

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DARYL J HARRIS II; §
GIOVANA FRAYRE; §
BRITTNEY SMITH; §
ELVEREDUARDO DIAZ-CATACOLI; §
AND MICHAEL LAM §
PLAINTIFFS, §

V §

NO. _____

BOARD OF REGENTS OF TEXAS §
SOUTHERN UNIVERSITY; §
UNIVERSITY; AUSTIN A. LANE §
IN HIS OFFICIAL CAPACITY AS §
PRESIDENT TEXAS SOUTHERN §
UNIVERSITY AND INDIVIDUALLY; §
KENDALL HARRIS IN HIS OFFICIAL §
CAPACITY AS PROVOST & VICE §
PRESIDENT TEXAS SOUTHERN §
UNIVERSITY AND INDIVIDUALLY; §
OSCAR H. CRINER IN HIS OFFICIAL §
CAPACITY AS INTERIM ASSOCIATE §
DEAN FOR ADMINISTRATION AND §
DEVELOPMENT AND INDIVIDUALLY; §
TERENCE H. FONTAINE IN HIS §
OFFICIAL CAPACITY AS DIRECTOR §
OF AVIATION AND INDIVIDUALLY; §
VERNON J BAKER INDIVIDUALLY; §
TASJAH HALL INDIVIDUALLY. §
DEFENDANTS. §

JURY REQUESTED

**PLAINTIFFS DARYL J. HARRIS II, GIOVANA FRAYRE, BRITTNEY SMITH, MICHAEL LAM, AND ELVEREDUARDO DIAZ'S
ORIGINAL COMPLAINT**

1. This case alleges violations of the Fifth Amendment taking of private property for public use, and due process violations. Such claims are codified under 42 U.S.C.

§1983. Further, the Civil Rights Attorney Fees Act, as amended, is applicable to this case under 42 U.S.C. § 1988.

2. Also, this case alleges violations of the First Amendment right to free speech and violation of due process via the Fourth Amendment and Fourteenth Amendment.

3. Plaintiffs bring claims under 18 U.S.C. 1964 et. seq. Racketeering Influence Corruption Organizations Act for wire fraud 18 U.S.C. § 1343 and mail fraud 18 U.S.C. § 1341.

4. Additionally, this case alleges State claims under pendent or supplemental jurisdiction for Common Law Fraud and Assault.

5. Jurisdiction of this Court is invoked under 28 U.S.C. § 1343 (1), 28 U.S.C. § 1331 and 18 U.S.C. § 1964.

6. The acts or omissions which serve as the basis for this cause of action occurred in Harris County, Houston, Texas, and venue is proper in this Court under 29 U.S.C. § 1391 (b).

PARTIES

7. Plaintiff Daryl J. Harris II (“Harris” or “Plaintiff Harris”) is a veteran of the U.S. Armed Forces. Harris is no longer a student at Texas Southern University (“TSU”). He resides in California.

8. Plaintiff Britteny Gabrielle Tokewa Smith (“Smith”) is a veteran of the U.S. Armed Forces. Smith is a graduate of TSU. She currently resides in Harris County, Texas.

9. Plaintiff Giovana Frayre (“Frayre”) is a veteran of the U.S. Armed Forces. Frayer is no longer a student at TSU and was forced to transfer to a functioning flight program. She resides in Harris County, Texas.

10. Plaintiff Michael Lam (“Lam”) a student paying using the Tomorrow Fund is no longer a student at TSU and was forced to transfer to a functioning flight program. He resides in Harris County, Texas.

11. Plaintiff ElverEduardo Diaz-Catacoli (“Diaz”) a student paying utilizing the Federal Stafford loan program is no longer a student at TSU and was forced to transfer to a functioning flight program. He resides in Harris County, Texas.

12. Defendant Board of Regents of Texas Southern University (“Board” or “university”) was created by statute and may sue and be sued. The Board may be served by serving Glenn O. Lewis, Chairman of the Board, at Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

13. Defendant Austin A. Lane (“Lane”), President of Texas Southern University, is being sued in his official capacity and individually. This defendant may be served process at Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

14. Defendant Kendal Harris (“Defendant Harris”), Provost and Vice President of Texas Southern University, is being sued in his official capacity and individually. This defendant may be served process at Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

15. Defendant Oscar H. Criner (“Criner”), Interim Associate Dean of Administration and Development, is being sued in his official capacity and individually. This defendant may be served process at Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

16. Defendant Terence H. Fontaine (“Fontaine”), Director of Aviation, is being sued in his official capacity and individually. This defendant may be served process at Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

17. Defendant Vernon J. Baker (“Baker”), Program Director, is being sued individually. This defendant may be served process at Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

18. Defendant Tasjah Hall (“Hall”), Instructor, is being sued individually. This defendant may be served process at Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

FACTS

Plaintiffs Background

19. Harris, Frayre, and Smith (collectively hereinafter “the veterans” and/or “veteran students”), enrolled into the university using “Post 9/11 G.I. Bill” benefits which is codified under 38 U.S.C. 33. Smith began attending the university to take private pilot flight training in Spring 2017. Harris and Frayre began attending the university to take private pilot flight training in Spring 2018. The university collected funds from the Veterans Administration to cover the special laboratory fee for the veterans. None of the veterans received more than 12 hours of training.

20. Lam attended the university Spring 2018. He utilized the state program of the Texas Tomorrow Fund to pay for his laboratory fees. He only received 6 hours of training.

21. Diaz attended the university from Fall 2016 to Fall 2017. Diaz borrowed \$28,000 from the federal Stafford loan program to attend the flight training program. During his tenure he was given only 2 hours of flight training by Texas Southern University and 7 hours by their contractor.

Background of The University and Its Flight Program

22. Texas Southern University is a historical black university located in Houston, Texas. The university was opened with a special designation to help educate the

urban inner city and minorities. The university was the State's first black institution that would allow minorities to attend law school.

23. The university in the late 1980's received a federal grant from the Federal Aviation Administration ("FAA") to train air traffic controllers. The grant allowed for the university to have a state-of-the-art air traffic control simulator along with two aircraft simulators. The goal of the FAA was to allow individuals to obtain a bachelors in Transportation Management with an emphasis in airway science. During this time period the program was successful at training some of the nations leading air traffic controllers.

24. Once the FAA stopped funding the grant, the program dwindled and had enrollment numbers as low as 10 students in the entire degree program. Hardly, enough to justify the existence of the transportation department.

25. During the period of 2005 to 2010, protest and turmoil existed at Texas Southern University.

26. During the years 2010 to 2012, the black pilots that graduated from the university began meeting with the new university officials about creating a flight program that would increase the number of minority pilots in the airline industry. The proposal included purchasing or leasing aircraft and providing *ab initio* flight training. The goal was to take a student from zero flight time to a commercial license with multi-engine rating within four years while obtaining a bachelors degree. The

former President John Rudley authorized the program and began placing funding into the newly developed flight program.

27. The university has several colleges including the College of Science, Engineering and Technology (hereinafter “CSET”). During the development of the new flight program the President allowed the flight portion to become a stand-alone department within CSET. When President Lane Austin took over the flight program it was placed back under the umbrella of the Transportation Department because the transportation department could no longer justify its existence (i.e. low enrollment numbers) and layoffs would certainly occur. Given the high interest in flight training by veterans and regular students the newly developed flight program proved to be a “gold mine” of revenue for the transportation department which meant the other degree programs that were failing could be spared.¹

28. The program currently advertises via the internet that students can obtain undergraduate degrees in Aviation Science Management and a Bachelor of Science degree in Aviation Management with Professional Pilot Concentration (hereinafter “Pilot Concentration”). *See* Exhibit 1.

29. The Courses for the Pilot Concentration included FAA part 141 Ground and Flight Training². The flight training consisted of courses that would teach the

¹ Counsel for Plaintiffs met with the interim Provost, Dr. Bobby Wilson, and he explained this rationale to him.

² Flight training in the United States is codified under 14 U.S.C. 61 and 14 U.S.C. 141. The type of training is simply referred to as training “under 141 or part 61.” In order to conduct training under part 141, the school

students to fly general aviation aircraft and obtain their private pilot license, instrument rating, and commercial license. Each license or rating had a ground portion and flight portion. The students were required to pay a special laboratory fee for the flight training portion. The lab fee for the private pilot flight training was \$12,990.00. This fee covered the cost of operating the aircraft, maintenance, insurance, fuel, landing fees, and instructor cost. The program lab fee was for a minimum of 35 flight training hours.

**Factual Allegations of Defendant University's
Common Pattern and Practice of Financial Fraud and Mismanagement**

30. TSU has engaged in a common pattern and practice of allowing employees engage in financial fraud, abuse of federal and state funds, civil right rights violations, and violating public trust.

31. For example, in the mid-1990's TSU while under the direction of President James Douglas began running the university in a financial deficit. This deficit was caused by the university engaging in the practice of "over-enrolling" students in order to receive advanced funding from the federal government. This deficit prevented students who utilized the Federal Student Program from receiving their financial refund checks in a timely manner and resulted in students not being able to

must have certain approvals from the FAA. One of the major requirements, is to have a chief pilot that possess a flight instructor certificate and a minimum number of flight hours.

pay for housing, food, books, and other basic needs to attend college. (i.e. misuse of federal funds)

32. Then, in the late 1990's the university hired President Priscilla Slade to "clean-up" all the prior years mismanagement. In lieu of "cleaning-up" the financial mismanagement President Slade went on to engage in financial fraud to pay for personal trips around the world, shopping sprees at Neiman Marcus, furnishing her home with luxury furniture, wasting \$100,000.00 in tabs at local bars, and paying for a custom-built home in Houston's premier Memorial neighborhood.

33. While President Slade was engaging in financial fraud, the Board was busy issuing no-bid contracts to a board member's business to house the law library while the law school was under construction due Hurricane Allyson flooding the school. Simultaneous, the Chair of Board was busy covering up the fact that the university accepted a bogus performance bond that was to ensure the foundation of the Student Recreation Center. The university accepted the bogus bond because the construction company was owned by the Chairman's best friend. (i.e. misuse of state funds)

34. Meanwhile, students were protesting campus security and the financial mismanagement of the university. During this period of turmoil, due to the deplorable conditions on campus a freshman was killed while simply walking from her car to her dorm. The board and the administration engaged in a systematic pattern of attempting to silence students from complaining. The administration went as far

as having two students charged with felonies for simply having information about the university's mismanagement (i.e. Civil rights violations). Fortunately, the Federal Bureau of Investigation intervened and the county District Attorney charged four of the administrators with conspiracy to misappropriate state funds.

35. This resulted in the campus being placed under various temporary leadership. The university ultimately was placed under the watchful eyes of President John Rudley. During this period of leadership, the university began to stop the financial mismanagement. Various programs were added, including the aviation flight training program, and campus began looking more like a university instead of a distressed third world country.

36. On June 6, 2016, Lane assumed the role as Chief Executive Officer of the university. He continued to express support for the aviation flight program. He attended numerous meetings with various stakeholders in the program. He met with Plaintiffs about their grievances of not being able fly when they already paid for flight training. He promised they would receive the training they paid for with their fees.

37. Nevertheless, the university refused to purchase aircraft and instead had the university's foundation acquire a \$2 million-dollar mansion for the President. Additionally, funds were expended on \$100,000 floor seats to the Houston Rockets.

38. The university continues allow other lower level employees engage in unethical and illegal practices such as having sex with students, offering course offerings only to increase enrollment to prevent layoffs of certain non-tenured faculty, and refusing to provide services the students paid to receive.

**Common Pattern and Practice of Mismanagement of
The Transportation Department and Aviation Program**

39. Since the administration has encouraged a pattern and practice of fraud and mismanagement, the Transportation Department began engaging in the same behavior.

40. Circa 1990 to 2003, the aviation program initially only offered two-degree track programs—Bachelor of Science in Airway Science Management and Bachelor of Airway Computer Science.

41. From 2003 to 2010, the aviation program only offered a Bachelor of Science degree in Aviation Management. This degree allows students to obtain an entry level job at the Federal Aviation Administration, the Transportation Security Administration, or a local airport working in operations.

42. During this same time period enrollment numbers were at an all time low. Students interested in the program were mostly obtaining outside flight training and only obtained the management degree so they could apply for the airlines as a pilot.

43. The students that attended were subjected to equipment that did not properly work but was required for their courses. The student paid laboratory fees for labs that did not exist or work.

44. The building (i.e. the old post office building) flooded and the students were forced to attend class in a structure that had the sheetrock partially removed and black mold growing on the remaining sheet rock. This problem was only rectified when the local media was contacted about the deplorable conditions.

45. Charles Glass, the director at the time, engaged in a financial scheme to double bill the university in order to have an increase in pay. This was reported to internal audit to investigate and was confirmed by the State's auditor.

46. In an attempt to increase enrollment, the director advertised to students on campus that if they changed their degree plan to aviation management, he would guarantee a grade of B+ or higher.

47. The director attempted to have undergraduate students draft the proposal to create a flight training program. He stated this assignment was part of their Aviation History 101 course. When a student protested the assignment, he posted 'Wanted' signs throughout campus which resulted in the student being placed under arrest.

48. The director engaged in discriminatory practices against Chinese students. He held the belief that the University was for blacks only.

Factual Allegations of Oscar Criner Illegal Conduct

49. Circa 2013, President Rudley authorized the use of special funding to support the aviation program.

50. The program would be funded by Title III funds. The funds were limited to developing a new flight training program.

51. In 2014, the flight training was conducted by an outside contractor. This limited the liability of the university in case of an aircraft accident. Each year, the university had to engage in a contract for the flight services provided by the contract.

52. When Oscar Criner became the interim director of the aviation program, he engaged in a systematic effort to have the program closed. Criner knowingly and intentionally would not sign the necessary contractual paperwork which lead to delays in the flight training the students had paid to receive. The delays prevented the students from completing the flight training in the prerequisite time period as describe in the university course description.³

53. Oscar Criner at one point told individuals that “the way you kill a program at the University is to sit on the paperwork.” This attempt to kill the program resulted in students not receiving the services they contracted with the university.

³ The flight courses were designed for the student to obtain the minimum required hours to take the FAA flight exam.

Factual Allegations of Vernon Baker and Tasjha Hall Illegal Conduct

54. Upon belief and information, Vernon Baker and Tasjha Hall engaged in a scheme to disrupt the flight program. This would force numerous students to have to change majors from the Pilot Concentration Program to Aviation Science Management in order to graduate. Hence, their jobs would be protected.

55. Baker and Hall, contacted the University Aviation Association. This association claims “to promote and foster excellence in collegiate aviation education by providing a forum for students, faculty, staff, and practitioners to share ideas, to enhance the quality of education, and to develop stronger programs and curricula. To influence aviation education policy at all governmental levels”.

56. However, upon information and belief, Baker and Hall convinced the UAA to produce a report that contained numerous falsehoods about the flight program while glorifying the fledgling aviation management program. The falsehoods included, unqualified faculty/staff, aircraft not in airworthy condition, missing aircraft logbooks, lack of maintenance logs, lack of clearly marked facilities, and that “security is an issue as C-182 reported stolen”. The ambiguous nature of the report made it unclear if the UAA was implying the university operated stolen aircraft or had one of its aircraft stolen. Nevertheless, this statement is abhorrently false.

57. Baker and Hall have publicly claimed that the report is written by aviation experts. Yet, the lead author and executive director, Dawn Vinson, only holds a masters in psychology. Dawn Vinson worked in the regional airline industry as a scheduler for pilots. Hardly an expert in the field of aviation, much less an expert in flight training programs.

58. This report was electronically transmitted via the internet and caused Defendant Harris to cease all flight operations after he learned of these allegations. This interrupted the flight training and caused damage to the Plaintiffs.

59. Baker and Hall had direct knowledge that students had enrolled and paid for flight training courses with the University. Baker and Hall willfully and intentionally devised the plan to have the UAA write a report that was so abhorrent it would force the university to cease all flight training due to “flight safety.” Thus, causing injury to the Plaintiffs.

**Terence Fontaine’s Intentional Misrepresentation to the University
Caused a Revocation of the FAR Part 141 Accreditation**

60. Upon information and belief, due to the UAA report, the university began searching for a “more qualified” candidate to oversee the flight program. Terence Fontaine represented himself as being more qualified than the active and retired airline pilots that were overseeing the program. Fontaine has a Doctorate in Education and is a former airline pilot. At the time of these events he had not obtained his FAA Certified Flight Instructor license.

61. Fontaine failed to notify the university that he lacked the necessary credentials to maintain the university's Federal Aviation Regulation part 141 designation. Those credentials would include but are not limited to possessing a Certified Flight Instructor certificate with a minimum number of hours as an instructor.

62. Upon information and belief, the university believing it found a more qualified candidate to oversee the program terminated the services of the qualified Chief Pilot and Assistant Chief Pilot to replace them with Fontaine. The FAA was notified of these individuals leaving the program.

63. The FAA gave the university 60-days to find a replacement in order to prevent losing its FAR part 141 designation. The university was unable to find such a replacement and have the replacement take the necessary FAA exam prior to losing its designation.

64. Defendant Fontaine, transmitted certain documents to the university via the internet or mail to obtain the position and it resulted in damages to the Plaintiffs. The University continued to advertise it was an FAA 141 school.

The University Intentionally Engaged in Fraud

65. During the Fall 2018, the university continued to sell flight training courses to veterans and other students after it lost its FAR part 141 designation. During the Fall 2018 semester, the new chief pilot awaited approval from the FAA to designate him as the chief instructor and reissue the part 141 designation. Defendant Fontaine

continued to conceal the fact that the university was not eligible to conduct part 141 training.

66. Veterans are not allowed to use their benefits for flight training at a non-designated school. The university collected funds from students and allowed veterans to activate their Post 9/11 G.I. Benefits in violation of the Veteran Affairs policy.

67. The university, via its agents, intentionally and knowingly submitted claims via the internet or mail to the Veteran Affairs administration while not having the proper credentials to bill the federal government for such services. This resulted in damage to the defendants.

**Factual Allegations of Unlawful Taking of Harris, Frayre, and Smith's
Chapter 33 Post 9/11 G.I. Bill Benefits**

68. Plaintiffs Harris, Frayre, and Smith are veterans of the United States Armed Forces. Due to Plaintiff's active duty service they have earned veteran education benefits that pays for tuition, fees, books, and housing. The program is titled "Post 9/11 G.I. Bill" which is codified under 38 U.S.C. 33. Many veterans refer to this benefit as simply "Chapter 33 benefits."

69. Accordingly, a veteran that enlisted or served as an officer after September 10, 2001 is eligible to receive up to 36-months of Post 9/11 G.I. Bill benefits. These benefits include:

a. Tuition and fees paid directly to the school.

b. Monthly housing allowance that is equal to (1) basic allowance for housing (BAH) payable for the zip code of the school to a military pay grade of e-5 with dependents if the veteran pursues resident training. (2) Half the BAH national average for distance learning; or (3) the national average BAH for pursuing training at a foreign school.

70. Each time a veteran enrolls in a semester the time the veteran attends the university is deducted from their 36-month allotment of benefits entitlement. For example, if Veteran A, attended Successful University from January 1, 2019 to January 31, 2019 the veteran's Post 9/11 G.I. Bill account will be deducted one-month from the 36-month total allotment. This program institutes time restraints on veterans which is intended to encourage them to remain with the selected degree program and university.

71. Each of the plaintiffs enrolled into Texas Southern University because the university advertised that it provided professional flight training. The courses advertised included a private pilot flight training course, instrument flight training course, and commercial pilot flight training. Each of the plaintiffs enrolled in the private pilot flight courses. This included a ground training course and flight laboratory that indicated they would be provided 40-hours of flight time towards the students FAA pilot certificate. The university never provided the flight training and

kept all fees, tuition, and other monies paid to attend the program. The special laboratory fee for the flight course was approximately \$12,999.00.

72. Additionally, due to the university failing to provide the services it falsely advertised via the internet the students unnecessarily lost several months of participation in the 36-month program allotment.

73. The Fifth Amendment of the U.S. Constitution holds that private property shall not be taken for public use, without just compensation. Here, the students had a private property interest in their earned federal veteran's education. The university via false advertisement recruited the veteran students which made them activate their chapter 33 benefits. Once the students were in the course the university did not have the proper infrastructure or qualifications to provide the students the flight training. The university simply took their benefit without providing any compensation or service in exchange. It was the Defendants' intent to harm the Plaintiffs.

Factual Allegations of Unlawful Taking of Lam's Texas Tomorrow Funds

74. Plaintiff Lam was a participate in the Texas Tomorrow Fund sponsored by the State of Texas. The Tomorrow Fund is a program that allowed parents to lock in the price for college tuition. For example, if a parent in 1995 paid into the fund starting in 1995 when their child attended college in 2018 the cost would be lower and funds would be applied to the college or university. Lam's parents were participants and invested into the program.

75. Plaintiff Lam upon learning about the university's flight program he elected to attend so that he could train to become a pilot. Lam's sole reason for attending the university was so that he could learn to fly through the flight program. The program enticed him to attend so he executed the use of his benefits. Almost, immediately upon paying the university for flight training Lam learned that Defendant Harris shuttered the flight program and canceled all flying. The university refused to allow the students to fly and Lam did not receive the services he paid for at the university. Lam incurred increase cost of living, loss of various other aviation opportunities, was forced to take courses unnecessary for his career path, and the university utilized his enrollment as means to justify certain non-tenured professor's existence.

Factual Allegations of Unlawful Taking of Eddie Diaz's Federal Loan Money

76. Plaintiff Diaz is an aspiring pilot that took independent flight courses prior to attending the university. Plaintiff Diaz learned of the university's flight program via the internet and was induced to attend. In order to pay for the flight training the university assisted Plaintiff Diaz by executing loans from the federal student loan program payable to the university. He paid for courses that alleged to pay for 40-hours of flight training and 25-hours for instrument training.

77. Diaz paid \$28,000 to only received 2-hours of flight training.

Factual Allegations of University Accounting Fraud

78. On credible information and belief, the university upon learning of the Plaintiffs request for relief began engaging in a systematic pattern of fraud to cover-up the fraud on the veterans.

