

14

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD, WILLIAM JOHNSON,
JAMERO MOSES and ANTHONY NELSON;
Pro-Se Plaintiffs,

Case:2:13-cv-11342
Judge: Roberts, Victoria A.
MJ: Hluchaniuk, Michael J.
Filed: 03-26-2013 At 03:04 PM
PRIS HEARD, ET AL V FINCO, ET AL (E
B)

V.
TOM FINCO, Deputy Director of
Michigan Department of Corrections(MDOC),
MIKE MARTIN, Special Activity Coordinator
of MDOC, BRAD PURVES,
Dietician and Food Service Manger.
Each Defendant sued in both
Individual and Official Capacity
Defendants;

CIVIL ACTION COMPLAINT

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, LAMONT HEARD, is incarcerated under the custody of the Michigan Department Of Corrections (MDOC). He is currently held at Lakeland Correctional Facility(LCF), at 141 First St. Coldwater Michigan, 49036.
2. Plaintiff Heard filed at least one pervious lawsuit. See Heard v. Ceruso, et al, 2:05-cv-231, USDC, WD-ND. See also, HEARD v WOOD et al, 11-121909-CK Oakland County Circuit Court.
3. Plaintiff William Johnson is incarcerated under the custody of MDOC. He is currently held at LCF.
4. Plaintiff Johnson failed at least 0 previous lawsuit.
5. Plaintiff JAMERO MOSES, is incarcerated under the custody of MDOC. He is currently held at LCF.

6. Plaintiff MOSES failed at least 2 previous lawsuits. see MOSES v. PRISONER HEALTH SERVICES(PHS) 2:09-cv-236
7. Plaintiff ANTHONY NELSON, is incarcerated under the custody of MDOC. He is currently held at LCF.
8. Plaintiff Nelson filed 0 pervious lawsuits.
9. Defendant TOM FINCO, is Deputy Director of MDOC. His office is in MDOC Central Office, located at 206 East Michigan Avenue, Lansing, Michigan 48909.
10. Defendant FINCO responsibility is to approve and implement religious menus and ensure plaintiffs receive an adequate meal. He is sued in both individual and official capacity.
11. Defendant MIKE MARTIN is special Activity Director of MDOC, his office is in Central Office. He is suited in both individual and official.
12. Defendant Martin responsibility is to ensure plaintiff's religious needs are met and to coordinate religious activity.
13. Defendant BRAD PURVES, is the Dietician and Food Service Manager of MDOC, his office is in Central Office. Defendant PURVES is sued in both individual and official capacity.
14. Defendant PURVES responsibility is to ensure Food Service religious menus are nutritional and met plaintiff's religious regimen. The Court has jurisdiction pursuant to 28 USC @ 331, 1392 and 42 USC @ 1983.

FACTUAL BACK GROUND

15. Plaintiffs, HEARD, JOHNSON, MOSES and NELSON are muslims and members of The Nation Of Islam Prison Reform Ministry.
16. Plaintiffs sincerely held beliefs are found in the Holy Qur'an, divine revelations of the Muelims.
17. One of the tenets of Plaintiffs faith is that it is mandatory for muslims to fast during the Arabic Lunar Month of Ramandon. The Arabic month of Ramandon has 29 to 30 days.
18. Fasting during Ramandon is a religious holiday of every Muslim.
19. In the Holy Qur'an, chapter 2, verse 185, Allah, the God of the

Muslims, gave the following injunction to all Muslims: "THE MONTH OF RAMADON IS THAT IN WHICH THE QUR'AN WAS REVEALED, A GUIDANCE TO MEN AND CLEAR PROOFS OF THE GUIDANCE AND THE CRITERION. SO WHOEVER OF YOU IS PRESENT IN THE MONTH, HE SHALL FAST THEREIN, AND WHOEVER IS SICK OR ON A JOURNEY, (HE SHALL FAST) A (LIKE) NUMBER OF OTHER DAYS. ALLAH DESIRES EASE FOR YOU, AND HE DESIRE NOT HARDSHIP FOR YOU AND (HE DESIRE) THAT YOU SHOULD COMPLETE THE NUMBER AND THAT YOU SHOULD EXALT THE GREATEST OF ALLAH FOR HAVING GUIDED YOU AND THAT YOU MAY GIVE THANKS."

20. Fasting during Ramadan is a blessed experience. It last for 29 to 30 days. Muslims seek spiritual bliss, brotherhood and read the entire Holy Qur'an throughout the month. Muslim mind-set is of peace and oneness with Allah(GOD). There is no other alternative for this once a year experience.

21. Fasting during Ramadan require plaintiffs to abstain from consuming food and liquid during the day light hours.

22. When the sun is set, plaintiffs can return to consuming food and liquids.

23. Michigan Department Of Corrections provide those muslims that elect to participate in the fast two meals per day. One meal before the sun rise and another meal after the sun set.

24. Each facility has the option of choosing between serving a bagged meal or allowing the muslims that choose to fast to eat in the dining hall.

25. The bag meals do not meet MDCC mandated 2,900 calory in-take count.

26. The dining hall meals consist of 1000 to 1500 calory intake.

27. Most facilities choose to allow the Muslims to eat in the dining hall because bag meals cost more.

28. The lower caloric intake place on plaintiff the substantial burden of choosing between obeying Allah(God), by continuing the fast and suffer deteriorating health or disobey Allah(God) by consuming food and liquid in order to substain good health.

29. Plaintiff complained to defendants, and other prison officials that the caloric intake they was receiving during Ramadan was too low.

30. The restricted caloric in-take cause plaintiffs to suffer the injuries of being physically weak, experience hunger pains and loss weight, etc. The restriction also take plaintiffs out of the spirit of fasting.

31. See grievance LCF 12-08-0849-09b, 12-08-0910-28e, 12-08-0864-20e, 11-0901270-09a, URF 10-08-3147-09e and MBP 09-08-01872-28c.

32. Plaintiffs also submitted proposals to defendants for the purpose of making changes to the food plan. See exhibit A.

33. Moreover, plaintiffs forward to defendants an article from the publication 'PRISONER LEGAL NEWS', that reported on an incarcerated muslims in the state of Virginia that had stated the same claim and obtained a favorable judgment. See articles, exhibit B

34. Defendants responded "A FAST BY DEFINITION IS LOWER CALORIC INTAKE." "THOSE OFFENDERS CHOOSING TO PARTICIPATE IN RAMADON ARE CHOOSING TO ABSTAIN FROM THE REGULAR STATE WIDE MENU AND THEREFORE, ARE NOT RECEIVING THE SAME NUTRITIONAL CONTENT BECAUSE OF FASTING." See Exhibit C.

35. However, that is not plaintiffs' and Islamic definition of fasting during Ramadan.

36. Islamic definition of fasting during Ramadan means abstaining from food and liquid during the day light hours.

36. Thus, Defendants could provide all of the mandated daily 2900 caloric intake by dividing it between the two meals.

38. Michigan Department of Corrections use to do that. Within the last five years it changed.

39. Therefore, defendants are discriminating against Plaintiffs sincerely held beliefs and imposing their beliefs of fasting on plaintiffs, which harms plaintiffs mental and physical health. Also it burdens the practice of plaintiffs sincerely held beliefs.

CAUSE OF ACTION ONE:

FIRST AMENDMENT VIOLATION, 8th AMENDMENT VIOLATION AND RLUIPA VIOLATION

40. Plaintiffs restates and incorporates by reference his previous

allegations.

41. Plaintiffs membership in the Nation Of Islam requires adherence to Allah(God) mandates to fast in the Arabic Lunar Month of Ramadan.

42. Defendants FINCO, MARTIN and PURVES have refused to accommodate plaintiffs request to be provided with adequate meals before the start and at the end of the daily fast.

