

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

**CAPTAIN SIMRATPAL SINGH,**  
8818 Moverly Ct.  
Springfield, VA 22152

*Plaintiff,*

v.

**ASHTON B. CARTER,** in his official  
capacity as Secretary of Defense,  
1400 Defense Pentagon  
Washington, DC 20301

**THE UNITED STATES DEPARTMENT  
OF DEFENSE,**  
1400 Defense Pentagon  
Washington, DC 20301

**ERIC K. FANNING,**  
in his official capacity as  
Secretary of the U.S. Army,  
101 Army Pentagon  
Washington, DC 20310

**LIEUTENANT GENERAL JAMES C.  
MCCONVILLE,** in his official capacity as  
Deputy Chief of Staff, G-1, U.S. Army  
300 Army Pentagon  
Washington, DC 20310

**THE UNITED STATES DEPARTMENT  
OF THE ARMY,**  
101 Army Pentagon  
Washington, DC 20310

*Defendants.*

Civil Action No. 1:16-cv-00399-BAH

**FIRST AMENDED COMPLAINT**  
(Jury Requested)

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**NATURE OF THE ACTION**

1. Plaintiff Simratpal Singh is a Captain in the United States Army, in the 249th Engineer Battalion Prime Power at Fort Belvoir, Virginia, where he is an Assistant Operations Officer.
2. Captain Singh is also a devout member of the Sikh faith.
3. A core tenet of Sikhism—mandated by the Sikh prophets and required by the *Rehat Maryada*, the official Sikh Code of Conduct—forbids Sikhs from shaving or cutting their hair, which must be worn in the *dastaar* (turban).
4. For Captain Singh, being forced to shave, cut his hair, or not wear the *dastaar* would be a severe violation of his conscience, yet under the Army’s grooming policies, he is subject to severe penalties—including dishonorable discharge—just for maintaining these articles of faith.
5. When general military rules burden a soldier’s faith, binding Department of Defense Instructions and Army regulations *require* the Army to accommodate the soldier’s religious exercise, so long as the “accommodation would not adversely affect mission accomplishment.” DoDI 1300.17(4)(f); AR 600-21 § 5-6.
6. There is no doubt that the Army can accomplish its mission while allowing Captain Singh to maintain his articles of faith while serving as an electrical engineer.
7. Captain Singh’s immediate commander, Lieutenant Colonel Julie Balten, has recommended that he be allowed to serve without being forced to violate his conscience.
8. Captain Singh has been serving with his beard and turban in place since December 8, 2015, without adverse impact on mission accomplishment.

9. Moreover, Sikhs have regularly served in the United States military with their articles of faith intact, including in combat at least as early as World War I and continuing through the Vietnam War.

10. It was only in the early 1980s that the military began barring Sikhs from military service because of their faith.

11. But even then, Sikhs already serving were grandfathered in without being forced to violate their conscience. And in just the last six years, the Army has admitted at least six fully-observant Sikhs, all who have served with distinction—including in combat zones—with their articles of faith fully intact.

12. America's allies around the world, including Canada, Great Britain, India, and Australia also allow observant Sikhs to serve in their militaries. Indeed, Canada's new Defense Minister—a decorated military veteran who advised top U.S. generals in Afghanistan—is himself an observant member of the Sikh faith who wears a turban and beard.<sup>1</sup>

13. This Court has already held that the Army lacks general justification for barring observant Sikhs from serving their country. *Iknoor Singh v. McHugh*, 109 F. Supp. 3d 72 (D.D.C. June 12, 2015).

14. Despite the long history of exemplary service by Sikhs in the United States military and utter lack of any justification for generally barring them, the Army has refused to fully grant

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<sup>1</sup> See Siobhán O'Grady, *Canada's New Defense Minister Made His Own Gas Mask to Work With His Sikh Beard*, Foreign Policy, Nov. 5, 2015, available at <http://foreignpolicy.com/2015/11/05/canadas-new-defense-minister-made-his-own-gas-mask-to-work-with-his-sikh-beard/> (last visited Nov. 24, 2015).

Captain Singh's formal request for a religious accommodation that would allow him to continue serving as an Army engineer without violating his deeply held religious convictions.

15. Captain Singh was initially granted a temporary accommodation to wear unshorn hair, a beard, and a turban, as required by his faith. That accommodation was set to end on March 31.

16. On Wednesday, February 24, 2016, after months of suggesting his accommodation would likely be made permanent—as has routinely happened for Sikh soldiers in the past—Defendants abruptly informed Captain Singh that, because of his Sikh religion, he must immediately undergo extraordinary, targeted, repetitive testing ostensibly to test whether he could properly wear a combat helmet and safety mask. *See* Exhibit 16 (Memorandum from Debra S. Wada, Assistant Secretary of the Army (Manpower and Reserve Affairs) to Commanding General, U.S. Army Corps of Engineers (Feb. 23, 2016)) (“the Wada Memorandum”).

17. Captain Singh has repeatedly worn a combat helmet and safety mask while wearing a beard, without any problems.

18. Captain Singh was initially instructed to schedule his own gas mask fit testing, which was scheduled to take place at Fort Belvoir (Captain Singh's home base) consistent with the Army's standard practices and procedures (as outlined in A.R. 350-1) on Monday, February 29.

19. Brushing aside this standard gas mask testing—which is applied to all Army soldiers—Captain Singh was informed on the afternoon of Friday, February 26, that he was under orders to report early the next week, on Tuesday, March 1, for the helmet testing contemplated in the Wada Memorandum.

20. Then at 8:00 PM that same evening, he was ordered that, following the helmet testing, he would be required to report to Aberdeen Proving Grounds in Maryland.

21. He was told he would be sequestered there for three days for safety-mask testing.

22. No other soldiers in the Army have been treated in this manner or subjected to similar tests as a condition for remaining in the Army.

23. This discriminatory treatment is unfounded and violates the Army's own regulations.

24. Moreover, such testing would infringe Captain Singh's free exercise and free speech rights secured to him by the Religious Freedom Restoration Act (RFRA) and the United States Constitution.

25. On March 3, 2016, this Court entered a Preliminary Injunction agreeing that the proposed testing would be "unfair and discriminatory" and precluding the Army from conducting "any non-standard or discriminatory testing for [Captain Singh's] helmet and gas mask during the pendency of the litigation." 03/03/16 Op. [Dkt. 23] at 22, 32.

26. On March 31, 2016, the Army extended Captain Singh's temporary accommodation, allowing him to serve with his beard and turban in place for one year, or possibly less "based upon military necessity if [Captain Singh] must be assigned to another unit." 03/31/16 Defs.' Notice of Army's Action [Dkt. 26], Ex. 1 at 2 ¶ 6.

27. The Army's accommodation, however, is not legally binding and could be revoked at any time.

28. Also, the Army's accommodation is subject to significant restrictions.

29. For example, the accommodation states that it may be withdrawn at any time, including any time Captain Singh is "assigned or directed to perform hazardous duties (duties for which [he] would be entitled to receive incentive hardship duty pay, special pay for service as a member of a

Weapons of Mass Destruction Civil Support Team, or hazardous duty incentive pay for flying duty).” *Id.* ¶ 5.

30. These conditions are more restrictive than conditions imposed on other service members who are allowed to wear beards for medical or religious reasons.

31. Also, no such conditions were imposed on Sikhs who served in the military before the early 1980s when the military began strictly enforcing its beard ban against religious minorities.

32. Captain Singh’s accommodation also requires that his “command provide quarterly assessments of the effect of [his] accommodation, if any, on unit cohesion and morale, good order and discipline, health and safety, and individual and unit readiness.” *Id.* ¶ 4.

33. No other service members are subject to such scrutiny based on the exercise of their civil rights while serving in the military.

34. Moreover, Captain Singh remains subject to Department of Defense and Army policies that would require him to re-apply for an accommodation every time he undergoes a transfer of duty station.

35. Those policies would also require him to abandon his religious beliefs and conform to military grooming policies during the pendency of any request for a renewed accommodation.

36. Captain Singh thus seeks declaratory and permanent injunctive relief protecting his religious exercise and barring the Army from (1) imposing unnecessary restrictions on his accommodation, (2) requiring him to resubmit for an accommodation with every transfer of duty station, (3) subjecting him to undue delay in considering his requests for a religious accommodation, or (4) requiring him to abandon his articles of faith during the pendency of any request for accommodation.

**JURISDICTION AND VENUE**

37. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

38. Venue lies in this district pursuant to 28 U.S.C. § 1391(e)(1).

**IDENTIFICATION OF PARTIES**

39. The Plaintiff, Captain Singh, is a practicing Sikh and a decorated member of the United States Army stationed at Fort Belvoir, Virginia.

40. Defendants are appointed officials of the United States government and United States governmental agencies responsible for the United States military and its grooming policies.

41. Defendant Ashton B. Carter is the Secretary of the United States Department of Defense. In this capacity, he has responsibility for the operation and management of the armed forces. Secretary Carter is sued in his official capacity only.

42. Defendant United States Department of Defense is an executive agency of the United States government and is responsible for the maintenance of the United States military.

43. Defendant Eric K. Fanning is the Secretary of the United States Army and is responsible for the operation and management of the United States Army. Secretary Fanning is sued in his official capacity only.

44. Defendant Lieutenant General James C. McConville is the Deputy Chief of Staff, G-1, U.S. Army. In this capacity, he has responsibility for religious accommodations in the Army, including Captain Singh's accommodation. General McConville is sued in his official capacity only.

45. Defendant Department of the Army is a department of the United States military and is responsible for the promulgation and administration of its own grooming policies and regulations.

## **FACTUAL ALLEGATIONS**

### Captain Singh's Faith

46. Sikhism is a monotheistic religion that originated in the fifteenth century in the Punjab region of South Asia.

47. While relatively young compared to other major world religions, it is the world's fifth largest faith tradition with nearly 25 million adherents.<sup>2</sup>

48. There are approximately 500,000 Sikhs in the United States.<sup>3</sup>

49. The founder of the Sikh faith, Guru Nanak, was born in 1469 in Punjab, India.

50. The Sikh religion 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.

51. Guru Nanak rejected the caste system and declared all human beings, including women, to be equal in rights and responsibilities and ability to reach God. He taught that God was universal to all—not limited to any religion, nation, race, color, or gender.

52. Consistent with the teachings of the Sikh gurus, Sikhs wear external articles of faith to bind them to the beliefs of the religion. Unlike some other faiths, where only the clergy maintain religious articles on their person, all Sikhs are required to wear external articles of faith.

53. These articles of faith, such as unshorn hair (*kesh*) and the turban, distinguish a Sikh and have deep spiritual significance.

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<sup>2</sup> 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).

<sup>3</sup> See S. Con. Res. 74, 107th Cong. (2001).

54. Maintaining uncut hair (including a beard) is an essential part of the Sikh way of life—one cannot be a practicing Sikh without abiding by this tenet of faith.

55. Guru Nanak started the practice, regarding it as living in harmony with the will of God. The Sikh Code of Conduct, called the *Rehat Maryada*, outlines the requirements for practicing the Sikh way of life.<sup>4</sup>

56. All Sikhs must follow the guidelines set forth in the *Rehat Maryada*.

57. The *Rehat Maryada* explicitly instructs that Sikhs must “[h]ave, on your person, all the time . . . the *keshas* (unshorn hair).” Exhibit 1 (excerpt of *Rehat Maryada*). The *Rehat Maryada* prohibits the removal of hair from the body as one of four major taboos. One of the other taboos on this list is adultery. That cutting one’s hair is a moral transgression as serious as committing adultery speaks to the immense significance of uncut hair in the Sikh religion.

58. The *Rehat Maryada* also mandates that Sikhs wear a turban which must always cover a Sikh’s head. The turban reminds a Sikh of his or her duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard and honestly, sharing with the needy, and promoting equality and justice for all. When a Sikh wears a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh’s head.

