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Washington, DC 20515-3214

October 20, 2006

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Philip J. Perry
General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528

Francine Kerner
General Counsel
Transportation Security Administration
Arlington, VA 22202-4220

Dear Mr. Perry and Ms. Kerner;

I write regarding the recent removal of former Federal Air Marshal, Robert MacLean. According to the notice of removal that he has provided my office, he was removed from duty for an unauthorized disclosure of sensitive security information. While I have no tolerance for the unauthorized release of information that would put our nation at risk, I strongly believe in the rights of whistleblowers and I have questions about the steps taken by the Department of Homeland Security and the Transportation Security Administration leading to Mr. MacLean's removal.

It is my understanding that Mr. MacLean's release of information regarded a notice to Federal Air Marshals that they would be removed from a number of cross country flights due to budgetary concerns related to overnight stays at hotels. If this were to happen, flights with similar paths of those hijacked on September 11, 2001 (and thus considered a greater security priority), could have been left without proper security regarding budgetary concerns. It appears that based upon this disclosure, the anticipated cut of Federal Air Marshals on certain cross country flights was reversed, improving aviation security. Considering the disclosure led to the reversal of the decision is cause for considering this as a whistleblower case. Beyond Mr. MacLean's potential whistleblower status, there are questions about the handling of this case and questions of whether the original message disclosed by Mr. MacLean was securely transmitted or appropriately marked as sensitive security information.

Moreover, there is the general issue of whether it is appropriate or even lawful for a government whistleblower to be terminated for the disclosure of unclassified information (sensitive security information is considered "sensitive but unclassified"). The Whistleblower Protection Act (WPA) protects federal employees from retaliation for any disclosure of unclassified information if its release is not specifically prohibited by congressional statute and if the employee "reasonably believes" the information is evidence of a substantial and specific danger to public safety. Agency rules creating

hybrid secrecy categories like “SSI” do not cancel out the employee protections under the WPA.

Considering the circumstances of this case, I ask you to complete a full review and provide my office with your findings. If you have any questions, please do not hesitate to contact Edward Mills at (202) 225-7944 or edward.mills@mail.house.gov.

Sincerely,


CAROLYN B. MALONEY
Member of Congress