UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JANE DOE, and B.D., and R.D., individually, and as parents and natural guardians of Jane Doe,

Plaintiffs,

v. Case No: 8:17-cv-1678-T-26TGW

UNITED STATES OF AMERICA and PINELLAS COUNTY SCHOOL BOARD,

Defendants.
_____/

UNITED STATES OF AMERICA'S MOTION TO DISMISS CAUSES OF ACTION I, II, AND VI, AND INCORPORATED MEMORANDUM OF LAW

Defendant United States of America ("United States" or "Defendant"), hereby moves to dismiss the Causes of Action I, II, and VI, pursuant to Fed. R. Civ. P. 12(b)(1) and (6). In support thereof, the United States shows as follows:

INTRODUCTION

Jane Doe is a victim of a crime committed by James Millard Knuckles. When the sexual assault(s) occurred, Mr. Knuckles was retired from military service and was an employee of Pinellas County—not the United States. Nevertheless, Ms. Doe filed an administrative claim seeking $5 billion in damages from the United States.[1] The United States certainly does not condone the reprehensible and unlawful actions by Mr.

[1] Ms. Doe's parents, B.D. and R.D., filed untimely claims that are barred.

Knuckles, but Congress has not waived the United States' sovereign immunity to allow this suit to proceed. Moreover, Plaintiffs' allegations fail to state a claim for which relief may be granted. Accordingly, Causes of Action I, II, and VI must be dismissed.

MEMORANDUM OF LAW

Jane Doe was a cadet, and Mr. Knuckles one of her instructors, in Clearwater High School's Marine Corps Junior Reserve Officers' Training Corps ("JROTC"). Amend. Compl., ¶ 16 (Doc. 4). JROTC units are established pursuant to 10 U.S.C. § 2031. A secondary educational institution, such as Clearwater High School, may apply for a unit if it meets the prescribed standards and criteria. 10 U.S.C. § 2031(a)(1). The Secretary of the military department concerned may authorize qualified institutions, such as Clearwater High School, "to *employ*, as administrators and instructors in the program, retired officers and noncommissioned officers who are in receipt of retired pay. . ." 10 U.S.C. § 2031(d) (emphasis added). Those institutions pay the instructors directly, but may seek reimbursement in an "amount equal to one-half of the amount paid to the retired member by the institution for any period. . ." 10 U.S.C. § 2031(d)(1). Notwithstanding this reimbursement, Congress made clear that retired members employed by an academic institution are not members of the military employed by the United States. 10 U.S.C. § 2031(d)(2) ("Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or inactive duty training for any purpose.").

Consistent with Section 2301, the Department of Defense promulgated an

Instruction[2] concerning the policy, responsibilities and procedures for the organization and administration of the JROTC program. DoDI 1205.13 (February 6, 2006) (attached hereto as Exhibit A). The Instruction states that the "institution [i.e. Clearwater High School] is the employing agency and shall pay the full amount due the JROTC instructor." *Id.* at E2.1.3. The school and the JROTC instructor are to negotiate the pay and responsibilities. *See* id. (The Instruction does not attempt "to cap or limit the amount of pay that may be agreed between the individual JROTC instructor and the employer [institution]."); *see also* id. at E2.1.4 (School may contract with the instructor to perform additional duties). "Retired officer and NCO instructors are *employees of the school and are responsible to the school authorities* for the conduct of the JROTC Program." *Id.* at E2.2.3 (emphasis added). Therefore, the school, not the United States, exercises daily control over the JROTC instructors.

Likewise, a school that establishes a Marine Corps JROTC program agrees that it is "the employing agency and shall pay the full amount due the JROTC instructor." MCO 1533.6E at 2-2 (attached hereto as Exhibit B). "As school employees, instructors are accountable to the School District for compliance with School District policies." *Id.* at 6-6. The school, not the United States, decides which certified candidate to hire and only notifies the Marine Corps within thirty days after the hiring. *See* id. at 4-2 ("final decision on employment rests with the local school board or its authorized

[2] DoD Instructions and Marine Corps Orders are regulations. *See Sec'y of Navy v. Huff*, 444 U.S. 453, 456 n. 2 (1980)(characterizing the Pacific Fleet Instruction 5440.3C, § 2604.2(2) (1974); First Marine Aircraft Wing Order 5370.1B, ¶ 5(a)(2) (1974); and Iwakuni Marine Corps Air Station Order 5370.3A, ¶ 5(a)(2) (1973) as regulations).

representatives."); *see also* id. at 2-3 ("Hiring of an Instructor. Forward to the MCJROTC Finance Section the original, facsimile or digital copy of DD Form 2767 within 30 days of employment."). Likewise, the school has full authority to terminate a JROTC instructor and only is required to notify the Marine Corps of the termination. *Id.* at 2-3 ("termination of an instructor not of a routine nature described above requires submission of a DD Form 2767.). Finally, it is explicitly stated that: "retired MCJROTC instructors are not covered by the Federal Tort Claims Act." *Id.* at 5-6.

I. COURT LACKS SUBJECT MATTER JURISDICTION

This Court may consider extrinsic evidence as part of a factual attack on subject matter jurisdiction. *See Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1233 (11th Cir. 2008) ("a factual attack on a complaint challenges the existence of subject matter jurisdiction using material extrinsic from the pleadings, such as affidavits or testimony."). "In assessing the propriety of a motion for dismissal under Fed. R. Civ. P. 12(b)(1), a district court is not limited to an inquiry into undisputed facts; it may hear conflicting evidence and decide for itself the factual issues that determine jurisdiction." *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1243 (11th Cir. 1991). As such, "[w]hen a defendant properly challenges subject matter jurisdiction under Rule 12(b)(1), the district court is free to independently weigh facts, and 'may proceed as it never could under Rule 12(b)(6) or Fed. R. Civ. P. 56.'" *Turcios v. Delicias Hispanas Corp.*, 275 F. App'x 879, 880 (11th Cir. 2008) (*quoting Morrison v. Amway Corp.*, 323 F.3d 920,

925 (11th Cir. 2003)). The United States hereby makes both a facial[3] and factual attack, pursuant to Rule 12(b)(1).

This Court lacks subject matter jurisdiction because Congress has not waived the United States' sovereign immunity. Indeed, "[t]he United States cannot be sued except as it consents to be sued." *Powers v. United States*, 996 F.2d 1121, 1124 (11th Cir. 1993). "Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *FDIC v. Meyer*, 510 U.S. 471, 475 (1994); *see United States v. Mitchell*, 463 U.S. 206, 212 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction."). Plaintiffs bear the burden of establishing subject matter jurisdiction and, thus, must prove an explicit waiver of immunity. *See Ishler v. Internal Revenue,* 237 F. App'x 394, 398 (11th Cir. 2007). While the Federal Tort Claims Act ("FTCA") provides a limited waiver of sovereign immunity, it does not apply to this case because: (1) Mr. Knuckles was not an employee of the United States; (2) the claims arise from an assault and/or battery, which are excluded from the FTCA; and (3) Mr. Knuckles' actions were not committed within the course and scope of his alleged employment.

A. Knuckles Was Not a Government Employee

The FTCA authorizes suit 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 .

[3] The Court may dismiss this case without relying on extrinsic evidence.

. . ." 28 U.S.C. § 1346(b)(1); *see United States v. Orleans*, 425 U.S. 807, 813 (1976). Accordingly, suits brought under the FTCA are generally limited to those claims arising from the negligent conduct of government employees. 28 U.S.C. § 1346(b). The FTCA retains sovereign immunity over claims against contractors. *See Tisdale v. U.S.*, 62 F.3d 1367, 1371 (11th Cir. 1995).

Whether an individual is an employee of the United States for purposes of the FTCA is determined by federal law. *See Logue v. United States*, 412 U.S. 521, 528 (1973). A person is not an 'employee of the government' for FTCA purposes unless the government controls and supervises the day-to-day activities of the individual. *Means v. United States*, 176 F.3d 1376, 1379 (11th Cir. 1999); *see Logue*, 412 U.S. at 526–32; *Orleans*, 425 U.S. at 815. This standard is generally referred to as the "*Logue*/*Orleans* daily-detailed-control test." *See Cavazos By & Through Cavazos v. United States*, 776 F.2d 1263, 1264 (5th Cir. 1985).

In *Cavazos*, "[t]he sole question presented ask[ed] whether the JROTC instructors were employees of the federal government, for whose negligence the United States may be held liable, or employees of the school district as an independent contractor, in which case the government could not be held accountable." *Cavazos*, 776 F.2d at 1264. Like Mr. Knuckles, the JROTC instructors at issue "were retired military personnel; they were civilians. Any doubt that might be harbored as to their status evanesces in light of the language of 10 U.S.C. § 2031(d)(2): 'Notwithstanding any other provision of law, such a retired member [of the military serving as a certified JROTC instructor] is not, while ... employed [as a JROTC instructor], considered to be on active duty or inactive

duty training for any purpose.'" *Id.* at 1265. The Fifth Circuit found that "certifying the instructors, providing manuals and uniforms, paying one-half the minimum salary of the certified instructors, providing broad outlines and goals, and conducting an annual inspection of the [High School] JROTC unit was insufficient to satisfy the *Logue-Orleans* test." *Id.* at 1266. It further noted indications of congressional intent that civilian JROTC instructors were not to be considered federal employees. *Id.* at 1266 n.7 (citing 10 U.S.C. § 2031(d); Sen.Rep. No. 1514, 88th Cong., 2d Sess. 2, reprinted in 1964 U.S.Code Cong. & Ad.News 3943, 3944; H.Rep. No. 925, 88th Cong., 1st Sess. 26, reprinted in 110 Cong.Rec. ——, ——, cf. 32 CFR § 111.7(a)(2) & (3); 32 CFR § 111.7(b)(3)).

Like the JROTC instructors in *Cavazos*, Mr. Knuckles was not an employee of the United States. He was hired by defendant Pinellas County School Board to be a JRTOC instructor at Clearwater High School. *See* Amend. Compl., ¶¶ 15 ("This is an action for damages as the result of sexual abuse upon the Plaintiff, Jane Doe, when she was a minor high school student by a teacher.") and 95 ("On August 8, 2014, PCSB hired MSG Knuckles as MCJROTC Marine Instructor at Clearwater High School.") (Doc. 4); Declaration of Ralph W. Ingles at ¶ 3 ("Ingles Decl.") (attached hereto as Exhibit C). While employed by Clearwater High School as a JROTC instructor, his salary was fully paid by Clearwater High School. *See* Ingles Decl. at ¶ 6; DoDI 1205.13 at E2.1.3 (February 6, 2006) ("institution [i.e. Clearwater High School] is the employing agency and shall pay the full amount due the JROTC instructor."); MCO 1533.6E at 2-2 ("the employing agency and shall pay the full amount due the JROTC instructor.").

As a Clearwater High School JROTC instructor, Mr. Knuckles was responsible to Clearwater High School authorities. *See* Ingles Decl. at ¶ 7. "Retired officer and NCO instructors are employees of the school and are responsible to the school authorities for the conduct of the JROTC Program." DoDI 1205.13 at E2.2.3 (February 6, 2006); *see* MCO 1533.6E at 6-6 ("As school employees, instructors are accountable to the School District for compliance with School District policies."). The United States neither controlled, nor supervised, the day-to-day activities of Mr. Knuckles. *See* Ingles Decl. at ¶¶ 8 & 9. Therefore, Plaintiffs cannot establish that Mr. Knuckles was an employee under the *Logue/Orleans* daily-detailed-control test.

Because Mr. Knuckles was not an employee of the United States, the FTCA does not waive sovereign immunity in this case. As a result, this Court lacks subject matter jurisdiction.

B. Plaintiffs' Claims Fall Within the Intentional Tort Exception to the FTCA

Even if Mr. Knuckles was an employee of the United States, this Court would still lack subject matter jurisdiction because claims arising out of intentional torts are generally excepted from the FTCA. The waiver of sovereign immunity provided by the FTCA is subject to enumerated exceptions, 28 U.S.C. §§ 2680(a)–(n). The exception relevant in this case is § 2680(h), which, inter alia, preserves the Government's immunity from suit on "[a]ny claim arising out of assault [or] battery." The Supreme Court has referred § 2680(h) as the "intentional tort exception." *Levin v. United States*, 568 U.S. 503, 506–07 (2013), *United States v. Shearer*, 473 U.S. 52, 54 (1985).

FTCA exceptions, such as the intentional tort exception, "must be strictly construed

in favor of the United States" and, when an exception applies, a court will lack subject matter jurisdiction over the action. *Zelaya v. United States*, 781 F.3d 1315, 1326–27 (11th Cir.), cert. denied, 136 S. Ct. 168 (2015) (quoting *JBP Acquisitions, LP v. United States ex rel. FDIC*, 224 F.3d 1260, 1263–64 (11th Cir. 2000). "[A] court must strictly observe the 'limitations and conditions upon which the Government consents to be sued' and cannot imply exceptions not present within the terms of the waiver." *Alvarez v. United States*, 862 F.3d 1297, 1301–02 (11th Cir. 2017) (*quoting Zelaya,* 781 F.3d at 1322).

Here, Plaintiffs bring this "action for damages as the result of sexual abuse upon the Plaintiff, Jane Doe, when she was a minor high school student by a teacher." Amend. Compl., ¶ 15. Plaintiffs allege that Mr. Knuckles "coerced and pressured Jane to have sex with him, and ultimately raped her" on five separate occasions. Amend. Compl., ¶¶ 34-39, 59 and 76-80 (Doc. 4). As a result, Plaintiffs' causes of action fall within the intentional tort exception to the FTCA.

Plaintiffs "cannot avoid the reach of § 2680(h) by framing [their] complaint in terms of negligent failure to prevent the assault and battery." *United States v. Shearer*, 473 U.S. 52, 55. (1985). Section 2680(h) does not merely bar claims for assault or battery; in sweeping language it excludes *any* claim arising out of assault or battery. *Id.* The Supreme Court has read this provision to cover claims that sound in negligence but stem from a battery committed by a Government employee. Thus, "the express words of the statute" bar Plaintiffs' first cause of action against the United States. *Id.* (quoting *United States v. Spelar*, 338 U.S. 217, 219 (1949)).

C. Knuckles Was Not Acting Within the Course and Scope of Employment

The FTCA only allows suits for torts committed by a federal employee "acting within the scope of his office or employment." 28 U.S.C. § 1346(b)(1). "Generally, sexual assaults and batteries by employees are held to be outside the scope of an employee's employment and, therefore, insufficient to impose vicarious liability on the employer." *Nazareth v. Herndon Ambulance Serv., Inc.*, 467 So.2d 1076, 1078 (Fla. 5th DCA 1985); *see Peluso v. United States*, No. 10-80076-CIV, 2011 WL 902624, at *4 (S.D. Fla. Mar. 8, 2011) ("sexual harassment amounting to assault and battery normally does not fall under the FTCA"). Unless a plaintiff can establish that the abuse occurred in furtherance of the employer's business, this type of conduct is not within the scope of employment. *Agriturf Mgmt., Inc. v. Roe*, 656 So.2d 954 (Fla. Dist. Ct. App. 1995) (finding abuse occurring on Agriturf's property during time perpetrator closing business not within scope of employment because sexual abuse not in furtherance of employer's business objectives); *see Mason v. Fla. Sheriffs' Self–Ins. Fund*, 699 So.2d 268 (Fla. Dist. Ct. App. 1997) (holding sexual assault by officer not within scope of employment, even though officer on duty, in uniform and serving warrant on woman he raped).

