

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
MOHAMMED SHOYEB**

I, Mohammed Shoyeb, pursuant to 28 U.S.C. § 1746, state and declare:

1. I am over eighteen years of age and, if called to testify at a hearing in this matter, can and will competently testify to the following facts of which I have personal knowledge.

2. I am an Operations Specialist (OS), stationed aboard the USS Chancellorsville (CG 62), which has been in dry dock in Yokosuka, Japan, since March 2020.

3. I am a devout Muslim and have practiced my faith since childhood. I was born in India, but my family moved to New York City in 2010. Following the devastation caused by the September 11, 2001 attacks, I wished to show my fellow citizens that my faith does not conflict with my patriotism.

4. Out of my desire to serve my country, I decided to join the Navy in November 2017. I began my service in the Navy after completing boot camp and A-School.

5. A core tenet of my Islamic faith, as one of the ten basic *fitras* (cleanliness and grooming obligations), is that all Muslim males who are genetically able to grow a substantial beard, no shorter than fist-length, do so as a sign of their devotion to God. Beards should be groomed and trimmed neatly, with the edges lined up. I consider it sinful and spiritually

degrading not to maintain a beard that complies with my religious obligations.

6. Throughout my time in the Navy, I have continued observing Islamic tenets and practices to the fullest extent that I can. Specifically, I study the Qur'an, pray five times daily, try to maintain a *halal* diet, and fast regularly.

7. Prior to my joining the Navy, I had never shaved and always maintained facial hair consistent with my faith tradition.

8. But when I joined the Navy, I was unaware that I could seek a religious accommodation, so I reluctantly removed my beard rather than risk ejection.

9. Once I realized that the Navy had updated its regulations to allow religious accommodations for beards, I again requested a religious-beard accommodation.

10. I first sought a religious accommodation to grow a beard consistent with my Islamic faith tradition as soon as I checked into the USS Chancellorsville in May 2018. I asked my chaplain for help seeking an accommodation and submitted the required documents to him, but he did not submit my application to the Navy. I do not know why he chose not to do so, but I suspect it was because he was unfamiliar with my faith and he did not believe I was sufficiently devout.

11. On June 22, 2020, with a different chaplain on my ship, I initiated my latest request for a religious-beard accommodation. This time I was supported by my chaplain, Lieutenant Joshua Hickman. Attached hereto as Exhibit A is a true and complete copy of Lieutenant Hickman's request, along with a letter from my imam filed in support.

12. The Deputy Chief of Naval Operations disapproved my request for an accommodation on July 13, 2020. Attached hereto as Exhibit B is a true and complete copy of the July 13, 2020 denial.

13. On September 17, 2020, I appealed the disapproval to the Chief of Naval Operations. Attached hereto as Exhibit C is a true and complete copy of my appeal.

14. The appeal was disapproved on December 14, 2020. Attached hereto as Exhibit D is a true and complete copy of the CNO's disapproval.

15. Because the Navy has denied my requests to grow a beard in conformity with my faith, I am now seeking a preliminary injunction to protect my religious rights under Navy and Department of Defense regulations, federal law, and the United States Constitution.

16. As an OS, I am responsible for radar operation and interpretation, course plotting, and working with tactical data systems. When at sea, I manage the link architecture with other vessels, manage surface contacts, and perform other tasks. Most of my work is done at a computer terminal. 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.

17. In my entire service as an OS, I have never had to don a gas mask as part of my usual duties. I have only worn a mask for training purposes. And the masks that I have worn are SCBA positive-pressure masks kept in the ship's repair locker. These masks are not personalized, and my beard did not interfere with a safe and effective fit when I have had to wear them.

18. I understand Sailors with duties similar to mine have received religious-beard accommodations.

19. Moreover, I am aware that many Sailors have been allowed beards for morale-related reasons, for medical reasons, and also for religious reasons. To my awareness, this has all been without adverse impact to sailors' ability to perform their duties.

20. To be sure, there may be times when a high probability of CBRN warfare could require all Sailors to be clean-shaven to wear a special Air Purifying Respirator (APR) mask with a fitted seal. But that would be exceedingly rare. 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 immediately shave. 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, nor is it likely that such risk would arise in the future.

21. My desire is to continue serving my country. I don't want to be in a position where I have to choose unnecessarily between serving my country and remaining true to my religious convictions. I also want to make it possible for other Muslims to enlist in our military and serve their country without having to abandon their religious commitments.

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

Executed this 19th day of July, 2021.

A handwritten signature in black ink, appearing to read 'Mohammed Shoyeb', written over a horizontal line.

Mohammed Shoyeb

EXHIBIT A

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

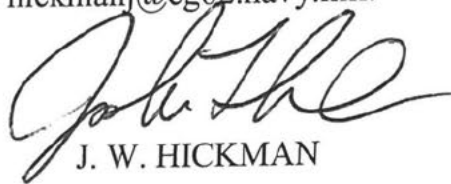
Ref: (a) SECNAVINST 1730.8
(b) SECNAVINST 1730.9
(c) DOD Instruction 1300.17
(d) BUPERSINST 1730.11A

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

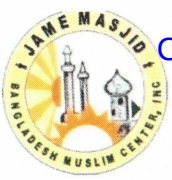
subscription to a YouTube Channel and listens to the Qu'ran daily as well as prays from his residence, because he was unable to find a Mosque or lay led Islamic community of the same form and style as his own within a reasonable distance of base to regularly attend. Additionally, he was deployed for 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



In the name of Allah, the most merciful, the most gracious

JAME MASJID

Bangladesh Muslim Center & Islamic School, Inc.

A Non Profit Religious Organization ID#: 11-2932850

105 Cortelyou Rd. Brooklyn, NY 11218

Tel: 718-436-4210, Fax: 718-972-2581 * Email: rccgeneral@yahoo.com

Date: 06/17/2020

RE: Saadaf Shoyeb.

To Whom It May Concern:

I am writing on behalf of OS2 Mohammed Saadaf Shoyeb.

OS2 Shoyeb was a regular attendee at our mosque from 2013-2018 when he resided in Kensington, Brooklyn. He is a Muslim who is seeking an accommodation to keep a beard as is mandatory for Muslim men as per Islamic tradition. The growing of the beard is a command that is derived directly from Islamic Tradition. As such, it would be considered highly problematic for Muslim man to be completely clean-shaven as per Islamic religious norms. The length of the beard becomes a difference of opinion and takes on its own legal considerations, but at a minimum it is understood and unanimously agreed upon across legal schools of thought and opinions that all Muslim men have the ability to grow a beard must do so. As such, brother Shoyeb is hoping to have this accommodation request fulfilled.

If I can be of any further assistance, please do let me know. I can be reached 718-436-4210.at any time. Thank you for your time and consideration

Yours truly,

Mohammed Hashem
President

EXHIBIT B



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

1730
Ser N1/114102
13 Jul 20

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)
To: OS2 Mohammad S. Shoyeb, USN
Via: Commanding Officer, USS CHANCELLORSVILLE (CG 62)

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

Ref: (a) NAVPERS 155651
(b) Your ltr of 22 Jun 20
(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 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: in furtherance of a compelling governmental interest, and 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:

a. Impact on military readiness, unit cohesion, good order and discipline, and health and safety

b. Religious importance of the request

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

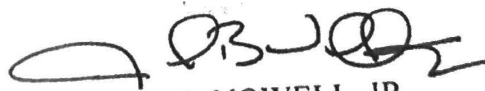
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there is alternative means available to meet the requested accommodation
- e. How other such requests have been treated

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)
COMCARSTRIKGRU FIVE

EXHIBIT C

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 D



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

1730
Ser N00/100011
14 Dec 20

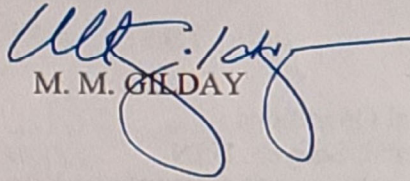
From: Chief of Naval Operations
To: OS2 Mohammad Shoyeb, USN
Via: Commanding Officer, USS CHANCELLORSVILLE (CG 62)

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)