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House of Representatives  
Committee on the Judiciary  
2138 Rayburn House Office Bldg.  
Washington, D.C. 20515

Dear Congress:

Having worked as an attorney for over sixteen years, I have tried numerous criminal cases ranging from minor misdemeanors to capital murder. I have found that most police officers, prosecutors and courts truly strive to be honorable and serve the public fairly. However, it appears that the protections that we enjoy are often denied to those who seek to protect us by whistleblowing on corruption, fraud, waste and abuse in our federal government. In fact, it appears that one such whistleblower, John Carman, is being wrongfully imprisoned by the very people who are supposed to protect us.

In September, 2007, I had the opportunity to observe most of John Carman's criminal trial in federal court in San Diego, California. I had previously met John through my fiancée, Darlene Fitzgerald, who testified at his trial. Darlene and John had previously collaborated to expose corruption in the U.S. Customs Service. As I observed John's trial, I was looking for a "smoking gun," some real piece of evidence that I could say - I see why the government would believe he is guilty. But it simply was not there.

In the mid 1990's, John was an inspector with the U. S. Customs Service (now under the Department of Homeland Security) assigned to the San Ysidro Port of Entry, on the California border with Mexico. John served many years with Customs and, prior to working for Customs, was a Secret Service Officer. By the mid 1990's, John had successfully worked for the federal government maintaining a high level security clearance and good standing for over 25 years.

While working at Customs, John says that he began to notice things that with all his experience, training and expertise did not add up. John noticed that there were things like "overflight exemptions" being granted to suspected narcotics smugglers and drug cartel members which allowed these highly suspect individuals to enter the U.S. uninspected with simply a stroke of a pen from certain Customs' managers. Further, John noticed that important leads on suspects connected to notorious drug cartel members that should have been followed up, were being shut down by these very same managers. John says that when he began to question his managers' actions, he was immediately retaliated against.

At about the same time frame, Special Agent Darlene Fitzgerald of the U.S. Customs Service was running a counter-smuggling operation in Southern California, involv-

ing pressurized rail tanker cars that were suspected of bringing tons of illegal narcotics into the U.S. Darlene had been with the Customs Service for just over ten years and, prior to that, was a captain in the U.S. Army Military Police Corps, for many years - all in good standing. Darlene's task force, dubbed "Operation Rite Rail," had information that literally tons of narcotics were being loaded into tanker cars in a rail yard in Guadalajara, Mexico every day, destined for the U.S. Her information turned out to be accurate because her task force seized 8,000 pounds of marijuana and 34 kilos of pure, uncut cocaine in just one of these tanker cars.

Subsequently, Darlene seized five more of these tanker cars from the same front/shell company in Mexico, manifested as empty, yet, when weighed, were found to cumulatively contained 25 to 40 tons of contraband.

Darlene says that certain managers in her chain of command immediately began to torpedo her operation and eventually ordered her to stop her investigation. The hold that Darlene had placed on these five tanker cars was then inexplicably removed, without Darlene's knowledge or permission, allowing them to enter the U.S., uninspected by anyone.

Darlene and her task force realized that if drug cartels could use railroad tanker cars to smuggle drugs into the U.S., terrorists could also use them for attacks. Timothy McVeigh blew up the federal Murrah Building with less than one ton of ammonium nitrate in an unsealed cargo truck. Terrorists could put several times this amount of ammonium nitrate in a sealed tanker car and, essentially, create the world's largest pipe bomb. While this seems too hideous to image, surely America has enemies who welcome such an opportunity. It is no surprise to me that since Darlene left Customs, no railroad tanker car seizures have been made. I sincerely doubt that the drug smugglers have simply stopped using them.

Darlene and John, and other loyal Customs employees working with them, were then placed between the proverbial rock and a hard place. Their instincts were screaming that this was more than just incompetence. Surely, no manager would perfunctorily surrender the acclaim and recognition that would have come with making what was probably the largest drug seizure in U.S. history. All of these loyal government employees had been taught throughout their careers that the way to solve grievances was to use their chain of command, and so they did.

Darlene says that the real problem turned out to be the chain of command. Under the United States Code, if a government official observes what he/she feels is a felony, they must report this suspected offense, or they too will be guilty of a felony - Misprision of Felony. As is clearly documented, these employees did their duties and reported these offenses through their chain of command.

Yet, no investigations were ever conducted. In fact, U.S. Customs SAC Lori Brown (the person in charge of Customs enforcement throughout Los Angeles and into Las Vegas) openly condoned the shut down of the investigation by Customs managers.

What these loyal government employees say happened to them can best be described as a horror story that seems more tailored to a Grisham novel. All of these agents/officers had been with the government for many years and had never been placed under investigation by anyone for anything.

Yet, unexpectedly, as soon as they reported what they felt was major corruption, they were placed under repeated frivolous internal affairs investigations and, eventually,

IRS audits. When they locked arms and decided to fight back by going outside the agency for help, the agency simply turned up the heat on them. Darlene and John say that they and five other Customs Special Agents and

Inspectors met with FBI Special Agent Rob Meza with the FBI's Public Corruptions Office out of San Diego, California. They laid out all of their evidence and even had a federal prosecutor, who had witnessed much of this corruption, back them up. Agent Meza reportedly agreed to investigate, then did not, even though millions of your tax dollars pay for this task force to investigate public corruption.

Again, the heat was turned up even higher on the Customs employees. They say they were harassed, investigated, passed over for promotions, threatened, surveilled by their own agency, and ultimately drummed out of the Customs Service, for doing their jobs. The details of this travesty of justice are contained in a recently released book entitled "BorderGate, the story the government doesn't want you to read."

These agents/inspectors attempted to file a class action lawsuit against Customs for whistleblower retaliation and EEO violations. The class action was split into several different federal cases. John's case moved forward separately from Darlene and her co-plaintiff's, Special Agent Sandy Nunn's, case. Darlene's Co-Case Agent, Special Agent Ruben Sandoval's case was split away as well. The game plan of "divide and conquer" is a good strategy for the government when they choose willful blindness as opposed to seeking out the truth.

During the time frame after these Customs employees left the agency and their civil cases were slowly snaking through the federal court system, these people did not go quietly into the night. John developed what became a very popular website for government whistleblowers who feared for their jobs if they spoke out against their managers.

Here they could pass on information anonymously if they wished, although some used John's website to publicly blow the whistle on government corruption, fraud, waste and abuse. As you might imagine, this website, entitled "www.CustomsCorruption.com," would not have been well received by those within Customs and the FBI who were the object of the allegations. Moreover, these brave Customs employees in their attempts to obtain help, testified before various U.S. Congressional & Senatorial committees.

They were repeatedly in the media regarding their allegations of corruption in Customs and the failure of Special Agent Meza and the FBI Public Corruption Office to investigate their allegations. Certainly, these activities would not have been welcomed by either agency.

Just a few weeks after the initial meeting with Special Agent Meza, John says he was arrested by local authorities in Le Mesa, California, reportedly at the direction of U.S. Customs Internal Affairs. The charge was apparently so frivolous that it did not even make it past arraignment. John was immediately released and filed another law suit against Customs. This appears to be the first attempt to shut John up using the criminal courts; it would not be the last.

Ruben Sandoval's civil case was dismissed on a motion for summary judgment before it ever went to trial. According to statistics at the Government Accountability Project (GAP), Whistleblowers must first utilize the Federal Merit Systems Protection Board, and then file an appeal directly with the Federal Circuit Court of Appeals. Since October 1994, One Hundred Eighty-Three (183) out of One Hundred Eighty-Five (185) cases were dismissed for decisions on the merits.

In February 2005, Darlene and Sandy's federal civil case was held in the San Diego Federal Courthouse. This case made history as a landmark case. It was the first time that a sitting judge, the Honorable Yvette Palazuelos, testified against the federal government as Darlene and Sandy's witness. During this trial, there was ample evidence presented to warrant a grand jury investigation into perjury, witness tampering, and facilitation of the illegal importation of 25 to 40 tons of narcotics – yet there was none.

After 90% of Darlene and Sandy's case was disallowed into the trial, the jury, not surprisingly, found in favor of Customs. The trial is more fully detailed in Darlene's book "BorderGate." Darlene and Sandy report that everyone on their witness list, including John, has since been severely harassed, fired, and/or arrested.

Even with the shenanigans, Darlene and John were still willing to testify before another Congressional committee in May, 2007, in support of the much needed "Whistleblower Protection Act" for federal government employees. Just two weeks before they had planned to go to Washington, D.C., John was placed under arrest by the FBI in San Diego on charges of conspiracy to kidnap a U.S. citizen in Mexico. The FBI's case was based in large part on the testimony and telephone recordings of a convicted felon and illegal alien, Eloy Fernandez.

Eloy's felony conviction stems from his attempted framing of two Customs' employees for crimes the FBI maintains they did not commit. Eloy's acknowledged motivation in framing the Custom's employees was so that the government would give him U.S. citizenship in exchange for his providing information of a crime. After his felony conviction, however, the FBI's headquarters reportedly blackballed Eloy from ever again being used as a confidential informant (CI). When the FBI blackballed Eloy, they noted that he was desperate for U.S. citizenship and hoped to use the government to get that citizenship by supplying information. John's attorney, Knut Hohnson, says that by this time, Eloy had already received over \$300,000 from the government for information in other cases.

He never paid any taxes on this money, and the government never filed any forms with the IRS notifying them that Eloy had earned this money.

Agent Lombardi was admittedly aware that Eloy was expecting either U.S. citizenship or a green card for his work in trying to get incriminating statements from John. Apparently, Eloy's only duty for such a coveted status was to talk with John three times, while Agent Lombardi recorded the telephone conversations. These recordings were used by Agent Lombardi to indict John.

Later at John's trial, it was apparent that John was unaware of Eloy's past. Testimony from numerous federal agents revealed that John had taken Eloy to various agencies and introduced him as a possible contact for them in Mexico. Apparently, due to confidentiality, these agents were not allowed to tell John of Eloy's past or that he had been blackballed by the FBI.

When John left Customs earlier, he had become a private investigator in San Diego. One of his clients was George Lane. Lane had hired John for a surveillance job of his ex-girlfriend Christie (last name intentionally omitted to preserve her privacy). Unknown to John or Christie, Lane, reportedly, was a consummate womanizer who had become quite skillful at conning women. He was reputed to have been notorious for spinning yarns that he was either a CIA agent or NSA agent, of which he was, apparently, neither. This information was confirmed, and uncontested during John's trial, not only by

Christie, but by Eloy and the government as well. Further, Darlene through her own investigation of Lane in Maysville, Kentucky, further developed this fact.

The recordings and e-mails clearly showed that Lane had convinced John that Christie was heavily using methamphetamine in Mexico, while in the presence of her two young sons. They also revealed that John was under the belief that he could have Eloy arrange for the Mexican Police (Mex. Feds) to detain, search, and arrest Christie if she were found to have drugs in her possession. Further they revealed that John believed that because of his tip, the Mex Feds would pay him a portion of any future bond that Christie would have to post. While this sounds a bit seedy, it certainly does not rise to the level of kidnapping; and it is tempered by fact that John believed he would be protecting the children from a methamphetamine addict.

It was discovered several months prior to John's trial that the FBI knew where Lane was located but, inexplicably, had never arrested him. Asked by John's attorney to locate and interview Lane, in July 2007, Darlene traveled to Maysville, Kentucky where Lane was reportedly residing. She discovered after interviewing several residents of Maysville, including members of the local police and sheriffs' departments, that FBI Agent Lombardi had interviewed Lane two months prior to her arrival. In fact, FBI Agent Lombardi himself had traveled to Maysville along with a polygrapher and had not only interviewed Lane but had polygraphed him and executed a search warrant on his residence, seizing two lap top computers. The prosecution released the information that Agent Lombardi had obtained only after George Lane was arrested, even though John's attorney had requested it weeks prior.

Bear in mind that Agent Lombardi and the prosecution had argued the dangerous nature of the charges against John and his ability to abscond as justification to keep him imprisoned. Certainly, the same would have been true for Lane; after all, Lane, who was an alleged co-conspirator, had obviously already departed California. If the prosecution and Agent Lombardi truly believed this, then why was Lane not arrested in Kentucky when there was a clear opportunity to do so? Perhaps, it was because they did not want Lane present during John's trial. Certainly, it would have seemed unlikely that Lane would have ever been discovered in Maysville, Kentucky by John's attorney who, after all, was in California. It should be noted, that only after Darlene discovered this critical information was Lane eventually arrested.

John's attorney claims that immediately after John's criminal trial, Lane was released on bond, even though John had been held without bond throughout his ordeal. Could it have been that since Darlene had discovered his whereabouts, Lane was being sent a not too subtle message discouraging him from cooperating with John's attorney?

Before John's trial began, his attorney repeatedly asked through motions to the court for all discoverable evidence held by the government. On the Thursday before John's trial was to begin (Sept. 19th), the prosecutor in step with Agent Lombardi relayed to the court and John's attorney that despite all of their best efforts, they could not locate Eloy.

However, they still wanted to use the recorded telephone conversations between Eloy and John as evidence. Now, at almost that same instance that this was occurring, Eloy was telephoning Darlene in an attempt to contact journalist Bill Conroy. Bill is the reporter who broke the "BorderGate" story in which John, Darlene and others had uncovered. Incidentally, Bill relates that he and his family were also severely harassed and intimidated by U.S. Customs after he had printed his articles. Bill had continued to fol-

low this story, however, and had recently published a story on John's case, which is how Eloy got his name.

When Eloy spoke to Darlene he told her that he needed to get in touch with Bill in order to, "Tell his side of the story." This begs the question, "Why does the FBI's witness need to talk to the media to tell his story?"

Darlene passed the information on to Bill, and Eloy was later interviewed that same day. Eloy reportedly told Bill that the FBI had lied to him and setup John. He also said that he had been trying to get with Agent Lombardi and the prosecutor, but they would not return his calls. Keep in mind that this interview was happening the very day that the prosecutor was informing the court that Eloy could not be found. Apparently, only after the court refused to allow the government to play for the jury Eloy's voice recordings from the telephone conversations did the prosecutor and Agent Lombardi feel the need to return Eloy's telephone calls. When it became clear that the court was going to enforce John's Sixth Amendment right to confront the witnesses against him, Eloy then miraculously appeared just in time to testify for the government.

The evidence presented by the prosecution during John's trial was essentially Eloy's three recorded telephone conversations with John and various e-mails. Nowhere in any of these recorded conversations or e-mails does John ever discuss a kidnapping. The only mention of kidnapping came from Eloy in one of the e-mails, but nothing in the recorded telephone conversations. Eloy said to John, "What ever happened to that woman we were going to kidnap, ha, ha, just kidding." John responded to this statement with confusion as to what Eloy had written.

The prosecution never addressed the obvious questions of why Eloy said he was just kidding and why Eloy had not been encouraged to send e-mails to John soliciting details of the alleged kidnapping. After all, Eloy was certainly hoping to curry favor with the FBI in hopes of getting U.S. citizenship. Likewise, it is important to note that Agent Lombardi was present during all three recorded telephone conversations, yet he never explained why he did not insist upon Eloy asking John specific questions about the alleged plot. The obvious reason would appear to be that if Eloy had forthrightly discussed such a kidnapping plot, and there was none, then John would have immediately begun to question Eloy as to what he was talking about.

Throughout the tape recorded conversations and e-mails, John repeatedly speaks of having Christie arrested and of bond money - not kidnapping. Further, nowhere in any of the evidence was there any statements by John or even Eloy of a planned kidnapping. Presumably, the whole idea for Agent Lombardi's working with Eloy was to have him entice John into discussing a kidnapping plot.

Yet, even with Eloy talking with John three separate times and exchanging numerous e-mails, there are no conversations of how, when or where they would grab Christie; what would be used to secure her, i.e., rope, zip ties or handcuffs; whose car would be used, rental or personal vehicle; what time and date would it occur; where would it occur, city or country side; while she was alone or with someone; where she would be taken; would she be held at a motel/ hotel or private residence; who would be watching her while waiting for the ransom; would they take shifts and how long would the shifts be (12 hours/ one day, one week, etc.); who would write a ransom note; how would it be written(e.g. typed, hand written, news clippings, etc); if typed, whose computer; who would deliver the ransom note; what would it say; how long would they wait; who would pay the ran-

som; how would contact be made; amount of ransom; method of delivery and pick up of the ransom. The lack of these details, or the thousands of other details that would have arisen had there been a kidnapping plot, were never addressed by the prosecution. Could it be that they do not exist? Moreover, when Eloy took the stand, he was given ample opportunity to describe the details of a kidnapping plot had he and John ever actually discussed such a thing.

Surely, had he and John ever had such conversations, recorded or not, Eloy could have easily lured John into discussing them during the recorded telephone conversations, yet they were not even alluded to.

In order to understand why the expenditure of \$300,000 for Eloy may seem contrary to government policy, it is necessary to review the apparent corruption that Darlene had blown the whistle on when she worked for Customs.

As stated above, in 1998, Darlene and her task force seized 8,000 pounds of marijuana and 34 kilos of pure, uncut cocaine from a single railroad tanker car. They then seized five more tanker cars containing 25 to 40 tons of contraband and had them parked in a rail yard awaiting approval to be opened. Her manager Assistant Special Agent in Charge (ASAIC) Gary Pinkava refused to allow her to inspect the tanker cars and ordered her not to complete her investigation. Later, he gave numerous reasons for not allowing the inspection of the tanker cars, which initially included him stating at a deposition that he did not even remember the tanker cars. After several other witnesses testified that Pinkava had in fact been specifically told about the tanker cars and after he was reminded of the fact that this would have been difficult to forget since it would have been potentially the largest drug seizure in U.S. history, his memory surprisingly improved. His second excuse was that he had told Darlene's immediate supervisor, Robert Mattivi, to inspect the tanker cars.

When this assertion was refuted by Mattivi, Pinkava then said that it would have cost too much to open the tanker cars. Incidentally, this was also argued by the government in Darlene's civil trial as justification for thwarting her investigation. (Case styled as Darlene Fitzgerald -Sandy Nunn Vs. Department of Homeland Security, civil docket in San Diego Federal Court; (a complete transcript of ASAIC Pinkava's testimony may be read at [www.BorderGate.net](http://www.BorderGate.net))). It was presented in court that the cost to safely open and inspect one of these tanker cars would have been approximately \$8,000.

Now, when you compare the refusal by certain officials within our government to the spending of even a relatively small amount of money to generate the country's largest drug seizure with the amount they are willing to spend on a witnesses such as Eloy, it paints a disturbing picture. This is even more disturbing when you read ASAIC Pinkava's trial testimony from the Fitzgerald/Nunn civil case wherein he admitted, without equivocation, that he would not even allow Darlene and Robert Mattivi to pressure test the tanker cars for free. Darlene says that she had arranged to have the tanker cars pressure tested at no cost to the government, and yet ASAIC Pinkava still ordered her not to do her job. No investigation has ever been conducted into why a high level Customs manager would actively thwart such an investigation.

In his criminal trial, John, unfortunately, got assaulted by a perfect storm. First, he was against young prosecutors who appeared more than eager to impress their superiors by obtaining a conviction on John - the man who had embarrassed some by maintaining a website exposing corruption within the federal government. A more seasoned prosecutor

surely would have insisted upon Agent Lombardi having Eloy to get John to discuss details of the alleged kidnapping plot, or seek a wire tap on John's telephone. Certainly, appropriate safeguards could have been initiated to protect Christie while the investigation was properly conducted. And, clearly, the government has not been concerned with spending too much tax payer money on certain investigations.

Second, the criminal case against John was being managed by an FBI agent whose own agency had been specifically singled out by John for its refusal to investigate public corruption. Third, John's jury consisted of jurors who had only been superficially questioned by the court using cursory questions. John's attorney was not permitted to ask any questions of the jury, and the court did not ask any probing questions that might have uncovered biases against John.

Clearly, the prosecution team showed no intentions of prosecuting John fairly. As stated above, Agent Lombardi and the prosecution did not divulge evidence voluntarily, timely, or sufficiently. During the presentation of the case, they introduced the three recorded statements and various e-mails covering a plethora of topics and investigations that John was discussing with various people.

Then, during his closing argument, the prosecutor incessantly took excerpts from those documents and pieced them together, often out of context. A clear example of this was when the prosecutor took just one sentence from an e-mail in which John was discussing a hotel in Mexico. The prosecutor presented this as one of his "Ah-hah!" moments, telling the jury that this proved that this was the location where John and Eloy were going to take Christie. What the prosecution did not reveal to the jury was that the e-mail had been sent two years prior to this alleged conspiracy.

John's attorney attempted to rectify this misstatement of fact, and displayed the date to the jury, but the wound had already been inflicted. Even though this piece of evidence was clearly refuted by John's attorney, the prosecutor continued to present statements out of context, even when they clearly referred to entirely different matters.

Another example of this came when the prosecutor took a statement in which John was talking of a reward on another case he had been working on. At no time during this conversation was Christie referenced. In fact, John spoke of the other case he had been working on. John's attorney even had another investigator testify that he and John were, in fact, talking about a reward for a case he had given John. Yet the prosecutor continued to present this statement out of context repeatedly and referred to it as "ransom" for Christie. Objections were raised, arguments were made; the court instructed the jury; but the damage was apparently too great to overcome.

The prosecutor then got to present his closing argument to the jury, twice. In federal court, the prosecution is allowed to present, essentially, two closing arguments. John's attorney was permitted only one closing argument, smothered between the prosecution's two arguments.

On September 26th, John was found guilty, much to the shock and dismay of those who had observed the trial and were aware of the whistleblower retaliation. The message sent by those in power in San Diego appears to be that whistleblowing on waste, fraud, abuse and corruption will not be tolerated.

It is also important to note that in May of this year as John remained incarcerated, Darlene Fitzgerald did in fact go to Washington, D.C. and testified in support of the "Whistleblower Protection Act" also known as the "Akaka Bill" after Senator Akaka

who helped author it.

It was officially read into the record that over 700 federal government employees wanted to appear and testify at this hearing. This clearly shows just how pervasive and systemic whistleblower retaliation has become. As I am writing this letter, this much needed piece of legislation sits idle at the Senate.

Since I first began practicing law, I have never truly felt that I knew, without a doubt, that an innocent man had been convicted of a crime he had not committed. John's case changes that. On behalf of John and all brave whistleblowers, I beseech you to appoint a special prosecutor and initiate a formal investigation into these cases. If you passively allow whistleblowers, such as John Carman and Darlene Fitzgerald, to be silenced, then no one can be expected to have the courage to report corruption, fraud, waste and abuse within our government.

Our beloved country can scarcely afford to be without the eyes and ears of whistleblowers at a time when so many of our enemies, both foreign and domestic, seek to do us harm.

Sincerely yours,

Austin Price, Esquire

CC:

U.S. Senate Committee on the Judiciary  
Senator Harry Reid  
The Government Accountability Project (GAP)  
The Project on Government Oversight (POGO)  
Senator Daniel Akaka  
Congressman Dana Rohrabacher  
Senator Charles (Chuck) Grassley