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No. \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

THOMAS STALCUP,  
Applicant,

v.

DEPARTMENT OF DEFENSE AGENCY,  
Office of the Secretary of Defense of the United States,  
Respondent.

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Emergency Application for Stay or Injunction Pending the Filing and  
Disposition of a Writ of Certiorari to the United States  
Court of Appeals for the First Circuit

An Application To The Honorable Ketanji Brown Jackson,  
Circuit Justice for the First Circuit

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## TABLE OF CONTENTS

	Pages
<b>Introduction</b> .....	3
<b>Questions Presented</b> .....	11
<b>Parties To The Proceeding</b> .....	12
<b>Opinions Below</b> .....	13
<b>Jurisdiction</b> .....	13
<b>Constitutional And Statutory Provisions Involved.</b> .....	14
<b>Statement Of The Case.</b> .....	17
Procedural History .....	17
Preservation Of Evidence .....	20
Need For Emergency Relief .....	20
<b>Argument</b> .....	22
The Preserving Of The Identified Components Is Paramount To The Pursuit Of Justice .....	27
Denying Preservation Of These Components Jeopardizes The Fairness Of The Ongoing Litigation .....	28
The Applicant Has Shown A Willingness To Compromise And Act In Good Faith .....	28
The Urgency Of The Situation Requires Immediate Action. . .	29
<b>Conclusion</b> .....	29

## INTRODUCTION

This urgent application pertains to the potential destruction of critical evidence related to the reconstruction of TWA Flight 800. This evidence includes potential missile fragments and related explosive residue, yet that evidence has remained unanalyzed and undisclosed by investigative agencies for over two decades. Recent developments have heightened the urgency of preserving it.

During the course of this litigation, the National Transportation Safety Board (NTSB) announced its intention to destroy all remaining physical evidence in the reconstruction of the aircraft. This announcement came within a remarkably short timeframe of Applicant Stalcup's request for a hearing on the FBI's failure to produce Navy radar tapes in response to a court-issued subpoena. These tapes, as revealed in recently obtained FBI records, contain crucial information showing an object on a direct course towards TWA Flight 800 prior to "impact". These circumstances present a grave concern and necessitate immediate action to protect the integrity of the evidence and uphold the due process rights of the litigants involved in multiple lawsuits pending in different Circuits<sup>1</sup>. Furthermore, it is essential

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<sup>1</sup> These cases include: *Stalcup v. DOD*, pending at the First Circuit Court of Appeals; a related wrongful death case, *Krick et. al. v. Raytheon Company et. al.*, No. 1:22-cv-11032-AK, at the District Court in the District of Massachusetts; and the FOIA case

to consider the rights of those who may reasonably be expected to file a petition for probable cause reconsideration with the NTSB based on the newly discovered evidence and subsequent analyses. Immediate measures are required to ensure that the evidence is preserved and that all parties have a fair opportunity to present their case.

On July 17, 1996, a catastrophic event unfolded off the coast of Long Island, NY, when TWA Flight 800 tragically exploded in midair. The accounts of eyewitnesses, coupled with evidence of inward penetrations into the fuselage and Naval radar data showing an object impacting the aircraft, strongly suggested the involvement of a US missile intercepting the flight. However, it is not surprising that this alternative narrative, which implicates powerful military personnel, defense contractors, and the Department of Defense (DOD), has faced skepticism and dismissal. Overcoming the resistance to challenging the official explanation and seeking accountability from these influential entities has been an arduous journey for Applicant Stalcup, who has tirelessly pursued justice through four federal lawsuits. Regrettably, the challenges to the official scenario

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*Stalcup v. the US Navy and FBI*, No. 8:23-cv-00885-TPB-AEP, at the District Court in the Middle District of Florida. These cases relate to the crash of TWA Flight 800 and reasonably likely may rely on analyses of the four wreckage items requested for preservation here.

surrounding the TWA Flight 800 incident were often dismissed and labeled as conspiracy theories.

In the case of *Stalcup v. CIA*, the federal District Court in Boston found that Stalcup was "alleging significant and prolonged governmental misconduct, in the form of a vast conspiracy" and ruled in favor of the CIA. *Stalcup v. CIA*, No. 11-11250-FDS, (D.MA 2013). In a related case, that same court noted that the crash of TWA Flight 800 "spawned a great deal of conspiracy literature" and again ruled in the government's favor. *Stalcup v. Naval Special Warfare Command*, No. 13-11966-WGY, n.2, (D.MA 2015). These decisions were subsequently affirmed by the First Circuit, further reinforcing the challenges faced by Stalcup in pursuing his claims.

Mindful of the potential for prejudice that may influence the US courts, particularly in light of this Court's requirement of a "presumption of legitimacy" towards the Government's official conduct, Stalcup developed a new strategy to ensure a fair and impartial evaluation of his claims. In the present case, he expanded the scope of his request to include records of all missile testing off the entire East Coast of the United States in 1996, in addition to those specifically related to TWA Flight 800. Already in possession of a Navy document describing DOD missile tests off Virginia

that year, he correctly assumed that records of missile tests off Long Island, where TWA Flight 800 tragically crashed, would be co-mingled with the Virginia test records.

In response however, the DOD failed to conduct a thorough search in the areas where missile test records are typically stored. Moreover, the DOD indicated that no missile tests were conducted anywhere off the East Coast during the relevant year. In his Appellate Reply Brief, Stalcup cited US Navy and Missile Defense Agency records to the contrary:

The government's Brief to this Court contains the same inaccurate statements about East Coast missile testing that compromised the District Court's ruling now being reviewed. Contrary to those statements, the United States did test missiles off the East Coast in 1996.

The USS Cape St. George Guided Missile Cruiser's 1996 Command History:

*"11 SEP [1996] In vicinity of Wallops Island, VA, CSG successfully fires a Standard SM-2 missile...Initial Operational Capability (IOC) of CEC achieved". See App-271.*

Missile Defense Agency (MDA) FOIA Release Document:

*"11 Sep 96 Two successful tests of the Navy's Cooperative Engagement Capability [CEC] system off the coast (sic) of Virginia. In each test, a BQM-74E drone<sup>2</sup> was used to simulate a cruise missile, and interceptor missiles carrying telemetry equipment instead of warheads were fired at the drone and successfully entered the 'lethality basket'. The two tests involved...two Aegis cruisers (Anzio and Cape St. George)".*

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<sup>2</sup> During discovery in this action, aerial target drones were confirmed to be flying near TWA Flight 800 when it crashed.

In a significant decision, the panel led by First Circuit Chief Justice Jeffrey R. Howard found in Stalcup's favor and remanded the case for further proceedings. Despite this ruling, the DOD persisted in asserting that no missiles were fired off the East Coast. However, recognizing the importance of the issues at hand, the District Court granted Stalcup the opportunity for discovery, allowing for a more thorough examination of the matter.

Stalcup proceeded to depose high-ranking officials involved in the East Coast missile tests, who provided confirmation that more than a dozen such tests had indeed taken place. Astonishingly, these officials also revealed that missiles with live warheads would have been fired in the New Jersey/New York vicinity beginning in the months leading up to the crash of TWA 800 off Long Island. Additionally, a high-ranking FBI official confirmed that aerial target drones like the BQM-74E drones that flew off Virginia's coast that summer, engaged by surface-to-air missiles, were present near TWA Flight 800 at the time of its tragic downfall. (Stalcup Reply Brief, *Id.*)

In another stunning revelation, Stalcup uncovered what Magistrate Judge Donald Cabell aptly described as a "very stark and . . . ominous"

transfer of Navy radar records to the FBI. Retired Navy Rear Admiral George Huchting and his subordinate, a former East Coast missile test site director, each testified that immediately after the tragic crash of TWA Flight 800, the Navy swiftly ordered the transfer of its radar records of the incident to the FBI. Admiral Huchting further testified that such a transfer had occurred only once before in history: when the USS Vincennes shot down an Iranian Airbus over the Persian Gulf eight years prior to the TWA 800 incident.

These revelations led to the District Court issuing a third-party subpoena for the Navy records, which Stalcup duly served on the FBI. Initially, the FBI located and produced contemporaneous teletype transmissions to the FBI Director, vividly describing what the Navy radar tapes recorded: an object "head[ing] straight for" TWA 800 before the tragic "impact". However, the FBI claimed it could not locate the actual tapes themselves. Stalcup later filed a motion to compel the production of these critical tapes and, on January 4, 2021, he requested a hearing on the motion.

Within a mere two months of filing that request, the National Transportation Safety Board (NTSB) announced the destruction of the entire TWA Flight 800 reconstruction. This reconstruction, which had been



meticulously preserved by the NTSB for over twenty-four years, held the potential to provide definitive evidence linking a US missile to the ill-fated jetliner. The NTSB's announcement of its destruction delivered a devastating blow to a group of TWA 800 families, who were notified of the new evidence obtained in this case, marking the first concrete evidence of the presence of DOD missile test assets flying near the jetliner when it crashed.

In yet another shocking discovery, the families' consultants examining the TWA Flight 800 reconstruction in January of 2023 photographed the spoliation of a significant portion of the lower fuselage that clearly exhibited the effects of an external missile blast. *See* First Circuit Doc. No. 00118006675. Originally curled inward and into the cargo bay by a full 180 degrees, this fuselage section has since been inexplicably flattened. The NTSB General Counsel's office has been made aware of this spoliation and has consented to the preservation of the relevant aircraft section, along with some neighboring parts that bear distinct holes confirmed by the FBI and NTSB to be the result of inward-moving projectiles.

However, the NTSB is currently in the process of destroying all

remaining parts, including four that possess potentially even greater evidentiary value. One of these parts reasonably likely contains missile fragments themselves, which can be definitively identified. The other three parts contain significant amounts of "splatter" material from the earliest moments of the crash, a material that the NTSB confirmed contains nitrates, which exist in high explosives. The NTSB inexplicably failed to conduct any additional analysis to determine if these nitrates originated from high explosives used in missile warheads.

Considering the prior defenses put forth by the DOD and the rulings of the First Circuit in this matter, it is imperative to acknowledge that the existing evidence in the record may not be sufficient to overcome the "presumption of legitimacy accorded to the Government's official conduct". This presumption applies to all FOIA cases and typically necessitates "clear evidence" to be displaced. *National Archives and Records Administration v. Favish et al.* (541 U.S. 157, 174 2004). The radar tapes and missile fragments would undoubtedly constitute that clear evidence, and Stalcup should not be unjustly deprived of it.

Given the imminent and real possibility of the destruction of these critical missile fragments within the TWA 800 wreckage, it is incumbent

upon this Court to expeditiously issue the requested Stay or Injunction to prevent the irreparable loss and destruction of evidence pending the filing and disposition of a writ of certiorari. By doing so, the Court can ensure the preservation of vital material that are essential to Stalcup's arguments and key to unraveling the truth behind the tragic crash of TWA Flight 800. The stakes are high, not only for the pursuit of justice but also for the public's confidence in the integrity and transparency of our government institutions. In the interest of justice, truth, and the protection of essential evidence, this Court must act swiftly and decisively to safeguard the rights of all parties affected and the integrity of our legal system.

### **QUESTIONS PRESENTED**

1. Whether the First Circuit Court of Appeals erred in denying the motion for an injunction and temporary restraining order to preserve critical evidence, given the unique and urgent circumstances surrounding the imminent destruction of that evidence, due to the court's narrow focus on the scope of the appeal, without considering the importance and relevance of the evidence in future proceedings within this and related cases and actions.
2. Whether there is a substantial likelihood of irreparable harm in the

absence of a temporary restraining order and injunction against the National Transportation Safety Board (NTSB) due to the imminent destruction of four specific wreckage components of the TWA Flight 800 crash, which are essential physical evidence in ongoing Freedom of Information Act and related lawsuits?

3. Whether the balance of equities favors granting a temporary restraining order and injunction to prevent the destruction of potential evidence of governmental impropriety, which is necessary to overcome Freedom of Information Act exemption defenses the government has previously raised (and substantially likely will raise again) in the pending lawsuits?

### **PARTIES TO THE PROCEEDING**

The applicant in this case is Dr. Thomas Stalcup, who is the plaintiff-appellant in the proceeding below.

The respondent in this case is the Department of Defense Agency, Office of the Secretary of Defense of the United States, which is the defendant-appellee in the proceeding below.

The National Transportation Safety Board (NTSB) is a third-party entity potentially affected by the requested stay and injunction, but is not a

party to the lawsuit.

## OPINIONS BELOW

The Court of Appeals for the First Circuit issued a brief order on June 5, 2023, denying the Plaintiff-Appellant's motion for an injunction and temporary restraining order against the National Transportation Safety Board. The court stated, "Plaintiff-appellant's motion for an injunction and temporary restraining order against the National Transportation Safety Board ('NTSB') is denied, as it seeks relief far beyond the scope of this appeal." The order did not provide any further explanation or analysis. A copy of the order is attached as Exhibit 1.

## JURISDICTION

The jurisdiction of this Court to entertain this emergency application for a stay or injunction pending the filing and disposition of a writ of certiorari arises under 28 U.S.C. § 1254, which grants the Supreme Court discretionary authority to review judgments of the United States Courts of Appeals. The jurisdiction of the Court also extends to emergency applications for stays or injunctions in accordance with the Court's Rules.

The underlying case, *Stalcup v. Department of Defense*, No. 22-1405, is currently pending before the United States Court of Appeals for the First

Circuit. The denial of the temporary restraining order by the First Circuit has left critical evidence at imminent risk of destruction. Given the urgency and irreparable harm that would result from the loss of this evidence, the application for a stay or injunction pending the filing and disposition of a writ of certiorari is properly within the jurisdiction of this Court.

This Court has the authority to grant the requested stay or injunction to prevent the irreparable harm that would occur if the evidence is destroyed before its significance can be fully examined and evaluated in the pending litigation. The Court's exercise of jurisdiction is necessary to safeguard the integrity of the legal process, protect the parties' rights, and ensure the availability of essential evidence in further proceedings.

Accordingly, this Court has jurisdiction to consider and grant the requested relief, and it is appropriate to exercise that jurisdiction in order to prevent the irreparable harm that would otherwise occur.

#### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This application for a stay or injunction pending the filing and disposition of a writ of certiorari involves several constitutional and statutory provisions that are central to the protection of the parties' rights and the preservation of evidence in the pending litigation. The following

provisions are implicated:

1. Due Process Clause of the Fifth Amendment: The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees individuals the right to a fair and impartial legal process. This includes the right to access and preserve relevant evidence that may be necessary to support their claims or defenses.
2. Freedom of Information Act (FOIA), 5 U.S.C. § 552: The FOIA grants individuals the right to access records held by federal agencies. In this case, the preservation of evidence is essential to ensure compliance with the FOIA and the disclosure of potentially relevant records that may shed light on the government's actions and the underlying issues in the litigation. Of particular importance here is the right to overcome FOIA exemption claims or defenses raised by the DOD. The preservation of the physical evidence, including the missile fragments within the TWA 800 wreckage, is crucial to substantiating Stalcup's contention of government impropriety and ensuring that the FOIA's purpose of promoting transparency and accountability is upheld. By accessing and examining the physical evidence, Stalcup would have a meaningful opportunity to challenge the DOD's claims of exemption

and present a compelling case that the government's official conduct warrants further scrutiny. The preservation of this evidence is thus paramount to safeguarding the right to overcome FOIA exemption claims and the integrity of the FOIA process itself.

3. **Preservation of Evidence:** The preservation of evidence is a fundamental principle of the legal system, ensuring that parties have access to relevant materials necessary for the resolution of their claims. The destruction or loss of critical evidence can severely prejudice a party's ability to present its case effectively and violates the principles of fairness and due process.
4. **Right to a Fair and Impartial Legal Process:** The right to a fair and impartial legal process is enshrined in various provisions of the Constitution, including the Fifth and Fourteenth Amendments. This right encompasses the preservation of evidence, as the destruction of evidence may impede a party's ability to fully present its case and deprive them of a meaningful opportunity to be heard.
5. **Federal Rules of Civil Procedure:** The Federal Rules of Civil Procedure, including but not limited to Rule 34, govern the conduct of civil litigation in federal courts. These rules include provisions for the



preservation and production of evidence, ensuring that parties have the opportunity to obtain and present relevant materials in support of their claims or defenses.

These constitutional and statutory provisions underscore the importance of preserving evidence and ensuring a fair and impartial legal process. The imminent destruction of evidence in this case raises significant concerns regarding the protection of these fundamental rights. It is essential that this Court exercises its authority to prevent the irreversible harm that would result from the loss of critical evidence and to safeguard the integrity of the legal process.

## **STATEMENT OF THE CASE**

### Procedural History

This case involves a series of proceedings related to the July 17, 1996 crash of TWA Flight 800 and the subsequent investigation into its cause. The Plaintiff-Appellant, Thomas Stalcup, initiated this litigation by filing a Freedom of Information Act (FOIA) request seeking records related to the TWA Flight 800 crash. The procedural history of this case is as follows:

FOIA Requests and District Court Proceedings: Stalcup submitted FOIA requests to various government agencies, including the Office of the

Secretary of Defense (OSD), the Missile Defense Agency (MDA), and the Joint Staff, seeking records pertaining to the crash. Stalcup alleged that the Department of Defense (DOD) failed to conduct an adequate search in response to his FOIA requests, as required by law.

Stalcup filed a lawsuit in the federal district court, challenging the adequacy of the agencies' search and the application of FOIA exemptions. The district court proceedings focused on the sufficiency of the search conducted by the DOD and involved the redaction of certain records made under FOIA exemptions.

Appellate Proceedings and Remand: On appeal to the First Circuit Court of Appeals, Stalcup argued that the DOD inaccurately indicated that no relevant missile tests were conducted and that the agency failed to provide sufficient evidence demonstrating that it conducted an adequate search in response to his FOIA requests.

The appellate court found merit in Stalcup's argument and determined that the DOD did not meet its burden of demonstrating an adequate search. The case was remanded back to the district court for further proceedings, including a reassessment of the adequacy of the DOD's search.

During the discovery period following the remand, Stalcup uncovered potential "clear evidence" of impropriety that he had been pursuing for decades. This evidence came in the form of Navy radar tapes, which allegedly recorded a missile impact on TWA Flight 800. The Magistrate Judge overseeing the discovery process acknowledged the gravity of the situation, describing the handling of these tapes immediately after the loss of the aircraft as "very stark" and "ominous." In light of these developments, the court issued a non-party subpoena to secure access to the tapes. However, the FBI failed to produce the tapes, and the District Court ultimately denied Stalcup's motion to compel their production.

The Second, Pending Appellate Proceedings: Stalcup appealed several District Court Orders to the First Circuit, including the order denying his motion to compel production of the radar tapes. During the appeal process, Stalcup became aware of valid concerns raised by family members involved in the related and ongoing wrongful death case against the government and defense contractors most likely responsible for TWA 800's demise, including concerns about the imminent destruction of all aircraft components containing potential missile fragments and the critical "splatter" material, evidence that would clearly bolster Stalcup's and the families' claims.

Given the potential criticality of this evidence for both Stalcup's case and the families' case, Stalcup filed a motion for a Temporary Restraining Order (TRO) at the First Circuit to halt the destruction of the entire reconstruction. Regrettably, the motion for a TRO was denied, necessitating the present Application for emergency relief before this Court. This Application seeks a limited preservation, specifically requesting that four relatively small aircraft components be safeguarded. This more targeted request represents a significant compromise and reflects Stalcup's ongoing, good faith efforts to obtain "clear evidence" of government impropriety that may be crucial in challenging the presumption of legitimacy accorded to the Government's official conduct.

#### Preservation of Evidence

The preservation of critical evidence is essential in this case to substantiate Stalcup's claims of government impropriety. Stalcup's argument centers on the DOD's failure to conduct an adequate search and the potential concealment of evidence under FOIA exemptions.

#### Need for Emergency Relief

Given the imminent destruction of the TWA Flight 800 reconstruction by the National Transportation Safety Board (NTSB) and the

potential loss of vital evidence, Stalcup seeks emergency relief to preserve specific wreckage components from the center wing tank. These components, identified as CW-102, CW-114, CW-148, and CW-129, hold the potential to provide critical information supporting Stalcup's claims of government impropriety and the need for a thorough investigation. *See* Stalcup's Affidavit, attached as Exhibit 2, and Dr. Frederic Whitehurst's Affidavit, attached as Exhibit 3.

## ARGUMENT

[I]n the absence of clear evidence to the contrary, courts presume that [Government agents] have properly discharged their official duties;<sup>3</sup>

Pro se applicant Stalcup asserts that the conclusions drawn by the FBI, CIA, and the NTSB regarding the crash of TWA 800 are inaccurate, alleging that they have altered and concealed evidence proving that a US missile was involved. Given the extraordinary nature of Stalcup's claim, which requires a demonstration of clear evidence to overcome the “presumption of legitimacy” accorded to official government conduct, it is imperative that this Court remains vigilant to ensure that the required evidentiary threshold can be met when necessary during the course of this case.

The First Circuit Court of Appeals' abbreviated denial of Stalcup's request to preserve this evidence stated that the request “seeks relief far beyond the scope of this appeal”, without saying anything more. Exhibit 1. That Court failed to address or apparently consider whether or not the evidence slated for destruction may be required or helpful in future proceedings in this or any other pending cases, nor if that evidence may be valuable in any investigations spawned by these cases. For example, the

<sup>3</sup> National Archives and Records Administration v. Favish et al. (541 U.S. 157, 174 2004)

families' law firm overseeing their wrongful death case have hired experts that are conducting new analyses that will likely show that a missile was involved, and this new analyses may be submitted to the NTSB within a petition for reconsideration of the probable cause. Significantly, the consideration of these petitions is contingent upon the presentation of new evidence or analyses. In this context, the identification of missile fragments within the wreckage would undoubtedly assume a central role in such proceedings. Applicant Stalcup was also clear in his motion for an injunction, as well as his main brief to the First Circuit Court, that his “case necessitates bolstering in one critical aspect—evidence of potential government impropriety”. Doc. No. 00118016920 at 2. *See also* Br. at 21, 22, Doc. No. 00117909968 (“Evidence that an 'alleged Government impropriety might have occurred' is required in FOIA actions to waive FOIA exemptions that DOD has claimed before in this action and may reasonably claim again”. Internal citation omitted).

This Court in *Favish* established a "clear evidence" requirement for overcoming a FOIA exemption defense, which has significant implications for the preservation of critical evidence in the present case. The *Favish* decision emphasizes the need to balance the public's right to information

with the FOIA exemption, including privacy considerations. The current case involves national security exemptions, which requires the same or higher standard of evidence to overcome.

In *Favish*, the Court recognized that FOIA's central purpose is to ensure transparency in government activities while also respecting privacy interests. The "clear evidence" standard sets a high threshold for disclosure of exempt materials, requiring evidence that would convince a reasonable person of potential government impropriety. Mere speculation is insufficient. What is needed is "evidence [that] points with credibility to some actual misfeasance or other impropriety." *Id.*

Applying the *Favish* clear evidence standard to the present case, it becomes crucial to preserve the critical evidence described herein. Preserving that evidence also preserves Stalcup's right to fairness and due process by safeguarding his access to it when it may reasonably be required in his two pending FOIA cases on this matter, while maintaining public confidence in the integrity of the legal process.

A scientific analysis that can establish, for example, that the metal particles found in the exploded center fuel tank of the jetliner were not from any aircraft structure but rather from the unique steel alloy potentially



found only in warhead casings would constitute the "clear evidence" required by this Court to overcome FOIA exemption claims.

The preservation of critical evidence, including missile fragments within the TWA 800 wreckage, is essential to uphold the rights to a fair and impartial legal process, overcome FOIA exemption claims, and promote transparency and accountability in the litigation. The Due Process Clause of the Fifth Amendment guarantees individuals the right to a fair and impartial legal process, which includes the right to access and preserve relevant evidence necessary to support their claims or defenses. Stalcup's pursuit of evidence preservation aligns with this constitutional right, ensuring compliance with the Freedom of Information Act (FOIA) and the disclosure of potentially relevant records.

Preservation of the physical evidence allows Stalcup to substantiate his contention of government impropriety, challenge FOIA exemption claims, and present a compelling case that warrants further scrutiny of the government's official conduct, including its ongoing refusal to release any missile test records whatsoever. By preserving this evidence, the right to overcome FOIA exemption claims is upheld, and the integrity of the FOIA process is maintained.

The preservation of evidence is also a fundamental principle of the legal system, guaranteeing that parties have access to relevant materials necessary for the resolution of their claims. Loss or destruction of critical evidence can severely prejudice a party's ability to present its case effectively, infringing upon the principles of fairness and due process. In this case, the preservation of the potential missile fragments and other physical evidence within the TWA 800 wreckage is paramount to ensure a fair and impartial legal process and protect Stalcup's rights to present his case and challenge the government's actions. It aligns with the right to a fair and impartial legal process enshrined in the Fifth and Fourteenth Amendments, as well as the Federal Rules of Civil Procedure, including Rule 34.

In *Matter of Providence Journal Co.*, 820 F. 2d 1342, 1346 (1st Cir. 1986), the First Circuit Court of Appeals held that “a court may issue a prior restraint in the form of a temporary restraining order or preliminary injunction without a full hearing”. Given the urgent nature of the present situation, Stalcup respectfully requests that such an order be granted without delay.

This Court should also take note of the coincidental timing of the NTSB's announcement regarding the destruction of the TWA Flight 800

reconstruction. Despite storing the reconstruction for over two decades, it was only after Stalcup sought a hearing on his motion to compel the FBI to produce the Navy tapes capturing an object heading towards TWA 800 before impact that the NTSB announced the destruction of all remaining physical evidence, including potential missile fragments embedded in the fuel tank's rubbery sealant. Notably, this fuel tank was claimed by the government to have spontaneously exploded and caused the crash.

Given historical precedents, it is likely that the government, if it has not done so already, will destroy the Navy radar tapes that could implicate its culpability instead of producing them. Therefore, the remaining potential missile fragments, with their unique metal alloys, may be the single best evidence available today that a US missile was responsible for the tragic incident.

### The Preserving Of The Identified Components Is Paramount To The Pursuit Of Justice

The preservation of the identified components CW-102, CW-114, CW-148, and CW-129 is not a trivial matter or a mere request for convenience. It is instead paramount to the pursuit of justice, both in terms of obtaining crucial evidence for ongoing litigation and in potentially unveiling the full truth about the crash of TWA Flight 800.

Denying Preservation Of These Components Jeopardizes  
The Fairness Of The Ongoing Litigation

The Applicant is involved in two pending FOIA cases, which require clear evidence of governmental improprieties related to the TWA Flight 800 crash investigation. As it stands, the government has asserted and is likely to reassert a FOIA exemption defense in *Stalcup v. DOD*. To contest this defense, the Applicant requires solid evidence of alleged impropriety. The destruction of the identified components would directly undermine the Applicant's ability to present such evidence, jeopardizing the fairness of the ongoing litigation.

The Applicant Has Shown  
A Willingness To Compromise And Act In Good Faith

The Applicant had initially requested a total pause to the handling and potential destruction of all wreckage parts. Upon denial of his motion for a TRO at the First Circuit Court of Appeals in this case, the Applicant significantly compromised by narrowing down his request to the preservation of only four relatively small components from the center wing fuel tank. This willingness to compromise underscores the good faith in which the Applicant has engaged throughout this process and emphasizes the critical importance he places on preserving these specific parts.

## The Urgency Of The Situation Requires Immediate Action

The risk of imminent destruction of the identified parts creates a clear and immediate urgency to this matter. If these parts are lost, they cannot be replaced or recreated, and their potential value as evidence will be irretrievably lost. The only way to ensure that justice can be fully and fairly pursued in both the ongoing and any future investigations is to prevent the destruction of these components.

### CONCLUSION

In light of the aforementioned arguments, the Applicant respectfully urges this Court to grant the motion for an emergency stay or injunction pending the filing and disposition of a writ of certiorari, consistent with the proposed Order attached hereto as Exhibit 4.

Respectfully submitted on this 3<sup>rd</sup> day of July 2023,

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### **CERTIFICATE OF SERVICE**

I, Thomas Stalcup, hereby certify under the pains and penalties of perjury, that this brief and its attachments have been served electronically to all interested parties, including AUSA Michael Fitzgerald and nonparty NTSB Acting General Counsel Casey Blaine. I further certify that such electronic service has been accepted and previously agreed to by the AUSA Fitzgerald, and that the NTSB General Counsel's Office has repeatedly accepted and responded to such electronic service in this matter.

July 3, 2023

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