

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

JUAN M. PÉREZ,

Plaintiff,

OPINION AND ORDER

v.

06-C-248-C

MATTHEW J. FRANK, RICHARD RAEMISCH,
CATHERINE FARREY, LIZZIE A. TEGELS,
SUE NAULT, MELANIE FAUST, and MARK
TESLIK, in their individual and official capacities,

Defendants.

In an order entered in this case on May 25, 2006, I granted plaintiff Juan M. Pérez, leave to proceed in forma pauperis on his claims that

a) Defendants Teslik, Farrey, Nault, Faust, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause of the First Amendment by promulgating and enforcing policies that deprived him of the ability to possess adequate quantities of prayer oil, engage in Jumu'ah, Ta'alim and group prayer during 'Eid al-Fitr and 'Eid ul-Adha, eat dates during Ramadan and feast on Halaal foods during 'Eid ul-Adha and 'Eid al-Fitr;

b) Defendants Teslik, Nault, Farrey, Faust, Tegels and Raemisch violated his rights

under the establishment clause of the First Amendment by depriving him of Halaal food and dates during Ramadan, 'Eid al-Fitr and 'Eid ul-Adha, while providing special foods to non-Muslim inmates for their religious feast days; and

c) Defendants Tegels and Raemisch violated his free speech rights under the First Amendment by refusing to deliver a photocopied article he received on October 31, 2005.

I denied plaintiff leave to proceed on a number of additional claims, including his claim that defendants Teslik, Farrey, Tegels, Raemisch and Frank violated his rights under RLUIPA and the free exercise clause of the First Amendment by denying him access to the restroom to perform Wudu (ritual ablutions) during hours when the prison dayroom was closed. In denying plaintiff leave to proceed on these claims, I noted:

With respect to Wudu, plaintiff contends only that he is unable to make Wudu during the hours the prison's dayroom is closed. Although prisons must accommodate prisoners when they are reasonably able to do so, they are under no obligation to provide inmates with 24-hour-a-day access to all desired opportunities for religious expression. Because plaintiff has not alleged that his ability to make Wudu has been rendered "effectively impracticable," he will be denied leave to proceed on his claim that prison officials violated his rights under RLUIPA by restricting his ability to perform ritual ablutions to hours during which the prison dayroom is open.

Dkt. #3, at 15-16.

Now plaintiff has filed a "Motion for Reconsideration or in the Alternative to Amend the Complaint," which I construe as a motion to supplement the factual allegations contained in his complaint and as a motion for reconsideration of the court's May 25, 2006

screening order in light of the additional allegations. I note that plaintiff has not served his motion on defendants, presumably because at the time he composed it, he was uncertain to whom his motion should be directed. Because Assistant Attorney General Corey Finkelmeyer has accepted service of plaintiff's complaint on behalf of defendants, a copy of plaintiff's motion will be forwarded to him along with a copy of this order.

In his motion, plaintiff argues that because defendants are prohibiting him from performing Wudu at designated prayer times, they are "render[ing] impracticable" a central practice of his faith. He alleges that the prison dayroom is open approximately eleven hours a day: from 7:45 a.m.-11:00 a.m., from 12:45 p.m.-4:30 p.m., from 6:30 p.m.-9:00 p.m. and from 9:30 p.m.-11:00 p.m. Plaintiff alleges also that he is required under Muslim law to perform salaah at specifically designated times, including sunrise and sunset; "failure to do so is punishable in this world as a possible death penalty offense under Sharia, and in the afterlife by placement in Gehenna (Hell)." Furthermore, he alleges that he may only perform salaah when he is in a state of ritual purification. To achieve purity, he must perform Wudu.

Because the dayroom is always closed at sunrise, and during winter months is often closed at sunset, if the prison policy prohibits him from performing Wudu during hours the prison dayroom is closed, as he alleges it does, then the policy may place a substantial burden on a central Islamic practice. Therefore, I will grant plaintiff's motion to supplement his complaint with the facts stated above, and in reliance on those factual allegations, will

grant his motion for reconsideration with respect to his contention that he has stated a claim against defendants Teslik, Farrey, Tegels, Raemisch and Frank for violating his rights under RLUIPA and the free exercise clause of the First Amendment by denying him access to the restroom to perform Wudu during hours when the prison dayroom was closed.

ORDER

IT IS ORDERED that

1. Plaintiff Juan Pérez's motion to supplement his complaint is GRANTED;
2. Plaintiff's motion for reconsideration of this court's May 25, 2006 order is GRANTED. He is GRANTED leave to proceed defendants Teslik, Farrey, Tegels, Raemisch and Frank on his claim that they are violating his rights under RLUIPA and the free exercise clause of the First Amendment by denying him access to the restroom to perform Wudu during hours when the prison dayroom is closed.

Entered this 9th day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge