

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Cynthia L. Allard)
John M. Anticev)
Gregory K. Baker)
Benjamin Berry,)
Daniel Caldwell,)
Joseph Ciccarelli,)
Donald Codling,)
John J. DiPaolo,)
Egon Dezihan,)
Raul Fernadez,)
Juan Garcia,)
Steven N. Garfinkel,)
Peter A. Galbraith,)
Daniel J. Gorman,)
James Hartnet,)
David Hedges,)
Steven A. Lester,)
Susan Lichacz,)
William A. Matysik,)
Enrique Mercadal,)
Jeff Millslagle,)
Randy Mondar,)
Konrad Motyka,)
Beth O'Brien,)
Manuel Perez, Jr.)
Kenneth Paul Powers)
William S. Reiner,)
Michael J. Saylor,)
David Stone,)
C. Daniel Sturgill,)
Manuel A. Suarez,)
Mark A. Van Balen,)
Dominic Venturi,)
Mark White)
Gregory Zimmer,)
)
)

Civil Action No.:

Plaintiffs,

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| |) |
| |) |
| v. |) |
| |) |
| ERIC H. HOLDER, JR., |) |
| United States Attorney General, |) |
| |) |
| |) |
| |) |
| <u>Defendant.</u> |) |

COMPLAINT
(EMPLOYMENT DISCRIMINATION BASED UPON AGE)

INTRODUCTION

1. Plaintiffs are current or retired FBI Agents who served as GS-14 Squad Supervisors in various FBI Field Offices when the FBI adopted a policy that forced them to either step down to Grade 13 positions or be involuntarily transferred to different offices. Plaintiffs contend that the FBI initiated the policy because of a perception by FBI managers that older Agents who had held a supervisory position for several years had become stagnant and needed to be replaced with younger Agents. As a result of the FBI's policy older agents were forced to: (1) retire prematurely, (2) accept demotions with a loss of pay, and/or (3) undergo severe personal and financial hardship, including family separation, by moving to an office distant from their homes while the FBI replaced them with younger Agents. Plaintiffs, who have exhausted their administrative remedies by timely filing administrative complaints of discrimination with the FBI, bring this civil action pursuant to the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 633a.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this civil action under the ADEA. Plaintiffs have exhausted administrative remedies by filing an administrative charge of discrimination more than 180 days before filing this action.

VENUE

3. Pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3), venue is proper in this judicial district as the FBI is located in the District of Columbia and the acts of discrimination complained of took place in the District of Columbia, and plaintiffs' personnel records are maintained by defendant in the District of Columbia.

PARTIES

4. Plaintiffs are current or retired FBI Agents who served as GS-14 Supervisory Special Agents in various FBI Field Offices who were more than 40 years of age when the defendant acted to their detriment.

5. Defendant Eric H. Holder, Jr., is the Attorney General of the United States. As such, Mr. Holder is the agency head of the FBI and is responsible for the personnel actions, omissions and practices thereof. As such, Mr. Holder is here sued only in his official capacity as head of the FBI. The FBI/Department of Justice had more than 500 employees in at least 20 calendar weeks during the past year.

STATEMENT OF FACTS

6. As of June 2004, plaintiffs were FBI Agents serving as Grade 14, Supervisory Special Agents and squad supervisors at various FBI Field Offices in the United States.

7. Sometime on or after June 2004 plaintiffs were informed that the FBI was adopting a Field Office Supervisors Term Limit Policy whereby senior agents assigned to grade 14 Field Supervisory positions were forced to either retire, accept reassignments in other offices or step down to grade 13 positions. For most Agents these involuntary transfers would have caused extreme hardship. For example, Agent Zimmer whose child had serious medical problems and who had a long term successful doctor-patient relationship with his treating physician would have had to interrupt his child's medical treatment. Even though the FBIHQ Health Unit agreed that his child should not move due to his medical condition, the FBI refused to exempt Agent Zimmer from the policy. When plaintiffs accepted the Grade 14 Field Office Supervisor positions, they were not told that they would face demotion in five years, as the longstanding practice in the FBI allowed Field Supervisor to remain in their positions indefinitely.

8. At the time the policy was adopted, FBI management knew that all of the supervisors subjected to the term policy would be over the age of 40. Indeed, data accumulated by the FBI show that the term limit policy would have a disproportionate impact on Agents who were more than 40 years of age. In fact, the data show that 100% of the 278 employees affected by the policy at the same time as plaintiffs were over the age of 40.

9. The term limit policy mandated that all Field Office Supervisors were to serve a maximum of five years. Those supervisors in place as of June 3, 2004, were given a grace period depending on when they were initially assigned. At the end of their five-year term, Field Office Supervisors had to either accept reassignment to another office or step down to a GS-13 investigative position within their division. Because the FBI knew that this policy would

adversely effect only Agents who were more than 40 years of age, the decision to implement it constitutes intentional discrimination.

10. The FBI has engaged in a number of other personnel practices that disfavor older employees. For example, after displacing hundreds of older agents, the FBI modified the policy to allow the younger agents who replaced them to stay in place for seven years.

11. In addition, at the same time the FBI was demoting older Agents, FBI Human Resources Director, Donald Packham, canvassed all 56 field offices for the names of three young agents who exhibited management potential. The FBI did not canvass for the names of three agents with management potential; they specifically sought young agents.

12. And, at the same time, the FBI was forcing out front-line supervisors for continued growth and development, they were reducing the standards for younger agents to become supervisors. In 2005, the FBI implemented an 18-month TDY that allowed agents to accept a TDY assignment to FBIHQ and receive full headquarters credit. Prior to 2005, the front line supervisor had to accept a two-year assignment to FBIHQ and completely relocate to the FBIHQ before receiving their HQ supervisory credit. Also, a supervisor had to be in the field for one year prior to requesting to participate in inspections. Approximately in 2006, the FBI changed that policy to allow supervisors at FBIHQ (with no field experience) to start doing inspections of the field after one year at FBIHQ. About this time the FBI also lowered the standard for a younger agent to become a relief supervisor to two years experience. Essentially, the day an agent came off probation, they were now eligible to become a relief supervisor. Further, the FBI lowered the requirement for an agent to apply for supervisory positions to three years. These policy changes by the FBI do not expand growth and development for younger

agents, but in fact reduce their requirements to become supervisors. Although the FBI has claimed that it gave senior agents options for a new career path, these options did not include a reduction of requirements for promotion nor did it create any financial incentives like the 18-month TDY offered to younger agents.

13. In addition, the Supervisory term limit policy only applies to Supervisory Special Agents. Supervisory Intelligence Analysts (SIA), who were also Grade 14 front-line supervisors but are a much younger group than the SSA's, were not exposed to a term limit policy. The SIA position was created several years after 9/11. Most of these positions were filled by individuals in their 20s and 30s.

STATEMENT OF CLAIM

14. Defendant's policy forcing older Grade 14 FBI Agents to leave positions where they were successfully serving constitutes discrimination based upon age in violation of the Age Discrimination in Employment Act of 1967.

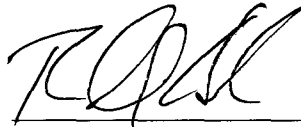
15. As a direct and proximate result of this unlawful discrimination and retaliation, plaintiffs have suffered and continue to suffer economic losses, lost pay and benefits, diminished pension benefits, lost career benefits and lost career opportunities, damage in the form of emotional distress, pain and suffering, as well as personal and professional humiliation and career damage.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs prays that this Court enter judgment in their favor and against defendants on all claims brought herein and provide them with the following relief:

- (a) order defendant to retroactively restore plaintiffs to their Grade supervisory positions with back pay and other benefits;
- (b) award plaintiffs liquidated damages in an amount equal to their pay losses;
- (c) enjoin defendant from further discriminating or retaliating against plaintiffs;
- (d) award plaintiff the costs of bringing and maintaining this civil action and the administrative charges that preceded it, including reasonable attorneys' fees, pursuant to 42 U.S.C. 2000e-5(k); and
- (e) award plaintiffs such other and further relief as the interests of justice may require.

Respectfully submitted,



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