UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MATSON WILLIS, et al.,	)	
Plaintiffs,	)	
	)	
vs.	)	1:09-cv-815-JMS-DML
	)	
COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, et al.,	)	
Defendants.	)	

ORDER

The Court recently entered its Final Judgment and Injunction in this case. [Dkt. 114.] Therein, it ordered the Department of Correction ("DOC") to supply a kosher meal option for any inmate whose sincerely held religious beliefs require it. The Court further ordered that all kosher meals must be certified as kosher by appropriate religious authorities selected by the DOC, which may be accomplished by purchasing pre-packaged meals certified as kosher or otherwise ensuring that meals are kosher at the frequency specified by the religious authorities. Finally, the Court awarded nominal damages to Mr. Willis on his individual claim.

Presently before the Court is DOC's motion to stay the injunction during the pendency of the appeal. [Dkt. 118.] The parties agree, however, that the judgment should be stayed solely as it relates to nominal damages. [Dkt. 128 at 1.]

A motion to stay a district court ruling pending appeal "is a request for extraordinary relief." *Chan v. Wodnicki*, 67 F.3d 137, 139 (7th Cir. 1995); *see also Hinrichs v. Bosma*, 410 F.Supp. 2d 745, 748-49 (S.D. Ind. 2006) ("a stay is considered extraordinary relief for which the moving party bears a 'heavy burden'") (quotation omitted). Under Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8(a), such extraordinary relief is appropriate only where a movant demonstrates the propriety of a stay according to the balance of four factors: (1) the movant's likelihood of suc-

cess on the merits; (2) the likelihood of irreparable injury to the movant absent a stay; (3) whether a stay will substantially injure other parties to the litigation; and (4) "where the public interest lies." *Glick v. Koenig*, 766 F.2d 265, 269 (7th Cir.1985).

A) Does the DOC have a likelihood of success on the merits on appeal?

Unlike the standard for a preliminary injunction, the party moving to stay an injunction must "demonstrate a substantial showing of likelihood of success [on appeal], not merely the possibility of success." *Id*. at 1301. Furthermore, the "mere recitation of arguments previously made and rejected" is not sufficient to meet the requisite finding of a likelihood of success on appeal. *Endress + Hauser, Inc. v. Hawk Measurement Systems Pty. LTD.*, 932 F. Supp. 1147, 1149 (S.D. Ind. 1996).

Here, the DOC recites two arguments it made in its motion for summary judgment—that avoiding the cost of providing kosher meals in the face of budgetary concerns is a compelling governmental interest, and that providing vegan meals that are not kosher is the least restrictive means of achieving that compelling interest. [Dkt. 119 at 3-4.] It does not raise any new issues that would make the case more meritorious on appeal than it was when this Court reviewed it in the first instance.

As to the first argument, the Court has already held that cost avoidance alone cannot be a compelling governmental interest under RLUIPA. *Koger v. Bryan*, 523 F.3d 789, 800 (7th Cir. 2008). As to the second argument, the Court has already rejected the DOC's assertion that providing vegan meals is the least restrictive means of promoting any compelling government interest, and the DOC presents no additional reason to validate its assertion here. 42 U.S.C. 2000cc-1(a).

Because the DOC has not demonstrated a substantial showing that it is likely to succeed on appeal, the Court finds that this factor weighs in favor of denying the stay.

B) Is there likelihood of irreparable injury to the DOC absent the stay?

The Seventh Circuit has held that "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to satisfy the irreparable harm requirement for a stay, and that "injury resulting from attempted compliance with government regulation ordinarily is not irreparable harm." *American Hospital Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980). Irreparable harm, in addition to being more than the financial burdens that come with complying with most government regulations, must be certain and immediate, rather than speculative or theoretical. *River of Life Kingdom Ministries v. Village of Hazel Crest, Ill.*, 611 F.3d 367, 391 (7th Cir. 2010).

Here, the DOC argues that it "will incur significant monetary costs in complying with the judgment," and that "the expenditures would likely impact negatively on the operation of the prisons placed throughout Indiana and upon the rehabilitation of those confined." [Dkt. 119 at 4, 5-6.] Although the DOC alludes to its potential inability to pay prison guards or otherwise maintain public safety, however, it has not—at any point during this litigation—attempted to calculate the actual cost of complying with the Court's order or provided any admissible evidence to justify its assertion. Moreover, despite this Court's explicit acknowledgement that kosher diets and Hallal diets are not interchangeable, [dkt. 103 at 5], the DOC continues to include the cost of providing kosher meals to Muslim inmates as it opines vaguely about the impending cost of providing kosher diets. [Dkt. 119 at 2-3.] Again, even if cost were a compelling interest—which it is not—Hallal diets are not the subject of this litigation and should not feature in DOC's consideration of the cost of kosher meals.

As the Court mentioned in its Order on Cross-Motions for Summary Judgment, [dkt. 103], the DOC's obligations under RLUIPA arise from complying with a federal regulation that is part and parcel of receiving federal funding that, in part, funds DOC's compliance. *See* 42

U.S.C. 2000cc-1(b)(1). The financial burdens that coincide with DOC's voluntary acceptance of federal funds are foreseeable—they do not constitute the type of "peculiar" harm necessary for a stay. *See American Hospital Ass'n*, 625 F.2d at 1331.

Because the DOC has not shown that it will experience irreparable injury absent the stay, this factor also weighs in favor of denying the stay.

C) Will the issuance of a stay substantially injure other parties in the proceeding?

The Seventh Circuit has held that "in the context of RLUIPA's broad definition of religious exercise, a . . . regulation that imposes a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003). In the context of dietary restrictions, "a prisoner's religious dietary practice is substantially burdened when the prison forces him to choose between his religious practice and adequate nutrition." *Nelson v. Miller*, 570 F.3d 868, 869 (7th Cir. 2009) (finding that denying a non-meat diet during Lent and on Fridays substantially burdened the religious practice ofw a Roman Catholic prisoner).

The DOC does not directly address the fact that inmates will continue to face substantial injury if denied kosher meals pending appeal. Instead, it reiterates that providing vegan meals would satisfy RLUIPA. [Dkt. 119. At 7-8.]

Despite the DOC's disagreement with the ruling in this case, however, the Court has determined—consistent with Seventh Circuit authority—that the denial of kosher diets substantially burdens Plaintiffs' religious exercise. [Dkt. 103 at 13.] Therefore, the longer the DOC fails to provide kosher meals to Plaintiffs, the longer it will continue burdening their religious exercise, thereby causing Plaintiffs immediate and certain harm.

Because Plaintiffs will be substantially injured by a stay pending appeal, this factor, too, weighs in favor of denying the stay.

D) Does the public interest favor a stay?

In its recently filed Statement of Interest, the United States Government expressed the "well-settled" position that "the public has an interest in protecting the civil rights of all persons." [Dkt. 126 at 3.] Citing to *Cutter v. Wilkinson*, it continued: "The federal government's interest in protecting individual rights is particularly salient in the context of the religious protections afforded by RLUIPA, the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens." 544 U.S. 709, 713 (2005). Additionally, the United States noted that "facilitating the religious exercise of incarcerated persons serves the important societal interest in rehabilitation of inmates." [Dkt. 126 at 4.]

The DOC argues, and Plaintiffs do not dispute, that the public has "a strong interest in the orderly, efficient, safe, and effective operation of the prison system within the State of Indiana." [Dkt. 119 at 4.] Nevertheless, the DOC has not shown how providing kosher meals might undermine this interest; it has merely provided speculative examples of various areas within its $691 million budget that could possibly be affected by a cost increase that might—but will not necessarily—result from providing kosher meals in compliance with RLUIPA.

In light of the public's interest in protecting the right to religious exercise, inmate rehabilitation, and agency compliance with regulation, and in the corresponding absence of any evidence indicating that the provision of kosher meals would negatively impact the safety and welfare of the prison system, this factor favors denying the stay.

Because each of the four factors considered by the Court favors denying the stay on the injunction necessitated by RLUIPA, the DOC's motion to stay the injunction is **GRANTED** solely as it pertains to nominal damages and otherwise **DENIED**. [Dkt. 118.]

01/25/2011

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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