UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-22958-CIV-SEITZ/SIMONTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.
_____/

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION, RESETTING TRIAL DATE, AND SETTING STATUS CONFERENCES

THIS MATTER is before the Court on the United States' Motion for Preliminary Injunction [DE-29], the response [DE-34], the reply [DE-40], several supplemental evidentiary filings by Defendants [DE-72, 75, 99], and Plaintiff's response to Defendants' supplemental filings [DE-88]. Further, the Court held an evidentiary hearing on the Motion for Preliminary Injunction on June 4 and 5, 2013. The United States brought this action alleging that Defendants are in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc (RLUIPA)[1] because they do not serve kosher meals to those prisoners whose religious beliefs require kosher meals. After the United States instituted this action, Defendants announced a new Religious Diet Program, that would provide kosher meals under certain circumstances. The Motion for Preliminary Injunction seeks an order requiring Defendants to

[1]This action was filed pursuant to 42 U.S.C. § 2000cc-2(f), which gives the Department of Justice the authority to enforce compliance with § 2000cc-1 by either an action for injunctive relief or declaratory relief on behalf of the United States who has an obligatory interest in protecting the religious liberty of all prisoners.

provide kosher meals to all prisoners with a sincere religious belief for keeping kosher and enjoining the implementation of certain aspects of the Religious Diet Program, which the United States asserts violate RLUIPA. Because the United States has met its burden of establishing its entitlement to a preliminary injunction, the Motion is granted.

FINDINGS OF FACT

I. Florida Department of Corrections

1. The Florida Department of Corrections ("FDOC" or "Defendants") incarcerates approximately 102,000 prisoners in 60 major facilities, Undisputed Facts at 1, with an operating budget of $2.1 billion for the 2013-2014 fiscal year. June 5 Tr. at 4.

2. FDOC receives federal funds, Undisputed Facts at 3, and is subject to RLUIPA. 42 U.S.C. § 2000cc 1(b).

3. FDOC incarcerates prisoners who have a sincere religious basis for keeping kosher. Undisputed Facts at 4.

II. Defendants' History of Providing a Kosher Diet

4. Prior to 2004, Defendants did not offer a kosher diet to any prisoners. Undisputed Facts at 5.

5. In September 2002, an FDOC prisoner named Alan Cotton filed suit in the U.S. District Court for the Southern District of Florida seeking a kosher diet. *Cotton v. Dep't of Corr.*, No. 1:02-cv-22760 (S.D. Fla. 2002).

6. In April 2004, shortly after the *Cotton* case settled, Defendants instituted a kosher diet program known as the Jewish Diet Accommodation Program ("JDAP"). U.S. Ex. 2.

7. JDAP offered kosher meals in 13 FDOC facilities. Prisoners eligible to participate in JDAP were transferred to one of these 13 facilities. *Id.* Initially, only Jewish prisoners were eligible to participate in JDAP, but Defendants opened the program to prisoners of all faiths in 2006. *Id.*; June 5 Tr. at 88.

8. In early 2007, FDOC Secretary Jim McDonough commissioned a Religious Diet Study Group to evaluate JDAP. *Id.* On July 26, 2007, the Study Group issued its report (the "Report"). The Report recommended that Defendants "retain a kosher dietary program," and that failure to do so would likely violate RLUIPA. U.S. Ex. 2 at 27. The Study Group stated that a prisoner desiring to keep kosher "is substantially burdened" by the denial of kosher food "because the regulations [denying a kosher diet] 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." *Id.*

9. Despite the Report's recommendation, Defendants terminated JDAP in August 2007. Undisputed Facts at 11; June 4 Tr. at 56.

10. During the three and a half years of JDAP's operation, a total of 784 prisoners enrolled in the Program, with an average enrollment of 250 prisoners per day. U.S. Ex. 2. In April 2007 - ten months after Defendants opened the program to prisoners of all faiths - 259 prisoners were enrolled, and 95 applications were pending. June 5 Tr. at 88-89. If Defendants had accepted every one of the 95 applications and no prisoners had left the program, it would have enrolled a maximum of 364 prisoners. June 5 Tr. at 89.

11. The prisoner population in the Florida Department of Corrections is roughly the same today as it was in 2007. June 5 Tr. at 89.

12. Like the final year of JDAP, the new Religious Diet Program ("RDP") is open to prisoners of all faiths. June 5 Tr. at 86.

13. After terminating JDAP, Defendants did not offer a kosher diet to any prisoner for the next three years. June 4 Tr. at 56.

14. In August 2010, Defendants instituted a "pilot" kosher diet program (the "Pilot Program") in the South Unit of the South Florida Reception Center ("SFRC"). Undisputed Facts at 18. Enrollment in the Pilot Program ranged from 8 to 18 prisoners during the program's existence. Undisputed Facts at 19; June 4 Tr. at 56. The Pilot Program was never expanded to any facility besides SFRC. Thus, from 2007-2013, FDOC did not offer a kosher diet to any prisoners except for the small number of prisoners in the Pilot Program.

15. Defendants originally committed to expanding the Pilot Program in October 2010, *see* U.S. Ex. 20, but changed course and never expanded the program to any additional prisoners. June 4 Tr. at 59.

16. Defendants' September 2010 review of the Pilot Program found that the total cost of providing a kosher diet to prisoners in the program was $4.71 per day. U.S. Ex. 7.

17. Since August 2007, Defendants have offered three primary diet options in their 60 major facilities: (1) a main line; (2) a vegan option; and (3) a no-meat option. U.S. Ex. 1. None of these diet options is kosher. See *Rich v. Secretary, Florida Dep't of Corrections*, 716 F.3d 525, 528 (11th Cir. 2013) ("none of these diets are kosher"); June 5 Tr. at 106. In 2007, Defendants removed all pork products from their food service offerings. U.S. Ex. 2; June 5 Tr. at 90.

18. In addition to the main line, no-meat, and vegan diet options, Defendants offer at least 15 medical and therapeutic diets at each facility. U.S. Ex. 4. Defendants have successfully managed all security and budgetary issues related to providing these special diets for years. June 4 Tr. at 60.

III. Defendant's Litigation Posture In Kosher Diet Cases

19. Since discontinuing JDAP in 2007, Defendants have defended their refusal to offer a kosher diet in at least five lawsuits filed by pro se prisoners: *Marshall v. Fl. Dep't of Corr.*, 2011 U.S. Dist. LEXIS 35057 (S.D. Fla. 2011); *Rich v. Buss*, No. 1:10-cv-157 (N.D. Fla. 2010); *Muhammad v. Crosby*, 2009 WL 2913412 (N.D. Fla. 2009); *Young v. McNeil*, 2009 WL 2058923 (N.D. Fla. 2009); and *Linehan v. Crosby*, 2008 WL 3889604 (N.D. Fla. 2008). June 5 Tr. at 153 ("We have litigated this issue several times"). Against each pro se prisoner, Defendants litigated the merits of their right to deny a kosher diet.

20. In May 2011, the United States opened a formal investigation of FDOC's dietary policies. U.S. Ex. 18. The United States' 15-month investigation included the review of thousands of pages of documents, retaining expert consultants in prison administration, and inspecting four FDOC facilities. In August 2012, the United States' investigation concluded that Defendants' failure to offer a kosher diet violated RLUIPA.

21. The United States advised Defendants of this conclusion on August 1, 2012, and offered to work with FDOC to negotiate a resolution that made a kosher diet available to all Florida prisoners with sincere religious grounds for keeping kosher. U.S. Ex. 19. Defendants refused to consider any change to their policies in response to the findings of the United States' investigation, and on August 14, 2012, the United States filed the instant suit. Complaint, DE-1.

22. After this Court denied Defendants' Motion to Dismiss or Transfer Venue, DE-13, the parties partook in court-ordered mediation on January 17, 2013. At this mediation session, Defendants agreed to submit a kosher diet proposal to the United States by March 4, 2013. Joint Mot. to Stay, DE-24. The Court stayed this litigation until April 19, 2013, to facilitate settlement discussions. DE-27.

23. On March 22, 2013, while the case was stayed for settlement discussions, Defendants issued a new policy - Procedure 503.006 - called the Religious Diet Program. U.S. Ex. 3. Defendants did not notify the United States of this new policy. Instead, the United States first learned of the policy on April 2, 2013 from counsel in separate litigation against Defendants' dietary policies. Status Rpt., DE-28.

24. One week after learning of the new policy, the United States filed a Motion for a Preliminary Injunction, DE-29, and the Court lifted the stay in this action on April 15, 2013, DE-30.

25. In this litigation with the United States, Defendants continue to assert that prisoners do not have a right to a kosher diet under RLUIPA and that Defendants may lawfully deny priosners a kosher diet at any time. See Defs' Opp. to U.S. Mot. for Prelim. Inj. ("Opp.") at 2; June 4 Tr. at 154.

IV. Defendants' New Religious Diet Program

26. Defendants announced that they were implementing the new Religious Diet Program (RDP) in a single facility - the Union Correctional Institution - on April 5, 2013. The Union Correctional Institution houses Bruce Rich, the plaintiff in an ongoing lawsuit against FDOC seeking a kosher diet, whose appeal was argued before the Eleventh Circuit on April 18,

2013. U.S. Ex. 11. After the Eleventh Circuit rejected Defendants' argument that the new policy mooted the Rich case, Defendants announced that the Union program would not begin until at least July 1, 2013. June 4 Tr. at 6.

27. By its terms, the RDP was to become effective in all other institution in September 2013. U.S. Ex. 3.

28. If implemented, the RDP will offer a certified kosher diet to eligible prisoners at participating FDOC facilities. U.S. Ex. 3. These kosher meals will consist of prepackaged, certified kosher entrees in addition to items from FDOC's normal food service operations. *Id.*

29. James Upchurch, FDOC's Assistant Secretary for Institutions, testified that the use of prepackaged meals in a statewide program alleviates the security concerns identified with the prior JDAP program. June 4 Tr. at 53.

30. FDOC Operations Manager Shane Phillips testified that he was not aware of any reason to believe that the participation rate in the new RDP would be higher than participation in the JDAP. June 4 Tr. at 153. FDOC head chaplain Alex Taylor testified that "it wouldn't be unreasonable" to expect "maybe as many as 500" prisoners to participate the RDP. June 5 Tr. at 113. Accordingly, prior to institution of the RDP, it was reasonable to anticipate that the likely range of participation in the RDP would be between 250-500 prisoners per day.

A. Participation in the Religious Diet Program and Changes to the Program

31. Since institution of the RDP at Union Correctional Institution, there has been an unexpectedly high number of applications for participation in the RDP, with an early participation rate of approximately 40% of the facility's population. DE-99-1. As a result,

Defendants revised the guidelines for participation in the RDP, leading to a drop in eligible inmates. *Id.*

32. The revision to the guidelines resulted in the addition of a question to the Assessment Sheet used by Defendants to determine participation eligibility. The new Assessment Sheet includes the question "What are the religious reasons for your diet needs? Please specify the specific law(s) connected to your belief or faith that require(s) you to eat a religious diet?" DE-99-8 at 13.

33. Several months after the preliminary injunction hearing, Defendants advised that the new RDP would not be rolled-out statewide by September 2013 and, instead, will be introduced at a handful of institutions between now and January 2014. DE-99-2. Those institutions are Cross City Correctional Institution, Everglades Correctional Institution, Homestead Correctional Institution, Northwest Florida Reception Center, and Okaloosa Correctional Institution. *Id.* There are currently no plans to introduce the RDP at any additional institutions. *Id.*

34. Additionally, not all of these five facilities will used prepackaged meals. Northwest Florida Reception Center and Everglades Correctional Institution will use kosher kitchens to prepare meals. *Id.* Everglades will use a combination of prepackaged meals and meals prepared in the kosher kitchen. *Id.*

35. Defendants now state that they will implement the RDP at Cross City, Everglades, and Northwest Florida on or about January 15, 2014. *Id.* There are no implementation dates for Homestead or Okaloosa. *Id.*

B. Cost of the Religious Diet Program

36. Defendants estimate that the marginal cost of providing a kosher diet under the RDP is $5.81 per prisoner, per day. U.S. Ex. 30.

37. The total cost of the Program depends in part on the number of participants. If participation in the RDP is the same as participation in JDAP (averaging 250 prisoners per day), its total cost will be $530,162 per year. This expense represents .00025 of FDOC's operating budget ($530,000 /$2.1 billion = .00025).

38. If participation in the RDP is twice as high as participation in JDAP (averaging 500 prisoners per day), the total cost of the RDP will be $1,060,324 per year. This expense represents .0005 of FDOC's operating budget.

39. Since institution of the RDP at Union, there has been an unexpectedly high number of applications for participation in the RDP, with an initial participation rate of approximately 40% and a current rate closer to 25% of the facility's population. DE-99-1. A statewide participation rate of 40% would lead to a cost of $86,522,520 per year (40,800 prisoners x $5.81 x 365) or .04 of FDOC's operating budget, while a statewide participation rate of 25% would lead to a cost of $54,076,575 per year or .02575 of FDOC's operating budget.

C. The Four Challenged Provisions of the Religious Diet Program[2]

40. Prisoners are eligible to participate in the RDP only if they pass the "sincerity test" prescribed by FDOC Procedure 503.006(4). U.S. Ex. 32 at 4-5.

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[2]It appears that not all of these provisions continue to be part of the RDP. However, given the constantly changing nature of the RDP, the issue of whether these provision are valid under RLUIPA is not moot.

41. The RDP's "sincerity test" requires that prisoners seeking to participate in the Program file a formal request for a kosher diet and interview with an FDOC chaplain who tests the prisoner's "knowledge of the religion and the requirements of keeping a religious diet." U.S. Ex. 32. The chaplain may then "confirm" a prisoner's stated beliefs through "internet searches to research diet requirements for specific religions," staff interviews, inspection of records of the prisoner's attendance at religious ceremonies, and conversations with religious figures. *Id.* If the prisoner's knowledge of religious orthodoxy is sufficient, the prisoner is admitted to the kosher diet program.

42. Chaplain Taylor acknowledged that the criteria used to assess sincerity is "not very clear" and creates a "slippery issue." June 5 Tr. at 62-63. FDOC has not provided any training or other guidance to chaplains at its 60 major institutions about how to judge a prisoner's sincerity or test "knowledge of the religion and the requirements of keeping a religious diet." June 4 Tr. at 93-95.

43. Under the prior version of the Religious Diet Program that was challenged by the United States' Motion for a Preliminary Injunction, prisoners who passed the sincerity interview process were required to eat exclusively non-kosher meals for 90 days prior to accessing the kosher diet option. U.S. Ex. 3. Defendants removed this provision from the RDP on the eve of the preliminary injunction hearing after briefing on the United States' Motion was complete. Defendants continue to defend the legality of the 90-day provision while simultaneously arguing that the Court lacks jurisdiction to review it. *See* Defs' Proposed Findings of Fact and Concl. of Law ("Defs' Findings"), DE-47 at 24.

44. The new RDP also contains a provision that removes any prisoner who misses ten percent of available meals. U.S. Ex. 32 at 6. A removed prisoner may not reapply for six months. *Id.* The Ten Percent Rule applies even if the prisoner who misses ten percent of meals consumes exclusively kosher food when the prisoner elects to eat. *Id.*

45. A prisoner who fasts for religious reasons and misses ten percent of meals will be removed from the RDP unless the prisoner submits a request for a religious fast fifteen days in advance. *Id.* Defendants' witnesses did not identify any basis for selecting the ten percent threshold. June 4 Tr. at 123 ("The Court: And how was the ten percent number selected . . . ? A: To be honest, I'm not quite sure how that ten percent came into effect."); June 4 Tr. at 50 ("I hesitate to say it's arbitrary, but I don't think it's based on any analytical formula.").

46. In addition to the Ten Percent Rule, the RDP contains a "Zero Tolerance Rule," under which a prisoner is removed from the RDP if he or she consumes any item that FDOC's contractors do not list as "kosher." June 4 Tr. at 143 (Q: "is it correct that if a prisoner eats a single item that is not considered kosher by the contractor that provided the list to you, that that prisoner is removed from the diet program . . .? A. That is correct"). Removal lasts for 30 days for a first offense, 120 days for a second offense, and one year for all subsequent offenses. U.S. Ex. 32 at 6. Removal from the RDP is mandatory for a first offense, June 5 Tr. at 100, and prisoners do not have an opportunity to explain their reasons for consuming a "non- kosher" item prior to removal. U.S. Ex. 32 at 6; June 5 Tr. at 101.

47. Defendants argue that this provision is necessary to avoid waste. However, Mr. Phillips testified that unused meals do not create waste because prepackaged kosher meals last "a couple years." June 4 Tr. at 147 ("Q: If you were ordering those shelf-stable kosher meals, and

the quantity that you ordered turned out to be slightly more than what was needed, there's no real risk that any of those meals would go bad and be wasted before they were used by prisoners, right? A. No, I don't believe so."). Former BOP Regional Food Service Administrator Dennis Watkins likewise testified that food service officials can ensure that meals do not go to waste by preparing a conservative number of hot entrees. If a prisoner showed up before his or her meal was prepared, food service officials could heat up an additional meal in "a minute and a half to two minutes." June 5 Tr. at 126.

V. Dietary Policies at Other Correctional Institutions

48. At least 35 state departments of correction offer a kosher diet to their prisoners. U.S. Ex. 16. In 2007, the FDOC study group's survey of state correctional facilities found that 26 of 34 responding facilities offered a kosher diet. U.S. Ex. 2. Institutions that currently provide a kosher diet to prisoners include the Federal Bureau of Prisons ("BOP"), the New York Department of Correctional Services, California Department of Corrections and Rehabilitation, Texas Department of Criminal Justice, and the Illinois Department of Corrections. U.S. Ex. 2, 16, 23.

49. New York does not require any sincerity test before admitting prisoners to its kosher diet program. U.S. Ex. 23. Rather, a prisoner need only register his or her religious preference to obtain a religious diet. *Id.* Similarly, FDOC General Counsel Kathleen Von Hoene acknowledged that 8 of 11 state departments of corrections surveyed by Defendants had no formal sincerity testing for their religious diet programs because "developing a test would be difficult under [RLUIPA]." U.S. Ex. 24.

50. The Federal Bureau of Prisons offers a kosher "Certified Religious Menu" to prisoners in each of its 115 facilities, including its maximum security facility in Florence, Colorado, and several facilities in the state of Florida. U.S. Ex. 14; June 5 Tr. at 133-35. BOP has offered a kosher diet system-wide for two decades.

51. Former BOP Assistant Director John Clark testified that access to religious diets furthers "the inherent value of prisoners being positively engaged in pro-social activity." June 4 Tr. at 86.

52. In each of its facilities, BOP's food service consists of a main line, a vegetarian option, and a Certified Religious Menu option. U.S. Ex. 14; June 5 Tr. at 132-33. BOP's Certified Religious Menu serves prepackaged, certified kosher entrees supplemented with certain items from BOP's other food service operations. *Id.*

53. BOP's Certified Religious Menu is open to prisoners of all religious faiths. A federal prisoner who desires a kosher diet must submit a request and meet with a chaplain at the prisoner's facility. Once a BOP chaplain determines that a prisoner's request for the Certified Religious Menu is sincere, the chaplain notifies the facility's food service director and the prisoner is immediately eligible to participate in the Certified Religious Menu. U.S. Ex. 14; June 5 Tr. at 128. There is no waiting period before a federal prisoner may begin consuming a certified kosher diet. *Id.*

54. BOP does not employ a sincerity test that focuses on knowledge of religious doctrine because "there's no nexus between being able to articulate knowledge and whether or not there's a sincere religious belief." June 4 Tr. at 90. Chaplain Taylor acknowledged that BOP abandoned knowledge testing years ago because of "the problems it created." June 5 Tr. at 98.

55. BOP does not remove prisoners from the Certified Religious Diet who elect not to eat a certain percentage of meals. June 5 Tr. at 127.

56. Nor does BOP monitor commissary purchases of prisoners enrolled in its kosher diet program. June 5 Tr. at 140 ("we do not monitor what those inmates purchase in the commissary").

57. Approximately 1.2 percent of BOP prisoners are currently enrolled in the Certified Religious Menu program. June 5 Tr. at 136. After an initial spike in participation shortly after BOP implemented the kosher diet program, participation has remained steady for nearly two decades. June 5 Tr. at 136-37.

58. The total cost of BOP's Certified Religious Menu ranges from $4.80 to $6.75 per prisoner, per day. June 5 Tr. at 135.

CONCLUSIONS OF LAW

Defendants raise several arguments in opposition to the Motion. Defendants argue that the motion is moot based on Defendants' new RDP, that the Court lacks jurisdiction to adjudicate any issues with the new RDP because the Plan was not explicitly pled in the complaint, and that the motion should be denied on its merits. Defendants cannot prevail on any of their arguments.

I. The Case is Not Moot

Defendants argue that the adoption of Florida's new RDP moots the United States' RLUIPA claim based on the failure to provide kosher meals. This exact issue was recently addressed by the Eleventh Circuit in *Rich v. Secretary, Florida Department of Corrections*, 716 F.3d 525 (11th Cir. 2013). In *Rich*, an individual prisoner, who is an orthodox Jew, challenged

the Defendants' failure to provide him with kosher meals under RLUIPA. While the *Rich* appeal was pending, the instant suit was filed and Florida announced the development of its new RDP. As a result, the *Rich* defendants argued that the appeal was moot. The Eleventh Circuit held that the claims were not moot under the voluntary cessation doctrine, which requires the analysis of three factors: (1) whether the termination of the offending conduct was unambiguous; (2) whether the change in government policy or conduct appears to be the result of substantial deliberation, or is simply an attempt to manipulate jurisdiction; and (3) whether the government has "consistently applied" a new policy or adhered to a new course of conduct. *Id.* at 531-32. Applying these factors to virtually the same facts presently before this Court, the Eleventh Circuit found that the *Rich* defendants had not unambiguously terminated their policy of refusing kosher meals. *Id.* at 532. The Court specifically noted that the *Rich* defendants' policy change came "late in the game," and only after Rich's brief had been filed with the Eleventh Circuit and this suit had been filed. *Id.* The Eleventh Circuit further noted that the RDP had been implemented only at the prison where Rich was incarcerated, indicating an attempt to manipulate jurisdiction.[3] *Id.* Finally, the Eleventh Circuit also found that Rich's claims were not moot based on Defendants' continued assertion that their failure to provide kosher meals did not violate the law. *Id.* Thus, based on *Rich*, the United States' claims in the instant case are not moot.[4]

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[3]It is still the case that the RDP has only been instituted at a single correctional facility.

[4]While Defendants argue that the "voluntary cessation" doctrine does not apply under RLUIPA, *see* DE-34 at 9, the Eleventh Circuit clearly found otherwise in *Rich.*

II. The Court Has Jurisdiction Over the Government's Challenge to the New Religious Diet Program

Defendants argue that this Court lacks jurisdiction to adjudicate deficiencies with the RDP because the United States does not specifically identify the Program in its Complaint. This argument is unavailing, as Federal Rule of Civil Procedure 8 does not require a plaintiff to allege every fact that supports its claim. Fed. R. Civ. P. 8. "Under Rule 8(a), applicable to ordinary civil proceedings, a complaint need only provide fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Mayle v. Felix*, 544 U.S. 644, 655 (2005). In its Complaint, the United States alleges that Defendants' dietary policies violate RLUIPA by burdening the religious exercise of prisoners seeking a kosher diet.[5] Defendants' continuing modifications to their dietary policies in response to this litigation are factual details that fit within the scope of the United States' RLUIPA claim under the fair notice standard. *Cf. Del Monte Fresh Produce Co. v. United States*, 570 F.3d 316, 324 (D.C. Cir. 2009) (reversing the district court's dismissal of a challenge to the Treasury Department's delay in granting a license because the court wrongly focused on the "precise historical facts that spawned the plaintiff's claims" rather than "the legal wrong complained of"). Furthermore, any other result would allow a defendant to avoid liability in perpetuity by continually modifying a policy challenged in litigation. In any event, Defendants themselves have placed the RDP at issue by raising it in their opposition to the instant motion and by arguing that it moots the United States' case. Consequently, the Court has jurisdiction to hear the challenges to the new RDP.

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[5]Months after the preliminary injunction hearing, the United States filed an Amended Complaint, DE-104, which specifically pleads the existence of the RDP.

III. The United States Is Entitled to a Preliminary Injunction

A preliminary injunction is appropriate where the moving party shows: (1) a substantial likelihood of success on the merits; (2) that an injunction is necessary to prevent irreparable injury; (3) that the injury to the moving party outweighs whatever damage the proposed injunction might cause the non-moving party; and (4) that an injunction is in the public interest. *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 968 (11th Cir. 2005). The United States has established each of these elements. Thus, a preliminary injunction is warranted.

A. The United States is Likely to Succeed on the Merits of its RLUIPA Claim

RLUIPA prohibits policies that substantially burden religious exercise except where a policy "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C. § 2000cc-1(a). Under this scheme, once a plaintiff proves that a challenged practice substantially burdens religious exercise, the burden shifts to the defendant to satisfy RLUIPA's strict scrutiny inquiry. 42 U.S.C. § 2000cc-2(b). As set forth below, Defendants cannot meet their burden.

1. Defendants' Challenged Dietary Policies Substantially Burden the Religious Exercise of Florida's Prisoners

Each of Defendants' challenged dietary policies substantially burdens the religious exercise of Florida prisoners. A "policy of not providing kosher food may be deemed to work a substantial burden upon [an inmate's] practice of his faith." *Baranowski v. Hart*, 486 F.3d 112, 125 (5th Cir. 2007); *see also Beerheide v. Suthers*, 286 F.3d 1179, 1185 (10th Cir. 2002) (failure to provide kosher diet burdens free exercise of religion in violation of the First Amendment).

Defendants concede that a substantial burden results from their blanket denial of a kosher diet and from three of the four challenged provisions of the RDP: (1) the 90-Day Rule; (2) the "zero tolerance" removal of prisoners who consume a single item Defendants listed as non-kosher; and (3) the "sincerity test" that probes prisoners' knowledge of religious doctrine. *See* Defs' Opp. to Mot. for Prelim. Inj., DE-34, at .21-24; U.S. Reply, DE-40, at 9-10.

The fourth challenged provision - which removes prisoners from the RDP if they miss ten percent of meals - likewise imposes a substantial burden. The Ten Percent Rule removes prisoners from their desired religious diet for a minimum of six months if they do not eat at least 90 percent of the available meals, even if every meal the prisoners eat is kosher. A policy that denies a religious diet to a prisoner, even where there is no evidence that the prisoner is insincere, substantially burdens religious exercise. *Cf. Lawson v. Singletary*, 85 F.3d 502, 509 (1996)) ("policies grounded on mere speculation" violate the law). Further, a six-month removal unquestionably works a substantial burden. *See Nelson v. Miller*, 570 F.3d 868, 880 (7th Cir. 2009) (failure to provide a non-meat diet during 40 days of Lent a substantial burden); *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006) (denying Muslim prisoner special Ramadan meals 24 out of 30 days constitutes a substantial burden under RLUIPA).

2. Defendants' Challenged Dietary Policies Are Not the Least Restrictive Means of Furthering a Compelling Government Interest

Because Defendants' dietary policies substantially burden religious exercise, the burden shifts to the Defendants to show that each of these provisions is the least restrictive means of furthering a compelling government interest. 42 U.S.C. § 2000cc-2(b). None of the challenged provisions meet this standard.

a. The Blanket Denial of a Kosher Diet

At the time the United States filed its Complaint, Defendants denied a kosher diet to all but a handful of prisoners in a single facility. Undisputed Facts 19. This near-blanket denial of a kosher diet is not the least restrictive means of furthering a compelling government interest. Indeed, Defendants' admission that they can provide a kosher diet[6] demonstrates as a matter of law that their challenged dietary policy fails RLUIPA's strict scrutiny test. Defendants cannot argue that they have compelling interests in denying a kosher diet while they provide such a diet voluntarily and continue to represent to the Court that they remain committed to providing a kosher diet to all eligible prisoners. *See Moussazadeh v. Texas Department of Criminal Justice*, 703 F.3d 781, 794 (5th Cir. 2012); *Koger v. Bryan*, 523 F.3d 789 (7th Cir. 2008) (denying request for a no-meat diet violated RLUIPA where prison offered such a diet to other prisoners); *Spratt v. Rhode Island Department of Corrections*, 482 F.3d 33, 40 (1st Cir. 2007) (prison system lacked compelling reasons for banning inmate preaching because the prison had previously allowed such preaching); *Washington v. Klem*, 497 F.3d 272, 285 (3d Cir. 2007) (restriction on the number of religious books a prisoner may possess invalid where other facilities in the state system did not have such a restriction); *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005). Defendants cannot have it both ways – Defendants cannot argue that they have a compelling interest in not providing kosher meals and also argue that they are committed to

[6]*See* June 4 Tr. at 52 ("Q: Mr. Upchurch, it's fair to say that the Department of Corrections has now determined that it can provide a statewide kosher diet plan consistent with its interests, correct? A: Yes."); June 5 Tr. at 80 ("Q: Mr. Taylor, the Florida Department of Corrections has now determined that it can provide a kosher diet in every facility using certified prepackaged kosher meals; is that correct? A: Yes.").

providing kosher meals. If Defendants truly remain committed to providing kosher meals to all eligible prisoners, then Defendants' interests in not providing the meals cannot be compelling.

Even if Defendants' concession that they can, and will eventually, provide a kosher diet were not fatal to their legal defense for denying such a diet, the United States is likely to succeed on the merits of its claim for two additional reasons: (1) Defendants have not identified any compelling interest furthered only by a blanket denial of a kosher diet and (2) numerous correctional facilities with interests identical to FDOC are able to offer a kosher diet.

First and most importantly, Defendants have not identified any compelling interest that is furthered only by a blanket denial of kosher diets. Defendants' chief argument is that denying a kosher diet is the least restrictive means of furthering their compelling interest in controlling cost. While cost control may be a compelling interest in certain situations, *see Rich*, 716 F.3d at 534, RLUIPA expressly contemplates that facilitating religious exercise "may require a government to incur expenses in its own operations." 42 U.S.C. § 2000cc-3(c).

The costs initially identified by Defendants in this litigation are not of a compelling magnitude. The average enrollment in Defendants' prior kosher diet program was 250 prisoners per day. Based on Defendants' estimate that a kosher diet costs $5.81 more per prisoner each day, Opp. at 6, a comparable participation rate in the new RDP would yield a total cost of approximately $530,000 per year. Accepting Chaplain Taylor's estimate that 500 prisoners may participate, the cost of providing a kosher diet is $1.06 million per year, or .0005 of FDOC's budget. Even if participation were four times as high as under the prior program - averaging 1,000 prisoners per day - the cost would only be $2.12 million per year, or .001 of FDOC's budget. No compelling interest is furthered by avoiding such a relatively minor expense. Under

the less rigorous standard of review applied in First Amendment cases, the Tenth Circuit has held that avoiding a larger expenditure on kosher food - constituting .0016 of the budget - was not rationally related to a penological interest. *Beerheide*, 286 F.3d at 1191; *see also Moussazadeh*, 703 F.3d at 795 ("we are skeptical that saving less than .005% of the food budget constitutes a compelling interest").

After the evidentiary hearing, Defendants submitted evidence indicating that the participation rate at the single institution where kosher meals are actually being served is approximately 25% of the institution's population. However, Defendants admit that the high participation rate is not based on religious reasons. *See* November 22 Tr. at 12. Further, the participation rate was initially closer to 40%; however, the rate has dropped off as Defendants have begun to reexamine applications for participation in the RDP. *See* DE-99-1. Clearly, the current program has made the RDP a more appealing alternative than the standard meal options. This is not a requirement of RLUIPA. Thus, it appears that the high participation rate will not be maintained as the RDP continues and the "bugs" in the system, which currently have made the RDP more desirable than standard prison fare, are worked out. *See* June 5 Tr. at 123 ("Anytime you offer a new program to the inmates, typically you're going to see a higher number initially, and then those numbers will fall off after three or four months or so of a program "). Consequently, Defendants have not shown that the high participation rate is representative of the long-term participation rate. Thus, Defendants cannot show that avoiding the expense of providing a kosher diet to Florida prisoners is the least restrictive means of furthering a compelling interest.

Second, the ability of similar correctional facilities to offer a kosher diet underscores that Defendants can offer such a diet consistent with its penological interests. It is well established that "the policies followed at other well-run institutions [are] relevant to a determination of the need for a particular type of restriction." *Procunier v. Martinez*, 416 U.S. 396, 414 n.14 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401, 413 (1989); *Rich*, 716 F.3d at 534 (practices of other institutions "are relevant to an inquiry about whether a particular restriction is the least restrictive means by which to further a shared interest"). The Federal Bureau of Prisons' kosher diet program is particularly relevant because BOP "has managed the largest correctional system in the Nation under the same heightened scrutiny standard as RLUIPA without compromising prison security, public safety, or the constitutional rights of other prisoners." *Cutter v. Wilkinson*, 544 U.S. 709, 725 (2005). Where BOP accommodates a particular religious exercise, a defendant is unlikely to satisfy RLUIPA's strict scrutiny inquiry "in the absence of any explanation by [the defendant] of significant differences between [its prison] and a federal prison that would render the federal policy unworkable." *Spratt*, 482 F.3d at 42; *see also Warsoldier*, 418 F.3d at 999 (enjoining prison's hair length policy where "[p]risons run by the federal government, Oregon, Colorado, and Nevada all meet the same penological goals without such a policy").

Here, the experience of similar institutions militates strongly against the legality of Defendants' blanket denial of a kosher diet. The Federal Bureau of Prisons, Texas, New York, California, Illinois and at least 31 other states offer a kosher diet to their prisoners. *See* U.S. Exhibits 2, 14, 16, 23. Defendants do not explain how their interests differ from these large correctional institutions. *See, e.g.*, June 5 Tr. at 30 (not aware of any differences in budgetary

circumstances between Florida and other large institutions); June 5 Tr. at 31 (no reason to think rate of participation in kosher diet will be higher in Florida than other prison systems). Recognizing this principle, the Eleventh Circuit recently reversed a grant of summary judgment for Defendants in a prisoner's suit seeking a kosher diet "in light of the Defendants' meager efforts to explain why Florida's prisons are so different from the penal institutions that now provide kosher meals such that the plans adopted by those other institutions would not work in Florida." *Rich*, 716 F.3d at 534. Because Defendants have not established that they have a compelling state interest in not providing a kosher diet, the United States is likely to prevail on the merits of its claim that Defendants' blanket denial of a kosher diet violates RLUIPA.

b. The 90 Day Rule

The RDP's requirement that prisoners seeking a kosher diet consume exclusively non-kosher food for a period of 90 days fails for the same reasons as Defendants' blanket denial of a kosher diet. After briefing concluded on the United States' Preliminary Injunction Motion, Defendants announced they were removing this waiting period from the RDP and would implement a kosher program without it. *See* U.S. Ex. 32. This policy change demonstrates that the 90 Day Rule cannot withstand strict scrutiny. Regardless, the provision substantially burdens religious exercise by depriving observant prisoners of a kosher diet for 90 days, *see, e.g., Nelson*, 570 F.3d at 880 (failure to provide a non-meat diet during 40 days of Lent a substantial burden), and is not the least restrictive means of furthering any compelling interest. Indeed, Defendants have not identified any compelling interest related to this provision. *See* Opp. at 21. Nor can Defendants avoid the Court's review of the 90 Day Rule by changing their policy on the eve of a

decision, as they continue to defend the legality of the provision in their briefing, Defs' Findings at 24, and may re-institute the provision in the future.

c. Religious Orthodoxy Testing

The RDP likewise violates RLUIPA by conditioning enrollment in the Program on prisoners satisfying a process of interviews and follow-up investigation that focuses on the prisoner's knowledge of religious dogma.[7] *See* U.S. Ex. 32 at 4-5. Defendants judge whether applicants to the RDP sufficiently ground their requests in "knowledge of their religion and the requirements of keeping a kosher diet,"[8] and authorize FDOC chaplains to measure a prisoner's fidelity to a particular religion by conducting interviews, internet searches, inspecting prison records, and reviewing a prisoner's past religious activities. *See* U.S. Ex. 32 at 4-5. This subordination of prisoners' personal religious beliefs violates federal law. The risk of FDOC officials second-guessing prisoners is heightened because, while Defendants concede that the criteria in its new policy are "not very clear," June 5 Tr. at 62, they have provided no training to chaplains to guide their assessments. June 5 Tr. at 93-95.

While RLUIPA "does not preclude inquiry into the sincerity of a prisoner's professed religiosity," *Cutter*, 544 U.S. at 725 n.13, such an inquiry must be "handled with a light touch"

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[7]While Defendants state that currently those conducting interviews have been instructed to cast a "wide net," *see* Defs' Supp. Prop. Findings at 17, there is nothing in the RDP that ensures that this will continue to be Defendants' policy.

[8]Because of the unexpectedly high participation rate in the RDP, Defendants modified their Assessment Sheet for the Certified Food Option that prisoners seeking to participate in the RDP fill-out and submit to Defendants. *See* DE-99-8 at 13. The modification included the addition of the following question: "What are the religious reasons for your diet needs? Please clarify the specific law(s) connected to your belief or faith that require(s) you to eat a religious diet?"

and limited "almost exclusively to a credibility assessment." *Moussazadeh*, 703 F.3d at 792. "Prison officials may not determine which religious observances are permissible because orthodox." *Grayson v. Schuler*, 666 F.3d 450, 453-55 (7th Cir. 2012). This principle bars Defendants' policy of excluding prisoners from a kosher diet based on clergy interpretations of religious doctrine or on prisoners' knowledge of religious laws and doctrine. Indeed, "clergy opinion has generally been deemed insufficient to override a prisoner's sincerely held religious belief." *Koger*, 523 F.3d at 799 (holding that RLUIPA covered a prisoner's request for a vegetarian diet even though there were "no dietary restrictions compelled by or central to his professed faith"); *see also Jackson v. Mann*, 196 F.3d 316, 320 (2d Cir. 1999) (sincerity of a prisoner's beliefs - not the decision of Jewish religious authorities - determines whether prisoner was entitled to kosher meals); *Newingham v. Magness*, 364 F. App'x. 298, 300 (8th Cir. 2010) (reversing and remanding where district court improperly relied on the prison's Islamic coordinator's opinion that a prayer rug was a "convenience" rather than a religious "requirement"); *Grayson*, 666 F.3d at 450 (prison could not force prisoner to cut his hair based on the premise that only those whose faith "'officially' require[s] the wearing of dreadlocks [may] wear them"); *Benning v. Georgia*, 391 F.3d 1299, 1313 (11th Cir. 2004) (finding that RLUIPA's definition of religious exercise "mitigates any dangers that entanglement may result from administrative review of good-faith religious belief."). Defendants' orthodoxy testing strays too far "into the realm of religious inquiry," where government officials "are forbidden to tread." *Moussazadeh*, 703 F.3d at 792.

Other correctional institutions effectively operate kosher diet programs without the rigorous inquiry that Defendants require. The Federal Bureau of Prisons sincerity test consists of

a single brief interview with a chaplain. *See* U.S. Ex. 14. The New York correctional system provides a kosher diet to all prisoners who self-identify with a qualifying religion. *See* U.S. Ex. 23. Eight of eleven state correctional systems surveyed by Defendants reported that they used no sincerity testing at all because such testing may violate RLUIPA U.S. Ex. 24. The experience of these institutions further demonstrates that Defendants' focus on religious orthodoxy is not the least restrictive means of furthering a compelling interest.

d. Zero Tolerance Removal Provision

The RDP's zero tolerance removal provision fails RLUIPA's strict scrutiny requirement for similar reasons. Prisoners who consume any item that Defendants do not list as "kosher" are removed for 30 days for a first offense, 120 days for a second offense, and 1 year for all subsequent offenses. U.S. Ex. 32 at 6. A prisoner has no opportunity to explain how the "non-kosher" selection fits within his or her religious beliefs prior to removal from the Program. This provision is incompatible with the principle that, under RLUIPA, a "few lapses in perfect adherence do not negate [a prisoner's] overarching display of sincerity." *Moussazadeh*, 703 F.3d at 792 (holding that a Jewish prisoner who repeatedly purchased non-kosher items from the commissary nonetheless "established his sincerity as a matter of law" by requesting a kosher diet and pursuing litigation). "A sincere religious believer doesn't forfeit his religious rights merely because he is not scrupulous in his observance; for where would religion be without its backsliders, penitents, and prodigal sons?" *Grayson*, 666 F.3d at 454.

The only compelling interest cited by Defendants in support of the zero tolerance rule is "cost containment." Opp. at 24. Defendants have presented no evidence, however, of how much money the zero tolerance rule would save. June 4 Tr. at 144. Nor have Defendants identified

any other institution that imposes a similar restriction. Without such evidence, Defendants cannot demonstrate that the zero tolerance rule is the least restrictive means of furthering a compelling interest. "Policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet [RLUIPA's] requirements." *Rich*, 716 F.3d at 533 (citing *Lawson*, 85 F.3d at 509). Thus, the zero tolerance rule violates RLUIPA.

e. The Ten Percent Rule

The RDP removes prisoners who eat less than 90 percent of available meals even if every meal they consume is kosher. *See* U.S. Ex. 32 at 6. Defendants assert that this provision is necessary to avoid the waste created by "throw[ing] away" unused meals. Opp. at 23. Like the zero tolerance rule, however, Defendants present no evidence of the magnitude of the costs incurred by such waste or the savings attributable to the ten percent rule.[9] Rather, Defendants' rationale for this provision is "mere speculation," which RLUIPA proscribes. Even if there were some evidence of cost savings, Defendants have not demonstrated that this rule is the least restrictive means to avoid "waste." Opp. at 23. Defendants can simply track average participation in the RDP and adjust their kosher food order accordingly to avoid wasting excess meals. BOP has managed its kosher diet operation using this alternative for two decades. June 5 Tr. at 127 ("Q. So, how did you avoid waste . . . from prisoners not showing up to eat meals? A. Basically based on history. We knew over a period of time roughly how many guys were going to show up for breakfast, lunch, and dinner in those special programs. And we would break out accordingly."). There is no evidence that Defendants have considered this less restrictive

[9]*See* June 4 Tr. at 123 ("The Court: And how was the ten percent number selected . . . ? A: To be honest, I'm not quite sure how that ten percent came into effect."); June 4 Tr. at 50 ("I hesitate to say it's arbitrary, but I don't think it's based on any analytical formula.").

alternative. *See, e.g.*, *Washington*, 497 F.3d at 284; *Warsoldier*, 418 F.3d at 999 ("CDC cannot meet its burden to prove least restrictive means unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice."); *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 989 (8th Cir. 2004) ("It is not clear that MDOC seriously considered any other alternatives."). For these reasons, the Ten Percent Rule violates RLUIPA.

In sum, the United States is likely to prevail on the merits of its claim that Defendants' prior blanket denial of a kosher diet violates RLUIPA, as do each of the four challenged provisions of Defendants' new dietary policies.

B. A Preliminary Injunction is Necessary To Avoid Irreparable Harm

Injunctive relief is necessary to prevent irreparable harm to hundreds of Florida prisoners who believe that keeping kosher is an important part of their religious beliefs. As set forth above, several aspects of Defendants' RDP will continue to burden prisoners' religious exercise in violation of RLUIPA. These unlawful restrictions on religious exercise constitute irreparable injury. *See, e.g., Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (finding irreparable harm when RLUIPA is violated); *Warsoldier,* 418 F.3d at 1001-02 (raising a colorable claim of an RLUIPA violation "established that [prisoner] will suffer an irreparable injury absent an injunction"); *Beerheide*, 286 F.3d at 1192 (failure to provide kosher diet burdens free exercise of religion in violation of the First Amendment). Indeed, it is well-established that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Moreover, the entire RDP is tenuous, as Defendants previously terminated a kosher diet program against the advice of their own study group and continue to argue that they may lawfully deny a kosher diet to all prisoners at any time. Accordingly, judicial intervention is necessary to ensure that Defendants do not eliminate their RDP in violation of RLUIPA in the future.

C. The Irreparable Harm to Prisoners Outweighs Any Harm to Defendants

The lack of potential harm to Defendants further demonstrates that a preliminary injunction is warranted. Although Defendants continue to assert that they have no legal obligation to provide a kosher diet, they have conceded that providing such a diet is consistent with their interests. *See* June 4 Tr. at 52 ("Q: Mr. Upchurch, it's fair to say that the Department of Corrections has now determined that it can provide a statewide kosher diet plan consistent with its interests, correct? A: Yes."). An injunction requiring Defendants to provide a diet will merely ensure that Defendants do not again reverse course and deny a kosher diet to all Florida prisoners.

Moreover, enjoining the four challenged provisions of Defendants' new RDP will not harm Defendants in any meaningful way. Indeed, enjoining these provisions may lessen the administrative burden on FDOC staff, as the challenged provisions impose obligations to test, track, and monitor the religious exercise of prisoners who desire a kosher diet. *See* June 5 Tr. at 112 ("The Court: But right now, [the sincerity testing and monitoring process] is staff-intensive on both ends, the admission and the monitoring. The Witness: As it appears in writing."). Further, the challenged provisions are not necessary to effectively operate a kosher diet program. Without them, Defendants' RDP would function similarly to other kosher diet programs, such as the one operated by the Federal Bureau of Prisons.

Finally, enjoining the challenged provisions of the RDP will save Defendants from expending resources to train staff and otherwise implement a policy that is likely to be invalidated. *See Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (enjoining implementation of a policy that is likely to be found a violation of law does not harm defendants). For these reasons, avoiding the irreparable harm to Florida prisoners outweighs any harm to Defendants from an injunction.

D. An Injunction Is in the Public Interest

An injunction that vindicates religious freedoms protected by federal law is in the public interest. *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) ("Frustration of federal statutes and prerogatives are not in the public interest"). Protection of religious exercise is a cherished ideal, and RLUIPA passed both houses of Congress unanimously as "the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens." *Cutter*, 544 U.S. at 713. By its terms, RLUIPA is broadly construed in favor of religious liberty "to the maximum extent permitted by [the statute] and the Constitution,"" 42 U.S.C. § 2000cc-3g, to ensure that "[s]incere faith and worship can be an indispensable part of rehabilitation." 146 Cong. Rec. S6678-02, at S6688-89 (daily ed. July 13, 2000). The number and diversity of organizations that have recently urged Defendants to provide a kosher diet further demonstrates the strong public interest at stake in this litigation. *See* U.S. Ex. 25-28 (amicus briefs filed in *Rich v. Secretary* by, among others, the Aleph Institute, International Mission Board of the Southern Baptist Convention, International Society for Krishna Consciousness, Hindu-American Foundation, National Jewish Commission on Law and

Public Affairs, American Civil Liberties Union, Rabbinical Alliance of America, and the American Jewish Committee).

CONCLUSION

Defendants' longstanding efforts to avoid providing a kosher diet demonstrate that injunctive relief is necessary to ensure the religious exercise of Florida prisoners. Defendants discontinued their prior kosher diet program against the advice of their own study group in 2007 and refused to offer a statewide kosher diet program for the next six years. Eight months after the United States filed suit in 2012, Defendants switched course and asked the Court to declare this litigation moot. Meanwhile, Defendants continue to argue that they may lawfully deny a kosher diet to all Florida prisoners and refuse to commit to providing a kosher diet in the future. Accordingly, an injunction is necessary to guarantee the rights protected by RLUIPA.

Accordingly, it is hereby

ORDERED that:

1. The United States' Motion for a Preliminary Injunction [DE-29] against the Defendants is GRANTED as follows:

(a) Defendants are preliminarily enjoined and ordered to provide a certified kosher diet to all prisoners with a sincere religious basis for keeping kosher no later than **July 1, 2014**;

(b) Defendants are preliminarily enjoined from implementing or re-promulgating Procedure 503.006(5) (90 Day Rule) of the Religious Diet Program, U.S. Ex. 3, effective immediately; and

(c) Defendants are preliminarily enjoined from implementing the following provisions of the Religious Diet Program, U.S. Ex. 32, effective immediately:

(i) Procedure 503.006(4)(b)-(e) (Orthodox Sincerity Testing), including asking the following question on the Assessment Sheet for the Certified Food Option: "What are the religious reasons for your diet needs? Please clarify the specific law(s) connected to your belief or faith that require(s) you to eat a religious diet?";

(ii) Procedure 503.006(7)(c) (10 Percent Rule); and

(iii) Procedure 503.006(7)(e)(2)-(3) (Zero Tolerance Rule).

2. Pursuant to the parties' agreement and the oral motion for extension of pretrial deadlines made at the November 22, 2013 hearing, the trial in this matter is reset for the two-week trial period beginning **August 25, 2014,** the pretrial conference is reset for **August 4, 2014 at 9:30 a.m.,** and the following deadlines shall apply:

February 28, 2014	Defendants shall submit a plan for phasing in the RDP (as modified herein) in all facilities by July 1, 2014
July 21, 2014	Pretrial stipulation due and motions in limine and responses due

3. Status Conferences shall be held on the following dates at 9:30 a.m.:

January 7, 2014

February 4, 2014

March 21, 2014

April 22, 2014

May 12, 2014

June 24, 2014

Any party that wishes to appear at a status conference by video conference may do so by submitting a completed Video Conference Scheduling Form, attached as Exhibit A, at least 5 business days before the scheduled status conference.

4. Defendants shall arrange for Plaintiff to inspect three facilities during the week of December 16, 2014 and to inspect two more facilities by the end of January 2014.

DONE and ORDERED in Miami, Florida, this 5th day of December, 2013.

PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

Video Conference Scheduling Form

(For External Off-Site Video Conference Facilities)

Please provide the following information:

Approving Judge/Unit Executive: _____

Courtroom Deputy/Chambers Contact: _____

Case No: _____

Docket # Referencing Video Conference: _____

Requested Video Conference Date: _____

Requested Video Conference Time: _____

Duration of Video Conference: _____

Attorney(s) appearing by video: _____
Attorney's Email address: _____
Attorney's Phone #: _____

External IP Address for attorney video equipment: _____
Contact information for attorney video equipment: _____
Test date and time: _____

Comments: _____
_____

Date Request Submitted: _____

For Use Only by Computer Services

Confirmation

Your video conference is confirmed for _____ at _____
at _____ for the parties listed above.

By: _____ Date: _____