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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HENRY PEREZ,

Plaintiff,

-against-

WESTCHESTER COUNTY DEPARTMENT OF
CORRECTIONS, as a County Agency,
COMMISSIONER ROCCO POZZI,
Individually and as Commissioner, WARDEN
ANTHONY AMICUCCI, Individually and as
the Senior Administrator, CAPTAIN ORLANDO,
Individually and as the Facility Grievance Coordinator

Defendants.
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And Related Cases: CARMELO GONZALES	05 CV 8255 (RMB)
JULIO ROSA	05 CV 8256 (RMB)
SHEDRET WHITEHEAD	05 CV 9226 (RMB)
TUERE BARNES	05 CV 10462 (RMB)
ANGEL TORRES	06 CV 0944 (RMB)
RICHARD SIMPSON	06 CV 1717 (RMB)
KHALID BARNES	06 CV 30609 (RMB)
ANUEDY VICENTE	05 CV 10463 (RMB)

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorney of record for Carmelo Gonzales, Julio Rosa, Shedret Whitehead, Tuere Barnes, Anuedy Vicente, Kenneth Wilson, Angel Torres, Richard Simpson, and Khalid Barnes (collectively, the "Plaintiffs") and attorneys of record for Westchester County Department of Corrections, as a County Agency, Commissioner Rocco Pozzi, Individually and as Commissioner, Warden Anthony Amicucci, Individually and as the Senior Administrator, Captain Orlando, Individually and as the Facility Grievance Coordinator (collectively referred to as "County Defendants"), that:

ORDER OF
SETTLEMENT, RELEASE AND
STIPULATION OF
DISCONTINUANCE

WHEREAS, Plaintiffs each filed a Summons and Complaint commencing the above-captioned proceedings in the United States District Court, Southern District of New York Pro Se Office between August 11, 2005 and April 21, 2006 seeking monetary and injunctive relief against the County Defendants based on alleged violations of each of their First, Eighth and Fourteenth Amendment constitutional rights, and pursuant to 42 U.S.C. Section 1983, the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. Section 2000bb, et. seq., and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. Section 2000cc, et. seq., based on the County Defendants’ alleged failure to serve Muslim inmates, who requested to be served Halal diets or Kosher diets in compliance with their religious dietary restrictions, as they self-designated themselves as practicing Muslims upon intake into the Westchester County Department of Correction or thereafter, by completing the required form in compliance with the facility’s Rule V5 and Section 7024.6 of New York State Commission of Corrections Minimum Standards (“NYSCOC Min. Standards”) copies of which are annexed hereto as Exhibit A; and

WHEREAS, Richard Cohen, Esq. was originally retained pro bono by each of the Plaintiffs to represent them herein while Mr. Cohen was a member of the law firm Akabas & Cohen; and

WHEREAS, Mr. Cohen subsequently joined the firm of Fox Rothschild LLP and, thereafter, each of the Plaintiffs retained Fox Rothschild LLP as substitute pro bono counsel; and

WHEREAS, *prior to the commencement of each of the Plaintiffs’ lawsuits*, Halal meat was served two (2) times per year at the Westchester County Department of Correction on certain religious occasions to Muslim inmates who had (i) requested to receive a religious diet via the Department’s policies and procedures, and (ii) filled out the proper form designating himself a practicing Muslim in compliance with Departmental policies and procedures including Westchester County Department of

Correction's Rule V5 and Section 7024.6 of NYSCOC Min. Standards, as written at the time the first lawsuit was filed herein; and

WHEREAS, on October 11, 2005, the Perez case was designated a Prison Litigation Reform Act Section 7(2)(g)(2) "PLRA" case by the Clerk of this Court; and

WHEREAS, on November 29, 2005, the following cases were consolidated for purposes of hearing any prospective motions to dismiss, pursuant to FRCP 12(b)(6) by the Honorable Judge Berman: Henry Perez v. Westchester County Department of Corrections, et al. 05 cv 8120(RMB), Carmelo Gonzales v. Westchester County Department of Corrections, et al.; 05 cv 8255 (RMB), Julio Rosa v. Westchester County Department of Corrections, et al.; 05 cv 8256(RMB), and Shedret Whitehead v. Westchester County Department of Corrections, et al.;05 cv 9226(RMB); and

WHEREAS, on January 4, 2006, the County Defendants renewed their request for a pre-motion conference on the actions, pursuant to Rule 2.A. of Judge Berman's Rules, to obtain permission to file a motion to dismiss against Plaintiffs for failure to state a cause of action pursuant to FRCP 12(b)(6);

WHEREAS, a status conference was held on April 3, 2006 at which the Court set deadlines for the parties to file dispositive motions; and

WHEREAS, on or about September 15, 2006, the County Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; on or about November 17, 2006, Plaintiffs filed Opposition to the County Defendants' Motion to Dismiss and a Cross-Motion for a Preliminary Injunction against the County Defendants; on December 7, 2006, County Defendants filed their Reply to Plaintiff's Opposition to the County Defendant's Motion to Dismiss and Opposition to Plaintiffs' Motion for a Preliminary Injunction; on December 18, 2006, Plaintiffs filed

its Reply to County Defendants' Opposition to Plaintiff's Cross-Motion for a Preliminary Injunction;
and

WHEREAS, on March 7, 2007, the Court deemed the motion to dismiss filed by County Defendants on or about September 14, 2006 to apply to claims made by pro se plaintiffs Morgan, Massa, and Pack. As such, County Defendants served the Court's Order and a complete set of the motion papers on Pro Se Plaintiffs Morgan, Massa, and Pack prior to March 20, 2007. Plaintiffs Morgan, Massa, and Pack were directed to advise the Court in writing no later than April 9, 2007 whether they wished to join in the response and cross-motion submitted on behalf of the Plaintiffs represented by Richard Cohen, Esq., or whether they wished to file their own response(s) to the motion. Pro Se Plaintiffs did not join Mr. Cohen's response.; and

WHEREAS, on April 30, 2007, the Court entered an Order:(i) granting the County Defendants' Motion to Dismiss as to the Plaintiffs' causes of action based on alleged violations of the First and Eighth Amendments of the Constitution, (ii) denying the County Defendants' Motion to Dismiss as to the Plaintiffs' causes of action based on alleged violations of the Fourteenth Amendment of the Constitution, (iii) denying Plaintiffs' Cross-Motion for a Preliminary Injunction, without prejudice, and (iv) directing the parties to appear at a status conference before the Court on May 9, 2007 and to "engage in good faith settlement negotiations prior to the conference with the Court"; and

WHEREAS, the status conference set for May 9, 2007 was adjourned to May 15, 2007 at the Plaintiffs' request; and

WHEREAS, on June 5, 2007, at the direction of the Court, the County Defendants' filed their Answer; and

WHEREAS, conferences were held before this Court on June 20 and 30, 2007, respectively, at which the Court scheduled the fact and expert discovery deadlines herein through and including September 28, 2007, and scheduled trial to occur on October 29, 2007; and

WHEREAS, thereafter, the parties attempted to engage in settlement negotiations and therefore did not engage in formal discovery or take any depositions in contemplation of a potential resolution of these matters at that time; and

WHEREAS, in September 2007, after investigating the availability and possibility of procuring Halal meat for Muslim inmates with the same frequency as Jewish inmates are served Kosher meat, and in contemplation of settling the above-captioned lawsuits, the County Defendants began serving four times or four meals per week Halal meat patties to Muslim inmates who (i) requested religious diets in accordance with Departmental policies and procedures pertaining to all religious diets including completing the proper form required by Westchester County Department of Correction's Rule V5 and Section 7024.6 of NYSCOC Min. Standards, as those rules were written prior to the commencement of the first lawsuit filed herein. This represents the same frequency that Kosher meat is currently served to Jewish inmates who presumably (i) requested religious diets in accordance with Departmental policies and procedures pertaining to all religious diets including completing the proper form required by Westchester County Department of Correction's Rule V5 and Section 7024.6 of NYSCOC Min. Standards; and

WHEREAS, by letter dated September 28, 2007, Plaintiffs' counsel made a joint request on behalf of the parties for an extension of the currently pending motion deadlines to allow the parties to continue to pursue good-faith settlement negotiations; and

WHEREAS, at the Court's directions Plaintiffs' counsel advised all Plaintiffs in the above-captioned lawsuits in writing of the general provisions of this settlement agreement and directed each

Plaintiff that objections if any, to the proposed settlement agreement must be received in writing no later than October 22, 2007; and

WHEREAS, no such written objections were received; and

WHEREAS, the settlement conference scheduled to occur on December 10, 2007 was adjourned by the Court to January 31, 2008; and upon the occurrence of the adjourned status conference, the Court directed that (i) any proposed settlement papers must be filed with the Court by no later than March 5, 2008, (ii) any motion by Plaintiffs for payment of their attorneys' fees and reimbursement of expenses, must be filed with the Court by no later March 17, 2008; (iii) any response papers must be filed with the Court by no later than March 31, 2008; and (iv) any reply papers must be filed with the Court by April 7, 2008; and

WHEREAS, upon request of the parties the deadline to submit any proposed settlement papers to the Court has been adjourned to March 11, 2008 and the parties have been directed to appear in Court on March 11, 2008; and

WHEREAS, the parties wish to resolve the above-captioned lawsuits without further litigation; and

WHEREAS, no party hereto is an infant, incompetent person for whom a committee has been appointed or conservatee;

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED, that the above-captioned lawsuits be and they hereby are settled and discontinued, with prejudice, as against the County Defendants, as follows:

1. For purposes of this Stipulation, the term "Halal" shall be defined as any food in compliance with the Holy Quran and as further defined by caselaw and other periodicals and as detailed in the report annexed hereto as Exhibit B, originally submitted by Imam John Nashid to

Sergeant Tom Shumansky, dated August 19, 2006. In the event it becomes necessary for purposes of determining compliance with the terms of this Stipulation, any duly-ordained and practicing Imam may be consulted by either party to determine whether or not certain food is or is not Halal.

2. County Defendants shall continue to serve all present and future Muslim inmates of the Westchester County Jail who (i) request a Halal Diet in accordance with the Department's policies and procedures pertaining to all religious diets at the time of application including completing the proper form required by Westchester County Department of Correction's Rule V5 and Section 7024.6 of NYSCOC Min. Standards, with Halal meat patties or other Halal meat products with the same frequency as Kosher meat is served to individuals who have been cleared by the same Departmental policies and procedures to receive a Kosher diet (this diet shall be referred to herein as the "Halal Diet").

3. As outlined above, any Muslim inmate who wishes to receive a Halal Diet must request the diet in accordance with the Department's policies and procedures pertaining to all religious diets at the time of application including completing the appropriate form in accordance with Westchester County Department of Correction's Rule V5 and Section 7024.6 of NYSCOC Min. Standards. Once such a request is made, the requesting inmate will receive meals containing Halal meat with the same frequency as Jewish inmates who have requested a Kosher diet, and who has met the above requirements.

4. Any and all present or future Muslim inmates who follow the guidelines outlined in paragraph numbers 1 and 2 above to receive a Halal Diet, and any other Departmental policies pertaining to religious diets that may exist at the time of application shall receive the same food trays as general population with the exception of the main entrée which will be replaced on certain days with

one Halal meat patty which replacement shall be made with the same frequency as Kosher meat is served to individuals who have been cleared to receive a Kosher diet.

5. Any and all Muslim inmates who have complied with the guidelines outlined in paragraphs numbers 1 and 2 above to receive the Halal Diet shall not receive any meals containing non-Halal meat unless that inmate requests to be removed from the Halal Diet.

6. Any and all Muslim inmates may opt out of receiving the Halal Diet at any time as long as the inmate follows the appropriate avenues to do so as required by the Westchester County Department of Corrections rules and regulations pertaining to religious diets. No Muslim inmate will be punished for doing so.

7. Any and all Muslim inmates who opt out of receiving the Halal Diet shall be able to opt back in so long as he or she complies with the Department's policies and procedures pertaining to religious diets at the time of application which may include (i) again requesting the Halal diet, and (ii) completing the form required by Westchester County Department of Correction's Rule V5 and Section 7024.6 of NYSCOC Min. Standards.

8. Any and all present or future Muslim inmates must be supplied with the forms required by Westchester County Department of Correction's Rule V5 and Section 7024.6 of NYSCOC Min. Standards upon request. Forms shall not be withheld as a disciplinary measure.

9. At no time may the County Defendants withhold the Halal Diet from any Muslim inmate who has complied with the guidelines outlined in paragraphs numbers 1 and 2 above, as a disciplinary or other measure.

10. Any Muslim inmate who has a complaint as to the diet he is receiving from County Defendants or any alleged retaliatory or punitive actions taken against him in connection with the Halal Diet shall have full and complete access to the facility's grievance program. Under no

circumstances will any inmate be prohibited from filing a grievance. In the event a grievance is filed, the County Defendants shall be prohibited from taking any retaliatory or punitive action against any alleged aggrieved inmate.

11. Nothing herein constitutes an admission of liability by the County Defendants regarding any alleged violation of any federal, state or local law or any duty whatsoever, whether based in statute, common law, or otherwise, and the County Defendants expressly deny that any such violation has occurred.

12. Both parties forever waive, release, and discharge the other from any and all liability that either party may have had or has against the other as of the date of each Plaintiff's respective Complaints but limited to the issues related to this action, , including, but not limited to, liability arising under any federal, state and local law or regulation, including, but not limited to, any claims for injunctive and equitable relief, punitive and compensatory and liquidated relief, except that as agreed to by the parties at a status conference before Judge Richard Berman on January 31, 2008, (i) Plaintiffs expressly reserve the right to move this Court, pursuant to any state or federal statute or common law for payment of their respective attorneys fees and reimbursement of costs and expenses, (ii) Plaintiffs shall be permitted to file the appropriate motion for attorney's fees and costs with this Court as Plaintiffs deem fit and; (iii) County Defendants shall have an opportunity to oppose any such motion for attorney's fees and reimbursement of costs and expenses.

13. Nothing herein shall prevent any of the Plaintiffs from filing similar claims to those alleged in the Complaint against the County Defendants in the event the County Defendants fail to comply with the terms of this Stipulation. In the event that Plaintiffs file claims similar to the claims in

the instant Complaints they are permitted to request referral of those claims to Judge Richard Berman.

(The Court retains discretion to accept any such case(s) as related. RMB

14. The parties have agreed that this settlement agreement is not a consent decree.

15. This stipulation may be filed without further notice with the Clerk of the Court.
16. Upon the Court's approval and entry of this Stipulation and Order, the above-captioned lawsuits shall be dismissed.

17. The parties have agreed that this agreement can be signed in counterparts,

18. The parties have agreed that facsimile copies of signatures are acceptable.

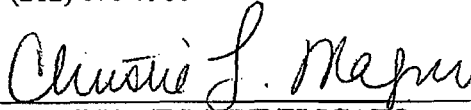
19. The clerk is requested to close this case (05 Civ 8120) RMB
and all related cases.

Dated: March 12, 2008
New York, New York



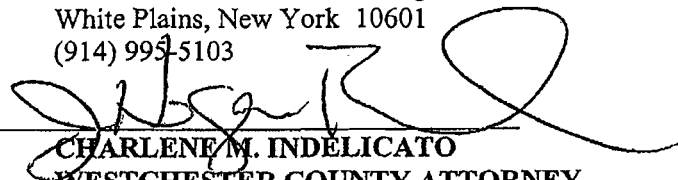
FOX ROTHSCHILD LLP
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Dated: March 12, 2008
White Plains, New York



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Dated: March 12, 2008
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SO ORDERED:

RMB

RICHARD M. BERMAN U.S.D.J.

3/12/08

EXHIBIT A

III. VISITING

1. Visiting days are Wednesday thru Sunday from 8:30 a.m. to 12:00 Noon, from 1:00 p.m. to 2:30 p.m., from 3:30 p.m. to 5:30 p.m., and from 6:30 p.m. to 9:30 p.m. All visits are subject to alphabetical schedule posted throughout the institution.
2. Each inmate will be permitted no more than (2) adult visitors at any one time. Each inmate is allowed two (2) visits per week.
3. Children under eighteen (18) must be accompanied by an adult or must have written consent of a parent or guardian to visit the jail facility.
4. Inmates will be searched prior to and subsequent to, each visit. Refusal to submit to search for any reason may result in loss of visiting privileges.
5. The inmate will be responsible for the orderly conduct of his visitors, as well as, his own behavior. Failure to comply with this rule may result in loss of visiting privileges.
6. Inmates will wear provided jumpsuits for visits or will not be allowed visiting privileges.

IV. MAIL

1. Mail call will be daily except Sundays and Holidays. Inmates are entitled to correspond with persons of their choice. No restrictions will be placed on the number of letters sent or received.
2. Outgoing mail will be sealed by the inmate and given to the Block Officer for disbursement.
3. Outgoing mail will bear the sender's name and institutional address in the upper left-hand corner of the envelope.
4. Incoming mail will be opened, inspected for contraband, and given to the recipient inmate.
5. Legal and privileged mail will be opened and inspected in the inmate's presence.

V. RELIGION

1. Inmates will be allowed to congregate for purpose of observing such religious activities as religious holidays, etc. with prior approval. Requests will be made in writing, through the Department Chaplain.
2. Inmates will advise the Department staff of their religious preference at booking.
3. Inmates will be allowed to wear and possess (1) religious medal or other religious item, no dimension of non-apparel items being more than 1 1/2 inches.
4. Inmates may change their religious affiliation upon written request to the appropriate religious authority.
5. Dietary laws/requirements will be observed where possible.

VI. PACKAGES

1. Each inmate will be permitted **ONE CLOTHING PACKAGE EVERY 3 MONTHS.**
2. Those items permissible are listed on the package lists posted throughout the institution.
3. No food items will be accepted.
4. All items received will be subject to physical, electronic and fluoroscope search.
5. No alcoholic beverages, or items the possession of which constitutes an offense under applicable Federal, State or Local Laws, or any article which is readily capable of constituting a threat to the safety or security of the facility will be permitted.
6. Any person who tries to introduce contraband into the institution **WILL BE PROSECUTED.**

VII. MISCELLANEOUS

1. Inmate recreation is conducted daily and is scheduled by blocks in the old building. Each block will, by policy, be afforded at least one hour of recreation per day. Recreation decks in the new building are opened from 9:00 a.m. to 9:30 p.m.
2. Educational Programs and Boot Camp for minors are mandatory, refusal will result in disciplinary action, including loss of good time. Interested adult inmates should apply for school, in writing, to the Educational Coordinator.
3. The Jail Law Library is open daily for legal reference material including, New York State Commission of Correction Minimum Standards. Application for its use should be made through your Block Officer.
4. Television is available in dayrooms.
5. Grievance Procedure forms are available from Correction Staff. Additionally, forms and instructions for grievance procedures to the State Commission of Correction are available in the Law Library.

religious activities. This area shall be made available to prisoners in accordance with the tenets of their religion, at times not unduly disruptive of facility routine.

7024.3 Religious advisors. (a) As used in this Part, the term religious advisor shall mean a person other than a prisoner whose ecclesiastical credentials have been approved by the chief administrative officer.

(b) Religious advisors shall be permitted to conduct congregate religious activities at least once per week at a time approved by the chief administrative officer. When no religious advisor is available, the chief administrative officer may permit a member of a prisoner religious group to conduct legitimate religious activities.

(c) Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be permitted confidential consultation with their religious advisors at times not unduly disruptive of facility routine.

7024.4 Celebration of religious holidays or festivals. Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be permitted to celebrate religious holidays or festivals on an individual or congregate basis.

7024.5 Supervision of prisoners exercising their religious beliefs. Each facility shall maintain supervision sufficient to ensure that the exercise of religious beliefs by prisoners does not constitute a threat to the safety, security or good order of a correctional facility, or the health of any individual.

7024.6 Religious dietary laws. Prisoners are entitled to observe reasonable dietary laws established by their religion. Each facility shall provide prisoners with food items sufficient to meet such reasonable religious dietary laws.

7024.7 Change of religion. A prisoner shall be permitted to change his religious affiliation upon application to the appropriate religious authority. The prisoner and the appropriate religious authority shall notify the chief administrative officer of such change.

7024.8 Religious articles. Consistent with the requirements of section 7024.1(b) of this Part, prisoners shall be entitled to wear and possess religious medals or other religious articles.

7024.9 Exercise of religious beliefs by prisoners in

EXHIBIT B

DATE: AUGUST 19, 2005

TO: Sgt. Tom Shumansky

FROM: Imam John Nashid

RE: "Muslim Diet Tray" / Inmate Shanduke McPhatter 2K #19.

In your statement dated 8/18/05, in reference to inmate McPhatter, not Eating because he did not receive HALAL FOOD. (Dietary laws and slaughter process attached). You indicated that C.O. Haves indicated to you that "The diet tray was prepared by Muslim Inmates and did meet minimum requirement as per nutrition and as per Muslim doctrine." As for nutrition this may be so, but as for meeting the minimum requirements, as per Muslim Doctrine, his statement is far from the truth, and any question referring to Muslim Doctrine should have been referred to myself.

The "Muslim Tray" which is not "Halal" is based on the fact that Halal is not provided in this facility at this time, and the Holy Qur'an states that "But if any is forced by hunger with no inclination to transgression (limits Set by G-D) Allah is indeed oft forgiving most merciful" HQ 5.3. Also the Holy Qur'an states that "The food of the people of the book is lawful unto you and yours is lawful to them" (Because Muslims and Jews slaughter their meat, in the name of God) H.Q. 5.5

The Kosher meals, which the facility purchases for the Jews are also permissible to the Muslims. Your policy of providing religious diets here has always been a discriminatory practice against the Muslim inmate population, in the twenty-one years I have been chaplain at this facility.

Once again please refer to my attached document "Halal Diet For Muslims" Qur'an Law, Slaughter process, State Law Also enclosed, Article from Journal Newspaper, "U.S. Muslims say its getting easier to find Halal or "permitted food".

I am available Tuesday, Wednesday, and Thursday.

CC: Shanduke McPhatter (Inmate)

Aramark (Food Service)

Steve Serpagli

Warden Amicucci

Warden Rocuzza

Rev. Charles Altert / Father Paul Tolve