IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RUFUS WEST, aka MANSA LUTALO IYAPO,

ORDER

Plaintiff,

11-cv-687-slc

v.

GREGORY GRAMS, MIKE MEISNER, MARDEL PETRAS, RICK RAEMISCH, GARY HAMBLIN, CHAPLAIN CAMPBELL, CHAPLAIN MARK TESLIK, JOHN DOE DAI ADMINISTRATORS, JOHN DOE SECURITY SUPERVISORS, JOHN DOE FOOD SERVICE SUPERVISOR, WILLIAM GROSSHANS and MELISSA SCHUELER,

Defendants.

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Plaintiff Mansa Lutalo Iyapo (who was incarcerated under the name Rufus West but wishes to be referred to by his "spiritual name"), has filed a civil action under 42 U.S.C. § 1983 alleging that prison officials have violated his rights to practice Islam and retaliated against him after he complained about restrictions on his religious practice. Plaintiff has paid the $350 filing fee for this action. He has filed also a number of other documents. He has submitted an amended complaint, dkt. #4, which I construe as including a motion for

leave to amend the original complaint. I will grant that motion because plaintiff has the right to amend his complaint once as a matter of course at this point in the proceedings. Fed R. Civ. P. 15(a)(1). He has filed a short supplement to the complaint, dkt. #5, that I will consider as part of the complaint. Because plaintiff is a prisoner, I must screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). After reviewing the complaint, I conclude that plaintiff may proceed on his claims that defendants have restricted his religious practice in violation of the Religious Land Use and Institutionalized Persons Act and the free exercise clause of the First Amendment, as well as his retaliation claim.

Plaintiff has filed also two motions for preliminary injunctive relief. I will set briefing on the first and deny the second as unnecessary.

In his amended complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

A. Jumuah and Talim

Since 1996, plaintiff has been a Muslim. As a Muslim, he adheres to the Holy Quran, which mandates that every Friday, all Muslims are to participate in Salat-ul-Jumuah. (Plaintiff refers also to these prayers as "Jumuah.") Jumuah is a congregational prayer; it cannot be offered alone. Consequently, an Imam is necessary to lead the prayers. Any Muslim in attendance who is male and "most conversant with Islamic theology" can serve as an Imam. Islamic group study, called "Talim," where Muslims learn about Islam and discuss Islamic issues, is "required, but not obligatory."

On July 3, 2007, plaintiff was transferred to the Columbia Correctional Institution. He immediately signed up to participate in all Islamic activities. However, defendants Gregory Grams (then-warden), Mardel Petras (former program supervisor), Rick Raemisch (the former secretary of the Department of Corrections), Chaplain Campbell and an unnamed official enforced a policy that did not allow prisoners to be Imams and lead Jumuah or Talim. Instead, Jumuah and Talim would be held when an outside Islamic volunteer was available to come to the prison to lead those services. If the volunteer was not able to come to the prison, the services would be canceled. Because of this policy, plaintiff was not able to take part in Jumuah or Talim dozens of times between July 2007 and April 2011. From April 2011 to the present, defendants Gary Hamblin (Secretary of the

Department of Corrections), Mike Meisner (warden) William Grosshans (Division of Adult Institutions administrator), Chaplain Campbell, Chaplain Teslik, Melissa Schueler and unnamed defendants enforced the same policy, resulting in further deprivations of Jumuah and Talim. Prisoners have been allowed to lead these services at other prisons at which plaintiff has been incarcerated.

In March 2008, plaintiff wrote an informal complaint to defendants Petras, Grams, Campbell, the Division of Adult Institutions administrator's office and the Department of Corrections secretary's office about the denials of Jumuah and Talim and suggested that Muslim prisoners be allowed to lead these services. On March 6, 2008, Petras responded on behalf of herself, Grams and Campbell, rejecting plaintiff's suggestion. Plaintiff also filed formal grievances but they were denied.

On October 6, 2008, defendant Petras told plaintiff that "the current Muslim spiritual leader is able to come to [the prison] every other week," even though Jumuah is required every Friday. On December 28, 2010, staff was notified that the Muslim volunteer was going to be out of the country until the end of January of 2011 and that the backup volunteer would be out of the state until February of 2011. A memo was posted stating that because of the unavailability of the spiritual leaders, there would be no Muslim services until the end of January 2011. Since July 2007, plaintiff has been deprived of Jumuah and Talim at least 132 times. Plaintiff has filed a grievance for each of these deprivations.

B. Eid al-Fitr

In Islam, the completion of Ramadan is celebrated worldwide by the Eid al-Fitr, which includes, but is not limited to, the congregational Eid al-Fitr prayer, Khutba and Feast. The Eid al-Fitr must be held the day after Ramadan or it loses its religious significance. Plaintiff and other Muslim inmates are qualified to lead the Eid al-Fitr services but are not allowed to do so. In 2007, Ramadan ended on October 12th at sunset, therefore, the Eid al-Fitr was October 13th. However, defendants Petras, Campbell and Grams agreed to have the Eid al-Fitr on October 19, 2007, which effectively deprived plaintiff of the Eid al-Fitr. A major reason for this delay was the unavailability of an outside Islamic volunteer on October 13, 2007. Similar delays took place in 2008 and 2009 as a result of the enforcement by defendants Meisner, Campbell, Teslik, Hamblin and John Doe staff of the policy prohibiting prisoners from leading the Eid al-Fitr festivities.

C. Ramadan Meals

Since coming to the Columbia Correctional Institution, plaintiff has fasted during Ramadan, but some unit staff have failed to punctually deliver the sunset meals at the required time. On July 22, 2011, during Talim, plaintiff and other Muslim prisoners complained to the outside Islamic volunteer, Aziz, in defendant Teslik's presence, about these delays, and suggested that Teslik issue a memo informing all of the units that the

Ramadan meals for 2011 should be issued at 7:30 p.m., which would allow the Muslim inmates to have their sunset meals in their possession ready to eat as soon as the sun sets without having to wait for the unit staff to bring them. Teslik was adamantly opposed to the 7:30 p.m. meal distribution because he believed that Muslims could possibly eat the food before sunset. After a debate, Teslik agreed to "talk to staff" about the earlier deliveries. During Ramadan, sunsets ranged from 8:21 p.m. on August 1, 2011, to 7:39 p.m. on August 29, 2011. On July 29, 2011, Teslik stated that the meals would be served at 8:30 p.m. for the entire Ramadan period, apparently after consulting with John Doe security supervisors and food service manager. This resulted in the meals being consistently late.

Defendant Teslik stated that 8:30 was chosen because it was the medication distribution time. This time is the latest possible time of the day that prisoners are allowed out of their cells.

DISCUSSION

I understand plaintiff to be bringing claims that defendants violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, and the free exercise clause of the First Amendment, by failing to regularly provide plaintiff Jumuah and Talim and by failing to provide Eid al-Fitr at the appropriate time. In addition, he brings a claim that defendants violated his First Amendment rights by retaliating against him for debating when to

properly serve Ramadan meals.

A. RLUIPA and Free Exercise Clause

Inmates alleging that government officials have impeded their ability to practice their religious beliefs have recourse to two different laws: the Religious Land Use and Institutionalized Persons Act and the free exercise clause of the First Amendment. Under RLUIPA, plaintiff has the initial burden to show that he has a sincere religious belief and that his religious exercise was substantially burdened. Koger v. Bryan, 523 F.3d 789, 797-98 (7th Cir. 2008); Vision Church v. Village of Long Grove, 468 F.3d 975, 996-97 (7th Cir. 2006). A "substantial burden" is "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).

Construing plaintiff's complaint liberally, I conclude that plaintiff has alleged enough to state RLUIPA claims regarding the repeated deprivations of Jumuah, Talim and Eid al-Fitr. As this case proceeds on these claims, if plaintiff shows at summary judgment or trial that defendants substantially burdened his sincerely held beliefs, the burden will shift to defendants to show that their actions further "a compelling governmental interest," and do so by "the least restrictive means." Cutter v. Wilkinson, 544 U.S. 709, 712 (2005). Also, plaintiff should be aware that he may not obtain monetary relief under RLUIPA. Nelson v.

Miller, 570 F.3d 868, 883-89 (7th Cir. 2009).

Turning to plaintiff's free exercise claims, I note that they are generally governed by the standard from Turner v. Safley, 482 U.S. 78 (1987), which requires the court to determine whether the restriction is reasonably related to a legitimate penological interest. In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; whether alternatives for exercising the right remain to the prisoner; what impact accommodation of the right will have on prison administration; and whether there are other ways that prison officials can achieve the same goals without encroaching on the right. Id. at 89.

In addition, some courts have suggested that courts must answer other questions as well, including: (1) whether the plaintiff's claim involves "religious" beliefs that are "sincere"; (2) whether defendants placed a "substantial burden" on the plaintiff's exercise of religion; (3) whether the plaintiff's claim involves a "central religious belief or practice"; and (4) whether the restriction targets the plaintiff's religion for adverse treatment or is a neutral rule of general applicability. This court or the court of appeals has treated one or more of these issues as an element in some past cases brought by prisoners, e.g., Borzych v. Frank, 2006 WL 3254497, *4 (W.D. Wis. 2006) (requiring all of these elements), but in other prisoner cases at least some of the elements have been ignored, e.g., Ortiz v. Downey, 561 F.3d 664,

669 (7th Cir. 2009) (applying Turner without discussing other elements). See also Mayfield v. Texas Department of Criminal Justice, 529 F.3d 599, 608 (5th Cir. 2008) (applying Turner without imposing other requirements).

It is unnecessary to sort out in this screening order the exact standard to be applied. Construing plaintiff's complaint liberally, I conclude that he has alleged enough to state free exercise claims with regard to the deprivations of Jumuah, Talim and Eid al-Fitr, regardless which standard applies. The court of appeals has stated that district courts should wait until summary judgment to determine whether there is a reasonable relationship between a restriction and a legitimate penological interest because an assessment under Turner requires a district court to evaluate the prison officials' particular reasons for the restriction. E.g., Ortiz, 561 F.3d at 669-70 (holding that it was error for district court to conclude without evidentiary record that policy was reasonably related to legitimate interest); Lindell v. Frank, 377 F.3d 655, 658 (7th Cir. 2004) (same). Accordingly, plaintiff may proceed on his free exercise claims.

B. Retaliation

I understand plaintiff to be bringing a claim against defendants Teslik, John Doe security supervisors and John Doe food service manager for serving Ramadan meals as late as possible in retaliation for plaintiff's debating with Teslik about when to properly serve

those meals. In order to state a claim for retaliation, plaintiff must identify (1) the constitutionally protected activity in which he was engaged; (2) one or more retaliatory actions taken by each defendant that would deter a person of "ordinary firmness" from engaging in the protected activity; and (3) sufficient facts to make it plausible to infer that plaintiff's protected activity was one of the reasons defendants took the action they did against him. Bridges v. Gilbert, 557 F.3d 541, 556 (7th Cir. 2009).

At this point, I conclude that plaintiff states, if only barely, a retaliation claim against defendants. Plaintiff's informal complaint about the Ramadan meals can constitute a protected activity, e.g., Walker v. Bertrand, 40 Fed. Appx. 988 (7th Cir. 2002) (prisoner's informal complaint about cell conditions can sustain retaliation claim), and one could infer retaliation from the fact that the decision to serve the meals as late as possible to fasting prisoners was made so soon after plaintiff talked to Teslik about the meals.

C. John Doe Defendants

I note that plaintiff is proceeding on claims against unnamed "John Doe" defendants. The matter of identifying these defendants will be addressed at a preliminary pretrial conference, which will be held before Magistrate Judge Stephen Crocker after the remaining defendants have answered the complaint. At that time, the magistrate judge will ask the defendants to assist plaintiff in identifying the unknown defendants so that plaintiff can

amend his complaint and obtain service of process upon those defendants.

D. Preliminary Injunctive Relief

Plaintiff has filed two motions for preliminary injunctive relief. However, plaintiff has not submitted admissible evidence to support his requests for injunctive relief and has not proposed facts supported by such evidence, as required by the court's Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order. I will set briefing on the first motion and deny the second as unnecessary. Plaintiff should take care to follow the court's procedures in briefing his motion.

Despite the fact that I have allowed plaintiff to proceed on his claims, I wish to make it clear to him that the bar is significantly higher for ultimately prevailing on his claims than it is on his request for leave to proceed. In his proposed findings of fact, plaintiff will have to lay out the facts of his case in detail, including an explanation of how each defendant was personally responsible for violating his rights. Plaintiff will have to show that he has some likelihood of success on the merits of his claims and that irreparable harm will result if the requested relief is denied. If he makes both showings, the court will move on to consider the balance of hardships between plaintiff and defendants and whether an injunction would be in the public interest, considering all four factors under a "sliding scale" approach. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

ORDER

IT IS ORDERED that

1. Plaintiff Mansa Lutalo Iyapo's motion for leave to amend his original complaint, dkt. #4, is GRANTED. Plaintiff's first amended complaint, dkt. #4, and supplement to that complaint, dkt. #5, will be treated as the operative complaint in this action.

2. Plaintiff is GRANTED leave to proceed on the following claims:

a. Defendants Gregory Grams, Mardel Petras, Rick Raemisch, Chaplain Campbell, Gary Hamblin, Mike Meisner, William Grosshans, Chaplain Teslik, Melissa Schueler and John Doe prison staff enforced a policy that deprived plaintiff of Jumuah and Talim, in violation of the Religious Land Use and Institutionalized Persons Act and the free exercise clause of the First Amendment.

b. Defendants Petras, Campbell, Grams, Meisner, Campbell, Teslik, Hamblin and John Doe prison staff deprived plaintiff of Eid al-Fitr, in violation of the Religious Land Use and Institutionalized Persons Act and the free exercise clause of the First Amendment.

c. Defendants Teslik, John Doe security supervisors and John Doe food service manager violated plaintiff's First Amendment rights by serving Ramadan meals as late as possible in retaliation for plaintiff debating with Teslik about when to properly serve those meals.

3. Plaintiff may have until August 24, 2012, in which to file a brief, proposed

findings of fact and evidentiary materials in support of his first motion for a preliminary injunction, dkt. #1. Defendants may have until the date their answer is due to file materials in response.

4. Plaintiff's second motion for preliminary injunctive relief, dkt. #6, is DENIED as unnecessary.

5. Pursuant to an informal service agreement between the Department of Justice and this court, the department has agreed to accept electronic service of documents on behalf of the defendants it represents. Therefore, for the remainder of this lawsuit, plaintiff does not have to send a paper copy of each document he files with the court to the department. All he has to do is submit the document to the court, and the department will have access to the document through the court's electronic filing system. Discovery requests or responses are an exception to the electronic service rule. Usually, those documents should be sent directly to counsel for the opposing party and do not have to be sent to the court. Discovery procedures will be explained more fully at the preliminary pretrial conference, to be held after defendants file their answer.

6. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer or lawyers will be representing defendants, he should serve the lawyers directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the

court's copy that he has sent a copy to defendants or to defendants' attorney.

7. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 3d day of August, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge