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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

21-5238

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JAHINNSLERTH OROZCO,

*Plaintiff-Appellant,*

—v.—

MERRICK B. GARLAND, Attorney General of the United States, in his official capacity,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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**JOINT APPENDIX**

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*Assistant United States Attorney*  
R. CRAIG LAWRENCE  
*Assistant United States Attorney*  
UNITED STATES ATTORNEY'S OFFICE  
CIVIL DIVISION  
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**U.S. District Court**  
**District of Columbia (Washington, DC)**  
**CIVIL DOCKET FOR CASE #: 1:19-cv-03336-EGS**

OROZCO v. WRAY et al  
Assigned to: Judge Emmet G. Sullivan  
Cause: 28:794 Rehabilitation Act

Date Filed: 11/05/2019  
Date Terminated: 09/30/2021  
Jury Demand: Plaintiff  
Nature of Suit: 442 Civil Rights: Jobs  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**JAHINNSLERTH OROZCO**

represented by **Timothy Ryan Elder**  
TRE LEGAL PRACTICE  
4226 Castanos Street  
Fremont, CA 94536  
415-873-9199  
Email: [telder@trelegal.com](mailto:telder@trelegal.com)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Albert Elia**  
TRE LEGAL PRACTICE  
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Fremont, CA 94536  
415-873-9199  
Fax: 415-952-9898  
Email: [aelia@trelegal.com](mailto:aelia@trelegal.com)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**CHRISTOPHER A. WRAY**  
*Director of the Federal Bureau of*  
*Investigation, in his official capacity*  
*TERMINATED: 01/27/2020*

represented by **Alan Burch**  
DOJ-USAO  
Eousa  
3 Constitution Square  
175 N Street, NE  
Washington, DC 20002  
202-252-5875  
Email: [alan.burch@usdoj.gov](mailto:alan.burch@usdoj.gov)  
*TERMINATED: 09/24/2020*

**Defendant**

**WILLIAM P. BARR**  
*Attorney General of the United States, in*  
*his official capacity*

represented by **Robert Aaron Caplen**  
UNITED STATES ATTORNEY'S  
OFFICE  
555 4th Street, NW

Washington, DC 20530

(202) 252-2523

Email: [robert.caplen@usdoj.gov](mailto:robert.caplen@usdoj.gov)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

**Alan Burch**

(See above for address)

TERMINATED: 09/24/2020

Date Filed	#	Page	Docket Text
11/05/2019	<u>1</u>		COMPLAINT against All Defendants with Jury Demand ( Filing fee \$ 400 receipt number ADCDC-6509122) filed by JAHINNSLERTH OROZCO. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons)(Elia, Albert) (Entered: 11/05/2019)
11/06/2019			Case Assigned to Judge Emmet G. Sullivan. (zrdj) (Entered: 11/06/2019)
11/06/2019	<u>2</u>		SUMMONS (2) Issued Electronically as to WILLIAM P. BARR, CHRISTOPHER A. WRAY (Attachments: # <u>1</u> Notice and Consent)(zrdj) (Entered: 11/06/2019)
11/13/2019	<u>3</u>		STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 11/13/19. (Attachment: Exhibit 1) (mac) (Entered: 11/13/2019)
11/15/2019	<u>4</u>		ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. WILLIAM P. BARR served on 11/15/2019; CHRISTOPHER A. WRAY served on 11/15/2019 (Elia, Albert) Modified on 11/20/2019 (jf). (Entered: 11/15/2019)
11/20/2019			NOTICE OF CORRECTED DOCKET ENTRY: re <u>4</u> Summons Returned Executed as to Federal Defendant was entered in error and counsel was instructed to refile said pleading. (eg) (Entered: 11/20/2019)
11/22/2019	<u>5</u>		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. CHRISTOPHER A. WRAY served on 11/12/2019 (Elia, Albert) (Entered: 11/22/2019)
11/22/2019	<u>6</u>		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 11/12/2019. (Elia, Albert) (Entered: 11/22/2019)
11/22/2019	<u>7</u>		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 11/15/2019. Answer due for ALL FEDERAL DEFENDANTS by 1/14/2020. (Elia, Albert) (Entered: 11/22/2019)
11/22/2019	<u>8</u>		MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Timothy Elder, Filing fee \$ 100, receipt number ADCDC-6588459. Fee Status: Fee Paid. by JAHINNSLERTH OROZCO (Attachments: # <u>1</u> Declaration of Timothy Elder, # <u>2</u> Text of Proposed Order)(Elia, Albert) (Entered: 11/22/2019)

11/25/2019			MINUTE ORDER granting <u>8</u> Motion for Leave to Appear Pro Hac Vice. Attorney Timothy R. Elder is hereby admitted pro hac vice to appear in this matter. <b>Counsel should register for e-filing via PACER and file a notice of appearance pursuant to LCvR 83.6(a). Click for instructions.</b> Signed by Judge Emmet G. Sullivan on 11/25/2019. (lcegs3) (Entered: 11/25/2019)
11/29/2019	<u>9</u>		NOTICE of Appearance by Timothy Ryan Elder on behalf of JAHINNSLERTH OROZCO (Elder, Timothy) (Entered: 11/29/2019)
12/20/2019	<u>10</u>		NOTICE of Appearance by Alan Burch on behalf of All Defendants (Burch, Alan) (Entered: 12/20/2019)
01/13/2020	<u>11</u>		MOTION to Dismiss by WILLIAM P. BARR, CHRISTOPHER A. WRAY (Attachments: # <u>1</u> Exhibit Letter of Aug. 7, 2019)(Burch, Alan) (Entered: 01/13/2020)
01/27/2020	<u>12</u>		AMENDED COMPLAINT against WILLIAM P. BARR with Jury Demand filed by JAHINNSLERTH OROZCO. (Attachments: # <u>1</u> Exhibit Redline comparison of the original and amended pleading)(Elia, Albert) (Entered: 01/27/2020)
01/28/2020			MINUTE ORDER denying as moot <u>11</u> Defendants' Motion to Dismiss in light of <u>12</u> Plaintiff's First Amended Complaint. Defendants shall file the answer or otherwise respond to the First Amended Complaint by no later than February 17, 2020. Signed by Judge Emmet G. Sullivan on 1/28/2020. (lcegs3) (Entered: 01/28/2020)
01/28/2020			Set/Reset Deadlines: Defendants Answer Or Otherwise Response To The First Amended Complaint due by 2/17/2020.(mac) (Entered: 01/28/2020)
01/28/2020	<u>13</u>		MOTION to Dismiss by WILLIAM P. BARR (Attachments: # <u>1</u> Exhibit FBI letter dated August 7, 2019)(Burch, Alan) (Entered: 01/28/2020)
02/11/2020	<u>14</u>		Memorandum in opposition to re <u>13</u> MOTION to Dismiss filed by JAHINNSLERTH OROZCO. (Attachments: # <u>1</u> Declaration of Albert Elia with Exhibits A and B)(Elia, Albert) (Entered: 02/11/2020)
02/18/2020	<u>15</u>		REPLY to opposition to motion re <u>13</u> MOTION to Dismiss filed by WILLIAM P. BARR. (Burch, Alan) (Entered: 02/18/2020)
09/14/2020	<u>16</u>		NOTICE OF SUPPLEMENTAL AUTHORITY by JAHINNSLERTH OROZCO (Attachments: # <u>1</u> Exhibit)(Elia, Albert) (Entered: 09/14/2020)
09/22/2020	<u>17</u>		NOTICE of Appearance by Robert Aaron Caplen on behalf of WILLIAM P. BARR (Caplen, Robert) (Entered: 09/22/2020)
09/24/2020	<u>18</u>		RESPONSE re <u>16</u> NOTICE OF SUPPLEMENTAL AUTHORITY <i>re decision in Nat'l Ass'n of the Deaf</i> filed by WILLIAM P. BARR. (Burch, Alan) (Entered: 09/24/2020)
09/24/2020	<u>19</u>		NOTICE OF WITHDRAWAL OF APPEARANCE as to WILLIAM P. BARR. Attorney Alan Burch terminated. (Burch, Alan) (Entered: 09/24/2020)
06/24/2021	<u>20</u>		NOTICE OF SUPPLEMENTAL AUTHORITY by JAHINNSLERTH OROZCO (Attachments: # <u>1</u> Exhibit)(Elia, Albert) (Entered: 06/24/2021)
09/30/2021	<u>21</u>		

		ORDER granting <u>13</u> Motion to Dismiss. Signed by Judge Emmet G. Sullivan on 9/30/2021. (lcegs1) (Entered: 09/30/2021)
10/01/2021	<u>22</u>	MEMORANDUM OPINION. Signed by Judge Emmet G. Sullivan on 10/1/2021. (lcegs1) (Entered: 10/01/2021)
10/28/2021	<u>23</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>21</u> Order on Motion to Dismiss by JAHINNSLERETH OROZCO. Filing fee \$ 505, receipt number ADCDC-8830177. Fee Status: Fee Paid. Parties have been notified. (Elia, Albert) (Entered: 10/28/2021)

**CIVIL COVER SHEET**

JS-44 (Rev. 6/17 DC)

<p><b>I. (a) PLAINTIFFS</b>                  JAHINNSLERTH OROZCO                  13284 Kenny Road                  Woodbridge, VA 22193</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p><b>DEFENDANTS</b>                  CHRISTOPHER A. WRAY, in his official capacity, 935                  Pennsylvania Ave, NW, Washington, D.C. 20535; WILLIAM                  P. BARR, in his official capacity, 950 Pennsylvania Ave, NW,                  Washington, D.C. 20530</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)                  ALBERT ELIA (DC BAR #1032028)Ä                  TRE Legal PracticeÄÄ                  1155 Market Street, 10th FloorÄÄ                  San Francisco, CA 94103 (415) 873-9199ÄÄ</p>	<p>ATTORNEYS (IF KNOWN)                  U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIAÄ                  555 Fourth Street, N.W.Ä                  Washington, D.C. 20530</p>

<p><b>II. BASIS OF JURISDICTION</b>                  (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff      <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant      <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input checked="" type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input checked="" type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input checked="" type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input checked="" type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane  <input type="checkbox"/> 315 Airplane Product Liability  <input type="checkbox"/> 320 Assault, Libel &amp; Slander  <input type="checkbox"/> 330 Federal Employers Liability  <input type="checkbox"/> 340 Marine  <input type="checkbox"/> 345 Marine Product Liability  <input type="checkbox"/> 350 Motor Vehicle  <input type="checkbox"/> 355 Motor Vehicle Product Liability  <input type="checkbox"/> 360 Other Personal Injury  <input type="checkbox"/> 362 Medical Malpractice  <input type="checkbox"/> 365 Product Liability  <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability  <input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u>  <input type="checkbox"/> 861 HIA (1395ff)  <input type="checkbox"/> 862 Black Lung (923)  <input type="checkbox"/> 863 DIWC/DIWW (405(g))  <input type="checkbox"/> 864 SSID Title XVI  <input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u>  <input type="checkbox"/> 891 Agricultural Acts  <input type="checkbox"/> 893 Environmental Matters  <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><input type="radio"/> <b>E. General Civil (Other)</b>      OR      <input type="radio"/> <b>F. Pro Se General Civil</b></p>			
<p><u>Real Property</u>  <input type="checkbox"/> 210 Land Condemnation  <input type="checkbox"/> 220 Foreclosure  <input type="checkbox"/> 230 Rent, Lease &amp; Ejectment  <input type="checkbox"/> 240 Torts to Land  <input type="checkbox"/> 245 Tort Product Liability  <input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u>  <input type="checkbox"/> 370 Other Fraud  <input type="checkbox"/> 371 Truth in Lending  <input type="checkbox"/> 380 Other Personal Property Damage  <input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u>  <input type="checkbox"/> 422 Appeal 27 USC 158  <input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u>  <input type="checkbox"/> 535 Death Penalty  <input type="checkbox"/> 540 Mandamus &amp; Other  <input type="checkbox"/> 550 Civil Rights  <input type="checkbox"/> 555 Prison Conditions  <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u>  <input type="checkbox"/> 820 Copyrights  <input type="checkbox"/> 830 Patent  <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application  <input type="checkbox"/> 840 Trademark</p>	<p><u>Federal Tax Suits</u>  <input type="checkbox"/> 870 Taxes (US plaintiff or defendant)  <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u>  <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881  <input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u>  <input type="checkbox"/> 375 False Claims Act  <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))  <input type="checkbox"/> 400 State Reapportionment  <input type="checkbox"/> 430 Banks &amp; Banking  <input type="checkbox"/> 450 Commerce/ICC Rates/etc.  <input type="checkbox"/> 460 Deportation</p>	<p><input type="checkbox"/> 462 Naturalization Application  <input type="checkbox"/> 465 Other Immigration Actions  <input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organization  <input type="checkbox"/> 480 Consumer Credit  <input type="checkbox"/> 490 Cable/Satellite TV  <input type="checkbox"/> 850 Securities/Commodities/Exchange  <input type="checkbox"/> 896 Arbitration  <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision  <input type="checkbox"/> 950 Constitutionality of State Statutes  <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input checked="" type="radio"/> <b>H. Employment Discrimination</b>  <input checked="" type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Violations of Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: Nov. 5, 2019	SIGNATURE OF ATTORNEY OF RECORD: /s/ Albert Elia #1032028
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JAHINNSLERTH OROZCO**, 13284 Kenny  
Road, Woodbridge, VA 22193,

Plaintiff,

v.

**WILLIAM P. BARR**, Attorney General of  
the United States, in his official capacity, 950  
Pennsylvania Avenue, NW, Washington, D.C.  
20530,

Defendant.

Case No. 1:19-cv-3336-EGS

**DEMAND FOR JURY TRIAL**

**FIRST AMENDED COMPLAINT**

1. This suit seeks to put an end to civil rights injuries that the Federal Bureau of Investigations (“FBI”), a division of the Department of Justice headed by Attorney General William P. Barr, has committed in violation of Section 508 of the Rehabilitation Act of 1973 (Section 508), 29 U.S.C. § 794d. The FBI has a policy and practice of procuring, maintaining, and using desktop, mobile, and web-based software applications without regard for the longstanding accessibility standards required by Section 508. The FBI’s failure to comply with these standards prevents blind employees such as Plaintiff from effectively and independently using screen access software to access critical systems that the FBI requires use of for employment.
2. The FBI has procured, maintained, and is using software systems that Plaintiff Jahinnslerth Orozco, a blind federal employee, and other disabled federal employees, cannot use to access information in a manner that is comparable to the access enjoyed by nondisabled colleagues. Blind employees use many accessible computer software

programs and websites by deploying keyboards in conjunction with screen access software that converts visual screen information into synthesized speech or into braille through a connected refreshable display. Unless the design of software applications follows well-established accessibility standards, blind persons may be unable to gain equal access to and use of that technology.

3. Despite Mr. Orozco's repeated reports of inaccessible technology and despite his ongoing attempts to get the FBI to provide accessible technology as required by the law, the FBI continues to develop, procure, maintain, and use inaccessible electronic and information technology. Mr. Orozco has exhausted administrative remedies with respect to these violations.
4. Mr. Orozco faces irreparable harm, as the FBI's use of this inaccessible electronic and information technology has the effect of limiting Mr. Orozco's employment opportunities and his ability to do his job effectively. Rather than being able to work alongside his sighted colleagues, Mr. Orozco is relegated to relying upon alternative accommodations and methods that do not allow him to independently use the FBI's critical software systems.
5. Mr. Orozco seeks declaratory and injunctive relief and reasonable attorneys' fees and costs, as well as other appropriate relief as determined by this court, for the FBI's violations of his rights.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1343, and 2201. This action is authorized and instituted pursuant to subsection (f)(3) of Section 508, 29 U.S.C. § 794d(f)(3), which incorporates by reference Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e)(3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

7. Defendant's primary place of business is in Washington, D.C., where their headquarters are located.
8. The acts and injuries complained of herein occurred in Washington, D.C.
9. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b) because Defendant has their headquarters in this district, because Defendant does business in this district, and because the acts complained of that constitute violations of Section 508 occurred in this district.

### **PARTIES**

10. Plaintiff Jahinnslerth Orozco is a resident of Arlington, Virginia and is employed full time in the District of Columbia.
11. Mr. Orozco is blind and is thus an individual with a disability as defined by Section 7 of the Rehabilitation Act of 1973, 29 U.S.C. § 705(20). As a blind computer user, Mr. Orozco uses screen access software that converts digital information to synthesized speech.
12. Mr. Orozco is currently employed as an Intelligence Analyst for the FBI. He has worked there as an analyst since July 15, 2012.
13. The FBI is a division of the U.S. Department of Justice, an executive agency of the United States Government subject to the accessibility requirements of Section 508, 29 U.S.C. § 794d(a)(1).
14. The FBI and the Department of Justice have their headquarters and principal places of business in Washington, D.C.
15. William P. Barr is the current Attorney General of the United States, and is sued in his official capacity.

### **ADMINISTRATIVE PROCEDURES**

16. On April 29, 2019, Plaintiff Jahinnslerth Orozco timely filed a complaint alleging violations of Section 508 with the FBI, as prescribed by 29 U.S.C. § 794d(f)(2), 28 C.F.R.

§ 39.170(d)(4), and 29 C.F.R. § 1614.106(a).

17. On May 9, 2019, upon receiving notice that his complaint had been accepted, Mr. Orozco filed a courtesy copy of his complaint with the Accessibility Program Office of the Office of the Chief Information Officer (“OCIO”).
18. By letter dated August 7, 2019, the FBI issued a final agency decision to dismiss Mr. Orozco’s complaint filed subject to the requirements of 29 U.S.C. § 794d(f)(2), 28 C.F.R. § 39.170(d)(4), and 29 C.F.R. § 1614.106(a), providing notice that Mr. Orozco had 90 days to file a civil action.
19. It also directed Mr. Orozco to speak with the OCIO regarding the status of his complaint.
20. To date, Mr. Orozco has not received a report of investigation of his complaint from anyone at the FBI.
21. The FBI must furnish such a report within 180 days of receiving such a complaint. 28 C.F.R. §§ 39.170(f)(1), (g)(1)-(3), & (h); 29 C.F.R. §§ 1614.108(e) & (f).
22. 180 days have elapsed since Mr. Orozco filed his complaint with the FBI.
23. Mr. Orozco has exhausted all administrative procedures required before filing this action under 29 C.F.R. §§ 1614.108(g) & 1614.407(b).
24. Mr. Orozco is further empowered to file this action directly under 29 U.S.C. § 794d(f)(3).
25. All conditions precedent to Mr. Orozco’s filing this action have been fulfilled.

#### **STATEMENT OF FACTS**

26. The FBI uses several web-based and other software systems that are inaccessible to blind employees who use screen access software.
27. Sentinel is a web-based case management system developed and used by the FBI.
28. Intelligence Analysts and other employees use Sentinel to review and manage case files,

create and review official communications, and process incoming leads.

29. Because Sentinel is inaccessible, Mr. Orozco cannot perform these vital functions efficiently and independently.
30. The FBI could have developed Sentinel to conform to Section 508 standards that would have made it accessible to Mr. Orozco and other blind FBI employees, but did not do so.
31. The FBI could have provided Mr. Orozco and other blind employees with an alternative means of accessing Sentinel that allowed them to independently use the information and data involved, but did not do so.
32. The Enterprise Process Automation System (“EPAS”) is a web-based software system developed and used by the FBI.
33. Mr. Orozco and other FBI employees use EPAS to perform administrative tasks such as travel requests, expense reimbursement, security alerts, access to applications and promotions, and outside work alerts.
34. Many of these functions require Mr. Orozco and other FBI employees to enter sensitive personal information.
35. Because EPAS is inaccessible, Mr. Orozco cannot perform these required functions efficiently and independently.
36. The FBI could have developed EPAS to conform to Section 508 standards that would have made it accessible to Mr. Orozco and other blind FBI employees, but did not do so.
37. The FBI could have provided Mr. Orozco and other blind employees with an alternative means of accessing EPAS that allowed them to independently use the information and data involved, but did not do so.
38. The FBI procured and uses web-based analytics software from Palantir Technologies (“Palantir”).

39. FBI analysts use Palantir to tie disparate intelligence resources together, search across and manage those resources, and track relationships among disparate entities.
40. Because Palantir is inaccessible, Mr. Orozco cannot perform these vital functions efficiently and independently.
41. The FBI could have either required Palantir to make its software conform to Section 508 standards that would have made it accessible to Mr. Orozco and other blind FBI employees, or procured or developed similar software that conformed to those standards, but did not do so.
42. The FBI could have provided Mr. Orozco and other blind employees with an alternative means of accessing Palantir that allowed them to independently use the information and data involved, but did not do so.
43. The Global Mission Analytics (“GMAN”) system is a web-based software system developed and used by the FBI.
44. FBI analysts use GMAN to search across internal and external intelligence resources.
45. Because GMAN is inaccessible, Mr. Orozco cannot perform these vital functions efficiently and independently.
46. The FBI could have developed GMAN to conform to Section 508 standards that would have made it accessible to Mr. Orozco and other blind FBI employees, but did not do so.
47. The FBI could have provided Mr. Orozco and other blind employees with an alternative means of accessing GMAN that allowed them to independently use the information and data involved, but did not do so.
48. The FBI uses Virtual Private Networking (“VPN”) misattribution software to enable analysts to securely and anonymously access external data sources without identifying that access as coming from the FBI.

49. Because the VPN software is inaccessible, Mr. Orozco cannot independently access those data sources, as required for efficient and effective assessment and analysis of intelligence information.
50. The FBI could have developed or procured VPN software that conformed to Section 508 standards that would have made it accessible to Mr. Orozco and other blind FBI employees, but did not do so.
51. The FBI could have provided Mr. Orozco and other blind employees with an alternative means of securely and anonymously accessing external data sources that allowed them to independently use the information and data involved, but did not do so.
52. The FBI uses secure mobile applications that it developed or procured to run on Android mobile devices.
53. FBI employees use these mobile applications for messaging, calendars, contact management, and other typical and specialized mobile application functions.
54. Because these secure mobile applications are inaccessible, Mr. Orozco and other blind FBI employees cannot independently access their functions, as their sighted colleagues can.
55. The FBI could have developed or procured secure mobile applications that conformed to Section 508 standards that would have made them accessible to Mr. Orozco and other blind FBI employees, but did not do so.
56. The FBI could have provided Mr. Orozco and other blind employees with an alternative means of accessing these secure mobile applications that allowed them to independently use the information and data involved, but did not do so.
57. The FBI uses other software systems that it developed or procured for administrative and job-specific functions.
58. Because these systems are inaccessible, Mr. Orozco and other blind FBI employees

cannot independently access their functions, as their sighted colleagues can.

59. The FBI could have developed or procured systems that conformed to Section 508 standards that would have made them accessible to Mr. Orozco and other blind FBI employees, but did not do so.
60. The FBI could have provided Mr. Orozco and other blind employees with an alternative means of accessing these systems that allowed them to independently use the information and data involved, but did not do so.
61. The FBI has not implemented adequate and effective processes for determining the Section 508 compliance of the information technology it develops procures, maintains, or uses.
62. The inability by Plaintiff and other disabled federal employees to gain equal access to and use of the services, information and data underlying the systems and applications described herein is ongoing.

## CAUSE OF ACTION

### **COUNT I: Violations of Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d**

63. Plaintiff incorporates by reference all the allegations of facts maintained in the previous paragraphs.
64. The FBI has failed to ensure that the information technology it develops, procures, maintains, or uses allows individuals with disabilities who are Federal employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities, in violation of 29 U.S.C. 794d(a)(1)(A)(i).
65. Because the harm to individuals with disabilities who are Federal employees is ongoing, the FBI's violation of 29 U.S.C. § 794d continues as of the date of the filing of this complaint.



66. Sentinel, EPAS, Palantir, GMAN, and other web-based software systems are web-based intranet applications that present web-based intranet information. As such, they are subject to the requirements of 36 C.F.R. § 1194.22, which applies to web-based intranet and internet information and applications.
67. Those systems, as well as the VPN software, secure mobile applications, and other non-web-based systems are also subject to the requirements of 36 C.F.R. § 1194.21, covering software applications.
68. Those systems and applications contain a variety of access barriers that prevent equal access to and independent use of it by Plaintiff and other blind persons using keyboards and screen access software.
69. The FBI had knowledge of or was deliberately indifferent to the inaccessibility of those systems and applications for blind users and still chose to develop, procure, maintain, or use them.
70. The accessibility standards and requirements under Section 508 are long-standing, well established by regulation, and well-known to the FBI, rendering the policies and conduct complained of either intentional or deliberately indifferent.
71. As a result of these actions, the FBI has deprived Mr. Orozco of the experiences and knowledge afforded to sighted FBI employees.
72. As a result of the FBI's conduct, Mr. Orozco has suffered and will continue to suffer discrimination because of his disability.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Jahinnslerth Orozco respectfully requests that this court:

- a) Issue a declaration of the rights and duties of the respective parties;
- b) Grant a permanent injunction enjoining the FBI from using Sentinel, EPAS, Palantir,

GMAN, its current VPN software and secure mobile applications, or any other electronic and information technology that is not compliant with Section 508 standards unless and until such technology is made compliant with those standards;

- c) Order the FBI to:
  - 1) conduct both automated and user testing of all new and updated technology developed, procured, maintained, or used by the FBI for compliance with Section 508 standards, and
  - 2) correct any problems discovered through such testing to ensure that persons with disabilities have access to information that is equivalent to persons without disabilities;
- d) Order the FBI to adopt and implement standard contract language for technology purchases that requires compliance with Section 508 standards;
- e) Order the FBI to review, update, publicize, and train its employees regarding its processes for employees and members of the public to make Section 508 complaints;
- f) Grant such other injunctive relief as may be appropriate;
- g) Award Mr. Orozco his reasonable attorneys' fees, reasonable expert witness fees, and other costs of this action;
- h) Grant such further relief as the Court deems necessary and proper.

### **JURY DEMAND**

Plaintiff requests a jury trial on all questions of fact raised by this Complaint.

DATED: January 27, 2020

Respectfully submitted,

*/s/ Albert Elia*

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Albert Elia (aelia@trelegal.com)

D.C. Bar No. 1032028

TRE Legal Practice

1155 Market Street, 10th Floor

San Francisco, CA 94103

(415) 873-9199

*Attorneys for Plaintiff Jahinnslerth Orozco*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

	)	
JAHINNSLERTH OROZCO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 19-3336 (EGS)
	)	
WILLIAM P. BARR,	)	
Attorney General of the United States,	)	
	)	
Defendant.	)	
	)	

**MOTION TO DISMISS**

Defendant, William P. Barr, U.S. Attorney General, respectfully asks the Court to dismiss this case pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff asserts a cause of action under Section 508 of the Rehabilitation Act, but he cannot state a claim for which relief may be granted under that statute and his claims are therefore properly dismissed. A memorandum of law in support is attached hereto, along with a proposed order.

Dated: January 28, 2020

Respectfully submitted,

JESSIE K. LIU, D.C. Bar #472845  
United States Attorney for the District of Columbia

DANIEL F. VAN HORN, D.C. Bar #924092  
Assistant United States Attorney

/s/ Alan Burch  
ALAN BURCH, D.C. Bar #470655  
Assistant United States Attorney  
United States Attorney’s Office, Civil Division  
555 Fourth St., NW  
Washington, DC 20530  
(202) 252-2550, alan.burch@usdoj.gov

*Counsel for Defendant*



RECEIVED

U.S. Department of Justice

2019 AUG -8 A 10:49

OFFICE OF EEO AFFAIRS

Washington, D.C. 20535-0001

AUG 7 - 2019  
CERTIFIED

Mr. Timothy R. Elder, Esq.  
TRE Legal Practice  
1155 Market Street, 10<sup>th</sup> Floor  
San Francisco, CA 94103

Complaint of Jahinnslerth S. Orozco  
v. William P. Barr, Attorney General  
Complaint No. FBI-2019-00201

Dear Mr. Elder:

On April 29, 2019, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791(d) et seq., your client, complainant Jahinnslerth Orozco, filed a formal Equal Employment Opportunity (EEO) complaint of discrimination against the Federal Bureau of Investigation (FBI).

Your client alleges that he was discriminated against based on disability (physical) insofar as the FBI has violated Section 508 of the Rehabilitation Act in that he has been required to use both software and other electronic information technology that is inaccessible. This issue was brought to the attention of an EEO Counselor on April 19, 2019. No resolution was reached at that stage. The Notice of Right to File a Discrimination Complaint was issued on April 26, 2019, and your client thereafter filed the instant EEO complaint.

The U.S. Equal Employment Opportunity Commission (EEOC) has jurisdiction over complaints alleging a violation of Section 501 of the Rehabilitation Act, codified at 29 U.S.C. § 791. Specifically, Section 505(a)(1) of the Rehabilitation Act provides that "[t]he remedies, procedures and rights set forth in section 717 of the Civil Rights Act of 1964 ... shall be available, with respect to any complaint under section 791 of

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this title..."<sup>1</sup> In this case, your client's complaint alleges a violation of Section 508 of the Rehabilitation Act, which is codified at 29 U.S.C. § 794(d). Insofar as Section 505(a)(1) does not give the EEOC jurisdiction over violations of Section 794(d), the EEOC has no jurisdiction over Section 508 violations. Accordingly, your client's complaint is properly dismissed for failure to state a claim of discrimination within the federal sector EEO process.

Instead, the appropriate mechanism for addressing your client's concerns is to contact the FBI's Accessibility Program Office, Office of the Chief Information Officer (OCIO), and inquire about the status of your client's pending accessibility complaint. Your client may contact the OCIO directly on FBINET at HQ\_DIV00\_OCIO\_FBI\_ACCESSIBILITY\_PROGRAM@fbinet.fbi.

The federal regulation at 29 C.F.R. § 1614.107 (a)(1) provides, in relevant part:

- (a) Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint:
  - (1) That fails to state a claim under § 1614.103 or § 1614.106(a) or states the same claim that is pending before or has been decided by the agency or Commission[.]

Consequently, it is the decision of the Department of Justice (DOJ) to dismiss your client's EEO complaint in accordance with 29 C.F.R. § 1614.107. This final agency decision is being sent pursuant to 29 C.F.R. § 1614.110.

#### **Notice of Appeal**

Pursuant to 29 C.F.R. § 1614.401 et seq., you and your client are hereby notified that this is the final action of the DOJ in this matter. You have the right to appeal this final action within 30 calendar days of your receipt of this final agency decision. Your appeal must be sent to:

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<sup>1</sup>Section 717 of the Civil Rights Act of 1964 (CRA), 42 U.S.C. Section 2000e-16, provides the EEOC with the authority to enforce the CRA within the federal sector.

Director, Office of Federal Operations  
Equal Employment Opportunity Commission  
P.O. Box 77960  
Washington, D.C. 20013

or hand-delivered to:

Equal Employment Opportunity Commission  
Office of Federal Operations  
Compliance and Control Division  
Federal Sector Programs  
One NOMA Station  
131 M Street, N.E.  
Suite 5SW12G  
Washington, D.C. 20507

or sent via facsimile to:

(202) 663-7022

In addition, a copy of your client's appeal must be sent to:

Office of Equal Employment Opportunity Affairs  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Room 9304  
Washington, D.C. 20535-0001

Your client must certify the date and method by which both the Equal Employment Opportunity Commission (EEOC) and the FBI were notified of the appeal. This certification must be in the appeal or in a separate attached sheet. Enclosed is a Notice of Appeal/Petition (EEOC Form 573) in the event your client decides to appeal the final agency decision.

Your client also has the right to file a civil action in an appropriate United States District Court:

- a) Within 90 days of receipt of the final action on an individual or class complaint if no appeal has been filed;
- b) After 180 days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

- c) Within 90 days of receipt of the Commission's final decision on an appeal;  
or
- d) After 180 days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

Your client must name the person who is the official agency head or department head as the defendant. In this case, your client must name the Attorney General as the defendant. Failure to provide this information may result in the dismissal of your client's civil action.

If your client decides to file a civil action and cannot afford the services of an attorney, he may request that the court appoint an attorney to represent him. Also, the court may permit your client to file the civil action without payment of fees, costs or other security. The granting or denial of the request is within the sole discretion of the court. Filing a request for an attorney does not extend the time in which to file a civil action.

FOR THE DEPARTMENT



Richard Toscano, Director  
Equal Employment Opportunity Staff  
Justice Management Division

**AUG 7 - 2019**  
Date

Enclosure

Cc: Mr. Albert Elia, Esq.  
TRE Legal Practice  
1155 Market Street, 10<sup>th</sup> Floor  
San Francisco, California 94103

Cc: Mr. Jahinnslerth S. Orozco  
801 15<sup>th</sup> Street South  
Apartment 101  
Arlington, Virginia 22202



OFFICE OF FEDERAL OPERATIONS  
 P.O. Box 77960  
 Washington, DC 20013-8960

**Complainant Information:** (Please Print or Type)

Complainant's name (Last, First, M.I.):	
Home/mailling address:	
City, State, ZIP Code:	
Daytime Telephone # (with area code):	
E-mail address (if any):	

**Attorney/Representative Information (if any):**

Attorney name:	
Non-Attorney Representative name:	
Address:	
City, State, ZIP Code:	
Telephone number (if applicable):	
E-mail address (if any):	

**General Information:**

Name of the agency being charged with discrimination:	
Identify the Agency's complaint number:	
Location of the duty station or local facility in which the complaint arose:	
Has a <b>final action</b> been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint?	<input type="checkbox"/> Yes; Date Received _____ (Remember to attach a copy) <input type="checkbox"/> No <input type="checkbox"/> This appeal alleges a breach of settlement agreement
Has a complaint been filed on this same matter with the EEOC, <u>another</u> agency, or through any <u>other</u> administrative or collective bargaining procedures?	<input type="checkbox"/> No <input type="checkbox"/> Yes (Indicate the agency or procedure, complaint/docket number, and attach a copy, if appropriate)
Has a civil action (lawsuit) been filed in connection with this complaint?	<input type="checkbox"/> No <input type="checkbox"/> Yes ( <b>Attach a copy of the civil action filed</b> )

**NOTICE:** Please **attach a copy of the final decision or order** from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the EEOC Administrative Judge's decision. Any comments or brief in support of this appeal **MUST** be filed with the EEOC and with the agency **within 30 days** of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the EEOC at the address above.

Signature of complainant or complainant's representative:	
Date:	

## PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)

1. **FORM NUMBER/TITLE/DATE:** EEOC Form 573, Notice of Appeal/Petition, January 2001
2. **AUTHORITY:** 42 U.S.C. § 2000e-16
3. **PRINCIPAL PURPOSE:** The purpose of this questionnaire is to solicit information to enable the Commission to properly and efficiently adjudicate appeals filed by Federal employees, former Federal employees, and applicants for Federal employment.
4. **ROUTINE USES:** Information provided on this form will be used by Commission employees to determine: (a) the appropriate agency from which to request relevant files; (b) whether the appeal is timely; (c) whether the Commission has jurisdiction over the issue(s) raised in the appeal, and (d) generally, to assist the Commission in properly processing and deciding appeals. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a data base for statistical purposes.
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION:** Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

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Send your appeal to:

The Equal Employment Opportunity Commission  
Office of Federal Operations  
P.O. Box 77960  
Washington, DC 20013-8960

Copy to Agency EEO Director/Attorney:

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JAHINNSLERTH OROZCO,**

Plaintiff,

v.

**WILLIAM P. BARR,** Attorney General of  
the United States, in his official capacity,

Defendant.

Case No. 1:19-cv-3336-EGS

**DECLARATION OF ALBERT ELIA IN SUPPORT OF PLAINTIFF'S  
MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

**Table of Exhibits**

Exhibit	Description
Exhibit A	Administrative complaint (April 29, 2019)
Exhibit B	Letter from FBI acknowledging receipt administrative complaint (May 9, 2019)

I, Albert Elia, declare:

1. I am an attorney at TRE Legal Practice admitted to practice law in the District of Columbia, a member of the bar of this Court, and a counsel of record for Plaintiff Jahinnslerth Orozco. I have been a counsel of record on this case since its inception. I have personal knowledge of the matters set forth herein, and if called as a witness I could competently testify to them. I make this declaration in support of Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss.
2. I assisted in the timely filing of Mr. Orozco's complaint with the Federal Bureau of Investigation ("FBI") on April 29, 2019. A true and exact copy of the Mr. Orozco's complaint

is attached as **Exhibit A**.

3. The complaint was submitted both to the Director for the FBI's Equal Employment Opportunity ("EEO") Office and to the Director for the Office of the Chief Information Officer ("OCIO") on that date.
4. Only a single administrative complaint, raising the same claims as in the federal complaint in this action, exists. A single, identical complaint was submitted to both EEO and OCIO.
5. Although it is our understanding that the regulations require EEO, to the extent it has designated the OCIO office for the handling of the complaint, to forward the complaint to the OCIO itself, TRE Legal Practice office provided the complaint to OCIO on Mr. Orozco's behalf. We did so in a good faith effort to support its proper investigation and handling.
6. TRE Legal Practice provided the complaint to OCIO on April 29, 2019 and again on May 9, 2019.
7. On April 29, 2019, TRE Legal Practice sent an electronic mail message addressed to [FBI\\_Accessibility@ic.fbi.gov](mailto:FBI_Accessibility@ic.fbi.gov) containing an electronic copy of the formal complaint of discrimination filed with the EEO by fax earlier that same day.
8. On May 9, 2019, TRE Legal Practice received a letter from the FBI acknowledging the formal complaint that we had filed on Mr. Orozco's behalf. A true and exact copy of the letter that we received from the FBI is attached as **Exhibit B**.
9. The FBI's May 9, 2019 notice of acceptance informed us that investigation of Mr. Orozco's complaint must be completed by October 26, 2019.
10. Also, on May 9, 2019, TRE Legal Practice sent an electronic mail message addressed to Lauren Troupe, Unit Chief of the FBI's Accessibility Program Office, containing an electronic copy of the same formal complaint and noting that it had been filed on April 29, 2019.
11. Plaintiff's counsel remained in contact with OCIO and was informed that an assistant general counsel had been assigned to the matter on July 25, 2019 when we received an email from Kelly A. Smith, Assistant General Counsel in FBI's Office of the General Counsel, informing us that Assistant General Counsel T. Brooks Anderson had been assigned to Mr. Orozco's

matter.

12. On information and belief, neither TRE Legal Practice nor our client ever received an investigative report, letter of findings, or Final Agency Decision from OCIO.
13. On information and belief, TRE Legal Practice has received no further correspondence from the OCIO or any other subsidiary, parent, or sister agency of the Department of Justice indicating further investigation of Mr. Orozco's complaint after July 25, 2019.

I declare under penalty of perjury under the laws of the District of Columbia that the foregoing is true and correct, and that this declaration is executed this 11th day of February 11, 2020.

*/s/ Albert Elia*

---

Albert Elia

# Exhibit A



**Timothy R. Elder**

aelia@trelegal.com

**Albert Elia**

aelia@trelegal.com

1155 Market Street, 10<sup>th</sup> Floor  
San Francisco, CA 94103

p: (415) 873-9199

f: (415) 952-9898

April 29, 2019

VIA U.S. MAIL AND EMAIL

Lee J. Lofthus, Assistant Attorney General for Administration  
Department of Justice  
10th and Pennsylvania Avenue, NW  
Room 1232  
Washington, DC 20530  
Email: [lee.loftus@usdoj.gov](mailto:lee.loftus@usdoj.gov)

**Re: Section 508 Complaint**

Dear Mr. Lofthus:

Our firm represents Jahinnslerth Orozco, an individual residing at 801 15th Street South, Apartment 101, Arlington, Virginia 22202. Mr. Orozco hereby complains of violations of Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d, by the Federal Bureau of Investigations (“FBI”). Those violations are based upon the FBI’s use of software and other electronic information technology (“EIT”) that is not accessible to blind users, including but not limited to the following:

- Software from Palantir Technologies
- Sentinel case management system software
- Enterprise Process Automation System (“EPAS”) software
- Secure Android Mobile application software
- Global Mission Analytics (“GMAN”) software

Blind employees like Mr. Orozco do not have access to and use of the information and data available through this software and EIT that is comparable to sighted employees. Nevertheless, the FBI requires ongoing use of such inaccessible software and EIT, in continuous violation of 29 U.S.C. § 794d(a)(1)(A)(i).

The enforcement provision of Section 508 requires federal agencies to use their own Section 504 regulations to process Section 508 administrative complaints. 29 U.S.C. § 794d(f)(2). Each federal agency is responsible for promulgating its own Section 504 regulations. 29 U.S.C. § 794(a). As a bureau of the U.S. Department of Justice (“DOJ”), the FBI is subject to the DOJ’s 504 Regulations located at 28 C.F.R. part 39. Those regulations require the filing of administrative complaints with the DOJ and directs that such complaints be “sent to the Director for Equal Employment Opportunity, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Room 1232, Washington, DC 20530.” 28 C.F.R. § 39.170(d)(4). Under 28 C.F.R. § 42.2(a), the Assistant Attorney General for Administration is designated as the Director for Equal Employment Opportunity. If he or she has designated another person as the official responsible for handling complaints (as permitted by 28 C.F.R. § 39.103), “he or she shall forward the complaint to th[at] Official immediately.” 28 C.F.R. § 39.170(d)(4). The DOJ is required to accept, investigate, and notify the complainant of the results of its investigation within 180 days of receiving a complaint. 28 C.F.R. §§ 39.170(f)(1), (g)(1)-(3), & (h). Section 508 empowers complainants to seek redress for violations in federal court. 29 U.S.C. § 794d(f)(3).

Complaints alleging violations of Section 508 do not allege disparate treatment, failure to accommodate, or disparate impact discrimination under 29 U.S.C. §§ 791 or 794, regardless of whether they are filed by employees or members of the public, and thus should not be processed as complaints with respect to employment. *See* 42 U.S.C. § 12112 (providing bases for employment discrimination claims as incorporated by 29 U.S.C. §§791(f) & 794(d)). However, even if such complaints are so processed, they would be processed “according to the procedures established by the Equal Employment Opportunity Commission (“EEOC”) in 29 CFR part 161[4].” 28 C.F.R. § 39.170(b). Under those procedures, they would still be filed in the same place (29 C.F.R. § 1614.106(a)), would still require the DOJ to investigate the complaint (29 C.F.R. § 1614.108(a)), and would still require that investigation to be completed and reported to the complainant within 180 days. 29 C.F.R. §§ 1614(108(e) & (f).

Mr. Orozco and other blind FBI employees will continue to have access to and use of information and data that is not comparable to sighted employees so long as the FBI continues to require employees to use inaccessible software and other EIT. That lack of comparable access and use has prevented, and will continue to prevent, Mr. Orozco and other blind employees from efficiently accessing or using such data and information. It has also resulted, and will continue to result, in lost opportunities for Mr. Orozco and other blind employees. Mr. Orozco asks that the FBI:

1. Require all inaccessible software and other EIT to be brought into compliance with the Section 508 technical standards; and
2. Require all software and other EIT to be tested and certified for 508 compliance before being made available for use by employees.



Mr. Orozco submits this formal complaint with the hope that the DOJ and FBI will address his concerns. To that end, we would be happy to work collaboratively with the DOJ and FBI to ensure that the FBI provides equivalent access for its blind employees, in a manner consistent with its security needs, by adhering to its Section 508 mandate. Please contact us should you wish us to participate in your investigation, or should you have any questions or concerns.

Sincerely,



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**Timothy R. Elder**

TRE Legal Practice



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**Albert Elia**

TRE Legal Practice

CC: Richard Toscano, DOJ Director of Equal Employment Opportunity; Arlene A. Gaylord, FBI Assistant Director, Equal Employment Opportunity Affairs; Gordon Bitko, FBI Chief Information Officer; Christopher A. Wray, FBI Director; William P. Barr, U.S. Attorney General; [FBI\\_Accessibility@ic.fbi.gov](mailto:FBI_Accessibility@ic.fbi.gov)

# Exhibit B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

**MAY - 9 2019**

VIA EMAIL

Mr. Timothy R. Elder, Esq.  
TRE Legal Practice  
1155 Market Street, 10th Floor  
San Francisco, California 94103

RE: JAHINNSLERTH S. OROZCO AND  
WILLIAM P. BARR, ATTORNEY GENERAL  
U.S. DEPARTMENT OF JUSTICE  
COMPLAINT OF DISCRIMINATION  
FILE NUMBER: FBI-2019-00201  
FILED: APRIL 29, 2019 (RECEIVED IN EEO)

Dear Mr. Elder:

This letter acknowledges this office's receipt of your client, Mr. Jahinnslerth S. Orozco, formal Equal Employment Opportunity (EEO) complaint of discrimination against the Federal Bureau of Investigation (FBI). It is among a number of other matters pending review by my staff, but be assured it is being handled as expeditiously as possible. Pursuant to 29 C.F.R. Part 1614, you will be advised by separate letter as to basis(es) and allegation(s) of discrimination this office either accepts for investigation or dismisses.

Your client should be aware that if the EEO complaint is accepted for investigation, the FBI is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint, that date being October 26, 2019, unless the parties agree in writing to extend the time period. As set forth in 29 C.F.R. § 1614.108(e), the parties may extend the time period voluntarily for not more than an additional 90 days. The FBI may unilaterally extend the time period, or any period of extension, for not more than 30 days to sanitize a complaint file.

Mr. Timothy R. Elder, Esq.

In addition, your client has the right to appeal the final action on or the dismissal of the EEO complaint. Unless the entire complaint has been dismissed, your client has the right to request a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) after October 26, 2019 or after completion of the investigation, whichever comes first. When a complaint has been amended, the FBI must complete its investigation within the earlier of: (a) 180 days after the last amendment to the complaint or (b) 360 days after the filing of the original complaint. However, your client may request a hearing from an EEOC AJ on the consolidated complaints any time after 180 days from the date of the first filed complaint.

If your client requests a hearing, the request should be made in writing to:

District Director  
Washington Field Office  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Fourth Floor, Suite 4NW02F  
Washington, D.C. 20507-0100

A copy of the request also should be provided to:

Office of Equal Employment Opportunity Affairs  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Room 9304  
Washington, D.C. 20535-0001

Enclosed is a Notice of Rights and Responsibilities. We encourage you and your client to review this form to better understand a complainant's rights and responsibilities during the EEO Process.

Finally, if your client wishes to pursue an informal resolution of the complaint, you may request mediation. Mediation involves a neutral third party, a mediator, who listens to both parties and attempts to facilitate their reaching a mutually satisfactory resolution to an existing dispute. Mediation is neither a forum in which the legal merits of your case are adjudicated, nor does electing mediation preclude your client from pursuing the formal complaint if informal resolution is not reached. Although mediation is available in most instances, it is not available if: (1) the complaint involves application of an FBI policy, an allegation

Mr. Timothy R. Elder, Esq.

of criminal behavior, an allegation pertaining to a class of employees; (2) if complainant is currently, or potentially, the subject of either an Inspection Division investigation or an Office of Professional Responsibility referral; or (3) if complainant is a former FBI employee or applicant. If your client is interested in pursuing mediation, please contact the Alternative Dispute Resolution (ADR) Program Manager at (202) 324-4128.

If this office can be of further assistance to you or your client, please contact Equal Employment Specialist Beatrice E. Mack at (703) 632-371.

Sincerely yours,

Arlene A. Gaylord  
Assistant Director -  
Equal Employment Opportunity  
Officer



By: Crystal T. Marable  
Supervisory Equal Employment  
Specialist

Attachment

Cc: Mr. Albert Elia, Esq. - VIA EMAIL

Cc: Mr. Jahinnslerth S. Orozco - VIA EMAIL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAHINNSLERTH OROZCO,

Plaintiff,

v.

Civ. Action No. 19-3336 (EGS)

MERRICK B. GARLAND, Attorney  
General of the United States,  
in his official capacity,<sup>1</sup>  
Defendant.

**ORDER**

For the reasons stated in the forthcoming Memorandum  
Opinion, it is hereby

**ORDERED** that Defendant's Motion to Dismiss, ECF No. 13, is  
**GRANTED;** and it is further

**ORDERED** that this case is dismissed with prejudice.

**SO ORDERED.**

Signed: **Emmet G. Sullivan**  
**United States District Judge**  
**September 30, 2021**

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes as defendant Merrick B. Garland for Former Attorney General William P. Barr.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAHINNSLERTH OROZCO,

Plaintiff,

v.

MERRICK B. GARLAND, Attorney  
General of the United States,  
in his official capacity,<sup>1</sup>

Defendant.

Civ. Action No. 19-3336 (EGS)

**MEMORANDUM OPINION**

Plaintiff Jahinnslerth Orozco ("Mr. Orozco") brings this suit under Section 508 of the Rehabilitation Act of 1973 ("Section 508"), codified in 29 U.S.C. § 794d. See Compl., ECF No. 12 ¶ 1. Mr. Orozco, a blind federal employee, alleges that the Federal Bureau of Investigations ("FBI"), a division of the Department of Justice headed by Attorney General Merrick B. Garland ("Defendant" or the "government"), has failed to comply with the accessibility standards of Section 508 and prevented blind employees from effectively and independently accessing critical systems required for employment. See *id.* Mr. Orozco asserts that the FBI has procured, maintained, and is using

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes as defendant Merrick B. Garland for Former Attorney General William P. Barr.

software systems that he, as a blind employee, cannot access in the manner enjoyed by his nondisabled colleagues. See *id.* ¶ 2, 11.

Pending before the Court is Defendant's Motion to Dismiss. See Def.'s Mem. in Supp. of Mot. to Dismiss ("Def.'s Mot. to Dismiss"), ECF No. 13. Upon careful consideration of the motion, opposition, the reply, the applicable law, and for the reasons explained below, Defendant's Motion to Dismiss is **GRANTED**.

#### **I. Factual and Procedural Background**

Mr. Orozco has been employed by the FBI as an Intelligence Analyst since July 15, 2012. See Compl., ECF No. 12 ¶ 12. As a blind computer user, Mr. Orozco uses screen access software that converts digital information into synthesized speech. See *id.* ¶ 11. Mr. Orozco alleges that several systems used by the FBI are inaccessible to blind employees who use screen access software. See *id.* ¶ 26. These include (1) Sentinel, a "web-based case management system" used to review and manage case files; (2) the Enterprise Process Automation System, a "web-based software system" used "to perform administrative tasks;" (3) Palantir Analytics Software used "to tie disparate intelligence resources together, search across and manage those resources, and track relationships among disparate entities;" (4) Global Mission Analytics, a web-based system used to "search across internal and external intelligence sources;" and (5) Virtual Private



Networking, a "misattribution software to enable analysts to securely and anonymously access external data sources without identifying that access as coming from the FBI." Def.'s Mot. to Dismiss, ECF No. 13 at 3 (citing Compl., ECF No. 12 ¶ 27-48). Mr. Orozco contends that the FBI could have provided him and other blind employees "with an alternative means of accessing these systems that allowed them to independently use the information and data involved, but did not do so." Compl., ECF No. 12 ¶ 60.

Consequently, Mr. Orozco filed an administrative complaint with the FBI on April 29, 2019. *Id.* ¶ 16 (citing 29 U.S.C. § 794d(f)(2) (Section 508), 28 C.F.R. § 39.170(d)(4) (the Department of Justice's ("DOJ") Equal Employment Opportunity ("EEO") regulation), and 28 C.F.R. § 1616.106(a) (Equal Employment Opportunity Commission ("EEOC") regulation)). Mr. Orozco also filed a copy of his complaint with the Accessibility Program Office of the Office of the Chief Information Officer ("OCIO") of the FBI. *Id.* ¶ 17.

On May 9, 2019, Mr. Orozco received a letter from the FBI acknowledging receipt of the EEO complaint and stating that investigation of the complaint must be completed by October 26, 2019. See Administrative Record ("AR"), Exhibit B, ECF No. 14-1 at 9. On July 25, 2019, the FBI's Office of the General Counsel informed Mr. Orozco's attorney that an assistant general counsel

had been assigned to the matter. See AR, Decl. of Albert Elia in Supp. of Pl.'s Mem. in Opp'n to Def.'s Mot. to Dismiss ("Alia Decl."), ECF No. 14-1 ¶ 11. Subsequently, on August 7, 2019, the FBI's EEO office dismissed Mr. Orozco's discrimination complaint for "failure to state a claim of discrimination within the federal sector EEO process." AR, ECF No. 13-1 at 2. The FBI decision letter added that "the appropriate mechanism for addressing [Mr. Orozco's] concerns is to contact the FBI's Accessibility Program Office, Office of the Chief Information Officer (OCIO), and inquire about the status of [Mr. Orozco's] pending accessibility complaint." *Id.* The letter concluded that "this final agency decision is being sent pursuant to 29 C.F.R. § 1614.110," and that Mr. Orozco had the right to appeal "within 30 calendar days" of receipt of the "final agency decision," as well as the right to file a civil action "180 days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken." *Id.* Mr. Orozco and his counsel did not receive any further correspondence from the OCIO, see Elia Decl., ECF No. 14-1 ¶ 12-13; where Mr. Orozco's accessibility complaint was pending, see AR, ECF No. 13-1 at 2.

Mr. Orozco filed his complaint in this Court on November 5, 2019, 180 days after OCIO received a copy of his complaint. See Pl.'s Mem. in Opp'n to Mot. to Dismiss ("Pl.'s Resp."), ECF No.

14 at 17. He seeks injunctive and declaratory relief as well as attorney's fees and other costs of this action. See Compl., ECF No. 12 at 9-10. The government filed a Motion to Dismiss on January 28, 2020. See Def.'s Mot. to Dismiss, ECF No. 13. Mr. Orozco responded on February 11, 2020. See Pl.'s Opp'n, ECF No. 14. The government replied on February 18, 2020. See Reply Supp. Mot. to Dismiss ("Def.'s Reply"), ECF No. 15. The motion is ripe and ready for adjudication.

## **II. Standard of Review**

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). While detailed factual allegations are not required, a complaint must contain "sufficient factual matter ... to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not sufficient to state a claim. *Id.*

When ruling on a Rule 12(b)(6) motion, the Court “may consider only the facts alleged in the complaint, any documents either attached to or incorporated in the complaint and matters of which we may take judicial notice.” *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997). In so doing, the court must give the plaintiff the “benefit of all inferences that can be derived from the facts alleged.” *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994).

### **III. Analysis**

The Defendant argues that Section 508 does not provide Mr. Orozco with either an explicit or an implicit cause of action, and alternatively, that he has failed to exhaust his administrative remedies prior to bringing this action. See Def.’s Mot. to Dismiss, ECF No. 13 at 2. The Court sets forth the statutory framework under Section 508 before turning to the government’s arguments.

#### **A. Statutory Framework**

Congress enacted the Rehabilitation Act in 1973 “to ensure that members of the disabled community could live independently and fully participate in society.” *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1259 (D.C. Cir. 2008). The Act has the distinction of being the “first major federal statute designed to protect the rights of and provide assistance to”

individuals with disabilities. *Smith v. Barton*, 914 F.2d 1330, 1338 (9th Cir. 1990).

Congress amended the Act in 1986 by adding section 508, which required the Executive Branch to develop guidelines to ensure that electronic information and technology ("EIT") would be accessible to people with disabilities. See Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, § 603, 100 Stat. 1807, 1830-31; *Clark v. Vilsack*, Civ. Action No. 19-394 (JEB), 2021 WL 2156500, at \*3 (D.D.C. May. 27, 2021); *Werwie v. Vought*, Civ. Action No. 19-713, 2020 WL 6781220, at \*3 (D.D.C. Nov. 18, 2020). However, the 1986 amendment lacked an independent enforcement mechanism, see Pub. L. No. 99-506, § 603; see also *Werwie*, 19-713, 2020 WL 6781220, at \*3; which Congress added in 1998, see Workforce Investment Act of 1998, Pub. L. No. 105-220, § 408(b), 112 Stat. 936, 1203-06; see also *Werwie*, 19-713, 2020 WL 6781220, at \*3.

Section 508(a), codified in 29 U.S.C. § 794d(a), now requires:

When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency, including the United States Postal Service, shall ensure, unless an undue burden would be imposed on the department or agency, that the electronic and information technology allows, regardless of the type of medium of the technology-

(i) individuals with disabilities who are Federal employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities....

29 U.S.C. § 794d(a) (1) (A) (i). Central to the parties' dispute, Section 508(f) of the Rehabilitation Act, codified as 29 U.S.C. § 794d(f) and titled "Enforcement," provides in relevant part:

(3) Civil Actions. The remedies, procedures, and rights set forth in sections 794a(a) (2) and 794a(b) [sections 505(a) (2) and 505(b) of the Rehabilitation Act] shall be the remedies, procedures, and rights *available to any individual with a disability* filing a complaint under paragraph (1).<sup>2</sup>

29 U.S.C. § 794d(f) (3) (emphasis added). In turn, the relevant parts of § 794a, which guide civil actions under Section 508, state that:

(a) (2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e) (3) of section 706 of such Act (42 U.S.C. 2000e-5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act *by any recipient of Federal assistance or Federal provider of such assistance* under section 794 of this title.

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<sup>2</sup> Section 508(f) also sets out a method of enforcement under "Administrative Complaints." See § 508(f) (2). Since the parties

Court does the same.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

29 U.S.C. § 794a (emphasis added). Finally, 42 U.S.C. §2000d prevents discrimination “under any program or activity receiving Federal financial assistance” while § 2000e-5 contains enforcement provisions for the EEOC.

**B. Section 508 Does Not Provide an Express Cause of Action**

The government argues that Mr. Orozco’s claim should be dismissed because § 794d does not provide him with a cause of action. See Def.’s Mot. to Dismiss, ECF No. 13 at 6. The government points out that § 794d(f) limits the available remedies to § 794a(a)(1) and (b), not § 794a(a)(2), which provides remedies for a government employee alleging workplace discrimination. See *id.* at 7. Further, it asserts that as a government employee, Mr. Orozco does not have a cause of action under 42 U.S.C. § 2000d; nor does he have one under § 2000e-5, because he “has not pleaded that the Commission has sued on his behalf.” *Id.* at 8. Since there is no other cause of action under §794(a), the government concludes there is “therefore by extension no available cause of action under section 594d [sic].” *Id.*

Mr. Orozco responds that Section 508 incorporates Section 504's comprehensive disability rights enforcement scheme in actions by federal employees regarding the EIT of federal agencies. Pl.'s Opp'n, ECF No. 14 at 7. He points out that "Section 508's enforcement provisions explicitly state that "any individual with a disability may file a complaint alleging that a Federal department or agency fails to comply." *Id.* at 7 (citing 29 U.S.C. § 794d(f)(1)(A)). Mr. Orozco consequently interprets the statutory scheme as one that requires federal employees to bring general employment discrimination claims under Section 501, and inaccessible EIT claims under Section 508. *See id.* The Court disagrees.

As a preliminary matter, Section 504, which prohibits recipients of federal financial assistance as well as executive agencies from conducting programs or activities that discriminate based on a disability, *see* 29 U.S.C. § 794(a); does not contain a "comprehensive disability rights enforcement scheme" of the sort suggested by Mr. Orozco, *see* Pl.'s Opp'n, ECF No. 14 at 7. As Mr. Orozco acknowledges, "Section 504 does not on its face apply to federal employees," and does not provide a "route for relief [for federal employees] under the Rehabilitation Act." *Taylor v. Small*, 350 F.3d 1286, 1291 (D.C. Cir. 2003) (quoting *Rivera v. Heyman*, 157 F.3d 101, 104 (2d Cir. 1998)).



Nor is the Court persuaded by Mr. Orozco's response to the government's argument about the exclusion of employment discrimination remedies (captured in § 794a(a)(1) but not referred to in §794d). Mr. Orozco explains this discrepancy by asserting that "Section 508's role is to extend federal agencies' barrier-removal obligations under Section 504, instead of extending their employment anti-discrimination obligations under Section 501 of the Rehabilitation Act, 29 U.S.C. § 791." *Id.* at 8. As the government responds—and the Court agrees—this argument "ignores the explicit language in the statute that define the available causes of action by their references to other statutory provisions." Def.'s Reply, ECF No. 15 at 4. Mr. Orozco's "broad point" that Section 508 provides for "civil actions" cannot rebut the "specific point" that it does not provide a cause of action in this instance. *See id.*

This view aligns with persuasive authority which holds that "section 508 provides no express cause of action." *Clark*, 19-394, 2021 WL 2156500, at \*4. The District Court in *Clark* reasoned that the "Civil Actions" remedies in § 794(f)(3) are explicitly limited to a "person aggrieved by any act or failure to act *by any recipient of Federal assistance or Federal provider of such assistance.*" *Id.* (citing § 794a(a)(2)) (emphasis added). However, the FBI is not a provider of federal assistance. *See Lane v. Pena*, 518 U.S. 187, 193 (1996)

(considering section 505's use of the term "Federal provider" and reading it to mean "federal funding agencies acting as such"). Thus, the remedies contained in Section 505 are not available to persons aggrieved by the FBI acting in its capacity as an employer. See *Clark*, 19-394, 2021 WL 2156500, at \*4. Mr. Orozco does not distinguish *Clark*, *id.*, or present an argument for why it is not persuasive. See generally ECF No. 20.

Mr. Orozco further contends that the plain text of Section 508 supports a private right of action against federal agencies, arguing that the heading "Civil Actions" demonstrates that Congress intended Section 508 to be enforced by lawsuits. See Pl.'s Opp'n, ECF No. 14 at 9; 29 U.S.C. § 794(f)(3). In support, he first argues that federal agencies are covered under Section 508, as under section 504, within the definition of federal providers of assistance. *Id.* at 10. He then asserts that Sections 504 and 508 both explicitly apply to "any program or activity conducted by any Executive agency or by the United States Postal Service." *Id.* at 11 (citing 29 U.S.C. § 794(a)). Therefore, failing to interpret Section 508 as granting a private right of action against federal agencies would render the "Civil Actions" portion of section 508 "surplusage." *Id.* at 10 (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotations and citation omitted) ("Statutory terms should not be treat[ed] as surplusage in any setting.")). The Court is

unpersuaded by the premise of this argument for the reasons explained below.

The government's arguments do not suggest that Section 508 does not support any civil actions or that Section 508 does not apply to "any program or activity conducted by any Executive agency or by the United States Postal Service," 29 U.S.C. § 794(a); rather, the Court reads the government's argument to be that Mr. Orozco's claim specifically "does not fit within either of the two permissible causes of action under the statute." Def.'s Mot. to Dismiss, ECF No. 13 at 2. This reading does not render the term "Civil Actions" surplusage because Section 505 (which guides "Civil Actions" under Section 508) does provide for civil actions, but only against recipients and providers of federal assistance, not persons aggrieved by the Government acting in its capacity as an employer. See *Clark*, 19-394, 2021 WL 2156500, at \*4.

Moreover, it is not the case, as Mr. Orozco asserts, that no court has "addressed the question presented here: whether Section 508(f)(3) authorizes an independent right of action for injunctive relief against a federal agency." Compare Pl.'s Opp'n, ECF No. 14 at 9, with *Clark*, 19-394, 2021 WL 2156500, at \*4; *Gonzalez v. Perdue*, No. 18-459, 2020 WL 1281237, at \*9 (E.D. Va. Mar. 17, 2020) (considering section 508 claim and concluding that it does not provide a private cause of action); *Latham v.*

*Brownlee*, No. 03-933, 2005 WL 578149, at \*9 (W.D. Tex. Mar. 3, 2005) (finding section 508 “does not authorize a private, non-administrative right [of] action”); *cf. Leiterman v. Johnson*, 60 F. Supp. 3d 166, 177 (D.D.C. 2014) (finding no section 508 cause of action for federal employee to sue federal employer and noting plaintiff conceded that section 505 did not provide cause of action). For these reasons, the Court holds, as have other District Courts that have considered the issue, that the text of Section 508 does not expressly support a private right of action.

**C. Section 508 Does Not Provide an Implicit Cause of Action**

The government also argues that Mr. Orozco cannot rely on an implicit cause of action because the United States as sovereign has not waived its immunity from suit, nor has Mr. Orozco brought his claim under the Administrative Procedure Act to challenge the agency’s determination of his administrative complaint. See Def.’s Mot. to Dismiss, ECF No. 13 at 8-9. The government points out that any waiver of immunity must be “unequivocally expressed in statutory text,” and “will be strictly construed, in terms of its scope, in favor of the sovereign.” *Id.* at 8 (citing *Pena*, 518 U.S. at 192). Mr. Orozco responds that his claims under Section 508 meet the test for an implied right of action. See Pl.’s Opp’n, ECF No. 14 at 12. He also asserts that Courts have established that Congress waived

sovereign immunity with respect to actions for equitable relief and attorney's fees under the Section 504 remedies incorporated by reference into Section 508. See *id.* at 14.

"[T]he fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979) (internal citation and quotation marks omitted). Accordingly, "[i]n determining whether an implied cause of action exists, 'the judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy. Statutory intent on this latter point is determinative.'" *Int'l Union, Sec., Police & Fire Prof'ls of Am. v. Faye*, 828 F.3d 969, 972 (D.C. Cir. 2016) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001)). Courts consider three factors in evaluating statutory intent. *Redington*, 442 U.S. at 575-76. First, courts consider the language and focus of the statute to determine whether it creates a federal right in favor of the plaintiff because he is someone for whose particular benefit the statute was enacted. *Id.* Second, courts consider the legislative history of the statute to determine whether Congress gave any implicit or explicit indication of its intent to create or deny a private judicial remedy. *Id.* Third, courts consider the statute's

underlying purpose to determine whether it would be consistent with the legislative scheme to imply such a remedy. *Id.*

Persuasive authority establishes that Section 508 does not contain an implicit cause of action. See *Clark*, 19-394, 2021 WL 2156500, at \*4. Although Mr. Orozco, as a blind federal employee, is someone for whose particular benefit the statute was enacted, see *Redington*, 442 U.S. at 575-76; a private right of action would be inconsistent with the intent demonstrated by Congress. As discussed above, Congress specifically amended Section 508 to create an enforcement scheme. See *supra*; 29 U.S.C. § 794d(f) (entitled "Enforcement"). "The comprehensive character of the remedial scheme expressly fashioned by Congress strongly evidences an intent not to authorize additional remedies." *Clark*, 19-394, 2021 WL 2156500, at \*4 (citing *Nw. Airlines, Inc. v. Transp. Workers Union of Am., AFL-CIO*, 451 U.S. 77, 93-94 (1981)); see also *Karahalios v. Nat'l Fed'n of Fed. Emps., Loc. 1263*, 489 U.S. 527, 533 (1989) ("It is also an 'elemental canon' of statutory construction that where a statute expressly provides a remedy, courts must be especially reluctant to provide additional remedies."); *Johnson v. Interstate Mgmt. Co., LLC*, 849 F.3d 1093, 1098 (D.C. Cir. 2017) (declining "to recognize a new implied cause of action" when "text of [statute] specifically addresses who may sue").

Although the Court is sympathetic to the challenges Mr. Orozco faces at his workplace, Mr. Orozco does not point to “strong indicia of a contrary congressional intent that would enable the Court to escape the conclu[sion] that caselaw compel[s].” *Clark*, 19-394, 2021 WL 2156500, at \*4 (internal quotations and citation omitted). The Congressional debates from 1978 that Mr. Orozco references—which took place 20 years prior to the latest amendment in 1998—suggest that the federal government’s exemption was lifted to allow administrative complaints and certain civil actions, but not a civil action brought by federal employees. See Pl.’s Opp’n, ECF No. 14 at 13; see also *Karahalios*, 489 U.S. at 533 (stating that “neither the language nor the structure of the Act shows any congressional intent to provide a private cause of action” for federal employees to enforce federal agencies’ violations of section 508).

The Court concludes that “Congress provided precisely the remedies it considered appropriate” for this statute. *Middlesex County Sewerage Authority v. Sea Clammers*, 453 U.S. 1, 15 (1981). The Court notes that although Section 508 does not provide a right for Mr. Orozco to sue, “the Government must, of course, comply with the Rehabilitation Act,” *Clark*, 19-394, 2021 WL 2156500, at \*4; which requires that the FBI provide “individuals with disabilities who are Federal employees to have

access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities.” 29 U.S.C. § 794d(a) (1) (A) (i).<sup>3</sup>

#### **IV. Conclusion**

For the foregoing reasons, the Court **GRANTS** the government’s motion to dismiss. An appropriate Order accompanying this Memorandum Opinion was issued on September 30, 2021.

**SO ORDERED.**

**Signed: Emmet G. Sullivan  
United States District Judge  
October 01, 2021**

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<sup>3</sup> Since the Court holds that there is no implied cause of action available, it need not reach the defense of sovereign immunity. See Def.’s Mot. to Dismiss, ECF No. 13 at 8. The Court similarly need not address whether Mr. Orozco has satisfied his administrative remedies. See *id.* at 9.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**JAHINNSLERETH OROZCO,**

Plaintiff,

v.

**MERRICK B. GARLAND,** Attorney  
General of the United States, in his official  
capacity,<sup>1</sup>

Defendant.

Case No. 1:19-cv-3336-EGS

**NOTICE OF APPEAL**

Notice is hereby given this 28th day of October, 2021, that Plaintiff Jahinnslereth Orozco, by and through his attorneys, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order of this Court entered on the 30th day of September, 2021, ECF No. 21, in favor of Defendant Merrick B. Garland, Attorney General of the United States, in his official capacity, and against said plaintiff.

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes as defendant current Attorney General Merrick B. Garland for former Attorney General William P. Barr.

DATED: October 28, 2021

Respectfully submitted,

*/s/ Albert Elia*

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*Attorneys for Plaintiff Jahinnslerth Orozco*

## CERTIFICATE OF SERVICE

I certify that on March 2, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

*/s/ Timothy Elder*

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Timothy Elder (telder@trelegal.com)  
TRE Legal Practice

*Counsel for Appellant*