

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

FRANCISCO J. REYES CAPARRÓS

Plaintiff

vs.

**LORETTA LYNCH
Attorney General of the United States in her official
capacity and in her representative capacity for the
UNITED STATES OF AMERICA**

Defendants

Civil No. 2015-

JURY TRIAL DEMANDED

COMPLAINT

TO THE HONORABLE COURT:

NOW COMES THE PLAINTIFF, FRANCISCO J. REYES CAPARRÓS. through the undersigned attorneys, and respectfully alleges and prays as follows:

INTRODUCTION

1.1 This is a civil action seeking monetary damages and injunctive relief, brought on behalf of Francisco J. Reyes Caparrós, the former Intelligence Specialist for the United States Attorney's Office in the District of Puerto Rico who was constructively discharged from his employment.

1.2 Plaintiff alleges that he suffered illegal retaliation and discrimination while employed in the U.S. Attorney's Office.

1.3 Mr. Reyes alleges that the management of the Office of the United States Attorney for

the District of Puerto Rico retaliated against him a number of different ways, including but not limited to stripping him of the functions for which he was hired, discrediting him, promoting an unfounded claim that he might be a Russian spy, implementing disciplinary actions ranging from a reprimand to an unwarranted half-day suspension, threatening him with a poor evaluation after years of outstanding grades, failing to give him step increases, isolating him from his co-workers by transferring him to a separate building at a distance from the Office of the U.S., and ultimately constructively discharging him.

1.4 The plaintiff alleges that this retaliation was in retaliation for his prior protected activity pursuant to Title VII of the 1964 Civil Rights Act, as amended, *42 U.S.C §2000e-16*, to protect employees in federal agencies.

1.5 Mr. Reyes also alleges a major contributing factor to many of management's retaliatory actions was his protected activity pursuant to the Whistleblower Protection Act, as amended by the Whistleblower Protection Enhancement Act of 2012, and the First Amendment to the United States Constitution, in light of his disclosure to of practices he reasonably believed constituted

1.6 He alleges that management retaliated against him for his protected disclosure to the Justice Department's Office of Inspector General ("OIJ") and the independent federal Office of Special Counsel ("OSC") of serious irregularities and potential wrongdoing on the part of management employees and for his presentation of Freedom of Information Act ("FOIA") and Privacy Act requests to the Office of the United States Attorney for the District of Puerto Rico.

1.7 This protected activity could have exposed issues regarding management's improper use of federal funds and employee time, its improper assignments for him to do personal tasks for

them, and similar matters.

1.8 Mr. Reyes also alleges constructive discharge. The harassing and retaliatory actions by management reached such an intensity by early February, 2003 and were so intolerable that it became clear to the plaintiff that management would do whatever it could to force him out of the office.

1.9 After attempting to be reinstated as the Intelligence Specialist, the position for which he was recruited, to no avail, Mr. Reyes had no choice but to leave his job, submitting his letter of resignation on February 3, 2015.

JURISDICTION

2.1 Federal Question jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, based on his right as a federal employee to be free from discrimination and retaliation.

2.2 This court has jurisdiction over this case pursuant to 28 U.S.C section 1331, since plaintiff seeks to redress deprivation of his right to be free from discrimination and retaliation pursuant to the 1964 Civil Rights Act, as amended, 42. U.S.C. §2000e-16, and to be free from retaliation for whistleblowing pursuant to the federal employees Whistleblower Protection Act, (*WPA*)

2.3. This is the proper venue to bring this action since the events and omissions giving rise to the claim occurred in this judicial district and because it is the judicial district in which the employment records relevant to all of the challenged employment actions are maintained and administered.

PARTIES

3.1. Plaintiff Francisco Reyes Caparrós is a veteran with a partial disability, and a citizen and resident of the Commonwealth of Puerto Rico. Since 2014, he has been licensed to practice law in Puerto Rico.

3.2. Mr. Reyes worked for the Justice Department of the United States as an Intelligence Specialist from May 24, 2009 until February 3, 2015, at the United States Attorney's Office for the District of Puerto Rico ("United States Attorney's Office" or "U.S. Attorney's Office") until his constructive discharge in early February, 2015.

3.3. Loretta Lynch is currently the Attorney General of the United States and as such the highest official of the United States Department of Justice (hereinafter referred to as the "DOJ").

3.4 As the head of the employing agency, defendant Lynch is the proper defendant for this action pursuant to 42 U.S.C. 2000e-16(c). She is sued in her official capacity as the Attorney General and in her representative capacity for the United States of America.

FACTS

Principal players and the federal agencies involved in this matter

4.1 Plaintiff Francisco Reyes Caparrós is a partially disabled veteran, with a 60% disability, who recently became a licensed attorney.

4.2 He worked as the Intelligence Specialist of the Office of the United States Attorney for the District of Puerto Rico from May 24, 2009 until February 3, 2015.

4.3 The Office of the United States Attorney for the District of Puerto Rico is, according to its website, charged with "enforc[ing] the laws and defend[ing] the interests of the United

States in both civil and criminal matters ...protect[ing] and serv[ing] the citizens of the District of Puerto Rico through the vigorous and impartial enforcement of the laws of the United States.” It may be referred to herein as “the U.S. Attorney’s Office”

4.4 At all times relevant to this complaint, attorney Rosa Emilia Rodríguez has been acting as the U.S. Attorney of the U.S. Attorney’s Office. She may be referred to herein as “Ms. Rodríguez” or the “Acting U.S. Attorney.”

4.5 Ms. Rodríguez was appointed to the her position by seven judges of the United States District Court for the District of Puerto Rico on October 13, 2007 and was re-appointed to a new term on October 4, 2011, pursuant to the unanimous vote of the judges of the District Court.

4.6 According to Ms. Rodríguez, as the highest-level management official at the her duties include the supervision of the entire office, through her First Assistant and other supervisors, making sure the administrative part of the office is functioning properly and developing initiatives and policies for the purpose of crime-fighting in Puerto Rico.

4.7 Atty. María Domínguez (“Ms. Domínguez”) at times relevant to this complaint was an Assistant U.S. Attorney (“AUSA”) and as First Assistant to Ms. Rodríguez, the second in charge of the U.S. Attorney’s Office. She held that position until earlier this year, when she left for private practice.

4.9 At times relevant to this complaint, atty. Jackeline Novas (“Ms. Novas”) has been an AUSA and Special Counsel to the Acting U.S. Attorney. She is now the Executive Assistant United States Attorney of the U.S. Attorney’s Office.

4.10 Attorney José Capó (“Mr. Capó”) is an AUSA. At relevant times, he was in charge of the Narcotics Strike Force and at other times the Chief of the Violent Crimes Unit of the Office

of the U.S. Attorney for the District of Puerto Rico. At times relevant to this complaint, Mr. Capó was in charge of the Firearms and Violence Reduction Task Force (“Firearms Initiative”), pursuant to which, among other things, prosecutors from the Puerto Rico government are temporarily assigned to be Special Assistant United States Attorneys.

4.11 Atty. Héctor Ramírez (“Mr. Ramírez”) is an AUSA and the director of the Civil Division of the Office of the U.S. Attorney for the District of Puerto Rico.

4.12 Lisa Western (“Ms. Western”) is the Administrative Officer for the Office of the U.S. Attorney for the District of Puerto Rico.

4.13 Carmen “Pura” López is the Human Resources (“HR”) Officer for the Office of the U.S. Attorney for the District of Puerto Rico.

4.14 The Equal Employment Opportunities (EEO) process in federal agencies is designed to protect federal employees from discrimination and from retaliation for opposing discriminatory practices, participating in EEO processes, or filing EEO complaints.

4.15 The Office of Inspector General (“OIG”) of the U.S. Department of Justice (“DOJ”) is a statutorily created entity with the mission to deter waste, fraud, abuse and misconduct in DOJ programs and personnel, and to promote economy and efficiency in those programs. Its offices are in Washington, D.C.

4.16 The Office of Special Counsel is an independent federal investigative and prosecutorial agency, charged *inter alia* with the enforcement of key sections of the federal Whistleblower Act, protecting employees from retaliation for whistleblowing and investigating and prosecuting charges of misconduct, waste, fraud and abuse.

The Honeymoon Period between Mr. Reyes and Upper Management

5.1 As an Intelligence Specialist, Mr. Reyes was recruited to perform a range of intelligence, investigative, advisory, security and training duties. He was required to coordinate with a number of working groups, task forces and committees. He also was to alert the staff of the office with respect to case development and to provide recommendations to investigative and law enforcement agencies to pursue investigations.

5.2 The plaintiff also handled sensitive security matters regarding the office and office personnel.

5.3 Mr. Reyes also had to coordinate certain matters with the administration of the Commonwealth of Puerto Rico.

5.4 Since Mr. Reyes had previously worked in local government, he was seen as having considerable contacts with the executive branch in Puerto Rico and the then Governor.

5.5 For the greater part of his tenure at the Office of the U.S. Attorney, Mr. Reyes was supervised directly by Lisa Western. Thereafter, he was supervised by Jackeline Novas.

5.6 During this period, he was assigned most of his duties either by the Acting U.S. Attorney Rosa Emilia Rodríguez or by her First Assistant María Domínguez.

5.7 For the first several years he worked at the Office of the U.S. Attorney for the District of Puerto Rico, was given outstanding evaluations, and received performance raises and time-off awards for his excellent services.

5.8 During this period, upper management of the office, including Ms. Rodríguez, Ms. Domínguez and Ms. Novas, considered Mr. Reyes a loyalist who would do their bidding.

5.9 During the first few years at the office, Mr. Reyes's base salary increased by some

\$10,000.00 and he was given bonuses in the early years. His Grade Scale went from GS12, step 1 to GS12, step 6, having received the annual increase and an additional step for quality.

Upper management uses Mr. Reyes for personal errands

6.1 Between 2009 and 2012, María Domínguez and Rosa Emilia Rodríguez used Mr. Reyes to carry out personal errands on their behalf, errands which were wholly unrelated to official duties.

6.2 Between December of 2009 and April of 2010, as reflected in several emails, First Assistant María Domínguez requested Mr. Reyes to use his time on the job to deal with a charge by the Puerto Rico Aqueducts and Sewer Authority (“AAA”) made to a tenant who was renting a house belonging to María Domínguez.

6.3 Ms. Domínguez stressed the urgency of resolving the situation, at one point telling Mr. Reyes that it was important to resolve quickly, since she was leaving on a work-related trip to Colombia and had to have peace of mind for the trip, and also because it was necessary to calm the tenant down.

6.4 As reflected in a contemporaneous email, Ms. Domínguez expected Mr. Reyes to meet with the AAA to resolve her issue with that public corporation.

6.5 Between September and November, 2010, Ms. Domínguez asked Mr. Reyes’s assistance with respect to certain payments to Claró (or the Puerto Rico Telephone Company cellular service) and with respect to charges she was challenging regarding a personal cellular used by one of her children.

6.6 In an email Ms. Domínguez sent to Mr. Reyes in early September of 2010, she

informed him that she needed an answer to her inquiry regarding the charges and credits by Claró, because she had to buy a new cell phone that week-end.

6.7 In August of 2011, Acting U.S. Attorney Rosa Emilia Rodríguez requested Mr. Reyes to find out why neither the apartment in which she lived and that of her mother did not have electrical power service. A few days later, she informed the plaintiff that electrical service had been restored, and she thanked him for his efforts.

6.8 In May of 2012, Ms. Domínguez requested Mr. Reyes to use his contacts in order for her to be able to communicate with the Puerto Rico Electric Power Authority (“AEE”), with respect a bill being charged to her husband’s daughter.

6.9 At some point in mid-2012, Acting U.S. Attorney Rosa Emilia Rodríguez asked Mr. Reyes to get her tinted windows for her automobile and thereafter asked him to replace the “BMW” sign to place on the hood of her car.

6.10 Mr. Reyes paid for the tinted window work and the sign with his personal funds.

6.11 It was not until March of 2013 that Ms. Rodríguez finally reimbursed Mr. Reyes for the money he had laid out for the tinted windows and the sign.

6.12 In October, 2012, Ms. Domínguez asked Mr. Reyes for assistance relating to an AAA bill on the property she was renting to a tenant which still appeared under the Social Security number of her husband.

6.13 On November 1, 2012, the First Assistant U.S. Attorney again asked for Mr. Reyes’s help regarding the property she rented to a tenant, this time with respect to the electric bill from the AEE, since the new tenant was to begin leasing the property on that day.

The bullet-proof vest incident and its aftermath

7.1 In February, 2012, in compliance with his duties related to the security and safety of personnel of the U.S. Attorney's Office, Mr. Reyes contacted the Executive Office of the United States Attorneys (EOUSA) in Washington, D.C. to report matters related to the safety of an Assistant U.S. Attorney, Idalia Mestey.

7.2 Ms. Mestey was working on a criminal case, during the course of which a policeman was killed. The office had received information regarding a possible death threat, and she also alleged that a suspected that an act of violence had been directed at her.

7.3 The Justice Department in Washington informed Mr. Reyes that it would be advisable for Ms. Mestey and Mr. Capó, who was working on the same case, to be provided with bullet proof vests.

7.4 After the upper management of the U.S. Attorney's Office found out about this, Mr. Reyes was called into a meeting with Ms. Rodríguez and other high-level management employees.

7.5 At the meeting, the Acting U.S. Attorney questioned Mr. Reyes's actions to protect Ms. Mestey, who had previously filed an EEO complaint regarding discriminatory actions by management.

7.6 Ms. Rodríguez indicated to Mr. Reyes that his actions in attending to the security needs of AUSA Mestery and in helping to secure the bullet-proof vest to her, were actions which helped her to become "a victim."

7.7 He was told that Ms. Mestey was one of several "crazies" ("locos") in the office, referring largely to employees who had filed EEO complaints against management.

7.8 Ms. Rodríguez yelled at Mr. Reyes, humiliating him, in front of upper management and office supervisors,

7.9 Either Ms. Rodríguez or Ms. Domínguez, or both, then ordered him out of the meeting.

7.10 At all times related to this incident, Mr. Reyes was acting pursuant to his duties as the Intelligence Specialist and in the interest of protecting the safety of two Assistant U.S. Attorneys whose lives were potentially in danger.

7.11 At no point was Mr. Reyes questioned about his provision of the vest for Mr. Capó.

The retaliation begins

8.1 After the incident where Acting U.S. Attorney Rosa Emilia Rodríguez yelled at Mr. Reyes and indicated that he should not be helping the “crazies” in the office, the plaintiff was treated in an entirely different manner by upper management of the office.

8.2 After that incident, Acting U.S. Attorney, Rosa Emilia Rodríguez did 360-turn around with respect to Mr. Reyes. Whereas before, he had been considered a loyalist, he was now a pariah. He was given the cold shoulder by Ms. Rodríguez and, on information and belief, other office employees were instructed not to talk to Mr. Reyes.

8.3 Safety and security matters previously handled by the plaintiff were removed from his duties.

8.4 During the summer of 2012, Mr. Reyes was removed from the office where he had been assigned at the beginning of his tenure at the Office of the U.S. Attorney.

8.5 Previously, his office had been in the Penthouse, on the Executive Floor, close to

high-level management.

8.6 After the move, he was assigned to an office on the fourteenth floor, near the administrative personnel and the Civil Division of the Office of the U.S. Attorney.

8.7 For the employees of the Office of the U.S. Attorney, this move was indicative of a fall from grace.

8.8 The Acting U.S. Attorney told Mr. Reyes that he was “lucky” to even have an office.

8.9 Mr. Reyes was required to submit weekly reports of his activities, a task which had never before been required of him in fulfillment of his job duties.

8.10 Mr. Reyes complained to the HR Officer Pura López, and to Administrative Officer Lisa Western concerning this requirement, which he believed to be over-supervision and micro-management but never got a response from management as to why this requirement was suddenly applied to him.

8.11 On information and belief, Ms. Rodríguez also prevented Mr. Reyes from giving seminars on money laundering and compliance, which he had done frequently for the past several years, indicating, among other things, he allegedly was not sufficiently “mature” to do so.

8.12 Mr. Reyes communicated with both the HR Officer, Pura López, and with his supervisor, Administrative Officer, Lisa Western, mentioning the extreme change in the behavior of management toward him and that there had been a sudden enforcement of rules for him which were being overlooked for other employees.

8.13 Neither Ms. López nor Ms. Western offered any solution to Mr. Reyes.

Management changes its position regarding personal errands

9.1 In June of 2013, a secretary in the U.S. Attorney's Office requested Mr. Reyes to assist her husband in obtaining a firearms license.

9.2 Shortly thereafter, Rosa Emilia Rodríguez did another 360 turnaround.

9.3 Ms. Rodríguez called Mr. Reyes to her office and, in the presence of María Domínguez, told him that he was no longer to do any personal errands for employees of the office.

9.4 Ms. Rodríguez informed Mr. Reyes that if he did any such personal errands, he would be charged with insubordination.

9.5 On June 18, 2013, Mr. Reyes consulted with Rebecca Vargas, the AUSA in charge of coordinating matters of ethics in the office and attending to employee concerns regarding ethical matters.

9.6 He asked Ms. Reyes regarding his ethical obligations, given that he had frequently been asked by Ms. Rodríguez and Ms. Domínguez to take care of such matters, but upon the secretary's request, had been prohibited from doing such errands in the future.

9.7 Ms. Vargas confirmed the conversation in an email on that date, informing him that since his "higher ups" had told him not to "help" others, "it would be better to do as asked — especially if you want to make a career as a federal agent."

9.8 Ms. Vargas cited DOJ regulations which provide that one must not use his/her official position for personal use for private gain for that of persons or organizations with which the employee is associated personally. *5 CFR 2635.702*.

The retaliation continues

10.3 In the summer months of 2013, while Mr. Reyes was out of the office studying for the bar exam, he received an invitation to attend a conference in Russia. He contacted Lisa Western for guidance regarding the requirements for his attending such a conference.

10.4 At some point in time, an unknown person placed a presentation on socialism in Mr. Reyes computer files in the office.

10.5 Although office management later concluded that someone else had placed the presentation on socialism on his computer, on information and belief, they encouraged an OIG investigation into his conduct.

10.6 In September of 2013, Rosa Emilia Rodríguez attempted to interfere with a request Mr. Reyes made to teach a course in criminal justice at a local university.

10.7 He inquired with the Rebecca Vargas concerning any ethical requirements arising from his teaching of the course. Ms. Vargas consulted with the DOJ and informed Mr. Reyes of the requirements with which he would have to comply. Despite this, Rosa Emilia Rodríguez requested a second review in an unsuccessful attempt to prevent him from teaching the course.

10.8 Towards the end of September, 2013, a meeting was held regarding the upcoming furlough of federal government employees. In front of the entire office staff, including members of upper management, student clerks, IT personnel and administrative personnel, Ms. Rodríguez stated that although employees could contact Mr. Reyes, he was “the person who no one likes in the office.”

10.9 Due to his sensitive position and security responsibilities, Mr. Reyes was not supposed to be placed on furlough.

10.10 On or about October 1, 2013, Mr. Reyes was interrogated by two FBI agents regarding the invitation to the conference in Russia and other issues related to his supposed contact with Russia.

10.11 On that same day, Mr. Reyes was called into a meeting with First Assistant, María Domínguez, at which both Mr. Capó and Ms. Western were present, and he was informed that he was to be placed on furlough because of his “poor judgment.” He was also told that he would have no more access to classified information.

10.12 Rosa Emilia Rodríguez has stated that Mr. Reyes might be or probably was recruited to be a Russian spy

10.13 When Mr. Reyes returned from furlough in or about mid-October 2013, he was informed that he could not access his office, because it had been cordoned off by the FBI.

10.14 The lock to his office was changed. His Iphone and Ipad were taken and were never returned.

10.15 Mr. Reyes questioned why this was being done. Management responded that the FBI now had control over his office and that he would be assigned only paralegal work until “things got resolved.”

10.16 At no time thereafter was Mr. Reyes ever informed who had initiated the investigation into his conduct respecting Russia or when, or if, the investigation had concluded.

Mr. Reyes EEO Complaint in October and November of 2013

11.1 After the events described above, Mr. Reyes presented an EEO Pre-Complaint in October, 2013 and a formal EEO Complaint in November, 2013, alleging that he had been

discriminated against and suffered retaliation due to his perceived support for AUSA Mestey, who had previously filed an EEO Complaint and was seen by Management of the Office of the U.S. Attorney as being one of the “crazies” in the office.

11.2 In his EEO Complaint, Mr. Reyes invoked the protection federal employees have against retaliation for participation in EEO processes and opposition to prohibited practices discrimination against employees.

11.3 Among the retaliatory actions mentioned by Mr. Reyes were the incident in which Ms. Rodríguez yelled at him and talked about the “crazies” in the office who filed complaints regarding management, the prohibition with respect to giving seminars, his removal from his office, the requirement regarding weekly reports, the assignment of tasks for which he had no training, the obstacles placed on his ability to teach the course, the comments made about him by upper management, his being interrogated by the FBI, with the implication that he was a Russian Spy, and his being placed on furlough.

11.4 Although this EEO complaint has been pending for almost two years, there still has not been a final agency decision with respect thereto.

The retaliation continues

12.1 After Mr. Reyes filed the EEO pre-complaint alleging retaliation for his perceived cooperation with another EEO complainant, he was subjected to additional retaliatory action.

12.2 His office was again changed, this being the third time his office had changed in little over a year, each time to a different floor.

12.3 His then supervisor, AUSA Jackeline Novas, took to assigning him tasks which, by

and large, did not correspond to the duties for which he was recruited and had, in fact, performed during his first few years of service.

12.4 He was also subject to intense supervision and micro-management, as well as actions designed to ostracize him and isolate him from his colleagues at the U.S. Attorney's Office, who on information and belief, were informed that he was not trustworthy.

12.5 He was also subject to undue disciplinary sanctions.

The Firearms Initiative, the inflated statistics and Mr. Reyes's suspension

13.1 On or about October 30, 2013, Mr. Reyes was assigned a new task, for which he had no special expertise and for which he would require support from the Information Technology ("IT").

13.2 The task was to gather firearms crime statistics through the end of 2013, for reporting pursuant to the "Firearms Initiative," since those statistics had been calculated only through September of that year.

13.3 Mr. Reyes was also supposed to detail the resolution of cases previously reported for 2011 and 2012.

13.4 The statistics pursuant to the Firearms Initiative are used by the Office of the United States Attorney to present to officials of the Commonwealth of Puerto Rico, including the Secretary of Justice, as well as to the Executive Office of the U.S. Attorneys in Washington, D.C.

13.5 Acting U.S. Attorney Rosa Emilia Rodríguez has stressed the importance of the Firearms Initiative to "the USAO [Office of the U.S. Attorney] and to the citizens of Puerto Rico." She also has stated that in other jurisdictions where the Firearms Initiative has been

implemented, the murder rate had been reduced by 30% in the prior two years.”

13.6 The statistics affect the public image of the Office of the U.S. Attorney for the District of Puerto Rico.

13.7 They also have an impact on the funding received by the Office of the U.S. Attorney for the District of Puerto Rico, and they are used to procure additional SAUSA's for the office.

13.8 At the time of this assignment, AUSA José Capó was the Chief of the Violent Crimes Unit and the person in charge of the Firearms Initiative.

13.9 Mr. Reyes started to analyze the statistics provided by office and soon discovered that the statistics had not been verified and that the information was incomplete and incorrect.

13.10 Mr. Reyes's completion of the project was hampered by the failure of some AUSA's to provide him with complete firearm statistics, information which was due by no later than November 30, 2013

13.11 As late as January 10, 2014, José Capó, in charge of Firearms Initiative, was still requesting necessary information from several AUSA's.

13.12 Despite the problems Mr. Reyes was confronting, in the time between November of 2013 to January of 2014, the plaintiff kept both Mr. Capó and Jackeline Novas informed regarding the progress he was making.

13.13 During this time frame, he provided them with different charts and analysis, for which he received no negative feedback for some three months and no further guidance regarding how he should perform the task.

13.14 In his analysis of the statistics which he had been given, Mr. Reyes came across information demonstrating that the statistics prepared by the Office of the U.S. Attorney had been

inflated.

13.15 The office's previous statistics contained errors by double-counting some cases and by including additional months in the annual counting.

13.16 Mr. Reyes pointed out the problem of inflation to the statistics to upper management of the Office of the U.S. Attorney for the District of Puerto Rico.

13.17 For the year 2012, the office's statistics had included 15 months, rather than 12 months.

13.18 On several occasions, Mr. Reyes informed Mr. Capó about the problem of the three extra months included in the yearly statistics for 2012.

13.19 Mr. Capó instructed Mr. Reyes to keep the three months in the statistical reporting for 2013.

13.20 In an email Mr. Reyes sent on December 19, 2013, Mr. Reyes informed both Ms. Novas and Mr. Capó that the previous statistics for 2012 had incorrectly included three months corresponding to the year 2011, and that the statistics for 2013 would consequently be lower than those previously prepared by the office for the earlier years.

13.21 Mr. Reyes also realized that some cases had been counted twice, further inflating the statistics.

13.22 On January 14, 2014, at 3:42 PM, Mr. Reyes sent an email to Ms. Novas and Mr. Capó, again pointing out that due to earlier errors, the statistics would be less than those reported earlier, stating that "the number actually came down... because ... [he] notice[d] that some double reporting (duplicate names) and ... proceeded to delete them."

. 13.23 Just one hour later, Ms. Novas wrote to Mr. Reyes criticizing his delay in

producing the statistical reports and saying that his conduct was “unacceptable.”

13.24 During the first week of March, 2014, Acting U.S. Attorney Rosa Emilia Rodríguez informed Mr. Reyes that she was proposing he be suspended without pay for one day in order “to promote the efficiency of the Federal service.” Ms. Rodríguez stated that the suspension was based on his “Negligent Performance of Duties” and “Lack of Candor,” related to his performance of the task related to the statistics related to the Firearms Initiative.

13.25 Ms. Rodríguez stated that Mr. Reyes had demonstrated “a lack of commitment and responsibility for [his] work” and that his delay in producing the statistics “negatively impacted the efficient operation of the United States Attorney’s Office generally” and had “diminished [her] trust in [Mr. Reyes].”

13.26 The Acting U.S. Attorney also accused Mr. Reyes of providing false information with respect to the failure of certain AUSA’s to provide timely information, reflecting a “fundamental lack of honesty and candor” and a “willingness to deceive supervisors in an effort to hide [his] negligent performance of [his] responsibilities.”

13.27 Ms. Rodríguez also informed Mr. Reyes that he could reply to the proposed suspension, either orally or in writing, but that she would be the one to make the final decision.

13.28 Mr. Reyes filed a written response to the proposed suspension, affirming that he had acted correctly, after which the Acting U.S. Attorney affirmed her own previous decision, but reduced the time of the suspension from a whole day to a half day.

13.29 Mr. Reyes thereafter amended his pending EEO complaint to include the suspension as a retaliatory.

Mr. Reyes engages in additional protected activity – Whistleblowing and Information Requests

14.1 On January 13, 2014, while the incidents were culminating with respect to Firearms Initiative statistics, Mr. Reyes contacted the Office of Inspector General (OIG) of the DOJ in Washington and reported wrongdoing on the part of members of higher management in the U.S. Attorney's Office in Puerto Rico, including Acting U.S. Attorney Rosa Emilia Rodríguez.

14.2 Among the matters reported to the OIG were the practices of Ms. Rodríguez and Ms. Domínguez in using Mr. Reyes for personal errands, retaliation against employees involved in EEO complaints, and the above-mentioned inflation of statistics related to the "Firearms Initiative."

14.3 On the following day, Mr. Reyes sent an email to the OIG stating that he needed "protection ... as I live in [constant] fear a reprisal in a hostile work environment," providing the OIG with his personal cellular phone number.

14.4 By the end of March, 2014, Mr. Reyes had not heard back from the OIG of the DOJ.

14.5 At about that time, Mr. Reyes presented the same issues to the Office of Special Counsel (OSC) in Washington, D.C.

14.6 Thereafter, Mr. Reyes notified the OIG that he had presented these issues to the Office of Special Counsel.

14.7 At some point after this notification, the OIG informed Mr. Reyes that he had to go exclusively through the OSC.

14.8 On information and belief, the Acting U.S. Attorney, Rosa Emilia Rodríguez, became aware of the OIG complaint shortly after it was presented.

14.9 The managers of the Office of the U.S. Attorney for the District of Puerto Rico are in frequent contact with the Executive Office of the DOJ in Washington, D.C.

14.10 In February, 2014, in order to provide further support for his OIG Complaint and his pending EEO complaint, and to protect his reputation in light of the adverse actions taken by management against him, Mr. Reyes also attempted to use the Freedom of Information Act (FOIA) and Privacy Act to process to ascertain information about him, with an eye towards protecting himself against unfounded accusations.

14.11 He narrowed his FOIA request on March 28, 2014, specifying *inter alia* that he was seeking communications regarding him made by certain specific employees, most of whom were members of management.

14.12 Plaintiff's FOIA requests were assigned to the Chief of the Civil Division, Héctor Ramírez, for processing.

14.13 On information and belief, Mr. Ramírez shared plaintiff's FOIA request with members of management, including Jennifer Hernández, José Capó, Jackeline Novas, and Timothy Henwood, all of whom were at a local restaurant, sharing on one or more cellular phones a copy of one or more of Mr. Reyes's FOIA Requests.

14.14 Mr. Reyes was fearful that management would attempt to derail his FOIA requests. as he knew they had done with respect to a similar request in the past.

Mr. Reyes is banished to the Social Security Office

15.1 In July, 2014, the plaintiff was informed that he was yet again being moved from his office, this time to the Social Security Office, to handle a fraud investigation.

15.2 First Assistant María Domínguez indicated that this was supposed to be a temporary assignment.

15.3 The Social Security Office to which Mr. Reyes was sent is located in the office building at the Plaza de las Américas Shopping Mall, a building separate from the office of the U.S. Attorney.

15.4 As a result of his transfer to the Social Security Office, Mr. Reyes was further isolated from the other employees from the office where he had previously worked for more than five years.

15.5 By the time Mr. Reyes left the Office of the U.S. Attorney some six months later, he was still exiled to the Social Security Office.

Further retaliation - a poor evaluation and a reprimand for “gossiping”

16.1 On or about August 15, 2014, Mr. Reyes was called in to meet Jackeline Novas, to sign his mid-year evaluation.

16.2 Ms. Novas stated that she considered Mr. Reyes’s work to be deficient and did not merit a successful rating, referring to purported deficiencies in certain motions he had prepared.

16.3 Although this was paralegal work, it was under the guidance of an experienced attorney, and, on information and belief, the office had prevailed on the writings which Ms. Novas criticized.

16.5 Immediately following Mr. Reyes’s receipt of the mid-year evaluation, Mr. Reyes received a formal letter of reprimand/

16.6 HR Director Pura López was called into the meeting, and Mr. Reyes was provided

with a formal letter of reprimand, bearing her signature and accusing him of improper gossiping in the office.

16.7 Mr. Reyes immediately notified Ms. Novas and Ms. López that he believed this action to be in retaliation for his prior protected activity, which they denied.

16.8 A virtually identical letter had been delivered some three weeks before to AUSA Carmen Márquez, who had earlier prevailed before a jury on a retaliation claim for the exercise of EEO activity and whose reinstatement had been ordered by the court.

16.9 Both letters were in apparent reference to a recent tip regarding an apartment allegedly rented for use by Ms. Domínguez during the trial of the former Governor of Puerto Rico, its alleged use for improper purposes, and a possible conflict of interest because the apartment was allegedly was rented from a defense attorney who also had contracts with the Office of the United States Attorney.

16.10 Management believed that Ms. Márquez and Mr. Reyes had acted in collaboration in a quest to investigate wrongdoing by high-level supervisors in the office.

16.12 On information and belief, the two letters were drafted, in whole or in part, by Ms. Domínguez, and reviewed by Ms. Rodríguez.

Mr. Reyes's final months on the job

17.1 During his final months at the Office of the U.S. Attorney, from the summer of 2014 to February, 2015, it became perfectly clear to the plaintiff that management would do whatever it takes to force him out of the office.

17.2 Plaintiff remained at the Social Security Office, rather than at the Office of the

United States Attorney during these last months.

17.3 Management of the office continued to micro-manage him and to prevent him from doing the duties for which he was recruited.

17.4 After receiving the reprimand for “gossiping,” Mr. Reyes amended his EEO complaint, alleging (as he had in the meeting with Pura López and Jackeline Novas referenced above), that the reprimand was an additional retaliatory action.

17.5 On September 10, 2014, Mr. Reyes gave an interview to an EEO Investigator with respect to this EEO complaint, during which he referenced his prior EEO activity, as well as his complaints of wrongdoing and FOIA requests. He also spoke about his transfer to the Social Security Agency offices, the poor evaluation, the reprimand, and a number of other matters.

17.6 Mr. Reyes also stated that he did not “know what else can happen to [him] now.”

17.7 At that time, Mr. Reyes indicated he wanted to amend his earlier complaint to include his transfer to the Social Security Office.

17.8 Several weeks later, an issue arose with respect to a medical certificate.

17.9 Mr. Reyes is a partially disabled veteran who suffers from ulcerative colitis, severe pain, Thoracic Outlet Syndrome and High Blood Pressure.

17.10 Two of his ribs are causing a blockage of two arteries, which in turn causes him to feel both pain and numbness in various parts of his body.

17.11 He has been hospitalized for extended periods of time.

17.12 His medical ailments are complicated in situations involving stress.

17.13 Mr. Reyes requested time off for sick leave for October 8th, 10th and 17th, 2014, so as to attend appointments for medical tests related to his ailments and treatment for pain relief,

all of which were scheduled on those days.

17.14 Before those dates, Jackeline Novas, then Mr. Reyes's supervisor, approved the leave, without the need for a medical certificate.

17.15 On October 21, 2014, despite the pre-approved leave, Ms. Novas unjustifiably required him to submit a medical certificate for each of those days.

17.16 Ms. Novas did not explain to Mr. Reyes why she was requesting the medical certificate, only referring the plaintiff to the leave policies of the office.

17.17 On information and belief, the office was investigating Mr. Reyes's out-of-office conduct, in the search for information which could lead to disciplinary action.

17.18 He thereafter provided management with the medical documentation showing that he indeed had been at appointments on the days in question.

17.19 Shortly after he was required to present the medical certificate, Mr. Reyes filed another EEO pre-complaint, alleging further retaliation.

17.20 On November 28, 2014, he presented a formal EEO complaint with respect to this matter.

17.21 All the while, he remained at the Social Security offices, away from his co-workers at the Office of the United States Attorney.

17.22 On or about January 22, 2015, Mr. Reyes wrote to Acting U.S. Attorney Rosa Emilia Rodríguez, making a formal request to be returned to the Office of the United States Attorney and to resume his duties as the Intelligence Specialist.

17.23 In the afternoon of January 26, 2015, Acting U.S. Attorney Rosa Emilia Rodríguez told him Mr. Reyes that he would have to stay at the Social Security office, based on certain

unknown “findings” of the Office of Inspector General and the investigation which allegedly was still being conducted by the FBI.

17.24 Ms. Rodríguez indicated that Mr. Reyes could not allow him to resume his job as an Intelligence Specialist or perform the duties corresponding to that position, because the Office of the U.S. Attorney was still in the process of determining “appropriate personnel actions responsive to the results of the investigation.”

17.25 By that time, management had long ago concluded that the file which was “inadvertently” placed on Mr. Reyes’s computer had originated from a separate computer used by an AUSA.

17.26 By that time, Mr. Reyes had been in the Social Security office for some six months and the FBI had commenced its investigation over a year earlier.

17.27 After the response by management and its refusal to reinstate him in his duties and return him to the office, Mr. Reyes concluded that management would continue to ostracize him and retaliate against him for his previous protected activity, and would do whatever it would take to get him out of the office.

17.28 This pattern of humiliating treatment, including but not limited to the cold shoulder treatment, the disciplinary actions against him, investigations into unfounded allegations, micro-management, the four times he was moved from office to office and his exile to the Social Security Office, was for the purpose of forcing to him to resign and to dissuade others from complaining about wrongdoing on the part of management and about management retaliation for the exercise of whistleblowing and EEO rights

17.29 His treatment by management of the office, as described above, had caused him

extreme stress, which was causing a deterioration in his health.

17.30 On February 3, 2015, Mr. Reyes presented a resignation letter, alleging constructive discharge.

17.31 In his letter of resignation, he mentioned being moved from office to office, being ostracized by management and the object of an unfounded investigation for over a year. He also mentioned the placement of the file on his computer, the micro-management, his being banished to the Social Security Office for a supposed temporary assignment, the disciplinary actions, the mid-year review in 2014, and the refusal of management to permit him to perform the duties for which he had been hired, and the overall hostile environment.

17.32 These actions by management also had caused a deterioration of his pre-existing health conditions.

17.33 On the same day he sent this letter, Mr. Reyes informed the attorney from the Office of Special Counsel in charge of his case that he had been forced to resign, having “no other option” since “management had “continued the harassment for over a year.”

17.34 A short time later, Mr. Reyes amended his November, 2014 EEO Complaint to include his constructive discharge, in addition to the office’s attempt to interfere with his professional activities after he left the office.

Damages

17.1 The above-described actions subjected Mr. Reyes to an extraordinarily hostile environment, causing him considerable stress which has aggravated his pre-existing medical conditions.

17.2 The Office of the U.S. Attorney has caused him extensive emotional and physical damages to the plaintiff, including but not limited to loss of sleep, appetite disturbances, tension, anxiety, nervousness, concern about his future and that of his daughter, gastrointestinal manifestations and muscular pain, for which he has received treatment.

17.4 The actions of the Office of the U.S. Attorney have created extreme disillusion in the plaintiff, due to his frustration about the inaction of the authorities with respect to his complaints of misconduct and retaliation.

17.5 These actions have a real possibility of adversely affecting his reputation and his future professional career.

17.6 As a result of the circumstances described above and the false allegations of dishonesty, negligent performance, and being a spy for the Russians, plaintiff's future job opportunities, as well as his reputation as an attorney bound by a code of ethics, will be adversely affected

17.7 As a result of these actions, plaintiff has been humiliated, and his professional ethics have been called into question. He suffers a sense of frustration and fear, as well as a loss of confidence in the processes meant to protect employees.

17.8 Mr. Reyes has suffered to date a loss of income of some \$50,000.00, in addition to benefits.

17.9 All of these damages are expected to continue into the future and will thereby will be increasing as time progresses.

A summary of Mr. Reyes's exhaustion of administrative remedies

19.1 All previous allegations are re-alleged and incorporated herein.

19.2 In November, 2013, Mr. Reyes filed a formal EEO complaint, alleging retaliation and discrimination on the basis of participation in and opposition.

19.3 This complaint was later amended to include subsequent retaliatory actions such as the suspension, the letter or reprimand and the transfer to the Social Security Office.

19.4 Although this complaint and its amendments were investigated as part of the EEO process, no final action was taken, no appeal was filed with the EEOC, and more than 180 days have passed since the presentation of the complaint.

19.5 In March of 2014, Mr. Reyes presented a complaint to the Office of Special Counsel concerning wrongdoing on the part of upper management of the U.S. Attorneys Office.

19.6 Mr. Reyes filed FOIA requests concerning matters of possible wrongdoing by management, which matters were creating malaise among lower-level employees in the office.

19.7 After receiving notification that he would have to pay tens of thousands of dollars to receive the requested information Mr. Reyes amended his FOIA requests, modifying them from more general requests to more specific ones, and providing more detail about the precise nature of his requests.

19.8 To date, Mr. Reyes has not received the requested information.

19.9 Mr. Reyes also sought protection under the federal Whistleblower Protection Act., filing complaints with the OIG and the OSC in early 2014 and informing the OSC about further retaliatory action taken against him.

18.10 In November of 2014, Mr. Reyes filed another formal EEO complaint regarding the

requirement that he submit a medical certificate for a pre-authorized sick leave absence.

18.11 This EEO complaint was later amended to include his constructive discharge and post-discharge retaliation which was affecting his future career opportunities.

18.12 On February 3, 2015, the same day he was forced to resign, Mr. Reyes informed the Office of Special Counsel that he had been forced to resign, having “no other option” since management had “continued the harassment for over a year.”

18.13 On the following day, the OSC indicated that it would “continue its investigation” and that it hoped “to have a preliminary determination for [Mr. Reyes] shortly.”

18.14 On February 18, 2015, the OSC informed Mr. Reyes of its preliminary determination to close the investigation and consolidate the matter with the EEO Investigation.

18.15 Mr. Reyes wrote to the OSC, questioning this determination, concerned that it meant that the wrongdoing he had brought to the attention of federal authorities would never be investigated.

18.16 Mr. Reyes has not heard back from the OSC concerning the status of his complaint.

18.17 On or about July 30, 2015, the Department of Justice issued a final decision with respect to his November, 2014 EEO Complaint and the amendments thereto, deciding against Mr. Reyes with respect to all of his claims.

18.18 The plaintiff was informed that he had thirty days to file a complaint in this court

18.19 The letter denying the claims was received on August 3, 2015.

CAUSES OF ACTION

19.1 All previous allegations are re-alleged and incorporated herein.

19.2 This claim is brought pursuant to Title VII of the 1964 Civil Rights Act.

19.3 Mr. Reyes also invokes his protections under the federal Whistleblower Protection Act and his rights pursuant to the First Amendment.

19.4 Due to the retaliation, discrimination and hostile environment plaintiff suffered, he is entitled to relief in the form of compensatory damages to the statutory maximum of \$300,000, as well as costs, interests and attorneys fees.

19.5 Pursuant to applicable statute, the attorneys fees can be enhanced to compensate for the delay factor.

19.6 These legal remedies do not provide plaintiff with an adequate remedy, entitling him to suitable equitable relief in order to assure that the Department of Justice complies with its obligations.

19.7 Mr. Reyes is also entitled to back pay, as well as payments for the reduction in his anticipated compensation pursuant to the federal step system, as part of his equitable relief.

19.8 Plaintiff is also entitled to an expungement of the negative information in his federal personnel records.

19.9 Plaintiff is entitled to equitable relief in the form of reinstatement or front pay in lieu of reinstatement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Francisco Reyes Caparrós respectfully requests the following relief.

1. That this court issue orders:
 - a. Determining that the actions of upper-level management of the Office of the U.S. Attorney for the District of Puerto Rico were discriminatory, retaliatory, and otherwise in violation of the 1964 Civil Rights Act, as amended, and other applicable laws and regulations prohibiting discrimination and retaliation against federal employees;
 - b. Determining that the actions of the Department of Justice violated plaintiff's rights pursuant to the Whistleblower Protection Act;
 - c. Providing for compensatory damages of no less than \$300,000.00;
 - d. Providing for back pay and for the loss of other benefits, currently estimated at more than \$90,000.00 and expected to increase in the future;
 - e. Providing for injunctive relief, including but not limited to the expungement of negative information about Mr. Reyes in the records of the Department of Justice.
 - f. Issuing further equitable relief, by either ordering reinstatement or the payment of front pay in lieu of reinstatement.
 - g. Ordering the Department of Justice to pay reasonable attorneys fees, costs, litigation expenses and applicable interests;
 - h. Ordering all other relief the court deems adequate and just.
2. Ordering that this case be heard by a Jury;.

3. Given that the Acting U.S. Attorney was appointed by the U.S. District Court and the knowledge tho judicial officers of this court may have concerning underlying events, plaintiff's also requests that a Visiting Judge be assigned to this case.

Respectfully submitted in San Juan, Puerto Rico this 2nd day of September, 2015.

Berkan/Mendez

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