No. 21-135

In the Supreme Court of the United States

VAUN MONROE,

Petitioner,

v.

COLUMBIA COLLEGE CHICAGO

AND

BRUCE SHERIDAN,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondent restates the Questions Presented as follows:

1. Whether the Court should grant review to determine the requirements for equitably estopping a defendant from asserting a limitations defense, based on the defendant's misrepresentation, when: (A) every court of appeals uses a "subjective" test focused on the defendant's "intentionality"; (B) the claims would not survive using the hypothesized "objective" test; and (C) the decisions below finding the claims untimely are correct?

2. Whether the Court should grant review to determine if a court deciding the timeliness of an EEOC charge should give deference to the fact the EEOC accepted the charge when: (A) there is no asserted circuit split or other basis for certiorari; (B) every court to address the issue agrees no deference should be given; and (C) the decisions below finding the claims untimely are correct?

RULE 29.6 DISCLOSURE STATEMENT

Columbia College Chicago is a private, not-for-profit corporation. Columbia College Chicago has no parent corporation, and no publicly held company owns 10% or more of its stock. Bruce Sheridan is an individual.

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BRIEF IN OPPOSITION

The courts below held equitable estoppel could not save Petitioner's untimely statutory claims.

The Petition's primary basis for review rests on an asserted Circuit split regarding the requirements for equitably estopping a defendant from asserting a limitations defense, based on the defendant's misrepresentation. The Petition claims a split exists between Circuits that use a "subjective" test focusing on the defendant's "intentionality," and those that use an "objective" test requiring only a misrepresentation and the other party's detrimental reliance on it.

There is no such split. Each Circuit requires the defendant's "intentionality" to mislead before equitable estoppel applies. Petitioner's contrary cited authority does not support the proposition for which is cited. Moreover, the asserted split is immaterial because Petitioner's claims would fail even under the hypothesized "objective" standard. Petitioner has failed to show any misrepresentation on which he relied and thereby missed a filing deadline.

As regards Petitioner's secondary basis for this Court's review—whether, in determining the timeliness of an EEOC charge, deference must be given by the district court to the fact the EEOC accepted and investigated the charge—Petitioner fails to assert a Circuit split or any other recognized ground for this Court's review. In fact, every court to address the issue holds district courts determine the timeliness of a charge de novo.

STATEMENT

A. Statutory Background

A Title VII plaintiff in Illinois must first file a charge with the EEOC or an authorized state agency within 300 days of the alleged unlawful practice. 42 U.S.C. § 2000e-5(e)(1); *Mirza v. Neiman Marcus Grp., Inc.*, 649 F. Supp.2d 837, 849-52 (N.D. Ill. 2009). Petitioner's claim pursuant to 42 U.S.C. § 1981 must have been filed within four years of the alleged practice. 28 U.S.C. § 1658. An Illinois plaintiff must file a Title VI claim, 42 U.S.C. § 2000d, within two years. 735 ILCS 5/13-202; *Monroe v. Columbia College Chicago*, 990 F.3d 1098, 1100 (7th Cir. 2021).

B. Factual Background

Petitioner was an assistant professor at Columbia College Chicago (College) between 2007 and 2014. (R. 50, ¶¶ 2, 18, 67).[1] On March 18, 2013, the interim Provost of the College denied Petitioner tenure. (R. 50, ¶54; Pet., at 15.). Petitioner filed a grievance regarding the decision, which the College's President denied. (R. 50, ¶¶ 55, 59).

C. Procedural Background

Petitioner filed a charge with the EEOC on February 7, 2014 complaining about the tenure decision. (R. 50, ¶ 63; R. 50-1, p. 3). The EEOC issued a Dismissal and Notice of Rights on May 12, 2017. (R.

[1] "R.__" refers to the district court's docket entries and related page numbers or paragraphs.

50-1, p. 2). Petitioner filed a complaint on August 10, 2017, and an Amended Complaint on May 7, 2018. (R. 1, R. 50). Petitioner alleges: discrimination in violation of Title VII (Count I); retaliation in violation of Title VII (Count II); violation of § 1981 (Count III); violation of Title VI (Count IV); interference with contract (Count V); and interference with prospective economic advantage (Count VI). (R. 50).

College filed a motion to dismiss Counts I-III (Title VI and §1981) as time-barred. (R. 52-53). The district court granted the motion as to the Title VII claims because the EEOC charge was filed more than 300 days after March 18, 2013, and as to the § 1981 claim because the lawsuit was filed more than four years after that date. (*Id*. at 27-28, 38). The district court rejected Petitioner's arguments that his claims should nonetheless be considered timely, including based on equitable estoppel. (*Id*. at 35-38).

College filed a motion for summary judgment regarding the Title VI claim, including because it was untimely under the applicable two-year limitations period. (R. 73-74). Petitioner opposed summary judgment on the ground a five-year period applied. (R. 79). The district court granted summary judgment regarding Title VI and the remaining claims. (R. 94).

Petitioner appealed, and the Seventh Circuit affirmed. A precedential Order affirmed the limitations period for a Title VI claim in Illinois is two years. (Pet. App. 1-7). A nonprecedential Order affirmed the statutory claims were untimely and not saved by equitable estoppel. (Pet. App. 23-39).

REASONS FOR DENYING THE PETITION

Question 1

I. Every Circuit's equitable estoppel standard focuses on the "intentionality" of the party making the misrepresentation.

Petitioner's certiorari request largely relies on an asserted circuit split regarding the requirements for equitably estopping a defendant from asserting a limitations defense, based on the defendant's misrepresentation. Petitioner asserts a split exists between Circuits focusing on the "subjective" "intentionality" of the defendant's misrepresentation—like the court below, which required the employer's deliberate design or understanding that the misrepresentation would cause the plaintiff to delay filing—and Circuits focusing only on the "objective" existence of the misrepresentation and reliance on it.

There is no such split. The Circuits agree a defendant cannot be estopped from asserting a limitations defense merely because it made a mistaken representation that plaintiff relied on. Instead, equitable estoppel requires some showing of the defendant's subjective intentional or knowing attempt to mislead. Petitioner's claim of a subjective vs. objective circuit split appears based on a misunderstanding and mischaracterization of the cases he cites. A fuller analysis of the cases cited by Petitioner demonstrates the absence of the asserted split.

The First Circuit holds: "An employee must also show evidence of either the employer's *improper purpose* or his constructive *knowledge of the deceptive nature* of his conduct. That evidence must be in the form of some definite, unequivocal behavior . . . fairly *calculated* to mask the truth or to lull an unsuspecting person into a false sense of security." *Vera v. McHugh*, 622 F.3d 17, 30 (1st Cir. 2010) (emphasis supplied).

The Second Circuit rejects estoppel where "appellee's alleged conduct does not amount to the type of *bad faith, dilatory actions* that require equity to step in and estop a statute of limitations defense." *Dillman v. Combustion Eng'g., Inc.*, 784 F.2d 57, 61 (2d Cir. 1986). (emphasis supplied); *see also O'Malley v. GTE Serv. Corp.*, 758 F.2d 818, 822 (2d Cir. 1985) ("O'Malley provided no evidence of deliberate misconduct or bad faith by GTE sufficient to invoke equitable estoppel").

The Third Circuit cites the Seventh Circuit for the rule that "equitable estoppel arises where the defendant *has attempted to mislead* the plaintiff and thus prevent the plaintiff from suing on time," describing that rule as requiring "inequitable conduct." *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1389-90 (3d Cir. 1994) (emphasis supplied) (citing *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 452 (7th Cir. 1991)). The Third Circuit "agree"[s] that the limitations period cannot be

extended absent a showing of defendant's "inequitable conduct." *Id.*[2]

Petitioner rightly acknowledges the Fourth and Fifth Circuits focus on a defendant's "subjective" "intentionality." (Pet. 21, 22-23).

As regards the Sixth Circuit, Petitioner cites *Tilley v. Kalamazoo Cnty. Road Comm'n*, 777 F.3d 303 (6th Cir. 2015), which does not address estoppel of a limitations defense. In *Bridgeport Music, Inc. v. Diamond Time*, 371 F.3d 883 (6th Cir. 2004), the Sixth Circuit relied on Seventh Circuit decisions to hold "[e]quitable estoppel, sometimes referred to as fraudulent concealment, is invoked in cases where the defendant takes active steps *to prevent* the plaintiff from suing in time, such as by hiding evidence or promising not to plead the statute of limitations" and "should be premised on a defendant's improper conduct." *Id.* at 891 (emphasis supplied) (internal punctuation and citation omitted). *See also,* discussion *infra*, regarding "to prevent."

Petitioner asserts there is a split within the Seventh Circuit. There is not. Although only some decisions use the exact verbiage of the court below,

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[2] It was with regard to Petitioner's discussion of initially filing in the wrong forum, as a means of demonstrating the diligence required for equitable tolling, that the Court below noted the Third Circuit had a broader conception of "equitable relief" than the Seventh. (Pet. App. 18) (citing *Thelen v. Marc's Big Boy Corp.*, 64 F.3d 264, 267-68 (7th Cir. 1995) (rejecting concealment of a decision's discriminatory motive as grounds for estoppel). Neither filing in the wrong forum nor concealment of motive is at issue here.

(Pet. App. 20 (citing *Hedrick v. Bd. of Regents of Univ. of Wisconsin Sys.*, 274 F.3d 1174, 1182 (7th Cir. 2001)), Petitioner is mistaken when he asserts the other cases he cites demand less. Indeed, in *Wheeldon v. Monon Corp.*, 946 F.2d 533 (7th Cir. 1991), the court explains equitable estoppel's requirements in almost exactly the same words as the court below. *Id.* at 537. In each of the other cases Petitioner cites, his parenthetical explains the holding as requiring that defendant took "active steps *to prevent*" plaintiff from filing timely. (*See* Pet. 24-25) (emphasis supplied). The cases do not say "active steps *that* prevent" a timely filing. The "to" in "to prevent" means "for the purpose of" preventing. *See New Webster's Dictionary and Thesaurus of the English Language* (1993). The exact language used in the opinions reinforces the meaning of "to prevent." In *Jackson v. Rockford Housing Auth*, the Seventh Circuit clarifies equitable estoppel requires that "the defendant . . . *tried to prevent* the plaintiff from suing in time." 213 F.3d 389, 394 (7th Cir. 2000) (emphasis supplied). Despite Petitioner's extended discussion of *Hentosh v. Herman M. Finch Univ. of Health Sci./Chicago Med. Sch.*, 167 F.3d 1170 (7th Cir. 1999), it similarly reinforces the requirement of an improper purpose. The case states that equitable estoppel is "sometimes referred to as fraudulent concealment," is exemplified by such things as "hiding evidence or promising not to plead the statute of limitations," and "denotes *efforts* by the defendant . . . *to prevent* the plaintiff from suing in time." *Id.* at 1174 (emphasis supplied).

Petitioner acknowledges the Eighth Circuit's rule is "subjective." (Pet. 21, 23).

Petitioner suggests the Ninth Circuit has issued conflicting opinions. It has not. All three cited opinions require defendant's improper purpose or knowledge of its deception. *See Leong v. Potter*, 347 F.3d 1117, 1123 (9th Cir. 2003) (rejecting equitable estoppel because there was no evidence defendant's actions were motivated by a desire to prevent plaintiff from advancing his claim) ("There is no evidence that the Postal Service refused to let Leong enter his former job site *because* he wished to speak with an EEO counselor.") (emphasis in original); *Johnson v. Henderson*, 314 F.3d 409, 416 (9th Cir. 2002) (holding a misleading statement by defendant nevertheless "cannot support an equitable estoppel for one simple reason: There is nothing in the record to suggest evidence of *improper purpose* on the part of the defendant, or of the defendant's actual or constructive *knowledge of the deceptive nature* of its conduct.") (emphasis supplied); *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000) (holding "[e]quitable estoppel focuses primarily on the actions taken by the defendant," referring to it as "fraudulent concealment," and reiterating consideration of whether there is "evidence of improper purpose . . . or of the defendant's actual or constructive knowledge of its conduct.").

In *Donovan v. Hahner, Foreman & Harness, Inc.*, the Tenth Circuit affirmed application of equitable estoppel because "[t]he trial court held that *defendant had deliberately concealed*" the information at issue. 736 F.2d 1421, 1427 (10th Cir. 1984) (emphasis supplied). *See also Che-Li Shen v. I.N.S.*, 749 F.2d 1469, 1473 (10th Cir. 1984) ("The traditional

requirements in this circuit for equitable estoppel" include that "the party to be estopped" "*must intend* that his conduct will be acted upon or must so act that the party asserting the estoppel has the right to believe that it was *so intended*.") (emphasis supplied).

The Eleventh Circuit holds that equitable estoppel requires that "the party to be estopped *intended* that the misrepresentation be acted on or had *reason to believe* the party asserting the estoppel would rely on it." *Dawkins v. Fulton Cnty. Gov't.*, 733 F.3d 1084, 1089 (11th Cir. 2013) (emphasis supplied), *cert. denied*, 134 S.Ct. 2293 (2014); *see also Salazar v. A.T.T. Co.*, 715 F. Supp. 351, 355 (S.D. Fla. 1989) ("Plaintiff must prove that her inaction was the consequence of either a *deliberate design* by the employer or of actions that the employer should unmistakably have *understood* would cause the employee to delay filing his charge. Further, the employer's conduct or representation must be directed to the very point of obtaining the delay of which it seeks to take advantage.") (emphasis supplied) (citing *Price*, 694 F.2d at 955 and *Kazanzas v. Walt Disney World Co.*, 704 F.2d 1527, 1532 (11th Cir. 1983), *cert. denied*, 104 S.Ct. 425 (1983)).

The D.C. Circuit requires a plaintiff to prove the defendant took "active steps *to prevent* the plaintiff from suing on time." *Smith-Haynie v. District of Columbia*, 155 F.3d 575, 580 (D.C. Cir. 1998) (emphasis supplied). Indeed, the decision directly quotes that language from *Cada*, which clarifies the rule requires plaintiff to show defendant's "*efforts* . . . *to prevent* the plaintiff from suing on time" and that

defendant "*attempted to mislead* him." *Id.* (citing *Cada*, 920 F.2d at 450-51) (emphasis supplied).

Petitioner's suggestion that the unanimous view of the Circuits is somehow at odds with this Court also does not withstand scrutiny. *See Crary v. Dye*, 208 U.S. 515, 520 (1908) ("The principle of estoppel is well settled. It precludes a person from denying what he has said . . . upon which another has acted. There must, however, be some intended deception in the conduct or declarations, or such gross negligence as to amount to constructive fraud."); *Henshaw v. Bissell*, 85 U.S. 255, 270 (1873) ("Certain it is that to the enforcement of an estoppel of this character . . . there must generally be some degree of turpitude in his conduct."); *Brandt v. Virginia Coal and Iron Co.*, 93 U.S. 326, 335-36 (1876) (quoting Justice Story for the proposition that equitable estoppel requires the equivalent of fraud, and that mere negligence will not suffice). Petitioner's cited cases are to the same effect. *See CIGNA Corp. v. Amara*, 131 S.Ct. 1866, 1880 (2011) (quoting Justice Story for the proposition that equitable estoppel is a "rebuke of all fraudulent misrepresentation"); *Heckler v. Cmty. Health Servs. of Crawford Cty.*, 104 S.Ct. 2218, 2223 (1984) (estoppel applies when a party makes a misrepresentation with reason to believe the other will rely on it); *Petralla v. Metro-Goldwyn-Mayer, Inc.*, 134 S.Ct. 1962, 1977 (2014) (estoppel applies when a party makes "intentionally misleading representations").

II. Petitioner's claims would fail under either standard.

Even if the asserted split existed, this case would be a poor vehicle to review it. Petitioner's asserted basis for equitable estoppel would also fail under the hypothesized "objective" standard requiring only a relied-on misrepresentation.

Petitioner, citing the position statement submitted by College to the EEOC, asserts the "[k]ey" to his "equitable estoppel argument is that Columbia took the active step of affirmatively representing to the EEOC (and to Monroe) that it is Columbia's president who makes the final decision on employment/tenure decisions." (Pet. 18). In other words, Petitioner bases his estoppel argument on an alleged representation by the College, in its EEOC position statement, that the tenure decision was not made by its Provost on March 18, 2013, but only later by its President. (*Id.* at 18-20)

First, even if College had misrepresented the relevant date of decision, Petitioner made no showing that he was late filing his EEOC (Title VII) charge, § 1983 claim, or Title VI claim because he relied on College's alleged misrepresentation to the EEOC. Indeed, neither the Amended Complaint nor the submissions in opposition to summary judgment say anything about College's EEOC position statement.