43. Defendants refusal is a violation of the United States Constitution First Amendment and Religious Land Use and Institutionalize Person Act (RLUIPA) U.S.C. § 2000cc-1 at seg.

44. Defendants receive federal funding.

45. Defendants' refusal has substantially burdened plaintiffs exercise of religion by inhibiting their free exercise of it and requires them to abandon precepts of his religion relating to fasting in order to survive.

46. Defendants refusal is a violation of the United States Constitution Eight amendment. Defendant's refusal to provide Plaintiffs with adequate and nutritional meals, that consist of 2900 calories, caused plaintiffs to suffer the following injuries: dehydration, dizziness, lose of weight, hunger pains, and weakness, for a 29 to 30 day period. This discourage plaintiffs participation in their mandatory fast. Which violates their first amendment right and RLUIPA protection.

47. Defendant seeks to impose their views of 'Fasting' on Plaintiffs, which harm plaintiffs health and interfere with the practice of Plaintiffs sincerely held beliefs.

48. Defendants seek to punish plaintiffs for being muslims. Their directive that prohibit food service staff from providing Plaintiffs and other Muslims with all their calories and nutrition is evidence of that.

49. Defendants food restriction on plaintiffs is not related to security.

50. Further, defendants action are unreasonable in light of the fact, that the same coloric intake restrictions are not placed on similarly situated Jewish prisoner during their fasting period.

fact, that the same coloric intake restrictions are not placed on similarly situated Jewish prisoner during their fasting period.

51. Plaintiffs have suffered and continues to suffer irreparable harm and damages as a result of defendants conduct.

WHEREFORE, Plaintiffs requests that this Court enter judgement:

- (1). Declaring that Defendants' refused to accommodate Plaintiff's request for adequate meals during Ramadan violates the 1st & 8th Amendments and RLUIPA.
- (2). Entering a mandatory injunction requiring that Defendants accommodate Plaintiffs' request for adequate meals during Ramadan.
- (3). Awarding plaintiffs appropriate money damages and compensatory relief, and other equitable relief in excess of \$25,000 from each defendant for the constitutional violation. Plaintiffs sayeth nothing further.

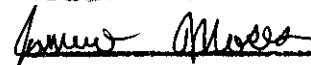
Respectfully Submitted:



LAMONT HEARD, 252329



WILLIAM JOHNSON, 235820



JAMERO MOSES, 231885



ANTHONY NELSON, 210771

LAKELAND CORR. FAC.
141 FIRST ST.
COLDWATER, MI 49036

MARCH 20, 2013

RAMADON PROPOSAL
(CHANGES TO THE CURRENT MENU & PROCEDURES)
STATE WIDE

To: Food Service Dietician, and Special Activities Coordinator
Michigan Department Of Corrections (MDOC)

From: Muslim Population, MDOC

Subject: Proposal To Make Changes To The Muslim Fasting Period During The Holy Month Of Ramadan; and To Add Id al-Fitr aka Eid ul Fitr.

There is a need to make changes to the food service menu, that is provided for the Muslim Fast during the month of Ramadan. The current menu and procedure discourages Muslim participation. For example, certain foods, such as the peanut butter, that was provided nearly everyday, has an un-healthy impact on the digestive system. Also, PD 04.07.100, Paragraph "H" mandates that the prison population must have two "Hot Meals" per day. However, during the previous fasts' all of the meals have been cold. Also, the menu provides less than 2800 caloric intake.

Changes need to be made concerning the lights/power procedures. The Wardens and/or shift command at each or certain facilities are not authorizing staff to turn on the lights/power during the breakfast meal. In other words, Muslims have to eat their breakfast meal in the dark.

Lastly, Id al-Fitr or Eid, needs to be added to the fast, because it is "the festival at the end of the fast of Ramadan on the 1st. of the Month of Shawwal." In essence, it is a feast or congregational gathering where those who participated in the fast, are spiritually encouraged, and bonded to the faith of Islam and Allah(God). To this end, below is the detailed proposal.

AUTHORITY:

Pursuant to PD 04.07.100 "Offender Meals;" and PD 05.03.150 Religious Beliefs & Practices of Prisoners" Paragraph "II" all proposed changes to the food service menu and issues dealing with religious regiments must be submitted to the food service director and chaplain, whom in turn will submit the proposals up their chain of command. See also, 42 U.S.C. Sec. 2000 cc Religious Land Use Institutionalized Persons Act.

Furthermore, in a most recent court holding, Cough v. Jobe, 479 F.Supp. 2d 569 (W.D. Va. 2006), a federal district court issued a preliminary injunction on the (same) grounds raised in this proposal. It is the populations hopes, that a Civil Action is not required in the case. Also U.S. Const. & State Const. against Cruel & Unusual Punishment.

OBJECTIVE:

There are two objectives for this proposal. The first is to make changes, State (Department) wide to the MDOC menu, for Muslims during the Month of Ramadan. Also, the procedure that discourages participation must change. Secondly, Id al-Fitr A/K/A Eid must be added because it is apart of the sincerely held beliefs and practices of Islam.

(1) CHANGES TO MENU:

(a) During regular meals, the MDCC population is maintained by a 2,000 caloric intake. However, during the month of Ramadan, the meals drop significantly below 2,000, and nearly 1,100 calories per meal. This causes dehydration, dizziness, hunger pains and weight loss. This has the effect of discouraging religious practices.

(b) The two bag meals are usually cold and stale because they are prepared in advance and kept in the freezer for preservation. Policy requires that population be given two hot meals per day. So, when Policy is Violated, and the same cold meals are provided nearly every day, a Muslims health is placed in jeopardy. Also, it causes anger, and dissipates the spirit of participation in the fast. The fast is above spiritual connection and thankfulness to God. It should not be a David v. Goliath feat to over-come the fast.

(c) For some reason, staff refuses to turn the lights on so that one can see the food that they are eating, i.e. Breakfast Meal. Staff claims that the Warden did not authorize the lights to be turned on. People in single occupancy cells; have no way of seeing and preparing their food in the dark.

(2) Eid ul Fitr, Prayer and Service/Meal:

Eid ul Fitr observance, consisting of the Eid ul Fitr meal and the Eid Fitr prayer, is an essential part of observance in the religion of Islam which commemorates and celebrates the 30 day fast of Ramadan. The Eid ul Fitr Prayer is a congregational prayer that must be performed during the morning of the first day following the completion of Ramadan. The Eid ul Fitr meals must be held at a time between the first and third day after the completion of Ramadan. The meal typically begins on the evening of the first day following the completion of Ramadan and the morning of the Eid ul Fitr prayer service.

(a) Because this is a tenet of the Muslims sincerely held beliefs and practices, it must be incorporated in all future fasts orchestrated and coordinated by MDCC Food Service Department(s), Special Activity Coordinator(s), and the appropriate staff.

(b) Those who fast without the assistance of the MDCC should be allowed to participate in the congregational prayer. Typically, because of past disrespect towards Muslim believers, they do not sign up for bag meals. They use their own means to observe the fast. Just because they do not fast how the department sees fit, or under their recognition, should not exclude them from the Eid ul Fitr prayer services.

(3) EQUIPMENT, SPECIAL ACCOMMODATION AND INSTRUCTIONS:

(a) During the fast, there must be two hot meals for ALL Muslims.

(b) Foods that may be repetitive and cause digestive problems must be substituted.

(c) Fast participants must be given at least 20 mins. to eat, as non-fasting participants. The lights in the cell must be on during that time.

(d) The meals must consist of 2,800 calories. Muslims are prohibited from eating in the day light hours. Nothing in their beliefs deny them a full days worth of calories, i.e. 2,800 cals.

