



HUY

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Pronounced "hoyt," Huy means "see you again/we never say goodbye" in the Coast Salish language.

February 10, 2014

**VIA EMAIL &
PRIORITY EXPRESS MAIL INTERNATIONAL**

Kate Fox Principi
Human Rights Committee Secretariat
8-14 Avenue de la Paix
CH 1211 Geneva 10
Switzerland

**Re: *Update to Joint Submission Concerning Religious Freedoms of Indigenous Persons
Deprived of their Liberty in the United States of America***

Dear Ms. Principi:

Thank you for providing us the opportunity to submit a short update to our September 3, 2013 NGO report in regard to the United States' rescheduled review. Enclosed are twenty (20) copies of our update. Please do not hesitate to contact us if you have any questions or if there is any further information we can provide to the Committee.

Sincerely,

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Eldon Vail, Past Department of Corrections Secretary

**UPDATE TO SEPTEMBER 3, 2013 JOINT SUBMISSION TO
THE U.N. HUMAN RIGHTS COMMITTEE**

**CONCERNING RELIGIOUS FREEDOMS OF INDIGENOUS
PERSONS DEPRIVED OF THEIR LIBERTY IN THE UNITED
STATES OF AMERICA**

**IN RELATION TO THE UNITED STATES' 4TH PERIODIC
REPORT**

110th Session, March 13–14, 2014

Submitted February 10, 2014

Contact:

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1. Huy provides this update to the joint report submitted on September 3, 2013 by the Affiliated Tribes of Northwest Indians, the Round Valley Indian Tribes, Huy, the National Native American Bar Association, the Indigenous Peoples Law and Policy Program at the University of Arizona, the National Congress of American Indians, the Native American Rights Fund, the Center for Indian Law and Policy at the Seattle University School of Law, the American Civil Liberties Union of Washington, and the American Civil Liberties Union of Southern California. Also, the national American Civil Liberties Union hereby signs on to the joint report.

2. Since our September 2013 report, which highlighted five states, illegal restrictions on indigenous prisoners' religious freedoms have continued unabated by the United States, in violation of domestic constitutional and statutory law as well as Articles 2, 10, 18, 26, and 27 of the International Covenant on Civil and Political Rights ("ICCPR") and the United States' obligations under the UN Declaration on the Rights of Indigenous Peoples. This update, like our initial report, responds to paragraphs 1(b), 4, 16, and 27 of the Committee's list of issues for the United States. Here, we provide updated information about California as well as information concerning Wyoming, Hawaii, and Missouri.

3. **California.** As we previously reported, the California Department of Corrections and Rehabilitation ("CDCR") imposed "emergency" regulations in February 2013 severely restricting indigenous prisoners' religious property. At the same time, it began reducing prisoner access to sweatlodge ceremonies. In response to an outpouring of criticism, CDCR made minor revisions to the regulations in July 2013, leaving intact the prohibition on previously allowed sacred items such as pipes and pipe bags, hand drums and rattles, and the sacred herb kinnikinnick. On December 9, 2013, CDCR made these emergency regulations permanent despite receiving a total of 162 written comments on the regulations, including 55 comments specifically protesting the illegality of the restrictions on indigenous peoples' religious freedoms and the failure of the CDCR to consult with indigenous peoples or include a single indigenous person in the process of designing the new regulations.¹ The CDCR's permanent adoption of these unduly restrictive regulations, in disregard for the outpouring of concern by indigenous inmates, other indigenous persons, tribal governments, and human rights and civil liberties organizations, exemplifies the institutional failure to address clear violations of indigenous prisoners' human rights at state and local levels in the United States.

4. **Wyoming.** In January 2014, the Tenth Circuit Court of Appeals ruled in *Yellowbear v. Lampert* that a federal district court improperly dismissed a case in which an indigenous prisoner challenged a decision to completely bar him from sweatlodge ceremonies due to the cost of transporting him from a special unit where he was held for his own safety.² The Tenth Circuit found this complete ban on participation was a cognizable claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Filed in 2011, the merits of the case will finally be heard by a court. This case not only demonstrates the pervasiveness of restrictions by state and local departments of corrections but also attests to the impossibility of rectifying the current pattern of human rights abuses on a case-by-case basis given the widespread nature of the violations and the failure of the United States to guarantee timely and effective remedies.

5. **Hawai'i.** On January 20, 2014, Huy, along with the Native American Rights Fund, filed a brief as *amicus curiae*, or "friend of the court," in the case of *Davis v. Abercrombie* in federal

¹ See California Department of Corrections and Rehabilitation, NCR 13-01 Final Statement of Reasons, http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2013NCR/13-01/Final%20Statement%20of%20Reasons.pdf.

² *Yellowbear v. Lampert*, No. 12-8048 (10th Cir. 2014) <http://www.ca10.uscourts.gov/opinions/12/12-8048.pdf>.

district court in the State of Hawai‘i.³ Hawai‘i has, since 1995, engaged in the controversial practice of sending prisoners to facilities on the mainland United States, with over half being held in private prisons such as those operated by the Corrections Corporation of America (“CCA”).⁴ In 2012, two Hawaiian prisoners were killed in separate incidents at CCA facilities in Arizona, illustrating larger concerns with CCA’s failure to protect the basic human rights of indigenous prisoners.⁵ In *Davis*, Native Hawaiian prisoners in Arizona CCA facilities are challenging the complete deprivation of access to a Pohaku O Kane, a sacred ceremony and space for prayer, refuge, and atonement that utilizes a stone altar. Despite prisons throughout the country successfully accommodating various forms of group worship, including indigenous sweatlodges that utilize fire and stones, CCA claims that unsubstantiated safety concerns support a complete ban on the Native Hawaiian stone altar. Far from posing threats to prison security, religious practice in prisons furthers rehabilitation and reduces recidivism.⁶ Held nearly 3,000 miles from their indigenous homelands, the importance of religious freedom for Native Hawaiian prisoners takes on heightened importance and is critical to their rehabilitation and survival.

6. **Missouri.** On November 18, 2013, Huy received a letter of allegation from an indigenous prisoner incarcerated by the Missouri Department of Corrections, contending that indigenous prisoners have not been allowed access to sweatlodge ceremonies since 2000. After an indigenous prisoner’s *pro se* claims pursuant to the First Amendment of the U.S. Constitution and RLUIPA were originally dismissed by a federal district court, the Eighth Circuit Court of Appeals reversed the dismissal and remanded the matter to the district court, only to have the prisoner’s case again dismissed by the trial court on summary judgment.⁷ This case, too, illustrates the impossibility of remedying the current pattern of human rights abuses against indigenous prisoners in the United States, on a case-by-case basis.

7. As this update illustrates, the United States continues to fail to fully implement the ICCPR at state and local levels. Disproportionately incarcerated and insufficiently consulted, indigenous peoples are suffering severe impacts from the United States’ failure to fulfill its obligation to prevent and remedy violations of indigenous prisoners’ religious freedoms. We respectfully reiterate our request the Human Rights Committee urge the United States to: (a) immediately halt violations of indigenous prisoners’ rights to freely exercise their religion; (b) undertake a comprehensive investigation of state laws and policies regarding indigenous exercise of religion; (c) engage indigenous communities in meaningful consultation to explore how federal, state and indigenous governments may jointly develop and advance shared penological goals regarding incarcerated indigenous persons; and (d) provide any other recommendations the Committee considers appropriate.

³ For background, see Order Denying Defendants’ Motion to Transfer Venue, *Davis v. Abercrombie*, No. 11-00144, <http://www.gpo.gov/fdsys/pkg/USCOURTS-hid-11-cv-00144/pdf/USCOURTS-hid-11-cv-00144-0.pdf>.

⁴ See Department of Sociology University of Hawaii at Manoa and Department of the Attorney General State of Hawaii, Hawaii’s Imprisonment Policy and the Performance of Parolees Who Were Incarcerated In-State and on the Mainland (2011), <http://ag.hawaii.gov/cpja/files/2013/01/AH-UH-Mainland-Prison-Study-2011.pdf>.

⁵ See ACLU, Family of a Second Hawaii Prisoner Murdered in Mainland Prison Files Suit Against State of Hawaii and Corrections Corporation of America, <https://www.aclu.org/node/34901>.

⁶ See, e.g., Melvina T. Sumter, Religiousness and Post-Release Community Adjustment: Graduate Research Fellowship – Final Report (2000), <https://www.ncjrs.gov/pdffiles1/nij/grants/184508.pdf>; Harvard Pluralism Project, Sweatlodges in American Prisons (2005), <http://www.pluralism.org/reports/view/103>.

⁷ See *Pounders v. Kempker*, No. 03-254 (8th Cir. 2013) (unpublished), <http://media.ca8.uscourts.gov/opndir/03/10/032054U.pdf>.