IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CLARENCE M. EASTERLING

Plaintiff,

v.

OPINION and ORDER

07-cv-598-bbc

MATTHEW J. FRANK, RICHARD J. RAEMISCH
PHILLIP A. KINGSTON, MICHAEL THURMER,
LAURA WOOD, CHARLES BROWN and BETH LIND,

Defendants.

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In this case brought under 42 U.S.C. § 1983, plaintiff Clarence M. Easterling is proceeding against defendants Matthew Frank, Richard J. Raemisch, Phillip A. Kingston, Michael Thurmer, Laura Wood and Beth Lind on his claims that they violated his First Amendment rights and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a)(1)-(2), when they failed to make a Torah available to him, provided him inadequate nutrition on Kosher meal trays, gave him food that contained ingredients his religion forbids and refused to permit him to wear his yarmulke "at all times when moving throughout the institution." Further, plaintiff is proceeding on his claims that defendants Charles Brown and Lind violated his Eighth Amendment rights by feeding him nutritionally

inadequate food and his Fourteenth Amendment equal protection rights when they discriminated against him on the basis of his religion by reducing the number of calories in his Kosher diet and offering more calories to prisoners practicing other religions.

Now before the court are plaintiff's motion for partial summary judgment and defendants' motion for summary judgment. Because plaintiff has failed to adduce sufficient evidence to raise a triable issue on his contentions that defendants Frank, Raemisch, Kingston, Thurmer, Wood and Lind violated his First Amendment rights or RLUIPA or that defendants Brown and Lind violated his Eighth Amendment and Fourteenth Amendment rights, I will grant defendants' motion and deny plaintiff's motion.

Also pending before the court are plaintiff's motion for an extension of time to file his response to defendants' motion for summary judgment, dkt. #78, and his motion to strike portions of the affidavit of Belinda Schrubbe, dkt. #67. I will grant plaintiff's motion for an extension of time to file his response to defendants' motion for summary judgment. Regarding his motion to strike, plaintiff objects to the portions of Schrubbe's affidavit that refer to portions of his medical records not at issue in this case. Because an issue in this case is plaintiff's weight loss during the period of December 2004 to May 2005, I will consider only the portions of Schrubbe's affidavit that concern this time period as opposed to striking the entire affidavit.

From the facts proposed by the parties, I find that the following facts are material and

undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Clarence M. Easterling is an inmate at the Waupun Correctional Institution, Waupun, Wisconsin. Defendant Matthew J. Frank was Secretary of the Wisconsin Department of Corrections from January 6, 2003 through August 29, 2007. Defendant Richard J. Raemisch was the Deputy Secretary of the Wisconsin Department of Corrections and is now the Secretary. Defendant Phillip A. Kingston was the warden at Waupun Correctional Institution from December 26, 2004 though March 31, 2007. Defendant Michael Thurmer was promoted from the position of deputy warden to the position of warden at the Waupun Correctional Institution on April 15, 2007. Defendant Laura Wood was the Corrections Program Supervisor at the Waupun Correction Institution. Defendant Charles Brown was the former Food Services Administrator and defendant Beth Lind is the current Food Services Administrator at the Waupun Correctional Institution.

B. Requesting a Torah

In order to participate in congregate religious services or study groups, an inmate must complete religious preference form DOC-1090. Plaintiff completed DOC-1090 twice,

once on September 5, 2004 and again on October 5, 2004; both times plaintiff indicated his religious preference was Jewish. Judaism is an approved religious group at the Waupun Correctional Institution. Internal Management Procedure DOC 309 IMP 6A provides that inmates who choose Judaism as their religious preference may possess in their cells, a tallith (prayer shawl), yarmulke (skull cap), phylacteries (small leather containers) and religious books and literature, such as the Torah, which is the foundation of Jewish religion. Inmates may obtain religious property items from an approved retail vendor or outlet or the institution's canteen.

Although Department of Corrections' funds may be used by an institution's chaplain to purchase religious items for group use, department funds cannot be used to purchase personal religious items for an inmate's personal possession and use. Any inventory of religious property items that the Waupun Correctional Institution chaplain maintains for inmate personal possession and use is dependent on donations from religious groups and organizations as well as other outside agencies. Because the inventory of religious property items for inmate personal possession and use is dependent on such donations, there are disparities between the amount of different items on hand for inmate possession and use. Inmates are permitted and encouraged to contact outside agencies or religious organizations to request donations of religious property items. Inmates are free to purchase recognized religious property items, such as the Torah or the Bible.

In September 2004, plaintiff requested a Torah from chaplain Jamyi Witch, but one was not available for his personal use. Defendant Laura Wood told plaintiff he could write to a Jewish non-profit agency to ask whether it would donate a Torah or ask his family to help him obtain a Torah for personal use. When plaintiff and other inmates requested Bibles for personal use, all received free Bibles that had been donated to the institution.

C. Wearing a Yarmulke

At all Wisconsin Department of Corrections institutions, it is a uniform practice to limit the wearing and displaying of all religious emblems, garments or other religious identifiers, including headgear, to those times when the inmate is in his cell or participating in a religious service. This uniform restriction limits the ability of inmates to uniquely identify themselves, either individually or in groups, and helps curb gang activity within the institutions. Suppressing gang activity is imperative to maintaining a safe and secure environment within correctional institutions. Any uniqueness that occurs in the facility can attract the attention of gangs. Limiting inmate displays of religious emblems or identifiers throughout an institution helps stifle displays of gang affiliation and curb gang activity. Further, the uniform restriction helps avoid situations where inmates from differing faith groups may take offense to being exposed to symbols of another religion. Finally, applying the restriction to all religious headgear, including Jewish yarmulkes, Rastifarian crowns,

Muslim kufis and Native American headbands, helps prevent the transfer of drugs, weapons or other contraband throughout the institution.

The Department of Corrections does permit inmates who work for the institution's maintenance department to wear caps or hats outside of their cells. These inmates are permitted to wear a cap or hat only when it is a part of standard work gear and serves the purpose of protecting the inmate worker from sun exposure or keeping dust and dirt out of his hair and face. The inmates chosen to work with the maintenance department are chosen by institutional staff and work under the supervision of staff maintenance workers.

A yarmulke is a thin, slightly-rounded skullcap traditionally worn by Jewish men. Although DOC 309 IMP 6A permitted plaintiff to have and wear a yarmulke in his cell or at a religious service, plaintiff requested permission to wear his yarmulke throughout the institution. Chaplain F. Paliekara recommended denying plaintiff's request for plaintiff's safety as well as for the safety of other inmates and staff. Paliekara noted that denial of plaintiff's request would be consistent with the institution's uniform restriction on wearing and displaying religious emblems or identifiers. Paliekara noted further that the wearing of the yarmulke at all times would reveal the religious identity of the inmate and might make him a potentially vulnerable target.

D. A Kosher Diet

A person practicing the religion of Judaism is required to remain Kosher. Remaining Kosher requires following certain Jewish dietary laws, including the requirement that meat and dairy not be prepared, served or eaten together. A Kosher diet further requires that all foods provided are pork-free, bread is dairy-free and margarine is dairy-free.

Meals consistent with a specific religious diet are provided to inmates who request such meals. To receive such meals, an inmate must complete and submit a "Religious Diet Request" form DOC-2167. Religious diets are governed by internal management procedure DOC 309 IMP 6B. This internal management procedure provides that an inmate requesting a Kosher diet should receive meals that satisfy the following requirements: (1) all food provided will be pork-free; (2) bread and margarine will be dairy-free; (3) milk, cheese or any other foods containing dairy will not be served with a meal containing meat, poultry or fish; (4) a glass or milk carton will not be placed on the Kosher lunch or dinner tray; and (5) a full day's supply of non-fat dry skim milk (to make 32 fluid ounces) will be provided with the breakfast tray. Inmates working in Waupun Correctional Institution's kitchen prepare the Kosher diet trays by following the daily approved Kosher menus posted in their work areas.

For inmates in segregation 4 ounces (equal to 16 ounces of liquid) of the dry milk replacement is provided on the breakfast tray and 2 ounces (equal to 8 ounces of liquid) is provided on both the lunch and dinner trays because security concerns prevent inmates in

segregation from keeping leftover food in between meals. When an inmate in segregation receives a Kosher diet, the dry milk replacement provided at lunch and dinner is provided in a separate paper bag and the inmate can decide whether to consume the dry milk.

Starting in 2004, Waupun Correctional Institution Food Services served inmates who requested a Kosher diet pre-packaged main course Kosher meals purchased from an outside vendor. These sealed meals are served twice a day, at lunch and at dinner, and have approximately 240 to 330 calories in each serving. In order to provide inmates receiving Kosher meals with well-rounded nutritional meals, the Food Services unit adds to the sealed meals items such as fresh fruit and vegetables and kosher bread and crackers. Between 2004 and 2005, the Waupun Correctional Institution kitchen made its own dairy-free bread for Kosher diet trays. When such bread was not made, the Waupun Correctional Institution purchased store purchased bread for inmates on a Kosher diet. The purchased bread brands were Wonder bread and Rotella (multi-grain honey wheat) bread. Although the labeling on both breads indicated that the breads were prepared in accordance with Kosher dietary rules, both breads contain milk products.

The generally acceptable nutritional caloric intake for adult males is 2,700 calories or more a day. From 2004 to 2005, inmates at the Waupun Correctional Institution, who were not receiving religious or medical diets, received approximately 3,000 calories a day. In 2007, they received 2,600 to 3,000 calories a day. The daily amount of calories for

inmates receiving a Kosher diet is approximately 2,700 calories a day. The Department of Corrections has certified dieticians who develop and review Kosher diets served at the institutions in order to maintain an adequate level of nutrition.

On November 30, 2004, plaintiff completed and signed "Religious Diet Request" form DOC-2167, requesting a Kosher diet tray. His Kosher diet request was canceled when he was transferred to the Wisconsin Resource Center on June 2, 2005. When he returned to the Waupun Correctional Institution on December 7, 2006, plaintiff submitted a new request for a Kosher diet.

On several occasions between December 2004 and June 2005, plaintiff was served bread that contained dairy products without his knowledge. From May 19, 2007 to May 23, 2007, plaintiff was again served bread with dairy in it. Between December 2006 and July 2008, a closed container of butter spread called Tastee Gold Spread Classic Cup that contained dairy products was placed on plaintiff's Kosher tray. Defendants Lind and Brown mistakenly believed that, as long as items containing dairy were physically separated from the meat portion of the meal, which was sealed, the Kosher dietary requirements would be met. Plaintiff was housed in segregation at the Waupun Correctional Institution during the following times: (1) November 3, 2004 - June 2, 2005; (2) May 2, 2007 - July 10, 2007; (3) July 27, 2007 - November 30, 2007; and (4) March 19, 2008 - June 5, 2008. From October 2004 to May 2, 2005, plaintiff lost 16 pounds.

OPINION

A. Religious Practice Claims

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, prohibits the government from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution" unless the burden furthers a "compelling governmental interest," and does so by "the least restrictive means." Cutter v. Wilkinson, 544 U.S. 709, 714-15 (2005). The Court of Appeals for the Seventh Circuit has defined "substantial burden" as "one that necessarily bears a 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). Under the statute, "religious exercise" is "any exercise of religion, whether or not compelled by, or central to a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

The protections offered by the First Amendment are more limited than those extended under RLUIPA. Therefore, any claim that fails under RLUIPA will fail inevitably under the First Amendment's more stringent requirements. Although RLUIPA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," 42 U.S.C. § 2000cc-5(7), traditional First Amendment jurisprudence protects only "the observation of [] central religious belief[s] or practice[s]." Civil Liberties for Urban Believers, 342 F.3d at 760. Thus, although inmates retain the First Amendment right to

practice religion while incarcerated, O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987), this right may be restricted due to the needs of the institution. Young v. Lane, 922 F.2d 370, 374 (7th Cir. 1991).

1. Denial of Torah

Plaintiff contends that the defendants violated his rights under RLUIPA and the First Amendment when they failed to provide him a free Torah for his personal use upon his request. The undisputed facts prove otherwise. Defendant Wood told plaintiff that a Torah was not available for his use but advised him that he could write to non-profit Jewish organizations to have one donated or that his family could help him obtain one. Although inmates who choose Judaism as their religious preference are allowed to posses a Torah, correctional institutions cannot purchase personal religious items with state funds. Moreover, the religious property items that institutional chaplains maintain for inmate personal use are dependent on donations from religious groups and organizations as well as other outside agencies. Defendants could not provide plaintiff with a free Torah when they did not have one to give.

In an argument somewhat unrelated to his RLUIPA and First Amendment claims, plaintiff contends that, because the Wis. Stat. §301.33(3) provides that every "inmate who requests it shall have the use of the Bible," he should also be provided the use of the Torah.

However, his contention is unpersuasive. As an initial matter, despite the language of the statute, it is undisputed that the Department of Corrections and its Religious Practices Advisory Committee do not accommodate requests for the Bible any differently from requests for other religious texts, that is, they provide any approved religious text when such texts are available. Regardless of that fact, plaintiff contends that defendants violated his rights because they more readily provide free Bibles than free Torahs. Plaintiff cites Pitts v. Knowles, 339 F. Supp. 1183 (D.C. Wis. 1972) in support of his contention. In Pitts, the court enjoined the state from continuing the practice of providing the use of the Quran on a more limited basis than it was providing the use of the sacred texts of other religions to other inmates. However, the circumstances in Pitts are not plaintiff's circumstances. Here, as defendants correctly point out, Bibles, Qurans and Torahs are all provided on the same basis at Waupun Correctional Institution, that is, from donations by outside groups. They are not purchased with state funds.

Plaintiff has failed to adduce any evidence from which a reasonable jury could determine that defendants placed a substantial burden on his ability to obtain and use a Torah. Plaintiff was not prevented from possessing a Torah and was advised how he could obtain one. The fact that defendants did not go out and purchase or find a free Torah for plaintiff's personal use did not render his religious exercise impracticable because he had other means to obtain the Torah for his use. Therefore, defendants did not violate RLUIPA,

or the First Amendment, when they failed to provide plaintiff with a free Torah for his personal use.

2. Restriction on Wearing Yarmulke

Plaintiff contends that defendants violated his rights under RLUIPA and the First Amendment when they did not allow him to wear his yarmulke throughout the Waupun Correctional Institution. To prevail on his claim that the defendants violated RLUIPA, plaintiff would have to establish that limiting his opportunities to wear his yarmulke substantially burdens his religious exercise. To defeat defendants' request for summary judgment, plaintiff would have to prove that a jury acting reasonably could find that limiting his opportunities to wear his yarmulke substantially burdens his religious exercise. Plaintiff has proved neither.

Plaintiff was allowed to wear his yarmulke in his cell and at religious services and his request to wear his yarmulke at other times was denied for security reasons. Plaintiff fails to provide any evidence that being allowed to wear a yarmulke in his cell and at religious services as opposed to wearing it all the time, substantially burdens his religious exercise. In fact, the Court of Appeals for the Seventh Circuit has noted that "the wearing of a yarmulke is conventional rather than prescribed." Young, 922 F.2d at 376 (alterations and quotations omitted). Limiting a religious convention, as opposed to limiting a religious requirement,

supports the conclusion that plaintiff's religious exercise is not being substantially burdened because the limitation does not render plaintiff's religious exercise effectively impracticable.

Even if I were to assume that a reasonable jury could find that the restriction was a substantial burden on plaintiff's religious exercise, the defendants' restriction furthers a compelling governmental interest and does so by the least restrictive means. The institution's chaplain told plaintiff that wearing the yarmulke at all times would place him, institution staff and other inmates in danger. Moreover, the institutional uniform practice of prohibiting any inmate to wear his religious emblems, including religious headgear, throughout the institution helps limit opportunities for inmates of differing faith groups to take offense at symbols of another religion and it limits gang activity. The restriction also decreases inmates' opportunities to conceal drugs, weapons or other contraband. "[P]rison security is a compelling state interest, and [] deference is due to institutional officials' expertise in this area." Cutter, 544 U.S. at 725 n.13. Defendants have established that security and safety are the governmental interests behind limiting plaintiff's opportunities for wearing his yarmulke in prison. Plaintiff has provided no facts to establish otherwise. Therefore, the restriction on when plaintiff can wear his yarmulke serves a compelling governmental interest.

Turning to whether defendants further their compelling governmental interest by the least restrict means, plaintiff contends that the fact that defendants permit some inmates to

wear caps or hats when performing maintenance duties establishes that inmates can wear headgear throughout the institution without causing any security or safety issues. However, the facts establish otherwise. Plaintiff is correct that inmates working maintenance are permitted to wear hats or caps, but, just as plaintiff is limited in when and where he can wear his yarmulke, those inmates are limited to wearing such headgear only when it is a part of standard work gear. There is no evidence that inmates are permitted to wear hats or caps at all time throughout the institution. Moreover, the inmates who are permitted to wear hats or caps while performing maintenance work are carefully selected by maintenance staff, which limits the security or safety concerns regarding those inmates. Plaintiff has adduced no evidence to show that defendants' policy that inmates wear religious headgear only in their cells or at religious services is not the least restrictive means to ensure safety and security in prison. Therefore, plaintiff's RLUIPA claim fails.

Moreover, defendants did not violate plaintiff's First Amendment rights. In Young v. Lane, 933 F. 2d 370, 375-77 (1991), the Court of Appeals for the Seventh Circuit upheld a policy similar to defendants' that allowed Jewish inmates to wear yarmulkes only inside their cells and during religious service. It did so on the basis of two security concerns: (1) yarmulkes could be used to conceal contraband and (2) they could be worn for gang identification purposes. The court stated that the policy was reasonably related to legitimate penological interests according to Turner v. Safely 482 U.S. 78, 84 (1987). In Turner, the

Supreme Court set out four factors to be used in determining the reasonableness of prison regulations: (1) the existence of a "valid, rational connection" between the regulation and a legitimate, neutral government interest; (2) the existence of alternative methods for the inmate to exercise his constitutional right; (3) the effect the inmate's assertion of that right will have on the operation of the prison; and (4) the absence of an alternative method to satisfy the government's legitimate interest. Id. at 89-90.

The policy to which plaintiff objects is the same policy upheld in Young. I find that prohibiting inmates to wear yarmulkes throughout the institution is clearly related to a legitimate, neutral government interest because, as previously stated, defendants' interest in the safety and security of inmates and staff is in fact a compelling interest. As the court of appeals held in Young, a policy that prohibits the wearing of religious headgear is reasonably related to the legitimate security goal of limiting the effectiveness of gangs by restricting the variety of available headgear.

Plaintiff has alternative methods of exercising his constitutional right by wearing his yarmulke in his cell and at religious services. Plaintiff contends that the contraband justification is suspect because the institution allows inmates performing maintenance duties to wear baseball caps and they can be used to conceal contraband. Although this is true, allowing plaintiff to wear his yarmulke throughout the institution affects the operation of the institution more than maintenance inmates wearing hats. The institution would have

to permit all religious headgear to be worn at all times which would compromise the security of the institution. Finally, there is no evidence supporting other obvious easy alternatives to the policy adopted by defendants. I find that the policy prohibiting plaintiff from wearing his yarmulke when moving throughout the institution does not violate his First Amendment rights and no jury acting reasonably could determine otherwise.

3. Kosher diet

Plaintiff contends that his rights were violated when he was provided with a Kosher diet that provided fewer calories than other inmate meals and provided food that violated his religion's dietary laws. Regarding plaintiff's contention that Kosher diet trays did not provide a nutritionally adequate diet, it is undisputed that the Kosher diet trays provide 2,700 calories a day, which is within the generally acceptable range for adult males. Plaintiff has presented no evidence from which a reasonable jury could find that the Kosher diet provided by defendants was nutritionally inadequate.

It is undisputed that from December 2004 through June 2005, plaintiff was provided bread, margarine and butter that contained dairy products and that powdered milk was placed on his Kosher diet tray with meat. Providing plaintiff with bread that contained dairy product and butter or margarine that contained dairy product violated the Department of Corrections IMP 6B. Defendants Lind and Brown mistakenly believed that because the

bread and butter or margarine were separated from the sealed meat main course, the requirements of the procedure as well as plaintiff's religious requirements were being met. Defendants also do not dispute that they violated the IMP 6B when they placed powdered milk on his lunch and dinner trays that contained meat, although the powered milk was provided in a bag and kept separate from the sealed meat entree.

Although the violations of the policy were unfortunate, they do not necessarily rise to the level of a claim under RLUIPA or the First Amendment. The issue is whether defendants *deliberately* burdened plaintiff's ability to practice his religion. Meyer v. Teslik, 411 F. Supp. 2d 983, 988-90 (W.D. Wis. 2006) ("If defendant deliberately blocked [plaintiff's] access to religious services . . . plaintiff's rights under RLUIPA would have been violated."). It is undisputed that defendants believed that separating food containing dairy products from the sealed meat entree met the requirements that dairy and meat products not be served together. It is also undisputed that the bread defendants purchased and provided claimed to be Kosher even though it contained some dairy product. These were unintentional mistakes. Although the Department of Corrections' policy states the requirements of the Kosher diet, defendants' failure to follow the policy does not automatically make the failure intentional. Archie v. City of Racine, 847 F.2d 1211 (7th Cir. 1988) (failure to comply with city policy to send rescue squad to every emergency did not make dispatcher's action deliberate deprivation of life in violation of due process clause).

Unintentional failures in complying with the policy are not deliberate impositions of a substantial burden on plaintiff's exercise of his Jewish faith. Because the facts establish that defendants did not deliberately provide plaintiff with meals that violated his religious diet, no reasonable jury could find that defendants violated plaintiff's rights under RLUIPA or the First Amendment.

B. Eighth Amendment Claim

Plaintiff claims that defendants Brown and Lind were deliberately indifferent to his serious medical need when they suppled him with meals containing substantially fewer calories than he needed. Under the Eighth Amendment, a prison official may violate a prisoner's right to medical care if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). "Deliberate indifference" means that the officials were aware that the detainee needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir.1997). Inadvertent error, negligence, gross negligence and ordinary malpractice are not cruel and unusual punishment within the meaning of the Eighth Amendment. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996);

Snipes v. DeTella, 95 F.3d 586, 590-91 (7th Cir. 1996).

Plaintiff contends that because he was on a Kosher diet he did not receive nutritionally adequate meals which caused him to lose 16 pounds from October 2004 to May 2005. However, the undisputed facts indicate that plaintiff received 2,700 calories a day which is the generally acceptable caloric intake for adult males. He has presented no evidence that this number of calories or the loss of 16 pounds in seven months created a serious medical need. A reasonable jury could not find that plaintiff had a serious medical need.

C. Fourteenth Amendment Equal Protection Claim

Plaintiff contends that defendants Brown and Lind also violated his Fourteenth Amendment equal protection rights. To prevail on this claim, plaintiff must prove that a reasonable jury could find that he has been treated differently from other persons similarly situated and that a discriminatory purpose was a motivating factor in the decision. Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977).

It is undisputed that all inmates received meals that provide between 2,600 to 3,000 a day and that receiving 2,700 calories a day is within the generally acceptable range for adult males. Kosher meals provide 2,700 calories a day. Even assuming that all non-Kosher

meals provided 3,000 calories, receiving 300 fewer calories does not establish that plaintiff was being treated differently. 2,700 calories a day is still within the generally acceptable range for adult males. Regardless of each meals exact caloric value, all inmates, including those receiving Kosher meals, received meals with caloric values within the generally acceptable range for adult males, that is, between 2,600 to 3,000 calories a day. Therefore, plaintiff has not presented evidence that he was treated differently from the other inmates at the institution who were not receiving religious diets. Because plaintiff was not treated differently from other inmates, defendants did not violate his equal protection rights.

ORDER

IT IS ORDERED that:

1. Plaintiff Clarence Easterling's motion for an extension of time to file his response to defendants' motion for summary judgment, dkt. #78, is GRANTED and his motion to strike, dkt. #67, is DENIED.

2. Plaintiff's motion for partial summary judgment, dkt. #45, is DENIED.

3. The motion for summary judgment, dkt. #53, filed by defendants Matthew J. Frank. Richard J. Raemisch, Phillip A. Kingston, Michael Thurmer, Laura Wood, Charles Brown and Beth Lind is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 3rd day of October, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge