

## ***Reasonable Accommodation Denied to Jewish Applicant by Department of Defense***

On 11/22/2022, a Second Amended Complaint was filed by Jeffrey Podell, a resident of the Eastern District of Pennsylvania and practitioner of the Jewish religion.

In a 59-page, 289 paragraph Complaint Podell sets forth that he applied for various positions within the Department of Defense but was required to complete the first phase of pre-employment processing on a Saturday. Notwithstanding a January 20, 2021, Presidential Executive Order, 13985, with respect to advancing racial equality and support for underserved communities through the federal government, the government takes the position in dealing with Podell that it could not and would not offer a reasonable accommodation.

Mr. Podell's Complaint involves employment discrimination, retaliation, equal protection, and due process violations based on membership in the legally protected class of a practitioner of the Jewish religion. It is alleged that the Defendants have engaged in a pattern and practice of direct and/or constructive discrimination and retaliation against Plaintiff when he, an otherwise qualified applicant, on multiple occasions, sought a reasonable accommodation for an alternative testing date in order to not violate his sincerely held religious beliefs. Podell's Complaint claims that at no time did Defendants dialogue, interact, and offer Plaintiff a mutually agreeable reasonable accommodation of Plaintiff's religious requirements. Instead, says Podell, Defendants abdicated their responsibilities to obey and enforce the laws and regulations for the prevention of discrimination and attempted to blame each other for their failures. He further claims that key Defendants acknowledged under oath that they never grant reasonable accommodations for Saturday Sabbath observers. In addition to damages, Plaintiff seeks to change the way Defendants function in connection with reasonable accommodations for religious needs through Declaratory and Injunctive Relief.

The parties sued are Lloyd J. Austin, III, Secretary of the United States Department of Defense; Frank D. Whitworth, III, Director of the National Geospatial Intelligence Agency; Frank Kenny, Chief of Police, National Geospatial Intelligence Agency Police; Richard Weiss, Assistant Chief of Police, National Geospatial Intelligence Agency Police; Jason Tinnin, Major of Police, National Geospatial Intelligence Agency Police; Wesley Lee Jordon, Lieutenant of Police, National Geospatial Intelligence Agency Police; Marcus Dwayne Jackson, Lieutenant of Police, National Geospatial Intelligence Agency Police; Jesse McNeil Lieutenant of Police, National Geospatial Intelligence Agency Police; Marcel Young, Lieutenant of Police, National Geospatial Intelligence Agency Police; and Larence Dublin, Corporal of Police, National Geospatial Intelligence Agency Police.

The United States of America on behalf of all Defendants has filed a Motion and Memorandum of Law in Support of Defendants' Motion to Transfer Venue and for Partial

Dismissal. Defendants take the position that the case should be heard not in the Eastern District of Pennsylvania where Mr. Podell lives but rather in the Eastern District of Virginia. The Defendants also ask the court to find that Mr. Podell failed to state a claim which relief could be granted and that Podell's claims of the United States Constitution are preempted by Title VII of the 1964 Civil Rights Act. The government further claims that the United States Court of Appeals for the Third Circuit precludes Podell's claim under the Religious Freedom Restoration Act, although the government admits that the Department of Justice is not seeking to enforce Third Circuit Authority. The United States takes the position and that Podell failed to exhaust a hostile work environment claim, does not state a hostile work environment claim, and that Podell failed to exhaust a claim for retaliation. It is alleged that Podell's retaliation claim should be dismissed because he failed to allege a causal relationship between protected conduct and an adverse personnel action. Finally, The United States of America takes the position that the court should dismiss all Defendants except for Secretary Austin, notwithstanding claims of individual behaviors on their part pertinent to the claims.

The argument made by the government is in contradistinction to reasonable accommodations made for a variety of other groups including Sheiks, Muslims, Christians, and the like. The Complaint relates that an EEOC investigation utilized interviews and written interrogatories which confirmed that the Department of Defense officials did not and would not abide by the requirements in the law to offer a reasonable accommodation to Mr. Podell.

The Court, per Judge Joel H. Slomsky, United States District Court for the Eastern District of Pennsylvania, held lengthy argument on the government's motion and the response of Podell's attorney, Clifford A. Rieders, Esquire, on April 26, 2023. The Court did not issue a ruling but rather indicated that it would have a transcript prepared and that the parties could respond within 30 days with further briefing if they wish.

Those interested in additional information may check the docket on the PACER Portal at 22-cv-3505.

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