

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

January 14, 2022

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 20-20568 Chhim v. City of Houston
USDC No. 4:20-CV-361

Dear Mr. Ochsner,

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

Sincerely,

LYLE W. CAYCE, Clerk

Dawn Shulin

By:

Dawn M. Shulin, Deputy Clerk
504-310-7658

cc w/encl:

Mr. Joseph Chhim
Mr. Robert William Higgason
Ms. Deidra Norris Sullivan

A P P E N D I X - A

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

December 14, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

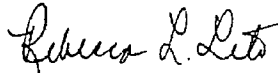
No. 20-20568 Chhim v. City of Houston
USDC No. 4:20-CV-361

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

Mr. Joseph Chhim
Mr. Robert William Higgason
Mr. Nathan Ochsner
Ms. Deidra Norris Sullivan

APPENDIX - B

United States Court of Appeals
for the Fifth Circuit

No. 20-20568

JOSEPH CHHIM,

Plaintiff—Appellant,

versus

CITY OF HOUSTON; LUNA NELSON, *in the official capacity,*

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-361

ON PETITION FOR REHEARING

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX C

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

December 08, 2021

Mr. Joseph Chhim
17201 Blackhawk Boulevard
Apartment 507
Friendswood, TX 77546

No. 20-20568 Chhim v. City of Houston
USDC No. 4:20-CV-361

Dear Mr. Chhim,

We received your Additional Request for Reconsideration.

Your letter that received on 12/2/2021, was construed as instructions to remove the attachments to your rehearing in order to make your petition for rehearing sufficient.

There are no provisions for reconsideration from an opinion, therefore, we are taking no action on this document.

If your intention is to correct the petition for rehearing that is already pending with the Court, you must file a motion to file a corrected petition for rehearing and attach that rehearing to the motion.

Please note that the Court could rule on your petition for rehearing at any time.

Sincerely,

LYLE W. CAYCE, Clerk

Dawn Shulin

By:

Dawn M. Shulin, Deputy Clerk
504-310-7658

cc: Mr. Robert William Higgason
Ms. Deidra Norris Sullivan

APPENDIX-D

United States Court of Appeals
for the Fifth Circuit

No. 20-20568

JOSEPH CHHIM,

Plaintiff—Appellant,

versus


CITY OF HOUSTON; LUNA NELSON, *in the official capacity,*

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-361

ORDER:

IT IS ORDERED that Appellant's motion to allow attachments to his petition for rehearing is DENIED.


CORY T. WILSON
United States Circuit Judge

APPENDIX - E

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

CORRECTED

November 24, 2021

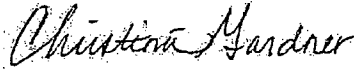
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-20568 Chhim v. City of Houston
USDC No. 4:20-CV-361

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Christina A. Gardner, Deputy Clerk
504-310-7684

Mr. Joseph Chhim
Mr. Robert William Higgason
Ms. Deidra Norris Sullivan

P.S. to Mr. Chhim: You have 10 days from the date of this notice to make your petition for rehearing en banc sufficient. You must e-mail your sufficient rehearing to Christina.Gardner@ca5.uscourts.gov. (See also the clerk's letter of 11/12/21)

APPENDIX-F

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

November 12, 2021

Mr. Joseph Chhim
17201 Blackhawk Boulevard
Apartment 507
Friendswood, TX 77546

No. 20-20568 Chhim v. City of Houston
USDC No. 4:20-CV-361

Dear Mr. Chhim,

The following pertains to your rehearing filed in paper form on November 12, 2021.

We have filed your Petition for Rehearing. However, it has the following deficiency. Unless the deficiency is corrected within 10 days from this date, we will forward the document to the court to be stricken.

Attachments to the rehearing are not allowed, see FED. R. APP. P. 40 and 5TH CIR. R. 35 and 40.

Once you have prepared your sufficient rehearing, you must email it to: Dawn.Shulin@ca5.uscourts.gov for review. If the rehearing is in compliance, you will receive a notice of docket activity advising you that the sufficient rehearing has been filed.

Sincerely,

LYLE W. CAYCE, Clerk

Dawn Shulin

By:

Dawn M. Shulin, Deputy Clerk
504-310-7658

cc: Mr. Robert William Higgason
Ms. Deidra Norris Sullivan

APPENDIX -



United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 29, 2021

Lyle W. Cayce
Clerk

No. 20-20568
Summary Calendar

JOSEPH CHHIM,

Plaintiff—Appellant,

versus

CITY OF HOUSTON; LUNA NELSON, *in the official capacity,*

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-361

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Joseph Chhim, proceeding pro se, moves for leave to proceed in forma pauperis (IFP) on appeal from the dismissal of his complaint, through which he sought relief under Title VII of the Civil Rights Act of 1964 for discrimination on the basis of race and national origin and under the Age

* Pursuant to 5TH CIRCUIT RULE 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 CIRCUIT RULE 47.5.4.

APPENDIX—H

Discrimination in Employment Act (ADEA) for discrimination on the basis of his age. Chhim, a 74-year-old Asian male originally from Cambodia, alleged that he was not interviewed or hired as a custodian with the City of Houston (the City) despite having superior qualifications for the position and that the City instead hired a younger Hispanic or Latino individual for the position. In addition, Chhim contended that he was not hired by the City in retaliation for his earlier complaints submitted to the Equal Employment Opportunity Commission (EEOC) and federal lawsuits. Finally, he asserted that the failure to interview or hire him constituted a breach of a 1994 Settlement Agreement entered by Chhim and the City.

The district court granted summary judgment in favor of the City and denied Chhim's request for in forma pauperis (IFP) status on appeal. By moving to proceed IFP on appeal, Chhim challenges the district court's certification. *See* FED. R. APP. P. 24(a)(5).

We review the district court's grant of summary judgment de novo. *EEOC v. LHC Grp.*, 773 F.3d 688, 694 (5th Cir. 2014). Viewing the facts in the light most favorable to the nonmovant, a grant of summary judgment is appropriate when the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (internal quotation marks omitted) (quoting FED. R. CIV. P. 56(a)).

Because Chhim alleges circumstantial evidence of discrimination and retaliation, we evaluate his claims using the burden-shifting approach adopted by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–05 (1973). *See Nicholson v. Securitas Sec. Servs., USA, Inc.*, 830 F.3d 186, 189 (5th Cir. 2016) (ADEA); *Heggemeier v. Caldwell Cnty.*, 826 F.3d 861, 867 (5th Cir. 2016) (Title VII); *McCoy v. City of Shreveport*, 492 F.3d 551, 557 (5th Cir. 2007) (retaliation). Under the *McDonnell Douglas* test, a plaintiff must initially establish a prima facie case of discrimination or retaliation.

Heggemeier, 826 F.3d at 867; *McCoy*, 492 F.3d at 557. To establish a prima facie case of employment discrimination, a plaintiff must show that he: “(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group.” *Morris v. Town of Independence*, 827 F.3d 396, 400 (5th Cir. 2016) (internal quotation marks and citation omitted). To establish a prima facie case of retaliation, the plaintiff must show that: “(1) he participated in an activity protected by Title VII; (2) his employer took an adverse employment action against him; and (3) a causal connection exists between the protected activity and the adverse employment action.” *McCoy*, 492 F.3d at 557. If the plaintiff succeeds in establishing a prima facie case, the burden shifts to the defendant to proffer a legitimate reason not based in discrimination or retaliation for its failure to hire the plaintiff. *Alvarado v. Texas Rangers*, 492 F.3d 605, 611 (5th Cir. 2007); *McCoy*, 492 F.3d at 557. If the defendant satisfies this burden, the plaintiff must provide evidence to establish that the defendant’s legitimate non-discriminatory or non-retaliatory reason is mere pretext, or show that discrimination or retaliation was another motivating factor in the employment decision. *See Alvarado*, 492 F.3d at 611; *McCoy*, 492 F.3d at 557.

Viewing the facts in the light most favorable to Chhim, the district court correctly held that Chhim could not establish a prima facie case of discrimination under the ADEA, as the individual hired for the custodian position was also a member of the protected group. *See* 29 U.S.C. § 631(a). As for his allegations of national origin discrimination, the district court properly concluded that Chhim’s conclusory assertions that his Cambodian background was taken into account during the decision-making process were insufficient to establish a prima facie case of discrimination. *See Carnaby v.*

City of Houston, 636 F.3d 183, 187 (5th Cir. 2011) (stating that “conclusional allegations and unsubstantiated assertions may not be relied on as evidence by the nonmoving party” in a summary judgment motion).

As for Chhim’s assertions of retaliation, we assume that he established a prima facie case and consider whether the City proffered a legitimate and non-discriminatory reason for failing to hire him. Here, the City employee conducting applicant screening submitted Chhim’s application for consideration for the interview process, but he noted that Chhim would not be eligible for a position because he had been previously terminated from the City’s employment. Chhim asserts that this reasoning is pretextual because he was more qualified for the position than the other candidates who were interviewed. However, he has presented no evidence that other qualified individuals had disclosed in their applications that they were previously terminated from their positions with the City but were nevertheless interviewed or hired. We conclude that the City’s reason for not hiring Chhim is legitimate and non-retaliatory.

dispute

Finally, we find no merit in Chhim’s assertions that the City’s failure to interview or hire him constitutes a breach of the 1994 Settlement Agreement. The meaning of a contract is a question of law to be determined by the court unless the terms of the agreement are ambiguous. *Christopher v. Safeway Stores, Inc.*, 644 F.2d 467, 471 (5th Cir. 1981). Under the Settlement Agreement, Chhim could apply for positions in the City, other than in the Aviation Department; however, there was no indication that he would necessarily be interviewed or hired. Even if the Settlement Agreement may be construed as stating that Chhim would not be penalized for any conduct preceding the agreement, nothing in the document indicated that his future actions, such as his conduct resulting in termination in 1995, would not be considered in hiring decisions. The district court correctly concluded that

dispute

there was no breach of the agreement. *See LHC Grp.*, 773 F.3d at 694; *Christopher*, 644 F.2d at 471.

Chhim's appeal lacks arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his motion for leave to proceed IFP is DENIED and the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

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

February 24, 2021

Mr. Robert William Higgason
City of Houston
Legal Department
900 Bagby Street
4th Floor
Houston, TX 77002

No. 20-20568 Chhim v. City of Houston
USDC No. 4:20-CV-361

Dear Mr. Higgason,

Please be advised that the appellee's brief due deadline is being canceled, as the deadline was projected prematurely.

Pro se appellant's motion for leave to proceed in forma pauperis (IFP) has to be disposed of first, before this appeal can proceed.

Once the appellant's sufficient brief is filed, we will proceed with the pending motion for IFP.

Sincerely,

LYLE W. CAYCE, Clerk

Jann Wynne

By: _____
Jann M. Wynne, Deputy Clerk
504-310-7688

I

cc: Mr. Joseph Chhim

APPENDIX - I

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

February 19, 2021

Mr. Joseph Chhim
17201 Blackhawk Boulevard
Apartment 507
Friendswood, TX 77546

No. 20-20568 Chhim v. City of Houston
USDC No. 4:20-CV-361

Dear Mr. Chhim,

The following pertains to your brief filed in paper form on February 10, 2021.

We filed your brief. However, you must make the following corrections within the next 14 days. You may:

1. Send someone to this office to correct the briefs;
2. Send someone to pick up the briefs, correct and return them;
3. Send a self-addressed stamped envelope and we will return your briefs, (we will tell you the postage cost on request). You must then mail the corrected briefs to this office;
4. Send corrected briefs and we will recycle those on file.

Opposing counsel's briefing time continues to run.

You need to correct or add:

Caption on the brief does not agree with the caption of the case in compliance with **FED. R. APP. P. 32(a)(2)(C)**. Caption must exactly match the Court's Official Caption (See Official Caption below). Additionally, the title of the brief must be corrected to read "Brief of Appellant".

Certificate of interested persons must be signed, see **5TH CIR. R. 28.2.1**.

Table of authorities must list cases (alphabetically arranged), statutes, and other authorities, with references to the pages of the brief where they are cited, see **FED. R. APP. P. 28(a)(3)**.

APPENDIX-J

Statement of jurisdiction is required, before the statement of issues, and must give the basis for the district court's subject-matter jurisdiction, the basis for the court of appeal's jurisdiction, the filing dates establishing the timeliness of the appeal, and if the appeal is from a final order/judgment, see **FED. R. APP. P. 28(a)(4)**. Additionally, the statement of jurisdiction must be added to the table of contents.

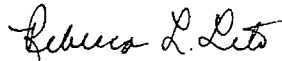
Record References: Although your brief contains citations to the record, they are not in proper form. Every assertion in briefs regarding matter in the record must be supported by a reference to the page number of the original record, whether in paper or electronic form, where the matter is found, using the record citation form as directed by the Clerk of Court, "**ROA.page#**"; some of your citations contain "**ROA,**"; also, please remove the case number from your citations as this is only added to citations for consolidated appeals. The use of "id" is not permitted when citing to the record on appeal. (See **5TH CIR. R. 28.2.2**).

You must also file Record Excerpts required by **5TH CIR. R. 30.1.2** within 14 days of this notice.

Do not hesitate to call if you have any questions.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Rebecca L. Leto, Deputy Clerk
504-310-7703

cc: Mr. Robert William Higgason
Ms. Deidra Norris Sullivan

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

December 07, 2020

Mr. Joseph Chhim
5634 Windsor Forest Drive
Houston, TX 77088-0000

No. 20-20568 Joseph Chhim v. City of Houston, et al
USDC No. 4:20-CV-361

Dear Mr. Chhim,

In light of your motion to proceed in forma pauperis, you are required to file a brief and record excerpts.

Briefing Notice. The record is complete for purposes of the appeal, see FED. R. APP. P. 12. **APPELLANT'S BRIEF AND RECORD EXCERPTS ARE DUE WITHIN 40 DAYS OF THE DATE SHOWN ABOVE, SEE FED. R. APP. P. AND 5TH CIR. R.s 28, 30 AND 31.** Note that 5TH CIR. R. 31 and the Internal Operating Procedures following rules 27 and 31 provides the general sense of the court on the disposition of a variety of matters, which includes that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases. See also 5TH CIR. R. 30.1.2 and 5TH CIR. R. R.31.1 to determine if you have to file electronic copies of the brief and record excerpts, and the Portable Document Format (PDF) you MUST use. A briefing checklist is available on the Fifth Circuit's website "<http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/rules/brchecklist.pdf>".

Policy on Extensions. The court considers in forma pauperis motions promptly after the appellant's brief is filed. The court grants extensions sparingly and only under the criteria of 5TH CIR. R. 31.4 and the Internal Operating Procedures following rules 27 and 31 which allow a maximum extension of 30 days in criminal cases and 40 days in civil cases except in the most extraordinary circumstances. If you request an extension, you must contact opposing counsel and advise us if the extension is opposed or not.

Appellee's Brief. The district court denied in forma pauperis status, and the appellee does not need to file a brief unless the court orders one. The court will notify the appellee if a brief is required and will send you a copy of any notice to the appellee.

Brief Covers. The caption for this appeal is attached. Please use it on any briefs to be filed with this court.

APPENDIX-K

Dismissal of Appeals. The clerk may dismiss appeals **without notice** if you do not file the brief and record excerpts on time, or otherwise fail to comply with the rules.

Appearance Form. If you have not electronically filed a "Form for Appearance of Counsel" as required by 5TH CIR. R. 46, you must do so within 14 days from this date. You must name each party you represent, see FED. R. APP. P. 12(b) and 5TH CIR. R. 12. The form is available from the Fifth Circuit website, www.ca5.uscourts.gov. If you fail to electronically file the form we will remove your name from the docket. Pro se parties do not need to file an appearance form.

Guidance Regarding Citations in Pleadings.

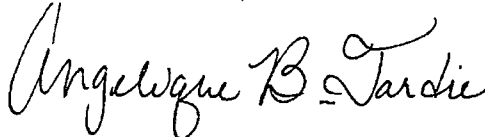
5TH CIR. R. 28.2.2 grants the Clerk the authority to create a standard format for citation to the electronic record on appeal. You must use the proper citation format when citing to the electronic record on appeal.

- A. In single record cases, use the short citation form, "ROA" followed by a period, followed by the page number. For example, "ROA.123."
- B. For multiple record cases, cite "ROA" followed by a period, followed by the Fifth Circuit appellate case number of the record referenced, followed by a period, followed by the page of the record. For example, "ROA.13-12345.123."
- C. Please note each individual citation must end using a termination of a period (.) or semicolon (;).

Record on Appeal. Pro se litigants may request the record on appeal from the district court. Those proceeding in forma pauperis may receive the record without payment of shipping costs. Others will be asked to pay these costs.

Sincerely,

LYLE W. CAYCE, Clerk



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

Enclosure(s)

cc w/encl:

Mr. Robert William Higgason

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

November 12, 2020

Mr. Joseph Chhim
5634 Windsor Forest Drive
Houston, TX 77088-0000

No. 20-20568 Joseph Chhim v. City of Houston, et al
USDC No. 4:20-CV-361

Dear Mr. Chhim,

Your motion for leave to appeal in forma pauperis has been filed, and will be submitted to the court upon filing of your appellant's brief.

Please complete and return the enclosed financial affidavit form in support of your motion to proceed ifp within 21 days from this date. Failure to do so may result in the dismissal of your appeal for want of prosecution pursuant to 5TH CIR. R. 42.3.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Gardner

By: _____
Christina A. Gardner, Deputy Clerk
504-310-7684

cc w/encl:

Mr. Robert William Higgason
Ms. Deidra Norris Sullivan

⑥

APPENDIX - L

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

November 05, 2020

Mr. Joseph Chhim
5634 Windsor Forest Drive
Houston, TX 77088-0000

No. 20-20568 Joseph Chhim v. City of Houston, et al
USDC No. 4:20-CV-361

Dear Mr. Chhim,

We have docketed the appeal as shown above, and ask you to use the case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See **FED. R. APP. P.** and **5TH CIR. R.** 27 for guidance. We will not acknowledge or act upon documents not authorized by these rules.

If you apply/applied to the district court for in forma pauperis status and are/were denied, you have 30 days from the date of this letter to pay the \$505.00 appellate filing fee to the clerk of the district court, or to apply for in forma pauperis status with this Court and include the financial affidavit required by **FED. R. APP. P.** 24. If you do not pay the filing fee, file a motion with this court for leave to proceed in forma pauperis, or receive an extension of time to do so from this court within the time provided, we will dismiss your appeal without further notice, see **5TH CIR. R.** 42.3.

All counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" naming all parties represented within 14 days from this date, see **FED. R. APP. P.** 12(b) and **5TH CIR. R.** 12. This form is available on our website www.ca5.uscourts.gov. Failure to electronically file this form will result in removing your name from our docket. Pro se parties are not required to file appearance forms.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or

APPENDIX-M

downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.

ATTENTION ATTORNEYS: Direct access to the electronic record on appeal (EROA) for pending appeals will be enabled by the U S District Court on a per case basis. Counsel can expect to receive notice once access to the EROA is available. Counsel must be approved for electronic filing and must be listed in the case as attorney of record before access will be authorized. Instructions for accessing and downloading the EROA can be found on our website at <http://www.ca5.uscourts.gov/docs/default-source/forms/instructions-for-electronic-record-download-feature-of-cm>. Additionally, a link to the instructions will be included in the notice you receive from the district court.

Sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. Access to sealed documents will continue to be provided by the district court only upon the filing and granting of a motion to view same in this court.

We recommend that you visit the Fifth Circuit's website, www.ca5.uscourts.gov and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

ATTENTION: If you are filing Pro Se (without a lawyer) you can request to receive correspondence from the court and other parties by email and can also request to file pleadings through the court's electronic filing systems. Details explaining how you can request this are available on the Fifth Circuit website at <http://www.ca5.uscourts.gov/docs/default-source/forms/pro-se-filer-instructions>. This is not available for any pro se serving in confinement.

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 20-20568

Joseph Chhim,

Plaintiff - Appellant

v.

City of Houston; Luna Nelson, in the official capacity,

Defendants - Appellees

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

ENTERED

October 30, 2020

David J. Bradley, Clerk

Joseph Chhim,

Plaintiff,

versus

City of Houston, et al.,

Defendants.

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Civil Action H-20-361

Order on Leave

Joseph Chhim's motion for leave to appeal as a pauper is denied. (40)

No reasonable issue exists for an appeal.

Signed on October 29, 2020, at Houston, Texas.



Lynn N. Hughes
United States District Judge

APPENDIX - N

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

United States Courts
Southern District of Texas
FILED

OCT 26 2020

David J. Bradley, Clerk of Court

JOSEPH CHHIM

Plaintiff,

v.

Civil Action Case H-20-361

CITY OF HOUSTON,

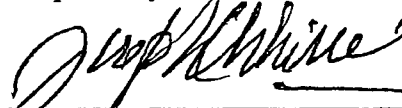
Defendants,

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NOTICE OF APPEALS

Notice is hereby that **Joseph Chhim** Appellant appeals to the United States Court of Appeals for the Fifth Circuit from the United States District Court Southern District of Texas Houston Division Judge Lynn N. Hughes's Judgment entered in this action signed on October 20, 2020, at Houston, Texas.

Respectfully submitted,



Joseph Chhim, Pro se
5634 Windsor Forest Dr.
Houston, Texas 77088
Telephone: 832-855-6743
Email: chhimjoseph100@gmail.com

APPENDIX - O

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

Joseph Chhim,

Plaintiff,

versus

City of Houston, et al.,

Defendants.

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ENTERED

October 20, 2020

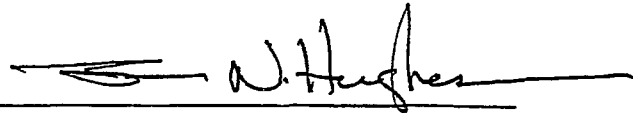
David J. Bradley, Clerk

Civil Action H-20-361

Final Judgment

Because he cannot show that the City breached the settlement, discriminated against him, or retaliated against him, Joseph Chhim takes nothing from the City of Houston and Lula Nelson.

Signed on October 20, 2020, at Houston, Texas.



Lynn N. Hughes
United States District Judge

APPENDIX - P

20-20568.623

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

Joseph Chhim,

Plaintiff,

versus

City of Houston, *et al.*,

Defendants.

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ENTERED

October 20, 2020

David J. Bradley, Clerk

Civil Action H-20-361

Opinion on Summary Judgment

I. *Introduction.*

Joseph Chhim sued the City of Houston and Lula Nelson for: (a) breach of settlement, (b) age discrimination, (c) national origin discrimination, and (d) retaliation. The City of Houston has moved for summary judgment saying it did not breach the settlement; no decision-makers were aware of his age, national origin, or protected activity; and no relevant adverse employment action occurred.

Because Chhim cannot show that the City breached the settlement, discriminated against him, or retaliated against him, he will lose.

2. *Background.*

Chhim was hired in 1981 in the City's Aviation Department. Over the next 11 years, the City had to counsel, report, and suspend Chhim multiple times for sleeping on the job, arriving late, leaving early, and failing to follow instructions.

In February 1990, the City offered to pay for him to have English lessons, but Chhim declined. In November 1992, Chhim quit because he was depressed after interpreting the City's offer for English lessons as discrimination.

APPENDIX - 9

N

20-20568.619

In May 1993, Chhim filed a discrimination suit against the City. The case settled with the City paying him \$5,000.00 and agreeing to allow Chhim to apply for other jobs with the City outside of the Aviation Department.

In October 1994, he was rehired as a lead janitor at the Civic Center. In July 1995, Chhim was terminated because of his performance issues.

In July 2019, Chhim applied for a janitor job in the General Services Department. Of the 196 applications received, his was one of 21 referred to Assistant Director Warren Davis and Senior Superintendent Walter Ellis for review. Chhim was not selected for an interview because of his termination in 1995. The City hired Aracelly Bocanegra to fill the job.

On October 21, 2019, Chhim filed a complaint with the Equal Opportunity Employment Commission.

3. *Statute of Limitations.*

A person has 300 days from the discriminatory act to file a complaint with the Commission. Therefore, all acts that occurred before December 25, 2018 are barred by the statute of limitations and will not be considered.

4. *Breach of Settlement.*

Chhim says that the City breached the settlement when it did not select his application for an interview because of his 1995 termination. He claims the settlement did not admit any fault by either side. Chhim seems to argue this fault includes his 1995 termination. Even if that termination is included as the fault of either party, the 1994 settlement would not apply to his 1995 termination because the firing occurred after the settlement.

Chhim also argues the settlement entitles him to the right to an *interview* for any position that he applies for with the City. The settlement allowed Chhim to *apply* for positions with the City outside of the Aviation Department. Chhim seems to confuse applying with interviewing. No language in the settlement mandates the City to interview Chhim.

Because Chhim cannot show the City violated the settlement, his breach of settlement claim fails.

5. *Age Discrimination.*

To succeed on an age discrimination claim, Chhim must show that (a) he is a member of a protected class, (b) he was qualified for his position, (c) he suffered an adverse employment action, and (d) others in his position were favored because of their age.¹

Chhim is seventy-four. While he is a member of the protected class, he has not shown the other elements of the claim.

Chhim claims the City did not hire him because of his age, yet he offers no facts in support. In fact, age is not included in the application.

The City hired Bocanegra for the janitor job. At fifty years old, she is in the same protected class as Chhim and is well within that protected class.

No adverse employment action occurred. He offers no facts to the contrary. Chhim was merely an applicant who was not interviewed because the City fired him in the past for performance troubles.

Because Chhim cannot show that he was discriminated against by the City based on his age, his age discrimination claim fails.

6. *National Origin Discrimination.*

To succeed on a national origin discrimination claim, Chhim must show that (a) he is a member of a protected class, (b) he was qualified for his position, (c) he suffered an adverse employment action, and (d) others in his position were favored because of their national origin.²

Chhim is ethnically Cambodian. He has been an American citizen since 1981. While he is a member of a protected class, he offers no evidence to support the claim other than conclusory statements of the law.

He says that the decision-makers for the City who reviewed his application were aware of his national origin because the settlement existed. He has not shown that these persons were actually aware of the settlement. The

¹ E.g., *Lee v. Kansas City S. Ry. Co.*, 574 F. 3d 253, 259 (5th Cir. 2009).

² *McCoy v. City of Shreveport*, 492 F.3d 551, 556 (5th Cir. 2007).

existence of the settlement is insufficient to show awareness. Chhim is unable to show that his national origin was a part of the decision process when his application was considered.

Because Chhim cannot show that he was discriminated against by the City based on his national origin, his national origin discrimination claim fails.

7. *Retaliation.*

To establish a retaliation claim, Chhim must show that (a) he engaged in a protected activity, (b) an adverse employment action occurred, and (c) a causal link exists between them.³

Chhim says he was retaliated against because he complained to the Commission. He does not offer facts or dates to support these claims. He vaguely refers to a petition for rehearing with the Fifth Circuit and Supreme Court in May 2020. Even if this formed the basis for the retaliation claim, it occurred after the decision to not refer him for an interview occurred. No causal link exists.

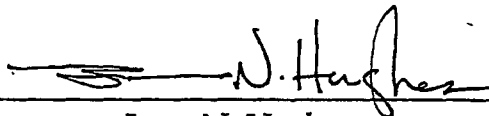
Chhim also cannot show that the City's justification for not interviewing him – that he was terminated by the City in 1995 – is illegitimate or retaliatory. He has offered no facts to show that the City's reason was pretextual.

Because Chhim cannot show the City retaliated against him, his retaliation claim fails.

8. *Conclusion.*

Because he cannot show that the City breached the settlement, discriminated against him, or retaliated against him, Joseph Chhim will take nothing from the City of Houston and Lula Nelson.

Signed on October 20, 2020, at Houston, Texas.



Lynn N. Hughes
United States District Judge

³ *Heggemeier v. Caldwell County, Texas*, 826 F.3d 861, 869 (5th Cir. 2016).

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Kelsey-Seybold Clinic

Changing the way health cares:

560 MEYERLAND PLAZA MALL
HOUSTON TX 77096-1615

Dept: 713-442-3222

Dept Fax: 713-442-3240

April 22, 2020

Re: Joseph Chhim
(DOB: 2/13/1945)

To whom it may concern,

We have started treating Mr. Chhim since 3/2/20. He met criterion for major depressive disorder and generalized anxiety disorder. He did report considerable distress from a prior employment termination with the city of Houston and provided documentation of prior treatment at that time. He would benefit from clarification and assistance about this matter.

Please feel free to contact our office if you have any questions,



Biren P Patel, MD

APPENDIX-R

DISMISSAL AND NOTICE OF RIGHTS

To: **Joseph Chhim**
5634 Windsor Forest Dr.
Houston, TX 77088

From: **Houston District Office**
Mickey Leland Building
1919 Smith Street, 7th Floor
Houston, TX 77002



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

460-2020-00520

Jose T. Vega,
Investigator

(713) 651-4941

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Rayford O. Irvin,
District Director

10/28/2019

(Date Mailed)

cc:

Susana Sosa
Legal
CITY OF HOUSTON
City Hall Annex, 900 Bagby, 3rd Floor
Houston, TX 77001

Lowell Keig, Director
TWC/Civil Rights Division
101 East 15th Street, Room 144T
Austin, TX 78778

APPENDIX-5

Texas Workforce Commission Civil Rights Division

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Joseph Chhim

Home Phone (Incl. Area Code)

(281) 820-5270

Date of Birth

1945

Street Address

5634 Windsor Forest Dr., Houston, TX 77088

City, State and ZIP Code

(832) 855-6743

Named Is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

CITY OF HOUSTON

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(832) 393-8900

Street Address

611 Walker Street, Houston, TX 77002

City, State and ZIP Code

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☒ NATIONAL ORIGIN
☒ RETALIATION ☒ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE
 Earliest Latest

07-26-2019

07-26-2019

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I. I Joseph Chhim (Over 40 years of age, Asian / Cambodian) applied for a position with the City of Houston. Specifically, I applied for a Custodian position on July 26, 2019.

II. Despite my extensive experiences, I have been repeatedly denied for any employment opportunities by Respondent.

III. I believe I have been discriminated against because of my race (Asian), national origin (Cambodian), in violation of Title VII of the Civil Rights Act of 1964, as amended, and because of my age (74), in violation of the Age Discrimination in Employment Act of 1967, as amended. I further believe I have been retaliated against for filing previous EEOC Charges against Respondent, in violation of the above statutes.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Oct 28, 2019

Date


 Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
 SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

APPENDIX - T

Case 4:11-cv-01560 Document 24 Filed in TXSD on 10/22/12 Page 8 of 12

Settlement Agreement

This Settlement Agreement is between the City of Houston ("the City") and Joseph Chhim ("Chhim").

WHEREAS, Chhim filed a suit styled *Chhim v. City of Houston*, in the Southern District of Texas (Civil Action No. H-93-1634) (the "Lawsuit"), in which Chhim makes certain allegations;

WHEREAS, the city denies the allegations in the Lawsuit;

WHEREAS, Chhim has recently received a new offer of employment with the City of Houston;

WHEREAS, the parties wish to disentangle themselves from each other and have agreed to settle all existing and past disputes between them, including but not limited to the Lawsuit, so that each party may have peace;

NOW THEREFORE, in consideration of the mutual promises and agreements contained below, the parties agree as follows:

1. The City will pay Chhim a sum of \$5000 (Five thousand dollars) as promptly as possible.
2. Chhim will withdraw all charges he has previously filed with the Equal Opportunity Employment Commission ("EEOC") that are still being considered by that agency.
3. To the extent the EEOC has authorized Chhim to sue on any charge he previously filed with the EEOC, Chhim agrees not to file any lawsuits against the City arising out of those charges.
4. Chhim agrees not to file any further charges with the EEOC against the City arising from any action or conduct by the City before October 22, 1994.

[Handwritten initials]

APPENDIX *[Handwritten mark]*

5. Chhim agrees to dismiss, with prejudice, the lawsuit styled *Chhim v. Texas Workers Compensation Commission and the City of Houston* (Case Number 634974) in Harris County Court at Law No. 2.
6. Chhim agrees to dismiss the Lawsuit with prejudice.
7. Chhim agrees to withdraw his appeal of the case styled *Chhim v. City of Houston, Consolidated Civil Action Nos. H-90-1760 and H-90-374*, which is currently on appeal to the Fifth Circuit Court of Appeals (Cause No. 94-20037).
8. Chhim agrees never to apply for a job in the Aviation Department in the City of Houston. This agreement in no way prevents Chhim from applying for a new job or from seeking a transfer or promotion to a new job in any department of the City other than the Aviation Department.
9. Chhim agrees to execute the release attached as Exhibit A.
10. The City agrees to release Chhim from all lawsuits, claims, or appeals of any kind that it has against Chhim arising out of any actions or conduct of Chhim prior to October 28, 1994. (20)
11. Both parties agree that the terms of this settlement will remain confidential. Both parties agree not to make any statement that would reveal any term of this Agreement, except to say that the case has settled on terms satisfactory to all parties.
12. The City agrees not to revoke Chhim's current offer of employment with the City.
13. The parties, without conceding liability in any way, agree that the settlement payment by the City in the amount of \$5000 is designed to compensate Chhim for whatever personal injury

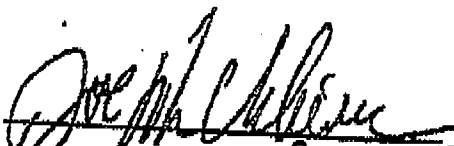
damages he has suffered as a result of any actions by the City, which Chhim complains of, or could have complained of, in the lawsuit.


14. The parties agree that the terms and conditions of this agreement will be put on the record in front of Judge Rosenthal or her designated magistrate judge with all parties present.

15. Chhim agrees that once this Agreement is signed and finalized, he will give the City his approval for it to file the necessary documents with the appropriate courts and agencies to dismiss or withdraw the cases and charges described above.

16. Each of the parties agrees to bear its own attorneys fees and costs incurred in connection with each case and controversy described in this agreement.

17. Both parties agree that Judge Rosenthal will have continuing jurisdiction over this Settlement Agreement and its terms.


JOSEPH CHHIM, for himself


MARCUS DOBBS, for all defendants
and the City of Houston

JHP-104982-jhp

Case 4:11-cv-01560 Document 24 Filed in TXSD on 10/22/12 Page 11 of 12

Exhibit A**RELEASE**

I, JOSEPH CHHIM, have agreed to accept the sum of FIVE THOUSAND DOLLARS (\$5,000.00), in cash to be paid by the CITY OF HOUSTON, TEXAS for the RELEASE of the CITY OF HOUSTON and its employees from all lawsuits, claims or appeals of any kind that I have against the City or the Department of Aviation that arose before October 20, 1994. This is a full release to settle all claims and legal issues between us that have occurred before October 20, 1994. 20 20

I understand and agree that the City and the Department of Aviation do not admit any fault in any matter and that this settlement is only to make peace and allow me to start fresh in my new position.

I have agreed to the settlement and release based upon my own thoughts and feelings. I could consult with anyone I chose before entering into this release and letter agreement. Mr. Peacock has only advised me regarding the matter styled *Chhim v. City of Houston* (Civil Action No. H-93-1634). I am not relying on any statements made by the City in agreeing to this settlement.

Everything we have agreed to is contained in the Settlement Agreement. There are no additional agreements not contained in the Settlement Agreement. I freely and willingly agree to this release of all my claims and lawsuits against the City and the Department of Aviation (prior to October 20, 1994) as well as those other agreements contained in the Settlement Agreement. 20 20

EXECUTED on this the 20 day of October, 1994.

Joseph Chhim
JOSEPH CHHIM