

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

**SUKHBIR SINGH TOOR, et al.,**

*Plaintiffs,*

v.

**DAVID H. BERGER, et al.,**

*Defendants.*

Civil Action No. 1:22-cv-01004

**APPLICATION FOR  
PRELIMINARY INJUNCTION  
(Oral Argument Requested)**

Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1(c), Plaintiffs Aekash Singh, Jaskirat Singh, and Milaap Singh Chahal hereby move for a preliminary injunction for the pendency of this lawsuit preventing Defendants from forcing them to violate their sincere religious beliefs by compelling them to shave their beards and remove their turbans and other religious articles of faith in order to commence their basic training with the United States Marine Corps. These Plaintiffs have requested a religious accommodation from the Marine Corps to allow them to grow their beards and wear other articles of faith in accordance with their faith, but have received only a very limited accommodation that does not protect their religious rights during (among other times) their recruit or “basic” training.

As further elaborated in the accompanying memorandum of points and authorities, the Marine Corps’ refusal to fully accommodate Plaintiffs’ religious exercise compels them to violate those beliefs in order to serve their country, and thereby irreparably harms their constitutional and statutory rights. And pending relief from this Court, Plaintiffs are left in limbo, unable to pursue their military careers unless they agree to abandon their faith. In a short time, their military entrance exams will expire, forcing them to either give up their dreams of serving in the military or undergo

the admission process a second time. Plaintiff Jaskirat Singh's contract under the Marine Corps' Delayed Entry Program expires on April 30, 2022. Accordingly, all three Plaintiffs respectfully request a hearing and a decision on this motion in time for a decision to be rendered no later than April 26, 2022, so that adequate time remains for an emergency appeal in case of an adverse decision from this Court.

In compliance with Local Civil Rule 7(m), undersigned counsel gave notice to counsel for the opposing parties of Plaintiff's request for relief. On April 13, 2022, counsel for all Defendants stated that agency counsel was seeking approval to extend the contract expiration deadline for Plaintiff Jaskirat Singh by 180 days, but counsel declined to agree to the preliminary merits relief sought. The parties will update the Court promptly if Mr. Singh's deadline is extended. In that case, the parties have agreed to resume a standard briefing schedule.

Respectfully submitted this 13th day of April, 2022.

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**STATEMENT OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION FOR PRELIMINARY  
INJUNCTION ON BEHALF OF  
PLAINTIFFS MILAAP SINGH  
CHAHAL, AEKASH SINGH, AND  
JASKIRAT SINGH**

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## INTRODUCTION

Members of the U.S. military should not have to choose between serving their God and serving their country. Yet Plaintiffs Milaap Singh Chahal, Aekash Singh, and Jaskirat Singh now face that coercive choice. All three meet the qualifications to be admitted into the United States Marine Corps with only one remaining obstacle: an order demanding that they abandon their core religious practices upon entering, and for the duration of, their basic training.

As devout Sikhs, Plaintiffs are obligated to maintain unshorn hair, including beards, and other religious articles. Consistent with Marine Corps policy, they have sought religious accommodations that would allow them to remain true to their faith while in service to their nation—accommodations that are already permitted by both the United States Army and United States Air Force, as well as by militaries around the world. The Marine Corps, in contrast, has insisted that Plaintiffs’ religious expression and articles of faith violate a standard of “uniformity” ostensibly required of all Marines during recruit training. It has thus denied their requests for religious accommodations during this initial phase of their service, barring them from serving at all as a result.<sup>1</sup> Forcing Plaintiffs to choose between serving their God and their country contradicts the Marine Corps’ own regulations, the Religious Freedom Restoration Act (RFRA), and the United States Constitution. This Court has previously granted related emergency relief to servicemembers in the Navy, *Di Liscia v. Austin*, No. 21-1047 (D.D.C. Apr. 15, 2021), ECF No. 7 at 1 (granting “stay enjoining Defendants from forcing Di Liscia to shave his beard”), and in the Army, *Singh v. Carter*, 168 F. Supp. 3d 216, 229 (D.D.C. 2016) (issuing TRO against discriminatory testing of a Sikh soldier concerning his religious beard). And the Army and Air

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<sup>1</sup> The Marine Corps has also denied the accommodation of Plaintiff Milaap Singh Chahal to the extent he may serve in a ceremonial role. And it has denied the accommodation of all Plaintiffs to the extent they may be deployed and entitled to receive “hostile fire” or “imminent danger” pay. While these limitations are also challenged in the Complaint, for purposes of this preliminary injunction motion, Plaintiffs address only the limitation on their accommodations during their basic training, which prevents them from entering the Marine Corps. Plaintiff Sukhbir Toor has already completed basic training. Thus, throughout this brief “Plaintiffs” refers only to Plaintiffs Milaap Singh Chahal, Aekash Singh, and Jaskirat Singh.

Force have since allowed accommodations for Sikhs across the board, including during recruit training. Because the Marine Corps has no compelling reason for continuing to restrict Plaintiffs' religious exercise, Plaintiffs now seek a preliminary injunction preventing the Marine Corps from enforcing its uniform and grooming policy as to their religious articles of faith.

Plaintiffs' articles of faith would not hinder the performance of their duties in any way. Moreover, the fact that the Marine Corps is *more* restrictive of religious practice during recruit training (where no external threats are present) than during a Marine's actual service underscores that its real concern is one of uniformity, not safety. This interest in uniformity has little force as applied to Plaintiffs' religious exercise, particularly considering the many other exceptions to uniformity the Marine Corps *invites* to diversify its ranks.



*U.S. Army Corporal Simran Preet Singh Lamba carrying the guidon for his platoon during Basic Combat Training graduation. Photo Credit: Susanne Kappler/U.S. Army*



*Marine Corps special-operations staff sergeant in Afghanistan  
Photo Credit: Michael M. Phillips/The Wall Street Journal*

Because the Marine Corps has no compelling reason to suppress Plaintiffs' religious exercise, Plaintiffs are likely to prevail on the merits of their RFRA, Free Exercise, and Equal Protection claims. The other injunction factors weigh in their favor too. Absent relief, Plaintiffs will continue suffering irreparable harm, facing a coercive choice to abandon either their religious beliefs or the ability to serve their country as Marines. All three Plaintiffs have put their lives and careers on hold, and two have waited over a year for the Marine Corps to process their requests. All of them have passed the requisite exams and fitness tests to qualify for a contract with the Marine Corps,

but these qualifying tests will soon expire. The Marine Corps allows recruits who are deemed qualified but who are not ready to commit to becoming a Marine to maintain their test scores for only up to two years. Candidates who are ready to make the commitment, but who cannot immediately embark for recruit training, enter into a Delayed Entry Program (DEP), which allows their qualifications to remain active for up to only 365 days.

While all three pre-accession Plaintiffs were ready to commit to becoming Marines, due to inconsistencies within the Marine Corps' own policies, two were prohibited from entering the DEP while their religious accommodations were pending while the third Plaintiff, Jaskirat Singh, was permitted to enter the DEP. On April 30, 2022, Plaintiff Jaskirat Singh's DEP contract will expire, and he will have to be administratively discharged and start the enlistment process over again absent relief from this Court. Additionally, given the extensively long time the Marine Corps has taken to respond to Plaintiffs' requests, and looming deadlines for both Plaintiffs Milaap Singh Chahal and Aekash Singh, they will both have to retake their mental and physical entrance tests and start the accommodation process all over again unless this Court intervenes.

The Marine Corps' asserted interests would not be compromised by allowing Plaintiffs to maintain their beards and religious articles. And relief would be in the public's interest, as it would affirm the core rights of religious exercise and expression guaranteed by federal law and the U.S. Constitution while supporting the Marine Corps' own commitment to the diversity of our servicemembers. The Court should issue a preliminary injunction enjoining the Marine Corps from forcing Plaintiffs to abandon their faith during recruit training and the pendency of this lawsuit.

## **BACKGROUND**

### The Sikh Faith

Sikhism is a monotheistic religion that originated in the fifteenth century in the Punjab region of South Asia. While relatively young compared to other major world religions, it is the world's

fifth largest faith tradition with nearly 25 million adherents.<sup>2</sup> There are approximately 700,000 Sikhs in the United States.<sup>3</sup> The Sikh faith teaches that God is all loving, all pervading, and eternal. Compl. ¶ 76. This God of love is accessed through grace and sought by service to mankind. *Id.* The founder of Sikhism, Guru Nanak, rejected the caste system and declared all human beings, including women, to be equal in rights, responsibilities, and ability to reach God. Compl. ¶ 77. He taught that God was universal to all—not limited to any religion, nation, race, color, or gender. *Id.*

Consistent with the teachings of the Sikh gurus, Sikhs wear external articles of faith to bind them to the beliefs of the religion. Compl. ¶ 78. Unlike some other faiths, where only clergy maintain religious articles on their person, all Sikhs are required to wear external articles of faith. *Id.* These articles of faith, such as unshorn hair (*kesh*) and the turban, distinguish a Sikh and have deep spiritual significance. Compl. ¶ 79. A Sikh's other religious articles include the *kanga* (small wooden comb) worn in the hair; the *kara* (steel bracelet) worn on the wrist; the *kacchera* (undershorts) worn under the clothes; and a sheathed *kirpan* that is carried on the person (emblem of justice resembling a small knife). *Id.*

Along with millions of other Sikhs, Plaintiffs sincerely believe that maintaining unshorn hair (including facial hair) is an essential part of the Sikh way of life. Compl. ¶ 80. Guru Nanak started the practice, regarding it as living in harmony with God's will. Compl. ¶ 81. The Sikh Code of Conduct, called the *Rehat Maryada*, outlines the requirements for practicing the Sikh way of life. All Sikhs must follow the guidelines set forth in this document. *Id.* The *Rehat Maryada* explicitly instructs that if you are a Sikh, you must “[h]ave, on your person, all the time . . . the *Keshas* (unshorn hair).” Compl. ¶ 82. This document prohibits the removal of hair from the body as one of four major taboos. One of the other taboos on this list is adultery. *Id.* Accordingly, the fact that cutting one's hair is a moral transgression as serious as committing adultery speaks to the immense

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<sup>2</sup> See *The Global Religious Landscape: A Report on the Size and Distribution of the World's Major Religious Groups as of 2010*, The Pew Forum on Religion and Public Life, 9 n.1 (2012), <https://perma.cc/L9L7-S6JA>.

<sup>3</sup> *Sikhism*, WorldAtlas (Nov. 4, 2021), <https://perma.cc/A3FZ-LLFE>.



significance of uncut hair in the Sikh religion. *Id.* The *Rehat Maryada* also mandates that Sikhs wear a turban which must always cover a Sikh's head. Compl. ¶ 83. The turban reminds a Sikh of his duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard and honestly, sharing with the needy, and promoting equality and justice for all. *Id.* When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh's head. *Id.* Historically, uncut hair and turbans have been central features of the Sikh identity. Compl. ¶ 84. For example, in the eighteenth century, Sikhs in South Asia were persecuted and forced to convert from their religion by the dominant leaders in the region. *Id.* The method of forcing conversions was to remove a Sikh's turban and cut off his hair. *Id.* As resistance to such forced conversions, many Sikhs chose death over having their turbans removed and hair shorn. Compl. ¶ 85. Since then, denying a Sikh the right to wear a turban and maintain unshorn hair has symbolized denying that person the right to belong to the Sikh faith, and is perceived as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh. Compl. ¶ 86.

#### The History of Sikh Service in the Military

Service in the armed forces has long been—and continues to be—a central part of the Sikh tradition. This tradition dates back to Guru Gobind Singh's creation of the Khalsa, a spiritual order and army comprised of initiated Sikhs, to resist persecution by the Mughal Empire in the late seventeenth century. The Khalsa warrior-saint paradigm instructs Sikhs to take up arms against oppression as a religious duty.<sup>4</sup> After Britain expanded its control of India, Sikh soldiers soon became “among the sturdiest and trustiest men of the British army,” with a group of twenty-one Sikhs famously repulsing an attack by thousands of Afghans for six hours at the Battle of Saragarhi in 1897, and with approximately 100,000 Sikhs—a disproportionately high number among Indian volunteer soldiers—fighting for the British in World War I.<sup>5</sup> Observant Sikhs still serve with their

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<sup>4</sup> Sir Charles Gough & Arthur Donald Innes, *The Sikhs and the Sikh Wars*, 18-21 (1897); Arvind-Pal Singh Mandair, *Sikhism: A Guide for the Perplexed*, 4, 55 (2013).

<sup>5</sup> See Rajdeep Singh Jolly, *The Application of the Religious Freedom Restoration Act to Appearance Regulations that Presumptively Prohibit Observant Sikh Lawyers from Joining the*



articles of faith intact in militaries in Canada, Australia, the United Kingdom, and India, and also as United Nations Peacekeepers, often working closely with American troops in troubled regions.<sup>6</sup> In fact, Canada's former Minister of National Defence and current Minister of International Development, Lieutenant Colonel Harjit Sajjan, is an observant Sikh, who supported the U.S.-led coalition in Afghanistan and served as a special advisor to U.S. Army Lieutenant General James Terry, commander of the 10th Mountain Division, with his religious articles of faith intact.<sup>7</sup>

As members of the "greatest generation," Sikhs proudly served in the U.S Army with all of their articles of faith during both World Wars and the Vietnam War, until the military changed its policy in 1981 to prohibit exemptions to the uniform requirements for visible articles of faith. While Congress subsequently enacted a statute protecting soldiers' right to wear religious apparel that is "neat and conservative" and would not "interfere with . . . military duties," 10 U.S.C. § 774(b), the statute did not address religious beliefs against cutting hair and was construed narrowly by the military to continue barring turban-wearing Sikhs from serving.<sup>8</sup> And although some Sikhs already in the Army were grandfathered in, the 1981 policy change precluded any other practicing Sikhs from entering the U.S. Armed Forces for nearly thirty years. In 2017 and 2020, the Army and Air Force revised their policies respectively, such that over 100 Sikhs currently serve with courage and distinction in those branches.<sup>9</sup> But the Marine Corps continues

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*U.S. Army Judge Advocate General Corps*, 11 Chap. L. Rev. 155, 157 (2007); *Sikhs Prove Their Valor; Twenty-one Men Hold Sarhargarti Police Post Against 1,000 Orakzais Over Six Hours*, N.Y. Times (Sept. 14, 1897).

<sup>6</sup> *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>.

<sup>7</sup> See Christopher Guly, *Defense Minister Harjit Singh Sajjan: A Sikh Soldier's Climb to the Canadian Cabinet*, L.A. Times (Feb. 22, 2016, 3:30 AM), <https://perma.cc/8KBL-VHXM>.

<sup>8</sup> See Defense Instr. 1300.17 (1988) (amended Jan. 2014 and Sept. 2020); Army Reg. 600-20 §§ 5-6g(4)(g) (2009).

<sup>9</sup> Dave Philipps, *The Marines Reluctantly Let a Sikh Officer Wear a Turban. He Says It's Not Enough*, N.Y. Times (Sept. 26, 2021), <https://perma.cc/LV3V-7UZV>; Army Directive 2017-03 (Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation) (Jan. 3,

to insist on “uniformity,” at least when it comes to the articles of faith of religious minorities, sending the clear message that no Sikhs need apply.

Prior Engagement with Defendants Regarding Sikh Religious Accommodations

Beginning in September 2019, counsel for Plaintiffs began outreach to then-Chief of Naval Personnel, John B. Nowell, Jr., to express concerns regarding Navy policies surrounding religious accommodations. Klapper Decl. Ex. A. Over the course of 2020 and early 2021, counsel continually engaged via letters and teleconferences with the Navy General Counsel’s office, including with then-Acting General Counsel Garrett Rensing and others. *See, e.g.*, Klapper Decl. Ex. B, C. At all times, counsel made it clear that these discussions were an effort to clear a path of equal access to employment for observant Sikhs to join the Marine Corps, and that the Navy General Counsel’s office should be prepared to receive Sikh religious accommodation requests in the near future.

Milaap Singh Chahal’s Commitment to the Sikh Faith

Milaap Singh Chahal has been a practicing Sikh since childhood. Compl. ¶ 123. As a first-generation Sikh American born in California, his faith goes to the core of his identity and motivates him with the desire to serve his fellow Americans daily as a Marine. Compl. ¶¶ 130-31. Since he was 11 years old, he has worn a turban continually, never shaved his facial hair, and attended religious services at Gurdwara every week with his family. Compl. ¶ 123. He also attended Sikh school on weekends. *Id.* At age 15, Chahal participated in the *Amrit Sanskar* ceremony of initiation, where he was “reborn” and began a “new chapter” in his life as an *amritdhari* or fully initiated Sikh, wearing all five religious articles continually: the *kesh* (unshorn hair), the *kanga* kept in his turban, the *kara* on the wrist, the *kacchera* undergarment, and the *kirpan* carried on his

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2017), <https://perma.cc/V25D-4LPJ>; Secretary of the Air Force, Air Force Instruction 36-2903, Dress and Personal Appearance of Air Force Personnel (Feb. 7, 2020), <https://perma.cc/ME57-FDM7>; Secretary of the Air Force, Air Force Policy Directive 52-2, Accommodation of Religious Practices in the Air Force (July 28, 2020), <https://perma.cc/RX7U-ZEMX>; *see also* Secretary of the Air Force, Department of the Air Force Instruction 52-201, Religious Freedom in the Department of the Air Force (June 23, 2021), <https://perma.cc/E3HQ-MNZS>.

person. Compl. ¶¶ 124-25. Chahal also fully practices other aspects of his faith, including attending Gurdwara daily after work for multiple hours, where he participates in prayers, hymns, and religious discussion. Compl. ¶ 126. Every week, he volunteers his time teaching martial arts to Sikh children. Compl. ¶ 127. Because of his religious beliefs, he is a vegetarian, and he does not consume tobacco or alcohol. Compl. ¶ 128.

#### Chahal's Desire to Join the Marine Corps

Chahal is currently a fully qualified candidate for accession into the Marine Corps. Ever since he was a child, he has wanted to serve his country in the armed forces because of his love for America and his passion for defending his community from injustice. Compl. ¶ 130. Chahal's faith is at the core of his decision to become a Marine, and he believes every American should give back to their country through military or government service. Compl. ¶ 131. Chahal desires to join the Marine Corps specifically because it prides itself on being one of the most elite institutions in the world. Compl. ¶ 136. He wants to follow in the legacy of military service, as many observant Sikhs have before him, and is committed to giving his all to the Marine Corps. *Id.* That is why he made this request before accession. Compl. ¶ 137. Being forced to shave his beard and cut his hair to enter recruit training would violate his sincere religious beliefs and practices observed since childhood, incurring irreparable harm to his religious identity. Compl. ¶ 86.

In high school, Chahal participated in Air Force Junior Reserve Officer Training Corps (ROTC) at Federal Way High School. Compl. ¶ 132. Though he joined his freshman year and submitted a religious accommodation request then, he was initially not permitted to wear the uniform or to participate in drills because of his turban. Compl. ¶ 133. He also experienced ridicule and backlash from authority figures due to his articles of faith. *Id.* Despite these challenges, Chahal continued showing up and was committed to participating to whatever extent possible. *Id.* Eventually, he received a letter from the Pentagon ensuring that he could wear his turban, beard,

and religious articles with his uniform and began fully participating in the program. Compl. Ex. GG.

Throughout his Air Force Junior ROTC participation, Chahal received numerous ribbons, including dress-and-appearance, academic, leadership-school, and achievement ribbons. Compl. ¶ 134. Thus, despite the initial discrimination he experienced, Chahal enjoyed and valued his time in the program and the experience strengthened his goal of serving his country in the military. Compl. ¶ 135.

#### Aekash Singh's Commitment to the Sikh Faith

Aekash Singh has also been a practicing Sikh since childhood. Compl. ¶ 170. In 2007, shortly after he was adopted at the age of five, he immigrated to the United States and became a citizen that same year. Compl. ¶ 179. He has lived in San Carlos, California ever since, and speaks English, Hindi, and Punjabi. *Id.* His Sikh faith requires him to defend his community and to protect against injustice. Compl. ¶ 178. He has never cut his hair, and he has worn a turban since eighth grade, even when he was the only student wearing one at his school. Compl. ¶¶ 170-71. These religious articles are an integral part of his identity. Compl. ¶ 171. Aekash keeps his hair, including his beard, unshorn because maintaining it in a natural state is regarded as living in harmony with the will of God. Compl. ¶¶ 81, 171. Throughout his childhood, Aekash attended Gurdwara every week and he has continued attending regularly. Compl. ¶ 172. As part of his religious practice, Aekash does not drink alcohol. Compl. ¶ 177. He also seeks to learn more about the history of his faith by reading scriptures and other sacred texts. *Id.*

As a child, Aekash participated in *Charni Lagna*, an auspicious ceremony celebrating his ability to read from the Guru Granth Sahib, the Sikh holy scripture written in Gurmukhi, the written form of the Punjabi language. Compl. ¶ 173. He also participated in the *Dastar Bandi* turban-tying ceremony, where he publicly committed to wear his turban as a spiritual discipline signifying sovereignty, dedication, self-respect, morality, courage, and piety. Compl. ¶ 175. The turban has immense spiritual and temporal significance to Aekash, and he wears it out of love and as a mark of commitment to his faith. *Id.* To this day, he has never gone out in public without a turban and

wears a *patka* (a smaller head covering) even when he is swimming or playing competitive sports. *Id.* Since he was a young child, Aekash has also continually worn the *kara*, an iron or steel bracelet, to remind himself that he is a servant of God and should not take any action that may bring shame or disgrace. Compl. ¶ 176. In short, Aekash’s religious exercise and identity is intertwined with these articles of faith, which have deep spiritual and moral significance to him.

#### Aekash Singh’s Desire to Join the Marine Corps

Aekash believes in giving back to his country and committing to something greater than himself. Compl. ¶ 179. Members of his family have a history of military service, including a great-great-grandfather who served in World War II and an uncle who currently serves as an officer in the U.S. Army. Compl. ¶ 180. Like brave Sikhs before him, he wishes to follow in this legacy of service and leadership. *Id.* His interest in joining the U.S. military started at a young age, when he heard stories from his mother who—from her own childhood—wanted to be a pilot in the Air Force. Compl. ¶ 181. When his parents got married, they both wanted to join the Army, but were unable to because his father would have had to cut his hair and violate his religious beliefs. Compl. ¶ 182. Aekash later became passionate about the Marine Corps after speaking with the father of one of his best friends who is a retired Marine. Compl. ¶ 183. Aekash views the Marine Corps as the most challenging branch of the U.S. military when it comes to training and discipline, and he is committed to meeting this challenge to defend his country and support the brave women and men in our military in the air, on the ground, and in the water. Compl. ¶ 184. He also views the Marines as the “warrior” branch of the military, which he relates to the rich tradition of Sikhs serving as courageous warriors against injustice. *Id.* Aekash passed all physical and medical tests in October 2020, and first submitted his religious accommodation request on March 1, 2021. Compl. ¶¶ 186, 189. He is honored by the opportunity to serve in a manner that reflects the Marine Corps values of honor, courage, and commitment. Compl. ¶ 184.

#### Jaskirat Singh’s Commitment to the Sikh Faith

Jaskirat Singh has also been a practicing Sikh his entire life. Compl. ¶ 150. He is a second-generation Sikh American born in Texas. *Id.* His faith goes to the core of his identity and motivates

him to serve his fellow Americans. Compl. ¶ 155. Like all other observant Sikhs, he sincerely believes that keeping his hair unshorn is an essential part of the Sikh faith and way of life, and that removing hair from the body is as reprehensible as adultery. Compl. ¶¶ 153-54. As a young man, he underwent the *Dastar Bandi* turban-tying ceremony, where he publicly committed to wear his turban as a religious exercise, and as an adult Sikh he believes he should always cover his head with a turban. Compl. ¶ 153. The *Rehat Maryada* mandates the turban as a reminder of the Sikh's duty to maintain and uphold the core beliefs of the faith. Compl. ¶ 154. Historically, uncut hair and turbans have been central features of an observant Sikh's identity, and to deny Jaskirat these aspects of his religious identity is to deny him the right to belong to the Sikh faith. *Id.* Jaskirat has also worn his *kara* since he was a small child, and he abstains from alcohol and tobacco as a matter of religious devotion. Compl. ¶¶ 151-52.

#### Jaskirat Singh's Desire to Join the Marine Corps

Ever since Jaskirat was a child, he has wanted to serve his country in the armed forces. Compl. ¶ 155. This desire arose from his love for America and his passion for defending others from injustice—values that are rooted in his religious faith. *Id.* Because he wants to follow in the legacy of military service, as his great-grandfather and many other observant Sikhs have before him, he is committed to becoming a Marine. Compl. ¶ 160. He has passed all physical and medical tests and, if not for his accommodation request, would—in the eyes of the Marine Corps—be ready to begin his recruit training. Compl. ¶ 158. The Delayed Entry Program, which Jaskirat entered when he signed his contract, allows a recruit to wait only one year to begin recruit training. Compl. ¶ 169. Thus, absent relief from this Court, his contract will expire on April 30, 2022. *Id.*

#### Relevant U.S. Marine Corps Regulations

Both the Department of Defense and the Marine Corps have adopted regulations regarding religious accommodation requests. Department of Defense regulations state that the Department “will normally accommodate practices of a Service member based on sincerely held religious belief.” Compl. Ex. Y at ¶ 1.2(e). These regulations explicitly adopt the language and legal standards of RFRA: if a military “policy, practice or duty substantially burdens a Service member’s

exercise of religion, accommodation can only be denied if” the policy is “in furtherance of a compelling governmental interest” and is “the least restrictive means of furthering that compelling governmental interest.” *Id.* The instruction also affirmatively provides that the Department of Defense “will accommodate individual expressions of sincerely held beliefs . . . which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety.” *Id.* at ¶ 1.2(b).

The Marine Corps grooming regulations incorporate these instructions by reference. “Marines may wear . . . [a]rticles of religious apparel which are not visible or apparent when worn with the uniform” and “[v]isible articles of religious apparel with the uniform as permitted by 10 U.S.C. § 774, 42 U.S.C. § 2000bb-1, DoDI 1300.17, and SECNAVINST 1730.8, with approval of CMC or designee.” Compl. Ex. V, MCO 1020.34H (May 1, 2018), at ¶ 6(a)-(c).

The Marine Corps also recently updated its religious accommodation guidance, recognizing its obligations under both RFRA and the Free Exercise Clause. Compl. Ex. L, MCO 1730.9 (July 12, 2021). These regulations describe the detailed process for religious accommodation requests, both pre-accession and post-accession. *Id.* These regulations make clear that “service members have a right to observe the tenets of their religion,” and they fully incorporate the standards of RFRA. *Id.* ¶¶ 1, 3(a)(1). Finally, MCO 1730.9 emphasizes that “[n]o Marine will be asked to change their personal beliefs, including religious beliefs, which are protected by the United States Constitution” and that the Marine Corps “has an obligation to try to find ways to facilitate each Marine’s commitment to their faith as well as to each other.” *Id.* at ¶ 3(b)(3).

#### Milaap Singh Chahal’s Efforts to Obtain an Accommodation

On March 1, 2021, Chahal sought a religious accommodation allowing him to wear his hair uncut, including an unshorn, neatly groomed beard, and to wear the turban with his Marine uniform, to fully reconcile his religious identity with his service as a Marine. Compl. Ex. BB. On June 30, 2021, he went with his recruiters to a Military Entrance Processing Station (MEPS), where he passed the Armed Services Vocation Aptitude Battery (ASVAB) test. Compl. ¶ 138. He also passed all other physical and medical tests required for entrance into the Marines. *Id.* His recruiters

told him he was fully qualified to join, but they sent him home early from MEPS saying he could not sign a contract or swear in without either removing his turban and hair or receiving a religious accommodation. Compl. ¶ 139.

On September 27, 2021, the Deputy Commandant for Manpower and Reserve Affairs (“DC M&RA”) granted a temporary, partial accommodation, with severe limitations. Compl. Ex. J. Most egregiously, to commence his service, Chahal must cut his hair and shave his beard, and also abandon all other articles of faith—even those *not visible* when he’s in uniform—for the duration of his recruit training. *Id.* at ¶ 4a. After recruit training, he would still have to shave his beard and discard his turban whenever serving in a ceremonial role. *Id.* at ¶¶ 4b(2), (5). And he would not be allowed maintain a beard when deployed and receiving “hostile fire” or “imminent danger” pay—a status that accompanies deployments to over 30 nations where the U.S. military has a presence, including countries such as Greece, Israel, and Kenya. *Id.* at ¶ 4b(3). His accommodation letter also suggested that, after accession, the accommodation could be subject to revocation by subsequent commanders and upon permanent changes of station or assignment. *Id.* at ¶ 6.

On October 21, 2021, Chahal submitted an appeal to the Commandant of the Marine Corps, requesting an accommodation allowing him to wear his beard, unshorn hair, and religious articles during recruit training in accordance with his sincere religious beliefs. Compl. Ex. K. Chahal also requested the ability to wear his beard and turban after recruit training, in both ceremonial and deployment environments, throughout his career. Nearly six months later, his appeal is still awaiting a response. Even though the Marine Corps is obligated by its own regulations to forward his request up the chain of command within 30 days and issue a response within 60 days, Compl. Ex. L at ¶¶ 4b(1)(b)-(c), a total of 174 days have passed with no response. Continuing to await a response is futile given Defendants’ consistent unwillingness to grant accommodations during recruit training. Moreover, Chahal will continue to face a total barrier to entry into his career, and even if the barrier eventually falls, continued delay eventually will force him to start the entrance process over again because his ASVAB test results will expire in June 2023. Compl. ¶ 149.



Aekash Singh's Efforts to Obtain an Accommodation

When Aekash first began conversations with recruiters, he expressed a desire for religious accommodation so that he could join the Marines without compromising his core religious beliefs and practices. Compl. ¶ 185. After working with a recruiter, Aekash went to MEPS on September 30, 2020. Compl. ¶ 186. He took and passed the ASVAB test and physical tests at that time, but MEPS personnel refused to give him a contract to sign. *Id.* Instead, they asked Aekash if he would cut his hair. *Id.* When he declined because of his religious beliefs, the recruiter told him he was not authorized to join the Marines. *Id.*

A formal accommodation process for pre-accession recruits was not yet in place, but Aekash's recruiter encouraged him to submit a request for accommodation and promised to help in getting it processed. Compl. ¶ 187. On October 9, 2020, under guidance from recruiters who told him he could enter the Delayed Entry Program, Aekash returned to MEPS to swear in, again was asked to sign a document promising to cut his hair. Compl. ¶ 188. When he declined because of his religious beliefs, he was told to leave the swear-in room and denied entry once again. *Id.*

Aekash then submitted a pre-accession request for religious accommodation to the DC M&RA, Defendant LtGen David Ottignon, on March 1, 2021. Compl. Ex. O. On March 2, Aekash's attorneys shared a copy of his request with then-Acting Navy General Counsel Gary Rensing and were ultimately referred to Major General Daniel Lecce. Compl. ¶ 190. Over the next seven months, Aekash's attorneys spoke multiple times with Major General Lecce, who confirmed on June 3, 2021 that "[w]e are tracking your client['s] pending accommodation request." Compl. ¶ 193. Per Marine Corps regulations, this pre-accession request should have been forwarded to the DC M&RA within 30 days of submission to his recruiter, and the DC M&RA should have made its review and final determinations within 60 days of receipt. Compl. Ex. L at ¶¶ 4b(1)(b)-(c). The Marine Corps missed both these deadlines.

After repeated attempts by Aekash's attorneys to receive updates about his accommodation request over the course of a year, counsel for the Commandant claimed on October 8, 2021, that Aekash "has not officially begun the religious accommodation process" and "would need to re-

initiate communication with Marine Corps recruiters to confirm that he is still interested in enlisting.” Klapper Decl. Ex. D; Compl. ¶ 194. But Aekash had consistently responded to his recruiters and continued expressing his interest in joining the Marine Corps. Nonetheless, in the interest of moving his accommodation forward—and given his desire to serve our country as a Marine—in October 2021, Aekash re-delivered in person his original religious accommodation package to Marine Corps Recruiting Command. Compl. ¶ 196. Two months later, in December 2021, his recruiter responded by asking him to write a statement erroneously confirming that he was a “conscientious objector” “due to [his] religion,” because “the command is asking for it.” Compl. Ex. CC. Aekash again clarified that he wants “to obtain a religious accommodation to enlist into the United States Marine Corps,” not that he is a “conscientious objector.” *Id.*

On February 22, 2022, nearly a year after Aekash’s original request and four months after he resubmitted the same request, the DC M&RA granted a temporary, partial accommodation with severe limitations. Compl. Ex. Q. Most egregiously, to commence his service, Aekash would, for the first time ever, have to cut his hair, shave his beard, and abandon his *kara* to commence his recruit training. *Id.* at ¶ 3a. And like Chahal, he would not be allowed to maintain his beard when deployed and receiving “hostile fire” or “imminent danger” pay. *Id.* at ¶ 3b(5). His accommodation letter also suggests that, after accession, the accommodation could be subject to revocation by subsequent commanders and upon permanent changes of station or assignment. *Id.* at ¶ 5.

To follow the Marine Corps’ internal procedures, Aekash submitted his appeal on March 8, 2022. Compl. Ex. R. But awaiting a response would be futile given Defendants’ consistent unwillingness to grant accommodations during recruit training. In the meantime, since the Marine Corps claims to have lost his original request after taking nearly a year from his first submission to respond, he continues to face a complete barrier to his Marine Corps career. Klapper Decl. Ex. D. Further, continued delay eventually will force him to start the entrance process over again because his ASVAB test results will expire in September 2022. Compl. ¶ 205. Urgent relief is thus warranted.

Jaskirat Singh's Efforts to Obtain an Accommodation

On November 24, 2021, Jaskirat Singh sought a religious accommodation allowing him to wear his hair, including his beard, uncut, and to wear the turban while in uniform to fully maintain his religious identity while serving as a Marine. Compl. Ex. M. On February 7, 2022, Jaskirat received a response from Defendant Ottignon, the Deputy Commandant for Manpower and Reserve Affairs. Compl. Ex. A. The partial, temporary approval Jaskirat received does not protect his religious exercise because of the many limitations imposed. Under his current accommodation, during recruit training, Jaskirat is not authorized to wear any of his articles of faith. *Id.* at ¶ 3a. Thus, in order to enter the Marines Corps at all, Jaskirat would have to violate his faith by shaving and cutting his hair for the first time ever. He could not wear his *kara* either. After recruit training, Jaskirat may only wear a beard when not receiving hostile-file or imminent-danger pay. *Id.* at ¶ 3b(5). If deployed to one of the dozens of locations covered by these categories, he would immediately have to shave his beard, regardless of whether the location presents any actual threat to safety. His accommodation letter also suggests that, after accession, the accommodation could be subject to revocation by subsequent commanders and upon permanent changes of station or assignment. *Id.* at ¶ 5. In explaining its denial of Jaskirat's request for accommodation during recruit training, the Marine Corps claimed a need for "breaking down individuality and training recruits to think of their team first." *Id.* at ¶ 2d. Given the Marine Corps' extensive consideration of this issues, it is unlikely that its position will change in response to Jaskirat's internal appeal, which he filed on February 21, 2022. Ex. N.

Other Accommodations Granted by the U.S. Military and Marine Corps

Other branches of the U.S. military currently accommodate service members with religious beards and turbans, including Sikh service members. Since the Army changed its policy in 2017, at least 100 Sikhs currently serve with courage and distinction.<sup>10</sup> The Army allows religious beards except when there is actual risk of CBRN (chemical, biological, radiological, and nuclear)

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<sup>10</sup> Philipps, *The Marines Reluctantly Let a Sikh Officer Wear a Turban. He Says It's Not Enough*, <https://perma.cc/25E4-XNVR>.

exposure.<sup>11</sup> In February 2020, the Air Force updated its policy to allow religious beards, and it has recently approved individual accommodations for Muslim and Sikh service members, among others.<sup>12</sup>

Further, the Marine Corps recently relaxed other aspects of its grooming policies to improve its diversity outreach, directly undermining its claim that its interest in uniformity is so compelling that protected expression of diverse faith traditions must give way. Compl. Ex. W (relaxing regulations for male haircuts, helmet caps, fingernail polish, and maternity dress); Compl. Ex. B (relaxing tattoo regulations); Compl. Ex. T (expanding medical beard accommodations). As General David Berger explained, “[t]he Marine Corps draws its collective strength and identity from all its Marines, so it is critical that we prioritize policies that maximize the individual strengths of every Marine, regardless of race, gender, sexual orientation, creed, or any other marker.”<sup>13</sup> And on November 15, 2021, Secretary of the Navy Carlos del Toro issued guidance to the Navy and the Marines stating that “[d]iversity, equity and inclusion (DE&I) are inextricably linked to the readiness and mission success of our Navy and Marine Corps team.” Compl. Ex. X. He explained that “[a]ccessing individuals with different perspectives adds to our ability to solve problems on and off the battlefield, and amplifies the capability of our forces . . . . To successfully meet those challenges, we require a Navy and Marine Corps that is diverse, with a wide array of ideas and capabilities, a total force that reflects the Nation whose principles we defend.” *Id.* Secretary del Toro also recently committed to “emphasizing diversity, equity, and inclusion in every aspect of our force,” because “[we] can only overcome the complex challenges we face every day by cultivating the talent and unique insights of individuals from diverse personal,

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<sup>11</sup> See Army Directive 2018-19 ¶ 5(b)(1)-(2) (Nov. 8, 2018), <https://perma.cc/X7P8-8492>.

<sup>12</sup> See Air Force Instruction 36-2903, Dress and Personal Appearance of Air Force Personnel, <https://perma.cc/ME57-FDM7>; see also Oriana Pawlyk, *Air Force Special Operations Approves First Beard, Turban Waiver for Sikh Airman*, Military.com (July 30, 2020), <https://perma.cc/4UZZ-TX3G>.

<sup>13</sup> Philip Athey, *Here’s Where Ponytails Stand for Women in the Marine Corps*, Marine Corps Times (Nov. 4, 2021), <https://perma.cc/DR75-BAP3>.

cultural, and professional backgrounds.”<sup>14</sup> Thus, multiple high-ranking officials have acknowledged the importance of diversity, including religious diversity, as not only aligned with the Marine Corps’ goals but in fact mission critical.

To further these goals, the Marines updated its grooming policies on October 29, 2021 to allow for tattoos anywhere on the body except the head, neck, and hands, including full-sleeve tattoos. Compl. Ex. B. It also allows Marines and applicants with face or neck tattoos that would not be covered by the uniform to request exceptions. *Id.* at ¶ 4(a)(2)(h). Since 2018, the Marines has also allowed women to wear alternative hairstyles including locks, twists, and braids. Compl. Ex. V. And on January 21, 2022, the Marine Corps announced its new exemption policy for Marines with medical-beard needs such as *pseudofolliculitis barbae*, a painful facial condition—affecting roughly 60% of African-American men—inflamed by shaving.<sup>15</sup> Compl. Ex. T. While the Marines has long permitted temporary exemptions to its grooming requirements for service members with medical conditions, medical personnel are now authorized to grant *permanent* exemptions directly without going through the requesting individual’s commander. *Id.* Marines are no longer required to carry a copy of their medical waiver on their person. *Id.* Further, Marines can no longer be separated or denied reenlistment because of ongoing medical conditions that prevent them from shaving. *Id.* On March 23, 2022, the Marines released yet another grooming update, allowing fingernail polish and updated maternity options for female Marines, extending some limitations on hair length, and allowing male Marines to adjust their hairlines and wear helmet caps beneath

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<sup>14</sup> Carlos Del Toro, *One Navy-Marine Corps Team: Strategic Guidance From The Secretary of the Navy*, 5 (Oct. 2021), <https://perma.cc/MDT2-7TQM>.

<sup>15</sup> As of 2020, there are 17,089 Black male Marines on Active Duty. *2020 Demographics: Profile of the Military Community*, Department of Defense, <https://perma.cc/Q38V-AJN5>. An estimated 60% of them suffer from *pseudofolliculitis barbae*. *Pseudofolliculitis Barbae*, American Osteopathic College of Dermatology, <https://perma.cc/EB8Z-SXGU>; see also Geoff Ziezulewicz, *How the Navy’s Beard Policy Discriminates Against Black Sailors*, Navy Times (Apr. 5, 2022), <https://perma.cc/T3D3-MG7U>.

their helmets. Compl. Ex. W. These changes are designed to “promote a culture of inclusion while maintaining a high level of professionalism.”<sup>16</sup>

As General David Berger recently acknowledged, such efforts do not undermine the Marine Corps’ ability to accomplish its mission, but instead further it because “[t]here’s a retention incentive in there that we don’t fully appreciate, that is taking care of the individual.”<sup>17</sup> In short, most of the time, the Marine Corps gets the tradeoff between uniformity and diversity right. Yet when it comes to statutorily and constitutionally protected religious expression, it chooses to discriminate.

### **STANDARD FOR GRANTING PRELIMINARY INJUNCTIVE RELIEF**

Plaintiffs are entitled to a preliminary injunction allowing them to maintain their hair, beards, and religious articles (including the turban) during recruit training and for the pendency of this case. When seeking a preliminary injunction under Federal Rule of Civil Procedure 65, a plaintiff must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm if injunctive relief is not granted; (3) that the balance of interests among the parties favors injunctive relief; and (4) that injunctive relief would be in the best interest of the public generally. *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (citing *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). As explained fully below, Plaintiffs are suffering and—absent injunctive relief—will continue to suffer a deprivation of their rights under RFRA, the Free Exercise Clause, and the Fifth Amendment’s guarantee of equal protection. All four factors thus line up in their favor.

### **ARGUMENT**

In this application for preliminary injunction, Plaintiffs raise four of the claims set forth in the verified complaint regarding the denial of their accommodation requests: (1) Count I, applying RFRA; (2) Counts II and III, applying the Free Exercise Clause; and (3) Count VI, applying the

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<sup>16</sup> *Updated Uniform Regulations per MARADMIN 134/22*, Facebook (Mar. 23, 2022), <https://perma.cc/3EX8-3FCL>.

<sup>17</sup> Philip Athey, *Corps’ Sergeant Major Calls for Improved Treatment, Care of Junior Marines*, Marine Corps Times (Aug. 9, 2021), <https://perma.cc/QL7K-6GWZ>.

Fifth Amendment’s equal protection guarantee. For the reasons set forth below, Plaintiffs are likely to succeed on the merits of each of these claims. The Marine Corps cannot show that forcing Plaintiffs to shave, cut their hair, and remove all religious articles to begin recruit training is the least restrictive means of furthering any compelling government interest. Because Plaintiffs are likely to succeed on the merits of their claims and satisfy the other injunctive relief factors as well, preliminary injunctive relief should be granted.

**I. Plaintiffs are likely to succeed on their RFRA claims.**

RFRA provides that the “Government shall not substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden *to the person*—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(a), (b) (emphasis added).

RFRA applies to the military, because the term “government” includes any “branch, department, agency . . . and official . . . of the United States,” 42 U.S.C. § 2000bb-2(1); *see also Singh v. Carter*, 168 F. Supp. 3d 216, 229 (D.D.C. 2016) (granting TRO to protect Sikh Army soldier from discriminatory testing related to his religious beard and turban, because he showed a likelihood of success under RFRA); *Singh v. McHugh*, 185 F. Supp. 3d 201, 217 (D.D.C. 2016) (finding that Army’s refusal to grant Sikh soldier an “accommodation that would enable him to enroll in ROTC while maintaining his religious practice” of wearing a beard and turban violated RFRA). These agencies include the Department of Defense, the Marine Corps, and their officers in their official capacities. *United States v. Sterling*, 75 M.J. 407, 410 (C.A.A.F. 2016) (citing “Secretary of the Navy Instr[uction] 1730.8B CH-1, Accommodation of Religious Practices,” which applies RFRA to the Navy); *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (applying RFRA against the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force); *see also* Compl. Ex. Y at ¶ 1.2(e)(1) (adopting the RFRA standard for military accommodations).

At the preliminary injunction stage, the burdens of proof on a RFRA claim “track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). Thus, it is the plaintiff’s initial burden to show that his sincere religious exercise has been



substantially burdened. *Id.* at 428; *see also Holt v. Hobbs*, 574 U.S. 352, 360 (2015) (“[P]etitioner bore the initial burden of proving that the Department’s grooming policy implicates his religious exercise.”). But once that showing is made, the burden then shifts to the government to show that it has a compelling interest in overriding the religious exercise that cannot be satisfied through less restrictive means. *O Centro*, 546 U.S. at 429. Here, the Marine Corps cannot reasonably dispute that Plaintiffs’ religious beliefs—the ordinary beliefs of hundreds of thousands of American Sikhs—are sincere and substantially burdened by Marine Corps grooming regulations and the restrictions placed in Plaintiffs’ accommodations. Nor can the Marine Corps meet its own burden of proof. The only compelling government interest it asserts is that of uniformity. But even assuming that some level of uniformity qualifies, the Marine Corps’ own actions show that the minor variations sought by Plaintiffs here would not implicate that interest. The Marine Corps has already conceded that many of the accommodations Plaintiffs seek will be permitted post-training, when serving in operational units might call for the heightened cohesion and *esprit de corps* purportedly enhanced by uniformity. And even during training, the Marine Corps allows many deviations from earlier standards of uniformity to accommodate individuals with interests that, unlike religion, have no constitutional protection. It follows that the Marine Corps cannot show that requiring Plaintiffs to shave, cut their hair, and remove their religious articles during training or in other phases of their careers furthers a compelling government interest at all, let alone in the least restrictive way.

**A. Plaintiffs are sincerely compelled by their Sikh faith to wear beards, unshorn hair, turbans, and other religious articles as a sign of devotion to God.**

Plaintiffs’ sincere desire to observe Sikh religious practice cannot reasonably be questioned. “Though the sincerity inquiry is important, it must be handled with a light touch, or ‘judicial shyness.’” *Moussazadeh v. Tex. Dep’t of Crim. Just.*, 703 F.3d 781, 792 (5th Cir. 2012) (quoting *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 262 (5th Cir. 2010)). Thus, courts should limit themselves “to ‘almost exclusively a credibility assessment’ when determining sincerity.” *Id.* (citing *Kay v. Bemis*, 500 F.3d 1214, 1219 (10th Cir. 2007)). At the preliminary



injunction stage, Plaintiffs’ sworn statements are sufficient to establish their sincerity. *Roman Catholic Archbishop of Wash. v. Bowser*, 531 F. Supp. 3d 22, 35 (D.D.C. 2021) (“find[ing] that the Archdiocese’s belief is sincere” at the preliminary injunction stage based on sworn statements); *see also* Compl. ¶¶ 123-29 (Milaap Singh Chahal); ¶¶ 150-54 (Jaskirat Singh); ¶¶ 170-78 (Aekash Singh). That is particularly so where the sworn statement attests to longstanding pre-litigation engagement in the religious exercise. *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284, 294 (D.D.C. 2020) (finding sincerity “evident in the Church’s pre-COVID-19 practices”). Further, while religious beliefs need not be “shared” by others to be protected by the law, the Supreme Court has found it instructive in a credibility determination that the asserted belief was “by no means idiosyncratic” within the broader faith community. *Holt*, 574 U.S. at 362. Here, longstanding Sikh practices, texts, and teaching align perfectly with Plaintiffs’ beliefs that they “are enjoined to wear at all times the uniform of their beliefs,” including “unshorn hair” and a beard. *Introduction to Sikhism*, 1 Religious Organizations and the Law § 1:23 (2d ed.). Thus, Plaintiffs have met their burden at the preliminary injunction stage to show a substantial likelihood that their accommodation request is based in sincere Sikh religious practice.

**B. The Marine Corps’ refusal to accommodate Plaintiffs’ religious practices imposes a substantial burden on their religious exercise.**

There is also no question that refusing to accommodate Plaintiffs’ Sikh religious practice would constitute a substantial burden on their exercise of religion. “A substantial burden exists when government action puts ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008) (quoting *Thomas v. Rev. Bd.*, 450 U.S. 707, 717-18 (1981)). Although substantial burdens can come in other forms as well, it is well established that this standard is satisfied when the plaintiff is “force[d] to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.” *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *see also Autor v. Pritzker*, 740 F.3d 176, 182 (D.C. Cir. 2014) (finding a viable claim when lobbyists were forced to choose between their First Amendment right

to petition the government and the benefit of serving on a federal advisory committee). Being put to the choice of giving up their religious beliefs or giving up the opportunity to serve in the Marine Corps altogether (or facing military discipline or adverse administrative action if they refuse to shave and remove their religious articles for recruit training) unquestionably imposes a substantial burden on Plaintiffs' religious exercise. Case law in the military context and other closely controlled government environments (like prisons) confirms this conclusion. *See Holt*, 574 U.S. at 361 (grooming policy that subjected prisoner to "serious disciplinary action" for growing beard constituted a substantial burden); *McHugh*, 185 F. Supp. 3d at 217 (Army's refusal to grant Sikh soldier an "accommodation that would enable him to enroll in ROTC while maintaining his religious practice" constituted a substantial burden); *cf. Carter*, 168 F. Supp. 3d at 229 (Army's "specialized testing for further processing of [Sikh soldier's] religious accommodation request is a substantial burden when such testing is not required for soldiers to obtain exceptions from the Army uniform and grooming regulations"). Because the Marine Corps' grooming regulations impose a substantial burden on Plaintiffs' religious beliefs, they are entitled to an accommodation unless the Marine Corps can show that granting one would impair a compelling government interest that cannot be satisfied via a less restrictive means. As elaborated below, the Marines cannot make this showing.

**C. The Marine Corps has no compelling interest in forcing Plaintiffs to forgo their religious practice to commence serving their country.**

Because the Marine Corps' regulations substantially burden Plaintiffs' religious exercise, "the burden [of strict scrutiny] is placed squarely on the [Marine Corps]." *O Centro*, 546 U.S. at 429. Defendants thus must prove that coercing Plaintiffs to shave and remove their religious articles before recruit training "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b). This is the "most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997), and a test that this Court recently ruled the armed forces flunked in a similar

case involving a Sikh recruit. *See McHugh*, 185 F. Supp. 3d at 225-227; *cf.* Army Directive 2018-19.

To meet RFRA’s demanding test, the Marine Corps cannot simply cite “broadly formulated interes[ts]” that, at a high level of generality, seem compelling. *Holt*, 574 U.S. at 362. RFRA demands a “‘more focused’ inquiry: 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.’” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014) (quoting *O Centro*, 546 U.S. at 430-31). In other words, the Marine Corps must show that it has a compelling interest in imposing its grooming requirement specifically *on Plaintiffs* during recruit training in particular. Thus, this Court 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*, 574 U.S. at 363 (cleaned up). The Marine Corps “cannot simply invoke general principles” to deny a servicemember’s religious accommodation. *McHugh*, 185 F. Supp. 3d at 223. It must evaluate Plaintiffs’ request in the context of their particular circumstances of recruit training. And it must show it has a compelling interest in eliminating any “marginal” risk that arises from granting an accommodation to Milaap Singh Chahal, Aekash Singh, and Jaskirat Singh specifically. *Holt*, 574 U.S. at 363.

This rule applies even to critically important interests such as protecting public health during a pandemic, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020); enforcing the nation’s drug laws, *O Centro*, 546 U.S. at 433; prison safety, *Holt*, 574 U.S. at 362; prevention of animal cruelty, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543-44, 546 (1993); traffic safety, *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1267-68 (11th Cir. 2005); protecting personnel in federal buildings, *Tagore v. United States*, 735 F.3d 324, 330-31 (5th Cir. 2013); and controlling government costs, *Rich v. Secretary, Florida Department of Corrections*, 716 F.3d 525, 533 (11th Cir. 2013). Under strict scrutiny, “so long as the

government can achieve its interests in a manner that does not burden religion, it must do so.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021).

The Marine Corps’ *general* interests in uniformity, discipline, or good order are insufficient to justify forcing Plaintiffs to shave, cut their hair, and remove their religious articles before recruit training. Any purported interest in uniformity, discipline, or good order is fatally undermined by the fact that existing Marine regulations provide broad categorical exemptions for tattoos and various women’s hairstyles. Moreover, the Marines has recently updated its beard policy to allow for permanent medical exemptions, to protect Marines from being separated or denied reenlistment for being placed in a “no shave” status, and to give medical officers authority to grant exemptions directly without having to go through the commander. *See, e.g.*, Compl. Ex. T (allowing medical officers to grant permanent exemptions from shaving when harmful to the individual’s health); Compl. Ex. S (detailing exemption process for Marines with *pseudofolliculitis barbae*, which includes “no shave” chits); Compl. Ex. V at 1-14 (permitting three lengths of haircuts for female Marines); *id.* at 1-11 (setting a maximum length of male haircuts, but allowing some leeway within that maximum); *id.* at 1-12 (permitting mustaches and the shaving of the scalp).

The presence of both categorical exemptions and individualized exceptions creates “a higher burden” on the Marines to “show[] that the law, as applied, furthers [its] compelling interest[s].” *McHugh*, 185 F. Supp. 3d at 223 (quoting *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 472-73 (5th Cir. 2014)). It also makes the existence of a compelling interest both more important (to guard against religious discrimination) and less likely. *Fraternal Ord. of Police v. Newark*, 170 F.3d 359, 365 (3d Cir. 1999) (Alito, J.). As a unanimous Supreme Court explained, “a law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Lukumi*, 508 U.S. at 547 (cleaned up). And “underinclusiveness . . . is often regarded as a telltale sign that the government’s interest in enacting a liberty-restraining pronouncement is not in fact ‘compelling.’” *BST Holdings, L.L.C. v. Occupational Safety and Health Admin.*, 17 F.4th 604, 616 (5th Cir. 2021).

In *Fraternal Order of Police*, for example, the Third Circuit struck down a police department’s “no-beard” policy, concluding that its claimed need for uniformity to “convey the image of a ‘monolithic, highly disciplined force’” was undermined when it allowed officers to grow beards for medical reasons. 170 F.3d at 365-67. Then-Judge Alito explained 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.” *Id.* at 366; *see also Potter v. District of Columbia*, 558 F.3d 542, 547 (D.C. Cir. 2009) (affirming summary judgment for Muslim firefighters because the government failed to “proff[e] evidence” that its “clean-shaven requirement [was] narrowly tailored to further the interest of protecting firefighters”); *Kennedy v. District of Columbia*, 654 A.2d 847, 855 (D.C. Cir. 1994) (highlighting how the D.C. Fire Department’s arguments about the need for uniform grooming standards to promote “*esprit de corps*” and ensure proper operation of SCBA masks were undermined by inconsistent enforcement). Here, because the Marine Corps’ regulations “presently do[] not apply” to thousands of servicemembers, the Marines’ interests in denying an accommodation to Plaintiffs “cannot be compelling.” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1143 (10th Cir. 2013).

The Supreme Court took an even stricter approach to this rule in *Fulton*, concluding that a City’s “creation of a system of exceptions” to its nondiscrimination policy—even where no exception had yet been granted—fatally “undermine[d] the City’s contention that its non-discrimination policies can brook no departures,” thus failing strict scrutiny. *Fulton*, 141 S. Ct. at 1882. Here, the Marine Corps has not merely set forth the possibility of seeking exceptions from the uniformity standard—*e.g.*, for visible and nonvisible tattoos, facial hair, braids, and so on—but it actually grants such exemptions in the name of diversity, recruitment, and retention. Compl. Ex. B; Compl. Ex. W. That makes this case easier than *Fulton*. Allowing the religious beards and turbans at issue here would impair uniformity no more than individual tattoos, diverse hairstyles allowed for women, or the diversity in height, build, skin color, and appearance that is unavoidable among any class of recruits. While uniformity certainly has a role, the Marine Corps

would not exist without diverse recruits. The exceptions that the Marine Corps carves out for other kinds of diversity reveal that its actual need is for a strong, uniformly committed team rather than Marines who appear identical.

In addition to fatally undermining its interests with categorical and individualized exemptions, the Marine Corps cannot show that its interest would be impaired by specifically allowing Plaintiffs to maintain their beards, hair, and religious articles during recruit training. *See O Centro*, 546 U.S. at 431 (government must prove “the asserted harm of granting specific exemptions to particular religious claimants”). The Marine Corps’ regulations direct that commanding officers may only suspend religious accommodations if necessary due to “the imminent threat to health and safety.” Compl. Ex. L at ¶ 4d(2)(b). But the Marine Corps has pointed to no such imminent threat *during recruit training*. To the contrary, recruit training is the period of a Marine’s career when he is *least* likely to encounter enemy fire or other imminent threats to health or safety. Given that the Marine Corps’ own regulations do not require Plaintiffs to immediately shave in violation of their religious beliefs, the Marines cannot claim a compelling interest in forcing them to do so. If unbending uniformity is such a critical element of mission accomplishment, surely the Marine Corps’ interest would be stronger during actual missions—yet in that situation its accommodation is *more* generous, which undermines its alleged compelling interest for purposes of recruit training. *Cf. McHugh*, 185 F. Supp. 3d at 225 (Army lacked compelling interest in denying accommodation to Sikh ROTC applicant, because during training he would not encounter a “real tactical operation” where he would need to shave); *see also* Miller Decl. ¶¶ 5-10 (noting that Navy submarines often allow sailors to grow beards during deployment, and this does not interfere with their firefighting duties).<sup>18</sup>

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<sup>18</sup> Should Plaintiffs be deployed during the pendency of this case, they reserve the right to seek further injunctive relief if the Marines seek to enforce prohibitions on their religious practice not narrowly tailored to a compelling military interest. For the purposes of this motion, however, Plaintiffs seek relief pertaining to their ability to commence recruit training, where the restrictions are at their maximum.

Experience from other branches confirms that the concerns underlying the need for uniformity—the promotion of good order and discipline—do not support a compelling interest when applied to religious accommodation. In *Singh v. McHugh*, for example, this Court rejected the same argument asserted here, noting that observant Sikhs serving in the past, “notwithstanding the deviation from the uniformity,” had “earned commendations and outstanding reviews” from their peers and superiors. 185 F. Supp. 3d at 228. Further, the undisputed evidence showed that none of the “negative consequences” predicted by the Army actually came about. *Id.* at 229. Rather, accommodated Sikhs achieved “exemplary service records” once they “had the chance to prove themselves.” *Id.* at 230. This Court explained in *McHugh* that even if a Marine’s failure to follow standards in some instances “might signal a rebellious streak or reflect a lack of impulse control or discipline,” applying that rationale to religious accommodations “fails to grapple with the fact that any deviation from the rules on [a religious observer’s] part flows from a very different source. And therefore, the decision lacks the individual assessment that is fundamental under RFRA.” *Id.* at 227 (requests for religious accommodations “do[] not stem from any lack of self-control, dedication, or attention to detail”).

Since *McHugh*, the evidence has only mounted regarding how religious observance coincides with good order, with hundreds of observant Sikhs now serving with excellence in the Army and Air Force—suggesting that the Marine Corps’ asserted compelling interest in enforcing uniformity by “training [Marines] to think of their team first” is simply not implicated.<sup>19</sup> To the contrary, the U.S. government has long recognized that failing to respect the “Free Exercise rights” of service members would both “diminish morale” and “weaken[] our national defense.” *Katcoff v. Marsh*, 755 F.2d 223, 228 (2d Cir. 1985). So have the Marines: “Spiritual readiness is the quality of a Marine’s inner self that distinguishes between courage and recklessness,” “is as important as

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<sup>19</sup> Compare Compl. Ex. A at ¶ 2(d) with Joseph Lacdan, *For Massachusetts Soldier, Path to Military Service Was a Spiritual One*, U.S. Army News (Sept. 24, 2020), <https://perma.cc/FL7N-SSYY> (“Today, there are hundreds, if not thousands, of patriotic American Sikhs, Jews, Muslims, Christians and service-members of other faiths who now have religious accommodations.”).



physical readiness or training,” and “is the bedrock upon which the concepts of honor, courage, and commitment are built.”<sup>20</sup> “Spiritual readiness is a force multiplier and is the foundation of moral courage,” which allows Marines to do things that are right “no matter what the cost” and never permit things that are wrong “no matter what the circumstances.” *Id.* Here, Plaintiffs’ faith is the source of their spiritual readiness and motivation to give back to their country.

In analogous cases, other branches of the armed forces have tried and failed to meet the compelling interest standard with respect to the very same interests the Marine Corps’ claims here. In one case, the Army denied Iknoor Singh’s “request to wear unshorn hair, a beard, and a turban” because of the military’s general interest in “[u]nit cohesion and morale,” “[g]ood order and discipline,” “[i]ndividual and unit readiness,” and the Sikh applicant’s “health and safety.” *McHugh*, 185 F. Supp. 3d at 222; *see also Carter*, 168 F. Supp. 3d at 229, 234-36 (enjoining specialized military uniform testing that singled-out a Sikh military officer based on his request to wear unshorn hair, a beard, and a turban). Those justifications “d[id] not withstand strict scrutiny” then, *McHugh*, 185 F. Supp. 3d at 224, and the Marine Corps’ similar interests do not now. In short, experience from other branches demonstrates what the Marine Corps ignores: that an accommodation for Plaintiffs to refrain from shaving and removing their religious articles consistent with their religious beliefs would not harm the Marine Corps’ interests any more than the categorical deviations in uniformity inherent in the grooming regulations and the thousands of exceptions to uniformity the Marine Corps has granted to individual Marines.

**D. Even if the Marine Corps did have a compelling interest here, forcing Plaintiffs to violate their faith is not the least restrictive means of furthering that interest.**

Because the Marine Corps cannot show a compelling governmental interest in applying shave orders to Plaintiffs before they begin recruit training, this Court need go no further. But even if the Marine Corps had shown such an interest, it could not show that forcing Plaintiffs to shave and

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<sup>20</sup> *The Commander’s Handbook for Religious Military Support*, U.S. Marine Corps, MRCP 3-30D.4.



remove their religious articles in violation of their religious beliefs is the least restrictive means of furthering that interest.

Under both DoD’s incorporation of RFRA, Compl. Ex. Y, and the First Amendment’s Free Exercise Clause, 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. Meeting this least-restrictive means standard is “exceptionally demanding.” *Holt*, 574 U.S. at 364. But that is the intent of the standard—ensuring that the Government “must” use “a less restrictive means” if one “is available for the Government to achieve its goals.” *Id.* at 365. This requires an evidence-based analysis that considers all available options. *See, e.g., McHugh*, 185 F. Supp. 3d at 231 n.23 (finding that the military failed to pursue workable alternatives when it denied religious beard accommodation for observant Sikh); *Carter*, 168 F. Supp. at 232 (finding similarly). Where there are exceptions to a scheme that the Government insists is the least restrictive, those exceptions defeat the Government’s insistence by “demonstrat[ing] that other, less-restrictive alternatives could exist.” *McHugh*, 185 F. Supp. 3d at 232 n.25 (quoting *McAllen Grace*, 764 F.3d at 475).

Applying the standard here yields the same outcome as it did in the previous *Carter* and *McHugh* cases: the Government flunks the test. Plaintiffs’ religious beards, uncut hair, and turbans could be accommodated in many ways without compromising the unity of the Marine Corps. As stated above, various neat and conservative deviations from the ordinary uniform are permissible within the Marine Corps without concern of breaking from the sense of unity or detracting from the mission. Such styles include full-sleeve tattoos, mustaches for male Marines and haircuts of various lengths of hair for female Marines. *See* Compl. Ex. B; Compl. Ex. W; Compl. Ex. V at 1-12, 1-14, 1-15, fig.1-3.

The Marine Corps’ total ban on religious articles during recruit training is not the least restrictive means of accomplishing its interest in uniformity. Plaintiffs made clear in their original requests that they will maintain their hair and beards in a neat and conservative manner that presents a professional appearance at all times. Compl. Ex. BB; Compl. Ex. N; Compl. Ex. O. This

underscores that the accommodation does not mean that Plaintiff's "training would be devoid of 'any emphasis on uniformity . . . or that these concerns could not be advanced some other way,'" including the requirement that they maintain their turban and unshorn hair and beard in a neat and orderly manner so as to "present a disciplined . . . appearance." *McHugh*, 185 F. Supp. 3d at 231.

Moreover, the policies of similarly situated entities confirm that the Marine Corps cannot meet the least restrictive means test. For instance, Army regulations permit a "large-scale exception . . . to its grooming policies" by allowing soldiers to grow beards where medically necessary. *McHugh*, 185 F. Supp. 3d at 226. Since 2007, "the Army has permitted more than 100,000 service members," including officers, "to grow beards for medical reasons." *Id.* at 224 (noting that the Army has authorized "at least 49,690 permanent 'shaving profiles,' and at least 57,616 temporary ones."). The Air Force has similarly liberalized its beard policy, especially in seeking to accommodate the religious beliefs of service members.<sup>21</sup> U.S. Navy regulations have also recognized the importance of this kind of narrow tailoring, stating that observant Sikh sailors who are granted a religious accommodation for the turban "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," subject to the sole exception of "the case of safety or protective headgear required by a Sailor's duties, position or assignment." Compl. Ex. D at ¶ 5d(4)(a). The Marine Corps, therefore, at a minimum, carries a burden to show why these accommodations that have proven consistent with good order and safety on other "well-run" branches of the military could not equally accommodate the Marine Corps' needs. *Cf. Holt*, 574 U.S. at 368 (state prison was outlier in barring religious conduct other prisons had shown could be allowed safely).

Militaries around the world also accommodate servicemembers with religious headwear and beards, including in the United Kingdom, Canada, Australia, New Zealand, India, Israel, and the

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<sup>21</sup> See Air Force Instruction 36-2903, Dress and Personal Appearance of Air Force Personnel, <https://perma.cc/ME57-FDM7> ("Beards are not authorized unless for medical reasons . . . or as authorized pursuant to a request for a religious accommodation."); see also *id.* Attachment 9 (offering "Sample Turban, Uncut Beard and Hair Approval Memorandum" templates for commanding officers).

United Nations. Many other countries including Germany, Hungary, and other NATO members also allow beards for non-religious reasons without detracting from mission readiness. Miller Decl. at ¶ 12. Canada’s former Minister of Defence, Harjit Sajjan, is a fully observant Sikh who previously served alongside U.S. forces in Afghanistan with his full beard. Plaintiffs’ Sikh counterparts in the Australian Army have specific accommodations for keeping their hair and beard uncut and wearing the turban.<sup>22</sup> In the interest of maintaining a good international image as a nation that upholds religious liberties, it would be incongruous for Plaintiffs to have less leeway in this religious accommodation than what their counterparts in the Australian Army are permitted. Furthermore, the presence of this accommodation in the Australian Army, an allied force with many parallels to the U.S. military, shows that such accommodation is possible without detracting from the unity of the force.

Because forcing Plaintiffs to shave, cut their hair, and remove their religious articles against their religious beliefs is not the least restrictive means of promoting any compelling government interest, they are likely to succeed on the merits of their RFRA claim.

## **II. Plaintiffs are likely to succeed on their Free Exercise Clause claims.**

Plaintiffs are also likely to prevail on their Free Exercise claims. Government action that burdens religious exercise is subject to strict scrutiny under the Free Exercise Clause if it is “not neutral or not of general application.” *Lukumi*, 508 U.S. at 546. “A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 141 S. Ct. at 1877; *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam) (actions trigger strict scrutiny “whenever they treat *any* comparable secular activity more favorably than religious exercise”). Here, the permitted deviations from uniformity—including deviations that allow alternate hairstyles, permanent beard accommodations for medical reasons, and tattoos in all circumstances—pose the exact same risks

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<sup>22</sup> *See, e.g., Army Dress Manual, The Australian Army, Effective Dec. 20, 2019 at 2-21 through 2-24 (Sections 2.67-2.71).*

to the government's alleged interests, regardless of the reason for the beard or other deviations. Thus, these exceptions trigger strict scrutiny. *Fulton*, 141 S. Ct. at 1877.

In *Lukumi*, the Supreme Court unanimously struck down an example of government action as not neutral or generally applicable. *Lukumi* involved four municipal ordinances that restricted the killing of animals. When challenged, the city argued that the ordinances were neutral because they were written “in secular terms, without referring to religious practices.” *Lukumi*, 508 U.S. at 534. The Supreme Court emphasized that when determining whether a law is neutral and generally applicable, “[f]acial neutrality is not determinative.” *Id.* The Court explained that because the ordinances applied to “Santeria adherents but almost no others,” they prohibited Santeria sacrifice “even when it does not threaten the city’s interest in the public health,” and “selective[ly]” “impose[d] burdens only on conduct motivated by religious belief,” they were not neutral or generally applicable. *Id.* at 536, 538-39, 543.

Like the City’s treatment of Santeria worship, the Marine Corps’ treatment of Plaintiffs has not been neutral or generally applicable. As discussed, exceptions to the uniform-appearance policies (including beard, hairstyle, and tattoo exemptions) are available for nonreligious reasons such as diversity, recruitment and retention, and medical needs, thus treating “comparable secular activit[ies] more favorably than religious exercise.” *Tandon*, 141 S. Ct. at 1296. And the Supreme Court has made clear that the mere *existence* of a discretionary exemption process, no matter “whether any exceptions have been given,” subjects a regime to strict scrutiny. *Fulton*, 141 S. Ct. at 1879. This principle applies to the exemption processes the Marine Corps holds out for other breaches of uniformity, for example, its process to seek exemptions for tattoos that would not be covered by uniforms or would otherwise violate its policy. Compl. Ex. B at ¶ 4a(2)(h).

By refusing to grant Plaintiffs an accommodation to practice their faith while granting accommodations for other reasons, the Marine Corps has impermissibly “impose[d] special disabilities on the basis of . . . religious status,” *Lukumi*, 508 U.S. at 533 (quoting *Emp. Div. v. Smith*, 494 U.S. 872, 877 (1990)). In light of this disparate treatment, the Marine Corps’ conduct should be evaluated with strict scrutiny under the Free Exercise Clause as well as under RFRA

(which already poses strict scrutiny as a default rule). As explained above, the Marine Corps' regulations, as enforced against Plaintiffs, are not the least restrictive means of upholding a compelling government interest.

### **III. Plaintiffs are likely to succeed on their Equal Protection claims.**

Plaintiffs are also likely to succeed on their Equal Protection claims under the Due Process Clause of the Fifth Amendment.<sup>23</sup> “Strict scrutiny . . . is warranted if the restriction ‘jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic.’” *Banner v. United States*, 428 F.3d 303, 307 (D.C. Cir. 2005) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)); *see also City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). The Marine Corps' actions here both jeopardize the exercise of a fundamental right—Plaintiffs' religious exercise—and categorize them on the basis of an inherently suspect characteristic—their religion, and more specifically, the religious basis of their need for a hair and garb accommodation.

Engaging in religious expression is the exercise of a fundamental right, both because it is religious exercise and because it is expression. *See, e.g., Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (“Unquestionably, the free exercise of religion is a fundamental constitutional right.”); *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951) (Equal Protection Clause barred the Government from suppressing Jehovah's Witnesses from engaging in religious expression); *see also Harbin-Bey v. Rutter*, 420 F.3d 571, 576 (6th Cir. 2005) (both speech and religious freedom are fundamental rights for Equal Protection purposes); *Srail v. Village of Lisle*, 588 F.3d 940, 943 (7th Cir. 2009) (“Fundamental rights include freedom of speech and religion.”). Here, Plaintiffs seek to exercise both their rights of expression and religious exercise. That is one of the two triggers for strict scrutiny.

The other trigger is the application of a suspect classification. The Marine Corps' singling out of Plaintiffs to their detriment, due to the religious motivation of their accommodation requests,

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<sup>23</sup> The principles of the Equal Protection Clause apply with equal force to the federal government through the Due Process Clause of the Fifth Amendment. *See Bolling v. Sharpe*, 347 U.S. 497 (1954).

also categorizes them on the basis of an inherently suspect class—religion. Discrimination on the basis of religious adherence “not only lacks a rational connection with any permissible legislative purpose, but is also inherently suspect. Such invidious discrimination violates the equal protection of the laws guaranteed by the Due Process Clause.” *King’s Garden, Inc. v. FCC*, 498 F.2d 51, 57 (D.C. Cir. 1974) (citing *Bolling*, 347 U.S. 497); *see also United States v. Batchelder*, 442 U.S. 114, 125 n.9 (1979) (“The Equal Protection Clause prohibits selective enforcement ‘based on an unjustifiable standard such as race, religion, or other arbitrary classification’”).

Here, as explained above, the Marine Corps has discriminated on the basis of Plaintiffs’ religion by refusing to extend to them the same kinds of exemptions from the grooming requirements that it extends to other Marines—a decision that reflects at least a “value judgment” that Plaintiffs’ “religious motivations” are not as worth accommodating. *Cf. Fraternal Ord. of Police*, 170 F.3d at 366. For Aekash in particular, the extensive delay he has experienced and the inaccurate characterization of his religious beliefs as a “conscientious objector” contrast sharply with the treatment of his colleagues of other faiths or no faiths at all, who have long since begun their careers as Marines. For the reasons discussed in Sections I.C and I.D above, the Marine Corps cannot defend its regulations under strict scrutiny. Plaintiffs are likely to succeed on their claims.

#### **IV. The remaining factors each weigh in favor of granting preliminary injunctive relief.**

“In First Amendment cases, the likelihood of success ‘will often be the determinative factor’” since preventing constitutional injuries tends to satisfy the other factors. *Pursuing Am. ’s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016); *see also Liberty Coins, LLC v. Goodman*, 748 F.3d 682, 691 (6th Cir. 2014) (“When a party seeks a preliminary injunction on the basis of the potential violation of the First Amendment, the likelihood of success on the merits often will be the determinative factor.”); *Roman Catholic Archbishop of Wash.*, 531 F. Supp. 3d at 46 (RFRA protects First Amendment interests, such that showing likelihood of success on the merits of RFRA claim means the plaintiff “has shown that [he] will be irreparably injured absent injunctive relief”).

**A. Plaintiffs will suffer irreparable harm absent injunctive relief.**

Where, as here, a plaintiff faces unlawful coercion to abandon his religious beliefs or experiences discrimination based on those beliefs, this Circuit and Court have consistently recognized irreparable harm. This tracks the Supreme Court’s rule that restrictions on religious exercise “cause irreparable harm” and that “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Diocese of Brooklyn*, 141 S. Ct. at 67 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); accord *Rigdon*, 962 F. Supp. at 165 (holding that the violation of First Amendment religious expression rights constituted irreparable injury); see also *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 104 (D.D.C. 2012) (violation of Fifth Amendment rights constitutes irreparable harm); cf. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006) (“[W]here a movant alleges a violation of the Establishment Clause, this is sufficient, without more, to satisfy the irreparable harm prong for purposes of the preliminary injunction determination.”). The same is true for loss of RFRA protections. *Roman Catholic Archbishop of Wash.*, 531 F. Supp. 3d at 45 (finding “the same is true of rights afforded under the RFRA”); *Capitol Hill Baptist Church*, 496 F. Supp. 3d at 301 (“When plaintiffs establish a strong likelihood of success on the merits of their RFRA claim, they have also adequately demonstrated that they will suffer irreparable harm absent the issuance of a preliminary injunction.” (cleaned up)).

Because Plaintiffs have demonstrated that their constitutional and civil rights are being violated, they have automatically established irreparable harm. See *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (“It has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’”) (quoting *Elrod*, 571 F.3d at 373). Facing a government directive to violate a teaching of one’s faith is “a harm for which there can be no do over and no redress.” *Roman Catholic Archbishop of Wash.*, 531 F. Supp. 3d at 46 (quoting *Capitol Hill Baptist Church*, 496 F. Supp. 3d at 302)).

The Marine Corps’ undue delay and failure to accommodate Plaintiffs has harmed their lives and careers in a practical sense as well. All three Plaintiffs have put their lives and careers on hold,

and two have already waited over a year for the Marine Corps to process their requests, only to receive denials. On April 30, 2022, Jaskirat's Delayed Entry Program contract will expire, and without an accommodation, he will be administratively discharged and will have to start the enlistment process over again, absent relief from this Court. Compl. ¶¶ 63, 169. And unless this Court intervenes, in September 2022 and June 2023, Aekash and Chahal will both have to retake their entrance tests, which they already passed. Compl. ¶¶ 149, 205.

In addition, being subjected to blatantly discriminatory conditions constitutes irreparable harm. This Court faced a similar situation in *Bonnette v. D.C. Court of Appeals*, 796 F. Supp. 2d 164 (D.D.C. 2011). In that case, the disabled plaintiff sought an accommodation in taking the Multistate Bar Examination. Defendants “argue[d] that [the blind plaintiff] cannot show that she is likely to suffer irreparable harm because it is possible that she will pass the D.C. Bar Exam using either a human reader or an audio CD.” *Id.* at 187. This Court rejected that argument, holding that “forcing Plaintiff to take the MBE under discriminatory conditions is itself a form of irreparable injury.” *Id.*; accord *Singh*, 168 F. Supp. 3d at 233 (“[B]eing subjected to discrimination is by itself an irreparable harm.”).

Under the governing regulations, Plaintiffs are fully entitled to religious accommodations and to receive one of the myriad individualized grooming exemptions that the Marine Corps provides to others. It is irreparable harm to force them to continue choosing between abandoning their religious beliefs and serving their country.

**B. The balance of harms and public interest weigh in Plaintiffs' favor.**

Plaintiffs likewise meet the combined balance-of-harms and public-interest factors. *See Kareem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020) (explaining that these remaining factors “‘merge when,’ as here, ‘the Government is the opposing party’” (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009))). Defendants will suffer no injury from a preliminary injunction allowing Plaintiffs to keep their requested beards and religious articles pending a final merits decision from this Court. As explained above, other branches of the military have allowed Sikh servicemembers to maintain their beards, unshorn hair, and religious articles without incident. And even if Defendants' abstract,



general interest in uniform appearances could be considered impaired by dress that is plainly religious in nature—a doubtful proposition—that interest has already given way where other forms of diverse expression or soldier-specific needs are at issue. Thus, the Marine Corps can demonstrate no harm to its interests stemming from accommodating Plaintiffs. In contrast, Plaintiffs have demonstrated that they will suffer irreparable and severe injury if made to choose between violating their faith and being denied military roles for which they have already proven themselves qualified.

As to public interest, enforcing an unconstitutional provision “is always contrary to the public interest.” *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). That is doubly so where unlawful religious discrimination is at issue. The Marine Corps’ own regulations emphasize that “Service members have a right to observe the tenets of their religion.” Compl. Ex. L; *see also* Compl. Ex. Y at ¶ 1.2(b) (“A Service member’s expression of such [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.”). As previously explained, there is a “vital public interest in safeguarding religious freedoms protected by the Constitution and by statutes enacted by Congress.” *Roman Catholic Archbishop of Wash.*, 531 F. Supp. 3d at 47; *see also O Centro v. Ashcroft*, 389 F.3d 973, 1010 (10th Cir. 2004) (en banc), *aff’d*, 546 U.S. 418 (2006) (“[T]here is a strong public interest in the free exercise of religion.”); *Tyndale House Publishers v. Sebelius*, 904 F. Supp. 2d 106, 130 (D.D.C. 2012) (“[T]here is undoubtedly also a public interest in ensuring that the rights secured under . . . RFRA, are protected.”).

Outside this Court, the Marine Corps has made clear that servicemembers’ diverse backgrounds and the expression of their identities is a help rather than a hindrance to good military order, even releasing a strategic plan for diversity, equity, and inclusion in July 2021.<sup>24</sup> As Defendant LtGen Ottignon recently explained, “[w]ithout having individuals with different

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<sup>24</sup> LtGen David Ottignon & BGen Jason Woodworth, *Diversity, Equity & Inclusion: Why This is Important to the Corps as a Warfighting Organization*, Marine Corps Gazette (July 2021), <https://perma.cc/9S26-ZQDL>.

backgrounds, we have the tendency to engage in ‘group think.’”<sup>25</sup> He added that “the statistics demonstrate the needle is moving, but admittedly not quickly enough to meet the strategic objective of building a diverse force to meet a peer threat.”<sup>26</sup> To seek out racial and ethnic diversity yet exclude religious diversity, particularly when Sikh servicemembers also identify as ethnically diverse, undercuts these asserted goals. *See also* National Defense Authorization Act for Fiscal Year 2020, H.R. 2500, 116th Cong. § 530B (2019) (“Any personnel policy developed or implemented by the Department of Defense with respect to members of the armed forces shall ensure equality of treatment and opportunity for all persons in the armed forces, without regard to . . . religion.”). Accommodating Plaintiffs advances religious diversity and removes a significant barrier to entry for them and similarly situated Sikh Americans who aspire to serve their country as Marines without compromising their core religious beliefs. Accommodating Plaintiffs will also increase retention for them and other Sikh Americans in the military, because servicemembers who can practice their faith and freely express their religious identity are less likely to struggle with mental health issues and more likely to remain in the military.<sup>27</sup>

#### **V. The Court should not require security.**

Plaintiffs request that the Court require no security. There is no prospect that Defendants would suffer damages even if it were later determined that they were wrongfully enjoined or restrained. Fed. R. Civ. P. 65(c). Thus, the relevant “sum” required to preserve Defendants’ interests is zero. *Id.* In addition, “only a party seeking to change (not maintain) the status quo needs to post a bond.” *Laster v. District of Columbia*, 439 F. Supp. 2d 93, 99 n.7 (D.D.C. 2006). Plaintiffs are not seeking to “command the government to act,” but rather “to *enjoin* the [Marine Corps] from enforcing its restrictions”—*i.e.*, to allow them to wear their religious articles as they would absent government

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<sup>25</sup> LtGen David Ottignon & BGen Jason Woodworth, *Diversity, Equity & Inclusion: Why This is Important to the Corps as a Warfighting Organization*, <https://perma.cc/9S26-ZQDL>.

<sup>26</sup> *Id.*

<sup>27</sup> Shareda Hosein, *Muslims in the U.S. Military: Moral Injury and Eroding Rights*, *Pastoral Psychology*, 68: 77-92 at 86, 89 (Nov. 12, 2018), <https://perma.cc/LC9H-SFZP>.

interference. *Capitol Hill Baptist Church*, 496 F. Supp. 3d at 292 (emphasis added). Their request, therefore, does not necessitate bond.

### CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully urge the Court to grant their application for a preliminary injunction directing the Marine Corps to grant them a full religious accommodation for the pendency of this lawsuit.

Plaintiffs also requests that the Court waive the posting of a bond.

Respectfully submitted this 13th day of April, 2022.

/s/ Eric S. Baxter

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 13, 2022, a true and correct copy of the foregoing was electronically filed using the CM/ECF system, which will send notification of such filing to all counsel of record. A copy of the foregoing was also served on counsel for Defendants by email.

/s/ Eric S. Baxter  
Eric S. Baxter

*Counsel for Plaintiff*

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

**SUKHBIR SINGH TOOR, et al.,**

*Plaintiffs,*

v.

**DAVID H. BERGER, et al.,**

*Defendants.*

Civil Action No. 1:22-cv-01004

**DECLARATION OF GISELLE  
KLAPPER IN SUPPORT OF  
APPLICATION FOR PRELIMINARY  
INJUNCTION**

**DECLARATION OF GISELLE KLAPPER  
IN SUPPORT OF APPLICATION FOR PRELIMINARY INJUNCTION**

I, Giselle Klapper, declare as follows:

1. I am a Senior Staff Attorney with the Sikh Coalition. I represent Plaintiffs Captain Sukhbir Singh Toor, Jaskirat Singh, Aekash Singh, and Milaap Singh Chahal in the above-captioned matter. I have personal knowledge of everything testified to in this declaration.

2. Attached as **Exhibit A** is a true and accurate copy of the September 5, 2019 letter from Plaintiffs' counsel to Vice Admiral John B. Nowell. Enclosed with this letter is a set of proposed revisions to BUPERSINST 1730.11 regarding religious accommodations in the U.S. Navy and Marine Corps.

3. Attached as **Exhibit B** is a true and accurate copy of the February 28, 2020 letter from Plaintiffs' counsel to General David H. Berger, Commandant of the Marine Corps, regarding religious accommodations in the Marine Corps.

4. Attached as **Exhibit C** is a true and accurate copy of the August 18, 2020 letter from Plaintiffs' counsel to William McWaters regarding religious accommodations in the Marine Corps.

5. Attached as **Exhibit D** is a true and accurate copy of an email exchange beginning October 6, 2021, and ending October 21, 2021, between Plaintiffs' counsel Amrith Kaur Aakre and counsel for the Commandant of the Marine Corps, Lt Col Dawn Steinberg.

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

Executed on this 11th day of April, 2022.

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

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Giselle Klapper

# **Exhibit A**





McDermott  
Will & Emery



BECKET  
*Religious Liberty for All*

September 5, 2019

Vice Admiral John B. Nowell  
Chief of Naval Personnel  
Department of the Navy  
Via email: [john.nowell@navy.mil](mailto:john.nowell@navy.mil)

Re: BUPERS INSTRUCTION 1730.11 (Standards and Procedures Governing the  
Accommodation of Religious Practices)

Dear Vice Admiral Nowell:

We respectfully write to you concerning BUPERS Instruction 1730.11 on Standards and Procedures Governing the Accommodation of Religious Practices, released on November 13, 2018 and revised on July 24, 2019. We appreciate that the instruction reaffirms the Navy's commitment to allowing Sailors and prospective accessions to serve in the Navy without abandoning their religious beliefs and practices. We are concerned, however, that the instruction substantially burdens Sikhs' exercise of religion by (1) requiring approval for religious accommodations of unshorn beards from a higher level authority than for beards of ¼ inch or less, (2) stating that religious head coverings must not interfere with the cover for the prescribed uniform of the day, and (3) subjecting approved religious accommodations to review, suspension, and revocation at any time upon a change in the circumstances upon which the initial religious accommodation was based.<sup>1</sup> We believe that these provisions will preclude observant Sikhs from joining the Navy and will hinder those who do join from serving effectively thereby violating their rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* Accordingly, we write to request that the Navy amend its policy to ensure full and equal opportunity for observant Sikh men and women who wish to serve their country in the United States Navy. We have enclosed for your review and consideration proposed amendments to BUPERSINST 1730.11, which include changes to NAVPERS 15665I to incorporate uniform and grooming guidelines specific to the wear of turbans and unshorn hair and beards.

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<sup>1</sup> BUPERS INSTRUCTION 1730.11, Standards and Procedures Governing the Accommodation of Religious Practices (13 November 2018), para. 5(d)(4)(a), para. 5(d)(4)(b) and para. 5(g).

By way of background, during the past decade, the Sikh Coalition<sup>2</sup> and the law firm of McDermott Will & Emery (“McDermott”) have jointly represented seventeen Sikhs in obtaining religious accommodations to serve in the U.S. Army with their Sikh articles of faith—*i.e.*, their unshorn hair, unshorn beards, and turbans—intact. The Becket Fund for Religious Liberty joined the Sikh Coalition and McDermott in co-representing five of those seventeen Sikh soldiers.

In response to our organizations’ efforts, our clients’ highly successful track record of service, and legal rulings by the United States District Court for the District of Columbia,<sup>3</sup> on January 3, 2017, the Army lifted its nearly forty-year presumptive ban against observant Sikhs and issued Army Directive 2017-03, formally allowing Sikhs to obtain accommodations to the uniform and grooming standards for their unshorn hair, unshorn beards, and turbans.<sup>4</sup>

Similarly, there are observant Sikhs who wish to serve our nation in the U.S. Navy, but are precluded by BUPERSINST 1730.11. Prior to discussing our concerns about the instruction, however, we believe it would be helpful to provide contextual information about the Sikh articles of faith and service record of observant Sikhs in the United States Armed Forces.

## **I. The Sikh Articles of Faith**

The Sikh religion is the world’s fifth largest faith tradition. The founder of the Sikh faith, Guru Nanak, was born in 1469 in Punjab, India. The Sikh religion is monotheistic, believing in one God that is all loving, all pervading, and eternal. This God of love is obtained through grace and sought by service to mankind. Guru Nanak rejected India’s caste system and declared all human beings, men and women, to be equal in rights and responsibilities and ability to reach God. He taught that God was universal to all—not limited to any religion, nation, race, color, or gender.

Consistent with the teachings of the Sikh gurus, Sikhs wear external articles of faith to bind them to the beliefs of the religion. Unlike some other faiths, where only the clergy maintain religious articles on their person, all Sikhs are required to wear these external articles of faith. The articles of faith, such as unshorn hair (*kesh*) and the turban are defining characteristics of a

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<sup>2</sup> The Sikh Coalition is a community-based organization that defends civil rights and civil liberties in the United States, educates the broader community about Sikhs and diversity, and fosters civic engagement amongst Sikh Americans. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001. Since our inception, we have worked with governmental entities and private employers to achieve mutually acceptable solutions for the accommodation of Sikh articles of faith.

<sup>3</sup> See *Singh v. Carter*, 168 F. Supp. 3d 216 (D.D.C. 2016); *Singh v. McHugh*, 185 F. Supp. 3d 201 (D.D.C. 2016).

<sup>4</sup> On May 25, 2017, the Army formally incorporated the new Sikh accommodation policies outlining appropriate uniform and grooming standards for Sikhs who obtained religious accommodations to maintain their articles of faith into Army Regulation 670-1 (Wear and Appearance of Army Uniforms and Insignia).

Sikh and have deep spiritual significance. They are the only articles of faith that raise concerns under the grooming and uniform regulations.

Maintaining *kesh* is an essential part of the Sikh way of life. One cannot be a fully observant Sikh without abiding by this tenet of faith. Guru Nanak started the practice, regarding it as living in harmony with the will of God. The Rehat Maryada, the Sikh Code of Conduct, outlines the requirements for practicing the Sikh way of life. All Sikhs must follow the guidelines set forth in this document. The Rehat Maryada explicitly instructs that if you are a Sikh, you must “[h]ave, on your person, all the time. . . the Keshas (unshorn hair).” Under Sikh theology, cutting one’s hair is a moral transgression as serious as committing adultery.

The Rehat Maryada also mandates that each Sikh wear an unconcealed turban that covers the head. The turban is a religious article that reminds a Sikh of his or her duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard, being honest, sharing with the needy, and promoting equality and justice for all. When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh’s head.

Historically, uncut hair and turbans have been central features of the Sikh identity. For example, in the 18th century, Sikhs in South Asia were persecuted and forced to convert from their religion by the region’s various rulers. The method of forcing conversions was to remove a Sikh’s turban and cut off his hair. As resistance to such forced conversions, many Sikhs chose death over having their turbans removed and hair shorn. Since then, denying a Sikh the right to wear a turban and maintain unshorn hair has symbolized denying that person the right to belong to the Sikh faith, and is perceived as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.

## **II. Observant Sikhs’ Service in the U.S. Armed Forces**

There are over 26 million Sikhs in the world and approximately 500,000 in the United States. For centuries, Sikh soldiers and officers have served in armies across the globe, fought bravely in wars, and achieved the highest levels of military distinction. Sikh values and the Sikh articles of faith fully complement the values of our fellow Americans and the U.S. Army, including our country’s commitment to freedom, justice, and defending the oppressed. Indeed, as is the case for other American communities, Sikhs have an extensive and proud history of military service. Service in armed forces has always been—and continues to be—an important part of the Sikh identity. Sikhs served as part of the Allied Forces in both World Wars and served in the U.S. Army dating back to early 20th Century.<sup>5</sup> Sikhs currently serve in the militaries of the

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<sup>5</sup> Bhagat Singh Thind was the first turban-wearing Sikh to serve in the U.S. Army. He enlisted in the Army during World War I, was promoted to the rank of Active Sergeant and received an honorable discharge on December 16, 1918. In a landmark 1923 decision, the Supreme Court denied his eligibility for naturalized citizenship for failing to meet the definition of a white person “in accordance with the understanding of the common man.” He eventually

United Kingdom, Canada, Australia, New Zealand, India, the United Nations, and many other countries. Canada's current Minister of National Defence, Harjit Sajjan, is an observant Sikh.

As you are no doubt aware, until recently, observant Sikh-Americans were virtually absent from the ranks of the U.S. Armed Forces for nearly forty years due to a policy that excluded them and members of other minority faiths unless they agreed to relinquish the tenets of their faith. Although practicing Sikhs proudly served our country in the U.S. Army without impediment during the Vietnam War and prior conflicts dating back to World War I, military policy was changed around 1981 to prohibit exemptions to the uniform requirements for visible articles of faith.

While this rule generally barred observant Sikhs from entering all branches of the U.S. Armed Forces for over 36 years, a number were grandfathered-in under the old military policy and served honorably in the U.S. Army with their Sikh articles of faith intact—some even serving lifetime careers dating to as recently as 2009. For example:

- COL Gopal S. Khalsa joined the Army as a private in 1976 and served in the U.S. Army until 2009. While on active duty, COL Khalsa served in the Special Forces Unit for 10 years on Parachute Status and as a Battalion Commander overseeing an 800-person intelligence group. He received a Meritorious Service Medal and Silver Oak Leaf Cluster Award, among many other honors. He is a graduate of the Army Officer Candidate School at FT Benning, Georgia, and was inducted into the Officer Candidate School Hall of Fame in 2004.
- COL Gurbhajan Singh, a dentist, served from 1979 until 2007. During his 28-year tenure, COL Singh was stationed around the United States and in Korea. He was awarded several honors including the "A" Prefix, the U.S. Army Medical Department's highest award for professional excellence.
- COL Arjinderpal Singh Sekhon, a medical doctor, served from 1984 until 2009. During his 25 years of commissioned service, COL Sekhon was stationed around the country. During the First Persian Gulf War, he was called to active duty and served stateside as a doctor at the U.S. Army Hospital in California. He rose through the ranks to colonel and was given a Battalion Commander position through which he oversaw a unit of 600-700 soldiers. Before the end of his career in the U.S. Army, he was decorated with various

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received his U.S. citizenship in 1936. See Berkeley Library, *Echoes of Freedom: South Asian Pioneers in California, 1899-1965*, Chapter 10: US vs. Bhagat Singh Thind, <http://guides.lib.berkeley.edu/echoes-of-freedom/chapter10>.

awards including a Presidential Unit Citation, Joint Meritorious Unit Award, and an Army Flight Surgeon Badge.

- SGT Sevak Singh Kroesen enlisted in the U.S. Army Reserves in 1976 and was attached to the Signal Company, 11th Special Forces Group after which he successfully completed airborne (paratrooper) and Radio Teletype Transmission Operator training. He then completed his Special Forces Qualification Courses and became a Special Forces Communications Sergeant with the Maryland National Guard. SGT Kroesen subsequently completed his schooling, training, and missions around the world all with honor and distinction. He was honorably discharged from active duty in 1991.
- SGT Kirnbir Singh Grewal served in the U.S. Army from 1977 to 1984. He entered the Army as a private and served both domestically and abroad in Germany. Sergeant Grewal, a turban-wearing Sikh, used the same standard-issue gas mask and helmet as other members of the Army. Indeed, his responsibilities included teaching other soldiers to use protective gear to survive nuclear and biological warfare.
- MAJ Parbhur Singh Brar is an ophthalmologist who served in the U.S. Army from December 1978 to October 1981. He was commissioned as a Reserve Officer, but then moved to Active Duty and was stationed at FT Eustis in Newport News, VA.

Subsequent to the service of these Sikh Army soldiers, the Sikh Coalition and its partners began representing a growing number of qualified, patriotic, observant Sikhs who sought to serve with their articles of faith intact. Between 2009 and 2016, the Army agreed to provide religious accommodations to these individuals which shall extend for the duration of their Army career. They include, for example:

- Major Kamaljeet S. Kalsi, a physician specializing in emergency and disaster medicine, who received an accommodation to serve with his articles of faith intact in 2009. Major Kalsi began active duty in June of 2010 and was deployed to Afghanistan in 2011. He was awarded a Bronze Star medal upon his return for “exceptionally meritorious service as an emergency medicine physician.” He currently serves in the U.S. Army Reserves.
- Major Tejdeep Singh Rattan, a dentist, who entered active duty in January of 2010 after receiving a religious accommodation. In 2011, he was deployed to Afghanistan where he volunteered to serve in a remote forward operating base. While deployed, Captain Rattan performed approximately 25% of all dental procedures performed throughout the 673rd Dental Company. He was awarded an Army Commendation Medal for his “outstanding performance, technical expertise, and unwavering commitment to mission accomplishment in a hostile environment[.]” as well as a NATO Medal for defusing a

tense confrontation with Afghan civilians. Major Rattan currently serves in the U.S. Army Reserve.

- Corporal Simran Preet S. Lamba, who began active duty in August 2010 after receiving a religious accommodation. Fluent in Punjabi and Hindi, he was recruited through the MAVNI program for his cultural and language skills. He served in a medical battalion as a Soldier Medic and was recognized as a “tremendous Soldier” who “had an amazing impact on his peers and supervisors.” In June 2014, he received an Army Commendation Medal for his selfless service and dedication to duty.
- Captain Simratpal Singh, an engineer and graduate of the prestigious U.S. Military Academy at West Point, Army Ranger and Bronze Star medalist for his service in Afghanistan, who received a religious accommodation in 2016 after serving for a decade in the Army. He then commanded an engineer company inside the 249th Engineer Battalion for 1.5 years and is now attending Advanced Civil Schooling at the University of Maryland.
- Specialist Harpal Singh, who began active duty in May of 2016. He obtained an exceptionally high Army Physical Fitness Score—330 out of 300—during BCT which earned him an Army Achievement Medal. He earned his second Army Achievement Medal in August 2016 for obtaining the highest APFT score within his company during Advanced Individual Training at Fort Eustis. Specialist Singh is currently in the U.S. Army Reserve.
- Cadet Arjan Singh Ghotra and Cadet Gurjiwan Singh Chahal, who are the first two observant Sikhs in U.S. history to attend the U.S. Military Academy at West Point, received religious accommodations to maintain their articles of faith in 2016 and 2017 respectively. CDT Ghotra previously served with excellence in the Virginia National Guard. Both Cadets have recently successfully completed their second year at West Point with their articles of faith intact.

According to Hank Minitrez, a spokesman for the Army, there were 60 religious accommodations that had been granted to Sikhs entering the service as of early May 2019.<sup>6</sup> Fourteen of those were granted as pre-accession waivers to high school students.

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<sup>6</sup> Matthew Cox, *14 Sikh High Schoolers Get Waivers to Enter Army Basic With Beard, Turban*, Military.com (May 2, 2019), <https://www.military.com/daily-news/2019/05/02/14-sikh-high-schoolers-get-waivers-enter-army-basic-beard-turban.html>.

### III. Sikh Articles of Faith and the Military's Interest in Neatness, Unit Cohesion, Safety, and Mission Accomplishment

As described in detail above, the many Sikh soldiers who have served honorably in the U.S. Army have demonstrated time and again that accommodation of the Sikh articles of faith, including the turban and unshorn hair and beard, in no way adversely affects the military's interest in uniformity and safety. To the contrary, as recognized by Congress, such accommodation advances mission accomplishment and unit cohesion, including by giving the Army access to soldiers with specialized skills (whether professional, technical, language, cultural and more) necessary to effectively address modern threats. *See* National Defense Authorization Act for Fiscal Year 2016 § 528, Pub. L. No. 114-92 (2015) (service by individuals “from numerous religious traditions, including Christian, Hindu, Jewish, Muslim, [and] Sikh” traditions, has “contribute[d] to the strength of the Armed Forces”).

#### 1. Sikh Articles of Faith Comply with Uniformity Standards

Sikh service members accommodated since 2009 have matched the color of their turban with required uniform headwear. Moreover, they have used camouflage patterned cloth to develop turbans that confirm with Army uniform requirements, including mechanisms to display their Army flash (insignia patch) on their turbans.<sup>7</sup> These Sikh service members serving in the U.S. Army have been commended for adhering to the uniform standards of neatness and conservativeness.<sup>8</sup>

#### 2. Sikh Service Members Are Able to Comply With Safety Requirements

As discussed in Army Directives 2017-03 and 2016-34, Sikh service members have undergone rigorous safety testing, including being placed in a chamber filled with gas, to determine whether their protective masks form an effective seal with their beards and religious headwear intact. The U.S. Army's policies are a reflection of that fact that Sikh service members are able to comply with safety standards for the wear of gas masks and helmets. They have also demonstrated that helmets and other safety gear can be worn safely over a *patka* (a smaller turban).

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<sup>7</sup> Steve Elliott, *Second Sikh doctor allowed to wear articles of faith; enlisted Soldier in training*, Official Homepage of the United States Army (September 9, 2010), [https://www.army.mil/article/44944/second\\_sikh\\_doctor\\_allowed\\_to\\_wear\\_articles\\_of\\_faith\\_enlisted\\_soldier\\_in\\_training](https://www.army.mil/article/44944/second_sikh_doctor_allowed_to_wear_articles_of_faith_enlisted_soldier_in_training).

<sup>8</sup> Steve Elliott, *Sikh Soldiers allowed to serve, retain their articles of faith*, Official Homepage of the United States Army (March 25, 2010), [https://www.army.mil/article/36339/sikh\\_soldiers\\_allowed\\_to\\_serve\\_retain\\_their\\_articles\\_of\\_faith](https://www.army.mil/article/36339/sikh_soldiers_allowed_to_serve_retain_their_articles_of_faith).



Even before the new Army policy was adopted, U.S. Army leadership recognized that Sikh service members were as battle-ready as their non-Sikh counterparts. When Undersecretary of the Army Joseph W. Westphal visited the Joint Readiness Training Center at Fort Polk in October 2012, he specifically noted in regards to a combat training class that included LTC Kalsi that he was “absolutely impressed with [all the service members’] intellect, their knowledge, and their easy disposition” and that the Army was on “good footing” with its readiness training.<sup>9</sup> CPT John Lopez, Company A, 197th Medical Battalion, who was CPT Rattan’s commanding officer during training, said that CPT Rattan “knows what he is doing and he’s doing a phenomenal job. *I’d go to battle with him.*”<sup>10</sup> And as the United States District Court for the District of Columbia has recognized, the Army’s own reviews have shown Sikhs serving “with their articles of faith intact without any of the negative consequences” that were predicted. In contrast, “[t]he praise heaped on each man’s service—including, in particular, for their discipline and leadership—[stood] in stark contrast” to concerns that “permitting him to maintain his articles of faith would undermine the quality of his training, unit cohesion and morale, military readiness, and the credibility of the officer corps.” *Singh v. McHugh*, 185 F. Supp. 3d 201, 229 (D.D.C. 2016).

Service members of the Sikh faith currently serving in the U.S. Army have proven that Sikhs not only can comply with all safety regulations with their turbans and unshorn hair and beards intact, but can also do so in the most difficult of duty stations while courageously serving our nation in overseas deployment as MAJ Kalsi and Rattan’s respective deployments attest.

#### **IV. Concerns about BUPERS Instruction 1730.11**

Upon reviewing BUPERSINST 1730.11, we believe that the instruction would substantially burden the free exercise of observant Sikhs who seek to enlist in the U.S. Navy, and is not the least restrictive means of advancing a compelling governmental interest. It is our belief that the instruction, as applied to observant Sikhs, would thereby violate the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* (“RFRA”).

##### **1. Religious Accommodations for Unshorn Beards**

Paragraph 5(d)(4)(a) and Tables 1 and 2 of the instruction require for the same duty type a higher level of approval authority for beards longer than one quarter inch in length than it requires for beards of one quarter inch or less. As explained in Section I of this letter, the Sikh religion mandates (1) that Sikhs maintain their hair unshorn, including facial hair; and (2) that Sikhs wear an unconcealed turban to cover their head. Unshorn hair (*kesh*) is an article of the

<sup>9</sup> C. Todd Lopez, *JRTC Rotation Demonstrates Force of Future*, Official Homepage of the United States Army (October 20, 2012), <https://www.army.mil/article/89623>.

<sup>10</sup> Steve Elliott, *Sikh Soldiers allowed to serve, retain their articles of faith*, *supra* note 7 (emphasis added), [https://www.army.mil/article/36339/sikh\\_soldiers\\_allowed\\_to\\_serve\\_retain\\_their\\_articles\\_of\\_faith](https://www.army.mil/article/36339/sikh_soldiers_allowed_to_serve_retain_their_articles_of_faith).



Sikh faith and the mandate to maintain hair unshorn applies to all hair, including facial. The requirement that religious accommodation requests for unshorn beards be approved at a higher level of authority than requests for beards of one quarter inch or less places a substantially higher burden on a Sikh's free exercise of religion. As described in detail in Sections II and III of this letter, the honorable service of turbaned Sikh soldiers in the U.S. Army underscores that Sikh articles of faith, including unshorn beards, present no barriers to full and effective service in the military, including the promotion of unit cohesion and uniformity. Beard worn by members of other faith groups have likewise been fully consistent with effective military service. Accordingly, approvals for religious accommodation requests for unshorn beards must be authorized at the same level as religious those for beards of one quarter inch or less for the same duty type.

The language below provides a proposed amendment to paragraph 5(d)(4)(a), as highlighted in the enclosed redline of BUPERSINST 1730.11.

(a) Beards. As delineated in table 1, religious accommodations for Sailors on shore duty, remote land-based sea duty and overseas shore duty to wear a beard ~~less than ¼ inch in length~~ may be authorized at the O-6 CO/ISIC level based upon the operational environment and in line with reference (c). Unshorn beards must be worn in a neat and conservative manner consistent with pre-established grooming guidelines requiring unshorn beards to be rolled, tied, and/or otherwise groomed to achieve a length not to exceed 2 inches when measured from the bottom of the chin. Religious accommodation All other requests for Sailors on sea duty and overseas sea duty to wear a beard consistent with pre-established grooming guidelines must be sent to CNO N1 for decision.

## 2. Religious Head Coverings Interfering With Navy Cover

Paragraph 5(d)(4)(b) of the instruction states that “religious head coverings must not interfere with the wearing of required safety equipment or *the cover for the prescribed uniform of the day*” (emphasis added). As explained in Section I of this letter, the Sikh religion mandates (1) that Sikhs maintain their hair unshorn, including facial hair; and (2) that Sikhs wear an unconcealed turban to cover their head. The requirement to wear Navy cover over the turban places a substantial burden on a Sikh's free exercise of religion. Accordingly, with the exception of protective gear (such as the combat helmet) required for protection against demonstrated health or safety risks, Sikhs must not be required to wear military headgear over their turban.

As described in detail in Sections II and III of this letter, the honorable service of turbaned Sikh soldiers in the U.S. Army underscores that Sikh articles of faith present no barriers to full and effective service in the military, including the promotion of unit cohesion and uniformity. The provisions of Army Regulation 670-1 specifically state that “unless duties,

position, or assignment require a Soldier to wear the Advanced Combat Helmet or other protective headgear, Soldiers granted this accommodation are not required to wear military headgear in addition to the turban or under-turban [*patka*].”<sup>11</sup>

While the Navy certainly has a compelling governmental interest in mission accomplishment, the requirement that Sikhs wear non-protective Navy headgear over their turbans is not the least restrictive means of furthering that compelling governmental interest—as evidenced by both the Army uniform regulations and the successful service of the 60 observant accommodated Sikhs who wear turbans in place of non-protective Army headgear. We believe the Navy’s requirement as applied to observant Sikhs thereby violates RFRA. Accordingly, we respectfully request that the Navy revise its policy and align with Army uniform regulations to allow Sikhs to wear their religiously-mandated turbans without covering them with Navy headgear.

Beyond compliance with the law, there are many other compelling reasons why it is beneficial for the U.S. Navy to allow Sikhs to serve with their articles of faith intact. Religious freedom and respect for religious pluralism are bedrock principles of this country—principles that the U.S. Navy is bound to protect and promote as part of many missions. A more inclusive military force will also promote the United States’ national security interest, a point the Secretary of Defense made in December 2015 in response to a direct question by SPC Kanwar Bir Singh: “Everybody who can contribute to our mission, who can meet what are high standards and contribute to our mission, we need them. It’s not just a matter of giving them the opportunity; it’s giving us the opportunity as a country to avail ourselves of their talent.”<sup>12</sup>

The language below provides a proposed amendment to paragraph 5(d)(4)(b), as highlighted in the enclosed redline of BUPERSINST 1730.11. Additionally, the instruction does not specify that religious accommodations for head coverings such as turbans include unshorn hair worn under the turban. In an effort to clarify this provision and to ensure the limitations imposed for head coverings will not undermine the religious accommodation of unshorn hair, the proposed amendment also includes unshorn hair.

(b) Head Coverings. As delineated in table 1, religious accommodations for Sailors on shore duty, remote land-based sea duty and overseas shore duty to wear neat and conservative religious head coverings such as (but not limited to) a hijab, turban worn over unshorn hair, 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). Religious head coverings worn over unshorn hair must be maintained consistent with pre-established guidelines for the wearing of such religious

<sup>11</sup> Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia (25 May 2017), para. 3-16(c)(2).

<sup>12</sup> *A Conversation with Ashton B. Carter*, Harvard University Institute of Politics at the Kennedy School (December 1, 2015), <https://iop.harvard.edu/forum/conversation-ashton-b-carter>, at 27:28.

~~headgear. Unless duties, position, or assignment require a Sailor to wear safety or protective headgear, Sailors granted a religious accommodation are not required to wear military headgear in addition to their religious head covering if such headgear would violate their sincerely held religious beliefs. Religious head coverings must not interfere with the wearing of required safety equipment or the cover for the prescribed uniform of the day.~~

### 3. Suspension and Revocation of Approved Religious Accommodations

Paragraph 5(g) of the instruction states that “an approved religious accommodation is subject to review, suspension and revocation, in whole or in part, at any time upon 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).” While paragraph 5(g) further states that a compelling governmental interest may require suspension or revocation of the religious accommodation, it fails to specify that the suspension or revocation must be the *least restrictive means* of furthering that compelling governmental interest consistent with RFRA—and may thereby allow for review of religious accommodations that violates the RFRA rights of Navy sailors.

While we do not contest the need for temporary suspension procedures in the event of an emergent, demonstrated threat to health and safety resulting from the accommodation, we are extremely concerned about the adverse effect these provisions may have on Sikh members of the Navy, as they could potentially be misused to revoke an accommodation for reasons unrelated to health and safety. Indeed, one of our clients, Major Rattan, was subject to an onerous renewal of his religious accommodation in the Army in 2011 when he was relocating from Fort Drum to Fort Bragg to join a dental training program. As a result of the delays in renewing his accommodation, his household-goods move was substantially delayed, he was forced to cancel a lease in North Carolina, and other forms of significant disruption and frustration ensued that gratuitously harmed his ability to contribute to mission accomplishment. It would be extremely detrimental to the U.S. Navy and its service members, if they had to suffer through similar delays—subject to the discretion of the decision-makers—at every new duty assignment or temporary duty change.

The provision could chill qualified observant Sikhs from joining and/or staying in the Navy if there is a concern that their accommodation will be reviewed and potentially suspended or revoked every time they attempt to advance in their Navy career. It is imperative that approved religious accommodations remain in effect for the duration of the service member’s career, unless a demonstrated threat to health and safety risk resulting from the accommodation – consistent with RFRA—requires a temporary suspension.

The language below provides a proposed amendment to paragraphs 4(a)(1) and 5(g), as highlighted in the enclosed redline of BUPERSINST 1730.11.

4(a)(1) Requestors must comply with the applicable policy, practice, direction or duty from which he or she is requesting accommodation until the request is adjudicated. Additionally, commanders and commanding officers (“commanders”) may temporarily modify or suspend a religious accommodation if health and operational circumstances or safety concerns arise that require immediate compliance by the requestor, consistent with subparagraph 5g.

5(g) Approval Duration, Withdrawal and Suspension. Subject to the reservations contained in this subparagraph, all approved religious accommodations will remain in effect for the duration of the service member’s career. An approved religious accommodation is subject to review, ~~suspension and revocation~~, in whole or in part, at any time upon a significant change in the circumstances upon which the initial religious accommodation was based implicating a specific and concrete threat to health and safety (e.g., new duty assignment, temporary duty or other material change in circumstances). If the commander determines that a compelling government interest requires suspension or revocation of the religious accommodation, and no less restrictive means of furthering that compelling government interest are available, the command must notify the requestor in writing. ~~The commander may temporarily modify or suspend an accommodation if operational circumstances or safety concerns arise that require immediate compliance by the requestor.~~ Approved religious accommodations will remain in effect until the commander or future commander notifies the candidate or Service member in writing that a compelling government interest requires a suspension or withdrawal of the religious accommodation. Religious accommodations may be immediately suspended ~~(normally for 90 days or less)~~ in light of ~~the duties assigned an imminent threat to health and safety while not permanently revoked that requires immediate compliance by all Sailors with like accommodations. Absent compliance with the written notification requirement set forth above,~~ the original approval will suffice for the Sailor to resume with the accommodation after the temporary suspension is complete or after 90 days, whichever is less. A copy of any permanent withdrawal of a religious accommodation approval must be sent via email to OPNAV N13 at ALTN\_Navy\_Religious\_Accommodations@navy.mil. If the request contains Personally Identifiable Information (PII), the request must be labelled and encrypted appropriately.

\* \* \* \* \*

Consistent with our guiding philosophy over the past decade, we hope to work cooperatively with you to articulate our concerns with BUPERS Instruction 1730.11, answer your questions, and provide you with the information you need to make informed decisions. As our world becomes more complex and interconnected, our military leadership must reflect different cultural and religious backgrounds. Given Sikhs’ long and distinguished military

history in the United States and around the world, Sikhs will continue to embrace the opportunity to enlist and serve as dedicated service members. We remain deeply appreciative of the U.S. Navy diligently working to safeguard the civil rights of all Americans who wish to serve or have served in the U.S. Armed Forces, including Sikhs.

Thank you in advance for your time, consideration, and cooperative spirit in achieving a robust, lasting process for handling the religious accommodations of Sikhs and other religious minorities.

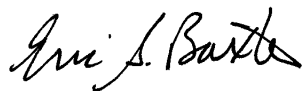
Sincerely,



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DEPARTMENT OF THE NAVY  
CHIEF OF NAVAL PERSONNEL  
701 SOUTH COURTHOUSE ROAD  
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BUPERSINST 1730.11 CH-1  
N131  
24 Jul 19

BUPERS INSTRUCTION 1730.11 CHANGE TRANSMITTAL 1

From: Chief of Naval Personnel

Subj: STANDARDS AND PROCEDURES GOVERNING THE ACCOMMODATION OF  
RELIGIOUS PRACTICES

Encl: (1) Revised Page 6 and new Page 6a

1. Purpose. To transmit revised page 6 of the basic instruction, which updates management of pre-accession and recruit training religious accommodations. This change includes an additional matrix chart to assist recruiting and recruit training leadership with management of these requests.

2. Action. Remove page 6 of the basic instruction and replace with enclosure (1) of this change transmittal.

3. 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.secnav.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.

  
JOHN B. NOWELL, JR

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>.



DEPARTMENT OF THE NAVY  
CHIEF OF NAVAL PERSONNEL  
701 SOUTH COURTHOUSE ROAD  
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BUPERSINST 1730.11  
N13  
13 Nov 2018

BUPERS INSTRUCTION 1730.11

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 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 updated policy, guidance, procedures and responsibilities for the accommodation of a sincerely held religious belief 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 religious accommodations as delineated in paragraph 5.

2. 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 Navy Reserve Officer 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.

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



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

(1) Requestors must comply with the applicable policy, practice, direction or duty from which he or she is requesting accommodation until the request is adjudicated. Additionally, commanders and commanding officers ("commanders") may temporarily modify or suspend a religious accommodation if ~~health and operational circumstances or~~ safety concerns arise that require immediate compliance by the requestor, consistent with subparagraph 5g.

(2) Personnel with an approved religious accommodation must inform their chain of command of the approved accommodation upon checking in or changing duties. Requestors must retain a copy of the approved accommodation and be able to produce it within a reasonable amount of time if required to do so.

b. Chaplains. The Chaplain Corps is responsible for the training associated with religious accommodation policy execution. Assisted by religious program specialists, Chaplains provide for and facilitate efforts to meet the religious needs of Department of the Navy (DON) personnel.

(1) A Navy chaplain will conduct an administrative interview for each religious accommodation request. 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 1730.9 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 for appeal or adjudication, commanders will use enclosure (4).



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(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 religious accommodation policy and will review and act on religious accommodation requests that require waiver of Department of Navy (DON) policy and religious accommodations routed to CNO N1 for approval as indicated in table 1.

## 5. Policy

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 or 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.

(1) Each request for religious accommodation must be reviewed on a 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 denied simply because similar requests were 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 or health and safety,
- (c) importance of the accommodation to the requestor,
- (d) cumulative impact of repeated accommodations of a similar nature and
- (e) alternate means to meet the requested accommodation.

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(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 a request to accommodate a religious practice. 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 or interfere with the wear or proper function of special or protective clothing or equipment (including, but not limited to, the donning of respiratory equipment, hazards to proper visibility and communication or clothing hazards) or

(b) otherwise impair mission accomplishment, good order, discipline, morale or unit cohesion.

(3) Sometimes it is necessary for commanders to recommend an alternative accommodation of a religious practice. 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 need. Where appropriate, the Chaplain memorandum may discuss alternative means available to address the requested accommodation.

(4) Types of religious accommodations and approval authority levels are listed on the following page. 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. Certain requests for religious accommodation may be approved by commanders in certain duty type environments as listed in table 1 below. Per reference (a), exceptions to this table are not permitted without CNO N1 approval.

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Duty Type	Types of Religious Accommodations	Authority
Types 1, 2, 3, 4 and 6 (all duty types)	Religious observances per subparagraph 5d(1)	CO
Types 1, 2, 3, 4 and 6 (all duty types)	Dietary practices per subparagraph 5d(2)	CO
Types 1, 3 and 6 (shore duty, remote land-based sea duty and overseas shore duty)	Beard <del>of 1/4 inch or less</del> per references (c) subparagraph 5d(4)	Approvals authorized at O-6 CO/Immediate Superior In Command (O-6 ISIC), otherwise send recommendation directly to CNO N1
Types 2 and 4 (sea duty and overseas sea duty)	Beard <del>of 1/4 inch or less</del> per references (c) and subparagraph 5d(4)	O-6 CO/ISIC send recommendation directly to CNO N1
<del>Types 1, 2, 3, 4 and 6 (all duty types)</del>	<del>Beard longer than 1/4 inch per references (c) and subparagraph 5d(4)</del>	<del>O-6 CO/ISIC send recommendation directly to CNO N1</del>
Types 1, 3 and 6 (shore duty, remote land-based sea duty, and overseas shore duty)	Neat conservative head covering per reference (c) and subparagraph 5d(4)	Approvals authorized at O-6 CO/ISIC, otherwise send recommendation directly to CNO N1
Types 2 and 4 (sea duty and overseas sea duty)	Neat conservative head covering per reference (c) and subparagraph 5d(4)	O-6 CO/ISIC send recommendation directly to CNO N1
Types 1, 2, 3, 4 and 6 (all duty types)	Uniform, grooming or religious apparel waivers not authorized at a lower level in line with reference (c)	O-6 CO/ISIC send recommendation directly to CNO N1
Types 1, 2, 3, 4 and 6 (all duty types)	Immunizations per subparagraph 5.d (3)	O-6 CO/ISIC send recommendation directly to CNO N1
Types 1, 2, 3, 4 and 6 (all duty types)	All other types of religious accommodation that require a waiver of Navy policy	O-6 CO/ISIC send recommendation directly to CNO N1

Table 1. Authorities and Religious Accommodations (sorted by duty type)

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

Note 2: Further details for duty types 1 through 6 can be found in MILPERSMAN 1306-102.

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 1. Accessionsource 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

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entering service. The following language should be used to document the applicant's 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 a religious accommodation at this time

---

(Applicant Signature)

I DO desire to request a religious accommodation for:

---

(Type of Request)

---

(Applicant Signature)

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

---

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

(2) Additionally, prospective accessions must be given the opportunity to route a religious accommodation request prior to departure for a Military Entrance Processing Station, as applicable. 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 recruit training commanders as listed in table 2 below. Per reference (a), exceptions to this table are not permitted without CNO N1 approval.

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<b>Type of Religious Accommodation</b>	<b>Process</b>	<b>Notes</b>
Religious observances	Route to RTC/OTCN CO for approval	Disapproval recommendations must be routed to CNO NI
Dietary practices	Route to RTC/OTCN CO for approval	Disapproval recommendations must be routed to CNO NI
Any request for beards during RTC/OTCN	RTC/OTCN CO may approve <del>1/4"</del> beard after capping	If <del>1/4"</del> beard after capping is not acceptable by applicant, then route to CNO NI
Religious head covering during RTC/OTCN	RTC/OTCNCO 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 route to CNO NI
Immunizations	RTC/OTCN CO may approve use of any available alternative vaccinations	If no alternative vaccines are available, then route to CNO NI
Uniform, grooming or religious apparel accommodation that do not require waiver of DON policy (e.g., full coverage swimwear)	Route to RTC/OTCN CO for approval	Disapproval recommendations must be routed to CNO NI
All other requests that require a waiver of Navy policy	Route to CNO NI	

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

c. Timelines. For religious accommodations requiring adjudication at the commander or 0-6 CO/ISIC level, final review and written notification to the requestor will be completed no later than 15 days from the date the requestor submitted the request to his or her immediate commander. This timeline is extended to 30 days for cases originating outside the continental United States (except for Hawaii and Alaska), and in all cases concerning Reserve Component

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Service members not on active duty that require adjudication at the commander or O-6 CO/ISIC level. Extensions may be granted by the Director, Military Personnel, Plans and Policy (OPNAV N13), generally due to operational necessity or lack of immediate access to a judge advocate or chaplain. All religious accommodation cases forwarded from the commander's O-6 CO/ISIC to CNO N1 for adjudication must be forwarded within 15 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 religious accommodation waiver request if they are expected to execute permanent change of station orders within 45 days. Written notification should be given to the requestor within 5 days upon any decision, modification, suspension or revocation of a religious accommodation.

d. Accommodation 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.

(2) Dietary Practices. Commanders should accommodate religious dietary observances to the fullest extent possible. Commanders normally accommodate 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 and 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, commanders should consider such factors as the safe and effective operation of weapons, work center equipment and machinery, and wear of protective clothing or equipment to determine whether the religious accommodation might interfere or otherwise impair the accomplishment of the unit or individual mission(s). 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.

(a) Beards. As delineated in table 1, religious accommodations for Sailors on shore duty, remote land-based sea duty and overseas shore duty to wear a beard ~~less than 1/4 inch in~~

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~~length~~ may be authorized at the O-6 CO/ISIC level based upon the operational environment and in line with reference (c). Unshorn beards must be worn in a neat and conservative manner consistent with pre-established grooming guidelines requiring unshorn beards to be rolled, tied and/or otherwise groomed to achieve a length not to exceed 2 inches when measured from the bottom of the chin. Religious accommodation~~All other~~ requests for Sailors on sea duty and overseas sea duty to wear a beard consistent with pre-established grooming guidelines must be sent to CNO N1 for decision.

(b) Head Coverings. As delineated in table 1, religious accommodations for Sailors on shore duty, remote land-based sea duty and overseas shore duty to wear neat and conservative religious head coverings such as (but not limited to) a hijab, turban worn over unshorn hair, 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). Religious head coverings worn over unshorn hair must be maintained consistent with pre-established guidelines for the wearing of such religious headgear. Unless duties, position, or assignment require a Sailor to wear safety or protective headgear, Sailors granted a religious accommodation are not required to wear military headgear in addition to their religious head covering if such headgear would violate their sincerely held religious beliefs. Religious head coverings must not interfere with the wearing of required safety equipment or the cover for the prescribed uniform of the day.

(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 to accommodate religious needs:

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

(2) Every requestor seeking religious accommodation 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 to the O-6 CO/ISIC for approval or endorsement for CNO N1 must include enclosures (1) through (4). There are no additional requirements.

(4) A copy of any religious accommodation authorized at the O-6 CO/ISIC level

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or requests forwarded from the O-6 CO/ISIC level to CNO N1 should be sent via e-mail to OPNAV N13 at [ALTN\\_Navy\\_Religious\\_Accommodations@navy.mil](mailto:ALTN_Navy_Religious_Accommodations@navy.mil). If the request contains Personally Identifiable Information (PII), the request must be labelled and encrypted appropriately.

(5) Sailors who fall under the direct report of another United States Military Service will adhere to the provision set forth in subparagraph 4a and must route their requests to the



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appropriate Service decision authority for approval. 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.

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. Appeals of CNO N1 adjudication will be forwarded to the Chief of Naval Operations (CNO) for final adjudication, unless directed otherwise in references (a) or (b).

(2) If the requestor's religious accommodation is denied at any level in the chain of command, and the requestor subsequently experiences a change in physical, operational or geographical environment, or if there is a change to pertinent policy, the requestor may renew his or her request for religious accommodation.

g. Approval Duration, Withdrawal and Suspension. Subject to the reservations contained in this subparagraph, all approved religious accommodations will remain in effect for the duration of the service member's career. An approved religious accommodation is subject to review, ~~suspension and revocation~~, in whole or in part, at any time upon a significant change in the circumstances upon which the initial religious accommodation was based implicating a specific and concrete threat to health and safety (e.g., new duty assignment, temporary duty or other material change in circumstances). If the commander determines that a compelling government interest requires suspension or revocation of the religious accommodation, and no less restrictive means of furthering that compelling government interest are available, the command must notify the requestor in writing. ~~The commander may temporarily modify or suspend an accommodation if operational circumstances or safety concerns arise that require immediate compliance by the requestor.~~ Approved religious accommodations will remain in effect until the commander or future commander notifies the candidate or Service member in writing that a compelling government interest requires a suspension or withdrawal of the religious accommodation. Religious accommodations may be immediately suspended ~~(normally for 90 days or less)~~ in light of ~~the duties assigned an imminent threat to health and safety while not permanently revoked, that requires immediate compliance by all Sailors with like accommodations.~~ Absent compliance with the written notification above, the original approval will suffice for the Sailor to resume with an accommodation after the temporary suspension is complete or after 90 days, whichever is less. A copy of any permanent withdrawal of a religious accommodation approval must be sent via email to OPNAV N13 at ALTN\_Navy\_Religious\_Accommodations@navy.mil. If the request contains Personally Identifiable Information (PII), the request must be labelled and encrypted appropriately.

(1) The authority to temporarily suspend a previously approved religious accommodation resides with the CO, while the authority to permanently revoke a previously approved religious accommodation remains with the same level of authority at which the religious accommodation was granted. For example, a CO can suspend a religious accommodation while waiting for the O-6 ISIC or DCNO N1 to permanently rescind the previously approved waiver. The standard for

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suspending or revoking a previously granted religious accommodation, in whole or in part, is the same as the standard for denying a religious accommodation, and the same factors must be considered. Suspensions and revocations may be appealed in the same process as described in subparagraph 5f(1).

(2) The written notification must include the nature of the changed circumstances that require such review and specify the reason for the revocation or the length of the suspension.

(3) The requestor will be given a chance to comment on the review and potential revocation of the religious accommodation. Any comments submitted by the requestor will be forwarded to the appropriate authority for consideration.

#### 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.secnav.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/AADRMD 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 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.

R. P. BURKE

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 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 (i.e., O-6 CO/ISIC or CNO N1)

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

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION

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 (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 religious accommodation 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 AN EXCEPTION TO POLICY TO ACCOMMODATE A 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 1730.11, 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  
To: Appropriate authority per table 1  
Via: As applicable with appropriate authority per table 1

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

Ref: (a) DoD Instruction 1300.17  
(b) SECNAVINST 1730.8  
(c) BUPERSINST 1730.11  
(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 accommodation 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/mailed 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.



### Changes to NAVPERS 15665I

Article 2201 paragraph 2 is revised to read as follows:

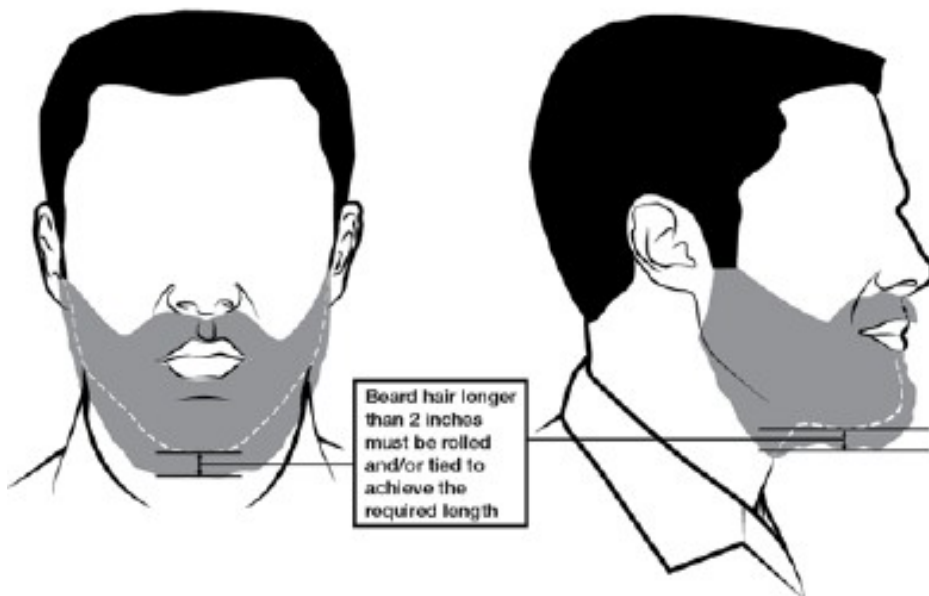
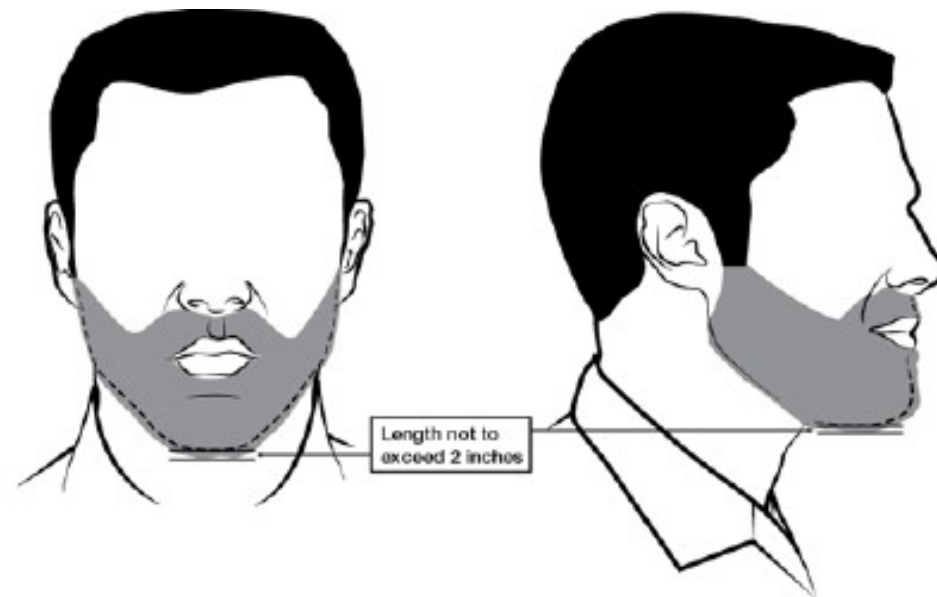
2. **SHAVING AND MUSTACHES (Men).** The face shall be clean shaven unless a shaving waiver is authorized by the Commanding Officer per <BUPERSINST 1000.22> or a religious accommodation has been granted per BUPERSINST 1730.11. Mustaches are authorized but shall be kept neatly and closely trimmed. No portion of the mustache shall extend below the lip line of the upper lip. It shall not go beyond a horizontal line extending across the corners of the mouth and no more than 1/4 inch beyond a vertical line drawn from the corner of the mouth. The length of an individual mustache hair fully extended shall not exceed approximately 1/2 inch. <Figure 2-2-1> refers. Handlebar mustaches, goatees, beards or eccentricities are not permitted. If a shaving waiver is authorized per BUPERSINST 1000.22, no facial/neck hair shall be shaved, manicured, styled or outlined nor exceed 1/4 inch in length. **Supervisors of individuals with medical shaving waivers shall actively monitor and ensure treatment regimen is followed.** If a religious accommodation for an unshorn beard has been granted per BUPERSINST 1730.11, it shall meet the following grooming standards:

a. Unshorn beards (which include facial and neck hair) must be maintained to a length not to exceed 2 inches when measured from the bottom of the chin. Beard hair longer than 2 inches must be rolled, tied and/or otherwise groomed to achieve the required length. Beards must be worn in a neat and conservative manner that presents a professional appearance. Sailors may use styling products to groom or hold the beard in place, but may not use petroleum-based products if wearing a protective mask during training. The bulk of a Sailor's beard may not impair the ability to operate an assigned weapon, military equipment, or machinery.

b. A mustache worn with an unshorn beard may extend sideways beyond the corners of the mouth to connect with the beard, but must be trimmed or groomed to not cover the upper lip.

The following personnel are not authorized to wear any facial hair except when medical waivers or religious accommodation have been granted:

- a. Brig prisoners.
- b. Brig awardees.
- c. Personnel in a disciplinary hold status (i.e., who are serving restriction or hard labor without confinement or extra duties as a result of a court-martial or NJP).
- d. Personnel assigned to a transient personnel unit who are awaiting separation:
  - (1) By reason of a court-martial sentence.
  - (2) To benefit the service (MILPERSMAN 1910-164).
  - (3) Pursuant to the recommendation or waiver of an administrative discharge board, for misconduct (MILPERSMAN 1910-140).



Article 6405 paragraph 7 is revised to read as follows:

7. **RELIGIOUS HEADGEAR.** Navy personnel with an approved religious accommodation per BUPERSINST 1730.11 may wear religious headgear such as (but not limited to) a hijab, turban worn over unshorn hair, kufi, kippah or yarmulke while in uniform if the headgear meets the following criteria.

a. It must be black or navy blue and contours closely to the shape of the head and face as applicable when worn;

b. It must be of a style and size that facilitates the proper wear of all Navy uniform covers, safety or emergency headgear when worn;

c. It cannot interfere with the proper wear or functioning of protective clothing or safety or emergency headgear and equipment;

d. It cannot bear any writing, symbols, or pictures;

e. It will not be worn in place of military headgear when military headgear is required (outdoors, or indoors when required for duties or ceremonies), except for turbans as delineated in subparagraph 7h;

f. It will not obstruct or inhibit the full view of the face from the front or side view. When wearing a turban or hijab, the natural hairline and ears may be fully covered;

g. Any portion of religious headgear that extends below the collar of the uniform shirt/blouse being worn will be tucked into the neck area and over the t-shirt or under garment being worn.

h. An accommodated Sailor may wear a turban (or under-turban or patka, as appropriate) in a neat and conservative manner that presents a professional and well-groomed appearance. Unless duties, position, or assignment require a Sailor to wear safety or protective headgear, Sailors with an approved religious accommodation are not required to wear military headgear in addition to the turban. Rank insignia will be displayed on the turban or under-turban when worn in circumstances where military headgear is customarily worn. When directed by a commander, Sailors may be required to wear a turban or under-turban made of fire-resistant material. Hair worn under the turban or under-turban is not subject to NAVPERS 15665I, but may not fall over the ears or eyebrows or touch the collar while in uniform. When the Sailor is wearing safety or protective headgear with the under-turban, the bulk of the hair will be repositioned or adjusted to ensure proper fit.



## **Exhibit B**



February 28, 2020

General David H. Berger  
Commandant of the Marine Corps  
*Via email:* [david.berger@marines.usmc.mil](mailto:david.berger@marines.usmc.mil)

**Re: Religious Accommodations in the United States Marine Corps**

Dear General Berger:

We respectfully write to you to request a meeting with your office to discuss religious accommodations for observant Sikhs and other religious minorities in the United States Marine Corps (“the Marines”). By way of background, during the past decade, the Sikh Coalition<sup>1</sup> and the law firm McDermott Will & Emery (“McDermott”) have jointly represented seventeen Sikhs in obtaining religious accommodations to serve in the United States Army (“the Army”) with their Sikh articles of faith – *i.e.*, their unshorn hair, unshorn beards, and turbans – intact. The Becket Fund for Religious Liberty joined the Sikh Coalition and McDermott in co-representing five of those seventeen Sikh soldiers. In response to our organizations’ efforts, our clients’ highly successful track record of service, and legal rulings by the United States District Court for the District of Columbia,<sup>2</sup> on January 3, 2017, the Army lifted its nearly forty-year presumptive ban against observant Sikhs and issued Army Directive 2017-03, formally allowing Sikhs to obtain accommodations to the uniform and grooming standards for their unshorn hair, unshorn beards, and turbans.<sup>3</sup>

Earlier this month, the United States Air Force (“the Air Force”) updated its dress and appearance policy to streamline and clarify the process to request and obtain religious

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<sup>1</sup> The Sikh Coalition is a community-based organization that defends civil rights and civil liberties in the United States, educates the broader community about Sikhs and diversity, and fosters civic engagement amongst Sikh Americans. The Sikh Coalition owes its existence in large part to the effort to combat uninformed discrimination against Sikh Americans after September 11, 2001. Since our inception, we have worked with governmental entities and private employers to achieve mutually acceptable solutions for the accommodation of Sikh articles of faith.

<sup>2</sup> See *Singh v. Carter*, 168 F. Supp. 3d 216 (D.D.C. 2016); *Singh v. McHugh*, 185 F. Supp. 3d 201 (D.D.C. 2016).

<sup>3</sup> On May 25, 2017, the Army formally incorporated the new Sikh accommodation policies outlining appropriate uniform and grooming standards for Sikhs who obtained religious accommodations to maintain their articles of faith into Army Regulation 670-1 (Wear and Appearance of Army Uniforms and Insignia).

accommodations for hijabs, turbans, unshorn hair, and unshorn beards for both pre-accession and enlisted Airmen and Officers. This policy revision follows the Air Force's recent approval of several individual accommodations for observant Sikhs and other minorities to serve with their articles of faith intact.

The United States Navy ("the Navy") also has a policy allowing for religious accommodations and is in the process of revising it to be more inclusive and to ensure that all qualified observant men and women who wish to serve their country in the Navy may do so while practicing their faith.

Similarly, there are observant Sikhs who wish to serve our nation in the Marines, but are precluded from requesting and obtaining religious accommodations to serve with their articles of faith intact. Accordingly, we would welcome the opportunity to meet with you and discuss religious accommodations for observant Sikhs and other religious minorities in the Marines. By bringing to bear the experiences of our clients and our expertise in religious accommodations pursuant to our work with the Army and Air Force, we hope to also work cooperatively with you to articulate our concerns and provide you with the information and support you need to revise and improve the current Marines policy – thereby ensuring full and equal opportunity for observant men and women who wish to serve their country in the Marines. To this end, we have enclosed for your review and consideration a list of model provisions for religious accommodation policies in the U.S. Armed Forces.

We will be at the Pentagon on March 16, 2020 for other meetings and would welcome the opportunity to meet with you if you are available. Prior to meeting and discussing our request, we believe it would be helpful to provide contextual information about the Sikh articles of faith and service record of observant Sikhs in the U.S. Armed Forces for your reference.

## **I. The Sikh Articles of Faith**

The Sikh religion is the world's fifth largest faith tradition. The founder of the Sikh faith, Guru Nanak, was born in 1469 in Punjab, India. The Sikh religion is monotheistic, believing in one God that is all loving, all pervading, and eternal. This God of love is obtained through grace and sought by service to mankind. Guru Nanak rejected India's caste system and declared all human beings, men and women, to be equal in rights and responsibilities and ability to reach God. He taught that God was universal to all—not limited to any religion, nation, race, color, or gender.

Consistent with the teachings of the Sikh gurus, Sikhs wear external articles of faith to bind them to the beliefs of the religion. Unlike some other faiths, where only the clergy maintain religious articles on their person, all Sikhs are required to wear these external articles of faith. The articles of faith, such as unshorn hair (*kesh*) and the turban are defining characteristics of a Sikh and have deep spiritual significance. They are the only articles of faith that raise concerns under the grooming and uniform regulations.

Maintaining *kesh* is an essential part of the Sikh way of life. One cannot be a fully observant Sikh without abiding by this tenet of faith. Guru Nanak started the practice, regarding it as living in harmony with the will of God. The Rehat Maryada, the Sikh Code of Conduct, outlines the requirements for practicing the Sikh way of life. All Sikhs must follow the guidelines set forth in this document. The Rehat Maryada explicitly instructs that if you are a Sikh, you must “[h]ave, on your person, all the time. . . the Keshas (unshorn hair).” Under Sikh theology, cutting one’s hair is a moral transgression as serious as committing adultery.

The Rehat Maryada also mandates that each Sikh wear an unconcealed turban that covers the head. The turban is a religious article that reminds a Sikh of his or her duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard, being honest, sharing with the needy, and promoting equality and justice for all. When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh’s head.

Historically, uncut hair and turbans have been central features of the Sikh identity. For example, in the 18th century, Sikhs in South Asia were persecuted and forced to convert from their religion by the region’s various rulers. The method of forcing conversions was to remove a Sikh’s turban and cut off his hair. As resistance to such forced conversions, many Sikhs chose death over having their turbans removed and hair shorn. Since then, denying a Sikh the right to wear a turban and maintain unshorn hair has symbolized denying that person the right to belong to the Sikh faith, and is perceived as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.

## **II. Observant Sikhs’ Service in the U.S. Armed Forces**

There are over 26 million Sikhs in the world and approximately 500,000 in the United States. For centuries, Sikh soldiers and officers have served in armies across the globe, fought bravely in wars, and achieved the highest levels of military distinction. Sikh values and the Sikh articles of faith fully complement the values of our fellow Americans and the Army, including our country’s commitment to freedom, justice, and defending the oppressed. Indeed, as is the case for other American communities, Sikhs have an extensive and proud history of military

service. Service in armed forces has always been—and continues to be—an important part of the Sikh identity. Sikhs served as part of the Allied Forces in both World Wars and served in the Army dating back to early 20th Century.<sup>4</sup> Sikhs currently serve in the militaries of the United Kingdom, Canada, Australia, New Zealand, India, the United Nations, and many other countries. Canada's current Minister of National Defence, Harjit Sajjan, is an observant Sikh.

As you are no doubt aware, until recently, observant Sikh-Americans were virtually absent from the ranks of the U.S. Armed Forces for nearly forty years due to a policy that excluded them and members of other minority faiths unless they agreed to relinquish the tenets of their faith. Although practicing Sikhs proudly served our country in the Army without impediment during the Vietnam War and prior conflicts dating back to World War I, military policy was changed around 1981 to prohibit exemptions to the uniform requirements for visible articles of faith.

While this rule generally barred observant Sikhs from entering all branches of the U.S. Armed Forces for nearly 40 years, a number were grandfathered-in under the old military policy and served honorably in the Army with their Sikh articles of faith intact—some even serving lifetime careers dating to as recently as 2009. For example:

- COL Gopal S. Khalsa joined the Army as a private in 1976 and served in the Army until 2009. While on active duty, COL Khalsa served in the Special Forces Unit for 10 years on Parachute Status and as a Battalion Commander overseeing an 800-person intelligence group. He received a Meritorious Service Medal and Silver Oak Leaf Cluster Award, among many other honors. He is a graduate of the Army Officer Candidate School at FT Benning, Georgia, and was inducted into the Officer Candidate School Hall of Fame in 2004.
- COL Gurbhajan Singh, a dentist, served from 1979 until 2007. During his 28-year tenure, COL Singh was stationed around the United States and in Korea. He was awarded several honors including the “A” Prefix, the Army Medical Department's highest award for professional excellence.

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<sup>4</sup> Bhagat Singh Thind was the first turban-wearing Sikh to serve in the U.S. Army. He enlisted in the Army during World War I, was promoted to the rank of Active Sergeant and received an honorable discharge on December 16, 1918. In a landmark 1923 decision, the Supreme Court denied his eligibility for naturalized citizenship for failing to meet the definition of a white person “in accordance with the understanding of the common man.” He eventually received his U.S. citizenship in 1936. See Berkeley Library, *Echoes of Freedom: South Asian Pioneers in California, 1899-1965*, Chapter 10: US vs. Bhagat Singh Thind, <http://guides.lib.berkeley.edu/echoes-of-freedom/chapter10>.



- COL Arjinderpal Singh Sekhon, a medical doctor, served from 1984 until 2009. During his 25 years of commissioned service, COL Sekhon was stationed around the country. During the First Persian Gulf War, he was called to active duty and served stateside as a doctor at an Army Hospital in California. He rose through the ranks to colonel and was given a Battalion Commander position through which he oversaw a unit of 600-700 soldiers. Before the end of his career in the Army, he was decorated with various awards including a Presidential Unit Citation, Joint Meritorious Unit Award, and an Army Flight Surgeon Badge.
- SGT Sevak Singh Kroesen enlisted in the Army Reserves in 1976 and was attached to the Signal Company, 11th Special Forces Group after which he successfully completed airborne (paratrooper) and Radio Teletype Transmission Operator training. He then completed his Special Forces Qualification Courses and became a Special Forces Communications Sergeant with the Maryland National Guard. SGT Kroesen subsequently completed his schooling, training, and missions around the world all with honor and distinction. He was honorably discharged from active duty in 1991.
- SGT Kirnbir Singh Grewal served in the Army from 1977 to 1984. He entered the Army as a private and served both domestically and abroad in Germany. Sergeant Grewal, a turban-wearing Sikh, used the same standard-issue gas mask and helmet as other members of the Army. Indeed, his responsibilities included teaching other soldiers to use protective gear to survive nuclear and biological warfare.
- MAJ Parbhur Singh Brar is an ophthalmologist who served in the Army from December 1978 to October 1981. He was commissioned as a Reserve Officer, but then moved to Active Duty and was stationed at FT Eustis in Newport News, VA.

Subsequent to the service of these Sikh Army soldiers, the Sikh Coalition and its partners began representing a growing number of qualified, patriotic, observant Sikhs who sought to serve with their articles of faith intact. Between 2009 and 2016, the Army agreed to provide religious accommodations to these individuals which shall extend for the duration of their Army career. They include, for example:

- Major Kamaljeet S. Kalsi, a physician specializing in emergency and disaster medicine, who received an accommodation to serve with his articles of faith intact in 2009. Major Kalsi began active duty in June of 2010 and was deployed to Afghanistan in 2011. He was awarded a Bronze Star medal upon his return for “exceptionally meritorious service as an emergency medicine physician.” He currently serves in the Army Reserves.

- Major Tejdeep Singh Rattan, a dentist, who entered active duty in January of 2010 after receiving a religious accommodation. In 2011, he was deployed to Afghanistan where he volunteered to serve in a remote forward operating base. While deployed, Captain Rattan performed approximately 25% of all dental procedures performed throughout the 673rd Dental Company. He was awarded an Army Commendation Medal for his “outstanding performance, technical expertise, and unwavering commitment to mission accomplishment in a hostile environment[,]” as well as a NATO Medal for defusing a tense confrontation with Afghan civilians. Major Rattan currently serves in the Army Reserve.
- Corporal Simran Preet S. Lamba, who began active duty in August 2010 after receiving a religious accommodation. Fluent in Punjabi and Hindi, he was recruited through the MAVNI program for his cultural and language skills. He served in a medical battalion as a Soldier Medic and was recognized as a “tremendous Soldier” who “had an amazing impact on his peers and supervisors.” In June 2014, he received an Army Commendation Medal for his selfless service and dedication to duty.
- Captain Simratpal Singh, an engineer and graduate of the prestigious U.S. Military Academy at West Point, Army Ranger and Bronze Star medalist for his service in Afghanistan, who received a religious accommodation in 2016 after serving for a decade in the Army. He then commanded an engineer company inside the 249th Engineer Battalion for 1.5 years and is now attending Advanced Civil Schooling at the University of Maryland.
- Specialist Harpal Singh, who began active duty in May of 2016. He obtained an exceptionally high Army Physical Fitness Score - 330 out of 300 - during BCT which earned him an Army Achievement Medal. He earned his second Army Achievement Medal in August 2016 for obtaining the highest APFT score within his company during Advanced Individual Training at Fort Eustis. Specialist Singh is currently in the Army Reserve.
- Cadet Arjan Singh Ghotra and Cadet Gurjiwan Singh Chahal, who are the first two observant Sikhs in U.S. history to attend the U.S. Military Academy at West Point, received religious accommodations to maintain their articles of faith in 2016 and 2017 respectively. CDT Ghotra previously served with excellence in the Virginia National Guard. Both Cadets have recently successfully completed their second year at West Point with their articles of faith intact.

According to Hank Minitrez, a spokesman for the Army, there are currently 60 religious accommodations that have been granted to Sikhs entering the service.<sup>5</sup> Fourteen of those were granted as pre-accession waivers to high school students.

Furthermore, as you may be aware, the Air Force has recently provided religious accommodations for four observant Sikhs to serve with their articles of faith intact, as well as several other religious minorities, including Muslim and Eastern Orthodox Airmen.<sup>6</sup>

### **III. Sikh Articles of Faith and the Military's Interest in Neatness, Unit Cohesion, Safety, and Mission Accomplishment**

As described in detail above, the many Sikh soldiers who have served honorably in the Army have demonstrated time and again that accommodation of the Sikh articles of faith, including the turban and unshorn hair and beard, in no way adversely affects the military's interest in uniformity and safety. To the contrary, as recognized by Congress, such accommodation advances mission accomplishment and unit cohesion, including by giving the Army access to soldiers with specialized skills (whether professional, technical, language, cultural and more) necessary to effectively address modern threats. *See* National Defense Authorization Act for Fiscal Year 2016 § 528, Pub. L. No. 114-92 (2015) (service by individuals “from numerous religious traditions, including Christian, Hindu, Jewish, Muslim, [and] Sikh” traditions, has “contribute[d] to the strength of the Armed Forces”).

#### **1. Sikh Articles of Faith Comply with Uniformity Standards**

Sikh service members accommodated since 2009 have matched the color of their turban with required uniform headwear. Moreover, they have used camouflage patterned cloth to develop turbans that confirm with Army uniform requirements, including mechanisms to display their Army flash (insignia patch) on their turbans.<sup>7</sup> These Sikh service members serving in the Army have been commended for adhering to the uniform standards of neatness and

<sup>5</sup> Matthew Cox, *14 Sikh High Schoolers Get Waivers to Enter Army Basic With Beard, Turban*, Military.com (May 2, 2019), <https://www.military.com/daily-news/2019/05/02/14-sikh-high-schoolers-get-waivers-enter-army-basic-beard-turban.html>.

<sup>6</sup> *See* Harmeet Kaur, *Air Force updates its dress code policy to include turbans, beards and hijabs*, CNN (February 13, 2020), <https://www.cnn.com/2020/02/13/us/air-force-dress-code-sikhs-muslims-trnd/index.html>

<sup>7</sup> Steve Elliott, *Second Sikh doctor allowed to wear articles of faith; enlisted Soldier in training*, Official Homepage of the United States Army (September 9, 2010), [https://www.army.mil/article/44944/second\\_sikh\\_doctor\\_allowed\\_to\\_wear\\_articles\\_of\\_faith\\_enlisted\\_soldier\\_in\\_training](https://www.army.mil/article/44944/second_sikh_doctor_allowed_to_wear_articles_of_faith_enlisted_soldier_in_training).

conservativeness.<sup>8</sup> The new Air Force policy for religious accommodations mandates similar standards for Sikh Airmen.

## 2. Sikh Service Members Are Able to Comply With Safety Requirements

As discussed in Army Directives 2017-03 and 2016-34, Sikh service members have undergone rigorous safety testing, including being placed in a chamber filled with gas, to determine whether their protective masks form an effective seal with their beards and religious headwear intact. The Army's policies are a reflection of that fact that Sikh service members are able to comply with safety standards for the wear of gas masks and helmets. They have also demonstrated that helmets and other safety gear can be worn safely over a *patka* (a smaller turban).

Even before the new Army policy was adopted, Army leadership recognized that Sikh service members were as battle-ready as their non-Sikh counterparts. When Undersecretary of the Army Joseph W. Westphal visited the Joint Readiness Training Center at Fort Polk in October 2012, he specifically noted in regards to a combat training class that included LTC Kalsi that he was “absolutely impressed with [all the service members’] intellect, their knowledge, and their easy disposition” and that the Army was on “good footing” with its readiness training.<sup>9</sup> CPT John Lopez, Company A, 197th Medical Battalion, who was CPT Rattan’s commanding officer during training, said that CPT Rattan “knows what he is doing and he’s doing a phenomenal job. *I’d go to battle with him.*”<sup>10</sup> And as the United States District Court for the District of Columbia has recognized, the Army’s own reviews have shown Sikhs serving “with their articles of faith intact without any of the negative consequences” that were predicted. In contrast, “[t]he praise heaped on each man’s service—including, in particular, for their discipline and leadership—[stood] in stark contrast” to concerns that “permitting him to maintain his articles of faith would undermine the quality of his training, unit cohesion and morale, military readiness, and the credibility of the officer corps.” *Singh v. McHugh*, 185 F. Supp. 3d 201, 229 (D.D.C. 2016).

Service members of the Sikh faith currently serving in the Army have proven that Sikhs not only can comply with all safety regulations with their turbans and unshorn hair and beards

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<sup>8</sup> Steve Elliott, *Sikh Soldiers allowed to serve, retain their articles of faith*, Official Homepage of the United States Army (March 25, 2010),

[https://www.army.mil/article/36339/sikh\\_soldiers\\_allowed\\_to\\_serve\\_retain\\_their\\_articles\\_of\\_faith](https://www.army.mil/article/36339/sikh_soldiers_allowed_to_serve_retain_their_articles_of_faith).

<sup>9</sup> C. Todd Lopez, *JRTC Rotation Demonstrates Force of Future*, Official Homepage of the United States Army (October 20, 2012), <https://www.army.mil/article/89623>.

<sup>10</sup> Steve Elliott, *Sikh Soldiers allowed to serve, retain their articles of faith*, *supra* note 7 (emphasis added), [https://www.army.mil/article/36339/sikh\\_soldiers\\_allowed\\_to\\_serve\\_retain\\_their\\_articles\\_of\\_faith](https://www.army.mil/article/36339/sikh_soldiers_allowed_to_serve_retain_their_articles_of_faith).

intact, but can also do so in the most difficult of duty stations while courageously serving our nation in overseas deployment as LTC Kalsi and MAJ Rattan's respective deployments attest.

\* \* \* \* \*

Consistent with our guiding philosophy over the past decade, we hope to work cooperatively with you to present the case for accommodation of Sikhs in the Marines, answer your questions, and provide you with the information you need to make informed decisions. As our world becomes more complex and interconnected, we strongly believe that our military should reflect different cultural and religious backgrounds. Given Sikhs' long and distinguished military history in the United States and around the world, Sikhs will continue to embrace the opportunity to enlist and serve as dedicated service members and would relish the opportunity to join the Marines.

Thank you in advance for your time, consideration, and cooperative spirit in achieving a robust, lasting process for handling the religious accommodations of observant Sikhs and other religious minorities in the Marines. We look forward to hearing back from you.

Sincerely,



Amrith Kaur  
Legal Director, The Sikh Coalition  
[amrith@sikhcoalition.org](mailto:amrith@sikhcoalition.org)



Amandeep S. Sidhu  
McDermott Will & Emery  
[asidhu@mwe.com](mailto:asidhu@mwe.com)

cc: Mr. Robert D. Hogue, Counsel for the Commandant of the Marine Corps  
[robert.hogue@marines.usmc.mil](mailto:robert.hogue@marines.usmc.mil)

## **Model Provisions for Religious Accommodation Policies in the U.S. Armed Forces**

### **1. Policy**

In accordance 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 service member's exercise of religion may be denied only when the military policy, practice, or duty, as applied to the service member, (a) furthers a compelling governmental interest and (b) is the least restrictive means of furthering that compelling governmental interest.

### **2. Pre-accession Requests**

Individuals intending to enter service must be allowed to submit a pre-accession request for religious accommodation and receive a timely decision before entry. Pre-accession requests include requests made before participating in a commissioning program or enlisting in or entering the Military Services; reenlisting (or reentering) in the Military services; enrolling in a Military Service Academy or a Senior Reserve Officers' Training Corps program; and being awarded a scholarship or other benefit that requires a commitment to serve as a service member.

### **3. Approval Authority**

Requests for religious accommodations will be reviewed and acted on at the O-6 level. If O-6 denies the request, the request will be forwarded to the Secretary of the Military Department for final action.

### **4. Review and Action Timelines**

Final action on religious accommodation requests must be completed within 30 days from the date the individual submits the request.

### **5. Accommodation Duration**

All approved religious accommodations remain in effect for the duration of the service member's career.

### **6. Suspension of Approved Accommodations**

a. Approved religious accommodations may be temporarily suspended in the event of a demonstrated specific and concrete threat to health and safety resulting from the accommodation, if no less restrictive means are available. The service member's commander (O-6), after consultation with the Judge Advocate, must notify the service member in writing of the need to suspend the

accommodation, the basis for the suspension, the date the suspension will likely go into effect, and the service member's right to appeal. The service member has a right to appeal the decision to suspend the accommodation within 10 days of receiving the written notice. Only the Secretary of the Military Department may take final action on the appeal.

b. In urgent circumstances involving a demonstrated imminent threat to health and safety, immediate suspension may be required.

c. Suspended accommodations must be reinstated as soon as the threat to health and safety resulting from the accommodation no longer exists.

## **7. Revocation of Approved Accommodations**

The standard for revoking a previously granted accommodation is the same as the standard for denying a religious accommodation request. Only the Secretary of the Military Department may revoke a previously granted accommodation.

## **8. Guidelines for the Wear of Turbans**

a. The turban will be worn in a neat and conservative manner that presents a professional and well-groomed appearance. The material will be plain, dark blue, or black, free of designs or markings; except that when wearing the Operational Camouflage Pattern Uniform, service members may wear a turban in a camouflage pattern matching the uniform. Service members assigned to units wearing a beret of any color may wear an appropriately colored turban or under-turban as directed by the unit commander.

b. Unless duties, position, or assignment require service members to wear the Advanced Combat Helmet or other protective headgear, service members with approved religious accommodations are not required to wear military headgear in addition to the turban. When wearing protective headgear, service members with approved accommodations may wear an under-turban.

c. Rank insignia will be displayed on the turban when worn in circumstances where military headgear is customarily worn.

## **9. Guidelines for the Wear of Unshorn Hair**

a. Unshorn hair must be groomed and tied in a neat and conservative manner. When the turban is worn, hair worn under the turban is not subject to the military department's grooming standards for hair.

b. Unshorn beards must be rolled, tied, and/or otherwise groomed closely to the face in a neat and conservative manner that presents a professional appearance.

## **Exhibit C**





THE  
SIKH COALITION

WINSTON  
& STRAWN  
LLP



BECKET  
*Religious Liberty for All*

August 18, 2020

William McWaters  
Manpower Military Policy, HQMC  
*Via email:* william.mcwaters@usmc.mil

Re: Religious Accommodations in the United States Marine Corps

Dear Bill,

Thank you again for your March 26, 2020 response to our earlier letter. Over the past few months, we have been very encouraged to read about the Commandant's commitment to further eliminating division and discrimination in the Marine Corps. In light of the recent Department of Defense ("DoD") guidance directing the Services to review all appearance standards and grooming policies for bias, we write to follow up on our previous correspondence regarding religious accommodations in the Marine Corps. As the Marine Corps reviews and modifies its appearance and grooming standards to ensure equal opportunity, we are hoping to discuss with you certain elements of MCO 1020.34H pertaining to religious accommodations.

1. Visible Articles of Religious Apparel

MCO 1020.34H subparagraph 1004.6c references SECNAVINST 1730.8, which only authorizes visible items of religious apparel that do not replace or interfere with the proper wearing of any authorized article of the uniform. As we have previously shared with you, observant Sikhs are religiously mandated to maintain unshorn hair (including facial hair) and to wear an unconcealed turban to cover their head. Being forced to remove their turban and replace it with Marine Corps headgear, or to wear Marine Corps headgear over their turban, would place a substantial burden on their free exercise of religion. With the exception of wearing protective headgear when there are no less restrictive means of ensuring safety, observant Sikhs must be allowed to wear their religiously mandated turbans unconcealed while serving in the Marine Corps. Accordingly, pursuant to the DoD's broader commitment to eliminating bias from its appearance and grooming policies, we respectfully request that the provision be revised to allow the religious accommodation of unconcealed headwear in accordance with each individual's religious mandate.

2. Exceptions to Grooming Regulations

MCO 1020.34H subparagraph 1004.7 allows requests for exceptions to grooming regulations based upon religious beliefs to be submitted to DC M&RA. As mentioned above, one of the mandates of the Sikh faith is to maintain all hair unshorn, including facial hair. Observant Sikhs serving in the Marine Corps must be allowed to receive religious accommodations to maintain their hair unshorn and tied in a neat and conservative manner under their turban, and their beards unshorn and rolled, tied, and/or otherwise groomed closely to the face. Accordingly, we seek to confirm that the provision in subparagraph 1004.7 will be interpreted to allow such religious accommodations.


3. Accommodation Duration

It is imperative that all approved religious accommodations remain in effect for the duration of the service member's career, unless a specific safety threat is identified and requires a temporary suspension. This ensures that religious accommodations are not revoked for reasons unrelated to health and safety, and that individuals are not burdened by the concern that their accommodation could potentially be revoked any time they attempt to advance in their Marine Corps career. Accordingly, we respectfully request that the policy be updated to clarify that all approved religious accommodations remain in effect for the duration of the Marine's career.

\* \* \* \* \*

We look forward to hearing back from you and we would be happy to set up a phone call to discuss this further. Thank you for your time and consideration, and for the opportunity to work collaboratively with you to ensure full and equal opportunity for observant men and women who wish to serve their country in the Marine Corps.

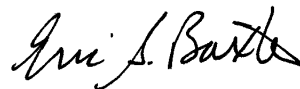
Sincerely,



Amrith Kaur  
Legal Director  
The Sikh Coalition  
[Amrith@sikhcoalition.org](mailto:Amrith@sikhcoalition.org)



Amandeep S. Sidhu  
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Winston & Strawn  
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Eric Baxter  
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## **Exhibit D**

**From:** Amrith Kaur <[amrith@sikhcoalition.org](mailto:amrith@sikhcoalition.org)>  
**Sent:** Thursday, October 21, 2021 1:12 PM  
**To:** Steinberg LtCol Dawn M <[dawn.steinberg@usmc.mil](mailto:dawn.steinberg@usmc.mil)>  
**Cc:** Parker LtCol Jennifer S <[jennifer.parker@usmc.mil](mailto:jennifer.parker@usmc.mil)>; Eric Baxter <[ebaxter@becketlaw.org](mailto:ebaxter@becketlaw.org)>; Amandeep Sidhu <[asidhu@winston.com](mailto:asidhu@winston.com)>; Giselle Klapper <[giselle@sikhcoalition.org](mailto:giselle@sikhcoalition.org)>; Aldrich SES Katherine M <[katherine.aldrich@usmc.mil](mailto:katherine.aldrich@usmc.mil)>  
**Subject:** Re: [Non-DoD Source] Re: Correspondence regarding your clients

Dear LtCol Steinberg,

I appreciate your response. However, I am afraid that I am unclear on why Aekash would have to start his process entirely over at this point given the timeline of events and all of the information that has been on the USMC's radar since before our submission on March 1, 2021. Are you saying that absolutely nothing has been done on his request? To be clear, prior to the submission, we worked extensively with then-Navy General Counsel, Gary Ressing to determine what if any process was in place for pre-accession religious accommodation requests. We simultaneously communicated directly with Aekash Singh's recruiters at MCRC for several weeks to learn the same. In both instances, we were told there was no specific process in place other than to just submit it. As a result, we submitted a request for religious accommodation on Aekash Singh's behalf to SSgt Geddylee Lawas via email on March 1, 2021.

On March 2, we shared a copy of the accommodation request with General Counsel, Gary Ressing – per his request in earlier conversations about the forthcoming USMC accommodation requests. We subsequently corresponded with Mr. Ressing and other USN and USMC representatives in the coming weeks confirming the status of Aekash's accommodation request, ultimately being referred to MajGen Daniel Lecce as the USMC point of contact. On April 19, I spoke with MajGen Lecce on the phone about the potential “catch 22” scenario arising out of the fact that Aekash Singh was in a pre-accession posture and had not yet signed a contract with the USMC. There also seemed to be a clear disconnect in protocol given Aekash was allowed to go to MEPS but not permitted to sign his Deferred Entry Program (DEP) contract indicating his general qualification to become a Marine, before getting to the stage of requesting a religious accommodation. MajGen Lecce agreed that it seemed problematic and asked for time to follow up with Aekash's recruiting command and determine where his submission was to move it up the chain of command. On April 30, MajGen Lecce spoke with our legal team and informed us that he believed Aekash's submission had not moved up the chain yet and asked that I resend both clients' religious accommodation requests directly to him, which I did that same day. He confirmed receipt of that email. We then engaged in additional correspondence with MajGen Lecce seeking confirmation of status on Aekash Singh's accommodation request. On June 3, MajGen Lecce stated “[w]e are tracking your clients pending accommodation requests.” **At no point in time were we told that Aekash Singh's accommodation request had not been submitted or that he had failed to respond to communication outreach from his recruiter at MCRC.** In fact, our impression given the conversations we and our client were having with both the MCRC and your office as well as the Navy General Counsel's office was the opposite. I have copies of the above-referenced correspondence and am happy to provide those to you. Please note that all of this occurred over several months before the USMC created any sort of process for the submission of pre-accession religious accommodation requests, despite our repeated requests for such guidance at the time of our submissions. Thus, as far as we are aware, Aekash's accommodation request submission on March 1, 2021 was consistent at all times with what the USMC had in place at that time.

However, now, over seven months later, we are being told that Aekash has to backtrack and start his submission process all over again. This claim is simply not credible in light of the extensive communication noted above. Nonetheless, in the interest of moving his accommodation forward – and given his fervent desire to serve our country as a Marine – Aekash Singh hand delivered his original religious accommodation package to MCRC last week. He has indicated his availability to schedule an interview with a USMC Chaplain and move this process forward.

It is our sincere hope that USMC leadership will do everything possible to ensure that Aekash Singh's accommodation request is handled as expeditiously as possible. If you need any additional information from our end, please let me know.

Very Respectfully,

Amrith

Amrith Kaur Aakre  
Legal Director | [The Sikh Coalition](#)  
Pronouns: she/her

50 Broad Street, Suite 504, New York, New York 10004  
National Office: [212.655.3095](tel:212.655.3095) ext.90 | Local Office: [847.786.5839](tel:847.786.5839)  
Fax: [212.208.2932](tel:212.208.2932)  
Email: [amrith@sikhcoalition.org](mailto:amrith@sikhcoalition.org)

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On Fri, Oct 8, 2021 at 8:04 AM Steinberg LtCol Dawn M <[dawn.steinberg@usmc.mil](mailto:dawn.steinberg@usmc.mil)> wrote:

Amrith,

According to the Marine Corps Recruiting Command (MCRC), after initially working with the recruiting substation in San Mateo, Applicant Aekash Singh has stopped responding to attempts to contact him. It is our understanding that he has not responded to recruiters since June, and that, just before he stopped communicating, he elected not to swear in and has not officially begun the religious accommodation process.

If Applicant Singh wishes to move forward with the religious accommodation process, he would need to re-initiate communication with Marine Corps recruiters to confirm that he is still interested in enlisting.

V/r,

Dawn M. Steinberg

Lieutenant Colonel, USMC

Senior Special Assistant

Office of the Counsel

Commandant of the Marine Corps

Headquarters, U.S. Marine Corps (Code CL)

3000 Marine Corps Pentagon, Room 4E468

Washington, DC 20350-3000

PH: 703-614-4067 (office)

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**From:** Amrith Kaur <[amrith@sikhcoalition.org](mailto:amrith@sikhcoalition.org)>

**Sent:** Thursday, October 7, 2021 12:02 PM

**To:** Aldrich SES Katherine M <[katherine.aldrich@usmc.mil](mailto:katherine.aldrich@usmc.mil)>

**Cc:** Steinberg LtCol Dawn M <[dawn.steinberg@usmc.mil](mailto:dawn.steinberg@usmc.mil)>; Parker LtCol Jennifer S <[jennifer.parker@usmc.mil](mailto:jennifer.parker@usmc.mil)>; Williamson BGen Ahmed T <[ahmed.t.williamson@usmc.mil](mailto:ahmed.t.williamson@usmc.mil)>; Eric Baxter <[ebaxter@becketlaw.org](mailto:ebaxter@becketlaw.org)>; Amandeep Sidhu <[asidhu@winston.com](mailto:asidhu@winston.com)>; Giselle Klapper <[giselle@sikhcoalition.org](mailto:giselle@sikhcoalition.org)>

**Subject:** [Non-DoD Source] Re: Correspondence regarding your clients

Thank you for the email, Ms. Aldrich.

Dear Lt. Col Steinberg,

I'm following up and cc'ing my colleagues, Giselle Klapper, Amandeep Sidhu, and Eric Baxter to this email as well. Please let me know when you are available to discuss the circumstances surrounding Aekash Singh's accommodation request. Looking forward to connecting on this soon.

Sincerely,

Amrith

Amrith Kaur Aakre

Legal Director | Sikh Coalition

50 Broad Street, Suite 504

New York, New York 10004

National Office: 212.655.3095 ext.90

Local Office: 847.786.5839

Fax: 212.208.2932

Email: [amrith@sikhcoalition.org](mailto:amrith@sikhcoalition.org)

On Oct 6, 2021, at 3:08 PM, Aldrich SES Katherine M <[katherine.aldrich@usmc.mil](mailto:katherine.aldrich@usmc.mil)> wrote:

Good afternoon - As the Office of Counsel for the Commandant and the Staff Judge Advocate are the legal representatives for the Deputy Commandant, M&RA (and the offices that fall under that position), please direct all correspondence regarding Milaap Chalal and Aekash Singh's requests for religious accommodation to the attention of LtCol Dawn Steinberg, cc to LtCol Jennifer Parker.

Please let me know if you have any questions regarding this.

R/

Katherine

Katherine M. Aldrich

Counsel for the Commandant (Acting)

Pentagon Room 4E468

703-692-1764 office

571-289-9332 cell

[Katherine.aldrich@usmc.mil](mailto:katherine.aldrich@usmc.mil)

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

**SUKHBIR SINGH TOOR, et al.,**

*Plaintiffs,*

v.

**DAVID H. BERGER, et al.,**

*Defendants.*

Civil Action No. 1:22-cv-01004

**DECLARATION OF  
GRAHAM MILLER**

I, Graham Miller, declare as follows:

1. I am over twenty-one 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 graduated with distinction from the U.S. Naval Academy in 2012 with a Bachelor of Science in physics. During my training at the Naval Academy, I received an award for excellence in physics.
3. After two years of Naval Nuclear Power Training in Charleston, South Carolina, I served as a Submarine Division Officer on the USS Albany (SSN-753) from 2014-2017. Part of this time included temporarily serving on the USS San Francisco (SSN-711) for a Western Pacific Deployment in 2014. In my role, I directed the safe and continuous operation of the submarine and nuclear propulsion plant. I also led divisions of six to twenty sailors to ensure ship safety and readiness in other contexts. I was selected twice as the Junior Officer of the Year in 2015 and 2016, and I received the Navy/Marine Corps Commendation Medal for meritorious service during this period.
4. I served as a Lieutenant in the U.S. Navy prior to receiving an honorable discharge in 2020.


5. On the USS San Francisco, all of the sailors had the option of wearing a beard during deployment on the submarine if they paid a fee of \$10 to the Morale, Welfare, and Recreation (MWR) fund. As I recall, most sailors took this option, and it was more common for sailors to be bearded than to be clean-shaven.
6. As just one example, I can recall routinely having a beard throughout an underway that was 77 days long.
7. Nor was my experience unusual. It was my understanding sailors on other Navy submarines likewise had the ability to grow beards if they contributed to their ships' MWR funds.
8. The Navy focused very heavily on fire safety when sailors were deployed on submarines. During training, we were warned that a fire could get out of control in just two minutes and the entire crew could die.
9. Yet beards were never discussed as a safety issue aboard the USS San Francisco or the USS Albany. We never received any training regarding our beards and Emergency Air Breathing (EAB) masks on the USS San Francisco, nor did I hear any concerns that our beards might hinder us from safely fighting fires. I never heard any concerns from the Navy regarding beards potentially interfering with EAB or self-contained breathing apparatus masks until after I left the submarine.
10. During my service in the Navy, I never experienced a situation where beards presented a safety problem, nor am I aware of any such situations.
11. From 2018-2020, I served as a Duty Control Officer with NATO Communications and Information Agency in Mons, Belgium. In that role, I provided oversight to 75 NATO

personnel from 29 member nations. I was awarded the Joint Service Commendation Medal for meritorious service in that role.

12. Many of the troops I worked with from European countries wore beards as a matter of standard practice. For instance, Germany, Hungary, and the United Kingdom all allowed beards in their military forces. The wearing of beards never interfered with the professionalism or mission readiness of the NATO forces with whom I worked.

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

Executed on this 11th day of April, 2022.

  
\_\_\_\_\_  
Graham Miller

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

**SUKHBIR SINGH TOOR, et al.,**

*Plaintiffs,*

v.

**DAVID H. BERGER, et al.,**

*Defendants*

Civil Action No. 1:22-cv-01004

**[PROPOSED] PRELIMINARY  
INJUNCTION**

Upon full consideration of Plaintiffs' April 13, 2022 application for a preliminary injunction and any opposition thereto,

It appearing to the Court that Plaintiffs Aekash Singh, Jaskirat Singh, and Milaap Singh Chahal are likely to succeed on the merits of the action, that they will suffer irreparable injury if the requested relief is not issued, that the Defendants will not be harmed if the requested relief is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Plaintiffs' application for a preliminary injunction is hereby GRANTED; and it is further

ORDERED that Defendants are hereby PROHIBITED, pending further order of this Court, from ordering Plaintiffs to shave or trim their beard; and it is further

ORDERED that Defendants are hereby PROHIBITED, pending further order of this Court, from subjecting Plaintiffs to disciplinary measures as a result of this lawsuit or their religious beliefs; and it is further

ORDERED, in accordance with Fed. R. Civ. P. 65(c), that this injunction shall be effective immediately without security from Plaintiff.

Date: \_\_\_\_\_

Time: \_\_\_\_\_

\_\_\_\_\_  
Judge, United States District Court