59. 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

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<sup>4</sup> *Sikh Rehat Maryada in English*, SGPC.net, <http://new.sgpc.net/sikh-rehat-maryada-in-english/> (last visited Nov. 25, 2015)

religion by political leaders. The method of forcing conversions was to remove a Sikh's turban and cut off his or her hair.

60. As resistance to such forced conversions, many Sikhs chose death over having their turbans removed and hair shorn.

61. 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.

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

62. Captain Singh was born in the Punjab region of India into an observant Sikh family.

63. From the time of his early childhood in India and after moving to the United States at age nine, he maintained unshorn hair covered with a *patka*, a small turban often worn by Sikh children.

64. When Captain Singh's beard came in, his father taught him how to properly wrap and wear the turban.

65. Throughout high school, Captain Singh maintained the Sikh articles of faith, wearing the turban and never cutting his hair or shaving.

66. Growing up, Captain Singh regularly attended the Sikh temple or *gurdwara* to hear preaching and to partake in *langar*.

67. *Langar* means "open kitchen" and is a form of communal dining that takes place in the *gurdwaras*. Individuals of any faith or no faith at all may participate. The food is simple vegetarian fare so that all may partake regardless of religious or other dietary restrictions. It is prepared by volunteer members of the Sikh community and served by them to participants who sit intermingled in rows on the floor.

68. *Langar* serves as a continuous reminder of the Sikh ethics of equality, generosity, inclusiveness, and care for the poor.

69. Regular participation in *langar* helped instill in Captain Singh the importance of hard work, a recognition of the good in others, and a willingness to sacrifice for the larger good. It also influenced his commitment to be a vegetarian. Though not required of Sikhs universally, Captain Singh believes that it is morally wrong to take the life of another creature simply for pleasure.

70. On Sundays, Captain Singh enjoyed listening to the preaching about Sikh scripture and history, and the musical recitations of Sikh scripture.

71. Stories of Sikhs who chose to die rather than remove their turban when subjected to forced conversions was a common theme that became particularly poignant to him.

72. While remaining deeply connected to his Sikh heritage, Captain Singh thrived in his high school in Bellevue, Washington, earning excellent grades and participating on the soccer team and wrestling squad. He participated in student government, serving as president of his sophomore class and as student-body treasurer the following year.

73. As a senior, he was selected from his class of nearly 400 students to serve on a teen advisory council for United States Congressman David Reichert.

74. Through that point in his life, he never experienced any negative repercussions from anyone because of his religion.

75. He never anticipated that the United States Army would be the first to pressure him to abandon his articles of faith.

Decision to Join the Military

76. Service in armed forces has always been—and continues to be—a central part of the Sikh identity. Tales of Sikh courage and valor date back at least as far as their defeat of the Afghan Pathans in 1813 at the Battle of Attock.<sup>5</sup>

77. Sikh soldiers famously defeated the British at the Battle of Chillianwala in 1849 before being overpowered six weeks later by superior British weapons.<sup>6</sup> Sikh soldiers soon became “among the sturdiest and trustiest men of the British army,”<sup>7</sup> 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<sup>8</sup> and with approximately 100,000 Sikhs—a disproportionately high number among Indian volunteer soldiers—fighting for the British in World War I.<sup>9</sup>

78. Today observant Sikhs proudly serve with their articles of faith intact in militaries around the world, most notably in India, Canada, Australia, and the United Kingdom, among others, 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

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<sup>5</sup> 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).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Sikhs Prove Their Valor, Twenty-one Men Hold Sarhargarti Police Post Against 1,000 Orakzais Over Six Hours*, New York Times, Sept. 14, 1897.

<sup>9</sup> Jolly, *supra* note 5, at 157.

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 10<sup>th</sup> Mountain Division.<sup>10</sup>

79. Captain Singh's own great-grandfather fought with the British-Indian Army in World War I, battling through Kuwait and into Iraq, where he was injured by a gunshot to the leg. He later also participated in the struggle for India's independence.

80. Captain Singh's father, in his young adulthood, sought to join the Indian Navy, although he was kept out by anti-Sikh sentiment that was prevalent at that time.

81. Familiar with this religious and family history, Captain Singh long desired to serve in the military.

82. Upon immigrating, Captain Singh developed a deep gratitude to the United States for granting his father political asylum and providing his family opportunities they would not have enjoyed in Punjab. Joining the Army seemed like the natural way to repay his country.

83. Captain Singh always assumed he would enter the Army as an enlisted soldier until a friend on the student council who was one year ahead of him in high school applied to the military academies. Learning for the first time about this opportunity, Captain Singh set his mind on attending West Point.

84. He ultimately received endorsements from Congressman David Reichert and Senator Maria Cantwell.

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<sup>10</sup> 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>.

85. Well into the application process, it still had never occurred to Captain Singh that the Army would have a problem with his unshorn hair, beard, and turban. At a recruiting event at the Seattle Convention Center, an officer from West Point casually mentioned the beard, joking that Captain Singh must be trying to grow it all the way out before he had to shave it. Captain Singh explained that he wore his beard for religious reasons. The officer indicated that he would look into whether an accommodation would be possible. When he later called and conveyed that an accommodation was not possible, Captain Singh realized for the first time that he faced a real dilemma.

86. Still not comprehending that he would be barred from serving his country because of his articles of faith, Captain Singh pressed forward with his application. Considering all the countries where faithful Sikhs serve in militaries around the world with their articles of faith intact, Captain Singh believed that a way would open for him to both serve his country and remain true to his beliefs. Even on Reception Day, when entering West Point as a new cadet, Captain Singh continued to make inquiries about a religious accommodation. He separately approached two Majors, both of whom gave vague responses, saying they would inquire and get back to him.

87. As the induction process continued, however, and before Captain Singh fully understood what was happening, he found himself in the barbershop with the other cadets to be trimmed and shaved.

88. Forced into the untenable position of having to violate his Sikh religious requirements or lose the opportunity to attend West Point and serve his country, and believing he had no other option, Captain Singh succumbed under pressure and made the difficult decision to remove his turban, cut his hair, and shave his beard.

89. Despite the intense physical rigor of his first weeks at West Point, most excruciating for Captain Singh was looking at himself in the mirror each morning to shave. He constantly regretted not having pursued his religious rights more aggressively.

90. While the demands of West Point forced him to focus on his training, he always knew he was violating his conscience and lying about who he really was. Experiencing significant shame and disappointment in himself, he committed to return to his articles of faith whenever the opportunity first arose.

#### Military Service

91. Notwithstanding the weight of his decision to compromise his Sikh religious practices, Captain Singh went on to serve his country with a deep commitment to service and excellence.

92. He graduated from West Point in 2010, receiving his Bachelor of Science degree in electrical engineering with Honors. Exhibit 2 (Academic Record, United States Military Academy at West Point).

93. After graduation, Captain Singh attended the Officer's Basic Course at Fort Leonard Wood, Missouri. He was assigned to Military Occupational Specialty 12A for engineering and was posted to Fort Lewis, Washington, as Assistant Brigade Engineer on the Brigade Combat Team.

94. During this time, Captain Singh received high praise from his commanders. Exhibit 3 (Evaluation Report for Period of Feb. 15, 2011 through Jan. 3, 2012). In particular, Captain Singh was noted to be "the best lieutenant in the Brigade S3 section and one of the top 3 on the Brigade Staff." *Id.* at 2. While posted at Fort Lewis, Captain Singh "seized the opportunity to attend and graduate Ranger School," with his commander noting that "[h]e will be an extraordinary platoon leader" who should be promoted ahead of his peers. *Id.* At Ranger School, Captain Singh declined

to request a special vegetarian diet to accommodate his religious beliefs because he wanted to survive on the same rations as everyone else. Instead, he gave away the meat in his rations to other soldiers. Though he lost thirty pounds, he never compromised his religious beliefs.

