IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHANIEL ALLEN LINDELL,

ORDER

Petitioner,

05-C-003-C

v.

MATTHEW J. FRANK; PETER HUIBREGTSE; GARY BOUGHTON; STEVEN HOUSER; CAPTAINS STEVE SCHUELER, THOMAS CORE, KURT LINJER, GILBERG and GARY BLACKBOURN; C.O. LANGE and SGT. CARPENTER,

Respondents.

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This is a proposed civil action for injunctive, declaratory and monetary relief brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. Moreover, from the trust fund account statement petitioner has submitted, I conclude that he does not have the means to pay the initial partial payment required under

§ 1915(b)(1). Nevertheless, petitioner owes the $150 for filing his complaint. (Petitioner's complaint was filed before February 7, 2005, when the filing fee was raised to $250) The warden of his institution will be advised of petitioner's obligation to pay this fee so that it can be collected if and when funds exist in petitioner's prison account.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner alleges the following facts.[1]

ALLEGATIONS OF FACT

Petitioner is a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Respondent Matthew Frank is Secretary of the Wisconsin Division of Corrections. Respondents Schueler, Linjer, Core, Gilberg and Blackbourn are members of the Gang Coordinators or investigators at the facility. Respondent Steven Houser is a contract negotiator employed by the Wisconsin Department of Corrections.

On February 8, 2001, respondent Schueler wrote petitioner a conduct report numbered 1230298. On February 9, 2001, respondent Core approved the conduct report and made it a major, even though there was no justification for making the conduct report a major. On February 26, 2001, respondent Houser found petitioner guilty of violating § DOC 303.20 and sentenced him to four days of adjustment segregation and destruction of the letter. In adjustment segregation, petitioner was denied all reading material, phone calls, visits and canteen. His letter and envelope were destroyed.

The rule petitioner was charged with violating is so vague that petitioner had no idea

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[1]Petitioner amended his complaint before I could complete the screening process on his original complaint. I have now substituted the amended complaint for the original complaint and am considering it the operative pleading in this case.

he was violating it by writing what he was accused of writing. Respondent Houser never stated what subsection of § DOC 303.20 petitioner had violated and respondent Schueler did not note the precise subsection in the conduct report, so petitioner could not defend himself. Nothing in petitioner's letter posed any danger to any legitimate and neutral penological need. The letter was destroyed and petitioner was punished because the letter criticized the Wisconsin Secure Program Facility and prison officials disliked the political and philosophical views expressed in the letter.

Petitioner was never told that he would be punished if he wrote in a letter to another inmate "the stuff" mentioned in the conduct report. Petitioner did not intend to violate § DOC 303.20 by his letter and no evidence exists or was presented at his disciplinary hearing that would allow a reasonable person to find that petitioner intended to violate § DOC 303.20 by writing what he did. At the time petitioner's letter was confiscated, Department of Corrections rules allowed him to write letters to other inmates and give them legal advice and § DOC 309.05(2)(c)) forbade prison officials from denying inmates publications on the basis of their "appeal to a particular ethnic, racial or religious audience or because of the political beliefs expressed therein."

Respondents Schueler, Core and Houser conspired to oppress petitioner's white nationalistic political and philosophical views by charging him in conduct report #1230298 and destroying his letter.

On March 29, 2002, respondent Linjer wrote conduct report #1335594, charging petitioner with violating § DOC 303.20 because of what petitioner wrote in a letter that was to be mailed to another inmate. The conduct report claimed that petitioner's use of the word "wood" was a word used by an alleged gang named the "Aryan Circle." However, "wood" is a common slang term for "Peckerwood," which appears in many dictionaries and means a "rural white working class male." Petitioner's use of the word "wood" had no gang-related purpose or meaning and petitioner was not informed that Aryan Circle was a forbidden organization. Respondent Linjer had told petitioner before he was issued conduct report #1335594 that he could use words like "Aryan" in his mail because Linjer knew that they were not gang related but a description of a race. Also, petitioner told Linjer he was not a member of the Aryan Circle.

Respondent Boughton approved conduct report #1335594 and made it a major because he decided that the letter "created a risk of serious disruption at the institution or in the community." Following a disciplinary hearing on April 10, 2002, petitioner was found guilty of the charges and sentenced to 360 days in program segregation, 30 days of cell confinement and destruction of the letter and its envelope. Boughton should have dismissed the conduct report as there was no evidence to support the charge. Petitioner appealed the discipline to the warden. On May 10, 2002, respondent Huibregtse upheld the disciplinary action but reduced petitioner's sentence to 180 days of program segregation and 30 days of

cell confinement.

The rule petitioner was charged with violating is so vague that petitioner had no idea he was violating it by writing what he was accused of writing. Because respondents Linjer and Blackbourn did not advise petitioner what subsection of § DOC 303.20 he had violated, petitioner could not defend against the charge or appeal the discipline intelligently. Respondents Blackbourn, Linjer, Boughton and Huibregtse conspired to issue conduct report #1335594 and find petitioner guilty of violating § DOC 303.20 in order to suppress petitioner's white-nationalistic political and philosophical views.

Petitioner is a Wotanist and has tried to practice his Wotanist religion since around July of 2000. Wotanism is a religion based on Celtic tribal culture that is centered around reverence for nature as the expression of the Gods and Goddesses. Part of petitioner's Wotanist beliefs could be described as political by someone unfamiliar with Wotanism and other similar Pagan/Nature-based religions. Among petitioner's religious beliefs are his beliefs that there be racial separation and that he have access to and contemplate "the 88 Precepts," because they contain many of the beliefs and concepts essential to the understanding of Wotanism.

On April 19, 2002, petitioner was helping inmate Alonzo Perry file a lawsuit over the staff's denial of magazines staff believed contained gang symbols and material. While petitioner was talking to Perry, respondents Lange and Gilberg came to petitioner's cell and

told him that they were going to search his cell because he had been seen "fishing" with Perry. "Fishing" is using a string to pass items to another inmate under the cell doors. It is impossible to fish where petitioner and Perry are housed because there is a bar under the doors making it impossible to pass items under the door. During the search, Gilberg was shown some of petitioner's papers, including the 88 Precepts. He directed respondent Lange to take them and accuse petitioner in a conduct report of violating § DOC 303.20 for possessing them.

On April 20, 2002, respondent Lange charged petitioner in conduct report #1351662 with violating several rules regarding "things staff claimed to have discovered during the . . . cell search." On April 22, 2002, respondent Boughton made the conduct report a major, even though there was no merit to making it a major. Respondent Carpenter was appointed as petitioner's staff advocate. However, Carpenter refused to provide the disciplinary hearing committee a two-page statement from petitioner. Pursuant to Wis. Admin. Code § DOC 303.78(2), Carpenter was required to submit the statement to the committee. His refusal to do so was intended to prevent petitioner from exhausting his administrative remedies for the discipline. Also, petitioner submitted written questions for his witnesses and respondent Blackbourn altered some of them and scribbled the answers next to them. In addition, petitioner was not given a copy of a one-page statement signed by respondent Linjer that was considered by respondent Blackbourn at the disciplinary hearing.

Petitioner was found guilty of all but one of the charges in conduct report #1351662. He was sentenced to 360 days in program segregation, 4 days in adjustment segregation and restitution in the amount of $10.75. Also at the hearing, respondent Blackbourn denied petitioner possession of the 88 Precepts after concluding that they were gang-related. Respondent Huibregtse denied petitioner's appeal of the disciplinary action.

Inmates in the Wisconsin Secure Program Facility are allowed to have Bibles and Qur'ans, even though these texts are used by white supremacist groups like the Ku Klux Klan and Aryan Nation/Church of Jesus Christ Christian and Islamic terrorist groups. Bibles and Qur'ans are filled with God/Allah promoted hatred and violence. The 88 Precepts is "sissyfied" compared to the Bible and Qur'an. Petitioner did not intend to violate the prison's rules by possessing the 88 Precepts. Respondents Lange and Blackbourn never told petitioner what subsection of § DOC 303.20 he had violated so that petitioner could intelligently defend against the charge or appeal the finding of guilt. Respondent Blackbourn did not consider petitioner's statement or make it a part of the record of the disciplinary proceeding. The rules petitioner was charged with violating are so vague that petitioner had no idea he could violate them by merely possessing the 88 Precepts. Respondents Lange, Gilberg, Linjer, Blackbourn, Boughton and Huibregtse conspired to oppress petitioner's white nationalistic political and religious views.

Depriving petitioner of the 88 Precepts substantially burdens petitioner's Wotonic

religious beliefs and serves no legitimate and neutral purpose.

DISCUSSION

In August of 2002, petitioner filed another lawsuit in this court, Lindell v. Litscher, 02-C-473-C. Although I initially denied petitioner leave to proceed in that action on grounds unrelated to the merits of the case, the Court of Appeals for the Seventh Circuit subsequently reversed that dismissal and remanded the case for screening pursuant to 28 U.S.C. § 1915(e)(2). On May 27, 2004, I granted petitioner leave to proceed on a number of claims, including a claim that petitioner's right to practice his religion was being substantially burdened because prison officials at the Wisconsin Secure Program Facility were prohibiting petitioner from acquiring texts and publications related to his religion such as such as "The Masks of Odin," "The Rights of Odin," "Temple of Wotan," and "Creed of Iron." In addition, I granted petitioner leave to proceed on a claim that his constitutional rights had been violated when he was prohibited from passing on to other inmates order forms from Wotansvolk or letters about the group practice of Wotanism and when he was prevented from possessing any personal books and magazines except a Bible or Koran while in the Health and Segregation Complex at Waupun Correctional Institution.

In this lawsuit, petitioner identifies seven causes of action:

1) His Fourteenth Amendment due process rights were violated when he was

disciplined for failing to comply with a regulation that is too vague to allow a reasonable person to comply with it.

2. His First Amendment right to freely exercise his religion and his rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc-2000cc-5, were violated when he was disciplined for his violation of a regulation that is overbroad.

3. His Fourteenth Amendment equal protection rights were violated when respondents Frank, Huibregtse, Boughton, Houser, Schueler, Core, Linger, Blackbourn, Lange, Gilbert and Sgt. Carpenter conspired "to harm" him because of his political, philosophical or religious views.

4. His Fourteenth Amendment equal protection rights and his rights under the First Amendment establishment clause are being violated by defendants' decision to allow inmates to possess Bibles and Qur'ans but not his Wotanist literature.

5. His rights under the Fourteenth Amendment due process clause were violated when he was disciplined without first receiving procedural safeguards such as fair notice of the charge and an opportunity to prepare a defense and appeal.

6. His rights under the Fourteenth Amendment due process clause were violated when defendants failed to produce any evidence of wrongdoing at his disciplinary hearing justifying imposition of the punishment he received.

7. His Sixth Amendment right of access to the courts was violated when respondents

Carpenter and Blackbourn refused to make part of the disciplinary record petitioner Lindell's statement objecting to the discipline imposed.

Petitioner will be denied leave to proceed in forma pauperis on his claims described above in paragraphs 5 and 6, because the claims are legally frivolous. Petitioner does not allege any facts from which an inference can be drawn that he had a protected liberty interest at stake requiring procedural due process. A claim that government officials violated due process requires proof of both inadequate procedures and interference with a liberty or property interest. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In the prison context, Sandin v. Conner, 515 U.S. 472, 483-484 (1995), holds that liberty interests "will be generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." After Sandin, protected liberty interests are essentially limited to the loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about deprivation of liberty). In his complaint, petitioner alleges that he was disciplined with four days' adjustment segregation, destruction of a letter for the violations charged in conduct report #1230298 and with 180 days' program segregation and 30 days' cell confinement for the violations charged in conduct

report #1335594. Because plaintiff was not placed in segregation for a period exceeding the remaining term of his imprisonment, he has not stated a claim of a violation of his procedural due process rights in connection with the disciplinary proceedings for conduct reports ## 1230298 and 1335594.

In addition, petitioner will be denied leave to proceed in forma pauperis on the claim set out above in paragraph 7, that respondents Carpenter and Blackbourn violated his Sixth Amendment right of access to the courts when they refused to include in a disciplinary record his statement objecting to the discipline imposed. Although prisoners have a constitutional right of access to the courts for pursuing post-conviction remedies and for challenging the conditions of their confinement, Campbell v. Miller, 787 F.2d 217, 225 (7th Cir. 1986) (citing Bounds v. Smith, 430 U.S. 817 (1977)); Wolff v. McDonnell, 418 U.S. at 539, 578-80 (1974); Procunier v. Martinez, 416 U.S. 396, 419 (1974), petitioner must allege facts from which an inference can be drawn of "actual injury." Lewis v. Casey, 518 U.S. 343, 349 (1996). This principle derives ultimately from the doctrine of standing and requires the petitioner to demonstrate that he is or was prevented from litigating a non-frivolous case. Id. at 352-53; Walters v. Edgar, 163 F.3d 430, 434 (7th Cir. 1998). Petitioner does not allege that respondents' refusal to include his objection in the record of his disciplinary proceeding prevented him from litigating a non-frivolous case. His failure to allege facts suggesting that he sustained an actual legal injury because of respondents'

refusal dooms his claim that he has been denied access to the courts.

In claim four, petitioner alleges that respondents' decision to allow inmates to possess Bibles and Quar'ans but not Wotanist texts violates his rights under the Fourteenth Amendment equal protection clause and the First Amendment establishment clause. Petitioner raised these identical claims in Lindell v. Casperson, 02-C-473-C. He has been granted leave to proceed in forma pauperis in that case on his establishment clause claim against respondents Frank and Litscher, who petitioner alleged were responsible for creating and authorizing implementation of the underlying policy that allows inmates to possess a Bible or Koran and other Christian books but not Odinist literature. Monell v. New York City Department of Social Services, 436 U.S. 658, 690 (1978) ("the touchstone of the 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution"). In addition, he was allowed to proceed on his equal protection claim. Because petitioner is already prosecuting these claims in case 02-C-473-C, I will deny him leave to proceed on the claims in this action.

Petitioner alleges in his third cause of action that respondents Frank, Huibregtse, Boughton, Houser, Schueler, Core, Linger, Blackbourn, Lange, Gilbert and Sgt. Carpenter conspired "to harm" him because of his political, philosophical or religious views. In the body of his complaint, petitioner alleges that respondents Schueler, Core and Houser conspired to "oppress petitioner's white nationalistic political and philosophical views by

charging him with conduct report #1230298 and destroying his letter." In addition, he alleges that respondents Lange, Gilberg, Linjer, Blackbourn, Boughton and Huibregtse conspired to oppress his white nationalistic political and religious views by charging him with conduct report #1335594 and depriving him of his copy of the 88 Precepts.

Claims of conspiracies to effect deprivations of civil or constitutional rights may be brought in federal court under 42 U.S.C. §1983 or §1985(3). In pleading a conspiracy, it is sufficient for a petitioner to indicate "the parties, general purpose, and approximate date, so that the defendant has notice of what he is charged with." Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). Although petitioner will need to prove that there was "an agreement between the parties 'to inflict a wrong against or injury upon another,' and 'an overt act that results in damage'" to succeed on his claim, Hampton, 600 F.2d at 621 (citing Rotermund v. United States Steel Corp., 474 F.2d 1139 (8th Cir. 1973)), it is not necessary that he plead the overt act in order to state a valid claim. Walker, 288 F.3d at1007. Petitioner has identified the parties, general purpose and the approximate time frame of the alleged conspiracies. Therefore, he will be permitted to proceed on his claim of conspiracy under both 42 U.S.C. §§ 1983 and 1985(3).

Although petitioner has met the minimal pleading requirements for stating a claim of conspiracy, Walker, 288 F.3d at 1007-08, he should be aware that conspiracy claimants bear a heavy burden of proof. To succeed on his claim under § 1983, petitioner will need

to adduce evidence showing that respondents reached an understanding to deprive him of his constitutional rights. Williams v. Seniff, 342 F.3d 774, 785 (7th Cir. 2003). In order to succeed on his claim under §1985(3), petitioner will need to prove "(1) the existence of a conspiracy, (2) a purpose of depriving a person or class of persons of equal protection of the laws, (3) an act in furtherance of a conspiracy, and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens." Green v. Benden, 281 F.3d 661, 665 (7th Cir. 2002) (citing Hernandez v. Joliet Police Department, 197 F.3d 256, 263 (7th Cir.1999)). Specifically, petitioner will need to adduce evidence to show that respondents' acts were motivated by discriminatory animus towards his religion. Majeske v. Fraternal Order of Police, Local Lodge No. 7, 94 F.3d 307, 311 (7th Cir. 1996). Under either section, petitioner may be able to prove the existence of an agreement through circumstantial evidence, "but only if it is sufficient to permit a reasonable jury to conclude that a meeting of the minds had occurred and that the parties had an understanding to achieve the conspiracy's objectives." Green, 281 F.3d at 666. See also Williams, 342 F.3d at 785.

Finally, petitioner contends that his Fourteenth Amendment right to due process and his First Amendment right to freely exercise his religion, as well as his rights under the Religious Land Use and Institutionalized Persons Act, are being violated because Wis. Admin. Code §§ DOC 303.20 and 303.02(11) are so vague and overbroad that he cannot

know when he is violating the regulations or defend himself against them. Petitioner alleges that respondents charged him with violating Wis. Admin. Code § DOC 303.20 when he used the word "wood" and other "stuff" in letters he wrote because those words are gang-related. Section DOC 303.20(3) states:

> Any inmate who participates in any activity with an inmate gang, as defined in s. DOC 303.02(11), or possesses any gang literature, creed, symbols or symbolisms is guilty of an offense. An inmate's possession of gang literature, creed symbols or symbolism is an act which shows that the inmate violates the rule. Institution staff may determine on a case by case basis what constitutes an unsanctioned group activity.

In effect, Wis. Stat. § DOC 303.20 prohibits materials that do not teach or advocate violence or criminal activity simply because they are "gang-related" and permits discipline of inmates even if they are not part of the group from which the prohibited literature, creed or symbol originates.

Section DOC 303.02(11) is a statute that simply defines the words, "inmate gang." It reads, "Inmate gang" means a group of inmates which is not sanctioned by the warden under § DOC 309.22." Because this regulation is subsumed in § 303.20, and because § 303.20 describes the behavior petitioner must avoid or be subject to penalty, I will consider petitioner's overbreath and vagueness challenges to be directed at § 303.20 only.

A. First Amendment and The Religious Land Use and Institutionalized Persons Act

The Religious Land Use and Institutionalized Persons Act prohibits governmental imposition of a "substantial burden on the religious exercise" of a prisoner, unless the defendant 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. Like plaintiffs asserting claims under the Religious Land Use and Institutionalized Persons Act, those bringing free exercise claims under the Constitution must show that the exercise of their religion has been substantially burdened. Hernandez v. Commissioner, 490 U.S. 680, 699 (1989). When a prison regulation impinges on an inmate's constitutional right to exercise religious freedom, the regulation must be reasonably related to a legitimate penological interest . O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987) (citing Turner v. Safley, 482 U.S. 78, 89 (1987)).

Plaintiff's allegations fail to state an actionable claim under either the legitimate penological interest or the stricter "compelling interest" standard. The Supreme Court has held that courts are required to give considerable deference to prison officials' adoption of policies that serve security interests. Pell v. Procunier, 417 U.S. 817, 827 (1974). It is beyond question that prison officials have a compelling interest in implementing policies designed to combat the threat to institutional security posed by organized gang activity. Rios v. Lane, 812 F.2d 1032, 1037 (7th Cir. 1987). Plaintiff's allegations do not permit an

inference that Wis. Admin. Code § DOC 303.20(3) is not reasonably related to this interest. By its language, the regulation prohibits possession of literature, creeds or symbols that are gang-related. Preventing inmates from possessing gang-related material is obviously related to the interest in preventing the formation and spread of inmate gangs. It is irrelevant that some of the prohibited materials might not advocate violence or criminal activity or that an inmate found in possession of gang-related material does not belong to the gang to which the material is related. Simply stated, the fact that the policy prohibits possession of materials that are merely gang-*related* does not make it constitutionally suspect. Therefore, I will deny petitioner leave to proceed in forma pauperis on his free exercise and Religious Land Use and Institutionalized Persons Act claims.

B. Due Process

In addition to his contention that Wis. Admin. Code § DOC 303.20(3) is overbroad, petitioner contends that the regulation is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment. He alleges that he was unaware that the Aryan Circle was a forbidden organization under the rules and that the rule prohibits his use of the word "wood" and other "stuff." I understand petitioner to allege that he has no way of knowing what materials are acceptable and what materials are prohibited.

The void-for-vagueness doctrine under the due process clause is grounded in the

principles of fair warning or notice. Smith v. Goguen, 415 U.S. 566, 572 (1974). It has long been a settled principle of the criminal law that penal statutes must define a criminal offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary enforcement." Kolender v. Lawson, 461 U.S. 352, 357 (1983). As applied to prison regulations, due process requires "fair notice of prohibited conduct before a sanction can be imposed." Williams v. Nix, 1 F.3d 712, 716 (8th Cir. 1993); see also Rios, 812 F.2d at 1038. Because plaintiff challenges Wis. Admin. Code § DOC 303.20(3) on its face, he must allege facts from which an inference may be drawn that it is "impermissibly vague in all of its applications." Server v. Mizell, 902 F.2d 611, 613 (7th Cir. 1990) (citing Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498 (1982)).

The Court of Appeals for the Seventh Circuit considered an inmate's vagueness challenge to a prison regulation in Rios. The inmate had been issued a disciplinary report for giving another inmate a note card listing several Spanish radio stations that could be received at the prison. Officials charged the inmate with violating a rule prohibiting "gang activity," which was defined as "engaging or pressuring others to engage in gang activities or meetings, displaying, wearing or using gang insignia, or giving gang signals." Id. at 1034. At his disciplinary hearing, the inmate explained that he obtained the names and frequencies of the radio stations from a prison-approved newspaper. However, the hearing officers

determined that he had violated the gang activity rule. Ultimately, the inmate filed suit, contending that the gang activity rule failed to notify him that his conduct was prohibited. The court reversed a grant of summary judgment for the officials because the inmate could not have known that "the simple transcription of previously authorized information onto a note card" would result in disciplinary sanctions. Id. at 1038. Rios is distinguishable from the present case. Plaintiff does not suggest that respondents published or sanctioned in another context within the prison the phrases or words he wrote in his letters.

More broadly, plaintiff's allegations are insufficient to sustain a vagueness challenge to Wis. Admin. Code § DOC 303.20(3). His allegations that the regulation does not list each and every unsanctioned group or word do not state a claim for vagueness. The regulation's ban on possessing gang literature, creeds or symbols gives inmates fair notice that they can be disciplined for possessing gang-related materials or writing gang-related symbols, words or phrases. To the extent the terms are imprecise, they afford prison officials necessary and appropriate discretion to respond to the constantly changing ways in which gang affiliation may be expressed. The law's clear recognition that prison officials are to be given discretion in day-to-day decisions does not make the rules and regulations they enforce unduly vague. Therefore, I will deny petitioner leave to proceed in forma pauperis on his due process claim.

ORDER

IT IS ORDERED that petitioner Nathaniel Lindell's request for leave to proceed in forma pauperis is DENIED on his claims that:

1) His Fourteenth Amendment due process rights were violated when he was disciplined for failing to comply with a regulation that is too vague to allow a reasonable person to comply with it.

2. His First Amendment right to freely exercise his religion and his rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § § 2000cc-2000cc-5, were violated when he was disciplined for his violation of a regulation that is overbroad.

3. His Fourteenth Amendment equal protection rights and his rights under the First Amendment establishment clause are being violated by defendants' decision to allow inmates to possess Bibles and Quar'ans but not his Wotanist literature.

4. His rights under the Fourteenth Amendment due process clause were violated when he was disciplined without first receiving procedural safeguards such as fair notice of the charge and an opportunity to prepare a defense and appeal.

5. His rights under the Fourteenth Amendment due process clause were violated when defendants failed to produce any evidence of wrongdoing at his disciplinary hearing justifying imposition of the punishment he received.

6. His Sixth Amendment right of access to the courts was violated when respondents

Carpenter and Blackbourn refused to make part of the disciplinary record petitioner Lindell's statement objecting to the discipline imposed.

FURTHER IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is GRANTED on his claim that respondents Frank, Huibregtse, Boughton, Houser, Schueler, Core, Linjer, Blackbourn, Lange, Gilberg and Sgt. Carpenter violated his equal protection rights when they conspired "to harm" him because of his political, philosophical or religious views.

- For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.
- Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- The unpaid balance of petitioner's filing fee is $150.00; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).
- Pursuant to an informal service agreement between the Attorney General and this

court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants.

- Petitioner submitted a numbers of exhibits with his original complaint. Because none appears to relate to the one claim on which plaintiff has been allowed to proceed, the exhibits will not be considered a part of petitioner's complaint.

Entered this 8th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge