

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA**

United States of America,

Plaintiff;

v.

Secretary, Florida Department of Corrections;  
and

Florida Department of Corrections,  
Defendants.

No. 1:12-cv-22958

**AMENDED COMPLAINT**

THE UNITED STATES OF AMERICA hereby files this Amended Complaint and alleges upon information and belief:

**INTRODUCTION**

1. By failing to offer kosher meals to prisoners with a sincere religious basis for keeping kosher, the Florida Department of Corrections (“FDOC”) forces hundreds of prisoners to violate their core religious beliefs on a daily basis, in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (“RLUIPA”).
2. Keeping kosher is a central tenet of Judaism and other religious traditions observed by prisoners incarcerated at FDOC facilities. FDOC’s dietary policies substantially burden the religious exercise of many of these prisoners.
3. FDOC’s refusal to provide a kosher diet consistent with RLUIPA makes the Department an outlier among American correctional institutions. The Federal Bureau of Prisons (“BOP”) and most state departments of correction offer kosher meal options to all prisoners with a religious basis for keeping kosher.

4. FDOC offered kosher meals until late 2007, when it discontinued its kosher diet program over the objections of its own Study Group on Religious Accommodation. Indeed, FDOC disregarded the Study Group's warning that ending the kosher food program would violate RLUIPA.
5. From 2007 – 2013, FDOC denied a kosher diet to all prisoners except for approximately one dozen prisoners in a single facility who have had access to a kosher pilot program since late 2010.
6. Months after the United States filed this case, Defendants changed course and admitted that they could offer a kosher diet consistent with their interests. At a hearing in June 2013, multiple FDOC officials stated that FDOC was capable of offering a kosher diet statewide consistent with its interests.
7. In April of 2013, eight months after the United States filed this litigation and after this Court denied Defendants' Motion to Dismiss, FDOC issued a new statewide dietary policy purporting to offer a kosher diet by September 2013. FDOC then asked the Court to find that this litigation was moot because "it is unambiguous that we intend to go forward to provide a system-wide kosher diet."
8. Nevertheless, FDOC never implemented the new Religious Diet Program. Rather, in October 2013, FDOC indicated that it had "revisited" its statewide kosher diet plan and instead would offer a kosher diet in no more than six facilities.
9. Currently, Defendants offer a kosher diet in only a single facility. FDOC's dietary policies continue to burden the religious exercise of hundreds of prisoners on a daily basis.

10. FDOC's dietary policies for prisoners who seek to keep kosher are a constantly moving target, but one feature of the policies is consistent: they continue to burden the religious exercise of hundreds of prisoners.
11. The United States seeks declaratory and injunctive relief to remedy Defendants' violations of the law, and to ensure that FDOC implements sustainable reforms that guarantee the religious freedoms protected by RLUIPA. The United States seeks this relief to remedy Defendants current violations of RLUIPA and any future dietary policies or practices of FDOC that continue to violate RLUIPA and deny a kosher diet to any prisoner with a sincere religious basis for keeping kosher.

#### **DEFENDANTS**

12. Defendant Secretary of the Florida Department of Corrections is the ultimate decision-maker with authority to approve all FDOC policies, including its dietary policies. The current Secretary of FDOC is Michael D. Crews, who is sued in his official capacity.
13. Defendant Florida Department of Corrections incarcerates over 100,000 prisoners in 146 facilities across the state of Florida, including 68 prisons, 40 work camps, and 33 work release centers. FDOC has an annual budget of approximately \$2.4 billion and employs 25,000 people.
14. FDOC receives federal funding and is an "institution" within the meaning of 42 U.S.C. § 2000cc-1(a) and 42 U.S.C. § 1997.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.
16. The United States is authorized to initiate this action against Defendants under RLUIPA, 42 U.S.C. § 2000cc-2(f).

17. The declaratory and injunctive relief sought by the United States is authorized by 42 U.S.C. § 2000cc-2(f) and 28 U.S.C. §§ 2201 and 2202.
18. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b). Defendants operate approximately 20 facilities in the Southern District of Florida, including the South Florida Reception Center that contains the pilot kosher program; Defendants incarcerate in the Southern District of Florida dozens of Jewish prisoners desiring to keep kosher, including prisoners named in this Complaint; and virtually all of the events, actions, or omissions giving rise to this claim occurred in Florida.

### **FACTUAL ALLEGATIONS**

19. FDOC's dietary policies violate the federal rights of hundreds of prisoners by forcing prisoners with a religious basis for consuming kosher meals to violate their core religious beliefs.
20. The substantial burden that FDOC's dietary policies impose on these prisoners is not necessary to achieve any compelling state interest. Indeed, the Federal Bureau of Prisons and most state departments of correction offer kosher meals while achieving interests that are indistinguishable from FDOC's.
21. FDOC itself acknowledges that it can provide a kosher diet statewide consistent with its interests, and further demonstrates that it can provide a statewide kosher diet option by voluntarily adopting the Religious Diet Program.

#### **I. FDOC Does Not Provide Kosher Meals to All Prisoners Who Have A Sincere Religious Basis for Keeping Kosher**

22. Prior to this litigation, FDOC denied a kosher diet to virtually all of its prisoners.

23. Currently, FDOC offers a kosher diet only to prisoners admitted to the Religious Diet Program in the Union Correctional Institution (“Union C.I.”), and the handful of prisoners eligible for the “pilot” kosher program in the South Florida Reception Center.
24. At all other institutions, FDOC offers two mainline dining options: a meat entrée and non-meat entrée. In addition to these options, prisoners may request vegan meals by submitting a request to the food service director.
25. FDOC also provides a variety of therapeutic diets, including a prenatal diet, liquid diet, puree diet, mechanical dental diet, mental health diet, low residue diet, fat intolerance diet, calorie regulated diet, and a renal diet.
26. FDOC does not offer any system-wide kosher diet.
27. Keeping kosher requires adherence to the laws of kashruth, which prescribe religiously acceptable sources of food and methods of food preparation.
28. To be kosher, a food item must derive from religiously-acceptable sources, be stored in kosher containers, prepared in a particular manner, and served on tableware that has not contacted non-kosher food. In addition, meat and dairy products may not be mixed.
29. While most correctional institutions in the United States offer kosher meals consistent with these requirements, many Florida prisoners desiring to keep kosher cannot do so.

## **II. FDOC Previously Offered Kosher Meals, But Discontinued Its Kosher Food Program Against the Advice of Its Own Study Group**

30. From 2004 to 2007, FDOC’s “Jewish Dietary Accommodation Program (“JDA Program”) served kosher meals to 784 prisoners, with an average daily enrollment of 250. During the last year of JDAP’s operation, the program was open to prisoners of all faiths.

31. Under that program, FDOC assigned eligible prisoners to one of thirteen FDOC facilities equipped to offer kosher meals. These facilities had the capacity to serve kosher meals to 900 prisoners per day, easily sufficient to accommodate the JDA Program's average enrollment of 250 prisoners per day.
32. In April 2007, FDOC commissioned a Study Group to review the JDA Program. The Study Group's report ("the Report") noted several challenges associated with offering kosher meals, but recommended that FDOC "[r]etain a kosher dietary program," with participation limited to "those inmates who have been expertly appraised or vetted by a rabbi as eligible to participate."
33. Indeed, the Study Group concluded that RLUIPA requires FDOC to provide kosher meals. The Report explained that a prisoner desiring to keep kosher "is substantially burdened" by the denial of kosher food "because the regulations [denying kosher food] leave him with no meaningful choice. He may either eat the non-kosher food and fail to obey his religious laws or not eat the non-kosher food and starve."
34. The Report further posited that "it is improbable that [FDOC] can satisfy a court's inquiry into whether the department is furthering a compelling interest, let alone that denying inmates' religious accommodation is the least restrictive means available."
35. Despite the Study Group's recommendation to continue providing kosher meals to eligible prisoners, FDOC terminated the JDA Program on August 16, 2007.

### **III. FDOC's Dietary Policies Unlawfully Burden Religious Exercise**

36. Defendants denied a kosher diet to virtually all prisoners from 2007 – 2013. After the United States filed this litigation, however, Defendants have announced a flurry of new

dietary policies. Each of these dietary policies substantially burdens the religious exercise of many FDOC prisoners desiring to keep kosher.

37. Before the present litigation, FDOC denied a kosher diet to virtually all prisoners it incarcerated. In 2010, Defendants made a small exception to their blanket denial of a kosher diet by offering a kosher diet to roughly one dozen prisoners in a single facility – the South Florida Reception Center.

38. In March 2013, months after the United States filed this litigation, Defendants announced a new statewide Religious Diet Program that purportedly would offer a kosher diet to all sincere prisoners by September 2013. This policy continued to violate RLIUPA by restricting access to a kosher diet in several ways, including: requiring prisoners seeking a kosher diet to consume exclusively non-kosher food for 90 days; removing prisoners from the kosher diet program for consuming a single item that FDOC deems “not kosher”; missing ten percent of the available meals, even if every meal a prisoner ate was kosher; and requiring prisoners to answer questions about religious dogma as a prerequisite for accessing a kosher diet.

39. In May 2013, FDOC revised its statewide kosher diet policy to remove the 90-day waiting period requirement. The May 2013 policy continued to limit participation in the kosher program based on the other three requirements discussed in Paragraph 37. The May 2013 policy had an effective date of September 2013. In June 2013, Defendants advised the court that the United States’ litigation was moot because “it is unambiguous that we intend to go forward to provide a system-wide kosher diet.”

40. Defendants never implemented a statewide kosher diet option.

41. In October 2013, Defendants advised that they are no longer planning on implementing a statewide kosher diet program. Rather, they are only considering expanding the current kosher diet program at Union C.I. to between two and six additional facilities. FDOC's latest kosher diet policy continues to exclude prisoners based on impermissible criteria, such as consuming a single non-kosher item and electing not to eat a certain percentage of meals. Moreover, the kosher diet will only be available in a handful of FDOC's 60 major facilities. Accordingly, the new program will substantially burden the religious exercise of many prisoners with a sincere religious basis for consuming a kosher diet.
42. In November 2013, Defendants announced that they will utilize an even stricter "sincerity" test to limit access to the Religious Diet Program. The new requirement forces prisoners to "clarify the specific law(s) connected to your belief or faith that require(s) you to eat a religious diet." This requirement will exclude sincere prisoners from the Program who are not able to answer questions about religious dogma to Defendants' satisfaction.
43. Consuming a kosher diet is a fundamental tenet of Judaism and other religions practiced by FDOC prisoners. FDOC's dietary policies deny a kosher diet to many of these prisoners and substantially burden their religious exercise.
44. FDOC's dietary policies substantially burden the religious exercise of hundreds of prisoners. For example:
  - a. Bruce Rich is an observant Jew who is serving a life sentence at Union Correctional Institution. Mr. Rich has been a sincere adherent of the Jewish faith since childhood, and has remained committed to his observance while incarcerated. Mr. Rich celebrates Jewish holidays, observes the Sabbath, studies



religious texts, and acts as the rabbi for the Sabbath services within his institution. Because Mr. Rich believes that eating only kosher food is a Biblically mandated obligation, he has sustained himself by purchasing kosher food items from the canteen rather than eating food that is not kosher. In an effort to obtain kosher food from FDOC, Mr. Rich filed a lawsuit in 2010 and has faithfully litigated his case in district and circuit court. FDOC dietary policies substantially burden Mr. Rich's religious exercise.

- b. Robert Gray is a 55-year-old prisoner housed at Everglades Correctional Institution. Mr. Gray is a sincere adherent of Judaism and has requested a transfer to the South Florida Reception Center so that he can participate in the pilot kosher program. To date, FDOC has not granted his request, forcing Mr. Gray to violate his religious beliefs by consuming non-kosher food.
- c. Leonard Shuster is a 52-year-old Jewish prisoner incarcerated in the Central Florida Reception Center. Mr. Shuster has submitted several lengthy requests for kosher meals that explain how his religious beliefs compel him to eat properly prepared kosher foods. In December 2011, FDOC denied Mr. Shuster's request by stating simply that its vegetarian meal option "allows the majority of religious groups . . . to meet the basic tenets of their belief systems." FDOC's dietary policies continue to force Mr. Shuster to violate his religious beliefs daily by consuming non-kosher food.
- d. Richard Shapiro is a Jewish prisoner who has been incarcerated at FDOC since 1999. He is currently housed in the Everglades Correctional Institution. Mr. Shapiro was raised by two Jewish parents and has been a sincere adherent to the

Jewish faith his entire adult life. FDOC's refusal to provide a kosher diet forces Mr. Shapiro to violate his religious conviction that his faith requires him to keep kosher.

- e. John Phillips is a Jewish prisoner incarcerated by FDOC. Mr. Phillips was raised by two Jewish parents and has been a sincere adherent to the Jewish faith his entire adult life. He believes his faith requires him to keep kosher. FDOC's dietary policies force Mr. Phillips to violate his religious convictions on a daily basis.
- f. Philip Melton is a Jewish prisoner incarcerated at the FDOC since 2009. Mr. Melton is currently housed in the Tarpon Springs Work Release Center. Mr. Melton's mother was Jewish by birth, and he has been a sincere adherent of the Jewish faith throughout his adult life. Mr. Melton believes that keeping kosher is a core aspect of his religious practice. FDOC's refusal to provide kosher meals substantially burdens Mr. Melton's religious exercise.
- g. Henry Camacho is a 49-year-old Jewish prisoner serving a life sentence. Mr. Camacho is incarcerated in the South Bay Correctional Facility. Mr. Camacho believes that keeping kosher is a core part of his religious faith. FDOC's refusal to provide kosher meals substantially burdens Mr. Camacho's religious exercise, and will continue to do so for the remainder of his life sentence.
- h. Murray Breitberg is a 70-year-old Jewish prisoner who has been incarcerated at FDOC for the past 12 years. Mr. Breitberg is currently housed in the South Bay Correctional Facility, where he is serving a life sentence. Mr. Breitberg believes that consuming exclusively kosher food is an important part of his religious

practice. FDOC's dietary policies substantially burden Mr. Breitberg's religious exercise, and will continue to do so for the duration of his life sentence.

- i. William Newkirk is a 53-year-old Jewish prisoner serving a life sentence. Mr. Newkirk is currently housed in the South Bay Correctional Facility, where he does not have access to kosher meals. Mr. Newkirk believes such meals are important to exercising his Jewish faith. FDOC's dietary policies force Mr. Newkirk to violate his religious beliefs on a daily basis by consuming non-kosher food.
- j. James Lopiano is a 24-year-old prisoner incarcerated in the Dade Correctional Institution. Mr. Lopiano is a sincere adherent of the Jewish faith, which he believes compels him to keep kosher. FDOC's dietary policies substantially burden Mr. Lopiano's religious exercise, and will continue to do so until his release, which is not scheduled until 2033.
- k. Paul Inkeles is a 60-year-old minimum security prisoner incarcerated in the Martin Correctional Institution. Mr. Inkeles is a sincere adherent of the Jewish faith, which he believes compels him to consume kosher food. FDOC's dietary policies substantially burden Mr. Inkeles's religious exercise.
- l. Edrian Katz is a 37-year-old minimum security prisoner housed in the Sago Parl Re-entry Center. Mr. Katz is a sincere adherent of the Jewish faith who believes that keeping kosher is an important aspect of his religious practice. FDOC's dietary practices substantially burden Mr. Katz's religious exercise.
- m. Mark Schack is a 50-year-old prisoner serving a life sentence. Mr. Schack is currently housed in the Okeechobee Correctional Institution. He is a sincere

adherent of the Jewish faith who believes keeping kosher is an important part of his religious exercise. FDOC's dietary policies substantially burden Mr. Schack's religious exercise.

45. FDOC's dietary policies likewise burden the religious exercise of hundreds of other prisoners.

**IV. Providing A Kosher Diet Is Consistent With FDOC's Compelling Government Interests**

46. FDOC is capable of providing kosher meals to prisoners consistent with its compelling government interests.

47. From 2004 to 2007, FDOC provided kosher meals to all prisoners deemed eligible by a screening process that measured the sincerity of their religious convictions. During this period, FDOC's kosher food program enrolled an average of 250 prisoners per day.

48. In 2007, a Study Group commissioned by the FDOC Secretary recommended that FDOC continue to make kosher meals available to prisoners deemed eligible by the religious sincerity screening. FDOC rejected the advice of its own Study Group and discontinued its kosher program.

49. FDOC's termination of its kosher food program was not supported by any studies or analysis other than the Study Group Report, which recommended that FDOC maintain the program. FDOC did not consider numerous alternative ways to provide kosher meals consistent with its compelling interests.

50. Most states and the federal government offer kosher diets to prisoners. BOP offers a kosher diet to prisoners at each of its 115 major facilities.

51. FDOC's voluntary operation of a kosher pilot program at the South Florida Reception Center further demonstrates that it can provide kosher food consistent with its compelling

interests. Since FDOC initiated the pilot program on August 16, 2010, it has spent approximately \$4.70 per day to provide kosher meals to prisoners in the program.

52. After initially authorizing the pilot program to run for 6 months, FDOC has continued it for the past three years.

53. FDOC's actions since this lawsuit began further demonstrate its ability to offer a statewide kosher diet program available to all prisoners.

54. In March 2013, FDOC promulgated a new Religious Diet Program and represented that it would implement this policy at all 60 of its major facilities.

55. At a preliminary injunction hearing in June 2013, Defendants represented to the Court that they were committed to a statewide kosher diet program.

56. Several FDOC officials testified at the June 2013 preliminary injunction hearing that FDOC can provide a statewide kosher diet program consistent with its interests.

#### **CLAIM FOR RELIEF:**

#### **DEFENDANTS' DIETARY POLICIES VIOLATE RLUIPA**

The United States incorporates by reference the allegations set forth in Paragraphs 1 – 56 as if fully set forth herein.

56. From 2007 – 2013, Defendants denied kosher meals to virtually all prisoners in their custody who requested the meals in accordance with their religious beliefs. Starting in 2013, Defendants have announced several new dietary policies that continue to restrict access to a kosher diet in important ways.

57. None of these new policies has been implemented, and FDOC currently denies a kosher diet to hundreds of prisoners who have a sincere religious basis for keeping kosher.

58. Defendants' failure to provide a kosher diet to all prisoners with a sincere religious basis for keeping kosher - whether as part of FDOC's prior blanket denial of a kosher diet or under FDOC's revised dietary policies – substantially burdens the religious exercise of prisoners in its custody. Failure to offer a kosher diet to sincere prisoners does not further a compelling government interest, and is not the least restrictive means of doing so.

59. Accordingly, FDOC's dietary policies violate RLUIPA, 42 U.S.C. § 2000cc.

#### **PRAYER FOR RELIEF**

RLUIPA authorizes the United States to seek injunctive and declaratory relief for Defendants' failure to provide a kosher diet to prisoners in their custody who desire such a diet to exercise their religious beliefs.

WHEREFORE, the United States prays that the Court:

- a. Declare that Defendants have violated RLUIPA by failing to offer kosher meals to prisoners in their custody who desire a kosher diet to exercise their religious beliefs;
- b. Order Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them, to provide nutritionally sufficient kosher meals to all prisoners in their custody who have a sincere religious basis for keeping kosher; and
- c. Order such other relief as the interests of justice may require.

Respectfully submitted for the United States of America,

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