Loring v. Daly, ___ F. Supp. 3d ___, 2021 WL 2105571 (D. Ariz. May 25, 2021)

- **Holding:** Claim by formerly jailed tribal member under the Religious Land Use and Incarcerated Persons Act against tribal correctional facility officials was barred by sovereign immunity because it sought relief against them in their official capacities, while a claim under 42 U.S.C. § 1983 against the officials was dismissed because the complaint did not allege any basis upon which to find that they acted under state authority.
- **Summary:** Plaintiff brought a pro se suit against the director and the lieutenant director of a correctional facility operated by the Salt River Pima Maricopa Indian Community's department of corrections. He alleged that Defendants denied him and other prisoners in administrative detention access to religious ceremonies that prisoners not in such detention were given access. Based on this allegation, Plaintiff asserted RLUIPA and § 1983 claims. Defendants moved to dismiss under Fed. R. Civ. P. 12(b)(1) on the ground of sovereign immunity and Rule 12(b)(6) for failure to state a claim upon which relief could be granted.

  The district court granted the motion. It held the RLUIPA claim precluded by sovereign immunity because "Plaintiff's alleged injuries arise from a policy, practice, or custom of the Salt River DOC, over which Defendants have policymaking authority, at the direction of the Community Council, which is an official-capacity claim." It added that "due to the nature of the primary relief Plaintiff seeks—reformation of Salt River DOC policy— Plaintiff's First Amendment claim is in essence an official-capacity claim against the SRPMIC and is barred by principles of sovereign immunity." The RLUIPA claim also suffered from an Article III jurisdictional defect—mootness—in light of Plaintiff's release from DOC custody. The absence of any state action, finally, doomed the § 1983 claim.

  The court declined to offer Plaintiff the opportunity to file an amended complaint, concluding that any attempt to remedy the action's deficiencies would be futile.
- **Relevant (2020) Deskbook Section:** 4:11 n.7
- **Comment:** The RLUIPA analysis is confused. The real "sovereign immunity" issue is whether the Community constitutes a "government" as defined in 42 U.S.C. § 2000cc-5. If it is, congressional abrogation has occurred. If it is not (and tribes presumably are not given that they are not subject to constitutional constraints—including the First Amendment), the basis for dismissal is failure to state a claim; i.e., they are not governed by the statute. Compounding the confusion is the fact that tribal immunity from suit is more properly characterized as Rule 12(b)(6), not a Rule 12(b)(1), defense. The better approach here would have been to dismiss the RLUIPA claim on mootness grounds.