95. Upon successfully completing Ranger School, Captain Singh was assigned as platoon leader for a 24-soldier Route Clearance Platoon within the Stryker Brigade Combat Team. Exhibit 4 (Officer Evaluation Report for Period of Jan. 4, 2012 through Jan. 3, 2013). In that capacity, Captain Singh was forward-deployed to Operation Enduring Freedom in Kandahar Province from April 2012 to January 2013.

96. During his deployment, Captain Singh continued to receive the highest evaluations from his commanders:

1 LT Singh is the strongest engineer platoon leader in the battalion. Simmer deployed his Sapper platoon in a route clearance mission during OPERATION ENDURING FREEDOM in support of multiple battlespaces in Regional Command South clearing over 10,000 miles of road. He is an aggressive and meticulous leader who maintained high standards to impressive effect in combat. 1 LT Singh is a solid, unflappable performer who can be counted on in tough positions and arduous missions.

*Id.*

97. In a subsequent Officer Evaluation Report, Captain Singh was “ranked number one of out of seven Officers” by his Company Commander, who also noted that as a “top performer, Simratpal makes any team he is on better. I would fight to serve with Simratpal again.” Exhibit 5 (Officer Evaluation Report for Period of Jan. 4, 2013 through Sept. 15, 2013), at 2. His LTC went on to note that CPT Singh’s performance “has been nothing short of superb through this rating period,” noting that his “ability to thrive in a dynamic and fluid situation make[s] him a vital asset to any team.” *Id.*

98. Upon returning from his deployment, and as a result of his “exceptional and meritorious service,” Captain Singh was awarded a Bronze Star Medal (“BSM”). Exhibit 6 (Bronze Star Medal Awarded to then-1LT Simratpal Singh). Specifically, Captain Singh was nominated for the Bronze Star for his leadership as patrol leader on “over 170 route clearance patrols throughout Kandahar Province in support of Combined Task Force Lancer,” “defense of FOB Frontenac during a coordinated and sustained enemy attack,” including leading his platoon to “suppress[] and eventually counterattack[] the heavily armed insurgents.” *Id.* at 3.

99. Captain Singh also received an Army Achievement Medal in November 2013 for his performance during a joint training exercise with the South Korean Army. Exhibit 7 (The Army Achievement Medal Awarded to then-1LT Simratpal Singh (Nov. 5, 2013)).

100. Captain Singh’s exceptional performance continued following his return stateside, where he served as a Brigade Assistant S-4 for a rapidly deployable 4,100 Soldier Stryker Brigade Combat Team. In this role, he was recognized as “easily the best of four captains” that “has proven himself an invaluable asset to the team.” Exhibit 8 (Officer Evaluation Report for Period of Sept. 15, 2013, through Sept. 14, 2014), at 1. Captain Singh is viewed as “a top 10% officer” who is a “fit, talented leader with unlimited potential and a bright future.” *Id.* at 2.

101. During this time, Captain Singh received an Army Commendation Medal for his service. Exhibit 9 (Army Commendation Medal (Nov. 17, 2014)).

102. In January 2015, Captain Singh attended and completed the Engineer Captain’s Career Course at Fort Leonard Wood while simultaneously volunteering to obtain a Master’s Degree in engineering. Exhibit 10 (Certificate of Achievement, U.S. Army Engineer School, FT Leonard Wood, MO (June 26, 2015)).

103. During this time period, he was noted to be a “highly skilled officer” who “displayed great leadership.” Exhibit 11 (CPT Simratpal Singh Service School Academic Evaluation Report for Period of Jan. 14, 2015, through June 26, 2015 (June 24, 2015)). It was also noted that “his presence and intellect greatly influenced his peers” and that he is “ready to command a company and will excel in any position of responsibility.” *Id.*

