EXHIBIT 9

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

YUSUF ABDUL ALIM,
-Plaintiff

vs. CIVIL NO. N-90-340(JAC)

HARRY MEACHUM, ET AL.,
-Defendants

MAGISTRATE'S OPINION

The plaintiff in this civil rights action seeks injunctive relief in the form of an order requiring the defendants to provide him with a diet consistent with his religious beliefs. He also seeks an order preventing the defendants from restricting his access to religious services and from otherwise intimidating or harassing him. Because the credible evidence before the court reveals that the defendants have accommodated the plaintiff's dietary needs and had legitimate penological reasons for excluding the plaintiff from religious services, the plaintiff's motion, Filing # 17, should be denied.

Facts

Based on the affidavits[1] submitted, the court finds the following facts.

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[1] Many of the purported affidavits submitted by the plaintiff are not notarized. In recognition of the plaintiff's pro se status, however, the court considered the "affidavits" in determining whether injunctive relief was warranted. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

Upon review and pursuant to 28 U.S.C. § 636(b)(1) and Rule 2 of the Local Rules of Civil Procedure (D. Conn. 1992), this recommended ruling on plaintiff's motion for a temporary restraining order and/or preliminary injunction is hereby APPROVED and ADOPTED as the ruling of this court over plaintiff's objections. It is so ordered.

Jose A. Cabranes, C.U.S.D.J.
New Haven, CT 10/20/92

Exhibit 55

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
AUG 31 3 26 PM '92

U.S. DIST. CT.
HARTFORD, CT.

YUSUF ABDUL ALIM,
-Plaintiff

VS. CIVIL NO. N-90-340(JAC)

LARRY MEACHUM, ET AL.,
-Defendants

MAGISTRATE'S OPINION

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The plaintiff, a prisoner at the Hartford Correctional Center, is a Sunni Muslim, an adherent of the Islamic religion. As a Sunni Muslim, the plaintiff is prohibited from eating certain foods.[2] For instance, the plaintiff may not eat pork. Similarly, he is prohibited from eating any other meat unless the animal was killed in a ritualistic fashion and the meat was processed and packaged in a particular manner.

Since at least April, 1984, the Connecticut Department of Corrections (hereafter "DOC") has attempted to accommodate the special dietary needs of members of the plaintiff's religion. Prior to February, 1991, the DOC's policy was to provide members of plaintiff's religion with a nutritionally adequate substitute for foods that were objectionable.

Beginning in February, 1991, in some locations, September, 1991, in others, the DOC implemented the Common Fare Menu. The Common Fare Menu was developed by a panel of representatives of several religions and is designed to accommodate the dietary needs of members of those religions. The Common Fare Menu is consistent with Muslim dietary law[3] and provides a diet that meets

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[2] The plaintiff may eat foods which are Halal, lawful, but may not eat foods which are Haram, unlawful.

[3] In finding that the Common Fare Menu conforms with Muslim dietary law, the court accepts the statements of Jabir A. Jawwaad, Abdul Majid Karim Hasan, and Kashif Abdul Karim. The court does not accept the statement of

or exceeds recommended dietary allowances established by the Food and Nutrition Board of the National Academy of Sciences. Further, in terms of its nutritional profile, the Common Fare Menu is remarkably similar to the menu served to the majority of the prison population.

From an institutional standpoint, the Common Fare Menu is cost effective. Because the Common Fare Menu utilizes foods which are available to the general prison population, no separate storage facilities are required and no additional workers are required to implement it. On the other hand, the adoption of a menu that includes Halal meats would entail a significant expense; not only are Halal meats more expensive than the meat served to the general population, but additional staff and storage space would be needed to ensure that the meat remained Halal.[4]

Persons incarcerated at the Hartford Correctional Center who are participating in the Common Fare Menu are

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Zaid Salid Shakir that the Common Fare Menu is inconsistent with Muslim dietary law simply because it does not include Halal meats and poultry.

[4] The court notes that the defendants may have overestimated the expense required to provide Halal meats to the plaintiff. Regardless of the exact figures, however, it is clear to this court that the inclusion of Halal meats would entail a significant expense.

provided with three full meals per day.[5] When an inmate who normally eats off the Common Fare Menu is at court and unable to eat at the prison, he is provided with a bagged lunch consisting of two cheese sandwiches, one piece of fruit, and a juice drink.[6] These lunches are in accord with Muslim dietary principles.

Religious services are provided for members of plaintiff's religion by persons who are under contract with the department of corrections. In 1990, the plaintiff was temporarily suspended from religious services at the Cheshire correctional facility because of his argumentative and disruptive behavior. Imam Kashif Abdul Karim, the supervising clergy at Cheshire in 1990, felt that the plaintiff's behavior agitated the other inmates and presented a threat to him personally. After approximately one month, the plaintiff was allowed

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[5] The court notes that there may have been one or two instances when, because of an administrative mix-up, the plaintiff was forced to forego a meal. The court rejects as not credible, however, the plaintiff's contention that he has been denied 20 meals and that he has lost 15 pounds while in prison because of the lack of sufficient food. According to Dr. Blanchette, the plaintiff is in much better health now than when he was first incarcerated. Records reveal that the plaintiff's weight changed only slightly between September, 1991, and January 23, 1992, and that the plaintiff's nutritional level is quite adequate.

[6] The court finds that the plaintiff's contention that he has been served bologna sandwiches when brought to court is not credible. In so finding, the court notes that the plaintiff did not report to anyone in the prison administration that he had received bologna sandwiches.

to attend services again.

On April 10, 1992, the plaintiff was involved with an altercation with a guard at the Hartford correctional center. The guard, Officer Bulawa, was monitoring the admission of inmates to religious services. When Officer Bulawa asked to see his pass, the plaintiff became indignant. He struck Officer Bulawa in the face with his fist whereupon Officer Bulawa pushed the plaintiff away. The plaintiff subsequently was restrained.[7]

Discussion

The test for the issuance of a preliminary injunction is well-established in the Second Circuit. For a preliminary injunction to issue, there must be a showing of "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." Jackson Dairy, Inc. v. H.P. Hood & Sons, 596 F.2d 70, 72 (2d Cir. 1979); Paulson v. County of Nassau, 925 F.2d 65, 68 (2d Cir. 1991).

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[7] Again, the court finds that the plaintiff's version of the events in question is not credible. The court notes, however, that the "affidavits" submitted by the plaintiff do indicate that the plaintiff pushed Officer Bulawa. See "Affidavits" of Leon E. Benjamin and Arthur Robinson, Filing # 41.

In this case, the plaintiff cannot meet the initial burden of showing that he will suffer irreparable harm if injunctive relief is not ordered. The plaintiff's claim that he is being deprived of a diet consistent with his religious beliefs is belied by the credible evidence before the court. The Common Fare Menu which currently is being utilized by all state correctional facilities does not violate Muslim dietary law. As noted above, the record does not support the plaintiff's contention that he was deprived of meals on twenty separate occasions.[8]

With respect to the plaintiff's contention that he was arbitrarily and capriciously deprived of the right to attend religious services, the record reveals that the state had legitimate penological reasons for excluding the plaintiff from religious services for a short period of time. See Bell v. Wolfish, 441 U.S. 520, 546 (1979)("maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and retrial detainees.") The court cannot say that the response of the correctional officials was

[8] The defendants concede that, due to mistakes, there may have been one or two occasions when the plaintiff was not provided with a meal from the Common Fare Menu. Those isolated incidents, however, do not warrant injunctive relief.

exaggerated in light of Imam Karim's fears that the plaintiff presented a personal threat to him. Id. In any event, the plaintiff makes no showing that he currently is being deprived access to religious services.

Finally, the record does not support the plaintiff's claim that he is being harassed or intimidated. With respect to the incident on April 10, 1992, the credible evidence reveals that the plaintiff struck Officer Bulawa after the officer asked to see his pass. Again, the response of the correctional officials to the plaintiff's actions does not appear to have been exaggerated.[9] Id.

In short, the plaintiff has not shown that injunctive relief is warranted. Accordingly, the motion

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[9] To the extent the plaintiff seeks to require the defendants to provide him with Halal meats, the motion also must be denied. As noted in ruling on a similar motion in Hasan Abdullah Qadr Rahman, a/k/a Ralph Hickey v. Larry Meachum, et al., Civil No. N-90-277(JAC)(March 11, 1992), slip op. at 3, a greater showing must be made before a court will order mandatory relief:

> In these circumstances, we have held that an injunction should issue 'only upon a clear showing that the moving party is entitled to the relief requested,' Flintkote Co. v. Blumenthal, 469 F.Supp. 115, 125-126 (N.D.N.Y.), aff'd, 596 F.2d 51 (2d Cir. 1979), or where 'extreme or very serious damage will result' from a denial of preliminary relief, Clune v. Publishers' Ass'n, 214 F.Supp. 520, 531 (S.D.N.Y.), aff'd, 314 F.2d 343 (2d Cir. 1963).

Abdul Wali v. Coughlin, 754 F.2d 1015, 1025 (2d Cir. 1985). The plaintiff simply cannot meet this standard.

for preliminary injunction should be denied.[10]

Either party is free to seek review of this report and recommendation as provided in 28 U.S.C. § 636(b) and Rule 72, Fed. R. Civ. P., bearing in mind that the failure to do so in a timely fashion may preclude further review.

Dated at Hartford, Connecticut, this 31st day of August, 1992.

Thomas P. Smith

THOMAS P. SMITH
U.S. MAG. JUDGE

[10] It follows from the above discussion that the magistrate judge feels the motion for temporary restraining order also should be denied. See Warner Bros. Inc. v. Dae Rim Trading, Inc., 877 F.2d 1120, 1125 (2d Cir. 1989)(the purpose of a temporary restraining order is simply to preserve the status quo until the court has an opportunity to pass upon the merits of the demand for a preliminary injunction).

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HASAN ABDULLAH QADR RAHMAN,
A/K/A RALPH HICKEY,
-Plaintiff

VS. CIVIL NO. N-90-277 (JAC)

LARRY MEACHUM, ET AL.

MAGISTRATE'S OPINION

In this civil rights action brought pursuant to 42 U.S.C. § 1983, the plaintiff claims that he has been denied his rights to freedom of religious expression under the first and fourteenth amendments to the United States Constitution because the defendants have failed to provide him with a diet consistent with his religious principles. The plaintiff also contends that the state's failure to provide him with the diet he desires constitutes cruel and unusual punishment and is a violation of his right to equal protection under the laws.[1] The defendants now move for summary judgment. For the reasons set forth herein, the defendants motion should be granted in part and denied in part.

The standard for summary judgment is well established. The remedy of summary judgment is appropriate "if the pleadings, depositions, answers to

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[1] The plaintiff also claimed that he was subjected to cruel and unusual punishment as a result of inadequate medical care. On January , 1992, however, this count was dismissed without prejudice upon the motion of the plaintiff and absent objection.

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, Fed.R.Civ.P. In ruling on a motion for summary judgment, the court must accept all reasonable inferences to be drawn from the evidence that support the nonmovant. Donahue v. Windsor Locks Bd. of Fire Comm'rs, 834 F.2d 54, 57 (2d Cir. 1987); Diamantopolous v. Brookside Corp., 683 F.Supp. 322, 325 (D.Conn. 1988). The moving party bears the initial burden of demonstrating that there are no disputed material facts and that it is entitled to judgment as a matter of law. Celotex v. Catrett, 477 U.S. 317, 323 (1986).

If the moving party meets its burden, the nonmoving party must "by affidavits or . . . otherwise[,] . . . set forth specific facts showing that there is a genuine issue for trial." Rule 56(e). Fed.R.Civ.P.; Anderson v. Liberty Lobby, 477 U.S. 242, 250 (1986). This requires the nonmoving party to "make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. at 322.

At the outset, the magistrate notes that the complaint must be dismissed insofar as it seeks monetary

damages against the defendants in their official capacities. It is well established that a suit against a state official in his/her official capacity should be treated as a suit against the State itself. Hafer v. Melo, ___ U.S. ___, 112 S.Ct. 358 (1991). Such a suit is barred by the terms of the Eleventh Amendment. Penhurst State School & Hospital v. Halderman, 465 U.S. 89, 98 (1984).

Additionally, the complaint must be dismissed insofar as it seeks injunctive relief from defendants Liburdi, West, and Guay. Because the plaintiff has been transferred to the Hartford Correctional Center, these defendants, employees of the Connecticut Correctional Institution at Cheshire, are not in a position to provide the plaintiff with the relief requested. Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985) ("Consequently, a prisoner's claim for injunctive relief to improve prison conditions is moot if he or she is no longer subject to those conditions."); Browdy v. Meachum, B-89-185 (JAC), slip op. at 3-4 (November 20, 1989.

The court begins its discussion of the merits of the plaintiff's case by noting that "while prisoners in penal institutions are subject to restrictions on their freedoms, the restrictions are not without limit." Kahane v. Carlson, 527 F.2d 492, 495 (2d Cir. 1975); see

also Procunier v. Martinez, 416 U.S. 396 (1974). A prison inmate retains those rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Pell v. Procunier, 417 U.S. 817, 822 (1974).

Consistent with these principles, courts have held that "[p]risoners have a right 'to receive diets consistent with their religious scruples.' Kahane v. Carlson, 527 F.2d 492, 495 (2d Cir. 1975)." Benjamin v. Coughlin, 905 F.2d 571 (2d Cir. 1990). The prison's obligation to comply with an inmate's dietary request, however, is limited by institutional concerns. Courts have been reluctant to "grant dietary requests where the cost is prohibitive, see Martinelli v. Dugger, 817 F.2d 1499, 1507 & n. 29 (11th Cir. 1987), cert. denied, 484 U.S. 1012 [(1988)]; Kahey v. Jones, 836 F.2d 948, 951 (5th Cir. 1988), or the accommodation is administratively unfeasible, see Kahey, 836 F.2d at 951, Kahane, 527 F.2d at 495." Benjamin v. Coughlin, supra, 905 F.2d at 579.

In this case, there is no dispute that, as a matter of policy, the defendants have attempted to provide the plaintiff with a diet consistent with his religious beliefs. Prior to February, 1991, the state's policy was to accommodate inmates' objections to particular foods by providing them with substitute foods of equal

nutritional value. Joint Affidavit of Robert J. DeVeau and Daniel K. Benwell, ¶ 5.[2]

Beginning in February, 1991, in some locations, September, 1991, in others, the defendants adopted a vegetarian diet known as common fare. Id. ¶¶ 7, 8. According to Imam Abdul-Majid Karim Hasan, an Associate Chaplin for the Department of Corrections, this diet does not violate Muslim dietary law.[3] Affidavit of Abdul-Majid Karim Hasan ¶¶ 8,9. Robert DeVeau, a registered dietician, indicates that the diet meets or exceeds recommended dietary allowances established by the Food and Nutrition Board of the National Academy of Sciences, the standard authority used by dieticians in public and private services. Joint Affidavit of Robert J. DeVeau and Daniel K. Benwell ¶ 11.

The plaintiff does not contest the defendants' representation that the common fare diet has been

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[2] While the affidavits submitted by the plaintiff raise a question of fact as to whether this policy was adhered to at all times, see Affidavit of Yusuf Abdul Alim a/k/a Albert McQueen, they are not at odds with the DeVeau affidavit which identifies the defendants' policy. In fact, the plaintiff concedes that the defendants provided the plaintiff with peanut butter when the general population was served pork. Complaint, ¶ 13j.

[3] Imam Hasan's resume, which is appended to the affidavit he submitted, indicates that he has a Master's Degree in Human Services, that he has received a certificate of completion in Imam's Preparatory Studies, that he has completed a course in the administration of religious programs in correctional institutions, and that he has served as a spiritual leader to various groups.

adopted, see Affidavit of Hasan Abdullah Qadr Rahman, p. 7; Affidavit of Abdul Qawi Salahuddin ¶ 2. It is the plaintiff's contention, however, that the diet is not nutritious and does not comply with Muslim dietary law.

While the plaintiff has submitted a number of affidavits in support of this contention, none of them are sufficient to create a genuine issue of fact. First, there has been no showing that the affiants are competent to testify as to the nutritional value of the meals served. Rule 56(e), Fed. R. Civ. P. ("Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.") Second, while the affiants are all practicing Muslims, there has been no showing that they have had any specialized training or instruction in Muslim dietary practices. Absent such a showing, their statements cannot be held to comply with Rule 56(e), Fed. R. Civ. P.[4] Inasmuch as Imam Hasan, a cleric and the Director of Islamic Services for the Department of Corrections, has indicated that the common fare diet is consistent with Muslim dietary practices, his statements

[4] Absent some indication of specific training or instruction, there is no way of discerning whether the beliefs espoused by the affiants are their own or those of their church.

must be credited.

To the extent the plaintiff is seeking a diet more extensive than that provided by common fare, his complaint is without merit. The state need not comply with every dietary request regardless of the cost or administrative burden. Benjamin v. Coughlin, supra, 905 F.2d at 579. In this case, the state has submitted several affidavits indicating that cost of complying with the plaintiff's requests would be substantial. See Supplemental Affidavit of Robert J. DeVeau. The state need not undertake such an expenditure when it is already making a reasonable accommodation for the plaintiff's religious beliefs.

Because the state's policy is to provide the plaintiff and others of the same religious affiliation with a nutritious diet consistent with their religious beliefs, summary judgment should be granted for defendants Hasan and Meachum with respect to the claims for monetary damages against them. It is well established that a public official cannot be liable for monetary damages unless he/she was personally involved in the alleged deprivation of constitutional rights. McKinnon v. Patterson, 568 F.2d 930, 934 (2d Cir. 1977), cert. denied, 434 U.S. 1087 (1978). In this case, there is no indication that either Hasan or Meachum was personally involved in anything but the adoption of a

general policy for dealing with specific religious dietary requests.

The defendants' motion for summary judgment, however, cannot be granted in its entirety.[5] There is a genuine dispute as to whether employees of the state department of corrections have always complied with the policies noted above. The court notes that the affiants indicate that they often have been served the same meals served to the general prison population, meals that are inconsistent with their religious beliefs. See e.g. Affidavit of Yusuf Abdul Alim a/k/a Albert McQueen (representing that he was served beef soup which he could not eat and, thereafter, denied a substitute consistent his religious beliefs). The affiants further represent that when they have complained about the meals

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[5] The defendants' request for qualified immunity must be denied. The plaintiff's right to a diet consistent with his religious beliefs was clearly established at the time this action accrued. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); see also Kahane v. Carlson, 527 F.2d 492 (2d Cir. 1975). As discussed infra, there is a question of fact as to whether the defendants have always complied with their articulated policy of attempting to provide members of the plaintiff's religion with a diet consistent with their religious beliefs.

The court also rejects the defendants' contention that the claims for injunctive relief against defendants Meachum and Hasan are moot. The plaintiff's claims are not limited to challenging the food provided at the Connecticut Correctional Institution at Cheshire. Additionally, since there is a question as to whether the common fare diet has always been followed, the court cannot find that the adoption of common fare menu moots the plaintiff's claims.

they have been told to eat around the offending foods.[6]

In short, the defendants' motion for summary judgment (filing 39) should be granted in part and denied in part. Insofar as it seeks monetary damages against the defendants in their official capacities, the complaint should dismissed. The complaint also should be dismissed to the extent it seeks injunctive relief from defendants Liburdi, Guay, and West. Finally, summary judgment should enter for the defendants on the issue of whether the common fare diet violates the plaintiff's constitutional rights and, more specifically, for defendants Meachum and Hasan insofar as the complaint seeks monetary damages against them.

Either party is free to seek timely review of this ruling pursuant to 28 U.S.C. § 636, and Local Rule 2 for U.S. Magistrate Judges.

Dated at Hartford, Connecticut, this 10th day of March, 1992.

Thomas P. Smith

THOMAS P. SMITH
U.S. MAG. JUDGE

[6] In fact, the defendants admit that the plaintiff and others were denied access to the common fare menu on at least one occasion.