No. 22-___

In the United States Supreme Court

DR. J. DAVID GOLUB
Petitioner,
V.
NORTHEASTERN UNIVERSITY
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIRST CIRCUIT COURT OF APPEALS

SUPREME COURT RULE 22 APPLICATION TO JUSTICE BREYER TO STAY THE FIRST CIRCUIT MANDATE IN DOCKET 20-1674

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QUESTIONS PRESENTED

1) Under U.S. Code Title 29 CHAPTER 14 § 626, are the First Circuit Appellate Court and the United States District Court - Massachusetts decisions, in DRJDG's age discrimination complaint against Northeastern University for illegal employment termination, clearly erroneous, containing substantial material reversible non-harmless constitutional procedural and substantive due process errors because the decisions failed to follow and adhere to stare decisis and well-established U.S. Supreme Court judicial precedent pertaining to equitable tolling[1], equitable estoppel and the well-established U.S. Supreme Court precedent applying the "relation back doctrine" to a timely filed on-line EEOC website inquiry charge that was subsequently "perfected"

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[1] Boechler, P.C. v. Commissioner of Internal Revenue, No. 20–1472, 596 U. S. ____ (April 21, 2022): Of course, the nonjurisdictional nature of the filing deadline does not help Boechler unless the deadline can be equitably tolled. "Equitable tolling" is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods. Lozano, 572 U. S., at 10–11. Because we do not understand Congress to alter that backdrop lightly, nonjurisdictional limitations periods are presumptively subject to equitable tolling. Irwin v. Department of Veterans Affairs, 498 U. S. 89, 95–96 (1990)*.... The Commissioner's argument misses the mark. The cases he cites almost all predate this Court's effort to "bring some discipline" to the use of the term "jurisdictional." Henderson, 562 U. S., at 435. And while this Court has been willing to treat " 'a long line of [Supreme] Cour[t] decisions left undisturbed by Congress' " as a clear indication that a requirement is jurisdictional, Fort Bend County v. Davis, 587 U. S. ___, ___ (2019) (slip op., at 6), no such "long line"of authority exists here.

upon transfer to the Boston EEOC investigative officer after the expiration of the 300-day filing period, notwithstanding the fact that the delay was the sole responsibility of the Equal Employment Opportunity Commission for failing to assign an EEOC Investigator to the case and for failing to timely respond to the Petitioner's on-line Inquiry Forms submitted within the prescribed 300-day statutory filing period, including repeated follow-up attempts, and after receiving a written on-line response that a EEOC representative would be assigned to undertake the completion of the procedural process?

PARTIES

THE PETITIONER IS DR. J. DAVID GOLUB

THE RESPONDENT IS NORTHEASTERN UNIVERSITY

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[2]Boechler, P.C., Petitioner v. Commissioner of Internal Revenue Docket No. 20-1472, 596 U. S. ____ (April 21, 2022) *Per Curiam*
Section 6330(d)(1)'s 30-day time limit to file a petition for review
of a collection due process determination is a nonjurisdictional deadline subject to equitable tolling. Pp. 2–11.
(a) Not all procedural requirements are jurisdictional. Many simply instruct "parties [to] take certain procedural steps at certain specified times" without conditioning a court's authority to hear the case on compliance with those steps. Henderson v. Shinseki, 562 U. S. 428, 435.The distinction matters, as jurisdictional requirements cannot be waived or forfeited, must be raised by courts sue sponte, and do not allow for equitable exceptions. Id., at 434–435; Sebelius v. Auburn Regional Medical Center, 568 U. S 145, 154. As such, a procedural requirement is jurisdictional only if Congress "clearly states" that it is. Arbaugh v. Y & H Corp., 546 U. S. 500, 515. This case therefore turns on whether Congress has clearly stated that §6330(d)(1)'s deadline is jurisdictional.

TABLE OF AUTHORITIES

RELEVANT STATUTES

29 U.S. Code § 621 *Et Seq.*

Congressional statement of findings and purpose
(a)The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons ***based on their ability rather than age***; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.
(Pub. L. 90–202, § 2, Dec. 15, 1967, 81 Stat. 602.)

29 U.S.CODE §1626.8 Contents of charge; Amendment of charge

(a) In addition to the requirements of § 1626.6, each charge should contain the following:

(1) The full name and contact information of the person making the charge except as provided in § 1626.8(d) below;

(2) The full name and contact information of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices;

(4) If known, the approximate number of employees of the prospective defendant employer or members of the prospective defendant labor organization.

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing by the Commission that conforms to the requirements of § 1626.6.

(c) A charge may be amended to clarify or amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not again be referred to the appropriate State agency.

42 U.S. Code § 2000e–5 (3) - Enforcement provisions

(A)For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B)In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

29 U.S. Code § 626 - Recordkeeping, investigation, and enforcement (b)

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: Provided, that liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

SUMMARY OF THE LEGAL ARGUMENT

I. UNDER 29 U.S.C §§ 621 ET SEQ., THE FIRST CIRCUIT DECISIONS IMPERMISSIBLY VIOLATE PROCEDURAL AND SUBSTANTIVE CONSTITUTIONAL DUE PROCESS AND ARE CLEARLY PREJUDICIAL NONHARMLESS REVERSIBLE ERROR BECAUSE THE EEOC CHARGE WAS NOT TIME-BARRED UNDER WELL-ESTABLISHED JUDICIAL PRECEDENT IN RULINGS ISSUED ACROSS ALL CIRCUITS, WITHOUT EXCEPTIONS, INCLUDING THE FIRST CIRCUIT COURT OF APPEALS, THAT EEOC PROCESSING DELAYS, DETAINMENT, INACTION, MISCOMMUNICATIONS, PARALYSIS, INTER-OFFICE ADMINISTRATIVE CONFUSION, MISMANAGEMENT, BUREAUCRATIC MIX-UPS, SILENCE AND INACTION, DO NOT PENALIZE, DO NOT EVISCERATE AND/OR DO NOT DISQUALIFY THE WELL-ESTABLISHED LEGAL PRECEDENT EMBEDDED IN FUNDAMENTAL UNITED STATES SUPREME COURT OPINIONS THAT THE FILED EEOC ON-LINE IN-TAKE FORM WITHIN THE 300-DAY STATUTORY PERIOD WOULD OTHERWISE BE DEEMED AND DECLARED A TIMELY FILED EEOC

PARTIES, GOOD FAITH RELIANCE, ACTUAL EXECUTED PERFORMANCE AND UNDER THE TOTALITY OF THE COMMUNICATIONS, INCLUDING THE HISTORY OF PREVIOUS AND PAST COMMUNICATIONS BETWEEN THE PARTIES, PROMISSORY ESTOPPEL, BREACH OF GOOD FAITH AND IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, BY ERRONEOUSLY IGNORING OR ADOPTING THE SPECIOUS, WAVERING, UNSTABLE, CONTRADICTORY, FLUCTUATING, INCONSISTENT AND CHANGING PRETEXT (CHANGE OF SCOPE OF THE MTLI POPSITION, FOLLOWED BY ALLEGED RESTRUCTURING, FOLLOWED BY A GEOGRAPHIC PRESENCE REQUIREMENT) PRESENTED BY THE DEFENDANT, NORTHEASTERN UNIVERSITY (NEU), TO THE EEOC AND THE USDC-MASS. FOR REMOVING AND REPLACING DRJDG AS THE MTLI, AFTER IT ENGAGED IN BAD FAITH BREACH OF TWO SUCCESSIVE CONSECUTIVE ANNUAL FISCAL PERIOD FACULTY EMPLOYMENT CONTRACTS, (ENDING 8/31/2018 AND 8/31/2019) WHICH CLEARLY SATISFY THE $75,000 STATUTORY MINIMUM TO CONFER FEDERAL DIVERSITY JURISDICTION IN ADDITION TO FEDERAL SUBJECT MATTER JURISDICTION.....

UNITED STATES SUPREME COURT

	:	DKT. 22- _____
DR. J. DAVID GOLUB	:	(1st CIR. DKT. NO. 20-1674)
	:	
PETITIONER	:	APPLICATION/AFFIDAVIT
PLAINTIFF-APPELLANT	:	
	:	APPLICATION TO STAY
VS.	:	THE MANDATE
	:	FOR 30 DAYS AND
NORTHEASTERN UNIVERSITY	:	EXTEND THE TIME TO
	:	FILE THE PETITION FOR
	:	WRIT OF CERTIORARI TO
RESPONDENT	:	THE U.S. SUPREME COURT
DEFENDANT-APPELLEE	:	ON OR BEFORE
	:	**MAY 31, 2022**

APPLICATION TO JUSTICE STEPHEN BREYER
DATED: ON OR BEFORE APRIL 30, 2022
SERVED: VIA FIRST CIRCUIT CM/ECF FILING SYSTEM

FOR GOOD, MERITORIOUS AND "SUBSTANTIAL" CAUSE APPLICATION TO STAY THE MANDATE AND EXTEND THE TIME IN WHICH TO FILE THE PETITION FOR WRIT OF CERTIORARI UNTIL MAY 31, 2022 FROM THE FIRST CIRCUIT ORDER ENTERED ON APRIL22, 2022, ERRONEOUSLY DENYING THE MOTION TO STAY THE APPELLATE COURT MANDATE AND THE FIRST CIRCUIT ORDER ENTERED ON FEBRUARY 17, 2022, ERRONEOUSLY DENYING DRJDG'S FIRST CIRCUIT COURT OF APPEALS PETITION AND EN BANC PETITION FOR REHEARING IN ORDER TO FILE AN APPLICATION FOR A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

THE PETITION FOR WRIT OF CERTIORARI PRESENTS SUBSTANTIAL PROCEDURAL JURISDICTIONAL QUESTION S AFFECTING

EVERY FEDERAL CIVIL RIGHTS EMPLOYMENT DISCRIMINATION COMPLAINT FILED WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN ALL CASES WHERE THE AGENCY DELAYS, DETAINS AND FAILS TO PROPERLY, PROMPTLY AND APPROPRIATELY RESPOND TO TIMELY FILED ON-LINE IN-TAKE QUESTIONNAIRE/CHARGE FORMS SUBMITTED WITHIN THE STATUTORY 300-DAY FILING DEADLINE BY AN AGGRIEVED EMPLOYEE

Please Take Notice, that pursuant to United States Supreme Court Rules 22 and 23, for valid and meritorious cause, Appellant-Plaintiff-Petitioner, DRJDG, files an application to stay the First Circuit Mandate, which fails as a matter of law, for the following foregoing listed reasons in order to file the U.S. Supreme Court application for a Writ of Certiorari from the USDC-Mass. Federal District Court decisions and the First Circuit Court of Appeals decisions entered on July 20, 2021 and the order entered on February 17, 2022, on or before May 31, 2022 for the following cogent reasons:

1) The July 20, 2021, decision is arbitrary, capricious, clearly erroneous and is unequivocal reversible non-harmless constitutional error, because it is in direct conflict with United States Supreme Court precedent and, accordingly, it violates procedural and substantive due process. DRJDG's EEOC in-take form for illegal violations of age

discrimination was timely filed. The EEOC's transfer letter from New Jersey to the Boston Office combined with on-line written communications to DRJDG from EEOC website representatives stating that an EEOC case investigator would respond to the charge[1] and complete the filing process shifts the entire legal analysis to the well-settled U.S. Supreme Court judicial precedent that the "relation back doctrine" controls the filing date of the charge not the actual date that the EEOC Sr. Investigator, Ms. Adriana Gomez, Esq., signed the actual charge, or contacted and communicated with DRJDG to discuss the details of the complaint. No other Circuit Court of Appeals has rejected the "***Relation Back Doctrine***", including the First Circuit Court of Appeals, except for this overwhelmingly unconstitutional and clearly erroneous decision in this case. Therefore, review by the United States Supreme Court is necessary to secure and maintain

[1] Title 29 CFR §1626.3 says: "charge shall mean a statement filed with the [EEOC] which alleges that the named prospective defendant has engaged in or is about to engage in acts in violation of the Act." Section 1626.8(a) identifies information a "charge should contain," including: the employee's and employer's names, addresses, and phone numbers; an allegation that the employee was the victim of age discrimination; the number of employees of the charged employer; and a statement indicating whether the charging party has initiated state proceedings. Section 1626.8(b), however, seems to qualify these requirements by stating that a charge is "sufficient" if it meets the requirements of §1626.6—i.e., if it is "in writing and ... name[s] the prospective respondent and ... generally allege[s] the discriminatory act(s)."

uniformity of the First Circuit Appellate Court's decisions[2] and correct material and substantial non-harmless constitutional errors involving equal protection, substantive and procedural due process;

2) The July 20, 2021, decision is arbitrary, capricious, clearly erroneous and is unequivocal reversible non-harmless constitutional error, because it is in direct conflict with all of the Circuit Courts of Appeal across the United States and, accordingly, it violates procedural and substantive due process. Therefore, review by the United States Supreme Court is necessary to secure and maintain uniformity of the application of judicial precedent across all federal circuits. Moreover, it involves one or more questions of exceptional importance[3];

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[2] The July 20, 2021, decision rejects the well-settled legal precedent, namely, "the unassailable relation-back doctrine" established by the United States Supreme Court in *Edelman v. Lynchburg College*, 536 U.S. 106 (2002) and the EEOC regulations establishing the minimum required definitional elements of a valid EEOC charge *in Federal Express Corp. v. Holowecki, et. al.*, 552 U.S. 389,128 S. Ct. 1147, 170 L. Ed. (2008). The Court's order impermissibly rejects this judicial precedent and accordingly violates DRJDG's fundamental procedural and substantive due process rights.

[3] The Fourth Circuit, in the employment discrimination context has found that equitable tolling properly applies when alleged untimely filing resulted from processing delays at the EEOC or from misleading statements by EEOC officials. See *Morris v. Lowe's Home Centers, Inc.*, 2011 U.S. Dist. LEXIS 63008 *; 24 Am. Disabilities Cas. (BNA) 1628; 2011 WL 2417046, ("The doctrine of equitable tolling applies to toll the limitations period when, due to agency error or misinformation, a complainant fails to meet the time requirements for filing an agency complaint. . ."); See Note 5 of the opinion, every other circuit with jurisdiction over the EEOC has reached the same conclusion, citing Davis v. Lucent Techs., Inc., 251 F.3d 227, 235 (1st Cir. 2001). Conduct by the government, i.e., EEOC agency inaction, misrepresentation and failure to timely respond to an on-line inquiry, that causes employees to fail to file a timely charge has been a consistent basis for the application of the equitable tolling and relation back doctrines.

3) The July 20, 2021, decision is arbitrary, capricious, clearly erroneous and is unequivocal reversible non-harmless constitutional error, because it is in direct conflict with the judicial precedent established within the First Circuit Court of Appeal. Therefore, review by the United States Supreme Court is necessary to secure and maintain uniformity of the application of judicial precedent across all Circuits and within the First Circuit Court of Appeals in adjudicating its own precedents and decisions[4] while avoiding an arbitrary, capricious and clearly erroneous decision in violation of federal constitutional equal protection and procedural and substantive judicial process.[5] The

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[4] In *Aly v. Mohegan Council, Boy Scouts of America*, 711 F.3d 34 2013 U.S. App. LEXIS 5804,117 Fair Empl. Prac. Cas. (BNA) 1258, 96 Empl. Prac. Dec. (CCH) P44,792; 2013 WL 1173324, (1st.Cir. 2013) upon de novo review by the First Circuit Court panel of Appellate Judges, an employee's unsigned intake-questionnaire or interview form was deemed to be a valid charge. The later signed formal charge was deemed to relate back to the original complaint and cured the defective interview form.

In *Maillet v. TD Bank US Holding Company*, 981 F. Supp. 2d 97, 2013 U.S. Dist. LEXIS 160114, 2013 WL 5977934, (USDC-Mass. 2013), the court held that an Intake Questionnaire can stand in place of a formal EEOC charge form if it can be reasonably construed as a request for the agency to take remedial action to protect the employee's rights. Although an Intake Questionnaire must be verified under Title VII of the Civil Rights Act of 1964, it can be amended after the initial filing to meet the verification requirement. The timely online intake questionnaire filed by DRJDG satisfies all of the elements of a timely EEOC claim.

[5] Cummings v. Pearson Education, Inc., USDC-Mass, Civil Action No. 03-12183-DPW (D. Mass. Dec. 6, 2004), the Court explicitly stated that EEOC intra-office procedural miscommunications do not rise to disqualify what would otherwise be a timely complaint." ... In a letter dated October 23, 2002, the EEOC acknowledged receipt of the general intake questionnaire. Senior District Court Judge Douglas Woodlock: Therefore,

federal district courts, including the First Circuit Court of Appeals have specifically identified and isolated cases where internal processing and filing delays caused by the EEOC do not penalize the plaintiff-petitioner pertaining to the timely filing of an EEOC in-Take Questionnaire within the statutory 300-day filing period ;

4) The July 20, 2021, decision is arbitrary, capricious, clearly erroneous and is unequivocal reversible non-harmless constitutional error, because the decision fails as a matter of law to assign any responsibility to the EEOC for its culpability, unreasonable and inexplicable delays in processing the timely filed EEOC online age discrimination claims notwithstanding the existence of the EEOC written transfer letter issued by the New Jersey EEOC office to the Boston EEOC Office[6]. The United States Supreme Court has a duty

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on the basis of the record before me, I find [t]he apparent "legal mistake". . . was manifestly not of the plaintiff's doing, nor was it within [her] knowledge or within [her] control to rectify. ***To deny relief to the plaintiff under the peculiar facts of this case "would be to exalt form over substance and preclude relief to a potentially meritorious claim simply because it was the victim of a bureaucratic mix-up," as well as to defeat two of the goals sought by the [government agencies]: the minimization of red tape and the efficient processing of discrimination charges.***

[6] See *Bonilla v. Muebles J.J. Alvarez, Inc.*,194 F.3d 275, 278 (1st Cir. 1999) citing Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982): equitable tolling is appropriate in the unusual circumstances where a claimant misses a filing deadline because of circumstances effectively beyond the plaintiff's control (such as the situation where DRJDG filed a timely on-line inquiry/intake questionnaire, receives a signed written EEOC letter transferring the case from the EEOC New Jersey Office to the EEOC Boston Office and, thereafter, the EEOC delays in assigning an EEOC Federal investigator to the

and responsibility to ensure that all of the federal circuits follow well-settled established judicial precedent by clarifying and adjudicating the situations where errors, delays and negligence caused by the EEOC processing system and procedures[7] do not impermissibly

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case.). DRJDG reasonably and rationally relied upon the receipt of EEOC electronic communications, after receipt of the transfer letter, informing DRJDG that the Boston Office would assign such a representative to conduct such an interview. The July 20, 2021, decision makes a zero distinction between filing a charge within the 300-day period and all other cases where nothing was filed. See also, *Angotti v. Kenyon Kenyon* 929 F. Supp. 651, 654 (S.D.N.Y. 1996)." ...

The plaintiff responds with two distinct arguments. First, the plaintiff explains that she attempted to include her claim for retaliation in the EEOC charge but was informed by the EEOC interviewer that such claims were not within the EEOC's jurisdiction. When the plaintiff objected, she says the interviewer conceded that such claims were handled by the EEOC but that her claim would be rejected if the ***"Retaliation" box was marked***.... Nonetheless, there are cases where similar circumstances were presented and equitable considerations were recognized and applied to save a plaintiff's complaint in light of misinformation or misleading conduct by the EEOC. In the leading case of *Albano v. Schering-Plough Corp.*, 912 F.2d 384 (9th Cir. 1990), the plaintiff had presented his constructive discharge allegations to the EEOC after filing a failure to promote claim of age discrimination. EEOC delays and errors in processing claims must not foreclose a litigant from having his day in Court. ***During the telephone communications with EEOC Senior Federal Investigator, Adriana Gomez, J.D., she stated that her remedy for the late EEOC Boston Office action was to check the box "Continuing Violation" and not back date the Charge.***

This is not Hearsay but rather the truth of the matter asserted in direct statements made to DRJDG, (me personally) by Ms. Gomez. Do we need a sworn affidavit from her? The Court has independent evidence of this fact because in her e-mails to DRJDG pertaining to finalizing the EEOC charge, Ms. Gomez emphasized that the date to include on the signed EEOC charge form was the date of the signing and not to be backdated, because DRJDG had complained directly to her about the fact that the EEOC was responsible for delay. Upon hearing the facts her remedy was to check the "Continuing Violation" box in the EEOC Form 5 Discrimination Charge.

[7] See Monk v. Stuart M. Perry, Inc.,. Civil Action No. 5:01cv 00093 (W.D. Va. Jun. 13, 2002): "... Equitable tolling applies "where the defendant has wrongfully deceived or mislead the plaintiff in order to conceal the existence of a cause of action." English, 828 F.2d at 1049. "Equitable Estoppel applies where, despite the plaintiff's knowledge of the

penalize a claimant/litigant by arbitrarily and capriciously preventing DRJDG's fundamental first amendment right to access the federal judicial process to address age discrimination violations under federal

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facts, the defendant engages in intentional misconduct to cause the plaintiff to miss the filing deadline." Id. In Title VII cases, courts have extended ***equitable doctrines*** to apply where the plaintiff claims to have been misled by the EEOC rather than the defendant. See, e.g., Johnson v. Al Tech Specialties Steel Corp., 731 F.2d 143, 146 (2d Cir. 1984) (finding EEOC's erroneous advice about filing deadline, when substantial, could be basis for equitable tolling); Citicorp Person-to-Person Financial Corp. v. Brazell, 658 F.2d 232, 234 (4th Cir. 1981) ("[A] clear violation of [a] regulation by [the] EEOC might warrant the finding of a tolling effect."). The Fourth Circuit has also recognized that Title VII's limitation period should be tolled when the plaintiff's tardy filing resulted from the delay of the complaint once it reached the EEOC's office. Waiters v. Robert Bosch Corp., 683 F.2d 89, 92 (4th Cir. 1982) ("[The Plaintiff] did everything required of him by the statute; had his charge been properly processed, the charge would have satisfied the filing process."); see also Carter v. Smith Food King, 765 F.2d 916, 924 (9th Cir. 1985) ("[A] claimant's right to pursue a civil action is not to be prejudiced by the EEOC's failure to properly process a grievance after it has been filed.").

Courts have regularly made use of equitable remedies to allow Title VII claimants to bring an action in federal court where they filed an untimely charge of discrimination based on misleading information from the EEOC. See, e.g., Johnson, 731 F.2d at 146; Cherry v. Thompson Steel Co., 805 F. Supp. 1257, 1261 n. 1 (D.Md. 1992). It seems apparent to the court that the same principles that excuse a plaintiff who relies on the EEOC's misleading information in failing to timely file a charge of discrimination, would also apply in cases in which a plaintiff, reasonably relying on misleading information from the EEOC, reasonably believes that she has included all her claims within her charge of discrimination. See Angotti v. Kenyon Kenyon, 929 F. Supp. 651, 656-57 (S.D.N.Y. 1996) (reviewing equitable principles in Title VII cases and finding that issues of fact existed as to whether equity excused plaintiff's seeming failure to include explicitly the charge of retaliation in the EEOC charge she filed where she had "presented documentary evidence that she presented her claims to the EEOC when she filed her charge of sex and disability discrimination" and "averred that the EEOC interviewer assured her that her retaliation claims were encompassed by the charge she did timely file.")... Thus, unless the EEOC interviewer affirmatively led Monk to believe that her charge would encompass all her present claims, it seems unlikely that she had any reasonable basis to believe that she had actually raised with the EEOC those claims that she attempts to state in the complaint but fails to mention in the charge of discrimination. Hentosh v. Herman M. Finch University of Health Sciences/The Chicago Medical School, 167 F.3d 1170, 1173 (7th Cir. 1999) (recognizing that plaintiff's reasonable reliance on misleading conduct is a prerequisite for equitably excusing a plaintiff's failure to exhaust administrative remedies).

law, after he filed a timely EEOC on-line charge within the statutory 300-day filing period;

5) The July 20, 2021, decision is arbitrary, capricious, clearly erroneous and fails as a matter of Constitutional Equal Protection law. The United States Supreme Court has a duty and responsibility to ensure that all of the federal circuits follow well-settled established judicial precedent including the First Circuit failure to properly apply the "relation back doctrine" to a timely filed on-line EEOC Inquiry questionnaire subsequently acknowledged and addressed by a written inter-office EEOC transfer letter[8] followed by on-line communications

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[8] See *Feldstein v. E.E.O.C.* 547 F. Supp. 97 (D. Mass. 1982). "...Even if the EEOC had acted more egregiously here the plaintiff would still have no express or implied claim against the Commission. It is clear, both from the Supreme Court's observations on Title VII. See *Occidental Life Insurance Co. v. Equal Employment Opportunity Comm.*, 456 F. Supp. 695 (ND Cal. 1978), that the plaintiff's right to a de novo action against his employer in district court is completely independent of any EEOC action and offers sufficient protection against the deprivation of any constitutional rights.

Indeed, Congress contemplated that such an alternative course of action for aggrieved parties before the EEOC would serve as a safeguard for individual rights, appropriate "where there is agency ***inaction***, dalliance ***(delaynce)*** or dismissal of the charge, or unsatisfactory resolution." 118 Cong. Rec. 7168 (March 6, 1972); as quoted in *Occidental Life Insurance Co. v. EEOC*, 432 U.S. 355 at 365, 97 S.Ct. 2447 at 2454, 53 L.Ed.2d 402 (1977). The statutory scheme suggests that district courts should be used as an alternative when the EEOC fails to pursue employers, not as a sanction against the EEOC itself. Moreover, the EEOC delays in assigning a Boston Office federal investigator should not foreclose the judicial process to what is otherwise a timely filed EEOC on-line inquiry intake questionnaire.

that an EEOC Boston office intake officer was to be assigned to the case;

6) The July 20, 2021, decision is arbitrary, capricious, clearly erroneous and fails as a matter of law and violates the Constitutional Commerce Clause. The United States Supreme Court has a duty and responsibility to ensure that all of the federal circuits follow well-settled established judicial precedent and avoid constitutional conflicts among the circuits because the First Circuit Appellate decision impermissibly treats out-of-state remote workers in a discriminatory manner relative to in-state workers and imposes impermissible discriminatory burdens on out-of-state (non-Commonwealth) employees to undertake alternative means to physically travel to the EEOC Boston office in order to obtain a hearing, consultation and service from an EEOC Senior federal investigator, including acknowledgement and confirmation of the in-take filing forms, concurrently with an internal hearing[9] necessary to file a formal EEOC charge;

