

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LAMONT HEARD, *et al.*,

Plaintiff,

Civil Action No. 1:13-cv-373

v.

HON. GORDON J. QUIST
United States District Judge

TOM FINCO, *et al.*,

HON. HUGH W. BRENNEMAN, JR.
United States Magistrate Judge

Defendants.

STATEMENT OF INTEREST OF THE UNITED STATES

INTRODUCTION

Plaintiffs' preliminary injunction raises two crucial issues: (1) whether Michigan prison officials, if found to provide inadequate nutrition to prisoners observing Ramadan,¹ are substantially burdening the exercise of religion in violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"); and, if so, (2) what remedies are needed to ensure that Michigan officials comply with RLUIPA. The United States files this Statement of Interest to assist the Court in determining whether there has been a violation of RLUIPA in the event that the Court finds that officials within the Michigan Department of Corrections ("MDOC") are providing inadequate nutrition to Muslim prisoners

¹ "Ramadan is the ninth month of the Arabian lunar calendar, when practicing Muslims . . . are required to fast during daylight hours for thirty consecutive days. This religious practice does not limit food consumption between sunset and dawn." *Lovelace v. Bassett*, 2009 WL 3157367 at *1 (W.D. Va. 2009).

observing Ramadan.² If the Court finds such a violation and issues an injunction, the United States also recommends that the Court appoint an independent monitor to ensure that the injunctive relief the Plaintiffs seek is properly implemented.

INTEREST OF THE UNITED STATES

The United States has authority to file this Statement of Interest pursuant to 28 U.S.C. § 517,³ which permits the Attorney General to attend to the interests of the United States in any case pending in federal court. The United States, acting through the Civil Rights Division of the U.S. Department of Justice, has an interest in this matter because the alleged unlawful practices fall within the enforcement authority of the Civil Rights Division, which enforces RLUIPA. *See, e.g., United States v. Fla. Dep't of Corr.*, No. 1:12-cv-22958 (S.D. Fla.) (8/14/12 Compl., dkt. # 1); *Ali v. Thaler*, No. 9:09-cv-52 (E.D. Tx.) (3/29/12 Statement of Interest of the United States, dkt. # 159); *Prison Legal News v. Berkeley Cnty. Sheriff's Office*, No. 2:10-02594 (D. S.C.) (04/12/11 Compl. Intervention, dkt. # 35-2); *Willis v. Ind. Dep't of Corr.*, No. 1:09-cv-815 (S.D. Ind.) (1/14/11 Statement of Interest of the United States, dkt. # 126). RLUIPA, a statute unanimously passed by Congress “to accord religious exercise heightened protection from government-imposed burdens,” *Cutter*

² The United States takes no position here regarding the number of calories necessary to ensure adequate nutrition. The United States seeks to assist the Court in determining whether the Defendants have violated RLUIPA if, in fact, the Court finds Defendants to be providing its prisoners with inadequate nutrition during Ramadan.

³ The full text of 28 U.S.C. Section 517 is as follows: “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

v. Wilkinson, 544 U.S. 709, 713 (2005), prohibits practices that impose a substantial burden on the exercise of religion unless they are the least restrictive means of furthering a compelling government interest. 42 U.S.C. § 2000cc-1(a).

BACKGROUND

Plaintiffs have moved the Court to issue a preliminary injunction, overseen by a monitor, requiring MDOC to provide Muslim prisoners with adequate nutrition during Ramadan. (Dkt. # 87.) Plaintiffs allege that Defendants have failed to provide them with nutritionally adequate meals during Ramadan in years past and that, without action from this Court, Defendants will do so again. (*Id.*)

The uncontested facts are as follows: Last year Defendants assured this Court that they would provide Plaintiffs with at least 2,350 calories each day during Ramadan. (Dkt. # 17.) Because of concerns that Plaintiffs raised with MDOC's proposed Ramadan menu, this Court ordered the Defendants to provide the promised 2,350 calories each day of Ramadan 2013. (Dkt. # 22.)⁴ Despite both their assurances and this Court's order, MDOC failed to actually provide the promised food. (Dkts. # 22, 70.) After Ramadan ended, the Court held the Defendants in contempt and imposed fines for their conduct. (Dkt. # 70.)

⁴ Based on Defendants' most recent filing (dkt. # 94), it appears that the parties have conflicting views about whether the Court's July 10, 2013 Order of Clarification binds Defendants for Ramadan 2014.

DISCUSSION

1. Failure to Provide Adequate Nutrition to Prisoners Observing Ramadan Substantially Burdens Their Religious Exercise

The Sixth Circuit has laid out a framework to apply when assessing whether the government is imposing a substantial burden under RLUIPA. In *Living Water Church of God v. Charter Twp. of Meridian*, the court noted that when deciding whether a substantial burden exists, a court should consider whether the government action places “substantial pressure on a religious institution to violate its religious beliefs. . . .” *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App’x 729, 737 (6th Cir. 2007); accord *Evans v. Snyder*, No. 2:11-cv-492, 2014 WL 1369301, slip op. at *3 (W.D. Mich. 2014) (“[C]ourts have concluded that a burden is substantial where it forces an individual to choose between the tenets of his religion and foregoing governmental benefits or places ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs’” (quoting *Living Water*, 258 F. App’x at 733–34)).

Failure to provide a prisoner with sufficient nutrition through meals served before sunrise and after sunset during Ramadan imposes a substantial burden on that prisoner’s religious exercise by “pressur[ing a prisoner] to break the fast, in violation of Islamic tenets.” *Couch v. Jabe*, 479 F. Supp 2d 569, 589-90 (W.D. Va. 2006). In *Couch*, the court found a substantial burden on the free exercise of religion where Defendants failed to show that meals they provided to Muslim prisoners during Ramadan “were either nutritionally or calorically” adequate. *Id.* The court issued a preliminary injunction requiring the Virginia Department of Corrections to provide Muslim prisoners with at least 2,200 calories a day during Ramadan, an amount equivalent to the number of calories offered to non-fasting prisoners during breakfast and evening meals. *Couch v. Jabe*, No. 7:05-cv-00642 (9/22/06 Order, dkt. # 51, at 5). See also *Heard v. Caruso*, 351 F.

App'x 1, 13 (6th. Cir. 2009) (“If Heard’s religion requires adherence to a Nation–of–Islam diet, prison officials’ refusal to accommodate this diet would impose a substantial burden.” (citing *Al–Amin v. Shear*, 325 F. App'x 190, 193–95 (4th Cir. 2009) (unpublished) (finding that the denial of kosher food to a Sunni Muslim during Ramadan would be a substantial burden)); *see also Nelson v. Miller*, 570 F.3d 868, 879 (7th Cir. 2009) (“We have held that a prisoner’s religious dietary practice is substantially burdened when the prison forces him to choose between his religious practice and adequate nutrition.”). If MDOC fails to provide prisoners observing Ramadan with adequate nutrition, as defined by the Court, such failure establishes a substantial burden under RLUIPA.

2. Failure to Provide Adequate Nutrition is not the Least Restrictive Means of Furthering a Compelling Government Interest

Once a Plaintiff has shown that the Defendant has imposed a substantial burden, the Defendant has the burden of showing that its action is the least restrictive means of furthering a compelling government interest. 42 U.S.C.A. § 2000cc-2; *See also Heard v. Caruso*, 351 F. App'x at 13. Here, MDOC has not carried this burden, nor can it. MDOC has failed to identify a compelling interest implicated by its denial of sufficient calories to prisoners observing Ramadan, let alone that depriving prisoners of calories is the least restrictive means of furthering that interest. Since MDOC has not put forth a defense, the analysis under RLUIPA stops here.

Even if MDOC did articulate a compelling interest, it could not demonstrate that failing to offer adequate nutrition is the least restrictive means of furthering that interest for two reasons. First, MDOC has conceded that it can provide sufficient nutrition to the Plaintiffs during Ramadan by assuring the Court it could do so last year. (Dkt. # 17.) Second, other prison systems have shown that it is possible to put into place successful policies and procedures that

ensure Muslim prisoners receive timely, adequate nutrition during Ramadan. *See, e.g.*, Bureau of Prisons Policy P5360.09, Religious Beliefs and Practices, § 548.20 (Dec. 31, 2004) (“When inmates observe a public fast, i.e. one which is regulated by law or custom for all the faith adherents, Food Service will provide a meal nutritionally equivalent to the meal(s) missed.”); *see also Garnica v. Wash. Dept. of Corrections*, 965 F. Supp. 2d 1250, 1269 (W.D. Wash. 2013) (finding prison’s provision of an average of 2,700 calories a day to Muslim prisoners during the Ramadan fast to be sufficient to satisfy the prison’s obligations under RLUIPA). For these reasons, it is clear that failing to adequately feed Muslim prisoners observing Ramadan is not the least restrictive means to further any compelling government interest.

3. Failure to Provide Adequate Nutrition During Ramadan Violates RLUIPA

Denying adequate nutrition to prisoners fasting during Ramadan substantially burdens religious exercise, and the denial is not the least restrictive means of furthering a compelling government interest; thus, failing to provide sufficient nutrition before sunrise and after sunset to prisoners observing Ramadan violates RLUIPA. This Court has recognized that MDOC previously failed to provide at least 2,350 calories each day to Muslim prisoners observing Ramadan. If this Court finds that, absent relief, MDOC will provide inadequate nutrition to Plaintiffs during Ramadan 2014, then injunctive relief is appropriate to prevent violations of RLUIPA.

4. A Monitor Will Help Ensure Compliance with the Court’s Order

If the Court finds a preliminary injunction to be appropriate, it may appoint an independent monitor to ensure compliance with the Court’s order. The authority of the Court to appoint a monitor is well established. *See Ex Parte Peterson*, 253 U.S. 300, 312–13 (1920) (acknowledging inherent power of courts to “appoint persons unconnected with the court to aid

judges in the performance of specific judicial duties,” and noting that courts have long exercised this power “when sitting in equity, by appointing, either with or without the consent of the parties, special masters, auditors, examiners, and commissioners.”). The effectiveness of injunctive relief is often contingent on some level of objective compliance monitoring. If the court does not put into place an independent, impartial monitoring system, particularly in a case like this where Defendants have a history of non-compliance, reliance on a Defendant to “self-certify” its compliance can further endanger the rights of prisoners affected by a Defendant’s behavior. *See Benjamin v. Schriro*, 370 F. App’x 168, 171 (2d Cir. 2010) (affirming district court’s decision to appoint an independent monitor to oversee reforms where New York City Department of Correction had a history of noncompliance with a court order); *see also United States v. Michigan*, No. G84-63, 1986 U.S. Dist. LEXIS 25679, *23-24 (W.D. Mich. 1986) (noting the court “needs . . . an independent basis for judging defendants’ compliance efforts, and the case law amply supports the use of an independent expert for this purpose.”).

The United States often uses monitors to ensure compliance with settlement agreements or court orders. *See, e.g., United States v. Detroit Police Dep’t*, No. 2:03-cv-72258 (E.D. Mich.) (7/18/03 Consent J.: Use of Force, Arrest, and Witness Detention, dkt. # 22; 7/18/03 Consent J.: Conditions of Confinement, dkt. # 23); *United States v. City of Detroit*, No. 2:04-cv-73152 (E.D. Mich.) (12/22/05 Settlement Order, dkt. # 43) (referring to monitor as an “independent auditor”); *United States v. Ohio*, No. 2:08-cv-475 (S.D. Ohio) (6/28/11 Am. Stipulation for Inj. Relief, dkt. # 85, at 16-20); *United States v. Robertson Cnty.*, No. 3:13-cv-00392 (M.D. Tenn.) (4/30/13 Settlement Agreement, dkt. # 4 at 15-20) (referring to monitor as an “independent consultant”). While not necessary to ensure compliance with every court order, monitoring is particularly important when an unlawful practice is entrenched. Here, given Defendants’ established history

of providing an inadequate number of calories during Ramadan, the Court may appoint an independent monitor to guide implementation and oversight of the requested injunctive relief, if granted.

CONCLUSION

Should the Court find the Defendants are providing inadequate nutrition during Ramadan, the Court should find a violation of RLUIPA for the reasons stated above. If the Court also finds a preliminary injunction to be the appropriate remedy, then the United States recommends that the Court grant Plaintiffs' request for a monitor to ensure that the injunctive relief is properly implemented.

Respectfully submitted,

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Dated: June 20, 2014

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