

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**IVAN HERNANDEZ.,**

*Plaintiff,*

**vs.**

**CITY OF SHAVANO PARK**

*Defendant.*

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**CAUSE NO. 5:20-cv-01453**

**JURY DEMANDED**

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**PLAINTIFF'S ORIGINAL COMPLAINT**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES**, IVAN HERNANDEZ, hereinafter referred to as Plaintiff, complaining of and about CITY OF SHAVANO PARK, hereinafter referred to as Defendant, and for cause of action will show unto the Court as follows:

**I.  
PARTIES AND SERVICE**

1. Plaintiff, IVAN HERNANDEZ, is a citizen of the United States and the State of Texas and resides in San Antonio, Bexar County, Texas.
2. Defendant, CITY OF SHAVANO PARK, within the State of Texas and operating business in Shavano Park, Bexar County, Texas.
3. Defendant CITY OF SHAVANO PARK., may be served with service of process by serving

its City Mayor: Mr. Matthew Smith, at 900 Saddletree Court, Shavano Park, San Antonio, Texas 78231.

**II.**  
**JURISDICTION AND VENUE**

4. The Court has subject-matter jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1331 as Plaintiff is suing Defendant under Title VII of the Civil Rights Act of 1964, for violating the federally guaranteed rights.
5. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the United States District Court of the Western District of Texas, San Antonio Division, as a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

**III.**  
**NATURE OF ACTION**

6. This is an action brought pursuant to Title VII of the Civil Rights Act of 1964, to correct and recover for Defendant's unlawful employment practices on the basis of Plaintiff's national origin (Dominican-Spanish) and retaliation for opposing such unwelcomed conduct.

**IV.**  
**CONDITIONS PRECEDENT**

7. All conditions precedent to jurisdiction have occurred with regard to exhaustion of administrative remedies.

**V.**  
**FACTS**

8. Ms. Ivan Hernandez (Hispanic), began his employment with the City of Shavano Park (“Shavano Park”) in January, 2001 as a firefighter, and was later promoted to a lieutenant. He left in the late 2005-time frame for a position in the Seguin Fire Department, but returned to Shavano Park in 2008, again returning to the position of lieutenant within a 2-year period of time. Around 2 years after that, Mr. Hernandez was promoted to the position of Captain (about 2012), where he remains and has performed admirably and competently.
9. Mr. Hernandez has been the only Hispanic Captain during his tenure with the department. In late 2018, Mr. Hernandez applied for the position Chief, the next step up for him within the department. At one time in the early 2000s, with the former Chief, there had been an Assistant Chief role, but that was later eliminated. Mr. Hernandez was interviewed for the Chief position in mid-December 2018, but ultimately the Chief in the Castle Hills Fire Department was hired from the outside, after one year in that position. No explanation for the hiring over Mr. Hernandez was offered.
10. Since no explanation was provided, Mr. Hernandez was curious (maybe even a little suspicious) as to why he was not selected as a long-time, highly decorated member of the department. In fact, anytime the former Chief was off, or out of town, he always instructed the department that Mr. Hernandez was in charge. As such, Mr. Hernandez made an open records request for the job posting/requirements, scoring and interview notes, to see what he could glean on the selection process. Based on his extensive of the city and its standards, it became obvious that the scoring was biased toward the applicant from outside the department, especially on items Mr. Hernandez was clearly more qualified or

knowledgeable on. This was not a fair evaluation. It made no sense.

11. When sitting back and contemplating Shavano Park as a whole, most importantly in the position of Fire Chief and other department heads, it was clear that Shavano Park, for as long as Mr. Hernandez could recall back over nearly 20 years, had never had a non-Caucasian preside over a department, nor anyone of Hispanic descent. Going into the process of selecting a new Chief, Mr. Hernandez recognized that those on the selection committee had already picked their horse in the race, and the City Council rubber stamped it, just as it had always been. Whether intentional or a pattern of excluding persons on a subconscious level because they aren't "like you," this is discrimination.
12. Although Mr. Hernandez has always been happy serving the community of Shavano Park, and enjoys his job, he wants a fair shake at advancement, like everyone else. It is my client's position that the conduct on the part of the City Council and the selection committee (including his superiors) at Shavano Park is discriminatory based on his national origin (**Spanish/Dominican**). Further, given his open records request and now raising these issues of discrimination, Mr. Hernandez has concerned that retaliation ("backlash") may occur against him. Ultimately, Mr. Hernandez would like this resolved, but we also believe that a jury in Bexar County, Texas will see this as not only illegal, but spiteful toward a hardworking, qualified and educated individual, simply because of his immutable characteristics.

**VI.**  
**NATIONAL ORIGIN DISCRIMINATION**  
**UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

13. Plaintiff incorporates by reference the allegations contained in above paragraphs, as if fully rewritten herein.
14. Defendant intentionally engaged in unlawful employment practices against Plaintiff on the basis of his national origin in violation of 42 U.S.C. Sec. 2000e *et seq.*
15. Defendant discriminated against Plaintiff in connection with the compensation, terms, conditions and privileges of employment or limited, segregated or classified Plaintiff in a manner that would deprive or tend to deprive her of an employment opportunity or adversely affect his status because of Plaintiff's national origin in violation of 42 U.S.C. Sec. 2000e *et seq.*
16. Defendant discriminated against Plaintiff in the form of differential treatment with regard to the process and procedures of hire.

**VII.**  
**RETALIATION**  
**UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

17. Plaintiff incorporates by reference the allegations contained in above paragraphs, as if fully rewritten herein.
18. Defendant has retaliated against Plaintiff by taking an adverse employment action against him on the basis of national origin in violation of 42 U.S.C. § 2000e-3(a).

**IX.**  
**DAMAGES**

19. Plaintiff sustained the following damages as a result of the actions and/or omissions of Defendant described hereinabove:
- a) Compensatory damages (including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-economic damages) allowed under 42 U.S.C. Sec. 2000e et seq.
  - b) Economic damages in the form of lost back pay and lost fringe benefits in the past. Economic damages, in the form of lost wages and fringe benefits that will, in reasonable probability, be sustained in the future.
  - c) All reasonable and necessary costs in pursuit of this suit, including attorney's fees pursuant to 42 U.S.C. Sec. 2000e et seq.
  - d) Punitive damages for the intentional racial discrimination and reckless indifference to the state and federal protected rights of Ivan Hernandez.

**X.**  
**JURY DEMAND**

20. Plaintiff demands a jury trial and tenders the appropriate fee with this Complaint.

**XI.**  
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff, IVAN HERNANDEZ, respectfully prays that Defendant, CITY OF SHAVANO PARK., be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court, together with interest as allowed by law, costs of court, and such other and further relief to which the Plaintiff

may be justly entitled at law or in equity.

Respectfully Submitted,



A handwritten signature in blue ink, appearing to read 'A. Kennard, Jr.', is written over a horizontal line.

Alfonso Kennard, Jr.  
Texas Bar No. 24036888  
2603 Augusta Dr., Suite 1450  
Houston, TX 77057  
Main: 713-742-0900  
Fax: 713-742-0951  
**ATTORNEY FOR PLAINTIFF**  
**IVAN HERNANDEZ**

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service 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. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p><b>(b)</b> County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)</p>	<p style="text-align: center;"><b>DEFENDANTS</b></p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 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)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<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"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & 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 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<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"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <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	
<p style="text-align: center;"><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p style="text-align: center;"><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p style="text-align: center;"><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p style="text-align: center;"><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p style="text-align: center;"><b>PROPERTY RIGHTS</b></p> <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 style="text-align: center;"><b>SOCIAL SECURITY</b></p> <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 style="text-align: center;"><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding   
  2 Removed from State Court   
  3 Remanded from Appellate Court   
  4 Reinstated or Reopened   
  5 Transferred from Another District (specify)   
  6 Multidistrict Litigation - Transfer   
  8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): \_\_\_\_\_

Brief description of cause: \_\_\_\_\_

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    **DEMAND \$** \_\_\_\_\_    **CHECK YES only if demanded in complaint: JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_    SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM 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 service of pleading 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. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.