

**FILED**

**MAR 22 2005**

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BRANDON SAMPLE §  
*R33949237*  
v. *PLI* §  
*PO BOX 26000*  
HARLEY LAPPIN, *Beaumont TX* §  
HARRELL WATTS. §  
(In Their Official Capacities) §

~~CASE NUMBER 1:05CV00596~~

JUDGE: Paul L. Friedman

DECK TYPE: Pro se General Civil

DATE STAMP: 03/22/2005

VERIFIED COMPLAINT

Preliminary Statement

1. This is a federal question action challenging the Bureau of Prisons (BOP) failure to handle inmate requests for religious accommodation consistent with the Religious Freedom Restoration Act (RFRA) and the Religious Land Use And Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000bb, 2000cc et. seq. Plaintiff seeks injunctive and declaratory relief.

Jurisdiction

2. This court has jurisdiction under 28 U.S.C. § 1331.

Venue

3. Venue is appropriate in the District of Columbia. See 28 U.S.C. § 1391(e)(1) & (2).

Exhaustion of Administrative Remedies

4. The plaintiff has exhausted all available administrative remedies using the BOP's administrative remedy program. See Remedy ID # 349793-F1, 349793-R1, 349793-A1.

Parties

5. The plaintiff, Brandon Sample, is a federal prisoner incarcerated at the Federal Correctional Institution in Beaumont,

Texas. Plaintiff's mailing address is Brandon Sample #33949-037 P.O. BOX 26020 Beaumont, TX 77720-6020.

6. Defendant Harley Lappin is the Director of the Federal Bureau of Prisons. He is sued in his official capacity. His mailing address is: 320 First St. N.W. Washington, DC 20534.

7. Defendant Harrell Watts is the BOP's National Inmate Appeals Administrator. He is sued in his official capacity. His mailing address is 320 First St. N.W. Washington, DC 20534.

Statement of Facts

8. The plaintiff is an observant Jew. Plaintiff practiced Judaism before his incarceration and continues his practice of Judaism while confined. Plaintiff frequently attends Jewish services, events, etc ... and is currently the liason between the Jewish community and chaplaincy staff at his place of incarceration.

9. Plaintiff sincerely believes that he must drink at least 3.5 ounces of red wine (a reviiit) while saying Kiddush, a prayer sanctifying the Sabbath, during Friday night and Saturday shabbos services. Plaintiff sincerely believes that wine must be used because it has been dictated by Jewish sages, the Code of Jewish Law, and by practice. For example, before his incarceration, plaintiff said Kiddush over wine during his Friday night and Saturday morning shabbos services.

10. Plaintiff also sincerely believes that he must drink four cups containing a least 3.5 ounces of wine during the Passover seder, a high holiday commemorating the deliverance of the Jewish people from Egyptian bondage 3300 years ago.

11. According to plaintiff, the Torah describes the Jewish people's transition from slavery to freedom using four different words to indicate four stages of transformation. These four words are known as the "four expressions of redemption." They are:

- A. V'hotzait - "and I removed you"
- B. V'hitzalti - "and I rescued you"
- C. V'goalti - "and I redeemed you"
- D. V'lakachti - "and I took you"

The four cups of wine during the Passover seder correspond to these "four expressions of redemption."

12. The use of wine in Kiddush and during Passover is not only "central" to plaintiff's religious practice, but also is important and based on a sincere religious belief.

13. Plaintiff requested BOP staff to either provide, or permit him to purchase, wine for the Kiddush and Passover observances. Defendant Watts, acting on behalf of defendant Lappin, (signatory authority for grievance responses in the BOP's Central Office has been delegated by the Director of the Bureau of Prisons to the National Inmate Appeals Administrator. See 28 C.F.R. § 542.11(a)(4)) denied the request.

14. Defendant Watts' denial was premised on the Regional Director's decision in Remedy ID # 349793-R1 which provides that, "the decision on whether or not to allow inmate consumption of wine during Jewish services is dependent upon the choice of the celebrant, not the decision or request of the inmate. The decision to use wine in Jewish services will be the choice

of the Jewish contractor. The Jewish contractor has chosen not to use wine, but rather grape juice in the service."

Furthermore, defendant Watts' denial included consideration of BOP Program Statement 5360.08, Religious Beliefs and Practices, which indicates that inmates may receive wine as part of a religious ritual but, only when administered under the supervision of clergy authorized by the BOP to perform the ritual.

#### COUNT ONE

15. Defendant Watts' denial of plaintiff's request for wine is inconsistent with the requirements of RFRA and RLUIPA.

16. First, instead of gauging plaintiff's request for wine against plaintiff's religious beliefs, Watts impermissibly shifted the inquiry to the religious beliefs of another person - the contract Rabbi. However, under RFRA, RLUIPA, and this circuit's precedents, this was error. See Henderson v. Kennedy, 265 F.3d 1072, 1073 (D.C. Cir. 2001) (the term "exercise of religion" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief); Levitan v. Ashcroft, 281 F.3d 1313, 1322 (D.C. Cir. 2002) (the fact that some other Catholics only consume the species of bread is not dispositive, nor are the statements of clergy that the taking of wine by congregants is not a mandatory element of the ritual) (emphasis added).

17. Second, as discussed previously, this denial substantially burdens plaintiff's exercise of religion because the taking of wine during Kiddush and Passover is not only "central" to

plaintiff's religious practice, but also is important and is based on plaintiff's sincere beliefs. Levitan, 281 F.3d at 1321 (In other cases, in which the practice is indisputably an important component of the litigant's religious scheme, such evidence may be relevant to overcome and claim that the impact of the challenged law is de minimis. Moreover, a rule that bans a practice might nonetheless impose a substantial burden, if the practice is important and based on a sincere religious belief).

18. Third, in denying plaintiff's request, defendant Watts did not assert a compelling governmental interest nor did he consider if his outright denial was the least restrictive means in handling plaintiff's request.

19. Fourth, reliance on P.S. 5360.08 and its requirement that a Rabbi administer wine violates RFRA and RLUIPA. This is because such requirement places plaintiff in a "catch 22" - plaintiff cannot receive the wine without a Rabbi, but no Rabbi will come to the prison on Shabbat or Passover to participate in the service, much less to administer wine, because Jewish law prohibits driving during these times. This policy does not represent the least restrictive means in handling plaintiff's request for wine.

20. Instead of requiring a Rabbi to administer wine, other BOP staff, such as the institution chaplain, can administer wine to the plaintiff. Currently, the institution chaplain provides grape juice, candles, matzoh, a lighter, and other religious accoutrements to the plaintiff. For the purposes of

RFRA and RLUIPA, there is no significant difference between a Rabbi and the institution chaplain administering wine and other items to the plaintiff.

21. Fifth, wine is presently provided to other Jewish and Catholic inmates in the BOP.

22. Sixth, Manishewitz makes a low alcohol content wine that can be used in lieu of regular wine to prevent drunkenness.

COUNT TWO

23. As evident by the allegations in paragraphs 8-22 of this complaint, defendant Lappin has failed to train, supervise, and promulgate policies requiring his subordinates to comply with RFRA and RLUIPA. Because of this, plaintiff's statutory rights have, and will continue, to be violated.

Relief Requested

24. Plaintiff seeks injunctive and declaratory relief requiring defendants to:

(1) Stop making the religious beliefs of other persons, such as the Rabbi in the instant case, dispositive of plaintiff's request for religious accommodation;

(2) Consider plaintiff's requests for religious accommodation consistent with plaintiff's sincere and important religious beliefs;

(3) Consider, consistent with RFRA and RLUIPA, plaintiff's requests for religious accommodation irrespective of whether the practice at issue is mandatory;

(4) Provide plaintiff with at least 3.5 ounces of kosher red wine for Kiddush on Friday nights and Saturday shabbos services;

(5) Provide plaintiff with four cups containing at least 3.5 ounces of kosher red wine to be drunk during the Passover seder; and

(6) Promulgate policies and train BOP staff to consider plaintiff's requests for religious accommodation consistent with the RFRA, RLUIPA, and circuit precedent.

Plaintiff further seeks costs and attorney's fees, if applicable.

Verification

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746. Signed this 7th day of February, 2005.

Respectfully submitted,



Brandon Sample #33949-037  
P.O. BOX 26020  
Beaumont, TX 77720-6020