

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

CARMEN MARQUEZ MARIN

Plaintiff

vs.

Civil No.

ALBERTO GONZALEZ,
Attorney General of the United States;

HUMBERTO (“BERT”) GARCIA,
U.S. Attorney for the District of Puerto Rico

Defendants

COMPLAINT

TO THE HONORABLE COURT:

NOW COMES THE PLAINTIFF, Carmen Márquez Marín, through the undersigned attorneys, and respectfully alleges and prays as follows:

INTRODUCTION

1.1 This is a civil action seeking monetary damages and declaratory and injunctive relief, brought on behalf of Carmen Márquez Marín, a former Assistant United States Attorney (“AUSA”) in the Criminal Division of the U.S. Attorney’s office in San Juan. Plaintiff alleges that she suffered illegal gender and national origin discrimination while employed as an AUSA, and that she was dismissed in August, 2004, in retaliation for her protected actions in denouncing discrimination in the agency.

1.2. Plaintiff also alleges that the dismissal was in violation of her constitutional right to due process of law and that her dismissal was carried out in a manner which violated the applicable regulations and procedures.

JURISDICTION

2.1. Federal Question jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(2) and 2202 and pursuant to the Fifth Amendment of the United States Constitution.

_____ 2.2. This court has jurisdiction over this case since plaintiff seeks to redress deprivation of her right to be free from discrimination pursuant to the 1964 Civil Rights Act, as amended, 42 U.S.C. §2000e-16, to be provided the remedies secured by federal regulations and procedures, and to be free from violations of her constitutional right to due process and the protection of her liberty interest, based on the judicially created remedy pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

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

PARTIES

_____ 3.1. Plaintiff Carmen Márquez Marín is an attorney and a citizen and resident of the Commonwealth of Puerto Rico. She will be referred to hereinafter as “attorney Márquez” or “Ms. Márquez.”

3.2. Ms. Márquez worked for the Justice Department of the United States as an Assistant United States Attorney (“AUSA”) from late 2001 to August 27, 2004, when she was summarily dismissed from that position.

3.2. Alberto González is currently the Attorney General of the United States and as such the

highest official of the United States Department of Justice (hereinafter referred to as the “DOJ”). He was preceded in that position by Attorney General John Ashcroft, who held the post at times relevant to this complaint. As the head of the employing agency, he is the proper defendant for this action pursuant to 42 U.S.C. 2000e-16(c). He is sued in his official capacity.

3.4. Humberto “Bert” García has been the United States Attorney for the District of Puerto Rico for approximately two and a half years. He may be referred to hereinafter as “Mr. García”. He is sued in his personal capacity for alleged violations of plaintiff’s constitutional rights.

FACTS

A. Background Facts

4.1. Plaintiff Carmen Márquez has been a licensed attorney in Puerto Rico since 1996, having graduated from the University of Puerto Rico School of Law the previous year. She also has a Master’s Degree in Environmental Law from Vermont Law School, and a Master’s Degree in Anthropology from Texas A & M.

4.2. In December of 2001, Ms. Márquez began working as an Assistant United States Attorney (“AUSA”), at a starting salary of approximately \$60,000.00 per year.

4.3. In order to obtain that position, she had to pass a rigorous recruitment process, including an evaluation by a committee of the United States Attorney’s office and a background check.

4.4. At that time, she was asked to make a five-year commitment.

4.5. Upon commencing her work at the U.S. Attorney’s Office, Ms. Márquez was assigned to the Narcotics Division.

4.6. In the course of her work as an AUSA over the next two and a half (2 ½) years, Ms.

Márquez successfully prosecuted numerous cases and was involved in major investigations concerning illegal activities such as organized crime, narcotics and money laundering.

4.7. She was consistently evaluated by her superiors as carrying out work which “meets to exceeds expectations.”

4.8. The last such evaluation was in March of 2004.

4.9. Ms. Márquez was also recognized and congratulated for her work on a case which provided the basis for the District of Puerto Rico’s receipt of an award for “Outstanding Interdiction Effort Award” for the year 2003.

