

HOLY SEE

Vatican City

_____)	
REVEREND JAMES J. FOLEY)	
<u>Petitioner</u>)	
_____)	
BERNARD CARDINAL LAW,)	<u>LIBELLUS AND APPEAL TO</u>
ARCHBISHOP, Archdiocese of Boston)	<u>HIS HOLINESS POPE JOHN</u>
Massachusetts USA)	<u>PAUL II under Can. 1401,</u>
<u>Respondent</u>)	<u>sec. 2; Can. 1405, Can. 1417,</u>
_____)	<u>sec. 1</u>

Parties

The Petitioner, Reverend James J. Foley, an ordained Diocesan priest, whose present mailing address is: c/o Robert E. Keane, Esquire 92 High Street, Suite T32, Medford, Massachusetts 02155 USA. The Petitioner has no permanent residence.

The Respondent, Bernard Cardinal Law, Archbishop, Archdiocese of Boston, Massachusetts USA, presently resides at the Cardinal's residence: 2101 Commonwealth Avenue, Brighton, Massachusetts 02135 USA.

Jurisdiction

This Complaint and Appeal is brought by and on behalf of Rev. James J. Foley, duly ordained under laws of the Roman Catholic Church. A case in controversy has arisen by and between the Rev. James J. Foley and Bernard Cardinal Law, Archbishop of the Archdiocese of Boston, Massachusetts USA pertaining to the rights and obligations of the parties under the Code of Canon Law and under Apostolic Letter Sacramentorum Sanctitatis Tutela, as further contained in the letter of Joseph Cardinal Ratzinger, Prefect and Tharsicius Bertone SDB, Archbishop Emeritus of Vercelli Secretary dated May 8, 2001.¹

Although jurisdiction would appear to be under the authority of Congregation of the Faith as contained in the letter previously cited dated May 8, 2001, the Petitioner believes that due to the nature of allegations contained in the Complaint

¹Letter sent by the Congregation of the Doctrine of the Faith on More Grave Delicts Reserved to the same Congregation dated May 8, 2001.

and the relief required that the more appropriate jurisdiction is with the Apostolic See as provided for under Can. 1417, Can. 1401, sec. 2, Can. 1405 and therefore humbly requests the Libellus and Appeal be accepted for hearing before the Holy See.

Statement of Facts

Rev. James J. Foley was validly ordained on May 20, 1978 by Humberto Cardinal Medeiros. He began his ministry in 1978 in the Archdiocese of Boston. He served in the Archdiocese at various assignments until 1997 when he volunteered for temporary assignment to the Archdiocese of Santa Fe, New Mexico which was in urgent need of priests, where he served his ministry with distinction.²

On or about September 15, 1999, Rev. Foley was summonsed to return to Boston to answer allegations of sexual misconduct.

Upon Rev. Foley's return to Boston, he was advised that a charge of sexual misconduct had recently been made against him relating to an incident that allegedly occurred approximately 16 years earlier in 1983. Rev. Foley vigorously denied the charge but was advised by the Rev. Charles J. Higgins, Delegate of the Archbishop that it was the policy of the Archdiocese of Boston to accept the accusation. Rev. Higgins advised Rev. Foley that he would be required to immediately undergo a psychological evaluation, to which he agreed.

On or about October 1, 1999 Rev. Foley was advised that it would be necessary to enter a six-month treatment program and that he could do no public ministry. He was informed that a sexual review board, established by the Archdiocese, would recommend further decisions based upon the information that Rev. Higgins provided to them. Rev. Foley continued to deny the charge of sexual misconduct but agreed to enter a six-month inpatient program at Southdown Institute in Ontario Canada. He entered the program on November 1, 1999 and completed the program at the end of April 2000.

²Exhibit I Letter from Rev. Michael J. Sheehan, Archbishop of Santa Fe dated 10/11/1999 to Rev. James Foley c/o Archdiocese of Boston with copy to His Eminence Bernard Cardinal Law.

The discharge evaluation states that "Based on our clinical judgment, he [Rev. Foley] is deemed to be at very minimal risk for ministerial boundary violations." He was never diagnosed as a pedophile or sexual deviant. He acknowledged during the course of therapy that any physical contact with a minor is inappropriate, but has consistently denied that any of the contact was of a sexual nature.

