IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MIGUEL A. CONTRERAS, et al.

Plaintiffs,

Civil Action No. 02 CV00923 (JR)

VS.

THOMAS RIDGE, et al.
SECRETARY,
DEPARTMENT OF HOMELAND
SECURITY

Defendant.

CLASS ACTION

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' PATTERN OR PRACTICE CLAIMS

Plaintiffs Miguel Contreras <u>et al.</u>, by counsel, respectfully submit their Opposition to Defendants' Motion for Summary Judgment on Plaintiffs' Pattern or Practice Claims.

Plaintiffs oppose Defendants' summary judgment motion for the reasons set forth in Plaintiffs Memorandum in Opposition to Defendants' Motion.

As an initial matter, Defendants are unable to meet their burden of production by showing the absence of any genuine issue of material fact with respect to the pattern and practice discrimination claims. As admitted by the Defendant's 30(b)(6) deposition witnesses and expert witnesses, the databases Defendant relied upon to develop its "statistical analysis" are deficient. Therefore, Defendants' statistical conclusions lack foundation and cannot support summary judgment. In addition, Defendants' own internal reports and documents contain admissions of discrimination which by themselves are sufficient to defeat Defendant's motion. Even if the deficiencies presented in Defendants' statistical analyses are ignored, Plaintiffs have presented sufficient proof through declarations and deposition testimony to show material disputed issues of fact sufficient to defeat summary judgment.

Case 1:02-cv-00923-JR Document 103 Filed 04/05/05 Page 2 of 3

In addition, Plaintiffs have responded under Fed. R. Civ. P. 56(f) and are entitled to full

discovery before responding to Defendants' motion with their own cumulation of statistical and

anecdotal evidence.

Furthermore, Plaintiffs assert that class-wide treatment of their pattern and practice

retaliation claims is proper under Rule 23. Customs' internal reports from 1995 and 2003 amply

demonstrate through both statistical and anecdotal evidence that the retaliation is systematic and

pervasive, not individual or isolated. Under such circumstances, class treatment of Plaintiffs'

retaliation claims is both warranted and necessary if Title VII is to fulfill its remedial purposes.

Plaintiffs apologize to the Court for the delay in responding to Defendants' summary

judgment motion, but the time was necessary to (1) for Plaintiffs' experts to analyze Dr. Siskin's

report and deal with the severe deficiencies in the databases; (2) analyze the numerous complex

legal and factual issues in Defendants' Motion and (3) the intervening holidays.

The evidence conclusively demonstrates that there exists numerous disputed issues of

material fact, sufficient to deny summary judgment or, in the alternative, the need for Plaintiffs

to take additional discovery to prepare a full response on the merits under Fed. R. Civ. P. 56(f).

For these reasons, Plaintiffs oppose Defendants' Motion.

Respectfully submitted,

David J. Shaffer (DC Bar #413484) Ronald A. Schmidt (DC Bar #465129)

GARVEY SCHUBERT BARER

1000 Potomac Street, NW, Suite 500

Washington, DC 20007

Telephone: (202) 965-7880

Date April 5, 2005

Facsimile: (202) 965-1729

DC_DOCS:634931.1 [21592-00100]

04/5/05 1:05 PM