



UNITED STATES MISSION  
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

July 16, 2014

OHCHR REGISTRY

22 JUL 2014

Recipients: SPB  
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United Nations Office of the High Commissioner  
for Human Rights (UNOHCHR)  
Palais Wilson  
1211 Geneva

To the attention of:

Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief

Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples

Thank you for your letter dated June 5, 2013. The United States fully supports the mandate of the Special Rapporteur on freedom of religion or belief and the mandate of the Special Rapporteur on the rights of indigenous peoples. We appreciate the opportunity to respond to this inquiry.

The freedom to practice the religion of one's choice has long been enshrined in our Constitution and laws. It is one of our founding principles, written into our Constitution and protected by federal laws. As such, a number of provisions exist to protect the religious freedoms of those in prison. In 2000, Congress unanimously enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA), in part because Congress was concerned that people confined to institutions were being unduly restricted in exercising their right to practice their religion. The institutionalized-persons provisions of RLUIPA recognize the crucial role religion can play in the rehabilitation of prisoners and the importance it may have for individuals, including those in mental health and other institutions.

The protections in the statute seek to ensure that state and local institutions do not place arbitrary or unnecessary restrictions on prisoners' religious practice. Under RLUIPA, if a prisoner makes a prima facie showing that the institution imposes a substantial burden on the prisoner's religious practice, the burden shifts to the government to prove that imposing the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering the compelling interest. *See* 42 U.S.C. § 2000cc-1. "Institutions" include prisons, jails, pretrial detention facilities, juvenile facilities, and institutions housing persons with disabilities when these facilities controlled by or provide services on behalf of state or local governments. In addition, RLUIPA encourages states to consider religious accommodations in their formulation of policies. Some federal circuit courts of appeal have held that government policies that substantially burden religious practice cannot survive if the government did not "consider and reject" less restrictive alternatives at the time the prison became aware of the burden on religious practice, including at the time of policy development or revision.

The Civil Rights Division at the U.S. Department of Justice enforces RLUIPA to combat discrimination and ensure religious freedom for all individuals. RLUIPA has been used to protect the religious practices of a wide variety of religious traditions, including Native American religions, Buddhism, Christianity, Hinduism, Islam, Judaism, and Sikhism. Over the past five years, the Division has opened approximately six investigations and conducted numerous other informal inquiries to enforce these provisions of the law. The Division has filed three lawsuits since 2009 to enforce the institutionalized-persons provisions of RLUIPA. The Division has also filed amicus curiae briefs in ten other such RLUIPA cases.

Two relevant examples are *Native American Council of Tribes, et al. v. Weber, et al.* and *Knight v. Thompson*. In *Native American Council of Tribes, et al. v. Weber, et al.* (8th Cir.), a case involving a prison in South Dakota, the Division filed a Statement of Interest urging the Court to permit Native American prisoners to use tobacco in religious ceremonies, without second-guessing whether tobacco is traditional to Native American religious practices, because RLUIPA guarantees a right to “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” In September 2013, a District Court agreed with this statement and ruled that the prison must allow these prisoners to use tobacco in religious ceremonies. In April 2014, the Eighth Circuit affirmed the District Court’s decision, upholding the right of the Native American prisoner to use a limited amount of tobacco in religious rituals.

In *Knight v. Thompson*, the Division filed a statement of interest in the District Court supporting prisoners in Alabama whose religious practices require they wear long hair. Alabama requires that all male prisoners have short hair. The prisoners claimed that, pursuant to RLUIPA, Alabama must accommodate their religious beliefs by permitting them to grow long hair. The District Court ruled against them, finding that Alabama’s requirement that they cut their hair short was the only means of achieving the state’s security and health needs. The prisoners appealed the decision to the U.S. Court of Appeals for the Eleventh Circuit. The Division filed an amicus brief supporting the prisoners, arguing that Alabama failed to meet its burden under RLUIPA of demonstrating that its hair-length restriction is the least restrictive means of meeting its compelling interests. On July 26, 2013, the Eleventh Circuit affirmed the District Court’s ruling in favor of Alabama’s hair-length restriction. The Eleventh Circuit held that the defendants had put on sufficient evidence of the necessity of requiring short hair to survive RLUIPA scrutiny. The prisoners have appealed to the United States Supreme Court, and their petition for certiorari is pending.

The Division is often able to work with states to change policies or practices in order to reduce restrictions on religious exercise before formally investigating or filing in court under RLUIPA’s “safe harbor” provision. The safe harbor provision lets governments avoid court action by changing their policy or practice or otherwise lifting the burden on religious exercise. This provision yields efficient and effective results.

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages. In other words, the Department may bring suit seeking an order from a court requiring an institution that has violated RLUIPA, for example, to amend the policy or practice that results in a substantial burden on the religious exercise of an individual confined to that institution. The Department may not, however, seek monetary awards on behalf



of persons that have been injured. Those who have suffered monetary damages from RLUIPA violations may file individual suits.

Additional information about the Division's enforcement of the institutionalized-persons provisions of RLUIPA is available on the Division's website at:  
<http://www.justice.gov/crt/about/spl/rluipa.php>.

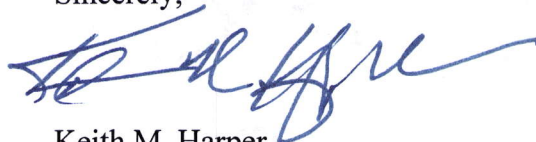
In addition to RLUIPA, the Bureau of Indian Affairs (BIA), Office of Justice Services also works to ensure the protection of the religious freedoms of Native American Inmates in Native American jails via programmatic policy. Inmates requesting traditional ceremonies must submit an Inmate Request, which must be approved before the ceremony is allowed for religious, spiritual, and ceremonial practices. The U.S. government respects all beliefs and will work with all inmates to provide for their spiritual needs while they are in detention. Participation in religious, spiritual or ceremonial activities is voluntary. The direction of this policy comes from the Religious Freedom Act.

However, those practices which threaten institutional safety and order may be prohibited or subject to restrictions. Some traditional ceremonies may be held at the facility; others may require a release. To make a specific request for a ceremony, the inmate must complete an Inmate Request Form. The facility will assign a staff member to make arrangements to conduct the ceremony at the facility or as part of a temporary release, if so ordered by the Court.

The BIA Corrections Handbook Policy was developed with the tribes through a consultation process to include detention standards development and review. More information on the BIA programs can be found in the following sections of the BIA Detention Handbook: Policy C2-27-02 Other Inmate Programs, Policy C2-27-05 Hair Care, Policy C2-47-01 Health Care Personnel, Policy C2-47-02 Verification of Traditional Practitioners, Policy C1-34-11 Menu Planning, and Policy C1-34-13 Religious/Traditional Diet.

The U.S. government assures you that the fullest consideration will continue to be given to this matter and to future correspondence from your offices.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Keith M. Harper', is written over a horizontal line.

Keith M. Harper  
Ambassador

U.S. Representative to the United Nations  
Human Rights Council