

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DULLAHAN
c/o 1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Plaintiff,

v.

DEFENSE INTELLIGENCE AGENCY
Washington, D.C. 20340

and

DEPARTMENT OF DEFENSE
Washington, D.C. 20301

and

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE
Washington, D.C. 20511

and

FEDERAL BUREAU OF
INVESTIGATION
Washington, D.C. 20530

Defendants.

* * * * *

Civil Action No. 10 - _____

COMPLAINT

Plaintiff John C. Dullahan, Irish émigré, retired U.S. Army Lieutenant Colonel, combat veteran of the Vietnam War, civilian deployer to Iraq, and dedicated federal civil servant of more than 11 years, brings this lawsuit to challenge the actions of the U.S. Government to arbitrarily and unceremoniously remove him from civilian employment

and brand him a risk to the national security interests of the United States without explanation and devoid of due process of law.

The actions of the defendants Defense Intelligence Agency, the Department of Defense, Office of the Director of National Intelligence, and the Federal Bureau of Investigation, jointly and severally, have violated the First and Fifth Amendments to the United States Constitution, the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, the Privacy Act, 5 U.S.C. § 552a *et seq.*, the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, the All Writs Act, 28 U.S.C. § 1651, and Executive Order 12968, as well as violated or improperly interpreted their internal regulations and procedures.

An American citizen, particularly one who has risked his life for his country over the course of five decades, is entitled to know the substantive nature of any charge(s) alleged by the Government against him. He is entitled to notice and opportunity to be heard, which are fundamental principles of due process of law.

Yet combat veteran John Dullahan was, instead, denied everything amidst permanently stigmatizing allegations in the so-called interests of national security, thereby rendering the actions of the defendants unconstitutional and in violation of everything the United States – and the Administration of President Barack Obama in particular - portends to stand for.

JURISDICTION AND VENUE

1. Jurisdiction and venue is proper in this Court under 5 U.S.C. § 702, 28 U.S.C. §§ 1331, 1346 and 2201.

PARTIES

2. Plaintiff John C. Dullahan (“Dullahan”) worked as an Intelligence Officer and supervisor at the Defense Intelligence Agency from 1987 – 1990 and 1997 – 2009. At the time of his termination in March 2009, Dullahan was an Intelligence Officer with the DIA. Several federal agencies have investigated his background and he has been favorably adjudicated numerous times in the past 40 years for access to classified information including up to the Top Secret/Sensitive Compartmented Information (“SCI”) level and a number of especially sensitive Special Access Programs.

3. Defendant Defense Intelligence Agency (“DIA”) is an agency of the United States Government as defined by 5 U.S.C. §§ 552a(a)(1), 701.

4. Defendant Department of Defense (“DoD”) is an agency of the United States Government as defined by 5 U.S.C. §§ 552a(a)(1), 701.

5. Defendant Office of the Director of National Intelligence (“ODNI”) is an agency of the United States Government as defined by 5 U.S.C. §§ 552a(a)(1), 701.

6. Defendant Federal Bureau of Investigation (“FBI”) is an agency of the United States Government as defined by 5 U.S.C. §§ 552a(a)(1), 701.

FACTS

7. In 1967, Dullahan emigrated from Ireland to the United States for the purpose of enlisting in the United States Army.

8. Following his enlistment in 1968, Dullahan was commissioned as an officer in 1970 and served in Vietnam as an Artillery Forward Observer.

9. Dullahan became a U.S. citizen in 1973.

10. In 1979, Dullahan was assigned to Germany as commander of a U.S. artillery unit attached to a German artillery battalion. During his assignment, in working toward certification as an Army European Foreign Area Officer, Dullahan delved into German history, culture, and political issues, improved his German language skills, made professional German contacts and friends, and faithfully represented and promoted to those contacts and friends the ideals of the United States of America.

11. From 1985 to 1986, Dullahan served as part of an American military contingent assigned to the United Nations Truce Supervision Organization in Syria, Lebanon, and Egypt. In the course of these duties, officers from some seventeen countries—including the Soviet Union--routinely worked and socialized together, a practice understood and approved by military managers, including Dullahan's former supervisor in Jerusalem.

12. Following eighteen months of honorable service in the Middle East, Dullahan returned to Washington, D.C. in 1987 to accept an assignment to DIA which lasted until 1990.

13. As the Berlin Wall tumbled and Communism began to fall, Dullahan played an increasingly important and distinguished role in U.S. military relations with the newly emerging Eastern European democracies. In his final Army assignment, Dullahan served from February 1990 to August 1992 as then-Chairman of the Joint Chiefs of Staff General Colin Powell's politico-military advisor for Eastern Europe, advising Powell and senior Pentagon policy-makers in the establishment and expansion of military contacts with the emerging democracies of Eastern Europe and fostering civilian control of their military forces. As part of his duties and often in support of Powell's visits with his own Eastern European military counterparts, Dullahan, per his leadership's direction,

conducted meetings with East European attachés in the Pentagon and at their embassies in Washington, D.C.

14. Additionally, to facilitate planning official exchanges and support Department of Defense policy formulation, Dullahan often had working lunches with the Polish, Czech, and Hungarian attachés. Such lunches and visits were standard procedure for an officer in Dullahan's position on the Joint Staff, and helped inform his advice to senior military members.

15. On one occasion, Dullahan was informed that FBI agents often photographed him (and others) as he entered certain foreign embassies, a practice Dullahan also noticed. Dullahan assumed such surveillance was a routine part of the FBI's longstanding counterintelligence program that monitored Warsaw Pact embassies for signs of unauthorized activities.

16. In or around 1990, a FBI agent called Dullahan and informed him the FBI believed he was consorting with known Communist agents. Dullahan never heard anything further from the FBI about this topic until the events at issue in this matter occurred.

17. As part of his Joint Staff responsibilities, in 1992 Dullahan prepared and accompanied General Powell and other Pentagon seniors on visits to their military counterparts in Eastern Europe. For his exceptional meritorious performance and "singularly distinctive accomplishments" during this critical period of reestablishment of U.S.-Eastern European military relations after more than 45 years, General Powell awarded Dullahan the Defense Meritorious Service Medal.

18. According to the citation, “During his tenure, and due in great part to his personal engagement, United States military relations with the countries of Poland, Hungary, Czechoslovakia, Romania, Bulgaria, and Albania have reached their highest point since 1945. The United States military’s role as an active contributor to United States government policy in Eastern Europe was expanded significantly during Colonel Dullahan’s service.”

19. Dullahan retired from the Army in 1992 as a Lieutenant Colonel after more than two decades of distinguished military service, including airborne and Ranger training, with the 82nd Airborne Division, and combat in Vietnam as an artillery forward observer. During his career, Dullahan learned German, French, and Arabic, became both a European and Middle Eastern Foreign Area Officer, and served in various capacities for the U.S. government in Europe and the Middle East.

20. In September 1997, Dullahan returned to DIA as a civilian employee. In the course of his work for DIA, he successfully completed a polygraph examination during which no issues surfaced.

21. In early 2008 two FBI agents asked Dullahan if he would participate in a special program, subject to approval by then-Director of DIA LTG Michael Maples. In or around February 2008, Dullahan willingly participated in an FBI polygraph as a condition of his participation in the special program.

22. During the polygraph examination, the FBI examiner alleged that Dullahan’s participation in Ranger, Airborne training, and combat duty (as well as his enjoyment of hang-gliding) demonstrated “risk-taking” behavior which made him more likely to seek contact with a foreign intelligence service. The polygraph examiner accused Dullahan of

meeting “Soviet handlers” when he had visited – twenty years earlier – East Germany in the early 1980s, during his U.N. assignment in Syria, and on his numerous official trips to Europe while on the Joint Staff, including trips with General Powell.

23. The polygraph examiner also alleged Dullahan had adopted the Communist beliefs of his liaison counterparts merely by associating with them. The polygraph examiner’s supervisor likewise accused Dullahan of spying for the Soviets. After the exam was complete, FBI officials informed Dullahan he had “failed” the polygraph and was “in big trouble.” At no time did Dullahan make any unfavorable admissions during the course of the polygraph examination that would justify such conclusions. Upon information and belief, the only “evidence” that allegedly existed to support the FBI’s apparent conclusions was, if anything, the technical results of the polygraph examination.

24. Both Dullahan and his wife, who was then and still remains at the time of filing a senior DIA employee, immediately reported the alleged FBI polygraph results to their respective DIA chains of command. Dullahan further requested that DIA conduct an extensive background investigation to clear his name.

25. Shortly thereafter, two FBI officials, Alexis LNU and Carlos LNU, showed Dullahan an outdated 1985 report that contained adverse accusations about his activities and informed him that they understood his probable anxiety about the incident, had no concerns with his foreign contacts, and that a second polygraph would likely resolve the issue. They opined the alleged FBI polygraph failure was unlikely to present an obstacle to Dullahan’s participation in the special program.

26. In or around February 2008, the FBI administered a second polygraph examination to Dullahan and again claimed that he “failed”. At no time before, during or

after the examination did Dullahan make any admissions that could be construed as adverse to his interests.

27. Dullahan then sent separate letters to DIA Director LTG Maples and the FBI protesting what he believed was an unfair process and that the polygraph results were inaccurate. He reiterated his willingness to participate in the special program as the FBI had requested. No written responses were ever received.

28. Shortly thereafter, FBI Special Agents Alexis LNU and Carlos LNU again interviewed Dullahan. During this second meeting, the two Special Agents asked Dullahan why he had not previously reported an unspecified foreign intelligence service “offer.” Apparently, Dullahan had mistakenly typed in one of the letters referenced above the sentence “I went to the home of the Soviet offer [sic].” The word “offer” should have been “officer” and the error was being misinterpreted as if he had gone to a Soviet home and received some form of recruitment “pitch” or “offer”. Special Agents Alexis LNU and Carlos LNU now accused Dullahan of trying to conceal and/or lie about this nonexistent foreign intelligence overture. In fact, Dullahan had received no such pitch or overture but his explanation, however, appeared to fall on deaf ears.

29. On October 1, 2008, Dullahan wrote another letter to the FBI. In it, he once again protested what he believed was an unfair process and that the polygraph results were inaccurate. He again reiterated his willingness to participate in the special program as the FBI had requested. Dullahan requested a personal meeting with the deciding authority and offered to re-take another polygraph examination. No written response was ever received.

30. In November 2008, Dullahan applied for another DIA position on the Joint Intelligence Task Force Combating Terrorism. A DIA counterintelligence official informed him that the two “failed” FBI polygraphs would have to be resolved before Dullahan could receive another position within DIA.

31. On or about December 18, 2008, Scott C. and Cassie LNU, two DIA counterintelligence officers, interviewed Dullahan. They initially appeared satisfied with Dullahan’s explanations and stated that resolving the issue was likely to be a relatively simple matter of administrative action. Furthermore, they also noted that Dullahan was not the first DIA person to experience difficulties with the FBI’s polygraph examinations. They stated that the alleged FBI polygraph failures were unlikely to present a further obstacle to Dullahan’s career and expressed their belief that a DIA polygraph, which was reputedly “fairer,” was likely to clear the matter up. Dullahan willingly agreed to undertake whatever examination DIA deemed necessary to resolve the issue.

32. On February 3, 2009, Dullahan underwent a third polygraph but this time performed by a DIA polygraph examiner. The polygraph examiner informed Dullahan he detected deception. No details were provided to Dullahan to explain the polygraph results, and absolutely no adverse admissions were made by him during the course of the examination.

33. On February 17, 2009, Dullahan was placed on administrative leave and his clearance was suspended without explanation. Upon information and belief, DIA took this action based solely, or at least predominantly, as a result of the technical results of the polygraph examinations.

34. On March 17, 2009, DIA Director LTG Maples personally issued two letters stating that Dullahan's employment with DIA was terminated and his SCI access was permanently revoked. No substantive or detailed reason was given for Dullahan's termination or clearance revocation.

35. Dullahan was denied any opportunity to appeal his clearance revocation. He was, however, offered an opportunity to appeal his termination to the Secretary of Defense but of course that determination was based solely on the clearance revocation decision. In revoking Dullahan's SCI clearance LTG Maples relied on his rarely invoked summary dismissal authority per 10 U.S.C. §1609, DIA Instruction 1426.001, and Defense Directive 5105.21 (dated March 18, 2008); and his summary clearance revocation authority under Intelligence Community ("IC") Policy Guidance Number 704.3 and Executive Order 12968.

36. In his termination and clearance revocation letters, LTG Maples merely cited to "national security" without further explanation to justify DIA's actions. Warren Hall, Deputy General Counsel for DIA, later explained in a letter April 6, 2009 that "Section 1609 is specifically intended for the rare case where the interests of the nation do not permit disclosure to the employee of specific information about the reasons for his removal from federal service."

37. Thus, Dullahan was left with no *de jure* opportunity to appeal his clearance revocation and—without so much as notice of the charges against him—no *de facto* opportunity to appeal his termination.

38. On March 24, 2009, Dullahan was instructed to report to DIA. At a meeting with security and personnel officials he was given the choice of facing termination and

revocation of his clearance with no opportunity for appeal, or quietly retiring with a full pension. If he chose the latter option, Dullahan was informed he would have the opportunity to reapply for a security clearance after one year. Again, when asked, DIA officials refused to provide even a generalized reason for Dullahan's loss of access and termination. Instead, they merely directed his attention to LTG Maples' termination letter that stated: "Circumstances have come to my attention that causes [sic] me to lose faith in your ability to maintain elements of character necessary to sustain eligibility for this access."

39. In order to assert his innocence, as any loyal American would do, Dullahan refused to resign and sought instead to clear his good name. Accordingly, Dullahan was terminated by DIA and his SCI access was revoked without any due process.

40. Upon information and belief, DIA's unfavorable adjudication was based solely, or at least predominantly, on the false technical results of the polygraph examinations. The defendants neglected to consider exculpatory, explanatory, and mitigating information from other sources, nor did they seek such information from Dullahan or others whose names he could have provided. To that end, DIA failed to follow its own regulations and established federal policy requiring evaluation of the "whole person" when adjudicating a clearance.

41. On March 27, 2009, Dullahan's primary attorney, Mark S. Zaid, who is eligible for access to Secret-level information through a favorable adjudication by the Department of Justice and has had authorized access to DIA classified information numerous times since 1993, requested access to all relevant classified information pertaining to Dullahan's situation in order to "properly" or "adequately represent" his client pursuant

to DoD Directive 5200.2-R, C3.4.4.6 (January 1987)(as amended), 32 C.F.R. § 154.16, and any other policy or provision governing access. That same day, Mr. Zaid asked DoD General Counsel Honorable Jeh Charles Johnson to provide details on how Dullahan could appeal his termination to the Secretary of Defense, the only avenue of challenge provided, as well as submitted an identical request for access to classified information.

42. By letter dated April 6, 2009, DIA denied Mr. Zaid's request for access to classified information relevant to Dullahan and declined to provide specific procedures for appeal. By letter dated April 20, 2009, the DoD also denied Mr. Zaid's request for access to classified information.

43. Shortly thereafter, further compounding his financial losses, Dullahan's application for unemployment compensation to the government of the District of Columbia, Department of Unemployment Compensation was rejected for the reason that, "Benefits cannot be paid at this time because there is an unresolved issue on [the unemployment compensation] claim." The decision was ultimately reversed but not before Dullahan suffered financial loss.

44. By letter dated May 22, 2009, Dullahan submitted a timely written appeal to the Secretary of Defense challenging his termination. At the time of the filing of this action, despite the passage of more than seven months, no response has been received.

FIRST CAUSE OF ACTION
(FIFTH AMENDMENT PROCEDURAL DUE PROCESS
AND NAME CLEARING HEARING – REVOCATION OF
SECURITY CLEARANCE – DIA, DoD, ODNI)

45. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

46. Dullahan's security clearance and its concomitant benefits constituted a liberty interest.

47. By revoking Dullahan's security clearance without providing notice of the charges against him and adequate opportunity to refute such charges, DIA violated due process guarantees under the Fifth Amendment.

48. The DIA can not summarily revoke Dullahan's security clearance when such action violates the due process clause of the U.S. Constitution.

49. The DIA failed to provide Dullahan with a statement of reasons or other explanation for its actions, simply citing "the interests of national security" based on authority granted under Executive Order 12968 and by the ODNI through administrative regulation IC Policy Guidance 704.3(D)(2)-(5).

50. Section 5.2(d) of Executive Order 12968 states that "[w]hen the head of an agency or principal deputy personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interest of the United States by revealing classified information, the particular procedure shall not be made available. This certification shall be conclusive." This paragraph violates the due process guarantees of the Fifth Amendment and is unconstitutional on its face.

51. Neither DIA nor DoD has revealed the existence of such "certification" having been made.

52. ODNI IC Policy Guidance 704.3 (D)(2)-(5) deprives employees of any due process guarantees in the event an IC Agency head invokes the undefined "interest of national security." Employees have no opportunity to appeal their clearance revocation.

ODNI IC Policy Guidance 704.3 (D)(2)-(5), therefore, violates the due process guarantees of the Fifth Amendment and is unconstitutional on its face.

53. DIA did not define the “interest of national security” in its decision to revoke Dullahan’s clearance, but its willingness to allow Dullahan to resign and encourage his reapplication for a clearance in one year calls into question the sincerity and substance of the merits behind DIA’s decisions.

54. By revoking Dullahan’s clearance and simultaneously removing all due process guarantees, DIA has acted ultra vires and violated the Fifth Amendment.

55. Although DIA did not specifically cite DoD Directive 5200.2-R, C8.2.4 (1996), which acts similarly to ODNI IC 704.3, as a basis for its refusal to provide Dullahan procedural or substantive due process, to the extent it is relied upon it is also in violation of the Fifth Amendment.

56. As no appropriate and/or effective opportunity was ever provided Dullahan for an opportunity to refute the allegations made against him or clear his name, he is entitled to notice of the charges against him, a name-clearing hearing and a written decision arising there from.

57. As a result, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

SECOND CAUSE OF ACTION
(FIFTH AMENDMENT LIBERTY INTEREST – DIA, DoD, FBI)

58. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

59. The DIA, DoD and FBI engaged in the conduct described above in order to unconstitutionally deprive Dullahan of his long-standing career within the Intelligence Community, primarily on the basis of unscientific and unreliable false polygraph results.

60. As a result of the actions of one or more of the defendants, Dullahan has been falsely branded as a national security threat, lost employment and participation in at least one specific program, lost and/or will lose the opportunity to obtain other positions of employment in his field of expertise, had his reputation in the community impugned which has resulted in foreclosing his freedom to take advantage of a range of employment opportunities, and has been precluded from further pursuing his chosen career.

61. The DIA, DoD and/or FBI have constructively excluded Dullahan from participating in his chosen profession within the national security and civilian defense community. Should Dullahan apply to work for a federal agency or a private civilian employer for a position that requires even the most rudimentary background investigation, the DIA, DoD and/or FBI will disseminate information, to include known inaccurate and false information, it maintains in its files about Dullahan that will adversely impact upon his reputation and harm or eliminate his chances for employment. As a result, the DIA, DoD and/or FBI will have effectively stigmatized Dullahan's reputation and imparted a "status change" upon him that has implicated his liberty interests.

62. One or more of the defendants has already disseminated false information concerning Dullahan to other agencies, as well as uploaded the information into federal databases that can be, and have been, accessed by private contractors.

63. As a result of the actions of one or more of the defendants, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

THIRD CAUSE OF ACTION
(ADMINISTRATIVE PROCEDURES ACT – DoD)

64. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

65. By letter dated May 22, 2009, Dullahan submitted a timely written appeal to the Secretary of Defense challenging his termination.

66. No final decision has been issued by the Secretary of Defense or his designee.

67. DoD has unreasonably delayed issuing its final decision thereby violating 5 U.S.C. § 706 (1).

68. As a result, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

FOURTH CAUSE OF ACTION
(ADMINISTRATIVE PROCEDURES ACT – DIA)

69. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

70. The DIA must administer its polygraph examinations and utilize the results in compliance with Department of Defense Directive Number 5210.48-R (January 1985).

71. Pursuant to C1.1.3. polygraph examinations shall be considered as supplementary to, not as a substitute for, other forms of investigation that may be required under the circumstances. Moreover, no unfavorable administrative action will be taken solely on

the basis of a polygraph examination chart that indicates deception, except as provided in paragraph C1.1.6. In taking the actions it did against Dullahan DIA violated this provision.

72. Paragraph C1.4.1.prohibits the DIA from rendering a final administrative determination based solely on the results of an analysis of the polygraph charts. In taking the actions it did against Dullahan DIA violated this provision.

73. Assuming the DIA polygraph of Dullahan actually registered deception, DIA violated the provisions of C1.1.6 which states: “When deception is indicated by the examiner's interpretation of polygraph charts in polygraph examinations conducted under the provisions of subparagraph C1.2.2.1. and paragraph C1.3.3., below, an in depth interview of the subject will be undertaken by the examiner immediately following the running of the chart, to resolve any indication of deception. If the indication of deception cannot be resolved through such means, the subject will be so advised and the results of the examination forwarded to the requesting Agency. If, after reviewing the polygraph examination results, the requesting Agency determines that they raise significant question relevant to the subject’s clearance or access status, the subject shall be given an opportunity to undergo additional examination by the examining Agency, using the same or a different examiner.”

74. DIA failed to afford Dullahan with an opportunity to undergo an additional examination in violation of C1.1.6.

75. Upon information and belief, DIA failed to conduct a comprehensive investigation of Dullahan. To the extent any investigation did occur no derogatory

information upon which an unfavorable administrative action may be independently based was obtained.

76. Upon information and belief, no DIA authority designated in paragraph C4.2.2. of Directive Number 5210.48-R issued a “written finding that the information in question is of such extreme sensitivity that access under the circumstances poses an unacceptable risk to the national security.”

77. Additionally, proper written notification was never provided to Dullahan pursuant to C1.1.6.1. of Directive Number 5210.48-R which states that “although the investigation that followed the indication of deception during the polygraph examination did not in and of itself provide an independent basis for denial of access, a determination to deny such access to the subject had been made, based upon the finding of the determining authority that access under the circumstances poses an unacceptable risk to the national security.”

78. Additionally, DIA used the polygraph instrument as a psychological prop when it conducted its interrogation of Dullahan in violation of C3.4.4. of Directive Number 5210.48-R.

79. To the extent DIA relied upon the polygraph results obtained by the FBI, it violated its applicable internal regulations.

80. The DIA is not permitted to violate Dullahan’s constitutional rights, including but not limited to those under the First and Fifth Amendments, or violate its own regulations.

81. DIA must also follow Department of Defense Directive Number 5210.48 (December 24, 1984), which contains similar provisions to that cited above in Directive Number 5210.48-R. Additionally, however, DIA violated ¶4.4 of Directive Number 5210.48 which states that “The probing of a person’s thoughts or beliefs and questions

about conduct that has no security implication or is not directly relevant to an investigation are [sic] prohibited (such as religious beliefs and affiliations, beliefs and opinions regarding racial matters, and *political beliefs and affiliations of a lawful nature* [emphasis added]).” By drawing conclusions and making personnel decisions based on Dullahan’s lawful political beliefs and affiliations, DIA violated its own regulation.

82. DIA maintains a specific system of records within its Privacy Act system of records wherein information pertaining to Dullahan and his polygraph/security processing are filed. The DIA permits information and records from within this system to be disseminated as a routine use, under the appropriate circumstances, to other federal, state, and local agencies. Additionally, the DIA’s violation of its internal regulations pertaining to its polygraph examination in Dullahan’s case has resulted in inaccurate and harmful adverse information being maintained within databases available to third parties including defense contractors.

83. Dullahan plans to apply and already has applied for employment that requires a security clearance, and the inaccurate and harmful information placed by DIA, or which will be or has been disseminated by DIA, has and will have an adverse impact upon Dullahan.

84. DIA, its officers and employees, committed and undertook actions that were arbitrary, capricious and/or an abuse of discretion pertaining to Dullahan, including, but not limited to, conducting an improper polygraph examination and unfairly relying on the results of the polygraph examination, failing to conduct a comprehensive investigation, and taking actions that were unwarranted by the facts, unsupported by substantial evidence, in violation of internal regulations and federal statutes as set forth above,

contrary to constitutional right, power, privilege, or immunity, or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right thereby causing Dullahan to suffer legal wrongs under the Administrative Procedures Act.

85. As a result of DIA's actions, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

FIFTH CAUSE OF ACTION
(ADMINISTRATIVE PROCEDURES ACT – FBI)

86. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

87. The FBI has engaged in, and continues to engage in, an unlawful and/or flawed process with respect to the utilization of polygraph examinations.

88. The FBI is not permitted to violate Dullahan's constitutional rights, including but not limited to those under the First and Fifth Amendments, or violate its own regulations.

89. The FBI maintains a specific system of records within its Privacy Act system of records wherein information pertaining to Dullahan and his polygraph/security processing are filed. The FBI permits information and records from within this system to be disseminated as a routine use, under the appropriate circumstances, to other federal, state, and local agencies. Additionally, the FBI's violation of its internal regulations pertaining to its polygraph examination in Dullahan's case has resulted in inaccurate and harmful adverse information being maintained within databases available to third parties including defense contractors.

90. Dullahan plans to apply and already has applied for employment that requires a security clearance, and the inaccurate and harmful information placed by FBI in its file or

transmitted to DIA, or which will be or has been disseminated by FBI, has and will have an adverse impact upon Dullahan.

91. The FBI, its officers and employees, committed and undertook actions that were arbitrary, capricious and/or an abuse of discretion pertaining to Dullahan, including, but not limited to, conducting an improper polygraph examination and unfairly relying on the results of the polygraph examination, failing to conduct a comprehensive investigation, and took actions that were unwarranted by the facts, unsupported by substantial evidence, in violation of internal regulations and federal statutes as set forth above, contrary to constitutional right, power, privilege, or immunity, or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right thereby causing Dullahan to suffer legal wrongs under the Administrative Procedures Act.

92. As a result of the FBI's actions, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

SIXTH CAUSE OF ACTION
**(FIRST AMENDMENT RIGHT OF ASSOCIATION/ADMINISTRATIVE
PROCEDURES ACT/DECLARATORY JUDGMENT ACT – DIA, DoD, FBI)**

93. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

94. Upon information and belief, one or more of the defendants effectively punished Dullahan for lawful, proper, and necessary associations with foreign contacts by revoking his clearance and terminating his employment based on his contacts in violation of Dullahan's First Amendment right of association.

95. At all times, Dullahan's foreign associations were in furtherance of his professional objectives on behalf of the U.S. government and approved by his supervisors, or they were innocuous friendships that did not violate any U.S. government rules, regulations, or norms. At no time did Dullahan seek to conceal his foreign associations from the U.S. government. He was and has been both forthcoming and candid in reporting all such foreign contacts or relationships.

96. By contrast, one or more of the defendants, through their officers and employees, have allowed their personal, unfounded, and ill-informed biases regarding U.S. liaison relationships with the former Soviet Union, as well as their individual political beliefs, to improperly and illegally color their personnel decisions. The false accusations that Dullahan consorted with Communists and adopted Communist beliefs belie an unfounded anti-Soviet paranoia far out of proportion to the innocuous and/or professional nature of Dullahan's relationships. None of the defendants have proffered any factual evidence indicating Dullahan's foreign associations were illegal, suspect, dangerous, deceptive, improper, or even untoward.

97. Upon information and belief, the DIA and FBI used otherwise normal security proceedings as a vehicle to act on their anti-Soviet fears and political beliefs—demonstrably misplaced in the case of Dullahan—and retaliate against him based on the exercise of his First Amendment right of association.

98. The retaliation for the lawful exercising of Dullahan's First Amendment rights, as implemented by internal regulations as well (such as DoD Directive Number 5210.48), resulted in an adverse official action by the DIA to falsely, deliberately and unconstitutionally revoke Dullahan's a security clearance and terminate his employment.

99. As a result of the actions of one or more of the defendants, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

SEVENTH CAUSE OF ACTION
(PRIVACY ACT – DIA, FBI)

100. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

101. The DIA and FBI maintain records within one or more Privacy Act Systems of Records that pertain to Dullahan.

102. The DIA and FBI failed to maintain records concerning Dullahan “with such accuracy, relevance, timeliness, and completeness” as would have been necessary “to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to” Dullahan that should have been “made on the basis of said record and consequently determinations were made which” were adverse to Dullahan thereby violating 5 U.S.C. § 552a(e)(5).

103. Upon information and belief, in conducting its investigation, the FBI relied almost exclusively on a single derogatory report that was over 24 years old and which contained false accusations and misleading information, as well as failed to interview other individuals, including Dullahan’s commanding officer, who were familiar with the situation and who could have provided favorable contrary, explanatory, and/or mitigating information.

104. The FBI and DIA also failed to afford Dullahan an adequate opportunity to correct the record and/or ignored his attempts to do so. Indeed, the FBI redacted the name of the author of the report, which was from more than 24 years ago, that was shown to

Dullahan after his first polygraph in or around February 2008. Dullahan has yet to be provided with a copy of any investigative file to permit a full response.

105. In failing to properly maintain said records, the DIA and FBI violated the provisions of 5 U.S.C. § 552a (g)(1)(C).

106. Upon information and belief, the DIA and FBI continue to maintain records pertaining to Dullahan in violation of 5 U.S.C. § 552a (g)(1)(C).

107. As a result of the actions of the DIA and FBI, Dullahan lost his employment and the opportunity to obtain other positions of employment, has had his reputation in the community impugned which has resulted in foreclosing his freedom to take advantage of a range of employment opportunities, and has precluded him from pursuing his chosen career as a national security advisor for the intelligence community.

108. The DIA and FBI, its employees and officers, to include one or more of the individual defendants, knew or should have known that their actions were improper, unlawful and/or in violation of the Privacy Act.

109. The DIA and FBI, its employees and officers, to include one or more of the individual defendants, acted intentionally or willfully in violation of Dullahan's privacy rights.

110. As a result of the actions of one or more of the defendants, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

EIGHTH CAUSE OF ACTION
**(FIRST AMENDMENT RIGHT TO COUNSEL/ADMINISTRATIVE
PROCEDURES ACT/DECLARATORY JUDGMENT ACT – DIA, DoD)**

111. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

112. The DIA and DoD have denied Dullahan's access to cleared counsel where classified information is concerned. Based on the defendants DIA and DoD's position, Dullahan's attorney may not review any or be given access to classified information relevant to his client's representation. In addition, Dullahan is not permitted to share classified information with his cleared counsel, nor have counsel present to represent and protect his interests during classified discussions. Should Dullahan share classified information with counsel he would be subject to civil and/or criminal penalties.

113. Dullahan's counsel Mark S. Zaid (as well as Bradley P. Moss) has been favorably adjudicated by the Department of Justice for eligibility to access to classified information up to and including the Secret level.

114. The DIA and DoD are obligated to accept the favorable security eligibility determination issued by the Department of Justice regarding Dullahan's counsel pursuant to paragraph 2.4 of Executive Order 12968, Chapter 4 of DoD 5200.2-R (February 23, 1996) and the July 16, 1998 memorandum issued by Senior Civilian Official Arthur L. Money re: "Clearance and Access Reciprocity in the Department of Defense".

115. Dullahan has determined his counsel possesses the requisite need-to-know relevant classified information pertaining to his employment that is essential to the protection of his legal rights.

116. The DIA and DoD's denial of classified access to Dullahan's cleared counsel constitutes an effective denial of counsel and implicates and violates Dullahan's protected rights under the First Amendment.

117. In order to challenge his termination and clearance revocation, Dullahan and/or his cleared counsel must have access to classified information in order to properly and effectively ensure protection of his legal interests.

118. By denying Dullahan's cleared attorney access to classified information necessary to provide advice regarding and preserve the rights of his client, the DIA has violated Dullahan's First Amendment right to counsel. Specifically, the DIA's decision contravenes Dullahan's established First Amendment right to share information, including classified information, with a cleared attorney when such sharing is necessary for an attorney to advise his client of his rights. Evaluating, investigating, and litigating these rights depends upon open and frank conversations between Dullahan and his attorney.

119. Dullahan's interest in speaking freely with his cleared attorney is interwoven with his right to effective assistance of counsel. Equally important is his cleared counsel's ability to access information crucial to preserving his client's rights.

120. Similarly, the first step in the resolution of any legal problem is ascertaining the factual background and sifting through the facts with an eye to the legally relevant. When that first step is compromised, a plaintiff suffers a concrete injury. Furthermore, without knowing all that his client and the defendants know, a plaintiff's cleared counsel cannot be prepared to adequately represent his client's interests.

121. Thus, when Dullahan was deprived of his ability to convey all known knowledge to his cleared attorney, and the attorney is likewise unable to access information relevant to his ensuring his client's rights, Dullahan suffers an actual, concrete injury.

122. As a result of the actions of the DIA and DoD, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

NINTH CAUSE OF ACTION
(VIOLATION OR UNREASONABLE INTERPRETATION OF
INTERNAL REGULATIONS – ATTORNEY ACCESS TO
CLASSIFIED INFORMATION – DIA AND DoD)

123. Dullahan repeats and realleges the allegations contained in paragraphs 7 through 44 above, inclusive.

124. The DIA and DoD have denied Dullahan's access to cleared counsel where classified information is concerned. Based on the DIA and DoD's position, Dullahan's cleared attorney may not review any or be given access to classified information relevant to his client's representation. In addition, Dullahan is not permitted to share classified information with his cleared counsel, nor have counsel present to represent and protect his interests during classified discussions. Should Dullahan share classified information with counsel he would be subject to civil and/or criminal penalties.

125. Dullahan's counsel Mark S. Zaid (as well as Bradley P. Moss) has been favorably adjudicated by the Department of Justice for eligibility to access to classified information up to and including the Secret level.

126. The DIA and DoD are obligated to accept the favorable security eligibility determination issued by the Department of Justice regarding Dullahan's counsel pursuant to paragraph 2.4 of Executive Order 12968, Chapter 4 of DoD 5200.2-R (February 23,

1996), and the July 16, 1998 memorandum issued by Senior Civilian Official Arthur L. Money re: "Clearance and Access Reciprocity in the Department of Defense".

127. Dullahan has determined his counsel has the requisite need-to-know relevant classified information pertaining to his employment that is essential to the protection of his legal rights.

128. Additionally, need-to-know determinations are nothing more than fact-based relevancy findings that fall within the jurisdiction and authority of federal courts.

129. The DIA and DoD's denial of classified access to Dullahan's counsel constitutes an effective denial of counsel and is in violation or inconsistent with the relevant existing regulations to include, but not limited to, DoD Directive 5200.2-R, C3.4.4.6 (February 23, 1996), DoD Regulation 5200.1-R, Information Security Program (January 1997) and 32 C.F.R. § 154.16.

130. In order to challenge his termination and clearance revocation, Dullahan and/or his cleared counsel must have access to classified information in order to properly and effectively ensure protection of his legal interests.

131. As a result of the actions of DIA and DoD, Dullahan has suffered adverse and harmful stigmatizing effects, including, but not limited to, lost or jeopardized present or future employment and/or financial opportunities.

WHEREFORE, John Dullahan requests that the Court award him the following relief:

(1) Declare and find that the defendants violated Dullahan's right to due process under the Fifth Amendment to the Constitution, and require the defendants to provide Dullahan with notice of the charges, a name clearing hearing in which he can refute and/or challenge the accuracy of the information underlying the fact-based findings that

resulted in the revocation of his clearance access and employment termination and any other appropriate relief to be determined in future proceedings;

(2) Declare and find that the DIA and DoD violated Dullahan's First Amendment right to counsel when it denied counsel's access to classified information in order to represent his client and require that access be granted in order to participate in future proceedings to include, but not limited to, a name clearing hearing;

(3) Declare and find that the defendants violated Dullahan's liberty interest under the Fifth Amendment to the Constitution, and require the DIA and DoD to rescind the revocation and termination notices and reinstate Dullahan's employment;

(4) Declare and find that the defendants violated Dullahan's freedom of association under the First Amendment to the Constitution, and require the DIA and DoD rescind the revocation and termination notices and reinstate Dullahan's employment;

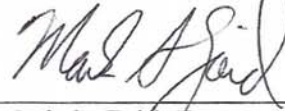
(5) Declare and find that the DIA, DoD and/or FBI violated the Administrative Procedure Act, their internal regulations and/or statutes governing their conduct involving Dullahan, and require the DIA and DoD to rescind the revocation and termination notices and reinstate Dullahan's employment and award, to the extent it is available, any appropriate monetary relief to be determined in future proceedings but not less than \$100,000;

(6) Declare and find that the defendants violated the Privacy Act by failing to make reasonable efforts to assure that such records regarding Dullahan are accurate, complete, timely and relevant prior to dissemination, and award any damages in an amount not less than \$1,000, or other appropriate relief, that are deserved there from;

- (7) Declare and find that the DIA and FBI's use of and reliance on the polygraph violated Dullahan's constitutional rights and applicable internal regulations;
- (8) Declare and find IC Policy Guidance 704.3 (D)(2)-(5) unconstitutional;
- (9) Declare and find 10 U.S.C. § 1609 and all regulations based thereon unconstitutional;
- (10) Declare and find Section 5.2(d) of Executive Order 12968 and all regulations based thereon unconstitutional;
- (11) Invoke its equitable powers to expunge all records or information maintained by the defendants that are inaccurate, derogatory or infringe upon Dullahan's express or implied constitutional or statutory rights;
- (12) Award any damages caused by the defendants' actions in an amount to be determined in later proceedings but no less than \$100,000;
- (13) Refer those DIA and FBI officials responsible for violating the Privacy Act for prosecution under 5 U.S.C. § 552a(i)(1);
- (14) Award Dullahan the costs of the action and reasonable attorney fees under the Equal Access to Justice Act, the Privacy Act or any other applicable law; and
- (15) Grant such other relief as the Court may deem just and proper.

Date: January 7, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark S. Zaid". The signature is written in a cursive style with a horizontal line underneath it.

Mark S. Zaid, Esq.

D.C. Bar #440532

Bradley P. Moss, Esq.

D.C. Bar #975905

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