

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**JUAN A. CURBELO and  
WILLIAM H. LEAFSTONE, JR.,**

**Plaintiffs,**

**vs.**

**No.**

**DAVID V. AGUILAR, Border Patrol Chief, and  
ROBERT W. GILBERT, Chief Patrol Agent – Tucson Sector,  
in their official capacities,**

**Defendants.**

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

PLAINTIFFS JUAN A. CURBELO and WILLIAM H. LEAFSTONE, JR., through the undersigned counsel, bring this action for injunctive and declaratory relief. As alleged with greater particularity below, Plaintiffs allege that, since August 2007, Defendants have unlawfully suspended Plaintiffs' enforcement authority, removed their badges and authority to carry firearms, and placed them on administrative duties, in violation of Plaintiffs' First Amendment rights. Specifically, Defendants took action against Agents Curbelo and Leafstone after they spoke out against the unlawful practice of "shotgunning" traffic and other related misconduct by other Border Patrol employees.

## **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, *Larson v. Domestic Foreign Commerce Corp.*, 337 U.S. 682 (1949), *Dugan v. Rank*, 372 U.S. 609 (1963), and federal common law.
2. This action seeks injunctive relief, 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 District of Arizona.
4. Venue of the Court is appropriate under 28 U.S.C. § 1391.

## **PARTIES**

5. Plaintiff Juan A. Curbelo is and was at all times relevant a Border Patrol agent. He resides in Douglas, Arizona.
6. William H. Leafstone, Jr. is and was at all times relevant a Border Patrol agent. He resides in Douglas, Arizona.
7. Defendant David V. Aguilar is and was at all times relevant the Chief of the Office of Border Patrol. The Office of Border Patrol is an office of U.S. Customs and Border Protection within the U.S. Department of Homeland Security. Defendant Aguilar is sued in his official capacity.
8. Defendant Robert W. Gilbert is and was at all times relevant the Chief Patrol Agent of the Tucson Sector of the Border Patrol. Upon information and belief, Defendant Gilbert resides in

Tucson, Arizona. He is sued in his official capacity.

### FACTS

9. Plaintiffs Curbelo and Leafstone have been employed as Border Patrol agents for approximately twelve years. Agent Curbelo has served in a supervisory capacity for approximately seven years. Agent Leafstone has served in a supervisory capacity for approximately five and a half years.

10. Agents Curbelo and Leafstone are exemplary Border Patrol agents who have received awards and commendations by Border Patrol for their hard work and dedication in bringing drug smugglers to justice.

11. On or about December 6, 2006, Agent Curbelo's ex-wife, Concepcion Curbelo, and his minor children who accompanied her, were stopped by a Border Patrol agent near Rodeo, New Mexico.

12. After the stop, Ms. Curbelo was arrested for allegedly possessing and trafficking marijuana. She and the Curbelo children were transported to the Border Patrol Station at Lordsburg, New Mexico.

13. The Curbelo children were detained for over two hours before Agent Curbelo was contacted about the arrest. Shortly thereafter, Agent Curbelo drove from Douglas, Arizona to Lordsburg, New Mexico, to pick up his children.

14. Ms. Curbelo was charged with possession of marijuana with intent to distribute. *U.S.A. v. Curbelo*, No. CR 07-958 WJ (D.N.M.). She was represented in her criminal matter by federal public defenders based in Las Cruces, New Mexico.

15. Shortly after December 6, 2006, Agent Curbelo received a copy of the incident report regarding his ex-wife's arrest. Curbelo read the report and found numerous discrepancies.

16. Agent Curbelo and Agent Leafstone believed that the report contained numerous inconsistencies that were an effort to cover up an obvious lack of reasonable suspicion for stopping Curbelo's ex-wife.

17. In particular, the stop of the ex-wife appeared to be one where a Border Patrol agent "shotguns traffic." "Shotgunning traffic" is slang used by Border Patrol agents to refer to the stopping of vehicles without reasonable suspicion for the stops.

18. The practice of "shotgunning traffic" violates the Fourth Amendment to the United States Constitution because agents who "shotgun traffic" are stopping vehicles without reasonable suspicion.

19. Additionally, Agent Curbelo's daughter overheard the agent who arrested Ms. Curbelo being told by other agents to change the way the incident report was written.

20. In January 2007, because of the Lordsburg office's failure to contact him regarding the detention of his minor children and his belief that the incident report regarding his ex-wife contained fabrications, Agent Curbelo contacted Len Platt, the Office of the Inspector General ("OIG").

21. Agent Curbelo complained to OIG about problems with the traffic stop and the incident report including: the apparent fabrication about whether Ms. Curbelo's vehicle was "riding low;" the failure to notify dispatch of the stop; dishonesty about the availability of radio reception in the area; the altering of Ms. Curbelo's story; the practice of "shotgunning." Agent Curbelo also

complained about the detention of his children without notifying him and the failure of the Lordsburg station to register the cell phones belonging to Ms. Curbelo and her children as evidence or property.

22. Agent Curbelo also spoke to his supervisors about his concerns in February 2007.

23. Agent Curbelo also spoke with his ex-wife's federal public defender in New Mexico about his concerns.

24. In early 2007, Agent Curbelo continued to press his concerns with OIG about how the Lordsburg Station operated with respect to the traffic stop of his ex-wife and the detention of his minor children. Mr. Platt told Agent Curbelo that Curbelo was jeopardizing his career by reporting the allegations of misconduct.

25. Agent Leafstone shared Agent Curbelo's opinions about the injustices Curbelo reported to OIG. Accordingly, Agent Leafstone agreed to testify in Las Cruces, New Mexico at a suppression hearing in Agent Curbelo's ex-wife criminal case on August 22, 2007.

26. At the suppression hearing, Agent Leafstone testified regarding the practice of "shotgunning traffic" and to other related matters.

27. Thereafter, the judge in Ms. Curbelo's case held that the traffic stop of Ms. Curbelo was not supported by evidence of reasonable suspicion.

28. On or about August 23, 2007, Defendant Gilbert directed that Agent Curbelo's credentials and enforcement authority be suspended and directed Curbelo to turn in his badge and firearm on August 24, 2007.

29. When Agent Leafstone returned to work on August 26, 2007, Defendant Gilbert also

directed that Agent Leafstone's credentials and enforcement authority be suspended and directed him to turn in his badge and firearm.

30. Agents Curbelo and Leafstone were informed that Defendant Gilbert had taken the action against them because they had allegedly divulged sensitive Border Patrol information.

31. Agents Curbelo and Leafstone deny divulging sensitive information.

32. Since August 2007, Agent Leafstone has been assigned to a border-fence-building crew, where he labored on the construction of portions of the border fence in Arizona.

33. Since August 2007, Agent Curbelo has been assigned to a border-fence-building crew, except for two months when he was placed on facilities maintenance. During the time he was serving on facilities maintenance, his duties included: painting guardrails and posts, mowing a leach field, unclogging sewage lines, and cleaning mud off the vehicle wash rack.

34. To date, the action taken against these agents has lasted longer than eight months.

35. On April 29, 2008, counsel for Plaintiffs wrote Defendant Aguilar asking him to reinstate Plaintiffs to their regular supervisory positions with their full job responsibilities.

36. On May 8, 2008, Defendant Aguilar, through an Employee Relations Specialist, refused to comment on Agents Curbelo and Leafstone's cases.

37. Agents Curbelo and Leafstone spoke out on a matter of public concern, to wit: the unconstitutional conduct of the Lordsburg station Border Patrol agents.

38. To date, Agents Curbelo and Leafstone remain on the aforementioned administrative duties.

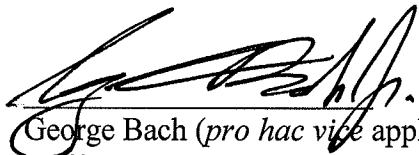
**CAUSE OF ACTION**  
**VIOLATIONS OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION**

39. Plaintiffs hereby incorporate by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.
40. Defendants' actions had and continue to have an unlawful chilling effect on Plaintiffs' right to free speech secured by U.S. Const. amend I.
41. Defendants' have unlawfully retaliated against Plaintiffs' for exercising their right to free speech secured by U.S. Const. amend I.
42. Defendants' actions have violated Plaintiff Leafstone's right to appear and give true testimony in a legal proceeding, a right secured by secured by U.S. Const. amend I.
43. Defendants' position is not substantially justified and no special circumstances exist such that would make an award of Plaintiffs' attorney fees, expenses, and costs unjust.

WHEREFORE Plaintiffs respectfully request:

- A. That the Court declare that Defendants' actions violate Plaintiffs' rights secured by U.S. Const. amend. I;
- B. That, because the infringement of First Amendment rights constitute irreparable harm for which there is no adequate remedy at law, the Court enter a preliminary and permanent injunction reinstating Plaintiffs to the positions and full job responsibilities they held on August 21, 2007;
- C. Plaintiffs' 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
- D. Any other further relief as may be just and equitable.

Respectfully submitted,

 5/20/08

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