

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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HUMBERTO LAGAR,

Plaintiff,

v.

LIZZIE A. TEGELS, MYRON OLSON,  
S. BARTON and the DAI-R.P.A.C. at JCI,

Defendants.

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OPINION AND ORDER

13-cv-251-wmc

In this action under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act, plaintiff Humberto Lagar is suing the warden, program manager and chaplain of Jackson Correctional Institution (“JCI”), and the Division of Adult Institutions Religious Practices Advisory Committee, for deprivation of his right to practice the Rosicrucian Religious Philosophy. Specifically, Lagar is not allowed to possess (and wear) a Rosicrucian Emblem while confined at JCI. Because he is a prisoner seeking “redress from a governmental entity or officer or employee of a governmental entity,” the court must determine, pursuant to the Prison Litigation Reform Act (PLRA), whether his proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. After examining the complaint, the court concludes that Lagar may proceed with his claims.

## ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously, holding the complaint "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Lagar alleges, and the court assumes for purposes of this screening order, the following facts.

### **A. Parties**

Plaintiff Humberto Lagar is an inmate in Jackson Correctional Institution ("JCI") and an adherent of the Rosicrucian Religious Philosophy.

Defendant Lizzie Tegels is the Warden of JCI. Defendant Myron Olson is the Chaplain at JCI. Defendant S. Barton is the Program Supervisor at JCI and a member of the Wisconsin Department of Corrections' Division of Adult Institutions Religious Practices Advisory Committee.

### **B. Denial of the right to receive and wear a Rosicrucian Emblem**

On September 4, 2012, Lagar wrote to Chaplain Olson requesting permission to receive and wear a Rosicrucian Emblem. Olson refused permission, explaining that this emblem was not one of the approved religious symbols allowed for prisoners under Department of Adult Institutions policy. Lagar then wrote to the acting warden of JCI, Judy Smith, with the same request. At Warden Smith's suggestion, Lagar submitted a "Request for New Religious Practice" form to the Religious Practices Advisory Committee, but the Committee denied it, informing Lagar that (1) the emblem would

not be allowed and (2) his faith was classified under the “Catholic” umbrella group, so he should wear one of the three approved Catholic emblems.

On January 17, 2013, Lagar wrote to Chaplain Olson protesting that the Rosicrucian religion is not the same as Catholicism. When Lagar did not receive a reply, he filed an formal inmate complaint. Responding to the complaint, Olson pointed out that part of the Rosicrucian emblem is a five-pointed star, a symbol associated with gangs and hate groups. The institution complaint examiner who reviewed Lagar’s complaint agreed with Olson and recommended that it be denied. A Department of Corrections complaint examiner agreed, finding that the five-pointed star is associated with gangs, and that one of the three available Catholic symbols should satisfy Lagar’s religious needs.

Lagar wrote several further letters to Chaplain Olson and to the Wisconsin Attorney General’s Office, arguing that the denial of his complaint was inconsistent with the institution’s treatment of inmates following approved “Pagan Religious Practices,” who are allowed to wear a five-pointed star. Lagar also explained that he is neither a gang member nor Catholic. In each case, Lagar was directed to appeal the decision through the inmate complaint review system. Lagar duly filed a second inmate complaint, but this, too, was rejected on the same grounds.

### OPINION

Lagar asserts claims under the First Amendment to the Constitution and the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb. The RFRA claim is

misplaced, because the Supreme Court has held that RFRA cannot be constitutionally applied to states and their agencies, *City of Boerne v. Flores*, 521 U.S. 507, 532-36, 117 S. Ct. 2157 (1997), but the court will assume that Lagar means to bring a claim under the identical provisions of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc, which do apply to government employees at JCI.

Allegations that a prisoner has been denied the right to practice his or her religion are analyzed in basically the same way under both the First Amendment and RLUIPA. The court must first find that officials have imposed a “substantial burden” on the exercise of the prisoner’s religion. *Hernandez v. Comm’r*, 490 U.S. 680, 699, 109 S.Ct. 2136 (1989); 42 U.S.C. § 2000cc-1. For purposes of screening, the court accepts that Mr. Lagar’s inability to wear the Rosicrucian Emblem is a “substantial burden” on his right of religious exercise.

Next, the court must find a First Amendment violation if the burden on religious practice is not “reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89 (1987). The court must also find a RLUIPA violation unless the state can show that the burden “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc-1. The allegations in the complaint suggest that the Wisconsin Department of Correction’s official reason for denying Lagar the right to receive and wear the religious emblem of his choice may be that the emblem is similar or identical to gang symbols. Controlling gang activity in prison is at the very least a legitimate penological interest, and likely a compelling interest. *See Rios v. Lane*, 812 F.2d

1032, 1037 (7th Cir. 1987) (central tenet of prison administration requires security, order and discipline be maintained in volatile and potentially dangerous environment). However, this explanation -- assuming it accurately represents the position of the Department of Corrections -- also appears undermined by Lagar's allegation that other inmates are allowed to wear essentially the same five-pointed star symbol in prison consistent with Pagan Religious Practices.

Accordingly, Lagar has stated facially viable claims under the First Amendment and RLUIPA. He may, therefore, proceed (1) for purposes of injunctive relief under § 1983 and RLUIPA against defendants Lizzie Tegels, Myron Olson and S. Barton; and (2) for purposes of § 1983 damages against Myron Olson and S. Barton, both of whom, it is possible to infer from the complaint, had some sort of "personal involvement" in a deprivation of Lagar's federal rights. Lagar may not proceed on any of his claims against captioned defendant Division of Adult Institutions Religious Practices Advisory Committee, which is not a suable entity.

## ORDER

IT IS ORDERED that:

- (1) Plaintiff Humberto Lagar's motion for leave to proceed is GRANTED IN PART consistent with the opinion above.
- (2) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the

Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

- (3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer 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.
- (4) 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.
- (5) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 30th day of December, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge