

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

KANWAR BIR SINGH,

HARPAL SINGH,

SATWINDER SINGH,
EX REL. A.S.G. (MINOR),

Plaintiffs,

v.

LIEUTENANT GENERAL JAMES C.
MCCONVILLE, in his official capacity as
Deputy Chief of Staff, G-1, U.S. Army

THE UNITED STATES DEPARTMENT OF
DEFENSE,

ASHTON B. CARTER, in his official capacity
as Secretary of Defense,

THE UNITED STATES DEPARTMENT OF
THE ARMY,

PATRICK J. MURPHY,
in his official capacity as
Acting Secretary of the U.S. Army,

Defendants.

Civil Action No. 1:16-cv-00581-BAH

**MEMORANDUM
IN SUPPORT OF
APPLICATION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	3
Plaintiffs’ Sikh Faith	3
The History of Sikh Service in the Military.....	4
Specialist Kanwar Singh’s Commitment to the Sikh Faith	8
Specialist Kanwar Singh’s Desire To Serve in the Military	9
Specialist Kanwar Singh’s Experience in the Military	12
Specialist Harpal Singh’s Faith and Desire To Serve in the Army.....	19
Private A.S.G.’s Faith and Desire To Serve in the Army	21
The Army’s Uniform and Grooming Regulations and their Exemptions.....	23
STANDARD FOR GRANTING PRELIMINARY INJUNCTIVE RELIEF	25
ARGUMENT	26
I. Plaintiffs are likely to succeed on their RFRA claim	26
A. Plaintiffs’ claims are ripe for review	27
B. Plaintiffs are sincerely compelled by their faith to remain observant Sikhs	29
C. The Army’s uniform and grooming regulations substantially burden Plaintiffs’ religious expression	30
D. The Army has no compelling interest in forcing Plaintiffs to abandon their articles of faith.....	33
1. Accommodating Plaintiffs’ hair and turban does not impede the Army’s asserted interests in uniformity, unit cohesion, good order, discipline, or health and safety	35
2. Army regulations provide broad categorical exemptions, and the Army has granted hundreds of thousands of individualized exceptions to its uniform and grooming policies	37

E. Even if the Army did have a compelling interest here, forcing Plaintiffs to violate their faith is not the least restrictive means of furthering that interest	41
II. The remaining factors all weigh in favor of granting temporary and preliminary injunctive relief	42
A. Plaintiffs will suffer irreparable harm absent injunctive relief	42
B. The balance of harms weighs in Plaintiffs' favor	44
C. The public interest favors granting an injunction	44
CONCLUSION	45

INTRODUCTION

Plaintiff Kanwar Bir Singh, a Specialist and future officer in the Massachusetts National Guard, Plaintiff Harpal Singh, a Specialist in the U.S. Army Reserve enlisting through the MAVNI program, and Plaintiff A.S.G., a Private in the Virginia National Guard (collectively, “Plaintiffs”), seek relief from this Court to prevent the Defendants (collectively, the “Army”) from violating their constitutional rights. Specifically, Plaintiffs seek to enjoin the Army from rejecting them from military service or engaging in discrimination against them because of their religious beliefs. Specialist Kanwar Singh, Specialist Harpal Singh, and Private A.S.G. are all adherents of Sikhism. Their faith requires that they wear unshorn hair, a beard, and a turban. The Army is well aware of their faith and its requirements. Specialist Kanwar Singh applied for an accommodation from the Army on August 12, 2015, nearly 240 days ago. Despite its own regulations that require a response within approximately ninety days, the Army has yet to rule on that accommodation. Specialist Harpal Singh applied for an accommodation from the Army on November 9, 2015. His request has now been pending for over 140 days. Private A.S.G. applied for an accommodation on March 16, 2016. The Army has not issued a decision on either of these accommodations. Each of the Plaintiffs is in danger of being separated from the Army with serious consequences for their careers if their accommodations are not granted soon. In Specialist Kanwar Singh’s case, his ship date for basic combat training (BCT) is May 31, 2016. Specialist Harpal Singh’s BCT date is May 9, 2016. And Private A.S.G.’s current BCT date is May 23, 2016. If Plaintiffs’ accommodations have not been met by those dates, they may not be able to continue serving their country.

In addition to withholding religious accommodations from the Plaintiffs, the Army has blatantly discriminated against each of them because of their religious requests, treating them in some respects like second-class soldiers. For example, Specialist Kanwar Singh has never been issued a uniform or a full military ID. For his first six months of service, he was literally segregated

from his unit during their monthly weekend drills, assigned instead to report to an office two days a month during the week. While Specialist Kanwar Singh is willing to serve in any capacity in the military, he should not be targeted or given limited options because of his religious beliefs. Despite the unchallenged sincerity of those religious beliefs and his request for an accommodation, pending now for over 140 days, high-ranking officers in the Army—including Defendant Lieutenant General McConville, Deputy Chief of Staff, Army G-1 (Personnel)—have continued directly pressuring him to cut his hair and shave as a condition for continuing to serve. Specialist Harpal and Private Anjar have also had similar experiences.

The military's discriminatory treatment of Plaintiffs is unlawful. The Religious Freedom Restoration Act (RFRA) forbids the military from suppressing soldiers' religious exercise unless it has a compelling interest that cannot be met in a less restrictive way. The Department of Defense's and the Army's own regulations likewise place "high value" on soldiers' right to exercise their religion, promising that religious accommodations "will" be granted, so long as mission readiness is not compromised. Here, there is no legitimate argument that Plaintiffs' articles of faith could adversely impact their military service. Moreover, the Army essentially concedes that, at all times, it has roughly 100,000 soldiers—including officers—who are allowed for medical reasons to maintain beards and that those beards "should not ordinarily require any functional limitations" on soldiers' performance of their duties.

Observant Sikhs have fought in the United States Army since World War I. It was only in the 1980s that the Army began strictly enforcing a ban on facial hair and religious headwear, including the Sikh turban. And even since that time, a number of Sikhs have continued serving—either through grandfathered exemptions or under the current Army policies by obtaining individualized exceptions. Currently, at least three other Sikh Americans are serving in the Army or in the Active

Reserves with their articles of faith fully intact. One other Sikh American serves in the Army's Inactive Ready Reserve. Considering that observant Sikhs are welcomed into the Indian, British, Canadian, and Australian militaries, the U.S. Army's refusal to grant Plaintiffs an exception is inexplicable. Just nine months ago, in a similar case brought by an aspiring Sikh soldier, this Court held that the Army generally lacks any justification for preemptively barring Sikhs from maintaining their articles of faith while serving in the military.¹ And just a few weeks ago, this Court held that the Army lacks justification for imposing individualized burdens on Sikhs who request accommodations for maintaining their articles of faith.² Yet the Army continues its pattern and practice of discriminating against all Sikh applicants. This blatant religious discrimination is unlawful and should end now, beginning with Plaintiffs.

BACKGROUND

Plaintiffs' Sikh Faith

The Sikh faith is monotheistic, believing in one God who is all loving, all pervading, and eternal. This God of love is obtained through grace and sought by service to mankind. As taught by the eleven Sikh Gurus—*i.e.*, the first ten prophet-leaders who revealed the faith, plus the Guru Granth Sahib, which is the compilation of their writings—Sikhs seek to live a disciplined life. *See* K. Singh Decl. ¶ 4; H. Singh Decl. ¶ 5; A.S.G. Decl. ¶ 5. Sikhism forbids consumption of alcohol, tobacco, and other drugs, as well as extramarital relations. The Sikh faith emphasizes humility in personal conduct and encourages avoiding materialism and not speaking ill of others. Sikhs prize boldness in standing for truth and defending the oppressed.

¹ *See Singh v. McHugh*, 109 F. Supp. 3d 72 (D.D.C. 2015).

² *Singh v. Carter*, No. 16-cv-399, 2016 WL 837924 (D.D.C. Mar. 3, 2016).

To bind them to these beliefs, all practicing Sikhs wear external articles of faith. These articles of faith, such as unshorn hair (*kesh*), including an unshorn beard, and the turban, distinguish a Sikh and have deep spiritual significance. The faith's founder, Guru Gobind Singh mandated that all Sikhs wear turbans. As turbans had previously been worn only by royalty, he repurposed the turban to signify the equality of all castes and creeds and all men and women. The Sikh Code of Conduct, called 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. ¶ 68. The *Rehat Maryada* prohibits the removal of hair from the body as one of four major taboos, which include adultery, demonstrating the seriousness of maintaining uncut hair in the Sikh religion. *Id.*

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 others in the region. The method of forcing conversion was to remove a Sikh's turban and cut off the hair. In 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.

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. It dates back to the late 17th century and Guru Gobind Singh's creation of the Khalsa, a spiritual order and army comprised of initiated Sikhs, to resist persecution by the Mughal Empire. The Khalsa warrior-saint paradigm instructs Sikhs to take up arms against oppression as a religious

duty.³ Renowned incidents of Sikh courage and valor include Sikh soldiers defeating the Afghan Pathans in 1813 at the Battle of Attock⁴ and their victory over the British at the Battle of Chillianwala in 1849. 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.⁵ Observant Sikhs still serve with their articles of faith intact in militaries in India, Canada, Australia, and the United Kingdom, and also as United Nations Peacekeepers, often working closely with American troops in troubled regions. In fact, Canada’s recently appointed Minister of Defense, Lieutenant Colonel Harjit Sajjan, is an observant Sikh. Lieutenant Colonel Sajjan 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.⁶

Plaintiffs would not be the first observant Sikhs to serve in the military. Indeed, Sikhs proudly served in the U.S. Army without impediment during the Vietnam War and prior conflicts dating back to World War I. Around 1981, however, military policy was changed to prohibit exemptions to the uniform requirements for visible articles of faith. While Congress subsequently enacted a

³ 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).

⁴ Pico Iyer, *The Lions of Punjab*, Time, Nov. 12 1984, at 53, discussed in Rajdeep Singh Jolly, *The Application of the Religious Freedom Restoration Act to Appearance Regulations that Presumptively Prohibit Observant Sikh Lawyers from Joining the U.S. Army Judge Advocate General Corps*, 11 Chap. L. Rev. 155, 157 n.13 (2007).

⁵ See *Sikhs Prove Their Valor, Twenty-one Men Hold Sarhargarti Police Post Against 1,000 Orakzais Over Six Hours*, N.Y. Times, Sept. 14, 1897; Jolly, *supra* note 3, at 157.

⁶ See 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/mexico-americas/la-fg-canada-sajjan-profile-20160222-story.html>.

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, 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.⁷ This rule has precluded almost all practicing Sikhs from entering the U.S. Armed Forces for the past thirty-five years.

Notably, however, many Sikhs who were already in the Army were grandfathered under the 1981 policy change. One of these soldiers, Colonel Gopal S. Khalsa, served in Special Forces units, obtained a Masters Parachutist Badge, and was a Battalion Commander overseeing a 700-person intelligence group. Khalsa Decl. ¶¶ 7, 13, 17. He received six Meritorious Service Medals, among many other honors, and in 2004, was inducted into the Officer Candidate School Hall of Fame. *Id.* ¶¶ 8, 21. For three decades after the Army's 1981 ban on the admission of new observant Sikhs into service, Colonel Khalsa and other Sikh soldiers served with distinction while maintaining their articles of faith. *Id.* ¶ 22; *see also* Kroesen Decl.; Grewal Decl.

Over the last six years, three other Sikhs have been granted religious accommodations, allowing them to serve in the Army with their articles of faith intact, and one additional Sikh has recently been given an accommodation lasting at least one year.



The first, Corporal Simran Preet S. Lamba, enlisted in December 2009. Lamba Decl. ¶ 4. Fluent in Punjabi and Hindi, he was recruited through MAVNI, a recruiting program for legal non-citizens, for his cultural and language skills. *Id.* He served in a medical battalion and was recognized as a "tremendous Soldier"

who "had an amazing impact on his peers and supervisors." *Id.* ¶ 17. In June 2014, he received an

⁷ *See* Dep't of Def. Instruction of February 3, 1988, 1330.17, <http://www.wood.army.mil/eop/EO%20FILES/regspubs/130017p.pdf> (amended Jan. 2014); Army Reg. 600-20 §§ 5-6g(4)(g).

Army Commendation Medal for his selfless service and dedication to duty. *Id.* ¶ 16. He is currently in the Individual Ready Reserve. *Id.* ¶ 3; *see also* Exhibit 1 (photos of Corp. Lamba).



Major Tejdeep S. Rattan, a dentist, entered active duty in January 2010 after receiving a religious accommodation. Rattan Decl. ¶ 1; *see also Singh v. McHugh*, 109 F. Supp. 3d at 99; Exhibit 1 (photo of Maj. Rattan). He was deployed to Afghanistan where he volunteered to serve in a remote forward operating base. Rattan Decl. ¶ 13. His superiors described his performance as “exemplary,” “tireless,” and “in keeping with the highest traditions of the . . . United States Army.” *Id.* ¶ 16. He received numerous awards, including a NATO Medal and the Army Commendation Medal for his service in Afghanistan, including using his Urdu language skills to diffuse a tense situation with Afghan locals. *Id.* ¶ 14. Major Rattan is currently in the U.S. Army Reserve Officer Corps. *Id.* ¶ 2.



Major Kamaljeet S. Kalsi began active duty in June 2010. Kalsi Decl. ¶ 6. He was also deployed to Afghanistan in 2011 and was awarded a Bronze Star Medal upon his return for his exceptional service. *Id.* ¶ 6, 8. In support of the award, Major Kalsi’s superiors cited his resuscitation back to life of two patients who were clinically dead on arrival; his expert emergency care of over 750 service members and civilians; coordination of five mass casualty exercises; and his general “commitment and leadership above and beyond that of his general duties.” *Id.* ¶ 8. His superiors have noted that he has “consistently demonstrated a strong commitment to improving Army Medicine,” “exceeded all expectations,” and that he “possesses absolutely unlimited potential as a leader.” *Id.* ¶ 9. Major Kalsi is currently in the U.S. Army Reserve Officer Corps. *Id.* ¶ 2; *see also* Exhibit 1 (photo of Maj. Kalsi).



A fourth Sikh soldier has recently been granted a long-term accommodation to serve in active duty with his articles of faith intact. Captain Simratpal Singh graduated from West Point in 2010, where he complied with the military's dress code requirements. *Singh v. Carter*, No. 16-cv-399, 2016 WL 837924, at *2 (D.D.C. Mar. 3, 2016). He graduated from Ranger School, served as a platoon leader while deployed to Afghanistan, and was awarded a Bronze Star Medal for his "exceptional and meritorious service." *Id.* In October, 2015, as he was beginning a new post, Captain Singh submitted a request for a religious accommodation to comply with the Sikh articles of faith to his new commander in the 249th Engineer Battalion Prime Power at Fort Belvoir, Virginia. *Id.* Captain Singh was granted a temporary accommodation on December 9, 2015. *Id.* at *3. His accommodation was extended until March 31, 2016, when it was extended for at least one year, albeit with restrictions that are still being litigated. Notice of Army's Action on Plaintiffs Request for Religious Accommodation, Dkt. 26, *Singh v. Carter*, No. 16-cv-399 (D.D.C. Mar. 31, 2016). Thus, Captain Singh has served without incident for over three months with his articles of faith intact, including having successfully passed standard protective-mask testing.

Again, the Sikh articles of faith have in no way impeded these soldieris' military service—even while deployed abroad in hostile territory. They are careful to conform their articles of faith to meet military standards for safety and "neat and conservative" uniformity.

Specialist Kanwar Singh's Commitment to the Sikh Faith

Specialist Kanwar Singh was born in New Delhi, India, into a Sikh family. K. Singh Decl. ¶ 5. Sikhism originated in the fifteenth century in the region of Punjab. With roughly 25 million

adherents,⁸ it is now the world's fifth largest faith tradition. In Delhi, however, Specialist Kanwar Singh was a religious minority among a predominantly Hindu population. K. Singh Decl. ¶ 6. He has followed Sikhism's strict code of conduct from childhood. *Id.* ¶ 7. His articles of faith have always provided a strong sense of identity and purpose, binding him to a proud history of Sikh "soldier-saints" who were defenders of the faith. *Id.* ¶ 8.

Specialist Kanwar Singh's Desire To Serve in the Military

At age seventeen, Specialist Kanwar Singh came to attend college in the United States, where a series of contrasting experiences deepened his faith and engendered a desire to serve in the U.S. military. *Id.* ¶ 9. An aunt and uncle lived in Virginia, so he looked to attend Virginia Tech to be near them, hoping to study aerospace engineering. *Id.* ¶ 10. His acceptance letter arrived on April 17, 2007, the day after a horrific shooting incident where a Virginia Tech senior killed thirty-two of his fellow students and injured two dozen others. *Id.* Shaken by this tragedy, Specialist Kanwar Singh's parents forbade him to attend the school. *Id.*

He enrolled instead at Virginia Commonwealth University (VCU), pursuing an academic course with a major in business and finance. *Id.* ¶ 11. As for many students, living on his own and finding his path to a career and adulthood was stressful. His religious discipline thus took on greater significance, becoming a source of personal strength and comfort. *Id.* ¶ 12.

Specialist Kanwar Singh's own grandfather and great-grandfather served in the British army during the World Wars. *Id.* ¶ 13. Prompted by their service and the Sikh military ethic that had informed his religious upbringing, Specialist Kanwar Singh also felt the desire to give of himself in service to his new country. *Id.* He sought to enroll in VCU's Reserve Officer Training Corps

⁸ See The Pew Forum on Religion and Public Life, *The Global Religious Landscape: A Report on the Size and Distribution of the World's Major Religious Groups as of 2010*, 9 n.1 (2012), <http://www.pewforum.org/files/2014/01/global-religion-full.pdf>.

(ROTC). *Id.* ¶ 14. Rejected because of his articles of faith, he focused his energy into his studies instead, ultimately completing his degree *magna cum laude* in four years. *Id.* ¶ 15.

Upon graduation, Specialist Kanwar Singh was employed by Capital One Bank and began working in its Professional Analyst Development Program. *Id.* ¶ 16. Another turning point in his faith followed shortly afterward. He continued the tradition begun in college of regularly attending the Sikh *gurdwara* (Sikh house of worship) to pray and partake in *langar*, a communal meal generally held following worship. *Id.* ¶¶ 17-18.

On August 5, 2012, Specialist Kanwar Singh was at his local *gurdwara* in Virginia when news of a shooting at another *gurdwara* in Oak Creek, Wisconsin, arrived. There, a white supremacist intruded into the Sikh temple where *langar* was being prepared and shot and killed six Sikhs and injured four others, before the intruder turned his gun on himself. *Id.* ¶ 21. Recalling the earlier Virginia Tech massacre, Specialist Kanwar Singh was again stunned to feel so close to such hatred. *Id.* ¶ 22. The shock of that event caused him to think deeply about the purpose of his faith and his path in life. *Id.* ¶ 23. He began for the first time to carefully study the teachings of the gurus and apply them to his life. *Id.* ¶ 24. This had a profound effect on him. The teachings of the gurus led him to a more peaceful outlook. He found he was becoming slower to anger and more likely to respond calmly to conflict. *Id.* ¶ 25. He found wisdom and strength in the Sikh scriptures and new confidence in his future goals. *Id.* ¶ 26. These experiences combined to deepen Specialist Kanwar Singh's own faith, including his desire to be of greater service to others. *Id.* ¶ 27.

In January 2014, a friend persuaded Specialist Kanwar Singh to move to Boston and shift his career toward investing. *Id.* ¶ 29. He enrolled in Harvard University's Extension Program, where he is pursuing a Master of Liberal Arts in Management ("ALM"). He is also enrolled at the University of Massachusetts (Boston), where he is simultaneously pursuing a Master of Business

Administration (“MBA”). *Id.* ¶ 30. He has been highly successful in these academic pursuits, maintaining a 3.89 GPA in his MLA program and a 3.96 GPA in his MBA program. *Id.* ¶ 32. He finishes both programs in May. He also works as a teaching fellow at Harvard University’s Extension Program, has co-authored a text for the course he helps teach, and has been offered to return next fall as a “co-instructor.” *Id.* ¶ 33. In January he started a full-time position at Hamersley Partners, a Boston investment firm. *Id.* ¶ 34. On the side, he is an entrepreneur and General Partner at West Street Capital, a research and investment firm he founded for family and friends. *Id.* ¶ 35. Specialist Kanwar Singh also recently served as an “E3! Ambassador,” working to improve the quality of life for young Asian Americans as part of a White House Initiative on Asian Americans and Pacific Islanders. *Id.* ¶ 36. By all accounts, he is well respected by his peers and supervisors.

Shortly after he arrived in Boston, Specialist Kanwar Singh experienced the counter to what he had felt in response to the Virginia Tech and Oak Creek shootings. K. Singh Decl. ¶ 37. In April 2014, U.S. Senator John McCain spoke at Harvard University. Specialist Kanwar Singh was deeply moved by the Senator’s military experiences and was transfixed when Senator McCain closed by encouraging all present to consider serving their country. *Id.* ¶ 38. By then Specialist Kanwar Singh was aware of other Sikhs admitted to serve in the Army and resolved that now was time for him to also serve. *Id.* ¶ 39.

That same month was also the first anniversary of the Boston Marathon bombings. *Id.* ¶ 40. Specialist Kanwar Singh was on Boylston Street to watch runners and participate in the memorial events. Many of the victims from the bombings were there—some without limbs, others in wheelchairs—to claim victory over the attacks that had maimed them. It was transformational to see them. A number of the victims were very young. *Id.* ¶ 41. Specialist Kanwar Singh knew that something like the bombing could happen again. He knew that the Massachusetts National Guard

had been the first to show up after the attacks and was impressed with what they had done. *Id.* ¶ 42. Hearing Senator McCain and recalling the National Guard’s response to the Boston bombings brought to Specialist Kanwar Singh’s mind the legacy of service of his own grandfathers and spiritual forbears. He knew he had to continue that legacy. *Id.* ¶ 43. His faith motivated him to serve, providing a personal foundation for the many parallel values he could see in military service—discipline, loyalty, honesty, respect, selfless service, and promoting justice. *Id.* ¶ 44.

In May 2014, within weeks of Senator McCain’s remarks and knowing that the Army had already provided religious accommodations to Major Kalsi, Major Rattan, and Corporal Lamba, Specialist Kanwar Singh began working with a recruiter to obtain his own admission into the Massachusetts National Guard. *Id.* ¶ 45. In June 2014 he took the ASVAB—the Armed Services Vocational Aptitude Battery—and passed in the 99th percentile. *Id.* ¶ 46.

Specialist Kanwar Singh’s Experience in the Military

Owing to an eye condition that had to be corrected, Specialist Kanwar Singh had to wait six months and reapply for admission into the National Guard. He focused that semester on his work, his school, and on becoming an American citizen. *Id.* ¶ 47. On December 18, 2014, he stood in historic Faneuil Hall and “renounce[d] and abjure[d] all allegiance and fidelity” to his birth country, swearing to “support and defend the Constitution and laws of the United States of America,” and to “bear arms on behalf of the United States when required by the law.” *Id.* ¶ 48.

Because of the then-pending *Iknoor Singh* lawsuit involving another Sikh military applicant, Specialist Kanwar Singh heard that he might not be admitted into the National Guard. *Id.* ¶ 49. One of his contacts with the Guard, however, was also the ROTC instructor at Boston University and encouraged him to enroll there. Specialist Kanwar Singh submitted his application for the ROTC on December 14, 2014, a few days before his naturalization ceremony. *Id.* ¶ 50.

Over the next four and a half months, Specialist Kanwar Singh excelled as an ROTC cadet. On February 28, 2015, during a field training exercise, he was commended by Major Josh Goodrich and Sergeant First Class Darius Scott for assisting his platoon in solving a complex field challenge. *Id.* ¶ 51. His platoon was tasked with transferring “claimed toxic contaminants” using ropes, bar stools and tire tubes. Specialist Kanwar Singh quickly engineered a solution that enabled his platoon to solve this complex challenge within the allotted time limit. *Id.* ¶ 52.

On March 6, 2015, Mr. Nathan Holt, a Military Science advisor, commended Specialist Kanwar Singh for helping his squad complete a two-mile run while carrying 10 to 40 pounds of weight. *Id.* ¶ 53. On March 21, 2015, Specialist Kanwar Singh’s platoon and squad leaders commended him for successfully helping his unit provide security and timely evacuation during a mock raid exercise. One of the key goals before the raid was to spot two high-value targets that his unit could capture as hostages. Specialist Kanwar Singh was the first person to spot both of them, out of the approximately sixty ROTC cadets present. *Id.* ¶ 54. He was also recognized by Company Commander Sergeant Tyler Wojtasinski for helping to accurately identify how the unit could have avoided casualties during the After Action Review. *Id.* ¶ 55.

During the semester-end ROTC Joint Field Training Exercise from April 10-11, 2015 at Camp Curtis Guild, in Reading, Massachusetts, Cadet Singh supported his platoon’s various missions in the following ways:

During a simulated raid operation in which his platoon was tasked with capturing or killing a high-value target, Cadet Singh was the first person to spot and engage the enemy target, and was successful in “killing” him.

During another exercise, Cadet Singh was able to get useful intelligence by providing villagers with MREs (with his platoon and squad leaders’ approval). His cordial and creative communication tactic deescalated the situation and negated the need for his platoon to take the villagers hostage.

During another raid exercise, all of Cadet Singh’s squad members stepped on Improvised Explosive Devices. As the only uninjured member of his squad, he took charge of the

situation, delivered first aid to his fallen comrades, called for backup help from other squads, and assisted with MEDEVAC evacuation.

Id. ¶¶ 56-59.

Throughout his ROTC experience, Specialist Kanwar Singh's unshorn hair, beard, and turban never interfered his relationships with other soldiers or his assigned missions. *Id.* ¶ 60. Although one of the most junior members of his unit, Specialist Kanwar Singh was recognized by his squad and platoon leaders for his active contributions, composed thinking, and high level of engagement. In his view, his faith was a source of strength during many of the exercises. *Id.* ¶ 61.

Despite Specialist Kanwar Singh's exemplary performance, the entire experience was made somewhat awkward in that he was never treated as a full and equal member of his battalion. *Id.* ¶ 62. He was issued a uniform, but not allowed to wear it. *Id.* ¶ 63. He was allowed to participate in all of his unit exercises, but only after extended debate over whether he should be permitted to do so. *Id.* Always lingering was the question of whether he would have the same opportunity as his fellow cadets to pursue a full military career after ROTC. *Id.* ¶ 64.

As a cadet, Specialist Kanwar Singh attended the ROTC graduation ceremony at Boston University and had an opportunity to meet Defendant Lieutenant General McConville, who was the graduation speaker. K. Singh Decl. ¶ 65. He was inspired by General McConville's remarks that in the U.S. military there is no allegiance to a king or queen or any other person, but only to the Constitution. *Id.*

In May 2015, Specialist Kanwar Singh renewed his application for entry into the Massachusetts National Guard. *Id.* ¶ 66. Although his recruiter discouraged him from "complicating" his admission, Specialist Kanwar Singh pursued a spot in Officer Candidate School. He was accepted, but concerns about his articles of faith were raised in the interview and his general application for admission lingered. *Id.* ¶ 67. On July 24, 2015, both U.S. Senators from

Massachusetts, Senator Edward Markey and Senator Elizabeth Warren, along with Congressman Michael Capuano, submitted a letter to Secretary of Defense Ashton Carter and then-Secretary of the Army John McHugh, supporting Specialist Kanwar Singh's enrollment. *Id.* ¶ 68. At that point, the process moved forward, and he was admitted on August 5, 2015. *Id.* ¶ 70. His administrative request for religious accommodation was submitted on August 12, 2015. *Id.* ¶ 71.

On December 1, 2015, Specialist Kanwar Singh attended a presentation at Harvard University by Defendant Secretary of the Department of Defense Ashton Carter. During the question-and-answer session, Specialist Kanwar Singh asked "what can we do to ensure anyone who is passionate and patriotic can serve our country without them having to give up on their religious beliefs?" *Id.* ¶ 73. Secretary Carter responded that "I appreciate your patriotism . . . and I appreciate your faith too." *Id.* ¶ 74. He also noted that "the new Canadian Defense Minister is a Sikh, by the way, extremely able and capable guy, and he worked with the Canadian forces figuring out how to accommodate the head to a helmet, and so it's all possible." *Id.* ¶ 75. Secretary Carter further emphasized that "the only way to stay good is to make sure that we are drawing from the largest possible pool. . . . Mission effectiveness depends upon us having access to the largest possible pool of Americans, because this is an all voluntary force. . . . I can't afford to hive off any part of our population and say 'you can't serve simply because of something that doesn't truly have consequence for their ability to serve. . . . We need them!'"⁹ *Id.* ¶ 76. The Department of Defense has used these statements by Secretary Carter to promote diversity in the military. *Id.* ¶ 77.

Specialist Kanwar Singh's treatment within the National Guard has been similar to what he experienced in the ROTC. *Id.* ¶ 78. In his initial orientation as a new recruit, he was told he would

⁹ *A Conversation with Ashton B. Carter*, Institute of Politics, Harvard University, Dec. 3, 2015, https://www.youtube.com/watch?v=FGugpmN_S8w (beginning at 27:30).

not be issued a uniform and could not attend drills with his unit. *Id.* ¶ 79. It took prolonged effort to get a military ID, even though he needed it as proof of health insurance. Even then, he was given only a 90-day temporary ID. *Id.* ¶ 80. From August through December of 2015, in place of weekend drills with his unit, he was ordered to report to an office two week days each month. *Id.* ¶ 81. On those days, he was required to show compliance with the minimal physical requirements, but then spent the rest of his hours with no specific assignments or assignments to perform minor office tasks, such as shredding documents. *Id.* ¶ 82. He has never been permitted to stand in formation with his unit. *Id.* ¶ 83. He has not been allowed to participate in any weapons training, and to date he still has not touched a real weapon. *Id.* ¶ 84. While Specialist Kanwar Singh is willing to perform any assigned role within the military, he should not be segregated from his unit because of his faith. *Id.* ¶ 85.

Starting a new job in January 2016, Specialist Kanwar Singh informed his commanders that he could no longer meet his service obligation on weekdays. *Id.* ¶ 86. Thus, for February and March of this year, Specialist Kanwar Singh was finally allowed to attend weekend drills with his colleagues, many of whom had no idea who he was and asked why he was there. *Id.* ¶ 87. He is still not permitted to wear a uniform. *Id.* ¶ 88.