On April 28, 2000 Rev. Foley met with Rev. Higgins who advised him that the sexual review board would meet on May 25, 2000 and reminded him that the Archdiocese of Boston had a 'zero tolerance policy' for all allegations of sexual abuse of minors. Rev. Foley was given no opportunity to appear before the board.³

On or about July 18, 2000 Rev. Foley was advised by Rev. Higgins that he was to commence therapy treatments with Dr. Vincent Lynch, Ph.D. He commenced these therapy sessions, continuing to the present. Dr. Lynch supports Rev. Foley's desire to return to the active ministry and in his letter dated January 3, 2002, Dr. Lynch states:

"Father Foley does not show any evidence of a thought disorder nor does he meet any criteria for the diagnosis of a major mental disorder . . . I see no evidence that Father Foley would pose any type of threat to those whom he might serve in an active ministry. He has a very rich prayer life and maintains a strong desire to return to an active priestly ministry."⁴

On or about October 23, 2000, without seeing any written accusation against him, after being denied the right to meet with his accuser, without any knowledge as to what investigation was done in reference to the charges, without any knowledge of the standard upon which he was judged or by whom he was judged, Rev. Foley was advised "Following the procedures of the Archdiocesan policy [zero

³Violation of Can. 50; Can. 191, sec. 1; Can. 221, sec. 1, 2, 3; Can. 1620, sec. 7.

⁴Exhibit II Letter of Vincent J. Lynch, Ph.D. dated 01/03/2002.

tolerance policy], there is no ministry.” He was further advised “Because of liability and legal problems, there is no possibility of excommunication”.⁵

On or about January 8, 2001 Rev. Foley wrote to His Eminence Bernard Cardinal Law again denying the allegation and the failure of the Archdiocese to provide him with any evidence that the allegation was true and denying him the opportunity to confront or meet with his accuser and to clear his name and reputation.⁶ His request was renewed on March 9, 2001.⁷

On April 11, 2001, Rev. Foley was again advised by Rev. Higgins, Delegate of the Cardinal, that the Archdiocese policy concerning sexual misconduct [zero tolerance policy] restricted him from active ministry and that he could not confront his accuser.⁸

On or about April 19, 2001 Rev. Foley again addressed Rev. Higgins stating his confusion as how an accusation unproven before a Court of Canon Law can result in a removal from active priestly ministry and how a zero tolerance policy can deny Rev. Foley an opportunity to vindicate his reputation and priesthood before a legitimate forum governed by canonical process.⁹

On or about February 8, 2002, Rev. Foley was requested to leave his residence in the Archdiocese and has been unable to obtain residence in the Archdiocese to this date after repeated requests to the Chancery.¹⁰

Rev. Foley remains to this date removed from active ministry under the zero tolerance policy established in the Archdiocese. Cardinal Law or his representative has publicly stated (1) that every priest that he has knowledge of having an accusation of sexual molestation of a minor made in the past 40 years

⁵Exhibit III Zero Tolerance Policy Memorandum dated 10/23/2000. See Footnote 3; also Violation of Can. 87, sec. 1; Can. 193, sec. 1; Can. 271, sec. 1, Can. 391, sec. 1; Can. 1321; Can. 1341; Can. 1324, sec. 1, 3; Can. 1526, sec. 1

⁶Exhibit IV Letter of Rev. Foley dated 01/08/2001.

⁷Exhibit V Letter of Rev. Foley dated 03/09/2001.

⁸Exhibit VI Letter of Rev. Charles Higgins dated 04/11/2001.

⁹Exhibit VII Letter of Rev. Foley 04/19/2001.

¹⁰Violation of Can. 195; Can. 384; Can. 1333, sec. 3, subsec. 2.

against him has been reported to the public authority;¹¹ (2) that no such priest is now holding assignment in the Archdiocese; (3) that even priests deemed by sexual review board **not** to pose a threat have also been removed from ministry in accordance with the zero tolerance policy.

Prayers for Relief

The Petitioner requests that the Holy See determine that:

The removal of Rev. Foley from public ministry is invalid and not in accordance with Church law.¹²

The zero tolerance policy and the sexual review board effectuated by the Archdiocese of Boston is not in accordance with Canon law and therefore any penalty imposed thereby is a nullity.¹³

The zero tolerance policy and the sexual review board established by the Archdiocese of Boston places the burden of proof upon the accused not the one who made the allegations, and therefore is in violation of Canon law and invalid.¹⁴

The zero tolerance policy and sexual review board established by the Archdiocese of Boston is being applied retroactively and ex post facto in violation of Can. 9.

