

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 05-cv-01978 -WYD-MJW

TIMOTHY SHELINE,

Plaintiff,

v.

JOE ORTIZ, in his official capacity as Executive Director of Colorado Department of Corrections,

Defendant.

FIRST AMENDED COMPLAINT

INTRODUCTION

1. Plaintiff Timothy Sheline is a prisoner in the Colorado Department of Corrections (CDOC). He is an Orthodox Jew whose sincerely-held religious beliefs require that he maintain a kosher diet.

2. In recognition of Mr. Sheline's religious beliefs, CDOC was providing Mr. Sheline with a special kosher food diet until April, 2005, when CDOC accused Mr. Sheline of taking two pads of kosher butter and two packages of Italian dressing from his kosher food tray and placing them in his pocket.

3. Based on a guard's accusation that Mr. Sheline had thus violated a minor dining hall rule, on April 25, 2005, CDOC formally revoked Mr. Sheline's entitlement to a kosher diet

for a period of one year. CDOC acted on the basis of Administrative Regulation 1550-06 (“AR 1550-06”), which governs religious diets for prisoners.

4. Since that time, Mr. Sheline has been unable to eat in the prison dining hall without violating his religious beliefs. He has been struggling to survive on a severely-restricted diet of the few kosher foods he is able to purchase at the prison canteen with his meager funds. As a result, he has lost over 30 pounds on a diet consisting almost entirely of peanut butter and crackers.

5. In this lawsuit, Mr. Sheline challenges CDOC’s legal authority to revoke his religious diet for allegedly violating a minor rule that has nothing to do with the sincerity of his religious beliefs. He seeks a court order forbidding CDOC to enforce the diet-revocation provisions of AR 1550-06 and a declaratory judgment that the regulation violates the right of prisoners to religious freedom and their right to due process of law.

JURISDICTION AND VENUE

6. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (RLUIPA). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

7. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

8. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All parties reside within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

PARTIES

9. Timothy Sheline is a prisoner in the custody of the Colorado Department of Corrections. He is currently housed at the Trinidad Correctional Facility in Trinidad, Colorado. Mr. Sheline is an Orthodox Jew. His sincerely-held religious beliefs require that he maintain a kosher diet.

10. Joe Ortiz is the Executive Director of the Colorado Department of Corrections. Defendant Ortiz is responsible for the enactment, enforcement, and application of the regulations, policies, and practices challenged in this litigation, including CDOC AR 1550-06. All employees and officials of CDOC referenced in this Complaint are employees and agents of Defendant Ortiz.

11. All policies, practices, actions, and threatened actions of the Defendant and his agents alleged in this Complaint are actions taken or threatened under color of state law.

FACTUAL BACKGROUND

12. In 1998, this Court issued a preliminary injunction ordering CDOC to provide kosher meals to Jewish prisoners whose religious beliefs require them. Beerheide v. Zavaras, 997 F. Supp. 1405 (D. Colo. 1998). After a trial, this Court issued a permanent injunction. Beerheide v. Suthers, 82 F. Supp. 2d 1190 (D. Colo. 2000). CDOC appealed, and in 2002, the Tenth Circuit Court of Appeals affirmed the permanent injunction. Beerheide v. Suthers, 286 F.3d 1179 (10th Cir. 2002).

13. Mr. Sheline was a prisoner in CDOC between 1999 and 2003, when he was released on parole. During that time, CDOC provided Mr. Sheline with a kosher diet.

14. After Mr. Sheline returned to CDOC for a parole violation, CDOC restored Mr. Sheline's kosher diet. Pursuant to the CDOC regulation challenged in this case, Mr. Sheline was required to sign the "Religious Diet Participation Agreement" that is included in "Attachment A" to AR 1550-06. A copy of the challenged regulation, AR 1550-06, is available on the CDOC web site at http://www.doc.state.co.us/admin_reg/PDFs/1550_06.

15. Pursuant to the "Agreement," a prisoner receiving a religious diet is forbidden to purchase or possess any "food items that are not permitted under [the prisoner's] religious diet." The "Agreement" notes that the prisoner's purchases from the prison canteen will be "routinely monitored."

16. Pursuant to the "Agreement," a prisoner is required to "follow all facility policies for dining."

17. Section IV.D. of the challenged regulation is titled "Diet Compliance, Review and Removal from a Religious Diet." Pursuant to this provision, CDOC enforces what the regulation calls a "two strikes policy." AR 1550-06, § IV.D.1. If CDOC concludes that a prisoner has violated any provision of the "Agreement," the prisoner receives a written warning. If CDOC concludes that a prisoner commits a subsequent violation within a year, the prisoner is "terminated from the Religious Diet Program for a period of one (1) year from the date of the second incident." AR 1550-06, Attachment A ¶ H; see also AR 1550-06, § IV.D.1 ("The second offense, within a one year time period, will result in cancellation of the diet for one year from the date of the second offense.").

18. On February 23, 2005, CDOC issued Mr. Sheline a "Religious Diet Non-Compliance Report" which stated that it was a "first warning" that he had violated the terms of

the “Religious Diet Agreement.” According to this written notice, Mr. Sheline’s violation consisted of purchasing food items from the canteen that were non-kosher. The notice did not assert that Mr. Sheline had consumed non-kosher food, nor did it assert that Mr. Sheline was not sincere in his religious belief that he must maintain a kosher diet. Mr. Sheline acknowledges that he did buy a can of non-kosher beef stew item to give to his cellmate on the occasion of his cellmate’s birthday. Mr. Sheline also acknowledges that he had purchased spice drops from the canteen. At the time of the purchase, Mr. Sheline believed that the spice drops were kosher.

19. Several months later, on April 5, 2005, a CDOC sergeant reported that she observed Mr. Sheline in the dining hall and saw him take something from his kosher diet food tray and put it in his pocket. According to the brief report, Mr. Sheline was searched, and two packets of kosher butter were found in Mr. Sheline’s shirt pocket.

20. Six days later, the same sergeant wrote another brief report. Once again, she said she observed Mr. Sheline put something from his kosher food tray into his pocket. The report says that Mr. Sheline was searched, and two packets of Italian dressing were found and confiscated.

21. Two weeks afterwards, on April 25, 2005, CDOC issued two separate Religious Diet Non-Compliance Reports formally revoking Mr. Sheline’s kosher diet. Each notice states: “Due to your non-compliance with one or more provisions contained in your signed Religious Diet Participation Agreement, your religious diet will be terminated.” One notice revokes Mr. Sheline’s kosher diet because of the accusation that he put two packets of butter in his shirt pocket while he was in the dining hall. The other notice revokes Mr. Sheline’s kosher diet

because of the accusation that he put two packets of Italian dressing in his shirt pocket while in the dining hall.

22. On information and belief, prisoners who are not on religious diets do not suffer such drastic consequences when they are accused of violating a minor dining hall rule. On the contrary, when prisoners are caught putting food in their pockets, ordinarily the food is simply confiscated. Even when prisoners receive disciplinary write-ups for such a minor infraction, the sanctions imposed are relatively minor and do not intentionally burden the prisoners' religious practice.

23. Pursuant to the challenged regulation, CDOC now denies Mr. Sheline the opportunity to obtain a kosher food tray in the prison dining hall. This deprivation will continue at least until April, 2006. Even if Mr. Sheline's kosher diet is restored after that, the challenged diet-revocation provisions will continue to pose an unjustifiable threat to Mr. Sheline's continued ability to receive kosher meals.

24. In the months since his religious diet was revoked, Mr. Sheline has been unable to eat in the prison dining hall without violating his religious beliefs. He has been struggling to survive on a severely-restricted diet of the few kosher foods he is able to purchase at the prison canteen with his meager funds. As a result, he has lost over 30 pounds on a diet consisting almost entirely of peanut butter and crackers. He believes that his health is suffering as a result and that it will continue to deteriorate unless this Court intervenes.

DECLARATORY RELIEF

25. An actual and immediate controversy exists between Plaintiff and Defendant. Plaintiff contends that the challenged regulation, both on its face and as applied in his particular

case, violates his statutory and constitutional rights. Defendant contends that the challenged regulation complies with the law.

26. Plaintiff is therefore entitled to a declaration of rights with respect to this controversy. Without such a declaration, Plaintiff will be uncertain of his rights and responsibilities under the law.

INJUNCTIVE RELIEF

27. Plaintiff is entitled to injunctive relief. Defendant has enforced and threatened to continue enforcing the challenged regulation against the Plaintiff. Defendant has acted and is threatening to act under color of state law to deprive Plaintiff of his statutory and constitutional rights. Plaintiff is suffering irreparable injury and will continue to suffer a real and immediate threat of irreparable injury as a result of the existence, operation, and implementation of the challenged regulation. Plaintiff has no plain, adequate or speedy remedy at law.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

28. Mr. Sheline has exhausted all available administrative remedies.

29. In CDOC, there is a three-step grievance procedure, which is outlined in Administrative Regulation 850-04. In early June, 2005, Mr. Sheline filed a Step 1 grievance against Dona Zavislan of the Central Food Services Administrative Office of CDOC. When he did not receive a response within the 25-day period specified by the CDOC regulations, Mr. Sheline then filed a Step 2 grievance. On July 14, 2005, he received a written response from Dona Zavislan that addressed the Step 2 grievance on the merits and denied it. Attached to the Step 2 grievance response was Mr. Sheline's Step 1 grievance, with CDOC's response,

indicating that Dona Zavislan had also denied the Step 1 grievance. Copies of the Step 1 and Step 2 grievances, and CDOC's response, are attached to this Complaint.

30. Mr. Sheline believed that the CDOC regulation specifying the grievance process required that Dona Zavislan's supervisor, not Dona Zavislan, be the one to review and respond to the Step 2 grievance. Because Mr. Sheline believed that CDOC had abused its own regulation by permitting Dona Zavislan to deny both his Step 1 and Step 2 grievance, Mr. Sheline prepared and attempted to file what he initially regarded as a new Step 2 grievance. When he attempted to submit this document to one of the case managers, she said that he could not file a second Step 2 grievance. The case manager told Mr. Sheline, however, that she would accept the document and she further stated that CDOC would consider it to be a Step 3 grievance. The case manager accepted this Step 3 grievance on or about July 16, 2005. Mr. Sheline has not received any response to this Step 3 grievance. According to CDOC Administrative Regulation 850-04, § IV.D.1.b., a Step 3 grievance must be answered within 45 days. The failure to respond to the Step 3 grievance after 45 days constitutes a denial of that grievance.

31. Mr. Sheline is not able to attach a copy of his Step 3 grievance, because he submitted his only copy to CDOC.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 2000cc, et seq. (RLUIPA))

32. The allegations of paragraphs 1-31 are incorporated herein.

33. The enforcement against Mr. Sheline of the diet-revocation provisions of Administrative Regulation 1550-06 substantially burdens and threatens to continue burdening Mr. Sheline's religious practice.

34. The burden on Mr. Sheline's religious practice is not the least restrictive means of furthering a compelling government interest.

35. CDOC receives financial assistance from the United States Government.

36. Wherefore, Plaintiff is entitled to a declaration that the challenged diet-revocation provisions violate RLIUPA on their face and as applied to Mr. Sheline; as well as injunctive relief against their enforcement; and an award of reasonable attorney's fees.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983, Due Process)

37. The allegations of paragraphs 1-36 are incorporated herein.

38. Prisoners whose sincerely-held religious beliefs require that they maintain a special diet are entitled, under the First Amendment, RLUIPA, and AR 1550-06, to a diet that complies with their religious beliefs and practices.

39. Prisoners who are entitled to a religious diet have a liberty interest that cannot be extinguished or terminated without due process of law.

40. The diet-revocation provisions of Administrative Regulation 1550-06 fail to provide procedural due process to prisoners who are accused of violating the terms of the Religious Diet Participation Agreement. Pursuant to the challenged diet-revocation provisions, CDOC revokes prisoners' religious diets without providing prior notice of the accusation against them and without providing them a prior opportunity to be heard. The diet-revocation provisions authorize automatic termination of a prisoner's religious diet when a guard or other CDOC official asserts that the prisoner has violated the "Agreement."

41. Mr. Sheline had a liberty interest in continuing to receive kosher meals. CDOC deprived Mr. Sheline of that liberty interest without due process of law. CDOC revoked Mr. Sheline's kosher diet without first providing notice of the alleged violations of the Religious Diet Participation Agreement and without first providing him an opportunity to deny, rebut, or explain the alleged violations.

42. The Religious Diet Non-Compliance Report that stated it was a "first warning" failed to provide Mr. Sheline with sufficient specific information to satisfy due process. It asserted that Mr. Sheline purchased food items from the Canteen that were not consistent with his religious diet, but it failed to identify which food items were allegedly purchased that CDOC believed to be non-kosher.

43. Each of the notices that Mr. Sheline received on April 25, 2005, also failed to provide sufficient information to satisfy due process. Each asserted that Mr. Sheline had violated the terms of the Religious Diet Participation Agreement, but neither provided any information about how he allegedly violated the Agreement or which portion of the Agreement he was alleged to have violated.

44. The diet-revocation provisions of Administrative Regulation 1550-06, on their face, authorize CDOC to deprive prisoners of their religious diets without according them due process of law. Mr. Sheline's religious diet was terminated without due process of law.

45. Wherefore, Plaintiff is entitled to a declaratory judgment that the diet-revocation provisions of Administrative Regulation 1550-06 are facially invalid; a declaration that the revocation of Mr. Sheline's kosher diet violated his right to procedural due process; an injunction

against enforcement of the diet-revocation provisions; and an award of reasonable attorney's fees.

THIRD CLAIM FOR RELIEF

(42 U.S.C. § 1983, First Amendment Free Exercise Clause)

46. The allegations of paragraphs 1-45 are incorporated herein.

47. The First Amendment protects the right of all persons to freely exercise their religious beliefs. It protects the right of prisoners to receive a diet that conforms to their sincerely-held religious beliefs. Maintaining a kosher diet is central to Mr. Sheline's sincerely-held religious beliefs. Accordingly, the First Amendment protects the right of Mr. Sheline to receive and continue receiving a kosher diet.

48. The diet-revocation provisions of Administrative Regulation 1550-06, on their face, authorize CDOC to deprive prisoners of their religious diets for reasons that have no reasonable relationship with any legitimate penological interests.

49. Mr. Sheline's kosher diet was revoked for reasons that have no reasonable relationship with any legitimate penological interest.

50. By revoking Mr. Sheline's kosher diet, CDOC has improperly and unjustifiably infringed Mr. Sheline's right to the free exercise of religion, in violation of the First Amendment.

51. Wherefore Mr. Sheline is entitled to a declaratory judgment that the diet-revocation provisions of Administrative Regulation 1550-06 violate the First Amendment facially and as applied to himself; injunctive relief against their enforcement; and an award of reasonable attorney's fees.

FOURTH CLAIM FOR RELIEF

(42 U.S.C. § 1983, Equal Protection Clause)

52. The allegations of paragraphs 1-51 are incorporated herein.

53. The sanction imposed on Mr. Sheline for allegedly putting two packets of butter and two packages of salad dressing in his shirt pocket is far more severe and burdensome than the sanctions imposed on prisoners who are accused of the same conduct but who are not receiving religious diets.

54. The more severe sanction was imposed on Mr. Sheline solely because he has exercised his constitutional and statutory right to receive a religious diet that conforms to his sincerely-held religious beliefs.

55. The difference in sanctions is not reasonably related to any legitimate penological interest.

56. Mr. Sheline was deprived and continues to be deprived of his right to the equal protection of the laws.

57. Wherefore, Mr. Sheline is entitled to a declaratory judgment, injunctive relief, and an award of reasonable attorney's fees.

PRAYER FOR RELIEF

Wherefore, Plaintiff is entitled to a declaratory judgment, interim and permanent injunctive relief, and an award of reasonable attorney's fees.

Dated: October 12, 2005

Respectfully submitted,

s/ Mark Silverstein

Mark Silverstein

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Colorado**

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Attorneys for Plaintiff

up 2 @ 6-31

RECEIVED

JUL 08 2005

DC FORM 850-4A (10/04)

COLORADO DEPARTMENT OF CORRECTIONS OFFENDER GRIEVANCE FORM
FOOD SERVICES

Grievance Number IF 05/06-002

STEP (Circle One) 1 2 3

ADA? Yes No

NAME <u>Timothy S. Sheline</u>	DOC NO. <u>100922</u>	FACILITY <u>TCF</u>
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- Instructions:
1. FILL OUT IDENTIFYING DATA LEGIBLY IN SPACE PROVIDED;
 2. CLEARLY STATE BASIS FOR GRIEVANCE OR GRIEVANCE APPEAL;
 3. STATE SPECIFICALLY WHAT REMEDY YOU ARE REQUESTING;
 4. ATTACH A COPY OF PRIOR STEP(S) AND RESPONSES IN GRIEVANCE PROCESS.

Subject of Grievance and Requested Remedy: Dona Zavislan has acted in a Religious Intolerant manner and stripped my Right to eat Kosher at Doc. This was done without investigation or due process. The diet was taken for alleged Dining Violations that do not even exist. This clearly Discriminatory practise Targets Jews in Violation of A.R. 850-15, Offender Non-Discrimination. The Right to eat Kosher in accordance with my Religious Views is Mandated By the Supreme Court. Yet Colorado DOC treats it as a Privilege, even require a Contract be signed to receive Kosher Meals. The contract holds a Jewish inmate to a Higher Standard of accountability than anyone of any other faith. It places Demands and Sanction on a Jew that do not exist for the non-jewish population. If every inmate at Doc is forced to sign a contract to receive meals, the one forced on a Jew is the worst case of Discrimination and the practise must be stopped. If a non-jew gives away his entire meal to someone else, nothing is said. The practise is common. If a Jew gives away a packet of salt and he will no longer be permitted to receive a Kosher meal. If a non-jew decides to pack up his entire meal to take out with him and is caught, the food is thrown away and nothing is said. No Sanctions. If a Jew is seen putting a packet of salad dressing in his shirt pocket, he will be written up and no longer allowed to receive a Kosher Meal at DOC. Where is the equality. There have been no valid violation, even if the practise were legal. Try investigating before you simply taking away the right to eat just to save money. My health is Suffering due to the Limited amount of food I can afford from canteen to remain Kosher. Remedy: Restore Kosher diet Immediately to eliminate the need to make it Court Ordered.

DATE: <u>6-6-05</u>	OFFENDER SIGNATURE: <u>[Signature]</u>
DATE RECEIVED: _____	RESPONDING STAFF SIGNATURE & ID _____

If you are dissatisfied with the response to this grievance, you may obtain further review by submitting the next step to the appropriate individual.

DATE: _____	SIGNATURE/PRINT NAME & STAFF ID # _____
DATE: <u>6-7-05</u>	SIGNATURE/PRINT NAME & STAFF ID # <u>Dalaf 818</u>
DATE: _____	OFFENDER SIGNATURE/PRINT NAME & DOC # _____

Original: Department File/AIC

Copies: Working File, Administrative Head, Offender, Clinical Chart (clinical and ADA only)

* No Tracking # provided. No response given. Text copy from my file attached.

DC FORM 850-4A (10/04)

COLORADO DEPARTMENT OF CORRECTIONS OFFENDER GRIEVANCE FORM

Grievance Number TF 05/06-002

STEP (Circle One) 1 **2** 3

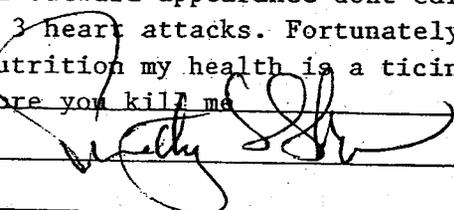
ADA? Yes No

NAME <u>Timothy S. Sheline</u>	DOC NO. <u>100922</u>	FACILITY <u>TCF</u>
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- Instructions:
1. FILL OUT IDENTIFYING DATA LEGIBLY IN SPACE PROVIDED;
 2. CLEARLY STATE BASIS FOR GRIEVANCE OR GRIEVANCE APPEAL;
 3. STATE SPECIFICALLY WHAT REMEDY YOU ARE REQUESTING;
 4. ATTACH A COPY OF PRIOR STEP(S) AND RESPONSES IN GRIEVANCE PROCESS.

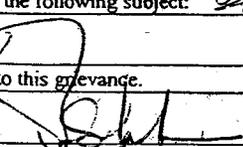
Subject of Grievance and Requested Remedy: Step 1 was filed against Dona Zavislan, Central Food Service Admin. Office, on 6-6-05. The issue remains ongoing and time requirements have been met. Deadline for response, giving 25 days as required by A.R.850-04 was 7-1-05. Apparently the enormity of this situation has been minimized. This has now become a Serious health issue. I have now lost almost 30 lbs. because DOC refuses to feed me. I have survived on primarily peanutbutter and crackers for over 2 months because its all I can afford from canteen to remain Kosher in keeping with my religion. This continues to violate the 1st Amendmend of the Constitution as well as a Permenant Injuction by the Supreme Court ordering DOC to provide me, an Orthodox Jew, with a Kosher diet. This refusal to provide Kosher food began as a combination of retaliation, and cost cutting effort by TCF Food Service Supervisory Staff. They wrote me up for bogus violation that are not inclusive on the Kosher Diet Contract. Dona Zavislan without investigation, or due process terminated my diet, treating it as a privilege even though it is a Right, and Supreme Court Injunctive Order. Since there is no valid, or legal precedence to suport refusing me food, it is obviouly a **deliberate act to inflict pain and suffering, with total disregard for my overall health**. The psychological impact as well is overwhelming knowing that all TCF staff up to and including the warden, as well as Central Office, are aware of the situation as well as my declining health and by all outward appearance dont care if I live or die. The implications are unbelievable. I have had 3 heart attacks. Fortunately none serious because I was in good health. But without proper nutrition my health is a ticing bomb.

Remedy: Reinstate my Kosher diet immediately. Before you kill me

DATE <u>July 5, 2005</u>	OFFENDER SIGNATURE 
DATE RECEIVED:	RESPONDING STAFF SIGNATURE & ID
RESPONSE	

I was never given a copy of the Step 1 grievance. I received it today stapled to the Step 2 grievance. I do not work at Trinidad Correctional Facility. Mr. Sheline was approved for a kosher diet on December 17, 2004. He signed a religious diet agreement indicating an understanding of what was expected of him. Mr. Sheline was found to be in violation of his religious diet agreement on four occasions. ON January 25 he took a regular tray. During the period December 17, 2004 through February 7 he purchased non-kosher food items from the Canteen. Mr. Sheline received written non-comliance reports for these two incidents. On April 5th and again on April 11th, Ms. Sheline was caught attempting to remove kosher food items from the dining room. I did not have anthing to do with the latter citations but they appear to be appropriate to me. Mr. Sheline may apply for reinstatement April 25, 2006

If you are dissatisfied with the response to this grievance, you may obtain further review by submitting the next step to the appropriate individual.

DATE: <u>July 8, 2005</u>	SIGNATURE/PRINT NAME & STAFF ID # <u>Dona Zavislan, #3656</u>
RECEIPT: I acknowledge receipt this date of a complaint from the above offender in regard to the following subject: <u>Food Service</u>	
DATE: <u>7-5-05</u>	SIGNATURE/PRINT NAME & STAFF ID # <u>Dona Zavislan #3656</u>
RECEIPT: I acknowledge receipt this date of a response from the Department of Corrections, to this grievance.	
DATE: <u>7-14-05</u>	OFFENDER SIGNATURE/PRINT NAME & DOC # 

RECEIVED

Original: Department File/AIC Copies: Working File, Administrative Head, Offender, Clinical Chart (clinical and ADA only)

JUL 08 2005

FOOD SERVICES