As of the date of this filing, Specialist Kanwar Singh's request for accommodation has been pending for nearly 240 days. This is a gross violation of the Army's own regulations. Religious accommodations can only be granted at or above the Deputy Chief of Staff (G-1) level. *See* Dep't of Def. Instruction 1300.17(4)(f)(2)(a), <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>; Army Reg. 600-21, § 5-6i(1). The request, however, must first be submitted to the soldier's immediate commander, who cannot grant or deny uniform and grooming requests, but has "10 working days" to make a "recommendation." Army Reg. 600-20, § 5-6i(1)-

(2), http://www.apd.army.mil/pdf/r600_20.pdf. The soldier must then obtain review by the unit chaplain and legal officer before appealing up through each level of command to the G-1. *Id.* § 5-6i(5)-(7). Each officer up the chain can again make recommendations, but has no authority to grant or deny the request. *Id.* § 5-6i(1). Once the appeal through the chain of command commences, the regulations allow thirty days for the request to make its way to the G-1. *Id.* § 5-6i(11). The G-1 then has thirty more days to make a final decision. *Id.* § 5-6i(10). Thus, depending on how long it takes to obtain endorsements from the unit chaplain and legal officer, it shouldn't take more than ninety days for an accommodation to be approved.

General McConville and the Army are clearly aware of Specialist Kanwar Singh's need for a religious accommodation and of his timeline. Specialist Kanwar Singh is scheduled to attend Basic Combat Training (BCT) at Fort Leonard Wood, Missouri, on May 31, 2016. K. Singh Decl. ¶ 90. On Saturday, March 12, 2016, while Specialist Kanwar Singh was at his weekend drill with his unit, his First Sergeant called him out in front of the entire unit of approximately 200 soldiers to meet with the battalion commander—Captain Kyle Moore. *Id.* ¶ 93. Captain Moore informed Specialist Kanwar Singh that the Army G-1—*i.e.*, General McConville—had reached out to Captain Moore's superior, LTC Jason Oberton, to ask if Specialist Kanwar Singh would be willing to cut his hair to attend BCT. *Id.* ¶ 94. Specialist Kanwar Singh respectfully responded that he could not cut his hair, which was why he had requested a religious accommodation. *Id.* ¶ 95.

Missing his BCT deadline would disrupt a carefully structured series of events that are essential to allow Specialist Kanwar Singh to remain in the Army. *Id.* ¶ 97. BCT lasts ten weeks and is a prerequisite for Specialist Kanwar Singh to attend Officer Candidate School at Camp Edwards, Cape Cod, Massachusetts. *Id.* Officer Candidate School is only offered twice yearly, beginning in September and March. It lasts eighteen months and is fulfilled on the standard National Guard

schedule of one weekend duty per month, plus two full weeks annually. *Id.* ¶ 98. Completing Officer Candidate School is a prerequisite for Specialist Kanwar Singh to select his specialty and complete his Military Occupational Specialties (MOS) qualifications or Basic Officers Leaders Course (BOLC). *Id.* ¶ 99.

Specialist Kanwar Singh's service contract requires him to start Officer Candidate School within one year of enlistment and to accept a commission as a Second Lieutenant within three years of enlistment. *Id.* ¶ 100. For multiple reasons, it would be almost impossible for Specialist Kanwar Singh to meet these deadlines if he misses his May 31 BCT start date. *Id.* ¶ 102. Although BCT is available around the country throughout the year, a significant lead time is required to reserve a spot. *Id.* ¶ 103. More importantly, Specialist Kanwar Singh has already committed to teach at the Harvard Business Extension Program for the 2016-2017 academic year. Being forced out of that commitment would cause a significant injury to his reputation and career opportunities there. *Id.* ¶ 104. Specialist Kanwar Singh is also under obligation with his full-time employer, Hamersley Partners, to complete certain required Securities License Examinations—which will require several months of preparation—by December 31. *Id.* ¶ 105. He negotiated these dates with his employer so they would allow him to take leave from the firm this summer to complete basic combat training. *Id.* ¶ 106. Again, failure to meet these commitments would have serious detrimental impact on Specialist Kanwar Singh's reputation and career, potentially leading to termination of his current employment. To avoid these irreparable injuries and unnecessary litigation, Specialist Kanwar Singh's counsel sent the Army General Counsel a letter on March 17—just five days after being informed of the April 6 deadline—requesting a prompt answer to his request for accommodation. On Friday, March 18, at 7:30 PM, counsel for the Army responded

that the April 6 date no longer applied and that his spot would be saved for him until the Army resolved his request for accommodation. *Id.* ¶ 107.

In sum, Specialist Kanwar Singh has made important career decisions in anticipation that the Army would timely consider his request for accommodation and treat him equally under its regulations. *Id.* ¶ 108. If the Army delays his accommodation, he may be forced to break his commitments to his civilian employers or lose the opportunity to serve in the Army, either of which would cause significant harm to his professional opportunities. *Id.* ¶ 109. And if the Army grants him a discriminatory accommodation that unfairly limits his service, he is concerned that his military career will be harmed.

Specialist Harpal Singh's Faith and Desire To Serve in the Army

Specialist Harpal Singh was born in Delhi and raised in the village of Sagra, Punjab, India to a devout Sikh family. H. Singh Decl. ¶ 7. His commitment to military service is rooted in his faith. *Id.* ¶ 6. He maintains a turban, unshorn hair and an unshorn beard in compliance with the Sikh religious mandates. Indeed, he has been a practicing Sikh his entire life, maintaining these articles of faith since childhood. *Id.* ¶ 4. For him, maintaining these Sikh articles of faith is a constant reminder to embody the Sikh values of discipline, self-sacrifice, and service to others—principles that also undergird his desire to serve in the Army. *Id.* ¶ 6 Specialist Harpal Singh has had a longstanding desire to serve in the military. Indeed, after finishing university, he applied for admission to the Indian Naval Academy. He passed all of the relevant tests but was not admitted due to colorblindness. *Id.* ¶ 8.

Instead, Specialist Harpal Singh pursued a career in telecommunications technology. In 2005, he obtained a Bachelors of Technology degree in electrical and electronics engineering from the Uttar Pradesh Technical University, in Lucknow, India. He began working in the

telecommunications technology sector and worked around the world—including in Ghana, Russia, and the Middle East—setting up cellular communications networks for Ericsson, a large Swedish telecommunications company. *Id.* ¶¶ 9-10. As part of his work for Ericsson, he eventually immigrated to the United States and, for the last five years, has been based in the San Francisco Bay area. *Id.* ¶ 10. In his free time, Specialist Harpal Singh is an avid outdoorsman and traveler. He enjoys mountaineering, snowboarding, back country snow-shoeing and skiing, hiking, and trail running. He enjoys meeting new people and experiencing new cultures. One of his travel goals is to visit all fifty states in America; in his five years in the United States, he has already visited twenty-two. *Id.* ¶ 11.

Specialist Harpal Singh has continued to pursue his dream of military service by joining the Army and serving the United States, the country where he and his wife have chosen to settle. *Id.* ¶ 12. Specialist Harpal Singh first sought to join the United States Army in 2011. However, when he visited the recruiting center, he was told that the MAVNI program did not have any open places. *Id.* ¶ 13. In 2012, he tried again. Two friends with similar skills who went to join at the same time—and who were both engineering contractors for Ericsson—were both admitted into the program, while he was told he could not join because of his beard and turban. *Id.* ¶ 14.

Specialist Harpal Singh learned from one of his friends who had joined the Army that the Army had announced that it would begin accommodating religious observant Sikhs. Still desiring to serve, Specialist Harpal Singh reapplied in spring 2015 and ultimately signed a contract in November to join the U.S. Army Reserve through the MAVNI program. *Id.* ¶ 15. He was recruited through the MAVNI program because of his language skills and cultural knowledge of Punjabi, which he speaks, reads and writes fluently. He also speaks, reads, and writes Hindi fluently, and

he speaks Urdu fluently. All three languages are considered a priority for the Army, such that it recruits native speakers to advance the interests of the United States. *Id.* ¶ 16.

Specialist Harpal Singh submitted his request for accommodation on November 9, 2015. *Id.* ¶ 17. The request has now been pending for over 140 days. *Id.* ¶ 21. Since that time he has been in limbo waiting for the military to decide whether he will be allowed to serve. *Id.* ¶ 22. Specialist Harpal Singh is scheduled to report for BCT on May 9, 2016. *Id.* ¶ 23. If his accommodation is not granted before that date, Specialist Harpal Singh may lose his opportunity to serve in the Army. *Id.* ¶ 24. And even if the accommodation is granted, if it contains discriminatory conditions on his service, he is concerned that this will limit his military career.

Private A.S.G.'s Faith and Desire To Serve in the Army

Private A.S.G. was born and raised in Ashburn, Virginia, into a devout Sikh family. A.S.G. Decl. ¶ 3. His commitment to military service is also rooted in his faith. *Id.* ¶ 6. He maintains a turban, unshorn hair, and an unshorn beard in compliance with Sikh religious mandates. Indeed, he has been a practicing Sikh his entire life. *Id.* ¶ 4.

Private A.S.G. has always had a strong desire to engage in service to his family and community, including a longstanding desire to participate in military service. *Id.* ¶ 6. Indeed, Private A.S.G.'s dedication to U.S. military life and service began long before he was age-eligible to serve. *Id.* Private A.S.G. is currently a senior at Briar Woods High School in Ashburn, Virginia. *Id.* ¶ 7. Because his school does not have a Junior ROTC program, he vigorously sought alternative opportunities to gain military experience. *Id.* Private A.S.G. has volunteered for both the Civil Air Patrol and the Virginia Defense Force in preparation for military service. *Id.* ¶ 8.

As a member of the Civil Air Patrol, Private A.S.G. practiced drills and engaged in character-building exercises. *Id.* ¶ 9. During his time with the Virginia Defense Force, he also participated

in numerous drills and was involved in a civil support mission conducting crowd control in Winchester, Virginia. *Id.* Private A.S.G. has also assisted Winchester police in directing vehicular and pedestrian traffic during the Apple Blossom Festival, when the number of visitors to the town substantially increases. *Id.*

As a sixteen-year-old, he was awarded the Virginia Defense Force Medal for his service during his monthly drills. *Id.* ¶ 11. Private A.S.G. has also received praise and commendation from his Virginia Defense Force commander, CSM Christopher S. Howlett, who noted that “his enthusiasm and dedication set him above the other young men and women in his unit” and that he “was attentive to his duties and worked diligently to master his soldier’s skills.” *Id.* ¶ 11. CSM Howlett further explained that Private A.S.G.’s Sikh articles of faith posed no impediment to service, stressing that “PVT [A.S.G.]’s hair and headgear were cause for questions but they were answered with positive explanations of Sikh ideals and martial history.” *Id.* ¶ 13. Private A.S.G.’s dedication has not gone unnoticed by his educators. Linda Gross, Private A.S.G.’s former social studies teacher who hails from a long line of military personnel, said of the young man, “[h]e has a strong love of his country and his faith. His faith is an integral part of who he is and helped him develop into the young man that he is today.” *Id.* ¶ 14.

In his free time, Private A.S.G. is an avid athlete. *Id.* ¶ 18. He competes in wrestling, cross-country running, and track, and he previously played basketball for his county. *Id.* Private A.S.G. was recently admitted to George Mason University. *Id.* ¶ 19. He plans to enroll this fall and join the school’s ROTC program while continuing his service with the Virginia National Guard. *Id.*

In sum, Private A.S.G. embodies strong moral character and love for and commitment to his country, and is an ideal candidate for the Virginia National Guard and the Army. He is eager to achieve his dream of service in the Army while retaining his right to practice his faith. *Id.* ¶ 20.

Private A.S.G.'s request for accommodation was submitted on March 16, 2016. *Id.* ¶ 21. Since enlisting in the Virginia Army National Guard in December of 2015, he has been denied—because of his articles of faith—the opportunity to participate in monthly drills that would help prepare him for basic training. *Id.* ¶ 23. When being interviewed in connection with his request for accommodation, the chaplain for the Virginia National Guard asked him what he would do if he were in battle against other Sikhs—would he be able to kill them? *Id.* ¶ 27. Private A.S.G. responded that as a member of the National Guard, his first duty of course would be to his country. He felt, however, that questioning his patriotism because of his faith was inappropriate. *Id.* ¶ 28. Private A.S.G. is currently scheduled to begin BCT on May 23, 2016. *Id.* ¶ 29. If his accommodation has not been granted by that time, he may be deprived of the opportunity to continue serving in the Virginia Army National Guard. *Id.*

The Army's Uniform and Grooming Regulations and their Exemptions

Plaintiffs' beards and turban are compatible with the Army's uniform and grooming regulations. Its uniform regulations allow soldiers to wear religious headgear while in uniform if the headgear is (1) "subdued in color," (2) "can be completely covered by standard military headgear," (3) "bears no writing, symbols, or pictures," and (4) "does not interfere with the wear or proper functioning of protective clothing or equipment." Army Reg. 600-20, § 5-6h(4)(g). Plaintiffs' turbans would comply with these requirements except a matching turban would replace standard issue headgear.

With respect to facial hair, Army regulations allow sideburns and a mustache as long as they are "neatly trimmed, tapered, and tidy." Army Reg. 670-1, § 3-2a(2)(a)-(b), http://www.apd.army.mil/pdffiles/r670_1.pdf. Although Plaintiffs' sideburns, mustache, and beard cannot be trimmed, they are kept neat and tidy, with the beard tied and tucked under the chin

and close to the face. *See* K. Singh Decl. Ex. 3 at 2-3; H. Singh Decl. Ex. 2 at 2; A.S.G. Decl. Ex. 4 at 3; *see also* Exhibit 1 (photos of Sikh soldiers). Sikhs have served with merit in the Army in a wide variety of capacities without compromising their faith *or* the military's interests in unit cohesion, safety, uniformity, decorum, or mission accomplishment.

Department of Defense and Army regulations expressly contemplate religious exceptions to the grooming policy. Department of Defense Instruction 1300.17 expressly provides that “the DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions.” Dep’t of Def. Instruction 1300.17(4)(a). Thus, it promises that “[r]equests for religious accommodation *will* be resolved in a timely manner and *will* be approved,” so long as they do not “adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement.” Dep’t of Def. Instruction 1300.17(4)(e) (emphases added).

Ironically, the person requesting the accommodation is required to comply with the uniform and grooming regulations while the request is pending, even if doing so violates his religious beliefs. Dep’t of Def. Instruction 1300.17(4)(g) (“Soldiers requesting an accommodation must continue to comply with AR 670-1 until the religious accommodation request is approved.”); Army Reg. 600-20, § 5-6*i*(1). In contrast, soldiers who need a *medical* exception for a beard can get one by having their doctor enter a “permanent profile” in their file, which is only reassessed annually. Technical Bulletin Med. 287 § 2-6*b*(2), http://armypubs.army.mil/med/DR_pubs/dr_a/pdf/tbmed287.pdf. The Technical Bulletin for medical exceptions expressly states that “[t]he existence of a beard does not prevent performance of most military duties.” Thus, it emphasizes that “the fact that a profile is awarded authorizing

the growth of a beard should not ordinarily require any functional limitations requiring a change or limitation in the performance of military duties.” *Id.* § 2-6c(1).

Since 2007, the Army has authorized “at least 49,690 permanent ‘shaving profiles’ and at least 57,616 temporary ones.” *Singh v. McHugh*, 109 F. Supp. 3d 72, 95 (D.D.C. 2015). This includes “not only enlisted men but officers bound to ensure that the men who serve under them are clean-shaven.” *Id.* In the *Singh v. McHugh* litigation, the Army did not “claim[] or show[] that even one of the more than 100,000 soldiers who have been permitted to grow a beard since 2007—including many who have served in deployed environments—have been ordered to shave it for any reason.” *Id.* at 96. Indeed, the Army admitted it “does not always enforce grooming policies pertaining to beards” even “when operational necessity requires.” *Id.* at 95 n.17.¹⁰

STANDARD FOR GRANTING PRELIMINARY INJUNCTIVE RELIEF

Plaintiffs are entitled to preliminary injunctive relief protecting their exercise of religion while the Army considers their requests for an exception, and while those requests, if denied, are reviewed by the Court. Under Federal Rule of Civil Procedure 65, a plaintiff seeking interim injunctive relief 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 interest 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. Natural Res. Def. Council*,

¹⁰ This Court may take judicial notice of the facts presented in the public record of the *Iknoor Singh* case. *Spencer v. Islamic Republic of Iran*, 922 F. Supp. 2d 108, 109 (D.D.C. 2013) (courts may take judicial notice “of evidence presented in other related cases” without requiring “the re-presentment of such evidence”); *Covad Comm. Co. v. Bell Atl. Corp.*, 407 F.3d 1220, 1222 (D.C. Cir. 2005) (recognizing that courts may take “judicial notice of facts on the public record”). The Army asked for significant parts of the record in the *Iknoor Singh* case to be sealed.

Inc., 555 U.S. 7 (2008)). The D.C. Circuit takes a “sliding scale” approach in evaluating these factors. If the party seeking injunctive relief “makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291–92 (D.C. Cir. 2009).¹¹ Here, however, all factors weigh overwhelmingly in Plaintiffs’ favor.

ARGUMENT

In their application for a preliminary injunction, Plaintiffs raise the RFRA claim set forth in their complaint. For the reasons enumerated below, Plaintiffs are likely to succeed on the merits of that claim and are entitled to relief on the other injunctive relief factors as well.

I. Plaintiffs are likely to succeed on their RFRA claim.

RFRA provides that “Government shall not substantially burden a person’s exercise of religion” unless the Government “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). The term “government” includes any “branch, department, agency . . . and official . . . of the United States,” 42 U.S.C. § 2000bb-2, including the Department of Defense, the Army, and their officers in their official capacities. *Singh v. McHugh*, 109 F. Supp. 3d at 87 (noting that the Army has conceded that it “is a government actor to which RFRA applies”); *Singh v. Carter*, 2016 WL 837924, at *7 (“Courts have shown no hesitation to review cases [against the military] in which a violation of the Constitution, statutes, or regulations is alleged.”) (quoting *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979)); *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (applying RFRA

¹¹ Although a number of other circuits and several judges on the D.C. Circuit have questioned the validity of the sliding scale approach, it remains the law in the D.C. Circuit. *See Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 121 n.3 (D.D.C. 2013).

against the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force); *see also* Dep’t of Def. Instruction 1300.17 (adopting RFRA standard).

At the preliminary injunction stage, the burdens of proof on a RFRA claim “track the burdens at trial.” *Gonzales v. O Centro*, 546 U.S. 418, 429 (2006). Thus, it is the plaintiff’s burden to show “more likely than not” that his sincere religious exercise has been substantially burdened. *Id.* at 428; *accord Holt v. Hobbs*, 135 S. Ct. 853, 862 (2015) (“[P]etitioner bore the initial burden of proving that the Department’s grooming policy implicates his religious exercise.”). 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; *Singh v. Carter*, 2016 WL 837924, at *8. Here, the military cannot reasonably dispute that Plaintiffs’ religious beliefs are sincere and substantially burdened by the Army’s uniform and grooming regulations. And considering the numerous medical exemptions granted for beards, the countless other variations in military uniformity, and the multiple religious exemptions that have been made for other Sikh soldiers, the Army cannot show that denying an accommodation to the Plaintiffs is the least restrictive means of furthering a compelling government interest.

A. Plaintiffs’ claims are ripe for review.

A claim is ripe if a plaintiff can show an “injury in fact—an invasion of a legally protected interest” that is “actual or imminent.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The Army’s inaction towards Plaintiffs’ requests for religious accommodations and their active discrimination against Plaintiffs make this case ripe for review.

The Army has had Specialist Kanwar Singh’s accommodation request since August 12, 2015, nearly 240 days. On information and belief, it has been on the desk of General McConville for at least forty days, well beyond the maximum thirty days allowed by regulation. Dep’t of Def. Instruction 1300.17(5)(b)(2). As demonstrated by General McConville’s inquiry on March 12,

pressuring Specialist Kanwar Singh to cut his hair to attend basic combat training by May 31, the Army is clearly aware that Specialist Kanwar Singh needs an immediate response to his request. K. Singh Decl. ¶¶ 90-109. By refusing to give him an answer leading up to his May 31 deadline, the Army is forcing Specialist Kanwar Singh to make a an imminent choice between serving his country and violating his faith. Thus, Specialist Kanwar Singh faces injury—“an invasion of a legally protected interest” both “actual” and “imminent.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The imminent loss of his right to freedom of religion and his position in Officer Training School makes the case ripe for adjudication. “[I]f a threatened injury is sufficiently ‘imminent’ to establish standing, the constitutional requirements of the ripeness doctrine will necessarily be satisfied.” *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1428 (D.C. Cir. 1996); *see also Fort Sill Apache Tribe v. Nat’l Indian Gaming Comm’n*, 103 F. Supp. 3d 113, 121 (D.D.C. 2015) (“Judicial review is authorized ‘when administrative inaction has precisely the same impact on the rights of the parties as denial of relief’”) (citation omitted).

Specialist Harpal Singh and Private A.S.G. also both face imminent injury in the absence of a preliminary injunction. Specialist Harpal Singh is slated to begin BCT on May 9, 2016. H. Singh Decl. ¶ 23. Without an exception by that date, he will be forced to choose between violating his faith and serving his country. *Id.* ¶ 24. Private A.S.G. is scheduled to attend BCT on May 23, 2016. A.S.G. Decl. ¶ 29. He also faces a choice between faith and service at that time. *Id.*

Moreover, each of the Plaintiffs has *already* been subject to discrimination because of their religious beliefs, a clear injury. *Singh v. Carter*, 2016 WL 837924, at *14 (being subjected to discrimination is by itself an irreparable harm). Specialist Kanwar Singh has not been allowed to engage in weapons training, hold a weapon, stand in formation, obtain a standard military ID, or wear his uniform; for six months he was also segregated from, and not allowed to drill with, his

unit. K. Singh Decl. ¶¶ 78-89. Specialist Harpal Singh was already denied entry into the Army at a time when two other similarly situated soldiers were allowed to join. H. Singh Decl. ¶ 14.

Private A.S.G. has not been allowed to participate in monthly drills since enlisting in the Virginia Army National Guard in December 2015. A.S.G. Decl. ¶¶ 23-25. Private A.S.G. is a member of the Recruit Sustainment Program, which exists to prepare recruits like him to succeed at BCT and Advanced Individual Training (AIT), and allows outstanding participants to be promoted from Private (E1) to Private (E2) and Private First Class (E3). *Id.* Private A.S.G.'s inability to participate in the drills has left him unprepared for BCT and AIT, and has denied him opportunities for promotion and pay raises available to other program participants. *Id.* Further, if his accommodation is delayed, he could be forced to be in violation of his Army contractual obligations, impacting the record of his time in service and his eventual retirement. *Id.*

These injuries indicate that this case is ripe for adjudication. RFRA imposes no exhaustion requirement on litigants in order to enjoin a violation of belief. *Oklevueha Native Am. Church of Haw., Inc. v. Holder*, 676 F.3d 829, 838 (9th Cir. 2012) (“We decline . . . to read an exhaustion requirement into RFRA where the statute contains no such condition.”); *see also Singh v. Carter*, 2016 WL 837924, at *8.

B. Plaintiffs are sincerely compelled by their faith to remain observant Sikhs.

Plaintiffs’ sincerely desire to observe the Sikh articles of faith. “Though the sincerity inquiry is important, it must be handled with a light touch, or ‘judicial shyness.’” *Moussazadeh v. Tex. Dep’t of Criminal Justice*, 703 F.3d 781, 792 (5th Cir. 2013) (internal quotation omitted). 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’ undisputed sworn testimony is sufficient to establish their sincerity. *Love v. Reed*, 216 F.3d 682, 688 (8th Cir. 2000).

Specialist Kanwar Singh, Specialist Harpal Singh, and Private A.S.G. are clearly sincere in their desire to observe the articles of faith and other aspects of the Sikh religion. Indeed, their interest in the military is inspired and encouraged by their faith. K. Singh Decl. ¶¶ 8, 13, 43-44; H. Singh Decl. ¶ 6; A.S.G. Decl. ¶ 6. Each of the Plaintiffs has observed the Sikh articles of faith of wearing a turban and maintaining unshorn hair (including facial hair), since childhood. K. Singh Decl. ¶¶ 7; H. Singh Decl. ¶ 4; A.S.G. Decl. ¶ 4. Considering these facts, it is likely that Plaintiffs will prevail in any challenge to the sincerity of their desire to maintain the Sikh articles of faith.

C. The Army's uniform and grooming regulations substantially burden Plaintiffs' religious expression.

Here, refusing to accommodate Plaintiffs' articles of faith constitutes a substantial burden on their religious exercise. A substantial burden exists when, even unintentionally, the government places coercive pressure on a believer to "conform . . . and forego religious precepts." *Singh v. Carter*, 206 WL 837924, at *11 (citing *Abdulsheeb v. Calbone*, 600 F.3d 1301, 1216 (10th Cir. 2010)). It is well established that where government "creat[es] a situation that forces the religious claimant to choose between following the dictates of his faith and winning an important benefit," that is "coercion enough" to qualify as a substantial burden. *Yellowbear v. Lampert*, 741 F.3d 48, 56 (10th Cir. 2014) (citing *Thomas*, 450 U.S. at 717-18, and *Sherbert v. Verner*, 374 U.S. 398 (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 religious beliefs or facing expulsion from their military careers unquestionably imposes a substantial burden on Plaintiffs' religious exercise. In a recent related case, this Court addressed the question whether discriminatory testing of a soldier requesting a religious accommodation constituted a substantial burden. *Singh v. Carter*, 2016 WL

837924, at *9. The court found that, aside from discriminatory testing, if the burden were “compliance with the Army grooming and appearance regulations,” the soldier’s *prima facie* case on substantial burden would be “easily satisfied.” *Id.* (stating that the Army “conced[ed]” that imposing “serious disciplinary action [for] maintaining the Sikh articles of faith” would constitute a substantial burden). The soldier in that case was subject to disciplinary action from the military for complying with his faith. Here, Plaintiffs are facing disciplinary action or expulsion from the military, an equally serious burden. *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (choice between “following the precepts of [one’s] religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of [one’s] religion in order to accept work, on the other hand” constituted burden on free exercise of religion); *Singh v. McHugh*, 109 F. Supp. 3d at 87 (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).

The Army has also burdened Plaintiffs’ religious beliefs by subjecting them to discrimination. This Court has recognized that religious discrimination constitutes a substantial burden under RFRA. *Singh v. Carter*, 2016 WL 837924, at *11. And, as detailed above, that burden is manifest here. For example, Specialist Kanwar Singh is admitted and recognized for his outstanding service. But he is told he cannot wear a uniform, cannot be issued a standard ID, and at times, has been literally segregated from the rest of his unit. By grossly delaying his accommodation and having General McConville, the decision maker on his accommodation, call to ask him to shave, the Army is pressuring Specialist Kanwar Singh to abandon his faith. Specialist Harpal Singh and Private A.S.G. have likewise experienced discrimination that pushes them to compromise their beliefs. H. Singh Decl. ¶ 14; A.S.G. Decl. ¶¶ 23-25.

Indeed, the Army has engaged in a broad pattern and practice of discriminating against Sikhs. This is true for both Sikhs seeking to enter the military, and those who are already serving. For instance, after being recruited through the MAVNI program in 2013, Taranbir Singh was abruptly separated from the program the same day he had his religious accommodation request denied and then—after being told he could appeal the accommodation denial—had to wait over fourteen months to be told by the Army that it would not consider his accommodation request because he had been separated. T. Singh Decl. ¶¶ 4-13. Undeterred, Taranbir Singh sought to enlist again in August 2014. But after having to re-take physical, medical, background, and MAVNI tests (which he passed), he was told that the MAVNI program had closed. *Id.* ¶¶ 14-15. After hearing a few months later that the MAVNI program had reopened, he applied again and was denied again—this time because the Army said that he had a skin condition. *Id.* ¶¶ 18-19.

Similarly, after voluntarily serving in Afghanistan and receiving awards for exemplary performance, Major Rattan returned stateside to be relocated to a highly selective residency in dental surgery and an important training course. Rattan Decl. ¶¶ 13-17. But before he could relocate, the Army ordered Major Rattan to reapply for the religious accommodation that he had already received in 2009. *Id.* ¶ 18. And even though relocations take long-term preparations—finding and purchasing a new home, arranging household moving, arranging travel—the Army took almost three months to re-grant the accommodation, finally issuing it just five days before the start of Major Rattan’s courses. *Id.* ¶¶ 19-20. This caused significant personal, financial, and familial hardship—and all for reasons never imposed on non-Sikhs. *Id.* ¶¶ 21-24.

This kind of unnecessary discrimination should end. It causes harm for no reason. In this case, for instance, there is no reason why a temporary accommodation could not be issued, allowing Plaintiffs to fully participate in the Army while their accommodations are timely processed. By

instead subjecting them to “separate and unequal” treatment, the Army is substantially and unnecessarily burdening their religious exercise. More broadly, this discriminatory pattern sends a message to all religious believers—especially minority religious believers—that they are not fully welcomed in the Army.

D. The Army has no compelling interest in forcing Plaintiffs to abandon their articles of faith.

Because the Army’s regulations substantially burden Plaintiffs’ religious exercise, “the burden [of strict scrutiny] is placed squarely on the [Army].” *O Centro*, 546 U.S. at 429. The government thus must prove that coercing Plaintiffs “(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); *Singh v. McHugh*, 109 F. Supp. 3d at 88 (noting that RFRA’s strict scrutiny standard “plainly applies to the U.S. Army”). 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 the Army recently flunked in two analogous cases in this Court. *Singh v. Carter*, 2016 WL 837924, at *12-*13; *Singh v. McHugh*, 109 F. Supp. 3d at 96-97.

In order to meet RFRA’s demanding test, the Army must show that it has a compelling interest in imposing its requirement specifically *on the individual Plaintiffs*. The Army cannot meet its burden by citing “broadly formulated interests” that, at a high level of generality, seem compelling. *Holt*, 135 S. Ct. at 863. 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*, 134 S. Ct. 2751, 2779 (2014) (quoting *O Centro*, 546 U.S. at 430-31). This rule applies even to critically important interests such as: enforcing the nation’s drug laws, *O Centro*, 546 U.S. at 433; prison safety, *Holt*, 135 S. Ct. at 859; 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 federal buildings, *Tagore v. United States*, 735 F.3d 324, 330-31 (5th Cir. 2013); controlling government costs, *Rich v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 525, 533 (11th Cir. 2013); and protecting public health, *Lukumi*, 508 U.S. at 544-45.

The Army cannot meet its heavy burden on “mere say-so.” *Holt*, 135 S. Ct. at 866. RFRA “demands much more,” *id.*—namely, specific evidence “prov[ing]” a compelling interest as against Plaintiffs and their request for temporary accommodation. *Singh v. McHugh*, 109 F. Supp. 3d at 93 (requiring defendants to prove that “the decision to deny *this plaintiff* a religious accommodation . . . actually furthers the compelling interests defendants have identified”). Thus, this Court must “‘scrutiniz[e] 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*, 135 S. Ct. at 863 (citation omitted).

The Army cannot meet this standard for multiple reasons. First, in enacting 10 U.S.C. § 774, Congress expressly rejected “uniformity” alone as a legitimate basis for denying soldiers a religious accommodation. That statute provides that soldiers shall be allowed to wear religious apparel as long as it is “neat and conservative” and does not interfere with “military duties.” 10 U.S.C. § 774. Although Congress expressly addressed only apparel, not beards, its allowance for religious apparel shows the Army has no compelling interest in “uniformity” alone.

Furthermore, the Army tried and failed to meet the compelling interest standard in the *Iknoor Singh* case with respect to all of its claimed interests. There, Lieutenant General McConville, the same Army G-1 reviewing Plaintiffs’ accommodation requests, denied Iknoor Singh’s “request to wear unshorn hair, a beard, and a turban” because of the Army’s interests in four general interests:

“[u]nit cohesion and morale,” “[g]ood order and discipline,” “[i]ndividual and unit readiness,” and the Sikh applicant’s “health and safety.” *Singh v. McHugh*, 109 F. Supp. 3d at 93-94. Indeed, the Army’s presumptive practice since 1981 has been to reject Sikhs who seek to serve in the military. This pattern and practice of discrimination forces Sikhs to choose between their faith and serving their country and unjustifiably chills the religious exercise of Sikhs.

The Army’s justifications “d[id] not withstand strict scrutiny” in the *Iknoor Singh* litigation, *id.* at 95, and they do not now. As an initial matter, those interests are too broadly formulated to answer the question of whether the Army may force Plaintiffs to violate their faith instead of granting a temporary accommodation. Further, Army policy and Congressional guidance has been trending toward eliminating the requirement that soldiers be forced to violate their faith while accommodation requests are pending. *See* Compl. ¶ 240; H.R. Rep. No. 114-102, at 134 (2015) (House Report to the 2016 National Defense Authorization Act urging DoD to quickly resolve accommodation requests without burdening service members’ free exercise “while [the] accommodation request is pending”). A wilting interest is not a compelling one.

There are two more reasons that those interests fail as applied to Plaintiffs. First, Plaintiffs’ hair and turban will be just as neat and professional as those of other successful Sikh soldiers in the U.S. Army, so banning them will not further the Army’s interests. Second, an accommodation for Plaintiffs certainly would not harm the Army’s interests any more than the categorical deviations in uniformity inherent in the regulations and the hundreds of thousands of exceptions to uniformity the Army has granted to individual soldiers.

1. Accommodating Plaintiffs’ hair and turban does not impede the Army’s asserted interests in uniformity, unit cohesion, good order, discipline, or health and safety.

The Army’s argument has been that, without uniformity of appearance, several other interests will be harmed. But uniformity is not binary. Small deviations from the norm do not result in a

general loss in uniformity. Plaintiffs will wear the same boots, the same trousers, the same shirts, the same coats, and the same insignia as other soldiers. The Army has successfully accommodated other Sikhs, and it tolerates far more deviations from its uniformity standards to accommodate personal taste, gender differences, and other religious requirements. Accommodating Plaintiffs will not harm the Army's interests.

Under Army regulations, the basic requirement for the wearing of hair, beards, and headgear is that they be neat and conservative. Thus, "[m]any hairstyles are acceptable, as long as they are neat and conservative." Army Reg. 670-1, § 3-2a(1). Similarly, men may wear sideburns and mustaches so long as they are "neatly trimmed, tapered, and tidy." *Id.* at § 3-2a(2)(b). Women may have long hair so long as it is "neat[]" and worn "above the lower edge of the collar." *Id.* at § 3-2a(3)(c). And religious attire, including headgear, may be worn while in uniform if it is "neat and conservative." Army Reg. 600-20 § 5-6h(4).

Just like other accommodated Sikh soldiers, Plaintiffs can wear their turbans, hair, and beards will in a neat and conservative manner at all times, with their unshorn hair neatly wrapped into their turban, well above the edge of the collar. Army Reg. 670-1 § 3-2(a)(3)(c). Just like other Sikh soldiers, Plaintiffs can wear their unshorn beards neatly tied up under their chins, maintaining a tidy appearance and ensuring they can maintain a gas-mask seal. Army Reg. 670-1 § 3-2(a)(2)(b). And they can wear their turbans in the manner listed below to match their uniforms and ensure that the turban does not interfere with the wear of protective closing or equipment, just as other Sikhs soldiers have done. *See, e.g.*, Army Reg. 600-20h(4)(c)(3); K. Singh Decl. Ex. 3 at 2; H. Singh Decl. Ex. 2 at 2; A.S.G. Decl. Ex. 4 at 3.

- In non-field Garrison settings, Plaintiffs will wear turbans made of ACU camouflage material to match their uniforms.

- In field settings, Plaintiffs will wear field turbans made of ACU camouflage material to match their uniforms.
- Plaintiffs will wear a Kevlar helmet using the field turban or an ACU-pattern “patka” (small turban).
- In settings where a Class A uniform is appropriate, Plaintiffs will wear black turbans to match black standard-issue berets worn with Class A uniforms.

Again, these standards for unshorn hair and turbans have been successfully employed by multiple Sikhs in the military, most recently Captain Singh, and previously Major Kalsi, Major Rattan, and Corporal Lamba. Each of these soldiers received an accommodation from the Army that permitted him “to serve while maintaining unshorn hair, an unshorn beard, and a turban.” *Singh v. McHugh*, 109 F. Supp. 3d at 98. And “each of them . . . earned commendations and outstanding reviews,” and had “praise heaped on [their] service,” particularly “for their discipline and leadership.” *Id.*; *see also Singh v. Carter*, 2016 WL 837924, at *2. Indeed, the Army previously “conducted an internal examination of the effect of [Corporal] Lamba’s religious accommodation,” which concluded that it “did not have a significant impact on unit morale, cohesion, good order, and discipline,” and “had no significant impact on his own, or any other Soldier’s, health and safety.” *Singh v. McHugh*, 109 F. Supp. 3d at 100-01. There is no reason to think that the same will not be true for an accommodation for Plaintiffs.

2. Army regulations provide broad categorical exemptions, and the Army has granted hundreds of thousands of individualized exceptions to its uniform and grooming policies.

The Army permits both categorical exemptions and individualized exceptions to its uniformity requirements. This creates “a higher burden” on the Army to “show[] that the law, as applied, furthers [its] compelling interest[s].” *Singh v. McHugh*, 109 F. Supp. 3d at 94 (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 Order of Police v. City of 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 (internal citation omitted); *Singh v. Carter*, 2016 WL 837924, at *12 (policy requiring specialized testing for Sikh soldier not compelling because it was “substantially underinclusive”). Because the Army’s regulations “specifically exempts large categories of persons” (here, hundreds of thousands of soldiers), the Army’s interests in denying a temporary accommodation to Plaintiffs “cannot be compelling.” *Black Hawk v. Pennsylvania*, 225 F. Supp. 2d 465, 477 (M.D. Pa. 2002).

First, the Army provides broad categorical exemptions to its uniformity regulations. In a recent reversal of Army policy, soldiers may wear tattoos of unlimited size and number on their arms and legs; they are generally restricted only from wearing tattoos on the head, face, wrists, and hands (though they may have a ring tattoo on one hand). Army Reg. 670-1 § 3-3.¹² Men are not required to be entirely clean-shaven. Instead, they may choose within certain guidelines to have sideburns and moustaches. *Id.* at § 3-2(a)(2)(a). Women are not required to keep their hair short. Instead, they may have long hair that “extends beyond the lower edge of the collar.” *Id.* at § 3-2(a)(3)(c). Women may also wear makeup and earrings. *Id.* at §§ 3-2(b)(1), 3-4(c). Pregnant soldiers may wear maternity uniforms. Dep’t of the Army Pamphlet 670-1 §§ 5-1, 15-1, http://www.ncoguide.com/files/da-pam-670_1.pdf. Further, women’s Class A uniforms are different in almost every respect from men’s. Women may wear a skirt, *id.* at §§ 14-15a, 14-18; a differently cut shirt, *id.* at § 14-19; different footwear, including heels, *id.* § at 20-23a; a neck tab

¹² See also C. Todd Lopez, *Army to Revise Tattoo Policy*, Army News Service, Apr. 2, 2015, http://www.army.mil/article/145780/Army_to_revise_tattoo_policy/ (last visited Nov. 23, 2015) (detailing permitted and banned forms of tattoos).

(instead of a neck tie), *id.* at § 14-10c(1); different headgear, *id.* at §§ 14-20, 20-13; a shorter cape, *id.* at § 20-5b(2); a narrower belt, *id.* at § 20-2b(2); and carry a handbag, *id.* at § 20-12.

Second, the Army has granted hundreds of thousands of exceptions to its uniformity regulations. For instance, Army regulations permit a “large-scale exception . . . to its grooming policies” by allowing soldiers to grow beards if medically necessary. *Singh v. McHugh*, 109 F. Supp. 3d at 97, 77. Since 2007, “the Army has permitted more than 100,000 service members,” including officers, “to grow beards for medical reasons.” *Id.* at *18 (noting that the Army has authorized “at least 49,690 permanent ‘shaving profiles’ and at least 57,616 temporary ones.”). While the standard exception allows beards to be grown to 1/4 of an inch, they can be longer if medically necessary. *Id.* The Army permits beard exceptions because, according to the Army’s Technical Bulletin on the exception, “[t]he existence of a beard does not prevent performance of most military duties” and “authorizing the growth of a beard should not ordinarily require a change or limitation in the performance of military duties.” Technical Bulletin Med. 287 § 2-6c(1). While a beard can be ordered shaved for operational reasons, the Army did not “claim[] or show[] that even one of the more than 100,000 soldiers who have been permitted to grow a beard since 2007—including many who have served in deployed environments—has been ordered to shave it for any reason.” *Singh v. McHugh*, 109 F. Supp. 3d at 96. Indeed, the Army admitted that it “does not always enforce grooming policies pertaining to beards” even “when operational necessity requires.” *Id.* at 95 n.17. This flexible treatment is evident from the experience of many Special Forces soldiers who served in Afghanistan while growing full beards.



This photo shows an example of General Petraeus with Special Forces soldiers in Afghanistan wearing beards and long hair.

Photo Credit: Fox News

The Army provides an even “large[r] scale” exception from its tattoo policy. *Id.* When it tightened its tattoo policy in 2014, the Army granted exceptions for “nearly 200,000 soldiers with non-confirming tattoos,” including officers. *Id.* Since November 2014, the Army has granted at least 183 exceptions for a variety of tattoos, including tattoos depicting Jesus Christ, a Star Wars character, a vampire Mickey Mouse, a family crest, and dragons. *Id.* at 79.

In sum, that “the Army is able to tolerate so many idiosyncratic deviations from its [uniformity] regulations” “undermines” its ability to argue that it has a compelling interest in denying a modest accommodation to Plaintiffs. *Id.* at 97.

* * * *

The uniformly successful experiences of several accommodated Sikh soldiers, the Army’s own internal analysis that accommodation was not harmful, and the Army’s broad categorical exemptions and “large scale” individualized exceptions to uniformity all have led this Court to conclude the Army could not “satisfy the[] burden of demonstrating” that its uniformity interests “are furthered by the unwavering application of Army policies to this plaintiff in this particular context.” *Singh v. McHugh*, 109 F. Supp. 3d at 101. The same is true here. While some degree of judicial deference to Army experience is permissible, this Court rightly recognized that deferring to the Army in the face of its undisputed policies and practices would amount to “a degree of deference that is tantamount to unquestioning acceptance.” *Id.* (quoting *Holt*, 135 S. Ct. at 864). If

the Army can grant permanent beard and tattoo exceptions for literally hundreds of thousands of soldiers, it does not need to force Plaintiffs to violate their faith to continue serving in the Army.

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

Because the Army cannot show a compelling governmental interest as applied to Plaintiffs, this Court need go no further. But if even if the Army had shown such an interest, it could not show that forcing Plaintiffs to cut their hair, shave their beards, and remove their turbans in order to serve in the Army is the least restrictive means of furthering that interest.

Meeting the least-restrictive means standard is “exceptionally demanding.” *Holt*, 135 S. Ct. at 864. 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.* 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.” *Singh v. McHugh*, 109 F. Supp. 3d at 101 (quoting *McAllen Grace*, 764 F.3d at 476); *Singh v. Carter*, 2016 WL 837924, at *12 (government interests in health and safety were “not pursued with respect to analogous nonreligious conduct”).

Applying the standard here yields the same outcome as it did in the other *Singh* cases: the Army flunks the test. A blanket ban on Plaintiffs’ articles of faith simply *cannot* be the least restrictive means in light of the existing accommodations for medical beards, nonconforming tattoos, and gender-specific uniform variations. To the extent that the Army is concerned with ensuring a “neat and orderly” appearance, it is less restrictive for the Army to require Plaintiffs, as it required for Corporal Lamba, to ensure their beards are “neat and well maintained at all times.” Lamba Decl. ¶ 8. And to the extent the concern is safety issues, the Army can follow its rules for medical beards: “when there is an actual need” to shave a beard to protect safety “in a real tactical

operation,” then shaving can be required. *Id.* at 96 (quoting Technical Bulletin Med. 287 § 2-6c(2)). But here, there is no reason to expect that Plaintiffs will face such a need anytime soon—not least because the Army has not shown that any of the many soldiers wearing medical beards in “deployed environments” were ever “ordered to shave . . . for any reason.” *Id.*; *Singh v. Carter*, 2016 WL 837924, at *12 (“substantially underinclusive” policies fail the least restrictive means test) (quoting *Holt*, 135 S. Ct. at 865-66).

II. The remaining factors all weigh in favor of granting temporary and preliminary injunctive relief.

Plaintiffs’ likelihood of succeeding on the merits of the RFRA claim is alone sufficient to justify a preliminary injunction. *See Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013) (stating that in RFRA cases “the analysis begins and ends with the likelihood of success on the merits”); *see also American Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012) (“[I]n First Amendment cases, the likelihood of success on the merits will often be the determinative factor.”) (citation and quotation marks omitted). The remaining relevant factors, however, all support a preliminary injunction as well.

A. Plaintiffs will suffer irreparable harm absent injunctive relief.

Defendants are actively discriminating against Plaintiffs because of their religious beliefs and pressuring them to violate their faith. That is clear irreparable harm. However, in the context of constitutional and civil rights, “it has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Mills v. Dist. of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373); *see also Singh v. Carter*, 2016 WL 837924 at *13-*14 (D.D.C. Mar. 3, 2016) (substantial burden under RFRA constituted irreparable harm); *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (violation of First Amendment religious expression rights constituted irreparable injury); *Simms v. Dist. 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.”). Because Plaintiffs have demonstrated that their constitutional and civil rights are being violated, they have automatically demonstrated irreparable harm under *Mills*.

In Specialist Kanwar Singh’s case, the loss of the specific job opportunity of officer training school and potentially a continuing position in the Army is also an injury that subjects him to irreparable harm. K. Singh Decl. ¶¶ 97-108. If he is not granted an accommodation, he will not be able to participate in basic combat training in May, and will forfeit his spot at officer training school. *Id.* ¶ 102. “The loss of specific job opportunities, training, and competitive advantages can constitute irreparable harm.” *Tanner v. Fed. Bureau of Prisons*, 433 F. Supp. 2d 117, 125 (D.D.C. 2006) (prison transfer that interfered with prisoner’s ability to complete occupational training constituted irreparable harm). Here, the Army’s refusal to grant an accommodation interferes with Specialist Kanwar Singh’s ability to take advantage of a specific training program, the denial of which would sabotage his future career irreparably. Specialist Harpal Singh and Private A.S.G. face similar injuries.

By delaying Plaintiffs’ accommodation request and subjecting them to discriminatory conditions, Defendants have created an atmosphere of mistrust and religious animosity. Defendants are sending a message to Plaintiffs’ leaders and peers that they were “wrong” to ask for a religious accommodation and are somehow unfit to be in the military. Under the governing regulations, Plaintiffs are fully entitled to a religious accommodation and to have their request assessed on the same terms as any other accommodation.

Finally, without this Court's intervention, there will be a severe chilling effect on religious minorities within the Army. If there is a perception that soldiers from minority religions who apply for a religious accommodation will then be segregated as a penalty just for asking, the Army's promise to provide religious accommodations will prove entirely illusory. *See, e.g., Singh v. Carter*, 2016 WL 837924, at *14 (imposition of individualized requirements on soldiers requesting accommodations would have a chilling effect on religious minorities).

B. The balance of harms weighs in Plaintiffs' favor.

The Defendants will suffer no injury from a preliminary injunction allowing Plaintiffs to act in accordance with their faith pending a final merits decision from this Court. As explained above, the Army has allowed other Sikhs to observe their faith without incident.

On the other hand, Plaintiffs have already demonstrated that they will suffer irreparable and severe injury if they are forced to violate their faith. *See* Part II.A. As in *Korte*, where there is a strong likelihood of success on the merits, "the balance of harms 'normally favors granting preliminary injunctive relief' because 'injunctions protecting First Amendment freedoms are always in the public interest.'" *Korte*, 735 F.3d at 666 (quoting *ACLU of Illinois v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012)); *Singh v. Carter*, 2016 WL 837924, at *14 ("chilling effect on religious minorities, not only Sikhs, who desire lawfully to practice their religion while serving this country in the Armed Forces" weighed in the plaintiff's favor).

C. The public interest favors granting an injunction.

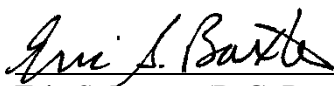
It is undoubtedly in the public interest for the military to avoid religious discrimination and accommodate religious exercise and expression. As "recognized by Congress when it enacted RFRA," there is a "strong public interest in a citizen's free exercise of religion." *O Centro v. Ashcroft*, 389 F.3d 973, 1010 (10th Cir. 2004) (en banc), *aff'd* 546 U.S. 418 (2006); *Rigdon*, 962 F. Supp. at 165 (granting an injunction in a RFRA case because "an injunction will serve the public

interest by protecting . . . the free exercise rights of . . . observant soldiers.”). Indeed, “it is always in the public interest to prevent the violation of a party’s constitutional rights” because “the public as a whole has a significant interest in . . . protection of First Amendment liberties.” *Connection Dist. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). Moreover, the Army itself has extolled the public interest in diversity in the military. *See About Diversity, Army Diversity: Strength in Diversity*, <http://www.armydiversity.army.mil/adoAbout/index.html> (“a diverse Army benefits us all”); *see also* National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 528, 129 Stat. 726 (2015) (stating that having service members “from numerous religious traditions, including Christian, Hindu, Jewish, Muslim, [and] Sikh” traditions, “contributes to the strength of the Armed Forces.”); *Singh v. Carter*, 2016 WL 837924, at *16 (“diverse military, reflective of the composition of our country and accepting of religious minorities” was strong public interest).

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully urge the Court to grant this application for a preliminary injunction.

Respectfully submitted this 4th day of April, 2016.



Eric S. Baxter (D.C. Bar No. 479221)
 Eric C. Rassbach (D.C. Bar No. 493739)
 Diana M. Verm (D.C. Bar No. 1811222)
 Daniel Blomberg (*pro hac vice* pending)
 The Becket Fund for Religious Liberty
 1200 New Hampshire Ave. NW, Suite 700
 Washington, DC, 20036
 (202) 955-0095 PHONE
 (202) 955-0090 FAX
ebaxter@becketfund.org

Amandeep S. Sidhu (D.C. Bar No. 978142)
 Emre N. Iltter (D.C. Bar No. 984479)
 McDermott Will & Emery LLP
 500 North Capitol Street, N.W.

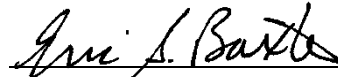
Washington, DC, 20001
(202) 756-8000 PHONE
(202) 756-8087 FAX
asidhu@mwe.com

Harsimran Kaur Dang (D.C. Bar No. 493428)
Gurjot Kaur (*pro hac vice* pending)
The Sikh Coalition
50 Broad Street, Suite 1537
New York, NY, 10004
(212) 655-3095 PHONE
harsimran@sikhcoalition.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Court's ECF system on April 4, 2016, and was thereby electronically served on counsel for Defendants.


Eric S. Baxter