Penalties have been imposed by the Archdiocese of Boston against Rev. Foley without hearing, without facing his accuser, without an opportunity to defend, without juridic determination that he is guilty, without juridic determination that the penalty is appropriate to him in violation of Canon laws.¹⁵

¹¹Exhibit VIII Letter of Rev. Higgins dated 01/31/2002.

¹²Violation of Can. 87, sec. 1; Can. 50; Can. 51; Can. 54, sec. 2; Can. 193, sec. 1; Can. 196, sec. 1; also see Footnotes 4, 6.

¹³Violation of Can. 1620, sec. 7; Can. 1321; Can. 1324, sec. 1 and 3; also see Footnotes 4, 6, 12.

¹⁴Violation of Can. 1526.

¹⁵Violation of Can. 87, sec. 1; Can. 50; Can. 51; Can. 54, sec. 2; Can. 193, sec. 1; Can. 196, sec. 1; Can. 220; Can. 221, sec. 1, 2, 3; Can. 391, sec. 1; Can. 620, sec. 7; Can. 1321; Can. 1324, sec. 1, 3

Rev. Foley has been refused his request to excommunicate in violation of Can. law.¹⁶

Wherefore the Petitioner prays that the Holy See in accordance with the jurisdiction as stated in Can. 1417, Can. 1401, sec. 2 and Can. 1405:

- (1) Accept the jurisdiction of this Libellus and Appeal in accordance with Canon Law and the primacy of the Holy See.
- (2) Appoint a personal advocate or procurator if the tribunal deems it necessary.
- (3) Issue a citation to the Respondent and, upon receipt, decree a Costestatio Litis.
- (4) Suspend any penalty imposed and restore the Petitioner to his residence at St. Patrick Rectory, Natick, Massachusetts USA pending a trial on the merits.^{10, 18}
- (5) Order the Archdiocese to produce to this tribunal and to the Petitioner any and all documents, witness statements, records, communications and all decrees and all materials related in any manner to this case, to Rev. Foley, to the zero tolerance policy and the sexual review board and further order the Archdiocese to submit to further discovery by the Petitioner as the Petitioner deems necessary and order the Archdiocese to produce all witnesses and individuals who have given testimony in the matter or participated in the case in any manner.
- (6) Determine that the imposition of penalties are extinguished by prescription.¹⁷
- (7) Determine that the penalties are suspended during the course of this proceeding.¹⁸
- (8) Order an immediate trial on the issues before this tribunal.
- (9) After hearing, declare the penalties imposed against the Petitioner a nullity and invalid.
- (10) Determine that the Petitioner is not responsible for the charges against him.
- (11) For such other relief as this tribunal deems just and proper.

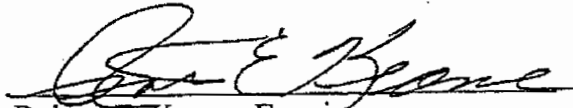
¹⁶Violation of Can. 170; Can. 271.

¹⁷Violation of Can. 1362; Can. 1363.

¹⁸Can. 1353; Can. 1638.

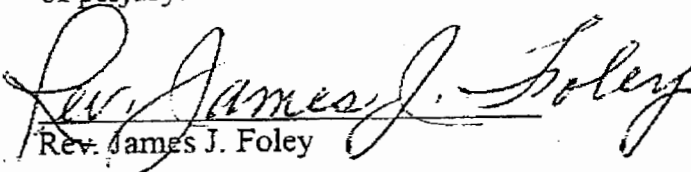
Respectfully submitted,

REV. JAMES J. FOLEY, Petitioner
By his attorney,



Robert E. Keane, Esquire
92 High Street - Suite T32
Medford, MA 02155 USA

Signed under the pains and penalties
of perjury.


Rev. James J. Foley

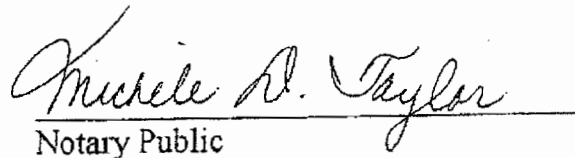
Dated: February 22, 2002

UNITED STATES OF AMERICA
Commonwealth of Massachusetts

County of Middlesex

February 22, 2002

Then personally appeared the above-named Rev. James J. Foley and
declared the foregoing instrument to be true and accurate to the best of his
knowledge and belief, before me


Notary Public

My Commission expires: 11/15/2002