



VIA ELECTRONIC MAIL

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Dear Messrs. Cuffari and Rodriguez and Meses. Quinn and Castano:

Muslim Advocates, a national civil rights and legal advocacy organization, King & Spalding LLP, and Americans for Immigrant Justice write to express serious concerns about the treatment of Muslim detainees housed at the Krome Service Processing Center (“Krome”), an Immigration and Customs Enforcement (“ICE”) detention facility in Miami, Florida, operated by the ICE Miami Field Office. The undersigned have received alarming reports that since the beginning of the COVID-19 pandemic, ICE and its officers have repeatedly violated the First Amendment rights of Muslim detainees.

During the pandemic, ICE officers at Krome have repeatedly served pork or pork-based products to Muslim detainees, contrary to the detainees' sincerely held religious belief that they are forbidden from consuming pork. Muslim detainees have been forced to accept these meals, because the religiously compliant or halal meals that ICE has served have been persistently rotten and expired. Nonetheless, ICE has continued to serve these rotten halal meals for over two years even after the detainees notified prison officials that the meals were inedible. As such, Muslim detainees are regularly served meals that they simply cannot eat. Such actions not only violate detainees' constitutional rights, but also put their health and well-being at serious risk.

ICE and DHS must immediately address this unlawful pattern of religious discrimination to ensure that no detainee at Krome or any other ICE facility across the United States is forced to choose between their faith and starvation.

I. ICE Is Serving Pork to Muslim Detainees at Krome in Violation of Detainees' Religious Beliefs.

The undersigned have received highly concerning reports of a widespread pattern of grave violations of the religious rights of Muslim detainees housed at Krome. These detainees have repeatedly been served meals containing pork and pork-based ingredients throughout the COVID-19 pandemic. Krome houses 440 detainees¹, and of those detainees approximately several dozen are Muslim. Muslim detainees at Krome sincerely believe that it is religiously impermissible to consume pork. Even food that touches pork or is prepared with the same tools as pork is religiously forbidden. Likewise, many believe that they must eat meals that are halal.

Since before the pandemic, ICE officials at Krome have been aware that the facility housed Muslim detainees whose faith prevents them from eating pork and requires that they eat halal meals. However, since at least late 2017, ICE officials at Krome have been serving Muslim detainees rotten and expired prepackaged halal meals. Those inedible meals pose serious health risks to Muslim detainees. In recent months, Muslim detainees who have eaten those spoiled halal meals have reported experiencing stomach pain, vomiting, and diarrhea. Yet, despite repeated complaints by dozens of Muslim detainees of the inedible meals to the chaplain at Krome, he has refused to help.

Prior to the pandemic, Muslim detainees were able to select their own meals from the cafeteria, thereby maintaining their ability to avoid pork and pork-based food even as the halal meals were spoiled. However, since the pandemic, Krome has shifted to a satellite-feeding program. Under satellite feeding, all meals are served pre-portioned and pre-plated in the pod or

¹*Exclusive look inside the Krome ICE detention center in Miami*, USA TODAY (Apr. 7, 2020), <https://www.usatoday.com/picture-gallery/news/nation/2019/12/19/exclusive-look-inside-the-krome-ice-detention-center-in-miami/2674094001/>.

housing units. Although ICE officers at Krome have long been aware of the Muslim detainees' faith-based dietary restrictions, they are nonetheless regularly serving Muslim detainees pre-plated pork sausage, pork ribs, and other pork-based ingredients during the pandemic. At least 2-3 times a week, the pre-plated meals unambiguously include pork. Consequently, 2-3 times a week, Muslim detainees at Krome are forced to choose between faith and food. There is no reason, even in a pandemic, that Muslim detainees cannot receive unexpired, unspoiled halal meals, or, at the very least, pre-plated meals that do not require them to consume pork.

While the detainees have notified ICE staff and Krome's chaplain of these conditions, their complaints have been willfully ignored. Muslim detainees have attempted to submit paper grievances, but ICE staff have neither picked up those grievances nor responded substantively to the serious complaints contained therein. Similarly, grievances submitted through the tablet system have been wantonly ignored for months. When the detainees sought assistance from the chaplain, the chaplain, who is charged with the spiritual well-being of all detainees, refused to assist in any way. Krome's illegal pattern of callousness to the health and free exercise of its Muslim detainees is encapsulated by the chaplain's response to the Muslim detainees' requests for assistance, who dismissed their requests by saying, "It is what it is." That ICE officials continue to serve rotten, expired halal meals or pork-based meals to Muslim detainees evinces deliberate indifference to their well-being.

In the face of the Krome staff's indifference and inaction, Muslim detainees are left with three choices during this pandemic: eat meals that contain pork, eat meals that are spoiled, or eat nothing at all. Consequently, Muslim detainees have been forced to choose between their sincere religious beliefs and their health. Many have suffered illness, like stomach pains, vomiting, and diarrhea, as a result.

This mistreatment is part of a broader practice at Krome of disregarding the well-being and constitutional rights of detainees in ICE's care. In June, detainees at Krome filed a complaint, alleging violations of the Fifth and Eighth Amendments based on state-created danger, violations of detention standards, and violations of their right to reasonable safety during the COVID-19 pandemic. Despite a preliminary injunction entered by the Court requiring ICE to enhance its protections against COVID-19, including, *inter alia* providing detainees with such basics as sufficient hand soap, cleaning supplies, and masks, last month, detainees at Krome were forced to file a motion to compel, alleging that ICE had not complied with the court's order. *See Gayle v. Meade*, No. 20-21553-CIV, 2020 WL 4047334 at *4 (S.D. Fla. July 17, 2020). That ICE is similarly flouting legally mandated religious liberty standards for detainees is thus reflective of its larger disdain for the detainees in its custody.

II. By Forcing Muslim Detainees to Choose Between Consuming Pork and Eating Rotten Halal Meals, ICE Officers at Krome Have Violated Clear Federal Law.

By habitually serving Muslim detainees pork and spoiled, expired, and cold halal meals, ICE officers at Krome have violated Muslim detainees' rights under the First Amendment and the Religious Freedom Restoration Act ("RFRA").² The Supreme Court has long held that "prison walls do not form a barrier separating prison inmates from the Constitution," *Turner v. Safley*, 482 U.S. 78, 84 (1987), and that inmates "clearly retain" First Amendment protections, including the right to free exercise of religion. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). Moreover, immigration detainees have the same rights as civil detainees, who are afforded "more constitutional protection, more considerate treatment, and conditions of confinement than criminals whose conditions of confinement are designed to punish." *See Mehmood v. Guerra*, 783 F. App'x 938, 941 (11th Cir. 2019); *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982). Both the First Amendment and RFRA forbid the government from substantially burdening an individual's religious exercise absent a compelling reason. *See* 42 U.S.C. § 2000bb (requiring a compelling interest and narrow tailoring of any restrictions to achieve that purpose); *Turner*, 482 U.S. at 89 (requiring the restriction to be reasonably related to a legitimate penological objective). If a compelling interest does not exist, the burden is impermissible. *See id.*

ICE's persistent pattern and practice of providing pork and spoiled halal meals to Muslim detainees at Krome imposes a substantial burden on those detainees' religious exercise, because it improperly forces those detainees to choose between engaging in conduct that seriously violates their religious beliefs or face a serious penalty. *See Holt v. Hobbs*, 135 S Ct. 853, 862 (2015). To wit, circuit courts around the country have found that denying a religiously compliant diet unconstitutionally burdens detainees' exercise rights. *See, e.g., Ford v. McGinnis*, 352 F.3d 582, 597 (2d. Cir. 2003) (holding that prisoners have a "clearly established" free exercise right under the First Amendment "to a diet consistent with [their] religious scruples"). Furthermore, the Eleventh Circuit has held that the First Amendment is violated when an inmate is forced to choose between eating nutritionally adequate but religiously non-compliant meals or suffering serious health consequences by eating nutritionally inadequate, religiously compliant food. *See Robbins v. Robertson*, 782 F. App'x 794, 802-03 (11th Cir. 2019). The choice that federal officers at Krome have forced Muslim detainees to make—between eating pork products, rotten halal meals, or eating nothing at all—is exactly the kind of impermissible burden the First Amendment and RFRA protect against.

The most egregious violations of the religious exercise rights of Muslim detainees at Krome—knowingly providing them with pork-based meals—run clearly afoul of their rights under the First Amendment and RFRA. District courts in Florida have found that knowingly serving an

² As a federal agency operating a detention facility, ICE is bound by RFRA. 42 U.S.C. § 2000bb-2.

inmate a meal with pork products constitutes a substantial burden of an inmate's free exercise rights under the First Amendment. *See Hill v. Williams*, No. 5:03CV192/MCR/EMT, 2005 WL 5993338, at *8 (N.D. Fla. Oct. 14, 2005); *see also Brandon v. Kinter*, 938 F.3d 21, 36 (2d Cir. 2019) (concluding that a Muslim inmate's free exercise rights under the First Amendment could be substantially burdened by being served pork ten times over the course of several months).

Additionally, federal courts have found that serving expired religious meals to inmates, like those provided to Krome's Muslim detainees, substantially burdens their First Amendment free exercise rights, because "inmates have the right to religiously-compliant foods that sustain them in good health." *See Gould v. California Dep't of Corr. & Rehab.*, No. 19-CV-00015-HSG, 2019 WL 2059660, at *2 (N.D. Cal. May 9, 2019) (quoting *McElyea v. Babbitt*, 833 F.2d 196, 197–98 (9th Cir. 1987)). Moreover, serving inmates expired food violates the Eighth Amendment, *see Gould*, 2019 WL 2059660, which requires prison officials provide detainees with the basic necessities of life, including edible food. *See Farmer v Brennan*, 511 U.S. 825, 832 (1994); *see also Womble v. Chrisman*, 770 F. App'x 918, 923–24 (10th Cir. 2019) (finding plausible Eighth Amendment claim where prison officials knew of and disregarded an excessive risk to inmate health because of the regular provision of spoiled food). Even if ICE believes that serving expired halal meals at Krome is related to a legitimate penological interest due to pandemic-associated limitations, the Eleventh Circuit, in a similar context, has found that the Florida Department of Corrections cannot rescind its kosher meal program in response to potential fiscal or budgetary crises. *See United States v. Sec'y Fla. Dep't of Corr.*, 828 F.3d 1341, 1347–49 (11th Cir. 2016).

No compelling reason justifies ICE serving pork and expired halal meals to Muslim detainees at Krome. It does not further any identifiable government interest or legitimate penological objective. Nor is there any discernible or reasonable justification for not including a pork-free meal for Muslim detainees through the satellite-feeding system. *Cf. Potts v. Holt*, 617 F. App'x 148, 151 (3d Cir. 2015) (stating that, under the First Amendment's *Turner* standard and RFRA, a salmonella outbreak and subsequent lockdown at a prison could not justify withholding kosher meals absent some nexus between the salmonella outbreak and defendants' ability to provide religious meals); *see also Hill*, 2005 WL 5993338 at *8 (holding that there was no legitimate penological interest in serving pork to a Muslim inmate because the defendant could not provide a rational reason for failing to obtain a pork-free meal).

Even if serving pork and expired halal meals to Muslim detainees did further some government interest or a legitimate penological objective, RFRA requires that the substantial burden imposed on the detainees be the least restrictive means of furthering that interest. *See* 42 U.S.C. § 2000bb. The denial of a religiously compliant diet or offering a diet that includes pork cannot meet this strict requirement. Including non-pork meal options for Muslim detainees in each pod would not hamper the current food service program. Moreover, Krome's current policy of serving Muslim detainees expired halal meals only demonstrates that ICE has the capacity to serve

detainees edible, unexpired pre-packaged halal meals, but that it willfully refuses to do so. *See United States*, 828 F.3d at 1348 (“Our Circuit has recognized that the fact that Florida formulated a [religious meal program] may be relevant to the question of whether a policy of not providing [such a program] is the least restrictive alternative to further a compelling interest.”) (internal quotations omitted).

The ongoing COVID-19 pandemic simply does not excuse ICE’s pattern of providing only inedible, expired, and cold halal meals; these practices commenced months prior to the pandemic. Substituting pork for inedible, expired food is offensive and constitutionally impermissible.

III. ICE and DHS Must Immediately Remedy the Unlawful Treatment of Muslim Detainees.

The undersigned believe that Krome is not the only ICE-run immigration detention facility in which Muslim individuals are being denied meals compliant with their religious beliefs. ICE and DHS should immediately remedy the discriminatory treatment suffered by Muslim detainees at Krome and other ICE detention facilities across the country. As part of ensuring that Muslim detainees are provided with safe to eat, religiously compliant meals, immigration authorities must serve unexpired halal plates to Muslim detainees at Krome and all other ICE facilities. Barring the availability of halal meals, ICE must ensure that each meal at each ICE-run facility includes sufficient plates without pork or contaminated by pork so that each Muslim detainee can exercise their constitutional and statutory rights to adhere to a diet consonant with their sincerely held religious beliefs.

ICE and DHS must also train, supervise, and discipline all personnel involved in this systematic denial of detainees’ rights at Krome. Likewise, ICE and DHS must more effectively monitor their staff to ensure that COVID-19 does not become license for ICE to violate the religious rights of its Muslim detainees. To that end, ICE and DHS should ensure that personnel at all ICE facilities are appropriately trained and educated with regard to religious meal requirements, religious accommodations, and facility grievance procedures.

The pandemic is no excuse to needlessly violate detainees’ religious rights. Given the gravity of the situation and the core rights at issue, the undersigned request a prompt response to this correspondence **within 14 days**. Should ICE and DHS fail to adequately resolve the issues outlined in this letter, the undersigned will be required to seek additional recourse. You may reply to Nimra Azmi at nimra@muslimadvocates.org or at the addresses below. We look forward to your response.

Very truly yours,

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