

# Correctional Food Service: The Law and You

Presented by:  
Carrie Hill, esq.

**Carrie.correctionslaw@gmail.com**

**612-306-4831**

**@2016 Carrie L. Sandbaken Hill, All Rights Reserved**

**The information contained herein is to be used solely for training purposes and shall not be construed as legal advice. Users of these materials should consult legal counsel to determine how the law of their individual jurisdiction affect the application of these materials to their individual circumstances. Legal requirements may vary in individual jurisdictions and may be modified by new rulings.**

# Jails



# AGENDA

- TURNER V. SAFLEY (Leading Supreme Court Decision for Corrections)
  - Legitimate Governmental Interest Test/Rationale
- FARMER V. BRENNAN (Duty to Protect/Conditions of Confinement)
  - Deliberate Indifference Test
- PLRA: Grievances
- DIETS:
  - Religious Programming
  - Medical
  - Allergies?
  - Contracts
  - Commissary
- SEARCHES:
  - Standard
  - Inmate Workers

# Civil Liability

- Proactive Steps to Minimize Risk
- Know the Law
  - At least clearly established rights
  - Act in an objectively reasonable manner

# Civil Liability

42 USC 1983: Civil Rights Act of 1871

- Qualified Immunity
- What are “Clearly Established Rights”?
- Constitutional Standards
  - 1st Amendment (Turner v. Safley)
    - Speech (mail; telephone; visitation;)
    - Religion : RLUIPA
  - 4th Amendment (Florence v. Board of Chosen Freeholders; Turner v. Safley)
    - Search
  - 8th Amendment
    - Medical/Mental Health Care (Estelle v. Gamble)
    - Duty to Protect (Assaults/In-Custody Deaths)(Farmer v. Brennan)
    - Conditions of Confinement (Wilson v. Seiter and Farmer v. Brennan)
    - Use of Force (Kinsley v. Hendrickson)

# Turner v. Safley

# Leading Supreme Court Decision

- U.S. Supreme Court requires lower federal courts to give deference to the expertise, judgment, and “**substantial**” **discretion** of corrections officials.
  - **Florence v. Board of Chosen Freeholders of the County of Burlington**, (566 U.S. - 2012)
- Before the courts can assume jurisdiction, they must consider “4” factors to determine whether a violation of the First Amendment exists. **Turner v. Safley**, 482 U.S. 78 (1987).



# Turner TEST (You have to know it)

- 1. Is there a 'valid, rational connection' between the regulation and the **legitimate governmental interest** put forward to justify it?
- 2. Are there **alternative means** of exercising the basic right that remain available to the inmate?
- 3. The impact accommodation of the asserted right will have on officers and other inmates and on the allocation of prison resources? (**ripple effect**)
- 4. The existence of obvious, easy alternatives- "**exaggerated response**"

# Conditions of Confinement

# Conditions of Confinement

8th Amendment protects against cruel & unusual punishment.

○ Conditions violate the 8th Amendment if:

1. **The prisoner suffered** “serious harm” (deprived of an essential human need); and
2. Correctional officials were “**deliberately indifferent**” to the rights, health or safety of the prisoner

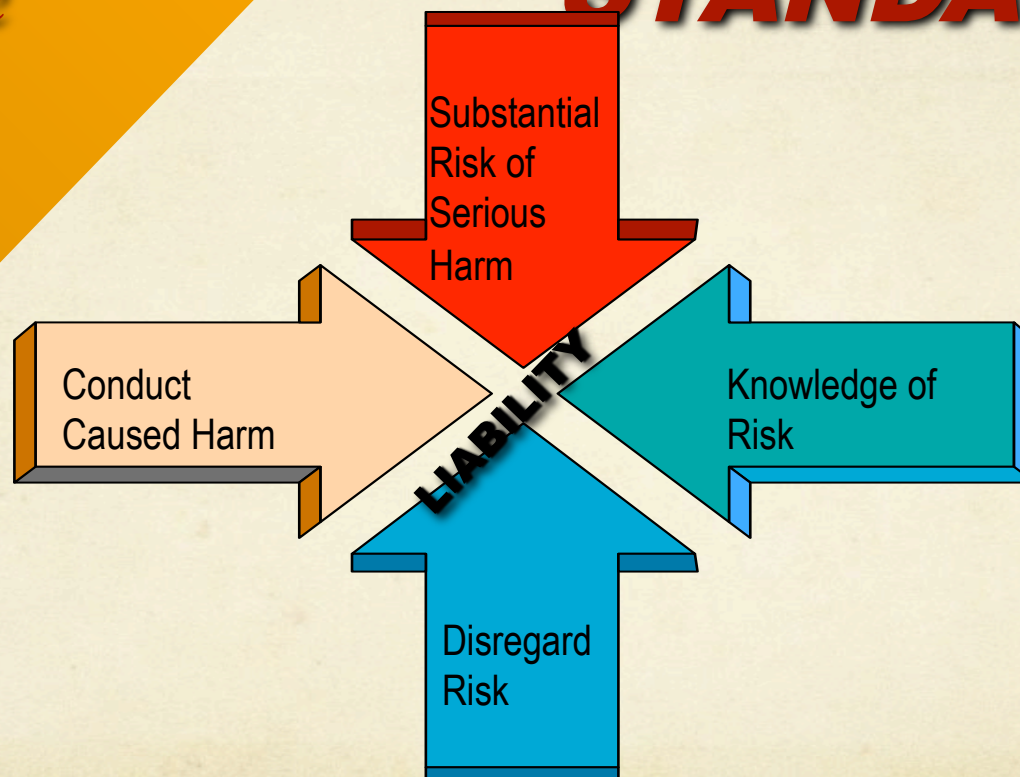
# Standard

## ○ Deliberate Indifference:

- A prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if they **know** that an inmate faces a **substantial risk** of serious harm and **disregards** that risk by failing to take **reasonable measures** to abate it

The

**STANDARD**



Farmer v. Brennan, 511 U.S. 825 (1994)

Deliberate Indifference Test

# Terms

## ○ “Deliberate”

- Intentional
- Conscious
- Intended
- Knowing

## ○ “Indifference”

- Apathy
- Carelessness
- Disinterest
- Inattention
- Insensitivity



# DELIBERATE INDIFFERENCE

- **CLOTHING EXCHANGES**

- HOW OFTEN?
- EXTRA CLOTHING?

