

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ERNEST JORD GUARDADO,)
)
Plaintiff,)
vs.)
STATE OF NEVADA, *et al.*,)
)
Defendants.)
_____)

Case No.: 2:18-cv-00198-GMN-VCF

ORDER

Pending before the Court is Plaintiff Ernest Jord Guardado’s (“Plaintiff’s”) Motion for Reconsideration, (ECF No. 146).¹ Defendants Julio Calderin, James Dzurenda, Jennifer Nash, Richard Snyder, Kim Thomas, Harold Wickham, and Brian Williams (collectively, “Defendants”) filed a Response, (ECF No. 148), to which Plaintiff filed a Reply, (ECF No. 149).

Also pending before the Court are Plaintiff’s Motion Requesting a Status Check on the Motion for Consideration, (ECF No. 150), Motion Requesting a Copy of the Civil Docket/Case History Report, (ECF No. 151), and Motion for Hearing regarding the Motion for Reconsideration, (ECF No. 152). Defendants did not file Responses.

For the reasons discussed below, the Court **DENIES** Plaintiff’s Motion for Reconsideration and **DENIES as moot** Plaintiff’s remaining motions.

¹ The Court is obligated to hold a pro se litigant to a different standard than a party who is represented by counsel. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The pleadings of a pro se litigant are “to be liberally construed” and “however inartfully pled, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97 (1976)). However, the pro se litigant “should not be treated more favorably” than the party who is represented by counsel. *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

1 **I. BACKGROUND**

2 This case arises out of alleged constitutional deprivations while Plaintiff was in custody
3 of the Nevada Department of Corrections. (*See* Second Am. Compl. (“SAC”), ECF No. 63).²

4 On April 5, 2017, Plaintiff sent kites to Defendants NDOC Director James Dzurenda,
5 Warden Brian Williams, Assistant Warden Jennifer Nash, and Chaplain Julio Calderin
6 regarding access to the Native American grounds and the denial of his chosen religion. (*Id.* at
7 5). More specifically, Plaintiff, who is not of Native American race or ethnicity, sought to
8 practice the Native American religion. (*Id.*). In those kites, Plaintiff cited case law arguing that
9 that the denial of non-Native Americans’ abilities to practice Native American beliefs violated
10 those inmates’ rights. (*Id.*). On July 11, 2017, Plaintiff filed a grievance explaining that no
11 other religion required inmates to show proof of their ethnicity to practice their beliefs. (*Id.* at
12 5–6).

13 On August 1, 2017, Defendant Calderin responded and explained that the requirement of
14 proving Native American descent was imposed by the Nevada Indian Commission (“NIC”).
15 (*Id.* at 6). That same day, Plaintiff filed a first level grievance which explained that NIC had no
16 authority over NDOC. (*Id.*). On August 28, 2017, Williams responded and quoted
17 administrative regulation (“AR”) 810. (*Id.*). Relevant here, AR 810.3 states that inmates
18 eligible to participate in Native American sweat lodge ceremonies include inmates who:

- 19 a. Show proof of being enrolled in a federal recognized tribe;
20 b. Demonstrate credible association with tribal living via written documentation
21 from a recognized tribe;
22 c. Demonstrate credible association with tribal living via written documentation
23 from a tribe recognized by the United States government as having existed prior

24 ² Plaintiff’s Second Amended Complaint was signed under penalty of perjury. (*See* SAC at 14). Thus, to the
25 extent the factual allegations in Plaintiff’s Second Amended Complaint are based upon personal information and
set forth facts that would be admissible in evidence, the allegations will be considered as evidence. *Jones v.*
Blanas, 393 F.3d 918, 923 (9th Cir. 2004); *see Lopez v. Smith*, 203 F.3d 1122, 1132 n.14 (9th Cir. 2000) (en
banc) (“A plaintiff’s verified complaint may be considered as an affidavit in opposition to summary judgment if
it is based on personal knowledge and sets forth specific facts admissible in evidence.”).

1 to 1887 (Dawes Act enacted) but not necessarily registered with the federal
2 government; [or]

3 d. Successfully obtain written verification of Native American ethnicity from the
4 [NIC].

5 (AR 810.3, Ex. A to Defs.’ MSJ at 11–12).

6 On August 31, 2017, Plaintiff filed a second level grievance. (SAC at 6). On November
7 2, 2017, Defendant Deputy Director of Programs Kim Thomas responded that Plaintiff could
8 not grieve an outside agency and that Plaintiff needed to go through the religious review team
9 (“RRT”). (*Id.*). Plaintiff filed the required documents with the RRT. (*Id.*). He requested that
10 the “exclusionary” language be removed from AR 810.3, and that he be permitted to practice
11 Native American religion. (*Id.*). The RRT committee did not respond. (*Id.*).

12 On February 2, 2018, Plaintiff filed a civil rights complaint pursuant to 42 U.S.C. § 1983
13 alleging violations of the First Amendment Free Exercise Clause, Fourteenth Amendment
14 Equal Protection Clause, and Religious Land Use and Institutionalized Persons Act
15 (“RLUIPA”). (*See generally* Compl., ECF No. 1-1). Additionally, Plaintiff filed a Motion for
16 Preliminary Injunction, (ECF No. 2), requesting a court order enjoining Defendants “from
17 denying Plaintiff and all those similar situated the ability to practice and participat[e] in their
18 Native [I]ndian beliefs, the racial discrimination of denying non Native American Indians from
19 participating in sweat lodge, prayer circle, drum circle, sacred pipe and access to the Native
20 Indian grounds.” (Mot. for Prelim. Inj. at 1, ECF No. 2). Additionally, Plaintiff requested that
21 Defendants be “restrained from deny[ing] plaintiff access to the Native Indian grounds, sweat
22 lodge, drum circle, prayer circle, sacred pipe, and all other religious functions with the other
23 Native Indian practitioners.” (*Id.*). On October 9, 2018, the Court held a hearing on Plaintiff’s
24 Motion for Preliminary Injunction. (Mins. Proceedings, ECF No. 21). The Court partly granted
25 the motion, ordering NDOC to allow Plaintiff to participate in Native American religious
ceremonies with Native American practitioners including sweat lodge, prayer circle, drum

1 circle, smudging, sacred pipe, and access to the Native Indian grounds. (Order on Prelim. Inj. at
2 6, ECF No. 24). The Court denied the motion as to Plaintiff's request that all similarly situated
3 prisoners are granted a similar accommodation. (*Id.*).

4 On March 27, 2018, Plaintiff submitted Faith Group Affiliation Declaration Form
5 seeking to change his faith group affiliation to Native American. (Ex. A to Mot. Recons., ECF
6 No. 28-1). It was denied the same day because "Inmate has no proof of being Native
7 American." (*Id.*). On September 20, 2018, Plaintiff submitted a second Faith Group Affiliation
8 Declaration Form seeking to change his faith group affiliation to Native American. (Ex. B to
9 Mot. Recons., ECF No. 28-1). It was denied on October 2, 2018 because Plaintiff had "no
10 tribal papers." (*Id.*).

11 On October 6, 2020, the Court granted in part and denied in part Plaintiff's Motion for
12 Summary Judgment, (ECF No. 97), and Defendants' Motion for Summary Judgment, (ECF No.
13 114). (*See* Order on Mot. Summ. J. ("MSJ"), ECF No. 142). Plaintiff's Motion to Extend,
14 (ECF Nos. 107, 112) were also granted *nunc pro tunc*, and the remaining motions were denied.
15 (*See id.*). On October 20, 2020, Plaintiff filed the instant Motion for Reconsideration,
16 requesting the Court reconsider its October 6, 2020 Order. (*See* Mot. Reconsideration, ECF No.
17 146).

18 **II. LEGAL STANDARD**

19 Although not mentioned in the Federal Rules of Civil Procedure, motions for
20 reconsideration may be brought under Rules 59 and 60. Rule 59(e) provides that any motion to
21 alter or amend a judgment shall be filed no later than 28 days after entry of the judgment. The
22 Ninth Circuit has held that a Rule 59(e) motion for reconsideration should not be granted
23 "absent highly unusual circumstances, unless the district court is presented with newly
24 discovered evidence, committed clear error, or if there is an intervening change in the
25 controlling law." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,

1 880 (9th Cir. 2009) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir.
2 1999)).

3 Under Rule 60(b), a court may, upon motion and just terms, “relieve a party . . . from a
4 final judgment,” on the ground that the “judgment is void[.]” Fed. R. Civ. P. 60(b)(4). A
5 judgment is “void only if the court that rendered judgment lacked jurisdiction of the subject
6 matter, or of the parties, or if the court acted in a manner inconsistent with due process of law.”
7 *In re Ctr. Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir. 1985). Additionally, under Rule
8 60(b), a court may relieve a party from a final judgment, order or proceeding only in the
9 following circumstances: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
10 discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or
11 (6) any other reason justifying relief from the judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549
12 (9th Cir. 2000). Rule 60(b) relief should only be granted under “extraordinary circumstances.”
13 *Buck v. Davis*, 137 S. Ct. 759, 777, 197 L. Ed. 2d 1 (2017).

14 **III. DISCUSSION**

15 Plaintiff requests the Court reconsider its decision granting summary judgment to
16 Defendants on Plaintiff’s First and Fourteenth claims. (Mot. Reconsideration 2:2–18:8).
17 Plaintiff additionally argues that the Court abused its discretion by ruling on the Motions for
18 Summary Judgment, (ECF Nos. 97, 114), before ruling on Plaintiff’s Motion for Appointment
19 of Counsel, (ECF No. 135). (*Id.* 18:10–20).

20 A motion for reconsideration must set forth the following: (1) some valid reason why the
21 court should revisit its prior order; and (2) facts or law of a “strongly convincing nature” in
22 support of reversing the prior decision. *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D.
23 Nev. 2003). Plaintiff, in this case, fails to provide both a valid reason and evidence supporting
24 reconsideration of the Court’s prior Order.

1 As to the First Amendment claims, Plaintiff broadly disputes the Court's prior ruling
2 without providing a valid reason why the Court should revisit its Order. (*See id.*). Plaintiff
3 argues that the Court erred by basing its decision on Defendants' claims that Plaintiff has
4 alternate means of practice Native American religion in his cell. (Mot. Reconsideration 2:19–
5 21). Plaintiff additionally points out sentences from the Court's prior Order and disputes the
6 Court's analysis. (*Id.* at 9). A motion for reconsideration is not a mechanism for rearguing
7 issues presented in the original filings, *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir.
8 1985), or “advancing theories of the case that could have been presented earlier,” *Resolution*
9 *Trust Corp. v. Holmes*, 846 F. Supp. 1310, 1316 (S.D. Tex. 1994) (footnotes omitted). Plaintiff
10 appears to be displeased with the Court's order, arguing that “the fact that plaintiffs [sic] claim
11 under RLUIPA was upheld so to [sic] should Plaintiffs First Amendment claim.” (*See* Mot.
12 Reconsideration 10:21–22). Plaintiff's disagreement with the Court's Order is not, however, a
13 legally sufficient ground for the Court to reconsider its prior order.

14 The same conclusion applies to Plaintiff's arguments concerning his Fourteenth
15 Amendment claim. Plaintiff asserts that the Court erroneously relied on Defendant Richard
16 Snyder's declaration, which indicates that “Native American services often involve use of eagle
17 feathers which only Native American are permitted to possess under federal law.” (Mot.
18 Reconsideration at 12–18); (*See* Decl. Richard Snyder (“Snyder Decl.”), Ex. B to Defs.' MSJ,
19 ECF No. 114-2). Because Defendants allegedly did not discuss eagle feathers in their Motion
20 for Summary Judgment, Plaintiff contends that he was unable to rebut Defendants' assertions in
21 his briefing. (Mot. Reconsideration 13:6–15:2). Defendants, however, attached Snyder's
22 declaration in the Motion for Summary Judgment. (*See generally* Snyder Decl. at 1–3).
23 Because Snyder's declaration is not newly discovered evidence, reconsideration is not
24 appropriate in this case.

1 As to the Motion for Appointment of Counsel, Plaintiff contends that the Court
2 erroneously ruled on the Motions for Summary Judgment before ruling on the Motion for
3 Appointment of Counsel. (Mot. Reconsideration 18:10–20). As a preliminary matter, Plaintiff
4 appears to dispute the procedural manner in which the Court addressed his pending motions.
5 Because the Court did not previously discuss Plaintiff’s Motion for Appointment of Counsel in
6 its prior Order, there is nothing for the Court to reconsider. Nevertheless, the Court maintains
7 discretion to manage its docket, including the order in which motions are addressed. *See Landis*
8 *v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 166 (1936) (every court has the power to
9 “control the disposition of the causes on its docket with economy of time and effort, for itself,
10 for counsel, and for litigants.”). The Ninth Circuit has limited this discretion, finding that “the
11 district court should determine if counsel would aid its resolution before disposing of the case
12 on its merits.” *Johnson v. United States Dep’t of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991).
13 Such limitation, however, does not apply in this case. Plaintiff solely disputes the Court’s
14 failure to address his Motion for Appointment of Counsel, (ECF No. 135), filed on August 25,
15 2020. (Mot. Reconsideration 18:12–13). Plaintiff, however, filed numerous Motions for
16 Appointment of Counsel, (ECF Nos. 44, 80, 81, 92), before filing the disputed Motion for
17 Appointment of Counsel on August 25, 2020. The Court thus had ample opportunity to
18 consider and ultimately find that appointment of counsel would not in the Court’s resolution of
19 Plaintiff’s case. The Court appropriately exercised its discretion in ruling on the Motions for
20 Summary Judgment prior to the Motion for Appointment of Counsel.

21 In sum, Plaintiff reargues issues already presented and does not provide any unusual
22 circumstances that would justify granting reconsideration. The Court finds neither clear error
23 nor manifest injustice in the reasoning of its previous Order, and therefore, the criteria for
24 reconsideration have not been met.

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1 **IV. CONCLUSION**


2 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Reconsideration, (ECF No.
3 146), is **DENIED**.

4 **IT IS FURTHER ORDERED** that Plaintiff's Motion Requesting a Status Check on the
5 Motion for Reconsideration, (ECF No. 150), is **DENIED as moot**.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion Requesting for a Copy of Civil
7 Docket/Case History Report, (ECF No. 151), is **DENIED as moot**.

8 **IT IS FURTHER ORDERED** that Plaintiff's Motion REQUESTING Hearing on the
9 Motion for Reconsideration, (ECF No. 152), is **DENIED as moot**.

10 **DATED** this 3 day of September, 2021.

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14 Gloria M. Navarro, District Judge
15 UNITED STATES DISTRICT COURT
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