



National Native American Bar Association

RESOLUTION # 2013-3

TITLE: Supporting the Free Exercise of Indigenous Religion by American Indian, Alaska Native and Native Hawaiian Prisoners in Domestic Detention Facilities

WHEREAS, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution; and

WHEREAS, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA strives to be a leader on social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians (collectively “American Indigenous Peoples”); and

WHEREAS, it is the policy of the United States, per the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996, to “protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions,” which right cannot be substantially burdened absent compelling justification; and

WHEREAS, the United States, in the Native American Apology Resolution, Public Law No. 111–118, section 8113, Dec. 19, 2009, 123 Stat. 3453, expressed “its commitment to build on the positive relationships of the past and present to move toward a brighter future where all the people of this land live reconciled as brothers and sisters . . . and encourage[d] all State governments similarly to work toward reconciling relationships with Indian tribes within their boundaries”

WHEREAS, the first Amendment of the United States Constitution, as well as state constitutional amendments and provisions, generally guarantee all Americans – including American Indigenous Peoples – the right to freely exercise religion; and

WHEREAS, the United States Supreme Court has recognized that prison inmates “do not forfeit all constitutional protections by reason of their conviction and confinement in prison.” *Bell v. Wolfish*, 441 U.S. 520, 545 (1979); and

WHEREAS, the federal Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, generally prevents a prison from substantially burdening an inmate’s religious exercise unless the imposition of the burden on that person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest; and

WHEREAS, various state laws, policies, procedures and protocols affirm the traditional indigenous religious rights of state-incarcerated American Indigenous Peoples; and

WHEREAS, various American Indian, Alaska Native and Native Hawaiian governments and societies (collectively “American indigenous governments”), as a matter of those indigenous governments’ own laws and policies, and the customs, traditions and practices of the citizens of those governments and societies, also affirm and support the traditional indigenous religious rights of incarcerated American Indians, Alaska Natives, and Native Hawaiians; and

WHEREAS, the United States, states, and American indigenous governments generally share common penological goals of repressing criminal activity within their jurisdictions, and facilitating all incarcerated American citizens’ rehabilitation in order to prevent habitual criminal offense; and

WHEREAS, the traditional indigenous religious practices and uses help further those shared penological goals in regard to incarcerated American Indigenous Peoples, *see* Suzanne J. Crawford & Dennis F. Kelley, American Indian Religious Traditions: An Encyclopedia 774 (2005) (“[F]or some Native American prison inmates, walking the red road in the white man’s iron house is the path to salvation, the way of beauty, and the only road to rehabilitation and survival.”); and

WHEREAS, those traditional indigenous religious practices that further incarcerated American Indigenous Peoples’ rehabilitation include, without limitation, the practice of sweat lodge, talking circle, blessing way, Change of Seasons, pipe, drumming and pow wow ceremonies; and the related use of sacred traditional items like beadwork, pipes, eagle feathers, animal hides, bones and teeth, prayer fans, hand-drums and sticks, rattles and medicine bags, and sacred traditional medicines like sage, sweet grass, cedar, copal, bitter root, osha root, kinnikinnick and tobacco; and

WHEREAS, the United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”), as endorsed by the United States in 2010, affirms that all doctrines, “policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust”; and

WHEREAS, the Declaration provides that Nation-States such as the United States “shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs”; and

WHEREAS, the Declaration further provides that “Indigenous peoples have the right to manifest, [practice], develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects . . .”; and

WHEREAS, the International Covenant on Civil and Political Rights (ICCPR), as ratified by the United States in 1992, provides that “everyone shall have the right to freedom of thought, conscience and religion, which “right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”; and

WHEREAS, the ICCPR further provides that the “[f]reedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others,” in regard to which the United Nations Office of the High Commissioners for Human Rights has declared that “persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint”; and

WHEREAS, notwithstanding the above-referenced international, federal, state, and American indigenous government laws and norms, the inherent rights of incarcerated American Indigenous Peoples’ freedom to believe, express and exercise the traditional religions, in various traditional indigenous religious manners, are too frequently violated by federal, state and local government actors in the United States.

NOW THEREFORE BE IT RESOLVED, that the National Native American Bar Association hereby commends and supports federally and state incarcerated American Indigenous Peoples’ freedom to believe, express and exercise traditional indigenous religion.

NOW THEREFORE BE IT FURTHER RESOLVED, that the National Native American Bar Association denounces and opposes any unduly burdensome or patently illegal federal, state or local government restriction upon incarcerated American Indigenous Peoples’ freedom to believe, express and exercise traditional indigenous religion, including any such restriction that does not advance the shared penological goals of federal, state and American indigenous governments.

NOW THEREFORE BE IT RESOLVED, that the National Native American Bar Association calls upon the United States, all fifty American states and the District of Columbia – including federal and state executive, agency, legislative, corrections and judicial officials and employees – to:

(a) Take all reasonable and any least restrictive steps to commend, support and facilitate incarcerated American Indigenous Peoples’ freedom to believe, express and exercise traditional indigenous religion,

(b) Denounce or cease any unduly burdensome or patently illegal or illegitimate federal, state or local government restriction upon incarcerated American Indigenous Peoples’ freedom to believe, express and exercise traditional indigenous religion, and

(c) Explore how federal, state and American indigenous governments can jointly develop and advance shared penological goals in regard to incarcerated American Indigenous Peoples.

NOW THEREFORE BE IT FURTHER RESOLVED, that the National Native American Bar Association calls upon the American Bar Association, Federal Bar Association and state and local bar associations, the National Congress of American Indians, regional inter-tribal associations and individual American indigenous governments, the United States Attorney General and Department of Justice, the American Correctional Association and American Association of State Correctional Administrators, and the United Nations Special Rapporteur on the Rights of Indigenous Peoples, to also formally call upon the United States, all fifty American states and the District of Columbia, to:

(a) Take all reasonable and any least restrictive steps to commend, support and facilitate incarcerated American Indigenous Peoples' freedom to believe, express and exercise traditional indigenous religion,

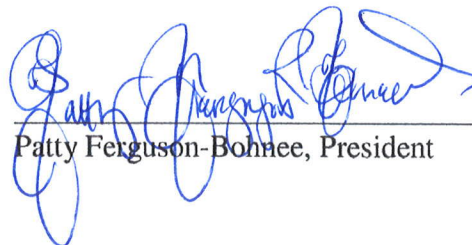
(b) Denounce or cease any unduly burdensome or patently illegal or illegitimate federal, state or local government restriction upon incarcerated American Indigenous Peoples' freedom to believe, express and exercise traditional indigenous religion, and

(c) Explore how federal, state and American indigenous governments can jointly develop and advance shared penological goals in regard to incarcerated American Indigenous Peoples.

NOW THEREFORE BE IT FURTHER RESOLVED that, for purpose of the call to action immediately above, a copy of this Resolution shall be immediately transmitted by the National Native American Bar Association President, to the Presidents of the American Bar Association and Federal Bar Association, the President of the National Congress of American Indians, the United States Attorney General and the Assistant Attorney General for the U.S. Department of Justice Civil Rights Division, the President of the National Association of Attorneys General, the Presidents of the American Correctional Association and American Association of State Correctional Administrators, and to the United Nations Special Rapporteur on the Rights of Indigenous Peoples.

CERTIFICATION

The foregoing resolution was adopted by the membership at the Annual Meeting of the National Native American Bar Association, on Wednesday, April 10, 2013, with a quorum present.



Patty Ferguson-Bonnee, President

ATTEST:



Linda Benally, Recording Secretary