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

LORENZO KYLES,

Plaintiff,

v.

STEVE MOHR,

Defendant.

OPINION and ORDER

22-cv-479-wmc[1]

Pro se plaintiff and prisoner Lorenzo Kyles practices Judaism, and he participates in Tisha B' Av, a day of mourning and fasting. Kyles contends that in 2022 defendant Chaplain Steve Mohr refused to accommodate his need to receive meals after sunset, in violation of his constitutional and statutory rights. Kyles filed a motion to amend his complaint. Dkt. 5. I will grant that motion and consider his amended complaint to be the operative pleading. Because Kyles is incarcerated and proceeding in forma pauperis, the next step is to screen his amended complaint, Dkt. 6, and dismiss any portion that is legally frivolous or 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. 28 U.S.C. §§ 1915 and 1915A. When screening a pro se litigant's complaint, I construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011).

I will dismiss Kyles's amended complaint with prejudice for failure to state a claim.

[1] I am exercising jurisdiction over these cases for purposes of this screening order only.

ALLEGATIONS

In 2022 Lorenzo Kyles was incarcerated at Stanley Correctional Institution, where Chaplain Mohr was working. Stanley inmates wishing to receive meals in accordance with the Tisha B' Av fast may submit a request to receive a meal bag for consumption after sunset. Inmates must sign up for the accommodation at least 60 days in advance of the event. In 2022, the sign-up deadline for Tisha B' Av fasting was June 8, with fasting to begin after sunset August 6 and to conclude after sunset August 7. Kyles requested the meal bag accommodation in February, and he received a response from the chapel indicating that he had been added to the list of inmates participating in Tisha B' Av. Kyles began the fast on August 6, abstaining from eating and drinking, but when he requested his meal bag the next evening an officer told him that there was no meal bag available. Kyles complained about not receiving the meal bag, and he was told that no names were given to the food service department for Tisha B' Av. Kyles suffered exhaustion and hunger pangs overnight, and he broke his fast by drinking water. Mohr later told Kyles that because of an oversight he failed to notify food service that Kyles needed the Tisha B' Av accommodation. Mohr also apologized for the mistake.

ANALYSIS

Kyles contends that Mohr violated his Eighth Amendment right to adequate nutrition, his First Amendment right to freedom of religion, and his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

A. Eighth Amendment

The Eighth Amendment guarantees inmates the "minimal civilized measure of life's necessities," *Townsend v. Fuchs*, 522 F.3d 765, 773 (7th Cir. 2008), including a diet with

adequate nutrition, *Mays v. Springborn*, 575 F.3d 643, 648 (7th Cir. 2009). To demonstrate that prison conditions violate the Eighth Amendment, a plaintiff must allege facts showing that a prison official or other defendant knew that the plaintiff faced a substantial risk of serious harm yet disregarded that risk by failing to take reasonable measures to address it. *Lunsford v. Bennett*, 17 F.3d 1574, 1579 (7th Cir. 1994); *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Kyles contends that Mohr's failure to ensure that he received the meal bags during Tisha B' Av left him without food for 36 hours. But Kyles has not alleged that while he went without food overnight on August 7, Mohr was aware that Kyles did not receive the meal bag and continued his fast despite not receiving food that evening. Therefore, Mohr's failure to step in to ensure that Kyles received food that evening does not show a failure to take reasonable measures in response to a risk of harm. So, Kyles does not state an Eighth Amendment claim against Mohr.

B. First Amendment

Prisoners generally retain their right to practice their religion, but prison officials may place restrictions on that right that are reasonably related to a legitimate penological interest. *See, e.g.*, *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987); *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019). And "forcing an inmate to choose between daily nutrition and religious practice is a substantial burden." *Thompson v. Holm*, 809 F.3d 376, 379–80 (7th Cir. 2016). But to be held liable for a First Amendment violation, the defendant must have intentionally imposed the substantial burden on the prisoner. *See Hambright v. Kemper*, 705 F. App'x 461, 463 (7th Cir. 2017) (citing *Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Cooney v. Casady*, 735 F.3d 514, 519 (7th Cir. 2013)).

I accept that Kyles suffered a substantial burden because he did not receive a meal bag the evening of August 7. But Kyles does not allege that Mohr intended to deprive Kyles of the meal bag that evening. Actually Kyles says that Mohr conceded his oversight and apologized for it. The only reasonable inference to be drawn from Mohr's apology is that he mistakenly, at most negligently, failed to notify food services that Kyles needed a meal bag on August 7. Negligent conduct does not support a free exercise claim. So, Kyles does not state a claim under the First Amendment.

C. RLUIPA

RLUIPA prohibits prisons receiving federal funds from imposing a substantial burden on a prisoner's religious exercise unless the burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc-1(a)(1)–(2). In applying this statute, courts have placed the initial burden on the plaintiff to show that he has a sincere religious belief and that his religious exercise was substantially burdened. *Holt v. Hobbs*, 574 U.S. 352, 361–362 (2015); *Koger v. Bryan*, 523 F.3d 789, 797–98 (7th Cir. 2008). If the plaintiff makes his required showing, the burden shifts to the defendants to demonstrate that their actions further a compelling governmental interest by the least restrictive means. *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005).

Although Kyles's ability to participate in Tisha B' Av was substantially burdened, he may not obtain the relief he seeks under RLUIPA. Kyles seeks monetary damages, but the court of appeals has held that they are not available under RLUIPA against state defendants sued in their individual capacities. *See Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012); *Vinning-El v. Evans*, 657 F.3d 591, 592 (7th Cir. 2011); *Nelson v. Miller*, 570 F.3d 868, 886–87 (7th Cir. 2009), *abrogated on other grounds by Jones v. Carter,* 915 F.3d 1147, 1149–50 (7th Cir. 2019).

This court has previously questioned whether the court of appeals will revisit this holding in light of *Tanzin v. Tanvir*, 141 S. Ct. 486, 489 (2020), which held that plaintiffs may recover money damages for individual-capacity suits under the Religious Freedom Restoration Act (RFRA), a statute similar to RLUIPA. *See, e.g.*, *Hernandez-Smith v. O'Donnell*, No. 20-cv-1117-jdp, 2022 WL 3985648, at *5 (W.D. Wis. Sept. 1, 2022); *Greene v. Teslik,* No. 18-cv-116-wmc, 2021 WL 1820788, at *6 (W.D. Wis. May 6, 2021). But I have recently concluded that *Nelson, Vinning-El*, and *Grayson* are not inconsistent with *Tanzin. See Russell v. Lange*, No. 22-cv-333-jdp, Dkt. 14 (W.D. Wis. Jan. 11, 2023). Therefore, Kyles may not pursue monetary damages under RLUIPA.

Kyles does not seek injunctive relief, and he does not allege that there is a danger that Mohr will deny him access to a meal bag for Tisha B' Av again, *see Thomson v. Bukowski*, 812 F. App'x 360 (7th Cir. 2020) (injunctive relief becomes moot once prisoner is transferred to a different facility). So, I will not grant Kyles leave to proceed under RLUIPA.

CONCLUSION

The court of appeals has cautioned against dismissing a pro se plaintiff's case without giving the plaintiff a chance to amend. *Felton v. City of Chicago*, 827 F.3d 632, 636 (7th Cir. 2016). But in this case, dismissal of Kyles's claims with prejudice is appropriate. Kyles's allegations show that Mohr was, at worst, negligent in leaving Kyles off the 2022 Tisha B' Av fasting list. I see no way that Kyles could supplement his complaint, consistent with his current allegations, to support a plausible theory for relief. I will dismiss Kyles's complaint with prejudice for failure to state a claim upon which relief can be granted. Because Kyles has failed

to state a federal claim, I will direct the clerk of court to record a strike under 28 U.S.C. § 1915(g).

ORDER

IT IS ORDERED that:

1. Plaintiff Lorenzo Kyles's motion to amend, Dkt. 5, is GRANTED.

2. Plaintiff is DENIED leave to proceed on any claim, and his amended complaint is DISMISSED with prejudice for failure to state a claim upon which relief can be granted.

3. The clerk of court is directed to record this dismissal as a strike under 28 U.S.C. § 1915(g), and close this case.

Entered January 27, 2023.

BY THE COURT:

/s/

____

JAMES D. PETERSON
District Judge