

1 result, Plaintiff has been placed in maximum custody confinement, where he has less access
2 to rehabilitation programs, no access to “sacred items/religious items,” and cannot use a
3 sweat lodge. (*Id.* at 9.)

4 On screening under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated
5 First Amendment religious exercise and Religious Land Use and Institutionalized Persons
6 Act (“RLUIPA”) claims for injunctive relief against Defendant David Shinn, former
7 Director of the Arizona Department of Corrections, Rehabilitation and Reentry
8 (“ADCRR”), in his official capacity, and directed Shinn to answer the claims.¹ (Doc. 6.)
9 The Court dismissed the remaining Defendant. (*Id.*)

10 **II. Summary Judgment Standard**

11 A court must grant summary judgment “if the movant shows that there is no genuine
12 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
13 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The
14 movant bears the initial responsibility of presenting the basis for its motion and identifying
15 those portions of the record, together with affidavits, if any, that it believes demonstrate
16 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

17 If the movant fails to carry its initial burden of production, the nonmovant need not
18 produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,
19 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts
20 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in
21 contention is material, i.e., a fact that might affect the outcome of the suit under the
22 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable
23 jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
24 242, 248, 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th
25 Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its

26 ¹ Shinn has since left ADCRR, and current ADCRR Director Ryan Thornell, in his official
27 capacity, was automatically substituted for Shinn pursuant to Federal Rule of Civil
28 Procedure 25(d). (Docs. 62, 63.)

1 favor, *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however,
2 it must “come forward with specific facts showing that there is a genuine issue for trial.”
3 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal
4 citation omitted); *see* Fed. R. Civ. P. 56(c)(1).

5 At summary judgment, the judge’s function is not to weigh the evidence and
6 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,
7 477 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence and draw
8 all inferences in the nonmovant’s favor. *Id.* at 255. The court need consider only the cited
9 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

10 **III. Relevant Facts²**

11 **A. ADCRR’s Prison Gang Policies**

12 Within the ADCRR, prisoners have formed gangs and other groups that engage in
13 unlawful behavior or present a threat to the safe and secure operation of the ADCRR or the
14 public. (Doc. 69 (Def.’s Statement of Facts) ¶ 1.) ADCRR categorizes such groups as
15 Security Threat Groups (STGs). (*Id.* ¶ 2.) In 1991, ADCRR established an STG Unit
16 dedicated to controlling prison gang activity because gangs were fighting each other and
17 amongst themselves, selling drugs, extorting payments from other prisoners, and ordering
18 assaults and killings in prison. (*Id.* ¶ 3.) By identifying and isolating STG members,
19 ADCRR has been able to reduce prison gang membership and activities, contributing to a
20 decrease in violence, intimidation, and harassment of other prisoners. (*Id.* ¶ 4.)

21 ADCRR’s STG policy is set forth in Department Order (“DO”) 806 and provides
22 for the identification and certification of prison gangs, the identification and validation of
23 prisoner STG members, the continual monitoring of STG activities, the re-classification of
24 validated prisoners, the debriefing and segregation of renounced prisoners, and a step-down
25 program for validated prisoners who participate in programming and are not involved in
26 gang activity or major disciplinary violations for two years. (*Id.* ¶ 5.)

27 The ADCRR defines an STG generally as any organization, club, association, or
28

² The relevant facts are undisputed unless the Court notes otherwise.

1 group of individuals, including traditional prison gangs, whose members engage in
2 unlawful acts or acts that violate ADCRR’s policies and detract from prison safety and
3 order. (*Id.* ¶ 8.) Under DO 806, a club, association, organization, or gang may be certified
4 as an STG if it either meets the statutory requirements for criminal street gang or terrorism
5 found in chapter 13 of the Arizona Revised Statutes or there is evidence demonstrating “a
6 clear and compelling potential to threaten the safe and secure operation of the Department
7 or any members or sections of the public.” (*Id.* ¶ 9.)

8 ADCRR has certified the following STGs: Aryan Brotherhood (1995); New
9 Mexican Mafia (1996); Old Mexican Mafia (1996); Border Brothers (1997); Grandel
10 (1997); Mau Mau (1998); Surenos (2000); Warrior Society (2001); Diné Pride (2009); and
11 West Side City Crips (2019). (*Id.* ¶ 12.) Since the STG policy began, the Department has
12 decertified the Old Mexican Mafia, Grandel, and Mau Mau STGS. (*Id.* ¶ 15.)³

13 ADCRR may designate a prisoner an STG suspect based on information from other
14 criminal justice agencies, interviews at ADCRR Reception Centers, and reports from staff;
15 once a prisoner is identified as a suspect, Special Security Unit (“SSU”) staff open a suspect
16 file and begin gathering information through telephone monitoring, mail scans, incident
17 reports and other information related to STG activity. (*Id.* ¶¶ 26-27.) When there is
18 sufficient evidence in a prisoner’s suspect file to meet validation criteria, SSU staff prepare
19 a validation packet. (*Id.* ¶ 28.) To be validated as an STG member, a prisoner must accrue
20 three or more of the following criteria specific to the STG: self-admission; tattoos;
21 symbolism; documents; publications; authorship; court records; group photos; association;
22 contacts; membership documents; other agency information; and media. (*Id.* ¶ 30.)

23 Under prior versions of DO 806, every validated STG member who refused to
24 renounce was assigned a maximum custody level and was sent to the ASPC–Eyman,
25 Browning Unit, which was established to provide maximum custody and control or safety

26
27 ³ Plaintiff asserts that he cannot say whether he disputes Defendant’s paragraph 15
28 because STG intelligence is “confidential at all times” and “on a need-to-know basis only.”
(Doc. 76 ¶ 15.) Plaintiff states that no notification has ever been issued to prisoners about
the decertification of Old Mexican Mafia, Grandel, or the Mau Mau. (*Id.*)

1 of certain inmates. (*Id.* ¶¶ 38-39.) Validated STG prisoners only became eligible for a
2 custody reduction and to leave the Browning Unit if the prisoner renounced his STG
3 membership and satisfactorily debriefed, which included a successful polygraph, or
4 successfully completed the STG Step-Down Program. (*Id.* ¶ 40.) The Step-Down Program
5 allows a prisoner to demonstrate he is no longer involved in an STG but does not require
6 the prisoner to renounce and debrief, to admit to being an STG member, or to provide
7 information about the STG. (*Id.* ¶ 41.)

8 Under the current DO 806, a validated STG member in the Browning Unit may be
9 eligible for a reduction in custody level in one of four ways: (1) renouncing STG
10 membership; (2) satisfactorily completing the STG Step-Down Program; (3) not
11 participating in any documented STG activity for 24 months as provided in DO 801
12 (ADCRR's classification policy) and completing the incentive steps outlined in DO 812
13 (ADCRR's maximum custody management policy); or (4) qualifying for a custody
14 reduction as provided by DO 801 and after consultation with the STG Unit. (*Id.* ¶ 42.)
15 According to Defendant, the current STG policy was modified and became effective on
16 April 15, 2021, and a prisoner now remains at the same custody and classification level
17 upon being validated. (*Id.* ¶ 43.) Plaintiff disputes this fact, asserting that under the current
18 policy, a validated member of an STG is assessed 16 points, which, depending on his point
19 score, can require him to be placed in a higher custody level. (Doc. 76 ¶ 43.)

20 In determining a prisoner's housing, ADCRR looks at various factors set forth in
21 DO 801, including the prisoner's disciplinary history, the prisoner's most serious current
22 and prior offense, escapes or escape attempts, history of violence, gang affiliation, age, and
23 participation in social programming. (Doc. 69 ¶¶ 44-45.) There are five custody levels
24 based on a prisoner's likelihood of escape or committing violence. (*Id.* ¶ 46.) Maximum
25 custody represents the highest risk to public and staff and requires frequent monitoring and
26 controlled movement within the facility. (*Id.* ¶ 47.)

27 **B. Warrior Society STG**

28 Defendant asserts that the Warrior Society has been a source of violent incidents in

1 the prison since 1982, when a fight broke out between Native American prisoners, all of
2 whom had Warrior Society tattoos, and black prisoners on a prison athletic field. (*Id.* ¶
3 16.) Plaintiff responds there is no evidence to support that the fight was for or in
4 furtherance of an STG, and Defendant does not explain or show these Warrior Society
5 tattoos that all of them had. (Doc. 76 ¶ 16.)

6 Defendant asserts that the Warrior Society has and continues to engage in drug
7 trafficking, extortion, assaults, and other disturbances, both in prison and outside of prison.
8 (Doc. 69 ¶ 17.) Plaintiff disputes this, saying there is no evidence to support that these
9 actions in and outside of prison “are in furtherance of, or for, an STG.” (Doc. 76 ¶ 17.)

10 Defendant asserts that suspected Warrior Society members have been involved in
11 such criminal matters as the 2010 murder of prisoner Albert Tsosi, a suspected member of
12 Diné Pride STG, and that Plaintiff was involved in this matter; the July 2020 homicide of
13 Joseph Toki, a Warrior Society member, during the robbery of a service station in
14 Scottsdale, Arizona; and the ongoing crimes committed on the Gila River Indian
15 Community investigated by FBI Safe Trails. (Doc. 69 ¶ 18.) Plaintiff disputes this,
16 asserting that he was stabbed in the chest in 2010, and, although he was charged with
17 murder in Maricopa County Superior Court case CR2011-005346-002 DT, the court found
18 “the State has failed to demonstrate . . . evidence that [Plaintiff] is a member of or affiliated
19 with the Warrior Society.” (Doc. 76 ¶ 18.) Plaintiff further asserts there is no evidence to
20 support that the homicide of Joseph Toki was for, or in furtherance of, an STG, and Plaintiff
21 states he does not have sufficient information about the bases of or the type of alleged
22 crimes Safe Trails is purportedly investigating. (*Id.*)

23 **C. ADCRR Religious Practice Policies**

24 Prisoner religious activities are governed by DO 904, and all prisoners are permitted
25 to possess a medallion consistent with their designated religious preference. (Doc. 69 ¶¶
26 54, 57.) Prisoners who designate a Native American religious preference are permitted to
27 possess additional items used in religious practice such as bandanas, beaded necklaces,
28 corn husks, corn pollens, various herbs, eagle feathers, and smudging shells. (*Id.* ¶ 58.)

1 Except for eagle feathers, which require a valid permit from the U.S. Fish and Wildlife
2 Service, the Chaplaincy approves the possession of such items for Native American
3 prisoners who are tribally enrolled in a federally recognized tribe. (*Id.* ¶ 59.) Native
4 American prisoners may possess these additional items by requesting them in a personally
5 signed inmate letter. (*Id.* ¶ 60.) ADCRR allows Native American prisoners to hold sweat
6 lodges, talking circles, pow wows, and dances, and they may engage in other group
7 religious practices if a request is submitted at least 20 days in advance; permission is
8 required for all religious celebrations. (*Id.* ¶¶ 61-63.)

9 Browning Unit prisoners are generally allowed to possess religious items and
10 participate in religious activities to the same extent as other prisoners except for activities
11 that present a security risk, such as the sweat lodge, which Browning Unit prisoners may
12 not participate in. (*Id.* ¶¶ 64-65.)

13 Sweat lodges are considered sacred grounds, and, according to Defendant, ADCRR
14 staff are not permitted inside without the permission of the shift commander who must first
15 notify a warden or deputy warden and the chaplain. (*Id.* ¶ 66.) Plaintiff disputes that
16 ADCRR staff must seek such approval and asserts that, at a townhall meeting in October
17 2022 at ASPC-Winslow, Captain Young told him that his officers “can search the sweat
18 lodge grounds without permission from administration.” (Doc. 76 ¶ 66.)

19 Defendant asserts that sweat lodge gatherings can and have been used to exchange
20 STG information and orders and for making and concealing weapons. (Doc. 69 ¶ 67.)
21 Defendant further asserts that Browning Unit prisoners cannot keep some items in their
22 cells, such as smudging shells, which could be used as weapons, or herbs, the burning of
23 which would violate Browning Unit’s designation as a non-smoking facility, and these
24 items are stored in the housing unit sergeant’s office and are available for use during
25 recreation. (*Id.* ¶¶ 68-69.) Plaintiff disputes that these restrictions are needed because,
26 based on his personal experience, “no such actions [have] ever been performed at sweat
27 lodges” and to his knowledge, there has not been an incident of a Native American using
28 their smudging shell as a weapon. (Doc. 76 ¶¶ 67-68.)

1 As an alternative to sweat lodges, Native American prisoners in maximum custody
2 can participate in talking circles during recreation time with any other Native Americans.
3 (Doc. 69 ¶ 70.) Plaintiff disputes that this is a viable alternative, stating that this
4 “alternative celebration” is a way for SSU officers to validate Native Americans as STG
5 members pursuant to DO 802 which says evidence relating to validation includes photos
6 of a prisoner with two or more validated or suspected STG members or reports
7 documenting “observed association of the inmate with STG . . . members.” (Doc. 76 ¶ 70.)

8 Defendant asserts that Browning Unit prisoners are permitted to smudge during
9 recreation time, but Plaintiff responds that he has been denied smudging by officers due to
10 his STG status in maximum security going back to 2019 and as recently as 2023. (Doc. 69
11 ¶ 71; Doc. 76 ¶ 71.)

12 Prisoners may participate in any observance in their own cells unless it affects the
13 operation of the institution, in which case the prisoner must request in writing the
14 accommodation they seek. (Doc. 69 ¶ 72.) In addition, Defendant asserts that prisoners
15 can fast, pray, meditate, engage in self-study, and order religious texts. (*Id.* ¶ 73.) Plaintiff
16 disputes this because any self-study or texts relative to the Warrior Society will be denied
17 because the Warrior Society is designated an STG. (Doc. 76 ¶ 73.)

18 **D. Plaintiff’s Designation as a Warrior Society Member**

19 Plaintiff entered ADCRR custody in 2000, was released to community supervision
20 in 2002, and returned to ADCRR custody in 2003 to serve a 12-year sentence. (Doc. 69 ¶¶
21 74-75.) In 2004, Plaintiff severely assaulted a correctional officer and was sentenced in
22 2006 to an additional 8.5 years in prison and was given a suspended sentence for assaulting
23 3 other officers while at the Maricopa County Jail earlier in 2006. (*Id.* ¶¶ 76, 78-79.)

24 Defendant asserts that Plaintiff was suspected of being a Warrior Society member
25 on May 20, 2010, when his name was found on an STG “hit list” targeting members of the
26 Warrior Society, and Plaintiff was connected to the June 2010 murder of Albert Tsosie, a
27 suspected member of Diné Pride. (*Id.* ¶ ¶ 80-81.) Plaintiff disputes this, asserting that
28 Maricopa County Superior Court records state that prison officials “failed to demonstrate

1 by the evidence that [Plaintiff] is a member of or affiliated with [an STG].” (Doc. 76 ¶ 80,
2 citing Trial Minute Entry Day Three (Aug. 13, 2012) in *State of Ariz. v. Richard Johnson*,
3 Maricopa County Superior Court Case No. CR2011-005346-002 DT.) Plaintiff further
4 asserts that in a 2013 district court case, the Court found that “the record shows that
5 Plaintiff [is] not an STG member.” (*Id.*, citing Doc. 161 at 8 in *Johnson v. Juvera*, No.
6 2:12-cv-00538-GMS (DKD) (D. Ariz. 2013).)

7 Plaintiff also asserts insofar as Defendant characterizes the murder of Albert Tsosie
8 as gang/STG related, the Superior Court “ruled otherwise.” (*Id.* ¶ 81, citing Trial Minute
9 Entry Day Three (Aug. 13, 2012) in *State of Ariz. v. Richard Johnson*, Maricopa County
10 Superior Court Case No. CR2011-005346-002 DT.) Plaintiff and Defendant dispute
11 whether Plaintiff was holding Tsosie’s arms or hand while another prisoner, Marlon
12 McCowan, stabbed Tsosie with a metal shank. (Doc. 69 ¶ 82; Doc. 76 ¶ 82.) Plaintiff
13 asserts that because Tsosie had a weapon in his hand, Plaintiff was holding Tsosie’s hand
14 so he (Plaintiff) would not be stabbed. (Doc. 76 ¶ 82.) In 2012, Plaintiff pleaded guilty to
15 solicitation to commit second-degree murder in Tsosie’s death and was sentenced to an
16 additional five years in prison. (Doc. 69 ¶ 85.)

17 Defendant asserts that ADCRR later determined McCowan to be a suspected
18 member of the Warrior Society based on a review of documents going back to 2003, but
19 Plaintiff responds he cannot say whether he disputes this statement because STG
20 documents are confidential. (Doc. 69 ¶ 83; Doc. 76 ¶ 83.)

21 In October 2014, Plaintiff was validated as a STG Warrior Society member due to
22 his possession of a roll call of Warrior Society and Diné Pride members housed at Central
23 Unit, a micro note he authored discussing Warrior Society business, including a debt to be
24 collected, a letter from another Warrior Society member discussing Warrior Society
25 business, and a letter from an influential Warrior Society member introducing himself.
26 (Doc. 69 ¶ 86.) In November 2014, after the STG Appeal Committee upheld the decision
27 of his first validation hearing, Plaintiff was transferred to the Browning Unit. (*Id.* ¶ 89.)

28 Plaintiff was in the Step-Down Program in 2017 and transferred to close custody (a

1 less restrictive facility), but while he was in close custody, officers found three STG-
2 specific documents in Plaintiff's belongings: a calendar code specific to the Warrior
3 Society with the name and number of another validated Warrior Society prisoner; a roster
4 of Warrior Society members; and a micro-note from a Diné Pride STG member to another
5 containing a Diné Pride roster and describing Diné Pride activities. (Doc. 69 ¶¶ 90-92.)
6 Plaintiff was terminated from the Step-Down Program on April 23, 2018, and returned to
7 maximum custody at the Browning Unit on April 30, 2018. (*Id.* ¶ 93.) Plaintiff had two
8 validation re-hearings in March and September 2020, and both hearings confirmed Plaintiff
9 as a member of the STG Warrior Society, and he remains a validated STG member. (*Id.* ¶
10 94.) Plaintiff disputes this evidence, asserting that he was terminated from the Step-Down
11 Program "due in part to retaliatory motives by prison officials." (Doc. 76 ¶ 92.)

12 In July 2022, Plaintiff was transferred to the ASPC-Winslow facility following a
13 classification review that determined he could be held in a less restrictive setting. (Doc.
14 69 ¶ 95.) On January 23, 2023, staff discovered a homemade handcuff key in Plaintiff's
15 property, and an SSU investigation found that Plaintiff was involved in facilitating the
16 assault of another prisoner. (*Id.* ¶¶ 96-97.) Plaintiff denies possessing the handcuff key or
17 facilitating the assault of another prisoner, and he asserts that no disciplinary ticket was
18 ever issued for facilitating an assault. (Doc. 76 ¶¶ 96-97.) Plaintiff was charged with
19 possession of the homemade handcuff key, found guilty, and his conviction was upheld on
20 appeal February 17, 2023. (Doc. 69 ¶ 98.) As a result, a discretionary override was issued,
21 and Plaintiff was returned to maximum custody at the Browning Unit. (*Id.* ¶ 99.) Plaintiff's
22 appeal of the override decision was upheld on May 12, 2023. (*Id.* ¶ 100.) Plaintiff's
23 disciplinary record includes threatening another person with harm, several assaults,
24 fighting, and the murder of Tsosie. (*Id.* ¶ 101.) Plaintiff disputes that he was returned to
25 maximum custody as a result of the handcuff key, asserting that the discretionary override
26 was because of STG activity for "sanctioning" an assault, and he notes that his
27 reclassification on June 21, 2023, states that he "has had no STG activity for the past 24
28 months" and could be managed at a lower custody yard. (Doc. 76 ¶ 99.)

1 Plaintiff asserts that due to his STG status, he has been classified to Browning Unit
2 for almost a decade, even though his current classification points are low enough to allow
3 him on a lower, medium security unit. (*Id.* ¶ 115.)

4 **E. Plaintiff's Religious Designation**

5 As of December 20, 2006, Plaintiff's designated religious preference has been
6 Native American. (Doc. 69 ¶ 102.) Defendant asserts that Plaintiff was raised in the
7 traditional Native American religion, but Plaintiff believes that religion is a European
8 concept imposed on Native Americans and that religion for him is just how he was brought
9 up, a way of life, involving traditional beliefs and stories, including creation stories. (*Id.*
10 ¶¶ 103-04.) Plaintiff disputes Defendant's characterization of "Native American religion,"
11 but will use the term to refer to his "theological doctrine/dogma." (Doc. 76 ¶¶ 103-04.)

12 Defendant quotes Plaintiff's description at his deposition of the Warrior Society as
13 a dogma "which is just looking out and helping those that cannot help themselves and
14 helping make sure that our traditional beliefs doesn't fade away with time, and carrying on
15 our traditional beliefs, traditional values, and the stories that were taught to us as younger
16 [sic] through verbal communication." (Doc. 69 ¶ 105.) Plaintiff does not dispute this
17 quotation but asserts that Defendant's fact "is an oversimplification of his hour-plus-long
18 deposition." (Doc. 76 ¶ 105.) Plaintiff became a member of the Warrior Society when he
19 began believing in this dogma. (Doc. 69 ¶ 106.)

20 The Warrior Society has members and elders, but Defendant says Plaintiff "does
21 not know or understand of any organization of the Warrior Society, holidays, or training,"
22 and he also "does not know of any tenets, beliefs, or practices that are different from
23 traditional Native American tenets, beliefs, or practices." (Doc. 69 ¶ 107.) Plaintiff
24 disputes this, asserting that Defendants seems to approach Plaintiff's system of religious
25 belief in the same way as "mainstream" religious perspective, even though the Supreme
26 Court has recognized there are many religions in this country and that "[r]eligious
27 experiences which are as real as life to some may be incomprehensible to others." (Doc.
28 76 ¶ 107, quoting *United States v. Ballard*, 322 U.S. 78, 86 (1944).)

1 In July 2021, while at the Browning Unit, Plaintiff requested permission to possess
2 certain herbs, but the Complex Senior Chaplain rejected and returned his inmate letter
3 because it was not signed. (Doc. 69 ¶ 109.) There is no documentation that Plaintiff signed
4 and returned his letter or submitted a new, signed letter. (*Id.* ¶ 110.) Plaintiff does not
5 recall his inmate letter being returned to him. (Doc. 76 ¶¶ 109-110.)

6 On July 11, 2022, following his transfer to close custody, Plaintiff requested to be
7 on the turn out to attend Talking Circle, Sweat Lodge, and all religious activities, and he
8 was added to the Talking Circle and Sweat Lodge turnouts on August 11, 2022. (Doc. 69
9 ¶¶ 111-112.)

10 If a Native American prisoner who is a validated STG member requests a religious
11 celebration or activity that is not a Native American celebration or activity already
12 recognized by ADCRR, the Department will accommodate the request to the extent
13 possible considering the safety and security of others and the orderly operations of the
14 prison. (*Id.* ¶ 113.) It is ADCRR's policy to accommodate all requests for religious
15 practices or celebrations to the extent possible because it promotes harmony and is to
16 everyone's advantage. (*Id.* ¶ 114.)

17 Plaintiff asserts that Defendant refuses to recognize the Warrior Society as a
18 "religious movement coming out of a religious community in response to religious
19 questions." (Doc. 76 ¶ 116.) Plaintiff asserts that the practice of his beliefs is substantially
20 burdened by the ADCRR's refusal to recognize the Warrior Society "as exercises of Native
21 Ways/Religious Beliefs that may or may not be compelled by, or central to, a system of
22 religious belief to Native Americans." (*Id.* ¶ 127.) Plaintiff states that the Warrior Society
23 "is not the primary denomination of Native Ways/Religious Beliefs but is just part of a
24 system of religious beliefs to Native Americans." (*Id.* ¶ 152.) "Plaintiff's belief occupies
25 a place in his life parallel to that filled by the orthodox belief in God." (*Id.* ¶ 155.)

26 Plaintiff states that because the Warrior Society is designated an STG, there is a
27 complete ban on Warrior Society literature in the ADCRR under DO 914, Inmate Mail,
28

1 section 7.0, Unauthorized Content, which prohibits STG publications, documents, or
2 articles indicating STG membership or activity. (*Id.* ¶ 131.)

3 Due to Plaintiff’s STG validation, his religious items have been destroyed,
4 specifically, a bandana. (*Id.* ¶ 135.) Due to Plaintiff’s STG validation, he is prohibited
5 from attending religious services, and Chaplain Venalongo said in a response to Plaintiff’s
6 grievance that “Browning Unit is a maximum security unit, and does not have any religious
7 service[s]” (*Id.* ¶¶ 140-141 (alteration and ellipsis in original).) Plaintiff has had
8 difficulty obtaining the proper accommodations for smoke-generating ceremonies (i.e.,
9 burning sage, cedar, sweetgrass, tobacco, and other sacred herbs), and although DO 904
10 provides that Browning Unit prisoners are allowed to conduct smoke-generating
11 ceremonies during their regularly scheduled exercise times in an approved exercise area,
12 officers do not have time to escort Plaintiff to an approved exercise area. (*Id.* ¶¶ 142, 144.)

13 **IV. Religious Exercise Legal Standards**

14 **A. First Amendment**

15 “Inmates retain the protections afforded by the First Amendment, ‘including its
16 directive that no law shall prohibit the free exercise of religion.’” *Shakur v. Schriro*, 514
17 F.3d 878, 883-84 (9th Cir. 2008) (quoting *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348
18 (1987)). To implicate the Free Exercise Clause, a prisoner must show that the belief at
19 issue is both “sincerely held” and “rooted in religious belief.” *Malik v. Brown*, 16 F.3d
20 330, 333 (9th Cir. 1994); *see Shakur*, 514 F.3d 884-85 (noting the Supreme Court’s
21 disapproval of the centrality test and finding that the sincerity test in *Malik* determines
22 whether the Free Exercise Clause applies).

23 If the prisoner makes this initial showing, the prisoner must then establish that
24 prison officials substantially burdened the religious practice by preventing the prisoner
25 from engaging in conduct which the prisoner sincerely believes is consistent with his or
26 her faith. *Shakur*, 514 F.3d at 884-85. A regulation that burdens the First Amendment
27 right to free exercise may be upheld only if it is reasonably related to a legitimate
28 penological interest. *Turner v. Safley*, 482 U.S. 78, 89 (1987). This determination requires

1 analysis of four prongs: (1) whether there is a valid, rational connection between the
2 regulation and the legitimate governmental interest; (2) whether there are alternative means
3 of exercising the right that remain open to prisoners; (3) the impact accommodation of the
4 right will have on guards and other prisoners, and on the allocation of prison resources;
5 and (4) the absence of ready alternatives. *Id.* at 90.

6 **B. RLUIPA**

7 Under RLUIPA, a government may not impose a substantial burden on the religious
8 exercise of a confined person unless the government establishes that the burden furthers a
9 “compelling governmental interest” and does so by “the least restrictive means.” 42 U.S.C.
10 § 2000cc-1(a)(1)-(2); *Warsoldier v. Woodford*, 418 F.3d 989, 994 (9th Cir. 2005).

11 RLUIPA requires a prisoner to show that the relevant exercise of religion is
12 grounded in a sincerely held religious belief. *Holt v. Hobbs*, 135 S. Ct. 853, 859, 862
13 (2015). Next, the prisoner bears the burden of establishing that a prison policy constitutes
14 a substantial burden on that exercise of religion. *Id.*; *Warsoldier*, 418 F.3d at 994 (citing
15 42 U.S.C. § 2000cc-2(b)). RLUIPA provides greater protection than the First
16 Amendment’s alternative means test. *Holt*, 135 S. Ct. at 862.

17 If the prisoner satisfies these two showings, the burden shifts to the government to
18 prove that the substantial burden on the prisoner’s religious practice both furthers a
19 compelling governmental interest and is the least restrictive means of doing so.
20 *Warsoldier*, 418 F.3d at 995.

21 **V. Discussion**

22 **A. Plaintiff’s Claims and Requested Relief**

23 Plaintiff alleges that ADCRR’s designation of the Warrior Society as an STG places
24 a substantial burden on Native Americans, discriminates against them “based upon race
25 and religious belief/Native Ways,” and “inhibits and constrains . . . Plaintiff’s[] ability to
26 express [his] Native Ways/Religious Belief.” (Doc. 1 at 9-12.) Plaintiff’s requested relief
27 in this action is to have the Warrior Society decertified as an STG; to promptly place
28 Plaintiff and other prisoners who are validated as Warrior Society members back in general

1 population status and classified to the “appropriate” custody level; to expunge all records
2 indicating any sort of Warrior Society STG activity; and to take “any additional steps
3 necessary to prevent these illegal acts from re-occurring.” (*Id.* at 16.)

4 To the extent Plaintiff is seeking relief on behalf of other Native American
5 prisoners, a non-attorney may not appear on behalf of another person. *See C.E. Pope*
6 *Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) (while a non-attorney may
7 represent himself, he has no authority to appear as an attorney for others); *Oxendine v.*
8 *Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (plain error to permit a prisoner proceeding
9 pro se to represent fellow prisoners in a class action); *McShane v. United States*, 366 F.2d
10 286, 288 (9th Cir. 1966) (non-lawyer had no authority to appear as an attorney for other
11 persons in a purported class action); *accord Smith v. Schwarzenegger*, 393 Fed. App’x 518,
12 519 (9th Cir. 2010) (“The district court correctly held that [a California state prisoner]
13 could not bring a class action, or otherwise appear on behalf of other inmates.”). Plaintiff
14 does not allege, nor does it otherwise appear, that he is an attorney licensed to practice in
15 Arizona. For that reason, he may not present claims on behalf of other prisoners.

16 In addition, although Plaintiff alleges that he has been validated as a Warrior Society
17 member “without having committed any disciplinary infractions,” Plaintiff does not
18 challenge the process by which he was validated as an STG member, and such a claim
19 would not fall under the First Amendment or RLUIPA.⁴

20 Also, while Plaintiff alleges that ADCRR’s designation of the Warrior Society as
21 an STG places a substantial burden on Native Americans, the designation of the Warrior
22 Society as an STG is not a claim in this action. As Magistrate Judge Willett observed in
23 an earlier Order denying Plaintiff’s request for an order requiring Defendant to produce
24 evidence of why ADCRR has classified the Warrior as an STG:

25
26
27 ⁴ Plaintiff did present a Fourteenth Amendment challenge to the ADCRR’s annual
28 review process of his maximum custody placement because of his STG validation in
Johnson v. Ryan, and the Ninth Circuit Court of Appeals affirmed the Court’s dismissal of
that claim. *See Johnson v. Ryan*, 55 F.4th 1167, 1188-89 (9th Cir. 2022).

1 At issue in this case is whether Plaintiff's rights under the First
2 Amendment and RLUIPA have been violated. (Doc. 6 at 3).
3 Resolution of these claims will not require the Court to analyze
4 the reasons why the Arizona Department of Corrections has
5 classified the Warrior Society as a STG. *Jonas v. Schriro*, No.
6 04-2719-PHX-SMM, 2006 WL 2772641, at *1 (D. Ariz. Sept.
7 25, 2006) (resolving inmate's claims asserting violations of the
8 First Amendment and RLUIPA premised on the prison's
9 classification of the Warrior Society as a STG, which allegedly
10 eliminated the inmate's ability to practice his religion and
11 traditions of his Native American beliefs, without analyzing
12 reasons why the Warrior Society was designated as a STG).
13 The Court finds that the information requested in Plaintiff's
14 Request for Production No. 3 is not relevant or proportional to
15 the needs of the case. Plaintiff's Motion to Compel (Doc. 40)
16 will be denied.

17 (Doc. 44 at 5.)

18 To the extent Plaintiff claims the Warrior Society is a religion and thus designating
19 the Warrior Society as an STG violates his religious rights, such a claim lacks merit because
20 there is no evidence that ADCRR's use of the name "Warrior Society" for a specific STG
21 within ADCRR is at all religiously based as opposed to a response to the actions of
22 individuals within a group that threaten prison operations. While Plaintiff cites numerous
23 treatises and articles about the role of warrior societies in Native American culture, there
24 is no evidence that ADCRR's use of this same term to denote an STG has anything to do
25 with traditional warrior societies or their religious practices.

26 Plaintiff's allegations in this action relate to his access to religious services, religious
27 practices, and religious items while in maximum custody as a validated STG member, and
28 the Court will limit its analysis to whether these religious rights have been violated.

29 **B. The Merits**

30 Defendant argues that assuming the Warrior Society is a religion, Plaintiff has not
31 identified any Warrior Society practice or exercise of his religion that differs in any way
32 from the practice or exercise of the Native American religion that he identified as his faith
33 and that ADCRR already seeks to accommodate. (Doc. 68 at 9.) Defendant argues that

1 “[g]iven Plaintiff’s view of the Warrior Society—that it is a dogma for protecting
2 traditional Native American beliefs with a benevolent code of conduct—the issue devolves
3 into whether the designation of the Warrior Society as an STG or his validation as a Warrior
4 Society member creates a substantial burden on his exercise or observance of Native
5 American religious practices.”⁵ (*Id.*)

6 Defendant appears to concede that Plaintiff’s religious exercise is grounded in a
7 sincerely held religious belief and not some other motivation. Thus, the Court’s analysis
8 will focus on whether Defendant has substantially burdened Plaintiff’s religious exercise
9 and, if so, whether the burden is reasonably related to a legitimate penological interest
10 under the First Amendment and furthers a compelling government interest under RLUIPA.

11 Under the First Amendment, a substantial burden exists “where the state . . . denies
12 [an important benefit] because of conduct mandated by religious belief, thereby putting
13 substantial pressure on an adherent to modify his behavior and to violate his beliefs.”
14 *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 717–18 (1981). In
15 the RLUIPA context, a substantial burden is one that is “‘oppressive’ to a ‘significantly
16 great’ extent. That is, a ‘substantial burden’ on ‘religious exercise’ must impose a
17 significantly great restriction or onus upon such exercise.” *Warsoldier v. Woodford*, 418
18 F.3d 989, 995 (9th Cir. 2005) (quoting *San Jose Christian Coll. v. City of Morgan Hill*,
19 360 F.3d 1024, 1034 (9th Cir. 2004)). To substantially burden the practice of an
20 individual’s religion, the interference must be more than an isolated incident or short-term
21 occurrence. *Canell v. Lightner*, 143 F.3d 1210, 1215 (9th Cir. 1998).

22 Defendant argues that when a Native American prisoner is transferred to maximum
23 custody, the only significant impact on his ability to practice and observe his religion is the
24 loss of the right to attend a sweat lodge, and ADCRR does not prevent maximum custody

25 ⁵ Defendant argues that the Warrior Society, at least as Plaintiff describes it, would
26 not likely meet the definition of a religion or at least one that is separate from the Native
27 American religion that ADCRR already recognizes. (Doc. 68 at 15.) Whether the Warrior
28 Society is a religion separate from the Native American religion already recognized by
ADCRR is not before the Court, and the Court need not address Defendant’s argument that
Plaintiff has not identified the religious characteristics of the Warrior Society.

1 prisoners from smudging, dancing, or partaking in other ceremonies during recreation
2 times. (Doc. 68 at 9.)

3 Plaintiff responds that the validation of the Warrior Society as an STG means there
4 is a substantial burden on his religious exercise because there is a complete ban on Warrior
5 Society literature, his religious property has been destroyed, he is prohibited from
6 assembling with others for religious services, and he is prohibited from smoke-generating
7 ceremonies.⁶ (Doc. 76 at 15.)

8 **1. Warrior Society Literature**

9 Plaintiff asserts that by designating the Warrior Society an STG, there is a “complete
10 ban” on “Warrior Society literature” because DO 914 prohibits STG publications,
11 documents, or articles indicating STG membership or activity. (Doc. 76 ¶ 131.) Plaintiff
12 has not identified any material that is effectively banned by ADCRR or that have been used
13 by ADCRR to validate him or any other prisoner as belonging to an STG. As such,
14 Plaintiff’s evidence is vague and conclusory and insufficient to create a genuine issue of
15 material fact that ADCRR substantially burdens his access to religious texts. *See Taylor v.*
16 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (“A summary judgment motion cannot be
17 defeated by relying solely on conclusory allegations unsupported by factual data.”);
18 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007) (“[c]onclusory,
19 speculative testimony in affidavits and moving papers is insufficient to raise genuine issues
20 of fact and defeat summary judgment”); *Nilsson v. City of Mesa*, 503 F.3d 947, 952 n.2
21 (9th Cir. 2007) (“a conclusory, self-serving affidavit, lacking detailed facts and any
22 supporting evidence, is insufficient to create a genuine issue of material fact”).

23 On this record, the facts do not support a finding, under either the First Amendment
24 or RLUIPA, that Defendant has substantially burdened Plaintiff’s ability to receive
25 “Warrior Society literature.” Accordingly, the Court will grant summary judgment to
26 Defendant on the issue of Warrior Society Literature.

27
28 ⁶ The Court assumes that smoke-generating ceremonies are synonymous with
smudging ceremonies, but that is not entirely clear.

2. Religious Property

1
2 Plaintiff asserts that his religious items have been destroyed due to his validation as
3 an STG member. (Doc. 76 at 7.) He presents an Informal Complaint dated February 17,
4 2023, in which he said he did not receive all his property after he was transferred to the
5 Browning Unit, including two of his six bandanas, even though DO 704 allows six
6 bandanas.⁷ (Doc. 76 at 126.) Sergeant Marquez responded that “I have reviewed your
7 contraband and all other items were altered, excess or not allowed at max custody unit and
8 will not be issued to you.” (*Id.* at 125.) Plaintiff filed a formal Grievance and said he only
9 received four bandanas when DO 904 allows six bandanas. (*Id.* at 124.) The response says
10 the bandana issue needs to be addressed on a separate complaint because it concerns
11 religious property. (*Id.* at 123.) Plaintiff filed a Grievance Appeal, and the response says
12 DO 904 permits a maximum of six paisley print style bandanas that must be pre-approved
13 by Chaplaincy Services, but Plaintiff’s profile shows he was denied a request to purchase
14 three paisley bandanas on July 27, 2021 because he did not sign or date the form that was
15 submitted to the Chaplain, and there were no authorized religious purchase requests
16 electronically filed in ACIS at that time. (*Id.* at 120.) In a separate Grievance about the
17 lack of religious services and property in Browning Unit, Plaintiff said he was told two of
18 his bandanas depicted gang symbols and would be destroyed, which Plaintiff said was
19 outrageous because one bandana has Native designs and the other “is a sacred significance
20 to Pimas.” (Doc. 76 at 81.) The response to this Grievance says the seized bandanas do
21 not meet the color/pattern requirement of policy and neither has been approved for
22 purchase by a chaplain. (*Id.* at 79.)

23 Plaintiff apparently has four bandanas to use for religious purposes, and he presents
24 no evidence how the lack of the maximum six bandanas allowed under the policy
25 substantially burdens his religious practice. On this record, the facts do not support a
26 finding, under either the First Amendment or RLUIPA, that Defendant has substantially

27
28 ⁷ Plaintiff did not mention any other religious property in this Informal Complaint
which also complained about not receiving all his legal boxes, a TV, a light bulb, fan,
books, and shower shoes. (Doc. 76 at 126.)

1 burdened Plaintiff's ability to possess religious property, and the Court will grant summary
2 judgment to Defendant on the issue of religious property.

3 **3. Assembling with Others for Religious Services**

4 Defendant presents evidence that Native American prisoners in maximum custody
5 can participate in talking circles during recreation time with any other Native Americans
6 at recreation at the same time, but Plaintiff disputes this because under DO 802, prisoners
7 may be validated as STG members if they are observed associating with other STG
8 members. (Doc. 69 ¶ 70; Doc. 76 ¶ 70.)

9 Plaintiff's evidence about assembling with others is too vague and conclusory to
10 create a genuine issue of material fact that he is prohibited from assembling with others for
11 religious services. Plaintiff is already a validated STG member, and it is not clear if he is
12 suggesting that other prisoners in maximum custody will not participate in talking circles
13 with him because, if they are not already, they may also be validated as STG members by
14 participating in a talking circle with Plaintiff or that Plaintiff risks further, unspecified
15 sanctions. Because Plaintiff has not sufficiently rebutted Defendant's evidence that he can
16 participate in talking circles during recreation time with other Native American prisoners,
17 the evidence fails to create a genuine issue of material fact that Plaintiff has been
18 substantially burdened under either the First Amendment or RLUIPA, and the Court will
19 grant summary judgment to Defendant on the issue of assembling for religious services.

20 **4. Smoke-Generating/Smudging Ceremonies**

21 Defendant argues that ADCRR allows, and Plaintiff's grievance documents
22 confirm, that he can participate in smoke-generating ceremonies such as smudging. (Doc.
23 77 at 4.) But Plaintiff presents evidence that he has had difficulty obtaining the proper
24 accommodations for smoke-generating ceremonies (i.e., burning sage, cedar, sweetgrass,
25 tobacco, and other sacred herbs), and although DO 904 allows Browning Unit prisoners to
26 conduct smoke-generating ceremonies during their regularly scheduled exercise times in
27 an approved exercise area, officers do not have time to escort Plaintiff to an approved
28 exercise area. (Doc. 76 ¶¶ 142, 144.)

1 Plaintiff's evidence also includes an Informal Complaint in which he complained
2 that he cannot participate in smudge, and that prison officials have told him if he wants to
3 exercise his religious practices, he "need[s] to renounce." (Doc. 76 at 83.) In response to
4 the smudging issue, Chaplain Venalanzo said that officers would provide Plaintiff with a
5 lighter to practice his prayers in the recreation field. (*Id.* at 82.) Plaintiff filed a Grievance
6 stating that even though Venalanzo said officers would provide a lighter, "[t]hat is not what
7 is happening," and officers have told him if he wants to practice his religion, he needs to
8 renounce his STG status and inform on other prisoners. (*Id.* at 80-81.) The grievance
9 response does not specifically address the smudging or lighter issue, but states that
10 Francisco consulted with the Senior Chaplain and DO 904.3.5, and that "Max custody and
11 detention's security requirements do not allow for the requested services." (*Id.* at 79.)
12 Plaintiff filed a Grievance Appeal, and the response states that the Chaplaincy does not
13 have control over access to a lighter and Plaintiff is "encouraged to work with security for
14 this provision." (*Id.*)

15 Based on this record, there is a question of fact whether Plaintiff can participate in
16 smudging activities such that this religious practice is substantially burdened.

17 **a. First Amendment**

18 Because there is a question of fact, the Court will consider the *Turner* factors to
19 determine whether the apparent restriction on smoke-generating activities is reasonably
20 related to a legitimate governmental interest.

21 Neither party addresses the *Turner* factors as they relate to each alleged deprivation.
22 Defendant only addresses the *Turner* factors with respect to ADCRR's STG policies, which
23 Defendant argues meet the four *Turner* factors. Defendant also contends that Plaintiff can
24 participate in smoke-generating/smudging ceremonies while in maximum custody, but
25 Plaintiff has presented evidence that officers have told him that he needs to first renounce,
26 and so he has not been able to participate in smoke-generating/smudging ceremonies.
27 Because of this conflicting evidence and that lack of argument as to this religious practice,
28 there is question of fact whether the burden on Plaintiff's ability to practice smoke-

1 generating/smudging ceremonies is reasonably related to a legitimate penological interest,
2 and the Court will deny summary judgment to Defendant as to this First Amendment claim.

3 **b. RLUIPA**

4 The same finding applies to Plaintiff's RLUIPA claim. Because Defendant has only
5 argued that Plaintiff is able to participate in smoke-generating/smudging ceremonies and
6 has not demonstrated that the restriction Plaintiff claims furthers a compelling government
7 interest, the Court will deny summary judgment to Defendant as to this RLUIPA claim.

8 **5. Sweat Lodge**

9 Defendant argues that the only restriction on Plaintiff's religious exercise that could
10 amount to a substantial burden is the denial of his ability to attend a sweat lodge while in
11 maximum custody. (Doc. 68 at 14.) Given this concession, there is, at minimum, a
12 question of fact whether the inability to participate in a sweat lodge while in maximum
13 custody amounts to a substantial burden on Plaintiff's religious exercise. *See Greene v.*
14 *Solano Cnty. Jail*, 513 F.3d 982, 987 (9th Cir. 2008) ("We have little difficulty in
15 concluding that an outright ban on a particular religious exercise is a substantial burden on
16 that religious exercise.")

17 **a. First Amendment**

18 As to the first *Turner* factor, Defendant has presented evidence that because sweat
19 lodges are considered sacred places that correctional officers do not routinely monitor and
20 have been used for making and concealing weapons and exchanging STG information,
21 which can threaten institutional security, Defendant has presented a valid, rational
22 connection between the sweat lodge prohibition and a legitimate governmental interest.
23 This factor weighs in favor of Defendant.

24 As to the second *Turner* factor, Defendant has presented evidence that Plaintiff has
25 alternative means of exercising his religious rights such as talking circles or dances and
26 smudging ceremonies, the latter of which Plaintiff disputes. Because there is evidence that
27 Plaintiff can neither participate in sweat lodge nor smudging ceremonies, and it is not clear
28 that talking circles or dances are an adequate substitute, this factor does not favor

1 Defendants. Plaintiff does not deny, however, that other religious expressions are available
2 to him or explain why they are not adequate alternatives to sweat lodges or smudging, so
3 this factor also does not favor Plaintiff.

4 Regarding the third *Turner* factor, the record shows that accommodating Plaintiff's
5 participation in sweat lodge would impact the safety and security of the prison, with
6 Defendant presenting evidence that sweat lodge gatherings can and have been used to
7 exchange STG information and orders and for making and concealing weapons. Thus, this
8 factor favors Defendant.

9 The fourth *Turner* factor considers the availability of "obvious, easy alternatives,"
10 because "if an inmate claimant can point to an alternative that fully accommodates the
11 prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that
12 as evidence that the regulation does not satisfy the reasonable relationship standard."
13 *Turner*, 482 U.S. at 90–91. Plaintiff has not identified an alternative that fully
14 accommodates his right to participate in sweat lodge at a *de minimis* cost, but he asserts
15 that Captain Young told him his officers can search the sweat lodge grounds without
16 permission, apparently implying this would be a *de minimis* cost to the prison and resolve
17 the security issue. But that hearsay statement is ambiguous and does not say officers can
18 enter the sweat lodge during ceremonies when prisoners are present, so it is not clear it
19 would alleviate ADCCR's legitimate security concerns. Thus, Plaintiff has not pointed to
20 an obvious, easy alternative to the prohibition on sweat lodges in maximum custody.

21 Because three of the four *Turner* factors favor Defendant, and the fourth factor—
22 whether Plaintiff has alternative means of religious expression does not clearly favor either
23 party, the Court will grant summary judgment to Defendant on Plaintiff's First Amendment
24 claim regarding the sweat lodge.

25 **b. RLUIPA**

26 Defendant argues that sweat lodges, by their nature, are different from other
27 religious ceremonies because prisoners cannot be observed when they enter the lodge, and
28 ADCRR has a compelling interest in maintaining the safety and security of the prison.

1 (Doc. 68 at 14.) Defendant presents evidence that sweat lodges are sacred and officers do
2 not typically enter them and sweat lodge gatherings have been used to exchange STG
3 information and orders and for making and concealing weapons. (Doc. 69 ¶ 67.) Defendant
4 presents evidence that prisoners in maximum custody are classified as the most dangerous
5 and require the highest level of security and frequent monitoring. (*Id.* ¶¶ 47, 50.) Thus,
6 Defendant argues, prohibiting sweat lodges in maximum security is the least restrictive
7 method of ensuring the safety and security of other prisoners and staff. (Doc. 68 at 14.)

8 Plaintiff does not address this specific argument in his Response.

9 Based on this record, Defendant has shown that ADCRR has a compelling interest
10 in maintaining prison safety and security and that prohibiting sweat lodges in maximum
11 security is the least restrictive means of doing so. The Court will grant summary judgment
12 to Defendant as to Plaintiff's RLUIPA claim regarding sweat lodges.

13 **IT IS ORDERED:**

14 (1) The reference to the Magistrate Judge is **withdrawn** as to Defendant's
15 Motion for Summary Judgment (Doc. 68).

16 (2) Defendant's Motion for Summary Judgment (Doc. 68) is **granted in part**
17 **and denied in part**. The Motion is **granted** as to all issues except the smoke-
18 generating/smudging issue.

19 (3) The remaining claims in this action are Plaintiff's First Amendment and
20 RLUIPA injunctive relief claims regarding the smoke-generating/smudging issue.

21 (4) This action is referred by random lot to Magistrate Judge Eric Markovich for
22 the purpose of conducting a settlement conference on this remaining claim for injunctive
23 relief.

24

25

26

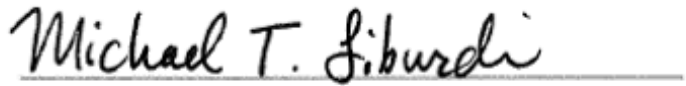
27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(5) The parties must jointly contact the chambers of Magistrate Judge Markovich at (520) 205-4600 within **14 days** of the date of this Order to schedule a settlement conference.

Dated this 16th day of January 2024.



Michael T. Liburdi
United States District Judge