

## Hedge Fund Accuses U.S. of Misconduct

By Erika K. Solanki, J.D. Candidate 2017 | March 10, 2015

In November 2010, the FBI executed a search warrant related to insider trading allegations at [David Ganek's](#) Level Global hedge fund offices. Although Mr. Ganek was never charged with a crime, clients fearful of being linked to misconduct quickly withdrew funds, and the fund was promptly closed.

In December 2014, the [United States Court of Appeals for the Second Circuit reversed the insider-trading convictions](#) of two former hedge fund managers, Todd Newman and Anthony Chiasson. In response, while David Ganek claimed the reversal to be a vindication, he also stressed that there are still many that have lost their reputations and jobs permanently as a result of haphazard allegations. In a [statement](#), Ganek said: “For the dozens of my high-integrity colleagues at Level Global who lost their jobs and their reputations because the FBI improperly raided our firm in this now-discredited fishing expedition, today’s legal vindication is a reminder how prosecutorial recklessness has real impact on real people.”

Last week, David Ganek [filed a lawsuit](#) accusing a number of FBI agents and federal prosecutors, including [Preet Bharara](#), the United States Attorney in Manhattan, of violating his rights in their search warrant. In [Bivens v. Six Unknown Named Agents](#), the Supreme Court recognized that an individual whose constitutional rights were violated may seek legal redress against the individuals [federal officials] responsible for the damages. The Court stated that “an agent acting—albeit unconstitutionally—in the name of the United States possesses a far greater capacity for harm than an individual trespasser exercising no authority other than his own.”

Ganek’s lawsuit alleges that the [search warrant](#) should not have named him as a defendant, because it was based on false information about his involvement in insider trading, and that the government tipped off the press to generate publicity for its fishing expedition against Wall Street. Ganek is seeking damages for violation of the Fourth Amendment for an illegal search and the Fifth Amendment for violation of his right to due process.

However, the [misconduct suit will be an uphill battle](#), as the law provides significant protection to prosecutors. In [Imbler v. Pachtman](#), the Supreme Court held that prosecutors are protected by “absolute immunity” when acting as an advocate in a judicial proceeding. It remains unclear what level of involvement prosecutors had in the warrant and subsequent search, meaning that they could shirk liability.