

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

**EDMUND DI LISCIA**

845 Monterey Road  
South Pasadena, CA 91030

**LEANDROS KATSAREAS,**

707 Hollywood Ave,  
Suffolk, VA 23434

**DOMINQUE BRAGGS,**

109 Water Way, Unit 14  
Hampton, VA 23666

**MOHAMMED SHOYEB,**

USS Chancellorsville (CG 62)

*Plaintiffs,*

v.

**LLOYD JAMES AUSTIN III,**

in his official capacity as Secretary of the  
United States Department of Defense,  
1000 Defense Pentagon  
Washington, DC 20301

**UNITED STATES DEPARTMENT  
OF DEFENSE,**

1400 Defense Pentagon  
Washington, DC 20301

**THOMAS HARKER,**

in his official capacity as Acting Secretary of  
the United States Navy,  
Naval Litigation Office  
720 Kennon St., SE, Room 233  
Washington, DC 20374-5013

**VICE ADMIRAL JOHN B. NOWELL, JR.,**

in his official capacity as Chief of Naval  
Personnel and Deputy Chief of Naval  
Operations,  
Naval Litigation Office  
720 Kennon St., SE, Room 233

Civil Action No. 21-1047

**COMPLAINT**

(Jury Requested)

Washington, DC 20374-5013

**UNITED STATES DEPARTMENT OF  
THE NAVY,**

Naval Litigation Office  
720 Kennon St., SE, Room 233  
Washington, DC 20374-5013

**CAPTAIN ERIC J. ANDUZE,**  
in his official capacity as Commanding  
Officer, USS Theodore Roosevelt  
Naval Litigation Office  
720 Kennon St., SE, Room 233  
Washington, DC 20374-5013

*Defendants.*

Eric S. Baxter (D.C. Bar No. 479221)  
Daniel Blomberg (D.C. Bar No. 1032624)  
Diana M. Verm (D.C. Bar No. 1811222)  
Diana M. Verm (D.C. Bar No. 1811222)  
Kayla Toney (D.C. Bar No. 1644219)

*(admission pending)*

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### **NATURE OF THE ACTION**

1. Plaintiff Edmund Di Liscia, a devout Chassidic Jew and a Sailor in the United States Navy with a rating as an Electricians Mate, Nuclear Power 3<sup>rd</sup> Class Petty Officer (EMN3), seeks emergency relief to stop Defendants from forcing him to shave in violation of his sincerely held religious beliefs.

2. Over two years ago, shortly after joining the Navy, EMN3 Di Liscia received a “no-shave chit” permitting him to maintain his beard as a religious accommodation for his faith. That accommodation remained effective during his current deployment aboard the U.S.S. Theodore Roosevelt. Indeed, throughout the deployment, his fellow Sailors aboard the USS Roosevelt have all received MWR (Morale, Welfare, and Recreation) no-shave chits that allow them to shave only once every fourteen days.

3. But on or around April 14, 2021, EMN3 Di Liscia’s chief informed him that he must shave on the morning of April 16, 2021, and regularly thereafter. Shortly before 5 AM ET on April 15, EMN3 Di Liscia was given a Record of Counseling memorializing that he has been given a direct order to shave and will be in violation of the order and will face punishment if he does not shave “prior to quarters 16APR2021” at his current location, which would be approximately 4:30 today (April 15) eastern time. If he does not shave, he will be subject to disciplinary action, which would permanently damage his career in the Navy and may subject him to severe personal penalties.

4. Defendants’ threats against EMN3 Di Liscia violate federal constitutional and statutory law, and must be immediately enjoined.

5. The remaining Plaintiffs are also Sailors in the United States Navy. They are all devout adherents of Islam and are also obliged by their faith to maintain a substantial beard.

6. Two already have beards. Plaintiff Leandros Katsareas, a Mass Communication Specialist 3<sup>rd</sup> Class Petty Officer (“MC3”) has had a religious accommodation for a quarter-inch beard since October 2018, and an accommodation for a four-inch beard since July 2020. Plaintiff Dominique Braggs, an Aviation Boatswain’s Mate—Fuels 3<sup>rd</sup> Class Petty Officer (“ABF3”) has had a beard for medical reasons ever since completing boot camp because he suffers from *pseudofolliculitis barbae* or “razor bumps”—a condition that overwhelmingly affects African-American Sailors like Braggs. Even with this medical accommodation, however, he is required to shave every thirty days to prove he still gets painful swellings on his face each time he does.

7. The fourth Plaintiff, Mohammed Shoyeb, an Operations Specialist 2<sup>nd</sup> Class Petty Officer (OS2), has sought a religious accommodation to grow a beard but been denied.

8. At any given time there are thousands of Sailors with beards for medical reasons. And ship commanders have broad discretion to allow Sailors to grow beards as a morale booster—a common practice, particularly on long deployments at sea. Indeed, the Navy has a robust tradition of bearded sailors; until 1985, beards were a defining feature of Navy servicemen.

9. Yet Defendants have recently started insisting there can be *no* religious-beard accommodations for Sailors on sea duty, because a beard supposedly “reduces safe and effective wear and operation of protective equipment,” specifically gas masks and respirators.

10. The issue has now come to a head. Plaintiff Di Liscia is suddenly being coerced to shave immediately, even though no new risk to health or safety has been identified. Similarly, MC3 Katsareas—who is currently working as a legal clerk, on a ship docked for repairs—has been told that his religious accommodation is about to be rescinded. ABF3 Braggs has recently filed for an official religious accommodation, but his application is still pending and—based on the Navy’s response to other requests for accommodation—likely to be denied or granted only to the extent



he remains on shore duty. In the meantime, he has regularly been pressured to undergo electrolysis or laser hair removal on his face so that his existing medical accommodation can be voided. And OS2 Shoyeb's appeal from the denial of his request for a religious accommodation has been categorically denied.

11. For all Plaintiffs, being prevented from wearing a substantial beard is a severe violation of their religious beliefs, yet under the Navy's grooming policies, they are subject to harsh penalties—and potential dishonorable discharge—for maintaining this religious practice.

12. Defendants should know that their disregard of Plaintiffs' religious obligations is unlawful. In this context, the First Amendment's Free Exercise Clause and the Religious Freedom Restoration Act of 1993 ("RFRA") both forbid Defendants from burdening Sailors' sincere religious exercise absent a compelling governmental interest that cannot be met by some means less restrictive than forced shaves. *See Tandon v. v. Newsom*, No. 20A151, 2021 WL 1328507 (Apr. 9, 2021); U.S. Const. amend. I; 42 U.S.C. § 2000bb, *et seq.* And regulations of the Department of Defense and Navy each separately impose the same obligation. Dep't of Defense Instruction 1300.17 ¶ 1.2(e) (as updated September 1, 2020) (hereinafter "Defense Instr.") § 1.2(e); Bureau of Navy Personnel Instruction 1730.11A ¶ 3 (as updated March 16, 2020) (hereinafter "Navy Instr.").

13. Defendants cannot possibly demonstrate a compelling governmental interest in requiring Plaintiffs to shave when they allow beards for a variety of other reasons, and have done so for decades. The fact that the U.S. Army and Air Force both allow religious beards further belies any supposedly compelling reason Defendants may assert for suppressing Plaintiffs' religious exercise. And the allowance for religious beards by militaries around the world, including in the United

Kingdom, Canada, Israel, Australia, New Zealand, and India, as well as by police and fire departments throughout the U.S., further undermines Defendants' claims.

14. Nor can Defendants show that forced shaves are the least restrictive means of resolving their alleged concerns. Even if beards didn't work with standard-issue masks, Defendants cannot show there are no other options that would. *See Singh v. McHugh*, 185 F. Supp. 3d 201, 231 n.23 (D.D.C. 2016) (noting that the Army has admitted there are masks "capable of providing protection to individuals who wear beards"). And Defendants bear the burden to show that the approach taken by other branches of the military, by militaries worldwide, and by police and fire departments across the nation is not viable.

15. Defendants' own decades-long policies and practices prove that they have no compelling interest in forcing Plaintiffs to shave now. They should thus immediately be enjoined—at least long enough for Plaintiffs' claims to be heard on their full merits.

### **JURISDICTION AND VENUE**

16. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

17. Venue lies in this district pursuant to 28 U.S.C. § 1391(e)(1).

### **IDENTIFICATION OF PARTIES**

18. Plaintiff EMN3 Edmund Di Liscia is a devout Chassidic Jew and a Member of the United States Navy stationed aboard the USS Theodore Roosevelt (CVN 71), currently deployed at sea.

19. Plaintiff MC3 Leandros Katsareas is a practicing Muslim and a member of the United States Navy stationed aboard the USS George Washington (CVN 73), currently docked in Newport News, Virginia.

20. Plaintiff ABF3 Dominique Braggs, is a practicing Muslim and a member of the United States Navy stationed at Naval Station Norfolk in Norfolk, Virginia.

21. Plaintiff OS2 Mohammed Shoyeb is a practicing Muslim and a member of the United States Navy stationed aboard the USS Chancellorsville (CG 62), which is currently docked in Yokosuka, Japan.

22. Defendants are appointed officials of the United States government and United States governmental agencies responsible for the United States military and its grooming policies.

23. Defendant Lloyd James Austin III is the Secretary of the United States Department of Defense. In this capacity, he has responsibility for the operation and management of the armed forces. Secretary Austin is sued in his official capacity only.

24. Defendant United States Department of Defense is an executive agency of the United States government and is responsible for the maintenance of the United States military.

25. Defendant Thomas Harker is the Acting Secretary of the United States Navy and is responsible for the operation and management of the United States Navy. Acting Secretary Harker is sued in his official capacity only.

26. Defendant Vice Admiral John B. Nowell, Jr. is the Chief of Naval Personnel and Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education). In this capacity, he has responsibility for religious accommodations in the Navy. Vice Admiral Nowell is sued in his official capacity only.

27. Defendant Department of the Navy is a department of the United States military and is responsible for the promulgation and administration of its own grooming policies and regulations.

28. Defendant Captain Eric J. Anduze is the Commanding Officer of the USS Theodore Roosevelt. In this capacity, he is responsible for EMN3 Di Liscia. Captain Anduze is sued in his official capacity only.

## **FACTUAL ALLEGATIONS**

### **EMN3 Di Liscia's Orthodox Jewish Beliefs**

29. EMN3 Di Liscia is a devout Chassidic Jew. He became observant prior to joining the Navy and has continued to practice the religion throughout his service.

30. Orthodox Judaism places great emphasis on observing ancient laws and customs spelled out in the Torah, the Talmud, and the Shulchan Aruch (Code of Jewish Law). Traditional Jewish laws and customs regulate everything from maintaining a kosher diet, to faithfully observing a day of rest on the Sabbath, to personal grooming habits regarding beards.

31. Chassidic Judaism, in particular, encourages adherents to engage in open piety and observance of their faith in everyday life.<sup>1</sup> This faith tradition is steeped in religious commitments regarding holiness, and Chassidic Jews such as EMN3 Di Liscia strive to keep even the hidden meaning of the Torah which is not explicitly stated in the text.

32. The Torah directs, “Do not cut off the hair on the sides of your head. Do not shave off the edges of your beard.” Leviticus 19:27.<sup>2</sup> Various adherents of Orthodox Judaism, including Chassidic Jews, understand this passage to restrict or forbid the shaving of facial hair.<sup>3</sup> According to the leading medieval commentator on the Hebrew Bible, “as a practical matter, since the exact areas of these edges are not clearly defined, it is forbidden to shave the entire beard....[T]he Torah forbids one to *destroy* it and to *shave it*.”<sup>4</sup>

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<sup>1</sup> Randal F. Schnoor, *Tradition and Innovation in an Ultra-Orthodox Community: The Hasidim of Outremont*, 10 Can. Jewish Studies 54 (2002), <https://perma.cc/7NWP-4GT4>.

<sup>2</sup> The Living Torah, trans. Rabbi Aryeh Kaplan, <https://perma.cc/QE5G-M7Z5>.

<sup>3</sup> See Deborah Pergament, *It's Not Just Hair: Historical and Cultural Considerations for an Emerging Technology*, 75 Chi.-Kent L. Rev. 41, 47 (1999) (discussing the Orthodox Jewish understanding of the passage and accompanying Talmudic injunctions).

<sup>4</sup> Rabbi Shlomo Yitzchaki, Commentary on Leviticus 19:27, Artscroll Stone Edition of the Torah, at 664 (known as Rashi, this eleventh-century scholar is the primary commentator on the Torah and Talmud).

33. Many Chassidic Jews believe the beard is so holy that they do not even trim it with scissors.<sup>5</sup> According to the Code of Jewish Law, “[t]here are five corners of the beard, and there are many opinions on them, therefore a God-fearing man should fulfill all of them and not pass a razor over any of his beard at all.”<sup>6</sup> Because their sincere belief is that they must do God’s will in the best way possible, and because the definition of “edges” and “corners” is unclear, Chassidic Jews refrain from shaving at all to avoid the possibility of breaking God’s commandment.<sup>7</sup> They also refrain from destroying the corners of their sideburns, which is a practice unique to Chassidic Judaism.

34. Adherents to Chassidic Judaism have maintained a strong tradition of wearing beards.<sup>8</sup> They believe that *growing* a beard, not just refraining from shaving it, is an inherently good and holy action. For Chassidic Jews, wearing a beard is not only an expression of fidelity and spiritual modesty, but also a sign of maturity. Their sincerely held religious beliefs thus compel them to serve God in the holiest way possible.

#### The Muslim Sailors’ Religious Beliefs

35. Islam, typically translated as “submission to God,” is an Abrahamic religion that upholds belief in a single God. Muslims believe that God has revealed Islam through four sources of truth:

- a. The Qur’an, which is God’s word as revealed to the prophet Muhammad;
- b. Tradition, which includes the sayings of Muhammad as recorded in the Hadith and other holy texts;

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<sup>5</sup> Shulchan Aruch, Yoreh De’ah 181-3, <https://perma.cc/TUX8-47UC> (“And there are those who forbid scissors that shave like a razor; and their words should be regarded.”)

<sup>6</sup> Shulchan Aruch, Yoreh De’ah 181-11, <https://perma.cc/TYY9-E62N>.

<sup>7</sup> See Makkot 20a, the William Davison Talmud, <https://perma.cc/3NP5-39KW> (“And one is liable for marring the edges of his beard only if he removes the hair with a razor. Rabbi Eliezer says: Even if he removed the hair with tweezers...he is liable to receive lashes.”)

<sup>8</sup> Elliott Horowitz, *Beards*, Yivo Encyclopedia of the Jews in E. Eur., <https://perma.cc/S9NW-6WZU>.

- c. Consensus of Muslim scholars; and
- d. Intellect.<sup>9</sup>

36. Worldwide, there are approximately 1.8 billion Muslims. Approximately 3.5 million Muslims live in the United States. As of 2015, at least 5,800 self-identified Muslims serve in the U.S. military, with more than 1,000 in the Navy. Because many Muslims prefer to “stay below the radar and just do their jobs without having to defend Islam,” particularly since the War on Terror involves enemy co-religionists, a more accurate estimate may be between 10,000 and 15,000.<sup>10</sup>

37. The practice of Islam is based on “Five Pillars,” obligatory acts of worship:

- a. *Shahada*: to declare belief in God and that Muhammad is his final prophet and messenger;
- b. *Salat*: to pray five times daily;
- c. *Zakat*: to give charity;
- d. *Sawm*: to fast during Ramadan; and,
- e. *Hajj*: to make a pilgrimage to Mecca at least once in a Muslim’s life.

38. *Fitra*, translated as “original disposition” or “primordial nature,” is the state of purity in which Muslims believe that all humans were born. Muslims believe that the appearance of the beard was a “specific miraculous event.”<sup>11</sup> According to the Stories of the Prophets, the angel Gabriel told the first man, Adam, that his beard was a blessing from Allah, given “in response to

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<sup>9</sup> Allamah Murtada Baghdadi, *The Islamic Perspective of the Beard* (trans. Shaykh Mubashir Ali, Shaykh Muhammad Amin), <https://perma.cc/CHC8-S58D>.

<sup>10</sup> Shareda Hosein, *Muslims in the U.S. Military: Moral Injury and Eroding Rights*, Pastoral Psychology (2019) 68: 77-92, <https://doi.org/10.1007/s11089-018-0839-8>.

<sup>11</sup> Baghdadi, *The Islamic Perspective of the Beard*, <https://perma.cc/CHC8-S58D>.

the supplication you made to your Lord,” “granted to you and your male offspring till the day of reckoning.”<sup>12</sup>

39. According to the Quran, it is a sin to “alter Allah’s creation,” and Muslims believe that “shaving of the beard is...an unnatural alteration with regard to what Allah, the Exalted, has created naturally.”<sup>13</sup> Muslim tradition further explains that the beard was created to provide a “clear distinction between the male and the female offspring of Adam.”<sup>14</sup>

40. Muslims follow several ritual purity practices regarding personal grooming. *See* Sunan Abu Dawud, MSA Reference: Book I, Hadith 0052 (Narrated by Aisha, Ummul Mu’minin) (“The Apostle of Allah [...] said: ‘Ten are the acts according to *fitrah* (nature): clipping the moustache, letting the beard grow, ....’”); *see also* Sahih Al-Bukhari, MSA Reference: Vol. 7, Book 72, Hadith 781 (Narrated by Ibn ‘Umar) (“Allah’s Messenger [...] said ‘Cut the moustaches short and leave the beard (as it is).’”).

41. In Islamic jurisprudence, Muslims are exhorted to be neat and clean because according to the Prophet Muhammad, “Verily, Allah is Beautiful and He loves Beauty.” Sahih Muslim, MSA Reference: Book I, Hadith 164 (Narrated by Abdullah b. Mas’ud). Thus, Muslim holy texts refer to the beard as a sign of devotion to God as well as masculinity.

42. In accord with these and other teachings, major Islamic schools of jurisprudence consider it obligatory for males to have a beard. Shaving is “considered an unjust action” and “regarded a sin by which an individual may be considered worthy of being punished.”<sup>15</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Baghdadi, *The Islamic Perspective of the Beard*, <https://perma.cc/CHC8-S58D>.

MC3 Katsareas's Commitment to the Islamic Faith

43. MC3 Katsareas converted to Islam in 2001 at the age of sixteen and has faithfully observed its tenets ever since, despite significant discrimination in both Australia and the U.S. When studying different religions before his conversion, MC3 Katsareas was specifically drawn to the principles of justice and free will inherent in Islam, principles which also motivated him to move to the United States. He has several years of experience as a civilian prison and hospital chaplain and as a lay religious leader in his community.

44. For virtually his entire adult life prior to shipping out to Navy Recruit Training Command at the age of 31, he maintained a beard in accordance with his sincere religious beliefs. His sincerely held belief and practice is that his beard should be at a minimum of fist length, or four inches below the chin and neatly groomed and trimmed, with the edges lined up. MC3 Katsareas considers it sinful and spiritually degrading not to maintain a fist-length beard that complies with his religious obligations.

45. MC3 Katsareas currently maintains a beard, which he views both as a symbol of devotion to God and as a defining feature of his masculinity. He believes wearing a beard helps him set a good example for his family and for other Muslims, and that if forced to compromise in this area, it will undermine his legacy in other aspects of his faith as well as harming his relationship with God.

ABF3 Braggs's Commitment to the Islamic Faith

46. After living in accordance with the Islamic faith since 2017, ABF3 Braggs formally converted to Islam with the assistance of Navy Chaplain Abuhena Saifulislam in 2020. He daily observes the tenets of the faith by studying the Quran, praying five times a day, and abstaining from alcohol. He also observes Islam's various fasts.



47. His sincerely held belief and practice is that his beard should be at a minimum of fist length, or four inches below the chin, but is not required to be longer than a fist in length.

48. ABF3 Braggs considers it sinful and spiritually degrading not to maintain a fist-length beard that complies with his religious obligations.

49. His sincerely held belief and practice is that his beard should be groomed and trimmed neatly, with the edges lined up.

OS2 Shoyeb's Commitment to the Islamic Faith

50. OS2 Shoyeb was born and raised in the Islamic faith, attending his local mosque throughout his childhood and teenage years. Prior to joining the Navy, he had never shaved.

51. OS2 Shoyeb has faithfully observed his faith's tenets his entire adult life.

52. Throughout his time in the Navy, OS2 Shoyeb has continued to practice his faith to the fullest extent possible. He studies the Quran, prays five times a day, tries to maintain a *halal* diet, and fasts regularly.

53. In accord with his beliefs, OS2 Shoyeb believes that as a devout Muslim man he should wear a fist-length beard.

54. Initially unaware that he could seek a religious accommodation OS2 Shoyeb does not presently wear a beard. If not for his military service, OS2 Shoyeb would wear a beard in conformity with his religious beliefs.

55. His sincerely held belief and practice is that his beard should be at a minimum of fist length, or four inches below the chin, but is not required to be longer than a fist in length. His sincerely held belief and practice is that his beard should be groomed and trimmed neatly, with the edges lined up.

56. OS2 Shoyeb considers it sinful and spiritually degrading not to maintain a fist-length beard that complies with his religious obligations.

#### Unique Challenges for Muslim Sailors

57. Since the terrorist attacks on September 11, 2001, serving in the U.S. military has become more difficult for Muslims, so much so that many feel compelled to keep their faith hidden “to avoid being harassed by peers.”<sup>16</sup> This pressure to either keep their religious identity secret or serve as “apologists for the actions of extremist groups whose members call themselves Muslim but whom most Muslims in America see as enemies of their religion” places additional strain on Muslim servicemembers’ mental health and wellbeing.<sup>17</sup>

58. “Despite the heightened sense of suspicion over the entire Muslim American community in the United States, some young Muslims are still inspired to join the military.”<sup>18</sup> MC3 Katsareas and OS2 Shoyeb have both expressed that the September 11, 2001 terrorist attacks motivated them to join the U.S. military, both to fight terrorism and to counteract stereotypes of Islamic extremism. Muslim Sailors like MC3 Katsareas, OS2 Shoyeb, and ABF3 Braggs should be lauded for choosing to fight for freedom despite the additional challenges they face as Muslim servicemembers. They should not have to face the additional burden of having to choose between their service and their faith.

59. In the aftermath of the 2009 Fort Hood shooting by an Islamic extremist, many Muslim servicemembers “felt that they had to singlehandedly defend Islam and American Muslims from the negative backlash as they built bridges of understanding with people of all faiths so that

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<sup>16</sup> Hosein, *Muslims in the U.S. Military: Moral Injury and Eroding Rights*, <https://doi.org/10.1007/s11089-018-0839-8>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Muslims wouldn't be lumped into the same category of terrorists.”<sup>19</sup> In his statement in response to the Fort Hood shooting, General George Casey stated that “the military benefits from diversity...and as horrific as this tragedy was, if our diversity becomes a casualty, I think that's worse.”<sup>20</sup>

60. Based on these events in recent U.S. history, and research documenting the unique pressures that Muslim servicemembers face, the ability to freely express their faith by wearing beards would directly strengthen the mental health and identity of MC3 Katsareas, OS2 Shoyeb, ABF3 Braggs, and other similarly-situated Sailors. Without religious accommodations, these Sailors “pay a higher price psychologically due to not being able to freely declare their full identity, perhaps in terms of religious struggles generated by not being able to publicly integrate their religious faith into their military service.”<sup>21</sup>

61. Granting religious beard accommodations would also boost morale and foster diversity, which U.S. military leaders have recognized as a strength, and it would contribute to good order and discipline rather than detracting from those interests. Indeed, “studies suggest that people who practice their religion have higher levels of wellbeing.”<sup>22</sup>

62. Allowing beards for religious reasons would also expand recruitment opportunities to more diverse communities who may otherwise be unable or unlikely to serve, including African Americans, Sikhs, and Orthodox Jewish communities.

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Hosein, *Muslims in the U.S. Military: Moral Injury and Eroding Rights*, <https://doi.org/10.1007/s11089-018-0839-8>.

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

EMN3 Di Liscia's Military Service

63. EMN3 Di Liscia serves as an Electrician's Mate, Nuclear Power. His duties can include operating, maintaining, and repairing generators, motors, and other electrical equipment associated with the nuclear power reactor.

64. He is currently serving aboard the USS Theodore Roosevelt (CVN 71), which is deployed at sea.

EMN3 Di Liscia's Efforts to Obtain an Accommodation

65. As an observant Jew, EMN3 Di Liscia came to boot camp with a full beard. He immediately sought to speak with a chaplain to obtain an accommodation for his beard. But he was told that if he pursued speaking with a chaplain about the matter, he would be immediately kicked out of the Navy. Out of fear, he shaved.

66. EMN3 Di Liscia regretted that decision and, about five months later, sought and received a no-shave chit, a religious accommodation allowing him to keep his beard. EMN3 Di Liscia obtained the no-shave chit around December 2018, while he was assigned to shore command. The chit transferred over to sea duty with him for his current deployment. He has not shaved since being granted the no-shave chit.

67. On his current deployment, EMN3 Di Liscia's commander has also issued a ship-wide MWR (Morale, Welfare, and Recreation) no-shave chit to help boost morale on the long sea deployment. However, this chit too would be insufficient to protect EMN3 Di Liscia as Sailors still must clean-shave every fourteen days.

68. In accordance with his Orthodox Jewish faith, EMN3 Di Liscia believes that, as a devout Jew, he should maintain his beard uncut by a razor blade.

69. Thus, to comply with his faith's prescriptions, on September 8, 2020, EMN3 Di Liscia sought a durable religious accommodation that would provide more long-term protection than his current no-shave chit.

70. On December 21, 2020, his request for a religious accommodation was denied by the Deputy Chief of Naval Operations (DCNO) on the stated grounds of safety concerns and possible interference with the effective performance of his duties, particularly in the event that he might have to wear a sealed gas mask or similar equipment. *See* Exhibit A ([Di Liscia Denial Letter] (Dec. 21, 2020)).

71. In late March and early April 2021, he filed an appeal of the DCNO's decision to the Chief of Naval Operations. The appeal was filed pursuant to Defense Instr. 1300.17 and Navy Instr. 1730.11A and is still pending.

72. EMN3 Di Liscia is safely able to serve in his position while maintaining a beard.

73. In his role as an EMN3, he assists with maintaining electrical equipment within the ship's reactor plant. He also stands watch on control stations and take intakes and logs. He does not perform work where it is common or likely that the use of face masks (including gas masks, self-contained breathing apparatus face masks and respirators) could be affected by a beard.

74. Like every EMN, he is trained to fight fires within the plants. While wearing a beard, he has undergone and passed routine gas-mask-seal-integrity tests, and his beard did not interfere with obtaining a satisfactory seal. Moreover, neither he nor fellow Sailors with him were required to undergo a full-chamber test because, as indicated by the first-class petty officer overseeing the seal-integrity test, the Damage Control department was not concerned about their ability to safely don a mask in the event of damage control.

75. Indeed, even the DCNO's letter denying his accommodation has already acknowledged that "the probability of a negative consequence from an ineffective seal is relatively low."

76. In his entire service as an EMN3, EMN3 Di Liscia has never had to don a gas mask as part of his usual duties.

77. EMN3 Di Liscia now brings this claim to enforce his rights under the First Amendment to the United States Constitution and RFRA.

MC3 Katsareas's Military Service

78. MC3 Katsareas was born and raised in Australia. After seeing the atrocities carried out by terrorists who claimed to act in the name of Islam on September 11, 2001, he vowed to fight against terrorists and their ideology.

79. In 2006, he was living in New Zealand and was invited to attend an Officer Selection Board to commission as an officer in the New Zealand Army. He did not proceed, as he could not bring himself to swear an inviolable oath to the Queen of England, both because of his faith and as a matter of personal conviction.

80. While later studying a course of Arabic at Qatar University, classmates from the United States who recognized MC3 Katsareas's passion for liberty encouraged him to study the Declaration of Independence, the Founding Fathers, and the Constitution. After thoroughly studying the principles behind the founding of the United States, he vowed that he would immigrate, become a U.S. citizen, and spend his life honorably serving and defending the United States Constitution.

81. MC3 Katsareas arrived in the United States in 2012 and, from 2013 to 2016, worked successfully with the FBI to help identify terrorist threats against Americans and U.S. interests both at home and abroad. His work led to the apprehension, expulsion, trials, and convictions of

several would-be terrorists in the United States and abroad. Within one day of obtaining his Permanent Residence in 2014, he filled out an application to join the Navy and was honored to swear an oath to support and defend the Constitution of the United States.

82. Soon after becoming a naturalized citizen at Navy Recruit Training Command in 2016, MC3 Katsareas renounced his Australian citizenship, as he considered it dishonorable to keep the benefits that come with citizenship when he was not willing to fight for that country's system of government.

83. Within two months of finishing Boot Camp at Recruit Training Command, MC3 Katsareas was deployed to 5th Fleet aboard USS Nitze (DDG 94) as a Professional Apprenticeship Career Track Seaman, where he often volunteered his Arabic skills to stand watches on the bridge, especially during many transits through the straits of Bab el-Mandeb and Hormuz.

84. In 2019, after graduating from the Defense Information School, MC3 Katsareas was stationed aboard the USS George Washington (CVN 73), an aircraft carrier docked in Newport News since August 2017 for a four-year Refueling and Complex Overhaul.

85. MC3 Katsareas has faced significant discrimination as a Muslim servicemember. In addition to the pressures of enemy combat externally, he has also experienced internal pressure from his own shipmates due to his faith.

#### MC3 Katsareas's Efforts to Obtain an Accommodation

86. Based on 2014 revisions to Department of Defense Instruction 1300.17 regarding religious accommodations, which he reviewed before joining the Navy, MC3 Katsareas expected that his sincerely held religious beliefs would be respected and accommodated.

87. Thus, after swearing his oath of enlistment, but before reporting to Recruit Training Command, MC3 Katsareas sought assurance that his sincerely held religious beliefs could be

accommodated, submitting a formal request for a beard accommodation to his recruiter. The recruiter said that it would not be possible to have a beard during training and that he would have to make the request at his first operational command.

88. Given no other options, in order to join the Navy in service of his country, MC3 Katsareas made the excruciating decision to shave his beard the night before going to boot camp. This was a very emotional experience that affected his sense of identity, his relationship with God, and his marriage. It felt like cutting out a piece of his own heart.

89. After training, he made repeated requests for a religious accommodation to allow him to maintain a beard in accordance with his faith.

90. Navy Sailors may often, during sea underway evolutions and deployments, purchase no-shave “chits” that allow the Sailor to grow a beard, with proceeds going to the Navy’s Morale, Welfare and Recreation Program. Though MC3 Katsareas was able to obtain such a chit on the USS Nitze in 2016, which lasted during his six-month deployment, he was still forced to shave when docked at the port of Nice, France, during his deployment. He received no formal religious accommodation until 2018.

91. In 2018, after nearly two years of his requests being misrouted, mishandled, and delayed, and while serving at Naval Station Norfolk, he submitted his fifth religious accommodation request for a waiver of grooming standards for religious purposes. He received a religious accommodation for an ungroomed quarter-inch beard while he was at the Defense Information School. *See* Exhibit B (Memorandum from R.P. Burke to Seaman Leandros Katsareas (Oct. 9, 2018)).

92. This accommodation only “partially approved” MC3 Katsareas’s request, which was for a fist-length beard. *Id.* ¶ 1. According to the accommodation, MC3 Katsareas could maintain his quarter-inch beard “while performing non-operational duties, including non-operational training,



while attached to Naval Station Norfolk.” *Id.* ¶ 3. He was told that “[u]pon a change in mission, duty or environment, and with a compelling government interest, your Commanding Officer may request that you temporarily shave your beard.” *Id.* ¶ 3. He was further told “you must again request approval when you report to a new command.” *Id.*

93. On December 6, 2019, MC3 Katsareas again submitted a request for a full religious accommodation, including:

- a. a fist-length beard from the bottom of the chin, which can be rolled and tied to achieve a length of two inches;
- b. a beard with edges that are groomed so as to be neat and clean, per the requirements of his sincerely held religious beliefs; and,
- c. a mustache that is neat and blends well into the beard.

94. A few months later, on March 16, 2020, the Bureau of Naval Personnel issued an updated Instruction regarding religious accommodations in the Navy, emphasizing that “commanders will provide maximum opportunity for the free exercise of religion by members of the naval service.” Navy Instr. 1730.11A ¶ 5. The instruction specifically contemplates accommodations of the type MC3 Katsareas requested. *Id.* ¶ 5(d)(4)(c).

95. Per Navy policy, MC3 Katsareas was interviewed by a Navy chaplain, Commander Abuhena Saifulislam, who submitted a memorandum regarding his request. *See* Exhibit C (Memorandum from Commander Abuhena Saifulislam to Commanding Officer, USS George Washington (Dec. 20, 2019)). Commander Saifulislam explained that MC3 “Katsareas has been a Muslim for almost 19 years after converting to Islam at the age of 16” and that his “beliefs stem from sources found in Islamic jurisprudence and are consistently recognized in all Islamic schools of jurisprudence.” *Id.* ¶ 3. Commander Saifulislam stated that his “professional and objective

opinion is that the approval of this request is of paramount religious importance to” MC3 Katsareas. *Id.*

96. Nonetheless, on April 4, 2020, the Deputy Chief of Naval Operations denied MC3 Katsareas’s request for an accommodation. *See* Exhibit D (Memorandum from John B. Nowell, Jr. to MC3 Leandros Katsareas (Apr. 4, 2020)).

97. Pursuant to Navy policy, on May 5, 2020, MC3 Katsareas submitted an appeal to the Chief of Naval Operations. *See* Exhibit E.

98. While MC3 Katsareas’s appeal was pending, he was reassigned from the media department to the Auxiliary Security Force (ASF) on board the USS George Washington.

99. Based on this reassignment, on July 15, 2020, the Deputy Chief of Naval Operations (DCNO) reconsidered the prior denial because these “present duties” with the ASF made “it highly unlikely that [MC3 Katsareas] be required to don personal protective equipment.” *See* Exhibit F.

100. The letter from the DCNO specified that “[u]pon a change in mission, duty, or work environment, and in furtherance of a compelling government interest” MC3 Katsareas could be “required to shave [his] beard in order to don personal protective equipment ....”

101. Approximately six months later, MC3 Katsareas was reassigned to the legal department to work as a legal clerk with intention of converting to the “Legalman rating.” He began his work there on December 9, 2020.

102. For more than two months he continued to maintain his beard without objection.

103. However, on February 17, 2021, MC3 Katsareas received notice that the DCNO wanted a letter from his commander requesting that MC3 Katsareas’s accommodation be rescinded. MC3 Katsareas was initially asked to draft this letter himself.

104. On February 26, 2021, MC3 Katsareas received a formal notice of the DCNO's intent to review his accommodation and giving him "ten (10) days from the date of this letter to review and comment on the proposed rescission of your previously approved accommodation." *See* Exhibit G.

105. After being granted a short extension of time, on March 11, MC3 Katsareas submitted comments opposing the proposed rescission. *See* Exhibit H.

106. He is still awaiting final word on whether his accommodation will be rescinded, but based on the denials that other Sailors in similar circumstances have received, MC3 Katsareas reasonably anticipates that his accommodation will be rescinded.

107. To protect his rights secured by the First Amendment to the United States Constitution and RFRA, MC3 Katsareas brings this claim.

#### ABF3 Braggs's Military Service

108. ABF3 Braggs serves as an Aviation Boatswain's Mate, Fuels—a position that normally involves refueling and maintenance of aircraft.

109. However, due to a back injury, ABF3 Braggs has been placed on limited duty since September 2020 and will remain on limited duty until July 2021.

#### ABF3 Braggs's Efforts to Obtain an Accommodation

110. Since boot camp, ABF3 Braggs has maintained a partial beard due to a medical no-shave chit. He was granted the chit because he suffers from *pseudofolliculitis barbae*, a skin condition particularly prevalent among African American men that is inflamed by shaving.<sup>23</sup> However, the

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<sup>23</sup> Notably, African Americans comprise the largest demographic of Muslim military personnel. Hosein, *Muslims in the U.S. Military: Moral Injury and Eroding Rights*, <https://doi.org/10.1007/s11089-018-0839-8>. Thus, many other Muslim sailors would be doubly harmed if the Navy does not allow medical or religious accommodations.

chit is insufficient in protecting AFB3 Braggs's religious exercise because he still must shave at least once a month to prove that he still is afflicted with the condition.

111. Further, even if the chit were sufficient, the Navy has previously announced its desire to eliminate the chit in favor of other methods of treating *pseudofolliculitis barbae*, including laser-hair removal.<sup>24</sup>

112. In accord with his beliefs, ABF3 Braggs believes that as devout Muslim man he should wear a fist-length beard.

113. He wishes to comply with the obligations of his sincerely held faith while at the same time serving his country. *See* Exhibit I (Memorandum from CDR Abuhena Saifulislam to Commanding Officer of the USS George Washington (May 7, 2020)).

114. ABF3 Braggs has never had to don a face mask to carry out his responsibilities that would function improperly with a beard. ABF3 Braggs is similarly unaware of any colleagues having to wear such face masks.

115. ABF3 Braggs first requested an accommodation on July 22, 2020. That request was denied on December 23, 2020. The denial specifically highlighted the concern "that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators" in the event of damage control. *See* Exhibit J ([Braggs Denial Letter] (Dec. 23, 2020)).

116. ABF3 Braggs has appealed the decision to the Chief of Naval Operations contending, *inter alia*, that positive-pressure masks do not require a perfect seal with the face for safe operation. *See* Exhibit K (Feb. 18, 2021). ABF3 Braggs also pointed out that the Navy has routinely granted

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<sup>24</sup> *Updated Guidelines for Facial Shaving Condition*, All Hands (Oct. 4, 2019), <https://perma.cc/B78D-7ZKV>

accommodations for non-religious beards in the past without any indication of adverse consequences.

117. Thus, far, the Chief of Naval Operations has not responded to ABF3 Braggs's appeal.

118. ABF3 Braggs recognizes that the accommodation would be conditional. In the unlikely event that a life-threatening situation arose requiring him to be clean-shaven to properly don a fitted mask, he would comply and shave without objection.

119. Because the Navy has thus far refused to grant him an exemption, ABF3 Braggs now brings this claim to enforce his rights under the First Amendment to the United States Constitution and RFRA.

#### OS2 Shoyeb's Military Service

120. As a native of New York City, OS2 Shoyeb lived through the horror of September 11, 2001 and has sought to counteract negative stereotypes about American Muslims.

121. Along with a general desire to serve and defend his country, OS2 Shoyeb decided to join the military to show that his love for America and the freedom it stands for does not conflict with his faith.

122. OS2 Shoyeb completed his boot camp and A-School in 2018. He serves as an Operations Specialist.

123. OS2 Shoyeb is stationed aboard the USS Chancellorsville (CG 62), which is currently in dry dock at the Naval Shipyard in Yokosuka, Japan.

#### OS2 Shoyeb's Efforts to Obtain an Accommodation

124. Throughout his time in the Navy, OS2 Shoyeb has continued to practice his faith to the fullest extent possible. He studies the Quran, prays five times a day, tries to maintain a *halal* diet,

and fasts regularly. In accord with his beliefs, OS2 Shoyeb believes that as a devout Muslim man he should wear a fist-length beard.

125. OS2 Shoyeb recognizes that the accommodation would be conditional. In the unlikely event that he faced a life-threatening situation that would require him to be clean-shaven to properly wear a fitted mask, he would comply and shave without objection.

126. However, the vast majority of OS2 Shoyeb's responsibilities take place at a computer terminal and he is not currently stationed within an active warzone.

127. Given his sincerely held religious beliefs, OS2 Shoyeb sought an accommodation to grow a fist-length beard. OS2 Shoyeb was aware that in March 2020, the Navy updated its guidance on religious accommodations, specifically recognizing religiously motivated beard-wearing as a possible accommodation. *See* Navy Instr. 1730.11A.

128. On June 22, 2020, OS2 Shoyeb lodged a request for a religious accommodation to grow a beard fist-length in conformity with Islamic practice.

129. As part of OS2 Shoyeb's application, Lieutenant Joshua Hickman, a command chaplain, submitted a statement concluding that OS2 Shoyeb sought to grow a beard out of a sincere desire to live in accordance with his faith. *See* Exhibit L.

130. The Deputy Chief of Naval Operations disapproved the request on July 13, 2020.

131. On September 17, 2020, OS2 Shoyeb appealed the disapproval to the Chief of Naval Operations. *See* Exhibit M.

132. The Chief of Naval Operations disapproved the request on December 14, 2020, citing concerns about protective masks being unable to function properly in the unlikely event that OS2 Shoyeb had to don one. In closing, the decision told OS2 Shoyeb to "put your ship and shipmates ahead of yourself." *See* Exhibit N.

133. Like ABF3 Braggs and MC3 Katsareas, OS2 Shoyeb now brings his claim to protect his rights under the First Amendment to the United States Constitution and RFRA

The Navy's Obligation To Provide Religious Accommodations

134. Congress has long demanded that “[u]nless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate the individual expression of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles or belief of the member and, in so far as practicable, may not use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training or assignment.” National Defense Authorization Act 2013, H.R. 4310, 112th Cong. 2 Sess. (2013) (as amended by National Defense Authorization Act 2014, H.R. 3304, 113th Cong. 1 Sess. (2014)).

135. In response to this directive, in 2014, the Department of Defense amended its Instruction 1300.17 regarding religious accommodations to be more accommodating toward religious minorities.

136. That Instruction was again updated in 2020 and affirmatively provides that the Department of Defense “will accommodate individual expression[] of sincerely held beliefs . . . which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety.” Defense Instr. 1300.17 § 1.2(b). It further provides that a religious accommodation against a “military policy, practice, or duty [that] substantially burdens a Service Member’s exercise of religion can only be denied if: (1) [t]he military policy, practice, or duty is in furtherance of a compelling governmental interest” and “(2) [i]t is the least restrictive means of furthering that compelling governmental interest.” Defense Instr. 1300.17 § 1.2(e).

137. Navy Regulations similarly require that commanding officers “use all proper means to foster high morale, and to develop and strengthen the moral and spiritual well-being of the personnel under his or her command” and “provide maximum opportunity for the free exercise of religion by members of the naval service.” Article 0820 (1990).

138. A more recent instruction from March 2020 reiterates that “commanders will provide maximum opportunity for the free exercise of religion by members of the naval service.” Navy Instr. 1730.11A ¶ 5. That instruction explains that “[r]eligious liberty is more than freedom to worship. It includes the freedom to integrate one’s religion into every aspect of one’s life.” *Id.* ¶ 3.

139. This recent guidance specifically recognized religiously motivated beard-wearing as an accommodation capable of being granted to Sailors. *Id.* at ¶¶ 5(a)(4), 5(b)(2), 5(d)(4)(c).

140. It specifies that “Commanders will not deny or recommend denial of a religious accommodation unless the denial or partial denial furthers a compelling governmental interest and is the least restrictive means of furthering that compelling government interest. *Id.* at ¶¶ 5(a)(2).

141. If a religious accommodation is granted, “[a] commander may require immediate compliance with suspension of [the] religious accommodation only if necessary due to an imminent threat to health or safety.” *Id.* ¶ 5(g)(2). Otherwise, “the Sailor or candidate must be given five business days to submit an appeal” of the suspension. *Id.* And “[w]hen the conditions that required the suspension are no longer present, the Sailor may resume the religious practice per the original waiver.” *Id.* ¶ 5(g)(3).



The Navy's Alleged Compelling Interest

142. All four Plaintiffs have requested beard accommodations through the appropriate chains of command, and all four have been at least initially denied. Their denial letters have consistently cited safety concerns regarding protective equipment, specifically gas masks and SCBA masks.

143. Specifically, Defendants have repeatedly stated a concern that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators. See Exs. D, J, N, O.

144. Defendants have conceded, however, that “the probability of a negative consequence from an ineffective seal is relatively low.” *Id.*

145. Moreover at any given time, there are thousands of Sailors assigned to duty sections who have beards for medical reasons.

146. And commanders frequently award no-shave chits to boost morale, especially during extended sea duty. Indeed, the Navy has an even more robust historical tradition of bearded sailors—until they were banned in 1985, beards were a defining feature of Navy servicemen.

147. Religious beards have no greater impact on personal protective equipment than these beards, and the Navy cannot claim to have a compelling interest in banning the former while permitting the latter.

148. Neither can the Navy suddenly claim a compelling interest in preventing every marginal risk of harm. Sailors engage in countless activities that may in rare situations lead to injury, yet are still permitted. The Navy cannot show that beards are so unique in this respect as to justify an outright ban.

149. The Navy does not even require fit testing of masks to individual Sailors to reduce the same risk from a poor fit that they claim is created by a religious beard. Instead, they use whichever

SCBA masks are available at the time. Similarly, Sailors have frequently been allowed to participate in advance firefighting training where fire and smoke are used without having to shave existing beards.

Least Restrictive Means

150. Nor can Defendants show that forced shaving is the least restrictive means of resolving their alleged concerns. Even if beards didn't work with standard-issue masks, Defendants cannot show there are no other options that would. *See Singh*, 185 F. Supp. 3d at 231 n.23 (noting that the Army has admitted there are masks "capable of providing protection to individuals who wear beards").

151. The fact that the U.S. Army and Air Force both allow religious beards belies any supposedly compelling reason Defendants may assert for suppressing Plaintiffs' religious exercise. And the allowance for religious beards by militaries around the world, including in the United Kingdom, Canada, Israel, Australia, New Zealand, and India, as well as by police and fire departments throughout the U.S., further undermines Defendants' claims.

152. Defendants bear the burden to show that the approach taken by other branches of the military, by militaries worldwide, and by police and fire departments across the nation is not viable. Defendants have failed to meet this burden.

**CLAIMS**

**COUNT I**

**Violation of the Religious Freedom Restoration Act  
Substantial Burden**

153. Plaintiffs incorporate by reference all preceding paragraphs.

154. Plaintiffs' sincerely held religious beliefs require them to wear neatly maintained beards. Their compliance with these beliefs is a religious exercise.

155. The Navy's discriminatory regulations and treatment expose EMN3 Di Liscia and MC3 Katsareas in particular to serious consequences of military discipline and the loss of their careers for their religious exercise—as they currently wear beards. The only reason the other Plaintiffs do not immediately face these consequences is that OS2 Shoyeb is not currently wearing a beard at all, which is a violation of his sincerely held religious beliefs, and ABF3 Braggs is forced to shave every 30 days to keep his medical accommodation.

156. The Navy's discriminatory regulations and treatment create government-imposed coercive pressure on Plaintiffs to change or violate their religious beliefs.

157. The Navy's discriminatory regulations and treatment chill Plaintiffs' religious exercise.

158. The Navy's discriminatory regulations and treatment impose a substantial burden on Plaintiffs' religious exercise.

159. For ABF3 Braggs in particular, were he forced to submit to laser-hair removal, it would burden his religious exercise not just during his time in the Navy, but for the rest of his life.

160. The Navy's discriminatory regulations and treatment do not further a compelling governmental interest as applied to Plaintiffs.

161. Applying the Navy's discriminatory regulations and treatment to Plaintiffs is not the least restrictive means of furthering any compelling governmental interest.

162. The Navy's discriminatory regulations and treatment of its grooming and personal appearance regulations thus violate rights secured to Plaintiffs by RFRA, 42 U.S.C. § 2000bb, et seq.

163. Plaintiffs have already suffered harm—prevented from living out their sincerely held beliefs, and forced to choose between serving in the U.S. military and following the dictates of

their own consciences. Absent injunctive and declaratory relief, Plaintiffs will continue to be harmed.

## **COUNT II**

### **Violation of the First Amendment to the United States Constitution Free Exercise Clause Burden on Religious Exercise**

164. Plaintiffs incorporate by reference all preceding paragraphs.

165. Plaintiffs' sincerely held religious beliefs require them to wear neatly maintained beards.

Their compliance with these beliefs is a religious exercise.

166. The Navy's grooming and personal appearance regulations are not neutral.

167. The Navy's treatment of Plaintiffs is not neutral.

168. The Navy's grooming and personal appearance regulations are not generally applicable.

169. The Navy's treatment of Plaintiffs is not generally applicable.

170. Defendants have created categorical exemptions and individualized exemptions from their grooming and personal appearance regulations.

171. The Navy's discriminatory treatment and grooming and personal appearance regulations create government-imposed coercive pressure on Plaintiffs to change or violate their religious beliefs.

172. The Navy's discriminatory treatment and regulations chill Plaintiffs' religious exercise.

173. The Navy's discriminatory treatment and regulations expose EMN3 Di Liscia and MC3 Katsareas in particular to substantial consequences for their religious exercise of currently wearing beards, including military discipline and the loss of their careers.

174. The Navy's discriminatory treatment and regulations burden Plaintiffs' religious exercise.

175. The Navy's discriminatory treatment and regulations further no compelling governmental interest.

176. The Navy's discriminatory treatment and regulations are not the least restrictive means of furthering Defendants' stated interests.

177. The Navy's discriminatory treatment and its enforcement of its grooming and personal appearance regulations thus violate Plaintiffs' rights as secured by the Free Exercise Clause of the First Amendment to the United States Constitution.

178. Plaintiffs have already suffered harm—prevented from living out their sincerely held beliefs, and forced to choose between serving in the U.S. military and following the dictates of their own consciences. Absent injunctive and declaratory relief against the Navy's regulations, Plaintiffs will continue to be harmed.

### **COUNT III**

#### **Violation of the First Amendment to the United States Constitution Free Exercise Clause Intentional Discrimination**

179. Plaintiffs incorporate by reference all preceding paragraphs.

180. Plaintiffs' sincerely held religious beliefs require them to wear neatly maintained beards. Their compliance with these beliefs is a religious exercise.

181. Historically, the Navy has allowed Sailors to maintain quarter-inch beards for medical reasons.

182. Even under new Navy rules discontinuing issuance of permanent no-shave chits (i.e., waivers that allowed Sailors who suffer from *pseudofolliculitis barbae* to permanently grow short, well-kept beards), Sailors can receive an exemption of temporary or indeterminate length, requiring only annual reevaluation. *See* Bureau of Naval Personnel, Management of Navy

Uniformed Personnel Diagnosed with Pseudofolliculitis Barbae, Instruction 1000.22C ¶¶ 6(c)-(e) (Oct. 8, 2019), <https://perma.cc/7VLE-JLKX>.

183. Despite being informed in detail of Plaintiffs’ beliefs, Defendants declined to give them accommodations that would allow them to comply both with their beliefs and the Navy’s regulations.

184. Defendants have no legitimate basis for denying Plaintiffs a religious accommodation.

185. Defendants denied Plaintiffs an accommodation because of their religion.

186. Defendants targeted Plaintiffs for heightened scrutiny because they requested an accommodation for their religious beliefs.

187. The Navy’s threatening to enforce its regulations against Plaintiffs thus violates their rights under the Free Exercise Clause of the First Amendment to the United States Constitution.

188. The Navy’s refusal to grant Plaintiffs accommodations to allow them to practice their religion despite accommodations being granted to other Sailors exhibits a hostility toward Plaintiffs’ religion, thus violating their rights under the Free Exercise Clause of the First Amendment to the United States Constitution.

189. Plaintiffs have already suffered harm—prevented from living out their sincerely held beliefs, and forced to choose between serving in the U.S. military and following the dictates of their own consciences. Absent injunctive and declaratory relief, Plaintiffs will continue to be harmed.

#### **COUNT IV**

#### **Violation of the First Amendment to the United States Constitution Freedom of Speech**

190. Plaintiffs incorporate by reference all preceding paragraphs.

191. The Navy's regulations prohibit Plaintiffs from expressing their faith through wearing neatly maintained beards.

192. The Navy's discriminatory treatment and regulations place a chilling effect on Plaintiffs' expression of their faith through obedience to their sincerely held beliefs via outward, physical articles of faith.

193. The Navy's discriminatory treatment and regulations constitute content discrimination.

194. The Navy's discriminatory treatment and regulations constitute viewpoint discrimination.

195. As applied to Plaintiffs, the Navy's discriminatory treatment and grooming-and-personal-appearance regulations are not necessary for good order, discipline or national security and do not satisfy strict scrutiny.

196. The Navy's discriminatory treatment and its enforcement of its grooming-and-personal-appearance regulations against Plaintiffs thus violate their rights under the Free Speech Clause of the First Amendment to the United States Constitution.

197. Plaintiffs have already suffered harm. Absent injunctive and declaratory relief, Plaintiffs will continue to be harmed.

### **COUNT V**

#### **Violation of the Fifth Amendment to the United States Constitution Substantive Due Process**

198. Plaintiffs incorporate by reference all preceding paragraphs.

199. Free exercise of religion is a fundamental right.

200. Plaintiffs' sincerely held religious beliefs require them to wear neatly maintained beards. Their compliance with these beliefs is a religious exercise.

201. Plaintiffs' fundamental right to engage in religious exercise has been burdened by the Navy's regulations and its denial of a religious accommodation.

202. The Navy's discriminatory treatment and enforcement of its grooming-and-personal-appearance regulations against Plaintiffs thus violate their rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

203. Plaintiffs have already suffered harm. Absent injunctive and declaratory relief, Plaintiffs will continue to be harmed.

### **COUNT VI**

#### **Violation of the Fifth Amendment to the United States Constitution Equal Protection**

204. Plaintiffs incorporate by reference all preceding paragraphs.

205. The Navy accommodates other types of personal expression of other service members.

206. The Navy accommodates the grooming preferences or needs of other Sailors by, for example, allowing Sailors who can pay for no-shave waivers to grow beards. It also accommodates the grooming needs of other Sailors by, for example, providing medical waivers that allowing Sailors to grow beards.

207. The Navy's discriminatory treatment and its enforcement of its grooming and personal appearance regulations against Plaintiffs thus violates their rights under the Fifth Amendment to the United States Constitution's guarantee of equal protection.

208. Plaintiffs have already suffered harm. Absent injunctive and declaratory relief, Plaintiffs will continue to be harmed.



**COUNT VII**

**Violation of the Fifth Amendment to the United States Constitution  
Procedural Due Process**

209. Plaintiffs incorporate by reference all preceding paragraphs.

210. Plaintiffs' sincerely held religious beliefs require them to wear neatly maintained beards. Their compliance with these beliefs is a religious exercise.

211. Enforcement of the Navy's regulations against EMN3 Di Liscia and MC3 Katsareas—disciplining them for wearing beards—would result in the loss of their livelihoods as Sailors and violate their procedural due process rights by wrongfully impairing their property and liberty interests.

212. Plaintiffs have already suffered harm. Absent injunctive and declaratory relief, Plaintiffs will continue to be harmed.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that the Court:

- a. Declare that the Religious Freedom Restoration Act requires the Navy to cease discriminating against Plaintiffs and accommodate their religious exercise in maintaining a beard as set forth above;
- b. Declare that the First Amendment of the United States Constitution requires the Navy to cease discriminating against Plaintiffs and accommodate their religious exercise in maintaining a beard as set forth above;
- c. Declare that the Fifth Amendment of the United States Constitution requires Defendants to cease discriminating against Plaintiffs and accommodate Plaintiffs' religious exercise in maintaining a beard as set forth above;

- d. Issue a temporary restraining order and a preliminary injunction enjoining Defendants from requiring EMN3 Di Liscia, MC3 Katsareas, and ABF3 Braggs to shave their existing beards;
- e. Issue a permanent injunction (1) enjoining Defendants from enforcing the Navy's grooming-and-personal-appearance regulations against Plaintiffs, insofar as the regulations prohibit them from keeping neatly maintained beards; (2) ordering Defendants to permit Plaintiffs to continue serving in the Navy regardless of whether they wear beards; and (3) ordering that the injunction will apply to all Navy posts that Plaintiffs will hold in the future, unless the Navy makes an individualized showing of a compelling governmental interest that cannot be satisfied by less restrictive means;
- f. Award nominal damages and compensatory damages;
- g. Award Plaintiffs the costs of this action and reasonable attorney fees; and,
- h. Award such other and further relief as it deems equitable and just.

**JURY DEMAND**

Plaintiffs request a trial by jury on all issues so triable.

Respectfully submitted this 15th day of April, 2021.

