they lied to him regarding his response to that question, which was in fact inconclusive. Special Agent Ripperger only interpreted Mr. [REDACTED] response to one question (regarding serious crimes) as significant. However, both Special Agent Edward Alston, who reviewed her interpretation on behalf of the Secret Service, and polygraph expert Danny Seiler, who was retained by Mr. [REDACTED] interpreted Mr. [REDACTED] response to the question on serious crimes as inconclusive. If Special Agent Ripperger lied to Mr. [REDACTED] about failing the question on the use of illegal drugs, why is it implausible that she could have lied about Mr.

█████ failing the question on the commission of serious crimes, especially given others experts disagreed with her analysis? The USSS, unable to gain a consensus on Mr. █████ results regarding the question on serious crimes, had to enlist a “tie breaker”, Sgt. William Magnuson, to make a final determination if Mr. █████ failed the serious crimes question, or if it was merely inconclusive.

#### **ERRONEOUS STATEMENT NO. 4**

The statement on page 7, paragraph 2, under Sanctions which reads “*Complainant . . . did not provide any evidence to show that SA's [Special Agent Ellen Ripperger's] testimony was not credible.*” The very fact that Special Agent Ellen Ripperger is at the center of an ongoing OIG investigation regarding this matter to include numerous felonies such as destruction of evidence, tampering with evidence, fabrication of evidence, perjury, and the disappearance of an audio file to which she had command, control, and custody of should be sufficient in and of itself for the Commission to question her credibility. Absolutely nothing is credible about her account of how the audio file of Mr.

█████ Exam disappeared. Refer to the section in the original appeal

#█████ titled “**Evidence supports that the Audio of Mr. █████**

**Polygraph Examination Existed Beyond a Shadow of a Doubt, but was not**



**Produced by the USSS.”** In the event the Commission still has lingering doubt regarding Special Agent Ellen Ripperger’s credibility, please refer to Exhibit Titled “Submission to Department of Homeland Security Office of the Inspector General Inaccuracies within the Deposition of USSS Special Agent Ellen Ripperger”, and the Transcript of Special Agent Ripperger’s Deposition with Red Highlighting labeling lies and Yellow Highlighting for probable lies. Prior to making any ruling, the Commission should wait for the official OIG Final Report to be issued. It was a miscarriage of justice and wholly inappropriate to dismiss the case prior to the disclosure of all the pertinent evidence from OIG.

The Commission is accepting the word of someone of interest in a felony investigation by OIG over the word of someone who has produced written evidence of malfeasance, evidence which the Commission has repeatedly ignored and not considered in its rulings. Mr. [REDACTED] has suffered extraordinary and irreparable damage from being given a polygraph examination which did not meet the standards of either the American Polygraph Association or the federal National Center for Credibility Assessment. Further, on knowledge and belief, the results of polygraph examinations are stored in a minimum of two federal databases, Joint Personnel Adjudication System (JPAS), and the Scattered Castles Joint

Worldwide Intelligence Communication System (JWICS). Mr. [REDACTED] now has the failure of a polygraph exam in his permanent federal record which will cause him severe long-term career harm with regard to securing promotions in positions with national security requirements.

### **ERRONEOUS STATEMENT NO. 5**

The statement on page 9, paragraph 3, under Disparate Treatment which reads, “*Complainant . . . did not provide any evidence showing that SA, or any other Agency official, based their decisions on Complainant's disability.*” This statement is untrue. USSS Special Agent George Stakias told Mr. [REDACTED] to write a statement explaining why he had seen a psychiatrist for several years during a review of the Complainant's security clearance paperwork (Form OF-306), in relation to disclosures made in Question 21 (mental health). The USSS denied possessing such a statement until the day of Special Agent George Stakias deposition, in which the USSS mysteriously was able to find the document requested in discovery. Requiring Mr. [REDACTED] to write such a statement was unlawful and an express violation of executive order #12968 and shows discriminatory animus. The only allowable question a credentialed personnel security investigator from the investigative service provider may ask the health care practitioner is “*if the person under investigation has a condition that could*

*impair judgment, reliability, or ability to properly safeguard classified national security information.”* This question is to determine if such treatment or counseling is relevant to the adjudication for eligibility for access to classified information or sensitive national security position. If the practitioner answers "no" to this question, no further questions are authorized. (Refer to SF-86 Guidance.)

Special Agent George Stakias engaged on a fishing expedition with regard to Mr. [REDACTED] mental health, which was impermissible under the law. If Mr. [REDACTED] was required to write such a statement, it is certain that it is USSS policy to make other applicants write such statements as well, showing further animus toward people who disclose mental health disabilities.

#### **ERRONEOUS STATEMENT NO. 6**

The statement on page 5, paragraph 4, under Agency Contentions which reads, “*Complainant had a significant response to a question during his polygraph exam . . . . Complainant did not offer any evidence to challenge these undisputed facts.*” Mr. [REDACTED] could only have had a significant response on a polygraph exam if he were given a polygraph exam, but the exam the USSS gave to Mr. [REDACTED] did not meet the standards of either the American Polygraph Association or the federal National Center for Credibility Assessment and thus

was not a polygraph examination (Refer to Exhibit APA STANDARDS OF PRACTICE). The exam given to Mr. [REDACTED] was not a polygraph examination because a polygraph exam MUST:

1. Be conducted with properly functioning equipment. (No)
2. Have an audio recording made of the exam and maintained as part of the examination files for a minimum of one year. (No)
3. The Examiner cannot disclose the results of the examination until the analysis of the exam has been completed. (Special Agent Ellen Ripperger told Mr. [REDACTED] he failed the exam before its analysis was complete. In request for admissions.)
4. An examiner subject to quality control review shall fully disclose all pertinent information regarding the case under review. (Mr. [REDACTED] audio was not disclosed, nor was the fact it was suspected he used countermeasures in the Quality Control Report.)

Thus, the agency assertion the non-discriminatory reason Mr. [REDACTED] offer of employment was withdrawn was due to “a significant response to a relevant question on his polygraph exam”, or his failure of a polygraph examination is neither true nor valid.

If the Commission sees fit to accept this polygraph exam as valid, it

should obtain a letter from both the American Polygraph Association and the federal National Center for Credibility Assessment stating that a polygraph examination having the above four aberrations remains a valid and viable polygraph examination added to the record. They will find neither agency will do so.

### **ERRONEOUS STATEMENT NO. 7**

The statement on page 5, paragraph 4, under Agency Contentions which reads “[*the*] Complainant fail[ed] to successfully complete his background check due to the results of the polygraph exam.” A background investigation must be based on the totality of the evidence of the applicant, and utilizing a single element of evidence (in this case a polygraph exam) violates the whole person concept which requires the USSS to consider the “totality” of the applicant’s conduct in all relevant circumstances. In selecting a single element to fail Mr. [REDACTED] the USSS engaged in disparate treatment with regard to Mr. [REDACTED] background adjudication, seemingly due to his disability. Further, the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position expressly prohibits the U.S. Government from taking an adverse security clearance action solely on the basis of a polygraph examination in the absence of adjudicatively

significant information (refer to Security Executive Agent Directive (SEAD) 4), yet this is exactly what the USSS did. Therefore, Mr. [REDACTED] did not fail his background investigation, as the USSS did not follow proper adjudicative guidelines when rendering a decision on his background investigation.

## **SECTION 2: INFERENCES NOT MADE IN THE NON-MOVING PARTY'S FAVOR**

### **JUSTIFIABLE INFERENCE #1 NOT MADE IN THE NON-MOVING PARTY'S FAVOR FOR SUMMARY JUDGEMENT**

The statement on page 9, paragraph 3, under Disparate Treatment which reads “*We find that Complainant's statements show that any hostility was due to SA's [Special Agent Ellen Ripperger] perception that Complainant was not being honest during the polygraph exam, and not due to his disability*” is an inference not made in the non-moving party's (Mr. [REDACTED] favor. At the summary judgment stage, all justifiable inferences must be drawn in the non-moving party's favor. This was inappropriate, and further the Commission could not make such a determination without a full fact-finding and the audio of Mr. [REDACTED] polygraph examination. Further, how could the Commission possibly determine what motivated Special Agent Ellen Ripperger's hostility? Apparently, the Commission read her mind, because there is no way possible the Commission could ascertain the source or motivation for her hostility. However,

Special Agent Ellen Ripperger's badgering of the Complainant with regard to his mental health could be a clue.

**JUSTIFIABLE INFERENCE #2 NOT MADE IN THE NON-MOVING PARTY'S FAVOR FOR SUMMARY JUDGEMENT**

The statement on page 8, paragraph 2, under Disparate Treatment which reads "*SA [Special Agent Ellen Ripperger] added that it was highly unlikely that anxiety would account for the physiological effects that were registered by the polygraph because it is not a test of one's responses to stress or anxiety.*"

Special Agent Ellen Ripperger is not a physician, and the Commission should not be reliant upon her for medical advice. Agent Ripperger's 14-week polygraph course at the National Center for Credibility Assessment (NCCA) does not qualify her to answer this question. The Commission is accepting of the explanation that Special Agent Ripperger was incompetent enough not to realize she was not recording the audio of Mr. [REDACTED] exam despite the software having two built in fail safes to avoid such an occurrence, yet she is somehow competent enough to discern which anxiety conditions could account for what degree of physiological effects when she can't even figure out how to turn on a tape recorder. At the summary judgment stage, all justifiable inferences must be drawn in the non-moving party's favor, and this is yet another example of one that was not.

## **SECTION 3 ERRONEOUS INTERPRETATIONS OF MATERIAL FACTS**

### **SIMILARLY SITUATED COMPARATORS**

As stated in the appeal decision, a "similarly situated" comparator must be similar in substantially all aspects. There is no more uniform or standardized process than the adjudication for a security clearance. It is not just designed to be identical between management areas within agencies, but also between agencies. If this were not the case, convicted felons and pedophiles in one managerial group might be given Top Secret clearances while another managerial group might deny a clearance to a jaywalker. The Commission again parrots Judge Eates erroneous conclusion that because another manager intervened for Special Agent Stephen Tignor to have a second polygraph exam, that nullifies him as a similarly situated comparator.

Both Mr. Tignor and Mr. [REDACTED] were similarly situated comparators. As potential new employees, both Tignor and [REDACTED] were required to undergo the same background investigation, as are all new USSS employees, and as such were equal in all relevant respects to this matter, thus making them similarly situated. The USSS argues that because Tignor had extensive prior employment with the Agency, and a prior successful polygraph examination with the USSS, that disqualifies him as a comparator. Tignor's prior employment is irrelevant to this matter because as previously articulated in



the original appeal, his prior employment did not change the requirements for his background investigation to be rehired by the USSS (which were the same as Mr. [REDACTED] nor did his prior successful polygraph examination exempt him from having to take the same polygraph examination as Mr. [REDACTED] to be rehired. Tignor's background investigation would be the same as Mr. [REDACTED] whether he worked in the past for the USSS, the FBI, or as a checkout clerk at a grocery store.

Further, the appeal decision completely ignores the second similarly situated comparator, Alvario Richards, who was polygraphed by Special Agent Ellen Ripperger. Alvario Richards like Mr. [REDACTED] was an outside applicant for a position with the USSS, underwent a polygraph examination by Special Agent Ellen Ripperger, but unlike Mr. [REDACTED] was not disabled and afforded the opportunity to take an additional two polygraph examinations (for a total of three), unlike Mr. [REDACTED] who was afforded but a single polygraph examination which had admitted technical difficulties by the USSS. Further, Alvario Richards did not have anyone intervene on his behalf to be afforded additional examinations, which is probably the reason the Commission ignores his existence in their response, because there is no mechanism to disqualify him as a similarly situated comparator.

If we accept the Commissions reasoning that a differential in

management staff nullifies comparators, henceforth we must accept that no discrimination occurs in analogous situations where for example all Hispanic applicants take an exam, fail, and are not offered a retest by one manager; but all white applicants take the same exam, fail, but are offered a retest by a different manager. This finding is absurd because agencies can discriminate at will simply by selecting a single manager to engage in discriminatory conduct.

**THE PROFFERED REASONS WERE PRETEXTS FOR  
DISCRIMINATION BOTH DIRECTLY AND INDIRECTLY**

Mr. [REDACTED] has established the proffered reasons were pretexts for discrimination both directly and indirectly. The USSS proffered explanation is unworthy of credence because it is *both* internally inconsistent and not believable. Further, the fact the USSS honed in on Mr. [REDACTED] mental disability and having Special Agent George Stakias make Mr. [REDACTED] write a statement explaining his mental disability as part of his national security paperwork was illegal and shows discriminatory animus. When coupled with Special Agent Ellen Ripperger's badgering of Mr. [REDACTED] during his polygraph examination about his disability, it leaves little doubt the USSS frowns upon hiring those with any mental illnesses, even those which are common and innocuous.

## **RECONSIDERATION MERITED ON ALL GROUNDS**

The appellate decision involved clearly erroneous interpretations of material facts, and in fact made no less than seven materially false statements to justify its affirmation. Additionally, this appellate decision did not reduce any of Mr. [REDACTED] allegations to material fact in the USSS favor, which is required for Summary Judgement. Further, minimally with regard to similarly situated comparators, the appellate decision involved clearly erroneous interpretations of the law.

Additionally, the appellate decision will have a substantial impact on the policies, practices, or operations of the United States Secret Service with regard to how it will treat applicants with mental disabilities.

Further, the three principal issues Mr. [REDACTED] raised were never reduced to material facts in favor of the USSS as required for summary judgement. Those issues should be given reconsideration and reduced to fact as required by law. The issues were: (1) was Mr. [REDACTED] polygraph test conducted properly, and if not, did the USSS steer Mr. [REDACTED] to fail the exam due to his disability? (2) Were the polygraph test results interpreted properly, and if not, did discriminatory animus play a role in the interpretation of his results? In addition, (3) Did other applicant(s) for employment who were not disabled receive more favorable treatment in both the analysis of their polygraph

examinations and the opportunity to retake their polygraph exams than Mr.

██████ did?

For all of the aforementioned reasons, it would be a severe injustice not to reconsider this decision.

### **LACK OF RECONSIDERATION PORTENDS EEOC CREDIBILITY**

It is also important for the EEOC to consider how the paper trail of Mr. ██████ case may look to anyone who reviews it. It may look like to a thoughtful person that Judge Eates started out with every intention of giving Mr. ██████ a fair and unbiased hearing, and ordered the USSS to produce the relevant materials during discovery. Perhaps at that point officials at a much higher level of government decided to intervene who thought it was imperative to retain the ability to interrogate American citizens under consideration for access to national security information, but who had committed no crimes, because this case could jeopardize the government's continued ability to do this. Maybe an ex-parte communication was had with Judge Eates to the effect of "make this go away or your next assignment as a judge will be sweeping up at the Capitol Building after hours." At which point explanations about missing evidence that most would consider ridiculous were now routinely accepted, and pertinent facts relevant to the

Complainant's case were seemingly ignored. The Complainant, feeling like his case went from fair and balanced to a government sponsored cover up, enlisted the aid of the Office of the Inspector General.

The Office of the Inspector General initially could not be bothered to look into this, even though they investigated one of the Complainant's co-workers for allegedly selling Girl Scout cookies during working hours. It was only after Senator Chris Van Hollen started asking questions did they agree to open an investigation, an investigation which has been active for over three years.

In August of 2019, OIG notified Senator Van Hollen that it would be concluding its investigation soon. In 2020, Mr. [REDACTED] made a FOIA to the Department of Homeland Security (DHS) for the results of the OIG investigation which was initially ignored, and they claimed never to have received. Sixty days later Mr. [REDACTED] made another request, this one denied because OIG's investigation went from "concluding soon" to "active and ongoing." Mr. [REDACTED] has appealed the denial of his FOIA request, but DHS still has not responded well after the legal time requirement for them to do so.

Mysteriously, shortly after Mr. [REDACTED] and his Senator Chris Van

Hollen begin pressing for OIG's investigation results to add to his EEOC Case, the EEOC after years of inaction on the appeal suddenly had the imperative to immediately dispose of the case - without the OIG investigation results of course. The EEOC was considerate enough to put no less than seven materially false statements, and two additional inferences made in favor of the USSS into its appeal decision. OIG has told Senator Chris Van Hollen they are not certain when their investigation will be closed, or their investigation results released, because they "wish to be thorough." They also refuse to answer if the results of their investigation will be released in their semi-annual report to Congress. Would it not be sad if the case were kept open in perpetuity and the results never released?

A scenario such as what has taken place with Mr. [REDACTED] case might evoke a word for many intelligent people, and that word is corruption. The EEOC's handling of Mr. [REDACTED] case might also evoke an additional word, and that word is complicit.

The United States Secret Service has fought vigorously to prevent any hearings in this matter, and for good reason. One must recognize that even if Mr. [REDACTED] is ultimately found not to have been discriminated against, should it be discovered that Mr. [REDACTED] did in fact receive an unethical polygraph

examination, or even a polygraph examination that was not conducted up to the standards of the National Center for Credibility Assessment (the governmental body for oversight, training, and regulation for DoD and federal polygraph examinations), it presents a host of problems, potentially very expensive problems, for the United States Secret Service.

First, if Mr. [REDACTED] were not given a proper exam, then there is no reason to believe that other USSS applicants, including applicants in protected classes, were given valid exams either, and some of them MAY have been discriminated against by using the polygraph.

Second, the consequence of this is at a minimum, every polygraph examination given by Special Agent Ellen Ripperger is potentially tainted and subject to review. If Special Agent Ellen Ripperger was taking direction from a higher authority on how this exam was conducted, it is highly likely every polygraph examination given to USSS applicants was fraudulent. The likely result of either of these scenarios would be a class action lawsuit against the USSS.

Third, the embarrassment of such an adverse finding would destroy what little credibility the United States Secret Service has left as a law enforcement agency in the wake of recent numerous scandals, perhaps

subjugating it further under the Department of Homeland Security, rightly stripping it of nearly all autonomy, or perhaps even eliminating it in its entirety.

Simply stated, the lack of a hearing will likely be seen as an attempt to bury this problem rather than resolve it, and erode what little respect many have for law enforcement which often is seen by the American people as immune from reproach or punishment, even when deservedly so. If for no other reason, a full hearing should be held to avoid the appearance of impropriety, as given the consequences to the USSS of holding a hearing, the potential exists for the public to infer (rightly or wrongly) that ex-parte communications were likely held regarding this matter with both Judge Eates and the Commission upon the appeal of her decision, resulting in its dismissal without an opportunity for a fact finding. The fact the USSS did not respond to Mr. [REDACTED] response to their opposition in which he requested they produce an affidavit from the person who repaired the polygraph audio and its maintenance records might lead many to conjecture that perhaps the USSS felt no need to respond because doing so simply drew more unwanted attention to the matter, and the fix was already in the bag.

**REQUEST FOR SUMMARY JUDGEMENT IN FAVOR OF  
MR. [REDACTED]**



The United States Secret Service has demonstrated a consistent lack of credibility in this matter. It has beyond any reasonable doubt done most if not all of the following: destroyed evidence, withheld evidence, misstated facts, and made materially false and deceptive statements to both Mr. [REDACTED] Senator Chris Van Hollen, and the EEOC. It should not be rewarded for this behavior by the EEOC, but unfortunately, it has been.

Further, the USSS has engaged in what would be best termed deceptive treachery to use any administrative means to dismiss the complaint on procedural grounds. As an example, the USSS waited more than 30 days after the first EEOC decision to submit the agencies final action or dismissal of the complaint. When it appeared the USSS would be non-responsive in this regard, Mr. [REDACTED] filed his appeal as to not exceed the customary EEOC 30-day deadline to file an appeal. The USSS then tried to argue that Mr. [REDACTED] appeal was not properly filed because he failed to wait for the agencies final action or dismissal of the complaint. Given the lack of responsiveness of the USSS to Mr. [REDACTED] FOIA requests, he likely would have been waiting in perpetuity, and if he tried to file a claim after 30 days had passed, the USSS or the EEOC certainly would have claimed the administrative deadline to do so had been exceeded, and attempted to have

the complaint dismissed on those grounds. Mr. [REDACTED] has continually been put in no win situations for the last five years during these proceedings.

Thus, a reasonable person would conclude even if the EEOC affords Mr. [REDACTED] a fact-finding hearing to determine the truth of this matter, it will be little more than a kangaroo court and yet another gross miscarriage of justice. Mr. [REDACTED] therefore requests summary judgement in his favor, as it is the only decision that will serve the interests of justice given the history and behavior of both the USSS and the EEOC.

Respectfully submitted,

[REDACTED]

October 20, 2020

Date

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

Exhibits:

Original Appeal of Summary Judgement Decision for USSS

Response to Agency (USSS) Opposition (of Appeal)

Submission to Department of Homeland Security Office of the Inspector General  
Inaccuracies within the Deposition of USSS Special Agent Ellen Ripperger

Deposition Transcript Special Agent Ellen Ripperger with Markup of  
Inconsistencies

Motion for Sanctions

Danny Seiler Polygraph Expert Affidavit

USSS Discovery Responses Polygraph Accuracy and Mental Health Questions

## **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was sent by Certified Mail Signature Required to:

DIRECTOR, OFFICE OF FEDERAL OPERATIONS  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
131 M STREET NE  
WASHINGTON DC 20507

This is to certify that a copy of the foregoing was sent by email to:

Steven Giballa  
Agency Representative  
United States Secret Service  
[Steven.Giballa@usss.dhs.gov](mailto:Steven.Giballa@usss.dhs.gov)

On this 20<sup>th</sup> day of October 2020.

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