NO. _____

IN THE

Supreme Court of the United States

_____

JONATHAN CORBETT,

Petitioner

V.

TRANSPORTATION SECURITY ADMINISTRATION,
UNITED STATES OF AMERICA,
ALEJANDRO CHAMIZO
BROWARD COUNTY
BROWARD COUNTY SHERIFF'S OFFICE

Respondents

_____

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

1. Are the Transportation Security Administration's (TSA) administrative checkpoint searches limited to those "no more extensive nor intensive than necessary, in the light of current technology, to detect the presence of weapons or explosives" as required by the Ninth Circuit, or may the TSA conduct more extensive searches as allowed in this case by the Eleventh Circuit?

2. If Question 1 is answered in as the former, were such boundaries "clearly established," for the purposes of a qualified immunity determination?

3. May TSA screeners, who are not law enforcement officers, physically detain individuals whom they believe to be non-compliant with screening procedures?

4. Are TSA screeners "investigative or law enforcement officers" as defined by the Federal Tort Claims Act, 28 U.S.C. § 2680(h)?

5. Is the correct test for determining if a tort claim is "arises from" another tort claim for which sovereign immunity applies: 1) whether the claim is "essential to" a barred tort, as described by the Fifth Circuit, Ninth Circuit, and previously by Eleventh Circuit in 2001, 2) whether the claim "is based on the same underlying conduct" as a barred tort, as described by the Eleventh Circuit in the instant case, or 3) some other test?

6. Did the court below stretch this Court's definition of "similar files," in the context of Freedom of Information Act exemptions, 5 U.S.C. § 552(b)(6), as written in *Dept. of State v. Washington Post*, 102 S. Ct. 1957 (1982)?

7. Did the court below misinterpret the pleading requirements, as laid out by *Iqbal v. Ashcroft*, 129 S. Ct. 1937 (2009) for a state civil conspiracy claim made under its supplemental jurisdiction, as well as the applicability of supervisory liability limitations?

8. Did the court below fail to correctly apply state law to a Florida constitutional claim made under its supplemental jurisdiction?

9. Should the Court reconsider its decision in *F.A.A. v. Cooper*, 132 S.Ct. 1441 (2012), limiting recovery under the Privacy Act to "pecuniary or economic loss?"

PARTIES TO THE PROCEEDING

Petitioner is Jonathan Corbett, an individual residing in the State of Florida appearing before this Court *pro se*.

Respondents are:

- The Transportation Security Administration, a sub-agency of the U.S. Department of Homeland Security,
- The United States of America,
- Alejandro Chamizo, an employee of the Transportation Security Administration, in his individual capacity,
- Broward County, a county in the State of Florida, and,
- Broward County Sheriff's Office, a law enforcement agency in Broward County, Florida.

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The opinion of the district court in dismissing 19 of the 21 charges brought in the first amended complaint is unpublished and attached to this petition as Appendix A. The opinion of the district court in dismissing the remaining charges, and thus the case in its entirety, is unpublished and attached to this petition as Appendix B.

The opinion of the Eleventh Circuit affirming the district court's dismissal is unpublished and attached to this petition as Appendix C. The opinion of the Eleventh Circuit denying reconsideration is unpublished and attached to this petition as Appendix D.

JURISDICTION

The Court of Appeals entered its judgment on June 4th, 2014, and denied reconsideration on August 19th, 2014. This Court has jurisdiction under 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the U.S. Constitution is reproduced in Appendix E. All statutes found in the Table of Authorities are reproduced in Appendix F.

STATEMENT OF THE CASE

A. Factual Background

Respondent TSA has been given authority by Congress to conduct warrantless administrative searches at airport checkpoints nationwide for the purpose of preventing air terrorism. As alleged in the district court complaint, Petitioner attempted to board a commercial flight from a public airport in Florida in 2011 and was directed by the TSA, operating under this authority, to pass through a device that would x-ray his body and digitally create an image of his nude body to be inspected by a TSA screener. Congress has since outlawed this type of screening after significant public objection relating to privacy concerns. 49 U.S.C. § 44901(l)(2).

TSA policy at the time permitted travelers to "opt out" of the x-ray device and receive "alternative screening" instead. Petitioner used this "opt out" option and presented himself for alternative screening. After stepping through a metal detector without alarm, Petitioner was advised by the screener assigned to him that the remainder of the "alternative screening" the TSA had in mind would involve the screener touching Petitioner's genitals and buttocks with his hands. Petitioner objected and informed the screener that he would not consent to the offensive conduct proposed by the screener.

Several other TSA screeners and/or managers, including Respondent Alejandro Chamizo, a TSA

manager, were summoned, and Chamizo summoned local law enforcement: deputies of Respondent Broward Sheriff's Office. Chamizo directed his subordinate staff to conduct a search of Petitioner's belongings that exceeded what was necessary to find weapons or explosives. This screening included reading through identification and credit cards in Petitioner's belongings in hopes of finding evidence of identity theft, as well as reading through pages of Petitioner's books, in hopes of finding something that would implicate Petitioner as "suspicious." Chamizo also told Petitioner that he could not leave the checkpoint, that he would be forcibly searched if he did not submit, and that he would be arrested for non-compliance.

Meanwhile, Chamizo, without Petitioner's consent, presented Petitioner's identification to the Broward Sheriff's Office deputies, who used the information printed thereon to run a background check on Petitioner.

After failing to find any prohibited items or outstanding warrants, Chamizo directed Petitioner to leave the airport. Petitioner missed his flight, which he re-booked through a different airport and boarded after being screened by that airport's TSA without incident and without indecent touching.

The government's tortious conduct, however, continued beyond the airport incident. Petitioner filed public records requests with both the TSA and the

local airport authority, Respondent Broward County, requesting incident reports and checkpoint security video in their possession. At the time, Broward County was knowingly in possession of video responsive to his request, but lied to Petitioner and claimed that they did not have any responsive records. After the TSA similarly denied having possession of checkpoint security video, Petitioner asked Broward County how it was possible that neither the airport authority nor the TSA had responsive records when there were over one dozen visible cameras at the checkpoint, at which point Broward County conceded that they had lied to Petitioner at the direction of the TSA, who contended that not just the videos, but mere knowledge of their existence, was Sensitive Security Information ("SSI"), 49 CFR 1520.5(a), and therefore unreleasable.

Finally, the TSA, after the start of litigation, produced incident reports, but they were heavily redacted, mostly citing "FOIA Exemption 6," 5 U.S.C. § 552(b)(6), which is an assertion that the incident reports were "similar files" to personnel records. Also once in litigation, the TSA, having obtained the checkpoint video from Broward County, reversed its assertion that the checkpoint video was SSI and produced for Petitioner intentionally grainy, pixelated copies of the video, stating that the videos are also "similar files" to personnel records and images of the faces of its employees are exempt from release. In sum, the TSA effectively claimed that any record that

identifies a TSA employee is a "similar file" to a personnel record and unreleasable.

B. Proceedings in District Court

Petitioner filed his original proceeding in U.S. District Court for the Southern District of Florida on March 2nd, 2012. His Amended Complaint, filed May 8th, 2012, listed 21 counts against the five defendants under federal and state law.

Between March 21st, 2012 and October 22nd, 2012, the defendants filed a total of 5 motions to dismiss. The district court dismissed all but 2 of the 21 counts on November 16th, 2012. Appendix A. Motions for Summary Judgment were filed by all remaining parties between February 13th, 2013 and February 19th, 2013, and the 2 remaining charges were dismissed on September 3rd, 2013. Appendix B. A timely notice of appeal was filed on September 6th, 2013.

The 21 counts in the amended complaint are summarized in the table below:

Count	Defendant	Charge
1	Chamizo	4th Amendment Seizure
2	Chamizo	4th Amendment Search
3	Chamizo	4th Amendment Search

4	Chamizo	4th Amendment Search
5	Chamizo	42 U.S.C. § 1983
6	USA	Assault
7	USA	False Arrest
8	USA	Invasion of Privacy
9	USA	Intentional Infliction of Emotional Distress
10-16	TSA	Privacy Act
17	TSA	Freedom of Information Act
18	Broward	Fla. Public Records Act
19	USA	Civil Conspiracy
20	Broward	Civil Conspiracy
21	BSO	Fla. Constitution

Counts 1 – 4 are 4th Amendment claims against TSA supervisor Chamizo. Count 1 is based on Chamizo's seizure of Petitioner, Counts 2 through 4 allege that the search of Petitioner exceeded the lawful boundaries of a lawful administrative search by: reading credit cards, identity cards, and other cards within his belongings (Count 2), reading pages in a book within his belongings (Count 3), and continuing to search his belongings for evidence of general criminality after it was clear that no weapons

or explosives would be found (Count 4). All four of these counts were dismissed by the district court pursuant to its grant of qualified immunity. Appendix A, p. A13 ("assuming without finding that Plaintiff's detention and search somehow violated his Fourth Amendment rights, the Court cannot say on the facts alleged that the rights at issue were clearly established.")

Count 5 was also dismissed resultant from qualified immunity, but Petitioner does not seek the Court's review of the dismissal of this charge.

Counts 6 – 9 are tort claims made against the United States of America under the Federal Tort Claims Act, 28 U.S.C. § 2680 *et. seq.* They allege that Chamizo's conduct, on behalf of the United States, constituted civil assault (Count 6), false arrest (Count 7), invasion of privacy (Count 8), and intentional infliction of emotional distress (Count 9). The FTCA waives sovereign immunity for assault and false arrest only if the actors are "investigative or law enforcement officers," defined by the statute as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." 28 U.S.C. § 2680(h). The district court found that TSA screeners are not "investigative or law enforcement officers" because although they conduct searches, they are "consensual" and therefore don't count. Appendix A, pp. A17 – A20. The court therefore applied sovereign immunity and dismissed Counts 6 & 7. *Id.* It also

found that Counts 8 & 9 are "derivative" of Counts 6 & 7 and are thus also barred by sovereign immunity. *Id.*

Counts 10 – 16 are claims under the Privacy Act, 5 U.S.C. § 552a, stemming from the involuntary collection and retention of data from Petitioner, including the contents of his boarding pass and Florida driver's license, seeking money damages and injunctive relief. The district court dismissed the counts requesting money damages for failure to state a claim upon which relief can be granted because precedent from this Court requires a showing of pecuniary loss before statutory damages may be granted, and Petitioner alleges no pecuniary loss. The district court dismissed the counts requesting injunctive relief by determining that such relief is not available under the statute. Appendix A, pp. A20 – A25.

Count 17 is a claim under the Freedom of Information Act, 5 U.S.C. § 552 *et. seq.*, against the TSA for failing to release documents lawfully requested by Petitioner. After proceedings in the district court, the TSA partially completed its responsibilities and provided Petitioner with some documents. However, the TSA has claimed, and the district court has agreed, that the names (on all documents) and faces (in CCTV security video) of its employees are exempt from release because the documents constitute "personnel or similar files." 5 U.S.C. § 552(b)(6). Appendix B, pp. B15, B16.

Count 18 is a claim against Broward County under Florida's public records law, Fla. Stat. 119 *et. seq.*, for failing to disclose records. Since substantially all responsive records are now in the TSA's possession, this count is unnecessary in light of Count 17 and is not pursued as a part of this petition.

Counts 19 & 20 charge the United States, and Broward County, respectively, of conspiring to violate federal and state public records laws by lying in response to Petitioner's public records requests. Specifically, both parties collaborated and, resultantly, decided to claim that CCTV security video did not exist when it, in fact, did. Both parties admit this allegation but assert that their actions were lawful because, in their view, statutes limiting the dissemination of Sensitive Security Information ("SSI") required the parties to falsely deny the existence of these records. During district court proceedings, the TSA conceded that the videos were not, in fact, SSI, and the earlier determination that they were SSI was mistaken. Nevertheless, the district court found that Petitioner failed to plausibly state a claim for civil conspiracy. Appendix A, pp. A30, A31.

Count 21 is a claim against the Broward Sheriff's Office, under the Florida Constitution, for unlawfully taking possession of Petitioner's identification from the TSA, without consent, and using it to run a background check, when reasonable suspicion was absent. The district court found, over Petitioner's

objection, that money damages are not available under the section of Florida's constitution relating to unlawful search and seizure and dismissed for failure to state a claim upon which relief could be granted. Appendix A, pp. A31 – A33.

C. Proceedings in the Court of Appeals

Petitioner challenged the district court's dismissal on all counts except Count 5. The appellate court affirmed the district court on all counts. Appendix C.

For Counts 1 – 4, Petitioner argued that a grant of qualified immunity was inappropriate because this Court has clearly established boundaries for administrative searches and the TSA exceeded those boundaries. *New York v. Burger*, 482 U.S. 691 (1987) (requiring searches to be "necessary to further the regulatory scheme"). The regulatory scheme requires the TSA to search passengers to ensure that they are not carrying dangerous items through the checkpoint, and, *e.g.*, reading through Petitioner's documents could not be thought by any reasonable screener to be in furtherance of that. The panel applied its own "reasonableness" test, rather than looking to the more rigid, bright-line limits placed upon administrative searches by this Court, and found that not only was the defendant immune, but that Petitioner failed to state a claim. Appendix C, pp. C12 – C15.

Relating to these counts, Petitioner also challenged that the district court failed to apply the test for qualified immunity established by the 11th Circuit and failed to apply the *Saucier* sequence (for qualified immunity, determine whether a rights violation occurred *first*, and *then* determine whether that right was clearly established) when doing so was in the interest of justice. The panel declined to address these issues. Petitioner does not seek the Court's review of these issues.

Finally, the panel also ruled that some of the actions were not taken directly by Chamizo and he is therefore not personally liable, despite directly ordering his subordinates to take the actions that they did. Appendix C12 – C13.

For Counts 6 & 7, Petitioner challenged the district court's determination that TSA screeners are not "investigative or law enforcement officers" under the FTCA. Petitioner argued that a plain reading of the text of the statute compels the conclusion that TSA screeners, whose primary job function is to conduct searches, must be "investigative or law enforcement officers" under the definition provided by the statute. That is, the district court's requirement that searches be compelled rather than consensual was a requirement arbitrarily created by that court rather than by Congress. Petitioner also argued that the district court's assertion that TSA searches are based on consent was inaccurate. The panel affirmed the district court's dismissal on other grounds: that TSA

screeners are not "officers of the United States" despite being federal employees with the word "Officer" in their job titles and despite every other court ever to have considered the issue to find otherwise. Appendix C, pp. C20 – C22.

For Counts 8 & 9, Petitioner challenged the district court's determination that these counts are "derivative of" Counts 6 & 7. Petitioner argued that "in order for a claim to be a 'derivative' of another claim, the other claim must be 'essential to' the derivative claim." Opening Brief, p. 30, *citing* *O'Ferrell v. United States*, 253 F.3d 1257, 1265 (11th Cir. 2001). The panel refused to apply its own test, instead ruling that any claims "based on the same underlying conduct" are derivative. Appendix C, pp. C17, C18.

For Counts 10 – 16, Petitioner challenged the district court's determination that Privacy Act damages must be pecuniary in order to be entitled to statutory damages. Additionally, Petitioner challenged the district court's determination that injunctive relief is unavailable under the Privacy Act. Between the district court's opinion and the appellate court's opinion, this Court decided *F.A.A. v. Cooper*, 132 S. Ct. 1441 (2012), which clarified that pecuniary loss is required before statutory damages are available, and the panel affirmed dismissal on those grounds. Appendix C, p. C23. Petitioner also challenged the district court's determination that injunctive relief is unavailable under the Privacy Act.

The panel agreed with Petitioner, but affirmed anyway, ruling that claims for injunctive relief must be preceded by a request for relief made directly with the agency. Appendix C, p. C23. The claim for injunctive relief is not presented for this Court's review.

For Counts 17 & 18, Petitioner challenged the district court's determination that incident reports and CCTV security video constitute "personnel records or similar files" as defined by the Freedom of Information Act's exemptions, and that the district court should have inquired further into the adequacy of the search for responsive records in light of obvious omissions. The panel declined to address Petitioner's claim of inadequate search, and affirmed the district court's ruling that the FOIA exemption applies, but puzzlingly, did so without finding that the records constituted "personnel records or similar files," instead merely ruling that "privacy interests outweigh any public interest in disclosure." Appendix C, p. C29.

For Counts 19 and 20, Petitioner challenged the district court's determination that he had not met the pleading requirements for civil conspiracy. The panel declined to discuss this challenge, merely noting in a footnote that it agreed with the district court. Appendix C, p. C29, fn. 11.

For Count 21, Petitioner challenged the district court's determination that Florida constitutional provisions are self-executing. The panel also declined

to discuss this challenge, merely noting in a footnote that it agreed with the district court. Appendix C, p. C29, fn. 11.

Reasons for Granting the Petition

I. The Court Should Resolve the Split Between the Ninth Circuit and Eleventh Circuit Regarding the Boundaries of an Administrative Search that Affects Two Million Americans Daily

Approximately 2,000,000 persons per day are searched by the Transportation Security Administration, a number far larger than the number of searches conducted by all other state and federal government agencies *combined*. This search is conducted without neither a warrant nor any level of suspicion, and is mandatory for any individual who wants or needs to travel by commercial airplane.

Instead, these searches are constitutional pursuant to the administrative search doctrine, which allows limited warrantless, causeless searches for specific "special needs," rather than general law enforcement objectives. The dawn of the administrative search doctrine can be found in *Frank v. Maryland*, 359 U.S. 360 (1959), where city health inspectors were granted permission to intrude upon homes absent a warrant for the sole purpose of ensuring compliance with building codes. Such searches were permitted "solely for the protection of the community's health" with the strict condition that

"[n]o evidence for criminal prosecution is sought to be seized." *Id.* at 366.

Frank was overruled eight years later by *Camara v. San Francisco*, 387 U.S. 523 (1967), for giving the government *too much* leeway with searches. Post-*Camera*, the administrative search doctrine would slowly be pieced back together by this Court, but always with the intent to limit such searches to that which are specifically required to advance a specific public interest rather than to search for evidence of general criminality. In 1987, the court finally defined the contours of administrative searches with a three-pronged test: 1) There must be "substantial government interest" supporting the regulatory scheme to which the search was made, 2) The warrantless searches must be "necessary to further the regulatory scheme," and 3) "[T]he statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant." *Burger* at 702, 703. This test was applied only after the court determined that a "special need" was present to justify an administrative search at all. *Id.*

The "special need" in *Burger* was that of a "pervasively regulated business," in *Frank* was that of public health, and for the TSA flows from the need to protect the skies from air piracy and terrorism. The TSA, created in 2002 after the tragic events of September 11th, 2001, exists solely to secure our nation's travelers from people intent on taking their

lives. This is the "regulatory scheme" contemplated by *Burger* and the rest of the long lines of administrative search doctrine case law.

It follows, then, that the TSA's administrative searches may not be conducted with the intent of finding cocaine, child pornography, counterfeit money, stolen credit cards, *etc.*, but *must* be confined to finding instrumentalities of taking over, or taking down, airplanes: weapons and explosives.

Federal courts across the country had quite consistently applied the limitations for administrative searches set by the high court for at least 40 years. *United States v. Aukai,* 497 F.3d 955 (9th Cir. 2007) *(en banc)*; *United States v. Davis*, 482 F.2d 893 (9th Cir. 1973); *United States v. Hartwell*, 436 F.3d 174 (3rd Cir. 2006), *cert. denied*; *United States v. Fofana*, 2009 U.S. Dist. LEXIS 45852, 09-CR-49 (S.D.O.H. 2009). *Aukai* offers perhaps the clearest articulation of the application of Supreme Court doctrine to the context of TSA searches with a three part balancing test: (1) the search is "no more extensive or intensive than necessary, in light of current technology, to detect the presence of weapons or explosives;" (2) the search "is confined in good faith to that purpose;" and (3) a potential passenger may avoid the search by choosing not to fly. *Aukai* at 962.

The Eleventh Circuit here, however, has tossed aside virtually all of these well-reasoned restrictions, instead allowing the TSA to search through

passengers belongings not just for the presence of weapons and explosive, but for anything that could make a traveler "suspicious:" from a credit card in someone else's name to possession of a book that might contain words that the TSA does not approve of. Appendix C, p. C13 ("a thorough screening of Corbett's bags was reasonable, even beyond the point of determining whether those belongings contained weapons").

This must not be allowed to stand, or the administrative search doctrine will be an end run around the constitutional guarantees of the Fourth Amendment. The Court should hear this petition to narrow the scope of TSA searches to the boundaries set by the Ninth Circuit in *Aukai*.

Finally, the panel also noted that Chamizo was not liable for some of the *Bivens* claims because he did not personally take all of the actions. This stretches *Iqbal v. Ashcroft*, 129 S. Ct. 1937 (2009), beyond its breaking point. Unlike in *Iqbal*, the amended complaint alleges that the supervisor was present on the scene personally directing the actions of his subordinates as they were taking place. The Court should take this opportunity to clarify that supervisors are not immune when they knowingly, personally direct subordinates to take unlawful actions. In the alternative, however, Petitioner would seek the Court's leave to amend his complaint to include the subordinates individually.

II. The Court Should Clarify Whether Travelers are Subject to Seizure By TSA Screeners When Passing Through Airport Checkpoints

As discussed, TSA searches affect millions of Americans daily. The individuals conducting airport checkpoint searches are Transportation Security Officers ("TSOs"). These federal employees are not law enforcement officers but are empowered by law to conduct searches.

There has been confusion among the courts as to whether or not these searches are based on the consent of the traveler. *Compare Aukai* to Appendix C. Recent case law suggests a shift from a theory of consent to a theory of travelers being briefly seized during the time they are in a checkpoint. *Id.* (noting the age of the cases cited that refer to checkpoint screenings as consent searches).

Most courts considering the issue have held that a traveler cannot leave a checkpoint, once a search has begun, until the search has been completed. *Id.* What is less clear, however, is how such a requirement can be enforced. Several issues present themselves.

Firstly, can a TSO, who lacks law enforcement status, physically prevent a passenger from leaving the checkpoint? Can the TSA forcibly search a non-compliant passenger? Or, is the TSA limited to enforcement of a civil penalty for non-compliance as allowed by, for example, 49 CFR 1503?

If a search is based on consent, would it not follow that a passenger can revoke that consent at any time? And, if a search is not based on consent, or otherwise cannot be terminated by the passenger, what are the boundaries of that search? If a traveler was under the impression that a search would be conducted by a metal detector, body scanner, or pat-down, and the TSA decides that a body cavity search is appropriate, does the passenger still have no right to walk away and leave the airport instead of continuing with the search?

These issues are of great importance, and Petitioner has standing to request that this Court resolve them, as he was indeed prevented from leaving a checkpoint and threatened with forcible search after declining to continue a search that was more intense than what was advertised to the public. The Court should resolve these questions at this time to put the TSA, and the public, on notice as to their responsibilities and restrictions, especially in light of the inability of the circuit courts to agree on the resolution of these issues.

III. The Court Should Reverse the Eleventh Circuit's Refusal to Implement a Plain Reading of the Federal Tort Claims Act's Definition of "Investigative or Law Enforcement Officer"

The Federal Tort Claims Act waives sovereign immunity for tort claims relating to false arrest and

assault only if the tortfeasor is an "investigative or law enforcement officer," defined as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." 28 U.S.C. § 2680(h). Petitioner has claimed that while TSA screeners are not empowered by law to seize evidence or to make arrests, they are indeed empowered to conduct searches, and a plain reading of the statute, which gives proper meaning to the word "or," compels concluding that TSA screeners are therefore "investigative or law enforcement officers." The TSA argued, and the district court ruled, that TSA searches aren't the type of searches Congress had in mind. Appendix A, pp. A17 – A20. But a detour to legislative intent is only appropriate if the plain meaning of the statute is unclear, and since the words of Congress are not in any way ambiguous, legislative intent should not have been delved into.

The Court of Appeals complicated the issue by, *sua sponte*, ruling that TSA screeners are not "officers of the United States," stating that there is a distinction between "employees" and "officers," and TSA screeners do not qualify as the former. Appendix C, pp. C20 – C22. No other court of which Petitioner is aware has ruled this way, the panel cites no case law in support of its ruling, and not even the TSA itself has made such an argument.

In inventing this distinction, the Eleventh Circuit argues that only TSA law enforcement can be "officers

of the United States," a dubious proposition. *Id.* This renders many words in the statute superfluous: "investigative or" becomes entirely unnecessary, and the 3 part qualification test also becomes unnecessary. If Congress had meant "only law enforcement officers," it could and would have said so in just a few words. The panel's opinion that TSA screeners are not "officers of the United States" is further troubled by the fact that the men in blue at TSA checkpoints hold the title "Transportation Security *Officer*."

Courts across the country have struggled with determining the boundaries of what constitutes an "investigative or law enforcement officer." The Court should hear the issue to promote uniformity in the courts below.

IV. The Court Should Resolve the Split Between the Fifth, Ninth, and Eleventh Circuits Regarding the Test for Determining When the United States is Immune From a Claim Under a Theory of "'Derivation"

The Federal Tort Claims Act, and its exceptions relevant here, have a bit of a convoluted method of operation: essentially, a state law claim against the United States is not allowed, unless it is a claim allowed by the FTCA, which specifically prohibits claims for certain intentional torts, unless committed by an "investigative or law enforcement officer."

Counts 8 & 9 are permitted claims under the rules of the FTCA as described above, but the government has successfully argued that since the claims are based on the same underlying conduct as other claims that are prohibited under the rules, they are barred because they are "derivative." Appendix A, p. A20. This theory of derivation is not spelled out by the statute but was viewed as implied by this Court. *United States v. Neustadt*, 366 U.S. 696 (1961).

Since then, most circuits to consider the idea, including formerly the Eleventh Circuit, has held that a claim is derivative only if it is "essential to" a tort claim for which the government enjoys sovereign immunity. *O'Ferrell*; *Thomas-Lazear v. F.B.I.*, 851 F.2d 1202 (9th Cir. 1988); *Williamson v. U.S.D.A.*, 815 F.2d 368 (5th Cir. 1987).

However, the panel opinion in the instant case appears to be a shift in Eleventh Circuit precedent, requiring merely that a claim be "based on the same underlying conduct" as a barred tort claim. Appendix C, p. C18. This test produces vastly different results. For example, false arrest is a barred claim, while intentional infliction of emotional distress (IIED) is not. If an individual was falsely arrested and the individual making the arrest did so in a way that was intentionally and needlessly distressful, a claim for IIED claim would be "based on the same underlying conduct" – the arrest – but *not* "essential to" the arrest. That is, if the arresting individual could have arrested a claimant with or without inflicting

emotional distress, and chose the path that caused the emotional distress for no legitimate reason, the IIED claim would stand under the "essential" test but be barred under the "underlying conduct" test.

The leeway granted to the government, should the Court allow the "underlying conduct" test to stand, would break the intent of the FTCA, for all a tortfeasor would need to do to insulate the government from liability for *any* tort claim is to simply ensure that he commits one of the tort claims for which immunity applies at the same time. To avoid this unintended outcome, and to resolve the question as to the correct test to apply, the Court should speak on this issue.

V. The Court Should Reverse the Eleventh Circuit's Expansive Reading of Freedom of Information Act Exemption 6 and Contour the Court's Boundaries on What Constitutes a "Similar File"

This Court has counseled that the term "'similar files' was to have a broad, rather than a narrow, meaning." *Department of State v. Washington Post Co.*, 456 U.S. 595, 600 (1982). The district court took this to mean that virtually any record that contains a person's name is "similar" to a personnel record and thus exempt from disclosure. Appendix B, pp. B13 – B16.

This view applies only part of *Washington Post*, and common sense, however. The Court noted that Congress "intended to cover detailed Government records on an individual which can be identified as applying to that individual." *Id.* at 602 (*citing* H.R.Rep. No. 1497*).* Under that view, the incident reports requested by Petitioner can best be considered as "applying" only to Petitioner, and CCTV security cameras are a general view of a public area and cannot be considered to "apply" to anyone.

The Court should clarify that its directive that "similar files" be interpreted "broadly" does not mean that it should be interpreted *unlimitedly*. Further, the Court should squarely reject the Eleventh Circuit's failure to conduct any analysis as to whether the records constitute similar files and instead weighing privacy interests without first finding statutory authority to do so.

VI. The Court Should Clarify the Minimum Pleading Requirements for Conspiracy Charges and Prevent Over-Application of the Requirements of Iqbal

In a 5-4 decision five years ago, the Court strongly tightened the pleading requirements for civil complaints in federal court. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Petitioner had alleged a conspiracy between the TSA and the local airport authority, Broward County, to break public records laws by lying

about the existence of public records. It was stipulated by all parties that the TSA and Broward County conferred, and it was stipulated by both parties that the result was that Broward County lied to Petitioner by denying that records existed when they knew otherwise.

The only question in dispute is one of law: whether the parties could lawfully lie in response to a public records request as a result of the authority granted to the TSA to classify documents as Sensitive Security Information, a doubtful proposition based on statutory language and case law. Yet, the district court ruled Petitioner's "allegations too nonspecific and insufficient to sustain any inference that TSA and Broward reached an agreement to act unlawfully." Appendix A, p. 31. The Court of Appeals commented merely that they "agree with the district court's cogent analysis" of the civil conspiracy claim and affirmed. Appendix C, p. 29, fn. 11.

In order to prevent the limitations required by *Iqbal* from being extended beyond the intent of the Court, and in order to ensure that agencies that conspire to unlawfully withhold public records are held accountable, the Court should clarify that the minimum requirements have been met here, and no more is necessary at the pleading stage.

VII. The Court Should Prevent the Misapplication of State Law by Its Inferior Courts

Petitioner sued Respondent Broward Sheriff's Office under Article I, Section 12 of the Florida constitution under a theory equivalent to a *Bivens* action under federal law. The district court ruled that monetary claims are not available under that section of the Florida constitution and cited a decisions of a mid-level state appellate court and a federal district court. Appendix A, pp. A31 – A33.

The cases cited by the district court, decided in 2004 and 2007, directly clash with the opinion of the Florida Supreme Court issued in 2007, cited by Petitioner. Opening Brief, pp. 38, 39, *citing Florida Hospital Waterman v. Buster*, 984 So.2d 478, 485 (Fla. 2007). The district court's opinion was adopted by the panel without discussion. Appendix C, p. 29, fn. 11.

The high court of the State of Florida is the final arbiter of Florida state law, and the district court's decision fails to respect that. At the very least, if the district court was uncertain as to the effect of Florida law, it could have certified the question to the Florida Supreme Court. Its failure to do so should be rejected by this Court.

VIII. The Court Should Reconsider Its Decision to Limit Privacy Act Claims to Those With Pecuniary Loss Because It Is Contrary to the Intent of Congress

In a 5-3 decision, this Court ruled that a litigant suing the government under the Privacy Act for statutory damages must first show some actual monetary damages before statutory damages are available. *F.A.A. v. Cooper*, 132 S. Ct. 1441 (2012). The majority reached their conclusion by adopting a most narrow interpretation of the statute, as is traditional when interpreting a waiver of sovereign immunity.

But, as the dissent in *Cooper* pointed out, the intent of Congress was to deter, and allow for the redress of, invasions of privacy by the government, and often times the only damage caused by an invasion of privacy is to one's emotional state. *Id.* at 1456. Even the most egregious privacy violations one can conceive of – a hidden camera in a toilet, theft and publication of embarrassing medical documents, etc. – come with no pecuniary loss necessarily.

This is precisely why Congress authorized statutory damages: because actual damages are not enough, and emotional damage is difficult to quantify. In the instant case, Petitioner is alleging that the government non-consensually and without statutory authority took his personally identifying information to add to databases that will potentially flag him for additional hassle as he travels, or for other adverse action, such as inclusion on government watch lists. The Privacy Act should have prevented the government from this course of conduct, but because of *Cooper*, and in light of the Eleventh Circuit's ruling

that litigants must first attempt to resolve their differences within the agency before heading to the courts, in order to get relief, a litigant would have to undergo extensive, potentially expensive, proceedings, likely consuming more than a year, and in the end a court could do nothing more than ask the government to do what it should have done in the first place. This is not the deterrent effect that Congress had in mind, and the Court should overrule its 2012 decision.

Conclusion

For the reasons above, this petition for certiorari should be granted.

Respectfully,

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Appendix A – District Court Dismissal Part I

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-20863-CV-LENARD/O'SULLIVAN

JONATHAN CORBETT,

Plaintiff,

v.

TRANSPORTATION SECURITY ADMINISTRATION, et al.,

Defendants.

OMNIBUS ORDER ON DEFENDANTS' MOTIONS TO DISMISS (D.E. 30, 37, 41, 64) AND PLAINTIFF'S CROSS-MOTIONS FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT (D.E. 38, 46, 65)

THIS CAUSE is before the Court on Defendants Broward County, the United States of America, the Transportation Security Administration, Alejandro Chamizo, and Broward Sheriff Al Lamberti's Motions to Dismiss (D.E. 30, 5/22/2012; D.E. 37, 6/25/2012; D.E. 41, 7/19/2012; D.E. 64, 10/22/2012). Plaintiff Jonathan Corbett filed Responses in Opposition (D.E. 35, 6/6/12; D.E. 46, 8/3/2012; D.E. 38, 7/9/12; D.E. 65,

11/7/12), which included three purported Cross-Motions for Leave to Amend (see D.E. 38, 7/9/12; D.E. 46, 8/3/12; D.E. 65, 11/7/12). Defendants filed Replies (D.E. 36, 6/12/12; D.E. 49, 8/13/12; D.E. 42, 7/23/12; D.E. 68, 11/14/12), and Plaintiff filed one Sur-Reply (D.E. 45, 7/24/12). Having considered the referenced filings and the record, the Court finds as follows.

I. Background

Plaintiff's First Amended Complaint alleges the following. On August 27th, 2011, Plaintiff arrived at Fort Lauderdale-Hollywood International Airport in Broward County to board a commercial airline flight. (First Amended Complaint, D.E. 20 ¶¶ 23, 24, 26.)

Plaintiff proceeded to a Transportation Security Administration (TSA) checkpoint where he was required to submit to a security screening. (Id. ¶¶ 27, 28.) At the checkpoint, Plaintiff was directed to a full-body scanner. (Id. ¶ 30.) A full-body scanner uses millimeter waves or similar electromagnetic radiation to create a nude image of a subject and detect metallic objects. (See id. ¶ 30.) Plaintiff declined to go through the body scanner. (Id. ¶ 31.) TSA policy allows passengers to decline going through the scanner and to submit to a manual pat-down search instead. (Id. ¶¶ 32, 33.)

Plaintiff was informed by TSA personnel that he would be screened using a pat-down search. (Id. ¶ 34.) Plaintiff agreed to a pat-down search on the condition that the TSA screener not touch his private areas. (Id. ¶ 35.) A TSA screener informed Plaintiff that this condition was a problem. (Id. ¶ 36.) The screener summoned a TSA supervisor. (Id.) The supervisor informed Plaintiff that he would have to consent to having private areas touched or police would be called.

(Id. ¶ 37.) Plaintiff reiterated that he would not consent to the touching of his private areas. (Id. ¶ 38.) The TSA supervisor summoned a Broward County sheriff as well as Defendant Chamizo, a TSA manager. (Id. ¶¶ 39, 41, 43.)

Chamizo arrived at the checkpoint and told Plaintiff that would have to consent to having his private areas touched. (Id. ¶ 44.) Chamizo told Plaintiff that if he did not consent, he would be forcibly searched and arrested. (Id. ¶¶ 45, 46.) Chamizo also told Plaintiff that he was not free to leave. (Id. ¶ 47.) Plaintiff's understanding at that point was that he was being detained. (Id. ¶ 48.)

Meanwhile, two TSA screeners searched Plaintiff's belongings, which consisted of a backpack and a plastic bag containing books. (Id. ¶¶ 50, 51.) One of the screeners found a stack of Plaintiff's credit cards and IDs. (Id. ¶ 55.) Plaintiff objected to the inspection of his credit cards, stating that the search exceeded TSA's objective of finding weapons, explosives, and incendiary devices. (Id. ¶ 56.) The screener responded that he was just making sure the names matched. (Id. ¶ 57.) Also during the search, a screener looked through one of Plaintiff's books. (Id. ¶ 59.) Plaintiff objected. (Id. ¶ 61.) The screener responded that he could look through Plaintiff's book if he wanted to. (Id. ¶ 62.) Chamizo took Plaintiff's driver's license and boarding pass in order to photocopy them. (Id. ¶ 66.) Plaintiff did not provide consent for Chamizo to do so. (Id. ¶ 67.) TSA agents also furnished a copy of Plaintiff's driver's license to the Broward Sheriff's Office, and the Broward Sheriff's Office checked if Plaintiff had any outstanding warrants. (Id. ¶ 70, 72.)

The search of Plaintiff's belongings lasted more than thirty minutes. (Id. ¶ 52.) Plaintiff was subsequently

"ejected" from the security checkpoint and denied access to his departure gate. (Id. ¶ 73.)

On August 29, 2011, Plaintiff requested, pursuant to the Freedom of Information Act and Florida's Public Records Act, that TSA and Broward County provide any documentation related to and any surveillance video footage of the security confrontation. (Id. ¶¶ 74, 75.) TSA responded by stating that it was not in possession of any video evidence, as it did not operate the cameras at Fort Lauderdale-Hollywood International Airport. (Id. ¶ 77.) Broward responded by stating that no video evidence existed, and even if it did, Broward had been informed by the TSA that any video footage would constitute sensitive security information not subject to public disclosure. (Id. ¶ 78, 80, 84.) TSA has since furnished to Plaintiff documentation and surveillance footage of the incident, though it has withheld certain documents and pixelated select video footage pursuant to several specified Freedom-of-Information-Act exemptions. (See TSA FOIA Response, D.E. 42-1 at 1–2; Plaintiff's Status Report, D.E. 50 at 1.) Plaintiff filed this action pro se on March 2, 2012, alleging various civil rights violations, torts, Privacy-Act violations, and Freedom-of-Information-Act/Public-Records-Act violations. (See Complaint, D.E. 1.) Plaintiff's First Amended Complaint sets forth the following twenty-one counts against Defendants:

Count	Defendant	Asserted Basis of Claim	Allegation
1	Chamizo	Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) / Fourth Amendment	Unreasonable seizure of person
2	Chamizo	Bivens / Fourth Amendment	Unreasonable search of credit cards
3	Chamizo	Bivens / Fourth Amendment	Unreasonable search of book
4	Chamizo	Bivens / Fourth Amendment	Unreasonable "retaliatory" search
5	Chamizo	Civil Rights Act, 42 U.S.C. § 1983	Deprivation of constitutional, federal, and state rights
6	United States	Federal Tort Claims Act, 28 U.S.C. § 1346 / Florida state law	Civil assault by Chamizo
7	United States	Federal Tort Claims Act, 28 U.S.C. § 1346 / Florida state law	False arrest by TSA agents
8	United States	Federal Tort Claims Act, 28 U.S.C. § 1346 / Florida state law	False light invasion of privacy by TSA agents for publicly detaining Plaintiff and searching belongings
9	United States	Federal Tort Claims Act, 28 U.S.C. § 1346 / Florida state law	Intentional infliction of emotional distress by TSA agents
10–16	TSA	Privacy Act, 5 U.S.C. § 552a(e)(3), (4), (5), (9), (10), (11), (12)	Failure to meet agency requirements when taking driver's license and boarding pass
17	TSA	Freedom of Information Act, 5 U.S.C. § 552, et seq.	Failure to respond to request for disclosure
18	Broward	Florida Public Records Act, Fla. Stat. § 119, et seq.	Failure to provide records as requested
19	United States	Federal Tort Claims Act, 28 U.S.C. § 1346 / Florida state law	Civil conspiracy in denying Public Records Act request
20	Broward	Florida state law	Civil conspiracy in denying Public Records Act request
21	Broward Sheriff's Office	Florida Constitution	Unlawful search and seizure for accepting Plaintiff's driver's license and running warrant check

(First Amended Complaint, D.E. 20 at 9–14.) Plaintiff seeks a myriad of compensatory, punitive, statutory, and nominal damages as well as declaratory and injunctive relief. (See id. at 15.)

II. Motions

Defendants move to dismiss Plaintiff's claims pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). (See Motions, D.E. 30, 37, 41, 64.) Defendants assert numerous grounds for dismissal which are discussed below.

In his Responses to Defendants' Motions to Dismiss, Plaintiff requests leave to amend his First Amended Complaint. (See D.E. 38, 46, 65.) Plaintiff's requests to amend are detailed below as well.

III. Applicable Standards

a. Rule 12(b)(6) Dismissal

Federal Rule of Civil Procedure 12(b)(6) allows a complaint to be dismissed for failure to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). When reviewing a motion to dismiss under Rule 12(b)(6), a court must accept all factual allegations contained in the complaint as true and view the facts in a light most favorable to the plaintiff. See Erickson v. Pardus, 551 U.S. 89, 93–94 (2007). The threshold of sufficiency that a complaint must meet to survive a motion to dismiss for failure to state a claim is . . . 'exceedingly low.'" Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 703 (11th Cir. 1985) (quoting Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev., 711 F.2d 989, 995 (11th Cir. 1983)). To dismiss, it must "appear [] to a certainty, 'that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. (quoting Milburn v. United States, 734 F.2d 762, 765 (11th Cir. 1984)).

b. Rule 12(b)(1) Dismissal

A challenge to the court's subject-matter jurisdiction is brought under Federal Rule of Civil Procedure

12(b)(1). See Fed. R. Civ. P. 12(b)(1); Newman v. William L. Gunlicks Irrevocable Trust, --- F. Supp. 2d ---, 2012 WL 4369602, at *2 (M.D. Fla. Sep. 25, 2012). Attacks on subject-matter jurisdiction come in two varieties, facial attacks and factual attacks. Godiciu v. J.P. Morgan Chase Bank, N.A., 2012 WL 4370263, at *1 (S.D. Fla. 2012). Facial attacks assert that the plaintiff's allegations, taken as true, fail to establish the court's jurisdiction. Morrison v. Amway Corp., 323 F.3d 920, 925 n.5 (11th Cir. 2003) (citing Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990)). Factual attacks, on the other hand, "challenge the court's jurisdiction in fact, irrespective of the pleadings." Id. In resolving factual challenges, the court may look outside the four corners of the complaint to determine if jurisdiction exists. See id.

c. Amendment of Pleadings

Apart from initial amendments permissible as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." Id. However, "[a] district court need not . . . allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir. 2001). Leave to amend a complaint is futile when the complaint as amended would still be properly dismissed or be immediately subject to summary judgment for the defendant. Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007) (citing Hall v. United Ins. Co. of Am., 367 F.3d

1255, 1263 (11th Cir. 2004)). In addition, "[a] motion for leave to amend should either set forth the substance of the proposed amendment or attach a copy of the proposed amendment." Long v. Satz, 181 F.3d 1275, 1279 (11th Cir. 1999). "Where a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly." Rosenberg v. Gould, 554 F.3d 962, 967 (11th Cir. 2009) (quoting Posner v. Essex Ins. Co., Ltd., 178 F.3d 1209, 1222 (11th Cir. 1999)).

IV. Discussion

a. Counts 1—5: Civil Rights Claims Against Chamizo

Chamizo moves to dismiss the counts asserted against him (Counts 1 through 5), in which Plaintiff alleges that the detention and search violated his Fourth Amendment rights. (See Chamizo Motion, D.E. 41 at 1.) Chamizo argues that the Court lacks jurisdiction over the claims, as they effectively challenge TSA's standard operating procedures, and all challenges to TSA administrative orders must be filed in the Court of Appeals. (Id. at 3–4.) Chamizo argues in the alternative that he cannot be held personally liable for approving of or overseeing the searches conducted by other TSA screeners. (Id. at 8.) Chamizo finally argues that he is entitled to qualified immunity, as Plaintiff's allegations fail to establish any violation of a clearly established constitutional right. (Id. at 5–15.)

Plaintiff responds that this Court has jurisdiction over his claims, for the challenged conduct went beyond TSA's standard operating procedures and therefore falls outside the scope of a final administrative order. (See Response to Chamizo, D.E. 46 at 3–7.) Plaintiff also argues that Chamizo is responsible for the actions

of the other TSA screeners, as he was present and personally directing them at the time of the searches. (Id. at 19.) Plaintiff moves in the alternative to amend his Complaint naming the individual TSA screeners as defendants. (Id. at 20.) Plaintiff further maintains that Chamizo is not entitled to qualified immunity because the detention and search violated Plaintiff's clearly established Fourth Amendment rights. (Id. at 9–19.) The Court finds Chamizo's qualified-immunity argument dispositive and will thus assume, for the purposes of this Order, that the Court has jurisdiction over Plaintiff's claims and that Chamizo is accountable for the conduct of all TSA screeners at the security checkpoint.

Pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), federal officials acting under color of federal law may be sued in their individual capacities for violating an individual's constitutional rights. Id. at 397; Micklas v. Doe, 450 F. App'x 856, 857 (11th Cir. 2012). To state a claim for relief in accordance with Bivens, a plaintiff must allege that a federal agent, by act or omission under color of federal authority, deprived him of a right, privilege, or immunity secured by the United States Constitution. See, e.g., Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990).

Under certain circumstances, public officers are entitled to qualified immunity from liability in Bivens suits. See Johnson v. Fankell, 520 U.S. 911, 914 (1997). "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person

would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

Assessing whether a government official is entitled to qualified immunity involves determination of (1) whether the facts that a plaintiff has alleged or shown establish the violation of a constitutional right, and (2) whether the right at issue was clearly established at the time of the defendant's alleged misconduct. See Saucier v. Katz, 533 U.S. 194, 201 (2001).

The relevant inquiry in evaluating whether a right is "clearly established" is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. Id. at 202. In the Eleventh Circuit, "the law can be 'clearly established' for qualified immunity purposes only by decisions of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose." Wilson v. Strong, 156 F.3d 1131, 1135 (11th Cir. 1998) (quoting Jenkins v. Talladega City Bd. of Educ., 115 F.3d 821, 826 n.4 (11th Cir. 1997)). While Saucier's two-step sequence for analyzing qualified-immunity defenses is often appropriate, it is not mandatory. Pearson v. Callahan, 555 U.S. 223, 129 (2009). Courts may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Id. at 236. "There are cases in which it is plain that a constitutional right is not clearly established but far from obvious whether in fact there is such a right." Id. at 237.

Plaintiff's civil-rights claims are predicated on alleged violations of the Fourth Amendment, which protects "[t]he right of the people to be secure in their persons,

houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV.

Under the Fourth Amendment, searches "conducted without a warrant issued upon probable cause [are] per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions." Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (internal quotation marks omitted).

One exception to the warrant/probable-cause requirement has been established for administrative searches. See New York v. Burger, 482 U.S. 691, 702 (1987); United States v. Biswell, 406 U.S. 311, 315 (1972); Bruce v. Beary, 498 F.3d 1232, 1239 (11th Cir. 2007). These searches are permissible without a warrant when: (1) a substantial government interest informs the regulatory scheme under which the search is made; (2) the search is necessary to further the regulatory scheme; and (3) the governing statute's inspection program is a "constitutionally adequate substitute for a warrant." Burger, 482 U.S. at 702–04. The constitutionality of administrative searches is not dependent upon the consent of the person being searched. See Biswell, 406 U.S. at 315. "[A]irport screening searches . . . are constitutionally reasonable administrative searches because they are 'conducted as part of a general regulatory scheme in furtherance of an administrative purpose, namely, to prevent the carrying of weapons or explosives aboard aircraft, and thereby to prevent hijackings.'" United States v. Aukai, 497 F.3d 955, 960 (9th Cir. 2007) (quoting United States v. Davis, 482 F.2d 893, 908 (9th Cir. 1973)); accord United States v. Hartwell, 436 F.3d 174, 179–81 (3d Cir. 2006) (holding airport searches "permissible under the administrative search doctrine because the State has an overwhelming interest in

preserving air travel safety, and the procedure is tailored to advance that interest while proving to be only minimally invasive"); see also City of Indianapolis v. Edmond, 531 U.S. 32, 47–48 (2000) (acknowledging the "validity of . . . searches at places like airports"); Chandler v. Miller, 520 U.S. 305, 323 (1997) (noting that "searches now routine at airports" are reasonable). An airport security screening search is reasonable as long as it "is no more extensive nor intensive than necessary, in the light of current technology, to detect the presence of weapons or explosives" and it is "confined in good faith to that purpose." Aukai, 497 F.3d at 962 (quoting Davis, 482 F.2d at 913).

Once a traveler presents himself for screening at an airport security checkpoint, he may not avoid being searched by retreating and attempting to leave. United States v. Herzbrun, 723 F.2d 773, 776 (11th Cir. 1984) (citing United States v. Skipwith, 482 F.2d 1272 (5th Cir. 1973)). "Such an option would constitute a one-way street for the benefit of a party planning airport mischief, since there is no guarantee that if he were allowed to leave he might not return and be more successful." Id. (quoting Skipwith, 482 F.2d at 1281 (Aldrich, J., dissenting)).

Furthemore, agents may briefly detain a traveler for purposes of completing a security search. See Aukai, 497 F.3d at 962–63 (finding eighteen-minute detention reasonable, "because it was not prolonged beyond the time reasonably required to rule out the presence of weapons or explosives").

In addressing the bounds of a permissible airport screening, at least one jurisdiction has noted that "'sheet explosives' may be disguised as a simple piece of paper or cardboard, and may be hidden in just about

anything, including a laptop, book, magazine, deck of cards, or packet of photographs." United States v. McCarty, 648 F.3d 820, 825 (9th Cir. 2011) (thus upholding as reasonable airport screener's inspection of passenger's photos). But see United States v. Fofana, 620 F. Supp. 2d 857, 863 (S.D. Ohio 2009) (finding inspection of envelopes and passports unreasonable, where by screener's own admissions, search went beyond the purpose of detecting weapons/explosives and was motivated by desire to find evidence of criminal wrongdoing).

Also noteworthy is that as long as (1) the screening is undertaken pursuant to a legitimate administrative search scheme; (2) the searcher's actions are cabined to the scope of the permissible administrative search; and (3) there is no impermissible programmatic secondary motive for the search, then the development of a second, subjective motive on the part of the individual searcher is irrelevant for purposes of Fourth Amendment analysis. McCarty, 648 F.3d at 834–35. Consistent with the foregoing, the Court concludes that Chamizo is entitled to qualified immunity on all claims asserted against him, for assuming without finding that Plaintiff's detention and search somehow violated his Fourth Amendment rights, the Court cannot say on the facts alleged that the rights at issue were clearly established. In light of the referenced authority, and in the absence of any mandatory authority holding to the contrary, the Court finds that it would not be clear to an officer in Chamizo's position that detaining Plaintiff and inspecting his belongings would be unconstitutional.

Chamizo could reasonably have concluded that (A) Plaintiff presented himself for screening at the security checkpoint and thus submitted to an

administrative search of his belongings, see Burger, 482 U.S. at 702; Biswell, 406 U.S. at 315; Herzbrun, 723 F.2d at 776; Beary, 498 F.3d at 1239; cf. Aukai, 497 F.3d at 960; Hartwell, 436 F.3d at 179–81, (B) TSA could lawfully search through Plaintiff's book, credit cards, and IDs for the purpose of finding explosive materials, cf. Aukai, 497 F.3d at 962; McCarty, 648 F.3d at 825, 838, and © TSA agents could detain Plaintiff while completing their inspection, cf. Aukai, 497 F.3d at 962–63; Herzbrun, 723 F.2d at 776. And although Chamizo allegedly stated that Plaintiff would be forcibly searched and arrested if he did not submit to a full pat-down search, there are no allegations that Plaintiff was in fact forcibly searched or arrested. TSA detained Plaintiff while the administrative search was conducted and allowed him to leave the checkpoint once the search was complete. As for Plaintiff's claim that the search was "retaliatory" in nature and therefore violated his Fourth Amendment rights, the Eleventh Circuit has made clear that no independent claim for retaliation exists under the Fourth Amendment. See Wood v. Kesler, 323 F.3d 872, 883 (11th Cir. 2003) ("Wood also asserts a § 1983 retaliation claim based on Kesler's conduct. Although Wood attempts to rely on the Fourth Amendment, there is no retaliation claim under the Fourth Amendment separate and distinct from Wood's malicious prosecution and false arrest claims."); Rehberg v. Paulk, 611 F.3d 828, 850 (11th Cir. 2010) ("As we explain above, it was not clearly established that the subpoenas to Rehberg's phone and email providers violated his Fourth Amendment rights. We also are inclined to agree with the government that Hodges and Paulk's retaliatory animus does not create a distinct constitutional tort."). For these reasons, the Court finds that Chamizo is entitled to qualified immunity on Counts 1 through 5,

and the Court therefore grants Chamizo's Motion to Dismiss. The Court likewise denies Plaintiff's purported Cross-Motion to Amend his Complaint and substitute the individual TSA screeners as defendants, as any such amendment would be futile.

b. Counts 6—9: Tort Claims Against the United States

The United States and TSA move jointly to dismiss Plaintiff's tort claims of civil assault, false arrest, false light invasion of privacy, and intentional infliction of emotional distress (Counts 6 through 9). (See USA/TSA Motion, D.E. 37 at 1.) The United States and TSA argue, in relevant part, that Plaintiff's claims are barred by sovereign immunity. (Id. at 3.) They also note that the tort of "invasion of privacy via false light" is not recognized under Florida state law. (Id. at 10.)

Plaintiff responds that the United States is not entitled to sovereign immunity on his intentional-tort claims because TSA agents are "investigate or law enforcement officers" to whom sovereign immunity does not apply. (See Response to USA/TSA, D.E. 38 at 3–6.) Plaintiff acknowledges that "invasion of privacy via false light" is not a cognizable tort in Florida and requests leave to amend his Complaint to allege "defamation" instead. (Id. at 16.)

In order for a suit to proceed against the United States, a waiver of sovereign immunity must exist. Federal Deposit Insurance Corp. v. Meyer, 510 U.S. 471, 475 (1994).

The Federal Torts Claims Act sets forth a limited waiver of sovereign immunity, allowing private citizens to bring claims against the United States for

injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. § 1346(b).

However, this waiver does not apply to "any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights," unless the claim is asserted against "investigative or law enforcement officers of the United States Government." Id. § 2680(h). An "investigative or law enforcement officer" is "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." Id. Several courts have addressed whether TSA agents are "investigative or law enforcement officers" for purposes of Section 2680(h), and the prevailing conclusion is that they are not. See Weinraub v. United States, Case No. 5:11–CV–651, 2012 WL 3308950, at *7 (E.D.N.C. Aug. 13, 2012) ("[T]he court concludes that the limited, consensual searches conducted by TSA screeners do not bring them within the definition of 'investigative or law enforcement officers' and, therefore, do not implicate the law enforcement proviso of § 2680(h)."); Coulter v. United States Dep't of Homeland Sec., Case No. 07–4894, 2008 WL 4416454, at *7 (D.N.J. Sept. 24, 2008) ("The TSA argues, and this Court agrees, that airport security screeners do not constitute investigative or law enforcement officials within the meaning of the FTCA."); Welch v. Huntleigh USA Corp., Case No. 04–

663, 2005 WL 1864296, at *5 (D. Or. Aug. 4, 2005) ("Since the Huntleigh screeners were only able to perform consensual searches, and had no authority to arrest, they cannot be considered law enforcement officers for the purpose of the FTCA."). But see Pellegrino v. United States Transp. Sec. Admin., 855 F. Supp. 2d 343, 357 (E.D. Pa. 2012) (finding discovery necessary to resolve whether TSA agents were authorized to execute searches, seize evidence, or make arrests such that the United States might be liable for intentionally tortious conduct under Section 2680(h)). As the district court in Weinruab summarized:

TSA screeners perform limited, consensual searches that are administrative in nature. See 49 U.S.C. § 44901 (requiring the screening of all passengers and property); § 44902 (requiring passengers to consent to a search to establish whether a passenger is carrying, or the property of a passenger contains, a dangerous weapon, explosive, or other destructive substance); 49 C.F.R. § 1540.107 (requiring submission to screening and inspection of persons and property). See also Welch v. Huntleigh USA Corp., No. 04–663 KI, 2005 WL 1864296, at *5 (D. Or. Aug. 4, 2005) ("[TSA] screeners are able to conduct consensual administrative searches for items which are prohibited entry into the airport's sterile areas. Screeners do not have the authority to detain individuals and must call law enforcement officers to search, seize, and arrest individuals if illegal items are found."). However, the phrase "to execute searches," when considered within the broader context of the law enforcement proviso, does not contemplate the types of searches performed by TSA screeners. Congress chose to define "investigative or law enforcement officer," for purposes of the law

enforcement proviso, to include officers that perform any one of three functions: the execution of searches, the seizure of evidence, or the making of arrests. 28 U.S .C. § 2680(h). Each of these are commonly understood to be traditional law enforcement functions performed by the likes of FBI agents, Bureau of Prisons officers, postal inspectors, and INS agents, all of which have broad investigative and law enforcement powers and have been found to fall within the law enforcement proviso. See, e.g., Medina v. United States, 259 F.3d 220, 224 (4th Cir. 2001) (INS agents—citing 8 U.S.C. § 1357, which confers broad power to search and arrest without a warrant); Harms v. United States, No. 91–2627, 972 F.2d 339, 1992 WL 203942, at *6 (4th Cir. Aug. 24, 1992) (unpubl. op.) (postal inspectors—citing 39 C.F.R. § 233.1(a), which confers broad power to arrest without a warrant). These traditional investigative or law enforcement officers have broad search, seizure, and/or arrest powers that they may exercise in a variety of circumstances, which stands in stark contrast to the TSA screener's power that is limited to pre-boarding searches for certain prohibited items. See United States v. McCarty, 648 F.3d 820, 831 (9th Cir. 2011) ("[O]nce a[n] [airport] search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale. . . . [T]he constitutional bounds of an airport administrative search require that the individual screener's actions be no more intrusive than necessary to determine the existence or absence of explosives that could result in harm to the passengers and aircraft.") (citation omitted). Therefore, it would be unreasonable to interpret "to execute searches" to include the TSA screener's performance of narrowly focused, consensual searches that are administrative in nature, when considered in light of the other

traditional law enforcement functions (i.e., seizure of evidence and arrest) that Congress chose to define "investigative or law enforcement officers." See Welch, 2005 WL 1864296, at *5 (concluding that screeners were not law enforcement officers because they could only perform consensual searches and could not seize evidence or make arrests) (citing Wilson v. United States, 959 F.2d 12, 15 (2d Cir. 1992) ("Because the power to seize evidence depends on the consent of the person from whom the evidence is to be taken, however, parole officers lack the seizure power contemplated by section 2680(h), and thus cannot be considered law enforcement personnel.")). Cf. Matsko v. United States, 372 F.3d 556, 560 (3rd Cir. 2004) ("[E]mployees of administrative agencies, no matter what investigative conduct they are involved in, do not come within the § 2680(h) exception.") (citation omitted)). As a result, the court concludes that TSA screeners are not "empowered by law to execute searches" for purposes of § 2680(h) and that, therefore, they are not "investigative or law enforcement officers." Thus, the law enforcement proviso to the intentional torts exception does not apply to TSA . . . .

2012 WL 3308950, at *7. Finally, "the exceptions in the FTCA are not limited to the torts specifically named therein, but rather encompass situations where 'the underlying governmental conduct which constitutes an excepted cause of action is essential to plaintiff's claim.'" O'Ferrell v. United States, 253 F.3d 1257 (11th Cir. 2001) (quoting Metz v. United States, 788 F.2d 1528, 1534 (11th Cir. 1986)).

In line with the foregoing, the Court finds that Plaintiff's tort claims against the United States are barred by sovereign immunity. The Court follows Weinraub, Coulter, and Welch and concludes that

TSA agents are not "investigative or law enforcement officers" for purposes of Section 2680(h). The Court thus finds that the Federal Tort Claims Act does not waive sovereign immunity with respect to intentional tort claims challenging the conduct of TSA agents. Moreover, the Court finds that Plaintiff's invasion-of-privacy and intentional-infliction-of-emotional-distress claims are derivative of his assault and false-arrest claims—i.e., they hinge on the same underlying governmental conduct—and are therefore precluded by Section 2680(h) as well.

On this basis the Court grants the United States and TSA's Motion to Dismiss as to Counts 6 through 9. The Court likewise denies Plaintiff's purported Cross-Motion for leave to substitute "defamation" for false light invasion of privacy, as any such amendment would be purely semantic and futile.

c. Counts 10—16: Privacy-Act Claims Against TSA

The United States and TSA also move to dismiss Plaintiff's Privacy-Act Claims (Counts 10 through 16), in which Plaintiff alleges that the TSA violated the Privacy Act by copying his driver's license and boarding pass and sharing those copies with the Broward Sheriff's Office. (See USA/TSA Motion, D.E. 37 at 13.) The United States and TSA argue, in relevant part, that Plaintiff is not entitled to monetary relief on his claims because he has failed to allege any actual damages stemming from the supposed Privacy-Act violations. (Id. at 14.)

Plaintiff argues that he has been adversely affected by the alleged Privacy-Act violations and is entitled to monetary damages. (See Response to USA/TSA, D.E. 38 at 11.) Plaintiff further argues that regardless, he

also seeks and is entitled to injunctive relief on his claims. (Id. at 12.)

The Privacy Act "governs the government's collection and dissemination of information and maintenance of its records [and] generally allows individuals to gain access to government records on them and to request correction of inaccurate records." Perry v. Bureau of Prisons, 371 F.3d 1304, 1304–05 (11th Cir. 2004) (citing Gowan v. U.S. Dep't of the Air Force, 148 F.3d 1182, 1187 (10th Cir. 1998)). The Act creates causes of action for, inter alia, an agency's denial of access to records, an agency's failure to maintain its records with accuracy, relevance, timeliness, and completeness to assure fairness in determinations, and an agency's failure to comply with any other Privacy Act provision which causes an "adverse effect on an individual." Gowan, 148 F.3d at 1187. The Act vests district courts with jurisdiction to hear civil actions brought against agencies alleged to have violated its provisions. 5 U.S.C. § 552a(g)(1)(c). The Privacy-Act subsections on which Plaintiff bases his claims provide as follows:

(e) Agency requirements.—Each agency that maintains a system of records shall:

* * * * *

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and (D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system

of records, and how he can contest its content; and (I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

* * * * *

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to

conducting such program, publish in the Federal Register notice of such establishment or revision.

5 U.S.C.A. § 552a(e).

The Supreme Court has made clear that a plaintiff must show some actual damages in order to qualify for monetary relief under the Privacy Act. Doe v. Chao, 540 U.S. 614, 616 (2004). A plaintiff may not recover monetary damages on proof of nothing more than a statutory violation. Id. at 620.

Moreover, injunctive relief is available under the Act in only two categories of cases: suits to amend a record, 5 U.S.C. § 552a(g)(2), and suits for access to a record, id. § 552a(g)(3). Chao, 540 U.S. at 635 (Ginsburg, J., dissenting); see also Clarkson v. IRS, 678 F.2d 1368, 1375 n.11 (11th Cir. 1982) ("The Privacy Act expressly provides for injunctive relief for only two types of agency misconduct, that is, wrongful withholding of documents . . . and wrongful refusal to amend an individual's record . . . ."). In line with the foregoing, the Court concludes that Plaintiff's Privacy-Act counts fail to state claims upon which relief can be granted. Plaintiff's claims allege only that "Defendant TSA, through its employee, collected personal information from CORBETT, including photocopies of his driver's license and boarding pass," "5 U.S.C. § 552a(e) prescribes many requirements for federal agencies that collect personal information from individuals," "[b]ased on the facts described above, the TSA failed to meet all of the following subsection requirements of 5 U.S.C. 552a(e): 3, 4, 5, 9, 10, 11, 12," and "[e]ach of these subsections is individually charged as a violation of 5 U.S.C. § 552a(e)." (First Amended Complaint, D.E. 20 ¶ 131–34.) Plaintiff alleges no actual damages separate and apart from the statutory violations themselves. Plaintiff's claims

are thus insufficient to entitle him to any monetary award. Furthermore, Plaintiff seeks neither the amendment of nor the disclosure of records under 5 U.S.C. § 552a(g)(2) or (3). Accordingly, injunctive relief is not available on Plaintiff's claims either.

On this basis the Court finds that Plaintiff's Privacy-Act counts fail to state claims upon which any relief can be granted, and the Court therefore grants the United States and TSA's Motion to Dismiss as to Counts 10 through 16.

d. Count 17: Freedom-of-Information-Act Claim Against TSA

The United States and TSA also move to dismiss as moot Plaintiff's Freedom-of-Information-Act (FOIA) claim (Count 17). (See USA/TSA Motion, D.E. 37 at 1 n.2.)

They argue that TSA has now responded to Plaintiff's information request and tendered both documents and surveillance footage, subject to certain FOIA exemptions. (See USA/TSA Reply, D.E. 42 at 8–9; see also TSA FOIA Response, D.E. 42-1 at 1–2.) Plaintiff argues that his FOIA claim is not moot, for although TSA has responded to his request and sent documentation and video footage of the subject incident, TSA has improperly redacted several materials and not furnished all requested, disclosable records. (See Response to USA/TSA, D.E. 38 at 13; Plaintiff's Status Report, D.E. 50 at 1.)

The Freedom of Information Act (FOIA) requires disclosure of government records to individuals who follow the outlined procedures for requesting information, unless the requested information falls within one of nine statutory exceptions. 5 U.S.C. §

552(b). A district court has jurisdiction over a complaint brought under the FOIA "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." Id. § 552(a)(4)(B). Jurisdiction under this statute is based upon the plaintiff's showing that an agency has "improperly withheld agency records." Brown v. DOJ, 169 F. App'x 537, 540 (11th Cir. 2006).

Courts generally hold that once an agency releases the documents responsive to a FOIA request, subject matter jurisdiction over a claim for injunctive relief under FOIA ceases to exist. See Bonilla v. DOJ, Case No. 11–20450, 2012 WL 204202, at *2 (S.D. Fla. Jan. 24, 2012); see also Pavlenko v. IRS, Case No. 08–61534, 2009 WL 1465463, at *1 (S.D. Fla. Apr. 1, 2009) (dismissing case for lack of subject matter jurisdiction where agency presented affidavits and exhibits demonstrating that it produced all responsive documents to plaintiff); Sands v. United States, Case No. 94–0537, 1995 WL 552308, *3 (S.D. Fla. Jun. 19, 1995) ("If upon initiation of a law suit it is determined that no documents responsive to a FOIA request have been withheld, the litigation should be dismissed as the claim for relief under FOIA becomes moot."); cf. Chilivis v. SEC, 673 F.2d 1205, 1210 (11th Cir. 1982) (because the agency had processed the requested records and instructed plaintiff to make arrangements to view the records, motion regarding release of documents became moot).

However, "in 'instances where an agency has released documents, but other related issue[s] remain unresolved, courts frequently will not dismiss the action' as moot." McKinley v. FDIC, 756 F. Supp. 2d 105, 110 (D.D.C. 2010) (quoting Guide to the Freedom

of Information Act, U.S. DOJ Office of Information Policy, 767–68 & n.180 (2009 ed.)); see also Nw. Univ. v. USDA, 403 F. Supp. 2d 83, 85–86 (D.D.C. 2005) (refusing to dismiss action as moot despite belated release of documents because plaintiff challenged adequacy of defendant's document production).

Here, although TSA maintains that it has tendered all nonexempt records requested, Plaintiff insists that additional materials are subject to disclosure and that the materials disclosed thus far have been improperly redacted. Based on the present record, the Court cannot say that TSA has disclosed all nonexempt materials in accordance with FOIA. The Court therefore finds that Plaintiff's FOIA claims are not moot. See, e.g., McKinley, 756 F. Supp. 2d at 111 ("FOIA requesters have a cognizable interest in having the Court determine (1) whether the search for records was adequate under the standards for adequate records searches required by FOIA, and (2) whether the agency has released all nonexempt material. Although the agency has released portions of certain agency documents, these additional issues remain in dispute, and the Court has jurisdiction to hear these claims." (citations omitted)).

On this basis the Court denies the United States and TSA's Motion to Dismiss as to Count 17.

e. Count 18: Florida-Public-Records-Act Claim Against Broward County

Broward moves to dismiss Count 18, in which Plaintiff alleges that Broward improperly denied his request under the Florida's Public Records Act and falsely stated that the requested records did not exist. (See Broward Motion, D.E. 30 at 4.) Broward argues that Plaintiff cannot establish any improper nondisclosure

under the Public Records Act, as the evidence requested by Plaintiff from Broward was sensitive security information and the TSA directed Broward to withhold it. (Id. at 4–6.) Broward further argues that it did not "lie" in denying the existence of the records sought. (Id.) Broward maintains that it was required by the TSA to deny the existence of any video footage, because the existence itself constituted sensitive security information. (Id.)

Plaintiff responds that Broward's alleged reliance on TSA's directives presents an issue of fact which is unresolvable at the motion-to-dismiss stage, and at any rate, Broward's reliance on TSA would not absolve Broward of liability for improper nondisclosure. (Response to Broward, D.E. 35 at 9.) Plaintiff further maintains that under the Public Records Act, Broward was not permitted to falsely deny the existence of the records requested. (Id. at 5.)

Florida's Public Records Act provides that "[i]t is the policy of [the state of Florida] that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency." Fla Stat. § 119.01(1).

The Act provides that "[i]f a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected, examined, or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees." Id. § 119.12(1).

Here, Plaintiff's Public-Records-Act count alleges that "BROWARD was properly served a Public Records Act

request," "BROWARD's response knowingly contained false statements; to wit, that records did not exist when they did," "BROWARD refused to correct the false statements and provide the records," and "[t]he records are not exempt from disclosure." (First Amended Complaint, D.E. 13, at 13.) Based only on the allegations set forth in the Complaint, the Court is unable to say that Broward's representations and nondisclosures were permissible and that Plaintiff is unable to sustain a claim under the Public Records Act. For these reasons, as well as those articulated in subsection d, supra, the Court finds dismissal of Plaintiff's claim inappropriate at this juncture. See, e.g., Johnson v. Jarvis, 74 So. 3d 168, 170–71 (Fla. Dist. Ct. App. 2011). On this basis the Court denies Broward's Motion to Dismiss as to Count 18.

f. Counts 19 and 20: Civil Conspiracy Claims Against United States and Broward County

The United States and Broward each move to dismiss Plaintiff's civil-conspiracy claims (Counts 19 and 20), in which Plaintiff alleges that Defendants unlawfully conspired to deny his request for records under the Public Records Act. (See USA/TSA Motion, D.E. 37 at 11; Broward Motion, D.E. 30 at 6.) Broward notes in particular that "there can be no action, as a matter of law, based on the County 'conferring' with TSA with respect to the subject records request. The Code of Federal Regulations, [49] § 1520.5 and § 1520.15, mandates such an interaction in the determination of what constitutes [sensitive security information]." (Broward Motion, D.E. 30 at 7.) Plaintiff responds that the Complaint plausibly alleges the existence of a civil conspiracy. (See Response to USA/TSA, D.E. 38 at 25; Response to Broward, D.E. 35 at 12.) Plaintiff argues that "[w]hen considering the circumstances in the

light most favorable to Plaintiff, there is no leap of logic required to take the set of facts articulated in the complaint and conclude that the TSA told Broward County that they were prohibited from disclosing the existence of public records, even though they were aware that there was no lawful basis to deny the existence of public records." (Response to USA/TSA, D.E. 38 at 16.)

To state a claim for civil conspiracy under Florida law, a plaintiff must allege: "(a) an agreement between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to plaintiff as a result of the acts done under the conspiracy." United Technologies Corp. v. Mazer, 556 F.3d 1260, 1271 (11th Cir. 2009) (quoting Charles v. Fla. Foreclosure Placement Ctr., LLC, 988 So. 2d 1157, 1159–60 (Fla. Dist. Ct. App. 2008)).

A civil-conspiracy claim must "set forth clear, positive, and specific allegations of civil conspiracy." Eagletech Commc'ns, Inc. v. Bryn Mawr Inv. Group, Inc., 79 So. 3d 855 (Fla. Dist. Ct. App. 2012). "General allegations of conspiracy are inadequate." World Class Yachts, Inc. v. Murphy, 731 So. 2d 798, 799 (Fla. Dist. Ct. App. 1999). The TSA is vested with the authority to designate information as "sensitive security information" pursuant to 49 U.S.C. § 114(s) and 49 C.F.R. § 1520. MacLean v. Dep't of Homeland Sec., 543 F.3d 1145, 1150 (9th Cir. 2008).

Here the Court finds that Plaintiff fails to state actionable civil-conspiracy claims. Plaintiff alleges only that "[t]he TSA and BROWARD conferred with each other regarding BROWARD's response to CORBETT's Public Records Act request," "[a]s a result of this collusion, BROWARD intentionally lied to

CORBETT regarding the existence of responsive records," and "[t]he above effect was the intention of both parties." (First Amended Complaint, D.E. 20 ¶ 143–45.) The Court finds these allegations too nonspecific and insufficient to sustain any inference that TSA and Broward reached an agreement to act unlawfully. As Broward points out, it was essentially obligated to consult with TSA to determine whether the records requested by Plaintiff constituted sensitive security information not subject to public disclosure.

For these reasons the Court finds that Plaintiff's civil-conspiracy allegations fail to state claims upon which relief can be granted, and the Court therefore grants the United States and TSA's Motion to Dismiss as to Count 19 and grants Broward's Motion to Dismiss as to Count 20.

g. Count 21: State Constitutional Claim of Unlawful Search and Seizure Against Broward Sheriff's Office

Broward Sheriff Al Lamberti moves to dismiss the single count asserted against the Broward Sheriff's Office (Count 21), in which Plaintiff alleges that the Sheriff's Office violated Plaintiff's state constitutional protections against unreasonable search and seizure by accepting Plaintiff's driver's license and running a warrant check. (See BSO Motion, D.E. 64 at 1.) Lamberti first notes that there is no such legal entity as the Broward Sheriff's "Office," and that this alleged party should be terminated accordingly. (Id. at 2–3.) Lamberti further argues that Plaintiff's claim should be dismissed because Plaintiff failed to provide written notice of the claim to the Broward Sheriff and the Florida Department of Financial Services in accordance with Florida's sovereign immunity statute. (Id. at 3.) Finally, Lamberti argues that

Plaintiff fails to allege any unreasonable conduct on the part of the Broward Sheriff. (Id. at 3–6.)

Plaintiff responds that the Broward Sheriff's Office is a legal entity and is a properly-named defendant in this action. (Response to Lamberti, D.E. 65 at 5.) Plaintiff also argues that he was not required to submit notice of his claim to the Broward Sheriff and the Florida Department of Financial Services under Florida's sovereign immunity statute, as his cause of action is a "state constitutional claim" and not a "common-law tort." (Id. at 7.) Plaintiff further maintains that the Broward Sheriff acted unlawfully by accepting Plaintiff's identification and checking for warrants without consent or reasonable suspicion. (Id. at 3.) Plaintiff requests in the alternative for leave to amend his Complaint "to replace the Broward Sheriff's Office with the individual sheriff who interacted with Plaintiff, to modify the related charge (Count 21) from a Florida constitutional violation to a federal Civil Rights Act violation, and to modify the prayer for relief accordingly." (Id. at 8.)

Lamberti notes in reply that state-constitutional claims for money damages are non-cognizable in Florida. (Lamberti Reply, D.E. 68 at 3–4.) In Florida, "no cause of action exists for money damages for a violation of a state constitutional right." Depaola v. Town of Davie, 872 So. 2d 377, 380 (Fla. Dist. Ct. App. 2004) (citing Garcia v. Reyes, 697 So. 2d 549, 549–50 (Fla. Dist. Ct. App. 1997)); see also Holcy v. Flagler Cnty. Sheriff, Case No. 3:05-cv-1324-J-32HTS, 2007 WL 2669219, at *6 (M.D. Fla. Sept. 6, 2007) ("To the extent plaintiff seeks relief in Count I under Article I, section 12 of the Florida Constitution . . . , the Court finds such avenue is likewise unavailing. Florida constitutional claims do not support claims for

damages absent a separate enabling statute. . . ." (citing Garcia, 697 So. 2d at 549–50)). Here, Plaintiff characterizes his claim against the Broward Sheriff as a "state constitutional claim" as opposed to a common-law tort. Plaintiff seeks only money damages for the Broward Sheriff's alleged violations of his Article 1, section 12 rights. (See First Amended Complaint, D.E. 20 at 15.) In line with the foregoing, the Court concludes that Plaintiff's state-constitutional claim for money damages is non-actionable under Florida law.

On this basis the Court grants Lamberti's Motion to Dismiss. The Court also denies Plaintiff's purported Cross-Motion for Leave to Amend, as substituting the Broward Sheriff's Office as defendant would be futile, and Plaintiff's request "to modify the related charge . . . from a Florida constitutional violation to a federal Civil Rights Act violation, and to modify the prayer for relief accordingly" is vague, unsupported by a proposed amended pleading, and not properly raised. See Long, 181 F.3d at 1279; Rosenberg, 554 F.3d at 967; Posner, 178 F.3d at 1222.

V. Conclusion

It is accordingly ORDERED AND ADJUDGED that:

1. Defendant Alejandro Chamizo's Motion to Dismiss (D.E. 41, 7/19/2012) is GRANTED;

2. Defendants United States of America and the Transportation Security Administration's Motion to Dismiss (D.E. 37, 6/25/2012) is GRANTED AS TO COUNTS 6—16 AND 19 and DENIED AS TO COUNT 17;

3. Defendant Broward County's Motion to Dismiss (D.E. 30, 5/22/2012) is GRANTED AS TO COUNT 20 and DENIED AS COUNT 18;

4. Defendant Broward Sheriff Al Lamberti's Motion to Dismiss (D.E. 64, 10/22/2012) is GRANTED;

5. COUNTS 1—16 and 19—21 of Plaintiff Jonathan Corbett's First Amended Complaint (D.E. 20) are DISMISSED; and 6. Plaintiff Jonathan Corbett's purported Cross-Motions for Leave to Amend (D.E. 38, 7/9/12; D.E. 46, 8/3/12; D.E. 65, 11/7/12) are DENIED.

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DONE AND ORDERED in Chambers at Miami, Florida, this 16th day of November, 2012.

/s/

JOAN A. LENARD

UNITED STATES DISTRICT JUDGE

Appendix B – District Court Dismissal Part II

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-20863-CV-LENARD/O'SULLIVAN

JONATHAN CORBETT,

Plaintiff,

v.

TRANSPORTATION SECURITY ADMINISTRATION, et al.,

Defendants.

OMNIBUS ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT (D.E. 89, 93) AND DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT (D.E. 95)

THIS CAUSE is before the Court on Defendant Transportation Security Administration's Motion for Summary Judgment (D.E. 89, 2/13/13), Defendant Broward County's Motion for Summary Judgment (D.E. 93, 2/29/13), and Plaintiff Jonathan Corbett's Opposition to Defendants' Motions for Summary Judgment and Cross-Motion for Summary Judgment (D.E. 95, 2/27/13). Having considered the referenced

filings, related pleadings, and record, the Court finds as follows.

I. Background

On August 27, 2011, Plaintiff arrived at Fort Lauderdale-Hollywood International Airport (FLL) in Broward County to board a commercial airline flight. Plaintiff proceeded to a Transportation Security Administration (TSA) checkpoint, where he was required to submit to a preflight security screening. Plaintiff declined to go through an electronic full-body scanner, and he refused to submit to a manual pat-down search. TSA officers detained Plaintiff and searched his belongings. Plaintiff was then removed from the security checkpoint and denied access to his departure gate.

By letters dated August 28, 2011, Plaintiff requested from the TSA and the Broward County Aviation Department, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 522, and Florida's Public Records Act (FPRA), Fla. Stat. § 119, any records pertaining to the security incident. (See Letter to TSA, D.E. 89-4 at 3; Letter to Broward, D.E. 93-2 at 3.) Plaintiff requested specifically:

1. Any notes taken by any employees of your organizations relating to this incident

2. Any incident reports, e-mails, or other documentation created as a result of this incident

3. Any correspondence between your organization and any other party as a result of this incident

4. Any audio, video, and or photographic records taken on August 27th between 3:45 AM and 5:15 AM at or around the TSA checkpoint in front of the FLL "E

gates" (US Airways). This must include all camera views that contain any part of this checkpoint, as well as the camera that monitors the sterile area's exit (adjacent to the checkpoint). (Letter to TSA, D.E. 89-4 at 3; Letter to Broward, D.E. 93-2 at 3.)

After receiving Plaintiff's records request, the TSA initiated a search for responsive documents. (Piniero Decl., D.E. 89-2 ¶ 11.) The TSA sent a request to FLL personnel, who collected any incident reports or other records generated in connection with the security incident. (Id.) FLL returned twenty-nine pages of records. (Id.) TSA also conducted an internal search of electronic records and found three pages of email related to the incident. (Id. ¶ 13.) At some point the TSA also obtained video surveillance footage from the security checkpoint. (See id. ¶ 29.)

Some of the foregoing records appeared to contain sensitive security information (SSI), so those records were submitted to the TSA's SSI Branch for review. (Id. ¶ 12; Hoffman Decl., D.E. 89-3 ¶ 8.) The SSI Branch determined that several documents contained SSI. (See Hoffman Decl., D.E. 89-3 ¶¶ 9–14.) In particular, certain reports revealed the selection criteria for enhanced passenger-screening and described the enhanced screening procedures used by the TSA. (Id.) The SSI Branch determined that if that information were made public, it would "provid[e] insight to those interested in circumventing TSA's checkpoint screening procedures." (Id. ¶ 11.) The TSA therefore redacted or withheld that information, invoking FOIA Exemption 3. (See id. ¶¶ 9–14.)

In addition, numerous records contained the names of TSA employees or state law enforcement officers that were involved in the security incident. (See Piniero Decl., D.E. 89-2 ¶¶ 28, 32.) The surveillance video

footage also showed the faces of certain TSA employees. (Id. ¶ 29.) The TSA determined that those individuals had a privacy interest in their personal identifying information because "its disclosure could expose them to unnecessary unofficial questioning, harassment, and stigmatization." (Id. ¶ 26; accord id. ¶ 32.) The TSA also determined that "none of the individuals' personal information would shed light on how TSA performs its statutory duties generally or in the particular instance at issue." (Id. ¶ 27.) The TSA concluded that "the public interest in having that information disclosed was insufficient to merit disclosure." (Id. ¶ 28.) The TSA therefore redacted the names of TSA employees and police officers from the paper records and pixelated their faces on the surveillance footage, invoking FOIA Exemption 6. (See id. ¶¶ 24–29.) The TSA also invoked Exemption 7(c) as an alternate basis on which to redact the names of the responding law enforcement officers. (Id. ¶¶ 30–33.)

Meanwhile, after receiving Plaintiff's records request, Broward sought direction from the TSA on whether the requested surveillance footage could be disclosed. (Capello Aff., D.E. 93-3 ¶ 7.) Broward consulted with the TSA pursuant to an Other Transaction Agreement (OTA) executed by the Department of Homeland Security (DHS), the TSA, and Broward under the authority of the Aviation and Transportation Security Act, Pub. L. 107-71, 115 Stat. 597. (See id. ¶ 5; OTA, D.E. 93-4 at 3.) The OTA sets forth the terms and conditions under which Broward operates closed circuit television (CCTV) surveillance cameras at FLL. (OTA, D.E. 93-4 at 3.) The OTA provides, in relevant part, that "[a]ny and all requests for CCTV media received by [Broward] shall be reviewed for Sensitive Security Information (SSI) in accordance

with 49 C.F.R. § 1542.101(c) and 49 C.F.R. § 1520.9(a)(3). If [Broward] is unable to determine whether the requested media contains SSI, then [Broward] shall forward the request to TSA Field Counsel for Sensitive Security Information (SSI) review in accordance with 49 C.F.R. § 1542.101(c) and 49 C.F.R. § 1520.9(a)(3)." (Id. at 3.) Broward sought review by the TSA. (Capello Aff., D.E. 93-3 ¶ 8.) At the time that Broward consulted with the TSA, the TSA's position was that the footage requested by Plaintiff contained non-disclosable SSI and that the existence of any footage itself constituted SSI as well. (Id. ¶¶ 8, 9.) On this basis, Broward informed Plaintiff that the requested video footage did not exist, and even if it did, it would not have been disclosable. (Cooper Decl., D.E. 96-1 ¶ 7.)

The TSA later issued a response to Plaintiff's records request by letter dated June 25, 2012. (See TSA FOIA Response, D.E. 89-5 at 1.) The TSA stated that it had conducted a reasonable search and had located thirty-two pages of records responsive to Plaintiff's request. (Id.) The TSA disclosed twenty-nine of the pages, subject to redactions, and it withheld three pages in full. (See id. at 1–2.) The TSA cited the FOIA Exemptions under which information was being withheld or redacted. (See id.) On July 23, 2012, TSA issued an amended FOIA response and furnished a pixelated copy of the requested surveillance footage. (See Amended FOIA Response, D.E. 89-7 at 2–3.) Plaintiff pursued an administrative appeal of the TSA's nondisclosures, which was ultimately denied. (See FOIA Appeal, D.E. 89-6 at 1; Denial of Appeal, D.E. 89-8 at 1.)

Plaintiff filed the present pro se action against TSA, Broward, and other parties alleging various civil-

rights violations, state torts, and Privacy-Act violations arising from the security detention and search. (See First Amended Complaint, D.E. 20 at 9–14.) Plaintiff further alleges that the TSA violated FOIA by failing to properly respond to his records request and that Broward violated the FPRA by failing to provide the records requested and by falsely stating that records did not exist. (See id. at 13–14.) Plaintiff seeks "[i]njunctive relief for FOIA & Public Records Act claims against Defendants TSA and BROWARD requiring the production of all documents requested." (Id. at 15.) Defendants earlier moved to dismiss Plaintiff's First Amended Complaint in its entirety. In an Omnibus Order, this Court dismissed Plaintiff's purported constitutional, tort, and Privacy-Act claims as non-actionable. (See Order, D.E. 69 at 8–32.)

II. Motions for Summary Judgment

Plaintiff, the TSA, and Broward now move for summary judgment with respect to Plaintiff's remaining FOIA and FPRA claims. (See Motions, D.E. 89, 93, 95.)

Plaintiff first argues, with regard to the records that have been disclosed, that the TSA improperly redacted the names and faces of TSA employees pursuant to FOIA Exemption 6. (See Cross-Motion, D.E. 95 at 3–10.) Plaintiff claims that the requested records are not subject to that exemption; that TSA employees have no privacy interest protecting disclosure of their identities; and that there is a strong public interest in releasing unredacted footage of the security interaction. (Id.) Plaintiff states his intention to "publish [the unredacted] video for the world to see." (Id. at 10.) Plaintiff also argues that the TSA improperly redacted the names of responding law

enforcement officers pursuant to FOIA Exemption 7(c). (Id.) Plaintiff claims that the requested files are not subject to that exemption and that police officers have no privacy interest protecting disclosure of their names. (Id. at 10–11.) In addition, Plaintiff requests that the Court review the substance of the TSA's SSI redactions. (Id. at 14.) Plaintiff argues that the SSI designations are "highly suspect" and that this Court has jurisdiction to review them. (Id.) Plaintiff further claims that the TSA and Broward have failed to produce alleged interagency communications responsive to his request for "[a]ny correspondence between your organization and any other party as a result of [the security] incident." (Id. at 15.)

Finally, Plaintiff maintains that Broward violated Florida's Public Records Act by falsely denying the existence of the surveillance footage sought. (Id. at 11–13.) The TSA argues that it properly redacted the names and faces of TSA employees and state law enforcement officers pursuant to FOIA Exemption 6. (See TSA Motion, D.E. 89 at 10.) The TSA argues that the employees and officers have a privacy interest in their identifying information and that there is no public interest in disclosure that outweighs that privacy interest. (Id. at 12–15.) The TSA also argues that it properly redacted the names of the police officers pursuant to FOIA Exemption 7(c), as the requested records are subject to that exemption and the officers have a privacy interest in the protection of their identities. (Id. at 16; TSA Response, D.E. 98 at 6.) The TSA argues that this Court has no jurisdiction to review the substance of its SSI designations, and even if the Court did, the SSI designations were appropriate. (TSA Motion, D.E. 89 at 5–10.) The TSA further argues that its FOIA search was reasonable and adequate, and Plaintiff's speculation that

additional disclosable records exist does not rebut the presumption of reasonableness. (Id. at 4; TSA Response, D.E. 98 at 8–9.) In support of its Motion for Summary Judgment, the TSA has submitted the above-cited declarations of Aeron J. Piniero, Operations Manager for the TSA's FIOA Office, and David E. Hoffman, Chief of the TSA's SSI Program. (See Piniero Decl., D.E. 89-2 ¶ 1; Hoffman Decl., D.E. 89-3 ¶ 1.)

Broward argues that Plaintiff is unable to sustain a claim under Florida's Public Records Act because the TSA has exclusive authority to control the release of SSI, and Broward acted at the direction of the TSA in denying Plaintiff's request for surveillance footage. (See Broward Motion, D.E. 93 at 7–9.) Broward argues alternatively that Plaintiff's FPRA claim is now moot, as the TSA has released the requested footage subject to appropriate redactions. (Id. at 9.) In support of its Motion for Summary

Judgment, Broward has submitted the above-cited declaration of Frank Capello, Aviation Security Director of the Broward County Aviation Department, and Sharlene Cooper, Public Records Request Coordinator for the Broward County Aviation Department. (See Capello Decl., D.E. 93-3 ¶ 2; Cooper Decl., D.E. 96-1 ¶ 3.)

III. Standard of Review

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). FOIA claims generally should be resolved on summary judgment. Miccosukee Tribe of Indians of Fla. v. United States, 516 F.3d 1235, 1243 (11th Cir. 2008).

In FOIA actions, "an agency is entitled to summary judgment if no material facts are in dispute and if it demonstrates that each document that falls within the class requested either has been produced . . . or is wholly exempt from the Act's inspection requirements." Bonilla v. U.S. Dep't of Justice, 798 F. Supp. 2d 1325, 1329 (S.D. Fla. 2011) (internal quotation marks omitted). The Government may use affidavits or declarations to meet its burden, Miccosukee Tribe, 516 F.3d at 1258, and such documents are "accorded a presumption of good faith," Fla. Immigrant Advocacy Ctr. v. Nat'l Sec. Agency, 380 F. Supp. 2d 1332, 1343 (S.D. Fla. 2005).

IV. Discussion

FOIA requires federal agencies, upon any request for records that reasonably describe documents held by that agency, to make those documents promptly available to any person. 5 U.S.C. § 552(a)(3). FOIA was enacted "to encourage public disclosure of information so citizens may understand what their government is doing." Office of the

Capital Collateral Counsel, N. Region of Fla. v. U.S. Dep't of Justice, 331 F.3d 799, 802 (11th Cir. 2003). A district court has jurisdiction over a complaint brought under FOIA "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). FOIA mandates disclosure of records upon request unless the records fall within any of nine exemptions set forth at 5 U.S.C. § 552(b). Fla. House of Representatives v. U.S. Dep't of Commerce, 961 F.2d 941, 944 (11th Cir. 1992). The three FOIA exemptions at issue in this case protect the following materials from disclosure:

(3) [matters] specifically exempted from disclosure by statute . . . , if that statute—

(A) (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; . . . .

* * * * *

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

* * * * *

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy . . . .

5 U.S.C. § 552(b).

a. Exemption 3

The first issue is whether the TSA properly redacted sensitive security information (SSI) pursuant to FOIA Exemption 3 and whether the TSA's SSI redactions are reviewable by this Court.

Exemption 3 protects from disclosure any information "specifically exempted from disclosure by statute," provided that the statute (i) requires the matters be withheld from the public in such a manner as to leave no discretion or (ii) establishes specific criteria for withholding or refers to particular types of matters to

be withheld. 5 U.S.C. § 552(b)(3)(A); News-Press v. U.S. Dep't of Homeland Sec., 489 F.3d 1173, 1189 n.3 (11th Cir. 2007).

One such withholding statute, 49 U.S.C. § 114(r), requires the TSA to prescribe regulations prohibiting disclosure of sensitive information related to transportation security. Section 114(r) provides:

Notwithstanding section 552 of title 5 [FOIA], the Under Secretary [of the TSA] shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107-71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or (c) be detrimental to the security of transportation.

49 U.S.C. § 114(r)(1). Pursuant to Section 114(r), the TSA has promulgated regulations that prohibit the disclosure of certain categories of sensitive security information. See generally 49 C.F.R. pt. 1520. Among the types of information designated as SSI are

"[a]ny procedures, including selection criteria and any comments, instructions, and implementing guidance pertaining thereto, for screening of persons, accessible property, checked baggage, U.S. mail, stores, and cargo, that is conducted by the Federal government or any other authorized person," 49 C.F.R. § 1520.5(b)(9)(i), and "[i]nformation and sources of information used by a passenger or property screening

program or system, including an automated screening system," id. § 1520.5(b)(9)(ii). Courts have unanimously concluded that Section 114(r) qualifies as a withholding statute for purposes of FOIA Exemption 3. See, e.g., Davis v. U.S. Dep't of Homeland Sec., No. 11-CV-203, 2013 WL 3288418, at *11 (E.D.N.Y. June 27, 2013); Skurow v. U.S. Dep't of Homeland Sec., 892 F. Supp. 2d 319, 330 n.7 (D.D.C. 2012); Gordon v. Fed. Bureau of Investigation, 390 F. Supp. 2d 897, 900 (N.D. Cal. 2004). Courts have further found that district courts have no authority to review the actual substance of SSI designations, as the jurisdiction to do so lies exclusively within the Court of Appeals. See 49 U.S.C. § 46110(a) (a person challenging the designation of information as SSI "may apply for review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business"); Skurow, 892 F. Supp. 2d at 331 (concluding that the district court "lack[ed] jurisdiction to review the substance of the TSA's SSI designations"); In re September 11 Litig., 236 F.R.D. 164, 174–75 (S.D.N.Y. 2006) ("District Courts are without jurisdiction to entertain challenges to TSA's determinations."); Chowdhury v. Nw. Airlines Corp., 226 F.R.D. 608, 614 (N.D. Cal. 2004) ("Congress has expressly provided that an appeal from an order of the TSA pursuant to section 114(s) lies exclusively with the Court of Appeals."); Shqeirat v. U.S. Airways Grp., Inc., No. 07-1513, 2008 WL 4232018, at *2 (D. Minn. Sep. 9, 2008) ("District Courts are without jurisdiction to entertain challenges to the TSA's decisions regarding disclosure of SSI.").

For these reasons, where information is withheld as SSI pursuant to Section 114(r) and Exemption 3, the only task for the district court is "to determine whether the material withheld, as described by TSA, fits within the scope of Section 114(r)." Skurow, 892 F. Supp. 2d at 331 (citing Morley v. Cent. Intelligence Agency, 508 F.3d 1108, 1126 (D.C. Cir. 2007)).

Here, the TSA's declarations indicate that SSI was withheld from the incident reports under Section 114(r) and Exemption 3 because the SSI reveals criteria used for enhanced passenger-screening and describes the enhanced screening procedures employed by the TSA. The TSA indicates that if that information were made public, it would "provid[e] insight to those interested in circumventing TSA's checkpoint screening procedures." (Hoffman Decl., D.E. 89-3 ¶ 11.) The Court finds that the material withheld, as described by the TSA, falls within the scope of Section 114(r), as its disclosure would be "detrimental to the security of transportation." 49 U.S.C. § 114(r)(1)(c). Based on that limited scope of review, the Court finds that the TSA's SSI redactions were not improper. The Court therefore grants summary judgment for the TSA and denies Plaintiff's request for disclosure or review of the TSA's SSI designations.

b. Exemption 6

The next issue is whether the TSA properly redacted the identifying information of

TSA employees and responding law enforcement officers pursuant to FOIA Exemption 6. Exemption 6 protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal

privacy." 5 U.S.C. § 552(b)(6). The primary purpose of Exemption 6 is to protect individuals from injury and embarrassment which may result from the unnecessary disclosure of personal information. News-Press, 489 F.3d at 1196.

The term "similar files" has been given a broad construction by courts and is interpreted to mean all information that "applies to a particular individual." U.S. Dep't of State v. Wash. Post Co., 456 U.S. 595, 599–603 (1982); see also Del Rio v. Miami Field Office of Fed. Bureau of Investigations, No. 08-21103-CIV, 2009 WL 2762698, at *4 (S.D. Fla. Aug. 27, 2009).

To determine whether personal information is exempt from disclosure under Exemption 6, a court must "balance the individual's right of privacy against the basic policy of opening agency action to the light of public scrutiny." Office of the Capital Collateral Counsel, 331 F.3d at 802 (quoting U.S. Dep't of State v. Ray, 502 U.S. 164, 175 (1991)).

Courts have found that the privacy interests of "lower-echelon" TSA employees may outweigh the public interest in disclosing their identities, such that the withholding of their names from records is appropriate under Exemption 6. See, e.g., Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec., 384 F. Supp. 2d 100, 117–18 (D.D.C. 2005); see also Skurow, 892 F. Supp. 2d at 333. As the court observed in Electronic Privacy:

As "advocates for security measures that may be unpopular," DHS and TSA employees are likely to experience annoyance or harassment following the disclosure of their involvement with [a particular passenger prescreening] program. . . . The documents released by the defendants will likely be published on

the Internet once released to the plaintiff, and it is likely that readers of the plaintiff's reports, including media reporters as well as private individuals, would seek out the employees mentioned for further information. This contact is the very type of privacy invasion that Exemption 6 is designed to prevent.

On the other side of the Exemption 6 balance, the public interest in learning the names of these lower-echelon employees is small. The plaintiff has not demonstrated that knowledge of the names of the employees involved in [the passenger prescreening program] development will help them to understand how the agency performs its statutory duties. Names alone will not shed any light on how the agencies worked with the airlines. Indeed, "information that does not directly reveal the operation or activities of the federal government 'falls outside the ambit of the public interest that the FOIA was enacted to serve.'"

Because the privacy interest of DHS and TSA employees in avoiding the unwanted contact or harassment that would result from the release of their names outweighs the public interest in disclosure, the court concludes that the defendants properly invoked Exemption 6 to redact the names of the federal employees included in the documents at issue. 384 F. Supp. 2d at 117–18 (footnotes and citations omitted); see also Voinche v. Fed. Bureau of Investigation, 940 F. Supp. 323, 330 (D.D.C. 1996) (finding "no reason to believe that the public will obtain a better understanding of the workings of various agencies by learning the identities" of FBI special agents and support personnel). But see Gordon, 390 F. Supp. 2d at 901–02 (finding names of TSA officials improperly withheld under Exemption 6).

Consistent with Electronic Privacy and the TSA's determinations in this case, the Court finds that the TSA justifiably redacted pursuant to Exemption 6 the names and faces of TSA employees and responding law enforcement officers involved in the security confrontation. The Court agrees that the employees and officers have a privacy interest in their personal identifying information, in particular because disclosure of that information could subject them to unnecessary harassment or stigmatization in connection with this matter. The Court further finds that there is no public interest in disclosure, as none of the individuals' names or personal information would shed light on how TSA performs its statutory duties, and the Court has previously found no actionable civil claims arising from the subject security incident. The Court therefore finds that the privacy interests at stake outweigh any alleged public interest in disclosure under Exemption 6. On this basis the Court grants summary judgment for the TSA and denies Plaintiff's request for disclosure of the redacted names and faces of the TSA employees and responding police officers.

c. Exemption 7(c)

The next issue is whether the TSA properly redacted the names of responding police officers pursuant to FOIA Exemption 7(c).

Exemption 7(c) protects from disclosure "records or information compiled for law enforcement purposes" to the extent that the production of such records or information "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).

Records are "compiled for law enforcement purposes" if they focus on alleged acts that could result in civil or criminal sanctions, Cappabianca v. Comm'r, U.S. Customs Serv., 847 F. Supp. 1558, 1565 (M.D. Fla. 1994), administrative or regulatory proceedings, Rosenglick v. Internal Revenue Serv., No. 97-747-CIV-ORL-18A, 1998 WL 773629, at *2 (M.D. Fla. Mar. 10, 1998), or national security and homeland security-related government investigation, see Gordon v. Fed. Bureau of Investigation, 388 F. Supp. 2d 1028, 1036 (N.D. Cal. 2005).

Exemption 7(c) provides more privacy protection than Exemption 6. Bonilla v. U.S. Dep't of Justice, No. 11–20450-Civ, 2012 WL 3759024, at *3 (S.D. Fla. Aug. 29, 2012). Exemption 7(c) prohibits any disclosure that "could reasonably be expected to constitute an unwarranted invasion of privacy," while Exemption 6 prevents any disclosure that "would constitute a clearly unwarranted invasion of privacy." See Office of the Capital Collateral Counsel, 331 F.3d at 803 n.6.

Here, it is unnecessary to determine whether the law enforcement officers' names were properly redacted under Exemption 7(c), as the Court has found that the names were properly redacted under the narrower Exemption 6. Nonetheless, the Court finds in the alternative that the names were properly withheld pursuant to Exemption 7(c). The Court finds that the subject incident reports fall within the scope of the Exemption, and for the same reasons stated supra, the Court finds that disclosure of the officers' personal information could reasonably be expected to constitute an unwarranted invasion of privacy and would serve no public interest. On this alternate basis the Court grants summary judgment for the TSA and

denies Plaintiff's request for disclosure of the redacted names of the responding law enforcement officers.

d. Alleged Additional Records

Plaintiff next claims that Defendants have failed to produce additional interagency communications responsive to his records request.

"The adequacy of an agency's search for documents requested under FOIA is judged by a reasonableness standard." Lee v. U.S. Attorney for S. Dist. of Fla., 289 F. App'x 377, 380 (11th Cir. 2008) (quoting Ray v. U.S. Dep't of Justice, 908 F.2d 1549, 1558 (11th Cir. 1990)). The search need not be exhaustive. Id. Rather, "the agency must show beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents." Id. (quoting Ray, 908 F.2d at 1558). This burden can be met by producing affidavits that are "relatively detailed, nonconclusory, and submitted in good faith." Id. (quoting Ray, 908 F.2d at 1558).

Once the agency meets its burden to show that its search was reasonable, the burden shifts to the requester "to rebut the agency's evidence by showing that the search was not reasonable or was not conducted in good faith." Id. (quoting Ray, 908 F.2d at 1558). The failure of an agency to turn up one specific document in its search does not alone render a search inadequate. Iturralde v. Comptroller of Currency, 315 F.3d 311, 315 (D.C. Cir. 2003).

Here, the TSA's unrefuted declarations indicate that a reasonable search was conducted for responsive records both at FLL and within the TSA offices. Plaintiff has offered no evidence showing that the search was unreasonable or that the TSA acted in bad

faith. Plaintiff's allegations that more records responsive to his request exist is unsubstantiated and, at any rate, insufficient to rebut the presumption of the search's adequacy. On this basis the Court grants summary judgment for the TSA and denies Plaintiff's request for disclosure of alleged additional records.

e. FPRA Claim Against Broward

Finally, Plaintiff maintains that Broward violated the FPRA by falsely denying the existence of surveillance footage from the security checkpoint.

Like FOIA, the FPRA provides that Florida citizens have a broad right to inspect the records of public bodies absent a clear and specific exemption from disclosure. See Fla. Stat. § 119.07; Greater Orlando Aviation Auth. v. Nejame, Lafay, Jancha, Vara, Barker, 4 So. 3d 41, 43 (Fla. Dist. Ct. App. 2009).

TSA regulations, meanwhile, provide that airport operators must "(1) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know; and (2) Refer all requests for SSI by other persons to TSA." 49 CFR § 1542.101(c); see also id. § 1520.9(a)(3) (providing that airport operators must "[r]efer requests by other persons for SSI to TSA").

Here, Broward acted pursuant to federal regulations and the OTA when it consulted the TSA regarding Plaintiff's records request, and it acted at the direction of the TSA in denying the existence of surveillance footage. The Court therefore has difficulty in concluding that Broward's actions could be unlawful under the FPRA. Cf. English v. Gen. Elec. Co., 496 U.S. 72, 79 (1990) ("[S]tate law is pre-empted to the

extent that it actually conflicts with federal law."); La. Pub. Serv. Comm'n v. Fed. Commc'ns Comm'n, 476 U.S. 355, 369 (1986) ("[A] federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation."). At any rate, assuming without finding that Broward did not comply with the FPRA when denying the existence of the requested footage, the Court finds that Plaintiff's FPRA claim—which seeks only injunctive relief "requiring the production of all documents requested" (First Amended Complaint, D.E. 20 at 15)—is now moot, as the TSA has produced the requested footage subject to appropriate redactions. On this basis the Court grants summary judgment in favor of Broward.

V. Conclusion

It is accordingly ORDERED AND ADJUDGED that:

1. Defendant Transportation Security Administration's Motion for Summary Judgment (D.E. 89, 2/13/13) is GRANTED;

2. Defendant Broward County's Motion for Summary Judgment (D.E. 93, 2/29/13) is GRANTED;

3. Plaintiff Jonathan Corbett's Cross-Motion for Summary Judgment (D.E. 95, 2/27/13) is DENIED; and

4. This case is now CLOSED.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of September, 2013.

/s/

JOAN A. LENARD

UNITED STATES DISTRICT JUDGE

Appendix C – Eleventh Circuit Opinion

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-14053

Non-Argument Calendar

D.C. Docket No. 1:12-cv-20863-JAL

JONATHAN CORBETT,

Plaintiff-Appellant,

versus

TRANSPORTATION SECURITY ADMINISTRATION,
UNITED STATES OF AMERICA,
ALEJANDRO CHAMIZO,
BROWARD COUNTY,
BROWARD SHERIFF'S OFFICE,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

(June 4, 2014)

Before HULL, WILSON and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiff-appellant Jonathan Corbett filed a pro se complaint asserting claims against defendants-appellees: (1) the Transportation Security Administration (the "TSA"); (2) the United States; (3) a TSA employee, Alejandro Chamizo; (4) Broward County, Florida; and (5) the Broward County Sheriff's Office (the "Sheriff's Office"). The district court dismissed nineteen of Corbett's claims and subsequently granted the defendants summary judgment on the remaining two claims. Corbett, pro se, appeals the district court's dismissal and summary judgment orders. After careful review of the briefs and the record, we affirm.

I. 2011 AIRPORT SCREENING

This case involves the TSA's airport security screening of Corbett.

A. The Screening of Corbett

On August 27, 2011, Corbett went to the Fort Lauderdale-Hollywood International Airport (the "airport") operated by defendant Broward County. Before boarding commercial flights at U.S. airports, all passengers must submit to screening of their persons and luggage at a security checkpoint. See 49 U.S.C. § 44901.

To board his commercial flight, Corbett proceeded to a security checkpoint operated by defendant TSA. Corbett had two pieces of carry-on baggage—"an average-sized backpack" and "a small plastic bag of books.[1]" Corbett placed his carry-on bags on the x-ray

[1] Corbett had not checked any luggage at the ticket counter.

conveyor belt for screening. Corbett was asked to go through the full-body scanner, and he declined.

A TSA employee (a "screener") then informed Corbett that he would instead be screened through the use of a manual "pat-down." The TSA screener explained how the pat-down worked. The screener would run the back of his hand along Corbett's buttocks. The screener would place one hand on Corbett's inner-thigh, the other hand on Corbett's hip, and slide the hand on the inner-thigh up until meeting resistance.

Corbett refused to permit the TSA screener to conduct the standard pat-down and further stated the TSA screener could "not touch his genitals or buttocks" during the pat-down. The TSA screener told Corbett that his refusal to consent to the standard pat-down screening was "a problem" and summoned a supervisor. To the supervisor, Corbett reiterated his demand that he not be touched on his buttocks or genitals, and the supervisor called the non-uniformed TSA manager, defendant Alejandro Chamizo, who came to the security checkpoint. Corbett alleged that defendant Chamizo warned Corbett "that if he did not consent [to having his genitals and buttocks touched], he would be forcibly searched" and "would be arrested."

B. The Screening of Corbett's Carry-on Bags

As Corbett was speaking with the TSA supervisor and defendant Chamizo, TSA screeners manually screened the two carry-on bags that Corbett had placed on the x-ray conveyor belt. The screeners did so pursuant to TSA Management Directive 100.4, which authorizes screening of "all contents of accessible property, including, but not limited to, containers, compartments, and envelopes" and notes

that screening "may be conducted for the purpose of finding threat items or identification media, as appropriate." The TSA screeners removed two items from the bags and examined them more closely. The two items were: (1) "a small stack of credit cards, IDs, and other plastic cards"; and (2) a book. The screener examined the credit and identification cards because TSA Management Directive 100.4 notes that, once screening at a security checkpoint begins, a TSA screener "may screen an individual's accessible property for identification media" to "re-verify that the individual's identity has been matched against government watch lists." In a sworn declaration, the TSA official who oversaw screening at the airport noted that "where identification media are found in a passenger's carry-on baggage, they are inspected to ensure that the passenger does not use a different name than the name that was submitted for vetting . . . . A passenger with identification media in more than one name may be attempting to circumvent the . . . watch-list matching program."

Corbett "verbally objected to the screener's review of his credit cards," and the TSA screener informed Corbett that he "was just making sure the names matched," as required by the TSA Management Directive. Corbett also complained that the TSA screener "began to look through the pages of" one of Corbett's books. The TSA security director stated that inspection of a book's pages is necessary because "books may be used to conceal prohibited or other potentially dangerous items." Corbett verbally objected to the review of his book, and the TSA screener told him that the screening of the book was permissible.

In his complaint, Corbett did not allege that defendant Chamizo: (1) personally participated in the inspections of Corbett's carry-on bags or the items therein; or (2) gave any verbal instructions to the screeners on how to conduct their inspections of Corbett's bags. Rather, Corbett's only allegation linking Chamizo to the screening of Corbett's bags and items therein was the following:

"CHAMIZO was the 'officer'-in-charge on the scene and approved of the searches."

C. The Sheriff's Background Check of Corbett

During these events, a TSA manager summoned an officer from the defendant Sheriff's Office. The manager did so pursuant to the TSA's standard operating procedures, which provide that "if the screening of a passenger or his or her property cannot be completed, law enforcement must be summoned to resolve the issue."

After the Sheriff's officer arrived, defendant Chamizo gave the officer a copy of Corbett's driver's license[2].

Chamizo gave the driver's license copy to the officer because "TSA screening procedures require that law enforcement personnel be notified when a passenger declines to complete screening, and that certain checks be run using the passenger's information." Accordingly, the Sheriff's officer conducted a check for outstanding warrants and other background information. The check of Corbett's background "came back clear." Corbett alleged that the entire

[2] At some point, Corbett's driver's license and boarding pass were copied.

checkpoint process lasted approximately an hour from start to finish.

Because Corbett would not consent to the manual pat-down to complete the screening, Corbett was denied access to his gate and the Sheriff's officer escorted Corbett out of the security checkpoint area. The TSA security director noted in a sworn declaration that a pat-down is "the last available form of screening" and an individual who refuses to consent to a pat-down, like Corbett, "cannot be cleared" to proceed to his gate. Corbett took his two carry-on bags and driver's license, and does not allege that the TSA employees withheld any items.

As discussed later, Corbett claimed that these acts violated his federal and state rights: (1) the detention of Corbett for approximately an hour while the TSA employees attempted to conduct a pat-down screening, screened his two carry-on bags, called a law enforcement officer, and awaited the results of a background check; (2) the inspection of his carry-on bags and two items therein; and (3) the copying of Corbett's driver's license and boarding pass, and the transfer of the driver's license copy to the Sheriff's officer.

II. CORBETT'S RECORD REQUESTS

A. Corbett's FOIA Request

In September 2011, Corbett sent to the TSA a request for documents and videos of the August 27, 2011 airport screening, under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

Corbett requested these documents: (1) "[a]ny notes taken by any employees of [the TSA] relating to [the 2011 airport] incident"; (2) "[a]ny incident reports, e-

mails, or other documentation created as a result of this incident"; (3) "[a]ny correspondence between [the TSA] and any other party as a result of this incident"; and (4) "[a]ny audio, video, and[/]or photographic records taken on August 27th between 3:45 AM and 5:15 AM at or around the TSA checkpoint in front of the . . .

'E gates' (US Airways)." Corbett specified: "[t]his must include all camera views that contain any part of this checkpoint, as well as the camera that monitors the sterile area's exit (adjacent to the checkpoint)."

The TSA referred Corbett's FOIA request to airport officials who "performed a manual search for records." The TSA produced 29 pages of documents, including: (1) incident reports; (2) statements from TSA employees participating in or witnessing the screening; (3) a copy of Corbett's boarding pass;

(4) handwritten notes; and (5) a TSA inspector's statement. The TSA also sent Corbett videos of the screening, but, before doing so, obscured the faces of the TSA employees, the Sheriff's officer, and other passengers in the airport security checkpoint area. The TSA also redacted the printed names of TSA employees and the Sheriff's officer. The TSA made these redactions pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6), and, as to the name of the Sheriff's officer, also pursuant to Exemption 7(C), id. § 552(b)(7)(C)[3].

[3] The TSA also redacted material regarding TSA operations considered by the TSA to be "sensitive security information" and exempted under FOIA

Corbett filed an administrative appeal challenging all redactions. The TSA denied Corbett's appeal[4].

III. PROCEDURAL HISTORY

A. Corbett's Amended Complaint

In March 2012, plaintiff Corbett filed a pro se complaint against defendants the TSA, the United States, Chamizo, and Broward County. In May 2012, Corbett filed an amended complaint (the "amended complaint"), adding the Sheriff's Office as a defendant.

Corbett's amended complaint asserted twenty-one claims, including, inter alia: (1) claims against TSA manager Chamizo, in his individual capacity, under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999 (1971), alleging that Chamizo violated Corbett's Fourth Amendment rights; (2) tort claims against the United

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Exemption 3. 5 U.S.C. 552(b)(3). In this appeal, Corbett does not challenge these redactions.

[4] Corbett also requested records from defendants Broward County and the Sheriff's Office under the Florida Public Records Act, Fla. Stat. § 119.07. In the district court, Corbett challenged the adequacy of defendant Broward County's response to his Public Records Act request, and the district court rejected that claim. Corbett's opening brief on appeal does not challenge the district court's ruling, and therefore Corbett abandons the issue on appeal. See Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008).

States, based on its waiver of sovereign immunity in the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b); (3) claims against the TSA under the Privacy Act, 5 U.S.C. § 552a; and (4) a claim against the TSA for unredacted records under FOIA.

B. Rule 12(b) Dismissal and Summary Judgment

Each of the defendants filed a motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 12(b). On November 16, 2012, the district court granted the motions as to all claims other than the claims for unredacted records under FOIA[5].

After discovery on the FOIA claim, the TSA filed a motion for summary judgment. The district court granted the motion in favor of the TSA, thus disposing of all of Corbett's claims.

Corbett timely filed a notice of appeal. We construe Corbett's pro se notice of appeal as covering the district court's orders on the motions to dismiss and the summary judgment motion.

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[5] On December 18, 2012, the district court denied Corbett's motion to file a second amended complaint. In this appeal, Corbett has not shown that the district court abused its discretion in denying this motion. See Lowe's Home Ctrs., Inc. v. Olin Corp., 313 F.3d 1307, 1314–15 (11th Cir. 2002) ("[A] district court has great discretion when deciding whether to grant a motion for leave to amend a complaint following the filing of responsive pleadings.").

IV. THE BIVENS CLAIMS AGAINST DEFENDANT CHAMIZO

We first address the Rule 12(b)(6) dismissal of Corbett's Bivens claims against defendant Chamizo based on the 2011 airport screening[6].

A. Qualified Immunity Principles

"Qualified immunity protects government officials performing discretionary functions from suits in their individual capacities unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." Andujar v. Rodriguez, 486 F.3d 1199, 1202 (11th Cir. 2007) (quotation marks omitted).

Here, undisputedly, defendant Chamizo was engaged in discretionary functions during the 2011 airport screening. Therefore, we examine: (1) whether the facts alleged, accepted as true and viewed in the light most favorable to Corbett, show that Chamizo's conduct violated one of Corbett's federal constitutional rights; and if so, (2) whether that right was "clearly established" at the time of the 2011 airport screening. See Scott v. Harris, 550 U.S. 372,

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[6] We review de novo the district court's grant of a motion to dismiss under Rule 12(b)(6) for failure to state a claim, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Leib v. Hillsborough Cnty. Pub. Transp. Comm'n, 558 F.3d 1301, 1305 (11th Cir. 2009).

377, 127 S. Ct. 1769, 1774 (2007) (quotation marks omitted).

To analyze these questions, we review the law regarding airport screening.

B. Screening at Airport Security Checkpoints

The Fourth Amendment protects individuals "against unreasonable searches and seizures," U.S. Const. amend. IV, and a search conducted without a warrant is "per se unreasonable subject only to a few specifically established and well-delineated exceptions," United States v. Garcia, 890 F.2d 355, 360 (11th Cir. 1989) (quotation marks and alteration omitted). One exception to the warrant requirement is for suspicionless searches conducted pursuant to administrative programs, such as security screenings of airport passengers. Congress explicitly requires "the screening of all passengers and property . . . that will be carried aboard a passenger aircraft." 49 U.S.C. § 44901(a). The Supreme Court has instructed that the suspicionless screenings conducted at airport security checkpoints pursuant to this statute fall under the administrative search exception to the Fourth Amendment's warrant requirement. See Chandler v. Miller, 520 U.S. 305, 323, 117 S. Ct. 1295, 1305 (1997) ("[W]here the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'—for example, searches now routine at airports . . . ."); see also Nat'l Treasury Emps. Union v. Von Raab, 489 U.S. 656, 674–75 & n.3, 109 S. Ct. 1384, 1395 & n.3 (1989) (providing as an example of a suspicionless search that may qualify as reasonable "the Federal Government's practice of requiring the search of all passengers seeking to board commercial airliners, as well as the search of their carry-on luggage, without

any basis for suspecting any particular passenger of an untoward motive"). In short, airport security screenings are generally "permissible administrative search[es] under the Fourth Amendment, even though [they are] initiated without individualized suspicion and [are] conducted without a warrant." See George v. Rehiel, 738 F.3d 562, 577 (3d Cir. 2013). "[S]creening passengers at an airport is an 'administrative search' because the primary goal is not to determine whether any passenger has committed a crime but rather to protect the public from a terrorist attack." Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec., 653 F.3d 1, 10 (D.C. Cir. 2011). "[T]hose presenting themselves at a[n] [airport] security checkpoint thereby consent to a search, and may not revoke that consent if the authorities elect to conduct a search." United States v. Herzbrun, 723 F.2d 773, 776 (11th Cir. 1984).

With these legal principles in mind, we turn to Corbett's claims against defendant Chamizo.

C. The Screening of Corbett's Bags, Cards, and Book

It is well established in this Circuit that supervisory officials, such as defendant Chamizo, are "not liable under Bivens for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability." Gonzalez v. Reno, 325 F.3d 1228, 1234 (11th Cir. 2003) (quotation marks and alteration omitted). Thus, to state a Bivens claim based on supervisory liability against defendant Chamizo, Corbett must allege that supervisor Chamizo "personally participated in the alleged unconstitutional conduct or that there is a causal connection between the actions of a supervising official and the alleged constitutional deprivation."

Franklin v. Curry, 738 F.3d 1246, 1249 (11th Cir. 2013) (quotation marks omitted).

Corbett, however, did not allege that defendant Chamizo personally opened any bags, inspected the bags' contents, or verbally directed the TSA employees to do any specific conduct. Corbett alleged only that Chamizo "was the 'officer'-in-charge on the scene and approved of the searches." Such "vague and conclusory allegations" do not establish a causal connection between a supervisor and unlawful activity. See Gonzalez, 325 F.3d at 1235.

Alternatively, even if this allegation was arguably sufficient, the search of Corbett's bags and contents did not violate the Fourth Amendment. Here, the TSA screeners were authorized, and indeed required, to inspect Corbett's carry-on bags and the items contained therein. See 49 U.S.C. § 44901. Further, by the time the TSA employees inspected Corbett's bags, Corbett had refused to allow the TSA employees to fully screen his person—either through use of a full-body scanner or the standard pat-down procedure. A reasonable TSA employee, at that point, could have suspected that Corbett's refusals resulted from his desire to conceal unlawful activity. See Herzbrun, 723 F.2d at 777 (stating that, "in deciding the lawfulness of a[n] [airport security] search, a court should focus on the reasonableness of the investigating officer's actions . . . . on the basis of the articulable facts at hand" to determine whether the officer "had reason to suspect that the defendant was carrying materials that could endanger the safety of a flight"). Thus, a thorough screening of Corbett's bags was reasonable, even beyond the point of determining whether those belongings contained weapons.

As the TSA security director pointed out, when TSA screeners find identification cards in a passenger's carry-on luggage, they must inspect those cards "to ensure that the passenger does not use a different name than the name that was submitted for vetting." A passenger's use of multiple names could indicate that the passenger is trying to circumvent the TSA's security measures. We recognize that Corbett's amended complaint alleged that a TSA screener looked through the pages of one of Corbett's books "in a manner that was not to determine if [weapons, explosives, or other incendiary devices] were somehow hidden within the book, but rather to inspect the text of the book." It was not unreasonable for a TSA screener to closely inspect Corbett's book, though, because "thin, flat explosives called 'sheet explosives' may be disguised as a simple piece of paper or cardboard, and may be hidden in just about anything, including a laptop, book, magazine, deck of cards, or packet of photographs." United States v. McCarty, 648 F.3d 820, 825 (9th Cir. 2011). Furthermore, a TSA screener could have reasonably factored the contents of a book possessed by a passenger into the totality of the circumstances relevant in determining whether the passenger presented a security threat. See George, 738 F.3d at 585–86 (noting that the facts that an individual carried a book critical of American foreign policy in the Middle East and Arabic flashcards were circumstances which "raised the possibility that [the individual] might pose a threat to airline security"). For all of these reasons, Corbett's allegations about the search of his bags and the items therein failed to state a Fourth Amendment claim against defendant Chamizo individually.

D. Detention of Corbett

We also affirm the dismissal of Corbett's detention claim against defendant Chamizo. Corbett consented to a screening of his person by presenting himself at the security checkpoint. Corbett could not revoke this consent by merely leaving the checkpoint. See Herzbrun, 723 F.2d at 776 (observing that a rule allowing an individual to revoke his consent to an airport security screening by leaving the airport security checkpoint "constitute a one-way street for the benefit of a party planning airport mischief, since there is no guarantee that if he were allowed to leave he might not return and be more successful" (quotation marks omitted)). We recognize that the entire security checkpoint screening lasted approximately one hour. Yet, accepting the alleged facts as true, Corbett was primarily to blame for that screening lasting as long as it did. If Corbett had permitted the TSA screeners to conduct a full pat-down screening, he would have swiftly proceeded to his gate. Although a seizure may become "unlawful if it is prolonged beyond the time reasonably required to complete [its lawful] mission," see Illinois v. Caballes, 543 U.S. 405, 407, 125 S. Ct. 834, 837 (2005), we cannot say that the time here, given all the factual circumstances, was unreasonable for the TSA employees to satisfy themselves that Corbett did not pose a security threat.

V. THE TORT CLAIMS AGAINST THE UNITED STATES

We turn to Corbett's tort claims for assault, false arrest, invasion of privacy, and intentional infliction of emotional distress ("emotional distress"), against the United States. The district court dismissed these claims under Rule 12(b)(1) as barred by sovereign

immunity, but Corbett contends the FTCA's limited waiver of sovereign immunity applies to these claims[7].

A. The FTCA's Limited Waiver of Sovereign Immunity

Sovereign immunity protects the federal government and its agencies from civil liability. Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 475, 114 S. Ct. 996, 1000 (1994). The FTCA in 28 U.S.C. § 1346(b) provides a limited waiver of sovereign immunity for tort claims. Motta ex rel. A.M. v. United States, 717 F.3d 840, 843 (11th Cir. 2013). That statute confers on federal district courts exclusive jurisdiction to hear claims against the United States for money damages "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. § 1346(b)(1) (emphasis added)[8].

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[7] We review de novo a district court's dismissal of a claim for lack of subject matter jurisdiction. Digital Props., Inc. v. City of Plantation, 121 F.3d 586, 589 (11th Cir. 1997). Absent a waiver of sovereign immunity, a district court lacks subject matter jurisdiction to hear claims against the United States. Bennett v. United States, 102 F.3d 486, 488 n.1 (11th Cir. 1996).

[8] The statute further provides that the United States is liable only if, under like circumstances, a private person "would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1).

The first problem for Corbett is that this limited waiver of sovereign immunity in § 1346(b)(1) does not apply to claims based on intentional torts of federal employees. 28 U.S.C. § 2680(h). Specifically, § 2680(h), also an FTCA provision, states that the United States does not waive sovereign immunity as to "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." Id. § 2680(h). This part of the FTCA is known as the "intentional torts exception" to the waiver in § 1346(b)(1). Importantly, this intentional torts exception in § 2680(h) is "not limited to the torts specifically named therein, but rather encompasses situations where the underlying governmental conduct which constitutes an excepted cause of action is essential to the plaintiff's claim." O'Ferrell v. United States, 253 F.3d 1257, 1266 (11th Cir. 2001) (quotation marks omitted).

Two of Corbett's intentional tort claims—assault and false arrest—are specifically named in § 2680(h), and thus sovereign immunity is not waived as to those claims. His other intentional tort claims—invasion of privacy and emotional distress—are based on the same underlying governmental conduct as Corbett's excepted claims for assault and false arrest. For example, the amended complaint alleged that the TSA screeners invaded Corbett's privacy by "surround[ing] CORBETT with uniforms," "dump[ing] CORBETT's belongings out on a table," and examining those items. Similarly, Corbett's amended complaint stated that the TSA screeners detained him at the airport security checkpoint and subjected him to "unlawful seizure," which caused him to experience "serious emotional distress." Because Corbett's invasion of

privacy and emotional distress claims are based on the same underlying conduct as his assault and false arrest claims, they are likewise subject to the intentional torts exception to the sovereign immunity waiver. See id. at 1265 (noting that claims of intentional infliction of emotional distress and intrusion upon privacy were barred when they were "derivative from plaintiff's underlying contention that he had been the victim of a false arrest" and "'false arrest' is one of the tort claims barred by 28 U.S.C. § 2680(h)").

B. The Law Enforcement Officer Proviso

We do not stop there, though, because there is also a statutory exception—termed the "law enforcement proviso"—to the statutory intentional torts exception to the sovereign immunity waiver. Immediately after stating that sovereign immunity is not waived with regard to certain intentional tort claims, § 2680(h) states: "Provided, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising . . . out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution." 28 U.S.C. § 2680(h) (second emphasis added).

Thus, the sovereign immunity waiver applies to the intentional tort claims here if the TSA employees involved were "investigative or law enforcement officers of the United States Government." Id. Section 2680(h) defines "investigative or law enforcement officer" to mean "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." Id. (emphases added). Several courts have

concluded that TSA screeners perform consensual, pre-boarding administrative searches for certain prohibited items (i.e., knives, firearms, liquids, gels, etc.), not traditional law enforcement functions such as making arrests and executing searches for violations of federal law, although their reasoning has varied. See Pellegrino v. U.S. Transp. Sec. Admin., No. 09-5505, 2014 WL 1489939, at *5–8 (E.D. Pa. Apr. 16, 2014) (concluding that the phrase "searches . . . for violations of Federal law" is ambiguous and determining that an analysis of the FTCA's legislative history "strongly suggests that the law enforcement proviso was enacted as a response to specific egregious behavior during raids conducted by federal law enforcement officers, and was not intended to be expansive enough to cover airport security screeners" (omission in original)); Walcott v. United States, No. 13-CV-3303, 2013 WL 5708044, at *3 (E.D.N.Y. Oct. 18, 2013) (concluding that "the meaning of 'empowered by law to execute searches . . . for violations of Federal law' under § 2680(h) is narrower than the meaning of a 'search' under the Fourth Amendment—that is, just because something is an administrative search under the Fourth Amendment, it doesn't mean the person doing the search is a law enforcement officer under § 2680(h)" (omission added)); Weinraub v. United States, 927 F. Supp. 2d 258, 263 (E.D.N.C. 2012) (observing that TSA screeners' power "is limited to pre-boarding searches for certain prohibited items," and concluding that "it would be unreasonable to interpret 'to execute searches' to include the TSA screener's performance of narrowly focused, consensual searches that are administrative in nature, when considered in light of the other traditional law enforcement functions (i.e., seizure of evidence and arrest) that Congress chose to define 'investigative or law enforcement officers'");

Coulter v. U.S. Dep't of Homeland Sec., No. 07-4894 (JAG), 2008 WL 4416454, at *7–9 (D.N.J. Sept. 24, 2008) (TSA screeners are not law enforcement officers because, inter alia, the statute authorizing airport security screening "does not include language referencing the power of an airport security screener to perform searches")[9].

We need not resolve this thorny "search" issue. The TSA screeners are not subject to the law enforcement proviso for a simpler reason—they are not "officers of the United States Government," as required by §

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[9] See also Hernandez v. United States, No. 12-cv-03165-LTB, 2014 WL 803774, at *6–7 (D. Colo. Feb. 28, 2014) (TSA screeners are not law enforcement officers because the functions named in the law enforcement proviso are "commonly understood to be traditional law enforcement functions . . . commonly performed by FBI agents, Bureau of Prison Officers, postal inspectors, and INS agents, all of which have broad investigative and law enforcement powers, and . . . fall within the law enforcement proviso," whereas TSA screeners only screen passengers for items "which are prohibited on airplanes, but not illegal to possess"); Welch v. Huntleigh USA Corp., No. 04-663 KI, 2005 WL 1864296, at *5 (D. Or. Aug. 4, 2005) (independent contractors performing screening for TSA were not law enforcement officers because "[s]creeners do not have the authority to detain individuals and must call law enforcement officers to search, seize, and arrest individuals if illegal items are found").

2680(h)'s statutory language. The FTCA draws a distinction between a "federal employee" and an "officer of the United States." Specifically, the FTCA waives the government's sovereign immunity for tort claims based on the acts or omissions of "any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. § 1346(b)(1) (emphasis added). Likewise, § 2680, the statute providing exceptions to the FTCA's sovereign immunity waiver, refers to "an act or omission of an employee of the Government." Id. § 2680(a) (emphasis added). The law enforcement proviso in § 2680(h), however, uses the term "officer of the United States," rather than "employee," as is used elsewhere in the FTCA. Id. § 2680(h). This variation in language is not insignificant and shows that the law enforcement proviso applies only when the person, whose conduct is at issue, is an "officer of the United States."

Further, the federal statutes governing airport security screening differentiate between federal employees of TSA and law enforcement officers. Significantly, 49 U.S.C. § 44901 states that "screening . . . shall be carried out by a Federal Government employee." 49 U.S.C. § 44901(a). Congress, however, explicitly authorized the TSA Administrator to "designate an employee of the [TSA] or other Federal agency to serve as a law enforcement officer." Id. § 114(p)(1). Only after being so designated may the TSA employee: (1) "carry a firearm"; (2) "make an arrest . . . for any offense against the United States"; or (3) "seek and execute warrants for arrest or seizure of evidence." Id. § 114(p)(2)(A)–(C). The TSA Administrator thus must affirmatively act to make a TSA employee an "officer." Merely being a TSA employee does not make one an "officer of the United States Government."

These provisions show that, within TSA, there are: (1) federal employees, who conduct airport security screening; and (2) law enforcement officers, who perform various law enforcement functions. The TSA screeners here are the first type—federal employees conducting airport security screening. Nothing in the record in this particular case shows that the TSA employees who screened Corbett had been specially designated as officers under § 114(p). In fact, in Corbett's discussion of the separate FOIA issue in this appeal, Corbett's brief actually admits that "the TSA is not a law enforcement agency." Because the TSA screeners here are federal employees, the law enforcement proviso regarding "officers of the United States" is inapplicable.

Therefore, the intentional torts exception does apply, and sovereign immunity bars Corbett's intentional tort claims against the United States, which included claims for assault, false arrest, invasion of privacy, and emotional distress. We affirm the district court's dismissal of those tort claims.

VI. THE PRIVACY ACT CLAIMS AGAINST THE TSA

The district court also did not err in dismissing Corbett's Privacy Act claims. The TSA is subject to the Privacy Act's requirements for federal agency recordkeeping. See 5 U.S.C. § 552a(e)(1)–(12). The basis for Corbett's claims is that TSA's Chamizo, at the security checkpoint, photocopied Corbett's driver's license and boarding pass without first complying with the Privacy Act's requirements.

To prevail on a Privacy Act claim under § 552a(g)(4), an individual must show, inter alia, that he suffered actual damages. Speaker v. U.S. Dep't of Health &

Human Servs., 623 F.3d 1371, 1381 (11th Cir. 2010). The Privacy Act does not allow for recovery of non-pecuniary damages stemming from "loss of reputation, shame, mortification, injury to the feelings and the like." Fed. Aviation Admin. v. Cooper, 566 U.S. ___, 132 S. Ct. 1441, 1449, 1451 (2012) (quotation marks omitted) (construing § 552a(g)(4)). We need not evaluate whether Corbett stated a Privacy Act violation because he alleged no pecuniary loss or actual damages as a result of a Privacy Act violation.

Alternatively, Corbett contends that the district court should have liberally construed his Privacy Act claims as requests for an injunction ordering the TSA "to amend" its records by destroying the copies of Corbett's driver's license and boarding pass. The Privacy Act does provide for injunctive relief in the form of ordering an agency to: (1) "amend the individual's record in accordance with his request or in such other way as the court may direct"; or (2) produce to the individual "any agency records improperly withheld from him." 5 U.S.C. § 552a(g)(2)–(3). Corbett's injunction claim, however, fails because an individual must file with an agency a formal request for an amendment or disclosure of records before seeking an injunction. See id. § 552a(d)(1), (d)(2). Corbett did not allege that he made such a request. Thus, he is not entitled to injunctive relief.

VII. THE FOIA CLAIM AGAINST TSA

The next issue is whether the district court properly granted the TSA's motion for summary judgment on Corbett's FOIA claim[10].

A. FOIA Principles

Under FOIA, a government agency must disclose to the public requested documents unless they fall within one of the nine statutory exemptions. Moye, O'Brien, O'Rourke, Hogan, & Pickert v. Nat'l R.R. Passenger Corp., 376 F.3d 1270, 1276 (11th Cir. 2004); see 5 U.S.C. § 552(a). An agency may redact portions of material from requested records. See U.S. Dep't of State v. Ray, 502 U.S. 164, 173, 112 S. Ct. 541, 547 (1991). The agency has the burden of showing that a FOIA exemption supports its withholding a document or making redactions. Id.

Here, the TSA produced documents and videos, but redacted: (1) the names of the TSA employees and Sheriff's officer; and (2) the faces of all individuals in the videos. The TSA relied on Exemption 6.

B. FOIA Exemption 6

Exemption 6 provides that an agency need not disclose "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). To determine whether Exemption 6 applies, we ask: (1) whether the withheld material was within "personnel, medical, or similar files"; and, if so, (2) whether "a balancing of individual privacy

[10] We review a grant of summary judgment de novo, and the district court's factual findings for clear error. Robinson v. Tyson Foods, Inc., 595 F.3d 1269, 1273 (11th Cir. 2010).

interests against the public interest in disclosure reveals that disclosure of the information would constitute a clearly unwarranted invasion of personal privacy." News-Press v. U.S. Dep't of Homeland Sec., 489 F.3d 1173, 1196–97 (11th Cir. 2007) (quotation marks omitted).

FOIA does not provide a definition of the term "similar files." In U.S. Department of State v. Washington Post Co., 456 U.S. 595, 102 S. Ct. 1957 (1982), the Supreme Court instructed that "the phrase 'similar files' was to have a broad, rather than a narrow, meaning." Id. at 600, 102 S. Ct. at 1961. Exemption 6 is not limited to "a narrow class of files containing only a discrete kind of personal information." Id. at 602, 102 S. Ct. at 1961. Instead, the exemption applies to "detailed Government records on an individual which can be identified as applying to that individual." Id. (quotation marks omitted). Congress's "primary purpose in enacting Exemption 6 was to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." Id. at 599, 102 S. Ct. at 1960. In light of this purpose, the Supreme Court determined that Congress intended that "the balancing of private against public interests, not the nature of the files in which the information was contained, should limit the scope of the exemption." Id.

Further, an agency's investigative reports constitute "similar files" for purposes of Exemption 6. See Forest Serv. Emps. for Envtl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1023–24 (9th Cir. 2008) (based on the Supreme Court's Washington Post opinion, the court had "little difficulty in concluding that the names and identifying information contained in [an agency report

of an investigation into a fatal forest fire] me[t] the 'similar file' requirement of Exemption 6"); Wood v. Fed. Bureau of Investigation, 432 F.3d 78, 86 (2d Cir. 2005) ("Exemption 6 applies to any personal information contained in files similar to personnel or medical files, such as administrative investigative records."); see also Judicial Watch, Inc. v. Food & Drug Admin., 449 F.3d 141, 152–53 (D.C. Cir. 2006) (an agency's redactions of names from records of the approval process for a drug was permissible under Exemption 6 because the statute exempts "not just files, but also bits of personal information, such as names and addresses, the release of which would create a palpable threat to privacy" (quotation marks and alterations omitted)).

Our circuit has applied Exemption 6 in several cases. In Federal Labor Relations Authority (F.L.R.A.) v. U.S. Department of Defense, 977 F.2d 545 (11th Cir. 1992), this Court held that the Defense Department's disclosure of a list of names and addresses of non-union federal employees within a relevant bargaining unit would result in an unwarranted invasion of personal privacy and withholding was allowed under Exemption 6. Id. at 547–50. We noted that "employee addresses say nothing about a federal agency's character or function" and therefore "the public interest side of the balance" carried little weight. Id. at 548. We rejected as overly tenuous any suggestion that the public had an interest in being able to contact "federal employees to learn something about the government" when there was no allegation that the government was operating irregularly. Id. On the other hand, we recognized strong privacy interests in one's address, as "an address . . . . is an indicator of one's choice of neighborhoods and one's affluence." Id. at 548–49. Therefore, we held that the privacy

interests clearly outweighed the public interests in disclosure. Id. at 549–50.

Next, in Office of the Capital Collateral Counsel v. U.S. Department of Justice, 331 F.3d 799 (11th Cir. 2003), this Court concluded that, under Exemption 6, the Department of Justice ("DOJ") could withhold certain documents pertaining to internal disciplinary proceedings against a former Assistant U.S. Attorney ("AUSA"). Id. at 801–02, 804. We noted that "[t]he fact that [the AUSA] was a public official . . . [did] not render her interest in preserving her personal privacy without weight." Id. at 803. The AUSA's privacy interest was significant, as the documents reflected "her private thoughts and feelings concerning her misconduct . . . and its effect on her, her family, and her career." Id. And there was "already substantial information available to the public about [the AUSA's] misconduct and her subsequent sanctions." Id. at 804. This already-public information satisfied the public interest in knowing about how the DOJ responded to the misconduct, and the AUSA's personal reflections about her misconduct were "not relevant to the public interest in knowing what the government is doing." Id.

In News-Press v. U.S. Department of Homeland Security, this Court permitted the Department of Homeland Security ("DHS") to redact from documents the names of individuals who applied for federal disaster relief funds after four hurricanes struck Florida. 489 F.3d at 1177–79, 1205. However, we required the DHS to disclose the applicants' addresses. Id. at 1205. This Court observed that the three news organizations did not articulate a "terribly strong" public interest in disclosure of the names. Id. at 1185, 1205. Further, withholding the names

would "substantially reduce the potential for negative secondary effects of disclosing the addresses." Id. (quotation marks and alteration omitted).

C. Applying Exemption 6 Here

Under the particular facts here, we conclude Exemption 6 permitted the limited redactions the TSA made. The TSA produced its full investigative files, including incident reports, witness statements, and videos. The TSA protected only names in the documents and faces on the videos. The TSA's documents and videos describe in full detail every aspect of the events at issue and the TSA's response to those events. Disclosure of the names of the individuals in those documents, or faces of the individuals, would not add to a reader's or viewer's understanding of those documents and images. See F.L.R.A., 977 F.2d at 548. Additionally, the TSA employees named and depicted are low-level screeners and security-checkpoint supervisors, and disclosure of their personal identities would not shed any light on the TSA's operations. See Wood, 432 F.3d at 88–89; see also Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec., 384 F. Supp. 2d 100, 116–17 (D.D.C. 2005) (concluding Exemption 6 allowed the TSA to redact names of its employees in documents because: (1) "federal employees have an identifiable privacy interest in avoiding disclosures of information that could lead to annoyance or harassment"; (2) "the public interest in learning the names of . . . lower-echelon employees is small"; and (3) there was no showing how the employees' names would help the public "understand how the agency performs its statutory duties").

Here, the individuals, named or depicted, have privacy interests in avoiding disclosure of their

personal identifying information. See U.S. Dep't of Defense v. F.L.R.A., 510 U.S. 487, 500, 114 S. Ct. 1006, 1015 (1994). And, Corbett has not shown the public has a compelling interest in disclosure of these personal identities. Corbett has not offered a reasonable, much less a compelling, explanation for a public interest, or even his own personal need, for the names and faces in the records here. For example, Corbett does not contend that knowing the personal identities would assist him in this or other litigation. In short, based on the record before us, we conclude the individuals' privacy interests outweigh any public interest in disclosure of the names and faces here. We thus affirm the district court's summary judgment to the TSA on Corbett's FOIA claim[11].

VIII. CONCLUSION

In light of the foregoing, we affirm.

AFFIRMED.

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[11] Because Exemption 6 supports all of the TSA's redactions, we need not consider whether Exemption 7(c) provides a separate basis for the redactions of the Sheriff's officer's name. Additionally, we affirm the district court's dismissal of the civil conspiracy claim, as well as the claim under the Florida Constitution. We agree with the district court's cogent analysis of these claims.

Appendix D – Eleventh Circuit Motion for Reconsideration Denied (Aug. 19th, 2014)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-14053

JONATHAN CORBETT,

Plaintiff-Appellant,

versus

TRANSPORTATION SECURITY ADMINISTRATION,
UNITED STATES OF AMERICA,
ALEJANDRO CHAMIZO,
BROWARD COUNTY,
BROWARD SHERIFF'S OFFICE,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before HULL, WILSON and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/

UNITED STATES CIRCUIT JUDGE

ORD-42

Appendix E – Constitutional Provision

The Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Appendix F – Statutes

28 U.S.C. § 2680(h)

[The provisions of this chapter and section 1346 (b) of this title shall not apply to —] Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: Provided, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346 (b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

5 U.S.C. § 552(b)(6)

[This section does not apply to matters that are —] personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

49 CFR 1520.5(a)

In general. In accordance with 49 U.S.C. 114(s), SSI is information obtained or developed in the conduct of security activities, including research and

development, the disclosure of which TSA has determined would—

(1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(2) Reveal trade secrets or privileged or confidential information obtained from any person; or

(3) Be detrimental to the security of transportation

49 U.S.C. § 44901(l)(2)

Use of advanced imaging technology.— Beginning June 1, 2012, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall ensure that any advanced imaging technology used for the screening of passengers under this section—

(A) is equipped with and employs automatic target recognition software; and

(B) complies with such other requirements as the Assistant Secretary determines necessary to address privacy considerations.

CERTIFICATE OF COMPLIANCE

I, Jonathan Corbett, hereby declare under penalty of perjury that I have measured the word count of the Petition for Certiorari, excluding appendicies, at 6,930 words, which complies with Rule 33 of this Court.

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CERTIFICATE OF SERVICE

I, Jonathan Corbett, hereby declare under penalty of perjury that I have served this Petition for Certiorari, on:

Solicitor General of the United States
Department of Justice
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Sharon Swingle *(counsel for federal respondents)*
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via USPS Priority Mail on November 14th, 2014.

_____

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