

Arias v. Raimondo, U.S. Court of Appeals – Ninth Circuit, No. 15-16120, June 22, 2017

Employee may proceed with retaliation action against employer's counsel, as Fair Labor Standards Act applies not only to employers, but to 'any person' discriminating against an employee filing complaint.

FACTS/PROCEDURE

In 2006, Jose Arias, an undocumented worker for Angelo Dairy sued his employer for workplace violations. In 2011 Arias' employer's attorney, Anthony Raimondo, successfully executed a plan to deport Arias from the United States at a scheduled deposition. In 2013, Arias filed a lawsuit against his employers and Raimondo for violating section 215(a)(93), an anti-retaliation provision, of the Fair Labor Standards Act (FLSA). Arias alleged that Raimondo violated the FLSA when he retaliated against Arias for filing his initial lawsuit. Raimondo argued that he was not liable under the FLSA because he was not Arias' employer. A district court granted Raimondo's motion to dismiss finding that Raimondo was not his employer since he did not exercise any control over Arias' employment.

The issue on appeal was whether an employer's attorney be held liable for retaliating against his client's employee because the employee sued his client for violations of workplace laws. The district court held the attorney could not be held liable.

DISCUSSION/HOLDING

Reversed and remanded. The Ninth Circuit held that an employer's attorney could be held liable for retaliating against his client's employee. Under the FLSA's anti-retaliation provision it is unlawful for *any* person, including legal representatives, to discriminate against an employee for filing a complaint. Under the FLSA, an employee has a private right of action against any employer, including any person acting for the employer, who violates section 215(a)(3).

The FLSA's retaliation provision is categorically different from its substantive economic provisions. The economic provisions relate to controversies under sections 206 and 207 which require a determination of primary workplace liability for wage and hour responsibilities and violations. Controversies arising from retaliation against employees concern the assertion of their legal rights. The Ninth Circuit makes it clear that economic provisions and the retaliation provisions are distinct, in fact, they are "as different as chalk from cheese." While the anti-retaliation provision applies to *any* retaliating person and seeks to protect an employee's right to remedial mechanisms, the *economic* provisions instead employ economic control tests to determine the de facto *employer* and do not serve the purpose of the retaliation provision. This is because the economic provisions concern the actual employer who controls substantive wage and hour issues. Retaliation provisions enable workers to avail themselves of their statutory rights in court by invoking the legal process designed by Congress to protect them.

Here, the district court improperly relied on precedent relating to the *economic* provisions in coming to a decision on an allegation of retaliation. However, since Raimondo's actions fall under the "purview, purpose, and the plain language" of FLSA's anti-retaliation provision and related sections, Arias may proceed with his retaliation action. The Ninth Circuit limited this holding to retaliation provisions and stated that it does not make non-actual employers like Raimondo liable for any of the substantive wage and hour economic provisions listed in the FLSA.