

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**RENAE BAROS** §  
§  
**Plaintiff,** §  
§  
vs. § **No. EP-05-CV-0336-H LH**  
§  
**MICHAEL CHERTOFF** §  
**Secretary of Homeland Security,** §  
§  
**Defendant.** §

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

Comes now, Plaintiff, RENAE BAROS, by and through her undersigned counsel and sues Defendant, MICHAEL CHERTOFF, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY, (hereinafter "Defendant") in the above-numbered and entitled case, and for causes of action would respectfully show unto the court and jury as follows:

**I. INTRODUCTION, JURISDICTION AND VENUE**

1. This is a proceeding for damages to redress unlawful violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 et seq. (Title VII) and the Civil Rights Act of 1991, 42 USC 1981a.
2. Plaintiff seeks damages against her employer, Defendant, who engaged in intentional and unlawful employment practices against Plaintiff by discriminating

against Plaintiff based on her gender (female), race (Hispanic) and retaliation for reporting sexual harassment by a superior, including taking an adverse action against Plaintiff for filing this lawsuit.

3. This court has subject matter jurisdiction over these claims by virtue of 28 U.S.C. 1331(4) and 28 U.S.C. 1331.
4. Declaratory, injunctive and equitable relief is sought pursuant to Title 28 U.S.C. Section 2201 and 2202. Compensatory damages are sought pursuant to 42 U.S.C. 1981a.
5. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. 2000e-5(k) and Fed. R. Civ. Pro. 54.
6. Venue of this action is proper in the El Paso Division of the Western District of Texas pursuant to 28 U.S.C. Sec. 1331(b) and 42 U.S.C. 2000e-5(f)(3), because events giving rise to Plaintiff's employment discrimination claims occurred in El Paso County, Texas.
7. The jurisdiction of the Court is invoked pursuant to Title VII of the Civil Rights Act of 1964, Section 701 et.seq., as amended, 42 U.S.C.A. 2000e, et. seq., and 29 C.F.R. 1614 et.seq.; 29 C.F.R. 1614 et.seq. and 28 U.S.C. Section 1331.

## II. PARTIES

8. Plaintiff RENAE BAROS, is a Hispanic female and a citizen of the United States who was employed by the DEPARTMENT OF TREASURY, at the United States Customs Service, Office of Investigations, Special Agent in Charge, El Paso, Texas (SAC/EL PASO) office. Plaintiff is now employed by the DEPARTMENT OF HOMELAND SECURITY, the successor agency to the DEPARTMENT OF TREASURY. RENAE BAROS has been employed by the federal government at all times relevant to this original complaint. All actions taken against plaintiff were in the Western District of Texas, El Paso County, El Paso, Texas. RENAE BAROS is a federal employee within the meaning of Section 701(f) and Section 717(a) of Title VII, 42 U.S.C. 2000(e)(f) and 16(a) and at all relevant times was a federal employee.
  
9. Defendant MICHAEL CHERTOFF is the SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY and Immigration and Customs Enforcement (ICE), which defendant is the successor Agency of the Department of Treasury, United States Customs Service, which at all relevant times was an agency of the United States government. Defendant MICHAEL CHERTOFF is sued in his official capacity as SECRETARY OF HOMELAND SECURITY, and as such, is amenable to suit as provided in Section 717(c) of Title VII, 42 U.S.C. §2000e16(c)). MICHAEL CHERTOFF may be served at 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220.

10. The injuries to and the damages suffered by RENAE BAROS and the occurrences upon which this action is based occurred in El Paso County, El Paso, Texas.

### **III. PROCEDURAL REQUIREMENTS**

11. Plaintiff filed the Original Complaint in this case because more than three hundred sixty (360) days have expired since the filing of the original, formal, administrative complaint of discrimination and retaliation before the Equal Employment Opportunity Commission.
12. Plaintiff files this Amended Complaint because more than one hundred eighty (180) days have expired since the filing of a second original, formal, administrative complaint of discrimination and retaliation before the Equal Employment Opportunity Commission.
13. Plaintiff had complied with the statutory prerequisites for maintaining her civil action as set forth in Title VII and the regulations issued thereunder; to wit: she has exhausted her administrative remedies. Specifically,
- a. The Plaintiff filed a formal complaint of discrimination on November 21, 2002, after receiving the Notice of Right to File a discrimination Complaint pursuant to 29 C.F.R 1614.

- b. The complaint was amended on May 30, 2003, and further amended on August 13, 2003.
- c. On January 12, 2005, the Plaintiff withdrew her request for a hearing before an EEOC Administrative Judge, and requested a Final Agency Decision.
- d. It had been more than two years since the complaint was last amended, and more than seven months since the Plaintiff asked for a Final Agency Decision.
- e. A second EEO complaint was filed by Plaintiff on July 10, 2006. A request for a hearing before an EEOC Administrative Judge was pending, however, it becomes moot upon the filing of this amended complaint.

#### **IV. FACTS**

14. In or around August 2001, the Plaintiff filed a complaint against Associate Special Agent in Charge Brian Pledger (Pledger) with the Office of Internal Affairs (now known as the Office of Professional Responsibility or OPR, hereinafter referred to as IA) for sexual harassment.
15. Immediately after contacting IA, Associate Special Agent in Charge Patricia Kramer (Kramer) significantly increased Plaintiff's work assignments, which

required frequent trips in her personally-owned vehicle (POV) to the SAC/El Paso office from the sub-office where Plaintiff was assigned, for which she was not reimbursed.

16. In September 2001, Plaintiff's Group Supervisor Joseph Bosarge (GS Bosarge) stated to Plaintiff that Kramer was furious at her for reporting Pledger's sexual harassment to IA, and advised Plaintiff to be "very careful". He stated Kramer is a "vindictive person". GS Bosarge further advised Plaintiff that Kramer did not believe Plaintiff had been the victim of sexual harassment because ASAC Pledger was a "family man".
17. In or around October 2001, the Plaintiff applied for a promotion to the position of Criminal Investigator under Vacancy Announcement number INVSC/01-055 DES.
18. In or around later 2001 Kramer ran into another management official within her office in the parking lot. Kramer told this official to watch out for the Plaintiff as she was a "black widow."
19. In or around December 2001, Plaintiff applied for a promotion to Intelligence Research Specialist (IRS), Vacancy Announcement number INVSC/01-096 KRH, located at SAC/El Paso. Plaintiff qualified at the GS-9 level. Plaintiff was not selected.

20. On the ranked list for Vacancy Announcement number INVSC/01-055 DES, given to Kramer in January 2002, Plaintiff was ranked Number One (1) by the Office of Personnel Management (OPM) for a GS-1811-9.
21. In or around January 2002, IA Special Investigations Unit conducted interviews of Plaintiff's co-workers, regarding Plaintiff's complaint of sexual harassment by ASAC Pledger. Immediately after this, Plaintiff began to hear rumors regarding her "lack of virtues" in law enforcement circles, including the FBI.
22. In or around January 2002, ASAC Kramer did not select Plaintiff for a promotion to GS-1811-9, for Vacancy Announcement number INVSC/01-055 DES. Instead, ASAC Kramer's selectees were Number Two (2), a Hispanic male, Number Nine (9), a Hispanic male, Number Twenty-eight (28), a Hispanic male, and number Twenty-nine (29), a White male. ASAC Kramer's other selectees were one (1) White female, nine (9) White males and seven (7) Hispanic males. ASAC Kramer did not select any Hispanic females for Vacancy Announcement number INVSC/01-055 DES. Plaintiff was more qualified than all of those selected for the position and substantially more qualified than two of those selected.
23. During the course of the formal investigation in this case ASAC Kramer stated her reasons for not selecting Plaintiff:

- i. that Plaintiff was the only candidate who was not an inspector, canine enforcement officer, import specialist or in another position covered under the Customs In-Service training agreement;
- ii. she selected candidates with more education and/or directly-related experience in enforcement work, self-initiated seizures, and had carried a firearm;
- iii. that Plaintiff had no law enforcement experience, that Plaintiff referred to a prior administrative position with Border Patrol in an investigative capacity and conveyed the impression Plaintiff was an investigator but was not;
- iv. that Border Patrol does not perform an investigative mission that is conjunctive to the investigative mission in El Paso and that Border Patrol Officers are not criminal investigators.

24. The qualifications for Vacancy Announcement number INVSC/01-055 DES were "applicant must have one year of specialized experience equivalent to the next lower grade, which has equipped the applicant with the particular knowledge, skills, and abilities to successfully perform the duties of the position. Experience is typically in or related to the work of the position described." Nowhere in Vacancy Announcement number INVSC/01-055 DES does it state that "holding a position as inspector, canine enforcement officer, import specialist or in another position covered under the Customs In-Service training agreement, or having a

- degree or directly-related experience in enforcement work, making self-initiated seizures, and previously carrying a firearm" are mandatory hiring criteria.
25. In January 2002, the Plaintiff was notified by IA that she was being investigated for allegedly "going to commit" perjury in her pending divorce proceedings. Subsequent to notification, a criminal investigator from IA sat in the courtroom during Plaintiff's divorce proceedings. Plaintiff believes this was a malicious, intentional infliction of emotional and psychological trauma on her by the Agency for her sexual harassment complaint about Pledger.
26. On March 27, 2002, Plaintiff inquired about her annual step increase via eMail and received an eMail response from the Special Agent in Charge's Administrative Assistant. The Plaintiff was told that her name had been removed from the Career Ladder Promotion list.
27. On April 19, 2002, Plaintiff was interviewed by SA S. Roy Moffett (SA Moffett) from the Office of the Inspector General (OIG). SA Moffett stated that he was investigating complaints against ASAC Kramer. Plaintiff gave a statement to OIG about ASAC Kramer. Immediately thereafter, ASAC Kramer detailed Plaintiff to the U.S. Attorney's office. Plaintiff was denied training for the software she was expected to use at the U.S. Attorney's office and Plaintiff was told she was expected to simultaneously continue her regular duties. Plaintiff was set up to fail by Kramer.

28. Intelligence Research Specialist Jim Vitale, (male) was provided the training denied to the Plaintiff. Jim Vitale was paid overtime on a weekend to take the training.
29. In or around August 2002, Plaintiff was notified by IA that she was being investigated for allegedly committing forgery during her divorce proceedings.
30. In or around September 2002, Plaintiff was again notified by IA that she was being investigated for allegedly using her personal cell phone during business hours.
31. In or around October 2002, Plaintiff was again notified by IA that she was being investigated for allegedly donating her ex-spouse's retired badge to a local charity during her divorce proceedings.
32. In October 2002, Plaintiff filed an informal EEO complaint. Kramer refused to consider mediation. Plaintiff received a Notice of a Right to File a Formal EEO Complaint on November 6, 2002, and Plaintiff filed a formal EEO complaint on November 21, 2002. The Agency has not entered its Final Agency Decision as of the filing of this complaint.
33. In or about December 2002, Plaintiff again applied for promotion to an IRS GS-9 position under Vacancy Announcement number DFVHQ-2002-0058 located at SAC/El Paso. Despite her previous qualification at the GS-9 level, Plaintiff was

- now informed she did not meet the minimum qualifications for a GS-9 level, and was therefore denied hiring consideration.
34. In February 2003, ASAC Kramer demonstrated overt hostility by making threats toward Plaintiff and another Investigative Assistant (Hispanic female), stating that the Agency was going to excepted service and it would be easier for upper management to make a "non-government employee" out of them.
35. In or around March 2003, Plaintiff applied for promotion to a GS-1811-9, Criminal Investigator position, Vacancy Announcement number CFICE-2003-0028, El Paso, Texas. Despite her previous qualification at the GS-9 level, Plaintiff was informed this vacancy had been cancelled.
36. In or around April 2003, Plaintiff filed a Freedom of Information Act (FOIA) request regarding the status of all IA investigations against her. Plaintiff was denied a response to her FOIA request claiming that there were open Internal Affairs investigations on her. Twenty-eight (28) months later, those IA investigations were still open.
37. In or around April 2003, Plaintiff applied for an IRS, GS-9 position, Vacancy Announcement number CFICE-2003-0007. Despite her previous qualification at the GS-9 level, Plaintiff was informed she did not meet the minimum qualifications for a GS-9 level, and was therefore denied hiring consideration.

38. In or around May 2003, Plaintiff applied for a promotion to a GS-1811-9, Criminal Investigator position, Vacancy Announcement number CFICE-2002-0094, El Paso, Texas. Despite her previous qualification at the GS-9 level, Plaintiff was informed she did not meet minimum qualifications for a GS-9 level, and was denied hiring consideration.
39. In or around May 2003, Plaintiff applied for a promotion to a GS-1811-9, Criminal Investigator position, Vacancy Announcement number CFICE-2002-0096, Las Cruces, NM. Plaintiff was disqualified because she "did not work in the local commuting area". However, Plaintiff did live and work in the local commuting area. Additionally, several white males live in Las Cruces, NM and commute daily to SAC/El Paso in government-owned vehicles.
40. In or around September 2003, Plaintiff was again notified by IA that she was being investigated for allegedly committing constructive fraud during her divorce proceedings.
41. In January 2004, Plaintiff was again notified by IA that she was being investigated for allegedly providing an unclassified memo to another law enforcement agency during her divorce proceedings.
42. In January 2005, Plaintiff was again notified by IA that she was being investigated for an incident that occurred in July 2003 that involved her ex-

- husband. Plaintiff was threatened with a polygraph if she did not cooperate, a violation of Agency policy.
43. On March 13, 2006, the Agency served Plaintiff with a proposal to suspend her from duty, without pay, for fourteen (14) calendar days regarding the issue contained in Paragraph 42 above (Paragraph 41 in Original Complaint).
44. A Stay of Proceedings in this lawsuit was granted by Judge Frank Montalvo on May 15, 2006, so that the Plaintiff could follow the required administrative process and file an EEO complaint with the Defendant.
45. Once the informal process was completed Plaintiff filed a second formal EEO complaint of employment discrimination on July 10, 2006, with the Agency.
46. The Agency subsequently suspended Plaintiff from duty for ten (10) days, without pay, in September of 2006.
47. Defendant, through its subordinates, intentionally maliciously subjected Plaintiff to IA investigations based upon race (Hispanic), sex (female) and retaliation for engaging in protected activity—reporting sexual harassment by a senior management official.
48. Defendant, through its subordinates, intentionally maliciously subjected Plaintiff to repeated IA investigations in a deliberate attempt to inflict mental anguish upon her because of her race, gender/sex and protected EEO activity.

49. Defendant, through its subordinates, intentionally maliciously subjected Plaintiff to repeated IA investigations in a deliberate attempt to block her advancement with the Agency through the wrongful use of the Agency's vetting process.
50. Defendant, through its subordinates, has repeatedly subjected Plaintiff to a hostile work environment, retaliation, and a pattern and practice of discrimination based upon race, sex, and her protected EEO activity.
51. Defendant, through its subordinates, has intentionally, maliciously and blatantly retaliated against plaintiff for engaging in the EEO process.
52. Plaintiff was denied promotions and selections because of the discrimination based on Plaintiff's race, sex, color, and protected EEO activity in violation of Title VII and 29 C.F.R. 1614 et. seq.
53. Defendant, through its subordinates, has intentionally, maliciously and blatantly subjected Plaintiff to adverse employment action for exercising her statutorily-protected rights.
54. As a result of the Agency's willful conduct, Plaintiff has suffered significant lost wages and other benefits, and has suffered physically, emotionally, psychologically, has been threatened, harassed and suspended from duty, and will continue to suffer irreparable injury requiring immediate injunctive relief, as more particularly alleged hereafter.

55. In addition, Plaintiff has suffered a loss of earning capacity as a direct and proximate result of the wrongs done her by Defendant, through its subordinates, of which complaint is made herein.

56. Accordingly, as a direct and proximate result of the conduct on the part of the Defendant, through its subordinates, Plaintiff is entitled to recover the following damages:

- (a) Mental anguish suffered in the past;
- (b) Mental anguish which, in all reasonable probability, will be suffered in the future;
- (c) Lost wages and income benefits;
- (d) Loss of wage earning capacity in the future;
- (e) Retirement benefits;
- (f) Thrift Savings plan benefits;
- (g) Use of a government-issued vehicle;
- (h) All other benefits normally associated with service with the defendant Agency at a journeyman Criminal Investigator level;
- (i) Loss of and damage to Plaintiff's reputation, including her reputation with other governmental agencies and their employees;
- (j) Future training and education benefits;
- (k) Social Security and Medicare contributions and/or the resulting benefit associated therewith;

- (l) Promotion opportunities;
  - (m) Interest on all applicable benefits and/or employment opportunities; and/or
  - (n) Medical and related expenses in the past and in the future.
  - (o) Promotion to a GS-1811-13 and the appropriate in-grade step.
  - (p) Cancellation of the 10-day suspension and payment for the lost wages
57. By reason of the above and foregoing, Plaintiff has been intentionally severely damaged for which damages Plaintiff now sues.
58. ATTORNEY'S FEES. Plaintiff was compelled to employ attorneys to bring this action against Defendant for the reasons presented in the above-entitled cause, and for that purpose, Plaintiff has retained the services of Mark Conrad and Cori A. Harbour, Attorneys at Law. Plaintiff has agreed to pay a reasonable fee for such legal services. Plaintiff is entitled to recover her reasonable and necessary attorneys' fees and expenses through a trial on the merits and such additional sums required in the event of an appeal. Plaintiff is entitled to recover her attorneys' fees and all costs of this action pursuant to, inter alia, 42 U.S.C. S2000e-5(k) and 29 C.F.R. 1614 et. seq.
59. Plaintiff has demanded a jury trial pursuant to Rule 39, Federal Rules of Civil Procedure.

## **V. PRAYER FOR RELIEF**

60. WHEREFORE, PREMISES CONSIDERED, Plaintiff demands, requests and prays that the defendant MICHAEL CHERTOFF, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY be duly cited to appear and answer herein, and that upon a final trial of this cause, Plaintiff have and recover:

1. a declaratory judgment that the acts, policies, practices, and procedures of Defendant complained of herein violated and continued to violate Plaintiff's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et. seq., as amended ; 29 C.F.R. 1614 et.seq.
2. an Order directing defendant and its management personnel to make plaintiff whole by assigning her to the higher position of GS-13, or higher, which she should have had based on her actual education, experience, job performance, abilities, training and seniority, providing appropriate back pay and reimbursement for lost pension and other benefits and expenses in an amount to be shown at trial;
3. judgment against Defendant for Plaintiff's damages as set forth above;
4. judgment against Defendant for reasonable and necessary attorneys' fees;

5. costs of court;
6. interest on said judgment, including attorneys' fees and costs of court, at the legal rate from date of judgment as for by the laws of the United States;
7. judgment pursuant to the Back Pay Act; and
8. such other and further relief, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

/s/ \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I CERTIFY THAT ON THE 22<sup>nd</sup> DAY of FEBRUARY, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Eduardo R. Castillo, Assistant United States Attorney

/s/  
\_\_\_\_\_  
Cori A. Harbour