

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MASTON WILLIS, on his own behalf and)	
on behalf of a class of those similarly situated,)	
)	
Plaintiff,)	
)	
v.)	No. 1:09-cv-815 LJM-JMS
)	
COMMISSIONER, INDIANA DEPARTMENT)	
OF CORRECTION;)	
STEPHEN HALL, in his official and individual)	
capacity,)	
MEARL HODGES, in his official and individual)	
capacity,)	
)	COMPLAINT-CLASS ACTION
Defendants.)	

**Second Amended Complaint-
Class Action Complaint for Declaratory and Injunctive Relief and Individual Claim
for Injunctive and Declaratory Relief and Nominal Damages**

Introduction

1. The Commissioner of the Indiana Department of Correction (“DOC”), through his Director of Religious Services, has determined that kosher diets are no longer to be provided to any prisoners, including Jewish prisoners and prisoners of other religious faiths whose religion requires them to keep kosher. Instead, the prisoners are being provided vegetarian diets which are not kosher. Maston Willis is an Orthodox Jewish prisoner who is required to keep kosher as an essential tenet of his religion. The DOC’s actions violate the rights of Mr. Willis and the putative class under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a). Injunctive and

corresponding declaratory relief is requested. This claim is raised in Count 1 of this complaint.

2. Even prior to the termination of kosher diets, the breakfasts served to Mr. Willis were not kosher. Therefore, he refused to eat the breakfasts served. As a result, and because of a policy created without notice by defendant Hall, and implemented by defendant Hodges, that provides that if a prisoner does not use his kosher diet privileges more than 75% of the time they will be revoked, he had his kosher diet, and his ability to receive any kosher food, removed for a period of thirty (30) days. This removal was unlawful and the plaintiff asks, in his individual capacity, for declaratory and injunctive relief against the DOC and nominal against defendants Hall and Hodges for their violation of plaintiff's First Amendment rights. This claim is raised in Count 2 of this complaint.

Jurisdiction, venue, cause of action

3. This Court has jurisdiction of this matter pursuant to 28 U.S.C § 1331.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
5. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
6. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States.

Parties

7. Maston Willis is an adult prisoner currently confined to the Miami Correctional Facility in Bunker Hill, Indiana.

8. The Commissioner of the Indiana Department of Correction is the duly appointed person in charge of the Indiana Department of Correction and is named in the claims for injunctive and declaratory relief pursuant to Fed.R.Civ.P. 17(d).

9. Dr. Stephen Hall is the Director of Religious Services for the Indiana Department of Correction and is sued in both his official capacity for declaratory and injunctive relief and in his individual capacity for nominal damages.

10. Chaplain Mearl Hodges is an employee of the Indiana Department of Correction and is the chaplain at the Miami Correction Facility. He is sued in both his official capacity for declaratory and injunctive relief and in his individual capacity for nominal damages.

Legal Background

11. The Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”) provides that:

[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that the imposition of the burden on that person—

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling interest.

See 42 U.S.C. § 2000cc-1(a).

12. The term “institution” is defined as any facility or institution that “is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State” and includes, *inter alia*, a “jail, prison, or other correctional facility.” *See* 42 U.S.C. § 1997(1).

13. The term “religious exercise” is defined to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” *See* 42 U.S.C. § 2000cc-5(7)(A).

14. RLUIPA applies in any case in which “the substantial burden [on the religious exercise of a person] is imposed in a program or activity that receives Federal financial assistance.” *See* 42 U.S.C. § 2000cc-1(b)(1).

Count 1 – The challenge to the denial of kosher diets for plaintiff and the putative class against defendant DOC

Class action allegations

15. Maston Willis brings this action on his own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

16. The class is defined as:

all prisoners confined within the Indiana Department of Correction, including the New Castle Correctional Facility, who have identified, or who will identify, themselves to the Indiana Department of Correction as requiring a kosher diet in order to properly exercise their religious beliefs and who have requested such a diet, or would request it if such a diet was available.

17. As defined the class meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

- a. The class is so numerous that joinder of all members is impractical. At this point the current size of the class is not known, but it is believed to be large.
- b. There are questions of law or fact common to the class: whether the DOC’s refusal to serve kosher diets violates the Religious Land Use and Institutionalized Persons Act.
- c. The claims of the representative party are typical of those of the class.
- d. The representative party will fairly and adequately protect the interests of

the class.

18. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met in this cause in that the defendant, at all times, has acted or has refused to act in a manner generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

Factual allegations

19. The Indiana Department of Correction receives federal financial assistance and therefore is subject to RLUIPA.

20. Maston Willis is an observant Orthodox Jew.

21. As an Orthodox Jew he is commanded to obey the laws of kashrut and to keep kosher in his diet.

22. Orthodox Jews, and Mr. Willis, believe that the laws of kashrut are commanded by God and are explicitly set out in the text of the Torah (the first five books of the Bible) in both Leviticus and Deuteronomy.

23. Among other things, kosher laws proscribe that:

- a. Certain foods may not be eaten at all. For example, only land animals which have a cloven foot and chew their cud may be eaten. (Leviticus 11:3-8). Thus pork may not be eaten, because pigs do not chew their cud. (Leviticus 11:7). Fish may be eaten, but not sea food that has neither fins nor scales. (Leviticus 11:9-12). Certain birds, including birds of prey, may not be eaten, although chicken and turkey may be eaten. (Leviticus 11:13-19).
- b. In order to be kosher, animals must be killed in accordance with Jewish law. (Deuteronomy 12: 20-24).
- c. Meat and dairy products may not be eaten together. This law derives from the Torah's prescription that "You shall not boil a kid in its mother's milk." (Deuteronomy 14:21).
- d. Utensils and cooking services that have been used to prepare or eat meat

may not be used to prepare or eat milk dishes, and vice-versa. But, the status of a dish or utensil can be transferred from food and vice-versa, only in the presence of heat.

- e. The separation between foods demanded by the laws of kashrut apply also to the dishwashers and sinks in which the plates, pots, pans and utensils are cleaned.
 - f. Although vegetables and fruit are kosher, they may not come into contact with non-kosher food, utensils or dishes
24. Orthodox Jews believe that the Torah is the word of God and they are therefore compelled to follow the laws of kashrut.
25. Keeping kosher is therefore a central and essential tenet of Orthodox Judaism.
26. The DOC recognizes that a kosher diet is essential for Orthodox Jews.
27. Prior litigation in this Court, *Preston and Johns v. Donahue* (No. 1:05-cv-260), resulted in a Private Settlement Agreement providing that kosher diets should be provided to the two plaintiffs in the litigation. Subsequent to the execution of the Private Settlement Agreement kosher diets were provided to Jewish prisoners who requested the diet and were approved for the diet by each institution's Chaplain.
28. Other religions adhered to by DOC prisoners also require that their members receive a kosher diet and the DOC provided kosher diets to these prisoners as well.
29. The DOC contracts its food services to a private entity, Aramark Corporation.
30. The kosher meals were provided through pre-packaged kosher meals, prepared by Aramark, being delivered to the approved prisoners when they went through the meal line.
31. Mr. Willis was approved for a kosher diet.
32. The Director of Religious Services for the DOC has determined that kosher diets should be discontinued within the DOC and that prisoners previously authorized to

receive kosher diets because of their religious beliefs can now receive only vegetarian diets.

33. All kosher diets have been terminated within the DOC.

34. Mr. Willis is no longer receiving a kosher diet and he has been explicitly informed that all he can receive is a vegetarian diet.

35. The vegetarian diet served within the DOC is not kosher.

36. Vegetarian food is prepared on the same cooking surfaces and in the same pots and pans as are used for preparing meat or in which meat and milk have been mixed.

37. For example, breakfasts feature hot foods, such as pancakes, which are prepared with pans, utensil and cook surfaces which are not kosher. Therefore, the meals are not kosher although no meat is served with the meals.

38. The same is true of the other vegetarian meals at the institution. Even though no meat is served, the meals are not kosher because the pans, utensils and cook surfaces are not kosher.

39. Additionally, the silverware used for the meals is not kosher and may have been used in earlier meals including non-kosher foods or combinations of food (*e.g.* meat and milk) that violate the rules of kashrut. Given that the silverware is not kosher, the meals eaten with the silverware are not kosher.

40. The trays on which the food is placed are the same trays on which other, non-kosher, foods or food combinations, are placed for other meals. The trays, and therefore the food served on them, are not kosher.

41. By contrast, the kosher meals formerly served to Mr. Willis and the class members were served in disposable trays which were not re-used.

42. Mr. Willis has fully exhausted his grievances concerning diet issue and has been informed at the last grievance level by Dr. Stephen Hall, Director of Religious Services for the DOC, that “Kosher diets are no longer available. Offender may apply for and receive the new protein alternative menu personal preference diet.” The grievance summary form from the DOC is attached to this complaint as Exhibit 1.

43. The “new protein alternative menu personal preference diet” is the non-kosher vegetarian diet.

44. There are limited kosher foods available through commissary and Mr. Willis does not have the financial ability to feed himself through the foods available from commissary. Moreover, these foods are not necessarily healthy if eaten to the exclusion of all others.

45. As applied to Mr. Willis, a person who is commanded by his religion to maintain a kosher diet, defendant’s policy of refusing kosher diets and offering prisoners only a non-kosher vegetarian alternative imposes a substantial burden on the exercise of his religion in that it renders his religious exercise effectively impracticable. He is being forced to go without food or to modify his behavior, eat non-kosher foods, and violate his beliefs.

46. The DOC can not demonstrate that the substantial burden imposed on Mr. Willis’ religious exercise is justifiable under RLUIPA.

47. At all times defendant has acted under color of state law.

48. The actions and inactions of the defendant are causing plaintiff irreparable harm for which there is no adequate remedy at law.

Legal claim

49. Defendant's termination of kosher diets to Mr. Willis and the putative class imposes, without justification, a substantial burden on their religion and religious exercise and is therefore unlawful as violating RLUIPA, 42 U.S.C. § 2000cc-1(a).

Count 2 – The challenge to the “75% policy” against defendants DOC, Hall and Hodges

Factual Allegations

50. The allegations contained in paragraphs 19-44 are restated and incorporated by reference.

51. Although pre-packaged kosher lunches and dinners were formerly provided to Mr. Willis. Mr. Willis and the other Orthodox Jews at Miami Correctional Facility were not provided with pre-packaged kosher breakfasts.

52. Instead, the prisoners on the kosher diet list received only the breakfasts that all prisoners were served. No special accommodations were made for the breakfast meal although the prisoners were required to show their kosher diet card before they receive the non-kosher diets.

53. A number of these breakfasts contained meat and milk products which meant that the meals were not kosher.

54. Moreover, the meals featured hot foods, such as pancakes, which were prepared with pans, utensils, and cook surfaces which were not kosher. Therefore, the meals were not kosher.

55. Additionally, the silverware used for the breakfasts was the same silverware that was used for other meals which may have included non-kosher foods or combinations of food (*e.g.* meat and milk) that violate the rules of kashrut. The silverware was not kosher.

56. The trays on which the breakfast food was placed are the same trays on which other foods were placed for other meals. The trays, and therefore the food on them, were not kosher. By contrast, the kosher meals served at the prison were on disposable trays which were not re-used.

57. Given that the breakfast meal was not kosher Mr. Willis and a number of the other Jewish prisoners did not eat breakfast. Instead, they stayed in their living areas, with permission of prison personnel, and did not go to the dining hall.

58. Given that the breakfast food was not kosher, Mr. Willis determined that he could not eat the breakfasts as a matter of his religious faith and principles. He continued to eat the pre-packaged kosher lunches and dinners.

59. He did not go through the breakfast diet line and he did not use his kosher diet card inasmuch as he did not eat breakfast.

60. Dr. Hall has created a new policy that if a prisoner does not use a diet card at least 75% of the time he will be removed from the diet list for a period of thirty (30) days, after which he may be restored to the diet by the Chaplain if it is a religious diet.

61. Mr. Willis and the other prisoners were not given notice of this policy.

62. Because of this policy, Mr. Willis was removed from the kosher diet list because he did not use his diet card for breakfasts.

63. Chaplain Hodges confiscated his diet card.

64. Because Mr. Willis did not present his kosher diet card for breakfast, because he did not go to breakfast, defendants Hall and Willis treated him as if he was not obeying the laws of kashrut.

65. This removal and confiscation occurred despite the fact that the breakfast meal

was not kosher.

66. He timely filed and exhausted his grievances to appeal this removal. His grievance documents are attached to this complaint as Exhibit 2.

67. His grievances were denied.

68. During his suspension period he was not allowed to receive any kosher diet and was forced to eat the regular food at the institution.

69. This is grossly contrary to his religious beliefs and the commands that are imposed upon him as an Orthodox Jew.

70. The other Orthodox Jewish prisoners who were refusing to eat the non-kosher diets also had their kosher diet cards suspended and confiscated by defendant Hodges.

71. At the end of the thirty (30) day period he reapplied for his kosher diet card from defendant Hodges.

72. At that point the DOC had created its new policy denying kosher diets as specified above and Mr. Willis was therefore offered only a vegetarian diet.

73. However, at the time that Mr. Willis reapplied for his kosher diet card prisoners who had not had their kosher diet cards taken still continued to receive the pre-packaged kosher meals..

74. As applied to Mr. Willis, a person who refused breakfasts because they were not kosher, defendants' policy terminating the kosher diet has imposed a substantial burden on the exercise of his religion without justification.

75. There is no valid penological reason to deny Mr. Willis a kosher diet because he refused to eat non-kosher food and this denial has no logical connection to a legitimate penological interest.

76. Dr. Hall and Chaplain Hodges are personally liable to plaintiff Willis for the nominal damages caused by the unlawful termination of his kosher diet and for the violation of his rights under the First Amendment.

77. If the kosher diet is restored to Mr. Willis, he will continue to refuse to eat breakfast as long as it not kosher.

78. At all times defendants have acted under color of state law.

79. The actions and inactions defendants are causing plaintiff irreparable harm for which there is no adequate remedy at law.

Legal claim

80. The policy, created by and/or implemented by the defendants, under which Mr. Willis' kosher diet was terminated after he failed to use his kosher diet card to obtain non-kosher meals, imposes, without justification, a substantial burden on Mr. Willis' religion and religious exercise, and is therefore unlawful as violating RLUIPA, 42 U.S.C. § 42 U.S.C. § 2000cc-1(a).

81. The policy, created by and/or implemented by the defendants, under which Mr. Willis' kosher diet was terminated after he failed to use his kosher diet card to obtain non-kosher meals, imposes, without justification, a substantial restriction, on Mr. Willis' right to the free exercise of his religion in violation of the First Amendment to the United States Constitution.

WHEREFORE, plaintiff requests that this Court enter the following relief in this cause:

- a. Accept jurisdiction of this case and set it for hearing.
- b. As to Count 1:

1. Certify this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with the class as defined above.
 2. Enter a declaratory judgment that termination of kosher diets for plaintiff and the putative class violates RLUIPA.
 3. Enter a preliminary injunction, later to be made permanent, enjoining defendant from terminating the religious diets of plaintiff and the putative class and order that kosher diets be restored and continued into the future for qualified prisoners.
- c. As to Count 2:
1. Declare that defendants have violated plaintiff's rights under RLUIPA and the First Amendment as specified above.
 2. Once an injunction is entered restoring kosher diets in Count 1, an injunction should be entered which enjoins defendants' policy terminating kosher diets for non-compliance when the non-compliance is occasioned by the failure to serve meals which are kosher.
 3. Award plaintiff his nominal damages against defendants Dr. Hall and Chaplain Hodges in their individual capacities for violation of his First Amendment rights.
- d. Award plaintiff his costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.
- e. Award all other proper relief.

/s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059 ext. 229
fax: 317/635-4105
kfalk@aclu-in.org

Attorney for Plaintiff and the
Putative Class

Certificate of Service

I hereby certify that on this 10th day of August, 2009, a copy of the foregoing was filed electronically with the Clerk of this Court. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system and the parties may access this filing through the Court's system.

Eric J. Beaver
Deputy Attorney General
eric.beaver@atg.in.gov

Cory C. Voight
Deputy Attorney General
cory.voight@atg.in.gov

/s/ Kenneth J. Falk
Kenneth J. Falk