No. 26-1352

ORAL ARGUMENT REQUESTED

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Applicant-Appellant,

v.

PSYCHOLOGICAL DIMENSIONS,
Respondent-Appellee.

On Appeal from the United States District Court
for the District of Colorado
Case No. 1:26-mc-00072-RBJ
Hon. R. Brooke Jackson, Senior U.S. District Judge

OPENING BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS APPLICANT-APPELLANT

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STATEMENT OF PRIOR OR RELATED APPEALS

There are no prior or related appeals.

STATEMENT OF JURISDICTION

This is a subpoena enforcement action arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"); the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 *et seq.* ("ADA"); and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621 *et seq.* ("ADEA"). The district court had jurisdiction under Title VII pursuant to 42 U.S.C. §§ 2000e-5(f)(3) and 2000e-9 (incorporating 29 U.S.C. § 161 of the National Labor Relations Act); under the ADA pursuant to 42 U.S.C. § 12117(a) (incorporating 42 U.S.C. §§ 2000e-5(f)(3) and 2000e-9); and under the ADEA pursuant to 29 U.S.C. § 626(a) (incorporating 29 U.S.C. § 209, incorporating in turn 15 U.S.C. § 49). On June 3, 2026, the district court denied the application of the Equal Employment Opportunity Commission ("EEOC") for an order to show cause as to why four administrative subpoenas should not be enforced.

Add.1; Appx.131.[1] The court entered final judgment on July 6, 2026. Add.9; Appx.139. The EEOC filed a timely notice of appeal on September 3, 2026. Appx.140; *see* Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Did the district court abuse its discretion in excusing Psychological Dimensions's failure to exhaust administrative remedies based on the court's own assumption that Psychological Dimensions's experienced counsel was confused, even though Psychological Dimensions never suggested this was the case?

2. Does the EEOC have authority to investigate all the allegations in an administrative charge of discrimination, not just those that affect the charging party?

3. Did the district court err by considering the validity only of the Title VII/ADA subpoenas, and not separately considering the validity of the ADEA subpoenas?

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[1] References to "Add.___" are to the pages of the Addendum attached to this brief. References to "Appx.___" are to the pages of the EEOC"s Appendix.

STATEMENT OF THE CASE

A. Course of Proceedings

This is a subpoena enforcement action. The EEOC sought to enforce four subpoenas against Psychological Dimensions: two issued under Title VII/ADA, and two issued under the ADEA. Appx.6. The EEOC contended that Psychological Dimensions did not exhaust administrative remedies for the Title VII/ADA subpoenas, and thus forfeited any objections to them. Appx.8. The court should enforce all four subpoenas, the EEOC said, because each sought information that is "relevant" within the meaning of the applicable statute. Appx.104-105.

The district court held that Psychological Dimensions did not forfeit its Title VII/ADA objections. Add.6; Appx.136. Considering the objections on the merits, the court declined to enforce the Title VII/ADA subpoenas because it deemed them not relevant to the underlying charges. Add.7-8; Appx.137-138. The court did not analyze the ADEA subpoenas separately. Nonetheless, it denied enforcement of the ADEA subpoenas *sub silencio*. *See* Add.8; Appx.138. The EEOC appealed. Appx.140.

B. Statement of the Facts

The Arapahoe County Sheriff's Office ("ACSO") has a two-phase hiring process administered by a third-party contractor, Psychological Dimensions. Appx.41-42. Phase 1 is a pre-offer assessment, one part of which involves filling out a questionnaire containing more than 430 questions. Appx.17, 43. One section of the questionnaire asks if applicants had ever been written up, suspended, terminated, convicted of inappropriate sexual activity or other crimes, owed child support, or engaged in fraud or theft. Appx.17, 26. In the same section, it asks the following four questions:

1) Have you ever been involved in or experienced any sexual harassment in the workplace?
2) Have you ever filed a formal complaint against an employer for any reason (*e.g.*, EEOC complaints, discrimination or harassment claims, wrongful termination, etc.)?
3) Have you ever been involved in any lawsuits or other judicial actions as either a plaintiff or defendant?

4) Other than the above question, have you appeared in court or any other legal proceedings (*e.g.*, Civil Service, EEOC) outside of past public safety job duties?

Appx.36-37.

Psychological Dimensions determines at the end of Phase 1 whether a candidate is suitable for a job opening and, if so, the applicant may receive a contingent job offer. Appx.41. During Phase 2 of the application process, Psychological Dimensions conducts post-offer written and oral examinations regarding medical and psychological history and obtains the applicant's medical records. Appx.21-22, 26, 41-42.

In January 2020, Jessica Roe applied for a position with ACSO as a Public Information Liaison. Appx.16-17. During Phase 1 of the hiring process, she answered "no" to the four questions listed above. Appx.120. Psychological Dimensions deemed Roe suitable at the end of Phase 1, and ACSO offered her a job contingent on the results of Phase 2. Appx.17. Psychological Dimensions then administered a polygraph exam, which she passed; conducted extensive oral and written examinations regarding her psychological and medical history; and sought copies of her medical records. Appx.19. Roe also provided writing samples; submitted to

interviews with at least six officers, during which she disclosed a psychological diagnosis; and presented a mock press briefing. Appx.20. In September 2020, ACSO informed Roe that she had not passed the post-offer psychological exam, and it rescinded her job offer. Appx.22.

In June 2021, Roe filed two EEOC administrative charges—one against ACSO and one against the Board of County Commissioners of Arapahoe County ("BCCAC"). Appx.10, 15. She alleged discrimination as to herself as an individual and a wider pattern or practice of discrimination. Appx.15-17. With respect to herself, she stated that ACSO and BCCAC had violated the ADA by rescinding her job offer. Appx.16-17. More broadly, she alleged a variety of ADA and Title VII violations in connection with the hiring process, including asking the four questions listed above. Appx.15-17. Those questions, the charges alleged, adversely considered past protected activity—such as previously complaining about sexual harassment or filing a charge with the EEOC—in the hiring process and chilled future protected activity. Appx.17. Roe subsequently filed an amended charge against ACSO and BCCAC, repeating the allegations of the initial ADA/Title VII charges and adding parallel claims under the

ADEA, the Pregnant Workers Fairness Act of 2022, the Genetic Information Nondiscrimination Act of 2008, and the Equal Pay Act of 1963. Appx.11, 24.

The EEOC sought to obtain additional information about the Phase 1 questionnaire from ACSO and BCCAC. Appx.34, 40. Both disclaimed any knowledge of the questionnaire's contents. Appx.43, 95. Accordingly, the EEOC sought the information directly from Psychological Dimensions. Appx.7, 94.

On August 26, 2025, the EEOC issued four subpoenas[2] to Psychological Dimensions seeking:

1) The Job Suitability Assessments for all ACSO applicants who answered affirmatively to the four questions;

[2] The charging party initially filed charges against two separate respondents, and the EEOC opened separate case files for each one (No. 541-2021-01979 and No. 541-2021-01956). The file for ACSO contained two charges: the initial charge (alleging Title VII/ADA violations) and the amended charge (alleging that the same conduct also violated the ADEA). So did the file for BCCAC. *See* Appx.50, 53 (two subpoenas citing two Title VII/ADA charges); Appx.44, 47 (two subpoenas citing two ADEA charges). The EEOC served Psychological Dimensions with one subpoena for each charge, for a total of four subpoenas. *See* Appx. 44, 47 (ADEA subpoenas No. DE-2025-0012 (16759 and 16761)); Appx.50, 53 (Title VII/ADA subpoenas No. DE-2025-0013 (16760 and 16762)).

2) for each Job Suitability Assessment provided in response to the subpoena(s), all written communications between Psychological Dimensions and ACSO discussing the applicant; and
3) a declaration authenticating the produced documents as true and accurate.

Appx.44 (ADEA subpoena 16759), Appx.47 (ADEA subpoena 16761); Appx.50 (Title VII/ADA subpoena 16760), Appx.53 (Title VII/ADA subpoena 16762); Appx.95 at n3. The EEOC served these subpoenas on Psychological Dimensions via U.S. mail, return receipt requested. Appx.56 (return receipt for case file 541-2021-01956); Appx.57 (return receipt for case file 541-2021-01979). Return receipts show that Psychological Dimensions received the subpoenas on August 28, 2025, and that an employee signed for them on that date. Appx.56, 57.

Psychological Dimensions did not send a letter objecting to the subpoenas until September 10, three business days past the five-day deadline for petitioning for revocation or modification of subpoenas under Title VII or the ADA (here, September 4). Appx.58, 114; *see* 29 C.F.R. § 1601.16(b)(1). The company captioned the letter, "Re: Age Directed Charge of Discrimination," and the letter specifically (and only) referred to

the two ADEA subpoenas (identifying them by subpoena numbers). Appx.58. The letter also stated that Psychological Dimensions was submitting its objections pursuant to 29 C.F.R. § 1626.16—a regulation covering subpoenas issued pursuant to the ADEA—despite the fact that these regulations prohibit any administrative review of ADEA subpoenas. Appx.58; *see* 29 C.F.R. § 1626.16(c) ("A subpoena issued by the Commission or its designee pursuant to the [ADEA] is not subject to review or appeal.").

On December 16, EEOC counsel Karl Tetzlaff emailed Psychological Dimensions's counsel Michah Dawson "to discuss any possibility of reaching an amicable resolution prior to proceeding in court." Appx.67. Two days later, the attorneys spoke on the phone about Psychological Dimensions's objections to the subpoenas. Appx.13, 66. Tetzlaff explained that the subpoenas were limited to ACSO and did not seek information about Psychological Dimensions's nationwide clients, as Psychological Dimensions initially believed. Appx.66. He asked Dawson whether this clarification would resolve Psychological Dimensions's objections. Appx.66. Dawson stated that he would have to confer with his client. Appx.66. Tetzlaff told him, "If we are not able to resolve this matter by [close of business Wednesday] we will proceed to recommend this matter

for subpoena enforcement in federal court." Appx.66. Nine minutes later, Dawson responded, "Unfortunately, it looks like we're going to have to litigate this issue." Appx.64-65.

Tetzlaff emailed the next day, observing once again that the burden on Psychological Dimensions would be "significantly reduced" because the subpoenas only applied to ACSO. Appx.64. He stated that they "did not have an opportunity to discuss that the objections filed by your office were untimely." Appx.64. He explained, "When a respondent fails to timely file a petition to revoke or modify, its objections are waived for failure to exhaust its administrative remedies" and suggested that Psychological Dimensions reconsider its position. Appx.64. "The EEOC remains willing to negotiate the terms of the subpoena," Tetzlaff concluded, "if Respondent is able to articulate its purported burden to avoid court intervention." Appx.64.

In reply, Dawson asked, "is the EEOC now taking the position that the September 10 letter in response to the request is not being considered a request to revoke?" Appx.63. "The issue is timing, not the title of the document," Tetzlaff explained. Appx.63. "The Commission considers the letter you provided to us to be untimely and as a result, a failure to exhaust

the administrative process," he said. Appx.63. He reiterated that the subpoena was far narrower than Psychological Dimensions initially understood and that the EEOC remained "open to discussing" a resolution without litigating. Appx.63.

Dawson responded, "I think we may have crossed wires on timing. It appears that despite the date on the mailing, and given the Labor Day holiday, our client received the subpoena on the 4th." Appx.62. Tetzlaff emailed a copy of the return receipts, demonstrating that Dawson was incorrect. Appx.62. The following week, Dawson emailed, "Unfortunately, it looks like we'll be litigating this one." Appx.61.

The EEOC applied for an order to show cause why the administrative subpoenas should not be enforced. Appx.6. In support of its petition, the EEOC argued: (1) there is no regulatory provision allowing Psychological Dimensions to object to the ADEA subpoenas, (2) Psychological Dimensions waived its objections to the Title VII/ADA subpoenas by never petitioning the EEOC to revoke or modify them, and (3) even if the court construed the ADEA objections as also applying to the Title VII/ADA subpoenas, the objections were lodged too late. Appx.101. The

EEOC also argued that all of Psychological Dimensions's objections failed on the merits. Appx.99.

Psychological Dimensions did not explain (and still has not explained) why it objected only to the ADEA subpoenas. Instead, it argued that the EEOC could not require strict compliance with procedural rules when it knew that Psychological Dimensions had objected to the subpoenas and "understood the objections to include the content of all of the subpoenas." Appx.116. Psychological Dimensions also argued that the subpoenas were not relevant to the underlying charges because Roe had not answered "yes" to any of the four challenged questions and had been deemed "suitable" at the end of Phase 1. Appx.120.

C. District Court's Decision

The district court denied the EEOC's application. Add.1; Appx.131. The court acknowledged that "there is no administrative procedure for objecting to ADEA subpoenas," and that Psychological Dimensions never expressly objected to the subpoenas issued pursuant to Title VII and the ADA. Add.5; Appx.135. "[E]ven if one assumes that Psychological Dimensions intended to object to the ADA/Title VII subpoena(s) as well," the court said, "they were untimely." Add.5; Appx.135.

Although Psychological Dimensions did not argue it was confused by the subpoenas, the district court observed, "Serving multiple subpoenas that were identical in content and differed only in the EEOC's numbering and statutory authority *could easily be* confusing, even to a presumably sophisticated third party."Add.6; Appx.136 (emphasis added). "The substance is that Psychological Dimensions intended to object to 'the subpoenas,'" the court said, "and that was or should have been obvious to the EEOC." Add.6; Appx.136.

The court acknowledged that Psychological Dimensions had not filed its Title VII/ADA objections within five days, but said, "some courts have made exceptions to that narrow window, particularly where the subpoena did not mention the five-day deadline." Add.6; Appx.136 (citing *EEOC v. Lutheran Soc. Servs.*, 186 F.3d 959 (D.C. Cir. 1999); *EEOC v. Serv. Tire Truck Ctrs.*, No. 1:18-cv-1539, 2018 WL 5043734 (M.D. Pa. Oct. 17, 2018); *EEOC v. WinCo Foods, Inc.*, No. 2:05-mc-00486-GEB-GGH, 2006 U.S. Dist. LEXIS 64521 (E.D. Cal. Sep. 8, 2006)). "I am not inclined to find that the very slight delay in registering its objections, in the context here, is dispositive," the court said. Add.6; Appx.136. "But even if I were to find the objections to

have been untimely filed," the court continued, "I have a bigger problem with the substance of the subpoenas in this instance." Add.6; Appx.136.

The EEOC issued the subpoenas, the court said, for the purpose of determining whether ACSO retaliated against applicants who answered "yes" to the four challenged questions. Add.6-7; Appx.136-137. However, the court observed, Roe answered "no." Add.7; Appx.137. Even if ACSO had a pattern or practice of retaliating against applicants who answered "yes," the court said, any such pattern or practice would have had no effect on Roe. Add.7; Appx.137. The court concluded that it was "unwilling to hold that the EEOC's authority to investigate discrimination in the workplace is unlimited, or that an individual's claim that she lost a job opportunity due to discrimination opens the door to compelling a third party to produce information that has nothing to do with the discrimination allegedly suffered by the claimant." Add.7-8; Appx.137-38.

STANDARD OF REVIEW

A district court decision refusing to enforce an EEOC subpoena is reviewed for abuse of discretion. *McLane Co. v. EEOC*, 581 U.S. 72, 85 (2017). "Whether a district court employed the correct standard of relevance—as opposed to how it applied that standard to the facts of a

given case—is a question of law, and a district court necessarily abuses its discretion if it based its ruling on an erroneous view of the law." *EEOC v. Centura Health*, 933 F.3d 1203, 1207 (10th Cir. 2019) (citation modified).

SUMMARY OF ARGUMENT

The district court's ruling is legally erroneous on both procedural and substantive grounds. EEOC regulations give parties served with a Title VII/ADA subpoena an administrative mechanism to seek modification or revocation. Failure to invoke that mechanism in a timely fashion constitutes failure to exhaust administrative remedies. Psychological Dimensions did not raise any objections to the Title VII/ADA subpoenas during the administrative process—it objected only to the subpoenas issued under the ADEA (which does not provide for administrative review). Even if one could disregard the plain language of Psychological Dimensions's letter to the EEOC and construe the letter as stating Title VII/ADA objections, Psychological Dimensions did not send that letter until after the Title VII/ADA deadline had passed.

Psychological Dimensions has never explained why it filed Title VII/ADA objections too late (if it filed them at all). Nonetheless, the district court offered a reason on its behalf, positing that the four subpoenas *could*

have been confusing. Based on this notion, the district court excused Psychological Dimensions from exhausting administrative remedies. That was reversible error.

This Court need not reach that issue, however, because the district court also erred substantively. Considering the Title VII/ADA objections on the merits, the district court wrongly held that the EEOC could not investigate pattern-or-practice allegations in the underlying charge because the charging party herself was not affected by the alleged pattern or practice. This was error. Title VII and the ADA require the EEOC to investigate *all* allegations in a charge. The EEOC may subpoena only evidence that is relevant to a charge—and that is exactly what the EEOC did here. A pattern-or-practice investigation is plainly relevant to a charge containing a pattern-or-practice allegation. This is true even if the challenged practice did not harm the charging party. No court of appeals has held otherwise.

The district court also erred by refusing to enforce the ADEA subpoenas based on its Title VII/ADA analysis. Relevance has a different meaning under the ADEA than it does under Title VII/ADA. Even in the absence of a charge, an ADEA investigation may proceed if it is relevant to

an ongoing investigation. These subpoenas surely were. It was reversible error for the district court to treat the ADEA subpoenas as interchangeable with those issued under Title VII/ADA.

ARGUMENT

The district court abused its discretion by not enforcing the EEOC's subpoenas. For the following reasons, the EEOC urges this Court to vacate the district court's decision and remand for further proceedings.

I. The EEOC has broad investigative authority.

The EEOC's authority to investigate discrimination differs by statute. Title VII has a multi-part enforcement mechanism, commencing with the filing of an administrative charge of discrimination. 42 U.S.C. § 2000e-5. The ADA adopts Title VII's enforcement procedures, also requiring an underlying charge. 42 U.S.C. § 12117(a). Both statutes require the EEOC to investigate *all* allegations in a charge. *See* 42 U.S.C. § 2000e-5(b) ("Whenever a charge is filed by or on behalf of a person claiming to be aggrieved … the Commission … *shall* make an investigation thereof." (emphasis added)); *id.* § 12117(a) (incorporating § 2000e-5(b)). They empower the EEOC to subpoena "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); *id.* § 12117(a) (incorporating § 2000e-8(a)).

The ADEA, in contrast, authorizes the EEOC to "receive information concerning alleged violations of the ADEA 'from any source.'" *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28 (1991) (citation omitted) (adding "EEOC's role in combatting age discrimination is not dependent on the filing of a charge"); *EEOC v. Sidley Austin Brown & Wood*, 315 F.3d 696, 701 (7th Cir. 2002) (unlike Title VII, EEOC enforcement under the ADEA does not require a charge); 29 C.F.R. § 1626.4 (EEOC may conduct investigations "on its own initiative"). The ADEA empowers the EEOC to "investigate such facts, conditions, practices, or matters as [it] may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter." 29 U.S.C. § 211(a) (incorporated into ADEA through 29 U.S.C. § 626(a)).[3]

When an employer refuses to comply voluntarily with a request for information, the EEOC may issue an administrative subpoena. *See EEOC v.*

[3] Individuals, in contrast, must file an ADEA charge before proceeding to court. 29 U.S.C. § 626(d)(1).

TriCore Reference Lab'ys, 849 F.3d 929, 934 (10th Cir. 2017). This subpoena authority extends to issuing third-party subpoenas. *See EEOC v. Kronos Inc.*, 694 F.3d 351, 355, 372 (3d Cir. 2012) (involving third-party subpoena); *EEOC v. Ill. Dep't of Emp. Sec.*, 995 F.2d 106, 107 (7th Cir. 1993) (same).

The ADEA does not provide for administrative review of an EEOC subpoena. 29 C.F.R. § 1626.16(c). Thus, there are no administrative remedies for a respondent to exhaust before raising objections in court. *See* 29 U.S.C. § 626(a) (incorporating procedures of 29 U.S.C. § 211(a)). Title VII and the ADA do allow for administrative review, but the subpoena recipient must petition for revocation or modification within five business days. *See* 29 C.F.R. § 1601.16(b)(1). If the parties cannot resolve all timely stated objections, or if the subpoena recipient has failed to exhaust administrative remedies and thereby forfeited its objections, the EEOC may petition the court for judicial enforcement. *See* 29 U.S.C. § 161(2) (incorporated into Title VII through 42 U.S.C. § 2000e-9).

If a subpoena issued under any of these statutes is within the agency's authority and seeks "relevant" information, "the district court should enforce the subpoena unless the employer establishes that the subpoena is too indefinite, has been issued for an illegitimate purpose, or is

unduly burdensome." *McLane Co.*, 581 U.S. at 77 (internal quotation marks omitted). When assessing relevance, "[the] limitation on the Commission's investigative authority is not especially constraining." *EEOC v. Shell Oil Co.*, 466 U.S. 54, 68 (1984). Courts may not render the relevance requirement a "nullity," but the EEOC is entitled to "virtually any material that might cast light on the allegations against the employer." *Id*. at 68-69.

II. Psychological Dimensions failed to exhaust its administrative remedies regarding the Title VII/ADA subpoenas.

For the following reasons, Psychological Dimensions has forfeited its right to challenge the Title VII/ADA subpoenas.

A. Psychological Dimensions never objected to the Title VII/ADA subpoenas.

The letter that Psychological Dimensions sent to the EEOC expressly objected only to the ADEA subpoenas. *See* Appx.58. The letter was captioned "Re: Age Directed Charge of Discrimination," and it specifically cited the two ADEA subpoenas (identifying subpoenas #DE-2025-0012 (16759) and #DE-2025-0012 (16761)). Appx.58. The letter also stated that Psychological Dimensions was submitting its objections pursuant to 29 C.F.R. § 1626.16—a regulation that applies only to the ADEA and that precludes administrative review, 29 C.F.R. § 1626.16(c). *See* Appx.58.

At no point did the letter say that Psychological Dimensions also objected to the subpoenas issued under Title VII and the ADA. Thus, Psychological Dimensions has forfeited its right to object to those subpoenas. *See* 29 C.F.R. § 1601.16(b)(1) (procedures for objecting to Title VII/ADA subpoenas); *see W. Watersheds Project v. U.S. Bureau of Land Mgmt.*, 76 F.4th 1286, 1293 (10th Cir. 2023) ("If a party fails to raise its objection, it has failed to exhaust its administrative remedies and has consequently forfeited its argument.").

B. Even if Psychological Dimensions objected to the Title VII/ADA subpoenas, it did so too late.

Even assuming for the sake of argument that the court could properly have interpreted the letter as also applying to the Title VII/ADA subpoenas, Psychological Dimensions submitted its objections more than five business days after being served. *See* 29 C.F.R. § 1601.16(b)(1) ("Any person served with a … subpoena who intends not to comply shall petition the [EEOC] to seek its revocation or modification … within five days … after service of the subpoena."); 42 U.S.C. § 2000e-12(a) (authorizing EEOC to promulgate "suitable procedural regulations to carry out the provisions of [Title VII]"). The regulation's "mandatory language creates a strong

presumption that issues parties fail to present to the agency will not be heard in court." *See EEOC v. Lutheran Soc. Servs.*, 186 F.3d 959, 964 (D.C. Cir. 1999). Thus, failure to petition the EEOC within five business days generally means that a respondent forfeits its objections. *Id.*

The weight of authority supports strict compliance with the five-day deadline. In *EEOC v. Aerotek, Inc.*, 498 F. App'x 645 (7th Cir. 2013), for example, the Seventh Circuit held that an employer had forfeited its objections to a subpoena because it filed the objections one day late. *Id.* at 647-48. And in *EEOC v. Cuzzens of Georgia, Inc.*, 608 F.2d 1062 (5th Cir. 1979), the Fifth Circuit held that "an employer served with an EEOC subpoena and making no effort to exhaust the available administrative remedies may not thereafter challenge the subsequent judicial enforcement of that subpoena for any reason short of objections based on constitutional grounds." *Id.* at 1064.

True, some courts have allowed exceptions to the five-day rule in "sufficiently extraordinary" circumstances. *See, e.g., Lutheran Soc. Servs.*, 186 F.3d at 964-65. But Psychological Dimensions has never suggested that "sufficiently extraordinary" circumstances exist here, and the record reveals no unusual barrier to timely filing. The district court's reason for

excusing compliance was solely its own speculation that "[s]erving multiple subpoenas that were identical in substantive content and differed only in EEOC's numbering and statutory authority *could easily be confusing*, even to a presumably sophisticated third party." Add.6; Appx.136 (emphasis added). However, Psychological Dimensions has never argued that it failed to make timely objections because of confusion, and its experienced counsel never suggested to the court that this was the case. The district court abused its discretion by assuming confusion where none was asserted.

III. The district court erred in its assessment of whether the subpoenas were "relevant."

The district court committed legal error by holding that an investigation is "relevant to the [Title VII/ADA] charge of discrimination" only if it is limited to allegations in the charge that personally affect the charging party. Add.7; Appx.137. The court also erred by completely overlooking that "relevance" has a broader meaning under the ADEA than it does under Title VII or the ADA; unlike those statutes, the ADEA does not link "relevance" to a charge at all.

A. The district court misunderstood the "relevance" requirement for subpoenas issued under Title VII and the ADA.

EEOC subpoenas issued pursuant to Title VII or the ADA must be "relevant" to the underlying charge. 42 U.S.C. § 2000e-8(a). Roe's charges expressly alleged a pattern or practice of discrimination affecting applicants other than herself. Add.7; Appx.137. The district court committed reversible error by misconstruing the statutory phrase "relevant to the charge of discrimination" to mean that the EEOC may only investigate Roe's personal harm even though the charge specifically alleged additional violations.

Nothing in Title VII limits the scope of employment-discrimination allegations that may be included in a sworn charge filed with the EEOC. Indeed, Title VII authorizes discrimination charges filed "on behalf of" a person aggrieved and charges filed by an EEOC Commissioner, 42 U.S.C. § 2000e-5(b), thus contemplating that charges may include allegations of unlawful employment practices inapplicable to the charging party. *See EEOC v. Cosmair, Inc.*, 821 F.2d 1085, 1090 (5th Cir. 1987) ("A charge not only informs the EEOC of discrimination against the employee who files

the charge or on whose behalf it is filed, but may also identify other unlawful company actions.").

No court of appeals has ever curtailed the EEOC's investigative authority because pattern-or-practice allegations did not apply to the charging party. Courts recognize that investigating these broader allegations is consistent with the EEOC's mission "to vindicate the public interest, which is broader than the interest of the charging parties." *EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1039 (10th Cir. 1993) (citation omitted); *see also Shell Oil*, 466 U.S. at 69 ("[I]t is crucial that the Commission's ability to investigate charges of systemic discrimination not be impaired.").

This Court has long held that the EEOC may investigate pattern-or-practice allegations in a charge even when the charging party is making allegations on behalf of others, rather than directly on behalf of the charging party herself. In *Joslin Dry Goods Co. v. EEOC*, 483 F.2d 178 (10th Cir. 1973), the charging party alleged that the employer had fired her because she was Black. *Id.* at 180. Although she did not personally claim that the employer had discriminated against her in any other way (*e.g.*, hiring), she also alleged that the employer "fails and refuses to hire

Negroes and persons of Mexican ancestry." *Id.* The district court refused to enforce the subpoena as to hiring "because she had not been the object of any hiring discrimination." *Id.* at 184. This Court characterized the district court's conclusion as "unduly restrictive," and held that, in general, "[t]he factual statement of a wrongful discharge is enough to justify an investigation of employment practices and policies, as to hiring as well as to firing." *Id.* "Although the charge as to hiring practices was less than might have been desired," this Court said, "it was sufficient to initiate the discovery procedures contemplated by the statutes." *Id.*

The Ninth Circuit reached the same conclusion in *EEOC v. VF Jeanswear LP*, 769 F. App'x 477 (9th Cir. 2019). In that case, the charging party alleged that she had been "harassed, demoted, underpaid, and not offered opportunities for promotion," all because of her sex. *Id.* at 478. She additionally alleged, "Females are not afforded the opportunity in top level positions. Top level positions are male dominated." *Id.* Just as the district court did in the instant case, the district court in *VF Jeanswear* limited the EEOC's investigatory authority to the charging party's "personally-suffered harms." *Id.* The Ninth Circuit reversed, holding, "[T]here is no legal basis for limiting the scope of the relevance inquiry only to the parts

of the charge relating to the personally-suffered harm of the charging party. Indeed, we have held otherwise. EEOC subpoenas are enforceable so long as they seek information relevant to *any* of the allegations in a charge, not just those affecting the charging party." *Id.* (emphasis added) (citing *EEOC v. Fed. Express Corp.*, 558 F.3d 842, 855 (9th Cir. 2009)).

No court of appeals has suggested that a pattern-or-practice investigation is not relevant to an underlying charge when that charge *does* expressly contain a pattern-or-practice allegation (as is the case here). To the contrary, courts have regularly held that pattern-or-practice evidence *is* relevant when there is a pattern-or-practice allegation in a charge. *See, e.g.*, *In re AAM Holding Corp.*, 153 F.4th 252, 262 (2d Cir. 2025) (upholding broad subpoena "[in] light of … broad allegations of a widespread pattern or practice of sexual harassment"); *Fed. Express Corp.*, 558 F.3d at 855 (upholding broad subpoena where charge alleged systemic discrimination); *see also Shell Oil*, 466 U.S. at 69 ("[I]t is crucial that the Commission's ability to investigate charges of systemic discrimination not be impaired.").

The district court did not cite any cases supporting its theory of relevance. Add.6-8; Appx.136-138. To the extent some cases have

questioned whether a pattern-or-practice investigation is relevant, they have done so only when charges do *not* expressly allege a pattern-or-practice of discrimination. In such cases, courts must decide on a case-specific basis whether an investigation is relevant to the allegations in the charge, mindful of the "'generous' construction that courts have given the term 'relevant.'" *McLane Co.*, 581 U.S. at 76 (cleaned up) (quoting *Shell Oil*, 466 U.S. at 68-69).

This Court applied this "generous" relevancy test in *Circle K Corp. v. EEOC*, 501 F.2d 1052 (10th Cir. 1974). The charge in that case did not allege a pattern-or-practice violation, but the EEOC learned during its investigation that the employer required all applicants to undergo a polygraph exam. *See id.* at 1054. This Court allowed the EEOC to expand its investigation to cover this requirement even though the employer rejected the charging party before applying the requirement to her. *Id.* "Relief from the EEOC's demand cannot be based on Circle K's contention that the charging party had not been subjected to the polygraph examination and therefore cannot be an aggrieved party," this Court said. *Id.*

This Court reached the opposite result in *TriCore Reference Laboratories*, 849 F.3d 929, another case in which the underlying charge did

not include pattern-or-practice allegations. In *TriCore*, an employee alleged only that her employer violated Title VII and the ADA by failing to provide her with a reasonable accommodation for her rheumatoid arthritis, which she said was exacerbated by her pregnancy. *Id.* at 934. This Court affirmed the district court's determination that the EEOC's request for a list of all employees who had sought accommodations for disability was not relevant because TriCore's response to the charge "said nothing to suggest that its actions were based on a company policy or that it had a pattern or practice of acting similarly when responding to other disabled employees' accommodation requests." *Id.* at 939.

This Court also focused on the *absence* of a pattern-or-practice allegation in *EEOC v. Burlington Northern Santa Fe Railroad*, 669 F.3d 1154 (10th Cir. 2012). There, the EEOC received two individual charges alleging disability discrimination regarding the same type of job in the same state. *Id.* at 1156. The EEOC cited these two charges when it issued a subpoena seeking nationwide information, but it did not mention that the EEOC also was in possession of four similar charges from four different states. *Id.* at 1156-57. This Court refused to enforce the subpoena because the two individual charges referenced in the subpoena were insufficient on their

own to justify a nationwide investigation. *Id.* at 1156. "[I]nsofar as the information sought by the EEOC was not 'relevant to a charge under investigation,'" this Court said, "the EEOC had no jurisdiction or power to seek it." *Id.* at 1158 (cleaned up).

Other circuits affirming the denial of petitions to enforce subpoenas for pattern-or-practice evidence also rely on the lack of pattern-or-practice allegations in the charge. In *EEOC v. Royal Caribbean Cruises, Ltd.*, 771 F.3d 757 (11th Cir. 2014) (per curiam), for example, the charge did *not* allege a pattern-or-practice violation. *See id.* at 759. The employee alleged that his employer violated the ADA by refusing to renew his employment contract after he was diagnosed with a medical condition. *Id.* In response to the charge, the employer admitted that it had fired the employee because of his illness but claimed that it was required to do so under the governing law and medical standards of the Bahamas. *Id.* In light of that concession, the court determined that the EEOC's investigation of companywide data about employees and applicants around the world with any medical condition, whether or not covered by Bahamian standards, was not relevant. *Id.* at 761.

All of these cases turn on the *absence* of a pattern-or-practice allegation. Consequently, they do not speak to the circumstances present here, where Roe expressly alleged pattern-or-practice discrimination.

B. The district court failed to consider whether the EEOC subpoenas were "relevant" under the ADEA.

Once it concluded that the Title VII/ADA subpoenas were not relevant to the underlying charges, the district court should have turned to the ADEA subpoenas. As discussed *supra* p.17-19, the ADEA defines relevance more broadly than do Title VII and the ADA. An ADEA subpoena does not require a charge—meaning that whether an investigation is relevant is not tied to a charging party's allegations. Rather, relevance under the ADEA depends only on the existence of an ongoing investigation into a matter within the EEOC's jurisdiction. *See* 29 U.S.C. § 626(a) (EEOC "shall have the power to make investigations … necessary or appropriate for the administration of this chapter"); 29 U.S.C. § 211(a) (incorporated into ADEA via 29 U.S.C. § 626(a)) (giving EEOC authority to "investigate such facts, conditions, practices, or matters as [it] may deem necessary or appropriate to determine whether any person has violated any provision of [the ADEA], or which may aid in the enforcement of the

provisions of [the ADEA]."); *Aerotek,* 815 F.3d at 333 (EEOC has "broad power to investigate on suspicion that the ADEA is being violated"); *see also EEOC v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 180 (4th Cir. 2011) ("EEOC's subpoena power is … constrained by evidentiary privileges."); *EEOC v. Cherokee Nation*, 871 F.2d 937, 938 (10th Cir. 1989) (refusing to enforce subpoena against Indian Tribe because Tribe was not subject to ADEA).

The district court did not mention the ADEA's relevance standard, let alone analyze it. Instead, it simply denied enforcement across the board. In denying the EEOC's application, the district court observed, "The subpoenas seek information that will enable the EEOC to determine whether persons who answer 'yes' to any of the four questions have or have not gotten a job at the ACSO. If the applications of such individuals are consistently unsuccessful, it might support a reasonable inference of discriminatory conduct. I get it." Add.7; Appx.137. This is a compelling explanation of why the information sought would be relevant to an ADEA investigation. Failure to consider the ADEA's relevance standard was reversible error.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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November 9, 2026

STATEMENT REGARDING ORAL ARGUMENT

The EEOC requests oral argument. The parties dispute the extent of the EEOC's investigative authority, which is at the core of the EEOC's enforcement efforts. Thus, this Court's ruling is likely to have wide-ranging impact. The EEOC would welcome the opportunity to answer any questions this Court may have.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,134 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Book Antiqua 14 point.

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CERTIFICATE OF PRIVACY REDACTIONS

I certify that all required privacy redactions have been made, as required by 10th Cir. R. 25.5 and ECF User Manual, Section II, Part J(a).

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I certify that any hard copies that will be submitted to this Court will be exact copies of the ECF version filed electronically.

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I certify that this electronic submission was scanned for viruses with the most recent version of a commercial virus scanning program (Microsoft Defender Antivirus) and found to be free from viruses.

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CERTIFICATE OF SERVICE

I certify that on this 9th day of November, 2026, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that three counsel of record are registered CM/ECF users, and service on them will be accomplished via the appellate CM/ECF system. I certify that I sent one copy of this brief by U.S. mail to the following attorney of record:

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Addendum

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge R. Brooke Jackson

Civil Action No. 26-MC-00072 -RBJ

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Applicant-Plaintiff,

v.

PSYCHOLOGICAL DIMENSIONS
Respondent.

ORDER on APPLICATION FOR ORDER TO SHOW CAUSE

The Equal Employment Opportunity Commission applies for an order to show cause as to why two administrative subpoenas served on Psychological Dimensions should not be enforced. The Court has considered the parties' briefs and the arguments of counsel during a hearing on May 26, 2026.[1] For the reasons summarized below, the application is DENIED.

BACKGROUND

A. Plaintiff's Unsuccessful Job Application.

On June 10, 2020, Jessica Roe applied for position as a Public Information Liaison at the Arapahoe County Sheriff's Office. *See* ECF No 2-1 at 2 (Charge of Discrimination). The application process has both pre-offer and post-offer phases. During the pre-offer phase, sometimes referred to as the suitability evaluation, Ms. Roe completed a more than 430-question

[1] Psychological Dimensions' brief was filed while the hearing was in progress, and the Court took the matter under advisement to review that brief before ruling.

psychological examination, sometimes referred to as a "Job Suitability Assessment," administered by Psychological Dimensions, a contractor to the ACSO. *Id.* at 6. She took a polygraph test. *Id*. She was required to provide writing samples and a release permitting a background investigation. *Id.* at 7. She participated in an interview with several ACSO officers. *Id.* Following all this she was informed that she was one of three finalists and would meet with the Sheriff and Undersheriff. *Id.* After that meeting she was offered the job with a starting date of September 12, 2020, contingent upon further medical, psychological and background investigation. ECF No 2-1 at 6-8. She accepted the offer.

In the post-offer phase Ms. Roe completed another extensive psychological examination with questions "that were extraordinarily similar to the previous questions she had answered." *Id.* at 8. She met with Dr. Chad Waxman, the Chief Psychologist of Psychological Dimensions, and a colleague, and answered questions relating to her mental health, during which she disclosed a previous history of [redacted] and was asked to complete documentation concerning prescriptions and to provide releases for the doctors who diagnosed the [redacted]. *Id.* at 8-9. While completing the documentation she remembered an earlier diagnosis and provider that she had not mentioned during the interview, and she disclosed that information. *Id.* at 9. However, because of that provider's document retention policy, it could not confirm that she had been a patient or provide records. *Id.* Ms. Roe states that because Dr. Waxman could not obtain the information from the source, he was unable to "pass" her. *Id.* at 9. "On September 14, 2020, Chief Stef [of the ACSO] called Ms. Roe and informed her that he was rescinding her offer because she did not pass the post-offer psychological exam." *Id.* Her efforts to persuade

Psychological Dimensions to reconsider and her complaint about the process to the ACSO were not successful.

B. <u>The EEOC Investigation</u>.

On June 4, 2021, Ms. Roe filed a Charge of Discrimination with the EEOC. ECF No. 2-1. Based on the alleged facts summarized above, she charged the ACSO (and the Board of County Commissioners of Arapahoe County) with discrimination based on sex, retaliation, and disability, in violation of The Americans with Disabilities Act (the "ADA") and Title VII of the Civil Rights Act of 1964. *Id.* at 2. An Amended Charge of Discrimination, filed on March 20, 2024, charged the ACSO and the Board with discrimination based on race, color, sex, religion, national origin, retaliation, age, disability, genetic information, and pregnancy. ECF No. 2-4 at 2. In addition to the ADA and Title VII, the amended charge invoked the Age Discrimination in Employment Act (the "ADEA"), the Pregnancy Discrimination Act, the Pregnant Workers Fairness Act, the Genetic Information Non-Discrimination Act, and the Equal Pay Act. *Id.* It appears that the EEOC's investigation has been ongoing from some time after the filing of the original charge on June 4, 2021 to the present and continuing.

On August 28, 2025, as part of its investigation, the EEOC served two administrative subpoenas on Psychological Dimensions: No: DE-2025-0012, issued pursuant to the ADEA; and No. DE-2025-0013, issued pursuant to the ADA and Title VII.[2] The subpoenas required Psychological Dimensions to produce certain information concerning the initial 430-plus

[22] During the hearing EEOC counsel indicated that there were four subpoenas, apparently two for the ACSO and two for the Board. For present purposes both parties referred to two subpoenas – the ADEA subpoena and the ADA/Title VII subpoena.

psychological evaluation that had been administered to Ms. Roe during the pre-offer phase of her application. Specifically, the subpoenas requested production of the following:

1. For the time period of January 1, 2020 through the present, provide the Job Suitability assessment for all individuals who answered affirmatively to any of the following questions (or variation thereof) asked by Psychological Dimensions during its assessment of Arapahoe County Sheriff's Office applicants:

    a. Have you ever been involved in or experienced any sexual harassment in the workplace?

    b. Have you ever filed a formal complaint against an employer for any reason (e.g. EEOC complaints, discrimination or harassment claims, wrongful termination, etc.)?

    c. Have you ever been involved in any lawsuits or other judicial actions as either a plaintiff or defendant?

    d. Other than the above question, have you appeared in court or any other legal proceedings (e.g. Civil Service, EEOC) outside of past public safety job duties?"

2. For each Job Suitability Assessment provided in response to No. 1 above, provide all written communications, including but not limited to emails and attachments, between Psychological Dimensions and Arapahoe County Sheriff's Office discussing the applicant.

3. A declaration authenticating the produced Documents as true and accurate copies.

ECF Nos. 2-9 and 2-10.

On September 10, 2025, Psychological Dimensions emailed its objections to the subpoenas. ECF No. 2-13. First, it argued that the requested information was not relevant because Ms. Roe had answered "no" to the four identified questions in the Assessment. Second, it claimed that compliance would be unduly burdensome in that it would take at least 1500 hours to review and produce the requested information. Third, it stated that the request sought information that would infringe on the privacy and HIPAA rights of individuals who are not

parties to the proceeding. Finally, it claimed that the request sought proprietary information that included Psychological Dimensions' trade secrets. *Id.*

Since that time, counsel for the parties have exchanged communications in an unsuccessful attempt to reach an agreement. That culminated in the pending application for an order to show cause as to why Psychological Dimensions should not be enforced.

ANALYSIS AND CONCLUSIONS

The EEOC makes both procedural and substantive arguments as to why the objections to its subpoenas should be rejected. I will address the procedural points first.

According to the EEOC, the September 10, 2025 objection letter identifies two subpoenas, both being subpoenas issued by the EEOC pursuant to the ADEA. This gets back to the duplicative subpoenas arising from the charge against the ACSO and the Board, *see supra* n.2. But there is no administrative procedure for objecting to ADEA subpoenas. There is an administrative procedure for objection to the subpoenas issued pursuant to the ADA and Title VII. But no objection identifying those subpoenas was made. In any event, even if one assumes that Psychological Dimensions intended to object to the ADA/Title VII subpoena(s) as well, they were untimely. Objections to subpoenas issued pursuant to the ADA or Title VII are due within five days after service. Civil Rights Act of 1964, § 710, Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 7, 86 Stat. 103, 109 (1972) (codified at 42 U.S.C. § 2000e-9 (1994)). These subpoenas were served on August 28, 2025. The objections were served on September 10, 2025. Thus, they were eight days late; and if one omits the intervening weekend and Labor Day and counts only business days, they were still five days late.

Serving multiple subpoenas that were identical in substantive content and differed only in the EEOC's numbering and statutory authority could easily be confusing, even to a presumably sophisticated third party. The substance is that Psychological Dimensions intended to object to "the subpoenas," and that was or should have been obvious to the EEOC. It is true that Psychological Dimensions did not object within five days. However, some courts have made exceptions to that narrow window, particularly where the subpoena did not mention the five-day deadline. *See EEOC v. Lutheran Social Servs.,* 186 F.3d 959 (D.C. Cir. 1999) (holding that Lutheran's failure to object to the subpoenas within five days was not unreasonable and thus the court did not deem the objections waived because "[n]othing on the face of the subpoena or in the statutes to which it referred would have led her to believe that Lutheran *must* petition the EEOC within five days); *see also United States EEOC v. Serv. Tire Truck Ctrs.,* 2018 WL 5043734, at *8 (M.D. Pa. Oct. 17, 2018) ("Neither the EEOC's subpoena nor related email to Service Tire specifically references any statute or regulation that concerns petitioning the EEOC to modify or revoke the subpoena within five days."); *EEOC v. WinCo Foods, Inc.,* 2006 U.S. Dist. LEXIS 64521, at *11 (E.D. Cal. Sep. 7, 2006) (finding that "the failure of the subpoenaed party to file timely objections" was not fatal because, inter alia, there was a lack of notice of the five-day deadline on the face of the subpoena or by reference).

I am not inclined to find that the very slight delay in registering its objections, in the context here, is dispositive. But even if I were to find the objections to have been untimely filed, I have a bigger problem with the substance of the subpoenas in this instance.

The EEOC challenges the inclusion of the four subject questions in the Job Suitability Assessment because it believes it potentially punishes applicants for exercising their rights under

the discrimination laws. If an applicant has objected to sex discrimination by an employer, or filed a claim with the EEOC, or litigated with an employer over allegedly discriminatory conduct, he or she has simply done what the law clearly states is legal and proper conduct. He or she should not be denied a job because an employer does not want to hire individuals who have pursued such claims in the past. The subpoenas seek information that will enable the EEOC to determine whether persons who answer "yes" to any of the four questions have or have not gotten a job at the ACSO. If the applications of such individuals are consistently unsuccessful, it might support a reasonable inference of discriminatory conduct. I get it.

The problem is that it has no application to the charging party, Ms. Roe. It is undisputed that she answered "no" to the four questions; that she was found to be suitable for the position; that she made the short list of three applicants who met with the Sheriff and Undersheriff; and that she was offered the job, contingent on further, post-offer, medical, psychological and background investigations. The reasons or reasons why the offer was rescinded are found in the post-offer evaluation, not in the Psychological Dimensions' 430-question questionnaire.

The EEOC does not, indeed cannot, dispute those facts. Nevertheless, the EEOC argues that its broad power to investigate charges of discrimination support the subpoenas. The EEOC also notes that Ms. Roe's Charge and Amended Charge assert a "pattern and practice of discrimination." But if the pattern or practice might be latent in the four questions in the Job Suitability Assessment, they did not impact Ms. Roe. The Court is informed that the EEOC has served additional subpoenas on Psychological Dimensions that focus on post-offer conduct. Those subpoenas and any related objections are not before this Court. The Court is unwilling to hold that the EEOC's authority to investigate discrimination in the workplace is unlimited, or

that an individual's claim that she lost a job opportunity due to discrimination opens the door to compelling a third party to produce information that has nothing to do with the discrimination allegedly suffered by the claimant.

ORDER

Applicant-Plaintiff's Application for an Order to Show Cause Why Administrative Subpoenas Should not be Enforced, ECF No. 1, is DENIED.

DATED this 3rd day of June, 2026.

BY THE COURT:

R. Brooke Jackson
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge R. Brooke Jackson

Civil Action No. 1:26-mc-00072-RBJ

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Applicant-Plaintiff,

v.

PSYCHOLOGICAL DIMENSIONS,

Respondent.

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Pursuant to the Minute Order (ECF No. 27), entered June 24, 2026 and the Order on Application for Order to Show Cause (ECF No. 20), entered June 3, 2026 by Senior Judge R. Brooke Jackson, it is hereby

ORDERED that judgment is entered in favor of the Respondent, Psychological Dimensions, and against the Petitioner/Plaintiff, Equal Employment Opportunity Commission. It is

FURTHER ORDERED that this case is dismissed.

Dated at Denver, Colorado this 6th day of July 2026.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

By: s/ Robert R. Keech
Robert R. Keech,
Deputy Clerk