UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CAIR FLORIDA, INC.; DERRICK ISSAC BROWN; CHRISTOPHER ADAMS JAMES; HARDIN GERARD JEAN-PIERRE; and MAURICIO HUMBERTO RIVAS-PENAILILLO,

Plaintiffs,

v. **Case No. 1:15-cv-23324-JAL**

MIAMI-DADE COUNTY; MARYDELL GUEVARA, in her individual capacity as Director of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; EDDIE DENSON, in his individual capacity as Acting Chief of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; JOSE HERNANDEZ, in his individual capacity as Chaplain of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; TERRY L. BROWNE, in her individual capacity as Commander of the Reentry Program Service Bureau of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; and DEBRA GRAHAM, in her individual capacity as Commander of the Food Services Bureau of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT

Defendants.
_____/

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs respectfully ask the Court to enter a preliminary injunction against Defendants' dietary policies with respect to Muslim inmates and order Defendants to provide a certified Halal diet to all inmates who have a sincere religious basis for maintaining a Halal diet. Since October of last year, Miami-Dade County has refused to provide Kosher meals (which are Halal-compliant) to Muslim inmates, forcing numerous prisoners to violate their religious beliefs on a daily basis. This failure violates the Religious Land Use and Institutionalized Persons Act, 42

U.S.C. § 2000cc (2000) (RLUIPA), as well as the Free Exercise and the Equal Protection clauses of the U.S. and Florida constitutions.

I. Introduction

This lawsuit concerns Defendants' creation and enforcement of a policy that bars Muslim inmates from receiving a Halal-compliant diet and instead relegates them to the diet for the general population. The general population diet does not satisfy Halal requirements, and as a result of Defendants' policy, Individual Plaintiffs and other Muslim inmates who are constituents of Plaintiff CAIR Florida, Inc. (CAIR-FL) must violate their sincerely-held religious beliefs in order to eat while incarcerated. The Policy violates Plaintiffs' rights under RLUIPA, as inmates desiring to keep Halal are substantially burdened by the denial of Halal meals, and relegating these inmates to the general diet does not serve a compelling interest and is not the least restrictive means of achieving the County's goals.

The Policy also violates the Free Exercise Clause of the United States and Florida constitutions because (a) there is no valid rational connection between Defendants' policy and any asserted governmental interest, (b) Plaintiffs have no alternative means of exercising their religious rights if relief is denied, (c) accommodation of their practices will not have an undue impact on other inmates or prison officials, and (d) alternatives to the challenged policies are clearly available. For the same reasons, the policy, which treats Muslim inmates less favorably than inmates of other religions, violates the Equal Protection Clause of the U.S. and state constitutions.

Accordingly, Plaintiffs move the Court to enter a preliminary injunction ordering Defendants to provide Halal meals (or in the alternative, Kosher meals) to them and to all

Muslim inmates in jails operated by the Miami-Dade Corrections and Rehabilitation Department (MDCR) whose sincerely-held religious beliefs require them to maintain a Halal diet.

II. Statement of Facts

A. The Challenged Policy

Effective October 1, 2014, the County adopted a "Faith Based Meals" Policy, which requires all inmates housed at a MDCR correctional facility to be fed meals from one of four main diets: "1) the master (general population) menu, 2) an alternative entrée with a non-meat substitute, 3) faith based kosher meals (upon approval), and 4) therapeutic diets prescribed by the Miami-Dade Inmate Medical Provider." Faith Based Meals Policy, Ex. 1 to Complaint, ECF 1-3 at 2. Pursuant to the Policy, "[i]nmates requesting a faith-based diet for the Muslim faith will be approved for the master (general population) menu," and "Muslim inmates currently on the faith-based menu will be automatically changed to the general population menu." *Id.* The Policy further states that all of MDCR's meals are free of alcohol, pork, pork products, trans-fats, and shellfish. *Id.* Prior to this Policy, when Muslim inmates at MDCR had requested a Halal diet in accordance with their sincerely held religious beliefs, the County had provided them with faith-based Kosher meals—meals that Plaintiffs acknowledge comply with Halal requirements. James Declaration, attached as Ex. 1, at ¶¶ 6, 9; Jean-Pierre Declaration, attached as Ex. 2, at ¶¶ 6, 10; Rivas-Penailillo Declaration, attached as Ex. 3, at ¶¶ 4, 6, 10; Hamze Declaration, attached as Ex. 4, at ¶¶ 7, 11. Since the Policy, Muslim inmates have not been approved for Halal or Kosher meals except for some who were given a special diet during the month of Ramadan. James Decl., Ex. 1, at ¶¶ 9-11; Jean-Pierre Decl., Ex. 2, at ¶¶ 10-12; Rivas-Penailillo Decl., Ex. 3, at ¶¶ 8-10; Grievances, Exs. 5, 6, 7, and 8 to Complaint, ECF 1-3 at 43, 48, 51, and 56.

B. The Policy's Substantial Burden on Plaintiffs

Plaintiffs Derrick Issac Brown, Christopher Adams James, Hardin Jean-Pierre, and Mauricio Humberto Rivas-Penailillo ("Individual Plaintiffs") are all Muslim inmates who have requested a Halal diet. James Decl., Ex. 1, at ¶¶ 3-4, 10-11; Jean-Pierre Decl., Ex. 2, at ¶¶ 3-4, 11-12; Rivas-Penailillo Decl., Ex. 3, at ¶¶ 3-4, 8-9; Brown Grievance, Ex. 5 to Complaint, ECF 1-3 at 43-45. The word "halal" in Arabic simply means permissible, as opposed to "haraam," which means forbidden. Thus a "halal diet" is food that is permissible to consume. Under Islamic principles, a "Halal diet," among other things, prohibits the meat of certain animals or their derivatives, requires animals eaten to be slaughtered in a particular manner, prohibits the consumption of alcohol or food containing alcohol, and mandates that the food not come into contact with haraam foods or be cooked with the same pots and utensils used for haraam foods. James Decl., Ex. 1, at ¶ 5; Jean-Pierre Decl., Ex. 2, at ¶ 5; Rivas-Penailillo Decl., Ex. 3, at ¶ 5.

As a result of the Faith Based Meals Policy, Individual Plaintiffs and other CAIR-FL constituents at MDCR have had to consume meals that are haraam, or inconsistent with their faith, rely on foods they can purchase with their meager funds, or else go hungry. James Decl., Ex. 1, at ¶ 14; Jean-Pierre Decl., Ex. 2, at ¶¶ 9, 14-15; Rivas-Penailillo Decl., Ex. 3, at ¶¶ 12-13. Rather than providing a Halal or Kosher diet, MDCR officials have instructed Muslim inmates to eat meals for the general population or the vegetarian alternative. James Decl., Ex. 1, at ¶¶ 7, 9; Jean-Pierre Decl., Ex. 2, at ¶¶ 7, 10; Rivas-Penailillo Decl., Ex. 3, at ¶¶ 7, 10; Policy, Ex. 1 to Complaint, ECF 1-3 at 2; Grievances, Exs. 5, 6, and 8 to Complaint, ECF 1-3 at 44, 49, 52, and 54. Individual Plaintiffs and CAIR-FL constituents do not find either of these menus to be satisfactorily in compliance with Halal requirements. James Decl., Ex. 1, at ¶¶ 6-7; Jean-Pierre Decl., Ex. 2, at ¶¶ 6-7; Rivas-Penailillo Decl., Ex. 3, at ¶¶ 6-7; Hamze Declaration, attached as

Ex. 4, at ¶¶ 16, 18. For example, there is no assurance that the meat in the general population diet is properly slaughtered, or that food in either menu is not contaminated by coming into contact with haraam foods during preparation and storage. James Decl., Ex. 1, at ¶ 8; Jean-Pierre Decl., Ex. 2, at ¶ 8; Hamze Decl., Ex. 4, at ¶ 11. Plaintiffs agree that the Kosher diet provided by MDCR, which was provided to Muslim inmates prior to October 2014, does comply with Halal requirements. James Decl., Ex. 1, at ¶ 6; Jean-Pierre Decl., Ex. 2, at ¶ 6; Rivas-Penailillo Decl., Ex. 3, at ¶ 6; Hamze Decl., Ex. 4, at ¶¶ 11, 19.

CAIR-FL has expended resources to intercede on behalf of the Individual Plaintiffs and its other constituents repeatedly over the past year, without success. *See* Hamze Decl., Ex. 4, at ¶¶ 30-31. CAIR-FL Regional Operations Director Nezar Hamze made repeated attempts to engage with Defendants regarding the incompatibility of their Faith Based Meals Policy with the dietary requirements of Muslim inmates, as well as offering to assist MDCR to find Halal-meat suppliers who could provide low-cost meals for Muslim inmates. *Id.* at ¶¶ 9, 11, 13, 16, 18-23, 25. According to Mr. Hamze's research, Halal meals could be procured at a significantly lower cost than Kosher meals. *Id.* at ¶ 29. Nonetheless, Defendants refused to seriously engage with Mr. Hamze about changing their Policy or reaching out to purveyors of Halal foods in order to stop burdening the beliefs of Muslim inmates. *Id.* at ¶¶ 14, 23, 25-26.

Instead, Defendants collected the meals policies of other correctional institutions in the state, determined that these institutions did not provide Halal meals to inmates, and left their own Faith Based Meals Policy unchanged. Guevara ltr., Ex. 3 to Complaint, ECF 1-3 at 7-8. Significantly, however, Defendants did not appear to inquire into whether the other institutions, most of whom offered Kosher meals, prohibited Muslim inmates from obtaining those meals, as is required under MDCR's Policy. *Id.* For example, Broward County Jail provides Kosher

meals to Muslim inmates. Hamze Decl., Ex. 4, at ¶ 28; Ex. 3 to Hamze Decl. In addition, several city and county jails across the country specifically provide Halal meals to Muslim inmates, including the Los Angeles County Jail System in California, St. Clair County Jail in Michigan, the New York City Jail System, and Pierce County Jail in Washington. Hamze Decl., Ex. 4, at ¶ 27; Exs. 5, 6, 7, and 8 to Hamze Decl.

MDCR operates the eighth largest jail system in the country. *MDCR website*, http://www.miamidade.gov/corrections/ (last updated Sept. 1, 2015). According to Miami-Dade County's Proposed Budget just approved last month, MDCR expects to have $326,205,000.00 in revenue for fiscal year 2015-16. *FY 2015 – 16 Proposed Budget and Multi-Year Capital Plan*, Volume II, http://www.miamidade.gov/budget/FY2015-16/proposed/library/corrections-and-rehabilitation.pdf (last updated July 15, 2015), at 29. Moreover, MDCR targets that it will spend $1.54 per meal per inmate during that period, without disaggregating this amount based on the types of meals provided. *Id.* at 32.

III. Argument and Memorandum of Law

Plaintiffs are entitled to a preliminary injunction requiring Defendants to serve them Halal meals, or in the alternative, Kosher meals. Plaintiffs are likely to succeed on the merits of their statutory and constitutional claims; the injunction is necessary to prevent irreparable injury; the ongoing injury incurred by Plaintiffs outweighs any perceived benefit to Defendants; and the preliminary injunction is not adverse to the public interest. *See Ga. Latino Alliance for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1262 (11th Cir. 2012) (setting forth the standard for a preliminary injunction). Finally, should Plaintiffs' motion be granted, this Court should exercise its discretion to waive any bond requirement. *BellSouth Telecomms., Inc. v. MCIMetro Access*

Transmission Servs., LLC, 425 F.3d 964, 971 (11th Cir. 2005); *Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1335-36 (M.D. Fla. 2009).

Plaintiffs meet this standard here. First, they are likely to succeed on the merits of their RLUIPA claim, as well as their constitutional claims because the County cannot show that its policy of denying Halal or Kosher meals to Muslim inmates is necessary to achieve a compelling government interest, or that it satisfies the standards enunciated in *Turner v. Safley*, 482 U.S. 78, 89-90 (1987). Second, absent an injunction, Defendants will continue to violate the law and force many inmates to violate their core religious beliefs by consuming food that is not compliant with their faith—an archetypal example of irreparable harm. Third, these injuries outweigh any harm to Defendants, as Defendants could simply resuscitate the policy they had in place prior to October 2014 of providing Muslim inmates with Kosher meals. Fourth, an injunction that forces the County to comply with federal civil rights laws and protects the religious exercise of Miami-Dade County detainees is unequivocally in the public interest. Without a preliminary injunction ordering Defendants to provide a Halal or Kosher diet to Muslim inmates with a sincere religious basis for keeping Halal, violations of inmates' rights will continue. The County's refusal to properly accommodate the religious exercise of Muslim inmates with respect to their diets and prolonged resistance to Plaintiff CAIR-FL's repeated efforts to provide guidance on Halal requirements and offers to identify Halal food suppliers underlines the need for an order from this Court.

A. Plaintiffs Are Likely to Succeed on the Merits of their Claims.

1. RLUIPA

Plaintiffs are likely to succeed on the merits of their claim that Defendants violate RLUIPA by failing to provide a Halal-compliant diet to inmates with a sincere religious basis for keeping Halal. 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(a)(1)(A)-(B). 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). Here, there is no question that the inability to access a Halal diet for the past year has substantially burdened the religious exercise of many Miami-Dade inmates, including Individual Plaintiffs and other Muslim inmates who are CAIR-FL constituents. Consequently, the County's Policy violates RLUIPA unless Defendants demonstrate that denying a Halal-compliant diet is necessary to achieve a compelling interest. Defendants cannot make this showing here.

a. Denying Halal-Compliant Meals Substantially Burdens the Religious Exercise of Certain Muslim Inmates.

There is little question that the County's failure to provide Halal-compliant meals to Muslim inmates since October 2014 substantially burdens the religious exercise of inmates with a sincere religious basis for keeping Halal. Religious exercise is defined "capaciously" under RLUIPA to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Holt v. Hobbs*, 135 S. Ct. 853, 860 (2015) (characterizing and quoting § 2000cc-5(7)(A) of the statute). Keeping Halal is clearly a religious exercise under the statute's definition. *See, e.g.*, *Watkins v. Jones*, No. 4:12-cv-215-RH, 2015 WL 5468647, at *13 (N.D. Fla. Aug. 28, 2015); *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1304-05 (10th Cir. 2010); *Hudson v. Dennehy*, 538 F. Supp. 2d 400, 410 (D. Mass. 2008). *See also Cutter v. Wilkinson*, 544 U.S. 709, 714 & n.5 (2005) (noting that during RLUIPA hearings, Congress identified prison's refusal to provide a Halal diet to Muslim inmates while providing Kosher food as an "egregious and unnecessary" restriction on religious liberty that would be prohibited by the

statute) (citing Hearing on Protecting Religious Freedom after *City of Boerne v. Flores*, 521 U.S. 507 (1997), before the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 2d Sess., pt. 3, p. 11, n. 1 (1998) (prepared statement of Marc D. Stern, Legal Director, American Jewish Congress)).

The County's year-long failure to provide a Halal-compliant diet substantially burdens this exercise. A burden is substantial under RLUIPA if it "is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004). Failing to provide a Halal-compliant diet easily meets this standard. *See, e.g.*, *Watkins*, 2015 WL 5468647, at *13 (Muslim inmate refused Halal-compliant diet was "substantially burdened in exercise of religious faith"); *Abdulhaseeb*, 600 F.3d at 1317-19 (Muslim inmate showed genuine issue of material fact as to substantial burden where prison failed to provide halal diet and restricted kosher meals to non-Islamic religions); *Hudson*, 538 F. Supp. 2d at 411 (holding that refusal to provide Halal diet "substantially burdens plaintiffs' exercise of their religious beliefs by creating pressure on plaintiffs to consume meals that do not conform with their understanding of the requirements of Islamic law"); *Evans v. Cal. Dep't of Corr. & Rehab.*, No. cv-07-07090-DDP, 2012 WL 137802, at *1 (C.D. Cal. Jan. 18, 2012) (concluding that prison's failure to provide Halal diet substantially burdened Muslim inmates' religious exercise and rejecting prison's argument that vegetarian meal should be adequate to satisfy Muslim beliefs). *See also Moussazadeh v. Tex. Dep't of Criminal Justice*, 703 F.3d 781, 793 (5th Cir. 2012) ("Denying all access to kosher food places a substantial burden on the practice of an inmate's faith."). MDCR's Faith Based Meals Policy unjustifiably singles out the Muslim inmate population by forcing only its Muslim inmates to consume the general population diet, an option that does not

meet the dietary requirements of the Muslim faith. The vegetarian alternative also does not comply with Halal and thus is no real alternative at all.

b. Denying Muslim Inmates a Halal-Compliant Diet is Not Narrowly Tailored to and Is Not the Least Restrictive Means to Achieve Any Compelling Government Interest.

Once it is established that a policy imposes a substantial burden on religious practices under RLUIPA, the government must establish that the challenged policy advances a compelling governmental interest *and* is the least restrictive means of furthering that interest. 42 U.S.C. §§ 2000cc(a)(1)(A)-(B), 2000cc-2(b). A "compelling State interest must be more than a colorable interest, or an interest serving the convenience the State." *Hudson*, 538 F. Supp. 2d at 410. Rather, it is an "interest[] of the highest order." *Church of Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520, 546 (1993). "RLUIPA . . . requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially burdened." *Holt*, 135 S.Ct. at 863.

Defendants must do more than simply articulate a compelling state interest. They must also show that the burden imposed by the challenged policy actually advances that interest by the least restrictive means. *See Holt*, 135 S.Ct. at 864 ("The least-restrictive-means standard is exceptionally demanding, and it requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party.") (citations and punctuation omitted); *Watkins*, 2015 WL 5468647, at *13 (noting that deference to interests articulated by facility "does not mean unquestioning acceptance of [its] position, nor does it 'justify the abdication of the [Court's] responsibility . . . to apply RLUIPA's rigorous standard") (quoting *Holt*, 135 S.Ct. at 864).

The "'least restrictive means' is one that does not sweep 'more broadly than necessary to promote the government's interest.'" *Hudson*, 538 F. Supp. 2d at 410. Defendants cannot meet their burden "unless [they] demonstrate[] that [they have] actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice." *Warsoldier v. Woodford*, 418 F.3d 989, 999 (9th Cir. 2005); *Hudson*, 538 F. Supp. 2d at 410. *See also Holt*, 135 S.Ct. at 864 ("If a less restrictive means is available for the Government to achieve its goals, the Government must use it."); *United States v. Sec'y, Fla. Dep't of Corr.*, No. 12-22958-civ, 2015 WL 1977795, at *9 (S.D. Fla. Apr. 30, 2015) (noting that policies based on "mere speculation, exaggerated fears, or post-hoc rationalization" do not satisfy RLUIPA).

The County's failure to provide a Halal-compliant diet for the past year cannot withstand RLUIPA's strict scrutiny inquiry. Defendants contend that the cost of providing a Halal diet is too high. Guevara ltr., Ex. 3 to Complaint, ECF 1-3 at 7. However, Defendants' assertion is not the end of the inquiry. Congress enacted RLUIPA knowing that there may be costs incurred in ensuring that inmates' constitutional rights are respected. *See* 42 U.S.C. § 2000cc-3(c) ("[T]his Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise."). It is important to determine what the difference in cost would be to provide Individual Plaintiffs with a Halal diet, in the context of MDCR's projected revenues in FY 2015-16 of over $325 million. *See, e.g.*, *Watkins*, 2015 WL 5458647, at *13 (concluding that additional $.53 per day for a kosher diet for Muslim inmates above the $3.00 cost for a therapeutic diet is "minimal impact" on a budget appropriation of nearly $2.3 billion and noting that "Although cost reduction, as a general matter, is unquestionably a compelling interest of [the correctional facility], we are skeptical that saving less than .05% of the food budget constitutes a compelling interest.") (quoting *Moussazadeh*, 703 F.3d at 795);

United States v. Sec'y, Fla. Dep't of Corr., 2015 WL 1977795, at *8 (concluding that costs were not a compelling interest in refusal to provide kosher meals where they cost, at most, $12.3 million compared to a $2.3 billion budget, or five-thousandths of the total budget).

Here, Defendant does not appear to have even done that. Despite Plaintiff CAIR-FL's attempts to help MDCR figure out how to provide Halal meals to Muslim inmates and its offers to assist in identifying suppliers of reasonably-priced Halal meals, Defendants have never followed up to even inquire what these costs would be. Hamze Decl., Ex. 4, at ¶¶ 20, 22-23, 25-26. Moreover, based on CAIR-FL's rough estimation of the costs of providing Halal meals to inmates, this option is *not* cost-prohibitive and may actually be cheaper than providing Kosher meals. *Id.* at ¶ 29. Even if cost containment were a compelling state interest, MDCR has not shown that outright denial of Halal or Kosher meals to Muslim inmates is the least restrictive means of achieving this goal. Instead, it simply asserts "that the least restrictive means of cost containment is not incurring the cost." *United States v. Sec'y, Fla. Dep't of Corr.*, 2015 WL 1977795, at *10. This is not enough, particularly where MDCR continues to provide Kosher meals to other inmates and has not even engaged in serious discussion with CAIR-FL about the feasibility of providing Halal meals.

MDCR cannot demonstrate a compelling interest in denying Muslim inmates a Halal meal or Kosher alternative when it already provides Kosher meals to other inmates. A government defendant cannot have a compelling interest in precluding an activity it already permits. *See Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 547 ("It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited."). Here, MDCR continues to provide Jewish inmates with a Kosher meal that fully accommodates their

religious dietary needs while denying its Muslim inmates full religious dietary accommodations. *See, e.g.*, *Moussazadeh*, 703 F.3d at 794 ("[defendant]'s argument that it has a compelling interest in minimizing costs by denying [plaintiff] Kosher food. . . is dampened by the fact that it has been offering Kosher meals to prisoners for more than two years"); *Koger v. Bryan*, 523 F.3d 789, 799, 801 (7th Cir. 2008) (denying request for a no-meat diet violated RLUIPA where prison offered such a diet to other prisoners).

Additionally, Defendants appear to incorrectly assume that the meal option is Halal if inmates eat either the general population diet or vegetarian menu items. But as Individual Plaintiffs have expressed and CAIR-FL has underlined, the general population diet is not Halal compliant. James Decl., Ex. 1, at ¶ 6; Jean-Pierre Decl., Ex. 2, at ¶ 6; Rivas-Penailillo Decl., Ex. 3, at ¶ 6; Hamze Decl., Ex. 4, at ¶¶ 9, 11, 16, 18. Further, in MDCR's vegetarian meals, non-meat items may be cross-contaminated with haraam food and may contain haraam substances that are not obvious on inspection. James Decl., Ex. 1, at ¶¶ 5-8; Jean-Pierre Decl., Ex. 2, at ¶¶ 5-8; Rivas-Penailillo Decl., Ex. 3, at ¶¶ 5-7. Even if this cross-contamination did not take place, the argument has troubling—and, indeed, unconstitutional—implications. Jewish inmates are provided diets specifically tailored to the dietary restrictions of their faith. There is no reason that Muslim inmates should be treated unequally, forced to pick from generally available options instead of receiving halal meals just as Jewish inmates receive Kosher meals.

c. Defendants Cannot Meet Strict Scrutiny Because Other Institutions with the Same Interests as MDCR Offer Halal-Compliant Meals to Muslim Inmates.

The ability of other corrections institutions to provide Halal meals to Muslim inmates consistent with their penological interests further demonstrates that Defendants cannot satisfy RLUIPA's strict scrutiny inquiry. Here, there is evidence that numerous city and county

correctional institutions across the country—including Los Angeles County, St. Clair County, New York City, and Pierce County—provide Halal meals to Muslim inmates, and that Broward County Jail in Florida makes Kosher meals available to Muslim inmates just as MDCR once did. Hamze Decl., Ex. 4, at ¶¶ 27-28; Exs. 3, 5, 6, 7, and 8 to Hamze Decl. The experience of these institutions underscores that MDCR's outright denial of Halal meals or Kosher alternatives to Muslim inmates is not necessary to achieve a compelling government interest, as "the policies followed at other well-run institutions [are] relevant to a determination of the need for a particular type of restriction." *United States v. Sec'y, Fla. Dep't of Corr.*, 2015 WL 1977795, at *11 (quoting *Procunier v. Martinez*, 416 U.S. 396, 414 n.14 (1974)). *See also Spratt v. R.I. Dep't of Corr.*, 482 F.3d 33, 42 (1st Cir. 2007). Because Miami-Dade County cannot identify any meaningful distinction between its operations and those of these other correctional institutions that require it to deny Muslim inmates at MDCR access to a Halal-compliant diet, the Faith Based Meals Policy fails strict scrutiny.

2. First Amendment

The Free Exercise Clause of the First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]." U.S. Const., amend I. The rights guaranteed by this clause do not end at the prison gates. *Turner*, 482 U.S. at 84. Under the *Turner* standard, Defendant's Faith Based Meals Policy is only "valid if it is reasonably related to legitimate penological interests." *Id.* at 89. Four factors assist the court to determine the reasonableness of the regulation:

> (1) whether there is "a valid, rational connection between the regulation and the prison legitimate governmental interest;" (2) "whether there are alternative means of exercising the right;" (3) "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources;" and (4) "the existence of obvious, easy alternatives[, which] may be evidence that the regulation is not reasonable, but is an exaggerated response to prison concerns."

Perry v. Sec'y, Fla. Dep't of Corr., 664 F.3d 1359, 1364-65 (11th Cir. 2011) (quoting *Turner*, 482 U.S. at 89-90). The U.S. Supreme Court has made clear that *Turner*'s "standard is not toothless," and that courts must not blindly defer to the judgment of prison administrators. *Thornburgh v. Abbott*, 490 U.S. 401, 414 (1989); *see also Procunier*, 416 U.S. at 405-06 ("[A] policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims."). Moreover, although prison officials are entitled to some deference, this "traditional deference does not mean that courts have abdicated their duty to protect those constitutional rights that a prisoner retains." *Fortner v. Thomas*, 983 F.2d 1024, 1029 (11th Cir. 1993) (citations omitted). With consideration of the *Turner* factors, Defendants' Faith Based Meals Policy is not "reasonably related to a legitimate penological interest" and therefore is an unconstitutional restriction on Plaintiffs' free exercise of religion.

For the reasons articulated above, Defendants' refusal to provide Halal meals fails under the *Turner* factors: (1) There is no *rational connection* between the Policy of denying Halal-compliant meals to Muslim inmates and any asserted governmental interest in controlling costs, especially where the County has never actually engaged in discussions with CAIR-FL regarding the availability of comparably-priced Halal meals, and where the proposed revenues for the MDCR in fiscal year 2015-2016 amount to $326,205,0000.00. Moreover, Plaintiffs' dietary needs cannot be satisfied with meals from the vegetarian or general population diets currently offered to them under the Policy. (2) Plaintiffs have no *alternative means* of complying with religious dictates about their diet, as they have no way to obtain a Halal diet if County officials refuse to provide one. (3) There is no evidence that providing Halal meals will *unduly impact* other inmates, officials, or prison resources in general. (4) There is an *obvious alternative* to the

County's policy: providing Halal meals to Muslim inmates, just as MDCR already provides Kosher meals to inmates of other faiths.

In light of these factors, it is not surprising that numerous courts have held that under the Free Exercise Clause "prison authorities must accommodate the right of prisoners to receive diets consistent with their religious scruples." *Kahane v. Carlson*, 527 F.2d 492, 495 (2d Cir. 1975) (holding that the plaintiff was constitutionally entitled to Kosher meals). For example, in *Beerheide v. Suthers*, 286 F.3d 1179 (l0th Cir. 2002), the Court applied the *Turner* standard to hold that the Free Exercise Clause required the prison to provide plaintiffs with kosher meals, despite the prison's contention that budgetary concerns and other inmates' resentment of favorable treatment for the plaintiffs justified their failure to accommodate the inmates' dietary needs. The Court held that, although budgetary constraints and potential hostility from other inmates were legitimate interests, the policy failed the remaining *Turner* factors. 286 F.3d at 1186. Plaintiffs did not have any alternative means to obtain kosher meals because they could not afford to purchase them from the prison canteen. The prison's "common fare" program, which offered vegetarian food or food prepared without pork, was also inadequate because "[a] vegetarian meal prepared in a non-kosher kitchen is not kosher." 286 F.3d at 1187. Thus, the prison's alternatives were "not an alternative at all." *Id.* Under the third *Turner* factor, the Court held that the defendants failed to show that the actual cost of providing kosher meals, although greater than non-kosher meals, was more than *de minimis. Id.* at 1190. Finally, the Court held that providing inmates with kosher meals free of charge was an alternative with a *de minimis* impact on the prison's budget. *Id.* at 1191-92. Under the *Turner* factors, therefore, Defendants' refusal to provide Halal meals is a clear violation of Plaintiffs' Free Exercise rights.

3. Equal Protection

In order to prevail on a claim under the Equal Protection Clause, a plaintiff must show different treatment from persons who are similarly situated. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Once a plaintiff satisfies this threshold requirement, the *Turner* standard applies to inmate challenges under the Equal Protection Clause. *See Harris v. Ostrout*, 65 F.3d 912, 916-17 (11th Cir. 1995); *Shakur v. Schriro*, 514 F.3d 878, 891 (9th Cir. 2008); *DeHart v. Horn*, 227 F.3d 47, 61 (3d Cir. 2000). Plaintiffs can easily establish disparate treatment because Defendants provide Kosher meals to Jewish inmates but refuse to provide Halal or Kosher meals to Muslim inmates. Moreover, discriminatory intent is evident in the Policy's singling out only of Muslims to receive the general population diet, suggesting that their belief that they must consume a Halal diet (along with their ability to determine what a Halal diet is) is less valid than the dietary beliefs of other inmates. Having met this threshold, the RLUIPA strict scrutiny analysis set forth above applies and compels the conclusion that Defendants' policy of refusing to provide Halal meals or Kosher meals to Muslim inmates while providing Kosher meals to Jewish inmates violates the Equal Protection Clause.

B. Plaintiffs Will Suffer Irreparable Harm.

Absent an injunction, Defendants will continue to force many inmates to violate their religious beliefs by consuming food that is Haraam. This constitutes irreparable harm as a matter of law. It is well-established that the loss of First Amendment freedoms, even for brief periods, represents irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). "This principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (finding irreparable harm when RLUIPA is violated). *See also Warsoldier*, 418 F.3d at 1001-02; *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996). Here, MDCR's Policy irreparably

harms numerous inmates on a daily basis by violating their constitutional Free Exercise and Equal Protection rights, as well as their right to religious exercise conferred by RLUIPA.

C. The Balance of Harms Favors Plaintiffs.

The balance of harms also favors an injunction. Plaintiffs' interest in religious exercise free of the substantial burdens imposed by the County's Faith Based Meals Policy easily outweighs the County's interest in enforcing its presumptively unconstitutional Policy. *See KH Outdoor LLC v. Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) ("[T]he threatened injury to the plaintiff clearly outweighs whatever damage the injunction may cause the [Defendant] [because] even a temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the [Defendant] has no legitimate interest in enforcing an unconstitutional ordinance."). There is nothing on the other side of the scale that could outweigh Plaintiffs' interests in engaging in constitutionally protected religious exercise, particularly where the County has not even inquired into the costs of supplying Halal meals, continues to provide Kosher meals to non-Muslim inmates, and has previously provided Kosher meals to Muslim inmates. In short, an injunction will not burden Defendants.

D. A Preliminary Injunction Serves the Public Interest.

It is well-established that the public has no interest in enforcing an unconstitutional policy. *See KH Outdoor, LLC*, 458 F.3d at 1272. Likewise, enforcement of federal statutes 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[.]"). This principle applies with special force to RLUIPA, which 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. In enacting RLUIPA, Congress recognized that "some institutions restrict religious liberty in egregious and unnecessary ways," and noted 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). By making these findings and enacting RLUIPA, Congress indicated that protection of prisoners' religious liberties is in the public interest. Moreover, the issuance of an injunction here is in the public interest because it protects not only *Plaintiffs'* rights to free exercise and equal protection, but also the rights of others whose sincerely-held religious beliefs are substantially burdened by and who are discriminated against pursuant to the challenged policy.

E. Plaintiffs Should Not Be Required to Post a Bond

"'[B]efore a court may issue a preliminary injunction, a bond must be posted,' but it is well-established that 'the amount of security required by the rule is a matter within the discretion of the trial court . . . [, and] the court may elect to require no security at all.'" *BellSouth Telecomms., Inc.*, 425 F.3d at 971 (citations omitted); *see also Carillon Importers, Ltd. v. Frank Pesce Intern. Group Ltd.*, 112 F.3d 1125, 1127 (11th Cir. 1997) ("The amount of an injunction bond is within the sound discretion of the district court."); *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995); *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325-26, *modified on other grounds*, 775 F.2d 998 (9th Cir. 1985); *Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 782 (10th Cir. 1964).

Exercise of that discretion is particularly appropriate where, as here, issues of public concern or important federal rights are involved. *See Complete Angler*, 607 F. Supp. 2d 1335-36 ("Waiving the bond requirement is particularly appropriate where a plaintiff alleges the

infringement of a fundamental constitutional right."). Accordingly, if this Court enters a preliminary injunction, no bond should be required.

IV. CONCLUSION

Based on the foregoing arguments and authorities, Plaintiffs ask this Court to enter a preliminary injunction requiring Defendants to provide them and other Muslim inmates with Halal meals or, in the alternative, Kosher meals.

Dated: October 8, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by notice of electronic filing on October 8, 2015, on all counsel named on the service list below. I further certify that Defendant Jose Hernandez will be served a copy of this motion along with the Complaint.

/s/ Shalini Goel Agarwal

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