APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

APPENDIX TABLE OF CONTENTS (Cont.)

U.S. Court of Appeals, 5th Circuit, No. 20-11002

U.S.D.C., N.D. Texas, No. 4:20-cv-00638-P

AGENCY DECISIONS

OTHER DOCUMENTS

OPINION, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (NOVEMBER 2, 2023)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CASEY CAMPBELL,

Plaintiff-Appellant,

v.

MERRICK B. GARLAND, Attorney General of the United States; WILLIAM ONUH, in his official capacity; WILLIAM ONUH, in his personal capacity,

Defendants-Appellees.

No. 22-11067

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 4:20-CV-638, 4:21-CV-881

Before: JONES, STEWART, and
DUNCAN, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Casey Campbell appeals the district court's summary judgment in favor of Defendants-Appellees William Onuh and Merrick

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

Garland (collectively referred to as "the Government"), dismissing his Title VII hostile work environment and related claims with prejudice. Campbell also appeals the district court's denial of his motions for summary judgment as well as several other miscellaneous rulings the district court issued during the course of the litigation in the underlying proceedings. Because all of Campbell's claims lack merit, we AFFIRM.

I. Factual & Procedural Background

Campbell began working as a Baptist chaplain for the Federal Bureau of Prisons ("BOP") in 2006. He was assigned to work at the Federal Medical Center Carswell ("FMC Carswell") location in Fort Worth, Texas in 2008. William Onuh began working as a Catholic chaplain at the FMC Carswell location in 2012. Both Onuh and Campbell were supervised by Jonathan Clark, another Baptist chaplain who began working at FMC Carswell in 2015.

After Campbell and Onuh began working together in 2012, their working relationship became challenged over disagreements involving their various job duties as prison chaplains. Campbell's complaints about Onuh are extensive and numerous, but they can be distilled into general categories of basic work grievances. For example, Campbell complained that Onuh made off-color remarks during some of his homilies by referring to Protestant ministries as "only entertainment" and by calling one of Campbell's Protestant supervisors "that boy." Campbell also complained that Onuh often arrived to work late or left work early, refused to supervise or assist non-Catholic volunteers during certain activities, and failed to perform basic work-related functions such as

preparing for services by providing materials and locking or unlocking doors to the buildings. According to Campbell, Onuh's failure to perform these routine tasks resulted in Campbell often having to do them instead.

This ultimately led Campbell to file an internal formal complaint with the BOP in May 2017. In his complaint, Campbell alleged that Onuh created a hostile work environment and discriminated against him on account of his religion. Campbell's complaint was initially processed by the Complaint Adjudication Office ("CAO"), which is an office within the Civil Rights Division of the Department of Justice ("DOJ"). In May 2019, the CAO issued a decision stating that the "record support[ed] a claim of harassment based on religion." Shortly after receiving the CAO's decision, Campbell filed suit in federal district court alleging that he had been subjected to a hostile work environment due to Onuh's conduct. Then in September 2019, the CAO determined that Campbell was entitled to $15,000 in non-pecuniary damages, $1,000 in attorneys' fees, and restoration of certain leave hours.

A few months later in December 2019, although his federal lawsuit was already pending, Campbell filed a second internal complaint with the BOP advancing additional allegations against Onuh. In March 2020, the second internal complaint was dismissed due to the pendency of the federal lawsuit. Campbell then filed a second federal lawsuit in June 2020. After a somewhat involved procedural journey, the two lawsuits were ultimately consolidated, and

the district court proceedings commenced in August 2021.[1]

Campbell's first amended complaint named Garland in his official capacity as head of the DOJ and Onuh in both his personal and official capacities. Therein, Campbell alleged claims under Title VII of the Civil Rights Act of 1964, *see* 42 U.S.C. §§ 2000e *et seq*., as well as claims under the Religious Freedom Restoration Act ("RFRA"), *see* 42 U.S.C. §§ 2000bb *et seq*. Specifically, he asserted that "for many years Chaplain Campbell and his co-workers, who are also chaplains at FMC Carswell, have been subjected to religious discrimination and harassment in a pervasively hostile work environment at FMC Carswell that is largely due to the illegal and discriminatory behavior of one BOP employee, William Onuh, who is also a chaplain at FMC Carswell." Campbell sought damages in addition to declaratory and injunctive

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[1] The record reflects that, prior to the consolidation of Campbell's two lawsuits, the district court dismissed one of his civil actions without prejudice under Federal Rule of Civil Procedure 41(b) "on the ground that [Campbell's] counsel failed to retain local counsel as required by local rules." *See Campbell v. Wilkinson*, 988 F.3d 798, 799 (5th Cir. 2021). This court, however, determined that the dismissal without prejudice effectively served as a dismissal with prejudice because, if Campbell attempted to reinstate his case after his attorney complied with the rule, he would likely be time-barred. *Id*. at 801 n.1. Moreover, such a dismissal was unwarranted because the violation of the rule was caused by counsel, and not Campbell, and there were lesser sanctions available. *Id*. at 802. Accordingly, this court reversed and remanded for the district court to consider the applicability of lesser sanctions. *Id*. On remand, the district court conducted a hearing and issued the lesser sanction of $402 against Campbell's counsel and thereafter, consolidated Campbell's two civil actions and proceeded on the merits.

relief. Significantly, his complaint requested that the district court conduct a de novo review of his discrimination and harassment claims that had been previously adjudicated by the CAO.

Onuh moved to dismiss Campbell's claims against him in his personal capacity on grounds of qualified immunity and the district court granted his motion. The parties then proceeded to discovery on Campbell's official capacity claims and both Campbell and the Government moved for summary judgment. In its motion, the Government also counterclaimed to recover the $15,000 in non-pecuniary damages and $1,000 in attorneys' fees that had been previously paid to Campbell as a result of the CAO's prior administrative decision in 2019.

In September 2022, the district court granted summary judgment in favor of the Government and dismissed Campbell's hostile work environment and RFRA claims with prejudice. It also granted the Government's counterclaim and held that it was entitled to recover the $15,000 in damages and $1,000 in attorneys' fees that had been previously paid to Campbell as a result of the CAO's 2019 decision. The district court denied Campbell's motions for summary judgment.[2] Thereafter, Campbell filed several post-judgment motions, including one for reconsideration, which the district court summarily denied as frivolous. Campbell filed this appeal.

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[2] Campbell twice moved for summary judgment and the district court denied both motions at different times during the underlying litigation.

II. Standard of Review

We conduct a de novo review of a district court's grant of summary judgment. *Sanders v. Christwood*, 970 F.3d 558, 561 (5th Cir. 2020). "Summary judgment is proper 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (citing Fed. R. Civ. P. 56(a)). A dispute regarding a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A plaintiff's subjective beliefs, conclusory allegations, speculation, or unsubstantiated assertions are insufficient to survive summary judgment. *See Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011); *Clark v. Am.'s Favorite Chicken Co.*, 110 F.3d 295, 297 (5th Cir. 1997); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim." *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). "A panel may affirm summary judgment on any ground supported by the record, even if it is different from that relied on by the district court." *Reed v. Neopost USA, Inc.*, 701 F.3d 434, 438 (5th Cir. 2012) (internal quotation marks and citation omitted).

III. Discussion

On appeal, Campbell argues that the district court erred in granting summary judgment in favor of the Government on his Title VII and RFRA claims and in denying his own motions for summary judgment. He

also advances a number of arguments regarding several of the district court's miscellaneous rulings that were issued during the underlying proceedings. We address each of his arguments in turn.

A. Title VII

Under Title VII, it is "an unlawful employment practice for an employer . . . 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." 42 U.S.C. § 2000e-2(a)(1). "Title VII is the exclusive judicial remedy for claims of discrimination in federal employment." *Rowe v. Sullivan*, 967 F.2d 186, 189 (5th Cir. 1992). A plaintiff seeking relief under Title VII, however, must exhaust his administrative remedies prior to filing suit in federal court. *See Stroy v. Gibson ex rel. Dep't of Veterans Affs.*, 896 F.3d 693, 698 (5th Cir. 2018).

If a federal employee is able to successfully secure "a final administrative disposition finding discrimination and ordering relief," he may choose to "either accept the disposition and its award[] or file a civil action." *Massingill v. Nicholson*, 496 F.3d 382, 385 (5th Cir. 2007); *see also* 42 U.S.C. § 2000e-16(c). If the employee chooses to file suit, there are two types of civil actions he can file: "a suit to enforce the final administrative disposition, in which the court examines only whether the agency has complied with the dis position" or a suit requesting "*de novo* review of the disposition." *Massingill*, 496 F.3d at 384. If the employee seeks de novo review of the administrative disposition, the review is for both liability and remedy.

Id. at 385. "[He] may not, however, seek de novo review of just the remedial award." *Id*.

To establish a prima facie case of a hostile work environment in a Title VII suit, an employee must show that: (1) he belonged to a protected class, (2) he was subjected to harassment, (3) the harassment was based on his protected class, (4) the harassment affected a "term, condition, or privilege of employment," and (5) "the employer knew or should have known of the harassment and failed to take prompt remedial action." *Bye v. MGM Resorts Int'l, Inc.*, 49 F.4th 918, 923 (5th Cir. 2022) (internal quotation marks and citations omitted). The statute, however, is not a "general civility code" and is not intended to address "complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language . . . and occasional teasing." *Id*. (citation omitted). Moreover, only harassment that is "severe or pervasive" will be considered to affect "a term, condition or privilege of employment." *Hudson v. Lincare, Inc.*, 58 F.4th 222, 229 (5th Cir. 2023). "For conduct to be sufficiently severe or pervasive, it must be both objectively and subjectively offensive." *Bye*, 49 F.4th at 924. In determining whether the work environment is "objectively offensive," a court should consider "the totality of the circumstances, including '(1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or merely an offensive utterance; and (4) whether it interferes with an employee's work performance.'" *Id*. "No single factor is determinative." *Id*.

Campbell first argues that the CAO's 2019 administrative decision that he received prior to filing

suit in federal court is "evidence" that Onuh subjected him to religious discrimination. He contends that the various portions of the CAO's written decision describing Onuh's discriminatory conduct constitute conclusively binding "judicial admissions" as to liability that cannot be contradicted in his civil action. He then cites to this circuit's standard for proving a hostile work environment claim and summarily concludes that he has met that standard. He further avers that the district court erred in refusing to consider issuing an injunction to remedy the "intentional religious discrimination" that he was subjected to in violation of Title VII. He submits that injunctive relief in this situation would be appropriate because the Government has "failed to present clear and convincing proof that there was no reasonable probability of further noncompliance with Title VII." He also argues that the district court erred by twice failing to grant his own summary judgment motions as to the Government's Title VII liability.

We disagree entirely with Campbell's arguments under Title VII. As an initial matter, he misconstrues the difference between "a suit to enforce the final administrative disposition" and a suit seeking "*de novo* review of the disposition." *Massingill*, 496 F.3d at 384; 42 U.S.C. § 2000e-16(c). His contention is also incorrect that the district court was bound by the CAO's finding of liability, *i.e.*, that the "record support[ed] a claim of harassment based on religion." He is likewise mistaken that the CAO's decision was tantamount to either a "judicial admission" or "evidence" of discrimination. The district court's de novo review of both the liability and remedy aspects of Campbell's claims was conducted at Campbell's

request and in accordance with this court's long-standing applicable precedent. *Id.* Campbell's arguments to the contrary are a misinterpretation of the law of this circuit. *See Massingill*, 496 F.3d at 385.

Likewise, Campbell has altogether failed to present competent evidence in support of his Title VII hostile work environment claims. Recall that to establish a prima facie case of a hostile work environment, an employee must show that: (1) he belonged to a protected class, (2) was subjected to harassment, (3) the harassment was based on his protected class, (4) the harassment affected a "term, condition, or privilege of employment," and (5) "the employer knew or should have known of the harassment and failed to take prompt remedial action." *Bye*, 49 F.4th at 923. Campbell has arguably failed to meet four out of five of these elements.

Assuming that Campbell's status as a Baptist chaplain puts him in a protected class under Title VII, he has failed to show that Onuh actually "harassed" him on this record, or that he was harassed due to his status as a Baptist chaplain. As stated, the majority of Campbell's complaints, if not all, appear to be basic work grievances that do not fall within the scope of Title VII's protections. For example, Campbell's complaint that Onuh often arrived to work late or left work early does not amount to harassment and does not relate to Campbell's status as a Baptist chaplain. Onuh's failure to escort non-Catholic volunteers during certain activities does not constitute harassment and is also irrelevant to Campbell's status as a Baptist chaplain. Onuh's alleged inappropriate remarks made during certain homilies, *i.e.*, his reference to the Protestant ministries as "only entertainment" and his

calling one of the Protestant supervisors "that boy," were made outside of Campbell's presence and were not directed toward Campbell specifically. Campbell's complaint that Onuh failed to lock and unlock certain doors or provide necessary materials for services misses the mark for the same reason—these alleged actions, even if true, do not amount to Title VII harassment and even if they did, they were not directed toward Campbell or related to his status as a Baptist chaplain.

Campbell has also failed to submit evidence that any of Onuh's conduct—even if it could be considered harassment based on Campbell's protected class—affected a term or condition of his employment. *See Hudson*, 58 F.4th at 229; *Bye*, 49 F.4th at 923. As this court has observed, only harassment that is "severe or pervasive" will be considered to affect "a term, condition or privilege of employment." *Hudson*, 58 F.4th at 229. For conduct to be considered "severe or pervasive," it must be both "objectively and subjectively offensive." *Bye*, 49 F.4th at 924. To determine whether a work environment is "objectively offensive," courts consider "the totality of the circumstances, including '(1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or merely an offensive utterance; and (4) whether it interferes with an employee's work performance.'" *Id.*

But none of Onuh's above-described conduct, as alleged by Campbell, even if true, qualifies as "severe or pervasive." Campbell complains about Onuh's alleged failure to lock and unlock doors, provide necessary materials, escort volunteers, and his tendency to leave work early and arrive late because Onuh's failure to

perform these tasks resulted in Campbell, at times, having to do the tasks instead. But as the district court observed, these sorts of tasks are expected to be performed by any BOP chaplain. And as this court has held, "[n]o reasonable jury could conclude that being assigned duties that were part of one's job description . . . amount[s] to a hostile work environment." *Peterson v. Linear Controls, Inc.*, 757 F. App'x 370, 375–76 (5th Cir. 2019) (citation omitted), *abrogated on other grounds by Hamilton v. Dallas*, 79 F.4th 494, 506 (5th Cir. 2023) (en banc).

Campbell's complaints about Onuh's unsavory remarks during his homilies fare no better. Not only were Onuh's alleged statements made outside of Campbell's presence, but they were not directed at Campbell or related to his status as a Baptist chaplain. Moreover, Campbell has only pointed to a few alleged statements over an extended period of time which were arguably light-hearted and mild teasing, and therefore not objectively offensive, even if subjectively offensive to Campbell. For the same reasons, Campbell cannot show that any of Onuh's alleged conduct was "frequen[t]," "severe," "physically threatening," or "humiliating." *Bye*, 49 F.4th at 924.

The record further reflects that Campbell has failed to show that Onuh's conduct interfered with his work performance. Indeed, Campbell's job performance remained exemplary during the entire time period he alleges that he was subjected to Onuh's "harassment." As the district court noted, "Campbell's deposition testimony confirmed that he has always received positive performance reviews, has never been formally disciplined, and has consistently advanced up the company's career advancement scale with corresponding

pay increases, bonuses, and awards." In short, nothing in the record indicates that Onuh's conduct was severe or pervasive, thus affecting "a term, condition or privilege of [Campbell's] employment." *Hudson*, 58 F.4th at 229.

Finally, Campbell cannot show that his "employer knew or should have known of the harassment and failed to take prompt remedial action." *Bye*, 49 F.4th at 923. The record reflects that the BOP responded to Campbell's initial complaints in multiple ways. The BOP not only minimized Campbell's contact with Onuh by assigning the two chaplains to different work schedules, but it also offered to assign them to different locations within FMC Carswell if necessary.

To conclude, "[t]he legal standard for workplace harassment in this circuit is . . . high," and Campbell has clearly failed to meet that standard here. *Gowesky v. Singing River Hosp. Sys.*, 321 F.3d 503, 509 (5th Cir. 2003). As this court has consistently held, Title VII is not a "general civility code" and is not intended to address "complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language . . . and occasional teasing." *Bye*, 49 F.4th at 923 (citations omitted). Yet all of Campbell's allegations against Onuh fall squarely into these categories and thus fail to constitute actionable harassment under the statute. *Id.* In short, the district court correctly concluded that Campbell failed to demonstrate a prima facie hostile work environment claim under Title VII. *Id.* For this reason, its orders granting summary judgment in favor of the Government and denying summary judgment to Campbell were proper and supported by the record. *See Sanders*, 970 F.3d at 561.

B. RFRA

"Congress enacted RFRA in order to provide greater protection for religious exercise than is available under the First Amendment." *United States v. Comrie*, 842 F.3d 348, 350–51 (5th Cir. 2016) (citation omitted); *see also* 42 U.S.C. § 2000bb, *et seq*. An individual "whose religious practices are burdened in violation of RFRA may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief." *Comrie*, 842 F.3d at 351. To qualify for protections under the statute, a person "must show that (1) the relevant religious exercise is grounded in a sincerely held religious belief and (2) the [G]overnment's action or policy substantially burdens that exercise by, for example, forcing the plaintiff to engage in conduct that seriously violates his or her religious beliefs." *Id*. (internal quotation marks and citation omitted). If the claimant meets this burden, the Government bears the burden of proving that "its action or policy (1) is in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that interest." *Id*.

With respect to his claims under RFRA, Campbell first argues that because Onuh is not his employer, Title VII does not bar or preempt his claims. For this reason, he avers that the district court's dismissal of those claims should be reversed. He also claims that he is entitled to injunctive relief under the statute. Campbell contends that the district court's order granting Onuh qualified immunity and dismissing his RFRA claims was erroneous because "the right to be free from religious discrimination at work was clearly established decades ago." He then avers that even if the law is not clearly established, this is an "obvious

case" of religious discrimination which overcomes Onuh's defense of qualified immunity.

Like his Title VII claims, Campbell's RFRA claim fails. As stated, to qualify for protections under the statute, a person "must show that (1) the relevant religious exercise is grounded in a sincerely held religious belief and (2) the [G]overnment's action or policy substantially burdens that exercise[.]" *Id.* Campbell has provided evidence of neither element and wholly fails to explain how his "sincerely held religious belief" has been "substantially burden[ed]" by the Government's conduct. *Id.* Instead, he argues that the district court failed to consider this court's decision in *Tagore v. United States*, 735 F.3d 324, 332 (5th Cir. 2013), *abrogated by Groff v. DeJoy*, 600 U.S. 447, 470 (2023). But the *Tagore* case does not change the analysis here. There, the panel remanded for further proceedings to determine whether the plaintiff held "a sincere religious belief" that had been substantially burdened by the Government's conduct. *Id.* In order for Campbell to advance a successful RFRA claim, he must do the same. Because he has failed to do so, his claim fails. *Id.*

Given that the district court properly dismissed Campbell's Title VII and RFRA claims, it was also warranted in denying injunctive relief.

C. Miscellaneous Arguments

Campbell's arguments regarding the district court's miscellaneous rulings that were issued during the underlying proceedings are also meritless, and border on frivolous. He argues that the district court erred in: (1) granting qualified immunity to Onuh; (2) sealing portions of the record; (3) issuing monetary sanctions

to Campbell's counsel under Texas Local Rule 83.10; and (4) failing to disqualify the BOP's in-house counsel. He also asks this court to vacate Texas Local Rule 83.10. Finally, he urges this court to reassign this case to a different district judge.

a. Qualified Immunity

To establish the inapplicability of qualified immunity, Campbell is required to show that Onuh violated his clearly established statutory or constitutional rights. *See Morgan v. Swanson*, 659 F.3d 359, 371 (5th Cir. 2011) (en banc) ("The basic steps of our qualified-immunity inquiry are well-known: a plaintiff seeking to defeat qualified immunity must show: (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." (internal quotation marks and citation omitted)). However, because Campbell has failed to assert a cognizable claim under Title VII, RFRA, or any other law, he cannot overcome Onuh's defense of qualified immunity in this case. *Id*. The district court's order granting qualified immunity to Onuh was thus adequately supported by the record and the applicable caselaw. *Id*.

b. Protective and Privacy Act Order

Campbell's argument that the district court erred "by sealing records that are presumptively public" is equally meritless. The district court issued a Protective and Privacy Act Order in May 2022 and stated in pertinent part that "[a]ll materials provided by any party in discovery (including deposition testimony) that are marked or otherwise designated in writing as 'confidential' are subject to this order and may be used

by the receiving party solely in connection with the litigation of this case (including any appeals), and for no other purpose." Campbell's argument on this issue is that the district court's order wrongfully denied him and the public access to the records that show the Government's misconduct in his case. Because the record and applicable caselaw establishes that the Government did not engage in misconduct in Campbell's case, his argument carries no weight. Furthermore, the Protective and Privacy Act Order was issued in compliance with the district court's authority under Rule 26(c) and 5 U.S.C. § 552a(b)(11) and Campbell has failed to explain how its issuance was an abuse of discretion. *See Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021) (noting that this court's review of a protective order is for abuse of discretion).

c. Monetary Sanctions

Campbell also argues that the district court erred in issuing monetary sanctions to his counsel for his failure to comply with Texas Local Rule 83.10. He also asks this court to vacate the rule. His arguments are without merit. Rule 83.10 requires an out-of-district lawyer to obtain local counsel or obtain leave to proceed without local counsel when litigating in the Northern District of Texas. *See* N.D. Tex. Civ. R. 83.10. As stated, prior to consolidation of Campbell's two lawsuits, the district court dismissed one of his civil actions without prejudice under Rule 41(b) "on the ground that [Campbell's] counsel failed to retain local counsel as required by local rules." *See Campbell*, 988 F.3d at 799. But this court reversed the district court's order dismissing Campbell's suit and directed the district court to consider the imposition of lesser sanctions on remand. *Id.* at 802. In compliance with

this court's directive on remand, the district court conducted a hearing and issued the lesser sanction of $402 against Campbell's counsel. Because the district court's issuance of the monetary sanction was in compliance with this court's directive on remand, Campbell cannot show that the sanction was issued in error. For the same reason, we decline his invitation to "vacate" Rule 83.10 due to its inconsistent application within the district.

d. Motion to Disqualify BOP Counsel

Campbell further argues that the district court erred in denying his motion to disqualify in-house counsel for the BOP. According to Campbell, BOP counsel should have been disqualified because he "will be a witness at trial" since some of the answers that he provided to interrogatories submitted for the CAO's decision conflicted with Onuh's deposition testimony. As an initial matter, it is abundantly clear on this record that Campbell will not get a trial, so his argument is likely moot. Further, as the Government points out, even though he participated in a limited capacity in the underlying proceedings, counsel did not appear as an advocate before the district court, so no grounds existed to disqualify him. *See In re Guidry*, 316 S.W.3d 729, 742 n.19 (Tex. App.—Hous. [14th Dist.] 2010) ("A lawyer disqualified under the lawyer-witness rule is still free to represent the client in that case by performing out-of-court functions, such as drafting pleadings, assisting with pretrial strategy, engaging in settlement negotiations, and assisting with trial strategy."). For these reasons, Campbell's arguments on this issue are once again meritless.

e. Reassignment of the Case

Finally, we reject Campbell's argument that his case should be assigned to a different district judge. "The power to reassign is an extraordinary one and is rarely invoked." *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 892 (5th Cir. 2021) (internal quotation marks and citation omitted). "[R]eassignments should be made infrequently and with great reluctance." *Id.* (citation omitted). As this court noted in *Miller*, there are two tests for determining whether to reassign a case to a different district judge. *Id.* at 892–93. Under the more stringent test, a court should consider:

> (1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his mind or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

Id. (citation omitted). "The more lenient test looks at whether the judge's role might reasonably cause an objective observer to question [the judge's] impartiality." *Id.* at 893 (internal quotation marks and citation omitted).

Here, reassignment of Campbell's case is not justified by either test. As an initial matter, the district judge's summary judgment in favor of the Government, as well as his numerous other rulings, are supported by the record and the controlling

caselaw in this circuit. For that reason alone, Campbell's argument that his case should be reassigned fails. Second, Campbell's conclusory allegations that the district judge "put [his] personal interests before the parties' right to a fair trial, conducted an ex parte investigation, prejudged the case based on [his] own views, and by other improper actions, denied [Campbell] an impartial tribunal" are unfounded and unsupported by the record evidence. In this case, Campbell has proven to be a vexatious litigant, consistently advancing meritless, and often frivolous, claims during the pendency of his multiple lawsuits. In spite of Campbell's efforts, the district judge has handled his case with diligence and compliance with applicable statutory law and caselaw. In short, the district judge did nothing in the proceedings below that "might reasonably cause an objective observer to question [his] impartiality." *Id.* Consequently, Campbell's argument for reassignment also fails.

IV. Conclusion

For the foregoing reasons, we AFFIRM the district court's rulings in all respects.

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (OCTOBER 28, 2022)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE CASEY CAMPBELL

No. 4:21-cv-0881-P

Before: Mark T. PITTMAN,
United States District Judge

ORDER

Before the Court are a plethora of post-judgment motions filed by Plaintiff, including: (1) Plaintiff's Motion Reconsider Summary Judgment (ECF No. 181); (2) Plaintiff's Second Motion to Reconsider Dismissal of Claims Against Defendant William Onuh (ECF No. 182); (3) Plaintiff's Motion to Reconsider Protective Order and Motion to Unseal Improperly Designated Protected Materials (ECF No. 184); (4) Plaintiff's Motion to Reconsider Motion to Compel Rule 30(b)(6) Depositions (ECF No. 186); and (5) Plaintiff's Motion Reconsider Sanctions Imposed on Plaintiff's Counsel William J. Dunleavy (ECF No 188). The five motions are utterly frivolous, repetitive of previous arguments, and a drain on the Court's

precious resources. For these reasons, the motions are summarily DENIED.[1]

SO ORDERED on this 28th day of October 2022.

/s/ Mark T. Pittman
United States District Judge

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[1] After eight years as a judge on a Texas trial court, a Texas appellate court, and now the federal bench, the undersigned can attest that this case easily ranks as one of the most frustrating of the many thousands over which I have presided. It was originally filed in the Dallas Division on August 8, 2019. ECF No. 1. Based on this Court's research, it is the oldest civil case in the Fort Worth Division.

The problems and age of this case can be laid squarely at the feet of lead counsel for Campbell, William Dunleavy. Throughout this litigation, he has consistently failed to comply with the rules and has been admonished by the Fifth Circuit, this Court, and Judge Sam Lindsay. *See, e.g., Campbell v. Wilkinson*, 988 F.3d 798, 802 (5th Cir. 2021) ("The delay here was caused entirely by counsel."); *Campbell v. Barr*, No. 4:20-CV-00638-P, 2021 WL 1567892, at *2 (N.D. Tex. Apr. 21, 2021) ("Mr. Dunleavy knowingly and willfully violated Local Rule 83.10.") (Pittman, J.); ECF No. 50 at 3 ("Mr. Dunleavy's disregard for applicable rules is apparent.") (Lindsay, J.). Counsel's behavior need not be rehashed in detail here, but if this case is appealed, the Court is hopeful that the honorable judges of the Fifth Circuit will review the entire record in order to obtain a proper understanding of his disturbing actions. *See, e.g.*, ECF No. 50 at 7 (describing this case as a "morass" crated by Campbell's counsel) (Lindsey, J.). As for this Court, it can ill-afford to exhaust any more time and resources to this case without prejudicing all other parties on its docket.

MEMORANDUM OPINION AND ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (SEPTEMBER 16, 2022)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE CASEY CAMPBELL,

No. 4:21-cv-0881-P

Before: Mark T. PITTMAN,
United States District Judge.

MEMORANDUM OPINION & ORDER

Before the Court are Defendants' Motion for Summary Judgment (ECF No. 133) and Plaintiff's Second Motion for Partial Summary Judgment (ECF No. 140). For the reasons listed below, the Court grants Defendants' Motion and denies Plaintiff's Motion.

INTRODUCTION

This is a hostile work environment and employment discrimination case. Plaintiff Casey Campbell is a Baptist chaplain at the Federal Bureau of Prisons (the "BOP"). Campbell alleges a Catholic chaplain at the BOP, Defendant William Onuh, violated his religious

rights and created a hostile work environment. Campbell also alleges that the BOP failed to take corrective action to resolve Onuh's complaints after an administrative decision instructed it to do so. Campbell thus also named the Attorney General as a Defendant, as head of the BOP.

Defendants move for summary judgment on all claims asserted by Campbell, contending that Campbell's claims under Title VII of the Civil Rights Act of 1964 ("Title VII") fail. *First*, they assert that the evidence presented does not demonstrate a hostile work environment. *Second*, as to the religious discrimination claims, they assert that Campbell did not exhaust administrative remedies and cannot show an adverse employment action taken on a discriminatory or retaliatory basis. Defendants also argue that Campbell's Religious Freedom Restoration Act ("RFRA") claims fail because Title VII preempts them, and Campbell cannot show a substantial burden on his exercise of religion. In the same motion, the Attorney General individually moves for summary judgment on his counterclaim for monies previously paid to Campbell under an administrative decision that Campbell elected to relitigate *de novo* in this action.

Campbell moves for partial summary judgment on several discrete points. The Court ultimately concludes that none of his arguments are meritorious and accordingly denies Campbell's motion.

BACKGROUND

This case has a convoluted procedural history that need not be exhaustively rehashed to rule on the present motions. The Court will give a brief synopsis

of the essential background, including the administrative proceedings that predated this lawsuit, before turning to its analysis.

Campbell initiated this process by filing an administrative complaint with the BOP's internal Equal Employment Opportunity ("EEO") process in May 2017. He alleged that Onuh created a hostile work environment and violated Title VII by discriminating against Campbell based on his religion. ECF No. 58 ¶¶ 2–3. The allegations were investigated by an outside contractor. ECF No. 135-1 at 144–65. This investigation produced about 60 pages of materials, including written responses to interrogatories from BOP employees and Campbell, but not oral testimony or in-person hearings. *Id.* at 87–90, 141, 163–65. The Complaint Adjudication Office ("CAO")—an office within the DOJ's Civil Rights Division—considered the limited paper record and then issued a decision in May 2019 stating that the "record support[ed] a claim of harassment based on religion." ECF No. 58 at 30–55.[1] The CAO determined that Campbell was entitled to compensatory damages and attorneys' fees. *Id.* at 53–54. Then, in September 2019, the CAO determined Campbell was entitled to $15,000 in non-pecuniary damages, $1,000 in attorneys' fees, and the restoration of leave hours. ECF No. 135-1at 90–91.

Three months later, Campbell filed a second EEO complaint, alleging "the religious discrimination and relation against [him] continue[d]" and "no corrective

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[1] To match the style of Defendants' brief, page references to Campbell's amended complaint are to the page numbers appearing at the top of each page, as generated by the ECF system. *See* ECF No. 134 at n.6.

action ha[d] been taken to stop Chaplain Onuh's illegal conduct." ECF No. 135-1 at 199. In March 2020, that second EEO complaint was administratively dismissed based on its overlap with this lawsuit. ECF No. 58 at 74–75.

As mentioned, this lawsuit has a tortured procedural history. In short, this case was transferred from the Dallas Division (when it was nearly a year old) and then consolidated with another existing lawsuit on the Court's docket. *See* ECF Nos. 50, 52. Relevant here, Campbell's operative pleading is his First Amended Complaint (ECF No. 58), wherein Campbell requests *de novo* review of the CAO final agency decision and asserts claims under both Title VII and RFRA. *See generally* ECF No. 58. Campbell seeks damages and declaratory/injunctive relief.

The crux of Campbell's claims stems from Onuh's allegedly hostile and discriminatory behavior on a multitude of occasions. A sampling of these allegations is sufficient to give a flavor of Campbell's complaints. Campbell alleges that during two masses held in 2017, Onuh stated during his homilies (at which Campbell was not present) that Campbell's Protestant ministry was "only entertainment" and referred to a supervisor chaplain as "that boy." ECF No. 135-1 at 166. He further alleges that Onuh sometimes refused to escort non-Catholic volunteers into the facilities. On occasion, Onuh also refused to supervise activities he was assigned to cover. *Id.* at 166. This sometimes resulted in other chaplains working overtime. Grievances like these form the basis of Campbell's EEO complaints and his claims presently before the Court. *See* ECF No. 58.

LEGAL STANDARD

Summary judgment is appropriate when the pleadings, depositions, admissions, disclosure materials on file, and affidavits, if any, show there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), (c)(1). A fact is material if the governing law identifies it as having the potential to affect the suit's outcome. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). While the moving party "must demonstrate the absence of a genuine issue of material fact, it does not need to negate the elements of the nonmovant's case." *Duffie v. United States*, 600 F.3d 362, 371 (5th Cir. 2010). An issue as to a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* To show a genuine dispute as to the material facts, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Co.*, 475 U.S. 574, 586 (1986). The nonmoving party must show evidence sufficient to support the resolution of the material factual issues in their favor. *Anderson*, 477 U.S. at 249 (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253 (1968)). When evaluating a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party. *Id.* at 255 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–59 (1970)).

ANALYSIS

The Court will first address Defendants' Motion, starting with the request for summary judgment on Campbell's Title VII claims, followed by his RFRA

claims. Then, the Court will analyze Defendants' request for summary judgment on the Attorney General's counterclaim. Finally, the Court will move to Campbell's Motion.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A. Defendants are entitled to summary judgment on Campbell's Title VII claims

Defendants contend that, reviewing *de novo*, Campbell's Title VII hostile work environment claim and his discrimination/retaliation claims fail. The Court agrees and grants summary judgment in Defendants' favor on these claims.

1. Because Campbell requested *de novo* review, the questions of liability and remedy must be determined anew

Title VII allows a federal employee to bring a civil action if he is "aggrieved" by his employing agency's decision on his EEO complaint. 42 U.S.C. § 2000e-16(c). The employee may file two types of actions: (1) a suit to enforce the administrative decision, where courts examine only "whether the agency has complied with the decision," or (2) a suit for *de novo* review of the agency's decision. *Massingill v. Nicholson*, 496 F.3d 382, 384 (5th Cir. 2007). Campbell elected for *de novo* review. ECF No. 58 ¶ 19.[2] This entails *de novo*

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[2] When Judge Lindsay granted Campbell leave to amend his pleadings (before this case was transferred and consolidated), he warned Campbell that the amended pleadings "must be limited to *either* an enforcement suit under the APA *or* a civil action seeking de novo review of the agency decision under Title VII, *but not both*." ECF No. 31 at 4 (emphasis in original).

review of "both liability and remedy." *Massingill*, 496 F.3d at 385 (quoting *Scott v. Johanns*, 409 F.3d 466, 472 (D.C. Cir. 2005)); *see* ECF No. 152 at 20 (Campbell acknowledging that "all questions of liability and remedy must be determined anew based on the new record created in this litigation" (quoting ECF No. 134)). Accordingly, Campbell recognizes that "administrative findings are merely evidence—that, like any other evidence, can be accepted or rejected by the trier of fact—requires [the plaintiff to] put his employing agency's underlying discrimination at issue in the case." ECF No. 134 at 20 (quoting *Laber v. Harvey*, 483 F.3d 404, 421 (4th Cir. 2006)).

It is therefore undisputed that the underlying CAO decisions are merely evidence for the Court to consider in its review of Campbell's claims. Notably, the Parties engaged in extensive discovery that produced a record far more voluminous than the limited record available to the CAO. ECF No. 134 at 15. This includes about 60 hours of oral deposition testimony (the CAO had none), thousands of pages of document production (that were not considered by the CAO), and several rounds of written discovery (building upon the limited paper record available to the CAO). *See id.* The Court therefore has the benefit of considering the robust record produced during discovery to review Campbell's claims.

2. Campbell's arguments that Defendants made judicial admissions as to their liability are unfounded

Campbell repeatedly asserts in his Response that Defendants' arguments are irrelevant because Defendants made judicial admissions to liability. Campbell is mistaken. He previously raised this argument in the

brief supporting his first motion for summary judgment. *See* ECF No. 69 at 4–5, n.12. The Court rejected that argument and denied the motion. *See* ECF No. 81. This issue has been exhaustively briefed multiple times (*see* ECF Nos. 69 at 4–5; 72 at 17–20; 134 at 13–16; 161 at 30; 163 at 1–3). That briefing solidifies the Court's conclusion that Campbell's argument that Defendants judicially admitted liability fails for two reasons.

First, in their discovery responses, Defendants acknowledged the contents of the CAO decisions, *see, e.g.*, ECF No. 60 ¶ 4 (statements in answer admitting that the CAO issued a decision and noting the contents of that decision), which Campbell suggests constitutes judicial admission. He is incorrect, however, because Defendants did not admit to liability by simply acknowledging the existence of the CAO decisions and their contents. *Second*, for similar reasons, posting the EEO notice at the prison does not constitute a judicial admission by Defendants. The notice merely summarized the CAO decisions and was posted at the direction of the CAO. Thus, reviewing *de novo*, the Court finds no reason to conclude that Defendants' actions constituted a judicial admission as to their liability in this dispute.

3. Campbell's hostile work environment claim fails

Campbell's central Title VII allegations raise a hostile work environment claim. ECF No. 58 ¶¶ 36–167. To establish a prima facie hostile work environment claim, a plaintiff must show: (1) he belongs to a protected group, (2) he was harassed, (3) the harassment was based on his protected class, (4) the harassment

affected a term, condition, or privilege of employment, and (5) the employer knew or should have known of the harassment and failed to take prompt remedial action. *Price v. Wheeler*, 834 F. App'x 849, 859 (5th Cir. 2020) (citing *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002)). The Court considers the "totality of the circumstances," including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* at 859–60 (citation omitted).

Defendants contend that Campbell failed to allege a prima facie hostile work environment claim for three reasons: Campbell cannot show (a) actionable harassment, (b) a connection between the alleged harassment and his protected status, and (c) that management did not take action to remediate Campbell's concerns. ECF No. 134 at 16. The Court addresses these arguments below and ultimately agrees with Defendants on each point. Campbell's failure to demonstrate a prima facie hostile work environment claim on these elements, even with the benefit of extensive discovery, provides several independent grounds for granting summary judgment for Defendants.

a. Campbell's allegations of harassment did not affect a term or condition of employment.

Defendants' first argument cuts to the core of Campbell's claims: they contend Campbell was not subject to actionable harassment. The "legal standard for workplace harassment in this circuit is . . . high,"

regardless of the type of harassment alleged. *See Gowesky v. Singing River Hosp. Sys.*, 321 F.3d 503, 509 (5th Cir. 2003) (allegations of discrimination based on disability). For alleged harassment to "affect a term, condition, or privilege of employment," it must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002) (internal quotations and citations omitted). Determining whether a work environment is actionably hostile depends on a totality of circumstances. *See id.* This analysis "focus[es] on factors such as the frequency of the conduct, the severity of the conduct, the degree to which the conduct is physically threatening or humiliating, and the degree to which the conduct unreasonably interferes with an employee's work performance." *Weller v. Citation Oil & Gas Corp.*, 84 F.3d 191, 194 (5th Cir. 1996). Defendants contend that Campbell failed to show that the alleged harassment affected Campbell's work performance, was severe or pervasive, or was physically threatening or humiliating. ECF No. 134 at 17–24. The Court agrees.

i. Lack of sufficient adverse impact on employment

Defendants point to Campbell's excellent employment record to show that the allegedly hostile work environment did not adversely impact Campbell's employment. Campbell states he "has routinely been evaluated as an exemplary employee" at FMC Carswell. ECF No. 58 ¶ 37. Campbell's deposition testimony confirmed that he has always received positive performance reviews, has never been formally disciplined, and has consistently advanced up the company's career

advancement scale with corresponding pay increases, bonuses, and awards. ECF No. 135-1 at 15–19. This testimony is corroborated by Campbell's consistent "excellent" and "outstanding" ratings on his annual performance (which were not available to the CAO). *See* ECF No. 135-2 at 584–633.

Defendants contend that this evidence undermines Campbell's claims that the alleged hostile work environment adversely affected his job performance. ECF No. 134 at 22 (citing *Kenyon v. W. Extrusions Corp.*, No. 98-CV-2431-L, 2000 WL 12902, at *6 (N.D. Tex. Jan. 6, 2000)) (explaining that, although the court found the conduct at issue "offensive and despicable," the plaintiff failed to produce evidence showing she failed to perform her job, was discouraged from continuing to work, or failed to advance in her career as a result of the harassment). Campbell counters by offering only conclusory statements that his "hostile work environment affected the terms, conditions[,] and privileges of his employment." ECF No. 161 at 33. He cites no evidence or authority to support his contention and instead relies on the already-rejected argument that Defendants admitted liability. *See id.* at 33–34.

Campbell's argument does not cut the mustard; his conclusory statements that the hostile work environment negatively impacted his job performance is insufficient to demonstrate that Defendants' conduct was objectively and subjectively hostile or abusive, so much so that he was unable to succeed in the workplace. The Court thus agrees with Defendants and concludes that this factor weighs against finding that the alleged harassment affected a term or condition of Campbell's employment.

ii. Conduct was not sufficiently severe or pervasive

Defendants next contend that the alleged harassment was not so severe or pervasive that it altered the conditions of Campbell's employment. ECF No. 134 at 17. For harassment to be severe or pervasive enough to be actionable under Title VII, the conduct must be both subjectively and objectively offensive. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21–22 (1993). In other words, the Court considers whether a reasonable person would find the conduct hostile and abusive and asks whether the victim perceived the conduct as such. *See id.*

To be sure, Campbell perceived Defendants' actions to be hostile and abusive. *See generally* ECF No. 134 at 17 (describing Defendants' allegedly hostile and abusive behavior). So, the central question here is whether a reasonable person would similarly find Defendants' conduct hostile and abusive.

Accepting Campbell's allegations as true, Onuh's workplace sins were primarily ones of omission. For example, Onuh "regularly l[eft] work early," and Onuh's behavior caused other chaplains at the BOP, including Campbell, "to temporarily perform tasks that Campbell thought Onuh should have done." ECF No. 134 at 17 (citing ECF No. 135-1 at 29–42, 61–63, 128–34). Some of those tasks include "escorting volunteers, locking or unlocking doors, or performing other administrative-type tasks." *Id.* But the evidence reflects that these sorts of tasks were expected to be performed by any BOP chaplain. *Id.* (citing *id.* at 6–7). And even if not, Campbell has neither produced evidence nor caselaw supporting his contention that a reasonable person would find Onuh's alleged shirking of his work

responsibilities sufficiently hostile and abusive to constitute a Title VII violation.[3]

Campbell's complaints against Onuh fall well short of his burden of proving that Onuh's conduct is subjectively and objectively hostile and abusive to be actionable under Title VII. And because Campbell identifies no caselaw demonstrating that the dynamic between Campbell and Onuh creates an actionable hostile work environment claim, the Court concludes that this factor also weighs against finding that the alleged harassment affected a term or condition of Campbell's employment. *See* ECF No. 161 at 32–35.

iii. Conduct was not physically threatening or humiliating

Defendants next contend that none of the alleged conduct was physically threatening or humiliating. ECF No. 134 at 20–21 (citing *Weller*, 84 F.3d at 194). Indeed, Campbell confirmed that Onuh was never physically violent with him or engaged in any kind of mean-spirited practical joke. ECF No. 134 at 64–65. *Cf. La Day v. Catalyst Tech., Inc.*, 302 F.3d 474, 476, 482 (5th Cir. 2002) (holding that a plaintiff showed his supervisor's harassment was physically humiliating where the supervisor inappropriately touched his

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[3] Defendants correctly point out that in many instances, Campbell's complaints against Onuh have no connection to Campbell. *See* ECF No. 164 at 4. Because Campbell fails to delineate how Onuh's actions that did not affect Campbell created a hostile work environment for *Campbell*, the Court rejects his argument on those points.

private parts and spat tobacco juice on him). Accordingly, this factor weighs against Campbell's hostile work environment claim as well.

Because the factors weigh against finding that Campbell was subject to work in a hostile environment, the Court concludes that Campbell fails to allege actionable harassment. *See Ramsey v. Henderson*, 286 F.3d 264, 268. Summary judgment for Defendants is therefore granted on this claim.

b. Campbell's claim is not connected to a protected status.

Defendants next challenge Campbell's assertions that he was harassed because of his Baptist religion. They argue nearly all of Onuh's objectionable behavior is disconnected from Campbell's status as a Baptist. ECF No. 134 at 24. Prior emails produced during discovery did not suggest that Onuh was "engaged in some form of religious discrimination against Campbell (as opposed to just personally disagreeable or uncivil behavior)." (ECF No135-1 at 179–82). As discussed above, Campbell alleges that Onuh shirked work and performed poorly. But there is no evidence that Campbell's Baptist status somehow caused or motivated Onuh to behave in that way. ECF No. 134 at 25.

Campbell offers only a perfunctory, conclusory response to this argument. ECF No. 161 at 31–32. He argues that he is Baptist and "suffered an adverse employment action when BOP denied him preferential treatment that Defendant Onuh was allowed because of Campbell's religion." *Id.* at 32. Without supporting evidence, he complains that the "denial of favored job conditions given to Onuh" constitutes an adverse employment action taken against Campbell because

he is Baptist. *Id.* Campbell leans again on the inapposite argument that the Final Agency Decision is a binding admission of liability, which the Court again rejects. *Id.* at 33.

Because Campbell presented 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.

c. The BOP responded to Campbell's complaints.

Defendants assert that even though the of which conduct Campbell complains does not constitute actionable harassment, the BOP nevertheless took steps to minimize contact between Campbell and Onuh. ECF No. 134 at 25. Defendants specifically note that Campbell and Onuh's "work schedules have not substantially overlapped over the years—particularly [considering that] essentially all chaplains work Sundays but are busy doing inmate services and other activities such that they do not have much interaction." ECF No. 134 at 25 (citing ECF No. 135-1 at 24–25, 73, 289–305). Additionally, in recent years, when "Campbell and Onuh have been scheduled to work on the same days, one has been assigned to the camp facility while the other will be assigned to the main facility, thus further ensuring that they are not continually working in the same area." *Id.* (citing ECF No. 135-1 at 120–21). Campbell does not meaningfully respond to this argument. *See* ECF No. 134 at 32–35. Therefore, even if Campbell had demonstrated an actionable Title VII claim, he fails to rebut Defendants' assertion of actions adequate to remedy his complaints.

4. Campbell's religious discrimination/ retaliation claims fail.

Finally, though the Complaint is less than artfully drafted, Campbell's pleading may allege religious discrimination or retaliation claims. He alludes to discrete adverse employment actions (such as a failure to hire or promote) that are ostensibly distinct hostile work environment claims. While the former entails specific instances of discrimination, the latter involves a more prolonged course of conduct. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002) ("Hostile environment claims are different in kind from discrete acts.").

Specifically, Campbell alleges that he was not selected to be a supervisory chaplain at FMC Carswell in 2015, and he vaguely suggests he should have been placed in some unspecified "special rate" or "retention pay" position carrying a higher salary. See ECF No. 135-1 at 26–29, 122–25. Campbell asserts that failure to promote because the warden allegedly told him to stop complaining about Onuh or other issues in the Religious Services department. *Id.* at 26–29. Campbell acknowledged, however, that he did not file an EEO complaint about not being selected, and "[t]he person whom they selected is a white Protestant male who graduated" from the same seminary as Campbell, evidencing that there was any possible discrimination was not based on Campbell's religion. *Id.* at 27–28.

Defendants assert that these types of accusations are properly considered discrete adverse employment acts. *See* ECF No. 134 at 26 (citing *Morgan*, 536 U.S. at 114 ("Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy

to identify.")). Defendants thus move for summary judgment on Campbell's ostensible discrimination or retaliation claims, as distinct from his hostile work environment claims. *Id.* (citing *EEOC v. USF Holland, LLC*, No. 3:20-CV-270-NRB-RP, 2021 WL 4497490, at *2 (N.D. Miss. Sept. 30, 2021)) ("Failure to hire is a 'discrete act' which is easy to identify and distinguished from hostile work environment claims . . . . "). Defendants argue, however, that such claims are barred because Campbell failed to timely exhaust his administrative remedies, and he failed to establish a prima facie case. ECF No. 134 at 28. Campbell almost entirely ignores Defendants' arguments on these points in his Response.

Before suing in federal court under Title VII, a federal employee asserting a claim of employment discrimination must first exhaust administrative remedies by complying with the EEO regulations set forth in 29 C.F.R. § 1614.105 *et seq*. *See Thomas v. Napolitano*, 449 F. App'x 373, 374–75 (5th Cir. 2011). These regulations require a federal employee claiming discrimination to contact an EEO counselor about the alleged incident "within 45 days of the date of the matter alleged to be discriminatory" and then file an administrative EEO complaint if the issue is not resolved through the counseling process. 29 C.F.R. §§ 1614.105(a)(1), 1614.106(a). Generally, "absent a defense of waiver, estoppel, or equitable tolling," failure to timely notify the EEO bars such a claim from proceeding. *Pacheco v. Rice*, 966 F.2d 904, 905 (5th Cir. 1992).

Campbell indicated he was not promoted to supervisory chaplain in 2015, but he did not file an EEO complaint until years later, in 2017. Even then, his tardy complaint neglected to mention the allegedly

discriminatory failure to promote him to supervisory chaplain. Because Campbell did not timely initiate the EEO process on his failure-to-promote claim, that claim is barred. *See id.*

So too for Campbell's vague claim that he should have been placed on a "special rate," "retention pay," or other similar position. Campbell failed to show that he applied for any positions that would entitle him to these benefits. Nor did Campbell demonstrate that he initiated—let alone exhausted—an EEO complaint on this lack-of-benefits claim. *See* ECF No. 134 at 29.

Finally, Campbell presented no evidence showing he is entitled to a defense of waiver, estoppel, or equitable tolling. Because he never filed an EEO complaint addressing his failure-to-promote and his lack-of-benefits claims, these defenses are inapplicable. *See, e.g.*, *Eberle v. Gonzales*, 240 F. App'x 622, 627 (5th Cir. 2007) ("[The]doctrine of equitable tolling does not permit plaintiffs to suspend the time for filing discrimination complaints indefinitely when they discover instances of disparate treatment of other employees months or years after their discharge." (citation and quotation omitted)).

Because the Court concludes these claims were not administratively exhausted and thus barred from proceeding, the Court declines to undertake the *McDonnel Douglas* analysis to determine whether Campbell pleaded a prima facie case. Defendants are therefore entitled to summary judgment on Campbell's Title VII claims.

B. Defendants are entitled to summary judgment on Campbell's RFRA claims.

Defendants also move for summary judgment on Campbell's RFRA claims, arguing that these claims are preempted by Title VII.

"[T]itle VII provides the exclusive remedy for employment discrimination claims raised by federal employees." *Kaswatuka v. U.S. Dep't of Homeland Sec.*, 7 F.4th 327, 330–31 (5th Cir. 2021) (quoting *Jackson v. Widnall*, 99 F.3d 710, 716 (5th Cir. 1996)). When "both the RFRA and Title VII claims that [a federal employee] plaintiff has alleged in [his] complaint are based on identical facts . . . the RFRA claims plaintiff has asserted against [the federal agency] defendants are preempted by the Title VII claims asserted against those same defendants." *Tagore v. United States*, No. H-09-0027, 2009 WL 2605310, at *10 (S.D. Tex. Aug. 21, 2009) (explaining the interaction between Title VII and RFRA and the corresponding caselaw).

Here, Campbell relies on the same factual allegations for both his RFRA and Title VII claims. *Compare* ECF No. 58 ¶ 168 (relying on the allegations in paragraphs 20 through 147 for Campbell's Title VII claims), *with* ¶ 174 (relying on the allegations in those exact same paragraphs for his RFRA claims). Thus, Defendants argue that Campbell's RFRA claims are directly related to his Title VII claims, so his RFRA claims are preempted by Title VII. ECF No. 134 at 40.

In response, Campbell did not cite a single case permitting a RFRA claim for religious discrimination in federal employment, nor is the Court aware of any. *See, e.g.*, *Holly v. Jewell*, 196 F. Supp. 3d 1079, 1088

(N.D. Cal. 2016) (collecting district court cases from across the country holding that Title VII preempts a federal employee's RFRA claim). Campbell's two-sentence conclusory counterargument is insufficient to pass muster. He merely states that he "is employed by the [BOP], not by Defendant Onuh," ECF No. 161 at 34, and consequently concludes that because Onuh is not his employer, Defendants' preemption defense fails. But he cites no evidence or authority to support his conclusory arguments. The Court therefore finds that Defendants are entitled to summary judgment also on Campbell's RFRA claims.

C. The Attorney General is entitled to summary judgment on his counterclaim to recover monies paid to Campbell.

Finally, Defendants assert that the Attorney General is entitled to summary judgment on his counterclaim for the monies paid to Campbell pursuant to the CAO decisions. *See* ECF No. 60. The Attorney General asserts that a federal agency may pursue such a counterclaim in a *de novo* employment-discrimination case to "offset against any recovery by [the plaintiff] and judgment against [the plaintiff] if no liability is found or the offset is greater than the recovery." *Massingill*, 496 F.3d at 386–87; *see also Smith*, 341 F. App'x at 37 (acknowledging that if a *de novo* review finds no liability or a lower award is granted, the agency can counterclaim against the plaintiff "to recover the amounts paid in excess of the ultimate award").

Here, the uncontested evidence shows Campbell received $15,000 in non-pecuniary damages and $1,000 in attorneys' fees from the BOP, as awarded by the

CAO. *See* ECF No. 14 at 6, 17; *see also* ECF No. 135-1 at 90–91. The Attorney General contends that he is entitled to recover the $16,000 in total monies paid to Campbell at the administrative level. *See* ECF No. 134 at 44–45 (citing *Massingill*, 496 F.3d at 386–87). Multiple cases to support the Attorney General's position. *See, e.g.*, *Hodge*, 257 F. App'x at 730 (affirming grant of federal agency's counterclaim in a *de novo* employment-discrimination case to recover funds paid to the plaintiff in accordance with the challenged EEOC award, as the plaintiff had demonstrated no error in granting summary judgment against her on her discrimination and retaliation claims, and the EEOC had awarded her the funds in dispute based on those claims); *Young v. Buttigieg*, No. 19-CV-01411-JCS, 2022 WL 1471416, at *4–6 (N.D. Cal. May 10, 2022) (denying plaintiff's motion to dismiss federal agency's counterclaims in a *de novo* employment-discrimination case to recover funds paid to the plaintiff in accordance with an EEOC award, in large part as "there is no dispute that [the plaintiff] would owe the government money if she does not").

Campbell entirely ignores the Attorney General's argument that the Attorney General would be entitled to summary judgment if the Court found no liability in its *de novo* review. *See* ECF No. 161. At most, Campbell makes a cursory reference in the brief supporting his own dispositive motion to his alleged efforts to mitigate damages. *See* ECF No. 141 at 38. This single paragraph merely states that "Campbell took every opportunity to mitigate his damages" without pointing to any substantiating evidence. *Id.* Thus, absent evidence to the contrary, the Court concludes that Campbell did not mitigate his damages.

The Court reviewed Campbell's claims for hostile work environment, religious discrimination and retaliation, and RFRA violations *de novo*. Because the Court granted summary judgment against Campbell on each of these claims, the Court concludes there is no basis for liability for Campbell's claims against Defendants. Thus, the Court grants summary judgment for the Attorney General on his counterclaim to recover the monies paid to Campbell due to the CAO decisions. The Attorney General is therefore entitled to recover $15,000 in non-pecuniary damages and $1,000 in attorneys' fees paid to Campbell in the earlier administrative proceedings. *See* ECF No. 14 at 6; *see also* ECF No. 135-1 at 90–91.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Campbell's brief in support of his Motion for Partial Summary Judgment is heavy on verbiage but light on substance. *See* ECF No. 141. The 38-page brief contains just seven pages of analysis and zero convincing arguments. *See id.* at 32–38. The Court addresses and disposes of each in turn.

First, Campbell repeats the tired argument that "the final agency decision here is not mere evidence, [but is instead] a judicial admission." *Id.* at 33, 35–37. The Court rejected this argument multiple times, both in a previous order denying Campbell's first dispositive motion, (ECF No. 81), and in the analysis of Defendants' Motion above. The Court declines to rehash its analysis and merely incorporates its reasoning and conclusion detailed above. In short, Campbell's argument holds no water.

Second, Campbell offers a terse argument for summary judgment on his hostile work environment claim. *See id.* at 34–35. After reciting the elements for such a claim, Campbell lists a handful of conclusory statements to bolster his argument. *See id.* But his statements amount to little more than threadbare recitations of the elements of a hostile work environment claim reconfigured to include the Parties' names. He cites: two distinguishable cases (one of which is out-of-circuit), the CAO decision, Defendants' Answer, an old Motion to Dismiss from an earlier case, and Onuh's Motion to establish qualified immunity. *Id.* at 35–36. None of these constitute sufficient or persuasive summary judgment evidence or authority. The dearth of supporting evidence is particularly noteworthy because the Parties engaged in extensive discovery in this case, as detailed above. The Court thus summarily denies Campbell's Motion on this claim.

Third, Campbell counters Defendants' contention that Title VII preempts his RFRA claim. *See id.* at 37–38. In his three-sentence argument, Campbell posits that the evidence in this case shows conclusively that he is employed by the [BOP], not by Defendant Onuh. *Id.* Campbell cites no evidence or authority to support this contention. The Court therefore incorporates its analysis on this point where it granted summary judgment for Defendants on its preemption argument. The Court therefore denies Campbell's Motion on this claim.

Finally, Campbell contends that Defendants' mitigation of damages affirmative defense is not supported by evidence. He argues that this "defense requires an injured party, following a breach, to exercise reasonable care to minimize his damages" using

reasonable efforts. *Id.* at 38. Campbell then argues, again without citing any evidence or authority, that "the evidence here on mitigation is conclusive that there was a failure to mitigate, as Campbell took every opportunity to mitigate." *Id.* But Campbell fails to detail how he ostensibly mitigated damages. *See id.* The Court therefore denies Campbell's Motion on this claim as well.

ORDER

For the reasons detailed above, the Court rules as follows:

Defendants Merrick B. Garland and William Onuh's Motion for Summary Judgment (ECF No. 133) is GRANTED. Accordingly, Plaintiff Casey Campbell's hostile work environment, religious discrimination, retaliation, and RFRA claims are each DISMISSED with prejudice.

Defendants' Motion for Summary Judgment on the Attorney General's counterclaim is GRANTED. The Court therefore ORDERS the Attorney General is entitled to recover the $15,000 in non-pecuniary damages and $1,000 in attorneys' fees paid to Campbell as a result of the prior administrative decisions.

Finally, Plaintiff Casey Campbell's Second Motion for Partial Summary Judgment (ECF No. 140) is DENIED.

SO ORDERED on this 16th day of September 2022.

/s/ Mark T. Pittman
United States District Judge

FINAL JUDGMENT, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (SEPTEMBER 16, 2022)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE CASEY CAMPBELL,

No. 4:21-cv-0881-P

Before: Mark T. PITTMAN,
United States District Judge.

FINAL JUDGMENT

This Final Judgment is issued pursuant to Federal Rule of Civil Procedure 58. In accordance with the Order dismissing the case issued on September 16, 2022:

Defendants Merrick B. Garland and William Onuh's Motion for Summary Judgment (ECF No. 133) is GRANTED.

Plaintiff Casey Campbell's hostile work environment claims, religious discrimination and retaliation claims, and RFRA claims are each DISMISSED with prejudice.

Defendants' Motion for Summary Judgment on the Attorney General's counterclaim is GRANTED. The Court therefore ORDERS that the Attorney

General is entitled to recover the $15,000 in non-pecuniary damages and $1,000 in attorneys' fees paid to Campbell as a result of the prior administrative decisions.

Finally, Plaintiff Casey Campbell's Second Motion for Partial Summary Judgment (ECF No. 140) is DENIED.

It is therefore ORDERED, ADJUDGED, and DECREED that this civil action is DISMISSED with prejudice.

The Clerk shall transmit a true copy of this Final Judgment to the Parties.

SO ORDERED on this 16th day of September 2022.

/s/ Mark T. Pittman
United States District Judge

PROTECTIVE AND PRIVACY ACT ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (MAY 4, 2022)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE CASEY CAMPBELL,

Civil Action No. 4:21-CV-00881-P

Before: Mark T. PITTMAN,
United States District Judge.

PROTECTIVE AND PRIVACY ACT ORDER

The Court GRANTS Defendants Merrick B. Garland and William Onuh (in his official capacity)'s Motion to Enter Order Authorizing Disclosures under the Privacy Act and Protective Order and, pursuant to the Court's authority under Federal Rule of Civil Procedure 26(c) and 5 U.S.C. § 552a(b)(11), ORDERS as follows:

1. Defendants are authorized to release to Plaintiff and to the Court any records discoverable in or relevant to this action that may be Privacy Act-protected, without obtaining the prior written consent of the individuals to whom such information pertains, subject to the terms and conditions of this order.

2. All materials provided by any party in discovery (including deposition testimony) that are marked or otherwise designated in writing as "confidential" are subject to this order and may be used by the receiving party solely in connection with the litigation of this case (including any appeals), and for no other purpose.

3. Confidential materials must be maintained in the custody and control of counsel of record for the receiving party, who may show such confidential materials to other persons only to the extent necessary to assist in the litigation of the case (collectively "authorized persons"). Counsel and any authorized persons shall not disclose information about confidential materials directly or indirectly to any persons other than authorized persons or the Court, and shall not copy or reproduce the materials except for use in connection with the litigation of this case, with such copies and reproductions treated in the same manner as the original materials. Confidential materials marked "eyes only" will be subject to the provisions of this order except that they will be maintained in the custody of the producing party and only made available for inspection by opposing counsel and any authorized persons (*i.e.*, with no copy retained by opposing counsel).

4. Before showing confidential materials to any authorized person, counsel must provide the authorized person with a copy of this order.

5. Upon conclusion of this case, counsel for any party receiving confidential materials is responsible for ensuring and certifying to the disclosing party that all copies made thereof have been destroyed or returned to the disclosing party.

6. Absent prior permission from the Court, confidential materials shall not be publicly filed with the Court, and instead shall be submitted with a motion to seal in the manner prescribed in the local rules. This order does not constitute a ruling on the question of whether any particular materials designated as confidential will in fact be accepted for filing under seal, and this order likewise does not constitute a ruling on the question of whether any material is properly discoverable or admissible or on any potential objection to the discoverability or admissibility of such material.

7. By consenting to this order, no party waives any of their positions respecting either the facts or the law applicable to this litigation or the discoverability or admissibility of any matter.

SO ORDERED on this 4th day of May, 2022.

/s/ Mark T. Pittman
United States District Judge

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (APRIL 20, 2022)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE CASEY CAMPBELL,

No. 4:21-cv-0881-P

Before: Mark T. PITTMAN,
United States District Judge.

ORDER

Several motions are before the Court: Plaintiff's Motion for Partial Summary Judgment and Motion to Allow Discovery (ECF No. 68); Plaintiff's Motion to Amend Complaint (ECF No. 76); Plaintiff's Motion for Extension (ECF No. 64); and Defendant Onuh's Motion to Establish Qualified Immunity (ECF No. 59). The Court addresses and rules upon each motion below.

A. Motion for Partial Summary Judgment

Having considered the Motion for Partial Summary Judgment and supporting brief (ECF Nos. 68, 69), Responses (ECF Nos. 70, 71), Reply (ECF No. 74), related filings, and applicable law, the Court determines that there are genuine disputes of material fact that

preclude summary judgment. *See* Fed. R. Civ. P. 56(a). The Court thus concludes that the Motion for Partial Summary Judgment (ECF No. 68) is DENIED.

B. Motion to Allow Discovery

In support of his Motion to Allow Discovery. Plaintiff gives only two sentences of argument asking the Court to allow discovery so he can "present evidence on the appropriate injunctive relief that should be crafted by the Court[.]" *See* ECF No. 69 at 5.

Defendants respond that, per the previous Order, discovery in this case was stayed "pending the resolution of any qualified immunity motion." ECF Nos. 71, 73 (quoting ECF No. 55).

Because the Court resolves the Motion for Qualified Immunity below, the previous Order staying discovery is now inapposite. Accordingly, the Motion to Allow Discovery (ECF No. 68) is DENIED as moot.

C. Motion to Amend Complaint

Next, Plaintiff seeks to "amend his Second Amended Complaint [sic] to allege additional religious discrimination, harassment, and retaliation he has experienced since he filed his First Amended Complaint." ECF No. 76. Plaintiff also seeks to raise new claims under 42 U.S.C. § 1983 and to add Michael Carr as a defendant.

When exercising its discretion to deny leave to amend, "a trial court may properly consider: (1) an unexplained delay following an original complaint; and (2) whether the facts underlying the amended complaint were known to the party when the original

complaint was filed." *Matter of Southmark Corp.*, 88 F.3d 311, 316 (5th Cir. 1996).

This case has been pending since August 8, 2019, and is currently set for trial on April 25, 2022. *See* ECF Nos. 1, 53. The deadline for motions to leave to join parties or amend pleadings was September 20, 2021. ECF No. 53. Plaintiff filed a (now fully briefed) motion for partial summary judgment based on his already-amended complaint. ECF No. 68. Further, Plaintiff fails to adequately explain his delay in bringing the § 1983 claim or in adding Carr as a defendant. Plaintiff's live complaint indicates that he was aware of the underlying material facts offered in his proposed amended pleading at the time he filed his First Amended Complaint. As Defendants argue, the First Amended Complaint "indicates that Carr was allegedly aware of Onuh's behavior, had likely informed other FMC Carswell leadership not to take action against Onuh, and instead took action towards Campbell that he felt was in response to Campbell's EEO complaints." ECF No. 78 at 10-11. The Court agrees and thus concludes Plaintiff fails to adequately explain his delay in needing to add new claims or new parties.

Plaintiff's Motion to Amend Complaint (ECF No. 76) is accordingly DENIED. The Court further instructs the Clerk of Court to STRIKE and UNFILE Plaintiff's Second Amended Complaint (ECF No. 75) that was filed without leave of Court or consent of Defendants. *See* Fed. R. Civ. P. 15(a)(2).

D. Motion for Extension

Next, Plaintiff's Motion for Extension (ECF No. 64) requests a 24-hour extension to file an Amended

Reply and Appendix in opposition to Defendant Onuh's Motion to Dismiss. The Court concludes that this Motion is adequately supported by good cause to warrant the brief, requested extension, and that Defendants would not suffer prejudice as a result. Plaintiff's Motion for Extension (ECF No. 64) is accordingly GRANTED. Accordingly, the Amended Reply and Appendix will be left unstricken on the Court's docket. *See* ECF Nos. 65-66.

E. Motion to Establish Qualified Immunity

Finally, the Court addresses Defend Onuh's Motion to Establish Qualified Immunity ("Immunity Motion"). ECF No. 59. Defendant Onuh moves to establish qualified immunity as to Campbell's claims against Onuh in his personal capacity (rather than his official capacity). *Id.* Onuh accordingly seeks to have the Court dismiss these claims. The Court agrees with Onuh and thus below grants the Immunity Motion and dismisses Campbell's claims against Onuh in his personal capacity.

1. Legal Standard

Qualified immunity is "an immunity from suit rather than a mere defense to liability." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (citation omitted). The Supreme Court set forth a two-pronged test to assess qualified immunity. *See Saucier v. Katz*, 533 U.S. 194, 200-01 (2001). Under the first prong, courts evaluate whether the facts alleged show the officer violated a constitutional right. *Id.* at 201. If so, courts then assess whether the right was "clearly established" at the time of the officer's conduct. *Id.* Courts

are free to decide which prong of analysis to address first. *Pearson*, 555 U.S. at 236.

Thus, government officials are entitled to qualified immunity when their conduct "does not violate clearly established statutory or constitutional law of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 812 (1982). This requires courts to ask whether the "law so clearly and unambiguously prohibited the conduct that *every* reasonable officer would understand what he is doing violates the law." *Wyatt v. Fletcher*, 718 F.3d 496, 503 (5th Cir. 2013) (emphasis in original).

2. Onuh is entitled to qualified immunity for claims brought against him in his personal capacity.

In the Immunity Motion, Onuh argues that he is entitled to qualified immunity for claims raised against him in his personal capacity. ECF No. 59. Specifically, Onuh argues Campbell failed to adequately allege that Onuh violated a clearly established constitutional or statutory right. *Id.* at 6.

Campbell's Amended Response (which grossly violated the Court's briefing page limit) argues that Onuh's conduct violated some "clearly established" law under the Religious Freedom Restoration Act.

Campbell cites several cases that he (incorrectly) argues are directly on point to this case. *See* ECF No. 65 at 31-36. The present dispute involves a BOP Protestant chaplain complaining of alleged religious discrimination and burdening of his exercise of religion against a Catholic chaplain and the Attorney General of the United States. The cases cited by Campbell are

far from on-point; those cases evoke drastically different statutory and constitutional questions involving discrimination based on, for instance, race and sex. *Id.* Campbell thus failed to direct the Court to any authority showing Onuh violated a right that was "clearly established" at the time of his alleged conduct.

The Court cannot "define clearly established law at a high level of generality." *Bustillos v. El Paso Cty. Hosp. Dist.*, 891 F.3d 214, 222 (5th Cir. 2018) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). This inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Id.* (citation omitted). The Supreme Court does "not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* (quoting *al-Kidd*, 563 U.S. at 741). "It is the plaintiff's burden to find a case in [her] favor that does not define the law at a 'high level of generality.'" *Vann v. City of Southaven*, 884 F.3d 307, 310 (5th Cir. 2018) (quoting *Cass v. City of Abilene*, 814 F.3d 721, 733 (5th Cir. 2016)). The Court concludes that Campbell failed to carry this burden.

Accordingly, the Court GRANTS the Motion to Establish Qualified Immunity (ECF No. 59).

SO ORDERED on this 20th day of April, 2022.

/s/ Mark T. Pittman
United States District Judge

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (APRIL 21, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASEY CAMPBELL,

Plaintiff,

v.

WILLIAM P BARR, ET AL.,

Defendants.

Civil Action No. 4:20-cv-00638-P

Before: Mark T. PITTMAN,
United States District Judge.

ORDER

On the date of this Order, the Court held a show cause hearing to consider lesser sanctions as instructed by the Fifth Circuit. ECF No. 21. Having considered the Fifth Circuit's opinion, Plaintiff's counsel's Response (ECF No. 20), docket entries, and applicable law, the Court hereby ORDERS Mr. William J. Dunleavy to pay $402.00 to the Clerk of the Court for the Fort Worth Division of the Northern District of Texas by 5:00 p.m. on or before April 22, 2021, and to comply

with the additional sanctions hereby imposed by this Order. The Court finds this $402.00 sanction to be a lesser sanction and the least severe sanction appropriate in this case.

BACKGROUND

Plaintiff Casey Campbell filed his complaint on June 16, 2020, and received an ECF notice on June 19, 2020, to comply with Local Rule 83.10 within fourteen days or risk the possible dismissal of this case without prejudice or without further notice. ECF No. 7. Under the local rules, "local counsel" means a member of the bar of this court who resides or maintain their principal office in this district and whose residence or principal office is located within 50 miles of the courthouse in the Fort Worth Division. N.D. Tex. R. 83.10(a); *see United States v. Thomas*, No. 4:13-CV-688-A, 2013 WL 11332537, at *1-2 (N.D. Tex. Sept. 5, 2013) (McBryde, J.) (holding that Local Rule 83.10(a) required Austin-based attorney to designate local counsel). In the forty-five (45) days subsequent to this notification, Plaintiff failed to obtain local counsel or file a motion for leave to proceed without local counsel. As a result, the Court dismissed this case without prejudice and pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and entered a final judgment. ECF Nos. 8, 9.

Plaintiff filed a Motion to Reconsider Dismissal and Motion to Proceed Without Local Counsel,[1] and

[1] The Court notes once again that Plaintiff made no unequivocal, affirmative statement or set forth any competent evidence that the limitations period had actually passed, but merely stated that the Court's dismissal was "likely a dismissal after the expiration of any applicable limitations period." Mtn. to Reconsider

Brief in Support on September 2, 2020. ECF Nos. 10, 11. Plaintiff's counsel admitted in the motion that he did not inform his client on the ECF notice or the local rule, or of his intention not to comply with either. Mtn. to Reconsider Br. at ¶ 5–6, 12, ECF No. 11. After consideration, the Court denied both motions. ECF No. 12. Plaintiff then appealed the Court's dismissal of this case to the Fifth Circuit. ECF No. 13. The Fifth Circuit reversed the Court's dismissal and remanded for further proceedings. *Campbell v. Wilkinson*, 988 F.3d 798 (5th Cir. 2021).

After the Fifth Circuit issued its judgment as the mandate in accordance with its opinion reversing and remanding this case for further proceedings, the Court entered a show cause order on April 13, 2021, requiring Mr. Dunleavy to file a response to the Court's April 13 Show Cause Order and scheduling a show cause hearing to consider lesser sanctions in accordance with the Fifth Circuit's instruction. ECF No. 18. Mr. Dunleavy filed his response timely and the Court held the show cause hearing on April 21, 2021, at 9:00 a.m. ECF Nos. 20, 21. The day before the

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Br. at ¶ 3, ECF No. 11 (emphasis added). During the show cause hearing, Mr. Dunleavy clarified that his concern with the dismissal of this case related to his fear of the tolling of the statute of limitations because of another nearly identical case in which he currently represents Campbell—based on same or similar facts as this case—in Judge Lindsay's court in the Dallas Division that was filed August 8, 2019, with the case number 3:19-cv-01887-L. ECF No. 21. The existence of the other case was not expressly brought to the Court's attention until remand and the Court is unaware if its existence was presented to the Fifth Circuit. Campbell's counsel's concession that consolidation of these two cases may be appropriate further supports the Court's understanding that dismissal was without prejudice.

hearing, Thomas B. Coward filed a Notice of Appearance for Plaintiff Casey Campbell. ECF No. 19. At the hearing, the Court heard argument from Mr. Dunleavy on the applicability of lesser sanctions. ECF No. 21.

LEGAL STANDARD

"Federal Rule of Civil Procedure 83 permits the establishment of local rules, and 83(b) expressly permits a federal judge to 'regulate practice in any manner consistent with . . . local rules of the district.' Circuit courts review a court's use of those inherent and statutory powers for abuse of discretion." *Burden v. BTI Emp. Screening Servs., Inc.*, 248 F.3d 1138 (5th Cir. 2001) (quoting Fed. R. Civ. P. 83). There is no "bad faith finding" requirement to impose sanctions for violation of local rules. *In re William Goode*, 821 F.3d 553, 559 (5th Cir. 2016) ("[T]his Circuit has never explicitly extended this requirement to sanctions imposed pursuant to a local rule, and we decline to do so here . . . . [W]e conclude that the district court was not required to make a finding of bad faith before sanctioning [an attorney] under [the local rules].").

FINDINGS

The Court finds that Mr. Dunleavy—pursuant to his own admissions in the Motion to Reconsider and at hearing—did not inform his client of the ECF notice or the local rule, or of his intention not to comply with either. Mtn. to Reconsider Br. at ¶ 5–6, 12; *Campbell*, 988 F.3d at 800. Therefore, the Court agrees with the Fifth Circuit's finding that Mr. Dunleavy's failure to comply with the local rules at issue "falls entirely on counsel." *Campbell*, 988 F.3d at 802. While a "bad faith" finding is not required where an attorney

violates the local rules under Federal Rule of Civil Procedure 83, the Court finds that Mr. Dunleavy knowingly and willfully violated Local Rule 83.10, as admitted by Mr. Dunleavy.

After the Court provided notice to Mr. Dunleavy of the Court's consideration of lesser sanctions in the April 13th Show Cause Order, and consideration of Mr. Dunleavy's response to the Court's show cause order, Mr. Dunleavy's arguments at hearing, the docket entries, the Fifth Circuit's opinion, and other applicable law, the Court finds the imposition of sanctions against Mr. Dunleavy are necessary to regulate practice in the Court consistent with the Local Rules for the Northern District of Texas pursuant to Federal Rule of Civil Procedure 83. *See Prudhomme v. Teneco Oil Co.*, 955 F.2d 390, 392 (5th Cir. 1992) (recognizing that district courts have broad discretion to manage their dockets). The Court also finds that the following lesser sanctions represent the least severe sanctions necessary to ensure Plaintiff's counsel's compliance with the Court's local rules.

SANCTIONS

Therefore, IT IS HEREBY ORDERED that Mr. Dunleavy shall personally pay a sum of $402.00[2] to the Clerk of the Court for the Fort Worth Division of the Northern District of Texas on or before Thursday, April 22, 2021, at 5:00 p.m. The Clerk of this Court is INSTRUCTED to accept Mr. Dunleavy's payment in accordance with this Order.

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[2] $402.00 represents the cost associated with the refiling of a case, which was this Court's intention at the outset when it dismissed this case without prejudice.

IT IS FURTHER ORDERED that on or before 12:00 p.m. on Thursday, April 22, 2021, Mr. Dunleavy shall read: (1) *Dondi Properties Corp. v. Commerce Savings & Loan Assoc.*, 121 F.R.D. 284 (N.D. Tex. 1988); (2) Local Civil Rules of the United States District Court for the Northern District of Texas; (3) the Texas Lawyer's Creed; (4) the Texas Rules of Professional Conduct; and (5) this Court's Judge Specific Requirements.

IT IS FURTHER ORDERED that Mr. Dunleavy shall certify to the Court via a filed and sworn affidavit on or before 5:00 p.m. on Thursday, April 22, 2021, that he has read, understands, and will comply with these five documents throughout the remainder of this litigation.[3]

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[3] During the remaining pendency of this case, counsel should be particularly mindful of their obligations under the Texas Lawyer's Creed. Among other things, as members of the Texas bar, Mr. Dunleavy: (1) "will always recognize that the position of judge is the symbol of both the judicial system and administration of justice"; (2) "will refrain from conduct that degrades this symbol"; (3) "will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law"; (4) "will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility"; (5) "will not engage in any conduct which offends the dignity and decorum of proceedings"; (6) "will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage"; (7) "will respect the rulings of the Court"; and (8) "will give the issues in controversy deliberate, impartial and studied analysis and consideration." TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM, reprinted in TEXAS RULES OF COURT 763-65 (West 2019); *cf.* GEORGE WASHINGTON, quoted in GREAT QUOTES FROM GREAT LEADERS 65 (compiled by Peggy Anderson (1990)) ("Strive not with your superiors in

Lastly, the Fifth Circuit's opinion remanded for the Court to consider Campbell's motion for leave to proceed without local counsel, filed together with his Rule 59 motion. *Campbell*, 988 F.3d at 802 n.2. Because Plaintiff is now represented by local counsel that complies with Local Rule 83.10, the Court finds this issue MOOT.

SO ORDERED on this 21st day of April, 2021.

/s/ Mark T. Pittman
United States District Judge

argument, but always submit your judgment to others with modesty.").

OPINION, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT (FEBRUARY 19, 2021)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CASEY CAMPBELL,

Plaintiff-Appellant,

v.

ROBERT M. WILKINSON, Acting U.S. Attorney General; WILLIAM ONUH,

Defendants-Appellees.

No. 20-11002

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-00638

Before: HAYNES, WILLETT, and HO, Circuit Judges.

James C. Ho, Circuit Judge:

Plaintiff brought claims of discrimination and retaliation under Title VII of the Civil Rights Act. The district court dismissed the suit under Federal Rule of Civil Procedure 41(b) on the ground that Plaintiff's counsel failed to retain local counsel as required by local rules. We hold that dismissal was unwarranted

and therefore reverse and remand for further proceedings.

I

Casey Campbell filed this lawsuit in the Northern District of Texas, alleging discrimination and retaliation by his employer, the Federal Bureau of Prisons, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

A few days later, the district court's Electronic Case Filing (ECF) system reminded Campbell's counsel that, "if necessary, [attorneys] must comply with Local Rule 83.10(a) within 14 days or risk the possible dismissal of this case without prejudice or without further notice." Local Rule 83.10(a) of the Northern District of Texas states that, absent leave of court or an applicable exemption, "local counsel is required in all cases where an attorney appearing in a case does not reside or maintain the attorney's principal office in this district."

Campbell's counsel neither resides nor maintains his office in the Northern District of Texas. Yet counsel did not obtain local counsel. Nor did he ask the court to waive the rule. Nor did he inform his client of the ECF notice or the local rule, or of his intention not to comply with either. He simply made a unilateral determination that the local rule did not apply to him, because he has practiced for decades in the Northern District of Texas, and because he currently lives and offices less than ten miles away in the neighboring Eastern District of Texas.

Approximately six weeks after issuing the ECF notice, the district court reviewed the record, determined

that counsel was not in compliance with the local rule, and dismissed the case without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure.

In response, counsel filed a motion to reconsider the dismissal and a motion to proceed without local counsel. The district court denied both motions. In doing so, the court noted that 45 days had elapsed between the ECF notification and the court's order of dismissal, without counsel either obtaining local counsel or requesting leave to proceed without local counsel.

II

Dismissal of Plaintiff's Title VII claim under Rule 41(b) of the Federal Rules of Civil Procedure was not warranted. To understand why, however, we must examine both the text of Rule 41(b) and various past decisions of our court.

Under Rule 41(b), "a defendant may move to dismiss the action or any claim against it" "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order." Fed. R. Civ. P. 41(b). It is well established that Rule 41(b) permits dismissal not only on motion of the defendant, but also on the court's own motion. *See*, *e.g.*, *Morris P. Ocean Sys., Inc.*, 730 F.2d 248, 251 (5th Cir. 1984) (citing *Link P. Wabash R.R. Co.*, 370 U.S. 626, 631 (1962)). The question nevertheless remains whether this particular dismissal on the district court's own motion was warranted under Rule 41(b).

This case does not involve a violation of either "these rules"—that is, the Federal Rules of Civil Procedure—or "a court order." Fed. R. Civ. P. 41(b). It involves the violation of a local rule. But Rule 41(b) does not mention local rules. This absence of any

express reference to "local rules" in Rule 41(b) thus raises the question whether it is ever appropriate to invoke Rule 41(b) based on nothing more than the violation of a local rule.

Outside the Rule 41(b) context, we have observed that "[a] local rule must be adopted by a majority of the district judges and followed by all, in effect serving as a standing order within the district," and that a local rule is accordingly equivalent to "a court order." *Jones P. Central Bank*, 161 F.3d 311, 313 (5th Cir. 1998). *But see id.* at 313–14 (Smith, J., dissenting) (noting that various provisions of the Federal Rules of Civil Procedure, including Rules 6, 26, 30, 73, and 77, expressly apply to both court orders and local rules, and thus "indicate, with precision, that court orders are not the same things as local rules").

We have not taken that approach within the Rule 41(b) context, however. In *Berry P. CIGNA/RSI-CIGNA*, 975 F.2d 1188 (5th Cir. 1992), we reaffirmed that a "dismissal of plaintiff's suit for failure to file a motion for default judgment, as required by local rule, [is] treated as dismissal for failure to prosecute" under Rule 41(b). *Id.* at 1190 (citing *Williams P. Brown & Root, Inc.*, 828 F.2d 325, 326–27 (5th Cir. 1987)).

So *Berry* did not dismiss under Rule 41(b) because a "local rule is a court order." *Jones*, 161 F.3d at 313. Rather, *Berry* dismissed because it held that the particular violation of local rule presented there should be "treated as dismissal for failure to prosecute"—as permitted under the plain text of Rule 41(b). 975 F.2d at 1190 (citing *Williams*, 828 F.2d at 326–27).

Our decision in *Berry* to analyze the local rule violation as a failure to prosecute, rather than as a violation of court order, could be decisive here. After all, unlike the local rule violated in *Berry*, it is harder to characterize a violation of the local rule presented here as a failure to prosecute.

In *Berry*, counsel failed to comply with a local rule that required the plaintiff to move for default judgment. Had the plaintiff complied with that rule, the case would have been terminated. So the court had some basis for treating the plaintiff's failure to move for default judgment, as required by local rule, as a failure to prosecute. *See id.* ("A dismissal for failure to file a motion for default judgment is equivalent to a dismissal for failure to prosecute. . . . [W]e treat the dismissal of Berry's suit for failure to prosecute as an involuntary dismissal under Fed. R. Civ. P. 41(b).").

Failure to hire local counsel, by contrast, does not affect the timing or resolution of proceedings. So the rationale underlying *Berry*—that a violation of a local rule might constitute a failure to prosecute—does not appear to fit the local rule violation presented here.

And even if we ultimately concluded that *Berry* applies here, dismissal of Plaintiff's Title VII claim was demonstrably unwarranted. That is because *Berry* sets forth a strict framework that district courts must meet to justify dismissal with prejudice—and one that the district court plainly failed to meet here.[1]

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[1] We acknowledge that the district court here dismissed this suit without prejudice. But we "treat the dismissal of [Campbell's] case as a dismissal with prejudice." *Id.* at 1191. That is because, "[w]here further litigation of [a] claim will be time-barred, a dismissal without prejudice is no less severe a sanction than a

Although we review a dismissal for failure to prosecute for abuse of discretion, we recognize that dismissal with prejudice is a severe sanction. Accordingly, we are careful to limit a district court's discretion to dismiss a case with prejudice. *See*, *e.g.*, *Berry*, 975 F.2d at 1191; *Price v. McGlathery*, 792 F.2d 472, 474 (5th Cir. 1986); *Callip v. Harris Cty. Child Welfare Dept.*, 757 F.2d 1513, 1519 (5th Cir. 1985).

As *Berry* makes clear, "[w]e will affirm dismissals with prejudice for failure to prosecute only when (1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile." 975 F.2d at 1191.

Moreover, in most cases where we have affirmed a dismissal with prejudice, we have found at least one of three aggravating factors: "(1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct." *Id.* (quotations omitted).

This case fails this analytical framework at every turn. To begin with, there is no "clear record of delay or contumacious conduct by the plaintiff" in this case. *Id.* Indeed, counsel did not inform Campbell about

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dismissal with prejudice, and the same standard of review is used.'" *Id.* (quoting *McGowan v. Faulkner Concrete Pipe Co.*, 659 F.2d 554, 556 (5th Cir. 1981)). Campbell's Title VII claim is subject to a 90-day limitations period. Where, as here, a Title VII complaint pursuant to an EEOC right-to-sue letter is later dismissed, the 90-day limitations period is not tolled. 42 U.S.C. § 2000e-5(f); *Berry*, 975 F.2d at 1191. So Campbell is time-barred from bringing his suit again.

Local Rule 83.10(a) or the ECF notification. Counsel simply made a unilateral determination not to hire local counsel, based on his conclusion that the local rule did not apply to him. So the failure to comply with local rules here falls entirely on counsel.

It is also far from obvious that the amount of time elapsed here is sufficient to constitute a "clear record of delay" in any event. *Id.* After all, "[t]he decisions of this court affirming Rule 41(b) dismissals with prejudice involve egregious and sometimes outrageous delays." *Rogers v. Kroger Co.*, 669 F.2d 317, 320–21 (5th Cir. 1982) (collecting cases involving multi-year delays). In *Berry*, by contrast, we concluded that the short delay there was insufficient to constitute a "clear record of delay." 975 F.2d at 1191. Here, the district court did not explain why a mere 45-day delay, without more, justified the severe sanction of dismissal with prejudice. *Cf. Price*, 792 F.2d 474–75 (upholding a dismissal for a delay of almost a full year where counsel also failed to file a pretrial order and failed to appear at a pretrial conference).

And even setting all that aside, there is no indication that the district court either "employed lesser sanctions that proved to be futile" or "expressly determined that lesser sanctions would not prompt diligent prosecution." *Berry*, 975 F.2d at 1191.

Nor is there any record evidence to establish any of the aggravating factors discussed in *Berry*: The delay here was caused entirely by counsel, not by Campbell. Defendants were not prejudiced because, as of the date of dismissal, no responsive pleadings were due and neither defendant had appeared in the case. And there is no evidence that counsel intended to delay proceedings. He may have wrongly concluded

the local rule did not apply to him. But he was otherwise ready and prepared to litigate Campbell's case himself.

In sum, the record shows neither a clear record of delay or contumacious conduct, nor the futility of lesser sanctions, nor any aggravating factor.

Dismissal of Plaintiff's Title VII claim under Rule 41(b) was unwarranted here. We therefore reverse and remand for further proceedings.[2]

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[2] Campbell also appealed the denial of his motion for leave to proceed without local counsel, filed together with his Rule 59 motion. He contends that his attorney's long experience with the Northern District of Texas and close proximity to the courthouse should have supported an exemption from the local counsel requirement. We leave this issue for the district court to address in the first instance on remand.

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (SEPTEMBER 2, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASEY CAMPBELL,

Plaintiff,

v.

WILLIAM P BARR ET AL.,

Defendants.

Civil Action No. 4:20-cv-00638-P

Before: Mark T. PITTMAN,
United States District Judge.

ORDER

Before the Court is Plaintiff's Motion to Reconsider Dismissal and Motion to Proceed Without Local Counsel. ECF No. 10. Having reviewed the Motion, related briefing, case filings, and docket entries, the Court finds that both requests in the Motion should be and are hereby DENIED.

Plaintiff Casey Campbell has failed to abide by Local Rule 83.10(a), requiring the appearance of local counsel where counsel of record for a party does not

reside in this district. N.D. Tex. R. 83.10(a). "Local counsel" means a member of the bar of this court who resides or maintain their principal office in this district and whose residence or principal office is located within 50 miles of the courthouse in the Fort Worth Division. *Id.*; *see United States v. Thomas*, No. 4:13-CV-688-A, 2013 WL 11332537, at *1-2 (N.D. Tex. Sept. 5, 2013) (McBryde, J.) (holding that Local Rule 83.10(a) required Austin-based attorney to designate local counsel).

Plaintiff was notified on June 19, 2020, to comply with Local Rule 83.10 within fourteen days or risk the possible dismissal of this case without prejudice or without further notice. ECF No. 7. In the forty-five (45) days subsequent to this notification, Plaintiff failed to obtain local counsel or file a motion for leave to proceed without local counsel. As a result, the Court dismissed this case without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.[1] ECF No. 8.

Twenty-eight (28) days after dismissal, Plaintiff filed the instant Motion. Yet as of the date of this Order, Plaintiff has still failed to obtain local counsel in accordance with Local Rule 83.10. Plaintiff instead argues that since Plaintiff's counsel has been barred in the Northern District of Texas, Plaintiff's counsel has "never been required by any judge in the Northern

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[1] "Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders." *Olsen v. Maples*, 333 F.3d 1199 n.3 (10th Cir. 2003) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962)).

District of Texas to hire local counsel." ECF No. 11. The Court finds this argument unpersuasive.

Accordingly, Plaintiff's Motion to Reconsider Dismissal and Motion to Proceed Without Local Counsel should be and hereby is DENIED.

SO ORDERED on this 2nd day of September, 2020.

Mark T. Pittman
United States District Judge

FINAL JUDGMENT, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (AUGUST 3, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASEY CAMPBELL,

Plaintiff,

v.

WILLIAM P BARR, ET AL.,

Defendants.

Civil Action No. 4:20-cv-00638-P

Before: Mark T. PITTMAN,
United States District Judge.

ORDER

This Final Judgment is issued pursuant to Federal Rule of Civil Procedure 58.

It is ORDERED, ADJUDGED, and DECREED that this civil action is DISMISSED without prejudice.

It is further ORDERED, ADJUDGED, and DECREED that all costs and expenses are taxed against the party incurring the same.

The Clerk shall transmit a true copy of this Final Judgment to the parties.

SO ORDERED on this 3rd day of August, 2020.

/s/ Mark T. Pittman
United States District Judge

ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (AUGUST 3, 2020)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASEY CAMPBELL,

Plaintiff,

v.

WILLIAM P BARR, ET AL.,

Defendants.

Civil Action No. 4:20-cv-00638-P

Before: Mark T. PITTMAN,
United States District Judge.

ORDER

Local Rule 83.10(a) requires the appearance of local counsel where counsel of record for a party does not reside in this district or maintain their principal office in this district. N.D. Tex. R. 83.10(a). "Local counsel" means a member of the bar of this court who resides or maintain their principal office in this district and whose residence or principal office is located within 50 miles of the courthouse in the Fort Worth Division. *Id.*; *see United States v. Thomas*, No.

4:13-CV-688-A, 2013 WL 11332537, at *1-2 (N.D. Tex. Sept. 5, 2013) (McBryde, J.) (holding that Local Rule 83.10(a) required Austin-based attorney to designate local counsel).

Plaintiff Casey Campbell was notified on June 19, 2020, to comply with Local Rule 83.10 within fourteen days. (ECF No. 7). A review of the record reveals that Plaintiff is still not in compliance with Local Rule 83.10(a). Because Plaintiff has failed to follow the Local Rules of the Northern District, the Court ORDERS that this case is DISMISSED without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.[1]

All pending motions in this matter are hereby DENIED as moot.

SO ORDERED on this 3rd day of August, 2020.

/s/ Mark T. Pittman
United States District Judge

[1] "Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders." *Olsen v. Maples*, 333 F.3d 1199 n.3 (10th Cir. 2003) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962)).

FINAL DECISION,
U.S. DEPARTMENT OF JUSTICE
(SEPTEMBER 27, 2019)

U.S. DEPARTMENT OF JUSTICE
COMPLAINT ADJUDICATION OFFICE
950 Pennsylvania Avenue NW
RFK Building, Room 3651
Washington, DC 20530

CASEY CAMPBELL,

v.

FEDERAL BUREAU OF PRISONS.

Agency No. BOP-2017-0505

DJ No. 187-3-4582

DEPARTMENT OF JUSTICE FINAL DECISION

in the matter of
Compensatory Damages and Attorney's Fees
in the case of
Casey Campbell v. Federal Bureau of Prisons

On May 16, 2019, the Complaint Adjudication Office issued a Department of Justice Final Decision finding that Federal Bureau of Prisons (BOP) management violated Title VII when it failed to address religious harassment complainant suffered from a

coworker, Chaplain William Onuh. *Casey Campbell v. Federal Bureau of Prisons*, BOP-2017-0505 (hereinafter FAD). As the prevailing party, complainant is entitled to compensatory damages for any demonstrable harm suffered as a result of management's violation of Title VII. FAD at 24-25. As the FAD explained, damages are based on "complainant's proffer of evidence as to the harm suffered, the extent, nature and severity of the harm, and the duration of the harm caused." *Id*. at 24.

The FAD ordered complainant to submit any request for compensatory damages to BOP's EEO Office and ordered BOP to either award the damages complainant requested or attempt to negotiate an appropriate amount; if a mutually acceptable award could not be agreed upon, the FAD requested the parties to notify this Office so that it could issue a decision. FAD at 24-25.

On July 12, 2019, the parties notified this Office that they had not reached an agreement on damages.

Background

Complainant and Onuh work together as prison chaplains at the BOP's Federal Medical Center Carswell in Fort Worth, Texas. Over the course of several years, Chaplain Onuh treated complainant harshly, by making insulting statements about Protestants, interfering with his work, and refusing to assist at non-Catholic functions even though such assistance was expected of all Chaplains, regardless of faith. Onuh scheduled Catholic services in the time and place complainant had reserved for Protestant worship services, interrupted Protestant worship services, and refused to escort non-Catholic volunteers

within the institution—resulting in cancelled meetings or other chaplains needing to cover for Onuh's refusal. FAD 5, 16. Onuh also disparaged Protestant chaplains during services he led, and complainant felt "ridiculed . . . [by Onuh] in a public setting." *Id*. at 2-3. Complainant provided evidence that Onuh routinely "yell[ed]" at complainant, becoming "bellicose." FAD 2; ROI 129. Eventually, because of the ongoing harassment and difficulties at work, complainant moved out of the office he shared with Onuh into a supply closet/ temporary office in order to escape Onuh. *Ibid*.

Starting in 2013, complainant told managers about his troubles with Onuh, including the derogatory comments and the fact that because of Onuh's refusal to perform certain tasks, other chaplains had to do more work than Onuh. FAD 6-7, 16. Managers did little to address the problems despite repeated complaints by complainant, and their reprimand of Onuh did not stop his conduct or behavior. *Id*. at 22-23. At one point, when Onuh persisted with his conduct, managers suggested that complainant ignore Onuh's conduct. *Id*. at 21-22. Harassment continued, and on May 5, 2017, complainant filed an EEO complaint alleging "a long-standing and unresolved problem" with Onuh. ROI 23.

Facts

In support of their respective position on damages, complainant and BOP submitted documents they had exchanged during their negotiations on damages and fees. These documents as well as the original Record of Investigation provide the basis for this Final Decision on damages and fees.

In his June 28, 2019, settlement offer to BOP, complainant claimed that he should be compensated "in a manner analogous to the Bureau of Prisons' 'retention pay' scheme." June 28, 2019, letter to Carolyn V. Sapla at 2. Under this program, BOP pays certain employees up to 25% above the regular pay rate for hard-to-fill positions. *Id.* Exh. A. Alternatively, complainant suggested he be compensated based on the BOP's "special rate pay," which affords up to a 30% pay increase for positions in selected regions of the country or with certain skills. *Id.* Exh. B. Complainant reasoned that these rates of pay reflect difficult work environments, and that, given Onuh's discrimination, he similarly endured a difficult work environment. Based on an average between "retention pay" and "special rate pay," complainant requested $152,647.28.[1]

In addition, complainant said that he used more sick leave and annual leave because of the hostile work environment he endured. He claimed that he took leave in response to the "mental anguish and emotional distress" he suffered. Before Onuh joined the facility, complainant used an average of 51 hours of sick leave per year. After Onuh's arrival, complainant noted, he used twice as much sick leave. June 28, 2019, letter to Carolyn V. Sapla at 2-3. Furthermore, complainant claimed, he used an extra 60 hours of

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[1] It is not clear whether this amount was intended by complainant to represent pecuniary damages for monetary losses or compensatory damages for pain and suffering. Given that complainant made an additional demand, later in his letter, for "non-economic damages for mental anguish and emotional distress" of $194,925.74, it appears that the claim for retention/special rate pay damages is for pecuniary damages.

annual leave each year "to remove himself from the hostile environment." *Id.* at 3. He requested $16,671.60 in compensation, the value of the extra leave he used. *Id*. at 3.

Complainant also claimed that BOP improperly failed to promote him in 2015 and instead promoted a less qualified colleague. He did not detail how the non-promotion is related to his hostile work environment claim. He sought lost wages because the promotion would have increased his salary. June 28, 2019, letter to Carolyn V. Sapla at 3.

Lastly, complainant asked for an additional sum covering "non-economic damages for mental anguish and emotional distress he has suffered." He alleged that these damages are equal to the lost wages, leave expended, and hardship pay he previously described, and amount to a further $194,925.74. Complainant's total damages claim comes to $389,851.48, with an additional attorney's fees request of $4,900.00. June 28, 2019, letter to Carolyn V. Sapla at 4. Complainant did not itemize or otherwise explain his attorney's fee request.

Complainant separately sought injunctive relief. He requested that Onuh "be removed from his assignment" at BOP "through termination, resignation, or reassignment." He also asked that one of his supervisors be reprimanded for how she handled his complaint, that BOP send the FAD to Onuh's church authorities, and that BOP reevaluate its hiring policies for chaplains. Referencing his nonpromotion, complainant requested that he be advanced to a GS-13 pay grade and placed on administrative leave until BOP removes Onuh. June 28, 2019, letter to Carolyn V. Sapla at 4.

On July 11, 2019, BOP rejected complainant's proposal. BOP characterized complainant's retention/special rate pay as impermissible "back pay" and concluded that he had not shown he was entitled to such compensation. July 11, 2019, letter to William Dunleavy at 1, 4. In considering his lost leave claim, BOP pointed out that complainant proffered no specific evidence to substantiate his use of sick or annual leave, other than "bald assertion of his counsel." *Id.* at 3-4. BOP also rejected his request for promotion, stating that the FAD contained no findings or evidence on that issue. *Id.* at 4.

In addressing complainant's alleged emotional pain and suffering, BOP noted that complainant had not submitted any statements from family members, friends, or health care providers. A review of complainant's submissions indicates that he did not submit any other proof in support of his emotional damages claim. July 11, 2019, letter to William Dunleavy at 5-6.

BOP also rejected complainant's claims for injunctive relief, stating that the requests did not fall within the relief provided in the FAD and that "most are prohibited by law or policy." July 11, 2019, letter to William Dunleavy at 6-7.

On the issue of attorney's fees, BOP noted that complainant did not submit a request within 30 days, as specified in the FAD. Furthermore, BOP maintained that complainant submitted no affidavit or other records to itemize the fees or describe counsel's expertise. July 11, 2019, letter to William Dunleavy at 7.

Citing the "duration and severity of [Onuh's] conduct," the lack of supporting evidence, and comparisons to similar cases, BOP offered an award of 100 hours of sick leave, 100 hours of annual leave, $7,500 in non-pecuniary damages, and $1,000 in attorney's fees. July 11, 2019, letter to William Dunleavy at 8-9.

In response, on July 12, complainant submitted a reduced demand for $166,524.30 in compensatory damages, reinstatement of 306 hours of sick leave and 360 hours of annual leave, and attorney's fees of $5,950. July 12, 2019, letter to Timothy Maughan at 4. Complainant's counsel stated that the original Record of Investigation "eliminates any need . . . to send . . . more evidence" of complainant's injuries. *Id.* at 1. Complainant's counsel also submitted an affidavit on attorney's fees, outlining his experience, his hourly rate, and the time spent on complainant's case. Declaration of William J. Dunleavy. He reported that complainant retained him on May 25, 2019.

Analysis

As appropriate relief, complainant is requesting $166,524.30 in compensatory damages, reinstatement of 306 hours of sick leave and 360 hours of annual leave, and attorney's fees of $5,950. July 12, 2019, letter to Timothy Maughan at 4. BOP has offered 100 hours of sick leave, 100 hours of annual leave, $7,500 in non-pecuniary damages, and $1,000 in attorney's fees. July 11, 2019, letter to William Dunleavy at 8-9.

A. Compensatory Damages

Compensatory damages may be awarded for pecuniary losses, such as medical expenses, and non-pecuniary losses, such as "emotional pain, suffering,

inconvenience, mental anguish, and loss of enjoyment of life" caused by management's violation of Title VII. EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act Of 1991, 1992 WL 189089, at *5 (hereinafter "EEOC Enforcement Guide"); 29 C.F.R. § 1614. 501; *Welker v. Dep't of Agric.*, EEOC DOC 0120120330, 2012 WL 3144521, at *7 (July 27, 2012). Damages are meant to compensate the employee for actual damage, not to punish the employer for wrongdoing. *Complainant v. Dep't of Justice*, EEOC Appeal No. 0120123467, 2015 WL 1607780, at *18 (Apr. 3, 2015). Complainant bears the burden of providing sufficient relevant evidence to support damages. *St. Louis v. Dep't of Agriculture*, EEOC Appeal No. 01A24586, 2003 WL 22988987, at *3 (Dec. 12, 2003). For both sets of compensatory damages, complainant must show that "the agency's discriminatory conduct directly or proximately caused the losses." *Complainant*, EEOC Appeal No. 0120123467, 2015 WL 1607780, at *20.

B. Pecuniary Losses

Complainant initially made a claim for pecuniary damages in the amount of $194,25.74. Pecuniary losses are "quantifiable," "out-of-pocket expenses" such as "moving expenses, medical exp[e]nses, psychiatric expenses, [or] physical therapy expenses." *St. Louis*, EEOC Appeal No. 01A24586, 2003 WL 22988987, at *2. A complainant may show them with "receipts, records, bills, . . . confirmation by other individuals, or other proof of actual losses and expenses." EEOC Enforcement Guide at *4. While documentation is not, strictly speaking, necessary to establish pecuniary damages, such damages "will not normally be sought

without documentation," and a lack of documentation can lower the amount awarded. *Ibid.*

Complainant based his claim for pecuniary damages on BOP retention/special rate pay, the value of lost leave, and lost wages from nonpromotion. June 28, 2019, letter to Carolyn V. Sapla at 1-3. As noted, complainant appeared to claim economic damages based on a retention/special rate pay analogy. BOP offers these pay rates to recruit and retain workers in remote geographical areas, in highly competitive locations, or under dangerous conditions. *See* June 28, 2019, letter to Carolyn V. Sapla Exhs. A & B. Complainant does not show, nor could he, that he was entitled to retention pay or special rate pay when he did not work under such conditions and given that these pay rates are not part of his employment arrangements with BOP. The fact that he endured a difficult work environment does not warrant pecuniary damages compensation at a pay scale clearly intended to be applied in very different circumstances. Pecuniary damages for discrimination are limited to quantifiable, "out-of-pocket expenses" that, where appropriate, will be based on the employee's actual payscale. *Complainant*, EEOC Appeal No. 0120123467, 2015 WL 1607780, at *18.

Further weakening complainant's pecuniary damages claim is complainant's basing the claim on emotional harm and mental anguish he suffered at work. Claims based on such mental/emotional elements are compensable—but as non-pecuniary damages, not as pecuniary damages. Thus, for all these reasons, complainant's claim for pecuniary damages in the form of wage compensation at the retention/special rate pay is denied.

Complainant also made a claim for compensatory damages for lost leave, leave that he took because of the harassment for which he requests monetary compensation. As a starting point, compensation for leave used because of discrimination is generally not a matter of pecuniary damages but rather one of equitable remedies. Therefore, this topic will be discussed in the section on equitable remedies.

Complainant also claims entitlement to lost wages of $11,436 because BOP did not promote him in 2015. June 28, 2019, letter to Carolyn V. Sapla at 3. Complainant did not allege discriminatory nonselection in his complaint and the FAD made no findings on the issue. For these reasons, complainant is not entitled to lost wages on this theory.[2]

C. Non-Pecuniary Damages

Complainant made a claim for non-pecuniary damages in the amount of $194,925.74. Non-pecuniary damages are damages for mental and emotional harm and suffering and can include "injury to professional standing, injury to character and reputation, injury to credit standing, [and] loss of health." EEOC Enforcement Guide at *5. But "[e]motional harm will not be presumed simply because the complaining party is a victim of discrimination." *Id*. at *5. A complainant must prove the "existence, nature, and severity of the emotional harm" he claims. *Ibid*. Evidence may take the form of statements from complainant or others

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[2] Complainant also claims that BOP has retaliated against him for complaining about Onuh. June 28, 2019, letter to Carolyn V. Sapla at 1. This claim was not part of the original investigation or FAD. *See* ROI 29, 44. If complainant wishes to pursue this claim, he must file a new complaint.

addressing "the outward manifestations or physical consequences of emotional distress." *St. Louis*, EEOC Appeal No. 01A24586, 2003 WL 22988987, at *2. Witnesses can be "family members, friends, health care providers, and other counselors (including clergy)" who may describe complainant's "sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown." *Ricardo K. v. Dept of Justice*, EEOC Appeal No. 0720170030, 2017 WL 4784862, at *4 (Oct. 12, 2017).

No specific type of evidence is necessary. "The absence of supporting evidence, however, may affect the amount of damages" awarded. *Ricardo K.*, EEOC Appeal No. 0720170030, 2017 WL 4784862, at *4. "The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action." *Ibid*.

Here, complainant claims "non-economic damages for [the] mental anguish and emotional distress he has suffered." June 28, 2019, letter to Carolyn V. Sapla at 3. Complainant's damages request does not describe his emotional distress or mental anguish in any detail. He also provides no statements or other documentation supporting his claim for emotional damages. Given the absence of affidavits from complainant or others on damages, the Department of Justice has relied on the descriptions of complainant's stress, frustration, and anger that appear in the Record of Investigation, along with a common sense understanding of what one can "infer that a person would suffer" under such circumstances. *Ricardo K.*, EEOC Appeal No. 0720170030, 2017 WL 4784862, at

*4. Complainant's estimate that his noneconomic damages equal his economic damages is of little help because he does not explain how the two are related.

The Record of Investigation and the FAD give some evidence of complainant's harm. Onuh made insulting statements about Protestants, yelled at complainant, argued constantly, and disrupted his work. FAD 1-2; ROI 59, 129, 130, 136. Onuh told complainant that evangelicals "are ruining the country" and called complainant "worthless." FAD 2; ROI 59. He accused complainant of shirking work. FAD 2; ROI 138. Complainant reported that Onuh made staff meetings "almost unbearable." FAD 2; ROI 136. He described Onuh as "bigoted" and prone to "outbursts and tirade[s]." ROI 23. On June 18, 2014, complainant felt "sick to [his] stomach and left work early" after he went to work and unexpectedly encountered Onuh. ROI 134. Complainant took leave, moved into a supply closet, and rearranged his schedule to avoid Onuh. ROI 129. He asked managers not to assign him to work alone with Onuh. ROI 132.

Others said the two had a "strained" or "tense" working relationship. FAD 9; ROI 91, 103. According to one observer, however, "[a]t times it could be labeled a hostile work environment and at other times they seem to get along fine." ROI 97.

Complainant generally had to take on extra tasks and schedule chaplaincy functions around Onuh, because Onuh refused to serve at non-Catholic functions. FAD 3, 5, 16; ROI 60-61, 66. As one co-worker put it, complainant's "job was often made more difficult by Chaplain Onuh refusing to supervise other faith groups and their volunteers." ROI 104.

Complainant suffered particular distress after Onuh disparaged Protestant chaplains to inmates during the Catholic mass, and complainant felt "ridiculed . . . in a public setting." FAD 2; ROI 58, 61, 146-153. When his complaints about Onuh went unheeded, complainant presumably felt abandoned by prison leadership as he reported they did not "take [his] concerns seriously." FAD 7; ROI 132. After Onuh sowed discord among inmates, complainant worried that Onuh may have "put . . . staff at risk." FAD 3; Complainant's May 12, 2018, Statement to the Complaint Adjudication Office at 8-9'. All in all, complainant reported "an atmosphere of anxiety in [his] department," caused by Onuh. ROI 80.

Onuh's behavior can be described as disrespectful, hurtful, and aggravating, but not threatening or violent. Compensation for harassment by Onuh, which lasted for almost 6 years, also takes into account BOP management's drawn out and mostly ineffective attempts to stop the harassment.

The specific evidence in the record that arguably supports a claim of emotional damages is very limited. There is very little evidence showing that the stress of harassment affected complainant's health—beyond the one day when he reported feeling sick to his stomach. *See Elvera S. v. United States Postal Serv.*, EEOC Appeal No. 0120141452, 2016 WL 930031, at *4 (Feb. 23, 2016) (reporting complainant experienced chest pains, panic attacks, and sleeplessness). There is very little information addressing whether complainant's anxiety persisted at home or affected his personal relationships. *See Ibid.* (noting complainant testified she "was emotional, depressed, [and had] a lack of interest in things she used to enjoy with [her] family);

Campbell v. Dep't of Justice, EEOC Appeal No. 01A40538, 2005 WL 2331821, at *3 (Sept. 14, 2005) (pointing to complainant's husband's account of "stress on [their] relationship").

Non-pecuniary harms cannot be precisely quantified. Adjudicators consider "similar cases, the severity of the harm and duration of the harm." *Shirley Marker v. United States Postal Serv.*, EEOC DOC 01A33910, 2004 WL 1494246, at *3 (June 16, 2004). While "there are no definitive rules governing the amounts to be awarded," the amount should be consistent with awards in similar cases and should not be "monstrously excessive" or the product of passion or prejudice. EEOC Enforcement Guide at 7-8; *Complainant*, EEOC Appeal No. 0120123467, 2015 WL 1607780, at *18 (internal quotation marks omitted).

Given the limited evidence here, complainant is entitled to $15,000 in non-pecuniary damages for emotional harm and mental anguish. This award is not monstrously excessive and is consistent with EEO precedent. *See Marker*, EEOC Appeal No. 01A33910, 2004 WL 1494246, at *3 (raising agency's award of $3,500 to $12,000 for emotional harm from 4 years of disability harassment including taunts, ridicule, gossip, additional work, and physical threats); *Grice v. Dep't of Agriculture*, EEOC Appeal No. 01976646, 2000 WL 270479, at *5 (Feb. 28, 2000) (awarding $11,000 after "complainant was subjected to the deliberate scrutiny of a supervisor motivated by discriminatory animus for a relatively long period of time" and "such a situation would cause emotional trauma"); *Hyde v. Dep't of Homeland Sec.*, EEOC Appeal No. 0720110003 (Jan. 6, 2012) (affirming award of $7,000 in non-pecuniary damages for failure to accommodate

employee's religious need to have Sundays as a day off, causing mental anguish and diminished spiritual relationship with fellow worshippers); *White v. Dep't of Defense*, EEOC Appeal No. 0120103295 (Feb. 27, 2012) (raising the agency's award of $5,000 to $25,000 in case in which management's decisions prevented employee from participating in Sunday worship for 13 months, causing "a great deal of emotional stress," as evidenced by testimony from employee and her doctor, pastor, and beautician, that management's actions caused her to resign from several church leadership positions, develop sleep difficulties, suffer worsened hypertension, and lose her hair).

These cases, along with the limited supporting evidence provided by complainant, as well as the facts provided in the record of investigation, support an award of $15,000 for the emotional harm and stress complainant suffered at work.

D. Equitable Relief

Complainant claims that because of harassment by Onuh, he took sick and annual leave he ordinarily would not have taken, and he how requests replacement of such leave. Specifically, complainant claims that he used, on average, 51 more hours of sick leave after the harassment began and that he took 60 more hours of annual leave yearly to escape harassment. Accordingly, complainant claims he lost a total of 306 hours of sick leave and 360 of annual leave, for which he requests monetary compensation. Appropriate compensation for equitable damages must place complainant in the same "place" he would have been absent the discrimination. In other words, for any leave used because of harassment the appropriate remedy would be to

reinstate all the leave that complainant used as a result of the discrimination.

With respect to complainant's leave claim, while it makes sense that a hostile work environment would increase complainant's leave use, he does not explain with any specificity what amount of leave he used to escape harassment, versus what amount he used for vacations, medical appointments, or family matters. Complainant asserts, without providing any support, that all the increased sick leave usage was because of discrimination. But this assertion is a fairly broad and generalized one and cannot be accepted at face value without some supporting evidence.

But significantly, complainant does not describe the circumstances leading to use of leave and does not describe any treatment or provide medical records or bills that would suggest the leave was used due to ongoing harassment.

Without any such supporting evidence, the Department of Justice cannot verify complainant's claim that he used 111 hours of extra leave annually due to harassment for which he should receive equitable compensation. At the same time, it is clear from the record that complainant was affected by the harassment. Under the circumstances, it is reasonable to conclude that some of the leave he took was due to the harassment. Given the generalized and unspecific nature of the information complainant provided to support his leave claim, a 50% reduction in the total leave requested by complainant is warranted. While this is an estimate, it is one based on an understanding of what transpired at work, the harassment that complainant had to endure, and the rather extended failure of BOP management to address and resolve

complainant's harassment concerns. As such, complainant shall have 153 hours of sick leave and 180 hours of annual leave restored.

Complainant asks BOP to take other measures, including removing Onuh. This Office does not function as a "super personnel department[ ]" dictating discipline and no such action is required here. *Meuser v. Fed. Express Corp.*, 564 F.3d 507, 519 (1st Cir. 2009) (internal quotation marks omitted). BOP must take all reasonable action to stop ongoing harassment and reasonably ensure that the harassment will not recur.

Complainant also requests that BOP reprimand one of his supervisors, contact Onuh's religious leaders, promote complainant, put him on administrative leave, and reevaluate chaplain hiring policies. June 28, 2019, letter to Carolyn V. Sapla at 4. None of these measures is required to make complainant whole, and most of these requests are not consistent with the dictates and requirements of Title VII.

E. Attorney's Fees

As noted above, complainant's claim for damages is hampered by the lack of specific evidence of how Onuh's actions harmed complainant. While complainant's counsel reviewed the record and the FAD and negotiated with BOP over a proposed settlement, he did not prepare any affidavits or compile documentary evidence (such as leave records or medical records) to support complainant's damages claim. The only attorney work product in the record is the June 29 letter to Carolyn Sapla, a follow-up letter to Timothy Maughan, and some brief responses to requests for additional

information. Accordingly, an appropriate attorney's fee award is the one BOP offered, $1,000.[3]

Decision

To compensate complainant for the losses he suffered as a result of harassment, complainant shall have restored to him 153 hours of sick leave and 180 hours of annual leave. He shall also be awarded $15,000 in non-pecuniary damages, and $1,000 in attorney' s fees.

/s/ Robert K. Abraham
Acting Complaint Adjudication Officer

/s/ April J. Anderson
Complaint Adjudication Officer

[3] BOP pointed out that counsel did not comply with the May 16, 2019, FAD'S request that complainant submit his attorney's fees request within 30 days. It should be noted, however, that complainant retained present counsel on May 25, 2019, and at least some of his work presumably took place after the 30-day period. *See* Declaration of William J. Dunleavy at 2. The delay does not warrant withholding a few award.

FINAL AGENCY DECISION,
U.S. DEPARTMENT OF JUSTICE
(MAY 16, 2019)

U.S. DEPARTMENT OF JUSTICE
COMPLAINT ADJUDICATION OFFICE
950 Pennsylvania Avenue NW
Patrick Henry Building, Room A4810
Washington, DC 20530

CASEY CAMPBELL,

v.

FEDERAL BUREAU OF PRISONS.

Agency No. BOP-2017-0031

DJ No. 187-3-4582

DEPARTMENT OF JUSTICE
FINAL AGENCY DECISION

in the matter of
Casey Campbell v. Federal Bureau of Prisons

Complainant, Casey Campbell, works as a chaplain at the Federal Bureau of Prisons' (BOP's) Carswell, Texas institution. He filed an employment discrimination complaint against the BOP under Section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 (Title VII) and 29 C.F.R. 1614.101(a).

The issue here is whether BOP discriminated against complainant because of his Protestant religion when a Catholic chaplain made disparaging remarks about Protestant chaplains, refused to escort non-Catholic volunteers, and failed to supervise non-Catholic activities, leaving non-Catholic chaplains like complainant with extra work. ROI 44.

Facts

I. Complainant's Allegation

Complainant, a Baptist prison chaplain, claims that a Catholic chaplain, William Onuh, routinely harassed him and other Protestant chaplains. ROI 56. Onuh made scornful comments to complainant and to inmates, yelled at complainant, interfered with his work, and refused to serve non-Catholic inmates and volunteers—leaving complainant and other chaplains to pick up the slack. Complainant claims Onuh "had a pattern of behavior that is prejudiced against non-Catholics over the entire course of his tenure at FMC Carswell." ROI 58.[1]

A. Onuh's Harassment of Complainant

From early in their working relationship, complainant maintained, he was unable to "spend more than an hour with Chaplain Onuh without him becoming bellicose and yelling at [complainant] or someone else." ROI 129. Complainant repeatedly complained to managers about scheduling conflicts between himself and Onuh, problems with shared office space, and "unprofessional conduct." ROI 132-134.

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[1] Onuh has worked at Carswell since 2012. ROI 83.

He admitted he did not "like, trust, or appreciate Chaplain Onuh," who he described as "both irrational and emotionally unstable." ROI 130, 123. In 2013, complainant suggested separate office space might help, but management did not provide it. ROI 127. Soon afterwards, complainant moved out of a shared office with Onuh and began to use a former storage closet for his belongings. ROI 129.

"[O]n a couple of occasions," complainant said, Onuh told him "that white evangelicals and Republicans are ruining the country." ROI 59. In 2013, Onuh "belitt[ed] and berat[ed]" another Protestant chaplain, Chaplain Stephens, "to the point of tears for several weekends in a row." ROI 127.[2]

Complainant's problems with Onuh continued into 2014. In June 2014 he and Onuh got into a heated email exchange after Campbell declined to take a phone call about a death notification and asked the front desk officer to ask Onuh to do it. ROI 138. Also that month, complainant emailed a Human Resources Manager reporting that Onuh "becomes belligerent whenever he is asked to do anything that does not directly involve Roman Catholics." ROI 132, 139. He wrote a Catholic Bishop, too, to complain that Onuh "argues with everything and everyone" so that "staff meetings are almost unbearable when he is present." ROI 136. Complainant even considered transferring to another institution, he said, but could not "financially afford to do so." ROI 135.

Onuh's harassment continued, and in recent years Onuh made disparaging comments about complainant

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[2] Stephens' first name is not in the record.

and Supervisory Chaplain Jonathan Clark. He has called the Protestant chaplains "boys" and has told complainant he was "worthless." ROI 59. In 2017, Onuh told inmates in his congregation that the Catholic congregation was "under attack & being persecuted." ROI 58, 61, 146-148, 151-153. He said Protestant services were "just entertainment." ROI 59.

In complainant's view, and as a result of Onuh's actions and behavior, his "faith [was] ridiculed by a fellow employee in a public setting." ROI 61. Furthermore, the remarks "put the safety and security of [the] institution's staff at risk (by inciting the inmates against [Onuh's] fellow chaplains)." Complainant's May 12, 2018 Statement to the Complaint Adjudication Office at 8-9.

B. Onuh's Refusal to Serve Non-Catholic Volunteers and Inmates

In addition to contemptuous comments, complainant claims, Onuh routinely refused to escort and supervise non-Catholic volunteer groups, leaving other chaplains to fill in for him. ROI 60, 156. Chaplains must "share pastoral duties, supervision of inmate groups, and administrative functions," according to complainant. ROI 61. This includes recruiting, training, and supervising volunteers of other faiths. ROI 61. Indeed, the chaplain's job description stipulates that they "[p]rovide a full pastoral ministry to inmates of all faith groups." ROI 121. Normally, as complainant described it, volunteers coming in to lead religious activities report to the front lobby and a chaplain takes them inside. ROI 59. This is "one of the most basic duties for any chaplain," complainant said. ROI 59. But Onuh, complainant reported, has "stated that

he is a 'Catholic chaplain'" as a way of explaining his unwillingness to assist certain volunteers. ROI 61.

Onuh failed to escort non-Catholic volunteers even when managers had assigned him to oversee an event with the volunteers, complainant asserted. ROI 156. Managers have, at times, instructed complainant to alter his activity schedule to transport volunteers that Onuh refused to serve. ROI 60. As complainant sees it, he "is being discriminated against when [he is] expected to escort and supervise volunteers as part of the conditions of [his] employment" and Onuh "is allowed to choose when and whether he will perform those same duties." ROI 61.

In early February 2017, a Seventh Day Adventist volunteer and a Mormon volunteer came to the prison and waited to meet with a women's group, but could not do so because they had no escort. ROI 58, 144.[3] Even though he was the only chaplain on duty, Onuh refused to escort the volunteers. ROI 27. In the meantime, the inmates had gathered for the planned meeting at the appointed time only to find the religious services department closed. ROI 149. "This has occurred now on several occasions," an inmate recounted in filing a complaint, and "[i]t is always

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[3] Complainant reported that Onuh refused to escort a Mormon and a Seventh Day Adventist volunteer on February 9. ROI 30, 58. An unidentified volunteer emailed the prison reporting that the sender and a Seventh Day Adventist volunteer were turned away on February 4. ROI 144. An inmate similarly complained that on February 4 Onuh failed to open Religious Services for the Seventh Day Adventist group to meet with volunteers. ROI 149. Given the similar descriptions of the event, it seems likely that these sources describe the same incident and complainant may be mistaken on the exact date.

when Chaplain Onuh is left to run the [Religious Services] Dep[artment]." ROI 149. Onuh "disregards all other services and is only concerned with his (catholic)," the inmate said, and she and "others find it discriminating." ROI 149.

On March 9, 2017, Onuh again refused to escort non-Catholic volunteers. This time Chaplain Beverly Ford stayed beyond her scheduled shift, working overtime, to accommodate a Protestant activity managers had assigned Onuh to facilitate. ROI 27, 58.

For some 18 weeks starting August 17, 2017, complainant reported, Mentor Coordinator Kathy Mobley "had to adjust her work routine" to support a recurring Thursday morning Protestant activity. ROI 119. Onuh was assigned to oversee the event, but he "either d[idn't] show up, or fail[ed]/refuse[d] to supervise the program." ROI 119. Accordingly, Mobley covered for Onuh on all but two Thursdays. ROI 119.

According to complainant, Onuh "has only ever refused to escort non-Catholic volunteers." Complainant's May 12, 2018 Statement to the Complaint Adjudication Office at 6. When Onuh does escort non-Catholics, complainant maintained, he treats them rudely and arrives late. ROI 30. In response volunteers "regularly express their frustrations," complainant reported, with Onuh's "demeanor/attitude toward them." ROI 30.[4] Complainant also said that the February and March 2017 incidents were "not the only times [Onuh] has refused or threatened to refuse to escort non-Catholic volunteers." ROI 59. Furthermore, because

[4] The investigator requested a list of the volunteers chaplains escorted between February 5 and March 9, 2017, but BOP did not provide this information. ROI 54.

Onuh "could not be relied upon to provide the community with the elements necessary for their service on a consistent and timely manner," complainant explained, the prison had to change the schedule for Native American worship. ROI 58.

As late as March 2018, Onuh left the main facility and went to the prison camp, complainant asserts, so that he would not have to escort a Christian Science volunteer. ROI 66. Instead, complainant assisted the volunteer. ROI 66. Also that month, after BOP assigned Onuh a shift overlapping with two other staff members, staff conferred and decided to be "especially careful to escort the volunteers every week in order to save them from having to interact with Chaplain Onuh." ROI 67. As complainant sees it, "his behavior has gone on for so long, that many people don't even realize how many changes have to be made in order to accommodate him." ROI 67.

Onuh also went out of his way, complainant believes, to interrupt a Protestant service in March 2018. ROI 66. Onuh has announced and scheduled Catholic services to take place in the space complainant had previously reserved for Protestant services. ROI 66, *see also* ROI 147-148.

In complainant's estimation these incidents show that Onuh "is prejudiced against non-Catholics." ROI 58. Indeed, Onuh has stated "that he is a 'Catholic chaplain' giving clear indication that he believed that he was not an ordinary chaplain and subject to sharing all of the ordinary chaplain tasks." ROI 61.

C. Complainant's Reports to Managers

Complainant said that he has repeatedly spoken to managers about his problems with Onuh. Years before filing his EEO complaint, complainant spoke to former Supervisory Chaplain Robert Danage "on several occasions" reporting Onuh's refusal to serve non-Catholics. ROI 62; *see also* ROI 16.[5] He told Danage that he, "as a Protestant . . . was being asked to do more than Chaplain Onuh." ROI 62. Indeed, complainant said, Onuh told Danage in a staff meeting in front of everyone that he "'would not' escort and supervise the groups he had been assigned." Complainant also relayed Onuh's comments that "white evangelicals were ruining the country." ROI 61. In response, Danage told complainant to "let it go." ROI 61. He explained that "Catholic priests have 'a lot of pull" and he was unwilling to try to correct Onuh's behavior. ROI 62. Danage also said that he "was afraid of having an EEO claim made against him if he tried to make Chaplain Onuh perform his duties like any other chaplain," complainant reported. ROI 62. Complainant in turn asked Danage "why he wasn't afraid that [complainant] would file an EEO complaint." ROI 62. Danage told complainant that executive staff had instructed him to "'manage around' Mr. Onah." ROI 66.

Complainant also reported problems to Associate Warden Schuman and Warden Jody Upton in 2013. ROI 127-129.[6] Complainant said he told the Warden

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[5] Complainant did not remember when this occurred. However, Clark has been Supervisory Chaplain since April 2015, so it is likely that the exchange occurred before then. ROI 88.

[6] Associate Warden Schuman's first name is not in the record.

he wanted to file an EEO complaint, but worried "the process would be too long." ROI 62. The Warden told complainant to "just overlook Chaplain Onuh's attitude, comments, and behavior," complainant reported. ROI 61. In response to complainant's concerns, the Associate Warden suggested that complainant "use [his] pastoral skill to reason with" Onuh and defuse tensions. ROI 127. Managers generally advised complainant to "ignore" Onuh. ROI 62.

Complainant claimed then Associate Warden Schuman refused to intervene in another chaplain's struggles with Onuh. When "it came to light" that Onuh harassed Chaplain Stephens "to the point of tears for several weekends in a row," Schuman told her to "be more assertive." ROI 127. In the Associate Warden's opinion, complainant and Stephens "were equally responsible for the conflict and problems that [they] had been experiencing with Chaplain Onuh." ROI 132.

In 2014 complainant wrote to Jonna Hawk, the Human Resources Manager, to report Onuh's reluctance to serve non-Catholics. He claimed that managers dealt with Onuh by simply not asking him "to perform the routine duties that the rest of us are asked to perform." ROI 132, 139. Complainant requested that he not work alone with Onuh. ROI 132. He also told Hawk he had stopped reporting his concerns to managers because "the administration was not going to take [his] concerns seriously." ROI 132.

Based on these interactions, complainant characterized BOP managers' response as "inaction over the years." ROI 66. As complainant sees it, in the year since his 2017 EEO complaint he has "seen no change in Chaplain Onuh's behavior toward [him] or the

programs [complainant] facilitate [s] and provide[s]." ROI 66. Complainant reports that Onuh "continues to make snide, sarcastic, and/or disparaging remarks about [complainant and Clark] to the inmate population." ROI 66. He assumes no "effective training or discipline has taken place." ROI 66.

II. Witness Testimony

A. Chaplain William Onuh

Onuh maintains that he has never "said or written anything negative about [complainant]." ROI 83. According to Onuh, he and complainant do not get along; complainant "resents [Onuh's] presence and would not like to have [him] around," Onuh believes. ROI 85. He claims complainant "has written [Onuh] up several times," and once packed up his belongings while Onuh was on vacation. ROI 85.

Onuh complained of a "chaotic period Chaplains Clark and [complainant] created," causing scheduling mishaps. ROI 83. One day during this time, Onuh said, a volunteer arrived and none of the chaplains had advance notice. Onuh was busy in the chapel, and another chaplain escorted them after calling Clark at home to verify the visitors. ROI 83. Onuh reported he "was written up for this incident" and received a "reprimand." ROI 83. He has never made pejorative comments about Protestant chaplains or refused to escort non-Catholic volunteers, Onuh insists. ROI 84.

B. Supervisory Chaplain Jonathan Clark

Clark, complainant's supervisor since 2015, reported that inmates came to him with concerns about Onuh's comments about other chaplains. ROI

89. Inmates said Onuh called Protestant Chaplains "liars" and "boys." ROI 89. In an email to Clark on February 8, 2017, one inmate reported that, at mass, Onuh "took the opportunity to bad mouth [Clark], [complainant], and Religious Services" and "[t]his was basically the theme of the entire Mass." ROI 143.

Another inmate, in a February 6, 2017, letter to Clark, said that Onuh announced at mass "that the Catholic community was under attack & being persecuted." ROI 146. In the homily that day, the inmate reported, Onuh said that the Religious Services Administration "plotted and schemed to undermine him" and that officials were "jealous" of high attendance at Catholic services. ROI 146. Onuh vowed to "stand his ground" on keeping an 8:00 a.m. Sunday slot for mass "as long as he is the Catholic Chaplain." ROI 147. Although mass was scheduled for 1:45 p.m. the next Sunday, Onuh said that inmates should ignore bulletins or announcements and come at 8:00. ROI 148. He reminded them that "the community was under persecution," and that they needed to "stand together." ROI 148. The effect, the prisoner said, was to "g[e]t a few inmates riled up." ROI 148.

On February 19, Onuh gave a second disruptive sermon, claiming again that the Catholic community was "under attack" and accusing Religious Services of "tell[ing] [inmates] lies," including "lies" about Onuh. ROI 151-153. He asserted that the "Protestant chaplains" should take over duties at the outlying facility, the prison camp, where he apparently preferred not to work. ROI 154. Onuh suggested that a time change in scheduled services that the other chaplains had imposed could undermine attendance at Catholic services. ROI 154. Onuh also denounced Nell Blackerby,

a Catholic contractor in Religious Services, accusing Blackerby and Clark of "[going] to the Bishop" about him, and declaring that "the Bishop here has no control over [him.]" ROI 152. In addition, Onuh told inmates he had no duty to supervise volunteers, and that BOP should not "spend money on foolishness" like the volunteer program. ROI 154. Clark said he informed BOP leadership about the inmate complaints. ROI 91.

After Onuh refused to escort non-Catholic volunteers, Clark "had several conversations" with him about it and "issued verbal reprimands." ROI 90. Indeed, he went so far as to refer Onuh to Special Investigative Services for misconduct. ROI 90.[7] On March 15, 2017, Clark wrote Warden Upton to report Onuh for failing to follow his instructions and escort volunteers on March 10, leaving Ford to pick up the slack. ROI 159. In the memo, Clark did not detail Onuh's pattern of refusing to escort non-Catholic volunteers. ROI 160.

Clark acknowledged that all chaplains are responsible for escorting volunteers for religious services. ROI 90. Chaplains are each "endorsed by their own religious traditions," he explained, but must also "facilitate inmates of all religious faiths [with] opportunities to pursue individual religious beliefs and practices." ROI 91.

After complainant told Clark about harassment, Clark informed complainant that he could seek help from the Employee Assistance Program or talk to an EEO counselor. ROI 91. He assured complainant that

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[7] Clark did not specify when he referred Onuh for investigation. ROI 90.

he "was addressing the concern of volunteers not being escorted." ROI 91. When an EEO counselor spoke to Clark on March 28, 2017, Clark said he knew about the issues with Onuh and had explained the problems to his supervisor. ROI 27. In his interview with the investigator, Clark reiterated that he had "voiced [complainant's] concerns to the Executive Staff." ROI 91.

In Clark's view, Onuh subjected complainant to discrimination based on his faith, and he discriminated against others as well. ROI 91. Onuh and complainant have a "strained" working relationship, as Clark describes it, and in Clark's view "Onuh sees workplace relationships as Protestants vers[u]s Catholics." ROI 91. Clark attributed this "to [Onuh's] own religious perspective"—he "is difficult to work with because he doesn't like to work with other faith groups." ROI 91. Clark affirmed that another Protestant chaplain, Ford, has been asked to work overtime because Onuh refused to escort Protestant volunteers. ROI 90.

Clark himself "would have filed an EEO complaint much the same as [complainant's]," he said, and he "may still" do so. ROI 92. But because Onuh has filed so many grievances against Clark, he worries any complaint would be seen as retaliation. ROI 92.

C. Associate Warden Catricia Howard

Howard is Clark's supervisor and complainant's second-line supervisor. She reported that Clark emailed her on March 16, 2017, about "an allegation of prejudice and harassment [involving] Chaplain Onuh." ROI 75-76. The email described "pejorative comments" that Onuh allegedly made about Protestant chaplains

and claims that Onuh refused to escort non-Catholic volunteers, Howard said. ROI 76, 80.

Howard provided the email she described to the investigator, and in it complainant asked "to make a formal complaint about the long standing prejudice and harassment" from Onuh, including "negative comments" about complainant, assertions that his services are "mere entertainment," and refusal to perform chaplain duties for non-Catholics. ROI 80. According to complainant, all this had created an "atmosphere of anxiety" in the department. ROI 80.

In response to the email, Howard said, Clark "was advised to speak to Chaplain Onuh about the allegations." ROI 78. Howard assured the EEO counselor on April 6, 2017, that she had "referred" complainant's concerns "for appropriate action" but provided no further elaboration. ROI 27. She did not believe Onuh had subjected complainant to discrimination. ROI 78.

In describing the chaplains' duties to the investigator, Howard explained that chaplains at the prison "are responsible for the supervision and administration of all religious programs as well as other religious activities." Each should "provide full pastoral ministry to inmates of all faith groups." ROI 78.

D. Warden Jody Upton

Upton, Warden since 2013, described "being sent an email" from complainant "expressing some concerns" about Onuh's treatment of him. ROI 70.[8] The Warden did not remember talking to either complainant or

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8 Upton did not specify the email's date. ROI 70.

Onuh about the issues. ROI 70. The two had "interpersonal communication issues" in the Warden's opinion, and Upton did "not recall ever discussing a discrimination concern" with complainant. ROI 72.

Upton acknowledged that Onuh once disregarded Chaplain Clark's direction to escort volunteers, ROI 69, 71. The warden did not know the volunteers' religion. ROI 71. In general, Upton explained, approved volunteers arrive at the institution throughout the week and a chaplain escorts them to services or to other activities. ROI 71. A chaplain's faith group plays no role in assigning escort duties. ROI 72. In fact, any employee can be tasked with escorting visitors. ROI 71.

E. Chaplain Beverly Ford

Protestant Chaplain Beverly Ford recalled a time when Onuh refused to escort volunteers, even after Clark directed him to do so. ROI 95. Onuh told Ford he would not escort the volunteers because he was busy with his own religious activities. ROI 95. Ford escorted the volunteers herself. ROI 95.

Ford believed that at times, some volunteers were not escorted into the prison but she "was not involved in the particulars." ROI 96. She did not know of Onuh calling Protestant ministers "boys" or "liars." ROI 95.[9] Complainant and Onuh "have had disagreements (issues) on and off," Ford said. ROI 97. She did not

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[9] Chaplain Farid Farooqi also testified that he had no knowledge of such insults, and that he did not observe Onuh refusing to escort non-Catholic volunteers. ROI 107. He believed there were "personal issues between" complainant and Onuh, rather than religious issues. ROI 108.

opine on what motivated their disagreements. There was "a hostile work environment" at times, but, she maintained, "[i]t's not about religion." ROI 97.

F. Chaplain Rachel Floyd

Floyd, another Protestant chaplain, worked at Carswell from 2012 until 2014. ROI 101. Onuh showed "disrespect towards [her] and other Protestant Chaplains," she reported, and "disregard" for his duties to escort volunteers regardless of their faith. ROI 103. For example, Floyd saw Onuh refuse to escort Protestant volunteers and supervise Protestant activities. ROI 101, 103. In her years there, he "often refused to escort non-Catholic volunteers." ROI 102. As a result, Floyd said, every Saturday she worked she was responsible for escorting volunteers because Onuh "refused to bring them in." ROI 102. And on Saturdays when she did not work, volunteers "had to leave the institution" without being able to participate in the scheduled meeting or activity because Onuh would not escort them. ROI 102.

In Floyd's view, complainant's job "was often made more difficult by Chaplain Onuh refusing to supervise other faith groups and their volunteers." ROI 104. She pointed out by way of contrast that BOP Program Statement 3939.07 requires chaplains to "[s]hare pastoral duties, supervision of inmate groups, and administrative functions equitably." ROI 103.

Floyd said she believed complainant endured discriminatory treatment and that she "personally witnessed and experienced Chaplain Onuh's disrespect towards [her]self and other Protestant [c]haplains." ROI 103. Once, Floyd reported, Onuh told a female

Protestant chaplain "that she was not a chaplain because she was female." ROI 101.

Floyd also admitted she was "not sure" how much religion influenced Onuh's mistreatment of coworkers because he "showed disrespect to most co-workers" and "was rude, disrespectful and overall very hard to work with." ROI 104. As a result, Floyd "avoided" Onuh as much as possible because of his "short temper." ROI 101.

G. Mentor Coordinator Kathy Mobley

Mobley said she has spoken to complainant and observed that he seemed "very troubled" by the alleged harassment and felt "at a loss" for what to do. ROI 113. Indeed, complainant has confided in her "several times over the course of the last several years" about potential religious discrimination. ROI 116. In addition, "several inmates," she reported, had told her that Onuh made derogatory comments about Protestant chaplains. ROI 114. However, Mobley did not hear Onuh make such statements. ROI 113.

Mobley has often sought help in correcting Onuh's behavior. For example, she spoke to human resources personnel on three occasions and twice reported him to BOP internal investigators. ROI 116. She communicated problems to union leaders, her supervisor (Clark), and her former supervisor (Danage). ROI 116. "Everyone seems to acknowledge that it is difficult to work with him." ROI 116. In particular, she said, "female inmates find it impossible to please him." ROI 116. But "no one address[es] the fact that his behavior is not acceptable and should not be tolerated in the worksite. . . . So we all just stay clear." ROI 116. Mobley admitted she tries to avoid Onuh. ROI 116. "Letting

him do his thing, makes everyone feel less threatened." ROI 116.

As Mobley sees it, Onuh does not escort volunteers "unless he absolutely has no other choice," and this "adds a lot of extra stress on those who work with him . . . who must pick up the extra work load." ROI 114. Ford, for instance, has had to "work comp time" to supervise activities after Onuh refused to. ROI 115. Mobley has also "covered Volunteer Programming because [Onuh] would not escort the Volunteers." ROI 115. She feels obligated "to ensure coverage" because she does not want volunteers "to feel they are not appreciated or valued for th[eir] services." ROI 115. On one occasion she recounted, Onuh and Farooqi were the only two staff working the evening shift and Onuh refused to escort a Protestant group. Farooqi had to cover for him. ROI 115. By way of explanation, Mobley speculated Onuh might see escorting visitors as "beneath him." ROI 114.

Mobley wondered if Onuh acted because of religion or if he "just is not willing to do anything that he does not absolutely have to do." ROI 114. Onuh, in her observation, "just is not a Team Player and is only willing to do what will serve him or his own needs." ROI 114. He is the only Catholic leader and "has an issue with most everyone in the Department," Mobley confirmed, leaving her "unsure" whether his attitude was based on religion. ROI 115.

ANALYSIS

Complainant claimed that he was discriminated against because of his Protestant religion when Chaplain Onuh made disparaging remarks about Protestant chaplains, refused to escort Protestant and

other non-Catholic volunteers, and declined to supervise Protestant activities—leaving Protestant chaplains like complainant with extra work. ROI 44. Complainant said that he raised these issues repeatedly with BOP senior managers and they took no corrective action. Federal employers may not discriminate against employees based on religion. 42 U.S.C. § 2000e-16; *see also* 29 C.F.R. § 1614.101. Discrimination can include treating "some people less favorably than others" because of their protected characteristic. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977).

Discriminatory actions prohibited by Title VII include "creat[ing] a hostile or abusive work environment." *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986). A hostile workplace "is permeated with 'discriminatory intimidation, ridicule, and insult' . . . that is 'sufficiently severe or pervasive to alter the conditions of [one's] employment and create an abusive working environment.'" *Harris Sys., Inc.*, 510 U.S. 17, 21 (1993) (quoting *Meritor Sav. Bank*, 477 U.S. at 65, 67).

Antidiscrimination law is not a "general civility code" for employees and does not assuage "the ordinary tribulations of the workplace, such as the sporadic use of abusive language" and "occasional teasing." *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (internal quotation marks omitted). Nor are "trivial harms" or "minor annoyances" actionable. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). Instead, harassing "conduct must be extreme" before it becomes the subject of legal action. *Faragher*, 524 U.S. at 788. Incidents like "slights," "occasional name-calling, rude emails, lost tempers

and workplace disagreements" are "uncognizable" under federal antidiscrimination law, and Title VII does not provide relief for "personality conflicts." *Baird v. Gotbaum*, 792 F.3d 166, 171 (D.C. Cir. 2015) (internal quotation marks omitted).

In determining whether alleged conduct is sufficiently severe or pervasive to have violated Title VII's prohibition of a hostile work environment, the fact-finder looks at all the circumstances. *Harris*, 510 U.S. at 23. These include the "frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance." *Flowers v. Southern Reg'l Physician Servs. Inc.*, 247 F.3d 229, 236 (5th Cir. 2001). A series of incidents may amount to a hostile environment if they are "more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." *Perry v. Ethan Allen, Inc.*, 115 F.3d 143, 149 (2d Cir. 1997) (internal quotation marks omitted).

Importantly, the record "must demonstrate that the conduct occurred because of" complainant's protected characteristic. *Alfano v. Costello*, 294 F.3d 365, 374 (2d Cir. 2002).

With respect to harassment on the basis of religion, it is noted at the outset that Title VII does not generally extend to actions within religious institutions. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188, (2012). In this case, however, the institution in question is a federal penal institution and chaplains at the institution are not exempt from Title VII. Religious animus must not be a factor in chaplains' treatment

of each other or assignment of their secular duties. As the Seventh Circuit explained in adjudicating a claim by a Veterans Administration hospital chaplain, a chaplain "is not simply a preacher but a secular employee hired to perform duties for which he has, by dint of his religious calling and pastoral experience, a special aptitude." The court saw "no reason to analyze this case differently from the typical Title VII case." *Baz v. Walters*, 782 F.2d 701, 705 (7th Cir. 1986). Similarly, in considering a case against the District of Columbia Department of Corrections, another federal judge has remarked that "religious affiliation is, at best, a matter of secondary importance" for prison chaplains, who must serve inmates of all faiths. *Rasul v. D.C.*, 680 F. Supp. 436, 440 (D.D.C. 1988).

An institution may fire a chaplain who "would not conform his ministry" to the institution's "multi-disciplinary" and "ecumenical approach." *Baz*, 782 F.2d at 704, 709. And a preference for chaplains of a particular faith may violate Title VII. *Heffernan v. Dept of Health and Human Serv.*, EEOC Appeal No. 0320060079, 2007 WL 313336, at *11 (Jan. 24, 2007).

I. A Hostile Work Environment

Complainant claimed Chaplain Onuh created a hostile environment motivated by religious bias when he treated complainant harshly, made insulting statements about Protestants, and refused to serve non-Catholic inmates and volunteers. Onuh scheduled Catholic services in the time and place complainant had reserved for Protestant worship, interrupted Protestant worship, and refused to escort non-Catholic volunteers-resulting in cancelled meetings. ROI 60, 66, 119, 147-149, 156. A review of Onuh's behavior

leads to the conclusion that his actions were "'sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment.'" *Harris*, 510 U.S. at 21 (quoting *Mentor Sav. Bank*, 477 U.S. at 65, 67). His mistreatment was "more than episodic" as it took place over several years. *Perry v. Ethan Allen, Inc.*, 115 F.3d 143, 149 (2d Cir. 1997); ROI 62, 127, 129, 136. Sometime before April 2015, complainant told his supervisor about Onuh's derogatory comments and how he, "as a Protestant . . . was being asked to do more than Chaplain Onuh." ROI 62. Complainant reported similar problems in 2017 and 2018. ROI 27, 58, 66, 119, 146.

Others confirmed that Onuh's behavior was pervasive and longstanding. Mobley said complainant confided in her "several times over the course of the last several years" about potential religious discrimination. ROI 116. Floyd, who left Carswell in 2014, said Onuh "often refused to escort non-Catholic volunteers" while she worked there. ROI 102.

Inmates, too, noticed Onuh's religious bias. One prisoner who complained about Onuh's refusal to supervise non-Catholic worship observed this behavior "on several occasions." ROI 149. The pattern here is "sufficiently continuous and concerted in order to be deemed pervasive." *Perry v. Ethan Allen, Inc.*, 115 F.3d 143, 149 (2d Cir. 1997).

Other harassing incidents include the times when Onuh made derogatory comments about complainant and his Protestant coworkers. He said complainant's Protestant services were "just entertainment," called the Protestant chaplains "boys," said they lied, and told complainant he was "worthless." ROI 59. Onuh also made pejorative generalizations about Protestants,

accusing evangelicals like complainant of "ruining the country." ROI 59. Such statements further contribute to a finding that Onuh's conduct was sufficiently pervasive to violate Title VII. The Commission has found similar belittling and humiliating statements about an individual's religion may support a finding of religious harassment. *See Hurston v. United States Postal Serv.*, EEOC Appeal No. 01986458, 2001 WL 65204, at *2 (Jan. 19, 2001) (finding harassment when, among other things, a co-worker characterized an employee's Wiccan observances as "frolic[ing] with the nymphs"); *Lashawna C. v. Dept of Labor*, EEOC Appeal No. 0720160020, 2017 WL 664453, at *5-6 (Feb. 10, 2017) (holding manager's single comment to Jewish subordinate that he "work[ed] like a Hebrew slave" constituted harassment). The Commission has also found harassment where, among other things, a manager called an employee's halal food "pagan." *Sabir v. Dept of Health and Human Servs.*, EEOC Appeal No. 01993859, 2002 WL 31107304, at *5 (Sept. 11, 2002).

Onuh's harassment affected complainant's working conditions. According to complainant, Onuh frequently "yell[ed]," conducted "outbursts and tirade[s]," and "bec[ame] bellicose." ROI 129, 133. At some point, to get away from this behavior, complainant moved out of his office. ROI 129. *See Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325, 333 (4th Cir. 2003) (noting harassment was sufficiently severe when it "drove [plaintiff] from the room" and "surely made it more difficult for her to do her job").

Onuh's actions also altered complainant's duties. Complainant had to pitch in when Onuh refused to serve non-Catholic inmates and their volunteers. ROI

115. As Floyd put it, Onuh often made complainant's work "more difficult" when he refused to serve other faith groups. ROI 104. Mobley, too, said that Onuh's disregard for non-Catholics "adds a lot of extra stress" and "extra work load" for complainant and others. ROI 114.

In addition to making extra work, Onuh interfered with complainant's work by interrupting Protestant services and scheduling conflicting Catholic services. ROI 66. As one inmate explained, Onuh insisted on keeping an 8:00 a.m. Sunday slot for mass—telling Catholic inmates to come for mass at 8 even if the chaplaincy scheduled it at other times. ROI 147-148.

Onuh undermined complainant's rapport with inmates and his authority over them. He informed prisoners that the Catholic community was "under attack" and that Protestant chaplains, like complainant, told them "lies." ROI 151-153. Complainant considered these comments particularly problematic, given his role in the prison. His job is to minister to inmates of all faiths; accordingly, he must seek their trust. Complainant and other BOP chaplains are also "Correctional Law enforcement Officers," and getting inmates "riled up," as Onuh did, is troubling and perhaps dangerous. ROI 115, 148.[10]

Onuh's anti-Protestant attitude further undermined the Religious Service's Department's mission to provide support for all faiths. The department had to change the schedule for Native American worship because Onuh proved unreliable. ROI 58. According to

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10 As Mobley explained, Religious Services employees "are [a]ll Correction Law Enforcement Officers [f]irst" and "[t]hat is why [they] receive Law Enforcement Pay." ROI 115.

a Seventh Day Adventist prisoner, Onuh failed to show up for non-Catholic group activities several times, resulting in cancellation. ROI 149. While complainant cannot sue on behalf of inmates or other employees Onuh injured, *McCollum v. California Dept of Corr. & Rehab.*, 647 F.3d 870, 878 (9th Cir. 2011), evidence that Onuh repeatedly refused to serve non-Catholic inmates helps to show his religious animus towards complainant, *Briscoe v. Fred's Dollar Store, Inc.*, 24 F.3d 1026, 1028-1029 (8th Cir. 1994) (noting that mistreatment of black customers helped show "prevailing atmosphere of racial animus against Blacks in general, and Black employees in particular").

There is some evidence of "personality conflicts" with Onuh that may not implicate religion. In Ford's view, complainant suffered "a hostile work environment" but complainant's "issues" with Onuh were "not about religion." ROI 97. Mobley said that because there were no other Catholic leaders at the prison, she was "unsure" whether he mistreated others because of their religion or whether he would mistreat "everyone" equally. ROI 115. Furthermore, some of complainant's complaints to management about Onuh's "yelling" and other conflicts do not mention religious discrimination. ROI 128-134; but *See* 139 (where complainant reported to a Human Resources Manager that Onuh resists serving non-Catholics).

When considered as a whole, the record provides significant evidence that Onuh's actions and hostility had a religious basis. Evidence of "harassment must be viewed against all of the circumstances and not in isolation." *Jackson v. Quanex Corp.*, 191 F.3d 647, 664 (6th Cir. 1999). When considering motives, Title VII

requires that "a protected characteristic was *a* motivating factor" but it need not be the only factor. *Quigg v. Thomas Cty. Sch. Dist.*, 814 F.3d 1227, 1238 (11th Cir. 2016); *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 717 (6th Cir. 2006). Here, assessing Onuh's motives in light of all the circumstances means evaluating Onuh's general disagreeableness alongside his comments about Protestant chaplains and his pattern of shirking supervision of non-Catholic services. Even if some of Onuh's disagreeableness and unwillingness to help fellow chaplains were due to personal issues, there is ample evidence that Onuh's lack of caring for and feeling of not being responsible to non-Catholics played a prominent role in many of his actions.

This conclusion is supported by the measured statements of Supervisory Chaplain Clark, who noted that "Onuh sees workplace relationships as Protestants vers[u]s Catholics" because of his "own religious perspective." ROI 91. 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." ROI 91. The record bears out Clark's assessment, as it does not describe Onuh's failure to supervise Catholic services or escort Catholic volunteers.[11]

Because chaplains must "share pastoral duties, supervision of inmate groups, and administrative functions," Onuh's refusal to serve non-Catholic inmates inevitably shifted work onto other chaplains, and this

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[11] The record does show that Onuh once treated a Catholic Religious Services Employee, Blackerby, harshly. ROI 152. But this one instance does not prove he is an "equal-opportunity harasser," *Holman v. Indiana*, 211 F.3d 399, 405 (7th Cir. 2000), nasty to everyone regardless of religion, given that he also made explicit, derogatory statements about Protestants. ROI 59.

took place over a considerable period of time. ROI 61. Ford, for one, has had to work overtime when Onuh refused to serve non-Catholic inmates. ROI 90. And Clark said he would feel justified in bringing his own EEO claim, but fears it would not be taken seriously. ROI 92. Onuh's insults and outbursts regularly brought another chaplain to tears, but it appears BOP did nothing to stop his abuse. ROI 127.

II. BOP's Liability for Onuh's Behavior

An employer is liable for the harassment if the harasser is a coworker and the employer, after receiving notice of the harassment, is negligent in addressing and attempting to correct the harassment. *Vance v. Ball State Univ.*, 570 U.S. 421, 424 (2013). An "employer will always be liable when its negligence leads to the creation or continuation of a hostile work environment." *Vance*, 570 U.S. at 446. Onuh is complainant's coworker, not his supervisor, so BOP is liable only if managers "knew or should have known" of the harassment, *Jackson*, 191 F.3d at 664, and failed to take measures "reasonably calculated to end the harassment," *EEOC v. Xerxes Corp.*, 639 F.3d 658, 672 (4th Cir. 2011) (internal quotation marks omitted). An employer must take "prompt and appropriate remedial action." *Huston v. Procter & Gamble Paper Products Corp.*, 568 F.3d 100, 104 (3d Cir. 2009).

Employer liability in this case depends on, among other things, "the promptness of the employer's investigation when complaints are made, whether offending employees were counseled or disciplined for their actions, and whether the employer's response was actually effective." *Xerxes Corp.*, 639 F.3d at 669. It is not enough that management does <u>something</u> in

response to complaints. It must "commit[ ] itself to resolving the allegations." *Jackson*, 191 F.3d at 665 (holding that a reprimand and other moderate measures that failed to stop graffiti and slurs were inadequate).

The record shows that BOP management at the institution knew about Onuh's harassment. In 2013 and 2014 complainant talked to former Supervisory Chaplain Danage. ROI 62. *See Destiny H. v. Dep't of the Navy*, EEOC Appeal No. 0120130872, 2015 WL 9685599, at *5 (Dec. 10, 2015) (holding agency became aware of harassment when victim told harasser's supervisor). Admittedly, complainant listed many grievances in his emails to Danage—most of them personal—but he also told Danage that "as a Protestant" he had to do more work than Onuh when Onuh refused to serve non-Catholics. ROI 62, 88. Moreover, complainant told Danage about Onuh's accusing evangelicals of "ruining the country." ROI 61. In addition, he told Danage he had thought about filing an EEO complaint. ROI 62. Nevertheless Danage, Onuh's supervisor, did not begin to assess Onuh's behavior and did not investigate further to learn whether the harassment was pervasive, and religiously motivated.

Complainant also spoke to others around the same time, including Human Resources Manager Hawk, Warden Upton, and an Associate Warden. ROI 127, 139, 132. By telling Warden Upton that he wanted to file an EEO complaint, complainant certainly made it clear that he did not see the dispute as a personality conflict. ROI 62. But managers nevertheless told complainant to "ignore" Onuh and to "manage around"

him." ROI 62, 66.[12] Such a response may have been adequate for a mere personality conflict, but "[w]hen an employer becomes aware of alleged harassment" on the basis of a protected factor such as religion, it has the duty to investigate the charges promptly and thoroughly." *Mayer v. Dep't of Homeland Security*, EEOC Appeal No. 0120071846, 2009 WL 1441519, at *5 (May 15, 2009) (emphasis in original). BOP did not take any firm, forceful action to address and respond to complainant's concerns. Indeed, many of BOP managers' actions seem to have been motivated by the hope that continuing problems would disappear on their own or would be ignored by the other chaplains. While there are surely religious discussions or disputes among chaplains of different denominations that would not call for managers' intervention, here the repeated and longstanding complaints called for some investigation and corrective action. Onuh's pattern of disparaging comments, harsh treatment of colleagues, and refusal to serve non-Catholics goes beyond mere differences of opinion in matters of faith.

Later, in 2017, managers had an even clearer picture of the problem. Clark, who succeeded Danage, admitted that he believed Onah acted inappropriately and with religious animus, so much so that Clark considered filing his own EEO claim. ROI 91-92. He told the investigator that, in his view, "Onuh sees work-place relationships as Protestants vers[u]s Catholics."

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[12] It is not clear when complainant first spoke to the Warden and Assistant Warden, but since he said he spoke to them about a potential EEO complaint "back then," when he spoke to Supervisory Chaplain Danage, this report was likely before April 2015, when Clark became Supervisory Chaplain. ROI 62, 88.

ROI 91. Clark said he had "voiced [complainant's] concerns to the Executive Staff." ROI 91.

Also in 2017, Clark acted on complainant's concerns. He "had several conversations" with Onuh about his behavior and "issued verbal reprimands." ROI 90. He told the EEO counselor on March 28, 2017, that he had explained the problems to his supervisor. ROI 27. He went so far as to refer Onuh for investigation. ROI 90. The record does not describe the investigation, but Onuh admits he "was written up" for failing to escort volunteers. ROI 83, 85. By the time the EEO counselor spoke with Clark's supervisor, Associate Warden Catricia Howard, on April 6, 2017, she said that Clark had "made her aware of the situation" and she "[r]eferred it for appropriate action." ROI 27.

But these efforts-and it seems only Clark made efforts-did not succeed. Clark himself expressed dissatisfaction with the situation. ROI 92. In December 2017, more than six months after complainant filed his EEO complaint, Clark reported, in the present tense, that Onuh "doesn't like to work with other faith groups" and "sees workplace relationships as Protestants vers[u]s Catholics." ROI 23, 37, 91. It does not appear, from his testimony, that Clark regards Onuh's behavior as reformed. Indeed, Clark went on to say that he had considered filing an EEO complaint "and may still." ROI 92.[13]

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[13] Clark's belated efforts would not likely relieve the BOP of responsibility, even had they stopped Onuh's behavior. "The Agency may not remove the effect of this initial inaction, i.e., avoiding liability, by its subsequent actions." *Complainant v.*

The record does not show that managers took any additional action in light of Onuh's incorrigible behavior. Onuh continued to avoid escorting non-Catholic volunteers and to interfere with Protestant programming. In March 2018 he left the main facility so that he would not have to assist a Christian Science volunteer and that same month he announced and scheduled Catholic services in the time and space assigned to complainant. ROI 66. Complainant maintained that "in the year since [his] official complaint, [he] has seen no change in Chaplain Onuh's behavior." ROI 66.[14]

Decision

The record supports a claim of harassment based on religion.

Remedies

The following relief is ordered:

Dep't of Veterans Affairs, EEOC Appeal No. 0120123232, 2015 WL 3484775, at *4 (May 21, 2015).

14 While only complainant's harms are directly relevant in this case, it is worth noting here that Onuh's intolerance of non-Catholics and managers' inaction affected many others. Inmates and volunteers also suffered. One group of Seventh Day Adventists found that Onuh closed the Religious Services area rather than facilitate their services, and reported that this happened "on several occasions." ROI 149. Because Onuh "could not be relied upon" to serve the Native American worship group, the chaplains had to change their scheduled services. ROI 58. Given that BOP has a constitutional and statutory duty to permit each inmate to practice his or her religion, *Patel v. U.S. Bureau of Prisons*, 515 F.3d 807, 813 (8th Cir. 2008); 42 U.S.C. § 2000bb-1(a), it is particularly troubling that managers here have long ignored Onuh's refusal to serve non-Catholics.

1. BOP shall take immediate steps to remedy the harassment and take steps reasonably calculated to prevent future harassment, consistent with 29 C.F.R. § 1614.501 (a)(2).

Such preventive and corrective action by BOP will include providing EEO training, particularly training on harassment, for Chaplain William Onuh. In addition, BOP will provide training on harassment and on the supervisory obligation to timely address and report complaints of harassment for Supervisory Chaplain Jonathan Clark, Warden Jody Upton, Associate Warden Catricia Howard, and any other officials in complainant's Chain of command at the Carswell, Texas facility that the BOP EEO Office determines need such training.

Complainant is eligible for compensatory damages recoverable under Section 102 (a) of the Civil Rights Act of 1991. This award is to be calculated based on complainant's proffer of evidence as to the harm suffered, the extent, nature and severity of the harm, and the duration of the harm caused as a result of BOP officials failure to remedy a hostile work environment based on religion.

Complainant shall submit his request for compensatory damages and supporting documents, including medical documentation, if any, of injuries suffered as a result of the religious harassment, to Carolyn Sapla, Acting EEO Officer, Federal Bureau of Prisons, 320 First Street, N.W., Room 936, Washington, DC 20534. A copy of the request should be submitted to the Complaint Adjudication Office as well. Following its receipt of the compensatory damages request, BOP should either award the amount requested or determine what amount it considers an appropriate award.

BOP and complainant should then attempt to agree on the compensatory damages award. If a mutually acceptable amount cannot be agreed upon, the parties should notify the Complaint Adjudication Office, which will then issue a decision determining an appropriate award.

3. Complainant is statutorily entitled to reasonable attorney's fees incurred pursuant to her successful hostile work environment claim. 29 C.F.R. § 1614.501(e). If complainant's attorney is eligible for an award of attorney's fees, then within thirty days of receipt of this decision, complainant's attorney shall submit a verified statement of costs and an affidavit itemizing the attorney's fees to Carolyn Sapla, Acting EEO Officer, Federal Bureau of Prisons, 320 First Street, N.W., Room 936, Washington, DC 20534. A copy of this statement should be sent to the Complaint Adjudication Office as well. 29 C.F.R. § 1614.501(e)(2).

If a mutually acceptable figure for the attorney's fees cannot be agreed upon, the parties should notify the Complaint Adjudication Office, which will then determine an appropriate award. 29 C.F.R. § 1614.501(e)(2)(ii)(A).

4. BOP shall post a notice for sixty days within the BOP Carswell, Texas facility, consistent with 29 C.F.R. § 1614.501(a)(1).

5. BOP shall submit a report on the status of the implementation of the relief ordered in this case to the Complaint Adjudication Office within ninety days of this decision.

/s/ Robert K. Abraham
Acting Complaint Adjudication Officer

/s/ April J. Anderson
Complaint Adjudication Officer

PLAINTIFF'S FIRST[1] AMENDED COMPLAINT (AUGUST 26, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE CASEY CAMPBELL

Civil Action No. 4:21-CV-00881-P

Introduction

1. Plaintiff Casey Campbell has been employed by the Federal Bureau of Prisons ("BOP") as a chaplain since 2006, serving the spiritual and religious needs of inmates, staff, volunteers and visitors at the federal prisons where he has worked. Chaplain Campbell's job performance is routinely evaluated as excellent by his supervisors and peers. In his current assignment at the Federal Medical Clinic Carswell

1 As Defendants note on page 1 of the pleading styled "Answer of Defendants Merrick Garland and William Onuh to Plaintiff's Original Complaint and Counterclaim of Defendant Garland" (Doc. 56) that this lawsuit is a newly styled and numbered lawsuit resulting from the consolidation of two pending lawsuits with different cause numbers, this pleading is styled Plaintiff's First Amended Complaint. Defendants also state "Defendants file this answer to Plaintiff's complaint in the later-filed suit (*Campbell v. Garland, et al.*, 4:20-CV-00638-P)." Accordingly, Plaintiff files this amended pleading as a matter of course 21 days after service of Defendants' Answer as allowed by Fed. R. Civ. P. 15(a)(1)(B).

("FMC Carswell"), which began in 2008, Chaplain Campbell serves a community of prisoners, prison employees, volunteers, and visitors ministering specifically to individuals of the Protestant faith, while also working in a pluralistic, religious environment serving religious and secular needs of persons of all faiths.

2. For many years, Chaplain Campbell and his co-workers, who are also chaplains at FMC Carswell, have been subjected to religious discrimination and harassment in a pervasively hostile work environment at FMC Carswell that is largely due to the illegal and discriminatory behavior of one BOP employee, William Onuh, who is also a chaplain at FMC Carswell.

3. The religious discrimination, harassment and the hostile work environment has not been corrected by BOP, even after repeated complaints by Campbell and others over at least seven years. Due to BOP's long-term failures to remedy the illegal discrimination, Chaplain Campbell filed a complaint through the BOP's internal Equal Employment Opportunity ("EEO") process in May 2017, consistent with the requirements of Title VII applicable to his federal employment.

4. Acting on Campbell's complaint, 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.

5. The May 16, 2019 CAO decision is attached to this Amended Complaint and is incorporated by reference fully, as if set out in its entirety.

6. Plaintiff offers the CAO decision as evidence[2] of the discrimination and harassment suffered by Plaintiff, as well as evidence of BOP's longstanding failure to act to remedy the illegal discrimination suffered by Plaintiff, which continues to this date.

7. DOJ also ordered BOP to take immediate steps to remedy the harassment and to take steps reasonably calculated to prevent future harassment, consistent with 29 C.F.R. § 1614.501(a)(2), ut BOP failed to remedy the illegal religious discrimination and illegal harassment.

8. The May 16, 2019 CAO decision is titled "Final Agency Decision", although the decision did not dispose of all issues and it did not decide the damages that Campbell was entitled.

9. After the May 16, 2019 CAO decision, BOP continued to allow the illegal discrimination, harassment and hostile work environment to persist.

10. Campbell timely filed his first lawsuit (Civil Action 3:19-cv-01887-L) on August 8, 2019, which was within ninety (90) days of the May 16, 2019 CAO decision, out of an abundance of caution over whether the decision was actually a "Final Agency Decision" and to pursue his claims and enforce his rights under Title VII.

11. The CAO issued a second decision on September 27, 2019 and awarded compensation to Campbell for the discrimination and harassment he

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[2] See *Massingill v. Nicholson*, 496 F.3d 382, 384 (5th Cir. 2007) (citing *Chandler v. Roudebush*, 425 U.S. 840 (1976) ("the Supreme Court held that administrative findings in discrimination cases may be evidence of discrimination.").

suffered, and the decision awarded Campbell attorney's fees he incurred to pursue his complaint of discrimination and harassment.

12. The September 27, 2019 CAO decision is attached to this Amended Complaint and is incorporated by reference fully, as if set out in its entirety.

13. Campbell offers the September 27, 2019 CAO decision as evidence[3] of the discrimination and harassment suffered by Plaintiff, as evidence of the attorney's fees Campbell is entitled, and as evidence of the BOP's longstanding and still continuing failure to act to remedy the illegal discrimination Campbell suffered, which pervasive discrimination and harassment continues unabated to this date, even after multiple orders by DOJ to BOP to remedy the illegal discrimination.

14. With BOP's failure to act to remedy the illegal discrimination been in the face of his lawsuit, it was necessary for Campbell to file another internal EEO complaint about discrimination on or about December 4, 2019 in his effort to compel BOP to remedy the illegal discrimination.

15. Campbell's internal EEO complaint on or about December 4, 2019 complained of discrimination, harassment and the continuing failure of BOP to correct discrimination and harassment that occurred after the discrimination that Campbell complained of in his earlier complaints and in his then pending lawsuit.

16. Although the December 2019 EEO complaint addressed a different time period when discrimination

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[3] *Id.*

occurred, on March 18, 2020, DOJ issued to Campbell a Dismissal of his internal EEO Complaint and Notice of Right to Sue.

17. Campbell timely filed his second lawsuit (Civil Action 3:20-cv-01605-G) on June 16, 2020, which was within ninety (90) days of the March 18, 2020 Dismissal and Notice of Right to Sue.

18. The March 18, 2020 Dismissal and Notice of Right to Sue is attached to this Amended Complaint and is incorporated by reference fully, as if set out in its entirety.

19. Campbell seeks *de novo* review of his discrimination and harassment claims by this Court, as allowed by Title VII.

20. Campbell timely files this Amended Complaint on March 18, 2021 in accordance with the Court's Order on March 4, 2021 (Doc. 31).

Parties

21. Plaintiff, Casey Campbell, is an individual who resides in Tarrant County, Texas.

22. Defendant, Merrick Garland ("Garland"), is the Attorney General of the United States, head of the United States Department of Justice, the executive branch department under which the Federal Bureau of Prisons runs the federal prisons and he has appeared in this action.

23. Plaintiff alleges Defendant Garland is a proper Defendant under Title VII as he is "'the head of the department, agency, or unit, as appropriate . . . '".[4]

24. Defendant, William Onuh ("Onuh"), is employed by the Federal Bureau of Prisons at FMC Carswell. Defendant Onuh has appeared in this action.

25. Plaintiff alleges Defendant Onuh is a proper Defendant under the Declaratory Judgment Act because Plaintiff seeks declarations that may affect Onuh's substantive rights.

26. Plaintiff alleges Defendant Onuh is a proper party in this case as his actions "substantially burden [Plaintiff's] exercise of religion in violation of 42 U.S.C. § 2000bb-1.

27. Plaintiff alleges that Defendant Onuh is not entitled to any qualified immunity, because it is clear that Onuh knowingly interfered and he knowingly, intentionally and substantially burdened [Plaintiff's] exercise of religion in violation of 42 U.S.C. § 2000bb-1.

28. Plaintiff shows "[q]ualified immunity shields from liability 'all but the plainly incompetent or those who knowingly violate the law.'"[5]

29. Plaintiff shows Defendants previously alleged that "by the end of November 2019, the BOP had

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[4] *Id*

[5] *Amador v. Vasquez*, No. 17-51001, p12 (5th Cir. 2020) (citing *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018); and *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

completed all remedial actions required in both of the CAO's decisions."[6]

30. As BOP was ordered by DOJ to "take immediate steps to remedy the harassment and take steps reasonably calculated to prevent future harassment, consistent with 29 C.F.R. § 1614.501(a)(2)", Plaintiff alleges that "steps reasonably calculated to prevent future harassment" necessarily included the requirement that Defendant Garland, and/or his agents, servants and employees at DOJ and at BOP, would advise Defendant Onuh that his conduct was illegal discrimination.

31. As BOP was necessarily required to advise and apprise Defendant Onuh that his past conduct was illegal, no reasonable employee of DOJ and/or of BOP could have concluded that Defendant Onuh's conduct was anything but illegal.

32. Defendant Onuh's knowing, intentional violations of the law are not protected by qualified immunity, nor by any other immunity.

Venue and Jurisdiction

33. Venue is proper in the Northern District of Texas because the cause of action accrued in the Northern District of Texas.

34. The Court has jurisdiction under 28 U.S.C. § 1331 as Campbell's claims involve questions of federal law under TITLE VII, 42 U.S.C. § 2000e *et*

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6 See Defendants Attorney General William P. Barr, the United States Department of Justice, and the Federal Bureau of Prisons' Motion to Dismiss (Doc. 13), filed on June 1, 2020 in Civil Action 3:19-cv-01887-L ("Campbell I").

seq., under the RELIGIOUS FREEDOM RESTORATION ACT, 42 U.S.C. § 2000bb *et seq.*, and claims for declaratory relief, injunctive relief and for costs and fees under 28 U.S.C. § 2201, § 2202 and § 2412.

35. Campbell further alleges that he has exhausted all administrative requirements necessary to pursue his claims under 42 U.S.C. § 2000e *et seq.*, as he has sought EEO counseling and he has formally complained through the EEO process available at BOP and he was issued a final agency decision that allows this lawsuit and confers jurisdiction in this Court.

Factual Allegations

36. Casey Campbell is a chaplain at FMC Carswell institution, where he has worked since 2008.

37. During his time as a BOP employee at FMC Carswell, Chaplain Campbell has routinely been evaluated as an exemplary employee.

38. Starting in 2012, Chaplain Campbell has been subjected to a series of discriminatory actions while working in a long-term, pervasively hostile work environment at FMC Carswell that BOP has been aware of and failed to remedy since as early as 2013.

39. Campbell complained to his supervisors at FMC Carswell over a period of several years, from 2013 through 2017, that he was being illegally discriminated against because of his Protestant religion by his co-worker, William Onuh, a Catholic chaplain at FMC Carswell.

40. Despite the repeated complaints about Defendant Onuh by Campbell and many others at

FMC Carswell, including fellow chaplains, other BOP employees, volunteers, visitors, and prisoners, which extended over a period of more than four years, no one of any authority took action to prevent the illegal religious discrimination by Onuh against Chaplain Campbell and others.

41. On May 2, 2017, after his repeated complaints over a period of years to supervisors at FMC Carswell about illegal discrimination prompted no remedial action by BOP, Casey Campbell filed a formal complaint of religious discrimination under 42 U.S.C. § 2000e (Title VII) and 29 C.F.R. 1614 to the EEO Office for BOP.

42. Campbell complained through BOP's agency complaint process of discrimination and harassment against him due to his Protestant religion, including complaints about Defendant Onuh.

43. Casey Campbell complained about Onuh's repeated, disparaging remarks about Protestant chaplains, Onuh's refusal to escort non-Catholic volunteers at FMC Carswell as required by his job duties, and Onuh's continuing refusals and failures to supervise non-Catholic activities at FMC Carswell, leaving non-Catholic chaplains like Chaplain Campbell with extra work.

44. After an extensive investigation by a federal contractor, Adept Services, Inc., which was investigation 2017-BOP-0505, BOP received an investigation report on or about April 16, 2018.

45. At some time after receipt by BOP, the investigation report was submitted to the CAO.

46. On May 16, 2019, thirteen months after the investigation report was received at BOP, CAO issued its decision that Chaplain Campbell had been subjected to illegal discrimination, that he is entitled to compensation and that BOP was required to remedy the illegal discrimination, which decision is attached to this pleading and is incorporated by reference as if set out in full herein.

47. BOP was ordered to take immediate steps to remedy illegal discrimination and harassment and to take steps reasonably calculated to prevent future harassment by Onuh.

48. The CAO determined in its May 16, 2019 decision that Plaintiff is entitled to recovery of compensatory damages from BOP.

49. The CAO also determined in its May 16, 2019 decision that Campbell is entitled to recover his attorney's fees from BOP.

50. On September 27, 2019, seventeen months after the investigation report was received at BOP and four months after CAO issued its decision that Chaplain Campbell had been subjected to illegal discrimination, that Campbell was entitled to compensation, and that BOP was required to remedy the illegal discrimination, CAO issued a second decision.

51. The second CAO decision, which is also attached to this pleading[7] and incorporated by reference as if set out in full herein, required BOP to pay

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[7] Plaintiff submits these CAO decisions as evidence. See *Massingill v. Nicholson*, 496 F.3d at 384 (citing *Chandler v. Roudebush,* 425 U.S. 840 (1976) ("administrative findings in discrimination cases may be evidence of discrimination.").

compensation to Campbell, to pay attorney's fees incurred by Campbell, and to remedy the illegal discrimination.

52. During the now more than twenty-two months since BOP was first ordered to take immediate steps to remedy the illegal religious discrimination and harassment Casey Campbell was and is subjected to at BOP, including by William Onuh, BOP continues to fail and refuse to remedy that illegal discrimination and/or harassment.

53. BOP has also failed to take steps reasonably calculated to prevent future illegal discrimination and/or harassment.

54. The allegations in this Third Amended Complaint are not intended as a treatise on all of the incidents of discrimination, harassment and retaliation that have continued since May 2019, but they are specific examples intended to show illegal religious discrimination at FMC Carswell that BOP was ordered to correct, but failed to correct, which is also evidence of the Defendants' knowledge.

55. In June 2019, Plaintiff complained to Carlyn Sapla, who was the acting EEO director for BOP, that no corrective action had been taken by BOP to stop Onuh's illegal conduct.

56. Also in June 2019, FMC Carswell associate warden Alan Cohen threatened Plaintiff and his supervisor, Chaplain Jonathan Clark, telling them to stop complaining about Onuh.

57. Associate warden Cohen also told Plaintiff to stop reporting Chaplain Onuh's illegal discrimination

and harassment or Plaintiff would be subjected to an investigation for stalking Onuh.

58. Plaintiff considers Cohen's threat of an investigation to be illegal retaliation, as it is threatened action by the employer that is harmful to the point that it could very readily dissuade a reasonable worker from making or supporting a charge of discrimination.[8]

59. In July 2019, Defendant Onuh arbitrarily canceled the Muslim religious service on July 19, 2019, without any consequence to Onuh.

60. Plaintiff reported Onuh's action to supervisors, who also were notified by Campbell's co-worker, Chaplain Farid Farooqi, but Defendant BOP failed to take any action.

61. Plaintiff reported to his supervisors Defendant Onuh's refusal to escort community volunteers from the Latter Day Saint ("LDS") faith on July 13, 2019 which resulted in the cancellation of the LDS worship service that day, but Defendant BOP again failed to take action.

62. On August 10, 2019, LDS volunteers were, again (for the second time in a four week period), denied access to the institution at a time when Onuh was assigned to escort them.

63. As Defendant Onuh refused to perform these duties, the LDS volunteers waited over 30 minutes before they left without ministering to the needs of the inmates, but Onuh again suffered no consequences for his refusal to perform these escort duties.

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[8] *Burlington Northern & Santa Fe Railway v. White*, 548 U.S. 53, 57 (2006).

64. When Defendant Onuh refused to perform escort duty, BOP failed to require him to escort volunteers, similar to BOP's repeated failures that Plaintiff complained about previously.

65. On August 15, 2019, Plaintiff again complained of Defendant Onuh's refusal to escort LDS volunteers who visited FMC Carswell to provide for the spiritual needs of inmates of the LDS faith.

66. Also on August 15, 2019, Onuh, unilaterally, without permission from supervisors and without any notification to supervisors, changed his work schedule, which resulted in a scheduled worship service that day for the Wiccan community being canceled.

67. On August 21, 2019, Plaintiff emailed Heidi Kugler, Chief Chaplaincy Administrator at BOP, to notify Kugler that FMC Carswell inmates continue to miss religious services because of Defendant Onuh's behavior, including the incidents on August 10 and August 15, 2019.

68. No change in Onuh's behavior resulted from Plaintiff's contact with Kugler.

69. Because BOP refused to remedy this illegal religious discrimination, Plaintiff submitted another formal request for EEO counseling on August 22, 2019 to Michael A. Irizarry, the EEO counselor at FMC Carswell, complaining of the on-going hostile work environment at FMC Carswell and retaliation due to his earlier complaints.

70. In February 2020, Defendant Onuh returned to work after an extended time away when he was out of the country.

71. On February 18, 2020, Plaintiff reported reading two emails indicating that, shortly after returning to work from his leave, Onuh had interrupted a worship service and caused an LDS inmate to miss her designated time of worship.

72. At or about the same time, Plaintiff learned Onuh had cussed at an inmate worker assigned to the Religious Services work detail.

73. In March 2020, as Plaintiff reviewed the scheduling of volunteers, it became apparent to Plaintiff that the supervisory chaplain, Chaplain Clark, had arranged the scheduling of volunteers so that Chaplain Onuh only works with Catholic volunteers, rather than with volunteers of other faiths, as other department chaplains are required.

74. On March 11, 2020, when staff chaplains were bidding on new work schedules that would change the volunteers and inmates with whom they would regularly work, Chaplain Clark told Plaintiff that Clark might change the entire programming and volunteer schedule rather than requiring Chaplain Onuh to supervise and facilitate the programming of other faith groups.

75. On March 11, 2020, Chaplain Gunn, the Life Connections Program chaplain, told Plaintiff that Chaplain Clark intended to leave her as the acting department head should he be required to be away from work. Plaintiff was the senior staff chaplain in the department at the time.

76. Before March 11, 2020, Plaintiff complained to Chaplain Clark about his practice of taking leave without naming any acting department head, which is contrary to the practice in every other department at

FMC Carswell, and contrary to past practice in the Religious Services department.

77. When confronted by Plaintiff, Clark said leaving no acting department head was "how he always liked to do things", which was contradicted by his statement to Chaplain Gunn noted above.

78. Before Plaintiff's March 11, 2020 conversation with Chaplain Gunn and after the CAO's decision requiring BOP to remedy the illegal discrimination, Plaintiff had asked Chaplain Clark who would be the acting supervisor in his absence.

79. Chaplain Clark told Plaintiff to consult associate warden Cohen, but Cohen had previously said he would not speak to Plaintiff without having another staff member present.

80. In March 2020, Plaintiff also learned the EEO counselor for FMC Carswell, Michael Irizarry, has had several hours-long meetings with Defendant Onuh, apparently to discuss claims by Onuh, but Irizarry has never met with Plaintiff, nor with Chaplain Farooqi, who also filed an EEO complaint against Defendant Onuh.

81. During the January 2020 to March 2020 time period, members of the executive staff at FMC Carswell, including the warden, associate warden Cohen and the warden's executive assistant, all appeared unannounced in classes led by Plaintiff, which had not happened before Plaintiff's recent complaints of discrimination and harassment.

82. Associate warden Cohen, on at least two other occasions, attended other classes led by Plaintiff, which is unprecedented in Plaintiff's experience and

not matched by Cohen's attending classes led by other chaplains.

83. Chaplain Clark has also arranged for regional staff to attend a recent class led by Plaintiff, who was the only department chaplain monitored by visiting staff.

84. On or about March 22, 2020, Chaplain Clark asked Plaintiff to report to him at the camp, rather than have Plaintiff go to his primary office.

85. Clark first told Plaintiff they "had planning to do", but after Plaintiff spent most of the afternoon with Clark, without doing any planning, Clark explained that he wanted to be able to testify that he had worked to keep the Plaintiff and Defendant Onuh separate from one another.

86. In late March 2020, Chaplain Clark told Plaintiff he had decided to cancel all religious programming with the exception of mandatory worship services, Threshold programming and Life Connections programming, in response to Covid-19.

87. Despite Plaintiff's vigorous opposition to this arbitrary and capricious decision in a prison where social distancing cannot be accomplished, this plan was put into effect.

88. Within days of implementing this new plan, Chaplain Clark was making exceptions for Defendant Onuh to continue conducting "Stations of the Cross" programming and Onuh's class on Catholic sacraments.

89. With these exceptions for Defendant Onuh's programs and classes, Onuh continued to receive, and he currently receives, more favorable treatment,

apparently due to religion, while religious programming directed by Plaintiff was and is canceled.

90. On March 25, 2020, Plaintiff also observed that the FMC Carswell staff telephone guide identifies Defendant Onuh as "Father" which is different than other chaplains and inconsistent with BOP guidance stating that all chaplains should be referred to simply as "chaplain".

91. Chaplain Farooqi is not listed on the telephone guide as "Imam", nor "Dr.", and no other chaplain is listed as "Bro.", "Rev.", "Pastor", or "Dr.", as would be appropriate to their religious affiliations, as only Defendant Onuh is allowed the honorific designation of his religion.

92. On April 6, 2020, Chaplain Clark was made an acting associate warden at FMC Carswell until further notice.

93. Clark instructed Plaintiff to oversee Passover preparations via individual accommodation rather than allowing any congregate worship, which instruction for individual accommodation was to be the practice among the other religious groups.

94. Plaintiff complained to acting Associate Warden (Chaplain) Clark that . . . the nature of the prison environment does not lend itself to "social distancing" under the best of circumstances and these restrictions are not the "least restrictive means" of placing a substantial burden upon the exercise of religion, and that these restrictions were not applied to Defendant Onuh who continued to lead congregate worship services.

95. On or about April 6, 2020, Plaintiff reported these issues about the denial of congregate services to Chief Chaplaincy Administrator Kugler.

96. On April 17, 2020, after Plaintiff reported to Chaplain Clark that he did not want to work with Chaplain Onuh without clear lines of authority, Chaplain Clark advised that Plaintiff, Chaplain Farooqi, and Defendant Onuh would be working at FMC Carswell without any designated supervisor.

97. Clark told Plaintiff he "need[ed] to make rounds everywhere" and if Plaintiff felt a need to be separated from Defendant Onuh, Plaintiff should adjust his location to be opposite of Onuh's location, as "pastoral rounds need to be made everywhere".

98. On April 17, 2020, Chaplain Clark advised Plaintiff that he should "avoid Onuh" when their schedules overlapped.

99. On May 16, 2020, Plaintiff repeated his request for clear lines of authority and supervision on Sundays when all staff chaplains were scheduled to work, but acting associate warden (Chaplain) Clark was not present to supervise the department due to his change in duties.

100. Chaplain Clark continued to refuse to delegate responsibilities or make clear work assignments in his absence.

101. Due to the continuing refusal by Clark and BOP to address Defendant Onuh's religious discrimination and harassment, Plaintiff was forced to expend leave time on Sundays to avoid Onuh.

102. In April and May of 2020, while acting as associate warden, Clark held no staff meetings,

provided no plan for operation of the department, nor to alleviate the hostile work environment, and he continued to cancel congregate services other than the services organized by Defendant Onuh.

103. On May 30, 2020, when Plaintiff again complained to Chaplain Clark about Defendant Onuh's continuing to conduct congregate worship services on Sundays in the various units, Clark indicated he did not believe Onuh was conducting services, but he would look into the matter.

104. When Plaintiff questioned Clark after the next Sunday, Chaplain Clark said he had not spoken with the chaplains who worked the prior Sunday about whether or not services were being conducted.

105. Clark called Chaplain Farooqi, who had worked the prior Sunday, to the office and Farooqi confirmed to Clark, in the presence of the Plaintiff, that Defendant Onuh was conducting services on various units on Sundays in violation of Clark's instructions.

106. In April and May 2020, Clark continued to refuse to allow Plaintiff to conduct congregate services on the various units at FMC Carswell.

107. Chaplain Clark consistently turned a blind eye to Defendant Onuh holding congregate services, while refusing Plaintiff and other chaplains the opportunity to lead congregate services.

108. In May 2020, Plaintiff saw illegal religious discrimination at FMC Carswell continue unabated despite his complaints and despite the final agency decision that ordered BOP to remedy the illegal religious discrimination.

109. By June 7, 2020, Chaplain Clark was no longer the acting associate warden for programming and he returned full-time to his duties as supervisory chaplain.

110. On June 7, 2020, Plaintiff advised Chaplain Clark that Plaintiff had not worked a Sunday in two months, due to Plaintiff seeking to avoid working, unsupervised, with Defendant Onuh.

111. Chaplain Clark again instructed Plaintiff to avoid being in the same area as Chaplain Onuh.

112. On June 12, 2020, Chaplain Clark informed Plaintiff that a proposal Plaintiff had made for modified religious services was denied; that the regional office had been contacted; and no other institutions in the region were holding congregate services.

113. Despite this information, Defendant Onuh continued to hold congregate services for the Catholic community that were apparently not authorized.

114. Clark also informed Plaintiff on June 12, 2020, that he had not spoken with Defendant Onuh about Onuh holding unauthorized congregate services, but that Clark had emailed Onuh to instruct him to stop the services.

115. On June 18, 2020, Plaintiff Campbell was notified that Defendant Onuh filed an EEO complaint of religious discrimination against Campbell.

116. This EEO complaint by Defendant Onuh is consistent with Onuh's statement that he is "at war" with Plaintiff Campbell.

117. On June 25, 2020, Chaplain Clark told Plaintiff that Clark had been selected Supervisor of the Year at FMC Carswell.

118. That same day, Clark told Plaintiff that Clark planned to file his own EEO complaint against Defendant Onuh.

119. As of July 6, 2020, Plaintiff and Defendant Onuh were still scheduled to work together unsupervised on Sundays, but Plaintiff accepted a move from working on Sundays, with an accompanying loss of pay, in order to avoid work with Onuh.

120. On August 16, 2020, it was announced by BOP that Chaplain Clark was "Supervisor of the Year" at FMC Carswell, which award was given during a time when Clark held no departmental staff meetings; cancelled and failed to accommodate religious services; and when three of five staff chaplains filed EEO complaints of illegal religious discrimination and hostile work environments.

121. Also in August 2020, Chaplain Clark named the two newest chaplains, Gunn and Montgomery, as acting supervisors in his absence, even after previously stating his supposed practice of not naming an acting supervisor in his absence.

122. On August 17, 2020, Plaintiff received a telephone call from Chaplain Farooqi at home to ask about the Plaintiff's welfare.

123. During the conversation, Farooqi said Defendant Onuh had been "hopping mad" at work that day because he was called by the Special Investigative Agent and interviewed about one of the religious services he arbitrarily canceled.

124. Defendant Onuh said he "had kept Farooqi out of everything", but if he faced discipline over the events addressed in the interview, he "would not spare anyone."

125. Also on August 17, 2020, Plaintiff learned that department heads are responsible for proposing all discipline to the warden, who decides whether proposed discipline is appropriate.

126. With this information, Plaintiff recognized that when Chaplain Clark told Plaintiff on multiple occasions that nothing was going to happen to Defendant Onuh, it was Clark himself who was responsible for recommending discipline for Onuh, which he apparently did not recommend.

127. On September 1, 2020, Plaintiff received an email from Chaplain Clark stating that "Chaplain Gunn will be acting for me on the above days. I will be on leave."

128. Also around September 1, 2020, Chaplain Clark advised Plaintiff that Clark was planning to take responsibility for the Thresholds programming at FMC Carswell from Plaintiff and give it to Chaplain Montgomery.

129. Thresholds is one of two nationwide Religious Services programs that are the official BOP re-entry/ rehabilitation programs.

130. Plaintiff has facilitated, supervised and/or directed the Thresholds programming at FMC Carswell for the entire time of his assignment at FMC Carswell.

131. On September 10, 2020, Chaplain Clark told Plaintiff the BOP Central Office had announced that FMC Carswell never should have prohibited congregate

religious services over the prior six months, as Plaintiff previously told Clark.

132. On September 10, 2020, Plaintiff was also notified that he would receive a different work schedule starting in October, where Plaintiff and Defendant Onuh would change from working one out of four days together, unsupervised, to working three out of four days together.

133. By this proposed schedule, Plaintiff would be forced to work more days with his harasser than with anyone else in the Religious Services department.

134. Around September 29, 2020, while reviewing a BOP Program Statement "Discrimination and Retaliation Complaints Processing", Plaintiff learned the EEO officer for FMC Carswell was required to file a report with the CAO about the implementation of the final agency decision for his case which, apparently, was not done.

135. On October 1, 2020, Plaintiff notified Chaplain Clark of prior instructions he had received from former Warden Jody Upton that Plaintiff should not report to Warden Upton, nor to the Special Investigative Agent, religious discrimination and harassment by Defendant Onuh.

136. Plaintiff also notified Clark of threats by former associate warden Cohen to charge Plaintiff with "stalking" if he made any new complaints about Onuh's discrimination and harassment.

137. Plaintiff also notified Clark that the change to Plaintiff's work schedule effective on October 1, 2020 was an aggravation of an already documented hostile work environment.

138. Plaintiff also repeated his many earlier requests that Clark, as department supervisor, remedy Campbell's hostile work environment as ordered by the May 2019 CAO decision.

139. Clark never made any substantive response to Plaintiff's earlier requests for a remedy and he again made no substantive response on October 1, 2020.

140. On December 5, 2020, a staff member at the main institution called on the radio for a chaplain, but no one responded.

141. Defendant Onuh was working that day at the main institution, but he failed to respond.

142. The control officer, again, broadcast over the radio for a chaplain to respond, but still Onuh failed to respond.

143. Then the control officer called for Plaintiff Campbell specifically by name and Plaintiff responded to the control officer to say he was moving to the location of the control officer.

144. When Plaintiff asked the control officer if Defendant Onuh had left the institution, she stated that she called for Plaintiff specifically, because "Chaplain Onuh doesn't answer his radio" and she knew that Plaintiff would respond.

145. When Plaintiff then called Onuh by name on the radio, he finally responded.

146. This is a long-standing problem in the Religious Services department, where Defendant Onuh simply fails to respond to general calls for "Religious Services" or for a "chaplain".

147. In December 2020, after the contentious schedule change in October 2020, Plaintiff continued to be assigned to only the main institution at FMC Carswell on Fridays and he is assigned only at the camp on Saturdays.

148. Defendant Onuh is supposed to be assigned to an opposite schedule, only at the camp on Fridays and only at the main institution on Saturdays.

149. This arrangement is intended to separate Plaintiff and Defendant Onuh when no supervisor is present, yet the separation punishes Plaintiff and substantially burdens Plaintiff's exercise of religion, as it restricts his ministry and his movement at FMC Carswell in violation of BOP policy.

150. Also in December 2020, Chaplain Clark again made clear that he would not leave Plaintiff as the acting supervisor in his absence.

151. Clark told others in the department that his refusal to assign Plaintiff as acting supervisor was due to Plaintiff's EEO activity.

152. On January 8, 2021, Defendant Onuh made the decision to work at the main institution on Friday rather than from his assigned office at the camp.

153. When Plaintiff complained to Chaplain Clark about the separation not being maintained, Clark told him that the separation was not something that he could enforce.

154. On Friday, January 22, 2021, because Defendant Onuh had started working at the main institution on Fridays, Plaintiff reported to work at the camp.

155. Chaplain Clark contacted Plaintiff by telephone to request that Plaintiff take supplies to Jewish inmates in the main institution for their Shabbat observation.

156. Plaintiff reminded Clark of their exchange on January 8, 2021 and told him that he reported to the camp, rather than at the main institution, because of Clark's instruction that he avoid Defendant Onuh.

157. Plaintiff and Chaplain Clark discussed the difficulties Clark has in managing Defendant Onuh; Clark continued to maintain that he has no responsibility for Onuh's religious discrimination and harassment because upper management instructed him to "manage around" Defendant Onuh.

158. Plaintiff suggested that Chaplain Clark contact Defendant Onuh at the main institution to address the issue of Shabbat supplies.

159. A few hours later, Clark called Plaintiff a second time to ask him to handle the issue of Shabbat supplies because Defendant Onuh either never responded to Clark's call or had refused the assignment.

160. These events Plaintiff reported from June 2019 through January 2021 are consistent with Defendant Onuh's years-long history of arbitrarily canceling non-Catholic religious programs and services; refusing to perform the duty of escorting non-Catholic volunteers; interfering with Protestant programming; and continuing to announce and schedule Catholic services in the time and space assigned to Plaintiff for Protestant services, which were among the numerous actions demonstrating religious discrimination and harassment identified by the CAO in May 2019.

161. Plaintiff alleges BOP's and/or FMC Carswell's policy of requiring him to avoid Defendant Onuh, as Clark has repeatedly instructed, is illegal discrimination, which BOP knows, because the CAO decision notified BOP in May 2019 that instructions of "just avoid Onuh"; "manage around him" and "work around Onuh" are examples of illegal discrimination and harassment.

162. BOP simply refuses to correct what CAO called Onuh's "incorrigible" behavior.

163. Plaintiff shows he has suffered both economic and non-economic damages due to Defendants' illegal conduct, including lost wages, denial of promotions, other lost economic benefits, including lost leave and vacation benefits; and he has suffered mental anguish and emotional distress because of BOP's refusal to comply with the law, because of BOP's refusal to correct Defendant Onuh's "incorrigible" behavior, and because of Onuh's illegal conduct that BOP has simply known about and refused to correct for years.

164. Since January 2021, Defendant Onuh's years-long history of arbitrarily canceling non-Catholic religious programs and services; refusing to perform the duty of escorting non-Catholic volunteers; interfering with the religious services and practice of other faiths has continued and has, if anything, has worsened.

165. In recent months, Campbell's supervisor at FMC Carswell, Chaplain Jonathan Clark, has advised Plaintiff that "the union" believes Onuh's illegal conduct is Campbell's fault.

166. Chaplain Clark is a management official at FMC Carswell and he has also advised Plaintiff that BOP will not take any appropriate action to remedy

the situation because "the union" supports Defenant Onuh.

167. Chaplain Clark has also advised Plaintiff that the warden at FMC Carswell will not take any appropriate action to remedy the illegal discrimination out of fear of being adverse to "the union".

Plaintiff's Title VII Claims

168. Plaintiff incorporates by reference and re-alleges as if stated fully here, the factual allegations set out in paragraphs 20 through 147 above and he relies upon these allegations for his claims of violations of Title VII by Defendants.

169. Campbell further alleges he was subjected to religious discrimination and harassment in his employment with BOP, in violation of 42 U.S.C. § 2000e *et seq*.; he alleges he is a member of a protected class; he suffered illegal discrimination and harassment because of his religion; and he suffered damages as a result of the illegal discrimination, including

170. Campbell alleges the conduct of BOP and its employees violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq*.

171. Campbell exhausted administrative remedies, as evidenced by two decisions from CAO attached to this pleading, and this Court accordingly has jurisdiction over his claims under Title VII.

172. Campbell alleges he is entitled under Title VII, to file this action to obtain "a *de novo* review of the disposition", that is, a *de novo* review of his Title

VII complaints, including on liability and remedies, which *de novo* review he now seeks.[9]

173. Campbell alleges he is entitled to injunctive relief, declaratory relief, and/or equitable relief to obtain appropriate remedies for his Title VII complaints, as such remedies are available under Title VII.

Plaintiff's Religious Freedom Restoration Act Claims

174. Plaintiff incorporates by reference and re-alleges as if stated fully here, the factual allegations set out in paragraphs 20 through 147 above and he relies upon these allegations for his claims under the RELIGIOUS FREEDOM RESTORATION ACT, 42 U.S.C. § 2000bb *et seq*.

175. "The RELIGIOUS FREEDOM RESTORATION ACT of 1993 (RFRA) prohibits the Federal Government from imposing substantial burdens on religious exercise, absent a compelling interest pursued through the least restrictive means."[10]

176. "Congress passed the Act in the wake of . . . *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)".[11]

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9 *Massingill*, 496 F.3d at 384 (citing *Scott v. Johanns*, 409 F.3d 466 (D.C.Cir. 2005)).

10 *FNU Tanzin, et al. v. Tanvir, et al*., 141 S.Ct. 486, 489 (2020).

11 *Id*.

177. The RFRA allows "persons whose religious exercise is substantially burdened by government . . . to 'obtain appropriate relief against a government.'"[12]

178. The RFRA authorizes this action against Defendant Garland in his official capacity as the head of the Department of Justice, which is the executive branch department in which BOP is one component agency, because the actions and inactions of BOP substantially burden the Plaintiff's exercise of religion in violation of this law.[13]

179. The RFRA authorizes Plaintiff, as a person whose religious exercise has been substantially burdened, to assert a claim in a judicial proceeding and obtain appropriate relief.[14]

180. "Appropriate relief" under the RFRA "includes claims for money damages against Government officials in their individual capacities."[15]

181. The RFRA authorizes this action against Defendant Onuh in his official capacity because the term "'government' includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States . . . ".[16]

182. The RFRA authorizes this action against Defendant Onuh in his individual capacity because "'appropriate relief' includes claims for money damages

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12 *Id.* (internal citations omitted).

13 42 U.S.C. § 2000bb-1(c).

14 *Id.*

15 *Tanzin*, 141 S.Ct. at 489.

16 42 U.S.C. § 2000bb-2(2).

against Government officials in their individual capacities."[17]

183. The RFRA authorizes Plaintiff to challenge the failures of the BOP to stop conduct of Defendant Onuh, to stop conduct of other BOP employees, and to compel appropriate action by BOP employees to remedy the substantial burdens imposed on Plaintiff's exercise of his religion.[18]

184. Defendant Onuh has no qualified immunity as to Plaintiff's claims for equitable relief, because qualified immunity is only a "defense to monetary damages and 'do[es] not extend to suits for injunctive relief[ ].'"[19]

185. Defendant Onuh has no qualified immunity in this "rare obvious case, where the unlawfulness of [Onuh's] conduct is sufficiently clear".[20]

186. Defendant Onuh has no qualified immunity because "[q]ualified immunity shields from liability 'all but the plainly incompetent or those who knowingly violate the law'"[21] and Onuh knowingly violated the

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17 *Tanzin*, 141 S.Ct. at 489.

18 5 U.S.C. § 704.

19 *Robinson v. Hunt County, Texas*, 921 F.3d 440, 452 (5th Cir. 2019) (quoting *Valley v. Rapides Parish School Bd.*, 118 F.3d 1047, 1051 n.1 (5th Cir. 1997)).

20 *Id.* (citing *City of Escondido v. Emmons*, 139 S. Ct. 500, 504 (2019)).

21 *Amador v. Vasquez*, No. 17-51001, p12 (5th Cir. 2020) (citing *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018); and *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

law, while BOP allowed him to violate the law, at least since 2013.

187. The May 16, 2019 decision from the CAO demonstrates the actual knowledge held by Defendant Onuh and BOP, as it states:

> "It was not the case that Onuh merely does not like to work; [Supervisory Chaplain Jonathan] Clark said 'he doesn't like to work with other faith groups.' ROI 91. The record bars out Clark's assessment, as it does not describe Onuh's failure supervise Catholic services or escort Catholic volunteers."[22]
>
> "Clark . . . admitted that he believed Onuh acted inappropriately and with religious animus, so much so that he considered filing his own EEO claim . . . "[23]
>
> "Associate Warden Catricia Howard, on April 6, 2017, . . . said that Clark had 'made her aware of the situation' and she '[r]eferred it for appropriate action.' ROI 27"[24]
>
> "But these efforts – and it seems only Clark made efforts – did not succeed."[25]
>
> "The record does not show that managers took any additional action in light of Onuh's

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22 May 16, 2019 Department of Justice Final Agency Decision in the Matter of Casey Campbell v. Federal Bureau of Prisons, P20 (emphasis added).

23 *Id*. at P22.

24 *Id*. at P23.

25 *Id*. (emphasis added).

> incorrigible behavior. Onuh continued to avoid escorting non-Catholic volunteers and to interfere with Protestant programming. In March 2018 he left the main facility so that he would not have to assist a Christian Science volunteer and that same month he announced and scheduled Catholic services in the time and space assigned to complainant. ROI 66. Complainant maintained that 'in the year since [his] official complaint, [he] has seen no change in Chaplain Onuh's behavior.' ROI 66."

188. Plaintiff alleges, as noted in his factual allegations above, despite the CAO order requiring BOP to "take steps reasonably calculated to prevent future harassment, consistent with 29 C.F.R. § 1614.501(a)(2)", which Plaintiff alleges required BOP to take "corrective, curative or preventive action . . . to ensure that violations of the law similar to those found will not recur", BOP failed to take such "corrective, curative or preventive action".

189. Knowing, intentional and deliberate illegal conduct of Defendant Onuh continues to this day, including much of the same illegal conduct Plaintiff has been complaining about since 2013, such as:

a. Onuh's refusal to perform the duty of "escorting non-Catholic volunteers";

b. Onuh continuing "to interfere with Protestant programming"; and

c. Onuh continuing to announce[ ] and schedule[ ] Catholic services in the time and space assigned to [Plaintiff].

190. This present and continuing illegal conduct by Defendant Onuh is permitted and fostered by BOP, which has failed and refused to comply with the CAO decision that requires BOP to take "corrective, curative or preventive action . . . to ensure that violations of the law similar to those found will not recur".

191. These failures by BOP to comply with the final agency decision from the CAO are evidence to demonstrate the need for injunctive relief as "appropriate relief" under the RFRA.

192. Plaintiff alleges he is entitled to injunctive relief, declaratory relief, and/or other equitable relief to end the substantial burdens imposed on his exercise of his religion, which substantial burdens are the results of the illegal conduct by Defendant Onuh that is allowed by BOP.

193. The Court should craft appropriate legal, injunctive, declaratory, and/or other equitable relief to compel BOP to take necessary "corrective, curative or preventive action . . . to relieve Plaintiff of the substantial burdens imposed on his exercise of religion that are imposed by the illegal conduct by Defendant Onuh; by the failures of BOP to comply with its obligations under Title VII; and failures by Defendant Garland to ensure his subordinates and subordinate agencies follow the law.

Plaintiff's Claims for
Declaratory, Injunctive and Equitable Relief

194. Plaintiff alleges the Court has authority under 42 U.S.C. § 2000bb *et seq.*; under 28 U.S.C. § 2201 and § 2202; and/or under 42 U.S.C. § 2000e-5(g) to order declaratory, injunctive, and/or other

equitable relief, including authority to decide Plaintiff's right to remedies from BOP, whether this Court acts under the RFRA and/or this Court completes a *de novo* review of Plaintiff's claims under Title VII.

195. Plaintiff shows the Court has authority to determine necessary steps to be taken by BOP to remedy the harassment and to determine what steps should be taken by BOP that would be reasonably calculated to prevent future harassment, consistent with 29 C.F.R. § 1614.501 (a)(2).

196. As Defendant Onuh is an individual who will be affected by Campbell's requests for declaratory, injunctive, and equitable relief, Campbell also shows the Court that Defendant Onuh is a proper party to this action that may determine legal rights and remedies that affect Onuh.

197. Plaintiff shows the Declaratory Judgment Act was "expressly designed to provide a milder alternative to the injunction remedy."[26]

198. Plaintiff alleges he "may pursue both injunctive and declaratory relief, and '[a] court may grant declaratory relief even though it chooses not to issue an injunction or mandamus.'"[27]

Plaintiff's Damages

199. Defendants caused Plaintiff to suffer damages, including past economic damages and past and future mental anguish and emotional distress, for

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[26] *Robinson v. Hunt County, Texas*, 921 F.3d 440, 450 (5th Cir. 2019) (citing *Morrow v. Harwell*, 768 F.2d 619, 627 (5th Cir. 1985)).

[27] *Id.* (citing *Powell v. McCormack*, 395 U.S. 486, 499 (1969)).

which Plaintiff seeks monetary relief, including all lost wages, lost leave time, lost vacation time and/or other damages for the mental anguish and emotion distress that Plaintiff has suffered.

Pre-Judgment and Post Judgment Interest

200. Plaintiff seeks pre-judgment and post judgment interest as allowed by applicable law.

Attorney's Fees

201. Plaintiff Casey Campbell seeks attorney's fees as permitted by law, including under 28 U.S.C. § 2201 *et seq.*; under 42 U.S.C. § 2000bb *et seq.*; and/or under 42 U.S.C. § 2000e *et seq.*

Jury Request

202. Casey Campbell requests a jury trial.

WHEREFORE, Plaintiff Casey Campbell prays that after Defendant Merrick Garland and Defendant William Onuh answer, that on final jury trial, he have judgment against Defendants for his damages, costs of suit, prejudgment and post-judgment interest as permitted by law, as well as the declaratory, injunctive and equitable relief requested against both Defendants, and for all other relief to which Plaintiff may show himself to be justly entitled.

Respectfully submitted,

/s/ William J. Dunleavy
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF FILING AND SERVICE

I certify that on August 26, 2021, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court Northern District of Texas, using the electronic case filing system of the court, which served a copy of this pleading on counsel of record for the Defendants and I further certify that

I emailed a copy of this pleading on August 26, 2021 to William Araiza, counsel for Defendant Onuh, at email: <waraiza@gmail.com>.

/s/ William J. Dunleavy
William J. Dunleavy

DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT (SEPTEMBER 8, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF TEXAS DALLAS DIVISION

IN RE CASEY CAMPBELL

Civil Action No. 4:21-CV-00881-P

ANSWER OF DEFENDANTS MERRICK GARLAND AND WILLIAM ONUH (IN HIS OFFICIAL CAPACITY) TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND COUNTERCLAIM OF DEFENDANT GARLAND

Defendants Merrick Garland and William Onuh[1] (in his official capacity) (collectively, "Defendants") file, without waiving any defenses or affirmative defenses to which they may be entitled, this answer, defenses, and counterclaims to the August 26, 2021 first amended complaint of Plaintiff Casey Campbell (Doc. 58). Answering the allegations of each paragraph

[1] This answer is filed on behalf of Defendant William Onuh only as to the claims against him in his official capacity. Onuh is anticipated to file a separate response regarding the personal capacity claims against him for alleged violations of the Religious Freedom Restoration Act.

of the first amended complaint and using the same headings (which are not admissions), Defendants respond as follows:

Introduction

1. Defendants admit that Plaintiff has been employed by the Federal Bureau of Prisons ("BOP") as a chaplain since 2006, that he was assigned to the Federal Medical Center ("FMC") Carswell in 2008, and that he is currently assigned to FMC Carswell where he ministers to individuals of the Protestant faith. Defendants deny all other allegations in paragraph 1 of Plaintiff's first amended complaint.

2. Defendants deny the allegations in paragraph 2 of Plaintiff's first amended complaint.

3. Defendants admit that Plaintiff filed a complaint alleging religious discrimination through the BOP's internal Equal Employment Opportunity ("EEO") process in May 2017, in accordance with the requirements of Title VII. Defendants deny all other allegations in paragraph 3 of Plaintiff's first amended complaint.

4. 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. Defendants deny all other allegations in paragraph 4 of Plaintiff's first amended complaint.

5. Paragraph 5 of Plaintiff's first amended complaint states a legal conclusion to which no response is

required. To the extent a response is required, Defendants admit that Plaintiff attached the May 16, 2019 CAO Final Agency Decision to the first amended complaint, but deny any other allegations in paragraph 5.

6. Paragraph 6 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that Plaintiff attached the May 16, 2019 CAO Final Agency Decision to the first amended complaint, but deny any other allegations in paragraph 6.

7. Defendants admit that the May 16, 2019 CAO Final Agency Decision ordered the BOP to "take immediate steps to remedy the harassment and take steps reasonably calculated to prevent future harassment, consistent with 29 C.F.R. § 1614.501(a)(2)," but deny all remaining allegations in paragraph 7 of Plaintiff's first amended complaint.

8. Defendants admit that the May 16, 2019 CAO Decision is titled "Final Agency Decision," and that the decision did not address the specific amount of damages to be awarded to Plaintiff, but deny the remaining allegations in paragraph 8 of Plaintiff's first amended complaint.

9. Defendants deny the allegations in paragraph 9 of Plaintiff's first amended complaint.

10. Defendants admit that Plaintiff filed his initial lawsuit, Civil Action No. 3:19-CV-01887-L, on August 8, 2019, and that this was filed within 90 days of the May 16, 2019 CAO Final Agency Decision, but lack sufficient information to admit or deny the remaining allegations in paragraph 10 of Plaintiff's first amended

complaint regarding Plaintiff's reasons for filing suit, and therefore deny the same.

11. Defendants admit that on September 27, 2019, the CAO issued a Final Agency Decision awarding a specific amount of compensatory damages and attorney's fees to Plaintiff, but deny all remaining allegations in paragraph 11 of Plaintiff's first amended complaint.

12. Paragraph 12 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that Plaintiff attached the September 27, 2019 CAO Final Agency Decision to the first amended complaint, but deny any other allegations in paragraph 12.

13. Paragraph 13 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that Plaintiff attached the September 27, 2019 CAO Final Agency Decision to the first amended complaint, but deny any other allegations in paragraph 13.

14. Defendants deny the allegations in paragraph 14 of Plaintiff's first amended complaint.

15. Defendants admit that Plaintiff filed an EEO complaint on or about December 4, 2019 regarding the same allegations at issue in his May 2017 EEO complaint and at issue in one of his previous lawsuits (*Campbell v. Garland, et al.*, 3:19-CV-1887-L), but deny all remaining allegations in paragraph 15 of Plaintiff's first amended complaint.

16. Defendants admit that the DOJ dismissed his December 2019 EEO complaint on March 18, 2020, and on that same date issued a denial letter and a notice of right to file a lawsuit in federal court, but deny all remaining allegations in paragraph 16 of Plaintiff's first amended complaint.

17. Defendants admit that Plaintiff filed his second lawsuit, Civil Action No. 3:20-CV-01605-G (later transferred to Fort Worth as 4:20-CV-00638-P), on June 16, 2020, and that this was filed within 90 days of the March 18, 2020 DOJ denial letter, but deny all remaining allegations in paragraph 17 of Plaintiff's first amended complaint.

18. Paragraph 18 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that Plaintiff attached the March 18, 2020 DOJ denial letter to the first amended complaint, but deny any other allegations in paragraph 18.

19. Paragraph 19 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations.

20. Defendants admit that Plaintiff previously timely filed his Third Amended Complaint in Civil Action No. 3:19-CV-1887-L on March 18, 2021 in accordance with the court's March 4, 2021 order, but deny any other allegations in paragraph 20 of Plaintiff's first amended complaint.

Parties

21. Defendants lack sufficient information to affirm or deny the allegations regarding Plaintiff's residency in paragraph 21 of Plaintiff's first amended complaint, and therefore deny the allegations.

22. Defendants admit the allegations in paragraph 22 of Plaintiff's first amended complaint.

23. Defendants admit the allegations in paragraph 23 of Plaintiff's first amended complaint, but deny the allegations in the footnote to paragraph 23.

24. Defendants admit the allegations in in paragraph 24 of Plaintiff's first amended complaint.

25. Defendants deny the allegations in paragraph 25 of Plaintiff's first amended complaint.

26. Defendants deny the allegations in paragraph 26 of Plaintiff's first amended complaint.

27. Defendants deny the allegations in paragraph 27 of Plaintiff's first amended complaint.

28. Defendants admit that Plaintiff accurately quotes from *Amador v. Vasquez*, with the clarification that the correct case citation is *Amador v. Vasquez*, 961 F.3d 721, 727 (5th Cir. 2020), but deny all remaining allegations in paragraph 28 of Plaintiff's first amended complaint.

29. Defendants admit that Plaintiff accurately quotes from the June 1, 2020 motion to dismiss filed in Civil Action No. 3:19-CV-1887-L by the Attorney General, the U.S. Department of Justice, and the BOP, but deny all remaining allegations in paragraph 29 of Plaintiff's first amended complaint.

30. Defendants deny the allegations in paragraph 30 of Plaintiff's first amended complaint.

31. Defendants deny the allegations in paragraph 31 of Plaintiff's first amended complaint.

32. Defendants deny the allegations in paragraph 32 of Plaintiff's first amended complaint.

Venue and Jurisdiction

33. Defendants admit the allegations in paragraph 33 of Plaintiff's first amended complaint.

34. Paragraph 34 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations.

35. Defendants admit that Plaintiff has exhausted his administrative remedies only as to any allegations both raised in his May 2017 EEO complaint and addressed by the CAO in the May 2019 Final Agency Decision, and that this Final Agency Decision conferred jurisdiction to this Court only as to the claims addressed in the Final Agency Decision, but deny all remaining allegations in paragraph 35 of Plaintiff's first amended complaint.

Factual Allegations

36. Defendants admit the allegations in paragraph 36 of Plaintiff's first amended complaint.

37. Defendants deny the allegations in paragraph 37 of Plaintiff's first amended complaint.

38. Defendants deny the allegations in paragraph 38 of Plaintiff's first amended complaint.

39. Defendants admit that Defendant William Onuh is a Catholic chaplain at FMC Carswell and is Plaintiff's co-worker, and that Plaintiff complained to at least one supervisor at FMC Carswell about Defendant Onuh on at least one occasion between 2013 and 2017. Defendants deny all remaining allegations in paragraph 39 of Plaintiff's first amended complaint.

40. Defendants deny the allegations in paragraph 40 of Plaintiff's first amended complaint.

41. Defendants admit that Plaintiff filed a formal EEO complaint with the BOP in May 2017 alleging religious discrimination under 42 U.S.C. § 2000e and 29 C.F.R. § 1614, with the clarification that the complaint was filed on May 5, 2017. Defendants deny all other allegations in paragraph 41 of Plaintiff's first amended complaint.

42. Defendants admit that Plaintiff filed a formal EEO complaint with the BOP in May 2017 alleging religious discrimination under 42 U.S.C. § 2000e and 29 C.F.R. § 1614. Defendants deny all other allegations in paragraph 42 of Plaintiff's first amended complaint.

43. Defendants admit that, in his May 2017 EEO complaint, Plaintiff asserted that Defendant Onuh made derogatory remarks about Protestant chaplains and their ministry on two separate occasions, that Defendant Onuh refused to escort non-Catholic volunteers on one occasion, that another chaplain was required to work overtime on one occasion when Defendant Onuh allegedly refused to supervise a non-Catholic activity, and that a non-Catholic service was permanently rescheduled as Defendant Onuh would not provide materials to the service at the time

scheduled. Defendants deny all other allegations in paragraph 43 of Plaintiff's first amended complaint.

44. Defendants admit that a federal contractor, Adept Services, Inc., completed an investigation of the allegations in Plaintiff's EEO complaint, and that the agency case number was BOP-2017-0505. Defendants deny all other allegations in paragraph 44 of Plaintiff's first amended complaint.

45. Defendants admit the allegations in paragraph 45 of Plaintiff's first amended complaint.

46. Defendants admit that on May 16, 2019, the CAO issued a Final Agency Decision finding that the record supported a claim of discrimination based on religion, finding that Plaintiff was eligible for compensatory damages and attorney's fees, and ordering the BOP to remedy the harassment. Defendants also admit that Plaintiff attached a copy of the May 16, 2019 Final Agency Decision to his first amended complaint. Defendants deny all other allegations in paragraph 46 of Plaintiff's first amended complaint.

47. Defendants admit that the May 16, 2019 Final Agency Decision ordered the BOP to take immediate steps to remedy the harassment and take steps reasonably calculated to prevent future harassment, consistent with 29 C.F.R. § 1614.501(a)(2). Defendants deny all other allegations in paragraph 47 of Plaintiff's first amended complaint.

48. Defendants admit the May 16, 2019 Final Agency Decision determined Plaintiff was eligible for compensatory damages that were recoverable under Section 102(a) of the Civil Rights Act of 1991 from the BOP, in an amount to be calculated based on Plaintiff's proffer of evidence as to the harm suffered.

Defendants deny all other allegations in paragraph 48 of Plaintiff's first amended complaint.

49. Defendants admit the May 16, 2019 Final Agency Decision determined Plaintiff was entitled to reasonable attorney's fees from the BOP incurred pursuant to the successful hostile work environment claim in accordance with 29 C.F.R. § 1614.501(e), in an amount to be calculated based on the attorney's submission of a verified statement of costs and affidavit itemizing the attorney's fees. Defendants deny all other allegations in paragraph 49 of Plaintiff's first amended complaint.

50. Defendants admit that on September 27, 2019, the CAO issued a second decision, and that this decision was issued about four months after the May 16, 2019 Final Agency Decision. Defendants deny all other allegations in paragraph 50 of Plaintiff's first amended complaint.

51. Defendants admit the September 27, 2019 CAO decision determined the specific amount of compensatory damages and the amount of attorney's fees that the BOP should pay to Plaintiff, and that Plaintiff attached a copy of the September 27, 2019 CAO decision to his first amended complaint. Defendants deny all other allegations in paragraph 51 of Plaintiff's first amended complaint.

52. Defendants deny the allegations in paragraph 52 of Plaintiff's first amended complaint.

53. Defendants deny the allegations in paragraph 53 of Plaintiff's first amended complaint.

54. Defendants deny the allegations in paragraph 54 of Plaintiff's first amended complaint.

55. Defendants admit that Carolyn Sapla was the Acting EEO Officer for the BOP in June 2019. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Carolyn Sapla, and therefore deny all remaining allegations in paragraph 55 of Plaintiff's first amended complaint.

56. Defendants admit that in June 2019, Alan Cohen was an associate warden at FMC Carswell and Chaplain Jonathan Clark was Plaintiff's supervisor at FMC Carswell. Defendants deny the allegation that Cohen "threatened" Plaintiff. Defendants lack sufficient information to admit or deny the remaining allegations regarding Cohen's communications with Chaplain Clark and Plaintiff in June 2019, and therefore deny all remaining allegations in paragraph 56 of Plaintiff's first amended complaint.

57. Defendants deny the allegation that Cohen threatened Plaintiff. Defendants lack sufficient information to admit or deny the remaining allegations regarding Cohen's communications with Plaintiff, and therefore deny all remaining allegations in paragraph 57 of Plaintiff's first amended complaint.

58. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's feelings regarding his conversation with Cohen, and therefore deny the allegations in paragraph 58 of Plaintiff's first amended complaint.

59. Defendants deny the allegations in paragraph 59 of Plaintiff's first amended complaint.

60. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's and

Chaplain Farid Farooqi's communications with unnamed supervisors and the BOP's response to these asserted communications, and therefore deny the allegations in paragraph 60 of Plaintiff's first amended complaint.

61. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with unnamed supervisors and the BOP's response to these asserted communications, and therefore deny the allegations in paragraph 61 of Plaintiff's first amended complaint.

62. Defendants deny the allegations in paragraph 62 of Plaintiff's first amended complaint.

63. Defendants lack sufficient information to admit or deny the allegations regarding the length of time any LDS volunteers waited at FMC Carswell on August 10, 2019, or whether they ministered to any inmates, and therefore deny these allegations in paragraph 63 of Plaintiff's first amended complaint. Defendants deny all remaining allegations in paragraph 63 of Plaintiff's first amended complaint.

64. Defendants deny the allegations in paragraph 64 of Plaintiff's first amended complaint.

65. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with unnamed individuals, and therefore deny the allegations in paragraph 65 of Plaintiff's first amended complaint.

66. Defendants deny the allegations in paragraph 66 of Plaintiff's first amended complaint.

67. Defendants admit that Heidi Kugler was employed by the BOP on August 21, 2019, with the

clarification that her title at that time was "Chief, Chaplaincy Services." Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Heidi Kugler on that date, and therefore deny the remaining allegations in paragraph 67 of Plaintiff's first amended complaint.

68. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Heidi Kugler and Defendant Onuh's related behavioral changes, and therefore deny the allegations in paragraph 68 of Plaintiff's first amended complaint.

69. Defendants deny the allegations in paragraph 69 of Plaintiff's first amended complaint.

70. Defendants admit the allegations in paragraph 70 of Plaintiff's first amended complaint.

71. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's reading of two emails from unnamed individuals on February 18, 2020, and therefore deny the allegations in paragraph 71 of Plaintiff's first amended complaint.

72. Defendants lack sufficient information to admit or deny the allegations regarding what Plaintiff learned about Defendant Onuh's communications with an unnamed inmate, and therefore deny the allegations in paragraph 72 of Plaintiff's first amended complaint.

73. Defendants deny the allegations in paragraph 73 of Plaintiff's first amended complaint.

74. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on March 11,

2020, and therefore deny the allegations in paragraph 74 of Plaintiff's first amended complaint.

75. Defendants admit that Chaplain Bobbie Gunn is a Life Connections Program chaplain. Defendants deny that Plaintiff was the senior staff chaplain on March 11, 2020. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Gunn on that date, and therefore deny the remaining allegations in paragraph 75 of Plaintiff's first amended complaint.

76. Defendants deny the allegations in paragraph 76 of Plaintiff's first amended complaint.

77. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark, and therefore deny the allegations in paragraph 77 of Plaintiff's first amended complaint.

78. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark, and therefore deny the allegations in paragraph 78 of Plaintiff's first amended complaint.

79. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark and Cohen, and therefore deny the allegations in paragraph 79 of Plaintiff's first amended complaint.

80. Defendants deny the allegations that Plaintiff has never met with the EEO counselor at FMC Carswell. Defendants lack sufficient information to admit or deny the allegations regarding Irizarry's meetings with other individuals at FMC Carswell,

and therefore deny the remaining allegations in paragraph 80 of Plaintiff's first amended complaint.

81. Defendants lack sufficient information to admit or deny the allegations regarding unnamed FMC Carswell executive staff members observing Plaintiff's classes between January and March 2020, and therefore deny the allegations in paragraph 81 of Plaintiff's first amended complaint.

82. Defendants lack sufficient information to admit or deny the allegations regarding Cohen observing Plaintiff's and other chaplains' classes on unknown dates and Plaintiff's prior experience with observation of his classes, and therefore deny the allegations in paragraph 82 of Plaintiff's first amended complaint.

83. Defendants lack sufficient information to admit or deny the allegations regarding Chaplain Clark's arranging regional staff to observe Plaintiff's and other chaplains' classes on unknown dates, and therefore deny the allegations in paragraph 83 of Plaintiff's first amended complaint.

84. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on March 22, 2020, and therefore deny the allegations in paragraph 84 of Plaintiff's first amended complaint.

85. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on March 22, 2020, and therefore deny the allegations in paragraph 85 of Plaintiff's first amended complaint.

86. Defendants admit that, due to the COVID-19 pandemic, some of FMC Carswell's religious

programming had to be modified. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark in March 2020, and therefore deny all remaining allegations in paragraph 86 of Plaintiff's first amended complaint.

87. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's asserted position on the COVID-19 precautions at FMC Carswell, and therefore deny the allegations in paragraph 87 of Plaintiff's first amended complaint.

88. Defendants deny the allegations in paragraph 88 of Plaintiff's first amended complaint.

89. Defendants deny the allegations in paragraph 89 of Plaintiff's first amended complaint.

90. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's observations regarding the FMC Carswell staff telephone guide, and therefore deny the allegations in paragraph 90 of Plaintiff's first amended complaint.

91. Defendants deny the allegations in paragraph 91 of Plaintiff's first amended complaint.

92. Defendants deny the allegations in paragraph 92 of Plaintiff's first amended complaint.

93. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding Passover preparations, and therefore deny the allegations in paragraph 93 of Plaintiff's first amended complaint.

94. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's

communications with Chaplain Clark regarding the COVID-19 precautions at FMC Carswell, and therefore deny the allegations in paragraph 94 of Plaintiff's first amended complaint.

95. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chief Kugler in April 2020 regarding the COVID-19 precautions at FMC Carswell, and therefore deny the allegations in paragraph 95 of Plaintiff's first amended complaint.

96. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on April 17, 2020, and therefore deny the allegations in paragraph 96 of Plaintiff's first amended complaint.

97. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on April 17, 2020, and therefore deny the allegations in paragraph 97 of Plaintiff's first amended complaint.

98. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on April 17, 2020, and therefore deny the allegations in paragraph 98 of Plaintiff's first amended complaint.

99. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's May 16, 2020 request to unknown individuals regarding department supervision on Sundays, and therefore deny the allegations in paragraph 99 of Plaintiff's first amended complaint.

100. Defendants deny the allegations in paragraph 100 of Plaintiff's first amended complaint.

101. Defendants deny the allegations in paragraph 101 of Plaintiff's first amended complaint.

102. Defendants deny the allegations in paragraph 102 of Plaintiff's first amended complaint.

103. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on May 30, 2020, and therefore deny the allegations in paragraph 103 of Plaintiff's first amended complaint.

104. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark in early June 2020, and therefore deny the allegations in paragraph 104 of Plaintiff's first amended complaint.

105. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark and Chaplain Farooqi in early June 2020, and therefore deny the allegations in paragraph 105 of Plaintiff's first amended complaint.

106. Defendants admit that Chaplain Clark required employees under his supervisions to comply with the COVID-19 precautions at FMC Carswell in April and May 2020, but deny all remaining allegations in paragraph 106 of Plaintiff's first amended complaint.

107. Defendants deny the allegations in paragraph 107 of Plaintiff's first amended complaint.

108. Defendants deny the allegations in paragraph 108 of Plaintiff's first amended complaint.

109. Defendants deny the allegations in paragraph 109 of Plaintiff's first amended complaint.

110. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on June 7, 2020, and therefore deny the allegations in paragraph 110 of Plaintiff's first amended complaint.

111. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on June 7, 2020, and therefore deny the allegations in paragraph 111 of Plaintiff's first amended complaint.

112. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on June 12, 2020, and therefore deny the allegations in paragraph 112 of Plaintiff's first amended complaint.

113. Defendants deny the allegations in paragraph 113 of Plaintiff's first amended complaint.

114. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on June 12, 2020, and therefore deny the allegations in paragraph 114 of Plaintiff's first amended complaint.

115. Defendants lack sufficient information to admit or deny the allegations regarding when Plaintiff was notified that Defendant Onuh had filed an EEO complaint, and therefore deny the allegations in paragraph 115 of Plaintiff's first amended complaint.

116. Defendants deny the allegations in paragraph 116 of Plaintiff's first amended complaint.

117. Defendants deny that Chaplain Clark was Supervisor of the Year in 2020. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on June 25, 2020, and therefore deny the remaining allegations in paragraph 117 of Plaintiff's first amended complaint.

118. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on June 25, 2020, and therefore deny the allegations in paragraph 118 of Plaintiff's first amended complaint.

119. Defendants deny the allegations in paragraph 119 of Plaintiff's first amended complaint.

120. Defendants deny the allegations in paragraph 120 of Plaintiff's first amended complaint.

121. Defendants lack sufficient information to admit or deny the allegations regarding Chaplain Clark's selection of any acting supervisor in August 2020 or Chaplain Clark's undated prior statements regarding the use of acting supervisors, and therefore deny all allegations in paragraph 121 of Plaintiff's first amended complaint.

122. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Farooqi on August 17, 2020, and therefore deny the allegations in paragraph 122 of Plaintiff's first amended complaint.

123. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Farooqi on August 17,

2020, and therefore deny the allegations in paragraph 123 of Plaintiff's first amended complaint.

124. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Farooqi on August 17, 2020 regarding Defendant Onuh's asserted statements, and therefore deny the allegations in paragraph 124 of Plaintiff's first amended complaint.

125. Defendants deny the allegations in paragraph 125 of Plaintiff's first amended complaint.

126. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding Defendant Onuh and Plaintiff's thoughts regarding these communications, and therefore deny the allegations in paragraph 126 of Plaintiff's first amended complaint.

127. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on September 1, 2020, and therefore deny the allegations in paragraph 127 of Plaintiff's first amended complaint.

128. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark about the Thresholds programming, and therefore deny the allegations in paragraph 128 of Plaintiff's first amended complaint.

129. Defendants admit that Thresholds is a BOP nationwide Religious Services re-entry/rehabilitation program, but deny all remaining allegations in paragraph 129 of Plaintiff's first amended complaint.

130. Defendants lack sufficient information to admit or deny the scope of Plaintiff's involvement with the Thresholds program at FMC Carswell during his assignment to the facility, and therefore deny all allegations in paragraph 130 of Plaintiff's first amended complaint.

131. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on September 10, 2020, and therefore deny the allegations in paragraph 131 of Plaintiff's first amended complaint.

132. Defendants lack sufficient information to admit or deny the allegations regarding when Plaintiff learned of the work schedule on which he bid, and therefore deny the allegations in paragraph 132 of Plaintiff's first amended complaint.

133. Defendants deny the allegations in paragraph 133 of Plaintiff's first amended complaint.

134. Defendants deny the allegations in paragraph 134 of Plaintiff's first amended complaint.

135. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on October 1, 2020, and therefore deny the allegations in paragraph 135 of Plaintiff's first amended complaint.

136. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on October 1, 2020, and therefore deny the allegations in paragraph 136 of Plaintiff's first amended complaint.

137. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's

communications with Chaplain Clark on October 1, 2020, and therefore deny the allegations in paragraph 137 of Plaintiff's first amended complaint.

138. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on October 1, 2020, and therefore deny the allegations in paragraph 138 of Plaintiff's first amended complaint.

139. Defendants deny the allegations in paragraph 139 of Plaintiff's first amended complaint.

140. Defendants lack sufficient information to admit or deny the allegations regarding an unknown staff member asking for a chaplain over the radio on December 5, 2020, and therefore deny the allegations in paragraph 140 of Plaintiff's first amended complaint.

141. Defendants admit that Defendant Onuh was on duty at FMC Carswell from 10 a.m. to 8 p.m. on December 5, 2020, but deny the remaining allegations in paragraph 141 of Plaintiff's first amended complaint.

142. Defendants lack sufficient information to admit or deny the allegations regarding an unknown control officer asking for a chaplain over the radio on December 5, 2020, and therefore deny the allegations in paragraph 142 of Plaintiff's first amended complaint.

143. Defendants lack sufficient information to admit or deny the allegations regarding an unknown control officer asking for Plaintiff over the radio on December 5, 2020, and Plaintiff's response, and therefore deny the allegations in paragraph 143 of Plaintiff's first amended complaint.

144. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's

communications with an unknown control officer on December 5, 2020, and therefore deny the allegations in paragraph 144 of Plaintiff's first amended complaint.

145. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's request to Defendant Onuh over the radio on December 5, 2020, and therefore deny the allegations in paragraph 145 of Plaintiff's first amended complaint.

146. Defendants deny the allegations in paragraph 146 of Plaintiff's first amended complaint.

147. Defendants deny the allegations in paragraph 147 of Plaintiff's first amended complaint.

148. Defendants deny the allegations in paragraph 148 of Plaintiff's first amended complaint.

149. Defendants deny the allegations in paragraph 149 of Plaintiff's first amended complaint.

150. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark in December 2020, and therefore deny the allegations in paragraph 150 of Plaintiff's first amended complaint.

151. Defendants lack sufficient information to admit or deny the allegations regarding Chaplain Clark's communications with unknown members of the Religious Services Department regarding individuals who would serve as acting supervisor in his absence, and therefore deny the allegations in paragraph 151 of Plaintiff's first amended complaint.

152. Defendants deny the allegations in paragraph 152 of Plaintiff's first amended complaint.

153. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding work schedules, and therefore deny the allegations in paragraph 153 of Plaintiff's first amended complaint.

154. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's reporting to work at the camp at FMC Carswell in January 2021, and therefore deny the allegations in paragraph 154 of Plaintiff's first amended complaint.

155. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding supplies for inmates' Shabbat observation, and therefore deny the allegations in paragraph 155 of Plaintiff's first amended complaint.

156. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding where Plaintiff reported to work, and therefore deny the allegations in paragraph 156 of Plaintiff's first amended complaint.

157. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding Defendant Onuh, and therefore deny the allegations in paragraph 157 of Plaintiff's first amended complaint.

158. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding Defendant Onuh, and therefore deny the allegations in paragraph 158 of Plaintiff's first amended complaint.

159. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark regarding supplies for inmates' Shabbat observation, and therefore deny the allegations in paragraph 159 of Plaintiff's first amended complaint.

160. Defendants deny the allegations in paragraph 160 of Plaintiff's first amended complaint.

161. Defendants deny the allegations in paragraph 161 of Plaintiff's first amended complaint.

162. Defendants deny the allegations in paragraph 162 of Plaintiff's first amended complaint.

163. Defendants deny the allegations in paragraph 163 of Plaintiff's first amended complaint.

164. Defendants deny the allegations in paragraph 164 of Plaintiff's first amended complaint.

165. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on unknown dates regarding Defendant Onuh and the vague term "the union," and therefore deny the allegations in paragraph 165 of Plaintiff's first amended complaint.

166. Defendants admit that Chaplain Clark is a member of the FMC Carswell management team, but lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on unknown dates regarding the BOP's thoughts on Defendant Onuh and the vague term "the union," and therefore deny the allegations in paragraph 166 of Plaintiff's first amended complaint.

167. Defendants lack sufficient information to admit or deny the allegations regarding Plaintiff's communications with Chaplain Clark on unknown dates regarding the FMC Carswell warden's thoughts on Defendant Onuh and the vague term "the union," and therefore deny the allegations in paragraph 166 of Plaintiff's first amended complaint.

Plaintiff's Title VII Claims

168. Paragraph 168 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 168 of Plaintiff's first amended complaint.

169. Defendants deny the allegations in paragraph 169 of Plaintiff's first amended complaint.

170. Defendants deny the allegations in paragraph 170 of Plaintiff's first amended complaint.

171. Defendants admit that Plaintiff has exhausted his administrative remedies only as to any allegations both raised in his May 2017 EEO complaint and addressed by the CAO in the May 2019 Final Agency Decision, and that this Final Agency Decision conferred jurisdiction to this Court only as to the claims addressed in the Final Agency Decision, but deny all remaining allegations in paragraph 171 of Plaintiff's first amended complaint.

172. Defendants admit that pursuant to Title VII, a federal employee may request a federal district court review *de novo* a final agency decision issued by a federal agency EEO, but deny all other allegations in paragraph 172 of Plaintiff's first amended complaint.

173. Defendants deny the allegations in paragraph 173 of Plaintiff's first amended complaint.

Plaintiff's Religious Freedom Restoration Act Claims

174. Paragraph 174 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 174 of Plaintiff's first amended complaint.

175. Defendants admit that Plaintiff accurately quotes from *FNU Tanzin, et al. v. Tanvir, et al.*, 141 S.Ct. 486, 489 (2020), but deny all other allegations in paragraph 175 of Plaintiff's first amended complaint.

176. Defendants admit that Plaintiff accurately quotes from *FNU Tanzin, et al. v. Tanvir, et al.*, 141 S.Ct. 486, 489 (2020), with the clarification that the full citation to *Employment Div. v. Smith* in the text of the decision includes the relevant pincites, but deny all other allegations in paragraph 176 of Plaintiff's first amended complaint.

177. Defendants admit that Plaintiff accurately quotes from *FNU Tanzin, et al. v. Tanvir, et al.*, 141 S.Ct. 486, 489 (2020), but deny all other allegations in paragraph 177 of Plaintiff's first amended complaint.

178. Defendants admit that Defendant Garland is the head of the DOJ, which is an agency within the Executive Branch of the federal government, and that the BOP is a subcomponent agency within the DOJ, but deny all remaining allegations in paragraph 178 of Plaintiff's first amended complaint.

179. Defendants admit that, pursuant to 42 U.S.C. § 2000bb-1(c), an individual whose religious exercise has been burdened may assert that violation as a claim in a judicial proceeding and obtain appropriate relief, but deny all other allegations in paragraph 179 of Plaintiff's first amended complaint.

180. Defendants admit that Plaintiff accurately quotes from *FNU Tanzin, et al. v. Tanvir, et al.*, 141 S.Ct. 486, 489 (2020), but deny all other allegations in paragraph 180 of Plaintiff's first amended complaint.

181. Defendants deny the allegations in paragraph 181 of Plaintiff's first amended complaint.

182. Defendants admit that Plaintiff accurately quotes from *FNU Tanzin, et al. v. Tanvir, et al.*, 141 S.Ct. 486, 489 (2020), but deny all other allegations in paragraph 182.

183. Defendants deny the allegations in paragraph 183 of Plaintiff's first amended complaint.

184. Defendants deny the allegations in paragraph 184 of Plaintiff's first amended complaint.

185. Defendants deny the allegations in paragraph 185 of Plaintiff's first amended complaint.

186. Defendants admit that Plaintiff accurately quotes from *Amador v. Vasquez*, with the clarification that correct case citation is *Amador v. Vasquez*, 961 F.3d 721, 727 (5th Cir. 2020), but deny all remaining allegations in paragraph 186 of Plaintiff's first amended complaint.

187. Defendants admit that Plaintiff has generally accurately quoted from the May 16, 2019 CAO Final Agency Decision, with the clarification that

Plaintiff has omitted or changed several prepositions and nouns (e.g., omitting "to" in the first quotation, changing "Clark" to "he" in the second quotation), but deny all remaining allegations in paragraph 187 of Plaintiff's first amended complaint.

188. Defendants deny the allegations in paragraph 188 of Plaintiff's first amended complaint.

189. Defendants deny the allegations in paragraph 189 of Plaintiff's first amended complaint.

190. Defendants deny the allegations in paragraph 190 of Plaintiff's first amended complaint.

191. Defendants deny the allegations in paragraph 191 of Plaintiff's first amended complaint.

192. Defendants deny the allegations in paragraph 192 of Plaintiff's first amended complaint.

193. The allegations in paragraph 193 of Plaintiff's first amended complaint consist of Plaintiff's requested relief to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 193 of Plaintiff's first amended complaint.

Plaintiff's Claims for Declaratory, Injunctive and Equitable Relief

194. Paragraph 194 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 194 of Plaintiff's first amended complaint.

195. Paragraph 195 of Plaintiff's first amended complaint states a legal conclusion to which no response is required. To the extent a response is

required, Defendants deny the allegations in paragraph 195 of Plaintiff's first amended complaint.

196. Defendants deny the allegations in paragraph 196 of Plaintiff's first amended complaint.

197. Defendants admit that Plaintiff correctly quotes from *Robinson v. Hunt County, Texas*, 921 F.3d 440, 450 (5th Cir. 2019), but deny all other allegations in paragraph 197 of Plaintiff's first amended complaint.

198. Defendants admit that Plaintiff correctly quotes from *Robinson v. Hunt County, Texas*, 921 F.3d 440, 450 (5th Cir. 2019), but deny all other allegations in paragraph 198 of Plaintiff's first amended complaint.

Plaintiff's Damages

199. Defendants deny the allegations in paragraph 199 of Plaintiff's first amended complaint.

Pre-Judgment and Post Judgment Interest

200. The allegations in paragraph 200 of Plaintiff's first amended complaint consist of Plaintiff's requested relief to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 200 of Plaintiff's first amended complaint.

Attorney's Fees

201. The allegations in paragraph 201 of Plaintiff's first amended complaint consist of Plaintiff's requested relief to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 201 of Plaintiff's first amended complaint.

Jury Request

202. The allegations in paragraph 202 of Plaintiff's first amended complaint consist of Plaintiff's requested relief to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 202 of Plaintiff's first amended complaint.

203. The allegations in the paragraph beginning "WHEREFORE" on page 28 of Plaintiff's first amended complaint consist of Plaintiff's requested relief to which no response is required. To the extent a response is required, Defendants deny the allegations in this paragraph of Plaintiff's first amended complaint.

GENERAL DENIAL

Any allegation contained in Plaintiff's first amended complaint that has not been specifically and expressly admitted or explained by Defendants herein is hereby denied.

Defenses

As separate and complete defenses hereto, and without waiving any of the above, Defendants offer the following defenses:

1. To the extent Plaintiff's first amended complaint purports to make allegations that were not asserted in Plaintiff's administrative claim(s) that form the basis of this lawsuit, or makes allegations about behavior that occurred after the May 2019 Department of Justice's Complaint Adjudication Office Final Agency Decision at issue in this action, or makes allegations about allegedly adverse events or occurrence for which Plaintiff did not timely make contact with an EEO

counselor or file a timely administrative claim or properly and timely exhaust all other administrative remedies and properly and timely file suit in federal court, any claims under Title VII relating to such matters are barred.

2. In his first amended complaint, Plaintiff indicates that he seeks *de novo* review of the claims raised in his EEO complaint and the CAO's May 2019 and September 2019 decisions. (Doc. 58, ¶¶ 19, 172, 194.) Therefore, any allegations or claims regarding Defendants' failure to comply with and/or enforce the agency decisions are not proper claims in this action.

3. Plaintiff's first amended complaint fails, in whole or in part, to state a claim upon which relief can be granted.

4. Defendant Onuh, as named in his official capacity, is not a proper defendant in a Title VII action. *See* 42 U.S.C. § 2000e-16(c); *Ackel v. Nat'l Comms., Inc.*, 339 F.3d 376, 381 n.1 (5th Cir. 2003); *Indest v. Freeman Decorating, Inc.*, 164 F.3d 258, 262 (5th Cir. 1999).

5. Plaintiff failed to establish a prima facie case of discrimination, harassment/hostile work environment, or retaliation under Title VII.

6. Plaintiff failed to establish he is a member of a protected class.

7. Plaintiff failed to establish an adverse employment decision or tangible employment action.

8. Plaintiff failed to establish that he has been treated differently from members not of his protected class.

9. Plaintiff failed to establish a causal connection between any protected activity and the alleged adverse employment action(s).

10. Plaintiff cannot establish that Defendants' legitimate, non-discriminatory and non-retaliatory reasons for each of the challenged actions are pretext for discrimination or retaliation.

11. Defendants would have made the same decisions without consideration of any prohibited factors under Title VII, including any prior protected activity.

12. Plaintiff failed to establish that, to the extent it occurred, any harassing behavior was based on a protected characteristic, or that any such harassing behavior affected a term, condition, or privilege of his employment.

13. Defendants exercised reasonable care to prevent and correct promptly any harassing behavior, and Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendants or to avoid harm otherwise.

14. Plaintiff's claims for relief under the Religious Freedom Restoration Act are barred as Title VII provides the exclusive remedy for employment discrimination claims against a federal employer. *See Pfau v. Reed*, 125 F.3d 927, 933 (5th Cir. 1997), *vacated on other grounds*, 525 U.S. 801 (1998), *pertinent holding reinstated*, 167 F.3d 228, 229 (5th Cir. 1999); *Tagore v. United States*, No. H-09-0027, 2009 WL 2605310, at *7-9 (S.D. Tex. Aug. 21, 2009), *aff'd in part, rev'd in part by* 735 F.3d 324 (5th Cir. 2013).

15. Plaintiff failed to establish that the activities allegedly burdened by Defendants are an exercise of religion, in violation of the Religious Freedom Restoration Act.

16. Plaintiff failed to establish that Defendants' actions substantially burden his exercise of religion, in violation of the Religious Freedom Restoration Act.

17. To the extent Plaintiff seeks money damages against Defendants in their official capacity for the alleged violations of the Religious Freedom Restoration Act, the statutory scheme does not authorize suits for money damages against officers in their official capacity. *See Davila v. Gladden*, 777 F.3d 1198, 1209 (11th Cir. 2015).

18. Defendants deny that Plaintiff is entitled to recover any damages in connection with the actions alleged in his first amended complaint. However, if any damages are recovered, Plaintiff is entitled to recover only those damages allowed by law.

19. Plaintiff has failed to mitigate his alleged damages, and any recovery should be so reduced.

20. Defendants assert their entitlement to any allowable credits, deductions, or offsets of a judgment, if any, in favor of Plaintiff, including but not limited to the amount of damages and/or other relief previously provided to Plaintiff as part of the administrative process regarding the claims at issue in this action.

21. To the extent Plaintiff requests compensatory damages, any recovery of such damages is limited under federal law. 42 U.S.C. § 1981a(b)(3).

22. To the extent Plaintiff requests exemplary or punitive damages, such damages are not recoverable

against the United States and/or its agencies under federal law. 42 U.S.C. § 1981a(b)(1).

23. Defendants are not liable for pre-judgment interest or post-judgment interest except as permitted by federal law. 28 U.S.C. § 1961; 31 U.S.C. § 1304(b).

24. Defendants are not liable for costs, including any attorney's fees, except as permitted by federal law. 42 U.S.C. §§ 2000e-16(d), 2000e-5(k).

25. Defendants specifically preserves any and all other defenses, not currently known, which through discovery may become applicable.

COUNTERCLAIM

Defendant/Counterclaim Plaintiff Merrick Garland, in his official capacity as Attorney General of the United States, seeks declaratory and equitable relief against the Plaintiff/Counterclaim Defendant Casey Campbell.

1. This Court has subject matter jurisdiction over this counterclaim under 28 U.S.C. § 1345.

2. Venue is proper in the Northern District of Texas under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the counterclaim occurred in this district.

3. On May 16, 2019, the U.S. Department of Justice ("DOJ") Complaint Adjudication Office issued a Final Agency Decision regarding Counterclaim Defendant Campbell's Equal Employment Opportunity ("EEO") complaint alleging he suffered discrimination on the basis of religion in violation of Title VII.

4. The May 16, 2019 Final Agency Decision found that the record supported a claim that the Federal

Bureau of Prisons ("BOP") had engaged in harassment based on religion, and that Counterclaim Defendant Campbell was entitled to compensatory damages and attorney's fees.

5. On September 27, 2019, the DOJ Complaint Adjudication Office issued a second decision, ordering the BOP provide relief via damages to Counterclaim Defendant Campbell in the amount of $15,000 in non-pecuniary damages and $1,000 in attorney's fees.

6. The BOP directly deposited these awarded damages in Counterclaim Defendant Campbell's bank account on November 6, 2019. (*See* Doc. 14 (Appendix in Support of Defendants Attorney General William Barr, United States Department of Justice, and Federal Bureau of Prisons' Motion to Dismiss) at 6 ¶ 8, 17.)

7. In his first amended complaint, Counterclaim Defendant Campbell seeks *de novo* review of the claims raised in his EEO complaint and the DOJ Complaint Adjudication Office's May 2019 and September 2019 decisions. (Doc. 58, ¶¶ 19, 172, 194.)

8. Counterclaim Plaintiff Attorney General Garland is entitled to an offset against any recovery by Counterclaim Defendant Campbell for the amount of money previously paid to Counterclaim Defendant Campbell during the administrative processing of his Title VII EEO complaint, or alternatively, to a judgment against Counterclaim Defendant Campbell if no liability is found or if the offset is greater than the recovery determined by the Court's *de novo* review. *See Smith v. Principi*, 341 F. App'x 34, 37 (5th Cir. 2009); *Massingill v. Nicholson*, 496 F.3d 382, 385-87 (5th Cir. 2007).

PRAYER FOR RELIEF

Having fully answered Campbell's first amended complaint, Defendant/Counterclaim Plaintiff Attorney General Merrick Garland and Defendant Chaplain William Onuh (in his official capacity) respectfully request that the Court deny Plaintiff/Counterclaim Defendant Casey Campbell any and all relief demanded in his first amended complaint, dismiss all claims asserted in the first amended complaint with prejudice, grant Defendants costs, and grant such other and further relief to which Defendants may be entitled. In the alternative, that Defendant/Counterclaim Plaintiff Attorney General Garland have an offset against any recovery by Plaintiff/Counterclaim Defendant Campbell and judgment against Plaintiff/Counterclaim Defendant Campbell if no liability is found or the offset is greater than the recovery.

Respectfully submitted,

PRERAK SHAH
Acting United States Attorney

/s/ Sarah E. Delaney
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Attorneys for Defendant/Counterclaim
Plaintiff Merrick Garland and
Defendant William Onuh
(in his official capacity)

CERTIFICATE OF SERVICE

On September 8, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Sarah E. Delaney
Sarah E. Delaney
Assistant United States Attorney