

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CHARLIE BATISTA,)	
)	Case No. 1:22-cv-20934-DPG
Plaintiff,)	
)	
v.)	DEMAND FOR JURY TRIAL
)	
ALEJANDRO MAYORKAS,)	
in his official capacity as Secretary)	
of the U.S. Department of Homeland)	
Security,)	
MONICA HESLES,)	
in her official capacity,)	
YESEIRA DIAZ,)	
in her official capacity, and)	
YASSER NAVARRETE,)	
in his official capacity,)	
)	
Defendants.)	
_____)	

FIRST AMENDED COMPLAINT

Plaintiff Charlie Batista (“Batista”),¹ for his first amended complaint against Defendants Alejandro Mayorkas, in his official capacity as Secretary of the United States Department of Homeland Security (“Defendant DHS”), Monica Hesles (“Defendant Hesles”), in her official capacity, Yeseira Diaz (“Defendant Diaz”), in her official capacity, and Yasser Navarrete (“Defendant Navarrete”), in his official capacity (collectively, “Defendants”), alleges the following:

1. It is widely recognized that individuals living with known disabilities and those who openly identify as non-binary and transgender have a much higher chance of experiencing

¹ Batista’s preferred pronouns are they/them/theirs, but for purposes of clarity in this Amended Complaint, Batista shall use the pronouns he/him/his.

some form of discrimination within the workplace. Refusal to hire, failure to promote, harassment, denial of job benefits, termination, and even physical and sexual violence are common occurrences for these workers, especially those of color. To combat this unfortunate reality, federal agencies are required to take appropriate steps to ensure that employment decisions are free from discrimination on the basis of, among other things, sexual orientation, gender identity, reprisal, or disability.

2. Batista is a long-time employee of the United States Citizenship and Immigration Services (“USCIS” or “Agency”), the federal agency under the United States Department of Homeland Security (“DHS”) charged with administering the nation’s naturalization and immigration system. Batista openly identifies in the workplace as a member of the lesbian, gay, bisexual, transgender, queer or questioning, plus community (“LGBTQ+”), and he lives with a known disability, namely a chronic anxiety disorder that results in unpredictable onset of panic attacks.

3. Since joining USCIS in 2008, Batista has been regarded as a “model employee” by supervisors and colleagues, underscored by his numerous professional accolades, including performance-related awards, outstanding or excellent job performance reviews, and countless scores of positive reviews from customers and their representatives.

4. USCIS is required by Defendant DHS to promote a safe environment for *all employees* and the visiting public, and to work with employees to maintain a work environment that is free from violence, harassment, intimidation, and other disruptive behavior. But the USCIS Miami Field Office must have missed that memo.

5. In 2015, Batista began working at the USCIS Miami Field Office upon accepting a position as an Immigration Services Officer. Unbeknownst to Batista at the time, the workplace

culture at the USCIS Miami Field Office was regarded by several employees as toxic and unhealthy, plagued by management's overt acts of favoritism, intimidation, humiliation, discrimination, and retaliation toward employees. Defendants Hesles, Diaz, and Navarrete (collectively referred to as the "USCIS Miami Field Office Defendants") managed or supervised Batista during the majority of his tenure at the USCIS Miami Field Office.

6. Despite Batista's many professional achievements and high job performance reviews, Defendants intentionally and maliciously targeted him with acts of intimidation, harassment, humiliation, discrimination, and retaliation that were motivated—at least in part—by Batista's sexual orientation, gender identity, and/or disability. Defendants' conduct consisted of, among other things:

- a) Forcing Batista to violate protocols impacting national security concerns;
- b) Subjecting Batista to persistent acts of ridicule, intimidation, and harassment on the basis of his disability;
- c) Intentionally denying Batista's requests for additional training;
- d) Maliciously delaying Batista's career ladder promotion;
- e) Staging a security infraction to undermine Batista's performance reviews;
- f) Falsifying reports that Batista engaged in unprofessional conduct during immigration interviews;
- g) Harassing Batista with constant work product deficiency reports;
- h) Ignoring Batista's request for workplace resources in connection with his intent to transition genders;
- i) Denying Batista's requests for reasonable accommodations based on his disability; and
- j) Forcing Batista to disregard instructions given to him by a medical professional.

7. Defendants' unlawful workplace conduct subjected Batista to a hostile and toxic work environment for over a year, which significantly impacted his physical and mental health, resulting in multiple hospitalizations, frequent medical treatment, and regular therapy sessions to cope with the high levels of workplace stress, anxiety, and trauma.

8. Batista seeks redress for the significant harm inflicted upon him by Defendants' unlawful workplace conduct, for which he seeks compensatory and punitive damages, as well as injunctive and other equitable relief.

9. Batista's claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112 to 12117, the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 to 2654, the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, and the Florida Civil Rights Act of 1992.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 because this case involves questions of federal law and because Batista seeks damages for violations of his civil rights.

11. The Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367(a) because the claims form part of the same case or controversy under Article III of the United States Constitution. The state law claims share all common operative facts with Batista's federal law claims, and the parties are identical. Resolving Batista's federal and state claims in a single action serves the interests of judicial economy, convenience, consistency, and fairness to the parties.

12. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practice was committed in this judicial district, the relevant employment records are maintained in this judicial district, and there is no other judicial district that has substantial connection to Batista's claims. Venue is also proper in this judicial district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims herein occurred within this judicial district.

THE PARTIES

13. Plaintiff Charlie Batista is employed by USCIS as an Immigration Services Officer. He worked under Defendants' supervision at the USCIS Miami Field Office from September 2015 through October 2017. Batista identifies as non-binary and resides in Miami-Dade County, Florida.

14. Defendant Alejandro Mayorkas is the Secretary of the United States Department of Homeland Security, the federal agency responsible for safeguarding the nation. Secretary Mayorkas is the proper party in actions against USCIS that allege violations of civil rights in the workplace.

15. Defendant Monica Hesles was employed by USCIS as a Supervisory Immigration Services Officer. Defendant Hesles was Batista's first-line supervisor at the Miami Field Office from October 2016 through July 2017. Upon information and belief, Defendant Hesles is no longer employed by USCIS and resides in Miami-Dade County, Florida.

16. Defendant Yasser Navarrete was employed by USCIS as the Section Chief of the Office of Adjudications at the Miami Field Office. Defendant Navarrete was Batista's second-line supervisor from April 2016 through October 2017 and Defendant Hesles' first-line supervisor. Upon information and belief, Defendant Navarrete is the current Field Office Director for the USCIS Office in Seattle, Washington, and resides in or around Seattle, Washington.

17. Defendant Yeseira Diaz was employed by USCIS as the Director of its Miami Field Office at all times relevant to this Amended Complaint. Defendant Diaz was Defendant Navarrete's first-line supervisor and Defendant Hesles's second-line supervisor. Upon

information and belief, Defendant Diaz is no longer employed by USCIS and resides in Broward County, Florida.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. On January 8, 2017, Batista initiated contact with an Equal Employment Opportunity counselor.

19. On April 24, 2017, USCIS notified Batista of his right to file a formal complaint following the conclusion of the EEO counseling.

20. On May 9, 2017, Batista filed a formal complaint with USCIS alleging claims of discrimination, retaliation, and hostile work environment (Case No. HS-CIS-00847-2017). Batista previously filed an informal EEO complaint alleging claims of workplace discrimination and retaliation based on Batista's sexual orientation, which Batista alleged started the unlawful retaliatory conduct that continued up until he left the USCIS Miami Field Office.

21. On August 14, 2017, Batista requested to amend his formal complaint to include like and related claims, which USCIS accepted on September 22, 2017.

22. On January 19, 2018, USCIS forwarded Batista a copy of the Investigative File, providing him with notice of his right to request a hearing before an EEOC Administrative Judge or, alternatively, to receive a Final Agency Decision.

23. On January 23, 2018, Batista filed a request for a hearing before an EEOC Administrative Judge.

24. On January 31, 2022, an Administrative Judge from the EEOC's Miami District Office entered judgment in favor of the Agency.

25. On or about March 3, 2022, the EEOC issued Batista a Notice of Right to Sue letter. Batista initiated this action within 90 days of receipt of that notice. Batista has fully complied with all prerequisites for this Court to assume jurisdiction over this action.

BACKGROUND FACTS

26. In 2006, Batista was medically diagnosed with a chronic anxiety disorder, namely a panic disorder that results in unpredictable episodic panic attack flareups, which make it extremely difficult for Batista to, among other things, sleep, work, concentrate, think, regulate emotions, or adequately care for himself. The flareups last approximately 3-to-7 days and may be triggered by high levels of stress and anxiety, according to the medical diagnosis.

27. Batista's chronic anxiety disorder is a psychological or mental disorder that substantially limits one or more major life activities. Specifically, the disorder significantly impacts Batista's ability to, among other things, sleep, work, concentrate, regulate emotions, or adequately care for himself. On occasion, Batista's episodic flareups have required emergency medical treatment and resulted in his hospitalization.

28. As a means of treating and coping with the chronic anxiety disorder, Batista regularly visits a physician and takes prescription medication. Specifically, Batista takes Paroxetine, an anti-depressant, and Clonazepam, an anti-anxiety medication.

29. USCIS hired Batista under Schedule A, the federal hiring authority for people with disabilities. At all times relevant to this Amended Complaint, Defendants regarded or perceived Batista as an individual with a disability.

30. Batista could perform the essential functions of his position with or without a reasonable accommodation.

Batista's Employment History with USCIS

31. In 2008, Batista began working for USCIS as an Immigration Services Officer, Level 1.

32. From 2008 through 2012, Batista received outstanding annual performance evaluations and several performance-based awards, including cash incentive awards in recognition of his exemplary job performance.

33. In 2012, Batista joined the Bureau of Immigration and Customs Enforcement—now known as Immigration and Customs Enforcement—where he worked for two years at its New York City Field Office. While at the Bureau of Immigration and Customs Enforcement, Batista received exceptional performance reviews that led to his promotion to the position of Law Enforcement Specialist.

34. In September 2015, Batista returned to USCIS upon accepting a position at its Miami Field Office as an Immigration Services Officer, Level 1. Batista's job responsibilities included reviewing and adjudicating immigration applications, and granting and denying requests for immigration benefits. In April 2016, Batista was promoted to an Immigration Services Officer, Level 2.

35. In October 2017, USCIS granted Batista's request for a hardship transfer based on his disability, which allowed Batista to transfer to the USCIS Potomac Service Center in Arlington, Virginia. Thereafter, Batista continued to receive outstanding annual performance evaluations and performance-based awards, including a Special Act Award in 2022 for being a "model [o]fficer" and an "exemplary" employee.

*Defendant Navarrete's Unlawful Discriminatory and Retaliatory Conduct
on the Basis of Batista's Sexual Orientation*

36. Batista's workplace troubles at the USCIS Miami Field Office began in April 2016 shortly after he was promoted to an Immigration Services Officer, Level 2, and thereafter reassigned to the Office of Adjudications.

37. In the Office of Adjudications, Batista's initial first-line supervisor was Juliette Espinosa and his second-line supervisor was Defendant Navarrete, the Chief of the Section.

38. In June 2016, Batista partnered with other LGBTQ+ employees and allies to host the Miami Field Office's inaugural LGBTQ+ Pride event. Defendant Navarrete did not participate in the office-wide event.

39. In July 2016, Defendant Navarrete ordered Batista to perform an immigration interview for an applicant that the Fraud Detection and National Security Directorate ("FDNS") expressly instructed Batista not to interview. Batista had previously reported the applicant to the FDNS after determining the applicant was under investigation for possible links to a terrorist organization. Despite the FDNS instructions, Batista performed the interview in compliance with the order given by Defendant Navarrete.

40. After performing the interview, a Supervisory Immigration Officer with the FDNS questioned Batista about why he had conducted the interview in direct contravention to instructions given to him by FDNS. Batista informed the Supervisory Immigration Officer that he was following the orders given to him by Defendant Navarrete.

41. Feeling as though Defendant Navarrete intentionally forced him to violate USCIS policy, Batista discussed the matter with Linda Babok, a Supervisory Immigration Officer with the FDNS. Ms. Babok informed Batista that the incident would be reported to the FDNS Chief.

42. Shortly after speaking with Ms. Babok, Defendant Navarrete accused Batista of sexually harassing a same-sex couple during an immigration interview and further accused Batista of being racist towards a separate interracial couple during an immigration interview. The accusations were false. Defendant Navarrete instructed Juliette Espinosa—Batista’s then first-line supervisor—to formally counsel Batista based on Defendant Navarrete’s accusations. Defendant Navarrete intentionally made the false accusations in a malicious attempt to negatively impact Batista’s conditions of employment with USCIS, in retaliation for the complaint Batista made to the FDNS.

43. On or about August 18, 2016, Batista filed an EEO complaint with the USCIS Office of Equal Opportunity and Inclusion alleging that, in connection with the two false accusations, Juliette Espinosa was engaging in unlawful discriminatory and retaliatory conduct against him on the basis of his sexual orientation. At the time, Batista was unaware that Defendant Navarrete was the source of the two accusations referenced in paragraph 42.

44. The false accusations made by Defendant Navarrete, which were shared amongst other employees at the USCIS Miami Field Office, caused Batista to suffer a great deal of emotional distress.

45. On October 20, 2016, an informal EEO hearing was held to address Batista’s claims of unlawful discrimination and retaliation. Shortly after the hearing, Juliette Espinosa informed Batista that Defendant Navarrete made the accusations and specifically ordered her to reprimand Batista in connection with the accusations. Juliette Espinosa profusely apologized to Batista for the entire ordeal, noting that she was completely surprised by Defendant Navarrete’s accusations and felt as though the accusations were made for the purpose of harassing Batista’s based on his sexual orientation.

Defendants' Unlawful Conduct Based on Batista's Disability and FMLA Submission

46. In October 2016, Defendant Hesles replaced Juliette Espinosa as Batista's first-line supervisor at the Miami Field Office. Shortly thereafter, Defendant Hesles became aware of Batista's panic disorder condition.

47. At all times relevant to this Amended Complaint, Defendant Hesles considered Batista as being an individual with a disability.

48. Defendant Hesles questioned Batista several times about his panic disorder, which made Batista very uncomfortable. Batista had not previously been questioned about his panic disorder by previous supervisors.

49. At some point during October 2016 and November 2016, Defendant Hesles asked Defendants Navarrete and Diaz about Batista's probationary status.

50. On or about December 1, 2016, Defendant Diaz sent an official inquiry up the chain to obtain information about Batista's employment probationary status. As a result of the inquiry, Defendants Diaz and Navarrete formed the mistaken belief that Batista was on a two-year probationary period with USCIS. The information was incorrect. Batista was not on a probationary status with USCIS, he was a career federal employee.

51. On December 13, 2016, Defendant Hesles began scrutinizing Batista's Family and Medical Leave Act ("FMLA") leave requests after informing Batista that he needed to be "a little more specific when requesting any type of leave under FMLA." Batista had submitted several prior requests for leave under the FMLA in connection with his disability without any issues or need for increased specificity. Defendants Diaz and Navarrete were aware of this unjustified change in the terms and conditions of Batista's employment, but failed to take any

remedial action. Upon information and belief, other employees were not subject to the same heightened scrutiny when requesting FMLA leave.

52. On December 16, 2016, Batista submitted a FMLA renewal packet to Defendants Navarrete and Hesles. Defendant Hesles forwarded Batista's FMLA renewal packet to Defendant Diaz. Defendant Hesles did not password protect or encrypt Batista's medical documentation when she forwarded the documents to Defendant Diaz, a violation of privacy and/or security protocols that went undisciplined.

53. Prior to submitting the FMLA renewal form on December 16, 2016, Batista had not received any negative performance reviews, evaluations, or other indications that he was underperforming in his role as a USCIS Immigration Services Officer. Batista had previously submitted FMLA renewal packets without experiencing any issues from supervisors.

54. At some point between December 16, 2016 and December 19, 2016, Defendant Hesles met with Defendants Navarrete and Diaz to discuss several concerns she had about Batista's FMLA renewal submission. Defendant Hesles did not question other similarly situated employees about the nature and extent of their respective disabilities.

55. On December 19, 2016, Defendant Navarrete forwarded Batista's FMLA renewal packet to Arlene Hidalgo and Dalia Garcia, Labor and Employment Relations Specialist and Deputy Chief of USCIS's Commercial and Law Division, respectively. Defendant Navarrete requested to speak with both of them about Batista's FMLA submission.

56. On December 22, 2016, Batista arrived at work and immediately noticed that his office door was open and that items in his desk drawers were rearranged. Believing that someone had been searching through his desk drawers, Batista sealed the corners of his desk with small pieces of clear scotch tape. Batista also sent an email inquiry to Defendant Hesles requesting the

names of employees who possess keys to Batista's desk. Later that day, Defendant Hesles questioned Batista about the specifics of the Schedule A hiring authority program—through which Batista was hired—and informed Batista that his probationary period with USCIS ends in 2018. Batista felt intimidated and very uncomfortable during the encounter.

57. On December 23, 2016, at the close of business, Batista secured his office and left for the holidays.

58. On December 27, 2016, Defendants Hesles raised several concerns in an email sent to Defendants Diaz and Navarrete about Batista's disability. Specifically, Defendant Hesles stated, in part, that "[her] concerns, as expressed to [Defendants Diaz and Navarrete], are merely due to the unpredictability of the symptoms exhibited during the performance of [Batista]'s job function...." In the same email, Defendant Hesles claimed to have visited Batista's office on Friday, December 23, 2016 to drop off a file, during which time she allegedly noticed a small notebook on Batista's desk containing passwords to DHS databases. Instead of properly securing the notebook, Defendant Hesles allegedly left it on Batista's desk for several days before taking possession of it. Defendant Hesles was not counseled for leaving a notebook containing passwords in an unsecure location.

59. At the time, Defendant Hesles mistakenly believed that Batista was under a probationary period with USCIS until 2018. Defendant Hesles intentionally and maliciously staged the incident involving the unsecure notebook in hopes of terminating Batista's employment with USCIS. Specifically, Defendant Hesles unlocked Batista's desk drawers while he was away, located his notebook in one of the drawers, and placed the notebook on his desk to make it appear as though Batista left it unsecure.

60. On December 28, 2016, Defendant Diaz sent an email to the Chief of Commercial and Administrative Law Division requesting to schedule an appointment to discuss Defendant Hesles's concerns about Batista's disability.

61. On December 29, 2016, Batista arrived at his office to find three unsecure A-files laying on his office chair. A-files are series of records maintained on a person that document the person's immigration history. A-files contain sensitive information and must be stored in a secure location according to USCIS policy. Batista reported the incident to Dennis Broughton, the Field Security Manager for District 9, and later reported the same incident to the Miami Field Office Defendants. No action was ever taken by Defendants in connection with the report.

62. Upon returning to his office on December 29, 2016, Batista also noticed that the clear pieces of scotch tape he previously affixed to the desk drawers were not adhering to the desk. Batista then unlocked his desk drawers and noticed that his red password booklet was missing. Later that day, Defendant Hesles informed Batista that she had found and taken possession of the notebook during a prior visit to his office. Defendant Hesles refused to return the notebook to Batista until she consulted with her chain of command. Batista requested a meeting with the USCIS Miami Field Office Defendants to discuss the matter, but Defendants intentionally ignored Batista's request.

63. On December 29, 2016, Defendant Hesles sent an email to Defendants Navarrete and Diaz inquiring whether she should inform Batista—in response to his inquiry—that the only individuals she knew possessed keys to Batista's desk drawers were Defendant Navarrete and Linda Don Carlos. Defendant Hesles intentionally withheld this information from Batista.

64. On or about December 30, 2016, Dennis Broughton sent an email to Defendants Hesles and Navarrete inquiring about the unsecure A-files Batista previously reported. That same

day, out of concern that Batista's claims may be investigated, Defendant Hesles instructed Defendant Navarrete to tell Dennis Broughton or his designee that the office is currently undergoing an inventory audit. Defendant Hesles knew or should have known her statement was false. The office's annual inventory audit ended prior to December 23, 2016.

65. On January 10, 2017, Defendant Hesles sent an unsolicited email to Defendant Diaz containing a detailed analysis of Batista's leave history for 2016.

66. On January 20, 2017, Associate Counsel Judith Homich contacted Human Resource Specialist Janelle Trudeau to inquire about Batista's two-year probationary period and to discuss the possibility of terminating Batista's employment with USCIS.

67. On January 23, 2017, Defendant Hesles approached Batista at work and demanded that he sign a document titled "USCIS Rules of Behavior" as a result of the alleged security infraction involving the unsecure notebook matter. Defendant Hesles informed Batista that he was required to sign the document because a Significant Incident Report ("SIR") had been generated in connection with the matter. Batista requested a copy of the SIR, but Defendant Hesles refused to provide it.

68. On January 24, 2017, Batista informed Defendant Hesles of the report he previously sent to Dennis Broughton about the unsecure A-files Batista found in his office, referenced in paragraph 61 above. Batista asked Defendant Hesles if that incident would require the creation of an SIR. In response, Defendant Hesles informed Batista that she would "elevate" the question.

69. On January 27, 2017, Defendant Hesles served Batista with a Letter of Counseling stating that Batista had committed a security infraction by allegedly leaving a notebook containing account passwords unsecure on his desk. Leaving files and passwords

unattended were common security violations in the USCIS Miami Field Office that regularly did not result in disciplinary action.

70. Batista refused to sign the document because he had not been afforded an opportunity to consult with a Union representative about the matter. The issuance of the Letter of Counseling constituted a disciplinary action that had an adverse effect on Batista's opportunities for advancement. For example, the Letter of Counseling negatively impacted Batista's career ladder promotion. The issuance of the Letter of Counseling would have dissuaded a reasonable employee from reporting a claim of unlawful discrimination, harassment, retaliation, and/or workplace misconduct.

71. On January 28, 2017, in response to the issuance of the Letter of Counseling, Batista contacted an Equal Employment Opportunity counselor to report what Batista believed to be unlawful discriminatory and retaliatory conduct by Defendant Hesles based on Batista's disability and FMLA renewal packet submission.

72. On January 29, 2017, Batista filed a grievance with the American Federal of Government Employees Local 0235 Union (hereafter referred to as the "Union") about the troubling incidents leading up to the issuance of the Letter of Counseling. In the grievance, Batista also noted that this was not the first time the USCIS Miami Field Office Defendants had fabricated false claims against him or intentionally placed him in a compromising position.

73. On January 30, 2017, the EEO counselor held an initial interview with Batista. That same day, Defendant Hesles sent an email to Defendants Diaz and Navarrete requesting assistance with telling Batista that, despite their previous statements to the contrary, he was not on a probationary status with USCIS.

74. On January 31, 2017, Defendant Hesles informed Batista that disciplinary measures would be initiated against him because of his unwillingness to sign the USCIS Rules of Behavior document. Defendant Hesles maliciously beleaguered Batista about the forthcoming disciplinary measures, which triggered Batista's panic disorder and caused him to suffer a significant panic attack that led to his hospitalization and subsequent incapacitation for approximately two months. Defendant Hesles's actions were the direct and proximate cause of Batista's panic attack.

75. On March 23, 2017, Batista's treating physician sent a letter to the USCIS Miami Field Office Defendants explaining that, in his opinion, Batista was capable of returning to work and performing his usual work duties, but that Batista must avoid returning to the Miami Field Office due to the negative impact the work environment had on his health.

76. On March 24, 2017, Batista sent an email to Defendant Hesles requesting to be transferred to the USCIS Kendall Field Office. The USCIS Kendall Field Office was also located in Miami, Florida. In the email, Batista made clear that the request was being made as a reasonable accommodation in connection with his disability, and he provided supporting documentation from a medical professional. Out of concerns for his health and wellbeing, Batista also requested permission to telework while the Agency considered his transfer request.

77. On March 30, 2017, Defendant Navarrete temporarily approved Batista's telework request, but in doing so, substantially altered the terms and conditions of Batista's employment with USCIS. Specifically, Defendant Navarrete imposed the following additional expectations on Batista during his temporary telework:

- a) Batista was required to submit a daily progress report to Defendant Navarrete to document his activities and accomplishments;
- b) Batista was required to send an email or call Defendant Navarrete each day at the beginning and end of the day;

- c) Batista was required to respond to all email requests and phone calls within two hours to either acknowledge receipt or provide a response to the request; and
- d) Batista was required to take leave if there was an insufficient amount of work for him to perform.

78. Defendant Navarrete unjustifiably scrutinized Batista's work and attendance more closely during his temporary telework period than that of other similarly situated employees.

79. In connection with the temporary telework approval, Defendant Navarrete assigned Batista to process the legal permanent resident ("LPR") status of Cuban nationals. Adjudicating the LPR status of Cuban nationals requires a special level of training because of the unique requirements set forth in the Cuban Adjustment Act. Batista had no prior experience with or training on adjudicating the LPR status of Cuban nationals.

80. On April 8, 2017, Batista and Defendants participated in a mediation session in connection with his complaint of unlawful discrimination filed on January 28, 2017. The parties did not achieve a resolution through mediation.

81. On April 12, 2017, Batista sent an email to Defendant Hesles that stated, in part, the following:

"I am reviewing files but strongly feel that I should not proceed in adjudicating them until I receive a refresher training so I could be up to speed with the current adjudicative process. In addition, I have not been provided with a point of contact with which I can consult cases should I have questions."

82. In response, Defendants denied Batista's request for refresher training. Over the course of about three months, Batista made several additional requests for refresher training, which Defendants repeatedly denied. Requests for training were routinely granted to other employees in the USCIS Miami Field Office.

83. On April 13, 2017, Defendant Hesles sent an Interoffice Memorandum to Batista stating that his career ladder promotion from GS-11 to GS-12 was being delayed because

“[Batista had] not demonstrated the ability to work independently as required at the GS-12 level.” In the Memorandum, Defendant Hesles stated that the following examples demonstrated Batista’s lack of retention and specialized experience:

- a) Failing to follow proper procedures when adjudicating I-485 and N-400 applications resulting in frequent errors;
- b) Failing to properly annotate Form G-1270 with fingerprint security information;
- c) Using Form G-1221 in cases where it is not needed;
- d) Failing to conduct required TECS security checks;
- e) Submitting inaccurate or incomplete denial notices and not properly using the USCIS national templates; and
- f) Adding inaccurate and/or irrelevant comments to Forms G-1221 and G-1270.

84. In the Interoffice Memorandum, Defendant Hesles further informed Batista that his work “must be reviewed and closely monitored due to the discovery of numerous errors exhibiting a lack of knowledge and understanding of the immigration rules and procedures.”

85. Prior to receiving the Interoffice Memorandum from Defendant Hesles, Batista was not made aware that he was underperforming in his duties as an Immigration Services Officer. The examples set forth in Defendant Hesles’s Interoffice Memorandum were common mistakes made by employees at the USCIS Miami Field Office, the occurrence of which did not delay the career ladder promotions for these employees or prevent the receipt of other performance-based awards.

86. The job performance deficiencies set forth in the Interoffice Memorandum were maliciously concocted by Defendant Hesles, with the support of Defendants Diaz and Navarrete, in a calculated effort to intimidate Batista and terminate his employment with USCIS. The issuance of the Interoffice Memorandum altered the terms and conditions of Batista’s employment with USCIS by, among other things, negatively impacting his wages and unjustifiably subjecting his work and attendance to heightened scrutiny relative to other employees.

87. On April 19, 2017, Defendant Hesles informed Batista that she had identified discrepancies in each of the 19 cases that he had adjudicated and returned on April 10, 2017. The discrepancies identified by Defendant Hesles were reported solely for the purpose of intimidating and harassing Batista, in an effort to negatively impact his job performance review and terminate Batista's employment with USCIS. That same day, Batista again requested that Defendant Hesles provide him with refresher training on adjudications. Defendant Helses again unjustifiably denied the request.

88. Defendant Hesles, with the support of Defendants Navarrete and Diaz, repeatedly refused to train Batista in a calculated effort to negatively impact his job performance and justify terminating his employment with USCIS. Batista filed several complaints with USCIS officials and his Union representatives regarding the refusal by the USCIS Miami Field Office Defendants to provide Batista with training or otherwise accommodate his requests for training.

89. On April 24, 2017, the USCIS Office of Equal Opportunity and Inclusion issued Batista a Notice of Right to File a Formal Complaint.

90. On April 28, 2017, Defendant Hesles informed Batista that she had identified discrepancies in 26 of the 39 cases he had adjudicated and returned on April 18, 2017. The discrepancies identified by Defendant Hesles were reported solely for the purpose of intimidating and harassing Batista, in an effort to negatively impact his job performance reviews and ultimately terminate Batista's employment with USCIS.

91. On May 4, 2017, Batista sent an email to Defendant Diaz stating that "for the past several months[,] [he] felt harassed, discriminated and retaliated against by [Defendant] Hesles." In the email, Batista recalled the incident from January 31, 2017, referenced in paragraph 74, and specifically requested to be transferred to a different supervisor. Defendant Diaz subsequently

acknowledged receipt of Batista's email and denied his request to be transferred to a different supervisor. Defendant Diaz had approved similar requests submitted by other employees.

92. On May 9, 2017, Batista filed a Formal Complaint of Discrimination with USCIS, receipt of which was acknowledge by the Agency on May 11, 2017. USCIS accepted the Batista's complaint for investigation and assigned it Case Number HS-CIS-00847-2017.

