IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Nadine Pellegrino
Harry Waldman
Plaintiffs

V.

Civil Action (Civil Rights Violations)

TERM, 2009

No.: 09-cv-5505

United States of America,
Transportation Security Administration,
Div. of Dept. of Homeland Security,
Washington, DC.

TSA TSO Nuyriah Abdul-Malik
sued in her individual capacity

TSA STSO Laura Labbee
sued in her individual capacity

TSA TSO Denice Kissinger
sued in her individual capacity

Doe TSA Aviations Security Inspector (ASI)
sued in their individual capacities

Doe TSA Officials sued in their individual
capacities

USA, Transportation Security Administration
C/O United States Attorney's Office
Eastern District of PA
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106
Defendants

PLAINTIFFS' 8-1-11 OPPOSITION MOTION TO NAMED DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' 3RD AMENDED COMPLAINT 2-17-11

Introduction

This lawsuit arose from violations and deprivations of Plaintiffs' US/PA Constitutional rights, liberties, and privileges (civil rights) and violations of federal/state statutes, abuses of power and authority, as well as misuses of the judicial system by Defendants (hereinafter Defs.) Abdul Malik, Laura Labbee, Denice Kissinger and Doe TSA Aviation Security Inspectors (ASIs) and Doe TSA Officials (TSAOs) (Doe Defs.). Pellegrino is a *TSA crimes victim*. Waldman is the husband of a *TSA crimes victim*. Plaintiffs believe the TSA Defs.' conduct was unlawful. Prior to filing, Plaintiffs sought every alternative known to them to resolve matters. Plaintiffs believe the Dept. of Justice should be prosecuting the TSA Defs. rather defending them with taxpayer dollars. Plaintiffs brought this lawsuit own their own behalf and in the public's interest and request a pubic accounting of the TSA's Defs.' misconduct (because the TSA failed in holding the Defs. accountable) and to vindicate their civil rights. Plaintiffs disagree with the Defs.' mis-characterizations and substitutions of material facts and oppose the Defs.' motion to dismiss Plaintiffs' 3rd Amended Complaint (hereinafter CMP) and accompanying memorandum of law in its entirety for the following reasons.

Argument

Claim I. TSA Defs. Abdul Malik and Labbee: a) violated clearly established property rights during a provocative, abusive search of Plaintiffs' accessible belongings at Phila. Intl. Airport (PIA) Terminal B CKPT; b) caused permanent damages to Plaintiffs' property; and c) either or both wilfully confiscated and disposed of personal belongings after the search ended without Plaintiff's knowledge or permission. Intentional damages were caused by Abdul Malik while Labbee directly supervised. Under the Federal Tort Claims Act (FTCA) the USA has waived immunity and can be held liable for the tortious conduct of its agents. [1] The USA is liable for damages caused by its agents, Abdul Malik and Labbee.

1) The named Defs.(hereafter Defs.) argue misleadingly that the only statute applying to this claim is *Bivens* [2] while the FTCA 28 USC §1346(b) against the USA [3] applies more appropriately to

---

1 "When the FTCA was passed, courts generally applied the law of the place where the injury occurred in tort cases....." *Sosa v. Alvarez-Machain,* 542 U.S. 692, 700 (2004) (citing 28 U.S.C. § 1346(b)(1)). "The extent of the United States' liability under the FTCA is generally determined by reference to state law." *Horne v. United States*, 223 F. App'x 154, 156 (3d Cir. 2007) (citing *Molzof v. United States*, 502 U.S. 301, 305, 112 S. Ct. 711, 116 L. Ed. 2d 731 (1992)).

2 *Bivens v. Six Unknown Federal Bureau of Narcotics Agents*, 403 US 388 (1971).

3 While Plaintiffs believe the named Defs. violated their US/PA Cons. 1st, 4th, and 14th Amend. rights during the search, this claim I is not a civil rights violations claim, it is a property damage/disposal claim.

Plaintiffs' right of action. The Third Circuit Ct. (3rd Cir.) holds the FTCA allows for property damage suits against the US (*Simon v. United States*, 341 F.3d 193, 199 (3d Cir. 2003)). [4] Plaintiffs filed a joint claim on 7-28-08 for damages/injuries that included a civil rights violations complaint enclosed prior to filing this lawsuit.[5] TSA Claim No. 20080728 47555, submitted within the required 2-yrs., is not time barred as the Defs. inaccurately argue, [6] nor is it exempt under 28 USC §2680.

Significantly, neither Def. made any effort to practice **due care** or **good faith** with Plaintiffs' property. During the search Pellegrino repeatedly requested that removed belongings remain out for proper repacking by her after the search ended. Her repeated requests to use **due care** [7] were repeatedly denied by both Defs. (CMP ¶ 20) with Abdul Malik escalated excessive abusive force on Plaintiffs' property. Repeatedly requests for the exercise of **due care** were ignored. [Ibid ¶ 20] Plaintiffs' allegations within the CMP meets the standards to recover damages against the USA. Plaintiffs will request leave to amend the wording of ¶26 to state: *the USA which acted through its agency the TSA and its agents* is liable and remove references to civil rights violations to avoid confusion.

2) The facts alleged in Plaintiffs' CMP meet *Iqbal's* "plausibility"standard for damages/losses. In assessing its sufficiency on a motion to dismiss, the court (Ct.) "must accept all of the complaint's well-pled facts as true." [*Fowler v. UPMC Shadyside,* 578 F.3d 203, 210 (3d Cir. 2009]. The CMP "need only set forth sufficient facts to support plausible claims." *Ibid.* at 212 [citing *Ashcroft v. Iqbal,* 129 S. Ct. 1937, 1949 (2009)]. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." [*Iqbal,* 129 S. Ct. at 1949]. Plaintiffs' CMP describes, with specificity, a plausible

4 The FTCA allows monetary recovery against the US for damages/loss of property occurring from wrongful acts of its agents while on the job, under circumstances where the US, if a private person, would be liable to Plaintiffs in accordance with the laws of PA. Under these terms the USA is liable.

5 TSA acknowledged Plaintiffs' claim 8-1-08, as received on 7-28-08 by fax from US Cong. Ron Klein's Office, assigned it expedited status, and denied it ten months later. Plaintiffs had 6 months after 5-19-09 to file a lawsuit which they did with the USDC ED PA on 11-18-09.

6 Defs.' argument citing USC 2401 (b) is erroneous as Plaintiffs' claim and lawsuit were filed timely. Required procedures were followed. The TSA never requested or required add'l info. See 28 U.S.C. § 2675(a). The final denial requirement is "jurisdictional and cannot be waived." *Bialowas v. United States*, 443 F.2d 1047, 1049 (3d Cir. 1971). After denial of a claim, Plaintiffs had two options and chose to file suit in the USDC pursuant to 28 U.S.C. § 2401(b).

7 **Due Care** is minimal concern for the rights of others. TSA's 7-29-06 search was not conducted in **good faith.** Pellegrino and her belongings were not afforded **Due Care**, were treated with contempt and disrespect. Pellegrino was afforded no dignity while TSA's published policy/SOPs at the time required searches to be performed in a dignified manner and passengers to be informed of their rights prior to the start of the search which never happened in Plaintiffs' case. The named Defs. (and TSO Clemens) violated Pellegrino's passenger rights. [Id. ¶¶ 9, 11, 17, 20; Fn. #10, 12, 16, 19, 23, 30, 108].

claim that states: a) the context of what occurred before, during, and after an abusive search that was compromised before it began [CMP ¶¶ 4-10, 11-26, 27-48; (Fn.) # 5-37)], b) Abdul Malik's and Labbee's direct involvement. c) Both Defs. exhibited contemptible disrespect for Pellegrino, reckless disregard for her property rights, d) followed by escalating animosity when Pellegrino made repeated requests for **due care**. e) The search was conducted in **bad faith,** [8] without **due care,** and had little to do with aviation security or passenger safety while no prohibited items were found.[9] f) Abdul Malik used excessive force on Plaintiffs' belongings under Labbee's direct supervision that caused unjustified permanent property damages and/or confiscation and disposals of three items without Plaintiff's permission.[10] [Id. ¶¶ 8, 20, 23; Fn #13, 18]. g) The Defs. were the only individuals physically inside the closet when Plaintiff's property went missing [11] h) yet lacked statutory authority under 49 U.S.C. § 44901(A) and § 44935 (B) to permanently damage, confiscate, or dispose of Plaintiffs' property into a filthy trash can inside TSA's search closet. (Id ¶ ¶ 15, 30, Fn. #23, 24, 35, 36, 40, 45). The Defs.' misconduct demonstrates the *wilful blind eye* of TSA's Officials in Phila. that allowed TSA screeners to treat passengers and their property with contemptuous disrespect behind closed doors while concealed from the public eyes.

3) The Defs. seek dismissal of this claim on faulty reasoning — a) time-barred and b) too many words used to describe the Defs.' tortious conduct toward Plaintiffs' property. At issue is the specificity required by the ruling in *Iqbal*. "To prevent dismissal, all civil complaints must now

8 When asked for clarification on the level of search Pellegrino was subjected, Labbee lied and misrepresented the reason as *airline designated* and was caught in her lie. (Id. Fn #40) Falsified TSA witness statements and reports misrepresented it as a random search. At no time were Plaintiffs told Pellegrino was subjected to a random search.

9 On 10-25-06 Labbee testified the search lasted 8 minutes TSA has never substantiated this time span with objective evidence. The video surveillance recordings captured and documented the precise length of the search. The videos were intentionally destroyed by the Doe TSA's ASI Defs. during official Due Process Discovery Proceedings (hereinafter DPDPs) roughly two months prior to 10-25-06 in violations of *Brady v. State of Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150, 153–54 (1972)* 18 PA C.S.A. § 5101; 18 PA Con. Stat. §4911.

10 Waldman has property rights to Pellegrino's belongings and vice versa.

11 At this stage, the Ct. must accept Plaintiffs' allegations about what transpired and about the Defs.' motives. See, e.g., *Fowler*, 578 F.3d at 212 (accepting as true plaintiff's allegation that she was "terminated because she was disabled"). The Ct. must accept that 1) Plaintiffs' property was damaged as a result of Abdul Malik's and Labbee's biased attitudes toward Pellegrino and initial and escalating animosities toward Pellegrino for speaking about provocative abuse and that 2) Labbee, summoned at Abdul Malik's request as her witness, arrived with a biased attitude of contempt toward Pellegrino. Further, the Defs. may not at this phase assert alternative reasons for their actions such as "Plaintiffs admit Pellegrino deliberately abandoned the property" when no such preposterous admission ever occurred. Contrary to the named Defs.'(2-17-11 Memo pg. 14 bottom) Plaintiffs never alleged or admitted the Defs.' unauthorized disposal of Plaintiffs' property was in any way abandoned by Pellegrino or anything remotely related to similar assertions by the Defs.

set out 'sufficient factual matter' to show that the claim is facially plausible." *Fowler v. UPMC Shadyside*, 578 F.3d 203,210 (3d Cir. 2009) (quoting *Iqbal*, 129 S.Ct. at 1949). Plaintiffs' claim as set out in ¶¶ 17-26 permits "*[t]he court to infer more than the mere possibility of misconduct.*" *Iqbal* at 1950. Plaintiffs maintain the Ct. has enough factual content to allow it to " ...[d]raw the reasonable inference that the defendant[s are] liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) at 1949 (citing *Twombly*, 550 U.S. at 556). Plaintiffs CMP 1) sets out sufficient factual matter in ¶¶ 5-16 and ¶¶ 17- 26 to show facially plausible and 2) contains facts sufficient to put the Defs. on notice of the grounds on which Plaintiffs' claim rests. The USA is liable for the tortious conduct of its screeners Nuryiah Abdul Malik and Laura Labbee.

Claim II. While acting under the color of law, with malicious intents, without probable cause, and for unjustified reasons, Abdul Malik, Labbee, and Kissinger (Defs.) knowingly misused the judicial system by conspiring to and then falsely accusing Pellegrino of crimes that never happened. The Defs. initiated and actuated two vexatious prosecutions by instigating and procuring PPD officers to unconstitutionally arrest and charge Pellegrino with baseless criminal counts. The Defs.' initiated two wrongful prosecutions against Pellegrino where Plaintiffs' liberty interests were violated for 20 months. Plaintiffs prevailed against every baseless charge instigated by the Defs.' misuse of the PPD, PA Commonwealth (Cmlth.) prosecutors, and Judicial System. The Defs. are equally liable for the damages and injuries they wilfully caused to both Plaintiffs who seek compensatory and punitive damages under 42 USC §1983, §1985, §1988, and *Bivens.*

A. Plaintiffs have pled adequate facts to state a plausible claim (*Iqbal*). By *whitewashing* their unlawful misconducts [12] and by obfuscating central issues and controlling law, the Defs.' 2-17-11 Memo distorts and mis-characterizes Plaintiffs' claim. On 7-29-06 Plaintiffs had clearly established rights under the 1st, 4th, 5th, 6th, and 14th Amendments (Amend.) and under PA Article I. §§ 1, 7, 8, 9, and 26. Title 42 USC §1983, §1985, and §1988 provides remedies for deprivations of Const. and statutory rights under color of state law. [13/14] Plaintiffs' CMP describes in explicit details the

---

12 The Defs. 2-17-11 Memo of Law (Part C. pp. 24-28)

13 The Defs. were acting under the color of PA law [CMP ¶ 3E] when they incited, instigated, and procured Phila. Police Officers (PPD Ofcs.) (actors under the color of PA law) to actuate Pellegrino's false arrest, two unlawful imprisonments, and to falsely charge Pellegrino with ten baseless counts without ever investigating the veracity of probable cause which prompted PA Cmlth. prosecutors (also actors under the color of PA law) to file baseless criminal complaints. Prosecutors also failed in their mandate to investigate the charges they wrongfully prosecuted and were utterly unable to substantiate at any time up to and including at trial. See 234 Pa. Code Rule 573

14 42 USC §1985 provides a right of action when individuals form a conspiracy to deprive another of their constitutionally protected rights to fair and equal treatment of the law, prosecutions based on malice without probable cause, and misuse of the judicial system.

Defs.' violations of statutes and deprivations of Plaintiffs' civil rights. Plaintiffs' timely right of action is cognizable under *Bivens v. Six Unknown Federal Bureau of Narcotics Agents*, 403 US 388 (1971). The named Defs. are equally liable in their individual capacities for conspiracy to deprive (§1985) and deprivation (§1983) of Plaintiffs' civil rights resulting directly from their misuses of the judicial system. Plaintiffs' seek compensatory and punitive relief for the harms, damages, and injuries their unconscionable misconducts caused resulting in unjustified defamations, prosecutions without probable cause based on malice, retaliations, self-preservations.[15] Plaintiffs seek vindication of their rights under 42 USC §1988. Plaintiffs' CMP meets required standards set in *Iqba*l as set forth in Argument Claim I (incorporated herein as fully set forth) for sufficient pleadings to state a claim under §1985 and §1983 and *Bivens* to move forward with this claim. The Defs. have no grounds for dismissal under FRCP Rule 8 and 12(b)(6) for the following reasons.

Elements to Prove Conspiracy to Deprive Civil Rights 42 USC §1985

B. The PA Sup. Ct. established the elements of conspiracy in *Thompson Coal Co. v. Pike Coal Co*., 488 Pa. 198, 211, 412 A. 2d 466, 472 (1979): "[t]wo or more persons. . . agreed with intent to do an unlawful act . . . Malice . . . is an essential part . . . intent must also be without justification. *Thompson Coal Co. v. Pike Coal Co*., supra." [See *Barmasters' Bartending School, Inc. v. Authentic Bartending School, Inc*., 931 F. Supp. 377, 386 (E.D. Pa, 1996 at Discussion: D. Civil Conspiracy)] [16] A cause of action under 42 USC §1985(3) was established with *Griffin v. Breckenridge*, 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (1971). [See *Lake v. Arnold* 112 F. 3d 682 3rd Cir. (1997) at § II B] In light of *Breckenridge* and *United Brotherhood of Carpenters and Joiners of America,* [17] the Third Circuit Court (3rd Cir.) notes [a] claim under 42 U. S.C. §1985(3)

---

15 Waldman's civil rights (5th Amend rights to consortium and right to travel freely interstate, in addition the named Defs. interfered with his contract with USAIRWAYS for a flight to Ft. Lauderdale) were violated as a result of the Defs.' wilful misconducts.

16 A conspiracy is actionable when "some overt act is done in pursuance of the common purpose or design ... and actual legal damage results[.]" *Baker v. Rangos*, 229 PA.Super. 333, 351, 324 A.2d 498, 506 (1974) (citations omitted). See *Franklin Music v. American Broadcasting Companies*, 616 F.2d 528, 547 (3d Cir.1979) (Sloviter, J., concurring). [See Rutherfoord v. Presbyterian-Univ. Hosp., 417 Pa. Super. 316, at 334, 612 A.2d 500, 508-09 (1992) See also *Thompson*, 488 Pa. at 211, 412 A.2d at 472; *Landau v. Western Pa. Nat'l Bank*, 445 Pa. 217, 224, 282 A.2d 335, 339 (1971).

17 *Breckenridge* and *United Brotherhood of Carpenters and Joiners of America, Local 610 v. Scott*, 463 U.S. 825, 103 S. Ct. 3352, 77 L. Ed. 2 d 1049 (1983)

alleges: (1) a conspiracy; (2) motivated by . . . discriminatory animus designed to deprive a person . . . equal protection of the laws; (3) an act furthering the conspiracy; and (4) an injury or deprivation of any right or privilege . . . *Id.* at 828-29, 103 S. Ct. at 3356; *Griffin v. Breckenridge*, 403 U.S. at 102-03, 91 S. Ct. at 1798-99." [See *Lake v Arnold* at Part II. B.] Plaintiffs' CMP sets forth in detail each of the four elements.

