251 Fed.Appx. 665
This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Eleventh Circuit Rules 36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11 Rule 36-3)
United States Court of Appeals,
Eleventh Circuit.

Matthew LATHAN, et al., Plaintiffs,
Ricky Knight, Franklin Irvin, James Limbaugh, Timothy Gray Wolf Smith, sue individually and on behalf of a class of persons similarly situated, Billy Two Feathers Jones, sue individually and on behalf of a class of persons similarly situated, Autry Little Ra Daughtry, sue individually and on behalf of a class of persons similarly situated, Jimmy Lee Bowen, Douglass Dark Horns Bailey, Michael Clem, United States of America, Plaintiffs–Appellants,
v.
Leslie THOMPSON, in his individual capacity, Donald Parker, Kenneth Patrick, Chaplain, Willie Johnson, Dewayne Estes, et al., Defendants–Appellees.

No. 06–15587. | Oct. 19, 2007.

Synopsis
Background: Inmates, who adhered to Native American religion, brought action challenging on various constitutional grounds and under the Religious Land Use and Institutionalized Persons Act (RLUIPA) the state Department of Corrections' policies restricting hair length and prohibiting sweat lodge ceremonies. The United States District Court for the Middle District of Alabama granted summary judgment to government defendants on their hair length restriction claims and dismissed sweat lodge claims. Inmates appealed.

Holdings: The Court of Appeals held that:

[1] inmates' claims challenging policy prohibiting sweat lodge ceremonies were moot;

[2] inmates were not entitled to monetary relief on their sweat lodge claims; and

[3] genuine issue of material fact as to whether Department's total ban on long hair was least restrictive means of furthering compelling governmental interest precluded summary judgment.

Affirmed in part; reversed, vacated and remanded in part.

Attorneys and Law Firms

***666** Mark Sabel, Sabel & Sabel, P.C., Montgomery, AL, for Plaintiffs and Plaintiffs–Appellants.

Catherine Y. Hancock, Michael S. Raab, Washington, DC, for Plaintiffs–Appellants.

Joseph David Steadman, Dodson & Steadman, P.C., Mobile, AL, for Defendants–Appellees.

Appeal from the United States District Court for the Middle District of Alabama. D.C. Docket No. 93–01404–CV–N.

Before TJOFLAT, HULL and WILSON, Circuit Judges.

Opinion

PER CURIAM:

Plaintiffs, inmates who are adherents to the Native American religion, challenge on various constitutional grounds and under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*, the Alabama Department of Corrections' policies restricting hair length and prohibiting sweat lodge ceremonies. Plaintiffs appeal the district court's September 29, 2003 order granting summary judgment to the defendants on their hair-length-restriction claims and the district court's September 14, 2006 order dismissing their sweat-lodge claims.

[1] After review and oral argument, we affirm the district court's dismissal of plaintiffs' sweat-lodge claims as moot. In December 2004, the Alabama Department of Corrections changed its policy and now permits inmates who declare Native American spirituality as their religion to participate in sweat lodge ceremonies four times a year. It is undisputed that, since December 2004, sweat lodge ceremonies have been held repeatedly pursuant to the new policy. We thus conclude that the plaintiffs' claims for injunctive and declaratory relief are moot and that plaintiffs have failed to rebut the presumption that these

public defendants' objectionable behavior will not recur. *See Troiano v. Supervisor of Elections,* 382 F.3d 1276, 1282–83 (11th Cir.2004).

[2] As to plaintiffs' claims for monetary relief, defendants are entitled to qualified immunity in their individual capacities because RLUIPA was not enacted until long after this lawsuit began and the law with regard to Native American inmates' rights to hold sweat lodge ceremonies under RLUIPA or the Constitution was not ***667** clearly established at the time the sweat-lodge ban was implemented. Furthermore, the defendants are entitled to sovereign immunity with regard to plaintiffs' official capacity claims.

[3] With regard to plaintiffs' hair-length-restriction claims, we conclude that on the present record factual issues exist as to whether, *inter alia*, the defendants' total ban on the wearing of long hair and denial of an exemption to the plaintiffs based on their Native American religion is "the least restrictive means of furthering [the defendants'] compelling governmental interest[s]" in security, discipline, hygiene and safety within the prisons and in the public's safety in the event of escapes and alteration of appearances. *See* 42 U.S.C. § 2000cc–1(a)(2). In addition, we note that the evidentiary record relating to the hair-length claims is over ten years old and that, in the intervening time, prison staffing and administration, prison safety and security, and the prison population in Alabama have changed. We, thus, vacate and remand to the district court for a full evidentiary hearing and bench trial, following which the district court shall make detailed findings of fact and conclusions of law.

In summary, we affirm the district court's September 14, 2006 order dismissing plaintiffs' sweat-lodge claims. We vacate the district court's September 29, 2003 order entering summary judgment on plaintiffs' hair-length-restriction claims and remand for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED, VACATED AND REMANDED IN PART.