- **SUICIDE**

- SHEETS
- EXTRA CLOTHING?

# Conditions of Confinement: Benchmark Cases

- **Bell v. Wolfish**, 441 U.S. 520 (1979)
  - Double-celling pretrial detainees
- **Rhodes v. Chapman**, 452 U.S. 337 (1981)
  - Double-celling inmates
- **Wilson v. Seiter**, 111 S.Ct. 2321 (1991)
  - Conditions case



# Totally of Conditions

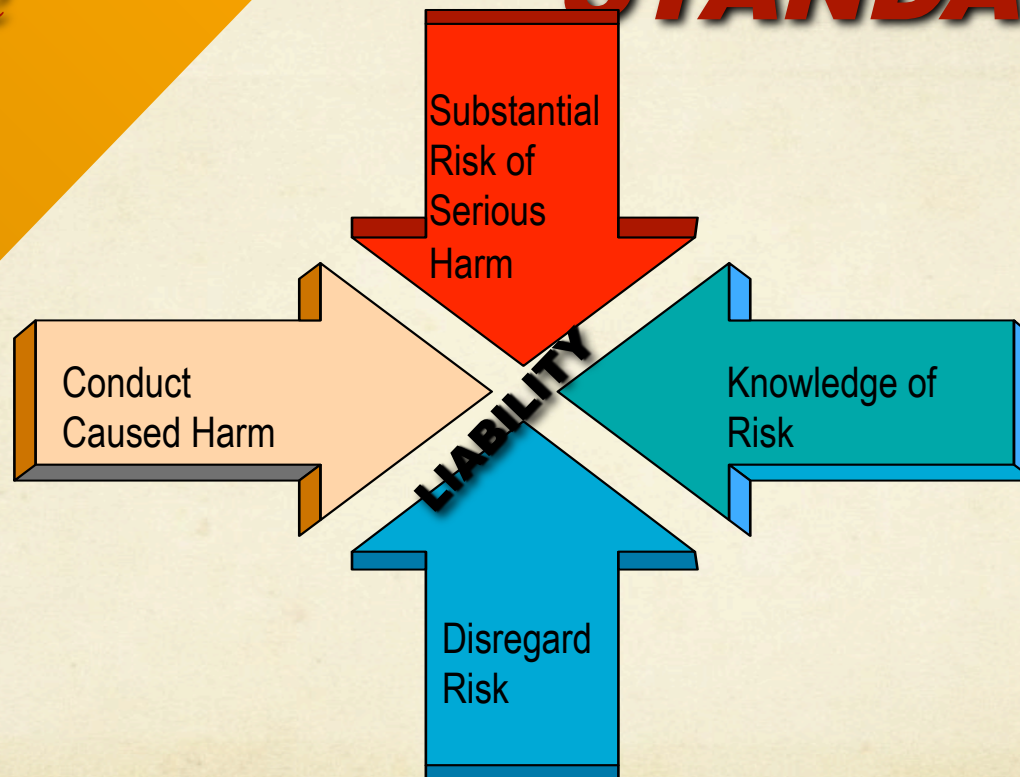
- “Totally of Conditions” or “overall conditions” cannot rise to the level of cruel and unusual punishment without a specific deprivation of a single human need.
- “[N]othing so amorphous as ‘overall conditions’ can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists.”  
Wilson at 304
- Inconvenience is not a constitutional deprivation.

# Totality of Conditions

- However, conditions “in combination” may constitute 8th Amendment violations when **each condition alone** is insufficient, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need.
- Examples:
  - Low cell temperature without extra blankets
  - 24 hour lockdown and no outdoor exercise

The

**STANDARD**



Farmer v. Brennan, 511 U.S. 825 (1994)

Deliberate Indifference Test

PILRA

○

# Prison Litigation Reform Act

- \* The Prison Litigation Reform Act (PLRA) 18 USC §3626 was enacted in 1996 by Congress.
- \* It is one of the most important developments in prisoner litigation.
- \* PLRA has the effect of discouraging frivolous litigation.
- \* PLRA has reduced the number of §1983 lawsuits by almost half.
- \* PLRA does not apply in state court actions
  - \* Many states (like Pennsylvania, Utah, Wisconsin ) have adopted legislation which mirrors PLRA

# Prison Litigation Reform Act

- No inmate may file a lawsuit without first exhausting their administrative remedies.

- “Applicability of Administrative Remedies.

No action shall be brought with respect to prison conditions under §1983 of this title, or any other Federal law by a prisoner confined in any jail, prison, or other correctional facility **until such administrative remedies as available are exhausted.**” 42

U.S.C. § 1997e(a)

# Prison Litigation Reform Act

What does it mean for your agency:

- Grievance system is a critical component:
  - Resolving at the lowest possible level;
  - Important tool that restricts an inmate's ability to file suit in federal court absent exhausting each level of your grievance system;
  - A complaint filed with IA IS NOT the same as completing each step of your formal grievance process as required by the PLRA.
    - Review your process (don't allow the two to be intertwined)
- Pass them out like candy 😊 (grievance forms)

# Prison Litigation Reform Act

- Inmates have no right to a grievance system.
- Officials do not have to obtain approval from the Department of Justice for their grievance system.



# Prison Litigation Reform Act

## Frivolous Lawsuits:

If a court finds possible merit, no order may be issued until the defendants have a chance to respond.

- \* **Three Strikes and the Inmate is Out!!!** If 3 previous suits have been dismissed, the inmate may not file any additional suits unless there is an immediate threat to his life or serious bodily harm.

# Prison Litigation Reform Act

## \* Frivolous Lawsuits:

\* [Hodges v. Denver](#), Civ. No. 07-0100 (10th Cir. May 25, 2007)

- \* Inmate's claim was dismissed as frivolous.
- \* Inmate claimed that jail staff planted a "homing device" in his body during an appendix operation.
- \* In addition, that jail staff were threatening sexual assaults against his family and friends.
- \* Assaults against his "manhood" because jailers "passed out sex to everyone but me."
- \* Inmate failed to identify a custom, policy or practice by the jail.
- \* Inmate failed to identify jail staff names or their titles.

# Prison Litigation Reform Act

- Barometer of the facility
- Pass them out “like candy”
- Take them seriously
- One grievable issue per grievance
- List of grievable issues
- If asked and answered, it’s asked and answered
- Timelines?
- Articulate the rationale for your decision (internal) (Use Turner)
- Articulate alternatives to the inmate

# Religious Exercise

# Religious Rights: Overview

## ○ First Amendment:

- Free Exercise of Religion; and
- Establishment Clauses
- Supreme Court Decisions:
  - **Turner v. Safley**, 482 U.S. 78 (1987)
  - **O'Lone v. Estate of Shabazz**, 482 U.S. 342 (1987)

## ○ RLUIPA:

- Religious Land Use and Institutionalized Persons Act of 2000 42 U.S.C. §2000cc-1(a)-(2) (RLUIPA)
- Supreme Court Decisions
  - **Cutter v. Wilkinson**, 44 U.S. 709 (2005)
  - **Sossamon v. Texas**, No. 08-1438 (U.S. April 20, 2011)
  - **Holt v Hobbs**, \_\_ U.S. \_\_ (January 20, 2015)

# Establishment Clause: Elements

- An action (institutional regulation) is unconstitutional if:
  - it lacks a secular (non-religious) purpose,
  - its primary effect either advances or inhibits religion; or
  - it fosters an excessive entanglement of government with religion.

# Religious Rights: RLUIPA

- **RLUIPA** (Religious Land Use and Institutionalized Persons Act Of 2000 42 U.S.C. §2000cc-1(a)-(2))

# RLUIPA-TEST

- “[n]o government shall impose a **substantial burden** on the religious exercise of a person residing in or confined to an institution” **unless** the burden “is in furtherance of a **compelling governmental interest**” and “is the **least restrictive means**” of furthering that interest. 42 U.S.C. §2000cc-1(a).



# RLUIPA -TEST

- Has the policy **substantially burdened** the exercise of the religion?
- If “yes” is there a **compelling governmental interest** for its actions.
- If “yes” then the religious practice must be restricted in the **least restrictive means**.

# RLUIPA -TEST

- Has the policy **substantially burdened** the exercise of the religion?  
Inmate must prove.
- A. The Supreme Court “assumed” that the religions in question were **bona fide religions**. (Nonmainstream religions involved in Cutter: Satanist; Wicca; Asatru; and Church of Jesus Christ Christian)

# RLUIPA -TEST

- 1. Has the policy substantially burdened the exercise of the religion?  
Inmate must prove.
- B. Is the burdened activity “religious exercise,”
  - Religious Exercise defined: “any exercise of religion, **whether or not compelled by, or central to, a system of religious belief.**”
  - **No matter what, the inmate** does not have to prove that the “exercise” is “compelled by or central to” their religious beliefs.

# RLUIPA -TEST

- 1. Has the policy substantially burdened the exercise of the religion? Inmate must prove.
  - A. Is the religion “bona fide?”-Interesting Question
  - B. Is the burdened activity “religious exercise?”
  - C. If so, is the burden “substantial”?
    - More difficult to define
    - “Sincerity of Belief”?
      - SC explained that a burden on religious exercise is “substantial” and, therefore, impermissible when it influences an adherent to act in a way that violates his or her sincerely held religious beliefs. (**Bitner v. Williams**; Kosher kitchen example-wearing gloves?)

# RLUIPA -TEST

- “Although RLUIPA bars inquiry into whether a particular belief or practice is "central" to a prisoner's religion, **the Act does not preclude inquiry into the sincerity of a prisoner's professed religiosity**” **Cutter v. Wilkinson**, 544 U.S. 709,, 725 (U.S. 2005).

# RLUIPA

- The test for religious exercise cases is that of a compelling necessity/least restrictive means.
  - Security is a compelling governmental interest.
  - **Due Deference** to the expertise of correctional officials is expected.
  - Must make genuine efforts to accommodate.
  - **Err on the side of “yes” rather than “no”**
  - **If deny, deny because it poses a threat to safety and security, not because it is religious in nature.**

# RLUIPA

- Seek outside assistance from various religious and legal authorities if in doubt.
- In addition, articulate all the other alternative means available for the inmate to practice their respective faith.
- Do not judge, mock or retaliate against an inmate for their chosen belief.
- Expect an increase in litigation. Pay close attention to your grievances.

# Religious Belief Must Be Sincere

- RLUIPA does not preclude inquiry into the sincerity of a prisoner's professed religion. *Cutter v. Wilkinson*, 544 U.S. 709, 725 n. 13 (2005)
- '[T]he "truth" of a belief is not open to question'; rather, the question is whether the objector's beliefs are 'truly held.' *Gillette v. U.S.*, 401 U.S. 437 (1971), quoting *U.S. v. Seeger*, 380 U.S. 163 (1965)



# Determining Sincerity

- Sincerity is **generally presumed** or easily established
- Primarily look at the **words or actions** of the inmate
- “The important inquiry was what the prisoner claimed was important to him.” McAllister v. Livingston, 348 Fed.Appx. 923 (5<sup>th</sup> Cir. 2009).

# Determining Sincerity

- Form
  - Not a test of knowledge
  - Rabbi?
  - Synogue?
  - Father Jewish?
  - Hebrew Name?
  - Converted?
- Words and Actions

# CASE LAW REVIEW

- Always check with local counsel to determine the relevancy and application of the decisions within your jurisdiction.
- Remember, inmates may still sue under the 1st Amendment (Free Exercise or Establishment Clauses) and RLUIPA.
- Be prepared for both.
- **LENGTH OF STAY IS RELEVANT!!!!!!!**

## RLUIPA: Beards

**Holt v. Hobbs**, (8th Cir. 2013) Supreme Court ruled January 20, 2015

- Issues: Presented on a handwritten petition
  - (1) Whether the Arkansas Department of Corrections' no beard growing policy violates the Religious Land Use and Institutionalized Persons Act (RLUIPA) or the First Amendment; and
  - (2) whether a ½ inch beard would satisfy the security goals sought by the policy.
- Holt (Abdul Malik Muhammad) said his Muslim beliefs required him to grow a beard ( ½” was a compromise to the outright ban. ¼” beards were allowed for medical reasons)
- Arkansas corrections officials claimed their grooming policy prohibiting beards promotes hygiene and safety.

## RLUIPA: Beards

- Judgment REVERSED and case REMANDED. Alito, J., delivered the opinion for a unanimous Court. Ginsburg, J., filed a concurring opinion, in which Sotomayor, J., joined. Sotomayor, J., filed a concurring opinion.
- The Supreme Court determined that the defendants are **not entitled to absolute discretion** when rendering decisions regarding RLUIPA.
- **RLUIPA is a three part test and the defendants are required to demonstrate that they restricted the religious practice in the least restrictive means possible.**
- They didn't. They cited only safety and security concerns (hiding contraband, altering identity).....
- **Defendants failed to show why they couldn't accommodate the beard by conducting additional security checks etc.... especially in light of the fact that a beard for medical reasons was allowed.**

## RLUIPA: Beards

- 39 other states allow ½ beards
  - Persuasive to the Supreme Court. Puts the burden on the agency why they need to take a different course.
- **RLUIPA demands a more focused inquiry** and requires the government to demonstrate that the compelling interest test is satisfied through the application of the challenged law to the particular claimant.
- Scrutinize the asserted harm of granting specific exemptions to particular religious claimant and to look to the marginal interest in enforcing the challenged government action in that particular context.

# RLUIPA: Urine Samples

**Holland v. Goord**, 13-2694, 2014 U.S. App. Lexis 13142 (2nd Cir.)

- A practicing Muslim claimed that officials unconstitutionally burdened his religious exercise when they ordered him to produce a urine sample within a three hour time frame when he was fasting to observe Ramadan. **No exceptions** were allowed
- The appeals court found that this gave him a choice of either providing the urine sample by drinking water, thus breaking his fast, or facing disciplinary sanctions, and that this **substantially burdened his First Amendment exercise of religion**.
- His claim for damages was allowed to proceed, but his claim for injunctive relief was moot because the relevant directive had been changed.

4

7

## RLUIPA: LEAST RESTRICTIVE

**Yellowbear v. Lampert**, Civ. No 12-8048 (10<sup>th</sup> Cir. January 23<sup>rd</sup>, 2014 )

- A Native American prisoner serving a life sentence for murdering his daughter claimed that correctional officials violated his constitutional and statutory rights to religious freedom by denying him access to the prison's sweatlodge.
- Prison officials claimed that the cost of providing the necessary security to accompany him from the special protective unit he was housed in to the sweatlodge was "unduly burdensome."



## RLUIPA: LEAST RESTRICTIVE

The federal appeals court disagreed, finding that the burden to his exercise of religion was high, given that he was granted no access of any kind, ever, to a religious exercise, and the cost to the prison left undefined by the record and thus presumably low.

Under these circumstances, the appeals court concluded, a reasonable fact finder could find a violation of the prisoner's statutory right to religious freedom. **Remanded**

## RLUIPA: LEAST RESTRICTIVE

- “While those convicted of crime in our society lawfully forfeit a great many civil liberties, Congress has (repeatedly) instructed that the sincere exercise of religion should not be among them – at least in the absence of a compelling reason. In this record we can find no reason like that”
- **Prison just outright denied. No access. No alternative.**
- No one questioned the sincerity of his faith.
- No one questioned that the sweat lodge is a form of his religious exercise.

## RLUIPA: Cell Request

**Jehovah v. Clark**, 792F.3rd 457 (4th Cir. 2015)

- Three claims by an inmate were allowed to proceed under 1st Amendment and RLUIPA
- **Prohibited consuming wine** during communion
  - Allowed bread dipped in wine and then discontinued
- **Working on the Sabbath**
  - Other jobs were available
- **Cellmates that chilled his exercise of religion** (not to be “yoked” with non believers)
  - Atheist, Agnostic, Muslim, An Insincere Christian, Hell’s Biker, Black anti Christian Atheist from an anti-white gang

# Judaism: Diets

## Kosher Diets-Central Tenet of Judaism

- Resnick v. Adams, 317 F.3d 1056 (9th Cir. 2003) The requirement to have an Orthodox Jewish inmate fill out a prison form in order to apply for a kosher meal was not a “substantial burden” on his right to free exercise of religion.

# Must You Provide a Religious Diet? Quick Overview

- “No” according to *Baranowski v. Hart*, 486 F.3d 112 (5th Cir. 2007)-cert denied 128 S.Ct. 707 (2007) Fact Specific.
- “No” according to *Sefeldeen v. Alameida*, Civ. No. 05-15809 (9th Cir. June 4, 2007).- Vegetarian meal for Muslim inmates did not violate the inmate’s rights under the 1st Amendment or RLUIPA. In this case, the inmate did not initially argue that the vegetarian meal violated his religious beliefs but rather that the meal was nutritionally inadequate. He had a failure to exhaust issue under RLUIPA because he didn’t initially raise the religious dietary argument at the administrative level.
- “Maybe” according to *Shakur v. Schriro*, Civ. No. 05-16705 (9th Cir. January 23, 2008). - This case was remanded to determine whether a compelling governmental interest existed in not providing a kosher meal to Muslim inmates which was already being provided to Jewish inmates.

# Must You Provide a Religious Diet? Quick Overview

- “Maybe” according to *Pratt v. Corrections Corporation of America*, 2008 U.S. App. Lexis 4977 (8th Cir.)-Cause of action may exist for failing to provide a Halal diet.
- “Yes” according to *Hudson v. Dennehy*, 2008 U.S. Dist. Lexis 16672 (D. Mass.)-Failing to provide a Halal diet for Muslim prisoners created a substantial burden as other religious diets were provided.
- “Yes” according to *Koger v. Bryan*, 523 F.3d 789 ( 11th Cir. 2008)-Failing to provide a non-meat diet for an inmate who was initially a Baptist, then a Buddhist, then a member of the Ordo Templi Orientis (OTO) a group associated with Thelema, violated his rights under RLUIPA.

# Must You Provide a Religious Diet? Quick Overview

- “Yes” according to *Fegans v. Norris*, Civ. No. 06-3473 (8th Cir. August 11, 2008) Failure to provide a Kosher diet to a follower of the Assemblies of Yahweh was a violation of RLUIPA.
- “Maybe” according to *Walker v. DOC*, Civ. No. 06-1839 (8th Cir. August 27, 2008) (unpublished) Case was remanded to determine whether denying inmate his “daily” kosher meals (“Hebrew Israelite”) was the least restrictive means of furthering a compelling governmental interest. QI
- “Maybe” according to *Wofford v Williams*, 2008 U.S. Dist. Lexis 63946 (D.Or., 2008). Argument that all 7th Day Adventists will want a kosher meal, cost too high, is not persuasive to the court.
- “No” according to *Linehan v, Crosby*, 2008 U.S. Dist. LEXIS 63738 (N.D. Fl., 2008) Providing a 7th Day Adventist a vegan/vegetarian diet instead of a kosher diet-OK. Cost of providing kosher diets for Florida DOC, too costly (CGI). No kosher meals were provided.

# Must You Provide a Religious Diet? Quick Overview

- Yes-Nelson v. Miller, Civ. No. 08-2044 (7th Cir. July 1, 2009), Failing to provide a religious diet and meat free meals to a strict catholic (monk).
  - Requiring an inmate to prove that abstaining from meat from a 4-legged animal was a substantial burden.
  - Not a problem to have him eat the regular meal just not the meat from 4-legged animals.
  - Problem to not provide a meatless meal during Lent.
  - Remanded to determine if CCI existed
- No-Miles v. Aramark, Civ. No. 07-33622 (Unpub. 3rd Cir. 2009), Aramark “substantially performed” its obligations to provide kosher meals.
  - Inmate received 23 out of 25 meals.
- No-Daly v. Davis, Civ. No. 08-2046 (unpub. 7th Cir. 2009), District court upheld suspension of inmate’s kosher meals when he was found buying and eating non-kosher food on 3 different occasions.
  - The rules were not a substantial burden.



# Must You Provide a Religious Diet?

## Quick Overview

- No-Jones v. Shabazz, 352 Fed. Appx. 910 (5th Cir. 2009, Unpublished; Not precedential)
- Yes then No-Festivus: Orange County, CA
  - Bona Fide Religion?
  - Sincerity
  - If the Judge can't figure it out....how are we?
- Yes-Tapp v. Proto, Civ. No. 10-3-59 (3rd Cir. Dec. 13, 2010)
  - No violation for two week delay in providing the kosher meal. Validating the sincerity of the inmate's belief justified the delay.
  - Cold and meals lacking "variety" also did not violate the inmate's rights.
- Yes-Vinning-El v. Evans, Civ. No 10-1681 (7th Cir. September 16, 2011)
  - Morrish Science Temple asked for a vegan diet. Chaplain denied it saying the religion allows for members to eat a variety of fish and meat. Remanded. It is not the Chaplain's interpretation of the faith that is relevant but the sincerity "espoused" by the inmate.

## Must You Provide a Religious Diet? Quick Overview

- Gardner v. Riska, 444 Fed. Appx. 353 (11th Cir. 2011). There was no evidence that a state prisoner sincerely believed that a Kosher diet was important to free exercise of his religion, as required to establish a prima facie case under RLUIPA, since the prisoner neither stated that he sincerely believed a Kosher diet was important to free exercise of his religion nor refuted prison records of the prisoner's purchases of numerous non-Kosher items from the prison canteen. Canteen operators' statements showed that they sold the prisoner non-Kosher items, that they heated many of those items for the prisoner, and witnessed him consuming non-Kosher items. The court noted that the canteen carried Kosher items.

# Must You Provide a Religious

## Diet? Quick Overview

Jones v. Shabazz, 352 Fed. Appx. 910 (5th Cir. 2009,  
Unpublished; Not precedential)

- No RLUIPA or 1st Amendment Violation
- Inmate said that a vegetarian option was not enough. He wanted fresh fruit, vegetables, chicken and fish .
- Court said no. The inmate only showed that he wanted certain foods, not that they were prohibited by his faith.
- Argument is important: How do the foods you are receiving create a substantial burden.

# Must You Provide a Religious Diet?

## Quick Overview

- NO-Yaacov v. Collins, 649 F.Supp.2d 679 (N.D. Ohio 2009).
  - The district court granted the defendants' motion for summary judgment, finding that the decision to restrict Kosher meals to prisoners registered as Orthodox Jews had a reasonable relationship to the legitimate penological interest of cost control for budgetary reasons.

# Must You Provide a Religious Diet? Quick Overview

- NO-Gallagher v. Shelton, 587 F.3d 1063 (10th Cir. 2009).
  - Isolated acts of negligence, in which prison officials failed to approve the state prisoner's requests for religious accommodations in a timely fashion, did not amount to a violation of the prisoner's right to free exercise of religion.
    - (failed to approve a request for fried foods (until after the holiday); failed to provide two sack lunch accommodations for religious fasting (until after the holiday); improper cleaning of kosher utensils and non-kosher utensils.
      - **Not a custom, policy or practice. The omissions were seen as individual violations and not a custom, policy or practice. No intent to deliberately contaminate the kosher utensils.**

# Must You Provide a Religious Diet?

## Quick Overview

- NO-Patel v. U.S. Bureau of Prisons, 515 F.3d 807, 813 (8th Cir. 2008),
  - Halal Meals

## Must You Provide a Religious Diet? Quick Overview

- A prisoner sought \$50,000 in damages because a lieutenant at a federal prison one evening denied him the religious meal he usually got under the Federal Bureau of Prison's Common Fare religious meal program. He was also denied a vegetarian meal, which he said would have satisfied him. A federal appeals court ruled that this one isolated incident did not reflect, either on the part of the lieutenant or the prison, a policy of refusing to provide religious or vegetarian meals and did not substantially burden his religious beliefs. The court further found that just **missing one meal** was not enough to show an Eighth Amendment cruel and unusual punishment violation. *Watkins v. Rogers*, #13-6040, 2013 U.S. App. Lexis 9927 (10th Cir.).

## Must You Provide a Religious Diet? Quick Overview

**YES-Moussazadeh v. Texas DCJ**, \_\_\_ F.3d \_\_\_ (5th Cir. 2012)

- Failure to provide a kosher diet to a Jewish inmate violated RLUIPA.
- TDCJ denied Moussazadeh's grievance and refused to provide him with kosher food. It provided no reason for doing so and stated only that as a matter of current policy, it did not provide kosher meals.
- After nearly a year of negotiations, TDCJ began offering kosher food in the dining hall at the Stringfellow Unit ("Stringfellow"), to which, in April 2007, Moussazadeh was transferred; he then began receiving kosher meals from the kitchen free of charge. The parties did not settle, however, because TDCJ refused to meet Moussazadeh's demand for a guarantee that it would not ever deny him kosher food.



## Must You Provide a Religious Diet? Quick Overview

- To be substantially burdened, a religious belief must be sincerely held. “[W]hile the ‘truth’ of a belief is not open to question, there remains the significant question of whether it is ‘truly held.’” *United States v. Seeger*, 380 U.S. 163, 185 (1965).
- It does not matter whether a religious belief itself is central to the religion, but only that “the adherent [ ] have an honest belief that the practice is important to his free exercise of religion.” *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 332 (5th Cir. 2009), *aff’d sub nom. Sossamon v. Texas*, 131 S. Ct. 1651 (2011). **Sincerity of a belief is an essential initial matter in a RLUIPA claim.** We have “had few occasions to conduct this part of the inquiry, as the sincerity of a religious belief is not often challenged.” *McAlister v. Livingston*, 348 F. App’x 923, 935 (5th Cir. 2009).
- **Sincerity is generally presumed or easily established.** When we have inquired as to sincerity, however, **we have looked to the words and actions** of the inmate. See *Sossamon*, 560 F.3d at 332. “[T]he important inquiry was what the prisoner claimed was important to him.” *McAlister*, 348 F. App’x at 935.

## Must You Provide a Religious Diet? Quick Overview

- A showing of sincerity **does not necessarily require strict doctrinal adherence to standards** created by organized religious hierarchies.
- As an initial matter, **the court was incorrect to say that Moussazadeh bought nonkosher food at the commissary.** The court concluded that items that were not certified as kosher were per se not kosher, but, as Moussazadeh and amicus curiae relate, **a certificate does not render food kosher or nonkosher.** See Brief for Amicus Curiae American Jewish Committee at 16S22. The items that Moussazadeh purchased, such as coffee and soda, do not need a certificate to be “kosher.” Id. Although certain adherents of Judaism may consume only certified kosher food, others will consume food that is not per se nonkosher. Id. **Individuals may practice their religion in any way they see fit, and “it is not for the Court to say it is an unreasonable one.”** A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist., 611 F.3d 248, 261 (5th Cir. 2010)

## Must You Provide a Religious Diet? Native American

- **Schlemm v. Wall**, Civ. No. 14-2604 (7th Cir. 2015)-viable claim to proceed
  - Inmate was from the Navajo Tribe
    - Requested vension for celebration and colored headband
  - Facility said “NO”
  - Navajo celebration required game meat (venison)
    - Inmate was willing to have ground beef.
    - Jail still said “NO”.
    - Jail offered Kosher and Halal
    - Court said that there is no evidence that USDA inspected game meats are not available. (Wisconsin)
  - Inmate requested colored headband to pray and meditate with in his cell.
    - Jail said “NO” - gang related
    - Inmate said he would use only earth tones - no red (assoc. with gangs)
    - Court said - inmate would only be in his cell. Jail doing nothing else to have gang identifiers hidden (tatts)

# Update From Florida DOC

- The Federal judge in the Florida DOC class action suit, issued a temporary injunction in December 2013, FORCING the state to begin serving kosher meals by July 2014 until the issue was decided at trial.
- Florida is only one of 15 states that did not offer inmates a kosher diet system wide.
- The warning from the court was quite obvious!!!

## Religious Diet: Overview

- Fairly Safe Guide to Providing a Religious Diet:
  - Assuming it is a Bona Fide Religion;
  - Assuming Sincerity of Belief Is Not In Question;
    - Lapses in perfect adherence **does not negate** the inmate's overarching display of sincerity.
  - Absent a safety and security reason (compelling governmental reason), err on the side of the diet.
    - Encourage the use of a **contract and commissary monitoring**
- (“Cost” of providing a religious diet, alone may not withstand judicial scrutiny).

# Prison Litigation Reform Act

- Under the PLRA, “[n]o action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). “[T]he PLRA pre-filing exhaustion requirement is mandatory and non-discretionary.”

# RLUIPA: Succah-Eating

- Sisney v. Reisch, 674 F.3d 839 (8th Cir. 2012)
  - Court rejected a Jewish prisoner's claim that his right to practice his religion was violated by a denial of his request to eat his meals in a "succah" (tent-like booth) that he wanted to erect during the Jewish holiday of Sukkot.
  - Prison officials were entitled to QI from liability, as it was "not apparent" that his rights to reasonable religious dietary accommodations included the use of a succah.

# Work-Sincerity Test

## Kitchen-Handling Pork

- Bitner v. Williams, Civ. No. 05-1930 (3rd Cir. July 25, 2006)
  - **Requiring a practicing Muslim inmate to handle pork when he objects is actionable.**
  - Inmate was offered gloves, but refused.
  - No qualified immunity. Officers admitted it was a constitutional violation but that it was not clearly established at the time. Court disagreed.
  - Long standing with the Supreme Court that a religious exercise is “substantial” and, therefore, impermissible when it influences an adherent to act in a way that violates his or her sincerely held religious beliefs.
  - The sincerity of the inmate’s beliefs were never in question.





Broward County Sheriff's Office  
Department of Detention  
Religious Diet / Liturgical Item  
Information Request

The Chaplain's Office has received your request for a religious diet and/or liturgical item. Please fill out all information requested below, and return it to the Chaplain's Office. The Chaplain's Office will review your request, and notify you of the decision.

Signature / CCN \_\_\_\_\_ Date sent to inmate: \_\_\_\_\_

Case No.: \_\_\_\_\_

Inmate Name: \_\_\_\_\_ BCCN.: \_\_\_\_\_

JMS# \_\_\_\_\_ Housing: \_\_\_\_\_

**Information requested:**

Current religious affiliation: \_\_\_\_\_

Did you convert to this religion?  No  
 Yes. When? \_\_\_\_\_ Where? \_\_\_\_\_

Previous religious affiliation(s):  No  
 Yes. Name of religion(s): \_\_\_\_\_

Diet requested: \_\_\_\_\_

Liturgical item requested: \_\_\_\_\_

Minister, Rabbi, Imam Name: \_\_\_\_\_

Name of place of worship: \_\_\_\_\_

Address of place of worship: \_\_\_\_\_

Phone no. of place of worship: \_\_\_\_\_

Name, Address, Phone of a relative who can provide requested information:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Inmate signature \_\_\_\_\_ Date \_\_\_\_\_

Please return this form within 30 days of receipt, or completion of a new form may be required

Form date: 05-30-14



Broward County Sheriff's Office  
Department of Detention  
Religious Diet Contract

Inmate Name:  Date:   
JMS#  Housing:   
Case No.:

The Chaplain's Office is considering your request to receive a religious diet while incarcerated in the jail. A list of rules is described below. Failure to follow by these rules may indicate that your religious beliefs are not sincere, and may result in a revocation of your religious diet and return to the regular diet.

**RELIGIOUS DIET RULES**

Inmates who have been approved to receive a religious diet should not :

1. Share the diet with another inmate.
2. Trade or barter the diet with another inmate.
3. Give the diet to another inmate.
4. Consume food items off of the regular diet tray.
5. Order commissary items that are inconsistent with the religious diet. For example, inmates receiving a Kosher diet may not order non-Kosher commissary items.
6. Consume commissary items received from other inmates that are inconsistent with the religious diet.

Acknowledgement

I have read and understand the above rules regarding receipt of a religious diet. By my signature below, I acknowledge that I understand that failure to follow these rules may result in the revocation of the religious diet and a return to the regular diet.

Inmate Signature \_\_\_\_\_ Date \_\_\_\_\_

Note : Please return this form to the Chaplain's Office within 30 days, or completion of a new form may be required.



Broward County Sheriff's Office  
Department of Detention  
Religious Diet Decision

Inmate Name: \_\_\_\_\_ Case No.: \_\_\_\_\_  
JMS No.: \_\_\_\_\_ Housing Location: \_\_\_\_\_

The Chaplain's Office has reviewed your request to receive a religious diet, or your continued receipt of a religious diet, including all information provided by you, and any information provided by religious volunteers, and has made the following decision:

For initial religious diet requests:

- Approved** to receive a religious diet. **Should it be later determined that your actions are inconsistent with your continued receipt of a religious diet, such as ordering non-Kosher commissary, sharing your meal, or eating from the regular diet tray, you may be returned to the regular diet.**
- Under Consideration.** The sincerity of you claimed religious beliefs cannot be confirmed. The reason for this decision is:
  - You have purchased commissary inconsistent with your claimed faith
  - The Rabbi, Imam or clergy member cannot verify your claimed faith
  - The information you provided cannot be verified
  - Other: \_\_\_\_\_

**Note :** Please provide additional information on an Inmate Request Form addressing the above areas of concern so that your request can be re-evaluated.

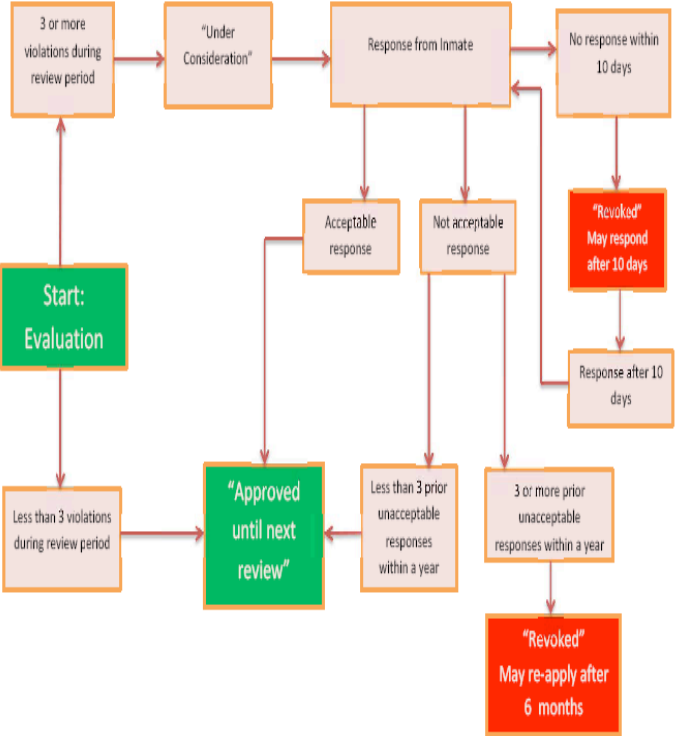
For previously approved religious diets

- Under Consideration.** Based upon a review of your activities since you were approved for a religious diet, your continued receipt of a religious diet is under consideration. The specific areas of concern are:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Approved until next review.** If your diet was under consideration during the last review, any further actions inconsistent with your religious diet during the following review period may result in a revocation of your religious diet, and a return to the regular diet.
- Revoked.** You have been previously notified of activities inconsistent with your religious diet and have failed to respond and/or failed to correct your behavior. The reason for this decision is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chaplain's Office \_\_\_\_\_  
Signature / CCN

\_\_\_\_\_ Date

# DIET EVALUATION FLOW CHART



Searches



# Search: Justification (History)

- General Rule: permitted when reasonable and furthers a legitimate penological interest

## Bell v. Wolfish 441 U.S. 520, 558 (1979)

- The Court held that routine strip searching of pretrial detainees **was not** a per se violation of the Fourth Amendment prohibition against **unreasonable searches and seizures**.
- In articulating the balancing test applicable to such searches, the Court stated: The **test of reasonableness** under the Fourth Amendment is not capable of precise definition or mechanical application

# Search Standards:

## Bell Test (still good law)

- Balance need for the search against the invasion imposed on the inmate:
  - Institution's **need** for the search; against
  - How **intrusive** is the search;
  - The **manner** in which the search is conducted; and
  - The **place** in which the search is to be conducted.
- More intrusive the search, the greater the institution's need.
- Institution's need is usually safety and security.
  - Prevention induction of contraband into the facility



## Moving Arrestees into General Population: Reasonable Suspicion **NOT** Required

- Florence v. Board of Chosen Freeholders of the County of Burlington, (566 U.S. - 2012)
  - Reasonable suspicion **is not required** prior to moving arrestees into **general population**
  - The Court relied and upheld on Bell v. Wolfish and Turner v. Safley.
    - In a 5-4 decision the Justices justify the strip searching of all arrestees entering “general population” for the following reasons:
      - (1) the prevention of disease, specifically MRS). Of these three, the potential for smuggling of weapons, drugs, and other contraband poses the greatest security threat. (2) the identification of gang members by observing their tattoos, and (3) the detection and deterrence of smuggling weapons, drugs or other contraband into the facility,
  - It was a case of first impression for the High Court.
  - **Substantial Deference** to the administrator!!!!!!

# Search Scenarios: Turner Analysis

- Clothing Exchanges
- Religious Head Coverings
- Inmate Workers
  - Before
  - During
  - After