B. The discrimination and the initial complaints

5.1. Approximately one year after plaintiff became an Assistant United States Attorney, Humberto (“Bert”) García was appointed as the United States Attorney for the District of Puerto Rico.

5.2. Shortly after Mr. García arrived, plaintiff signed a new document, through which she purportedly was to begin a two-year “trial period” as an AUSA.

5.3. Almost immediately after he began his tenure as U.S. Attorney, Mr. García made certain administrative changes in the office, appointing David Rivera as the Deputy Chief in charge of the Narcotics Division. As such, Mr. Rivera became plaintiff’s immediate supervisor.

5.4 On information and belief, Mr. Rivera is a person of Puerto Rican heritage, but was born and raised in the continental United States.

5.5. Also in the first several months after Mr. García took charge, he recruited a number of Assistant United States Attorneys, all of whom were men.

5.6. After Mr. García assumed the position as United States Attorney, a “boy’s club” formed at the office, manifested in the holding of men-only meetings, both behind closed doors and openly, and also in the participation of male employees in golfing and other recreational shared activities. David Rivera was a participant in this “boy’s club”.

_____ 5.7. Some time in the year 2003, attorney Márquez became aware of what she understood to be salary discrepancies in the office, in that AUSA’s from the continental United States and male attorneys were generally receiving higher salaries than similarly situated female attorneys and attorneys from Puerto Rico.

5.8. Attorney Márquez also became aware that the new AUSA’s who had been recruited by Mr. García were being paid higher salaries than those who had been working at the office prior to that time.

5.9. Upon becoming aware of the salary differentials, Ms. Márquez questioned the inequities, raising her concerns with the First Assistant of the office, a high-level official who responds directly to Mr. García

5.10. Soon after Ms. Márquez presented these concerns to the First Assistant, she was called to Mr. García’s office. Mr. García admitted that there were inequities in the salaries, but requested Ms. Márquez to refrain from further complaints about the situation. He indicated that he would try to take steps to resolve the situation in the upcoming year.

_____ 5.11. After Ms. Márquez raised her concerns about the salary inequities to the high-level supervisors at the agency, she noticed significant changes in the attitude of her immediate supervisor, David Rivera. Mr. Rivera began treating plaintiff with outward hostility, manifested in such actions as the exclusion of the plaintiff from meetings, avoiding direct contact with her; refusing to provide

her with assistance, guidance and adequate supervision, the creation of obstacles to her performing her duties, the under-estimation of the value of her work, and disrespect towards her.

5.12. Creating a hostile work environment, Mr. Rivera demeaned the plaintiff, instructing her to perform paralegal tasks which were well below her capacity and her previous work experience. He humiliated her and undermined her, and attempted to remove her from significant work, which according to him, was thereafter to be carried out by a male Assistant United States Attorney who was not of Puerto Rican origin.

5.13. Mr. Rivera also made derogatory comments towards Puerto Ricans and Puerto Rico.

5.14. Attorney Márquez complained about her treatment by Rivera to the Chief of the Criminal Division, speaking to the Chief about “boy’s club”, as well as her perception that Mr. Rivera was discriminating against her on the basis of gender.

5.15. On several occasions in the year 2003 and in the early part of 2004, Ms. Márquez also addressed her concerns regarding discrimination to the Equal Employment Opportunity (EEO) representative designated at the U.S. Attorney’s office in Puerto Rico.

5.16. Although the highest level supervisors were aware of discriminatory comments and/or practices on the part of the supervisory staff of the office, they either participated directly in the conduct or tolerated the same.

C. The EARS evaluation

6.1. In late 2003 and early 2004, the United States Attorney’s Office in the District of Puerto Rico was subject to an evaluation by the Evaluation and Review Staff of the Executive Office of the United States Attorneys.

6.2. The purpose of this evaluation, commonly referred to as “EARS”, was for the Executive Office to examine the management of the Puerto Rico U.S. Attorney’s office as a whole.

6.3. As part of the EARS process, the AUSA’s in Puerto Rico were to fill out questionnaires concerning the workings of the office.

6.4. In the context of the EARS evaluation, Ms. Márquez met with several other female Assistant United States Attorneys. All agreed that it was important to be fully forthcoming in the evaluations, and that they should not hesitate to make known their thoughts about the discriminatory atmosphere in the office.

6.5. During the EARS evaluation process, plaintiff Carmen Márquez was forthcoming about her discrimination concerns. On information and belief, the other female AUSA’s referred to in the preceding paragraph were similarly forthcoming.

6.6. Almost immediately following the EARS process, in February of 2004, four female AUSA’s, including the plaintiff, were transferred to other sections within the United States Attorneys’ office.

6.7. As a result of the transfer, Ms. Márquez was placed under the supervision of Edwin Vázquez, Deputy Chief of Violent Crimes, a placement which management knew was not favorable to her.

6.8. Said transfer was in retaliation for the comments made by attorney Márquez in the EARS process and also in retaliation for her complaints about salary inequities and mistreatment of female AUSA’s.

D. The Feldman EEO complaint

_____7.1. Some time in 2004, another female AUSA, Irene Feldman, filed a EEO complaint alleging sex discrimination regarding her treatment in the office (hereinafter referred to as “the Feldman complaint”).

7.2. On information and belief, the Feldman complaint named Edwin Vázquez, as one of the persons responsible for the discrimination she alleged.

7.3. On information and belief, Ms. Feldman alleged that Mr. Vázquez had treated her with extreme disrespect and had demeaned her. Also on information and belief, Ms. Feldman asserted that U.S. Attorney Bert García was aware of her complaints concerning Edwin Vázquez, but had acquiesced in that conduct.

7.4. On information and belief, the supervisory personnel in the office were aware of the fact that Ms. Márquez had expressed her intention to cooperate with the EEO process regarding the Feldman complaint, and that if asked, would be forthcoming about her own perceptions of the discriminatory atmosphere at the office.

E. Plaintiff’s EEO complaint and the retaliation leading to her dismissal

8.1 On or about June 25, 2004, the plaintiff began her own EEO complaint, invoking the informal counseling stage of the EEO complaint process provided for employees of the federal government.

8.2. Ms. Márquez complained of such matters as the aforementioned salary inequities, the hostile environment imbued with gender and national origin discrimination, the “boy’s club”, and the differential treatment in terms of evaluations and time-off awards and similar benefits, on the

basis of gender and national origin.

8.3. On July 26th and July 27th, 2004, an EEO counselor from Washington contacted the supervisory personnel in the chain of command in the office of the United States Attorney in San Juan, including U.S. Attorney Bert García. The EEO counselor informed Mr. García and other supervisors of the contents of plaintiff's EEO complaint.

8.4. On August 3, 2004, plaintiff's former counsel filed a formal complaint of discrimination on her behalf.

8.5. On August 4th, 2004, barely one week after Mr. García was informed by the EEO counselor about plaintiff's EEO complaint, and only one day after the filing of plaintiff's formal complaint, Mr. García wrote to the Executive Office for United States Attorneys in Washington, complaining of "unacceptable conduct" on the part of the plaintiff, and recommending her removal "within thirty (30) days after the removal letter is delivered to her."

8.6. In the latter days of August of 2004, an FBI agent was sent to San Juan to investigate the allegations of gender discrimination contained in the complaint which had been filed by AUSA Irene Feldman.

8.7. Plaintiff was interviewed by the FBI agent investigating the Feldman complaint on August 25, 2004.

_____ 8.8. Earlier that same date, on August 25, 2004, plaintiff met with her supervisor, Edwin Vázquez, who had been named in the Feldman complaint, concerning a case being litigated in the office.

8.9. During that encounter, Mr. Vázquez treated Ms. Márquez with extreme hostility, and displayed a total lack of respect towards the plaintiff. He shouted at her and questioned her actions,

telling her that she was “no one” and that her only role was “to do what he told her to do”, and that her purpose was to “serve the agents”. He also told her to “shut up”, and he accused her of being a liar.

8.10. On the following day, August 26, 2004, plaintiff provided the FBI agent investigating the Feldman complaint with a written version of her oral statement, setting forth her view that there was a discriminatory atmosphere in the office, in essence supporting the Feldman complaint.

8.11. One day later, on August 27, 2004, Ms. Márquez was told to go to a meeting with the United States Attorney, Humberto García. When she arrived for the meeting, she was directed to a conference room at the United States Attorney’s Office, where the entire supervisory staff of the office was present.

8.12. In front of all those present, plaintiff was given a letter informing her that she was being dismissed from her position as an AUSA, effective immediately.

8.13. Plaintiff had been given no prior notice that disciplinary action against her was contemplated.

8.14. The dismissal letter, signed by an official of the Executive Office in Washington, D.C., who had never met the plaintiff, was based on information provided by the U.S. Attorney, Mr. García

8.15. The letter contained false and defamatory accusations of alleged misconduct on the part of the plaintiff and further claimed that she displayed a “pattern of dishonesty” and a “pattern of non-compliance with established internal policies” of the office “and/or the law”.

8.16. These allegations were pretextual reasons given for the immediate dismissal of plaintiff.

8.17. On information and belief, the events which allegedly gave rise to these “patterns” of improper conduct in most instances had occurred long before the referenced meeting, and prior to

Ms. Márquez's being given an evaluation to the effect that she had "met or exceeded expectations".

8.18. On information and belief, the allegations contained in this letter were published to all supervisors in the office, including those supervisors who were not in the chain of command regarding Ms. Márquez.

8.19. After receiving the letter, Ms. Márquez was then "escorted" to her office by a security guard and a representative of human resources, so that she could gather her belongings and be expelled from the building immediately.

8.20. On information and belief, the purpose of this humiliating treatment and the manner in which plaintiff was dismissed was to dissuade others from complaining about discrimination and the hostile work environment in the office of the United States Attorney in Puerto Rico.

8.21. On information and belief, following the dismissal, supervisors at the office have since proclaimed that plaintiff was dismissed because she was not fulfilling the mission of the office and was affecting the "morale" of the office by complaining too much.

F. Damages

9.1. As a result of the actions and omissions of the United States Department of Justice, acting through the employees mentioned herein, the plaintiff has suffered extreme emotional distress and anxiety, exhibiting physical manifestations of stress, including gastro-enterological and related problems, head-aches and sleep disturbance, requiring treatment for these ailments.

9.2. Ms. Márquez has had to pay for a medical plan, as well as other medical expenses, causing her economic damages which are reasonably expected to increase in the future.

9.3. As a result of the dismissal from her job, Ms. Márquez has suffered a significant loss of

income to date, which loss is expected to increase in the future. She has also had to incur in expenses associated with the establishment of her law practice. She also has had to sell investments in order to make ends meet.

9.4. She also has lost additional benefits in the form of life insurance, health insurance coverage and contributions to a retirement plan.

9.5. As a result of the dismissal, attorney Márquez's qualification for credit has also been adversely affected.

9.6. As a result of the circumstances surrounding the dismissal, and in particular the false allegations of misconduct and dishonesty, plaintiff's future job opportunities have been and will be affected in the future, as has her reputation as an ethical attorney.

9.7 As a result of the dismissal and the discrimination, plaintiff has been humiliated and her professional ethics have been called into question. She has experienced and continues to have mistrust of her peers, as well as a sense of frustration and fear regarding her future career prospects and a loss of confidence in the judicial system.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

_____ 10.1. All previous allegations are reaffirmed as if fully alleged herein.

10.2 This cause of action refers to defendant Attorney General Alberto González.

_____ 10.3. The actions described herein constitute discrimination on the basis of plaintiff' gender and national origin.

10.4. These actions were also taken in retaliation for plaintiff's previous complaints of

discrimination.

10.5. On August 30, 2004, the plaintiff filed a formal EEO discrimination complaint with the Department of Justice, questioning her August 27th dismissal as discriminatory on the basis of gender and national origin, and in retaliation for her previous complaints of discrimination, which complaint was consolidated with the earlier complaints of discrimination.

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

10.7. On or about May 6, 2005, the plaintiff received a letter from the United States Department of Justice, informing her of her right to file a civil action since more than 180 days had passed since the filing of her formal complaint.

10.8. In order to redress the discrimination and retaliation suffered by the plaintiff, she is entitled to relief in the form of compensatory damages, costs, interests and attorneys fees.

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

SECOND CAUSE OF ACTION

_____ 11.1. This cause of action is filed against defendant Humberto “Bert” García.

11.2. Mr. García made the decision to dismiss plaintiff.

11.3. Mr. García also decided to do so on the basis of the false allegations mentioned in paragraph 8.15 above.

11.4. This defendant also made the decision to do so in a public and official manner, disseminating derogatory information about the plaintiff and accusing her of misconduct and a pattern of dishonesty.

11.5. The serious allegations contained in the letter of dismissal, in conjunction with the dismissal itself, deprived plaintiff of a protected liberty interest pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution, in that they impose an unjustified stigma upon her, affect her reputation and significantly interfere with her future employment opportunities, with the potential for seriously damaging her standing and associations in the community.

11.6. At the time of plaintiff's dismissal, Mr. García informed her that she had no right to any pre or post-termination hearing to respond to the charges contained in the referenced letter, giving her no opportunity to clear her name.

11.7. The manner in which Mr. García conducted the discharge and the circumstances surrounding the same caused plaintiff damages which are independent of her claim of discrimination, in that her constitutional liberty interests were affected and she was provided no process in which to demonstrate the falsity of the allegations which supposedly justified her dismissal.

11.8. These actions by this defendant were in violation of plaintiff's Fifth Amendment rights to due process of law, for which Mr. García must respond to the plaintiff in damages, punitive damages and for the costs and attorneys fees of this action.

THIRD CAUSE OF ACTION

_____ 12.1. In discharging the plaintiff, Humberto García violated the applicable regulations and procedures of the United States Attorneys' offices.

12.2. Despite the fact that plaintiff had been working as an AUSA for more than two and a half (2 ½) years at the time of her discharge, Mr. García considered her to be in her two-year “trial attorney” period at the time when he summarily fired her, thus depriving her of procedural remedies to which she otherwise would have been entitled.

12.3. Assuming *arguendo* that plaintiff was properly considered as a “trial period” attorney at the time of her dismissal, defendant García failed to provide plaintiff the procedural guarantees to which she was entitled with that classification, *inter alia*, by failing to institute a plan for improvement of performance (PIP) and failing to give her thirty (30) days advance notice of the proposed dismissal.

12.4. The summary dismissal and the circumstances surrounding the same, in violation of applicable regulations and procedures, entitle plaintiff to damages caused thereby and to appropriate equitable relief.

PRAYER FOR RELIEF

_____ **WHEREFORE**, Plaintiff Carmen Márquez Marin respectfully requests that this court:

1. Declare that the actions of the Department of Justice were discriminatory, retaliatory, and otherwise in violation of the 1964 Civil Rights Act, as amended, and other applicable laws and regulations prohibiting discrimination and retaliation against federal employees.

2. Declare that the actions of the defendant García violated plaintiff’s Fifth Amendment right to due process of law and the regulations and procedures applicable to the dismissal of Assistant United States Attorneys.

3. Issue preliminary and permanent injunctive relief, including but not limited to the

reinstatement of plaintiff to her position, the elimination of all negative information about her in the records of the Department of Justice, and an order prohibiting the defendants from all actions of further discrimination against the plaintiff.

4. Provide the plaintiff with damages for loss of income, which amounts are currently believed to be in excess of \$70,000.00 and will increase in the future;

5. Provide the plaintiff with compensation for her non-monetary loss, which she has estimated to be in excess of \$500,000.00 at this time, and may increase in the future.

6. Order the defendant Humberto “Bert” García to pay punitive damages in an amount in excess of \$250,000.00.

7. Provide the plaintiff with reasonable attorneys fees, costs, litigation expenses and applicable interests;

7. Provide all other relief the court deems adequate and just.

A JURY TRIAL is hereby demanded.

Respectfully submitted in San Juan, Puerto Rico this 9th day of June, 2005.

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