(e) Hence forth Muslims Eid ul Fitr meal and prayer service must be observed.

(f) A room in the programs building or the unit must be provided to accommodate the Eid ul Fitr prayer service, held in the morning.

(g) The Food Service Director and local Supervisors must have a directive, and plan a budget and/or arrange for the food menu to accommodate the Eid ul Fitr meal.

(h) Incarcerated Muslims must be allowed to distinguish between participating in the entire fast and the Eid ul Fitr, or just the Fitr.

TIME & DATE:

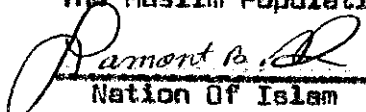
Consistent with Muslims annual fast during the Month of Ramadan and Eid ul Fitr on the 1st. of Shawwal.

WHAT WILL THIS ACCOMPLISH?

This will accomplish and encourage rehabilitation, which helps ease tension within the MDOC. Moreover, it increases one's spiritual connection to Allah(God). Also, studies show, incarcerated persons, who have spiritual activity have a lower rate of engaging in violence and returning to prison. Lastly, approval of this proposal will increase civility between staff and residents.

Therefore, we pray, that our claims are considered, researched and ultimately granted, before the start of the 2009 Fast.

Respectfully Submitted By,
The Muslim Population,



Nation Of Islam
Prison Reform Min.
Lamont Y. Heard, #252329


Moorish Science
Temple Of America
Dary
D.A. [unclear] #157365

Muslim Brotherhood
Al - Islam
Tahib Adullah #161175

cc: File
Muslim Population
MDOC Food Service
Special Activities Coordinator
SMF/Chaplain

Dated: June / 9 / 2009

of records); understaffing; and lax suicide prevention procedures. Plainly, based on the three plaintiffs' experiences, concern for suicidal prisoners was mortally inadequate. These flawed policies of the county made them directly liable under 42 U.S.C. § 1983, if only by omission of constitutionally adequate safeguards for the mental health and well-being of the decedents. A major point in Abdollahi's suit was that he was experiencing severe heroin withdrawal, specialized needs for which were simply ignored. In Summers suit, falsified records of non-existent cell checks were found contributory. Finally, the inadequate suicide prevention policy at the time of Arambula's death was accepted by the court as a triable issue.

Named defendants included staffers in the Sheriff's department as well as nurses provided under contract from the University of California at Davis. The settlement provided that the county would pay \$450,000 while the University paid the remaining \$550,000. Of the \$1,000,000, half went to Katz and the three attorneys who worked for years gaining relief for the plaintiffs. Arambula's two sons each received \$100,000 annuities while his parents received \$50,000. Abdollahi's son was paid \$150,000 and Summers' mother received \$100,000. See: *Abdollahi v. County of Sacramento*, U.S.D.C. (E.D. Cal.) Case No. CIV-S-02-2488 FCD JFM (consolidated cases). The settlements are posted on PLN's website. 

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Muslim Virginia Prisoner Entitled to 2,200 Calories During Ramadan

A federal district court has issued a preliminary injunction requiring the Virginia Department of Corrections (VDOC) to provide a Muslim prisoner with "food items containing 2,200 calories" daily during Ramadan, a month-long period of religious fasting.

This action was brought by Keen Mountain Correctional Center prisoner William R. Couch, who is a Sunni Muslim. Couch's complaint alleged claims under the First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA), stating that prison officials had "deprived him of adequate nutrition and calories during Ramadan" in 2002, 2003, 2004 and 2005.


VDOC operating procedures allow each prison to decide whether to provide Ramadan participants with the same full, hot breakfast that is served to the general prison population or to provide a significantly smaller, cold bag meal. Prison officials always opted to serve the bag meal. During previous Ramadans, Couch was provided with only "approximately 1,000 calories per day." As a result, he said he experienced weight loss of about 13 pounds, constant hunger, "hunger headaches" and listlessness.

For the Ramadan fast in 2006, prison officials advised Couch they would follow the previous Ramadan procedures. Couch then filed suit on the previous violations of his religious rights and for preliminary

injunctive relief to prevent future violations and harm. The court granted the defendants' motion for summary judgment in part, finding that some of Couch's claims were barred by the statute of limitations and others for failure to exhaust administrative remedies. The remaining exhausted claims were allowed to proceed. See: *Couch v. Jabe*, 479 F.Supp.2d 569 (W.D.Va. 2006).

In ruling on the preliminary injunction motion, the district court found the defendants did not present evidence to contradict Couch's claim that he suffered physical injury of weight loss due to reduced caloric intake during Ramadan. Nor did they refute that the smaller bag breakfast only provides about 1,000 calories per day.

The court held that such weight loss is "an injury that amounts to irreparable harm." The defendants offered no evidence that the preliminary injunction, if granted, would "disrupt the orderly operation of the food service process at Keen Mountain and other prisons." As such, the district court entered preliminary injunctive relief requiring prison officials to provide Couch with 2,200 calories daily during Ramadan. See: *Couch v. Jabe*, USDC W.D. Va., Case No. 7:05-cv-00642-PMS (Sept. 22, 2006).

The case settled on undisclosed terms on March 19, 2007, and the court retained jurisdiction to enforce the settlement agreement between the parties. 

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STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

PATRICIA L. CARUSO
DIRECTOR

June 25, 2009

Mr. Heard # 252329
Standish Correctional Facility
4713 W. M-61
Standish, MI 48658

Addressing your letter concerning Changes to the Muslim Fasting Period – The Holy Month of Ramadan: and to add ID al-Fitr aka Eid ul Fitr. Michigan Department of Corrections Policies and Procedures addressed the recognized religious holidays. Central office Food Service can not make changes to the recognized religious holidays.

Religious fasts are elected by an individual. Bagged meals are offered for consumption outside of facility meal service times. Hot meals are **offered** at least twice a day at the facility meal services as directed by policy. You have an option of eating the hot meal or observing the fasting period.

A fast by definition is low caloric intake. However MDOC serves a bag meal for Ramadan that contains a regular caloric intake.

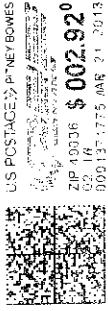
Sincerely,

A handwritten signature in cursive script that reads "J. McKinney".

J. McKinney,
Assistant Food Service Program Manager

cc. Warden Birkett Standish Correctional Facility
G. McClellan, Food Service Program Manager
D. Spaulding, Food Service Director, Standish Correctional Facility

Lamont Heard, 252329
Lafeland Correctional Facility
141 First St.
Coldwater, MI 49036



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CIVIL COVER SHEET FOR PRISONER CASES

Case No. <u>13-11342</u>		Judge: <u>Victoria A. Roberts</u>	Magistrate Judge: <u>Michael Hluchaniuk</u>
Name of 1st Listed Plaintiff/Petitioner: LAMONT HEARD, ET AL		Name of 1st Listed Defendant/Respondent: TOM FINCO, ET AL	
Inmate Number: 252329		Additional Information:	
Plaintiff/Petitioner's Attorney and Address Information:			
Correctional Facility: Lakeland Correctional Facility 141 First Street Coldwater, MI 49036 BRANCH COUNTY			

BASIS OF JURISDICTION

- 2 U.S. Government Defendant
 3 Federal Question

ORIGIN

- 1 Original Proceeding
 5 Transferred from Another District Court
 Other:

NATURE OF SUIT

- 530 Habeas Corpus
 540 Mandamus
 550 Civil Rights
 555 Prison Conditions

FEE STATUS

- IFP *In Forma Pauperis*
 PD Paid

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

- Yes No

➤ If yes, give the following information:

Court: _____

Case No: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- Yes No

➤ If yes, give the following information:

Court: _____

Case No: _____

Judge: _____