No. 23-_____

In the Supreme Court of the United States

CASEY CAMPBELL,

Petitioner,

v.

MERRICK B. GARLAND,
ATTORNEY GENERAL OF THE UNITED STATES;
AND WILLIAM ONUH, IN HIS OFFICIAL CAPACITY
AND IN HIS PERSONAL CAPACITY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are employer statements on religious discrimination that are included in the complaint and admitted in the answer binding judicial admissions in the *de novo* review of a federal employee's Title VII religious discrimination claim?

2. Is a Final Agency Decision that was not vacated competent evidence in the *de novo* review of a federal employee's Title VII religious discrimination/hostile work environment claim?

3. As "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" and as "[Title VII] gives [religious practices] favored treatment", can discrimination or harassment of a federal employee based on religion be considered "the ordinary tribulations of the workplace"?

4. Was the law prohibiting religious discrimination in the workplace clearly established in 2013 to preclude qualified immunity as a defense to a claim for damages under the Religious Freedom Restoration Act?

5. Is qualified immunity a defense to a claim for equitable relief under Title VII or under the Religious Freedom Restoration Act?

6. Is a sanction that abridges substantive rights for a non-willful violation of a local rule proper under Federal Rule of Civil Procedure 83(a)(2).

LIST OF PROCEEDINGS

Casey Campbell v. William P. Barr, Attorney General of the United States; United States Department of Justice; Federal Bureau of Prisons; and William Onuh, Civil Action: 3:19-cv-01887-L in the U.S. District Court for the Northern District of Texas, Dallas Division, Transfer Order - July 21, 2021.

Casey Campbell v. William P. Barr, Attorney General of the United States; and William Onuh, Civil Action: 3:20-cv-01605-G in the U.S. District Court for the Northern District of Texas, Dallas Division, Transfer Order - June 19, 2020.

Casey Campbell v. William P. Barr, Attorney General of the United States; and William Onuh, Civil Action: 4:20-cv-00638-P in the U.S. District Court for the Northern District of Texas, Fort Worth Division, Final Judgment - June 19, 2020.

Casey Campbell v. Robert M. Wilkinson, Acting U.S. Attorney General; and William Onuh, Appeal 20-11002, in the U.S. Court of Appeals for the Fifth Circuit, Judgment - February 19, 2021 988 F.3d 798 (5th Cir. 2021)).

In re Casey Campbell, Civil Action: 4:21-cv-00881-P in the U.S. District Court for the Northern District of Texas, Fort Worth Division, Final Judgment - September 16, 2022.

Casey Campbell v. Merrick B. Garland, Attorney General of the United States; and William Onuh, in his official capacity and in his personal capacity, Appeal 21-10133, in the U.S. Court of Appeals for the Fifth Circuit, Judgment - November 2, 2023.

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The United States Court of Appeals for the Fifth Circuit Per Curiam Opinion, dated November 2, 2023, is included in the Appendix ("App.") at App.1a. This opinion affirmed the Memorandum and Order of the U.S. District Court for the Northern District of Texas, dated September 16, 2022, is included at App.23a. The full list of relevant opinions and orders below includes:

1. Final Agency Decision in *Casey J. Campbell v. U.S. Department of Justice*, Agency Case Number BOP-2017-0505 (5/16/2019) (App.99a)

2. Final Agency Decision *Casey J. Campbell v. U.S. Department of Justice*, Agency Case Number BOP-2017-0505 (9/27/2019) (App.81a)

3. Order of Dismissal in *Casey Campbell v. William P. Barr, Attorney General of the United States; and William Onuh*, 4:20-cv-00638-P (8/3/2020) (App.79a)

4. Final Judgment in *Casey Campbell v. William P. Barr, Attorney General of the United States; and William Onuh*, 4:20-cv-00638-P (8/3/2020)

5. Order on Plaintiff's Motion to Reconsider in *Casey Campbell v. William P. Barr, Attorney General of the United States; and William Onuh*, 4:20-cv-00638-P (9/2/2020) (App.74a)

6. Judgment in *Casey Campbell v. Robert M. Wilkinson, Acting U.S. Attorney General; and William Onuh*, appeal 20-11002 (2/19/2021) (988 F.3d 798 (5th Cir. 2021)) (App.66a)

7. Order on Sanctions in *Casey Campbell v. William P. Barr, Attorney General of the United States; and William Onuh*, 4:20-cv-00638-P (4/21/2021) (App. 59a)

8. Order on Qualified Immunity in *In re Casey Campbell*, 4:21-cv-00881-P (4/20/2022) (App.53a)

9. Privacy Act and Protective Order in *In re Casey Campbell*, 4:21-cv-00881-P (5/4/2022) (App.50a)

10. Memorandum Opinion and Order in *In re Casey Campbell*, 4:21-cv-00881-P (9/16/2022) (App.48a)

11. Final Judgment in *In re Casey Campbell*, 4:21-cv-00881-P (9/16/2022) (App.48a)

12. Order on Plaintiff's Motions to Reconsider in *In re Casey Campbell*, 4:21-cv-00881-P (10/28/2022) (App.21a)

13. Judgment in *Casey Campbell v. Merrick B. Garland, Attorney General of the United States; and William Onuh, in his official capacity and in his personal capacity*, appeal 21-10133 (11/2/2023) (App.1a)

JURISDICTION

The U.S. Court of Appeals for the Fifth Circuit entered its judgment on November 2, 2023. No timely motion for rehearing was filed. This Petition for Writ of Certiorari is timely filed under this Court's Rule 13 within ninety (90) days of the judgment of the Court of Appeals. This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 2000e-2—
Unlawful Employment Practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S. Code § 2000bb-1—
Free Exercise of Religion Protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

STATEMENT OF THE CASE

A. Procedural History

The Attorney General, the chief law enforcement officer of the United States responsible for enforcing civil rights laws, determined that Casey Campbell, a Federal Bureau of Prisons ("BOP") chaplain, was subjected to religious discrimination by his co-worker, William Onuh, another BOP chaplain. (ROA.575-600, App.99a-132a). This discrimination finding was made by the Department of Justice ("DOJ") Complaint Adjudication Office ("CAO"). (ROA.575-600, App.99a-

132a). The CAO issued its May 16, 2019 Final Agency Decision on Campbell's formal complaint filed through the DOJ's internal EEO process. (ROA.575-600, App. 99a-132a).

The Final Agency Decision found Campbell suffered a hostile work environment (ROA.575-600, App.99a-132a); that Onuh's "incorrigible behavior" was "sufficiently severe or pervasive to alter the conditions of [Campbell's] employment" (ROA.590, App. 120a); the harassment "had a religious basis" (ROA. 593, App.123a); and supervisors "knew about Onuh's harassment", but did not remedy the discrimination. (ROA.595-597, App.126a-129a).

Campbell filed his first lawsuit ("*Campbell I*") with claims of religious discrimination and hostile work environment on August 8, 2019. (ROA.23). The CAO issued a second Final Agency Decision on September 27, 2019, which assessed damages and attorney's fees. (ROA.605, App.79a). Campbell continued complaining of religious discrimination and a hostile work environment and he filed another EEO complaint through DOJ's EEO process. (ROA.619). When the CAO dismissed this new complaint, Campbell filed another lawsuit on June 16, 2020 ("*Campbell II*") that also complained of religious discrimination and a hostile work environment. (ROA.4762-4775).

Campbell II was dismissed on August 3, 2020 due to the failure of Campbell's counsel to hire local counsel required by Northern District of Texas local rule. (ROA.4797, App.81a). The District Court denied Campbell's motion to reconsider the dismissal and his motion to proceed without local counsel. (ROA.4799, App.74a). On February 19, 2021, the Fifth Circuit reversed the dismissal. (ROA.4838, App.66a). Upon

remand, the District Court imposed a monetary sanction as a "lesser sanction" for the failure to hire local counsel. (ROA.4853, App.59a).

On July 21, 2021, *Campbell I* was transferred from the Dallas Division to the Fort Worth Division. (ROA.488). *Campbell I* was re-numbered as 4:21-cv-00881-P and consolidated with *Campbell II*. (ROA.499; and App.4a).

In the consolidated case, William Onuh raised a qualified immunity defense on August 30, 2021 and discovery was stayed. (ROA.625). Campbell moved for partial summary judgment on liability on September 27, 2021. (ROA.892). The District Court granted Onuh's request for qualified immunity on April 20, 2022, while denying Campbell's motion for partial summary judgment as to liability. (ROA.1234, App.53a). On September 16, 2022, the District Court denied Campbell's second motion for partial summary judgment as to liability, while also granting the Defendants' motion for summary judgment as to all of Campbell's remaining claims. (ROA.2325, App.48a).

The District Court said the final agency decisions are "merely evidence for the Court to consider in its review of Campbell's claims." (ROA.2311, App.29a). The District Court also said "Campbell cites no evidence or authority to support his contention [of a hostile work environment]" (ROA.2314, App.33a); "Campbell presented no competent summary judgment evidence that the harassment complained of was based on [religion]" (ROA.2317, App.37a); and Campbell "cites no evidence or authority to support his [RFRA claim]." (ROA.2320, App.42a).

The Fifth Circuit panel affirmed the District Court's summary judgment, holding the employer statements in the final agency decisions are not judicial admissions, nor even evidence of discrimination. *Campbell*, No. 21-10133, at 8. (App.42a).

B. Facts of the Case

Casey Campbell complained of religious discrimination and a hostile work environment at Federal Medical Center-Carswell ("FMC Carswell") in Fort Worth, Texas, where he works as a BOP chaplain. (ROA.575-600, App.99a-132a). Starting in 2013, Campbell complained of discrimination and harassment. (ROA.580, App.106a). Years of inaction prompted Campbell to formally complain on May 5, 2017 through DOJ's internal EEO process. (ROA.547, App.83a). The complaint was investigated and the investigation resulted in the May 16, 2019 Final Agency Decision. (ROA.2476-2741; and ROA.575-600, App.99a-132a). The CAO decision found religious discrimination and harassment inflicted by Campbell's coworker, William Onuh. (ROA.575-600, App.99a-132a).

The CAO said, "the record shows that BOP management at the institution knew about Onuh's harassment." (ROA.595, App.126a). The details of Onuh's religious discrimination are documented at great length by the CAO in the twenty-six pages of the May 16, 2019 Final Agency Decision. (ROA.575-600, App.99a-132a). The CAO said "[a] review of Onuh's behavior leads to the conclusion that his actions were 'sufficiently severe or pervasive to alter the conditions of [Campbell's] employment and create an abusive working environment.'" (ROA.590, App.129a). But BOP took no effective action to stop Onuh's illegal conduct in all

the years since Campbell first complained. (ROA.597, App.129a).

The May 16, 2019 Final Agency Decision is a statement by DOJ, Casey Campbell's employer. (ROA.575, App.99a). The May 16, 2019 Final Agency Decision is also a statement by the Attorney General, Defendant Merrick Garland. (ROA.575, App.99a). In their Defendants' Answer to Campbell's First Amended Complaint, Defendant Garland and Defendant Onuh admit that the May 16, 2019 Final Agency Decision "supported a claim of discrimination based on religion" and "that Plaintiff was eligible for compensatory damages and reasonable attorney's fees." (ROA.636, App.172a). No evidence controverts the statements and admissions in the final agency decisions. (ROA.575-600, App.99a-132a). The admissions in Defendants' Answer are also not contradicted by any evidence.

Defendants never amended the Answer to remove their admissions; they did not controvert their admissions with evidence; they offered no evidence to show, nor did they argue, the May 16, 2019 Final Agency Decision is wrong; and the Attorney General never changed his findings on religious discrimination. Defendants have argued that Campbell suffered no discrimination. (ROA.929-932; ROA.1689-1691; and ROA.1872-1876). Defendants argued that Campbell's work environment was not hostile. (ROA.929-932; ROA.1692-1697; and ROA.1876-1882). Defendants also argued that Campbell's performance evaluations were good, so the terms and conditions of his employment must not have been affected. (ROA.929-932; ROA.1697-1698; and ROA.1882-1883).

Defendants made these arguments even as BOP's representative Delaine Hill testified that no one at

BOP had authority to dispute the Attorney General's discrimination findings. (ROA.2035). Hill was also DOJ's Rule 30(b)(6) representative. (ROA.4080-4111). Hill also testified that once the Attorney General issued a final agency decision, "everybody at BOP just needs to follow what the attorney general says". (ROA.2035). Hill admitted this was true "even if Campbell files a lawsuit seeking a *de novo* review". (ROA.2035).

Despite these employer statements from DOJ, despite the Attorney General's findings of discrimination, the District Court rejected Campbell's arguments that the statements and findings were judicial admissions. (ROA.2311-2312). The District Court said the May 16, 2019 Final Agency Decision is evidence. (ROA.1755). But the District Court also said Campbell offered no evidence that the "hostile work environment affected the terms, conditions[,] and privileges of his employment." (ROA.2314).

All of the statements and admissions of religious discrimination and hostile work environment were confirmed by the evidence and the testimony that was developed in the lawsuit. Casey Campbell, William Onuh, Kathryn Mobley, and Jonathan Clark were some of the witnesses who offered testimony and evidence in the District Court. They all answered interrogatories in the administrative proceedings and they were all deposed in the lawsuit.[1] Each of these

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[1] Campbell Interrogatory Answers (ROA.2531-2539, ROA.2540-2542), Campbell Deposition (ROA.4240-4289); Onuh Interrogatory Answers (ROA.2531-2539), Onuh Deposition (ROA.3921-3996); Mobley Interrogatory Answers (ROA.2531-2539), Mobley Deposition (ROA.3871-3920); and Clark Interrogatory Answers (ROA. 2531-2539) and Clark Deposition (ROA.3997-4061).

witnesses amplified what they told the EEO investigator during the administrative proceedings about Onuh's religious discrimination.

Casey Campbell submits that Mobley's and Clark's statements are direct evidence of religious discrimination and were cited by the CAO, which is itself direct evidence of discrimination, including the following:

> For some 18 weeks . . . Mobley 'had to adjust her work routine' [for a recurring] Protestant activity. Onuh was assigned to oversee the event, but he 'either [didn't] show up, or [failed/refused] to supervise the program.' . . . Mobley covered for Onuh on all but two Thursdays. (ROA.592, App.104a).
>
> Mobley, too, said that Onuh's disregard for non-Catholics 'adds a lot of extra stress' and 'extra work load' for [Campbell] and others. (ROA.592, App.116a).

Kathryn Mobley testified that Onuh is treated differently due to his religion:

> Father Onuh is a Father, which means he is a Catholic priest. They're much harder to come by in the Bureau of Prisons. (ROA.3877).
>
> [Onuh has] more of a sense of entitlement and a sense of 'I'm the Father' . . . that's just kind of how it is. (ROA.3877).
>
> we're all supposed to be . . . a team . . . if you have one team player that doesn't want to be a team player, then everyone else has to pick up the slack because that's just how it is. . . . everything has to still get done. So you can't force or make someone do something

> that they don't want to do and especially if you're a Father. (ROA.3877).

Chaplain Clark described Onuh's discrimination to the CAO as follows:

> "Onuh sees workplace relationships as Protestants vers[u]s Catholics' because of his 'own religious perspective." (ROA.594, App.124a).
>
> It was not the case that Onuh merely does not like to work; Clark said he 'doesn't like to work with other faith groups.' The record bears out Clark's assessment, as it does not describe Onuh's failure to supervise Catholic services or escort Catholic volunteers. (ROA. 594, App.124a).

From the time Mobley and Clark answered interrogatories in 2017, until they were deposed over four years later, Chaplain Clark said William Onuh's religious discrimination and harassment of Casey Campbell never stopped:

> no one at BOP has taken prompt, effective action to stop the harassment of Casey Campbell by William Onuh. (ROA.4023).
>
> [Clark] failed as a supervisor . . . to ensure that Casey Campbell's work environment was free from discrimination, hostility, intimidation, reprisal and harassment. (ROA.4019).
>
> Associate Warden Catricia Howard, Warden Jody Upton, Warden Michael Carr, BOP South Central Regional Director Juan Balthazar, and BOP Director Michael Carvajal also failed to correct Defendant Onuh's reli-

> gious discrimination and harassment of Casey Campbell. (ROA.4019).

All of these statements from Casey Campbell's co-workers and from his direct supervisor, in the final agency decisions and during their depositions, are statements from employees or agents of the Attorney General under Fed. R. Evid. 801(d)(2). The Attorney General of the United States is a reasonable person, and he is competent to render opinions on what constitutes religious discrimination and what is a hostile work environment. The Attorney General's statements show Onuh's actions were objectively and subjectively offensive.

The District Court said Campbell "produced [no] evidence nor caselaw . . . to [establish] a Title VII violation" (ROA.2315); "no evidence that Campbell's Baptist status somehow caused or motivated Onuh to behave in that way" (ROA.2316); no evidence that the "'denial of favored job conditions given to Onuh' constitutes an adverse employment action taken against Campbell because he is Baptist." (ROA.2316-2317); and "no competent summary judgment evidence that the harassment complained of was based on his Baptist status, Campbell's Title VII claim also fails under this element." (ROA.2317). The Fifth Circuit affirmed these rulings from the District Court. (App.1a-20a).

C. Basis for Jurisdiction in the District Court

The District Court had jurisdiction over this action under 28 U.S.C. § 1331 because Campbell's claims involve questions of federal law under Title VII, 42 U.S.C. § 2000e *et seq*. and under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq*.

REASONS FOR GRANTING THE PETITION

This case should be reviewed so the Court can state directly what conduct in the workplace creates a hostile work environment due to religion. This Court has explained in recent decisions the importance of protecting religious liberties in *Masterpiece Cakeshop, Ltd., et al. v. Colorado Civil Rights Comm'n., et al.*, 138 S.Ct. 1719 (2018) and in *Kennedy v. Bremerton School Dist.*, 142 S.Ct. 2407 (2022). The Court has said what accommodations employers must make for job applicants and employees in *Equal Emp't. Opportunity Comm'n. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015) and *Groff v. DeJoy*, 143 S.Ct. 2279 (2023). This Court has also instructed that government must not substantially burden, nor infringe upon religious beliefs and practices in *FNU Tanzin, et al. v. Tanvir, et al.*, 141 S.Ct. 486, 489 (2020) and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020). None of these recent decisions explains what conduct creates a hostile work environment due to religion.

This Court has not explained when qualified immunity protects government officials who discriminate based on religion or who burden religious exercise. Since *Chandler v. Roudebush* was decided in 1976, this Court has not said what evidentiary weight must be given to administrative decisions, final agency decisions, or employer statements in religious discrimination cases. These questions raised here should be answered by the United States Supreme Court.

This case deserves review by the Supreme Court to stop religious discrimination and harassment that Casey Campbell continues to suffer at work. But this case is not only about Campbell's religious liberties. The Attorney General recognized in the May 16, 2019 Final Agency Decision "that Onuh's intolerance of non-Catholics and managers' inaction affected many others." (ROA.597, App.129a) "Inmates and volunteers also suffered." (ROA.597, App.129a) The decision notes "BOP has a constitutional and statutory duty to permit each inmate to practice his or her religion". (ROA.597, App.129a) (citing *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008); and 42 U.S.C. § 2000bb-1(a)). Campbell seeks protection for his own religious liberties, as well as protection for the religious liberties of inmates and religious volunteers.

The Fifth Circuit described Campbell's complaints as "basic work grievances" concerning "ordinary tribulations of the workplace". *Campbell*, No. 21-10133, at 7-8. But when "Onuh failed to lock and unlock certain doors or provide necessary materials for services" *id.* at 10, he deprived inmates of their First Amendment rights to practice their religions. When Onuh "refused to supervise or assist non-Catholic volunteers" *id.* at 2, he infringed upon the volunteers' religious exercise. Onuh's derogatory remarks were not "light-hearted and mild teasing". *Id.* at 10. Onuh's "remarks 'put the safety and security of [the] institution's staff at risk [by inciting the inmates against [Onuh's] fellow chaplains]'." (ROA.577, App.102a). Review by this Court is needed to re-affirm Casey Campbell's right, each inmate's right, and every volunteer's right to practice his or her religion, even in prison.

The Court should grant this petition to confirm the prohibition of religious discrimination in the workplace was clearly established decades ago by Title VII. The Court should also confirm that Title VII and 42 U.S.C. 1983, two statutes "in the very same field of civil rights law", provide guidance on the Religious Freedom Restoration Act. These statutes, with "parallel causes of action", are sufficiently clear such that every reasonable official will understand that discrimination in the workplace due to religion substantially burdens an employee's exercise and practice of religion.

The Court should also reiterate that qualified immunity "does not ordinarily bar equitable relief." *Wood v. Strickland*, 420 U.S. 308, 314 n. 6 (1975).

A. Are Employer Statements Judicial Admissions in a Title VII *de novo* Review?

In *Chandler v. Roudebush*, 425 U.S. 840, 864 n. 39 (1976), this Court said "[p]rior administrative findings made with respect to an employment discrimination claim may, of course, be admitted as evidence at a federal-sector trial *de novo*." In *Massingill v. Nicholson*, 496 F.3d 382, 385 (5th Cir. 2007), the Fifth Circuit acknowledged the *Chandler* holding on administrative findings as evidence of discrimination.

Campbell argues the final agency decision here is not merely evidence, but is instead a judicial admission by the employer. Campbell can identify no case other than his own where the final agency decision was issued by the employer and not vacated. Typically, such administrative decisions are issued by the EEOC and may not warrant deference from a trial court. In this case however, the administrative decision is a

final agency decision, issued by the employer. The *Chandler* decision does not explain how such final agency decisions should be treated. As the Fifth Circuit treated employer statements and a final agency decision as merely administrative findings, when the pleading rules and the rules of evidence treat such statements as admissions by the employer, Campbell submits the opinion is wrong and it is inconsistent with this Court's precedents.

This Court said in *Jones, et al v. Morehead*, 68 U.S. 155, 165 (1863) "[i]t would be subversive of all sound practice, and tend largely to defeat the ends of justice, if the court should refuse to accept a fact as settled, which is distinctly alleged in the bill, and admitted in the answer." Citing *Jones*, the Fifth Circuit explained over ninety years ago in *Pullman Co. v. Bullard*, 44 F.2d 347 (5th Cir. 1930), the "conclusiveness of an unstricken admission is illustrated in *Jones* [], where the admission was enforced though the evidence showed it untrue, and in *Northern Pacific Railroad v. Paine*, [] where the only evidence of plaintiff's title was an admission in a plea which was not a good one, but was not stricken."

In this case, Campbell alleged in paragraph 4 of his First Amended Complaint that "the Complaint Adjudication Office ('CAO') at Department of Justice ('DOJ') decided on May 16, 2019 that Campbell was a victim of religious discrimination, and entitled to compensation for that discrimination and harassment". (ROA.547, App.134a). Campbell attached a copy of the May 16, 2019 Final Agency Decision to his First Amended Complaint (ROA.575-600, App.99a-132a), and he incorporated that decision into his Complaint at paragraph 5. (ROA.547, App.134a).

In their Answer, Defendant Garland and Defendant Onuh admitted the following:

> Defendants admit that on May 16, 2019, the Department of Justice ("DOJ)'s Complaint Adjudication Office ("CAO") issued a Final Agency Decision regarding Plaintiff's May 2017 EEO complaint, finding that the record supported a claim of discrimination based on religion, and finding that Plaintiff was eligible for compensatory damages and reasonable attorney's fees. (ROA.636, App.172a).

Campbell argued below, and he argues now, this is a judicial admission, based on precedents from this Court and from the Fifth Circuit.

"Normally, factual assertions in pleadings and pretrial orders are considered to be judicial admissions conclusively binding on the party who made them." *Myers v. Manchester Insurance & Indemnity Co.*, 572 F.2d 134 (5th Cir. 1978) "Facts that are admitted in the pleadings are no longer at issue." *Davis v. A.G. Edwards & Sons, Inc.*, 823 F.2d 105, 108 (5th Cir. 1987). These facts "are considered to be judicial admissions conclusively binding on the party who made them." *White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir. 1983). The District Court and the Fifth Circuit fail to explain why the employer statements in the May 16, 2019 Final Agency Decision that admit religious discrimination and a hostile work environment are not judicial admissions.

The issue of judicial admissions was not analyzed by the Fifth Circuit. The panel below simply said "[w]e disagree entirely with Campbell's arguments under Title VII" and "Campbell's arguments . . . are

a misinterpretation of the law of this circuit". *Campbell v. Garland*, 22-11067, at 8 (5th. Cir. Nov. 2, 2023). Campbell shows the employer admissions in the final agency decisions are judicial admissions that should remove the issues of religious discrimination and the hostile work environment from dispute. If the employer statements in the final agency decisions are not judicial admissions, they should be considered admissions by the employer, allowed as evidence by Fed. R. Evid. 801(d)(2), as this Court recognized in *Chandler*, 425 U.S. at 864 n. 39. Campbell asks the Court to grant this petition to explain the proper effect of admissions in a Title VII *de novo* review.

B. Is a Final Agency Decision Competent Evidence in a Title VII *de novo* Review?

Yes. A final agency decision is competent summary judgment evidence in a *de novo* review of a federal employee's Title VII claims. This Court has said "[p]rior administrative findings made with respect to an employment discrimination claim may, of course, be admitted as evidence at a federal-sector trial *de novo*." *Chandler*, 425 U.S. at 864 n. 39 (citing Fed. Rule Evid. 803(8)(C)). The Fifth Circuit followed *Chandler* in *Massingill*, 496 F.3d at 385 ("the Supreme Court held that administrative findings in discrimination cases may be evidence of discrimination.").

Although the Fifth Circuit cited *Massingill* in its judgment, the court below also said the May 16, 2019 Final Agency Decision was not "a 'judicial admission' or 'evidence' of discrimination." *Campbell*, 22-11067, at 8. The Fifth Circuit said "Campbell has altogether failed to present competent evidence in support of his Title VII hostile work environment claims." *Id.* Like the District Court, the panel below failed to analyze

and failed to explain how the twenty-six pages of employer statements in the final agency decision are not evidence. These employer statements include repeated admissions that Casey Campbell was subjected to religious discrimination and a hostile work environment.

C. Is Religious Discrimination "The Ordinary Tribulations of the Workplace"?

No, religious discrimination and harassment are not the ordinary tribulations of the workplace. But the Fifth Circuit concluded the religious discrimination and hostile work environment that Campbell experienced were "basic work grievances that did not fall within the scope of Title VII's protections." *Campbell*, 22-11067, at 9.

This Court's recent Title VII decisions have explained the requirements imposed on employers to accommodate religious practices and beliefs of job applicants and employees. *See Abercrombie & Fitch*, 575 U.S. at 779 and *Groff v. DeJoy*, 143 S.Ct. at 2285. This Court has said "Title VII . . . gives '[religious practices] favored treatment in order to ensure religious persons' full participation in the workforce. *Groff*, 143 S.Ct. at 2290 n. 9 (citing *Abercrombie & Fitch*, 575 U.S. at 775).

In other contexts, this Court has explained "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)). Similarly, religious discrimination, like race discrimination, will be subjected to an even "more exacting constitutional scrutiny than [gender

discrimination]." *Johnson*, 916 F.3d at 417 (citing *Clark v. Jeter*, 486 U.S. 456, 461 (1988)).

With all of this Court's recent decisions, it is clear religious practices and religious expression have favored status. Infringements upon religious expression and substantial burdens on religious exercise, even for minimal periods of time, constitute irreparable harms. Casey Campbell shows infringements upon religious expression and substantial burdens on religious exercise should never be considered "the ordinary tribulations of the workplace." Campbell asks the Court to review this case and then explain when religious discrimination creates a hostile work environment.

D. Was the Prohibition on Religious Discrimination Clearly Established in 2013?

The answer is yes. Qualified immunity is not a bar to Casey Campbell's RFRA claim against William Onuh. The Fifth Circuit recognized the right to be free from religious discrimination at work was clearly established more than 50 years ago. *Johnson*, 916 F.3d at 417 (citing *Rogers v. EEOC*, 454 F.2d 234 (5th Cir. 1971), cert denied 406 U.S. 957 (1972)); *see also Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986). This Fifth Circuit finding that religious discrimination at work has been prohibited for over a half century is consistent with Title VII and this Court's precedents.

Government officials are entitled to qualified immunity "unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *Dist. of Columbia v. Wesby*, 138 S.Ct. 577, 589 (2018) (citing *Reichle v. Howards*, 566 U.S. 658, 664 (2012)).

"A court must decide (1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was 'clearly established' at the time of the defendant's alleged misconduct." *Pearson v. Callahan*, 555 U.S. 223, 223-224 (2009).

"'Clearly established' means that, at the time of the officer's conduct, the law was 'sufficiently clear' that every 'reasonable official would understand that what he is doing' is unlawful." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). "In other words, existing law must have placed the constitutionality of the officer's conduct 'beyond debate.'" *Id.* at 741.

The application of qualified immunity to RFRA results from this Court's holding that "appropriate relief" under RFRA may include money damages from government officials personally. *FNU Tanzin*, 141 S.Ct. at 489. *FNU Tanzin* also recognizes "government officials are entitled to assert a qualified immunity defense when sued in their individual capacities for money damages under RFRA." *id.* at 493.

FNU Tanzin says RFRA and 42 U.S.C. § 1983 are statutes "in the very same field of civil rights law". *Id.* at 493. In *Johnson*, the Fifth Circuit said 42 U.S.C. 1983 and Title VII are "parallel causes of action" *id.* (citing *Lauderdale v. Tex. Dep't of Criminal Justice*, 512 F.3d 157, 166 (5th Cir. 2007)), while noting "there is good sense in seeking generally to harmonize the standards of what amounts to actionable harassment." *Id.* (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 n.1 (1998)).

Campbell shows the law prohibiting religious discrimination was sufficiently clear in 2013, when he began complaining about William Onuh, so every reasonable official would understand that religious based harassment and a hostile work environment based on religion is unlawful. *Johnson* is about race discrimination. *Id. Meritor Sav. Bank* was a sexual harassment case. 477 U.S. at 66. Campbell complains here of religious discrimination. These claims are different. But religious discrimination, like race-based discrimination, infringes upon a fundamental right and must be "given the most exacting scrutiny". *Clark*, 486 U.S. at 461 (citing *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 672 (1966)).

Decades of caselaw advising government officials that gender discrimination, race discrimination, and religious discrimination in employment are illegal under Title VII, should also serve notice that such conduct is also illegal under RFRA. *Johnson* notes "[c]ourts applied the *Rogers* holding to harassment and hostile work environment claims based on race, religion, and national origin before the EEOC issued a Guideline in 1980". *Johnson*, 916 F.3d at 417 (*emphasis added*). Campbell submits that at least within the Fifth Circuit's jurisdiction, the law prohibiting religious discrimination was clearly established in 1971. *Meritor Sav. Bank* shows the prohibition on religious discrimination at work was clearly established throughout the country in 1986. 477 U.S. at 66.

Whether due to *Rogers* in 1971, or *Meritor Sav. Bank* in 1986, the law prohibiting religious discrimination was clearly established before 2013, when Casey Campbell began complaining about William Onuh. Every reasonable official, including Onuh, had

noticed that Onuh's harassment of Campbell was unlawful in 2013. Qualified immunity should not bar Campbell's claims against Onuh, as the law prohibiting religious discrimination was clearly established many decades before William Onuh began harassing Casey Campbell.

E. Is Qualified Immunity a Defense to Claims for Equitable Relief?

While this lawsuit was pending, *FNU Tanzin* held that government officials may be personally liable for illegal actions that substantially burden the exercise of religion. *FNU Tanzin*, 141 S.Ct. at 489. But *FNU Tanzin* identified no new illegal conduct, only penalties, and it does not immunize William Onuh's actions at issue in this case. *Id.*

RFRA allows "appropriate relief" to those whose religious exercise is substantially burdened. 42 U.S.C. § 2000bb *et seq*. This Court said "appropriate relief" may be money damages against government officials individually. *FNU Tanzin*, 141 S.Ct. at 489. The Tenth Circuit Court of Appeals has found that RFRA allows injunctive relief as "appropriate relief. *Ajaj v. Fed. Bureau of Prisons*, 25 F.4th 805, 809 (10th Cir. 2022). The Fifth Circuit has said "qualified immunity protect[s] only individuals from claims for damages [it does] not bar official-capacity claims or claims for injunctive relief." *Singleton v. Cannizzaro*, 956 F.3d 773, 778 n.3 (5th Cir. 2020)). These holdings are consistent with this Court's statement in *Wood* recognizing qualified immunity "does not ordinarily bar equitable relief." 420 U.S. at 314 n. 6. But this rule was not applied by the District Court or the Fifth Circuit.

"RFRA uses the same terminology as [42 U.S.C.] § 1983 in the very same field of civil rights law, [and] 'it is reasonable to believe that the terminology bears a consistent meaning.'" *FNU Tanzin,* 141 S.Ct. at 491-492. Injunctive relief is "appropriate relief" under 42 U.S.C. § 1983. *Robinson*, 921 F.3d at 452. As the same terminology of "appropriate relief" is used in RFRA, it is reasonable to believe this terminology bears a consistent meaning, and Campbell's claims for injunctive and other equitable relief should be allowed as "appropriate relief" under RFRA. William Onuh should not be allowed qualified immunity as a defense to Casey Campbell's claims for equitable relief under RFRA.

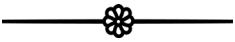
F. Is a Sanction for a Non-Willful Violation of a Local Rule Proper Under Rule 83(a)(2)?

Federal Rule of Civil Procedure 83(a)(2) states as follows:

> Requirement of Form. A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

Campbell has not found a case where this Court has explained the impact of Rule 83(a)(2). The Fifth Circuit has addressed the rule, but the panel opinion in this case conflicts with the Fifth Circuit's decisions in *Matta v. May*, 118 F.3d 410 (5th Cir. 1997) (sanctions based on a clearly erroneous assessment of the evidence are improper); *Hollier v. Watson*, 605 Fed. Appx. 255 (5th Cir. 2015); *Hicks v. Miller Brewing Co.*, 34 Fed.Appx. 962 (5th Cir. 2002); and *Razvi v. Dall. Fort Worth Int'l Airport*, No. 21-10016 (5th Cir. Sep 16, 2022), which all recognize that sanctions abridging

substantive rights may not be imposed for a non-willful violation of a local rule. Casey Campbell asks this Court to review this case, explain the correct application of Rule 83(a)(2), and reverse the monetary sanction.



CONCLUSION

The District Court's summary judgment and the Fifth Circuit's decision affirming that judgment are clearly wrong. The Attorney General's final agency decision was attached to Casey Campbell's complaint, incorporated into the complaint, and the Defendants admitted the allegations in their Answer. The final agency decisions in this case are also employer statements. If these employer statements are not judicial admissions, they are certainly admissions allowed as evidence by Fed. R. Evid. 801(d)(2), as this Court noted in *Chandler*.

A number of this Court's recent decisions explain the importance of protecting religious liberties, these decisions advise what accommodations employers must make for job applicants and employees, and they instruct that government must not infringe upon religious beliefs and practices. Campbell asks the Court to grant this petition to explain what conduct creates a hostile work environment based on religion, and to make clear that qualified immunity does not protect government officials who discriminate based upon religion or who substantially burden religious exercise.

Casey Campbell asks the Court to grant this petition because this case is not only about his own religious liberties. The religious freedoms of inmates and volunteers have also suffered. Every inmate has a constitutional right to practice his or her religion. Campbell asks the Court to accept this case to vindicate his and others' religious liberties. Campbell asks the Court to make clear that religious discrimination is not a basic work grievance, nor the ordinary tribulations of the workplace, and to confirm the prohibition of religious discrimination in the workplace was clearly established decades ago by Title VII. Campbell asks the Court to confirm that guidance from Title VII and 42 U.S.C. 1983 makes sufficiently clear for every reasonable official that discrimination and harassment in the workplace due to religion is a substantial burden on religious exercise and that qualified immunity does not bar Campbell's claims for money damages or for equitable relief. Finally, Casey Campbell asks the Court to review the sanction based upon an inadvertent violation of a local rule.

Respectfully submitted,

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