

No. 22-5234

**In the United States Court of Appeals
for the District of Columbia Circuit**

JASKIRAT SINGH, AEKASH SINGH, MILAAP SINGH CHAHAL,
PLAINTIFFS-APPELLANTS

v.

DAVID H. BERGER, ET AL,
DEFENDANTS-APPELLEES

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA (CIV. NO. 22-1004)*

**BRIEF OF FORMER MILITARY OFFICIALS ERIC FANNING, MARK
HERTLING, R. PATRICK HUSTON, AND JEFFREY KENDALL IN
SUPPORT OF APPELLANTS**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), *amici curiae* make the following certification:

(A) **Parties, Intervenors, and Amici.** All parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Brief of Plaintiffs-Appellants.

(B) **Rulings Under Review.** An accurate reference to the ruling at issue appears in the Brief for Plaintiffs-Appellants.

(C) **Related Cases.** Aside from the related cases listed in the Brief for Plaintiffs-Appellants, *amici* are unaware of any related cases pending in this Court or in any other court.

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici are four former high-ranking officials of the United States military with over a century of collective experience serving in and leading our Armed Forces. *Amici* are deeply familiar with what is necessary for the Armed Forces to accomplish their missions. *Amici* are greatly interested in this case because its outcome may impact the ability of the Marine Corps to recruit and retain the best service members. And *amici* believe that Americans should not have to choose between fidelity to their faith and military service.

Eric Fanning served as the 22nd Secretary of the Army during the administration of President Obama. He previously served as Chief of Staff to the Secretary of Defense, Acting Secretary of the Air Force and Under Secretary of the Air Force, and Deputy Under Secretary of the Navy/Deputy Chief Management Officer. He is the only individual ever to have held senior appointments in all three military departments and in the Office of the Secretary of Defense. During his tenure as Secretary of the Army, Mr. Fanning was statutorily responsible for all matters relating to the Army, including manpower and personnel. He implemented the U.S. Army's policy changes allowing religious accommodations for Sikh soldiers during basic

training and active duty. He is also the first openly gay leader of any U.S. military service.

Lieutenant General Mark Hertling served for 37 years in the United States Army. He retired in 2013 as the Commanding General of United States Army Europe and the Seventh Army after commanding every organization from Platoon to Field Army. During the Iraq War, General Hertling led tens of thousands of troops into battle as Commanding General of the 1st Armored Division. In total, General Hertling spent over three years in combat. From 2009 to 2011, he also served as the first Deputy Commanding General for Initial Military Training, and led training at every Combat Training Center in the United States and at the Joint-Multinational Training Center in Europe.

Brigadier General R. Patrick Huston served for 35 years on active duty in the United States Army. He retired in 2021 as the Assistant Judge Advocate General. General Huston was an Army Ranger and helicopter pilot. He completed five combat tours in Iraq and Afghanistan and served as the Staff Judge Advocate of three major organizations: the 101st Airborne Division, the Joint Special Operations Command, and the U.S. Central Command. He also served as the Commanding General of The Judge Advocate General's Legal Center & School.

Brigadier General Jeffrey Kendall served for 31 years in the United States Air Force. He retired in 2013 as the Director of Warfighter Systems Integration in the Office of the Secretary of the Air Force. General Kendall commanded an operational F-15C squadron, and logged 323 hours of combat flying in Operations Desert Shield, Desert Storm, and Southern Watch. He later served as the Commander of Kandahar Airfield in Afghanistan. During his career, General Kendall commanded a flying training group at the U.S. Air Force Academy and the international 80th Flying Training Wing at Sheppard Air Force Base. From 2002 to 2003, he served as Associate Director for Expanded Joint Force Training and Deputy Under Secretary of Defense for Readiness in the Office of the Secretary of Defense.

RULE 29 STATEMENT

All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, no party or its counsel contributed any money intended to fund preparation or submission of this brief, and no person—other than the *amici curiae* or its counsel—contributed money intended to fund preparation or submission of this brief.

Pursuant to Circuit Rule 29(d), *amici* certify that a separate brief is necessary. As former military officials, *amici* possess unique experience that

makes them especially well-equipped to refute the government's justifications for denying appellants a religious accommodation and to highlight the harmful effects of that policy on national security.

SUMMARY OF ARGUMENT

The United States military has a proud tradition of accommodating religious exercise, furthering both our Nation's constitutional values and our military's mission. Religious accommodations embody General George Washington's admonition that "[t]he Cause of America, and of Liberty, is the Cause of every virtuous American Citizen; whatever may be his Religion or his Descent." Address to the Inhabitants of Canada, Sept. 14, 1775, *Founders Online*, National Archives, tinyurl.com/298ytaba.

Thus, during the French and Indian War, then-Colonel Washington recognized his Virginia militia included members of minority faiths such as Baptists. 1 Anson Phelps Stokes, *Church and State in the United States* 268 (1950). In response, Virginia created a chaplain corps that ultimately included chaplains from minority religions, not just from the Anglican establishment, to "celebrate divine worship, and to preach to the soldiers." *Id.* Similarly, when approving the Nation's first required oath for military officers in 1789, Congress explicitly provided that officers could make an "affirmation" rather

than a sworn allegiance. *See* Act of September 29, 1789, Ch. 25, § 3, 1 Stat. 96. That accommodation ensured that individuals holding religious beliefs that forbade swearing oaths to God could still serve. *See* Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1467-68, 1473-75 (1990). And today, the law generally allows uniformed service members to wear yarmulkes and other religious apparel, so long as it is “neat and conservative” and would not “interfere with . . . military duties.” 10 U.S.C. § 774(b).

The religious accommodations appellants seek fit squarely within this tradition. Appellants are observant Sikhs whose religion requires them to maintain unshorn beards and uncut hair covered by a turban. Each appellant wishes to serve in the Marine Corps and has passed all the preliminary medical and physical tests to do so. Sikhs have served in the U.S. military since at least World War I. *Statement for the Record of the Sikh Coalition*, House Armed Services Committee Hearing on Religious Accommodations in the Armed Services (Sept. 19, 2014), <https://perma.cc/DCS7-A8PR>. But in 1981, the military adopted grooming policies that barred Sikhs from service. *Sikhs to Army: No Longer Ban Beards, Turbans*, The Miami Herald, at C5 (Dec. 9,

1982). Every branch has since reversed course and changed their policies to accommodate practicing Sikhs. *See infra* at n.1.

The Marine Corps, however, remains an outlier. The Corps allows exemptions for Sikhs in many contexts after recruit training. And the Corps already grants new non-Sikh recruits exceptions from various grooming requirements during recruit training. Yet the Corps refuses to grant Sikh recruits a similar exception, effectively barring them from maintaining their unshorn beards, uncut hair, and turbans during recruit training. *See* Dist. Ct. Dkt. No. 1-2. That policy amounts to a *de facto* ban on Sikh participation in the Marine Corps, since it requires observant Sikhs to violate their faith as a condition of entry.

This Court should enjoin the Corps from enforcing this unlawful exclusionary policy. Like the rest of the federal government, the Corps must follow the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* (“RFRA”), which prohibits “substantially burden[ing] a person’s exercise of religion” unless applying that burden “is the least restrictive means of furthering [a] compelling governmental interest.” *Id.* §§ 2000bb-1(a), (b). The Corps must also honor the Constitution’s Free Exercise Clause, which demands heightened scrutiny whenever government “prohibits religious

conduct while permitting secular conduct that undermines the government's asserted interests in a similar way.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). Undisputedly, requiring appellants to cut their hair, shave their beards, and relinquish their turbans would substantially burden their religious exercise under a policy rife with secular exemptions.

Yet the Corps contends that RFRA and the Constitution allow it to deny appellants the same religious accommodation that other branches have granted. The Corps claims that accommodating Sikhs in recruit training would purportedly threaten “mission accomplishment” by undermining the Corps’ “discipline of uniformity.” Dist. Ct. Dkt. No. 35-1, ¶¶ 23, 24. And the district court denied injunctive relief by invoking those concerns to conclude the “public interest” disfavored relief, notwithstanding appellants’ likelihood of success on the merits. Dist. Ct. Dkt. No. 45, at 10-13.

Experience belies those rationales. The Marine Corps offers numerous exemptions from its grooming policies during recruit training—for women’s hairstyles, medical beards, and even tattoos—without any claimed impact on soldier discipline or *esprit de corps*. Further undermining the Corps’ dire predictions, every other branch of the military has offered Sikhs religious accommodations, resulting in a track record of remarkable success, not

disaster. Drawing on a mountain of collective experience, *amici* can confirm that the Corps' concerns over teambuilding, character formation, and unit cohesion are equally important to training in other branches, and have not been undermined by granting Sikhs accommodations.

Moreover, the government's exclusionary rationale omits key dimensions of national security. Religious accommodations demonstrably advance mission-readiness and mission-accomplishment. Religious accommodations eliminate mission-irrelevant barriers to service and facilitate specialized recruitment, without compromising military discipline. Likewise, accommodations foster resilience by supporting personal faith and facilitate the diversity essential to any expeditionary force. Military service depends on a willingness to sacrifice for the good of the Nation. But the Corps cannot demand that recruits sacrifice their faith as the price of admission.

ARGUMENT

I. Experience Belies the Government's Justifications for Denying Sikhs Religious Accommodations

Relying on a single declaration from the government, the district court concluded that accommodating appellants would "compromise the Marine Corps' national defense mission," by "disrupting . . . the discipline of uniformity." Dist. Ct. Dkt. No. 45, at 12-13 (citation and internal quotation

marks omitted). The government likewise asserts that granting an accommodation would undermine values like “the formation of a team mentality” and “willingness to sacrifice.” *See* Dist. Ct. Dkt. No. 35-1, ¶ 18.

Whether framed as part of the RFRA analysis or as part of the “public interest” standard for injunctive relief, the government’s claims of disruption defy credulity. Under RFRA, the government cannot just recite “broadly formulated interests” such as “a need for uniformity.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431, 435 (2006). Rather, courts must “scrutinize the asserted harm of granting specific exemptions to particular religious claimants and . . . look to the marginal interest in enforcing the challenged government action in that particular context.” *Holt v. Hobbs*, 574 U.S. 352, 363 (2015) (citation and internal quotation marks omitted). Here, “tens of thousands of soldiers . . . have received grooming and uniform accommodations for other reasons,” underscoring the government’s failure to show that accommodating appellants would compromise military readiness. *See Singh v. McHugh*, 185 F. Supp. 3d 201, 231 (D.D.C. 2016).

The Marine Corps offers myriad exceptions from its grooming requirements during recruit training, from allowing women to maintain long hair to allowing beards for medical reasons. *See* Resp. in Opp’n to Pls.’ Mot.

for Inj. Pending Appeal at 15-17. Yet the Corps concedes that these exceptions have not undermined discipline or team-oriented values. *See id.* at 15-16. The Corps allows exemptions for tattoos on the grounds that those exceptions further the Corps' "pursuit of diversity and inclusion." *See id.* at 17. But accommodating appellants would further the same goal.

Our military's broader experience further undermines the Corps' assertions. Over the last five years, the Army, Navy, and Air Force have each changed their policies to provide religious accommodations allowing Sikh service members to maintain neatly kept unshorn hair and beards.¹ *Amici* can attest that some of us were involved in those transitions, and that the changes have strengthened our military. More than 100 Sikhs now serve in the Army and Air Force as a result of religious accommodations, and the Corps identifies zero evidence of any adverse effect on discipline or *esprit de corps*. Dave

¹ *See* Army Directive 2017-03 (Jan. 3, 2017), <https://perma.cc/V25D-4LPJ>; Army Reg. 600-20 App. P (July 24, 2020), <https://perma.cc/9JDV-ZJYL>; Air Force Instruction 36-2903, Dress and Personal Appearance of Air Force Personnel (updated Mar. 15, 2021), <https://perma.cc/ME57-FDM7>; Navy Bur. of Pers. Instr. 1730.11A (Mar. 16, 2020), <https://tinyurl.com/45pwf88d>; *see also*, e.g., Kayshel Trudell, *Air Force Graduates First Fully Religiously Accommodated Sikh Airman from Security Forces Apprentice Course*, U.S. Air Force Recruiting Serv. (Sept. 30, 2019), <https://tinyurl.com/5cv66j7j>; Susanne Kappler, *Keeping Faith: Sikh Soldier Graduates Basic Training*, U.S. Army (Nov. 10, 2010), <https://tinyurl.com/54mpxxbj>.

Philipps, *The Marines Reluctantly Let a Sikh Officer Wear a Turban. He Says It's Not Enough*, N.Y. Times (Sept. 26, 2021), <https://tinyurl.com/bdefkrnm>. Even the Marine Corps already grants the accommodations appellants seek outside the context of recruit training. See Dist. Ct. Dkt. Nos. 1-2 & 1-4.

Sikhs serving in our Armed Forces regularly receive commendations for their professional appearance. They have even fashioned turbans that conform to uniform requirements and patterns, and display the same “flash” (insignia patch) as their fellow service members. Steve Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, U.S. Army (Mar. 25, 2010), <https://tinyurl.com/nhbn2h7e>. One commander’s comment about a Sikh under his command says it all: “[H]e knows what he is doing and he’s doing a phenomenal job. I’d go to battle with him.” *Id.* Given that record, the government’s “marginal interest” in denying appellants an accommodation hardly qualifies as compelling. *Holt*, 574 U.S. at 363.

Likewise, experience demonstrates that less restrictive alternatives are perfectly adequate to serve the Corps’ interests. Resp. in Opp’n to Pls.’ Mot. for Inj. Pending Appeal at 12-13. The government admits that allowing women to maintain long hair or varied hairstyles during recruit training does not

destroy *esprit de corps* or inhibit teambuilding, precisely because the Corps still subjects these women to “strict grooming requirements.” *Id.* at 16. The same is true of recruits who cannot shave daily for medical reasons, who comply with “hair management” protocols. *Id.* at 15. The government fails to explain why it could not permit appellants to maintain their unshorn hair, beards, and turbans subject to similarly strict standards. Tidiness, good order, and discipline are core tenants of the Sikh faith and consistent with appellants’ religious practices. *See* Dawinder S. Sidhu & Neha Singh Gohil, *Civil Rights in Wartime: The Post-9/11 Sikh Experience* 47 (2009) (observing that “*Kes* [unshorn hair], one of the five Sikh articles of faith, should be kept tidy” and noting that the turban assists Sikhs with that goal and signifies “the wearer’s commitment to . . . general discipline”).

Similar problems pervade the government’s oft-repeated claim that the Marine Corps’ unique mission as the Nation’s “expeditionary force” justifies its disparate treatment of Sikh recruits compared to other branches. *Resp. in Opp’n to Pls.’ Mot. for Inj. Pending Appeal* at 9-11. Having trained, supervised, or managed tens of thousands of Army, Navy, and Air Force soldiers, *amici* can confirm that the Corps’ asserted teambuilding, psychological transformation, and shared identity objectives are equally

important to the training missions of other branches—none of which, again, have been compromised by granting Sikhs religious accommodations. The fate of the Corps’ expeditionary mission and the Marines’ ability to “deploy at a moment’s notice,” Dist Ct. Dkt. No. 35-1, ¶ 28, does not depend on shearing appellants’ locks and barring their turbans.

II. The Government Ignores the Significant National Security Benefits of Religious Accommodations

The government’s constellation of national security concerns is also underinclusive, and omits the integral role that religious accommodations play in mission-readiness and mission-success. Accommodations facilitate recruitment, foster troop resilience, and promote diversity in our Armed Forces.

Start with military recruitment. As Congress has recognized, protecting recruits’ religious freedom lets the military attract individuals “from numerous religious traditions, including Christian, Hindu, Jewish, Muslim, [and] Sikh” faiths, which “contributes to the strength of the Armed Forces.” *See* National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 528, 129 Stat. 726, 814 (2015). Unsurprisingly, allowing for religious pluralism helps attract individuals from all walks of life to military service, making religious accommodations a critical asset in maintaining an “all-volunteer force.” Mickey R. Dansby et al., *Managing Diversity in the*

Military: Research Perspectives from the Defense Equal Opportunity Management Institute 83-84 (2001).

That consideration has special urgency today. Participation in America's Armed Forces has plummeted. Pentagon officials characterize the current environment as "the worst it has been since the end of the Vietnam War." Alex Horton, *Pentagon Bedeviled by Recruitment Failures as Solutions Prove Elusive*, Wash. Post (Sept. 21, 2022), <https://tinyurl.com/yu8yyy6c>. "Less than a quarter of young American adults are physically fit to enlist and have no disqualifying criminal record," and only about one in ten such adults say they would even consider military service. Dave Philipps, *With Few Able and Fewer Willing, U.S. Military Can't Find Recruits*, N.Y. Times (July 14, 2022), <https://tinyurl.com/5n7yajrf>. In this environment, removing impediments to service is mission-critical.

Failing to accommodate appellants' Sikh faith carries even more obvious downsides for recruitment. Sikhs have a long history of military service dating back centuries. Indeed, a central element of the Sikh religion is the ideal of a warrior-saint who combats injustice. Sidhu & Gohil, *supra*, at 21 (Sikhs are instructed "to be saint-soldiers—those who would not only adhere to Guru Nanak's underlying message of remembering God's name, but who would also

fight for justice.”). An estimated 700,000 Sikhs currently live in the United States and the Sikh faith has approximately 25 million adherents worldwide, making Sikhism the fifth-largest religion in the world.² Excluding Sikhs from recruit training—and thus from ensuing service in the Corps—arbitrarily excludes a significant population whose faith espouses commitment to service.

Allowing religious accommodations for Sikhs and others also helps the military recruit and retain uniquely skilled individuals without compromising national security. Consider Simran Preet Singh Lamba, an observant Sikh who now serves as a corporal in the Army. Like one of the appellants, Corporal Lamba possesses language skills in Punjabi and Hindi that are a valuable strategic asset to the Armed Forces—so much so that the Army recruited Lamba in 2009 on this basis. *See* Dist. Ct. Dkt. No. 1, ¶ 179; Steve Elliott, *Second Sikh Doctor Allowed to Wear Articles Faith; Enlisted Soldier in Training*, U.S. Army (Sept. 9, 2010), <https://tinyurl.com/ye4ww638>. Like appellants, Corporal Lamba’s faith demands that he wear a well-kept beard,

² *See Sikhism: What Do You Know About It?*, Wash. Post (Aug. 6, 2012), <https://tinyurl.com/5x6utpcp>; The Pew Forum on Religion & Public Life, *The Global Religious Landscape: A Report on the Size and Distribution of the World’s Major Religious Groups as of 2010* 9 n.1 (2012), <https://tinyurl.com/mua7kkch>.

unshorn hair, and a turban. *Singh*, 185 F. Supp. 3d at 228. The Army granted Lamba a religious accommodation so he could serve as a medic. *Id.* Lamba's superiors describe him as "easily one of the most impressive Soldiers in the company," and he has received an Army Commendation Medal for his "selfless service and dedication to duty." *Id.*

Or take the religious accommodation the Army granted to Lieutenant Colonel Kamaljeet Singh Kalsi, a doctor and observant Sikh. *Id.* at 227-28. The result? Kalsi earned a bronze star for his service in Afghanistan. *Id.* Or consider the Air Force, where attorney Maysaa Ouza recently received an accommodation that allowed her to join the JAG Corps while wearing a hijab consistent with her Muslim faith, including during basic training. Kent Miller, *First Air Force JAG Officer to Wear Hijab Featured in Short NBC Documentary*, Military Times (Mar. 24, 2019), <https://tinyurl.com/3h8vu9zm>. The lesson is clear: religious accommodations allow talented individuals to fill crucial military needs.

Religious accommodations also foster resilience among soldiers and further the Corps' goal of maintaining a diverse fighting force. The Marine Corps has long recognized that "[s]piritual readiness renders a Marine capable of coping with any crisis," and provides "the bedrock upon which the

concepts of honor, courage, and commitment are built.” U.S. Marine Corps, *The Commander’s Handbook for Religious Ministry Support*, MCRP 3-30D.4, at 1-1 (May 2, 2016), <https://tinyurl.com/429zedhj>. Marines regularly face demanding challenges, and “[o]nly the spiritually ready have the moral courage to persevere in the face of overwhelming odds.” *Id.* at 1-2. According to the Commandant of the Marine Corps himself: “While the importance of physical, mental, and social fitness are more recognizable, Spiritual Fitness is just as critical.” U.S. Marine Corps, *Spiritual Fitness: Leader’s Guide 3* (2022) (statement of Gen. David H. Berger), <https://tinyurl.com/yfj23uhy>. Given the challenges of combat—the principal task for which the Corps trains recruits—it is clear that “[u]nless the soldier’s soul sustains him he cannot be relied on and will fail.” *Selected Speeches and Statements of General of the Army George C. Marshall* 122 (H. A. de Weerd ed., 1945).

Additionally, religious accommodations advance the military’s mission of maintaining a diverse fighting force. President Biden has made clear that “[a]ll Americans who are qualified to serve in the Armed Forces of the United States . . . should be able to serve.” Executive Order No. 14,004, 86 Fed. Reg. 7471, 7471 (Jan. 25, 2021). And the President has time and again emphasized the importance of diversity in the military. *See* Morgan Chalfant & Rebecca

Khell, *Biden Emphasizes Diversity in First Visit to Pentagon*, The Hill (Feb. 10, 2021), <https://tinyurl.com/24acrn66>; Joseph R. Biden, National Security Strategy at 21 (Oct. 12, 2022), <https://tinyurl.com/ydbnvd49> (“We will strengthen the effectiveness of the [military] by promoting diversity and inclusion.”). Religious accommodations are of a piece with efforts to remove barriers to service for women, racial minorities, and LGBTQ recruits. Accommodations help ensure the racial and religious makeup of the U.S. military mirrors the American public it serves.

Given all of this, the idea that the Marine Corps’ “expeditionary force” mission provides a justifiable reason to deny appellants an accommodation is baffling. Marines headed to a foreign land need all the support available. The Corps recognizes the psychological benefits that faith often provides in these contexts. Yet it insists on denying an accommodation in recruit training—a time when developing resilience is especially important. As the Corps itself has noted, recruit training is the time to teach recruits how to “[d]raw[] on internal resources under hellish circumstances.” *Commander’s Handbook*, *supra*, at 1-2. The idea is “to push recruits to the lowest depth in order to glimpse the depravations of combat conditions” and to “help[] recruits realize they will need inner resources to cope with combat.” *Id.* Unsurprisingly, then,

the Marine Corps provides religious support during recruit training just as it does in combat zones. *Compare Recruit Training Matrix*, Marine Corps Recruit Depot, Parris Island (Apr. 15, 2022), <https://tinyurl.com/bdcr2p3h> (showing scheduled time each Sunday for religious services) *with Commander's Handbook*, *supra*, at 2-12 (“In a combat zone . . . religious supplies go fast.”). The government provides no satisfactory explanation for treating appellants’ religious practices any differently.

Similarly, maintaining a diverse fighting force provides important strategic advantages, especially for expeditionary missions abroad. As noted above, Sikhs and service members from other religious minorities often have uncommon skills, such as the ability to communicate in a foreign language. Undoubtedly, a religiously diverse Marine Corps also enables our forces to interact more effectively with allies and enemies alike. *See, e.g.*, Army Reg. 165-1 § 1-5b (June 23, 2015), <https://tinyurl.com/bdhujwhf> (“In many nations of the world, religious beliefs influence perceptions of power, diplomacy, law, and social customs.”). Those insights are already bearing fruit in other branches. In 2011, Major Tejdeep Singh Rattan, an observant Sikh in the Army, received a NATO medal for diffusing a tense confrontation with Afghan civilians—an achievement made possible in part by Major Rattan’s “cultural

understanding” and “engagement with local populations.” *Statement for the Record of the Sikh Coalition, supra*. As Secretary of Defense Lloyd Austin has explained, “diversity in our military ranks makes us better at defending the American people.” Jim Garamone, U.S. Dep’t of Def., *Biden Showcases the Strength, Excellence of American Military Diversity* (Mar. 8, 2021), <https://tinyurl.com/zd7ju96p>.

* * *

The government’s failure to accommodate appellants results in an indefensible *de facto* ban on Sikhs serving in the Marine Corps. Requiring a recruit to violate the tenets of his faith as a condition of participating in recruit training undermines recruits from within, withdrawing an important source of resilience when soldiers need it most. And telling adherents of one faith—but not others—that they cannot obtain comparable religious accommodations is no way to foster diversity or recruit a highly skilled fighting force. Both the law and our military’s collective experience counsel against such pointless discrimination. “Implicit in the term ‘national defense’ is the notion of defending those values and ideals which set this Nation apart It would indeed be ironic if, in the name of national defense, we would sanction the

subversion of one of those liberties.” *United States v. Robel*, 389 U.S. 258, 264 (1967).

CONCLUSION

For the foregoing reasons, the Court should reverse the district court’s denial of appellants’ motion for a preliminary injunction.

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CERTIFICATE OF COMPLIANCE

This Brief of Former Military Officials in Support of Appellants complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4,126 words, excluding the parts of the brief Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1) exempt.

This Brief of Former Military Officials in Support of Appellants also complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word, in Century Schoolbook style, 14-point font.

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CERTIFICATE OF SERVICE

I, Mark S. Storslee, certify that on October 28, 2022, I caused to be electronically filed the original of the foregoing Brief of Former Military Officials in Support of Appellants with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

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