

ORAL ARGUMENT SCHEDULED FOR NOVEMBER 29, 2022**No. 22-5234**

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

JASKIRAT SINGH, AEKASH SINGH, MILAAP SINGH CHAHAL,
Plaintiffs-Appellants,

v.

DAVID H. BERGER, *ET AL.*,
Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia,
Honorable Richard J. Leon (1:22-cv-01004-RJL)

**BRIEF OF THE SIKH AMERICAN VETERANS ALLIANCE AND
WOMEN VETERANS AND FAMILIES NETWORK IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

Daniel T. Menken
MCDERMOTT WILL & EMERY
1007 N. Orange St., 10th Fl.
Wilmington, Delaware 19801
dmenken@mwe.com

Joshua W. Eastby
MCDERMOTT WILL & EMERY
444 West Lake St., Ste. 4000
Chicago, Illinois 60606
jeastby@mwe.com

Jiaxiao Zhang
MCDERMOTT WILL & EMERY
18565 Jamboree Rd., Ste. 250
Irvine, California 92612
jjazhang@mwe.com

Richard D. Salgado
Counsel of Record
Marina Stefanova
MCDERMOTT WILL & EMERY
2501 N. Harwood St., Ste. 1900
Dallas, Texas 75201
Tel: 214-210-2797
richard.salgado@mwe.com
mstefanova@mwe.com

*Counsel for Amici Curiae Sikh American Veterans Alliance and Women
Veterans and Families Network*

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), counsel for *amici curiae* certifies as follows:

A. Parties and *Amici*

All parties, intervenors, and *Amici* appearing before the District Court and in this Court are listed in the Plaintiffs-Appellants' Certificate as to Parties, Rulings, and Related Cases.

B. Rulings Under Review

References to the rulings at issue in the appeal appear in the Plaintiffs-Appellants' Certificate as to Parties, Rulings, and Related Cases.

C. Related Cases

To *Amici's* knowledge, this case has not previously been before this Court and an accurate reference to the related cases pending in this or any other court appears in the Plaintiffs-Appellants' Certificate as to Parties, Rulings, and Related Cases.

CORPORATE DISCLOSURE STATEMENT

Amici curiae Sikh American Veterans Alliance and Women Veterans and Families Network are nonprofit organizations and do not issue stock. Pursuant to Federal Rule of Appellate Procedure 26.1, the Sikh American Veterans Alliance and the Women Veterans and Families Network disclose that neither has parent corporations, and no publicly held corporation owns 10% or more of the stock of either *amici*.

CERTIFICATE OF NECESSITY OF SEPARATE BRIEFS

I certify, pursuant to Circuit Rule 29(d), that separate briefing is necessary in this case because of differences in the *amici*'s interests and perspectives. The Sikh American Veterans Alliance and the Women Veterans and Families Network are—uniquely—veterans organizations who are submitting this brief to present their own important perspectives on the rights and representation of minorities—and, specifically Sikhs—in the U.S. military.

Dated: October 28, 2022

/s/ Richard D. Salgado
Richard D. Salgado

TABLE OF CONTENTS

	Page
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES	i
CORPORATE DISCLOSURE STATEMENT	ii
CERTIFICATE OF NECESSITY OF SEPARATE BRIEFS	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	vi
GLOSSARY.....	xiii
STATUTES AND REGULATIONS.....	xiv
STATEMENT OF <i>AMICI CURIAE</i> 'S IDENTITY, INTEREST, AND AUTHORITY TO FILE	1
RULE 29(A)(4)(E) STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTION	2
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. Sikhs Have Successfully Served in The U.S. Military While Maintaining Their Articles of Faith.....	5
A. Other U.S. Military Branches Demand Uniformity, Team Identity, and Transformation.....	5
B. Sikhs Have a Strong History and Tradition of Military Service.....	8
C. U.S. Military Regulations and Exemptions Already Allow Sikhs to Train and Serve While Maintaining Their Articles of Faith.....	13
1. The Army	14
2. The Air Force	21

3.	The Navy	23
II.	Sikhs Have Successfully Served in Militaries Worldwide While Maintaining Their Articles of Faith.....	28
A.	Close U.S. Allies Allow Sikhs to Serve While Maintaining their Articles of Faith.....	29
1.	The United Kingdom	29
2.	Canada.....	31
3.	Australia	33
B.	Both the U.S. and Foreign Militaries Have Recognized Sikhs’ Commendable Service.....	35
III.	Allowing Sikhs to Serve in the Marine Corps While Maintaining Their Articles of Faith Is in the Public Interest.	38
	CONCLUSION	42
	CERTIFICATE OF COMPLIANCE.....	44
	CERTIFICATE OF SERVICE	45

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Chahal v. Seamands</i> , No. 17-cv-12656 (E.D. Mich. Aug. 14, 2017).....	15
<i>Di Liscia v. Austin</i> , No. 1:21-cv-01047 (D.D.C. Apr. 15, 2021)	25, 26
<i>Gordon v. Holder</i> , 721 F.3d 638 (D.C. Cir. 2013).....	38, 42
<i>Holt v. Hobbs</i> , 574 U.S. 352 (2015).....	5, 6
<i>Pursuing Am. 's Greatness v. Fed. Election Comm'n</i> , 831 F.3d 500 (D.C. Cir. 2016).....	38
<i>Singh v. Carter</i> , 168 F. Supp. 3d 216 (D.D.C. 2016).....	20, 21

Statutes

Goldwater-Nichols Department of Defense Reorganization Act	6
Religious Freedom Restoration Act.....	38

Other Authorities

1st Lt. Kayshel Trudell, <i>Air Force Graduates First Fully Religiously Accommodated Sikh Airman From Security Forces Apprentice Course</i> , JOINT BASE SAN ANTONIO (Oct. 3, 2019), https://www.jbsa.mil/News/News/Article/1977879/air-force- graduates-first-fully-religiously-accommodated-sikh-airman-from- secur/	22
<i>2018-05-01 Sarabjot Anand Gets Promoted to Captain in the Royal Canadian Air Force (RCAF)</i> , SARABJOT ANAND, https://ssanand.com/milestones.html	33

<i>Admiral Elmo R. Zumwalt Jr.</i> , NAVAL HISTORY AND HERITAGE COMMAND (Oct. 7, 2016), https://www.history.navy.mil/browse- by-topic/people/chiefs-of-naval-operations/admiral-elmo-r-- zumwalt-jr-.html	27
<i>Airman 1st Class Sunjit Rathour</i> , AIR FORCE RECRUITING SERVICE (Sept. 26, 2019), https://www.recruiting.af.mil/News/Photos/igphoto/2002190269/	22
Alaa Elassar, <i>Woman Becomes First Observant Sikh to Graduate from the US Military Academy at West Point</i> , CNN (June 13, 2020), https://www.cnn.com/2020/06/13/us/first-sikh-woman-graduates- west-point-trnd/index.html	16
All Things Considered, <i>Sikhs Regain Right to Wear Turbans in U.S. Army</i> , U.S. Army, N. COUNTRY PUB. RADIO (Mar. 24, 2010), https://www.northcountrypublicradio.org/news/npr/125142736/sik hs-regain-right-to-wear-turbans-in-u-s-army	19
Army Directive 2017-03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation (Jan. 3, 2017), https://api.army.mil/e2/c/downloads/463407.pdf	14
Army Regulation 600-20, Army Command Policy (July 24, 2020), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30074- AR_600-20-000-WEB-1.pdf	7
Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia (Jan. 26, 2021), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30302- AR_670-1-000-WEB-1.pdf	14
The Australian Army, <i>Army Dress Manual</i> (Dec. 20, 2019), https://www.army.gov.au/sites/default/files/2022- 03/Army%20Dress%20Manual%20AL5_1.pdf	33, 34
Austl. War Mem'l, No. 017103 (May 12, 1944), https://www.awm.gov.au/collection/C356524	12

Canadian Armed Forces, <i>Policy and Appearance: Religious And Spiritual Consideration On Dress</i> , https://www.canada.ca/en/services/defence/caf/military-identity-system/dress-manual/chapter-2/section-3.html	31
Carol Kuruvilla, <i>Air Force Solidifies Approval Process for Religious Beards, Turbans, Hijabs</i> , THE HUFFINGTON POST (Feb. 12, 2020), https://www.huffpost.com/entry/air-force-hijab-turban-beard-policy_n_5e44469dc5b6d0ea38124ecf	23
Christopher Guly, <i>Defense Minister Harjit Singh Sajjan: A Sikh soldier's climb to the Canadian Cabinet</i> , L.A. TIMES (Feb. 22, 2016), http://www.latimes.com/world/mexicoamericas/la-fg-canada-sajjan-profile-20160222-story.html	36
Dave Philipps, <i>The Marines Reluctantly Let a Sikh Officer Wear a Turban. He Says It's Not Enough</i> , THE N.Y. TIMES (Sept. 26, 2021), nytimes.com/2021/09/26/us/sikh-marine-turban.html	16
Devin Friedman, <i>Kristin Beck: A Navy SEAL in Transition</i> , GQ (Nov. 25, 2015), https://www.gq.com/story/kristin-beck-transgender-navy-seal	27
Diptarka Ghosh, <i>Sikhism</i> , WORLD ATLAS (Nov. 4, 2021), worldatlas.com/articles/Sikhism.html	8
Dep't of the Air Force Instruction 52-201, Religious Freedom in the Department of the Air Force (June 23, 2021), https://static.e-publishing.af.mil/production/1/af_hc/publication/dafi52-201/dafi52-201.pdf	7
Dep't of Defense Instruction 1300-17, Religious Liberty in the Military Services (Sept. 1, 2020), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130017p.pdf	6, 23
Dep't of the Navy, BUPERS Instruction 1730.11 (Nov. 13, 2018), https://www.spirit-filled.org/documents/BUPERSINST_1730.11.pdf	23

Dep't of the Navy, BUPERS Instruction 1730.11A (Mar. 16, 2020), https://www.mynavyhr.navy.mil/Portals/55/Reference/Instructions/BUPERS/BUPERSINST%201730.11.pdf?ver=OnlNuaARI9ZcZjM_9eJLfA%3d%3d	24
Ella Wagner, <i>Bhagat Singh Thind</i> , NAT'L PARK SERV. (Nov. 1, 2021), nps.gov/people/bhagat-singh-thind.htm	9
Gurjiwan Singh Chahal, “ <i>Army is in Your Blood</i> ”: <i>Fighting for an Accommodation to Serve His Country While Practicing His Faith</i> , THE WEST POINT CTR. FOR ORAL HISTORY (May 11, 2021), https://www.westpointcoh.org/interviews/army-is-in-your-blood-fighting-for-an-accommodation-to-serve-his-country-while-practicing-his-faith	15
Harjit Sajjan, <i>MP for Vancouver South, Named Minister of Defence</i> , CBC (Nov. 4, 2015), https://www.cbc.ca/news/canada/british-columbia/harjit-sajjan-mp-vancouver-south-defence-minister-1.3303667	35, 36
<i>The Honourable Harjit S. Sajjan: Minister of International Development and Minister responsible for the Pacific Economic Development Agency of Canada</i> , CANADA, https://pm.gc.ca/en/cabinet/honourable-harjit-s-sajjan	36
<i>Indian Army Chief of Staff Visits with Gen. Ray Odierno</i> , U.S. ARMY (Dec. 6, 2013), https://www.army.mil/article/116555/indian_army_chief_of_staff_visits_with_united_states_army_chief_of_staff	37
Katherine Hafner, <i>Muslim Sailor Aboard USS George Washington Gets Navy Waiver to Grow 4-Inch Beard</i> , THE VIRGINIAN-PILOT (July 31, 2020), https://www.pilotonline.com/military/vp-nw-muslim-sailor-beard-20200731-i2ewutovbnfv5n6k3evjyxqsla-story.html	24
Letter from Lt. Gen. Thomas P. Bostick to Simran Preet Singh Lamba (Aug. 30, 2010), https://www.sikhcoalition.org/wp-content/uploads/2016/12/2010-Sikh-Military-Lamba-Accommodation.pdf	19

Letter from Maj. Gen. Gina S. Farrisee to then-Cpt. Kamal Singh Kalsi (Oct. 22, 2009), https://sikhcoalition.org/documents/pdf/10-23-09%20Kalsi%20Accommodation%20Decision.pdf	17
<i>Lt. Col. Harjit S Sajjan Has Become First Sikh to Receive the Order of Military Merit</i> , ASIAN JOURNAL (June 27, 2014), https://asianjournal.ca/lt-col-harjit-s-sajjan-become-first-sikh-receive-order-military-merit/	35
Lt. Gen. David Ottignon & Brigadier Gen. Jason Woodworth, <i>Diversity, Equity & Inclusion</i> , MARINE CORPS GAZETTE 41 (July 2021), https://mca-marines.org/wp-content/uploads/Diversity-Equity-Inclusion-1.pdf	5
Manpreet K. Singh, <i>A Turbaned Troop Commander in the Australian Army Trains Combat Engineers</i> , SBS (Aug. 2, 2022), https://www.sbs.com.au/language/en/article/a-turbaned-troop-commander-in-the-australian-army-trains-combat-engineers/g0ltmwdgn	34, 35
Matthew Cox, <i>14 Sikh High Schoolers Get Waivers to Enter Army Basic With Beard, Turban</i> , 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/amp	16
Murray Brewster, <i>New Defence Minister Harjit Singh Sajjan proved mettle in Afghanistan</i> , THE GLOBE AND MAIL (Nov. 5, 2015), http://www.theglobeandmail.com/news/politics/new-defence-minister-harjit-singh-sajjan-proved-mettle-in-afghanistan/article27114750/	36
Neha Singh Gohil & Dawinder S. Sidhu, <i>The Sikh Turban: Post-9/11 Challenges to this Article of Faith</i> , 9 RUTGERS J. L. & RELIGION 1 (2008).....	8
<i>Our Work</i> , SAVA: SIKH AMERICAN VETERANS ALLIANCE, https://www.sava.org/our-work.html	17

Philip Athey, <i>Here's Where Ponytails Stand for Women in the Marine Corps</i> , MARINE CORPS TIMES (Nov. 4, 2021), https://www.marinecorpstimes.com/news/your-marine-corps/2021/11/04/heres-where-ponytails-stand-for-women-in-the-marine-corps/	41
<i>Religious Accommodations in the Armed Servs.: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Servs.</i> , 113th Cong. 3 (Nov. 19, 2014), https://docs.house.gov/meetings/AS/AS02/20141119/102755/HHRG-113-AS02-20141119-SD003.pdf	10, 13
Ryan Colby, <i>Katsareas v. United States Navy</i> , THE BECKET FUND FOR RELIGIOUS LIBERTY, https://www.becketlaw.org/case/katsareas-v-united-states-navy/	24, 25
The Sikh Coalition, <i>Another Historic Moment for #LetSikhsServe</i> (Aug. 23, 2017), https://www.sikhcoalition.org/blog/2017/another-historic-moment-letsikhsserve/	21
Sikh Sangat, <i>Sikhs in World War 2</i> , https://www.flickr.com/photos/sikh-sangat/6325419138/in/photostream/	11
Stephen Snyder, <i>Why Should it be so Hard for a Sikh to Serve in the U.S. Military?</i> , THE WORLD (Dec. 17, 2015), theworld.org/stories/2015-12-17/why-should-it-be-so-hard-sikh-serve-us-military	17, 18
Steve Elliott, <i>Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith</i> , U.S. ARMY (Mar. 25, 2010), https://www.army.mil/article/36339/sikh_soldiers_allowed_to_serve_retain_their_articles_of_faith	18
Tanveer Kalo, <i>Dr. Bhagat Singh Thind</i> , U.S. WORLD WAR I CENTENNIAL COMM'N, worldwar1centennial.org/index.php/indians-who-served/1940-dr-bhagat-singh-thind.html	10
Tell Me More, <i>Why Do Sikhs Want to Serve in the Military?</i> , NAT'L PUB. RADIO (Aug. 16, 2013), https://www.npr.org/templates/story/story.php?storyId=212603796	8

- Treasury Board of Canada Secretariat, *A Conversation with Captain Sarabjot Anand on Asian Heritage Month*, LINKEDIN (May 13, 2022), <https://www.linkedin.com/pulse/conversation-captain-sarabjot-anand-asian-heritage-month-tbs-sct/>32
- Tweet Unexpectedly Reveals Extent of Soldier's Support to Sikh Community*, THE ROYAL LOGISTICS CORPS ASSOC. (Sept. 2, 2020), <https://www.royallogisticcorps.co.uk/tweet-unexpectedly-reveals-extent-of-soliders-support-to-sikh-community/>.....30
- United Kingdom Ministry of Defence, *Guide on Religion and Belief in the Armed Forces*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/28127/guide_religion_belief.pdf.....29, 30
- US Naval Institute Staff, *A Brief History of Grooming in the U.S. Navy*, USNI NEWS (Oct. 23, 2014), <https://news.usni.org/2014/10/23/brief-history-grooming-u-s-navy>26
- War Office Second World War Official Collection, No. E 2502, Imperial War Museums (Apr. 18, 1941), <https://www.iwm.org.uk/collections/item/object/205196229>11
- Washington Air National Guard Recruit a First for ANG*, AIR NATIONAL GUARD (Sept. 27, 2019), <https://www.ang.af.mil/Media/Photos/igphoto/2002188296/>22

GLOSSARY

DoD – U.S. Department of Defense

NATO – North Atlantic Treaty Organization

RFRA – Religious Freedom Restoration Act

STATUTES AND REGULATIONS

The relevant statutes and regulations have been reproduced in the addendum to the Plaintiffs-Appellants' Opening Brief.

**STATEMENT OF *AMICI CURIAE*'S
IDENTITY, INTEREST, AND AUTHORITY TO FILE**

The Sikh American Veterans Alliance is a nonprofit organization that promotes the core values of loyalty, unity, and selfless service that are intrinsic to both Sikhism and military service. Based on its extensive work to advance the rights of Sikhs in the military, the Sikh American Veterans Alliance is uniquely positioned to detail the history of Sikhs' military service and provide context on the Sikh experience in the armed forces in the U.S. and abroad.

The Women Veterans and Families Network is a nonprofit organization dedicated to empowering, supporting, and promoting the general welfare of women veterans and military families through professional development, resources, networking, advocacy, mentorship, and outreach. Through its experience in promoting the welfare of women veterans and military families, the Women Veterans and Families Network offers an important perspective on the rights and representation of minorities in the U.S. military.

Amici curiae have substantial interest in the panel's decision because it will affect the rights of Sikhs and other religious minority groups to serve in the U.S. armed forces without being forced to abandon their faith and religious practices.

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), *Amici* state that they conferred with counsel for Plaintiffs-Appellants and Defendants-Appellees and that all parties consent to *Amici* filing a timely *amicus* brief.

**RULE 29(A)(4)(E) STATEMENT OF
AUTHORSHIP AND FINANCIAL CONTRIBUTION**

Amici state that: (1) there is no party or counsel for a party in the pending appeal who authored the *amicus* brief in whole or in part; (2) there is no party or counsel for a party in the pending appeal who contributed money that was intended to fund preparing or submitting the brief; and (3) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than *Amici* and their members.

SUMMARY OF ARGUMENT

The district court denied the preliminary injunction on the theory that accommodating Sikh religious beliefs as to dress and grooming would be so disruptive to the United States Marines Corps' ("Marine Corps") need for team building during boot camp that it would "pose a documented risk to national security." The long, exemplary history of Sikh military service in other branches of the U.S. military and throughout the world debunks that notion entirely.¹

No one disputes the Marine Corps' desire to "strip" recruits of their "individuality" to create a "team mindset" and "transform" them into servicemembers with the "mental, moral, and physical foundation" to serve their country. But the Marines are not alone. Other branches share that same goal, including related interests in uniformity, mission accomplishment, unit cohesion, and discipline. Those concepts also transcend international borders and are embraced by other militaries around the world. Unlike the Marine Corps, however, those other branches and militaries successfully accommodate Sikh religious beliefs.

Far from risking national security, the accommodation of religious beliefs has strengthened other branches of the U.S. military for decades by enabling disciplined, courageous Sikh servicemembers to serve while maintaining their articles of faith.

¹ In contrast, the Marine Corps has failed to provide any documentation outside of one Colonel's declaration to support the supposed risk.

Sikh servicemembers have also garnered many awards for their honorable service, including the Bronze Star Medal and Army Commendation Medal for “exceptionally meritorious service” during armed conflicts. In 2021, two observant Sikhs graduated from West Point, and one has since graduated from Army Ranger school, where he served as a platoon leader.

Examples from militaries worldwide further undercut the Marines’ purported interest in excluding Sikhs from service. The militaries of numerous countries—including close U.S. allies such as the United Kingdom, Canada, and Australia—allow Sikhs to serve while maintaining articles of faith. Sikhs serving in militaries worldwide have been appointed to leadership roles and have been recognized for their exemplary military service. U.S. servicemembers routinely serve alongside Sikhs from foreign militaries in highly demanding operations. Not only have Sikh articles of faith not impeded the missions’ effectiveness, but the U.S. has honored and awarded Sikhs from foreign militaries for their service and accomplishments.

Likewise, the Marine Corps already makes other exceptions for *non*-religious reasons, including allowing medical exemptions for beards, allowing increasingly diverse hairstyles for women, and allowing visible tattoos.

Sikhs’ service while maintaining their articles of faith is thus already a reality, and it has made the U.S. military better suited for operations worldwide. Appellants are not asking the Marine Corps to gamble national security with untested

accommodations. Rather, the relief requested is merely for the Marine Corps to act in a manner consistent with its diversity efforts and “harness the total capabilities of a diverse team that will face a complex peer fight that requires [their] collective abilities to defeat the enemy”² by making the same accommodations that other branches and militaries have already made without hindering their other objectives.

ARGUMENT

I. Sikhs Have Successfully Served in The U.S. Military While Maintaining Their Articles of Faith.

A. Other U.S. Military Branches Demand Uniformity, Team Identity, and Transformation.

Other branches’ success allowing accommodations undercuts the Marine Corps’ position that doing so would threaten national security. The Supreme Court made clear in the context of religious accommodations for prison inmates that, “the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.” *Holt v. Hobbs*, 574 U.S. 352, 368 (2015). The Court should likewise look to the success of other branches of the armed forces in accommodating Sikh practices. *See id.* at 367 (finding that prison must grant religious exemption because it “failed to show, in the face of petitioner’s evidence, that its prison system is so different from the many institutions that allow

² Lt. Gen. David Ottignon & Brigadier Gen. Jason Woodworth, *Diversity, Equity & Inclusion*, MARINE CORPS GAZETTE 41 (July 2021), <https://mca-marines.org/wp-content/uploads/Diversity-Equity-Inclusion-1.pdf>.

facial hair” that such accommodation “cannot be employed at its institutions”). Here, “when so many [other branches] offer an accommodation, [the Marines] must, at a minimum, offer persuasive reasons why it believes that it must take a different course.” *Id.* at 369. The Marine Corps has not met this burden.

While the Marine Corps may insist otherwise, it is not “so different”—at least for present purposes—from those other branches. While the different branches were at one time “fractured” and independently autonomous, Congress enacted the Goldwater-Nichols Department of Defense Reorganization Act during the Reagan administration to unify them.³ The branches now each share in similar goals and objectives—especially the concept of overcoming new recruits’ individuality to transform them into servicemembers.

Indeed, the Marine Corps is not the only U.S. military branch with an interest in ensuring “mission accomplishment, unit cohesion, and good order and discipline.” The U.S. Department of Defense (the “DoD”) has expressly stated that all “DoD Components have a compelling governmental interest in mission accomplishment[,]
. . . including such necessary elements of mission accomplishment as military readiness, unit cohesion, good order and discipline, and health and safety.”⁴

³ Locher, James R. III, *Has It Worked?—The Goldwater-Nichols Reorganization Act*, 54 NAVAL WAR COLL. REV. 95, 99 (2001).

⁴ Dep’t of Defense Instruction 1300-17, Religious Liberty in the Military Services, at 4-5 (Sept. 1, 2020), <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130017p.pdf>.

The Army, Air Force, and Navy (which, notably, falls under the Department of the Navy just as the Marines do) also emphasize the importance of military readiness, cohesion, and discipline. For example, Chapter 4 of the Army Command Policy (Military Discipline and Conduct) states:

[M]ilitary discipline . . . is manifested in individuals and units by cohesion, bonding, and a spirit of teamwork; by smartness of appearance and action; by cleanliness and maintenance of dress, equipment, and quarters; . . . and by fairness, justice, and equity for all Soldiers, regardless of race, color, sex (including gender identity), national origin, religion, and sexual orientation.⁵

Similarly, the Air Force has issued guidance regarding the impact of religious accommodations on military readiness, unit cohesion, and discipline:

The Department of the Air Force has a compelling government interest in . . . military readiness, unit cohesion, good order and discipline, and health and safety for both the member and the unit. Commanders may only impose limits on such expressions when there is a real (not theoretical) adverse impact on military readiness, unit cohesion, good order and discipline, health or safety of the member or the unit.⁶

Despite these shared values and goals, the Army, Air Force, and Navy—but not the Marines—permit religious accommodations for Sikhs to serve *and train* without compromising “mission accomplishment, unit cohesion, and good order and

⁵ Army Regulation 600-20, Army Command Policy, at 27 (July 24, 2020), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30074-AR_600-20-000-WEB-1.pdf.

⁶ Dep’t of the Air Force Instruction 52-201, Religious Freedom in the Department of the Air Force, at 2-3 (June 23, 2021), https://static.e-publishing.af.mil/production/1/af_hc/publication/dafi52-201/dafi52-201.pdf.

discipline.” How then is the Marine Corps differently situated? It is not. The Marine Corps has not—and cannot—justify its claim that its interests are somehow so much greater than those of other military branches.

B. Sikhs Have a Strong History and Tradition of Military Service.

Sikhs are renowned for their dutiful and honorable military service, which is consistent with their core values of honesty, service to one’s community, and treating everyone as equals.⁷ Sikhism stems from the rejection of the caste system and aims to “fight injustice in all of its forms.”⁸ Because of Sikhism’s emphasis on community service and its origins in the struggle against religious oppression,⁹ Sikhs maintain a rich tradition of military service.¹⁰ Their long and distinguished history in the world’s militaries dates back hundreds of years.

Devout Sikhs have served in the U.S. military since at least World War I, including Bhagat Singh Thind—shown below in uniform, with his articles of faith

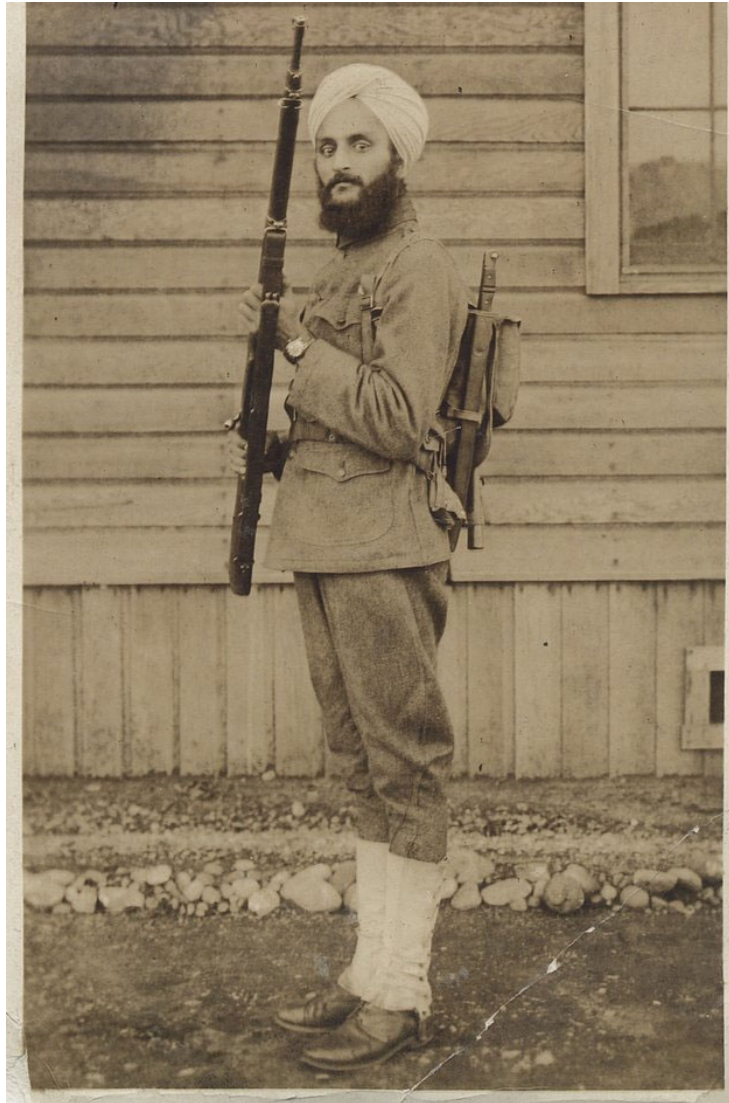
⁷ See Neha Singh Gohil & Dawinder S. Sidhu, *The Sikh Turban: Post-9/11 Challenges to this Article of Faith*, 9 RUTGERS J. L. & RELIGION 1, 9 & nn.30-31 (2008).

⁸ *Id.* at 9, 11-12 & nn. 32-33, 52.

⁹ See Diptarka Ghosh, *Sikhism*, WORLD ATLAS (Nov. 4, 2021), [worldatlas.com/articles/Sikhism.html](https://www.worldatlas.com/articles/Sikhism.html) (“Sikhism originated as an independent religion that marked a protest against the rigid caste system of the Hindus and the political domination of the Muslims”).

¹⁰ See Tell Me More, *Why Do Sikhs Want to Serve in the Military?*, NAT’L PUB. RADIO (Aug. 16, 2013), <https://www.npr.org/templates/story/story.php?storyId=212603796>.

intact, and also standing together with other members of his U.S. Army regiment at Camp Lewis in 1918.



11

¹¹ Ella Wagner, *Bhagat Singh Thind*, NAT'L PARK SERV. (Nov. 1, 2021), nps.gov/people/bhagat-singh-thind.htm.



12

Sikhs have continued this tradition of proud service in the U.S. military through World War II, the Vietnam War, and onward.¹³ As reflected in the examples and images herein, Sikhs' military service does not break uniformity or undermine discipline or mission readiness. As shown in the following photographs from World

¹² Tanveer Kalo, *Dr. Bhagat Singh Thind*, U.S. WORLD WAR I CENTENNIAL COMM'N, worldwar1centennial.org/index.php/indians-who-served/1940-dr-bhagat-singh-thind.html.

¹³ See *Religious Accommodations in the Armed Servs.: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Servs.*, 113th Cong. 3 (Nov. 19, 2014) (statement of the Sikh Coalition for the record), <https://docs.house.gov/meetings/AS/AS02/20141119/102755/HHRG-113-AS02-20141119-SD003.pdf>.

War II, Sikh servicemembers from other countries joined in important and beneficial ways in the Allied effort:



An Indian soldier on anti-aircraft duty¹⁴



Sikhs celebrating liberation in 1944¹⁵

¹⁴ War Office Second World War Official Collection, No. E 2502, Imperial War Museums (Apr. 18, 1941), <https://www.iwm.org.uk/collections/item/object/205196229>.

¹⁵ Sikh Sangat, *Sikhs in World War 2*, <https://www.flickr.com/photos/sikh-sangat/6325419138/in/photostream/>.



AUSTRALIAN WAR MEMORIAL

017103

*British Sikh and Australian soldiers during World War II*¹⁶

Among the U.S. forces, Sikhs were permitted to serve—without abandoning their articles of faith—until 1981. But in 1981, the U.S. military changed its policy to prohibit exemptions to the uniform requirements. That change immediately

¹⁶ Austl. War Mem'l, No. 017103 (May 12, 1944), <https://www.awm.gov.au/collection/C356524>.

excluded observant Sikhs (and many Muslims and Jews) unless they abandoned the tenets of their faith.¹⁷

C. U.S. Military Regulations and Exemptions Already Allow Sikhs to Train and Serve While Maintaining Their Articles of Faith.

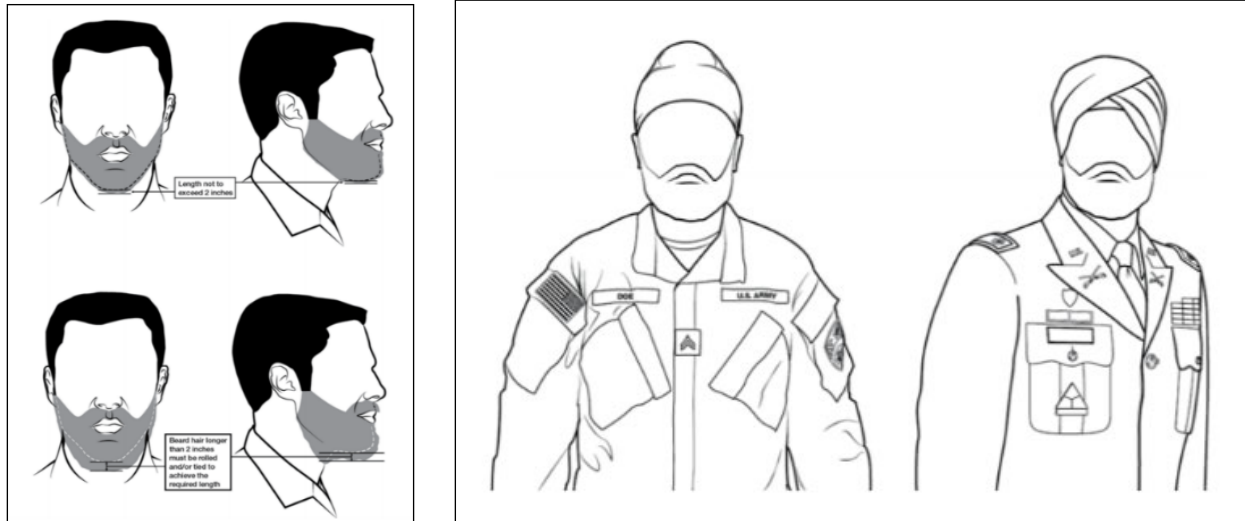
After prohibiting articles of faith in the 1980s, the military has recently started to reverse course on its discriminatory policies—recognizing once again that Sikhs can aptly serve without abandoning their religious practices. The Army, the Air Force, and the Navy have provided accommodations for Sikhs to train and serve while maintaining their articles of faith. Notably, the Marine Corps, too, allows Sikhs to serve—yet not to attend recruit training to serve—with their articles of faith.

There are many examples of Sikhs successfully serving while maintaining their articles of faith—some of which are detailed below. And there are no instances in which these articles of faith harmed military discipline, cohesion, or mission readiness. Based on this record of success—and the exemptions that the military already allows to Sikhs, other religious groups, women, and on other secular grounds—the Marine Corps’ prohibition on Sikh articles of faith during recruit training is unfounded.

¹⁷ *Religious Accommodations in the Armed Servs.: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Servs.*, 113th Cong. 3 (Nov. 19, 2014) (statement of the Sikh Coalition for the record).

1. The Army

Since 2017, the Army has allowed its servicemembers to wear Sikh articles of faith both during training and while serving.¹⁸ The Army's directives provide specific guidance on how beards and turbans are to be worn, as shown below.¹⁹



Sikhs are also allowed to maintain their articles of faith while training at West Point. Arjan Singh Ghotra and Gurjiwan Singh Chahal, now 2nd Lieutenants in the Army, became the first two observant Sikh men to serve at and graduate from West Point Military Academy with their articles of faith intact in 2021. Joint Appendix (“JA”) A160, A690.

¹⁸ Army Directive 2017-03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation, at 1 (Jan. 3, 2017), <https://api.army.mil/e2/c/downloads/463407.pdf>; Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia, at 21-24 (Jan. 26, 2021), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30302-AR_670-1-000-WEB-1.pdf.

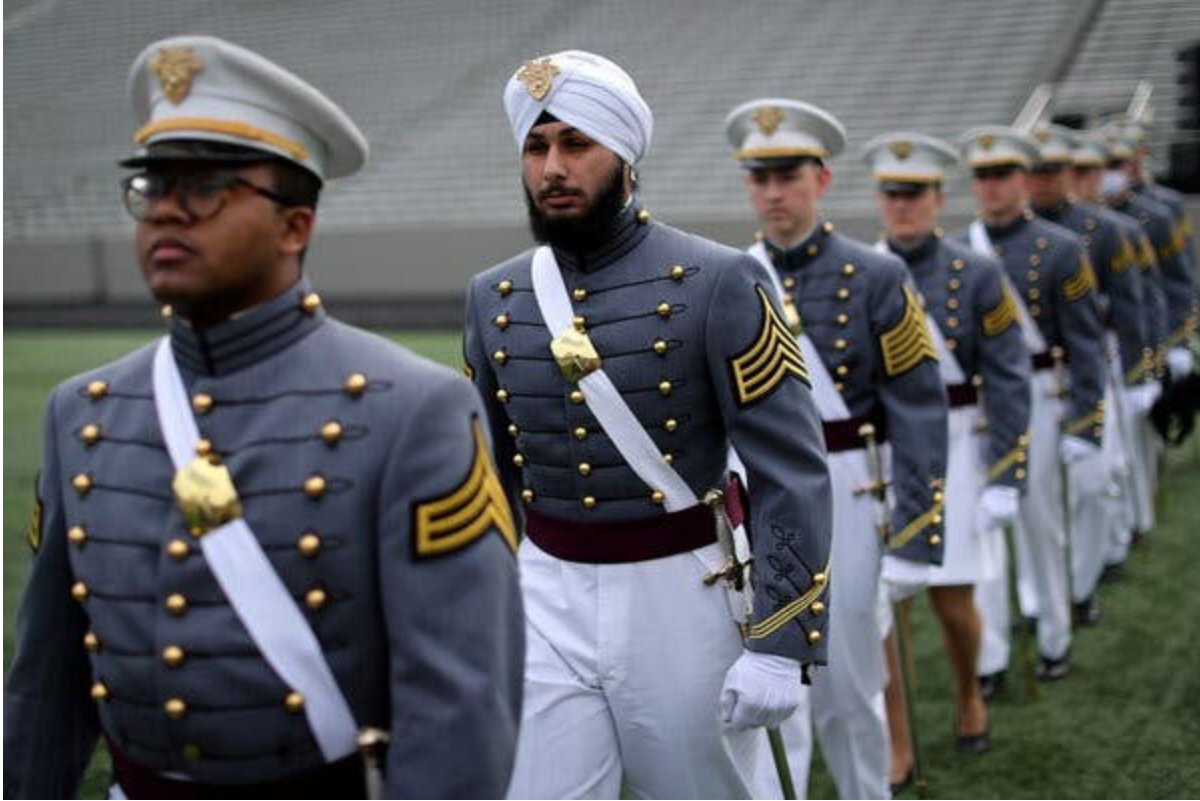
¹⁹ Fig. 3–6. *Beard figure*, in Army Regulation 670-1, Wear and Appearance of Army Uniforms and Insignia, at 23; Fig. 3–7. *Turban figure*, in *id.* at 24.



Gurjiwan Singh Chahal marching with his fellow West Point cadets²⁰

West Point's Uniform and Grooming Policies for Cadets with Approved Religious Accommodations describes how Sikh cadets are to conform their turbans and other articles of faith. JA A160-61. West Point now authorizes Sikh cadets to wear a black turban in lieu of ceremonial headgear such as the shako or dress hat. JA A160-61. In doing so, Sikhs are to place on the front center of their turban the same brass West Point crest that other cadets wear on their head covering. JA A160-61.

²⁰ *Chahal v. Seamands*, THE BECKET FUND FOR RELIGIOUS LIBERTY, becketlaw.org/case/chahal-v-seamands/; *see also Chahal v. Seamands*, No. 17-cv-12656 (E.D. Mich. Aug. 14, 2017); Gurjiwan Singh Chahal, "Army is in Your Blood": Fighting for an Accommodation to Serve His Country While Practicing His Faith, THE WEST POINT CTR. FOR ORAL HISTORY (May 11, 2021), <https://www.westpointcoh.org/interviews/army-is-in-your-blood-fighting-for-an-accommodation-to-serve-his-country-while-practicing-his-faith>.



*Gurjiwan Singh Chahal, at the West Point Graduation Ceremonies*²¹

Over 60 Sikhs serve in the Army currently, and at least three Sikhs have graduated from West Point.²²

²¹ Dave Philipps, *The Marines Reluctantly Let a Sikh Officer Wear a Turban. He Says It's Not Enough*, THE N.Y. TIMES (Sept. 26, 2021), [nytimes.com/2021/09/26/us/sikh-marine-turban.html](https://www.nytimes.com/2021/09/26/us/sikh-marine-turban.html).

²² 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/amp>; Alaa Elassar, *Woman Becomes First Observant Sikh to Graduate from the US Military Academy at West Point*, CNN (June 13, 2020), <https://www.cnn.com/2020/06/13/us/first-sikh-woman-graduates-west-point-trnd/index.html>.

Lieutenant Colonel Kamal Singh Kalsi.²³ In October 2009, the Army granted then-Captain Kamal Singh Kalsi accommodations to wear “a beard, uncut hair, and turban in keeping with the tenets of [his] Sikh faith.”²⁴ Lt. Col. Kalsi later received the Bronze Star Medal in 2011 for “exceptionally meritorious service as an emergency medicine physician” while deployed in support of Operation Enduring Freedom and currently serves in the Army Reserves. JA A653.



*Lt. Col. Kamal Kalsi testifying before the U.S. Commission on Civil Rights*²⁵

²³ Lt. Col Kalsi is the founder of the Sikh American Veterans Alliance. *See Our Work*, SAVA: SIKH AMERICAN VETERANS ALLIANCE, <https://www.sava.org/our-work.html>.

²⁴ *See* Letter from Maj. Gen. Gina S. Farrisee to then-Cpt. Kamal Singh Kalsi (Oct. 22, 2009), <https://sikhcoalition.org/documents/pdf/10-23-09%20Kalsi%20Accommodation%20Decision.pdf>.

²⁵ Stephen Snyder, *Why Should it be so Hard for a Sikh to Serve in the U.S. Military?*, THE WORLD (Dec. 17, 2015), theworld.org/stories/2015-12-17/why-should-it-be-so-hard-sikh-serve-us-military.



*Lt. Col. Kamal Kalsi serving in Afghanistan as Officer-in-Chief of a tented Emergency Room in Jan. 2011*²⁶

Major (Dr.) Tejdeep Singh Rattan. In 2009, the Army granted then-Second Lieutenant Tejdeep Rattan accommodations to wear “a beard, uncut hair, and turban in keeping with the tenets of [his] Sikh faith.”²⁷ He has since been promoted to Major, and in 2011, he received the Army Commendation Medal for “outstanding performance, technical expertise, and unwavering commitment to mission accomplishment in a hostile environment.” JA A653-54. Major Rattan continues to serve in the Army Reserve. JA A653-54.

²⁶ *Id.*

²⁷ See Steve Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, U.S. ARMY (Mar. 25, 2010), https://www.army.mil/article/36339/sikh_soldiers_allowed_to_serve_retain_their_articles_of_faith.



*Major (Dr.) Tejdeep Singh Rattan*²⁸

Corporal Simran Preet Singh Lamba. The Army accommodated Corporal Simran Preet Singh Lamba in August 2010 to “wear a turban and retain [his] unshorn hair, (including beard) in keeping with the tenets of [his] faith.”²⁹ During Basic Combat Training graduation, he was selected to carry the guidon for his platoon, a significant honor. JA A016. Corporal Lamba successfully served in an Army

²⁸ All Things Considered, *Sikhs Regain Right to Wear Turbans in U.S. Army*, N. COUNTRY PUB. RADIO (Mar. 24, 2010), <https://www.northcountrypublicradio.org/news/npr/125142736/sikhs-regain-right-to-wear-turbans-in-u-s-army>.

²⁹ Letter from Lt. Gen. Thomas P. Bostick to Simran Preet Singh Lamba (Aug. 30, 2010), <https://www.sikhcoalition.org/wp-content/uploads/2016/12/2010-Sikh-Military-Lamba-Accommodation.pdf>.

Medical Battalion as a Soldier Medic, and he received an Army Commendation Medal in June 2014 for his selfless service and dedication to duty. JA A654.



U.S. Army Cpl. Simran Preet Singh Lamba carrying the guidon for his platoon during Basic Combat Training graduation³⁰

Major Simratpal Singh. Engineer, Army Ranger School and West Point honors graduate, and decorated Army officer, Major Simratpal Singh was granted a temporary religious accommodation in late 2015, which was extended twice through March 2016. JA A654. He then had to seek court intervention to obtain an enduring accommodation. *See Singh v. Carter*, 168 F. Supp. 3d 216, 229 (D.D.C. 2016) (“Singling out the plaintiff for specialized testing due only to his Sikh articles of

³⁰ JA A016.

faith is, in this context, unfair and discriminatory.”). After receiving this accommodation, he commanded an engineer company in the 249th Engineer Battalion for one and a half years and attended Advanced Civil Schooling. JA A654. He has also served as an instructor at West Point:



Cadet Gurjiwan Singh Chahal, Maj. Simratpal Singh, and Cadet Arjan Singh Ghotra at Cadet Basic Training graduation at West Point³¹

2. The Air Force

The Air Force likewise has allowed Sikhs to maintain their articles of faith while both training and serving—with no detriment to its discipline or operations.

Airman Sunjit Rathour. Then-Airman 1st Class Sunjit Rathour graduated from the Security Forces Apprentice Course in September 2019, where he trained

³¹ The Sikh Coalition, *Another Historic Moment for #LetSikhsServe* (Aug. 23, 2017), <https://www.sikhcoalition.org/blog/2017/another-historic-moment-letsikhsserve/>.

while maintaining his articles of faith.³² Airman Sunjit Rathour's accommodations, granted in December 2018, will continue during his time as an active duty Airman.³³



*Airman 1st Class Sunjit Rathour*³⁴

Airman Gurchetan Singh. Airman 1st Class Gurchetan Singh was the first observant Sikh to attend basic training and graduate from the Air National Guard in 2020, where he trained while maintaining his articles of faith.³⁵

³² *Airman 1st Class Sunjit Rathour*, AIR FORCE RECRUITING SERVICE (Sept. 26, 2019), <https://www.recruiting.af.mil/News/Photos/igphoto/2002190269/>.

³³ 1st Lt. Kayshel Trudell, *Air Force Graduates First Fully Religiously Accommodated Sikh Airman From Security Forces Apprentice Course*, JOINT BASE SAN ANTONIO (Oct. 3, 2019), <https://www.jbsa.mil/News/News/Article/1977879/air-force-graduates-first-fully-religiously-accommodated-sikh-airman-from-secur/>.

³⁴ *Id.*; *Airman 1st Class Sunjit Rathour*, AIR FORCE RECRUITING SERVICE (Sept. 26, 2019), <https://www.recruiting.af.mil/News/Photos/igphoto/2002190269/>.

³⁵ *See Washington Air National Guard Recruit a First for ANG*, AIR NATIONAL GUARD (Sept. 27, 2019), <https://www.ang.af.mil/Media/Photos/igphoto/2002188296/>.



*Air Force Airman 1st Class Gurchetan Singh*³⁶

3. The Navy

The Chief of Navy Personnel has permitted religious accommodations for beards and head coverings (explicitly including turbans) since at least November 13, 2018, for active duty servicemembers.³⁷ Previously, the Navy did not permit certain religious accommodations, such as the wearing of a turban, due to similar uniformity

³⁶ Carol Kuruville, *Air Force Solidifies Approval Process for Religious Beards, Turbans, Hijabs*, THE HUFFINGTON POST (Feb. 12, 2020), https://www.huffpost.com/entry/air-force-hijab-turban-beard-policy_n_5e44469dc5b6d0ea38124ecf.

³⁷ Dep't of Defense Instruction 1300-17, Religious Liberty in the Military Services, at 4-5 (Sept. 1, 2020), <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130017p.pdf>; Dep't of the Navy, BUPERS Instruction 1730.11 (Nov. 13, 2018), https://www.spirit-filled.org/documents/BUPERSINST_1730.11.pdf.

arguments. But the Navy's policy was expanded in 2020 to be more permissive of head coverings, beards, and unshorn hair, including at the basic training level, and further notes that "[m]any religious practices, such as (but not limited to) religious observances . . . do not need a request for waiver of policy and can be accommodated at the command level. Other religious accommodations may be approved by the first O-6 in the chain of command."³⁸ Thus, "fleet commanders [can] approve most religious accommodation requests," and "only the Deputy Chief of Naval Operations has the authority to deny such requests."³⁹

Mass Communication Specialist 3rd Class Leo Katsareas. On July 15, 2020, the Navy granted a grooming waiver to then-Petty Officer 3rd Class Leo Katsareas, allowing him to grow a 4-inch beard consistent with his Muslim faith.⁴⁰ He had previously received a temporary "chit" permitting him to keep a beard, and at his previous duty station had been granted a partial, quarter-inch accommodation, consistent with Navy medical needs exemptions. Since his accommodation, MC3 Katsareas "has been able to wear a gas mask with no issue, including during combat

³⁸ Dep't of the Navy, BUPERS Instruction 1730.11A (Mar. 16, 2020) at 5, 8-9, https://www.mynavyhr.navy.mil/Portals/55/Reference/Instructions/BUPERS/BUPERSINST%201730.11.pdf?ver=OnlNuaARI9ZcZjM_9eJLfA%3d%3d.

³⁹ Katherine Hafner, *Muslim Sailor Aboard USS George Washington Gets Navy Waiver to Grow 4-Inch Beard*, THE VIRGINIAN-PILOT (July 31, 2020), <https://www.pilotonline.com/military/vp-nw-muslim-sailor-beard-20200731-i2ewutovbnfv5n6k3evjyxqsla-story.html>.

⁴⁰ Ryan Colby, *Katsareas v. United States Navy*, THE BECKET FUND FOR RELIGIOUS LIBERTY, <https://www.becketlaw.org/case/katsareas-v-united-states-navy/>.

actions in 2016, where he was assigned to his ship's firefighting party when it came under guided missile fire by Houthi insurgents in Yemen, as well as in other firefighting training situations.”⁴¹



*Mass Communication Specialist 3rd Class Leo Katsareas*⁴²

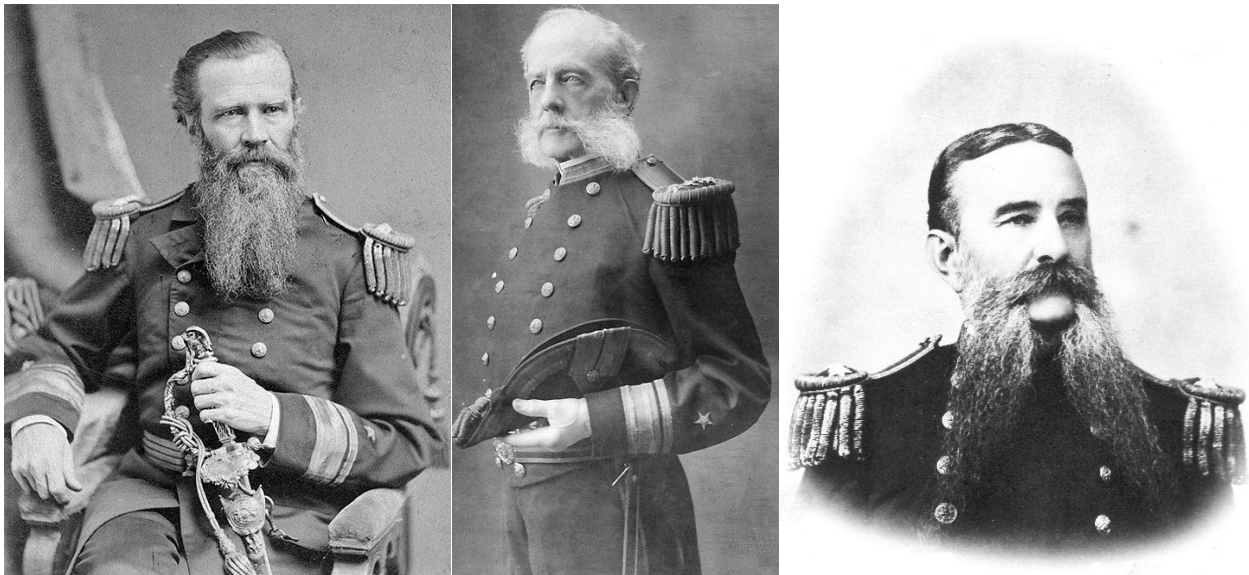
Electrician's Mate, Nuclear Power 3rd Class Edmund Di Liscia. As an observant Orthodox Jewish sailor, EMN3 Di Liscia received a no-shave chit allowing him to grow a religious beard while on shore command and deployments. *Di Liscia v. Austin*, No. 1:21-cv-01047 (D.D.C. Apr. 15, 2021), Dkt. 7 at 1. While deployed on an aircraft carrier in the South China Sea, EMN3 Di Liscia's commander suddenly ordered him to shave within 24 hours. *Id.* EMN3 Di Liscia

⁴¹ *Id.*

⁴² *Id.*

sought emergency relief from the District Court of the District of Columbia, which granted a stay protecting Di Liscia from forced shaves. *Id.*

In fact, the Navy long had a widespread policy of allowing all servicemembers to wear beards, without requiring religious or medical reasons. Historically, U.S. Navy sailors and officers have kept various hairstyles and facial hair of varying lengths and levels of grooming. Even when Secretary of the Navy George Badger established in 1841 that hair and beards were to be cut short, whiskers could still “descend more than one inch below the tip of the ear, and thence in line towards the corners of the mouth.”⁴³



*Rear Adm. Worden (1873); Rear Adm. Luce (1888); Rear Adm. Walker (1889)*⁴⁴

⁴³ US Naval Institute Staff, *A Brief History of Grooming in the U.S. Navy*, USNI NEWS (Oct. 23, 2014), <https://news.usni.org/2014/10/23/brief-history-grooming-u-s-navy>.

⁴⁴ *Id.*

In the 1970s, Chief of Naval Operations Admiral Elmo Zumwalt allowed longer hair, beards, and sideburns to reduce racism and sexism in the ranks, improve the Navy's image, and boost recruitment and retention. *Id.* Admiral Zumwalt made clear: "I will not countenance the rights or privileges of any officers or enlisted men being abrogated in any way because they choose to grow sideburns or neatly trimmed beards or moustaches."⁴⁵



USS Pensacola, 1944 (left)⁴⁶ and Navy SEAL (ret. 2011) Chris Beck (right)⁴⁷

Today, the Navy continues to allow beards (for no specific religious or medical reason). Indeed, Graham Miller, Lieutenant in the U.S. Navy and Duty Control Officer with NATO Communications and Information Agency between

⁴⁵ *Admiral Elmo R. Zumwalt Jr.*, NAVAL HISTORY AND HERITAGE COMMAND (Oct. 7, 2016), <https://www.history.navy.mil/browse-by-topic/people/chiefs-of-naval-operations/admiral-elmo-r--zumwalt-jr-.html>.

⁴⁶ *Id.*

⁴⁷ Devin Friedman, *Kristin Beck: A Navy SEAL in Transition*, GQ (Nov. 25, 2015), <https://www.gq.com/story/kristin-beck-transgender-navy-seal>.

2018 and 2020, observed that on both cruisers and submarines, “all of the sailors had the option of wearing a beard during deployment ... if they paid a fee [e.g.] of \$10 to the Morale, Welfare, and Recreation (MWR) fund.” JA A706. He observed that “most sailors took this option, and it was more common for sailors to be bearded than to be clean-shaven.” JA A706. Beards were never considered a safety or fire hazard, and they were never perceived as interfering with sailors’ firefighting duties or the use of emergency masks. JA A706.

II. Sikhs Have Successfully Served in Militaries Worldwide While Maintaining Their Articles of Faith.

In addition to serving in various branches of the U.S. military, Sikhs serve in militaries across the globe—including the United Kingdom, Canada, Australia, New Zealand, and India—while maintaining their articles of faith. Sikh servicemembers’ turbans, unshorn hair, and beards have never been an impediment to their service. Indeed, wearing beards (even for non-religious reasons) is common practice for servicemembers worldwide. As former Lieutenant in the U.S. Navy and Duty Control Officer with NATO Communications and Information Agency Graham Miller explained, “[m]any of the troops [he] worked with from European countries wore beards as a matter of standard practice.” JA A707. “For instance, Germany, Hungary, and the United Kingdom all allowed beards in their military forces.” JA A707. Crucially, “[t]he wearing of beards never interfered with the professionalism or mission readiness of the NATO forces[.]” JA A707.

Sikhs have excelled in their military duties worldwide, routinely assuming leadership roles and receiving numerous awards for their exemplary service. The U.S., too, has honored Sikhs serving in foreign militaries with the highest levels of distinction for their service alongside U.S. troops.

A. Close U.S. Allies Allow Sikhs to Serve While Maintaining their Articles of Faith.

Many of the U.S.'s closest military allies have developed uniform and grooming policies that specifically allow Sikhs to serve while maintaining their articles of faith.

1. The United Kingdom

The United Kingdom's "Guide on Religion and Belief in the Armed Forces" acknowledges that a ban on headwear "may constitute indirect discrimination" against Sikh servicemembers.⁴⁸ The UK Armed Forces "recogni[z]e the need to observe specific codes of dress in accordance with particular religious beliefs" and "are committed to supporting all individuals who are keen to practi[c]e their faith."⁴⁹ Thus, "Sikhs are able to wear ... Kara (iron or steel bangle), Kesh (uncut hair), Kanga (small comb), Kachera (special design knee length underwear) and Kirpan (small

⁴⁸ United Kingdom Ministry of Defence, *Guide on Religion and Belief in the Armed Forces*, at 10, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/28127/guide_religion_belief.pdf.

⁴⁹ *Id.* at 12.

sword); male Sikhs can also wear a turban.”⁵⁰ The UK Armed Forces further specify that “Sikh men can wear their beards, and their hair long in the Sikh tradition.”⁵¹

Sikh servicemembers like Corporal Chamandeep Singh (pictured below) demonstrate that Sikhs’ articles of faith do not impede their service in the UK Armed Forces, but rather, allow them to serve proudly and effectively. Corporal Singh serves in the Royal Logistic Corps of the Regular Army, where he serves along with 150 other Sikhs.⁵² His promotion to this rank garnered overwhelming praise from the community and reflected the support and acceptance of the UK Armed Forces for his service while maintaining articles of faith.⁵³

⁵⁰ *Id.*

⁵¹ *Id.* Sikhs “are also required to keep their beards neat,” and “those who are fully practicing Sikhs and are required to keep their hair, including facial hair uncut, may keep their uncut beard folded and tied under the chin.” *Id.*

⁵² *Tweet Unexpectedly Reveals Extent of Soldier’s Support to Sikh Community*, THE ROYAL LOGISTICS CORPS ASSOC. (Sept. 2, 2020), <https://www.royallogisticcorps.co.uk/tweet-unexpectedly-reveals-extent-of-soliders-support-to-sikh-community/>.

⁵³ *Id.*



*Corporal Chamandeep Singh*⁵⁴

2. Canada

The Canadian Armed Forces' instructions on "Policy and Appearance" contain a specific section on "Religious and Spiritual Consideration on Dress" allowing Sikh servicemembers to practice their religion and maintain their articles of faith.⁵⁵ Among other things, the instructions expressly permit Sikhs to "leave hair on the head, face and body uncut."⁵⁶

⁵⁴ On file with authors.

⁵⁵ Canadian Armed Forces, *Policy and Appearance: Religious And Spiritual Consideration On Dress*, at ¶¶ 6-13, <https://www.canada.ca/en/services/defence/caf/military-identity-system/dress-manual/chapter-2/section-3.html>.

⁵⁶ *Id.* at ¶ 8.

Canada not only allows Sikhs to maintain their articles of faith but also prominently recognizes Sikhs' service to the Armed Forces. For instance, the Treasury Board of Canada Secretariat recently published an interview with Captain Sarabjot Anand, a Communications and Electronics Engineering Officer with the Canadian Armed Forces and a practicing Sikh (pictured below).⁵⁷ Captain Anand echoed the importance of integrating members of various backgrounds into the military, explaining: "One of the main reasons I enrolled in the Canadian Armed Forces was, not only to embrace the Sikh warrior culture, but also to live and breathe the concept of 'duty before self' and service to community—two values of Sikh faith. And now that I am in the [Canadian Armed Forces], I get to embrace the diversity we have among our organizations."⁵⁸

⁵⁷ Treasury Board of Canada Secretariat, *A Conversation with Captain Sarabjot Anand on Asian Heritage Month*, LINKEDIN (May 13, 2022), <https://www.linkedin.com/pulse/conversation-captain-sarabjot-anand-asian-heritage-month-tbs-sct/>.

⁵⁸ *Id.*



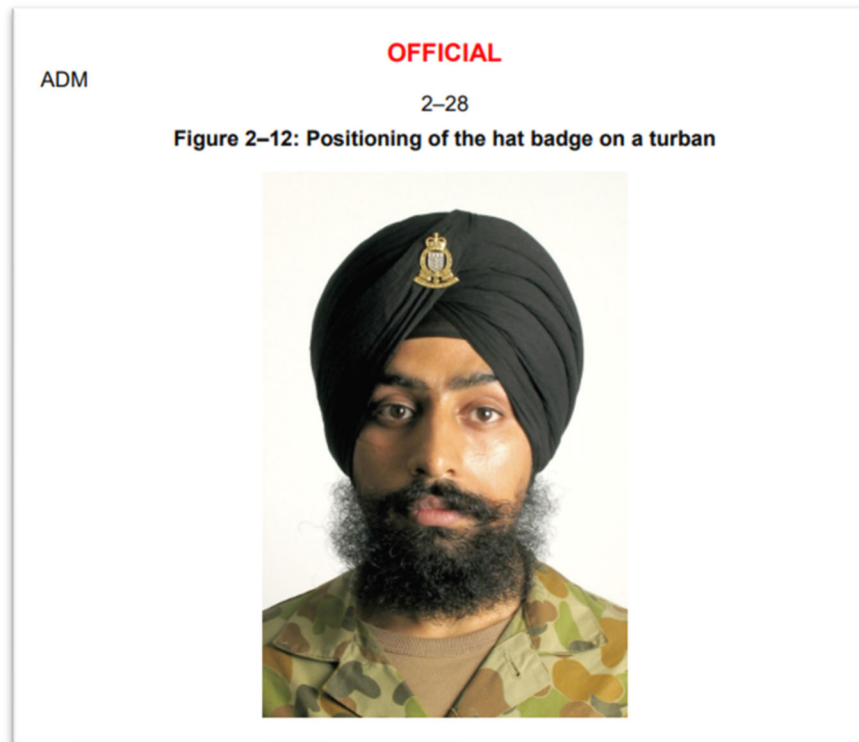
Sarabjot Anand, receiving promotion to Captain in the Royal Canadian Airforce⁵⁹

3. Australia

The Australian Army likewise allows Sikhs to serve while maintaining uncut beards and hair, wearing a turban, and carrying other religious items.⁶⁰

⁵⁹ 2018-05-01 Sarabjot Anand Gets Promoted to Captain in the Royal Canadian Air Force (RCAF), SARABJOT ANAND, <https://ssanand.com/milestones.html>.

⁶⁰ The Australian Army, *Army Dress Manual* (Dec. 20, 2019), at 2-26–2-30 (Sections 2.72–2.76), https://www.army.gov.au/sites/default/files/2022-03/Army%20Dress%20Manual%20AL5_1.pdf.



*Excerpt of Australian Army's Dress Manual*⁶¹

Sikhs are not only allowed to serve in the Australian Army while maintaining their articles of faith, but they also hold leadership and training positions. One such example is Lieutenant Amrinder Ghuman, an Australian Army Officer who serves as Troop Commander of an Initial Employment Training (IET) Troop (pictured below).⁶²

⁶¹ *Id.* at 2-28 (Section 2.72).

⁶² Manpreet K. Singh, *A Turbaned Troop Commander in the Australian Army Trains Combat Engineers*, SBS (Aug. 2, 2022), <https://www.sbs.com.au/language/en/article/a-turbaned-troop-commander-in-the-australian-army-trains-combat-engineers/g0ltmwdgn>.



*Lieutenant Amrinder Ghuman, leading an Initial Employment Training Troop*⁶³

B. Both the U.S. and Foreign Militaries Have Recognized Sikhs' Commendable Service.

Sikhs are not only allowed to maintain their articles of faith while serving in militaries worldwide, but they are also frequently honored for their exemplary service. For instance, in 2014, the Canadian military awarded Lieutenant Colonel Harjit S. Sajjan (pictured below)—an Afghanistan war hero and the first Sikh to command a Canadian Army regiment—one of its highest military honors, the Order of Military Merit.⁶⁴ From 2015 to 2021, Lieutenant Colonel Sajjan served as Canada's Minister of National Defence (the equivalent to the U.S. Secretary of

⁶³ *Id.*

⁶⁴ *Harjit Sajjan, MP for Vancouver South, Named Minister of Defence*, CBC (Nov. 4, 2015), <https://www.cbc.ca/news/canada/british-columbia/harjit-sajjan-mp-vancouver-south-defence-minister-1.3303667>; *Lt. Col. Harjit S Sajjan Has Become First Sikh to Receive the Order of Military Merit*, ASIAN JOURNAL (June 27, 2014), <https://asianjournal.ca/lt-col-harjit-s-sajjan-become-first-sikh-receive-order-military-merit/>.

Defense), and in 2021, he was appointed Canada's Minister of International Development and Minister responsible for the Pacific Economic Development Agency of Canada—all while wearing his articles of faith.⁶⁵ Notably, while supporting the U.S.-led coalition in Afghanistan, he served as a special advisor to U.S. Army Lieutenant General James Terry, commander of the 10th Mountain Division.⁶⁶



*Lt. Col. Harjit S. Sajjan with Canadian Governor General David Johnston*⁶⁷

⁶⁵ See Murray Brewster, *New Defence Minister Harjit Singh Sajjan proved mettle in Afghanistan*, THE GLOBE AND MAIL (Nov. 5, 2015), <http://www.theglobeandmail.com/news/politics/new-defence-minister-harjit-singh-sajjan-proved-mettle-in-afghanistan/article27114750/>; *The Honourable Harjit S. Sajjan: Minister of International Development and Minister responsible for the Pacific Economic Development Agency of Canada*, CANADA, <https://pm.gc.ca/en/cabinet/honourable-harjit-s-sajjan>.

⁶⁶ Christopher Guly, *Defense Minister Harjit Singh Sajjan: A Sikh soldier's climb to the Canadian Cabinet*, L.A. TIMES (Feb. 22, 2016), <http://www.latimes.com/world/mexicoamericas/la-fg-canada-sajjan-profile-20160222-story.html>.

⁶⁷ *Harjit Sajjan, MP for Vancouver South, Named Minister of Defence*, CBC (Nov. 4, 2015), <https://www.cbc.ca/news/canada/british-columbia/harjit-sajjan-mp-vancouver-south-defence-minister-1.3303667>.

Sikh servicemembers in foreign militaries also work closely with U.S. troops in troubled regions, and the U.S. military has expressly recognized their exemplary service. For instance, on December 5, 2013, the U.S. honored General Bikram Singh, the Chief of Staff of the Indian Army (pictured below), awarding him the prestigious Legion of Merit.⁶⁸



The U.S. military's history of successful collaboration with Sikhs serving in foreign militaries demonstrates that Sikh articles of faith do not detract from U.S. mission readiness and do not interfere with military operations, goals, or principles.

⁶⁸ *Indian Army Chief of Staff Visits with Gen. Ray Odierno*, U.S. ARMY (Dec. 6, 2013), at 8-9, https://www.army.mil/article/116555/indian_army_chief_of_staff_visits_with_unit_ed_states_army_chief_of_staff.

III. Allowing Sikhs to Serve in the Marine Corps While Maintaining Their Articles of Faith Is in the Public Interest.

The district court ultimately reduced its preliminary injunction analysis to the single question—under the public interest prong—of whether accommodating Sikh articles of faith during recruit training would endanger national security. JA A822-25. Because it would not—as shown above—the public interest weighs heavily in favor of an injunction.

First, it is in the public interest to enjoin the Marine Corps’ policy because it is unconstitutional. Full stop. As this Circuit has held, “enforcement of an unconstitutional law is always contrary to the public interest.” *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). Conversely, “there is always a strong public interest in the exercise of” First Amendment rights. *Pursuing Am.’s Greatness v. Fed. Election Comm’n*, 831 F.3d 500, 511 (D.C. Cir. 2016). As Plaintiffs-Appellants explain more fully in their Opening Brief, the Marine Corps’ policy of discriminating against Sikhs by excluding them from military service on the basis of their religion—without a compelling reason to do so—violates the Religious Freedom Restoration Act (“RFRA”) and the First Amendment. “In First Amendment cases, the likelihood of success ‘will often be the determinative factor’ in the preliminary injunction analysis.” *Pursuing Am.’s Greatness*, 831 F.3d at 511 (quoting *Joelner v. Vill. of Wash. Park, Ill.*, 378 F.3d 613, 620 (7th Cir. 2004)). Because it did not assess the likelihood of success on the merits, the district court

skipped over the unconstitutional and unlawful nature of the Marine Corps' policy, and, as a result, failed to fully consider the policy's harm to the public interest.

Second, the district court erred because it gave undue weight to the government's justifications for its discriminatory policy, even though these reasons are unsupported and directly contradict the military's values and goals—as shown above and as Plaintiffs-Appellants have demonstrated.

As discussed in Section I, *supra*, other branches of the U.S. military already allow accommodations to Sikhs, and the Marine Corps has not shown why it requires a higher degree of uniformity. It does not. As Plaintiffs argue, the Marine Corps already accepts recruits that vary widely in their appearances; both men and women, individuals of various races, ethnicities, height, weight, hair color, and even recruits with extensive tattoos. The Marine Corps lets recruits maintain unshaved beards for medical reasons and lets women to have longer hair and alternate hairstyles such as braids, locks, and twists. These are visible differences, but they cause no negative consequences to the Marine Corps' operations, cohesion, or discipline.

The Marine Corps' interest in uniformity is contradicted by its stated goals of promoting diversity and inclusion, and teaching recruits to operate as one cohesive unit despite differences in appearance or background. This begs the question whether—consistent with the pictures below—the Marine Corps' stated interest in maintaining a cohesive force really signals a desire for homogeny:



U.S. Marine Corps recruits with Golf Company, Second Recruit Training Battalion, at Marine Corps Recruit Depot San Diego.⁶⁹



U.S. Marine Corps recruits with Lima Company, Third Recruit Training Battalion, at Marine Corps Recruit Depot San Diego⁷⁰

⁶⁹ On file with authors.

⁷⁰ On file with authors.

But this cannot possibly be true. 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.”⁷¹ Secretary of the Navy Carlos Del Toro likewise 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.” JA A543. He added 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.” JA A543. He recognized that the U.S. “face[s] unpredictable and intense challenges near and abroad,” and that “[t]o 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.” JA A544.

As the military’s own practices and policies make clear—and the government in this case has admitted—the Marine Corps’ interest in “uniformity” in no way requires that all recruits appear completely *identical*. See Dkt. 1966895 at 17

⁷¹ Philip Athey, *Here’s Where Ponytails Stand for Women in the Marine Corps*, MARINE CORPS TIMES (Nov. 4, 2021), <https://www.marinecorpstimes.com/news/your-marine-corps/2021/11/04/heres-where-ponytails-stand-for-women-in-the-marine-corps/>.

(admitting that the challenged policies regarding “uniform and grooming requirements” are not “simply intended to make recruits appear identical”) (internal quotations omitted). Sikh articles of faith do not undermine the military’s uniformity any more than any of the other physical characteristics that servicemembers exhibit and that the Marine Corps allows.

By extension, the government’s claim that Sikh articles of faith undermine its interests does not pass any level of scrutiny, as it suggests that the effectiveness of the military rests on the outward features of its servicemembers and not on their skills and training. Allowing Sikh articles of faith does not undermine—and in fact only strengthens—the military’s ability to carry out missions in a cohesive, disciplined, and successful manner. *See* Sects. I-II, *supra*.

In any event, even if the government’s stated reasons were well-founded, they still would be outweighed by the public interest in protecting constitutional rights. “[T]he Constitution is the ultimate expression of the public interest,” and it “does not permit [the government] to prioritize any policy goal over” the Constitution. *Gordon*, 721 F.3d at 653.

CONCLUSION

For the foregoing reasons, the Court should reverse the denial of Plaintiffs-Appellants’ request for preliminary injunctive relief.

Dated: October 28, 2022

Respectfully submitted,

/s/ Richard D. Salgado

Richard D. Salgado
Marina Stefanova
MCDERMOTT WILL & EMERY
2501 N. Harwood St., Ste. 1900
Dallas, Texas 75201
Tel: 214-210-2797
richard.salgado@mwe.com
mstefanova@mwe.com

Daniel T. Menken
MCDERMOTT WILL & EMERY
The Nemours Building
1007 N. Orange St., 10th Fl.
Wilmington, Delaware 19801
Tel: 302-485-3937
dmenken@mwe.com

Joshua W. Eastby
MCDERMOTT WILL & EMERY
444 West Lake St., Ste. 4000
Chicago, Illinois 60606
Tel: 312-550-2035
jeastby@mwe.com

Jiaxiao Zhang
MCDERMOTT WILL & EMERY
18565 Jamboree Rd., Ste. 250
Irvine, California 92612
Tel: 949-757-6398
jiazhang@mwe.com

*Counsel for Amici Curiae Sikh
American Veterans Alliance and
Women Veterans and Families
Network*

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g), that this brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure Rule 32(f) and Circuit Rule 32(e)(1), the brief contains 6,407 words.

I further certify that this brief complies with the typeface requirements and the type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Times New Roman font.

Dated: October 28, 2022

/s/ Richard D. Salgado
Richard D. Salgado

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2022, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit, using the CM/ECF system of the Court. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: October 28, 2022

/s/ Richard D. Salgado
Richard D. Salgado