

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

<b>TYLER SMITH, KYLE MOREINO, and JOSEPH SHEPARD,</b>	:	
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	
	:	
<b>RHODE ISLAND DEPARTMENT OF CORRECTIONS, WAYNE SALISBURY, BARRY WEINER, LYND AUL, and WILLIAM DEVINE,</b>	:	
	:	
<b>each in their official capacities,</b>	:	
<i>Defendants.</i>	:	

**VERIFIED COMPLAINT**

**PRELIMINARY STATEMENT**

1. This case addresses the denial by the Rhode Island Department of Corrections and Rhode Island Department of Corrections officials Wayne Salisbury, Barry Weiner, and William Devine (collectively, “RIDOC”), of opportunities for Native American prisoners to practice their religion, in violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. (“RLUIPA”).

2. Plaintiffs Tyler Smith, Kyle Moreino, and Joseph Shepard are of Native American ancestry and are adherents to Native American religious traditions, who are incarcerated by RIDOC at the Adult Correctional Institutions (“ACI”) in Cranston, Rhode Island.

3. Consistent with RLUIPA, prison systems around the country have adopted comprehensive policies for accommodating the religious practices of Native Americans, under which incarcerated individuals have access to a spiritual counselor, typically a Native elder; the opportunity to participate in religious ceremonies, including pipe ceremonies, sweat lodge

ceremonies, smudging ceremonies, drum circles, and powwows; and the opportunity to obtain religious items, including medicine bags, feathers, and dream catchers.

4. In contrast, RIDOC has adopted no policies for accommodating Native American religious practices. It has created no opportunities for Native American prisoners to receive spiritual guidance from a Native American elder. It does not allow incarcerated people to participate in any Native American religious ceremonies. It does not allow Native American prisoners to obtain Native American religious items.

5. This is not a new problem. For years, Native American prisoners have complained about the absence of any religious accommodations at the ACI, but RIDOC has ignored those concerns.

6. Defendants' ongoing denials of Plaintiffs' right to the free exercise of religion violate RLUIPA and require immediate action by this Court.

### **JURISDICTION AND VENUE**

7. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over Plaintiffs' claims that Defendants violated Plaintiffs' rights under RLUIPA, 42 U.S.C § 2000cc et seq.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to these claims occurred in Cranston, Rhode Island.

### **PARTIES**

9. Plaintiffs Tyler Smith, Kyle Moreino, and Joseph Shepard are Native American by ancestry and are adherents to Native Americans religious traditions. Plaintiffs Moreino and Shepard are incarcerated by RIDOC in the ACI's John J. Moran Medium Security Facility, in

Cranston, Rhode Island. Plaintiff Smith was recently transferred from Medium Security to Minimum Security.

10. Defendant RIDOC is a department of the State of Rhode Island, established to provide for the custody, care, discipline, training, treatment, and study of persons committed to state correctional institutions pursuant to R.I. Gen. Laws § 42-56-1, et seq.

11. Defendant Wayne Salisbury is the Director of the Rhode Island Department of Corrections. In this position, Defendant Salisbury bears responsibility for the management, administration, and supervision of the Rhode Island prison system, pursuant to R.I. Gen. Laws § 42-56-10, et seq. As such, Defendant Salisbury is the supervising authority and commanding officer of the other named Defendants and all RIDOC employees. As the Director, Defendant Salisbury bears responsibility for creating, maintaining, and implementing RIDOC's policies for accommodating the free exercise of religion of all persons incarcerated by RIDOC.

12. Defendant Barry Weiner is RIDOC's Assistant Director for Rehabilitative Services. In that position, he bears responsibility "to coordinate and supervise all religious programs." 240-RICR-10-00-2 § 2.6.

13. Defendant William Devine is the Acting Warden of the John J. Moran Medium Security Facility where Plaintiffs Moreino and Shepard are incarcerated. He bears responsibility for supervising all RIDOC employees in the Medium Security Facility and for implementing RIDOC's policies in the Medium Security Facility.

14. Defendant Lynda Aul is the Warden of the Minimum Security Facility where Plaintiff Smith is incarcerated. She bears responsibility for supervising all RIDOC employees in that facility and for implementing RIDOC's policies in the facility.

15. At all times relevant hereto, each of the individual Defendants has acted under the color of state law. The individual Defendants are each sued in their official capacities.

## **FACTS**

### **I. PLAINTIFFS' SINCERE RELIGIOUS BELIEFS AND PRACTICES**

#### **A. Plaintiffs' Native American Background and Heritage**

##### **1. Tyler Smith**

16. Tyler Smith is a Native American whose religious beliefs are based on the traditions of the Abenaki and Méti tribes, which are part of the Wabanaki Tribal Nation, as taught to him by his father and other family members.

17. Mr. Smith has indicated his Native American heritage by identifying his race as “American Indian,” a racial category that RIDOC employs in its data management system.

18. As a child, Mr. Smith attended powwows and other Native American ceremonies with his father and other relatives. During Mr. Smith's early teenage years, his father took him to different ceremonies and spent time teaching Mr. Smith the native language of Algonquian.

19. Language preservation is particularly important in Native American cultures because many tribes rely on oral traditions to pass down cultural practices, traditions, and religious beliefs. Mr. Smith believes that learning his language enables him to communicate with the elders in his community and participate in ceremonial practices.

20. As an adult, Mr. Smith spent time living with his aunt on the Passamaquoddy Indian Reservation in Maine, another tribe within the Wabanaki Nation. While living on the reservation, he connected with his cultural traditions, including fishing and learning about Abenaki tribal practices and history.

21. In 2018, Mr. Smith attended a series of meetings with the local Elder Society of the Abenaki. He made plans with the elders to join the Medicine Society, as well as attend a naming

ceremony so he would be provided with a Native American name. Mr. Smith was unable to attend the ceremony due to his incarceration, but it is a ceremony he still hopes to undertake.

22. Before his incarceration, Mr. Smith regularly engaged in the traditional Native American practice of burning sage to cleanse his space of negative energy and negative feelings. Mr. Smith has a sincere belief that burning sage brings him closer to the earth, provides spiritual healing, and is a necessary component of his religious practice that connects him to the Creator.

**2. Kyle Moreino**

23. Kyle Moreino is a Native American whose religious beliefs are based on the traditions of the Narragansett tribe.

24. While he was growing up, Mr. Moreino knew that his father had Narragansett ancestry but, due to their estranged relationship, Mr. Moreino only began in adulthood to explore his heritage and spiritual beliefs.

25. Mr. Moreino has indicated his Native American heritage by identifying his race as “American Indian” in RIDOC’s data management system.

26. While in prison, Mr. Moreino has made efforts to connect with his Native American heritage. He currently receives information through the mail so that he can learn the Algonquian language. Mr. Moreino believes that learning Algonquian will deepen his connection to his spiritual beliefs and practices.

27. Mr. Moreino has reached out to the Narragansett Indian Tribe to become a member of the tribe by showing his lineage through his paternal grandparents, who were tribal members.

28. Mr. Moreino wants to learn more about and engage in practices arising out of Narragansett spiritual beliefs so that he can provide spiritual guidance to his children and pass down his cultural beliefs and practices. As a parent, Mr. Moreino feels strongly that a connection to

spirituality is a core component of a person's identity and hopes to continue Native American traditions through his own children.

**3. Joseph Shepard**

29. Joseph Shepard is a Native American whose religious beliefs are based on the traditions of the Narragansett tribe.

30. Mr. Shepard is of Narragansett descent on his mother's side. While Mr. Shepard has long known of his Native American heritage, it was not until adulthood that he developed a connection to Native spiritual practices, traditions, and beliefs.

31. Mr. Shepard explored several different religions before deciding that he identified with Native American religion. His exploration included reading and learning about Judaism and Islam. After exploring these religions, Mr. Shepard came to realize that Native American religious traditions are the belief system that most resonates with him.

32. Mr. Shepard has made many attempts to explore and learn more about Native spiritual practices during his incarceration, including contacting the Narragansett tribe to establish his ancestral lineage and if possible to become a registered member of the tribe.

33. Mr. Shepard has been seeking to deepen his spiritual practice and has sought information in the mail to learn the Nipmuck language, an Eastern Algonquian language. He believes that learning the language will help deepen his connection to his culture and spirituality.

**B. Plaintiffs Seek to Participate in Traditional Native American Ceremonies.**

34. As adherents of Native American religious traditions, Plaintiffs sincerely desire to participate in traditional Native American religious ceremonies, including pipe ceremonies, sweat lodge ceremonies, drum circles, smudging ceremonies, and powwows. The religious significance to Plaintiffs of each of these ceremonies is described below.

**1. Pipe Ceremonies**

35. Plaintiffs seek to participate in pipe ceremonies, which are a traditional ceremony within their religious traditions.

36. In Plaintiffs' religious traditions, tobacco is considered a sacred medicine used as an offering to the creator during pipe ceremonies.

37. The Federal Bureau of Prisons has described the importance of pipe ceremonies within Native American traditions:

The Sacred Pipe is the cornerstone of the spiritual teachings of most Native American tribes. A high degree of reverence is given the Sacred Pipe as central to traditional religious belief and practice.

Federal Bureau of Prisons, *Inmate Religious Beliefs and Practices: Practical Guidelines for Administration of Inmate Religious Beliefs and Practices* at p.205/Native Am., p.11. (Mar. 7, 2002) [hereinafter "BOP, *Inmate Religious Beliefs and Practices*"]; see generally Joseph Epes Brown, ed., *The Sacred Pipe: Black Elk's Account of the Seven Rites of the Oglala Sioux* (University of Oklahoma Press 1953).

38. The Oregon Department of Corrections has described a pipe ceremony as follows:

The Pipe Ceremony involves the use of the Sacred Pipe and is an important religious activity for Native Americans. The pipe represents the universe. It is a sacred altar that can be taken anywhere. In it all the kingdoms are united. The bowl is made of stone or clay to represent the elemental kingdom. The stem is of wood and represents the plant kingdom. The pipe is decorated with fur and feathers to represent the animal kingdom. It is used by two-legged humans, thus bringing all the kingdoms into the ceremony. Often the pipe has four streamers of red, black, white and yellow representing the colors of the four directions and the four races of humans. The bowl represents the female energies while the stem represents the male. The bowl is the flesh and blood of the Native people; the stem is the bones. The symbols of the pipe are never ending and like the universe itself.

The pipe and any objects used with it should be smudged before the

actual pipe ceremony. When a pipe ceremony is done, the bowl is filled with tobacco, kinnik-kinnik, sage or sweetgrass in a ritual manner. First, pinches are offered to the Great Spirit, to the Earth Mother and to the four directions. When the pipe is lit a puff of smoke is offered to each of the four directions, to the Great Spirit and to our Mother Earth. The smoke from the pipe is the breath of prayer as it drifts up from the bowl and it is believed that when the smoke is drawn in through the stem the breath of the Great Spirit is taken into the body. With the smoke—an ethereal substance which can penetrate between the realms of the physical and the spiritual—prayers are sent to the Creator.

The pipe must be awakened and consecrated by a medicine person. The medicine person selects the pipe bearer who is in charge of preparing for this ceremony. A comparison could be made between the pipe ceremony and a Christian communion service. The pipe as it is passed from person to person becomes a powerful tool for healing and helping the earth and all of her children today.

Oregon Dept. of Corrections, *Handbook of Religious Beliefs and Practices* pp. 40-41 (Apr. 1991).

## **2. Sweat Lodge Ceremonies**

39. Plaintiffs seek to participate in sweat lodge ceremonies, which are a central religious ceremony in their religious traditions.

40. A sweat lodge is a physical structure, typically a dome about ten feet in diameter and six feet tall, made of plant materials and wrapped in a tarp or blankets. Rocks are heated and placed in a small dugout in the center and water is poured on them to emit steam.

41. A sweat ceremony is the primary way that Native Americans in Plaintiffs' traditions detoxify their body and spirit from negative energy to achieve spiritual balance.

42. Sweat lodges have played a part in the religious practice of Native Americans of New England since long before European contact. The earliest recorded description of Native American sweat lodges is from Roger Williams, who lived among the Narragansett in what is now Rhode Island. In 1643, he published a lexicon of the Narragansett language, which includes the



following entry:

*Pesuponck*; an Hot-house. This Hot-house is a kind of little Cell or Cave, six or eight feet over, round, made on the side of a hill (commonly by some Rivulet or Brooke) into this frequently the men enter after they have exceedingly heated it with store of wood, laid upon an heape of stones in the middle. . . . [H]ere doe they sit round these hot stones an houre or more, taking *Tobacco*, discoursing, and sweating together.

Roger Williams, A Key into the Language of America, in Collections of the Rhode Island Historical Society, Vol. I, p.158 (1827), <https://www.gutenberg.org/files/63701/63701-h/63701-h.htm>.

43. The Bureau of Prisons has described the meaning and importance of sweat lodge ceremonies as follows:

Equal to the Sacred Pipe as a cornerstone of Native American traditions is the purification ceremony of the Sweat Lodge. Many lodge rituals are for communal prayer purposes and others are for personal healing. To enter the Sweat Lodge is to return to the womb of Mother Earth for purification, strength, guidance, and for physical, mental, emotional and spiritual healing. Rocks, wood, fire, and water are used in the process. The participants also offer their suffering and prayers for one who is sick, one who needs help, and for all of creation. These prayers are spoken, chanted, and sung for the interrelatedness of all life. There are typically four periods of prayer called “rounds” or “doors.” Each period ends with a prayer or shout as the door flap is thrown open and the cool breath of the Creator welcomes all into new life.

BOP, *Inmate Religious Beliefs and Practices* at p.208, Native Am. at p.14; see generally Joseph Bruchac, *The Native American Sweat Lodge: History and Legends* (The Crossing Press, 1993).

### 3. Drum Circles

44. Plaintiffs seek to engage in drum circles, a religious ceremony within their traditions.

45. As its name suggests, a drum circle involves a group of people who play hand drums

and other percussion instruments while standing or sitting in a circular formation.

46. The Bureau of Prisons has recognized the importance of drum circles within Native American religious traditions:

The drum is seen as the heartbeat of both the earth and the Native American Nation. It brings the Native peoples together in a Sacred Circle and reunites all in spirit and purpose. The drum is believed to reconnect the Native Americans with the earth and, through it, the Native American sends forth prayers.

BOP, *Inmate Religious Beliefs and Practices* at 207-208, Native American at 13-14.

#### **4. Smudging Ceremonies**

47. Plaintiffs seek to engage in smudging ceremonies, a spiritual tradition shared by many Native American tribes, including Plaintiffs' tribes.

48. Smudging consists of burning sage or other sacred herbs such as sweetgrass, tobacco, and red cedar. The smoke is then wafted over different parts of the practitioner's body to cleanse the spirit.

49. The Bureau of Prisons has recognized the importance of smudging within many Native American religious traditions:

The daily burning of sweet grass, sage, cedar, or other indigenous herbs is a widespread practice for those who are deeply involved in Native spirituality. Personal possession of small quantities of certain herbs by Indian inmates is usually permitted. The bitterness of the sage smoke reminds the Native American of the hard, difficult times that Creator has led them through, and the sweet grass smoke evokes the good times that Creator has given. As herbs are burned, the smoke purifies the body so nothing unclean participates in the ceremony. The sacred plants (sweet grass, sage, cedar, tobacco and corn pollen) are used in group ceremonies. Tobacco is used as an offering and in prayer. Sage, sweet grass, and cedar are used in cleansing, blessing, and purification.

BOP, *Inmate Religious Beliefs and Practices* at 205, Native American at 11.

50. The Oregon Department of Corrections describes a typical smudging ceremony and

its meaning as follows:

This is a process of using smoke to clear away negative energies and to attract positive energies. Small amounts of sage, sweetgrass or a high grade of tobacco with as few additives in it as possible is used to produce smoke. Tobacco, like sage, tends to draw the negativity out of things and the sweetgrass brings in positive energies. Other plants, like cedar and juniper, may also be used because of their special healing powers. The individual desiring to smudge lights the mixture, lets it smoulder, then draws the smoke toward the heart and over the head to receive its blessing. After the smudging takes place, the smoke is offered to the four directions.

Oregon Dept. of Corrections, *Handbook of Religious Beliefs and Practices* p.40 (Apr. 1991).

## **5. Powwows**

51. Plaintiffs seek to participate in an annual Powwow, which is a traditional practice among many Native American tribes, including Plaintiffs' tribes.

52. A Powwow typically consists of ceremonial practices such as a drum circle, dancing, and eating traditional Native American foods.

53. The Bureau of Prisons has described a Powwow as follows:

The Pow-wow is a day of traditional dancing, speaking, and praying in word, song, and music for all that lives. The gathering of inmates (often with guests from the outside, who may be dressed in ceremonial/liturgical garb) symbolizes a renewal of unity in the Spirit. A feast of traditional, familiar foods (such as fry bread, corn pemmican, and buffalo meat) is seen as central to the gathering. The spiritual advisor(s) establish the order of events for the gathering.

BOP, *Inmate Religious Beliefs and Practices* at 208, Native American at 14.

54. As BOP has recognized, a Powwow is a religious exercise because "All elements in the Pow-wow constitute a whole prayer." *Id.*

## **C. Plaintiffs Seek to Obtain Traditional Native American Religious Items.**

55. As part of their religious practice, Plaintiffs seek to obtain traditional Native American items that are recognized as having spiritual significance in Plaintiffs' traditions:

medicine bags, feathers, and dreamcatchers. The religious significance of each item is described below.

### **1. Medicine Bags**

56. Plaintiffs seek to obtain, carry, and maintain medicine bags containing sacred herbs and other small objects with spiritual significance. A medicine bag is a spiritual item that is common to many Native American tribes, including Plaintiffs' tribes.

57. A medicine bag is a small satchel, typically made of leather, worn around the neck. The medicine bag contains small sacred items that can vary from person to person. Many Native Americans include in a medicine bag the four medicines—sage, sweetgrass, cedar, and tobacco—along with other small tokens. Each item held within a medicine bag has spiritual significance to the person wearing it.

58. The Bureau of Prisons has described the importance of medicine bags in Native American religious traditions:

Traditionally, many Native Americans carry, wear, and maintain the medicine bag. The medicine bag may contain such natural objects as stones, animal parts, herbs, or seeds and kernels of maize, corn or other vegetables. Native Americans believe that each natural object possesses a spirit. As part of one's medicine bag, the spirits of these objects become part of the wearer. The medicine bag becomes the wearer's invocation to the Creator to continually be with and watch over him/her. It represents an extremely personal relationship between the Creator and the wearer, and care should be taken that the Indian's spiritual significance of the medicine bag not be violated.

BOP, *Inmate Religious Beliefs and Practices* at p.205, Native American at p.10.

### **2. Feathers and Bird Parts**

59. Plaintiffs seek to obtain feathers and bird parts, which are recognized as having spiritual significance in Plaintiffs' traditions.

60. Plaintiffs' traditions teach that the relationship between humans and animals is deeply spiritual. Animals provide more than direct sustenance such as food but also serve as spiritual guides, messengers, educators, and protectors.

61. Birds and bird feathers play a significant part in Plaintiffs' religious traditions and signify a connection to the Creator. Feathers carry spiritual significance and are often gifted to represent honor and wisdom.

62. Many different types of feathers are used in religious ceremonies. For instance, eagle feathers are cleansed using smoke and then brushed over the top of a person when they are feeling sad or hurt to bring positive energy to their bodies and carry their prayers to the Creator.

63. In Plaintiffs' traditions, feathers and bird parts play an essential part in numerous religious exercises, including pipe ceremonies and smudging. In addition, the personal possession of feathers and bird parts is itself a religious exercise.

64. The Bureau of Prisons has described the importance of feathers and bird parts in Native American religious traditions:

Birds and feathers are sacred to Native Americans, but the eagle is regarded in a special way. The eagle represents power, strength, healing, and loyalty for the Indian. Eagle feathers are considered sacred and cannot be purchased by Native Americans for personal possession, but can only be awarded or given by another.

BOP, *Inmate Religious Beliefs and Practices* at p.206, Native American at p. 12.

### **3. Dreamcatchers**

65. Plaintiffs seek to obtain dreamcatchers, which are recognized devotional objects in Plaintiffs' cultures.

66. Typically, a dreamcatcher consists of a willow hoop woven into a web or a net. They can include feathers and beads, and they are traditionally suspended on cradles as a form of

armor or protection.

67. Dreamcatchers originated in the Ojibwe tradition and were first documented in the 1920s. Over the course of the twentieth century, they were adopted by many Native American tribes. *See generally* Kim Crystal, History of the Dreamcatcher, [https://www.youtube.com/watch?v=J4atXU3jCVo&ab\\_channel=KimCrystal](https://www.youtube.com/watch?v=J4atXU3jCVo&ab_channel=KimCrystal).

68. For Plaintiffs, the dreamcatcher is a symbol of hope and healing. Plaintiffs, like many in their culture, sincerely believe that possession of a dreamcatcher is a religious exercise, in that possession of a dreamcatcher will protect them from negative energy, while also serving as a symbol of culture and heritage during incarceration.

**D. Plaintiffs Seek to Obtain a Diet Consistent with Their Religious Beliefs.**

69. Plaintiffs seek to obtain a diet that is consistent with their religious beliefs.

70. In Plaintiffs' traditions, food provides a connection to the ancestral world, the natural world, and the spirit world. Plaintiffs have a sincere belief that their diet is part of their spiritual practice that connects them and keeps them in alignment with the natural world.

71. Plaintiffs' traditions include a diet of plant and animal-based foods that are local to New England, including squash, corn, beans, and animal and seafood that are typical of the region.

72. Plaintiffs' traditions also call for eating traditional foods at regular feasts, including feasts to mark the beginning of each season, the Corn Harvest festival, and at powwows.

**E. Plaintiffs Seek Spiritual Guidance from a Native American Elder.**

73. Plaintiffs seek access to a Native American elder to serve as their spiritual advisor.

74. Within Plaintiffs' traditions, Native American elders are responsible for passing on the wisdom, teachings, and traditions of their people. Native American elders play a vital role in Plaintiffs' communities as a source of spiritual guidance, who can explain to younger tribal

members how and why different parts of a ceremony are performed.

75. Native American cultures and traditions are primarily passed down and preserved through oral tradition, and regular communication with an Elder is a necessary component of Plaintiffs' sincere religious beliefs.

## **II. RIDOC PROHIBITS PLAINTIFFS FROM ENGAGING IN NATIVE AMERICAN RELIGIOUS PRACTICES AND THEREBY IMPOSES "SUBSTANTIAL BURDENS" ON NUMEROUS "RELIGIOUS EXERCISES"**

### **A. RIDOC Prevents Plaintiffs from Practicing Their Religion**

76. This case presents a stark and blatant violation of RLUIPA: RIDOC has simply made no accommodations for Native American religious practices.

77. RIDOC has denied Plaintiffs' requests to hold communal religious ceremonies, including pipe ceremonies, sweat lodge ceremonies, drumming circles, smudging ceremonies, and powwows.

78. RIDOC has denied Plaintiffs' requests to obtain items that are essential for expressing their religious beliefs, including medicine bags, dreamcatchers, and bird feathers.

79. RIDOC has denied Plaintiffs' requests for a diet consistent with their religious beliefs and the opportunity to celebrate annual feasts with traditional foods.

80. RIDOC has denied Plaintiffs' requests for access to a Native American elder to provide spiritual guidance.

81. Each of these denials of Plaintiffs' ability to engage in a religious practice imposes a separate and independent "substantial burden" on a "religious exercise" that could only be sustained if RIDOC could show that the denial was the "least restrictive means" to "further a compelling governmental interest."

82. RLUIPA defines a "religious exercise" broadly to mean "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).

83. Pursuant to that definition, when prison officials prevent a prisoner from engaging in a particular religious practice, they impose a “substantial burden” on that “religious exercise.” For example, a limit on beard length imposes a substantial burden on a religious exercise for prisoners whose religious beliefs mandate that they grow their beards. *Holt v. Hobbs*, 574 U.S. 352, 358 (2015).

84. This is not a case, however, where prison officials prevent incarcerated people from engaging in one or two religious exercises. RIDOC prevents Plaintiffs from engaging in nearly *every* religious exercise that is part of their religious traditions.

85. Plaintiffs’ inability to practice all aspects of their religion causes them enormous ongoing harms.

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.

87. 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.

**B. Plaintiffs Cannot Practice Their Religion Without RIDOC’s Authorization.**

88. RIDOC policies provide that incarcerated people can participate in communal religious events and obtain items essential for their religious practice only if the event or item has been authorized by RIDOC officials.



89. RIDOC policies provide that religious services must be supervised by an institutional chaplain. *See* 240-RICR-10-00-2, *Religious Programs and Services* (all “inmate services and religious programs are scheduled, supervised, and directed by institutional chaplains”). Prisoners who attempt to hold religious events without RIDOC’s approval, and without the supervision of an institutional chaplain, are in violation of RIDOC’s policies and are subject to discipline, including the imposition of disciplinary confinement and loss of privileges.

90. Similarly, RIDOC policies provide that prisoners may possess only those items that have been approved by RIDOC. Religious items that have not been approved by RIDOC are contraband, and Plaintiffs would be subject to punishment, including disciplinary confinement, if they were caught possessing them. RIDOC Policy 11.01-8, Inmate Discipline § III.2.

91. RIDOC has not approved any Native American religious ceremonies that Plaintiffs can attend. As a result, Plaintiffs are unable to participate in any Native American ceremonies, including pipe ceremonies, sweat lodge ceremonies, drum circles, smudging ceremonies, and powwows.

92. RIDOC has not approved Native American religious items that Plaintiffs may obtain. As a result, Plaintiffs cannot obtain medicine bags, feathers, and dreamcatchers.

93. Although RIDOC provides a kosher diet to Jewish prisoners and a hallal diet to Muslims, it provides no diet that conforms to Plaintiffs’ religious needs.

94. Similarly, while RIDOC has hired chaplains to provide religious counseling and guidance to inmates of other faiths, it has made no accommodation for Plaintiffs’ needs to obtain religious guidance from a Native American elder.

**C. RIDOC Has Long Known that Native American Prisoners Have No Opportunities to Practice Their Religion But Has Ignored and Denied Their Requests for Accommodations.**

95. For years, Native American prisoners have requested that RIDOC accommodate their religious practices, as required by RLUIPA, but RIDOC has consistently ignored or rejected those requests.

96. For instance, for five years starting in 2019, Wolf Pawochawog-Mequinosh, an inmate in Medium Security, requested permission to have his religion designated as “Native American” and to wear a Native American headband, but he was repeatedly told that RIDOC had no programs for accommodating Native American religious practices. *See* Complaint, *Pawochawog-Mequinosh v. RIDOC*, Case No. 1:24-cv-00036-WES-PAS (D.R.I.).

97. RIDOC requires that all persons incarcerated at the ACI designate a religion. RIDOC recognizes only a few possible religious designations that a prisoner may choose, which include “Catholic,” “Protestant,” “Jewish,” “Muslim,” “Pagan/Wiccan,” “other,” and “no religion.” The religious designation selected by each prisoner becomes part of the official inmate file that RIDOC maintains for each prisoner in a computer system called “INFACTS.”

98. Under RIDOC’s policies, the religion designated by each incarcerated person determines the religious observances they are allowed to attend, the religious items they will be allowed to obtain, whether they will be allowed to receive dietary accommodations consistent with to their religion, and the institutional chaplain to whom they are assigned.

99. This policy was explained in an orientation session for new prisoners in the Medium Security Facility: “Your declared religion is listed in INFACTS, [and] this will determine your eligibility to participate in certain religious events and will also determine which religious items you are permitted to order from catalogs.”

100. As Mr. Pawochawog-Mequinosh was repeatedly told, RIDOC did not allow prisoners to designate “Native American” as their religion, and RIDOC had approved no Native American religious ceremonies or items.

101. In January 2024, Mr. Pawochawog-Mequinosh brought suit against RIDOC under RLUIPA, and in June 2024 RIDOC allowed him to obtain and wear a headband, but it did not extend the opportunity to other Native American religious practitioners or recognize Native American as a religious identity.

102. RIDOC has not approved any other items or practices for incarcerated Native Americans but instead has denied or ignored the requests to accommodate Native American religious practices, including those filed by Plaintiffs Smith, Moreino, and Shepard.

**D. Each of the Plaintiffs Has Requested to Engage in Native American Religious Exercises, But RIDOC Has Rejected Each of Those Requests.**

103. Plaintiffs have filed numerous grievances through RIDOC’s administrative process; after each grievance was denied, Plaintiffs filed an appeal; and these appeals have been denied. Accordingly, Plaintiffs have fully exhausted RIDOC’s administrative remedies, making resort to judicial intervention the only available avenue for relief.

104. RIDOC’s grievance process allows incarcerated people to file grievances to challenge “[i]nterpretation and application of policies, rules and procedures of the facilities and/or Department,” and “[a]ny other matter relating to access to privileges, programs, and/or services; conditions of care or supervision; and living facility conditions within the authority of RIDOC, except as noted in this policy.” RIDOC Policy No. 13.10-5, Inmate Grievances § IV.B.1, 5 (Jan. 12, 2023).

105. The grievance policy contains a list of “non-grievable areas of facility life,” including discipline decisions, classification of inmates, and health care actions, and provides that

a grievance filed over a non-grievable area will be “will be rejected and returned to the inmate as an unprocessed grievance.” Id. § IV.C. The list of “non-grievable areas” makes no mention of religion, religious programming, or religious services.

106. Incarcerated persons begin the grievance process by filing a “Level 1” grievance, which sets out the issue the incarcerated person seeks to raise and the relief that they request. If RIDOC officials deny the grievance, the incarcerated person may appeal that denial by filing a “Level 2 grievance.” Id. § IV.E.

107. RIDOC officials have fifteen days to resolve a Level 2 grievance, unless they notify the prisoner that they have extended that time.

108. Incarcerated people have no additional appeals available after a Level 2 grievance has been resolved. Accordingly, when a Level 2 grievance has been resolved, Plaintiffs have exhausted the administrative remedies provided by RIDOC.

**1. Tyler Smith’s Grievances**

**a. Grievance No. 2024-0636 (re: religious items)**

109. On April 12, 2024, Tyler Smith sent a letter to Barry Weiner, RIDOC’s Assistant Director of Rehabilitative Services, requesting permission to obtain Native American religious items: “I am writing you today to request that I be allowed to order Native American items such as Dream Catchers, Medicine Bags, Feathers, etc.” Mr. Smith sent similar letters to Ken Findlay, RIDOC’s Interdepartmental Project Manager, and Sarah Pinelli, who is also in that department.

110. On June 7, 2024, not having received responses to these letters, Mr. Smith filed a Level 1 grievance (Grievance No. 2024-0636), explaining that he had raised this issue with RIDOC administrators and was requesting “approval of items of my religious belief such as dream catchers, feathers, sage, etc.”

111. On June 28, 2024, the Level 1 grievance was returned as unprocessed. Although the grievance requested approval for specific religious items, the grievance processor treated the grievance as challenging the failure of RIDOC administrators to respond to Mr. Smith's letters and declared that it was "filed concerning non-grievable subject matters." In particular, the denial stated: "There is no time limit in which the RIDOC Administration must answer any personal request from the inmate population."

112. Mr. Smith filed an appeal of that decision by filing a Level 2 grievance. In the appeal, Mr. Smith reiterated that he was challenging RIDOC's failure to approve specific religious items that he had requested: "Please approve my items, that's my sought relief."

113. On July 9, 2024, the Level 2 grievance was denied on the same ground as the Level 1 grievance had been denied: "There is no time limit in which the RIDOC Administration must answer any personal request from the inmate population."

**b. Grievance No. 2024-0672 (re: religious ceremonies)**

114. On July 8, 2024, Mr. Smith filed a Level 1 grievance challenging the lack of opportunities for him to participate in Native American ceremonies: "RIDOC does not offer me ceremonies of my religious background and belief. There are no pipe ceremonies, sweat lodges, drum circles and other things to practice my belief."

115. Although RIDOC's grievance policy does not identify religious issues as being "non-grievable," RIDOC returned Mr. Smith's grievance as "unprocessed," stating that the grievance process was not available for the request and that he should instead send the request for Native American religious programming to Barry Weiner, the Assistant Director of Rehabilitative Services.

116. On July 22, 2024, Mr. Smith filed a Level 2 grievance, appealing the rejection of his grievance.

117. Mr. Smith also sent a letter to Barry Weiner, requesting that Native American be recognized as a religious designation, that he be allowed to participate in Native American ceremonies, and reminding Mr. Weiner that he had already requested to be allowed to obtain Native American items.

118. On August 19, 2024, RIDOC denied Mr. Smith's Level 2 grievance. The denial confirmed that Mr. Smith had followed the process suggested in the denial of the Level 1 grievance—that he should direct the request to Mr. Weiner's department. The denial also acknowledged that Mr. Weiner had received Mr. Smith's requests and that further requests should go through his office, not the grievance process.

119. Although it has been more than a year since he first raised the issue, Mr. Smith has received no response from Mr. Weiner regarding his requests to practice Native American religion.

**c. Grievance No. 2024-0712 (re: Native American services)**

120. On June 15, 2024, Mr. Smith filed a Level 1 grievance challenging the lack of services for Native American religious practice: “there are no Native American Services here at the RIDOC. There is also no spiritual leader/advisor. We have no religious option for Native American belief.”

121. On July 24, 2024, that grievance was returned as unprocessed, stating that the grievance process was unavailable for these issues and that Mr. Smith should raise these issues with Barry Weiner, the Assistant Director of Rehabilitative Services.

122. On August 4, 2024, Mr. Smith appealed that decision by filing a Level 2 grievance.

123. On August 19, 2024, the Level 2 grievance was denied as unprocessed. The denial was identical to the denial of Grievance No. 2024-0672, discussed above. It confirmed that Mr. Smith had directed his request to Mr. Weiner and that his office would be addressing the issue.

