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NTSB Order No. EA-5901

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 1st day of July, 2021

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STEPHEN DICKSON, <sup>1</sup>	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-30403
v.	)	
	)	
PAUL F. GENDRON,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montaño issued on May 4, 2018.<sup>2</sup> By that decision, the law judge affirmed the Administrator’s Order of Suspension, finding that the Administrator proved by a preponderance

<sup>1</sup> The original caption for this matter was *Daniel K. Elwell, Acting Administrator, Federal Aviation Administration v. Paul F. Gendron*.

<sup>2</sup> A copy of the law judge’s decision is attached.

of the evidence that respondent violated 14 C.F.R. §§ 43.13(a)<sup>3</sup> and (b)<sup>4</sup> in both the repair of the nose strut and the non-repair of the left-wing flap damage of N410LR. Consequently, the law judge affirmed the 180-day suspension of respondent's mechanic certificate with airframe and powerplant (A&P) ratings. Respondent timely appealed. For the reasons discussed below, we deny his appeal and affirm the law judge's decision and suspension of respondent's certificate.

*A. Facts*

Respondent held a mechanic certificate with A&P ratings.<sup>5</sup> On February 12, 2016, a Federal Aviation Administration (FAA) ramp inspection of a Cessna 172, N410LR,<sup>6</sup> owned by a flight school, identified two issues requiring maintenance: severe corrosion on the nose strut chrome, and severe chafing against the left-wing flap upper leading edge skin.<sup>7</sup> On February 17, 2016, FAA Inspector Robert Perez conducted a follow-up inspection on N410LR<sup>8</sup> and found that it was still in maintenance. He noted that “[t]he nose strut was painted halfway up the chrome area and the left-hand flap still had the abrasion or gouge marks.”<sup>9</sup> Inspector Perez took a picture

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<sup>3</sup> Section 43.13(a) provides in pertinent part: Each person performing maintenance, alteration, or preventative maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator.

<sup>4</sup> Section 43.13(b) provides in pertinent part: Each person maintaining or altering, or performing preventative maintenance, shall do that work in such a manner and use materials of such a quality that the condition of the aircraft, airframe, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

<sup>5</sup> Complaint at 1; Answer at 1. The Administrator's Order of Suspension subsequently became the Complaint.

<sup>6</sup> *Id.*

<sup>7</sup> Complaint at 1.

<sup>8</sup> Reply Br. at 3.

<sup>9</sup> Tr. 67.

of the nose strut that day and stated that “you could still see the outline of the corrosion halfway up. The chromium, the plating has been removed and you see the paint halfway up there.”<sup>10</sup>

Respondent admitted that on February 29, 2016, he approved N410LR’s return to service.<sup>11</sup> He further admitted that at the time, he wrote the following in the maintenance record: “Removed corrosion on nose strut and treated per Cessna [Structural Repair Model] SRM 51-11-00-6 page 5 . . .”<sup>12</sup> and “[a]djusted upper TE [Trailing Edge] Wing to Flap clearance and Ops [Operations] Check.-OK.”<sup>13</sup> On March 8, 2016, Inspector Perez conducted a follow-up inspection with Inspector Michael Burton and found that the state of the aircraft was the same as when he had inspected it in February; when comparing pictures that he had taken on February 12th and March 8th, Inspector Perez saw that the corrosion on the nose strut had grown larger.<sup>14</sup>

As a result of the follow-up inspection, on March 10, 2016, Inspector Perez issued an FAA Aircraft Condition Notice (Notice) documenting that the “nose strut, chrome area attached to fork has corrosion painted over the surface,” and noting that it was “an imminent hazard to safety.”<sup>15</sup> The Notice continued in relevant part that the “operation of the aircraft prior to correction will be contrary to pertinent Federal Aviation Regulations [FARs].”<sup>16</sup> Respondent admitted to replacing the nose strut in April 2016.<sup>17</sup>

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<sup>10</sup> Tr. 68; Exhibit (Exh.) A-7. Inspector Perez clarified that out of the three pictures in Exhibit A-7, he took the first picture, while Inspector Burton took the remaining photographs.

<sup>11</sup> Complaint at 1; Answer at 4.

<sup>12</sup> *Id.*

<sup>13</sup> Complaint at 2; Answer at 5.

<sup>14</sup> Tr. 69-77. Inspector Burton did not testify in this case.

<sup>15</sup> Exh. A-14

<sup>16</sup> Reply Br. at 6; Exh. A-14.

<sup>17</sup> *Id.* at 5 (citing Tr. 367).

On June 2, 2016, Inspector Perez e-mailed two pictures solely of the nose strut to Textron Aviation and received a response from Geoff Kelley, a customer service engineer from the company, the next day.<sup>18</sup> Based on the pictures, Mr. Kelley stated in his response e-mail that “parts replacement would have been recommended. Landing gear parts are critical items, and corrosion in high strength steel parts can and have resulted in cracks and failures. The type of repair accomplished on this nose gear would not be advised by Cessna.”<sup>19</sup> Inspector Perez did not send an inquiry to Textron Aviation regarding the wing flap.

*B. Procedural Background*

On June 15, 2017, the FAA issued an Order of Suspension, which became the complaint in this case, suspending respondent’s mechanic certificate with A&P ratings for 180 days. The Administrator alleged respondent violated 14 C.F.R. §§ 43.13(a) and (b) by failing to properly perform maintenance not only on the severe corrosion of the nose strut chrome area, but also of the chafing on the left-wing flap of N410LR. Regarding the maintenance record entries, the FAA specified that SRM Chapter 51-11-00-6<sup>20</sup> (Corrosion and Corrosion Control—General) did not apply to the aircraft’s nose landing gear components or any sub-assemblies, and that the maintenance respondent described regarding the left-wing flap did not involve any maintenance to repair chafing.

Respondent timely appealed the order on June 27, 2017, and filed an answer to the complaint, along with affirmative defenses, on August 19, 2017. The law judge conducted a

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<sup>18</sup> Exh. A-17 at 1-3.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> Tr. 77; Exh. A-9.

hearing from April 17-19, 2018, and issued an Oral Initial Decision on May 4, 2018. Respondent timely appealed the law judge's Oral Initial Decision on May 11, 2018, and filed a supporting brief on July 23, 2018. The Administrator filed a reply brief on September 12, 2018.

Prior to the hearing, the FAA submitted its First Discovery Request on October 5, 2017. On October 20, 2017, respondent submitted his Responses to Interrogatories, listing his potential witnesses and the subject of their testimony<sup>21</sup> and stating that their curricula vitae (CV) were forthcoming. On November 5, 2017, respondent submitted his Amended Responses to Interrogatories, which did not include CVs but did include the name of an additional witness.<sup>22</sup> According to the FAA, on December 19, 2017, when both parties participated in a conference call, the FAA informed the judge that it had not received the requested information, which it needed to depose respondent's expert witness.<sup>23</sup> On February 1, 2018, the law judge issued a Notice of Hearing and concurrently issued a Prehearing Order, requiring the parties to comply with initial disclosure requirements and to disclose witness information.<sup>24</sup> On February 15, 2018, the FAA submitted its Initial Disclosures. On February 27, 2018, the paralegal to Michael Wolf, respondent's original counsel, e-mailed that Mr. Wolf would produce a witness list the next day.

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<sup>21</sup> Some of the descriptions included testifying to the purpose of the strut, the corrosion, acceptable industry standards, strut integrity function, integrity of the nose strut and wing flap, and structural analysis of the nose strut metal. Responses to Interrogatories, at 3-4.

<sup>22</sup> Respondent stated that the witness will testify to the integrity of the nose strut and wing flap, the effect of the corrosion on the nose strut, and the proper procedures for correction/maintenance of the corrosion and wing flap chafing. Respondent's Amended Responses, at 4.

<sup>23</sup> FAA Motion to Compel, at 2. For witnesses, parties were to provide a list of names and addresses of all witnesses who the party expected to present at the hearing. For expert witnesses, parties were to provide the CVs and copies of any reports which may be referred to in testimony.

<sup>24</sup> Prehearing Order, at 2-3.

On March 7, 2018, the FAA issued its Motion to Compel Discovery, stating that while respondent provided a list with general information on expected testimony, he provided nothing further.

On March 23, 2018, the Administrator served a Prehearing Submission. On April 2, 2018, when the law judge reminded Mr. Wolf that prehearing submissions were due on March 27, 2018, Mr. Wolf responded that he would submit them the next day.<sup>25</sup> On April 3, 2018, his paralegal e-mailed that the supplemental discovery would be sent on April 6, 2018, and that Mr. Wolf was withdrawing as respondent's counsel. On April 4, 2018, the law judge's office responded that prehearing submissions were past due, to which the paralegal replied on April 5, 2018, that the submissions would be remailed the next day.<sup>26</sup>

On April 5, 2018, the Administrator filed his Prehearing Objections and Motion in Limine (Motion in Limine) to prohibit respondent from introducing expert testimony, to prohibit the testimony of witnesses who were neither expert nor fact witnesses, and to prohibit respondent's use of exhibits not marked and disclosed per the Prehearing Order. The Administrator explained that he was not in receipt of respondent's prehearing submissions and

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<sup>25</sup> Motion in Limine, Exh. 3.

<sup>26</sup> On April 2, 2018, after not being able "to find where they were submitted," the Hearing Assistant for the Office of Administrative Law Judges inquired about respondent's prehearing submission that were due on March 27, 2018. That same day, respondent's attorney stated, "I will have this material on FedEx tomorrow to you and Mr. Goldberg." Later, on April 4, 2018, the Hearing Assistant e-mailed respondent's counsel reminding him of the deadline and noting, "Please forward them via e-mail TODAY as we have not received the FedEx referred to below as of today, Wednesday, April 4, 2018." In response, Mr. Goldberg stated, "Attached, please find a copy of the FedEx receipt and a copy of an accompanying letter in the package of the discovery materials. I am sending out another FedEx package tomorrow which will include the final supplementary materials and witness and exhibit list and Mr. Gendron's discovery request . . . ."

was therefore unable to object to specific evidence or witnesses. The Administrator specified that respondent failed to provide expert reports, contact information, or CVs for any expert witness. As a result, the Administrator asserted that respondent prevented the FAA from conducting meaningful depositions.

On April 9, 2018, Mr. Wolf notified the judge of a conflict of interest with his paralegal, who was subpoenaed as one of respondent's witnesses, and that Robert Resnick would be stepping in as respondent's new counsel.<sup>27</sup> Mr. Wolf relayed that Mr. Resnick would request a 30-day extension, which the law judge construed as a continuance.<sup>28</sup> On April 10, 2018, Mr. Wolf filed a Motion to Withdraw as Counsel of Record (Motion to Withdraw). That same day, the law judge held a prehearing conference call in which Mr. Resnick asked for a 30-day extension, which the law judge construed as a request to continue.<sup>29</sup> The law judge noted that Mr. Resnick "stated that he would be ready to proceed to hearing, as scheduled to begin on April 17th, should an extension not be granted." The law judge denied respondent's request for a continuance and granted the Administrator's Motion in Limine.<sup>30</sup> On April 16, 2018, the law judge granted Mr. Wolf's Motion to Withdraw.

The law judge subsequently conducted a multiday hearing from April 17, 2018 to

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<sup>27</sup> Mr. Wolf did not provide the date of when the subpoena was sent or received. The first mention of the subpoena was on April 9, 2018 when he e-mailed: "Our Paralegal Alfred DeLeo, as a witness and we did not realize that he was at the hangar when the repairs-in-question to the subject aircraft were being performed, and Mr. Gendron is going to subpoena him."

<sup>28</sup> Tr. 22-24.

<sup>29</sup> *Id.* at 23-24.

<sup>30</sup> While it does not appear that the prehearing teleconference was transcribed, the law judge detailed what was discussed at the time. *Id.* at 13; *See* Appeal Brief (Appeal Br.) at 4-5.

April 19, 2018, and began by addressing respondent's affirmative defenses and the judge's prehearing conference rulings. Respondent's first affirmative defense centered on the doctrine of Unclean Hands,<sup>31</sup> asserting that the ramp inspections were targeted to "harass, intimidate and retaliate against the [r]espondent for making formal complaints under the 'whistleblower doctrine'" against a FSDO Manager in connection with an Airworthiness Certificate for aircraft N6807JW.<sup>32</sup> Respondent asserted that the inspection was not random, but "a calculated and systematic form of intentional harassment, illegal search and false entry, among other acts."<sup>33</sup> The law judge stated that he did not have the authority to determine whether the Administrator abused his discretion by initiating this case; the judge clarified that the issue on appeal was whether the FAA proved its allegations by a preponderance of the evidence.<sup>34</sup> For the second affirmative defense, respondent alleged that the safety inspectors were not knowledgeable or qualified;<sup>35</sup> however, the law judge stated that respondent could challenge the inspectors' qualifications through cross examination and testimony,<sup>36</sup> and that respondent could argue being better qualified and that his testimony should be given greater evidentiary weight during the

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<sup>31</sup> The Doctrine of Unclean Hands is a legal "principle that a party cannot seek equitable relief or assert an equitable defense if that party has violated an equitable principle such as good faith." *Clean-hands doctrine*, BLACK'S LAW DICTIONARY (7th ed. 1999).

<sup>32</sup> The airworthiness certificate issue regarding this aircraft is not before the Board and was not before the ALJ, who clarified, "This is not an aircraft in issue in this case." Tr. 11.

<sup>33</sup> *Id.* at 12; Answer at 6.

<sup>34</sup> *Id.* at 13.

<sup>35</sup> *Id.* at 12-13. The law judge quoted the second affirmative defense verbatim: "The alleged 'safety inspectors' who conducted the said aircraft inspection of the nose strut and flap chafing were not qualified to perform said inspection on said aircraft for their 'specialty.[']'" *Id.* at 13; Answer at 7.

<sup>36</sup> *Id.* at 15.

hearing.<sup>37</sup> The judge reiterated that the issue was whether the Administrator could prove his case and whether respondent could prove that he appropriately performed the required repairs.<sup>38</sup>

As for the prehearing conference call, the law judge noted that both Mr. Wolf and Mr. Resnick were present on April 10.<sup>39</sup> The law judge explained his denial of respondent's request for a continuance—respondent did not articulate a compelling reason and filed Mr. Resnick's appearance one week and a day before the hearing, which did not justify a continuation.<sup>40</sup> Moreover, the law judge found that respondent did not provide relevant information as required by the prehearing order—namely, identification of witnesses and expert witnesses, and expert reports and exhibits intended for trial.<sup>41</sup> He further found that Mr. Wolf did not articulate his recent awareness of a conflict of interest with the paralegal and did not explain why his law firm did not participate in discovery.<sup>42</sup> The law judge declared that respondent's inaction and refusal to participate in discovery and to comply with the NTSB Rules of Practice and the prehearing order could not be rewarded to the detriment of the Administrator, who had diligently prosecuted the case.<sup>43</sup> The law judge stated that the Administrator made every effort to engage with respondent, who could not and would not participate in discovery.<sup>44</sup>

The law judge also explained that he granted the Motion in Limine (Motion) because respondent failed to participate in discovery and had not complied with the prehearing order, the

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 19.

<sup>40</sup> *Id.* at 24.

<sup>41</sup> *Id.* at 22-23.

<sup>42</sup> *Id.* at 24.

<sup>43</sup> *Id.* at 25.

<sup>44</sup> *Id.* at 23.

Federal Rules of Civil Procedure, or the NTSB Rules of Practice.<sup>45</sup> Mr. Wolf had received a copy of the Motion, but neither filed a response nor requested an opportunity to do so. The law judge also confirmed receipt by Mr. Resnick, who stated seeing the Motion for the first time during the prehearing conference call and claiming that he had no time to prepare because he thought that the call was to discuss a continuance.<sup>46</sup> During the prehearing conference, the law judge granted the Motion and excluded respondent's experts from testifying for several reasons, which included not filing their reports or CVs.<sup>47</sup> Further, respondent did not provide contact information and a description of witness testimony.<sup>48</sup> The law judge found that Mr. Wolf provided irrelevant documents, and recalled advising respondent to identify the documents not only to discuss with the FAA, but also to file with the law judge, which respondent failed to do.<sup>49</sup> Moreover, Mr. Wolf did not respond to the Motion to Compel Discovery.<sup>50</sup>

While Mr. Resnick objected and requested a bifurcation of the proceedings, the law judge denied his request, explaining that both parties “had the same time, had the same order, and the same period of requirements to exchange information and present their witnesses.”<sup>51</sup> Granting the bifurcation request would, as the law judge noted, unfairly “put the Administrator in a position where he would present all of his evidence, all the work that he has done, and give [r]espondent a chance to then come back later on”<sup>52</sup> to refute the arguments.

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<sup>45</sup> *Id.* at 25.

<sup>46</sup> *Id.* at 19-20, 28.

<sup>47</sup> *Id.* at 25.

<sup>48</sup> *Id.* at 25-26.

<sup>49</sup> *Id.* at 26.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 36-37.

<sup>52</sup> *Id.* at 37-38.

The judge then heard testimony from the FAA's witnesses: Robert Perez, FAA Assistant Aviation Safety Inspector; Geoffrey A. Kelley, Customer Service Engineer with Textron Aviation; and David M. Dunn, FAA Technical Advisor. Respondent testified on his own behalf and called no other witnesses due to the restrictions following the Motion in Limine.

Inspector Perez testified that he was an FAA Assistant Aviation Safety Inspector and that he conducted the ramp inspection on N410LR on February 12, 2016, observing severe corrosion on the nose strut.<sup>53</sup> At a follow-up inspection on February 17, 2016, he testified that he found that the nose strut was painted halfway up the chrome.<sup>54</sup> At the last inspection on March 8, 2016, he testified that he thought the condition of the nose strut remained the same;<sup>55</sup> however, when comparing the visual outline of the corrosion, he testified that it was larger in the March 8, 2016, photograph<sup>56</sup> than on February 17, 2016,<sup>57</sup> due to leaking seals.<sup>58</sup>

Regarding respondent's use of Cessna SRM Chapter 51-11-00-6<sup>59</sup> (Corrosion and Corrosion Control—General), Inspector Perez testified that it applied to the main landing gear and not the nose strut.<sup>60</sup> He further testified that SRM Chapter 32-20-00 (Nose Landing Gear—Maintenance Practices) applied instead and that it contained the following instructions:

- (1) Clean all parts in cleaning solvent.
- (2) Examine all parts for damage and wear.
- (3) Replace all parts that show wear and damage and all O-rings and backup rings with new parts.

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<sup>53</sup> *Id.* at 59-62; Exh. A-5.

<sup>54</sup> *Id.* at 67-69; Exh. A-7.

<sup>55</sup> *Id.* at 69-72; Exh. A-13.

<sup>56</sup> Exh. A-13.

<sup>57</sup> *Id.* at A-7.

<sup>58</sup> Tr. 72-73.

<sup>59</sup> *Id.* at 77; Exh. A-9.

<sup>60</sup> *Id.* at 77, 79-80.

- (4) Sharp metal edges must be smooth with Number 400 emery paper and cleaned with solvent.<sup>61</sup>

Inspector Perez also testified to FAA Advisory Circular 43.13-1B, “Acceptable Methods, Techniques, and Practice—Aircraft Inspection and Repair.”<sup>62</sup> During the ramp inspection, Inspector Perez testified that he specifically looked at paragraph 6-193 of the Advisory Circular for chromium and nickel-plated parts like the nose strut, which provided in relevant part:

(c) Whenever a chromium or nickel-plated component requires buffing, coat the area with a corrosion-preventative compound, if possible. And (d) when buffing exceeds the minimum thickness of the plating, or the base metal has sustained corrosive attack, the component should be removed and replaced. And (e) the removed component can be restored to a serviceable condition by having the old plating completely stripped and replated in accordance with acceptable methods and specifications.<sup>63</sup>

Inspector Perez further testified to e-mailing photos of the nose strut taken during the February 12, 2016 and February 17, 2016, inspections to Mr. Kelley at Textron Aviation, which owns Cessna,<sup>64</sup> and receiving this response:<sup>65</sup> “[P]arts replacement would have been recommended. Landing gear parts are critical items, and corrosion in high-strength steel parts

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<sup>61</sup> *Id.* at 80-82; Exh. A-11.

<sup>62</sup> *Id.* at 82, 84; Exh. A-16 (Section 12 Plated Parts) is only part of this Advisory Circular (AC), which contains methods, techniques, and practices acceptable to the Administrator for the inspection and repair of nonpressurized areas of civil aircraft, only when there are no manufacturer repair or maintenance instructions. This data generally pertains to minor repairs. The complete AC is accessible at [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC\\_43.13-1B\\_w-chg1.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_43.13-1B_w-chg1.pdf).

<sup>63</sup> *Id.* at 83-85.

<sup>64</sup> *Id.* at 95, 98.

<sup>65</sup> *Id.* at 180.

can, have resulted in cracks and failures. This type of repair accomplished on this nose gear would not be advised by Cessna.”<sup>66</sup>

Inspector Perez also testified that respondent did not perform the proper maintenance on the wing flap.<sup>67</sup> He testified that when left untreated, the rivet heads could pop out, the skin could fail, and the wing flap could break apart.<sup>68</sup> He recounted that on February 12th, he observed a 12-inch abrasion or a gouge running across the upper side of the left-wing flap.<sup>69</sup> At the follow-up inspection on February 17th, he testified that he saw that the flap still had the abrasion or gouge marks.<sup>70</sup> On March 8, 2016, Inspector Perez returned for a follow-up inspection and testified that “[t]he left[-]wing flap still had the gouge on it and the line and the rivet heads that were still missing.”<sup>71</sup> He stated that Cessna SRM Chapter 57-10-00 (Wing Damage Classification)<sup>72</sup> and Chapter 51-10-00 (Damage Investigation and Classification)<sup>73</sup> applied to conducting maintenance on damaged wing flaps for the model Cessna 172,<sup>74</sup> and explained that the former contained the following classifications:<sup>75</sup> negligible damage,<sup>76</sup>

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<sup>66</sup> *Id.* at 95, 99, 103.

<sup>67</sup> *Id.* at 86-88.

<sup>68</sup> *Id.* at 91.

<sup>69</sup> *Id.* at 61, 64, 66; Exh. A-6.

<sup>70</sup> *Id.* at 67.

<sup>71</sup> *Id.* at 74.

<sup>72</sup> Exh. A-15.

<sup>73</sup> *Id.* at A-12.

<sup>74</sup> Tr. 87, 91-92.

<sup>75</sup> *Id.* at 88-89; Exh. A-15. The Wing Damage Classification chapter advises that the three categories provide general guidelines when determining the extent and criticalness of any damage. Exh. A-15 at 1, Section 1(A).

<sup>76</sup> “Negligible Damage: Any smooth dents in the wing leading edge skin that are not more than 0.030 inch below contour and circumscribable with not more than 1.5-inch diameter circle that have no evidence of skin tears, cracks, or skin penetrations . . . constitute negligible damage; and rework is considered cosmetic.” *Id.* at 2, Section 8(A).

repairable damage,<sup>77</sup> or damage necessitating replacement of parts.<sup>78</sup> Inspector Perez noted that respondent should have documented the wing damage classification level pursuant to Chapter 57-10-00, but failed to do so.<sup>79</sup>

Looking at Chapter 51-10-00, Inspector Perez classified the damage as an abrasion, which he explained is a “damaged area of any size which results in a cross-sectional area change due to scuffing, rubbing, and scraping or other surface corrosion. It is usually rough and irregular.”<sup>80</sup> He further identified a gouge, which he explained is “a damaged area of any size which results in a cross-sectional area change. It is usually caused by contact with [a] relatively sharp object which produces a continuous sharp or smooth channel-like groove in a material.”<sup>81</sup>

Subsequent to the March 8<sup>th</sup> follow-up inspection, he issued an Aircraft Condition Notice (Notice) on March 10<sup>th</sup> “to communicate with the aircraft owner a discrepancy with the aircraft that could impact the airworthiness.”<sup>82</sup> He clarified, however, that the Notice was issued strictly for the nose strut and not the left-wing flap: “I felt that the nose strut was a higher risk than the flap.”<sup>83</sup>

On cross examination, Inspector Perez admitted to not measuring the abrasion or the gouge of wing flap in person, but instead basing his measurements on what he saw in the

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<sup>77</sup> “Repairable Damage: Dents or dings deeper and/or larger than specified above must be repaired. Skin tears, cracks, or penetrations must be repaired. . . .” *Id.* Section 8(B).

<sup>78</sup> “Damage Necessitating Replacement of Parts: Where extreme damage has occurred, complete leading edge skin panels should be replaced.” *Id.* Section 8(C).

<sup>79</sup> Tr. 89; Exh. A-8.

<sup>80</sup> *Id.* at 92-93.

<sup>81</sup> *Id.* at 93.

<sup>82</sup> *Id.* at 93-94; Exh. A-14.

<sup>83</sup> *Id.* at 94.

pictures.<sup>84</sup> When asked about rivet panels on the wing and pressed as to whether they were actually button plugs,<sup>85</sup> Inspector Perez responded that either way, the rubbing was visible above the rivets.<sup>86</sup> Moreover, he stated that it was respondent's job to document the measurements.<sup>87</sup> Inspector Perez testified that based on the Wing Damage Classification, the damage here was not negligible because the dimensions between rivets and spacing and diameter of the circle of the inspection plate exceeded the 1.5 inches maximum.<sup>88</sup> Further, he admitted not measuring the corrosion,<sup>89</sup> but reiterated on redirect that taking measurements was respondent's responsibility.<sup>90</sup>

Mr. Kelley next testified that as a Customer Service Engineer with Textron, his primary duty was to assist in troubleshooting and maintenance and give repair recommendations regarding Textron aircraft by phone and via email.<sup>91</sup> He confirmed by e-mailing Inspector Perez that Cessna would have recommended replacing the nose strut and would not have advised the type of repair reflected in the photographs.<sup>92</sup> Mr. Kelley explained that his recommendation was based on the fact that "there is no damage tolerance...on a nose strut barrel such as this."<sup>93</sup>

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<sup>84</sup> *Id.* at 111, 113, 122.

<sup>85</sup> *Id.* at 114-115.

<sup>86</sup> *Id.* at 115.

<sup>87</sup> *Id.* at 118.

<sup>88</sup> *Id.* at 125; Exh. A-6. According to the Wing Damage Classification, "[a]ny smooth dents in the wing leading edge skin that are not more than 0.030 inch below contour and circumscribable with not more than 1.5-inch diameter circle that have no evidence of skin tears, cracks, or skin penetrations . . . constitute negligible damage; and rework is considered cosmetic." Exh. A-15 at 2, Section 8(A) (emphasis added).

<sup>89</sup> Tr. 132; Exh. A-5.

<sup>90</sup> *Id.* at 165.

<sup>91</sup> *Id.* at 180, 184.

<sup>92</sup> *Id.* at 159; Exh. A-17.

<sup>93</sup> *Id.* at 193.

“Once this part is damaged, there is no allowable repair by Cessna” because corrosion in steel material “has the propensity to create pitting” and cracking, thereby resulting in sudden failure of the part.<sup>94</sup> Mr. Kelley elaborated that Textron’s maintenance manual cautions against painting chrome steel parts, such as the nose strut,<sup>95</sup> since the painted part can possibly slide up to the strut seals, causing a leak. Moreover, Mr. Kelley noted that painting over the chrome plating – which is the protective coating of the part – can conceal any damage that may propagate underneath.<sup>96</sup> On cross examination, he stated that if Textron were presented with the corrosion issue, the company would have recommended a replacement of the nose strut.<sup>97</sup>

FAA called its expert witness in aviation maintenance and airworthiness,<sup>98</sup> Inspector Dunn, who had worked for the FAA since 2007 and previously served as an airworthiness and avionics inspector.<sup>99</sup> He testified that there were no temporary repairs of a nose strut; only replacement was allowed per SRM 32-20-00.<sup>100</sup> When comparing the February 12th photo<sup>101</sup> of the nose strut to the March 8th photo,<sup>102</sup> he testified that the latter was worse because the paint was an induced risk or hazard and an improper repair.<sup>103</sup> For the chrome strut, he testified that he would have used SRM Chapter 32-20-00 (Nose Landing Gear—Maintenance Practices)<sup>104</sup> and

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 194-195.

<sup>96</sup> *Id.* at 195.

<sup>97</sup> *Id.* at 201.

<sup>98</sup> *Id.* at 215.

<sup>99</sup> *Id.* at 207-210.

<sup>100</sup> *Id.* at 219-221, 232-233.

<sup>101</sup> Exh. A-5.

<sup>102</sup> *Id.* at A-13.

<sup>103</sup> Tr. 227-228.

<sup>104</sup> *Id.* at 233; Exh. A-11.

not Chapter 51-11-00-6<sup>105</sup> (Corrosion and Corrosion Control—General), as respondent did.<sup>106</sup> Inspector Dunn did not consider the painting of the nose strut acceptable because the maintenance manual mandates a change of the part, not a repair.<sup>107</sup> On cross examination, he repeated that there was no repair for nose strut corrosion, only replacement.<sup>108</sup>

Regarding the wing flap, Inspector Dunn testified that respondent adjusted that part to keep it from chafing.<sup>109</sup> But based on the pictures, Inspector Dunn testified “that the existing chafing was not addressed.”<sup>110</sup> As to determining the damage classification, Inspector Dunn cited to SRM Chapter 57-10-00,<sup>111</sup> stating that respondent would have needed to measure the damage.<sup>112</sup> It was obvious to him from the maintenance log that respondent saw the damage, but did not mention repairing the chafing.<sup>113</sup> While Inspector Dunn agreed with respondent’s adjustment to mitigate chafing, he opined that the chafing should have been addressed before respondent released the airplane to service.<sup>114</sup>

Respondent testified last, stating that he was the Assistant Director of Maintenance for Island Air Charters.<sup>115</sup> Regarding the chrome nose strut, he admitted that ideally “you would like to replace the entire strut. Realistically, . . . you don’t always have that luxury, so you have to use

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<sup>105</sup> *Id.* at 77; Exh. A-9.

<sup>106</sup> *Id.* at 232; Exh. A-9.

<sup>107</sup> *Id.* at 243.

<sup>108</sup> *Id.* at 258.

<sup>109</sup> *Id.* at 238; Exh. A-8.

<sup>110</sup> *Id.* at 238.

<sup>111</sup> *Id.* at 239-240; Exh. A-15.

<sup>112</sup> *Id.* at 240.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 243.

<sup>115</sup> *Id.* at 311-312.

a lot of discretion as a mechanic.”<sup>116</sup> He testified that the FAA and manufacturer permit discretion.<sup>117</sup> He stated that per the manual (SRM 51-11-00-6),<sup>118</sup> he cleaned and inspected the corrosion, and he treated the area with a corrosion protective agent similar to paint.<sup>119</sup> He disputed arguments that the only repair is a replacement.<sup>120</sup> Although he was aware that the strut needed replacement, he testified that there were none available.<sup>121</sup> He stated that he consulted with Cessna’s technical department, which was not happy with his repair.<sup>122</sup> However, he insisted that his repair was proper and that instead of compromising the structural integrity, he improved it by painting it per maintenance manual recommendations.<sup>123</sup> He later replaced the strut in April 2016.<sup>124</sup> When asked by the law judge, respondent confirmed that his determination to conduct the interim repair was based on his experience as an engineer and mechanic. He testified that painting was the best interim repair for the nose strut, but that the ideal repair would have been to change the strut. Nonetheless, he testified that he did not believe that the structural integrity of the strut was compromised.<sup>125</sup>

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<sup>116</sup> *Id.* at 352.

<sup>117</sup> *Id.* at 352, 371.

<sup>118</sup> Although he did not specify which manual, it is evident that he was referring to SRM 51-11-00-6. He testified, “And my operation that I signed in the logbook, in the records stated that I cleaned the corrosion, which is required by the manual, I inspected the corrosion as per the manual . . . .” Tr. 354. As noted above, he wrote the following in the maintenance record: “Removed corrosion on nose strut and treated per Cessna SRM 51-11-00-6 page 5 . . . .”

Complaint at 1; Answer at 4.

<sup>119</sup> Tr. 354, 358.

<sup>120</sup> *Id.* at 370.

<sup>121</sup> *Id.* at 355.

<sup>122</sup> *Id.* at 355-356.

<sup>123</sup> *Id.* at 356, 369.

<sup>124</sup> *Id.* at 367.

<sup>125</sup> *Id.* at 396-397.

Regarding the wing flap, respondent stated on direct examination that he adjusted the flap upward for proper clearance.<sup>126</sup> He denied violating 14 C.F.R. § 43.13(a) because based on his engineering background, he determined that the damage was an inch and a half, which required no further action since he considered the damage negligible.<sup>127</sup> On cross examination, he insisted that he was not obligated to document the damage and that all that was required was to list the work performed, which he did when he adjusted the wing flap.<sup>128</sup> As for the FAA inspectors, respondent expressed his belief that they were unqualified to perform inspections on the aircraft given their specialties, and added that Inspector Perez misidentified the button plugs.<sup>129</sup> Respondent shared with the law judge that that he was not “required to treat the chafing or anything further because it was deemed negligible.”<sup>130</sup> He added, “[a]nd quite frankly, the owner didn’t want to pay for it.”<sup>131</sup>

*C. Law Judge’s Oral Initial Decision*

In the May 4, 2018, Oral Initial Decision and Order, the law judge determined that the Administrator proved respondent violated 14 C.F.R. §§ 43.13(a) and (b). Based on these violations, the law judge affirmed the suspension of respondent’s mechanic certificate with A&P ratings for 180 days.<sup>132</sup> In making this determination, the law judge reviewed the allegations in the emergency

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<sup>126</sup> *Id.* at 337.

<sup>127</sup> *Id.* at 338-341, 345.

<sup>128</sup> *Id.* at 386, 389.

<sup>129</sup> *Id.* at 375-376.

<sup>130</sup> *Id.* at 369.

<sup>131</sup> *Id.*

<sup>132</sup> Oral Initial Decision at 569.

order, summarized witness testimony and relevant exhibits, addressed the credibility of the parties' witnesses, and made several findings of fact.

The law judge specifically addressed the credibility of each of the Administrator's witnesses and found them credible. In his decision, the law judge believed that Inspector Perez credibly testified on direct and cross examinations, notwithstanding that Inspector Perez misidentified the button plug.<sup>133</sup> The law judge acknowledged that it was for respondent to demonstrate the Inspector's lack of subject matter knowledge on the button plug issue;<sup>134</sup> the law judge noted, however, that the differences between the button plug and rivet were not in issue and that Inspector Perez admitted, without hesitation, not knowing what was a button plug.<sup>135</sup> The law judge stated that when Inspector Perez was asked if the misidentification would change his opinion, he said no.<sup>136</sup> The law judge found that the misidentification was a minor issue that did not "detract from his credibility or the weight of his overall testimony."<sup>137</sup>

As for Mr. Kelley, the law judge also found his testimony credible on direct and cross examinations.<sup>138</sup> The law judge noted that for the latter, cross examination "in no way diminished his testimony nor detracted from the weigh his testimony deserves."<sup>139</sup> He had also noted that Mr. Kelley provided testimony consistent with that of Inspector Perez, when

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<sup>133</sup> *Id.* at 497-498.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 498.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 503.

<sup>139</sup> *Id.*

Mr. Kelley agreed on redirect examination “that the propeller could strike the runway if the front strut broke off and completely failed.”<sup>140</sup>

The law judge deemed Inspector Dunn’s testimony and expert opinion as “logical and persuasive and of significant depth based on his experience and training, and based on his evaluation of the evidence in this case, his evaluation of the testimony and his reliance on the Federal Aviation Regulations and maintenance manuals in formulating his opinions.”<sup>141</sup>

By contrast, the law judge did not find respondent credible.<sup>142</sup> He found respondent’s testimony to be evasive at times;<sup>143</sup> specifically, if respondent “did not want to address an issue, he began to testify about technical matters which appeared . . . to do nothing more than confuse the record.”<sup>144</sup> The law judge found that respondent’s answers were inconsistent; as an example, the law judge noted that when he asked respondent “You applied protection to the strut?”; respondent answered, “Yes, to protect it.”<sup>145</sup> But respondent testified that the strut did not require protection: “Yeah, it does not require protection. It’s a preventative maintenance practice.”<sup>146</sup> The law judge described respondent’s answers as “moving targets, so therefore it’s difficult to say really what his opinion is on any specific matter. His answers changed every time a question

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 513.

<sup>142</sup> *Id.* at 551.

<sup>143</sup> *Id.* at 550.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 551.

<sup>146</sup> *Id.*

is asked or even when the same question is asked.”<sup>147</sup> The law judge thus gave greater weight to the Administrator’s witnesses and expert who gave consistent testimony.<sup>148</sup>

1. Nose Strut

The law judge found that the Administrator proved by a preponderance of the evidence that respondent violated 14 C.F.R. § 43.13(a) in his repair of the nose strut.<sup>149</sup> The law judge agreed with the Administrator that respondent used an SRM that did not apply to the nose strut.<sup>150</sup> The law judge stated that respondent did not replace it as required by the Cessna manual, but made up an unauthorized interim repair based on respondent’s own experience and discretion.<sup>151</sup> The law judge found that respondent’s interim repair was not an acceptable method and practice to the Administrator.<sup>152</sup>

The law judge further found that the Administrator proved by a preponderance of the evidence that respondent violated 14 C.F.R. § 43.13(b) because the interim repair of the nose strut worsened the aircraft’s condition, causing Inspector Perez to ground the aircraft due to an immediate safety hazard.<sup>153</sup> The law judge noted that Inspector Perez issued a Condition Notice on March 10, 2016, notifying the owner that there was a discrepancy that could affect the airworthiness of the aircraft.<sup>154</sup> The judge found it significant that Inspector Perez testified that the

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 556.

<sup>150</sup> *Id.* at 557.

<sup>151</sup> *Id.* at 556-557.

<sup>152</sup> *Id.* at 557.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 492, 540; Exh. A-14.

aircraft was essentially grounded.<sup>155</sup> Because Inspector Perez believed that the nose strut was a higher risk than the issues on the flap, he included a description of the corrosion of the strut on the Condition Notice.<sup>156</sup> The law judge observed that Inspector Perez, Inspector Dunn, and Mr. Kelley all testified that painting the nose strut could exacerbate and affect the seals.<sup>157</sup> The law judge continued, “The aircraft had to be grounded by Inspector Perez because after the [r]espondent repaired the aircraft, the aircraft presented an immediate hazard to safety. The aircraft was clearly in a worse position and worse condition than before [respondent] worked on it.”<sup>158</sup>

## 2. Wing Flap

The law judge found that “[r]espondent conduct[ed] an inspection of the wing flap damage and did not document his inspection in the maintenance record,”<sup>159</sup> and that under 14 C.F.R. §§ 43.13(a) and (b), the preponderance of the evidence established that the wing flap damage was not negligible and required repairs, which respondent did not do.<sup>160</sup> The law judge added that “[r]espondent did not perform the repairs because he believed, based on his undocumented inspection, that the damage to the wing flap was negligible.” The law judge continued that respondent “also testified that the owner of the aircraft did not want the repairs to the wing flap to be made.”<sup>161</sup>

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<sup>155</sup> *Id.* at 492.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 558.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 557.

<sup>160</sup> *Id.* at 557-558.

<sup>161</sup> *Id.* at 557.

With respect to § 43.13(b), the law judge found that “[i]n maintaining or altering or performing preventative maintenance [r]espondent did not do the work in such a manner or use materials of such quality that the condition of the aircraft, airframe, aircraft engine, propellor or appliance worked on was at least equal to its original or properly[-]altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration and other qualities affecting airworthiness).” He declared that “[r]espondent simply did not perform the repairs that the preponderance of the evidence in this case established that were required to be repaired.”<sup>162</sup>

### 3. Affirmative Defenses

The law judge found that respondent did not prove by a preponderance of the evidence that the NTSB ALJs have jurisdiction to determine some of the affirmative defenses. For the first affirmative defense, the law judge reiterated that he did not have the authority to address issues identified as intentional harassment.<sup>163</sup> He noted that respondent had the opportunity to cross examine the witnesses regarding whether they were biased, which respondent failed to do.<sup>164</sup> Regarding the second affirmative defense, the law judge noted that the FAA inspectors who conducted the ramp inspection were certified A&P mechanics with substantial experience in maintenance and avionics.<sup>165</sup> Acknowledging that Inspector Perez did not know the difference between a rivet and button plug, the law judge deemed this as a non-substantive, minor issue that did not affect the Inspector’s credibility; the law judge stated that the differences were not in

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<sup>162</sup> *Id.* at 558.

<sup>163</sup> *Id.* at 561.

<sup>164</sup> *Id.* at 560.

<sup>165</sup> *Id.* at 563.

issue, and found it significant that the Inspector admitted his lack of knowledge without hesitation.<sup>166</sup>

#### *D. Issues on Appeal*

On appeal, respondent alleges that the law judge: (1) committed prejudicial error and denied his right to due process by striking his witnesses and exhibits, thus warranting a new trial or remand under 49 C.F.R. § 821.49(a)(4);<sup>167</sup>(2) abused his discretion in denying his request for a continuance; and (3) deviated from law, precedent, and policy in finding for the FAA.<sup>168</sup>

### **2. Decision**

While we give deference to our law judge's rulings on certain issues, such as credibility determinations,<sup>169</sup> we review cases, as a whole, *de novo*.<sup>170</sup>

#### *A. The law judge properly granted the Administrator's Motion in Limine.*

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<sup>166</sup> *Id.*

<sup>167</sup> On appeal, the Board will consider issues that include whether any prejudicial errors occurred. 49 C.F.R. § 821.49(a)(4). If the Board determines that the law judge erred in any respect, or that his initial decision or order should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's initial decision or order, or may remand the proceeding for any such purpose as the Board may deem necessary. 49 C.F.R. § 821.49(b).

<sup>168</sup> On appeal, the Board will consider issues that include whether the findings of fact are each supported by a preponderance of reliable, probative, and substantive evidence; and whether the questions on appeal are substantial. 49 C.F.R. § 821.49(a)(1)-(2).

<sup>169</sup> We will not disturb a law judge's credibility determination unless it is arbitrary and capricious. *Administrator v. Porco*, NTSB Order No. EA-5591 at 13 (2011), *aff'd sub nom.*, *Porco v. Huerta*, 472 Fed. Appx. 2 (D.C. Cir. 2012) (per curiam).

<sup>170</sup> *Administrator v. Smith*, NTSB Order No. EA-5646 at 8 (2013); *Administrator v. Frohmuth and Dworak*, NTSB Order No. EA-3816 at 2 n.5 (1993); *Administrator v. Wolf*, NTSB Order No. EA-3450 (1991); *Administrator v. Schneider*, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

Respondent contends that the law judge's grant of the Administrator's Motion in Limine, striking all of respondent's witnesses and exhibits, deprived him of due process and resulted in prejudicial error. Respondent first argues that he was not specifically notified of the law judge's intent to hear the Motion in Limine when he received notice of the April 10, 2018 telephone conference hearing.<sup>171</sup> Respondent states that he saw the Motion for the first time during the preconference hearing.<sup>172</sup> Respondent claims that had there been notice that the law judge would rule on the Motion, his current counsel could have prepared a response.<sup>173</sup> Second, respondent disagrees that he failed to identify witnesses or set forth the basis of their testimony, maintaining that he detailed accounts of their testimony and identified who would serve as experts. Respondent insists that the FAA knew the witnesses from their past participation in the informal review process.<sup>174</sup>

The Administrator disagrees that the grant of the Motion was an abuse of discretion.<sup>175</sup> The Administrator notes that respondent had approximately six months to provide discovery disclosures; he was afforded numerous reminders and opportunities to respond to discovery requests and comply with the initial disclosure requirements and the law judge's prehearing order. The Administrator argues that respondent failed to do so after repeatedly indicating that

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<sup>171</sup> Appeal Br. at 8.

<sup>172</sup> *Id.* at 6.

<sup>173</sup> *Id.* at 9.

<sup>174</sup> *Id.* Based on August – September 2017 e-mail exchanges between the parties, it appears that there was an informal conference that was conducted for settlement purposes.

<sup>175</sup> While respondent argues that there was a deprivation of due process and prejudicial error, the Administrator noted that the standard of review of the ALJ's evidentiary and procedural rulings is the abuse of discretion standard. *See* Reply Br. at 9-10.

the information was forthcoming. The Administrator argues that the decision to exclude respondent's witnesses and exhibits was reasonable and supported by precedent, as it would have been unfair to allow respondent to produce evidence at trial that the Administrator had no chance to review, much less prepare to rebut.

Finally, the Administrator identifies respondent's failure to show that the exclusion of this evidence was prejudicial and affected the overall outcome of the case. The Administrator noted that respondent "failed to participate in the process or comply with the ALJ's prehearing order."<sup>176</sup> He continued that "any purported prejudice to Respondent's case was of his own making; it was not the result of any error by the ALJ for all of the reasons discussed."<sup>177</sup>

Regarding the Administrator's abuse of discretion argument, we have long held that our law judges have significant discretion in overseeing hearings and making evidentiary rulings.<sup>178</sup> Thus, we review a law judge's ruling on a procedural or evidentiary issue under an abuse of discretion standard, after a party can show such a ruling prejudiced him.<sup>179</sup> In this case,

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<sup>176</sup> *Id.* at 30.

<sup>177</sup> *Id.*

<sup>178</sup> *Administrator v. Wright*, NTSB Order No. EA-5872 at 23 (2020). In that case, Mr. Wright's commercial pilot certificate was temporarily suspended after he flew a helicopter at a low altitude in violation of federal aviation regulations. *Id.* at 2-3. Mr. Wright appealed and filed a Motion in Limine, arguing that the Administrator violated the Pilots Bill of Rights for failing to timely provide him air traffic control data. The law judge denied the Motion, determining there was no such requirement. Mr. Wright appealed. The Board ultimately found that Mr. Wright did not demonstrate being prejudiced as result of the statements and videos that were entered into evidence. *Id.* at 23. Among the Board's reasons were that the Administrator had offered Mr. Wright the opportunity to view the videos earlier, but he insisted that the videos be mailed to him; Mr. Wright had time to gather evidence and identify witnesses; and he received witness statements and videos almost a full month before the hearing. *Id.* at 23-24. The Board found that respondent had not established that he lacked time to prepare his case. *Id.* at 25.

<sup>179</sup> *Id.* at 23 n.162 (citing *Administrator v. Horna*, NTSB Order No. EA-5720 at 8 (2014); *Administrator v. Walker*, NTSB Order No. EA-5656 at 15 n.39 (2013)).

respondent has not demonstrated prejudice as a result of the exclusion of his evidence and witnesses.

We find respondent's argument regarding lack of time to prepare a response to the Motion in Limine without merit. Notably, the Administrator sent the Motion on April 5, 2018 to Mr. Wolf, who was the attorney of record at the time; there were no representations that Mr. Wolf initially failed to notify respondent or Mr. Resnick of the Motion.<sup>180</sup> Mr. Wolf knew of respondent's decision to retain new counsel; as noted previously, Mr. Wolf had e-mailed the law judge on April 9, 2018 and specified that Mr. Resnick would replace him as counsel and request a 30-day extension. Additionally, respondent neither identified evidence nor provided information on what he would have proffered that would have been favorable to his case; respondent asserts that with more time, his current counsel could have properly motioned for an extension to allow FAA to depose respondent's witnesses.<sup>181</sup> However, the Board notes that respondent was given numerous opportunities from October 2017 to April 2018 to provide the addresses and CVs of his witnesses and expert witness, which he failed to do. Even with a reminder from the law judge's office that prehearing submissions were overdue, respondent failed to provide the requisite information of his potential witnesses.

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<sup>180</sup> In *Administrator v. Ricotta*, NTSB Order No. EA-5569 (Jan. 24, 2011), petitioner had three attorneys during the course of his appeal. The ALJ inadvertently served his decision to the previous attorney instead of the new attorney of record. Thus, the Board found that the date of service was when petitioner received a copy of the ALJ decision on May 24, 2010, and not when his previous attorney received it on May 14, 2010.

<sup>181</sup> Tr. 28.

Moreover, a review of the Administrator's First Discovery Request<sup>182</sup> and Respondent's Amended Response<sup>183</sup> demonstrates that the Administrator explicitly requested that respondent not only identify (with full name, address, telephone number, and other information to locate that person) who would be called as a witness, but also provide the following: a description of the topic of the prospective testimony, a summary of witness knowledge, identity of expert opinion offered, identity of all material relied upon by the witness for that opinion, and any reports or other documents prepared by or reviewed by the witness such as a CV, formal report, etc.<sup>184</sup> While respondent did provide names of witnesses and summaries of the witnesses' testimony, he requested additional time to provide CVs and provided no contact information for the witnesses.<sup>185</sup> Respondent did provide a general list of documents that would be "relied on in defense of charges," but he did not identify the material each witness relied upon for their opinions. By contrast, the Administrator timely provided its witness list complete with contact information and included Inspector Dunn's Opinion Report (providing a summary of his testimony and the materials he reviewed) and CV.<sup>186</sup>

Respondent's due process argument suggests that he was expressly prevented from offering his own witnesses because of the Motion in Limine. As we held in *Administrator v. Smith*,<sup>187</sup> "when a respondent has had the opportunity to present and cross-examine witnesses at the administrative hearing, neither the law judge nor the Administrator has denied the respondent

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<sup>182</sup> Motion in Limine, at 2, Exh. 2.

<sup>183</sup> *Id.*, Exh. 1.

<sup>184</sup> *Id.*, Exh. 2, at 2-3.

<sup>185</sup> *Id.*, Exh. 1, at 1.

<sup>186</sup> Acting Administrator's Prehearing Summary.

<sup>187</sup> NTSB Order No. EA-5646 (2013), at 7 n. 13

due process of law.”<sup>188</sup> Here, we find that it was respondent’s own inaction and refusal to comply with the NTSB Rules of Practice and the prehearing order that prevented him from offering witnesses. Accordingly, the Board finds that respondent has proven neither judicial error nor due process violations when the law judge granted the Administrator’s Motion in Limine. Respondent had the opportunity to provide the requisite information, he committed to provide it, but ultimately failed to do so. Furthermore, respondent did not demonstrate prejudice to his case stemming from the law judge’s ruling. Because respondent has not proven the necessary criteria for a failure of due process, we need not address whether the ruling was an abuse of discretion.

*B. The law judge properly denied respondent’s request for a continuance or bifurcation.*

Respondent avers that the law judge’s denial of his request for a continuance and bifurcation was an abuse of discretion resulting in prejudicial error, requiring a new trial pursuant to 49 C.F.R. § 821.49(a)(4). Respondent believed that hiring a new attorney, due to potential conflicts with prior counsel, immediately before the hearing was good cause for a continuance or bifurcation and that the law judge denied him a right to a fair trial because a continuance or bifurcation would have been “unfair” to the Administrator.

The Administrator disputes this abuse of discretion claim. Citing *Administrator v. Keurst, Jr.*, the Administrator maintains that “when a party has received adequate notice of the date and time for a hearing, a continuance would require that a written request be served in time to both the law judge and the other party to modify their travel plans.”<sup>189</sup> In that case, Mr. Keurst’s

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<sup>188</sup> See, e.g., *Administrator v. Nadal*, NTSB Order No. EA-5308 at 7 n.6 (2007).

<sup>189</sup> NTSB Order No. EA-2448 at 2 n.3 (1986).

commercial pilot certificate was temporarily suspended after operating a helicopter at a low altitude, zero air speed, and over water without being properly equipped. When he appealed the initial decision, the law judge denied his motion for a continuance in which Mr. Keurst contended that he was not represented by counsel and was not prepared to present evidence or witnesses. The FAA argued that it was not an abuse of discretion for the judge to deny the continuance since Mr. Keurst made the motion on the day of the hearing. The FAA further noted that Mr. Keurst did not provide evidence of extenuating circumstances that would have justified a continuance.

We have also held that last minute requests for a continuance must be supported by a strong showing of evidence of extenuating circumstances, particularly when the request is not made until the hearing begins.<sup>190</sup> The Administrator adds that respondent did not explain how a continuance or bifurcation of the hearing could have cured his noncompliance with the prehearing order. The Administrator insists that respondent's argument that his prior counsel's failures deprived him of a fair trial is a matter solely between respondent and his counsel. Hiring his new counsel just one week before the hearing was an issue of respondent's own making, and respondent's current counsel explicitly told the judge that if a continuance were not granted, he would be ready to proceed.<sup>191</sup>

In *Keurst*, when acknowledging the receipt of Mr. Keurst's appeal, the Board informed respondent that "the last minute retention of a lawyer cannot be used as an excuse for

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<sup>190</sup> See *Administrator v. Knox*, NTSB Order No. EA-410 (1972); *Administrator v. Tuomela*, NTSB Order No. EA-2013 (1984).

<sup>191</sup> Tr. 23.

postponement of a hearing.”<sup>192</sup> The Board noted that Mr. Keurst did not request a continuance until the day of the hearing,<sup>193</sup> and through the appeal, the Board perceived no reason to question what was within the law judge’s discretion.<sup>194</sup> The Board added that Mr. Keurst did not specify how he was prejudiced, stating that “[a]lthough [respondent] contends that he could have presented further evidence and additional witnesses, he did not identify what evidence nor did he provide information as to the identity of any witness ... or what the content of their testimony would be.”<sup>195</sup>

Similarly, the Board here does not question the law judge’s denial of respondent’s request for a continuance, which he sought a week before the hearing, and his request for bifurcation, which he requested at the start of the hearing.<sup>196</sup> Since *Keurst*, the Board has not wavered in its position regarding last minute attorney retention because without it, a respondent could conceivably avoid complying with a judge’s order or deadline by simply retaining counsel or changing its counsel right before a hearing, which would further delay a case and prolong the discovery process. If multiple respondents engaged in such a practice, law judges’ dockets would be burdened, but also the FAA’s resources to handle cases could be strained. Thus, the Board maintains its position that a respondent who personally decides to hire or change counsel at the last minute—without extenuating circumstances—should bear the burden of the consequences.

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<sup>192</sup> NTSB Order No. EA-2448 at 6.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 7.

<sup>196</sup> *Keurst* at 6.

Significantly, as the law judge noted, in this case, during the prehearing conference on April 10, respondent's current counsel stated that he would be ready to proceed with the hearing should the extension not be granted.<sup>197</sup> We find it significant that during this appeal, respondent's current counsel did not deny making such a statement, thereby leaving the impression at the prehearing conference that he was prepared to move forward and that there were no extenuating circumstances necessitating a continuance.

Therefore, respondent has failed to articulate how he was prejudiced by the denial of the request for continuance and bifurcation and has not provided any explanation of how a continuance or bifurcation would have remedied his procedural noncompliance with the law judge's prehearing order. Based upon this failure of proof, we need not address whether the law judge's ruling constituted an abuse of discretion.

*C. The law judge's credibility findings were not arbitrary and capricious.*

We must defer to the law judge's explicit credibility findings unless they are arbitrary and capricious, because as the trier of fact, the law judge is best positioned to evaluate the witnesses' demeanor and conduct during live testimony.<sup>198</sup> The arbitrary and capricious standard is a high one to meet<sup>199</sup> and one that, only "on occasion,"<sup>200</sup> the Board has found to have been met to overturn a law judge's credibility determination. A credibility determination is arbitrary and capricious if it is not based on the facts before the judge.<sup>201</sup>

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<sup>197</sup> Tr. 23.

<sup>198</sup> *Administrator v. Pham*, NTSB Order No. EA-5889 at 17 (2021).

<sup>199</sup> *Porco*, *supra* n.187 at 17, 20-21.

<sup>200</sup> *See Administrator v. Rojas*, NTSB Order No. EA-5496 at 12 (2009).

<sup>201</sup> *See, e.g., Porco*, *supra* n.187 at 29.

The Board finds that the law judge's credibility findings of the FAA witnesses were reasonably based on the facts before him, including Cessna's SRMs, Cessna's recommendation, and FAA guidance. The law judge explained why he found the Administrator's witnesses credible and respondent not credible based on his observations of the witnesses and the evidentiary record.<sup>202</sup>

For example, he found Inspector Perez's testimony that respondent incorrectly relied upon SRM 51-11-00-6 was corroborated by Inspector Dunn, who agreed that respondent should have referenced SRM 32-20-00, which recommended replacing the nose strut. The law judge based his opinion of Inspector Dunn on his consistency with regulations and maintenance manuals. Further, FAA Advisory Circular 41.131B—applicable when there are no manufacturer repair or maintenance records, which is not the case here—recommended replacement. Moreover, Inspector Perez provided an e-mail response from Mr. Kelley, a Cessna representative, that the company would have recommended replacement based on the pictures of the nose strut. And the law judge found Mr. Kelley's testimony consistent with that of Inspector Perez, when Mr. Kelley agreed that given the condition of the nose strut, "the propeller could strike the runway if the front strut broke off and completely failed."<sup>203</sup>

Inspector Perez also had memorialized his observation of the status of the nose strut on the Notice subsequent to his March follow-up inspection. Significantly, even respondent himself acknowledged that Cessna was not happy with his interim repair, and admitted that the ideal repair would have been to replace the nose strut. With respect to the wing flap damage, Inspector

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<sup>202</sup> Oral Initial Decision at 503.

<sup>203</sup> *Id.* at 503.

Perez's testimony was supported by pictures demonstrating the damage and corroborated by Inspector Dunn, who agreed that SRM 57-10-00 was the proper reference.

By contrast, the law judge did not find respondent's testimony credible. Where there is conflicting testimony, the law judge must deduce which witness is more credible and give weight to that testimony.<sup>204</sup> In determining that respondent was not credible, the law judge noted respondent's inconsistent testimony and demeanor at the hearing, the testimony from credible witnesses, pictures taken of the nose strut and wing flap, respondent's written maintenance entry, and the applicable SRMs.

The Board notes that neither the FAA nor Cessna supported respondent's interim repair to the nose strut and his adjustment to the left-wing flap. For the nose strut, respondent admitted through testimony that he was aware that replacement was needed and also admitted that Cessna was not happy with his interim repair. He agreed that the ideal repair would have been to replace the nose strut, which is inconsistent with his use of SRM 51-11-00-6. Respondent's testimony about painting the nose strut was inconsistent. Initially, respondent testified that he applied the paint for protection. But later he stated that the nose strut "does not require protection."

For the wing flap, the Board agrees with the law judge that argument about the misidentification of the button plug was to attack Inspector Perez's credibility as an inspector. The law judge noted, however, the inspector's credentials and experience as reasons why the misidentification did not affect Inspector Perez's credibility. The Board also finds that Inspector Perez provided credible testimony. As noted above, SRM 57-10-100 specifies the type of repairs

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<sup>204</sup> See *Acting Administrator v. Smith*, NTSB Order No. EA-3558 at 5 (1992) (citing *Administrator v. Smith*, 5 NTSB 1560, 1563 (1987)).

required for the different damage classifications. Thus, the misidentification was of no consequence because the FAA inspectors ultimately referenced the correct manual. Respondent has not disputed the use of this manual.

Examining the law judge's findings in the context of all the evidence, we find no basis to overturn the law judge's credibility determinations.

D. *The Administrator proved by a preponderance of the evidence that respondent violated 14 C.F.R. §§ 43.13(a)-(b).*

1. Nose Strut

The preponderance of the evidence shows that respondent violated 14 C.F.R. §§ 43.13(a) and (b) by not performing the required maintenance on the nose strut of N410LR, as prescribed by the manufacturer's maintenance manual and practices acceptable to the Administrator. As noted above, respondent wrote in the maintenance record: "Removed corrosion on nose strut and treated per Cessna SRM 51-11-00-6 page 5 . . ." <sup>205</sup>

Respondent argues that there was no rebuttal testimony presented that respondent's repair was not compliant with 14 C.F.R. § 43.13(a). Respondent explains that he was confronted with a situation in which no replacement was available at the time and that his decision was based on his "over 40 years' experience, including having designed and engineered over 1,600 parts certified by the FAA." <sup>206</sup> Citing to *Administrator v. Wyatt*, respondent argues that "[u]sing his unique knowledge and through his contacts with the manufacturer, metallurgists and other specialists, determined he could use other methods,

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<sup>205</sup> Complaint at 1; Answer at 4.

<sup>206</sup> Appeal Br. at 14.

techniques and practices acceptable to the Administration, and repair the corroded strut until a replacement was found, having determined the depth of the corrosion to be minor.”<sup>207</sup> The *Wyatt* case dealt with the proposed suspension of a mechanic for performing an interim repair in the absence of specific guidance from the manufacturer.<sup>208</sup> In that case, Mr. Wyatt was called to perform maintenance after a pilot broke a lever that adjusted his seat. Although Mr. Wyatt determined that the seat lever should be replaced, no replacements were available at the time. Accordingly, Mr. Wyatt conducted an interim repair before replacing it the next day. In his defense, Mr. Wyatt asserted that there was no prescribed repair in any manual because the lever was minor and had no effect on airworthiness. The Board agreed and found that he appropriately exercised his judgment. As a result, the Board dismissed the suspension of his airframe mechanic certificate.

Respondent argues that in his case, the FAA did not address whether his repair was permitted under 14 C.F.R. § 43.13(b), which mentioned the use of other methods, techniques and practices acceptable to the Administrator. We find respondent’s arguments unconvincing. Pursuant to FAA Advisory Circular 43.13-1B, § 12, other “methods, techniques, and practices acceptable to the Administrator for the inspection and repair” of plated parts are permitted “only when there are no manufacturer repair or maintenance instructions.”<sup>209</sup> Here, documentary and testimonial evidence in the record shows that there was an SRM Chapter specifically dedicated to the nose chrome corrosion damage repair – SRM Chapter 32-20-00

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<sup>207</sup> NTSB Order No. EA-3457, 1992 WL 31799 (Jan. 8, 1992).

<sup>208</sup> Reply Br. at 5; Exh. A-11.

<sup>209</sup> *Id.* at 13.

(Nose Landing Gear—Maintenance Practices) – which required respondent to replace the nose strut.<sup>210</sup> Notably, SRM Chapter 32-20-00 does not allow for applying paint or protective coating as respondent did. The credible evidence in the record and testimony from Inspector Perez, Inspector Dunn, and Mr. Kelley confirm that Cessna required the nose strut to be replaced in this circumstance. Cessna’s assessment of the damage prompted Mr. Kelley to advise a replacement, and respondent conceded that Textron was not happy with his repair. Respondent failed to comply with SRM Chapter 32-20-00 and instead relied on the inapplicable SRM 51-11-00-6.

Accordingly, respondent’s reliance on *Wyatt* is misplaced. Here, there was express guidance from the manufacturer of the type of repair that was required for the nose strut, which instructed respondent to replace the affected part. Respondent, however, did not adhere to the applicable SRM.

Significantly, respondent admitted that ideally “you would like to replace the entire strut,”<sup>211</sup> and that he “was left with a situation in which a plane had a part that could not be repaired using the manufacturer's maintenance manual or the instructions for Continued Airworthiness prepared by the manufacturer, because there was no replacement part available.”<sup>212</sup> The Board notes that respondent’s admission and eventual replacement of the part was recognition that replacement was the proper repair. Further, describing his painting on the maintenance form as an “interim repair” indicates that even respondent knew that applying paint

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<sup>210</sup> Chapter 32-20-00, § 7B, at 4 (emphasis added); Oral Initial Decision at 556-557.

<sup>211</sup> Tr. 352.

<sup>212</sup> Appeal Br. at 14-15 (emphasis added).

or protective coating was merely a temporary solution that would have to be properly fixed in the future.

Moreover, respondent did not initially repair the nose strut at least equal to its original and properly altered condition when he applied protective paint or coating. Based on the condition of the nose strut upon the ramp inspection on February 12, 2016, Inspector Perez testified that the nose strut absorbed impact upon landing and that “[i]f that component fails, it could break off or it could collapse due to seals leaking and that collapse could cause the aircraft propeller to hit the ground and flip over.”<sup>213</sup> His Condition Notice stated that the nose strut with the painted corrosion is “considered to be an imminent hazard to safety.” Further, Mr. Kelley stated that the painted part can slide up to the strut seals and cause a leak, and Inspector Dunn testified that the paint could induce risk or hazard.

Accordingly, we agree with the law judge that the nose strut was not repaired to an acceptable regulatory standard. For these reasons, we find that the Administrator proved by a preponderance of the evidence that respondent violated 14 C.F.R. §§ 43.13(a)-(b) by conducting an interim repair on the nose strut.

## 2. Left-Wing Flap

The preponderance of the evidence shows that respondent violated 14 C.F.R. §§ 43.13(a) and (b) by not performing the required maintenance, as prescribed by the manufacturer’s maintenance manual and practices acceptable to the Administrator, where the left-wing flap is at least equal to its original or properly altered condition.

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<sup>213</sup> Tr. 86.

Respondent maintains that the FAA did not prove its case by failing to identify the danger to the aircraft's airworthiness when it misidentified non-critical button plug as critical rivets, and by failing to take any measurements of the chafed area. By contrast, the Administrator disputes the assertion that the chafing was "minor" with only "cosmetic effect,"<sup>214</sup> and notes that although the Inspector admitted not knowing a button plug, that did not alter his opinion because "[a]t the end of the day, the rubbing is still there, as you can see from evidence of the wear marks."<sup>215</sup> Regardless of nomenclature, the Administrator contends that Inspector Perez and Inspector Dunn were clear in their testimony that the left-wing flap was severely chafed and that the button plug heads were gone.<sup>216</sup>

As for measurements of the chafed area, the Administrator notes that the FAA's witnesses consistently testified that it was respondent's job to measure and assess the damage using Cessna SRM Chapter 57-10-00 to determine whether repairs were necessary.<sup>217</sup> Significantly, as Inspectors Perez and Inspector Dunn credibly testified, any purported measurements were irrelevant because the left-wing flap showed evidence of skin penetration or corrugation, which automatically removed the damage from the "Negligible Damage" category, and required repair, if not replacement, according to Cessna SRM Chapter 57-10-00.<sup>218</sup>

The Board finds that respondent violated 14 C.F.R. § 43.13(a) in his non-repair of the left-wing flap. Respondent documented in the logbook that he "[a]djusted upper TE Wing to

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<sup>214</sup> Appeal Br. at 20-22.

<sup>215</sup> *Id.* at 19 (Tr. 115-116).

<sup>216</sup> Tr. 65-66, 237, 269. *See* Exh. A-6 at 2.

<sup>217</sup> *Id.* at 87-91, 116-118, 165, 167, 239-240, 270.

<sup>218</sup> Reply Br. at 21 (citing Tr. 127-130, 237-241, 243. *See* Exh. A-15 at 3 paragraph 13.A).

Flap clearance and Ops Check.-OK.”<sup>219</sup> Further, based on this logbook entry and his testimony, it is evident that respondent failed to make the required repair based on his erroneous belief that the damage was not more than 1.5 inches in diameter and classified it as Negligible Damage, which only required cosmetic repair. Significantly, respondent admitted not repairing the left-wing flap chafing. By contrast, Inspector Perez and Inspector Dunn testified that the damage was more than just negligible, and that under the Wing Damage Classification, deeper and larger dents or dings are classified as Repairable Damage that must be repaired. Extreme damages are classified as Damage Necessitating Replacement of Parts, in which the leading edge skin panels should be replaced.<sup>220</sup> Inspector Perez and Inspector Dunn testified that the diameter of the damage was more than the 1.5 inch minimum for a negligible classification; moreover, there was evidence of skin penetration or corrugation. For this reason, the inspectors concluded that this was more than Negligible Damage, which in turn would require more than a cosmetic repair. As noted above, under the manual’s Wing Damage Classification, deeper and larger dents or dings are classified as Repairable Damage that must be repaired.

Given the conflicting testimony on the extent of the damage, the Board looks to the law judge’s credibility determinations to inform our findings. The law judge found the inspectors credible on both direct and cross examinations,<sup>221</sup> and did not find respondent credible. Thus, the

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<sup>219</sup> Complaint at 2; Answer at 5.

<sup>220</sup> Exh. A-15. As previously noted, smooth dents in the wing leading edge skin that are not more than 0.030 inch below contour and circumscribable with not more than 1.5-inch diameter circle that have no evidence of skin tears, cracks, or skin penetrations constitute negligible damage and rework is considered cosmetic. For damage necessitating replacement of parts, where extreme damage has occurred, complete leading edge skin panels should be replaced.

<sup>221</sup> Oral Initial Decision at 497, 513.

Board defers to the FAA's Repairable Damage classification and not respondent's Negligible Damage classification. By painting the left-wing flap, respondent performed a cosmetic repair that is unacceptable for damage classified as Repairable Damage. Respondent should have replaced the left-wing flap as the damage was more than negligible, according to the FAA inspectors. Accordingly, we find respondent's non-repair of the left-wing flap violated 14 C.F.R. § 43.13(a).

The FAA argues that by not repairing the severe chafing, respondent failed to return the aircraft to its original or properly-altered condition per 14 C.F.R. § 43.13(b).<sup>222</sup> Inspector Dunn explained that the exposed metal "could induce corrosion"; and "if not attended to, could lead to a total penetration of the wing flap, itself, and failure of the wing flap."<sup>223</sup> Inspector Perez agreed that the "material removed from the flap . . . could cause a crack."<sup>224</sup> He warned that because the chafing exceeded the negligible damage threshold permitted by the Cessna manual, "it could affect the airworthiness of the aircraft."<sup>225</sup> Given the law judge's credibility findings, the Board also finds that by not repairing the severe chafing, respondent failed to return the aircraft to its original or properly-altered condition under 14 C.F.R. § 43.13(b).

Based on the evidence and credible testimony from both FAA inspectors, we affirm the law judge's determination that the Administrator proved by a preponderance of the evidence that respondent violated 14 C.F.R. §§ 43.13(a) and (b) for the left-wing flap.

**ACCORDINGLY, IT IS ORDERED THAT:**

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<sup>222</sup> Tr. 86-87.

<sup>223</sup> *Id.* at 236-237, 241-243, 267-268.

<sup>224</sup> *Id.* at 123.

<sup>225</sup> *Id.* at 124-127.

1. Respondent's appeal is denied; and
2. The law judge's oral initial decision is affirmed; and
3. Respondent's mechanic certificate with A&P ratings is suspended for a period of 180 days.

SUMWALT, Chairman, LANDSBERG, Vice Chairman, HOMENDY, GRAHAM, CHAPMAN, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*

In the matter of: \*

DANIEL K. ELWELL, \*

ACTING ADMINISTRATOR, \*

FEDERAL AVIATION ADMINISTRATION, \* Docket No.: SE-30403

Complainant, \* JUDGE MONTAÑO

v. \*

PAUL F. GENDRON, \*

Respondent. \*

\* \* \* \* \*

Via Conference Call  
Friday,  
May 4, 2018

The above-entitled matter came on for hearing,  
pursuant to notice at 2:00 p.m.

BEFORE: ALFONSO J. MONTAÑO  
Chief Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

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## ORAL INITIAL DECISION AND ORDER

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JUDGE MONTAÑO: This has been a proceeding under the provisions of 49 USC Section 44709, formerly Section 609 of the Federal Aviation Act, and the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board. This matter has been heard before me as the administrative law judge, and as permitted by the regulations, I am issuing an oral initial decision in the proceedings. Pursuant to notice, this matter came on for trial on April 17th, 18th and 19th, 2018, in Miami, Florida. The Administrator was represented by Brandon C. Goldberg, Esquire, Federal Aviation Administration, Office of Chief Counsel, Enforcement Division - Southern Team. The Respondent was represented by Robert P. Resnick, Esquire.

1           The Respondent appealed the Administrator's Order of  
2 Suspension dated June 15, 2017, which was subsequently filed as  
3 the complaint in this case on July 17, 2017.

4           The Administrator alleges that the Respondent violated 14 CFR  
5 Section 43.13(a) in that he performed maintenance, alterations or  
6 preventive maintenance on an aircraft engine, propeller or  
7 appliance and did not use the methods, techniques, and practices  
8 prescribed in the current manufacturer's maintenance manual or  
9 Instructions for Continued Airworthiness prepared by its  
10 manufacturer, or other method, techniques and practices acceptable  
11 to the Administrator, except as noted in Section 43.16.

12           The Administrator also alleges the Respondent violated 14 CFR  
13 Section 43.13(b) in that in maintaining or altering or performing  
14 preventive maintenance, the Respondent did not do that work in  
15 such manner or use materials of such quality that the condition of  
16 the aircraft, airframe, aircraft engine, propeller, or appliance  
17 worked on was at least equal to its original or properly altered  
18 condition (with regard to aerodynamic function, structural  
19 strength, resistance to vibration and deterioration, and other  
20 qualities affecting airworthiness).

21           Based on the alleged violations, the Administrator determined  
22 that safety in air commerce or air transportation and the public  
23 interest required any and all mechanic certificates held by  
24 Mr. Gendron be suspended for a period of 180 days.

25           The Respondent's first attorney, Mr. Michael H. Wolf, filed

1 an answer to the complaint and the Respondent admitted a number of  
2 allegations in the complaint and denied a number of others. The  
3 Respondent maintains that all work was properly accomplished per  
4 the regulations, and the Respondent also advanced two affirmative  
5 defenses in his answer to the complaint.

6 The first one is an affirmative defense of unclean hands, and  
7 the second affirmative defense is one in which Respondent argues  
8 that safety inspectors that were involved in this case were not  
9 knowledgeable or qualified relative to the inspection of the nose  
10 strut and flap chaffins, and were not qualified to perform the  
11 said inspections on said aircraft for their specialties. I will  
12 address specifically the affirmative defenses later in my  
13 decision.

14 The parties were afforded a full opportunity to offer  
15 evidence, to call, examine and cross-examine witnesses and make  
16 arguments in support of their respective positions. Mr. Gendron  
17 had been in the courtroom throughout the hearing and was of  
18 assistance to his attorney.

19 I will not discuss all of the evidence in detail. I have,  
20 however, considered all of the evidence, both oral and  
21 documentary. That information that I do not specifically mention  
22 is viewed by me as being corroborative or as not materially  
23 affecting the outcome of this decision.

24 Let me first talk about the agreements between the parties.  
25 In his answer to the Acting Administrator's complaint, Respondent

1 admitted allegations in paragraphs 1, 4, 5, 6 and 9 of the  
2 Administrator's complaint. As the Respondent has admitted these  
3 allegations, they are deemed to have been established for the  
4 purpose of this hearing and for this decision. The Respondent  
5 denied the allegations in the Administrator's complaint in  
6 paragraphs 2, 3, 7, 8, 10, 11 and 11(a) and (b).

7 As far as the exhibits are concerned in this case, the  
8 Administrator moved for the admission of exhibits A-1, A-2, A-5,  
9 A-6, A-7, A-8, A-9, A-11, A-12, A-13, A-14, A-15, A-16 and A-17.  
10 These exhibits were admitted into evidence. The Respondent  
11 objected to the admission of Exhibits A-8 and A-9. They were  
12 admitted over the Respondent's objection.

13 I also asked that the Respondent's resumes -- there were two  
14 copies of his resume that he used to refresh his recollection on  
15 his direct examination relative to his background and experience.  
16 I asked that they be made ALJ Exhibit 1. Respondent did not move  
17 for the admission of any exhibits.

18 With that background, now I will talk first about the  
19 testimony that I heard during the course of the hearing and then I  
20 will talk about how I applied that testimony to the issues I have  
21 to decide in this case. I appreciate the parties' patience while  
22 I go through this.

23 The Administrator, of course, has the burden of proof in this  
24 case and the Administrator presented the testimony of Aviation  
25 Safety Inspector Robert Perez, Textron customer service engineer

1 Geoff Kelley, and provided the expert witness testimony of  
2 Aviation Safety Inspector David Dunn.

3 Robert Perez was the first witness to testify for the Acting  
4 Administrator. He testified that he is currently employed by the  
5 FAA as an aviation safety inspector with the South Florida Flight  
6 Standards District Office. He has been employed in that position  
7 for the past 4 years. Inspector Perez testified that he began  
8 working for the FAA in 2014 as a journeyman aviation inspector.

9 Prior to his employment with the FAA, he was a manager at  
10 Florida West Airlines, a part 21 company. He was a manager who  
11 had oversight over 10 people performing maintenance on aircraft at  
12 that company. He also oversaw and managed contractor repair  
13 personnel that did work for the airline as well.

14 Prior to that, he worked as a quality control inspector and  
15 served as a maintenance trainer with Aero Cargo. He was involved  
16 in quality control review and oversaw "A" checks, line  
17 maintenance, as well as heavy checks on transport aircraft for  
18 that company. Prior to that position he worked for Spirit  
19 Airlines where he oversaw maintenance during night operations. He  
20 did this for approximately two years. Prior to this position, he  
21 worked for JetBlue as part of ground operations, where he provided  
22 ground services for aircraft.

23 Inspector Perez has an airframe and powerplant mechanic  
24 rating. He also has a commercial pilot certificate and an  
25 instrument rating. He also is a certificated private pilot.

1           Inspector Perez testified that he became involved in this  
2 case during an inspection of a flight school. During his  
3 inspection he identified the aircraft at issue in this case,  
4 N410LR, a Cessna 172R. He identified that that aircraft had  
5 corrosion on its nose strut. He obtained additional information  
6 about the aircraft from the FAA database.

7           He testified when he inspected the aircraft he noted the  
8 corrosion on the nose strut and he also identified a gouge and  
9 abrasions on the upper left-hand wing flap. He testified he could  
10 feel the gouge and testified that the flap had a line of abrasion  
11 along it that he could feel with his fingertip. He also noted  
12 corrosion on the flap at the location of the gouge and abrasions.

13           Inspector Perez identified Exhibit A-5, which included photo-  
14 graphs of the nose strut. He testified that he took the photo-  
15 graphs on February 12, 2016. He testified the photo at A-5 showed  
16 the flaking of chrome on the strut and he could see, he testified,  
17 discoloration and corrosion of the metal underneath the chrome.

18           Inspector Perez identified Administrator's Exhibit A-6, which  
19 are photographs he took of the left wing flap. He described the  
20 abrasions and the gouge on the wing flap. He also testified that  
21 the rivet heads were gone below the area of the abrasions and the  
22 gouge that he identified on the wing flap.

23           Inspector Perez testified that he returned for a follow-up  
24 inspection on February 17, 2016. With him at that time was  
25 Inspector Richard VonGunten. He testified that the aircraft at

1 that point was in maintenance and they conducted their inspection  
2 while it was in maintenance, and he testified that he inspected  
3 the left wing. Inspector Perez testified that the strut at that  
4 time was painted over and the corrosion was covered by the white  
5 paint, and the left wing flap still had the abrasions and the  
6 gouge that he noted during his first inspection.

7 He took photographs of the aircraft, specifically the  
8 photograph at Exhibit A-7, 1 of 3. He testified that Inspector  
9 VonGunten took the photographs at A-7, 2 of 3 and 3 of 3.

10 Inspector Perez testified he saw Inspector VonGunten take the  
11 photographs, and he testified that the photographs showed that you  
12 could still see the corrosion through the paint on the nose strut.

13 Inspector Perez then testified he performed a third follow-up  
14 inspection on March 8, 2016. He testified he went back for a  
15 third follow-up inspection because the aircraft had not been  
16 released for service during the last inspection. Inspector  
17 Michael Burton was with him during that follow-up inspection.

18 Inspector Perez identified photographs of the nose strut of  
19 this aircraft which he took during the third inspection, which are  
20 at Administrator's A-13. He testified that the photographs show  
21 that the chrome plating on the strut had been removed and the  
22 paint that had been painted on it to cover the corroded area had  
23 also been removed by the compression of the nose strut.

24 When asked to compare the photos of the damage at A-13, which  
25 were taken in the March 8th inspection, and A-7, which was taken

1 in the February 17th inspection, Inspector Perez testified that  
2 A-7 showed the strut had been painted but the corrosion could  
3 still be seen under the paint. In A-13, he testified that photo-  
4 graph showed that the corrosion had become larger. He testified  
5 that he believed the damage became larger because of the takeoff  
6 and landings that were experienced in the aircraft.

7 He testified that the strut cannot be painted when corrosion  
8 is found to protect the strut. The chrome protects the strut and  
9 the paint does not, he testified. He testified that the strut has  
10 to be replaced as the corrosion through the chrome cannot be  
11 repaired. Inspector Perez also testified that the paint on the  
12 strut could be pushed up into the seals of the strut during  
13 landing. That would damage the seals and cause leaking of the  
14 fluid in the strut, the hydraulic fluid in the strut.

15 Inspector Perez testified that the left wing flap still had  
16 abrasions and a gouge on it that it had when he inspected it again  
17 on March 8, 2016. Nothing had been done to repair the damage, he  
18 testified.

19 Inspector Perez testified that the Administrator's Exhibit  
20 A-8 was the maintenance record entry made by Mr. Gendron for the  
21 repairs he had performed to the nose strut and the left wing flap  
22 and left wing. He testified that Mr. Gendron's signature appears  
23 on that maintenance record, as well as his A&P mechanic's number.

24 The entry in the record indicates for the wing repair, and I  
25 quote, "adjust TE Wing to Flap clearance with Ops check -OK." As

1 for the repair of the nose strut, Mr. Gendron's entry in the  
2 record indicates that he removed corrosion on the nose strut and  
3 "treated per Cessna SRM 51-11-00-6 page 5, Per Cessna Technical,  
4 OK for service unless strut seal is compromised. Re-inspect in  
5 100 hours." That is the quotation of the maintenance record that  
6 was signed by Mr. Gendron at A-8.

7 Inspector Perez testified that the log entry indicated that  
8 Mr. Gendron was referring to the Cessna Service Repair Manual  
9 which relates to the two main landing gear springs and not the  
10 nose landing gear or the nose strut. The nose landing gear, he  
11 testified, has no springs.

12 Inspector Perez testified that Administrator's Exhibit 11 was  
13 the section of the Cessna repair manual that specifically relates  
14 to the nose strut of the Cessna 172. Exhibit 11, page 4, under  
15 7B, specifically relates to inspection and repair of the nose  
16 strut. That section of the manual does not allow for repair of  
17 damage to the nose strut nor does not allow for the repair of  
18 corrosion to the nose strut. The manual requires the replacement  
19 of all parts that show wear or damage on the nose strut.

20 Inspector Perez further testified that the Administrator's  
21 Exhibit A-16 relates to damage to chromium and nickel-plated  
22 parts. He identified the document as Advisory Circular 43.13-1B.  
23 He read the document into the record, which indicates that  
24 chromium and nickel plate provide protection by forming a somewhat  
25 impervious physical coat over the underlying base metal. When

1 breaks occur in the surface, that protection is destroyed. The  
2 section then describes the reworking that can be performed on  
3 chromium and nickel-plated components is limited and should  
4 consist of light buffing to remove corrosion and produce the  
5 required smoothness.

6 This advisory circular states that when buffing exceeds the  
7 minimum thickness of the plating or when the base metal sustained  
8 corrosion attack, the component should be removed and replaced.  
9 The AC does not indicate that corrosion should be painted over.

10 Inspector Perez testified that the photos in Exhibit A-13 of  
11 the nose strut indicate that there are areas that are not smooth  
12 and there is no chrome plating present on the strut at all at  
13 certain parts of the strut. He testified that when you paint a  
14 strut it causes an additional problem separate and distinct from  
15 the corrosion to the strut. That problem would occur with the  
16 seals. If the strut goes below the paint, it could cause the  
17 seals to be damaged and cause the strut to leak.

18 He testified if there is strut corrosion and the strut is not  
19 replaced, it could become worse over time and develop cracks. If  
20 the cracks are severe enough, it could lead to a strut failure and  
21 it could break off and the nose strut could collapse during  
22 takeoff or at landing, causing an accident.

23 Inspector Perez then was asked questions about the wing flap  
24 in this case. He testified that the maintenance record entry at  
25 A-8 indicates that the Respondent had adjusted the flap and wing

1 to avoid further rubbing and abrasion; however, the damage to the  
2 flap in terms of the gouge and the abrasions were not repaired.

3 He testified that Exhibit A-15 is the Cessna Structural  
4 Repair Manual which relates to wing damage classification. He  
5 testified that the manual requires that damage to the wing be  
6 classified as (A) negligible damage, (B) repairable damage, and  
7 (C) damage necessitating replacement. Inspector Perez testified  
8 that Mr. Gendron did not classify the damage to the flap and did  
9 not make any entry in the maintenance log regarding the  
10 classification of the damage, or any inspection that he had done  
11 relative to the damage, gouge and abrasions on the wing flap.

12 Inspector Perez also testified that the Administrator's  
13 Exhibit 12 also required the classification of damages to the  
14 aircraft. A-12 is the Cessna Structural Repair Manual, which also  
15 requires damage to an aircraft to be classified as negligible  
16 damage, repairable damage and major replacement damage. Once  
17 again he testified that the Respondent did not make any entry in  
18 the maintenance record which classified the damage to the aircraft  
19 in issue in this case.

20 He testified that the wing flap increases lift at low speeds.  
21 If damage to the flap is not repaired it could cause rivet heads  
22 to be stressed and pop off during the vibrations. That could in  
23 turn cause the skin of the aircraft to fail.

24 Inspector Perez then testified that after his March 8th  
25 inspection which indicated the flaps had not been repaired, he

1 issued a condition notice on the aircraft, which is at  
2 Administrator's Exhibit A-14. That document is Form 8620-1.

3 The condition notice was issued on March 10, 2016. The  
4 purpose of the condition notice, he testified, was to put the  
5 owner of the aircraft on notice that there was a discrepancy that  
6 could affect the airworthiness of the aircraft. He testified that  
7 the aircraft was essentially grounded.

8 Inspector Perez testified that he felt the nose strut was a  
9 higher risk than the issues on the flap and so he included a  
10 description of the corrosion of the strut on the condition notice.  
11 However, he testified that because he did not include the abrasion  
12 and gouging to the wing flap, meant that there was no problem with  
13 the wing flap.

14 He testified that in his investigation he reached out to the  
15 flight school and to Mr. Gendron. He also contacted Textron  
16 Aviation, who has the rights or owns the rights of Cessna. He  
17 testified he sent email and two photos to Textron, which are part  
18 of Administrator's A-17. He testified he had a conversation with  
19 a Textron representative and exchanged emails which are Exhibit  
20 A-17. He received an email from Geoffrey Kelley at A-17, page 4  
21 of 7, which Inspector Perez stated, that based on that email, he  
22 felt that his findings in his investigation were validated.

23 On cross-examination, Inspector Perez testified that he  
24 worked on Cessna 172s in the past. He testified he had not worked  
25 on a Cessna in over 10 years. He was asked to review Exhibit A-11

1 and was asked to agree that page 4 of 11 under 7B was for assembly  
2 of a strut and not instructing for repairing a strut. Inspector  
3 Perez testified he disagreed with that statement and he testified  
4 the section was for the inspection and repair of a nose strut.

5 Inspector Perez then was asked about the wing flap and  
6 inspection and asked to review A-15 in the Cessna Structural  
7 Repair Manual, titled, Wing Damage Classification. He was asked  
8 to review A-15, section 13 at page 3, Wing Flap Damage Criteria.  
9 Inspector Perez was then asked if he measured the gouges on the  
10 flaps and he responded that he did not.

11 He was asked about what he described as rivets on the flap  
12 that appeared to be worn by friction with the wing. He testified  
13 he did not confirm that issue with a Cessna expert at the time,  
14 but he indicated that he believed that those items were in fact  
15 rivets. When asked if he knew that the items were button plugs  
16 rather than rivets, he testified he did not know what a button  
17 plug was. When asked if the item was a button plug and not a worn  
18 rivet, would it change his opinion, and he testified that that  
19 would not change his opinion at all.

20 Inspector Perez was asked to review the photographs in A-6,  
21 and he testified that the black area that appears at the center of  
22 the photo is where the paint had been rubbed off to the metal of  
23 the wing flap. The black area, he testified, was actually bare  
24 metal. He was again asked if he had measured the areas he  
25 considered damaged on the wing flap, to which he responded again

1 that he had not measured the area of damage. Inspector Perez  
2 testified it was the Respondent's responsibility to measure the  
3 damage. He testified it was the Respondent's responsibility to  
4 include the measurement in his maintenance record. He further  
5 testified it was Respondent who had to determine the amount and  
6 category of wear and damage to the wing flap.

7 When asked, if Mr. Gendron indicated that the chafing and  
8 damage were okay, then a pilot flying the aircraft would have to  
9 accept that and consider the aircraft safe to fly, Inspector Perez  
10 responded that a pilot would likely question that repair or why  
11 that repair was not done.

12 Inspector Perez testified that the maintenance manual does  
13 not allow for the abrasion and gouges not to be repaired. He  
14 testified that he believed the damaged area, the gouge where the  
15 paint is worn to the metal, is greater than 1.5 inches in area.  
16 He testified that the gouge showed that the blue paint of the  
17 aircraft had been removed by the friction with the wing. The  
18 white base paint had also been removed as well.

19 Inspector Perez testified that the dark part of the gouge was  
20 the bare metal and there was evidence of skin tear. Inspector  
21 Perez testified that the damage was not a dent, it was a gouge  
22 that had penetrated base metal.

23 When asked to confirm that there was no emergency action  
24 taken after the inspections completed, Inspector Perez testified  
25 that there had been action taken. He had issued the condition

1 notice on the aircraft at A-14. The notice required the damage to  
2 be fixed. They are considered to be an imminent hazard to safety,  
3 and operating of the aircraft prior to correction will be contrary  
4 to federal regulations.

5 Inspector Perez was then questioned about the strut. He  
6 testified he did not know the diameter of the strut. He did not  
7 measure the corrosion on the strut, he testified. He testified he  
8 did not know the depth of the corrosion on the strut. Inspector  
9 Perez testified that he touched the corrosion during his  
10 inspection and he could feel the edges of the corrosion. He  
11 testified there was no leaking hydraulic fluid coming from the  
12 strut at that time during his first inspection.

13 Inspector Perez was again asked to review Exhibit A-9 and  
14 testified that he did not see any air pressure loss on the strut  
15 during his inspection. He testified that he was afraid that the  
16 corrosion on the nose strut could turn into cracking during take-  
17 off and landing that would lead to more cracking and, finally,  
18 could potentially lead to the failure of the strut entirely. When  
19 asked if he consulted with Cessna engineers, Inspector Perez  
20 testified that he had contacted Cessna technical support. He was  
21 then asked if he was aware that the strut had been replaced before  
22 the FAA took action in this case, and I believe he testified that  
23 he was aware of that fact.

24 Inspector Perez testified that the scraper ring on the strut  
25 was intended to protect the surface of the strut by scraping away

1 dirt and preventing it from getting into the seals of the strut.  
2 He was asked if he believed the condition of the strut in the  
3 photo at A-13 was caused by the scraper ring. He testified that  
4 his concern was not the scraper ring, but he was concerned that  
5 the strut could break because of the corrosion and possible  
6 cracking.

7 Inspector Perez testified that the Cessna Structural Repair  
8 Manual for the nose landing gear was applicable to this repair.  
9 A-11, page 4, 7B sets forth how repairs have to be conducted. He  
10 testified that the Structural Repair Manual for Corrosion and  
11 Corrosion Control - General, at A-9, which Respondent claimed he  
12 used in his maintenance record, is not applicable to the nose  
13 strut. The section the Respondent referenced in the aircraft  
14 maintenance relates to control of corrosion on the main landing  
15 gear springs, not on the nose strut. The nose strut does not have  
16 springs, Inspector Perez testified. He also testified that the  
17 section does not deal with corrosion on chrome, but with corrosion  
18 on the main landing gear springs.

19 When asked if the maintenance record indicated the Respondent  
20 indicated in the record that the repairs were made in accordance  
21 with a service repair manual and then states "per Cessna  
22 Technical," Inspector Perez indicated he did not know what  
23 Respondent meant by that entry. He agreed that the Respondent had  
24 a choice of going to the repair manual or to Cessna Technical for  
25 guidance.

1           Finally, Respondent questioned Inspector Perez and asked him  
2 to agree that the issue simply is a difference in a point of view  
3 between he and Mr. Gendron. Inspector Perez was concerned the  
4 metal would fail due to corrosion and Mr. Gendron viewed the issue  
5 as the entire strut would fail. Inspector Perez stated he could  
6 not agree with that statement.

7           On redirect, Inspector Perez again testified that he was an  
8 A&P mechanic and not simply an avionics inspector, which  
9 Respondent's counsel had addressed him during his questioning on  
10 cross. He was asked who was responsible for measuring the gouge  
11 and other damage to the wing flap and again Inspector Perez  
12 testified that that was the duty of the Respondent. He agreed  
13 that Mr. Gendron did not include any measurements in his  
14 maintenance records.

15           On recross, Inspector Perez again testified that there were  
16 no measurements in the maintenance records. When asked if includ-  
17 ing measurements was required, Inspector Perez stated that there  
18 was such a requirement. He also testified that the skin on the  
19 flap had been removed from the metal on the flap. He testified  
20 that there was actual metal missing. He testified that the flap  
21 skin had been penetrated. He testified metal was actually missing  
22 from the skin of the flap. He testified that the gouge was more  
23 than just the rubbing or removal of paint through friction.

24           I found Inspector Perez to be a credible witness both on  
25 direct and cross-examination. The issue as to the identification

1 of a button plug was argued to demonstrate his lack of subject  
2 matter knowledge; however, the difference between the identifica-  
3 tion of a button plug and a rivet are not in issue in this case.  
4 When he was asked and confronted with misidentification on cross,  
5 he answered the question without hesitation and testified that he  
6 did not know what a button plug was. He was asked if his  
7 misidentification of the button plug would change his opinion and  
8 he testified that it would not. I do not find Inspector Perez's  
9 testimony relative to this minor issue to detract from his  
10 credibility or the weight of his overall testimony.

11 The Administrator next called Geoffrey Austin Kelley.  
12 Mr. Kelley is employed by Textron Aviation as a customer service  
13 engineer. He has held that position for over 3 years. His duties  
14 include assisting troubleshooting maintenance issues and providing  
15 support.

16 Prior to holding that job he was an airworthiness inspector  
17 with the Washington Citation facilities for Cessna. He worked as  
18 a mechanic and performed repairs on Cessna Citations and  
19 determined airworthiness of aircraft. Prior to that position, he  
20 worked at an FBO performing repairs and general maintenance.  
21 Mr. Kelley was an auto mechanic prior to becoming involved in  
22 aviation.

23 Mr. Kelley has an A&P mechanic certificate with inspection  
24 authority. He is certified to fly single engine aircraft and  
25 multiengine aircraft. He also has an instrument rating.

1           He described his job duties as handling inquiries by mail and  
2 phone about repairs to aircraft. Mr. Kelley testified he became  
3 involved in these types of cases when he received phone calls and  
4 emails regarding troubleshooting problems with Cessna aircraft.  
5 He provides information as to how to troubleshoot the problem and  
6 make recommendations as to repairs. He will make suggestions as  
7 to what repairs need to be made.

8           Mr. Kelley testified that at times he has to discuss problems  
9 with engineers on staff to obtain a recommendation for specific  
10 types of repairs if he is unable to assist in the inquiry relative  
11 to troubleshooting and repairs. He testified that Textron makes  
12 note of who calls, what aircraft was discussed, and what problems  
13 were reviewed, and notes whether an engineer had to be contacted  
14 on that issue. He testified if that occurs, once the review is  
15 completed by an engineer, he will call back the caller with the  
16 recommendations of the engineer. He testified that Textron owns  
17 the rights to Cessna, Beechcraft aircraft, and Hawker aircraft, as  
18 well.

19           He testified that he was called by Inspector Perez, who sent  
20 the email, Exhibit A-17, with photos attached. He testified that  
21 the second photograph in A-17 indicated corrosion of the strut  
22 with chrome flakes peeling off. The other photograph, he  
23 testified, at A-17, page 2, showed the same strut with paint over  
24 the corroded area.

25           He testified that he sent an email to Inspector Perez after

1 reviewing the information at A-17. He read the email into the  
2 record, which states: "I have searched our database and I see  
3 calls logged from you, Mr. Perez, on this aircraft. They were  
4 recorded on 3/15/2016 and April 14, 2016 for gear and flap damage  
5 tolerances. I can find no evidence of us being contacted on nose  
6 strut corrosion in the last year for the 172 model by anyone else.  
7 Attached are pages from our training manual and procedures manual.  
8 "CS Information is the program we use to log calls and issues,"  
9 the email states. "While we try to diligently log in all calls  
10 received, certain dynamics may not allow this to happen 100  
11 percent of the time. Keeping this in mind, we may have received a  
12 call from an individual in question and not documented it.  
13 However, parts replacement would have been recommended in this  
14 case. Landing gear parts are critical items, and corrosion in  
15 high strength steel parts can and have resulted in cracks and  
16 failures. The type of repair accomplished on this nose gear would  
17 not have been advised by Cessna."

18 Mr. Kelley testified that there were no allowable repairs for  
19 the strut barrel. There is no damage tolerance, he testified, and  
20 once this part is damaged, there is no allowable repair.

21 He went on to testify that corrosion leads to pitting that  
22 can cause cracks to develop. Mr. Kelley testified that this could  
23 result in sudden failure of the strut. He was asked to review  
24 page 2 of A-17. He testified that the maintenance manual advises  
25 that painting of the strut is not allowed. Mr. Kelley testified

1 that the painted area could slide up into the seal and damage the  
2 seals. Mr. Kelley testified that the chrome is the protective  
3 coating of the part. Painting on the corrosion possibly conceals  
4 the proliferation of damage in the part and could conceal further  
5 corrosion and cracks.

6 Mr. Kelley testified in response to questions on cross-  
7 examination that the nose strut is made of 4130 steel with a  
8 125/1000th wall thickness. He testified the chrome plating is up  
9 to 3/1000th of an inch thick. When asked if re-chroming a strut  
10 is a repair, Mr. Kelley testified that a strut cannot be repaired.  
11 When asked about the scrape seal on the strut, Mr. Kelley  
12 testified that that is for the purpose of scraping off dirt from  
13 the strut. It is the first barrier to protect the strut.

14 When asked if the strut can compress all the way down to the  
15 fork, Mr. Kelley testified that indeed the strut can be compressed  
16 all the way down to the stop on the fork in the assembly. When  
17 asked to review the photos in A-17, 3 of 7, Mr. Kelley testified  
18 that the photo of the strut indicated typical wear; however, again  
19 he testified that the strut can go all the way down to the fork.  
20 He testified the scrape seals do not stop the strut from  
21 compressing completely all the way down to the strut.

22 As to whether calls to Textron are missed and not logged in,  
23 he indicated that can happen. He was then asked about the number  
24 of representatives that take calls, to which Mr. Kelley answered  
25 the number varied over time, but he was not specifically asked

1 about the period of time in issue in this case. Mr. Kelley  
2 testified that he was trained to answer questions. When asked  
3 about what occurred when Mr. Kelley could not answer a question,  
4 Mr. Kelley responded that the question is then referred to an  
5 engineer with expertise in the specific area that he could not  
6 respond to.

7 As a minimum qualification for his job, he indicated that at  
8 minimum a person must hold an A&P with at least 3 years of  
9 experience and preferably, I believe he said, 5 years of  
10 experience. He testified that there are times when Textron may  
11 leave the type of repair to be done on an aircraft to the judgment  
12 of a mechanic. However, Mr. Kelley testified that if his office  
13 had been present-ed with the issue in this case regarding the  
14 strut, the recommendation would have been to replace the strut.  
15 Again, he testified that there is no repair of a strut, there is  
16 only replacement of a strut.

17 When asked if the aircraft would still be airworthy if the  
18 strut was not replaced, Mr. Kelley testified that in their eyes,  
19 the eyes of Textron, the aircraft would not be airworthy. When  
20 asked if the issue was one of hydraulics being compromised or  
21 metal being compromised, Mr. Kelley testified that it was both.  
22 The greater the corrosion, the greater the possibility it could  
23 lead to cracks in the strut.

24 Mr. Kelley was asked if re-chroming of the strut was allowed  
25 and he again responded, no, the strut must be replaced. When

1 asked if the propeller could strike the runway if the strut was  
2 fully compressed, Mr. Kelley responded no.

3 On redirect, he agreed that the propeller could strike the  
4 runway if the front strut broke off and completely failed. This  
5 is consistent with the testimony of Inspector Perez.

6 I found Mr. Kelley's testimony to be credible both on direct  
7 and cross-examination. Cross-examination in no way diminished his  
8 testimony nor detracted from the weight his testimony deserves.

9 The Administrator then presented his expert witness. The  
10 Administrator called his expert aviation safety inspector, David  
11 Matthew Dunn.

12 Mr. Dunn's CV and his expert report has been admitted into  
13 evidence as A-3. After direct examination of Mr. Dunn's  
14 credentials, certification and experience, he was offered as an  
15 expert in aviation maintenance and airworthiness. Respondent had  
16 an opportunity to *voir dire* Mr. Dunn and objected to him being  
17 qualified as an expert, while at the same time stating that he had  
18 an impressive background. Respondent maintained that Inspector  
19 Dunn's testimony would not assist the trier of fact in  
20 understanding the issues of this case. He was qualified as an  
21 expert in aviation maintenance and airworthiness over the  
22 Respondent's objection.

23 Inspector Dunn testified that the Administrator's Exhibit A-5  
24 depicted the nose strut of the aircraft in this case with  
25 defoliation of the chrome plating and showed delamination and

1 corrosion evident in the base metal of the strut. He testified  
2 that A-7 depicts the nose strut with corrosion removed and the  
3 strut painted over where the chrome plating was removed.

4 He then testified that A-13 showed how the strut had been  
5 compressed below the area that had been painted. The photo shows  
6 the scraping ring had exfoliated the paint at the top of the area  
7 Respondent had stated that he had repaired. Inspector Dunn  
8 testified that the paint used by Respondent could cause damage to  
9 the seals of the strut. He testified that the seal would be  
10 contaminated by the paint if it got past the strut scraper ring.  
11 If that happened, he testified it could cause hydraulic fluid to  
12 leak from the strut. He testified that it appeared that the strut  
13 had compressed to the point of hitting the top of the fork of the  
14 strut.

15 Inspector Dunn testified that he was more concerned about the  
16 corrosion on the strut than a leaking strut. He testified the  
17 corrosion on the strut could lead to cracks in the strut and could  
18 lead to the failure of the nose landing gear strut in the event of  
19 a hard landing.

20 He was asked to compare the extent of the damage before  
21 repair of the strut at A-5 and after the maintenance was performed  
22 by the Respondent on A-13. He testified that the corrosion and  
23 chrome plating is gone in photo A-13, and the damage, in his  
24 expert opinion, looked worse in A-13, which depicted the  
25 exfoliated paint.

1           Once again he testified that the introduction of paint into  
2 the strut induced another hazard to the strut and possibly it  
3 would damage the strut seal and cause hydraulic leaking. His  
4 testimony was consistent with the testimony of Mr. Kelley, who  
5 also said that painting of the strut introduced a completely new  
6 issue or danger to the strut.

7           Inspector Dunn testified that there was more chrome missing  
8 in the photo at A-13 after the repair was made. He testified that  
9 the Respondent's maintenance log at A-8 indicated that he had  
10 "Removed corrosion on the nose strut and treated per Cessna SRM  
11 51-11-00-6 page 5, Per Cessna Technical -OK for service unless  
12 strut seal is compromised. Re-inspect at next 100 hour  
13 inspection."

14           Inspector Dunn testified that the service repair manual that  
15 Respondent cited in his maintenance record does not apply to the  
16 nose strut of the aircraft in this case. The section cited by the  
17 Respondent is entitled, Corrosion and Corrosion Control - General.  
18 He testified that manual applied to corrosion on other parts of  
19 the aircraft and not the nose strut. Inspector Dunn testified  
20 that the page number cited by the Respondent relates to corrosion  
21 on the springs of the main landing gear. The nose strut has no  
22 springs.

23           He further stated that chrome plating is not even mentioned  
24 in the maintenance manual section cited by the Respondent in A-9.  
25 Inspector Dunn testified that the maintenance manual that applies

1 to the nose strut is at Exhibit A-11, which is titled, Nose  
2 Landing Gear Maintenance Practices, and the manual does in fact  
3 mention chrome. The manual does not call for maintenance repairs.  
4 Inspector Dunn testified the strut must be replaced according to  
5 the maintenance manual at A-11. Repairs cannot be done to the  
6 strut; it has to be replaced. The Cessna manual requires  
7 replacement and does not provide or instruct for repair of the  
8 nose strut.

9 He testified that chromium plating is applied to the strut to  
10 protect it from the outside environment. Corrosion of the strut  
11 could become worse if not replaced. Corrosion could lead to  
12 pitting and to cracking and, if severe enough, the cracking could  
13 lead to complete nose strut failure.

14 Inspector Dunn then testified as to the flap damage in this  
15 case. He testified that Exhibit A-6 indicated damage to the wing  
16 flap. He testified that rubbing of the flap against the wing  
17 could lead to chafing that could lead to penetration of the wing  
18 flap. He then testified that the button plugs on the flap had  
19 been rubbed to the extent that the heads of those button plugs had  
20 departed the aircraft. Inspector Dunn testified that chafing  
21 could lead to premature failure of the flap.

22 In reviewing the photographs at A-6, 1 of 2, he testified  
23 that the damage to the flap extended through the paint to the  
24 metal surface of the flap. Inspector Dunn testified that the  
25 maintenance record that the Respondent filled out for his work on

1 the wing simply read "Adjusted upper TE Wing to Flap clearance and  
2 Ops check -OK." Respondent adjusted the flap but did not address  
3 or repair the chafing damage, he testified.

4 He testified that the first step to be taken in deciding to  
5 make repairs on the wing flap is for a mechanic to classify the  
6 wing damage. He referred to Exhibit A-15, which is titled, Wing  
7 Damage Classification. Page 3 of 4 provides for classification on  
8 wing flap damage criteria. As previously mentioned, classifi-  
9 cations are (A) negligible, (B) repairable, and (C) damage  
10 necessitating the replacement of the part.

11 Inspector Dunn testified that the Respondent would have to  
12 have measured the damage to determine the classification of the  
13 damage. He testified that measurements and classification of the  
14 damage to the flap should have been in the maintenance record that  
15 was made by Mr. Gendron at A-6.

16 He testified that there was no mention of the classification  
17 of damage to the flap nor was there any measurements included in  
18 the record. If the damage is classified as negligible, the  
19 inspection and that finding, according to Inspector Dunn, must be  
20 included in the maintenance record.

21 Inspector Dunn testified from his review of the photograph  
22 that the damage to the wing flap was not negligible. Exposed  
23 metal was not addressed by the Respondent and could involve  
24 further corrosion. Corrective action would have been to apply a  
25 coating to the damage to prevent corrosion. He testified an

1 aluminum alloy can be subject to corrosion and that could lead to  
2 failure of the wing flap skin.

3 Inspector Dunn then testified as to his expert opinion. The  
4 nose gear repair in this case was not acceptable to the  
5 Administrator. He again testified that there is no repair allowed  
6 for corrosion on the nose strut. The Cessna maintenance manual  
7 calls for the replacement of the nose strut.

8 As to the opinion of the work performed by the Respondent on  
9 the wing flap, or lack of work done on the wing flap, Inspector  
10 Dunn testified that Mr. Gendron simply adjusted the clearance  
11 between the flap and the wing. Mr. Gendron did not address or  
12 repair the chafing and bare metal areas on the flap. Those damage  
13 areas should have been addressed and repaired at the same time  
14 that Mr. Gendron adjusted the wing flap clearance.

15 On cross-examination, Inspector Dunn agreed that the  
16 corrosion of the nose strut could have taken place over a period  
17 of time. He did not know how long Mr. Gendron had worked on the  
18 airplane before the inspection in issue in this case. Inspector  
19 Dunn testified he did not know what kind of metal the nose strut  
20 was made of until he heard testimony on that matter from  
21 Mr. Kelley.

22 When asked about his experience in avionics, Inspector Dunn  
23 testified that he was experienced in aviation maintenance, he has  
24 an A&P and has inspection authority. He also testified that he  
25 does have avionics experience.

1           When he was asked how he would treat the corrosion in the  
2 nose strut, he testified he would not treat; he would have  
3 replaced the nose strut. He agreed that corrosion is caused by  
4 exposure to the elements. Inspector Dunn testified that he agreed  
5 that the strut had a shiny portion and dull portion.

6           He was asked to review A-13 and testified it was his opinion  
7 that the scraper ring had removed some of the paint that  
8 Respondent had painted on the strut; therefore, the scraper ring  
9 had gone past the area that was treated and painted by the  
10 Respondent.

11           Inspector Dunn was again asked about the repair of the  
12 corrosion on the nose strut and again he responded that there is  
13 no repair for corrosion on the nose strut; it must be replaced.

14           He was then asked how he would repair chrome corrosion  
15 anywhere else on the aircraft. Inspector Dunn responded that he  
16 would have to go to the applicable maintenance manual to determine  
17 how to repair the chrome corrosion on other parts of the aircraft.  
18 He was asked how he would fix chrome corrosion on a bicycle or a  
19 '57 Ford, which Inspector Dunn testified that an aircraft is  
20 vastly different from a bicycle and a '57 Ford. He testified that  
21 there was an FAA-approved process for repairing chrome on aircraft  
22 and other parts of the aircraft. When asked again how he would  
23 repair corrosion on a '57 Ford or a bicycle, Inspector Dunn  
24 testified he would go to the applicable manual and seek those with  
25 experience on how to fix that problem. I believe he again

1 testified that the Cessna 172 is not like fixing a bicycle or a  
2 '57 Ford.

3 Inspector Dunn testified he has never seen a nose strut break  
4 on a Cessna 172. He testified he has seen corrosion on the nose  
5 strut of a 172 in the past. He agreed that different mechanics  
6 can read instructions in different ways. He agreed that the  
7 scraper ring had caused the painted area on the strut to peel.

8 When asked to view A-13 and asked to agree that the strut  
9 appeared dry, Inspector Dunn disagreed. He testified that there  
10 are areas, in his view of the photograph, which looked wet to him.  
11 He testified that he would have a suspicion that the strut had  
12 been leaking. He agreed that it is reasonable to put a protective  
13 coating on the strut.

14 Inspector Dunn was asked if he knew how much fluid was in the  
15 nose strut and he answered he did not. He was informed by  
16 Respondent's counsel that there was apparently -- I believe he  
17 stated 1 tablespoon of hydraulic fluid in the strut. He testified  
18 that he would follow maintenance manuals to determine what the  
19 manual indicated as to the fluid in the strut. Inspector Dunn  
20 testified he refers to maintenance manuals in all cases before he  
21 begins to perform any maintenance.

22 Inspector Dunn testified that he did not know if re-chroming  
23 was permitted on other parts of aircraft. He testified that he  
24 agreed that Respondent had reviewed the Structural Repair Manual  
25 at A-9. He agreed that Mr. Gendron referred to the document in

1 the maintenance logbook at A-8. He referred to, again, SRM 51-11-  
2 00-6.

3 Inspector Dunn was then questioned about the wing damage. He  
4 testified that not all aluminum planes are painted. He agreed  
5 that aluminum was on the wings of this aircraft in issue in this  
6 case. He agreed that aluminum can oxidize. He was asked if he  
7 could see any areas of oxidization on the wing in photograph A-6,  
8 and Inspector Dunn testified that the white spots on the abrasions  
9 on the wing were oxidized spots.

10 Inspector Dunn agreed that A-6 depicted button plugs and not  
11 rivets, as identified by Inspector Perez. He did, however,  
12 testify that the button plugs in the photo were worn to the point  
13 that they were almost flat. He could not say whether the worn  
14 button plugs would affect the integrity of the skin flap.

15 Inspector Dunn agreed that the vital problem causing the  
16 abrasion was the rubbing of the wing on the flap. When asked if  
17 he agreed the Respondent used maintenance manuals to adjust the  
18 flap, Inspector Dunn testified the Respondent made no reference to  
19 manuals in the maintenance log that was reviewed to make the  
20 adjustment on the wing flap. Essentially he testified there was  
21 no reference that Mr. Gendron had used any manual when he adjusted  
22 the wing and the flap.

23 Inspector Dunn testified that Respondent was required to make  
24 a reference to the repair manual or service repair manual he  
25 relied upon in his maintenance record. It is required by the

1 regulations, he testified. When asked what regulations required  
2 the documentation, Inspector Dunn responded 14 CFR 43.11. When  
3 asked if Mr. Gendron's entry on the maintenance record indicated  
4 review of the maintenance manual, Inspector Dunn replied that no  
5 it did not. He testified 43.9(a)(1) related to entry of  
6 maintenance for 100-hour inspection. Repair to the wing and the  
7 strut in this case are not part of the 100-hour inspection.

8 Inspector John Dunn agreed that 43.9 requires the mechanic to  
9 use a description or data acceptable to the Administrator, but  
10 Mr. Dunn emphasized data acceptable to the Administrator. But  
11 again, Inspector Dunn testified that the section 43.9(a)(1) does  
12 not cover the repairs in issue in this case. That section relates  
13 again to the 100-hour inspections and those repairs that were  
14 specifically required in that 100-hour inspection.

15 When asked if Section 43.11 required a description of the  
16 type of inspection performed, Mr. Dunn testified that 43.11(a)(1)  
17 requires a description of the type of inspection and a brief  
18 description of the extent of the inspection. When asked if the  
19 FAA inspected the aircraft in issue in this case after March 10th,  
20 I believe Inspector Dunn testified that the FAA had not inspected  
21 the aircraft again after March 10, 2016.

22 On redirect, Inspector Dunn testified that 43.9(a)(1), again,  
23 are not violations in this case. He testified 43.13(a) clearly  
24 states that a maintenance record must include data in the form  
25 acceptable to the Administrator.

1           On recross, Inspector Dunn was asked if the maintenance  
2 manual at A-8 indicated that Mr. Gendron made reference to the  
3 data he used to repair the flap in use and Inspector Dunn stated  
4 that the Respondent had not made any such reference.

5           I found Inspector Dunn's testimony and expert opinion to be  
6 logical and persuasive and of significant depth based on his  
7 experience and training, and based on his evaluation of the  
8 evidence in this case, his evaluation of the testimony, and his  
9 reliance on the Federal Aviation Regulations and maintenance  
10 manuals in formulating his opinion.

11           At the close of the Administrator's case, the Respondent made  
12 a motion to dismiss, arguing that the Administrator had not proven  
13 his *prima facie* case. I denied that motion, stating that at that  
14 point in the process the Administrator had established his *prima*  
15 *facie* case, that the Respondent had violated the cited  
16 regulations, by a preponderance of the evidence.

17           With that, the Respondent then presented his case.  
18 Respondent, Mr. Gendron, testified on his own behalf. Mr. Gendron  
19 testified about his work history and experience. Two resumes were  
20 used by counsel to refresh Mr. Gendron's recollection about his  
21 work history. I, as I stated previously, had the two resumes  
22 admitted into evidence as ALJ Exhibit 1. The two resumes detail  
23 Mr. Gendron's work history and experience, which I will briefly  
24 touch upon here.

25           Mr. Gendron testified he currently works for Island Air

1 Charter as an assistant director. He testified he is also an  
2 assistant dean of aircraft maintenance at Aircraft Maintenance  
3 Training Institute. He testified that he has worked for Island  
4 Air Charter for 4 years.

5 Prior to that, he worked for himself at RPM Commander. He  
6 testified the company was the holder of supplemental type  
7 certificates and the holder of a parts manufacturing authority,  
8 which is referred to as a PMA. He testified he has worked at RPM  
9 Commander for 8 years and has 1600 line items on the list of parts  
10 that he has manufactured.

11 He testified he develops all drawings and certifications for  
12 all PMA items. He testified he developed research materials as  
13 well as background data in order to receive the parts  
14 manufacturing authority for the items he makes. Mr. Gendron  
15 testified he wore all the hats for that company: development,  
16 inspection, quality control, shipping and receiving. He testified  
17 he still works for the company and has done so for the past 8 or 9  
18 years. He said he started the company in 2008.

19 Prior to that, Mr. Gendron testified he worked for Best in  
20 the Caribbean for 11 years, which he said is a similar company.  
21 He testified that Best in the Caribbean was a 135 applicant for an  
22 air taxi. This was also his company, he testified, and he wore  
23 all the hats for that organization as well.

24 He testified Best in the Caribbean never obtained an FAA  
25 certification, but RPM Commander did. RPM Commander is an FAA

1 repair station, he testified. He testified that he authored FAA  
2 manuals for the Best in the Caribbean, which, as he stated, has  
3 never been certified by the FAA.

4 Mr. Gendron testified that he prepared all the required  
5 documents for establishing a 135 company and making an airline  
6 from scratch. Again, he testified that the Best in the Caribbean  
7 has never been certified by the FAA. The Best in the Caribbean,  
8 he testified, has been in existence for 11 years.

9 Mr. Gendron testified his company, he did not say which, had  
10 two engines for Island Air, three engines for himself, and one  
11 engine for an outside individual. He was rebuilding all of these  
12 engines, he testified.

13 Prior to that time, he worked for Aircraft Parts &  
14 Accessories Exchange, which was a repair station under Part 145.  
15 He testified that Aircraft Parts is an interim company that he  
16 created. He testified he was with that interim company for 15  
17 years. He said that company was started in 1992.

18 He stated that he was then the director of the PMA  
19 department, where he developed drawings to submit for parts  
20 manufacturing approval. Mr. Gendron also testified he worked with  
21 metals making metallurgical determination and thickness  
22 determination. He testified he also performed a lot of reverse  
23 engineering. Mr. Gendron testified he was familiar with the  
24 metals used in the Cessna 172.

25 He also testified he worked for Arrow Air Cargo while he

1 worked for Aircraft Parts & Accessories Exchange. He testified he  
2 was a flight engineer for that company in a DC-8. He testified he  
3 had 700 hours as a flight engineer and around 7,000 hours of total  
4 flight hours.

5 He testified he has experience in a number of aircraft: 747,  
6 727, 737, DC-8, the Mooney, the Piper, Beech, Cessna aircraft.

7 Prior to 2005, he stated he worked for Airscan as a  
8 government contractor. He testified he worked in Kosovo. He  
9 repaired aircraft as a field mechanic.

10 Mr. Gendron testified you don't invent parts, you use  
11 documented engineering background and you also conform with  
12 maintenance control. He responded in that way to a question as to  
13 whether he had to use his imagination in the field to address  
14 problems with the aircraft when no parts were available.

15 He stated he worked with Airscan for 2 years, as listed on  
16 his resume. He also stated he worked for the company as a  
17 contract worker. He testified he worked as a sales representative  
18 for Superior Air Parts. Prior to that, he was with Pan Am for two  
19 and a half years as a maintenance supervisor. Prior to that, he  
20 worked for a friend in a company called Jet Helicopter Leasing,  
21 where he states he started in 1979 or 1980. He has done freelance  
22 work, such as 100-hour inspections, annual inspections and tire  
23 exchanges throughout his career.

24 Mr. Gendron testified that he is an FAA-rated airframe and  
25 powerplant mechanic. He is a licensed flight engineer, a

1 commercial pilot with single and multiengine aircraft ratings. He  
2 testified he has 14 years of experience with heavy aircraft  
3 maintenance. Respondent testified he has 40 years of experience  
4 in general aviation maintenance. He testified he has experience  
5 with landing gear in his business he called APAX, Aviation Parts  
6 and Exchange Company. Mr. Gendron testified that he has 20 years  
7 of experience in certified repair station work and has about 14  
8 years' experience in manufacturing and the sales of parts under  
9 his STC certification.

10 When asked if he worked for NATO, North Atlantic Treaty  
11 Organization, he testified that he did not, but he had a NATO top  
12 security clearance. He said he also had a top secret military  
13 intelligence clearance.

14 After discussing his background and his experience,  
15 Mr. Gendron was asked about the issues in this case. He testified  
16 that he has firsthand experience in landing gear failure. He  
17 bought a plane that had sustained a landing gear failure.

18 He testified that 410LR was owned by Sky Able Flight Training  
19 Academy. He was called in on an emergency basis to conduct a 100-  
20 hour inspection because the flight school had no one else to do  
21 the work. The Respondent testified he performed the inspection in  
22 February of 2016. His inspection involved going through the  
23 checklist of Part 43, Appendix D. He testified A-8 is a  
24 maintenance record of that inspection.

25 He testified that the record indicates he adjusted the

1 trailing edge to the flap clearance and ops check okay, as  
2 previously stated. Mr. Gendron testified that there was no cite  
3 to a page number from a manual because he stated it was such a  
4 basic simple operation that there was no reference to adjust the  
5 trailing edge of the wing.

6 He testified he observed the chafing on the wing when he did  
7 his overall inspection. He testified he could see the trailing  
8 edge of the wing had been depressed to the point where it was  
9 contacting the flap. He adjusted the wing, as he testified.

10 Mr. Gendron testified that that corrected the contact with  
11 the flap and corrected the cause of the chafing. He denied that  
12 he violated 43.13(a) as to the flap and chafing in this case.

13 Mr. Gendron testified that in referencing the Structural Repair  
14 Manual for the wing on the aircraft, he determined that the  
15 chafing did not meet the criteria above negligible.

16 Mr. Gendron testified he referenced the Structural Repair  
17 Manual and in looking over that manual, he believed that the  
18 chafing on the wing flap did not meet the criteria that indicated  
19 it was above, in his words, negligible. He testified that the  
20 trailing edge of the flap was corrugated on the top and bottom.  
21 Each ridge is 3 inches from ridge to ridge, he testified, and that  
22 the scrape on the flap was, by what he described as a measurement,  
23 less than one and a half inches in length, and therefore that did  
24 not meet the criteria for anything more than negligible.

25 Respondent tried to introduce his drawing of a measurement

1 but it was excluded. He first stated he did not know when he  
2 first made the drawing and the calculation as to the measurements  
3 of the abrasion, whether it was before the hearing, but then he  
4 immediately thereafter testified he made the drawing at the time  
5 of the inspection. His testimony is inconsistent as to when he  
6 actually made these measurements. I excluded the document  
7 Respondent was attempting to enter into evidence, as it was not  
8 provided to the Administrator pre-trial.

9 Mr. Gendron testified in his professional opinion the damage  
10 and chafing was considered negligible. He testified that contrary  
11 to Inspector Perez's testimony, he did not see any corrosion on  
12 bare metal on the flap. He saw paint completely rubbed off in a  
13 particular area but did not see bare metal or penetration of the  
14 metal.

15 In response to the testimony that Inspector Perez could feel  
16 bare metal when he rubbed the area with his finger, Mr. Gendron  
17 testified that Inspector Perez was actually feeling worn feathered  
18 paint. Mr. Gendron testified that once he determined that the  
19 chafing was negligible, he did nothing more, as no further action  
20 was required. He testified he did not include the specific manual  
21 reference in the maintenance record because he's not required to  
22 do so because the damage was negligible. He testified he was not  
23 required to include the manual section for the repairs that he  
24 did. Mr. Gendron testified that he is not under obligation in any  
25 part of the Federal Aviation Regulations to list the manual

1 sections unless there is a major repair or a major alteration. In  
2 those cases, he testified, there is a specific form that has to be  
3 filled out.

4 Mr. Gendron then testified that the photos at A-6 did not  
5 show worn rivets as claimed by Inspector Perez, but they were  
6 actually button plugs, which have absolutely no effect on the  
7 structural integrity of the wing, Mr. Gendron testified. However,  
8 he also testified that the button plugs have no damage tolerance  
9 in them, they just require clearance from the wing, which he  
10 testified he adjusted.

11 Mr. Gendron testified that his repair of the flap area was  
12 not a violation of 14 CFR 43.13(a) or (b). His repair had no  
13 effect on the aerodynamic function of the airplane nor did it have  
14 any effect on the structural strength of the flap or the wing. He  
15 also testified that there was a question of vibration to the flap  
16 but he adjusted the wing and fixed the problem. The chafing, he  
17 testified, had no effect on the vibration.

18 Let me correct myself there. Mr. Gendron testified that his  
19 repair of the flap had not violated 14.13(b). Also, he also  
20 testified, as I'll indicate later, that he [had not] violated any  
21 of the sections cited by the Administrator. He absolutely denied  
22 the charges that he did not use methods and techniques and  
23 practices prescribed as described in 14 CFR 43.13(a).

24 As to the nose strut, Mr. Gendron testified that he had  
25 experience in repairing chrome, removing the actual strut from the

1 lower assembly, removing them from the aircraft, reinstalling them  
2 and testing them, both as a pilot and as a flight engineer. He  
3 testified that when he first saw the strut he originally tried to  
4 get the owner to replace the strut. He testified that the parts  
5 to replace the nose strut were not available for a very long  
6 period of time, which would have included the corroded nose strut.  
7 Mr. Gendron testified that the nose strut is similar to a shock  
8 absorber, similar to that you have on a car or a motorcycle. He  
9 testified that in this case, the chrome on the steel delaminated,  
10 which was caused by corrosion of the steel underneath the chrome.  
11 He testified that chrome does not corrode. He testified that  
12 after cleanup, the corrosion was about a thousandth of an inch  
13 thick. Again, he testified, and I quote, "Ideally, he would like  
14 to replace the entire strut. Realistically, in the field, you  
15 don't always have that luxury, so you have to use a lot of  
16 discretion as a mechanic."

17 Mr. Gendron testified that both the FAA and the manufacturer  
18 allowed for the exercise of discretion by the mechanic. He  
19 testified that it would take 8 to 12 months lead time to obtain a  
20 replacement nose strut. Mr. Gendron testified that it would take  
21 in excess of months for the chrome to exfoliate on the strut as it  
22 did in this case. He testified that it appeared on pictures that  
23 the aircraft experienced mostly normal landings, in his opinion.

24 When asked what would happen if the strut compressed to the  
25 point of the corrosion, Mr. Gendron testified that it would cause

1 damage to the scraper seal and would not have reached the upper  
2 seals of the strut. He testified that if a landing had caused the  
3 seals to hit the corrosion and damage the seal, you might see  
4 flaking of the corrosion. He doubted that the corrosion would be  
5 reached by the seals, he testified. He testified that even if the  
6 struts had compressed fully, the corrosion would not have reached  
7 the seals.

8 Mr. Gendron testified he signed the logbook and stated in the  
9 record that he cleaned the corrosion as per the manual, he  
10 inspected the corrosion as per the manual, and then was required  
11 to treat the bare metal with a corrosion protective agent. He  
12 testified that was similar to paint. He testified that is exactly  
13 what he did. He painted the entire chrome strut below the seal  
14 for cosmetic purposes. Again, he testified that he was aware that  
15 the strut needed to be replaced, but there was no replacement  
16 available.

17 When asked what process he went through to determine how to  
18 repair the strut and be in compliance with 43.13(a) and (b),  
19 Mr. Gendron testified he contacted the IA who would have signed an  
20 annual inspection on the aircraft had it gone through an annual  
21 inspection, and based on his 60 years of experience in the  
22 aviation industry, and then he went on to say he also consulted  
23 other mechanics in the field. He testified he consulted Cessna  
24 Technical, called them by phone. He testified he also spoke to  
25 Casey Metallurgical business and spoke to Frank Crate at that

1 business. He had used this company previously as part of his  
2 parts manufacturing authority. He testified that he asked  
3 Mr. Crate for his opinion on the damaged area.

4 Mr. Gendron testified that based on his professional opinion  
5 and the opinion of everybody else that he spoke to, he then testi-  
6 fied, and I quote, "They weren't entirely happy." He testified  
7 that based on his determination, they weren't entirely happy.

8 Mr. Gendron, again, testified that "if we could replace the  
9 strut, we would." When asked, based on his investigation what he  
10 determined would be the proper repair and that would comply with  
11 the requirements under the law and with the requirements of the  
12 FAA, Mr. Gendron testified that based on his experience, his  
13 determination of the proper repair, he determined that the shiny  
14 area above the corroded area that the seals ride upon and that the  
15 area that is discussed in the Structural Repair Manual, that was  
16 the area where no repair could be allowed. He also determined  
17 that below the corroded area was nothing more than cosmetic in  
18 nature and had no structural bearing as to the amount of steel  
19 that was actually removed, and the amount of steel that was  
20 actually removed was negligible.

21 I asked for clarification, if he was testifying that the area  
22 above the corrosion on the strut was a part that the structural  
23 manual indicated you could not repair? He testified that's  
24 correct. The part of the chrome tube below that included the  
25 corrosion served no purpose other than cosmetic purposes and

1 apparently, according to Mr. Gendron, that part could be repaired.  
2 Based on his conclusion, he cleaned the corrosion, made it larger,  
3 and then painted it with zinc phosphate primer.

4 When asked about corrosion of the metal casing metal causing  
5 cracking in the strut, Mr. Gendron testified a tell-tale sign of a  
6 cracked strut is leaking of hydraulic fluid. He testified he  
7 buffed down to where the corrosion was no longer in existence. He  
8 then inspected it with a 10-power magnifying glass, saw no cracks.  
9 He then let the aircraft sit overnight and checked for leaks after  
10 repair. He testified there were no leaks.

11 Mr. Gendron testified based on his experience and the fact  
12 that he removed very little metal and determined that it was still  
13 equal to its structural strength, he determined that the aircraft  
14 was capable of safe flight and returned it to service.

15 He was asked to review Exhibit A-13 and was asked what he did  
16 to protect the chrome, and he testified that chrome did not  
17 require protection. He testified the picture depicted the strut  
18 that had, according to him, obviously been overextended from a  
19 hard landing. He described dirt, debris, and also saw residual  
20 fluid from the protective oil that he said he put on the chrome.  
21 He referred to the lubricant, the protective lubricant, the same  
22 lubricant that is in the landing gear, he testified, it is  
23 hydraulic fluid.

24 Mr. Gendron testified that it appeared that the nose strut  
25 had been subject to a hard landing and overextended the gear to

1 the upper strut. He testified that hard landings are common in  
2 flight schools and a repair to any part of the landing gear is  
3 cause for re-inspection to make sure that there's no damage to the  
4 strut as a result of the landing. He testified that the hard  
5 landing nullified his repair. He testified that the nose strut  
6 had been subject to excessive load that it was possibly not  
7 designed for and the strut required further inspection.

8 Mr. Gendron testified that if the seal had come in contact with  
9 the corroded area, the seals would have failed and the aircraft  
10 would be rendered unairworthy. He testified that did not happen  
11 in this case because he would have seen hydraulic fluid leaking  
12 all over the place.

13 Mr. Gendron then testified that he made his logbook entries  
14 at A-8. He testified he worked on the aircraft later in time when  
15 he overhauled the engine and replaced the nose strut after the  
16 inspections in this case.

17 Mr. Gendron denied he violated 14 CFR 43.13(a) because he  
18 followed the manual strictly and he interpreted it based on his  
19 engineering knowledge and his maintenance history, and the  
20 sections are only applicable to the sealed area itself and not  
21 area of the general corrosion cleaning and painting which he did.

22 Mr. Gendron denied he violated 14 CFR 43.13(b). He testified  
23 that he did follow the manual recommendations for corrosion  
24 treatment, including the painting. He did it in a professional  
25 manner, with good engineering basis. There was no compromise to

1 the structural integrity of the strut and no question as to the  
2 aero-dynamic changes. He improved the deterioration of the strut  
3 by putting paint on it, he testified.

4 When asked how he responded to the Administrator's witness'  
5 testimony that painting the strut created a new problem  
6 altogether, he testified it did not cause any damage. When  
7 Mr. Gendron was asked about the Administrator's argument the only  
8 repair for the strut is replacement, Mr. Gendron testified he  
9 denied that argument.

10 When asked how he reconciled that denial with the fact that  
11 the manual called for disassembly and replacement, he testified  
12 "based on what he was tasked to do and the repair, he used his own  
13 experience and his own prowess to interpolate," he testified,  
14 "that the area that they were using specifically addressed the  
15 seal area, where you can't protrude into the chrome more than  
16 slightly into the surface. That is all as an effect of the seal  
17 area and no bearing on the area that I was inspecting." That is a  
18 quote from Mr. Gendron. The quote begins on "based on" and ends  
19 "with the area that I was inspecting."

20 I asked that he repeat that answer. He said that based on  
21 what the previous witnesses had said, they described an area that  
22 was for the seal only. He testified that both the FAA and the  
23 manufacturers allow discretion by the mechanic to determine what  
24 area is applicable and what should be done to correct it.

25 Mr. Gendron then testified that all Administrator's

1 inspectors were not qualified to inspect a Cessna 172 because he  
2 testified that they believed there was hydraulics in the tail  
3 section of a 172. He testified that one of the inspectors had  
4 asked about hydraulics in the tail section of the 172.

5 When asked why he denied the Structural Repair Manual  
6 sections quoted by the Administrator applied to the nose landing  
7 gear in this case, he testified he demanded strict proof of how  
8 the Administrator determined that he did not comply with the  
9 service repair manual in his answer to the complaint.

10 He was then asked about the Federal Aviation Regulations,  
11 Part 43, Appendix D, which is the minimum standard for 100-hour or  
12 annual inspection. He testified that he absolutely met that  
13 standard and exceeded that standard relative to the inspection and  
14 to documentation. The 100-hour inspection minimum standard at  
15 Part 43, Appendix D, is that the only thing you inspect, according  
16 to Mr. Gendron, on the landing gear is for security and function,  
17 and that is exactly what he did, he testified.

18 Again, Mr. Gendron testified about his affirmative defense  
19 that the safety inspectors in this case were not knowledgeable or  
20 qualified. He testified that the inspectors did not know what  
21 kind of an airplane they were actually inspecting.

22 Mr. Gendron was then led through a series of questions  
23 relative to what action the Administrator should have taken before  
24 bringing this formal action against him of suspension. He argued  
25 that he believed the Administrator should have taken additional

1 steps to discuss the matter with him before bringing the formal  
2 action. The Administrator objected, saying the question went to  
3 matters of prosecutorial discretion.

4 Mr. Gendron was then asked about the form at Exhibit A-14.  
5 He explained it was an aircraft condition notice. He pointed out  
6 that there was two pieces of form, that if you count the cover  
7 sheet, he concluded that there was only a partial form and an  
8 incomplete form. However, there was no objection to the admission  
9 of the form or any question as to authenticity during the course  
10 of the proceedings.

11 Mr. Gendron testified that the form did not mean that the  
12 aircraft was grounded. He testified it just means that there's an  
13 item that needs to be further addressed to make sure that the  
14 aircraft was still in compliance. He testified he did not agree  
15 with the form. Mr. Gendron testified that the Administrator's  
16 inspectors were required to discuss the case with engineering  
17 before they brought the action against him and they did not. He  
18 did not testify as to what information he based that testimony  
19 upon.

20 He testified that 2150 sanction guidelines and the program  
21 circular did not apply to him. They are internal documents. He  
22 is only subject to the Federal Aviation Regulations, he stated,  
23 which he states he followed to the letter.

24 On cross-examination, Mr. Gendron was asked about his two  
25 resumes. One version begins with a paragraph which states he is

1 currently working for Island Air Charters. He testified that was  
2 correct. He was working for Island Air Charters in October of  
3 2016. He was then asked about the second resume, which does not  
4 start with a paragraph. Mr. Gendron agreed that the second resume  
5 indicated he was currently working as a freelance A&P mechanic in  
6 South Florida and the Caribbean. There was no further questioning  
7 or redirect of Mr. Gendron.

8 As provided by the regulations, I can ask questions of  
9 witnesses if I need clarification. I asked Mr. Gendron first  
10 about his resume. I asked him if I should emphasize the  
11 information on one of the resumes over the other. Mr. Gendron  
12 testified that both were the same. He said that he elaborated a  
13 little bit more on one resume for a certain job he was applying  
14 for. He testified that the longer resume was the more current  
15 one, but then in the next breath testified that neither one was  
16 the most current resume.

17 I asked him where he was currently working and he responded  
18 he was working for Island Air Charters and he testified he is an  
19 assistant dean at AMI. And I believe he testified he was an  
20 unpaid assistant, however, I'm not -- I'll have to check the  
21 record on that. He also testified that he is doing freelance  
22 repair work and engine rebuilds, as he previously testified.

23 I asked Mr. Gendron about his determination that chafing on  
24 the wing flap was negligible and he answered that that was  
25 correct. When I asked him why he did not include that

1 determination in the maintenance repair record, he testified that  
2 he did not believe that he was required to do so; since he did not  
3 do any work on the flap, he could not put anything in the record.

4 He agreed that two mechanics can see things differently  
5 relative to a repair to an aircraft. I asked him hypothetically  
6 that if another mechanic looked over his maintenance record in  
7 this case and then inspected the aircraft and decided that the  
8 damage was more than negligible, would it not be important for  
9 him, Mr. Gendron, to have put that information about finding that  
10 it was negligible in the record as to his determination so that a  
11 sub-sequent mechanic could see what decision, as to whether or not  
12 the damage was negligible, was made by Mr. Gendron at the time of  
13 his inspection. Mr. Gendron responded that there was a degree of  
14 acceptance between mechanics and maintenance personnel on how they  
15 interpret certain things. He stated that if another mechanic is  
16 questioning his determination on the flap, him being Mr. Gendron,  
17 then that subsequent mechanic would have to go to the Structural  
18 Repair Manual and read the wing tolerance and then he would have  
19 found that the damage tolerance was negligible. The mechanic  
20 would then have, more than likely, come up to him, apparently Mr.  
21 Gendron, and say, how did you determine not to do anything there?  
22 And he stated he, Mr. Gendron would have said that he looked at  
23 the Structural Repair Manual and the document and he classified  
24 the damage as negligible. That was his response.

25 Mr. Gendron agreed that the other mechanic would not have to

1 go through that whole process if Mr. Gendron had simply included  
2 his determination in the maintenance record that his inspection of  
3 the wing flap damage was, in his opinion, negligible. He agreed  
4 with that, but he testified that he was not required to include  
5 that information on the record.

6 He essentially testified that if he does not include anything  
7 in the record, that it meant the repair was not necessary and  
8 apparently, my understanding of his testimony, that another  
9 mechanic that inspected an aircraft later would know that. He  
10 testified he is not required to repair the chafing or anything  
11 else because he deemed that it was negligible.

12 He then testified that the owner did not want to pay for the  
13 repair of the wing. In response to my question, he testified that  
14 the problems were brought to the attention of the owner. He  
15 testified "we" brought the problem to the owner's attention;  
16 however, he did not say who "we" are. He testified that the  
17 information was brought to the owner's attention.

18 When I asked if the damage was negligible why did he bring it  
19 to the owner's attention, he testified just because it is  
20 mentioned in the FAA reg check. He did not specify what reg  
21 check. He testified that he had to make sure that all of the  
22 items that they found during the reg check were complied with or  
23 mitigated somehow. And again, he did not identify who "they" were  
24 in his answer.

25 He agreed that he testified he put protective fluid on the

1 strut. He said that it was common general aviation practice. He  
2 did not put that in his maintenance record because that was part  
3 of the normal lubing service for the aircraft as part of the 100-  
4 hour inspection. When I asked him if he did not have to include  
5 the protective lubrication in the maintenance record, he did not  
6 answer the question. He indicated that if I put everything down  
7 in the record for the 100-hour inspection, the entry would be  
8 volumes long.

9 He testified that he agreed that he previously testified that  
10 he put on the lubricant to protect the chrome. When I pointed out  
11 that he previously testified that chrome did not require  
12 protection, he responded it didn't require protection, but it was  
13 good maintenance practice. It is an additional preventive  
14 maintenance, he testified. When I asked why he applied the  
15 lubricant to the strut, he testified to help the seals and help  
16 the dirt get pulled away from the scraper seal.

17 I asked the Respondent if he was an engineer, as he had  
18 testified numerous times during his testimony that he referred to  
19 his engineering experience. He said he was a flight engineer,  
20 which he testified was an "engineer of sorts." He agreed that a  
21 flight engineer flies in the cockpit of the aircraft and he  
22 testified he is required to know all of the systems and all of the  
23 interaction of the systems and all the ramifications and emergency  
24 procedures and safety notices, everything related to the operation  
25 of the airplane short of physically manipulating the controls. He

1 also stated he has parts manufacturing authority and writes his  
2 own regulations in conformance with FAA regulations. When I asked  
3 if he had an engineering degree, he testified that he did not have  
4 a formal engineering degree, other than a flight engineer  
5 certificate.

6 Mr. Gendron agreed that hard landings are common in flight  
7 school training. He agreed that there is a stop at the bottom of  
8 the strut and he corrected me that the stop was at the top of the  
9 fork of the assembly. He agreed that the shock absorber or the  
10 strut could go all the way down to the fork. He testified that  
11 that was correct. When I stated that the strut could go all the  
12 way down to the fork, he testified, yes, that is correct.

13 When I asked if it went all the way down to the fork at the  
14 corrosion point, he testified that the fork would go up into the  
15 upper housing and it would contact the metal stop, but the seals  
16 are above that. That was his answer. Then he went into what  
17 appeared to be a somewhat confusing, and unnecessary discussion of  
18 the assembly of the strut, which I found was somewhat evasive and  
19 clearly an effort to confuse the simple nature of the question.  
20 We looked at charts as far as the assembly of the nose strut,  
21 which had nothing to do with my question.

22 After his impromptu dissertation, I asked him if he was  
23 telling me that the corrosion that is pictured in the document in  
24 evidence would never come in contact with anything, he testified  
25 that is correct. He then changed his answer, testifying that it

1 should not come in contact with anything. I then asked why the  
2 paint was scraped off if it was not supposed to come in contact  
3 with anything. He testified the lower scraping ring scraped off  
4 the paint. He then agreed that the corrosion he repaired came in  
5 contact with something, a scraper ring.

6 In response to my question if, based upon his engineering  
7 experience and his experience as a mechanic, he determined that it  
8 was the correct repair for the nose strut, he testified that he  
9 determined that the repair he made was the best choice of an  
10 interim repair for the nose strut. The best repair would have  
11 been, again, he testified, to replace the strut. He said, I admit  
12 that. He then changed the subject to talk about testimony of the  
13 Cessna propeller striking the ground in the event of a strut  
14 collapse. He raised an issue in his response that I did not ask  
15 him about and then went on to reject the premise he himself  
16 raised, which was not the subject of my question.

17 Mr. Gendron agreed that if the strut broke from the fork  
18 assembly, the prop would strike the ground, but he went on to say  
19 that there was little chance of that happening.

20 When I summarized his testimony and stated that he did not  
21 repair the chafing on the flaps because it was negligible, he  
22 testified he "did" repair the chafing because he moved the  
23 trailing edge of the wing out of contact with the flap. When I  
24 asked the same question again, he answered that he did not repair  
25 the chafing and abrasions because he determined it was negligible.

1           As far as the strut was concerned, I asked if I understood  
2 his testimony, he made the best interim repair that he felt could  
3 be made based on his experience as a mechanic, taking into account  
4 his engineering experience, he testified that that was correct.  
5 He also said that he has sought part manufacturing approval for  
6 manufacturing those struts; however, he did not testify that he  
7 had obtained approval for the manufacture of the struts that are  
8 at issue in this case.

9           Neither Mr. Resnick nor Mr. Goldberg had any follow-up  
10 questions to what I had asked. At this point what I will do is go  
11 into my discussion of how I used these facts in making the  
12 decisions that I have to make in this case. However, we've been  
13 going for a while, so I will take a 10-minute break. I have now  
14 11 minutes to 4. I will ask everybody to come back on the line at  
15 4:00. Do not hang up, simply put your phone on mute. So we will  
16 reconvene at 4:00 and we'll go off the record for 10 minutes.

17           (Off the record at 3:46 p.m.)

18           (On the record at 3:58 p.m.)

19           JUDGE MONTAÑO: Thank you all very much. We're currently  
20 back on the record. At this point, as I said, I will now discuss  
21 the testimony and how it relates to the issues I must decide.

22           I appreciate the parties' patience in hearing my discussion  
23 of the testimony. I think it is important for anyone reading this  
24 decision to understand what I heard during the course of the  
25 hearing so that if they have questions, they can look at my

1 description and compare it to the transcript. So I appreciate  
2 your patience.

3 The Administrator alleges that the Respondent violated 14 CFR  
4 43.13(a) in that he performed maintenance, alteration or  
5 preventive maintenance on an aircraft, engine, propeller or  
6 appliance and did not use the methods, techniques and practices  
7 prescribed in the current manufacturer's maintenance manual or  
8 Instructions for Continued Airworthiness prepared by its  
9 manufacturer, or other methods, techniques and practices  
10 acceptable to the Administrator, again, except as noted in Section  
11 43.16.

12 The Administrator also alleges that the Respondent violated  
13 14 CFR 43.13(b) in that in maintaining or altering or performing  
14 preventive maintenance, Respondent did not do that work in such a  
15 manner or use materials of such a quality that the condition of  
16 the aircraft, airframe, aircraft engine, propeller or appliance  
17 worked on was at least equal to its original or properly altered  
18 condition (with regard to aerodynamic function, structural  
19 strength, resistance to vibration and deterioration, and other  
20 qualities affecting airworthiness).

21 As we have discussed, a ramp check was conducted by the  
22 Administrator on February 12, 2016, in which the FAA inspector  
23 identified two issues requiring maintenance: (1) the nose strut  
24 chrome area had severe corrosion; and (2) the left wing flap upper  
25 leading edge skin had severe chafing against the wing.

1           The Respondent performed maintenance on the aircraft, a  
2 Cessna N410LR, on February 29, 2016. Respondent included in his  
3 maintenance record that he had removed corrosion on the nose strut  
4 and treated per Cessna SRM 51-11-00-6, page 5.

5           The Administrator alleges that the Structural Repair Manual  
6 Respondent quoted in the maintenance records do not apply to the  
7 nose landing gear component or any subassemblies. The  
8 Administrator alleges Respondent failed to properly perform the  
9 maintenance on the issues identified relative to the left wing as  
10 well. The Administrator alleges that the maintenance record  
11 prepared by the Respondent included a statement that he "adjusted  
12 the upper TE Wing to Flap clearance and Ops check -OK." There's  
13 no mention of the damage in that record to any of the damage on  
14 the wing flap. The Administrator alleges that the Respondent  
15 failed to perform any maintenance or repair on the left wing flap.

16           In addressing the issues in this case, I will first address  
17 whether the Administrator has established his *prima facie* case  
18 relative, first, to the nose strut and, second, relative to the  
19 flap abrasions and damage.

20           There is no dispute that the Respondent performed the  
21 maintenance in this case. The Respondent made references during  
22 his testimony to the effect that they decided to take action;  
23 however, the Respondent did not identify any other individuals or  
24 mechanics who assisted him with the repairs and decision not to  
25 repair the wing flap damage. The Respondent does not dispute that

1 he performed the repair in issue in the nose strut and he admits  
2 that he did not repair the severe chafing on the wing flap upper  
3 leading edge.

4 Inspector Perez performed the ramp inspection in this case  
5 and subsequently inspected the aircraft after Respondent's work  
6 was accomplished on the aircraft. Inspector Perez, as I  
7 previously stated, is an A&P mechanic with extensive experience in  
8 aircraft maintenance and he has experience in aircraft avionics,  
9 as well.

10 Inspector Perez performed his inspection on February 12,  
11 2016, and identified the corrosion on the nose strut of the  
12 aircraft. He testified he saw chrome flaking off a strut. On  
13 further examination, he testified he saw the metal beneath the  
14 chrome was pitted. He took photographs of the corrosion which  
15 were admitted into evidence as A-5.

16 Inspector Perez testified that he again inspected the  
17 aircraft on February 17, 2016. At that time he testified he  
18 inspected the nose strut of the Cessna. He testified that upon  
19 his examination he saw that it appeared that the chrome flakes had  
20 been removed, the area of corrosion on the metal was made larger,  
21 and the nose strut had been partially painted. He took three  
22 photographs of the strut, which has been admitted into evidence as  
23 A-7.

24 The inspector testified that he again inspected the aircraft  
25 on March 8, 2016. At that time, according to Inspector Perez, the

1 area of the damage of the strut is still larger in size. The  
2 paint had been torn off the strut, according Inspector Perez. He  
3 took photos of the strut and the aircraft, which have been  
4 admitted into evidence at A-13.

5 Inspector Perez testified that he reviewed the maintenance  
6 record prepared by the Respondent and found the Respondent had  
7 referenced the wrong section of the Cessna service repair manual  
8 to apparently support the maintenance that he performed and then  
9 documented in his maintenance records. The SRM is at  
10 Administrator's Exhibit A-9. The SRM is entitled "Corrosion and  
11 Corrosion Control - General," 51-11-00. Inspector Perez testified  
12 that the proper manual that should have been used was entitled  
13 "Nose Landing Gear Maintenance Practices," which is at  
14 Administrator's Exhibit 11.

15 Inspector Perez testified Mr. Gendron made reference in the  
16 maintenance record to the service repair manual 51-11-006, page 5.  
17 Page 5 deals with the control of corrosion on landing gear springs  
18 under section 7. That section, according to Inspector Perez,  
19 deals with the main landing gear springs. The nose strut, again,  
20 does not have springs.

21 He testified that section 6 relates to corrosion removal and  
22 references corrosion removal on aluminum and aluminum alloy and  
23 steel. That section does not deal with the repair or removal of  
24 corrosion on chrome, where the corrosion existed in this case, on  
25 the nose strut.

1           Inspector Perez testified there's no repair allowed for  
2 corrosion on the nose strut and certainly not the repair that was  
3 referenced by the Respondent in his maintenance record. According  
4 to Inspector Perez, the strut must be replaced, as provided in the  
5 Cessna Model 172 maintenance manual at page 4, 7B.

6           He testified that the strut cannot be painted. Inspector  
7 Perez testified that based on his inspection on March 8, he issued  
8 a condition notice which essentially grounded the aircraft. The  
9 condition notice was admitted into evidence as Administrator's  
10 A-14. Inspector Perez wrote on the form that the nose strut  
11 chrome area attached to the fork has corrosion painted over the  
12 surface. The printed form specifically states that what Inspector  
13 Perez listed on the form are considered to be an imminent hazard  
14 to safety, and operation of the aircraft prior to correction will  
15 be contrary to pertinent Federal Aviation Regulations. It also  
16 states that a special flight permit will not be required to be  
17 issued prior to operation if corrective action is not taken.

18           Inspector Perez testified he contacted Mr. Geoff Kelley,  
19 customer service engineer at Textron, the company that owns  
20 Cessna, to ensure and verify that his understanding that the nose  
21 strut could not be repaired but had to be replaced was correct.

22           I found Inspector Perez's testimony to be credible, as I  
23 stated earlier. There was a question as to his identification of  
24 button plugs as rivets, however, this is not a major issue or an  
25 issue that detracts from Inspector Perez's testimony or the

1 credibility of the inspector. He answered questions apparently  
2 truthfully and without evasion. I feel his testimony, which was  
3 incorrect relative to this minor issue, does not detract from his  
4 credibility or the weight of his overall testimony.

5 As previously stated, Mr. Kelley is a customer service  
6 engineer of Textron. Mr. Kelley has an A&P certificate and has  
7 inspection authority. He described his extensive experience in  
8 aviation maintenance, which was in no way limited to avionics.  
9 Respondent did not question Mr. Kelley's qualifications during  
10 cross-examination. Mr. Kelley testified that Inspector Perez  
11 contacted him to confirm his understanding of the requirement that  
12 the nose strut cannot be repaired but must be replaced.

13 Mr. Kelley sponsored Administrator's Exhibit A-17, which is an  
14 email response he sent to Inspector Perez in which he represented  
15 that he reviewed the photos of the painted strut and stated that  
16 that type of repair would not have been advised to be performed by  
17 Cessna. He stated that complete replacement of the strut would  
18 have been recommended by Cessna. His email also indicates that he  
19 researched his database to determine if anyone else had called  
20 Textron with a question relative to nose gear flap damage  
21 tolerance. No evidence that Textron had been contacted relative  
22 to the nose strut damage for a 172 model in this case.

23 He states in his email that if such questions had been  
24 directed to Textron, they would have recommended replacement of  
25 the strut and the type of repair accomplished on the strut in this

1 case would not have been recommended. He testified that repair of  
2 the nose strut is not allowed and the only action that can be  
3 taken on the nose strut with corrosion is complete replacement of  
4 the strut.

5 He also testified that painting the chrome on the nose strut,  
6 as depicted in the photos sent to him by Inspector Perez, is not  
7 allowed. You do not repair, he testified; you do not paint the  
8 strut. He testified you replace the strut. He testified that  
9 corrosion in the strut could lead to pitting and cracks. If  
10 allowed to worsen, it could lead to a failure and possibly the  
11 collapse of the nose strut. He also testified that the painting  
12 of the strut created a new problem altogether in that the paint on  
13 the strut could negatively affect the strut seals.

14 I find Mr. Kelley's testimony to be credible, both on direct  
15 and cross. Cross-examination in no way diminished his testimony  
16 nor detracted from the weight his testimony deserves.

17 Inspector Dunn testified as an expert for the Administrator.  
18 He is also an A&P mechanic and he too has extensive experience in  
19 aircraft maintenance in all areas. He also had an inspection  
20 authority in the past, but he let it lapse when he was employed by  
21 the FAA. He has worked on Cessna 172s and he has experience in  
22 aircraft maintenance and is not limited to avionics, as argued by  
23 the Respondent.

24 Inspector Dunn testified that the nose strut cannot be  
25 repaired; it has to be replaced. He corroborated the testimony of

1 both Inspector Perez and the testimony of Mr. Kelley.

2 Inspector Dunn also testified that the section cited by the  
3 Respondent in the maintenance manual, section 7, for the repair he  
4 indicated he performed in his maintenance entry is actually for  
5 maintenance on the springs of a main landing gear and not on the  
6 nose strut landing gear. He testified that the nose strut landing  
7 gear does not have springs.

8 He further testified that if Respondent was referring to  
9 section 6 of the Structural Repair Manual 51-11-00, that section  
10 deals with certain metals: aluminum, aluminum alloy, and steel.  
11 That section does not deal with chrome.

12 He testified that the nose strut corrosion could lead to  
13 pitting and cracking that could lead to complete failure, possibly  
14 the collapse of the strut and the nose gear. Inspector Dunn has  
15 also testified that the nose strut cannot be painted. He  
16 testified that in his opinion painting of the strut is not  
17 allowed. Paint on the strut creates a new and additional problem  
18 separate and distinct from the corrosion for the same reasons  
19 voiced by Inspector Perez and Mr. Kelley during their testimony,  
20 it may affect the strut seals.

21 Asked numerous times about a repair of the strut on cross-  
22 examination, Inspector Dunn always responded that the strut cannot  
23 be repaired, it must be replaced. He was also asked how he would  
24 repair chrome corrosion on a bicycle or '57 Ford, to which  
25 Mr. Dunn testified that a bicycle or a '57 Ford are nothing like

1 an aircraft. When pressed on how he would repair chrome corrosion  
2 on a bicycle or a '57 Ford, he testified he would ask an expert  
3 and he would refer to the appropriate maintenance manual for the  
4 repair on those items.

5 I find Inspector Dunn's testimony and expert opinion to be  
6 logical, persuasive, and of significant depth based on his  
7 experience and training and based on his evaluation of the  
8 evidence, evaluation of the testimony and his reliance on the  
9 Federal Aviation Regulations and maintenance manuals in  
10 formulating his opinion.

11 I will now discuss the Respondent's position and argument  
12 relative to the nose strut. At the onset, I must note that a  
13 number of times during his testimony Mr. Gendron testified that  
14 the correct maintenance is to replace the nose strut. He  
15 testified that he admits that the proper repair of the nose strut  
16 is to replace it. He testified that he told the owner of the  
17 aircraft that the nose strut should be replaced, but that it would  
18 take a considerable amount of time to obtain the replacement nose  
19 strut.

20 Yet, he also testified on direct examination by his counsel  
21 that he rejected the idea that the nose strut had to be replaced  
22 and could not be repaired. He testified that since the nose strut  
23 could not be replaced for a long period of time, he performed what  
24 he called an interim repair. He testified that, and I quote,  
25 "Ideally you would like to replace the strut. Realistically, in

1 the field you don't always have that luxury so you have to use a  
2 lot of discretion as a mechanic."

3 Mr. Gendron testified that both the FAA and the manufacturers  
4 allowed for the exercise of discretion by the mechanic. Again,  
5 when asked what process he went through to determine how to repair  
6 the strut and be in compliance with 43.13(a) and (b), Mr. Gendron  
7 testified he contacted the IA who would have signed off on the  
8 annual inspection had it gone through an annual inspection, and  
9 based on his 60 years of experience in the aviation industry, and  
10 he also went on to say that he had also consulted other mechanics  
11 in the field.

12 He testified he consulted Cessna Technical. He testified he  
13 also spoke to a business called Casey Metallurgical and spoke to  
14 Frank Crate at that business, that he uses as part of his part  
15 manufacturing authority business. He testified that he asked  
16 Mr. Crate for his opinion on the damaged area of the strut.

17 Mr. Gendron did not provide the names of those individuals he  
18 consulted except for Mr. Crate. He did not say when he called  
19 Cessna Technical or who he spoke to. He did not testify as to  
20 when he contacted the IA in this case that he referred to, and did  
21 not identify other field mechanics he said he contacted.

22 Mr. Gendron then testified that, based on his professional  
23 opinion and the opinion of everybody else that he spoke to,  
24 testified, and I quote, "They weren't entirely happy." He  
25 testified that based on his determination, again, quote, "They

1 were not entirely happy." Mr. Gendron again testified that if we  
2 could replace the strut, we would.

3 When asked again, based on his investigation, what he did to  
4 determine what the proper repair was that would comply with the  
5 requirements under the law and the FAA, Mr. Gendron testified that  
6 "based on my experience, my determination of a proper repair," he  
7 determined that the shiny areas above the corroded area that the  
8 seals ride upon, that is the area that is discussed in the  
9 Structural Repair Manual where no repair is allowed. He also  
10 deter-mined that below that area where the corrosion existed in  
11 this strut was nothing more than cosmetic in nature and had no  
12 structural bearing as to the amount of steel that was actually  
13 removed, and that steel that was actually removed was negligible.

14 I asked for clarification, if he was testifying that the area  
15 above the corrosion of the strut was part of a structural manual  
16 indicating you could not repair that area, he testified that that  
17 was correct. I then asked, the part of the chrome that had  
18 corrosion and the area below served no purpose other than cosmetic  
19 purposes and apparently it could be repaired, and therefore he  
20 concluded that the lower part of the strut with the corrosion in  
21 this case could be repaired and painted? He testified, that, he  
22 agreed, was his testimony.

23 Mr. Gendron provided no support for this theory in the  
24 regulations, his maintenance training or experience, nor did he  
25 even testify that it was understood, commonly understood or

1 accepted in the aviation community. He did not even indicate when  
2 he came up with this theory. This defense had not been raised  
3 until the hearing in this case.

4 I must note that I do not find this assertion to be credible,  
5 after he himself testified that the strut can be compressed the  
6 entire length of the strut to the fork stop. This is also the  
7 testimony of Inspector Perez and Inspector Dunn. Thus, if the  
8 strut is to provide support when the strut is fully compressed, it  
9 cannot only exist for cosmetic purposes. I find Mr. Gendron's  
10 argument completely without credibility and without merit.

11 He testified that based on his conclusion that the cosmetic  
12 portion of the strut could be repaired, he cleaned the corrosion,  
13 made it larger, and then painted it with zinc phosphate primer.  
14 He testified he performed this repair in full accordance with the  
15 manual section he cited in the maintenance log.

16 I note that the maintenance log he cites says nothing about  
17 "cosmetic parts of the strut." Mr. Gendron did not testify that  
18 the Structural Repair Manual he cited and used approved for an  
19 interim repair that he performed. He did not testify that that  
20 Structural Repair Manual allowed for an interim repair as he had  
21 performed. He did not cite or reference any source or regulation  
22 or maintenance manual which indicates that an interim repair on  
23 the nose strut is permitted. The only authority he cites is the  
24 fact that he spoke to a number of people and they were not happy.  
25 He did not testify about what these individuals were not happy

1 about. Were they not happy about what he planned to do? Not  
2 happy about he did not replace the strut? Mr. Gendron did not  
3 explain what "they're not happy" or "not entirely happy" meant.  
4 Thus, I cannot give this vague reference to obtaining the opinion  
5 of a number of individuals any weight. They weren't happy is not  
6 an opinion.

7 While his maintenance record indicates he contacted Cessna,  
8 he did not testify that they approved of his interim repair or  
9 agreed that his conclusion that the lower part of the strut tube  
10 was for cosmetic purposes only.

11 Mr. Gendron's testimony boils down to his answer to my  
12 question in which I stated, after hearing his testimony, that I  
13 understood his testimony to be that he made the best interim  
14 repair that he felt he could make based on his experience as a  
15 mechanic and taking into account his engineering experience, and  
16 he testified that that is correct. Thus, Mr. Gendron essentially  
17 argues that I should give his opinion as to the interim repair the  
18 greater weight over the contrary, consistent testimony of two  
19 aviation inspectors, one an expert witness, and a Textron Cessna  
20 engineer, who all testified consistently that the nose strut  
21 cannot be repaired but rather must be replaced.

22 I must also note that none of these witnesses were asked  
23 about, on cross-examination, any cosmetic parts of the nose strut  
24 area when they were cross-examined.

25 In determining what weight to give Mr. Gendron's testimony, I

1 have to consider his testimony first relative to his resumes. He  
2 testified I should use both resumes to evaluate his experience.  
3 He testified the longer version was the most current, and then in  
4 the next breath testified that neither one of those resumes were  
5 the most current.

6 He testified that he is an assistant dean -- I believe he  
7 said he was an unpaid assistant dean, but I'll have to check the  
8 record on that -- at the maintenance school. His resume states  
9 he's also the chief instructor at that school, as well. However,  
10 his resume also indicates the school is awaiting FAA  
11 certification; thus, the status of whether the school is  
12 functioning and whether he is currently paid or unpaid or is  
13 training anyone at the school is uncertain from his testimony and  
14 the resumes that he used to refresh his recollection.

15 Based on his testimony and his resumes, it still remains  
16 unclear if he currently works as a freelance airframe and  
17 powerplant mechanic after he lost his job at Island Air Carrier or  
18 if he currently works for Island Air Carrier.

19 Matters as to his resume and background could have been  
20 clarified by Mr. Gendron as he used the resumes to refresh his  
21 recollection of his accomplishments and to essentially bolster his  
22 experience relative to what weight I should give it. Most  
23 troubling is his repeated testimony about his engineering  
24 experience. While he states that he has reverse engineered  
25 aviation parts and has parts manufacturing authority, he provided

1 no corroboration or documentation of that representation.

2       When asked if he was an engineer, his answer was evasive, as  
3 he claimed that he was a certified flight engineer, which is a  
4 kind of engineer, he testified. He testified he had 700 hours of  
5 flight time as a flight engineer. His resume that is in the  
6 record as ALJ-1 states that, contrary to his testimony under oath  
7 that he had 700 hours as a flight engineer, his resume indicates  
8 he has 300 hours of flight time as a flight engineer. According  
9 to his resume, his flight engineer work ended in 2005, after a  
10 period of 6 months. He testified that he has PMA authority and  
11 STC authority, but again he provided no corroboration or  
12 documentation of these certifications in the record. When asked  
13 if he had an engineering degree, Mr. Gendron testified that he did  
14 not. Despite his attempts to argue about his engineering  
15 experience, his experience in reverse engineering, I do not find  
16 that this description of his experience renders him an engineer,  
17 nor am I convinced that I should give his opinion the weight that  
18 I would give someone that has a degree in engineering.

19       It is clear that Mr. Gendron believed that he was the most  
20 competent person in the courtroom, and perhaps he is. Certainly  
21 he believed the FAA inspectors were incompetent.

22       I also found Mr. Gendron's testimony to be evasive at times.  
23 I found that if he did not want to address an issue, he began to  
24 testify about technical matters which appeared to serve to do  
25 nothing more than confuse the record.

1 His answers were inconsistent. For example: You applied  
2 protection to the strut? Yes, to protect it. But he testified  
3 the strut did not require protection. "Yeah, it does not require  
4 protection. It's a preventive maintenance practice." His answers  
5 to many of these questions were moving targets, so therefore it's  
6 difficult to say really what his opinion is on any specific  
7 matter. His answers changed every time a question is asked or  
8 even when the same question is asked.

9 In the final balance, I do not find Mr. Gendron to be a  
10 credible witness for the reasons I just stated. I give the  
11 consistent testimony of the Administrator's witness and expert  
12 witnesses the greater weight, and I find the Administrator's  
13 evidence and exhibits to be compelling relative to the nose strut  
14 issues in this case.

15 As to the flap repair, I'll now turn to that issue.  
16 Inspector Perez testified that when he conducted his first  
17 inspection on February 12, 2016, he identified the damage on the  
18 right wing. He took photographs of the damage, which were  
19 admitted into evidence as A-6. Inspector Perez testified that  
20 during his inspection of the wing he ran his hand over the damaged  
21 area of the flap and he testified that his fingernail caught in  
22 the black section of the damage depicted in the photographs at  
23 A-6. He testified that he saw metal material was missing from  
24 those black spots, and he testified the flap metal was penetrated.

25 Inspector Perez testified that A-15 is entitled "Wing Damage

1 Classification," which is part of the Cessna Structural Repair  
2 Manual. It lists classification of wing or flap damage -- wing  
3 damage as negligible damage, repairable damage, and damage that  
4 requires replacement. Inspector Perez testified that he believed  
5 the damage to the wing flap was not negligible damage, but damage  
6 that required repair. He testified that the damage to the wing  
7 involved flap skin penetration where the black spots in the photos  
8 indicated that metal was missing and the skin was penetrated.

9 He also testified that the area of damage was greater than 1½  
10 inches, even though he testified he did not measure the damage.  
11 There's damage to the black spots on the wing flap, are not just  
12 simply one; there's more than one, and there's also some white  
13 areas of abrasion which have been identified to be corrosion.  
14 That testimony came from Inspector Dunn.

15 Furthermore, the damage to the flap extended over a long area  
16 of the flap, as depicted in A-6, 1 of 2. The photo showed two  
17 black areas and white abrasion that clearly appeared to be greater  
18 than 1.5 inches. Inspector Dunn, as the Administrator's expert,  
19 testified that he too saw the corrosion as depicted in the  
20 photographs at A-6. He testified that from his examination of the  
21 photos he could see corrosion in the black areas on the flap,  
22 which he testified is a clear indication of skin penetration.  
23 Inspector Dunn also testified that the damage to the wing flap was  
24 not negligible and should have been repaired, was required to be  
25 repaired. Inspector Dunn testified that the areas of damage to

1 the wing flap cannot be left unrepaired. He testified that in  
2 Florida weather the presence of water and salt, that presence only  
3 heightens the problem. He testified that such damage has to be  
4 repaired and essentially cannot be left to the elements.

5 The Respondent maintains that the wing flap was not repaired  
6 because when he examined the damage, he classified the damage as  
7 negligible. Therefore, he did not perform any repairs to the  
8 damage to the wing flap.

9 He testified he did not document that he found the damage to  
10 be negligible and without need of repair in the maintenance record  
11 at A-8 because he is not required to do so. He did not repair  
12 anything so he did not have to document anything. When asked why  
13 he did not cite the manual section in the maintenance record for  
14 the adjustment of the wing, Mr. Gendron testified that it was such  
15 a simple adjustment, there's nothing to cite. Mr. Gendron  
16 testified that he had informed the owner the of the wing flap  
17 damage and testified that the owner did not want those repairs  
18 done.

19 When I asked why he brought these negligible problems, that  
20 in his opinion needed no repair, to the attention of the owner, he  
21 testified that he was required to tell the owner. He did not  
22 testify that the owner felt the damage repair was negligible, only  
23 that the owner did not want the damage repaired.

24 It remains an open question as to whether the Respondent  
25 would have made the repairs of the flap had the owner requested he

1 do so. It would have also been of interest to find out if the  
2 owner also concurred with his opinion that the damage to the wing  
3 was negligible.

4 When I asked him how another mechanic who inspected the  
5 aircraft at a later date would know the Respondent determined the  
6 damage to the flap was negligible, he again testified that the  
7 mechanic would have to go through the manual to determine and find  
8 out if Mr. Gendron had determined that the damage was indeed  
9 negligible. That subsequent mechanic would then have an unwritten  
10 understanding that exists among mechanics, according to  
11 Mr. Gendron, that if something was not fixed on an aircraft that  
12 it did not need to be fixed by the previous mechanic.

13 He agreed that rather than having a second or later mechanic  
14 go through the steps he described, it would be easier if  
15 Mr. Gendron had simply recorded in the maintenance record that he  
16 determined the flap damage was negligible after his inspection of  
17 the wing flap damage. He testified that he agreed to that, but he  
18 testified he was not required to document that finding in the  
19 maintenance record.

20 I must note at this point that Mr. Gendron claims that he met  
21 the minimum requirements of documentation as required by the  
22 regulations for a 100-hour inspection for the wing adjustment and  
23 flaps, as well as the nose strut. However, as Inspector Dunn  
24 convincingly testified, the repairs and repair entries made  
25 relative to the wing damage and the nose strut were not part of

1 the 100-hour inspection.

2 Inspector Dunn testified that 14 CFR 43.11 applies to the  
3 wing repair and inspection of the flap area in this case. 14 CFR  
4 43.11 is entitled "Content, form and disposition of records for  
5 inspection conducted under parts 91, 125, 135.411(a)(1), and  
6 135.419 of this chapter." That section provides that a person  
7 approving or disapproving for return to service an aircraft,  
8 airframe, aircraft engine, propeller, or component part of any  
9 inspection performed in accordance with part 91, 125,  
10 135.411(a)(1), and 135.419, shall make an entry in the maintenance  
11 record of the equipment, containing the following information:  
12 (1) The type of inspection and a brief description of the extent  
13 of the inspection.

14 Since Respondent returned this aircraft to service in this  
15 case, he was required to make an entry in the maintenance record  
16 of the inspection that he made of the wing flap damage and a brief  
17 description of the extent of that inspection, and include that in  
18 the record. Certainly that required entry would have included his  
19 stated findings that the damage was negligible. He did not do  
20 this.

21 Based on the evidence before me, I must give the  
22 Administrator's witness and their evidence the greater weight. I  
23 find that the Respondent was required to document his inspection  
24 of the wing flap damage in the maintenance record at A-8 in this  
25 case. I further find that the Administrator's witnesses are

1 persuasive in their testimony and through his exhibits that the  
2 damage to the wing flap was more than negligible and should have  
3 been repaired. I find this by a preponderance of the evidence.  
4 These two inspectors testified that damage to the wing flap was  
5 greater than negligible in nature.

6 I give Inspector Perez's objective testimony the greater  
7 weight and I found the expert opinion of Inspector Dunn, as the  
8 expert opinion, to be logical and persuasive and of significant  
9 depth based on his experience and training, and based on his  
10 evaluation of the evidence, evaluation of the testimony and,  
11 again, his reliance on the Federal Aviation Regulations and  
12 maintenance manual in formulating his opinion.

13 Based on all of the evidence and testimony before me, I find  
14 that the Administrator has proven by a preponderance of the  
15 evidence that the Respondent violated 14 CFR 43.13(a) in both the  
16 repair of the nose strut in issue and the non-repair of the damage  
17 to the right wing flap. As to the nose strut, Respondent did not  
18 use the methods, techniques and practices prescribed in current  
19 manufacturer maintenance manuals or Instructions of Continued  
20 Airworthiness prepared by its manufacturer or other methods,  
21 techniques, and practices acceptable to the Administrator, except  
22 as noted in 43.16.

23 Respondent used the Structural Repair Manual that did not  
24 apply to the nose strut landing gear in this case. Respondent did  
25 not replace the nose strut as required by the Cessna manual.

1 Instead, he essentially made up his own interim repair that is not  
2 authorized anywhere and is based entirely on what he described as  
3 his experience and his discretion. Clearly that interim repair  
4 was not a method and practice acceptable to the Administrator. If  
5 it was so, this hearing would never have taken place.

6 As to the damage to the wing flaps, Respondent conducted an  
7 inspection of the wing flap damage and did not document his  
8 inspection in the maintenance record. A preponderance of the  
9 evidence established that the damage to the wing flap was not  
10 negligible and was required to be repaired. Respondent did not  
11 perform the repairs because he believed, based on his undocumented  
12 inspection, that the wing damage was negligible. He also  
13 testified that the owner of the aircraft did not want the repairs  
14 to the wing flap to be made.

15 I further find that the Administrator has proven by a  
16 preponderance of the evidence that the Respondent violated 14 CFR  
17 43.13(b). In maintaining or altering or performing preventive  
18 maintenance Respondent did not do the work in such a manner or use  
19 materials of such quality that the condition of the aircraft,  
20 airframe, aircraft engine, propeller or appliance worked on was at  
21 least equal to its original or properly altered condition (with  
22 regard to aerodynamic function, structural strength, resistance to  
23 vibration and deterioration, and other qualities affecting  
24 airworthiness).

25 As to the repair of the wing flap damage of the aircraft in

1 this case, the Respondent simply did not perform the repairs that  
2 the preponderance of the evidence in this case established were  
3 required to be repaired. As to the Respondent's interim repair of  
4 the aircraft nose strut in this case, that interim repair,  
5 according to the testimony from Mr. Dunn, only made the condition  
6 of the aircraft worse. Both inspectors and Mr. Kelley testified,  
7 by painting the nose strut only served to create a problem that  
8 could be exacerbated and affect the seals on the nose strut. The  
9 aircraft had to be grounded by Inspector Perez because after the  
10 Respondent repaired the aircraft, the aircraft presented an  
11 immediate hazard to safety. The aircraft was clearly in a worse  
12 position and worse condition than before Mr. Gendron worked on it.

13 Having found that the Administrator has proven by a  
14 preponderance of the evidence the violations cited in his  
15 complaint, I now turn to the Respondent's affirmative defenses.  
16 As I stated earlier, the Respondent raises two affirmative  
17 defenses, unclean hands and that the safety inspectors were not  
18 knowledgeable or qualified.

19 At the beginning of this hearing I included a discussion  
20 about this. I indicated that the first affirmative defense, for a  
21 complete record, I will state that the Respondent contends and  
22 counterclaims the following: That alleged safety inspectors were  
23 not qualified and this action was done only for the primary  
24 purpose to harass, intimidate and retaliate against the Respondent  
25 for making formal complaints under the whistleblower doctrine

1 about the actions of the FSDO manager, Mr. Sergio Lopez of FSDO  
2 19, regarding obtaining an airworthiness certificate for aircraft  
3 N680JW, and has sought the Respondent for alleged random ramp  
4 inspections of the aircraft, when in fact these were targeted  
5 inspections. The FAA personnel at the direction of Mr. Lopez  
6 directed his inspectors to inspect in a mode and area of specialty  
7 that they were not qualified for, thereby impersonating general  
8 aircraft structural inspectors. They further falsified the  
9 condition of the aircraft and maintenance to bring these  
10 allegations.

11 The affirmative defense goes on to say: To say the least,  
12 this was a calculated and systematic form of intentional  
13 harassment, illegal search, and false entry, among other acts.  
14 Further, in the event that there was a serious safety issue in the  
15 way the maintenance was performed or the condition of the nose  
16 strut or flaps, the FAA was required to issue a Form 8620-1, in  
17 accordance with 8900.1, CHG 0, Volume 8, Chapter 5, Section 5,  
18 Paragraph 8-405.

19 He goes on to say: An informal telephone conference was  
20 conducted between FAA counsel, Mr. Brandon Goldberg, and two other  
21 gentlemen in his office with Respondent, his attorney, Mr. Michael  
22 Wolf, Mr. Wolf's paralegal, and two IAs in Mr. Wolf's office.  
23 Both Respondent's IAs reviewed the material supplied by Goldberg  
24 by the FAA inspectors, and one had firsthand knowledge of the nose  
25 strut corrosion and both IAs found no issue or grounds for a

1 violation of FAA regulations or for the letter of investigation  
2 action.

3 Through only an unqualified, informal telephone conference  
4 where the Respondent presented a firsthand witness who was an IA  
5 and presented who had another IA on the telephone conference,  
6 presented credible evidence in his favor that he had not violated  
7 any FAA regulations, and the petitioner could not support their  
8 position since they did not present any credible evidence, and  
9 still it is recommended that his A&P mechanic license be suspended  
10 for 6 months.

11 That is the first affirmative defense.

12 Second affirmative defense: Safety inspectors not  
13 knowledgeable or qualified. That affirmative defense states the  
14 alleged safety inspectors who conducted the said aircraft  
15 inspection of the nose strut and flap chafing were not qualified  
16 to perform said inspection on said aircraft per their specialty.

17 As I stated at the beginning of this hearing, my jurisdiction  
18 is limited as to the allegations about harassment or a targeted  
19 ramp inspection or inspectors posing as something they're not,  
20 illegal search and seizure. While those acts specifically are  
21 matters that are not before me and I do not have jurisdiction to  
22 issue a decision, my decision, as I said, and my jurisdiction is  
23 to determine whether or not the Administrator can prove his  
24 allegations by a preponderance of the evidence and whether the  
25 Respondent can prove that he did not violate the cited regulations

1 by a preponderance of the evidence. Therefore, I do not have the  
2 authority, as I stated earlier, to address those issues relative  
3 to what has been identified as a calculated and systemic form of  
4 intentional harassment.

5 As to what the Administrator should have done if they found a  
6 problem, that is not before me. I can only address what action  
7 the Administrator has taken. So therefore, the Respondent's  
8 argument that the Administrator should have taken some other  
9 action by citing the forms and citing parts of volumes is not  
10 something that's before me.

11 As far as the informal telephone conference, as I indicated  
12 at the beginning of this hearing, the informal conference is not  
13 something that's before me. An informal conference is just that,  
14 an informal conference. It's an opportunity for the parties to  
15 get together and talk about it, so the Administrator can determine  
16 whether an action should be brought or not.

17 As to whether or not the Administrator should have taken some  
18 other action that the Respondent would have preferred, such as  
19 dismissing the case or taking a lesser action, those matters are  
20 not before me. That is an informal conference.

21 In this case, the only thing that is before me is what  
22 evidence is before me after the Administrator has filed the  
23 complaint. In this case, the Administrator has filed a complaint  
24 citing specific regulations. They presented their evidence. The  
25 Respondent conducted cross-examination, presented his testimony.

1 So that is the only thing that is before me. So therefore I  
2 cannot address the affirmative defense as to unclean hands. This  
3 is not a court of equity. It's an administrative proceeding,  
4 where my jurisdiction is limited to what I've just described.

5 However, I did indicate to the Respondent that if there are  
6 questions about whether or not the inspectors were biased or that  
7 certainly that could be addressed during the course of cross-  
8 examination, and the Respondent in fact did have every opportunity  
9 to cross-examine the witnesses presented by the Administrator.

10 As to the second affirmative defense, the Respondent had  
11 ample opportunity to cross-examine the Administrator's fact and  
12 expert witness to test their qualification and knowledge of the  
13 subject matter. While the Respondent's counsel kept referring to  
14 Administrator's inspectors as aviation inspectors, the record  
15 clearly established that Inspector Perez and Inspector Dunn were  
16 both certificated A&P mechanics with substantial aircraft  
17 maintenance experience as well as avionics experience.

18 While the Respondent argues that Inspector Perez did not know  
19 the difference between a rivet and an inspection button, that  
20 issue raised by the Respondent during argument and asked of  
21 Inspector Perez during his testimony is not of great significance  
22 in this case. It is a minor issue and, again, I do not find that  
23 that non-substantive issue would detract from Inspector Perez's  
24 credibility.

25 The Respondent has had every opportunity to question the

1 witnesses to determine if they were in some way biased.

2 Respondent did not do so.

3       Based on my review of all of the evidence in this case and  
4 the arguments by the Respondent, I must find that the Respondent  
5 has not proven any affirmative defenses that I have jurisdiction  
6 over by a preponderance of the evidence.

7       I must make findings of facts and conclusions of law. Having  
8 discussed the testimony in which I must now make findings of facts  
9 and conclusions of law, in doing so, I will utilize the  
10 Administrator's complaint.

11       In his answer to the complaint, the Respondent admitted the  
12 allegations in paragraphs 1, 4, 5, and 6, and paragraph 9. As the  
13 Respondent has admitted these allegations, they are deemed to have  
14 been established for the purpose of this hearing and this  
15 decision. Respondent denied the allegations in paragraphs 2, 3,  
16 7, 8, 10, and 11(a) and (b).

17       As to paragraph 2, the Respondent denied that on February 12,  
18 2016, FAA inspectors conducted a ramp inspection on aircraft  
19 N410LR. I find that the Administrator has proven by a  
20 preponderance through its documents and through its testimony of  
21 witnesses that the Administrator in fact did conduct a ramp  
22 inspection on the aircraft on February 12, 2016.

23       As to paragraph 3, which the Respondent denies: During the  
24 above-described ramp inspection, the FAA inspector identified the  
25 following issues requiring maintenance: Nose strut chrome area

1 has severe corrosion and left wing flap upper leading edge skin  
2 has severe chafing against the wing. The Administrator has proven  
3 by a preponderance of evidence the allegations about the nose  
4 strut damage. The Administrator has also proven by a  
5 preponderance of the evidence the existence of the flap upper  
6 leading edge skin chafing damage, which should have repaired.  
7 This was proven by a preponderance of the evidence.

8       The Respondent denied paragraph 7: The Structural Repair  
9 Manual you quoted in the February 28, 2016 maintenance record does  
10 not apply to the nose landing gear components or any sub-  
11 assemblies. The Administrator has proven by a preponderance of  
12 evidence through his testimony of the two witnesses, one an  
13 expert, aviation safety inspectors, that indeed the Structural  
14 Repair Manual quoted by the Respondent does not apply to the nose  
15 landing gear components or any subassemblies. The Administrator  
16 has proven that allegation by a preponderance of the evidence.

17       The Administrator has also proven the allegations in  
18 paragraph 8, that the Respondent failed to properly perform  
19 maintenance on the issues identified in 3(a) above.

20       Paragraph 10, the Administrator has proven by a preponderance  
21 of evidence that the maintenance described in paragraph 9 above  
22 did not involve any maintenance to repair the chafing identified  
23 in paragraph 3(b) above. The Administrator has proven by a  
24 preponderance of the evidence and the Respondent does not dispute  
25 that he did not repair the damage to the wing as has been

1 described throughout this hearing.

2       And number 11: You failed to properly perform maintenance on  
3 the issues identified in paragraph 3(b) above, and as a result,  
4 you violated 14 CFR 43.13(a) and 43.13(b). I find that the  
5 Administrator has proven 11(a) and (b) by a preponderance of the  
6 evidence.

7       In conclusion, having found that the Administrator has proven  
8 the alleged violation of the Federal Aviation Regulations in the  
9 Administrator's complaint by a preponderance of reliable,  
10 probative, and credible evidence, I now turn to the sanction  
11 imposed by the Administrator in this case.

12       In addressing the issue of sanctions in this case, I must  
13 note that on August 3, 2012, Public Law 112-153, known as the  
14 Pilot's Bill of Rights, was signed into law. The Pilot's Bill of  
15 Rights specifically strikes from 49 USC 44709 language which  
16 provides that in cases involving airman certificate denials the  
17 Board is bound by all validly adopted interpretation of laws and  
18 regulations the Administrator carries out unless the Board finds  
19 an interpretation is arbitrary, capricious or otherwise not in  
20 accordance with the law.

21       More specific to this case, the Pilot's Bill of Rights also  
22 strikes from 49 USC 44709 and 44710 language in cases involving  
23 amendments, modifications, suspensions, and revocation of airman  
24 certificates the Board is bound by all validly adopted  
25 interpretations of law and regulations the Administrator carries

1 out, and of written agency policy guidance available to the public  
2 relating to sanctions to be imposed under this section, unless the  
3 Board finds an interpretation is arbitrary, capricious, or  
4 otherwise not in accordance with the law.

5 So, essentially, I'm no longer bound to give the  
6 Administrator deference by statute because of the passage of the  
7 Pilot's Bill of Rights. While I am no longer bound to give  
8 deference to the FAA by statute, the agency is entitled, as Mr.  
9 Goldberg argued, judicial deference due all federal administrative  
10 agencies under the Supreme Court case of *Martin vs. Occupational*  
11 *Safety and Health Review Commission, et al.*, 99 USC 144, 111 S.Ct.  
12 1171. That case was decided in 1991.

13 In applying the principles of judicial deference to the  
14 interpretations of law, regulations, and policies that the FAA  
15 Administrator carries out, I must analyze and weigh the facts and  
16 circumstances in each case to determine if the sanction selected  
17 by the Administrator is appropriate. Based on the alleged  
18 violation, the Administrator determined that safety in air  
19 commerce or air transportation and public interest required the  
20 suspension of any and all mechanic certificates that Mr. Gendron  
21 holds, including but not limited to his mechanic certificate with  
22 airframe and powerplant ratings, for a period of 180 days. The  
23 Administrator has asked that I take judicial notice of FAA Order  
24 2150.3B, Appendix B, and argues that the 180-day suspension is the  
25 appropriate remedy in this case relative to the multiple

1 violations, the two violations in this case.

2 Mr. Goldberg argued that the 180 days suspension is not the  
3 maximum period of suspension. The Administrator argues that  
4 deference should be shown to the Administrator in choosing the  
5 180-day suspension choice of sanction.

6 The Respondent argues that I should rule in his favor and  
7 reject the Administrator's complaint. However, based on the  
8 preponderance of the evidence in this case, I have found  
9 otherwise. Respondent does not cite any mitigating factors for me  
10 to consider to reduce the suspension period.

11 Based on the evidence before me and my consideration of  
12 aggravating and mitigating circumstances, or lack thereof, in this  
13 case, I find that the Administrator's period of suspension is  
14 reasonable under the circumstances of this case. I do not find it  
15 arbitrary, capricious, or not in accordance with the law.  
16 Therefore, I sustain the Administrator's sanction of 180 days  
17 suspension in this case and that suspension must be and shall be  
18 affirmed as issued.

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ORDER

IT IS ORDERED THAT the Administrator's Order of Suspension, the complaint in this case, be, and is hereby, affirmed as issued.

Any and all mechanical certificates held by Paul F. Gendron, including but not limited to his Mechanic Certificate No. 3124630 with airframe and powerplant ratings, are suspended for a period of 180 days.

Entered on the 4th day of May 2018 in Washington, D.C.

Edited on  
July 6, 2018

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ALFONSO J. MONTAÑO  
Chief Administrative Law Judge

## APPEAL

1  
2 JUDGE MONTAÑO: That completes my oral initial decision. At  
3 the close of the hearing in Miami, I handed out to the parties a  
4 sheet which included their appeal rights, and, for the record, I  
5 need to make sure that the parties agree that they received that  
6 sheet. Let me ask the Administrator first.

7 Did you receive the Appeal of Oral Initial Decision sheet?

8 MR. GOLDBERG: Yes, Your Honor.

9 JUDGE MONTAÑO: All right. Mr. Resnick, do you agree that  
10 you received that sheet as well? Mr. Resnick?

11 MR. RESNICK: Sorry. I was on mute. I did in fact receive  
12 one, but I don't know where I put it at this point. Is one avail-  
13 able if I need to get one? I guess I can get one from --

14 JUDGE MONTAÑO: Yes. Absolutely. We can have one emailed or  
15 faxed to your office. Certainly, we will do that. I'm not sure  
16 we'll be able to do it today. Well, I will try and get it done  
17 today if I can. Certainly, I'll see if someone can do that for  
18 us. You'll certainly have it by Monday. There is a period of --  
19 a notice of appeal has to be filed 10 days after the date on which  
20 the oral initial decision is rendered. So if it's mailed to you  
21 on Monday, then you should have enough time to review it again.  
22 But if you go onto the website of the NTSB.gov and you go to the  
23 NTSB legal tab and go down to administrative law judges, you  
24 should be able to get a copy of it there as well. But we'll send  
25 you one by electronic means as soon as we can.

1 MR. RESNICK: Thank you. Thank you.

2 JUDGE MONTAÑO: You're welcome. And as I stated in the  
3 hearing, I would certainly urge the parties to consider their  
4 appeal rights and to exercise them if they feel they should. I  
5 identified the appeal levels that the parties can pursue: First,  
6 to the Board, and then from the Board either to the district court  
7 under the Pilot's Bill of Rights, or the circuit court of appeals,  
8 and from there, on to the Supreme Court, if appropriate. Again,  
9 what can occur with this decision is, one, it can be reversed, or  
10 it can be affirmed, or it can be remanded for further findings.

11 So we will -- this is going to be my decision. It will  
12 become part of the record. And that will end my oral initial  
13 decision in this case. I appreciate the patience of the parties  
14 in sitting through this lengthy decision. I found it was neces-  
15 sary in this case, which is somewhat complex. I appreciate your  
16 time and I appreciate your presentation of your case at hearing.

17 Thank you all very much, and I will end the conversation and  
18 the conference at this time. I'll ask the court reporter to give  
19 me a call once he's finished there.

20 Thank you all very much. Good-bye.

21 (Whereupon, at 5:03 p.m., the hearing in the above-entitled  
22 matter was adjourned.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Paul F. Gendron

DOCKET NO. SE-30403

PLACE: Via Telephone

DATE: May 4, 2018

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.



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Timothy Atkinson  
Official Reporter