UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RILEY BENJAMIN, on behalf of himself and others similarly situated, Plaintiff, v. NICOLE COLBERT, et al., Defendants.	No. 23-cv- _____

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This case is about the right of incarcerated Jewish people to keep a kosher diet in accordance with their religious beliefs, without having to provide verification of their faith from a rabbi or through a letter of conversion. The Religious Freedom Restoration Act ("RFRA") prohibits District of Columbia government officials from substantially burdening the free exercise of religion except where narrowly tailored to serve a compelling interest. Nevertheless, Defendant Nicole Colbert, Supervisory Chaplain for the District of Columbia Department of Corrections ("DOC"); Defendant Jimmie Allen, a DOC Chaplain; and Defendant Jacqueline Williams, DOC's Deputy Director of Education, Reentry, and Case Management, have—as a matter of practice or policy—substantially burdened incarcerated Jewish individuals' religious exercise by denying them access to kosher meals absent external verification of their faith by a rabbi or synagogue, or through a letter of conversion.

On behalf of himself and a putative class of Jewish people who are or will be in DOC custody and request a kosher diet, Plaintiff Riley Benjamin seeks a preliminary injunction against Defendant's unlawful external verification requirement.

STATEMENT OF FACTS

A. The importance of adhering to a kosher diet in Judaism

Jewish dietary laws, or "kashruth," are a significant part of Jewish identity and religious practice. Based on verses in the Torah, kashruth has been interpreted by rabbinic authorities over thousands of years. *See What is Kosher?* CHABAD.ORG.[1] For many Jewish people, eating "kosher," or "fit" foods, is both a commandment from God and a way to feel connected to Judaism during everyday life. *Id.* Jewish people keep kosher for spiritual reasons and also to feel unity and a shared identity with others who practice Judaism. *See* Rabbi Ephraim Buchwald, *Kashruth: An Interpretation for the 20th Century*, 2 (1988).[2]

B. Defendants' denial of Mr. Benjamin's kosher diet

Mr. Benjamin is a Jewish man who has been denied a kosher diet by Defendants. Mr. Benjamin decided to become Jewish several years ago, after researching various religions and being inspired by several religious films. Benjamin Decl. ¶ 2. On June 27, 2022, Mr. Benjamin was arrested and taken into DOC custody. *Id.* ¶ 3. DOC staff have informed Mr. Benjamin that he is classified as Jewish in DOC records, and as far as he knows, he has been classified as Jewish since his arrival in DOC custody. *Id.* ¶ 4. Mr. Benjamin wishes to keep kosher to practice his faith, so shortly after arriving at the Jail, he contacted Defendant to request a kosher diet. *Id.* ¶¶ 5-6. Mr. Benjamin was not provided with kosher meals. *Id.* ¶ 6. Mr. Benjamin followed up with a second request, asking to be given "all Jewish religion items," including kosher food, so that he could practice his faith. *Id.*; Ex. A. Defendant Colbert responded with the following: "Please provide the

[1] Available at http://www.chabad.org/library/howto/wizard_cdo/aid/113425/jewish/What-is-Kosher.htm (Last accessed Aug. 9, 2023).
[2] Available at https://njop.org/resources/the-case-for-keeping-kosher-an-interpretation-for-the-21st-century/ (Last accessed Aug. 9, 2023).

name and number of your rabbi and temple that will verify you[r] connection to this faith community or provide your letter of conversion as required by the laws of the Jewish faith." Benjamin Decl. ¶ 7; Ex. A.

Over the course of the next four months, Mr. Benjamin submitted at least fifteen request slips, grievances, and grievance appeals requesting kosher meals and religious reading materials and effects. Benjamin Decl. ¶ 11. Defendant Colbert and Defendant Allen denied all his requests because Mr. Benjamin had not provided external verification of his Judaism, either through a rabbi or a letter of conversion. *Id*. On December 26, 2022, Mr. Benjamin submitted a Level 2 appeal, also known as "Step 4" of the grievance process. *Id.* ¶ 14; Ex. C. His appeal was denied on December 28, 2022. Benjamin Decl. ¶¶ 15-16; Ex. C. In a document attached to the denial, Defendant Williams stated that as a matter of DOC policy, it is "a requirement to provide documentation to verify your Faith affiliation" in order to receive a religious diet. Benjamin Decl. ¶ 16; Ex. D. During the winter of 2022-23, Mr. Benjamin and another Jew in custody had an in-person conversation with Defendant Colbert, in which she said that a rabbi would be brought into the Jail to perform additional verification and, if necessary, formally convert them to Judaism. Benjamin Decl. ¶ 13. No rabbi ever arrived. *Id.*

C. The denial of other class members' religious diets

Other Jewish people in the D.C. Jail have been subjected to the same treatment by the Defendants. John Henri is a Jewish man who has kept kosher for about ten years. Decl. of John Henri ¶ 2. After Mr. Henri was sent to D.C. Jail, he requested to receive kosher meals and religious materials so that he could continue to practice his religion while incarcerated. *Id.* ¶ 4. Defendant Colbert denied his request, saying "[p]lease provide the name and number of your rabbi and temple that will verify your connection to this faith community or provide your letter of conversion that

is required by the laws of the Jewish faith." *Id.* at ¶ 5; Ex. A. Mr. Henri informed Reverend Colbert that he was going on a hunger strike immediately. Henri Decl. ¶ 6. Over the next four months, Mr. Henri submitted additional grievances to Defendants Colbert and Allen and each time was denied. *Id.* ¶¶ 7-8. At one point, Defendant Allen informed Mr. Henri that he had been "given a Jewish conversion study guide" and "[a]ccording to the Jewish faith, all converts should be able to provide the synagogue and the name of their Rabbi to confirm conversion." *Id.* ¶ 8; Ex. B. Mr. Henri has no need for a conversion guide, as he is already Jewish. Henri Decl. ¶ 9.

Keith Barnes is yet another Jewish man who was denied a kosher diet while in DOC custody. Mr. Barnes was raised Jewish and, as far as he knows, is listed as Jewish in DOC records. *See* Decl. of Keith Barnes ¶¶ 4-5. When Mr. Barnes was in DOC custody between November 2021 and June 2023, Defendant Allen denied Mr. Barnes kosher meals, telling him that he was required to "provide the name and phone number of the Rabbi and Synagogue that can verify your conversion or letter of your conversation [sic] as required by the laws of the Jewish faith." *Id.* ¶ 8; Ex. A. DOC officials demanded this proof even though Mr. Barnes had been in DOC custody previously and during that prior period of incarceration was given kosher meals and attended Jewish religious services. Barnes Decl. ¶ 4.

ARGUMENT

To obtain a preliminary injunction, Mr. Benjamin must establish that (1) "he is likely to succeed on the merits," (2) "he is likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in his favor," and (4) "an injunction is in the public interest." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011). Here, all the factors weigh strongly in Mr. Benjamin's favor. The requested injunction also complies with the Prison Litigation Reform Act (PLRA).

A. Mr. Benjamin and proposed class members are likely to succeed on the merits.

Congress enacted RFRA in 1993 "in order to provide greater protection for religious exercise than is available under the First Amendment." *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). "Under RFRA, the federal government and the District of Columbia may not substantially burden a person's exercise of religion unless the government 'demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'" *Potter v. District of Columbia*, 558 F.3d 542, 546 (D.C. Cir. 2009) (quoting 42 U.S.C. § 2000bb–1). To show that Defendant has violated RFRA, Mr. Benjamin and proposed class members must demonstrate that DOC has imposed a "substantial burden on [their] religious exercise." *Kaemmerling v. Lappin*, 553 F.3d 669, 677 (D.C. Cir. 2008). Additionally, their "asserted [religious] belief must be 'sincere.'" *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 717 n.28 (2014); *see Levitan v. Ashcroft,* 281 F.3d 1313, 1320 (D.C. Cir. 2002). Because Defendants have substantially burdened the sincere religious exercise of Mr. Benjamin and the proposed class members, the burden shifts to Defendants to show that there is a "compelling government interest" that justifies their conduct and that their restriction is narrowly tailored to serve that interest. *See* 42 U.S.C. § 2000bb–1(b). Since there is no such interest here (and even if there were, the denial of kosher meals based on an external verification requirement would not be narrowly tailored to serve any such interest), Mr. Benjamin and the proposed class members are likely to succeed on the merits of their RFRA claims.

1. Defendants' denial of kosher meals substantially burdens Mr. Benjamin and proposed class members' religious exercise.

The activity that Mr. Benjamin and the class members are trying to engage in—eating kosher meals—is motivated by their religion, *see* Benjamin Decl. ¶ 5; Henri Decl. ¶ 2; Barnes

Decl. ¶ 2, and therefore constitutes religious exercise. RFRA defines "[t]he term 'religious exercise'" broadly as "'any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'" *Sample v. Lappin*, 424 F. Supp. 2d 187, 192-93 (D.D.C. 2006) (citing 42 U.S.C. § 2000cc–5(7)(A)). Judaism is a mainstream religious belief system and is practiced by 5.8 million adults in the United States. PEW RESEARCH CENTER, *Jewish Americans in 2020*, May 11, 2021.[3] Although not all Jews believe that their faith requires them to "keep kosher" by following Jewish dietary laws, religious exercise "need not be compelled by the adherent's religion to merit statutory protection." *Kaemmerling*, 553 F.3d at 678; *see also Holt*, 574 U.S. at 362 (noting that "the protection of RLUIPA," RFRA's sister statute that provides RFRA's definition of religious exercise, "is 'not limited to beliefs which are shared by all of the members of a religious sect'").

Defendants' denial of kosher meals substantially burdens Mr. Benjamin's and proposed class members' religious exercise. "[A] substantial burden exists when government action puts 'substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" *Kaemmerling*, 553 F.3d at 678 (quoting *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981)). Courts regularly conclude that total denials of religiously acceptable food constitute a substantial burden. *See, e.g., Brandon v. Kinter*, 938 F.3d 21, 32 (2d Cir. 2019) (noting that the Second Circuit "has 'generally found that to deny prison inmates the provision of food that satisfies the dictates of their faith does unconstitutionally burden their free exercise rights'" (quoting *McEachin v. McGuinnis*, 357 F.3d 197, 203 (2d Cir. 2004)); *Moussazadeh v. Texas Dep't of Crim. Just.*, 703 F.3d 781, 793 (5th Cir. 2012), as corrected (Feb. 20, 2013) (holding that "denial of religiously sufficient food

[3] Available at: https://www.pewresearch.org/religion/2021/05/11/jewish-americans-in-2020/ (Last accessed Aug. 9, 2023).

where it is a generally available benefit would constitute a substantial burden on the exercise of religion"); *Haight v. Thompson*, 763 F.3d 554, 565 (6th Cir. 2014) (holding that "[t]he prison's decision to bar corn pemmican and buffalo meat 'effectively bars' the [Native American] inmates from this religious practice" and therefore constitutes a substantial burden); *Reed v. Bryant*, 719 F. App'x 771, 778 (10th Cir. 2017) ("[T]his court has long held that prisoners have the right under the First Amendment and RLUIPA to a diet that conforms to their sincerely held religious beliefs.").

This Court has adhered to this consensus. *See United States v. Chansley*, 518 F. Supp. 3d 36, 42 (D.D.C. 2021) (concluding "that the DOC's refusal to provide [the movant] with an all-organic diet is a substantial burden . . . to his religious beliefs."). And the principle reflected in these cases is equally applicable to the requirements of kashruth as to other religious dietary requirements. *See Willis v. Comm'r, Ind. Dep't of Corr.*, 753 F. Supp. 2d 768, 777 (S.D. Ind. 2010) ("DOC substantially burdened the Plaintiffs' religious exercise when it denied them kosher food.").

Defendants' denial of kosher meals not only puts substantial pressure on Mr. Benjamin's and proposed class members' religious exercise, but completely prevents them from practicing this aspect of their faith. A "choice" between practicing one's religion and sufficient nutrition is no choice at all. *See, e.g., Jones v. Carter*, 915 F.3d 1147, 1150 (7th Cir. 2019) ("When the state forces a prisoner to choose between adequate nutrition and religious practice, it is imposing a substantial burden on his religious practice . . ."). And "[t]he greater restriction (barring access to the practice) includes the lesser one (substantially burdening the practice)." *Haight*, 763 F.3d at 565; *see Sample*, 424 F. Supp. 2d at 194-95 (concluding that the plaintiff had made out a prima facie case under RFRA when he was "effectively [] prohibited from exercising his sincere religious

beliefs in consuming wine during Sabbath and Passover services"). Therefore, the denial of kosher meals is a substantial burden on Mr. Benjamin and proposed class members' ability to practice their faith.

2. Defendants routinely and impermissibly require external verification of faith in lieu of considering personal sincerity of belief.

To warrant protection under RFRA, "[t]he litigant's [religious] beliefs must be sincere." *Levitan*, 281 F.3d at 1320. In other words, "the relevant inquiry is not whether, as an objective matter, the belief is 'accurate or logical'" but whether it is "*sincerely held*" and "in [the litigant's] own scheme of things, religious." *Jackson v. Mann*, 196 F.3d 316, 320 (2d Cir. 1999) (Sotomayor, J.). Specifically, "whether [plaintiff]'s beliefs are entitled to Free Exercise protection turns on whether they are 'sincerely held,' not on the 'ecclesiastical question' whether [plaintiff] is in fact a Jew under Judaic law." *Id.* at 321. "While it is a delicate task to evaluate religious *sincerity* without questioning religious *verity*, our free exercise doctrine is based upon the premise that courts are capable of distinguishing between these two questions." *Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) (Sotomayor, J.) (quoting *Jolly v. Coughlin*, 76 F.3d 468, 476 (2d Cir. 1996)) (original emphasis from *Jolly* restored).

Though a clergy verification can be one part of a holistic sincerity inquiry, it cannot be dispositive of a person's sincerity. The ecclesiastical "opinions of the DOC[] religious authorities cannot trump the plaintiff's sincere and religious belief." *Id.*; *see Koger v. Bryan*, 523 F.3d 789, 799 (7th Cir. 2008) ("[A] clergy verification requirement forms an attenuated facet of any religious accommodation regime because clergy opinion has generally been deemed insufficient to override a prisoner's sincerely held religious belief."); *Roberts v. Klein*, 770 F. Supp. 2d 1102, 1112 (D. Nev. 2011) (finding that external verification from a Jewish organization was "not required" for Jewish inmates to receive kosher meals if their beliefs were "sincerely held"). Similarly, while

"membership in an organized religion is relevant to the question of sincerity of beliefs, *it is not determinative*." *Monts v. Arpaio*, 2012 WL 160246, at *3 (D. Ariz. Jan. 19, 2012) (emphasis added); *see also Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989) (rejecting "the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization").

Defendants denied (and made clear that they would continue to deny) Mr. Benjamin's kosher meal requests unless he provided external verification of his faith—even though Defendants had no reason to doubt, and many reasons to believe, that Mr. Benjamin's religious beliefs are sincere. Mr. Benjamin decided to become Jewish many years ago and his family and friends are aware that he is Jewish. DOC officials have informed Mr. Benjamin that he is listed as Jewish in DOC's records, and as far as Mr. Benjamin knows, he has been listed as Jewish since his intake. Benjamin Decl. ¶¶ 2, 4-9; *see Sample*, 424 F. Supp. 2d at 193, n.6 (noting that plaintiff was denoted as Jewish in the system at all relevant times—a fact that supported the sincerity of his religious beliefs). Mr. Benjamin has submitted at least fifteen grievances or grievance appeals related to Defendants' failure to take his faith seriously. He has consistently requested a kosher diet and other materials to support his practice of Judaism, including Jewish religious literature and religious holiday items. *See* Benjamin Decl. ¶ 6; Ex. A ("I need all Jewish religion items (seddur,[4] candles, kosher crackers, grape juice and kosher meals please"); *see also Parkell v. Senato*, 2019 WL 1435883, at *5 (D. Del. Mar. 31, 2019) (pointing to plaintiff's repeated attempts to secure a kosher diet as supportive of his sincerity). When Defendant Colbert told Mr. Benjamin that Jewish reading material was unavailable, he sought it out on his tablet on his own, and he has now read and watched much of what is available there. *See* Benjamin Decl. ¶ 12; *see also Parkell*,

[4] "Seddur" (also transliterated in English as "siddur") is Hebrew for prayerbook.

