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February 4, 2004

BY FACSIMILE & FIRST CLASS MAIL

Secretary James V. Crosby Jr.
Florida Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399-2500

Re: The Department of Correction's Kosher Meal Plan

Dear Secretary Crosby:

We are writing to express our concerns over certain features of the Department of Corrections' plan for implementing its obligation to provide a kosher meal plan to all inmates whose sincere religious beliefs require them to keep kosher.

As you may know, The Becket Fund for Religious Liberty is an interfaith, bi-partisan public interest law firm dedicated to protecting the free expression of all religious traditions, and the freedom of all religious people and institutions to participate fully in public life and public benefits. The Becket Fund advocates in support of these principles in state and federal courts throughout the United States. We were recently pleased to work with the Department to achieve a settlement agreement pursuant to which the Department agreed to provide Jewish inmate Alan Cotton a kosher diet in exchange for dismissal of his lawsuit against the Department under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Florida Religious Freedom Restoration Act (FRFRA), and the Free Exercise Clause of the First Amendment.

Since the Department recognized its obligation under RLUIPA, FRFRA, and the First Amendment to provide a kosher diet and settled the lawsuit brought by Mr. Cotton, the Becket Fund has been in contact with a number of prisoners within the Department's custody whose sincere religious beliefs also require them to keep a kosher diet. Based on the Department's November 2003 written promise to Senator Gwen Margolis

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that it plans to implement a kosher diet plan and its public statements to various news media that it will treat other inmates who require a kosher diet as well as Mr. Cotton, we have consistently suggested that they be patient and to take the Department at its word that it will indeed institute a kosher food program to meet its obligation under RLUIPA, FRFRA, and the First Amendment.

Accordingly, we were encouraged when we recently learned that the Department plans to begin implementing a kosher food program in February of this year. However, based on what we have learned about the manner in which the Department plans to implement this program, we have serious concerns about the legal and fiscal viability of the Department's planned approach.

First, as we understand the Department's current proposal, the kosher diet plan will be prepared in a separate stand-alone kitchen despite the advice of kosher food experts to the contrary. In particular, we understand that the Department has consulted both Rabbi Menachem Katz of the Aleph Institute and Chaplain Gary Friedman of Jewish Prisoner Services International, both of whom have expertise in setting up and maintaining a functioning kosher diet program in prisons. These experts have both advised the Department that its current proposal is inadequate because there is absolutely no guarantee under the Department's proposal that the food the Department claims will be kosher will in fact be prepared in compliance with the Jewish laws governing the preparation of a kosher diet. Unless the kitchen is made kosher in advance of its use by a certified rabbi and maintained as kosher by those who are properly trained in kosher preparation, the food served from that kitchen will not be kosher. Until that issue is addressed, the Department will continue to be vulnerable to a lawsuit by defaulting on its obligation under RLUIPA, Florida's RFRA, and the First Amendment to provide a kosher diet.

Second, it is our understanding that the Department's proposal is to exclude all meat from its kosher diet plan (even though the absence of meat is not necessary or contemplated to keep kosher) and that the kosher diet plan will only be offered at certain facilities, all of which are in locations far removed from South Florida where most of the Jewish inmates have community ties to family and Jewish rabbis and support groups (such as the Aleph Institute). We further understand that the Department's purpose of serving a deliberately unappealing diet in an undesirable location is to encourage as few inmates as possible to request a kosher diet. Because this approach is likely to be seen by the courts as an attempt to punish sincere religious beliefs rather than accommodate them, we strongly urge the Department to reconsider. Moreover, to the extent that the Department is concerned about limiting the provision of a kosher diet to only those inmates who are sincere in their religious convictions, we understand that Rabbi Katz of the Aleph Institute has suggested alternative ways in which sincerity of inmates could be assessed. The Department could also undoubtedly learn from the experience of other federal and state prisons that have been able to limit the provision of kosher meals to sincere believers without resorting to punitive measures to assess sincerity.

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Third, based on the cost figures Department spokespersons have given to the media, it is our understanding that the Department plans to spend \$12.51 a day per inmate to provide a kosher meal plan. While the Department is certainly free to spend excessively, we are puzzled as to why the Department would make such a choice. For example, we understand that Gold Kosher Catering, a company that has helped other prisons establish and maintain a kosher diet plan, has informed the Department that it could provide three complete kosher meals for just \$7 a day. Likewise, both Rabbi Katz and Chaplain Friedman have informed the Department that they could easily establish a kosher menu design that would cost half or less of the Department's \$12.51 proposal. Moreover, we are not aware of any federal or state prison system that spends \$12.51 a day to provide a nutritionally adequate kosher diet. We would encourage the Department, in the interest of developing a fiscally sustainable kosher food program, to take a critical look at its current \$12.51 design and draw on the expertise of those who can construct an adequate kosher meal plan at a more reasonable price.

In sum, we are pleased to see the Department taking steps to take seriously its obligation to provide for the religious dietary needs of inmates. It is our recommendation, however, that if the Department wishes to establish and maintain a program that will be sustainable, both from a legal and a fiscal standpoint, it would be well-advised to refine its present proposal.

Sincerely,

Derek L. Gaubatz, Esq.
Senior Legal Counsel

cc: Governor Jeb Bush
Denver J. Stutler, Chief of Staff
Senator Gwen Margolis
Members of the Senate Appropriations Subcommittee on Criminal Justice
Members of the House Subcommittee on Corrections
Members of the House Subcommittee on Public Safety Appropriations
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