No. 13-13519

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Petitioner/Appellant,

v.

ROYAL CARIBBEAN CRUISE LINES, LTD.,

Respondent/Appellee.

On Appeal from the United States District Court
for the Southern District of Florida
No. 1:12-MC-22014-JEM

PETITION OF APPELLANT EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR REHEARING (OR HEARING) EN BANC

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to 11th Cir. R. 26.1 and 28.1(b), I hereby certify that the following persons have an interest in the outcome of this case:

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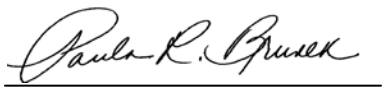
Pursuant to Fed. R. App. P. 26.1, the Equal Employment Opportunity Commission, as a government agency, is not required to file a corporate disclosure statement.



Paula R. Bruner

STATEMENT REGARDING REHEARING EN BANC

I express a belief based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance:

Whether the panel's decision treating evidence of possible systemic discrimination as irrelevant to an individual charge of disability discrimination because the employer admitted to firing the charging party because of his medical condition conflicts with established law. *See EEOC v. Shell Oil Co.,* 466 U.S. 54 (1984); *Gen. Tel. Co. v. EEOC,* 446 U.S. 318 (1980); *U.S. v. Florida Azalea Specialists*, 19 F.3d 620 (11th Cir. 1994), *EEOC v. UPMC*, 471 Fed. Appx. 96 (3d Cir. 2012); *EEOC v. Randstad*, 685 F.3d 433 (4th Cir. 2012); *EEOC v. Schwan's Home Serv.*, 644 F.3d 742 (8th Cir. 2011); *EEOC v. Konica Minolta Bus. Solutions USA, Inc.*, 639 F.3d 366 (7th Cir. 2011); *EEOC v. Kronos, Inc.*, 620 F.3d 287 (3d Cir. 2010); *EEOC v. Cambridge Tile Mfg. Co.*, 590 F.2d 205 (6th Cir. 1979); *EEOC v. Univ. of New Mexico*, 504 F.2d 1296 (10th Cir. 1974).

Whether the panel's decision adopted an inapt balancing test to address burdensomeness, rather than requiring the employer to show that

compliance would severely disrupt its normal business operations, *see EEOC v. Randstad*, 685 F.3d 433 (4th Cir. 2012); *EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1040 (10th Cir.1993); *EEOC v. Bay Shipbuilding Corp.*, 668 F.2d 304, 313 (7th Cir. 1981), and then departed from controlling precedent in holding that a potential dispute over jurisdiction was a factor to weigh in determining burdensomeness. *See EEOC v. Kloster Cruise Ltd.*, 939 F.2d 920 (11th Cir.1991).

s/Paula R. Bruner
Attorney of Record for the EEOC

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STATEMENT OF THE ISSUES

1. Whether the panel disregarded Supreme Court and Circuit precedent in redefining "relevance" and impeding the EEOC's investigation, both of whether the charging party had been illegally fired and whether others had been subjected to similar discrimination.

2. Whether, in affirming burdensomeness, the panel improperly deviated from prevailing law precluding consideration of jurisdictional defenses at the subpoena enforcement stage and requiring significant disruption to the employer's business operations.

STATEMENT OF THE CASE

1. Course of Proceedings

The EEOC initiated a subpoena enforcement action following Royal Caribbean Cruise Line's ("RCCL") refusal to produce information concerning its foreign national applicants or employees who were denied employment because of their medical conditions. T8-DE 1. The magistrate judge issued a report recommending denial of the Commission's application. T4-DE 34. The district court adopted the magistrate's report.

T3-DE 50. The EEOC appealed. T2-DE 52; Fed. R. App. 4(a). This Court affirmed. Panel Opinion ("Op.") of November 6, 2014.

2. Statement of the Facts

RCCL fired Jose Morabito, an Argentine national employed on an RCCL cruise ship that ports in Miami, T15-DE 1-4 at 1-2, after he was diagnosed with HIV and Kaposi Sarcoma but declared fit for duty by his physician. *Id.* at 3-4; T13-DE 1-2 at 2. Morabito filed a charge alleging that RCCL fired him because of his medical condition in violation of the ADA. T16-DE 1-3. RCCL denied the discrimination allegation, stating that Bahamian law required Morabito's termination because he has an infectious disease, and thus was permanently unfit for duty. T15-DE 1-4 at 3-4; T10-DE 21 at 2. RCCL averred that all shipboard applicants and employees are subject to the medical guidelines. T15-DE 1-4 at 3. In investigating whether RCCL's enforcement of the medical guidelines may unlawfully exclude individuals with disabilities from employment regardless of their ability to perform the essential functions of the job, the EEOC issued a subpoena. T14-DE 20-11. RCCL partially resisted the

Commission's subpoena, arguing that the EEOC did not have jurisdiction because the ADA does not cover a foreign national employed on a foreign-flagged ship operating primarily in international waters. T15-DE 1-4 at 1-4. The Commission modified the subpoena, but RCCL declined to comply. DE 1-15; DE 20-15. In the enforcement proceeding, the magistrate decided that the EEOC had established a plausible basis for jurisdiction but recommended against enforcement of the subpoena on relevance and burdensomeness grounds. T4-DE 34. The district court adopted the magistrate's recommendation. T3-DE 50.

3. The Panel Decision

The panel ruled that the disputed subpoena requests sought irrelevant information because they were "aimed at discovering members of a potential class of employees or applicants who suffered from a pattern or practice of discrimination[.]" Op. at 5. In its view, company-wide data would not shed light on the filed charge, especially since RCCL admitted that it terminated Morabito because of his medical condition. *Id.* The Court stated that relevance is determined by "the contested issues that

must be decided to resolve that charge[.]" *Id.* at 7. The Court opined that if EEOC desires to advocate on behalf of other potential victims of this same form of discrimination, it can file a Commissioner charge. *Id.* at 9.

The Court also decided that, even if the requested information were "related to" Morabito's charge, Op. at 7, RCCL had proved compliance would be unduly burdensome. *Id.* at 8. The Court applied a balancing test, and concluded that "the district court was justified in considering [the] potential jurisdictional hurdle in weighing the potential benefits and hardships of enforcing the EEOC's wide-ranging subpoena in this case." *Id.* at 11. The Court also resolved that the burden on RCCL to comply "would be significant" because RCCL would be required to manually review and compile documents for thousands of former employees and divert 5-7 employees for two months to review information. *Id.* at 9-11.

ARGUMENT

I. The Panel Decision Improperly Departs From Prevailing Subpoena Standards And Impedes The EEOC's Ability To Conduct An Effective Investigation.

The panel's redefinition of relevancy as limited to "the contested

issues that must be decided to resolve that charge," Op. at 7, conflicts with established legal standards for relevancy in subpoena enforcement proceedings. The Supreme Court made clear in *EEOC v. Shell Oil Co.*, 466 U.S. 54 (1984), that the relevancy limitation on the agency's investigation "is not especially constraining" and that the EEOC is entitled to "virtually any material that *might* cast light on the allegations against the employer." *Id.* at 68-69 (emphasis added). Moreover, "the EEOC's investigatory power is broader than the four corners of the charge[, and] . . . the EEOC need not cabin its investigation to a literal reading of the allegations in the charge." *EEOC v. Cambridge Tile Mfg. Co.*, 590 F.2d 205, 299 (6th Cir. 1979). Nothing in these standards supports the panel's restrictive determination that relevant information is limited to contested issues.

Further, in deciding what is contested here, the panel applied the wrong legal standard in determining "the only issues in dispute regarding Mr. Morabito's individual charge are whether the EEOC has jurisdiction over his claim . . . and whether the BMA standards provide a valid justification for RCCL's employment decision." Op. at 8. First, it is settled

law that defenses on the merits of a charge may not be raised to block the enforcement of an administrative subpoena. *Shell Oil*, 466 U.S. at 72 n.26; *cf. FTC v. Standard Oil Co.*, 449 U.S. 232, 241-43 (1980) (judicial review of early phases of an administrative inquiry results in "interference with the proper functioning of the agency" and "delay[s] resolution of the ultimate question whether the Act was violated"). In that the EEOC established plausible jurisdiction in this enforcement proceeding, Op. at 10-11; T4-DE34 at 5, as this Circuit requires, *EEOC v. Kloster Cruise Ltd.*, 939 F.2d 920, 922 (11th Cir.1991), any perceived "jurisdictional hurdle," Op. at 11, should have been disregarded and RCCL required to "disgorge *any evidence* relevant to the allegations of discrimination contained in the charge, regardless of the strength of the evidentiary foundation for those allegations." *Shell Oil,* 466 U.S. at 72 (emphasis added).

Second, the panel's decision that RCCL's admission regarding Morabito's termination blocks EEOC's access to comparative data also conflicts with established law. Op. at 7-8. RCCL's admission does not resolve the issue of whether RCCL violated the ADA; "the question is not

merely whether the reasons alleged by the [employer] have merit, per se, but whether those reasons are pretextual and whether they reflect bias, conscious or sub-conscious, based on [a protected trait]." *EEOC v. Univ. of New Mexico*, 504 F.2d 1296, 1302 (10th Cir. 1974).

Further, comparative data is relevant to Morabito's charge. The ADA bars employers from discriminating against qualified individuals on the basis of their disabilities, including by using qualification standards or other selection criteria such as medical standards that tend to screen them out. 42 U.S.C. §12112(b)(6). RCCL made information about other employees "relevant" to EEOC's investigation of Morabito's charge when it stated that the Bahamian standards required RCCL to declare permanently unfit for duty any shipboard employee with an AIDS-related illness and that all RCCL employees working on ships operating under the Bahamian flag were subject to these medical standards. T-15, DE 1-4 at 3-4. Hence, information concerning RCCL's treatment of its employees who are similarly situated to Morabito, but have different medical conditions, is relevant because it would provide critical comparative data needed to

establish whether RCCL's reasons for taking certain adverse action is pretextual. *See, e.g., EEOC v. Konica Minolta Bus. Solutions U.S.A., Inc.*, 639 F.3d 366, 369 (7th Cir.2011) (the EEOC is "authorized to consider whether the overall conditions in a workplace support the complaining employee's allegations"); *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 (3d Cir. 2010) ("EEOC is entitled to information that 'may provide a useful context' for evaluating employment practices under investigation, in particular when such information constitutes comparison data"); *Univ. of New Mexico*, 504 F.2d at 1302 ("it is entirely relevant to the charge that [the EEOC] investigate the subject personnel files in order to determine how faculty members of different national origins were treated in comparable situations").

Information about the application of those medical standards more broadly would help the Commission to determine whether they are job-related and consistent with business necessity or whether they screen out individuals who pose a direct threat, either of which might be a defense to a potential ADA claim. *See* 42 U.S.C. §12113(a)& (b). In any event, even if RCCL's admission provided the EEOC sufficient information to determine

that RCCL's action was reasonable or discriminatory, the EEOC is not "expected to ask only questions to which it already knows the answers." *Kloster Cruise*, 939 F.2d at 923. Thus, in treating the employer's admission as dispositive of all the Commission needs to know, the panel effectively "'place[d] a potent weapon in the hands of employers who have no interest in complying voluntarily with the Act, [and] wish instead to delay as long as possible investigations by the EEOC.'" *Univ. of Pa. v. EEOC*, 493 U.S. 182, 194 (1990) (quoting *Shell Oil*, 466 U.S. at 81).

Finally, in suggesting that EEOC issue a Commissioner's charge to obtain systemic data, the panel improperly attempted to dictate how the EEOC should conduct its investigation, *Newsome v. EEOC*, 301 F.3d 227, 231 (5th Cir. 2002) (district court properly rejected request for court order controlling EEOC's investigation), and ignored *Shell Oil's* mandate that the "Commission's ability to investigate . . . systemic discrimination not be impaired." 466 U.S. at 69. The filing of a Commissioner's charge is an option but not a requirement when potential systemic violations are uncovered during the agency's investigation and the violations are similar

to those alleged in the charge. *See, e.g., Gen. Tel. Co. of the N.W., Inc. v. EEOC*, 446 U.S. 318, 331 (1980) ("[a]ny violations that the EEOC ascertains in the course of a reasonable investigation of the charging party's complaint are actionable").

In fact, prevailing law disregarded by the panel permits the Commission to investigate systemic violations even if the underlying charge is an individual charge that did not allege a systemic violation or mention the policy or practice that gave rise to the systemic violation. *See, e.g. EEOC v. UPMC*, 471 Fed. Appx. 96 (3d Cir. 2012) (permitting company-wide information about UPMC's personal-leave policy even though individual charge did not mention leave policy); *EEOC v. Randstad*, 685 F.3d 433 (4th Cir. 2012) (permitting EEOC investigation of potential systemic ADA violation based on literacy requirement even though original charge asserted only national origin discrimination); *Kronos*, 620 F.3d at 297-99 (permitting EEOC to subpoena nationwide information about test at issue, even though the charge alleged only an individual claim); *EEOC v. UPS*, 94 F.3d 314, 317–18 (7th Cir. 1996) (when EEOC

receives charge alleging individual disability-discrimination claim, agency can investigate whether challenged policy affects a class of employees); *EEOC v. Astra U.S.A., Inc.*, 94 F.3d 738, 746 (1st Cir. 1996) (a charge "is capable of supporting an EEOC investigation into both the discrimination described in the charge itself and into the surrounding circumstances (including a full probing of any evidence of discriminatory practices unearthed during the course of the initial investigation)"); *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 756 (9th Cir. 1991) (EEOC "must be permitted to investigate the full picture of [a respondent's] practices"); *Univ. of New Mexico*, 504 F.2d at 1302-03 (approving EEOC investigation of university's treatment of other professors of different national origin even though individual charge alleged discrimination based on a specific national origin). The panel's narrow construction of EEOC's investigative authority departs from prevailing standards and thwarts the EEOC's congressionally-mandated "laudatory goals" of eradicating systemic discrimination and protecting "as-yet undiscovered victims." Op. at 8.

II. The Panel Determination That RCCL's Compliance With The EEOC Subpoena Would Be Unduly Burdensome Miscasts RCCL's Burden Of Proof And Improperly Considers Jurisdiction.

The panel rejected long-standing evidentiary requirements for proving burdensomeness and improperly considered RCCL's defenses to the merits of the charge. Op. at 11-12. In this Circuit, once evidence sought is deemed relevant, however "tangential" or "tenuous," Op. at 8, compliance is required unless the employer can demonstrate that compliance would threaten or disrupt the normal operation of a respondent's business. *See FTC v. Jim Walter Corp.*, 651 F.2d 251, 258 (5th Cir. 1981). To this end, "[t]he subpoenaed party may not merely utter the claim [of undue burden]; it must persuade [the court]." *Id.*; *see also EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1040 (10th Cir.1993) (an employer cannot avoid "compliance with a subpoena for relevant information simply upon the cry of 'unduly burdensome'").

Here, the panel ignored the prevailing standard for proving

burdensomeness, Op. at 11, and invoked the balancing test in *EEOC v. Packard Elec. Div.*, 569 F.2d 315, 318 (5th Cir. 1978),[1] to affirm the finding of undue burden. Op. at 11. In so doing, the panel mistakenly decided that potential jurisdictional challenges made compliance unreasonable because this Court requires enforcement whenever there is a plausible basis for jurisdiction. *Kloster Cruise*, 939 F.2d at 922. In that EEOC established plausible jurisdiction, Op. at 10-11; T4-DE34 at 5, the panel improperly considered RCCL's jurisdictional concern as a reason to relieve RCCL of producing relevant data.

Next, the panel legally erred in deciding that compliance would be unduly burdensome because an RCCL official averred that a manual

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[1] The panel's reliance on *Packard's* balancing test may be misplaced since it was based on Rule 45(b) of the Federal Rules of Civil Procedure. Rule 45(b) provides for the issuance of discovery subpoenas in litigation and requires that subpoenaed documents be admissible. *AF Holdings, LLC v. Does 1-105*, 752 F.3d 990, 995 (D.C. Cir. 2014). In contrast, the EEOC has a broad right of access to "any" evidence that bears on the allegations of the charge, without regard to the degree of need or admissibility. *Univ. of Pa.*, 493 U.S. at 191. Hence, Rule 45 standards should not apply to EEOC subpoenas. *EEOC v. Kronos, Inc.*, 694 F.3d 351, 371 (3d Cir. 2012) ("Rule 45 does not apply to administrative subpoenas").

search of its records would take 5-7 employees working full-time for 60 days to review its records and identify the applicants and employees who were disqualified for employment because of medical conditions. Op. at 9-10; T3-DE 50 at 5. This assertion does not constitute proof of undue burden to a multi-billion dollar business.[2] Further, the panel ruling directly conflicts with circuit precedent indicating that manual compilation of records is not enough to establish an undue burden. *New Orleans Public Service, Inc. v. Brown*, 507 F.2d 160, 164 (5th Cir. 1975) ("the court placed the limitation on the power of the subpoena on an improper basis when it held that it was invalid merely because it required the company to make compilations"). In the absence of any significant impact on RCCL's business, the panel inappropriately rested on a "cry" of undue burden, *Citicorp*, 985 F.2d at 1040, and circumvented its obligation to enforce an EEOC subpoena that sought relevant information. *See Brown*, 507 F.2d at

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[2] According to EEOC's Determination on RCCL's Petition to Revoke or Modify the Subpoena, RCCL's 2010 assets totaled $19.69 billion and its net income was $547 million. T13-DE 1-2 at 15.

164 ("the court erred in placing the burden on the EEOC to restructure its subpoena merely because full and complete compliance was arguably troublesome and expensive to the employer").

CONCLUSION

The panel decision on relevance and undue burden conflicts with subpoena enforcement jurisprudence and requires review by the full Court to assure conformity with prevailing law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Paula R. Bruner, hereby certify that on December 19, 2014, I electronically filed the foregoing petition for rehearing en banc with the Court via the appellate CM/ECF system and mailed hard copies. I also certify that the following counsel of record, who have consented to electronic service, will be served the foregoing petition via the appellate CM/ECF system and provided hard copies by regular mail:

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ADDENDUM

Panel Opinion

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-13519

D.C. Docket No. 1:12-mc-22014-JEM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff - Appellant,

versus

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(November 6, 2014)

Before ED CARNES, Chief Judge, and RESTANI,[*] Judge, and MERRYDAY,[**] District Judge.

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[*] Honorable Jane A. Restani, United States Court of International Trade Judge, sitting by designation.

[**] Honorable Steven D. Merryday, United States District Judge for the Middle District of Florida, sitting by designation.

PER CURIAM:

The Equal Employment Opportunity Commission ("the EEOC" or "the Commission") appeals the district court's denial of the EEOC's application for enforcement of its administrative subpoena issued to Royal Caribbean Cruises, Ltd. ("RCCL"). After careful consideration and with the benefit of oral argument, we affirm.[1]

BACKGROUND

In June 2010, Jose Morabito, an Argentinean national who was employed by RCCL as an assistant waiter on one of its cruise ships, filed a charge of discrimination with the EEOC. Mr. Morabito alleged that RCCL violated the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12112, when RCCL refused to renew his employment contract after he was diagnosed with a medical condition. Mr. Morabito had been diagnosed with HIV and Kaposi Sarcoma, but he had been declared fit for duty by his physician.

RCCL responded to the charge with a position statement contending that (1) the ADA was inapplicable because Mr. Morabito was a foreign national who was employed on a ship flying the flag of the Bahamas and (2) because RCCL's ships are registered under the law of the Bahamas, RCCL was required to follow the Bahamas Maritime Authority ("BMA") medical standards for seafarers, which

[1] The district court had jurisdiction pursuant to 42 U.S.C. § 2000e-9 (2012) and 29 U.S.C. § 161(2). We exercise jurisdiction pursuant to 28 U.S.C. § 1291.

allegedly disqualified Mr. Morabito from duty at sea.

After receiving RCCL's position statement, the EEOC requested a list of all employees discharged by RCCL since 2010 pursuant to the BMA medical standards. RCCL objected, asserting that the ADA did not cover foreign nationals working on foreign-flagged ships and that the information sought was not relevant to Mr. Morabito's charge.

The EEOC ultimately issued an administrative subpoena, which included requests for the following information[2]:

> (1) List all employees who were discharged or whose contracts were not renewed [from August 25, 2009, through present[3]] due to a medical reason . . . .
>
> (2) For each employee listed in response to request number 1, include employee's name, citizenship, employment contract, position title, reason for and date of discharge, a copy of the separation notice and the last known contact information for each individual.
>
> (3) For each employee listed in response to request number l, include their employment application and related correspondence, any interview notes, the identity of the person who hired the employee, how the employee obtained the position (i.e. online, in person, recruiter), the location where the employee was interviewed, and the identity and location of the person who made the final hiring decision.

[2] The subpoena also requested information pertaining to RCCL's general hiring and firing practices and its business operations in Miami, Florida. RCCL fully responded to these requests.

[3] The EEOC's original subpoena requested information from January 1, 2008, through present. The EEOC modified the relevant timeframe so that the information was limited to August 25, 2009, through present.

> (4) List all persons who applied for a position but were not hired within the relevant period due to a medical reason . . . .
>
> (5) For each employee listed in response to request number 4, include their citizenship, employment application and related correspondence, any interview notes, the identity of the person [who] hired the employee, how the employee learned of the position (i.e. online, in person, recruiter), the location where the employee was interviewed, and the identity and location of the person who made the final hiring decisions.

RCCL partially complied by providing records for employees or applicants who were United States citizens. The EEOC sought to compel enforcement of the requests for the remaining records regarding non-U.S. citizens who had been discharged or denied employment because of a medical condition.

The magistrate judge recommended that the petition to enforce the subpoena be denied on the grounds that the information sought was not relevant to Mr. Morabito's charge and that compliance with the disputed portions of the subpoena would be unduly burdensome. The EEOC filed objections with the district court. The district court rejected the EEOC's contentions and affirmed and adopted the magistrate judge's report and recommendation. The EEOC appeals.

DISCUSSION

In investigating allegations of unlawful employment practices, the EEOC is entitled to inspect and copy "any evidence of any person being investigated or proceeded against that relates to unlawful employment practices . . . and is relevant to the charge under investigation." 42 U.S.C. § 2000e-8(a) (2012). Although

"courts have generously construed the term 'relevant' and have afforded the Commission access to virtually any material that might cast light on the allegations against the employer," the Supreme Court has cautioned against construing the EEOC's investigative authority so broadly that the relevancy requirement is rendered "a nullity." EEOC v. Shell Oil Co., 466 U.S. 54, 68–69 (1984). A district court also "may weigh such equitable criteria as reasonableness and oppressiveness in issuing a subpoena for documents." EEOC v. Packard Elec. Div., Gen. Motors Corp., 569 F.2d 315, 318 (5th Cir. 1978).[4]

"The 'relevance' of documents in an administrative proceeding is a mixed question of law and fact, which implies that our standard of review of such determinations should look either to 'legal error' or to 'clear error,' depending on the circumstances." Id. at 317–18. We review the district court's balancing of the relative hardships and benefits of enforcement for abuse of discretion. Id. at 318. We find no error in the district court's opinion.

As the district court noted, the record below makes clear that the disputed portions of the subpoena are aimed at discovering members of a potential class of employees or applicants who suffered from a pattern or practice of discrimination, rather than fleshing out Mr. Morabito's charge. Although statistical and comparative data in some cases may be relevant in determining whether unlawful

[4] All decisions of the Fifth Circuit issued prior to the close of business on September 30, 1981, are binding precedent. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

discrimination occurred, the EEOC was required to make some showing that the requested information "bears on the subject matter of the[] individual complaint[]." Id.

The arguments presented by the EEOC on this point amounted to simply parroting the Supreme Court's statement that the information "might cast light on the allegations" against RCCL. Shell Oil, 466 U.S. at 69. It is not immediately clear, however, why company-wide data regarding employees and applicants around the world with any medical condition, including conditions not specifically covered by the BMA medical standards or similar to Mr. Morabito's, would shed light on Mr. Morabito's individual charge that he was fired because of his HIV and Kaposi Sarcoma diagnoses. This is especially so as RCCL admits that Mr. Morabito was terminated because of his medical condition, which RCCL alleges was required by the BMA medical standards. This does not appear to be a case where statistical data is needed to determine whether an employer's facially neutral explanation for the adverse employment decision is pretext for discrimination. We cannot say based on the record before us that the district court clearly erred in determining the interrelation, or lack thereof, between the information sought and the allegations in Mr. Morabito's charge. See Packard, 569 F.2d at 318 (holding that district court's finding that facility-wide statistical data was not relevant to individual charges of discrimination was not clearly erroneous); EEOC v. United

Air Lines, Inc., 287 F.3d 643, 654–55 (7th Cir. 2002) (holding that world-wide company information regarding employees who had taken medical leave of absence or had been laid off and benefits they received was not relevant to resolving individual flight attendant's charge that employer unlawfully failed to make contributions to French social security system on behalf of Americans employed or domiciled in France).

The EEOC focused most of its efforts before the district court, and in its briefs before us, on its argument that the EEOC is entitled to expand the investigation to uncover other potential violations and victims of discrimination on the basis of disability. According to the EEOC, this information is relevant because it is the same type of discrimination alleged in Mr. Morabito's charge and RCCL's reliance on the BMA standards suggests that others might have been discriminated against. We do not construe the relevancy standard so broadly. It might be that this information is related to Mr. Morabito's individual charge, but the standard by which the EEOC's subpoena power is governed is "relevant to the charge under investigation." 42 U.S.C. § 2000e-8(a) (emphasis added). The relevance that is necessary to support a subpoena for the investigation of an individual charge is relevance to the contested issues that must be decided to resolve that charge, not relevance to issues that may be contested when and if future charges are brought by others. Because RCCL has admitted that the reason

that it refused to renew Mr. Morabito's contract is his medical condition, whether it refused to renew other employee's contracts for the same reason is irrelevant to his charge. That issue is settled. Although eradicating unlawful discrimination and protecting other as-yet undiscovered victims are laudatory goals and within the Commission's broad mandate, the EEOC must still make the necessary showing of relevancy in attempting to enforce its subpoena. We agree with the magistrate judge and the district court that the broad company-wide information sought by the EEOC here has not been demonstrated to be relevant to the only contested issues that remain from those that arose as a result of the individual charge brought by Mr. Morabito.

Even if the information sought has some tenuous relevance to the charge filed by Mr. Morabito, we find no error in the district court's holding that compliance with the subpoena would be unduly burdensome to RCCL. As explained, the information sought by the EEOC is at best tangentially relevant to Mr. Morabito's individual charge of discrimination. The only issues in dispute regarding Mr. Morabito's individual charge are whether the EEOC has jurisdiction over his claim, as he is a foreign national who was employed on a foreign-flagged ship, and whether the BMA standards provide a valid justification for RCCL's employment decision. RCCL already has provided the EEOC with information regarding its corporate

structure, its hiring and firing practices, the BMA standards, and the circumstances surrounding Mr. Morabito's termination. The EEOC failed to present a cogent argument as to how the additional information sought, which pertains to employees and applicants from around the world suffering from any medical condition, in the light of the information the EEOC already possesses, would further aid the Commission in resolving the issues in dispute regarding Mr. Morabito's charge.

To the extent that the EEOC desires this information so that it may advocate on behalf of other potential victims of employment discrimination, the need for the subpoenaed information is relatively low. The Commission has the ability to file a Commissioner's charge alleging a pattern and practice of discrimination that could support a request for that information. See 42 U.S.C. § 2000e-5(b) (2012) (providing that a discrimination charge may be filed "by or on behalf of a person claiming to be aggrieved, or by a member of the Commission"). In any case, the EEOC may not enforce a subpoena in the investigation of an individual charge merely as an expedient bypass of the mechanisms required to file a Commissioner's charge.

In contrast to the limited need for the subpoenaed information to resolve Mr. Morabito's claim, the burden on RCCL in complying with the subpoena would be significant. RCCL would be required to manually

review and cross-reference paper documents relating to thousands of former employees. Additionally, RCCL would be required to collect records from independent hiring partners concerning thousands of applicants who were not hired. To supply the information sought, RCCL estimated that it would need to divert five to seven employees from their usual tasks for forty hours a week for two months. As the EEOC has little, if any, need for the requested information to resolve Mr. Morabito's charge, this burden is unwarranted.

Moreover, RCCL has raised a legitimate question regarding whether the EEOC has jurisdiction over the claims of foreign nationals on foreign-flagged ships, like Mr. Morabito, when doing so likely would interfere with the internal order of the vessels. See Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 125 (2005) ("Our cases hold that a clear statement of congressional intent is necessary before a general statutory requirement can interfere with matters that concern a foreign-flag vessel's internal affairs and operations . . . ."); Lobo v. Celebrity Cruises, Inc., 704 F.3d 882, 888 & n.10 (11th Cir. 2013) (holding that the Labor Management Relations Act and National Labor Relations Act do not apply to wage disputes between foreign-flagged ship and its foreign crew, even when ship enters U.S. waters). Although we need not decide at this time whether the EEOC lacks

jurisdiction over claims of foreign nationals employed on foreign-flagged ships, see EEOC v. Kloster Cruise Ltd., 939 F.2d 920, 922–23 (11th Cir. 1991), the district court was justified in considering this potential jurisdictional hurdle in weighing the potential benefits and hardships of enforcing the EEOC's wide-ranging subpoena in this case.

In an attempt to challenge the district court's analysis, the EEOC cites cases from other Courts of Appeals that suggest that a party seeking to avoid enforcement of an EEOC administrative subpoena must show that compliance would interfere with its normal business operations. See Appellant's Br. 43–44 (citing EEOC v. Bay Shipbuilding Corp., 668 F.2d 304, 313 (7th Cir. 1981); EEOC v. Citicorp Diners Club, Inc., 985 F.2d 1036, 1040 (10th Cir.1993); EEOC v. Randstad, 685 F.3d 433, 452 (4th Cir. 2012)). According to the EEOC, RCCL has not even attempted to show that devoting five to seven employees for two months would disrupt its normal business operations when RCCL employs over 50,000 people and is a multi-billion dollar business.

We reject such a rigid rule in the burdensomeness analysis. The court in Packard stated that a district court is authorized to "weigh such equitable criteria as reasonableness and oppressiveness" and that "this rubric impl[ies] a balancing of hardships and benefits." 569 F.2d at 318. The use of

"such . . . criteria" and the plural of "hardship" and "benefit" clearly indicates that a district court may consider a number of factors in this analysis, rather than requiring specific types of evidence on a single factor. See also United Air Lines, 287 F.3d at 653 (noting that cases such as Bay Shipbuilding have suggested a party must show that compliance would threaten normal business operations but explaining "that scenario is more illustrative than categorical" and "[w]hat is unduly burdensome depends on the particular facts of each case and no hard and fast rule can be applied to resolve the question" (internal quotation marks omitted)); EEOC v. Ford Motor Credit Co., 26 F.3d 44, 47 (6th Cir. 1994) ("Essentially, this court's task is to weigh the likely relevance of the requested material to the investigation against the burden to Ford of producing the material.").

We conclude that the district court's weighing of the burden to RCCL, which certainly was not trivial, and the likely irrelevance of the information to Mr. Morabito's charge was not an abuse of discretion, especially in the light of the jurisdictional issues raised by RCCL.[5]

[5] We decline the EEOC's invitation to modify the scope of the subpoena. First, the possibility of modification was not presented to the district court in the objections to the magistrate judge's report and recommendation. Additionally, under the EEOC's proposed modification, RCCL would still be required to supply information regarding all applicants who were denied employment because of a medical condiction and all terminated employees who had worked on ships that entered U.S. waters. It is unclear how much this modification would reduce the burden on RCCL in reviewing the documents necessary to compile that information, and the relevancy and jurisdictional issues described above remain.

CONCLUSION

For the foregoing reasons, the district court's denial of the EEOC's application to enforce the administrative subpoena is

AFFIRMED.