1) Conspiracy to deprive civil rights 42 USC §1985: Before either Abdul Malik or Labbee stepped out of the search closet and expecting a formal complaint to the TSA by Pellegrino for misconduct during the search behind closed doors, Abdul Malik initiated a conspiracy to falsely accuse Pellegrino of assault and solicited Labbee to falsely agree she witnessed it. Also expecting a complaint to higher TSA authorities, in a meeting of minds, Labbee agreed without hesitation to also falsely accuse Pellegrino of assault. Both Defs. agreed to be each other's false witness [CMP. ¶ 29; Fn #41]. After both Defs. separately left the closet at different times, Kissinger joined their conspiracy as Labbee's false witness prior to a) initiating her falsified, fabricated 7-29-06 TSA witness stmt. b) Kissinger, Abdul Malik and Labbee were driven to the PPD SW station to file two false criminal complaints against Pellegrino [Id. ¶ ¶ 3D, 8-10, 12, 18, 28, 32, 33, 35, 39, 54, 75, 118; Fn. # 19-21, 50, 68, 73, 84, 139].

2) Motivated by animus/discrimination: After her arrival on the CKPT, Abdul Malik a) expressed immediate, mean-spirited animosity toward Pellegrino [Ibid. ¶¶8 -26; Fn. #11- #37], b) projected her own animosity onto Pellegrino labelling Plaintiff as *one of those types of irate passengers* (Prelim. Hearing testimony 10-25-06) [Id. Fn. #18, #30], c) testified she wanted, requested, and sought approval by TSA STSO Frank A. Dilworth to enact different (unequal) treatment from other passengers for Pellegrino [Id. ¶ 8, 9; Fn. 30]. d) Salient physical characteristics of race and age differences cannot be excluded from Abdul Malik's motivations for *animus and discrimination* against Pellegrino. [Id. Fn. #8, 30]. [18] e) TSA's SOPs entitled Pellegrino to request a change of Abdul Malik's search gloves which produced immediate, visible strongly expressed inappropriate nonverbal hostility from Abdul Malik. [Id. ¶ 8, Fn.# 17, 18, 30]. f) Abdul Malik, as well as Kissinger and Labbee, falsely alleged they interacted verbally with Pellegrino prior to entering the search closet. It never happened. g) Labbee and Kissinger entered the closet after not

18 Reasons for Abdul Malik's immediately visible nonverbal animosity toward Pellegrino are discoverable.

with Pellegrino both mirroring Abdul Malik's hostile attitude without having any prior contact or dialog of any kind with Pellegrino. [Id. ¶ ¶ 6-26; Fn. #11-37, 76]. A key issue here is that the video surveillance recordings captured and documented Abdul Malik's immediate animosity toward Pellegrino, discredited and impeached the Defs.' and TSO Thos. Clemens' fabricated, falsified 7-29-06 TSA witness stmts. and documented that events as falsely alleged by the Defs. never occurred. [19/20] h) The Defs. exhibited escalated animosity toward Pellegrino during the search (Id. ¶ ¶ 15, 17-23). Behind closed doors, Abdul Malik provocatively and wilfully permanently damaged Plaintiffs' property while Labbee refused to stop it. Abdul Malik twice threatened (intimidated) Pellegrino with arrest for speaking about the Defs. provocative, abusive conduct (Id. ¶ 21; Fn. # 34). Throughout the search, Kissinger encouraged excessive Explosive Testing Detection (ETD) swabbing that had nothing to do with finding prohibited items, aviation security, or passenger safety (Id. ¶ 12).

(3) Actions in furtherance of their conspiracy 42 USC §1983: After the search ended, Abdul Malik falsely accused Pellegrino of an assault. For a 3rd time insisted the PPD be called to arrest Pellegrino [21] [Id. ¶ ¶ 28-34]. Also after falsely accusing Pellegrino of assault, Labbee obliged [Id. ¶ 29-30; Fn #44]. (Dilworth's 7-29-06 report notes Labbee phoned for PPD officers. Significantly, PPD Ofcs. who came to the CKPT were not eyewitnesses to the Defs.' false allegations.[22] (Id. ¶ ¶

19 The TSA, the PPD, and the Phila. DA's Office had unfettered access to several multiple angle overhead digital video surveillance camera recordings each capturing the 90 minute time span when Plaintiffs were under surveillance at the PIA CKPT. The recordings objectively documented that the Defs.'allegations that Pellegrino was *rude*, *irate, enraged, stomped, threw, slammed* were fabricated. Significantly, none of these agencies produced as much as a fraction of a second of any misconduct by Pellegrino from several hours of footage available to them before TSA ASI Defs.agreed to have the exculpatory/impeachment recordings destroyed during DPDP.

20 The named Defs. falsely alleged they were involved in dialog (conversational interaction) with Pellegrino prior to entering the search closet. TSA's Doe ASI Defs. destroyed the video recording that documented the Defs. lied.

21 To establish a 1st AMD retaliation claim under 42 USC §1983, plaintiffs must prove: (1) constitutionally protected conduct; (2) that the Def. took adverse action sufficient to deter a person of ordinary firmness from exercising her rights; and (3) a causal connection between the two. *Mitchell v. Horn*, 318 F. 3d 523, 530 (3rd Cir. 2003). 1) Freedom of speech related to public welfare is well-established as a protected right/privilege. Pellegrino had a right to state her intent to report the named Defs.' misconduct to higher TSA authorities as an issue of public concern to US citizens. 2) After the search ended Pellegrino was falsely accused of criminal acts and violations of federal screening procedures by the Defs. Without justification Pellegrino was unlawfully confined by Labbee on the CKPT on false pretenses, falsely accused of three fabricated assaults/injuries while Plaintiffs were marginalized and kept uniformed by TSA Officials (TSAO Defs.) and the PPD. After roughly an hour of confined re-detention, Pellegrino was unjustifiably arrested without probable cause at Abdul Malik's and Labbee's instigation and insistence. [*Ibid*. ¶ ¶ 27-48] [See PL EX #1 On 7-29-06 Pellegrino requested the three Defs.' names on an official TSA complaint form from a male TSA agent who would not identify himself or his rank. [Id. ¶ 52] The form was handed to Waldman after and only after an unjustified arrest instigated by the named Defs. Plaintiffs believe Labbee's handwriting lists the names of the Defs. on the form. [See PL EX #1] [*Id*. Fn. #82]

22 According to Dilworth's Incident Detail (IDR) and Summary Reports (SR), TSA Officials were summoned to the CKPT roughly around the same time as the PPD. [CMP 35, 50, 51] [PL EX #4]

27-33, 44, 46, 62; Fn. # 41; 44, 50, 51).[23] Prior to PPD Ofcs.' arrival, Pellegrino was unjustifiably confined by Labbee to a table and directed not to touch her belongings. The Defs. made false reports to PPD Ofcs. that falsely incriminated Pellegrino. The Defs. submitted handwritten fabricated TSA witness stmts. dated 7-29-06 falsely alleging assaults and numerous events that never happened (Fair Information Practice Principles (FIPPs) and Privacy Act (PA) violations). Abdul Malik insisted on "*pressing charges"* with the PPD. Assured Abdul Malik was following through on their conspired agreement, Labbee agreed to file one also. [Id. ¶ 37] The Defs.' instigated, initiated, and actuated Pellegrino's unjustified arrest and unlawful imprisonments. as already stated, Kissinger accompanied Abdul Malik and Labbee to the PPD SW station to provide a false witness statement. Both Defs. knowingly reported fabricated assaults, injuries, and false eye witness accounts to PPD Det. Wm. Campbell. [24] Labbee and Abdul Malik wilfully filed false criminal complaints on 7-29-06. [25] (Id. ¶ ¶ 27-48) Kissinger actively participated with Abdul Malik and Labbee in the instigation and initiation of Pellegrino's false arrest, unlawful imprisonments, ten baseless criminal charges and two wrongful prosecutions lacking probable cause and based in malice. Contrary to the named Defs.' 2-17-11 argument, Kissinger shares equal liability for her own misconducts in a common design with Labbee and Abdul Malik. [CMP ¶ ¶ 26, 27-29, 30-31, 33, 44, 46, 62][26] By agreeing to act and then acting on

23 Waldman is an eyewitness that Labbee 1) was not standing outside the closet as she falsely alleged, 2) was not assaulted as she falsely alleged and 3) that Kissinger was not in the vicinity of the closet where Labbee falsely alleged she had been assaulted, 5) that Kissinger was not in the vicinity and was not walking into the closet as she falsely testified on 3-28-08 at Pellegrino's trial, and that 6) Kissinger was not an eyewitness to the assault Labbee fabricated [Id. Fn. #35].

24 No physical documentation of Abdul Malik's and Labbee's fictitious injuries was produced by prosecutors.

25 Abdul Malik insisted on Pellegrino's arrest twice after Plaintiff"s stated her intent to report the Defs.' provocative, abusive conduct during the search and insisted a third time after the search ended. Labbee agreed to summon the PPD knowing she had not witnessed or experienced an assault of any kind. Neither Def. had stepped outside the confines of the closet by this time, but both Defs. falsely testified Labbee had (10-25-06). The precise moment Kissinger agreed to join in falsely accusing Pellegrino is not known to Plaintiffs due to marginalization on the CKPT; however Kissinger's actions are documented in TSA records. The precise time Kissinger stated she witnessed Labbee's fabricated assault and when she put it in a witness stmt. are discoverable.

26 The Defs.' argument is specious in its assertion that Plaintiffs' claim against Kissinger must be dismissed as *she did not initiate a criminal complaint.* Restatement (Second) of Torts (hereinafter RSoT) §654 (1977) defined the institution of criminal proceedings that directly applies to Plaintiffs' claim. Also, RSoT §875 (1979) states: "Each of two or more persons whose tortious conduct is a legal cause of a single and indivisible harm to the injured party is subject to liability to the injured party for the entire harm." RSoT §876 (1979) sets out three ways in which persons acting in concert may be held accountable for each other's tortious conduct: "For harm resulting to a third person from the tortious conduct of another, *one* is subject to liability if *he* "(a) commits a tortious act in concert with the *other* or pursuant to a common design with him, or "(b) knows that the *other's* conduct constitutes a breach of duty and gives *substantial assistance* or *encouragement* to the *other* so to conduct himself, or "(c) gives *substantial assistance* to the *other* in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person." For liability under §876(a)(b)(c): *another's* conduct must be, in fact, tortious and resulted in harm to

their agreement, the Defs. violated state/federal statues, TSA's Management Directives (Mgmt. Dirs.), TSA's civil rights policy/SOPs and Plaintiffs' civil rights [27] (Ibid. ¶ ¶ 27, 39, 46-48; Fn. 62, 125).

4) Injuries: Plaintiffs' CMP [¶ 47-48 pg. 25] lists several injuries. Pellegrino is the Defs. crimes victim and was innocent of the charges in the underlying cases. The Defs. defamed and vilified Plaintiff, maliciously forced Pellegrino to a humiliating trial, yet failed in every way to substantiate any of their false accusations. Nevertheless they have continued, brazenly, to malign Pellegrino in USDC records. [28] The Defs.' reckless actions wilfully caused: a) irreparable damages to Pellegrino's personal/professional reputations and have permanently affected Plaintiffs' ability to earn a living that relied upon her reputations.[29] b) Plaintiffs were deprived of their 4th Amend. rights to be free from prosecutions without probable cause, c) deprived of their rights to travel home to FL and d) deprived of 5th Amend. rights to consortium and to communicate with each other. Pellegrino was wrongfully prosecuted for speaking about the named Defs.' provocative abusive conduct during the search (1st Amend. rights). (Id. ¶ ¶ 10, 14, 18, 20, 27-48, 53, 54, 58, 63, 64, 65, 82, 100 - 103, 113G(1), 115, 116; Fn. # 12, 70, 73, 80, 85, 89, 82, 92, 115, 129, 130, 132, 139). The Defs. actions caused Pellegrino's unjustified 42+ month criminal record, costs of defending against fictitious crimes and expunction cost and more. The named Defs.' reckless and malicious lies caused the creation of hundreds of false and tainted records on Pellegrino which to date the TSA has failed to correct, delete, expunge or destroy from its system of records in violations the Privacy Act. [30]

Plaintiffs. Kissinger's conduct as described in Plaintiffs' CMP — Kissinger was an active participant in the initiation of two wrongful prosecutions lacking probable cause. Kissinger 1) falsely alleged she was an eyewitness to a fabricated, fictitious crime; 2) initiated a falsified TSA witness statement; 3) actively participated in the instigation, initiation, actuation and prolonged continuance of two vexatious prosecutions. Her 4) falsified witness statement (tainted evidence) was supplied by TSAO Defs. to the Phila. DA's Office to support the wrongful prosecutions; 5) her false allegations were misrepresented to prosecutors by TSAO Defs. as factual when, in fact, her contributions to the prosecutions were false testimony in court and fraudulent manufactured evidence. Kissinger 6) made false statements as a witness for the prosecution and 7) appeared in court to testify as Labbee's false witness. 8) Indeed, Kissinger lied under oath in perjured testimony on 3-28-08 falsely stating she witnessed an assault that never happened with the intent to unlawfully interfere with and influence judicial outcomes.

27 Violations of 18 USC §2; 18 USC 371, 18 PA Con. Stat. 49 §4906, §4910, §4911; 18 USC §1001, 18 USC §1519, 5 USC §552(a). TSA's Mgmt.Dir. 100.4 and 1100.73-5, 5 CFR part 2635(v), 1st , 4th, 5th, 6th, 14th Amend.

28 Labbee still claims she was 'indeed assaulted' while photographs challenges the veracity of her allegations. The presiding judge in the underlying cases barred her complaint by Ct. Order 1-24-08. [See PL EX #3, #6, #20, #21].

29 This has harmed both Plaintiffs who rely on their reputations to earn a living.

30 The Defs. falsely accused Pellegrino of violating federal screening procedures which initiated a TSA Civil Action Enforcement (CAE) Investigation (EI) by Doe TSA ASI Defs. who are directly responsible for the pre-meditated, inten-

C. The 3rd Cir. recognizes a §1983 cause of action. (*Rose v. Bartle*, 871 f.2D 331, 348, 349 (3d Cir. 1989)**.** A §1983 claim must allege a deprivation of a federally protected right committed by one acting under color of state law. [*Lake v Arnold* at Sect. III ¶ 2]. [31] The ruling in *Gomez v. Toledo*, 446 U.S. 635, 640 (1980) clarifies the requirements of stating a claim: "By the plain terms of §1983 . . . First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law." [See also *Groman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995) at ¶ 30]. Plaintiffs' CMP has explicitly stated federal rights deprivations [CMP ¶ ¶ 4, 17, 24, 26-27, 46, 48-49,109, 111, 113G] while the Defs. were acting under color of law [Ibid. ¶ ¶ 3E, 4, 24, 26, 44, 117; Fn. 28)].

D. The 3rd Cir. has "[h]eld that malicious prosecution is actionable under 42 USCA Sec. 1983." (citing *Losch v. Borough of Parkesburg*, 736 F.2d 903, 907 (3d Cir.1984); *Jennings v. Shuman*, 567 F.2d 1213, 1219-20 (3d Cir.1977)). [See *Lee v. Mihalich* 847 F. 2d 66 at ¶9]. "In order to state a prima facie case for a section 1983 claim of malicious prosecution, the plaintiff must establish the elements of the common law tort as it has developed over time. [32] In *McKenna v. City of Phila.*, 582 F.3d 447 (3d Cir. 2009) the Ct. states "[T]o prevail on a malicious prosecution claim under section 1983, a plaintiff must show that: (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff's favor; [33] (3) the proceeding was initiated without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. *Id.* at 461 (citing *Estate of Smith v. Marasco*, 318 F. 3d 497, 521 (3d Cir. 2003))." [34] Plaintiffs CMP explicitly sets forth all five.

tional destruction of several hours of multiple camera angle exculpatory evidence during DPDP. The videos documented, discredited, impugned, and impeached the named Defs.' false allegations.

31 To establish a section 1983 claim, a plaintiff "must demonstrate a violation of a right secured by the Constitution and the laws of the United States [and] that the alleged deprivation was committed by a person acting under color of state law." *Mark v. Borough of Hatboro,* 51 F.3d 1137, 1141 (3d Cir.), cert. denied, U.S., 116 S.Ct. 165, 133 L.Ed.2d 107 (1995) (quoting *Moore v. Tartler*, 986 F.2d 682, 685 (3d Cir.1993)). *Kneipp v. Tedder*, 95 F.3d 1199, 1204 (3d Cir.1996).

32 See *Lee v. Mihalich*, 847 F. 2d 66, 70 (3d Cir.1988); see also *McArdle v. Tronetti*, 961 F.2d 1083, 1088 (3d Cir.1992); *Singleton v. City of New York*, 632 F. 2d 185, 195 (2d Cir.1980) (collecting cases), cert. denied, 450 U.S. 920, 101 S.Ct. 1368, 67 L.Ed.2d 347 (1981).

33 Acquittal is well-established in common law as concluding in favor of the accused.

34 PA. common law requires proof of the first four elements. A federal §1983 claim requires the fifth.

(1) **EACH NAMED DEF. INSTIGATED, PARTICIPATED IN, AND ACTUATED THE INITIATION OF THE UNDERLYING CASES.**[35] As already stated a) as false witnesses for each other, Abdul Malik and Labbee filed false criminal complaints with the PPD. As Labbee's false witness, Kissinger wilfully accompanied both Defs. to the PPD SW station to assist in the initiation/actuation of Labbee's and Abdul Malik's false criminal complaints. By common design, Kissinger knowingly played an active and integral role as Labbee's false witness from the beginning throughout official proceedings all the way up to barred and perjured trial testimony. The Defs. were equally involved in the instigation, initiation, actuation on 7-29-06 that continued up to Pellegrino's trial on 3-28-08 [36] (CMP ¶ ¶3B, C, D, 8, 14, 27-39, 40 -48, 53, 58, 60, 61, 65, 66, 82, 85(3), 95, 97, 100-104, 113F(2), 113G3, 115, 118; Fn. #14, 18, 22 , 44, 45, 46, 50, 61, 68, 70, 73, 75, 84, 139).

2) PELLEGRINO PREVAILED AGAINST ALL TEN BASELESS WRONGFUL CHARGES: [CMP ¶ ¶ 34, 47, 48, 106. Fn. # #53, 70, 73, 75, 115, 133) [PL EX #12, #14, #15]. According to Restatement (Second) of Torts (RSoT) §659 (1977) and under PA law, the PA. S. Ct. considers criminal proceedings terminated in favor of the accused by (a) discharge by a magistrate at a prelim. hearing, (c) the formal abandonment of the proceedings by the public prosecutor; or (e) an acquittal [*Hilfirty v. Shipman,* 91 F. 3d 573, 579 (3d Cir. 1996) (citing *Haefner v. Burkey*, 626 A.2d 519, 521 (Pa. 1993)]. [37] As stated in Plaintiffs' CMP **(a)** 4 counts (2 bogus felony and 2 bogus misdemeanor counts) were discharged at the Prelim. Hearing for LOE. [CMP Fn. #72]. **(c)** 2 add'l baseless charges were formally abandoned by prosecutors between 7-29 to 7-30-06. No reason ever provided, no deal or compromise made. [Ibid Fn. #72] [38] [See PA. S. Ct. holding in *Haefner* 626 A.2d at 521].The

35 Contrary to the Defs. argument that Kissinger didn't file a complaint so she cannot be held liable, Kissinger is equally as liable as she was an original instigator and actuator in the initiation of Labbee's wrongful prosecution and played an active role all the way to Pellegrino prevailing against the named Defs.' false accusations at trial.

36 Significantly, Pellegrino was forced to trial after the 1-24-08 Ct. Order ruling out all testimonies on anything that occurred outside the search closet meaning the only Complaint heard was Abdul Malik's. Plaintiffs were never informed by the Phila. DA's Office prior to commencement of Pellegrino's trial that Abdul Malik would be a **NO SHOW** at trial. In addition Plaintiffs have no factual evidence Abdul Malik ever withdrew her false 7-29-06 criminal complaint. As a result, Pellegrino was deprived of her 6th Amend. rights to confront her accuser at trial.

37 Other ways criminal proceedings were terminated in favor of the accused are by (b) the refusal of a grand jury to indict; or (d) the quashing of an indictment or information; or (f) a final order in favor of the accused by a trial or appellate court. [See *Hilfirty v. Shipman* (citing *Haefner v. Burkey* (1993)].

38 In violation of 49 U.S.C. § 44901(A) SECT (E)(1) — (A Bag-Match Program) — the TSA failed to remove Plaintiffs' checked bags from the USAIRWAYS aircraft. The Bag-Match Program ensures that no checked baggage is aboard at takeoff unless the passenger who checked the baggage is aboard also. Two making-terroristic-threats counts disappeared from the PPD charge sheets by the time the Phila. DA's Office's Complaints were initiated after

remaining four charges were acquitted on 3-28-08 after Abdul Malik was a **No Show** for cross examination. Pellegrino was tried one criminal assault and one possession of an instrument of crime (a suitcase) charge where no relevant witness testimony or evidence was introduced by prosecutor ADA Andre Martino to substantiate his case-in-chief [39] that resulted in Pellegrino's being deprived her 6th Amend. right to confront her accuser (Abdul Malik). Prosecutor Andre Martino conducted a trial based solely on introducing Ct. Ordered barred testimonies after J. Gehret questioned why a trial was necessary. The Court: "Have I done any action on this case?" Elbert: "Yes." The Court: "How come we're still doing it? Let me see counsel sidebar. (Off-the-record discussion.) The Court: "So, this is a trial?" [PL EX #15 Gehret pg. 4] Pellegrino's trial consisted of Labbee's and Kissinger's barred false testimonies that significantly directly contradicted each other. [PL EX #15 Labbee pp. 5 -9 and Kissinger 11-12- [Id. Fn. #72].[40]

3) **PROCEEDINGS IN THE UNDERLYING CASES WERE INITIATED WITHOUT PROBABLE CAUSE** [41] The 4th Amend. prohibits prosecution without probable cause [*Orsatti v. N. J. State Police*, 71 F. 3rd., 480, 482 (3rd. Cir. 1995)]). The 3rd Cir. has held that "[T]he question of probable cause in a section 1983 damage suit is one for the jury. *Patzig v. O'Neil*, 577 F. 2d 841, 848 (3d Cir.1978)" [*Montgomery v. DeSimone*, 159 F.3d 120 (3d Cir.1998) at Sect. II ¶ 2]. Given the investigative opportunities avail-

---

Plaintiffs' scheduled flight to Ft. Lauderdale took off with their checked bags aboard and returned on three separate USAIRWAYS flights from Ft. Lauderdale to Phila. without the Plaintiffs in direct violations of the federal statute.

39 Plaintiffs believe this is an example of TSA's, the Defs.', and the Phila. DA's Offices' misuse of the judicial system

40 The video recordings were exculpatory/impeachment evidence the TSA wilfully concealed and withheld from Plaintiffs/Prosecutors during DPDP and the same evidence Doe TSA ASI Defs. wilfully had destroyed prior to the Preliminary Hearing 10-25-06. Plaintiffs contend the recordings convincingly undermined the named Defs.' cases and the PA Cmlth.'s prosecutions. The Phila. DA's Office forced trial having no complainant to introduce evidence. Labbee's and Kissinger's testimony was barred because the videos had been willfully destroyed by ASI Defs. Undaunted by no relevant witness, having no case to prosecute, Martino put Labbee and Kissinger on the witness stand and prosecuted Pellegrino on a barred complaint and barred testimony.

41 The named Defs. argue erroneously: 1) It is undisputed that Pellegrino was arrested. This is disputed. Plaintiffs contend Pellegrino was unlawfully arrested without probable cause as a result of the named Defs.' false accusations and false reports to PPD Ofcs. — criminal offenses in the PA Cmlth. 2) Also, the Defs. argue erroneously that the PPD Ofcs. had reasonably trustworthy information from the named Defs. while Plaintiffs contend Pellegrino's false arrest was based solely on the named Defs.' false reports and Abdul Malik's and Labbee's mean-spirited, adamant insistence on having Pellegrino arrested in retaliation. [CMP ¶ 36-37] 3) In addition, the Defs. lied to PA Cmlth. law enforcement officers, 4) lied to PA Cmlth. prosecutors, and 5) lied under oath to two PA Cmlth. Ct. judges during official proceedings with the intent to pervert the course of justice and unlawfully influence judicial outcomes. [Ibid. ¶¶ 33-35] Abdul Malik's and Labbee's perjured testimonies were successful in influencing J. James DeLeon on 10-25-06. Labbee's and Kissinger's perjured testimonies were unsuccessful in persuading J. Thos. Gehret who knew about the wilful destruction of the video surveillance recordings (what he called ***the best factual evidence***).

able to the PPD on 7-29-06 and thereafter, the context of the events needs consideration. No PPD Ofc. was an eyewitness to the false accusations of the Defs. PPD Ofc. John Fadgen, SW Div. Det. Wm. Campbell, and an unnamed Airport Div. Det., and the PPD all failed to: a) perform any respectable investigation into probable cause, [42] b) interview 'non TSA' people, c) objectively verify the Defs.' accusations before unjustified handcuffing, falsely arrest, unlawful imprisonments, and ten baseless counts. And they failed to investigate thereafter. d) The PPD failed to photo-document Abdul Malik's and Labbee's faked injuries, e) investigate/photo document the alleged '*crime scene'* (Fadgen never so much as walked near or into the closet while Pellegrino was unconstitutionally confined and marginalized by Labbee).[PL EX #3, #6, #20, #21] The PPD also failed f) to secure, preserve, and archive the most trustworthy objective eyewitnesses (several hrs. of multiple angle overhead video surveillance recordings) [PL EX #2], g) material exculpatory evidence or impeachment materials, or h) the falsely alleged *instruments of crime — a fabric rollaboard and a rolling tote*. Contrary to the named Defs.' specious argument, Plaintiffs contend a person of reasonable caution would logically conclude the PPD Ofcs. were grossly negligent in their duties prior to and after Pellegrino's false arrest, unlawful imprisonments, booking on bogus charges, etc.[43] While the overhead video surveillance recordings captured the events as they actually occurred on the CKPT, the PPD agents

42 Probable cause exists where "the facts and circumstances within their [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Carroll v. United States*, 267 U. S. 132, 267 U. S. 162. [See *Draper v. United State*s, 358 U. S. 307 (1959) at 313]. [See also the 3rd Cir. holding in *Montgomery v. DeSimone*, 159 F.3d 120 (3d Cir. 1998)].

43 While the named Defs. argue in their 2-17-11 Memo that the PPD acted correctly in arresting Pellegrino, Plaintiffs assert correctness is not the issue. The issue is that Doe TSAO Defs. acted prejudicially and in common design with the named Defs. The PPD did not act reasonably or responsibly. The PPD did not diligently pursue their investigation while Pellegrino was confined without probable cause. The record reflects both the PPD and the Phila. DA's Office failed to properly investigate the veracity of the named Defs.' allegations and also failed to discover and secure material exculpatory/impeachment evidence which they had duties to do so, but failed in their duties while they had ample time, capabilities and resources to do so with relative ease and unfettered access to the video surveillance recordings and unfettered access to eye witnesses. PPD Ofcs. in the underlying cases knew or should have known *the most reasonably trustworthy information* were the video surveillance recordings which were easily accessible at the PIA recording housing. [See PL EX #2 ¶¶4-5]. A police officer of reasonable caution would have chosen indisputable, objective video surveillance evidence plus interviewing all available witnesses rather than hearing only one-sided subjective accusations from the named TSA Defs. officiated by TSA Officials to make a reasonable determination of probable cause. Despite logic, common sense, and reasonableness, PPD arresting Ofc. Fadgen and Ofc. McColley made no effort to do what reasonable people of caution would do. Instead these PPD Ofcs. stood around for roughly an hour waiting for direction from TSA Officials (TSAO Defs.) while they should have made every effort to objectively investigate the named Defs.' allegations while Pellegrino was unjustifiably confined. Their conduct does not lead a person of reasonable caution to think or believe the PPD acted reasonably or correctly on 7-29-06 or thereafter relevant to Plaintiff's unjustified arrest, baseless charges, and wrongful prosecutions.

paid no attention to objective evidence but rather relied solely on the Defs.' subjective and false accusations. (Id. ¶ ¶ 1, 34-44, 47, 50, 55, 56, 59, 61, 65, 67, 103, 111, 113 I; Fn. #2, 64, 66, 72, 86, 133). No PPD Ofc. or Det. made any efforts to investigate the veracity of Abdul Malik's and Labbee's false criminal complaints. At most the PPD Ofcs. operated from *mere suspicion* based on the named Defs. false accusations which is insufficient to support probable cause. Pellegrino, the named Defs.' crimes victim, was forced to stand trial for crimes that never happened while Abdul Malik and Labbee acted like they were the crime victims. (CMP ¶ ¶ 27, 38, 40, 43, 48, 53-55, 82, 85, 101; Fn. 29, 38, 66). Significantly, while mandated by 234 PA Rules of Criminal Procedures (RCP) 573, the Phila. DA's Office never investigated the charges they lodged against Pellegrino and never investigated the possibility of exculpatory or impeachment evidence. Indeed, the Phila. DA's Office turned *a wilful blind eye* to Pellegrino's federally protected civil rights during two wrongful prosecutions. The Defs.' false criminal complaints coupled with the taxpayer-funded machinery of the TSA, whose TSAO Defs. supplied tainted *fabricated evidence* to the prosecution while concealing and withholding exculpatory evidence were the sole basis for the PA Cmlth.'s prosecutions against Pellegrino. At trial the Phila. DA's offices cases-in -chief defied reason, logic, and common sense when presented by ADA Andre Martino. The multiple angle, overhead video surveillance recordings objectively documented no probable cause existed. Yet, prosecutors, who were mandated to procure and turn over exculpatory evidence and impeachment materials (*Brady Materials*) in the interests of justice failed to do so. [44] The failures of the PPD and the Phila. DA's Office to properly investigate the charges they brought against Pellegrino, their failures to secure, preserve, and turn over exculpatory and impeachment video surveillance evidence as mandated by law provided the Doe TSA ASI Defs. with viable opportunities to wilfully destroy exculpatory/impeachment evidence. Plaintiffs assert the Defs. actions deprived Pellegrino of federally protected civil rights to be free from prosecution without probable cause (4th), substantial and procedural due process rights, rights to liberty (5th), rights to compel witnesses in her favor (6th) and under state law absolute rights to fair treatment /equal protections of the laws (14th Amend.)

4) **THE NAMED DEFS. ACTED FOR PURPOSES OTHER THAN SEEKING JUSTICE**: 42 USC ¶1983 After Pellegri-

---

44 *Brady v. State of Maryland, 373 U.S. 83 (1963);*18 PA C.S.A. § 5101; 18 PA Con. Stat. §4911; *Giglio v. United States, 405 U.S. 150, 153–54 (1972).*

no stated her intent to report the Defs.' abusive conduct to higher TSA authorities (1st AMD rights), the named Defs. acted in malicious retaliations and self-preservations [CMP 24, 41, 42, 75, 113 F2]. The named Defs.' false and fabricated accusations were intended to mislead, pervert, and unlawfully influence official PA Cmlth. proceedings and judicial outcomes by misrepresenting Plaintiff in a false, negative light, vindictively inflicting emotional/financial injuries on Pellegrino for stating her intent to report their abusive conduct. [Ibid 34, 48, 106, 113F2, 115; Fn. #105] The named Defs. misused the judicial system for purposes of retaliations, self-preservations with malicious intents.

5) **DEPRIVATION OF PERSONAL LIBERTY CONSISTENT WITH THE CONCEPT OF SEIZURE**: Rulings of the 3rd Cir. suggest Plaintiffs' ***TSA Nighmare Ordeal*** is consist with the concept of "seizure." [*Gallo v. City of Philadelphia*, 161 F.3d 217 (3d Cir. 1998) at Sect. III Discussion Was Gallo Seized?] [45] Plaintiffs were unconstitutionally re-detained on the CKPT at Abdul Malik's insistence. Pellegrino was unjustifiably confined by Labbee at the PIA for roughly 1 hr. after a provocative, abusive search behind closed doors. Pellegrino body was unconstitutionally seized, unjustifiably invasively frisked by an aggressive, accusing female PPD Ofc. as a result of Abdul Malik's and Labbee's false allegations. To Waldman's horror, at 57 yrs. of age Pellegrino's arthritic wrists were tightly handcuffed behind her back for no justifiable reason. Waldman watched his wife's body humiliatingly seized in his presence, aggressively, and degradingly pushed out of the PIA CKPT from behind by the same aggressive female PPD Ofc. in a *perp walk* for all gaping onlookers, then locked behind bars in two different jails for over 18 hours without food and without adequate water for no justifiable reasons (pretrial deprivations of liberty).[46] [CMP ¶¶ 38, 39, 43] Plaintiffs were forced to post unjustified bail [47] and hire several attorneys at considerable expense to defend against fictitious crimes while

45 The Defs. argue erroneously in their 2-17-11 Memo that Pellegrino did not suffer deprivation of liberty as she did not attend the 1-24-08 Oral Motion to Dismiss the charges. Pellegrino was subjected to court subpoena and both Plaintiffs appeared on 1-22-08 which was the originally scheduled date for the Oral Motion Hearing. If Pellegrino didn't show up, she faced bench warrant arrest. Judge Gehret excused Pellegrino because he and the Phila. DA's Office were not prepared to hear the Motion on 1-22-08. Plaintiffs would have incurred costly additional expenses to purchase new airline tickets to appear at a time that was convenient for the Court and the Prosecution.

46 Horrific 3rd world conditions. Rodents, cockroaches, toilets filed to the brim with feces and urine, denied any communications with Waldman and vice versa, no food, and grossly inadequate water for a 57 yr. old with arthritis.

47 In *Gallo v. City of Phila*. the 3rd Cir. cited Justice Ginsberg's concurring opinion in *Albright v. Oliver*, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994) "Relying on the common law understanding of the purpose of bail, Justice Ginsburg explained in her concurrence in Albright that "the difference between pretrial incarceration and other ways to secure a defendant's court attendance [is] a distinction between methods of retaining control over a defendant's person, not one between seizure and its opposite." 510 U.S. at 278, 114 S. Ct. at 815. Thus, although

deliberately deprived of exculpatory/impeachment evidence by Doe TSA Defs. in violation of due process rights. (Id. ¶ 42-48) Thereafter under threat of subsequent incarceration, Pellegrino, the named Defs.' crimes victim, was under subpoena to appear at various Ct. proceedings over 20-months at considerable time, humiliation and embarrassment, emotional stress/distress, and expense to answer for the named Defs.' malicious fabricated accusations of crimes that never happened. Failure to appear at numerous scheduled court dates/times subjected Pellegrino to bench warrant arrest.[48] Pellegrino's loss of personal liberty (4th, 5th, 14th Amend. violations) was not restored until acquittals on 3-28-08.[49] (Id. ¶ ¶ 26, 27, 38, 40, 43, 48, 53, 82, 85 (3), 101; Fn. #29, 38, 66) [See PL EX #9, #14, #15].

Plaintiffs have alleged enough explicit details in their CMP (satisfying *Iqbal* requirements) to adequately state a claim under 42 USC §1985, §1983 and under *Bivens*. The named Defs. have no grounds for dismissal and are liable in their individual capacities for violations of Plaintiffs' federally protected 1st, 4th, 5th, 6th and 14th Amend rights. The brazen misuses of the judicial system make recovery of compensatory and punitive damages appropriate to deter future actions by TSA's agents.

Claim III: Doe TSA Officials (TSAO) Defs.' misconducts are inextricably linked into two wrongful prosecutions. TSAO Defs. were instrumental in providing substantial assistance during two wrongful prosecutions by failing in their mandated duties 1) to adhere to legal conduct, 2) to objectively and reasonably investigate the named Defs.' accusations prior to wrongful arrest, imprisonments, charges and prosecutions, 3) to implement Fair Information Practices Procedures (FIPPs), and 4) to intervene in preventing retaliatory false incriminations. TSAO Defs. 5) knowingly assigned fraudulent Report Codes to the named Defs.' falsified, fabricated witness stmts., 6) falsely reported a fictitious incident as actual event to a federal agency, 7) violated state, federal, and Const. laws by providing strategic substantial assistance and encouragement to the named Defs.' wrongful prosecutions. 8) Each TSAO Defs. involved is sued in their individual capacities as co-tortfeasors equally liable for aiding and abetting the named Defs. in their misuses of the judicial system that caused considerable damages, injuries to Plaintiffs. 42 USC §1983, 1988 and Bivens.

recognizing that a defendant who is incarcerated pending trial suffers greater deprivation than one released on bail, Justice Ginsburg concluded that even the latter defendant is seized. See Albright, 510 U.S. at 279, 114 S.Ct. at 815-16. She wrote: "Such a defendant is scarcely at liberty; he remains apprehended, arrested in his movements, indeed 'seized' for trial, so long as he is bound to appear in court and answer the state's charges." *Albright*, 510 U.S. at 279, 114 S.Ct. at 816. The 3rd Cir. found this analysis compelling and supported by Supreme Court case law.

48 In *Gallo v. City of Philadelphia*, 161 F.3d 217 (3d Cir. 1998) the 3rd Cir. concluded that the intentional restrictions imposed on Gallo's liberty qualified as a seizure. The Ct. found Gallo's posting of bond and required appearances in Ct. constituted a loss if liberty consistent with the concept of seizure and that pretrial restrictions on travel and required attendance at court hearings constitute a seizure. [See *Murphy v. Lynn*, 118 F.3d 938, 945 (2d Cir.1997)]. Pellegrino's person had been seized, Waldman was forced to post bail to secure her release from horrific, filthy, 3rd-world conditions at the PPD SW Div. jail. As a FL resident, Pellegrino was required to appear in a Phila. courtroom at the CJC over a 20-month period which is consistent with the concept of seizure.

49 Pellegrino's unjustified seizure and loss of liberty still has profound effects on Waldman and on Pellegrino.

1) By *whitewashing* TSAO Defs.'actions/inactions,[50] by obfuscating central issues and controlling law, the Defs. have distorted and mis-characterized Plaintiffs' claim. (CMP ¶¶ 49-67). Contrary to the Defs. argument, the identities of each TSAO Def. and their actions/inactions are discoverable.[51] The named Defs.' roles in conspiracy and wrongful prosecutions were explicitly described in Claim II of Plaintiffs CMP. TSAO Defs.' misconducts are inextricably intertwined into the named Defs.' wrongful prosecutions by the strategic *substantial assistance* TSAO Defs. provided. Doe TSAO Defs wilful actions/inactions cannot be isolated away from the named Defs.' actions as Doe TSAO Defs. acted in common design and played integral roles in those wrongful prosecutions. As such Plaintiffs' claim is not time-barred. [52] Right of action is under *Bivens,* §1983, §1988. The clock started ticking on 3-28-08. The Defs. have no grounds to have Plaintiffs' claim dismissed.

In 1909, Congress enacted a general *aiding and abetting* statute applicable to all fed. crim. offenses (18 U.S.C. § 2). As federal public service agents, the named and Doe TSAO Defs. had mandated obligations to the public they served. Each Def. was subjected to all aspects of 5 CFR part 2635 including (v) *The prohibition against fraud or false statements in a government matter.* [53] In addition, each Defs.' conduct was subjected to TSA Mgmt. Dirs. prohibiting violations of state, federal laws and passengers' Const. rights [CMP ¶ ¶ 17, 27, 49]. Further, RSoT §654 (1977), R(S)oT §876 (a),(b), and (c) (1979) in Argument II are incorporated herein as if fully set forth.[54] Also R(S)oT §878 (1979) which states where "[t]wo or more persons are under a common duty and failure to perform it amounts to tortious conduct, each is subject to liability for the entire harm resulting from failure to perform the duty." All of the above apply

50 Named Defs. 2-17-11 Memo of Law (Part C. pp. 24-28)

51 (Plaintiffs have not abandoned their claims against an identifiable set of TSAO Defs. who prepared and accompanied the named Defs. for and to official proceedings where the named Defs. knowingly and intentionally provided false stmts. and testimonies intended to mislead prosecutors and two PA Commonwealth judges [CMP ¶¶ 65-67] while knowing exculpatory/impeachment evidence had been wilfully destroyed and/or was being withheld from Prosecutors and Plaintiffs by identifiable TSA ASI and TSAO Defs during DPDP. No space is available due to pages restriction. Instead Plaintiffs' focus on the TSAO Defs. who assigned fraudulent Rpt. Codes to the named Defs.' falsified TSA witness stmts., submitted the Fictitious Incident Rpt. to TSA TSOC, and those who intentionally failed to review the video surveillance recordings. The required use of FIPPs would have precluded falsified witness stmts. and fraudulent Rpt. Codes on the named Defs' stmts., Dilworth's false Summary Rpt., and the 7-29-06 *Fictitious Incident* from being supplied to Prosecutors (tainted evidence) and corruptly incorporated into TSA's records.

52 The clock on the TSAO Defs.' offenses started ticking when Plaintiff was acquitted of wrongful criminal charges the Phila. DA's Office failed to investigate, secure and produce exculpatory evidence or in any way substantiate the remaining baseless charges on 3-28-08.

53 Standards of Ethical Conduct for Employees of the Executive Branch of the USA

54 For liability under RSoT §876(a)(b)(c) *another's* conduct must, in fact, be tortious resulting in harm to plaintiffs. Plaintiffs contend the named Defs'. conduct was tortious and resulted in considerable harm to Plaintiffs.

to the Doe TSA Defs' duties to act in ways that prevented harm to Plaintiffs.

The 3rd Cir. recognizes liability for *malicious prosecution* as well as *aiding and abetting* based on action and inaction "when it rises to the level of providing substantial assistance. . ." [55] The Ct. emphasized a "heightened standard" for *aiding/abetting* liability. *Failla v. City of Passaic*, 146 F.3d 149, 158 (3d Cir. 1998) at 159. [56] There is little indication the 3rd Cir. has taken up aiding/abetting malicious prosecutions, although it has routinely considered "[d]ecisions by other Courts as part of our "clearly established" analysis when we have not yet addressed the right asserted by the plaintiff. See, e.g., *Kopec*, 361 F.3d at 778; *Atkinson v. Taylor*, 316 F.3d 257, 263 (3d Cir.2003)" (See *Williams v. Bitner,* 455 F.3d 186 (2006))." [57] Once the named Defs. agreed to falsely accuse Pellegrino, act as false witnesses, report false incriminations to the PPD, tortious conduct and breach of obligated duties occurred [58] [Ibid . ¶ ¶ 17-48]. Once Labbee unjustifiably re-detained Pellegrino at Abdul Malik's insistence, confined Plaintiff to the CKPT table directing Plaintiff to not touch her property,[59] and took strategic actions to keep both Plaintiffs' marginalized and uninformed against their wills, a special relationship between the named Defs. and Doe TSAO Defs. was established. [60] Significantly no TSAO Def. was an eyewitness on the CKPT to what the overhead surveillance cameras objectively captured prior to being summoned to officiate [Id. ¶ ¶ 7, 34,50-51,54-63; Fn. #18, 20, 26, 37, 87, 90, 94]. Any reason-

55 (*Hurley v. Atlantic City Police Dept*, 174 F. 3d 95, 127 n. 27 (3d Cir. 1999)(citations omitted), cert. denied, U.S.,120 S. Ct. 786 (2000) at 158 n.11; 174 F.3d at 126.

56 Six factors are considered: 1) the nature of the act encouraged, 2) the amount of assistance given by the Def., 3) presence/absence at the time of the tort, 4) relation to the other, 5) state of mind, and 6) duration of assistance provided..*Hurley v. Atlantic City Police Dept*, 174 F.3d 95, 127 n. 27 (3d Cir. 1999) (citations omitted), cert. denied,U.S.,120 S. Ct. 786 (2000).

57 Kopec v. Tate, 361 F.3d 772, 778 (3d Cir.2004) Also, the 5th, 6th, 8th, 9th, and 10th Cir. Cts. have considered cases involving aiding/abetting malicious prosecutions.

58 As already noted in Claim II, Kissinger was an active conspirator [CMP ¶ ¶ 32-34]. Plaintiffs were 1) intentionally excluded from what was said during the approx. 50-min. conf. between TSAO and the named Defs., 2) were intentionally kept uninformed, 3) were intentionally not interviewed or confronted about the named Defs.' false accusations. TSA Officer in charge or his rep. never appeared after Plaintiffs' repeated requests to communicate with him [CMP ¶ 30-31, 35 Fn. # 57, 81, 102] It is Plaintiffs' understanding that USAIRWAYS Salameh was also intentionally excluded from the conf. and instructed to stay away from and not speak to Pellegrino. [Ibid. ¶ 31; Fn. 48, 88]

59 In essence, Labbee directed Pellegrino not to examine or exhibit the damaged property from inside her suitcases in a public manner.

60 TSAO Defs. were either summoned to the CKPT to officiate or enacted their roles by phone with TSA Official not on the CKPT [See PL EX #4 Dilworth's IDR]. [Id. ¶9; Fn. 18, 21, 55]. As noted in Dilworth's Supplemental Report (SR), TSA Fed. Sec. Mgr., Richard Rowe, "arrived on the CKPT at 19:35" and "ASI Osbourne Shepherd (contacted) was notified at 19:25." [Id. ¶ 35] While unlawfully re-detained, Pellegrino requested the name/rank of one male TSA agent wearing a white shirt who refused to provide his or the named Defs.' He walked away from the table where Labbee confined Pellegrino. [Id. ¶ 52] Still, each TSA Official who provided material assistance and who participated in aiding/abetting the wrongful prosecutions can be identified through Discovery.

able determinations or conclusions relevant to charges filed against Pellegrino —specifically related to events prior to their arrival —required a legitimate objective fact-finding investigation to prevent further violations of Plaintiffs' Const. 1st, 4th, 5th, 6th, and 14th Amend. (fair treatment/equal protections) rights. Exhibiting remarkable callous indifference and a *wilful blind eye* to Plaintiffs' Const. rights,[61] TSAO Defs. ignored their supervisory duties to investigate Plaintiffs' side, interview relevant eyewitnesses, review the video evidence and thereafter intervene to prevent and control the harm the named Defs. were determined to inflict on Pellegrino, even after Plaintiffs repeatedly requested communications with TSA's Official in Charge.[62] Contrary to the named Defs.' misleading argument that these Defs. had no responsibilities to investigate, each TSAO Def., as federal public service employees, were mandated by TSA Mgmt. Dirs. to not violate state/federal laws and passengers' Const. rights as well as to not turn a **wilful blind eye** to *another's* violations. Egregiously ignoring mandated duties, Doe TSAO Defs. made conscious reckless choices to use prejudicial, one-sided rather than fair multi-sided objective, fact-finding methods [63] for roughly 50 min. prior to Pellegrino's wrongful arrest, imprisonments, and prosecutions. TSAO Defs. wilfully chose to 1) not interview readily available eyewitnesses [64] including Plaintiffs,[65] 2) did not review readily accessible objective video surveillance recordings (**the best factual evidence)** to determine the veracity of the named Defs.' accusations by objective means [PL EX #2] while Plaintiffs were unconstitutionally confined, marginalized, and kept uninformed against their wills. 4) Doe TSAO Defs. chose to listen only to the Defs.' false accusations 5) while they knew, should have known, they had a duty to know that Pellegrino stated her intent to report the named Defs.' misconducts to higher TSA authorities [PL EX #1] (bypassing Phila. authority) even while their presence on the CKPT was continuing to be objectively recorded by video surveillance cameras. [66] 6) By failing to properly manage, supervise [CMP ¶ 6-7], control, and intervene in unlawful

---

61 According to a small-statured, male TSA Official who helped Waldman with their luggage after Pellegrino was wrongly arrested said to the effect .. *She'll get her wrists slapped and a misdemeanor, that'll be the end of it.* [CMP ¶61]

62 Plaintiffs have reason to believe his title and name is TSA Federal Security Director, Robert Ellis.

63 The reasons for the TSAO Defs.' offenses can be uncovered during Discovery.

64 These Defs. failed to get the names of eyewitnesses on the CKPT at relevant times.

65 Plaintiffs repeatedly requested that TSA's Official in Charge be summoned. Neither he nor his rep appeared.

66 Significantly, TSAO Defs. knew or should have known that the CKPT had been poorly managed, supervised, and understaffed that evening and that a security breech was captured on video surveillance recordings, [Ibid. ¶¶ 6, 7, 113E1; Fn. 108] that Pellegrino who had no criminal record and indeed requested a formal complaint form with the named Defs. listed on it. [See PL EX #1].

misconducts, TSAO Defs. violated their mandated duties to protect Plaintiffs' civil rights.

7) The videos verified no probable cause existed and a wrongful arrest occurred under their officiation and supervision while acting prejudicially in favor of the named Defs.' misconducts, by acting in common design with the named Defs., TSAO Defs. provided strategic *substantial assistance a*nd TSA's *seal of approval* thereby giving the named Defs. *encouragement* to initiate and actuate two wrongful prosecutions by intentionally misusing their authority. 8) Without verifying and still unable to date to produce a single shred of evidence to substantiate disruptive/unruly conduct in any way by Pellegrino while on the CKPT, identifiable Doe TSAO Defs.' assigned *fraudulent 500 Rpt. Codes* to the named Defs.' false and fabricated witness stmts. in violation of state/federal laws, TSA's Mgmt. Dirs, federal FIPPs, 5 CRF 26359(v) [CMP ¶ ¶ 50 - 64; Fn #76].

Falsified witness stmts. with fraudulent 500 Rpt. Codes were initiated under the direct supervision of identifiable TSAO Defs. who provided add'l *encouragement* and strategic *substantial assistance* by ratifying the named Defs.' initiation of a *Fictitious Incident* that reported fabricated assaults, undocumented phony injuries, fictitious disruptive/unruly conduct— in essence—faked events to federal and state agencies. Add to this, the named Defs.' fabricated defaming stmts. intentionally misrepresented Pellegrino in false, negative light were supplied to prosecutors[67] who were not informed that *TSA's evidence* was spurious in content. Once these fraudulent records were supplied to PA Cmlth. prosecutors, the actions of TSAO Defs. were inextricably intertwined in interfering with and perverting the course of justice (add'l misuses of the judicial system).

Under basic tort law principles, actors who order, authorize, or ratify unlawful falsifications of records are liable for the resulting defamations, damages, and injures. Plaintiffs have adequately pled that identifiable TSAO Defs., by their wilful actions/inactions provided strategic *substantial material assistance* and *encouragement* to the named Defs.' misuses of the judicial system. Plaintiffs' claims meets the requirements to state a claim as established in *Iqbal* and Argument I and II. The named Defs. have no grounds for dismissal. TSAO Defs.' wilful involvement/participation in misuses of the judicial system make recovery of compensatory and punitive damages appropriate.

67 Plaintiffs have reason to believe tainted evidence was supplied by TSA's Leg. Dept.

Claims IV, V, VI: During two vexatious prosecutions Doe (ASIs) and/or TSA (TSAO) Defs. played integral roles in aiding and abetting the named Defs.' by wilfully 1) concealing exculpatory/impeachment evidence, 2) withholding Brady/Giglio materials from Plaintiffs, 3) destroying video surveillance recordings rather than disclosing and providing copies, 4) covering-up and stonewalling Plaintiffs' DPDP inquiries, 4) feeding Plaintiffs' attys. misleading rhetoric in response to repeated requests for copies of the recordings. The Defs. 5) supplied prosecutors with fraudulent, manufactured records, 6) mislead the presiding judge, prosecutors, and Plaintiffs, 7) interfered with and perverted official proceedings and 8) tried to influence judicial outcomes. Doe TSA ASI and TSAO Defs. are individually liable as co-tortfeasors for the pivotal roles they played in common design with and by providing substantial assistance to the named Defs. misuses of the judicial system. The Defs. are equally liable for the damages and injuries they wilfully caused to both Plaintiffs who seek compensatory and punitive damages under 42 USC §1983, §1985, §1988, and Bivens.

1. **The right to procedural due process is absolute**. The named Defs. *whitewashed* Doe TSA ASI and TSAO Defs.' (Doe TSA Defs.) misdeeds during DPDP. [CMP ¶ ¶ 68-96; Fn. #85, 102] [PL EX. #2 and #5]. Significantly Doe TSA Defs.' inextricably involved themselves in two wrongful prosecutions by wilfully concealing, destroying exculpatory/impeachment video recordings and/or withholding additional exculpatory/impeachment materials.[68] Doe TSA Defs.' misconducts were established in the underlying cases [PL EX #12, #14, #15]. Presiding J. Gehret agreed Plaintiffs did everything they could to secure the video evidence.[69] Doe ASI and TSAO Defs. played integral roles in common design with the named Defs. in two wrongful prosecutions that interfered with, perverted, and attempted to unlawfully influence official proceedings and judicial outcomes. With brazen contempt for Plaintiffs' Const. rights, Doe TSA Defs. violated *Brady/Giglio* rulings and their progeny. Doe TSAO Defs. responded in **bad faith** to repeated DPDP inquiries. [70] Plaintiffs' Claims IV, V, and VI are articulated in explicit details in their CMP [¶ ¶ 68-99 Fn #96-125] and meet the specificity/probability standards set by *Iqbal* [71] set forth in Argument I, incorporated herein as fully stated. Case law and

68 *Brady v. State of Maryland, 373 U.S. 83 (1963);*18 PA C.S.A. § 5101; 18 PA Con. Stat. §4911; *Giglio v. United States, 405 U.S. 150, 153–54 (1972)*.

69 PL EX #14 pg. 6. Significantly, the named Defs. recently produced an Ex. B which proves TSAO Defs. deliberately withheld exculpatory/impeachment evidence during DPDP in violation of PA RCP 573(B) (1) (a) thru (g) and also mislead the presiding judge, prosecutors, Plaintiffs' def. attys. and Plaintiffs about when the TSA received written notification to preserve the video surveillance evidence. It is now evident the TSA withheld critical exculpatory evidence during DPDP. [See Defs.' Ex. B also PL EX #22 A and B, PL EX #12 pg 27 Hetnecker and #14 pg. 9 Elbert.]

70 *Brady v. State of Maryland*, 373 U.S. 83 (1963); *Giglio v. United States, 405 U.S. 150, 153–54 (1972); United States v. Agurs, 427 U.S. 97, 107 (1976); Calif. v. Trombetta, 467 US 479 (1984); United States v. Bagley*, 473 U.S. 667 (1985); *Arizona v. Youngblood,* 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988); *Kyles v. Whitley (93-7927), 514 U.S. 419 (1995);* 234 Pa. Code Rule 573 (A) (B) 1 a to 9 g.

71 *Ashcroft v. Iqba*l, 129 S. Ct. 1937 (2009). Additionally, malicious prosecution lawsuits (42 USC §1983)

R(S)oT standards for *aiding and abetting* claims set forth in Argument II and III are incorporated also.[72] Elements of conspiracy, malicious prosecution and to prove Plaintiffs' 42 USC §1985 and §1983 claims have been set forth in Argument II and are incorporated herein.

Contrary to the named Defs' argument, Doe TSA Defs. wilfully acted out pivotal roles inextricably intertwined themselves into providing strategic *substantial assistance* to the named Defs.' wrongful prosecutions. Doe TSA Defs. misdeeds violated Plaintiffs' rights to due process of law and cannot be separated away or isolated apart from *aiding and abetting* two wrongful prosecutions because Doe TSA Defs. acted by common design with the named Defs. Doe TSA defs. actions facilitated and sustained the named Defs. misuses of the judicial system for 20 months. [73] The clock started ticking with acquittals on 3-28-08 when J. Gehret held the TSA responsible for withholding the videos from Plaintiffs' who required them to properly defend against baseless charges.[74] Harms caused by Doe TSA Defs.' actions (due process violations) subjects them to liabilities equal to the named Defs. As a result, Plaintiffs Claims IV, V, and VI are not time-barred. Plaintiffs seek vindication of their rights under 42 USC §1983, §1985, §1988, 5 CFR part 2635(w).[75] Right of action is under *Bivens* for aiding/abetting the named Defs.' misuses of the judicial system.

---

arise from Const. protected activities. Malicious prosecutions harm the falsely accused and threaten efficient admin. of justice. Harms arise from forced defense against fabricated crime(s) that subject the falsely accused to a panoply of psychological pressures that add the stress/distress of defending against a prosecutions commenced from spite or ill will. Even more egregious and shocking, Doe ASI and TSAO Defs. stepped in to destroy Plaintiffs' proof of the named Defs.' mean-spirited retaliations and repeated lies told to the PPD and TSA Officials that were unfairly entered into TSA's system of records. These Doe TSA Defs. offenses played integral parts in the unnecessary continuation of two malicious prosecutions.

72 RSoT) §654 (1977); RSoT §875 (1979); §876(a)(b)(c) (1979) are incorporated herein.

73 Had the TSA ASI Defs. not deliberately destroyed Plaintiffs' exculpatory/impeachment video surveillance evidence, both prosecutions would have been dismissed as soon as Plaintiffs had the opportunity to present convincing evidence for dismissals on all charges—the video surveillance recordings.

74 [PL EX #15 pg. PA Cmlth. Ct. System J. Thos. Gehret held the TSA responsible for withholding and not turning over the video surveillance recordings. Plaintiffs' claim is not time-barred as the Doe Defs. misconducts are inextricably interlinked into the named Defs.' maliciously motivated prosecutions. Accrual began on 3-28-08 after Pellegrino's acquittals. TSA ASI and TSAO Defs. chose to actively *aid and abet* the named Defs.' misuses of the judicial system. TSA's ASI Defs. knowingly chose to *"kill off"* Plaintiffs' key eyewitnesses (exculpatory and impeachment video surveillance evidence) in violation of Plaintiff's 4th Amend rights to be free from prosecutions without probable causes, 5th Amend. rights to not be deprived of liberty without due process of law, 6th Amend. rights to compel witnesses in her favor, and 14th Amend. rights to fair treatment and equal protections of the law. TSAO Defs. also consciously misused the judicial system by deliberately withholding exculpatory/impeachment evidence from Plaintiffs and Prosecutors, by stonewalling Plaintiffs DPDP inquiries, unlawfully interfering with, perverting, and attempting to influence official proceedings and judicial outcomes resulting in deprivation of Plaintiff's rights to fair and equal treatment of the law.

75 5 CFR Pt. 2635(w) *The prohibition against concealing, mutilating or destroying a public record* (18 USC 2071). *Bivens v. Six Unknown Federal Bureau of Narcotics Agents*, 403 US 388 (1971), 91 S CT 1999, 29 L Ed. 2d 619 (1971).

ELEMENTS TO PROVE CONSPIRACY

1. Conspiracy to deprive federally protected rights (42 USC §1985): As federal investigators, Doe ASI Defs.[76] knew/should have known any joint decision to conceal the existence of multiple angle overhead video surveillance recordings from prosecutors (and Plaintiffs) [77] and to agree together to intentionally destroy such exculpatory/impeachment (hereafter exculpatory evidence), esp. while sought during DPDP by Plaintiffs' were unlawful actions that violated federal/state laws and Plaintiffs' due process rights, [78] PA R.C.P., Rule 573(A)(B)1(a) 9(g), in-place TSA's Mgmt. Dirs., security and civil rights policies, and SOPs [CMP ¶68]. Before 8-29-06, in violation of Sup. Ct. rulings including *Brady* and its progeny, 234 Pa. Code Rule 573 (A)(B)(1)(a) to (9)(g), TSA ASI Defs.[79] agreed to have the video evidence destroyed after realizing none of the footage supported any of the named Defs.' allegations against Pellegrino. [80] Doe TSA ASI Defs' considered, decided, and agreed to have the videos destroyed by not alerting PIA's Sec. Dept. to preserve them while Plaintiffs' atty., Giuliani, had alerted Holman, Gerardo, and Scully he wanted copies of the exculpatory videos [81] to defend against the baseless charges. Doe TSA ASI Defs.'

76 Eckl's 6-4-07 testimony states 'inspectors' not 'inspector' — more than one TSA ASI investigator was involved in the agreement to destroy Plaintiffs' exculpatory/impeachment (video surveillance) evidence [PL EX #12 pg 20]

77 *Brady v. State of Maryland*, 373 U.S. 83 (1963); *Giglio v. United States, 405 U.S. 150, 153–54 (1972); United States v. Agurs, 427 U.S. 97, 107 (1976); United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley (93-7927), 514 U.S. 419 (1995)*

78 *Brady v. State of Maryland*, 373 U.S. 83 (1963) exculpatory evidence requested by Brady not produced by the prosecution violated due process rights; *Giglio v. United States*, 405 U.S. 150, 153–54 (1972) Brady impeachment evidence not produced violated due process rights; *United States v. Agurs*, 427 U.S. 97, 107 (1976) favorable evidence in the absence of a request by the accused not produced violated due process rights; *United States v. Bagley*, 473 U.S. 667 (1985) the Brady Rule insures that a miscarriage of justice does not occur; *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) favorable evidence known to the others acting on the gov.' behalf not produced including the police violated due process rights; *Strickler v. Greene*, 527 U.S. 263, 281 (1999) Prosecutors obligations to disclose exculpatory evidence; *Napue v. Illinois*, 360 U.S. 264 (1959) false evidence, known by reps. of the state, must fall under the 14th Amend; *Mooney v. Holohan*, 294 U.S. 103 (1935) perjured testimony known to prosecutors who did not correct the record; *Pyle v. State of Kansas*, 317 U.S. 213 (1942); the state, while not soliciting false evidence, allowed it to go uncorrected when it appears; *Alcorta v. Texas,* 355 U. S. 28 (1957) prosecution witness allowed to testify falsely with the prosecutor's knowledge.

79 Plaintiffs have reason to think at least one if not more TSA Officials knew and approved the deliberate destruction of the video surveillance recordings, the cover-up, the stonewalling that followed, intentionally withheld exculpatory/impeachment materials from Plaintiffs during DPDP [CMP ¶ 87].

80 Multiple video surveillance cameras captured and recorded the events on the CKPT. False and fabricated versions were reported to TSA Officials, PPD Ofcs. by the named Defs. which were also reported to TSA Operations Center in VA (TSOC). On or around 8-2-06 a corrupt sub-standard CAE investigation (EI) by TSA ASI Defs. occurred. Thereafter Doe TSA Defs. initiated a baseless CAE against Pellegrino which TSA ASI and TSAO Defs. have never been able to substantiate with as much as a fraction of a second of video surveillance evidence from multiple angle overhead camera recordings.

81 PL EX #2, #5, # 22 A and B

agreement to destroy exculpatory evidence during DPDP constituted a §1985 conspiracy to deprive Plaintiffs' of their civil rights. [82]

2. / 3. DOE TSA DEFS.' MOTIVATIONS TO DEPRIVE CIVIL RIGHTS AND ACTIONS IN FURTHERANCE OF CONSPIRACY: [83] Doe TSA Defs. had several motives to conceal, withhold and destroy Plaintiffs' exculpatory evidence. ASI Defs. wanted to 1) remove any video evidence of poor TSA mgmt. and supervision on the CKPT, the crew's dereliction of duties causing an aviation security breech [CMP ¶¶5-7; Fn. #6-13, #108], the named Defs. violations of Plaintiffs' passenger/civil rights, [Ibid ¶¶ 8-48; Fn. #14-71] 2) unfairly advantaging the named Defs.' wrongful prosecutions, [84] 3) unfairly advantaging prosecutors, 4) unfairly disadvantaging Giuliani's efforts during DPDP, and 5) unfairly disadvantaging Plaintiffs' ability to prepare a proper defense against baseless charges. TSA ASIs Defs. were motivated to: **6)** conceal the existence of exculpatory evidence from prosecutors who were mandated to turn over copies to Plaintiffs. **7)** TSA Officials Holman, Gerardo Spiro, and Patrice Scully had been timely notified [85/86] by Giuliani's phone communications no later than 8-21-06 (9 days prior to destructions), **8)** Holman was notified in writing via fax received on 8-25-06 [87] to preserve any video evidence for copying [88] (4 1/2 days prior to destructions). TSA ASI Defs. were motived to

82 In Claims IV, V, VI, the TSAO Defs. are agents who concealed or withheld information on the existence of the video evidence from Prosecutors or Plaintiffs, who agreed to the destruction of the recordings, or participated in the intentional cover-up after destruction, or the stonewalling, or who decided to withhold exculpatory or impeachment evidence from prosecutors or Plaintiffs, those who decided to provided tainted evidence to prosecutors after. after the videos were destroyed.

83 Plaintiffs strongly feared the TSA would destroy the video surveillance recordings if given an opportunity once the TSA knew what the digital surveillance cameras captured. Plaintiffs wanted copies before the TSA destroyed their exculpatory/impeachment evidence and immediately instructed their def. atty. to obtain copies . [PL EX. #5].

84 RSoT (1979) § 876 (a),(b),(c)

85 TSA Field Counsel Patrice Scully received phone notification no later than 8-21-06 and did not return Giuliani's call by 8-25-06 which prompted his 8-25-06 letter to Holman. After the *video recordings* were deliberately destroyed by TSA ASI Defs. Scully's assistant, Lisa Eckl, Esq., notified Plaintiffs' atty. that no video existed. Eckl concealed information that TSA ASI Defs. took active roles in the destruction of the video evidence during DPDP. Plaintiffs' understanding is that the TSA also concealed this information from the Phila. DA's Office for months.

86 It's possible Scully's asst. Lisa Eckl, Esq., became aware before, by, or after 8-21-06 and certainly knew directly after Labor Day, 2006 because she returned Giuliani's phone call to Scully requesting copies of the video evidence.

87 Once these TSA Officials were notified by Guiliani to preserve any and all video surveillance recordings, they knew or should have known that any and all video surveillance recordings sought by Plaintiffs had *exculpatory and impeachment value* and were required to be treated as such. Even without such notifications Doe TSA ASI Defs. were legally mandated to disclose and produce exculpatory/impeachment evidence to Phila. DA prosecutors, who in turn, were mandated by the same PA R. Crim. P., Rule 573(B)(1)(a-g) to hand over exculpatory/impeachment evidence to Plaintiffs..

88 See PL EX #5, # 22A and B, and Def.'s EX B. The named Defs. have recently produced EX B to the USDC that was withheld during DPDP. EX. B is a copy of Guiliani's 8-25-06 letter to Celestine Holman who received it

destroy the videos because they undermined two wrongful *TSA backed* prosecutions already in progress. Furthermore, Doe TSA Defs. were motivated thereafter **9)** to conceal the existence and destructions of the videos, **10)** to stonewall Plaintiffs' attys.' inquiries, **11)** to withhold exculpatory evidence from prosecutors and Plaintiffs, **12)** to respond to DPDP inquiries with distorted, misleading, tangential information concealing the truth about the actual existence and intentional destructions of the videos, and **13)** to deny video recordings ever existed because TSA Defs. did not want Plaintiffs to have copies of impeachment evidence against the TSA.[89] The recordings impeached TSO Clemens' and the named Defs.' allegations. Video footage captured lack of probable cause, an unjustified re-detention, confinement, handcuffing, arrest and no justification for imprisonments. In particular, the videos objectively: undermined the named Defs.' and TSA's credibility, the PA Cmlth.'s cases, TSA's CAE, [90] [Id. ¶ 75] and documented that the "*The Incident*" Lisa Eckl referenced several times was, in fact, a *Fictitious Incident"* [Id ¶ 62],[91] and that Clemens and the named Defs. falsified their 7-29-06 TSA witness statements. [92] TSA ASI Defs. were motivated to destroy the video recordings because: they captured the named Defs.' false reports to the PPD, Pellegrino's re-detention for no justifiable reasons, that Plaintiffs were marginalized and kept on the CKPT un-informed for roughly 1 hour while TSAO Defs. and the PPD failed to properly investigate the

on the same day (8-25-06). During the Ct. Ordered investigation hearing 6-4-07, Plaintiffs attorney requested from Eckl a copy of Giuliani's letter. Plaintiffs' understanding is that Eckl produced a copy with a date stamp received on 8-29-06 misleading him, J. Gehret, and prosecutors to believe Holman had not received Giuliani's letter until 8-29-06 which roughly around the time the video evidence was destroyed. [See PL EX # 14 Oral Motion to Dismiss, Elbert pg. 8: "I have a copy of the letter by Giuliani.The date I have, 8-29-06, thirty days after the incident. That date stamp applies to when it would have been gotten in the office or when it was received by the airport, as told by the testimony, indicating that it was not received, physically, by the person that would make the call....." The TSA made no effort to clarify that Holman received Giuliani's letter 4 1/2 days before the video evidence was destroyed. [See also pp 4-13 PL EX #14]

89 *Brady v. State of Maryland*, 373 U.S. 83 (1963) "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution."; *Giglio v. United States*, 405 U.S. 150, 153–54 (1972) impeachment materials were not turned over to *Giglio* after request in violation of due process rights; *United States v. Agurs*, 427 U.S. 97, 107 (1976); *United States v. Bagley*, 473 U.S. 667 (1985) exculpatory evidence should be provided without Bagley's request to insure a miscarriage of justice does not occur; *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

90 initiated on or about 8-2-06 to 8-7-06 for bogus federal screening violations.

91 and objectively proved a *Fictitious Incident* had been falsely reported by Phila. TSAO Defs. to TSA's Operations Center)

92 Destruction of the video evidence enabled the falsified and fraudulent records initiated by the named Defs., Clemens, Dilworth and approved by Dilworth and Rowe to stand unchallenged in TSA's system of records in violations of TSA FIPPs and Pellegrino's Privacy Act rights and also enabled the named Defs to repeatedly lie to prosecutors and under oath to two PA Cmlth. judges.

veracity of the named Defs.' allegations [Id. ¶ 75] 10), Pellegrino had been falsely arrested without probable cause [Id. ¶60]. Significantly, the video evidence contradicted the named Defs.' false criminal complaints. [Id. ¶ 39] and was objective evidence the named Defs. violated state (18 PA Cons. Stat. §4903, §4904 §4906 (a) (b), §4910; §4911, §5107) [Id. Fn. # 62] and federal (18 USC §1519; 42; USC §1983, §1985) statutes and Plaintiffs' civil rights. TSA had serious public relations problems if Plaintiffs were handed copies of the recordings.

In a meeting of minds, TSA ASI Defs. were motivated to protect TSA's (and it agents') interests by destroying the videos. This gave the named Defs. an unfair advantage in their favor while they deprived Plaintiffs of their due process rights to fair treatment and equal protection of the laws. Contrary to the named Defs.' erroneous assertions of "*lost video footage,"* Plaintiffs exculpatory evidence was *deliberately destroyed* in **bad faith** by TSA ASI Defs. so *key objective eyewitnesses* were permanently unavailable to prosecutors and Plaintiffs during two wrongful prosecutions. Doe TSA Defs.' had motives to provide strategic *substantial assistance* to the named Defs.' wrongful prosecutions. Significantly, PPD Ofcs./Dets. and the Phila. DA Office's [93] investigators made no effort at any time to secure the 7-29-06 video surveillance evidence.[94] The continued existence of powerful impeachment evidence against TSA agents threw monkey wrenches into two *TSA backed*

93 Under the S. Ct. ruling in *Brady v. State of Maryland*, 373 U.S. 83 (1963), its progeny (*Giglio v. United States, 405 U.S. 150, 153–54 (1972); United States v. Agurs, 427 U.S. 97, 107 (1976); United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley (93-7927), 514 U.S. 419 (1995)*, and under PA Cmlth. RCP, Rule 573 (B) (1) (a) through (g), The Phila. DA's office was legally obligated to seek out and provide evidence favorable to Pellegrino as part of its mandate to not violate Pellegrino's civil rights. This affirmative duty applied equally to TSA ASI and TSAO Defs. as fed. gov. agents who supplied material evidence to the Phila. DA's Office, although it was fraudulent, manufactured evidence TSA provided. Significantly, the Phila. DA's Office did not investigate the named Defs.' false allegations, made no effort to determine whether *Brady/Giglio* evidence existed or to secure copies of the video evidence or impeachment materials from the TSA even though they were mandated to do so. Plaintiffs contend the Phila. DA's Office prosecutors have no excuse for its failure to produce exculpatory evidence after they filed groundless criminal counts against Pellegrino which they never investigated before or after charging. Indeed, the Phila. DA's Office was obligated even when the PPD Airport Div. and Ofc. J. Fadgen failed to perform a crime scene investigation, failed to interview available witnesses, failed to secure any evidence, and failed to preserve evidence favorable to Pellegrino and turn these over to prosecutors. In addition, PPD Det. Campbell failed to investigate the named Defs.'allegations and failed to secure the exculpatory video surveillance evidence. Clearly both the Phila. DA's Office and the PPD were nothing less than negligent in their affirmative duties, obligations, and mandates. The the most egregious offenses were Doe TSA ASI Defs. and TSAO Defs. who unlawfully interfered with, perverted and attempted to unlawfully influence judicial proceedings and outcomes. Doe TSA Defs' wilful misconducts *aided and abetted* the named Defs.' wrongful prosecutions by a common design in providing *considerable substantial assistance* by concealing, by not turning over copies to the Phila. DA's Office and by destroying the best factual exculpatory/impeachment evidence during DPDP.

94 From the beginning, Plaintiffs had strong fears the TSA would destroy the video evidence and instructed Giuliani the day he was paid to secure the video evidence before the TSA destroyed it. [CMP ¶69][PL EX #5].

wrongful prosecutions and TSA's baseless CAE. [95] TSA ASI Defs. were motivated to destroy the video evidence while TSA Officials stonewalled Guiliani's DPDP requests for copies. Of more significance, TSA ASI Defs [96] were in strategic positions to cause the permanent destructions the video evidence if they made no effort to contact PIA's Security Dept. to preserve the recordings which is what they agreed to do and actually did. [97] Doe TSA Defs. had mandated duties based in well-established law, federal/state statutes, PA RCP 573(A)(B) (1) (a) thru 9 (g), embodied in TSA's Dirs., civil rights and security policies, and SOPs to disclose and produce exculpatory evidence to Prosecutors.[98] Doe ASI Defs. had obligations to legitimately investigate, analyze, gather and produce material evidence, including *Brady/Giglio Materials*, to Doe TSAO Defs., who were required to turn material evidence over to TSA's Leg. Dept., who in turn were mandated to disclose and supply prosecutors with true/correct copies of all material evidence, who were mandated to supply

---

95 Duties to disclose and preserve impeachment/exculpatory evidence are based in the right to fair treatment, equal protections of the law, a fair trial (due process). *Brady v. State of Maryland*; (prosecution is required to produce exculpatory/impeachment evidence without request) *Giglio v. United States; United States v. Agurs; California v. Trombetta; United States v. Bagley*; *Arizona v. Youngblood*; *Kyles v. Whitley.*

96 (and most like at least one if not more TSAO Defs.)

97 [See PL EX #12 pp: 6-19 Renee Tuft, TSA Liason and PIA Sec. Mgr., 6-4-07 testimony] [CMP ¶ ¶ 78-79, 113E]. Tufts established the TSA was required by policy and SOPs to notify PIA's Security Dept. to preserve video recordings. Tufts testimony indicated TSA ASI Defs. did not act as obligated and it was TSA's sole responsibility to notify her dept. in writing to preserve and archive the videos. If TSA's agents did not contact the PIA Security Dept., her dept. employees would have no way of knowing recordings needed to be archived for criminal or civil proceedings. The only actions TSA ASI Defs. needed to take insure the exculpatory/impeachment evidence permanently disappeared was to do nothing and to not contact PIA's Security Dept. by phone, in person, or in writing. Tufts also testified the videos pertinent to Pellegrino were not preserved or archived because no one from the TSA got in touch with her dept. to request preservation of the videos for civil and criminal proceedings (both categories applied). The only individuals on record requesting copies were the Plaintiffs. TSA ASI Defs. and most likely TSAO Defs. knew or should have known that by not contacting Tufts' Security Dept. the recordings would permanently vanish. TSA ASI Defs. knew Plaintiffs' **best factual exculpatory evidence** would be destroyed by a 30-day loop record-over process by 8-29-06 thereby avoiding disclosure to Prosecutors and preventing Plaintiffs from obtaining copies (violations of the *Brady Rule*, numerous statutes, due process rights to fair and equal treatment of the law, rights to prepare a proper defense, rights to compel witnesses in their favor, thereby prolonging Plaintiffs' liberty interests under the concept of seizure). Plaintiffs believe Tufts' testimony about video cameras covering the conveyor belts only was misleading as there were numerous fish-eye lens cameras installed in the ceiling of Terminal B CKPT and the PIA's 1-5-05 press release contradicted Tufts' assertion of camera surveillance only of the CKPT conveyor belts. [PL EX #2]. TSA ASI and TSAO Defs.' deliberate inactions constitute violations of Plaintiffs' 4th, 5th, 6th, 14th Amends rights, TSA security and civil rights policies, TSA SOPs, TSA Mgmt. Directives, 18 PA Cons. Stat. §4910, §4911, §5107; 18 USC § 1519; 42 U.S.C. §1983, §1985), PA RCP 573 (B) (1) (a) through 9 (g).

98 Unquestionably, TSA ASI Defs. were required by SOPs as well as common sense to review and analyze the video recordings for 7-29-06 to adhere to TSA FIPPs and as the means to produce an accurate, objective CAE EI Rpt. for what was, in deed, ***a Fictitious Incident*** based on the named Defs.' false allegations. It is preposterous for the TSA to cling to it's misleading assertion that their investigators did not look at the video evidence thus deciding **the best factual evidence** was insignificant but the named Defs.' legally unchallenged allegations were all that was needed to rely upon in their investigations of alleged criminal conduct and federal screening violations.

copies of all exculpatory evidence to Plaintiffs to prepare a proper defense against baseless charges. [PL EX #24]

Undaunted by legal mandates, in direct violations of TSA's policy and SOPs, TSA Defs. acted to permanently destroy the video recordings by not alerting PIA's Sec. Dept. to pull and preserve them which *killed off* Plaintiffs' *key eyewitnesses* by PIA's 30-day loop record-over process. [PL EX #12 Renee Tufts pp. 6-19]. By destroying key impeachment evidence against the named Defs., Doe ASI Defs. provided *strategic substantial assistance* [99] that facilitated the continuation of the named Defs.' wrongful prosecutions for a total of 20 months.[100] [Ibid. Fn. # 75]. Thereafter instead of reporting Doe ASI Defs.' unlawful misconducts to higher authorities as mandated by TSA Mgmt. Dir, No 1100.73-5 and 200.7, Doe TSAO Defs. stepped in and concealed, covered-up, and stonewalled Plaintiffs' def. attys.' DPDP inquiries and requests for copies of the videos. [101] In early Sept. 2006, Eckl responded to Giuliani's August phone communication to Scully who did not return his phone inquiries. [CMP ¶ ¶ 73-74] [102] Eckl left a voice mail message to the effect that *no video recording for 7-29-06 existed and there never had been any*. Either Eckl (or other TSA Officials) crafted this and other misleading responses designed to withhold the full truth about TSA's wilful destructions of video recordings from Plaintiffs for some ten months. When contacted by Plaintiffs' def. attys., Eckl provided distorted, misleading and tangential responses, stonewalled a 2-18-07 subpoena for copies of the videos and DPDP inquiries and turned the named false Defs.' allegations about a *Fictitious Incident* and fictitious crimes into a *TSA Proven Incident* [PL EX. #5, #7, #11A, #11B, and #16] until a Ct. ordered hearing 6-4-07. Eckl fessed up to Doe TSA ASI Defs.' intentional spoliation of the video recordings. While TSA Eckl testified, PA Cmlth. prosecutor ADA Marion Braccia sat in silence and made no comments on the record about the destroyed video evidence. [Ibid. Fn. #120] Testifying about the reason the video

99 (18 U.S.C. § 2) and elements of R(S)oT §654 (1977), §875 (1979), §876 (a)(b)(c)(1979) *aiding and abetting*

100 18 U.S.C. § 2; 18 USC § 1519; 42 U.S.C. §1985; 18 PA CONS. STAT. § 4910; 18 PA CONS. STAT. § 4911. 18 Pa. Cons. Stat. § 5107; RSoT) §654 (1977); RSoT §875 (1979); §876(a)(b)(c) (1979).

101 Doe TSAO Defs. withheld and did not report the destruction of the video surveillance recordings to the Prosecutors who would have been legally obligated to divulge these unlawful actions to Plaintiffs during DPDP. Prosecutors never reported such events to Plaintiffs or their attorneys. Disturbingly, the Phila. DA's Office made no effort to discover whether exculpatory/impeachment evidence existed, this agency was content to prosecute Pellegrino with fraudulent, fabricated evidence supplied by TSAO Defs.

102 The word *September* is missing from Plaintiffs' CMP after the word early pg. 35 between ¶ ¶ 73-74.

surveillance recordings for the entire CKPT for 7-29-06 were not preserved, Eckl stated: "*So our inspectors did not believe that was necessary in this case.....*" [PL EX. #12 pg. 20]. [103] Significantly, Doe TSA Defs. lacked authority to decide what *evidence* should/should not be disclosed, produced, withheld or destroyed during any criminal [104] (or civil) [105] proceedings. [106] Well-established law has ruled repeatedly that exculpatory evidence that is not produced to an accused is a violation of due process rights. [107] On the same day, Eckl disclosed TSA's intent to withhold records Plaintiffs classify as *Brady Materials.*[108]/ [109] Eckl: "*You shouldn't have one from Dilworth....*" The Court: "*He's got it*." [PL EX. #12 pg 23]. [CMP ¶ ¶ 89-99; Fn. #109 - 125] While *Brady/Giglio Materials* were intentionally destroyed and withheld, and other *Brady Materials* intended to be withheld by TSA ended up with the prosecution by mistake, TSA supplied prosecutors with factually fraudulent, fabricated

---

103 The precise time of the deliberation(s) including who decided *it was not necessary to preserve the video recordings* are discoverable.

104 See *Griffin v. Spratt*, 969 F. 2d 16 (3d Cir. 1992) (citing *Calif. v Trombetta*, 467 U.S. 479 (1984); *AZ. v. Youngblood* 488 US 51 (1988).] The Sup. Ct. held in *Trombetta* that the gov. violates a def.'s due process rights when it fails to preserve evidence that would likely play a significant role in the accused's defense. To meet "constitutional materiality," standards, the Ct. noted "evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 US at 489. In *Youngbloo*d, the Ct. assigned the burden of showing *bad faith* on the part of the police who failed to preserve the potentially useful evidence. *Youngblood*. 488 US. at 58. Had the video evidence been preserved in the underlying cases, Plaintiffs would have immediately motioned to have all charges discharged then moved forward with a civil rights violations lawsuit against the named TSA Defs. with convincing evidence.

105 In civil cases, a party anticipating litigation has an affirmative duty to preserve relevant evidence (*Roselli v Gen. Elect. Co. 559, A.2d 685 (PA Super 1991)*. Further the PA. Sup. Ct. adopted the 3rd Cir.'s 3-part test set forth in *Schmidt v. Milwaukee Elec. Tool Corp.* 13 F3d 76 (3d Cir. 1994) proper penalties for spoliation of evidence 1) the degree of fault, 2) the degree of prejudice suffered, and 3) the availability of sanction to deter future similar conduct.

106 Eckl's reason for TSA ASI Defs.' decision to have the videos destroyed is nonsensical. Clemens and the named Defs. made numerous false, fabricated accusations against Pellegrino in their 7-29-06 TSA witness stmts. about events prior to and after the search when the Abdul Malik and Labbee falsely accused Pellegrino of assaults and/or injuries that never happened. While Clemens did not testify on 10-25-06, Abdul Malik and Labbee did. Prosecutor Nicholas Liermann put Abdul Malik's and Labbee's false defaming testimonies on the record after exculpatory/impeachment video surveillance evidence had been wilfuly destroyed by TSA ASI Defs. The named Defs.' false testimonies were *credibility impeachment issues* during DPDP and for trial. Also TSA ASI Defs. knew or should have known what the named Defs. alleged on their falsified witness statements prior to initiating their EI in early August, 2006. Plaintiffs required the video surveillance evidence to impeach the named Defs.' false witness statements, false 10-25-06 testimonies and Labbee's and Kissinger's 3-28-08 false testimonies as well as to defend against TSA's baseless CAE.

107 *Brady v. State of Maryland*, 373 U.S. 83 (1963); *Giglio v. United States, 405 U.S. 150, 153–54 (1972); United States v. Agurs, 427 U.S. 97, 107 (1976); United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley (93-7927), 514 U.S. 419 (1995)* Even more disturbing, the presiding judge would not allow Plaintiffs to have a copy of the transcript of the hearing which provided significant testimony that the TSA had violated Plaintiffs due process rights. [CMP ¶ Fn. #120]

108 CMP Fn. #85

109 *Brady v. State of Maryland, 373 U.S. 83 (1963)*; *Giglio v. United States, 405 U.S. 150, 153–54 (1972); Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

evidence. [110/111] Further, TSA Eckl would not allow video recording and photographing of the search closet or the ceiling during a winter of 2007 investigation.[PL EX 11A]. In contrast, Gabriel Chorno, Phila. City Solicitor's Office (O&O of the PIA) allowed videotaping and photographing of the search closet [PL EX #23].

As already noted, Doe TSAO Defs., acting in bad faith, concealed material information and evidence from the presiding judge, prosecutors, and Plaintiffs (in the underlying case) who were mislead to believe TSA Holman had not received Giuliani's 8-25-06 letter until 8-29-06. When in fact, Holman received Giuliani's letter requesting copy(s) of any video on 8-25-06 (4.5 days prior to TSA's wilful destructions). [112] Defs.' Ex B [also PL EX #22 A/B with clarifying notes] was produced to the USDC on 2-17-11 in support of their Motion to Dismiss Plaintiffs' CMP. On top of this Scully, who did not respond to Giuliani's DPDP inquiries to obtain copies of the videos no less than 9 days before they were destroyed, appeared in court on 1-24-08 attempting to persuade Judge Gehret that the TSA did not own or control the video surveillance cameras and that the TSA had to make a request to get "*the tapes*" (that were in fact digital recordings). Plaintiffs believe, Scully tried to shift the blame for TSA's wilful destructions of the videos to the PIA Security Dept. [PL EX #14 pp: 10-11].[113]

4. Injuries: As set forth in Claim II CMP ¶ 47 - 48 and in this Argument Claim II, Plaintiffs injuries and damages are incorporated herein. Due process violations assume defamation injuries. Both Plaintiffs are victims of Doe TSA ASI and TSAO Defs. With unconscionable contempt for and with deliberate indifference to Plaintiffs civil rights, Doe TSA Defs. brazenly violated Plaintiffs' 4th, 5th, 6th, and 14th

---

110 Clemens', two of the named Defs'. witness stmts. and Dilworth's Summary Rpt. and Incident Detail Rpts. (by mistake), Labbee's stmt. was produced by Eckl during the Ct. order hearing after repeated requests for Discovery materials.

111 Testimony of TSA Eckl indicates she (as TSA's leg. rep.) was supplying and withholding evidence from prosecutors but it is not clear if she was the only TSA Official or who was in charge (which is discoverable). [See PL EX. #12 pg. 23 Eckl: "You shouldn't have the one from Dilworth. Dilworth just reviewed --" The Court: He's got it." Hetznecker: "I do have it. It was provided by the DA's Office." Phila ADA Marion Braccia: " I have the same ones that Mr. Hetznecker has." [pg. 29] While Eckl may have made decisions about what to withhold and what to supply to the DA's Office on her own, Plaintiff have reason to think these decisions were coming from Eckl's TSA superiors; nevertheless, TSAO Defs. who were actually making decisions to withhold material evidence from the prosecutors and Plaintiffs are discoverable.

112 Celestine Holman, TSA Asst. Fed. Director for Regulatory Inspections, worked in the same dept. as ASI Defs. Whether Holman actively participated with TSA's ASI Defs.is discoverable.

113 Had the ASI and TSAO Defs. not become actively involved in wrongfully *aiding and abetting* the named Defs. unlawful misconducts and turned over exculpatory and impeachment evidence as required by law, Directives, PA. Rules of Criminal Procedures and state, federal and Const. laws, two unjustified baseless prosecutions would have ended shortly after they were maliciously instigated, initiated, and actuated by the named Defs.

Amend. rights by choosing to set up an unfair treatment and unequal protections of the laws. TSA ASI and TSAO Defs.' wilful involvement/participation in providing strategic *substantial assistance* to the named Defs.' misuses of the judicial system in two wrongful prosecutions shocks the conscience of reasonable minds and makes recovery of compensatory and punitive damages appropriate. TSA ASI and TSAO Defs. share equal liability as co-tortfeasors. Plaintiffs claims are not time-barred. The named Defs. have no grounds for dismissal. TSA ASI and TSAO Defs.' wilful involvement/participation in misuses of the judicial system make recovery of compensatory and punitive damages appropriate.

Claim VII: The TSA has failed to correct its falsified records in violation of TSA's Fair Information Practice Principles (FIPPs), Privacy Act (PA), 5 USC § 552(A)(B), 42 USC 21E § § 2000EE, 2000EE-1, 2000EE-2, 6 USC §142, 49 CFR Part 1540.103, TSA Mgmt. Dir. 1100.73.5, 100.4, 200.7, 18 Pa. CSA. § 5101; 18 PA Con. Stat. §4911; 18 PA Con. Stat. §4906, 5 CFR PT. 2635(v). Plaintiffs seek relief pursuant to the PA to correct, delete, expunge, or destroy tainted records on Pellegrino.

Under 5 U.S.C. § 552a(g), (g)(1)(A), (g)(1)(B), (g)(1)(C), (g)(1)(D), the PA provides for four separate, distinct civil causes of action. Not only the named and Doe Defs. but also other TSA's agents violated FIPPs and Pellegrino's PA rights causing defamations, damages, and injuries arising from wrongful prosecutions and false, unsubstantiated, unproven allegations of federal screening violations. In violations of TSA FIPPs [PL EX #29 A,B,C,D], the PA, 5 CFR PT. 2635(v), and state/federal laws, TSAO Defs. supplied prosecutors with corrupt, tainted evidence – falsified stmts. and rpts., fraudulent Rept. Codes, records that omitted pertinent facts and instead contained fabricated content that intentionally misrepresented Pellegrino in a false, negative light [CMP ¶¶5 - 38, 49-67; 100 - 104; Fn. #6-61 #76-95); #126 - #133]. [114] The PA states: *A cause of action arises under the Privacy Act when an agency violates the Act "in such a way as to have an adverse effect on an individual."* [115] Plaintiffs suf-

114 Some examples — Dilworth was not an eyewitness to any of the named Defs.' allegations yet he omitted this in his SR. No male or female supervisor was visually present on the CKPT when Plaintiffs arrived prior to 7:00 p.m. Dilworth's report omits the word "alleged," the TSA aviations security breech, and that Clemens, Abdul Malik, and Labbee were not working on the CKPT when Plaintiffs arrived and didn't show up until some later times. Labbee's statement falsely alleged that she had been struck by Pellegrino's shoe(s), bags, etc. on her lower legs while standing just outside the closet doorway, Dilworth's SR perverts this into *Pellegrino's shoes fell out of her bag and she picked up a pair of her fallen shoes on the floor and hit Abdul Malik in the lower left ankle as she threw the shoes in the direction of lane 1*. Abdul Malik falsely alleged she had been struck inside the closet on the leg and ankle with Pellegrino's tote. Factually neither named Def. had been touched by Pellegrino, her shoes, her rollaboard or tote. [See PL EX #3, #6, #20, #21 These photo clearly indicate the physical impossibly for Pellegrino to exit the closet with a suitcase if Labbee, a portly woman, were standing just outside the search closet doorway.]

115 "In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the

fered distressful adverse affects from the defamations and vilifications contained in TSA's falsified, fabricated records.[116] If the court determines that the agency *"does not amend an individual's record, refuses to comply with an individual's request, fails to maintain any record concerning an individual with such accuracy.....to assure fairness", or "acted in a manner which was intentional or willful,"* the agency is liable for *"actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000,"* including costs and attorneys fees. [5 U.S.C. § 552a(g)(1)(A to D), § 552a(g)(4)]. TSAO's agents knew or should have known the documents they disclosed were contradicted by the video surveillance recording (***the best factual evidence***), TSA ASI Defs. wilfully had destroyed. The PA forbids agency disclosure of "*any record...contained in a system of records*" without the written consent of the "i*ndividual to whom the record pertains*." 5 U.S.C. §552a(b). [117] TSAO Defs. willfully supplied *corrupt evidence* to prosecutors without Plaintiffs' knowledge/permission [118] while wilfully withholding from Plaintiffs *Brady/Giglio Materials* and wilfully concealing, covering up, and stonewalling the deliberate destructions of *exculpatory/impeachment materials*.[119] [PL EX 11A, 11B] By supplying

individual in an amount equal to the sum of .... (A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and (B) the costs of the action together with reasonable attorney fees as determined by the court."

116 Unjustified defamations in public, humiliation/embarrassment, permanent damages to personal/professional reputations, emotional stress/distress, out-of-pocket expenses, and continued ongoing damages/injuries, loss of income.

117 The falsified, fraudulent stmts. produced to the prosecutors were misrepresented as factually correct which had the intended effect of misleading prosecutors, perverting and interfering with the due course of justice.

118 Copies of the falsified, fradulent records were forwarded to TSA TSOC without Pellegrino's knowledge or permission. (TSA Transportation Security Operations Center in VA. renamed *The Liberty Center*.) Reporting a fictitious incident violated TSA's policy on FIPPs as set out in the PA 1974 [5 U.S.C. 552a]. (PA) and 6 U.S.C. §142 Privacy Officer Statute, "Section 222 of the Homeland Security Act of 2002, as amended, the basis for the authorities and responsibilities of the DHS Chief Privacy Officer. This section calls on the Chief Privacy Officer to "assur[e] that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974" [See PL EX #29A-D DHS Privacy Policy Guidance Memo 12/29/08 page 3 ¶ 2.] The TSA has disclosed Celestine Holman's 8-7-06 letter to Pellegrino containing objectionable defaming false allegations that it has never been able to substantiate to the USDC as the named Defs.' EX. A without Plaintiffs' knowledge/permission in violation of the PA 5 U.S.C. § 552a(b). ("The Privacy Act prohibits more than dissemination of records themselves, but also 'non consensual disclosure of any information that has been retrieved from a protected record.'" [quoting *Bartel v. FAA*, 725 F.2d 1403, 1408 (D.C. Cir. 1984))); *Chang v. Dep't of the Navy*, 314 F. Supp. 2d 35, 41 n.2 (D.D.C. 2004) ("[D]isclosure encompasses release of the contents of a record 'by any means of communication,' 5 U.S.C. § 552a(b), and not just 'the mere physical dissemination of records (or copies).'" (quoting *Bartel*, 725 F.2d at 1408)].

119 *Brady v. State of Maryland*, 373 U.S. 83 (1963). "The Brady rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur. See *United States v. Bagley,* 473 U.S. 667, 675 (1985) .[See Brady v. Maryland Material in the United States District Courts: Rules, Orders, and Policies Report to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States, Federal Judicial Center May 31, 2007

falsified, fraudulent,[120] fabricated records while withholding exculpatory/impeachment evidence,[121] [PL EX 22A, 22B, Def. EX B] TSAO Defs. acted with improper motives, purposes, unfairness and tried to interfere with, influence, and pervert the course of justice.[122] Plaintiffs contend TSAO Defs. intentionally and willfully violated FIPPs and Pellegrino's PA rights. While TSAO Defs. had authority to disclose objective factually correct records to law enforcement agencies in accordance with FIPPs without Pellegrino's permission (under an exception); these TSA Defs. did not have authority to supply *corrupt, tainted records* that violated FIPPs, the PA, and due process rights which mislead prosecutors, perverted official records and official proceedings that also violated §552a (g), (g)(1)(A), (g)(1)(B), (g)(1)(C), (g)(1)(D), sub-¶(d)(2), and § 552a (e)(5)(6)(9)).[123] In violations of FIPPs, the named, TSA ASI and TSAO Defs.' misdeeds have been omitted from TSA's system of records. [124] TSA has failed to establish rules of conduct for its agents' creation and publication of *corrupt records*. [125]

TSA withheld 303 pages under PA or FOIA exemptions in Plaintiff's request under FOIA/PA. TSA's exemptions include classified, and investigatory records related to law enforcement as well as others. Significantly, the exemptions mask the records' natures and prevent Plaintiffs from discovering the full extent of corruptions in TSA's records on Pellegrino. Plaintiffs challenge TSA's right to broad sweeping exemptions without disclosing the contents of these records esp. since Pellegrino committed no crimes and is a *TSA crimes victim*. Under the circumstances, Plaintiffs believe withholding records are TSA's attempts to cover up corruption within its ranks. [See also Plaintiffs' argument in Claim X for add'l details]. The APA 5 U.S.C. §§ 701-706 provides an alternative means for

pg 2 Fn. 6.] Prosecutors in the underlying cases made no investigatory effort to separate facts from fictions.

120 Fraudulent 500 Rept. Code were assigned [CMP ¶35; Fn #129] to the named Defs.' statements/Dilworth's IDR/SR. Fed. Sec. Mgr. Richard Rowe's and/or Dilworth's signatures appear on these stmts, Clemens and the named Defs. signatures appear on their statements. TSAO Defs. who made the decision to assign fraudulent codes is discoverable.

121 Eckl produced Labbee's statement a 6-4-07 a Court Ordered hearing. See PL EX # 12 Notes of Testimony pp: 22-27 and pg. 24 "[N]ope I provided that to Amelia" (meaning to the DA's Office). Dilworth's reports were discovered to be exculpatory/impeachment evidence that undermined the prosecutions' cases in chief.

122 The TSAO Defs' knew or should have known that the witness stmts. were untrustworthy material evidence as a result of the intentional destruction of the video recordings (**the best factual evidence)** after TSA ASIs discovered the video surveillance recordings were favorable only to Plaintiffs but not at all favorable to the named TSA Defs. Deliberately ignoring this violation of due process, the TSAO Defs. had willful disregard for whether the content of the witness stmts were truth or false when these were provided to prosecutors.

123 Still, the named Defs. argue *The Fictitious Incident* they reported was "an actual event" when, in fact, video surveillance recordings objectively documented its *fictitiousness. This is the reason* TSA ASI Defs. destroyed the recordings.

124 To date the TSA has failed to correct or produce all of its records on Pellegrino for Plaintiffs' review to request appropriate deletions, expunction, or corrections.

125 including the rules and penalties for non-compliance

relief to review records withheld when corrections, deletions, or expunctions are sought. Significantly, TSA has failed to describe records withheld, have not provided a Vaughn index [126] or procedures mandated by *Ferri v. Bell*, 645 F.2d 1213, 1220 (3d Cir. 1981). "*In such instances the Privacy Act should not be used to deny access to information about an individual which would otherwise have been required to be disclosed to that individual under the Freedom of Information Act.*" [127] In accordance with FIPPs and the PA, the exemptions prevent Plaintiffs' lawful rights to have corrupt, wilfully tainted records corrected, deleted, expunged, and/or destroyed. Plaintiffs seek relief to obtain copies of records TSA is withholding to make corrections, deletions, expunctions, and destructions.

Claim VIII: TSA turned a wilful blind eye to investigating Plaintiffs' civil rights violations complaint under 6 USC 345. Plaintiffs seek relief by judicial review under 5 U.S.C. §§ 702-706, declaratory and injunctive relief under the DJA and the APA.

Contrary to the named Defs.' mis-characterizations and omissions, Plaintiffs' claim focuses on TSA's Office of Civil Rights Civil Liberties' (OCRCL) failure to investigate their civil rights violations complaint. Plaintiffs suffered permanent damages, injuries, and defamations as a result of the named and Doe TSA Defs.' violations of 42 USC §1985, §1983 and state and federal statutes and constitutional rights. [128] Title 5 USC §702, §703, §704 provide a right of review, a form and venue of proceeding, and reviewable actions of an agency for which there is no other adequate remedy in a court. Plaintiffs seek review of TSA's OCRCL's failure to investigate Plaintiffs' complaint 7-28-08 by using a *wilful blind eye* to their agents violations of Plaintiffs' 1st, 4th, 5th, 6th, and 14th Amend. rights. [129] The APA provides for comprehensive judicial review of agency actions [130] and review of the records as a whole cited by a party (5 USC § 702). The 3rd. Cir. held that an agency's decision may be reviewable if there are internal agency policies, procedures, and regulations that can serve as law to be applied, or a standard against which to judge the exercise of agency discretion. [citing *Chong v. Director. United States Information Agency*, 821 F.2d 171 (3d Cir. 1987]. Plaintiffs believe 6 USC §345 a. 6 applies.

126 *Vaughn v. Rosen*, 484 F.2d 820, 826 (D.C.Cir.1973), cert. denied, 415 U.S. 977 , 94 S.Ct. 1564, 39 L. Ed. 2d 873 (1974)

127 *Porter v. United States Department of Justice*., 717 F.2d 787 (3rd Cir. 1983)

128 Some of but not all of the named and Doe Defs.' unlawful misconducts are documented in court proceeding transcripts; the TSA is still withholding documents.

129 TSA's final action was to claim it never received Plaintiffs' complaint.

130 *Heckler v. Chaney*, 470 U.S. 821, 828, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985)

Plaintiffs have stated a plausible claim applying standards from *Iqbal* (set forth in Claim I and incorporate it herein) that they suffered legal wrongs when the material facts stated in their CMP are considered in their entirety. Plaintiffs seek a whole record review. "*A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . ., is entitled to judicial review thereof. An action . . . seeking relief other than money damages and stating a claim that an agency ... failed to act ...shall not be dismissed nor relief therein be denied on the ground that it is against the United States ....*" (5 USC § 702) [131] Plaintiffs maintain 1) the OCRCL failed to investigate their complaint in violation of 6 USC §345 a. 6. 2) Existing evidence compels a decision different from TSA's decision to not investigate. 3) Documented wilful concealment, destruction and intentional withholding of exculpatory evidence by TSA ASI and TSAO Defs. during DPDP inextricably intertwined into the named Defs.' misuses of the judicial system justifies the need for a decision different from turning a *wilful blind eye* to Plaintiffs' complaint.

Contrary to the named Defs.' factually incorrect argument, when Plaintiffs submitted their #95 Claim on 8-28-08, which included an 11- page complaint describing the named, the Doe ASI and the Doe TSA Official Defs.' violations of state/federal laws and constitutionally protected rights on 7-28-08, the TSA received 1) a property damage claim and 2) a civil rights/liberties violations complaint. On 7-28-08 Plaintiffs phoned Stephanie Stolzfus, TSA Mgr. External Compliance, at 571 227 2363, and notified her that their civil rights violations compliant had been faxed to the TSA Claims Mgmt. Office (CMO) and another copy faxed by their US Cong. Rep.'s office. Furthermore, Stolzfus had been notified that a hard copy via FEDEX had been sent to TSA's CMO.[132] TSA (CMO logged and acknowledged Plaintiffs' claim while the TSA OCRCL failed to assign a number, acknowledge, or investigate Plaintiffs' Complaint. [133] Plaintiffs did not learn TSA's OCRCL

131 Under 5 USC §706 the court shall: "(1) *compel agency action unlawfully withheld or unreasonably delayed; and 2) hold unlawful and set aside an agency actions, findings, and conclusions found to be*: (A) *arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law*; (B) *contrary to constitution right, power, privilege, or immunity*; ... (D) *without observance of procedure required by law*; (E) *unsupported by substantial evidence ....* or (F) *unwarranted by the facts.....*" An agency decision is arbitrary and capricious if the evidence compels a different decision. (*Iredia v. Fitzgerald*, 2010 U.S. Dist. LEXIS 76215, *11 (E.D. Pa. 2010) (citing *Ghaly v. INS*, 48 f.3d 1426, 1430 (7th Cir. 1995)).

132 TSA posted on its website "***Regardless of how your complaint is routed, it will be carefully reviewed and resolved in accordance with applicable laws and polices.***" **Are citizens being mislead by TSA's website statement?**

133 Under § 345, the Office of Civil Rights Civil Liberties is required to assign a number to each complaint received and to investigate each complaint.

did not enter their complaint into its docket of complaints and not investigate in any way their assertions of civil rights violations until after their *expedited* claim was denied ten months later.

Also contrary to the named Defs.' misleading argument, Plaintiffs do not regard Claim VIII as a FTCA issue but rather a failure of TSA's OCRCL to comply with statutory requirements under §345 6 a. As noted TSA Stolzfus [134] was contacted on 7-28-08 to alert her as TSA's OCRCL rep. that Plaintiffs had filed both an admin. claim and a civil rights violations complaint at the same time. Title 6 USC §345 a. 6. establishes an Officer of CRCL who among other things "investigates complaints and information indicating possible abuses of civil rights or civil liberties ....." but not Plaintiffs' [135] even though their complaint asserted serious violations of state, federal laws, civil rights, intentional falsification of records, an aviation security breech at the CKPT resulting from a derelict, poorly managed, poorly supervised and obviously understaffed staffed crew, intentional concealment and destruction of *Brady Materials*, its cover-up and corruption within the TSA. TSA turned a *wilful blind eye* to Plaintiffs' complaint. In the interests of other US citizens who have had their complaints ignored by the TSA, Plaintiffs seek a judicial review of the entire record for the harms, damages, injuries, and defamations suffered. Sect 704 of the APA states: "If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer." Plaintiffs believe it is in the best interests of US citizens to seek liability against TSA's OCRCL and seek declaratory and injunctive relief under the APA and the DJA.

CLAIM IX. TSA's failure to adequately train, supervise, control its agents resulted in constitutional injuries caused by the named and Doe TSA Defs.' violations of state, federal, and constitutional laws. Plaintiffs' injuries resulted from the deliberate indifference of TSA's policy makers to provide adequate training to its agents. 42 USC 1983 and 1988 provide remedies for violations of 4th Amend. rights. Plaintiffs have a right of action under 5 USC.701-706 for injunctive relief. Plaintiffs can state a plausible claim. The named Defs. do not have grounds to have Plaintiffs' claim dismissed.

---

134 At the time Stolzfus (an attorney) was a Mgr. in the TSA OCRCL in the External Compliance Div. Plaintiffs believe Stolzfus is currently Director of the TSA Office of Traveler Specialized Screening & Outreach.

135 Once civil rights violations were reported, 6 USC 345 required TSA's OCRCL to log complaints into their records and investigate them. In addition, DHS and TSA were required to report to Congress on the number and status of reported violations in a published quarterly report to Congress. (CMP ¶ ¶ 105-109; Fn. 134-135) [See also PL EX # 28 on the reported number of complaints the TSA turned over (3,500 complaints of misconduct from Jan 2009 to June 2010) to the US House Oversight Committee investigating how TSA reviews and investigates complaints of civil rights violations.]

To prevail on a §1983 Plaintiffs must prove: 1) TSA's training was deficient relevant to injuries sustained. 2) TSA's failure to provide relevant training to the Defs.' was the moving force behind Plaintiffs' injuries [*Monroe v. Pap*e, 365 U.S. 167, 81 S. Ct. 473, (1961)].[136] 3) TSA's deficient training programs (training) fit a policy, pattern, practice that reflects deliberate indifference to passengers' civil rights. [137]

1) **TSA'S TRAINING PROGRAMS WERE DEFICIENT:** While Plaintiffs have no access to TSA's *Training* records for the named and Doe Defs. documented conduct is material evidence of deficiencies in TSA's training. Video surveillance recordings confirmed this but were destroyed by TSA ASI Defs.[138] Significantly, the DHS's Office of Inspector General (OIG) conducted an audit (from 7/2009 to 4/2010) and generated a 30-pg. report in 10/2010 on deficiencies in TSO training [PL EX 27 includes pp. -10]. OIG determined TSA's mgmt. of its screening workforce training was not formally documented and current practices needed improvement and provided recommendations. While OIG referred to "passenger(s)" five times in 30 pages, these were impersonal references to "screening" and "flow" rather than acceptable conduct when interacting with passengers. Training to avoid violating passenger civil rights was not mentioned. OIG did not address course content or on-the-job training relevant to acceptable conduct with passengers. OIG's report focused on technical screening skills. [139] Significantly, TSA's

136 The video surveillance recordings captured the derelict and dysfunctional state of TSA mgmt, supv. and the crew when Plaintiffs arrived on the CKPT which was an example of TSA's failure to adequately train, supervise and control the crew that resulted in an aviation security breech. [CMP ¶ ¶7-15; Fn.1-26] TSA failed to address its own problems but rather persisted in baseless prosecutions of Plaintiff after it destroyed evidence of its failure to train.

137 Where TSA agents will repeatedly perform particular tasks that may result in harm to another person, TSA is required to provide adequate and sufficient training in how to conduct those tasks in a manner that is consistent with generally accepted practices that do not cause harm to passengers.

138 The 3rd Cir. has held that there is no requirement at the pleading stage for Plaintiff to identify a specific policy to survive a motion to dismiss, because such a requirement would be "unduly harsh" at this early juncture. *Carter v. City of Philadelphi*a, 191 F.3d 339, 358 (3d Cir. 1999). "The Monell Court defined a municipal policy as a "statement, ordinance, regulation, or decision officially adopted and promulgated by [a local governing] body's officers." (*Simmons, v. City of Philadelphia,* 947 F.2d 104221 Fed. R. Serv. 3d 966 (citing *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018 (1978) at 690, 98 S.Ct. at 2036))

139 OIG's full rpt. is on line at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_11-05_Oct10.pdf. Executive Summary notes the TSA: a) does not have documented standard processes to update training based on current information – the process is informal (pg 3); b) has not documented procedures to determine.....time needed for the workforce to complete training requirements, provides little centralized oversight (pg 3); c) did not establish a lead office to organize/coordinate TSO training until 2006. (pg 3); d) At that time Mgmt Dir. 1900.8 established TSO Training and Initial Certification programs designating the Operational Technical Training Div. (OTTD) within the Office of Security Operations responsible for training programs; however OTTD did not assume an active leadership role until 2009 even though the law was passed in 2001.(pg 3); e) OTTD does not have a written procedure to determine whether training courses needed to be modified. (pg 4); f) OTTD does not have a structured the on-the-job training program and can't document the accomplishments of workgroups; moreover, there is a lack of standardization from one airport to another (pg. 5); g) officials acknowledged TSA did not strategically plan and document TSO training development from the onset (pg 5); h) does not ensure TSOs are provided the time they need to effectively

current on-line training (OLT) course catalog [See PL EX 26 A-G for examples] designed to develop competency in certain skills areas [140] reveals a shocking deficit in courses on 1) Transportation Security Proficiency, 2) Application of Screening Standard Operation Procedures, 3) Respecting Privacy and Preserving Freedoms, (4) Incident Management, 5) Law Enforcement Proficiency, 6) Investigative Skills),[141] and 7) Public Service Motivations. Conspicuously missing from the catalog are competency development courses in acceptable/unacceptable conduct when relevant to passengers' [142] civil rights [143] such as: The Constitution — Passengers' US/State Civil Rights; Federal, State, Const. Laws– TSA Directives–No Qualified Immunity for Violators; TSA's FIPPs–Duties and Responsibilities; The Privacy Act–Violations of Passengers' Rights; FIPPs Standards for Writing Incident, Witness, and Investigation Reports; Standards for Crime Scene/Incident Investigations; Exculpatory Evidence–*Brady/Giglio* Rules and Violations–Your Mandated Duties and Responsibilities.[144]

2) Injuries 42 USC §§1983, 1988: OIG's report and TSA's current OLT course catalog are evidence of ongoing deficiencies in TSA's training its agents who interact directly with passengers.

The deficiencies points to the underlying cause of violations of Plaintiffs' civil rights. [145] (CMP

complete training requirements.(pg 8); i) no documentation and implementation of a comprehensive methodology is in place to guide efforts to keep TSO training program/materials up-to-date and relevant (pg. 9).

140 The catalog can be located at (http://www.tsa.gov/join/benefits/competencies.shtm).

141 Content for the two courses listed are not relevant to the required elements of conducting or participating in state and federal investigations but instead are: 1) Preparing a Business Case and 2) Presenting Your Case. The course contents are "presentation" not "investigative" in nature.[See PL EX #26 A-G]

142 The misnomer *customer* is substituted for *airline passenger(s*) in TSA's list of Customer Service courses offered in its current catalog. In course descriptions, passengers would be external rather than internal *customers*. In reality, *passengers* are customers of the airlines, rail, or bus service companies not the TSA. The TSA's mission is to protect the traveling public while upholding their Const. privileges. By mislabelling *passengers* as *customers*, the TSA has created misconceptions of passengers. A review of TSA's Customer Service courses point to inadequacies in addressing issues relative to passengers civil right/liberties as are offerings in Conflict Mgmt. and Interpersonal Communication Skills.

143 TSA's 7-30-10 EEO and Diversity Policy Stmt. appears to be the only online policy in some way relevant to passengers' civil rights. Internet searches produce no other official TSA policy stmt. focused on the civil rights/liberties of passengers. TSA's stmt. makes 3 references to passengers as "the traveling public" or "public" and 3 references to "civil rights and liberties" with no clear statement pertaining to TSA agents duties, obligations, and responsibilities to protect passengers' civil rights. The stmt. focuses on TSA employees civil rights. [PL EX #19]

144 To establish liability on a failure to train claim under §1983, a plaintiff "must identify a failure to provide specific training that has a causal nexus with [his] injuries and must demonstrate that the absence of that specific training can reasonably be said to reflect a deliberate indifference to whether the alleged constitutional deprivations occurred." *Reitz v. County of Buck*s, 125 F.3d 139, 145 (3d Cir. 1997).

145 The right to free speech , freedom to travel (1st AMD), freedom from unlawful falsifications of official federal/state records (violations FIPPs, the Privacy Act 18 PA Cons. Stat. §4903, §4904, §5107) freedom from conspiracy to incriminate (violation §1985) and false incriminations (violations §1983, 18 PA Con. Stat. §4906 (a) and (b), §4910 § 4911), unjustified driver's license confiscation (violation 4th AMD) and NCIC checks (invasion of privacy), Labbee's attempts to violate Plaintiff's medical privacy, unlawful search and seizure of Plaintiff's person

¶ ¶ 4-16, Claims II ¶ ¶ 27-48), III, (¶ ¶ 49-67), IV (¶ ¶ 68-88), V (¶ ¶ 89-96), VI (¶ ¶ 97-99), VII (¶ ¶ 100-104), VIII (¶ ¶ 105-109).

3) Policy, custom, practice of Deliberate indifference (a wilful blind eye): Policy makers knew/should have known: 1) of needs for specific training when a growing number of complaints were received by TSA alleging agent misconduct [See PL EX #28],[146] 2) that specific content/training addressing misconduct had not been developed or operational prior to 7-29-06, and 3) TSA's current training programs are still deficient some five years later. Plaintiffs' maintain TSA Defs. were acting out on customs or practices (*operational policies*) not consistent with TSA's Dirs, within the law, or within generally accepted standards of decency. Based on the growing number of complaints from the numbers reported in TSA's quarterly Rpts. to Congress, TSA authorities turned a *wilful blind eye* to training that reduced the number of complaints. TSA's acceptance of *operational policies* demonstrate deliberate indifference to passengers' civil rights with whom their agents come into contact.

In sum, Plaintiffs seek redress and vindication of their rights under 42 USC §§1983, 1988 against Doe TSAO Defs. who made training decisions prior to 7-29-06 that resulted in damages and injuries to Plaintiffs. The identities of TSA's policy makers are discoverable. Also, Plaintiffs seek injunctive relief under the APA 5 U.S.C. §§701 - 706 and the DJA. Plaintiffs reserve the right to amend their CMP to add case law if not adding it would cause dismissal of their claim.

Claim X: Pursuit to the Freedom of Information Act (FOIA) and the Privacy Act (PA), the TSA has failed to meet its obligations under Plaintiff's request. Plaintiffs are entitled under 5 USC 552 and 5 USC 552(a) to ascertain the kinds of records the TSA is withholding and how TSA justifies its exemptions to withhold 303 records in their entirety. TSA has not justified its broad and sweeping exemptions in withholding 303 records as well as extensive censorship on records the agency has produced. Moreover, the TSA has failed to clearly identify or describe the nature of records withheld. Plaintiffs seek a Vaughn Index and further description and clarification on the types of records withheld due to Abdul Malik's, Labbee's, Kissinger's, Clemens' as well as add'l TSA agents reckless and wilful falsifications of records on Pellegrino.

from Plaintiffs, false arrest, two unlawful imprisonments, baseless wrongful prosecutions (4th, 5th, 14th AMDs), tainted evidence supplied to prosecutors while *Brady* Rule violations (deliberate destruction, concealment and withholding of exculpatory impeachment evidence — video surveillance recordings and additional impeachment records— occurred (6th AMD), a trial based on barred testimonies where Plaintiff was denied her due process rights to confront her accuser (6th AMD). These violations occurred as if laws did not apply to any of the named and Doe Defs.

146 According to a 3-14-11 Daniel Rubin article "Staffers with the House Committee on Oversight and Government Reform have combed through 9,500 pages of records they requested from the TSA, including 3,500 complaints of misconduct between January 2009 and June, 2010. From that list the TSA identified 89 civil rights complaints." [PL EX # 28 on line version of the article]

Plaintiffs have pled adequate facts in their CMP to state a plausible claim (*Iqbal*). The Defs. have no grounds for dismissal. Plaintiffs incorporate their argument for Claim VII FIPPs and Privacy Act issues herein). The TSA has statutory obligations under FOIA[147] (and PA)[148] to produce records in response to Plaintiff's 5-28-09 FOIA /PA request. On 12-29-09 Plaintiffs received TSA's response – 375 pgs. pertaining to Pellegrino are in TSA's records; 303 pgs. have been withheld in their entirety under three PA exemptions, and under 4 FOIA exemptions. TSA produced 72 pgs. [while censoring identities, [149] phone numbers, dates, e-mails, recommended actions, sanction amount,[150] whole paragraphs, a significant number of censored pages rendered meaningless. A significant number had already been provided by Plaintiffs to TSA without censoring in support of their 7-28-08 civil rights violations complaint via their US. Cong. Rep.'s office.]

The named Defs. argue erroneously that Plaintiff's request is fulfilled. Plaintiffs' assert TSA has far from fulfilled its obligations under FOIA/PA. Pellegrino appealed TSA's paltry production of records. [151] (CMP ¶ ¶ 113 A,B,C) Plaintiffs' CMP asserts: 1) Pellegrino is a crimes victim of the named and Doe Defs. [CMP ¶ ¶ 1, 38, 40-41, 65, 67, 103, 111; Fn. 2] 2) where TSA Defs. violated FIPPs, state, federal, Const. laws, *Brady/Giglio Principles.* Corruption within TSA's ranks occurred that Plaintiffs believe are unlawful acts [Ibid. ¶ ¶ 4 - 111]. 3) Plaintiffs believe that evidence

147 Exemptions 552 (b)(2), (5), (6), and 7(C)

148 TSA claimed exemptions under the PA 552(a) 1.) (j)(2) enforcement of criminal laws, criminal offenders, 2.) (k)(l) classified information and 3.) (k)(2) investigatory materials compiled for law enforcement purposes. 1) By 3-28-08 the baseless charges were acquitted. Pellegrino is a TSA crimes victim not a criminal. The TSA lacks justification for withholding falsified records that falsely paint Plaintiff as a criminal. TSA Defs. violated FIPPs, state/federal laws, and Plaintiffs' civil rights, Plaintiffs are denied access to TSA corrupted perverted records on Pellegrino with a (j)(2) classification. 2) There is nothing worthy of a "classified information" exemption category for Plaintiff's FOIA/PA request. At no time has Pellegrino been a threat to national security. USAIRWAYS cleared Pellegrino for the flight on 7-29-06 any suspicion the TSA entertained would have been based on falsified and tainted information that violated TSA's FIPPs, state, federal and constitutional laws that need corrections. 3) Plaintiffs' Claims II, IV, V, VI, VII assert the TSA's "investigatory materials are tainted and corrupt by false, fraudulent, and fictional content. Plaintiffs have supplied documented evidence of ASI Defs.' deliberate destruction video surveillance recordings that contradicted and impeached the named Defs.' false allegations. TSAO Defs.' wilful cover-up and stone-walling of the destruction of exculpatory evidence, additional concealment and withholding of exculpatory evidence during DPDP from Prosecutors/Plaintiffs are central issues and constitutional questions in Plaintiffs' lawsuit. The classification of investigatory materials exemption is highly suspicious after TSA ASI Defs.' deliberate spoliation of the video surveillance evidence.

149 Plaintiffs believe the names withheld will identify Doe Aviation Security Inspector (ASI) Defs. and TSA Official Defs. involved in Brady/Giglio violations during the wrongful prosecutions.

150 TSA never acted upon their civil action after TSA ASI Defs. wilfully destroyed the video surveillance recordings impeaching TSA allegations.

151 Pellegrino appealed TSA's withholding of records, was notified (ltr. from V. Newhouse) in a final TSA decision that an appeal would not be acted upon when the request became a matter of litigation [PL EX 18].

of those violations and corruption should exist in TSA's system of records and are being withheld (Ibid. ¶ ¶ 102, 106,108, 111; Fn. 1A, 2]. Plaintiffs believe the violations are a serious matter of public interest and that these records should be produced for this reason as well as others. Citizens have a right to know how an agency given statutory authority by Congress to protect its transportation safety brazenly corrupts its records violating FIPPs, PA state, US federal and Const. laws and passengers' civil rights then destroys Const. protected evidence. According to the 3rd Cir. "[A] *FOIA* request for material implicating the *Brady Rule* simultaneously advances an "indirect public purpose" satisfying the second prong of the test for disclosure under one of the privacy-based exemptions. *Wine Hobby, USA Inc. v. IRS*, *supra,* 502 F.2d at 137. The public at large has an important stake in ensuring that criminal justice is fairly administered; to the extent disclosure may remedy and deter *Brady* violations, society stands to gain*."* [*Ferri v. Bell*, 645 F.2d 1213 (3rd Cir. 1981) at §III, ¶] Plaintiffs assert their *TSA Nightmare Ordeal* is an appropriate reason to challenge TSA's claimed exemptions because the public has something to gain.[152]

Plaintiffs provided in explicit details seven examples of records Plaintiffs know the TSA is currently withholding directly relevant to the above stated violations (CMP ¶113 A to K). [153] The public stands to gain the greatest benefit from disclosure, TSA's Defs. who committed unlawful acts against Plaintiffs stand to gain the greatest benefit if the TSA is allowed to claim the exemptions.

The 3rd Cir.'s view is when an individual requests records under both FOIA and PA, the request should be processed under the PA. The requester "*should be advised, however, that the agency has elected to use [P.A.] procedures, of the existence and the general effect of FOIA, and of the differences, if any, between the agency's procedures under the two Acts..... The net effect of this approach should be to assure the individuals do not, as a consequence of the P. A., have less*

152 According to the 3rd Cir. "FOIA's Exemption 7(C)'s protection of personal privacy is not absolute. As the trial court recognized, the proper approach to Ferri's request under a privacy-based exemption such as section 7(C) is a de novo balancing test, weighing the privacy interest and the extent to which it is invaded, on the one hand, against the public benefit that would result from disclosure, on the other. *Committee on Masonic Homes of the R. W. Grand Lodge v. NLRB*, 556 F.2d 214, 220 (3d Cir. 1977)." [*Ferri v. Bell* 645 F.2d 1213 (3rd Cir. 1981) at §III, ¶ 2] See also *Wine Hobby USA, Inc. v. Internal Revenue Service*, 502 F.2d 133, 135 (3d Cir. 1974).

153 Plaintiffs' Claim VII asserts the TSA's system of records on Pellegrino contain falsified records that are in violation of the Code of Fair Information Practices (FIPPs) and TSA's FIPPs under the PA. The Privacy Act 5 U.S.C. § 552a, Public Law No. 93-579 incorporates the Code of Fair Information Practices recommended by HEW and empowers individuals to control the federal government's collection, use, and dissemination of sensitive personal information.

access to information pertaining to themselves than that they had prior to its enactment. [*Porter v. US DoJ*, 717 F.2d 787 (3rd Cir. 1983) at §3C last 2 paragraphs.] TSA's 12-23-09 letter notified Plaintiff the request was processed under FOIA; however the greatest number of records were withheld under the PA. FOIA provides individuals access to records that are exempt from access under the P.A. and provides 3rd parties greater access than individuals to their own records in the system. The APA empowers the USDC to review the records currently withheld to determine whether the TSA is entitled to the exemptions it claims. Plaintiffs' claim requires a full Vaughn index regarding what records the TSA is not entitled to withhold from their 'crimes victim' and what citizens can expect if they find themselves living the same TSA *Nightmare Ordeal* as Plaintiffs. Therefore Plaintiffs seek relief thru the USDC to obtain records the TSA is not entitled to withhold. There are no grounds to dismiss Plaintiffs' claim.

CLAIM XI. Defamation

Plaintiffs have not abandoned this claim but due to page limitations can not include an argument in response to the named Defs. Motion to Dismiss in this argument. PL EX # 30 is a true and correct version of Daniel Rubin's 2-8-11 commentary that appeared in the Phila. Inquirer.

Conclusion

For the foregoing reasons Plaintiffs respectfully request the Court to deny the named Defs.' Motion to Dismiss Plaintiffs' 3rd Amended Complaint.

Respectfully,

_____

Nadine Pellegrino

_____

Harry Waldman

Date: August 1, 2011