No. 18-17393

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIS C. McALLISTER,
Plaintiff-Appellant,

v.

CURTIS L. BRUNK; ADECCO USA, INC.;
TRANE U.S., INC.,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Hawaii
Hon. Derrick K. Watson, District Judge
Civ. No. 16-00447 DKW-KJM

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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Statement of Interest

Congress charged the Equal Employment Opportunity Commission ("EEOC") with administering and enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* The district court made several legal errors in this case. First, the court wrongly held that Title VII prohibits retaliation against an individual for filing a discrimination charge with the EEOC only if a court later deems the charge to have been reasonable. Second, the court applied the wrong legal standard to assess whether McAllister suffered an "adverse action" for purposes of his retaliation claim. Finally, the court incorrectly concluded that the staffing agency that employed McAllister could not be liable as a matter of law for any discrimination that happened to him at its client's worksite. In so ruling, the court applied an unduly narrow interpretation of Title VII and its protections against employment discrimination. Because the EEOC has a substantial interest in the proper interpretation of the laws it enforces, it files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

Statement of the Issues[1]

1. In light of binding Circuit precedent to the contrary, did the district court err by holding that Title VII only prohibits retaliation for the filing of an EEOC charge if a court later deems the charge to have been reasonable?

[1] The EEOC takes no position on any other issue in this case.

2. Did the district court wrongly ignore the Supreme Court's instruction that the "adverse action" standard for retaliation claims is different and broader than the analogous standard for substantive discrimination claims?
3. Could Adecco, as McAllister's employer, be liable for negligently allowing Trane to discriminate against him, regardless of whether Adecco and Trane were joint employers?

Statement of the Case

A. Statement of Facts

Adecco USA, Inc. ("Adecco"), a temporary staffing agency, hired McAllister to work on various assignments with different clients. (R.350-4 at 2, 4, PageID #3025, 3027.) Adecco acknowledges that it was McAllister's employer. (R.350-4 at 2, PageID #3025.)

One of McAllister's temporary assignments was to organize inventory at a warehouse owned by Trane U.S., Inc. ("Trane"). (R.350-4 at 4, PageID #3027.) McAllister was the only black employee at the work site. (R.350-2 at 84, PageID #2885.) He testified that Adecco told him to report to Trane employee Shanna Huddy, but Huddy told him to report not only to her, but also to two other supervisors. (R.350-2 at 73, PageID #2874.) According to McAllister, these three individuals gave him conflicting instructions, and then "snicker[ed] and laugh[ed]" about it. (R.350-2 at 70-71, 86, PageID #2871-72, 2887.) McAllister believed that

they did this because of his race and, later, in retaliation for his complaints of discrimination. (R.350-2 at 81, 102-03, PageID #2882, 2903-04.)

McAllister complained to Huddy about the conflicting instructions. (R.350-2 at 80-81, 88, PageID #2881-82, 2889.) He also emailed Adecco recruiter Rene Kahawaiola'a about the problems he was having working for three supervisors. (R.350-2 at 187-90, PageID #2988-91.) He told Kahawaiola'a that if Trane did not want him there because of his race, it should say so. Kahawaiola'a promised to address the issues with Huddy and said she would follow up with McAllister the following week. (R.350-2 at 187, PageID #2988.)

One week later, McAllister told Kahawaiola'a that Huddy had met with him and asked him about his complaints. He said that he had refused to discuss his concerns with her, however, because he believed that he was required to deal with Adecco. (R.350-2 at 191, PageID #2992.) He reminded Kahawaiola'a that she had promised to follow up with him, and said he was still waiting to hear from her. (R.350-2 at 191, 193, PageID #2992, 2994.)

Later that day, Adecco branch manager Curtis Brunk emailed McAllister to say that Trane had terminated his assignment. Brunk added that he would like to meet with McAllister regarding his complaints to Kahawaiola'a. (R.350-2 at 191, PageID #2992.) McAllister said that before meeting with Brunk, he wanted to know why Trane had terminated him. (R.350-2 at 197, PageID #2998.) Brunk

replied that he preferred to speak with McAllister in person or by phone. (R.350-2 at 196, PageID #2997.) McAllister responded that he had already complained to Adecco about discrimination and retaliation, and he criticized Brunk's investigation as biased. (R.350-2 at 194, PageID #2995.)

Two days later, Adecco employee relations manager Jessica Geyer emailed McAllister from Adecco's corporate office. She explained that the local office had asked her to reach out to him and asked when he could talk. (R.350-2 at 201-02, PageID #3002-03.) Although he had not yet filed EEOC charges, McAllister responded, "Sorry, these complaints are now in the hands of the EEOC." (R.350-2 at 201, PageID #3002.) He added that Adecco should not require him to repeat the details of his complaint to multiple people. (R.350-2 at 199, PageID #3000.)

Geyer asked McAllister whether he was still interested in working with Adecco on other assignments, even though he did not wish to discuss the situation at Trane with her. (R.350-2 at 201, PageID #3002.) He responded affirmatively. (R.350-2 at 200, PageID #3001.)

Following his termination from Trane, McAllister filed separate EEOC charges against Trane and Adecco. Both charges alleged race discrimination and retaliation. (R.350-2 at 185-86, PageID #2986-87.) McAllister testified that he filed the charge against Adecco because "I felt discriminated against by Adecco and its employees that I came in contact with." (R.350-2 at 48, PageID #2849.)

Kahawaiola'a never followed through on her promise to get back to him, he said, and Brunk failed to follow Adecco's anti-harassment procedures. (R.350-2 at 49-54, 58, 94-95, PageID #2850-55, 2859, 2895-96.) "[Brunk] kept this thing going until he talked to Florida," McAllister testified. "He didn't want to handle it. He shunned his responsibility …." (R.350-2 at 51, PageID #2852.)

McAllister believed that part of the reason Trane terminated him was that Adecco had failed to investigate his complaints. (R.350-2 at 104, PageID #2905.) "[T]he assignment was over," he said. "[H]ow can you get more retaliatory than this without an investigation, without inquiries as to my complaints, just cause and effect. To me, it was just a classic case of retaliation." (R.350-2 at 98-99, PageID #2899-2900.)

Following his termination from Trane, McAllister hoped that Adecco would send him on other assignments. Adecco requires employees who are not actively working to call in each week to report their availability. (R.350-4 at 3, PageID #3026.) McAllister did not do this. (R.350-2 at 157-58, PageID #2958-59; R.350-4 at 8, PageID #3031.) When Adecco did not hear from McAllister for thirty days, it placed him on "inactive" status, in accordance with its usual policy. (R.350-4 at 8, PageID #3031.) Because Adecco did not call him with further assignments, McAllister considered himself constructively discharged. (R.350-2 at 155-56, PageID #2956-57.)

McAllister sued Adecco under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*.[2] (R.1, PageID #1.) He alleged in part that after he informed Adecco about Trane's hostile work environment, Adecco discriminated and retaliated against him by failing to investigate in accordance with its anti-discrimination policies. (R.117 at 11, 13, 16, PageID #938, 940, 943.) The failure to investigate, McAllister alleged, allowed the discrimination to continue and contributed to his discharge from Trane. (R.117 at 11, 20, 25, PageID #938, 947, 952.) McAllister also alleged that Adecco discriminated and/or retaliated against him by failing to tell him why Trane terminated his assignment, and by failing to offer him a different placement after Trane fired him. (R.117 at 11, 12, 22-24, PageID #938, 939, 949-51.) McAllister sought to hold Adecco liable not only for its own conduct, but also for Trane's conduct, arguing that Adecco and Trane were joint employers. (R.117 at 22, PageID #949.)

B. District Court Opinion

The district court granted summary judgment to Adecco. (R.396, PageID #3673.) The court examined whether McAllister had engaged in protected conduct with respect to "either his EEOC complaint or his informal email complaints."

[2] He also sued Trane and Brunk. The district court dismissed Trane as a sanction for McAllister's repeated discovery abuses after a series of lesser sanctions proved unsuccessful. (R.332 at 10-14, PageID #2681-85.) McAllister dropped his Title VII claim against Brunk in his first amended complaint. (R.117 at 9, PageID #936.)

