



By order of the Court, Associate Judge Wesley M. Bogdan



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**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<b>In the Matter of:</b>	)	<b>CIVIL CASE NO. 23-0002</b>
	)	
<b>JOSEPH N. TAISAKAN,</b>	)	
	)	
<b>Petitioner,</b>	)	<b>ORDER AFFIRMING CIVIL SERVICE</b>
	)	<b>COMMISSION DECISION AND</b>
<b>v.</b>	)	<b>DISMISSING PETITION</b>
	)	
<b>WALLY VILLAGOMEZ, in his official</b>	)	
<b>capacity as Commissioner of the</b>	)	
<b>Department of Corrections,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

**I. INTRODUCTION**

**THIS MATTER** came before the Court on August 22, 2023 at 10:00 a.m. in the CNMI Superior Court, Guma’ Hustisia, Courtroom 223A for Oral Argument on the merits of Joseph N. Taisakan’s (“Petitioner”) Petition for Judicial Review (the “Petition”). Petitioner was represented by his counsel, Joseph E. Horey. Wally Villagomez, in his official capacity as Commissioner of the Department of Corrections (“Commissioner” or “Respondent”), was represented by Assistant Attorney General Leslie Healer.

Petitioner appeals Respondent’s decision terminating his employment as a Department of Corrections officer and the Civil Service Commission’s subsequent affirmation of that decision. Petitioner filed his opening brief on March 8, 2023. Respondent filed his opposition on March 29, 2023. Petitioner filed a reply on April 13, 2023.

1 Based upon a review of the arguments, filings, and relevant law, and for the reasons stated  
2 herein, the Court **AFFIRMS** the decision of the Civil Service Commission and **DISMISSES** the  
3 Petition.

## 4 **II. FACTS AND BACKGROUND**

- 5 1. Petitioner worked at the Department of Corrections (“DOC”) from 2004 to 2022 and at all times  
6 relevant to this case was employed as a Corrections Officer II.
- 7 2. On February 18, 2021, the Governor issued Directive No. 2021-002 (the “Governor’s  
8 Directive”), which required executive branch employees to get vaccinated against the COVID-  
9 19 virus and provide proof of vaccination.
- 10 3. In lieu of getting vaccinated against the COVID-19 virus, the Governor’s Directive allowed  
11 employees to seek an approved medical or religious exemption.
- 12 4. On February 23, 2021, the DOC issued a memorandum notifying all DOC employees that they  
13 had until March 12, 2021 to comply with the Governor’s Directive.
- 14 5. On April 12, 2021, the Civil Service Commission (“CSC”) issued a bulletin notifying employees  
15 that the time period for compliance had been extended and that they had until April 30, 2021 to  
16 comply with the Governor’s Directive or risk the possibility of termination from employment.
- 17 6. On April 15, 2021, the DOC Commissioner issued a second memorandum stating that all DOC  
18 employees were required to submit their proof of vaccination or request for a medical/religious  
19 exemption by no later than April 30, 2021, in accordance with CSC’s announcement.
- 20 7. Petitioner did not submit any proof of vaccination or request for a medical/religious exemption  
21 by either the original March 12, 2021 deadline or the extended April 30, 2021 deadline.
- 22 8. On October 12, 2021, the Commissioner issued a letter specifically to Petitioner requesting either  
23 proof that Petitioner had registered for the COVID-19 vaccine or a statement of his intent to seek  
24 a medical/religious exemption, to be provided by October 20, 2021.

1 9. On October 14, 2021, Petitioner submitted a letter to the Director of DOC, Georgia Cabrera,  
2 asserting a religious exemption. Specifically, the letter stated: “I am a devout Catholic . . . . My  
3 body is a temple for the Holy Spirit and to corrupt the sanctity of the blood with unnatural  
4 components, not created by the hand of God, is tantamount to a desecration of my beliefs. I  
5 firmly believe that it is my [G]od given right to protect my body from any man made  
6 contaminants that may change and alter my body as it was created from the image of God.”

7 10. On October 15, 2021, the Commissioner responded to Petitioner’s letter with a request for  
8 additional information pertaining to how or why Petitioner’s religious belief prevented him from  
9 receiving the vaccine. The Commissioner sought Petitioner’s answer to thirteen questions,  
10 including:

- 11 - “Does your religious belief prohibit [] vaccination generally . . . [or] prohibit the COVID-19  
12 vaccine specifically?”
- 13 - “What other eating or living habits have you adopted that stem from your religious  
14 convictions regarding protecting your body from any man-made contaminants?”
- 15 - “What other vaccinations have you received, and when?”
- 16 - “What over-the-counter medications or prescription medications have you taken, and  
17 when?”
- 18 - “What reasonable accommodations are you specifically requesting? Describe any alternate  
19 accommodations that might address your needs.”

20 11. Petitioner was asked to provide this additional information by October 21, 2021 or risk  
21 termination.

22 12. On October 22, 2021, Petitioner submitted a response that did not answer any of the  
23 Commissioner’s questions and instead asserted that his original letter from October 14, 2021 was  
24 sufficient to show his sincerely held religious belief.

13. Although nonresponsive to the follow-up questions, Petitioner’s reply did include multiple  
articles discussing, generally, the extent to which an employer may inquire into a person’s  
religious beliefs.

- 1 14. On October 26, 2021, the Commissioner sent a third letter to Petitioner acknowledging  
2 Petitioner's response but informing Petitioner that there was not yet sufficient information to  
3 evaluate the sincerity and religious nature of his request.
- 4 15. The Commissioner reiterated his thirteen questions and asked Petitioner to respond by November  
5 9, 2021 or risk termination.
- 6 16. On November 10, 2021, Petitioner submitted another untimely response repeating what he had  
7 said in his previous letters – *i.e.*, that his belief was sincerely held and that the Commissioner  
8 was going beyond the limit of his ability to inquire into a person's religious beliefs.
- 9 17. Petitioner's response again failed to answer any of the Commissioner's questions, including the  
10 question of what accommodations he is specifically requesting.
- 11 18. On November 24, 2021, Petitioner was served with a "Notice of Proposed Adverse Action  
12 (Termination from Service with Cause)" informing Petitioner that he was being terminated for  
13 failure to comply with the Governor's Directive, in violation of NMIAC §§ 10-20.2-436(a)(2)  
14 & (b) (Code of Ethics), 10-20.2-438 (Policy on Employee Conduct), and 10-20.2-440  
15 (Subordination to Authority).
- 16 19. On January 11, 2022, the Commissioner issued the Appointing Authority's Final Decision on  
17 Adverse Action sustaining the allegations against Petitioner and ordering Petitioner's  
18 termination effective January 14, 2022.
- 19 20. Petitioner timely appealed his termination on January 26, 2022.
- 20 21. On June 28, 2022, the Civil Service Commission held an administrative hearing in response to  
21 Petitioner's appeal.
- 22 22. On December 6, 2022, the Civil Service Commission affirmed Petitioner's termination in its  
23 Findings of Fact and Conclusions of Law ("CSC Decision").  
24

1 23. On January 5, 2023, Petitioner filed the present Petition for Judicial Review in the Superior Court  
2 of the Northern Mariana Islands.

3 **III. LEGAL STANDARD**

4 The Commonwealth Rules of Procedure for Administrative Appeals govern the procedures  
5 and processes to be used in the Superior Court for judicial review of final agency orders or decisions  
6 in contested case proceedings under the Administrative Procedures Act (“APA”), 1 CMC §§ 9101-  
7 15. *See generally* NMI R. P. Admin. App.

8 Under the APA, the Court has the authority to review final agency decisions that are properly  
9 appealed and shall “decide all relevant questions of law, interpret constitutional and statutory  
10 provisions, and determine the meaning or applicability of the terms of an agency action.” 1 CMC  
11 § 9112(f). Specifically, the reviewing court shall:

- 12 (1) Compel agency action unlawfully withheld or unreasonably delayed; and
- 13 (2) Hold unlawful and set aside agency action, findings, and conclusions found to be:
  - 14 (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with  
law;
  - 15 (ii) Contrary to constitutional right, power, privilege, or immunity;
  - 16 (iii) In excess of statutory jurisdiction, authority, or limitations, or short of statutory  
rights;
  - 17 (iv) Without observance of procedure required by law;
  - 18 (v) Unsupported by substantial evidence in a case subject to 1 CMC §§ 9108 and  
9109 or otherwise reviewed on the record of an agency hearing provided by  
statute; or
  - 19 (vi) Unwarranted by the facts to the extent that the facts are subject to trial de novo by the  
reviewing court.

20 1 CMC § 9112(f)(1) & (2).

21 In making the forgoing determination, the court “shall review the whole record or those parts  
22 of it cited by a party, and due account shall be taken of the rule or prejudicial error.” *Id.*

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1 **IV. DISCUSSION**

2 Substantively, there are two issues which can be addressed in the following order: (1) first,  
3 whether the Commissioner’s decision to terminate Petitioner was unconstitutional or otherwise  
4 unlawful; and (2) second, whether CSC’s decision affirming Petitioner’s termination—a decision that  
5 neither party disputes is the final agency action that culminated in this appeal before the Court—was  
6 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 1 CMC  
7 § 9112(f).

8 Under the APA, this Court may hold unlawful and set aside any agency action it determines to  
9 be unconstitutional. *See Premier Ins. Co. v. Commonwealth Dep’t of Labor*, 2012 MP 16 ¶ 14  
10 (“Pursuant to the APA, courts must ‘[h]old unlawful and set aside agency action[s] . . . found to be . .  
11 . [c]ontrary to constitutional right . . . [or] [w]ithout observance of procedure required by law.’”) (citing  
12 1 CMC §§ 9112(f)(2)(ii), (f)(2)(iv)). If the Court determines that the Commissioner’s decision to  
13 terminate Petitioner was in violation of Petitioner’s First Amendment constitutional right to freedom  
14 of religion, then by extension CSC’s affirmance of that decision must be held unlawful and set aside.

15 The appropriate standard of review for this constitutional inquiry is *de novo*. *In re San Nicolas*,  
16 1 N. Mar. I. 329, 333 (1990); *see also Slingluff v. Occupational Safety & Health Review Comm’n*, 425  
17 F.3d 861, 866 (10th Cir. 2005) (noting that the deferential “arbitrary, capricious, [or] abuse of  
18 discretion” standard of review “does not apply to questions of law”); *Chen v. Carroll*, 866 F.Supp.  
19 283, 285-86 (E.D. Va. 1994) (“Under the [APA], courts reviewing agency decisions must consider  
20 questions of law *de novo*.”).

21 If the Court determines that the Commissioner’s decision to terminate Petitioner was not in  
22 violation of his constitutional rights, then the inquiry proceeds to whether CSC’s decision affirming  
23 Petitioner’s termination was nevertheless “arbitrary, capricious, an abuse of discretion, or otherwise  
24 not in accordance with law.” *Pac. Sec. Alarm, Inc. v. Commonwealth Ports Auth.*, 2006 MP 17 ¶ 14

1 (“Agency decisions are reviewed on the basis of an ‘arbitrary and capricious’ standard.”) (citing  
2 *Wileman Bros. & Elliott, Inc. v. Espy*, 58 F.3d 1367, 1374 (9th Cir. 1995)).

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4 Because Petitioner concedes in his reply brief that all administrative procedures were properly  
5 followed during the termination and appeals process below, the Court does not analyze whether the  
6 procedures below were “[w]ithout observance of procedure required by law.” *See* Reply at 8  
7 (“Respondent stresses that the post-termination proceedings before the Commission were procedurally  
8 regular . . . and *Petitioner does not dispute their procedural regularity.*”) (emphasis added).

9 **A. Petitioner’s Termination Was Not Unconstitutional Because It Was Not Based On**  
10 **Petitioner’s Religion Or Even Petitioner’s Request for a Religious Exemption;**  
11 **Rather, Petitioner Refused to Take the COVID-19 Vaccine and Failed to Comply**  
12 **With Reasonable Requests to Substantiate His Claimed Religious Exemption.**

13 The First Amendment to the United States Constitution, which has been incorporated against  
14 the states by the Fourteenth Amendment, guarantees, among other things, the free exercise of religion.  
15 U.S. Const. amend I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Indeed, the Commonwealth  
16 Constitution contains explicit protections for freedom of religion. NMI Const., Art. I, Sec. 2 (“No law  
17 shall be made respecting an establishment of religion, or prohibiting the free exercise thereof;”); *id.* at  
18 Art. I, Sec. 6 (“No person shall be denied the enjoyment of civil rights or be discriminated against in  
19 the exercise thereof on account of . . . religion[.]”).

20 Moreover, Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating  
21 against employees and job applicants based on their religion. *Adeyeye v. Heartland Sweeteners, LLC*,  
22 721 F.3d 444, 448 (7th Cir. 2013) (citing 42 U.S.C. §§ 2000e-2(a)). To make out a prima facie case  
23 of religious discrimination based on the failure to accommodate, a plaintiff must show that: (1) the  
24 observance or practice conflicting with an employment requirement is religious in nature; (2) he called  
the religious observance or practice to his employer’s attention; and (3) the religious observance or

1 practice was the basis for his discharge. *Passarella v. Aspirus, Inc.*, 2023 U.S. Dist. LEXIS 40958,  
2 \*10 (W.D. Wis. March 9, 2023).

3 However, “conclusory assertions of violations of religious beliefs” need not be taken “at face  
4 value.” *Bolden-Hardge v. Off. of the Cal. State Controller*, 63 F.4th 1215, 1223 (9th Cir. 2023). And  
5 a “threadbare reference” to the plaintiff’s religious beliefs cannot satisfy the first element of a prima  
6 facie case for use of a religious exemption. *Gage v. Mayo Clinic*, 2023 U.S. Dist. LEXIS 77304, 2023  
7 WL 3230986, at \*3 (D. Ariz. May 3, 2023).

8 Here, the crux of Petitioner’s argument is that the initial rationale he provided in his first letter  
9 to the DOC requesting a religious exemption to the COVID-19 vaccination mandate was sufficient in-  
10 and-of-itself to show that his belief was truly religious in nature and that it was sincerely held. *See*  
11 *Pet. Opening Brief* at 6 (“[T]here was no objective reason to question the religious nature of Mr.  
12 Taisakan’s request. His letter explicitly begins: ‘The intent of this letter is to assert my right to a  
13 religious exemption.’”), 7 (“There was also no objective reason for either the Commissioner or the  
14 CSC to question Mr. Taisakan’s sincerity.”).

15 Based upon Petitioner’s assumption that the religious nature and sincerity of his belief was  
16 obvious on its face, Petitioner reasons that the Commissioner was not entitled to ask any questions or  
17 seek any supporting information and instead should have granted Petitioner’s request as-is. Petitioner  
18 argues that the Commissioner’s failure to accept his response, and his subsequent decision to terminate  
19 Petitioner, violated his right to freedom of religion.

20 However, Petitioner’s argument is somewhat circular. It assumes the truth of his claimed  
21 entitlement to exemption from the COVID-19 vaccination mandate, which was his initial burden to  
22 establish. On appeal, Petitioner concedes that an employer may seek additional supporting  
23 information where he has an “objective” basis for questioning either the religious nature or the  
24 sincerity of a particular belief, but denies that the Commissioner could have had any objective reason



1 to question either of these things with regard to Petitioner’s request for an exemption. *See* Pet.  
2 Opening Brief at 5 (citing EEOC, Compliance Manual on Religious Discrimination § 12-I-A-3); *see*  
3 *also Adeyeye*, 721 F.3d at 451 (“If the managers who considered the request had questions about  
4 whether the request was religious, nothing would have prevented them from asking [the employee] to  
5 explain a little more about the nature of his request . . . . [The] law leaves ample room for dialogue on  
6 these matters.”).

7 The Court disagrees with Petitioner’s suggestion that follow-up questions about his religious  
8 beliefs were *per se* unlawful and violated his constitutional rights in the context of a COVID-19 request  
9 for a religious exemption under these facts. As an initial matter, the record shows that the  
10 Commissioner genuinely sought to understand why Petitioner’s Catholic faith prevented him from  
11 receiving the COVID-19 vaccine where, as the Commissioner pointed out in his October 15, 2021  
12 response to Petitioner’s request, “[t]he Vatican’s doctrinal office finds that it is morally acceptable for  
13 Catholics to take vaccines against COVID-19[.]” Certified Record at 117.

14 In addition, the record shows that the Commissioner himself is Catholic, like most of the  
15 population in the CNMI, and that it was his understanding that practicing the Catholic faith was not  
16 inherently at odds with receiving the COVID-19 vaccine but, rather, getting the vaccine was aligned  
17 with the Catholic principle of “pursu[ing] common good, as an act of love especially to protect the  
18 weakest and most exposed.” *Id.*; Transcript at 158. Accordingly, there is evidence in the record to  
19 show that the Commissioner had an objective basis to question the sincerity of Petitioner’s claimed  
20 religious exemption. Petitioner’s refusal to respond to the follow-up questions about the parameters  
21 of his religious beliefs was inappropriate in this context.

22 Persuasive jurisprudence from sister jurisdictions has held that an employee’s request for a  
23 religious exemption from a COVID-19 vaccination mandate can be denied if it is determined that  
24 employee’s belief “lacks authentic religious significance.” *Nogowski v. St. Charles Med. Ctr.*, 2023

1 U.S. Dist. LEXIS 191165, \*6 (D. Or. October 24, 2023) (citing *Tiano v. Dillard Dep't Stores*, 139  
2 F.3d 679, 681 (9th Cir. 1998); *see also Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1180 (9th  
3 Cir. 2021), *reconsideration en banc denied*, 22 F.4th 1099 (9th Cir. 2022) (citing EEOC Guidance).<sup>1</sup>

4         Additionally, in response to the COVID-19 pandemic, the U.S. Equal Employment  
5 Opportunity Commission (“EEOC”) provided Title VII guidance on religious accommodations to  
6 COVID-19 vaccine mandates.<sup>2</sup> EEOC’s guidance provides that, although Title VII prohibits  
7 employment discrimination based on religion, an employee’s request for an exemption from a  
8 COVID-19 vaccination mandate can be denied on the ground that the employee’s belief is not truly  
9 “religious in nature or is not sincerely held,” or on the ground that such an exemption would pose an  
10 “undue hardship” by burdening “the conduct of the employer’s business” through increasing “the risk  
11 of the spread of COVID-19 to other employees or to the public.”<sup>3</sup>

12         This guidance underscores that objections to COVID-19 vaccines “purely based on social,  
13 political, or economic views or personal preferences . . . (including about the possible effects of the  
14 vaccine)” do not qualify as religious beliefs under Title VII.<sup>4</sup> *Cf. Adeyeye*, 721 F.3d at 448 (“[A]  
15 genuinely held belief that involves matters of the afterlife, spirituality, or the soul, among other  
16 possibilities, qualifies as religion under Title VII.”); *see also Passarella*, 2023 U.S. Dist. LEXIS  
17 40958, \*12 (“[T]he court must distinguish between religious belief and other matters of personal  
18 conviction, because *only religious beliefs warrant the heightened protection of the First Amendment*

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20 <sup>1</sup> Even long before the outbreak of COVID-19, the United States Supreme Court recognized that the right to practice  
21 religion freely is not beyond regulation in the public interest, including regulation aimed at reducing the risk of exposing  
the community to communicable diseases. *See Doe*, 19 F.4th at 1181 (citing *Prince v. Massachusetts*, 321 U.S. 158,  
166-67 (1944)).

22 <sup>2</sup> What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, U.S. Equal  
23 Employment Opportunity Commission, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L> (last updated May 15, 2023).

24 <sup>3</sup> *Id.*

<sup>4</sup> *Id.*

1 *or Title VII.*”) (emphasis added). It follows that an inquiry may be conducted where a plaintiff has  
2 failed to establish a prima facie case for use of a religious exemption and an objective basis exists for  
3 questioning the authenticity or sincerity of a claimed religious exemption.

4 For example, in a case involving a prisoner’s request for a special diet on the basis of his  
5 religion, the Seventh Circuit found that it was not unreasonable for a prison chaplain to conduct an  
6 inquiry into the sincerity of the prisoner’s claimed religious belief where the belief represented a  
7 departure from the orthodox beliefs of the prisoner’s faith:

8 A prison is entitled to ensure that a given claim reflects a sincere religious belief, rather  
9 than a preference . . . . And although sincerity rather than orthodoxy is the touchstone,  
10 a prison still is entitled to give some consideration to an organization’s tenets. ***For the  
11 more a given person’s professed beliefs differ from the orthodox beliefs of his faith,  
12 the less likely they are to be sincerely held.*** Very few people who identify themselves  
13 as Baptists sincerely believe that a halal or vegan diet is obligatory on religious  
14 grounds. ***Such a belief isn’t impossible, but it is sufficiently rare that a prison’s  
15 chaplain could be skeptical and conduct an inquiry to determine whether the claim  
16 was nonetheless sincere.***

17 *Vinning-El v. Evans*, 657 F.3d 591, 594 (7th Cir. 2011) (emphasis added).

18 Here, where it appears to the Court that Petitioner did not meet his burden of establishing a  
19 prima facie case for use of a religious exemption, and where the Commissioner and presumably  
20 numerous other executive branch employees of the Catholic faith had no religious objections to  
21 complying with the Governor’s Directive, it was not unlawful for the Commissioner to seek additional  
22 information to understand the parameters of Petitioner’s beliefs and practices with regard to “man-  
23 made contaminants,” in order to assess whether Petitioner’s objection “reflect[ed] a sincere religious  
24 belief, rather than a preference[.]” *Id.*

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25 Petitioner next argues that “[e]ven if some further inquiry had been justified,” the  
26 Commissioner’s thirteen follow-up questions were “intrusive” and “went beyond proper limits.” Pet.  
27 Opening Brief at 10. However, Petitioner cites to no case law outlining or suggesting what *is* a proper

1 inquiry into the sincerity of one’s beliefs, or discussing how many questions is too many questions, or  
2 delineating what questions are appropriate versus inappropriate to ask. Rather, Petitioner’s objection  
3 appears to be a blanket objection to the fact that the Commissioner did not accept his assertion of a  
4 religious exemption at face value and instead sought further information to better understand his belief  
5 – an act that Petitioner perceived as “looking for irrelevant holes to poke” in Petitioner’s claim. *Id.*

6         Again, Petitioner’s repeated assertion that his request should have been accepted at face value  
7 and that the Commissioner was not entitled to further inquiry is not supported by the facts of this case  
8 or by the law, *see supra*. There is sufficient evidence in the record to support this Court’s finding that  
9 the Commissioner had an objective basis to question the sincerity of Petitioner’s claimed religious  
10 exemption and that he accordingly could seek further information to make an appropriate assessment.  
11 The Commissioner followed the appropriate procedures to seek this additional information from  
12 Petitioner and afforded Petitioner numerous opportunities to comply with his requests for information,  
13 even accepting multiple late submissions from Petitioner.

14         It was incumbent on Petitioner to corroborate his claimed exemption to the vaccination  
15 mandate and to cooperate with the Commissioner’s efforts to determine whether a reasonable  
16 accommodation could be granted. *See Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 (1986)  
17 (explaining that “bilateral cooperation is appropriate in the search for an acceptable reconciliation of  
18 the needs of the employee’s religion and the exigencies of the employer’s business.”) (internal  
19 quotation marks and citation omitted). Here, Petitioner failed to cooperate in the administrative  
20 process almost every step of the way – first by failing to submit a request for a religious exemption by  
21 either the March 12, 2021 or April 30, 2021 deadlines, then by failing to respond to even a single  
22 follow-up question posed by the Commissioner in his October 15, 2021 and October 26, 2021 letters  
23 to Petitioner. Petitioner even refused to explain what accommodations he was seeking in order to  
24 allow him to continue performing his job as a Corrections Officer II.

1 This Court has great respect for the First Amendment and its protection of freedom of religion.  
2 With that said, what occurred here was not a violation of Petitioner’s constitutional rights. Petitioner  
3 was afforded ample opportunity to invoke and substantiate his request for a religious exemption and  
4 chose not to participate in the process which he himself concedes was procedurally proper. His  
5 subsequent termination was not, therefore, based on his religious convictions or even his request for a  
6 religious exemption itself, but rather on his failure to comply with the Governor’s Directive, his  
7 violation of the employee code of conduct and code of ethics, and his insubordination. *See* CSC  
8 Decision at 11 (citing Petitioner’s violation of NMIAC §§ 10-20.2-436(a)(2) & (b) (Code of Ethics),  
9 10-20.2-438 (Policy on Employee Conduct), and 10-20.2-440 (Subordination to Authority)).

10 Accordingly, the Court finds that the Commissioner’s decision to terminate Petitioner was not  
11 unconstitutional or otherwise unlawful, and the Court declines to set it aside.

12 **B. CSC’s Decision to Affirm Petitioner’s Termination Was Not Arbitrary,**  
13 **Capricious, an Abuse of Discretion, or Otherwise Not In Accordance With Law.**

14 Under the Administrative Procedure Act, “[a]gency decisions are reviewed on the basis of an  
15 ‘arbitrary and capricious’ standard.” *Pac. Sec. Alarm, Inc. v. Commonwealth Ports Auth.*, 2006 MP  
16 17 ¶ 14 (citing *Wileman Bros. & Elliott, Inc. v. Espy*, 58 F.3d 1367, 1374 (9th Cir. 1995)); *see also* 1  
17 CMC § 9112. Although arbitrary and capricious action under 1 CMC § 9112 is not specifically defined  
18 in the statute, it has been defined in this jurisdiction as “willful and unreasonable action without  
19 consideration or in disregard of facts or without determining principle.” *In re Blankenship*, 3 N.M.I.  
20 209, 217 (1992) (citing BLACK’S LAW DICTIONARY (5th ed. 1979)). “[T]he scope of review under the  
21 ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the  
22 agency.” *Commonwealth Ports Auth.*, 2006 MP 17 ¶ 14 (citing *Motor Vehicle Mfrs. Ass’n v. State*  
23 *Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

1 Here, the Civil Service Commission concluded that Petitioner’s termination was supported by  
2 just cause and, further, that the procedural requirements for termination were followed (and, again,  
3 Petitioner does not dispute the latter). In determining that the decision to terminate Petitioner was  
4 supported by just cause, CSC made the following findings:

- 5 - That COVID-19 is a highly contagious, dangerous, and deadly disease, especially for  
6 frontline workers;
- 7 - That the Governor’s vaccination policy was meant to address the developing health and  
8 safety concerns during the COVID-19 pandemic, but nevertheless the policy allowed  
9 employees to submit a request for a religious or medical accommodation;
- 10 - That Petitioner had “sufficient notice and time” to comply with the policy, including by  
11 submitting a request for a religious or medical accommodation, but failed to do so;
- 12 - That this failure constituted a violation of three regulations: NMIAC §§ 10-20.2-436(a)(2)  
13 & (b) (Code of Ethics), 10-20.2-438 (Policy on Employee Conduct), and 10-20.2-440  
14 (Subordination to Authority);
- 15 - That management’s decision to terminate Petitioner was warranted after numerous attempts  
16 to provide Petitioner with an opportunity to demonstrate a basis for an exemption; and
- 17 - That termination was the appropriate disciplinary action because Petitioner’s failure to  
18 vaccinate impeded his ability to supervise inmates, serve with other officers, or address  
19 public inquiries without posing a risk to public health.

20 =====

21 The record before the Court shows that CSC’s decision was well-supported by the facts, well-  
22 reasoned, and grounded in law. The Court cannot say that CSC’s decision to affirm Petitioner’s  
23 termination was “willful and unreasonable,” “without consideration or in disregard of facts,” or  
24 “without determining principle.” *In re Blankenship*, 3 N.M.I. 209, 217 (1992). The Court therefore

1 finds that CSC's decision to affirm Petitioner's termination was not arbitrary, capricious, an abuse of  
2 discretion, or otherwise not in accordance with the law, and the Court declines to set it aside.

3 **V. CONCLUSION**

4 **THEREFORE**, for the reasons stated above, the Court **AFFIRMS** the Civil Service  
5 Commission's decision and **DISMISSES** the Petition with prejudice.

6  
7 **SO ORDERED** this 29th day of November, 2023.

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9 /s/  
10 **WESLEY M. BOGDAN, Associate Judge**

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