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

YADIEL NUÑEZ-MUÑOZ,

Plaintiff,

v.

DANE COUNTY SHERIFF'S OFFICE AND SERGEANT OLSON,

Defendants.

OPINION and ORDER

Case No. 16-cv-373-wmc

Pro se plaintiff Yadiel Nuñez-Muñoz has filed a proposed civil action in which he contends that Dane County Jail policies prohibiting Muslim inmates from possessing prayer rugs and religious headwear violate his rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-2(b). His complaint is before the court for screening pursuant to 28 U.S.C. § 1915A. After reviewing the complaint, the court concludes that Nuñez-Muñoz may proceed on his claims under RLUIPA and the First Amendment.

OPINION

I. RLUIPA

Under RLUIPA, the plaintiff has the initial burden to show that he has a sincere religious belief and that his religious exercise was substantially burdened. 42 U.S.C. § 2000cc-1(a); *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005). If the plaintiff makes the showing, the burden shifts to the defendants to show that their actions further a "compelling governmental interest," and do so by "the least restrictive means." *Id.*; *Holt v. Hobbs*, 135 S. Ct. 853, 862 (2015) (citing *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2774, n. 28 (2014)). If a plaintiff prevails on a RLUIPA claim, he is limited to declaratory and injunctive relief; he

cannot obtain money damages. *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012).

Plaintiff alleges that restrictions prohibiting access to prayer rugs and religious headgear substantially burden his religious exercise, so he may proceed on his claims under RLUIPA. If, at summary judgment or trial, plaintiff can prove a substantial burden with specific facts, the burden will shift to defendants to prove that the restrictions are the least restrictive means of furthering a compelling governmental interest.

The only question on plaintiff's RLUIPA claim relates to the proper defendants. Plaintiff names Sergeant Olson and the Dane County Sheriff's Office as defendants. On a claim for injunctive relief, the question is whether the defendant has any authority to grant the relief requested. *Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011). Plaintiff alleges that he has discussed religious property restrictions with Sergeant Olson and that Olson has responded that the jail is working on a solution. At this early stage of the proceedings, the court will infer that Olson has the authority to grant any relief ordered by the court. Plaintiff will not be allowed to proceed against the Dane County Sheriff's Office, however, because the Sheriff's Office is not an entity that may be sued. *See, e.g.*, *Whiting v. Marathon Cnty. Sheriff's Dep't*, 382 F.3d 700, 704 (7th Cir. 2004); *Chan v. Wodnicki*, 123 F.3d 1005, 1007 (7th Cir. 1997).

II. Free Exercise Clause.

The standard for proving a claim under the free exercise clause is less clear than the standard under RLUIPA. Generally, when a prisoner brings a claim under the First Amendment, the question is whether the challenged restriction is reasonably related to a legitimate penological interest. *Turner v. Safley*, 482 U.S. 78 (1987); *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). Four factors are relevant to that determination: whether

there is a "valid, rational connection" between the restriction and a legitimate governmental interest; whether the prisoner retains alternatives for exercising the right; the impact that accommodation of the right will have on prison administration; and whether there are other ways that prison officials can achieve the same goals without encroaching on the right.

However, in the context of claims brought under the free exercise clause, there are open questions regarding whether there may be other elements as well. In particular, it is not clear whether a plaintiff must prove that: (1) the defendants placed a "substantial burden" on his exercise of religion; or (2) the restriction is not a neutral rule of general applicability but instead targets the plaintiff's religion for adverse treatment. In some cases, courts have applied one or both of these other elements and in some cases the courts have omitted them. *E.g., Ortiz v. Downey*, 561 F.3d 664, 669 (7th Cir. 2009) (applying *Turner* standard without discussing other elements); *Borzych v. Frank*, 439 F.3d 388, 390 (7th Cir. 2006) (requiring prisoner to show that restriction was discriminatory); *Kaufman v. McCaughtry*, 419 F.3d 678, 682-83 (7th Cir. 2005) (requiring showing of substantial burden). *See also Lewis v. Sternes*, 712 F.3d 1083, 1085 (7th Cir. 2013) (stating that it is open question whether prisoner must prove discrimination in free exercise claim); *World Outreach Conference Center v. City of Chicago*, 591 F.3d 531, 534 (7th Cir. 2009) (plaintiff may prove free exercise claim with evidence of substantial burden or intentional religious discrimination).

Even if the court assumes that a free exercise claim requires plaintiff to prove that his religious exercise has been substantially burdened and that the restrictions are not

part of a generally applicable neutral rule, the court concludes that plaintiff has stated a claim upon which relief may be granted under the free exercise clause. As noted above, plaintiff has alleged that the restrictions on religious property at the Dane County Jail burden his religious exercise and that the restrictions are not neutral. Finally, with respect to the question whether the restrictions are reasonably related to a legitimate penological interest, the general rule is that courts should not make that assessment in the context of a screening order. *Ortiz*, 561 F.3d at 669-70. Because there is no reason to depart from that general rule in this case, the court will allow plaintiff to proceed on this claim against defendant Olson as well.

ORDER

IT IS ORDERED that:

(1) Plaintiff Yadiel Nuñez-Muñoz is GRANTED leave to proceed on his claims that Sergeant Olson violated his rights under RLUIPA and the First Amendment by denying him access to prayer rugs and religious headgear at the Dane County Jail.

(2) Plaintiff is DENIED leave to proceed on all other claims. The Dane County Sheriff's Office is DISMISSED.

(3) The clerk's office will prepare summons and the U.S. Marshal Service shall affect service upon the defendant.

(4) For the time being, plaintiff must send the defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendant, he should serve the lawyer directly rather than the defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to the defendant or to defendant's attorney.

(5) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

(6) If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 17th day of May, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge