**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,

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

vs.

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 DEPARTMNENT; and DEBRA GRAHAM, in her individual capacity as Commander of the Food Services Bureau of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT,

Defendants.
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**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Defendants' Motion to Dismiss should be denied, as (1) Plaintiff CAIR-Florida, Inc. (CAIR-FL) has both associational standing and standing in its own right; (2) Defendants have not met their burdens under the Religious Land Use and Institutionalized Persons Act (RLUIPA) of showing that the Faith Based Meals Policy furthers a compelling interest or is the least restrictive means to achieve such an interest; (3) Defendants failed to show a reasonable relation between the Policy and any penological interest; (4) the Policy facially discriminates against

Muslim inmates, satisfying the intent requirement for the equal protection claims; (5) Defendants' redefinition of Halal and selective denial of dietary requests based on the inmates' particular religion violates clearly established law; and (6) the Complaint makes sufficient allegations about the unlawful actions of Defendants Guevara, Denson, Hernandez, Browne, and Graham ("Individual Defendants") that caused the constitutional injuries to Plaintiffs and put Individual Defendants on notice of the claims and supporting factual allegations against them.

## I. Legal Standard

When reviewing a Rule 12(b)(6) motion to dismiss, "the pleadings are construed broadly" and "the allegations in the complaint are viewed in the light most favorable to the plaintiff." *Watts v. Fla. Int'l Univ.*, 495 F.2d 1289, 1295 (11th Cir. 2007) (citations omitted). The Complaint alleges that the County's Faith Based Meals Policy, as executed by Individual Defendants, which singles out Muslims to be denied meals that are compliant with their faith, has substantially burdened the religious exercise of Muslim inmates by denying them Halal meals, in violation of RLUIPA, and the Free Exercise and Equal Protection clauses of the federal and state constitutions. Because the Complaint states claims for relief that, if true, are substantively plausible, Defendants' motion to dismiss must be denied. *Johnson v. City of Shelby, Miss.*, 135 S. Ct. 346, 347 (2014) (per curiam) (holding under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), that "substantive plausibility" requires only that plaintiffs state "simply, concisely, and directly events that" entitle them to relief). *See also Randall v. Scott*, 610 F.3d 701, 710 (11th Cir. 2010) ("[T]here is no 'heightened pleading standard' as it relates to cases governed by Rule 8(a)(2), including civil rights complaints."); *Johnson v. Breeden*, 280 F.3d 1308, 1317 (11th Cir. 2002) ("Where it is not evident from the allegations of the complaint alone that the defendants are entitled to qualified

immunity, the case will proceed to the summary judgment stage, the most typical juncture at which defendants entitled to qualified immunity are released from the threat of liability and the burden of further litigation.") (citation omitted).

## II. CAIR-FL Has Standing, Both as a Representative of Its Constituents and in Its Own Right.

CAIR-FL filed this suit both on its own behalf and on behalf of the constituents it represents—here, current and future Muslim inmates at MDCR facilities. *See* Compl., ECF 1 at ¶¶ 12-17. Defendants take issue only with CAIR-FL's associational standing, asserting that the organization has not specifically identified any constituents[1] burdened by the County's Faith Based Meals Policy. ECF 10 at 6. Because Plaintiff CAIR-FL has sufficiently alleged that it represents Individual Plaintiffs and other Muslim inmates injured by the Policy and that it has been injured in its own right through diversion of resources and frustration of mission, Plaintiff CAIR-FL has standing on both grounds.

### A. CAIR-FL's Associational Standing

Generally, an association has standing to file an action on behalf of its members "when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*, 432 U.S. at 343. Accordingly, "an association may bring suit on behalf of constituents even where the

[1] Although Defendants sometimes refer to CAIR-FL's constituents as "members," ECF 10 at 6, the fact that CAIR-FL is not a membership organization does not undercut its associational standing. *See, e.g.*, *Doe v. Stincer*, 175 F.3d 879, 885-86 (11th Cir. 1999) (discussing standing of association with constituents rather than members in *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 344-45 (1977)). Just as in *Doe* and *Hunt*, Plaintiff CAIR-FL has standing as a representative of Muslims, its constituents, as the group was established to protect and advance the interests of Muslims, who are the primary beneficiaries of its activities, and have the means to influence its priorities and activities. *Id.*

individual constituents have not brought suit themselves." *Stincer*, 175 F.3d at 882. "Nor must the association name the members on whose behalf suit is brought." *Id*. The Eleventh Circuit has clarified that "neither unusual circumstances, inability of individual members to assert rights, nor an explicit statement of representation are requisites." *Id*. (citing *Church of Scientology v. Cazares*, 638 F.2d 1272, 1279 (5th Cir. 1981)). In addition, in cases seeking declaratory, injunctive, or other prospective relief, individual constituents need not participate in the litigation because of a presumption that "the remedy, if granted, will inure to the benefit of those members of the association actually injured," *Hunt*, 432 U.S. at 343; *Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1160 (11th Cir. 2008).

Plaintiff CAIR-FL has, at this stage of the litigation, made sufficient allegations about injured constituents to establish associational standing. *See Am.'s Health Ins. Plans v. Hudgens*, 742 F.3d 1319, 1327 (11th Cir. 2014) (citing *Bischoff v. Osceola Cty., Fla.*, 222 F.3d 874, 878 (11th Cir. 2000)) (noting that at motion to dismiss stage, "general factual allegations of injury resulting from the defendant's conduct may be sufficient to show standing"). The Complaint states that "CAIR-FL's constituents include Muslims who have been, are being, and will be detained by MDCR and subjected to Defendants' Faith-Based Meals Policy," notes that Individual Plaintiffs are all Muslim in the custody of MDCR, and explains that CAIR-FL has had to divert resources to work with "Muslim inmates, including Individual Plaintiffs," affected by the Policy. ECF 1 at ¶¶ 8-11, 14-15. If this were not enough to show that Individual Plaintiffs are among CAIR's constituents, the Complaint repeatedly refers to "Individual Plaintiffs and *other* CAIR-FL constituents," making clear that Individual Plaintiffs are CAIR-FL constituents and that there are other CAIR-FL constituents as well who are affected by the Policy. *Id.* at ¶ 3 (emphasis added). Defendants do not challenge the other elements of associational standing, as

the interests CAIR-FL seeks to protect—the constitutional and civil rights of Muslims—are clearly germane to its purpose, *id.* at ¶ 12, and the principal relief sought is injunctive and declaratory, *id.* at p. 20, which does not require the participation of individual constituents.

**B. CAIR-FL's Standing in Its Own Right**

Because CAIR-FL has established representative standing, the Court need not determine its standing in its own right. *See Common Cause v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009) (having found that the NAACP had standing on its own behalf, the court did not address whether it also had associational standing). However, it has long been established that "an organization has standing to sue on its own behalf if the defendant's illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." *Fla. State Conference of NAACP*, 522 F.3d at 1165 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). *Accord Common Cause*, 554 F.3d at 1350; *see also Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 n.10 (11th Cir. 1989).

The complaint here sufficiently alleges harm to CAIR-FL itself to support this alternate theory of standing. While "an identifiable trifle" suffices to meet the "injury in fact" necessary to confer standing, *see United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n.14 (1973) (rejecting the government's argument that standing should be limited "to those who have been 'significantly' affected by the challenged … action"), the effect of the challenged Policy upon CAIR-FL is far beyond that. The County's Policy has required CAIR-FL "to divert significant resources from its advocacy and education efforts to work and consult with Muslim inmates, including Individual Plaintiffs, affected by Defendants' unconstitutional Policy and to try to educate correctional officials in Miami-Dade County regarding Halal diets and the religious practices of Muslims." Compl., ECF 1 at ¶ 15. Further, if

the Faith Based Meals Policy is not enjoined, this diversion will continue for the foreseeable future as CAIR-FL continues to assist Muslim inmates whose religious exercise is substantially burdened by the Policy to advocate for their free exercise rights at MDCR. *Id.* at ¶ 16. Moreover, this diversion of resources "frustrates CAIR-FL's efforts through other initiatives [including such things as conferences, town hall meetings, know your rights presentations, interfaith events, legal clinics, and legislative advocacy] to achieve its organizational mission." *Id.* at ¶¶ 13, 17. Given that Individual Plaintiffs and other CAIR-FL constituents at MDCR must either eat the non-Halal compliant food they are served under the Policy or else go hungry, the harm has already occurred. *Id.* at ¶¶ 3, 48-49, 52. Defendants' opposition to making any changes to the Policy despite repeated advocacy efforts by CAIR-FL underscores that the harm is immediate and ongoing. *Id.* at ¶¶ 33-44, 49. This constitutes injury in fact.

The remaining standing requirements are easily met. First, the injury is fairly traceable to the conduct of the County and Individual Defendants who implemented the Faith Based Meals Policy. But for the County's Policy, CAIR-FL would not have had to divert current or future resources to address the issues raised by it, frustrating CAIR-FL's other activities. Second, the injury will be redressed by a favorable decision. If the Court rules in CAIR-FL's favor and declares the Faith Based Meals Policy unlawful, the injury set forth above will be fully redressed because CAIR-FL will then be able to stop all the work made necessary by the Policy. Therefore, apart from associational standing, CAIR-FL has standing in its own right.

## III. Plaintiffs Have Made Out a Prima Facie Case for a RLUIPA Violation, and Defendants Have Not Satisfied Their Burden to Overcome It.

Defendants' suggestion that Plaintiffs have failed to state a claim under RLUIPA, ECF 10 at 11, is premised on a misunderstanding of the burden-shifting framework of the statute. 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) (2000). 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-compliant diet since October 2014 because of the Faith Based Meals Policy has substantially burdened the religious exercise of Individual Plaintiffs and other CAIR-FL constituents. *See Holt v. Hobbs*, 135 S. Ct. 853, 860 (2015) (noting that RLUIPA defines religious exercise "capaciously" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief"); *Watkins v. Jones*, No. 4:12-cv-215-RH, 2015 WL 5468647, at *13 (N.D. Fla. Aug. 28, 2015) (concluding that eating halal-compliant diet is religious exercise and that refusal of this diet substantially burdens religious exercise); *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1317-19 (10th Cir. 2010) (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-Muslims); *Hudson v. Dennehy*, 538 F. Supp. 2d 400, 410 (D. Mass. 2008) (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"). Defendants make no serious argument otherwise.

Because Plaintiffs have made out a prima facie case of substantial burden on their religious exercise, the County's Policy violates RLUIPA unless Defendants can demonstrate that denying a Halal-compliant diet is necessary to achieve a compelling interest *and* is the least restrictive means of doing so. 42 U.S.C. §§ 2000cc(a)(1)(A)-(B), 2000cc-2(b). They have shown neither. 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). In addition, Defendants must show that their Policy is the least restrictive means of advancing the compelling interest, an "exceptionally demanding" standard. *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.") (citation omitted); *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).

Defendants assert that the interests furthered by the Faith Based Meals Policy are "financial and operational obstacles" posed by an increasing number of Muslim inmates' requests for Halal-compliant meals. *See* ECF 10 at 11. However, simply asserting that accommodating the requests of Muslim inmates is expensive does not come close to satisfying Defendants' burden of proof on this issue.[2] 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."). Defendants must show that the

[2] Although Defendants cite to a couple of unpublished decisions—*Muhammad v. Sapp*, 388 F. App'x 892 (11th Cir. 2010); *Linehan v. Crosby*, 346 F. App'x 471 (11th Cir. 2009)—to suggest otherwise, Plaintiffs note that, in addition to being nonbinding, *see* 11th Cir. R. 36-2, in both of those cases, the plaintiffs were pro se and presented only a limited factual record to the court. The court in *United States v. Sec'y, Fla. Dep't of Corr.*, 2015 WL 1977795, at *8 n.15, disregarded both unpublished cases on this basis. Further, unlike in those cases, Defendants here have presented no evidence that their Policy is the least restrictive means of furthering their interests. *See Muhammad*, 388 F. App'x at 897; *Linehan*, 346 F. App'x at 473. Moreover, it is not clear that generally asserted costs are a compelling state interest that can satisfy strict scrutiny. *See Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 263 (1974) (holding in another context that "conservation of the taxpayers' purse is simply not a sufficient state interest" to withstand strict scrutiny).

difference in cost to provide Individual Plaintiffs with a Halal-compliant diet is onerous in the context of MDCR's overall budget and would adversely impact correctional operations. *See, e.g.*, *Watkins*, 2015 WL 5458647, 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'" and consequently, concluding that "we are skeptical that saving less than .05% of the food budget constitutes a compelling interest") (quoting *Holt*, 135 S.Ct. at 864, and *Moussazadeh v. Texas*, 703 F.3d 781, 795 (5th Cir. 2012), respectively); *United States v. Sec'y, Fla. Dep't of Corr.*, 2015 WL 1977795, at *8 (finding that costs were not compelling interest in refusal to provide kosher meals where they represented five-thousandths of the total budget and where "Defendants, who bear the burden of proof on this issue, have not shown that the costs . . . are so onerous that they have had an effect on Defendants' operations. . . . There is no evidence that any programs have been cut, that any staff has been cut, or that there has been any harm to any aspect of Defendants' operations."). Here, except for asserting that the County will incur some expense, Defendants provide no evidence of the financial impact of accommodating the Halal diet requests of Muslim inmates in relation to MDCR's overall or that these costs have had any effect on prison operations or resulted in cuts to programs or staff.

Even if "financial and operational obstacles" were a compelling interest, Defendants have not shown that outright denial of Halal or Kosher meals to Muslim inmates is the least restrictive means of achieving these goals. Instead, Defendants simply assert "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 non-Muslim inmates, *see* Compl., ECF 1 at ¶ 30, and has not even engaged in

serious discussion with CAIR-FL about the feasibility of providing Halal meals or the estimated costs of using particular Halal meat suppliers, *id.* at ¶¶ 42-44. Because Defendants have fallen woefully short of meeting their burden, Plaintiffs' RLUIPA claim should not be dismissed.

## IV. Plaintiffs Have Adequately Alleged Constitutional Injuries from the Faith Based Meals Policy.

### A. Plaintiffs Have Made Out Their Free Exercise Claims, as the Policy Is Not Reasonably Related to a Legitimate Penological Interest.

Although Plaintiffs' free exercise claims under the federal and state constitutions are governed by a more permissive standard than the RLUIPA claims, Plaintiffs have satisfied that standard here by showing that 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. *See Turner v. Safley*, 482 U.S. 78, 84 (1987). *See also Thornburgh v. Abbott*, 490 U.S. 401, 414 (1989) (cautioning that *Turner*'s "standard is not toothless"); *Procunier v. Martinez*, 416 U.S. 396, 405 (1974) ("[A] policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims.").

Defendants' refusal to provide Halal-compliant 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 serious discussion with CAIR-FL regarding the availability of comparably-priced Halal meals or shown with any specificity that the costs of providing Halal-compliant meals would impact its operations. 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—certainly none that asserts such impact with any specificity. (4) There is an *obvious alternative* to the County's policy: providing Halal-compliant meals to Muslim inmates, just as MDCR already provides Kosher meals to inmates of other faiths. *See Turner*, 482 U.S. at 89-90 (enumerating four-factor reasonableness test).

In light of these factors, it is not surprising that 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); *Beerheide v. Suthers*, 286 F.3d 1179, 1186-87, 1190-92 (l0th Cir. 2002) (holding that although the defendants' budgetary constraints and potential hostility from other inmates were legitimate interests, refusal to provide plaintiffs with kosher meals failed the other *Turner* factors, as the plaintiffs could not afford to purchase Kosher meals from the canteen, vegetarian meal was inadequate because it was not kosher, the defendants failed to show that added cost of kosher meals was more than *de minimis*, and the defendants could provide kosher meals free of charge with *de minimis* impact on budget). Likewise here, because Defendants' refusal to provide Halal meals is a clear violation of under the *Turner* factors, Plaintiffs' free exercise claims should not be dismissed.

### B. Plaintiffs Have Sufficiently Shown Intentional Discrimination for Their Equal Protection Claims Because the Policy Singles Out Muslim Inmates.

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. *See* Compl., ECF 1 at ¶¶ 30-32. Moreover, the Policy's explicit provisions that "[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," Ex. 1 to Compl., ECF 1-3 at 2 (emphases added), are facially discriminatory on the basis of religion, a protected class. *See, e.g.*, *Hassan v. City of New York*, --- F.3d ----, 2015 WL 5933354, at *11 (3d Cir. 2015) (reversing dismissal of equal protection challenge to police policy of surveilling Muslims, and observing that "direct evidence of intent is supplied by the policy itself") (internal quotation marks and citation omitted); *Morrison v. Garraghty*, 239 F.3d 648, 658 (4th Cir. 2001) (holding that inmate who challenged prison's "facially discriminatory policy" that conditioned consideration of requests for Native American spiritual items upon inmate's proof of Native American heritage had shown equal protection violation); *Sephardi v. Town of Surfside*, No. 99-1566-civ, 2003 WL 25728154, at *1 (S.D. Fla. May 14, 2003), *amended on other grounds by* 2003 WL 25728153 (S.D. Fla. June 9, 2003) ("The analysis to be applied in determining whether facially discriminatory legislation constitutes an equal protection challenge does not require independent evidence of discriminatory intent."). *Cf. Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993) ("Discriminatory intent may be found even where the record contains no direct evidence of bad faith, ill will or any evil motive on the part of public officials."). 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—is discriminatory on its face. To the extent that Defendants seek to imply that they enacted the

Faith Based Meals Policy in good faith because they truly believed that Muslim inmates could eat the general population diet and still comply with the dictates of their faith, ECF 10 at 13, Plaintiffs repeatedly disabused them of this notion. Compl., ECF 1 at ¶¶ 19-20, 33, 36, 38, 41-42, 48, 57-72. Having shown intent to discriminate through the County's facially discriminatory Policy, the strict scrutiny analysis (i.e. compelling interest and least restrictive alternative) set forth above applies and compels the conclusion that Defendants' Policy of refusing to provide Halal-compliant meals to Muslim inmates while providing Kosher meals to Jewish inmates violates the Equal Protection Clause. Consequently, Plaintiffs' equal protection claims should survive Defendants' Motion to Dismiss.

## V. Because It Is Clearly Established that Redefining the Meaning of a Religious Dietary Request to in Fact Not Comply with the Dictates of that Religious Dietary Request Violates the Constitution, Qualified Immunity Does Not Apply.

Individual Defendants are not entitled to qualified immunity because redefining Halal for Muslim inmates to mean food that is already served to inmates in the general population that is plainly not Halal, while accommodating the religious dietary requests of Jewish inmates, violates free exercise and equal protection rights that were clearly established at the time of the violation.[3] Plaintiffs have three routes to showing that a constitutional violation was clearly established: "(1) that a materially similar case has already been decided, giving notice to the [government], (2) that a broader, clearly established principle should control the novel facts in this situation, or (3) this case fits within the exception of conduct which so obviously violates the

[3] The relevant time of violation here ranges from October 1, 2014, when the Faith Based Meals Policy was enacted and CAIR-FL started having to divert resources to address complaints of Muslim inmates at MDCR, *see* Compl., ECF 1 at ¶¶ 15, 27, 33, to June 12-July 30, 2015, when Individual Plaintiffs submitted grievances and exhausted their administrative remedies, *id.* at ¶¶ 57-72, to August 14, 2015, when in response to a letter notifying the Miami-Dade County Mayor and Board of Commissioners of the Policy's illegality and unconstitutionality, Individual Defendant Marydell Guevara reaffirmed that the County would not rescind the Policy, *id.* at ¶¶19-20.

constitution that prior caselaw is unnecessary." *Keating v. City of Miami*, 598 F.3d 753, 766 (11th Cir. 2010) (quoting *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005)). Thus, they need not show that a "factually identical" policy was previously struck down, but only that "the right is sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* Plaintiffs satisfy that standard here.

Under controlling Supreme Court precedent, "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendment without fear of penalty." *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972). *See also id.* at 321 n.1 & 322 (where Buddhist inmate also brought equal protection claim, concluding that "if he was denied a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts, then there was palpable discrimination by the State"). Applying this broad principle, the overwhelming weight of published cases holds that inmates have a constitutionally protected interest in a religious diet that should not be unreasonably infringed. *Lovelace v. Lee*, 472 F.3d 174, 198-99 (4th Cir. 2006) ("a prisoner has a 'clearly established . . . right to a diet consistent with his . . . religious scruples'") (citation omitted); *Williams v. Bitner*, 455 F.3d 186, 192 (3d Cir. 2006) (noting that in inmate religious diet cases, "an inmate requesting a special diet on the basis of a sincerely held religious belief has a constitutionally protected interest upon which the prison administration may not unreasonably infringe.") (quotation marks and citation omitted); *Love v. Reed*, 216 F.3d 682, 689-91 (8th Cir. 2000) (holding that denial of inmate's dietary request so that he could avoid preparing food, or benefitting from the preparation of food by others, on the Sabbath, violated his free exercise rights); *Ashelman v. Wawrzaszek*, 111 F.3d 674, 677 (9th Cir. 1997) (holding that prison's policy of supplying Orthodox Jewish inmates with one frozen kosher

dinner supplemented with nonkosher vegetarian or nonpork meals violated prisoners' free exercise rights, as the court "recognized that requiring a believer to defile himself by doing something that is completely forbidden by his religion is different from (and more serious than) curtailing various ways of expressing beliefs for which alternatives are available"); *LaFevers v. Saffle*, 936 F.2d 1117, 1119 (10th Cir. 1991) (holding that prisoners have constitutional right to diet conforming to sincerely held religious beliefs, unless the regulation denying that accommodation is reasonably related to legitimate penological interests and thus finding that dismissal of First Amendment claim for refusal of religious diet was abuse of discretion); *Moorish Sci. Temple of Am., Inc. v. Smith*, 693 F.2d 987 (2d Cir. 1982) (holding that inmate had properly raised First Amendment and equal protection claims by alleging he was denied Muslim diet while Jewish inmates received Kosher meals, and noting that "prison authorities must accommodate the right of prisoners to receive diets consistent with their religious scruples") (quoting *Kahane*, 527 F.2d at 495).

Pursuant to this basic principle, Defendants cannot seriously argue that they have given Muslim inmates "reasonable opportunities to exercise their religious freedom" when the County's Faith Based Meals Policy simply denies them the ability to eat a Halal-compliant diet on the generalized excuse that it would be expensive without making any particularized showing of the burden. *See Cruz*, 405 U.S. at 322 n.2. Moreover, the County's actions of simply redefining what food is compliant with Halal to include the general population diet that does not appear to be prepared in compliance with Islamic dietary guidelines "so obviously violates the constitution" that no controlling cases involving religious diets of inmates are necessary. *See Keating*, 598 F.3d at 766. Likewise, denying faith based meals to Muslims while providing them to Jewish inmates is obvious and "palpable discrimination." *See Cruz*, 405 U.S. at 322.

In addition, contrary to Defendants' suggestions otherwise, ECF 10 at 18-19, Plaintiffs make specific allegations about actions by Individual Defendants that extend beyond mere *respondeat superior* liability to show their personal participation in establishing the Faith Based Meals Policy and resulting in constitutional deprivations to Individual Plaintiffs and other CAIR-FL constituents. *See Zatler v.Wainwright*, 802 F.2d 397, 401 (11th Cir. 1986) (noting that "affirmative causal connection between the official's acts or omissions and the alleged constitutional deprivation" needed for §1983 claims may be shown by (1) personal involvement in the acts resulting in the constitutional deprivation, (2) the official establishing a policy or custom resulting in deliberate indifference to an inmate's constitutional rights, or (3) a supervisory defendant breaching a duty imposed by state or local law causing constitutional injury); *Swint v. City of Wadley, Ala.*, 51 F.3d 988, 999 (11th Cir. 1995).

Specifically, the Complaint alleges that Defendant MDCR Director Guevara is the final policymaker with respect to "the creation and enforcement of MDCR's Faith-Based Meals Policy." ECF 1 at ¶ 21. In response to a letter notifying the Miami-Dade County Mayor and Board of Commissioners of the unconstitutionality of the County's Faith Based Meals Policy, Defendant Guevara is the one who wrote back to say that the County would not change the Policy. *Id.* at ¶¶ 19-20, 48. Thus, she was directly involved in creating and ratifying the Policy, resulting in constitutional deprivation to Individual Plaintiffs and other CAIR-FL constituents.[4]

[4] Director Guevara is the County's final policymaker with respect to inmate dietary policies. "[I]n assessing whether a governmental decision maker is a final policy maker, [the Eleventh Circuit] look[s] to whether there is an *actual* 'opportunity' for '*meaningful*' review." *Holloman v. Harland*, 370 F.3d 1252, 1292 (11th Cir.2004) (emphasis added); *Willingham v. City of Valparaiso, Fla.*, --- F. Supp. 3d ----, 2015 WL 1276755, at *7 (N.D. Fla. 2015) (noting that city charter's review mechanism is not dispositive and that "circumstances can convert an otherwise functional review process into one which fails to provide an opportunity for meaningful review"). The determination of whether an official has final policy making authority is not based on a technical application of local law. Rather, the court "should examine *not only*

the relevant positive law, including ordinances, rules, and regulations, *but also* the relevant *customs and practices* having the force of law." *Mandel v. Doe*, 888 F.2d 783, 793 (11th Cir. 1989) (citing *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989) (emphasis added) and *Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986) (county prosecutor found to be final policymaker based in part on *relevant operational practices*) (emphasis added)). In *Mandel*, an inmate sued Escambia County for injuries from a medical assistant's deliberate indifference. The County argued it should not be liable because, under its written agreement, a doctor was to supervise care provided by the medical assistant. 88 F.2d at 791. However, the court held that notwithstanding this written agreement, a custom and practice developed such that a "policy" was established that the medical assistant was authorized to function "without any supervision or review at all," and thus, the medical assistant was the "sole and final policy maker with respect to medical affairs at the road prison." *Id.* at 794.

*Mandel* controls this case. Here, even though under the County Charter the Board of County Commissioners is "the legislative and governing body of the county" and has the power to provide jails, Miami-Dade County Home Rule Charter, Art. 1 § 1.01.A.4, and the Mayor as Director Guevara's boss had the authority to review her actions, *id.* § 2.02.C, just as in *Mandel*, while there was technically a review process in place on paper, there is no indication that any meaningful administrative or supervisory review of Director Guevara's Faith Based Meals Policy ever occurred. The *de facto* delegation to the Director with respect to inmate dietary policies was complete and not subject to review. And just like *Mandel*, pursuant to the delegation by the Mayor and Board to the MDCR Director, a "custom and practice having the force of law" established a "policy" in Miami-Dade County of the MDCR Director being the "sole and final policy maker" on inmate dietary policies. 88 F.2d at 793, 794.

Thus, Defendants' reliance on previous district court opinions discussing final policymakers in Miami-Dade County is unavailing. ECF 10 at 7-8 n.3. *See, e.g.*, *Williams v. Miami-Dade Cty.*, 859 F. Supp. 2d 1297, 1302 (S.D. Fla. 2012) (finding that MDPD Director was not final policymaker as to use of force policy based on misreading *City of St. Louis v. Prapotnik*, 485 U.S. 112, 127, 130 (1988), which distinguishes between an official's "discretionary decisions [that] are constrained by policies not of that official's making"—where the official is not acting as a final policymaker—and decisions by an official "cast in the form of a policy statement" or "manifest[ing] a custom or usage of which the supervisor must be aware"—where the official is acting as a final policymaker); *Blue v. Miami-Dade Cty.*, No. 10-23599-civ, 2011 WL 1099263, at *3-*4 (S.D. Fla. Mar. 22, 2011) (concluding that Community Action Agency was not final policymaker with respect to Head Start program where, pursuant to 2009 ordinance, agency had to periodically report to Board of County Commissioners in the areas of governance, program planning, policies, and operations and was thus subject to meaningful administrative review); *Wilson v. Miami-Dade Cty.*, No. 1:04-cv-23250, 2005 WL 3597737, at *9 (S.D. Fla. Oct. 11, 2005) (finding no municipal liability where the plaintiff conceded that basis of § 1983 claim was not unconstitutional policy or custom but instead failure to train or supervise employees); *Buzzi v. Gomez*, 62 F. Supp. 2d 1344, 1359 (S.D. Fla. 1999) (ruling that because "several layers of authority provid[ing] checks and balances to address grievances" prevented Assistant Director of Police Services from having the final say over employee promotions and training opportunities, he was not final policymaker).

This case stands in contrast to those opinions, as MDCR Director Guevara has operational control over inmate dietary policies, her final decision on inmate meals was cast in

The Complaint alleges that Defendant Hernandez "worked with a volunteer . . . to reduce the cost" of meals for Muslim inmates, and was integrally involved in developing and carrying out the Policy. *Id.* at ¶ 34. His direct participation is evident in the grievance and appeal responses, in which he repeatedly denied Individual Plaintiffs' requests for a Halal diet and told them that their only alternative to the general population diet was the vegetarian diet. Grievances, ECF 1-3 at 43-58. This vegetarian diet is also not Halal-compliant. Compl., ECF 1 at ¶ 46. He was also contacted directly by CAIR-FL's Regional Operations Director Nezar Hamze and made aware that the Policy effectively forced Muslim inmates to eat non-Halal foods and substantially burdened their constitutional rights. *Id.* at ¶¶ 33-34, 36-37, 42, 48. Thus Defendant Hernandez was also directly involved in creating the Policy and depriving Individual Plaintiffs and other CAIR-FL constituents of the ability to exercise their religion by redefining the meaning of Halal to whatever was most convenient for MDCR, despite clear notice that the general population diet did not in fact comply with Muslim religious beliefs.

The Complaint also makes specific allegations with respect to the other Individual Defendants: Defendant Commander of Food Services Graham was told by Mr. Hamze that the Policy forced Muslim inmates to violate their faith, but refused to consider alternative proposals to reduce the costs of meals for Muslims. ECF 1 at ¶¶ 38-40, 42. Defendant Commander Browne was similarly advised that the Policy forces Muslim inmates to violate their faith, but

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the form of a policy statement on Faith Based Meals, and there are not multiple layers of actual review of her decisions. After reviewing the Miami-Dade County Code, the undersigned found no provisions establishing a process to appeal decisions of the MDCR Director. The delegation of decision-making authority to Director Guevara is underlined by the fact that in response to a letter addressed to the Mayor and Board of Commissioners regarding the Faith Based Meals Policy, she is the one who responded to say that the County would not change it.

In any case, even assuming that the Court finds that Director Guevara is not the final policymaker with respect to inmate dietary policies, the Mayor and Board of Commissioners effectively ratified the Policy by refusing to change it after being notified of its illegality.

after setting up a meeting with other MDCR officials, took no action to rectify the Policy or even respond to Plaintiff CAIR-FL's inquiries about improving it. *Id.* at ¶¶ 41-44. Likewise, Defendant Acting Chief Denson, after being advised of the Policy's unconstitutional deprivations to Muslim inmates, took no action to rectify the Policy. *Id.* at ¶¶ 42-43.

Denying faith-based meals to some inmates by redefining what is required by their faith, while accommodating the faith-based meal requests of inmates of other faiths violates clearly established law, and Individual Defendants' actions caused the constitutional injuries suffered by Plaintiffs. Consequently, Individual Defendants are not shielded by qualified immunity.

## VI. The Complaint Is Not a "Shotgun Pleading," as All Defendants Are Aware of the Specific Allegations That Pertain to Them.

Because the allegations in the Complaint disaggregate the unlawful actions of Individual Defendants that caused injury to Plaintiffs and distill the unlawful nature of these actions into five claims for relief titled with the law or constitutional provision under which the claim is brought, Defendants' arguments about a "shotgun pleading," ECF 10 at 7-8, are misplaced. "Federal Rule of Civil Procedure 8(a)(2) requires that a complaint provide 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012). Rule 10(b) requires a party to "state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). The purpose of these rules is "to require the pleader to present his claims discretely and succinctly, so that, his adversary can discern what he is claiming and frame a responsive pleading, the court can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted, and, at trial, the court can determine that evidence which is relevant and that which is not." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015) (citation omitted). In

*Weiland*, the Eleventh Circuit observed that dismissal under Rules 8(a)(2) and 10(b) is warranted if "it is *virtually impossible* to know which allegations of fact are intended to support which claim(s) for relief," and held that the district court abused its discretion in dismissing several counts of the complaint because they reincorporated by reference the factual allegations of the preceding paragraphs and failed to identify which factual allegations were relevant to which legal claims. *Id.* at 1324-25. The court concluded that it was "not a situation where a failure to more precisely parcel out and identify the facts relevant to each claim materially increased the burden of understanding the factual allegations underlying each count." *Id.* at 1324.

Likewise here, the task of figuring out which of the 1 through 79 paragraphs in Plaintiffs' complaint that are incorporated into the five numbered counts are relevant to the claims "is hardly a task at all." *Id.* at 1325. While Defendants profess confusion about the allegations against each Individual Defendant, the alleged unlawful actions with respect to each Individual Defendant are clearly laid out in the Complaint as enumerated in the previous section. (i.e. Defendant Guevara: ECF 1 at ¶¶ 19-21, 48; Defendant Hernandez: ECF 1 at ¶¶ 33-34, 36-37, 42, 48; ECF 1-3 at 43-58; Defendant Graham: ECF 1 at ¶¶ 38-40, 42; Defendant Browne: ECF 1 at ¶¶ 41-44; Defendant Denson: ECF 1 at ¶¶ 42-43). Because the Complaint puts Defendants on notice of the specific claims against them and the factual allegations that support those claims, the argument about a shotgun pleading is without merit.

**Conclusion**

For the reasons discussed above, Plaintiffs respectfully request this Court to deny Defendants' Motion to Dismiss the Complaint.

Dated: October 26, 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 26, 2015, on all counsel named on the service list below.

*/s/ Shalini Goel Agarwal*

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