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

MAURICE A. JOHNSON,

Plaintiff,

v.

CHAPLAIN SPARLING, WARDEN LIZZIE TEGELS, and DEPUTY WARDEN TIM THOMAS,

Defendants.

OPINION & ORDER

12-cv-917-wmc

State inmate Maurice A. Johnson submitted a proposed complaint pursuant to 42 U.S.C. § 1983, alleging that he was denied access to congregational religious services at the New Lisbon Correctional Institution ("NLCI"). Johnson has been granted leave to proceed *in forma pauperis* and has made an initial partial payment. Since Johnson was incarcerated at the time of the events he alleges, the Prison Litigation Reform Act ("PLRA") also requires the court to screen his complaint to determine whether it: (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). Because the court finds that Johnson has failed to state a plausible claim for relief, it will deny him leave to proceed on his claims.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must read the allegations generously, and hold the complaint "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Johnson alleges, and the court assumes as true for purposes of this screening order, the following facts:

Johnson presently resides at the Wisconsin Resource Center. At all times pertinent to the complaint, he was incarcerated at NLCI, where defendant Sparling is employed as the prison chaplain, defendant Lizzie Tegels is warden, and defendant Tim Thomas is deputy warden.

Johnson's claims stem from his inability to attend Jumu'ah, an Islamic Friday "assembly prayer," meaning that it must be prayed in congregation.[1] While he was not permitted to attend Friday Jumu'ah, Johnson claims defendants permitted other religious groups to practice in congregation, including "Catholic Mass, Sweat Lodge Ceremony and Protestant worship." (Compl. (dkt. #1) 5.)

The deprivation Johnson alleges stems from the Wisconsin Department of Corrections' Division of Adult Institutions ("DAI") Policy 309.61.01, which requires all religious services to be led by an approved spiritual leader, volunteer or Chaplain and does not permit inmates to lead or conduct religious services. (Compl. Ex. B (dkt. #1-2) 2.) *See Perez v. Frank*, No. 06 C 248 C, 2007 WL 1101285, at *4 (W.D. Wis. Apr. 11, 2007). NLCI had a volunteer who led Islamic services on Wednesdays, but was unable to secure a volunteer to provide services on Fridays during April of 2012.

On April 15, 2012, Johnson wrote to Chaplain Sparling, complaining about his inability to practice his religious beliefs by attending Jumu'ah. On April 20, 2012, Johnson followed up by writing to Deputy Warden Thomas. Unsatisfied with the responses received from both, Johnson then wrote to the Institution Complaint Examiner ("ICE"). On May 1,

[1] Jumu'ah is a ceremony intended to purify the sins Johnson and his fellow believers may have committed during the previous week. During the prayer service, an orator delivers a message to the believers who are gathered for prayer. Normally, prayers are led by an Imam, who is the person with the most age or experience amongst those present. Under Islamic law, there are no special training requirements for being an Imam. *Perez v. Frank*, 2007 WL 1101285, at *3 (W.D. Wis. Apr. 11, 2007).

2012, Johnson was asked to provide specific dates that he was denied the ability to practice his religious beliefs. Johnson responded that he had been denied the ability to practice his religious beliefs for the entire month of April.

Following Johnson's response, ICE recommended his complaint be dismissed, explaining that Johnson had not provided specific dates of the incidents, but rather made broad claims for the entire month of April. Additionally, ICE explained the requirements of DAI 309.61.01, NLCI's ongoing attempts to secure a volunteer for Friday prayer, and Johnson's right to practice his faith individually. Finding the preservation of the individual right and NLCI's attempts to secure additional volunteers, ICE found no violation of any Administrative Code. On May 15, 2012, Tegels dismissed the complaint. Johnson appealed that initial finding, but the Department of Corrections found he had "presented no information to warrant a recommendation overturning [the] decision," and upheld the initial decision.[2]

Johnson's allegations against Sparling are based on her role as Chaplain and her failure to permit congregate Jumu'ah, while permitting other religions to conduct congregate prayer. Johnson's allegations against Deputy Warden Thomas are based on his role as "acting program director." As acting program director, Johnson alleges that Thomas was responsible for approving scheduled religious functions, and specifically chose not to schedule and approve Jumu'ah. Last, Johnson's allegations against Warden Tegels are based on "the actions of her staff" and her role to "ultimately approve all functions at NLCI and to ensure fairness to all prisoners."

[2] Johnson attached to his complaint copies of grievances he filed while detained at NLCI and responses he received to those grievances. The court has considered them as part of his complaint. Fed. R. Civ. P. 10(c).

Johnson seeks only punitive damages, asking the court to award him $300,000 for "pain and suffering and mental anguish."

OPINION

Here, Johnson's pleadings implicate six sources of law: the First Amendment's Free Exercise and Establishment Clauses; The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1; the Fourteenth Amendment's Equal Protection and Due Process Clauses; and the Eighth Amendment's Cruel and Unusual Punishment Clause. The court addresses each in turn to determine if Johnson has stated a claim on which relief can be granted.

A. Eighth Amendment

To state a claim for an Eighth Amendment violation, Johnson must allege conditions that result in "unquestioned and serious deprivations of basic human needs" or that cause intolerable or shocking prison conditions. *Rhodes v. Chapman*, 452 U.S. 337, 347-48 (1981); *see also Wells v. Franzen*, 777 F.2d 1258, 1264 (7th Cir. 1985). Under that standard, Johnson has failed to state a claim on which relief can be granted. Without denigrating the importance of prayer, none of the facts he alleges suggest that he has been deprived of basic human needs or that the prison conditions were otherwise "intolerable or shocking." *Cf. Caldwell v. Miller*, 790 F.2d 589, 601 n.16 (7th Cir. 1986) (finding that possible free-exercise claim, considered in combination with exercise restrictions, suspension of contact visitation and possible legal-access claim, did not rise to the level of an Eighth Amendment violation). Indeed, Johnson alleges only a temporary loss of weekly service while a new prayer leader is located. Johnson will, therefore, be denied leave to proceed on

this claim.

B. Fourteenth Amendment Due Process Clause

The court will likewise dismiss Johnson's due process claim. Johnson's allegation of a due process violation is limited entirely to his invocation of the term "due process," without further context or explanation. (*See* Compl. (dkt. #1) 4.) Reading Johnson's complaint generously, he has failed to allege any facts that support a claim under the Due Process Clause.

As an initial matter, Johnson's pleading contains insufficient allegations to support a due process claim relating to his ICE complaints. The Seventh Circuit has explicitly stated that there is no Fourteenth Amendment substantive due-process right to an inmate grievance procedure. *See Grieveson v. Anderson*, 538 F.3d 763, 772 (7th Cir. 2008) (citing *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996)). Thus, Johnson has failed to state a claim for relief under the Due Process Clause.

Even if he had, "[w]here another provision of the Constitution provides an explicit textual source of constitutional protection, a court must assess a plaintiff's claims under that explicit provision and not the more generalized notion of substantive due process." *Conn v. Gabbert*, 526 U.S. 286, 293 (1999) (citations omitted). Here, Johnson's allegation that he has been temporarily deprived the chance to attend Jumu'ah services is more adequately addressed by the Free Exercise Clause of the First Amendment.

C. First Amendment Establishment Clause and Fourteenth Amendment Equal Protection

Because Johnson's claims under the Establishment Clause and the Equal Protection Clause turn on the same legal requirements, the court considers those claims together. The

Establishment Clause prevents the government from promoting any religious doctrine or organization or affiliating itself with one. *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 590-91 (1989). It also "prohibits the government from favoring one religion over another without a legitimate secular reason." *Kaufman v. McCaughtry*, 419 F.3d 678, 683 (7th Cir. 2005). The clause is violated when "the challenged governmental practice either has the purpose or effect of 'endorsing' religion." *County of Allegheny*, 492 U.S. at 592. In contrast, no violation exists when a governmental entity provides opportunities for institutionalized inmates to practice their religion, provided that the entity does so in an even-handed way.

Similar to a claim under the Establishment Clause, a plaintiff alleging an equal protection violation must establish that a state actor has treated him differently because of his membership in a particular class and that "the state actor did so purposefully." *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000); *Sherwin Manor Nursing Center, Inc. v. McAuliffe*, 37 F.3d 1216, 1220 (7th Cir. 1994). Discriminatory purpose "implies that the decisionmaker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effects on an identifiable group." *Shango v. Jurich*, 681 F.2d 1091, 1104 (7th Cir. 1982).

Here, Johnson states no viable claim under either the Establishment Clause or the Equal Protection Clause, because he has not plausibly alleged that defendants either purposefully discriminated against Muslims or, the flip side of the coin, that they favored other religious groups. While he alleges that other religious groups were allowed to "fully practice their congregate tenets" (*see* Compl. at 5), he does *not* allege that prison officials permitted other religions to congregate for religious service without the leadership of an

approved spiritual leader, volunteer or chaplain. Rather, the inmate complaints Johnson has submitted show that DAI Policy 309.61.01 mandates that group services for *all* religions at NLCI be led by an approved leader, volunteer or chaplain. (*See* Compl. (dkt. #1-2) 2.) Johnson does not allege that defendants actively sought volunteers to lead other religions, but did not attempt to find volunteers for the Muslim inmates. Rather, based on the complaint, as well as the grievance documentation Johnson has filed, it appears that the defendants secured a volunteer who led Islamic services on Wednesdays, were having difficulties in finding a volunteer to lead Friday services and continued to search. (Compl. (dkt. #1-2) 2.) Thus, Johnson has failed to state a plausible claim under the Establishment Clause or the Equal Protection Clause.

D. Free Exercise of Religion

Inmates may also raise claims alleging that government officials have impeded their ability to practice their religious beliefs under (1) RLUIPA; and (2) the Free Exercise Clause of the First Amendment. The court will, therefore, consider whether Johnson has stated a claim under each of these sources of law as well.

i. RLUIPA

Johnson alleges that defendants violated RLUIPA by substantially burdening his religious exercise in not permitting Johnson to congregate for Jumu'ah. (Compl. at 5.) The court need not consider the substance of this claim, however, because Johnson cannot get any relief under RLUIPA. Under the Federal Rules of Civil Procedure, a complaint must include a claim for relief. Fed. R. Civ. P. 8(a)(3). As noted above, Johnson asks only for monetary relief in the form of punitive damages (Compl. at 7), but he cannot recover

monetary damages under RLUIPA because that statute permits only claims for injunctive relief. *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012) (damages unavailable under RLUIPA because claims for damages against state actors in their official capacity are barred by sovereign immunity, while Act does not create a cause of action against state actors in their personal capacity); *Nelson v. Miller*, 570 F.3d 868, 883-89 (7th Cir. 2009).

Even if this court were to allow Johnson to amend his complaint to include injunctive relief, such a request would be moot. The alleged violations occurred while Johnson was housed at NLCI; he is now housed at the Wisconsin Resource Center. Generally, "when a prisoner who seeks injunctive relief for a condition specific to a particular prison is transferred out of that prison, the need for relief, and hence the prisoner's claim, become moot." *Lehn v. Holmes*, 364 F.3d 862, 871 (7th Cir. 2004). Because Johnson only states a claim for monetary relief and because any amendment to the complaint including injunctive relief would be futile, the court will dismiss Johnson's RLUIPA claim.

ii. First Amendment Free Exercise Clause

A Free Exercise Clause inquiry similarly asks whether the government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden. *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989). Accordingly, Johnson must allege that the defendants placed "a substantial burden on the observation of a central religious belief or practice." *Id*. A "substantial burden" is "one that necessarily bears a direct, primary and fundamental responsibility for rendering religious exercise . . . effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003). Because Johnson

alleges that he is a Muslim and that it violates a mandatory tenet of his faith to worship under the alleged conditions, the court will infer at this stage that his religious exercise was substantially burdened. (Compl. (dkt. #1) 7.)

Actions by prison officials that substantially burden religious observation do not violate the Constitution, however, if they are reasonably related to a legitimate penological interest. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 350-52 (1987). Four factors are relevant to that determination: (1) whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; (2) whether the prisoner retains alternatives for exercising the right; (3) the impact that accommodation of the right will have on prison administration; and (4) whether there are other ways that prison officials can achieve the same goals without encroaching on the right. *Turner v. Safley*, 482 U.S. 78 (1987).

In some contexts, the Seventh Circuit has suggested that it is appropriate to wait for summary judgment to evaluate whether prison officials have adequately demonstrated a rational relationship to a legitimate penological interest. *See, e.g.*, *Ortiz v. Downey*, 561 F.3d 664, 669-70 (7th Cir. 2009) (district court erred in assuming on the basis of the complaint alone that there was a legitimate penological reason for denying inmate a rosary and prayer book); *Lindell v. Frank*, 377 F.3d 655, 657-58 (7th Cir. 2004) (district court erred in presuming a security justification existed in confiscating picture postcards when actual reasons behind their removal were not apparent). In *Ortiz*, for instance, the grievances attached to the complaint showed that the defendant's sole articulated reason for denying the plaintiff a rosary and prayer book was because he believed those items were not "vital to worship." *Ortiz*, 561 F.3d at 669. The Seventh Circuit noted that under the Free Exercise

Clause, a person's beliefs are "not subject to restriction by the personal theological views of another," *id.*, and since that was the only justification in the record, Ortiz had stated a Free Exercise claim that was "plausible on its face," *id.* at 670.

There is, however, an important difference between the facts in *Ortiz* and in this case. Unlike *Ortiz and Lindell*, Johnson's own filings demonstrate that the failure to offer Jumu'ah services in April 2012 was due to the lack of a volunteer, undermining his conclusory and unsupported assertions that defendants "deliberately, wantonly, knowingly and capriciously" denied him the chance to participate in Jumu'ah. Moreover, "it is well-established that prison officials are justified in requiring an approved nonprisoner to lead prisoners in group worship." *West v. Grams*, No. 11-cv-687-slc, 2013 WL 5966165, at *10 (W.D. Wis. Nov. 8, 2013) (collecting cases). Indeed, prison policies requiring volunteer leaders at group services and prohibiting prisoners from leading such services have been consistently upheld as justified. *See, e.g.*, *Johnson-Bey v. Lane*, 863 F.2d 1308, 1310-11 (7th Cir. 1988) (holding that prisons need not allow inmates to conduct their own religious services due to security concerns); *Hadi v. Horn*, 830 F.2d 779, 783-85 (7th Cir. 1987) (finding cancellations for lack of a chaplain served a legitimate government interest).

Unlike in *Lindell*, the policy underlying the restriction on Jumu'ah services is also in the record. Unlike in *Ortiz*, that policy has been consistently upheld as satisfying the *Turner* test. Therefore, Johnson pleads no facts suggesting that DAI Policy 309.61.01 was merely a pretext, nor need the court take as true his conclusory allegation that the restriction on Jumu'ah attendance was "wanton" and "capricious," since it not only lacks factual support but is also undermined by the record itself. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) ("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the

elements of a cause of action' will not do. Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.") (internal citations omitted); *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008) (party may plead itself out of court by pleading facts that establish an impenetrable defense to its claims). Johnson has therefore failed to state a plausible claim for relief, and he will not be permitted to proceed.

ORDER

IT IS ORDERED that plaintiff Maurice A. Johnson's request to proceed on his claims under RLUIPA and the First, Eighth, and Fourteenth Amendments is DENIED; the clerk of court is directed to enter judgment and close this case.

Entered this 30th day of April, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge