



CALIFORNIA INDIAN LEGAL SERVICES

BISHOP · ESCONDIDO · EUREKA · SACRAMENTO

609 S. Escondido Blvd., Escondido, CA 92025 ~ Phone: 760.746.8941 ~ Fax: 760.746.1815
www.calindian.org ~ contactCILS@calindian.org

April 30, 2013

California Department of Corrections and Rehabilitation
Regulation and Policy Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001
RPMB@cdcr.ca.gov

**Re: Notice of Change to Regulations (NCR 13-01)
American Indigenous Prisoners' Religious Liberty**

To Whom It May Concern:

California Indian Legal Services (CILS) is non-profit law firm that has been representing California Indians and tribes since 1967. We write to voice our opposition to the proposed amendments to Section 3190(b) of the California Code of Regulations, Title 15, Crime Prevention and Corrections regarding inmate religious property, and related restrictions on sweat lodge ceremonies. The proposed regulation substantially burdens American indigenous prisoners' exercise of religion, in violation of both federal and international law.

We are extremely concerned about the proposed regulation's effects on American indigenous prisoners as well as the broader communities to which they will return, particularly tribal communities. Prisoners write CILS on a regular basis complaining about the loss or infringement of their religious freedoms because they have nowhere else to turn. CILS has represented Native American prisoners in the past to give them a voice and to preserve their right to practice their religions in prison just as practitioners of more mainstream faiths such as Christianity and Islam. While CILS shares California's interest in repressing criminal activity and promoting rehabilitation, we also staunchly support the free exercise of religion guaranteed by the Constitution. That right is essential to achieving the goals of lower crime rates and rehabilitating offenders.

The proposed regulation, already in force on a so-called "emergency" basis, includes an unduly restrictive Religious Property Matrix. American indigenous prisoners are no longer allowed to possess previously permitted items including, but not limited to, sacred medicines such as kinnikinnick and copal as well as sacred items like cloth for prayer ties, beads or beading supplies, pipes, bags, drums or other instruments. Further, the Matrix is only amendable a maximum of twice a year by the Wardens Advisory Group/Religious Review Committee in accordance with the rulemaking requirements of the Administrative Procedures Act. Thus, the process for getting an item approved is much more burdensome for Native American prisoners because local religious review committees are no longer empowered to approve religious items.

American indigenous prisoners' sweat lodge ceremonies also appear to have been curtailed, from occurring every weekend to only one or two times per month. That restriction, in

particular, presents a potentially disastrous impediment to Native prisoners' spiritual rehabilitation, which may exacerbate recidivism. From my experience representing incarcerated Native Americans in religious rights matters, regular sweats are extremely importantly not only as a ritual cleansing of the body and mind but as a stabilizing force within the prison community. It is no less spiritual than a Sunday mass or Friday evening Shabbat. I fear the psychological and legal ramifications of this move will far outweigh any practical or economic savings.

Possible challenges to the proposed regulation include violations of the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the federal Religious Land Use and Institutionalized Persons Act, and Article I § 7 of the California Constitution. Additionally, the regulation violates international law protecting Native American peoples' religious freedoms, as articulated in the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by the United States in 2010, and the International Covenant on Civil and Political Rights, which the United States ratified in 1992.

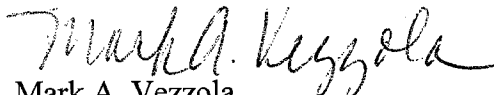
The proposed regulation also stands in stark contrast to *Sample v. Borg*, 675 F. Supp. 574 (E.D. Cal. 1987), a federal case wherein CILS represented a class of Native American prisoners alleging violations of their religious freedoms. In that case, the parties entered into a stipulation that recognized that ritual purification is a central element to the practice of American Indian religions and provided that upon request and with sufficient numbers of individuals justify it, a sweat lodge will be constructed on prison grounds with adequate firewood and supplies (i.e., kinnikinnik, bitter root, eagle feathers, sage, cedar, sweet grass, etc.) for weekly ceremonies. See Stipulation for Entry of Judgment, lodged on February 20, 1987, enclosed for your review.

We urge you to reject the proposed regulation as violating constitutional protections on the practice of religion and immediately restore American indigenous prisoners' ability to possess previously permitted religious property items and to fully participate in sweat lodge ceremonies as stipulated to by the parties in *Sample v. Borg*. Future regulations should, at a minimum, include all previously permitted items of Native American religious property and ceremonies and a flexible mechanism to approve requests for inadvertently omitted items.

Finally, we urge you to engage California tribal governments and representatives in meaningful consultation prior to drafting or implementing future religious freedoms regulations that impact Native American prisoners. The proposed amendments to Section 3190(b) and any other new regulations appear to be devised without any tribal consultation whatsoever. CILS and others look forward to partnering with the Department to explore possibilities for joint development and preserving security and religious freedom in California's prisons.

Sincerely,

CALIFORNIA INDIAN LEGAL SERVICES



Mark A. Vezzola
Directing Attorney

Enclosure: Stipulation for Entry of Judgment

Cc: Galanda Broadman, PLLC
8606 35th Avenue NE, Ste. L1
Seattle, WA 98115

Cc: Religious Liberty Clinic
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610