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### **Your Responsibility When Using the Information Provided Below:**

*When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.*

### **Religious Rights and Access to Religious Diets for People Incarcerated in Arizona Prisons** (Updated January 2021)

Thank you for contacting us about your religious rights while incarcerated in Arizona's prisons. We hope the following handout answers your questions. Section I of this letter is a general overview of the religious rights of incarcerated people, and the laws that establish those rights. Section II covers Arizona Department of Correction's ("ADC") religious diet policies. Section III discusses a variety of other religious rights issues that incarcerated people may encounter. Section IV describes what you can do if you think that your religious rights have been violated.

#### **I. Incarcerated Persons' General Rights to Freely Exercise Their Religion**

The U.S. Constitution's First and Fourteenth Amendments protect your freedom to practice a religion and to be free from state-imposed religion—this still applies when you are in prison or jail.<sup>1</sup> Also, the Fourteenth Amendment equal protection clause requires the government to treat all people equally. This means that you should have a reasonable chance to pursue your practice of religion the same as other people who may have different religious beliefs or practices from you, and state officials cannot favor or give preference to any specific religion over another.<sup>2</sup> To be protected by the Constitution, your belief must be "sincerely held" and "religious in nature."<sup>3</sup> Prison officials can impose restrictions on

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<sup>1</sup> *Shakur v. Schriro*, 514 F.3d 878, 883–84 (9th Cir. 2008).

<sup>2</sup> *Cruz v. Beto*, 405 U.S. 319, 321–22, and fn. 2 (1972).

<sup>3</sup> *Shakur v. Schriro*, 514 F.3d 878, 885 (9th Cir. 2008).

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your religious rights without violating the Constitution if the policy or action is “reasonably related” to a “legitimate penological interest.”<sup>4</sup> Courts consider four factors in deciding whether a policy or action is reasonable or if it violates a person’s First Amendment rights: (1) if the policy has a logical connection to legitimate governmental interests invoked to justify it, (2) if there are alternative means of exercising the religious right, (3) what impact accommodating the religious right will have on prison staff, other prisoners, and prison resources, and (4) if there are ready alternatives to the regulation that could be implemented.<sup>5</sup>

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is a federal law that gives federal and state prisoners **more** protection of their religious rights than under the First Amendment. RLUIPA applies to Arizona prisoners.<sup>6</sup> Under RLUIPA, you have to show that prison officials imposed a “substantial burden” on your practice of a sincerely held religious belief; unlike the First Amendment analysis, the practice does not need to be compelled by or central to the religion.<sup>7</sup> In a RLUIPA case, the burden is on the prison officials to justify a policy or action that substantially burdens your religious practice. They have to show the restriction is “(1) in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”<sup>8</sup> In analyzing a RLUIPA claim, a court may consider alternatives put forward by the incarcerated person, can propose its own potential alternatives, and can

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<sup>4</sup> *Turner v. Safley*, 482 U.S. 78, 78 (1987).

<sup>5</sup> *Id.* at 78–79; *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) (regulations that precluded incarcerated people of Muslim faith with jobs from attending Friday religious services did not violate First Amendment); *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008) (allowing an incarcerated person of Muslim faith in Arizona to proceed with First Amendment and equal protection claim challenging refusal to provide meat consistent with Halal requirements); *Anderson v. Angelone*, 123 F.3d 1197 (9th Cir. 1997) (regulations prohibiting incarcerated person from acting as minister of his own church did not violate First Amendment); *Ward v. Walsh*, 1 F.3d 873 (9th Cir. 1993) (refusal to allow an incarcerated person of Orthodox Jewish faith to have candles in cell and failure to provide Orthodox rabbi did not violate First Amendment, but remanding for further proceedings regarding denial of kosher diet); *Friend v. Kolodzieczak*, 923 F.2d 126 (9th Cir. 1991) (rule barring rosaries and scapulars in cells did not violate First Amendment); *Standing Deer v. Carlson*, 831 F.2d 1525 (9th Cir. 1987) (regulation banning wearing of religious headbands in the dining hall did not violate First Amendment). But note that these cases were all decided before Congress passed RLUIPA.

<sup>6</sup> *See, e.g., Simonsen v. Arizona Dep’t of Corr.*, No. 2 CA-CV 2008-0123, 2009 WL 1600401, at \*3 (Ariz. Ct. App. June 8, 2009)(unpublished).

<sup>7</sup> 42 U.S.C. § 2000cc (1).

<sup>8</sup> 42 U.S.C. § 2000cc-1; *See* A.R.S. § 41-1493.01.

look at whether other prisons have adopted less restrictive policies. Where there are viable less restrictive alternatives that a prison official could implement, they must set forth detailed evidence, tailored to the situation, explaining to the court why they cannot implement the proposed alternative.<sup>9</sup>

Arizona laws protect your religious rights.<sup>10</sup> Additionally, ADC's Department Order 904 exists to, "ensure inmates are allowed to participate in religious activities, have access to religious materials, religious diets and other legitimate aspects of their faith."<sup>11</sup> Prison staff must ensure that beliefs are respected and that there is no coercion or harassment into changing religious affiliation.<sup>12</sup>

#### **a. Designating Religious Preferences With ADC**

During initial intake to ADC, people should be given the chance to designate their religion on Form 901-5.<sup>13</sup> If it isn't done during intake, it should happen after unit orientation.<sup>14</sup> Requests and changes also can be made to religious preference at any time by submitting Form 916-1 to a Chaplain for approval, or by providing additional requested documentation within one year of a preference designation.<sup>15</sup>

## **II. ADC's Policies on Religious Diets and Fasting for Religious Reasons**

The most common First Amendment / RLUIPA issue that comes up in prisons and jails is whether people whose religions include diet restrictions (for example, kosher, halal,

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<sup>9</sup> See 42 U.S.C. § 2000cc, et. seq.; *Holt v. Hobbs*, 135 S.Ct. 853, 865 (2015) (grooming regulation that did not allow any religious exceptions, including for a Muslim man's half-inch beard, violated RLUIPA); *Warsoldier v. Woodard*, 418 F.3d 989, 998-1000 (9th Cir. 2005) (granting preliminary injunction in incarcerated persons' RLUIPA challenge to California Department of Corrections' former grooming regulations); *Walker v. Beard*, 789 F.3d 1125 (9th Cir. 2015) (denial of incarcerated person's request to be housed only with members of his own race did not violate RLUIPA because state had compelling interest in avoiding racial discrimination).

<sup>10</sup> A.R.S. § 41-1493.01.

<sup>11</sup> Arizona Department of Corrections, *Department Order 904: Inmate Religious Activities/Marriage Requests* (Jul. 13, 2020), [https://corrections.az.gov/sites/default/files/policies/900/0904\\_032519.pdf](https://corrections.az.gov/sites/default/files/policies/900/0904_032519.pdf) (hereinafter "D.O. 904").

<sup>12</sup> *Id.* § 3.1, et. seq.

<sup>13</sup> *Id.* § 2.1.

<sup>14</sup> *Id.* § 2.1.1.

<sup>15</sup> *Id.* § 2.2.1– 2.2.2.

vegetarian/vegan) can receive special meals.<sup>16</sup> ADC has provided kosher meals to incarcerated people who have requested them for religious reasons in the past. On August 1, 2020, however, ADC initiated a “common fare meal (CFM) that, it claims, “meets the dietary requirement for Halal, Kosher, and Vegetarian standards.”<sup>17</sup>

On December 10, 2020, Perkins Coie LLP, a private law firm, filed a class action lawsuit against ADC challenging the replacement of kosher meals with the common fare meal for people seeking a religious diet based on concerns that the meals are not, in fact, kosher. For more information on this lawsuit, please contact Perkins Coie LLP at the following address:

Jordan A. Kroop  
Perkins Coie LLP  
2901 North Central Avenue  
Suite 2000  
Phoenix AZ 85012

#### **a. Ordering a Religious Diet**

If you want to receive a religious diet in ADC, you must submit an Inmate Letter to the prison’s Chaplain.<sup>18</sup> ADC should accommodate the request so long as it is possible within ADC’s budget, security, and operations of the facility.<sup>19</sup> The Senior Chaplain orders the diet by forwarding a “Restricted Diet Order Form” to the Food Service Liaison for approval and processing of the diet.<sup>20</sup> You will only be provided your prescribed diet. In

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<sup>16</sup> See, e.g., *McElyea v. Babbitt*, 833 F.2d 196, 198 (9th Cir. 1987) (incarcerated people entitled to religious diet to extent security and budgetary concerns permit); *Johnson v. Moore*, 948 F.2d 517, 520 (9th Cir. 1991) (incarcerated person who wants special diet must show the dietary requirements are rooted in religious beliefs); *Ward v. Walsh*, 1 F.3d 873, 877–879 (remanding for further proceedings on kosher diet claim); *Ashelman v. Wawrzaszek*, 111 F.3d 674, 678 (9th Cir. 1997)(incarcerated people entitled to food that satisfies dietary rules of their religion); *Oluwa v. Gomez*, 133 F.3d 1237, 1240 (9th Cir. 1998) (remanding for further proceedings a claim by Rastafarian seeking vegan diet containing no grapes or other vine fruits); *Luckette v. Lewis*, 883 F. Supp. 471, 479 (D. Ariz. 1995)(prison policies “substantially burdened” the incarcerated persons’ attempt to maintain a Kosher diet). Again, these decisions pre-date the passage of RLUIPA, and were made under the stricter First Amendment analysis. See Part I above.

<sup>17</sup> DO 904 § 4.5.

<sup>18</sup> D.O. 904, § 4.5.1.

<sup>19</sup> *Id.* § 4.5.2.

<sup>20</sup> *Diet Reference Manual*, at 9.

other words, if you refuse a religious diet, *it will not be replaced* with a General Population meal.<sup>21</sup> If you want to cancel a religious diet, you must submit a written request to the Chaplain.

The Senior Chaplain is supposed to change, re-order, and cancel religious diets.<sup>22</sup> A diet can be cancelled at any time if the Chaplain notifies the Food Service Liaison.<sup>23</sup> You will be removed from the diet roster and your diet card will be confiscated.<sup>24</sup> The Chaplain can remove you from a religious diet for non-compliance. Non-compliance is defined as when you miss five meals in 7 calendar days.<sup>25</sup> In addition, we are aware of people having their kosher or vegan diets cancelled if they are observed consuming foods or ordering foods from canteen that are forbidden by their religious diet, for example, consuming/ordering pork products while on the kosher diet, or any meat while on the religious vegan diet. If removed from the diet roster, you can only be put back on the roster for a religious diet by the Senior Chaplain after filing a grievance.<sup>26</sup>

Medical diets are given preference over religious diets, and if a medical diet conflicts with the religious diet; ADC will give you the medical diet.<sup>27</sup> You can sign a “medical refusal form” for the medical diet and renew the religious diet.<sup>28</sup>

#### **b. Requests to Refrain from Food for Fasting**

If you would like to refrain from food on certain days, such as Ramadan or Yom Kippur, this must be requested and approved by religious staff in advance of the holiday.<sup>29</sup> Questions about religious fasts should go to the Religious and Volunteer Services Administrator, or to the Chaplain. If they approve the fast, you should not be penalized for not taking your diet.<sup>30</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.*

<sup>27</sup> Arizona Department of Corrections, *Diet Reference Manual*, at 6  
[https://corrections.az.gov/sites/default/files/documents/PDFs/tech\\_manuals/adc-dietreferencemanual\\_060118.pdf](https://corrections.az.gov/sites/default/files/documents/PDFs/tech_manuals/adc-dietreferencemanual_060118.pdf) (June 2018).

<sup>28</sup> *Id.*

<sup>29</sup> D.O. 904, § 4.3.1.

<sup>30</sup> *Id.* § 4.3.1. Some incarcerated people have told us that to avoid any confusion with custody staff as to whether they are “refusing” their religious diet, that they accept the meal when it is given to them but wait to eat it when it is permissible. For example, Muslims

### III. Other Religious Rights Issues

This section describes some other religious rights issues that may affect you.

#### a. Access to Clergy, Religious Counseling, and Religious Visitors

Incarcerated people have a constitutional right to have access to clergy or religious counseling, and prohibitions or unreasonable limitations on their access to clergy substantially burdens their religious rights.<sup>31</sup> Arizona law requires Chaplains have access to incarcerated people.<sup>32</sup> Senior Chaplains are supposed to ensure that unit chaplains interact with incarcerated people during the day; that chaplains visit people in detention or disciplinary detention as much as possible; and ensure that there are a minimum of two services per month at the institution or unit.<sup>33</sup> The senior Chaplain should also decide a number of formal religious activities per unit, per week—depending on the religious needs of the unit.<sup>34</sup>

Religious clergy should arrange for religious visits by request and by initiating Form 904-5.<sup>35</sup> Incarcerated people have to request or consent to visits *prior* to the visit authorization.<sup>36</sup> Visits are at the discretion of the wardens, who can deny religious visits in the interests of safety and security.<sup>37</sup>

#### b. Access to Group Worship and Religious Practices

Group worship is a core religious practice, according to the U.S. Supreme Court, and as a result, federal courts have held that barring incarcerated people from participating

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might accept their sack lunch when it is given to them mid-day during Ramadan, but hold on to it and wait until sundown to break their fast.

<sup>31</sup> *Merrick v. Inmate Legal Servs.*, 650 F. App'x 333, 335-36 (9th Cir. 2016) (plaintiff adequately pleaded that “not allowing him to confess to clergy of his faith by way of unmonitored, unrecorded phone calls substantially burdened his religious exercise”) (unpublished); *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1210 (9th Cir. 2008), *opinion amended and superseded on denial of reh'g*, 519 F.3d 985 (9th Cir. 2008) (upholding injunction where evidence did not support defendant jail’s contention that it provides “opportunities for inmates to participate in religious services and counseling”).

<sup>32</sup> A.R.S. §31-206; *see also* D.O. 904, § 1.2.1.

<sup>33</sup> D.O. 904, § 1.3, *et. seq.*

<sup>34</sup> *Id.* § 3.5, *et. seq.*

<sup>35</sup> *Id.* § 5.1.1.

<sup>36</sup> *Id.* § 5.1.3.

<sup>37</sup> *Id.* §§ 5.1.1– 5.1.2.

in congregate worship, group prayer, or religious study groups substantially burdens the exercise of their religion.<sup>38</sup>

The Arizona Department of Corrections has specific rules regarding certain religious practices and events which are outlined in D.O. 904. Some of those rules are summarized here.

- **Sweat Lodges:** Participation in Sweat Lodge Ceremonies requires verification of Native American ethnicity.<sup>39</sup> Sweat lodges should be in all institutions where there are a sufficient number of eligible Native Americans, and requests have been made for a Sweat Lodge.<sup>40</sup> Sweat Lodge ceremonies can be held on a weekly basis if wood is available and no other concerns prevent it.<sup>41</sup>
- **Smudging & Smoke Generating Ceremonies:** Ceremonial use of smudging (burning herbs) is permitted, unless restricted by the unit. The time and place when smudging is allowed is arranged through the senior Chaplains and in discussion with the warden.<sup>42</sup> All smoke-generating ceremonies must be outside.<sup>43</sup>
- **Sacramental Wine:** Only religious leaders may use up to 2 ounces of sacramental wine.<sup>44</sup> Prisoners may not participate in sacramental wine.<sup>45</sup>
- **Candles:** Candles are allowed in group religious ceremonies only if pre-approved by the Religious and Volunteer Services Administrator.<sup>46</sup> Wax candles are only allowed in minimum and medium custody units; and can only be used by authorized

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<sup>38</sup> *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (“[T]he ‘exercise of religion’ often involves . . . physical acts [such as] assembling with others for a worship service[.]”); *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 988 (9th Cir. 2008) (holding that barring prisoners from group worship, prayer, or religious studies substantially burdens their right to exercise their religion).

<sup>39</sup> D.O. 904, § 2.3, et. seq.

<sup>40</sup> *Id.* § 4.4.1.7.

<sup>41</sup> *Id.* § 4.4.1.3.

<sup>42</sup> *Id.* §§ 4.1.8.1.1, 4.1.8.1.2, 4.4.3.3.1.

<sup>43</sup> *Id.* § 4.4.3.3.

<sup>44</sup> *Id.* § 4.1.8.2.1.

<sup>45</sup> *Id.* § 4.1.8.2.2.

<sup>46</sup> *Id.* § 4.4.6.6.

persons.<sup>47</sup> Prisoners may not have wax candles at any time.<sup>48</sup>

**c. Access to Religious Publications and Texts**

People in prison and jails cannot be denied access to religious texts, and courts have found that depriving prisoners of religious texts may be a substantial burden on their right to freely exercise their religious beliefs.<sup>49</sup>

Arizona prison libraries must have a section for religious publications.<sup>50</sup> Any publications that threaten security, or promote hatred against other racial or ethnic groups, are not permitted.<sup>51</sup> Religious tapes or CDs that are commercially recorded can be sent through mail to incarcerated persons, but will be pre-screened by the Senior Chaplain.<sup>52</sup>

**d. Grooming Requirements and Restrictions on Religious Clothing and Jewelry**

There have been quite a lot of legal disputes across the country about whether people in prisons and jails can wear religious jewelry or clothing—for example head coverings such as yarmulkes, turbans, or kufis—or be exempted from prison grooming and clothing standards that are contrary to their religious beliefs.<sup>53</sup>

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<sup>47</sup> *Id.* §§ 4.4.6.6.1, 4.4.6.6.2.

<sup>48</sup> *Id.* § 4.4.6.6.3.

<sup>49</sup> *See, e.g., Rouser v. White*, 630 F.Supp.2d 1165 (E.D. Cal. 2009) (Wiccan prisoner allowed to proceed with lawsuit claiming that lack access to religious items violated RLUIPA, the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment) *Rouser v. White*, 707 F.Supp.2d 1055 (E.D. Cal. 2010) (preliminary injunction protecting Wiccan rights to have religious texts and items); *Rouser v. White*, 825 F.3d 1076 (9th Cir. 2016) (discussing how these actions led to a consent decree); *Harris v. Escamilla*, 736 Fed. App'x 618, 620-21 (9th Cir. 2018) (correctional officer's desecration of prisoner's Quran, such that he was unable to read his required ten daily verses in accordance with the tenets of Islam, was a substantial burden on the prisoner's religious exercise) (unpublished); *cf. Sutton v. Rasheed*, 323 F.3d 236, 257 (3d Cir. 2003) (noting that a Christian "could [not] practice his faith," if "deprived of a Bible.").

<sup>50</sup> D.O. 904, § 3.4.

<sup>51</sup> *Id.* § 3.4.2.

<sup>52</sup> D.O. 914, § 3.6.

<sup>53</sup> *See, e.g., Holt v. Hobbs*, 135 S.Ct. 853 (2015) (Arkansas Department of Corrections grooming regulation that did not allow any religious exceptions, such as a half inch beard for an incarcerated Muslim person, violated RLUIPA); *Clark v. Scribner*, No. CIVS-0500702 ALAP, 2007 WL 3105118 (E.D. Cal. Oct. 23, 2007) (plaintiff stated a claim of a RLUIPA violation where he was not allowed to access dining hall unless he removed religious head covering) (unreported); *Malik v. Ozmint*, No.8:07-387-GBH-BHH, 2008



ADC allows beards up to 1” in length.<sup>54</sup> ADC policy permits men to have hair long enough to touch the shoulders, but it has to be worn tied back at all times unless in the housing unit or if walking to and from the restroom and shower.<sup>55</sup> ADC’s D.O. 904 states that “religious symbols or clothing items, including head coverings may be worn openly only during religious ceremonies and at no other time and place.”<sup>56</sup> These ceremonies include approved group ceremonies and personal ceremonies in one’s own living areas.<sup>57</sup> This restrictive policy on religious headwear arguably violates RLUIPA, as courts in other jurisdictions have found such a limit on wearing religious headwear to violate incarcerated peoples’ right to exercise their religion.<sup>58</sup>

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WL 701517 (D.S.C. Feb. 13, 2008) (genuine issue as to whether RLUIPA violated where Muslim maximum security unit inmate was not allowed to wear kufi when outside of cell) (unreported); *Couch v. Jabe*, 679 F.3d 197, 199 (4th Cir. 2012) (grant of Summary Judgment for Virginia prison officials on grooming regulation that did not allow religious exception for a 1/8 inch beard for an incarcerated Muslim person was vacated and remanded); *Ortiz v. Downey*, 561 F.3d 664, 669-70 (7th Cir. 2009) (prisoner adequately stated claim showing substantial burden under RLUIPA where he alleged denial of access to rosary beads and prayer booklet); *Warsoldier v. Woodford*, 418 F.3d 989 (9th Cir. 2005) (former CDCR policy requiring incarcerated Native Americans to have short hair, and subjecting them to punishment if they did not comply, violated RLUIPA); *Benning v. Georgia*, 845 F. Supp. 2d 1372, 1374 (M.D. Ga. 2012) (denying the prison’s Motion for Summary Judgment regarding a policy which disallowed an observant incarcerated Jewish person to grow *payot* (“earlocks”)); *but see Henderson v. Terhune*, 379 F.3d 709 (9th Cir. 2004) (applying First Amendment standard, the CDCR’s former hair-length regulations were found to serve important penological interests that outweighed prisoner’s religious interests); *Garner v. Livingston*, No. CA-C-06-218, 2011 WL 2038581 (S.D. Tex. May 19, 2011) (no RLUIPA violation where prisoners allowed to wear kufi only in cell and chapel) (unreported); *Jihad v. Fabian*, No. 09-1604 SRN LIB, 2011 WL 1641885 (D. Minn. Feb. 17, 2011) (no RLUIPA violation where prisoners allowed to wear kufi in cells and chapel and state-issued caps and headbands outside of cells)(unreported); *Hearn v. Kennell*, No. 07-1235, 2009 WL 3460455 (C.D. Ill. Oct. 22, 2009) (no RLUIPA violation where prisoner had not shown that his religion requires a particular garment) (unreported).

<sup>54</sup> Arizona Department of Corrections, *Department Order 704: Inmate Regulations*, §2.3 (Jan. 12, 2017), [https://corrections.az.gov/sites/default/files/policies/700/0704\\_032519.pdf](https://corrections.az.gov/sites/default/files/policies/700/0704_032519.pdf) (hereinafter “D.O. 704”).

<sup>55</sup> *Id.* §§1.3– 1.3.2.

<sup>56</sup> D.O. 904, § 4.4.6.5.

<sup>57</sup> *Id.* §§ 4.4.6.5.1.– 4.4.6.5.2.

<sup>58</sup> *See Muhammad v. Ariz. Dep’t of Corrs.*, No. CV-11-1890-PHX-SMM, 2013 WL 3864253, at \*5–8 (D. Ariz. July 25, 2013) (finding Muslim man had stated a sufficient

### e. Religious Items

You may have “authorized personal items” for the practice of your religion as long as they do not pose a threat to the safety, security, and operation of the prison, and some items may be banned because of the custody level of the unit.<sup>59</sup> Religious property is subject to reasonable security inspection and should be handled respectfully by staff during searches.<sup>60</sup>

To receive an item to use in the practice of religion; the you must:

1. Request the item from a Chaplain;
2. A senior Chaplain verifies your religious preferences and determines if the requested items are on the approved items list; and
3. The Senior Chaplain approves or denies the request.<sup>61</sup>

If an item is not available in the Inmate Store, it should be ordered. To order the item, send an Inmate Letter to the Senior Chaplain. The letter must include:

1. A description of the item, including size;
2. Where the item is available, including the source’s name and contact information; and
3. A complete itemized list of all previously approved religious items that you

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claim that this ADC policy impaired his free exercise rights when he challenged the rule prohibiting him from openly wearing a kufi) (unreported); *see also Ali v. Stephens*, 822 F.3d 776, 780 (5th Cir. 2016) (policy allowing incarcerated person to only wear Kufi inside his cell or for religious services violated RLUIPA); *but see Harris v. Wall*, 217 F. Supp. 3d 541, 545 (D.R.I. 2016) (prison allowed to regulate the type of Kufi an incarcerated person could wear on the yard: “close-fitted, seamless, crocheted kufi, of a single color”); *Singh v. Goord*, 520 F.Supp.2d 487, 503 (S.D.N.Y. 2007) (prohibiting Sikh man from wearing his turban during outside transports and limiting wear of his religious kara bracelet to 30 minutes per day substantially burdened his exercise of Sikh religious beliefs that require him to wear both at all times); *but see Rattler v Sublett*, 145 F.3d 1340, at \*1 (9th Cir. 1998) (pre-RLUIPA decision finding ADC policy restricting religious head coverings to not violate the First Amendment) (unpublished); *Sutton v. Stewart*, 22 F. Supp. 1097, 1100 (D. Ariz. 1998), *aff’d* 185 F.3d 869 (9th Cir. 1999) (same); *Blair-Bey v. Ludlow*, 168 F.3d 497 (9th Cir. 1999) (same) (unpublished).

<sup>59</sup> D.O. 904, § 4.1.8.1, § 4.1.3.

<sup>60</sup> *Id.* § 4.4.6.2; *see also Harris v. Escamilla*, 736 Fed. App’x 618, 620-21 (9th Cir. 2018) (correctional officer’s desecration of prisoner’s Quran, such that he was unable to read to read his required ten daily verses in accordance with the tenets of Islam, was a substantial burden on the prisoner’s religious exercise) (unpublished).

<sup>61</sup> D.O. 904, § 4.1.6, et. seq.

currently have in your possession.<sup>62</sup>

You must include with the letter:

1. A completed and signed Inmate Request for Withdrawal (Form 905-1) with the total amount of the order including any shipping and handling charges;
2. Completed order form from approved sources; and
3. Completed and stamped envelopes that are addressed to the approved source.<sup>63</sup>

If a requested item is not on the approved item list, the request should be forwarded to the Religious and Volunteer Services Administrator and will go to the Religious Accommodation Review committee for approval or denial.<sup>64</sup>

#### **f. Time Off Work for Religious Holy Days**

You can request to be excused from work on specified holy days.<sup>65</sup> These requests must be submitted to the Senior Chaplain at least 30 days before the requested day.<sup>66</sup> The chaplains will discuss work assignments with the wardens before approval.<sup>67</sup> On those days, you must remain in your cell and not participate in recreation activities, phone calls, and shopping.<sup>68</sup> You can leave your cell to shower and eat as directed by prison staff.<sup>69</sup> While the policy does not explicitly say so, it makes sense that you should be allowed to leave your cell to go to congregate religious services being held on your holy day.

Recurring requests that happen each week—for example, observation of Shabbat or Sundays, must be submitted in writing to the senior chaplains. The senior chaplains will discuss with the wardens regarding work assignments before approval.<sup>70</sup>

#### **g. Religious Practice and Restrictive Housing**

Being placed in restrictive housing does not necessarily justify denying all outlets for the practice of religion or all opportunities for worship. Courts must still balance incarcerated people's religious rights against security needs under the First Amendment

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<sup>62</sup> *Id.* § 4.1.4, et. seq.

<sup>63</sup> *Id.* § 4.1.5, et. seq.

<sup>64</sup> *Id.* §§ 4.1.6.4 – 4.1.6.4.1..

<sup>65</sup> *Id.* § 4.2.1.

<sup>66</sup> *Id.* § 4.2.4.1.

<sup>67</sup> *Id.* §§ 4.2.3.1, 4.2.3.2.

<sup>68</sup> *Id.* § 4.2.2.

<sup>69</sup> *Id.*, § 4.2.2.1.

<sup>70</sup> *Id.* §§ 4.2.3.1, 4.2.3.2.

and/or RLUIPA standards.<sup>71</sup> Unless specifically restricted by the custody level and security of housing, incarcerated people should not be denied access to approved religious items or opportunities as part of disciplinary housing.<sup>72</sup>

#### IV. What You Can Do if Your Religious Rights Are Being Violated

Wardens and administrators must ensure staff respect your religious beliefs.<sup>73</sup> If you experience any problems, you can discuss with the Chaplain or send an Inmate Informal Complaint Resolution, Form 802-11, to try to solve the problem informally.<sup>74</sup> You might submit a Form 802-11 or talk to the Chaplain if you are not being allowed to practice your religion; your religious rights have been violated; or if an ADC staff member has discriminated against you because of your religious views, or has tried to talk you out of receiving a religious diet.

If informal steps do not solve the problem, you can fill out and submit a formal grievance, Form 802-1.<sup>75</sup> For example, you can file a Form 802-1 if the Chaplain decided you were not eligible for a special diet or if you are having problems actually getting your religious meals. You may also submit a Form 802-1 to complain about actions of an ADC employee that affect your religious rights. If there is any chance that you will want to pursue the issue in court, you must keep filing grievances until you get responses at all levels of the appeal process, including the Director's level. *It is important to "exhaust your administrative remedies" to preserve your right to file a lawsuit.* Exhausting remedies means that you have appealed the issue to the highest administrative level. Be aware that the grievance process has **strict deadlines**. If you want more information on how to file grievances, you can write to the Prison Law Office and ask for our free packet on the ADC

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<sup>71</sup> See *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1209–11 (9th Cir. 2008) (upholding injunction requiring that people incarcerated in county jail in administrative segregation be given opportunities for worship, provided they were not disruptive or violent); *Greene v. Solano Cnty. Jail*, 513 F.3d 982, 987–90 (9th Cir. 2008) (striking down jail policy prohibiting maximum security inmates from participating in group worship under RLUIPA because policy substantially burdened the right to exercise religion and there was no evidence jail officials had considered less restrictive measures).

<sup>72</sup> D.O. 904, § 4.1.1.3; See also D.O.704, § 9.2 (stating incarcerated people in detention will lose “property, visitation and phone call privileges, except for hygiene, legal and religious materials.”).

<sup>73</sup> D.O. 904, § 3.1, et. seq.

<sup>74</sup> Prison Law Office, *Arizona's Inmate Grievance System* 6 (Nov. 2016), <https://prisonlaw.com/wp-content/uploads/2019/04/Exhaustion-Memo-with-Forms-Nov-2016-Revisions.pdf>.

<sup>75</sup> *Id.* at 7.

grievance system.<sup>76</sup>

If you exhausted all available ADC appeals processes, you may file a lawsuit in state or federal court. Due to limited resources, we cannot represent you in court regarding a violation of your religious right, and unfortunately there is no right to an attorney in a civil proceeding in Arizona.<sup>77</sup> On request, we can provide a list of attorneys who have brought individual lawsuits against ADC in the past. If you would like additional self-help material on how to file a lawsuit, please write us and request the “Suing an Arizona State Agency” manual published by the Arizona Attorney General’s Office, or the handout from the federal court on how to sue in federal court.

Once you have exhausted your grievance, you also may be able to receive legal assistance in challenging restrictions on your religious rights from the Stanford Law School Religious Liberties Clinic, or the U.S. Department of Justice. You can send confidential legal mail to either organization at the following addresses:

Prof. James A. Sonne, Director  
Religious Liberty Clinic  
Stanford Law School  
559 Nathan Abbott Way  
Stanford, CA 94305-8610

Special Litigation Section  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

We hope that you have found this information helpful.

Sincerely,

Prison Law Office

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<sup>76</sup> *See id.*

<sup>77</sup> *Powell v. State*, 507 P.2d 989, 990 (Ariz. Ct. App. 1973).