

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
MAC. S. HUDSON and)	
DERRICK TYLER,)	
)	
Plaintiffs,)	CIVIL ACTION
v.)	NO. 01-12145-RGS
)	
KATHLEEN DENNEHY, in her official)	
capacity as Commissioner of the)	
Massachusetts Department of)	
Corrections,)	
)	
Defendant.)	
_____)	

FIRST AMENDED COMPLAINT

Plaintiffs Mac S. Hudson and Derrick Tyler for their complaint against defendant, Kathleen Dennehy, state as follows:

INTRODUCTION

1. Plaintiffs Mac S. Hudson and Derrick Tyler are Muslims and members of the Nation of Islam. They are presently in the custody of the Massachusetts Department of Corrections (the "DOC"). Defendant Kathleen Dennehy is the Commissioner of the DOC. As Commissioner, Ms. Dennehy has interfered with Plaintiffs' right to freely exercise their religion and has denied Plaintiffs an opportunity to exercise their religion equal to that of inmates of other faiths who are confined to DOC facilities . Plaintiffs seek declaratory and injunctive relief for the deprivation of Plaintiffs' rights as secured by the Constitution, laws and regulations of the United States and the Commonwealth of Massachusetts.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over all claims arising under the United States Constitution, 42 U.S.C. § 1983 and 42 U.S.C. §§ 2000cc et seq. pursuant to 28 U.S.C. §§ 1331 and 1343. This court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 1331, 2201 and 2202. This court has supplemental jurisdiction over all state law claims under 28 U.S.C. § 1367(a).

3. Venue lies in the District of Massachusetts pursuant to 28 U.S.C. § 1391(b). The events giving rise to this action occurred in this District and, on information and belief, the defendant resides in this District.

PARTIES

4. At all times mentioned herein, Plaintiff Mac S. Hudson was and is a prisoner of the Commonwealth of Massachusetts, in the custody of the DOC and, except as otherwise noted, confined to MCI-Cedar Junction in Walpole, Massachusetts.

5. At all times mentioned herein, Plaintiff Derrick Tyler was and is a prisoner of the Commonwealth of Massachusetts, in the custody of the DOC and confined to MCI-Cedar Junction.

6. Defendant Kathleen Dennehy is the Commissioner of the Department of Corrections in the Commonwealth of Massachusetts. Ms. Dennehy is ultimately responsible for and controls the care and custody of the Plaintiffs and the operation and actions of the DOC. She is being sued in her official capacity only.

7. The DOC is a department of the Commonwealth of Massachusetts.

8. The DOC receives Federal financial assistance.

STATEMENT OF FACT

Plaintiffs are Muslims and Members of the Nation of Islam

9. Mr. Hudson is, has been, and continues to be a Muslim. More specifically, he is a member of the Nation of Islam.

10. Mr. Tyler is, has been, and continues to be a Muslim. More specifically, he is a member of the Nation of Islam.

11. The Nation of Islam was founded in the 1920s by the Honorable Master Fard Muhammad and the Honorable Elijah Muhammad. The Nation of Islam observes Islamic law and follows the teachings of the Honorable Elijah Muhammad.

12. Nation of Islam members are instructed to follow the Qur'an, which dictates proper Muslim conduct and reveals the doctrines of Islam.

13. Members of the Nation of Islam must not eat pork, any other food forbidden by the Qur'an and certain vegetables.

14. Nation of Islam members are required to pray five times daily: morning, noon, midafternoon, sundown, and before bed. While saying prayers, Muslims must be facing east towards Mecca and may pray only after thoroughly cleansing the body.

15. Nation of Islam members must, as a community, attend Jumah prayer each and every Friday.

Plaintiffs Must Consume Only Halal Food

16. Mr. Hudson and Mr. Tyler sincerely believe that Muslims must eat only food items that are "Halal," meaning "lawful," and must not eat food items that are "Haram," meaning "forbidden."

17. Mr. Hudson and Mr. Tyler sincerely believe that any food that contains pork or pork byproducts is not Halal and is Haram.

18. Mr. Hudson and Mr. Tyler sincerely believe that Haram foods include, but are not limited to, additives such as yellow dye number 5 and red dye number 40, as well as gelatin, animal shortening and certain oils.

19. Mr. Hudson and Mr. Tyler sincerely believe that for meat to be Halal, the animal from which it comes must be slaughtered while reciting the Name of Allah and in a manner prescribed by Islamic law. Mr. Hudson and Mr. Tyler sincerely believe that all food containing meat or byproducts of meat that is not slaughtered in this manner is not Halal and is Haram.

20. Mr. Hudson and Mr. Tyler sincerely believe that their Islamic faith requires them to eat Halal foods, including Halal meat.

21. Mr. Hudson and Mr. Tyler sincerely believe that, because eating any food containing Haram ingredients is strictly forbidden, it is a Muslim's duty to either check all the ingredients used to prepare their meals or abstain from eating those meals altogether. Consequently, Mr. Hudson and Mr. Tyler's religious beliefs require them to forego all meals that have unknown or undisclosed ingredients.

Plaintiffs Must Consume Only Halal Meals Prepared by Certain Muslims

22. Mr. Hudson and Mr. Tyler sincerely believe that Muslims may eat only Halal meals that are prepared by other Muslims who are in the state and condition of Tahara. In Islam, Tahara is a state of ritual purity. Tahara is reached by a purification rite of absolution that Muslims must perform before conducting their five mandatory Salats and before preparing and eating their Halal meals.

23. Ramadan is the ninth month of the Islamic calendar. Mr. Hudson and Mr. Tyler sincerely believe that Muslims must fast from sunrise to sunset for the entire month of Ramadan.

24. During Ramadan, the fast is broken each day after sunset with prayer and a meal. Mr. Hudson and Mr. Tyler sincerely believe that, as with all other meals, Ramadan meals must be Halal and must be prepared by Muslims in observance of Taharah.

25. Mr. Hudson and Mr. Tyler sincerely believe that Muslims are required to celebrate Eid-ul-Fitr (Feast of Fast-Breaking). Eid ul-Fitr commemorates the end of the month of Ramadan. Fasting is forbidden on this day as it marks the end of a month-long fast.

26. Mr. Hudson and Mr. Tyler sincerely believe that, as with all other meals, the Eid-ul-Fitr feast must be Halal and must be prepared by Muslims in observance of Taharah.

27. Mr. Hudson and Mr. Tyler sincerely believe that Muslims are required to observe the Eid-ul-Adha (Feast of Sacrifice) during Dhul-Hijjah, the last month of the Islamic calendar. Muslims unable to make a pilgrimage to Mecca are to fast for the first nine days of Dhul-Hijjah before celebrating the Eid-ul-Adha.

28. Mr. Hudson and Mr. Tyler sincerely believe that, as with all other meals, the Eid-ul-Adha feast must be Halal and must be prepared by Muslims in observance of Taharah.

The DOC Does Not Provide Halal Meals

29. The DOC does not provide Halal meals in accordance with Mr. Hudson and Mr. Tyler's religious dietary restrictions.

30. The DOC does not provide meals prepared exclusively by Muslims during Ramadan, Eid-ul-Fitr, Eid-ul-Adha or at any other time.

31. Mr. Hudson and Mr. Tyler are presently in a segregated unit within MCI-Cedar Junction and are not permitted to supplement the meals the prison provides by purchasing food from the MCI-Cedar Junction Canteen.

32. As a result of the DOC's actions, both Mr. Hudson and Mr. Tyler have lost a significant amount of weight.

33. The DOC's failure to provide regular, nutritious meals that Mr. Hudson and Mr. Tyler may eat in accordance with their sincere religious beliefs places a substantial burden on the exercise of their religion.

Hudson and Tyler Have Exhausted Their Administrative Remedies

34. In or around July 2000, while confined at the Souza-Baranowski Correctional Center ("SBCC"), Mr. Hudson submitted a request to former Superintendent John Marshall for meals consistent with his religious dietary restrictions.

35. The DOC notified Mr. Hudson that his request for Halal meals was forwarded to the DOC's Religious Committee.

36. While awaiting the Religious Committee's decision, Mr. Hudson was transferred from SBCC to MCI-Cedar Junction.

37. In a letter to Sherry Elliot, Director of Treatment at MCI-Cedar Junction, dated January 2, 2001, Mr. Hudson reaffirmed his initial request for Halal meals.

38. In or around November 2000, Ms. Elliot admitted to Mr. Hudson and Mr. Tyler that the prison did not have Muslims preparing meals in accordance with Tahara.

39. In a letter dated January 8, 2001, Ms. Elliot informed Mr. Hudson that the Religious Committee had taken his request for Halal meals under advisement.

40. On information and belief, the DOC's Religious Committee meets quarterly throughout the year.

41. Mr. Hudson's request before the Religious Committee has been pending since July 2000 with no response or resolution.

42. Mr. Tyler has also registered for Halal meals through Ms. Elliot's office but Ms. Elliot refused to process his request.

43. On information and belief, the DOC offers vegetarian meals originally designed to meet the religious needs of Seventh-Day Adventists.

44. In his letter to Ms. Elliot dated January 2, 2001, Mr. Hudson requested a menu and a list of ingredients used in preparing the DOC's vegetarian meals so as to ensure that none of the meals contained Haram ingredients.

45. In a letter to Peter A. Pepe, former Superintendent of MCI-Cedar Junction, dated January 8, 2001, Mr. Hudson repeated his request to view a menu and a list of ingredients used in preparing the DOC's vegetarian meals so as to ensure that none of the meals contained Haram ingredients.

46. Mr. Hudson's request to see a menu and a list of ingredients was denied in a memorandum from Ms. Elliot dated January 8, 2001 and a letter from Mr. Pepe dated February 9, 2001.

DOC Denied Plaintiffs Access to Prayer Rugs

47. Between 1980 and approximately 1993, the DOC permitted Muslim inmates to keep prayer rugs in their cells in order to make their five daily Salats (prayers) as mandated by the Qur'an. The daily Salats constitute the second of the five pillars of Islam.

48. In or around the year 1993, the DOC changed its policy and rescinded the right of Muslim inmates to keep prayer rugs.

49. The DOC has offered no valid reason for this change in its prayer rug policy.

50. Mr. Hudson and Mr. Tyler sincerely believe that a Muslim must place himself in the state and condition of Tahara before making a Salat.

51. The prayer rug is an integral part of this process. The rug must be used only for prayer, kept clean, and not placed on a dirty floor.

52. Mr. Hudson and Mr. Tyler have no access to prayer rugs.

53. In response to complaints about the DOC's refusal to permit them access to prayer rugs, the DOC issued Mr. Hudson and Mr. Tyler an extra bath towel to use in lieu of a prayer rug.

54. Mr. Hudson and Mr. Tyler sincerely believe that the "prayer towel" provided by the DOC does not conform with Islamic tradition.

55. DOC Prison guards have desecrated Mr. Hudson's "prayer towels" during routine cell searches. On different occasions, Mr. Hudson's "prayer towel" had footprints on it, was dropped on the floor and was confiscated for being over the DOC's two towel per inmate limit.

56. On each occasion, the DOC told Mr. Hudson that the "prayer towel" was mistaken for a regular towel.

57. Mr. Hudson and Mr. Tyler are presently without either a prayer towel or a prayer rug.

58. On or about July 12, 2001, Mr. Hudson filed a request to purchase a prayer rug or to arrange a donation of prayer rugs to the prison with Ms. Elliot.

59. On or about July 18, 2001, Ms. Elliot denied Mr. Hudson's request with no stated rationale.

60. On or about July 26, 2001, Mr. Hudson filed a request to purchase a prayer rug or to arrange a donation of prayer rugs to the prison with Peter Allen, former Superintendent of MCI-Cedar Junction.

61. On or about August 15, 2001, Mr. Allen denied Mr. Hudson's request with no stated rationale.

62. On or about August 8, 2001, Mr. Tyler filed a request to purchase a prayer rug or to arrange a donation of prayer rugs to the prison with Ms. Elliot.

63. On or about August 16, 2001, Ms. Elliot denied Mr. Tyler's request with no stated rationale.

64. The DOC's refusal to permit Mr. Hudson and Mr. Tyler to keep prayer rugs in their cells places a substantial burden on the exercise of their religion by interfering with their ability to perform the five daily Salats.

The DOC Denies Plaintiffs Access to Jumah Services

65. Jumah, literally meaning 'Friday,' is the day when Muslims congregate to perform the Midday Salat (prayer) and listen to the Khutbah. The Khutbah is a religious sermon given by an Imam prior to performing Salat on Fridays. The Khutbah is considered a part of the Salat itself.

66. Mr. Hudson and Mr. Tyler sincerely believe that Islamic law mandates all Muslims to listen to or attend Jumah services as part of a community, as mandated by Islamic law.

67. Mr. Hudson and Mr. Tyler are presently held in a segregated unit at MCI-Cedar Junction. While segregated, Mr. Hudson and Mr. Tyler are denied the right to attend mandatory Jumah services.

68. Prisoners with televisions may participate in the prison's Jumah services, which are broadcast via closed-circuit televisions.

69. MCI-Cedar Junction has not made arrangements for prisoners without televisions to participate in Jumah prayer.

70. The DOC presently denies Mr. Hudson and Mr. Tyler access to a television and, therefore, access to Jumah services.

71. In a letter dated July 11, 2001, Mr. Hudson informed Ms. Elliot that he does not have access to a television and, therefore, cannot participate in Jumah services.

72. Mr. Hudson and Mr. Tyler sincerely believe that reciting the Khutbah amid fewer than three people is not permissible. According to Islamic law, at least three people have to be present to perform the Khutbah or the Jumah services will be invalid.

73. On or about July 11, 2001, Mr. Hudson submitted a request to Ms. Elliot asking that the Inner Perimeter Security Office approve one person to make rounds with the Imam in order to allow segregated prisoners to hear the Khutbah and fulfill Jumah. Mr. Hudson's July 11th request was denied by Ms. Elliot.

74. The DOC's refusal to permit Mr. Hudson and Mr. Tyler to participate in Jumah services while housed in a segregation unit places a substantial burden on the exercise of their religion.

The DOC Places Burdens on the Exercise of Islam that It Does Not Place on Other Religions

75. The DOC requires Muslim inmates, including Mr. Hudson and Mr. Tyler, to register with MCI-Cedar Junction officials prior to attending Islamic prayers and rituals in the Mosque.

76. If their name is not on the list, Muslim inmates, including Mr. Hudson and Mr. Tyler, are denied the opportunity to worship with the Muslim community.

77. MCI-Cedar Junction does not require Christian or Catholic inmates to register prior to attending religious services.

78. The DOC has never identified any rational state interest to account for the registration policy and the disparate treatment of Muslim inmates, including Mr. Hudson and Mr. Tyler.

79. The DOC offers inmates of Jewish faith special Kosher meals to accommodate their religious dietary restrictions.

80. The DOC purchases these special Kosher meals from an outside vendor.

81. The DOC refuses to provide special Halal meals from an outside vendor.

COUNT I

**Violations of the Religious Land Use and Institutionalized Persons Act of 2000
(42 U.S.C. § 2000cc et seq.)**

82. Paragraphs 1 through 81 are incorporated by reference as if set forth fully herein.

83. Defendant has imposed and continues to impose substantial burdens on the religious exercise of the plaintiffs in violation of 42 U.S.C. § 2000cc-1(a) by: (a) failing to provide Plaintiffs with nutritionally adequate meals that conform to their sincere religious

beliefs; (b) denying Plaintiffs access to prayer rugs; and (c) preventing Plaintiffs from participating in Jumah services.

84. These substantial burdens are not imposed in furtherance of any compelling governmental interest nor are they the least restrictive means of furthering any governmental interest.

COUNT II

Violations of the First and Fourteenth Amendments to the United States Constitution “Free Exercise of Religion” (42 U.S.C. § 1983)

85. Paragraphs 1 through 84 are incorporated by reference as if set forth fully herein.

86. Defendant, under color of state law, has deprived and continues to deprive Plaintiffs of their right to free exercise of religion, as secured by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, by: (a) failing to provide Plaintiffs with nutritionally adequate meals that conform to their sincere religious beliefs; (b) denying Plaintiffs access to prayer rugs; and (c) preventing Plaintiffs from participating in Jumah services.

COUNT III

Violations of the Fourteenth Amendment to the United States Constitution “Equal Protection” (42 U.S.C. § 1983)

87. Paragraphs 1 through 86 are incorporated by reference as if set forth fully herein.

88. Defendant, under color of state law, has deprived and continues to deprive Plaintiffs of their right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, by placing restrictions on the exercise of

Islam that are not placed on the exercise of other religions and thereby discriminating against Plaintiffs on the basis of their religion.

89. Defendant's disparate treatment of Plaintiffs is based on Plaintiffs' religion and is motivated by discrimination.

COUNT IV

**Violations of Article II of the Massachusetts Declaration of Rights and
Article XLVI of the Articles of Amendment to the Massachusetts Constitution
"Religious Freedom"
(M.G.L. ch. 12, § 11I)**

90. Paragraphs 1 through 89 are incorporated by reference as if set forth fully herein.

91. Defendant has deprived and continues to deprive Plaintiffs of their religious freedoms, as secured by Article II of the Massachusetts Declaration of Rights, Article XLVI of the Articles of Amendment to the Massachusetts Constitution and M.G.L. ch. 12, § 11I, by: (a) failing to provide Plaintiffs with nutritionally adequate meals that conform to their sincere religious beliefs; (b) denying Plaintiffs access to prayer rugs; and (c) preventing Plaintiffs from participating in Jumah services.

COUNT V

**Violations of Article I of the Massachusetts Declaration of Rights
"Massachusetts Equal Protection"
(M.G.L. ch. 12, § 11I)**

92. Paragraphs 1 through 91 are incorporated by reference as if set forth fully herein.

93. Defendant has deprived and continues to deprive Plaintiffs of their right to equal protection of the laws, as secured by Article I of the Massachusetts Declaration of Rights and M.G.L. ch. 12, § 11I, by not providing Plaintiffs access to meals that conform to their religious beliefs while providing members of other faiths access to meals that conform to their beliefs and thereby discriminating against Plaintiffs on the basis of their religion.

94. Defendant has deprived and continues to deprive Plaintiffs of their right to equal protection of the laws, as secured by Article I of the Massachusetts Declaration of Rights and M.G.L. ch. 12, § 11I, by burdening Plaintiffs' access to religious services while allowing members of other faiths access to religious services and thereby discriminating against Plaintiffs on the basis of their religion.

95. Defendant's disparate treatment of Plaintiffs is based on Plaintiffs' religion and, therefore, is purposeful and motivated by discrimination.

96. The defendant's interference with Plaintiffs' rights secured by Article I of the Massachusetts Declaration of Rights has been accomplished by threats, intimidation or coercion in violation of M.G.L. ch. 12, § 11I.

COUNT VI

Violations of M.G.L. ch. 127, § 88 and 103 C.M.R. 471.07 and 471.09(5) "Prisoners' Religious Freedom" (M.G.L. ch. 12, § 11I)

97. Paragraphs 1 through 96 are incorporated by reference as if set forth fully herein.

98. The Defendant's actions are in direct violation the DOC's regulations codified at 103 C.M.R. 471.07 and 471.09(5) and interfere with Plaintiff's rights under M.G.L. ch. 127, § 88 by: (a) failing to provide Plaintiffs with nutritionally adequate meals that conform to their sincere religious beliefs; (b) denying Plaintiffs access to prayer rugs; and (c) preventing Plaintiffs from participating in Jumah services.

99. The defendant's interference with Plaintiffs' rights secured by 103 C.M.R. 471.07 and 471.09 and M.G.L. ch. 127, § 88 has been accomplished by threats, intimidation or coercion in violation of M.G.L. ch. 12, § 11I.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Enter judgment for the Plaintiff and against the Defendant on all counts of this Complaint;
- (b) Declare the practice of denying Plaintiffs adequate meals that conform to their sincere religious beliefs unconstitutional and/or in violation of state and/or federal law;
- (c) Declare the practice of denying Plaintiffs the right to have and use prayer rugs unconstitutional and/or in violation of state and/or federal law;
- (d) Declare the practice of denying Plaintiffs access to religious services unconstitutional and/or in violation of state and/or federal law;
- (e) Enter a permanent injunction ordering the Defendant to provide the Plaintiffs with a nutritionally adequate diet that fully conforms to their religious beliefs;
- (f) Enter a permanent injunction ordering the Defendant to provide, in advance of each addition to a menu, access to a list of ingredients in the newly added food item(s) so that the Plaintiffs may ensure the meal conforms to their religious beliefs;
- (g) Enter a permanent injunction ordering Defendant to provide Plaintiffs with prayer rugs or, in the alternative, to permit Plaintiffs to procure prayer rugs for themselves;
- (h) Enter a permanent injunction ordering Defendant to allow Plaintiffs to attend religious services without first having to register and allow Plaintiff to attend all Jumah services either in person or via closed-circuit television;

- (i) Award the Plaintiff reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- (j) Grant such other relief as the court deems just and proper.

Respectfully Submitted

MAC S. HUDSON and
DERRICK TYLER

By their Attorneys,

/s/ Benjamin A. Goldberger

Michael D. Kendall (BBO#544866)
Benjamin A. Goldberger (BBO#654357)
McDermott Will & Emery LLP
28 State Street
Boston, MA 02109-1775
617.535.4000 (phone)
617.535.3800 (fax)

BST99 1435274-4.009962.0179