(R.396 at 23, PageID #3695.) Apparently considering the EEOC charge to be covered by the participation clause and the informal email complaints to be covered by the opposition clause, the court said that both clauses require a plaintiff to show a reasonable belief that the employer's conduct violated Title VII. (R.396 at 21-22, PageID # 3693-94.) Because McAllister's belief that Trane was discriminating against him based on his race was not reasonable, the court concluded, McAllister failed to show that he engaged in protected activity. (R.396 at 23, PageID #3695.)

In the alternative, the court held, Adecco had not taken any retaliatory adverse actions against McAllister. (R.396 at 24-25, PageID #3696-97.) According to the court, Adecco's only possible retaliatory adverse actions were its purported failure to offer McAllister a new assignment after Trane terminated him and he filed his EEOC charges, and its failure to investigate McAllister's allegations, to follow its own anti-discrimination policies, or to tell McAllister why Trane had terminated his employment. (R.396 at 24, PageID #3696.) The court did not consider Adecco's possible role in contributing to McAllister's termination from Trane.

The court assumed that Adecco's failure to offer a new assignment would qualify as a retaliatory adverse action, but held that McAllister could not establish causation or pretext for Adecco's failure to offer him work. (R.396 at 24, PageID

#3696.) Failure to investigate, failure to comply with anti-discrimination policies, and failure to explain why Trane had terminated McAllister did not qualify as retaliatory adverse actions, the court held. "An adverse action," the court explained, "'is one that materially affects the compensation, terms, conditions, or privileges ... of employment.'" (R.396 at 24, PageID #3696.) Not only did Adecco's failure to investigate email complaints, to say why Trane terminated his employment, or to follow its own anti-discrimination/anti-harassment policies not satisfy this standard, the court observed, but the record evidence contradicted McAllister's allegations. (R.396 at 25, PageID #3697.)

The court also held that Adecco could not be liable for Trane's alleged discrimination. The court did not consider whether, based on Adecco's admission that it was McAllister's employer, Adecco could be liable for negligently permitting a third party to discriminate against its employee. It limited its analysis to the question of whether Adecco and Trane were joint employers, recognizing that one joint employer may be liable for another's discrimination if it knew or should have known of the discrimination and failed to take corrective action within its control. (R.396 at 32, PageID #3704.) The court applied an "economic reality test" to determine whether Adecco and Trane were joint employers, concluded that they were not, and therefore held that Adecco could not be liable for Trane's discrimination. (R.396 at 30-31, PageID #3702-03.)

Argument

I. As this Court has already held, Title VII prohibits retaliation for the filing of an EEOC charge regardless of the merits of the charge.

Title VII's anti-retaliation provision provides, in relevant part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C § 2000e-3(a). The last two clauses of this provision are known, respectively, as the opposition clause and the participation clause.

The participation clause is limited in scope: it applies only to raising a claim, testifying, assisting, or participating in an investigation, proceeding, or hearing under Title VII. However, it provides strong protection against retaliation. Thus, an employer may not retaliate for the filing or threatened filing of an EEOC charge regardless of whether the charging party reasonably believes that he is complaining about a violation of Title VII.[3] *Sias v. City Demonstration Agency*, 588 F.2d 692, 695 (9th Cir. 1978) (participation clause bars retaliation for the filing of a charge whether or not a court subsequently deems the charge to be

[3] This Court has left open the question whether the participation clause applies when an employee *lies* during an EEOC investigation—a question not at issue in this case. *Vasconcelos v. Meese*, 907 F.2d 111, 113 n.1 (9th Cir. 1990).

meritorious); *Gifford v. Atchison, Topeka & Santa Fe Ry. Co.*, 685 F.2d 1149, 1156 n.3 (9th Cir. 1982) (no legal distinction between actual and threatened filing of charge).

The opposition clause differs both in scope and in the degree of protection it affords. Unlike the participation clause, the opposition clause encompasses any form of opposition, whether or not it involves raising a claim, testifying, assisting, or participating in an investigation, proceeding, or hearing under that statute. *Sias*, 588 F.2d at 695. Its protection, however, extends only to individuals who act reasonably in opposing conduct that they reasonably believe violates Title VII. *Id.* (must have reasonable belief); *Silver v. KCA, Inc.*, 586 F.2d 138, 141 (9th Cir. 1978) (means of opposition must be reasonable); *see also* EEOC Enforcement Guidance on Retaliation and Related Issues, 2016 WL 4688886, at *5 (Aug. 25, 2016) ("Retaliation Guidance"); *Sias*, 588 F.2d at 695 (same).

This difference stems from the statutory language. The opposition clause protects opposition to practices "made ... unlawful" by Title VII, but the participation clause protects participating "*in any manner* in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a) (emphasis added). This expansive language leaves no room for a reasonableness test. As the Fourth Circuit has explained, "Congress could not have carved out in clearer terms this safe harbor from employer retaliation. A straightforward reading of the

statute's unrestrictive language leads inexorably to the conclusion that all testimony in a Title VII proceeding is protected against punitive employer action." *Glover v. S.C. Law Enf't Div.*, 170 F.3d 411, 414 (4th Cir. 1999); *see also Kelley v. City of Albuquerque*, 542 F.3d 802, 814 (10th Cir. 2008) ("The term 'any' carries an expansive meaning when, as here, it is used without limitation."); *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1186 (11th Cir. 1997) (Congress did not limit the word "any" in the participation clause, "so 'any' means all").

The statutory purpose also supports this interpretation. As the Supreme Court has recognized, "Title VII depends for its enforcement on the cooperation of employees who are willing to file complaints and act as witnesses." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 66 (2006). "If the availability of [the participation clause's] protection were to turn on whether the employee's charge were ultimately found to be meritorious," however, "resort to the remedies provided by the Act would be severely chilled." *Sias*, 588 F.2d at 694; *see also id.* at 695 ("The purpose of the [participation clause] is to protect the employee who utilizes the tools provided by Congress to protect his rights."); *Hashimoto v. Dalton*, 118 F.3d 671, 680 (9th Cir. 1997) (same); *Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304, 1313 (6th Cir. 1989) ("The purpose of the statute is to protect access to the machinery available to seek redress for civil rights

violations and to protect the operation of that machinery once it has been engaged.").

The district court mistakenly relied on *Trent v. Valley Electric Association Inc.*, 41 F.3d 524, 526-27 (9th Cir. 1994), for the proposition that protection under the participation clause requires a reasonable belief that the employer has violated Title VII. (R.396 at 21, PageID #3693.) *Trent* involved the opposition clause, not the participation clause. This Court plainly recognizes the difference and limits the reasonableness requirement to the opposition clause. *Sias*, 588 F.2d at 695.

A majority of other circuits agree. *See Slagle v. Cty. of Clarion*, 435 F.3d 262, 268 (3d Cir. 2006) (participation clause applies "regardless of whether the allegations in the original charge were valid or reasonable") (quoting with approval EEOC Compl. Man. § 8: Retaliation, 2006 WL 4672792 (June 1, 2006), *superseded by* Retaliation Guidance, 2016 WL 4688886); *Glover*, 170 F.3d at 414 ("Reading a reasonableness test into [the] participation clause would do violence to the text of that provision and would undermine the objectives of Title VII."); *Merritt*, 120 F.3d at 1187 (participation clause covers accused harasser's testimony that no sexual harassment occurred); *Wyatt v. City of Boston*, 35 F.3d 13, 15 (1st Cir. 1996) ("[T]here is nothing in [the participation clause's] wording requiring that the charges be valid, nor even an implied requirement that they be reasonable."); *Booker*, 879 F.2d at 1312 ("The 'exceptionally broad protection' of

the participation clause extends to persons who have 'participated in any manner' in Title VII proceedings."); *Pettway v. Am. Cast Iron Pipe Co.*, 411 F.2d 998, 1006 (5th Cir. 1969) (same). *But see Cox v. Onondaga Cty. Sheriff's Dep't*, 760 F.3d 139, 148 (2d Cir. 2014) (participation clause requires "good faith" belief); *Mattson v. Caterpillar, Inc.*, 359 F.3d 885, 891 (7th Cir. 2004) (same).

