

ORAL ARGUMENT SCHEDULED FOR NOVEMBER 29, 2022**No. 22-5234**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JASKIRAT SINGH, AEKASH SINGH, MILAAP SINGH CHAHAL,
Plaintiffs-Appellants,

v.

DAVID H. BERGER, ET AL.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA, No. 1:22-CV-01004-RJL
BEFORE THE HONORABLE RICHARD J. LEON

**BRIEF OF CHAPLAIN JACOB GOLDSTEIN (RET.)
AS AMICUS CURIAE IN SUPPORT OF APPELLANTS**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES
PURSUANT TO CIRCUIT RULE 28(A)(1)**

(A) Parties and Amici. All parties, intervenors, and amici appearing before the district court and in this Court are listed in Appellants' Certificate as to Parties, Rulings, and Related Cases.

(B) Rulings Under Review. An accurate reference to the ruling at issue appears in Appellants' Certificate as to Parties, Rulings, and Related Cases.

(C) Related Cases. An accurate statement regarding related cases appears in Appellants' Certificate as to Parties, Rulings, and Related Cases.

**STATEMENT REGARDING CONSENT TO FILE
AND SEPARATE BRIEFING**

All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than Chaplain Goldstein or his counsel contributed money that was intended to fund preparing or submitting the brief.

Pursuant to Circuit Rule 29(d), Chaplain Goldstein—a 38-year veteran of the United States Army and an ordained rabbi—certifies that a separate brief is necessary. Like Appellants, Chaplain Goldstein is religiously forbidden from shaving his beard. He benefited from the same religious exemption that Appellants now seek. His military experience and ministerial and theological expertise make him especially well-suited to provide a unique perspective on the importance of faith and free religious exercise to active-duty servicemembers.

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STATEMENT OF INTEREST

Chaplain Jacob Goldstein (Ret.) is an ordained rabbi who served as a chaplain in the United States Army from 1977 until 2015. To his knowledge, he is the longest-serving Jewish chaplain in American military history. During his 38 years of service, Chaplain Goldstein was regularly deployed in support of combat missions overseas, including in Afghanistan and Iraq. He was also mobilized in response to the September 11 attacks and spent several months as the military's most senior chaplain at Ground Zero. Chaplain Goldstein ultimately rose to the rank of colonel and received many commendations for his service, including two Meritorious Service Medals and two Army Achievement medals. During his entire career, Chaplain Goldstein wore a full-length beard, as required by his Jewish faith.

Chaplain Goldstein submits this brief to offer his unique perspective on the importance of religious exercise to military readiness and, in turn, national security. Throughout his military career, Chaplain Goldstein witnessed firsthand the beneficial effects of religious exercise on soldiers' ability to achieve their missions. And, as someone who would have needed to leave the armed forces if forced to shave his beard, Chaplain Goldstein has direct personal experience regarding the importance of outward displays of faith for minority servicemembers.

ARGUMENT

Former Marine Corps Commandant Gen. Alexander Vandegrift once remarked that “religion is precious under fire.” Dep’t of the Army, *Fires: A Joint Publication for U.S. Artillery Professionals*, at 63 (July–Aug. 2011), <https://tinyurl.com/pknpmp2d>. Yet the Corps today refuses to allow Sikh recruits to exercise their faith by wearing turbans and maintaining neatly tied beards. It says that accommodating their religious exercise would threaten the Corps’ ability to serve as the nation’s “chief expeditionary force.” Opp. to Injunction Pending Appeal (“Opp.”) 1–2.

The exact opposite is true. Chaplain Goldstein’s military experience shows that supporting religious expression is critical for empowering and retaining all servicemembers. The Corps itself has recognized that religious exercise promotes two objectives—spiritual fitness and diversity—that it has repeatedly identified as key to its success on the battlefield. For Marines, religious exercise is a strength, not a weakness.

I. Chaplain Goldstein’s Experience Illustrates the Importance of Supporting Religious Observance in the Armed Forces.

Chaplain Goldstein is an Orthodox Jew. He was born in a Displaced Persons Camp to Holocaust survivors after the Second World War, and his family immigrated to the United States shortly thereafter. As an adult, he became a rabbi and studied the Torah at the Rabbinical College of Canada and the Lubavitch

Rabbinical Seminary. While a student at Lubavitch, Chaplain Goldstein began visiting military bases on a regular basis to pray with Jewish soldiers. A Roman Catholic chaplain eventually asked him to enlist, leading Chaplain Goldstein to join the Army National Guard in 1977.

At that time, Army regulations required soldiers to be clean-shaven. Chaplain Goldstein, however, had a full-length beard, which his faith forbade him from shaving. After six months of service, the Army told him to shave his beard or leave the service. Fortunately, Chaplain Goldstein requested and eventually received a religious accommodation—and maintained a full-length beard throughout his military career.

Chaplain Goldstein served in the Army National Guard and the Army Reserves until 2015, when he retired as a colonel. During his career, he regularly deployed overseas—including in Granada during Operation Urgent Fury, in Israel during the Gulf War, and in Afghanistan and Iraq during the War on Terror. Chaplain Goldstein was also regularly mobilized to support soldiers carrying out their missions within the United States. He aided the Hurricane Katrina relief effort and, after the September 11 terrorist attacks, served for fourteen months at Ground Zero as the Senior Chaplain for all branches of the military. During those missions,

Chaplain Goldstein tended to the spiritual needs of all the soldiers in his regiment, regardless of their religious background.¹

Based on his 38 years of military experience, Chaplain Goldstein understands that soldiers' religious exercise is critical for achieving military objectives. His religious practice gave him the fortitude and resilience needed to face the enemy, and the same was true for the religious soldiers whom he supported. Faith helps soldiers overcome the extraordinary challenges that our nation's safety requires them to face—especially in combat, where soldiers are asked to take the lives of others as they simultaneously risk their own. That is because faith provides religious soldiers in those circumstances with strength, courage, and moral conviction.

But belief alone is not enough. To unlock faith's galvanizing power, soldiers must be able to *practice* their religious beliefs. Religious exercise is especially important for soldiers of minority faiths. For instance, chaplains support all soldiers but can minister only to some; as a matter of military policy, the First Amendment, and their own beliefs, chaplains cannot be compelled to lead services for other faiths. And due to their small numbers, religious minorities will often lack access to formal religious services and chaplains of their own faith. Personal religious expression thus provides a much-needed way for minority soldiers to exercise their religious

¹ Chaplain Goldstein has provided a more thorough discussion of his military career in *Singh v. Carter*, No. 1:16-cv-00399, ECF No. 37-6 (D.D.C. April 12, 2016) (declaration of Chaplain Jacob Z. Goldstein).

beliefs, even in times of grave danger. For soldiers of many minority faiths, including Sikhism, Islam, and Judaism, that expression includes wearing a beard.

The ability to practice one's faith also bears on force retention, particularly for soldiers of minority faiths. Chaplain Goldstein's own experience in receiving a religious accommodation illustrates this point. But for that accommodation, Chaplain Goldstein would have been forced to choose between his faith and service to his country—and would have left the Army rather than shave his beard. Based on his decades of experience supporting soldiers' religious exercise, Chaplain Goldstein understands that the same is true for countless others who have received religious exemptions.

II. The Corps' Actions Here Contradict Its Repeated Statements that Free Religious Exercise is Critical to Military Success.

The Corps' refusal to allow Appellants to exercise their Sikh faith contradicts its own statements and policies addressing the importance of religious exercise to its ability to serve as the nation's "expeditionary force." Opp. 1. For the Corps, free exercise of religion is more than a constitutional requirement. Instead, the Corps recognizes that supporting religious exercise confers two military benefits on individual Marines and the Corps as a whole. *First*, the Corps insists that religious exercise is critical for spiritual fitness, which gives Marines the mental fortitude they need to thrive in dangerous situations. *Second*, the Corps recognizes that supporting

minorities' religious exercise promotes diversity—a key component of a successful fighting force.

1. The Corps Insists that Supporting Religious Exercise Is Critical for Spiritual Fitness.

The Corps says that it cannot accommodate Appellants' religious exercise because the Corps is an “expeditionary force.” Opp. 1–2. That position contradicts the Corps' longstanding view that spiritual fitness—and therefore religious exercise—is necessary for it to achieve its difficult missions.

The Corps' role as one of our country's expeditionary forces requires it to “be *ready*” above all else. Gen. Robert B. Neller, Commandant of the Marine Corps, Testimony before the Senate Appropriations Committee, Subcommittee on Defense, at 2 (May 1, 2019), <https://tinyurl.com/2yyaks2r>. The Corps is a “force in readiness” that lives in a state of “constant preparedness” and is always “ready to secure or protect national policy objectives by military force.” *Id.* at 2–3. To this end, it undertakes considerable expense and efforts to train Marines to serve as “shock troops [who] must be the most ready when the nation is least ready.” Dep't of the Navy, Marine Corps Order 3000.13B at 4(a) (July 14, 2020), <https://tinyurl.com/4tu7ujtn>.

The Corps is well aware that serving as an expeditionary force is a tall order, so it has identified maintaining Marines' resilience as a key area of focus. In the words of a former Commandant of the Marine Corps, a “large part” of the Corps'

ability to “answer our Nation[']s call on a moment[']s notice” is “our capacity for resilience.” Gen. Robert B. Neller, *Spiritual Fitness*, ALMAR No. 033/16 (Oct. 3, 2016), <https://tinyurl.com/54dews9h>.² Resilience “ensures that when faced with the challenges Marines face in and out of combat, they will be able to meet those challenges, drawing from internal and external sources of strength and support.” U.S. Marine Corps, Human Performance Branch, *Resilience*, <https://tinyurl.com/yc554xvb> (last visited Oct. 27, 2022).

That is where faith comes in. The Corps views religious exercise as essential to “spiritual fitness.” See U.S. Marine Corps, *Religious Ministry in the United States Marine Corps*, MCTP 3-30D at 1-2 (Apr. 4, 2018), <https://tinyurl.com/35tsh2bp>; U.S. Marine Corps, *Spiritual Fitness Leader’s Guide*, at 9 (Feb. 2022), <https://tinyurl.com/y4wmsywb>; see also Gen. David H. Berger, *Resiliency and Spiritual Fitness*, ALMAR No. 027/20 (Dec. 3, 2020), <https://tinyurl.com/5n7uvh7j> (noting that chaplains “are uniquely equipped to optimize spiritual fitness at all levels”). Spiritual fitness is a Marine’s commitment to higher values and ability to practice them in the face of adversity. See U.S. Marine Corps, *Spiritual Fitness Leader’s Guide*, at 8; U.S. Marine Corps, *Spiritual Fitness: Official Site for Marine Corps Spiritual Fitness*, <https://tinyurl.com/46re9rh5> (last visited Oct. 27, 2022).

² An ALMAR—an acronym for “All Marine Corps Activities”—is a communication from the Commandant of the Marine Corps to all Marines.

The Corps has repeatedly identified spiritual fitness as one of the most important ways for Marines to maintain their resilience. “[S]piritual fitness is intricately connected to resiliency, human performance, and combat effectiveness,” U.S. Marine Corps, *Spiritual Fitness Leader’s Guide*, at 5, because it “permits Marines and Sailors to draw upon collective spiritual resources in order to maintain their resiliency,” Gen. David H. Berger, *Resiliency and Spiritual Fitness*, ALMAR No. 027/20. That is not simply a hunch. The Corps developed that view based on “[r]esearch indicat[ing] that spiritual fitness plays a key role in resiliency, in our ability to grow, develop, recover, heal, and adapt.” Gen. Robert B. Neller, *Spiritual Fitness*, ALMAR No. 033/16. So it is no surprise that the Corps acknowledges that a “strong faith in God can add significantly to resilience, regardless of how that God is understood or worshipped.” U.S. Marine Corps, *Combat and Operational Stress Control*, MCRP 6-11C at 3-31 (Dec. 20, 2010), <https://tinyurl.com/286bf3t3>. A prior Corps manual on religious ministry even expressly recognized that “[o]nly the spiritually ready have the moral courage to persevere in the face of overwhelming odds.” U.S. Marine Corps, *Commander’s Handbook for Religious Ministry Support*, MCRP 3-30D.4 at 1-2 (May 2, 2016), <https://tinyurl.com/tve3sfdn>.

The Corps’ chaplaincy program further shows that it recognizes and values the link between spiritual fitness, free exercise, and force readiness. The compelling “interest in developing a chaplaincy” that enables servicemembers to freely practice

their religion “concerns operational, strategic, or tactical matters” vital to national security. *Larsen v. U.S. Navy*, 486 F. Supp. 2d 11, 29 (D.D.C. 2007) (quotation marks removed); *see also Katcoff v. Marsh*, 755 F.2d 223, 234 (2d Cir. 1985) (holding that the First Amendment requires the military to provide chaplains in order “to make religion available to soldiers who have been moved . . . to areas of the world where religion of their own denominations is not available to them”). Chaplains “offer care to Marines and their families while meeting and facilitating religious needs,” U.S. Marine Corps, *Religious Ministry in the United States Marine Corps*, at 1-1, and fulfill the “especially important” “task” of instilling in servicemen “that their sacrifices, the performance of their duty, are important.” President Dwight D. Eisenhower, Remarks to Members of the Military Chaplains Nat’l Ass’n (May 9, 1956), <https://tinyurl.com/ms9wpcyv>.

Other policies reveal the Corps’ recognition of the same link. For instance, in acknowledgement of the crucial role that religious services play in ensuring spiritual fitness, the Corps promotes the use of “lay leaders,” Marines who volunteer to “support a temporary accommodation of specific religious requirements in operational settings when assigned chaplains are not able to provide for specific religious needs within the command.” U.S. Marine Corps, *Religious Lay Leader*, MCRP 6-12B at 1.1 (May 2016), <https://tinyurl.com/bdzmr7h6>. The Corps encourages lay leaders to “conduct religious services and supplement the ministry

of chaplains” and to otherwise facilitate the religious exercise of observant Marines. *Id.* at 1-1 and 2-1. Similarly, the Corps contracts with civilians to provide religious services when necessary and allows Marines to support the activities of chaplains and lay leaders on a voluntary basis. Dep’t of the Navy, Marine Corps Order 1730.6f, § 4(a)(2) (Aug. 16, 2018), <https://tinyurl.com/2nuuvayx>.

The Corps’ emphasis on spiritual fitness is incompatible with its denial of a religious exemption that will allow Sikh recruits to wear articles of their faith. Forbidding Sikhs recruits from maintaining beards and wearing turbans is tantamount to denying their right to exercise their Sikh faith. Complaint ¶ 86. A lack of spiritual fitness is especially destructive during training, when the Corps must introduce civilian recruits to military life and inculcate shared values and a sense of duty. Indeed, as General Berger has recognized, spiritual fitness is “just as critical” as “physical, mental, and social fitness” to “build[ing] character and instill[ing] core values in every Marine.” U.S. Marine Corps, *Spiritual Fitness Leader’s Guide*, at 3.

2. The Corps Recognizes that Supporting Minority Religious Exercise is Critical for Diversity.

The Corps’ denial of Appellants’ religious exercise also contradicts its repeated promotion of diversity, including religious diversity. *See, e.g.,* Todd South, *Diversity of “Races, Religions, Backgrounds and Genders” Essential to Warfighting in the Information Age*, 3-Star Says, Marine Corps Times (Sept. 30, 2019),

<https://tinyurl.com/yc5k33zh>. The Corps has identified diversity as a key institutional objective for three primary reasons.

First, as General Berger has explained, the Marine Corps values diversity because it is “directly related to warfighting and [our] ability to make good decisions.” Gen. David H. Berger & Ryan Evans, *Gen. David H. Berger on the Marine Corps of the Future*, War on the Rocks (Jan. 4, 2022), <https://tinyurl.com/uakt99tc>. Diversity promotes sound military decisionmaking because a homogenous force has “blind spots.” *Id.* Those blind spots lead to groupthink, and groupthink means that “we’re going to get killed because we’re going to end up with solutions that we’re all familiar with but [are] easy to counter.” Jeff Schogol, *Diversity Is About Saving Marines’ Lives, Not Political Correctness*, *Commandant Says*, Task & Purpose (Sept. 23, 2020), <https://tinyurl.com/yta3ss5w>.

Second, diversity also helps the Corps work more effectively with allies and civilian populations abroad. The Corps recognizes that its missions are more successful when Marines understand those with whom they interact on a daily basis. *See, e.g.*, U.S. Marine Corps, *The Marine Mindset* (explaining that Marines must complete “cultural training” before deploying to a foreign country to “familiarize themselves with the [country’s] language, customs and traditions, [and] religion”), <https://tinyurl.com/4uxtffy2> (last visited Oct. 27, 2022). Diversity, including religious diversity, promotes cultural understanding by incorporating Marines into

the force who already have insight into other perspectives due to their “unique personal background[s],” including their “upbringing and experiences.” *See* U.S. Marine Corps, *Talent Management 2030*, at 5 (Nov. 2021), <https://tinyurl.com/yf3czsc9>. Marines with diverse backgrounds are also able to teach their fellow troops about foreign cultures, empowering even those without the same background to fight more effectively overseas. *See, e.g.*, Russell Midori, *The Quran and the Corps*, Bluffton Today (Sept. 9, 2010) (observing that Muslim chaplains can teach Marines about Islam to prepare them to understand civilian populations in the Middle East), <https://tinyurl.com/3jvn4sk7>.

Third, diversity is key to maximizing and retaining talent. Diversity helps the Corps attract and retain talented Americans who might not otherwise enlist by showing them that the Corps is a viable career option for people of their background. *See* U.S. Marine Corps, *Talent Management 2030*, at 5. Diversity also promotes inclusion, which the Corps has repeatedly identified as critical for maximizing the performance of its recruits. *See id.*; Lt. Gen. David Ottignon & B. Gen. Jason Woodworth, *Diversity, Equity & Inclusion: Why This is Important to the Corps as a Warfighting Organization*, Marine Corps Gazette, at 41 (July 2021), <https://tinyurl.com/bdf29b5a>. “Inclusion breeds boldness of thought and action; it allows each Marine to live up to their full potential, thrive, and step up and take a swing at the problem.” *Id.*

The Corps' statements and policies reveal its recognition that helping religious minorities practice their faith fosters religious diversity. The Navy proudly advertises that its chaplains—who also serve in the Corps—come from “more than 100 different faith groups, including Christian, Jewish, Muslim, Buddhist and many others.” U.S. Navy, *Navy Chaplain*, <https://tinyurl.com/4bdyxj6r> (last visited Oct. 27, 2022). But even when Marines from minority faiths are served by chaplains from other faiths, those chaplains are expected to provide them with pastoral support and facilitate their individual religious exercise. U.S. Marine Corps, *Religious Ministry in the United States Marine Corps*, at 2-1; *see also supra* at 9–10 (discussing lay leaders and civilian contractors).

The Corps' clear commitment to religious diversity and adoption of policies recognizing that Marines' religious observance is not a one-size-fits-all affair belie the government's assertions that displays of minority religious faith can undermine soldiers' “shared identity” and can impede the “psychological transformation” of individuals into a team. Opp. 11. Religious diversity neither “introduce[s] religious disputes into the Army” nor “compel[s] men to a mode of Worship, which they do not profess.” George Washington, Letter to John Hancock, Nat'l Archives (June 8, 1777), <https://tinyurl.com/2xz2msxh>. It is instead a necessary component of a successful military in a pluralistic society.

* * * * *

Chaplain Goldstein shares the Corps' views that religious exercise is critical for servicemembers' resilience and that religious diversity helps the armed forces perform more effectively. During his 38 years of service, he saw countless soldiers bolster their fighting spirit through religious observance. Chaplain Goldstein himself also helped American forces interact more effectively with their Israeli counterparts by teaching them about Judaism. The Corps' error is that it failed to live up to its own values, not that it adopted them in the first place.

CONCLUSION

The Corps' denial of a religious accommodation to Appellants undermines its stated goals of promoting spiritual fitness and diversity. Chaplain Goldstein therefore respectfully urges this Court to reverse the District Court's denial of a permanent injunction.

Dated: October 28, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29, I certify that the attached brief is proportionately spaced, has a typeface of 14 points, and complies with the word count limitations set forth in Fed. R. App. P. 29(a)(5). This Brief has 3,204 words, excluding the portions exempted by Fed. R. App. P. 32, according to the word count feature of Microsoft Word used to generate this Brief.

Dated: October 28, 2022

By: /s/ Jacob T. Spencer
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