2019 WL 1435883, at *5 ("His sincerity is also reflected in the . . . religious materials he possesses."); *Worthy v. Antrim,* 2007 WL 9718119, at *1-2, 4 (D. Alaska July 18, 2007) (pointing to "the fact that [the plaintiff] reads the Torah on a regular basis" as supportive of his sincerity and concluding that prison officials substantially burdened the plaintiff's religious exercise by nonetheless requiring external verification). In light of DOC's own classification of Mr. Benjamin as Jewish and his persistence in seeking religious accommodations, Defendants had no legitimate basis to refuse to accept his sincerity. Instead of accepting these clear indications that Mr. Benjamin is sincerely Jewish, Defendants made external verification—not Mr. Benjamin's sincerity—the dispositive factor in whether they would grant his religious accommodation request. Absent narrow tailoring to serve a compelling interest, RFRA forbids that formalistic approach to deciding whether to burden individuals' religious practice.

Putative class members' accounts of their own experiences requesting kosher meals confirm that Defendants require external verification, even when faced with similarly strong evidence of sincerity. Mr. Henri has kept kosher for about a decade and told Defendants that he maintained a kosher diet prior to his incarceration. Henri Decl. ¶¶ 2-4. When Defendant Colbert denied his request for kosher meals, he informed her that he would go on a hunger strike rather than eat non-kosher food, *id.* at 6; as this Court has found, an individual's willingness to go without food to avoid eating a non-religious diet is "strong evidence of his sincerity in his religious beliefs." *Chansley*, 518 F. Supp. 3d at 41. Likewise, Mr. Barnes has a history of keeping kosher and attending religious services to practice his Jewish faith while in DOC custody previously. Barnes Decl. ¶ 4; *see Searles v. Van Bebber*, 993 F. Supp. 1350, 1352–53 (D. Kan. 1998) (explaining that plaintiff's sincerity was supported by his prior receipt of kosher meals and participation in Jewish "call outs" at various correctional facilities). Still, Defendants issued them both the same

boilerplate response requiring external verification of their faith. *Id.* at ¶ 8; Henri Decl. ¶ 5. In fact, Defendant Williams made clear in her denial of Mr. Benjamin's grievance appeal that, as a matter of DOC policy, it is "*a requirement* to provide documentation to verify your Faith affiliation" in order to receive a religious diet. Benjamin Decl. ¶¶ 16 (emphasis added).

To require external verification of a person's faith as a prerequisite to providing a religious accommodation ignores individual religious experiences and the sincerity of personally held beliefs. Defendants are violating Mr. Benjamin's and the proposed class members' religious exercise rights by using an external verification requirement to deny kosher meals, regardless of other indicia of sincerity. Irrespective of any external verification, RFRA requires that Defendants provide kosher meals to Jewish people who request them and have a sincerely held desire to keep kosher in order to practice their faith.

3. Defendants' practice does not fall under RFRA's exception.

Because the Defendants' actions substantially burden Mr. Benjamin's and the proposed class members' sincerely held religious beliefs, the burden shifts to Defendants to show that their actions are "the least restrictive means of furthering [a] compelling governmental interest." 42 U.S.C. § 2000bb-1. In other words, Defendants must show that their practice survives "strict scrutiny." *See Haight*, 763 F.3d at 566. Defendants cannot meet either prong (compelling interest or least restrictive means) of this demanding test, much less both of them. "[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Sample*, 424 F. Supp. 2d at 195 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)). And whatever the Defendants' asserted interest, a misdirected litmus test for sincerity of religious belief cannot be the least restrictive means for advancing it.

Though cost containment and the maintenance of order through the identification of sincere religious diet requests may be *valid* penological concerns, RFRA requires that they be *compelling* ones. *See* 42 U.S.C. § 2000bb-1. Moreover, RFRA requires that the government show that its interests are compelling as to "the particular claimant[s] whose sincere exercise of religion is being substantially burdened," not just at a high level of generality. *Hobby Lobby*, 573 U.S. at 726.

"[B]oth RFRA and its sister statute, RLUIPA, may in some circumstances require the Government to expend additional funds to accommodate citizens' religious beliefs." *Id.* at 730. As a result, Defendants must "do more than 'simply utter the magic word[]' 'costs.'" *United States v. Sec'y, Fla. Dep't of Corr*., 828 F.3d 1341, 1348 (11th Cir. 2016); *see also Schlemm v. Wall,* 784 F.3d 362, 365 (7th Cir. 2015) (explaining that "[s]aving a few dollars is not a compelling interest" for a prison). "[A]ccommodating a religious practice will generally be more expensive than a failure to accommodate," *Willis v. Comm'r, Ind. Dep't of Corr.*, 753 F. Supp. 2d 768, 778 (S.D. Ind. 2010), but cost cannot defeat every religious accommodation request. Any costs incurred may simply be what is necessary to respect individuals' rights. That is the case here, and Defendants will surely be unable to show that any cost savings that their external verification practice yields are compelling *specifically as to Mr. Benjamin or the proposed class*. *Hobby Lobby*, 573 U.S. at 726.

Similarly, it is doubtful that any interests the Defendants may have in the "verification of religious affiliation" or "orderly administration of a prison dietary system" are sufficiently compelling to justify their substantial burden on the religious exercise of Mr. Benjamin and members of the putative class. *See Koger v. Bryan*, 523 F.3d 789, 800 (7th Cir. 2008) (noting that no appellate court has found these interests to be compelling). "[T]he strength of a state's interest in denying kosher food 'is dampened by the fact that it has been offering kosher meals to [other]

prisoners.'" *Sec'y, Fla. Dep't of Corr.*, 828 F.3d at 1348 (quoting *Moussazadeh*, 703 F.3d at 794–95). The D.C. DOC conceded to this Court as recently as 2021 that it "routinely" provided halal meals to Muslims in DOC custody and claimed that it provided kosher meals to Jews as well. *Chansley*, 518 F. Supp. 3d at 42–43. As a result, there is "no reason to believe that it would be administratively"—or financially—"infeasible for the DOC to likewise accommodate" Mr. Benjamin and the proposed class members. *Id.* at 43.

Even if Defendants had a compelling interest in identifying insincere religious meal requests, their external verification practice is not the least restrictive means of doing so. "'The least-restrictive-means standard is exceptionally demanding,' and it requires the government to 'sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party.'" *Holt*, 574 U.S. at 364-65 (quoting *Hobby Lobby*, 573 U.S. at 728). Requiring external verification is simply not an accurate litmus test for First Amendment sincerity of religious belief, and as a result, it "affect[s] sincere and insincere inmates alike." *Kuperman v. Warden, N.H. State Prison*, 2009 WL 4042760, at *6 (D.N.H. Nov. 20, 2009). Such an overinclusive mechanism cannot be the least restrictive means of achieving any compelling government interest. *See Otto v. City of Boca Raton*, 981 F.3d 854, 879 (11th Cir. 2020) (explaining that an overinclusive regulation of speech is not the least restrictive means).

In sum, Defendants' external verification requirement imposes a substantial burden on Mr. Benjamin's and proposed class members' sincere desire to practice their faith and does not qualify for RFRA's strict exception. As a result, Mr. Benjamin and proposed class members are likely to succeed on the merits of their RFRA claim.

B. Mr. Benjamin and proposed class members will suffer irreparable harm in the absence of preliminary relief.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). Free exercise of religion is protected by the First Amendment. "Courts have persuasively found that irreparable harm accompanies a substantial burden on an individual's rights to the free exercise of religion under RFRA." *Jolly*, 76 F.3d at 482. As discussed above, Defendants have denied Mr. Benjamin's and proposed class members' religious exercise rights through the implementation of an external verification requirement that impermissibly excludes them from receiving a religious diet in accordance with their sincerely held beliefs. This is an irreparable harm. *Cf. Singh v. Berger*, 56 F.4th 88, 109 (D.C. Cir. 2022) (finding irreparable harm where Marine Corps prevented Sikh men from exercising their religion by wearing unshorn hair); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (finding irreparable harm where a prison prevented Native American man from exercising his religion by wearing unshorn hair). Absent injunctive relief, Mr. Benjamin and proposed class members' First Amendment rights will continue to be violated and they will continue to suffer irreparable harm.

C. The balance of equities favors Mr. Benjamin and proposed class members.

"There is no harm to the Government when a court prevents unlawful practices." *Banks v. Booth*, 468 F. Supp. 3d 101, 124 (D.D.C. 2020). Mr. Benjamin and proposed class members will suffer irreparable harm through denial of their right to free exercise of religion; by contrast, Defendants will incur no harm in being prohibited from impermissibly relying on an external verification requirement, or by being required to provide kosher meals to Jewish people who request them and have a sincerely held desire to keep kosher in order to practice their faith.

Because the entry of an injunction will not harm Defendant, the security required by Fed. R. Civ. P. 65(c) should be set at zero. *See, e.g., Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) ("The district court retains discretion as to the amount of security required, *if any*." (internal quotation marks omitted)); *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996) ("[T]he district court did not abuse its discretion in dispensing with the bond."); *Fox Television Stations, Inc. v. FilmOn X LLC*, 966 F. Supp. 2d 30, 52 (D.D.C. 2013) ("It is well settled that Rule 65(c) gives the Court wide discretion in the matter of requiring security." (citation omitted)).

D. A preliminary injunction will serve the public interest.

"It is always in the public interest to prevent the violation of a party's constitutional rights." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (quoting *Abdah v. Bush*, 2005 WL 711814, at *6 (D.D.C. Mar. 29, 2005)); *accord Lamprecht v. F.C.C.*, 958 F.2d 382, 390 (D.C. Cir. 1992) (explaining that "a [government] policy that is unconstitutional would inherently conflict with the public interest"). For the same reasons, adherence to and enforcement of federal statutes like RFRA is in the public interest. *See United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (noting that "[f]rustration of federal statutes and prerogatives are not in the public interest"). The public interest would be served by respecting the religious beliefs and exercises of Mr. Benjamin and proposed class members and ending the unlawful violation of their rights.

E. The requested relief is consistent with the PLRA.

The Prison Litigation Reform Act ("PLRA") requires that preliminary injunctive relief in cases involving prison conditions "must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm" and tells the court to give weight to "any adverse impact on public safety or the operation of a criminal justice system." 18 U.S.C. § 3626(a)(2). Mr. Benjamin

requests that the Court prohibit Defendants from requiring Jewish individuals in DOC custody to provide external verification of their faith in order to receive a kosher diet as a religious accommodation, and to require Defendants to provide kosher meals to Jewish people who request them and have a sincerely held desire to keep kosher in order to practice their faith. This remedy is narrowly drawn, as it targets precisely the aspects of DOC's practice or policy that violate the statutory rights of Mr. Benjamin and other Jews who are or will be in DOC custody and request kosher meals. The burden on DOC is minimal: to end its RFRA violations, DOC must only cease requiring, and relying on, external verification of faith, and provide kosher meals to sincere individuals. This remedy extends no further than necessary to correct the violations, as it does no more than ensure that Mr. Benjamin and class members are provided the consideration of their request that they should have received, if not for the violation of their rights. *See Aytch v. Cox*, 2015 WL 2450498, *6 (D. Nev. May 21, 2015) (granting a preliminary injunction to provide a plaintiff with a religious diet that also met his medical needs as the injunction "would satisfy the PLRA standards set forth above").

This remedy is not at all intrusive, and it would not jeopardize public safety or DOC's operations. DOC would be free to design a new approach that does not require external verification without the intrusion of the court or a third party. *See United States v. Sec'y, Fla. Dep't of Corr.,* 2015 WL 1977795, at *11 (S.D. Fla. Apr. 30, 2015) (finding an injunction that allowed the Defendants to create their own kosher meal policies was the least intrusive remedy and fulfilled the need-narrowness-intrusiveness requirements of the PLRA). Finally, the denials Mr. Benjamin received imply that DOC would provide kosher meals to residents who can provide external proof of their faith; accordingly, the relief requested here requires only that DOC make more broadly

available an accommodation it is already willing to provide. DOC's own practice therefore shows that the requested relief would comply with the PLRA.

CONCLUSION

The motion for a preliminary injunction should be granted. A proposed order is filed herewith.

August 10, 2023

Respectfully submitted,

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