In *Goss v. Human Servs. Assocs., Inc.*, 79 So. 3d 127, 132 (Fla. Dist. Ct. App. 2012), the employee's duties entailed working with the equestrian program and counseling. The court correctly observed that the sexual assault was not committed for any therapeutic purpose. *Id.* The court noted that the employee actively concealed the sexual contact because she knew that it was conducted only to satisfy her carnal desires and not in furtherance of her duties. *Id.* As a result, the court found that the sexual assault was

outside the course and scope of her employment. *Id.*

In *Casey v. City of Miami Beach*, 789 F.Supp.2d 1318 (S.D. Fla. 2011), the court determined on a motion to dismiss that sovereign immunity precluded the imposition of vicarious liability for a sexual battery committed by a police officer against an arrestee. The court found that the sexual battery was not "activated by any purpose to serve the City," and therefore that the officer was not acting within the course and scope of his employment when he committed the assault. *Casey*, 789 F.Supp.2d at 1320-21. The court in Casey found the "conclusory" allegations of the complaint legally insufficient to sustain a vicarious-liability claim at the motion to dismiss stage with respect to the plaintiff's sexual-assault claim. *See* id.

In *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353, 356 (Fla. Dist. Ct. App. 2001), the Third District Court of Appeal dismissed a vicarious liability claim against a church for the church pastor's sexual assault of a member of the congregation. *Iglesia*, 783 So. 2d 358. The court found the assault to be beyond the scope of the pastor's employment, noting that "[w]hile [the pastor] may have had access to [the plaintiff] because of his position as the Church pastor ... he was not engaging in authorized acts or serving the interests of the Church during the time he tried to seduce her or on the day he raped her." *Id.* Like the pastor in *Iglesia*, Mr. Knuckles' sex crimes were "independent, self serving acts" he committed outside the scope of employment. *See Iglesia*, 783 So. 2d at 358. Accordingly, the United States is immune from this suit.

II. PLAINTIFFS FAIL TO STATE A CLAIM

Plaintiffs' Amended Complaint should be dismissed for failure to state a claim for which relief may be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Id.* (*quoting Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555, 127 S.Ct. 1955. Indeed, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (*citing Twombly*, 550 U.S. at 556). To meet this "plausibility standard," a plaintiff must "plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citing *Twombly*, 550 U.S. at 556).

A. Knuckles Was Not a Government Employee

In their First Cause of Action, Plaintiffs allege "[t]he United States' Negligent Hiring and Supervision of Master Sergeant James M. Knuckles.") Under Florida law, "[n]egligent hiring occurs when, prior to the time the *employee* is actually hired, the *employer* knew or should have known of the employee's unfitness, and the issue of liability primarily focuses upon the adequacy of the *employer's* pre-employment investigation into the *employee's* background. *Garcia v. Duffy*, 492 So. 2d 435, 438–39

(Fla. Dist. Ct. App. 1986) (emphasis added). Similarly, "[n]egligent supervision occurs when during the course of employment, the *employer* becomes aware or should have become aware of problems with an *employee* that indicated his unfitness, and the *employer* fails to take further actions such as investigation, discharge, or reassignment." *Dep't of Envtl. Prot. v. Hardy*, 907 So.2d 655, 660 (Fla. Dist. Ct. App. 2005) (emphasis added).

In their Second Cause of Action, Plaintiffs allege that the United States is vicariously liable for the actions of Mr. Knuckles. Under the doctrine of respondeat superior, an employer cannot be held liable for the tortious or criminal acts of an employee, unless the acts were committed during the course of the employment and to further a purpose or interest, however excessive or misguided, of the employer. *Iglesia*, 783 So. 2d at 356.

Plaintiffs fail to state a claim for vicarious liability and negligent hiring or supervision because the United States neither hired nor employed Mr. Knuckles. *See* Amend. Compl., ¶ 95 ("On August 8, 2014, PCSB hired MSG Knuckles as MCJROTC Marine Instructor at Clearwater High School."); MCO 1533.6E at 4-2 ("final decision on employment rests with the local school board or its authorized representatives."). Indeed, retired officers such as Mr. Knuckles "are *employees of the school and are responsible to the school authorities* for the conduct of the JROTC Program." MCO 1533.6E at E2.2.3 (emphasis added); *see* DoDI 1205.13 at E2.1.3. (February 6, 2006) ("The institution [i.e. Clearwater High School] is the employing agency and shall pay the full amount due the JROTC instructor."); MCO 1533.6E at 6-6 ("As school employees, instructors are accountable to the School District for compliance with School District policies."). Because the power of supervision was vested in Clearwater High School, the United

States had no duty to exercise supervisory power it did not have. *See Elders v. United Methodist Church*, 793 So. 2d 1038, 1041 (Fla. Dist. Ct. App. 2001) ("Because the power of supervision was vested in the District Superintendent, not in the congregation, we conclude that there was no duty on the part of St. John's to exercise supervisory power it did not have.").

Nevertheless, even if Mr. Knuckles was an employee hired by the United States, Plaintiffs do not allege that the United States knew or should have known Mr. Knuckles, specifically, was unfit. Rather, Plaintiffs make the absurd and highly offensive suggestion that the United States should have known Mr. Knuckles was unfit because it "knew or should have known of the potential for rape, seduction, and/or coerced sexual intercourse of female student cadet recruits by MCJROTC instructors because the same violations have occurred [by others] numerous times in the past." Amed. Compl., ¶ 17. By Plaintiffs rationale, every school system in Florida would be held strictly liable for sexual assaults by a teacher, because some teachers at other schools have engaged in that unlawful activity in the past. Florida law imposes no such burden. *See, e.g. Garcia*, 492 So. 2d at 441 ("Even actual knowledge of an employee's criminal record does not establish, as a matter of law, the employer's negligence in hiring him.")

B. Cause of Action VI is Barred

Under the FTCA, a claim is "forever barred" unless it is "presented in writing to the appropriate Federal agency within two years after such claim accrues." 28 U.S.C. § 2401(b). A claim under the FTCA generally "accrues at the time of injury." *Diaz v. United States*, 165 F.3d 1337, 1339 (11th Cir. 1999). "When more than one person has a

claim arising from the same incident, each person shall file a claim separately" and the claim "shall be signed by the claimant personally or by a duly authorized agent." 32 C.F.R. § 750.6.

The date of the last injury alleged in the Amended Complaint was February 13, 2015. *See* Amend. Compl., ¶¶ 39, 59, 71 & 80. B.D. and R.D. did not present signed individual claims to the Navy until May 10, 2017.[4] Because the claims were presented more than two years after the claim arose, it is forever barred.

While the FTCA's time bar is subject to equitable tolling, *United States v. Kwai Fun Wong*, 135 S. Ct. 1625, 1638 (2015), equitable tolling is appropriate only "when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999) (per curiam). "The plaintiff bears the burden of showing that such extraordinary circumstances exist." *Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006). Because equitable tolling is an extraordinary remedy, it "should be extended only sparingly." *Id.* (internal quotation marks omitted). The Eleventh Circuit has rejected arguments that ignorance of the law justifies equitable tolling. *See Wakefield v. R.R. Ret. Bd.*, 131 F.3d 967, 970 (11th Cir. 1997). As a result, equitable tolling is not appropriate in this case.

[4] By letters dated January 12, 2017, B.D. and R.D. were advised they had not presented a proper claim.

CONCLUSION

Based on the forgoing, the United States respectfully requests that the Amended Complaint be dismissed for lack of subject matter jurisdiction and for failure to state a claim for which relief may be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice to counsel of record.

By: *s/ Sean P. Flynn*
SEAN P. FLYNN
Assistant United States Attorney