19-5841

IN THE

SUPREME COURT

OF THE

UNITED STATES

Shahram Shakouri,

Peittioner

v.

Lorie Davis, et al.,

Respondent(s)

ON

PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Shahram Shakouri, Pro Se
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QUESTIONS PRESENTED

1. Whether district court's lack of religious neutrality violated Petitioner's right to the Due Process Clause of the 14th Amendment or Free Exercise Clause of the First Amendment.

The district court's decision in this case which religious hostility on part of the court itself is factor, violates the federal court's obligation of religious neutrality under the Free Exercise Clause of the First Amendment to the Constitution.

An impartial review of the final judgment in the instant case reveals that the district court exhibited hostility toward Petitioner's religious views. The district court defined his religious views as "subjective belief", questioned the validity of the Baha'i Teachings and inquired whether Petitioner's interpretation of his religious teachings is correct. In other words, the district judge acted as an "arbiter of scriptural interpretation," which according to this Honorable Court, "it is not within **[his]** judicial function and judicial competence" to do so. **Thomas v. Review Board., 101 S. Ct. 1425, 1431 (1981).**

In **Masterpiece Cake Shop v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018)**, this Honorable Court reversed the ruling on two grounds: (1) hostility towards Phillips' religious beliefs made by the Commission; and (2) significant differences between prior Commission exemptions and the instant case.

Similarly, in the case at hand, the district court's hostility towards Petitioner's religious views, and significant differences between prior exemptions accorded to adherents of other religions by the federal courts, and the court's refusal to extend the same constitutional protections to Petitioner warrants reversal of judgment.

2. Texas Religious Freedom Restoration Act defines "Free Exercise of religion [as] act or refusal to act that is substantially motivated by sincere religious beliefs." TRFRA also provides for religious exemptions from conduct that violates sincerely held religious beliefs. Petitioner applied for such exemptions on religious grounds and would have received one, but for the fact that the State and the federal courts disfavored his religion because of the religious condemnation of slavery it commands; he was denied a narrow exemption.

The question presented is, whether the government, in pursuit of legitimate interest, can in a selective manner impose burdens only on conduct motivated by religious beliefs? Or whether the government can regulate or outlaw conduct because it is religiously motivated. 113 S. Ct. 2217.

3. In response to Petitioner's Plea for a religious exemption from participating in Prison Work Program without pay, because slavery is contrary to the Law of God in his religion. The Court of Appeals for the Fifth Circuit concluded that because the prison

system required prisoners to work, then Petitioner has no viable 13th Amendment claim.

In other words, the Fifth Circuit declared that the provision of the 13th Amendment overrides the Free Exercise Clause of the First Amendment, authorized the lower courts to ignore prisoner's First Amendment claims in favor of slavery, affirmed discrimination against religious beliefs, and sanctioned Texas to impose a penalty on Free Exercise of Religion.

In light of this Honorable Court's precedent that, "a law may not discriminate against some or all religious beliefs." 113 S. Ct. 2217, the question presented is whether the application of State regulation 497.099 requiring prisoners to work for no pay, discriminates against Petitioner's religious beliefs, or violates his rights under the First Amendment to the Constitution.

4. Title 28 U.S.C.A. §1915(e) and §1915A was enacted by the United States Congress to curtail the litigation of individuals proceeding in forma pauperis. The Congress did not intend for the either statute to be used to dismiss non-IFP civil right complaints, and there is nothing in the language of the statute to suggest otherwise.

Although, the district court dismissed Petitioner's non-IFP complaint pursuant to §1915(e), the court pointed to no authority from this Court or the circuit courts authorizing it to dismiss a non-IFP civil right complaint pursuant to either §1915(e) or §1915A.

The Fifth Circuit on the other hand, created a question of law on this issue. The Appellate Court held: "This Court has not determined whether §1915(e)(2)(B)(i), which is included in a section titled "Proceeding in forma pauperis," applies when the plaintiff is not proceeding in forma pauperis." Notwithstanding, the Fifth Circuit endorsed the district court's decision to dismiss Petitioner's civil right complaint pursuant to §1915(e). See Exhibit "A" @ 3.

The question presented is whether the provisions of 28 U.S.C.A. §1915(e) or §1915A applies to Petitioner's non-IFP complaint, and whether the district violated Petitioner's due process rights by dismissing his suit in which the filing fees were paid pursuant to §1915(e).

5. In **Channer v. Hall, 112 F.3d 214 (5th Cir. 1997)**, the Court held: "Our inquiry begins with **United States v. Kozminski, 108 S. Ct. 2751 (1988)**. In that case, the Supreme Court held that, the term "involuntary servitude" necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use of threat of physical restriant or physical injury, or by the legal process." Id., @ 952, 108 S. Ct. @ 2765 (emphasis added).

In **Watson v. Graves, 909 F.2d 1544 (5th Cir. 1990)**, the Court held: "We recognize that inmates, despite their status as convicted criminals, retained their civil right not to be subjected

to involuntary servitude because they have not been sentenced to hard labor. See Id., @ 1551, 1552.

In **Mayfield v. Texas Dept. of Criminal Justice, 529 F.3d 599 (5th Cir. 2008)** the Court held: "Government action [disciplinary citations] or regulation [Tex. Gov. Code 497.099] creates a substantial burden" on religious exercise if it truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs...The effect of a government action or regulation [imposition of over 700 days of various restrictions in this case] is significant because it either (1) influences the adherent to act in a way that violates his religious beliefs, or (2) forces the adherent to choose between on the one hand, enjoying generally available, non-trivial benefit, and, on the other hand, following the religious beliefs."

Additionally, in his pleadings, Petitioner asserted that because he has not been sentenced to hard labor, 112 F.3d 214, the Defendants lacked authority to force him into involuntary servitude, or to unlawfully punish him for his sincerely held religious belief that he cannot participate in prison work for no pay program, because abolishment of industrial slavery constitutes a legitimate religious imperative, central to his religious beliefs.

In light of the foregoing precedents, the question presented is whether the lower Courts erred by labelling Petitioner's "religious exercise" claim as frivolous, by ignoring this Court's precedent in Thomas v. Review Board, 101 S. Ct. 1425 (1981), explaining that "when a Plaintiff draws a line, it is not for the Court to say it is an unreasonable one." Or whether the "government has placed a substantial burden on the observation of [his] central religious belief or practice." Hernandez v. C.I.R., 109 S. Ct. 2136 (1989).

LIST OF THE PARTIES

PETITIONER: Shahram Shakouri
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C. N. Stevenson Unit
1525 FM 766
Cuero, Texas 77954-6300

DEFENDANTS: Lorie Davis, Director of Texas Dept. of Criminal Justice - Institutional Division
Kelli Ward; Melodee Blalock; Bobbie Turner-Parker
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Huntsville, Texas 77340

ATTORNEY FOR THE DEFENDANTS:

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TABLE OF CONTENTS

CONTENTS PAGES

illegitimacy of religious beliefs and practices. The Free Exercise Clause bars even "subtle departures from neutrality" on matters of religion. Id., @ 543. In the present case, because the above precedent is applicable to Tex. Gov. Code 497.099, and because the Free Exercise of religion was the cornerstone of Petitioner's claim, and the heartland of religious beliefs was at issue, the federal courts were obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of Petitioner's religious beliefs.

However, instead of granting him a narrow religious exemption pursuant to provisions of TRFRA or RLUIPA, the federal courts exhibited hostility towards Petitioner's religious views, ridiculed him for his religious conviction, and denied him his most fundamental right to freedom or worship.

TABLE OF AUTHORITIES

Case Laws **Pages**

UNITED STATES CONSTITUTION

TEXAS CONSTITUTION

FEDERAL STATUTORY PROVISIONS

TEXAS STATUTORY PROVISIONS

IN THE

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OF THE

UNITED STATES

OCTOBER TERM, 2019

No. _____

Shahram Shakouri,
Petitioner

v.

Lorie Davis, Director
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Respondent(s)

PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

ORAL ARGUMENT REQUESTED

PETITION FOR WRIT OF CERTIORARI

Shahram Shakouri (hereinafter "Petitioner") presents his petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, in which

the court ignored the district court's hostility toward Petitioner's religious beliefs; affirmed the district court's decision to deny Petitioner his most fundamental rights to free exercise of religion; refused to resolve inconsistencies in its rulings in **Watson, Channer, and Lineberry** in one hand and **Ali v. Johnson** on the other hand; and set a dangerous precedent for the Lower Courts to dismiss non-IFP civil right complaints pursuant to §1915(e). See Exhibit "A" in Appendix, attached.

Petitioner is appealing to this Honorable Court for a review of his petition in the context of its recent ruling in **Masterpiece Cakeshop v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018).**

In **Masterpiece**, Justice Kennedy specifically noted the hostility towards Phillips made by the Commission as their reason to reverse the ruling. Similarly in the present case, the district court's hostility towards Petitioner's sincerely held religious beliefs warrants reversal of the judgment as well.

OPINION BELOW

The opinions of the Court of Appeals (Exhibit "A") and the District Court (D.E. 21), (Exhibit "C").

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on May 1, 2019. See Exhibit A in Appendix, attached.

The jurisdiction of this Court is invoked under Title 28 U.S.C. §1254(1). This petition is timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

a. The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law respecting an establishment of religion or prohibiting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press."

b. The Third Article of the United States Constitution, at Section 1, states in part: "The judicial power of the United States, shall be vested in one supreme court in such inferior courts as the Congress may from time to time ordain."

Section 2, states in part: "The judicial power shall extend to all cases in law and equity, arising under this Constitution."

c. The 13th Amendment to the United States Constitution, Section 1, states: "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party has been duly convicted shall exist within the United States, or any place subject to their jurisdiction."

d. The 14th Amendment to the United States Constitution, Section 1, states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges

or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

e. The Texas Constitution, Art. 1 §6, "Freedom of Worship," states: "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters or religion, and no preference shall be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship."

f. The Texas Constitution, Art. 1, §19, states: "Deprivation of Life, Liberty, etc., due course of law.

Section 19: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disinfranchised except by the due course of the law of the land."

g. The Texas Constitution, Art. 5, §1, states: "Judicial Power; courts in which vested. Sec. 1. The judicial power of this State shall be vested in one supreme court, in one court of criminal appeals, in court of appeals, in district courts, in courts of justices of the peace, and in such courts as may be provided by law."

h. Texas Civil Practices and Remedies Code, §110.001, defines the free exercise of religion as follows: "(a) In this Chapter: (1) "Free exercise of religion" means an act or refusal to act that is substantially motivated by sincere religious belief under this chapter, it is not necessary to determine that the act or refusal to act is motivated by an central part or central requirement of the person's sincere religious belief."

i. Texas Penal Code §12.01, states: "Punishment in accordance with the Code: (a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure. (b) Penal law enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter. (c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence."

PROCEDURAL HISTORY

Petitioner sued the Director of TDCJ-ID along with 10 other defendants in State court. Petitioner alleged that the Director's failure to grant him a religious exemption from government regulation 497.099, pursuant to the provisions of TRFRA, violates the Free Exercise Clause of the First Amendment, and equal protection of the law of the 14th Amendment.

Glen Whitfield, one of the named defendants, untimely removed the case to the United States District Court for the Southern District of Texas (Houston Division). The district court transferred Petitioner's claim against certain defendants to the Western District of Texas (Pecos Division), then dismissed Petitioner's claims against the remaining defendants. See Petitioner's brief Exhibit "B" @ 24-26. See also the Fifth Circuit's judgment, Exhibit "A" @ 2.

The district court denied Petitioner's remand motion, and the Court of Appeals for the Fifth Circuit affirmed. The court concluded that the provisions of 28 U.S.C. §1446(b)(1), and 1446 (b)(2)(A) is inapplicable in this case. Id.

Although the Free Exercise of Religion was the cornerstone of Petitioner's claim, and the heartland of religious beliefs was at issue. The Fifth Circuit meticulously suppressed Petitioner's claims to free exercise of religion, and to equal protection of law. Characterized his complaint only as an objection to violation of his rights under the 13th Amendment, and also ignored the district court's hostility towards Petitioner's religious beliefs.

Instead of redressing his claim to free exercise of religion, and in direct opposition to its own precedents in **Watson, Channer, and Lineberry**, the court concluded that "inmates sentenced to incarceration cannot state a viable 13th Amendment claim if the prison system requires them to work." The court failed to realize that, (1) Petitioner's objection to prison work for no pay program is religiously motivated; (2) he has not been sentenced to labor

or hard labor, **112 F.3d 217**; (3) the Free Exercise Clause "Protect[s] religious observers against unequal treatment," **137 S. Ct. 2019**; and (4) the Supreme Court has long established that (i) "State cannot impose a penalty on the free exercise of religion"; and (ii) "a law we said may not discriminate against some or all religious beliefs." **137 S. Ct. 2021.**

The Pecos Division dismissed Petitioner's claim against several defendants pursuant to 28 U.S.C.A. §1915(g), even though the filing fee was paid and Petitioner was **not** proceeding in forma pauperis, according to the findings of district court, (Houston Division). See Exhibit "C" @ 1 and Exhibit "B" @ 26, 27.

STATEMENT OF THE CASE

The district court's decision in this case which religious hostility on part of the court itself is a factor, violates the federal court's obligation of religious neutrality under the Free Exercise Clause of the First Amendment to the Constitution.

A Liberal review of the final judgment in the instant case reveals that the district court exhibited hostility towards the Petitioner's religious views as "subjective belief", questioned the validity of the divinely ordained Baha'i teachings, and inquired whether Petitioner's interpretation of his religious scriptures is correct. In other words, the district judge acted as an "arbiter of scriptural interpretation," which according to

this Honorable Court, "it is not within [his] judicial function and judicial competence" to do. See **Thomas v. Review Board, 101 S. Ct. 1425, 1431 (1981).**

In **Masterpiece**, Justice Kennedy noted, "the Commission compared Phillips' religious beliefs to defense of slavery or the Holocaust. Kennedy found such comparison "inappropriate for a Commission charged with the solemn responsibility of fair and neutral enforcement of Colorado's anti-discrimination law."

In the case at hand, the district (Houston Div.), in its order of dismissal referred to Petitioner's religious view as "over-reaching claim", and challenged Petitioner's understanding of his religious teachings. The court held: "In none of these **[Baha'i]** text is stated that participation in prison work programs while incarcerated violated tenets of the Baha'i Faith."[1] See Exhibit "C" D.E. 21, n.2 @ 2 and Exhibit "B" @ 20.

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[1] It is noteworthy, that when the Muslim prisoners asked the federal courts to be exempt from consumption of pork, or when the Jewish prisoners asked for exemption from working on Sabbath, the Courts upheld their Constitutional Rights to free exercise of religion, granting them the exemptions.
No federal judge "exhibited hostility", or acted as an "arbiter of holy scriptures", by claiming that neither Quran nor Torah stated that consumption of pork or working on Sabbath is prohibited while incarcerated. In the case at bar however, the district court did not employ religious neutrality and did not grant a narrow exemption. Rather the court exhibited hostility towards Petitioner's religious beliefs when it questioned the validity of his religious teachings, and treated his religion significantly different.

The district court (Pecos Div.) also made similar improper comments. The court referred to Petitioner's religious beliefs as "insincere," "subjective," "self-serving," and "Rather unusual."[2] An unmistakable indicative of district courts hostility towards Petitioner's religious beliefs and convictions. See **Shakouri v. Raines, No. 4:11-CV-126-RAJ, (D.E. 109 @ 7, 9, 10, 11, 12) WL 12531365 (2014).** Exhibit "D".

In light of this Honorable Court's ruling in **Masterpiece,** such observation and criticism of Petitioner's religious views is inappropriate for the United States federal courts charged with solemn responsibility of fair and neutral enforcement of provisions of the First Amendment to the Constitution.

The Fifth Circuit did not mention the district court's comments about Petitioner's sincerely held religious belief; much less expressed concern with their content. For these reasons, it can be concluded that these statements cast doubt on the fairness and impartiality of the district court's adjudication of Petitioner's case. The Fifth Circuit endorsement of discrimination and hostility towards Petitioner's religious conviction remains troubling.

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[2] The trial judge impermissibly confronted what is in essence, the ecclesiastical question of whether the laws of the Baha'i Faith are usual or "rather unusual." "All government officials [including] judges - wholly incapable of defining a religion or its adherents." **Hyde v. TDCJ, 948 F. Supp. 625 (S.D. Texas 1996).**

Additionally, this Honorable Court in **Hernandez v. C.I.R., 109 S. Ct. 2136, 2148 (1989)** held: "It is not within the judicial ken to question the centrality of particular beliefs or practice to faith, or the validity of particular litigant's interpretation of those creeds."

This Court further held: "Religious beliefs need not be acceptable, logical, consistent, or comprehensive to others to merit First Amendment Protection." **Thomas supra @ 1430.**

In **Ford v. McGinnis, 352 F.3d 582 (2nd Cir. 2003)**, the Court held: "Courts are not permitted to ask whether a particular belief is appropriate or true however unusual or unfamiliar the belief may be."

In spite of clearly established federal law, the district court referred to Petitioner's religious belief as "rather unusual." The federal courts' hostility in this case was inconsistent with the First Amendment guarantee that our laws be applied in a manner that is neutral toward religion. Petitioner was entitled to a neutral decision maker who would give full and fair consideration to his religious objections as he sought to assert it in all of the circumstances in which his case was presented. See **Masterpiece @ III.**

In **Masterpiece**, the Supreme Court avoided ruling broadly on the intersection of anti-discrimination laws and rights to free exercise. In fact, Justice Kagan wrote a concurring opinion, joined by Justice Breyer taking particular notice of the narrow grounds of the ruling. Justice Gorsuch also wrote a concurring opinion, joined by Alito. Both Kagan's and Gorsuch's concurrence considered how the Commission handled Masterpiece differently than prior exemption requests. Kagan and Gorsuch concurrence agreed the Commission exhibited hostility towards Phillips' religious beliefs and concurred with the reversal. Justice Kagan cited as significant differences between prior Commission exemptions and the instant case.

Turning to the present case, Petitioner believes that this Honorable Court should re-examine his appeal in the context of **Masterpiece**, and grant him a narrow ground of religious exemption to the Texas Government Code 497.099 requiring prisoners to work for no pay.

Since Petitioner never asked for sweeping changes, or a broad ruling on the intersection of prison work regulation and right to free exercise, his appeal falls under this Court's ruling in **Masterpiece.** In fact, his request for a narrow exemption on

religious grounds is in line with the provisions of RLUIPA[3], and it is well within the boundaries of Texas Law set forth in TRFRA.

TRFRA codified at Texas Civil Practice and Remedies §110.001 (a)(1) states: "Free exercise of religion means act or refusal to act that is substantially motivated by sincere religious belief." Therefore, Petitioner's refusal to work without pay is "refusal to act", and "free exercise of religion" according to TRFRA.

§110.001 further states: "Under this chapter, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief."

On this issue the 2nd Circuit in **McEachin v. McGinnis** held: "Burden Practice need not be mandated by the adherent's religion in order to sustain a prisoner's free exercise claim." **357 F.3d 197 (2nd Cir. 2004).**

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[3] RLUIPA, **42 U.S.C.S. § 2000C et seq.,** makes it clear that it is the obligation of the courts to consider whether exceptions are required under the test set forth by Congress. See **Holt v. Hobbs, 135 S. Ct. 853 (2015).**

The Baha'i Holy Scriptures explicitly condemns both chattel slavery and industrial slavery. Therefore, observance of this law is mandatory, and it is an unfailing component of the Baha'i Faith, just as religion of Islam forbids consumption of pork, and Judaism forbids working on Sabbath.

In light of the foregoing, the district court abused its discretion by challenging the validity of the Baha'i Law, by criticising Petitioner's religious belief, and by questioning his interpretation of those creeds. The district court's decision thus, should be reviewed in a similar light as **Masterpiece**, and the judgment should be reversed.

II

In **Masterpiece**, Justice Kennedy's opinion also cited the three exemptions the Commission previously granted for the non-discrimination law arising from the William Jack complaints. The opinion also noted differences in handling previous exemptions as indicative of Commission hostility towards religious belief, rather than maintaining neutrality. Kennedy's opinion noted that he may have been inclined to rule in favor of the Commission if they had remained religiously neutral in their evaluation. Justice Kagan also cited as significant differences between prior Commission exemptions and the instant case. She posited the Commission could have ruled differently in the two situations if they had stayed religiously neutral. Justice Gorsuch indicated the Commission should maintain consistency among similar cases.

Applying the above standard to the present case, it becomes evident that the district court's hostility towards Petitioner's religious belief, rather than maintaining neutrality violated his rights to Free Exercise of religion, and equal protection of the law.

More fundamentally, the significant differences between prior exemptions accorded to adherents of other religions by the federal courts, and this Court, and refusing to extend the same constitutional protections to the Baha'is goes against the establishment clause's core principle of denominational neutrality.

In fact, the differences in treatment between Petitioner's case and the cases of other plaintiffs who objected to government regulations is another indication of hostility toward Petitioner's religious beliefs.

For instance, in **Ware v. La. Dept. of Corr., 866 F.3d 263 (5th Cir. 2017)** the Fifth Circuit upheld a Louisiana State Prisoner, religious rights pursuant to RLUIPA to adhere to precepts of his Rastafari religion, to grow his hair into deradlocks. In **Davis v. Davis, 826 F.3d 258 (5th Cir. 2016)**, the court also protected the religious rights of a Native American plaintiff pursuant to RLUIPA. In **Holt v. Hobbs, 135 S. Ct. 853 (2015)**, this Honorable Court upheld the religious rights of the Muslim prisoners to grow their beards.

In numerous other cases this court and the federal courts have protected the constitutional rights of the adherents of

various faiths to free exercise of religion, and have granted them myriad exemptions. In the present case however, because of religious hostility towards Petitioner's religious beliefs, his case was handled differently and he was denied a narrow exemption under RLUIPA.

III

Violation of the 1st and 13th Amendment Rights

The Fifth Circuit affirmed the district court's reliance on its precedence in **Ali v. Johnson, 259 F.3d 317 (5th Cir. 2001),** to deny Petitioner his most fundamental rights to free exercise of religion. The court held, "inmates sentenced to incarceration cannot state a viable 13th Amendment claim if prison system requires them to work."

By endorsing the district court's reliance on **Ali v. Johnson,** the Fifth Circuit artfully avoided redressing the essence of Petitioner's claim which involves express discrimination based on religious identity with respect to condemnation of slavery.

Instead of acknowledging that here, the heartland of religious belief is at issue, and admitting that the Baha'is have the same constitutional rights to free exercise of religion, as any other religious denominations, and redressing his free exercise claim accordingly, the court ruled in favor of slavery.

As an alternative, the Fifth Circuit could have adjudicated Petitioner's religious objections to involuntary servitude under its own precedents in **Watson, and Channer,** and accorded him a

narrow exemption. Instead the court decided to label his colorable claim to freedom of religion as frivolous and malicious.

Additionally, the district court's reliance on **Ali v. Johnson** is misplaced because, a closer examination of the 13th Amendment, the Texas laws on punishment, and the related precedents from the Fifth Circuit reveals four (4) refutable points. 1) The 13th Amendment is applicable only when labor is assessed as punishment; 2) Texas laws does not recognize labor or hard labor as punishment; 3) Petitioner has been sentenced to confinement and NOT to labor; and 4) The Fifth Circuit has drawn "distinction between those prisoners who are sentenced to labor as part of their sentence and those who are NOT." See **Watson v. Graves, 909 F.2d 1549, 1553 (5th Cir. 1990)**; See also **Channer v. Hall, 112 F.3d 214 (5th Cir. 1997).**

Thirteenth Amendment on Punishment

Petitioner's assertion that he is being subjected to slavery as he is being **punished** for refusing to work without pay in violation of his religious beliefs is **not** contrary to the provisions of the U.S. Constitution as written in its 13th Amendment, which clearly reads: Section 1. "Neither slavery nor involuntary servitude, **except as punishment** for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Section 2. "Congress shall have the power to enforce this article by appropriate legis-

lation."

As it is evident this U.S. Constitutional Amendment clearly states that **any** slavery or involuntary servitude **MUST be imposed as punishment** for crime whereof the party shall have been duly convicted. The State of Texas does not provide in its statutes, to date any form of labor to be assessed as a sentence or punishment imposed by the convicting court.

Texas laws on punishment

Texas Penal Code §12.01 which relies on Texas Code of Criminal Procedure (T.C.C.P.) for assessment of punishment of a person who is duly tried, convicted and sentenced in accordance to the law is to be fined; placed on suspended sentence, either deferred or probation or confined in a county jail, state jail, or state penitentiary, or to be put to death.

The State of Texas, in its statutes governing **punishment** for a felony committed, does not provide for sentencing one duly tried and convicted to hard labor or labor as a form of punishment. Texas laws on **punishment** thus, is consistent with the provisions and requirements of the 13th Amendment to the U.S. Constitution.

Additionally, in **Ex Parte United States, 242 U.S. 27, 41, 42, 37 S. Ct. 72 (1916),** the court held: "Indisputably under our constitutional system the right to try offenses against the criminal laws and upon conviction to impose the **punishment** provided by law is judicial, and it is equally to be conceded

that in exerting the powers vested in them on such subject, courts inherently possess ample right to exercise reasonably, that is, judicial discretion to enable them to wisely exert their authority." This is clear and convincing proof that **only** the Judicial Branch of the Government may impose punishment upon conviction for violation of offense against the criminal laws; and not the Executive Branch of Government.

It is also clearly established by the Texas Constitution Art. 1 §19 and Texas Penal Code §12.01 that imposition of punishment is a judicial function. Then the Texas Dept. of Criminal Justice, Correctional Institutions Division, an executive branch of government does not have the constitutional authority to **increase** Petitioner's punishment to a greater degree than that which the convicting court assessed when he was sentenced for the alleged crime committed, especially when the increased punishment violated Petitioner's right to free exercise of religion.

Thus, when the Fifth Circuit in **Ali v. Johnson** held that "inmates sentenced to incarceration cannot state a viable 13th Amendment claim if the prison system requires them to work," eventhough inmates in Texas **ARE NOT** sentenced to labor, the court violated Petitioner's 1st and 13th Amendment rights to the Constitution and granted the executive office of TDCJ-ID judicial power in violation of separation of powers doctrine, codified

in Article III of the U.S. Constitution and Article II § 1 of the Texas Constitution.

Inconsistencies in the Fifth Circuit's Rulings on the Provisions of the 13th Amendment

Although the Fifth Circuit in **Watson v. Graves, 909 F.2d 1549 (5th Cir. 1990)** concluded that "we do not dispute that when a prisoner is sentenced to labor as part of his sentence, his labor belongs to the prison and is at the disposal of the prison officials. We draw a distinction however, between those prisoners who are sentenced to labor as part of their sentence and those who are not. See Note 7 @ 1553. And despite the fact that Petitioner is not sentenced to labor, the religious hostility towards Petitioner's creeds prevented the distinct court from reviewing his claim pursuant to **Watson.**

The district court lack of religious neutrality, further precluded the court from assessing Petitioner's constitutional claim pursuant to the Fifth Circuit precedents in **Channer v. Hall, 112 F.3d 214 (5th Cir. 1997),** or **Lineberry v. U.S., 436 Fed. Appx. 293 (5th Cir. 2010).**

In **Channer**, the court held: "We recognize that inmates, despite their status as convicted criminals, retained their civil right not to be subjected to involuntary servitude because they have not been sentenced to hard labor." Id., @ 217.

In **Lineberry**, the court stated: "Prisoner was not forced into involuntary servitude in violation of the 13th Amendment

where he was paid for his work, and he was not subject to realistic threat of compulsion."

In **Watson**, the court further held: "We agree that prisoner who is not sentenced to hard labor, retaines his 13th Amendment rights; however, in order to prove a violation of 13th Amendment the prisoner must show he was subjected to involuntary servitude or slavery. Id., @ 1552.

In the face of clear infringement on free exercise before this court, and because Petitioner is **NOT** sentenced to labor, and because he has severly and repeatedly been punished[4] for adhering to his religious belief that slavery is contrary to the Law of God, jurists of reason could debate whether the Fifth Circuit conclusion that "Petitioner cannot state a viable 13th Amendment claim," is reasonable.

The 13th Amendment question in this case is controlled by the Fifth Circuit decisions in **Watson**, **Channer**, and **Lineberry**. The court's endorsement of **Ali v. Johnson** where the case is not

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[4] Petitioner has suffered over 700 days of various restrictions, 240 days this year alone for exercise of a constitutionally protected right to freedom of religion. He has lost contact visits, phone usage, commissary, and recreation privileges. His custody level has been reduced to Line 3, G4 and he has been transferred to an inferior wing of the prison called Medium custody. This is without question religious persecution, unacceptable by any standard.

based on free exercise claim, and it is not on point with the case at hand, is an unequal treatment of Petitioner's constitutional rights, and plain discrimination against his religious beliefs. See Petitioner's brief Exhibit "B" @ 20, 21.

The Supreme Court has established, "The Free Exercise Clause protect[s] religious observer against unequal treatment." **Trinity Lutheran Church v. Comer, 137 S. Ct. 2012, 2020 (2017).** This court further held, "The Free Exercise Clause protect[s] against indirect coercion or penalties on free exercise of religion, not outright prohibitations." Id., @ 2022; citing **Lyng, 108 S. Ct. 1319.**

In light of the foregoing, the decision of the Fifth Circuit that: "Shakouri's retaliation claim fails because it alleges that the defendants retaliated against Shakouri for exercising his constitutional rights not to participate in the prison work program, but he has no such right," is contrary to its own rulings in **Watson, Channer, and Lineberry.**[5]

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[5] Petitioner relied heavily on the Fifth Circuit rulings in **Watson, Channer, and Lineberry** to prove that because he has not been sentenced to labor or hard labor, he cannot be compelled into involuntary servitude. There is however, no reasoning from the appellate court as to why his claim was not reviewed pursuant to the above precedents, nor is there an explanation why the **Fifth** Circuit's ruling in **Ali v. Johnson** is in opposition to its rulings in **Watson, Channer, and Lineberry.** The Fifth Circuit's decision did not mention the above cases much less an effort to resolve their stark contrast.

It is also in direct conflict with the provisions of RLUIPA and TRFRA, prohibiting government from imposing substantial burden on prisoner's religious exercise.

The Court's decision is also in opposition to its own ruling in **Mayfield v. TDCJ, 529 F.3d 599 (5th Cir. 2008)**, in which the court held: "Government action or regulation creates a 'substantial burden' on religious exercise if it truly pressure the adherent to significantly modify his religious behavior and significantly violates his religious beliefs." Id., @ 601.

If further clashes with the circuit court's rulings that "precedent suggest that inmates have a right not to be disciplined for refusing to perform tasks that violate their religious beliefs." **McEachin v. McGinnis, 35 F.3d 197, 205 (2nd Cir. 2004).**

More fundamentally the court's conclusion that Petitioner has no viable 1st and 13th Amendment claim, because the prison system [referring to Tex. Gov. Code 497.099] requires inmates to work, is squarely rejected by the Supreme Court in cases where **free exercise of religion is at stake.**

In **Church of Lukumi, 508 U.S. 520**, this Court held: "A law we said, may not discriminate against "some or all religious beliefs." Id., @ 552. Nor may a law regulate or outlaw conduct because it is religiously motivated." **Trinity** supra @ 2021.

In **Church of Lukumi** supra, the Court made it clear that government, if it is to respect the constitution's guarantee of free exercise, cannot impost regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner

that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. The Free Exercise Clause bars even "subtle departures from neutrality" on matters of religion. Id., @ 543, 113 S. Ct. 2217.

Here, it means that the federal courts were obliged under the free exercise clause to proceed in a manner neutral toward and tolerant of Petitioner's religious beliefs. Instead the federal courts ridiculed Petitioner for his religious conviction, and made mockery of his religious beliefs.

Considering the foregoing precedents and the above ruling from the Supreme Court, Texas prison regulation 497.099 is unconstitutional,[6] because (1) confers judicial authority on executive branch of government to exact punishment, which is a core judicial function; (2) imposes penalty on the free exercise of religion, because it requires surrender of religious rights in exchange for immunity from persecution, and (3) oppresses religion or its practices.

The unconstitutionality of the statute and its punishment on free exercise of religion should trigger the most exacting scrutinizing from this Honorable Court, because the Supreme Court

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[6] Neither the district court, nor the Fifth Circuit redressed Petitioner's challenge to unconstitutionality of Texas Government Code 497.099.

has long established that government may not "devise mechanisms, overt or disguised to persecute or oppress religion or its practices." **Lukumi** supra @ 547; see also **Trinity** supra @ 2026.

IV

Improper Standard Employed for Dismissal

Petitioner contends that district court (Houston Div.) did not have the authority to dismiss his non-IFP civil right complaint under the provisions of 28 U.S.C. §1915 (e)(2)(B)(i) as frivolous for failure to state a claim, and §1915 (d) as malicious.

The district court (Pecos Div.) also erred by dismissing Petitioner's non-IFP complaint pursuant to §1915 (g). The question presented is whether §1915 (e)(2)(B)(i) and §1915 (g) are applicable in present case, and whether the district court's misapplication of the law violated Petitioner's rights to due process of law.

The district court (Houston Div.) clearly established that "Plaintiff is not proceeding in forma pauperis in this lawsuit." See Exhibit "C" @ 2, 3. Therefore, the court did not apply the proper standard and its decision to dismiss Petitioner's non-IFP complaint pursuant to §1915 (e) is abuse of discretion.

Section §1915 (e) was enacted by the United States Congress to curtail litigations of individuals proceeding in forma pauperis. The Congress did intend for the statute to be used to dismiss non-IFP civil right complaints, and there is nothing in the language of the statue to suggest otherwise.

Also there is no ruling from the Fifth Circuit on this issue. The court held: "This court has not determined whether §1915 (e)(2)(B)(i), which is included in a Section titled "Proceeding in forma pauperis," applies when the plaintiff is not proceeding in forma pauperis." See the court's decision @ 3. By endorsing the dismissal of Petitioner's complaint pursuant to §1915 (e), the Fifth Circuit set a dangerous precedent for teh lower courts to dismiss future non-IFP complaints under §1915 (e).

Furthermore, the district court pointed to no authority from the Supreme Court or the Circuit Courts authorizing the court to dismiss a non-IFP civil right complaint pursuant to §1915 (e), §1915A, or §1915 (d)(2).

Section §1915 (d)(2) states: "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determine that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal --

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted.

The Defendants may argue that §1915 (d)(2) applies to the present case. There are two issues with such argument. First, the district court did not dismiss Petitioner's complaint pursusnt to §1915 (d)(2), and Secondly, §1915 (d)(2) is also included in the same section titled "Proceeding in Forma Pauperis." Sub-section (A) which states: "The allegation of poverty is untrue,"

makes it clear that the Congress enacted this statute to curtail litigations of individuals proceeding in Forma Pauperis, and §1915 (d)(2) is inapplicable when the plaintiff is not proceeding in forma pauperis.

Besides, there are two conflicting rulings from two district courts on the same issue. The district court (Houston Div.) denied defendant Whitfields motion to dismiss the suit pursuant to §1915 (g), and the district court (Pecos Div.) dismissed the suit against defendant Whitfield under §1915 (g). See Exhibit "D". As it is evident both rulings **cannot** be correct. One of two rulings must fail, because both district courts "1) relied on clearly erroneous factual findings; 2) relied on erroneous conclusion of law; or 3) misapplied the law to the facts." **Volkswagon of America, 545 F.3d 304 (5th Cir. 2008).** See Petitioner's brief @ 11, 12 and @ 27.

C O N C L U S I O N.

The Fifth Circuit's decision to ignore the district court's hostility towards Petitioner's religious beliefs and do deny him his most fundamental rights to free exercise of religion, discounts centuries of history and jeopardizes the constitutional rights of the Baha'i prisoners in all states.

In sum, if the government in America cannot compel a Muslim prisoner to shave his beard because his Islamic Faith does not allow him, **Holt v. Hobbs, 135 S. Ct. 853 (2015)**; or force a Jewish prisoner to eat non-Kosher food because it is against his religious

beliefs, **Bartlett v. Atencio, U.S.D.C. Case #1:17-CV-19-CWD;** or to compel a Christian cake maker to make a wedding cake for a gay couple because it is contrary to his Christian beliefs, **Masterpiece** supra; or cannot require a Jehovah's Witness to engage in production of weapons, because his religion forbids him, **Thomas v. Review Board, 101 S. Ct. 1425;** or a business could not be forced to pay for contraception in violation of its owners religious view, **Christian-Burwell v. Hobby Lobby, 134 S. Ct. 275 (2014),** then the government of Texas cannot force a Baha'i to participate in industrial slavery in violation of his religious beliefs, because his Baha'i Faith forbids him.

In **trinity Lutheran Church** supra, Justice Gorsuch wrote, "that discrimination should not be permitted against religious exercise anywhere." The phrase religious encompasses Baha'i Faith, and anywhere includes prisons.

Finally, it is worth noting that in November 2018, Colorado voters approved an amendment that removed the exception clause for prisoner labor from the state constitution's prohibition against slavery. The time has come for this Honorable Court to broaden the 5th Circuit rulings in **Watson, Channer, and Lineberry** to put an end to slavery at gun point in Texas prisons. Regardless of how people feel about the criminal justice system, the ultimate outcome should not be slavery. Said abolish slavery Colorado's co-chair Jumokie Emery.

Petitioner prays that this Honorable Court will grant him a narrow religious exemption from taking part in prison work for no pay program pursuant to the provisions of TRFRA or RLUIPA.

SO PRAYED this 19th day of July, 2019.

Respectfully submitted,

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