

IN THE SUPREME COURT OF THE UNITED STATES

No.: Fifth Circuit Case Number

ONUYOM UKPONG

v.

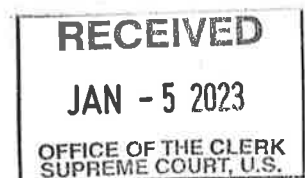
INTERNATIONAL LEADERSHIP OF TEXAS, AND
KAREN MARX, INDIVIDUALLY AND IN HER OFFICIAL
CAPACITY AS PRINCIPAL, DEFENDANTS, JOINTLY
AND SEVERALLY

USDC No. 3:19-CV-218

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FOR THE FIFTH CIRCUIT

To the Honorable Samuel A. Alito, Jr., Justice of the United States Supreme
Court:

Pursuant to Rule 13.5 and 30.2 of this court, I, Onoyom G. Ukpong, the
applicant, humbly request a 53-day extension of time, to and together with March 4,
2023, within which to file a petition for a writ of certiorari for this court to review
the judgement of the United States Court of Appeals for the Fifth Circuit in this
case. Especially as inability to find a proper legal representative to file petition is
worsened by this holiday season office closures. The Fifth Circuit entered its
decision on October 12, 2022 (see APP. 001, 11pp.). (See APP. 002, District Court
decision, 4pp.). The applicant also request stay of the Fifth Circuit's decision; pleads:



unless extended, the time allowed for filing a petition will expire on January 10, 2023. The jurisdiction of this court would be invoked under 28 U.S.C. 1254 (1).

1. This case presents the questions: a) whether the Fifth Circuit having granted summary judgement erroneously to the corporate defendants (ILTexas) in this case on the “sovereign immunity” ground and/or the “time-bar” ground violates the applicant’s rights under Title VII of the Civil Rights Act as amended. The applicant is member of a protected class; b) whether, given the disclosure of its identity by self on its website as an organization (ILTexas.org) (during the period at issue), ILTexas qualified as a governmental entity to the extent the lower courts decided it was immune from suit, even clearly in the absence of applicable law; c) whether the Fifth Circuit admittance of and decision on misapplied ILTexas “sovereign immunity” assertion violates the Fourteenth Amendment: Title VII of the Civil Rights Act of 1964 SEC. 2000e-7. [Section 708]. Holding that “Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.” And the question whether the purported immunity violates the applicant’s right under the Act, as amended.

2. This case also presents the question whether the ILTexas “time-barred” assertion, that the Fifth Circuit adopted, violates the applicant’s due

process rights under the Fourteenth Amendment. Considering the fact that he filed on time.

In its judgement, the Fifth Circuit held, erroneously, that the applicant's § 1981 and Title VII claims were "time-barred". The EEOC Notice of Right to Sue allowed the applicant 90 days from July 6, 2018 and he filed suit on in the United States District Courts Eastern District of Texas, Sherman Division (Sherman) on October 04, 2018 , using the EEOC Notice of Right to Sue (on the 86th day, following his receipt of EEOC Notice of Right to Sue dated July 10, 2018 (see APP. 003, EEOC Notice), see APP. 004, Sherman Civil Docket For Case #: 4:18-cv-00699-ALM-CAN, 2pp.; APP. 005 case entry sheet, 4pp.; see APP. 006, proof of service, 2pp.[cert. and certified mail receipt]).

The applicant filed notice to withdraw and withdrew his lawsuit from the Sherman on November 12, 2018 (see APP. 007, case withdrawal notice) after filing his Title VII lawsuit in state court on November 5, 2018 using TWC Notice of Right to Sue (dated October 10, 2018 and received October 15, 2018) that allowed him 60 days beginning October 15, 2018 to file suit (see APP. 008. Notice). Sherman gave ILTexas ten (10) days from November 12, 2018 to respond to applicant's notice of case withdrawal, but the ILTexas failed to respond. Sherman granted the Notice (see APP. 009, Sherman Order).

The applicant argued that both suits he filed in federal and state courts were not "time-barred". In that he received the TWC Right to Sue Notice on Monday October 15, 2018, and duly filed lawsuit on November 5. 2022 (22 days following

receipt of Notice). December 14, 2018 was the 60th day and last day for filing of suit in state court, and the applicant filed on time.” (see APP. 010, Civil Case Sheet proof of early filing).

If time is not extended the questioned unconstitutional “time-barred” ground of summary judgement would become a precedent that would adversely affect future timely-filed lawsuits and/or even foreclose against United States citizens’ due process rights under the Fourteenth Amendment.

In their motion for summary judgement, ILTexas advanced, albeit unconstitutionally, the following reasons for terminating the applicant: a) “concerns with instruction & student management”, b) “numerous student incidents & complaints”. His evidence on record include, but is not limited to, material facts in the applicant’s response to motion for summary judgement, notably the violation of his due process rights by ILTexas, and showing that during the period at issue, ILTexas was not a governmental but a corporate entity, in his Declaration, in a specific transcript of deposition of him by ILTexas that is currently on record but absent his signature that could have verified content accuracy, and in evaluations of the applicant’s instruction by four of ILTexas’s administrators attesting to his excellent instructional & student management skills. The Fifth Circuit adopted the foregoing ILTexas assertions unmindful of the preponderance of evidence on record showing otherwise. In this case, the applicant contended that the said adoption violated his constitutional due process rights.

In his response to motion for summary judgement, the applicant argued in relevant part that the Eddie Conger Declaration belies ILTexas' assertion of "right" of sovereign immunity: "ILTexas is tuition-free and is operated by a private", emphasis added, "tax-exempt nonprofit under contract—the charter—with the Commissioner of Education" (see Declaration Conger, p.2, on record). The applicant argued that a private nonprofit (ILTexas) was not a governmental entity.

Unless this application is granted, ILTexas will circumvent the law, the consequences would be severe and with constitutional violation repercussions; in which they will have set or caused the setting of a precedent that a corporate defendant is immune to lawsuit.

The ILTexas "sovereign immunity" and "time-barred" grounds for summary judgement, which the court of appeals adopted, are nowhere near compelling enough to provide a basis for the granting of summary judgement—particularly in the face of a clear absence of applicable law to warrant the granting of summary judgement. The certiorari based on circuit conflicts on an undeniably important question of constitutional law.

The applicant respectfully requests a 53-day extension of time, to and including March 4, 2023, within which to prepare and file a petition for a writ of certiorari. This case presents complex issues concerning the Fourteenth Amendment.

Note: The next page number six of this application is the courtesy statement and signature page only.

Respectfully submitted.

A handwritten signature in blue ink, appearing to read 'Onoyom G. Ukpong', with a horizontal line extending from the end of the signature.

ONUYOM G. UKPONG, PH.D.
8401 Skillman Street, #2058
Dallas, TX 75231
682-300-6447

December 31, 2022

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

October 12, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-11111 Ukpong v. Intl Leadership of TX
USDC No. 3:19-CV-218

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that appellant pay to appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "W M Jett", written over a horizontal line.

By: _____
Whitney M. Jett, Deputy Clerk

Enclosure(s)

Mr. Jeremy Wayne Hawpe
Mr. Okon J. Usoro

21-11111 Ukpong v. Intl Leadership of TX "Unpublished Opinion" (3:19-CV-218)

From: cmecf_caseprocessing@ca5.uscourts.gov (cmecf_caseprocessing@ca5.uscourts.gov)

To: okonjuseropc@att.net

Date: Wednesday, October 12, 2022 at 10:58 AM CDT

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United States Court of Appeals for the Fifth Circuit

Notice of Docket Activity

The following transaction was entered on 10/12/2022 at 9:55:49 AM Central Daylight Time and filed on 10/12/2022

Case Name: Ukpong v. Intl Leadership of TX

Case Number: [21-11111](#)

Document(s): [Document\(s\)](#)

Docket Text:

UNPUBLISHED OPINION FILED. [21-11111 Affirmed] Judge: JEG, Judge: DRW, Judge: KDE. Mandate issue date is 11/03/2022 [21-11111] (WMJ)

Notice will be electronically mailed to:

Mr. Jeremy Wayne Hawpe: jhawpe@Littler.com, mbrogdon@littler.com

Mr. Okon J. Usoro: okonjuseropc@att.net

The following document(s) are associated with this transaction:

Document Description: Unpublished Opinion

Original Filename: 21-11111.0.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1105048708 [Date=10/12/2022] [FileNumber=9959227-0]

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Document Description: OPJDT-2 Letter

Original Filename: /opt/ACECF/live/forms/WhitneyJett_211111_9959227_MemoRePetforReh-OPJDT2_404.pdf

Electronic Document Stamp:

[STAMP acecfStamp_ID=1105048708 [Date=10/12/2022] [FileNumber=9959227-1]

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Recipients:

- [Mr. Jeremy Wayne Hawpe](#)
- [Mr. Okon J. Usoro](#)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 12, 2022

Lyle W. Cayce
Clerk

No. 21-11111

ONUYOM UKPONG, DOCTOR,

Plaintiff—Appellant,

versus

INTERNATIONAL LEADERSHIP OF TEXAS; KAREN MARX,
individually and in her official capacity as Principal,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CV-218

Before GRAVES, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Onoyom Ukpong, Ph.D., was formerly employed as an art teacher at International Leadership of Texas Garland High School (“ILTexas”), an open-enrollment charter school in Texas. After receiving multiple letters of reprimand, ILTexas terminated Dr. Ukpong’s employment. Dr. Ukpong

* 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.

No. 21-11111

sued ILTexas and its principal, Karen Marx, alleging race and national-origin discrimination and seeking damages under (1) state tort law, (2) Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and (3) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* The district court granted summary judgment to both defendants on all claims on grounds of sovereign immunity and timeliness. We AFFIRM.

I

Dr. Ukpong, a black man, is a native of Nigeria. In August 2017, he applied for and obtained employment as a high-school art teacher at ILTexas. But after receiving several reprimand letters stemming from complaints of unprofessionalism toward his students, ILTexas terminated Dr. Ukpong's employment on December 22, 2017.

On February 14, 2018, Dr. Ukpong filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging that ILTexas had discriminated against him on the basis of race and national origin in violation of Title VII. The EEOC did not take action on Dr. Ukpong's charge and issued to him a Notice of Right to Sue on July 6, 2018. The right-to-sue letter informed him of his right to file a Title VII suit within 90 days of his receipt of the EEOC notice.

Meanwhile, Dr. Ukpong also filed a discrimination complaint with the Texas Workforce Commission ("TWC"). The TWC issued to Dr. Ukpong a Notice of Complainant's Right to File Civil Action on October 10, 2018. The notice informed Dr. Ukpong of his right to bring a private civil action under the Texas Commission on Human Rights Act ("TCHRA") within 60 days of the notice.

On November 5, 2018, Dr. Ukpong sued *pro se* in Texas state court, alleging that ILTexas had discriminated and retaliated against him on the basis of race and national origin in violation of Title VII and 42 U.S.C. § 1981.

No. 21-11111

ILTexas removed the suit to the U.S. District Court for the Northern District of Texas.

After removal to federal court, Dr. Ukpogon retained counsel and filed an amended complaint, seeking money damages. He added Defendant Karen Marx, both in her individual and official capacity as the principal at ILTexas. His amended complaint asserts three categories of claims against both defendants: (1) state-law tort claims for vicarious liability, negligence, negligent hiring, and intentional infliction of emotional distress; (2) claims under 42 U.S.C. § 1981 for race discrimination, hostile work environment, retaliation, and disparate treatment; and (3) claims under Title VII for race discrimination, harassment, disparate treatment, and hostile work environment. He did not, however, assert any claims under the TCHRA.

In October 2021, the district court granted summary judgment to both defendants on all claims. *Ukpogon v. Int'l Leadership of Tex.*, No. 3:19-CV-00218-E, 2021 WL 4991077 (N.D. Tex. Oct. 27, 2021). First, the district court held that Dr. Ukpogon's state-law claims were barred by sovereign immunity under Texas law because ILTexas is an open-enrollment charter school. *Id.* at *2. Second, it held that Dr. Ukpogon's § 1981 claims were barred by sovereign immunity because § 1981 does not abrogate state sovereign immunity and Texas had not waived its immunity to damages under § 1981. *Id.* Third, the court held that Dr. Ukpogon's Title VII claims were time-barred because he did not file suit within the 90-day limitations period after receiving his EEOC right-to-sue letter. *Id.* at *3.

Dr. Ukpogon timely appealed.

II

“This court reviews a grant of summary judgment *de novo*, applying the same standards as the district court.” *Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318, 323 (5th Cir. 2002) (citing *Daniels v. City of Arlington*, 246 F.3d

No. 21-11111

500, 502 (5th Cir. 2001)). “Summary judgment should be granted if there is no genuine issue of material fact for trial and the moving party is entitled to judgment as a matter of law.” *Id.* (citing FED. R. CIV. P. 56(c)). “A genuine issue of material fact exists when there is evidence sufficient for a rational trier of fact to find for the non-moving party.” *Id.* (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)). “[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation marks omitted). Once the moving party has done so, the non-movant “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586. Instead, the non-movant “is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim.” *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (citing *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir. 1994)). “A non-movant will not avoid summary judgment by presenting ‘speculation, improbable inferences, or unsubstantiated assertions.’” *Jones v. United States*, 936 F.3d 318, 321 (5th Cir. 2019) (quoting *Lawrence v. Fed. Home Loan Mortg. Corp.*, 808 F.3d 670, 673 (5th Cir. 2015)).

III

On appeal, we consider three of Dr. Ukpong’s challenges to the district court’s ruling, which correspond to the district court’s grouping of his claims into three groups: state-law tort claims, § 1981 claims, and Title VII claims. We do not consider Dr. Ukpong’s argument, raised for the first time on appeal, that the Texas Constitution permits him to sue the defendants notwithstanding their immunity. *See Celanese Corp. v. Martin K.*

No. 21-11111

Eby Constr. Co., 620 F.3d 529, 531 (5th Cir. 2010) (observing the general rule that arguments not raised before the district court are forfeited).

A

Dr. Ukpong first argues that Defendants are not entitled to sovereign immunity against his state-law tort claims because, he contends, ILTexas is not an open-enrollment charter school, and, even if it were, open-enrollment charter schools are not entitled to sovereign immunity.

Dr. Ukpong's position, however, is incorrect on both counts. Taking the two points in reverse order, Texas law is clear that open-enrollment charter schools and their employees are generally entitled to immunity from suit and liability. *See* TEX. EDUC. CODE ANN. § 12.1056(a); *El Paso Educ. Initiative, Inc. v. Amex Props., LLC*, 602 S.W.3d 521, 526–30 (Tex. 2020). And as the district court noted, there is no genuine dispute that ILTexas is an open-enrollment charter school. In reaching its conclusion, the court properly relied on the declaration of Edward G. Conger, the district superintendent and chief executive officer of ILTexas's campuses in Texas, *see* FED. R. CIV. P. 56(c)(1) (declarations may support a summary-judgment motion), as well as the Texas Education Agency's website, which lists ILTexas as an open-enrollment charter school, *see Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005) (permitting judicial notice of agency website). Dr. Ukpong does not cite any record evidence to the contrary.

We therefore agree with the district court that the defendants are entitled to sovereign immunity on Dr. Ukpong's state-law tort claims. Because Texas has not waived its immunity for the types of tort claims Dr. Ukpong has asserted against the defendants, *see* TEX. CIV. PRAC. & REM. CODE ANN. § 101.021, we affirm the grant of summary judgment in the defendants' favor on these claims.

No. 21-11111

B

We reach a similar conclusion with respect to Dr. Ukpong's federal claims under 42 U.S.C. § 1981. The district court correctly noted that § 1981 does not abrogate state sovereign immunity. *Sessions v. Rusk State Hosp.*, 648 F.2d 1066, 1069 (5th Cir. Unit A June 1981). The court also correctly reasoned that, by removing Dr. Ukpong's case to federal court, Texas voluntarily consented to federal-court jurisdiction but not to damages, waiving its immunity to suit but not to liability. *See Meyers ex rel. Benzing v. Texas*, 410 F.3d 236, 255 (5th Cir. 2005). Because Texas has not agreed to damages liability under § 1981, the state retains its immunity against these claims.

On appeal, Dr. Ukpong does not contend that Texas waived its immunity, by removal or otherwise, and therefore he has abandoned any such challenge. *See Anderson v. Jackson State Univ.*, 675 F. App'x 461, 463 (5th Cir. 2017) (per curiam) (litigants can forfeit argument that state defendants waived immunity); *Perez*, 307 F.3d at 332 (same). We see no reason to disturb the district court's ruling.

C

Finally, Dr. Ukpong takes exception to the district court's ruling that his Title VII claims were untimely. Again, we disagree and affirm. "A civil action under Title VII must be brought within ninety days of receipt of a right-to-sue letter from the EEOC." *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992) (citing 42 U.S.C. § 2000e-5(f); *Price v. Digital Equip. Corp.*, 846 F.2d 1026, 1027 (5th Cir. 1988)). "This requirement to file a lawsuit within the ninety-day limitation period is strictly construed." *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002). "Courts within this Circuit have repeatedly dismissed cases in which the plaintiff did not file a complaint until after the ninety-day limitation period had expired." *Id.*

No. 21-11111

Here, Dr. Ukpong was issued an EEOC right-to-sue letter on July 6, 2018, but did not file suit until November 5, 2018, well outside the 90-day limitations period.

Dr. Ukpong resists this straightforward conclusion, arguing that the 90-day limitations period for his federal Title VII claims runs not from the date of the EEOC notice, as the statute provides, but from the date he received authorization from the TWC to bring a state-law claim under the TCHRA. But he cites no authority in support of his counterintuitive position. More importantly, we have previously held that EEOC right-to-sue letters are not interchangeable with TWC right-to-sue letters, acknowledging that “receipt of a TCHR[A] letter would *not* trigger the analogous EEOC ninety-day filing period.” *Vielma v. Eureka Co.*, 218 F.3d 458, 466 (5th Cir. 2000) (emphasis in original). This is because, under the terms of the statute, the EEOC letter is “the exclusive mechanism for commencing the federal filing period.” *Id.* (citing *Muth v. Cobro Corp.*, 895 F. Supp. 254, 256 (E.D. Mo. 1995)); *see* 42 U.S.C. § 2000e-5(f)(1).

Dr. Ukpong also argues, for the first time on appeal, that the lenient construction we typically afford to pro se pleadings should save his untimely filed complaint because, when he filed it in state court, he was proceeding pro se.¹ We decline to do so. “Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of vague sympathy for particular litigants.” *Baldwin Cnty. Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984). “[T]he liberal construction given to *pro se* pleadings does not mean liberal deadlines.” *Robinson v. Schafer*, 305 F. App’x 629, 630 (11th Cir. 2008) (per curiam) (internal quotation marks omitted).

¹ Although arguments not raised before the district court are forfeited, *see Celanese*, 620 F.3d at 531, we consider this argument to underscore the limits of this Court’s liberal construction of pro se pleadings.

No. 21-11111

Here, a liberal construction of Dr. Ukpong's complaint cannot bring November 5, 2018, within 90 days of July 6, 2018. Indeed, we have consistently enforced Title VII's strict deadline even against pro se litigants. *E.g., Taylor*, 296 F.3d at 380 (one day late); *Urbina v. United Parcel Serv. Inc.*, 335 F. App'x 418, 419 (5th Cir. 2009) (per curiam) (two days late).

IV

In sum, Dr. Ukpong's state-law and § 1981 claims are barred by sovereign immunity because Texas has not consented to liability for the types of claims alleged here. Dr. Ukpong's remaining claims, under Title VII, are time-barred because he did not file suit within the 90-day limitations period.

The judgment of the district court is AFFIRMED.

Ukpong v. Int'l Leadership of Tex.

Decided Oct 27, 2021

3:19-cv-00218-E

10-27-2021

DR. ONOYOM UKPONG, Plaintiff, v.
INTERNATIONAL LEADERSHIP OF TEXAS
AND KAREN MARX, INDIVIDUALLY AND
IN HER OFFICIAL CAPACITY AS PRINCIPAL
Defendants.

ADA BROWN, UNITED STATES DISTRICT
JUDGE.

MEMORANDUM OPINION AND ORDER

ADA BROWN, UNITED STATES DISTRICT
JUDGE.

The Court stayed this case pending a ruling on Defendants' Motion for Summary Judgment. The stay is now lifted. The Court has carefully considered the motion for summary judgment (Doc. 74), the response, and the reply, as well as the supporting appendices, applicable law, and any relevant portions of the record. For reasons that follow, the Court grants Defendants' motion.

Background

Plaintiff, Dr. Onoyom Ukpong, was pro se when he initiated this lawsuit in state court against Defendant International Leadership of Texas (ILT). He is now represented by counsel. ILT timely removed the case to this Court on the basis of federal question jurisdiction. After removal, Plaintiff amended his complaint and added Karen Marx as a defendant.

Plaintiff's First Amended Complaint alleges he was employed as an art teacher by ILT. ILT runs charter schools, including Garland High School, where Plaintiff worked. Defendant Marx was the Principal of Garland High School, employed in a managerial capacity by ILT, and Plaintiff's immediate supervisor. After Plaintiff's employment was terminated, he filed this action.

1 *1

He asserts claims under 42 U.S.C. § 1981 for race discrimination, hostile work environment, retaliation, and disparate treatment and claims under Title VII of the Civil Rights Act of 1964 for race discrimination, harassment, disparate treatment, and hostile work environment. Plaintiff further asserts state law claims for vicarious liability, negligence, negligent hiring, and intentional infliction of emotional distress. Defendants have moved for summary judgment on all Plaintiff's claims.

To be entitled to summary judgment, a party must show there is no genuine dispute as to any material fact and it is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a). The party moving for summary judgment bears the initial burden of informing the court of the basis for the motion and identifying the portions of the record that it believes demonstrate the absence of a genuine issue of material fact. *Meinecke v. H & R Block of Houston*, 66 F.3d 77, 81 (5th Cir. 1995). If the movant meets its burden, the burden shifts to the nonmovant to establish the existence of a genuine issue for trial. *Id.* In ruling on the summary judgment motion, this Court reviews the evidence and the inferences to be drawn therefrom

in the light most favorable to the nonmovant. *Norman v. Apache Corp.*, 19 F.3d 1017, 1021 (5th Cir. 1994).

Sovereign Immunity

First, Defendants assert sovereign or governmental immunity bars suit or liability for Plaintiff's state-law tort claims. They argue that ILT is an open-enrollment charter school and open-enrollment charter schools and their employees are immune to the same extent as a school district and its employees.

In 2011, the Texas Supreme Court held that open-enrollment charter schools are governmental units for purposes of the Texas Tort Claims Act. *LTTS Charter School, Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 82 (Tex. 2011). Thereafter the Texas Legislature amended the ² education code to expressly provide that an open-enrollment charter school is a governmental unit as defined by the tort claims act. Tex. Educ. Code Ann. § 12.1056(b). Section 12.1056 further provides that in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees of such a school are immune from liability and suit to the same extent as school district employees. *Id.* § 12.1056(a).

Defendants' summary judgment evidence includes the declaration of Edward Conger, who has worked as ILT's District Superintendent since 2013. He is the chief executive officer of ILT's campuses in Texas. The declaration states that ILT is classified as an open-enrollment charter school by the Texas Education Agency (TEA). The ILT Garland High School location is an open-enrollment charter school. Admission and enrollment is open to persons who reside within the geographic boundaries set out in the school's charter. For a student to be admitted, the parent must follow established guidelines for the admission and lottery process. ILT is accountable

to the State of Texas through oversight of its charter and the receipt of substantial public funding.

Defendants also ask the Court to take judicial notice of the TEA's website. ILT Garland High School is on the TEA's list of open-enrollment charter schools. *See* <https://pryor.tea.state.tx.us/Charter/Forms/ReportViewerPublic.aspx?reportid=rptcertaingrade.rpt>. It is appropriate for the Court to take judicial notice of information posted on a government website. *See Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005); *see also* Fed. R. Evid. 201(d) (court may take judicial notice at any stage of proceeding).

Plaintiff does not dispute that open-enrollment charter schools are entitled to sovereign immunity. He contends Defendants cannot prove ILT is an open-enrollment charter school. Without citation to authority, Plaintiff asserts Conger's declaration is not definite proof because ³ Conger is an employee. Citing ILT's website, Plaintiff argues that ILT's procedures for admission suggest it is not an open-enrollment school. Plaintiff also cites the fact that ILT is a corporation, not a governmental entity. The Court does not find this argument persuasive as open-enrollment charters are typically held and run by non-profit corporations. *See Honors Academy, Inc. v. Tex. Educ. Agency*, 555 S.W.3d 54, 57 (Tex. 2018).

The Court concludes Defendants have established that ILT is an open-enrollment charter school. Plaintiff has failed to produce evidence raising a genuine issue of material fact on this issue. Accordingly, Defendants are immune from suit as to Plaintiff's state-law tort claims.

Defendants also contend they are entitled to summary judgment on Plaintiff's § 1981 claims under the doctrine of Eleventh Amendment sovereign immunity. They argue that because ILT is an open-enrollment charter school, it and its employees are entitled to the protections of

sovereign immunity as to the § 1981 claims, unless that immunity has been waived by the State of Texas or abrogated by Congress.

The Eleventh Amendment provides that the “judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state.” U.S. Const. amend. XI. The reference to actions “against one of the United States” encompasses not only actions in which a State is actually named as a defendant, but also certain actions against state agents and state instrumentalities. *Southwestern Bell Tel. Co. v. City of El Paso*, 243 F.3d 936, 937 (5th Cir. 2001). In federal courts, § 1981 claims against a state entity are barred by the Eleventh Amendment. *Muhammad v. Dallas Cty. Cmty. Supervision & Corr. Dep’t*, No. 3:03-CV-1726-M, 2007 WL 2457615, at *3 (N.D. Tex. Aug. 30, 2007). Section 1981 does not waive a state's Eleventh Amendment immunity. *Sessions v. Rusk State Hosp.*, 648 F.2d 1066, 1069 (5th Cir. 1981). *4

Plaintiff argues that Defendants cannot claim immunity from liability because ILT removed the case from state court. Plaintiff also states, “To be sure, the Defendants have not filed an Answer in this case, and the Motion for Summary Judgment following the denial of its Motion to Dismiss, is the first time it has asserted immunity.” These arguments lack merit. When ILT removed the case to federal court, it voluntarily invoked the court's jurisdiction and waived its immunity from *suit* in federal court. See *Meyers ex rel. Benzing v. Tex.*, 410 F.3d 236, 255 (5th Cir. 2005). A state defendant may continue to assert immunity from *liability* even after removal to federal court. *Cephus v. Tex. Health & Human Servs. Comm’n*, 146 F.Supp.3d 818, 828-29 & n.3 (S.D. Tex. Nov. 19, 2015) (citing *Meyers*, 410 F.3d at 255). In addition, contrary to Plaintiff's assertion, Defendants did answer the amended complaint and their answer lists the doctrine of sovereign and/or governmental immunity as an affirmative

defense. The Court concludes Defendants are entitled to summary judgment on Plaintiff's § 1981 claims.

Title VII Claims

Next, the Court addresses Plaintiff's Title VII claims. Defendants have moved for summary judgment on these claims on grounds that they are time barred. A civil action under Title VII must be brought within 90 days of receipt of a right-to-sue letter from the Equal Employment Opportunity Commission (EEOC). *Wright v. Arlington Indep. Sch. Dist.*, 834 Fed. App'x 897, 901 (5th Cir. 2020); *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992); see 42 U.S.C. § 2000e-5(f). Defendants contend Plaintiff did not file suit within that time frame.

Plaintiff's amended complaint alleges he exhausted his administrative remedies and “has been issued a “Right to Sue.” As Plaintiff acknowledges in his response to the summary judgment motion, the EEOC issued Plaintiff a right-to-sue letter on July 6, 2018. Plaintiff filed this action in state court on November 5, 2018, more than 90 days after the letter was issued. He contends *5 this action is timely because he filed it within 60 days of receiving an October 10, 2018 right-to-sue letter from the Texas Workforce Commission (TWC).

Defendants maintain that Plaintiff cannot rely on the TWC letter because it provided authority to file Texas Commission on Human Rights Act (TCHRA) claims only. The Court agrees. The letters are not interchangeable. The Fifth Circuit has stated that receipt of a TWC letter does not trigger the EEOC ninety-day filing period. See *Vielma v. Eureka Co.*, 218 F.3d 458, 466-67 (5th Cir. 2000). “Receipt of the federal letter appears to be the exclusive mechanism for commencing the federal filing period.” *Id.* at 466. As Plaintiff did not file his lawsuit within 90 days of receiving the EEOC right-to-sue letter, the Court concludes that Plaintiff's Title VII claims are untimely as a matter of law.

In addition, Defendant Marx asserts she is entitled to summary judgment on Plaintiffs Title VII claims because individuals are not liable under Title VII. Plaintiff responds that Marx “cannot escape liability in her individual capacity.” The Court agrees with Marx. “Individuals are not liable under Title VII in either their individual or official capacities.” *Ackel v. Nat'l Commc'ns, Inc.*, 339 F.3d 376, 381 n.1 (5th Cir. 2003). Defendants are entitled to summary judgment on Plaintiffs Title VII claims.

In sum, the Court has concluded that Defendants are entitled to summary judgment on all of Plaintiff s claims. Plaintiff has a pending motion for referral to a magistrate judge for mediation (Doc. 94). The Court **denies** that motion as moot in light of the Court's decision that Defendants are entitled to summary judgment on all of Plaintiff s claims.

6 **SO ORDERED.** *6

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Onyiah Okong
659 Junction Dr
Apt # E - 208
Allen, TX 75012

From: Dallas District Office
207 S. Houston St
3rd Floor
Dallas, TX 75202

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1607.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

450-2018-02715

Juan F. Munoz,
Intake Supervisor

(214) 253-2774

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA). This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **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.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required). EPA suits must be brought 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.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

for 
Belinda F. McCallister,
District Director

07/06/2018

(Date Mailed)

Enclosure(s)

cc: Letter Mendelson, P.C. - GSC (LCS)
Allison Day
RE: INTERNATIONAL LEADERSHIP OF TEXAS
2301 McGee Street, 8th Floor
Kansas City, MO 64108

Kerthana Queenan
KOLGORE & KILGORE PLLC
3108 Carlisle Street
Dallas, TX 75204

JURY,PROSE

**U.S. District Court
Eastern District of TEXAS [LIVE] (Sherman)
CIVIL DOCKET FOR CASE #: 4:18-cv-00699-ALM-CAN**

Ukpong v. International Leadership of Texas
Assigned to: District Judge Amos L. Mazzant, III
Referred to: Magistrate Judge Christine A. Nowak
Cause: 42:1981 Job Discrimination (Race)

Date Filed: 10/04/2018
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff**Dr. Onoyom Ukpong**

represented by **Onoyom Ukpong**
659 Junction Drive
Apt. E208
Allen, TX 75013
PRO SE

V.

Defendant**International Leadership of Texas**

represented by **James Allen Frederick**
Little Mendelson, P.C. - Dallas
2001 Ross Ave
Suite 1500, Lock Box 116
Dallas, TX 75201-2931
214-880-8186
Fax: 214-880-0181
Email: jfrederick@littler.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Saba H Alvi
Little Mendelson, P.C. - Dallas
2001 Ross Ave
Suite 1500, Lock Box 116
Dallas, TX 75201-2931
214-880-8197
Fax: 214-880-0181
Email: salvi@littler.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/04/2018	<u>1</u>	COMPLAINT against International Leadership of Texas, filed by Onoyom Ukpong. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(rpc,) (Additional attachment(s) added on 10/4/2018: # <u>3</u> Civil Cover Sheet) (rpc,). (Entered: 10/04/2018)
10/04/2018	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Onoyom Ukpong. (rpc,) (Entered: 10/04/2018)
10/04/2018		Case Assigned to District Judge Amos L. Mazzant, III and Magistrate Judge Christine A. Nowak. (rpc,) (Entered: 10/04/2018)
10/04/2018		In accordance with the provisions of 28 USC Section 636(c), you are hereby notified that a U.S. Magistrate Judge of this district court is available to conduct any or all proceedings in this case including a jury or non-jury trial and to order the entry of a final judgment. The form <u>Consent to Proceed Before Magistrate Judge</u> is available on our website. All signed consent forms, excluding pro se parties, should be filed electronically using the event <i>Notice Regarding Consent to Proceed Before Magistrate Judge</i> . **Pro Se packet handed to Plaintiff in clerk's office. (rpc,) (Entered: 10/04/2018)

10/04/2018	<u>3</u>	ORDER granting <u>2</u> Motion for Leave to Proceed in forma pauperis. Plaintiff shall prepare service of process on the Defendant. It is further ORDERED that the Clerk of the Court shall issue process and the United States Marshal shall serve process upon the Defendant within thirty (30) days of receiving completed process from the Clerk of the Court. Signed by Magistrate Judge Christine A. Nowak on 10/4/2018. (rpc,) (Entered: 10/04/2018)
10/04/2018	<u>4</u>	SUMMONS Issued as to International Leadership of Texas and forwarded along with the USM-285 to the US Marshal for service. (rpc,) (Entered: 10/04/2018)
10/24/2018	<u>5</u>	SUMMONS Returned Executed International Leadership of Texas served on 10/15/2018, answer due 11/5/2018. (daj,) (Entered: 10/25/2018)
10/31/2018	<u>6</u>	<i>Defendant's Original</i> ANSWER to <u>1</u> Complaint by International Leadership of Texas.(Frederick, James) (Entered: 10/31/2018)
11/01/2018	<u>7</u>	ORDER GOVERNING PROCEEDINGS. Rule 16 Management Conference set for 12/20/2018 at 1:30 PM in Ctrm A01 (Sherman - Annex) before Magistrate Judge Christine A. Nowak. Rule 26 Meeting Joint Report due by 12/5/2018. Signed by Magistrate Judge Christine A. Nowak on 11/1/2018. (baf,) (Entered: 11/01/2018)
11/01/2018	<u>8</u>	CORPORATE DISCLOSURE STATEMENT filed by International Leadership of Texas (Alvi, Saba) (Entered: 11/01/2018)
11/01/2018		In accordance with the provisions of 28 USC Section 636(c), you are hereby notified that a U.S. Magistrate Judge of this district court is available to conduct any or all proceedings in this case including a jury or non-jury trial and to order the entry of a final judgment. The form <u>Consent to Proceed Before Magistrate Judge</u> is available on our website. All signed consent forms, excluding pro se parties, should be filed electronically using the event <i>Notice Regarding Consent to Proceed Before Magistrate Judge</i> . (baf,) (Entered: 11/01/2018)

UNITED STATES DISTRICT COURTS
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED

OCT 04 2013

Clerk, U.S. District Court
Sherman, Texas

DR. ONOYOM UKPONG

Case Number: _____

Name of Plaintiff(s)

vs

INTERNATIONAL LEADERSHIP OF TEXAS

Name of Defendant(s)

COMPLAINT UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Note: If plaintiff is alleging employment discrimination based on race or color, please also see 42:U.S.C. 1981

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is specifically conferred on the court by 42 U.S.C. 2000e-5. Equitable and other relief are also sought under 42 U.S.C. 2000e-5(g).

- 2.. Plaintiff, DR. ONOYOM UKPONG, is a citizen of the United States
(name of plaintiff)

and resides at 659 JUNCTION DR. #E208, ALLEN,
(street address) (city)

COLLIN, TEXAS, 75013, 682-300-6447
(county) (state) (zip) (telephone)

INTERNATIONAL LEADERSHIP OF TEXAS

3.. Defendant, INTERNATIONAL LEADERSHIP OF TEXAS, resides at, or its business is
(name of defendant)

located at 1820 N. GREENVILLE AVE #100 RICHARDSON
(street address) (city)

DALLAS TEXAS 75081 972-479-9078
(county) (state) (zip) (telephone)

4. Plaintiff sought employment from the defendant or was employed by the defendant

at GARLAND HIGH SCHOOL
(street address) (city)

DALLAS TEXAS
(county) (state) (zip)

5. Defendant discriminated against plaintiff in the manner indicated in paragraphs 9 and 10

of the complaint on or about DECEMBER 22, 2017
(month, day, year)

6. Plaintiff filed charges against the defendant with the Equal Employment Opportunity Commission charging defendant with the acts of discrimination indicated in paragraphs 9 and 10 of this complaint on or about

FEBRUARY 13, 2018
(month, day, year)

7. The Equal Employment Commission issued a Notice of Right to Sue which was received by plaintiff on

JULY 10, 2018
(month day, year)

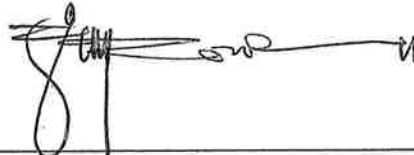
10. The acts set forth in paragraph 9 of this complaint:

- a. are still being committed by defendant.
- b. are no longer being committed by defendant.
- c. defendant may still be committing the acts.

11. Plaintiff attaches to this complaint a copy of the charges filed with the Equal Employment Opportunity Commission which charges are submitted as a brief statement of the facts supporting this complaint. WHEREFORE, Plaintiff prays that the Court grant the following relief to the plaintiff:

- a. Defendant be directed to employ plaintiff.
- b. Defendant be directed to re-employ plaintiff.
- c. Defendant be directed to promote plaintiff.
- d. Defendant be directed to _____ and that the

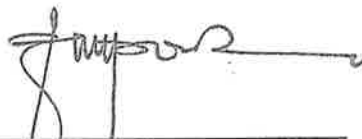
Court grant such relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.



(Signature of Plaintiff)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded by first class mail [or, delivered in person, or certified mail] to each attorney/party of record on this date: NOVEMBER 13, 2018



Signature of Party

Print Name/Address/Phone Number:

ONUYOM UKPONG
659 JUNCTION DR
APT. E208
ALLEN, TX 75013

Please list all parties/addresses to be served:

JAMES ALLEN FREDERICK

SABA H. ALVI

LITTLER MENDELSON, P.C. - DALLAS

2001 ROSS AVE

SUITE 1500, LOCK BOX 116

DALLAS, TX 75201-2931

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SABA H. ALVI
Street and Apt. No., or PO Box No.
2661 ROSS AVE, SUITE 1500
City, State, ZIP+4®
DALLAS, TX 75201

PS Form 3800, April 2010 ISBN 7530-02-000-0047 See Reverse for Instructions

7018 2290 0001 1709 8665

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

November 12, 2018

To: Judge Amos L. Mazzant
United States District Court
Eastern District of Texas
7940 Preston Road
Plano, Texas 75024

In the Matter of:

4:18-CV-699

ONUYOM UKPONG,
Plaintiff,

Vs.

INTERNATIONAL LEADERSHIP OF TEXAS,
Defendant,

Dear Judge Mazzant:

Notice of Case Withdrawal

I, Onoyom Ukpog, the Plaintiff, submit, humbly, this notice of withdrawal of the Civil Action no. 4: 18-CV-699 filed in the United States District Court, Eastern District of Texas, Sherman Division, Plano Texas, on October 4, 2018. Reason: I prefer filing and have filed a similar lawsuit that is pending at H-160th Judicial District Court of Dallas County cause-numbered DC 18-16636.

Thank you in anticipation of your Honor's attention to and approval of this notice.

Respectfully,



Onoyom Ukpog, Ph.D.

Judge Amos L. Mazzant
UNITED STATE MAGISTRATE JUDGE

Texas Workforce Commission

A Member of Texas Workforce Solutions

Ruth R. Hughs, Chair
Commissioner Representing
Employers

Julian Alvarez
Commissioner Representing
Labor

Vacant
Commissioner Representing
the Public

Larry E. Temple
Executive Director

October 10, 2018

NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION

Onoyom Ukpong
c/o Kershena Queenan
Kilgore & Kilgore PLLC
3109 Carlisle Street
Dallas, TX 75204

Re: ***Onoyom Ukpong v. International Leadership of Texas***
EEOC Complaint # 450-2018-02715


Dear Onoyom Ukpong:

The above-referenced case was processed by the United States Equal Employment Opportunity Commission or a local agency. Pursuant to Sections 21.252 and 21.254 of the Texas Labor Code, this notice is to advise you of your right to bring a private civil action in state court in the above-referenced case. **YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION.**

If your case has been successfully resolved by the U. S. Equal Employment Opportunity Commission or another agency through a voluntary settlement or conciliation agreement, you may be prohibited by the terms of such an agreement from filing a private civil action in state court pursuant to the Texas Commission on Human Rights Act, as amended.

The United States Supreme Court has held in *Kremer v. Chemical Construction Corporation*, 456 U.S. 461 (1982), that a federal district court must generally dismiss a Title VII action involving the same parties and raising the same issues as those raised in a prior state court action under Chapter 21 of the Texas Labor Code. Therefore, filing a lawsuit in state court based on the issuance of this notice of right to file a civil action may prevent you from filing a lawsuit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e - et seq.

Sincerely,



Lowell A. Keig
Director, Civil Rights Division

RETAIN ENVELOPE TO VERIFY DATE RECEIVED

Copy to:
International Leadership of Texas
c/o: Allison Day
Littler Mendelson, P.C.
2301 McGee Street, 8th Floor
Kansas City, MO 64108

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DR. ONOYOM UKPONG,

Plaintiff,

v.

INTERNATIONAL LEADERSHIP OF
TEXAS,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:18-CV-00699-ALM-
CAN

ORDER

On November 13, 2018, Plaintiff filed a Notice of Case Withdrawal, seeking to voluntarily dismiss the instant case. Defendant shall file a response to Plaintiff’s Notice of Case Withdrawal within ten (10) days of this Order. Any response should include Defendant’s position, supported by applicable authority.

IT IS SO ORDERED.

SIGNED this 13th day of November, 2018.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dr. Onoyom Ukpong

(b) County of Residence of First Listed Plaintiff Collin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Pro Se

DEFENDANTS

International Leadership of Texas

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- 1 U.S. Government Plaintiff
- 3 Federal Question *(U.S. Government Not a Party)*
- 2 U.S. Government Defendant
- 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42:1981

Brief description of cause:
Job discrimination

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE: 10/04/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

IN THE SUPREME COURT OF THE UNITED STATES

No. Fifth Circuit Case Number
ONUYOM UKPONG

v.

INTERNATIONAL LEADERSHIP OF TEXAS, AND
KAREN MARX, INDIVIDUALLY AND IN HER OFFICIAL
CAPACITY AS PRINCIPAL, DEFENDANTS, JOINTLY
AND SEVERALLY
USDC No. 3:19-CV-218

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FOR THE FIFTH CIRCUIT

I, Onoyom G. Ukpog, the applicant, certify that, on December 31, 2022, three copies of the application for a Writ of Certiorari in the above-captioned case were sent, by a certified mail, U.S. Postal Service and by electronic mail, to the following counsel:

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I further certify that all parties required to be served have been served.



Onoyom G. Ukpog, Ph.D.

IN THE SUPREME COURT OF THE UNITED STATES

No. Fifth Circuit Case Number

ONUYOM UKPONG

v.

INTERNATIONAL LEADERSHIP OF TEXAS, AND
KAREN MARX, INDIVIDUALLY AND IN HER OFFICIAL
CAPACITY AS PRINCIPAL, DEFENDANTS, JOINTLY
AND SEVERALLY

USDC No. 3:19-CV-218

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FOR THE FIFTH CIRCUIT

I, Onoyom G. Ukpog, the applicant, certify that the application for a writ of certiorari in the above-captioned case contains less than 1,190 words, excluding the portions that are exempted by Rule 33.1(d).



Onoyom G. Ukpog, Ph.D.

December, 31, 2022