124. To date, Mr. Smith has received no response from Mr. Weiner on this request.

**d. Grievance No. 2024-1160 (re: Native American diet)**

125. On December 1, 2024, Mr. Smith filed a Level 1 grievance requesting that RIDOC make available a diet that is consistent with his Native American religious traditions.

126. On December 3, 2024, that grievance was denied in a rejection that stated that Native American is not a religion and there is no Native American diet: “Being recognized as Native American is considered an ethnicity and Native Americans do not practice one singular religion much less have one specific diet. On top of that, you have listed ‘Wicca/Pagan’ as your religion of choice while being incarcerated within the RIDOC; there is a Wicca/Pagan diet available to you.”

127. On December 9, 2024, Mr. Smith appealed that denial by filing a Level 2 grievance.

128. On January 13, 2025, Mr. Smith received notice that RIDOC had extended the time to resolve the appeal by twenty days, and on January 30, 2025, Mr. Smith received a second notice that the time to resolve the appeal had been extended another 30 days, with the extension to expire on February 7, 2025. The second notice requested additional information about regarding the diet that Mr. Smith was requesting.

129. On February 4, Mr. Smith sent a letter to the grievance coordinator describing in detail the diet he was requesting: “Our diet is supposed to include plant and animal based foods that are found local to the region,” including venison, turkey, quail, salmon, corn, beans, and squash. The letter included the name of a vendor of prepackaged Native American foods.

130. Although the extensions given to itself by RIDOC have expired, Mr. Smith has received no notice of a resolution to this grievance.

**2. Kyle Moreino's Grievances**

**a. Grievance No. 2024-0899 (re: Native American items, ceremonies, designation)**

131. On September 20, 2024, Mr. Moreino filed a Level 1 grievance challenging the absence of access to Native American religious items, ceremonies, and a spiritual adviser, as well as the absence of an option to designate Native American as his religion.

132. On September 23, 2024, that grievance was denied in a decision that stated that these concerns should be sent to the Assistant Director of Rehabilitative Services and could not be resolved through the grievance process.

133. On September 24, 2024, Mr. Moreino appealed that decision by filing a Level 2 grievance, but he did not receive a response to the appeal.

**b. Grievance No. 2024-1280 (re: Native American diet)**

134. On December 24, 2024, Mr. Moreino filed a Level 1 grievance over the absence of a Native American diet.

135. On December 26, 2024, that grievance was denied in a decision that stated: "Being recognized as Native American is considered an ethnicity and Native Americans do not practice one singular religion much less have one specific diet."

136. On January 6, 2025, Mr. Moreino appealed that decision by filing a Level 2 grievance, but he has received no response to that appeal.



**3. Joseph Shepard's Grievances**

**a. Grievance No. 2024-0817 (re: Native American religion and lifestyle)**

137. On August 21, 2024, Mr. Shepard filed a Level 1 grievance challenging the denial of his “right to practice my Native American Religion/lifestyle. I request to be allowed and given a catalog to purchase all Native Practice items; a sweat lodge & place to worship, and Native American diet/holiday diet for Narragansett practices.”

138. On October 8, 2024, that grievance was returned as unprocessed in a decision that stated that the request should be directed to the Assistant Director of Rehabilitative Services, rather than the grievance process. The denial also mentioned that Mr. Shepard's religion was listed as Jewish in the INFACETS system.

139. On November 26, 2024, Mr. Shepard appealed the denial of his Level 1 grievance by filing a Level 2 grievance.

140. On December 26, 2024, the Level 2 grievance was denied on the ground that Mr. Shepard was identified as white and Jewish in RIDOC's computer system: “Records show that you reported your race and religion as white and of the Jewish faith. If you are of, and practicing the Jewish faith, you would not be granted approval on items designated to other beliefs and practices.”

141. In fact, six months earlier, on June 24, 2024, Mr. Shepard had requested to change his religious designation to Native American, a request that had not then been approved because RIDOC did not recognize Native American as an inmate religious designation. Mr. Shepard had also sent a request to Deputy Warden Fennessey on June 24, 2024, in which he requested to practice Native American religion: “I need to speak with you and whoever is in charge of religious

programs/services. I am Native American and need religious items [illegible] to practice my religion and a place to practice my Native American ceremonies ex: sweat lodge etc.”

142. Deputy Warden Fennessey directed Mr. Shepard to discuss the issue with the chaplain, and Mr. Shepard sent several request slips to the chaplain. On October 15, 2024, Mr. Shepard sent the chaplain a request slip that stated: “This is the 3rd time I’ve written/reached out since June 2024. I’m ask for help in facilitating Native American practices. I was directed to you by Dept. Warden Fennessey. May you help me reach out to Indian council and tribe to get a spiritual leader to assist me in Native ceremonies and practices.”

143. Chaplain Mancuso replied by stating that the request had been sent to Ken Findlay for his review: “Mr. Shepard, I have received the request regarding your Native American beliefs. Your request has been forwarded to Mr. Ken Findlay for further consideration and review.”

**b. Grievance No. 2024-1157 (re: Native American diet)**

144. On November 30, 2024, Mr. Shepard filed a Level 1 grievance requesting a Native American diet.

145. On December 3, 2024, that request was denied: “Being recognized as Native American is considered an ethnicity and Native Americans do not practice one singular religion much less have one specific diet. On top of that, you have listed ‘Jewish’ as your religion of choice.”

146. On December 6, 2024, Mr. Shepard appealed that decision by filing a Level 2 grievance.

147. On January 13, 2025, that appeal was denied on the ground that Mr. Shepard was not listed as Native American in RIDOC’s records, despite the fact that it was not then possible for him to designate his religion as Native American.

**E. RIDOC's Recent Actions Fail to Accommodate Plaintiffs' Religion.**

148. In March 2025, counsel for Plaintiffs alerted RIDOC that Plaintiffs intended to proceed to litigation if RIDOC continued to reject their requests to accommodate their religious practices, and sought to discuss RIDOC's plans regarding the religious ceremonies, items, diet, and access to religious counsel that Plaintiffs had requested.

149. RIDOC's response in April 2025 was that Plaintiffs had not exhausted the grievance process and that RIDOC was studying the issue.

150. As discussed above, Plaintiffs had exhausted available administrative remedies.

151. Counsel for Plaintiffs continued to seek to engage RIDOC to discuss a plan to accommodate Plaintiffs' religious exercise but was repeatedly advised that RIDOC needed additional time to study the issue.

152. Sometime around April 2025, RIDOC for the first time allowed Plaintiffs to designate that their religion is "Native American" in RIDOC's data management system.

153. In June 2025, RIDOC informed Plaintiffs' counsel that in principle it had authorized two additional prisoners to obtain Native American headbands.

154. Beyond those two actions, RIDOC has failed to adopt any policies to allow Native American religious practices or any timetable for doing so, but has instead expressed that it needs more time to investigate the issue to determine RIDOC's position on whether it can accommodate Plaintiffs' right to observe religious ceremonies, obtain religious items, meet with a spiritual elder, and obtain a Native American diet.

155. In the meantime, and for years, RIDOC has failed to accommodate Plaintiffs' religious beliefs and practices. In the absence of judicial intervention, Plaintiffs have no way to know when, if ever, they will be able to practice their religion.

**F. RIDOC Cannot Sustain Its Burden of Justifying the Denials of Plaintiffs’ Right to Practice Religion.**

156. RLUIPA requires that prisons accommodate the religious practices of incarcerated people. In particular, RLUIPA prohibits prisons from imposing a “substantial burden” on a “religious exercise” unless the burden is the “least restrictive means” of furthering a “compelling governmental interest.” 42 U.S.C. § 2000cc-1(a).

157. Under RLUIPA, RIDOC bears the burden of establishing that each denial of Plaintiffs’ right to engage in a religious exercise is the “least restrictive means” to achieve a “compelling governmental interest.”

158. RIDOC cannot meet its burden because all of the practices that Plaintiffs have requested are routinely allowed at prisons around the country. As the experience of these prisons shows, prison officials have found ways to accommodate Native American religious practices consistently with their penological missions.

159. For decades, and long before the adoption of RLUIPA, many prisons had adopted comprehensive policies for accommodating Native American religious practices, which guaranty followers of Native American religions to have access to religious counseling, the opportunity to participate in Native American religious ceremonies, and the ability to obtain Native American religious items.

160. For instance, the Federal Bureau of Prisons (“BOP”) has adopted a 343-page policy manual, *Inmate Religious Beliefs and Practices: Practical Guidelines for Administration of Inmate Religious Beliefs and Practices*, which includes a 25-page chapter on Native American religious practices.

161. BOP’s guidelines summarize typical observances for adherents to Native American religions and how those must be accommodated in BOP prisons. The guidelines also list approved

personal and congregate religious items and the need for access to Native American elders to provide religious counseling. The guidelines also provide technical and practical guidance for accommodating Native American religious ceremonies.

162. The policies adopted by BOP are typical of those adopted at prisons around the country:

a. **Pipe ceremonies.** Pipe ceremonies are observed in federal prisons managed by the Federal Bureau of Prisons, as well as in the prison systems managed by the states of Alabama, Arizona, Arkansas, Indiana, Kentucky, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New York, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin, among other prisons.

b. **Sweat lodge ceremonies.** Sweat lodge ceremonies are observed in every prison system in New England—except Rhode Island—and the prison systems operated by the states of Connecticut, Maine, Massachusetts, and New Hampshire have erected sweat lodges for Native American prisoners. Sweat lodges are also available in federal prisons operated by the Federal Bureau of Prisons, and in prisons operated by the states of Alabama, Arizona, Idaho, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Utah, Washington, Wisconsin, and Wyoming, among other states

c. **Drum circles.** Numerous prison systems accommodate regular drum ceremonies for followers of Native American religions, including the Federal Bureau of Prisons, Alabama, Idaho, Indiana, Kansas, Kentucky, Massachusetts, Nevada, New Hampshire, Pennsylvania, Utah, Vermont, and Wisconsin.

d. **Smudging.** The Federal Bureau of Prisons describes smudging ceremonies as a “required daily observance” for many followers of Native American religion, and it allows

such ceremonies to be conducted in designated outdoor spaces. The Connecticut Department of Corrections allows prisoners to purchase herbs for smudging and permits them to smudge every day during a specified time known as “smudge call.” Smudging ceremonies are also regularly available at prisons in Alabama, Arizona, Idaho, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Nevada, New Hampshire, New York, Oregon, Montana, Pennsylvania, Texas, Vermont, Washington, and Wisconsin, among other prison systems.

e. **Pow wows.** The Federal Bureau of Prison authorizes annual powwows in federal prisons. Powwows are also held annually in prisons in Indiana, Kentucky, Massachusetts, Oregon, South Dakota, and Washington, among other prisons.

f. **Medicine bags.** Medicine bags are approved religious items by the Federal Bureau of Prisons, as well as at prisons operated by the states of Alabama, California, Georgia, Indiana, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New York, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin, among other prisons.

g. **Feathers.** Many prisons authorize followers of Native American religions to possess feathers, including at prisons operated by the Federal Bureau of Prisons and the states of Alabama, Arkansas, California, Georgia, Indiana, Kentucky, Maine, Massachusetts, Missouri, Montana, Nevada, New Hampshire, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Vermont, Washington, and Wisconsin, among other prisons.

h. **Dreamcatchers.** Dreamcatchers are available to prisoners in Alabama, California, Maine, Montana, New Hampshire, Nevada, Oklahoma, Texas, Vermont, and Washington, among other state prison systems.

**CLAIMS FOR RELIEF**

**COUNT 1**

***Violation of the Religious Land Use and Institutionalized Persons Act  
by Denying Plaintiffs the Ability to Participate in Native American Religious Ceremonies  
(Against All Defendants)***

1. Defendants are in violation of RLUIPA by denying Plaintiffs the ability to participate in Native American religious exercises.

2. RLUIPA provides:

**(a) In general**

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

**(b) Exception**

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1.

3. Plaintiffs are all “persons” as that term is used in RLUIPA. 42 U.S.C § 2000cc-1(a) and 42 U.S.C. § 1997(3).

4. At all relevant times, Plaintiffs were confined to the ACI, which is an “institution,” as defined in 42 U.S.C. 1997(1).

5. Defendant RIDOC is a “government” as defined in RLUIPA. 42 U.S.C. § 2000cc-5(4)(A)(i)-(iii), and each of the individual Defendants are agents of RIDOC.

6. RIDOC has denied Plaintiffs the ability to participate in a variety of Native American religious ceremonies that Plaintiffs seek to engage in as part of their sincere religious beliefs, including:

- a. Pipe ceremonies;
- b. Sweat lodge ceremonies;
- c. Drum circles;
- d. Smudging ceremonies; and
- e. Powwows.

7. Each of these ceremonies is an “exercise of religion” under RLUIPA. 42 U.S.C. § 2000bb-2(4); 42 U.S.C. § 2000cc-5(7)(A).

8. Each of the denials of Plaintiffs’ ability to participate in these ceremonies constitutes a “substantial burden” on Plaintiffs’ ability to participate in an exercise of religion.

9. Defendants cannot meet their burden of demonstrating that the “substantial burdens” they have imposed are the “least restrictive means of furthering [a] compelling governmental interest.”

## **COUNT 2**

### ***Violation of the Religious Land Use and Institutionalized Persons Act by Denying Plaintiffs the Ability to Obtain Native American Religious Items (Against All Defendants)***

10. As set out above, RLUIPA provides that RIDOC may not impose a “substantial burden” on an “exercise of religion” unless the burden is the “least restrictive means” to advance a “compelling governmental interest.”

11. RIDOC has denied Plaintiffs the ability to obtain a variety of Native American religious items, each one of which is essential to engaging in Native American religious activities:



- a. Medicine bags;
- b. Feathers and bird parts; and
- c. Dreamcatchers.

12. Each of these items is essential to engaging in a Native American “exercise of religion.”

13. The denial of each items constitutes a “substantial burden” on Plaintiffs’ ability to participate in an “exercise of religion.”

14. Defendants cannot meet their burden of demonstrating that the “substantial burdens” they have imposed are the “least restrictive means of furthering [a] compelling governmental interest.”

### **COUNT 3**

***Violation of the Religious Land Use and Institutionalized Persons Act  
by Denying Plaintiffs the Ability to Obtain a Diet Consistent with Their Religious Beliefs  
(Against All Defendants)***

15. As set out above, RLUIPA provides that RIDOC may not impose a “substantial burden” on an “exercise of religion” unless the burden is the “least restrictive means” to advance a “compelling governmental interest.”

16. RIDOC has denied Plaintiffs the ability to obtain a diet consistent with their religious beliefs.

17. Eating a diet consistent with Plaintiffs’ religious beliefs is an “exercise of religion,” and RIDOC’s denial constitutes a “substantial burden” on that religious exercise.

18. Defendants cannot meet their burden of demonstrating that the “substantial burdens” they have imposed on Plaintiffs’ “religious exercises” are the “least restrictive means of furthering [a] compelling governmental interest.”

#### COUNT 4

***Violation of the Religious Land Use and Institutionalized Persons Act  
by Denying Plaintiffs the Ability to Obtain Religious Counsel and Guidance  
(Against All Defendants)***

19. As set out above, RLUIPA provides that RIDOC may not impose a “substantial burden” on an “exercise of religion” unless the burden is the “least restrictive means” to advance a “compelling governmental interest.”

20. RIDOC has denied Plaintiffs the ability to receive religious counsel and guidance through a Native American Elder, an institutional chaplain, or other religious volunteer.

21. Receiving religious counsel and guidance is a “religious exercise,” and the denial of that opportunity constitutes a “substantial burden” on that religious exercise.

22. Defendants cannot meet their burden of demonstrating that the “substantial burdens” they have imposed on Plaintiffs’ “religious exercises” are the “least restrictive means of furthering [a] compelling governmental interest.”

#### **PRAYER FOR RELIEF**

Plaintiffs Smith, Moreino, and Shepard request that this Court grant the following relief:

A. A declaratory judgment that Defendants’ denials of Plaintiffs’ requests for Native American religious accommodations violate Plaintiffs’ rights to the free exercise of religion, as protected by RLUIPA;

B. A preliminary injunction and, after a hearing on the merits, a permanent injunction ordering Defendants to allow Plaintiffs to participate in Native American ceremonies, including (1) pipe ceremonies, (2) sweat lodge ceremonies, (3) drum circles, (4) smudging ceremonies, and (5) powwows;

C. A preliminary injunction, and after a hearing on the merits, a permanent injunction ordering Defendants to allow Plaintiffs to obtain Native American religious items, including (1) medicine bags, (2) feathers and bird parts, and (3) dreamcatchers;

D. A preliminary injunction and, after a hearing on the merits, a permanent injunction ordering Defendants to make available a diet consistent with Plaintiffs' religious traditions;

E. A preliminary injunction, and after a hearing on the merits, a permanent injunction ordering Defendants to allow Plaintiffs to obtain religious counsel and guidance;

F. An award of reasonable attorneys' fees and costs of litigation, pursuant to 42 U.S.C. § 1988 and other applicable law; and

G. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

TYLER SMITH, KYLE MOREINO, and JOSEPH  
SHEPARD

By their attorneys,

/s/ Jared A. Goldstein

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Cooperating counsel, ACLU Foundation of RI

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

TYLER SMITH, KYLE MOREINO,  
and JOSEPH SHEPARD,  
*Plaintiffs,*

v.

RHODE ISLAND DEPARTMENT OF  
CORRECTIONS, WAYNE SALISBURY,  
BARRY WEINER, LYND AUL, and  
WILLIAM DEVINE,  
*Defendants.*

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VERIFICATION

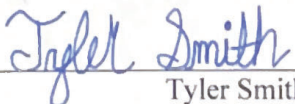
I, Tyler Smith, hereby declare under penalty of perjury as follows:

1. I am a Plaintiff in the above-captioned lawsuit.
2. I bring this action on my own behalf.
3. I have read the Complaint in the above-captioned action, and it is true and correct,

to the best of my knowledge, information, and belief.

I, Tyler Smith, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that  
the foregoing is true and correct.

Executed on June 12, 2025.

  
Tyler Smith

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

**TYLER SMITH, KYLE MOREINO,  
and JOSEPH SHEPARD,**  
*Plaintiffs,*

**v.**

**RHODE ISLAND DEPARTMENT OF  
CORRECTIONS, WAYNE SALISBURY,  
BARRY WEINER, LYND AUL, and  
WILLIAM DEVINE,**  
*Defendants.*

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**VERIFICATION**

I, Kyle Moreino, hereby declare under penalty of perjury as follows:

1. I am a Plaintiff in the above-captioned lawsuit.
2. I bring this action on my own behalf.
3. I have read the Complaint in the above-captioned action, and it is true and correct,

to the best of my knowledge, information, and belief.

I, Kyle Moreino, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746,  
that the foregoing is true and correct.

Executed on 06/12, 2025.

  
\_\_\_\_\_  
Kyle Moreino

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

**TYLER SMITH, KYLE MOREINO,  
and JOSEPH SHEPARD,**  
*Plaintiffs,*

**v.**

**RHODE ISLAND DEPARTMENT OF  
CORRECTIONS, WAYNE SALISBURY,  
BARRY WEINER, LYND AUL, and  
WILLIAM DEVINE,**  
*Defendants.*

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**VERIFICATION**

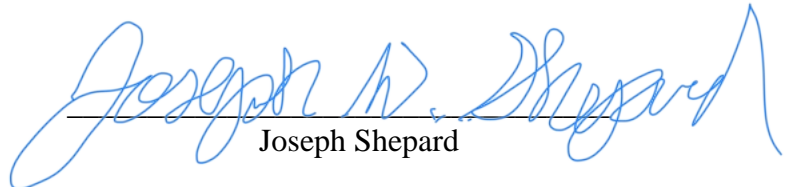
I, Joseph Shepard, hereby declare under penalty of perjury as follows:

1. I am a Plaintiff in the above-captioned lawsuit.
2. I bring this action on my own behalf.
3. I have read the Complaint in the above-captioned action, and it is true and correct,

to the best of my knowledge, information, and belief.

I, Joseph Shepard, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746,  
that the foregoing is true and correct.

Executed on June 12, 2025.

  
\_\_\_\_\_  
Joseph Shepard