UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:25-cv-10685-WGY

AMERICAN ASSOCIATION of UNIVERSITY PROFESSORS, et al,
Plaintiffs

vs.

MARCO RUBIO, in his official capacity as Secretary of State, et al,
Defendants

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For Hearing Before:
Judge William G. Young

Status Conference

United States District Court
District of Massachusetts (Boston.)
One Courthouse Way
Boston, Massachusetts 02210
Thursday, May 22, 2025

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P R O C E E D I N G S

(Begins, 2:45 p.m.)

THE CLERK: The Court will now hear Civil Action Number 25-10685, the American Association of University Professors, et al versus Marco Rubio, et al.

THE COURT: Well good afternoon counsel. I have allowed internet access to this hearing, and so it's appropriate that I say, if you are attending this hearing via the internet, the rules of court remain in full force and effect, that means there is no taping, streaming, rebroadcast, screen shots, or other transcription of these proceeding.

I'm going to go first, because I think we're off on an unfortunate wrong course procedurally. I'm not talking about substance, I'm talking about procedure.

Now this was billed as a status conference. My understanding of status conferences is just a time to touch base, see generally how things are going, and not entertain matters of substance. I confess I was surprised, on the day preceding the conference, to receive the defense's motion for a protective order, which I had not known was coming, and, um, I will say, Mr. Kanter, if it was thought that I was going to entertain this motion today, that is most assuredly not a status conference and I would not have allowed you to

appear remotely. But then I reflected on it and it's clear, looking at the papers, there was no such intention that I would, um, entertain this. But we'll understand that it's not my practice just to hold status conferences and I think it's necessary that I enter some further and more precise orders as to how we're going to -- how we're going to proceed.

Now the plaintiffs promptly, um, files two letters. First of all, letter practice is inappropriate in this court, only motions and oppositions to motions are the way to communicate with the Court. No other way. I do not -- I don't want to be pompous, I was going to say I do not receive letters, but obviously I received these, I read them, and I'll docket them, their briefs, but no more. You file a proper opposition, if you have a wanting opposition, and then you, um, brief it.

Also, one of the two letters just bleats about defaults in discovery. I'm not going anywhere. The Rules of Civil Procedure allow you to file motions. I am very sensitive to the need for expedition in this case. By collapsing the preliminary injunction with trial on the merits, I did not for a moment suggest, and no party should think I did, suggest that we would somehow just put this on the list somewhere and then it

would pop up someday down the line.

Plaintiffs filed a motion for a preliminary injunction, they sought emergency relief from the Court. Yes, I collapsed it with trial on the merits because I want -- I want evidence, I want to know exactly what happened to make a prudential ruling. It was the second letter, which I'm treating as an opposition, that in effect briefed the matter.

So going forward, here's how we're going to proceed. If any party needs to communicate by the Court, they'll do it by motion. All motions in this case are considered emergency motions, from the very fact that the case is going to go to trial, to the extent a trial is appropriate, um, no later than July. Opposition to motions will be filed 3 business days thereafter.

It's perfectly appropriate to ask for an oral hearing on a motion. Candidly I don't normally give oral hearings on motions. So, um -- but I decide them promptly. And you understand, until August, I hope to take some time in August, but I'll be here, and I try to stay on top of my docket.

Now let's turn -- because I have this pile of papers in front of me, and I don't suggest, though it can be argued, I don't suggest that the defendants'

motion is interposed for the purpose of delay, but it's not inappropriate for me to say that, given the very thorough, um, case-management conference I have held in this case, that it comes as a surprise that these matters are being raised so late in the case. This sort of argument for a protective order is something that the defendants' public officials should have understood from the very get-go.

Nevertheless, I'm going to give it an oral argument. Not this afternoon. I would be subjected to being blindsided if I did that, and I won't do that. But I'm going to make the following observations.

The defendants' motion is not ripe. The time -- well either it's been waived, because it comes so late and one would have expected that the defense would have raised these things when we were talking about case management, but I'm not going to deny it on those grounds, I'm going to entertain it on the merits. But all parties should understand that, for one thing, this is not only a case under the Administrative Procedure Act, but to the extent that it is a case under the Administrative Procedure Act, it is the obligations of the defendant public officials to produce the administrative record. It will be produced no later than noon, Thursday, May 29th, that's a week from today.

The full administrative record on which the defendant public officials rest, for the defense of this matter, to the extent there is an administrative record, will be produced, and the Court will look at it.

On Monday, the 2nd of June, at 11:00 -- I assumed you would like 11:00 because some of you are out of town and that will give you a chance to be here, we'll hold oral argument on the defendants' motion for a protective order, et cetera. That takes us -- that's how we're going to address that motion. And I express no opinion on the merits of the motion. Well I have, because I think, and I am confident in saying so, that this case goes well beyond any claim under the Administrative Procedure Act.

Fortunately I have the, um, interrogatories and requests for, um, production and I've reviewed them. I don't give argument on discovery requests, though it is open to the defense to, um, interpose written objections, but I will say in general the discovery requests are not inappropriate, but as I look at it, it, um, uses the term "targeted noncitizens." I would have hoped you would have agreed. You did not. The Court orders that you get 5 of these, not the number you want, but only 5.

In other respects, it appears that this -- these

requests are in order, and while the Court must rule on any objections that there may be, um, they've been filed, um, and I -- they're running, and, um, I will decide the motion for a protective order before answers and production is due. But to the extent I deny the motion for a protective order, I expect full production and timely, I don't expect to give extensions of these discovery requests.

Now that takes care of everything I wanted to say. Let's turn to the plaintiffs. And, um, first, I said you could have 5. Who do you want?

MR. BIALE: Your Honor, if we can have a moment to confer to answer that question?

THE COURT: You can.

MR. BIALE: And let me say, your Honor, my apologies for the informality of the letters, we wanted to keep the Court informed, but we appreciate the --

THE COURT: Well these letters are grammatically correct, it doesn't take long to put a caption on it. This Court -- and this is not some idiosyncrasy of this session, we don't go for letter practice in Massachusetts. Make oppositions, make motions, attach affidavits, that's what the Rule of Civil Procedure request.

MR. BIALE: Fair enough, your Honor.

THE COURT: All right, you may take a moment.

Mr. Kanter, any question about the Court's orders?

MR. KANTER: Um, no. I understand that, um -- first, thank you for entertaining the government's motion. I fully understand the Court's admonition that, um, this is a status conference and not an argument, so I won't argue, um, the motion today.

I am in receipt of the plaintiffs' letters, um, the two that the Court mentioned as well. I do have a comment about one of them, which is to say not the one, um, relating to the defendants' motion for a protective order, but the other letter. But I will comment at the appropriate time. Thank you.

THE COURT: I fully respect your answer and I understand it.

I've been a judge for a long time, I've heard a lot of letters and a lot of motions, since that's how we do it, whining about conduct with respect to discovery. I take all of that with a grain of salt, people are entitled to be advocates. But everything I said in the case-management conference governs. I expect full compliance and fulsome discovery of all these matters, which reminds me of one other matter. But now back to the plaintiffs.

Which 5?

MR. BIALE: So we've conferred and the 5 that we selected are Mahmoud Khalil, Mohsen Mahdawi, Rumeysa Ozturk, Yunseo Chung, and Badar Khan Suri. And I'll provide the spelling of those names to the Court Reporter.

THE COURT: They're in the motion, and I can give them to the Court Reporter. Thank you.

Questions? Any questions about the Court's orders?

MR. BIALE: No, your Honor, and I think --

THE COURT: All right.

MR. BIALE: To the extent we have any more questions, we will raise them in a formal motion.

THE COURT: Thank you. But there is one matter that I overlooked.

In your substantive letter you point out that -- and at least as I listen to the news and read the newspapers, certain of the documents that the plaintiffs request be produced are -- have been identified in other litigation. As to those, without resolving whether I can go beyond -- though I will tell you, Mr. Kanter, my instincts are I can, I want those documents produced in this case by noon next Thursday.

All right. If there are no other questions?

MR. KANTER: I do, I have a question, your Honor.

THE COURT: Yes, sir.

MR. KANTER: Because I both listened to the last case-management conference, your comments at the start of this hearing, and I also studied the transcript, and I note that your Honor asked the plaintiffs to focus on three such cases, and plaintiffs served us with a request, they added 6 to the 3 and asked us for all --

THE COURT: Now they're down to 5. Now they're down to 5.

MR. KANTER: Yes. And I, um -- with the -- um, in the spirit of the Court's -- um, like we're talking, having a cup of coffee, sharing thoughts, rather than argument, it seems that, um, they raise the price, are given a discount, and have come out ahead. And --

THE COURT: Mr. Kanter --

MR. KANTER: Yes.

THE COURT: We were sitting down having a cup of coffee the last time we met. Now you people aren't agreeing.

MR. KANTER: Right.

THE COURT: I can resolve disagreements. To the extent I am confident in resolving it on the record I have before me, I've resolved them. I'm going to give you a full and fair hearing on your motion. We'll proceed by motions.

MR. KANTER: Thank you, your Honor.

THE COURT: I've ordered 5. I'm satisfied with 5. Any other questions?

MR. BIALE: I did have one question, your Honor, about trial procedure, if you would entertain that now?

THE COURT: Yes.

MR. BIALE: Certain of our witnesses may be out of the country at the time that we've set for the trial and we wanted to know if the Court would entertain remote testimony by one or two, hopefully not more than that, but it's --

THE COURT: It's much -- assuming we get there, I'm sensitive to what Mr. Kanter has raised in his motion, and be clear, I'm not going to be entertaining an argument that this motion that is pending before me has been waived or is out of time. I'm not going to allow delay, but I'm going to entertain the motion on its merits.

So -- but we should be doing the types of things you're talking about and I will entertain those questions. I assume it's a trial with witnesses, at least on some counts or to some extent or the like. I prefer agreement. If there isn't agreement, there are the Federal Rules and local rules that deal with matters like that. As you can see, this courtroom is

well-equipped to handle that. I am familiar with it. Live testimony is always to be preferred. I earlier said, and I'll simply reiterate, that jury-waived, I'm comfortable with taking matters out of order to accommodate witnesses. A good question.

MR. BIALE: Okay, thank you, your Honor.

THE COURT: Yes.

Other questions?

(Silence.)

THE COURT: Now I don't want us to get off on the wrong foot and, um, Mr. Kanter, I do this to accommodate you, and we've kept it down to just the matters I wanted to deal with, and I appreciate that. You're at a disadvantage -- well sort of functionally --

MR. KANTER: Yes, your Honor.

THE COURT: -- at a disadvantage by being at a distance, and I regret that, but that's what you wanted. I hope we can get back on track. Agreement is much to be preferred. They'll be no delays -- they'll be no delays in the Court's rulings. Um, cases, of course, can be resolved. Lincoln resolved many and he was a great trial lawyer. It is --

MR. KANTER: Your Honor, I do have --

THE COURT: Yes?

MR. KANTER: Your Honor, I do have a question, and

it relates to, um, the plaintiffs' letter, and I take the Court's, um, words that you take it with a grain of salt, but I do want to say something about the Court's instructions to us to collaborate over the course of two weeks. And I believe we did, I believe we collaborated well. And I raised the prospect of filing a protective order earlier than stated in this letter. That there's an error in the letter in that regard. And I can point it out, but I -- I'll take the Court's pulse on that. But I think that our general approach has been what kind of discovery will get us to trial within 6 weeks?

THE COURT: That's what I want.

MR. KANTER: Yes. And the Rule 26 proportionality principle therefore is very much in play. Our view frankly is --

THE COURT: You're arguing, Mr. Kanter. Respectfully, you can argue it in writing.

MR. KANTER: I want to be aspirational, which is that the rhetoric -- even if the discovery requests are disproportionate, the rhetoric should not be disproportionate to reality or the facts. And I just have to take exception to some of the very strong words, including "bad faith," that my colleague, my counterparts have used in this letter, um --

THE COURT: Mr. Kanter -- Mr. Kanter, I interrupt

you -- I interrupt you, because this is not, um, having heard you, now I'll give them equal time. I've been doing this a long time. You're saying things that respectfully I would expect you to say. Normally I am fully content with getting all these things in writing, and then I decide them.

Now the extent to which you can agree is manifest by agreement. When you can't agree, you set your best foot forward as advocates and I decide. I'm not loathe to decide. And taking exception to rhetoric, I'm used to rhetoric, I said I'd take it with a grain of salt. I'm not saying anyone, I'm not making any finding of bad faith or making that suggestion. I expect to go to trial, to adjudication anyway, of these matters as designated. That's where I'm driving, in an evenhanded fashion. There's no need to argue.

It's good to see you. And it's good to see you, Mr. Kanter, if only virtually.

We'll recess.

(Ends, 3:15 p.m.)

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the forgoing transcript of the record is a true and accurate transcription of my stenographic notes, before Judge William G. Young, on Thursday, May 22, 2025, to the best of my skill and ability.

/s/ Richard H. Romanow 05-28-25
_____
RICHARD H. ROMANOW Date