

**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.

██

February 22, 2021

**RESPONSE TO UNITED STATES SECRET SERVICE (USSS)
OPPOSITION FOR RECONSIDERATION OF APPEAL # ██████████
AFFIRMING A DECISION FOR SUMMARY JUDGEMENT TO THE
UNITED STATES SECRET SERVICE WITHOUT A HEARING**

RESPONSE

A response to Attorney Giballa’s Opposition for reconsideration from the United States Secret Service is warranted because (1) it contains numerous materially false statements, (2) most contentions in the response have not been reduced to material fact in the moving party’s favor, and (3) it further requests the Commission make *additional* inferences in the moving party’s favor, which alone invalidates the request for summary judgement. At the

summary judgment stage, ALL justifiable inferences must be drawn in the non-moving party's favor. In this instance, NO justifiable inferences were made in the non-moving party's favor, and if they were, this matter would immediately be referred for a full fact finding.

Not only does the opposition request the existing numerous inferences which favor of the USSS to stand, it makes additional inferences in favor of the USSS to try and justify the AFFIRMATION of the original appeal. This is impermissible under the law when granting summary judgement. For summary judgement to be granted, there must exist no issues of material fact requiring resolution by the fact finder. However, 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, withheld, or falsified evidence ordered to be produced during discovery. Facts which remain under DHS-OIG investigation at the time of this filing. The opposition repeatedly makes statements to the effect of "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 ONE FAILURES TO REDUCE MATERIAL FACTS

I. THE DESTRUCTION OF THE AUDIO RECORDING

The United States Secret Service goes to great lengths in section II of their opposition to describe how likely it is that the United States Secret Service did not destroy the audio of Mr. [REDACTED] polygraph examination. It doesn't matter if it was likely. It doesn't matter if the proffered explanation is believable. For summary judgement, it must be reduced to material fact that the USSS in fact did not destroy it. Especially given their internal quality control documents signed by two USSS Special Agents affirm the recording existed and it was audible at random intervals throughout Mr. [REDACTED] *entire* polygraph examination. The United States Secret Service's documents disclosed during discovery completely obliterate the USSS argument in Section II that "[the audio file] was never destroyed or altered and Complainant has failed to prove otherwise."

The United States Secret Service should provide the following affidavits to the Commission to justify summary judgement. An affidavit from the person who discovered Special Agent Ripperger's polygraph unit was malfunctioning, and how this discovery was made. An affidavit from the technician who fixed

Special Agent Ripperger's polygraph unit, stating what exactly was fixed. The documents showing where and when the repairs were made to Special Agent Ripperger's polygraph unit. The receipts for the parts put into Special Agent Ripperger's polygraph unit. Further, Special Agent Ellen Ripperger states in her deposition "They're cheap little external mikes" which have "since been replaced because they were problematic." (Page 124 Ripperger Deposition). Given this, the United States Secret Service could not possibly have been the only entity to experience this problem with the Lafayette Polygraph microphones, so the United States Secret Service should obtain an affidavit from an engineer at Lafayette attesting to this as a known and recurring quality control problem with Lafayette polygraph units.

The United States Secret Service has refused all requests to provide any evidence whatsoever that any type of technical issue was responsible for a purported failure to record Mr. [REDACTED] polygraph examination. In fact, what little was provided in discovery to Mr. [REDACTED] proves the exact opposite, that his exam was recorded and audible in its entirety. Heresy and plausible theories about what may have happened do not reduce this matter to material fact, and fail to meet the burden for Summary Judgement.

SECTION TWO IMPERMISSABLE INFERENCES MADE IN MOVING PARTY'S FAVOR

As if the United States Secret Service has not been provided enough inferences made in their favor in prior submissions to the Commission, the USSS now requests a finding that Special Agent Ellen Ripperger's conduct "was motivated by his [Mr. ██████] conduct and not by his disability" which is asking the Commission to blame to victim. Requesting such a finding is asking the Commission to engage in speculation and inference in the moving party's favor, and is expressly forbidden when issuing a finding a Summary Judgement.

If Special Agent Ellen Ripperger was entitled to accuse Mr. ██████ of being a liar, imply he was an arsonist, infer he was guilty of using illegal drugs and past serious undetected crimes, and lie to him about the results of his polygraph responses pertaining to illegal drug use, certainly Mr. ██████ should be entitled to point out when Special Agent Ellen Ripperger was lying to him and being inconsistent during her examination. Even Special Agent Ellen Ripperger and the United States Secret Service have admitted that Mr. ██████ was lied to during the interrogation in his polygraph examination, and to suggest that he endure such abuse and his failure to willing do so was justification for his disparate treatment demonstrates this was not a background investigation, but an inquisition, whose motivations have not been reduced to material fact, and are likely motivated by his disclosure of a mental disability.

The question the Commission should be asking is why Special Agent

Ellen Ripperger would badger an applicant with an impeccable background with such accusations, when nothing in the material records supports such unfounded allegations. Further, Mr. ██████ went on to be issued an Executive Branch Top Secret (T5) clearance after an 18 month investigation into his background, which made no finding to deny him a clearance. Given the United States Secret Service refused to answer during discovery how many people with disabilities failed its polygraph examinations, and that United States Secret Service Special Agents came forward to Mr. ██████ and his attorney to report that the polygraph was being utilized as a pretext to deny veterans with PTSD positions, certainly the matter merits investigation. Especially when one considers the depths to which the United States Secret Service delved in Mr. ██████ mental health disability.

SECTION THREE: EVIDENCE WITHHELD IN DISCOVERY

1. THE EXISTENCE OF SIMILARLY SITUATED COMPARATORS

In Section V, the United States Secret Service complains that similarly situated comparator Alvario Richards was never raised as a comparator before the Administrative Judge. This is because the United States Secret Service failed to disclose him to Mr. ██████ during the discovery process. The United States Secret Service had an obligation to disclose the existence of Mr. Richards to Mr. ██████ during discovery, but failed to do so. Accordingly, they cannot now claim this

argument as untimely or inadmissible (*Saxena v. Goffney*, (2008) 159 Cal.App.4th 316). The United States Secret Service incorrectly frames this as being asked to “reopen discovery”, but it is actually a case of their own willful failure to comply with discovery.

Further, the United States Secret Service did not disclose the identity of comparator Special Agent Stephen Tignor, who was also brought to the attention of Mr. [REDACTED] and his attorney via contact with an individual who identified himself as a USSS Special Agent. The only difference between Mr. Tignor and Mr. Richards is the timing of disclosure to Mr. [REDACTED] about the existence of this comparator, facts the United States Secret Service failed to disclose in discovery. If the United States Secret Service did not complain about Mr. Tignor, they can hardly complain about Mr. Richards given their failure to disclose. While the United States Secret Service may have considered compliance with Discovery “too burdensome”, apparently two of their Special Agents did not share the same animosity for justice.

Significantly, while the United States Secret Service seeks to suppress the evidence of Mr. Richards experience with Special Agent Ellen Ripperger, they do not deny or dispute the account or description of Mr. Richards experience. On knowledge and belief, the information pertaining to the disclosure of the existence of Mr. Alvario Richards was done under attorney client privilege, and the Special

Agent who made the disclosure indicated they feared retaliation from the United States Secret Service should their identity be revealed.

2. POLYGRAPH DATA FILES WITHHELD FOR A REASON

Through the employ of a second polygraph and forensic expert who will be submitting an affidavit at a later time, it has come to light that the probable reason the United States Secret Service withheld the computer polygraph data files and provided only paper copies of the polygraph charts in pdf format is that such files may contain checksums that enable a forensic expert to discern if the polygraph file(s) have been tampered with. This would explain why the Department of Homeland Security Office of the Inspector General (DHS-OIG) has kept the investigation open for years and not closed the investigation. If DHS-OIG discerned that the polygraph examination files in Mr. ██████ exam were tampered with, this would be subject to potential disclosure either in the DHS-OIG annual report, a DHS-OIG Investigation Report, through FOIA requests, or by the repeated requests from Senator Chris Van Hollen. Further, DHS-OIG sent the supposed audio files of Mr. ██████ polygraph examination out for forensic examination to discern if they had been subject to tampering. The results of these forensic exams were requested under a FOIA request that was denied. Mr. ██████ appealed the denial of this FOIA request, but DHS still has not responded well after the legal time requirement for them to do so. DHS-OIG mysteriously changed

its investigation status from “concluding soon” to “active and ongoing.” The reason for this however is no mystery. By never closing the case, nothing discovered in the investigation is subject to disclosure, and the truth can be hidden from the American public in perpetuity.

SECTION FOUR MATERIALLY FALSE STATEMENTS

MATERIALLY FALSE STATEMENT NO. 1

In the conclusion it is stated “The Decision on Appeal did not involve any clearly erroneous interpretation of material fact or law” and in Section I states “Complainant did not dispute any of the Agency’s statements of material fact.” Neither statement is true. At a minimum, the Appeal of the Decision for Summary Judgement articulates the existence of no less than SEVEN erroneous statements. The United States Secret Service Opposition submission includes an additional NINE erroneous statements. The United States Secret Service has submitted to the EEOC no less than SIXTEEN clearly discernable erroneous statements. (The term erroneous is used very loosely here, because most people would call them lies.) Further, the Appeal Decision includes TWO inferences made in the moving party’s favor. The United States Secret Service Opposition submission requests the EEOC make yet another inference in the moving party’s favor to deny reconsideration, for a total of THREE inferences

made in the moving party's favor.

MATERIALLY FALSE STATEMENT NO. 2

The statement in Section VI, "Complainant was not qualified for the position of IT Program Manager" must be false because Mr. [REDACTED] is currently a GS-15 IT Program Manager at another federal agency holding a position requiring a Tier 5 (Top Secret) background investigation. Mr. [REDACTED] was also a GS-14 IT Program Manager for in excess of one year prior to his application to the USSS, making him by OPM standards qualified in every respect for the position. Further, at the time of his application, Mr. [REDACTED] held a FAC P/PM Expert Level III Program Management Certification from the Federal Acquisition Institute (FAI), the highest federal Program Management certification available in the government.

MATERIALLY FALSE STATEMENT NO. 3

In Section VI, the following false statement is made "*The record demonstrates that Complainant was not a qualified individual with a disability within the meaning of the Rehabilitation Act.*" The Office of Personnel Management lists disabilities on [Form SF 256](#) and code 91 refers to "Significant Psychiatric Disorder", which specifically lists major depression declared on Complainant's security clearance and application paperwork.

Further, referring to the EEOC publication “[The ABCs of Schedule A Disability Program Managers & Selective Placement Program Coordinators](#)”, Question 3 reads “Who is a person with a disability under the Rehabilitation Act of 1973?”. The answer specifically lists Major Depressive Disorder and Obsessive Compulsive Disorder as two of 18 example impairments almost always covered under the Rehabilitation Act. Mr. [REDACTED] declared by means of a statement from a physician he suffered from both Major Depressive Disorder and Obsessive Compulsive Disorder on his employment and security paperwork, thus he was covered under the Rehabilitation Act of 1973 for two impairments, despite the false statements made by the United States Secret Service to the contrary in support of their opposition statement.

Further, under Discovery Interrogatories, No. 9 states, “If the Agency contends that the Complainant does not meet the statutory definition of disabled, please set forth all facts which support such a contention.” To which the United States Secret Service responded, “The Agency is not aware of any information at this time, prior to the close of discovery, that would support a contention that Complainant does not meet the statutory definition of “disabled.” Yet again Attorney Giballa misstates the facts when they fail to support the conduct of the United States Secret Service.

MATERIALLY FALSE STATEMENT NO. 4

In Section four the statement “[Special Agent George] Stakias made a perfectly appropriate and minimal inquiry into Complainant’s mental health conditions to determine whether such conditions could affect his eligibility to access classified information pursuant to the Adjudicative Guidelines for Determining Access to Classified Information and Executive Order 12968” is false on all counts.

Special Agent George Stakias did not ask Mr. [REDACTED] to provide as stated by the United States Secret Service “a short description of his mental health.” Special Agent George Stakias instructed Mr. [REDACTED] to list EVERY reason why he had seen a psychiatrist. This request was neither short, minimal, or noninvasive. It was no less than a fishing expedition into every aspect of Mr. [REDACTED] mental health which is impermissible by any legal standard.

Executive Order 12968 does not permit the agency to ask the applicant ANYTHING about their mental health. It permits them to ask the applicant’s *physician* a single question. This is because the agency holds power over the applicant, and can coerce the applicant to divulge information pertaining to their mental health which they are under no obligation to disclose under HIPAA, but will feel obligated to do so when asked, out of fear a failure to disclose will cost them the job opportunity. It was for this reason alone Mr.

██████ did not tell Special Agent George Stakias his request was unlawful and refuse to answer his inquiry. Requiring Mr. ██████ to write such a statement was unlawful and an express violation of executive order #12968, and further shows discriminatory animus.

The only allowable question a credentialed personnel security investigator from the investigative service provider may ask is to that of a health care practitioner (not the applicant) is “[Does] the person under investigation [have] 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. ██████ mental health, which was impermissible under the law. If Mr. ██████ 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.

MATERIALLY FALSE STATEMENT NO. 5

In Section 3, the United States Secret Service states Mr. Seiler (Mr. ██████ polygraph expert) “*limited his criticism of the examination to a difference of opinion regarding the optimal polygraph scoring method.*” This is not true. Mr. Seiler had SIX specific criticisms of Mr. ██████ exam and states the following in his polygraph report to Mr. ██████ which was submitted to the EEOC as Exhibit #1 in his Motion for Sanctions.

1. The exam lacks congruency.
 - a. For example, ██████ ██████ scores a high truthful (+3) that he did not lie on any aspect of his application yet he failed the question on committing past serious crimes which were to be declared on his application. This is also an example of why I need to speak with the examiner to determine the scoring rules that were applied in this exam.
2. The Quality Control Review conducted by the Secret Service does not meet the standards of the American Polygraph Association without a complete review of at least the audio files. A review of the polygraph charts is not in my opinion a complete quality control review procedure.
3. I did not observe any strong and consistent evidence of countermeasures being employed on the control questions which is where they typically would be employed by someone trying to defeat the exam.
4. Overall in my professional judgment, even if the USSS provided all the required materials to properly evaluate this exam, my best estimate at this point would find the test to be inconclusive.
5. For an inconclusive exam, absent any disqualifying admissions during the exam of wrong doing, my standard protocol would be to retest the examinee and target the most reactive specific relevant issue of background concern.
6. In my professional opinion, based on the information provided by ██████ ██████ he should be granted a second polygraph examination.

MATERIALLY FALSE STATEMENT NO. 6

In Section 3, the United States Secret Service states, “*Mr. Seiler, interpreted Complainant’s response to the relevant question of whether he had engaged in serious criminal activity as “inconclusive,” rather than “significant response.” See Request at 7-8. This statement is not supported with any citation to the record and is, quite simply, wrong.*” In reality it is the United States Secret Service that once again has submitted materially false statements. Refer to signed Affidavit of Danny Seiler, October 4, 2016, item #8(d) which states: “*In my professional judgment, based on the materials provided, I find the screening test to be inconclusive.*”

MATERIALLY FALSE STATEMENT NO. 7

In Section 3, the United States Secret Service states, “*Every polygraph examiner who evaluated Complainant’s examination agreed that his response to relevant question R4 was a significant response, including Mr. Seiler.*” From the previously articulated answer to Materially False Statement No. 6, it is clear this cannot be the case for Mr. Seiler. Further, the documents provided by the USSS show examiners Ripperger and Alston could not agree on the question of a significant response pertaining to Series 2 Question 4 R24 on serious crimes. Ripperger rated as a significant response, Alston rated as

inconclusive, and a tie breaker Magnusen rated as significant response. Hence the three scoring sheets in the polygraph results file provided during discovery. While there was consensus on the question of alleged drug use (R6, R26) as inconclusive by both Ripperger and Alston, there was never a consensus on the question of serious crimes, and to claim otherwise refutes the documents provided to Mr. [REDACTED] during discovery. Hence Mr. [REDACTED] submission to the EEOC was correct, Ripperger and Magnusen rated the question on serious crimes as a significant response while Alston and Seiler did not.

MATERIALLY FALSE STATEMENT NO. 8

In Section II it is stated, “*The audio file produced by the Agency to Complainant and the administrative judge included audible portions*” is not true. There are not audible “portions”, with the exception of a one minute header. As stated in the Spoliation Sanctions Motion, “2. In fact, the audio files proved by USSS were virtually blank and contained nothing of any use or significance.” This remains the contention of Mr. [REDACTED] and is yet another instance that has not been reduced to material fact in the United States Secret Service’s favor, making summary judgement impermissible. The audio must be played during a hearing for a judge to ascertain who is lying. These are mutually exclusive versions of the truth, and only one of them is correct.

