

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**ERIC DOWDY-EL, AVERIS X. WILSON,
AMIRA SALEM, TOM TRAINI and
ROGER HUNT**, on behalf of themselves
and all others similarly situated,

Case No. 2:06-CV-11765

Hon. Avern L. Cohn

Plaintiffs,

Magistrate Judge Paul J. Komives

v.

PATRICIA L. CARUSO, in her official
capacity as Director of the Michigan
Department of Corrections, **MICHAEL
MARTIN**, in his official capacity as
Correctional Facilities Administration
Special Activities Coordinator, and **DAVE
BURNETT**, in his official capacity as former
Correctional Facilities Administration
Special Activities Coordinator,

Defendants.
_____ /

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Eric Dowdy-El, Averis X. Wilson, Amira Salem, Tom Traini and Roger Hunt (“Representative Plaintiffs”), on behalf of themselves and others similar situated, state as follows for their Second Amended Class Action Complaint and Jury Demand:

Nature of the Action

1. This action is based on 42 U.S.C. § 1983 and concerns violations of the Representative Plaintiffs’ rights under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc *et seq.*, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the Equal Protection Clause of the Michigan

Constitution, the Free Exercise Clause of the First Amendment of the United States Constitution, and the Free Exercise Clause of the Michigan Constitution.

2. On behalf of Plaintiffs Dowdy-El, Wilson, Salem and/or Traini who are Muslim, as well as all similarly situated inmates housed with the Michigan Department of Corrections, Plaintiffs seek the following system-wide relief:

- a. Accommodation to attend a weekly, mandatory religious service on Friday (which service is already provided by all or most MDOC institutions) by the institution not scheduling relevant inmates for a conflicting school, work or other detail or activity.
- b. Reversal and correction of any punitive actions taken by MDOC institutions against inmates who refused to attend work, school or other assignments but which required the inmate to miss the Friday Islamic religious service.
- c. Accommodation for desirous Muslim inmates to be provided a religiously mandated diet (halal).
- d. Accommodation for desirous Muslim inmates to participate in two annual feasts which are recognized as the high holy days in Islam.

3. On behalf of Plaintiff Hunt, who is a Seventh-day Adventist, as well as all similarly situated inmates housed with the Michigan Department of Corrections, Plaintiffs seek the following system-wide relief:

- a. Accommodation of the Saturday holy day ("Sabbath") by the institution not scheduling relevant inmates for a conflicting school, work or other detail or activity.

b. Reversal and correction of any punitive actions taken by MDOC institutions against inmates who refused to attend work, school or other assignments due to a conflict with the Saturday Sabbath.

4. The Representative Plaintiffs and putative class members hereby seek injunctive and declaratory relief remedying and enjoining these illegal actions.

Parties and Jurisdiction

5. Representative Plaintiff Eric Dowdy-El (aka Eric M. Dowdy) is presently incarcerated in the Chippewa Correctional Facility, located in Kincheloe, Michigan. At the time the original complaint was filed, Dowdy-El was incarcerated in Cotton Correctional Facility, located in Jackson, Michigan.

6. Representative Plaintiff Averis X. Wilson is presently incarcerated in the Kinross Correctional Facility, located in Kincheloe, Michigan. At the time the original complaint was filed, Wilson was incarcerated in Cotton Correctional Facility, located in Jackson, Michigan.

7. Representative Plaintiff Amira Salem is presently incarcerated in the Huron Valley Women's Correctional Facility, located in Ypsilanti, Michigan.

8. Representative Plaintiff Tom Traini is presently incarcerated in the Lakeland Correctional Facility, located in Coldwater, Michigan.

9. Representative Plaintiff Roger Hunt is presently incarcerated in the Cooper Street Correctional Facility, located in Jackson, Michigan.

10. Dowdy-El, Wilson, Salem and Traini are collectively referred to herein as "Representative Muslim Plaintiffs".

11. Defendant Patricia L. Caruso is the Director of the Michigan Department of Corrections.

12. Defendant Michael Martin is the Correctional Facilities Administration Special Activities Coordinator for the State of Michigan.

13. Defendant Dave Burnett was the Correctional Facilities Administration Special Activities Coordinator for the State of Michigan at the time the original complaint was filed.

14. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Defendants' Illegal Refusal to Accommodate Representative Plaintiffs' Religious Requirements by Rejecting their Request to be Released from Work or School to Worship at the Times Mandated by their Religion

16. Michigan's correctional facilities are subject to certain policy directives, including, without limitation, Policy Directive 05.03.150, entitled "Religious Beliefs and Practices of Prisoners." Despite this policy, which require the accommodation of Representative Plaintiffs' core beliefs and practices, Defendants have failed to do so.

17. Muslims observe Jum'ah or "Holy Day", a weekly congregational service of prayer and worship that begins around noon on Fridays and lasts approximately one hour. This service is an integral and mandatory part of Muslim life. Most if not all MDOC facilities provide Friday Islamic services for Muslim inmates.

18. Seventh-day Adventists observe the Sabbath, beginning on Friday at sundown and ending on Saturday at sundown, which is an integral and mandatory part of the Seventh-day Adventist faith.

19. Defendants have unreasonably failed to accommodate Representative Plaintiffs' weekly worship requirements by rejecting their request to be released from work or school to

worship at the times mandated by their religion or to be scheduled for work or school details which do not conflict with the dictates of their religion .

20. Defendants' failure to accommodate these core beliefs and practices imposes a substantial burden for Representative Plaintiffs, interferes with their ability to practice the basic tenants of their religion, and is in violation of both fundamental constitutional principles and basic human rights law.

21. Defendants excuse inmates from work and school for a wide variety of reasons, including doctor appointments, attorney visits, administrative appointments and therapy. Nonetheless, they refuse to release Representative Plaintiffs and other similarly situated inmates for worship services mandated by their religion.

22. Moreover, MDOC facilities only require a limited number of work, school or similar details to be filled by inmates. Defendants could schedule inmates for details which do not conflict with services, but they refuse to do so.

23. If an inmate refuses to attend a scheduled detail due to a conflict with a religious service, that inmate is administratively punished (including being placed on "00" status), which can and does lead to a decrease in rights for the inmate and becomes part of the inmates' administrative file. Such actions damage inmates by reducing their rights and affecting their standing within the prison system.

**Defendants' Illegal Refusal to Accommodate Representative Muslim Plaintiffs'
Dietary Restrictions and Observance of the Eid Feasts**

24. Representative Muslim Plaintiffs are Muslims who follow the doctrines, teachings, and practices of Islam. Muslims adhere to certain dietary restrictions and are permitted to consume only halal food. A halal diet requires, among other things, that meat be

slaughtered in a ritual manner and that adherents refrain from consuming pork as well as any foods prepared in a kitchen in which pork is cooked or otherwise prepared.

25. Muslims observe two annual feasts, Eid ul-Fitr and Eid ul-Adha (the “Eid Feasts”). Eid ul-Fitr occurs at the end of Ramadan, a month of fasting. Eid ul-Adha is celebrated approximately 70 days after the end of Ramadan to commemorate God's forgiveness of Abraham for vowing to sacrifice his son. These two feasts are the most holy days in Islam.

26. The Policies include a number of specific requirements regarding religious dietary needs, *inter alia*:

a. Prisoners are entitled to observe religious dietary restrictions only as provided in the Policies. (Policies, ¶ YY).

b. Any facility “at which meals are provided to meet necessary religious dietary restrictions” shall provide “[a]dequate menu substitutions.” (*Id.*, ¶ PP).

c. Directors of correctional facilities “may authorize the development of a separate menu to meet the necessary religious dietary restrictions of a prisoner.” (*Id.*, ¶ QQ).

d. Correctional Facilities Administration (CFA) prisons must provide kosher meals. (*Id.*)

e. Prisoners may eat from one of the “religious menus” provide by the prison “only with approval of the CFA Special Activities Coordinator,” and such approval shall be granted “only if it is necessary to the practice of the prisoner’s designated religion.” (*Id.*, ¶ SS).

f. The Michigan penal system must accommodate the annual Passover Seder observed in Judaism. (*Id.*, ¶ WW).

27. Despite Representative Muslim Plaintiffs' requests for accommodation of dietary restrictions dictated by Islam, and despite the fact that Defendants accommodate Jewish inmates' dietary restrictions by providing kosher meals to observant Jews and permit Jews to have a seder at Passover, Defendants have refused to accommodate Representative Muslim Plaintiffs' and other Muslim inmates dietary requirements. Specifically, Defendants have refused to provide halal food or to accommodate Muslim inmates desiring to honor the Eid Feasts.