/s/ Eric S. Baxter

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Daniel Blomberg (D.C. Bar No. 1032624)  
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# **EXHIBIT A**



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/114239  
21 Dec 20

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: EMN3 Edmund D. DiLiscia, USN  
Via: Commanding Officer, USS THEODORE ROOSEVELT (CVN 71)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF  
GROOMING STANDARDS FOR FACIAL HAIR

Ref: (a) NAVPERS 15565I  
(b) DoD Instruction 1300.17 of 1 Sep 20  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A  
(f) 42 U.S.C. §2000bb-1  
(g) United States Attorney General memo of 6 Oct 17  
(h) Your ltr of 8 Sep 20  
(i) COMNAVSAFECEN NORFOLK VA 261941Z Nov 18 (ALSAFE 18/008)

1. In line with references (a) through (i), your request to waive the requirements in article 2201.2 of reference (a) for a beard is disapproved. I am disapproving your wear of a beard due to the Navy's compelling Government interest in mission accomplishment including safety.

2. In line with references (b) through (e), I am designated as the approval authority for requests for religious accommodation.

3. Reference (f), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion or good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (g) emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF GROOMING STANDARDS FOR FACIAL HAIR

- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there is alternative means available to meet the requested accommodation
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (h), including the endorsements from your chain of command and the local chaplain, and the guidance of Commander, Naval Safety Center in reference (i).

a. With regard to your request to wear a beard onboard a naval vessel in port and underway, reference (i) reported that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators. Damage control (DC), both in port and underway, is the responsibility of each crew member. Your participation in shipboard DC efforts is routine and foreseeable regardless of whether the ship is in port or at sea. Beards present a hazard to these efforts, as outlined above, and this hazard can extend to other personnel should they be required to come to your aid if you are injured during DC activities. Though the probability of a negative consequence from an ineffective seal is relatively low, the severity of that consequence may be high – to include injury. From an operational risk management perspective, this risk is untenable.

b. I find that granting your request would present an unacceptable risk to the Navy's compelling interest in mission accomplishment, including military readiness and safety on both the individual and unit levels. I further find that there are no less restrictive means available to accommodate your request.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. Deviations from Navy standards must be considered against how those deviations impact the Navy mission as a whole. If you subsequently experience a change in physical, operational or geographical environment you may again request for religious accommodation.



JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)

# **EXHIBIT B**





DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/114106  
9 Oct 18

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: SN Leandros Katsareas, USN  
Via: Commanding Officer, Naval Station Norfolk

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF  
GROOMING STANDARDS FOR FACIAL HAIR

Ref: (a) NAVPERS 15565I  
(b) Your ltr of 6 Jul 18  
(c) COMNAVSAFECEN ltr 5100 Ser 00/0123 of 8 Mar 16  
(d) SECNAVINST 1730.8B  
(e) BUPERSINST 1000.22  
(f) DoD Instruction 1300.17 of 10 February 2009  
(g) ASN (M&RA) memo of 6 Jun 13

1. Pursuant to references (a) through (g), your request to waive the requirements in Article 2201.2 of reference (a) for facial hair is partially approved.
2. In making this decision, I reviewed the documents in reference (b), including the endorsements by your chain of command and the guidance of the Commander, Naval Safety Center in reference (c).
3. In line with references (d) through (g), I am designated as the approval authority for requests for religious accommodation. As permitted by reference (d), I find that this accommodation is the least restrictive means of accommodating your request while maintaining the Navy's compelling interest in mission accomplishment. You may wear a beard consistent with the standards set forth in reference (e). That is, you may maintain facial hair not to exceed 1/4 inch in length. The beard must not become unkempt in appearance and will not be manicured to any style. You will only maintain your beard while performing non-operational duties, including non-operational training, while attached to Naval Station Norfolk. Upon a change in mission, duty or environment, and with a compelling government interest, your Commanding Officer may request that you temporarily shave your beard. At that time, you must revert to the standard set forth in Article 2201.2 of reference (a). Pursuant to references (d) and (f), you must again request approval when you report to a new command.
4. The Navy is a specialized community governed by a discipline separate from that of the rest of society. The importance of putting your ship and your shipmates ahead of yourself is of particular significance in the Navy. A waiver of Navy's Uniform Regulations would have a detrimental effect on your military readiness, that of your unit and the safety of you and those who serve beside you. In line with reference (g), facial hair interferes with the proper seal of all current Navy breathing apparatuses and can significantly increase risk to the individual. The



Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF  
GROOMING STANDARDS FOR FACIAL HAIR

Navy has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order, discipline, health and safety, on both the individual and unit levels.

5. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. Deviations from Navy standards must be considered against how those deviations impact the Navy mission as a whole.



R. P. BURKE

Copy to:  
CNRMA

# **EXHIBIT C**

20 DEC 19

From: CDR Saifulislam, Abuhena M, CHC, USN

To: Commanding Officer, USS George Washington (CVN 73)

Subj: REQUEST FOR AN EXCEPTION TO POLICY TO ACCOMMODATE A PRACTICE  
BASED ON RELIGIOUS BELIEF ICO MC3 LEANDROS KATSAREAS

Ref: (a) SECNAVINST 1730.8

(b) SECNAVINST 1730.9

1. MC3 Leandros Katsareas has submitted a request for accommodation of a religious practice per reference (a). Per BUPERSINST 1730.11, I interviewed the requestor on December 20, 2019. I explained that this interview would not be a confidential communication as defined by reference (b) and informed the requestor that referral for confidential chaplain support was available.

2. Nature of the request. MC3 Katsareas is requesting a waiver of grooming standards including a mustache and beard that follows the following requirements:

- a. A beard that is at least fist length (four inches in length) from the bottom of the chin.
- b. A beard with edges that are groomed so as to be neat, clean, and professional.
- c. A mustache that blends well into the beard.

MC3 Katsareas has submitted six previous requests to obtain this waiver, all of which have been consistent in what he was requesting. MC3 Katsareas reports that the first five requests were not properly handled by his previous chains of command and the sixth went to CNP, but the partial waiver he received allowing to have ¼" of facial hair that could not be groomed like that of someone who suffers from pseudofolliculitis barbae did not meet the requirements of his sincerely held religious beliefs.

3. Basis. MC3 Katsareas has been a Muslim for almost 19 years after converting to Islam at the age of 16. Katsareas' beliefs stem from sources found in Islamic jurisprudence and are consistently recognized in all Islamic schools of jurisprudence. My professional and objective opinion is that the approval of this request is of paramount religious importance to MC3 Katsareas.

4. Alternate Means. There are no alternate means that would satisfy MC3 Katsareas' sincerely held religious beliefs and convictions. If this accommodation cannot be granted fully, MC3 Katsareas requests that the U.S. Navy facilitates an inter-service transfer to the U.S. Army Reserves where this type of religious accommodation has previously been granted.

Subj: REQUEST FOR AN EXCEPTION TO POLICY TO ACCOMMODATE A PRACTICE  
BASED ON RELIGIOUS BELIEF ICO MC3 LEANDROS KATSAREAS

5. Sincerity. Given the six previous requests that MC3 Katsareas has submitted, dating back to before he even shipped off to RTC, his persistence in trying to obtain this waiver, the fact that for his entire adult life prior to shipping out to RTC at the age of 31 that he maintained a beard identical to that which he is requesting, the consistency of what he has requested, and his in-depth level of knowledge of Islam, I assess his request as being sincere.

6. My contact information is 757-534-1050 and [abuhena.saifulislam@cvn73.navy.mil](mailto:abuhena.saifulislam@cvn73.navy.mil).

  
Abuhena Saifulislam

Copy to:  
(MC3 Leandros Katsareas)

BUPERSINST 1730.11  
13 Nov 2018

### CHAPLAIN INTERVIEW CHECKLIST TEMPLATE

Requestor:			Interview Date: <u>DECEMBER 20, 2019</u>		
Name: <u>LEANDROS KATSARZAK, MCB</u>			Chaplain Interviewer: <u>Abubena Saifulislam</u>		
Phone: <u>757 610 5557</u>			Phone: <u>757-534-1050</u>		
Email: <u>leo.katsarzak@gmail.com</u>			E-mail: <u>abubena.saifulislam@vnm13.navy.mil</u>		
Command: <u>USS GEORGE WASHINGTON</u>			Chaplain's Command: <u>USS GEORGE WASHINGTON</u>		
Interview Preliminaries					
Yes	No	N/A			
<input checked="" type="checkbox"/>			Chaplain reviewed policy and doctrine on religious accommodation and the policy for which the requestor is seeking accommodation.		
<input checked="" type="checkbox"/>			Applicant was notified that the interview is not confidential and will be used to advise the command.		
<input checked="" type="checkbox"/>			Chaplain explained to the applicant that confidential support can be received from another chaplain.		
<input checked="" type="checkbox"/>			Applicant has been granted a religious accommodation for this practice previously.		
<input checked="" type="checkbox"/>			Applicant's Page 2 (NAVPERS 1070/602) reflects the belief cited in the application.		
Type of Waiver Requested					
Yes	No	N/A			
	<input checked="" type="checkbox"/>		Uniform standards		
<input checked="" type="checkbox"/>			Grooming standards		
	<input checked="" type="checkbox"/>		Immunization requirements		
	<input checked="" type="checkbox"/>		DNA sampling		
	<input checked="" type="checkbox"/>		Other (Please describe):		
Interview					
Yes	No	N/A			
			Requestor's religious beliefs seemed honestly and sincerely held using one or more of the following factors:		
<input checked="" type="checkbox"/>			1. Requestor was credible (consistently keeps tenets, practices, etc.).		
<input checked="" type="checkbox"/>			2. Requestor's demeanor and pattern of conduct are consistent with the request.		
<input checked="" type="checkbox"/>			3. Requestor participates in activities associated with the belief(s).		
<input checked="" type="checkbox"/>			4. Other persons supporting the claim are credible.		
		<input checked="" type="checkbox"/>	5. Request is supported by letter(s) of verification or endorsement from an organization espousing the beliefs which are the basis for the claim.		
<input checked="" type="checkbox"/>			Alternate means of accommodating the practice were explored in the interview.		
Process Checklist					
Yes	No	N/A			
<input checked="" type="checkbox"/>			Chaplain has prepared a memorandum documenting the interview.		
<input checked="" type="checkbox"/>			Chaplain reviewed memorandum with applicant and provided a copy.		
<input checked="" type="checkbox"/>			Chaplain submitted the memorandum and this document to the commanding officer via chain of command.		
<input checked="" type="checkbox"/>			Chaplain referred applicant to command to process request.		

# **EXHIBIT D**



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/114044  
4 Apr 20

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: MC3 Leandros Katsareas, USN  
Via: Commanding Officer, USS GEORGE WASHINGTON (CVN 73)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF GROOMING STANDARDS FOR FACIAL HAIR

Ref: (a) NAVPERS 15565I  
(b) Your ltr of 6 Dec 19  
(c) COMNAVSAFECEN NORFOLK VA 261941Z Nov 18 (ALSAFE 18/008)  
(d) SECNAVINST 1730.8B  
(e) DoD Instruction 1300.17 of 10 February 2009  
(f) ASN (M&RA) memo of 6 Jun 13  
(g) BUPERSINST 1730.11A  
(h) 42 U.S.C. §2000bb-1  
(i) United States Attorney General memo of 6 Oct 17

1. In line with references (a) through (h), your request to waive the requirements in Article 2201.2 of reference (a) for a beard, is disapproved. I am disapproving your wear of a beard due to the Navy's compelling Government interest in mission accomplishment at sea including safety.

2. In line with references (d) through (g), I am designated as the approval authority for requests for religious accommodation.

3. Reference (h), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is: (1) in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that interest. Reference (e) incorporates RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline and health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion and good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (i) emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (d) and (e), determination of a request for religious accommodation requires consideration of the following factors:



Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF GROOMING STANDARDS FOR FACIAL HAIR

- a. Impact on military readiness, unit cohesion, good order and discipline, and health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there is alternative means available to meet the requested accommodation
- e. How other such requests have been treated

5. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. Deviations from Navy standards must be considered against how those deviations impact the Navy mission as a whole. In making this decision, I reviewed reference (b), including the endorsements by your chain of command, the local chaplain and the guidance of the Commander, Naval Safety Center in reference (c).

a. With regard to your request to wear a beard, reference (c) reported that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators. Damage control (DC), both in port and underway, is the responsibility of each crew member. Your participation in shipboard DC efforts are routine and foreseeable regardless of whether the ship is in port or at sea. Beards present a hazard to these efforts, as outlined above, and this hazard can extend to other personnel should they be required to come to your aid if you are injured during DC activities. Though the probability of a negative consequence from an ineffective seal is relatively low, the severity of that consequence may be high – to include injury. From an operational risk management perspective, this risk is untenable. If assigned to a shore command, you may once again submit a request for religious accommodation.

b. I find that granting your request would present an unacceptable risk to the Navy's compelling interest in mission accomplishment, including good order and discipline, military readiness and safety on both the individual and unit levels. We must create an environment where everyone is treated the same and an environment that supports immediate and unquestioned response to command authority. I further find that there are no less restrictive means available to accommodate your request.

6. If you subsequently experience a change in physical, operational or geographical environment you may again request for religious accommodation.



JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)



# **EXHIBIT E**

5 MAY 20

From: MC3 Leandros Katsareas, USN  
To: Chief of Naval Operations  
Via: Commanding Officer, USS George Washington (CVN 73)

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

Ref: (a) DCNO denial ltr of 4 APR 20  
(b) DoD INSTRUCTION 1300.17 Incorporating Change 1, Effective 22 JAN 2014  
(c) BUPERSINST 1730.11A

Encl: (1) My original religious accommodation request dated 6 DEC 19

1. I converted to Islam in 2001 at the age of sixteen and have faithfully observed its tenets ever since. Even though I was born and raised in Australia, after seeing the atrocities carried out on 9/11, I vowed to fight against terrorists and their ideology. In 2006 I was living in New Zealand and was invited to attend an Officer Selection Board to commission as an officer in the New Zealand Army. I did not proceed, as I could not bring myself to swear an inviolable oath to the Queen of England. While studying a course of Arabic at Qatar University, classmates from the U.S. who recognized my passion for liberty encouraged me to study the Declaration of Independence, the Founding Fathers, and the Constitution. After thoroughly studying the principles behind the founding of the United States, I vowed that one day I would immigrate, become a U.S. citizen, and spend my life honorably serving the United States.

I arrived in the United States in 2012 and spent 2013 through 2016 working with the FBI to assist in identifying terrorist threats against Americans and American interests both at home and abroad. Within one day of obtaining my Permanent Residence in 2014, I filled out an application to join the Navy and was honored to swear an oath to support and defend the Constitution of the United States. Soon after becoming a naturalized citizen at RTC in 2016, I renounced my Australian citizenship as I considered it dishonorable to keep the benefits that come with citizenship when I was not willing to fight for that country's system of government.

My service in the Navy has included a 2016 deployment to 5<sup>th</sup> Fleet aboard USS Nitze (DDG 94) as a PACT Seaman, where I often volunteered my Arabic skills to stand watches on the bridge, especially during our many transits through the straits of Bab el-Mandeb and Hormuz. When Houthis in Yemen fired upon us with guided anti-ship missiles, I responded to the General Quarters as a member of my repair locker's fire party. Later, in 2019, I graduated from the Defense Information School's Basic Mass Communication Specialist Course, and I currently serve aboard the USS George Washington (CVN 73).

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

2. Since joining the Navy, I have sought a religious accommodation to maintain a beard in accordance by my Islamic faith, which requires—as one of the ten basic *fitras* (cleanliness and grooming obligations) for Muslims—that all Muslim males who are genetically able to grow a substantial beard do so as a sign of their devotion to God. Although I currently have a 2018 accommodation from the CNP for an ungroomed ¼ inch beard, I consider it sinful and spiritually degrading not to maintain a beard that complies with my religious obligations. Thus, on 06 DEC 2019, I submitted a request for a religious accommodation in accordance with reference (b) that would allow me to have a beard consistent with my sincerely held religious beliefs, meaning:

- a. a fist length beard from the bottom of the chin, which can be rolled and tied to achieve a length of two inches per reference (c);
- b. a beard with edges that are groomed so as to be neat and clean, per the requirements of my sincerely held religious beliefs; and
- c. a mustache that is neat and blends well into the beard.

3. On 16 MAR 20, reference (c) was updated to provide for religious accommodations for facial hair. It was my understanding that the new instruction would allow for my requested accommodation. I was very grateful that the Navy was fully implementing the standards of reference (b) and that I would no longer be left to choose between my religious obligations and my patriotic duty to serve my country.

However, on 09 APR 20, contrary to my understanding of the updates to reference (c), I received the DCNO's letter denying my request for a full religious accommodation. I am submitting this appeal of the DCNO's decision as I believe his decision is inconsistent with references (b) and (c), with the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1, *et seq.*, and with the First Amendment.

4. Given that I submitted my request prior to the 16 MAR 20 update to reference (c) and that the DCNO's decision was issued on 4 APR 20, I imagine that my request was among the first to be adjudicated under the terms of new policy in reference (c). I am therefore respectfully requesting confirmation that the review and adjudication of my request was conducted with the advice of a judge advocate in accordance with reference (c). Also, before a denial of this appeal, consultation should be undertaken with the Department of Justice's Office of Legal Policy. *See* Federal Law Protections for Religious Liberty, 82 Fed. Reg. 49,668, 49,671 (Oct. 26, 2017) (instructing all agencies to consult "subject-matter experts who can answer questions about religious nondiscrimination rules" when considering religious accommodation issues, and that "any questions" about the guidance should be addressed to the Office of Legal Policy).

5. The DCNO stated that he denied my request "due to the Navy's compelling Government interest in mission accomplishment at sea including safety." Specifically, the DCNO stated in paragraph 5(a) of his denial decision that "reference (c) reported that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face mask and respirators."

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

For the reasons stated below, I believe that the DCNO's decision is not the least restrictive means of furthering the Navy's compelling government interest in mission accomplishment at sea including safety.

6. Use of Self-Contained Breathing Apparatus (SCBA) facemasks/respirators:

The 3M/Scott SCBA mask and respirator used by the Navy does not require a perfect seal around the face to be effective because it uses positive air pressure rather than a seal to provide a safe environment for its wearer. Positive air pressure forces any polluted air—including smoke—outside of the mask. This process ensures the wearer continues to breathe clean, tank-supplied oxygen.

The safe and effective use of the Scott SCBA mask, regardless of a seal, is further evidenced by the fact that Sailors are not fit-tested for Scott SCBA masks or issued individual masks known to form a perfect seal with their faces. Instead, we use whichever SCBA masks are in the repair locker and are available at that time.

When I was stationed aboard the USS Nitze upon its deployment in 2016, I had a MWR no-shave chit that allowed me to grow a beard as long as I wanted, which was substantially longer than the ¼ inch of facial hair I am allowed now. When we received incoming anti-ship missile fire from Houthi batteries, I was on the ship's fire-party in my repair locker, preparing to enter the depths of the ship if we were struck with a missile. I did not face any issues whatsoever in wearing a Scott SCBA mask, tank, and regulators with my beard.

Similarly, I did not face any issues during any other General Quarters drill evolution when using the Scott SCBA mask with my beard. In addition, we were not required to shave our beards after the initial combat action while we were still in the area where we were attacked, indicating that beards imposed no significant safety risks. Even when I attended advanced shipboard firefighting school, where more advanced trainers with fire and smoke are used, I was not required to shave off the ¼ inch of facial hair that I had at the time. My experience on the USS Nitze is evidence that the Navy lacks a compelling interest in requiring sailors to be clean-shaven in situations that require the use of protective equipment.

At the very least, the factors I have listed demonstrate that the DCNO's decision is not the least restrictive means of satisfying a compelling government interest, because the Navy's own practices show that its asserted safety concerns do not require a categorical ban on religious beards and because there are a variety of ways that my religious grooming requirements could be accommodated without actual risk to safety.

7. Use of gas masks or Air Purifying Respirators (APR):

I understand that there are unique situations where a high probability of CBRN warfare (MOPP Level 2) requires all Sailors to be clean-shaven, including those with medical exemptions, in order to wear an APR with a fitted seal. In the event I am in such a situation, I understand I may be

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

required to temporarily shave my beard, and I will comply with those orders. My religious beliefs dictate that the preservation of one's life is of paramount importance in situations where there is a specific, concrete, and/or imminent threat to life or limb and that religious observances may therefore be suspended temporarily to preserve safety pursuant to that specific, imminent threat. Such a threat, however, comes only in limited circumstances that trigger a specific MOPP level.

Again, for these reasons, denying my request to maintain a beard for religious purposes on the sole basis that I am generally assigned to a sea command is not the least restrictive means of furthering the Navy's compelling government interest in mission-accomplishment. This decision also ensures that no sailor assigned to a sea command is likely to receive a religious accommodation for a beard, despite the lack of high risk, specific, concrete and/or imminent threats to their life or limb. This would be a violation of references (b) and (c), RFRA, and the First Amendment.

Given the above, I respectfully request that my previous request for a religious accommodation be approved and apply to any operational, non-operational, or training environment command where I am stationed, with the possibility of a temporary exception for situations where there is a specific and concrete threat of exposure to toxic CBRN agents (MOPP Level 2). As mentioned above, I understand that I may have to shave my beard as required to meet the Navy's compelling interests under those specific and temporary circumstances.

8. The DCNO stated in paragraph 5(a) of his denial decision: *"If assigned to a shore command, you may once again submit a request for religious accommodation."*

My understanding of this statement is that a religious accommodation for a beard would only be approved when a Sailor is on shore duty. My religious obligations, however, do not change depending on my assignment going from shore or sea duty. Almost all Sailors, by virtue of their rating's LaDR and sea/shore rotations, will start their careers at sea duty commands. Depriving these Sailors from being able to maintain their religious requirements for up to the first five years of their careers in the Navy places a substantial burden on Sailors' exercise of religion in a manner that does not comply with references (b) and (c), with RFRA, or with the First Amendment. Among other things, it would effectively ban virtually all religiously observant individuals with similar beliefs from service in the Navy.

The RFRA standard rejects such a "categorical approach." Rather, it requires the government "to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 420 (2006). Because—among other things—the Navy uses positive pressure masks that are not individually fit-tested and allows sailors on sea duty to wear beards for MWR purposes, the compelling interest standard is not met. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (strict scrutiny not met where policy "leaves appreciable damage" to vital interests "unprohibited").

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

Moreover, RFRA's "least-restrictive-means standard is exceptionally demanding," even in settings such as prisons or the military where government is traditionally given significant deference. *Holt v. Hobbs*, 574 U.S. 352, 364 (2015). The government always bears the burden not just to "explain why it denied the exemption," but also to "prove that denying the exemption is the least restrictive means of furthering a compelling governmental interest." *Id.* This requires an evidence-based analysis that considers all available options. *See, e.g., Singh v. McHugh*, 185 F. Supp. 3d 201, 231 & n.23 (D.D.C. 2016) (identifying means of accommodating religious beards); *Singh v. Carter*, 168 F. Supp. 3d 216, 232 (D.D.C. 2016) (same). Because there are various ways my religious beard could be accommodated without compromising safety or other compelling interests, I request that my application for a waiver be granted.

9. I further request to have a permanent approval of this waiver so that it is enduring and it follows me throughout my career, subject to situations of imminent safety concerns necessitating a temporary suspension of the accommodation. As an observant Muslim, my religious beliefs reflect who I am and who I sincerely believe God requires me to be. Having to make an accommodation request over and over again at each new command unnecessarily and substantially burdens my faith, subjects me to a higher probability of discrimination, and deprives me of the stability and clarity other Sailors have regarding whether I will be accepted in a manner that allows me to proudly serve my country. The lack of a permanent accommodation requires me to go through the arduous process of having to re-apply routinely with duty changes, and it places me in a situation of limbo during the months it takes to obtain approval.

10. I respectfully request that this waiver is entered into my NSIPS profile under the religious accommodation section.

11. The DCNO's denial letter suggested that concerns about "good order and discipline" and unit cohesion may also have contributed to his decision. Again, however, government "cannot simply invoke general principles," but must show that granting "*this plaintiff* a religious accommodation" threatens good order, discipline, or unit cohesion. *McHugh*, 185 F. Supp. 3d at 223. The government has made no such showing here. *Accord id.* at 229 ("[T]he undisputed evidence in the record indicates that [other] men served—or are serving—with their articles of faith intact without any of the negative consequences that defendants predict would flow from granting a similar exception in this case.").

The DCNO's concern that "[w]e must create an environment where everyone is treated the same" is also impermissibly broad and violates clear and well-established law. RFRA—and the First Amendment's Religion Clauses—clearly contemplate that the government has a heightened duty to accommodate religious needs as such. *Holt*, 574 U.S. at 356, 357; *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 338 (1987). Moreover, a policy treating all sailors the same with respect to their religious needs must acknowledge that different sailors will have different religious obligations. Treating them the same requires applying the same RFRA standard, not denying religious accommodations to minority religious beliefs. Moreover, equal respect for diverse religious beliefs reinforces, rather than undermines, "an environment that supports immediate and unquestioned response to command authority."

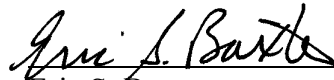
Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

12. I am proud to serve in the United States Navy, and wish to serve with my whole religious identity intact. As a junior sailor, it is incredibly demoralizing continuously to have to fight to maintain my religious beliefs, as protected by RFRA, Navy regulations and policy, DOD instructions and directives, and the First Amendment. Additionally, I have made every effort to provide detailed information and to address stated or anticipated objections to my request.

The DoD Instruction in reference (b) was revised in 2014. I enlisted in the Navy after seeing this instruction, reasonably expecting that my sincerely held religious beliefs would be respected and accommodated. Despite numerous denials along the way, I am hopeful that your review of both my accommodation request and the Navy's recent policy update in MAR 2020 will lead to a religious accommodation for me to maintain my beard moving forward so that I can continue to serve our country without having to compromise my religious beliefs.



Katsareas, L.  
MC3 USN



Eric S. Baxter  
Daniel H. Blomberg  
Diana M. Verm  
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# **EXHIBIT F**





DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/ 114104  
15 Jul 20

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: MC3 Leandros Katsareas, USN  
Via: Commanding Officer, USS GEORGE WASHINGTON (CVN 73)

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR WEAR OF A BEARD ICO  
MC3 LEANDROS KATSAREAS, USN

Ref: (a) Your ltr of 5 May 20  
(b) DoD Instruction 1300.17  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A

1. Upon reconsideration of reference (a), your request for a religious accommodation is approved. This decision is based on additional information provided by your chain of command, including your present duties as a member of the Auxiliary Security Force (ASF) and the fact that the nature of such duties makes it highly unlikely that you will be required to don personal protective equipment. As permitted by references (b) through (e), you may wear a four-inch beard. In line with reference (e), while you are in uniform, your beard must be groomed to achieve a length not to exceed two inches when measured from the bottom of your chin.

2. Per references (b) through (e), I am designated as the approval authority for requests for religious accommodation.

3. Further, per reference (e), this determination is subject to review, suspension or revocation, in whole or in part, at any time based upon change in circumstances. Upon a change in mission, duty, or work environment, and in furtherance of a compelling government interest, you may be required to shave your beard in order to don personal protective equipment in line with reference (e).

4. The Navy welcomes people of all faiths and no faith to join our ranks in patriotic service. You have my sincere best wishes for your continued success in your Navy career.



JOHN B. NOWELL, JR

Copy to:  
CNO  
OPNAV (N131, N0975)

# **EXHIBIT G**



**DEPARTMENT OF THE NAVY**

USS GEORGE WASHINGTON (CVN 73)  
FPO AE 09550

1730  
Ser LEG/099  
26 Feb 21

From: Commanding Officer, USS GEORGE WASHINGTON (CVN 73)  
To: MC3 Leandros Katsareas, USN

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR WEAR OF A BEARD ICO  
MC3 LEANDROS KATSAREAS, USN

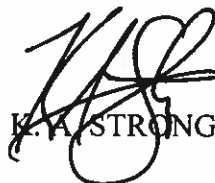
Ref: (a) Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education)  
(N1) ltr of 15 Jul 20  
(b) DoD Instruction 1300.17  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A

1. In accordance with reference (b), this letter shall serve as notice of my intent to request review of reference (a), your previously granted religious accommodation. Per references (b) through (e), the Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1), is the approval authority for requests for religious accommodations, as well as proposals to review and rescind previously approved accommodations. Reference (a) requires review of religious accommodations upon a determination that the circumstances under which the grant of accommodation was approved have changed.

2. You recently completed your assigned duties with the USS GEORGE WASHINGTON's Auxiliary Security Forces and transferred to the Legal Department to pursue a career as a Legalman. Your reassignment resulted in a material change in circumstances. Specifically, you have been placed in a duty section, which *may* require you to don personal protective equipment in the performance of those duties. As such, a review of your previously approved accommodation is required, per reference (a).

3. You have ten (10) days from the date of this letter to review and comment on the proposed rescission of your previously approved accommodation. Your input, if any, will be forwarded to the approval authority for consideration upon the expiration of the ten-day period.

4. My point of contact for this matter is my Command Judge Advocate, LCDR Denise Romeo, JAGC, USN. She can be reached at 757-534-0293 or [denise.romeo@cvn73.navy.mil](mailto:denise.romeo@cvn73.navy.mil).

  
K.A. STRONG

# **EXHIBIT H**

11 MAR 21

From: MC3 Leandros Katsareas, USN  
To: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education (N1))  
Via: Commanding Officer, USS George Washington (CVN 73)

Subj: COMMENT ON PROPOSED RECISSION OF RELIGIOUS ACCOMMODATION

Ref: (a) 9 Oct 18 ltr granting partial accommodation  
(b) 06 Dec 19 request for full accommodation  
(c) 04 Apr 20 ltr denying full accommodation  
(d) 05 May 20 appeal from denial of full accommodation  
(e) DCNO ltr of 15 Jul 20 temporarily granting full accommodation  
(f) CO ltr of 26 Feb 21 proposing rescission of accommodation  
(g) Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb, *et seq.*  
(h) DoDI 1300.17, 1 Sep 20  
(i) BUPERSINST 1730.11A

Encl: (1) My original religious accommodation request dated 6 DEC 19  
(2) My appeal of reference (a) dated 5 MAY 20

1. My name is MC3 Leandros Katsareas. I am currently stationed aboard the USS George Washington where I am assigned to the Legal Department as a prospective Legalman conversion. I write to express my objection to the proposed rescission of my existing religious accommodation.

2. I am a practicing Muslim. One of Islam's ten basic *fitras* (cleanliness and grooming obligations) requires Muslim males who are genetically able to grow a substantial beard as a sign of their devotion to God. Since joining the Navy, I have sought a religious accommodation to maintain a beard in accordance with my Islamic faith.

3. In 2018, I was granted a partial accommodation for an ungroomed, quarter-inch beard. (Reference (a).) This partial accommodation did not fulfill my religious obligations, leaving me in a constant state of sin, spiritual shame, and insecurity. Thus, on 6 Dec 19, I renewed my request for a full accommodation. (Reference (b).) That request was denied on 4 Apr 20, on the stated ground that "a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators." (Reference (c).) I appealed the denial on 5 May 20. (Reference (d).) In the meantime, I transferred to serve in the Auxiliary Security Force (ASF). On 15 Jul 20, my appeal was granted on that ground: "the nature of [ASF] duties makes it highly unlikely that you will be required to don personal protective equipment." (Reference (e).)

4. Pursuant to that accommodation, I am presently allowed to maintain a four-inch beard, although while I am in uniform, my beard must be groomed to a length of no more than two inches from the bottom of my chin. (Reference (e).)

Subj: COMMENT ON PROPOSED RECISSION OF RELIGIOUS ACCOMMODATION  
BY MC3 LEANDROS KATSAREAS, USN

5. It is my understanding that my commanding officer is now requesting that the accommodation be rescinded because, having transferred out of the ASF to the Legal Department, I have been assigned a duty section which “*may* require [me] to don personal protective equipment in the performance of those duties.” (Reference (f).)

6. A recission of my accommodation on this ground would be unlawful.

7. An existing accommodation may be repealed only for a compelling governmental interest that cannot be satisfied by any less restrictive means. (Reference (g); Reference (h) at 1.2(e) and 3.2(g).) Here, the Navy cannot show it has a compelling interest in rescinding my accommodation. And even if it could, it cannot show that forcing me to shave is the least restrictive means of meeting its alleged interests.

8. ***No compelling interest.*** The compelling interest standard cannot be satisfied by citing a “broadly formulated interest[]” that seems compelling at a high level of generality. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). A “more focused” inquiry is required: the Navy must show it has a compelling interest in the marginal benefit that would be attained from applying “the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Id.* at 430-31. In this instance, that means the Navy must show it has a compelling interest in eliminating any “marginal” safety risk that arises from using personal protective equipment with a beard. *Holt v. Hobbs*, 574 U.S. 352, 363 (2015). That standard cannot be met here for at least two reasons.

9. First, a rule is not compelling if it “leaves appreciable damage to that supposedly vital interest unprohibited.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993). So it is here. At any given time, there are thousands of Sailors assigned to duty sections who have beards for medical reasons. And commanders frequently award no-shave chits to boost morale, especially during extended sea duty. I know of at least one ship where the entire crew is currently required to shave only once every two weeks. Religious beards have no greater impact on personal protective equipment than these beards, and the Navy cannot claim to have a compelling interest in banning the former while permitting the latter. *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 367 (3d Cir. 1999) (Alito, J.) (“We are at a loss to understand why religious exemptions threaten important ... interests but medical exemptions do not.”); *Singh v. McHugh*, 185 F. Supp. 3d 201, 225 (D.D.C. 2016) (“[I]t is difficult to see how accommodating plaintiff’s religious exercise would do greater damage to the Army’s compelling interests ... than the tens of thousands of medical shaving profiles the Army has already granted.”).

10. Second, the Navy cannot suddenly claim a *new* interest in entirely banning beards for safety reasons without highly persuasive evidence. *Geller v. Sec’y of Def.*, 423 F. Supp. 16, 18 (D.D.C. 1976) (dismissing newly alleged governmental interest where Air Force chaplain had been “permitted to wear a beard without criticism, adverse action or ill effects for seven years”). Medical beards and commander discretion to issue no-shave chits have existed in the Navy for decades with no appreciable injury to Sailor well-being. *Mitchell Cnty. v. Zimmerman*, 810 N.W.2d 1, 17 (Iowa 2012) (“[I]t is difficult to see that an outright ban on [a longstanding practice] is necessary to serve a compelling state interest.”). Indeed, the DCNO has already acknowledged—presumably based on decades of experience—that “the probability of a negative consequence from an



Subj: COMMENT ON PROPOSED RECISSION OF RELIGIOUS ACCOMMODATION  
BY MC3 LEANDROS KATSAREAS, USN

ineffective seal is relatively low.” (Reference (c).) And even if the severity of a negative consequence “may be high—to include injury,” (Reference (c)), “the government does not have a compelling interest in each marginal percentage point by which its goals are advanced.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 803 n.9 (2011). Sailors engage in countless activities that may in rare situations lead to “injury” yet are still permitted. The Navy cannot show that beards are so unique in this respect as to justify an outright ban. Decades of allowing beards with masks shows that the risk, if any, is negligible.

11. My personal experience confirms that the Navy lacks a compelling interest in requiring Sailors to be clean-shaven when using protective equipment. When I was deployed aboard the USS Nitze in 2016, I had a MWR no-shave chit that allowed me to grow a beard as long as I wanted. When we received incoming anti-ship missile fire from Houthi batteries, I was on the ship’s fire-party in my repair locker, preparing to enter the depths of the ship if we were struck with a missile. I did not face any issues whatsoever in wearing a Scott SCBA mask, tank, and regulators with my beard.

12. Similarly, I did not face any issues during any other General Quarters drill evolution when using the Scott SCBA mask with my beard. In addition, we were not required to shave our beards after the initial combat action while we were still in the area where we were attacked, indicating that beards imposed no significant safety risks. Even when I attended advanced shipboard firefighting school on 21 Aug 20, where more advanced trainers with fire and smoke are used, I was not required to shave off the beard that I had that was approximately one inch long from the bottom of my chin, and I was able to utilize my SCBA mask during those evolutions without any problems.

13. The safe and effective use of the Scott SCBA mask, regardless of a perfect seal, is further evidenced by the fact that Sailors are not fit-tested for Scott SCBA masks or issued individual masks known to form a perfect seal with their faces. Instead, Sailors use whichever SCBA masks are in the repair locker and are available at that time. This is in part because an SCBA mask uses positive air pressure to provide a safe environment for its wearer. Positive air pressure forces any polluted air—including smoke—outside of the mask. This process significantly reduces, if not eliminates, any risk that the wearer would be exposed to polluted air, regardless of whether a perfect seal with the face is formed. Firefighters also use SCBA masks in life-threatening situations, including for more than a decade in the District of Columbia after the D.C. Circuit upheld evidence that—because of their positive pressure feature—“SCBAs can be worn safely by bearded firefighters in hazardous environments.” *Potter v. District of Columbia*, 558 F.3d 542, 549 (D.C. Cir. 2009) (upholding Muslim firefighters’ challenge to no-beard policy). Although that ruling turned, in part, on the fire department’s failure to challenge the evidence of safety, the department has now for more than a decade conducted what one judge called “a semi-natural experiment, in which the District of Columbia [has fought] calamities with some of its firefighters bearded, while other firefighting entities” have adhered to a clean-shave requirement. *Id.* at 554 (Williams, J., concurring). In all those years, despite an open invitation, the department has never returned with evidence that “the experiment launched” by the court’s order ended by “having falsified the plaintiffs’ theory.” *See id.*

14. **Not the least restrictive means.** Even if the Navy could show a compelling interest in reducing any marginal safety risk introduced by beards, forced shaving is not the least restrictive

Subj: COMMENT ON PROPOSED RECISSION OF RELIGIOUS ACCOMMODATION  
BY MC3 LEANDROS KATSAREAS, USN

means of resolving this concern. The “least-restrictive-means standard is exceptionally demanding,” even in settings such as prisons or the military where government is traditionally given significant deference. *Holt*, 574 U.S. at 364. The government always bears the burden not just to “explain why it denied the exemption,” but also to “prove that denying the exemption is the least restrictive means of furthering a compelling governmental interest.” *Id.*

15. Here, less restrictive alternatives are available. Other branches of the U.S. military currently accommodate service members with religious beards. As of 2017, the U.S. Army now allows religious beards except when there is actual risk of CBRN exposure. *See* Army Directives 2017-03; 2016-34. Even when the Army had a ban on religious beards, it conceded that “there [we]re some protective masks that [we]re capable of providing protection to individuals who wear beards,” even though they were “not standard Army issue.” *McHugh*, 185 F. Supp. 3d at 231 n.23. In some instances, it “created special masks for individuals” and in others “it obtained special masks from the United Kingdom.” *Id.* The Air Force updated its policy in February 2020 to reflect its allowance of religious beards, and it has recently approved accommodations for Muslim, Eastern Orthodox, and Sikh service members. Many fire and police departments around the U.S. also accommodate religious beards, further indicating that less restrictive means are available. *See, e.g., Fraternal Order of Police*, 170 F.3d 359; *Potter*, 558 F.3d 542; *see also Holt*, 574 U.S. at 368-69 (existence of accommodations in similar contexts “suggests that the [government] could satisfy its ... concerns through a means less restrictive than denying petitioner the exemption he seeks”). This is true even if the government has to incur some cost to adopt the accommodations that are used elsewhere. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730 (2014) (standard “may in some circumstances require the Government to expend additional funds to accommodate citizens’ religious beliefs”). Thus, because the Navy has “far more restrictive” regulations than its sister services, its regulations cannot “be regarded as ‘narrowly tailored.’” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020).

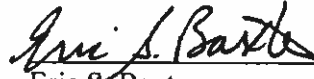
16. Militaries around the world also accommodate service members with religious beards, including in the United Kingdom, Canada, Australia, New Zealand, India, Israel, and United Nations. Canada’s current Minister of Defence, Harjit Sajjan, is a fully observant Sikh who previously served alongside U.S. forces in Afghanistan with his full beard. Recently, the U.S. Army has consulted with the Indian army about other types of masks that could be used with beards even in situations where there is an actual risk of CBRN exposure. The Navy, of course, may avoid these alternatives simply by allowing Sailors with religious beards to continue as they have in the past with their beards in place.

17. Because the Navy cannot demonstrate that there is a significant danger in allowing beards with personal protective equipment—as it has for decades—and because it cannot show that forced shaves are the only way to address that danger, even if it existed, I respectfully request that the proposal to rescind my accommodation be withdrawn.

  
Katsareas, L.  
MC3 USN



Subj: COMMENT ON PROPOSED RECISSION OF RELIGIOUS ACCOMMODATION  
BY MC3 LEANDROS KATSAREAS, USN

A handwritten signature in black ink, appearing to read "Eric S. Baxter", is positioned above a horizontal line.

Eric S. Baxter

Daniel H. Blomberg

Diana M. Verm

THE BECKET FUND FOR RELIGIOUS LIBERTY

1919 Pennsylvania Ave. NW, Ste. 400

Washington D.C. 20006

202-955-0095

[ebaxter@becketlaw.org](mailto:ebaxter@becketlaw.org)

06 Dec 19

From: MC3 Leandros Katsareas, USN  
To: Chief of Naval Personnel  
Via: Commanding Officer, USS George Washington (CVN 73)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION BY MC3 LEANDROS  
KATSAREAS, USN

Ref: (a) SECNAVINST 1730.8B  
(b) DoD INSTRUCTION 1300.17 Incorporating change 1 effective Jan 22, 2014  
(c) BUPERSINST 1730.11  
(d) Army Directive 2017-03 (Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation)

Encl: (1) DoD INSTRUCTION 1300.17 Incorporating change 1 effective Jan 22, 2014  
(2) BUPERSINST 1730.11  
(3) Army Directive 2017-03 (Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation)  
(4) Theological Evidence of my sincerely held religious beliefs  
(5) Previous attempts to obtain this waiver  
(6) Potential objections to my request and responses  
(7) DD Form 368 Request for Conditional Release

1. I consider myself both privileged and honored to have the opportunity to serve in the Navy. I immigrated to this country after falling in love with the US Constitution and with the intention of devoting my life to supporting and defending it.

2. I respectfully request a religious accommodation by way of a waiver of Navy grooming standards to grow a beard within the following guidelines for religious purposes as per my sincerely held religious beliefs and in accordance with DOD Instruction 1300.17 (enclosure 1):

- a. A beard fist length (four inches) in length from the bottom of the chin.
- b. A beard with edges that are groomed so as to be neat and clean, per the requirements of my sincerely held religious beliefs.
- c. A mustache that is neat and blends well into the beard.

3. I respectfully request that this be expeditiously processed to be approved at the CNP level (due to the six improperly handled attempts I have made since 2015 to have this waiver properly approved).

Subj: REQUEST FOR RELIGIOUS ACCOMODATION BY MC3 LEANDROS  
KATSAREAS, USN

4. I respectfully request that the above apply to any operational, non-operational, or training environment command that I am stationed, except in situations when there is a probable threat of CBRN attack (MOPP Level 2). At these times, I will shorten my beard to be as short as necessary to obtain a seal on a gas mask.
5. I respectfully request to have the permanent approval of this waiver so that it follows me throughout my career as having to make this request over and over again at each new command I move to as doing so subjects me to a higher chance of discrimination by people who don't want an openly practicing Muslim in 'their Navy' and also is tantamount to discrimination by bureaucratic fiat as it requires me to go through an undue burden with the process of subjecting myself to an excessive amount of paperwork and takes several months to obtain approval and puts me in a situation of limbo. To elaborate on this further, I arrived at this command in April of 2019 and what you are reading is my first request to reach you since then. The formatting and other requirements make it very difficult for Sailors who have not been properly trained in Navy correspondence to obtain, especially with the work-loads that we have as Sailors.
6. I respectfully request a Common Access Card sized card with this waiver approval clearly stated on it so that I don't require to fold and carry a piece of paper that can easily get lost.
7. I respectfully request that this waiver is entered into my NSIPS profile under the religious accommodation section.
8. My request is based on my sincerely held religious belief that all Muslim males genetically able to do so are required to grow a substantial beard as a sign of their devotion to God and further theological evidence for this can be found in enclosure 4. As a Muslim man, my beard is a defining feature of my masculinity and to be without a beard is both humiliating and emasculating beyond description. Furthermore, removing one's beard is considered a sinful form of self-mutilation and unnatural.
9. I have made several attempts to obtain this waiver dating back to 2015 when I was going through the recruiting process. To show you how difficult it is for a Sailor to get this done I have included an explanation of all of my attempts in Enclosure 5.
10. I understand that there may be objections to my request. I have addressed these objections in Enclosure 6.
11. The request that I am making meets the minimum requirements of my sincerely held religious beliefs. I enlisted in the Navy in good faith, after DoD Instruction 1300.17 was released with the reasonable expectation that I would be able to both serve my country and fulfill the requirements of my sincerely held religious beliefs without being forced to choose one or the other. This is my seventh attempt since 2015 to obtain such a waiver and I believe that I have acted in good faith and with immense patience on this matter since then.

Subj: REQUEST FOR RELIGIOUS ACCOMODATION BY MC3 LEANDROS  
KATSAREAS, USN

12. Should the CNP refuse to approve this request in its entirety, I respectfully request that the Navy approves it temporarily and facilitates, at every level, my inter-service transfer to the Army Reserves, where the requirements of my religious faith can be met in its entirety in accordance with Army Directive 2017-03 (Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation) (enclosure 6) and where I can continue serving this country honorably as an example to my future children, to my community, and to posterity without having to forego my religious obligations and sincerely held religious beliefs.

In this case I respectfully request the included DD Form 368 (enclosure 7) be signed and approved and be made valid for at least one year for the inter-service transfer process to be completed.

This facilitation would also require the Navy to assist me in obtaining the necessary waivers to ensure that any service-related injuries or medical conditions that I have accumulated during my time in the Navy will not prevent me from being able to continue to serve in the Army and that I am allowed to retain whatever paygrade I may have achieved at the time of my transfer, even if I'm not being paid for it yet.

  
\_\_\_\_\_  
Katsareas, L.  
MC3 USN

5 MAY 20

From: MC3 Leandros Katsareas, USN  
To: Chief of Naval Operations  
Via: Commanding Officer, USS George Washington (CVN 73)

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

Ref: (a) DCNO denial ltr of 4 APR 20  
(b) DoD INSTRUCTION 1300.17 Incorporating Change 1, Effective 22 JAN 2014  
(c) BUPERSINST 1730.11A

Encl: (1) My original religious accommodation request dated 6 DEC 19

1. I converted to Islam in 2001 at the age of sixteen and have faithfully observed its tenets ever since. Even though I was born and raised in Australia, after seeing the atrocities carried out on 9/11, I vowed to fight against terrorists and their ideology. In 2006 I was living in New Zealand and was invited to attend an Officer Selection Board to commission as an officer in the New Zealand Army. I did not proceed, as I could not bring myself to swear an inviolable oath to the Queen of England. While studying a course of Arabic at Qatar University, classmates from the U.S. who recognized my passion for liberty encouraged me to study the Declaration of Independence, the Founding Fathers, and the Constitution. After thoroughly studying the principles behind the founding of the United States, I vowed that one day I would immigrate, become a U.S. citizen, and spend my life honorably serving the United States.

I arrived in the United States in 2012 and spent 2013 through 2016 working with the FBI to assist in identifying terrorist threats against Americans and American interests both at home and abroad. Within one day of obtaining my Permanent Residence in 2014, I filled out an application to join the Navy and was honored to swear an oath to support and defend the Constitution of the United States. Soon after becoming a naturalized citizen at RTC in 2016, I renounced my Australian citizenship as I considered it dishonorable to keep the benefits that come with citizenship when I was not willing to fight for that country's system of government.

My service in the Navy has included a 2016 deployment to 5<sup>th</sup> Fleet aboard USS Nitze (DDG 94) as a PACT Seaman, where I often volunteered my Arabic skills to stand watches on the bridge, especially during our many transits through the straits of Bab el-Mandeb and Hormuz. When Houthis in Yemen fired upon us with guided anti-ship missiles, I responded to the General Quarters as a member of my repair locker's fire party. Later, in 2019, I graduated from the Defense Information School's Basic Mass Communication Specialist Course, and I currently serve aboard the USS George Washington (CVN 73).

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

2. Since joining the Navy, I have sought a religious accommodation to maintain a beard in accordance by my Islamic faith, which requires—as one of the ten basic *fitras* (cleanliness and grooming obligations) for Muslims—that all Muslim males who are genetically able to grow a substantial beard do so as a sign of their devotion to God. Although I currently have a 2018 accommodation from the CNP for an ungroomed  $\frac{1}{4}$  inch beard, I consider it sinful and spiritually degrading not to maintain a beard that complies with my religious obligations. Thus, on 06 DEC 2019, I submitted a request for a religious accommodation in accordance with reference (b) that would allow me to have a beard consistent with my sincerely held religious beliefs, meaning:

- a. a fist length beard from the bottom of the chin, which can be rolled and tied to achieve a length of two inches per reference (c);
- b. a beard with edges that are groomed so as to be neat and clean, per the requirements of my sincerely held religious beliefs; and
- c. a mustache that is neat and blends well into the beard.

3. On 16 MAR 20, reference (c) was updated to provide for religious accommodations for facial hair. It was my understanding that the new instruction would allow for my requested accommodation. I was very grateful that the Navy was fully implementing the standards of reference (b) and that I would no longer be left to choose between my religious obligations and my patriotic duty to serve my country.

However, on 09 APR 20, contrary to my understanding of the updates to reference (c), I received the DCNO's letter denying my request for a full religious accommodation. I am submitting this appeal of the DCNO's decision as I believe his decision is inconsistent with references (b) and (c), with the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1, *et seq.*, and with the First Amendment.

4. Given that I submitted my request prior to the 16 MAR 20 update to reference (c) and that the DCNO's decision was issued on 4 APR 20, I imagine that my request was among the first to be adjudicated under the terms of new policy in reference (c). I am therefore respectfully requesting confirmation that the review and adjudication of my request was conducted with the advice of a judge advocate in accordance with reference (c). Also, before a denial of this appeal, consultation should be undertaken with the Department of Justice's Office of Legal Policy. *See* Federal Law Protections for Religious Liberty, 82 Fed. Reg. 49,668, 49,671 (Oct. 26, 2017) (instructing all agencies to consult "subject-matter experts who can answer questions about religious nondiscrimination rules" when considering religious accommodation issues, and that "any questions" about the guidance should be addressed to the Office of Legal Policy).

5. The DCNO stated that he denied my request "due to the Navy's compelling Government interest in mission accomplishment at sea including safety." Specifically, the DCNO stated in paragraph 5(a) of his denial decision that "reference (c) reported that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face mask and respirators."

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BY MC3 LEANDROS KATSAREAS, USN

For the reasons stated below, I believe that the DCNO's decision is not the least restrictive means of furthering the Navy's compelling government interest in mission accomplishment at sea including safety.

6. Use of Self-Contained Breathing Apparatus (SCBA) facemasks/respirators:

The 3M/Scott SCBA mask and respirator used by the Navy does not require a perfect seal around the face to be effective because it uses positive air pressure rather than a seal to provide a safe environment for its wearer. Positive air pressure forces any polluted air—including smoke—outside of the mask. This process ensures the wearer continues to breathe clean, tank-supplied oxygen.

The safe and effective use of the Scott SCBA mask, regardless of a seal, is further evidenced by the fact that Sailors are not fit-tested for Scott SCBA masks or issued individual masks known to form a perfect seal with their faces. Instead, we use whichever SCBA masks are in the repair locker and are available at that time.

When I was stationed aboard the USS Nitze upon its deployment in 2016, I had a MWR no-shave chit that allowed me to grow a beard as long as I wanted, which was substantially longer than the ¼ inch of facial hair I am allowed now. When we received incoming anti-ship missile fire from Houthi batteries, I was on the ship's fire-party in my repair locker, preparing to enter the depths of the ship if we were struck with a missile. I did not face any issues whatsoever in wearing a Scott SCBA mask, tank, and regulators with my beard.

Similarly, I did not face any issues during any other General Quarters drill evolution when using the Scott SCBA mask with my beard. In addition, we were not required to shave our beards after the initial combat action while we were still in the area where we were attacked, indicating that beards imposed no significant safety risks. Even when I attended advanced shipboard firefighting school, where more advanced trainers with fire and smoke are used, I was not required to shave off the ¼ inch of facial hair that I had at the time. My experience on the USS Nitze is evidence that the Navy lacks a compelling interest in requiring sailors to be clean-shaven in situations that require the use of protective equipment.

At the very least, the factors I have listed demonstrate that the DCNO's decision is not the least restrictive means of satisfying a compelling government interest, because the Navy's own practices show that its asserted safety concerns do not require a categorical ban on religious beards and because there are a variety of ways that my religious grooming requirements could be accommodated without actual risk to safety.

7. Use of gas masks or Air Purifying Respirators (APR):

I understand that there are unique situations where a high probability of CBRN warfare (MOPP Level 2) requires all Sailors to be clean-shaven, including those with medical exemptions, in order to wear an APR with a fitted seal. In the event I am in such a situation, I understand I may be



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required to temporarily shave my beard, and I will comply with those orders. My religious beliefs dictate that the preservation of one's life is of paramount importance in situations where there is a specific, concrete, and/or imminent threat to life or limb and that religious observances may therefore be suspended temporarily to preserve safety pursuant to that specific, imminent threat. Such a threat, however, comes only in limited circumstances that trigger a specific MOPP level.

Again, for these reasons, denying my request to maintain a beard for religious purposes on the sole basis that I am generally assigned to a sea command is not the least restrictive means of furthering the Navy's compelling government interest in mission-accomplishment. This decision also ensures that no sailor assigned to a sea command is likely to receive a religious accommodation for a beard, despite the lack of high risk, specific, concrete and/or imminent threats to their life or limb. This would be a violation of references (b) and (c), RFRA, and the First Amendment.

Given the above, I respectfully request that my previous request for a religious accommodation be approved and apply to any operational, non-operational, or training environment command where I am stationed, with the possibility of a temporary exception for situations where there is a specific and concrete threat of exposure to toxic CBRN agents (MOPP Level 2). As mentioned above, I understand that I may have to shave my beard as required to meet the Navy's compelling interests under those specific and temporary circumstances.

8. The DCNO stated in paragraph 5(a) of his denial decision: "*If assigned to a shore command, you may once again submit a request for religious accommodation.*"

My understanding of this statement is that a religious accommodation for a beard would only be approved when a Sailor is on shore duty. My religious obligations, however, do not change depending on my assignment going from shore or sea duty. Almost all Sailors, by virtue of their rating's LaDR and sea/shore rotations, will start their careers at sea duty commands. Depriving these Sailors from being able to maintain their religious requirements for up to the first five years of their careers in the Navy places a substantial burden on Sailors' exercise of religion in a manner that does not comply with references (b) and (c), with RFRA, or with the First Amendment. Among other things, it would effectively ban virtually all religiously observant individuals with similar beliefs from service in the Navy.

The RFRA standard rejects such a "categorical approach." Rather, it requires the government "to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 420 (2006). Because—among other things—the Navy uses positive pressure masks that are not individually fit-tested and allows sailors on sea duty to wear beards for MWR purposes, the compelling interest standard is not met. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (strict scrutiny not met where policy "leaves appreciable damage" to vital interests "unprohibited").



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Moreover, RFRA's "least-restrictive-means standard is exceptionally demanding," even in settings such as prisons or the military where government is traditionally given significant deference. *Holt v. Hobbs*, 574 U.S. 352, 364 (2015). The government always bears the burden not just to "explain why it denied the exemption," but also to "prove that denying the exemption is the least restrictive means of furthering a compelling governmental interest." *Id.* This requires an evidence-based analysis that considers all available options. *See, e.g., Singh v. McHugh*, 185 F. Supp. 3d 201, 231 & n.23 (D.D.C. 2016) (identifying means of accommodating religious beards); *Singh v. Carter*, 168 F. Supp. 3d 216, 232 (D.D.C. 2016) (same). Because there are various ways my religious beard could be accommodated without compromising safety or other compelling interests, I request that my application for a waiver be granted.

9. I further request to have a permanent approval of this waiver so that it is enduring and it follows me throughout my career, subject to situations of imminent safety concerns necessitating a temporary suspension of the accommodation. As an observant Muslim, my religious beliefs reflect who I am and who I sincerely believe God requires me to be. Having to make an accommodation request over and over again at each new command unnecessarily and substantially burdens my faith, subjects me to a higher probability of discrimination, and deprives me of the stability and clarity other Sailors have regarding whether I will be accepted in a manner that allows me to proudly serve my country. The lack of a permanent accommodation requires me to go through the arduous process of having to re-apply routinely with duty changes, and it places me in a situation of limbo during the months it takes to obtain approval.

10. I respectfully request that this waiver is entered into my NSIPS profile under the religious accommodation section.

11. The DCNO's denial letter suggested that concerns about "good order and discipline" and unit cohesion may also have contributed to his decision. Again, however, government "cannot simply invoke general principles," but must show that granting "*this plaintiff's* religious accommodation" threatens good order, discipline, or unit cohesion. *McHugh*, 185 F. Supp. 3d at 223. The government has made no such showing here. *Accord id.* at 229 ("[T]he undisputed evidence in the record indicates that [other] men served—or are serving—with their articles of faith intact without any of the negative consequences that defendants predict would flow from granting a similar exception in this case.").

The DCNO's concern that "[w]e must create an environment where everyone is treated the same" is also impermissibly broad and violates clear and well-established law. RFRA—and the First Amendment's Religion Clauses—clearly contemplate that the government has a heightened duty to accommodate religious needs as such. *Holt*, 574 U.S. at 356, 357; *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 338 (1987). Moreover, a policy treating all sailors the same with respect to their religious needs must acknowledge that different sailors will have different religious obligations. Treating them the same requires applying the same RFRA standard, not denying religious accommodations to minority religious beliefs. Moreover, equal respect for diverse religious beliefs reinforces, rather than undermines, "an environment that supports immediate and unquestioned response to command authority."

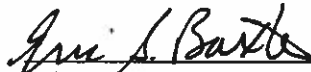
Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST  
BY MC3 LEANDROS KATSAREAS, USN

12. I am proud to serve in the United States Navy, and wish to serve with my whole religious identity intact. As a junior sailor, it is incredibly demoralizing continuously to have to fight to maintain my religious beliefs, as protected by RFRA, Navy regulations and policy, DOD instructions and directives, and the First Amendment. Additionally, I have made every effort to provide detailed information and to address stated or anticipated objections to my request.

The DoD Instruction in reference (b) was revised in 2014. I enlisted in the Navy after seeing this instruction, reasonably expecting that my sincerely held religious beliefs would be respected and accommodated. Despite numerous denials along the way, I am hopeful that your review of both my accommodation request and the Navy's recent policy update in MAR 2020 will lead to a religious accommodation for me to maintain my beard moving forward so that I can continue to serve our country without having to compromise my religious beliefs.



Katsareas, L.  
MC3 USN



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# **EXHIBIT I**

7 May 2020

From: CDR Saifulislam, Abuhena M, CHC, USN

To: Commanding Officer, USS George Washington (CVN 73)

Subj: REQUEST FOR AN EXCEPTION TO POLICY TO ACCOMMODATE A PRACTICE  
BASED ON RELIGIOUS BELIEF ICO ABF3 DOMINQUE K. BRAGGS.

Ref: (a) SECNAVINST 1730.8  
(b) SECNAVINST 1730.9

1. ABF3 Dominique Braggs has submitted a request for accommodation of a religious practice per reference (a). Per BUPERSINST 1730.11, I interviewed the requestor on May 7, 2020. I explained that this interview would not be a confidential communication as defined by reference (b) and informed the requestor that referral for confidential chaplain support was available.

2. Nature of the request. ABF3 Braggs is requesting a waiver of grooming standards including a mustache and beard that follows the following requirements:

- a. A beard fits (two inches) in length from the bottom of the chin.
- b. A beard with edges that are groomed as per his sincerely held religious belief.
- c. A mustache that blends well into the beard.

3. Basis. ABF3 Braggs became a Muslim after converting to Islam. ABF3 Braggs' beliefs stem from sources found in Islamic jurisprudence and are consistently recognized in all Islamic schools of jurisprudence. My professional and objective opinion is that the approval of this request is of paramount religious importance to ABF3 Braggs.

4. Alternate Means. There are no alternate means that would satisfy ABF3 Braggs' sincerely held religious beliefs and convictions.

5. Sincerity. ABF3 Braggs is a recent convert in Islam and wants to adhere to the Prophetic tradition of growing a beard. Based on his firm conviction of practicing his faith, I assess his request as being sincere.

6. My contact information is 757-534-1050 and [abuhena.saifulislam@cvn73.navy.mil](mailto:abuhena.saifulislam@cvn73.navy.mil).

  
Abuhena Saifulislam

Copy to:  
(ABF3 Dominique Braggs)

Enclosure (1)

# **EXHIBIT J**





DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/114244  
23 Dec 20

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: ABF3 Dominique K. Braggs, USN  
Via: Commanding Officer, USS GEORGE WASHINGTON (CVN 73)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF  
GROOMING STANDARDS FOR FACIAL HAIR

Ref: (a) NAVPERS 15565I  
(b) DoD Instruction 1300.17 of 1 Sep 20  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A  
(f) 42 U.S.C. §2000bb-1  
(g) United States Attorney General memo of 6 Oct 17  
(h) Your ltr of 22 Jul 20  
(i) COMNAVSAFECEN NORFOLK VA 261941Z Nov 18 (ALSAFE 18/008)

1. In line with references (a) through (i), your request to waive the requirements in article 2201.2 of reference (a) for a beard is disapproved. I am disapproving your request to grow a beard due to the Navy's compelling Government interest in mission accomplishment including safety.

2. In line with references (b) through (e), I am designated as the approval authority for requests for religious accommodation.

3. Reference (f), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion or good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (g) emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF GROOMING STANDARDS FOR FACIAL HAIR

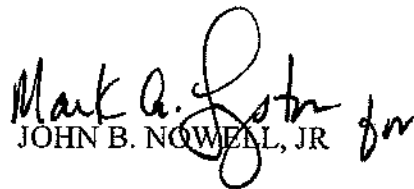
- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there is alternative means available to meet the requested accommodation
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (h), including the endorsements from your chain of command and the local chaplain, and the guidance of Commander, Naval Safety Center in reference (i).

a. With regard to your request to wear a beard onboard a naval vessel in port and underway, reference (i) reported that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators. Damage control (DC), both in port and underway, is the responsibility of each crew member. Your participation in shipboard DC efforts is routine and foreseeable regardless of whether the ship is in port or at sea. Beards present a hazard to these efforts, as outlined above, and this hazard can extend to other personnel should they be required to come to your aid if you are injured during DC activities. Though the probability of a negative consequence from an ineffective seal is relatively low, the severity of that consequence may be high – to include injury. From an operational risk management perspective, this risk is untenable.

b. I find that granting your request would present an unacceptable risk to the Navy's compelling interest in mission accomplishment, including military readiness and safety on both the individual and unit levels. I further find that there are no less restrictive means available to accommodate your request.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. Deviations from Navy standards must be considered against how those deviations impact the Navy mission as a whole. If you subsequently experience a change in physical, operational or geographical environment you may again request for religious accommodation.

  
JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)

# **EXHIBIT K**



18 FEB 21

From: ABF3 Dominique K. Braggs, USN

To: Chief of Naval Operations

Via: Commanding Officer, Naval Station Norfolk

Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION  
REQUEST BY ABF3 Dominique K. Braggs, USN

Ref: (a) DCNO denial ltr of 23 DEC 20

(b) DoD INSTRUCTION 1300.17, Effective 1 SEP 20

(c) BUPERSINST 1730.11A, Effective 16 MAR 20

Encl: (1) My original religious accommodation request dated 22 JUL 20

### **SUMMARY**

1. My name is Dominique Braggs and I am an ABF3 stationed aboard the USS George Washington (CVN 73). Pursuant to the DoD guidelines in references (b) and (c) respecting religious accommodation, I write to respectfully appeal the denial of my request for an exception to the Navy's grooming policy to accommodate a fist-length beard in accordance with my sincerely held religious beliefs as a Muslim in service to my country.

Like thousands of other Muslims in the United States, I believe that growing a beard is a central expression of my faith. Since Boot Camp, I have been able to maintain a partial beard pursuant to a medical no-shave chit based on my diagnosis of *pseudofolliculitis barbae* or "razor bumps," a condition common to African-American men like me. Even with the no-shave chit, however, I have been required to shave in violation of my religious beliefs once a month to show that my medical condition still persists. Last July, the Secretary of Defense directed a thorough review of all hairstyle and grooming policies for racial bias. I hoped this would lead to more consistent medical accommodations for African-American men, who suffer disproportionately from razor bumps, as well as to more consistent religious accommodations for minorities with a religious obligation to maintain their beards. The Navy, however, appears to be taking the opposite approach, as I have since been told I may have to undergo laser hair removal or a similar procedure to continue serving our country. Any permanent hair-removal procedure would be a further serious violation of my religious beliefs.

On or about 22 JUL 20, I therefore sought a religious accommodation allowing me to maintain my beard and to fully reconcile my religious identity with my Navy service. On 23 DEC 20, the DCNO denied my request on the stated ground of safety concerns

and possible interference with the effective performance of my duties—particularly in the event I might have to wear a sealed gas mask or similar equipment.

While sensitive to the safety concerns raised in reference (a), I am confident that, given my particular duties and the treatment of similar situations by the Navy and other branches of the military, my request can be granted consistent with my ability to serve. And if circumstances were to change, such that the Navy deemed it unavoidable for me to be clean-shaven due to imminent risk to health and safety, I would be willing to shave my beard temporarily. But that is an unlikely situation insufficient to justify a complete denial of my request for accommodation. Finally, I am aware that some Sailors been allowed beards not only for medical reasons, but also for religious reasons—all presumably without adverse impact to performing their duties.

Finally, on 22 JAN 21, I received orders to report to Naval Station Norfolk Virginia for limited duty until July 2021.

I thus submit this appeal requesting a similar accommodation from the Navy's grooming policy so that I may wear a beard consistent with my faith. I further ask that this waiver follow me throughout my career and be entered into my NSIPS profile under the religious-accommodation section.

### **BACKGROUND**

2. I have observed the tenets of Islam since 2017. I was raised a Seventh-day Adventist, but after learning about Islam from close friends and living the religion for several years, I formally converted with the assistance of Navy Chaplain Abuhena Saifulislam in 2020. As a Muslim, I observe the tenets of Islam by studying the Qur'an, praying five times daily, abstaining from alcohol, and observing the Islamic fasts, among other things.

I also sincerely believe that I should maintain a beard in accordance with my faith. One of the ten *fitras* (cleanliness and grooming obligations) for Muslims is that all males who are able to grow a beard must do so as a sign of their devotion to God. Specifically, per my religious obligations as set forth in the *hadith*, which is a collection of the teachings of the Prophet Mohammed, I am required to maintain a fist-length, or roughly four-inch, beard whenever it is possible to do so. My religious beliefs further require that my beard be neatly trimmed. I would have no objection to grooming my beard to appear no longer than two inches in length from the bottom of my chin.

I currently serve in the Navy as an Aviation Boatswain's Mate, Fuels (ABF3). However, due to a back injury, I am currently on limited duty and have not been aboard ship since September 2020. My limited duty is scheduled to continue until July 2021.

3. On 16 MAR 20, reference (c) was updated to provide for religious accommodations for facial hair. It was my understanding that the new instruction would allow for my requested accommodation. I thus submitted a request for waiver of policy on 22 JUL 20, seeking a religious accommodation “to grow a beard four inches in length from the bottom of my chin with groomed and neat edges dues to my ... sincerely held religious beliefs, to be groomed ... to keep it appearing no longer than two inches in length from the bottom of my chin.” On 23 DEC 20, I received a response from the DCNO denying my request for a full religious accommodation. The DCNO stated that he denied my request due to “the Navy’s compelling Government interest in mission accomplishment, including military readiness and safety.” Specifically, the DCNO stated in paragraph 5(a) of his denial decision that “a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators.”

5. I am submitting this appeal of the DCNO’s decision as I believe his decision is inconsistent with references (b) and (c); with the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1, *et seq.*; and with the First Amendment to the United States Constitution.

Given that my request is among the first to be decided under the terms of reference (c)’s updated policy, I also respectfully ask that, in accordance with that reference, my appeal be handled with the advice of a judge advocate and in consultation with the Department of Justice’s Office of Legal Policy. *See* Federal Law Protections for Religious Liberty, 82 Fed. Reg. 49,668, 49,671 (Oct. 26, 2017) (instructing all agencies to consult “subject-matter experts who can answer questions about religious nondiscrimination rules” when considering religious accommodation, and that “any questions” about the guidance should be addressed to the Office of Legal Policy).

### ANALYSIS

6. The Department of Defense recognizes the right of Service members to observe and practice their chosen faith, including by way of accommodation from standard procedures. Specifically, reference (b) in DoD’s Instruction 1300.17 on Religious Liberty in the Military Services (updated 1 SEP 20) provides that the military “will accommodate individual expressions of sincerely held [religious] beliefs . . . which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety.” Moreover, in laying out such an accommodating approach, the instruction expressly incorporates norms of the Free Exercise Clause to the First Amendment and the federal Religious Freedom Restoration Act (RFRA). *See Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (observing that the requirements of the First Amendment and RFRA apply to military religious-accommodation decisions); *Singh v. McHugh*, 185 F. Supp. 3d 201 (D.D.C. 2016) (observing similarly). Accordingly, a Service member must be granted an accommodation from any military policy that would place a substantial burden on his or her religious exercise, unless the DoD Component can prove that (1) insisting on the policy without exception “is

in furtherance of a compelling governmental interest” and (2) such insistence “is the least restrictive means of furthering that . . . interest.” Instruction 1300.17.

The DCNO’s refusal to allow my beard fails to satisfy the foregoing test for four reasons. First and most immediately, my duties are unlikely to require me to use the equipment the DCNO flagged as a safety concern, and in the event of an actual and unavoidable need to shave, I would do so. Second, even if I had to use such equipment, in most instances my beard would not prevent safe and effective use. In the extremely rare situation that it would, I would shave. Third, the Navy’s ability to grant medical waivers for sailors to grow beards not only casts doubt on any across-the-board safety argument, it also implicates established law requiring that non-religious exceptions to a government rule be extended at least as far to faith-based requests. Finally, even if denying my request were otherwise warranted—and it is not—there has yet to be the sort of required showing that alternatives are infeasible.

*7. First, my assignment makes it highly unlikely that I will need to use a face mask as protective equipment, and, were the threat level somehow to change to make mask usage an unavoidable necessity, I would comply.*

The update to the DoD Instructions clarifies that religious accommodations are to be issued “in accordance with RFRA.” And under RFRA’s compelling-interest analysis, the government cannot prevail by showing such an interest in the abstract. Rather, it must show a compelling reason to apply “the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 419-20 (2006). As courts have thus observed, the military “cannot simply invoke general principles” to deny a Service member’s religious accommodation. *Singh v. McHugh*, 185 F. Supp. 3d 201, 223 (D.D.C. 2016). In other words, the Navy cannot deny my request generically; instead, it must evaluate that request in my particular assignment.

But the Navy cannot show such a particularized compelling interest when it comes to safety or mission accomplishment in my case because, in my duties as an AFB3, I do not perform work where it is common or likely that the use of face masks (including gas masks, self-contained breathing apparatus face masks and respirators) could be affected by a beard. In my entire service as an AFB3, I have never had to don a face mask, and I am not aware that any of my AFB colleagues have either. And the possibility is even more remote while I am on limited duty.

On this point, I understand Sailors with duties similar to mine have in fact received religious-beard accommodations. On 15 JUL 20, for example, the Navy granted MC3 Leandros Katsareas, a practicing Muslim, a 4-inch beard accommodation on sea duty while temporarily serving in the Auxiliary Security Force, because “the nature of [his] duties makes it highly unlikely that [he] will be required to don personal protective equipment.”

To be sure, there are assignments where a high probability of CBRN warfare may require all Sailors to be clean-shaven to wear a special Air Purifying Respirator (APR) mask with a fitted seal. And if DoD deemed the likelihood of my APR usage to be sufficiently high as to require all Sailors to be clean-shaven, I would comply and shave. After all, my faith further dictates that the preservation of life is of paramount importance in situations where there is a specific, concrete, or imminent threat to life or limb.

But I am on no such high-risk assignment at present. Rather, based on the Navy's classification of the threat level on my current assignment, the likelihood of CBRN warfare is low enough to permit waivers of the grooming policy in accordance with the law and DoD's pledge to "normally accommodate practices of a Service member based on sincerely held religious belief."

*8. Second, in the rare event that I may be required to use a mask, it is unlikely that a beard would interfere with my ability to wear such equipment, or I would shave.*

Even when it comes to masks, it is my understanding that the most common system for those in my station—the SCBA—in fact works with beards. Because the 3M/Scott SCBA mask and respirator system protects its wearer using positive air pressure, it does not require a seal around the face to be effective. The positive pressure, rather, forces any polluted air, such as smoke, outside of the mask. The oxygen tank continuously provides safe, clean air to the wearer, even without an airtight seal. Indeed, I understand this very functionality is why the Navy does not assign fit-tested masks to individual Sailors but instead directs them to use whichever SCBA masks are available in the repair locker.

And although the previously described APR system may be used in the event of CBRN warfare, that is insufficient reason to deny my request entirely, especially considering my present assignment and my willingness to shave should there be actual risk of CBRN warfare. *See, e.g., Army Directive 2018-19 ¶ 5(b)(1)-(2)* (requiring accommodated soldiers to shave for actual "threat of exposure to toxic CBRN agents," but not for "training or tactical simulations designed to ensure that the Soldier is fully familiar with use of the protective mask"). Moreover, I have observed that Sailors who have been afforded medical-beard exemptions have had no trouble using masks when training for firefighting or in other circumstances. As I am seeking a similar accommodation, it is reasonable to assume the same lack of a problem in my case.

*9. Third, the Navy grants medical exceptions to its grooming policy for beards, which demonstrates that it can safely accommodate a beard such as the one I request.*

Several Sailors on my ship, including myself, have indeed been granted waivers to wear quarter-inch beards for medical reasons while on sea duty—and from my own experience, and what I have observed and learned in personal conversations with

others, none have encountered issues in wearing a mask, tank, or regulator. At a minimum, therefore, this ability to perform tasks safely while wearing a beard confirms that an absolute beard prohibition is unjustified as a matter of safety or effectiveness, at least absent actual threat of CBRN warfare.

Furthermore, the Navy's accommodation of medical beards creates a strong legal presumption that religious ones are workable—particularly given the Navy's strong commitment to religious liberty in references (b) and (c). *See Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999) (“The medical exemption raises concern because it indicates that the Department has made a value judgment that secular (i.e., medical) motivations for wearing a beard are important enough to overcome its general interest in uniformity but that religious motivations are not.”); *Singh v. McHugh*, 185 F. Supp. 3d 201, 225 (D.D.C. 2016). (“[I]t is difficult to see how accommodating plaintiff's religious exercise would do greater damage to the Army's compelling interests in uniformity, discipline, credibility, unit cohesion, and training than the tens of thousands of medical shaving profiles the Army has already granted.”). The Navy has made no showing that its asymmetrical treatment of secular and religious requests on my ship is justified—and certainly no showing that survives the high scrutiny imposed under RFRA and DoD policy.

10. *Finally, the Navy has not explored workable alternatives to my request.*

The DoD's incorporation of RFRA, as expressed in references (b) and (c), requires that, even when a compelling interest might exist as a general matter, the outright denial of a given request for religious accommodation must include an evaluation that there are no feasible alternatives to such a denial. This “least-restrictive-means standard is exceptionally demanding” in that it requires the government to show “it lacks other means of achieving its desired goal.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014). This requires an evidence-based analysis that considers all available options. *See, e.g., Singh v. McHugh*, 185 F. Supp. 3d 201, 231 n.23 (D.D.C. 2016) (finding that the military failed to pursue good alternatives when it denied a Sikh the religious accommodation of a beard); *Singh v. Carter*, 168 F. Supp. 3d 216, 232 (D.D.C. 2016) (finding similarly).

There are surely ways my religious need for a beard could be accommodated without compromising safety or mission accomplishment. For example, as previously discussed, one alternative is to grant my accommodation subject to actual threat of CBRN exposure. Also, many militaries around the world accommodate service members with religious beards. Canada's current Minister of Defence, Harjit Sajjan, is a fully observant Sikh who previously served alongside U.S. forces in Afghanistan with his full beard. Fire departments also accommodate firefighters who serve with religious beards in place. These examples suggest that any increased risk from accommodating religious beards is minimal and/or that there are other options for masks that could be used to fully accommodate U.S. Service members with religious



beards. Indeed, it is my understanding that the U.S. Army has been in contact with the Indian Army, which has a significant number of Sikh soldiers, to discuss a mask that was designed to accommodate Sikh soldiers' religious obligation to maintain unshorn hair. The DCNO's denial of my request without consideration of these and other options violates RFRA and DoD guidelines.

### CONCLUSION

13. I request a religious accommodation that allows me to wear a fist-length beard in accordance with my sincere practice of Islam.

14. I further request a permanent approval of this accommodation that follows me throughout my career, subject to situations of imminent safety concerns that demand a temporary suspension. Having to needlessly repeat my request at new commands would substantially burden my faith, subject me to a higher probability of discrimination, and deprive me of the stability and clarity afforded to other Sailors—in addition to creating repetitive work for the CNO and other Naval offices. A permanent accommodation would avoid these problems.

15. Finally, I request that this accommodation be entered into my NSIPS profile under the religious-accommodation section.

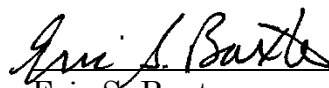
16. I am proud to serve in the United States Navy, and I wish to do so with my religious identity intact—in accordance with both the letter and spirit of the Navy's regulations and policies, DoD instructions and directives, the Religious Freedom Restoration Act, and the First Amendment.

I am hopeful that your review of both my request and the DoD's policy update in SEP 20, reference (b), will lead to a religious accommodation for me to maintain my beard moving forward, so that I can continue to serve my country without having to compromise my religious beliefs.

Thank you for your consideration.

---

Braggs, D.  
ABF3 USN



---

Eric S. Baxter  
Daniel H. Blomberg  
Diana M. Verm  
William Seidleck

THE BECKET FUND FOR  
RELIGIOUS LIBERTY  
1200 New Hampshire Ave., NW  
Washington, D.C. 20036  
202-955-0095  
*ebaxter@becketlaw.org*



# **EXHIBIT L**

22 Jun 20

MEMORANDUM FOR THE RECORD

From: LT Joshua Hickman, Command Chaplain, USS CHANCELLORSVILLE (CG 62)  
To: CAPT Marc Boran, Commanding Officer, USS CHANCELLORSVILLE (CG 62)

Subj: REQUEST FOR AN EXCEPTION TO POLICY TO ACCOMMODATE A PRACTICE  
BASED ON RELIGIOUS BELIEF ICO OS2 MOHAMMAD SHOYEB

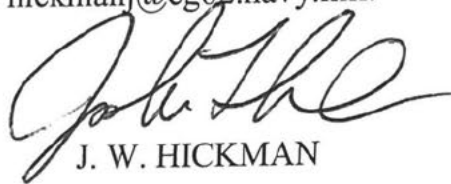
Ref: (a) SECNAVINST 1730.8  
(b) SECNAVINST 1730.9  
(c) DOD Instruction 1300.17  
(d) BUPERSINST 1730.11A

1. OS2 Mohammad Shoyeb has submitted a request for a waiver of policy to accommodate a religious practice in accordance with reference (a) through (d). Per DCNO (N1), I interviewed the member on 22 June 2020. I explained that this interview would not be confidential communication as defined by reference (b) and informed the member that referral for confidential chaplain support was available.
2. Nature of the request. OS2 Shoyeb requests a waiver to the uniform grooming policy, specifically regarding the growth of facial hair, because of his Islamic faith.
3. Basis. Some Islamic Hadith (the recorded words and teachings of the Prophet Muhammad, serving as the second primary source of Islamic teachings after the Qu'ran) state that men without beards cannot head a Muslim community or lead prayers because beards serve as symbols of authority in the Middle East. Other Hadith teachings, as well as numerous Islamic traditions, encourage men to not cut their beards because they distinguish men from women and Muslims from non-Muslims.
  - a. It is the interpretation of OS2 Shoyeb that these teaching do explicitly necessitate men of the Islamic faith to wear a beard. It is my professional and objective opinion after interviewing OS2 Shoyeb that wearing a beard is of religious importance to him.
  - b. OS2 Shoyeb's religion as listed in his NAVPERS 1070/602 (Page 2) is Islam.
4. Alternate Means. There are no alternative means of meeting this request other than an exception to policy.
5. Sincerity. I have determined from my interview with OS2 Shoyeb his claim of faith is sincere. OS2 Shoyeb was raised in a Muslim family, practicing the tenants of the Islamic faith from the beginning of his life. During both his early childhood in India, and his young adult years in New York City, the service member and his family were participating members of the local mosque. Since joining the U.S. Navy and being stationed onboard CHANCELLORSVILLE in Yokosuka, Japan, OS2 Shoyeb has found a Mosque via a

Subj: REQUEST FOR AN EXCEPTION TO POLICY TO ACCOMMODATE A PRACTICE  
BASED ON RELIGIOUS BELIEF ICO OS2 MOHAMMAD SHOYEB

subscription to a YouTube Channel and listens to the Qu'ran daily as well as prays from his residence, because he was unable to find a Mosque or lay led Islamic community of the same form and style as his own within a reasonable distance of base to regularly attend. Additionally, he was deployed for much of the past year. He has a copy of the Qu'ran. He does not desire to serve as a Muslim Lay Leader while aboard the ship at this time, but is considering it for the future. OS2 Shoyeb genuinely strives to adhere to the tenants of his faith such as eating halal, fasting during Ramadan, financially supporting the needy and performing his five daily prayers. He has produced a letter of verification or endorsement from a past Imam at a Mosque espousing his participation in the Islamic faith.

6. My contact information is 315-243-0045 or hickmanj@cg62.navy.mil.



J. W. HICKMAN

Copy to:  
OS2 Mohammad Shoyeb  
Admin

# **EXHIBIT M**

17 Sep 2020

From: OS2 Shoyeb, Mohammed, USN  
To: Chief of Naval Operations  
Via: Commanding Officer, USS CHANCELLORSVILLE

Subj: APPEAL OF DISAPPROVAL OF RELIGIOUS ACCOMMODATION THROUGH  
WAIVER OF GROOMING STANDARDS FOR FACIAL HAIR

Ref: (a) DoD Instruction 1300.17 of 1 September 2020  
(b) SECNAVINST 1730.8B  
(c) BUPERSINST 1730.11A  
(d) N1/114102 of 13 July 2020

Encl: (1) Letter of Verification or Endorsement from Imam Mohammed Hashem  
(2) Graphic depicting beard growth and being rolled and tied at two inches  
(3) Military.Com Article, *Sailor Gets OK to Grow 4-Inch Beard, Pushes Navy to Grant Career-Length Waive*, By Gina Harkins, 28 July 2020.

1. Pursuant to references (a) through (c), I hereby appeal the disapproval of religious accommodation reference (d). New information from enclosure (3) has updated my request from Navy policy NAVPERS 15665I, Chapter-2, Section-2, 2201.2 to grow a beard four inches in length from the bottom of my chin with groomed and neat edges due to my sincerely held religious beliefs, to be groomed in accordance with reference (c) to keep it appearing no longer than 2 inches in length from the bottom of my chin.

2. My request is based on my religious belief a Muslim man, when genetically able to, must grow a fist length as a sign of his devotion to God. Evidence for this can be found throughout Islamic texts and in accordance with the major schools Islamic jurisprudence.

3. I certify that I understand that any approved or partially approved waiver may not be appropriate for future duty to which I may be assigned, including operational, non-operational or training command(s), and may be suspended or withdrawn in accordance with reference (c).

M. S. Shoyeb

Enclosure (1)

# **EXHIBIT N**





DEPARTMENT OF THE NAVY  
CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N00/100011  
14 Dec 20

From: Chief of Naval Operations  
To: OS2 Mohammad Shoyeb, USN  
Via: Commanding Officer, USS CHANCELLORSVILLE (CG 62)

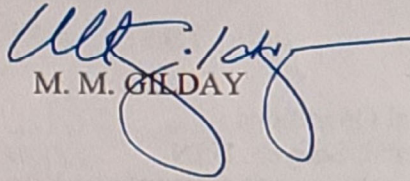
Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR WEAR OF A BEARD ICO  
OS2 MOHAMMAD SHOYEB, USN

Ref: (a) DCNO (N1) ltr 1730 Ser N1/114102 of 13 Jul 20  
(b) DoD Instruction 1300.17 of 1 Sep 20  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A  
(f) NAVPERS 15565I  
(g) COMNAVSAFECEN ltr 5100 Ser/013 of 22 Oct 18  
(h) DoD Instruction 1332.45 of 30 Jul 2018  
(i) OPNAVINST 1300.20  
(j) OPNAVINST 5100.19F

1. Your appeal of reference (a) is disapproved. I am affirming the decision in reference (a) due to the Navy's compelling Government interest in mission accomplishment including safety.
2. I considered your original request, your appeal, and the endorsements to your correspondence. References (b) through (e) designate me as the final appeal authority for requests for religious accommodation. You must adhere to the grooming standards set forth in reference (f).
3. As explained in reference (g), facial hair interferes with the proper seal of all current Navy breathing apparatuses and significantly increases risks to both an individual Sailor participating in damage control efforts and to other Sailors who may be required to render aid to a Sailor with an ineffective seal during damage control activities. Therefore, your accommodation cannot be supported when it is foreseeable that you may be required to don a breathing apparatus at a moment's notice, which includes when underway or as a member of an in-port duty section and when attending firefighting training. While underway or on duty in-port, service in the Navy presents challenges and hazards different from the rest of society and at times requires you to put your ship and your shipmates ahead of yourself. As a Service Chief, I am responsible for the readiness and safety of all Sailors per references (g) through (i), and this obligation requires me to disapprove your request subject to a change in duty assignment.



4. The Navy welcomes people of all faiths and no faith to join our ranks in patriotic service.  
You have my sincere best wishes for your continued success in your Navy career.

  
M. M. GILDAY

Copy to:  
ASN (M&RA)  
OPNAV (N1, N131, N097)



# **EXHIBIT O**



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/114239  
21 Dec 20

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: EMN3 Edmund D. DiLiscia, USN  
Via: Commanding Officer, USS THEODORE ROOSEVELT (CVN 71)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF  
GROOMING STANDARDS FOR FACIAL HAIR

Ref: (a) NAVPERS 15565I  
(b) DoD Instruction 1300.17 of 1 Sep 20  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A  
(f) 42 U.S.C. §2000bb-1  
(g) United States Attorney General memo of 6 Oct 17  
(h) Your ltr of 8 Sep 20  
(i) COMNAVSAFECEN NORFOLK VA 261941Z Nov 18 (ALSAFE 18/008)

1. In line with references (a) through (i), your request to waive the requirements in article 2201.2 of reference (a) for a beard is disapproved. I am disapproving your wear of a beard due to the Navy's compelling Government interest in mission accomplishment including safety.

2. In line with references (b) through (e), I am designated as the approval authority for requests for religious accommodation.

3. Reference (f), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion or good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (g) emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF GROOMING STANDARDS FOR FACIAL HAIR

- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there is alternative means available to meet the requested accommodation
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (h), including the endorsements from your chain of command and the local chaplain, and the guidance of Commander, Naval Safety Center in reference (i).

a. With regard to your request to wear a beard onboard a naval vessel in port and underway, reference (i) reported that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators. Damage control (DC), both in port and underway, is the responsibility of each crew member. Your participation in shipboard DC efforts is routine and foreseeable regardless of whether the ship is in port or at sea. Beards present a hazard to these efforts, as outlined above, and this hazard can extend to other personnel should they be required to come to your aid if you are injured during DC activities. Though the probability of a negative consequence from an ineffective seal is relatively low, the severity of that consequence may be high – to include injury. From an operational risk management perspective, this risk is untenable.

b. I find that granting your request would present an unacceptable risk to the Navy's compelling interest in mission accomplishment, including military readiness and safety on both the individual and unit levels. I further find that there are no less restrictive means available to accommodate your request.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. Deviations from Navy standards must be considered against how those deviations impact the Navy mission as a whole. If you subsequently experience a change in physical, operational or geographical environment you may again request for religious accommodation.



JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)

# **EXHIBIT P**

**RECORD OF COUNSELING**

DATE 15 APR 2021

**PRIVACY ACT STATEMENT**

The authority for requesting the following information is contained in 10USC 8012 and EO 9397. The data will be used to document quality force counseling actions not prescribed in other directives. When completed the form may or may not become a source document to support administrative separation. Data is also releasable to higher headquarters officials when used to support administrative separation or UCMJ action. Completion of the form by a counselor is mandatory; however, disclosure of information or facts by the counselee is voluntary. Failure to disclose information or facts may not be in counselee's best interest in the event administrative, disciplinary or separation action is subsequently deemed warranted by the counselee's commander.

Name (Last, First Middle Initial)

Grade

SSN

Diliscia, Edmund

EMN

DIVISION/WORK CENTER/DUTY SECTION  
RENAME/GRADE OF COUNSELOR  
LCDR Taylor**REASON FOR COUNSELING**☐ MID MARKING PERIOD APPRAISAL☐ PERFORMANCE☐ END OF MARKING PERIOD APPRAISAL☐ PRIVATE INDEBTEDNESS☐ PERSONAL BEHAVIOR☐ OJT PROGRESS☐ SUPPORT OF DEPENDENTS☒ RESPONSIBILITIES☐ SUBSTANDARD DRESS/APPEARANCE☒ OTHER - Specify Shaving Requirements**RESUME OF REASON WHICH CAUSED THE COUNSELING REQUIREMENT (Give details, facts, specific dates, names, sequence of events, etc)**

Petty Officer Diliscia has a request in to the ship's COC and the CNO not to shave for religious reasons. The request has not been approved by the COC or the CNO. I am advising Petty Diliscia that he has a direct order to shave by tomorrow morning (16ARP2021) at divisional quarters. Petty Officer Diliscia will be written up and will be subject to possible NJP if he chooses not to obey this lawful order.

**SOLUTION THAT YOU AND THE INDIVIDUAL DEVELOPED AND DISCUSSED TO OVERCOME THE PROBLEM(s) AND PRECLUDE FUTURE INVOLVEMENT. (Outline all solutions and indicate which one(s) individual freely elected)**

Shave prior to quarters on 16APR2021.

**OTHER AGENCIES INDIVIDUAL REFERRED:**

**COUNSELEE's COMMENTS:** Currently a legal organization representing the interests of religious military personnel, to include myself, is attempting to receive a Federal order to order the Navy not to force me to shave. This order is being attempted to reach my person by 0630 16 APR 21, upon which I will present it to all interested parties.

I wish to note that I joined the Navy as an observant Chassidic Jew and am now being ordered to violate my religious practice despite prior religious accommodation and minor to none impact on ship mission. As an observant Chassidic Jew this action is extremely humiliating and deeply harming to my psyche and soul. I regret that the Navy is not able to accomplish the purpose of religious accommodation as stated in Burgerlust 1730.11A or the 1st amendment.

**COUNSELEE's SIGNATURE**



**COUNSELOR's SIGNATURE**



LEON TAYLOR

**REMARKS/FOLLOW-UP ACTION(Outline all efforts indicating dates, names, progress, etc.)**



CHOC CHINEH  
WITNESS SIGNATURE

WITNESS SIGNATURE

DISCUSSED THAT THE PREVIOUSLY APPROVED RELIGIOUS ACCOMMODATION HAS BEEN OVERRIDDEN BY THE REQUEST SUBMITTED TO CNO VI THAT WAS DISAPPROVED, DATED FOR 25 DEC 2020, IN ACCORDANCE WITH NAVAL INSTRUCTION.

#### KEY COUNSELING POINTS

- \* Counseling is performed to solve a problem or to fulfill a need. Determine interview objective prior to meeting; review available records, and arrange office seating for best results.
- \* Give the individual the facts whether they are pleasant or unpleasant
- \* Be a good listener—Be fair.
- \* Refer individual to other base agencies for professional help. You don't have the answers to all the problems.
- \* Follow-up on referrals to base agencies to make certain that there is a continuity of action and that referrals are complete.
- \* Keep the individual's problems confidential.
- \* Help the person to grow in self-understanding.
- \* DO-NOT lose your self control. The results could be disastrous.
- \* DO-NOT make promises you can't keep.
- \* DO-NOT make snap decisions.
- \* DO-NOT forget to document the counseling and have the counselee sign the counseling sheet.

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

**EDMUND DI LISCIA, et al.,**

*Plaintiffs,*

v.

**LLOYD JAMES AUSTIN III, et al.,**  
*Defendants.*

Civil Action No. 21-1047

**DECLARATION OF ERIC S. BAXTER  
IN SUPPORT OF APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

**DECLARATION OF ERIC S. BAXTER IN SUPPORT  
OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION**

I, Eric S. Baxter, hereby state under penalty of perjury as follows:

1. I am counsel for EMN3 Edmund Di Liscia in the above-captioned matter. I have personal knowledge of everything testified to in this declaration.
2. Attached hereto as Exhibit A is a true and complete copy of an Instruction from the Department of Defense dated September 1, 2020, establishing official policy on religious liberty in the armed services.
3. Attached hereto as Exhibit B is a true and complete copy of an Instruction from the Chief of Personnel of the Department of the Navy dated March 16, 2020, concerning the standards and procedures governing the accommodation of religious practices.
4. Attached hereto as Exhibit C is a true and complete copy of a chart depicting religious accommodation requests submitted to CNO N1 from August 1, 2018 to April 7, 2020, and the outcome of each request.



5. Attached hereto as Exhibit D is a true and complete copy of a letter from Deputy Chief of Naval Operations John B. Nowell, Jr. denying EMN3 Edmund Di Liscia's request for religious accommodation through the waiver of grooming standards for facial hair.

6. Attached hereto as Exhibit E is a true and complete copy of an order from EMN3 Edmund Di Liscia's commanding officer, ordering that he shave by the morning of April 16, 2021, or face punishment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of April, 2021.

/s/Eric S. Baxter

Eric S. Baxter

# **EXHIBIT A**

## **(Declaration of Eric S. Baxter)**



## DoD INSTRUCTION 1300.17

### RELIGIOUS LIBERTY IN THE MILITARY SERVICES

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**Originating Component:** Office of the Under Secretary of Defense for Personnel and Readiness

**Effective:** September 1, 2020

**Releasability:** Cleared for public release. Available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

**Reissues and Cancels:** DoD Instruction 1300.17, "Accommodation of Religious Practices Within the Military Services," February 10, 2009, as amended

**Incorporates and Cancels:** Assistant Secretary of Defense for Force Management Policy Memorandum, "Sacramental Use of Peyote by Native American Service Members," April 25, 1997

**Approved by:** Matthew P. Donovan, Under Secretary of Defense for Personnel and Readiness

---

**Purpose:** In accordance with the authority in DoD Directive 5124.02, this issuance:

- Establishes DoD policy in furtherance of the Free Exercise Clause of the First Amendment to the Constitution of the United States, recognizing that Service members have the right to observe the tenets of their religion, or to observe no religion at all.
- Establishes policy, assigns responsibilities, and provides procedures for the accommodation of religious practices of Service members.
- Establishes DoD policy on the accommodation of individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs), which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety.
- Establishes DoD policy providing that an expression of sincerely held beliefs (conscience, moral principles, or religious beliefs) may not, in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.
- Implements requirements in Section 2000bb-1 of Title 42, United States Code (U.S.C), also known as "The Religious Freedom Restoration Act" (RFRA), and other laws applicable to the accommodation

*DoDI 1300.17, September 1, 2020*

of religious practices for DoD to provide, in accordance with the RFRA, that DoD Components will normally accommodate practices of a Service member based on a sincerely held religious belief.

- Requires DoD Components to oversee the development and provision of education and training on the policies and procedures pertaining to the accommodation of religious practices of Service members to commanders, judge advocates, chaplains, recruiters, and other personnel as deemed appropriate by the Military Department or Military Service concerned.

*DoDI 1300.17, September 1, 2020*

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*DoDI 1300.17, September 1, 2020*

## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.**

a. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. The definitions, policies, procedures, and assignments of responsibility prescribed in this issuance apply only to the accommodation of religious practices of Service members and in no other context.

### **1.2. POLICY.**

a. Pursuant to the Free Exercise Clause of the First Amendment to the United States Constitution, Service members have the right to observe the tenets of their religion or to observe no religion at all, as provided in this issuance.

b. In accordance with Section 533(a)(1) of Public Law 112-239, as amended, the DoD Components will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety. A Service member’s expression of such beliefs may not, in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

c. In accordance with Section 533(b) of Public Law 112-239, as implemented by DoD Instruction 1304.28, no Service member may require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain, nor may any Service member discriminate or take any adverse personnel action on the basis of the refusal by the chaplain to comply with such requirements. This does not preclude disciplinary or administrative action for conduct by a Service member that is proscribed by Chapter 47 of Title 10, U.S.C. (the Uniform Code of Military Justice), including actions and speech that threaten good order and discipline.

d. Requests for religious accommodation will be analyzed under the standard in Paragraph 1.2.e. of this issuance using the process in Section 3 of this issuance. Accommodation of practices reflecting a Service member’s sincerely held conscience or moral principles will be governed by the policies of the DoD Component concerned.

e. DoD Components have a compelling governmental interest in mission accomplishment at the individual, unit, and organizational levels, including such necessary elements of mission accomplishment as military readiness, unit cohesion, good order and discipline, and health and safety. In accordance with RFRA and the guidance in this issuance, DoD Components will normally accommodate practices of a Service member based on sincerely held religious belief.

*DoDI 1300.17, September 1, 2020*

Accommodation includes excusing a Service member from an otherwise applicable military policy, practice, or duty. In accordance with RFRA, if such a military policy, practice or duty substantially burdens a Service member's exercise of religion, accommodation can only be denied if:

- (1) The military policy, practice, or duty is in furtherance of a compelling governmental interest.
- (2) It is the least restrictive means of furthering that compelling governmental interest.

In applying the standard in Paragraphs 1.2.e.(1) and 1.2.e.(2), the burden of proof is placed upon the DoD Component, not the individual requesting the exemption.

f. Requests for the accommodation of religious practices will be reviewed and acted on as soon as possible, in accordance with this issuance and any DoD Component implementing guidance.

g. In accordance with provisions in Paragraphs 1.2.e and 1.2.f of this issuance, immediate commanders may resolve requests for accommodation of religious practices that do not require a waiver of DoD Component policies regarding the wearing of military uniforms, the wearing of religious apparel, or Service grooming, appearance, or body art standards.



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## **SECTION 2: RESPONSIBILITIES**

### **2.1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS (ASD(M&RA)).**

Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, the ASD(M&RA):

- a. Is responsible for the administration of this issuance and for oversight of the implementation of the policies and procedures it establishes. Issues guidance to the DoD Components, as necessary, concerning the accommodation of religious practices and the implementation of the policies in this issuance.
- b. Acts on Military Department requests regarding limitations on the use, possession, or transportation of peyote cactus for religious practices, in addition to those already listed in Paragraph 3.4. of this issuance, in accordance with Paragraph 3.4.a.(4) of this issuance.

### **2.2. DOD COMPONENT HEADS OTHER THAN THE SECRETARIES OF THE MILITARY DEPARTMENTS.**

The DoD Component heads other than the Secretaries of the Military Departments:

- a. Ensure that requests for the accommodation of religious practices are processed or forwarded for review and action in accordance with this issuance and the implementing regulations and policies of the Military Department and Military Service to which the Service member belongs.
- b. Establish component regulations and policies to address the Service member's sincerely held conscience or moral principles in accordance with Paragraph 1.2.d. of this issuance.

### **2.3. SECRETARIES OF THE MILITARY DEPARTMENTS.**

The Secretaries of the Military Departments:

- a. Adhere to all provisions of this issuance.
- b. Administer their respective programs and update existing regulations and policies, or develop and distribute new guidance, as appropriate, to implement the provisions of this issuance. Implementing issuances will, consistent with this issuance:
  - (1) Establish controls to ensure compliance with established procedures and processing timelines applicable to accommodation requests.
  - (2) Designate appropriate agency officials to review and act on the following:

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(a) Requests for the accommodation of religious practices.

(b) Requests for an exemption to an otherwise applicable Military Department or Military Service policy in support of the requesting Service member's exercise of religion or furtherance of religious practices, including, but not limited to, requests pertaining to:

1. Religious apparel, including religious body art.

2. Grooming.

3. Medical practices, including DNA (deoxyribonucleic acid) specimen sampling and immunizations.

(c) Requests from a Service member's command to rescind a previously granted accommodation.

(3) Ensure, to the greatest extent practical, the consistent application of the policies and procedures prescribed by this issuance to similarly situated requests for the accommodation of religious practices throughout their respective Military Departments.

(4) Develop and implement a standards-based approach to the review of, and final action on, requests for the accommodation of religious practices to promote predictable outcomes for the same or similar requests. Such standards will be evidence-based and address commonly requested accommodations. The Military Departments and Military Services will issue or update applicable regulations and policies to authorize officers or officials at the lowest appropriate level of command or supervision to review and take final action on requests for accommodations covered by such standards, in accordance with this issuance. The absence of a standards-based approach to a requested accommodation will not, standing alone, serve as the basis for denying the request. Such a standards-based approach may include:

(a) A list of accommodations of religious practices that may, in ordinary circumstances, be granted to a member serving in a particular military occupational specialty, rating, specialty code, or duty assignment.

(b) Specific guidance on factors to be considered in making individual determinations with regard to a commonly requested or other accommodation of religious practices. Such factors may include those enumerated in Paragraph 3.2.d. of this issuance.

(c). Provide information about the policies and procedures governing the accommodation of religious practices and religious expression to prospective Service members, in accordance with Paragraph 3.2.i. of this issuance.

(d) Request, as appropriate, approval from the ASD(M&RA) regarding limitations on the use, possession, or transportation of peyote cactus for religious practices, in addition to those already listed in Paragraph 3.4. of this issuance, in accordance with Paragraph 3.4.a.(4) of this issuance.

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(5) Oversee the development and provision of education and training on the policies and procedures pertaining to the accommodation of religious practices of Service members to:

- (a) Commanders.
- (b) Judge advocates.
- (c) Chaplains.
- (d) Recruiters.
- (e) Other personnel as deemed appropriate by the Military Department or Military Service concerned.

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## **SECTION 3: PROCESSING ACCOMMODATION REQUESTS**

### **3.1. ACCOMMODATION REQUESTS.**

a. Service members submitting a request for accommodation will continue to comply with the policy, practice, or duty from which an accommodation has been requested unless and until informed that the request has been approved by the appropriate authority. Exceptions to this requirement may only be granted in exceptional circumstances, in accordance with the implementing regulations and policies promulgated by the Military Department and Military Service concerned.

b. Requests for accommodation submitted by a cadet or midshipman enrolled at a Military Service Academy or in a Senior Reserve Officers' Training Corps program will be addressed in accordance with this issuance and the implementing regulations and policies promulgated by the Military Department and Military Service concerned.

c. Nothing in this issuance precludes disciplinary or administrative action for conduct by a Service member that is prohibited by Chapter 47 of Title 10, U.S.C., also known as "The Uniform Code of Military Justice."

### **3.2. REVIEW OF AND ACTION ON REQUESTS FOR THE ACCOMMODATION OF RELIGIOUS PRACTICES.**

#### **a. Adjudication Authority.**

Requests for the accommodation of religious practices that can be approved consistent with Military Department and Military Service regulations or policies, (e.g., current uniform and grooming standards) will be reviewed and acted on at the lowest appropriate level of command or supervision, as provided in the regulations and policies of the Military Department and Military Service concerned and in accordance with this issuance. Requests for the accommodation of religious practices that require the waiver of otherwise applicable Military Department and Military Service regulations and policies will be forwarded to the Secretary of the Military Department concerned. Records concerning requests for accommodations will be maintained in accordance with DoD Instruction 5400.11.

#### **b. Delegation.**

The Secretary of a Military Department may delegate, in writing, the authority to act on requests for the accommodation of religious practices that require the waiver of otherwise applicable Military Department and Military Service regulations and policies only as described in Paragraph 3.2.b.(1) through 3.2.b.(3).

##### **(1) Department of the Army.**

Delegation may be no lower than the Deputy Chief of Staff, G-1.

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## (2) Department of the Navy.

Delegation may be no lower than the Chief of Naval Personnel, or the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs, as appropriate.

## (3) Department of the Air Force.

Delegation may be no lower than the Air Force Deputy Chief of Staff for Manpower, Personnel, and Services, or the Deputy Chief of Space Operations for Personnel and Logistics Services, as appropriate.

**c. Review and Action Timelines.**

Requests for the accommodation of religious practices will be reviewed and acted on as soon as practicable, and no later than the timelines provided in Table 1. Exceptions to this review and action timeline may be granted only in exceptional circumstances, as determined by the regulations and policies of the Military Department and Military Service concerned.

**Table 1. Review and Action Timeline for Processing Accommodation Requests**

Action to be Taken	For Requests Within the United States	For Requests Outside the United States or for Reserve Component Service Members Not on Active Duty
Action on Requests for Religious Accommodation that Can Be Approved Consistent with Existing Military Department or Military Service Regulations or Policies		
Review and final action completed and written notification to requesting Service member provided	No later than 30 business days from Service member submission	No later than 60 days from Service member submission
Action on Requests for Religious Accommodation that Require the Waiver of Otherwise Applicable Military Department or Military Service Regulations or Policies		
Written request for accommodation received by the Office of the Secretary concerned <sup>1</sup>	No later than 30 days from Service member submission to commander or supervisor	No later than 60 days from Service member submission to commander or supervisor
Review and final action completed and written notification to requesting Service member provided	No later than 60 days from receipt by the Office of the Secretary concerned. <sup>1</sup> Must be provided to the Service member within 5 days of final action	
1. Unless authority is delegated to a subordinate official in accordance with Paragraph 3.2.b of this issuance.		

**d. Factors for Consideration.**

Officials charged with making recommendations or taking final action on a Service member's request for the accommodation of religious practices will review each request

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individually, considering the full range of facts and circumstances relevant to the specific request. Factors to consider include:

(1) The compelling governmental interest in mission accomplishment, including military readiness, unit cohesion, good order and discipline, or health and safety.

(2) Alternate means available to address the requested accommodation. The means that is least restrictive to the requestor's religious practice and that does not impede a compelling governmental interest will be determinative.

**e. Notice of Resolution.**

A Service member will be promptly informed of the approval or disapproval of his or her request for accommodation in accordance with Table 1.

(1) A Service member's request for the accommodation of religious practices may be granted in whole or in part. The Service member will be informed in writing of any conditions or limitations placed on the grant that are necessary to meet the DoD's compelling governmental interest in mission accomplishment, such as, for example, conditions related to:

(a) Deployment;

(b) Health and safety issues relative to particular assignments or types of assignments; or

(c) Training events or ceremonial occasions that require a Service member to conform to military standards to protect health and safety, or maintain good order and discipline.

(2) A Service member whose request is granted in part will be informed, in writing, of the specific elements of that approval.

**f. Administrative Appeal Process.**

The regulations and policies of a Military Department or Military Service implementing this issuance will provide a process for Service members to appeal the denial of a request for accommodation of religious practices, or any condition on such accommodation. Appeals will be sent to an official in the chain of command or chain of supervision above the officer or official who took final action on the request. No further administrative appeal will be available for a decision made by the Secretary of the Military Department.

**g. Accommodation Duration and Proposals to Rescind a Granted Accommodation.**

An approved request for accommodation will remain in effect during follow-on duties, assignments, or locations, and for the duration of a Service member's military career, including after promotions, reenlistment or commissioning, unless and until rescinded in accordance with the requirements of this issuance.

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(1) In accordance with this issuance and the implementing policies and regulations of the Military Department and Military Service concerned, an approved accommodation may be subject to review and rescission, in whole or in part, at any time, based upon a determination that the circumstances under which the grant of accommodation was approved have changed (e.g., deployment, new duties, or other material change in circumstances). The Military Department or Military Service concerned—not the individual Service member—bears the burden of initiating a proposal to review and rescind an accommodation previously granted.

(2) When a Military Department or Military Service initiates a proposal to review and rescind an accommodation previously granted, an appropriate officer or official will forward a written summary of the nature of the materially changed circumstances that require such review and repeal to the Service member concerned for comment.

(a) The Service member will be:

1. Allotted no fewer than 10 days to review and comment on the proposed rescission of the accommodation.

2. Afforded the opportunity to review and comment on any endorsements of this proposal from the chain of command.

3. Afforded, subject to security classification requirements, the opportunity to review and comment on any documents or attachments to the proposal or subsequent endorsements.

(b) Any comments submitted by the Service member will be forwarded for consideration by the appropriate official authorized to act on the matter, in accordance with this issuance.

(3) A proposal to review and rescind a previously approved accommodation must be acted on at a level of authority no lower than that at which the accommodation was granted, in accordance with this issuance and the regulations and policies of the Military Department and Military Service concerned implementing this issuance. The standard for repealing a previously granted accommodation, in whole or in part, is the same as the standard for denying a request for the accommodation of religious practices in the first place, and the same factors must be considered, as appropriate.

#### **h. Accommodation Modification or Suspense Under Exigent Circumstances.**

Under exigent circumstances and in furtherance of a compelling governmental interest due to operational necessity, when time is of the essence and no less restrictive means of religious accommodation are available, a commander at a level determined by the Military Department or Military Service concerned may temporarily modify or suspend accommodations granted, upon notice to the Service member concerned and without benefit of appeal. The level of this commander must be no lower than the officer exercising Summary Court-Martial Convening Authority over a Service member who has previously been granted an accommodation of religious practices.



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(1) To the extent practicable, the commander concerned, if not a general officer or flag officer, or member of the senior executive service, will notify, in advance, the first general officer or flag officer, or member of the senior executive service, as appropriate, in the affected Service member's chain of command or supervision, of the commander's intent to modify or suspend a previously granted accommodation. When such advance notice is not practicable, the commander concerned will notify the appropriate general officer or flag officer, or member of the senior executive service, as appropriate, as soon as circumstances permit.

(2) The Service member concerned may be required to immediately comply with the modification or suspension of an accommodation, if circumstances so warrant.

(3) The modification or suspension of the accommodation will apply for only the minimum period required by the circumstances.

#### **i. Pre-accession Procedures.**

(1) Applicants to the Military Services will be informed of the policies and procedures for the accommodation of religious practices in accordance with this issuance, and as implemented by the Military Department or Military Service concerned. These applicants include individuals who apply for:

- (a) A commissioning program;
- (b) A warrant officer program;
- (c) Enlistment or entry in the Military Services;
- (d) Reenlistment (or reentry) in the Military Services;
- (e) Enrollment in a Military Service Academy or a Senior Reserve Officers' Training Corps program (including Military Service Academy preparatory schools); or
- (f) The award of a scholarship or other benefit that requires a commitment to serve as a Service member.

(2) The Military Departments and Military Services will develop processes for the review and action on pre-accession requests for the accommodation of religious practices and establish those processes in appropriate regulations and policies. Such processes must provide applicants the opportunity to submit a request for accommodation of religious practices, and receive a final decision on that request, before participation in the commissioning program, warrant officer program, enlistment, reenlistment, enrollment in a Military Service Academy or a Senior Reserve Officers' Training Corps program, or award of such scholarship or benefit. The review and processing of such requests must be consistent with this issuance.

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### **3.3. REQUIRED PRINCIPLES AND RULES FOR MILITARY REGULATIONS AND POLICIES.**

DoD Component regulations and policies must include the following principles and rules:

a. Worship practices, holy days, and Sabbath or similar religious observance requests will be accommodated to the extent possible, consistent with mission accomplishment and will normally not require a religious accommodation request.

b. A Service member's religious practices will be considered in acting on a request for separate rations. Accommodation requests for separate rations may be adjudicated at the command level.

c. A Service member's religious practices will be considered in acting on a request for exemption from required medical practices. Action on a request for medical exemption must be consistent with mission accomplishment, including consideration of potential medical risks to other persons comprising the unit or organization.

d. The following rules govern the wear of items of religious apparel:

(1) In accordance with Section 774 of Title 10, U.S.C., Service members may wear items of religious apparel while in uniform, except in circumstances in which wearing the item would interfere with the performance of the member's military duties or the item of apparel is not neat and conservative. The Military Departments and Military Services will prescribe regulations governing the wear of such items. Factors that may be considered in determining whether an item of religious apparel interferes with military duties include, but are not limited to, whether the item:

(a) Impairs the safe and effective operation of weapons, military equipment, or machinery.

(b) Poses a health or safety hazard to the Service member wearing the religious apparel or to others.

(c) Interferes with the wear or proper function of special or protective clothing or equipment (e.g., helmets, protective masks, wet suits).

(d) Otherwise impairs mission accomplishment.

(2) Religious items or articles not visible or apparent may be worn with the uniform, provided they do not interfere with the performance of the Service member's military duties, as described in Paragraph 3.3.d.(1) of this issuance, and do not interfere with the proper wear of any authorized article of the uniform.

(3) Under regulations and policies of the Military Department and Military Service concerned, religious headgear may be worn with the uniform whenever a military cap, hat, or other headgear is not prescribed. Religious headgear may also be worn underneath prescribed

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military headgear, provided it does not interfere with the proper wear, function, or appearance of the headgear, as described in Paragraph 3.2.d.(1).

(4) Notwithstanding any other provision in this issuance, while conducting worship services and during the performance of rites and rituals associated with his or her religious faith, a chaplain may wear with the military uniform any required religious apparel or accouterments associated with the traditions or practices of his or her religious faith.

(5) In evaluating requests for the accommodation of religious practices related to body art, these factors will be among those considered:

(a) Whether the body art is neat and conservative.

(b) The location of the body art, including whether the body art is visible when the Service member is wearing the military uniform.

### **3.4. ADDITIONAL GUIDANCE REGARDING THE USE OF PEYOTE.**

a. There are additional rules governing the use of peyote in religious practices. In accordance with Section 1996a of Title 42, U.S.C. (also known as the “American Indian Religious Freedom Act Amendments of 1994”), Service members who are members of Indian tribes as defined in that statute may use, possess, or transport the peyote cactus as a religious sacrament in connection with the bona fide practice of a traditional Indian religion, and will not be penalized or discriminated against on the basis of such use, possession, or transportation. Reasonable limitations on the use, possession, transportation, or distribution of peyote may be imposed to promote military readiness, promote safety, or comply with international law or laws of other countries. The Secretaries of the Military Departments will prescribe regulations authorizing the use, possession, or transportation of peyote cactus and imposing limitations on such use, possession, or transportation including, but not limited to, the following:

(1) Peyote will not be used on duty or within 24 hours before scheduled military duty.

(2) Peyote may be possessed in amulet form, not for ingestion, and such an amulet may be worn as an item of religious apparel subject to Military Service uniform regulations. Otherwise, peyote will not be used, possessed, distributed, or introduced aboard military vehicles, vessels, or aircraft or, except when permitted by the installation commander, on military installations.

(3) A Service member who has used peyote will promptly notify their commander upon return to duty after such use.

(a) The Secretary of the Military Department concerned may require pre-use notification by Service members performing designated duties when it is in the interest of military readiness or safety to notify commanders of a Service member’s intent to use peyote.

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(b) Upon notification of use or intended use of peyote, the Service member will provide documentation verifying membership in an Indian tribe as defined by Section 1996a(c)(2) of Title 42, U.S.C.

(4) The establishment by the Secretary of a Military Department of limitations on the use, possession, or transportation of peyote cactus, in addition to those already listed in Paragraph 3.4. of this issuance, must be consistent with RFRA, the Free Exercise Clause of the First Amendment to the Constitution of the United States, any other applicable statutes such as the American Indian Religious Freedom Act Amendments of 1994, and this issuance. Any such additional limitations must be approved, in advance, by the ASD(M&RA). Before approving any additional limitation proposed by the Secretary of a Military Department, the ASD(M&RA) will consult with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice, pursuant to Section 1996a(b)(7) of Title 42, U.S.C.

b. Requests by Service members for the accommodation of a religious practice involving the use, possession, or transportation of any substance other than peyote, the use, possession, transportation, manufacturing, or distribution of which is prohibited by law or policy, will be forwarded to the Secretary of the Military Department concerned for resolution. Before taking final action on any such accommodation request, the Secretary of the Military Department concerned will notify the ASD(M&RA).

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## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
RFRA	Religious Freedom Restoration Act
U.S.C.	United States Code

### G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
<b>compelling government interest</b>	In the DoD, a military requirement that is essential to accomplishment of the military mission. In accordance with Paragraph 1.2.e. of this issuance, DoD Components have a compelling governmental interest in mission accomplishment at the individual, unit, and organizational levels, including such necessary elements of mission accomplishment as military readiness, unit cohesion, good order and discipline, and health and safety.
<b>neat and conservative</b>	<p>In the context of the wear of a military uniform, items of religious apparel that:</p> <p style="padding-left: 40px;">Are discreet, tidy, and not dissonant or showy in style, size, design, brightness, or color.</p> <p style="padding-left: 40px;">Do not replace or interfere with the proper wear of any authorized article of the uniform.</p> <p style="padding-left: 40px;">Are not temporarily or permanently affixed or appended to any authorized article of the uniform.</p>
<b>pre-accession</b>	The period of time before a prospective Service member's participation in a commissioning program, warrant officer program, enlistment (or entry), reenlistment (or reentry), or enrollment in a Military Service Academy or a Senior Reserve Officers' Training Corps program.

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<b>TERM</b>	<b>DEFINITION</b>
<b>religious apparel</b>	Articles of clothing, jewelry or other such accoutrements the wearing of which is part of the observance of the religious faith practiced by the Service member.
<b>religious body art</b>	Temporary or permanent tattoos, piercings through the skin or body parts, or other modifications to the body that are a part of a Service member's religious practice.
<b>religious practice</b>	An action, behavior, or course of conduct constituting individual expressions of religious beliefs, whether or not compelled by, or central to, the religion concerned.
<b>substantial burden</b>	<p>A governmental act is a substantial burden to a Service member's exercise of religion if it:</p> <p>Requires participation in an activity prohibited by a sincerely held religious belief;</p> <p>Prevents participation in conduct motivated by a sincerely held religious belief; or</p> <p>Places substantial pressure on a Service member to engage in conduct contrary to a sincerely held religious belief.</p>

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## REFERENCES

DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008  
DoD Instruction 1304.28, “Guidance for the Appointment of Chaplains for the Military Departments,” June 11, 2004, as amended  
DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019  
Section 533 of Public Law 112-239, the “National Defense Authorization Act for Fiscal Year 2013,” December 18, 2012, as amended  
United States Code, Title 10  
United States Code, Title 42  
United States Constitution



# **EXHIBIT B**

## **(Declaration of Eric S. Baxter)**



DEPARTMENT OF THE NAVY  
CHIEF OF NAVAL PERSONNEL  
701 SOUTH COURTHOUSE ROAD  
ARLINGTON VA 22204-2472

BUPERSINST 1730.11A  
N13  
16 Mar 2020

BUPERS INSTRUCTION 1730.11A

From: Chief of Naval Personnel

Subj: STANDARDS AND PROCEDURES GOVERNING THE ACCOMMODATION OF  
RELIGIOUS PRACTICES

Ref: (a) DoD Instruction 1300.17 of 10 February 2009  
(b) SECNAVINST 1730.8B  
(c) NAVPERS 15665I  
(d) BUMEDINST 6230.15B

Encl: (1) Sample Request for Waiver of Policy to Accommodate a Religious Practice  
(Template)  
(2) Chaplain Interview Checklist (Template)  
(3) Chaplain Memorandum for the Record (Template)  
(4) Religious Accommodation Approval or Endorsement (Template)

1. Purpose. To provide policy, guidance, procedures and responsibilities for the accommodation of practices in support of sincerely held religious beliefs for Sailors and prospective accessions, per references (a) and (b). Reference (c) provides the Navy's manner of wear policy for the most commonly requested waivers of uniform and grooming standards in support of religious practices, as delineated in paragraph 5.

a. This revision updates policy, guidance and procedures for the accommodation of practices in support of sincerely held religious beliefs.

b. This is a complete revision and should be reviewed in its entirety.

2. Cancellation. BUPERSINST 1730.11.

3. Scope and Applicability

a. This instruction applies to all active and reserve members of the Navy, including applicants for entry into the Navy and Navy Reserve, as well as midshipmen at the U.S. Naval Academy (USNA) and in the Naval Reserve Officers Training Corps (NROTC), and officers and officer candidates in Navy officer accession programs. Nothing in this instruction precludes disciplinary or administrative action for conduct that is proscribed by the Uniform Code of Military Justice or supporting policies.

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b. **Conscientious Objectors.** Conscientious objections are not covered under this instruction. See DoD Instruction 1300.06 (Conscientious Objector) of 12 July 2017.

c. **Peyote Use.** Peyote use is not covered under this instruction. See Assistant Secretary of Defense for Force Management Policy Memorandum of 25 April 1997, *Sacramental Use of Peyote by Native American Service Members*.

3. **Background.** This policy complies with references (a) and (b) and supports the Navy's culture of diversity, tolerance and inclusion. In line with section 2000bb-1 of Title 42, United States Code, requests for religious accommodation from a military policy, practice or duty that substantially burdens a Sailor's exercise of religion may be denied only when the military policy, practice or duty furthers a compelling government interest and is the least restrictive means available of furthering that compelling government interest. Religious liberty is more than freedom to worship. It includes the freedom to integrate one's religion into every aspect of one's life. When the policies or procedures of the Navy conflict with a Sailor's religious practices, the Navy works to support the Sailor's religious practices to the broadest extent possible within the bounds of military readiness, unit cohesion, good order, discipline, health and safety. Many religious practices such as (but not limited to) religious observances and dietary practices do not need a request for waiver of policy and can be accommodated at the command level.

#### 4. **Roles and Responsibilities**

a. **Sailors.** Sailors seeking accommodation of a religious practice that requires a waiver of Navy policy ("requestors") must submit a request in writing to their commander, consistent with enclosure (1). Prospective accessions seeking accommodation of a religious practice that requires a waiver of Navy policy ("requestors") should use the accession source chain of command, consistent with subparagraph 5b, enclosure (1) and Table 2.

(1) A requestor must comply with the applicable policy, practice, direction or duty from which he or she is requesting a religious accommodation until the request is adjudicated. Additionally, commanders and commanding officers ("commanders") may temporarily modify or suspend a religious accommodation, consistent with subparagraph 5g.

(2) A requestor with an approved religious accommodation must inform his or her chain of command of the approved accommodation upon checking in to a new command or changing duties. A requestor must retain a copy of the approved accommodation and be able to produce it within five working days.

b. **Chaplains.** Command chaplains are responsible for advising and assisting commands with religious accommodation policy execution. In line with SECNAVINST 1730.7E, chaplains, assisted by Religious Program Specialists, provide for and facilitate religious requirements of Sailors and authorized users and advise commanders on command religious program matters throughout the Department of the Navy (DON).

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(1) A Navy chaplain will conduct an administrative interview for each religious accommodation request that requires a waiver of policy. Local chaplains should be used if available. Chaplains may use any means available to ensure the interview takes place promptly, such as telephone or video conference. The chaplain should use enclosure (2) during the interview and must produce a memorandum for the record consistent with enclosure (3).

(2) The chaplain will inform the Sailor or prospective accession that the interview is for the purpose of preparing a memorandum for the record and advising the command, and that the content of the interview is not privileged or confidential as defined in SECNAVINST 1730.9A and the Manual for Courts-Martial Military Rule of Evidence 503.

c. Commanders and Commanding Officers (CO). Commanders must process requests according to the timelines, routing and criteria set forth in this instruction.

(1) When forwarding a request for adjudication or appeal, commanders will use enclosure (4).

(2) Commanders must obtain the advice of a judge advocate and a chaplain prior to acting on a request that involves a waiver of Navy policy.

(3) Commanders will include a religious needs assessment upon check-in to the command in line with OPNAVINST 1730.1E to include identification of Sailors who may need previously-approved religious accommodation waivers reviewed.

d. Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (CNO N1). CNO N1 is responsible for overseeing this religious accommodation policy and will review and act on religious accommodation requests that require waiver of Department of Navy (DON) policy and are routed to CNO N1 for approval as indicated in Tables 1 and 2.

5. Policy. In accordance with Article 0820 of United States Navy Regulations, 1990, commanders will provide maximum opportunity for the free exercise of religion by members of the naval service.

a. Standards-Based Approach. The Navy has a compelling governmental interest in mission accomplishment at the individual, unit and organizational levels, including such necessary elements of mission accomplishment as military readiness, unit cohesion, good order, discipline, health and safety. The military is a specialized community within the United States, governed by a discipline separate from the rest of society. All Navy personnel must expeditiously review and act on requests for religious accommodations. Many religious practices do not require an exception to Navy policy and can be accommodated at the command level. The term “religious practice” includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

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(1) Each request for religious accommodation must be reviewed on a case-by-case basis, giving consideration to the full range of facts and circumstances relevant to the specific request. Requests to accommodate religious practices should not be approved or denied simply because similar requests were approved or denied. The following factors should be considered:

- (a) applicable operational or regional policies,
- (b) importance of the military policy, practice or duty in terms of mission accomplishment, including military readiness, unit cohesion, good order, discipline, health, or safety,
- (c) importance of the practice to the requestor,
- (d) cumulative impact of repeated accommodations of a similar nature and
- (e) alternate means to fulfill the request.

(2) To comply with the intent of section 2000bb-1 of Title 42, U.S. Code, commanders and their staffs should remain objective in considering requests to accommodate religious practices. Commanders will not deny or recommend denial of a religious accommodation unless the denial or partial denial furthers a compelling governmental interest and is the least restrictive means of furthering that compelling government interest. It is essential that commanders articulate the factual basis underlying any compelling government interest and that they articulate why a recommended denial or partial denial is the least restrictive means available to the commander to protect the compelling government interest over the individual request. Factors to consider include (but are not limited to) whether approving the accommodation would:

- (a) pose a health or safety hazard (such as flammable materials or loose clothing that could become caught in a piece of equipment),
- (b) interfere with the wear or proper function of special or protective clothing or equipment (such as a respirator, protective helmet or communication gear) or
- (c) otherwise impair mission accomplishment, good order, discipline, morale or unit cohesion.

(3) Sometimes it is necessary for commanders to recommend an alternative manner by which the religious requirement may be met. For example, there may be options and resources not known to the member at the time of his or her request that might be known to the commander. Those alternatives should be discussed and offered to the member to determine if they might satisfy some or all of the member's religious requirement. Where appropriate, the chaplain memorandum may discuss alternative means available to address the requested accommodation.

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(4) Religious practices and corresponding approval authorities are listed in Table 1. Many religious practices, such as (but not limited to) religious observances and dietary practices do not need a request for waiver of policy and can be accommodated at the command level. Other religious accommodations may be approved by the first O-6 in the chain of command, whether the requestor's CO or Immediate Superior in Command (ISIC). Per reference (a), exceptions to Table 1 are not permitted without CNO N1 approval.

Type of Religious Practice	Authority
Religious observances per subparagraph 5d(1)	CO
Dietary practices per subparagraph 5d(2)	CO
Neat, conservative head covering in line with subparagraph 5d(4)(a), which requires waiver of uniform regulation provisions in reference (c)	Approvals authorized at O-6 CO/ISIC level. O-6 CO/ISIC send recommendation for <b>disapproval</b> directly to CNO N1
Unshorn hair on men in line with subparagraph 5d(4)(b), which requires waiver of uniform regulation provisions in reference (c)	O6 CO/ISIC send recommendation directly to CNO N1
Beard, which requires waiver of requirement for male Sailors to be clean shaven found in reference (c), in line with subparagraph 5d(4)(c)	O6 CO/ISIC send recommendation directly to CNO N1
Uniform, grooming or religious apparel waivers not authorized at the CO or O-6 CO/ISIC level in line with reference (c)	O-6 CO/ISIC send recommendation directly to CNO N1
Immunizations per subparagraph 5d(3)	O-6 CO/ISIC send recommendation directly to CNO N1
All other types of religious practices that require a waiver of Navy policy to support	O-6 CO/ISIC send recommendation directly to CNO N1

Table 1. Authorities and Religious Practices

Note 1: Pre-accession authority examples are listed below in subparagraph 5b.

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b. Accessions

(1) Navy accession sources, Navy Recruiting Command, Naval Service Training Command, USNA and U.S. Navy Bureau of Medicine and Surgery (BUMED), are the designated chains of command for pre-accession requests in line with Table 2. Accession source headquarters are responsible for ensuring active and reserve enlisted and officer accessions are informed of uniform and grooming standards and policies, as well as procedures for seeking religious accommodations. Accession source headquarters must document this opportunity in writing and ensure all accession requests for religious accommodation are adjudicated prior to entering service. The following language should be used to document the applicant understanding of the Navy's religious accommodation policy:

"I understand that Department of the Navy policy is to accommodate religious practices whenever possible, unless doing so would have an adverse impact on mission accomplishment, including military readiness, unit cohesion, good order, discipline or health and safety.

I understand accommodation of my religious practices cannot be guaranteed at all times. I understand that determination of military necessity rests entirely with my Navy chain of command, and that I will be expected to comply with the Navy's policy, practice or duty from which I am requesting accommodation unless and until approved by the designated authority.

I do NOT desire to request support for specific religious practices at this time

---

(Applicant Signature)

I DO desire to request support for the following religious practice(s):

---

(Type of Request)

---

(Applicant Signature)

Applicants requesting religious accommodation may not enlist or commission until they receive a final response in writing. Accession commands must immediately process the request in line with BUPERSINST 1730.11A (Standards and Procedures Governing the Accommodation of Religious Practices).

---

(Typed or Printed Name and Signature of Witnessing Recruiting Representative)"



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(2) Additionally, prospective accessions must be given the opportunity to route a religious accommodation request prior to departure for a Military Entrance Processing Station. Many pre-accession religious practices such as (but not limited to) religious observances and dietary practices do not need a request for waiver of policy and can be accommodated at the command level. Certain requests for religious accommodation may be approved by local commanders as listed in Table 2, below. Per reference (a), exceptions to this table are not permitted without CNO N1 approval.

Type of Religious Practice	Process	Notes
Religious observances	Route to RTC/OTCN CO for approval	RTC/OTCN CO send recommendation for disapproval directly to CNO N1
Dietary practices	Route to RTC/OTCN CO for approval	RTC/OTCN CO send recommendation for disapproval directly to CNO N1
Religious head covering during RTC/OTCN	RTC/OTCN CO may approve religious head covering during religious ceremonies/services only	If religious head covering during religious ceremonies/services only is not acceptable by applicant, then send to CNO N1
Unshorn hair on men in line with subparagraph 5d(4)(b), which requires waiver of uniform regulation provisions in reference (c)	RTC/OTCN CO send recommendation directly to CNO N1	
Any request for beards during RTC/OTCN	RTC/OTCN CO send recommendation directly to CNO N1	
Uniform, grooming or religious apparel accommodation that do not require waiver of DON policy	Route to RTC/OTCN CO for approval	Disapproval recommendations must be routed to CNO N1
Immunizations	RTC/OTCN CO may approve use of any available alternative vaccinations	If no alternative vaccines are available, then send recommendation directly to CNO N1
All other requests that require a waiver of Navy policy	Route to CNO N1	

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Table 2. Authorities and Religious Practices for Pre-Accession and Recruit Training

c. Timelines. For waivers of policy requiring adjudication at the commander or O-6 CO/ISIC level, final review and written notification to the requestor will be completed no later than 7 days from the date the requestor submitted the request to his or her immediate commander. Extensions for good cause may be granted by the Director, Military Personnel, Plans and Policy (OPNAV N13). Examples of good cause for an extension include operational necessity or lack of immediate access to a judge advocate or chaplain. All religious accommodation cases forwarded from an O-6 CO/ISIC or RTC/OTCN to CNO N1 for adjudication must be forwarded within 7 days from the date the requestor submitted the request to his/her immediate commander, and will be expeditiously adjudicated in line with references (a) and (b). To ensure timely and consistent adjudication of all requests, active and reserve Sailors will not submit a request for a religious accommodation that would require a waiver of Navy policy if they are expected to execute permanent change of station orders within 90 days. Written notification should be given to the requestor within 5 days upon any decision, modification, suspension or revocation of a waiver of policy.

d. Religious Practice Type

(1) Observances of Worship and Holy Days. Worship practices, holy days and Sabbath or similar religious observance requests will be accommodated except by necessity, consistent with mission accomplishment, U.S. Navy Regulations, and Navy Military Personnel Manual (MILPERSMAN) article 1731-010. These requests do not normally require a waiver of policy.

(2) Dietary Practices. Commanders should support religious dietary observances to the fullest extent possible. Commanders normally support religious dietary observances through a standard core menu that supports many religious dietary requirements or by issuing Meals Ready to Eat, Religious. In certain circumstances, commanders may consider other alternative solutions.

(3) Immunizations. The Navy requires immunizations for all Sailors, based on its compelling interest in mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety. Local commanders should make a reasonable effort to acquire alternative vaccinations, when available, that meet both religious needs of Sailors and the Navy's immunization requirements as determined by BUMED. Refer to MILPERSMAN 1730-020 as needed. Medical waivers of immunization requirements not associated with religious belief will continue to be adjudicated by the health care provider as addressed in reference (d).

(4) Uniform and Grooming. Pursuant to subparagraph 5a above, to determine whether a religious accommodation might interfere with the accomplishment of the unit or individual mission(s), a commander should consider such factors as the safe and effective operation of weapons, work center equipment and machinery, as well as wear of protective clothing or equipment. Commanders should also state in the endorsement or approval how the religious accommodation may need to be modified in operational, non-operational or training environments.

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(a) Head Coverings. As delineated in Table 1, religious accommodations for Sailors on all duty types to wear neat and conservative religious head coverings such as (but not limited to) a hijab, turban, kufi, kippah or yarmulke may be authorized at the O-6 CO/ISIC level based upon the operational environment and in line with reference (c). Except in the case of safety or protective headgear required by a Sailor's duties, position or assignment, Sailors granted a religious accommodation for head coverings are not required to wear military headgear in addition to their religious head covering if such military headgear would violate their sincerely held religious beliefs.

(b) Unshorn/Long Hair. As delineated in Table 1, waivers of Navy policy for male Sailors on all duty types to wear unshorn/long hair must be sent to CNO N1 for decision.

(c) Beards. As delineated in Table 1, waivers of Navy policy for Sailors on all duty types to wear a beard must be sent to CNO N1 for decision. Approved unshorn beards must be worn in a neat and conservative manner. When a Sailor is authorized to wear a beard of greater than 2 inches in length, the beard must be rolled, tied and/or otherwise groomed to achieve a length not to exceed 2 inches when measured from the bottom of the chin.

(5) Deoxyribonucleic Acid (DNA) Specimen Sampling. Waiver requests from participation in DNA specimen collection should be forwarded to CNO N1 for final adjudication. BUMED will be consulted prior to final adjudication.

(6) Other Religious Accommodation Requests. All other religious accommodation requests requiring a policy waiver not specified under this section will be routed to CNO N1 via OPNAV N13 for adjudication.

e. Routing. For those requests that require a waiver of policy:

(1) A requestor seeking a waiver of Navy policy must submit a request in writing through his or her commander using the template at enclosure (1). The requestor must state the waiver sought and may elaborate on the sincerely-held religious beliefs or circumstances motivating the request.

(2) Every requestor seeking religious accommodation requiring a waiver of Navy policy must interview with a Navy chaplain. The chaplain will assess whether the requestor's religious beliefs appear sincerely-held, and will forward an evaluation to the commander using the templates provided in enclosures (2) and (3).

(3) Commanders will take appropriate action on requests to stay within the timelines in subparagraph 5(c). Requests forwarded by a commander to the O-6 CO/ISIC or to CNO N1 must include enclosures (1) through (4). There are no additional requirements.

(4) A copy of all waivers of uniform or grooming policy authorized at the O-6 CO/ISIC level must be forwarded via e-mail to OPNAV N13 for record keeping purposes at

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ALTN\_Navy\_Religious\_Accommodations@navy.mil. Requests forwarded from the O-6 CO/ISIC level to CNO N1 for adjudication must also be sent to that email address. Forwarding waiver requests to OPNAV N13 via mail is highly discouraged and can potentially delay a decision for a Sailor.

(5) For commands that do not have regular Navy/Marine Corps Intranet email accounts (e.g., overseas, sea duty or joint commands), email OPNAV N13 at ALTN\_Navy\_Religious\_Accommodations@navy.mil first before sending attachments.

(6) If the request contains Personally Identifiable Information (PII), the request must be labelled and encrypted appropriately.

(7) A requestor who reports directly to another U.S. military service must route religious accommodation requests to the authority specified in the policies of that military service. Sailors assigned to a Joint command will route requests to their respective Navy Element Commander for approval or recommendation to CNO N1 as delineated in Table 1. In all circumstances Sailors will adhere to the provisions set forth in subparagraph 4a.

(8) Questions from commands and requesters concerning religious accommodation requests may be referred to ALTN\_Navy\_Religious\_Accommodations@navy.mil.

f. Appeals

(1) Appeals of command-level adjudication will be forwarded to the commander's O-6 CO/ISIC for adjudication. Appeals of O-6 CO/ISIC level adjudication will be forwarded to CNO N1 for adjudication within 15 days from the date the requestor submits the appeal. Appeals of CNO N1 adjudication will be forwarded to the Chief of Naval Operations (CNO) for final adjudication, unless other direction is provided in reference (a) or (b).

(2) When a religious accommodation request is denied, the requestor may renew the request upon a change in physical, operational or geographical environment, or at any time in which there is a change to pertinent policy.

g. Approval Duration, Withdrawal and Suspension. Religious accommodations are subject to review, suspension or revocation, in whole or in part, any time there is a change in the circumstances upon which the initial religious accommodation was based (e.g., new duty assignment, temporary duty or other material change in circumstances). However, an approved religious accommodation remains in effect until the commander or future commander notifies the Sailor or candidate in writing that a compelling government interest requires suspension or revocation of the accommodation. The written notification must include the nature of the changed circumstances and specify the reason for the revocation and the length of the suspension.

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(1) The authority to temporarily suspend a previously approved religious accommodation resides with the Sailor's CO, while the authority to permanently revoke a previously approved religious accommodation remains with CNO N1. A commander may suspend or initiate revocation of an approved religious accommodation only upon a determination that a compelling government interest requires such suspension or revocation and that no less restrictive means of furthering that compelling government interest are available. The decision to suspend or initiate revocation of an approved religious accommodation must be informed by the factors enumerated in this instruction.

(2) A commander may require immediate compliance with suspension of a religious accommodation only if necessary due to an imminent threat to health or safety. In any case in which there is no imminent threat, the Sailor or candidate must be given five business days to submit an appeal using the process described in subparagraph 5f(1). The religious accommodation will remain in effect until the appeal process is completed. When necessary, a Sailor may be assigned to temporary additional duty orders to protect him or her from circumstances that are incompatible with the religious accommodation while the appeal is being adjudicated.

(3) When there is a change in military duties or requirements, a commander may suspend a previously approved religious accommodation if the suspension furthers a compelling government interest and is the least restrictive means available to further that interest. For example, a Sailor with a grooming waiver authorizing him to wear a beard may be required to shave the beard to deploy to an area in which there is a high risk that the Sailor will have to don a gasmask. When the conditions that required the suspension are no longer present, the Sailor may resume the religious practice per the original waiver. There is no requirement for a Sailor to resubmit a request for a religious accommodation that has been suspended.

## 6. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned for the standard subject identification codes (SSIC) 1000 through 13000 series per the records disposition schedules located on the Department of the Navy/Assistant for Administration (DON/AA), Directives and Records Management Division (DRMD) portal page at <https://portal.secnave.navy.mil/orgs/DUSNM/DONAA/DRM/Records-and-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local records manager or the DON/AA DRMD program office.

7. Review and Effective Date. Per OPNAVINST 5215.17A, OPNAV N13 will review this instruction annually on the anniversary of its issuance date to ensure applicability, currency and consistency with Federal, Department of Defense, SECNAV and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction. This instruction will be in effect for 5 years unless revised or cancelled in the interim, and will be reissued by the 5-year anniversary

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date if it is still required, unless it meets one of the exceptions in OPNAVINST 5215.17A, paragraph 9. Otherwise, if the instruction is no longer required, it will be processed for cancellation following the guidance in OPNAV Manual 5215.1 of May 2016.



JOHN B. NOWELL, JR  
Deputy Chief of Naval Operations  
(Manpower, Personnel, Training,  
and Education)

Releasability and distribution:

This instruction is cleared for public release and is available electronically only via BUPERS/NAVPERSCOM Web site, <https://www.public.navy.mil/bupers-npc/reference/Pages/default.aspx>

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SAMPLE REQUEST FOR WAIVER OF POLICY TO ACCOMMODATE A RELIGIOUS  
PRACTICE (TEMPLATE)

(Date)

From: Rate or rank, as applicable, full name, branch and type of service as applicable

To: Appropriate authority per Table 1 or Table 2 (i.e., O-6 CO/ISIC or CNO N1)

Via: Appropriate authority per Table 1 or Table 2 (i.e., CO, O-6 CO/ISIC)

Subj: REQUEST FOR WAIVER OF POLICY IN SUPPORT OF RELIGIOUS PRACTICE

Ref: (a) DoD Instruction 1300.17 of 10 February 2009

(b) SECNAVINST 1730.8

(c) BUPERSINST 1730.11

(d) Other references as needed

Encl: (1) Photograph or graphic (as needed to show the neat and conservative color, manner of wear, etc.)

(2) Optional enclosures (e.g., religious leader endorsement or research in applicable area)

1. Pursuant to references (a) through (c), I hereby request religious accommodation from Navy policy (use reference as needed) to \_\_\_\_ (describe the specific practice(s)) \_\_\_\_ due to my religious belief that \_\_\_\_ (paraphrase religious basis of the request) \_\_\_\_.

2. My request is based on my religious belief that \_\_\_\_\_ (provide a detailed explanation here as desired) \_\_\_\_\_ and reference enclosure (1) or (2) as needed/desired.

3. (Required statement) I certify that I understand that any approved or partially approved waiver may not be appropriate for future duty to which I may be assigned, including operational, non-operational or training command(s), and may be suspended or withdrawn in accordance with reference (c).

\_\_\_\_\_  
(Signature)

Enclosure (1)



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CHAPLAIN INTERVIEW CHECKLIST TEMPLATE

Requestor:			Interview Date:
Name:			Chaplain Interviewer:
Phone:			Phone:
Email:			E-mail:
Command:			Chaplain's Command:
Interview Preliminaries			
Yes	No	N/A	
			Chaplain reviewed policy and doctrine on religious accommodation and the policy for which the requestor is seeking accommodation.
			Applicant was notified that the interview is not confidential and will be used to advise the command.
			Chaplain explained to the applicant that confidential support can be received from another chaplain.
			Applicant has been granted a waiver for this practice previously.
			Applicant's Page 2 (NAVPERS 1070/602) reflects the belief cited in the application.
Type of Waiver Requested			
Yes	No	N/A	
			Uniform standards
			Grooming standards
			Immunization requirements
			DNA sampling
			Other (Please describe):
Interview			
Yes	No	N/A	
			Requestor's religious beliefs seemed honestly and sincerely held using one or more of the following factors:
			1. Requestor was credible (consistently keeps tenets, practices, etc.).
			2. Requestor's demeanor and pattern of conduct are consistent with the request.
			3. Requestor participates in activities associated with the belief(s).
			4. Other persons supporting the claim are credible.
			5. Request is supported by letter(s) of verification or endorsement from an organization espousing the beliefs which are the basis for the claim.
			Alternate means of accommodating the practice were explored in the interview.
Process Checklist			
Yes	No	N/A	
			Chaplain has prepared a memorandum documenting the interview.
			Chaplain reviewed memorandum with applicant and provided a copy.
			Chaplain submitted the memorandum and this document to the commanding officer via chain of command.
			Chaplain referred applicant to command to process request.

Enclosure (2)

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CHAPLAIN MEMORANDUM FOR THE RECORD (TEMPLATE)

From: [Chaplain's rank and name], CHC, USN  
To: [Commanding Officer of requestor]

Subj: REQUEST FOR A WAIVER OF POLICY TO ACCOMMODATE PRACTICE  
BASED ON RELIGIOUS BELIEF ICO [REQUESTOR'S RANK, NAME]

Ref: (a) SECNAVINST 1730.8  
(b) SECNAVINST 1730.9

1. (Requestor's rank and name) has submitted a request for accommodation of a religious practice per reference (a). Per BUPERSINST 1730.11A, I interviewed the requestor on (date). I explained that this interview would not be a confidential communication as defined by reference (b) and informed the requestor that referral for confidential chaplain support was available.
2. Nature of the request. (Provide a narrative summary of the request for religious accommodation and whether or not the requestor has previously had this or any other related request approved or denied)
3. Basis. (Identify the religious beliefs on which the accommodation request is based and provide a professional and objective opinion regarding the religious importance of the request to the member. Include the requestor's religion as listed on NAVPERS 1070/602 (Page 2).
4. Alternate Means. (Indicate alternate means of meeting the request)
5. Sincerity. (Assess the sincerity of the requestor. The memorandum should focus on the sincerity of the member's personal religious beliefs, including the information provided during the interview.)
6. My contact information is (telephone number and e-mail address).

[Signature]

Copy to:  
(Rank and name of requestor)

Enclosure (3)

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RELIGIOUS ACCOMMODATION APPROVAL OR ENDORSEMENT (TEMPLATE)

(Date)

From: Appropriate authority per Table 1 or Table 2

To: Appropriate authority per Table 1 or Table 2

Via: As applicable with appropriate authority per Table 1 or Table 2

Subj: APPROVAL (or) APPROVAL/DISAPPROVAL RECOMMENDATION ICO (INSERT  
NAME HERE) RELIGIOUS ACCOMMODATION

Ref: (a) DoD Instruction 1300.17

(b) SECNAVINST 1730.8

(c) BUPERSINST 1730.11A

(d) Other references as needed including regional or operational policy

Encl: (1) Sailor/accession request of DD MMM YY

(2) Chaplain Memorandum and Interview Checklist

(3) Other enclosures as needed (e.g., operational or regional policy)

1. Per references (a) through (c)/(d), I am approving this request or I am forwarding this request recommending approval/disapproval in full or in part during the following environments (as applicable to the command):

a. Operational recommendation:

b. Non-operational recommendation:

c. Training environment recommendation:

2. The following information was considered or is provided for consideration as applicable (articulate the factual basis underlying any compelling government interest and why the denial or partial denial is the least restrictive means available to protect the compelling government interest over the individual request):

a. The importance of the military policy, practice or duty from which religious accommodation is sought in terms of mission accomplishment, including:

(1) Military readiness:

(2) Unit cohesion:

(3) Good order and discipline:

(4) Health and safety:

Enclosure (4)

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- b. The religious importance of the practice to the requestor.
  - c. The cumulative impact of repeated accommodations of religious practices of a similar nature.
  - d. Alternate means available to accommodate the practice in whole or in part.
3. Other pertinent issues or information associated with this request.
4. My point of contact (POC) for this matter is \_\_\_\_\_ (insert POC here) who can be reached at \_\_\_\_\_(insert e-mail and telephone number here).
5. This approval/recommendation will be emailed to OPNAV N131 for review/decision within the timelines in reference (c). Otherwise, Commander should provide the timeline/waiver of timeline here as applicable.

\_\_\_\_\_  
(Signature)

Copy to:  
OPNAV N131  
Operational Commander(s),  
Requestor, etc.

# **EXHIBIT C**

## **(Declaration of Eric S. Baxter)**

Religious Accommodation Requests Submitted to CNO N1 From August 1, 2018, to April 7, 2020									
Rank	Request Type			Outcome	Duty Type	Req date:	Decision:	Details	
	Beard	Head Covering	Hair						
O1		X		Islam	Approved	Shore	07-Mar-18	03-Aug-18	Hijab approved.
E2		X		Sikh	Partially Approved	Recruit Training Command (RTC)	04-Jun-18	13-Aug-18	Turban and bandana approved for wear during religious practice at RTC and full-time after capping ceremony.
E5	X			Christianity	Approved	Shore	25-Apr-18	26-Sep-18	1/4" beard requested and approved.
E1	X			Islam	Partially Approved	Recruit Training Command (RTC)	13-Jun-18	26-Sep-18	1/2" beard requested during Recruit Training and thereafter. 26-Sep-18 CNO N1 approval limited beard length to 1/4" after capping ceremony. 28-Sep-18 Requester appealed to CNO. 14-Nov-18 CNO approved 1/2" beard after capping ceremony.
E7		X		Islam	Approved	Shore - USNR	23-Jul-18	05-Oct-18	Hijab approved.
E3	X			Islam	Partially Approved	Shore	06-Jul-18	09-Oct-18	3" to 4" beard, rolled to no more than 2," requested. Approval limited to 1/4" beard.
E2	X			Islam	Approved	Shore - Training Command Student	15-Aug-18	09-Oct-18	1/4" beard requested and approved.
E2	X			Islam	Approved	Shore - Training Command Student	17-Aug-18	09-Oct-18	1/4" beard requested and approved.
E7	X			Islam	Disapproved	Shore - Recruiter	16-Aug-18	15-Oct-18	Beard of unspecified length requested and disapproved.
E7	X			Islam	Approved	Shore - Billet requires requester to go underway	11-Sep-18	17-Oct-18	Beard of unspecified length requested. Approval limited to 1/4" beard and when not underway.
E4	X		X	Rastafarianism	Disapproved	Sea	14-Jun-18	19-Nov-18	Beard and unshorn hair of unspecified length requested and disapproved.
E4	X			Nordic	Partially Approved	Shore	4-Sep-2018	30-Jan-19	1" beard requested. Approval limited to 1/4" beard.
E7	X			Nordic	Approved	Shore - Instructor	20-Nov-18	30-Jan-19	Short, professional beard requested. Approval limited to 1/4" beard.
E5	X			Nordic	Partially Approved	Shore	26-Nov-18	30-Jan-19	3" beard requested. Approval limited to 1/4" beard.
E4		X		Islam	Approved	Sea	9-Dec-18	7-Mar-19	Hijab authorized except when removal is necessary to don PPE.
E6	X			Nordic	Disapproved	Sea	01-Dec-18	11-Mar-19	Beard of longer than 1/4" requested and disapproved.
O2	X	X		Judaism	Partially Approved	Shore - Billet requires requester to go underway	2-Jan-19	11-Mar-19	Kippah and 1/4" beard requested. Kippah approved. Beard approval limited to when not assigned duties onboard a naval vessel.

E6	X	X		Judaism	Partially Approved	Sea - Rotational unit	29-Jan-19	20-Mar-19	Kippah and beard of unspecified length requested. Kippah approved except to don PPE. Beard approval limited to 1/4" and when "off hull."
E4	X			Islam	Disapproved	Sea	1-Mar-19	22-May-19	1/4" beard requested and disapproved.
E1		X		Judaism	Partially Approved	Recruit Training Command (RTC)	5-Mar-19	3-Jun-19	Kippah approved for wear during religious practice at RTC and full-time after capping ceremony.
CIV		X		Islam	Partially Approved	Accession	22-Mar-19	3-Jun-19	Hijab approved for wear during religious practice at RTC and full-time after capping ceremony.
E3	X			Islam	Disapproved	Sea	23-Apr-19	5-Jun-19	Short beard requested and disapproved.
CIV	X			Judaism	Approved	Officer Training Command	21-Feb-19	17-Jun-19	Beard of unlimited length, with no shaving or trimming, requested during Officer Development School (ODS). 1-Apr-19 CNO N1 approval limited beard length to 1/4" and only upon ODS graduation. 23-May-19 Requester appealed to CNO. 17-Jun-19 CNO approved request, subject to review upon reporting to new command.
E4	X			Mosaic	Disapproved	Sea	13-Feb-19	22-Jul-19	1/4" beard requested and disapproved.
E5	X			Mosaic	Disapproved	Sea	14-Mar-19	22-Jul-19	1/4" beard requested and disapproved.
E3	X			Islam	Disapproved	Sea	23-Apr-19	23-Jul-19	1/4" beard requested and disapproved.
E8	X			Nordic	Disapproved	Naval Special Warfare	28-Feb-19	23-Aug-19	Beard of longer than 1/4" requested and disapproved.
E3	X			Islam	Partially Approved	Shore - Training Command Student	12-Jun-19	28-Aug-19	26-Mar-19 1/4" beard approved by O-6, in accordance with BUPERSINST 1730.11. 28-Aug-19 Beard of greater than 1/4" disapproved by CNO N1.
Prisoner	X		X	Nordic	Disapproved	Brig	12-May-19	3-Sep-19	Beard and unshorn hair of unspecified length requested and disapproved.
E3		X		Christian	Approved	Seabee	4-Sep-19	25-Oct-19	Head covering approved except to don PPE. (Requester provided a photo of herself wearing a black cloth that covered all of her hair.)
E3		X		Islam	Approved	Sea	17-Sep-19	25-Oct-19	Hijab approved except to don PPE.
E6	X			Nordic	Disapproved	Sea	26-Aug-19	18-Nov-19	1/4" beard requested and disapproved.
E4	X			IUIC	Disapproved	Sea	5-Nov-19	10-Dec-19	1/4" beard requested and disapproved.
E4	X			Islam	Disapproved	Sea	6-Nov-19	23-Dec-19	Beard of longer than 1/4" requested and disapproved.
E3		X		Islam	Approved	Sea	7-Oct-19	6-Jan-20	Hijab approved except to don PPE.
E7	X			Islam	Disapproved	Sea	24-Apr-19	3-Feb-20	Beard of unspecified length requested and disapproved.
E3		X		Islam	Approved	Sea	15-Oct-19	3-Feb-20	Request to wear kufi during Ramadan. Request approved except to don PPE.
E3	X			Islam	Disapproved	Sea	11-Dec-19	3-Feb-20	Beard of "full length" requested and disapproved.
E5	X	X		Islam	Partially Approved	Sea	8-Nov-19	14-Feb-20	Request for taqiyah, 1/4" beard while at sea, and beard of longer than 1/4" beard while in port. Taqiyah approved except to don PPE. Beard approval limited to 1/4" and only when not underway. Beard disapproved when underway.
E4	X	X		Judaism	Partially Approved	Sea	18-Feb-19	27-Feb-20	Yarmulke and 1/4" beard requested. Yarmulke approved. Beard disapproved.
E4	X			Islam	Disapproved	Sea	28-Jan-20	27-Feb-20	1/4" beard requested and disapproved.



E4	X			Islam	Disapproved	Sea	3-Dec-19	28-Feb-20	Beard of unspecified length requested and disapproved.
E4	X			Islam	Disapproved	Sea	17-Dec-19	28-Feb-20	Beard of unspecified length requested and disapproved.
E7	X			Nordic	Partially Approved	Shore - Instructor	27-Dec-19	12-Mar-20	Beard of unspecified length requested. Approval limited to 1/4" beard.
E4	X			Islam	Disapproved	Sea	6-Dec-19	4-Apr-20	4" beard requested and disapproved.
E2	X			Islam	N/A	Shore - Training Command Student	10-Oct-18		1/4" beard requested. Request returned to local O-6 in accordance with BUPERSINST 1730.11.
E4	X			Nordic	N/A	Sea	29-Nov-18		1/4" beard requested. Requester directed to resubmit at new command due to pending transfer.
E3		X		Islam	N/A	Sea	29-Jan-19		Hijab requested. CNO N1 staff member informed CO that previous approval remains valid unless CO recommends revocation. CO did not recommend revocation.
CIV		X		Islam	N/A	Accession	12-Jul-19		Hijab request withdrawn due to requester's decision not to proceed with HPSP application

CO Approved Religious Accommodation Requests									
<u>Rank</u>	<u>Request Type</u>				<u>Outcome</u>	<u>Duty</u>	<u>Req date:</u>	<u>Decision:</u>	<u>Details</u>
	<u>Beard</u>	<u>Head Covering</u>	<u>Hair</u>	<u>Religion</u>					
E-1	X			Islam	Approved	Recruit Training Command	5-Oct-18	15-Nov-18	14" beard approved for wear after capping ceremony.
E-3	X			Judaism	Approved	Training Command - Student	20-Nov-18	5-Dec-18	1/4" beard approved.
O-1	X			Judaism	Approved	Training Command - Student	11-Dec-18	19-Dec-18	1/4" beard approved.
E-7	X			Islam	Approved	Shore	2-Jan-19	5-Feb-19	1/4" beard approved.
E-6	X			Islam	Approved	Shore	21-Feb-19	8-Mar-19	1/4" beard approved.
E-1		X		Judaism	Disapproved	Recruit Training Command	5-Mar-19	21-Mar-19	Kippah wear during meals requested and disapproved.
O-1	X			Judaism	Approved	Shore	10-Apr-19	1-May-19	1/4" beard approved.

# **EXHIBIT D**

## **(Declaration of Eric S. Baxter)**



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/114239  
21 Dec 20

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: EMN3 Edmund D. DiLiscia, USN  
Via: Commanding Officer, USS THEODORE ROOSEVELT (CVN 71)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF  
GROOMING STANDARDS FOR FACIAL HAIR

Ref: (a) NAVPERS 15565I  
(b) DoD Instruction 1300.17 of 1 Sep 20  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A  
(f) 42 U.S.C. §2000bb-1  
(g) United States Attorney General memo of 6 Oct 17  
(h) Your ltr of 8 Sep 20  
(i) COMNAVSAFECEN NORFOLK VA 261941Z Nov 18 (ALSAFE 18/008)

1. In line with references (a) through (i), your request to waive the requirements in article 2201.2 of reference (a) for a beard is disapproved. I am disapproving your wear of a beard due to the Navy's compelling Government interest in mission accomplishment including safety.

2. In line with references (b) through (e), I am designated as the approval authority for requests for religious accommodation.

3. Reference (f), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion or good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (g) emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF GROOMING STANDARDS FOR FACIAL HAIR

- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there is alternative means available to meet the requested accommodation
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (h), including the endorsements from your chain of command and the local chaplain, and the guidance of Commander, Naval Safety Center in reference (i).

a. With regard to your request to wear a beard onboard a naval vessel in port and underway, reference (i) reported that a beard reduces safe and effective wear and operation of protective equipment, to include gas masks, self-contained breathing apparatus face masks and respirators. Damage control (DC), both in port and underway, is the responsibility of each crew member. Your participation in shipboard DC efforts is routine and foreseeable regardless of whether the ship is in port or at sea. Beards present a hazard to these efforts, as outlined above, and this hazard can extend to other personnel should they be required to come to your aid if you are injured during DC activities. Though the probability of a negative consequence from an ineffective seal is relatively low, the severity of that consequence may be high – to include injury. From an operational risk management perspective, this risk is untenable.

b. I find that granting your request would present an unacceptable risk to the Navy's compelling interest in mission accomplishment, including military readiness and safety on both the individual and unit levels. I further find that there are no less restrictive means available to accommodate your request.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. Deviations from Navy standards must be considered against how those deviations impact the Navy mission as a whole. If you subsequently experience a change in physical, operational or geographical environment you may again request for religious accommodation.



JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)

# **EXHIBIT E**

## **(Declaration of Eric S. Baxter)**

**RECORD OF COUNSELING**

DATE 15 APR 2021

**PRIVACY ACT STATEMENT**

The authority for requesting the following information is contained in 10USC 8012 and EO 9397. The data will be used to document quality force counseling actions not prescribed in other directives. When completed the form may or may not become a source document to support administrative separation. Data is also releasable to higher headquarters officials when used to support administrative separation or UCMJ action. Completion of the form by a counselor is mandatory; however, disclosure of information or facts by the counselee is voluntary. Failure to disclose information or facts may not be in counselee's best interest in the event administrative, disciplinary or separation action is subsequently deemed warranted by the counselee's commander.

Name (Last, First Middle Initial)

Grade

SSN

Diliscia, Edmund

EMN

DIVISION/WORK CENTER/DUTY SECTION  
RENAME/GRADE OF COUNSELOR  
LCDR Taylor**REASON FOR COUNSELING**☐ MID MARKING PERIOD APPRAISAL☐ PERFORMANCE☐ END OF MARKING PERIOD APPRAISAL☐ PRIVATE INDEBTEDNESS☐ PERSONAL BEHAVIOR☐ OJT PROGRESS☐ SUPPORT OF DEPENDENTS☒ RESPONSIBILITIES☐ SUBSTANDARD DRESS/APPEARANCE☒ OTHER - Specify Shaving Requirements**RESUME OF REASON WHICH CAUSED THE COUNSELING REQUIREMENT (Give details, facts, specific dates, names, sequence of events, etc)**

Petty Officer Diliscia has a request in to the ship's COC and the CNO not to shave for religious reasons. The request has not been approved by the COC or the CNO. I am advising Petty Diliscia that he has a direct order to shave by tomorrow morning (16ARP2021) at divisional quarters. Petty Officer Diliscia will be written up and will be subject to possible NJP if he chooses not to obey this lawful order.

**SOLUTION THAT YOU AND THE INDIVIDUAL DEVELOPED AND DISCUSSED TO OVERCOME THE PROBLEM(s) AND PRECLUDE FUTURE INVOLVEMENT. (Outline all solutions and indicate which one(s) individual freely elected)**

Shave prior to quarters on 16APR2021.

OTHER AGENCIES INDIVIDUAL REFERRED:



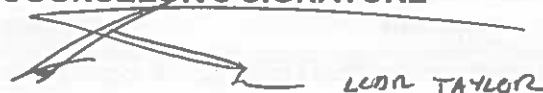
**COUNSELEE's COMMENTS:** Currently a legal organization representing the interests of religious military personnel, to include myself, is attempting to receive a Federal order to order the Navy not to force me to shave. This order is being attempted to reach my person by 0630 16 APR 21, upon which I will present it to all interested parties.

I wish to note that I joined the Navy as an observant Chassidic Jew and am now being ordered to violate my religious practice despite prior religious accommodation and minor to none impact on ship mission. As an observant Chassidic Jew this action is extremely humiliating and deeply harming to my psyche and soul. I regret that the Navy is not able to accomplish the purpose of religious accommodation as stated in Burgerlust 1730.11A or the 1st amendment.

**COUNSELEE's SIGNATURE**



**COUNSELOR's SIGNATURE**



LEON TAYLOR

**REMARKS/FOLLOW-UP ACTION(Outline all efforts indicating dates, names, progress, etc.)**



CHOC CHINEH  
WITNESS SIGNATURE

WITNESS SIGNATURE

DISCUSSED THAT THE PREVIOUSLY APPROVED RELIGIOUS ACCOMMODATION HAS BEEN OVERRIDDEN BY THE REQUEST SUBMITTED TO CND VI THAT WAS DISAPPROVED, DATED FOR 25 DEC 2020, IN ACCORDANCE WITH NAVAL INSTRUCTION.

### KEY COUNSELING POINTS

- \* Counseling is performed to solve a problem or to fulfill a need. Determine interview objective prior to meeting; review available records, and arrange office seating for best results.
- \* Give the individual the facts whether they are pleasant or unpleasant
- \* Be a good listener—Be fair.
- \* Refer individual to other base agencies for professional help. You don't have the answers to all the problems.
- \* Follow-up on referrals to base agencies to make certain that there is a continuity of action and that referrals are complete.
- \* Keep the individual's problems confidential.
- \* Help the person to grow in self-understanding.
- \* DO-NOT lose your self control. The results could be disastrous.
- \* DO-NOT make promises you can't keep.
- \* DO-NOT make snap decisions.
- \* DO-NOT forget to document the counseling and have the counselee sign the counseling sheet.

## CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

<b>I. (a) PLAINTIFFS</b> Edmund Di Liscia, Leandros Katsareas, Dominique Braggs, Mohammed Shoyeb  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> Lloyd James Austin III, in his official capacity as Sec'y of US DoD; United States Dep't of Defense; Thomas Harker, in his official capacity as Acting Sec'y of US Navy; Vice Admiral John B. Nowell, Jr., in his official capacity as Chief of Naval Personnel & Deputy Chief of Naval Ops; US Dept of the Navy; Captain Eric J. Anduze, in his official capacity as Commanding Officer, USS Theodore Roosevelt  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) The Becket Fund for Religious Liberty 1919 Pennsylvania Ave. NW, Suite 400 Washington, DC 20006 202-955-0095	ATTORNEYS (IF KNOWN)																								
<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff         </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)         </div> </div>	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input checked="" type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<div style="display: flex; justify-content: space-around;"> <input type="radio"/> <b>E. General Civil (Other)</b> <span>OR</span> <input type="radio"/> <b>F. Pro Se General Civil</b> </div>			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609  <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**

**VII. REQUESTED IN COMPLAINT**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

**JURY DEMAND:**

Check YES only if demanded in complaint  
 YES ☒ NO ☐

**VIII. RELATED CASE(S) IF ANY**

(See instruction)

YES ☐ NO ☒

If yes, please complete related case form

**DATE:** 4/15/2021

**SIGNATURE OF ATTORNEY OF RECORD** /s/ Eric S. Baxter

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

District of Columbia



Edmund Di Liscia, et al.

*Plaintiff(s)*

v.

Lloyd James Austin III, in his official capacity as  
Secretary of the United States Department of  
Defense, et al.

*Defendant(s)*

Civil Action No. 21-1047

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Lloyd James Austin III  
Secretary of the United States Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eric S. Baxter  
The Becket Fund for Religious Liberty  
1919 Pennsylvania Avenue NW, Suite 400  
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

## UNITED STATES DISTRICT COURT

for the

District of Columbia



Edmund Di Liscia, et al.

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*Plaintiff(s)*

v.

Lloyd James Austin III, in his official capacity as  
Secretary of the United States Department of  
Defense, et al.

---

*Defendant(s)*

Civil Action No. 21-1047

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* United States Department of Defense  
1400 Defense Pentagon  
Washington, DC 20301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eric S. Baxter  
The Becket Fund for Religious Liberty  
1919 Pennsylvania Avenue NW, Suite 400  
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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☐ Other *(specify)*: \_\_\_\_\_

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

District of Columbia

Edmund Di Liscia, et al.

*Plaintiff(s)*

v.

Lloyd James Austin III, in his official capacity as  
Secretary of the United States Department of  
Defense

*Defendant(s)*

Civil Action No. 21-1047

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Thomas Harker, in his official capacity as Acting Secretary of the United States Navy  
General Counsel of the Navy  
Naval Litigation Office  
720 Kennon St., SE, Room 233  
Washington Navy Yard, DC 20374-5013  
(202) 685-7039

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Eric Baxter  
The Becket Fund for Religious Liberty  
1919 Pennsylvania Ave. NW, Suite 400  
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
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 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

District of Columbia

Edmund Di Liscia, et al.

*Plaintiff(s)*

v.

Lloyd James Austin III, in his official capacity as  
Secretary of the United States Department of  
Defense, et al.

*Defendant(s)*

Civil Action No. 21-1047

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Vice Admiral John B. Nowell, Jr., in his official capacity as Chief of Naval Personnel  
and Deputy Chief of Naval Operations  
Naval Litigation Office  
720 Kennon St., SE, Room 233  
Washington Navy Yard, DC 20374-5013  
(202) 685-7039

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Eric Baxter  
The Becket Fund for Religious Liberty  
1919 Pennsylvania Ave. NW, Suite 400  
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

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 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

## District of Columbia

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*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
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 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

District of Columbia

Edmund Di Liscia, et al.

\_\_\_\_\_  
*Plaintiff(s)*

v.

Lloyd James Austin III, in his official capacity as  
Secretary of the United States Department of  
Defense, et al.

\_\_\_\_\_  
*Defendant(s)*

Civil Action No. 21-1047

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Captain Eric J. Anduze, in his official capacity as Commanding Officer, USS Theodore Roosevelt  
General Counsel of the Navy  
Naval Litigation Office  
720 Kennon St., SE, Room 233  
Washington Navy Yard, DC 20374-5013  
(202) 685-7039

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eric Baxter  
The Becket Fund for Religious Liberty  
1919 Pennsylvania Ave. NW, Suite 400  
Washington, DC 20006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: