



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

**Concurring Statement of Chair Lina Khan,
Commissioner Rebecca Kelly Slaughter, and Commissioner Alvaro Bedoya
In the Matter of Civil Investigative Demands
Dated June 30, 2022, to Amazon.com, Inc. and
Certain Current and Former Amazon Employees
Commission File No. 2123050**

September 21, 2022

We concur with the Commission's opinion on the instant petition to quash. We write this short concurrence to note the issues of first impression presented here and to suggest that the Commission consider revisions to the Commission's Rules of Practice. As explained in the Commission's opinion, the Commission's Rule of Practice 2.7(f)(3) entitles FTC staff to exclude counsel for other parties from an investigational hearing and Rule 2.9(b) entitles the witness to her choice of counsel. These rules may be in tension where a witness's chosen counsel also represents a third party – here, the target – and that counsel refuses to limit its representation at the investigational hearing to the witness and the witness's interests. Although this conduct clearly violates the Commission's rules, identifying the appropriate remedy for such a violation is a question of first impression. Because staff's authority to prevent the representation of a third party's interests at an investigational hearing stems from Rule 2.7(f)(3), staff understandably presumed that Rule 2.7(f)(3) also would provide the Commission's remedy for such misconduct – which the rule states is exclusion. While the Commission's opinion today clarifies that the remedy here is the pursuit of sanctions pursuant to Rule 4.1(e), staff's employment of the exclusion remedy was a reasonable interpretation of the Commission's Rules of Practice under the circumstances.

The issue raised by this dispute is just one of many challenges facing FTC staff when pursuing complex investigations of targets that may perceive benefits to prolonging discovery. We believe it may be necessary to consider revisions to the Commission's Rules of Practice for Part II investigations to address the potential for gamesmanship and delay tactics that can impede critical investigations.
