

numerous grounds, including absolute and qualified immunity, Judge Alesia wrote:

Because [Officer Smith] bore quasi-judicial responsibilities in deciding whether or not to allow Benson a reprieve from the travel restrictions imposed on him as conditions of parole and in enforcing the parole conditions, he should be accorded the same protection that is accorded judges and parole board members. Consequently, the court finds that [Officer Smith] is entitled to absolute immunity for his actions in enforcing the terms of Benson's parole, including his decision to deny Benson permission to travel outside of the Northern District of Illinois.

*Id.* at 1133-34.

Benson's parole for his four-year count III sentence lasted until July 30, 1997, at which time Benson's five-year probation sentence for count I began. (*Id.* P 13.) On August 1, 1997, Benson began serving his five-year probation term for count I. (*Id.*) In February 1998, less than seven months into Benson's probation, Defendant Deputy U.S. Attorney Safford filed a motion to have Benson's probation revoked for various probation [\*9] violations, including Benson's failure to report certain financial information. n4 (*Id.* P 14.) In October 1998, during a probation revocation hearing before Judge Grady, Benson argued for the first time that Judge Grady's earlier imposed probation sentence violated Benson's Fifth Amendment double jeopardy rights. (*Id.* P 15.) Specifically, Benson argued that the probation sentence on count I was improper because he had already served a one-year term associated with count I while awaiting the resolution of his first appeal. n5 (*Id.*) On March 18, 1999, approximately twenty months into Benson's probation, Judge Grady agreed with Benson and vacated his probation. (*Id.* P 17.) Judge Grady wrote:

The critical fact in this court's view is that the sentence defendant received from Judge Plunkett on Count I was concurrent with the four year sentence he received on Count III, so that, in serving 467 days on Judge Plunkett's sentence, the defendant necessarily served the 365 days imposed on Count I.

...Much time and effort would have been saved, of course, had Benson raised his Double Jeopardy argument before he was resentenced. However, an illegal sentence can be challenged [\*10] at any time, and this court has no alternative but to vacate the probationary sentence imposed on Count I on April 29, 1994.

(Judge Grady's March 18, 1999 Order, Ex. A to Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment ("Pl.'s Opp'n").)

n4 While the record reveals that a condition of Benson's *parole* required him to provide such financial information, the record is unclear as to exactly what were the conditions of Benson's *probation*.

n5 Judge Plunkett's initial sentence ordered Benson to serve his three sentences concurrently. While awaiting his initial appeal, Benson had served 467 days. Thus, according to Benson, he had served out his 1-year, or 365-day, term associated with count I.

Soon thereafter, Benson brought this two-count complaint under the authority of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 1999 (1971), seeking over \$ 8 million from the various probation officers [\*11] and prosecutors involved in either the supervision of his probation and/or the attempt to have it revoked. In Count I, Benson alleges violations of his Fifth Amendment rights against double jeopardy because: (1) U.S. Attorney Lassar and Deputy U.S. Attorney Safford filed numerous pleadings seeking to revoke Benson's probation and objected to Benson's motion to vacate (Complaint ("Compl.") PP 38, 44, 49); (2) U.S. Attorney Lassar, Deputy U.S. Attorney Safford, and Assistant U.S. Attorney Bertocchi appeared and prosecuted Benson during a probation revocation hearing seeking to imprison him for alleged probation violations (Compl. PP 46, 48); (3) between August 1, 1997 and October 16, 1998, Officer Smith supervised Benson as if he were on probation (Compl. P 36); (4) Officer Smith, Officer Raven, and Officer Vlaming actively sought to revoke Benson's probation and have him sentenced to jail by preparing a special report regarding Benson's probation violations and testifying at Benson's probation revocation hearing (Compl. P 37, 47-48); and (5) U.S. Attorney Lassar, Deputy U.S. Attorney Safford, Officer Smith, and Financial Litigation Agent Kenneth Giles collected \$ 3,703.00 of the total [\*12] \$ 4,083.00 amount owed for the costs of prosecution which was imposed as a special condition of Benson's probation. (Compl. P 50.)

In Count II, Benson alleges that, by supervising his probation and/or subsequently seeking to revoke it without the requisite jurisdictional authority, Defendants conspired to deprive him of his First Amendment rights to speak, travel, and associate. (Compl. P 59.) Benson's First Amendment count is completely derivative of his Fifth Amendment count in that it is premised entirely on his probationary conditions. The court will discuss the counts contemporaneously.