UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROMAN LEE JONES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:16-cv-2887-WTL-MJD
	)	
COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION,	)	
	)	
	)	
Defendant.	)	

Plaintiff's Memorandum in Support of Motion for Preliminary Injunction

Introduction

Roman Lee Jones, a prisoner confined within the Indiana Department of Correction ("DOC"), is Muslim and attempts to comply with the requirements of Islam. One of these is to adhere to the religiously-mandated dietary obligations referred to generally as halal. The standard DOC diet contains meat that is not halal and the only alternative available religious diet provided by the DOC in the prison where Mr. Jones is confined is a vegetarian diet designed to meet kosher requirements. However, Mr. Jones, consistent with other Muslims, believes that Islam prohibits rejecting food that Allah has given to humans and this includes animal meat. It therefore violates Mr. Jones's sincere religious beliefs to prevent him from eating halal meat and to force him to adhere to vegetarianism. A vegetarian diet is not halal. Mr. Jones is entitled to a halal diet that includes meat and the failure to provide him one imposes a substantial burden on the exercise of his religion in violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc, *et seq.* All the other requirements for the grant of a preliminary injunction are met and one should issue.

The preliminary injunction standard

The standard in the Seventh Circuit for the granting of a preliminary injunction is clear. In order to determine whether a preliminary injunction should be granted, the Court weighs several factors:

> (1) whether the plaintiff has established a prima facie case, thus demonstrating at least a reasonable likelihood of success at trial;
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> (2) whether the plaintiff's remedies at law are inadequate, thus causing irreparable harm pending the resolution of the substantive action if the injunction does not issue;
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> (3) whether the threatened injury to the plaintiff outweighs the threatened harm the grant of the injunction may inflict on the defendant; and
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> (4) whether, by the grant of the preliminary injunction, the public interest would be disserved.

See, e.g., Baja Contractors, Inc. v. City of Chicago, 830 F.2d 667, 675 (7th Cir. 1987). The heart of this test, however, is "a comparison of the likelihood, and the gravity of two types of error: erroneously granting a preliminary injunction, and erroneously denying it." *Gen. Leaseways, Inc. v. Nat'l Truck Leasing Ass'n*, 744 F.2d 588, 590 (7th Cir. 1984). Thus, "the more likely [the preliminary injunction movant] is to win, the less the balance of harms must weigh in his favor." *Turnell v. CentiMark Corp.*, 796 F.3d 656, 662 (7th Cir. 2015).

Facts

It is believed that the following facts will be adduced in support of the preliminary injunction request.[1]

Roman Lee Jones is an adult person who has been committed, since 1997, to the Indiana Department of Correction ("DOC") after being convicted of criminal offenses. (Declaration of

[1] Inasmuch as discovery has not yet occurred in this case, Mr. Jones reserves the right to supplement the following factual information.

Roman Lee Jones ["Jones Dec."] ¶¶ 1-2, attached to this memorandum). He is currently confined to the Indiana State Prison, a DOC facility. (*Id.* ¶ 3).

Mr. Jones is Muslim and he is recognized as such by the DOC. (*Id.* ¶ 4). He attempts to comply with the requirements of Islam despite his incarceration. (*Id.*).

The Holy Text of Islam is the Qur'an. (*Id.* ¶ 5). Mr. Jones and other Muslims recognize that this text is a revelation from God. (*Id.*). The Qur'an sets out many commandments for Muslims, including specifying dietary requirements that Muslims must observe. (*Id.* ¶ 7). Foods that can be eaten by Muslims are referred to as "halal." (*Id.* ¶ 8). The term "halal" means "lawful" or "permissible" and refers not just to food but to other matters that are permissible under Islamic law. (*Id.* ¶ 9). The opposite of matters that are halal are matters that are *haram*, or forbidden. (*Id.* ¶ 10).

The Qur'an teaches that certain foods, such as pork or alcohol, are always haram and therefore may never be consumed by Muslims. (*Id.* ¶ 11). Other foods, such as meat from cows, veal, lamb, sheep, goats, chickens, and ducks are deemed to be halal if they are slaughtered in the manner prescribed by Islamic law and they are not contaminated by food that is haram. (*Id.* ¶ 12).[2]

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[2] As the Court noted in *Hudson v. Dennehy*, 538 F. Supp. 2d 400, 404 n.1 (D. Mass. 2008), judgment entered, 2008 WL 1451984 (D. Mass. Apr. 11, 2008), *aff'd sub nom. Crawford v. Clarke*, 578 F.3d 39 (1st Cir. 2009):

> An Islamic website, eat-halal.com, describes the Halal slaughter ritual as follows.
>
> > Animals such as cows, sheep, goats, deer, moose, chickens, ducks, game birds, etc., are also Halal, but they must be Zabihah (slaughtered according to Islamic Rites) in order to be suitable for consumption. The procedure is as follows: the animal must be slaughtered by a Muslim (or a Jew or Christian). The animal should be put down on the ground (or held if it is small) and its throat should be slit with a very sharp knife to make sure that the 3 main blood vessels are cut. While cutting the throat of the animal (without severing it) the person must pronounce the name of Allah or recite a blessing which contains the name of Allah, such as "Bismillah Allah-u-Akbar."

Muslims view certain religious duties as *fard*, or mandatory. (*Id.* ¶ 13). Mr. Jones believes that it is mandatory that a Muslim maintain a halal diet. (*Id.* ¶ 14).

The regular DOC diet is not halal as meat is served that is not halal. (*Id.* ¶¶ 15, 16). For a brief period of time a number of years ago the DOC provided halal meals to Muslim prisoners who wanted them. (*Id.* ¶ 16). These meals took the form of pre-packaged meals that contained halal meat if they contained meat. (*Id.* ¶ 17). Before halal meals were provided, the DOC provided pre-packaged kosher meals to Muslim prisoners who were authorized to receive them, as was Mr. Jones. (*Id.* ¶¶ 18, 19).

It was appropriate for Mr. Jones and other Muslim prisoners to receive the kosher meals as the Qur'an provides at *Surah*[3] 5:5 that food of the "people of the Book" or "those who have been given the Book" is lawful for Muslims. (*Id.* ¶¶ 20, 21, see also attachments to Jones Dec.). The terms "people of the Book" or "those who have been given the Book," includes Jews. (Jones Dec. ¶ 20). Therefore, in the absence of meals that are halal, Muslims may eat a kosher diet. (*Id.* ¶ 22). Mr. Jones would certainly have preferred receiving a halal diet that would feature meat slaughtered as required by the Qur'an. (*Id.*). But, he accepted the kosher diet. (*Id.* ¶ 19).

However, both the kosher and halal diets were discontinued by the DOC. (*Id.* ¶ 23, *see also Willis v. Commissioner, Indiana Dept. of Correction*, 753 F. Supp. 2d 768, 773 (S.D. Ind. 2010)). Litigation was brought challenging the discontinuance and in December of 2010, Chief Judge Magnus Stinson of this Court ordered that kosher meals be provided to all prisoners who, for sincerely held religious reasons, request them in writing. (*Willis v. Commissioner, Indiana Dep't*

[3] The Qur'an is divided into chapters, or *surah*. And the *surahs* are divided into verses, or *ayah.* (Jones Dec. ¶ 6).

of Correction, No. 2:09-cv-815 JMS-TAB, ECF No. 114 (Dec. 8, 2010)[4], *see also* Jones Dec. ¶ 23).

Following this decision the DOC reinstated the kosher diets by providing prepackaged lunches and dinners that were designated as kosher. (Jones Dec. ¶ 24). The meals frequently contained kosher meat. (*Id.*). Breakfasts were supplied by providing non-prepackaged meals. (*Id.*). No separate halal option was provided. (*Id.* ¶ 25). Therefore, Mr. Jones reapplied for, and received, a kosher diet. (*Id.*).

After a period of time the DOC determined that it would set up separate kosher kitchens in a number of its facilities. One of the facilities where kosher kitchens were established was the Indiana State Prison. (*Id.* ¶ 26). The kosher kitchen does not serve any meat dishes, instead serving kosher meatless entrees made of textured vegetable protein. (*Id.* ¶ 27).

Although all kosher meals at the Indiana State Prison are now meatless, not all kosher meals throughout the DOC are vegetarian. There are not kosher kitchens in all of the DOC's facilities and in those facilities without kosher kitchens where there are prisoners approved for kosher diets the prisoners continue to receive the pre-packaged meals with kosher meats.

Mr. Jones objects to receiving the vegetarian kosher diet because, as a Muslim, he has a sincere religious belief that he is required to have a meat-based diet. (*Id.* ¶ 30). This does not mean that he has to have meat with every meal. (*Id.* ¶ 31). Instead, it means that meat must be a regular part of his diet and that having a vegetarian diet forced upon him is *haram.* (*Id.*).

The belief that a Muslim is obligated not to avoid meat comes from various sources, including the Qur'an itself. For example, *Surah* 2:168 is translated, by two separate translations, as: "O men! eat the lawful and good things out of what is in the earth," or "O ye people! Eat of

[4] The Court may take judicial notice of its own records. *Gonon v. Allied Interstate, LLC*, 286 F.R.D. 405, 408 n.2 (S.D. Ind. 2012) (citing *In re Salem*, 465 F.3d 767, 771 (7th Cir. 2006)).

what is on earth, Lawful and good." (*Id.* ¶ 33, attachments to Jones Dec.). And *Surah* 6:118 and *Surah* 6:119 is translated, again by two separate translations, as follows:

> Therefore eat of that on which Allah's name has been mentioned if you are believers in His communications."
>
> And what reason have you that you should not eat of that which Allah's name has been mentioned and He has already made plain to you what He has forbidden to you.
>
> or
>
> So eat of (meats) on which Allah.s name hath been pronounced, if ye have faith in His signs.
>
> Why should ye not eat of (meats) on which Allah.s name hath been pronounced, when he Hath explained to you in detail what is forbidden to you.

(Jones Dec. ¶ 34 and attachments to Jones Dec.).

Mr. Jones interprets these *ayah*, as well as other sources, as requiring that he, as a Muslim, observe a diet that does not exclude meat as humans have been commanded to eat meat that is lawful, that is, halal. (Jones Dec. ¶ 35). While not all Muslims share this interpretation, Mr. Jones is aware that he is not alone among Muslims in believing that they have a religious obligation to eat a meat-based diet and that it is religiously improper to eat a vegetarian diet. (*Id.* ¶ 36).[5]

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[5] For example, one author notes:

> In arguing against vegetarianism the Islamic legal scholar Mawil Izzi Dien has gone so far as to assert the following:
>
> > According to Islamic Law there are no grounds upon which one can argue that animals should not be killed for food. The Islamic legal opinion on. (*sic*) this issue is based on clear Qur'anic verses. Muslims are not only prohibited from eating certain food, but also may not choose to prohibit themselves food that is allowed by Islam. Accordingly vegetarianism is not permitted unless on grounds such as unavailability or medical necessity. Vegetarianism is not allowed under the pretext of giving priority to the interest of animals because such decisions are God's prerogative.

Richard C. Foltz, ANIMALS IN ISLAMIC TRADITION AND MUSLIM CULTURES 107 (2006), available at www.archive.org/stream/Book1_galerikitabkuning/booke_djvu.txt (last visited Nov. 29, 2016).

Therefore, Mr. Jones has a religious obligation to eat halal meat, but he is being denied the ability to do so because the DOC is not willing to provide him with a halal diet that is meat based and not vegetarian. (*Id.* ¶ 37). He sincerely believes that he must eat such a diet and its denial imposes a substantial burden on his religious exercise and it is not justified. (*Id.* ¶ 38).

The DOC receives federal financial assistance and is therefore subject to the requirements of RLUIPA. *See, e.g., Willis*, 753 F. Supp. 2d at 776 (noting that the DOC and the plaintiffs agree that the DOC has received federal funding and must comply with the conditions Congress imposed in RLUIPA); *Rowe v. Lemon*, 976 N.E.2d 129, 135 (Ind. Ct. App. 2012) (noting that the DOC receives federal funding).

At the time that he executed his declaration Mr. Jones only had $26 in his institutional account. (Jones Dec. ¶ 40). These are the only monies that he has. (*Id.*).

