



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

October 29, 2019

Robert MacLean
c/o Tom Devine, Esq.
Government Accountability Project
1612 K Street, NW, Suite 1100
Washington, DC 20006
TomD@whistleblower.org

VIA ELECTRONIC MAIL

Subject: OSC File No. MA-16-2104

Dear Mr. MacLean,

I write to thank you for your public service. During your time in federal service, you have demonstrated your commitment to protecting the American public, and for that you are a true patriot. In particular, you have brought to my office numerous disclosures of wrongdoing. Currently, we have two referrals to the U.S. Department of Homeland Security pending, covering three critical issues: the security of flight decks (with a lack of outward facing doors and secondary barriers); the inadequate measures currently in place to protect against opioid attacks on airplanes; and the security risks that come with exempting religious food trucks from airport inspections.

You brought these serious concerns to my office because of your commitment to the safety of the American people, undeterred by the whistleblower retaliation you experienced with your 2006 removal, which was ultimately remedied following your seminal victory in the U.S. Supreme Court. We greatly appreciate that, despite the reprisal you suffered, you came forward with these important disclosures. We look forward to our continued work with you on these matters.

I understand that you wish to take your prohibited personnel practice case to the Merit Systems Protection Board. I am sorry for the hardship that you have endured. As you know, my office worked diligently to obtain a favorable outcome for you. I wish you all the best in your future endeavors.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. J. Kerner".

Henry J. Kerner
Special Counsel



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VIA ELECTRONIC MAIL

Subject: OSC File No. MA-16-2104

Dear Mr. MacLean:

This letter responds to the prohibited personnel practice complaint you filed with the U.S. Office of Special Counsel (OSC) on February 19, 2016 against the U.S. Department of Homeland Security, Transportation Security Administration (TSA).

You were a longtime Federal Air Marshal (FAM) TSA. In your complaint, you alleged that TSA retaliated against you for your repeated and public whistleblowing concerning TSA, dating back to 2003 and continuing to the present. Your protected disclosures and activities include, but are not limited to, in 2003, blowing the whistle internally and externally about TSA cancelling FAM missions that you believed were critical for preventing terrorist attacks; exercising your appeal rights of your 2006 termination, going all the way to the Supreme Court, where you prevailed against the agency; filing multiple prohibited personnel practice complaints and disclosures with OSC; making numerous disclosures to Congress; and making numerous disclosures to management within TSA.

You allege that in retaliation for your protected activities and disclosures, TSA took a series of personnel actions against you, including, but not limited to, non-selecting you for a promotion in 2006; denying you additional promotions post-2006; placing you on flight assignments in 2016 that you allege endangered your life because of your high profile; subjecting you to a mental health examination; subjecting you to numerous retaliatory investigations, administrative and criminal; repeatedly and significantly changing your duties and working conditions; falsely accusing you of misconduct; repeatedly blocking your transfer to another agency; issuing you a proposed removal; and in March 2019, terminating your employment with TSA.

On October 29, 2019, you informed OSC that you were electing to pursue an Individual Right of Action (IRA) Appeal with the Merit Systems Protection Board (Board).

U.S. Office of Special Counsel

Robert MacLean

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Pursuant to 5 U.S.C. § 1214(a)(3)(B), an individual has the right to pursue an appeal before the Board if after 120 days OSC has not notified the individual that the Special Counsel will seek corrective action on his or her behalf. We note that the Board is the same body before which OSC presents allegations of prohibited personnel practices for review and adjudication. Because the Board has the authority to make authoritative determinations with regard to your retaliation claims, there is no basis for further inquiry into this matter as we would be bound by the Board's adjudication of the issues. Accordingly, we will close our file in this matter.

Sincerely,



Elizabeth McMurray
Chief, Retaliation and Disclosure Unit
emcmurray@osc.gov
(202) 804-7089

cc: Gary Gilbert, Esq.
David Karman, Esq.