UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

TYLER SMITH, KYLE MOREINO, and JOSEPH SHEPARD,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	**C.A. NO.: 1:25-cv-00272**
RHODE ISLAND DEPARTMENT OF CORRECTIONS, WAYNE SALISBURY, BARRY WEINER, LYNDA AUL, and WILLIAM DEVINE,	:	
Defendants.	:	

PLAINTIFFS' REPLY MEMORANDUM
IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

I. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR RLUIPA CLAIMS

In their opposition memorandum, Defendants do not dispute any of the key facts that establish Plaintiffs' likelihood of success on their RLUIPA claims—that Plaintiffs are Native Americans who have no opportunities to practice their religion by participating in pipe ceremonies, drum circles, smudging ceremonies, sweat lodge ceremonies, and powwows; that Plaintiffs cannot obtain religious items, including medicine bags, feathers, and dreamcatchers; and that Plaintiffs cannot obtain a diet consistent with their religious beliefs. *See* Pls. Mem. at 3-15. Defendants also do not dispute that for over a year Plaintiffs have been asking Defendants for permission to hold these ceremonies, obtain these items, and be provided an appropriate diet. *Id.* at 15-19. Nor do Defendants dispute that RIDOC has denied all of those requests. *Id.* Defendants likewise do not challenge the fact that Plaintiffs can engage in these exercises and obtain these items only with Defendants' permission. *Id.* at 12-13. Defendants also do not challenge the fact that the religious

practices that Plaintiffs have been denied are widely allowed at prisons across the country. *Id.* at 23-27.

These uncontested facts establish that Plaintiffs are substantially likely to prevail on their claims under RLUIPA. Plaintiffs can readily meet their burden of showing, under 42 U.S.C.A. § 2000cc-1, that Defendants have imposed "substantial burdens" on "religious exercises" by refusing Plaintiffs' requests to hold Native American ceremonies and obtain Native American religious items. Given the widespread accommodation at prisons across the country of the religious exercises that Plaintiffs are seeking, Defendants cannot satisfy their burden of showing that denial of these religious practices is the "least restrictive means" to achieve a "compelling governmental purpose." *Id.*

Rather than dispute any of the facts establishing Plaintiffs' likelihood of success on the merits, Defendants make a series of unsupported and unpersuasive arguments. First, Defendants argue (Def. Mem. at 5-6) that this Court should ignore the experiences of other prisons in assessing whether it is possible to accommodate Plaintiffs' religious needs. As discussed in Section A below, that argument directly conflicts with binding Supreme Court and First Circuit caselaw. *Holt v. Hobbs*, 574 U.S. 352, 369 (2015); *Spratt v. RIDOC*, 482 F.3d 33, 42 (1st Cir. 2007). Second, Defendants argue (Def. Mem. at 6-10) that Plaintiffs' requests are "premature" because they have not identified a Native American volunteer spiritual adviser. As discussed in Section B below, that argument is belied both by the facts and the law. Third, Defendants make a series of vague and unsupported arguments that it would undermine RIDOC's safety and security concerns to allow Plaintiffs to hold Native American ceremonies or obtain Native American religious items. As discussed in Section C, Defendants do not show that the accommodations offered by other prisons would be unworkable at the ACI and offer no basis for concluding that they could satisfy what the

Supreme Court has characterized as the "exceptionally demanding standard" established for defendants by RLUIPA. *Holt*, 574 U.S. at 364-365.

A. The Supreme Court, the First Circuit, This Court, and Many Other Courts Have Held that Accommodations Given in Other Prisons Are Relevant in RLUIPA Cases

As Plaintiffs showed in their opening brief, prisons around the country allow Native American prisoners to participate in the religious ceremonies and obtain the religious items that Plaintiffs are seeking here:

- Pipe ceremonies are observed in federal prisons and in at least twenty state prison systems. Pls. Mem. at 28.
- Sweat lodge ceremonies are observed in state prison system across New England, in federal prisons, and in the prison systems of at least eighteen additional states. *Id.* at 32-33.
- Drum circles are observed in federal prisons and in the prison systems operated by at least twelve states. *Id.* at 36.
- Smudging ceremonies are observed in federal prisons and the prison systems of at least nineteen states. *Id.* at 37-38.
- Powwows are held in federal prisons and at least six state prison systems. *Id.* at 39.
- Medicine bags are available in federal prisons and at least twenty-one state prison systems. *Id.* at 41-42.
- Feathers are available to prisoners in federal prisons and at least twenty state prison systems. *Id.* at 44-45.
- Dreamcatchers are available in at least ten state prison systems. *Id.* at 46.

The widespread observance of these religious practices at prisons around the country shows that it is possible to accommodate these practices in prison settings and undermines any claim that such practices cannot be accommodated consistently with prison safety and security.

Defendants argue, however, that this Court should ignore the experiences of other prisons, asserting: "Plaintiffs cannot rely on the policies of other prison systems." Def. Mem. at 5-6. As Plaintiffs showed in their opening brief, courts routinely examine the policies and practices of other prisons in adjudicating RLUIPA cased. As the Supreme Court has declared:

> We do not suggest that RLUIPA requires a prison to grant a particular religious exemption as soon as a few other jurisdictions do so. But when so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course.

Holt v. Hobbs, 574 U.S. 352, 369 (2015). Similarly, in *Spratt v. RIDOC*, 482 F.3d 33, 42 (1st Cir. 2007), the First Circuit addressed a RIDOC policy prohibiting inmates from engaging in religious preaching and declared that the Bureau of Prisons' policy allowing the practice was highly probative: "[I]n the absence of any explanation by RIDOC of significant differences between the ACI and a federal prison that would render the federal policy unworkable, the Federal Bureau of Prisons policy suggests that some form of inmate preaching could be permissible without disturbing prison security." Similar decisions abound in which courts in RLUIPA cases have found it especially significant that other prisons have found ways to accommodate a religious practice at issue.[1]

[1] *See, e.g., Haight v. Thompson*, 763 F.3d 554, 563 (6th Cir. 2014) ("Many other States, it turns out, permit Native American inmates to have access to sweat lodges for religious ceremonies. . . . Yet, for reasons of their own, the prison officials never studied how these accommodations worked and whether they posed serious security risks or whether the prisons found ways to alleviate these risks."); *Native American Council of Tribes v. Weber*, 750 F. 3d 742, 752 (8th Cir. 2014) ("[T]hat other correctional facilities permit inmates to use tobacco for religious purposes supports the existence of less restrictive means of ensuring order and security in prisons."); *Chance*

To be sure, the fact that a religious practice is allowed in one prison does not establish as a matter of law that prison officials lack compelling reasons to refuse to accommodate it. There may be unique factors that prevent prison officials from being able to provide the same accommodations provided in other prisons. As Supreme Court, the First Circuit, and other courts have held, however, when an RLUIPA plaintiff can show that a religious practice is accommodated in other prisons, RLUIPA defendants must provide "persuasive reasons" for not providing accommodation and must show that there are "significant differences" with other prisons that "would render the [accommodation] policy unworkable." *Holt*, 574 U.S at 369; *Spratt*, 482 F.3d at 42; *see also Harris v. Wall*, 217 F. Supp. 3d 541, 556 (D.R.I. 2016) (declaring that RLUIPA defendants "must respond to less restrictive policies used at other prisons brought to their attention during the course of the litigation").

Disregarding binding precedent, Defendants assert that this Court should ignore the experiences of other prisons because "there are more than 500 recognized Native American Tribes in the United States" and "[t]here is no such thing as a generic 'Native American Religion.'" Def. Mem. at 5. That assertion is a non-sequitur. Although there is considerable variation among Native American religious traditions, Plaintiffs seek to engage in religious practices (pipe ceremonies, sweat lodge ceremonies, drum circles, smudging ceremonies, and powwows) that are widely observed among Native American traditions and that have long-established and well-recognized religious elements; similarly, Plaintiffs seek religious items (medicine bags, feathers, and dreamcatchers) that are common to many tribes. Conceivably, the experiences of other prisons would not be applicable here if Plaintiffs were seeking to hold ceremonies and obtain items that

v. Texas Dep't of Crim. Just., 730 F.3d 404, 411 (5th Cir. 2013) ("[P]rison policies from other jurisdictions provide some evidence as to the feasibility of implementing a less restrictive means of achieving prison safety and security.").

are very different from the items and ceremonies that are allowed at other prisons. However, in the Verified Complaint, Plaintiffs described the ceremonies and items that they seek, and these descriptions make clear that the ceremonies and items are the same ones that are widely allowed in other prisons.[2]

Defendants further argue that this Court can ignore the experiences of other prisons because Plaintiffs "provide no evidence tailored to the unique operational, security, and budgetary circumstances of RIDOC." Def. Mem. at 5. Under RLUIPA, however, it is not Plaintiffs' burden to provide such evidence. Instead, Plaintiffs meet their burden by showing that Defendants are preventing them from engaging in specified religious practices and thereby imposing "substantial burdens" on "religious exercises"; Defendants then bear the burden of demonstrating that RIDOC's "operational, security, and budgetary circumstances" establish compelling reasons to foreclose Plaintiffs' opportunities to engage in those religious practices.[3] As RLUIPA thus establishes, Plaintiffs' religious practices must be allowed unless Defendants can demonstrate that there are compelling reasons *not to accommodate* those practices.