Second, as regards Title VII, Petitioner could not logically claim his EEOC charge was untimely because of any misrepresentation in College's position statement. The position statement was submitted in

response to, and thus, after the charge. (R. 50-1, p. 3; R. 55-1, p. 2).

Third, in light of what Petitioner has asserted, any suggestion that his claims were untimely because of the EEOC position statement makes little sense. Petitioner makes no allegation in his Amended Complaint about relying on the position statement, even though he did make allegations otherwise addressing his lack of timeliness. (R. 50, ¶¶ 60, 62). Similarly, in his response to summary judgment regarding Title VI, Petitioner did not make any argument that defendant should be equitably estopped from asserting the two-year statute of limitations because Petitioner relied on the position statement (or for any other reason). Instead, Petitioner's only response regarding limitations was that the court should apply a five-year period. (R. 86).

Fourth, the position statement did not contain any misrepresentation on which Petitioner might reasonably have relied. The position statement states: "Columbia's procedures dictate that the Provost/Vice President for Academic Affairs will decide . . . whether or not to grant the faculty member a tenured appointment"; "Louise Love served as interim Provost"; "In the present matter, Louise Love denied Monroe tenure (citing a March 18, 2013 letter from Love to Petitioner); and later refers to "Love's decision against tenure in 2013." (R. 55-1, p. 7). The position statement then states, with an obvious typographical error, as follows: "At the time of Monroe's denial of tenure, a Columbia faculty member who was not granted a tenured appointment could challenge or

seek review of the President's (sic) decision by bringing his or her appeal to the Elected Representatives of the College ("ERC")." (*Id*.). After describing this "review" process as an "appeal," the statement continues, "the President then makes a final decision regarding the granting or denial of tenure. That decision is not appealable." (*Id*. at p. 8). Other than the obvious typographical error, none of that is a misrepresentation.

Petitioner's claims were untimely not because of anything in the position statement. Petitioner's claims were untimely because, under this Court's precedent, the statute of limitations commences upon communication of the tenure decision, and not the conclusion of any subsequent grievance proceeding. *See Delaware State Coll. v. Ricks* 101 S.Ct. 498 (1980).[3]

III. The claims were correctly dismissed as untimely.

The actual untimeliness of the claims under the statutes is not at issue. The Amended Complaint

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[3] Petitioner's reference to the College's 2010-11 decision to terminate (and reinstate) his employment only reinforces the conclusion that his dispute is with the legal effect of College's representations, not with the accuracy of the representations themselves. Petitioner alleges his understanding of the President's role in his tenure denial was also based on the 2010-11 termination process. (R. 50, ¶ 60). The Amended Complaint makes clear Petitioner understood that the termination process (like the tenure process) involved an initial decision followed by a grievance procedure, and that the President's participation was limited to the latter. (*See* R. 50, ¶¶ 40-42, 44-46, 49).

alleges that interim Provost Louise Love communicated her decision denying tenure to Petitioner on March 18, 2013. (R. 50, ¶ 54). That decision was followed by a grievance procedure in which the President ultimately confirmed the decision on August 12, 2013. (*Id*. at ¶¶ 55, 59.). Both courts below held March 18, 2013 was the date of the unlawful employment practice for limitations purposes, and that Petitioner's Title VII, § 1983, and Title VI claims were thus untimely. (Pet. App. 3, 13, 14, 16, 27). The EEOC charge (300 day limitations period) was thus 26 days late, rendering the Title VII claim time-barred. The § 1983 claim (four-year period) was 145 days late. And the Title VI claim (two-year period) was almost three years late.

Furthermore, College cannot be equitably estopped from asserting the March 18, 2013 date based on its EEOC position statement. Petitioner's argument defies logic as regards his Title VII claims. Petitioner's untimely EEOC charge pre-dated, and thus could not have been caused by, the position statement. Petitioner did not assert equitable estoppel, based on the position statement (or anything else), in response to College's summary judgment argument that his Title VI claim was time-barred. Instead, Petitioner simply (and wrongly) argued the limitations period itself was five years, instead of two. Even if he had asserted the position statement as a basis for estoppel, Petitioner failed to make any showing that his untimeliness with regard to any claim was due to his reliance on the position statement, much less that College engaged in any deliberate or knowing deception in that statement.

Question 2

As regards the second issue, Petitioner fails to assert any of the recognized bases for this Court's review. (*See* S.Ct. Rule 10). There is no reason for this Court to consider how much "deference or weight" a district court—when considering the timeliness of an EEOC charge—should give to the fact the agency accepted and investigated the charge. Courts consider the timeliness of a charge de novo. Accordingly, courts accord no deference or weight even to an explicit EEOC determination of timeliness, much less to the mere fact the agency processed the charge. Given the uniformity of authority, it is no surprise this Court refused to consider the same issue only three years ago. *See Poirier v. Mass. Dep't. of Corr.*, 139 S.Ct. 584 (2018) (denying certiorari).

The issue is so settled the Seventh Circuit declared it "borders on frivolous" to suggest the district court should defer to the EEOC, even where it has explicitly found a charge timely. *Smith v. Potter*, 445 F.3d 1000, 1011 (7th Cir. 2006). *See also Chandler v. Roudebush*, 96 S.Ct. 1949, 1961 (1976) (finding Title VII claims of federal and private-sector employees should be decided de novo); *Hetherington v. Wal-Mart*, 511 F. App'x. 909, 912 (11th Cir. 2013) ("the district court was not required to defer or make reference to the EEOC [good cause] determination, as it had to conduct a de novo review of his claim."); *Dorn v. General Motors Corp.*, 131 F. App'x 462, 471 (6th Cir. 2005) (even if the "right to sue" letter had contained a finding of timeliness, "the district court is not bound by EEOC determinations."), *cert. denied*, 126 S.Ct. 425

(2005); *Goldman v. Sears, Roebuck & Co.*, 607 F.2d 1014, 1017 (1st Cir. 1979) (rejecting plaintiff's complaint "the district court did not give due weight to the EEOC's own determination that his charge was timely filed" because "courts have generally made an independent review of the timeliness of the agency filing"), *cert. denied*, 100 S.Ct. 1317 (1980); *Chappell v. Emco Machine Works Co.*, 601 F.2d 1295, 1304 (5th Cir. 1979) (rejecting plaintiff's claim "this court should defer to the EEOC's determination that she had satisfied all of Title VII's jurisdictional prerequisites" because "a court must make an independent determination"); *Underwood v. Durango Coca-Cola Bottling Co.*, No. 20-cv-997, 2021 WL 964051, *3 (D. Colo. March 15, 2021) ("Courts do not typically defer to the EEOC's interpretation of the clear requirement of a time limit on filing a charge"); *Wu v. Good Samaritan Hosp. Med. Ctr.*, No. 17-cv-4247, 2019 WL 2754865, *6-7 (E.D.N.Y. July 2, 2019) ("the EEOC's acceptance of plaintiff's charge is not dispositive on the issue of timeliness because it is for the Court to determine whether Plaintiff's claims are, as a matter of law, timely and within the statute of limitations"), *aff'd*, 815 F. App'x 575 (2d Cir. 2020); *Anderson v. Greenville Health Sys.*, No. 6:16-1051, 2016 WL 8674619, *4 (D.S.C. October 14, 2016) ("even if the EEOC did not dismiss the charge as untimely, the EEOC's determination as to timeliness is not binding on this Court. Rather, this Court must consider Plaintiff's retaliation claims *de novo*."), *report and recommendation adopted*, 2016 WL 6405751 (D.S.C. Oct. 31, 2016), *aff'd*, 687 F. App'x 281 (4th Cir. 2017), *cert. denied*, 138 S.Ct. 1443 (2018); *Poirier v. Mass. Dep't. of Corrections*, 186 F. Supp.3d 66, 68 (D. Mass.

2016) ("I am . . . empowered to make an independent finding on timeliness, and I am not bound by the agencies' findings in this regard."), *aff'd*, 2018 WL 1137451 (1st Cir. Feb. 22, 2018), *cert. denied*, 139 S.Ct. 584 (2018); *Muhammad v. Sams Club*., No. 2:14-cv-0213, 2014 WL 7150254, *4 (E.D. Cal. Dec. 15, 2014) (plaintiff's argument that the EEOC "would not have accepted his administrative charge if it was untimely" "lacks merit because the administrative agency's acceptance and/or investigation of an untimely charge is not binding on the court with respect to the question of timeliness.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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