79. The cover-up involved unknown co-conspirators editing the accounts of at least one of the Plaintiffs. On June 28, 2018, on advice of counsel the Frayre logged on to her student account at the University and took screenshots of her account balance. *See* Exhibit 2. The account balance for the semester of Spring 2018 indicated that she had incurred total charges of \$17,451.74 of which 12,999.00 was attributed to a Aviation Flight Training Fee. Out of the \$17,451.74 the account screenshot indicates the Veteran Affairs Chapter 33 paid \$17,441.74.

80. On March 13, 2019, Plaintiff logged into her student account and noticed the Aviation Flight Training Fee was no longer apportioned at the rate of \$12,999.00 and it was now indicating \$0.00. Now the account states the Veteran Affairs paid \$4,472.74. *See* Exhibit 3

81. On March 13, 2019, Plaintiff logged into her Veterans benefits account and checked for any refunds. She selected the display 'ALL' option for 'Returned Payments' and the Veteran Affairs indicated one payment was returned on August 8, 2018 in the amount of \$289.50. *See* Exhibit 4.

82. Plaintiff avers that Defendants are engaged in an active effort to conceal their fraud by engaging in wire fraud and various other financial accounting schemes.

Harris' Factual Allegation of Assault and Violation of First Amendment

83. On or near November 12, 2018, Plaintiff Harris, after 11 months of being enrolled in the program, approached the director of the flight program, Defendant Fontaine, about the lack of flight training. Plaintiff Harris was concerned that he would not be able to complete the requisite flight hours because of a mathematical impossibility caused by the university training non-paying individuals. Plaintiff Harris stood at the door of Fontaine's office and requested an explanation as to why the university was not allowing paying students fly but were allowing various non-paying students fly.

84. Fontaine became angry and struck Plaintiff Harris with his elbow, forearm, and hand.

85. Fontaine filed a report with the university to restrict Plaintiff Harris' ability to speak to him about the program.

86. Plaintiff Harris withdrew from the university.

FEDERAL RELIEF ONE

**42 U.S.C. 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS TO DUE
PROCESS AND PROTECTION FROM THE UNLAWFUL TAKING OF
PRIVATE PROPERTY
(Post 9/11 G.I. Bill Benefits)**

87. Defendants, University, Lane, Harris, Criner, Fontaine, Baker, and Hall, who are persons, acting under color statute deprived Plaintiffs Harris, Frayre, and Smith of rights and privileges secured by the U.S. Constitution and laws of the United States and Texas Law. Plaintiff Harris, Frayre, and Smith were deprived of their rights to private property (e.g. “Post 9/11 G.I. Benefits”) by an unlawfully taking the benefits for public benefit without just compensation. Defendants operated a flight program in violation of 14 U.S.C. 141 which is required for the university to collect Federal Veteran benefits for flight training. Defendants “sold” them 35-hours of flight training but did not meet the requirements of 14 U.S.C. 141 at the time of accepting the veteran benefits. Defendants sought and received Plaintiffs’ benefits to pay for the laboratory fee. Plaintiffs Harris, Frayre, and Smith suffered damages. Plaintiffs assert relief under the Fourth and Fifth Amendment via the Fourteenth Amendment of the United States Constitution; 42 U.S.C §1983; 38 U.S.C 33.

FEDERAL RELIEF TWO

**42 U.S.C. 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS TO DUE
PROCESS AND PROTECTION FROM THE UNLAWFUL TAKING OF
PRIVATE PROPERTY
(The Texas Tomorrow Fund)**

88. Defendants, Lane, Harris, Criner, Fontaine, Baker, and Hall, who are persons, acting under color of statute deprived Michael Lam of rights and privileges secured by the U.S. Constitution and laws of the United States and Texas Law. The defendants conspired to unlawfully take private property (e.g. “The Texas Tomorrow Fund”) from Plaintiff Lam for public use without just compensation. Plaintiff Lam suffered damages. Plaintiff Lam asserts relief under the Fourth and Fifth Amendment via the Fourteenth Amendment of the United States Constitution; 42 U.S.C §1983.

FEDERAL RELIEF THREE

**42 U.S.C. 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS TO DUE
PROCESS AND PROTECTION FROM THE UNLAWFUL TAKING OF
PRIVATE PROPERTY
(Federal Student Loan Funds)**

89. Defendants, Lane, Harris, Criner, Fontaine, Baker, and Hall, who are persons, acting under color of statute deprived Eddie Diaz of rights and privileges secured by the U.S. Constitution and laws of the United States and Texas Law. The defendants conspired to unlawfully take private property (e.g. Federal Student Loan Funds) from Plaintiff Diaz for public use without just compensation. Plaintiff Diaz suffered

damages. Plaintiff Diaz asserts relief under the Fourth and Fifth Amendment via the Fourteenth Amendment of the United States Constitution; 42 U.S.C §1983.

FEDERAL RELIEF FOUR

**42 U.S.C. 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS
(Freedom of Speech)**

90. Plaintiff Harris had his First Amendment right to free speech violated. Harris engaged in protected activities by questioning Defendant Fontaine when he would receive the requisite flight training.

91. While Plaintiff Harris engaged in his protected speech Defendant Fontaine assaulted Plaintiff Harris. Defendants Fontaine who is a person, acting under color of statute, custom, and usage, deprived Plaintiff Harris of rights and privileges of free speech secured by the U.S. Constitution and Texas Law. This intentional and outrageous conduct by Defendant Fontaine and the other facts as set out above, which are shocking to the conscience, caused Plaintiff Harris to suffer humiliation, loss of standing in the community, depression, insomnia, nervousness, frustration, emotional distress, stress with relationships with others, and mental anguish. Such acts were the result of willful, wanton disregard by Defendant Fontaine. Plaintiff Harris suffered damages as a direct result of Fontaine's willful and intentional conduct. U.S. Const. First Amendment, 42 U.S.C. § 1983.

FEDERAL RELIEF FIVE

18 U.S.C § 1961 et. seq RICO

92. Plaintiffs incorporates by reference as if fully plead hereinafter the facts from paragraphs 19-82.

93. The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter [18 USCS § 1962] by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. 18 USCS § 1964.

94. Any person injured in his business or property by reason of a violation of section 1962 of this chapter [18 USCS § 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. *Id.*

95. Defendants Oscar H. Criner, Terence H. Fontaine, Vernon J. Baker, and Tasjah Hall are “persons” as defined by RICO, 18 U.S.C. § 1961 (3).

96. Defendants Texas Southern University, Oscar H. Criner, Terence H. Fontaine, Vernon J. Baker, and Tasjah Hall are an “enterprise” as defined by RICO, 18 U.S.C. § 1961 (4).

97. Defendants Oscar H. Criner, Terence H. Fontaine, Vernon J. Baker, and Tasjah Hall conducted or participated or conspired to conduct or participate in the conduct of the enterprises’ affairs, affecting interstate or foreign commerce, through a pattern of racketeering activity, consisting of multiple acts indictable under 18 U.S.C. § 1343 (wire fraud) and 18 U.S.C. § (mail fraud).

98. As a direct, intended and foreseeable result of Defendants’ violation of RICO, Plaintiffs has suffered an identifiable and distinct injury to their business or property interests in the form of lost military benefits, loan money, grant money, future wages, and other damages.

99. As a result of Defendants’ violation of RICO, Plaintiff suffered injury and is entitled to recover threefold the damages be sustained, the costs of suit, including attorney’s fee. 18 U.S.C. § 1964 (c).

STATE LAW CLAIM ONE

COMMON LAW FRAUD

100. Plaintiff incorporates by reference as if fully plead hereinafter the facts from paragraphs 18-79.

101. Alternatively, All Plaintiffs assert a state law claim for common-law fraud against Defendant University, Lane, Harris, Criner, and Fontaine. To prove a common-law fraud, claim the plaintiffs must prove: (1) the defendants made a representation to the plaintiffs; (2) the representation was material; (3) the representation was false; (4) when the defendants made the representation, the defendants

c. Knew the representation was false, or

d. Made the representation recklessly, as a positive assertion, and without knowledge of its truth.

(5) the defendants made the representation with the intent plaintiff act on it; (6) the plaintiffs relied on the representation(s); (7) the representation caused the plaintiff injury.

STATE LAW CLAIM TWO

ASSAULT

102. Plaintiff incorporates by reference as if fully plead hereinafter the facts from paragraphs 76-79

103. Plaintiff Harris asserts a state law claim for assault against Defendant Fontaine. In order to establish an assault claim, a plaintiff must show that the defendant: (1) intentionally, knowingly, or recklessly caused him bodily injury; (2) intentionally or knowingly threatened him with imminent bodily injury; or (3) intentionally or knowingly caused physical contact with him when the defendant knew or should have reasonably believed that he would regard the contact as offensive or provocative. Tex. Penal Code Ann. § 22.01(a) (Supp. 2009). A threat is "imminent" when it is a threat of present harm, not future or conditional harm. *Cox v. Waste Mgmt. of Tex., Inc.*, 300 S.W.3d 424, 427, (Tex. 2009).

104. Defendant Fontaine intentionally made offensive contact with Plaintiff Harris when he struck Harris with his hand, forearm, and elbow. Defendant additionally threatened him with imminent bodily injury by slamming a door in Plaintiff Harris' face. But for Plaintiff Harris moving he would have been injured by the door. Plaintiff Harris suffered mental anguish, embarrassment, harassment, and other specified damages as a result of Fontaine's intentional and wanton conduct.

DAMAGES

Special Damages

105. Harris is a military veteran that resided in the State of California. Harris had stable employment and lived a normal life in the California prior to being solicited to attend flight training at TSU. Harris relocated to Houston, Texas for the sole

purpose of attending the flight training program. The moved cost several thousands of dollars and lost income due to attending the program. Harris has lost valuable time in utilizing the Chapter 33 benefits and the housing allowance that is allocated for this program. If TSU had a properly functioning program the benefits would have been properly used. However, due to the intentional fraudulent scheme directed at the Plaintiffs, the university and its agents took Harris' benefits. These benefits cannot be restored.

106. Frayre is a military veteran that resides in Houston, Texas. Frayre lost valuable time in utilizing the Chapter 33 benefits and the housing allowance that is allocated for this program. If TSU had a properly functioning program the benefits would have been properly used. However, due to the intentional fraudulent scheme of the university and its agents Frayre has wasted the benefits with TSU. Additionally, Frayre will lose additional funds when she transfers to another institution to seek education because the credits will not transfer.

107. Smith is a veteran and graduate of TSU's Aviation Science Management Program. Due to the university failing to have the flight program functioning she was forced to obtain a degree that has a substantially less earning capacity. Additionally, she will need to seek additional flight training at a higher cost. There will likely be living expenses, tuition, books, and fees that she will be forced to pay out of pocket.

108. Lam was a participant in the Texas Tomorrow Fund. Lam paid into the program but never received the services. Lam was forced to attend a privately-owned program at an increase cost and a lack of ability to use the Texas Tomorrow Fund. Lam has had an increase cost of living, fees, books, and other cost due to TSU's intentional fraudulent scheme.

109. Diaz was a student using the federally back student loan program. Diaz was forced to take out \$28,000 in loans that he is responsible for paying back. If TSU had not engaged in its intentional and knowingly fraudulent scheme he would have never incurred this cost.

General Damages

110. As a result of the conduct and violations outlined above, all defendants are liable to Harris, Frayre, Smith, Lam, and Diaz for compensatory and punitive damages.

Attorney Fees

111. Under the Civil Rights Attorney Fees Award Act, Plaintiffs are entitled to reasonable and necessary attorney fees and costs for all federal claims. 42 U.S.C. § 1988.

112. Plaintiffs are entitled to attorney fees under the Racketeer Influence Corruption Act 18 U.S.C. § 1964.

Lane, Harris, Criner, Fontaine, Baker, and Hall
Are Not Shielded by Qualified Immunity

113. Lane, Harris, Criner, Fontaine, Baker, and Hall are not shielded by qualified immunity. At the time of the occurrences alleged as the basis of this lawsuit, it was clearly established law that such defendants could not deprive Plaintiffs Harris, Frayre, Smith, Lam, and Diaz of their constitutional right under the Fifth Amendment and due process. Nor could such defendants conspire to deprive Plaintiffs of their constitutional rights. Additionally, established law defined Plaintiff Harris' speech as protected speech and therefore Defendant Fontaine could not deprive Harris of his constitutional right to free speech under the First Amendment.

INJUNCTIVE RELIEF

114. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged, and this suit for injunctive is the only means to securing adequate relief. Plaintiffs suffered, are now suffering and will continue to suffer irreparable injury from the defendants' policy, practice, custom and usage, as set forth herein, until and unless enjoined by the Court. First, Fourth, Fifth, and Fourteenth Amendments and 42 U.S.C. § 1983 and 18 U.S.C. § 1964.

PRAYER

Plaintiffs request the Court to cause defendants to be cited to appear and answer in this Court, and that upon final hearing, the Court grant to plaintiffs as follows:

- a. Grant Plaintiffs equitable and legal relief enjoining defendants, their agents, successors, employers, and those acting in concert with them or at their direction from continuing to abridge the rights of plaintiffs;
- b. Grant Plaintiffs actual and compensatory damages.
- c. Grant Plaintiffs punitive damages as to Defendants Lane, Harris, Fontaine, Criner, Baker, Hall.
- d. Grant Plaintiffs prejudgment interest in the highest amount allowable by law; and
- e. Grant Plaintiffs reasonable and necessary attorney fees together with their costs and such other further relief as appears just and equitable in the circumstances of this case.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

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