93. That same day, Defendant Helses informed Batista that she had identified discrepancies in 6 cases that he had adjudicated and returned on April 27, 2017. The work product discrepancies identified by Defendant Hesles were fabricated or otherwise harmless, and reported solely for the purpose of attempting to terminate Batista's employment with USCIS. That same day, Batista sent an email to the USCIS Miami Field Office Defendants asking if he, Batista, had been placed on a Performance Improvement Plan (PIP). The initiation of a PIP in the USCIS Miami Field Office often indicated that management was attempting to ultimately terminate an employee's employment. In response, Defendant Hesles stated that Batista had not been placed on a PIP.

94. On May 16, 2017, Defendant Hesles informed Batista that the Agency had denied his reasonable accommodation request to be transferred to the Kendall Field Office upon determining that the documentation Batista provided was insufficient to establish a nexus between his medical condition and the need to be transferred to the Kendall Field Office. However, the Agency could have approved Batista's request because the documentation was sufficient to establish a nexus between Batista's medical condition and the need for the transfer. That same day, Batista's treating physician informed Dr. Biddle, the USCIS Medical Officer, that he advised Batista not to return to the Miami Field Office out of concern that doing so would trigger another panic attack and result in Batista's hospitalization.

95. On May 19, 2017, Defendant Hesles informed Batista that his temporary telework status was being suspended and that he was to report to duty at the Miami Field Office on May 22, 2017.

96. On May 22, 2017, upon returning to the USCIS Miami Field Office, Batista informed Defendant Hesles that he no longer had access to Q-Flow, an appointment management system. In response, Defendant Hesles visited Batista in his office, intentionally invaded his personal space, and engaged in verbal and non-verbal conduct in an effort to intimidate and harass Batista. Immediately after the incident, Batista informed Defendants Hesles and Navarrete that he felt intimidated and very uncomfortable by Defendant Hesles's conduct during the office visit. No action was taken by Defendant Navarrete or Defendant Hesles to address Batista's concerns.

97. Later that day, Batista informed the USCIS Miami Field Office Defendants that he intended to transition genders and inquired into whether Agency resources were available to help relay the news to his fellow co-workers. The USCIS Miami Field Office Defendants never provided Batista with any information or assistance in response to his requests, but they did thereafter increase the frequency and severity of the unlawful discriminatory and retaliatory actions taken against Batista.

98. On May 22, 2017, Batista also submitted a hardship transfer request to the USCIS Office of Human Capital and Training, noting that the transfer would eliminate exposure to the workplace conditions at the USCIS Miami Field Office that trigger his panic disorder. Batista also noted that the temporary telework arrangement afforded to him by Defendant Navarrete impedes Batista's ability to perform the essential job function of his position as an Immigration Services Officer.

99. On May 24, 2017, Defendant Helses informed Batista that she had identified discrepancies in 27 of the 55 cases that he had adjudicated and returned on April 27, 2017. Six of the cases were the same ones included in the discrepancy report generated on May 9, 2017. The discrepancies identified by Defendant Helses were reported solely for the purpose of intimidating and harassing Batista, in an effort to negatively impact his job performance review and terminate Batista's employment with USCIS.

100. On May 25, 2017, Defendant Helses purposefully intimidated and harassed Batista during a visit to his office, which caused Batista to suffer a significant panic attack that required treatment by emergency medical services.

101. On May 29, 2017, Batista appealed the Agency's denial of his reasonable accommodation request to be transferred to the Kendall Field Office. The appeal was denied by Stephen Kock, the USCIS District 9 Deputy Director, upon finding that "there [was] insufficient basis to reverse the decision of [Defendant] Helses regarding her determination concerning [Batista's] reasonable accommodation request."

102. On May 30, 2017, Batista contacted the Federal Protective Service because he did not feel physically safe at work as a result of the intentional harassment, intimidation, and ridicule being perpetuated by Defendant Helses in the workplace.

103. On May 31, 2017, Batista sent an email to Daniel Renaud, the USCIS Associate Director, seeking immediate assistance with addressing the hostile work environment Batista was being forced to endure at the USCIS Miami Field Office. In the email, Batista stated that he simply wished to work in a safe and productive environment.

104. On June 9, 2017, Defendant Helses informed Batista that she had identified discrepancies in 22 cases that he had worked on. The discrepancies identified by Defendant

Hesles were reported solely for the purpose of intimidating and harassing Batista, in an effort to negatively impact his job performance review and terminate Batista's employment with USCIS.

105. In response to the constant work product reprimands being issued to him by Defendant Hesles, together with Defendants' refusal to provide him with additional training, Batista filed multiple EEO-related complaints alleging unlawful discriminatory and retaliatory conduct on the part of Defendant Hesles. Batista also made several pleas to USCIS officials and Union representatives for help to end the hostile work environment he was being forced to endure in the Office of Adjudications.

106. On July 7, 2017, out of concerns for physical health and wellbeing, Batista requested that the USCIS Office of Human Capital and Training expedite the hardship transfer request he submitted on May 22, 2017. In support thereof, Batista submitted the same medical documentation that the USCIS Miami Field Office Defendants claimed was insufficient to grant his prior reasonable accommodation transfer request. At the time, the USCIS Miami Field Office Defendants were unaware that Batista had submitted the hardship transfer request.

107. On July 11, 2017, Defendant Hesles notified Batista that his mid-term progress review was scheduled for July 13, 2017, and in doing so, intentionally made it appear as though someone other than herself would be conducting the review.

108. On July 13, 2017, upon arriving at the conference room where his mid-term progress review was to occur, Batista noticed the presence of Defendants Hesles and Navarrete. Defendant Navarrete directed Batista to enter the room and instructed him to sit. Batista expressed concerns to Defendant Navarrete about the presence of Defendant Hesles. Defendant Navarrete ignored Batista's concerns and continued with the mid-term progress review. At the conclusion of the meeting, Batista reported the incident to Defendant Diaz, noting that he felt

extremely uncomfortable and fearful given the past complaints he made against Defendant Hesles. Batista also reported the incident to the Commander of the Federal Protective Service because he felt unsafe in the workplace.

109. At the end of the workday on July 13, 2017, Batista's anxiety levels spiked to an extent that required him to seek immediate medical treatment at Mount Sinai's Emergency Room. The anxiety experienced by Batista was inflicted upon him by the actions taken by Defendants Hesles and Navarrete in the workplace that day.

110. On July 17, 2017, Defendant Diaz approved Batista's request to be transferred to a different supervisor. Thereafter, Batista's first-line supervisor was Haydee Harrison and his second-line supervisor was Roketa Mansfield.

111. On several occasions after July 17, 2017, Defendant Hesles approached and greeted Batista in the workplace in a manner that made Batista very uncomfortable. Batista reported the incidents to Section Chief Roketa Mansfield in an email dated August 3, 2017. In response, Ms. Mansfield assured Batista that she would handle the situation.

112. On August 14, 2017, Batista sent an email to Defendant Diaz expressing several concerns about work-related matters. One of those concerns was that he had felt unwelcomed and "frowned upon" at the Miami Field Office after revealing his intention to transition genders.

113. On or about October 4, 2017, Batista received his annual performance review for the rating period from October 19, 2016 through September 19, 2017. Batista achieved expectations and received the following high praise from his first-line supervisor Haydee Harrison:

Officer Batista has demonstrated a professional and courteous demeanor when dealing with customers and co-workers, and presented a professional image of the agency while conducting interviews. Mr. Batista identified possible fraud cases during the adjudication process and forwarded them to the USCIS Fraud Detection Unit (FDNS) for further

review, according to establishes guidelines. Officer Batista demonstrated his ability to effectively communicate orally and in writing. During this rating period[,] [O]fficer Batista was also assigned as the Duty Officer assisting the Information Unit, and also helped organized, and participated in special events held at the Miami Field Office.

114. Notably absent from Batista's performance review was any mention of the work product errors or job performance deficiencies relied upon by the USCIS Miami Field Office to delay Batista's career ladder promotion.

115. In October 2017, the USCIS Office of Human Capital and Training approved Batista's hardship transfer request, and Batista was thereafter reassigned to the USCIS Potomac Service Center in Arlington, Virginia.

HARM SUFFERED

116. Defendants' unlawful workplace conduct forced Batista to endure a hostile work environment for more than a year at the USCIS Miami Field Office, which caused Batista to suffer significant harm, including but not limited to reputational and character harm, pecuniary losses, severe emotional distress, physical pain and suffering, and personal humiliation.

117. To cope with the severe levels of anxiety, depression, and trauma inflicted upon him by Defendants' workplace conduct, Batista was forced to seek frequent professional counseling services, consume prescription medications, undergo emergency medical treatment, request the assistance of law enforcement, and move to a different state.

118. Defendants' unlawful workplace conduct exacerbated and triggered Batista's panic disorder condition on a frequent basis, resulting in a significant deterioration of Batista's health and led to his incapacitation for prolonged periods of time. Defendants' unlawful workplace conduct forced Batista to accept temporary telework accommodations as a means of protecting his health and wellbeing. The telework arrangement materially altered the terms and

conditions of Batista's employment by, among other things, precluded him from obtaining the necessary training to perform his job duties in satisfactory manner.

119. Defendants' unlawful and relentless workplace conduct persisted despite Batista's numerous EEO-related complaints and constant pleas for help.

COUNT I
Unlawful Discrimination Based on Sex
in Violation of Title VII of the Civil Rights Act of 1964

120. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 119.

121. Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), makes it unlawful for any employer "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).

122. USCIS and Defendant DHS are employers under Title VII because each agency is engaged in an industry affecting commerce and each agency employs more than fifteen employees for each working day in each of twenty or more calendar weeks in a calendar year.

123. Batista is a member of a protected class on the basis of his sexual orientation and gender identity. Batista openly identified in the workplace as a gay male and informed the USCIS Miami Field Office Defendants on several occasions of his intent to transition genders. Defendants were aware of Batista's sexual orientation and his intent to transition genders.

124. As a USCIS employee, Batista performed his job in a manner that was consistent with USCIS's legitimate business expectations.

125. Defendant Navarrete discriminated against Batista in the workplace by filing false accusations against him, harassing him, refusing to train him, intimidating him, and failing to quash the hostile work environment Batista complained about and was subjected to while assigned to the Office of Adjudications. Batista's sexual orientation or gender identity was the determining factor or a motivating factor in Defendant Navarrete's unlawful discriminatory actions.

126. As described above, Batista suffered materially adverse employment actions as a result of Defendant Navarrete's discriminatory actions, including: (i) being disciplined for an infraction that regularly goes undisciplined within the workplace; (ii) having his work and attendance more closely than that of other employees; (iii) being targeted with verbal and non-verbal intimidation tactics; (iv) constantly receiving unjustifiable work-related reprimands; (v) unjustifiably having his career ladder promotion delayed; (vi) denying his requests for training; and (vii) subjecting Batista to a hostile work environment

127. Defendant Navarrete's actions were intentional, willful, malicious, or done with a reckless disregard to Batista's right to be free from unlawful discrimination in the workplace based on his sexual orientation and gender identity.

128. As a direct and proximate cause of Defendant Navarrete's intentional discrimination, Batista has suffered and continues to suffer damages.

COUNT II
**Unlawful Retaliation Based on Sex
in Violation of Title VII of the Civil Rights Act of 1964**

129. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 128.

130. Title VII forbids an employer from retaliating against an employee because of the employee's opposition to "any practice made an unlawful practice" by Title VII, or the employee's participation in "an investigation, proceeding, or hearing under [Title VII]." 42 U.S.C. § 2000e-3(a).

131. Batista engaged in protected activity under Title VII by, among other things, reporting Defendant Navarrete's conduct to the FDNS, making claims of unlawful sex-based discrimination and retaliation against Defendant Navarrete, and making several EEO-related complaints about Defendant Navarrete's retaliatory actions.

132. In response to the protected activities taken by Batista, Defendant Navarrete retaliated against Batista by: (i) falsely accusing Batista of engaging in inappropriate conduct during an interview with a same-sex couple; (ii) disciplining Batista for an infraction that regularly goes undisciplined within the workplace; (iii) unjustifiably scrutinizing Batista's work and attendance more closely than that of other employees; (iv) harassing Batista with work-related reprimands; (v) denying Batista's request for training; (vi) maliciously delaying Batista's career ladder promotion; and (vii) subjecting Batista to a hostile work environment.

133. The protected activities taken by Batista, referenced above, were the determining factor or motivating factors that led to Defendant Navarrete's actions.

134. Defendant Navarrete's actions, referenced above, would likely dissuade a reasonable employee from engaging in activity protected under Title VII.

135. Defendant Navarrete's actions were intentional, willful, malicious, or done with a reckless disregard to Batista's right to be free from unlawful retaliatory conduct in the workplace.

136. As a direct and proximate cause of Defendant Navarrete's intentional retaliatory conduct, Batista has suffered and continues to suffer damages.

COUNT III
**Hostile Work Environment Based on Sex
in Violation of Title VII of the Civil Rights Act of 1964**

137. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 136.

138. A work environment violates Title VII if it is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and creates an abusive working environment.

139. As described above, Defendants subjected Batista to a work environment that was permeated with unwelcome conduct based on his sexual orientation or gender identity, including: (i) making false accusations that Batista engaged in inappropriate conduct during an interview with a same-sex couple; (ii) unjustifiably reprimanding Batista for visiting the office with a male friend; (iii) ordering a subordinate to counsel Batista for baseless accusations that involved a same-sex couple; (iv) forcing Batista to sit through a mid-term progress review with a supervisor who he had filed numerous EEO-related complaints against; and (v) ignoring Batista's requests for assistance with workplace resources in connection with his intent to transition genders.

140. As described above, Defendants' conduct was severe or pervasive and altered Batista's conditions of employment because the conduct, among other things: (i) occurred frequently; (ii) led to Batista's hospitalization or incapacitation on multiple occasions; (iii)

required Batista to seek medical treatment and therapy; (iv) required Batista to take prescription medication; (v) negatively impacted Batista's mental and physical health; (vi) created an atmosphere of intimidation and humiliation; (vii) made Batista feel unsafe and unwelcomed in the workplace; and (viii) significantly interfered with Batista's job performance. Batista's sexual orientation or gender identity was the determining factor or a motivating factor in Defendants' conduct.

141. Defendants failed to take adequate remedial measures to ensure that Batista would not be subject to continued sex-based discrimination and retaliation at the USCIS Miami Field Office.

142. The hostile work environment created by Defendants' unlawful workplace conduct detrimentally affected Batista.

143. Batista's multiple complaints to Defendants, other USCIS officials, Union representatives, and the EEOC did not cause Defendants' unlawful workplace conduct to cease.

144. As a direct and proximate cause of the hostile work environment created by Defendants' unlawful workplace conduct, Batista has suffered and continues to suffer damages. Defendants' unlawful workplace conduct would detrimentally affect a reasonable person of the same sexual orientation or gender identity in Batista's position.

COUNT IV
Retaliation in Violation of the Family and Medical Leave Act

145. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 144.

146. The Family Medical and Leave Act ("FMLA") makes it unlawful for any employer "to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right

provided [by the Act],” or to “discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by [the Act].”

147. USCIS and Defendant DHS are employers under the FMLA because each agency is engaged in an industry affecting commerce and each agency employs more than fifteen employees for each working day in each of twenty or more calendar weeks in a calendar year.

148. Batista is an eligible employee under the FMLA because he was employed on a full-time basis by USCIS during the periods at issue. As an employee, Batista was entitled to use FMLA leave in connection with his known disability.

149. Batista engaged in a protected activity under the FMLA by filing his renewal form on December 16, 2016 and by subsequently requesting FMLA leave.

150. By filing his FMLA renewal form on December 16, 2016, Batista gave notice to Defendants of his intention to use FMLA leave in the future. Batista also invoked his right to FMLA leave on several different occasions.

151. Shortly after filing his FMLA renewal form and requesting FMLA leave, Batista suffered adverse employment actions. The protectivity activity taken by Batista under the FMLA was the determining factor or a motivating factor in Defendants’ actions.

152. The temporal proximity of Batista’s filing of the FMLA renewal packet and the adverse employment actions suffered by Batista is evident of a causal relationship between the two actions.

153. The temporal proximity of Batista’s requests for FMLA leave and the adverse employment actions suffered by Batista is evident of a causal relationship between the actions.

154. The actions taken by Defendants against Batista would likely dissuade a reasonable employee from requesting leave under the FMLA or reporting a claim of discrimination or retaliation in connection with requesting leave under the FMLA.

155. Defendants' actions were intentional, willful, malicious, or done with a reckless disregard to Batista's right to be free from unlawful retaliatory conduct in the workplace.

156. As a direct and proximate cause of Defendants' intentional retaliatory conduct, Batista has suffered and continues to suffer damages.

COUNT V
Unlawful Discrimination Based on Disability
in Violation of the Americans with Disabilities Act of 1990

157. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 156.

158. The Americans with Disabilities Act ("ADA") prohibits discrimination by an employer "against a qualified individual on the basis of disability in regard to...the advancement...of employees, employee compensation, job training, and any other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

159. USCIS and Defendant DHS are employers under the ADA because each agency is engaged in an industry affecting commerce and each agency employs more than fifteen employees for each working day in each of twenty or more calendar weeks in a calendar year.

160. As employers, USCIS and Defendant DHS are required under the ADA to make reasonable accommodations to employees with known disabilities.

161. In 2006, Batista was diagnosed with a panic disorder, making him a "qualified individual with a disability" within the meaning of 42 U.S.C. § 12111. Batista was also hired by

USCIS under Schedule A, the federal hiring authority for people with disabilities. Batista could perform the essential functions of his position with or without a reasonable accommodation.

162. Defendants Hesles and Navarrete regularly made discriminatory comments to Batista and his co-workers regarding Batista's disability and his requests for a reasonable accommodation.

163. On several different occasions, as described above, Batista notified Defendants about his disability and requested a reasonable accommodation for a reassignment to a different supervisor and a transfer to a different office.

164. Defendants refused to engage in the interactive process and denied Batista's requests claiming that there was not a nexus between the requests and Batista's disability.

165. Defendants' unlawful workplace actions were intentional, willful, malicious, or done with a reckless disregard to Batista's right to be free from unlawful discrimination in the workplace based on his disability.

166. As a direct and proximate cause of Defendants' unlawful acts, Batista has suffered and continues to suffer damages.

COUNT VI
Unlawful Retaliation Based on Disability
in Violation of the Americans with Disabilities Act of 1990

167. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 166.

168. Under the ADA, it is unlawful for an employer to "discriminate against any individual because such individual has opposed any act or practice made unlawful by [the ADA] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA]." 42 U.S.C. § 12203(a).

169. Batista engaged in protected activity under the ADA by, among other things, making requests for reasonable accommodations based on his disability, taking leave to undergo treatment for his disability, filing claims of disability-based discrimination and retaliation against the USCIS Mimi Field Office Defendants, and participating in investigations and hearings related to his claims of disability-based discrimination and retaliation against the USCIS Miami Field Office Defendants.

170. In response to the protected activities undertaken by Batista, the USCIS Miami Field Office Defendants retaliated against Batista by, among other things: (i) framing Batista to make it appear as though he committed a security infraction, (ii) disciplining Batista for an infraction that regularly goes undisciplined within the workplace, (iii) unjustifiably scrutinizing Batista's work and attendance more closely than that of other employees, (iv) intimidating Batista through verbal and non-verbal communication; (v) harassing Batista with work-related reprimands, (vi) delaying Batista's career ladder promotion; (vii) denying Batista's request for training, and (vi) subjecting Batista to a hostile work environment. The protected activities taken by Batista were the determining factor or motivating factors in the actions taken against him by the USCIS Miami Field Office Defendants.

171. Defendants' unlawful retaliatory actions would likely dissuade a reasonable employee from engaging in activity protected under ADA.

172. The Defendants' unlawful workplace actions were intentional, willful, malicious, or done with a reckless disregard to Batista's right to be free from unlawful retaliatory conduct in the workplace.

173. As a direct and proximate cause of the USCIS Miami Field Office Defendants' intentional retaliatory conduct, Batista has suffered and continues to suffer damages.

COUNT VII
**Hostile Work Environment Based on Disability
in Violation of the Americans with Disabilities Act of 1990**

174. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 173.

175. A work environment violates the ADA if it is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and creates an abusive working environment.

176. As described above, Defendants' conduct was severe or pervasive and altered Batista's conditions of employment because the conduct, among other things: (i) occurred frequently, (ii) led to Batista's hospitalization or incapacitation on multiple occasions; (iii) required Batista to seek medical treatment and therapy; (iv) required Batista to take prescription medication; (v) negatively impacted Batista's mental and physical health; (vi) created an atmosphere of intimidation and humiliation; (vii) made Batista feel unsafe and unwelcomed in the workplace; and (viii) significantly interfered with Batista's job performance. Batista's disability was the determining factor or a motivating factor in Defendants' unlawful conduct.

177. Batista's multiple complaints to Defendants, other USCIS supervisors, Union representatives, and the EEOC did not cause Defendants' unlawful conduct to cease.

178. Defendants failed to take adequate remedial measures to ensure that Batista would not be subject to continued disability-based discrimination and retaliation at the USCIS Miami Field Office.

179. The hostile work environment created by Defendants' unlawful workplace conduct detrimentally affected Batista and would detrimentally affect a reasonable employee in Batista's position.

180. Batista's multiple complaints to Defendants, other USCIS officials, Union representatives, and the EEOC did not cause Defendants' unlawful workplace conduct to cease.

181. As a direct and proximate cause of the hostile work environment created by Defendants' unlawful workplace conduct, Batista has suffered and continues to suffer damages. Defendants' unlawful workplace conduct would detrimentally affect a reasonable person of the same sexual orientation or gender identity in Batista's position.

COUNT VIII
**Unlawful Discrimination Based on Disability
in Violation of the Rehabilitation Act**

182. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 181.

183. Section 501 of the Rehabilitation Act prohibits employment discrimination against individuals with disabilities in the federal sector. 29 U.S.C. § 791.

184. USCIS and Defendant DHS are employers subject to the Rehabilitation Act.

185. Batista was disabled within the meaning of the Rehabilitation Act.

186. Batista could perform the essential functions of his position with or without a reasonable accommodation.

187. Defendants took adverse employment actions against Batista based on his disability, including but not limited to: (i) subjecting Batista's work and attendance to more scrutiny relative to that of other employees; (ii) delaying Batista's career promotion ladder; (iii) denying Batista's request for a reasonable accommodation based on his disability; (iv) reassigning Batista to adjudicate immigration applications that he was not properly training to adjudicate; (v) refusing Batista's requests for training; and (vi) fabricating work product errors

that negatively impacted Batista's performance evaluations in an effort to terminate his employment with USCIS.

188. Defendants' actions were intentional, willful, malicious, or done with reckless disregard to Batista's right to be free from unlawful discrimination in the workplace based on his disability.

189. As a direct and proximate cause of Defendants' unlawful actions, Batista has suffered and continues to suffer damages.

COUNT IX
**Unlawful Retaliation Based on Disability
in Violation of the Rehabilitation Act**

190. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 189 above.

191. The Rehabilitation Act prohibit employers from retaliating against employees who "made a charge, testified, assisted, or participated in any manner in an investigation, proceedings, or hearing under [the Act]."

192. Batista engaged in several activities protected under the Rehabilitation Act, including but not limited to: (i) filing EEO-related complaints of discrimination based on disability with the EEO counselor on January 27, 2017, (ii) participating in mediation on April 8, 2017, (iii) taking leave to undergo treatment for his disability, (iv) filing claims of disability-based discrimination and retaliation against the USCIS Mimi Field Office Defendants, and (v) participating in investigations and hearings related to his claims of disability-based discrimination and retaliation against the USCIS Miami Field Office Defendants.

193. Defendants were aware that Batista had engaged in each of the protected activities referenced above.

194. In response to the protected activities undertaken by Batista, Defendants retaliated against him by, among other things: (i) framing Batista to make it appear as though he committed a security infraction, (ii) disciplining Batista for an infraction that regularly goes undisciplined within the workplace, (iii) unjustifiably scrutinizing Batista's work and attendance more closely than that of other employees, (iv) intimidating Batista through verbal and non-verbal communication; (v) harassing Batista with work-related reprimands, (vi) delaying Batista's career ladder promotion; (vii) denying Batista's request for training, and (vi) subjecting Batista to a hostile work environment.

195. As described above, Defendants' unlawful retaliatory actions had a materially adverse impact on the terms and conditions of Batista's employment with USCIS.

196. Defendants' actions were intentional, willful, malicious, or done with a reckless disregard to Batista's right to be free from unlawful retaliatory conduct in the workplace.

197. As a direct and proximate cause of Defendants' unlawful actions, Batista has suffered and continues to suffer damages.

COUNT X
**Unlawful Discrimination Based on Handicap
in Violation of the Florida Civil Rights Act**

198. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 197 above.

199. The Florida Civil Rights Act of 1992 ("FCRA"), makes it unlawful for an employer to, among other things, "discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's...sex...[or] handicap...."

200. The purpose of the FCRA is to “secure for all individuals within the state freedom from discrimination because of...sex...[or] handicap...and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.”

201. USCIS and Defendant DHS are employers under the FCRA because each agency employs fifteen or more employees for each working day in each of twenty or more calendar weeks in a calendar year.

202. Batista’s panic disorder qualifies as a “handicap” under the FCRA. Defendants perceived or regarded Batista as having a disability or handicap within the meaning of the FCRA.

203. Batista is a member of a protected class under the FCRA on the basis of his sexual orientation and handicap. Defendants were aware of Batista’s sexual orientation and handicap.

204. As a USCIS employee, Batista performed his job in a manner that was consistent with USCIS’s legitimate business expectations.

205. Defendants discriminated against Batista in the workplace by, among other things: (i) filing false accusations against him; (ii) harassing him; (iii) refusing to train him; (iv) intimidating him; (v) denying his requests for a reasonable accommodation based on his handicap; (vi) intentionally delaying his promotion; and (vii) failing to quash the hostile work environment Batista complained about and was subjected to while assigned to the Office of Adjudications. Batista’s sexual orientation or handicap was the determining factor or a motivating factor in Defendants’ unlawful discriminatory actions.

206. The adverse employment actions taken by Defendants, referenced above, would not have occurred but for Batista's sexual orientation or handicap.

207. Defendants' unlawful actions were intentional, willful, malicious, or done with reckless disregard to Batista's right to be free from unlawful discrimination in the workplace based on his sexual orientation and handicap.

208. As a direct and proximate cause of Defendants' unlawful discriminatory acts, Batista has suffered and continues to suffer harm.

COUNT XI
**Unlawful Retaliation Based on Handicap
in Violation of the Florida Civil Rights Act**

209. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 208 above.

210. The FCRA makes it unlawful for an employer to retaliate against an employee for engaging in activity protected under the Act.

211. Batista engaged in protected activities under the FCRA, including but not limited to: (i) making several EEO-related complaints about Defendants' unlawful discriminatory and retaliatory actions; (ii) making requests for reasonable accommodations based on his disability; (iii) taking leave to undergo treatment for his disability; (iv) filing claims of disability-based discrimination and retaliation against the USCIS Miami Field Office Defendants; and (v) participating in investigations and hearings related to his claims of disability-based discrimination and retaliation against the USCIS Miami Field Office Defendants.

212. In response to the protected activities undertaken by Batista, Defendants retaliated against him by, among other things: (i) falsely accusing Batista of engaging in inappropriate conduct during an interview with a same-sex couple; (ii) disciplining Batista for an infraction

that regularly goes undisciplined within the workplace; (iii) unjustifiably scrutinizing Batista's work and attendance more closely than that of other employees; (iv) harassing Batista with work-related reprimands; (v) denying Batista's request for training; (vi) maliciously delaying Batista's career ladder promotion; (vii) denying Batista's requests for a reasonable accommodation based on his disability; and (viii) subjecting Batista to a hostile work environment

213. The protected activities taken by Batista, referenced above, were the determining factor or motivating factors that led to Defendants' unlawful workplace actions.

214. Defendants' unlawful workplace actions, referenced above, would likely dissuade a reasonable employee from engaging in activity protected under the FCRA.

215. Defendants' unlawful actions were intentional, willful, malicious, or done with reckless disregard to Batista's right to be free from retaliation for engaging in activity protected under the FCRA.

216. As a direct and proximate cause of Defendants' unlawful retaliatory acts, Batista has suffered harm.

PRAYER FOR RELIEF

WHEREFORE, Batista respectfully requests that the Court enter judgment on the Amended Complaint, in favor of Batista and against Defendants, as follows:

- A. Award Batista back pay, in an amount equal to the wages and benefits he lost as a result of Defendants' unlawful workplace conduct;
- B. Award Batista compensatory damages, in a fair and reasonable amount to be determined at trial;
- C. Award Batista pre-judgment and post-judgment interest;

- D. Award Batista punitive damages, in an amount to be determined at trial, that sufficiently punishes, penalizes, and/or deters Defendants' unlawful conduct;
- E. Award Batista the costs and fees he incurred in connection with this action, including reasonable attorney's fees;
- F. Enter an injunction requiring managers and supervisors at the USCIS Miami Field Office to complete annual employment discrimination training, in a manner and format approved by the U.S. Equal Employment Opportunity Commission; and
- G. Award Batista such other relief that the Court deems just and proper.

Dated: September 12, 2022



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