

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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MATTHEW FOGG,  
individually and on behalf of a class of  
all other persons similarly situated,  
2833 Alabama Ave SE – No. 0956  
Washington, DC 20020  
240-375-3580

Plaintiffs,

v.

MERRICK GARLAND,  
U.S. Attorney General,  
Department of Justice,

Agency.

SERVE ON:

Hon. Merrick Garland  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
202-353-1555

Defendant.

Case: 1:24-cv-00792 JURY DEMAND  
Assigned To : Cooper, Christopher R.  
Assign. Date : 3/19/2024  
Description: Employ. Discrim. (H-DECK)

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COMES NOW Plaintiff, Matthew Fogg, individually and on behalf of all similarly situated persons (“Fogg”, “Plaintiff”, “Class Representative”), for their Complaint against, Department of Justice, United States Marshal Service (“Defendant”, “USMS”), allege, upon personal knowledge as to the allegations concerning themselves and upon information and belief based on investigation as to all others. Fogg seeks redress for the class and individually for himself and all members of the class similarly situated for longstanding policies and practices of racial discrimination in employment, a racially hostile work environment, and

retaliation, practices which prevented members from advancing to senior levels within the organization.

### **ADMINISTRATIVE EXHAUSTION**

1. Former Deputy United States Marshal (“DUSM”) Matthew Fogg filed an administrative Equal Employment Opportunity (“EEO”) class complaint of racial discrimination against the USMS—for which counseling was first sought on March 10, 1994—on July 12, 1994.

2. The class action administrative complaint asserts claims of race discrimination against African American DUSMs in promotions and various aspects of the promotional process, assignments, training, evaluations, awards and discipline.

3. On April 2, 1996, the USMS dismissed the class complaint and thereafter Mr. Fogg timely filed an appeal of the USMS’s dismissal of the class complaint with the EEOC Office of Federal Operations. The EEOC administratively closed the appeal on October 24, 1997 on the mistaken basis that Mr. Fogg had withdrawn his class complaint.

4. In 2004, Mr. Fogg petitioned the EEOC to reconsider the dismissal of his appeal. The fact that Mr. Fogg had filed a class complaint that was widely known by African American DUSMs and many of them relied on that class charge as a means of addressing the racial discrimination they experienced in the USMS. Indeed, in October 2004 at least eight African American DUSMs, including Class Representatives Brewer and Reid, filed with the EEOC in connection with the effort to reinstate that class charge. Those declarations articulated allegations of continuing class-wide race discrimination by the USMS and examples of such discrimination in promotions, assignments and training, among others, experienced by the declarants and the declarants’ intention and request to be a part of and included in that class complaint.

5. On May 26, 2006, the EEOC re-opened Mr. Fogg's appeal and vacated the USMS's dismissal of the class complaint and remanded the case to the EEOC Washington Field Office to determine whether class certification was appropriate.

6. On March 19, 2007, the EEOC Washington Field Office dismissed the class complaint. Again, the dismissal of the class complaint was timely appealed to the EEOC, Office of Federal Operations on June 20, 2007. Among other grounds, the appeal argued that the Administrative Judge failed to consider evidence submitted in the 2004 declarations, including the declaration of Class Representatives Brewer and Reid, and the allegations and information contained in the 1992 Ad Hoc Committee Report. On July 11, 2012, the EEOC Office of Federal Operations reversed the dismissal of the complaint and certified a class. The USMS moved for reconsideration of the decision, and the motion was subsequently denied.

7. 180 days have passed since the filing of the Initial Class Complaint, with neither a preliminary nor final settlement agreement having been approved by the current EEOC administrative judge assigned to the matter, and with no hearing being held in the underlying proceedings, and thus Fogg exhausted all administrative remedies required to file the instant complaint.

8. Still aggrieved, and gravely dissatisfied with the underlying administrative proceedings, which have gone on for 29 years, 8 months, and several days without being resolved, and thus being subjected to undue delay, and further plagued with legal representatives that appear to be operating with a conflict of interest and/or not in accordance with the D.C. Bar's rules of professional conduct and responsibility, which resulted in Fogg filing a complaint with the DC Bar against those legal representatives for the same, and because said legal representatives having shown in several instances to not advocated for in the best interests of the class, Plaintiff and Class representative Fogg filed the instant individual and Class Complaint pursuant to 29 C.F.R. § 1614.407(b) and was authorized to do so under the law.

## **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction pursuant to 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1331. Personal jurisdiction over the USMS exists because it maintains offices in Washington, D.C.

10. Venue is proper under 42 U.S.C. § 2000e-5(f)(3) because Class Representative Fogg resides in the District of Columbia and during his employment with USMS, the discriminatory employment practices, acts, and omissions that are challenged occurred while he was employed with USMS, whose headquarters are located in Washington D.C. The District of Columbia is therefore the most logical forum in which to litigate the claims of the Class Representative and the proposed class in this case.

## **PARTIES**

11. At the time of events giving rise to this complaint, Plaintiff worked as a Criminal Investigator, GS-1811-13, for the U.S. Marshal's Service (USMS) in Arlington, VA. Plaintiff is an African American citizen of the United States and a resident of Washington, D.C.

12 Defendant USMS is an agency of the United States Department of Justice, whose headquarters are located in Washington D.C.. According to its website, USMS is the “enforcement arm of the federal courts . . . involved in virtually every federal law enforcement initiative.” Its major operations include judicial security, fugitive investigations, and prisoner services. While the Agency’s headquarters are located in Washington, D.C. Metropolitan area in Arlington, Virginia, the USMS has offices throughout the United States, including in Washington D.C.

## **FACTUAL ALLEGATIONS**

12. USMS fails to recruit Black employees at a rate comparable to the recruitment of White employees.

13. Black employees are denied employment opportunities in favor of less senior less qualified White employees.
14. The penalties for infractions applied to Black employees in USMS disciplinary proceedings are frequently greater and more severe than those applied to White employees.
15. The USMS purposely delays the processing of EEO complaints filed by Black employees.
16. Similarly-situated White and non-Black USMS employees receive preferential treatment with respect to special assignments.
17. Fogg and all similarly-situated class members were subjected to harassment and retaliation by Defendant because of their efforts to enforce equal opportunity and nondiscrimination in federal employment, including but not limited to being passed over for promotions, special assignments, bonuses, and awards, and being abandoned by coworkers while in the field and in the process of apprehending a suspect deemed to be armed and highly dangerous, being denied promotions, being subjected to disciplinary proceedings.
18. Other individuals and/or class members who opposed these practices had their careers destroyed. Fogg, DUSM Stephen Zanowic, and USMS Inspector Bill Scott testified before at a Congressional hearing convened by the Congressional Black Caucus, in 1997 following an article published in the New York Times investigating Fogg's claims and exposing the racism and corruption inside the USMS, entitled "Bigots with Badges".<sup>1</sup> DUSM Stephen Zanowic, whose ethnicity is Jewish, had his career destroyed and was forced out of the USMS in retaliation for standing up against the racism that he observed his Black partner William Bill Scott was subjected to after testifying. Scott later died from injuries after getting into a car

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<sup>1</sup> <https://www.scribd.com/document/464963771/Bigots-With-Badges>

accident under mysterious circumstances. Fogg later expounded on his experience with racism in the USMS at a congressional hearing before the CBC in 1999.<sup>2</sup>

19. Said practices and policies comprised unlawful discrimination, has been the regular policy of the Defendant and was the Defendant's regular practice.

20. The USMS has a long, documented history of continuing systematic discrimination against African Americans, including in the District of Columbia ("DC"). African American DUSMs have asserted claims of systemic discrimination at least since the early 1970's in an effort to remedy this discrimination.

21. The USMS has responded to these claims through studies and reports that have largely substantiated these claims and identified some proposed remedial measures which often were not implemented and have not effectively remedied the continuing discrimination and its effects. For example, administrative claims of race discrimination in 1972 and a civil action in 1974 alleging racially discriminatory promotional and other practices were brought on behalf of African American DUSMs in the USMS's DC Office, where one half of all African American DUSMs were assigned.

22. That litigation was dismissed in 1976 as part of a compromise providing for a study by an intradepartmental panel chaired by then Assistant Attorney General Peter R. Taft. Published in January 1977, the "Taft Report" concluded that charges of racial discrimination against the black deputy marshals had been established and that charges of harassment and retaliation because of efforts to enforce equal opportunity and nondiscrimination in federal employment had been sustained." *Bennett v U.S.*, 1982 U.S. Cl. Ct. LEXIS 2359 at \*11, No. 565-78 (Ct. Cl. August 4, 1982).

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<sup>2</sup>Fogg, Matthew. Testimony before Congressional Black Caucus Hearing on Police Brutality in Minority Communities. May 10, 1999. <https://www.c-span.org/video/?123167-1/police-brutality-minority-communities> starting at 3:35:00

23. The Taft Report found discrimination in promotions, assignments, training and other practices and recommended a series of remedial efforts to be implemented by the USMS.

24. In 1991, systemic claims of racial discrimination by the USMS against African American DUSMs across the Service were again initiated. In response, the USMS created the Ad Hoc Committee on Personnel Matters to investigate the claims and make findings and recommendations. The 1992 Report of that Ad Hoc Committee made the findings quoted above regarding perceptions of “a good old boy network” affecting promotions and assignments, and made a number of recommendations for the USMS to implement in order to address the claims and findings. Among its findings were that a number of the 1977 Taft Report recommendations regarding promotions and training had not been implemented, and it recommended that those and other measures should be implemented, including: That the Service insure the integrity of the processes under which employees are hired, promoted, assigned, evaluated, rewarded, and disciplined, and that the Service adopt a policy of openness concerning processes in the areas of promotions, assignments, and awards so that these processes are readily available to employees or to the scrutiny of employee representatives. 1992 Report, at 11-13, 15.

25. However, the “good ole boy network” and said historical discriminatory practices are still practiced today.

26. The alleged actions and practices described herein are common to the class.

27. In 1996, the Office of Inspector General of the Department of Justice issued a report on an investigation of an annual gathering of law enforcement personnel known as the “Good O’ Boy Roundup” that occurred between 1985 and 1995. The Inspector General found “substantial credible evidence of blatantly racist signs, skits, and actions,” including signs that read “nigger checkpoint.” The Inspector General indicated in his report that forty-four past and present DOJ employees had attended at least one roundup. On information and belief, some of

the past and present DOJ employees reported as participants in the “Good O’ Boy Roundup” by the Inspector General were employees of the USMS.

28. In 1999, in upholding a jury verdict finding racial discrimination in promotions and a racially hostile environment by the USMS on the individual claims of Plaintiff Matthew Fogg, this Court held that the evidence “described a U.S. Marshal’s Service . . . that has labored in substantial racial turmoil for at least a decade, and in which racial identities are keenly felt. The perception is pervasive on the part of African American members of the Marshal Service that they are less highly regarded and more is expected of them than of their white peers.”

29. The Court also found that “[t]he USMS concedes that Fogg presented evidence that the USMS in general has had a race problem,” and noted that “[t]hree senior African-American managers in the USMS . . . testified that African-Americans are not treated fairly compared to their white counterparts.” *Fogg v. Reno*, C.A. 94-2814, Memorandum and Order, at 5 & n. 5 (D.D.C. July 1, 1999).

30. Despite the existence of the class administrative charge and a number of individual charges alleging race discrimination, the USMS failed to take meaningful and effective steps to end the continuing pattern and practice of racial discrimination and to remedy the effects of that discrimination.

31. The USMS has not revised its policies and practices so as to eliminate the causes and sources of racial discrimination or the discriminatory effects of those policies and practices.

32. The “good old boy network” affecting promotions and assignments referred to in the 1992 Report of the Ad Hoc Committee has been preserved and perpetuated and continues the discriminatory practices of the USMS and perpetuates the effects of past racial discrimination. Indeed, many individuals currently in senior management and decision-making positions at the USMS benefited from and have continued the “good old boy network.”



33. For example, Michael Earp is the current Assistant Director in charge of the Investigative Operation Division (IOD) at headquarters. In the 1990s's, Michael Earp and Plaintiff Matthew Fogg applied for a position in IOD; Matthew Fogg was at the top of the Certification List, and the IOD Division Chief at the time indicated that Plaintiff would be chosen for the position. Nevertheless, Michael Earp was selected by the then Director for the position despite being ranked fourteenth on the certification list.

34. The pattern and practice of racial discrimination in the USMS is continuing and is manifested in discriminatory employment practices with respect to promotions, transfers, assignments, training, awards, and the use of investigations.

35. As stated above, prior to 1994 and continuing to the present, Class Representative Fogg and the class he seeks to represent have been discriminated against with respect to the promotional policies, practices and procedures for competitive positions including those ranked GS-12, GS-13, GS-14, GS-15, and the Senior Executive Service (SES) within the USMS.

