

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.)	
_____)	

SECOND AMENDED COMPLAINT

Plaintiff Charlie Batista (“Batista”),¹ for his second 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 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) Denying Batista's requests for additional training;
- d) Delaying Batista's career ladder promotion;
- e) Staging a security infraction to undermine Batista's performance reviews;
- f) Fabricating reports that Batista engaged in unprofessional conduct during immigration interviews;
- g) Falsely accusing Batista of committing work product deficiencies;
- 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' 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 damages, back pay, 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, and the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*

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, lives with a known disability, 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. Batista sought guidance from Linda Babok, a Supervisory Immigration Officer with the FDNS, because he felt that Defendant Navarrete intentionally forced him to violate USCIS policy. 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. Defendant Navarrete shared the false accusations with other employees at the USCIS Miami Field Office. The accusations greatly disparaged Batista’s professional character and reputation, and caused him to experience high levels of mental anguish and emotional pain.

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. At the time of the inquiry, Defendants Diaz and Navarrete believed Batista was on a two-year probationary period with USCIS. The information was incorrect. Batista was not on a probationary status with USCIS.

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." While employed by USCIS, Batista had submitted several prior requests for leave under the FMLA in connection with his disability without any issues or need for increased specificity. Defendant Hesles's request constituted an unjustified change in the terms and conditions of Batista's employment. Defendants Diaz and Navarrete were aware of Defendant Hesles's request, 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. Defendant Hesles's actions constituted 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 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 about Batista's disability in an email sent to Defendants Diaz and Navarrete. 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 claimed to have noticed a small notebook on Batista's desk containing passwords to DHS databases. Instead of properly securing the notebook, Defendant Hesles left the notebook 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 believed that Batista was under a probationary period with USCIS until 2018. Defendant Hesles 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 the notebook containing passwords in an unsecure location.

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 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 never shared this information with 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, Defendant Hesles instructed Defendant Navarrete to tell Dennis Broughton or his designee that the office was currently undergoing an inventory audit. Defendant Hesles knew or should have known that 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 requested that he sign a document titled "USCIS Rules of Behavior." 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 notebook incident referenced in paragraph 62. 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. 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 leaving a notebook containing account passwords unsecure on his desk. Batista did not leave 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 went undisciplined.

70. Batista refused to sign the document and requested 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 because it, among other things, 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 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 pestered 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 was having on Batista's 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 stated 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. In doing so, substantially altered the terms and conditions of Batista's employment with USCIS by imposing the following additional expectations on Batista during the telework period:

- 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 the telework period relative to 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. Batista did not fail to follow proper procedures when adjudicating I-485 and N-400 applications. Batista did not fail to properly annotate Form G-1270 with fingerprint security information. Batista did not use Form G-1221 in cases where the form was not needed. Batista did not fail to conduct required TECS security checks. Batista did not submit inaccurate or incomplete denial notices. Batista did not fail to properly use the USCIS national templates. Batista did not add inaccurate or irrelevant comments to Forms G-1221 and G1270.

85. 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.” 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. Batista’s work did not contain numerous errors that exhibited a lack of knowledge and understanding of the immigration rules and procedures.

87. Prior to receiving the Interoffice Memorandum from Defendant Hesles, Batista was not informed that he was underperforming in his duties as an Immigration Services Officer.

88. Defendant Hesles overly scrutinized Batista's work relative to other similarly situated employees in an 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, delaying his promotion and unjustifiably subjecting his work and attendance to heightened scrutiny relative to other similarly situated employees.

89. 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. Batista's work product did not contain any discrepancies. Defendant Hesles identified the alleged discrepancies to intimidate and harass 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 denied the request.

90. Defendant Hesles, with the support of Defendants Navarrete and Diaz, repeatedly refused to train Batista. The refusal to train Batista negatively impacted his job performance. 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.

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

92. 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. Batista's work product did not contain any discrepancies. Defendant Hesles identified the discrepancies to

intimidate and harass Batista, in an effort to negatively impact his job performance reviews and ultimately terminate Batista's employment with USCIS.

93. 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.

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

95. That same day, Defendant Hesles informed Batista that she had identified discrepancies in 6 cases that he had adjudicated and returned on April 27, 2017. Batista's work product did not contain any discrepancies. Defendant Hesles identified the work product discrepancies in an effort 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.

96. 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. The

documentation submitted by Batista 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 had 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.

97. 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.

98. 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 intimidated Batista using verbal and non-verbal conduct. Immediately after the incident, Batista informed Defendants Hesles and Navarrete that he felt intimidated and very uncomfortable by Defendant Hesles's behavior during the office visit. No action was taken by Defendant Navarrete or Defendant Hesles to address Batista's concerns.

99. 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. After Batista made the request, the USCIS Miami Field Office Defendants increased the frequency and severity of the acts of intimidation and ridicule directed at Batista.

100. On May 22, 2017, Batista submitted a hardship transfer request to the USCIS Office of Human Capital and Training, noting that the transfer would eliminate the 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 impeded Batista's ability to perform the essential job function of his position as an Immigration Services Officer.

101. 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. Batista's work product did not contain any discrepancies. Six of the cases identified by Defendant Helses were the same ones included in the discrepancy report she generated on May 9, 2017. Defendant Helses identified the discrepancies to intimidate and harass Batista, in an effort to negatively impact his job performance review and terminate Batista's employment with USCIS.

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

103. 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."

104. 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.

105. 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.

106. On June 9, 2017, Defendant Helses informed Batista that she had identified discrepancies in 22 cases that he had worked on. Batista's work product did not contain any discrepancies. Defendant Helses identified the discrepancies to intimidate and harass Batista, in an effort to negatively impact his job performance review and terminate Batista's employment with USCIS.

107. Batista filed multiple EEO-related complaints for unlawful discrimination and retaliation on the part of Defendant Helses in connection with the constant reports of work product discrepancies and the refusal to train Batista. Batista 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.

108. 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.

109. On July 11, 2017, Defendant Helses notified Batista that his mid-term progress review was scheduled for July 13, 2017. In her communications with Batista, Defendant Helses made it appear as though someone other than herself would be conducting the review.

110. 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 down. 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 reported the same incident to the Commander of the Federal Protective Service because he felt unsafe in the workplace.

111. At the end of the workday on July 13, 2017, Batista's anxiety spiked to levels 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.

112. 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.

113. On several occasions after July 17, 2017, Defendant Hesles approached and engaged with Batista in the workplace in an intimidating 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.

114. 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. Defendant Diaz did not take any action to address Batista’s concerns.

115. 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.

116. 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. Nor did the performance review mention any of the discrepancies identified by Defendant Hesles on April 28, 2017, May 9, 2017, May 24, 2017, and June 9, 2017.

117. 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

118. 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.

119. 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.

120. 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.

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

122. Batista still seeks regular medical care and treatment to deal with the mental anguish and trauma inflicted upon him the USCIS Miami Field Office Defendants.

COUNT I

Defendant Navarrete's Unlawful Discrimination Based on Sex in Violation of Title VII of the Civil Rights Act of 1964

123. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 122.

124. Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), makes clear that all personnel actions affecting employees in executive agencies "shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-16(a).

125. USCIS and Defendant DHS are executive agencies within the meaning of 42 U.S.C. § 2000 e-16.

126. 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.

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

128. 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.

129. Batista's sexual orientation or gender identity was a motivating factor in Defendant Navarrete's unlawful discriminatory actions.

130. Batista's sexual orientation or gender identity was the determining factor in Defendant Navarrete's unlawful discriminatory actions.

131. Batista suffered materially adverse employment actions as a result of Defendant Navarrete's discriminatory actions, including: (i) having his work and attendance excessively scrutinized relative to other similarly situated employees; (ii) being denied workplace benefits that were afforded to other similarly situated employees; (iii) constantly receiving unjustified work-related reprimands that negatively impacted Batista's opportunities for advancement; (iv) having his career ladder promotion unjustifiably delayed; (v) being denied training opportunities

that affected his opportunities for advancement; and (vi) being reassigned to roles with significant different responsibilities that afforded less opportunity for professional growth.

132. 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.

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

COUNT II
**Defendant Navarrete's Unlawful Retaliation
in Violation of Title VII of the Civil Rights Act of 1964**

134. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 122.

135. Employers are prohibited 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.

136. 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.

137. In response to the protected activities taken by Batista, Defendant Navarrete retaliated against Batista by: (i) 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) 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) delaying Batista's career ladder promotion; (vii) reassigning Batista to adjudicate immigration applications that he was not properly training to adjudicate; and (viii) failing to adequately respond to Batista's complaints regarding a hostile work environment.

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

139. The protected activities taken by Batista, referenced above, were motivating factors that led to Defendant Navarrete's actions.

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

141. 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.

142. 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 Caused by Defendants
in Violation of Title VII of the Civil Rights Act of 1964**

143. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 122, and paragraphs 131 and 137.

144. 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.

145. Defendants subjected Batista to a work environment that was permeated with discriminatory intimidation, ridicule, and insult, which included: (i) 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 fabricating accusations involving a same-sex applicant 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.

146. 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 a constant atmosphere of intimidation and humiliation; (vii) made Batista feel unsafe and unwelcomed in the workplace; and (viii) significantly interfered with Batista's job performance and opportunities for advancement.

