No. 03-1433

In the Supreme Court of the United States

ROBERT W. RANN, PETITIONER

v.

ELAINE L. CHAO, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly read the plain language of the Equal Employment Opportunity Commission's regulations to require alleged victims of discrimination to file a notice of intent to sue directly with the Commission when they intend to forego the administrative grievance process.

2. Whether the court of appeals correctly determined that petitioner was not entitled to bring a suit to challenge the results of the administrative grievance process because he failed to respond to agency requests for information and therefore did not exhaust his administrative remedies.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 346 F.3d 192. The opinion of the district court (Pet. App. 14a-24a) granting the respondent's motion for summary judgment is reported at 154 F. Supp. 2d 61. The opinion of the district court (Pet. App. 27a-43a) denying petitioner's motion for reconsideration is reported at 209 F. Supp. 2d 75.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 2003. A petition for rehearing was denied on January 6, 2004 (Pet. App. 25a). The petition for a writ of certiorari was filed on April 5, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Robert Rann has been an employee of the United States Department of Labor since 1970. Pet. App. 16a. In November 1997, petitioner, then age 64, applied to be promoted to a higher grade from his current position of Manpower Analyst, GS-13, in the Office of Policy and Research at the Employment and Training Administration, to Manpower Analyst, GS-14. *Id.* at 2a. Petitioner interviewed for the position. According to his complaint, petitioner received a letter on March 16, 1998, informing him that he was not selected for the position. *Ibid.*; *id.* at 38a. Another employee, age 38, was selected instead. *Id.* at 16a, 38a.

Believing his non-selection for the GS-14 Manpower Analyst position was motivated by age discrimination, petitioner contacted the Department of Labor's Equal Employment Opportunity (EEO) counselor and on April 23, 1998, filed an informal complaint of age discrimination with the Department of Labor's Civil Rights Center, the agency's EEO office. Pet. App. 2a. When he met with the counselor, she told him she was unsure whether he would be able to file a civil suit while the administrative process was pending. *Id.* at 46a. While the petitioner was present, she called the Equal Employment Opportunity Commission (EEOC or Commission), where an employee incorrectly stated that petitioner could file a civil action immediately or opt out of the formal complaint process at any time. *Id.* at 46a-47a.

2. Unable to resolve the matter through informal counseling and mediation, petitioner filed a formal complaint of age discrimination with the agency's EEO office on September 15, 1998. Pet. App. 3a. In an October 7, 1998 letter, the Civil Rights Center informed

petitioner that his formal complaint was accepted for investigation. The letter advised petitioner that he was required to cooperate in the investigation by presenting a sworn affidavit answering specific questions about his case within a specified time frame and that failure to cooperate with the EEO investigation would lead to the dismissal of his complaint for failure to prosecute. *Ibid.*

Over the next six months, the EEO investigator made repeated requests for the affidavit. Pet. App. 17a. On at least one occasion, petitioner's attorney asked for additional time to respond. *Id.* at 3a. When petitioner failed to comply, the Civil Rights Center dismissed the complaint on June 7, 1999, for failure to prosecute pursuant to 29 C.F.R. 1614.107(g) (1999).[1] Pet. App. 3a; see 57 Fed. Reg. 12,634, 12,649 (1992) (promulgating 29 C.F.R. 1614.107(g)).

3. On September 2, 1999, petitioner filed suit under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, against the Secretary of Labor, seeking damages for alleged age discrimination. The Secretary moved to dismiss or, in the alternative, for summary judgment, arguing that the district court lacked subject-matter jurisdiction because petitioner had failed to exhaust his administrative remedies by not cooperating in the administrative process. Pet. App. 15a.

a. The ADEA provides two avenues for obtaining relief for federal employees seeking judicial redress for

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[1] Section 1614.107(g) requires EEO complainants to cooperate with investigators and instructs agencies to dismiss complaints where complainants fail to do so. Effective November 9, 1999, the provisions of Section 1614.107(g) were re-codified at 29 C.F.R. 1614.107(a)(7). 64 Fed. Reg. 37,644, 37,656 (1999); see 29 C.F.R. 1614.107(a)(7) (2003).

discriminatory acts by employers. First, an employee may elect to pursue administrative remedies; if the administrative route proves unsatisfactory, the employee may then file a claim in federal court once administrative remedies have been fully exhausted. 29 U.S.C. 633a(b); 29 U.S.C. 633a(c); see 29 C.F.R. 1614.201(c) (administrative remedies considered exhausted if the agency has not taken final action after 180 days). Alternatively, an employee may file suit directly in district court, but must provide the EEOC with 30 days' notice of his intent to sue and must file the notice within 180 days from when the discrimination occurred. 29 U.S.C. 633a(d); 29 C.F.R. 1614.201(a) (1999) (requiring that such notice be filed in writing with the EEOC).

b. On July 26, 2000, the district court rejected petitioner's claim that 29 U.S.C. 633a(d) permitted him to proceed in district court, stating that petitioner filed suit beyond what the court then believed to be a 180-day time limit on the initiation of ADEA suits. See Pet. App. 31a-32a.

On August 20, 2001, the district court granted the Secretary's motion to dismiss. Pet. App. 16a. The district court held it lacked subject matter jurisdiction over the complaint because petitioner failed to cooperate in the formal complaint process, thereby failing to exhaust his administrative remedies properly before filing suit. *Ibid.*

The district court held that the record indisputably demonstrated that the petitioner "knowingly and deliberately failed to comply with the EEO's formal complaint procedures." Pet. App. 22a. The district court also rejected the petitioner's contention that exhaustion of administrative remedies would have been futile. *Ibid.*

Petitioner then brought a motion asking the district court to alter or amend its judgment dismissing his complaint. The court denied the motion. Pet. App. 27a. The district court first corrected its July 26, 2000, ruling, noting that petitioner had 180 days to file notice of intent to sue, but could initiate the suit itself later. *Id.* at 32a-33a. Nevertheless, the court determined that petitioner was not entitled to proceed to court under 29 U.S.C. 633a(d) because he had failed to provide notice to the EEOC of his intent to sue. Pet. App. 33a. The regulations, the court explained, made clear that notice to the employing agency would not suffice. *Id.* at 33a-37a. Even if it did suffice, however, petitioner's notice would have been untimely because he filed his formal complaint more than 180 days after March 16, 1998, which, according to his complaint, is when he first learned of the discriminatory action. *Id.* at 37a; see 29 U.S.C. 633a(d). The court rejected petitioner's argument that he learned of his rejection ten days later because this assertion contradicted the allegations in his complaint. Pet. App. 38a. Finally, the court upheld its earlier decision that petitioner had not exhausted his administrative remedies and therefore was not entitled to file suit pursuant to 29 U.S.C. 633a(b). Pet. App. 39a-40a. Petitioner appealed.

c. The court of appeals affirmed the judgment of the district court.[2] Concluding that petitioner "in no way attempted to exhaust the administrative process," the court ruled that petitioner's failure to exhaust his administrative remedies barred him from bringing suit

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[2] Because the district court considered matters outside the record, the court of appeals treated the judgment below as a grant of summary judgment rather than dismissal under Federal Rule of Civil Procedure 12(b). Pet. App. 4a.

in district court.[3] Pet. App. 8a. The court rejected petitioner's argument that his administrative remedies should be deemed exhausted because the Civil Rights Center dismissed the administrative complaint for failure to prosecute after the close of the 180-day investigative period. *Id.* at 9a. The court found "no basis" for a rule that would prevent the agency from dismissing a complaint after 180 days when the complainant failed to cooperate. *Ibid.* It observed that such an argument "would, in effect, fault the Labor Department for not dismissing [the] complaint before, or perhaps at, the moment when the 180 days passed." *Ibid.* Noting that the agency "acted early and often" on petitioner's formal administrative complaint, the court surmised that it made "no sense * * * to turn [petitioner's] own obduracy into a basis for penalizing the agency." *Ibid.*

The court also rejected petitioner's estoppel argument. Petitioner claimed that he relied on the statement of an unnamed employee of the EEOC, stating that he could opt out of the administrative process at any time. Pet. App. 10a, 46a-47a. Noting this Court's "powerful cautions against application of the doctrine to the government," the court stated that petitioner failed to offer any reasons for applying estoppel and "ha[d] not attempted to prove the traditional elements of the estoppel doctrine." *Id.* at 10a.

Finally, the court ruled that petitioner was barred from filing suit under 29 U.S.C. 633a(d), the ADEA

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[3] The court was critical of the district court's characterization of the exhaustion default as jurisdictional under the ADEA, explaining that "timeliness and exhaustion requirements * * * are subject to equitable defenses and are in that sense non-jurisdictional." Pet. App. 4a.

provision allowing for direct filing of age discrimination suits in court, because petitioner did not inform the EEOC of an intent to sue 30 days prior to filing, as required by the statute and its implementing regulations. Pet. App. 11a-13a. The court determined that a prior agency regulation equating notice to the employing agency with notice to the EEOC Commission was no longer extant and, thus, the court of appeals decisions that relied on the past regulation were inapposite. *Id.* at 11a-12a. The court declined to follow the Seventh Circuit decision's in *Bohac* v. *West*, 85 F.3d 306 (1996), which deemed agency notification sufficient for purposes of Section 633a(d), on the grounds that it was contrary to the plain language of Section 633a(d) and inconsistent with the current agency regulations. Pet. App. 12a-13a. Significantly, the court stressed that notice to the EEOC was necessary for it to fulfill its obligation to act to eliminate unlawful practices. *Id.* at 12a.

ARGUMENT

The decision of the court of appeals is correct and does not squarely conflict with decisions of other circuits. Further review by this Court is therefore unwarranted.

1. Petitioner first contends that he is entitled to file suit without exhausting his administrative remedies because he complied with the notice requirements of 29 U.S.C. 633a(d) "when he filed informal and formal complaints of age discrimination directly with his agency." Pet. 13. The court of appeals properly rejected that contention.

a. As the court of appeals noted, the plain language of Section 633a(d) requires that notice of intent to sue be filed with the EEOC. 29 U.S.C. 633a(d). The statute

states that a complainant is barred from bringing a civil action "until the individual has given the *Commission* not less than thirty days' notice." *Ibid.* (emphasis added). The statute then requires specific actions from the Commission itself. Upon receiving notice of intent to sue, the EEOC must (1) "promptly notify all persons named therein as prospective defendants in the action" and (2) "take any appropriate action to assure the elimination of any unlawful practice." *Ibid.* This provision, designed for cases in which the claimant has not sought relief from his employer, ensures that all critical personnel are notified of a likely lawsuit and requires remedial action by the EEOC. Even where, as here, the agency has independent notice of the complaint, notifying the EEOC of the intent to sue provides additional protection for the claimant by requiring the EEOC itself to act to eliminate discrimination at the agency.

Consistent with the statute, the plain language of the implementing regulation also demonstrates that the EEOC, rather than the employing agency, must be notified of the employee's intent to forego administrative procedures and sue the government. The regulation states plainly that "an aggrieved individual may file a civil action in a United States district court * * * after giving the *Commission* not less than 30 days' notice of the intent to file such action." 29 C.F.R. 1614.201(a) (1999) (emphasis added). It stresses that the notice "*must* be filed in writing with EEOC" and provides the mailing address for the EEOC. *Ibid.* (emphasis added). This leaves no room to argue that notifying the employing agency suffices, and this clear regulation, subject to notice and comment rulemaking, is entitled to substantial deference. See *United States* v. *Mead Corp.*, 533 U.S. 218, 230-231 (2001); *Chevron*

U.S.A. Inc. v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-845 (1984).

b. Petitioner asserts that the court of appeals' strict construction of the Section 633a(d) notice requirement conflicts with decisions of other courts of appeals. Petitioner points to *Purtill* v. *Harris*, 658 F.2d 134, 138 (3d Cir. 1981), cert. denied, 462 U.S. 1131 (1983), and *McIntosh* v. *Weinberger*, 810 F.2d 1411, 1425 n.6 (8th Cir. 1986), vacated and remanded on other grounds, 487 U.S. 1212 (1988), cases in which the courts of appeals considered complaints filed with the EEO office of the employing agency to be the equivalent of providing notice to the EEOC for purposes of 29 U.S.C. 633a(d). As the court of appeals explained (Pet. App. 11a-13a), petitioner's reliance on these cases is misplaced because in *Purtill* and *McIntosh* the courts relied on now obsolete agency regulations that deemed notice to the employing agency's EEO office the equivalent of notice to the EEOC. See 29 C.F.R. 1613.214(a)(2) (1991) (stating that complaints may be filed with agency officials and requiring agency officials to provide notice to the EEOC). *Stevens* v. *Department of Treasury*, 500 U.S. 1, 6 n.1 (1991), which petitioner cites (Pet. 11), also involves an EEOC complaint filed under the old regulation. In 1992, the EEOC issued revised regulations to "enable quicker, more efficient processing of complaints and promote impartial, fair and early resolution of complaints." 57 Fed. Reg. 12,634 (1992).[4] The current regulations, as explained above, pp. 8-9, *supra*, now require that claimants intending to benefit

[4] The revised complaint procedures became effective in October 1992 and were removed as obsolete from the Federal Register in 1995. 60 Fed. Reg. 43,371 (1995).

from this alternate route to the court system notify the EEOC directly. 29 C.F.R. 1614.201(a).

Petitioner argues that the new regulations, effective in 1992, were not intended to be a substantive change from the old regulations. See Pet. 17-18 (quoting the Federal Register notice as stating that "[w]e did not make any changes to the substance of the section"); 57 Fed. Reg. 12,644 (1992). This argument, however, misconstrues the text of the Federal Register notice. The notice to which petitioner points was the EEOC's explanation of the changes it made to its proposed regulations as a result of the notice and comment process. See 57 Fed. Reg. at 12,634 (issuing the final rule and explaining the changes from the proposed rule); 54 Fed. Reg. 45,746 (1989) (setting out the proposed rule). The statement quoted by petitioner merely explains that the EEOC made no substantive changes to the proposed text of this provision as a result of the notice and comment process, even though the final version consolidated the ADEA provision with those for other civil rights statutes and moved the consolidated provision to a different section of the regulations. See 57 Fed. Reg. at 12,644 ("We have consolidated the two sections to simplify the regulation and make it clear that the civil action rights under the three statutes are the same. Consequently, we moved the ADEA exhaustion of administrative remedies section to § 1614.201. We did not make any changes to the substance of the section."). In contrast, the fact that the new notice provision, both as drafted and as ultimately enacted, was part of a larger scheme to streamline and clarify the procedures for claimants strongly suggests that it was intended to be a change from the procedures set out in the old regulations. See *id.* at 12,634.

Only one other circuit has clearly addressed the notification issue since the new regulations were issued. The Seventh Circuit, in *Bohac* v. *West*, 85 F.3d 306, 309-310 (1996), ruled that the notice requirement of Section 633a(d) is met once the employee files a formal administrative complaint of age discrimination with the employing agency. Citing "the significant sharing of responsibilities between the EEOC and the agencies," the Seventh Circuit determined that "the goals of the 30 days' notice provision are sufficiently advanced through the filing of a formal administrative complaint" with the agency. *Id.* at 310.

The *Bohac* decision, however, only considered whether the *statute* required the complainant to notify the EEOC directly. And while the language of the statute has remained unchanged, the EEOC's regulations have changed significantly and now clearly require notification directly to the EEOC. Nevertheless, the Seventh Circuit's decision never mentioned, much less discussed, the applicable regulations. *Bohac*, 85 F.3d at 309.[5] Moreover, all the cases cited by *Bohac* in support of its decision date from before 1992, when the new regulations became effective. Because *Bohac* focused solely on interpretation of the statute and the D.C. Circuit's opinion below turned on its interpretation of the EEOC's regulations, the opinions are not squarely in conflict, and reconciling the two does not require this Court's review.

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[5] In fact, the only regulation on which the Seventh Circuit relied addressed the separate route to district court following a final agency decision. *Bohac*, 85 F.3d at 310 n.3 (discussing 29 C.F.R. 1614.408(a), which governs the time limits for bringing suit by those who used the administrative process).

Moreover, *Bohac* is inconsistent with the plain language of the statute, which requires that notice must be given to the Commission, and thwarts the goals of the notice requirement of Section 633a(d). The statute requires the EEOC, upon receiving notice of intent to sue, to (1) "promptly notify all persons named therein as prospective defendants in the action" and (2) "take any appropriate action to assure the elimination of any unlawful practice." 29 U.S.C. 633a(d). While notice to the agency's EEO office may in some instances be sufficient to meet the statute's initial goal of giving notice to all prospective defendants, the requirement that notice be made to the EEOC ensures that the agency does not misconstrue an intent to sue letter as a step in the administrative process. Moreover, as the court of appeals explained, "it is hard to see" how notice to the agency would satisfy the other goal of the provision – ensuring that the EEOC acts to eliminate unlawful practices. Pet. App. 12a.

c. In addition, the instant case would not be a good vehicle to resolve any confusion because petitioner did not provide notice of his intent to sue, even to his employing agency, within 180 days of the discriminatory act, which creates an independent defect in his notice of intent to sue. Petitioner was notified of his non-selection on March 16, 1998, but did not file a formal complaint with the Department of Labor until September 15, 1998—183 days later. Pet. App. 37a. Petitioner suggests (Pet. 6, 16) that he was notified of the adverse personnel action after March 16, but the district court rejected petitioner's "transparent attempt * * * to save his case," noting that petitioner in his complaint averred that he was notified of his non-selection for the promotion on March 16, 1998. Pet. App. 38a. Because the allegations of facts in the petitioner's complaint are

to be taken as true, see *SEC* v. *Edwards*, 124 S. Ct. 892, 895 n.* (2004), he cannot rely on an argument that requires him to demonstrate that facts alleged in the complaint are false.

Consequently, even if petitioner prevails on his fundamental argument that notice to his employing agency was adequate for purposes of Section 633a(d), he cannot proceed with his claim because any notice to the agency was untimely. This issue, therefore, does not merit further review by this Court.

2. Petitioner also seeks to assert a right to file a claim in the district court based on Section 633a(b), which allows an alleged victim of discrimination to seek recourse in the district court at the close of administrative proceedings.

a. Petitioner first argues that he has fully exhausted his administrative remedies because he filed an administrative complaint and the agency dismissed that complaint after the 180-day minimum investigative period. Petitioner cites as support for this proposition 29 C.F.R. 1614.201(c), which provides that "administrative remedies will be considered to be exhausted for purposes of filing a civil action * * * 180 days after the filing of an individual complaint" if there has been no final agency action and no appeal taken by the complainant.[6]

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[6] The government's concession in *Stevens*, 500 U.S. at 9, that "a federal employee who elects agency review of an age discrimination claim need not exhaust his administrative remedies before bringing a civil action" is unhelpful to petitioner. The Court declined to rule on the issue in *Stevens*. *Id.* at 10. But far more importantly, petitioner has never challenged the exhaustion requirement, contending only that he has satisfied it. Pet. App. 6a-7a.

Petitioner cannot benefit from that provision in this case and cannot demonstrate that he has exhausted the administrative process. The agency's delay in dismissing the petitioner's claim was driven by its continued efforts to get information from petitioner that would enable it to complete the investigation. Pet. App. 3a. Moreover, requests for more time by petitioner's own attorney delayed the agency's resolution further. *Ibid.* Petitioner's argument that his failure to respond to agency requests somehow constitutes an exhaustion of his administrative remedies turns the two-route approach Congress established for ADEA dispute resolution on its head. Section 633a(d) permits an employee to bypass the administrative process and file a claim directly in district court, or, as a second option, an aggrieved employee can pursue administrative remedies under Section 633a(b). The former option requires compliance with the statutory notice requirements, 29 U.S.C. 633a(d), while the latter option requires participation in the administrative process, 29 U.S.C. 633a(b) (requiring the EEOC to provide for the acceptance and processing of complaints of discrimination on account of age in federal employment).

Having failed to comply with either option, petitioner seeks to create yet another route for judicial review. Petitioner would like this Court to sanction this "third route" to district court, by which he can invoke the administrative process but fail to cooperate and participate in it, and simply let 180 days go by. EEOC regulations, however, protect those who vigorously advance their claims but are thwarted by an intransigent bureaucracy. They were not designed to allow an ostensible victim of discrimination to claim that he has exhausted his administrative remedies when he has refused to participate in the administrative process.

Petitioner was never required to pursue an administrative remedy, but having done so, he cannot fail to assist the agency and then claim that agency inaction requires the government to consider those remedies exhausted.[7]

Petitioner points to decisions of the EEOC, suggesting that they create an agency interpretation entitled to deference, see *Chevron*, 467 at 843-845, that the government is prohibited from dismissing an administrative complaint for failure to prosecute after 180 days. The only rule those cases suggest, however, is that the government is precluded from dismissing a complaint when the claim was not acted on within 180 days; they do not address the case in which an agency attempted to complete its investigation but was prevented from doing so by the complainant. For example, in *Koch* v. *Levitt*, No. 01962676, 1997 WL 106419 (EEOC Mar. 6, 1997), the agency did not even begin investigating until the 180-day time limit had nearly

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[7] Language in the Federal Register, explaining the EEOC's decision to adopt the 180-day deadline, may suggest that the 180-day limit is to be strictly observed, regardless of the cause of the delay. See, *e.g.*, 57 Fed. Reg. at 12,636 ("Within 180 days from the filing of the complaint, the agency must complete its investigation and provide a copy of the complaint file to the complainant."). The focus of the explanation, however, is on whether agencies would be able to complete a full investigation in the time allowed. See, *e.g.*, *id.* at 12,635 ("One major reason for proposing part 1614 was to eliminate the time delays and backlogs frequently associated with part 1613 agency complaint processing by limiting agency processing to 180 days and by reducing the number of decision making levels."). Here, there is no question that the agency actively sought to investigate petitioner's claim, but was thwarted in doing so by his refusal to cooperate. Petitioner cannot himself create obstacles to timely resolution of his claim and then fault the agency for continuing its good faith efforts to investigate.

run. *Id.* at *6. Given the agency's own failure to investigate in a timely manner, the court concluded, it could not dismiss the complaint for Koch's failure to respond to belated requests for information. *Id.* at *5-*6. Similarly, in *Hwang* v. *Henderson*, No. 01983455, 1999 WL 303871 (EEOC Apr. 29, 1999), the court overturned the agency's dismissal of the complaint for failure to prosecute because it determined that the agency already had adequate information to investigate the charges and in fact had investigated the claims. *Id.* at *1. It did not suggest that Hwang's situation was similar to the one here, where the government attempted to proceed with the investigation but was unable to do so because its repeated requests for specific, basic information were ignored by the complainant.

b. Finally, petitioner contends that even if an agency may ordinarily dismiss a claim for failure to prosecute after the 180-day period has run, the Department of Labor was estopped from doing so here because petitioner received faulty advice from an unnamed EEOC employee. Pet. 22-23. Acknowledging this Court's "powerful cautions against application of the doctrine [of equitable estoppel] to the government," the court of appeals properly dismissed the estoppel argument as baseless. Pet. App. 10a.

The long-established rule is that the Government may not be estopped by an act of one of its agents. *OPM* v. *Richardson*, 496 U.S. 414, 415-416, 419 (1990) ("From our earliest cases, we have recognized that equitable estoppel will not lie against the Government as it lies against private litigants."); *Heckler* v. *Community Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 63 (1984) (stating the general rule that "those who deal with the Government are expected to know

the law and may not rely on the conduct of Government agents contrary to law").

Petitioner relies heavily on *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990), in support of his position. *Irwin* made clear that in some cases statutory time limits for suits against the government are subject to equitable tolling. *Id.* at 95-96. But even in those cases, however, the Court stressed that "no more favorable tolling doctrine may be employed against the Government than is employed in suits between private litigants." *Id.* at 96. And in suits involving private litigants, "[f]ederal courts have typically extended equitable relief only sparingly." *Ibid.*

To claim estoppel, petitioner must demonstrate that his reliance on statements from an unnamed EEOC employee were reasonable. *Heckler*, 467 U.S. at 59. In other words, he must show that he "did not know nor should [he] have known" that the statements were misleading. *Ibid.* But this Court has long held litigants responsible for knowledge of both the United States Code and federal regulations. *Id.* at 62; *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380, 384-385 (1947). Petitioner has not, therefore, demonstrated that he is entitled to any tolling of the applicable time limit.

Petitioner points to no circuit conflicts or any compelling reason for excusing his failure to cooperate with the administrative process; this issue, therefore, does not merit this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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