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

SHAWN RILEY,

Plaintiff,

v.

CHAPLAIN EWING

Defendant.

OPINION & ORDER

15-cv-592-jdp

Pro se prisoner Shawn Riley is in the custody of the Wisconsin Department of Corrections (DOC), incarcerated at the Wisconsin Secure Program Facility (WSPF). Plaintiff has filed a proposed complaint under 42 U.S.C. § 1983, alleging that defendant Chaplain Ewing denied him accommodations for fasting during the month of Ramadan. Dkt. 1.

Plaintiff has made an initial partial payment of his filing fee, as directed by the court. The next step in this case is for me to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief can be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915, 1915A. In screening any pro se litigant's complaint, I must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). After reviewing the complaint with this principle in mind, I conclude that plaintiff has stated claims against Ewing under the First Amendment and under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.* I will therefore grant plaintiff leave to proceed.

ALLEGATIONS OF FACT

Plaintiff is currently incarcerated at WSPF, which is located in Boscobel, Wisconsin. Ewing is a DOC employee who works as a chaplain at WSPF.

On May 12, 2015, plaintiff submitted a form to Ewing requesting meal accommodations to allow him to participate in Ramadan. Ewing responded the next day, indicating that the deadline for requesting accommodations—April 19, 2015—had already passed. Ewing therefore denied plaintiff's request as untimely. Plaintiff tried to resolve the matter with his unit manager, but he merely directed plaintiff to speak with Ewing. Plaintiff submitted a second request to Ewing on May 14, 2015, explaining that he had never been informed of the signup deadline. Ewing responded that it was up to plaintiff to keep track of his religious dates and that if he had any questions, he could contact Ewing.

Ramadan began on June 18, 2015, and plaintiff began a "self-reliant" fast. Dkt. 1, ¶ 8. He did not eat the meals that prison staff served him during the day, although he was able to save some of the food from these meals to eat after sunset. This was a risky strategy because the saved food was contraband. Plaintiff was also able to purchase 12 items from the commissary per week, but this was mostly junk food: cookies, candy, chips, etc.

At 10:00 on the night that Ramadan began, plaintiff asked a correctional officer to see if food services had any extra meals that he could have. The officer agreed to check and then ask for Ewing's permission to give plaintiff food. Ewing came to plaintiff's cell several hours later and explained that food services was not going to send plaintiff extra food.

The next day, plaintiff submitted a form to WSPF's food services supervisor, asking whether it would have been too difficult to add him to the list of Ramadan participants when he submitted his initial request in May. Plaintiff also asked whether it would be possible to

add him to the list even though Ramadan had already begun. The supervisor responded a week later and told plaintiff to address the issue with Ewing. Plaintiff contacted Ewing once again, and Ewing visited plaintiff's cell on June 29, 2015. Plaintiff does not recount specifically what Ewing said, but he alleges that Ewing did not provide a reasonable justification for denying plaintiff meal accommodations to participate in Ramadan.

Because plaintiff was unable to save enough food from his meals to eat at night, and because he was unable to purchase healthy food from the commissary, plaintiff broke his fast by eating during the day on several occasions throughout Ramadan.

Plaintiff filed suit in this court on September 14, 2015.

ANALYSIS

"[C]onvicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison." *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). Here, plaintiff invokes the First Amendment, alleging that Ewing's refusal to accept plaintiff's request for meal accommodations violated plaintiff's right to exercise his religion. Dkt. 1, at 4.[1] "[I]nmates' complaints that prison authorities have infringed their religious rights commonly include a claim under [RLUIPA], which confers greater religious rights on prisoners than the free exercise clause has been interpreted to do." *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012). Although plaintiff does not specifically mention this statute, I

[1] Somewhat in passing, plaintiff also alleges that he experienced physical and mental hardships during Ramadan that "amounted to cruel [and] unusual punishment under the Eighth Amendment." Dkt. 1, at 7. But plaintiff has not alleged facts suggesting that Ewing acted with the intent to humiliate plaintiff or inflict psychological or physical pain. I construe plaintiff's complaint as alleging violations of his religious rights, rather than alleging unconstitutional conditions of confinement.

construe his complaint as alleging both a First Amendment claim and a claim under RLUIPA. I will grant plaintiff leave to proceed with both of these claims.

A. RLUIPA claim

Plaintiff alleges that Ewing denied him the meal accommodations that would have allowed him to participate in Ramadan. RLUIPA protects an inmate's religious rights from substantial burden unless that burden is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that interest. *See* 42 U.S.C. § 2000cc-1; *Koger v. Bryan*, 523 F.3d 789, 796 (7th Cir. 2008). A substantial burden "is one that necessarily bears 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). Claims under RLUIPA involve a burden-shifting analysis: first, plaintiff must make out a prima facie case demonstrating a substantial burden on his religious rights; second, Ewing must show that WSPF's policy is the least restrictive means of furthering a compelling governmental interest. *Koger*, 523 F.3d at 796. RLUIPA allows for claims against the state, but it limits plaintiff to only declaratory and injunctive relief; he may not obtain money damages from Ewing. *Sossamon v. Texas*, 563 U.S. 277, 288 (2011).

Because this case is at the screening stage, I will evaluate only whether plaintiff has alleged facts to support a prima facie case under RLUIPA. Plaintiff has satisfied this requirement: he alleges that Ewing's failure to provide him with meal accommodations prevented him from "fulfill[ing] his Ramadan obligations for the first time in his life as a Muslim." Dkt. 1, at 7. I conclude that plaintiff has stated a claim under RLUIPA and may proceed against Ewing for injunctive relief.

B. First Amendment claim

The standard for proving a claim under the free exercise clause of the First Amendment is less clear than the standard for proving a claim under RLUIPA. Generally, when a prisoner brings a claim under the First Amendment, the question is whether the challenged restriction is reasonably related to a legitimate penological interest. *Turner v. Safley*, 482 U.S. 78, 89 (1987). Four factors are relevant to this determination: (1) whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; (2) whether the prisoner retains alternatives for exercising the right; (3) the impact that accommodation of the right will have on prison administration; and (4) whether there are other ways that prison officials can achieve the same goals without encroaching on the right. *Id.* at 89-91.

There are open questions regarding whether the elements of a constitutional claim differ from the elements of a claim under RLUIPA. In particular, it is not clear whether a plaintiff must prove that a defendant placed a "substantial burden" on his exercise of religion, or the restriction is not a neutral rule of general applicability but instead targets the plaintiff's religion for adverse treatment. In some cases, courts have applied one or both of these other elements and in some cases the courts have omitted them. *E.g.*, *Ortiz v. Downey*, 561 F.3d 664, 669 (7th Cir. 2009) (applying *Turner* standard without discussing other elements); *Borzych v. Frank*, 439 F.3d 388, 390 (7th Cir. 2006) (requiring prisoner to show that restriction was discriminatory); *Kaufman v. McCaughtry*, 419 F.3d 678, 682-83 (7th Cir. 2005) (requiring showing of substantial burden). *See also Lewis v. Sternes*, 712 F.3d 1083, 1085 (7th Cir. 2013) (stating that it is open question whether prisoner must prove discrimination in free exercise claim); *World Outreach Conf. Ctr. v. City of Chicago*, 591 F.3d

531, 534 (7th Cir. 2009) (plaintiff may prove free exercise claim with evidence of substantial burden or intentional religious discrimination).

Even if I assume that a free exercise claim requires plaintiff to prove that defendants substantially burdened his religious exercise and that the restrictions are not part of a generally applicable neutral rule, I conclude that plaintiff has stated a claim upon which relief may be granted under the free exercise clause, at least at this early stage of the proceedings. I will wait until summary judgment to determine whether there is a reasonable relationship between WSPF's policy for requesting meal accommodations and a legitimate penological interest. *See Ortiz*, 561 F.3d at 669 ("At this pre-discovery stage of the proceedings, there is no evidentiary record from which the district court could conclude that [the plaintiff]'s requests posed a security risk to the institution or were incompatible with his detention."). For now, plaintiff has adequately alleged that Ewing burdened his religious exercise without a reasonable justification for doing so. Dkt. 1, ¶ 18. Thus, plaintiff has stated a First Amendment claim and may proceed against Ewing.

ORDER

IT IS ORDERED that:

1. Plaintiff Shawn Riley is GRANTED leave to proceed against defendant Chaplain Ewing with his claim under the free exercise clause of the First Amendment and with his claim under the Religious Land Use and Institutionalized Persons Act.

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 defendant. Plaintiff should not attempt to serve defendant on his own at this time. 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 defendant.

3. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered August 30, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge