

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

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HUMBERTO LAGAR,

Plaintiff,

OPINION AND ORDER

v.

13-cv-751-wmc

RICHARD F. RAEMISCH, *et al.*,

Defendants.

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Plaintiff Humberto Lagar is currently in custody of the Wisconsin Department of Corrections at Jackson Correctional Institution. He filed this action against certain prison and parole officials pursuant to 42 U.S.C. § 1983, purporting to challenge the validity of one or more adverse decisions by the Wisconsin Parole Commission. Lagar has already been found eligible to proceed *in forma pauperis* and he has made an initial payment of the filing fee as required by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(b).

Because Lagar is incarcerated, the court is also required by the PLRA, 28 U.S.C. § 1915A, to screen his proposed complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. In addressing any *pro se* litigant’s complaint, the court must read the allegations generously, reviewing them under “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, the court must deny Lagar leave to proceed further and dismiss this case for reasons set forth below.

## ALLEGATIONS OF FACT<sup>1</sup>

Lagar was convicted of possession with intent to deliver cocaine within a school zone in Milwaukee County Case No. 95CR2577. On February 16, 1996, the circuit court sentenced Lagar as a habitual offender, requiring him to serve twenty years' imprisonment. Lagar was given a mandatory release date of October 8, 2009, and a discharge date of November 29, 2015. He remains confined at the Jackson Correctional Institution.

The named defendants are former WDOC Secretary Richard F. Raemisch; former WDOC Secretary Gary H. Hamblin; former WDOC Parole Chairperson Alfonso J. Graham; WDOC Parole Chairperson Kathleen Nagle; WDOC Parole Commissioner Danielle LaCost; WDOC Parole Commissioner Steven S. Landreman; former JCI Warden Randall R. Hepp; JCI Deputy Warden Debra Boyd; Social Worker Hope Hansen; AODA Treatment Program Supervisor Melinda Derus; Social Worker A. Steidl; Inmate Complaint Examiner Jodi Dougherty; WODOC Program Review Committee Coordinator Tami J. Waldera; and Psychologist Ashley Hakes.

In his pending complaint, Lagar challenges an adverse decision by the Parole Commission, which allegedly denied him a "presumptive mandatory release" scheduled

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<sup>1</sup> For purposes of this order, the court accepts all well-pled allegations in plaintiff's complaint as true and draws all reasonable inferences in his favor. The court has also supplemented these facts with dates and procedural information about plaintiff's underlying criminal proceedings from public records available at Wisconsin Circuit Court Access, <http://wcca.wicourts.gov> (last visited February 14, 2014). The court draws all other facts from the exhibits submitted by plaintiff, which are deemed part of the pleadings. *See* FED. R. CIV. P. 10(c); *see also* *Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) (explaining that documents attached to the complaint become part of the pleading, meaning that a court may consider those documents to determine whether plaintiff has stated a valid claim).

for October 8, 2009. Contemporaneous exhibits provided by Lagar along with his complaint indicate that the Parole Commission denied him release: (1) because he refused to participate in an Alcohol and Other Drug Abuse (“AODA”) treatment program; and (2) for protection of the public. For these same reasons, the Parole Commission denied him release in two subsequent decisions on August 10, 2010, and on August 14, 2012.

In challenging these decisions, Lagar insists that he is not a drug addict, that he has no need for an AODA treatment program and, therefore, has been wrongfully denied mandatory release. In this case, Lagar seeks monetary damages pursuant to 42 U.S.C. § 1983 in the amount of \$1,000 for every day that he has been wrongfully confined, \$5 million in punitive damages and all fees, costs and litigation expenses.

### OPINION

Even assuming that all of the facts above are true, Lagar cannot proceed with a claim under 42 U.S.C. § 1983. To recover damages for a prisoner’s “unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid,” the plaintiff must prove “that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court’s issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254.” *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). *Heck* also bars claims for damages under § 1983 that would necessarily invalidate confinement imposed by a legal

process, such as a parole board hearing. *See Edwards v. Balisok*, 520 U.S. 641, 645 (1997); *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 899-900 (7th Cir. 2001); *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997).

Here, Lagar alleges that counselors have wrongfully required him to complete a treatment program, which has disqualified him from achieving early release from prison on parole. *See Wis. Stat. § 302.11(1g)(b)(2)*. *Heck* bars this suit because a finding that prison officials deprived him of a protected liberty interest in mandatory release necessarily implies that the board's decision to continue his confinement was invalid.

The court takes judicial notice of facts presented in a habeas corpus petition filed recently by Lagar, showing that the parole board's decision has not been set aside. *See Lagar v. Tegels*, Case No. 13-cv-489-wmc (W.D. Wis.). Absent a showing that the parole board's decision has been invalidated or set aside, the rule in *Heck* precludes his claim for damages.

Because his claims are barred, the court must deny leave to proceed and dismiss this case as legally frivolous. *See Moore v. Pemberton*, 110 F.3d 22, 24 (7th Cir. 1997) (A complaint that is barred by *Heck v. Humphrey* is considered legally frivolous and counts as a "strike" under 28 U.S.C. § 1915(g)).

## ORDER

IT IS ORDERED that:

1. Plaintiff Humberto Lagar's request for leave to proceed is DENIED and his complaint is DISMISSED without prejudice as legally frivolous.

2. The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g). (barring a prisoner with three or more “strikes” or dismissals for a filing a civil action or appeal that is frivolous, malicious, or fails to state a claim from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical injury).
3. Although he has been found indigent, plaintiff is obligated to pay the remainder of the filing fee in monthly installments as set forth in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the prison facility where plaintiff is in custody, advising the warden of his obligation to deduct payments from plaintiff’s inmate trust fund account until the \$350 filing fee has been paid in full.

Entered this 10th day of December, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge