No. 05-828

In the Supreme Court of the United States

WILLIAM D. MORRIS, PETITIONER

v.

DONALD H. RUMSFELD, SECRETARY OF DEFENSE

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a federal employee who obtains a favorable administrative decision finding discrimination under the Rehabilitation Act but who is not content with the remedy awarded may file a "civil action" under 42 U.S.C. 2000e-16(c) in district court seeking to challenge solely the amount of damages awarded in the administrative process or instead must litigate both liability and remedy de novo in such an action.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A15) is reported at 420 F.3d 287. The opinion of the district court (Pet. App. C1-C9) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. A16-A17) was entered on August 22, 2005. A petition for rehearing was denied on October 3, 2005. The petition for a writ of certiorari was filed on December 28, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, prohibits covered federal employers (including

petitioner's former employer, the Defense Logistics Agency (DLA)), from discriminating against persons with disabilities in matters of hiring, placement, or advancement, while at the same time recognizing that employers have legitimate interests in performing the duties of their business adequately and efficiently. In 1978, Congress amended the Rehabilitation Act to specify means of enforcement, including making the remedies of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, available to persons aggrieved by violation of the section of the Rehabilitation Act applicable to federal employees. See *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624, 626 & n.1 (1984).

A federal employee who believes he or she is the victim of discrimination in violation of the Rehabilitation Act may present a complaint to the employing agency. See 29 C.F.R. 1614.103, 1614.106. After following specified procedures, which may include the intermediary decision of an administrative judge, the agency issues its final decision disposing of such a complaint. See 29 C.F.R. 1614.109-1614.110. If dissatisfied with an agency decision, a federal employee has two choices. First, he or she may file a de novo civil action in federal district court. See 29 C.F.R. 1614.407(a). Second, he or she may appeal the agency decision to the Equal Employment Opportunity Commission (EEOC), see 29 C.F.R. 1614.401(a), in which case he or she may file a de novo civil action after the EEOC issues its final decision on appeal. See 29 C.F.R. 1614.407(c).

In the Civil Rights Act of 1991, 42 U.S.C. 1981a, Congress expanded the authority of the EEOC to award appropriate remedies, including reinstatement, backpay, and compensatory damages. See *West* v. *Gibson*, 527 U.S. 212 (1999). In so doing, Congress intended to

"encourag[e] quicker, less formal, and less expensive resolution of disputes within the Federal Government and outside of court." *Id.* at 219.

Like a private-sector employee, a federal employee "aggrieved by the final disposition of his complaint" in the administrative process "may file a civil action as provided in section 2000e-5." 42 U.S.C. 2000e-16(c). In *Chandler* v. *Roudebush*, 425 U.S. 840 (1976), this Court explained that the "civil action" conferred in Section 2000e-16(c) "accord[s] a federal employee the same right to a trial *de novo* as private-sector employees enjoy under Title VII." *Id.* at 864. Although the *Chandler* Court did not directly address the question whether a federal employee may limit a court's review to those aspects of an EEOC decision that he or she wishes to challenge, the Court indicated that prior administrative findings are not binding in district court, but may "be admitted as evidence at a federal-sector trial *de novo*." *Id.* at 863 n.39.

Unlike federal employees, federal agencies have no right to challenge adverse EEOC decisions in court. The EEOC's regulations specify that "[f]inal action that has not been the subject of an appeal or civil action shall be binding on the agency." 29 C.F.R. 1614.504(a). See *Gibson*, 527 U.S. at 222. Moreover, so long as a federal employee is not seeking any additional relief beyond that granted in an administrative decision, he or she may go into federal court to "enforce" a binding decision "without risking de novo review of the merits." *Girard* v. *Rubin*, 62 F.3d 1244, 1247 (9th Cir. 1995) (quoting *Haskins* v. *United States Dep't of the Army*, 808 F.2d 1192, 1199 n.4 (6th Cir.), cert. denied, 484 U.S. 815 (1987)); accord *Moore* v. *Devine*, 780 F.2d 1559, 1563 (11th Cir. 1986). However, where a federal employee rejects an EEOC

decision (or an agency's final action), and files a civil action in district court under Title VII, that action prevents the underlying administrative decision from becoming final and "binding on the agency." 29 C.F.R. 1614.504(a). Thus, as the EEOC's regulations make clear, a federal employee who obtains a favorable decision in the administrative process has several choices: (1) accept that decision and the remedy awarded therein; (2) "file a civil action for enforcement" of that decision in district court if he or she believes the agency is not fully complying with it; or (3) "commence *de novo* proceedings" in district court. 29 C.F.R. 1614.503(g).

2. In 2001, petitioner William D. Morris filed a lawsuit under the Rehabilitation Act alleging that his back injury was attributable to the failure of the DLA to accommodate his degenerative back condition. Pet. App. A3. An administrative judge (AJ) concluded that the DLA had discriminated against petitioner for approximately three months in 1992 by failing to accommodate his medical restrictions, and recommended that he be awarded compensatory damages. The DLA issued a final decision rejecting the AJ's determination of discrimination. Petitioner appealed this final agency decision to the EEOC, which reinstated the AJ's determination of discrimination, awarded certain relief, and remanded for a determination of appropriate compensatory damages. After the EEOC rejected the DLA's request for reconsideration, the DLA awarded petitioner compensatory damages of $12,500. *Id.* at A4.

Petitioner filed a lawsuit seeking a jury trial to increase his damages award. Pet. App. A4. In a summary judgment motion, petitioner sought to bind the DLA to the EEOC's finding of discrimination. The district court granted the motion, holding that because the EEOC's

finding of discrimination was made in a separate administrative decision from the DLA's award of $12,500 in compensatory damages, petitioner could challenge the damages award without having to litigate liability. *Id.* at A5.

3. The court of appeals reversed. Pet. App. A1-A15. The court began by observing that petitioner's challenge to the damages award was "not * * * an enforcement action," but rather an action under "42 U.S.C. 2000e-16(c)'s provision for *de novo* consideration of discrimination claims in the federal courts." *Id.* at A7. As such, the court explained, petitioner's federal action could not be limited solely to the issue of damages because the statutory language "contemplate[s] that a judicial remedy must depend on judicial[—]not administrative —findings of discrimination." *Id.* at A10. In particular, the court pointed to 42 U.S.C. 2000e-5(g)(1) (incorporated by reference into the Rehabilitation Act), which authorizes a federal court to provide a remedy "'[i]f the court finds' that discrimination occurred." Pet. App. A10 (quoting 42 U.S.C. 2000e-5(g)(1)).

The court of appeals also observed that petitioner's argument appeared to be inconsistent with this Court's decision in *Chandler*, since a trial de novo "requires the court to decide the issues essential to the plaintiff's claims, including liability, without deferring to any prior administrative adjudication." Pet. App. A10. The court of appeals reasoned that this Court's statement in *Chandler* that prior administrative findings with respect to an employment discrimination claim may be admitted as evidence at a trial de novo regarding such a claim "clearly implies that agency findings, while pertinent for a reviewing court, are not to be regarded as binding on the court." *Id.* at A10-A11.

The court of appeals found additional support for its interpretation of the relevant statutory language in recent decisions of the Tenth and the District of Columbia Circuits, both of which concluded that litigants could not judicially challenge only those parts of an EEOC decision that they believed to be wrong, while seeking to bind the government on those issues resolved in their favor. Pet. App. A11-A12 (discussing *Timmons* v. *White*, 314 F.3d 1229 (10th Cir. 2003), and *Scott* v. *Johanns*, 409 F.3d 466 (D.C. Cir. 2005), cert. denied, 126 S. Ct. 1121 (2006)). The court of appeals rejected contrary decisions from the Fourth Circuit on the ground that they failed "to have distinguished between enforcement actions (which do not provide *de novo* review) and *de novo* actions under § 2000e-16(c)," *id.* at A-13,[1] and contrary dictum from the Ninth Circuit, which included no analysis and appeared to be in tension with other Ninth Circuit precedent. See *id.* at A12-A13 & n.11.

ARGUMENT

Petitioner seeks review of the court of appeals' determination that a federal employee who obtains a favorable administrative decision under the Rehabilitation Act may not file a civil action in district court seeking to challenge solely the amount of damages awarded in the administrative process but instead must litigate both liability and remedy de novo. Pet. 7-16. That decision was correct and does not conflict with applicable case law from any other circuit. In addition, this Court recently denied certiorari in a case, relied on by the court of appeals here (Pet. App. A12), presenting the same issue. See *Scott* v. *Johanns*, 409 F.3d 466 (D.C. Cir.

[1] As noted below, those decisions were recently overruled by the Fourth Circuit, sitting en banc.

2005), cert. denied, 126 S. Ct. 1121 (Jan. 9, 2006) (No. 05-356). A writ of certiorari is likewise unwarranted here.

1. a. The court of appeals properly held that a federal employee who is not satisfied with the amount of damages awarded in an administrative decision under the Rehabilitation Act (which incorporates by reference the cause of action in Title VII) may not seek de novo review of that decision in district court limited solely to the issue of damages. Although federal employees "aggrieved by" an administrative decision (either in whole or in part) may bring a "civil action" in district court, 42 U.S.C. 2000e-16(c), the court may provide a remedy only "[i]f *the court* finds" that the defendant has unlawfully discriminated, 42 U.S.C. 2000e-5(g)(1) (emphasis added).[2] Thus, as the court of appeals correctly recognized, the language of Title VII (incorporated into the Rehabilitation Act) "contemplate[s] that a judicial remedy must depend on judicial[—]not administrative—findings of discrimination, and no other statutory language suggests that this requirement should change if a claimant does in fact present an administrative finding

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[2] That provision provides, in relevant part:

> (g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders
>
> (1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay * * * , or any other equitable relief as the court deems appropriate.

42 U.S.C. 2000e-5(g)(1).

of liability to the court." Pet. App. A10. Under petitioner's theory that administrative findings of discrimination are binding in a civil action in which the employee challenges only the administrative remedy he received, "judicial * * * findings of discrimination" would not only be unnecessary but precluded. That result is contradicted by the plain language of the statute.

Petitioner's position is also inconsistent with this Court's decision in *Chandler* v. *Roudebush*, 425 U.S. 840 (1976). *Chandler* demonstrates in at least three additional ways that federal employees may not pick and choose among favorable and unfavorable findings in the administrative process by seeking limited de novo review of the remedies awarded while simultaneously treating prior liability findings as conclusive in district court. First, *Chandler* states that the civil action authorized by Section 2000e-16(c) is a "trial *de novo*." *Id.* at 846. That term is generally understood to encompass a new trial on the merits of the entire case, in which a court is not bound by prior findings. See *id.* at 853-854, 861 (referring to trial de novo as "plenary trial[]" and rejecting a reading of the term "civil action" that would permit "fragmentary *de novo* consideration of discrimination claims where appropriate") (internal quotation marks omitted); *Timmons* v. *White*, 314 F.3d 1229, 1233 (10th Cir. 2003) (citing definitions of "trial de novo" in cases and *Black's Law Dictionary* 1512 (7th ed. 1999)); Pet. App. A10. Second, *Chandler* makes clear that Section 2000e-16(c) "accord[s] a federal employee the same right to a trial *de novo* as private-sector employees enjoy under Title VII." 425 U.S. at 864; accord Pet. App. A7. That principle would be undermined if federal employees could treat the favorable components of administrative decisions as binding in district court and liti-

gate only the unfavorable determinations, because private plaintiffs do not typically obtain any administrative resolution of their claims prior to arriving in district court and thus must litigate both liability and remedy.

Third, allowing federal employees to seek review in district court limited solely to damages would be inconsistent with the *Chandler* Court's statement that "[p]rior administrative findings made with respect to an employment discrimination claim may, of course, be admitted as evidence at a federal-sector trial *de novo*." 425 U.S. at 863 n.39. See *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino*, 501 U.S. 104, 112-113 (1991) (citing *Chandler* for proposition that "[a]dministrative findings with respect to the * * * claims of federal employees enjoy no preclusive effect in subsequent judicial litigation"). As the court of appeals recognized, "[i]f agency decisions were intended to have any binding effect, the Court's observation [that such administrative findings may be admitted as evidence] would have been superfluous." Pet. App. A11.

b. Petitioner makes several attempts (Pet. 7-16) to overcome the plain language of Title VII and *Chandler*. None has any merit. He argues first that requiring a federal employee seeking enhanced damages to face a trial de novo of the entire case "would tend to undermine the remedial scheme of [the statute]," under which EEOC decisions are binding on federal agencies, Pet. 12, and allow agencies to force employees into court simply by awarding "ridiculously low" compensatory damages. Pet. 13. But the de novo nature of the trial available under the Rehabilitation Act does nothing to undermine the EEOC's authority or to force employees into court because the employee always has the option of appealing an agency's award of damages to the EEOC,

see 29 C.F.R. 1614.401(a), and the EEOC's decision is *binding* on the agency, unless *the employee* decides to file a lawsuit, 29 C.F.R. 1614.504(a). It is petitioner here who circumvented the EEOC by choosing to file an action in district court, rather than appeal the agency's award of damages to the EEOC. Most importantly, in making his statutory argument, petitioner never even addresses the statutory language, quoted above, that requires a *judicial* finding of discrimination in order to obtain judicial remedies. See 42 U.S.C. 2000e-5(g)(1) (reproduced in note 2, *supra*).

Next, petitioner contends that the court of appeals misread *Chandler*'s statement that "[p]rior administrative findings made with respect to an employment discrimination claim may, of course, be admitted as evidence at a federal sector trial *de novo*." *Chandler*, 425 U.S. at 863 n.39 (quoted in Pet. 13-14). Petitioner asserts (Pet. 14) that the court of appeals was wrong to read that statement to indicate that administrative findings are not binding on a federal court because, by also stating that "many potential issues can be eliminated * * * in the course of pretrial proceedings," 425 U.S. at 863 n.39, the *Chandler* Court suggested that administrative findings may be treated as binding in motions for summary judgment. That reading of *Chandler* is untenable. If the liability findings have preclusive effect at the pretrial stage, then there would be no basis for litigating liability at a trial de novo and treating the liability findings merely as "evidence."

2. Petitioner asserts (Pet. 7) that the circuits are divided on the question presented. That is incorrect.

There is a consensus among the courts of appeals that have recently addressed the question that federal employees who have obtained favorable liability findings

in the administrative process under Title VII (or the Rehabilitation Act) may not seek de novo review in district court limited solely to the question of damages. In addition to the decision by the Third Circuit below, the Fourth, Tenth, Eleventh, and District of Columbia Circuits have recently issued published decisions holding that federal employees who have prevailed in the administrative process under Title VII may not tailor a civil action in federal court solely to a request for enhanced remedies. See *Laber* v. *Harvey*, No. 04-2132, 2006 WL 348289 (4th Cir. Feb. 16, 2006) (en banc); *Ellis* v. *England*, 432 F.3d 1321 (11th Cir. 2005) (per curiam); *Scott* v. *Johanns*, 409 F.3d 466 (D.C. Cir. 2005), cert. denied, 126 S. Ct. 1121 (2006); *Timmons*, *supra*. No court of appeals (or district court) has rejected or even questioned the analysis in these decisions, and this Court recently denied a petition for certiorari on the same question presented here in *Scott*. 126 S. Ct. 1121 (2006).

Petitioner thus relies exclusively (Pet. 4, 7) on claims of conflict with older decisions in various circuits. However, a close examination of these cases reveals no conflict. The conflict that the petition suggests between the decision below and the Fourth Circuit's decisions in *Morris* v. *Rice*, 985 F.2d 143 (1993), and *Pecker* v. *Heckler*, 801 F.2d 709 (1986), was recently resolved by the Fourth Circuit itself, which expressly overruled both *Morris* and *Pecker* in the en banc decision in *Laber*, *supra*. Indeed, the Fourth Circuit expressed its agreement with the decision below and held that "in order properly to claim entitlement to a more favorable remedial award, the employee must place the employing agency's discrimination at issue." *Laber*, 2006 WL 348289, at *12.

Petitioner's reliance (Pet. 4) on *Moore* v. *Devine*, 780 F.2d 1559 (11th Cir. 1986), is also misplaced. The Eleventh Circuit recently stated that other circuits had erred in reading *Moore* "to allow fragmentary *de novo* review of suits brought, not to enforce an EEOC decision, but rather seeking *de novo* review of that decision." *Ellis*, 432 F.3d at 1325. The Eleventh Circuit unequivocally stated that "we do not read *Moore* as permitting such fragmentary *de novo* review," and held that federal employees may not bring suit under the Rehabilitation Act seeking solely to challenge the amount of damages awarded in the EEOC administrative process. *Ibid.*

Petitioner's reliance (Pet. 4) on *Girard* v. *Rubin*, 62 F.3d 1244 (9th Cir. 1995), is similarly unavailing. *Girard* did not hold that liability findings in an administrative decision are binding in a damages-only trial in district court; it held only that the government waived a timeliness defense by failing to appeal a prior (and separate) EEOC decision that the complaint was filed within the statute of limitations. *Id.* at 1247. Indeed, in an unpublished decision, the Ninth Circuit underscored the limited reach of *Girard* while affirming a district court holding that a jury was not bound by prior administrative findings favorable to a plaintiff in a "trial de novo" under Title VII. See *Friel* v. *Daley*, No. 99-15733, 2000 WL 1208197, at *1 (Aug. 24, 2000) (230 F.3d 1366 (Table)) ("It is one thing to say that the government loses an affirmative defense by failing to appeal an adverse administrative ruling; it is far different to say that the plaintiff is relieved of proving all the elements of his claim."). Likewise, in a recent published decision, the Ninth Circuit treated the question whether administrative liability findings are subject to de novo review as an open question in that circuit. See *Farrell* v. *Principi*,

366 F.3d 1066, 1068 n.2 (2004) (comparing *Morris* v. *Rice*, *supra*, with *Timmons*, *supra*, and reserving judgment on the issue).

Finally, petitioner asserts (Pet. 4) that the court of appeals' decision in this case is in conflict with *Haskins* v. *United States Department of the Army*, 808 F.2d 1192 (6th Cir.), cert. denied, 484 U.S. 815 (1987). But in *Haskins*, the Sixth Circuit expressly noted that, where an employee seeks de novo review of his discrimination claims, "the district court is not bound by the administrative findings." *Id.* at 1199 n.4. See Pet. App. A12 (distinguishing *Haskins*).[3]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[3] While the *Haskins* court did state that "the factual findings underlying an administrative liability determination must be accepted by the district court if the plaintiff so requests," 808 F.2d at 1200, that statement was made in the context of a case in which the government "did not challenge the liability determination," *ibid.*; see *id.* at 1195 (noting that "the district court granted [the employee's] motion for partial summary judgment on the question of Title VII liability since the Army had 'admitted discrimination against the plaintiff' "). In this case, by contrast, the government has contested liability.