IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAVIER R. SALGADO,

Plaintiff, ORDER

v. 06-C-598-C

GREGORY GRAMS, Warden; JANEL NICKEL, Security Director; SEAN SALTER, Adm. Captain; STEVE CASPERSON, Administrator; DAN WESTFIELD, Security Chief; MATTHEW FRANK, Secretary of D.O.C.,

Defendants.

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Plaintiff Javier Salgado is a prisoner in protective custody at the Columbia Correctional Institution in Portage, Wisconsin. In an order dated November 6, 2006, I granted him leave to proceed in forma pauperis on his claim that defendant prison officials are violating his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment by prohibiting him from possessing prayer oil, prayer beads and a prayer rug in his prison cell. Under 28 U.S.C. § 1915(e)(2)(B), I denied plaintiff leave to proceed on several additional claims.

Now before the court is plaintiff's motion for reconsideration of the November 6

order, in which he asks the court to grant him leave to proceed on two of the dismissed claims, namely, his claims that defendants violated his rights under the First Amendment and RLUIPA by prohibiting him from attending group worship services and violated his rights under the Eighth Amendment by confining him indefinitely in a segregation cell. Plaintiff's motion for reconsideration will be denied with respect to both claims.

As I explained to plaintiff in the November 6 screening order, prison officials do not violate the Constitution when they limit prisoners' ability to exercise their religious beliefs so long as the officials are furthering "a compelling governmental interest," by "the least restrictive means" available. Cutter v. Wilkinson, 544 U.S. 709, 712 (2005). Plaintiff acknowledges that members of the Latin Kings gang have placed a "hit" on him, thereby endangering his life. Nevertheless, he asserts that he should be permitted to attend congregate religious services because the "Wisconsin Department of Corrections does not have a high propensity for violence and/or murder."

In the prison setting, there are few concerns as paramount as security. For this reason, the Supreme Court has been clear in stating that RLUIPA does not "elevate accommodation of religious observances over an institution's need to maintain order and safety." Cutter, 544 U.S. at 722. Courts have been cautioned to apply RLUIPA's "compelling interest" standard with "particular sensitivity to security concerns" and with appropriate "deference to the experience and expertise of prison and jail administrators in

establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources." Id. at 723 (citing S. Rep. No. 103-111, at 10, U.S.C.C.A.N. 1993, pp. 1892, 1899, 1900).

It may well be true, as plaintiff alleges, that the Wisconsin prison system is safer than others; if so, it is likely because the prison system takes seriously threats to the safety of its inmates. Given the threats made to plaintiff's life by prison gang members, prison officials are well within their rights to prohibit him from attending congregate religious services, however great a burden that limitation may place on his ability to fully exercise his religious beliefs. Because prison officials have a compelling reason for restricting plaintiff's ability to attend religious services, plaintiff's motion for reconsideration will be denied with respect to his claim that defendants are violating his rights under the First Amendment and RLUIPA by prohibiting him from attending group worship services.

Next, plaintiff challenges this court's decision to deny him leave to proceed on his claim that defendants have violated his rights under the Eighth Amendment by confining him indefinitely in a segregation cell for the purpose of keeping him safe from other prisoners. Although there is no question that confinement in long-term segregation is unpleasant and perhaps even more restrictive than necessary, conditions of confinement violate the Eighth Amendment only when they "involve the wanton and unnecessary infliction of pain" or are "grossly disproportionate to the severity of the crime warranting

imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). So long as conditions do not fall below contemporary standards of decency, they are not unconstitutional, however restrictive or poorly designed they may be.

Plaintiff does not suggest that he is confined in conditions that fail to meet his most basic needs. Rather, he complains that he is denied access to programs and to the companionship of other prisoners. Although these are true deprivations, they do not rise to the level of constitutional violations in plaintiff's situation. As I noted in the November 6 order, it is possible that prison officials might violate petitioner's Eighth Amendment rights by *releasing* him from protective custody. Farmer, 511 U.S. at 847 (if prison official is aware of substantial risk that prisoner will be assaulted and fails to take reasonable protective measures, he may be liable for his inaction). Although plaintiff objects to the manner in which prison officials are keeping him safe, they are entitled to considerable deference. Plaintiff's motion for reconsideration will be denied with respect to his claim that defendants have violated his Eighth Amendment rights by confining him indefinitely in segregation.

ORDER

IT IS ORDERED that plaintiff Javier Salgado's motion for reconsideration of this

court's November 6, 2006 order is DENIED.

Entered this 27th day of November, 2006.

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