II. The district court applied the wrong legal standard to assess whether McAllister suffered an "adverse action" for purposes of his retaliation claim.

The district court erred in applying the "adverse action" standard governing substantive discrimination claims to McAllister's retaliation claim. (R.396 at 24, PageID #3696.) In *Burlington Northern*, the Supreme Court relied on differences in statutory language to interpret the "adverse action" standard of Title VII's anti-retaliation provision more broadly than the "adverse action" standard applicable to the substantive prohibition on discrimination. In the retaliation context, the Court held, a plaintiff must show only "that a reasonable employee would have found the challenged action materially adverse, 'which in this context means it might well have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" 548 U.S. at 68 (citations and some internal quotation marks omitted).

This Court has acknowledged that *Burlington Northern* applies a more liberal "adverse action" standard to retaliation claims than to substantive

discrimination claims. In *Campbell v. Hawaii Department of Education*, 892 F.3d 1005 (9th Cir. 2018), this Court recognized that "Title VII retaliation claims may be brought against a much broader range of employer conduct than substantive claims of discrimination." *Id.* at 1021. Specifically, the *Campbell* Court explained, "a Title VII retaliation claim need not be supported by an adverse action that materially altered the terms or conditions of the plaintiff's employment; instead an allegedly retaliatory action is subject to challenge so long as the plaintiff can show that 'a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *Id.* (quoting *Burlington N.*, 548 U.S. at 68).

The district court ignored this binding law, relying instead on this Court's discussion of a substantive discrimination claim to define the "adverse action" standard. *See* R.396 at 24, PageID #3696 (quoting *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008)). Thus, the court incorrectly said that a retaliatory adverse action must "materially affect[ ] the compensation, terms, conditions, or privileges of employment." *Id.* Adecco's purported failure to investigate McAllister's complaints, failure to tell him why Trane terminated his assignment, and failure to follow its anti-discrimination policies did not satisfy this standard, the court held. (R.396 at 24-25, PageID #3696-97.) Whether or not the court

would have reached the same conclusion under the correct *Burlington Northern* standard, it erred by overlooking McAllister's additional allegation that Adecco contributed to his termination from Trane. Termination is an adverse action under any standard.

Failure to investigate can also constitute a retaliatory adverse action under certain circumstances. *Compare Rochon v. Gonzales*, 438 F.3d 1211, 1219-20 (D.C. Cir. 2006) (FBI's failure to investigate discriminatory and retaliatory death threat made against employee and his family constituted retaliatory adverse action because FBI would have investigated in other circumstances and its failure to do so here might well have dissuaded reasonable employee from complaining of discrimination) (cited with approval in *Burlington N.*, 548 U.S. at 63-64), *with Daniels v. United Parcel Serv., Inc.*, 701 F.3d 620, 640 (10th Cir. 2012) ("[F]ailure to investigate a complaint, *unless it leads to demonstrable harm*, leaves an employee no worse off than before the complaint was filed.") (emphasis added).

III. The district court erred in holding that Adecco could not be liable as a matter of law for any discrimination that happened to McAllister during his placement at Trane.

The district court was incorrect when it held that Adecco could not be liable for Trane's discrimination because Adecco and Trane were not joint employers. (R.396 at 30, PageID #3702.) Its focus on joint employer status was understandable, given that the plaintiff framed the argument this way. (R.117 at 7,

10, PageID #934, 937.) However, it was unnecessary for the court to consider joint employer status because, under ordinary Title VII principles, Adecco could be liable for negligently allowing a third party to discriminate against Adecco's own employee at his work site. *See, e.g.*, *Freitag v. Ayers*, 468 F.3d 528, 538 (9th Cir. 2006) (prison employee harassed by inmates); *Galdamez v. Potter*, 415 F.3d 1015, 1022 (9th Cir. 2005) (Postal Service employee harassed by customers and community members); *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 968 (9th Cir. 2002) (corporate services manager raped by potential client); *Folkerson v. Circus Circus Enters., Inc.*, 107 F.3d 754, 756 (9th Cir. 1997) (casino employee harassed by patron). Here, because Adecco hired McAllister specifically to send him on temporary assignments elsewhere, his work site was wherever Adecco sent him. *See Little*, 301 F.3d at 967 ("The nature of Little's employment extended the work environment beyond the physical confines of the corporate office.").

An employer is liable for a third party's discrimination against its employee based not on the discrimination itself, but on "the employer's 'negligence and ratification' of the [discrimination] through its failure to take appropriate and reasonable responsive action." *Freitag*, 468 F.3d at 538. This Court accordingly has held that an employer is liable if it knew or should have known of the discrimination and failed to take reasonable corrective measures within its control. *Id.*; *see also* 29 C.F.R. § 1604.11(e) (applying this standard to sexual harassment);

EEOC Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms, 1997 WL 33159161, at *11 (Dec. 3, 1997) ("Contingent Workers Guidance") (applying this standard to staffing firm's liability for discrimination by its client).

Fortuitously, the negligence standards governing liability for third-party discrimination and liability for discrimination by a joint employer are identical. *EEOC v. Global Horizons, Inc.*, 915 F.3d 631, 641 (9th Cir. 2019) ("We have employed that same negligence standard in an analogous setting, involving an employer's liability for the discriminatory conduct of third parties in the workplace ... [and] we agree with the Fifth and Seventh Circuits that this standard should govern in the joint-employment context as well."). Thus, the district court considered whether Adecco had acted negligently even though it did so under a joint employer framework. (R.396 at 32, PageID #3704.)

The court erred, however, in its application of the negligence standard. It reasoned that because Adecco lacked "control over [Trane's] employees and their decisions," there were no corrective measures that were within Adecco's control. (R.396 at 33, PageID #3705.) Thus, it concluded, even if Adecco knew or should

have known about Trane's discrimination and/or retaliation,[4] it could not have done anything about it. *Id.*

This analysis reflects an unduly narrow view of corrective measures. Possible corrective measures include, but are not limited to, (1) informing the client of the alleged discrimination, (2) asserting a commitment to protect its workers from discrimination, (3) insisting upon prompt investigative and corrective actions, and (4) offering the worker an opportunity for a different assignment at the same rate of pay. *See Brief-McGurrin v. Cisco Sys., Inc.*, ___ F. Supp. 3d ___, 2019 WL 1332357, at *3 (M.D.N.C. Mar. 25, 2019) (quoting Contingent Workers Guidance, 1997 WL 33159161, at *11); *Signore v. Bank of Am., N.A.*, No. 2:12cv539, 2013 WL 6622905, at *6 (E.D. Va. Dec. 13, 2013) (same); *see also Caldwell v. ServiceMaster Corp.*, 966 F. Supp. 33, 48 (D.D.C. 1997) (by offering alternative assignments, employment agency took the corrective measures that were within its control). The district court should have considered the full range of possibilities, but it did not.

[4] In this case, Adecco had actual knowledge of Trane's alleged discrimination. We note, however, that if it had not had actual knowledge, failing to investigate the reasons behind Trane's actions in violation of standard practice may have constituted evidence that it "should have known" about the discrimination. *See Nicholson v. Securitas Sec. Servs. USA, Inc.*, 830 F.3d 186, 191 (5th Cir. 2016) ("If Securitas failed to follow its usual practices in responding to a client's desire to have an employee removed, such a deviation can support Nicholson's claim that the company should have known of the alleged discrimination.").

Conclusion

If affirmed on appeal, the district court's analysis would erroneously limit the scope of Title VII. The EEOC therefore urges this Court to correct the district court's errors.

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Certificate of Service

I certify that I filed the foregoing brief in PDF format via this Court's CM/ECF system this 16th day of August, 2019.

I certify that the pro se appellant and all counsel of record have consented to electronic service and will be served this 16th day of August, 2019, via the CM/ECF system.

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Statement of Related Cases

The EEOC is unaware of any known related case pending in this Court.