

Handout 7
The Prison Diet Case

Independently, read the following excerpt, focusing on the court's analysis of whether the defendant's assertions constitute a compelling government interest and are the least restrictive means of serving that interest. Complete the "Prison Diet" section of Handout 8.

Terrell v. Montalbano, No. 7:07-CV-00518, 2008 WL 4679540 (W.D.Va., Oct. 21, 2008)

[Terrell was an inmate at the Virginia Department of Corrections (VDOC) whose application for a special kosher diet was delayed by the prison director for six months because the director wanted to evaluate the sincerity of Terrell's religious beliefs. Terrell argues that this delay violated RLUIPA by forcing him to eat the regular prison fare, which violated his religious beliefs.]

KISER, Senior District Judge, delivered the opinion of the court:

The issue is whether [prison director] Montalbano's decision to defer Terrell's application imposed a substantial burden on Terrell's religious exercise. Terrell claims that he has "no alternative available to practice his sincere religious dietary beliefs outside the Common Fare Program." The meat and no-meat menus are not prepared according to kosher guidelines. VDOC's decision to defer Terrell's Diet application meant that Terrell could not eat the kosher meals required by his sincerely held religious belief. Therefore, I find that the deferral imposed a substantial burden on Terrell's ability to practice his religious dietary beliefs.

Because Terrell has demonstrated that the six-month deferral imposed a substantial burden on his religious exercise, the burden shifts to Montalbano to show that the deferral policy "is the least restrictive means of furthering a compelling governmental interest." Montalbano does not adequately demonstrate on the present record that the deferral policy is the least restrictive means of furthering a compelling governmental interest. She simply asserts that "[u]nless prisoners are entitled willy-nilly to be admitted to the Common Fare Program, the protocol employed in this section has to be viewed as reasonable. There obviously is a valid rational connection between the protocol and the government's interest in regulating which inmates are entitled to participate in the Common Fare Program." Despite this bald assertion, Montalbano did not present any evidence of the Common Fare Program's current costs versus other menus, the deferral policy's impact on VDOC's budget, or the impact on prison security.

Montalbano failed to justify a compelling government interest. She did not present any evidence in the instant matter of the Common Fare Program food, supplies, preparation, or serving costs. She did not present any evidence of the prison's ability to afford any extra expense of Common Fare meals without first inquiring into the sincerity of an applicant's religious beliefs. She did not present any evidence indicating that she relied upon any such concerns in deferring Terrell's application. Given the lack of evidence to support Montalbano's justification for imposing a six-month deferral period, I cannot conclude at this stage that the asserted interest is compelling as a matter of law.