Argument

I. Mr. Jones will prevail in his argument that imposing a vegetarian diet on him violates RLUIPA

A. An introduction to RLUIPA

Mir Ahmed Ali is quoted as stating:

> [t]he criticism of the slaughter of animals by the opponents of Islam is unreasonable. Animals have been created by the creator to provide food for the human beings. There is life in everything man or animal eats or drinks. Therefore, saving or sparing of life is not possible. This is the law of nature. The very existence of life depends upon the proper consuming of life. Life in the lower stages of creation has been purposely created to be sacrificed to serve the survival of the species in the higher realm.

Islamic-Laws.com, *Eating Etiquettes in Islam*, www.islamic-laws.com/eatinghabbit.htm (last visited Nov. 20, 2016).

And, Allamah Taba Tabai is quoted as writing that "[c]learly, the system of creation, which has overall control on all the creatures, has ordained that man should get nourishment from meats, etc. Then it has guided the previous parts of existences towards it. It is the system, which has created in human beings the ability to get substances from both animals and vegetables." *Id.*

Under RLUIPA:

> [n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution ... even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest

42 U.S.C. § 2000cc-1(a). Religious exercise is defined expansively as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(B)

RLUIPA was "enacted . . . in part, to protect inmates and other institutionalized persons from substantial burdens in freely practicing their religions." *Charles v. Verhagen*, 348 F.3d 601, 606 (7th Cir. 2003). Its predecessor and sister statute, the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, *et seq*.[6], was explicitly enacted "to restore the compelling interest test as set forth in *Sherbert* v. *Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially

[6] RFRA and RLUIPA have substantively identical provisions. However, as originally written RFRA applied to actions of all governmental entities, state as well as federal. *Boerne v. Flores*, 521 U.S. 507, 516 (1997). In *Boerne* the Court held that to the extent that Congress attempted to bind state and local governments in RFRA it was unconstitutional as it was not a valid exercise of Congress' powers under Section 5 of the Fourteenth Amendment to enforce the substantive portions of that amendment. *Id.* at 532-35. However, this holding did not disturb the constitutionality of RFRA when addressed to the United States, as opposed to those acting under color of state law, inasmuch as "legislation affecting the internal operations of the national government does not depend on § 5 [of the Fourteenth Amendment]; it rests securely on Art. I § 8 cl. 18." *O'Bryan v. Bureau of Prisons*, 349 F.3d 399, 401 (7th Cir. 2003) (holding that RFRA applies to Bureau of Prisons). Congress responded to *Flores* by enacting RLUIPA that applies to state and local government and to those acting under color of state law. 42 U.S.C. § 2000cc-5(4). RFRA and RLUIPA are "substantively identical with respect to prisoners' entitlements." *Whitfield v. Illinois Dept. of Corrections*, 237 Fed. Appx. 93, *1 (7th Cir. 2007). "RLUIPA thus allows prisoners 'to seek religious accommodations pursuant to the same standard as set forth in RFRA.'" *Holt v. Hobbs*, --U.S.--, 135 S.Ct. 853, 860 (2015) (quoting *Gonzales v. O'Centro Espirita Beneficente Unio do Vegetal*, 546 U.S. 418, 436 (2006)).

burdened." 42 U.S.C. § 2000bb(b)(1). RFRA and RLUIPA reflect Congress's concern about the United States Supreme Court's holdings in *Employment Division v. Smith*, 494 U.S. 872 (1990), and *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987), both of which, in Congress' estimation, weakened traditional First Amendment protections. S. Rep. 103-11, 1993 U.S.C.C.A.N 1892, 1895-1901.

RLUIPA, like RFRA, therefore provides for an "expansive protection for religious liberty" for prisoners, among others. *Holt v. Hobbs*, --U.S.--, 135 S.Ct. 853, 860 (2015). Under the statute the plaintiff has the burden of persuasion of showing that a challenged practice creates a substantial burden on religious exercise, at which point the burden of persuasion shifts to the government to prove that the burden is necessitated by a compelling governmental interest and that the restriction is the least restrictive means to meet that interest. 42 U.S.C. § 2000cc-2(b).

The Supreme Court has stressed that:

> Several provisions of RLUIPA underscore its expansive protection for religious liberty. Congress defined "religious exercise" capaciously to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." § 2000cc–5(7)(A). Congress mandated that this concept "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." § 2000cc–3(g). And Congress stated that RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." § 2000cc–3(c).

Holt, 135 S. Ct. at 860.

B. Denying a meat-based halal diet to Mr. Jones substantially burdens his religious exercise motivated by a sincere religious belief

As noted, "RLUIPA protects 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief,' § 2000cc-5(7)(A), but, of course, a prisoner's request for an accommodation must be sincerely based on a religious belief and not some other motivation." *Id.* at 862 (citing *Burwell v. Hobby Lobby Stores, Inc.*, --U.S--, 134 S.Ct. 2751, 2774 n.28 (2014)). The DOC acknowledges that Mr. Jones is Muslim and it cannot be disputed that the requirement

to maintain a halal diet is a fundamental precept in Islam. *See., e.g., Perrilla v. Fischer*, No. 13-CV-0398M, 2013 WL 5798557, at *4 n.4 (W.D.N.Y. Oct. 28, 2013).[7] Mr. Jones is sincere and his desire to have a halal diet is motivated by a religious purpose.

Of course, Mr. Jones's interpretation of halal is not that he should eat only foods that are not prohibited, but that he must not be denied the ability to have a meat-based diet. As noted above, this interpretation of what a halal diet requires is not an insincere interpretation of Islamic law particular only to Mr. Jones. Instead it is based on the text of the Qur'an as well as other sources and his interpretation is shared by others (*see supra* at 6-7 and n.5). Courts have recognized that some Muslims may have this same belief. For example, in *Lewis v. Ryan*, No. 04cv2468 JLS(NLS), 2008 WL 1944112 (S.D. Calif. May 1, 2008), the court, in denying defendant prison officials' motion for summary judgment in a case where a Muslim prisoner sought a non-vegetarian diet, noted that the plaintiff prisoner claimed that:

> his religion does not subscribe to vegetarianism, which is the religious option offered at [the prison]. . . . In support of these assertions, Plaintiff references pertinent portions of the scripture contained in the Holy Quaran, which states in pertinent part, "[s]o eat meats on which Allah's name has been pronounced" and "[h]e who does not eat meat is not of my religion."

Id., 2008 WL 194412, at *19. In *Shabazz v. Giurbino*, No. 1:11-cv-01558-LJO-SAB(PC), 2014

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[7] The court in *Perilla* noted:

> As summarized by one district court the Muslim Halal dietary requirement is as follows: "[T]he Koran dictates that practicing Muslims eat food that is Halal, which means allowed or lawful. The opposite of Halal is Haram, which means prohibited or unlawful. A Halal diet includes fruits, vegetables and all things from the sea. The flesh of herbivorous animals, such as cows, lambs, chickens and turkeys, is Halal if it is slaughtered with the appropriate prayer and in the appropriate manner. Certain items are Haram and cannot be made Halal through ritual slaughter. Examples of such Haram items include pork and all pork by-products, carrion and the flesh of carnivorous animals, such as cat, dog, rat, lion, tiger, and eagle. Intoxicants of all types are also Haram. Halal does not require separate preparation and serving facilities after Halal meat is slaughtered according to ritual."

Perrilla, 2013 WL 5798557, at *4 (internal citations omitted).

WL 4344368 (E.D. Calif. Aug. 8, 2014), *report and recommendation adopted*, 2014 WL 5092914 (E.D. Calif. Oct. 9, 2014), the Magistrate Judge, in denying a motion to dismiss directed at a prisoner's claims that being served vegetarian meals at lunch and dinner violated, among other things, RLUIPA, noted that the plaintiff had alleged in his complaint that:

> by forcing Muslim inmates, such as himself, to eat two vegetarian meals and one Halal meal a day is a "deliberate indifference" to the tenants of Al-Islam, a deliberate violation of Qur'anic Injunction, Mandates of the Qur'an to every Muslim to follow the sunna (i.e. practices, teachings and doings of Prophet Muhammad (peace and blessing be upon him) who said in the Authentic Hadith (i.e. verified recorded practices of the Prophet Muhammad (peace and blessing upon him): "I eat meat, whoever does not eat meat is not of my Ummah (i.e. Muslim Community)."

