

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-22958-CIV-SEITZ/TURNOFF

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SECRETARY, FLORIDA DEPARTMENT OF
CORRECTIONS and FLORIDA DEPARTMENT
OF CORRECTIONS,

Defendants.

_____ /

FINAL JUDGMENT AND PERMANENT INJUNCTION

Pursuant to the Court's Order on Motions for Summary Judgment [DE-498] entered on April 30, 2015, and the Court's Order re: Contents of Injunction, it is

ORDERED that:

Declaratory Judgments

1. Judgment is entered in favor of Defendants and against Plaintiff on Plaintiff's claim challenging Defendants' doctrinal sincerity testing. The Court declares that Defendants' doctrinal sincerity testing does not violate RLUIPA provided it is not the sole determining factor in Defendants' sincerity testing or is not unduly weighted by Defendants in making sincerity determinations, such that it is in effect the sole determining factor.

2. Judgment is entered in favor of Defendants and against Plaintiff on Plaintiff's claim challenging Defendants' anti-bartering policy. The Court declares that Defendants' anti-bartering policy does not violate RLUIPA.

3. Judgment is entered in favor of Plaintiff and against Defendants on Plaintiff's claim challenging Defendants' denial of a kosher diet to sincere prisoners. The Court declares that Defendants' policy of denying a kosher diet to sincere prisoners violates RLUIPA.

4. Judgment is entered in favor of Plaintiff and against Defendants on Plaintiff's claim challenging Defendants' ten percent rule, which removes a prisoner from the Religious Diet Program (RDP) if he or she misses ten percent or more of his or her Certified Food Option (CFO) meals within a one month period. The Court declares that Defendants' ten percent rule violates RLUIPA.

5. Judgment is entered in favor of Plaintiff and against Defendants on Plaintiff's claim challenging the zero tolerance rule, which removes a prisoner from the RDP if he or she purchases, possess, or consumes food from the canteen or other source that violates the RDP requirements, and any policy that suspends prisoners from the kosher diet without first providing an opportunity for the prisoners to contest their removal. The Court declares that Defendants' zero tolerance rule and any policy that suspends prisoners from the kosher diet without first providing an opportunity for the prisoners to contest their removal violates RLUIPA.

Permanent Injunction

6. For the reasons set out in the Order on Motions for Summary Judgment, the Court enters a permanent injunction that:

- a. Orders Defendants to offer a kosher diet, as defined herein, to all prisoners with a sincere religious basis for keeping kosher.
- b. Enjoins Defendants from enforcing the ten percent rule.

- c. Enjoins Defendants from enforcing the zero tolerance rule and any policy that suspends prisoners from the kosher diet without first providing an opportunity for the prisoners to contest their removal or suspension.

Policies and Procedures

7. A “kosher diet” means food prepared consistent with the requirements recognized by a religious authority qualified to determine whether food is kosher. For pre-packaged food, for instance, this means that a qualified religious authority must have approved the foods as kosher. The Defendants currently rely upon the certified kosher listings on the website maintained by the Chicago Rabbinical Council (<http://www.crcweb.org/>). These listings are acceptable for complying with this injunction. The Defendants may also accept certifications from other authorities upon a showing that these certifications are reliable. All food, including food considered pareve, shall be handled and prepared in accordance with the procedures set forth in the Department of Corrections Procedure 503.006, which is attached hereto as Exhibit A.

8. To ensure that Defendants’ personnel consistently apply the procedures for procuring and handling the food products used in the kosher diet, Defendants shall periodically conduct audits according to their established audit procedures to ensure that the food being used in the kosher diet and the preparation of the kosher diet meals comports with the requirements of Paragraph 7. Defendants will share these procedures with the United States within one week of the issuance of this injunction and within one week of any changes being made to the procedures.

9. To ensure that Defendants’ chaplains apply consistent standards when processing prisoner violations pursuant to Procedure 503.006, Defendants shall train all chaplains in processing notices of violations in accordance with Procedure 503.006. The Defendants are

currently developing training materials for processing violations and upon completion will provide the training module to the Court and the United States.

10. Defendants may modify the auditing and training procedures described above. If Defendants modify these procedures, they shall notify the United States and provide the United States with the modified procedure within one week of the modified procedure being finalized.

Monitoring & Accountability

Monthly Reports

11. Defendants shall file with the Court a monthly report containing the information listed below. The first report shall be due on the first day of the month following the first full month from the date of this Order, with subsequent reports due the first day of each month thereafter (September 1, October 1, etc.). Each report shall contain the following information:

- a. The total number of prisoners enrolled in the Religious Diet Program (“RDP”) on the 15th day of the prior month; and
- b. A breakdown of the number of prisoners enrolled in the RDP on the 15th day of the prior month at each facility of the Florida Department of Corrections, including privately-operated facilities.

Quarterly Reports and Documentation

12. Defendants shall also provide on a quarterly basis reports and documentation of processing prisoners’ RDP violations. The first report shall be due January 15, 2016, for the last quarter of 2015, with subsequent documents provided on the fifteenth day of the month after each quarter thereafter (April 15, 2016; July 15, 2016, etc). The reports and documentation shall include:

- a. Defendants shall provide to the Court and the United States a summary report showing: (1) the total number of prisoners who potentially violated the RDP during the most recent quarterly period; (2) the basis of those violations; (3) the number of notices of violation issued during the quarterly period; and (4) the disposition of the notices of violation fully processed during that period. The summary report shall include the following information on notices of violation issued: (a) the names of the prisoners in each institution who were issued a notice of violation; (b) if disposition was reached during that quarter, whether the disposition was based upon written notification only or whether a face to face pastoral interview was scheduled; and (c) the results of each disposition. For any disposition that results in a suspension, the length of suspension shall be indicated.
- b. By the first of the month prior to each quarterly reporting period (September 1, 2015; December 1, 2015; March 1, 2016; June 1, 2016, etc.), the United States shall identify five (5) institutions for which the Defendants shall provide copies of the Department of Corrections' form DC5-325. No later than the end of the month in which the quarterly report is submitted (January 31, 2016; July 31, 2016, etc.), Defendants shall provide to the United States copies of the DC5-325 for each prisoner listed on the quarterly summary report for each of the five (5) institutions previously identified by the United States.

Access to Inspect FDOC Facilities

13. Defendants shall provide the United States reasonable access to personnel, prisoners, and the food preparation, food serving, and dining areas of Defendants' facilities as pertinent to the United States' assessment of Defendants' compliance with this Injunction. Reasonable access will be provided to attorneys, experts, or other Justice Department personnel. The Defendants shall, until the termination of this Injunction, retain and provide the United States with reasonable access to documents relevant to the issues in this case (including prisoner requests to join the RDP, responses thereto, records of prisoner violations related to the RDP, and documents showing the cost of RDP meals).

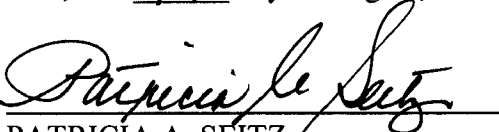
Notice and Opportunity To Cure Violations

14. If the United States believes that Defendants have failed to fulfill any obligation under this Injunction, the United States shall, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to Defendants. Defendants shall have 30 days from the date of such notice to cure the failure, and provide the United States with sufficient proof of its cure. During this period, the United States and the Defendants shall coordinate and discuss areas of disagreement and attempt to resolve outstanding differences. At the end of the 30-day period, in the event that the United States determines that Defendants have not cured the failure, the United States may, without further notice, initiate a court proceeding to remedy the failure.

Modification and Termination

15. Modification and termination of this injunction are governed by the Prison Litigation Reform Act, 18 U.S.C. § 3626, and Federal Rule of Civil Procedure 60.

DONE and ORDERED in Miami, Florida, this 12^R day of August, 2015.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record