

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

DANIEL GREER

Plaintiff,

-v-

CONNECTICUT DEPARTMENT OF
CORRECTION; CHESHIRE CORRECTIONAL
INSTITUTION; and ROLLIN COOK,
Commissioner for the Department of Correction
in the State of Connecticut,

Defendants.

Civil Action No. 20cv350
MARCH 13, 2020

COMPLAINT

Plaintiff Daniel Greer, by his undersigned attorneys at Morrison & Foerster LLP, for his Complaint, alleges as follows:

INTRODUCTION

1. This is an action by Rabbi Daniel Greer, a Jewish inmate of the Connecticut Department of Correction (“CTDOC”), currently incarcerated at the Cheshire Correctional Institution (“Cheshire Correctional”), for relief under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc-1 *et seq.* and the Connecticut Religious Freedom Restoration Act, Conn. Gen. Stat. §52-571b (“RFRA”), as a result of unlawful burdens imposed on Rabbi Greer’s religious exercise.

2. Keeping kosher is a central tenet of Judaism observed by Rabbi Greer, and CTDOC’s and Cheshire Correctional’s failure to provide Rabbi Greer with meals that are kosher for Passover – a *de facto* ban on such meals – will substantially burden his religious exercise of

keeping kosher during Passover. If denied relief, Rabbi Greer will be forced to choose between starving for the eight days of Passover or violating his sincerely held religious beliefs. Given his advanced age and poor health, this could be a life-threatening decision.

3. The burdens that CTDOC's and Cheshire Correctional's policies relating to dietary policies and religious practice will impose on Rabbi Greer are substantial and not necessary to achieve any compelling state interest.

4. RLUIPA was enacted unanimously by Congress to ensure that the core principle of religious freedom – that the State should not impose burdens that interfere with the religiously informed conscience of its citizens – is not just for the powerful or the virtuous, but instead extends even to the lawbreaker and the politically powerless. The same is true for RFRA.

5. Rabbi Greer seeks declaratory and injunctive relief to lift the burdens on his religious exercise, to remedy Defendants' violations of the law, and to ensure that CTDOC and Cheshire Correctional implement sustainable reforms that guarantee the religious freedoms protected by RLUIPA and RFRA.

PARTIES

6. Plaintiff Rabbi Daniel Greer has been incarcerated at Cheshire Correctional Institution since December 2019. Rabbi Greer is a practicing Orthodox Jew and has been an Orthodox rabbi since 1975. He is sincere in his Jewish religious beliefs.

7. Defendant CTDOC is an agency of the State of Connecticut having responsibility for the confinement and rehabilitation of individuals under custody at state facilities. CTDOC, upon information and belief, receives federal funding and is an "institution" within the meaning of 42 U.S.C. § 2000cc-1(a) and 42 U.S.C. § 1997.

8. Defendant Cheshire Correctional Institution is located in Cheshire, Connecticut,

and is an “institution” within the meaning of 42 U.S.C. §2000cc-1(a) and 42 U.S.C. § 1997. Cheshire Correctional is operated by CTDOC.

9. Defendant Rollin Cook is the Commissioner for CTDOC. He is sued here in his official capacity.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

11. The declaratory and injunctive relief sought by Rabbi Greer is authorized by 42 U.S.C. § 2000cc-2(a) and 28 U.S.C. §§ 2201 and 2202.

12. Venue is proper in the District of Connecticut pursuant to 28 U.S.C. § 1391(b). Defendants operate correctional facilities in the District of Connecticut, including Cheshire Correctional, in which Rabbi Greer is incarcerated.

FACTUAL ALLEGATIONS

Passover and Its Dietary Restrictions

13. Passover commemorates the 1313 BCE redemption of the Jewish people from slavery in Egypt, as recounted in the book of Exodus. (1:8 – 15:21).

14. As set forth in Exodus, after years of enslavement by the Egyptians, God sent Moses to Pharaoh to demand emancipation. Pharaoh refused Moses’ repeated requests, and God responded by afflicting the Egyptians with ten plagues. These plagues culminated in the death of every firstborn Egyptian male, after which Pharaoh begged Moses to take the Jews out of Egypt. A fundamental holiday in Judaism, many Jews who are generally non-observant follow the laws of Passover.

15. An essential part of Passover observance is adherence to special dietary laws that apply in addition to the standard rules of kosher.

16. “[T]he observance of kosher has been a hallmark of Jewish identity. Perhaps more than any other ‘mitzvah,’ the kosher laws emphasize that Judaism is much more than a ‘religion’ in the conventional sense of the word. To the Jew, holiness is not confined to holy places and times outside the everyday; rather, life in its totality is a sacred endeavor. Even the seemingly mundane activity of eating is a [Godly] act and a uniquely Jewish experience.”¹

17. Kosher dietary laws (also known as the laws of *kashrut*) include mandates on what foods and ingredients can and cannot be consumed; how food is cooked, prepared, stored, and served; as well as on the cleaning of pots, plates, and utensils. Generally speaking, to be kosher, a food item must be derived from religiously acceptable sources, prepared in accordance with Jewish law, and stored in and served on containers and tableware that are only used for kosher items. In addition, meat and poultry may not be mixed with dairy products.

18. The laws of kosher for Passover are even more stringent than the basic laws of kosher. Broadly speaking, the laws of Passover require eating unleavened bread (*matza*, pl. *matzot*), avoiding leavened products (*chametz*), and conducting a ceremonial dinner (*seder*) on the first two nights.

19. Throughout Passover, Jews eat unleavened bread.

20. From Passover eve through the eighth day of Passover, effectively nine days, Jews may not consume, own, or benefit from leavened products. Leavened products include any food created by allowing grain (specifically wheat, oat, spelt, rye, or barley) and water to ferment and rise, *i.e.*, leaven.

21. Rabbi Greer is an Ashkenazi Jew. Ashkenazi Jews are Jews that trace their recent ancestry to Central and Eastern Europe. Ashkenazi Jews refrain from eating *kitniyot* at Passover.

¹ See http://www.chabad.org/library/howto/wizard_cdo/aid/113425/jewish/What-is-Kosher.htm (last visited March 7, 2020).

This includes, but is not limited to, legumes, corn, and rice. These foods are avoided because they are harvested at the same time as the grains listed above, and some amount of those grains might have mixed in.

22. Not only are leavened products forbidden during Passover, but foods processed on equipment used to produce such products are also prohibited. Preparing a kitchen for Passover is therefore a substantial undertaking and would be virtually impossible to do at Cheshire Correctional.

23. All leavened products must be removed, and the kitchen cleaned and *kashered*, a process through which surfaces and instruments used to prepare leavened products are made permissible for Passover use. Generally, this process requires cleaning, waiting 24 hours, and then applying heat by burning or boiling for a set amount of time. Pots, dishwashers, ovens, stoves, sinks and faucets, refrigerators, tables, kitchen gloves, towels, and countertops are all items that must undergo this process.

24. Ovens, for example, must be cleaned, unused for 24 hours, and then heated to 550 degrees Fahrenheit for an hour. Items with seams or cracks that trap food may need to be blowtorched. Utensils used to cook liquids with leavened products must be cleaned, left idle for 24 hours, placed in a pot of boiling water for 10 seconds, and then rinsed in cold water. The utensils should be immersed one at a time, and the water must return to a boil between each immersion. The pot containing the boiling water should also be kosher for Passover. Some materials, such as ceramic, cannot be made kosher for Passover at all. And, once the kitchen is cleaned and *kashered*, it would have to remain that way for the entire Passover holiday.

25. The Biblical punishment for eating leavened products on Passover is *kares*, being cut off from the Jewish people (Exodus 12:15). This severe penalty indicates both the serious

nature of the Passover requirements, and that strict Passover observance symbolizes an eternal connection with God and the Jewish people.

26. The third critical portion of Passover observance entails conducting a *seder*, or ceremonial dinner, on the first two nights of Passover. This fulfills the Biblical mandate to remember the Exodus and to eat unleavened bread.

27. The ceremonial dinner also fulfills obligations imposed by rabbinic authorities, including drinking four cups of wine or grape juice, eating bitter herbs, reciting psalms of praise, eating the *afikomen* (an extra piece of unleavened bread to remember the Passover offering), and demonstrating acts of freedom, such as leaning while eating and sitting with a pillow.

28. At the *seder* meal, a special plate is arranged. It includes five items: (1) haroses, a mixture of apples, nuts, wine, and cinnamon, which represents the bricks and mortar the Jews used in their labor; (2) a vegetable, preferably parsley, potato, or celery, which will be dipped in salt water that represents the tears of the slaves; (3) bitter herbs, typically romaine or endives, and freshly grated horseradish; (4) a boiled or roasted egg, representing a sacrifice; and (5) a piece of roasted meat, as a reminder of the paschal lamb that was brought when the Temple stood in Jerusalem. Three pieces of unleavened bread are kept next to or within the plate.

29. The dinner follows the service laid out in a religious book called the *haggadah*. The meal involves, among other things, washing hands, dipping vegetables, and making blessings. At three points during the meal, one is commanded to eat some portion of unleavened bread. At four other points, one is obligated to drink a cup of wine or grape juice.

CTDOC Does Not Provide Rabbi Greer with Kosher Diet for Passover

30. CTDOC and Cheshire Correctional provide three meal options to Cheshire Correctional inmates: the Master Menu, therapeutic diet, and common fare diet. CTDOC's

Food Service Manual defines the common fare diet as “[a] diet which meets all nutritional requirements and reasonably accommodates recognized religious dietary restrictions.”²

31. CTDOC imposes the common fare meal plan on Rabbi Greer. The food on the common fare meal plan is generally not kosher, although certain products are. Rabbi Greer survives by eating those kosher products on the common fare menu, supplemented only by the few kosher foods purchased by him from the commissary. Rabbi Greer has not had a hot meal, meat, poultry, or cooked fish since December 2, 2019.

32. Upon information and belief, the meal plans currently offered by CTDOC at Cheshire Correctional, including the common fare meal plan, do not comply with Orthodox Jewish kosher laws for Passover and are, therefore, not in any way acceptable as substitutes or alternatives to a kosher diet for Rabbi Greer during Passover.

33. Rabbi Greer has submitted numerous complaints and grievances to CTDOC and Cheshire Correctional requesting proper kosher food and an accommodation for Passover, including kosher for Passover food and provisions for two ceremonial *seder* dinners, consistent with his religious beliefs. In particular, he has suggested that CTDOC make prepackaged meals prepared by a reputable kosher food vendor available to him for purchase through the Cheshire Correctional commissary, *at no cost to CTDOC*, but CTDOC has refused to provide these accommodations.

34. Upon information and belief, the only bases asserted by CTDOC and Cheshire Correctional for not providing meals that are kosher for Passover are alleged concerns over the safety of the prepackaged kosher meals, which are entirely unfounded. These meals are prepared by reputable, well-known kosher food vendors and would be no different from every other

² Connecticut Department of Correction Administrative Directive Number 10.18, Effective Date 6/24/2015.

prepackaged food made available to inmates in the prison or the commissary, and they could undergo the same safety precautions and checks. Upon information and belief, these prepackaged kosher meals are also made available in other correctional institutions, and similar security procedures can be followed at Cheshire Correctional.

35. Upon information and belief, CTDOC will not provide Rabbi Greer with any of the items necessary to allow him to conduct two ceremonial *seder* dinners, as required by Jewish law. Upon information and belief, CTDOC will at most provide Rabbi Greer with a box of unleavened bread and some tuna fish, which will be insufficient to satisfy the requirements of Passover.

36. CTDOC does not employ anyone knowledgeable in the laws of kosher to oversee the common fare meal plan or to supervise the purchasing, handling, preparation, and serving of common fare food at Cheshire Correctional.

37. The Federal Bureau of Prisons and most state prison systems in the United States offer a kosher diet option for Jewish prisoners who keep kosher. They typically do so by purchasing prepackaged shelf-stable or frozen kosher meals. During Passover, prepackaged kosher for Passover meals are served. These meals come double-sealed so prisoners or staff can warm them in any microwave or oven as long as the seal remains intact. Jewish prisoners can use disposable utensils and dinnerware.

38. By providing double-sealed shelf-stable or frozen meals with disposable utensils and dishes, prison administrators do not have to spend extra resources maintaining a kosher for Passover kitchen, which would require kosher food, a separate kitchen, a separate set of cookware, and regular rabbinic supervision.

39. None of the common fare options meets the requirements of kosher for Passover

food. If not provided with prepackaged and sealed meals, Rabbi Greer's religious rights will be violated. As it stands, the common fare menu would force Rabbi Greer, who has a religious basis for consuming kosher meals, to violate his core religious beliefs over Passover.

CLAIMS FOR RELIEF

FIRST CLAIM

(Defendants' Actions Violate RLUIPA)

40. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-39 as if fully set forth herein.

41. Defendants will not provide meals that are kosher for Passover to Rabbi Greer or provisions for two ceremonial dinners on the first two nights of Passover in accordance with his religious beliefs.

42. Defendants' actions constitute a substantial burden on Rabbi Greer's religious exercise, and they are not the least restrictive means of furthering any compelling government interest.

43. Accordingly, Defendants' actions violate RLUIPA, 42 U.S.C. § 2000cc-1.

SECOND CLAIM

(Defendants' Actions Violate RFRA)

44. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1-43 as if fully set forth herein.

45. Defendants will not provide meals that are kosher for Passover to Rabbi Greer or provisions for two ceremonial dinners on the first two nights of Passover in accordance with his religious beliefs.

46. Defendants' actions constitute a substantial burden on Rabbi Greer's religious

exercise and they are not the least restrictive means of furthering any compelling government interest.

47. Accordingly, Defendants' actions violate the Connecticut Religious Freedom Restoration Act, Conn. Gen. Stat. §52-571b ("RFRA").

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

- a. Order Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them to provide Plaintiff with nutritionally sufficient meals that are kosher for Passover on each of the eight days of Passover (April 8 through April 16 in 2020) and provisions for two ceremonial dinners on the first two nights of Passover (April 8 and April 9);
- b. Declare that Defendants have violated RLUIPA and Connecticut RFRA;
- c. Award to Plaintiff full costs and attorneys' fees arising out of this litigation; and
- d. Order such other relief as the interest of justice may require.

Respectfully submitted,

By: /s/ Jonathan J. Einhorn

Jonathan J. Einhorn
JONATHAN J. EINHORN LAW OFFICES
129 Whitney Avenue
New Haven, CT 06510-1223
Telephone: 203.777.3777
Facsimile: 203.782.1721
E-mail: einhornlawoffice@gmail.com

Joel C. Haims (*pro hac vice* admission pending)
Steve Rappoport (*pro hac vice* admission pending)
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019-9601
Telephone: 212.468.8000
Facsimile: 212.468.7900
E-mail: jhaims@mofocom
E-mail: srappoport@mofocom

Attorneys for Plaintiff Daniel Greer