

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:12-cv-22958-SEITZ/TURNOFF

**SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS, ET AL.,**

Defendants.

**JOINT MOTION TO VACATE THIS COURT'S ORDER AND TERMINATE
OUTSTANDING INJUNCTION**

The Florida Department of Corrections (“Defendant”) and the United States of America (“Plaintiff”), move to terminate this Court’s outstanding Permanent Injunction pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626 (2018). *See* (Doc. 548 at ¶ 15).¹ The Parties have worked together since issuance of the injunction to ensure that the remedy this court ordered is implemented in a sustainable manner. Both Parties now believe that Defendant offers and will continue to provide a kosher diet to prisoners with a sincere religious basis for seeking the diet. As a result, the Parties have been working together over the last few months to verify that all requirements of the injunction have been fully met and to prepare this Motion to Terminate.

While the Parties were preparing this filing, this Court issued an order setting a hearing on implementation of the Religious Diet Program (“RDP”). (Doc. 732). This Court held a hearing on October 23, 2018 and the Parties updated the Court on progress implementing the Program. This

¹ Each document filed in this case as part of the Electronic Case File will be referenced as “Doc.” followed by the document number.

Motion provides additional information that demonstrates why further court oversight of the RDP in unnecessary.

In support of this Motion to Vacate this Court's Order and Terminate Outstanding Injunction, the Defendant files the attached declarations. In further support of this Motion, the Parties state as follows:

STATEMENT OF THE FACTS

1. On August 12, 2015, this Court entered a permanent injunction against Defendant which required Defendant to offer a kosher diet to all prisoners with a sincere religious basis for eating that diet, train chaplains on implementation of the religious diet program, regularly audit the program to ensure the diet is prepared in accordance with the procedure, report on participation in the program, and provide the Department of Justice with information and access to monitor implementation. *See* Doc. 548 at ¶¶ 2-7. Defendant was also enjoined from enforcing the "ten percent rule," the "zero tolerance rule," and any policy that suspends prisoners from the kosher diet without providing an opportunity for the prisoners to contest their removal or suspension. *Id.* at 2-3.²
2. As of September 15, 2018, Defendant provides a kosher diet to 5,500 prisoners across 127 facilities. *See e.g.* (Doc. 749-1). *See also* (Doc. 750-1).
3. Defendant has an auditing and inspection process in place to ensure that each Correctional Institution within the State is providing the RDP in an efficient, uniform, and appropriate fashion which complies with this Court's requirements and the policies of Defendant. *See* (Defendant's Exhibit A at ¶¶ 4-7).

² This case has a lengthy procedural history which is unnecessary to restate.

4. Defendant ensures that the RDP is nutritionally adequate on an annual basis and, through the auditing process, ensures that facilities implement the RDP menu as written. *See* (Defendant's Exhibit A at ¶ 8).
5. Defendant additionally ensures that proper training is provided to Canteen workers on serving RDP participants. *See* (Defendant's Exhibit A at ¶¶ 14-16).
6. Defendant has further created processes for provision of the RDP to all participating inmates within Defendant's custody. *See* (Defendant's Exhibit B at ¶¶ 4-10). The process involves scanning inmate Identification Cards upon entry at the dining hall to ensure that RDP prisoners receive the RDP meal. *Id.* Defendant provides training for the security staff tasked with scanning IDs and supervising dining halls on the ID scanning process and technology. *Id.*
7. Moreover, all Chaplains have received training on implementation of the Religious Diet Program in accordance with this Court's Order, most recently on June 5, 2018. (Defendant's Exhibit C at ¶ 7). There are currently 41 RDP chaplains and an additional 60 generalist chaplains who also assist in the implementation of the Religious Diet Program. *Id.* Religious Diet Program training for chaplains covers the process for assessing sincerity, the process for placing someone on the Religious Diet, the process for notifying prisoners of potential violations, the process for assessing potential violations, and the process for suspending or removing prisoners from the Religious Diet. *See Id.* at ¶ 9.
8. Chaplains receive training on the Religious Diet Program annually. (Defendant's Exhibit C at ¶ 9). During the last year, chaplains have received sixteen and one-half hours of training across Defendant's four regions. *Id.* Chaplains also received individual training on an as needed basis, totaling twenty-four hours in the past year. *Id.*

9. Defendant has filed 44 reports on implementation to the Court. *See* (Docs. 579, 588, 593, 599, 603, 611, 620, 625, 632, 639, 640, 646, 651, 653, 654, 657, 658, 664, 668, 669, 677, 681, 682, 685, 687, 688, 689, 691, 697, 698, 699, 703, 705, 706, 710, 714, 716, 717, 722, 723, 724, 725, 729, 738, 749, 750, 752).
10. Plaintiff has conducted monitoring both on site and through review of documentation. Plaintiff conducted inspections at nine facilities accompanied by an expert. The inspections included interviews of staff and prisoners and observation of meal preparation and service. Plaintiff also reviewed the compliance reports filed by the Defendants, supplemental materials provided by the Defendant, filings on the docket, and correspondence from prisoners across the system. *See* (Doc. 678).
11. Since Defendant implemented the Court's injunction, the Plaintiff has periodically identified concerns about implementation through monitoring efforts, such as uneven opportunity to contest a potential removal. When Plaintiff has identified concerns, Plaintiff has shared those with Defendant. Defendant has been open to addressing the concerns and has responded by taking steps including conducting follow up training for chaplains.
12. Defendant is in substantial compliance with this Court's Order.
13. Because of the Defendant's substantial compliance, Plaintiff has not initiated any court proceedings to cure violations of this Order.
14. More than two years have passed since the Court issued injunctive relief.

MEMORANDUM OF LAW

On August 12, 2015, this Court issued an Order creating a Permanent Injunction against Defendant. Defendant is committed to continuing to comply with the requirements of the Religious Land Use and Institutionalized Persons Act by providing a kosher diet to all prisoners who have a sincere religious basis for keeping kosher. However, oversight by this Court is no longer necessary or appropriate.

Since this Court's Permanent Injunction was issued, Defendant has followed and continues to follow the terms of the Order. A kosher diet complying with the terms described within the Order is available to prisoners statewide. Further, Defendant has not enforced the "ten percent rule," the "zero tolerance rule," or any other policy that suspends prisoners from the kosher diet without providing an opportunity for the prisoners to contest their removal or suspension from the kosher diet program. *See Id.* at ¶ 6.

To ensure that the program is implemented as ordered, both Parties have conducted oversight. Defendant has conducted periodic audits of the program and provided them to Plaintiff as requested. Defendant has trained (and continues to train) its chaplains in the proper implementation and maintenance of the RDP. Defendant has filed Monthly and Quarterly Reports with this Court, in compliance with this Court's Order. *See* (Docs. 579, 588, 593, 599, 603, 611, 620, 625, 632, 639, 640, 646, 651, 653, 654, 657, 658, 664, 668, 669, 677, 681, 682, 685, 687, 688, 689, 691, 697, 698, 699, 703, 705, 706, 710, 714, 716, 717, 722, 723, 724, 725, 729, 738, 749, 750, 752). Defendant has also allowed Plaintiff to inspect its facilities upon request, resulting in inspections of nine facilities. To the extent that Plaintiff has identified concerns with implementation of the Court's injunction through its review of letters from prisoners, filings on the court docket, records produced by Defendant, and on-site inspections, Defendant has worked

to cure those deficiencies and has provided Plaintiff with information about its efforts. *See id.* at ¶ 14.

A. Prison Litigation Reform Act

This Court should terminate the injunction in this matter under the terms of the Prison Litigation Reform Act. Specifically, the Act requires that: “In any civil action with respect to prison conditions in which prospective relief is ordered, such relief *shall be terminable* upon the motion of any party or intervener-- (i) 2 years after the date the court granted or approved the prospective relief[.]” 18 U.S.C. § 3626(b) (emphasis added). This relief must be granted unless “the court makes written findings based on the record that prospective relief remains necessary to correct a *current and ongoing* violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.” 18 U.S.C. § 3626(b)(3) (emphasis added). *See also Cason v. Seckinger*, 231 F.3d 777, 784 (11th Cir. 2000) (explaining that “a “current and ongoing” violation is a violation that exists at the time the district court conducts the § 3626(b)(3) inquiry, and not a potential future violation.”).

As the result of this litigation, Defendant has implemented the RDP. Neither Party has provided the Court with evidence of an ongoing violation of Federal law. As described above, Defendant has complied with this Court’s Order in good faith since its entry, and continued prospective relief is no longer necessary to force compliance from Defendant.

B. Ongoing Compliance with the Law

Going forward, Defendant must comply with the current findings of law established by the Eleventh Circuit in response to Defendant’s appeal of this Court’s order. *U.S. v. FDOC*, 828 F. 3d 1341 (11th Cir. 2016). Court oversight is no longer necessary given the clarity of RLUIPA’s

requirements along with the Defendant's commitment to continuing to provide a kosher diet to those with a sincere basis for seeking that diet.

CONCLUSION

WHEREFORE, the Parties respectfully request that this Court's Order creating a Permanent Injunction against Defendant be vacated, (Doc. 548), the Permanent Injunction be terminated, and that the Court relinquish its jurisdiction over Defendant and close the case file.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Joint Motion to Vacate this Court's Order and Terminate Outstanding Injunction* was e-filed and served electronically through CM/ECF on December 5, 2018, on all counsel or parties of record.

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