

Description	Judge: Jason Lidyard Court Monitor: Michael Roybal		
Date	10/14/2021	Location	FTR COURTROOM 11
Time	Speaker	Note	
2:36:32 PM		Andrew Sterling Butters, et al. v. Thomas Mason, et al. D-132-CV-2021-00084 Hearing: Appearances: DeNiro// Jonathan Niener// Sarah Sanchez/ Michael Weil	
4:04:54 PM	Court	Recalls case and appearances	
4:06:09 PM	Niener	They got a request for judicial notice yesterday, at the same time they were preparing their response. Would like to make a few points. Its the cases in the courts response.	
4:08:22 PM	Court	they were cases that were on point that he was able to research.	
4:08:44 PM	Niener	There was one very important distinction. The other case the plaintiffs were given the option to be masked or be vaccinated. That was not offered here. There was only to be vaccinated or fired. This case is an outright mandate. There are two percent of people were granted the exemptions.	
4:11:31 PM	Court	There is a continuance theme were they discuss Jacobson case and ask for exemptions. Reads case law and cites cases.	
4:13:59 PM	Niener	Jacobson case, there were exemptions. That is why the court was willing to go to a rational basis. There were using a vaccine that was used in the 18th century. There is no constitutional right to education. There is a constitutional right to employment with out violation.	
4:16:04 PM	Weil	During counsels presentation, counsel presented a summary of alleged facts. They disagree with almost all facts. To be clear triad issued a litigation poll. It did not issue this based upon the request by any entity. It did so on its own without any outside influence. They instituted the vaccine requirement to reduce health risks to its employees. The family and friends of the 5 employees who died would appreciate this. Triad issued a vaccine mandate with both medical and religious exemptions. They are asking for relief for all employees. Plaintiffs counsel's presentation underscored the nature of this. An offense to an employees own conscious is not enough for a religious exemption.	
4:22:40 PM		In the papers there is a strong basis to apply to plaintiffs requests. A similar mandate had already been in effect. The plaintiffs have not met the burden of earning an injunction. Both side agreed that loss of employment is not enough to award. The only harm that the plaintiffs is alleged is that Triad is a state actor. this is a good way to pivot.	
4:26:38 PM		they do not have harm to the constitutional rights. The court can deny the motion. Irrational basis, case law found it is a rational basis. To the extend that Jacobson to be overrulled is for another court to rule that. The weight of the authority	
4:31:29 PM		The next claim is for the NM Human Rights Act, there are three basic claims: Religious discrimination claim, triad has granted all but 1 religious exemption, they have to go on a leave of absence. Triad did not reach that decision lightly. Looking at the responsibilities of employees, drug	

		testing and other reasons for people to be onsite. The only thing to do was to keep on leave without pay. Employees are likely to get their jobs back. They will maintain their seniority. If they were to get a new job with higher pay then were would not be any harm done.
4:35:26 PM		The law does not require TRIAD to grant the accomidations they want. The alternative would create an undo hardship. This would create a risk to other employees, the labs.
4:36:55 PM	Court	NM Human Rights Act is the reason of reasonable accomidations.
4:38:40 PM	Weil	Reasonable accomidation does not need to be one that everyone likes. Medical accomidations TRIAD closely follows the CDC guidelines. Dr. P consulted with CDC and medical experts and the employees own doctors. Where she could she granted the exemption. They are asking the court to second guess the CDC and FDA.
4:40:16 PM		There was no evidence admitted to support the retaliation claim. The impact to the lab and other employees is immense if they do not take the proper steps. Unless the court has any questions will submit on that.
4:42:49 PM		The policy takes effect tomorrow that employees need to be vaccinated. Tomorrow close of business
4:43:38 PM	Niener	Deft tried to associate the other case with this case. Those regulation were in place for a long time before the court addressed the plaintiffs claims. The status quo is that the plaintiffs work at LANL. On the issue of Jacobson still being good law, quotes supreme justice. They have submitted expert data. United States Congress wants to speak with him. Submitted affidavit from Richard Flemming. Deft have not submitted any experts. They have submitted expert testimony. The vaccinated dont remove a virus. LANL does not make any claims that the 5 who died were not vaccinated. Vermont has 75% of deaths were vaccinated people. The evidence is clear that vaccinated people do spread COVID 19. People who were sent home, got to work from home. LANL did not lose any time of work. They dont have any idea of any experts that Dr. P spoke to.
4:53:02 PM	Weil	Each situation is different, if more information was needed the employees were able to provide additional information. This was a thoughtful process for each request.
4:55:07 PM	Niener	The person has the right to decide what medical treatment, what is going to be injected into their body, case law is very clear on that. NM case law states that public policy includes decision by court, constitutional laws and provision. By requiring people to get the vaccine, it is a retaliory discharge. They can not mandate it because it is still under emergency use. Their job is their livelihood. They have skills that only LANL can use. Does not think this is a private company.
5:04:36 PM		There is a case where the plaintiff sued the prison and the courts decision was that they could keep the injuctive relief. If you look at those cases
5:06:57 PM	DeNiro	Page 21 of TRIAD response paragraph 4- READS PARAGRAPH. There is beyond a constitutional violation, they are different than lawyers and doctors. The have clearances that lawyers and doctors dont have. Losing the security clearance, they cant get back. That is harm to the plantiffs, some are required to retire early. It comes down to JAB or NO job. If those who are seeking religous, they feel like they would sin if they took

		the job. These are things that can not be overlooked lightly. Leave without pay is not a reasonable accomidation. There is a risk of National Security as it is confidential and can not state at this time. There is an active investigation at this time.
5:14:38 PM		They are being fired for exercising their religoin. Reads the NM Bill of Rights. There is a constitutional aspect that needs to be looked at. Everyone who is submitted a religous exemption is being fired. Several plaintiffs have had covid and they have had ammunity past 30 days. Dr. P gave an exeption to allow someone to go out of state and not have to quarentine, due to ammunity. Dr. P is picking and choosing who she gives ammunity exeptions to. United Airlines case there was an order entered a few days ago, and there is a TRO issued against United Airlines from putting their employees on leave without pay. Asking for the same relief until an evidentiary hearing. Asks for TRIAD to allow any employee to submit an exemption if have not done so yet, and appeal and denied exceptions.
5:23:04 PM	Court	Does appreciate everyone coming here today and the mandate being effective close of business tomorrow. Parties to report tomorrow by 08:00 am for ruling.
5:23:46 PM		In Recess

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