



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

[REDACTED]

Lyle P.,<sup>1</sup>  
Complainant,

v.

Chad F. Wolf,  
Acting Secretary,  
Department of Homeland Security  
(Immigration and Customs Enforcement),  
Agency.

Appeal No. 2019005269

Hearing Nos. 460-2018-00272X, 460-2019-00034X, 460-2019-00035X, 460-2019-00036X,  
460-2019-00037X, 460-2019-00038X, 460-2019-00039X, 460-2019-00040X, 460-2019-  
00041X, 460-2019-00042X

Agency Nos. HS-ICE-26326-2016, HS-ICE-25747-2016, HS-ICE-25522-2016, HS-ICE-26477-  
2016, HS-ICE-26478-2016, HS-ICE-27231-2016, HS-ICE-27234-2016, HS-ICE-26976-2016,  
HS-ICE-27230-2016, HS-ICE-00115-2017

**DECISION**

After issuing its August 13, 2019 final order, both the Agency and Complainant filed appeals with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.110(a) and .403(a), from the decision of an EEOC Administrative Judge (AJ), dated July 8, 2019, that dismissed the above-captioned consolidated complaints alleging unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

### BACKGROUND

Complainant was employed in various positions and locations by the Agency. Starting in January 2016, he was a Deportation Officer, GS-1801-13, at the Enforcement and Removal Operations office in Houston, Texas, until retiring on July 30, 2016.

Between February 19 and November 29, 2016, Complainant filed multiple equal employment opportunity (EEO) complaints alleging that the Agency discriminated against him based on his race (Asian), sex (male), religion (Buddhist), color (dark-skinned), age (51), and reprisal for prior protected EEO activity when:

1. On January 28, 2016, he learned he was not selected for the position of Detention and Deportation Officer (DDO), GS-1801-13, vacancy announcement number (Vac. Ann.) LAG-ERO-1534141-MD-0531, for which he was found eligible.
2. On January 15, 2016, he learned he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG-FAO-1515464-SD-794, for which was found eligible.
3. On November 25, 2015, he learned he was not selected for the position of DDO, GS-1801-13, Vac. Ann. LAG-FCH-1529489-DM-312, for which was found eligible.
4. On November 23, 2015, he learned he was not selected for the position of DDO, GS-1801-13, Vac. Ann. LAG-FAO-1514708-SD-791, for which he was found eligible.
5. On November 5, 2015, he learned he was not selected for the position of DDO, GS-1801-13, Vac. Ann. LAG-FDN-1473344-MB-51, for which he was found eligible.
6. On or about January 2016, he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG-ERO-1553493-DN-010) in Williston, Vermont.
7. On March 29, 2016, he was notified he was not selected for the position of DDO, Vac. Ann. LAG-ERO-1426085-BB-112 in Williston, Vermont.
8. On April 21, 2016, he was notified he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG-FAT-1624616-RJS-023, in Savannah, GA.
9. On April 21, 2016, he was notified that he was not selected for the position of Supervisory DDO, GS-1801-13, SDDO, Vac. Ann. LAG-FSD-1652985-SD-826 in San Diego, CA.
10. On April 22, 2016, he was notified he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG-FSD-1615631-SD-823 in Otay, California.
11. On April 27, 2016, he was notified he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG-FBV-1653433-SD-828 in Champlain, New York.

12. On April 27, 2016, he was notified he was not selected for the position of Supervisory DDO, GS-1801-13, SDDO, Vac. Ann. LAG- FDA-1630403-LMA-523 in Amarillo, Texas.
13. On April 27, 2016, he was notified he was not selected for the position of Supervisory DDO, GS- 1801-13, Vac. Ann. LAG- FDA-1630403-LMA-523 in Lubbock, Texas.
14. On April 28, 2016, he was notified he was not selected for the position of DDO, GS-1801-13, Vac. Ann. LAG-ER0-1237577-LKS-180, in Washington, DC.
15. On May 2, 2016, he was notified he was not selected for the position of Supervisory DDO, GS-1801-14, Vac. Ann. LAG-ER0-1657052-DN-038 in Williston, Vermont.
16. On May 2, 2016, he was notified he was not selected for the position of Supervisory DDO (Section Chief), GS-1801-14, Vac. Ann. LAGER0- 1655264-DN-035 in Laguna Niguel, California.
17. On May 2, 2016, he was notified he was not selected for the position of Supervisory DDO (Section Chief), GS-1801-14, Vac. Ann. No. LAGER0- 1661608-DN-042 in Williston, Vermont.
18. On May 3, 2016, he was notified he was not selected for the position of Supervisory DDO (AFOD), GS-1801-14, Vac. Ann. LAG-FDT-1665284-APO in Columbus, Ohio.
19. On May 5, 2016, he was notified he was not selected for the position of DDO, GS-1801-13/14, Vac. Ann. LAG-ER0-1327812-BTR-140 in Washington, DC.
20. On May 10, 2016, he was notified he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG- FCH-1635488-AE-l41, in Indianapolis, Indiana.
21. On May 16, 2016, he was notified he was not selected for the position of Supervisory DDO (AFOD), GS-1801-13, Vac. Ann. LAG-FDA-1694784-LMA-531 in Oklahoma City, Oklahoma.
22. On May 18, 2016, he was notified he was not selected for the position of Supervisory DDO (Unit Chief), GS-1801-15, Vac. Ann. LAGER0-1691112-MD-0572 in Washington, DC.
23. On June 16, 2016, he was notified he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG- FPH-1674654- RJS-039 in Phoenix, Arizona.
24. On April 11, 2016, he was notified he was not selected for the position of Deportation Liaison Officer, GS-1801-14, Vac. Ann. DAL-OIA-1625492-MP-SDL in Vienna.

25. On May 23, 2016, the Laguna Service Center notified him he did not meet the education and/or experience requirements for the position of Supervisory DDO (AFOD), GS-1801-14, in Austin, Texas, and would not receive further consideration under Vac. Ann. LAG-FAO-1686833-AP-014.
26. On June 10, 2016, he was notified he was not selected for the position of DDO, GS-1801-13/14, Vac. Ann. LAG-ERO-1302491-BTR-129 in Washington, DC.
27. On June 12, 2016, he became aware he was not selected for the position of DDO, GS-1801-13/14, Vac. Ann. LAG-ERO-1263339-LKS-190 in Washington, DC.
28. On July 5, 2016, he became aware he was not selected for the position of Detention Liaison Officer, GS-1801-14, Vac. Ann. DAL-OIA-1715007-MP-SDL in Warsaw, Poland.
29. On July 5, 2016, the Laguna Service Center notified him he self-certified his ineligibility on the qualification and/or eligibility requirements for the position of Supervisory DDO (Section Chief), GS-1801-14, Vac. Ann. LAG-ERO-1716735-DN-052 in Washington, DC.
30. On July 6, 2016, he learned he was not selected for the position of Supervisory DDO, GS-1801-13, Vac. Ann. LAG-FDT-1688190-AP-015 in Detroit, Michigan.
31. On August 1, 2016 he learned he was not selected for the position of DDO, GS-1801-13/14, Vac. Ann. LAG-ERO-1682029-DN-046 in Washington, DC.
32. On August 29, 2016, the Laguna Service Center notified him that he self-certified his ineligibility on the qualification and/or eligibility requirements for the position of Supervisory DDO (AFOD), GS-1801-14, Vac. Ann. LAG-FPH-1754958-RJS-056 in Phoenix, Arizona.
33. On September 22, 2016, he learned he was not selected for four vacancies for the position of DDO, GS-1801-13, Vac. Ann. LAG-ERO-1508376-BB-146 in Baltimore, Maryland, Los Angeles, California, San Antonio, Texas, and Miami, Florida.
34. On September 23, 2016, he learned he was not selected for the position of DDO, GS-1801-13, Vac. Ann. LAG-ERO-1656692-DN-037 in Washington, DC.
35. On September 23, 2016, he learned he was not selected for the position of DDO, GS-1801-14, Vac. Ann. LAG-ERO-1722886-BB-165 in Mesa Arizona.

The Agency investigated these claims and Complainant requested a hearing before an EEOC AJ. At a prehearing status conference, the AJ gathered some information from Complainant on the number of prior EEO complaints he had filed and the issues involved. The AJ then ordered Complainant to produce information related to all his EEO cases.

During this same time period, the AJ ordered the Agency to file a motion to dismiss Complainant's complaints for abuse of process pursuant to 29 C.F.R. § 1614.107(a)(9), and for Complainant to respond. This regulation requires an agency to dismiss EEO complaints that are part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. As ordered, the Agency filed a motion to dismiss, and asked that Complainant's complaint pending before the AJ, as well as any other pending complaints, be dismissed.

The AJ granted the Agency's motion to dismiss. In his decision, the AJ recounted that he spent significant hours untangling Complainant's EEO history and uncovered that his complaints raise four non-selections he alleged in prior EEO complaints that were previously before an EEOC hearings unit – with the only difference being that he changed the year he allegedly learned of them from 2015 to 2016. In the prior case, in September 2015, an AJ issued a default judgment against the Agency for failure to timely produce the EEO investigation. The parties entered into a settlement agreement in December 2015, resolving the Agency's obligations under the default judgment order. This included temporarily selecting and promoting Complainant on paper to a GS-14, step 1 position for nearly four years and thereafter permanently promoting him from his GS-12 position to a GS-13 position in Houston, Texas (which started in January 2016), and back pay.<sup>2</sup>

The AJ recounted four different non-selections in the consolidated complaints that Complainant alleged he was notified or learned of between April 2016 – June 2016, but application closing dates for two were in December 2014 and February 2015, and the non-selections for the others occurred in March and May 2015. The AJ suspected it was unlikely the Agency would have waited as long as Complainant alleged to notify him of these non-selections and it was likely, given his prior practice, that he would have filed EEO complaints regarding them. The AJ recounted that because of this suspicion, he reviewed 4,437 pages of documents in the consolidated complaints record and numerous records in some other cases involving hundreds of more pages, and this revealed Complainant's attempt to adjudicate the four non-selections that he already settled. The AJ indicated he did not have the time and resources to review more claims filed by Complainant in other cases to determine if more non-selections in the consolidated complaints were also already adjudicated.

The AJ determined that Complainant's claim of systematic discrimination on a variety of protected bases was widely speculative in nature. For example, Complainant contended that the Agency only promotes Catholics because its headquarters human resource office is made up mostly of them, without any evidence they were Catholic or how they knew his religion. The AJ found that after Complainant lost his security clearance in January 2016, he filed many EEO complaints regarding

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<sup>2</sup> In June 2016, Complainant filed a notice of breach regarding his back pay. In EEOC Appeal No. 0120162675 (Aug. 23, 2017), request for reconsideration denied, EEOC Request No. 0520180081 (Mar. 22, 2018), the Commission found that Complainant did not show the Agency miscalculated back pay.

non-selections for which he was unqualified because he lacked the requisite clearance.<sup>3</sup> He also filed EEO complaints on non-selections for positions that were all over the country and overseas, many of which would not have resulted in a promotion. Complainant did this after settling a case where he specifically negotiated a transfer to Houston, which suggests that he filed multiple non-selection complaints without any intent to take the position if he were selected. He continued to reside in Houston after retiring. The AJ further found Complainant's claims lacked specificity in that he often did not know the identity of either the selecting officials or the selectees. The AJ noted that much of the language in his complaints was the same, with Complainant simply changing the vacancy announcement number. He noted Complainant made vague accusations of systemic discrimination on such a wide variety of protected bases that it strains credulity that he believed that in each case he was non-selected on the basis of discrimination or retaliation. After Complainant lost his security clearance, the AJ found the pace of his EEO complaints increased considerably, suggesting with the other circumstances discussed, that he had “weaponized the EEO process” as a means of “retaliating” against the Agency and with the hope of overburdening its EEO office to achieve another default judgment sanction. Based on all these factors, the AJ dismissed the ten consolidated complaints before him for abuse of process pursuant to 29 C.F.R. § 1614.107(a)(9).

However, in addition to dismissing the EEO complaints before him for abuse of the EEO process, the AJ also ordered that all of Complainant’s pending “claims” in the EEO administrative process against the Agency be dismissed. The AJ also issued an order barring Complainant indefinitely from filing any further EEO complaints against any federal agency. In doing this, the AJ added that Complainant has a long history of filing EEO complaints against numerous federal agencies.

In its August 13, 2019 final order, the Agency implemented the portions of the AJ’s order dismissing the ten consolidated complaints before him for abuse of process under 29 C.F.R. § 1614.107(a)(9), as well as dismissing all his other pending “complaints” against the Agency. But it declined to implement the portion of the AJ’s decision barring Complainant from filing any EEO complaints in the future. It reasoned that this bar was unprecedented and contrary to the Commission’s policy of preserving a complainant’s rights in the EEO process when possible.

On appeal, Complainant argues that filing EEO complaints on 35 non-selections is insufficient to constitute an abuse of the EEO process. He contends that at the referenced teleconference, the AJ raised his voice, berated him, and engaged in a racist rant using hateful words toward him. He accused the AJ of being a “white supremacist” and “hate monster” who needs a psychiatric evaluation. Complainant does not identify the words allegedly spoken by the AJ.

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<sup>3</sup> In Marquis K. v. DHS (ICE), EEOC Appeal No. 020171667 (Aug. 23, 2017), the Commission found that it did not have jurisdiction over the Agency allegedly harassing, condescending, and making accusatory remarks at a hearing on Complainant’s clearance because once statements gathered during the investigation are included in a security clearance investigative report, they are squarely within the rubric of a security clearance determination and, accordingly, beyond the Commission's jurisdiction.

In response to Complainant's appeal, Agency counsel, in contradiction to the final Agency order argues that the AJ's order barring Complainant from filing EEO complaints with any agency in the future should be upheld.<sup>4</sup>

### ANALYSIS AND FINDINGS

Abuse of process is defined as a clear pattern of misuse of the process for ends other than that which it was designed to accomplish. The Commission has a strong policy in favor of preserving a complainant's EEO rights whenever possible. Strict criteria have been established by the Commission to determine whether a complaint, or a number of consolidated complaints, should be dismissed for this reason under 29 C.F.R. § 1614.107(a)(9). The occasions in which application of the standards are appropriate must be rare. This requires an analysis of whether the complainant evidences an ulterior purpose to abuse or misuse the EEO process. Numerous complaint filings alone is not a sufficient basis for determining that there has been an abuse of the process. But multiple filings on the same issues, lack of specificity in the allegations, and the filing of complaints on allegations previously raised, may be considered in deciding whether a complainant has engaged in a pattern of abuse of the EEO process. EEOC Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110) (Aug. 5, 2015), at 5-20.

While we agree with Complainant that without more the filing of EEO complaints on 35 non-selections is insufficient to constitute an abuse of the EEO process, the AJ's finding was based on more than that. Rather, the AJ determined Complainant abused the EEO process in two main two ways – by deliberately relitigating claims already litigated and closed with substantial relief, and by overwhelming the Agency's in-house EEO machinery to force another default judgment against the Agency.

Based on our independent review of the record, we find that the AJ properly dismissed Complainant's ten consolidated complaints before him for abuse of process, pursuant to 29 C.F.R. § 1614.107(a)(9), for the same reasons recounted above by the AJ. In doing so, we find significant similarities between this situation and other cases where we have found abuse of process. See, e.g., Abell v. Dep't of Interior, EEOC Appeal No. 01A33023 (May 13, 2004) (finding abuse of process where complainant filed 40 complaints of non-selection with no intention to take the job); A. Stoyanov v. Dep't of the Navy, EEOC Appeal Nos. 01A60843, 01A61391, 01A61781, 01A62205, 01A62852 (Aug. 31, 2006) (finding abuse of process where complainant filed 25 complaints over non-selections where complainant was ineligible for positions for which he applied); Y. Stoyanov v. Dep't of the Navy, EEOC Appeal Nos. 0120110604, 0120111454, 0120111991 (Apr. 20, 2011); Y. Stoyanov v. Dep't of the Navy, EEOC Appeal Nos. 0120113142, 0120113817, 0120114019 (Dec. 6, 2011); Y. Stoyanov v. Dep't of the Navy, EEOC Appeal No. 0120100479 (Dec. 30, 2011) (finding abuse of process where complainant filed seven complaints over numerous non-selections where complainant was ineligible for the positions for which he applied). It should be noted that,

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<sup>4</sup> We decline to consider this argument because we assume the final Agency order, issued by the Agency's EEO function, speaks for the Agency on this issue.

in all these cited cases, only the specific complaints at issue were dismissed, not other/future complaints.

Here, the AJ also dismissed all Complainant's EEO "claims" pending with the Agency not before the AJ in this case and enjoined him from filing future EEO complaints with any federal agency. We find these orders go beyond the AJ's authority under 29 CFR §1614.107(a)(9) and §1614.109(b).<sup>5</sup> The Agency is free to procedurally dismiss cases pending before it at the pre-hearing stage for any of the reasons enumerated in 29 C.F.R. § 1614.107(a) with appropriate appeal rights.

### CONCLUSION

The Agency's final order implementing the AJ's decision to dismiss Complainant's consolidated EEO complaints for abuse of process is **AFFIRMED**. The Agency's final order implementing the AJ's decision to dismiss all Complainant's other pending EEO complaints against the Agency is **REVERSED**. The Agency's action in its final order to reject implementing the AJ's order enjoining Complainant from filing any further EEO complaints against any Agency (including itself) is **AFFIRMED**.

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be

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<sup>5</sup> We note that EEOC Regulation 29 C.F.R. § 1614.109(e) states an AJ may disqualify an individual from representing complainants or agencies in EEOC hearings who refuse to follow the orders of an AJ, or who otherwise engages in improper conduct. Disqualification applies to future hearings, and imposing it involves special procedural requirements. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) (Aug. 5, 2015), at 7-32 to 7-33. This regulation only applies to representatives, not complainants.



submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

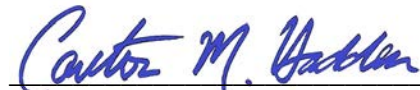
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

#### RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

September 11, 2020  
Date