

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

JERRY CHARLES,

Plaintiff,

v.

MATTHEW J. FRANK, JON
LITSCHER & DICK VERHAGEN,

Defendants.

ORDER

02-C-626-C

Defendants have filed a motion to dismiss plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff is proceeding in this case on a claim that defendants violated his rights under the Religious Land Use and Institutionalized Persons Act and the First Amendment by prohibiting him from wearing Muslim prayer beads under his shirt. Defendants argue that plaintiff's claim under the Religious Land Use and Institutionalized Persons Act must be dismissed because he "has failed to demonstrate in his complaint that the wearing of Dhikr beads is a religious exercise." The act applies only when the government imposes a "substantial burden on the religious exercise" of a prisoner. Essentially, defendants argue that because an exhibit attached to plaintiff's complaint

discusses the importance to Muslims of using prayer beads to count prayers, rather than the importance of wearing prayer beads, plaintiff has pleaded himself out of court. See Dfts' Br. in Supp. of Mot. to Dismiss, dkt. #13, at 3 (The "exhibit clearly shows that in the Muslim tradition, Dhikr beads are used only for counting prayers. Therefore, nothing in the complaint establishes a claim that the *wearing* of Dhikr beads is a religious exercise").

There is "no requirement in federal suits of pleading the facts or the elements of a claim." Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002); see also Shah v. Inter-Continental Hotel Operating Corp., 314 F.3d 278, 282 (7th Cir. 2002) ("The plaintiff is not required to plead facts or legal theories or cases or statutes, but merely to describe his claim briefly and simply."); Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) ("All that need be specified is the bare minimum facts necessary to put the defendant on notice of the claim so that he can file an answer."). Therefore, it is irrelevant that plaintiff did not, in defendants' words, "demonstrate in his complaint that the wearing of Dhikr beads is a religious exercise." Moreover, the fact that plaintiff's attachment does not discuss the wearing of Dhikr beads does not mean that such a practice has no religious significance to adherents of plaintiff's religion, particularly given that on a motion to dismiss all reasonable inferences are to be drawn in the plaintiff's favor, not the defendants'. See, e.g., Harrell v. Cook, 169 F.3d 428 (7th Cir. 1999). Accordingly, defendants' motion will be denied.

ORDER

IT IS ORDERED that defendants Matthew J. Frank, Jon Litscher and Dick Verhagens' motion to dismiss plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted is DENIED.

Entered this 8th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge