

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 dated May 25, 2006, I granted plaintiff leave to proceed on his claims that the above-named defendants violated his rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to provide him with a variety of religious programs and accommodations and denying him mail sent to him from outside the prison. In an order dated June 9, 2006, I granted plaintiff's motion to amend his complaint to assert an additional claim under RLUIPA and the First Amendment. Now, plaintiff has filed a motion for leave to file a supplemental pleading, in which he seeks to add a new claim and two new defendants to his lawsuit. Because defendants have not yet

answered plaintiff's complaint and because the claim plaintiff seeks to add is related to other claims he is pursuing in this lawsuit, his motion will be granted.

In his "supplemental pleading," plaintiff alleges the following facts.

## ALLEGATIONS OF FACT

### A. Additional Parties

Proposed defendant Greg Grams is employed by the Wisconsin Department of Corrections as warden of the Columbia Correctional Institution.

Proposed defendant Timothy Lundquist is employed by the Wisconsin Department of Corrections as warden of the New Lisbon Correctional Institution.

### B. Request for Digital Qur'an Player

It is incumbent on every Muslim to memorize the Qur'an and learn to pronounce it correctly in Arabic. By doing so, Muslims "earn good deeds" that will guarantee them "the necessary blessings and rewards to achieve Paradise, and a high place in it." Because plaintiff does not have access to a "reliable Qur'anic scholar or recitator" he has no means of learning how to properly pronounce Arabic from other individuals while he is incarcerated.

On October 27, 2005, plaintiff completed a Request for New Religious Practice or Property form asking that he be allowed to purchase a digital Qur'an player. On the form,

plaintiff explained that he believes he is obligated to listen to the Qur'an, memorize it and recite it properly. Plaintiff submitted the completed form to defendant Teslik, who is chaplain of the New Lisbon Correctional Institution.

On March 3, 2006, defendant Teslik denied plaintiff's request, stating:

I recommend that "Digital Quran Reader Book" be denied as it is not listed under allowable Inmate personal items (page 6) of DOC 309 IMP 6A (09-03-02). A catalog description provided by inmate Pérez was reviewed and is attached. I consulted with Security Director Larry Fuchs and Property Captain Timothy Higbee on December 23, 2005 regarding my decision to deny this request for new religious property.

Plaintiff's request was sent to defendant Faust, who upheld the decision to deny it. On December 28, 2005, defendant Faust wrote, "This item is not allowed per new IMP DOC 309 6A which will become effective on 01/06/06. Security concerns as well due to need for Batteries. Request denied." Proposed defendant Lundquist upheld defendant Faust's decision on February 7, 2006, indicating, "Recommend request be denied. Not allowable property item per IMP 6A. Security concerns noted as well in regards to batteries. Quran in written form is allowable." On February 21, 2006, proposed defendant Grams denied plaintiff's final appeal and denied the request.

Plaintiff filed an inmate complaint numbered NLCI-2006-6651 regarding the denial of his request for a digital Qur'an player. The inmate complaint examiner's report stated falsely that plaintiff had "requested one item . . . and ha[d] filed a complaint on an entirely

different item.” Consequently, plaintiff’s complaint was dismissed by defendant Tegels on March 6, 2006. Defendant Raemisch upheld defendant Tegels’s dismissal.

On April 23, 2006, plaintiff refiled his request for religious property, “citing his religiously held belief that it is obligatory upon him and mandated by his religion to learn to memorize and correctly recite the Qur’an and the blessings that come with listening to and reciting it.” On April 28, 2006, defendant Teslik denied the request, stating:

I recommend that inmate’s request for “Digital Quran Player” be denied due to Qur’an being available in written format. A previous request for similar item was submitted for review. I included NLCI security director and property supervisor in the previous request for this item. Item is not allowable in DOC 309 IMP 6A (03-01-06) which was revised since inmate’s previous request for this item.

Defendants Faust and Tegels and proposed defendant Lundquist denied plaintiff’s appeals, noting that the Qu’ran was available to plaintiff in written form and that the item plaintiff requested was “not essential to practice [plaintiff’s] faith.”

Defendants Grams and Raemisch and proposed defendant Lundquist allow inmates to purchase and possess instruments such as electric keyboards and beat machines but will not allow plaintiff to have a digital Qur’an player.

## OPINION

According to plaintiff, he did not include mention of the denial of the digital Qur’an

player in his original complaint because at the time he filed the original complaint he was awaiting a final decision on his inmate complaint. Recognizing that he could not sue the prison before his administrative remedies had been exhausted, Cannon v. Washington, 418 F.3d 714, 719 (7th Cir. 2005), plaintiff waited prudently until a final decision had been made before moving to add the claim to his complaint.

Once a plaintiff has filed a lawsuit, he may alter his complaint in one of two ways: he may file an amendment (once by right if defendants have not answered the original complaint, and subsequently by permission of the court) or supplement his complaint (with the court's permission only). Plaintiff has amended his complaint once already in this lawsuit, when he clarified his allegations regarding defendants' refusal to provide him with access to the restroom to perform ritual ablutions before prayer, as required by his religion. Therefore, whether he characterizes his new filing as an amendment or a supplement, he may add his new claim and additional defendants only if given leave to do so.

Under Fed. R. Civ. P. 15(d), a court may grant a plaintiff leave to "serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Because plaintiff's proposed "supplemental" claim involves events that occurred *prior* to the filing of this lawsuit, it does not fall within the ambit of Rule 15(d).

However, plaintiff's addition of new claims and defendants could be fairly

characterized as a proposed amendment to his original complaint. Cannon, 418 F.3d at 719 (plaintiff could raise new claims “by amending his complaint in an already pending case” or by “initiating an entirely new proceeding”).

Leave to amend should be liberally granted whenever justice requires, Fed. R. Civ. P. 15(a), and when a pro se complaint is involved, district courts should allow litigants ample opportunity to amend. Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir. 1996). Because permitting plaintiff to amend his complaint to add his claim regarding denial of the digital Qur'an player would not unduly burden defendants or delay the proceedings in this case, there is no procedural reason to deny him leave to amend.

The next question is whether plaintiff's allegations state a claim against defendants Teslik, Grams, Lundquist, Raemisch, Tegels and Faust under the free exercise clause or RLUIPA. As I explained to plaintiff in the May 25 order granting him leave to proceed on his other claims in this case, in order to prevail on a free exercise claim he must show that prison officials “rendered impracticable” a sincere expression of his religious belief. In the case of a free exercise claim arising under the First Amendment, he must show further that the practice that was substantially burdened was one that is central to his faith. There are many reasons why it is unlikely that plaintiff will prevail on his claim that denying him a digital Qur'an player amounts to placing a substantial burden on the practice of his faith. Plaintiff does not allege that prison officials have denied him the opportunity to read and

recite the Qur'an; he alleges only that they have limited the means by which he may hear the Qur'an recited to him.

Nevertheless, plaintiff has alleged that he is "required" to hear the Qur'an recited in Arabic so that he may memorize it and recite it properly. Although it seems highly implausible that perfect rhetorical skills are an important component of the practice of Islam, at this stage in the proceedings I cannot say with certainty that plaintiff might not adduce evidence in support of his claim. Consequently, his motion to amend complaint will be granted and plaintiff will be given leave to proceed against defendants Teslik, Grams, Lundquist, Raemisch, Tegels and Faust on his claim that they violated his rights under the First Amendment and RLUIPA by refusing to allow him to possess a digital Qur'an player.

One last procedural point. Although plaintiff's request to add information is technically an amendment rather than a supplement, the document he has submitted to the court does not restate all of the claims contained in his original complaint. Therefore, instead of replacing his complaint with the newly filed document, I will treat plaintiff's most recent filing as an addition to the original complaint. In answering the complaint, defendants should simply respond to the paragraphs contained in docket #9 as though they were a continuation of docket #2.

ORDER

IT IS ORDERED that

1. Plaintiff Juan Pérez's motion to amend his complaint is GRANTED;
2. Plaintiff is GRANTED leave to proceed on his claim that defendants Teslik, Grams, Lundquist, Raemisch, Tegels and Faust violated his rights under the First Amendment and RLUIPA by refusing to allow him to possess a digital Qur'an player;
3. Defendants Greg Grams and Timothy Lundquist are added as defendants in this lawsuit;
4. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and all preceding orders in this case are being sent today to the Attorney General for service on defendants Grams and Lundquist. The existing defendants must file an answer to the amended complaint within the time remaining for them to file their answer to the original complaint or 10 days from the date this order is entered, whichever is longer.

Entered this 7th day of July, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge