

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

United States of America,

Plaintiff;

v.

Secretary, Florida Department of Corrections;  
and

Florida Department of Corrections,

Defendants.

No. 1:12-cv-22958

**COMPLAINT**

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

**INTRODUCTION**

1. By refusing to offer kosher meals, the Florida Department of Corrections (“FDC”) forces hundreds of its prisoners to violate their core religious beliefs on a daily basis, in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (“RLUIPA”).
2. Keeping kosher is a central tenet of Judaism and other religious traditions observed by prisoners incarcerated at FDC facilities. FDC’s refusal to provide kosher meals to these prisoners substantially burdens their religious exercise.
3. FDC’s dietary policy is an outlier among American correctional institutions. The Federal Bureau of Prisons (“BOP”) and most state departments of correction offer kosher meal options to all prisoners with a religious basis for keeping kosher.
4. FDC itself offered kosher meals until late 2007, when it discontinued its kosher food program over the objections of its own Study Group commissioned to evaluate the kosher

food program. Indeed, FDC disregarded the Study Group's warning that ending the kosher food program would violate RLUIPA.

5. Moreover, since 2010 FDC has voluntarily provided kosher meals to approximately one dozen prisoners per day through its pilot kosher program in a south Florida facility. While the pilot program accommodates only a small fraction of the 250 prisoners previously enrolled in FDC's statewide kosher program, it demonstrates that FDC can provide kosher meals consistent with its compelling interests.
6. The United States seeks declaratory and injunctive relief to remedy Defendants' violations of the law, and to ensure that FDC implements sustainable reforms that guarantee the religious freedoms protected by RLUIPA.

#### **DEFENDANTS**

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

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.
11. The United States is authorized to initiate this action against Defendants under RLUIPA, 42 U.S.C. § 2000cc-2(f).
12. The declaratory and injunctive relief sought by the United States is authorized by 42 U.S.C. § 2000cc-2(f) and 28 U.S.C. §§ 2201 and 2202.
13. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b). Defendants operate approximately 20 facilities in the Southern District of Florida, including the South Florida Reception Center that contains the pilot kosher program; Defendants incarcerate in the Southern District of Florida dozens of Jewish prisoners desiring to keep kosher, including ten prisoners named in this Complaint; and virtually all of the events, actions, or omissions giving rise to this claim occurred in Florida.

### **FACTUAL ALLEGATIONS**

14. FDC's refusal to provide kosher meals violates the federal rights of hundreds of prisoners. FDC's dietary policies force prisoners with a religious basis for consuming kosher meals to violate their core religious beliefs on a daily basis.
15. The substantial burden that FDC's dietary policies impose on these prisoners is not necessary to achieve any compelling state interest. Indeed, the Federal Bureau of Prisons and most state departments of correction offer kosher meals while achieving interests that are indistinguishable from FDC's.
16. FDC further demonstrates that it can provide kosher meals consistent with its interests by voluntarily operating a pilot kosher food program in one of its facilities.

**I. FDC Does Not Provide Kosher Meals**

17. FDC does not provide kosher meals to its prisoners. The only exception to FDC's blanket refusal to offer kosher meals is the handful of prisoners eligible for the "pilot" kosher program in the South Florida Reception Center.
18. FDC's pilot program has the capacity to serve approximately one dozen out of the hundreds of FDC prisoners who possess a religious basis for keeping kosher. Moreover, most FDC prisoners are not eligible for assignment to the kosher program, as the program admits only prisoners who are at least 59 years old or are eligible for assignment to a work squad.
19. Instead of providing kosher meals, FDC offers two mainline dining options for most meals – a meat entrée and non-meat entrée. In addition to these options, prisoners may request vegan meals by submitting a request to the food service director.
20. FDC also provides a variety of therapeutic diets, including a prenatal diet, liquid diet, puree diet, mechanical dental diet, mental health diet, low residue diet, fat intolerance diet, calorie regulated diet, and a renal diet.
21. None of the meal options offered by FDC is kosher.
22. Keeping kosher requires adherence to the laws of kashruth, which prescribe religiously acceptable sources of food and methods of food preparation.
23. To be kosher, a food item must derive from religiously-acceptable sources, be stored in kosher containers, prepared in a particular manner, and served on tableware that has not contacted non-kosher food. In addition, meat and dairy products may not be mixed.
24. While most correctional institutions in the United States offer kosher meals consistent with these requirements, Florida prisoners desiring to keep kosher cannot do so.

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

25. Until August 2007, FDC – like BOP and most state correctional institutions – offered kosher meals to all prisoners who passed a religious sincerity test.
26. Under that program, known as the “Jewish Dietary Accommodation Program” (“JDA Program”), FDC assigned eligible prisoners to 1 of 13 FDC facilities equipped to offer kosher meals. These facilities had the capacity to serve kosher meals to 900 prisoners per day, easily sufficient to accommodate the JDA Program’s average enrollment of 250 prisoners per day.
27. In April 2007, FDC commissioned a Study Group to review the JDA Program. The Study Group’s report (“the Report”) noted several challenges associated with offering kosher meals, but recommended that FDC “[r]etain a kosher dietary program,” with participation limited to “those inmates who have been expertly appraised or vetted by a rabbi as eligible to participate.”
28. Indeed, the Study Group concluded that RLUIPA requires FDC to provide kosher meals. The Report explained that a prisoner desiring to keep kosher “is substantially burdened” by the denial of kosher food “because the regulations [denying kosher food] leave him with no meaningful choice. He may either eat the non-kosher food and fail to obey his religious laws or not eat the non-kosher food and starve.”
29. The Report further posited that “it is improbable that [FDC] can satisfy a court’s inquiry into whether the department is furthering a compelling interest, let alone that denying inmates’ religious accommodation is the least restrictive means available.”

30. Despite the Study Group's recommendation to continue providing kosher meals to eligible prisoners, FDC terminated the JDA Program on August 16, 2007.

**III. FDC's Denial of Kosher Food Unlawfully Burdens Religious Exercise**

31. FDC's denial of kosher meals substantially burdens the religious exercise of prisoners desiring to keep kosher, as consuming a kosher diet is a fundamental tenet of Judaism and other religions practiced by FDC prisoners.

32. FDC's dietary policies substantially burden the religious exercise of hundreds of prisoners. For example:

- a. Prisoner 1 is a 54-year-old prisoner housed in the minimum security unit of the Tomoka, C.I. facility. Prisoner 1 is a sincere adherent of Judaism and has requested a transfer to the South Florida Reception Center so that he can participate in the pilot kosher program. To date, FDC has not granted his request, forcing Prisoner 1 to violate his religious beliefs by consuming non-kosher food.
- b. Prisoner 2 is a 50-year-old Jewish prisoner incarcerated in the Suwanee C.I. Annex. Prisoner 2 has submitted several lengthy requests for kosher meals that explain how his religious beliefs compel him to eat properly prepared kosher foods. In December 2011, FDC denied Prisoner 2's request by stating simply that its vegetarian meal option "allows the majority of religious groups . . . to meet the basic tenets of their belief systems." FDC's dietary policies continue to force Prisoner 2 to violate his religious beliefs daily by consuming non-kosher food.
- c. Prisoner 3 is a 52-year-old Jewish prisoner incarcerated in the Charlotte, C.I. facility in Punta Gorda, Florida. Prisoner 3, who desires to keep kosher as part of his religious practice, participated in the JDA Program until its termination in

2007. FDC has not allowed Prisoner 3 to participate in the kosher pilot program, forcing him to consume non-kosher food in violation of his sincere religious beliefs.

- d. Prisoner 4 is a Jewish prisoner who has been incarcerated at FDC since 1999. He is currently housed in the Everglades Correctional Institution. Prisoner 4 was raised by two Jewish parents and has been a sincere adherent to the Jewish faith his entire adult life. FDC's refusal to provide a kosher diet forces Prisoner 4 to violate his religious conviction that his faith requires him to keep kosher.
- e. Prisoner 5 is a Jewish prisoner incarcerated in the Everglades Correctional Institution. Prisoner 5 was raised by two Jewish parents and has been a sincere adherent to the Jewish faith his entire adult life. He believes his faith requires him to keep kosher. FDC's dietary policies force Prisoner 5 to violate his religious convictions on a daily basis.
- f. Prisoner 6 is a Jewish prisoner incarcerated at the FDC since 2009. Prisoner 6 is currently housed in the Everglades Correctional Institution. Prisoner 6's mother was Jewish by birth, and he has been a sincere adherent of the Jewish faith throughout his adult life. Prisoner 6 believes that keeping kosher is a core aspect of his religious practice. FDC's refusal to provide kosher meals substantially burdens Prisoner 6's religious exercise.
- g. Prisoner 7 is a 48-year-old Jewish prisoner serving a life sentence. Prisoner 7 is incarcerated in the South Bay, C.F. facility. Prisoner 7 believes that keeping kosher is a core part of his religious faith. FDC's refusal to provide kosher meals

substantially burdens Prisoner 7's religious exercise, and will continue to do so for the remainder of his life sentence.

- h. Prisoner 8 is a 68-year-old Jewish prisoner who has been incarcerated at FDC for the past 10 years. Prisoner 8 is currently housed in the South Bay, C.F. facility, where he is serving a life sentence. Prisoner 8 believes that consuming exclusively kosher food is an important part of his religious practice. FDC's dietary policies substantially burden Prisoner 8's religious exercise, and will continue to do so for the duration of his life sentence.
- i. Prisoner 9 is a 52-year-old Jewish prisoner serving a life sentence. Prisoner 9 is currently housed in the South Bay, C.F. facility, where he does not have access to kosher meals. Prisoner 9 believes such meals are important to exercising his Jewish faith. FDC's dietary policies force Prisoner 9 to violate his religious beliefs on a daily basis by consuming non-kosher food.
- j. Prisoner 10 is a 22-year-old prisoner incarcerated in the Dade Correctional Institution. Prisoner 10 is a sincere adherent of the Jewish faith, which he believes compels him to keep kosher. FDC's dietary policies substantially burden Prisoner 10's religious exercise, and will continue to do so until his release, which is not scheduled until 2034.
- k. Prisoner 11 is a 58-year-old minimum security prisoner incarcerated in the Dade Correctional Institution. Prisoner 11 is a sincere adherent of the Jewish faith, which he believes compels him to consume kosher food. FDC's dietary policies substantially burden Prisoner 11's religious exercise.



- l. Prisoner 12 is a 35-year-old minimum security prisoner housed in the Okeechobee Correctional Institution. Prisoner 12 is a sincere adherent of the Jewish faith who believes that keeping kosher is an important aspect of his religious practice. FDC's dietary practices substantially burden Prisoner 12's religious exercise.
  - m. Prisoner 13 is a 49-year-old prisoner serving a life sentence. Prisoner 13 is currently housed in the Okeechobee Correctional Institution. He is a sincere adherent of the Jewish faith who believes keeping kosher is an important part of his religious exercise. FDC's dietary policies substantially burden Prisoner 13's religious exercise.
33. FDC's dietary policies likewise burden the religious exercise of hundreds of other prisoners.
34. From 2004 to 2007, the JDA Program served kosher meals to 784 prisoners, with an average daily enrollment of 250.

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

35. FDC is capable of providing kosher meals to prisoners consistent with its compelling government interests.
36. From 2004 to 2007, FDC provided kosher meals to all prisoners deemed eligible by a screening process that measured the sincerity of their religious convictions. During this period, FDC's kosher food program enrolled an average of 250 prisoners per day.
37. In 2007, a Study Group commissioned by the FDC Secretary recommended that FDC continue to make kosher meals available to prisoners deemed eligible by the religious

sincerity screening. FDC rejected the advice of its own Study Group and discontinued its kosher program.

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

39. Most states and the federal government offer kosher diets to prisoners, and FDC itself operates a pilot kosher program at the South Florida Reception Center.

40. FDC's voluntary operation of the pilot program demonstrates that it can provide kosher food consistent with its compelling interests.

41. FDC initiated the pilot program on August 16, 2010, at the South Florida Reception Center. FDC invested \$11,668 to establish a kosher kitchen at that facility and spends approximately \$4.70 per day to provide kosher meals to prisoners in the program.

42. After initially authorizing the program to run for 6 months, FDC has continued it for the past 18 months.

43. FDC's decision to voluntarily establish and continue the pilot program demonstrates that providing kosher food is consistent with FDC's compelling interests.

44. Nevertheless, the pilot program cannot accommodate most FDC prisoners who desire to keep kosher. The program started with 11 prisoners in 2010 and its enrollment has dropped to as few as 8 prisoners. From 2004-2007 the enrollment in FDC's Jewish Dietary Program averaged 250 individuals.

45. For the hundreds of prisoners unable to participate in the pilot program, FDC's dietary policies unlawfully burden religious exercise that RLUIPA protects.

**CLAIM FOR RELIEF:**

**DEFENDANTS' DENIAL OF KOSHER MEALS VIOLATES RLUIPA**

The United States incorporates by reference the allegations set forth in Paragraphs 1 – 45 as if fully set forth herein.

46. Defendants do not provide kosher meals to prisoners in their custody who request the meals in accordance with their religious beliefs.
47. Defendants' denial of kosher meals constitutes a substantial burden on the religious exercise of prisoners in their custody, and denial of kosher meals is not the least restrictive means of furthering any compelling government interest.
48. Accordingly, FDC's refusal to provide kosher meals violates RLUIPA, 42 U.S.C. § 2000cc.

**PRAAYER FOR RELIEF**

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

WHEREFORE, the United States prays that the Court:

- a. Declare that Defendants have violated RLUIPA by failing to offer kosher meals to prisoners in their custody who desire a kosher diet to exercise their religious beliefs;
- b. Order Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with

them to provide prisoners in their custody with nutritionally sufficient kosher meals; and

- c. Order such other relief as the interests of justice may require.

Respectfully submitted for the United States of America,

WIFREDO A. FERRER  
United States Attorney  
Southern District of Florida

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

VERONICA HARRELL-JAMES  
Assistant United States Attorney  
Southern District of Florida

JONATHAN M. SMITH  
Chief  
Special Litigation Section

TIMOTHY D. MYGATT  
Special Counsel  
Special Litigation Section

s/ Michael J. Songer  
MICHAEL J. SONGER  
Special Florida Bar # A5501751  
Attorney  
United States Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
(202) 514-6255  
michael.songer@usdoj.gov

DATED: August 14, 2012