[9] Equal Employment Opportunity Comm. v. Elrod, 674 F.2d 601 (7th Cir. 1982) ...It is clear that the purpose of the legislation was to prohibit arbitrary, discriminatory government conduct that is the very essence of the guarantee of "equal protection of the laws" of the Fourteenth Amendment. In addition, the development of the ADEA follows the familiar pattern of contemporary civil rights acts in grounding prohibitions against private parties in the Commerce Clause, while reaching government conduct by the more

7) The July 20, 2021, decision is arbitrary, capricious clearly erroneous and is unequivocal reversible non-harmless constitutional error, fails to address or consider the fact that DRJDG filed on-line employment applications with the NEU H.R. department. The employment application numbers were identified in the complaint and submitted to the EEOC. On January 29, 2018, all of the relevant NEU applications for alternative faculty positions, from inception were identified and submitted to Mr. Anthony Pino, EEOC Enforcement Supervisor, under EEOC charge # 523-2018-00644. The July 20, 2021, decision fails to address or consider the fact that the EEOC Charge included continuing violations and retaliation as identified by the EEOC Sr. Federal Investigator, Adriana Gomez, Esq. See and compare Gomez v. Potter, 553 U.S. 474,128 S. Ct. 1931 ,170 L. Ed. 2d 887 (2008), with Kleber v. CareFusion Corp., 914 F.3d 480, 490 (7th Cir. 2019),

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direct route of the Fourteenth Amendment. Thus, the ADEA amendment constitutes "appropriate legislation" under § 5 of the Fourteenth Amendment.

Congress enacted the Age Discrimination in Employment Act of 1967, Pub.L. No. 90202, 81 Stat. 602, to promote the employment of older persons based on ability, to prohibit arbitrary age discrimination, and to aid in studying the relationship between age and employment. 29 U.S.C. § 621(b). The 1967 Act protected only private sector employees between the ages of 40 and 65. 29 U.S.C. § 631 (amended 1978). The 1974 amendment to the ADEA extended the protection of the Act to federal, state, and local government employees. Fair Labor Standards Amendments of 1974, Pub.L. No. 93-259, § 28, 88 Stat. 74 (amending 29 U.S.C. § 630).

Petition 18-1346 to USSC Certiorari denied.[10] The July 20, 2021 decision fails to address or consider the fact that DRJDG was and is highly qualified to hold the "Professor of Practice" faculty position in Accounting, Law, Taxation, Business Law, Finance, Law & Economics and Law & Policy, given the breath of his employment experiences in large, small and medium size firms.[11] DRJDG's only contractual employment relationship with NEU CPS (after he was

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[10] The issue raised on Petition for Certiorari, as stated in AARP's brief for attorney Kleber was as follows: Does the text of section 4(a)(2) of the Age Discrimination in Employment Act (ADEA) protect outside job applicants, as this Court held when interpreting language identical to section 4(a)(2) in Griggs v. Duke Power Company, 401 U.S. 424 (1971), or does section 4(a)(2) unambiguously *apply only* to incumbent employees applying for transfers and promotions, as the majority of a divided en banc Seventh Circuit held below? See Also Amtrak v. Morgan 536 U.S. 101 (2002), 122 S. Ct. 2061 (2002), the subsequent discrete acts of retaliation committed by NEU, through its issuance of a second signed employment contract with zero compensation and the additional refusal to consider filed employment applications for comparable faculty positions.

[11] The inclusion of faculty positions entitled "professor of practice" in the learned professions, such as law, medicine and accounting has been widely adopted across many Universities in recognition of the fact that pure academic research faculty do not provide the necessary breath of experiences that students need to compete in today's marketplace. In fact, Northeastern University markets and targets itself as the school of "experiential learning".(The CPA license has now grown to 150 credit course hours requirements, adopted nationally and statewide (which also satisfies national portability and reciprocity) and in most cases CPA Accounting Programs have combined a graduate M.S. degree in Taxation and/or Financial Accounting to meet the new credit requirements to qualify to sit for the CPA exam).United States Law Schools include Law clinics in the majority of programs and employ faculty who work at law firms, government agencies and the courts. In fact, a member of the appellate panel in this case was a professor of law and is currently a visiting professor of law at Harvard Law School, while serving as a federal circuit court judge.
https://www.ca1.uscourts.gov/judges
https://hls.harvard.edu/faculty/directory/10046/Barron

asked to relinquish his role as the Law and Economics faculty professor in the NEU Doctoral Law & Policy program to become the NEU CPS MTLI) for the consecutive years 2009 through 2019 consummated as the MTLI.

8) The July 20, 2021 decision is arbitrary, capricious, clearly erroneous and is unequivocal reversible non-harmless constitutional error, because it fails to address or consider the fact that the defendant altered its reasons for terminating DRJDG on three separate occasions, with wavering and conflicting reasons, [namely, 1) the scope of the job description had changed, 2) subsequently changing its position that a restructuring change had taken place, 3) subsequently changing its position that the MTLI was required to geographically reside in Boston]. The basis for removing DRJDG as the MTLI, as a proffered defense to age discrimination, alleging that NEU replaced DRJDG, as the MTLI, under a new policy rejecting remote workers in favor of a full-time residential employee is clear and indisputable pretext. Moreover, the reason stated to the EEOC Enforcement Supervisor Pino was that the scope of the position changed. (See Appendix to Petition for Rehearing PHA DOC #2 P.65). All statements proffered by the defendant through its counsel are heedless

and thoughtless fabrications, neither statement is true and they all constitute further evidence of the pretext offered by NEU. Why, because they have provided inconsistent, contradictory incoherent reasons for DRJDG's removal as the MTLI, which are refuted by the fact that the MTLI for the finance discipline, manages and oversees the CPS program remotely from New Mexico, in the identical manner performed by DRJDG.[12] Moreover, DRJDG and the NEU CPS Finance MTLI, scheduled joint on-campus faculty meetings together with the Deans of the programs on an annual basis (usually scheduled around the dates for the annual NEU CPS faculty conferences for all

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[12] See and compare Colarusso v. Fed Ex Corp.Ser. Civil Action No. 17-cv-11571-IT (D. Mass. Sep. 30, 2020) Colarusso has not "merely [] impugn[ed] the veracity of the employer's justification" but has instead "elucidate[d] specific facts which would enable a jury to find that the reason given is **not only a sham, but a sham intended to cover up the employer's real motive.**" Mesnick v. Gen. Elec. Co., 950 F.2d 816, 824 (1st Cir. 1991) (in the context of a retaliation claim under the Age Discrimination in Employment Act), with Fournier v. Massachusetts Civil Action No. 18-10865-FDS (D. Mass. Nov. 2, 2020) There is "no mechanical formula" to show pretext. Billings v. Town of Grafton, 515 F.3d 39, 55 (1st Cir. 2008) (quoting Che v. Massachusetts Bay Transp. Auth., 342 F.3d. 31, 39 (1st Cir. 2003)) (internal quotation marks omitted). But a plaintiff "must produce sufficient evidence to create a genuine issue of fact as to two points: 1) the employer's articulated reasons for its adverse actions were pretextual, and 2) the real reason for the employer's actions was [retaliatory] animus." Ray v. Ropes & Gray LLP, 799 F.3d 99, 113 (1st Cir. 2015) (quoting Mariani-Colón, 511 F.3d at 223). One method for a plaintiff to show pretext is to identify "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence, " Theidon, 948 F.3d at 497 (quoting Adamson v. Walgreens Co., 750 F.3d 73, 79 (1st Cir. 2014)). Other evidence of pretext includes "deviations from standard procedures, the sequence of occurrences leading up to a challenged decision, and close temporal

University departments) to provide uniform guidance on administering the programs, to provide uniform guidance on substantive technical course content matters and to listen to faculty offer their experiences on providing courses under the different modes of student learning (100% on-ground, blended, hybrid and 100% on-line).

9) The July 20, 2021 decision is arbitrary, capricious, clearly erroneous and is unequivocal reversible non-harmless constitutional error, because it fails to address or consider the fact that in addition to federal subject matter jurisdiction, the Federal Court possesses federal diversity jurisdiction to include pendent claims under supplemental jurisdiction to properly address NEU's willful breach of written employment contracts based on prior course of dealing,[13] the duty to exercise good faith, breach of implied covenant of good faith and fair dealing[14] and the rational reliance expectations of DRJDG given the

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proximity between relevant events." Harrington v. Aggregate Indus. Ne. Region, Inc., 668 F.3d 25, 33 (1st Cir. 2012) (citing Hodgens, 144 F.3d at 168-70).

[13] In order to prevail on a breach of contract claim under Massachusetts law, a plaintiff must show that "(1) a valid contract between the parties existed, (2) the plaintiff was ready, willing, and able to perform, (3) the defendant was in breach of the contract, and (4) the plaintiff sustained damages as a result." Bose Corp. v. Ejaz, 732 F.3d 17, 21 (1st Cir. 2013) (citing Singarella v. City of Boston, 342 Mass. 385, 387 (1961)).

[14] Under Massachusetts law, "[e]very contract implies good faith and fair dealing between the parties to it.' " Young v. Wells Fargo Bank, N.A., 717 F.3d 224, 237 (1st Cir.

eight consecutive contracts signed and executed by the parties as the MTLI subsumed under promissory estoppel. The First Circuit Court of Appeals abandoned its duty and ***failed*** to employ the "fresh eyes" standard of appellate de novo review with no deference to the decision making in the lower court.

10) The July 20, 2021, decision is arbitrary, capricious, clearly erroneous and is unequivocal reversible **non-harmless** constitutional error, and accordingly, this motion to **Stay the Mandate must be granted,** because it is overwhelmingly clear that the First Circuit

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2013) (quoting T.W. Nickerson, Inc. v. Fleet Nat. Bank, 456 Mass. 562, 569, 924 N.E.2d 696 (2010)). The implied covenant provides "that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 471, 583 N.E.2d 806 (1991). This "guarantee[s] that the parties remain faithful to the intended and agreed expectations of the parties in their performance." Uno Rests., Inc. v. Bos. Kenmore Realty Corp., 441 Mass. 376, 385, 805 N.E.2d 957 (2004). See Suzuki v. Abiomed, Inc. 253 F. Supp. 3d 342, 347 (D. Mass. 2017). To plead promissory estoppel under Massachusetts law, a plaintiff must allege that (1) the defendant "made an unambiguous promise" which he or she "should have reasonably expected to 'induce action or forbearance of a definite and substantial character'" on the part of the plaintiff; (2) the promise actually induced such action or forbearance; and (3) "injustice can be avoided only by enforcement of the promise." Suzuki v. Abiomed, Inc., 253 F. Supp. 3d 342, 351 (D. Mass. 2017) (quoting Neuhoff v. Marvin Lumber & Cedar Co., 370 F.3d 197, 203 (1st Cir. 2004);

Under Massachusetts law, to state a claim for promissory estoppel "a plaintiff must allege that (1) a promisor makes a promise which he should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, (2) the promise does induce such action or forbearance, and (3) injustice can be avoided only by enforcement of the promise." Mackenzie v. Flagstar Bank, FSB, 738 F.3d 486, 496 (1st Cir. 2013). To succeed on an estoppel theory, a plaintiff must demonstrate that that he has been induced by the conduct of another to do something different from what otherwise would have been done and that harm has resulted.

rulings and decisions on how, when and to whom the "relation back doctrine" (including equitable tolling and equitable estoppel relief) should be applied and enforced to EEOC employment discrimination filings are contradictory, confused, in conflict with prior rulings, ambiguous, arbitrary and capricious. Moreover, the First Circuit Appellate Court has expressly declared in its opinions that there are Federal Circuit conflicts in applying judicial precedent to continuing and retaliatory violations committed by an employer after receiving notice that an EEOC age discrimination claim has been filed by an employee pursuant to an employment termination, demotion or position removal[15]. The United States Supreme Court has a judicial duty and an obligation to clarify those rulings to be uniformly applied across all Federal Circuits including the First Circuit Appellate decisions, judgments and rulings in compliance with United States

[15] Clockedile v. NH Department of Corrections, 245 F.3d (1st Cir. 2001). "On balance, we think the cleanest rule is this: retaliation claims are preserved so long as the retaliation is reasonably related to and grows out of the discrimination complained of to the agency-e.g., the retaliation is for filing the agency complaint itself. **Someday the Supreme Court will bring order to this subject; until then, this is a practical resolution of a narrow but recurring problem. And, while the circuits' broader theories may diverge, this retaliation rule is a result on which the decisions generally converge, whatever the explanation given.**" See also Cir.2001: "...In the analogous area of equitable tolling under Title VII, the Supreme Court has modified one aspect of this approach by holding that "absence of prejudice is a factor to be considered in determining whether the doctrine of equitable tolling should apply once a factor that might justify tolling is identified, it is not an independent basis for invoking the

Supreme Court precedent, especially given the present pandemic economy and a perceived post-pandemic economy where remote nonresident workers employed by in-state Commonwealth or state private and public employers were, are, and must be expected to exponentially increase and the magnitude, degree and frequency of new civil rights claims including age discrimination claims are expected to multiply. The changing aging population demographics, together with the increasing probability for increased employment of remote workers (especially older workers) provides the impetus and groundwork for uniform application of procedural filings necessitating United States Supreme Court judicial review to clarify the law, not only within the Circuit, but across all the Circuits[16] to

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doctrine..." Baldwin County Welcome Center v. Brown, 466 U.S. 147, 152, 104 S.Ct. 1723, 1726, 80 L.Ed.2d 196 (1984) (Per Curiam)..

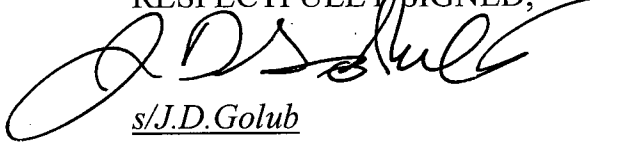
[16] See Reeves v. Sanderson Plumbing Prods., Inc. 530 U.S. 133 (2000): A plaintiff's prima facie case of discrimination (as defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, and subsequent decisions), combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, may be adequate to sustain a finding of liability for intentional discrimination under the ADEA. In this case, Reeves established a prima facie case and made a substantial showing that respondent's legitimate, nondiscriminatory explanation, i.e., his shoddy recordkeeping, was false. citing *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610, 113 S.Ct. 1701, 123 L.Ed.2d 338 (1993) and *Biggins v. The Hazen Paper Company* 111 F.3d 205 (1st Cir. 1997): "This Flying Dutchman of a case has returned to us after a first trial, a panel decision, Supreme Court review, a further panel decision, an en banc order directing a further trial on one count, and then a second trial, followed now by the instant appeal. We hope that this opinion will bring the matter to a close, for a decade of litigation about a single, narrow event is enough. Note: the conflicting reasons for removing DRJDG as the MTLI proffered by defendant Northeastern University to the

eradicate equal protection, substantive and procedural due process constitutional violations;

REMEDIES AND RELIEF

Under penalties of perjury the aforementioned assertions, statements of facts and all evidence and statements placed on the lower court and appellate court records are true and correct. Accordingly, the motion to stay the mandate and grant the petitioner until May 31, 2022 to perfect and file the U.S. Supreme Court Petition for Writ of Certiorari should and must be granted, because every ***FUTURE*** filing with the Federal E.E.O.C. agency charged with EFFICIENTLY, PROMPTLY, AND TIMELY responding to filers and processing their charges under its duty of carrying out the Employment Discrimination Statutory laws is at stake and will be impacted and affected by the decision in this case.

RESPECTFULLY SIGNED,



s/J.D.Golub

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Federal Courts does not provide a rational legitimate basis or grounds for termination to overcome age discrimination."