Defendants make no attempt to show that they could meet their burden to show that RIDOC faces "unique operational, security, and budgetary circumstances" that foreclose the accommodations provided to Native American religious practices at prisons around the country. Accordingly, Plaintiffs are likely to prevail on their RLUIPA claims.

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2 *See* Smith Decl. ¶ 7; Shepard Decl. ¶ 7; Moreino Decl. ¶ 7.

3 *See Spratt*, 482 F.3d at 38 ("Once a plaintiff has established that his religious exercise has been substantially burdened, the onus shifts to the government to show (3) that the burden furthers a compelling governmental interest and (4) that the burden is the least restrictive means of achieving that compelling interest.").

B. The Fact that Plaintiffs Have Not Identified a Volunteer Religious Leader Has No Bearing on Their RLUIPA Claims

For over a year, Plaintiffs have requested permission to observe Native American religious ceremonies, but Defendants have denied those requests. Pls. Mem. at 13-20. Plaintiffs filed grievances over these denials and exhausted RIDOC's grievance process. *Id.* at 15-20. Accordingly, Plaintiffs' claims over those denials are ripe and are not premature.[4]

Defendants do not dispute that Plaintiffs have exhausted available administrative remedies but they nonetheless argue that Plaintiffs' RLUIPA claims are "premature" because Plaintiffs have not identified a volunteer religious adviser who can lead Native American ceremonies. Def. Mem. at 6-10. Defendants argue that the real reason Plaintiffs cannot practice their religious is Plaintiffs' "own inaction" in failing to identify a volunteer to lead Native American ceremonies and not the fact that Defendants have denied all of Plaintiffs' requests to hold those ceremonies. Def. Mem. at 9. Defendants appear to argue that Plaintiffs' asserted failure to identify a volunteer spiritual advisor is dispositive not only of their claims regarding religious ceremonies, *id.* at 9, but also their claims regarding religious items, *id.* at 25.

For a myriad of reasons, Defendants are wrong that Plaintiffs' RLUIPA claims are "premature" or are in any way affected by the asserted fact that Plaintiffs have not identified a volunteer spiritual adviser to lead the ceremonies in which they seek to participate.

First, it bears emphasis that in denying Plaintiffs' requests to practice their religion, Defendants never reached out to Plaintiffs to discuss any details for how these ceremonies could be conducted, including who could lead them, where they could be held, and under what

[4] *Compare Chambers v. Sood*, 956 F.3d 979, 984 (7th Cir. 2020) (holding that prisoner case was "premature" because it was filed before administrative grievances had been exhausted) *with Davis v. Barrett*, 576 F.3d 129, 132 (2d Cir. 2009) (holding that plaintiff's exhaustion of administrative remedies makes a prisoner's claim ripe).

restrictions and policies they could be held.[5] Defendants never suggested that RIDOC could only consider their request to hold Native American ceremonies if Plaintiffs identified a volunteer spiritual adviser.[6] Second, if Defendants had ever bothered to ask Plaintiffs to discuss their religious needs, Plaintiffs would have informed Defendants that while their religious traditions make it preferable for a Native American Elder to lead these ceremonies, ceremonies may be conducted under the supervision of a RIDOC chaplain or staff until an Elder is identified.[7] Third, even if a Native American spiritual leader were required to lead these ceremonies, it would not justify Defendants' denials of Plaintiffs' requests. Identifying who will lead ceremonies is one of many details that must be worked out to hold Native American ceremonies, along with identifying the kinds of drums, pipes, and smudging materials that can be used, the location of the ceremonies, and so on. Nothing in RLUIPA suggests that prison officials may deny requests for religious accommodations because inmates have not identified and assembled all the necessary elements of a religious exercise from the outset.

1. Defendants Denied Plaintiffs' Requests to Practice Native American Religion and Never Suggested that They Might Provide Accommodations If Plaintiffs Identified a Volunteer Spiritual Leader

In their memorandum to this Court, Defendants take the position that "[i]t is incumbent on Plaintiffs to identify a spiritual advisor," Def. Mem. at 7, and that Plaintiff's asserted failure to identify a spiritual advisor—and not anything Defendants have done—prevents Plaintiffs from being able to practice their religion. *Id*. at 9 (asserting that Plaintiffs' "own inaction" is "the cause of their inability to practice their religion").

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5 *See* Smith Decl. ¶ 6; Shepard Decl. ¶ 6; Moreino Decl. ¶ 6.

6 *See* Smith Decl. ¶ 11; Shepard Decl. ¶ 14; Moreino Decl. ¶ *13.*

7 *See* Smith Decl. ¶ 17; Shepard Decl. ¶ 16; Moreino Decl. ¶ 14.

Defendants' litigation position is news to Plaintiffs. For over a year, Plaintiffs requested permission to hold Native American ceremonies, obtain Native American religious items, and obtain a traditional Native American diet, and Defendants denied those requests. At no point have Defendants ever asked Plaintiffs to identify a spiritual advisor to lead Native American ceremonies. At no point have Defendants ever suggested that RIDOC might accommodate their requests to practice their religion if they identified a spiritual advisor.

Instead, Defendants repeatedly told Plaintiffs that RIDOC was responsible for providing all religious services. In October 2024, Mr. Shepard told the Chaplain that he wanted to contact "the Indian Council and tribe to get a spiritual leader to assist me/us in Native ceremonies and practices," Pls. Exh. 13, p.110, but he was directed instead to get in touch with RIDOC's Office of Rehabilitative Services and was told: "The RIDOC does have a Chaplain who handles all religious needs." *Id.* at pp. 111, 114. Rather than being told that it was incumbent on Plaintiffs to arrange for requested Native American ceremonies, Plaintiffs were told: "The Assistant Director, in consultation with the institutional Chaplains and other appropriate staff, makes reasonable efforts to arrange for the requested services." Exh. 7, p.66. Plaintiffs were also directed to follow RIDOC's policy on religious services, which specifically declares that RIDOC's "institutional chaplains"—not inmates—"are responsible for . . . [r]ecruiting, screening, and orienting prospective volunteers for religious programs and services." Exh. 3, § 2.6(D)(3).

Plaintiffs did just as they were told and reached out to Defendant Weiner, the Assistant Director for Rehabilitative Services. They sent letters to Defendant Weiner's office and repeated their requests to hold Native American ceremonies and obtain Native American items. Pls. Exh. 5, p.56; Exh. 7, p.64. No one from Defendant Weiner's office suggested that Plaintiffs needed to take any additional steps or recruit a volunteer to lead Native American services. Plaintiff Smith

was told that he had properly submitted his request for accommodations and that he had "already followed the above-mentioned steps in the policy." Pls. Exh. 9, p.87. In a letter dated May 21, 2025, the Office of Rehabilitative Services reassured Plaintiff Smith that it was "working to find resources, guidance, and information to move forward with what can be offered." The letter asked for Plaintiff Smith's tribal affiliation and for contact information with the tribe to help RIDOC facilitate Native American religious practices.[8] At no time did the Office ask Plaintiffs to identify who would lead ceremonies, state that it was incumbent on Plaintiffs to identify who would lead ceremonies, or suggest that Plaintiffs' requests could only be approved if Plaintiffs identified from the outset who would lead the ceremonies.[9]

As Plaintiffs have declared, if Defendants had ever requested that they identify a volunteer to lead Native American services or suggested that their requests could be accommodated if they identified a volunteer, Plaintiffs would have made every effort to identify a volunteer spiritual leader. *See* Shepard Decl. ¶¶ 14-15 (identifying Bella Noka as a Narragansett Elder who could lead Native American services and identify other Elders who could lead services); Smith Decl. ¶ 16; Moreino Decl. ¶ 13.

From reading Defendants' memorandum, one could get the impression that Plaintiffs refused to provide RIDOC details about the religious ceremonies and items that they requested and instead demanded that RIDOC furnish everything necessary to fulfill these requests. See, e.g., Def. Mem. at 9-10 (asserting that Plaintiffs refused to provide the name of a religious volunteer and are "demanding that Defendants do it for them"); *id*. at 16 ("Plaintiffs are not offering to cooperate with any degree of flexibility: they do not provide any specifics about how RIDOC could

8 Smith Decl. ¶ 14; Moreino Decl. ¶ 12.

9 Smith Decl. ¶ 10; Shepard Decl. ¶ 10, 14; Moreino Decl. ¶ 13.

accommodate a sweat lodge, they do not concede any sort of limitations on their requests."). This impression is entirely false and bears no resemblance to what happened.

As Plaintiffs' exhibits show, in the year since Plaintiffs requested permission to participate in Native American ceremonies, Defendants have never approached Plaintiffs to discuss any details about Plaintiffs' religious needs.[10] Defendants never requested that Plaintiffs provide additional information about these ceremonies and items, including who could lead the ceremonies; under what restrictions they could be held; what kinds of drums, pipes, smudging materials, and sweat lodge could be used; who would furnish the necessary materials and from what vendors; among many other matters. Defendants never once asked the Plaintiffs to discuss these matters or sought to work out the details about the ceremonies or religious items with the Plaintiffs.

Defendants' failure to discuss any of these matters with Plaintiffs highlights Defendants' refusal to take seriously Plaintiffs' religious needs. It does not in any way make Plaintiffs' requests "premature."

2. An Outside Volunteer Is Not Required to Supervise Native American Ceremonies

Defendants do not argue that RIDOC's policies require that Native American religious ceremonies must be led by outside volunteers. Nor could Defendants make such an argument. RIDOC employs institutional chaplains, who lead Catholic, Protestant, Jewish, and Muslim services.

Instead, Defendants' argue that, *as a religious matter*, Native American traditions require that the ceremonies in which Plaintiffs seek to participate must be led by Native American religious

[10] Smith Decl. ¶ 6; Shepard Decl. ¶ 6; Moreino Decl. ¶ 6.

leaders. *See, e.g.*, Def. Mem. at 6 ("Native American tradition requires that ceremonies be led by one who is of the Native American race."); *id*. at 10 (asserting that having a Native American religious advisor at pipe ceremonies "is a requirement of the Native American religion itself").[11] Defendants' argument is based on their own unsupported assertions about what Plaintiffs' religious traditions require. In making those assertions, it again bears emphasis that Defendants never once discussed Plaintiffs' traditions with Plaintiffs themselves.[12]

Had Defendants ever reached out to Plaintiffs to discuss their religious needs, Plaintiffs would have told them that, in their traditions, it is preferable to have a Native American Elder lead these ceremonies, but it may be possible for these ceremonies to be held under the supervision of a RIDOC chaplain or other RIDOC official if no Elder is available or until a volunteer Native American chaplain can be identified.[13]

In support of their assertion that Native American religious traditions mandate that ceremonies be supervised only by Native Americans, Defendants rely on prison policies (which Defendants otherwise say the Court should ignore), but those policies directly conflict with Defendants' assertions. For instance, the Kentucky Department of Corrections policy cited by Defendants, Def. Mem. at 10, allows smudging and pipe ceremonies to be supervised *either* by "staff *or* a Certified Volunteer." Pls. Exh. 19, p.157. The New Hampshire Department of Corrections similarly provides that Native American religious ceremonies shall be conducted *either* by "NHDOC staff *or* an approved religious volunteer." Pls. Exh. 22, p.182. In the absence

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[11] Defendants mistakenly suggest that "Native American" is a racial designation and that Native American religious ceremonies can be limited by race. That argument finds no support in caselaw. *See Morrison v. Garraghty*, 239 F.3d 648, 659 (4th Cir. 2001); *Brown ex rel. Indigenous Inmates at N.D. State Prison v. Schuetzle*, 368 F. Supp. 2d 1009 (D.N.D. 2005).

[12] Smith Decl. ¶ 6; Shepard Decl. ¶ 6; Moreino Decl. ¶ 6.

[13] Smith Decl. ¶ 17; Shepard Decl. ¶ 16; Moreino Decl. ¶ 14.

of an outside volunteer, services may be led by prisoners under the "supervision of NHDOC staff." *Id*. The Wisconsin Department of Corrections likewise allows institutional chaplains to supervise ceremonies of other faiths, including the Native American ceremonies that Plaintiffs seek.[14]

RIDOC's own policies do not require that religious services must be led by outside volunteers. Instead, RIDOC's regulations provide: "Inmate services and religious programs are scheduled, supervised, and directed by *institutional chaplains* in coordination with facility staff." Pls. Exh. 3, 240 RICR 10-00-2 § 2.6(B) (emphasis added). "Institutional chaplains" are clergy members "who are contract employees of the Department of Corrections and who provide, facilitate and manage religious programs, services, and pastoral care to the inmates, staff, and families." Id. § 2.4(H). Just as RIDOC has chosen to hire Catholic, Jewish, and Muslim chaplains, who lead Catholic, Jewish, and Muslim services, RIDOC could hire a Native American chaplain to lead Native American services. Likewise, RIDOC could choose to make its institutional chaplains available to supervise Native American ceremonies, just as they supervise ceremonies of other faiths. Defendants may refuse to direct institutional chaplains to supervise Native American services only if Defendants could show that the refusal is the least restrictive means to

[14] *See West v. Hoy*, 126 F.4th 567, 571 (7th Cir. 2025) (describing Wisconsin prison policy that "when an outside religious leader or volunteer is not available to come to the prison . . . the Policy encourages WDOC staff to adjust the programming in certain ways, rather than canceling altogether. . . . For instance, the Policy provides that a chaplain or a staff member can oversee the gathering of inmates of a different faith. When performing such a role, the chaplain or staff member can ask certain inmates to perform the various religious functions, such as calling prayer, carrying the pipe, singing in choir, or reading a designated passage, so long as the participants are chosen in a random and equitable manner."); *West v. Carr*, No. 17-CV-335, 2021 WL 4972419, at *5 (W.D. Wis. Oct. 26, 2021) (noting that under Wisconsin policies when a Native American religious leader is unavailable "a DOC Chaplain might supervise a pipe/drum/smudging ceremony"); *id.* at *6 ("If no spiritual leader/clergy, volunteer or Chaplain is available, facility staff shall supervise per guidelines established by the Chaplain/designee.").

achieve a compelling governmental interest, a burden that Defendants have made no attempt to satisfy.

3. Even If an Outside Volunteer Were Required to Lead Native American Ceremonies, It Would Not Justify Defendants' Denials of Plaintiffs' Requests to Hold Those Ceremonies

Even if it were true that Plaintiffs' religious traditions require a Native American religious adviser to lead Native American ceremonies, it would present no basis for Defendants' refusal to approve—or even consider—Plaintiffs' request to hold these ceremonies. Before the requested ceremonies can be held, many operational details must be worked out, including deciding who will lead the ceremonies, identifying and obtaining the specific drums, pipes, and smudging materials that are required, and finding an appropriate location for the ceremonies. Nothing in RLUIPA or any RLUIPA caselaw suggests that Defendants were justified in denying Plaintiffs' requests for religious accommodations on the ground that Plaintiffs did not present a plan that addressed all details for conducting the ceremonies at the time they requested permission to hold the ceremonies. The fact that Plaintiffs have not identified a volunteer to lead the ceremonies presents no more of a basis for Defendants to deny their requests than the fact that Plaintiffs have not already obtained the pipes, drums, and smudging materials that are required to hold these ceremonies. Plaintiffs were not required to assemble everything necessary to hold their requested ceremonies before Defendants could consider approving them.

In a telling but clearly inadvertent misstatement, Defendants assert that "Plaintiffs put the horse before the cart" in requesting permission to hold Native American religious ceremonies without first identifying who would lead the ceremonies. Def. Mem. at 9. In order to pull a load, a horse must indeed be placed *before* the cart. So too were Plaintiffs correct in first requesting permission to hold Native American religious ceremonies and obtain religious items, and they were not required to provide from the outset all of the details about the ceremonies and items that

would be necessary to operationalize their requests. It would be absurd for RIDOC to deny Plaintiffs' request to hold drum circles because Plaintiffs had not already obtained the drums necessary for the ceremony (or identified the specific drums they need). So too is it absurd for Defendants—having never asked Plaintiffs to elaborate on the details of their requests—to declare that these requests are "premature" (Def. Mem. at 10, 13, 17, 21) because Plaintiffs have not first identified who will lead the ceremonies.

Nothing in RLUIPA, federal law, or RIDOC policies required that Plaintiffs furnish at the outset all the details necessary to accommodate their religious practices. Instead, the Prison Litigation Reform Act establishes that prisoners can pursue RLUIPA claims if they exhaust available administrative remedies by following the prison's grievance process. RIDOC's grievance policy do not require that Plaintiffs provide a comprehensive plan for accommodating their religion in order to pursue a grievance. Instead, to pursue an RLUIPA claim Plaintiffs were required to give Defendants sufficient information to alert them to the nature of the problem and the need for accommodation.[15]

Here, Plaintiffs satisfied RLUIPA and RIDOC's own grievance process by notifying Defendants of the nature of their religious needs and requesting accommodations. The fact that Plaintiffs did not furnish all the details for accommodating Native American religious ceremonies establishes no basis for Defendants' ongoing refusal to find ways to make accommodations.

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[15] *See Wilcox v. Brown*, 877 F.3d 161, 167 n.4 (4th Cir. 2017) (grievances must contain sufficient detail to "alert[ ] the prison to the nature of the wrong for which redress is sought" and "give prison officials a fair opportunity to address the alleged [mistreatment]"); *Mack v. Warden Loretto FCI*, 839 F.3d 286, 295 (3d Cir. 2016) (stating that "an inmate's grievance must at least 'alert[ ] the prison to the nature of the wrong for which redress is sought'" because "the primary purpose of a grievance is to alert prison officials to a problem.") (quoting *Jones v. Bock*, 549 U.S. 199, 219 (2007)); *Griffin v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir. 2009) ("[A] grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought.").

4. Defendants Are Wrong in Asserting that They Can Arbitrarily Deny Plaintiffs a Native American Chaplain While Providing Chaplains to Other Religions

Defendants are mistaken in asserting that they "are not required under any constitutional or statutory authority to locate and provide chaplains or spiritual advisors, Native American or otherwise." Def. Mem. at 7. As Plaintiffs recognized in their opening memorandum, RIDOC is not required to provide a paid, full-time chaplain for every faith that may be present in the prison system. Pls. Mem. at 50. However, RIDOC is required to treat all faiths equally, and it cannot arbitrarily provide chaplain services to some faiths while denying those services to others. Here, RIDOC has hired institutional chaplains who provide religious services to prisoners of the Muslim, Jewish, Catholic, Protestant, and other faiths. Inmates of those faiths are not required to find volunteer chaplains to hold religious services and celebrate their religious ceremonies; RIDOC has already done it for them. While prison officials may not be under an obligation to provide *any* chaplains, they cannot arbitrarily provide chaplains to some faiths to facilitate their religious practices, while denying chaplains to others.[16]

The cases cited by Defendants to support the claim that they have no obligation to provide chaplain services to Native Americans do not support that claim. For instance, *Hartman v. California Dept. of Corrections*, 707 F.3d 1114 (9th Cir. 2013), cited by Defendants at Def. Mem.

[16] *See* Rouser v. White, 630 F. Supp. 2d 1165, 1198 (E.D. Cal. 2009) ("Although defendants have tendered evidence that paid chaplains may be necessary for the Protestant, Catholic, Muslim, Jewish, and Native American faiths, they have offered no evidence that paid chaplains are not necessary for inmates of other faiths based on similar considerations."). It is conceivable that RIDOC may have non-arbitrary reasons for hiring paid chaplains for some faiths but not for Native Americans. For instance, in *Smith v. Kyler*, 295 F. App'x 479, 483 (3d Cir. 2008), the Third Circuit affirmed the denial of an RLUIPA claim where prison officials had a policy of providing paid chaplains to inmates of larger faith groups while relying on volunteers for faiths adhered to by few prisoners. Here, however, Defendants have made no attempt to justify the different treatment accorded to some faith groups and the denial of such treatment to Plaintiffs.

7, involved a challenge by a Wiccan prisoner to prison officials' refusal to hire a full-time paid Wiccan chaplain. The Court rejected the RLUIPA claim because it found that the absence of a paid chaplain imposed no burden on plaintiffs' ability to practice the Wiccan religion because California policy "permits staff chaplains of other faiths . . . to assist Wiccan inmates in the practice of their religion, and they admit that they actually receive the assistance of staff chaplains." *Id.* at 1123. That situation is wholly different from the one facing Plaintiffs in this case. RIDOC provides paid chaplains who facilitate the religious services of some faiths but RIDOC has not made its institutional chaplains available to help facilitate Native American services. Unlike the plaintiffs in *Hartman*, who were able to practice their religion with the assistance of state-paid staff chaplains, the Plaintiffs here have no opportunity to engage in any religious ceremonies. Moreover, while *Hartman* rejected the plaintiff's RLUIPA claim, the court nonetheless ruled that it would violate the Establishment Clause for a state to arbitrarily provide paid chaplains for some faiths but not others. *Id.* at 1125-1127. Accordingly, *Hartman* expressly conflicts with Defendants' position that RIDOC may provide chaplains to prisoners of other faiths while refusing to do the same for Native Americans.

C. Plaintiffs Are Substantially Likely to Prevail on Their Claims Regarding Religious Ceremonies

As discussed in their opening memorandum, Plaintiffs requested permission to participate in Native American religious ceremonies—pipe ceremonies, sweat lodge ceremonies, drum circles, smudging ceremonies, and powwows—but Defendants denied those requests. Pls. Mem. at 13-17. Those denials impose "substantial burdens" on "religious exercises," which shifts the burden to Defendants to show that the denials are the "least restrictive means" to achieve a "compelling governmental interest." Plaintiffs are likely to prevail on their RLUIPA claims for

religious ceremonies because prisons around the country accommodate these ceremonies and Defendants cannot show that they have no option but to prohibit them at the ACI.

Defendants repeatedly and mistakenly assert, however, that Plaintiffs are asking this Court to order RIDOC to allow Plaintiffs to hold Native American ceremonies without any restrictions and without any consideration for RIDOC's legitimate safety and security interests. *See* Def. Mem. at 12, 16, 18, 20, 21. That assertion is unfounded. It again bears emphasis that Defendants have never reached out to Plaintiffs to discuss any details about how these ceremonies could be conducted. If Defendants had done so, they would have learned that Plaintiffs are flexible and recognize that RIDOC may impose reasonable restrictions to carry out its legitimate penological interests while also fulfilling its legal obligation to accommodate Plaintiffs' religious needs.[17] Moreover, in their opening memorandum, Plaintiffs cited to dozens of prison policies that impose restrictions for accommodating Native American religious practices in a prison setting, which Plaintiffs stated could serve as models for RIDOC's policies. *See* Pls. Mem. at 53 ("RIDOC does not need to start from scratch in determining how to accommodate Plaintiffs' requests because the policies adopted by prisons around the country provide ready models for RIDOC to adopt.").

In seeking an order requiring that Defendants allow them to practice their religion, Plaintiffs recognize that Defendants are entitled to a reasonable amount of time to comply. That is especially true in cases governed by the Prison Litigation Reform Act, which requires that "[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). Pursuant to that provision, Plaintiffs request that the Court order Defendants to allow them to practice their religion, while giving

[17] See Smith Decl. ¶ 9; Shepard Decl. ¶ 9; Moreino Decl. ¶ 9.

Defendants sufficient time to develop appropriate policies to carry out that order, subject to discussion with Plaintiffs and this Court's oversight.

1. Defendants Cannot Show that Denying Plaintiffs the Opportunity to Participate in Pipe Ceremonies Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Although Plaintiffs have repeatedly requested permission to hold pipe ceremonies, and Defendants have denied those requests, Defendants argue that "Plaintiffs cannot claim that Defendants have denied them the right to participate in Pipe Ceremonies where they have made no effort to find a spiritual advisor that can conduct one." Def. Mem. at 10. That argument is wrong for all the reasons discussed in Part I.B above.

Defendants next assert that Plaintiffs are *religiously ineligible* to hold pipe ceremonies because "Plaintiffs do not allege they are enrolled members of a federally recognized tribe or approved by a tribal authority to possess a spiritual pipe." Def. Mem. at 11-12. In so arguing, it appears that Defendants are asserting authority to determine who is qualified, as a matter of Plaintiffs' religion, to engage in pipe ceremonies, regardless of Plaintiffs' sincere religious beliefs. The words of RLUIPA expressly reject that notion: "The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

Courts have repeatedly held that sincere believers in Native American religious traditions have a right to practice religion, regardless of whether they are enrolled tribal members. For instance, in *Morrison v. Garraghty*, 239 F.3d 648, 659 (4th Cir. 2001), the court held unconstitutional a regulation that conditioned an inmate's religious practice on having "Native American blood" and declared: "[W]e agree with the district court's conclusion that prison officials cannot measure the sincerity of Morrison's religious belief in Native American Spirituality solely by his racial make-up or the lack of his tribal membership." Similarly, in *Brown v. Schuetzle*, 368

F. Supp. 2d 1009 (D.N.D. 2005), the court held that the First Amendment prohibits a prison from adopting a policy that prevents the attendance of non-Native Americans at sweat lodge ceremonies.[18]

Plaintiffs are entitled to injunctive relief because Defendants have provided no compelling reasons for their refusal to allow pipe ceremonies, when such ceremonies are routinely accommodated at other prisons. Defendants are wrong, however, to assert that Plaintiffs now "demand that this Court compel RIDOC to facilitate pipe ceremonies without an advisor, and without any regard to the operational, security, and budgetary circumstances of RIDOC as to where and how they can be properly accommodated." Def. Mem. at 11. As discussed above, Plaintiffs readily concede that many details remain to be worked about how pipe ceremonies can be conducted. In fashioning injunctive relief, Plaintiffs invite the Court to give Defendants adequate time to work out these details, subject to discussion with the Plaintiffs and subject to this Court's review.

2. Defendants Cannot Show that Denying Plaintiffs the Opportunity to Participate in Sweat Lodge Ceremonies Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Defendants do not deny that Plaintiffs requested to participate in sweat lodge ceremonies, that Defendants denied those requests, and that as a result Plaintiffs have no opportunities to participate in sweat lodge ceremonies. Defendants nonetheless make the same argument discussed above: that Plaintiffs' requests to hold sweat lodge ceremonies are "premature" because Plaintiffs have not identified a spiritual leader who can advise RIDOC on how to construct a sweat lodge. Def. Mem. at 13. Defendants apparently hold the view that they were under no obligation to

[18] *See also Mitchell v. Angelone*, 82 F. Supp. 2d 485, 493 (E.D. Va. 1999) (striking down prison policy that allowed only persons of Native American heritage to obtain Native American religious items).

accommodate Plaintiffs' religion until Plaintiffs provided architectural plans and the name of an architect. *Id.* at 14. But that is not what the law says. RLUIPA prohibits RIDOC from imposing substantial burdens on Plaintiffs' religious exercises unless Defendants can show that imposing such burdens is the least restrictive means to achieve a compelling governmental interest. Here, Defendants are imposing substantial burdens on Plaintiffs' free exercise by denying them the opportunity to participate in sweat lodge ceremonies, unlike prison officials at every other prison system in New England and dozens of prison systems around the country, which each have constructed sweat lodges on prison grounds.

Defendants next argue that RLUIPA cannot be read to impose an obligation on them to construct a sweat lodge. In support of that argument, Defendants rely primarily on an unpublished decision, *Baltas v. Erfe*, 2022 WL 4260672, at *12 (D. Conn. Sept. 15, 2022). The problem with Defendants' reliance on *Baltas* is that it is not an RLUIPA case and never mentions RLUIPA. Instead, it addresses a very different legal standard, the standard for qualified immunity under the First Amendment's Free Exercise Clause. As construed by the Supreme Court, the Free Exercise Clause prohibits the government from intentionally burdening religious freedom, but it does not prohibit the government from imposing burdens on religion through neutral rules of general applicability. *See Employment Division v. Smith*, 494 U.S. 872 (1990). In contrast, RLUIPA imposes affirmative obligations on prisons to remove government-imposed burdens on free exercise unless those burdens are necessary to serve compelling interests. RLUIPA expressly declares that compliance "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." 42 U.S.C. § 2000cc-3(c). Construing identical language in the Religious Freedom Restoration Act—which the Supreme Court characterized as RLUIPA's "sister statute"—the Court recognized that this language might require

"the creation of an entirely new program" to overcome burdens placed on religious practice. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014).

Under RLUIPA, Defendants could justify denying sweat lodge ceremonies only if they can demonstrate that the denial is necessary to serve a compelling governmental purpose. Defendants are wrong to suggest that RLUIPA does not require them to take affirmative steps that involve the expenditure of additional costs, the allocation of resources, or inconvenience, when it is necessary to accommodate religion. For instance, under RLUIPA prisons must provide kosher food to observant Jews and halal food to observant Muslims, even though those obligations impose significant financial burdens on prisons. As one circuit court judge explained:

> [I]n prison, the government often burdens religious exercise and violates [RLUIPA] by *not* doing something—by not providing kosher food, or not providing a space for group religious services, or not providing access to a sweat lodge. The federal courts have repeatedly underscored RLUIPA's accommodation requirements. In case after case, courts have recognized a government duty to affirmatively provide religious accommodations, even though these affirmative accommodations might, at times, require the government to expend significant additional resources. This obligation comes straight from RLUIPA's text: "[T]his chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise."

Lozano v. Collier, 98 F.4th 614, 629 (5th Cir. 2024) (Oldham, J., concurring) (internal citations omitted).

To be sure, the amount of resources necessary to accommodate a religious practice may present a compelling basis for a prison's refusal to accommodate it. See, e.g., *Holt v. Hobbs*, 574 U.S. 352, 368 (2015) (recognizing that there may be cases where defendants can establish "a compelling interest in cost control or program administration."). In this case, however, Defendants present no evidence to suggest that, unlike every surrounding state's prison system, RIDOC lacks

the resources necessary to construct a sweat lodge. Even if Defendants could show that it would be cost-prohibitive to construct a sweat lodge at the ACI, there may be other means to accommodate Plaintiffs' religious needs, including transporting Plaintiffs to a sweat lodge or by allowing Plaintiffs to raise a portion of the funds to construct a sweat lodge. Defendants are required to demonstrate that denial of *any* consideration of Plaintiffs' request to participate in sweat lodge ceremonies is the only option available that allows the state to achieve its compelling interests.

Defendants next argue that "it has become clear from Defendants' own preliminary investigation that the existence and use of a sweat lodge presents safety and security concerns, as well as logistical physical plant concerns." Def. Mem. at 14-15. Defendants cannot satisfy their burden under RLUIPA by asserting vague, unsubstantiated, and concededly preliminary "concerns." The "safety and security concerns" identified by Defendants are present at all prisons, and yet dozens of prison systems have found ways to accommodate sweat lodges and sweat lodge ceremonies. Not only do Defendants present no evidence to substantiate their "concerns," Defendants present no evidence to show that the accommodations employed at other prisons would be unworkable in addressing these concerns. As the Supreme Court has explained, "The least-restrictive-means standard is exceptionally demanding, and it requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party." *Holt v. Hobbs*, 574 U.S. 352, 364-365 (2015).

Defendants next assert they cannot accommodate sweat lodge ceremonies at the ACI because the only possible space to construct a sweat lodge is currently used as a recreation field for soccer and softball. Def. Mem. at 15. Unlike their other unsubstantiated concerns, Defendants submit *some* evidence to back this one up: a single sentence in an affidavit by Geoff Weston,

RIDOC's Deputy Chief for the Division of Facility Management, in which Mr. Weston declares: "Given the size of the sweat lodge and the space restrictions at the ACI, there is only one outdoor location that could accommodate the sweat lodge at the medium security facility of the ACI: the current field used by inmates for baseball and soccer." Def. Exh. B. ¶ 7. That single sentence is insufficient, however, to satisfy Defendants' burden of showing that the denial of all opportunities to participate in sweat lodge ceremonies is the only available option. As the First Circuit has explained: "[T]o meet the least restrictive means test, prison administrators generally ought to explore at least some alternatives, and their rejection should generally be accompanied by some measure of explanation." *Spratt*, 482 F.3d at 41 n.11; *see also Couch v. Jabe*, 679 F.3d 197, 203 (4th Cir. 2012) ("[T]he government, in the RLUIPA context, cannot meet its burden to prove least restrictive means unless it demonstrates that it has actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice.").

Trapp v. Roden, 41 N.E.3d 1 (Mass. 2015), illustrates the "exceptionally demanding" standard that RLUIPA imposes on prison officials. In *Trapp*, state prison officials closed a sweat lodge after smoke from the lodge entered prison buildings, assertedly causing distress to asthmatic prisoners and prison staff. Although the state presented witnesses who testified that smoke from the sweat lodge entered the buildings, the Massachusetts Supreme Judicial Council found this evidence insufficient because the state failed to demonstrate that the smoke caused serious health problems: "Prison officials may not 'declare a compelling governmental interest by fiat.'" *Id*. at 217 (quoting *Yellowbear v. Lampert*, 741 F.3d 48, 59 (10th Cir. 2014)). Even if the evidence had established that smoke from the sweat lodge posed a health risk, the Court found, the state had failed to show that it had exhausted alternative means of addressing it. Defendants submitted evidence that they had tried to find another location for the sweat lodge by conducting tests in

which they set fires at different locations on the prison grounds, but smoke from the fires still entered prison buildings. *Id.* at 218. As the Court ruled, these tests were insufficient to meet the state's burden because it failed to "consider whether it could filter the air within the facility, or whether it could disperse the air outside to prevent smoke from entering the facility." *Id.* at 218.

As *Trapp v. Roden* illustrates, Defendants have not met their burden of establishing that they have no option but to deny Plaintiffs' requests for sweat lodge ceremonies. Defendants have not conducted a comprehensive study of available space at the ACI; instead, they offer a single sentence in a declaration by a RIDOC official. Moreover, in reaching his conclusion, Mr. Weston relied on the size of a sweat lodge he toured in Massachusetts, but Defendants present no evidence to suggest that they have explored whether Plaintiffs need a sweat lodge of the same size or whether it might be possible to construct a portable sweat lodge. *See Haight v. Thompson*, 763 F.3d 554, 564 (6th Cir. 2014) (discussing these options). Even if Mr. Weston were correct that a sweat lodge could not be constructed at the Medium Security Facility, Defendants have not explored whether it would be feasible to construct a sweat lodge on RIDOC property outside the facility. *See Yellowbear*, 741 F.3d at 59 (Gorsuch, J.) (holding that RLUIPA may require prison officials to transport a prisoner from one facility to another to attend a sweat lodge ceremony).

Defendants next argue that they cannot accommodate Plaintiffs' request to hold sweat lodge ceremonies because "Plaintiffs are not offering to cooperate with any degree of flexibility: they do not provide any specifics about how RIDOC could accommodate a sweat lodge, they do not concede any sort of limitations on their requests." Def. Mem. at 16. That argument bears no resemblance to the facts. Plaintiffs simply requested permission to hold sweat lodge ceremonies, and Defendants ignored those requests and then denied Plaintiffs' grievances over them. Defendants never approached Plaintiffs to discuss any specifics about how RIDOC could

accommodate their request or what restriction they could accept that would be consistent with their religious needs.[19] Defendants cannot blame Plaintiffs for failing to provide a detailed sweat lodge plan when Defendants ignored Plaintiffs' request and never asked Plaintiffs to discuss it. Had Defendants sought to discuss it with Plaintiffs, they would have learned that Plaintiffs are flexible and recognize RIDOC's authority to impose reasonable regulations and limitations on religious practices that are necessary for it to carry out its penological mission.[20]

In short, Plaintiffs have never requested to be allowed to practice their religion without limitation. Nor have they asked this Court to order RIDOC to allow them to do so. Instead, they ask for an order requiring RIDOC to allow Plaintiffs to practice their religion, including through sweat lodge ceremonies. As discussed above, Plaintiffs readily concede that Defendants are entitled to a reasonable amount of time to work out the details of how to comply with the injunctive relief they are seeking, subject to discussion with Plaintiffs and oversight by this Court.

3. Defendants Cannot Show that Denying Plaintiffs the Opportunity to Participate in Drum Circles Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Defendants do not dispute the fact that Plaintiffs requested permission to hold drum circles, that Defendants denied those requests, and that as a result Plaintiffs cannot hold drum circles. Defendants likewise do not deny that drum circles are routinely allowed in other prisons. Repeating the argument addressed above, however, Defendants argue that Plaintiffs' request to hold drum circles is "premature" because Plaintiffs have not identified a spiritual leader who can lead drum circles. As discussed above, that argument is specious for numerous reasons. Defendants denied Plaintiffs' requests to hold drum circles without asking for any additional information, including

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19 Smith Decl. ¶ 6; Shepard Decl. ¶ 6; Moreino Decl. ¶ 6.

20 Smith Decl. ¶ 9; Shepard Decl. ¶ 9; Moreino Decl. ¶ 9.

who would lead them. Defendants cannot rely on their failure to seek additional information as a basis for their ongoing refusal to accommodate Plaintiffs' religion. Moreover, drum circles could be supervised by RIDOC staff if no volunteer Native American spiritual adviser is available. *See, e.g.*, *West v. Carr*, No. 17-CV-335-WMC, 2021 WL 4972419, at *5 (W.D. Wis. Oct. 26, 2021) ("[A] DOC Chaplain might supervise a pipe/drum/smudging ceremony").

4. Defendants Cannot Show that Denying Plaintiffs the Opportunity to Participate in Smudging Ceremonies Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Plaintiffs can meet their burden under RLUIPA because they requested permission to hold smudging ceremonies and Defendants denied those requests. The burden therefore shifts to Defendants, who must show that the denial is necessary to achieve a compelling interest, but Defendants make little attempt to do so. Pointing to the policies of other prison systems, Defendants argue that they "cannot facilitate Smudging Ceremonies without a spiritual advisor." Def. Mem. at 18. That assertion is undermined by the very policies that Defendants cite. Defendants cite to Kentucky's policies on smudging, but those policies allow smudging to be conducted "with direct supervision from staff." *Id*. Defendants likewise rely on *Cryer v. Massachusetts Dep't of Correction*, 763 F. Supp. 2d 237, 250 (D. Mass. 2011), but *Cryer* makes clear that Massachusetts prison staff—and not solely outside volunteers—supervise smudging ceremonies. The same is true in Wisconsin. *See also West v. Carr*, No. 17-CV-335-WMC, 2021 WL 4972419, at *5 (W.D. Wis. Oct. 26, 2021) ("[A] DOC Chaplain might supervise a pipe/drum/smudging ceremony").

In any event, Defendants cannot defend their decision to ignore Plaintiffs' requests to hold smudging ceremonies on the ground that Plaintiffs did not provide all the details necessary to hold smudging ceremonies—what materials they would use, where they would be stored, the frequency of ceremonies, and who would lead them—when Defendants never sought such information.

Under RLUIPA, Defendants are under an obligation to accommodate Plaintiffs' religion and must find means to do so unless the denial is the least restrictive means to achieve a compelling governmental interest.

5. Defendants Cannot Show that Denying Plaintiffs the Opportunity to Participate in Powwows Ceremonies Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Defendants do not dispute the fact that that Plaintiffs requested permission to hold an annual powwow, that RIDOC denied that request, and that Plaintiffs have no opportunities to hold a powwow. Def. Mem. at 20-21. Repeating the same argument addressed above, however, Defendants argue that RIDOC had no obligation to accommodate Plaintiffs' request, or even to consider it, because Plaintiffs did not identify a spiritual leader who could advise RIDOC on how to accommodate powwows. *Id*. at 21. As discussed above, Defendants simply denied Plaintiffs' requests without ever seeking any information from Plaintiffs about their religious needs. Having denied Plaintiffs' requests without seeking additional information, Defendants cannot now justify the denial by asserting that Plaintiffs failed to provide detailed information.

Defendants next argue that Plaintiffs' motion is "speculative" because Plaintiffs "do not identify any sort of impending holiday, event or purpose for which their religious exercise will be burdened." *Id*. at 21. While it is true that Plaintiffs have not identified specific dates for a powwow, that is because Defendants never asked them for any information about the powwow they are seeking. Had Defendants sought any such information from Plaintiffs, they would have learned that Native Americans typically hold powwows on various Native American days of celebration, including the start of each season and the corn harvest festival. See Pls. Exh. 17, pp. 143-144; *see also* United Indians of All Tribes Foundation, *All of Your Powwow Questions Answered*, https://unitedindians.org/frequently-asked-questions-2/. Had Defendants ever asked Plaintiffs to discuss their request to hold a powwow, they would have learned that there is considerable

flexibility in Plaintiffs' traditions about the details of a powwow and that Plaintiffs remain eager to work with Defendants to find ways to celebrate their traditions, consistent with Defendants' reasonable interests and Plaintiffs' religious needs.[21]

Defendants' refusal to pursue any accommodation means that Plaintiffs have no opportunities to hold an annual powwow, which causes Plaintiff ongoing harms. Plaintiffs' continuing inability to practice their religion can hardly be described as "speculative."

D. Plaintiffs Are Substantially Likely to Prevail on Their Claims Regarding Religious Items

As discussed in their opening memorandum, Plaintiffs requested permission to obtain items that are widely recognized as religious items in Native American traditions—medicine bags, feathers, and dreamcatchers, but Defendants denied those requests. Pls. Mem. at 13-16. Those denials impose "substantial burdens" on a "religious exercise," which shifts the burden to Defendants to show that the denials are the "least restrictive means" to achieve a "compelling governmental interest." Each of the items Plaintiffs seeks is widely available at other prisons, and Defendants cannot show that they have no option but to prohibit them at the ACI. Accordingly, Plaintiffs are likely to prevail on their RLUIPA claims regarding religious items.

1. Defendants Cannot Show that Denying Plaintiffs the Opportunities to Obtain Medicine Bags Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Plaintiffs requested permission to obtain medicine bags, a traditional Native American religious item that is available in prisons throughout the United States. Pls. Exhs. 5, 6, 11, 13. In their opening memorandum, Plaintiffs provided many examples of regulations and limitations that prisons have adopted to accommodate the possession and use of medicine bags. See e.g., Exhs. 18,

[21] *See* Smith Decl. ¶ 9; Shepard Decl. ¶ 9; Moreino Decl. ¶ 9.

19, 20, 21, 24, 25, 28. As Plaintiffs explained, these policies seek to ensure that prisoners can possess medicine bags without jeopardizing prison safety by imposing reasonable restrictions on the size of medicine bags, the materials they can be made of, where on a prisoner's body they can be worn, and how they can be inspected. Pls.' Mem. at 41-42.

Defendants make no attempt to show that policies adopted at other prisons for accommodating medicine bags would be unworkable at the ACI. Ignoring Plaintiffs' actual argument, Defendants instead assert: "Plaintiffs fail to acknowledge the potential danger of unregulated, unapproved medicine bags, and demand they be allowed to bypass safety protocol and regulations, despite the well-established safety procedures and requirements documented in their cited exhibits." Def. Mem. at 21. But Plaintiffs' memorandum expressly acknowledged that prison officials have adopted reasonable restrictions to address safety concerns raised by allowing medicine bags.[22]

Defendants next assert that Plaintiffs' claims for religious items are "premature" because Plaintiffs assertedly "did not give the state the necessary time to develop and approve procedural requirements and staff training that respect the cultural items they seek." *Id*. It is hard to know what to make of this argument, considering that Defendants never suggested to Plaintiffs that they needed additional time to develop policies for accommodating Plaintiffs' requests but instead ignored Plaintiffs' requests and then denied their grievances over them. Even if Defendants had requested additional time, Plaintiffs' claims would still be ripe and not premature because Defendants' denials of Plaintiffs' requests for religious items imposes ongoing harm on Plaintiffs. In any event, as discussed above, Plaintiffs recognize that RIDOC may need a reasonable amount

[22] Months before filing the Complaint, Plaintiffs' counsel sent Defendants' counsel examples of prison policies that have been adopted to accommodate medicine bags in prisons and urged RIDOC to adopt similar policies.

of time to comply with the injunctive relief they are requesting to develop appropriate policies for accommodating their religious needs, subject to discussion with Plaintiffs and oversight by this Court.

2. Defendants Cannot Show that Denying Plaintiffs the Opportunity to Obtain Feathers Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Plaintiffs requested permission to obtain feathers, a recognized religious object in many Native American traditions, which are available to incarcerated Native Americans at prisons around the country, but Defendants denied those requests. Pls. Mem. at 15-16. Under RLUIPA, it therefore falls on Defendants to justify those denials under RLUIPA's strict scrutiny standard.

Rather than providing any justification for the denial of Plaintiffs' requests, Defendants declare that Plaintiffs are seeking "eagle feathers" and assert that Plaintiffs "lack standing" to seek them because they are not members of federally recognized tribes. Def. Mem. at 22-24. While Defendants are correct that federal law generally restricts possession of eagle feathers to enrolled members of federally recognized tribes, Plaintiffs never requested eagle feathers. Instead, they sought permission to obtain "feathers" and other Native American items. See Exhs. 5, 6, 11, 13. As shown in the exhibits submitted in support of Plaintiffs' opening memorandum, prisons around the country routinely allow prisoners who practice Native American religions to obtain feathers, including turkey, duck, and goose feathers, whether or not they are members of federally recognized tribes.[23]

[23] *See e.g.*, Pls. Exh. 17, p. 151 (stating that under Indiana policies prisoners may obtain duck, goose, quail, pheasant, and turkey feathers without a federal permit, but eagle feathers and migratory bird feathers may only be obtained with a federal permit); Pls. Exh. 24, p. 203 (catalog of religious items available to Pennsylvania inmates, including turkey feathers); Pls. Exh. 36 (providing that inmates following Native American religions are entitled to 12 feathers, but only members of federally recognized tribes may obtain eagle feathers).

Plaintiffs are entitled to injunctive relief because Defendants present no basis why Plaintiffs should be denied religious objects that are widely allowed at prisons around the country.

3. Defendants Cannot Show that Denying Plaintiffs the Opportunity to Obtain Dreamcatchers Is the Least Restrictive Means to Accomplish a Compelling Governmental Interest

Plaintiffs requested to obtain dreamcatchers, but Defendants denied those requests without explanation. Pls. Mem. at 15-16. Defendants now assert that they could not approve the request for dreamcatchers because Plaintiffs did not identify a Native American volunteer who could advise RIDOC: "A Native American spiritual adviser, or at the very least a tribal representative, could help direct RIDOC as to where they could procure dream catchers to provide to inmates for purchase that complies with the requirements of the individual tribal affiliations of Native American inmates at the ACI." Def. Mem. at 26. That argument is specious. RIDOC does not need a Native American spiritual adviser to find out what kind of dreamcatchers Plaintiffs are seeking. Defendants could easily have asked Plaintiffs for information about the kind of dreamcatchers they are seeking but they never did. Had they reached out to Plaintiffs, Defendants would have learned that Plaintiffs seek the same type of dreamcatchers that are widely available at many prisons and that can be obtained from many vendors.[24] Defendants present no justification for their ongoing denial of dreamcatchers to Plaintiffs.

Defendants also mistakenly assert that "Plaintiffs fail to acknowledge the potential danger of unregulated, unapproved dreamcatchers, and demand they be allowed to bypass safety protocol and regulations, despite the well-established safety procedures and requirements documented in their cited exhibits." Def. Mem. at 26. However, Plaintiffs have recognized that accommodating religious practices in a prison setting can involve accepting reasonable restrictions to ensure prison

[24] *See* Smith Decl. ¶¶ 7-8; Shepard Decl. ¶¶ 7-8; Moreino Decl. ¶¶ 7-8.

safety and security. As discussed above, Plaintiffs invite the Court to give Defendants sufficient time to adopt reasonable policies for obtaining and possessing dreamcatchers that will accommodate Plaintiffs' religious needs while also addressing safety and security concerns.

E. Plaintiffs Are Substantially Likely to Prevail on Their Claims Regarding a Religious Diet

Plaintiffs' traditions teach that food provides a connection to the ancestral world, the natural world, and the spirit world. Verified Complaint ¶ 70. Plaintiffs requested that RIDOC accommodate a diet that is consistent with their traditions, in which Plaintiffs seek to eat food that is native to the New England area, such as squash, corn, beans, and animal and seafood that are typical of the region. Pls. Exhs. 10, 12, 14.

Defendants respond by questioning Plaintiffs' sincerity. Citing the same prison policies that they argue this Court should ignore, Defendants assert that "Native Americans have no specific diet" and accuse Plaintiffs of making "fraudulent assertions of faith." Def. Mem. at 27, 28. To be sure, Defendants are correct there is no specific diet shared by all Native Americans, but that fact is irrelevant to Plaintiffs' RLUIPA claims. It is well-established that the diet that Plaintiffs seek is traditional to Native Americans of the New England region.[25] The prison policies that Defendants cite make clear that Native Americans have specific teachings about the spiritual value of food. As the Departments of Corrections for Indiana, Massachusetts, and Washington all state, Native Americans traditions teach that "the eating of healthy and nutritional food is a necessary part of the total sacredness of life." ECF 2-2, Pl's Ex. 17 p. 146, Pl's Ex. 20 p. 171, Pl's Ex. 29 at

[25] Although citing to Wikipedia is generally frowned upon, the following entry provides a useful summary and history of the traditional diet of Native Americans of New England: https://en.wikipedia.org/wiki/Southern_New_England_Algonquian_cuisine/

p. 252. Many prison systems accommodate Native American dietary needs by providing specific traditional foods on holidays, feast days, and other special occasions.[26]

Even if Defendants were correct that Plaintiffs' religious traditions do not specify a particular diet, that fact would be irrelevant under RLUIPA, which requires that prisons and courts focus on the beliefs and practices of the individual plaintiffs, not the religious group to which plaintiffs belong. Under RLUIPA, a plaintiff satisfies his burden by showing that he seeks to engage in a religious exercise arising out of his sincere religious beliefs, and it does not matter whether the plaintiff's beliefs are part of an established religious tradition or if his beliefs are inconsistent with the prevailing views of his religious traditions. *See, e.g., Holt v. Hobbs*, 574 U.S. 352, 362 (2015) ("Petitioner's belief is by no means idiosyncratic . . . But even if it were, the protection of RLUIPA, no less than the guarantee of the Free Exercise Clause, is 'not limited to beliefs which are shared by all of the members of a religious sect'"); *Thomas v. Rev. Bd. of Indiana*, 450 U.S. 707, 715-16 (1981) ("Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.").

Defendants next seem to argue that they have satisfied their obligation under RLUIPA by offering Plaintiffs a choice of vegetarian or kosher food. Def. Mem. at 28-29. But Defendants offer

[26] See, e.g., Pls. Exh. 1 p. 20 (BOP) ("A feast of traditional, familiar foods (such as fry bread, corn pemmican, and buffalo meat) is seen as central to [the powwow]."); Exh. 27 p. 234 (Maryland) ("Buffalo meat or venison is desirable as the main food attraction for ceremonial meals, held during solstice celebrations and for other occasions. Other traditional foods include various vegetable dishes, in season."); Exh. 29 p. 251 (Washington) ("Fry bread is provided at each Native American Change of Season."); Exh. 31 p. 268 (Wisc.) ("Ceremonial food items - may be consumed by participants as part of ceremony. Shelf-stable food products (e.g. dried corn, dried berries, dried meat, nuts) in vendor-sealed, clear plastic package(s).").

no basis for concluding that those options are in any way consistent with the traditional diet of Native Americans of New England that Plaintiffs have requested. Nor do Defendants provide an explanation for why they could not explore ordering food from a vendor, such as Tocabe, https://shoptocabe.com/, which makes packaged Native American foods, akin to the kosher and hallal trays that RIDOC purchases for Jewish and Muslim prisoners.[27]

Defendants next argue that Plaintiffs must be insincere in seeking a diet arising out of their New England Native American traditions because—gasp!—Plaintiffs' commissary records show that they have ordered junk food (e.g., Oreos, Doritos, and Fritos). Def. Mem. at 31. Defendants do not claim that the commissary provides any options for foods that would meet Plaintiffs' requests for a religiously appropriate diet. The fact that Plaintiffs have eaten the foods that Defendants make available to them does not undermine their sincerity in seeking a diet that Defendants have denied to them.[28] Moreover, religious practitioners do not forgo RLUIPA's protections if they occasionally fail to live up to their religion's teachings.[29]

Finally, Defendants make vague assertions that accommodating Plaintiffs' request for a religious diet could create a "challenge . . . to legitimate penological interests—that is, effective

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[27] Plaintiff Smith suggested that RIDOC explore ordering Native American meals through Tocabe, Pls. Exh. 10 p.97, but Defendants never responded to that suggestion.

[28] *See Borkholder v. Lemmon*, 983 F. Supp. 2d 1013, 1018 (N.D. Ind. 2013) (rejecting the argument that a prisoner's commissary purchase of chicken-flavored ramen showed that his request for a vegetarian diet was insincere when the commissary did not make available a vegetarian ramen option); *Cotton v. Cate*, No. C 09-0385, 2010 WL 2867099, at *3 (N.D. Cal. July 20, 2010) ("[P]laintiff's willingness to eat fish 'if he has to' is not an admission that he does not have a sincere religious belief in the need for a vegan diet.").

[29] See *Reed v. Faulkner*, 842 F.2d 960, 963 (7th Cir. 1988) ("[T]he fact that a person does not adhere steadfastly to every tenet of his faith does not mark him as insincere. . . . It would be bizarre for prisons to undertake in effect to promote strict orthodoxy, by forfeiting the religious rights of any inmate observed backsliding, thus placing guards and fellow inmates in the role of religious police.").

allocation of [RIDOC's] finite resources." Def. Mem. at 28. Under RLUIPA, a lack of resources might well constitute a compelling governmental interest, but to deny Plaintiffs the ability to engage in a religious practice a state defendant must do more than merely articulate an interest in preserving the state's finite resources. It must demonstrate that "it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion." *Holt*, 574 U.S. at 364-65. Defendants' vague and unsupported assertion that the state has limited resources does not satisfy that standard.

Accordingly, this Court should grant Plaintiffs' request for a preliminary injunction because Plaintiffs are substantially likely to prevail on their claim that Defendants are in violation of RLUIPA through their ongoing denial of an accommodation to Plaintiffs' request for a traditional Native American diet.

II. DEFENDANTS' DENIALS OF PLAINTIFFS' REQUESTS TO PRACTICE THEIR RELIGION IMPOSES ONGOING IRREPARABLE HARM

As a result of Defendants' actions, Plaintiffs are, and have been, unable to hold any Native American ceremonies, obtain Native American religious items, or eat a diet consistent with their religious traditions. The wholesale denial of all ability to practice their religion is longstanding, ongoing, and affects Plaintiffs every moment of every day. See Verified Complaint ¶ 86 ("The denial of ability to engage in the religious practices of his religious traditions inhibits Plaintiff Smith's rehabilitative process. These practices serve as a grounding and healing force in his life. Without them, he feels that he is surrounded by negative energy, causing him daily distress."); *id.* ¶ 87 (declaring that Plaintiff Shepard "experiences regular panic attacks, and his spirituality provides him with a calming and grounding feeling which aids and relieves his anxiety. Without any religious services or means to practice his faith, he experiences daily distress.").

It is well-established that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). As courts have uniformly held, "This principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms, and the statute requires courts to construe it broadly to protect religious exercise."[30] Adhering to these cases, Judge William Smith of this Court declared that "the loss of religious freedom caused by an RLUIPA violation—standing alone—is sufficient to show irreparable harm." *Harris v. Wall*, 217 F. Supp. 3d 541, 560 (D.R.I. 2016).

Defendants assert, however, that Plaintiffs have not demonstrated irreparable harm because "[t]he scope and immediacy of irreparable injury in this case is unclear." Def. Mem. at 32. In support of that assertion, Defendants rely on their much-belabored point that Plaintiffs cannot perform their requested ceremonies without a spiritual adviser. *Id.* As discussed above, that argument is a non-sequitur. Plaintiffs readily concede that to hold Native American ceremonies and obtain Native American religious items, additional steps must be taken. Pipes, tobacco, drums, a sweat lodge, and smudging materials must each be procured. Adequate space must be identified where ceremonies can be held, and a leader must be identified to conduct the ceremonies.

The fact that additional steps must be taken before Plaintiffs can hold Native American ceremonies does not speak to whether Defendants' refusal to allow Plaintiffs to hold those ceremonies is causing Plaintiffs ongoing irreparable harm. Not only have Plaintiffs submitted sworn statements that they are experiencing daily distress due to the lack of opportunities to

[30] *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012); *Green Haven Prison Preparative Meeting of Religious Soc'y of Friends v. New York State Dep't of Corr. & Cmty. Supervision*, 16 F.4th 67, 80 (2d Cir. 2021).

practice their religion, caselaw firmly establishes that the denial of opportunities to practice religion amounts to irreparable harm.

Illustrative of this issue are RLUIPA cases outside the prison context that address municipal denials of permits to construct churches and other houses of worship. Applying RLUIPA, courts have not hesitated to declare that a city's denial of a permit to construct a church can impose irreparable harm justifying immediate injunctive relief.[31] When a municipal permit is necessary for a church to be built, the denial of the permit imposes irreparable harm even though many steps remain to be taken after a permit is granted before any religious exercises can be held in the church—an architect must develop plans, construction materials must be obtained, and the church must be built. Despite the need to take additional steps to hold any church services, the harm from a permit denial is ongoing. As one court put it: "[E]very day the Church cannot use the property it bought for religious purposes prevents it from engaging in 'religious exercise' in Congress's eyes." *Christian Fellowship Centers v. Vill. of Canton*, 377 F. Supp. 3d 146, 166 (N.D.N.Y. 2019).

The same principle applies here: Plaintiffs need Defendants' permission to hold Native American religious ceremonies and obtain religious items but Defendants have denied that permission. Defendants' denials cause Plaintiffs ongoing irreparable harm, notwithstanding the fact that additional steps must be taken before Native American religious ceremonies can be held and Native American religious items can be procured. A preliminary injunction is warranted to require that Defendants grant Plaintiffs permission to engage in these religious exercises, to allow

[31] *See, e.g., Opulent Life Church*, 697 F.3d at 295; *Anchor Stone Christian Church v. City of Santa Ana*, 777 F. Supp. 3d 1126, 1154 (C.D. Cal. 2025); *Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 584 F. Supp. 2d 766, 795 (D. Md. 2008), *aff'd*, 368 F. App'x 370 (4th Cir. 2010).

the remaining steps to commence, and to end Defendants' denial of all opportunities for Plaintiffs to practice their religion.

III. THE BALANCE OF HARDSHIPS FAVORS A PRELIMINARY INJUNCTION

As discussed in Plaintiffs' opening memorandum, the balance of hardships favors the issuance of preliminary injunctive relief. Pls. Mem. at 52-53. Plaintiffs face irreparable harm from the denial of all opportunity to practice their religion, while a preliminary injunction would impose no more hardship on Defendants than is borne by prisons around the country in accommodating Native American religious practices. Defendants argue, however, that "the hardship Plaintiffs allegedly face in the absence of their requested religious accommodations must be weighed against the operational burden of compelling RIDOC to immediately construct or modify facilities, adopt untested policies, and implement a complex religious accommodation program." Def. Mem. at 33. Given Defendants' refusal to accommodate *any* Native American religious practices, a comprehensive program to do so is exactly what is required. Having neglected for years to fulfill their obligations to accommodate the religious needs of Native Americans, Defendants cannot now complain that it would impose significant hardships on them to adopt a program of accommodation.

Although Defendants must adopt a comprehensive program of accommodation, the injunctive relief sought by Plaintiffs would not require that they "immediately construct or modify facilities, adopt untested policies, and implement a complex religious accommodation program." As Plaintiffs emphasize, they invite the Court, in granting injunctive relief, to provide Defendants a reasonable amount of time to adopt policies, subject to discussion with Plaintiffs and review by this Court, that allow Plaintiffs to practice their religion while also allowing Defendants to carry out RIDOC's penological mission.

IV. THE PUBLIC INTEREST FAVORS A PRELIMINARY INJUNCTION

As discussed in Plaintiffs' opening memorandum, courts have recognized that "[i]njunctions protecting First Amendment freedoms are always in the public interest," a principle that applies equally to RLUIPA.[32] Defendants assert, however, that injunctive relief should be withheld out of deference to Defendants' interests in ensuring the "orderly administration of Rhode Island's prisons." Def. Mem. at 34. In particular, Defendants argue that granting injunctive relief would undermine "the legitimate interests of the State in creating durable, enforceable solutions without ensuring that substantial changes to security and operations are carefully vetted." Id. at 35. But Defendants have not committed to providing any "enforceable solutions" to accommodate Plaintiffs' religious practices. While their memorandum makes vague assertions that they are looking for solutions, Defendants fail to concede that they have any legal obligation to accommodate Plaintiffs' religious needs .

In light of Defendants' continued refusal to commit to accommodating Plaintiffs' religious practices, injunctive relief is necessary to protect Plaintiffs' right to practice religion. At the same time, the injunctive relief sought by Plaintiffs would not undermine the State's interest in the orderly operation of Rhode Island prisons. Instead, Plaintiffs seek an order requiring that Defendants allow Plaintiffs to engage in their requested religious ceremonies, obtain their requested religious items, and obtain a diet consistent with their religious traditions, while also giving Defendants sufficient time to adopt reasonable policies consistent with RIDOC's penological interest. As Plaintiffs have shown, they are asking for accommodations that are

[32] *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 298 (5th Cir. 2012); *see also Harris v. Wall*, 217 F. Supp. 3d 541, 560 (D.R.I. 2016) (recognizing that "protection of religious practice is an important public interest" and that in weighing injunctive relief "the public interest in protecting religious practice predominates").

routinely provided in other prisons, whose policies provide ready models for accommodating Native American religious practices without sacrificing prison safety and security.

CONCLUSION

For the reasons discussed above and in their opening memorandum, Plaintiffs request that this Court grant their motion for a preliminary injunction.

Respectfully submitted,

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