Statement of
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Good afternoon, Chairman Alexander, Ranking Member Murray, Members of the Committee. Thank you for inviting me to testify today. I am pleased to be here with my colleague, Chair Jenny Yang.

My name is David Lopez and I am the General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC). Congress in 1972 gave EEOC litigation authority to "ensure more effective enforcement of Title VII," *General Telephone Company of the Northwest v. EEOC*, 446 U.S. 318, 325 (1980). As General Counsel, I am in charge of the Commission's litigation program, overseeing the Agency's 15 Regional Attorneys and a staff of more than 325 lawyers and legal professionals who conduct or support Commission litigation in district and appellate courts throughout the nation.

When President Obama first nominated me in 2009 to be the EEOC's General Counsel, I had served as an attorney and civil servant under both Republican and Democratic administrations. And throughout my tenure I have observed firsthand that civil rights are not a partisan issue, but an American promise. Last year, we celebrated the 50th anniversary of the Civil Rights Act of 1964 – one of the most transformative pieces of legislation in the country's history. Along with subsequent legislation targeting discrimination based on other traits such as age and disability, it has enabled countless individuals to unleash their potential and productivity, which in turn drives our nation's economic engine. This year, we celebrate the 50th Anniversary of the EEOC, an agency created by the 1964 Act.

As we all know, the Civil Rights Act grew out of the freedom struggle aimed at throwing off an odious racial caste system. This struggle triggered an enduring conversation in our country about the meaning of freedom and our understanding of opportunity. Title VII included protections against race discrimination along with protections against discrimination on the basis of sex, national origin, religion, and color. Each generation has advanced this discussion, and the freedom struggle, illustrated by the children's crusade in Birmingham, has inspired each generation to expand opportunity for women, religious minorities, older workers, individuals with disabilities and, in this moment, the LGBT community. Even though we may disagree on the specifics or the finer points of law, as I travel the country I have no doubt that there is a broad

national consensus for the value of equal opportunity and its vital importance to individual productivity and potential.

I am proud to have devoted most of my career to this agency, created 50 years ago to further these values, and to have worked with many dedicated colleagues who believe in the value of public service to their country and communities and who doubtless could pursue more lucrative career options. This includes Robert Canino, the regional attorney in Dallas, who won a $240 million verdict on behalf of 32 workers with intellectual disabilities. These workers had been brought to Iowa to work at a turkey evisceration plant. During their employment, they were housed in an old schoolhouse where they were deprived of access to medical care, and subjected to verbal and sometimes physical abuse. In a top of the fold article in the New York Times, Robert was deemed the men's "last, best hope for justice." In my mind, this description speaks for the large majority of my EEOC colleagues.

Indeed, the EEOC is a small agency with a big mission – to stop and remedy unlawful employment discrimination. To that end, the Agency has carried out its mission consistently and dutifully, decade after decade and we can see its impact in every corner of American society.

The EEOC's goal to prevent, stop, and remedy discrimination begins with prevention. The Commission issues policy guidance designed to explain employer responsibilities and employee rights under the laws we enforce and devotes enormous attention and resources to public outreach and education across the country. As Chair Yang mentioned, we receive and investigate nearly 100,000 private-sector charges per year and resolve the vast majority of them informally, in mediation or conciliation. Before we litigate, we look at the conciliation efforts to ensure that informal resolution was not possible. When these tools do not work, the statute authorizes the Commission file suit to enforce the nation's employment anti-discrimination laws in federal court.

FIFTY YEARS AFTER CIVIL RIGHTS ACT: WHERE ARE WE?

Where are we? From my vantage point as the EEOC's chief prosecutor, this is an important question. Given the origins of the Act and recent events in our nation, there is bad news and good news. The bad news is that discrimination is still a real problem in this country. For example, we recently had a case in North Carolina involving racial harassment. Two African-American truck drivers were repeatedly subjected to derogatory racial comments and slurs that included the "n" word and the displaying of a noose. The fact that this is still happening in the 21st century underscores that there is more work to be done to eradicate race discrimination in the workplace. However, I would note that the good news is that it took the jury in Winston-Salem, North Carolina less than an hour to find the employer liable and assess

damages, and the Fourth Circuit less than a month to affirm the decision and the district court's order of broad injunctive relief to make sure the conduct did not recur.

Similarly, we settled two major systemic race discrimination cases for eight figure monetary settlements and broad non-monetary relief. The first case, *EEOC, et al. v. Local 28 of the Sheet Metal Workers' Int'l Ass'n, et al.*, was filed nearly forty years ago by the Department of Justice against Local 28 of the Sheet Metal Workers' International Association, and the EEOC's New York District Office took the case over when litigation authority was transferred to the EEOC in 1972. In this case, the union has agreed to pay $12.7 million over five years in settlement of allegations of discrimination against black and Hispanic journeypersons on the basis of race.

The second case, *EEOC v. Patterson-UTI Drilling Company, LLC*, is a nationwide race and national origin discrimination case filed against a drilling company that alleged race and national origin discrimination, harassment and retaliation. We were able to settle this case early without the need for discovery or lengthy proceedings. The employer agreed to a multi-million dollar settlement fund for a class of victims of the discrimination and strong injunctive relief provisions that will foster a work environment that is free from discrimination. These are major successes for the systemic litigation program.

BROAD-BASED SUPPORT TO COMBAT CONTINUING DISCRIMINATION

From what I hear from the public as I travel across the country, while we have had significant successes, there is more work to do.

Sex discrimination remains a problem. There are some employers, fifty years after the passage of the Civil Rights Act, who have hired few, if any women, in certain positions. For example, not too long ago, we secured a victory in a systemic pattern or practice case involving a trucking company in Missouri that had a policy of assigning trainees based on sex. The court ruled, as a matter of law, that this constituted a pattern or practice violation of Title VII's prohibition against sex discrimination. There are numerous other case examples of the good work we have done in this area.

Unfortunately, one of the most overt forms of discrimination we continue to see is pregnancy discrimination. I hear ongoing frustration from women and their families across the country that some employers still don't understand this is discrimination like any other form of discrimination. I am pleased to report, however, we have had many successes in this area. (see Pregnancy Litigation Fact Sheet). One example of our success is *Young v. UPS*, the pregnancy discrimination case recently decided by the Supreme Court addressing the circumstances when an employer has an obligation to provide leave under the Pregnancy Discrimination Act. The

Commission joined the government's brief in support of Ms. Young, and Ms. Young was also supported by organizations from across the political spectrum.

We have been very successful in litigating cases on behalf of individuals with disabilities. For example, recently we prevailed at a trial in Miami in a case involving a licensed security guard with only one arm who was removed from his post because a customer complained about his disability.

We have also vigorously litigated cases based on religious discrimination. The Supreme Court recently heard our case against *Abercrombie and Fitch*. In this case, the Court examined Title VII's requirement that companies reasonably accommodate workers' religious beliefs and practices. This case involves Samantha Elauf, a 17-year old Muslim woman born and raised in Tulsa, Oklahoma whom we allege was denied hire by the company because she wore a hijab in observance of her religion. A broad range of religious groups filed amicus briefs in support of the EEOC's position and the principle of religious freedom, including the Beckett Fund, Orthodox Jewish groups, Seventh Day Adventists groups, and Islamic groups. Other groups supported the EEOC's position as well, including Lambda Legal Defense and Education Fund.

This case illustrates the EEOC's commitment to protecting the religious exercise of all Americans and underscores the singular important role that the EEOC's litigation can play in helping to clarify the law, and thus, in ultimately bringing greater certainty about legal obligations and rights for employers and employees alike. Regardless of the outcome, the fact that the EEOC was there to take this young woman's religious discrimination claim all the way to the Supreme Court of the United States in that Romanesque building around the corner with the words "Equal Justice Under Law" over the entrance should make us all proud.

We are also working to end workplace discrimination in other areas, such as discrimination against transgender individuals and the discrimination that continues against immigrant and vulnerable workers who work on the margins and are often most susceptible to abuse and exploitation.

Indeed, we have enjoyed numerous litigation successes that include: *EEOC v. Presrite* (N.D. Ohio 2013) ($700,000 settlement, plus priority consideration to at least 40 female job applicants as well as new measures designed to prevent future discrimination); *EEOC v. Interstate Distributor* (D. Colo. 2012) ($4.85 million settlement, along with revised ADA policy), *EEOC v. Yellow/YRC* (N.D. Ill. 2012) ($11 million settlement in Title VII race harassment case); *EEOC v. Pitre* (D. N.M. 2012) ($2 million settlement, plus new policies and practices to provide a work environment free of sexual harassment and retaliation, evaluation of managers on compliance with anti-discrimination laws, and a compliance monitor); *EEOC v. Verizon* (D. Md. 2011) ($20 million settlement, representing EEOC's largest ADA settlement,

plus requirement for revised attendance plans, policies and ADA policy to include reasonable accommodations); *EEOC v. ABM* (E.D. Cal. 2010) ($5.8 million settlement, along with outside EEO monitor, training for investigators of harassment complaints, tracking future discrimination complaints, employee training in English and Spanish, internal compliance audits, and periodic annual reports to the EEOC); and *EEOC v. Republic Services* (D. Nev. 2010) ($3 million settlement, plus hiring of EEO compliance officer, internal audit policies and procedures, training and reports to EEOC, tracking of future discrimination complaints).

Most of our cases settle – and that is a good outcome because it means that the employer was willing to come to the table and work with us on an appropriate remedy. In the event that a case is not settled, however, the Commission has had an enormously successful trial program. We have won 16 of our last 24 jury trials from FY 2013 to the present. These trial victories include not only the *Henry's Turkey* case that I previously mentioned, but also cases involving the denial of promotion based on sex, disability discrimination, age discrimination, racial harassment, sexual harassment, and retaliation. The law enforcement and public education value of these cases in underscoring our government's commitment to eliminating illegal workplace discrimination in local communities and across the Nation cannot be underestimated.

We also have obtained landmark victories in the appellate courts. For example, in *EEOC v. Houston Funding*, a panel of the Fifth Circuit issued a landmark – but common-sense – ruling recognizing that discrimination against a woman because she is lactating is discrimination "because of sex" in violation of Title VII and the Pregnancy Discrimination Act. This case is one success among many in the courts of appeals, which also include such recent cases as *EEOC v. Baltimore County*, 747 F.3d 267 (4th Cir. 2014) (agreeing with EEOC's contention that pension system treated older new-hires less favorably because of their age by requiring them to make larger contributions than younger new-hires); *EEOC v. United Airlines*, 693 F.3d 760 (7th Cir. 2012) (transfer accommodation of qualified individuals is mandatory absent undue hardship), cert petition denied; *EEOC v. Cintas Corp.*, 699 F.3d 884 (6th Cir. 2012) (pattern-or-practice hiring claim may be pursued under section 706), cert petition denied.

Last year, the Office of General Counsel was able to favorably resolve 93% percent of its cases. By any measure, this is outstanding. I believe we can learn from all of our cases – both the wins and the losses – and have stressed extensively during my tenure a culture of examining "lessons learned" in order to carry out our law enforcement mission more effectively and efficiently. This includes a personal review of cases where we have been subject to fees; discussions with the attorneys involved; a discussion of the cases during our regular regional attorney calls, including lessons for the program; an immediate adjustment of any internal practices, if appropriate, to ensure we improve our law enforcement performance and don't repeat our mistakes; and a broader discussion of the issues in formal training sessions. And, of course, significant adverse decisions are circulated to all attorneys.

LITIGATION AS A TOOL OF LAST RESORT

While it's my job as General Counsel to be the Agency's chief litigator, let me be clear: I believe litigation should be the enforcement tool of last resort. I do *not* believe in suing first, and asking questions later – and our statutory authority does not contemplate or permit this. In FY 2014, for instance, we litigated on the merits only .15 percent of all charges filed. That is about one-and-a-half lawsuits for every 1,000 charges filed. During my tenure as GC, I have focused on developing and filing critical cases, particularly those that further the public interest. We carefully and deliberately vet our potential litigation vehicles to ensure effective enforcement nationwide and across the statutes. And we seek approval from the Agency's Commissioners – by law, a bipartisan group – consistent with the guidelines the Commission itself has adopted to govern the delegation of litigation authority.

As General Counsel, I, along with those under my direction, actively and enthusiastically support the Agency's non-litigation enforcement efforts. Voluntary compliance is an important component of those efforts and I have proudly defended our agency's record on this front. Indeed, on April 29, 2015, in *Mach Mining v. EEOC*, the Supreme Court held in a unanimous opinion that "a court may review whether the EEOC satisfied its statutory obligation to attempt conciliation before suit[, but] the scope of that review is narrow." In particular, judicial review is limited to whether the EEOC has "inform[ed] the employer about the specific allegation" and whether the EEOC has "tr[ied] to engage the employer in some form of discussion." In issuing its decision, the court noted that Title VII is about substantive outcomes. The Supreme Court's decision ends confusion in the lower courts about the standard of review and is a step forward for victims of discrimination because we can now focus our attention on the merits of the discrimination allegations in our litigation and ensuring workplace fairness.

As I noted at my recent re-confirmation hearing, during my tenure as General Counsel, I believe we have engaged in unprecedented levels of outreach to various stakeholder groups across the country, including to bar and management groups. Indeed, the day following my confirmation hearing, I addressed and took questions from the U.S. Chamber of Commerce. While often their positions, such as in *Young v. UPS* and *EEOC v. Abercrombie and Fitch*, express different views than ours, we appreciate and learn from the dialogue we're able to have. Further, although I believe we have a great story to tell in just about any area, we always welcome feedback and constructive criticism as an opportunity to improve our enforcement efforts. This is the only way we will become stronger and more effective.

EFFICIENT USE OF RESOURCES

Last year, I was honored to be named by the National Law Journal as one of America's 50 Outstanding General Counsels, but that award really belongs to my dedicated colleagues at the EEOC who inspire me every day. I have seen up close and personal the unparalleled dedication and skill of these amazing civil servants. This award reflects the tremendous work of the program during an extremely challenging period when we endured a hiring freeze, significant attrition, and furloughs. Still, despite these particularly difficult times, we were able to continue to conduct a successful litigation program.

I will share with you how we are working to ensure that we are putting public resources to good use in the challenging budget climate. More than four years ago, I talked about fostering a "culture of collaboration." True to my pledge, I have cultivated "One National Law Enforcement Agency," encouraging our litigators nationwide to operate more collaboratively and cohesively with each other and our internal partners. This collaboration is designed to address two problems often confronted by large, geographically dispersed organizations: (1) what I call "the left hand, right hand" problem, that is, coordination between the districts, and (2) "the reinvention of the wheel" problem, which is the result of not preserving institutional knowledge.

I believe we have made great strides towards addressing these problems. The National Law Enforcement Agency approach is characterized by sharing ideas, best practices and lessons across districts, partnering between district offices to build synergy and provide sufficient human resources to cases, and leveraging technology to help us share ideas, work smarter and work more efficiently. We aim to operate as an integrated community. It is this integrated community approach that furthers the efficient use of resources, allows for innovation, and has contributed to many of the successes mentioned above.

CLOSING COMMENTS

In our 50th Anniversary year, I am going to close my testimony with a story illustrating the difference our work makes in the lives of American families. Recently, the Commission held an educational meeting to examine the ongoing problem of harassment in the workplace. The Commission highlighted our recent resolution of a race and national origin harassment case filed against an oil and gas well service business in Wyoming. A Charging Party from this case, who appeared as a witness at the meeting, recounted the following about what he experienced on the job:

> I started working at J&R as a mechanic in November 2007. My first day on the job the Truck Pusher, who was second in command in Edgerton, introduced me as "uncle beaner" ... I was shocked that he would say that to me. Having lived in

> Albuquerque, New Mexico for 40 years and Denver, Colorado for 10 years before coming to Wyoming, I never experienced anything like that. For this guy it was like nothing though. I was "uncle beaner." Mike was just "beaner or half a beaner" because he is only half-Hispanic. We were both "stupid Mexicans" or "dumb Mexicans" or "worthless Mexicans." Sometimes he would switch up and call us "spics" too. He told me at least once that he didn't like "spics" and that Mexicans were the reason we have swine flu. ... He'd also just say stupid stuff like "hey you got any pesos."

We resolved the case for significant monetary relief – but just as importantly, for injunctive relief, including training and policy changes. The Charging Party suffered depression, but the experience was transformative for him and we believe the industry.

He expressed, "Now that it's all over, I am proud that we stood up for ourselves, and I'm glad EEOC was able to help get things like the training and the surveys as part of the settlement. And I want to thank the Commission for letting me come out here to Washington to tell my story. It means a lot to me. All I ever wanted was to change how people were being treated, and hopefully my coming here will help do that."

Thank you for your attention and I would be pleased to answer any questions.