MATERIALLY FALSE STATEMENT NO. 9

In Section VI, the United States Secret Service states, “The Agency presented a legitimate, non-discriminatory reason for not hiring Complainant.” The single reason the United States Secret Service provided for not hiring Mr. [REDACTED] was that “he failed his background investigation.” That statement isn’t true. Mr. [REDACTED] failed a polygraph examination which the United States Secret Service lumps into its background investigation. The evidence overwhelming proves the United States Secret Service improperly administered Mr. [REDACTED] polygraph examination, and it did not follow either its own internal procedures nor those of the National Center for Credibility Assessment, the governmental body for oversight, training, and regulation for DoD and federal agency polygraph examinations. The ostensible results of the Mr. [REDACTED] polygraph exam are of no value; and it cannot be concluded Mr. [REDACTED] failed the polygraph exam, thus it cannot be determined he failed his background investigation either. Hence the United States Secret Service has not provided a nondiscriminatory reason for not hiring Mr. [REDACTED]

SECTION FOUR: STATEMENTS OF FALLACIOUS LOGIC

FALLACIOUS LOGIC STATEMENT NO. 1

In the Conclusion section, the United States Secret Service states a

“Decision on Appeal [will not] have any impact on the policies, practices, or operations of the Agency.” This quite simply is an impossibility to discern, as it is impossible to predict given the nuances of this case what the decision will be, or how the regulatory bodies will respond to the United States Secret Service’s conduct in this matter.

FALLACIOUS LOGIC STATEMENT NO. 2

In Section 3, the United States Secret Service states, “Why [should] the Agency be subject to these non-governmental standards (the American Polygraph Association). Both Special Agent Ellen Ripperger, Special Agent Ed Alston, and William A. Magnuson were members of the American Polygraph Association during the time of Mr. ██████ exam. On knowledge and belief, the United States Secret Service routinely pays for its polygraph examiners to take American Polygraph Association courses and for membership within the organization. Further, does the United Secret Service completely disassociate itself with the protocols of the most recognized civilian governing body for polygraph oversight and integrity?”

FALLACIOUS LOGIC STATEMENT NO. 3

In Section IV, the United States Secret Service states, “*SA Ripperger was not the subject of an investigation at the time of any of her testimony in this matter*” and because of that “*her testimony could not possibly have been*

influenced by an investigation that did not yet exist.” That is analogous to saying if someone robbed a bank but was interviewed by the police as a witness to the robbery rather than the perpetrator to the robbery, the fact they had robbed the bank would not influence their statements to the police. If Special Agent Ripperger committed a crime or misconduct during Mr. ██████ exam, that fact would certainly influence her testimony under deposition whether there was an active OIG investigation or not.

FALLACIOUS LOGIC STATEMENT NO. 4

In Section IV, the United States Secret Service states, “*Complainant’s attempt to create an adverse credibility factor through his own action of simply reporting a matter to the OIG for investigation, especially where, as is the case here, there has been no finding of misconduct or impropriety.*” First, there has been no published finding in this matter, as OIG has not completed its investigation. That is materially and significantly different to the United States Secret Service’s claim of “*no finding of misconduct or impropriety.*” (Which is also materially false statement number 10 by the United States Secret Service.)

Second, Mr. ██████ did not “*create*” an adverse credibility factor, he reported one based on the facts of this case. Third, given OIG has sent Special Agent Ripperger’s audio out for forensic analysis, and the case has been under investigation for literally years, OIG is not keeping the case open because they

found no misconduct. OIG closes cases without merit within a quarter, one need only read OIG annual reports to discern that fact.

FALLACIOUS LOGIC STATEMENT NO. 5

The United States Secret Service has continually misrepresented Mr. [REDACTED] as challenging the validity or the science of the polygraph examination. Mr. [REDACTED] is challenging the validity of the polygraph examination *given specifically to him, not the validity of polygraph examinations in general*. It has always been Mr. [REDACTED] contention that the United States Secret Service purposely failed him on his polygraph examination as pretext for not hiring him due to the disclosure of a mental illness. On knowledge and belief, the United States Secret Service is using the polygraph exam which is immune to any oversight as pretext to disqualify multitudes of applicants with mental disabilities they do not wish to hire, such as veterans with PTSD, and those with mental illnesses they deem undesirable for employment based on ignorance.

FRAUD UPON THE EEOC

The United States Secret Service has continually entered into the record with regard to this case statements which are untrue, and which their counsel Attorney Giballa had to know were untrue (because quite frankly no one with an IQ above 40 will believe the statements or excuses the United States Secret Service has put

forth in this matter.) More egregious is after Mr. ██████ points out the inaccuracy of the statements in responses with citations proving statements inaccurate, the United States Secret Service will resubmit the same false statements again as facts, statements which they must know are untrue. How many times will the EEOC allow this to happen without acknowledging this is not merely a case of overzealous representation or incompetence, but an intentional fraud committed upon the court? It is clear in this case that attorney misconduct and abusive discovery tactics have resulted in favorable judgments for the United States Secret Service, and for the EEOC to allow this conduct to continue unfettered does not serve the interests of justice.

MR. ██████ WAS TREATED DIFFERENTLY

There is clearly disparate treatment with regard to how Mr. ██████ was treated by the United States Secret Service. Mr. ██████ was given a polygraph examination where he was lied to, bullied, badgered about his disability, and given a polygraph exam which 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 agency polygraph examinations – including the United States Secret Service. (Refer to National Center for Credibility Assessment Publication PDD 505 Law Enforcement Pre-

Employment Test). It states in item 1.1, Assure recording device is functioning. This is but one of many irregularities that would nullify Mr. [REDACTED] polygraph examination as being valid as pointed out by Mr. [REDACTED] polygraph expert Mr. Seiler.

Mr. [REDACTED] was treated differently than Mr. Tignor or Mr. Richards, both of whom were afforded polygraph retests while Mr. [REDACTED] who was disabled was not. Further, discovery documents show in item No. 12 the existence of an applicant who had a significant response which was concurred by United States Secret Service Quality Control, yet this applicant (File No. 20130186) was afforded a retest, and Mr. [REDACTED] was not. Mr. [REDACTED] single significant response was not concurred by United States Secret Service Quality Control, but they brought in a “tie breaker” to deny him employment rather than afford him a retest as had been done routinely with other applicants.

Very simply, it cannot be determined Mr. [REDACTED] was not treated differently due to his disability without a full hearing and fact finding, but even if that were to occur, the United States Secret Service would simply withhold evidence and misstate facts for the record as they have done numerous times during these proceedings. This makes a fair hearing an impossibility for Mr. [REDACTED]

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

Mr. [REDACTED] has established the USSS proffered reasons for the retraction of his offer of employment 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 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, 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. ██████ 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. ██████ polygraph test conducted properly? [NO], and if not, did the USSS steer Mr. ██████ to fail the exam due to his disability? [YES] The evidence presented to the EEOC shows the answer to these questions are NO and YES respectively. (2) Were the polygraph test results interpreted properly? [NO], and if not, did discriminatory animus play a role in the interpretation of his results? [YES] The evidence presented to the EEOC shows the answer to these questions are NO and YES respectively. 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? [YES] The evidence presented to the EEOC shows the answer to this question is YES.

Given the evidence, how does the EEOC legally, morally, logically, ethically, or rationally justify deny Mr. ██████ a hearing of fact finding in this

matter?

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 to a thoughtful person 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 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 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 later 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. ██████ case might evoke a word for many intelligent people, and that word is corruption. The EEOC’s handling of Mr. ██████ 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. ██████ is ultimately found not to have been discriminated against, should it be discovered that Mr. ██████ 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 not 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. ██████ 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 at a high level.

EEOC HAS ABDICATED ITS RESPONSIBILITIES IN THIS CASE

The EEOC has very simply abdicated any responsibility with regard to the handling of this case, and the reasons for doing so are irrelevant. The EEOC has

allowed the United States Secret Service to submit false statement into the record that were disproven by the Complainant with zero sanctions or censure for doing so. The EEOC has granted summary judgement to the United States Secret Service when none of the material facts were reduced in their favor. The EEOC has ignored the discrepancies in the material record submitted by the United States Secret Service throughout the prosecution of this case to the point of ad nauseum.

The United States Secret Service has become so brazen that it submits five statements in Section I of its opposition that this response demonstrably shows are patently untrue. Those statements are: (1) Complainant did not dispute *any* of the Agency's statements of material fact, (2) Request almost entirely lacks citations to the record, (3) the accuracy of Complainant's assertions [are] difficult, if not impossible, to verify, (4) Complainant . . . did not provide any evidence showing that SA, or any other Agency official, based their decisions on Complainant's disability, and (5) Several of the "erroneous statements" (. . .) are disputes of legal interpretations, rather than genuine disputes of material fact. Given this, it is an utter impossibility for Mr. [REDACTED] (or anyone else) to prove their case in such a biased and one-sided venue.

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. ██████████ 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. ██████████ 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. ██████████ 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. ██████████ 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. ██████████ 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]

February 22, 2021

Date

[REDACTED]
[REDACTED] Road
[REDACTED]
[REDACTED]
[REDACTED]

Exhibits Referenced and Previously Submitted to EEOC:

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 Federal Express with a 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

On this 26th day of February 2021.

██████████ ██████████