36. USMS promotion policies, practices, and procedures have had a disparate impact on class members compared to their white counterparts. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. There are alternate objective selection procedures available to USMS that would have a less racially disparate impact. In addition, the USMS has failed to implement promotion procedures that are valid and have less adverse impact on African Americans in violation of the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607 et seq. The continued use of such policies and practices reflects an intent to discriminate against the class in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

37. The USMS Merit Promotion System relies on subjective selection methods, judgments, procedures, and criteria which perpetuate the "good old boy network" through which African Americans are discriminatorily denied promotions on the basis of race.

38. Specifically, the USMS's so-called "Merit Promotion Plan" of assigning promotions incorporates a number of features that impede the promotion of African American DUSMs. These features include: (1) a scoring, grading and ranking system where criteria are subjectively evaluated; (2) Merit Promotion graders, who are predominantly white peers of the candidates, who favor white candidates for promotions; (3) a merit promotion exam and essay test which favor white deputies and which are not justified by business necessity; (4) subjective and biased scoring of assignments; (5) scoring of awards, assignments, and trainings, which are discriminatorily denied to African Americans, and (6) a discriminatory three-tier ranking system, which includes reranking by the Chief Deputy or US Marshal ("recommending official"), the Career Board, and the Director and Deputy Director.

39. Under the Merit Promotion Plan, the Career Board and the Recommending Official make recommendations to the Director. However, the Director may disregard the recommendation of the Career Board and the Recommending Official and select a candidate for any reason. Affording the Director this authority has a disparate impact on African Americans, who are frequently denied promotions despite being recommended by the Career Board or Recommending Official, and perpetuates the existence of the "good old boy network". The continuation of this policy reflects an intent to discriminate against African American DUSMs in violation of Title VII.

40. African Americans are also routinely denied positions on the Career Board that makes the recommendations for promotions to the Director. The failure to provide all Deputy U.S. Marshals consistent, timely notice of job openings and promotional opportunities denies African American deputies an equal opportunity to apply for and receive promotions and advancement.

41. The USMS discriminates against African American DUSMs by circumventing the merit promotion process by using such devices as: (1) canceling positions when white

applicants do not receive a sufficiently high merit promotion ranking to qualify for the position; (2) giving white deputies “temporary” promotions that are later turned into permanent positions; and (3) using “selective placement factors” to select particular white deputies for promotions.

42. The USMS discriminates against African American DUSMs in terms of promotions by selecting white candidates from outside of a region rather than advancing internal African American candidates to fill vacancies and promotional positions, resulting in a disparate impact on African American deputies.

43. The USMS discriminates against African American deputies by choosing groomed white DUSMs over African American applicants for promotions through the use of selective criteria in the competitive application process, which advantage particular candidates.

44. Pursuant to USMS Directives 3.1 and 3.3, an employee who is under internal investigation may not be considered for a promotion. These policies and procedures discriminate and have an adverse impact against African American DUSMs, who are frequently targeted for internal affairs investigations when they are up for promotion. White Deputies and USMS leadership frequently institute an internal affairs complaint on African American DUSMs to prevent them from being selected for promotions and/or in retaliation for making their own complaints about racial hostility.

45. As a result of the forgoing policies and practices, qualified African American DUSMs are promoted to, or selected for, competitive positions less frequently than similarly situated white Deputies. In addition, African American DUSMs have been and continue to be discouraged from applying for competitive positions because of the discriminatory Merit Promotion System used by the USMS.

46. Additionally, Plaintiff Fogg continued to be retaliated against in violation of Title VII for opposing discrimination via his EEO complaints and testimony before Congress when the

following actions occurred: Post-verdict (*Fogg v. Reno*, C.A. 94-2814 (D.D.C. July 1, 1999)) the Agency refused to have Fogg's U.S. Department of Labor, Office of Workers Compensation Benefits (OWCP) adjusted in connection to the Final Court Order and change his grade from a GS-13 to a GS-14 as awarded to him in the verdict; the Agency caused the DOL-OWCP to force Fogg off Benefits and on OPM Retirement; the Agency miscalculated Fogg's 2008 total monetary relief for Compensatory damages and backpay award; the Agency failed to report its 2008 Final Judgment & Order monetary 'Withholdings' to include Federal and State taxes causing Fogg to be subjected to two IRS Audits, an Annuity Garnishment and Maryland State refusing to renew his Driver's license and automobile registration for non-payment of taxes; Fogg erroneously still owes the IRS; the Agency changed Fogg's retirement credentials from Chief Deputy to Chief Inspector after 8 years after per 2008 Court Order; the Agency has continuously obstructed Fogg's retirement and media livelihood through this day by reporting false information about his retirement title as Chief Deputy.

47. Prior to 1994 and continuing to the present, Class Representatives and the class they seek to represent have been discriminated against with respect to the policies, practices and procedures for assignments and lateral transfers within the USMS. USMS assignment and lateral transfer policies, practices, and procedures are highly subjective. Managers and supervisors in each District have unbridled discretion in many instances with respect to handing out assignments and approving lateral transfers. The high degree of subjectivity in the assignment and lateral transfer process has a disparate impact on African American DUSMs. As compared to their white counterparts, African American DUSMs receive fewer career-enhancing assignments and are routinely denied lateral transfers. Such policies, practices and/or procedures are not valid, job-related, or justified by business necessity. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII.

48. All of The practices described that have a disparate impact on the class also independently constitute intentional discrimination on the basis of race (African American or Black).

49. These discriminatory policies and practices adversely affected the ability of African American DUSMs to secure promotions or career enhancing opportunities and experiences.

50. USMS Directive 1.1 details the five basic duties and assignments of DUSMs employed at the District (as opposed to Headquarters). The five basic duties/assignments are: (1) Judicial and Court Security; (2) Prisoner Transportation and Cell Block; (3) Investigations and Warrant; (4) Seizure and Process; and (5) Business Management. Serving on warrant squads is important experience to have when a DUSM submits his or her merit promotion application package. Significantly, no guidelines are provided to District management with respect to assignments. Warrant squad experience enhances a DUSM's chance for promotion. The Merit Promotion Application includes a section on warrant-related experience which specifically asks applicants to address "[h]ow much variety is there in your enforcement work? Have you successfully completed investigations on escapees, Drug Enforcement Administration warrants and parole violators?" African American DUSMs are discriminatorily denied assignments to warrant squads.

51. The USMS discriminated against Fogg after he opposed the USMS discriminatory practice of targeting Black communities in the Washington D.C. metropolitan area for intense monitoring and targeting of individuals, especially Black, to arrest for crimes involving the distribution and/or usage of illegal drugs, despite research showing that Black and White individuals use drugs at the nearly the same rate, with the excuse that by arresting White drug dealers, the Agency would be subjected to lawsuits and external pressures from the arrestees' parents or relatives, who may be judges and lawyers, and the whole program might get shut down, by failing to promote him and grant him special assignments, and by leaving him on

scene and abandoning a warrant squad he was assigned to during a drug bust, endangering his life since he had no back up and had to arrest and disarm a dangerous individual who had been featured on "America's Most Wanted" by himself.

52. Serving in acting supervisory positions is a critical career-enhancing experience. The Merit Promotions Application specifically asks whether an applicant has served as an acting supervisor. African American DUSMs are discriminatorily denied assignments to serve as acting supervisors.

53. Managers and supervisors in each District are also given the discretion to select individuals for career-enhancing headquarter assignments and assignment to specialized task forces and details.

54. The Merit Promotion Plan also discriminates against African American DUSMs seeking lateral transfers. When vacancies in the USMS occur, the positions can either be filled through a promotion (i.e., promoting a DUSM at the GS-12 level to a GS-13) or through a lateral transfer (i.e., filling a GS-13 position with a DUSM who is already a GS-13). DUSMs at the GS-13 to GS-15 level seeking to laterally transfer into a vacant position automatically make the certification list. African American DUSMs are routinely denied lateral transfers, even if they are willing to make a lateral transfer into positions that are lower on the GS scale. In addition, less qualified white DUSMs are frequently chosen for positions that class members are trying to make a transfer into laterally.

55. Prior to 1994 and continuing to the present, Class Representative Fogg and the class he seeks to represent have been discriminated against with respect to the policies, practices and procedures with respect to training within the USMS.

56. USMS training policies, practices, and procedures are highly subjective. Managers and supervisors in each District have unfettered discretion in deciding which DUSMs receive training. The high degree of subjectivity in how DUSMs receive training has a disparate impact

on African American DUSMs. As compared to their white counterparts, African American DUSMs receive fewer career-enhancing training opportunities. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. These discriminatory policies and practices adversely affected the ability of African American Deputies to secure promotions. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

57. Directive 14.1 governs the process for approving external training for DUSMs (i.e. training provided outside the Marshals Service). In order for an employee to attend external training, the District or Division (i.e. Asst. Directors and U.S. Marshals) must submit an SF-182 Request, Authorization, Agreement and Certification of Training to the Training Academy for approval. The DUSM requesting the training initially fills out the SF-182, which must then be approved by his/her immediate supervisor. A second-line supervisor must also approve the training. "Only requests approved by district and division management will be processed by the Training Academy." Thus, local management has the authority to approve training and Directive 14.1 does not include any guidelines on when approval should be granted.

58. Receiving training is critical to advancement within the Marshals Service. Section IV of the Merit Promotion Application specifically asks applicants to list the training they have received. In addition, part of the composite score given to Merit Promotion applications consists of a score for training. African American DUSMs' training requests are discriminatorily denied.

59. As stated above, prior to 1994 and continuing to the present, Class Representatives and the class they seek to represent have been discriminated against with respect to the policies, practices and procedures with respect to awards within the USMS. USMS award policies,

practices, and procedures are highly subjective. Managers and supervisors in each District have complete discretion in deciding which DUSMs receive certain awards.

60. The high degree of subjectivity in how DUSMs receive awards has a disparate impact on African American DUSMs. As compared to their white counterparts, African American DUSMs receive fewer career-enhancing awards. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. These discriminatory policies and practices adversely affected the ability of African American Deputies to secure promotions.

61. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

62. USMS Directive 3.3 describes the Awards Program in the USMS and its administration. There are three basic types of awards: (1) sustained superior performance awards which are cash awards; (2) Special Act Awards, which are also cash awards; and (3) Time Off Awards. Under this Directive, authority is given to each U.S. Marshal to approve awards of up to \$2,500 per employee per year or 80 hours of leave per employee, per leave year. There are also Director's Honorary Awards (which may or may not include cash) and Quality Step Increase (QSI) awards. As explained by Directive 3.3, "[a] QSI is an increase in basic pay from one step of the grade to the next step. A QSI provides faster than normal progression through the steps of the General [pay] Schedule.

63. Unlike other forms of monetary recognition, a QSI permanently increases an employee's rate of basic pay by one step." While the Director sets the percentage of employees within a District that can be submitted for QSIs, District management selects the individual employees who will be chosen to receive QSIs.

64. Receiving awards is critical to advancement within the Marshals Service. Section V of the Merit Promotion Application specifically asks applicants to list the awards they have



received. In addition, part of the composite score given to Merit Promotion applications consists of a score for awards. African American DUSMs receive awards less frequently than their white counterparts.

65. Prior to 1994 and continuing to the present, Class Representatives and the class they seek to represent have been discriminated against with respect to the policies, practices and procedures regarding the use of allegations of misconduct and investigations by the Office of Internal Investigations (OII) within the USMS.

66. USMS policies, practices, and procedures regarding the making of allegations of misconduct that may be investigated by OII are arbitrary and highly subjective. The arbitrary and subjective policies and practices regarding the process for initiating investigations of misconduct have a disparate impact on African American DUSMs. As compared to their white counterparts, African American DUSMs are subjected to investigations by OII for conduct for which white DUSMs are not. African Americans are also unfairly accused of charges that can prevent an individual from being promoted or serving in certain coveted headquarters divisions, such as Investigative Operations.

67. These discriminatory policies and practices adversely affect the ability of African American DUSMs to secure promotions or access to positions and opportunities that are career-enhancing, because DUSMs under investigation by OII are not eligible for promotions, awards, and certain assignments.

68. Such policies, practices and procedures are not valid, job-related, or justified by business necessity. The continued use of such policies and practices reflects an intention to discriminate against class members in violation of Title VII. These practices also independently constitute intentional discrimination on the basis of race.

69. Compounding the adverse impact of these arbitrary and subjective policies and practices on class members is the fact that OII suffers from a lack of resources and high quality

investigators, which often results in the failure to complete investigations within the proscribed 90 day time frame. A March 2010 Report by the United States Department of Justice, Office of Inspector General on the USMS Office of Internal Investigations found that from FY 2004 to FY 2009 OII failed to meet its 90-day standard for completing misconduct investigations in 51% of the cases it closed. The Report also found that OII is “under-resourced, has lower-graded investigator positions, and lacks adequate administrative and analytic support.” Specifically, investigators in the USMS OII had caseloads “three to five times larger” than their counterparts in ATF, DEA, and the FBI. The Report went on to acknowledge that “lengthy investigations can delay promotions and career progression of employees under investigation, which can damage employee morale, and hinder the USMS’s ability to appropriately manage its workforce.”

70. Class members are routinely targeted by their white co-workers and supervisors for investigation by the OII based on false and/or frivolous allegations or for conduct that would not result in an investigation if committed by a white deputy. These frivolous allegations often lead to successive disciplinary action, culminating in a Notice of Proposed Removal, causing Deputies to have to defend themselves against these allegations, which subsequently results in the removal of the Deputy for misconduct because the adjudicators fail to correctly weigh the evidence of falsity properly and discount any evidence that would have led to the revocation of the Proposed Notice of Removal. In contrast, OII discriminatorily declines to investigate white DUSMs, and class members have been reprimanded by their supervisors when they report to OII misconduct by white DUSMs.

71. Because of the Defendant’s systemic pattern and practice of racial discrimination, Class Representatives and the class they seek to represent have been adversely affected by these policies and practices and have experienced harm, including loss of compensation, wages, back pay, and employment benefits.

72. The Class Representatives and class members have no plain, adequate, or complete remedy at law to redress the pervasive wrongs alleged herein; this suit is their only means of securing adequate relief. Additionally, the Class Representatives and putative class are currently suffering injury from USMS's unlawful policies, practices and procedures as described herein, and will continue to suffer unless those policies, practices and procedures are enjoined by this Court.

### **CLASS ACTION ALLEGATIONS**

#### **A. Class Definition**

73. The previous paragraphs are incorporated in this section as if set forth herein.

74. Class Representative Fogg seeks to maintain claims on his own behalf and on behalf of a class defined as follows: All current and former African American Deputy U.S. Marshals who are serving or have served with the USMS at any time during the liability period.

#### **B. Efficiency of Class Prosecution of Common Claims**

75. Certification of a class of African American DUSMs is the most efficient and economical means of resolving the questions of law and fact common to the claims of Class Representative and the proposed class. Class Representative's claims require determination of whether USMS has engaged in systemic pattern and practice of racial discrimination against African American DUSMs. Further, the Class Representative seeks remedies to eliminate racial discrimination, the adverse effects of such discrimination and to prevent continuing racial discrimination in the future for themselves and on behalf of the class. Without class certification, the same evidence and issues would be subject to repeated litigation in a multitude of individual lawsuits, with an attendant risk of inconsistent adjudications and conflicting obligations.

76. Class Representative's claims are premised upon the traditional bifurcated method of proof and trial for disparate impact and systemic disparate treatment claims of the type at issue here. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

### **C. Numerosity and Impracticability of Joinder**

77. The number of African American DUSMs currently employed by the USMS is approximately several hundred. The proposed class defined above thus consists of hundreds of current and former DUSMs who have served during the liability period, approximately 10,000 individuals total.

78. Therefore, the class that Class Representative Fogg seeks to represent is too numerous to make joinder of all members practicable.

### **D. Common Questions of Law and Fact**

79. Prosecution of Class Representative's claims will require the adjudication of numerous questions of law and fact common to the proposed class. Common questions of law include, inter alia, whether: (a) USMS has engaged in unlawful, systemic racial discrimination, retaliation, and created a hostile work environment against African American DUSMs with respect to its policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations; (b) USMS policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations have an unlawful disparate impact on African American DUSMs; and (c) USMS is liable for continuing violations of Title VII.

80. Common questions of fact include, inter alia, whether USMS has, through its policies, practices and procedures: (a) denied or delayed promotions for African American DUSMs; (b) relied on a promotion system that results in a pattern and practice of discrimination against

African American DUSMs; (c) uses devices to circumvent the Merit Promotion System to promote white DUSMs; (d) used subjective practices and selective criteria to give white DUSMs an advantage over African American DUSMs in applying for promotions; (e) filled job openings with candidates from outside the region to avoid promoting internal African American DUSMs; (f) denied career-enhancing assignments and transfers to African American DUSMs, while granting them to white DUSMs to groom them for promotions; (g) denied career-enhancing training opportunities to African American DUSMs, while granting them to white DUSMs; (h) denied career-enhancing awards and equal treatment regarding awards to African American DUSMs while granting them and granting more favorable awards to white DUSMs; and (i) initiated and conducted investigations of misconduct as to African American DUSMs differently than as to white DUSMs.

81. USMS's employment policies, practices and procedures affecting the Class Representative and members of the proposed class are set at the agency level and apply universally to all class members. These policies, practices and procedures are not unique or limited to any particular USMS unit, but instead concern all units and therefore adversely affect Class Representative Fogg and proposed class members regardless of the USMS division or District in which they work. A pattern and practice of discrimination against African American DUSMs – in promotions, transfers, assignments, training, awards, and investigations – occurs throughout all levels, Districts and divisions of USMS.

#### **E. Typicality of Claims and Relief Sought**

82. Class Representative Fogg's claims are typical of those of the proposed class. Class Representative asserts claims in each of the categories of claims asserted on behalf of the proposed class. The relief Class Representative seeks for racial discrimination complained of herein is also typical of the relief sought on behalf of the proposed class. Members of the

proposed class, like Class Representative Fogg, are African American employees who have worked for USMS during the liability period and have been subjected to the pattern and practice of discrimination across all levels, Districts and departments of USMS, as alleged above and that discrimination affects Class Representative Fogg and the proposed class members in similar ways. The relief necessary to remedy Class Representative's claims is the same relief necessary to remedy the claims of the proposed class members.

83. Representatives seek the following relief for their claims and for those of the proposed class: (a) declaratory judgment that USMS has engaged in systemic racial discrimination against African American DUSMs in promotions, transfers, assignments, training, awards, and investigations; (b) a permanent injunction against such continuing discriminatory conduct; (c) restructuring of USMS's policies and practices regarding promotions, transfers, assignments, training, awards, and investigations so that African American DUSMs will be able in the future to compete fairly within the agency; (d) injunctive relief to make whole African American DUSMs and to place them in the positions they would have held in the absence of USMS's past racial discrimination; (e) back pay, front pay and equitable monetary remedies necessary to make African American DUSMs whole for USMS's past discrimination.

#### **F. Adequacy of Representation**

84. Class Representative Fogg's interests are co-extensive with those of the members of the class he seeks to represent in this case. As described above, Fogg seeks to bring an end to USMS's discriminatory employment policies, practices and procedures. Class Representative Fogg has no conflicts with other members of the class related to the challenges to the discriminatory USMS practices. Class Representative Fogg is willing and able to represent the class fairly and vigorously in this action.

85. Class Representative Fogg seeks leave from the Court to a stay of the proceedings for 90 days to retain counsel who are qualified, experienced, able to conduct this litigation and to meet the requirements of litigating an employment discrimination class action of this size and complexity. Extraordinary circumstances exist that call for the granting of such a stay: The attorneys' failed to adequately represent the interest of the class in the underlying administrative proceedings, by approving a preliminary settlement on behalf of the class prior to seeking the approval of the class representative Fogg, and by failing to provide a copy to Fogg so he could adequately voice his objection to the same prior to a fairness hearing, and thus their actions allegedly constitute a fraud on the tribunal and a violation of several rules of professional responsibility of the D.C. Bar, culminating in Fogg having no choice but to file the case pro se in Federal court in order to fulfill his duties and responsibilities as the named class representative and after filing a D.C. Bar complaint against said counsel seeking disciplinary action so as to protect the class and the public from their continued alleged misconduct in the future. *See Boussum v. Washington*, 655 F.Supp.3d 636 (2023) (After group of disabled inmates brought *pro se* class action, alleging that problems with staffing and unit's programming, care, in violation of various laws and the Constitution, the court *sua sponte* stayed the case for three months to allow the plaintiffs and the clerk of court to seek pro bono counsel)("Thus, it is common practice in the Eastern District of Michigan to stay a case temporarily to find pro bono counsel for a pro se inmate litigant if "clear extraordinary circumstances exist." E.g., *Fajardo-Garzon v. De Hoffman*, No. 2:21-CV-10340, 2021 WL 1259462, at \*2 (E.D. Mich. Apr. 6, 2021) (granting 30-day stay); *Boone v. Heyns*, No. 12-14098, 2017 WL 3977524, at \*6 (E.D. Mich. Sept. 11, 2017) (same)").

86. The combined interests, experience and resources of Class Representative Fogg and counsel (once retained) to litigate competently the claims at issue clearly satisfy the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4).

### **G. Requirements of Rule 23(b)(2)**

87. USMS has acted on grounds generally applicable to the proposed class as a whole by adopting, following and perpetuating policies, practices and procedures that result in systemic discrimination on the basis of race. Racial discrimination is the agency's standard operating procedure rather than a sporadic occurrence. USMS also has refused to act on grounds generally applicable to the class by refusing to adopt and apply policies, practices and procedures that are nondiscriminatory and eliminate the effects of past discrimination against African American DUSMs. USMS's discriminatory actions and refusals to act on grounds generally applicable to the class make appropriate the requested final injunctive and declaratory relief with respect to the class as a whole.

88. Injunctive and declaratory relief are the predominant forms of relief sought in this action because they are absolutely necessary to the cessation of discrimination and elimination of the effects of past discrimination. In addition, injunctive and declaratory relief are the essential predicate for Class Representative and class members' entitlement to equitable monetary and non-monetary remedies. Those equitable monetary and non-monetary remedies flow directly from proof of the common questions of law and fact regarding the existence of systemic racial discrimination against African American DUSMs.

### **H. Requirements of Rule 23(b)(3)**

89. The common issues of law and fact affecting the claims of Class Representative Fogg and proposed class members, including, but not limited to, the common issues identified in Subsection D above, predominate over any issues affecting only individual claims.

90. A class action is superior to other available means for the fair and efficient adjudication of the claims of Class Representative and members of the proposed class. The cost of proving



USMS's pattern and practice of discrimination makes it impracticable for Class Representative and members of the proposed class to pursue their claims individually.

91. A trial by jury is demanded on all counts so triable.

**COUNT I**  
**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**  
**42 U.S.C. § 2000, et seq., AS AMENDED**  
**RACE DISCRIMINATION**  
**(On Behalf of Class Representative and the Putative Class)**

92. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

93. Subsection D above, predominates over any issues affecting only individual claims. Class Representative Fogg re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

94. USMS has discriminated against Class Representative and all members of the proposed class through its policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations in violation of Title VII.

95. USMS's policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations are or have been administered in a manner intentionally to discriminate against Class Representative and the members of the proposed class.

96. USMS's policies, practices and procedures regarding promotions, transfers, assignments, training, awards, and investigations have an unlawful disparate impact against Class Representative Fogg and the members of the proposed class.

97. Because USMS's discriminatory policies and practices have been perpetuated and its discriminatory conduct has been continuing and persistent, Class Representative and the

proposed class members are entitled to application of the continuing violation doctrine to all violations alleged herein.

98. As a direct and proximate result of USMS's conduct, Class Representative and the members of the proposed class have suffered harm, including in their positions and assignments within the USMS, loss of compensation and other employment benefits, and emotional distress, anguish and humiliation.

99. Because of the discrimination they have suffered at USMS, Class Representative and the members of the proposed class are entitled to all legal and equitable remedies available under Title VII.

**COUNT II**  
**VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**42 U.S.C. § 2000e-3(a)**  
**RETALIATION**  
**(On Behalf of Class Representative Fogg and the Putative Class)**

100. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

101. Class Representative Fogg and members of the putative class allege, with incorporation by reference of all preceding paragraphs, that the United States Marshals Service (USMS) has engaged in unlawful retaliation against employees for engaging in activities protected under Title VII. Specifically, these protected activities include filing complaints of racial discrimination, participating in investigations, litigation, or opposition to practices deemed unlawful under Title VII.

102. The USMS has subjected the Class Representative and members of the putative class to adverse employment actions following their engagement in protected activities. These actions include, but are not limited to, unjustified negative performance evaluations, denial of

promotions, transfers, assignments, and other benefits of employment, the placement of an oversized BLACK RUBBER RAT given to him by a white Supervisor, continuous racial abuse by white colleagues, death threats, being left in the field on stakeouts to apprehend dangerous criminal suspects by themselves; as well as additional forms of discrimination intended to punish and dissuade further participation in protected activities.

103. Such retaliatory practices by the USMS create a workplace atmosphere that would deter a reasonable worker from making or supporting a charge of discrimination, thus meeting both the subjective belief of the affected employees in the retaliatory motive of the USMS and the objective standard that would dissuade a reasonable person from engaging in protected activities.

104. As a direct and proximate result of the retaliatory conduct by the USMS, Class Representative and the members of the proposed class have suffered significant harm, including, but not limited to, career progression setbacks, loss of compensation, emotional distress, and a chilling effect on the exercise of their rights under Title VII.

105. Therefore, Class Representative and the members of the putative class seek all legal and equitable remedies available under Title VII for the retaliatory actions committed by the USMS.

**COUNT IV**  
**VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**42 U.S.C. § 2000e-2(a)**  
**HOSTILE WORK ENVIRONMENT BASED ON RACE AND REPRISAL**  
**(On Behalf of Class Representative and the Putative Class)**

106. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

107. Class Representative and members of the putative class restate and incorporate by reference all previous allegations, asserting that the United States Marshals Service (USMS) has maintained a work environment hostile to employees based on race AND REPRISAL, in violation of Title VII. This hostile work environment is characterized by frequent, severe, and pervasive incidents of racial discrimination, including derogatory remarks, unfair employment practices, and an overall atmosphere of racial hostility that significantly alters the conditions of the employment environment.

108. The conduct in question is not only highly offensive but has also been purposefully designed or negligently allowed to persist by the USMS, thereby creating an intimidating, hostile, or offensive working environment for the Class Representative and members of the proposed class.

109. This pervasive atmosphere of racial hostility meets the legal standards for a hostile work environment, affecting the terms, conditions, and privileges of employment for the Class Representative and the putative class members. It is both subjectively perceived by the affected employees and objectively severe enough to create a work environment that a reasonable person would find hostile or abusive.

110. As a direct consequence of this hostile work environment, Class Representative and the proposed class members have endured considerable emotional distress, humiliation, and adverse employment consequences, including, but not limited to, diminished career advancement opportunities and loss of professional dignity.

111. In light of these violations, Class Representative and the members of the putative class seek recourse through all legal and equitable remedies available under Title VII to address the hostile work environment based on race perpetuated by the USMS.

#### COUNT IV

**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

**42 U.S.C. § 2000E-3**

**RETALIATORY HARASSMENT**

**(On Behalf of Plaintiff Matthew Fogg)**

112. Plaintiff Fogg reasserts and incorporates by reference each allegation in the previous paragraphs of this Complaint.

113. Plaintiff Fogg, subsequent to his active engagement in protected Equal Employment Opportunity (EEO) activities of participating in the underlying administrative complaint from the initial filing up to and including the present, engaged in the litigation process as seen in *Fogg v. Reno*, C.A. 94-2814, provided testimony at a Congressional hearing on or around May 10, 1999, and participated in opposition activities, including but not limited to, publicly speaking against the racial discrimination and the hostile work environment created by Defendant in public forums, created and shared content on YouTube and his website [www.bigotswithbadges.com](http://www.bigotswithbadges.com) about the same.

114. Plaintiff Fogg asserts being subjected to harassment by the Defendant after he engaged in said protected activities, including but not limited too: the Agency failed to properly adjust his worker's compensation benefits in connection to the Final Court Order; failure to change his grade from a GS-13 to a GS-14 as awarded to him in a prior court verdict; force Fogg off Worker's Comp Benefits and on OPM Retirement; miscalculation of Fogg's 2008 total monetary relief for Compensatory damages and backpay award; the failure to report its 2008 Final Judgment & Order monetary 'Withholdings' to the IRS causing the IRS to harass and audit him at his home on two separate occasions seeking to find the withholdings being held by the Dept. of Justice; Continuously garnishing Fogg's monthly retirement annuity over \$1500 dollars; The IRS placed a levy on Fogg's personal bank accounts and took over 25,000.00 dollars; The IRS caused the Maryland State Comptroller to act upon the IRS's erroneous tax

assessment to prevent Fogg from obtaining his vehicle registration and driver's license until he made payments on the high tax assessments; When finally in 2016 the DOJ admitted to its so-called mistake and sent him a check covering the Withholdings with interest dating back to 2008, the accrued IRS and Maryland State penalties caused him to not receive any tax refunds owed him over the last 10 years. These acts, which not only demonstrated a blatant disregard for his Plaintiff's well-being but also highlights a direct causal connection to his protected activities, the small or nonexistent time gap between each activity and the harassment, which was severe and pervasive and constituted conduct based on reprisal.

115. These retaliatory acts clearly establish both a subjective belief by Fogg in the retaliatory nature of the USMS's actions and meet the objective person standard, indicating that such treatment would likely deter a reasonable individual from engaging in protected EEO activities.

116. These actions by Defendant were objectively intimidating, enough to discourage a reasonable person from partaking in similar protected activities.

117. USMS subjected Plaintiff Fogg to adverse actions that would cause a reasonable person under the same circumstances to be deterred from engaging in protected EEO activity.

118. USMS's actions were intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of causing harm to Plaintiff Fogg.

119. As a direct result of USMS's retaliatory actions, Plaintiff Fogg suffered economic losses, mental and emotional harm, anguish, and humiliation.

120. By reason of the retaliation suffered at USMS, Plaintiff Fogg is entitled to all legal and equitable remedies available under Title VII § 2000E-3.

### **PRAYER FOR RELIEF**

WHEREFORE, Class Representative Fogg, on behalf of himself and the members of the class they seek to represent, requests the following relief:

- A. An order granting Fogg's motion for a 90-stay of the proceedings to obtain counsel.
- B. An order certifying this action as a class action maintainable under Federal Rules of Civil Procedure Rule 23(a), (b)(2), and (b)(3), on behalf of the proposed plaintiff class and appropriate subclasses, designation of Class Representative Fogg as representative of this class and appropriate subclasses, and designation of his subsequently retained counsel of record as class counsel;
- C. A declaratory judgment that USMS's employment policies, practices and procedures challenged herein are unlawful and in violation of Title VII;
- D. A permanent injunction against USMS and its agents, employees and representatives, and any and all persons acting in concert with them, from engaging in any further unlawful discriminatory practices, policies, customs, usages as set forth herein;
- E. An Order requiring USMS to initiate and implement programs that
- (1) will provide equal employment opportunities for African American DUSMs;
  - (2) will remedy the effects of USMS' past and present unlawful employment policies, practices and procedures; and
  - (3) will eliminate the continuing effects of the discriminatory practices described above;
- E. An Order requiring USMS to initiate and implement systems of promoting, assigning, transferring, training, awarding, compensating and conducting investigations of DUSMs that treat African American DUSMs in a non-discriminatory manner.
- F. An Order establishing a task force on equality and fairness to determine the effectiveness of the programs described in (D) and (E) above, and which would provide for
- (1) monitoring and reporting to ensure equal employment opportunity;

- (2) assuring that injunctive relief is properly implemented; and
- (3) quarterly reports setting forth information relevant to the determination of the effectiveness of the programs described in (D) and (E) above;
- G. An Order placing or restoring Class Representative(s) and other class members into those jobs they would now be occupying, but for USMS' discriminatory policies, practices and procedures;
- H. An Order directing USMS to adjust the wage rates and benefits for Class Representative(s) and other class members to the levels to which they would be entitled but for the Defendant's discriminatory policies, practices and/or procedures;
- I. An award of back pay, front pay, lost benefits and equitable monetary relief for lost compensation and job benefits suffered by Class Representative(s) and the class members to be determined at trial;
- J. Any other equitable relief to which Class Representative(s) and the proposed class members are entitled;
- K. An award of compensatory damages to Class Representative(s) and members of the class in the amounts of 3 billion dollars;
- L. An award of compensatory damages to Class Representative(s) on their individual claims of discrimination in an amount of 300,000 dollars.
- M. An award of litigation costs and expenses, including reasonable attorneys' fees, to Class Representative(s) and the class;
- N. Pre-judgment and post-judgment interest on the amounts of equitable monetary relief awarded;



O. Such other and further relief as the Court may deem just and proper;

P. Retention of jurisdiction by the Court until such time as the Court is satisfied that the Defendant has remedied the practices, policies and procedures complained of herein and is determined to be in full compliance with the law; and

Q. any other relief deemed just and proper by the Court.

Let the words of my mouth and the meditation of my heart be acceptable in your sight, O Lord, my Rock and my Redeemer. In Jesus' mighty name, Amen. Signed, Sealed, and Delivered.

Respectfully Submitted on this 19th Day of March, 2024,

/s/ 

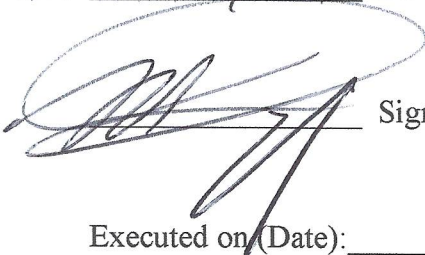
Matthew Fogg,  
Chief Deputy U.S. Marshal, Ret.  
Plaintiff and Class Named Complainant  
2833 Alabama Ave SE – No. 0956  
Washington, DC 20020  
240-375-3580

**CERTIFICATION**

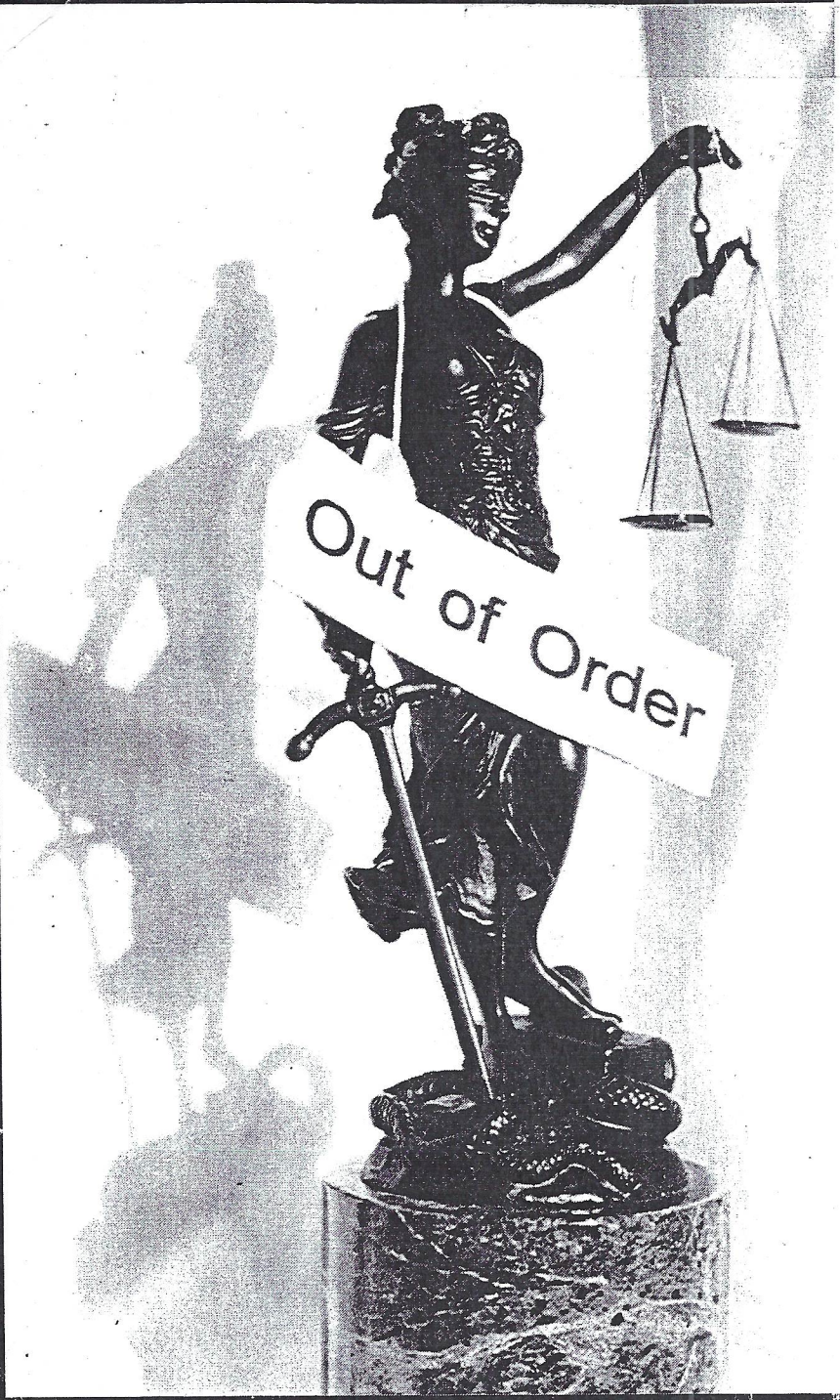
**I HEREBY CERTIFY** that on March 19, 2024, and declare under penalty of perjury under the laws of the United States of America that:

1. The matters sworn herein are made from my personal knowledge and are true and correct to the best of my information, knowledge and belief, and that I am competent to testify thereto.
3. This Complaint was filed with the Clerk for the Federal District Court for the District of Columbia and summons for the Defendant requested, to be served upon the Defendant via the Federal Rules of Civil Procedure.

MATTHEW FOLLO Name

 Signature

Executed on (Date): \_\_\_\_\_



**The failure  
of justice  
is as  
damaging  
to society  
as the  
crime  
itself.**

CLARENCE DARROW