

No. 23-16099

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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AARON M. ZAMORA,  
Plaintiff-Appellant,

v.

ARIZONA BOARD OF REGENTS, a political subdivision of the state of Arizona  
and Arizona State University, a public university; and ARIZONA STATE  
UNIVERSITY,  
Defendants-Appellees.

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On Appeal from the United States District Court  
for the District of Arizona

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BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
AND ATTORNEY GENERAL AS AMICUS CURIAE IN SUPPORT OF  
APPELLANT AND IN FAVOR OF REVERSAL

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## STATEMENT OF INTEREST

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, imposes various administrative prerequisites to suit. *Id.* § 2000e-5(f)(1). This case presents the important question of whether an employee must file a Title VII lawsuit within 90 days of becoming *eligible* to receive a notice of right to sue from the EEOC, or whether a lawsuit is timely if filed within 90 days of *receiving* such a notice. The EEOC and the Attorney General share enforcement responsibility under Title VII, *id.* §§ 2000e-5(a), (f)(1), and share an interest in the proper interpretation of Title VII's pre-suit requirements. Accordingly, the EEOC and Attorney General file this brief pursuant to Federal Rule of Appellate Procedure 29(a).

## STATEMENT OF THE ISSUE<sup>1</sup>

Title VII imposes administrative prerequisites to suit, including the filing of a charge with the EEOC and the receipt of a notice of right to sue from the EEOC or the Attorney General. 42 U.S.C. § 2000e-5(f)(1). A right-to-sue notice, which a charging party may obtain by right after 180 days, triggers a 90-day limitations period for filing suit. At issue is when the 90-day clock begins to run: within 90

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<sup>1</sup> The EEOC and the Attorney General take no position on the ultimate merits of Zamora's Title VII claims or on any other issue raised on appeal.

days of when an individual becomes eligible to receive a notice of right to sue, or after the individual actually receives the notice.

## STATEMENT OF THE CASE

### A. Statutory Background<sup>2</sup>

Title VII prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a). The statute “establishe[s] an integrated, multistep enforcement procedure,” which begins with the filing of a charge of discrimination with the EEOC. *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 359 (1977). An aggrieved individual must file a charge within 180 days of the alleged unlawful employment practice, or within 300 days if the alleged violation occurred in a jurisdiction that has a state or local fair-employment-practices agency with the authority to grant or seek relief for the alleged practice. 42 U.S.C. § 2000e-5(e)(1). If, after investigation, the EEOC is unable to find reasonable cause to believe that the allegations are true, “it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action.” 42 U.S.C. § 2000e-5(b). Pursuant to its procedural regulations, the EEOC will then issue a notice of right to sue.<sup>3</sup> 29 C.F.R. §§ 1601.28(b)(3), (d). If the

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<sup>2</sup> Pertinent statutory and regulatory provisions are reproduced in an addendum at the end of this brief.

<sup>3</sup> Title VII authorizes the EEOC to issue “suitable procedural regulations.” 42 U.S.C. § 2000e-12(a).

EEOC does find reasonable cause, it “shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.” 42 U.S.C. § 2000e-5(b).

The EEOC (or the Attorney General in a case against a state or local governmental entity) will issue a notice of right to sue upon request if more than 180 days have passed since the filing of the charge and the EEOC (or the Attorney General) has not yet filed a civil action, or the EEOC has not yet entered into a conciliation agreement to which the aggrieved individual is a party.<sup>4</sup> *Id.* § 2000e-5(f)(1); 29 C.F.R. § 1601.28(a)(1) (“at any time” after the 180-day mark, the aggrieved person may request, in writing, a notice of right to sue, and the EEOC “shall promptly issue it”). Prior to the 180-day mark, however, the EEOC controls the administrative process and has discretion whether or not to issue a notice of right to sue. *See* 29 C.F.R. § 1601.28(a)(2) (EEOC “may issue” notice of right to sue prior to 180-day mark upon written request). Issuing a notice of right to sue at an individual’s request usually terminates all further charge processing. 29 C.F.R. § 1601.28(a)(3). *But see id.* (EEOC will further process charge if it determines further processing would effectuate the purpose of Title VII).

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<sup>4</sup> If the employer is a governmental entity and the EEOC disposes of the charge for any reason other than dismissal, the Attorney General issues the notice of right to sue. 29 C.F.R. § 1601.28(d).



A notice of right to sue instructs that “[i]f you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.**” R.21 at 6 (Zamora’s notice of right to sue) (bold and capitalization in original); *see also* 42 U.S.C. § 2000e-5(f)(1) (setting 90-day limitations period for filing suit). No provision in the statute allows an individual to file suit (as opposed to intervening in an existing suit) without a notice of right to sue. *Compare* 42 U.S.C. § 2000e-5(f)(1) (allowing suit within 90 days after the EEOC or Attorney General “giv[es]...such notice”), *with id.* (allowing intervention in an existing government lawsuit without a notice of right to sue).

## **B. Statement of Facts**

Pro se plaintiff Aaron Zamora alleges that while working at Arizona State University (ASU) as a parking assistant, he experienced various forms of discrimination based on mental and physical disabilities, race, and national origin in violation of the Americans with Disabilities Act (ADA),<sup>5</sup> the Rehabilitation Act,<sup>6</sup> Section 1983,<sup>7</sup> Arizona state law, and Title VII. R.1 (Complaint). He alleges that ASU failed to accommodate his disabilities (cyclic vomiting syndrome and

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<sup>5</sup> 42 U.S.C. §§ 12101 *et seq.*

<sup>6</sup> 29 U.S.C. §§ 791 *et seq.*

<sup>7</sup> 42 U.S.C. § 1983.

autism), failed to train him properly, retaliated against him for requesting accommodations, and terminated him because of his race and/or national origin and disabilities. *Id.*

Zamora filed an EEOC charge in March 2021. *Id.* at 33. On September 19, 2022, before receiving a notice of right to sue, he filed this case against ASU and the Arizona Board of Regents (ABOR) in federal district court. R.1. ASU and ABOR moved to dismiss for failure to state a claim, arguing in relevant part that Zamora had failed to comply with pre-suit requirements because he had failed to obtain a notice of right to sue from the EEOC. R.12 at 7-8. Zamora stated in response that “Due to COVID-19 the EEOC is far behind and burdened with overload of cases therefore their investigation is to this date still ongoing and that is why they had Plaintiff Zamora file his claim before issuing the letter of right to sue to preserve his rights to sue.” R.14 at 15.<sup>8</sup>

On March 13, 2023, while the motion to dismiss was pending, the EEOC issued a determination and a notice of right to sue. R.21 at 6 (notice). The notice

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<sup>8</sup> On March 21, 2020, the EEOC did temporarily suspend issuing charge-closure documents, including notices of right to sue, unless the charging party requested them. The Commission resumed issuing these documents on August 3, 2020, so this suspension should not have affected the issuance of Zamora’s letter. *See generally* EEOC, Press Release, “EEOC Resumes Issuance of Charge Closure Documents,” <https://www.eeoc.gov/newsroom/eeoc-resumes-issuance-charge-closure-documents> (Aug. 3, 2020).

advised Zamora that if he chose to file a lawsuit, he must do so within 90 days. *Id.* Zamora filed this notice with the district court the next day. R.20 (notice of service).

### **C. District Court’s Decision**

The district court granted Defendants’ motion to dismiss in its entirety. R.22 at 1. The court dispensed with the ADA, Rehabilitation Act, Section 1983, and state law claims on various grounds not addressed here, including dismissing ASU as a defendant. R.22 at 6-9, 11. However, the court dismissed Zamora’s Title VII claims against ABOR as untimely. R.22 at 9-11. The court rejected Defendants’ argument that the suit was premature because Zamora had brought it before he received a notice of right to sue, R.22 at 10, holding instead that Zamora had filed the suit too late because he brought it more than 90 days after becoming *entitled* to receive a notice of right to sue, R.22 at 11. This appeal followed.

## **ARGUMENT**

### **Zamora did not file his Title VII lawsuit too late.**

The district court erred in holding that Zamora had to file his Title VII lawsuit within 90 days of becoming *eligible* to receive a notice of right to sue, rather than within 90 days of actually receiving a right-to-sue letter. As this Court held in *Scott v. Gino Morena Enterprises, LLC*, 888 F.3d 1101 (9th Cir. 2018), “under a plain reading of § 2000e-5(f)(1), the 90-day period in which a claimant

may file a civil action begins when the EEOC gives a right-to-sue notice.” *Id.* at 1108.

### **I. Title VII litigation requires a federal notice of right to sue.**

No provision in Title VII allows an individual to file suit before the EEOC (or Attorney General) has notified them of their right to sue. To the contrary, the statute specifies when the EEOC must issue a notice of right to sue, and expressly authorizes an aggrieved individual to file suit “within 90 days after the giving of such notice.” 42 U.S.C § 2000e-5(f)(1); *cf. id.* (omitting any requirement for a notice of right to sue for an individual who seeks only to intervene in an existing lawsuit).

The Supreme Court has consistently recognized that the notice of right to sue starts the 90-day clock running. In *Fort Bend County v. Davis*, for instance, the Court observed that “[w]hether or not the EEOC acts on [a] charge, a complainant is entitled to a ‘right-to-sue’ notice 180 days after the charge is filed[,] and within 90 days *following such notice*, the complainant may commence a civil action against the allegedly offending employer.” 139 S. Ct. 1843, 1847 (2019) (internal citations omitted; emphasis added). Likewise, in *Occidental Life Insurance Co. v. EEOC*, the Court explained, “After waiting for [180 days], the complainant may either file a private action within 90 days *after EEOC notification* or continue to leave the ultimate resolution of his charge to the efforts of the EEOC.” 432 U.S.

355, 361 (1977) (emphasis added); *see also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47 (1974) (plaintiff satisfied Title VII pre-suit requirements by filing timely EEOC charge and “receiv[ing] and act[ing] upon the Commission’s statutory notice of the right to sue”).

Consistent with the statutory language and Supreme Court precedent, this Court held in *Scott* that “§ 2000e-5(f)(1) plainly ties the 90-day period to the ‘giving of [the right-to-sue] notice,’ not eligibility for a right-to-sue notice.” 888 F.3d at 1110. Basing the 90-day period upon *eligibility* to receive a right-to-sue notice, the *Scott* Court concluded, would be “contrary to the language of the statute.” *Id.* Moreover, doing so “would arguably render right-to-sue notices meaningless.” *Id.* Even after 180 days, the Court said, the EEOC retains jurisdiction to continue investigating and to act on a charge. *Id.* Requiring a charging party to file suit based merely on the passage of time, and not on receipt of a notice of right to sue, *Scott* said, cannot be squared with Congress’s intent that the administrative scheme “provide an opportunity to reach a voluntary settlement of an employment discrimination dispute.” *Id.* (quoting *Jasch v. Potter*, 302 F.3d 1092, 1094 (9th Cir. 2002)); *see also Alexander*, 415 U.S. at 44 (Congress intended “[c]ooperation and voluntary compliance” to be the “preferred means” of achieving equal employment opportunity).

In addition to *Scott*'s reasoning, requiring an individual to sue before receiving a right-to-sue letter would contravene another central purpose of the notice-of-right-to-sue requirement: "to prevent concurrent proceedings in the EEOC and the courts." *Perdue v. Roy Stone Transfer Corp.*, 690 F.2d 1091, 1094 (4th Cir. 1982) (citing H.R. Rep. No. 238, 92nd Cong., 1st Sess. (1972), *reprinted in* 1972 U.S.C.C.A.N. 2137, 2148). If an individual files suit without EEOC authorization, the EEOC may not even know that litigation is ongoing. Thus, the agency could not make a reasoned decision whether to continue its investigation or to refocus its limited resources.

**II. The district court relied on inapt and wrongly decided precedent to hold that Zamora should have filed suit before receiving a federal right-to-sue notice.**

In holding that Zamora had filed suit too late, the district court erroneously ignored *Scott* and relied, instead, on *Stiefel v. Bechtel Corp.*, 624 F.3d 1240 (9th Cir. 2010), a case involving an entirely different question pertaining to charges filed with state fair-employment-practices agencies.<sup>9</sup> *See* R.22 at 10 (citing *Stiefel v. Bechtel Corp.*, 624 F.3d 1240, 1245 (9th Cir. 2010)). *Stiefel* addressed only

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<sup>9</sup> The court also relied upon *Payan v. Aramark Management Services Ltd. Partnership*, 495 F.3d 1119 (9th Cir. 2007), R.22 at 10, which addresses only how to determine the presumptive date for receipt of a right-to-sue notice when the actual date is unknown. *Payan*, 495 F.3d at 1121. Nothing in *Payan* suggests that a lawsuit filed prior to receipt of a notice of right to sue could ever be considered too late.

whether a claimant may file suit without first receiving a federal notice of right to sue, and did not address whether a claimant who waits to receive a federal notice could thereby forfeit the opportunity to vindicate their Title VII rights in court.

In *Stiefel*, the plaintiff had filed a charge of discrimination with a California agency that had a “worksharing agreement” with the EEOC, under which the state and federal agencies divided the processing and investigation of charges. 624 F.3d at 1245. The *Stiefel* Court wrongly assumed that all state charges filed with agencies that have worksharing agreements are automatically dual filed with the EEOC. *See id.* at 1244 (characterizing charge as “dual-filed” with the EEOC); *see also Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1105 (9th Cir. 2008) (deeming a state charge filed pursuant to a worksharing agreement to be “properly filed” with EEOC). This assumption was incorrect. While charges are usually dual filed, in some circumstances they are not. For instance, in California, individuals who request an immediate right-to-sue notice from the state elect not to dual-file with the EEOC. *See* Cal. C.R. Dep’t, Instructions for Obtaining a Right-to-Sue Notice at 1 (Jan. 2024), [https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/CRD-Intake-Form\\_Right-to-Sue\\_ENG.pdf](https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/CRD-Intake-Form_Right-to-Sue_ENG.pdf); *see also* 29 C.F.R. § 1601.13(b) (charge is dual filed with EEOC only at charging party’s request).

Based on its inaccurate understanding that all state charges are necessarily dual filed with the EEOC, the Court reasoned that an individual who files a state charge with an agency having a worksharing agreement with the EEOC need not obtain a federal notice of right to sue before bringing suit on federal claims. *Stiefel*, 624 F.3d at 1244-45; *see also Surrell*, 518 F.3d at 1105 (same). As long as 180 days have passed since a charge was filed with the state agency, *Stiefel* said, an individual with a state notice of right to sue “may” proceed with a federal lawsuit, even absent a federal right-to-sue notice, because the EEOC “did not timely act on [his] properly [dual-] filed charge.” *Stiefel*, 624 F.3d at 1245; *see also Surrell*, 518 F.3d at 1105 (same). Requesting a federal notice at that point, *Stiefel* appears to have reasoned, would be a meaningless formality.

Even if state charges *have* been dual filed with the EEOC, this assumption was wrong. Federal regulations require state agencies to notify the EEOC when they finish processing a dual-filed charge so that the EEOC can determine “what further action by the EEOC is warranted.” 29 C.F.R. § 1640.11(b)-(c). The EEOC does not always agree with a state agency’s conclusions, although it “accord[s] substantial weight to final findings and orders made by State or local authorities.” 42 U.S.C. § 2000e-5(b). In some cases, the EEOC may find reasonable cause to believe that an employer has violated Title VII even if the state has concluded that the employer has not violated state law. In other cases, the EEOC may be able to



successfully conciliate a charge although the state agency was not. *See* 42 U.S.C. § 2000e-5(f)(1). Accordingly, state agencies cannot issue federal notices of right to sue. *See* Cal. Dep’t of Fair Emp. & Hous., SB 491 Report at 6 (2018), <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2018/12/SB491Report2018.pdf> (“DFEH does not issue federal right-to-sue notices; those are produced separately by the EEOC once it is informed by DFEH of a case closure.”).

Given the numerous faulty assumptions in *Stiefel* and *Surrell*, we urge this Court to reconsider those precedents at an appropriate time. For present purposes, we note simply that those cases have no bearing on the fact pattern here, where Zamora filed a charge with the EEOC but not with a state agency, did not receive a state notice of right to sue, and eventually received a notice of right to sue from the EEOC.

*Scott*, rather than *Stiefel* or *Surrell*, is the governing precedent in this case. 888 F.3d at 1104-05. Like Zamora, the plaintiff in *Scott* filed a charge with the EEOC, and she did not rely on a state notice of right to sue as a basis for her Title VII claim.<sup>10</sup> 888 F.3d at 1104-05. Rather, she added that claim to a pending lawsuit only after receiving a right-to-sue letter from the EEOC. The plaintiff amended her

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<sup>10</sup> Unlike Zamora, Scott originally filed a charge with a state fair-employment-practices agency, which dual filed her charge with the EEOC. 888 F.3d at 1105.

complaint fewer than 90 days after receiving the EEOC notice but more than 90 days after she became eligible to receive one. *Id.* at 1106-07. Extrapolating from *Stiefel* and *Surrell*, the defendant argued that she had filed her claim too late. *Id.* at 1106.

The *Scott* Court acknowledged that language in *Stiefel* could be read to support the defendant's argument, but it characterized that language as dicta and declined to follow it. *Id.* at 1110. *Stiefel* dealt only with "the claimant's right to sue," the *Scott* Court said, not with "the deadline by which the claimant must sue." *Id.* Treating the issue as one of first impression, *Scott* concluded that "the 90-day period for an aggrieved person to file a civil action under Title VII begins when the person is given notice of the right to sue from the EEOC, not when the person becomes eligible to receive such notice." *Id.* at 1113. *Scott* is controlling here. Consistent with *Scott*, Zamora did not file his lawsuit too late. Thus, the district court's dismissal of his Title VII claim on that basis should be reversed.

### **III. Contrary to the district court's holding, Zamora filed suit too early, but that does not doom his lawsuit.**

Although the district court was wrong that Zamora filed suit too late, in our view, he had no authority to file a Title VII claim before receiving the EEOC's notice of right to sue.<sup>11</sup> As discussed above, *supra* pp. 7-9, Title VII requires

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<sup>11</sup> Under circumstances not applicable here, of course, equity might excuse the failure to await receipt of a right-to-sue notice. *See, e.g., Perdue*, 690 F.2d at 1091-

individuals to file a charge with the EEOC and obtain a right-to-sue notice from the EEOC (or Attorney General) before proceeding with federal claims. *See* 42 U.S.C. §§ 2000e-5(b) (charge processing); 2000e-5(e)(1) (charge filing), 2000e-5(f)(1) (notice of right to sue and 90-day deadline for filing suit); *see also* 29 C.F.R. §§ 1601.28(b), (d) (notice of right to sue). Zamora did not follow the necessary steps.

Nevertheless, the district court should not have dismissed Zamora’s claims with prejudice. It could have dismissed them without prejudice, *see, e.g., Salehian v. Nev. State Treasurer’s Off.*, 618 F. Supp. 3d 995, 1007 (D. Nev. 2022); *Gragg v. Wenzak, Inc.*, No. 10-3276, 2011 WL 1331897, at \*4 (C.D. Ill. Apr. 6, 2011), and tolled his filing deadline for 90 days from the date of dismissal (because, by the time the court ordered dismissal, the statutory 90-day period had already expired), *see Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 354 (1983) (tolling 90-day filing deadline for Title VII suit). It could have given him leave to amend once the EEOC issued the notice—an option the court considered but rejected based on its mistaken belief that Zamora had already filed too late. *See Smith v. Pac. Props.*

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93 (allowing lawsuit to proceed where plaintiff repeatedly requested right-to-sue notice but the EEOC maintained that it could not issue one after parties had entered into settlement agreement); *see also Pinkard v. Pullman-Standard*, 678 F.2d 1211, 1218-19 (5th Cir. 1982) (per curiam) (“receipt of a right-to-sue letter is a condition precedent, which on proper occasion may be equitably modified”).

*& Dev. Corp.*, 358 F.3d 1097, 1100 (9th Cir. 2004) (leave to amend “should, as the rules require, be ‘freely given’” (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962))). Or it could have considered the defect cured when Zamora provided the notice, which he did as soon as he received it. *See* R.20 (notice of service); *see also Perkins v. Silverstein*, 939 F.2d 463, 471 (7th Cir. 1991) (“While [plaintiff’s Title VII claims] may have been subject to dismissal at any time prior to [her] receipt of a right-to-sue letter, the receipt of that letter after the complaint had been filed, but before it had been dismissed, effectively cured the deficiency in the original complaint.”). What it should not have done is dismissed his case with prejudice for filing it too late.

### **CONCLUSION**

For the foregoing reasons, the district court’s dismissal of Zamora’s Title VII claim should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(A) because it contains fifteen pages, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(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 Times New Roman 14 point.

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# **ADDENDUM**

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**42 U.S.C. § 2000e-5(f)(1)**

If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the

Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

## 29 C.F.R. § 1601.28

(a) Issuance of notice of right to sue upon request.

(1) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued and the charge to which the request relates is filed against a respondent other than a government, governmental agency or political subdivision, the Commission shall promptly issue such notice as described in § 1601.28(e) to all parties, at any time after the expiration of one hundred eighty (180) days from the date of filing of the charge with the Commission, or in the case of a Commissioner charge 180 days after the filing of the charge or 180 days after the expiration of any period of reference under section 706(d) of title VII as appropriate.

(2) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued, and the charge to which the request relates is filed against a respondent other than a government, governmental agency or political subdivision, the Commission may issue such notice as described in § 1601.28(e) with copies to all parties, at any time prior to the expiration of 180 days from the date of filing of the charge with the Commission; provided that the District Director, the Field Director, the Area Director, the Local Director, the Director of the Office of Field Programs or upon

delegation, the Director of Field Management Programs has determined that it is probable that the Commission will be unable to complete its administrative processing of the charge within 180 days from the filing of the charge and has attached a written certificate to that effect.

(3) Issuance of a notice of right to sue shall terminate further proceeding of any charge that is not a Commissioner charge unless the District Director; Field Director; Area Director; Local Director; Director of the Office of Field Programs or upon delegation, the Director of Field Management Programs; or the General Counsel, determines at that time or at a later time that it would effectuate the purpose of title VII, the ADA, or GINA to further process the charge. Issuance of a notice of right to sue shall not terminate the processing of a Commissioner charge.

(4) The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate.

(b) Issuance of notice of right to sue following Commission disposition of charge.

(1) Where the Commission has found reasonable cause to believe that title VII, the ADA, or GINA has been violated, has been unable to obtain voluntary compliance with title VII, the ADA, or GINA, and where the Commission has decided not to bring a civil action against the respondent, it will issue a notice of right to sue on the charge as described in § 1601.28(e) to:

(i) The person claiming to be aggrieved, or,

(ii) In the case of a Commissioner charge, to any member of the class who is named in the charge, identified by the Commissioner in a third-party certificate, or otherwise identified by the Commission as a member of the class and provide a copy thereof to all parties.

(2) Where the Commission has entered into a conciliation agreement to which the person claiming to be aggrieved is not a party, the Commission shall issue a notice of right to sue on the charge to the person claiming to be aggrieved.

(3) Where the Commission has dismissed a charge pursuant to § 1601.18, it shall issue a notice of right to sue as described in § 1601.28(e) to:

- (i) The person claiming to be aggrieved, or,
- (ii) In the case of a Commissioner charge, to any member of the class who is named in the charge, identified by the Commissioner in a third-party certificate, or otherwise identified by the Commission as a member of the class, and provide a copy thereof to all parties.

(4) The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate.

(c) The Commission hereby delegates authority to District Directors, Field Directors, Area Directors, Local Directors, the Director of the Office of Field Programs, or Director of Field Management Programs or their designees, to issue notices of right to sue, in accordance with this section, on behalf of the Commission. Where a charge has been filed on behalf of a person claiming to be aggrieved, the notice of right to sue shall be issued in the name of the person or organization who filed the charge.

(d) Notices of right to sue for charges against Governmental respondents. In all cases where the respondent is a government, governmental agency, or a political

subdivision, the Commission will issue the notice of right to sue when there has been a dismissal of a charge. The notice of right to sue will be issued in accordance with § 1601.28(e). In all other cases where the respondent is a government, governmental agency, or political subdivision, the Attorney General will issue the notice of right to sue, including the following cases:

(1) When there has been a finding of reasonable cause by the Commission, there has been a failure of conciliation, and the Attorney General has decided not to file a civil action; and

(2) Where a charging party has requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2). In cases where a charge of discrimination results in a finding of cause in part and no cause in part, the case will be treated as a “cause” determination and will be referred to the Attorney General.

(e) Content of notice of right to sue. The notice of right to sue shall include:

(1) Authorization to the aggrieved person to bring a civil action under title VII, the ADA, or GINA pursuant to section 706(f)(1) of title VII, section 107 of the ADA, or section 207 of GINA within 90 days from receipt of such authorization;

(2) Advice concerning the institution of such civil action by the person claiming to be aggrieved, where appropriate;

(3) The charge;

(4) The Commission's decision, determination, or dismissal, as appropriate.



## CERTIFICATE OF SERVICE

I certify that on this February 1, 2024, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that counsel for Defendant-Appellee is a registered CM/ECF user and service will be accomplished via the appellate CM/ECF system. I further certify that I have caused to be sent one copy of the foregoing brief by UPS overnight delivery to pro se Plaintiff-Appellant Aaron M. Zamora at the following address:

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