

CAIR LEGAL DEFENSE FUND

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

DAMARIO ROBERTS (Inmate # 398950); *et al.*,

Plaintiffs,

v.

STEPHEN SINCLAIR, in his official capacity
as Secretary of the Washington Department of
Corrections; *et al.*,

Defendants.

Civil Action No. 18-cv-00837-RSM

**PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AS TO LIABILITY AND
PERMANENT INJUNCTIVE RELIEF**

Motion Noted: August 2, 2019

NOTICE OF MOTION FOR SUMMARY JUDGMENT

1
2 TO ALL DEFENDANTS AND THEIR COUNSEL: Please take notice that as soon as the
3 matter may be heard in the United States District Court for the Western District of Washington,
4 Plaintiffs DAMARIO ROBERTS (Inmate #398950), MOHAMED MOHAMED (Inmate #
5 384454), JEREMY LIVINSTON (Inmate #381036), NAIM LAO (Inmate # 381036), and JOHN
6 JAMES (Inmate # 712756) shall and hereby do move the Court for Summary Judgment as to
7 Liability and Permanent Injunctive Relief. Plaintiffs seek the entry of summary judgment against
8 Defendants STEPHEN SINCLAIR, BELINDA STEWART, JAMIE DOLAN, MIKE OBELAND,
9 JEFF UTTECHT, DAVID SHERMAN, HENRI FISCHER, PETE MAXSON, SERGEANT
10 PARKS, and SERGEANT ROSE. This motion is brought pursuant to Federal Rule of Civil
11 Procedure 56, 42 U.S.C. § 1983, the First Amendment, the Eighth Amendment, the Fourteenth
12 Amendment, and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*
13 Defendants violated these provisions by implementing policies, procedures, and practices which
14 deprived Plaintiffs of adequate meals during Ramadan 2018.

15 Plaintiffs' motion is based upon their Amended Complaint (Dkt. 59), this notice of motion,
16 the accompanying memorandum of points and authorities, the deposition transcripts and exhibits in
17 support, and all such further written materials and oral arguments as may be presented to the Court.
18 The Court should enter summary judgment finding liability against all Official-Capacity Defendants
19 and award declaratory and injunctive relief. The Government should also enter summary judgment
20 against all Individual-Capacity Defendants. Further proceedings should relate solely to Plaintiffs'
21 damages and entitlement to attorneys' fees.

22 Respectfully submitted,

23 Dated: July 10, 2019
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By /s/ Lena F. Masri
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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DAMARIO ROBERTS (Inmate # 398950); *et al.*,

Plaintiffs,

v.

STEPHEN SINCLAIR, in his official capacity
as Secretary of the Washington Department of
Corrections; *et al.*,

Defendants.

Civil Action No. 18-cv-00837-RSM

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AS TO LIABILITY AND
PERMANENT INJUNCTIVE RELIEF**

Motion Noted: August 2, 2019

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29	WDOC Brad Simpson 30(b)(6) Deposition	June 19, 2019
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31	WDOC Brent Carney 30(b)(6) Deposition	June 19, 2019
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33	Plaintiff Naim Lao Deposition	June 20, 2019
34	Plaintiff Demario Roberts Deposition	June 6, 2019
35	Washington DOC Stewart Ramadan 2019 Memo	January 9, 2019

1 **INTRODUCTION**

2 One of the five pillars of Islam is that Muslims fast during Ramadan. Plaintiffs Damarío
 3 Roberts, Mohamed Mohamed, Jeremy Livingston, Naim Lao, and John James are all sincere Muslims
 4 who observe the Ramadan fast. But Defendants, all officials and employees of the Washington
 5 Department of Corrections, refused to feed them accordingly. So when given the choice between
 6 starving and violating their religious faith, Plaintiffs chose to starve. Fasting during the day and
 7 unable to eat at night, Plaintiffs lost significant weight and became sick with malnourishment. They
 8 were forced to purchase their own food and beg for other inmates to share food, against policy, to
 9 survive. They did this all because Defendants imposed, and continue to impose, onerous and
 10 intrusive requirements for inmates to participate in Ramadan.

11 These requirements are illegal. They are without justification. Defendants did not refuse to
 12 feed Plaintiffs because it was too difficult. They acknowledge they always have enough food on
 13 hand, and that it's easy to take a halal meal out of the freezer, heat it up after sunset, and feed fasting
 14 Muslim inmates. Instead Defendants refused to feed Plaintiffs because of their irrational,
 15 bureaucratic policies. After all, the Defendants reasoned, it was Plaintiffs' choice to starve.
 16 Defendants gave themselves discretion to disagree with Plaintiffs' religious beliefs, suggesting "Allah
 17 is all merciful" and will forgive Plaintiffs if – due to Defendants' refusal to provide Ramadan meals –
 18 Plaintiffs violate their faith by eating lunch.

19 The U.S. Constitution and the Religious Land Use and Institutionalized Persons Act forbid
 20 the Washington Department of Corrections from substituting the Government's discretionary
 21 opinions regarding religious accommodations for Muslims' actual religious practice of Ramadan. The
 22 Department is required to accommodate fasting inmates, not starve them.

23 This Court should enter summary judgment on liability against all Defendants and enjoin the
 24 WSDOC from adopting or implementing any policy which prevents Muslim inmates from fasting
 25 during any future Ramadan.

26 **STATEMENT OF MATERIAL UNDISPUTED FACTS**

27 **A. Plaintiffs' Sincere Religious Beliefs Require Fasting During Ramadan**

28 1. All the Plaintiffs are practicing Muslims who sincerely believe that observing the

1 Ramadan fast is required by their religious faith. Livingston Dep., Ex. 25, 27:24-30-25; Mohamed
2 Dep., Ex. 27, 21:20-22:25; James Dep., Ex. 26, 8:8-8:13, 20:3-20:11; Lao Dep., Ex. 33, 24:20-26:5;
3 Roberts Dep., Ex. 34, 12:18-13:7, 23:5-23:7.

4 2. In accordance with their Islamic faith, Plaintiffs, along with Muslims worldwide,
5 observe Ramadan as a month of fasting. *See* Ramadan Memo, Ex. 2 at 5. During Ramadan,
6 “participating Muslims refrain from eating and drinking from dawn until sunset.” *Id.* According to the
7 sincerely-held religious beliefs of the plaintiffs, Muslims fast “for the sake of God.” *Id.* Though Muslims
8 fast from dawn until sunset, Muslims are permitted to consume food and drink liquids during the
9 remaining hours of the day (sunset until dawn). *Id.*; *see also* Obenland Dep., Ex. 28, 22:5-23:13
10 (explaining Ramadan).

11 **B. The WSDOC Ramadan Sign-Up Process Is Intentionally Designed to Restrict**
12 **Inmate Participation in the Ramadan Meal Program**

13 3. Each year, the Washington Department of Corrections issues a Memorandum from
14 the Corrections Program Administrator and the Food Services Administrator addressed to “All
15 Incarcerated Individuals.” Stewart Dep., Ex. 20, 63:20-25, 64:1-2. The Memorandum (the “Ramadan
16 Memo”) explains the Ramadan sign-up process that inmates are required to follow in order to be added
17 to the Ramadan Meal Program. It sets a sign-up deadline for two weeks after the issuance date of the
18 Ramadan Memo. Stewart Dep., Ex. 20, 32:12-24, 52:19-54:18. Attached to the Ramadan Memo is a
19 Ramadan Meal Request Form the inmates are required to fill out as part of the sign-up process. Stewart
20 Dep., Ex. 20, 34:17-37:9; Ex. 2 at 1-3.

21 4. The Department and WDOC headquarters do not follow up with any of the twelve
22 correctional facilities to ensure the Ramadan Memo is in fact posted in visible areas. Stewart Dep., Ex.
23 20, 40:6-41:17, Sherman Dep., Ex. 23, 41:19-24, 56:4-22. In 2019 the Department conducted a focus
24 group at the Washington State Penitentiary and concluded the facility had failed to post the Ramadan
25 Memo, but did not follow-up regarding other facilities’ compliance. Stewart 30(b)(6) Dep., Ex. 21 at
26 46:7-47:7, 47:24-48:19. In fact, Defendant Sherman, Chaplain of Monroe Correctional Complex
27 (“MCC”) responsible for posting the Ramadan Memo at his facilities, acknowledged that he never
28 verified whether the Ramadan Memo was ever posted at any of MCC’s units. Sherman Dep., Ex. 23

1 at 56:4-22.

2 5. Upon being hired as the Correctional Program Administrator in 2012, Defendant
3 Stewart added criteria for participation in the Ramadan Meal Program. Stewart Dep., Ex. 20, 36:6-
4 37:9. The added criteria have not been changed since, remaining the same in 2019. Stewart Dep., Ex.
5 20, 64:3-17; Stewart 30(b)(6) Dep., Ex. 21, 6:25-7:2; Ramadan 2019 Memo, Ex. 35.

6 6. Inmates are eligible to participate in the Ramadan Meal Program if they satisfy one of
7 two criteria as of the date of the Ramadan Memo: “Ramadan participant approval will be based on
8 participation in Islamic/Muslim religious programming over the past six (6) months or those currently
9 on a halal meal.” Stewart Dep., Ex. 20, 37:25-38:17, 64:10-14; see ex. Ex. 2 at 1-3.

10 7. Defendant Stewart added the criteria as requirements to the Ramadan Sign-Up Process
11 in order “to try to weed out individuals who don’t practice the faith,” and to ensure that only people
12 who are “practicing some aspect of the faith” and “have some sort of sincerity toward the faith” are
13 added. Stewart Dep., Ex. 20, 43:1-21, 50:17-52:24.

14 8. An inmate can be denied participation in the Ramadan Meal Program based on how
15 they answer the questions on the Ramadan Meal Request Form that pertain to criteria
16 eligibility. Stewart Dep., Ex. 20, 37:11-16. *See, e.g.*, Ex. 2. at 3.

17 9. An inmate who immediately signs up for Islamic religious programming after the
18 Ramadan Memo is issued cannot satisfy the first criteria of “participation in Islamic/Muslim religious
19 programming over the past six (6) months.” Stewart Dep., Ex. 20, 47:18-48:21.

20 10. An inmate who immediately signs up for a halal meal diet after the Ramadan Memo is
21 issued cannot satisfy the second criteria of being “currently on a halal meal,” and would therefore only
22 be permitted to participate in the Ramadan Meal Program if they attended Islamic/Muslim religious
23 programming for six months prior to the date of the Ramadan Memo. Stewart Dep., Ex. 20, 41:18-
24 43:5.

25 11. The religious diet sign-up period occurs twice a year (November to April 15 and May
26 to October 15) and the religious diet is implemented twice a year (May 1 and November 1). Stewart
27 Dep., Ex. 20, 55:5-56:21. An inmate who signs up for a halal diet during the current religious diet sign-
28

1 up period and before the date of the Ramadan Memo and whose halal diet will not be implemented
2 until after the date the Ramadan Memo is issued, cannot satisfy the second criteria of being “currently
3 on a halal meal.” Stewart Dep., Ex. 20, 38:10-25, 42:8-24.

4 12. Participation in the Islamic religious holidays Eid al-Fitr or Eid al-Adha is not enough
5 to qualify an inmate to participate in the Ramadan Meal Program. Stewart Dep., Ex. 20, 116:22-25.

6 13. Nor is possession of Islamic religious items or an affidavit from a Muslim religious
7 leader confirming the inmate is a Muslim enough to qualify an inmate for participation. Stewart Dep.,
8 Ex. 20, 117:1-9.

9 14. If a facility chaplain believes an exception should be applied to allow an inmate to
10 participate in the Ramadan Meal Program, they are required to contact Defendant Stewart’s office to
11 explain the reasons for the exception. Stewart Dep., Ex. 20, 59:13-60:19. Someone from Defendant
12 Stewart’s office would then decide whether to allow that inmate to participate. *Id.*

13 15. In 2018, Ramadan began on May 16. The Ramadan Memo was issued on January 16,
14 2018 and inmates had until 5 pm on January 30, 2018 to sign-up to participate in the Ramadan Meal
15 Program. Ex. 2. Facility chaplains had a separate deadline of February 15, 2018 to submit a request
16 for an exception to Defendant Stewart’s office for consideration. Stewart Dep., Ex. 20, 69:12-25 to
17 70:1-16. “No signup forms [were] accepted after February 15, 2018. Inmates are not notified of the
18 deadline set for chaplains to submit requests for exceptions. Stewart Dep., Ex. 20, 69:12-25 to 70:1-
19 16.

20 16. An inmate that has been denied from participating in the Ramadan Meal Program will
21 not receive any Ramadan meals. Stewart Dep., Ex. 20, 67-68. The Department does not provide
22 inmates that choose to fast Ramadan but missed the sign-up period with any food to eat that they can
23 consume from sunset to sunrise, in accordance with their sincerely held religious beliefs. Stewart
24 30(b)(6) Dep., Ex. 21 at 10:4-12.

25 17. An inmate prescribed a medical diet is forced to choose between (a) maintaining their
26 health by continuing their medical diet and sacrificing their sincerely-held religious beliefs by not
27 participating in the Ramadan Meal Program and (b) participating in the Ramadan Meal Program and
28

1 sacrificing their health by discontinuing their medical diet. Stewart Dep., Ex. 20, 63:3-12.

2 18. When asked what options an inmate has to sustain himself if he has a sincerely-held
3 religious belief that he is prohibited from eating during daylight hours during the month of Ramadan
4 and he was also denied from getting meals during nighttime hours, Defendant Sherman responded that
5 “[h]is options would be to eat the mainline food that’s coming in. That Allah is called merciful and
6 that he would understand that he did not have any other options in order to sustain himself and that
7 he would then be required to – that he would be forgiven for eating during non-Ramada[n] hours or
8 days.” Sherman Dep., Ex. 23 at 122:18-25, 123:8-13.

9 **C. Defendants Denied Plaintiffs’ Participation in Ramadan**

10 19. Damario Roberts was denied multiple grievances for being denied participation in
11 Ramadan 2018. In one of those grievances, he stated “I am a practicing Muslim and Chaplain Sherman
12 refuses to put me on the ramadan list because I have not gone to 6 straight months of jumah, It is not
13 against my religion not to go to jumah. It is not against my religion not to go to jumah and I am fasting
14 for ramadan. I am not getting fed through DOC.” Ex. 8.

15 20. Mohamed was denied grievances he filed during 2017 and 2018 regarding participation
16 in Ramadan. In his grievance filed May 30, 2018, he stated “[t]his is the second year am going thru this
17 process and they keep not putting me on the Ramadan list after I filled out the form before the deadline.
18 I can’t go to regular mainline because I can’t bring the food back and I’ll get infracted. I can’t eat after
19 sundown and I have no food to practice my religion. This is mandatory to fast the month of Ramadan.
20 I spoke with the Chaplain and told me he can’t help.” Defendants Sherman and Maxson denied this
21 grievance despite confirming that he met the religious event participation requirement because
22 “Chaplain Fischer stated he searched his office for the form and was unable to find a Ramadan Meal
23 request form.” Ex. 7.

24 21. Jeremy Livingston was denied an emergency grievance he filed during Ramadan 2018
25 for being denied Ramadan meals. Livingston had sent numerous messages complaining over the prior
26 months to Defendant Sherman and others that he keeps being placed on callout for Christian services
27 when he has repeatedly requested to be placed on callout for jumu’ah prayer. Nonetheless, Defendant
28

1 Sherman denied his request to participate in Ramadan based on failure to meet the six month Islamic
2 event participation criteria. Ex. 6; Ex. 14| Sherman Dep., Ex. 23 at 175:4 to 182:7.

3 22. Defendant Sherman testified he initially denied Mohamed's grievance because he didn't
4 find a record of his participation in jumu'ah services at that time because Mohamed was likely "slipping
5 out and going to Jumah" instead of going to his GED classes. Sherman Dep., Ex. 23 at 158:12-22.
6 Ex. 14.

7 23. Naim Lao filed multiple emergency grievances regarding the denial of his participation
8 in Ramadan, all of which were denied. "Yesterday I was feeling dizzy and my limbs were tingly and
9 approached [sic] Sargent Parks stating that there is something clearly wrong with me and that I am
10 about to pass out and explain to him what was going on and he said that if I don't start eating then
11 sooner or later they are going to have to force feed me. My friend Vincent had to help me walk the
12 rest of the way back to my cell... There is no need to force feed me just let me bring some food back
13 to the cell and I will eat when my religion allows it. Please feed me. This is the fourth day in a row
14 that DOC has yet to feed me for ramadan and I am very HUNGRY." Lao Dep., Ex. 9.

15 24. John James has Celiac's Disease, which requires him to eat a gluten-free diet. James
16 Dep., Ex. 26 at 89:5-13. Nevertheless, James was denied multiple grievances filed over the course of
17 several years to obtain gluten-free meals during Ramadan. James Dep., Ex. 26 at 107:12-20; Stewart
18 Dep., Ex. 20 at 142:11-143:19; Stewart 30(b)(6) Dep., Ex. 21 at 57:11-14; 58:13-16; 60:17-25; Ex. 10.
19 WSDOC's policy does not allow "alternative meals" during Ramadan, which the Department deems
20 "special meals for special people." Stewart Dep., Ex. 20, 60:21-61:22. The WSDOC had no other
21 reason besides its "no special meals for special people" rule to deny this request. This is even though
22 it is not difficult for WSDOC to accommodate a single request of a Ramadan gluten-free meal for the
23 month of Ramadan. Stewart Dep., Ex. 10; Ex. 20 at 144:6-147:8. In one of multiple grievances that
24 were denied, filed during Ramadan 2015, he stated "I want to grieve against SCCC Food Service for
25 poisoning me... I began experiencing extreme diarrhea, head aches [sic] and body pains. Which lead to
26 throwing up... PA Erin Lystad examined me and... told me I had food poisoning... I told her all I've
27 had to eat since 6-17-2015 was Ramadan meals." Ex. 10 at 13.
28

1 25. In 2014, WSDOC modified its Religious Programs Policy (Policy No. DOC 560.200)
2 to “[a]djust[] that therapeutic diets take precedence over religious diets unless refused at the time of
3 medical encounter.” Thus, inmates are forced to choose between their prescribed medical diet and
4 their religious dietary needs. This modification was made despite WSDOC having only received a
5 single request – by Plaintiff John James – for a Ramadan diet to also be a therapeutic diet. Stewart
6 30(b)(6), Ex. 21 at 57:6-25 to 58:10-20; Sherman Dep., Ex. 23 at 10:14-17; Ex. 12 at 1; Simpson Dep.,
7 Ex. 29 at 88: 8-12.

8 **D. Defendants Denied Other Inmates’ Participation in Ramadan**

9 26. On January 28, 2018, Chaplain Luce submitted a request to Defendant Stewart for
10 guidance as to whether an exception can be given to Inmate Vader stating:

11 ... [H]e has not attended any Muslim services at all, and is not on Halal diet... He said he did
12 Ramadan in the past; on OMNI he did Ramadan in 2013 and 2015. He said he grew up in an
13 African-American foster home and did Ramadan on the street. However he is clear that he is
14 not a practicing Muslim. From his description he is more like Bahai where all religions are
15 one. Because of this I gave him information on the Baha’i The Fast which is coming up in
16 March and encouraged him to think it over. Please provide guidance to me as to if I can deny
17 him or should add him specifically for Ramadan as an exception to the Islamic faith. The
18 tension would be that he does not pray to Allah and does not recognize Allah as God per
19 se. This might offender our Muslim men, rightfully so. Ex 3 at 4145.

20 Stewart responded “I do not understand why you need guidance. The answer is 100 percent
21 evident.” Inmate Vader was denied participation. Stewart Dep., Ex. 20 at 78:2-80:18. Ex. 3 at 4147-
22 4147.

23 27. On May 16, 2018, Defendant Stewart removed Inmate Hussein from participating in
24 the Ramadan Meal Program without explanation despite having been added as an exception the day
25 prior by the Superintendent of that correctional facility. Stewart Dep., Ex. 20 at 81:21-82:20; Ex. 3 at
26 9680-9681.

27 28. Defendant Stewart denied Inmate Costello from participating in the Ramadan Meal
28 Program despite Chaplain Jakstas of Larch Corrections Center requesting an exception be made on
the basis that he was admitted to the Department after the Ramadan sign-up deadline: “I’m not adding
Costello because he did not meet the requirement of signing up on time... [Statewide Muslim
Chaplain] Rasheed, I believe you said at one time a new convert should not participate in Ramadan

1 until they know more about the faith as it will be too hard on them.” Ex. 3 at 9796-9801. Defendant
2 Stewart explained that “[she] did that based on conversations that I had in the past with Chaplain
3 Rasheed, and he said new converts should not be added the first year... new converts should not be –
4 should not go through Ramadan during early on in their conversion because it is too hard to do that
5 30-day fast. They have no idea of the magnitude of what it takes to do that.” Stewart Dep., Ex. 20 at
6 87:10-90:12.

7 29. In the same email, Defendant Stewart’s staff added two other inmates Chaplain Jakstas
8 had identified along with Inmate Costello to participate in the Ramadan Meal Program because they –
9 like Costello – arrived at the Department after the sign-up period. Stewart Dep., Ex. 20 at 87:10-92:11;
10 Ex. 3 at 9796-9801.

11 30. Inmate Rollins was denied participation in Ramadan in 2017 because he did not meet
12 the criteria for sign-up. Ex. 3 at 7634-7635; Stewart Dep., Ex. 20 at 97:8-101:21. He explained in his
13 grievance: “I received a message back from Chaplain Wakeman...that due to me not participating in
14 the Islamic Juma service within the last six (6) months that I won’t be allowed to participate in
15 Ramada[n]. I am not Sunni, nor Shiite Muslim. However, I am A Nation of Islam Muslim... This
16 facility does not provide a Juma service for those of us who are Nation of Islam Muslims.” Ex. 3 at
17 7624-7629. The Level I denial of his grievance states that “[d]ue to limited resources preference will
18 be given to those who have participated in Islamic/Muslim religious programming over the past 6
19 months or those currently on a Halal meal... As discussed during your interview, you did not meet the
20 initial requirements. No further action will be recommended at this time.” Ex. 3 at 7624-7629.
21 Defendant Stewart, in her Level III response, stated that she concurred despite acknowledging that
22 services for members of Nation of Islam are not provided at the facility. Inmate Rollins was denied
23 again in 2018 for the same reason. When asked about these denials during her deposition, Defendant
24 Stewart said that she doesn’t agree with the decision and that “[h]e should have been added.” Stewart
25 Dep., Ex. 20 at 97:8-101:21.

26 31. Defendant Sherman and Defendant Maxson denied Inmate Mitchell participation in
27 the Ramadan Meal Program despite Mitchell stating that he was in segregation during the sign-up
28

1 period, did not see the Ramadan Memo, was not aware of the sign-up period and that he had signed
2 up for the Ramadan Prayer List not realizing it was different than the Ramadan Meal List. Sherman
3 Dep., Ex. 23 at 113:22-25 to 115:1-17; Ex. 3 at 10264, 10267-10270, 10279, 10281-10282, 10284-
4 10290. Sherman explained that “[h]e has to deal with his honesty, lack of honesty, sincerity, whatever
5 the factors were that led to him being in the hole, to not signing up for the list... Allah is going to
6 understand that, and that’s the merciful side.” Sherman Dep., Ex. 23 at 126:17-23.

7
8 32. Defendants Sherman and Maxson denied Inmate Greer participation in the Ramadan
9 Meal Program based on failure to meet the six month Islamic/Muslim religious programming
10 attendance requirement, even though he fasted during Ramadan two years prior. Sherman Dep., Ex.
11 23 at 141:5-25, 143:1-8; Ex. 13.

12 **E. Ramadan Meal Logistics**

13 33. A Ramadan meal is just a Halal meal. Heise Dep., Ex. 32, 37:2-38:25; Stewart Dep.,
14 Ex. 20, 62:2-10. The only difference is that instead of having three or more meals a day, at Ramadan
15 there are only two significant meals, the Suhoor (morning meal) and the Iftar (evening/break fast meal).
16 Heise Dep., Ex. 32, 37:2-9.

17 34. Halal meals are kept frozen on site at the correctional facilities. Heise Dep., Ex. 32,
18 35:14-21. Each costs about \$1.50. Simpson 54:12-25. They can be ordered in as short as one week in
19 advance. Heise Dep., Ex. 32, 47:6-13. There is always enough. Heise Dep., Ex. 32, 20:20-23:3; 35:14-
20 36:22. The inmates heat up their own food without a problem. Heise Dep., Ex. 32, 46:14-18; Stewart
21 Dep., Ex. 20, 61:5-9. If the inmates could not heat them up, there is no issue with The WSDOC doing
22 so. Heise Dep., Ex. 32, 39:16-17.

23 35. To the extent they require more halal meals, The WSDOC can just order additional
24 food. Heise Dep., Ex. 32, 47:6-13. To the extent the prison orders too many Ramadan meals, the
25 Ramadan meals can simply be repurposed as ordinary halal meals. Heise Dep., Ex. 32, 38:14-25. The
26 cost effects are minimal, and The WSDOC has not calculated any additional cost to add anyone to the
27 Ramadan List. Heise Dep., Ex. 32, 27:25-29:6.

28 36. There is no administrative problem requiring any significant lead time to prepare.

1 Indeed, in 2019, the prison needed more Ramadan meals and with one phone call those meals arrived
 2 within a couple of hours. In 2018, The WSDOC was forced by court order to add people at the last
 3 second to the Ramadan List, and yet The WSDOC could not identify any additional costs or problems
 4 with compliance. Obenland Dep., Ex. 28, 43:17-46:16; Stewart 30(b)(6) Dep., Ex. 21, 26:2-27:7. In
 5 2019, the Monroe Correctional Complex added six inmates to the Ramadan list the first week of
 6 Ramadan, Obenland Dep., Ex. 28, 15:21-17:13, and there were zero logistical problems, Obenland
 7 Dep., Ex. 28, 28:2-13.

8 37. Department of Corrections creates menus with a range of caloric levels to meet the
 9 needs of most of their population. Carney Dep., Ex. 22, 8:7-9. The WSDOC use nutritional standards
 10 for their menus that come from established dietary guidelines. Carney Dep., Ex. 22, 13:6-20. And there
 11 is no reason that The WSDOC could not do the same for Ramadan meals. Carney Dep., Ex. 22, 20:13-
 12 19.

13 **ARGUMENT**

14 In ruling on a motion under Rule 56, summary judgment is appropriate when “there is no
 15 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of
 16 law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

17 **I. Defendants’ Ramadan Policies and Practices Violate RLUIPA**

18 For reasons no greater than marginal administrative convenience, knowing the pain it will cause
 19 the many Muslim inmates who observe Ramadan’s fast, Defendants deprived Plaintiffs of food. In
 20 doing so, they violate RLUIPA, the law Congress passed to ensure prisons and jails across the country
 21 allow inmates in custody to practice their faith.

22 **A. RLUIPA Requires Defendants to Accommodate Ramadan Fasting**

23 RLUIPA exists to make it illegal for the Department to do what it has done here: deprive
 24 Muslim inmates of food, and sometimes even water, between sunset and dawn so the inmates may
 25 observe the Ramadan fast during the day. Section 3 of the Religious Land Use and Institutionalized
 26 Persons Act of 2000, 42 U.S.C. § 2000cc creates a private cause of action for such persons who allege
 27 that a state government has substantially burdened their religious conduct. 42 U.S.C. § 2000cc-1(a),
 28

1 2(a). Unlike cases arising under the Free Exercise Clause of the First Amendment, RLUIPA applies
 2 even where the burden on the prisoner “results from a rule of general applicability.” 42 U.S.C. §
 3 2000cc-1(a).

4 To establish a claim under RLUIPA, a plaintiff bears the initial burden of showing (1) that he
 5 seeks to engage in an exercise of religion, and (2) that the challenged practice substantially burdens that
 6 exercise of religion. 42 U.S.C. § 2000cc-2(b). Once a plaintiff has established this *prima facie* case, a
 7 defendant bears the burden of proving that imposition of the burden is in “furtherance of a compelling
 8 governmental interest” and “is the least restrictive means of furthering that compelling governmental
 9 interest.” 42 U.S.C. § 2000cc-1(a)(1)-(2).

10 **B. All Plaintiffs Are and Were Muslims who Adhere to One of the Five Pillars of**
 11 **Islam Directing Adherents to Fast During Ramadan**

12 All of the Plaintiffs are Muslims who believe that observing the Ramadan fast is required by
 13 their faith. Livingston Dep., Ex. 25, 27:24-30-25; Mohamed Dep., Ex. 27, 21:20-22:25; James Dep.,
 14 Ex. 26, 8:8-8:13, 20:3-20:11; Lao Dep., Ex. 33, 24:20-26:5; Roberts Dep., Ex. 34, 12:18-13:7, 23:5-23:7.
 15 It is why, in spite of Defendants failure to provide them food, they maintained their fast through
 16 substantial weight loss and symptoms of malnutrition and starvation.

17 **C. Without food after sunset, Defendants Substantially Burden The Ability of**
 18 **Muslim Inmates to Observe Ramadan’s Fast**

19 In passing RLUIPA, Congress required that all prisons, jails, and detention centers make great
 20 efforts to accommodate the religious practices of those in custody. Those great efforts, whatever else
 21 they include, must give Plaintiffs and other Muslim inmates food compatible with their religious
 22 practices. “Congress enacted RLUIPA ... in order to provide very broad protection for religious
 23 liberty” to prisoners. *Holt v. Hobbs*, 135 S. Ct. 853, 859 (2015).

24 As the Ninth Circuit has made clear, all inmates—including the plaintiffs—“have the right to
 25 be provided with food sufficient to sustain them in good health that satisfies the dietary laws of their
 26 religion.” *McElyea v. Babbitt*, 833 F.2d 196, 198 (9th Cir. 1987); *see also England v. Walsh*, 727 Fed. Appx
 27 255, 256-7 (9th Cir. 2018) (unpublished opinion); *Porter v. Wegman*, 671 Fed. Appx. 442, 443 (9th Cir.
 28 2016) (unpublished opinion); *Dickinson v. Arizona Dep’t of Corr.*, 1999 U.S. App. LEXIS 16026 *3 (9th

1 Cir. 1999) (unpublished opinion); *Logan v. Lewis*, 1998 U.S. App. LEXIS 3751 *3-4 (9th Cir. 1998)
2 (unpublished opinion). Courts have “repeatedly held that forcing an inmate to choose between daily
3 nutrition and religious practice is a substantial burden,” particularly during Ramadan. *See, e.g., Thompson*
4 *v. Holm*, 809 F.3d 376, 380 (7th Cir. 2016) (collecting cases and finding a substantial burden where
5 prison denied inmate Ramadan meals for two days).

6 A substantial burden exists, then, whenever a facility either forces an inmate to choose between
7 eating a diet that violates his faith and going without food at all for a period of time that inflicts on
8 Plaintiffs an “adverse physical effect.” *Shakur v. Scribner*, 514 F.3d 878, 888-89 (9th Cir. 2008); *see also*
9 *Vincent v. Stewart*, 757 Fed. Appx. 578, 580-81 (9th Cir. 2018) (unpublished opinion); *Rawlins v. Stewart*,
10 10 Fed. Appx. 446, 446 (9th Cir. 2001) (unpublished opinion). With respect to this point of law, the
11 Ninth Circuit is much like other circuit courts that have confronted similar issues. *See Love v. Reed*, 216
12 F.3d 682, 689-690 (8th Cir. 2000) (finding prison's failure to accommodate prisoner's religious diet a
13 violation of RLUIPA and rejecting prison's suggestion that the prisoner could fast as an alternative to
14 the prison's accommodation of the desired diet); *Nelson v. Miller*, 570 F.3d 868, 879 (7th Cir. 2009);
15 *Hunafa v. Murphy*, 907 F.2d 46 (7th Cir. 1990).

16 Here, the undisputable facts show that the Department’s Ramadan practices offered Plaintiffs
17 food only when their faith did not allow them to eat. It is a fact that the Department will, because it
18 must, concede. All four plaintiffs urged Defendants to provide them with food after sunset so that
19 they could break their daily, dawn-to-sunset fast and prepare for the next day’s fast. The Defendants
20 knew because they were told repeatedly that plaintiffs could not and would not eat food from dawn to
21 sunset. For example, Naim Lao begged for food, explaining that he “was feeling dizzy” and that his
22 “limbs were tingly.” Lao Dep., Ex. 9 at 4. “Please feed me,” he wrote in a grievance that was
23 thoughtlessly rejected. “[J]ust let me bring some food back to the cell and I will eat when my religion
24 allows it.” *Id.* John James, who has Celiac disease, also pleaded his case to Defendants, explaining that
25 eating gluten-laden meals caused him “extreme diarrhea, head aches, and body pains.” Ex. 10 at 13.
26 From Mr. James’ perspective, it seemed as if the facility, with deliberate intention, was “poisoning”
27 him. *Id.* And still, Defendants unthinking obedience to Department Ramadan practices prevented
28 them from providing all fasting inmates with food at a time that they could make use of it. Because

1 Defendants would not provide food when Plaintiffs’ religious beliefs permitted them to eat, and
2 altogether denied John James gluten-free food during Ramadan, Defendants have denied Muslim
3 inmates observing Ramadan food “that satisfies the dietary laws of their religion.” *McElyea v. Babbitt*,
4 833 F.2d 196, 198 (9th Cir. 1987). For RLUIPA, this burden is as substantial of a burden as there ever
5 was.

6 **D. Because Depriving Muslim Inmates of Food Consistent with their Religious**
7 **Beliefs Substantially Burdens RLUIPA rights, Defendants Must Identify a**
8 **Compelling Interest—a Showing They Cannot Make**

9 A compelling interest does not exist just because a defendant labels its interest as compelling.
10 This Court must do more and ferret out exactly what interest is at stake. And here, Defendants’ interest
11 in denying food to Muslim inmates observing Ramadan’s fast boils down to, at most, a marginal effort
12 to achieve a small, indeterminate amount of cost savings.

13 Defendants acknowledge that Ramadan meals are halal meals kept frozen that cost just \$1.50
14 each. Simpson 54:12-25 They acknowledge that it takes just a week—not six months—to order and
15 receive halal meals. And the undisputed evidence indicates that Muslim inmates seeking to fast during
16 Ramadan can heat up their own frozen meals without creating any extra administrative burdens for
17 Defendants. Nothing indicates how flimsy Defendants interest is here than the fact that, though
18 Defendants have been compelled to add Muslim inmates to the Ramadan list this year and last year,
19 they cannot any additional costs or problems with compliance. Obenland Dep., Ex. 28, 43:17-46:16;
20 Stewart 30(b)(6) Dep., Ex. 21, 26:2-27:7.

21 These ethereal savings and conveniences, if they exist at all and are not just a pretext for
22 religious animosity, do not constitute compelling need. RLUIPA itself recognizes that it “may require
23 a government to incur expenses in its own operations to avoid imposing a substantial burden on
24 religious exercise.” 42 U.S.C. § 2000cc-3(c). Thus, RLUIPA may override some fiscal policy decisions,
25 and, without more, a desire to curb costs is not a compelling interest that can justify a substantial
26 burden on the free exercise of religion. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct 2751, 2781 (2014)
27 (stating that RFRA and RLUIPA may require the government to expend additional funds to
28 accommodate citizens’ religious beliefs).

1 If cost containment were a compelling government interest in all circumstances, RLUIPA
2 would be irreparably weakened. “To allow government conduct to survive strict scrutiny each time the
3 government claims that accommodating an inmate’s religion would impose some cost or inefficiency,
4 would be to impermissibly weaken RLUIPA’s effect.” *Bilal v. Lehman*, 2006 U.S. Dist. LEXIS 93152 at
5 *30 (W.D. Wash. Oct. 2, 2006) (quoting *Madison v. Riter*, 240 F. Supp. 2d 566, 578 n. 10 (W.D. Va. 2003)).

6 While some courts have held that limiting costs can be a compelling interest in certain
7 circumstances, marginal cost savings is never a compelling interest. See *Luckette v. Lewis*, 883 F. Supp.
8 471, 480 (D. Ariz. 1995) (recognizing that limiting costs is a compelling interest, but holding that the
9 additional expense of providing Kosher meals to inmates was not a compelling interest because it was
10 “minimal”); see also *Agrawal v. Briley*, 2004 U.S. Dist. LEXIS 16997 *8 (N.D. Ill. 2004) (“It is undeniable
11 that, in the abstract, safety, security, internal order and discipline, and the management and
12 conservation of resources are ‘compelling interests.’ It does not follow, however, that anything that
13 furthers one or more of these interests, however marginally, is equally ‘compelling.’ ... [T]he possibility
14 that Plaintiff’s preferred diet cost a small amount more per year could not be considered compelling.”).

15 It is difficult to see how Defendants have established a compelling state interest not to incur
16 costs associated with providing Ramadan meals to a few additional Muslim inmates who, according to
17 their sincerely-held beliefs, have a religious obligation to fast during Ramadan. And other states are
18 able to offer Ramadan meals that do not mimic the one at issue in this case. Alaska’s Ramadan Policy,
19 for example, provides hot meals totaling 2400-3000 calories a day with no hoops or signups required.¹
20 It is also why Plaintiff James has had no issue receiving Ramadan meals at all prior facilities.

21 In order for Defendants’ administrative concerns to have an impact on this Court’s analysis,
22 the Department must still establish that avoiding additional administrative burden amounts to a
23 compelling interest. *Bilal*, 2006 Dist. LEXIS 93152 at *34. In the 9th Circuit, when looking at whether
24 budgetary and administrative concerns of the prison can justify a burden on free exercise, courts must
25 look to whether there are reasonable alternatives to the current policy. The existence of alternatives is
26 evidence that a prison policy is not reasonable and cannot be justified by reference to administrative
27

28 ¹ <http://www.correct.state.ak.us/pnp/pdf/805.03.pdf> at 8.

1 concerns. *Ashelman v. Wawrzaszek*, 111 F.3d 674, 677 (9th Cir. 1997); *see also Ward v. Walsh*, 1 F.3d 873,
 2 879 (9th Cir. 11993); *Turner v. Safley*, 482 U.S. 78, 90-91 (1987). That few other prisons appear to have
 3 the same issue that Defendants have is strong evidence that the administrative burdens here are
 4 imagined. And of course, many alternatives exist to minimalize any administrative burden.

5 Meanwhile, Defendants have not provided evidence to demonstrate that the burden on their
 6 efficiency is compelling other than conclusory statements. *F.T.C. v. Publishing Clearing House, Inc.*, 104
 7 F.3d 1168, 1171 (9th Cir. 1997) (such statements insufficient to avoid summary judgment).

8 Likewise, Defendants have not shown that the outright denial of Ramadan meals to a number
 9 of inmates is the least restrictive means of achieving that goal. “The least-restrictive-means standard is
 10 exceptionally demanding.” *Holt v. Hobbs*, 135 S.Ct. 853, 864 (2015). It “requires the government to
 11 show that it lacks other means of achieving its desired goal without imposing a substantial burden.” *Id.*
 12 “If a less restrictive means is available for the Government to achieve its goals, the Government must
 13 use it.” *Id.*

14 The same alternatives that show a lack of compelling interest also show the lack of least
 15 restrictive means. The Department cannot meet its burden to prove least restrictive means unless it
 16 demonstrates that “it has actually considered and rejected the efficacy of less restrictive measures
 17 before adopting the challenged practice. *Warsoldier*, 418 F.3d at 999. In *Holt*, 135 S.Ct. at 866, the
 18 Supreme Court, finding that a policy violated RLUIPA, stated, “when so many prisons offer an
 19 accommodation, a prison must, at a minimum, offer persuasive reasons why it believes it must take a
 20 different course, and the Department has failed to make that showing here.” *See also Warsoldier*, 418
 21 F.3d at 1000 (“[W]e have found comparisons between institutions analytically useful when considering
 22 whether the government is employing the least restrictive means.”) The Department of Corrections
 23 offers no explanation why these prison systems are able to meet their interests without infringing on
 24 their inmates’ right to freely exercise their religious beliefs.

25 **E. Even the Court Identifies a Compelling Interest, Defendants Unthinking**
 26 **Obedience to their Past Ramadan Practices Shows that Less Restrictive**
 27 **Means were Available to Them**

28 With extra food on hand every day of Ramadan, and more just a phone call and a few days

1 away if needed, depriving Plaintiffs of food at a time they could eat was not the least restrictive means
2 of pursuing the Department's interest however Defendants characterize it. "The least-restrictive-means
3 standard is exceptionally demanding." *Holt v. Hobbs*, 135 S.Ct. 853, 864 (2015). It "requires the
4 government to show that it lacks other means of achieving its desired goal without imposing a
5 substantial burden." *Id.* "If a less restrictive means is available for the Government to achieve its goals,
6 the Government must use it." *Id.*

7 The same alternatives that show a lack of compelling interest also show the lack of least
8 restrictive means. The Department cannot meet its burden to prove least restrictive means unless it
9 demonstrates that "it has actually considered and rejected the efficacy of less restrictive measures
10 before adopting the challenged practice. *Warsoldier*, 418 F.3d at 999. In *Holt*, 135 S.Ct. at 866, the
11 Supreme Court, finding that a policy violated RLUIPA, stated, "when so many prisons offer an
12 accommodation, a prison must, at a minimum, offer persuasive reasons why it believes it must take a
13 different course, and the Department has failed to make that showing here." *See also Warsoldier*, 418
14 F.3d at 1000 ("[W]e have found comparisons between institutions analytically useful when considering
15 whether the government is employing the least restrictive means.") The Department offers no
16 explanation why these prison systems are able to meet their interests without infringing on their
17 inmates' right to freely exercise their religious beliefs.

18 **II. Defendants' Policies Starve Fasting Muslim Inmates in Violation of the Eight** 19 **Amendment**

20 The same policies that require Muslims such as Plaintiffs to either starve or abandon their
21 religious beliefs also violate the Eighth Amendment.

22 The United States Supreme Court has held that "the unnecessary and wanton infliction of pain
23 ... constitutes cruel and unusual punishment forbidden by the Eighth Amendment." *Hudson v.*
24 *McMillian*, 503 U.S. 1, 5 (1992) (quoting *Whitley v. Albers*, 475 U.S. 312 (1986)). "What is necessary to
25 show sufficient harm for purposes of the Cruel and Unusual Punishments Clause depends upon the
26 claim at issue." *Id.* The inquiry is "contextual and responsive to 'contemporary standards of decency.'" *Id.*
27 (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). *See also, Estelle*, supra, 429 U.S., at 102 (proscribing
28 torture and barbarous punishment was "the primary concern of the drafters" of the Eighth

1 Amendment); *Wilkinson v. Utah*, 99 U.S. 130, 136 (1879) (“[I]t is safe to affirm that punishments of
2 torture ... and all others in the same line of unnecessary cruelty, are forbidden by [the Eighth
3 Amendment]”). When the cumulative impact of the conditions of incarceration threatens the physical,
4 mental, and emotional health and well-being of the inmates and/or creates a probability of recidivism
5 and future incarceration, the court must conclude that the conditions violate the Constitution.” *Rhodes*
6 *v. Chapman*, 452 U.S. 337, 364 (1981).

7 Under the Eighth Amendment, “[p]rison officials have a duty to ensure that prisoners are
8 provided adequate shelter, food, clothing, sanitation, medical care, and personal safety. *Johnson v. Lewis*,
9 217 F.3d 726, 731 (9th Cir. 2000). See *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Keenan v. Hall*, 83
10 F.3d 1083, 1089 (9th Cir. 1996); *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982). “While prison
11 food need not be ‘tasty or aesthetically pleasing,’ it must be ‘adequate to maintain health.” *Keenan v.*
12 *Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996), quoting *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993).

13 An Eighth Amendment violation will be found when (1) the alleged deprivation must be
14 objectively sufficiently serious, and (2) the prison official acted with deliberate indifference to inmate’s
15 serious needs. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Rhodes v. Chapman*, 452 U.S. 337 (1981).
16 Those violations that deny basic necessities are sufficiently grave to form the basis for an Eighth
17 Amendment claim. *Wilson v. Seiter*, 501 U.S. 294 (1991). Deliberate indifference is found when the
18 government is “aware of facts from which the inference could be drawn that a substantial risk of serious
19 harm exists,” and, as a result, draws such an inference. *Id.* at 837. But even a prison official who was
20 unaware of the risk of substantial risk of harm violates the Eighth Amendment if the risk was obvious
21 so that a reasonable person should have inferred a substantial risk of serious harm. *Id.*

22 The deliberate indifference of Defendants is pronounced. All four plaintiffs put in writing
23 repeatedly that they were going without food. Mohamed Mohamed explained his predicament: “I can’t
24 go to the regular mainline because I can’t bring the food back and...I can’t eat after sundown.” Ex. 7.
25 Demario Roberts stated in plain English to Defendants that he “was not getting fed through DOC.”
26 Ex. 8. Defendants knew that Plaintiffs were not getting food between sunset and dawn, the only time
27 during which they could eat as Muslims observing Ramadan’s fast. Indeed, rather than provide
28 Plaintiffs with food, a guard noticing Naim Lao’s ragged appearance threatened to force feed him if he

1 continues to fast in accordance with his faith. Lao Dep., Ex. 9 at 4.

2 Depriving adequate nutrition and caloric intake to inmates constitutes an actionable Eighth
3 Amendment violation. The Eighth Amendment imposes a duty on officials to provide “humane
4 conditions of confinement,” including ensuring, among other things, that prisoners receive adequate
5 clothing, food and medical care. *Johnson*, 217 F.3d at 731 (quoting *Farmer v. Brennan*, 511 U.S. at 832).
6 A deprivation that denies prisoners the “minimal civilized measure of life’s necessities” can form the
7 basis of an Eighth Amendment Claim. *Id.* (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)); *see also*
8 *Keenan*, 83 F.3d at 1089. Further, “the more basic the need, the shorter the time it can be withheld.”
9 *Hoptowit*, 682 F.2d at 1259; *see also Anderson v. County of Kern*, 45 F.3d 1310, 1314, *as amended*, 75 F.3d 448
10 (9th Cir. 1995).

11 That requires providing [food]...Other courts have also held that inadequate food is actionable
12 under the Eighth Amendment. *See, e.g., Cunningham v. Jones*, 567 F.2d 653, 656 (6th Cir. 1977); *Berry v.*
13 *Brady*, 192 F.3d 504, 507 (5th Cir. 1999); *Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) (“A
14 substantial deprivation of food may be sufficiently serious to state a conditions of confinement claim
15 under the Eighth Amendment.”); *Landman v. Royster*, 333 F. Supp. 621 (E.D. Va. 1971).

16 **III. Defendants Violate the Equal Protection Clause and Free Exercise Clause**

17 Defendants violate the Equal Protection Clause if Plaintiffs can show a difference in treatment
18 between Muslims and other protected groups, unless the difference “is reasonably related to legitimate
19 penological interests.” *Turner v. Safley*, 482 U.S. 78, 89 (1987); *see Shakur v. Schriro*, 514 F.3d 878, 891
20 (9th Cir. 2008). Under the four part *Turner* test, reasonableness looks to (1) the logicalness of the
21 connection between the regulation and the goal, (2) the alternate means of exercising the right in
22 question that currently exist, (3) the impact of accommodation on others, and (4) the absence of ready
23 alternatives. *Turner*, 482 U.S. at 89-91.

24 Here, Ramadan and Passover are treated differently. The evidence shows that Plaintiffs and
25 other Muslims were scrutinized heavily before being permitted to obtain Ramadan meals. But for
26 Passover, a different story emerges. “A few years ago, the Department experienced 1,800 individuals
27 who signed up for Passover.” Simpson Dep., Ex. 29, 59:14-15. But instead of scrutinizing and rejecting
28 those individuals because they did not sign up ahead of time or pass any religious tests, the Department

1 of Corrections simply provided the 1,800 all-of-a-sudden Jewish inmates Passover meals. Simpson
2 Dep., Ex. 29, 59:14-15; 60:13-62:14. This created “a third of a million dollars divot” into the
3 Department of Corrections’ budget. Simpson Dep., Ex. 29, 59:15-16. And yet, despite that, the meals
4 were provided, no questions asked. Simpson Dep., Ex. 29, 59:15-16; 60:13-62:14.

5 This unequal treatment violates the Equal Protection Clause. Discrimination and differential
6 treatment on the basis of religion also violates the Free Exercise Clause. *See, e.g., Bd. of Educ. of Kiryas*
7 *Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 715 (1994) (O’Connor, J., concurring); *see also Awad v. Ziri*
8 *ax*, 670 F.3d 1111, 1128 (10th Cir. 2012). Such discrimination cannot be justified under any of the *Turner*
9 factors. In fact, the Department’s Passover meals are more expensive than the Halal meals. Simpson
10 Dep., Ex. 42:25-43:20; *see also Bilal*, 2006 WL 3626808, at *7.

11 **IV. Defendants Are Not Entitled to Qualified Immunity**

12 Plaintiffs seek damages against individual-capacity Defendants for violations of Plaintiffs
13 constitutional rights. 42 U.S.C. § 1983 provides a cause of action against persons acting under the color
14 of state law who have violated rights guaranteed by the Constitution. *Buckley v. City of Redding*, 66 F.3d
15 188, 190 (9th Cir. 1995). Here, though the Defendants are likely to assert qualified immunity as a
16 defense against these damages claims, the clarity of the constitutional violation precludes its application
17 to this case.

18 There can be no qualified immunity when a constitutional right at issue was “clearly
19 established” at the time of the alleged violation. *Dela Cruz v. Kauai County*, 279 F.3d 1064, 1069 (9th
20 Cir. 2002). And there are few rights more clearly established than the right of an inmate to adequate
21 nutrition. “There is no question that an inmate’s Eighth Amendment right to adequate food is clearly
22 established.” *Foster v. Runnels*, 554 F.3d 807, 815 (9th Cir. 2009). Defendants have always known that,
23 as the government officials who exercise control over Plaintiffs during their incarceration, it is their
24 constitutional obligation to provide them “with food sufficient to sustain them in good health that
25 satisfies the dietary laws of their religion.” *McElyea v. Babbitt*, 833 F.2d 196, 198 (9th Cir. 1987).
26 Defendant Stewart, an architect of the Department’s Ramadan practices, acknowledged as much when
27 she conceded in deposition that, of course, “it would be not right to not provide people food to be
28 able to sustain themselves.” Stewart Dep, 153:11-12. Though the Supreme Court does “not require a

1 case directly on point" to satisfy the "clearly established" threshold that must be met to defeat qualified
2 immunity, the Ninth Circuit in *McElyea* and other cases has spoken plainly on the nonnegotiable
3 requirement that inmates be fed and otherwise not coerced into abandoning their religious
4 beliefs. *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2083, 563 U.S. 731, 179 L. Ed. 2d 1149 (2011)

5 More than twenty years ago, the Ninth Circuit directed a prison to provide a kosher² diet to a
6 Jewish inmate "sufficient to sustain [him] in good health without violating the laws of kashruthf."
7 *Ashelman v. Wawrzaszek*, 111 F.3d 674, 677 (9th Cir. 1997). The case embraced *McElyea's* holding
8 explicitly, emphasizing that providing food in accordance with the "dietary laws of their religion" is
9 what the Ninth Circuit requires. *Id.* Indeed, in *Ashelman*, the Ninth Circuit approvingly noted that the
10 Arizona prison at the center of the dispute already "accommodates the dietary requirements of other
11 religious groups, including Muslims, Sikhs, and Seventh-Day Adventists." *Id.*, at 678. Simply put,
12 Defendants have had decades of notice from the Ninth Circuit that the Constitution requires that they
13 must accommodate the religious dietary needs of their inmates.

14 The Ninth Circuit has also looked to other circuit courts to support its holding that a prisoner's
15 right to a religious diet is clearly established law. *See Navajo Nation v. United States Forest Serv.*, 535 F.3d
16 1058, 1091 (9th Cir. 2008), citing *Lovelace v. Lee*, 472 F.3d 174, 198-99 (4th Cir. 2006) ("Under both
17 the Free Exercise Clause and RLUIPA in its most elemental form, a prisoner has a 'clearly established
18 ... right to a diet consistent with his ... religious scruples,' including proper food during Ramadan.")
19 (quoting *Ford v. McGinnis*, 352 F.3d 582, 597 (2d Cir. 2003)).

20 Department prison authorities are familiar with Islam and have provided Ramadan meal
21 services for a number of years. Moreover, the presence of Muslim inmates is sufficient to alert the
22 authorities to their constitutional and statutory duty to accommodate the religious exercise of those
23 inmates. The law is clearly established that unthinkingly depriving inmates of food consistent with their
24 religious beliefs is illegal. A reasonable official would realize that the actions taken by Defendants'—

25
26
27 ² While a kosher diet implicates *what* food is served, an Islamic diet also regards *when* food is
28 served. During Ramadan, for example, an Islamic diet would provide Muslim inmates with food
between sunset and dawn so that they can eat and observe their daily daytime fast.

1 forcing Plaintiffs to choose between their sincerely-held religious beliefs and food—would thus violate
2 clearly established law.

3
4 Moreover, the law is clearly established that withholding food from inmates is a violation of
5 the Plaintiffs’ rights under the Eighth Amendment. “There is no question that an inmate’s Eighth
6 Amendment right to adequate food is clearly established.” *Foster v. Runnels*, 554 F.3d 807, 815 (9th Cir.
7 2009); *see also supra* Part II. It is also not a defense that the Ramadan policy is a written regulation.
8 Defendants cannot “seek shelter in the reasonableness of [their] actions on the basis of [a memo or
9 regulation].” *Id.* at 816; *see Cooper v. Sheriff*, 929 F.2d 1078, 1083 (5th Cir. 1991).

10 CONCLUSION

11 Plaintiffs’ motion for summary judgment as to liability and a permanent injunction should be
12 granted.

13 Respectfully submitted,

14 Dated: July 10, 2019

CAIR LEGAL DEFENSE FUND

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