Id., 2014 WL 4344368, at *4 (additional quotation marks omitted).

In *Caruso v. Zenon*, No., 95-MK-1578 (BNB), 2005 WL 5957978 (D. Col. July 25, 2005), the plaintiff prisoner argued that Islam required that he be provided with a meal that regularly included halal red meat and the prison authorities countered that such a diet is not mandatory under Islam. The court noted that this argument misses the point given that under RLUIPA "[t]he term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(&)(A); *Caruso*, 2005 WL 5957978, at *11. Therefore, the plaintiff's desire to consume halal meat:

> is an act protected under RLUIPA regardless of whether it is a mandatory or optional practice of Islam. On this point, both Islamic experts agree; under Islam, the act of eating any *halal* food, including red meat, is considered an act of thanks and worship. Moreover, it is clear from his testimony that [plaintiff] intends it as such. Because consuming *halal* red meat (or fish, or strawberries, on other *halal* food God has provided) is one way in which Muslims may exercise their religious beliefs, the court finds that [plaintiff's] desire to regularly consume *halal* red meat is a form of religious exercise protected under RLUIPA.

Id., 2005 WL 5957978, *11.

Of course, "in addition to showing that the relevant exercise is grounded in a sincerely held

religious belief, [plaintiff] also [bears] the burden of proving that the DOC's refusal to allow him a non-vegetarian halal diet "substantially burdened that exercise of religion." *Holt*, 135 S.Ct. at 862. Religious exercise is "substantially burdened" under RLUIPA:

> when a government (1) requires participation in an activity prohibited by a sincerely held religious belief, or (2) prevents participation in conduct motivated by a sincerely held religious belief, or (3) places substantial pressure on an adherent either not to engage in conduct motivated by a sincerely held religious belief or to engage in conduct contrary to a sincerely held religious belief, such as where the government presents the plaintiff with a Hobson's choice – an illusory choice where the only realistically possible course of action trenches on an adherent's sincerely held religious belief.

Adhulhaseeb v. Calbone, 600 F.3d 1301, 1315 (10th Cir. 2010). In *Holt*, where the challenged policy prohibited the prisoner from growing what he considered to be a religiously-mandated beard, the Court noted that the correctional policy that required him to shave any facial hair was clearly a substantial burden under RLUIPA as it required him "to 'engage in conduct that seriously violates [his] religious beliefs.'" *Holt*, 135 S.Ct. at 862 (quoting *Hobby Lobby*, 134 S.Ct. at 2775) (addition by the Court). The Seventh Circuit has noted that a substantial burden is created when a prison policy makes the religious exercise "effectively impracticable." *Koger v. Bryan*, 523 F.3d 789, 799 (7th Cir. 2008) (quoting *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003)).

As did the plaintiff in *Holt*, Mr. Jones "easily satisfie[s] th[e] obligation" of demonstrating a substantial burden. *Holt*, 135 S.Ct. at 862. After all, he has a sincere religious belief that he must eat a halal diet and his belief is that such a diet must include halal meat and he is being denied such a diet. As the Tenth Circuit noted in denying the state's summary judgment motion where the plaintiff Muslim prisoner sought a meat-based halal diet, the prison authorities' action denying such a diet "either prevents [plaintiff's] religious exercise, or, at the least, places substantial pressure on [plaintiff] not to engage in his religious exercise by presenting him with a Hobson's

choice – either he eats a non-halal diet in violation of his sincerely held beliefs, or he does not eat." *Abdulhaseeb*, 600 F.3d at 1316. The DOC is clearly preventing Mr. Jones's religious exercise of eating a halal diet that must include meat.

C. The DOC will not be able to sustain its burden to demonstrate that denying Mr. Jones a meat-based halal diet furthers a compelling governmental interest and is the least restrictive means to achieve that interest

Given that forcing Mr. Jones to become a vegetarian, in contravention of his sincere religious beliefs, is a substantial burden on those beliefs, Mr. Jones will prevail on this case unless the DOC carries its burden of demonstrating both that this substantial burden furthers a compelling governmental interest and that it is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1(b). The DOC will not be able to establish either.

In analyzing whether the DOC will be able to satisfy the compelling governmental interest standard the parameters of the analysis must be established. Although courts must give "'due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources,'" the deference is not unlimited. *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005) (quoting S. Rep. No. 103-111, 1993 U.S. Code Cong. & Admin. News 1892, 1899, 1900). Therefore, "inadequately formulated prison regulations and policies grounded on mere speculation, exaggerated fears, or post-hoc rationalization will not suffice to meet the act's requirements." S. Rep. No. 103-11, 1993 U.S. Code Cong. & Admin. News at 1900. (referring to RFRA). As the Supreme Court recently noted in *Holt*, "[p]rison officials are experts in running prisons and evaluating the likely effects of altering prison rules, and courts should respect that expertise. But that respect does not justify the abdication of the responsibility, conferred by Congress, to apply RLUIPA's rigorous standard." *Holt*, 135 S.Ct. at 864. And, the

Court stressed in *Holt* that RLUIPA "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person' – the particular claimant whose sincere exercise of religion is being substantially burdened." 135 S.Ct. at 863 (internal quotation marks and citations omitted).

Therefore, what is the compelling governmental interest justifying the denial of a meat-based halal diet to Mr. Jones specifically? At this point, before the DOC has even answered the complaint in this case, the precise justification for the DOC's position has not yet been articulated. However, in *Willis*, where this Court found that the denial of kosher diets violated RLUIPA, the DOC argued that the greater cost of kosher, as opposed to regular, diets, was a compelling interest justifying their denial. It is anticipated that a similar argument will be made here. The Court in *Willis* noted that "accommodating a religious practice will generally be more expensive than a failure to accommodate; as such, RLUIPA specifically contemplates that the law 'may require a government to incur expenses in its own operations to avoid imposing a substantial burden.'" 753 F. Supp. 2d at 778 (quoting 42 U.S.C. § 2000cc-3(c)). Therefore, "cost alone is not enough." *Id.* Indeed, in *Koger v. Bryan* the court concluded that the prisoner had the right to a non-meat religious diet and noted that "orderly administration of a prison dietary system, and the accommodations made thereunder, are legitimate concerns of prison officials . . . The problem for the prison officials, however, is that no appellate court has ever found these to be compelling interests." 523 F.3d at 800 (footnote omitted). The minimal cost and administrative burden of providing Mr. Jones with diet conforming to his sincere religious belief as to what is halal – requiring meat – will be negligible. This is particularly true inasmuch as the evidence will show that certain prisoners in the DOC continue to receive the pre-packaged kosher diets with kosher meat. Providing Mr. Jones with similar pre-packaged meals containing halal meat will be

minimally burdensome and its denial is not justified by any compelling governmental interest.

Even if a substantial governmental interest could be demonstrated, the DOC would still have to demonstrate that the total denial of halal is the least restrictive means of addressing this interest. This is an "'exceptionally demanding'" standard, "and it requires the government to "'sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].'" *Holt*, 135 S.Ct. at 864 (internal citations omitted) (Court's alteration). "[T]he Supreme Court's directive in *Holt* [means] that this Court must not simply assume that a plausible, less restrictive alternative would be ineffective." *Lindh v. Warden Federal Correctional Institution, Terre Haute, Indiana*, No . 2:14-cv-00142-JMS-DKL, 2016 WL 4528478, *12 (S.D. Ind. Aug. 30, 2016). Given the minimal cost and inconvenience of providing Mr. Jones with a meat-based halal diet, and given the fact that at least some prisoners continue to receive pre-packaged kosher meals containing meat, there appear to be ample lesser alternatives that the DOC can pursue other than complete denial of the meat-based halal diet.

II. The other requirements for the grant of a preliminary injunction will be met here

A. Mr. Jones is being caused irreparable harm for which there is no adequate remedy at law

Mr. Jones is not being able to comply with a fundamentally important part of his religious belief – the need to comply with the Islamic requirement that he eat a meat-based diet. In *Christian Legal Society v. Walker*, 453 F.3d 853 (7th Cir. 2006), the court noted that "violations of First Amendment rights are presumed to constitute irreparable injuries." *Id.* at 867 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The court stated further that "[t]he loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate." *Id.* at 859. Here, the violation is of RLUIPA, not the First Amendment. However, as

courts have noted, "although the plaintiff's free exercise claim is statutory rather than constitutional, the denial of the plaintiff's right to the free exercise of religious beliefs is a harm that cannot be adequately compensated monetarily." *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (referring to RFRA). *See also Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (same, citing *Jolly*). And, "[c]ourts have persuasively found that irreparable harm accompanies a substantial burden on an individual's rights to the free exercise of religion under RFRA." *Jolly*, 76 F.3d at 482 (citations omitted). *See also, e.g., Harris v. Wall*, No. CV 16-080 S--F. Supp. 3d--, 2016 WL 6820369, at *13 (D. R.I. Nov. 18, 2016)) ("[T]he loss of religious freedom caused by a RLUIPA violation – standing alone – is sufficient to show irreparable harm."). Therefore, the denial of Mr. Jones's rights under RLUIPA represents irreparable harm for which there is no adequate remedy at law.

B. The balance of harms favors the grant of a preliminary injunction

Given that Mr. Jones has established that he is likely to succeed on the merits of his claim, "no substantial harm to others can be said to inhere in its enjoinment." *Déjà vu of Nashville, Inc., v. Metro Gov't of Nashville*, 274 F.3d 377, 400 (6th Cir. 2001) (referring to a demonstration that a law violates the First Amendment). Instead, an injunction will only force the DOC to conform its conduct to what is required by RLUIPA to protect the religious rights of Mr. Jones. In *Christian Legal Soc'y*, the court stressed that a governmental entity cannot claim that requiring it to comply with the First Amendment to the United States Constitution is harmful or burdensome. *See Christian Legal Soc'y*, 453 F.3d at 867 (holding that if a governmental entity "is applying [a] policy in a manner that violates [the plaintiff's] First Amendment rights . . . then [the] claimed harm is no harm at all"). The same is true here concerning compliance with RLUIPA, the statute modeled on the one that Congress passed to preserve what it perceived as a weakening of First

Amendment rights by Supreme Court decisions. *Holt*, 135 S.Ct. at 859-60. The balance of harms favors the issuance of the preliminary injunction.

C. The public interest favors the grant of the preliminary injunction

In *Christian Legal Society* the Seventh Circuit noted that "injunctions protecting First Amendment freedoms are always in the public interest." 453 F.3d at 859. "This principle applies equally to injunctions protecting RLUIPA rights because . . . RLUIPA enforces First Amendment rights and must be construed broadly." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 298 (5th Cir. 2012). The public interest favors the grant of the preliminary injunction here.

D. The preliminary injunction should issue without bond

Mr. Jones is an indigent prisoner who cannot afford to post bond. In this situation courts will waive the requirements that a bond be posted to obtain a preliminary injunction. *See, e.g., V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1123 (N.D. Calif. 2009) ("a district court may waive the bond requirements where the plaintiffs are indigent.").

Moreover, providing Mr. Jones – one DOC prisoner – with a meat-based halal diet will hardly be financially burdensome to the DOC. In the absence of monetary injuries no bond should be required. *See, e.g., Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996).

Conclusion

Accordingly, a preliminary injunction should be granted to Mr. Jones, without bond, requiring the DOC to provide him with diet conforming to his belief in halal dietary requirements – a diet containing meat.

s/ Kenneth J. Falk
Kenneth J. Falk
No. 6777-49

s/ Jan P. Mensz
Jan P. Mensz
No. 33798-49
ACLU of Indiana
1031 E. Washington St
Indianapolis, IN 46202
317/635-4059
fax: 317/635-4105
kfalk@aclu-in.org
jmensz@aclu-in.org

Attorneys for Plaintiff

Certificate of Service

I hereby certify that on this 30th day of November, 2016, a copy of the foregoing was filed electronically with the Clerk of this Court. A copy will be served by the Court's system on:

David A. Arthur
Deputy Attorney General
David.Arthur@atg.in.gov

s/ Kenneth J. Falk
Kenneth J. Falk
Attorney at Law