28. Defendants' failure to accommodate these core Muslim beliefs and practices imposes a substantial burden for Representative Muslim Plaintiffs, interferes with their ability to practice the basic tenants of their religion, and is in violation of federal law, state and federal constitutional principles and basic human rights law.

Class Allegations

29. Representative Plaintiffs incorporate the allegations above as if fully stated herein.

30. The class represented by Representative Plaintiffs is so numerous that joinder of all members is impracticable.

31. There are questions of law or fact common to the class.

32. The claims or defenses of the representative parties are typical of the claims or defenses of this class;

33. The Representative Plaintiffs will fairly and adequately protect the interests of the class.

34. This action alleges that Defendants acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

COUNT I: RLUIPA

35. Representative Plaintiffs incorporate the allegations above as if fully stated herein.

36. Representative Plaintiffs and Defendants are governed by and subject to the requirements of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc, *et seq.*

37. RLUIPA provides that the government may not “impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, 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 the furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling government interest.” § 2000cc-a. This rule applies to, *inter alia*, “a program or activity that receives Federal financial assistance.” *Id.*

38. Each correctional facility in which any Representative Plaintiff is incarcerated is an “institution” as defined 42 U.S.C. § 1997.

39. On information and belief, the Michigan Department of Corrections receives federal financial assistance.

40. By failing to accommodate Representative Plaintiffs’ dietary and worship needs as described above, Defendants have imposed a substantial burden on Representative Plaintiffs.

41. The burden on Representative Plaintiffs is not in furtherance of a compelling governmental interest.

42. The burden on Representative Plaintiffs is not the least restrictive means of furthering any compelling interest.

43. Representative Plaintiffs have satisfied all legal and procedural requirements for bringing an action under RLUIPA.

WHEREFORE Representative Plaintiffs respectfully request that this Court:

(A) certify a class action under Fed. R. Civ. P. 23 on behalf of all current and future Michigan inmates:

(i) practicing Islam who have been, or will be denied the opportunity (a) to receive a halal diet, (b) to observe the Eid Feasts and/or (c) to observe Jum'ah or the Friday "Holy Day" service without a conflicting work, school or similar detail and without penalty of any sort; and

(ii) practicing Seventh-day Adventism who have been, or will be, denied the ability to participate in the Sabbath without a conflicting work, school or similar detail and without penalty of any sort; and

(iii) practicing Islam or Seventh-day Adventism who, in the past or pursuant to Defendants' policies and practices, has been or would be placed on "00" status or have any adverse administrative action taken against him or her due to failure to report to a scheduled detail or similar assignment due to conflict with either the Muslim Friday service or the Seventh-day Adventist Sabbath, respectively.

(b) grant a declaratory judgment in Plaintiffs' favor declaring that Defendants violated Plaintiffs' religious freedom rights protected by RLUIPA,

- (c) grant injunctive relief requiring Defendants to permit and provide for halal meals; to accommodate the Eid Feasts; to accommodate Muslim dietary requirements; to allow Muslim inmates to observe and participate in the Friday service and to allow Seventh-day Adventist inmates to be free of work or school details on the Sabbath free of a conflicting work, school or similar detail; and to clear the administrative records of any inmate to the extent such records reflect negatively upon the inmate for having refused to attend a scheduled work or other detail due to a conflict with a religious service; and
- (d) grant attorney fees and costs incurred by Plaintiffs, and
- (e) grant such additional relief as this Court deems just and equitable.

COUNT II: EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

44. Representative Plaintiffs incorporate the allegations above as if fully stated herein.

45. The due process requirements imposed by the Fourteenth Amendment to the United States Constitution guarantees that states must provide for the equal protection of law.

46. By failing to accommodate Representative Plaintiffs' dietary and worship needs as described above, while accommodating the dietary needs of similarly situated Jewish inmates, Defendants have violated Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment.

47. By failing to accommodate Representative Plaintiffs' dietary and worship needs as described above, Defendants have imposed a substantial burden on Representative Plaintiffs.

48. The burden on Representative Plaintiffs is not in furtherance of a compelling governmental interest.

49. The burden on Representative Plaintiffs is not the least restrictive means of furthering any compelling interest.

50. Representative Plaintiffs have satisfied all legal and procedural requirements for bringing an action under the Equal Protection Clause.

WHEREFORE Representative Plaintiffs respectfully request that this Court (a) grant judgment in its favor under the Fourteenth Amendment of the United States Constitution, (b) certify a class action under Fed. R. Civ. P. 23 on behalf of all Michigan inmates as described above; (c) grant injunctive relief as described above; (d) grant attorney fees and costs incurred by Plaintiffs, and (e) grant such additional relief as this Court deems just and equitable.

COUNT III: VIOLATION OF MICHIGAN CONSTITUTION, ARTICLE 1, § 2

51. Representative Plaintiffs incorporate the allegations above as if fully stated herein.

52. Article 1, § 2 of the Michigan Constitution provides: “No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.”

53. By failing to accommodate Representative Plaintiffs’ dietary and worship needs as described above, while accommodating the dietary needs of similarly situated Jewish inmates, Defendants have violated Plaintiffs’ rights under the Equal Protection Clause of the Michigan Constitution.

54. By failing to accommodate Representative Plaintiffs’ dietary and worship needs as described above, Defendants have imposed a substantial burden on Representative Plaintiffs.

55. The burden on Representative Plaintiffs is not in furtherance of a compelling governmental interest.

56. The burden on Representative Plaintiffs is not the least restrictive means of furthering any compelling interest.

57. Representative Plaintiffs have satisfied all legal and procedural requirements for bringing an action under the Michigan Constitution.

WHEREFORE Representative Plaintiffs respectfully request that this Court (a) grant judgment in its favor under the Michigan Constitution, (b) certify a class action under Fed. R. Civ. P. 23 on behalf of all Michigan inmates as described above; (c) grant injunctive relief as described above; (d) grant attorney fees and costs incurred by Plaintiffs, and (e) grant such additional relief as this Court deems just and equitable.

COUNT IV: FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

58. Representative Plaintiffs incorporate the allegations above as if fully stated herein.

59. The Free Exercise Clause of the United States Constitution provides that Congress “shall make no law ... prohibiting the free exercise [of religion].” U.S. Const., amend. 1. This guarantee applies to the states through the Fourteenth Amendment to the Constitution.

60. Defendants’ policies and practices and use thereof are neither neutral nor generally applicable.

61. By failing to accommodate Representative Plaintiffs’ dietary and worship needs as described above, while accommodating the dietary needs of similarly situated Jewish inmates, Defendants have violated Plaintiff’s free exercise rights under the First Amendment.

62. Representative Plaintiffs have satisfied all legal and procedural requirements for bringing an action under the First Amendment.

WHEREFORE Representative Plaintiffs respectfully request that this Court (a) grant judgment in its favor under the Free Exercise Clause of the United States Constitution, (b) certify a class action under Fed. R. Civ. P. 23 on behalf of all Michigan inmates as described above; (c) grant injunctive relief as described above; (d) grant attorney fees and costs incurred by Plaintiffs, and (e) grant such additional relief as this Court deems just and equitable.

COUNT V: VIOLATION OF MICHIGAN CONSTITUTION, ARTICLE 1, § 4

63. Representative Plaintiffs incorporate the allegations above as if fully stated herein.

64. Article 1, § 4 of the Michigan Constitution provides in relevant part: “Every person shall be at liberty to worship God according to the dictates of his own conscience. . . . The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.”

65. By failing to accommodate Representative Plaintiffs’ dietary and worship needs as described above, Defendants have violated Plaintiffs’ rights under the Free Exercise Clause of the Michigan Constitution.

66. The Policies and the Defendants’ use thereof burden the exercise of Representative Plaintiffs’ sincere and religiously motivated beliefs.

67. The burden on Representative Plaintiffs is not in furtherance of a compelling governmental interest.

68. The burden on Representative Plaintiffs is not a narrowly tailored means of furthering any compelling interest.

69. Representative Plaintiffs have satisfied all legal and procedural requirements for bringing an action under the Michigan Constitution.

WHEREFORE Representative Plaintiffs respectfully request that this Court (a) grant judgment in its favor under the Free Exercise Clause of the Michigan Constitution, (b) certify a class action under Fed. R. Civ. P. 23 on behalf of all Michigan inmates as described above; (c) grant injunctive relief as described above; (d) grant attorney fees and costs incurred by Plaintiffs, and (e) grant such additional relief as this Court deems just and equitable.

Respectfully submitted,

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Dated: January 27, 2010

Certificate of Service

I hereby certify that on January 27, 2010, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all registered ECF Counsel.

Respectfully submitted,

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