

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

NORMAN SIMMONDS (Inmate
#X0233489),

Plaintiff,

v.

SHERIFF MELODY M. MADDOX, in
her official capacity as Dekalb County
Sheriff; *et al.*,

Defendants.

Civil Action No.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S EMERGENCY
MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

INTRODUCTION

Plaintiff Norman Simmonds is a Muslim confined to the Dekalb County Jail. Defendants are Dekalb County Jail officials who have refused to provide Simmonds and other Muslim detainees with enough food during the holy month of Ramadan, denying them any food at all during several 24-hour periods. Simmonds hereby respectfully moves under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, *et seq.*, for a temporary restraining order and/or preliminary injunction compelling Defendants to

supply timely, adequate nutrition to Simmonds and all Muslim detainees who are fasting during Ramadan until May 1, 2022.

FACTUAL BACKGROUND

Fasting from dawn to sunset during Ramadan is one of the five pillars of Islam. *See* Complaint ¶¶ 1-2 and 23 n.3. Ramadan, which is the ninth month of the Muslim calendar, is based off a lunar cycle and so begins about ten days earlier each year. *Id.* ¶ 23 n.3. This year, Ramadan started on April 2, 2022, and will end on approximately May 2, 2022. *Id.* ¶ 23. Simmonds, along with Muslims across the world, fasts for Ramadan in accordance with his sincerely held religious beliefs and the religious traditions of Islam. *Id.*; *see also id.* ¶ 90.

Defendants have failed to accommodate Simmonds and other Muslims who are fasting during Ramadan, despite a Ramadan meal delivery program for which they signed up. This is not the first time the Government has demonstrated its hostility toward Islam in general and Simmonds in particular.

From the first day he entered the facility on September 1, 2021, Simmonds informed jail officials that he was Muslim via the jail's intake process and requested a halal diet. *See id.* ¶ 43. The jail's only available religious diet consists of kosher meals, which have been requested by Jews and Muslims like Simmonds who consider kosher meals to be halal. *See id.* ¶ 43;

see also id. at n.6 (noting in the past Muslims were accommodated with kosher diets because kosher diets are halal as well). But Simmonds' request was neither accepted nor even responded to. *Id.* at ¶ 44. He sent requests to the chaplain, to medical, to food service, and he followed up. Still nothing. Simmonds finally filed a formal grievance with the chaplain explaining his eight-month wait to get this accommodation, and the unsigned response said Simmonds would have to prove he was devout before his kosher/halal meal request would be granted. *Id.* ¶¶ 88-89. Still nothing. *Id.*

In the meantime, Simmonds requested a vegan diet to ensure he did not eat meat prepared in a way that would violate his sincerely held religious beliefs. *Id.* ¶ 45. Every morning for eight months, Simmonds has received approximately one cup of oatmeal, two plain tortillas, and a very small cup of apple juice, or occasionally milk. *Id.* ¶ 46. In the afternoon, he receives a lunch tray that invariably includes approximately half a cup of rice, half a cup of beans, one-quarter cup of corn or green beans, and two pieces of bread. *Id.* ¶ 47. Along with the lunch tray, he receives a bag that includes two pieces of bread and a jelly packet. *Id.* ¶ 48. Other detainees on the vegan meal plan also receive a packet of peanut butter, but Simmonds is allergic to peanuts. The facility removes the peanut butter from his bag but does not replace it with anything else. *Id.* Every day for the past eight months, this is what Simmonds

eats. According to calorie estimates obtained online, Defendants provide Simmonds a maximum of 1,525 calories, on a good day.

During Ramadan, Defendants' failure to provide adequate nutrition is even worse. Though the same foods are served, breakfast has most often been distributed too late for Simmonds and other Muslims to eat before their daily fast must begin. Breakfast was delivered before Simmonds began his fast only three of the first 14 days of Ramadan. *Id.* ¶¶ 36-37. On the other days, Simmonds did not have a meal to eat prior to starting his fast at dawn.

When Simmonds is supposed to break his fast, generally around 8 p.m. each night, jail officials have provided a standard lunch tray of rice, beans, corn, and bread but at unpredictable times, anywhere from 8:30 to 11:30 p.m.—forcing Simmonds to go without food for hours longer and wonder if his will ever come. *Id.* ¶ 39. During Ramadan, the facility has stopped sending the jelly sandwich altogether, but it has not replaced those lost calories with additional portions or any other substitute. *Id.* ¶ 49. Three of the first 14 days of Ramadan, he received no lunch tray in the evening at all. *Id.* ¶ 40. As a result, the best Defendants have done this Ramadan was during the three days jail officials provided Simmonds with a maximum of 1367 calories. All other days, Defendants have forced Simmonds to subsist on fewer than 700 calories each

day. Three days in a row during the first week of Ramadan, Defendants provided no food to Plaintiff at all.

Much of the problem here can be connected to a separate failure by the Government. The Government has refused to allow Muslims such as Simmonds to obtain kosher meals. *Id.* ¶ 43 and n.6 Because Jews and Muslims follow similar rules, and Kosher is more restrictive than Halal, Kosher meals are, in the eyes of Simmonds and most other Muslims, also Halal. *Id.* And Kosher meals—which are frozen and prepackaged—would provide Simmonds and other Muslims with full recommended nutrition, should they get all three meals a day. *Id.* ¶ 63. But because the Government has instead forced Muslims onto vegan meals, which provide less than 1,500 calories, Simmonds and other Muslims already start from a substantially inadequate nutritional baseline. And when meals are not provided (or provided only at a time they cannot be eaten), the problem compounds.

Simmonds and other fasting Muslims are wholly dependent upon Defendants to be able to eat. And they are eating next to nothing. Simmonds already suffers from hypertension and is pre-diabetic. *Id.* ¶ 30. He now faces severe weight loss and starvation symptoms as a result of Defendants' refusal to provide him adequate nutrition. Simmonds and other Muslims cannot even reliably store food from the commissary to compensate because Defendants

have repeatedly refused detainees' requests for time pieces – watches, personal clocks, or a single, visible wall clock in the unit. *Id.* ¶ 35. Because they have no idea what time it is while in their cells, they cannot know if it is early enough for their morning meal time or late enough to break their fast. This also adds an additional element of food insecurity that causes Simmonds extreme stress and mental anguish, to be starving and never knowing when or if his next meal will come.

Simmonds immediately spoke to prison officials and food service staff when breakfast came too late the first day. He filed a formal grievance on April 4, 2022, regarding the Government's failure to provide him and other Muslims with consistent Ramadan meals before dawn and after sunset. *Id.* ¶ 90. He also wrote a letter to the Sheriff as suggested in the inmate handbook. *Id.* ¶ 92 (but also noting how Defendants obstructed his ability to transmit the letter to the Sheriff). Simmonds reports symptoms of malnutrition, headaches, dizziness, weakness, mental fog, and other harms caused by Defendants' failure to provide adequate food before dawn and after sunset. *Id.* ¶ 29. Simmonds seeks a temporary restraining order to immediately correct the nutritional deficiencies for the remainder of Ramadan, and order Defendants' to deliver timely, adequate, and religiously-compatible meals to Simmonds.

ARGUMENT

The standard for issuing a temporary restraining order is substantially identical to the standard for issuing a preliminary injunction. *See Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (applying same standard to request for preliminary injunction as TRO). The purpose of a temporary restraining order is to preserve the status quo and prevent irreparable harm before a preliminary injunction hearing is held and merits adjudicated. *Granny Goose Foods v. Bhd. Of Teamsters & Auto Truck Drivers*, 415 U.S. 432, 439 (1974); *Powers v. Secretary, Florida Dept. of Corrections*, 691 Fed. App'x. 581, 583 (11th Cir. 2017).

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Id.*

The holy month of Ramadan started with the new moon on April 1, 2022, and ends on the evening of May 1, 2022. Simmonds is experiencing starvation and a severe deprivation of adequate nutrition *right now* due to Defendants' refusal to deliver pre-dawn and at-sunset meals and accommodate his religious practice. A temporary restraining order is necessary here to make sure Muslims like Simmonds are adequately fed starting immediately. The

temporary restraining order should then be converted into a preliminary injunction as soon as a hearing may be held, and last through the pendency of this litigation, including during subsequent months of Ramadan if necessary.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS THAT DEFENDANTS' REFUSAL TO PROVIDE MEALS TO PLAINTIFF AND OTHER FASTING MUSLIMS DETAINEES ON THE RAMADAN LIST ON TIME – OR AT ALL – VIOLATES FEDERAL LAW

A. Simmonds has satisfied the Prison Litigation Reform Act's Exhaustion Requirement, and to the extent Simmonds failed to exhaust, no remedy was available.

Under the Prison Litigation Reform Act of 1995 (“PLRA”), “No action shall be brought with respect to prison conditions ... until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e. Simmonds seeks court intervention because the Dekalb County Jail has either refused to consider Simmonds’ Ramadan-nutrition grievances as emergencies or has blocked their filing altogether.

Simmonds has exhausted every step of the administrative process available to him since jail officials began providing a starvation-level amount of food to him, beginning on April 2, 2022. On April 4, 2022, Simmonds filed an official grievance in the second step of a standard process that takes a minimum of 60 days to complete. No emergency grievance process exists at the facility. So Simmonds completed the only quasi-emergency option the Dekalb

County Jail offers—by writing a letter to the Sheriff. Unlike the grievance forms, this option is not available on the inmate kiosk. To complete this process, Dekalb County Jail staff told Simmonds he would have to write a letter and mail it to Sheriff Maddox, at his own expense. But the facility refused to give Simmonds the specific address to which these complaints must be sent, delaying Simmonds’ ability to effectuate any solution by the end of the one-month Ramadan period. At any rate, according to the handbook, the Sheriff has 30 days to respond, forward the complaint back to the facility, or ignore it completely, rendering the entire process futile regardless. *See generally* Complaint ¶¶ 90-94.

Further, Simmonds has already fully grieved his inability to obtain a halal (or kosher, which generally by definition is also halal) meal or the ability to tell time as necessary to observe Ramadan fasting hours. *See* Complaint ¶¶ 65-89.

The Government’s failure to provide an emergency grievance process for time-sensitive, life-threatening issues like sustained starvation leaves Simmonds with no available remedy and excuses any further need for appeal or exhaustion. This is because PLRA plaintiffs need not exhaust “unavailable” remedies. *Ross v. Blake*, 578 U.S. 632, 643 (2016). Administrative remedies are unavailable when “the facts on the ground demonstrate that no such potential

[for relief] exists,” and when “some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it.” *Id.* at 643-44.

Dekalb County’s 60-day grievance process presents no potential for remedy of an unconstitutional condition that begins and ends before the process can be exhausted. The minimum 60 days required to exhaust the standard grievance process is longer than the entire month of Ramadan. It is thus not an “available remedy because it takes too long to provide any relief.” *Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171, 1173 (7th Cir. 2010); *Ross*, 578 U.S. 642-43; *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014) (“unduly prolonged”); *see also Fry v. Napoleon*, 137 S. Ct. 743, 753 (2017) (remedy under IDEA not available when there is no possibility of obtaining relief). A remedy is also unavailable when prison officials “make it irrational for [the detainee] to pursue them,” causing the detainee to “lose a benefit that Congress intended to bestow on him.” *Turner v. Burnside*, 541 F.3d 1077, 1085 (11th Cir. 2008).

And though a theoretical possibility of remedy exists with the direct-to-the-Sheriff grievance, it cannot be filed through the kiosk as a standard grievance is, the inmate handbook provides no instructions on how or where to properly serve it, and facility staff “thwart inmates from taking advantage ...

through machination [and] misrepresentation... in order to trip up all but the most skillful prisoner.” *Ross v. Blake*, 578 U.S. 644.

Here, the remedies are unavailable, so Simmonds does not need to further exhaust.

B. Simmonds is likely to succeed on the merits that Defendants’ dietary practice as applied to Simmonds and other Muslim detainees fasting during Ramadan violates RLUIPA.

The Religious Land Use and Institutionalized Persons Act (“RLUIPA”) limits the ability of detention facilities to impose substantial burdens on the religious exercise of inmates. 42 U.S.C. § 2000cc-1. “Congress enacted RLUIPA ... in order to provide very broad protection for religious liberty” to detainees. *Holt v. Hobbs*, 574 U.S. 352, 356 (2015). “Inmates ... have the right to be provided with food sufficient to sustain them in good health that satisfies the dietary laws of their religion.” *McElyea v. Babbitt*, 833 F.2d 196, 198 (9th Cir. 1987). Courts have “repeatedly held that forcing an inmate to choose between daily nutrition and religious practice is a substantial burden,” particularly during Ramadan. *See, e.g., Benning v. Georgia*, 391 F.3d 1299 (11th Cir. 2004) (upholding the constitutionality of RLUIPA to support Jewish incarcerated’s request for kosher meals and yarmulke); *Thompson v. Holm*, 809 F.3d 376, 380 (7th Cir. 2016) (collecting cases and finding a substantial burden where prison

denied inmate Ramadan meals for two days). Courts have also recognized that forcing detainees to pay for or procure their own religious food is a substantial burden, which the Government can alleviate by providing religiously compliant food for free. *See, e.g., Moussazadeh v. Tex. Dep't of Criminal Justice*, 703 F.3d 781, 796 (5th Cir. 2012).

The Dekalb County Jail Food Service Program policy states that the facility will provide basic, healthy meals to inmates in accordance with government guidelines and medically or religiously necessary meal accommodations. Federal guidelines estimate that adults of Simmonds' size and age should eat 2,600 to 2,800 calories per day. Complaint ¶ 31. The standard vegan diet served to Simmonds in place of the halal accommodation he was denied never reaches the recommended nutrition level on a normal day. *Id.* ¶¶ 45-48. And during Ramadan, Defendants have refused to consistently deliver morning meals early enough for Simmonds and other Muslims to eat before their daily fasts begin, resulting in lost calories and nutrition for all but three days so far this month. *Id.* ¶ 37. Worse, Defendants have eliminated the paltry jelly sandwich that typically passes for Simmonds' dinner without increasing portion sizes in other areas. *Id.* ¶ 49. Defendants provided Simmonds with around 1,000 calories for three of the past 14 days, and fewer than 700 for the other 11. Three days in a row, he received no food at all. *Id.*

¶ 25. Defendants’ failure to supply Simmonds with adequate, religiously-compatible food has imposed a substantial burden on his religious practice of Ramadan.

Furthermore, Defendants have delivered dinner trays to Simmonds and other fasting Muslims hours later than their fasts are required to break, resulting in not only a substantial burden to the practice of their religion, but also intense hunger, dizziness, weakness, and weight loss. Complaint ¶ 29. For good reason – Defendants have forced Simmonds and other Muslim inmates to subsist primarily on what they can save or procure elsewhere, severely short of their recommended dietary needs. But even if they can scrounge up something to eat on their own, Defendants have repeatedly refused to allow any kind of timepiece – watches, personal clocks, or even a wall clock visible from the cell – so Simmonds and other Muslims have no idea when they can eat, only adding to the severe starvation, anxiety, and stress of the food insecurity Defendants are inflicting on them. *Id.* ¶ 35. And the Government also revoked Simmonds’ commissary privileges during the first week of Ramadan, making any supplementation next to impossible. *Id.* ¶ 40.

Simmonds has “a clearly established right to a nutritious diet during Ramadan. *Welch v. Spaulding*, 627 Fed. Appx. 479, 483 (6th Cir. 2015) (unpublished) (citing to and applying law of various circuits). “Under both the

Free Exercise Clause of the First Amendment and RLUIPA, a prisoner has a clearly established right to a diet consistent with his religious scruples, including proper food during Ramadan.” *Jernigan v. Atkins*, 5:11-CV-113-RH-GRJ, 2011 WL 3421506, at *2 (N.D. Fla. June 30, 2011) (cleaned dup), *report and recommendation adopted*, 5:11CV113-RH/GRJ, 2011 WL 3419956 (N.D. Fla. Aug. 4, 2011). As the Complaint and facts above explain in stark detail, the Government’s provision of less than a half to less than a third of an adequate diet each day of Ramadan—and zero food for three straight days—simply fails to meet the requirements of RLUIPA and the Constitution.

The Government may only justify its failure to provide adequate nutrition during Ramadan to its Muslim inmates if it overcomes statutorily-mandated strict scrutiny. The Government must demonstrate that not providing food furthers a compelling governmental interest by the least restrictive means. 42 U.S.C. § 2000cc-1(a); *Benning*, 391 F.3d 1306 (“This standard is not new in Georgia or any state.... RLUIPA reanimates the strict scrutiny long applied to the states regarding the free exercise of religion...”) The Government cannot satisfy its burden.

Defendants have not yet supplied a compelling governmental interest for reducing food quantities and refusing timely delivery. Nor can they. Defendants have no compelling interest in Muslim detainee malnutrition.

Moreover, Congress has stated that RLUIPA “may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.” *Holt*, 135 S. Ct. 860 (quoting 42 U.S.C. § 2000cc-3(c)).

Nor can Defendants show that their current Ramadan meal system – of delivering reduced meals, on time sometimes, late or not at all at other times – satisfies the least restrictive means. Defendants deliver meals on time sometimes and are therefore operationally capable of providing sufficient pre-dawn and at-sunset nutrition to Muslim detainees. But for Simmonds and other fasting Muslims, the Government has either failed or refused to make sure they are adequately fed. The Government cannot demonstrate that its “imposition of [a substantial] burden on that person” – i.e. specifically denying Ramadan meals to the Simmonds – fulfills a compelling interest by the least restrictive means. *See* 42 U.S.C. § 2000cc(a)(1).

II. THE REMAINING PRELIMINARY INJUNCTION FACTORS WEIGH IN FAVOR OF ENJOINING DEFENDANTS TO PROVIDE PLAINTIFF AND ALL FASTING MUSLIM DETAINEES WITH ON-TIME MEALS AND ORDERING THEIR IMMEDIATE AND NUTRITIONALLY ADEQUATE SUSTENANCE.

After demonstrating either a likelihood of success on the merits or a serious question going to the merits, the party seeking a temporary restraining order or preliminary injunction must show that (a) he is likely to suffer

irreparable harm in the absence of preliminary relief, (b) the balance of equities tips in his favor, and (c) a preliminary injunction is in the public interest. *E.g., Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). Because each factor clearly favors Simmonds, a temporary and preliminary injunction against the current jail practices surrounding food during Ramadan, and requiring the provision of adequate nutrition, is necessary to alleviate the substantial burden on their religious observance.

A. Irreparable Harm

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). This principle applies equally to violations of RLUIPA, in which “the echoes of these constitutional principles are unmistakable.” *Midrash Shephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1239 (11th Cir. 2004).

Malnutrition, particularly over a month-long period, constitutes irreparable harm. The injury is exacerbated in Simmonds’ case because the inadequate, inconsistent delivery of nutrition further complicates his hypertensive and pre-diabetic conditions. The Eighth Amendment, as incorporated to states through the Fourteenth Amendment, requires prison officials to “provide humane conditions of confinement; prison officials must

ensure that inmates receive adequate food.” *Farmer*, 511 U.S. 825, 832 (1994). Defendants’ refusal to provide Simmonds and other Muslims with nutritionally adequate pre-dawn and post-sunset meals during Ramadan constitutes an ongoing cruel condition of confinement, and a failure to accommodate Simmonds’ sincere religious practice.

Absent relief from this Court, Simmonds will face the choice of adhering to his sincerely held religious beliefs of daytime fasting during Ramadan, or abandoning the practice and violating his sincerely held religious beliefs in order to survive and eat adequate meals. This constitutes irreparable harm, and warrants a temporary restraining order and preliminary injunction requiring Defendants to appropriately accommodate Simmonds’ religious practice.

B. Balance of the Equities

An injunction here would impose no burden on Defendants insofar as it simply requires providing Simmonds and other fasting Muslim detainees nutritionally sufficient food, on time, consistently. Dekalb County has already demonstrated at least three times that it is possible to do so. Meanwhile, the burden on Simmonds and other fasting Muslim detainees is substantial. Each and every day during Ramadan they are unable to gain adequate nutrition, they are experiencing weight loss and starvation, not to mention the mental

anguish that comes with not knowing if or when a meal will come. These conditions, forced upon Simmonds and other Muslims by the Government, severely hamper them from practicing their Muslim faith.

C. Public Interest

“[T]here is the highest public interest in due observance of all constitutional guarantees.” *Unites States v. Raines*, 362 U.S. 17, 27 (1960). And the public has no protectable interest in the Government’s violation of fundamental rights. *Grayson v. Alabama*, 2017 WL 4767741*2 (11th Cir.) (equities strongly outweigh State’s interest in carrying out death penalty on schedule if means of execution may be unconstitutional). Similarly, it “is clear that it would not be equitable or in the public’s interest to allow the state ... to violate the requirements of federal law.” *California Pharmacists Ass’n. v. Maxwell-Jolly*, 563 F.3d 847, 852-53 (9th Cir. 2009). On the contrary, RLUIPA’s very existence demonstrates that “the United States has a substantial interest in ensuring that state prisons that receive federal funds protect the federal civil rights of prisoners.” *Benning*, 391 F.3d 1307.

III. CONCLUSION

The Court should impose a temporary restraining order and preliminary injunction requiring Defendants to supply Simmonds and all fasting Muslim detainees with timely, nutritionally adequate daily meals during Ramadan.

Given the number of deficiencies the Government has imposed on Muslims, the Court must fashion specific relief so that the Government can comply with the temporary restraining order and preliminary injunction. The Court should thus order that Simmonds and other Muslims be provided the full daily allotment of kosher meals as an adequate halal diet, both for each day of Ramadan and beyond. The Court should also order that the morning meal be provided no later than an hour before dawn, with Defendants keeping a log of delivery times to provide to the Court. The afternoon and evening meals should also be provided at sundown, again with Defendants keeping a log of delivery times.

Dated: April 18, 2022

Respectfully Submitted,

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