

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. 1:21-cv-01047-TJK

**DECLARATION OF
ERIC BAXTER**

I, Eric Baxter, declare as follows:

1. I am Senior Counsel at the Becket Fund for Religious Liberty. I represent Plaintiffs EMN3 Edmund Di Liscia, MC3 Leandros Katsareas, ABF3 Dominique Braggs, and OS2 Mohammed Shoyeb in the above-captioned matter.

2. Attached as **Exhibit A** is a true and accurate copy of the July 15, 2020 religious accommodation granted to MC3 Katsareas allowing him to maintain a four-inch beard, which was filed on the docket as Complaint Exhibit F (Dkt. 1-6).

3. Attached as **Exhibit B** is a true and accurate photo image of the April 30, 2021 recommendation to approve ABF3 Braggs a religious accommodation in non-operational environments.

4. Attached as **Exhibit C** is a true and accurate photo image of prior medical no-shave chits granted to ABF3 Braggs.

5. Attached as **Exhibit D** is a true and accurate redacted photo image of a prior shaving waiver granted to ABF3 Braggs due to *pseudofolliculitis barbae*.

6. On information and belief, attached as **Exhibit E** is what appears to be a dispatch from Vice Admiral John B. Nowell, Jr. informing commanding officers that they have no authority to issue no-shave chits solely to help improve Sailors' morale.

7. Attached as **Exhibit F** is a true and correct copy of MC3 Katsareas's May 5, 2020 appeal letter regarding the denial of religious accommodations, filed on the docket as Exhibit E (Dkt. 1-5) to the Complaint.

8. Attached as **Exhibit G** is a true and correct copy of the February 26, 2021 letter informing MC3 Katsareas of his Commanding Officer's intent to seek a rescission of his accommodations to maintain a beard.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 16th day of July, 2021.

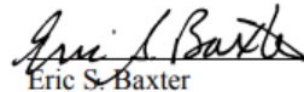

Eric S. Baxter

EXHIBIT A



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.

A handwritten signature in black ink, appearing to read "John B. Nowell, Jr.", is positioned above the printed name.

JOHN B. NOWELL, JR

Copy to:
CNO
OPNAV (N131, N0975)

EXHIBIT B



DEPARTMENT OF THE NAVY
NAVAL STATION NORFOLK
1530 GILBERT STREET SUITE 2000
NORFOLK, VA 23511-2722

1730
Ser N00J/221
30 Apr 21

From: Commanding Officer, Naval Station Norfolk
To: Chief of Naval Operations

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

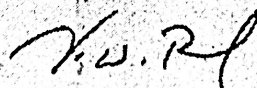
Ref: (a) DoD Instruction 1300.17
(b) SECNAVINST 1730.8
(c) BUPERSINST 1730.11A

Encl: (1) ABF3 Braggs' appeal of 18 Feb 21

1. Per references (a) through (c), forwarding recommending approval in non-operational environments, disapproval in operational environments.

2. ABF3 Braggs is currently assigned to Naval Station Norfolk on Limited Duty orders.

3. My point of contact for this matter is LT Morgan A. Sellers, JAGC, USN who can be reached at (757) 322-3066 or at morgan.a.sellers@navy.mil.


V.W. BAKER

Copy to:
OPNAV N131
ABF3 Braggs

EXHIBIT C

CVN-73 No Shave Chit Card
Name: Briggs, Dominique Last 4: 0250
Expiration: 20 APR 20
If expired member MUST follow Naval Grooming Standards
Modified Grooming Standards
Follow medical treatment recommendations.
TERRANCE A. MAYES
HM1/USN/AD
SFIDC 1801239504 20 APR 20
Signature/Date

CVN-73 No Shave Chit Card
Name: BRAGGS DOMINIQUE Last 4: 0250
Expiration: 21 JUN 2020
If expired member MUST follow Naval Grooming Standards
Modified Grooming Standards
Follow medical treatment recommendations.
HM1(SWEMF) MARCELO, PETRONILO
SFIDC USN
NPI: 1028044 21 JUN 2020
Signature/Date

CVN-73 No Shave Chit Card
Name: DOMINIQUE BRAGGS Last 4: 0250
Expiration: 04 Jul 2020
If expired member MUST follow Naval Grooming Standards
Modified Grooming Standards
Follow medical treatment recommendations.
TERRANCE A. MAYES
HM1/USN/AD
SFIDC 1801239504 04 Jul 2020
Signature/Date

CVN-73 No Shave Chit Card
Name: Briggs, Dominique Last 4: 0250
Expiration: 22 JUL 2020
If expired member MUST follow Naval Grooming Standards
Modified Grooming Standards
Follow medical treatment recommendations.
TERRANCE A. MAYES
HM1/USN/AD
SFIDC 1801239504 22 JUL 2020
Signature/Date

EXHIBIT D

BUPERSINST 1000.22B
27 DEC 2004

Supporting Directive BUPERSINST 1000.22A

FOR OFFICIAL USE ONLY (WHEN FILLED IN)		
PSEUDOFOLLICULITIS BARBAE (PFB) SHAVING WAIVER/EVALUATION/DISPOSITION		SSN
LAST NAME	FIRST NAME	M.I.
Briggs, Dominick	K.	
MEDICAL OFFICER INITIAL EVALUATION <input type="checkbox"/> No PFB or other medical condition that prevents shaving <input checked="" type="checkbox"/> Pseudofolliculitis Barbae (PFB) <input type="checkbox"/> Facial Nodulocystic Acne <input type="checkbox"/> Other:		
NAME OF MEDICAL OFFICER/RANK Bryan M. Clarke HMC (PMF/SCW/SW) USN SFDC NPH#1003345198		SIGNATURE/DATE <i>[Signature]</i> 04 MAR 2019
Due to the medical condition as specified above NO SHAVING of facial hair is recommended on a temporary basis for:		
SPECIFY PERIOD OF TIME 90 DAYS		TITLE/SIGNATURE/DATE
SHAVE IAW PHASE I PROTOCOL		Bryan M. Clarke HMC (PMF/SCW/SW) USN SFDC NPH#1003345198 04 MAR 2019
MEDICAL OFFICER/SMR DOCUMENTATION FOR SFDC PROTOCOL COMPLETION:		
<input type="checkbox"/> PHASE I	SIGNATURE/TITLE/DATE	
<input type="checkbox"/> PHASE II	SIGNATURE/TITLE/DATE	
<input type="checkbox"/> PHASE III	SIGNATURE/TITLE/DATE	
<input type="checkbox"/> PHASE IV	SIGNATURE/TITLE/DATE	
FAILURE OF PFB PROTOCOL RECOMMENDATION		
This Navy service member has failed the established PFB protocol. A permanent "NO SHAVE" status is recommended.		
SIGNATURE/TITLE		DATE
COMMANDING OFFICER DECISION		
<input type="checkbox"/> A permanent "NO SHAVING" status is authorized. <input type="checkbox"/> Refer to NAVPERSCOM (PERS-83) for Administrative Separation		
NAME/RANK/TITLE		SIGNATURE/DATE

NAVPERS 1000/1 (REV 12-02)

S/N: 0106-LF-982-8600

PREVIOUS EDITIONS WILL NOT BE USED

FOR OFFICIAL USE ONLY (WHEN FILLED IN)

BUPERSINST 1000.22B
27 DEC 2004

Supporting Directive BUPERSINST 1000.22A

FOR OFFICIAL USE ONLY (WHEN FILLED IN)	
PSEUDOFOLLICULITIS BARBAE (PFB) SHAVING WAIVER/EVALUATION/DISPOSITION	
LAST NAME FIRST NAME M.I. <i>Bray, Dwayne</i>	SSN [REDACTED]
MEDICAL OFFICER INITIAL EVALUATION <input type="checkbox"/> No PFB or other medical condition that prevents shaving <input checked="" type="checkbox"/> Pseudofolliculitis Barbae (PFB) <input type="checkbox"/> Facial Nodulocystic Acne <input type="checkbox"/> Other:	
NAME OF MEDICAL OFFICER/RANK TERRANCE A. MAYES HM /USN/AD SFIDC 1801239504	SIGNATURE/DATE <i>[Signature]</i>
Due to the medical condition as specified above NO SHAVING of facial hair is recommended on a temporary basis for:	
SPECIFY PERIOD OF TIME <i>Per [Signature]</i>	TITLE/SIGNATURE/DATE TERRANCE A. MAYES HM /USN/AD SFIDC 1801239504 <i>[Signature]</i>
MEDICAL OFFICER/SMDR DOCUMENTATION FOR PFB PROTOCOL COMPLETION:	
<input type="checkbox"/> PHASE I	SIGNATURE/TITLE/DATE <i>[Signature]</i>
<input type="checkbox"/> PHASE II	SIGNATURE/TITLE/DATE TERRANCE A. MAYES HM /USN/AD <i>[Signature]</i>
<input checked="" type="checkbox"/> PHASE III	SIGNATURE/TITLE/DATE <i>[Signature]</i>
<input type="checkbox"/> PHASE IV	SIGNATURE/TITLE/DATE
FAILURE OF PFB PROTOCOL RECOMMENDATION	
This Navy service member has failed the established PFB protocol. A permanent "NO SHAVE" status is recommended.	
SIGNATURE/TITLE	DATE
COMMANDING OFFICER DECISION	
<input type="checkbox"/> A permanent "NO SHAVING" status is authorized. <input type="checkbox"/> Refer to NAVPERSCOM (PERS-83) for Administrative Separation	
NAME/RANK/TITLE	SIGNATURE/DATE

NAVPERS 1000/1 (REV 12-02)

S/N: 0106-LF-982-8600

PREVIOUS EDITIONS WILL NOT BE USED

FOR OFFICIAL USE ONLY (WHEN FILLED IN)

Enclosure (2)

EXHIBIT E

-----OFFICIAL INFORMATION DISPATCH FOLLOWS-----

OTTUZYUW RHOIAAA0001 1062147-UUUU--RHSSSUU

ZNR UUUUU

O 162136Z APR 21 MID600050505263U

FM CNO WASHINGTON DC

TO NAVADMIN

INFO CNO WASHINGTON DC

BT

UNCLAS

NAVADMIN 080/21

PASS TO OFFICE CODES:

FM CNO WASHINGTON DC//N1//

INFO CNO WASHINGTON DC//N1//

MSGID/GENADMIN/CNO WASHINGTON DC/N1/APR//

SUBJ/PERSONAL FOR COMMANDERS, COMMANDING OFFICERS AND EXECUTIVE OFFICERS UNAUTHORIZED BEARDS//

REF/A/GENADMIN/COMNAVSAFECEN NORFOLK VA/261941ZNOV18//

REF/B/DOC/BUPERSINST/CHNAVPER/16MAR20//

REF/C/DOC/BUPERSINST/CHNAVPER/8OCT19//

NARR/REF A IS ALSAFE 18/008, FACE SEAL GUIDANCE UPDATE. REF B IS BUPERS INSTRUCTION 1730.11A, STANDARDS AND PROCEDURES GOVERNING THE ACCOMMODATION OF RELIGIOUS PRACTICES. REF C IS BUPERS INSTRUCTION 1000.22C, MANAGEMENT OF NAVY UNIFORMED PERSONNEL DIAGNOSED WITH PSEUDOFOLLICULITIS BARBAE//

RMKS/1. Navy senior leadership recently learned that some Fleet units may be allowing Sailors to grow beards while underway. While commands likely do this with good intentions to support morale, it is contrary to Navy policy and is NOT within the commanding officers authority. More importantly and based on Naval Safety Center Face Seal Guidance (reference (a)), facial hair puts Sailors, their shipmates and your ship at increased risk in the event of a fire or other event/casualty requiring the donning of a breathing apparatus. ALL afloat commanders must ensure this practice stops immediately.

2. Naval Safety Center studies have shown that Sailors with facial hair of any length are not able to maintain a skin-to-rubber seal on all current Navy breathing apparatuses. These studies which concluded that deviations from the current prescribed facial hair grooming standards represented a significant increased risk to the individual and that subsequent risk was transferred to other crew members who may have to assist or rely upon individuals with facial hair. The fire on the former USS BONHOMME RICHARD (LHD 6) is a stark reminder that when fire strikes all Sailors must be ready to respond at a moments notice. The bottom line, Sailors who are not adhering to the grooming standards pose a risk to themselves, our shipmates and your ship.

3. For all Sailors afloat or ashore, the only exceptions to policy for facial hair are waivers for religious accommodations (reference (b)) approved by me and waivers due to a medical diagnosis of Pseudofolliculitis Barbae (PFB), while being treated in line with (reference (c)) and as approved by the Commanding Officer.

4. Release by Vice Admiral John B. Nowell, Jr, N1.//

BT

#0001

NNNN

<DmdsSecurity>UNCLASSIFIED//</DmdsSecurity>

<DmdsReleaser>LI.JIANHUA.1472482757</DmdsReleaser>

CLASSIFICATION: UNCLASSIFIED//

EXHIBIT F

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 5th 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."

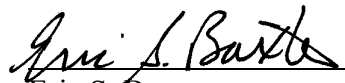
Subj: APPEAL OF DCNO'S DENIAL OF RELIGIOUS ACCOMMODATION REQUEST
BY MC3 LEANDROS KATSAREAS, USN

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

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

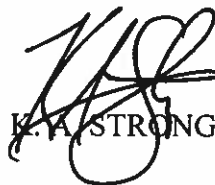
Ref: (a) Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education)
(N1) ltr of 15 Jul 20
(b) DoD Instruction 1300.17
(c) SECNAVINST 1730.8B
(d) ASN (M&RA) memo of 6 Jun 13
(e) BUPERSINST 1730.11A

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.


K.A. STRONG