

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No. :

ALAN J. COTTON,

Plaintiff,

v.

FLORIDA DEPARTMENT OF CORRECTIONS;
MICHAEL W. MOORE, in his official capacity as
Secretary of the Florida Department of
Corrections; TIMOTHY MINGO, in his official
capacity as Warden of the Everglades Correctional
Institution,

Defendants.

**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY
RELIEF, AND ATTORNEYS'
FEES; AND DEMAND FOR JURY
TRIAL.**

COMPLAINT

Comes now Plaintiff, by and through his attorneys, and for his Complaint states as follows.

NATURE OF ACTION

1. Plaintiff Alan J. Cotton is an adherent to the Jewish faith who is in the custody of the Florida Department of Corrections. The Jewish faith holds, as one of its fundamental tenets, that believers must eat food prepared and served in a kosher manner. Plaintiff seeks injunctive relief requesting that the Florida Department of Corrections provide him and similarly situated Jewish prisoners nutritionally-sufficient kosher meals.

JURISDICTION AND VENUE

2. This Court has jurisdiction over all federal claims in the Complaint as arising under the United States Constitution pursuant to 28 U.S.C. §§ 1331 and 1343

(a)(3) and (a)(4), and under 42 U.S.C. § 2000cc *et seq.*, which confers original jurisdiction on United States District Courts in suits to redress the deprivation of rights, privileges and immunities, as stated herein. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has pendant and supplemental jurisdiction over all state law claims under 28 U.S.C. § 1367(a).

3. Venue lies in this District pursuant to 28 U.S.C. § 1391. Plaintiff and all Defendants are located in this district. The events giving rise to this action occurred in this District.

PARTIES

4. At all times herein mentioned, Plaintiff ALAN J. COTTON was and is a prisoner in the Florida Department of Corrections system. He is also a member of the Jewish faith.

5. Defendant FLORIDA DEPARTMENT OF CORRECTIONS is a legal subdivision of the State of Florida, created and existing by virtue of the Constitution and laws of the State of Florida, and is empowered by the State to act through its governing body, its officials, employees and official bodies. The Department of Corrections is empowered by the State of Florida to regulate and maintain the state's correctional system.

6. Defendant MICHAEL W. MOORE is the Secretary of the Florida Department of Corrections. He is sued in his official capacity only.

7. Defendant TIMOTHY MINGO is the Warden of Everglades Correctional Institution in Dade County, Florida, an institution under the control of the Florida Department of Corrections.

STATEMENT OF FACTS

Plaintiff's Need for Kosher Food is a Religious Conviction

8. Plaintiff Alan J. Cotton is a prisoner within the custody of the Florida Department of Corrections and is presently housed at the Department's Everglades Correctional Institution.

9. Plaintiff was born and raised in the Jewish faith and is a sincere adherent of Orthodox Judaism. As part of the practice of his faith, Plaintiff sincerely believes he is required to keep a kosher diet.

10. In accordance with established Jewish tradition and practice, Plaintiff believes that keeping a kosher diet is a fundamental tenet of the Jewish faith and that the primary purpose of observing and keeping a kosher diet is to conform to the divine will of God as expressed in the Torah. Plaintiff subscribes to established Jewish teaching that the Torah teaches that the slightest morsel of forbidden food taints not only the body, but the soul itself.

11. Keeping kosher includes adherence to specific rules—commonly referred to as the laws of *kashruth*—derived from the Torah concerning which foods may be consumed and the manner of preparation and service of permitted foods.

12. Keeping kosher requires strict adherence to the rules set forth in the Torah regarding the foods that may be consumed. Foods that may be eaten include all non-animal products such as fruits and vegetables, meat from animals that chew the cud and have cloven hooves (e.g., cows and sheep), certain types of poultry (e.g., chicken, turkey,

and duck), and fish that have fins and scales. Dairy products are permitted, but meat and dairy may not be mixed together.

13. Keeping kosher also dictates specific methods by which allowable foods may be prepared for consumption. For example, kosher food is no longer considered kosher when the food is prepared in containers that are non-kosher. To keep kosher food untainted, the containers, pots and pans, utensils, and all other implements used in the preparation must not come into contact or have had contact with non-kosher food. The food must also be served on plates and bowls and eaten with utensils that have not had contact with non-kosher food.

14. In short, the three essential qualities of a kosher diet are:

- A. it must be derived from a religiously-acceptable source;
- B. it must be prepared and served in a religiously-acceptable way; and
- C. meat and dairy may not be mixed.

15. Kosher food can be made available to Jewish believers in institutional environments through several possible means, including, but not limited to, the following: (1) preparing food on site with proper kitchen facilities under the direction of a qualified kosher food supervisor; (2) obtaining pre-packaged meals from kosher food vendors around the country (e.g., sealed airline dinners or shelf stable packaging); or (3) obtaining acceptable kosher products through retail outlets and kosher food purveyors. In addition, the use of disposable plastic or paper goods and utensils is an easy, cost-effective and religiously-acceptable means of providing kosher food in an institutional environment.

The Department of Corrections Does Not Provide a Kosher Meal Option

16. The Florida Department of Corrections, including the Everglades Correctional Institution, officially provides three different meal plans for its prisoners: the Regular menu, the Alternate entrée, and the Therapeutic diet. The Regular meal is a standard nutritional offering. The Alternate entrée is an alternative for prisoners who do not like the particular servings of the regular meal. The Therapeutic diet is a diet that is prescribed for medical reasons to meet the requirements of a given medical condition.

17. None of those meal plans qualify as kosher under Jewish laws of *kashruth*.

18. In addition to the three plans identified above, the Department of Corrections, including the Everglades Correctional Institution, has also offered a Vegan diet which meets the religious needs of some prisoners. However, that diet also fails to qualify as kosher.

19. In an October 24, 2000 letter to Plaintiff, the Department of Corrections acknowledged that none of the meal plans offered by the Department of Corrections are kosher. In correspondence to Plaintiff dated December 12, 2000, the Department of Corrections reaffirmed that the “department does not provide a Kosher meal plan.”

20. Although the Department of Corrections, including the Everglades Correctional Institution, does accommodate the religious needs of some prisoners in its facilities by providing special meals for inmates “whose religions require a pork-free, lacto-ovo, or lacto-vegetarian diet” and a “vegan (strict vegetarian) meal pattern . . . for the religious requirements of inmates who choose to avoid all animal products,” *see* 33 FL ADC 33-204.003(8), the Florida Department of Corrections, including the Everglades Correctional Institution, refuses to provide kosher meals for its Jewish prisoners.

21. Furthermore, the Florida Department of Corrections, including the Everglades Correctional Institution, refuses to provide kosher meals for its Jewish prisoners even when 33 FL ADC 33-503.001(11) provides that “[i]nmates who wish to observe religious dietary laws shall be provided a diet sufficient to sustain them in good health *without violating those dietary laws.*” (emphasis supplied). 33 FL ADC 33-503.001(11) further provides an exception to this rule “only in unusual cases.”

22. Federal prisons in Florida operated by the Bureau of Prisons provide kosher meals to their Jewish prisoners. However, the Florida Department of Corrections, including the Everglades Correctional Institution, refuses to similarly accommodate the religious needs of Jewish prisoners in its facilities by providing kosher meals.

23. Although a number of Florida counties, including but not limited to Broward, Miami-Dade, and Palm Beach, accommodate the religious needs of Jewish prisoners in their facilities by providing kosher meals, the Florida Department of Corrections, including the Everglades Correctional Institution, refuses to provide kosher meals for its Jewish prisoners.

Defendants’ Denial of Plaintiff’s Requests for Kosher Meals

24. Plaintiff filed an informal grievance on October 20, 2000 requesting kosher meals as required by his faith.

25. On October 24, 2000, Defendants denied Plaintiff’s request for a kosher meal plan and suggested that he select the Alternate entrée. The Alternate entrée does not conform to the requirements of a Jewish kosher meal.

26. Plaintiff filed a formal grievance on October 24, 2000 requesting that the Defendants provide him kosher meals as required by his faith.

27. Defendants denied that grievance on October 27, 2000.
28. Plaintiff filed a timely administrative appeal of that denial on October 30, 2000.
29. Defendants denied that appeal on December 12, 2000.
30. Thereafter, on January 31, 2001, Defendant Department of Corrections informed Plaintiff by letter that his administrative appeals were exhausted and that the Florida Department of Corrections would not provide him or other Jewish prisoners with kosher meals.
31. Despite the fact that Plaintiff has exhausted all administrative remedies, Defendants continue to this day to deny Plaintiff kosher meals, as required by his sincere religious beliefs.
32. Defendants have never identified any compelling government interest for denying Plaintiff kosher meals or explained how the failure to provide kosher meals is the least restrictive means of advancing any such compelling government interest.
33. On information and belief, the Florida Department of Corrections receives Federal financial assistance.
34. The activities and operation of the Florida Department of Corrections, including its provision of meals for the prisoners under its custody, affects commerce with foreign nations, among the several States, or with Indian tribes.

Legal Violations

COUNT I

**Violation of the Religious Land Use and Institutionalized Persons Act of 2000
“Substantial Burden on Religious Exercise”
(42 U.S.C. § 2000cc et seq.)**

35. Paragraphs 1 through 34 are incorporated by reference as if set forth fully herein.

36. Defendants have deprived and continue to deprive Plaintiff of his right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act of 2000, by unlawfully imposing a substantial burden on Plaintiff’s religious exercise.

37. On information and belief, the substantial burden Defendants have imposed on Plaintiff’s religious exercise is imposed in a program or activity that receives Federal financial assistance.

38. The substantial burden Defendants have imposed on Plaintiff’s religious exercise affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

COUNT II

**Violation of the United States Constitution
Free Exercise of Religion: First and Fourteenth Amendments
(42 U.S.C. § 1983)**

39. Paragraphs 1 though 34 are incorporated by reference as if set forth fully herein.

40. Defendants have deprived and continue to deprive Plaintiff of his free exercise of religion, as secured by the First Amendment to the United States Constitution

and made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiff because of his religion and by substantially burdening his religious exercise.

COUNT III

**Violation of the Florida Constitution
Free Exercise of Religion: Florida Constitution Article I, Section III**

41. Paragraphs 1 through 34 are incorporated by reference as if set forth fully herein.

42. Defendants have deprived and continue to deprive Plaintiff of his right to freedom of religion, as secured by Article I, Section III of the Florida Constitution, by discriminating against Plaintiff because of his religion and by substantially burdening his religious exercise.

COUNT IV

**Violation of the United States Constitution
Equal Protection: Fourteenth Amendment
(42 U.S.C. § 1983)**

43. Paragraphs 1 through 34 are incorporated by reference as if set forth fully herein.

44. Defendants have deprived and continue to deprive Plaintiff of his right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against Plaintiff in their application of the laws of the State of Florida.

COUNT V

**Violation of the Florida Constitution
Equal Protection: Article I, Section 2**

45. Paragraphs 1 through 34 are incorporated by reference as if set forth fully herein.

46. Defendants have deprived and continue to deprive Plaintiff of his right to equal protection of the laws, as secured by Article I, Section 2 of the Florida Constitution, by discriminating against Plaintiff in their application of the laws of the State of Florida.

COUNT VI

Violation of the Florida Religious Freedom Restoration Act of 1998

47. Paragraphs 1 through 34 are incorporated by reference as if set forth fully herein.

48. Defendants have deprived Plaintiff of his rights under the Florida Religious Freedom Restoration Act of 1998 by unlawfully imposing a substantial burden on his religious exercise.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- (a) A preliminary and permanent injunction requiring Defendants to provide Plaintiff and similarly situated Jewish prisoners in the custody of the Defendants with a nutritionally-sufficient kosher diet;
- (b) A declaration that Defendants' failure to provide Plaintiff with a nutritionally-sufficient kosher diet, as required by his sincere religious beliefs, is in violation of the Religious Land Use and Institutionalized

Persons Act of 2000, the Florida Religious Freedom Restoration Act of 1998, and the Free Exercise of religion and Equal Protection principles of the United States and Florida Constitutions.

- (c) An award to Plaintiff of full costs and attorneys' fees arising out of this litigation; and
- (d) Such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury in this action of all issues so triable.

Respectfully submitted this ____th day of September 2002.

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