APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TINA DAVIS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. H-17-280
	§	
TEXAS CHILDREN'S HOSPITAL,	§	
	§	
Defendant.	§	

ORDER

Pending before the Court is Defendant's Motion for Summary Judgment and Supporting Brief (Document No. 21). Having considered the motion, submissions, and applicable law, the Court determines the motion should be granted.

I. BACKGROUND

This is an employment discrimination dispute between *pro se* Plaintiff Tina Davis ("Davis") and Davis's former employer, Texas Children's Hospital ("TCH"). TCH employed Davis from August 24, 2015, to August 22, 2016. Davis alleges that, during Davis's employment with TCH, TCH subjected Davis to harassment based on her race and gender, discriminated against Davis based on her race and gender, and retaliated against Davis for complaining about such alleged harassment and discrimination. On October 10, 2016, Davis filed a charge of discrimination with the Equal Employment Opportunity Commission (the

"EEOC"). On January 27, 2018, Davis filed a lawsuit in this Court against THC, asserting claims pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII") and 42 U.S.C. § 1981 ("Section 1981") for race and sex-based harassment, discrimination, and retaliation. On February 21, 2018, TCH moved for summary judgment on all of Davis's claims.

II. STANDARD OF REVIEW

Summary judgment is proper when "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(a). The court must view the evidence in a light most favorable to the nonmovant. *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997). Initially, the movant bears the burden of presenting the basis for the motion and the elements of the causes of action upon which the nonmovant will be unable to establish a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the nonmovant to come forward with specific facts showing there is a genuine dispute for trial. *See* FED. R. CIV. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). "A dispute about a material fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993) (citation omitted).

But the nonmoving party's bare allegations, standing alone, are insufficient to create a material dispute of fact and defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). Moreover, conclusory allegations unsupported by specific facts will not prevent an award of summary judgment; the plaintiff cannot rest on his allegations to get to a jury without any significant probative evidence tending to support the complaint. *Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio*, 40 F.3d 698, 713 (5th Cir. 1994). If a reasonable jury could not return a verdict for the nonmoving party, then summary judgment is appropriate. *Liberty Lobby, Inc.*, 477 U.S. at 248. The nonmovant's burden cannot be satisfied by "conclusory allegations, unsubstantiated assertions, or 'only a scintilla of evidence.'" *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). Furthermore, it is not the function of the court to search the record on the nonmovant's behalf for evidence which may raise a fact issue. *Topalian v. Ehrman*, 954 F.2d 1125, 1137 n.30 (5th Cir. 1992). Therefore, "[a]lthough we consider the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the nonmovant, the nonmoving party may not rest on the mere allegations or denials of its pleadings, but must respond by setting forth specific facts indicating a genuine issue for trial." *Goodson v. City of Corpus Christi*, 202 F.3d 730, 735 (5th Cir. 2000).

III. LAW & ANALYSIS

Davis asserts claims against TCH pursuant to Title VII and Section 1981 for harassment, discrimination, and retaliation. TCH moves for summary judgment on all of Davis's claims.[1] The Court addresses TCH's motion for summary judgment on each claim in turn.

A. Harassment

Davis contends TCH harassed Davis (1) based on her sex in violation of Title VII; and (2) based on her race in violation of Title VII and Section 1981. TCH seeks summary judgment on Davis's harassment claims, contending (1) Davis failed to exhaust her administrative remedies on her Title VII harassment claims; and (2) Davis cannot establish a prima facie case of Section 1981 harassment. The Court addresses each contention in turn.

[1] Davis filed a response to TCH's motion for summary judgment on April 26, 2018, nearly three months after TCH filed its motion for summary judgment. Although *pro se* pleadings are construed liberally, *pro se* litigants must abide by the local rules of this district. *See United States v. Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994). Under Local Rule 7.3, a party opposing a motion for summary judgment must file a response within twenty-one days after the motion for summary judgment is served. S.D. TEX. LOCAL RULE 7.3. Because Davis's response to TCH's motion for summary judgment was filed more than twenty-one days after TCH filed its motion for summary judgment, Davis's response is stricken as untimely. The Court therefore considers Davis's motion for summary judgment unopposed. *See* S.D. TEX. LOCAL RULE 7.4. Further, were the Court to consider Davis's response, the response does not address the contentions raised in TCH's motion for summary judgment.

1. Title VII Harassment

TCH contends Davis failed to exhaust her administrative remedies on her Title VII harassment claims. A Title VII complaint may only encompass discrimination "like or related to allegation[s] contained in the [EEOC] charge and growing out of such allegations during the pendency of the case before the Commission." *McClain v. Lufkin Indus., Inc.*, 519 F.3d 264, 273 (5th Cir. 2008).

Davis's EEOC complaint alleges race and sex discrimination as well as retaliation, stating:

> On or about August 24, 2015, I started working for [TCH] as a Patient Care Technician 1. On or about August 22, 2016, Ruben Castillo, Human Resources Specialist, terminated my employment. According to Mr. Castillo, I was terminated because I allegedly made a threatening remark. I believe that I have been discriminated against because of my race, African-American, and gender, female, in violation of Title VII of the Civil Rights Act of 1964, as amended. Also, I believe that I have been retaliated against.[2]

Davis's EEOC complaint does not mention, allude to, or allege facts supporting a harassment claim. Nor does the Court find the allegations in Davis's EEOC complaint would have put the EEOC on notice that Davis was additionally alleging TCH subjected Davis to race- and sex-based harassment. Davis has thus failed to exhaust her administrative remedies on Davis's Title VII harassment claims and is

[2] *Defendant's Motion for Summary Judgment and Supporting Brief*, Document No. 21, Exhibit 8 (*EEOC Complaint*).

precluded from asserting them in this lawsuit. *See Sosebee v. Tex. Alcoholic Beverage Comm'n*, 906 F. Supp. 2d 596, 601 (N.D. Tex. 2012) (Godbey, J.). Accordingly, TCH's motion for summary judgment is granted as to Davis's Title VII race- and sex-based harassment claims.

2. Section 1981 Harassment

TCH contends Davis cannot establish a prima facie case of Section 1981 race-based harassment.[3] To establish a prima facie claim of Section 1981 race-based harassment, a plaintiff must show: (1) she is a member of a protected group; (2) she was the victim of uninvited harassment; (3) the harassment was based on race; and (4) the harassment affected a term, condition, or privilege of employment. *Barkley v. Singing River Elec. Power Ass'n*, 433 F. App'x 254, 257 (5th Cir. 2011). Additionally, when a plaintiff alleges harassment by a co-worker—as opposed to a supervisor—the plaintiff must prove the employer knew or should have known of the harassment and failed to take prompt remedial action. *Aryain v. Wal-mart Stores Tex. LP*, 435 F.3d 473, 479 n.3 (5th Cir. 2008). Regarding the third element, Davis has not offered evidence that any alleged harassment was based on her race, and in her deposition, Davis concedes it was

[3] There is no exhaustion requirement in Section 1981 cases. *Jones v. Robinson Prop. Group, L.P.*, 427 F.3d 897, 992 (5th Cir. 2005).

not.[4] Davis therefore fails to establish a prima facie case of Section 1981 race-based harassment.[5] Accordingly TCH's motion for summary judgment is granted as to Davis's Section 1981 harassment claim.

B. Discrimination

Davis contends TCH discriminated against Davis by terminating her based on (1) her sex in violation of Title VII; and (2) her race in violation of Title VII and Section 1981.[6] TCH contends Davis can neither establish a prima facie case of each claim nor demonstrate TCH's asserted reasons for TCH's actions are pretextual.

The Court evaluates Davis's Title VII and Section 1981 discrimination claims under the *McDonnell Douglas* burden-shifting framework. *Squetres v.*

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[4] *Defendant's Motion for Summary Judgment and Supporting Brief*, Document No. 21, Exhibit 3 at 74–75 (*Deposition of Davis*) [hereinafter *Deposition of Davis*].

[5] The Court notes the elements of race-based harassment are identical under Title VII and Section 1981. *Anderson v. Douglas & Lomason Co.*, 26 F.3d 1277, 1284 n.7 (5th Cir. 1994). Thus, even if Davis exhausted her administrative remedies on her Title VII race-based harassment claim, the Title VII race-based harassment claim fails for the same reason Davis's Section 1981 race-based harassment claim fails.

[6] To the extent Davis's complaint may be construed as alleging TCH additionally discriminated or retaliated against Davis by denying Davis a position transfer and transferring Davis to another location, Davis fails to establish that either of these actions was adverse and the evidence indicates otherwise. *Deposition of Davis*, *supra* note 4, at 71; *Defendant's Motion for Summary Judgment and Supporting Brief*, Document No. 21, Exhibit 5 at ¶¶ 12 (*Declaration of Ruben Castillo*) [hereinafter *Declaration of Ruben Castillo*]. Additionally, with regard to Davis's Title VII claims, neither TCH's alleged denial of Davis's position transfer nor TCH's transfer of Davis to a different location were mentioned or alluded to in Davis's EEOC complaint. Thus, even if these actions were adverse, they are outside the scope of Davis's EEOC complaint and cannot be relied on in support of Davis's Title VII claims.

Heico Cos., L.L.C., 782 F.3d 224, 231 (5th Cir. 2015) (Title VII); *see also Morris v. Town of Independence*, 827 F.3d 396, 400 (5th Cir. 2016) (Section 1981). A plaintiff must first establish a prima facie case of discrimination, at which point the burden shifts to the defendant to "articulate a legitimate, nondiscriminatory reason for the challenged employment decision." *Id.* "At this stage, the employer's burden is one of production, not persuasion, and involves no credibility assessment." *Id.* An employer's decision may be legitimate even if it is unreasonable or based on an incorrect belief as long as it is not discriminatory. *See, e.g., Bryant v. Compass Grp. USA Inc.*, 413 F.3d 471, 478 (5th Cir. 2005) ("Management does not have to make proper decisions, only non-discriminatory ones.") (citing *Little v. Republic Ref. Co.*, 924 F.2d 93, 97 (5th Cir. 1991) ("even an incorrect belief that an employee's performance is inadequate constitutes a legitimate, nondiscriminatory reason" for termination)).

If the defendant-employer articulates a legitimate reason, the burden shifts back to the plaintiff to prove "either (1) the reason stated by the employer was a pretext for discrimination, or (2) the defendant's reason, while true, was only one reason for its conduct and discrimination is another motivating factor ('mixed motive')." *Id.* "In contrast to the minimal burden that a plaintiff bears when establishing her prima facie case, a plaintiff must provide 'substantial evidence' of pretext." *Higgins v. Lufkin Indus., Inc.*, 633 F. App'x 229, 234 (5th Cir. 2015)

(quoting *Auguster v. Vermilion Parish Sch. Bd.*, 249 F.3d 400, 402–03 (5th Cir. 2001)). "A subjective belief of discrimination, however genuine, may not be the basis of judicial relief." *Lawrence v. Univ. of Tex. Med. Branch at Galveston*, 163 F.3d 309, 313 (5th Cir. 1999).

Assuming, without deciding, that Davis established a prima facie case of Title VII and Section 1981 discrimination, the burden shifts to TCH to articulate a legitimate, nondiscriminatory reason for Davis's termination. TCH contends it terminated Davis for (1) threatening a co-worker; and (2) a pattern of workplace misconduct and poor performance. TCH offers evidence establishing that, after being notified that Davis had threatened another employee, TCH conducted a thorough investigation into the threat before terminating Davis.[7] TCH also offers the declaration of Conchita Almedina de Palacios ("Palacios"), Davis's supervisor, explaining that Davis repeatedly violated workplace rules and failed to improve her performance after repeated written and verbal counseling.[8] Palacios's declaration is further substantiated by the declaration of Kesha Rector, stating that "[t]hroughout Davis's employment with TCH, Davis had difficulty working collaboratively and

[7] *Declaration of Ruben Castillo*, *supra* note 6, ¶¶ 9–16

[8] *Defendant's Motion for Summary Judgment and Supporting Brief*, Document No. 21, Exhibit 1 at 1–8 (*Declaration of Conchita Almedina De Palacios*).

communicating effectively with her co-workers."[9] Kesha Rector also states she received "multiple complaints from Davis's co-workers about Davis's attitude and performance issues."[10] The Court finds TCH has met its burden of establishing a legitimate, nondiscriminatory reason for Davis's termination.

Davis does not point to any evidence indicating that TCH's articulated reasons for Davis's termination are pretext for sex or race discrimination. To the extent that Davis's complaint may be construed as pleading a disparate impact theory, Davis points to no evidence of other employees being treated less harshly for nearly identical conduct. *See Vaughen v. Woodforest Bank*, 665 F.3d 632, 637 (5th Cir. 2011). The Court also notes that the TCH employee that participated in hiring and terminating Davis and issued Davis written counseling is the same sex and race as Davis. *See Spears v. Patterson UTI Drilling Co.*, 337 F. App'x 416, 421–22 (5th Cir. 2009) ("The same actor inference creates a presumption that animus was not present where the same actor responsible for the adverse employment action either hired or promoted the employee at issue."); *see also Udoewa v. Plus4 Credit Union*, 754 F. Supp. 2d 850, 873 (S.D. Tex. 2010) (Rosenthal, J.) ("Courts have held that evidence that the person who made the final

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[9] *Defendant's Motion for Summary Judgment and Supporting Brief*, Document No. 21, Exhibit 2 ¶ 7 (*Declaration of Kesha Rector*) [hereinafter *Declaration of Kesha Rector*].

[10] *Declaration of Kesha Rector*, *supra* note 9, ¶ 7.

decision to terminate a particular plaintiff was the same race as the plaintiff undercuts any inference of discrimination.") (quoting *Boice v. Se. Penn. Transp. Auth.*, No. 05–4772, 2007 WL 2916188, at *10 (E.D. Pa. Oct. 5, 2007)). Davis has therefore failed to carry her burden of showing pretext. Accordingly, TCH's motion for summary judgment is granted as to Davis's Title VII and Section 1981 discrimination claims.

C. Retaliation

Davis contends she was terminated in retaliation for complaining about race- and sex-based harassment and discrimination in violation of Title VII and Section 1981. TCH contends Davis can neither establish a prima facie case of each claim nor demonstrate TCH's asserted reasons for TCH's actions are pretextual.

To establish a prima facie case of retaliation under Title VII or Section 1981, a plaintiff must show (1) she engaged in statutorily protected activity; (2) an adverse employment action occurred; and (3) a causal connection exists between the protected activity and the adverse employment action. *Medina v. Ramsey Steel Co., Inc.*, 238 F.3d 674, 684 (5th Cir. 2001); *Foley v. Univ. of Houston Sys.*, 355 F.3d 333, 340 n.8 (5th Cir. 2003). Once a plaintiff does so, "the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Medina*, 238 F.3d at 684. The burden then shifts back to the

plaintiff to "demonstrate that the adverse employment action would not have occurred 'but for' the protected activity." *Id.*

In Davis's deposition, Davis concedes she did not experience race-based harassment at TCH[11] and did not complain to anyone at TCH about race-based discrimination.[12] Davis therefore fails to establish she engaged in protected activity related to race-based discrimination or harassment. With regard to Davis's allegations of retaliation relying on complaints of sex-based harassment or discrimination, Davis concedes she was not terminated because of any complaints of sex-based harassment or discrimination.[13] Rather, Davis alleges she was terminated for complaining about a co-worker allegedly grabbing Davis's shirt.[14] Davis does not allege any grabbing was based on her sex. Davis therefore fails to establish a causal connection exists between any alleged complaints of sex-based harassment or discrimination and Davis's termination.

Overall, Davis does not allege facts—or provide any evidence—supporting a prima facie case of retaliation. Further, assuming Davis could establish a prima facie case of retaliation, as discussed *supra* Part III.B., TCH has met its burden of

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[11] *Deposition of Davis*, *supra* note 4, at 74–75.

[12] *Deposition of Davis*, *supra* note 4, at 53.

[13] *Deposition of Davis*, *supra* note 4, at 56–59.

[14] *Deposition of Davis*, *supra* note 4, at 20–22.

establishing a legitimate, nondiscriminatory reason for Davis's termination, and Davis offers no evidence demonstrating her termination would not have occurred but for her protected activity. Accordingly, TCH's motion for summary judgment is granted as to Davis's Title VII and Section 1981 retaliation claims.

IV. CONCLUSION

Based on the foregoing, the Court hereby

ORDERS that Defendant's Motion for Summary Judgment and Supporting Brief (Document No. 21) is **GRANTED**.

The Court will issue a separate Final Judgment.

SIGNED at Houston, Texas, on this 15 day of May, 2018.

David Hittner

DAVID HITTNER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TINA DAVIS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. H-17-280
	§	
TEXAS CHILDREN'S HOSPITAL,	§	
	§	
Defendant.	§	

FINAL JUDGMENT

Because the Court has dismissed all claims asserted in this lawsuit by Plaintiff Tina Davis against Defendant Texas Children's Hospital, the Court hereby

ORDERS that Plaintiff Tina Davis's case is **DISMISSED WITH PREJUDICE.**

THIS IS A FINAL JUDGMENT.

SIGNED at Houston, Texas, on this 15 day of May, 2018.

DAVID HITTNER
United States District Judge

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 3, 2019
Lyle W. Cayce
Clerk

No. 18-20387
Summary Calendar

TINA DAVIS,

Plaintiff–Appellant

v.

TEXAS CHILDREN'S HOSPITAL,

Defendant–Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-280

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Texas Children's Hospital fired its employee Tina Davis. Davis then sued the hospital for: (1) discrimination and harassment under 42 U.S.C. § 1981; (2) retaliation under § 1981; (3) discrimination and harassment under Title VII; and (4) retaliation under Title VII. Specifically, Davis says that her supervisor Ms. Conchita and a hospital employee named Omar created a pervasive hostile work environment.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

One example Davis gives: Conchita was yelling at her, and so Davis walked away. At which point, Conchita supposedly grabbed her from behind. Next, Davis claims that Omar screamed at her that he "would do what he wants." And Davis also alleges that during this altercation, Omar was face to face with her, inches away, so that his spit hit her face. Davis claims that she then sought transfer, but in response, her supervisors fired her. So Davis filed an EEOC complaint. And next, she sued.

After her deposition, she filed a letter with the district court expressing her dissatisfaction. The hospital then moved for summary judgment. And the court granted summary judgment on several grounds.

First, the court held that Davis failed to exhaust her administrative remedies for her Title VII harassment claim because her EEOC complaint failed to "allege facts supporting a harassment claim." Second, the court found that Davis had failed to make a prima facie case for § 1981 harassment since she didn't offer evidence showing that "any alleged harassment was based on her race." The court also noted that in her deposition, Davis even conceded that the alleged harassment was not based on race. Third, the court reasoned that even if Davis could make out prima facie Title VII and § 1981 cases, she failed to show that the hospital's articulated reasons for firing her—threatening a coworker, misbehavior, and poor performance—were mere pretext. And fourth, on retaliation, the Court held that Davis failed to show that she was engaged in a protected activity for which she was fired.

Davis makes two arguments on appeal: (1) that the district court erred in granting summary judgment; and (2) that the district court made ethical violations, which she raises for the first time on appeal.

We review the district court's granting of summary judgment de novo.[1] Under Federal Rule of Civil Procedure 56(a), summary judgment is appropriate when "there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law." The court must consider the evidence in the light most favorable to the nonmovant.[2] But the nonmovant must present more than a mere scintilla of evidence or conclusory allegations.[3]

Yet on appeal, Davis recites only conclusory allegations of racial and sex discrimination. She cites no evidence supporting those allegations. Nor did she do so below—not in her complaint; not in her opposition to summary judgment. And the district court gave her ample opportunity to dispute a material fact: Davis failed to reply to the summary-judgment motion on time. And yet the court considered her response anyway, even though it was nearly two months late.

Considering that Davis failed to establish prima facie cases for Title VII and § 1981 harassment and discrimination, as well as for Title VII retaliation, the district court correctly dismissed her suit. Finally, Davis's argument that the district judge should've recused himself isn't properly before this court. As this Court explained in *Andrade*, which we decided in 2003, "[r]equests for recusal raised for the first time on appeal are generally rejected as untimely."[4]

AFFIRMED.

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[1] *Rogers v. Bromac Title Servs., L.L.C.*, 755 F.3d 347, 350 (5th Cir. 2014).

[2] *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997).

[3] *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007).

[4] *Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003) (citing *United States v. Sanford*, 157 F.3d 987, 988–89 (5th Cir. 1998)).

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20387
Summary Calendar

D.C. Docket No. 4:17-CV-280

TINA DAVIS,

Plaintiff - Appellant

v.

TEXAS CHILDREN'S HOSPITAL,

Defendant - Appellee

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

Before SMITH, WIENER, and WILLETT, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 28, 2019

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 18-20387 Tina Davis v. Texas Children's Hospital
USDC No. 4:17-CV-280

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Angelique B. Tardie

By: _____
Angelique B. Tardie, Deputy Clerk
504-310-7715

cc: (letter only)
Ms. Veronica Cruz
Ms. Tina Davis
Ms. Felicity A. Fowler

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20387

TINA DAVIS,

Plaintiff - Appellant

v.

TEXAS CHILDREN'S HOSPITAL,

Defendant - Appellee

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

ON PETITION FOR REHEARING EN BANC

(Opinion 4/3/2019, 5 Cir., _____, _____ F.3d _____)

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Don R. Willett

UNITED STATES CIRCUIT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Tina Davis,	§	
	§	
	§	
V.	§	Civil Action No. 4:17-280
	§	
Texas Children's Hospital,	§	
	§	

ORDER

Pending before the Court is the Motion for Leave to Appeal In Forma Pauperis (Document # 49). Having considered the motion and the applicable law, the Court determines that the foregoing motion should be moot. Accordingly, the Court hereby

ORDERS that the Motion for Leave to Appeal In Forma Pauperis (Document # 49) is MOOT. The Plaintiff has previously been granted in forma pauperis status.

SIGNED on the 25 day of June, 2019.

DAVID HITTNER
United States District Judge