147. Batista's sexual orientation or gender identity was the determining factor in Defendant's conduct.

148. Batista's sexual orientation or gender identity was a motivating factor in Defendants' conduct.

149. Defendants failed to take adequate remedial measures to ensure that Batista would not be subject to continued discrimination and retaliation based on his sexual orientation and/or gender identity at the USCIS Miami Field Office.

150. Defendants' conduct detrimentally affected Batista.

151. Defendants' conduct would detrimentally affect a reasonable person with the same sexual orientation in Batista's position.

152. Defendants' conduct would detrimentally affect a reasonable person with the same gender identity expressions in Batista's position.

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

154. 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.

COUNT IV
**Defendants' Unlawful Discrimination Based on Disability
in Violation of the Rehabilitation Act**

155. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 122.

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

157. Federal agencies are required to make reasonable accommodations for disabled or handicapped individuals unless doing so would create an undue hardship for the agency.

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

159. Batista is an individual with a disability within the meaning of the Rehabilitation Act.

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

161. Defendants knew or should have known of Batista's disability.

162. Batista made requests for reasonable accommodations based on his known disability. Defendants refused to provide Batista with the reasonable accommodations requested.

163. Defendant DHS or USCIS would have suffered an undue hardship by providing Batista with the reasonable accommodations he requested.

164. Defendants took adverse employment actions against Batista based on his disability, including but not limited to: (i) excessively scrutinizing Batista's work and attendance relative to other similarly situated employees; (ii) disciplining Batista in ways that negatively impacted his pay and opportunities for advancement; (iii) delaying Batista's career promotion ladder; (iv) denying Batista's requests for reasonable accommodations based on his disability; (v) 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.

165. 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.

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

COUNT V
Defendants' Unlawful Retaliation
in Violation of the Rehabilitation Act

167. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 122, and paragraph 164.

168. 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].”

169. 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.

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

171. In response to the protected activities undertaken by Batista, Defendants took adverse employment actions against Batista, including: (i) framing Batista to make it appear as though he committed a security infraction; (ii) disciplining Batista in ways that negatively impacted his pay and opportunities for advancement; (iii) forcing Batista to ignore his physician’s medical advice; (iv) unjustifiably scrutinizing Batista’s work and attendance more closely than that of other similarly situated employees; (v) excessively reprimanding Batista; (vi) delaying Batista’s career ladder promotion; and (vii) denying Batista’s requests for training.

172. Defendants’ actions would have dissuaded a reasonable employee in Batista’s position from making or supporting a charge of discrimination.

173. Defendants’ actions had a materially adverse impact on the terms and conditions of Batista’s employment with USCIS.

174. 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.

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

COUNT VII
**Hostile Work Environment Caused by Defendants
in Violation of the Rehabilitation Act**

176. Batista incorporates herein by reference the allegations set forth in paragraphs 1 through 122, and paragraphs 164 and 171.

177. A work environment violates the Rehabilitation Act 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.

178. Defendants subjected Batista to a work environment that was permeated with discriminatory intimidation, ridicule, and insult, which included: (i) framing Batista to make it appear as though he committed a security infraction; (ii) improperly sharing information about Batista's disability with other USCIS employees; (iii) disciplining Batista in ways that negatively impacted his pay and opportunities for advancement; (iv) forcing Batista to ignore his physician's medical advice; (v) unjustifiably refusing Batista's requests for reasonable accommodations; (vi) unjustifiably scrutinizing Batista's work and attendance more closely than that of other similarly situated employees; (vii) excessively reprimanding Batista; (viii) delaying Batista's career ladder promotion; and (ix) denying Batista's requests for training.

179. 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 a persistent atmosphere of intimidation and humiliation; (vii) made Batista feel unsafe and unwelcomed in the workplace; and (viii) significantly interfered with Batista's job performance.

180. Batista's disability was the determining factor in the actions taken by Defendants, referenced above.

181. Batista's disability was a motivating factor in the actions taken by Defendants, referenced above.

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

183. 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.

184. The work environment created by Defendants' conduct detrimentally affected Batista. The work environment created by Defendants' conduct would detrimentally affect a reasonable employee in Batista's position.

185. As a direct and proximate cause of the work environment created by Defendants' workplace conduct, Batista has suffered and continues to suffer damages.

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 the delay in his career ladder promotion;

- 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 the costs and fees he incurred in connection with pursuing the claims asserted herein, including reasonable attorney's fees;
- E. 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
- F. Award Batista such other relief that the Court deems just and proper.

Dated: November 9, 2022

/s/ Jordan D. Howlette

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