

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS**

**BRYAN GONZALEZ,**

**Plaintiff,**

**vs.**

**No. CV 11-29**

**VICTOR M. MANJARREZ, JR.,**

**Defendant.**

**COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF**

PLAINTIFF BRYAN GONZALEZ, through the undersigned counsel, brings this action for damages pursuant to *Bivens v Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. As alleged with greater particularity below, Mr. Gonzalez alleges that on September 16, 2009, Defendant Manjarrez, Chief Patrol Agent for the El Paso Sector of the U.S. Border Patrol, terminated Mr. Gonzalez's employment in violation of his First Amendment right to free speech, in retaliation for his remarks regarding the drug war, Mexico, and other matters of public concern.

**JURISDICTION and VENUE**

1. Under U.S. Const. art. III, § 2, this Court has jurisdiction because the rights sought to be protected herein are secured by U.S. Const. amend. I. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388

(1971), and federal common law.

2. This action seeks damages, as well as declaratory relief pursuant to 28 U.S.C. §§ 2201-02 and Fed. R. Civ. P. 57.

3. The unlawful acts alleged herein were committed within the jurisdiction of the United States District Court for the Western District of Texas.

4. Venue of the Court is appropriate under 28 U.S.C. § 1391.

### **PARTIES**

5. Plaintiff Bryan Gonzalez was at all times relevant a Border Patrol agent. He resides in El Paso, Texas.

6. Defendant Victor J. Manjarrez, Jr., is and was at all times relevant the Chief Patrol Agent of the El Paso Sector of U.S. Border Patrol, which is the mobile, uniformed law enforcement arm of U.S. Customs and Border Protection within the Department of Homeland Security. Upon information and belief, Defendant Manjarrez resides in El Paso, Texas.

### **FACTS**

7. Mr. Gonzalez was employed by Defendant as a Border Patrol Agent from October 15, 2007 to September 16, 2009. During the time of his employment, Mr. Gonzalez was on his two-year probationary status that, but for his unlawful termination by Defendant, would have expired in October 2009.

8. Mr. Gonzalez was an exemplary Border Patrol Agent who received excellent performance reviews during his employment with Defendant.

9. In April 2009, Mr. Gonzalez was working out of the Border Patrol Station in Deming, New Mexico.

10. On April 13, 2009, Mr. Gonzalez was patrolling the border between the United States and Mexico. Border Patrol Agent Shawn Montoya was also patrolling the border in the same vicinity on that date.

11. On April 13, 2009, Mr. Gonzalez and Mr. Montoya pulled their vehicles along each other and began talking during a break.

12. During their discussion, Mr. Gonzalez and Mr. Montoya began to discuss the drug-related violence in Mexico.

13. Mr. Gonzalez remarked that legalization of drugs would end the drug war and related violence in Mexico. He also stated that the drug problems in America were due to American demand for drugs, supplied by Mexico.

14. Mr. Gonzalez mentioned the organization, Law Enforcement Against Prohibition, made up of former law enforcement officers who are opposed to the drug war. He also mentioned the organization's website to Mr. Montoya during their conversation.

15. During the conversation, Mr. Montoya asked why Mexicans are always trying to enter the United States and steal jobs. In response, Mr. Gonzalez replied that the reason Mexicans came to the U.S. was the lack of jobs in Mexico.

16. During the conversation, in response to Mr. Montoya's discriminatory remarks, Mr. Gonzalez noted that he was Mexican, because, while he was born in the United States and was a

citizen of the United States, he had had dual citizenship with Mexico until he was eighteen years old.

17. Upon information, Mr. Montoya mentioned Mr. Gonzalez's remarks to another Border Patrol Agent, Richard Carrasquillo.

18. On April 27, 2009, Mr. Carrasquillo reported Mr. Gonzalez's remarks to the Joint Intake Command in Washington, D.C.

19. On May 5, 2009, an Internal Affairs Investigation was commenced, resulting in a Report of Investigation dated August 4, 2009.

20. Mr. Gonzalez was terminated by Defendant on October 16, 2009.

21. The termination letter stated, in part, that Mr. Gonzalez held "personal views that were contrary to the core characteristics of Border Patrol Agents, which are patriotism, dedication, and esprit de corps."

22. Because Mr. Gonzalez was a probationary employee, he has no administrative remedy under the Civil Service Reform Act.

23. Mr. Gonzalez's speech was on a matter of public concern.

24. Mr. Gonzalez's speech was not disruptive and did not interfere with the Defendant's interest in efficiency.

25. Mr. Gonzalez's speech was not made pursuant to his official duties.

26. As a result of Defendant's actions, Mr. Gonzalez suffered emotional distress, lost wages and benefits, incidental and consequential damages in an amount to be proven at trial.

27. Defendant's actions have had an unlawful chilling effect on Plaintiff's free speech rights.

28. Defendant's actions were malicious, wanton, willful, reckless, and in knowing violation of Mr. Gonzalez's constitutional rights under the First Amendment.

**COUNT ONE**

**VIOLATION OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION  
(*Bivens v Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971))**

29. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

30. A violation of the First Amendment's right to free speech constitutes irreparable harm. Elrod v. Burns, 427 U.S. 347 (1976).

31. Defendant's actions had and continue to have an unlawful chilling effect on Plaintiff's and others' right to free speech secured by the First Amendment to the United States Constitution.

32. Defendant unlawfully retaliated against Plaintiff for exercising his right to free speech secured by the First Amendment to the United States Constitution.

33. Defendant's unlawful actions caused Mr. Gonzalez harm and he is entitled to compensatory and punitive damages.

**COUNT II**

**VIOLATION OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION  
(Declaratory Judgment Act, 28 U.S.C. §§ 2201-02)**

34. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

35. A violation of the First Amendment's right to free speech constitutes irreparable harm. Elrod v. Burns, 427 U.S. 347 (1976).

36. Defendant's actions had and continue to have an unlawful chilling effect on Plaintiff's and others' right to free speech secured by the First Amendment to the United States Constitution.

37. Defendant unlawfully retaliated against Plaintiff for exercising his right to free speech secured by the First Amendment to the United States Constitution.

38. Defendant's unlawful actions caused Mr. Gonzalez harm and he is entitled to a declaratory judgment, compensatory and punitive damages, and such other relief that the Court deems appropriate under 28 U.S.C. § 2202.

**JURY DEMAND**

Plaintiff seeks a trial by jury of all issues so triable.

**RELIEF REQUESTED**

WHEREFORE Plaintiff respectfully seeks:

- A. a declaratory judgment by the Court that Defendant's actions violated Plaintiff's rights secured by First Amendment to the United States Constitution;
- B. compensatory damages against the Defendant in an amount sufficient to make up for all of the harm that the Defendant's unlawful conduct caused;
- C. punitive damages against the Defendant for the malicious, wanton, willful, reckless, and knowing violation of Mr. Gonzalez's constitutional rights under the First Amendment in an amount sufficient to deter the Defendant and others from violating the constitutional rights of others;
- D. Plaintiff's reasonable attorney's fees, expenses, and costs of this action pursuant to the

Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C § 2412(b); and

E. such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ George Bach 1/20/11

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