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Do Prison Inmates Have a Right to Vegetarian Meals?

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INTRODUCTION

There are many issues surrounding the availability of vegetarian food in prison, and there is much variety in the way different prison systems have addressed these issues. While some prisoners are given limited rights to receive certain diets, including those prisoners with medical conditions and those of certain religious denominations, there are many factors that play a role in a prison's decision of whether to provide vegetarian food.

First, some prison employees have expressed their belief even though it may be unfounded, that inmates often use food as a way to make them feel special. Getting a vegetarian diet when thousands of other inmates have something else is sometimes a psychological ploy used by an inmate in an effort to feel special or different. They may also feel that inmates use food to try to draw attention to themselves. For some employees, it seems that once one inmate gets a special meal, many other inmates suddenly want a special meal. For these reasons, prisons usually require that special diets be prescribed by a physician for medical reasons, or by a chaplain for religious reasons. Prisons want to make sure that an inmate is truly a vegetarian before special provisions are arranged.

Next, prisons are constantly struggling to provide nutritious meals to thousands of prisoners at the lowest cost possible. To keep costs low, uniform meals are essential. Prison officials often claim that it is very difficult for prisons to afford special meals for individual prisoners. This is the main excuse that prisons use for denying requests for vegetarian or vegan meals.

FIRST AMENDMENT RIGHTS

Do prisoners have a right to vegetarian meals? In order to answer this question, a discussion of the First Amendment right to freedom of religion is necessary. The First Amendment of the United States Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ." Courts, as well as legal scholars, have attempted to define religion; however, it is next to impossible to define it in a way with which everyone agrees on. Religion can be defined either in a broad or narrow manner, and this definition can mean the difference between rights and no rights for an inmate to practice a certain set of beliefs, or "religion."

In 1965, the Supreme Court addressed the definition of religion in *United States v. Seeger*, 380 US 163, 85 S. Ct. 850 (1965), as it applied to a statute that allowed religious objectors to refrain from being drafted to military service. The Court declared that the statute's definition would be interpreted to include any "sincere and meaningful" belief that "occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption" (Id. at 166). The Court quotes Dr. David Saville Muzzey, a leader in the Ethical Cultural Movement: "Religion, for all the various definitions that have been given of it, must surely mean the devotion of man to the highest ideal that he can conceive. And that ideal is a community of spirits in which the latent moral potentialities of men shall have been elicited by their reciprocal endeavors to cultivate the best in their fellow men." In addition, the Court quotes Justice Douglas in *US v. Ballard*, 322 US 78, 86, 64 S. Ct. 882, 886 (1944): "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others." As a result of this broad definition, the truth of a belief may not be questioned; however, the sincerity of a belief must be determined based on the facts of each case.

The Equal Employment Opportunity Commission (EEOC) also provides a broad definition of religion in Title VII cases. The EEOC Guidelines, 29 CFR 1605 (1985), state that religious beliefs are "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." In addition, the EEOC has also stated that the protections of Title VII extend not only to traditional religious beliefs, but to moral and ethical beliefs as well (45 FED. REG. At 72, 611 (1980) [citing the analysis applied by the Supreme Court in *US v. Seeger*, 380 US 163 (1964), and *Welsh v. US*, 398 US 333 (1970)]).

IS ETHICAL VEGANISM A RELIGION?

The previous examples of broad definitions of religion are analogous to the argument that ethical veganism should either be recognized as a religion, or alternatively, protected as a class in the same way that religion is. As the Court set out in *Welsh*, 398 US at 340, "[I]f an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual a place parallel to that filled by God in traditionally religious persons." By analogy, an inmate who sincerely holds a strong ethical or moral belief in refraining from consuming meat, or any animal by-products, could be said to hold beliefs occupying a place parallel to that filled by God in religious persons, and, therefore, the inmate should be entitled to an alternative to meat and animal by-products.

As different courts define religion in very different ways, some courts have not followed *Seeger* or *Welsh* in defining religion broadly. For example, a ruling by the Kansas Court of Appeals held that if an inmate's decision not to eat meat is based on moral, not religious beliefs, the prison does not have to provide vegetarian meals. The prison decided to serve meatless meals only to inmates who were vegetarian for health or religious reasons, and the court said there is a distinction between moral and religious beliefs (*Sammons v. Simmons*, 963 P.2d 444 (1998)).

NUTRITION ISSUES

If it is determined that an inmate has an arguable basis for the position that his or her rights are constitutionally protected, the next inquiry is whether the prison's dietary policy is reasonably related to legitimate penological purposes. *Turner v. Saffley*, 482 US 78, 89, 107 S. Ct. 2254 (1987), provides the test for balancing the prison's interests with the inmate's interests. When assessing a prison regulation's reasonableness, the Supreme Court identified four factors to consider: (1) whether there is a rational connection between the prison regulation and the legitimate governmental interest; (2) whether there are alternative means for the prisoner to exercise his right; (3) what impact the requested constitutional accommodation from the prisoner will have on guards, other prisoners, and the allocation of prison resources; and (4) whether the absence of alternatives is evidence of the reasonableness of a prison regulation (*Turner*, 482 US at 89-90). The Supreme Court has held that *Turner* applies to all constitutional claims arising in prison with the exception of Eighth Amendment claims.

In federal prisons, there was an adoption by the Bureau of Prisons on May 30, 1984, of Operations Memorandum No. 110-84 (5360), which provided for a Modified Common Fare Religious Diet Program. The Common Fare diet applies to all inmates requesting a religious diet. This program serves foods that largely require no preparation, contain no pork or pork derivatives, do not mix meat or dairy products in the service of food items, and are served with utensils that have not come in contact with pork or pork derivatives. To the extent practicable, this diet contains approximately three hot entrées a week to accommodate the religious dietary needs of the Muslim and Jewish inmates, and meets or exceeds the required dietary allowances established by the Food and Nutrition Board of the National Academy of Sciences. Bureau of Prisons (BOP) policy provides that inmates requesting a religious diet must submit an application to the prison chaplain, who is responsible for approving requests for special religious diets, otherwise called the "common fare diet program." See Federal Bureau of Prisons Operations Memorandum 051-95 (Apr. 6, 1995). An "inmate shall ordinarily begin eating from the common fare menu within two days after Food Service receives written authorization from the Chap-lain." See *id.* at 3.

One potential roadblock to getting vegetarian food in prison is the prison dietitian. While most prison dietitians are likely to be knowledgeable about vegetarian and vegan diets, some may go so far as to say that a vegetarian diet is unhealthy and could cause nutritional problems in a prison setting. In one case, *Jenkins v. Angelone*, 948 F. Supp. 543 (1996), the registered dietitian for the prison stated that inmates on such a diet would be prone to rickets, scurvy, and other conditions associated with malnutrition. To prevent an argument like this from destroying a prisoner's case, the prisoner should supply the court with any evidence to the contrary and obtain any supporting affidavits possible. Also, the prisoner should try submitting the position paper from The American Dietetic Association that states that vegetarian diets are healthy and nutritionally adequate.

In Nevada, one prison offers pork-free and vegetarian alternative meals to all inmates and provides special medical diets to inmates who require such accommodation. Prison regulations provide that an inmate may choose one of the pork-free or vegetarian

alternatives for religious, health, or personal reasons. These alternatives conform to the dictates of the Muslim, Hare Krishna, and Seventh-day Adventist religions. Also, during the month of Ramadan, the prison provides Muslim inmates with sack lunches so they can eat at religiously dictated times. While this type of policy would be ideal in all state prisons, many policies and decisions regarding meal planning are left to individual prisons. For example, each state is allowed to set its own regulation regarding the daily minimum number of calories that must be provided to each inmate.

Some vegetarian inmates have been transferred to other prisons that could accommodate their dietary needs. There is no specific right to a transfer of this sort; however, in some instances, a carefully crafted request to transfer may be effective after a showing that there are no feasible alternatives at the prison where an inmate is currently incarcerated.

When a prisoner is considering a strategy or plan of action in seeking vegetarian meals, it is important to carefully document any incidents where he or she is denied vegetarian meals. The prisoner should record the date, time, place, and persons involved. For example, if the prisoner requests vegetarian food from the physician or the chaplain, the information regarding that request should be documented.

CONCLUSION

Receiving vegetarian or vegan meals in prison is no easy process. Although it may sound crass, the easiest way to receive vegetarian or vegan meals in prison is to join a religion that has vegetarianism or veganism as a tenet of the faith. Although it could be argued that ethical veganism should qualify as a religion under the First Amendment, courts may rule otherwise.

It is unfortunate and ironic that prisons are resistant to providing vegetarian or vegan meals. If we want prisoners to renounce violence, shouldn't we encourage them to be involved in lifestyles that exemplify non-violence?

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