



PRISON LAW OFFICE
General Delivery, San Quentin CA. 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Mae Ackerman-Brimberg
Rana Anabtawi
Steven Fama
Alison Hardy
Sia Henry
Corene Kendrick
Rita Lomio
Margot Mendelson
Millard Murphy
Lynn Wu

Your Responsibility When Using the Information Provided Below:

When we wrote this handout, we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

California Prisoners' Religious Rights and Religious Diets **(Updated February 2017)**

Thank you for contacting our office regarding your religious rights as a prisoner. We hope the following information answers your questions.

Section I of this letter is a general overview of the religious rights of prisoners and the laws that establish those rights. Section II covers religious diet issues and the CDCR's religious diet policies. Section III discusses a variety of other religious rights issues that prisoners have raised. Section IV describes what you can do if you think your religious rights have been violated.

I. Prisoners' General Religious Rights

The First and Fourteenth Amendments to the U.S. Constitution protect the freedom to practice a religion and to be free from state-imposed religion; these protections extend to prisoners. Also, the Fourteenth Amendment equal protection clause requires the state to treat all similarly situated people equally; thus, prisoners are entitled to a reasonable opportunity to pursue their practice of religion comparable to the opportunity afforded to other prisoners who adhere to religious precepts.¹ To gain constitutional protection, a prisoner's belief must be both "sincerely held" and "religious in nature."² However, prison officials can impose restrictions on prisoners' religious rights without violating the constitution if the policy or action is "reasonably related" to a "legitimate penological interest." Courts consider four factors in deciding whether a policy or action is reasonable: (1) whether the policy or action has a logical connection to legitimate governmental interests invoked to justify it, (2) whether prisoners have alternative

¹ *Cruz v. Beto* (1972) 405 U.S. 319, 322, and fn. 2 [92 S.Ct. 1079; 31 L.Ed.2d 263].

² *Shakur v. Shriro* (9th Cir. 2008) 514 F.3d 878, 885.

means of exercising the religious right, (3) what impact accommodation of the religious right will have on prison staff, other prisoners, and prison resources, and (4) whether there are ready alternatives to the regulation that could be implemented.³

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is a federal law that gives prisoners more religious rights than the First Amendment. California state prisoners are protected by RLUIPA because the California prison system accepts federal funding. Under RLUIPA a prisoner has to show that prison officials imposed a “substantial burden” on the practice of a sincerely held religious belief; the practice does not need to be compelled by or central to the religion. To justify a policy or action that substantially burdens the practice of religion, prison officials must show that the policy or action “(1) is in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest.” In analyzing a RLUIPA issue, a court may consider alternatives put forward by the prisoner, can propose its own potential alternatives, and can look at whether other prisons have adopted less restrictive policies. Where there are viable less restrictive alternatives, prison officials must set forth detailed evidence, tailored to the situation, which identifies the failings in those alternatives.⁴

There are also California laws that generally protect prisoners’ religious rights. A statute provides that it is the intention of the state to allow prisoners reasonable opportunities to exercise religious freedom.⁵ The CDCR regulations state that a warden “shall make every reasonable effort” to provide for the religious and spiritual welfare of all interested prisoners.⁶

³ *O’Lone v. Estate of Shabazz* (1987) 482 U.S. 342 [107 S.Ct. 2400; 96 L.Ed.2d 282] (regulations that precluded Muslim prisoners with jobs from attending Friday religious services did not violate First Amendment); *Shakur v. Schriro* (9th Cir. 2008) 514 F.3d 878 (allowing Muslim prisoner to proceed with First Amendment and equal protection claim challenging refusal to provide meat consistent with Halal requirements); see, e.g., *Anderson v. Angelone* (9th Cir. 1997) 123 F.3d 1197 (regulations prohibiting prisoner from acting as minister of his own church did not violate First Amendment); *Ward v. Walsh* (9th Cir. 1993) 1 F.3d 873 (refusal to allow Orthodox Jewish prisoner to have candles in cell and failure to provide Orthodox rabbi did not violate First Amendment, but remanding for further proceedings regarding denial of kosher diet); *Friend v. Kolodziejczak* (9th Cir. 1991) 923 F.2d 126 (rule barring rosaries and scapulars in cells did not violate First Amendment) *Standing Deer v. Carlson* (9th Cir. 1987) 831 F.2d 1525 (regulation banning wearing of religious headbands did not violate First Amendment).

⁴ 42 U.S.C. § 2000cc et seq.; *Holt v. Hobbs* (2015) ___ U.S. ___ [135 S.Ct. 853; 190 L.Ed.2d 747] (grooming regulation that did not allow any religious exceptions, such as a ½” beard for Muslim prisoners, violated RLUIPA); *Warsoldier v. Woodard* (9th Cir. 2005) 418 F.3d 989, 998-1000 (granting preliminary injunction in prisoners’ RLUIPA challenge to former CDCR grooming regulations); *Walker v. Beard* (9th Cir. 2015) 789 F.3d 1125 (refusal to grant prisoner’s religious-based request for housing only with members of his own race did not violate RLUIPA because state had compelling interest in avoiding racial discrimination).

⁵ Penal Code § 5009.

⁶ 15 CCR § 3210(a).

II. The CDCR Religious Diet Program

One frequently raised First Amendment and RLUIPA issue has been whether prisoners whose religions include diet restrictions are entitled to special meals.⁷ The CDCR has a Religious Diet Program which offers at least vegetarian, kosher and meat alternate (Halal) diet options. The Religious Diet Program is described in the California Code of Regulations, title 15, sections 3054-3054.5 and the Department Operations Manual [DOM] § 54080.14.

The Religious Diet Program options are as follows:

- **Kosher Meals:** Kosher meals are now provided at every meal time at most, but not necessarily all, adult institutions. The meals follow kosher laws. A prisoner whose kosher needs cannot be met at the prison in which he is housed may be considered for transfer to an institution that can provide a kosher diet.⁸

Prisoners participating in the Jewish kosher diet program have the option to fast on a recognized Jewish fasting day, for the period required by that day. The Jewish Chaplain will provide Food Services staff with a list of participating prisoners at least three days ahead of the fast. A prisoner who chooses to fast will be provided with a sack meal to be eaten at the end of the fasting period. The sack meal will be equal to two kosher sack lunches. The Jewish Fasting Days recognized by the CDCR are Yom Kippur (Day of Atonement), Fast of Tisha B'Av, Fast of Esther, Fast of the 17th of Tammuz, Fast of Gedaliah, and Fast of 10th of Tevet.⁹

Prisoners participating in the kosher diet program who want to observe Passover shall receive kosher Passover foods during the eight days of observance.¹⁰

⁷ See, e.g., *In re Garcia* (2012) 202 Cal.App.4th 892, 904-906 [136 Cal.Rptr.3d 298] (denial of prisoner's request to participate in kosher meals program, based on fact that he was a Messianic Jew and not participating in traditional Jewish services, violated RLUIPA); *McElyea v. Babbitt* (9th Cir. 1987) 833 F.2d 196, 198 (prisoners entitled to religious diet to extent security and budgetary concerns permit); *Johnson v. Moore* (9th Cir. 1991) 948 F.2d 517, 520 (prisoner who wants special diet must show the dietary requirements are rooted in religious beliefs); *Ward v. Walsh* (9th Cir. 1993) 1 F.3d 873, 877-879 (remanding for further proceedings on kosher diet claim); *Ashelman v. Wawrzaszek* (9th Cir. 1997) 111 F.3d 674, 678 (prisoners entitled to food that satisfies dietary rules of their religion); *Oluwa v. Gomez* (9th Cir. 1998) 133 F.3d 1237, 1240 (remanding for further proceedings a claim by Rastafarian seeking vegan diet containing no grapes or other vine fruits); *Cooper v. California* (N.D. Cal. 2007) No. C 02-03712 JSW, Order on Findings and Recommendations (requiring kosher meals); *Menefield v. Cate* (E.D. Cal. Oct. 5, 2009) No. 08-00751 CRB PR, Order (in the absence of Halal meals, Muslim prisoners should be allowed the option of a Kosher meal); *In re Lewis* (Marin Super. Ct., Dec. 12, 2008) No. SC158441A, Order (same).

⁸ See 15 CCR § 3054.2.

⁹ DOM § 54080.14.

¹⁰ 15 CCR § 3054.2(e).

- **Halal Meals:** The Religious Meat Alternate Program has been implemented in all CDCR adult institutions. The program consists of two vegetarian meals (breakfast and lunch) and dinner with halal meat (from an animal that was cared for and slaughtered according to Islamic dietary laws). The program is available to Muslim prisoners. Non-Muslim prisoners with a religious dietary need that can be met by the program may also apply to be included.¹¹

The CDCR does not have specific policies for providing special meals for Muslim holidays. However, the rules state in general that faith groups may be permitted up to two events each year where foods with recognized religious significance are provided by the prison in place of the regularly planned meal.¹²

- **Vegetarian Meals:** Vegetarian Meals are available at all CDCR adult institutions. The vegetarian diet is also available to prisoners based on personal or ethical reasons, as well as religious reasons. Vegetarian Meals are lacto-ovo vegetarian, meaning they may include dairy products and eggs. Vegetarian meals may also include fish.¹³

If you want to get into one of the CDCR religious diet programs, there are four steps:

1. You must ask the Chaplain at your institution for the CDCR Form 3030 Religious Diet Request form, fill out the form, and turn it in to the Chaplain. If you are not able to speak with a Chaplain, you can submit a CDCR Form 22 Request for Interview asking for a CDCR Form 3030 Religious Diet Request.
2. After the Chaplain receives the completed Religious Diet Request, the Chaplain will interview you to explain your options and tell you about the meals.
3. The Chaplain will determine if you are eligible for the religious diet program and will send you a written notice of the decision.
4. If the Chaplain decides you are eligible for a religious diet, the Chaplain will explain the CDCR Form 3030-A Religious Diet Program Agreement and have you sign it. The Chaplain will then put your name on the Religious Diet participant list. You will receive a CDCR Form 3030-B Religious Diet Card that you must show to receive your Vegetarian, Kosher or Meat Alternate meals.¹⁴

¹¹ 15 CCR § 3054.3; DOM § 54080.14.

¹² 15 CCR § 3053; DOM § 54080.14.

¹³ 15 CCR § 3054.1; DOM § 54080.14.

¹⁴ 15 CCR § 3054.4; DOM § 54080.14; see also *Resnick v. Adams* (9th Cir. 2003) 348 F.3d 763 (approving similar religious diet procedures adopted by the federal prison system).

The process should happen fairly quickly. The Chaplain should put your name on the Religious Diet participant list within 24 hours of the approval and you should begin receiving your meals within two days of your name being placed on the list. Generally, you should begin receiving your religious diet meals within 30 calendar days from the date the Chaplain received your completed Religious Diet Request form.¹⁵

If you are eligible to receive a religious meal, you should receive it no matter how you are classified or where you are housed. Also, if you transfer to another prison, you should continue to receive your religious diet meals.¹⁶

You must follow the rules in the Religious Diet Program Agreement. If you do not do so, you could be removed from the Religious Diet Program. A CDCR staff member who thinks you have violated the Religious Diet Program rules can fill out a CDCR Form 128-B General Chrono and send it to the Chaplain. The Chaplain will meet with you and give you an opportunity to respond. If the Chaplain finds that you violated a diet program rule, you will receive a written warning but you will continue to receive your religious meals. If you violate a diet program rule again within six months of the first violation, you may be removed from the Religious Diet Program for 6 months. You have the right to discuss the alleged violation with the Chaplain before he or she can remove you from the Religious Diet Program. Violations are documented on a CDCR Form 3030-C Religious Diet Program Notice of Non-Compliance.¹⁷

III. Other Religious Rights Issues

This section describes some other religious rights issues that may affect prisoners.¹⁸

A statute allows clergy and spiritual advisors to get authorization to visit prisoners.¹⁹ The CDCR regulations also state that a warden “may” employ ministers and chaplains of various faiths.²⁰ If a chaplain cannot be obtained for a particular faith, the warden may designate a

¹⁵ 15 CCR § 3054.4; DOM § 54080.14.

¹⁶ 15 CCR § 3054(c); DOM § 54080.14. However, medical diet needs will take precedence over religious diets. 15 CCR § 3054(d).

¹⁷ 15 CCR § 3054.5; DOM § 54080.14.

¹⁸ The CDCR regulations and Operations Manual discuss procedures regarding religious programs. 15 CCR § 3210-3213; DOM §§ 101060.1-101060.14.

¹⁹ Penal Code § 5009.

²⁰ 15 CCR § 3210; see also *Rouser v. White* (E.D. Cal. 2009) 630 F.Supp.2d 1165 (Wiccan prisoner allowed to proceed with lawsuit claiming lack of a paid Wiccan chaplain and policies inhibiting group worship violated the RLUIPA, the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment) *Rouser v. White* (E.D. Cal. 2010) 707 F.Supp.2d 1055 (preliminary injunction protecting Wiccan rights to hold religious ceremonies); *Rouser v. White* (9th Cir. 2016) 825 F.3d 1076 (discussing how these actions led to a consent decree);

qualified prisoner to minister to other prisoners of that religion.²¹ Information received by chaplains performing their duties is privileged from disclosure to prison staff, except when failure to disclose the information would jeopardize any person's safety or prison security.²² It is a felony for a prison official to monitor without permission any conversation between a prisoner and a religious advisor.²³

The CDCR regulations state that a warden shall allow "reasonable time and accommodation" for religious services "in keeping with facility security and other necessary institutional operations and activities."²⁴ State laws allow prisoner officials to make exceptions the smoking ban for approved religious ceremonies.²⁵ With prior written approval of the warden, persons may be allowed to bring ceremonial drinks (such as sacramental wine) or other religious items into a prison.²⁶ Chapels, religious sanctuaries, and grounds designated for religious use are subject to reasonable searches by prison staff.²⁷

Prisoners sometimes raise concerns about access to religious books and other religious property used for worship.²⁸ The CDCR has a Religious Personal Property Matrix, which lists approved religious property items and which is incorporated by reference in the CDCR's regulations.²⁹ Religious items are subject to reasonable searches by staff.³⁰ Approved religious items may be removed or restricted if necessary to eliminate a serious threat to facility security of the safety of prisoners or staff; removal or restriction for a period of longer than 30 calendar

Hartmann v. CDCR (9th Cir 2013) 707 F.3d 1114, 1125-1127 (allowing Wiccan prisoners to proceed with Fourteenth Amendment claim that they should have a full-time paid Wiccan chaplain because full-time paid chaplains were provided for other faiths with fewer adherents).

²¹ 15 CCR § 3211.

²² 15 CCR § 3212.

²³ Penal Code § 636.

²⁴ 15 CCR § 3210.

²⁵ Penal Code § 5030.1(a); 15 CCR § 3188(c)(1).

²⁶ 15 CCR § 3213(a).

²⁷ 15 CCR § 3213(f).

²⁸ *Rouser v. White* (E.D. Cal. 2009) 630 F.Supp.2d 1165 (Wiccan prisoner allowed to proceed with lawsuit claiming that lack access to religious items violated RLUIPA, the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment) *Rouser v. White* (E.D. Cal. 2010) 707 F.Supp.2d 1055 (preliminary injunction protecting Wiccan rights to have religious texts and items); *Rouser v. White* (9th Cir. 2016) 825 F.3d 1076 (discussing how these actions led to a consent decree).

²⁹ 15 CCR § 3190(b); § 3213(b); DOM 54030.10.9; The Religious Personal Property Matrix (RPPM) is in the Appendix to the DOM.

³⁰ 15 CCR § 3213(b)-(d).

days requires approval by the associate director of the Statewide Religious Review Committee (SRRC), a committee that addresses statewide prisoner religious/spiritual issues.³¹

There have been quite a lot of legal disputes about whether prisoners can wear religious clothing or get exceptions to prison grooming and clothing standards that are contrary to their religious beliefs.³² Currently, the CDCR rules do not place restrictions on prisoners' hair and facial hair; prisoners may grow their hair and facial hair pretty much as they wish, so long as it is clean and groomed.³³ The CDCR rules also allow prisoners to wear or carry religious items such as a beaded headband, beaded wristband, beaded choker, religious medallion and chain, religious headgear, medicine bag, prayer beads, and tallit katan/tsitsit.³⁴

Another issue is whether prisoners can get time off from work to practice their religion. The CDCR rules provide that excused time off (ETO) may be used to attend religious services or functions. For routine religious services, use of ETO shall be limited to instances in which it would be unduly burdensome to change the prisoner's work or school schedule.³⁵

Another question that is sometimes raised is whether prison officials can impose special restrictions on religious practices when prisoners are in segregation or high security units. Placing a prisoner in administrative segregation does not necessarily justify denying all outlets for the practice of religion or all opportunities for group worship. Courts must still balance

³¹ 15 CCR § 3213(e); see also 15 CCR § 3000.

³² See *Holt v. Hobbs* (2015) __ U.S. __ [135 S.Ct. 853; 190 L.Ed.2d 747] (Arkansas grooming regulation that did not allow any religious exceptions, such as a ½" beard for Muslim prisoners, violated RLUIPA); *In re Ben-Sholom* (Marin Superior Ct. Mar. 1996) No. SC77668, Order (Jewish death row prisoner obtained court order allowing him to wear a yarmulke); *Clark v. Scribner*, No. S-05-00702 (E.D. Cal. Sept. 12, 2007) (prima facie case of RLUIPA violation where prisoner was not allowed to access dining hall unless he removed religious head covering); *Malik v. Ozmint*, No.8:07-387-GBH-BHH, 2008 WL 701517 (D. S.C. Feb. 13, 2008) (genuine issue as to whether RLUIPA violated where Muslim maximum security unit inmate was not allowed to wear kufi when outside of cell); *Caruso v. Zenon*, No. 95-MK-1578 (BNB), 2005 WL 5957978 (D. Colo. July 25, 2005) (RLUIPA violation where Muslim prisoner not allowed to wear kufi outside of cell or chapel); but see *Garner v. Livingston*, No. CA-C-06-218, 2011 WL 2038581 (S.D. Tex. May 19, 2011) (no RLUIPA violation where prisoners allowed to wear kufi only in cell and chapel); *Jihad v. Fabian*, No. 09-1604 SRN LIB, 2011 WL 1641885 (D. Minn. Feb. 17, 2011) (no RLUIPA violation where prisoners allowed to wear kufi in cells and chapel and state-issued caps and headbands outside of cells); *Hearn v. Kennell*, No. 07-1235, 2009 WL 3460455 (C.D. Ill. Oct. 22, 2009) (no RLUIPA violation prisoner had not shown that his religion requires a particular garment); *Warsoldier v. Woodford* (9th Cir. 2005) 418 F.3d 989 (former CDCR policy requiring Native American prisoner to have short hair, and subjecting him to punishment if he did not comply, violated RLUIPA); *Mayweathers v. Newland* (E.D. Cal. 2004) 328 F.Supp.2d 1086 (applying RLUIPA, court barred prison officials from disciplining Muslim prisoners for wearing 1/2-inch beards in violation of former CDCR grooming standards); but see *Henderson v. Terhune* (9th Cir. 2004) 379 F.3d 709 (applying First Amendment standard, the CDCR's former hair-length regulations were found to serve important penological interests that outweighed prisoner's religious interests).

³³ See 15 CCR § 3062.

³⁴ 15 CCR § 3213(b)-(c).

³⁵ 15 CCR § 3045.2(d)(4).

prisoner's religious rights against security needs under the First Amendment and/or RLUIPA standards (see section I, above).³⁶

Sometimes prisoners wish to use religious names that are different from their legal names. California law provides that no prisoner can file an application for a change of name except as permitted at the discretion of the CDCR.³⁷ The CDCR has adopted a procedure for considering a prisoner's request for a name change.³⁸ Forms and information concerning legal name changes are available on the California courts website.³⁹

IV. What You Can Do if Your Religious Rights are Being Violated

The institution Chaplains should make sure that participants in the Religious Diet Program are receiving their meals.⁴⁰ If you are experiencing any problems, you can send the Chaplain a Form 22 Request for Interview to try to solve the problem informally. You might also submit a Form 22 or talk to the Chaplain if you are not being allowed to practice your religion or you feel your religious rights have been violated, or if a CDCR staff member has discriminated against you because of your religious views or has tried to talk you out of participating in the Religious Diet Program.

If informal steps do not solve the problem, you can fill out and submit a CDCR Form 602 Administrative Appeal. For example, you can file a 602 appeal if you have been unable to get the CDCR Form 3030 Religious Diet Request form, if the Chaplain decided you were not eligible for a special diet, or if you are having problems actually getting your religious meals. You may also submit a 602 appeal to complain about actions of a CDCR employee that affect your religious rights. If there is any chance that you will want to pursue the issue in court, you must keep filing your 602 until you get responses at all levels of the appeal process. *It is important to "exhaust your administrative remedies" to preserve your right to file an action in court.* If you want more information on how to file a 602 administrative appeal, you can write to the Prison Law Office and ask for the free packet on administrative appeals.

³⁶ See *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190, 1209-1211 (upholding injunction requiring that county jail inmates in administrative segregation be given opportunities for worship, provided the inmates were not disruptive or violent); *Greene v. Solano County Jail* (9th Cir. 2008) 513 F.3d 982, 987-989 (striking down jail policy prohibiting maximum security inmates from participating in group worship under RLUIPA because policy substantially burdened the right to exercise religion and there was no evidence jail officials had considered less restrictive measures).

³⁷ Code of Civil Procedure § 1279.5(b).

³⁸ DOM § 73010.6.1.

³⁹ See www.courts.ca.gov/selfhelp-namechange.htm.

⁴⁰ DOM § 54080.14.

The CDCR also has other means for addressing prisoners' complaints. After you have completed the 602 appeal process, you may request an investigation of serious staff misconduct related to your religious rights by contacting the CDCR Office of Internal Affairs at: P.O. Box 3009, Sacramento, CA 95812. You can also request help with religious practice issues from the office of the CDCR Ombudsman by sending a Form 22 Request for Interview in a U Save 'Em envelope to the institution's ombudsman; writing a confidential letter to CDCR Office of the Ombudsman, 1515 S Street, Room 124 South, Sacramento, CA 95811 or having someone on the outside call (916) 445-1773 or fill out an on-line form at www.cdcr.ca.gov. However, *you do NOT have to complain to the CDCR Office of Internal Affairs or the CDCR Office of the Ombudsman before proceeding with any court action.*

If you have exhausted all available CDCR appeals processes, you may choose to file an action in court. Due to limited resources, the Prison Law Office is unable to represent you in court regarding a violation of your religious rights or refusal to include you in the Religious Diet Program. If you would like additional self-help material on how to file a lawsuit in court, please write to the Prison Law Office to request the "State Habeas Corpus Manual" or the "Lawsuits for Money Damages Against Prison Officials" manual.

You also may be able to receive legal assistance in challenging restrictions on your religious rights from the Stanford Law School Religious Liberties Clinic or the U.S. Department of Justice. You can send a confidential legal mail to either the clinic or DOJ at the following addresses:

Prof. James A. Sonne, Director
Religious Liberty Clinic
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610

Special Litigation Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530