104. Last spring, Captain Singh attended the Pentagon’s Second Annual Vaisakhi Celebration Event. (Lisa Ferdinando, *Pentagon celebrates Sikh new year, Vaisakhi*, Army News Service, May 4, 2015, available at [http://www.army.mil/article/147837/Pentagon\\_celebrates\\_Sikh\\_new\\_year\\_Vaisakhi/](http://www.army.mil/article/147837/Pentagon_celebrates_Sikh_new_year_Vaisakhi/) (last visited Nov. 24, 2015)). This event, which celebrated one of the most significant holidays for Sikhs, included Sikh soldiers from various branches of the U.S. military. *Id.* The Pentagon’s deputy chaplain, Lieutenant Colonel Claude Brittian, noted the need to “stand up for the rights of others to celebrate in regards to their faith” and stated that Sikh soldiers in the U.S. military “who practice their faith should have the opportunity to share their faith.” *Id.*

105. At the event, Captain Singh met several Sikh soldiers who maintain their uncut hair and beards and wear turbans. Further convicted by seeing his fellow U.S. Army soldiers fully practicing their Sikh faith, and for the first time seeing a viable path to obtaining an accommodation, Captain Singh began taking steps towards requesting an exception through his chain-of-command.

106. In mid-October, Captain Singh completed his Master’s program and commenced on one-month’s leave with orders to report to the 249th Engineer Battalion Prime Power at Fort Belvoir, Virginia, on November 16.

107. Realizing that he needed to return to being fully observant of his Sikh articles of faith, and after religious consideration and consultation, Captain Singh concluded that this was the right time.

108. On October 16, 2015, Captain Singh informed his new immediate commander, Lieutenant Colonel Julie Balten, that he intended to report on November 16 wearing a turban and maintain unshorn hair and a beard. She expressed her view that this would have no adverse impact on Captain Singh's ability to fulfill his responsibilities and promised to recommend that he be granted an accommodation.

109. The following day, Captain Singh submitted a letter to then-Secretary of the Army, John McHugh, and to then-Acting General Counsel for the Army, Robert Park, seeking assurance that he would not face disciplinary action as a result of his decision to maintain the Sikh articles of faith.

Effort to Obtain an Accommodation

110. With the understanding that an accommodation was viewed favorably and was being expedited, Captain Singh twice used personal leave to extend his report date, first to November 30 and then to December 14, to give the Army adequate opportunity to respond to his request.

111. On December 8, Defendants issued a thirty-day accommodation allowing Captain Singh to return to work while the permanent accommodation was presumably being finalized.

112. Then, on January 8, Defendants extended the temporary accommodation until March 31.

113. Wishing to proceed in good faith and to avoid legal conflict, and having received no indication that the accommodation would not be made permanent, Captain Singh again agreed to the extension without pursuing a legal remedy.

114. Defendants were well aware that Captain Singh could not wait until the deadline for a final answer on his request for accommodation. Once the temporary accommodation expired, Captain Singh's unshorn hair, turban, and beard would be in violation of the Uniform Code of Military Justice, exposing him to career-ending penalties for living his faith. Through his counsel, Captain Singh thus repeatedly made clear that he would need at least three weeks to seek injunctive relief should the accommodation be denied.

115. Then on February 24, just over a month before his temporary accommodation expired, Defendants abruptly escalated matters by sending Captain Singh a letter stating he would have to undergo rigorous safety testing because of his religion. Exhibit 16.

116. With respect to his helmet, Captain Singh was told he would have to be "evaluated" by a "technical expert" to determine whether he could safely "wear a patka" (a religious head covering worn beneath the turban), or whether he must "modify the length" or "bulk" of his hair, which are acts forbidden by his religion. *Id.*

117. With respect to his safety mask, Captain Singh was told he would have to undergo a series of tests, over multiple days, until he could "achieve a protection factor (PF) greater than 6667 in three of five successive tests." *Id.*

118. Captain Singh was initially provided contact information for scheduling the evaluations on his own. *Id.*

119. But on the afternoon of Friday, February 26, he was ordered to report to his normal post for helmet testing the morning of Tuesday, March 1.

120. Later that evening, around 8:00 PM, he received supplemental orders to report to the Aberdeen Proving Ground in Maryland after his helmet testing for the safety mask evaluations.

121. For no comprehensible reason, Captain Singh initially was going to be required to report and remain at the Proving Ground under escort.

122. Only after his immediate Commander provided assurances of his complete trustworthiness was he cleared to report on his own.

123. No other soldier in even remotely comparable circumstances has been treated in such a discriminatory fashion.

124. No soldiers undergo evaluation for helmet fit. Kalsi Decl. [Dkt. 2-2] ¶¶ 15-16; Lamba Decl. [Dkt. 2-3] ¶¶ 21-23.

125. Rather, soldiers are left to freely try on different helmets and make their own assessment of fit. Kalsi Decl. ¶¶ 15-16; Lamba Decl. ¶¶ 21-23.

126. Soldiers frequently adjust, remove, or add padding to their helmets on their own, again with no external evaluation, to ensure a personally satisfying fit. Kalsi Decl. ¶ 15; Lamba Decl. ¶ 22.

127. Captain Singh and others who have served in the Army for years have never even heard of getting an “expert” evaluation of helmet fit. Khalsa Decl. [Dkt. 2-4] ¶¶ 24-25; Lamba Decl. ¶¶ 22-24.

128. Even other Sikhs who have recently served in the Army with unshorn hair were never required to undergo evaluations to determine if they could safely wear their helmets. Kalsi Decl. ¶¶ 13-16; Lamba Decl. ¶¶ 21-23 Khalsa Decl. ¶¶ 24-25.

129. Similarly, with respect to safety masks, there are no hard-and-fast rules regarding how masks must “fit” for a soldier to be in the Army. The Army’s training guidance speaks only in

terms of “protective mask confidence,” providing that commanders are required to conduct “a mask confidence exercise annually and prior to deployment.” AR 350-1, § G-27(i).

130. In reality, soldiers may go long periods of time without being subjected to mask-fit evaluations. Before the Wada memo, in his nearly ten years in the Army, Captain Singh had only undergone one mask exercise.

131. That exercise comprised sealing his mask, entering a gas chamber, removing the mask for one minute, and then replacing it.

132. On February 29, 2016, Captain Singh again successfully completed such a test along with his unit.

133. He donned a standard-issue gas mask and made a seal before entering a gas chamber with his unit. After the gas was released, they ran in place and did neck rotations to make sure the seal was maintained. He then used two fingers to break the seal on his mask before replacing it and re-creating a seal. He completed the test without incident. Singh Decl. [Dkt. 16-2] ¶¶ 13-17.

134. This is consistent with the experience of other soldiers. Lamba Decl. ¶¶ 11-12, 20-23; Kalsi Decl. ¶¶ 11-14; Khalsa Decl. ¶¶ 24-27.

135. None of the Sikh soldiers with fully grown beards have had any difficulty passing the standard safety mask exercises. Lamba Decl. ¶¶ 11-12, 20-23 (stating that he would go early into the gas chamber and stay longer in it to prove the effectiveness of his protective mask seal); Kalsi Decl. ¶¶ 11-14 (stating that he and other Sikh soldiers successfully passed standard protective mask testing); Khalsa Decl. ¶¶ 24-27 (stating that the Navy permitted sailors cruising at sea to wear beards as long as they were more than one inch, because such beards could maintain an oxygen-mask seal); *see also* Goldstein Decl. [Dkt. 37-6] ¶¶ 11-20, 24 (bearded Orthodox Jewish rabbi who

served 38 years as a chaplain in the U.S. Army, successfully passed standard gas mask testing, and served in several deployed environments, including Granada, Iraq, Kuwait, Afghanistan, and Israel); Exhibit 17 (Dresin Decl. ¶¶ 8-11 (currently serving bearded Orthodox Jewish rabbi in U.S. Army; two deployments in Afghanistan)).

136. None were ever subjected to extensive testing because of their religion. Lamba Decl. ¶¶ 21-23; Kalsi Decl. ¶¶ 11-14; Khalsa Decl. ¶¶ 24-26; *see also* Goldstein Decl. [Dkt. 37-6], Ex. 1 (granting Rabbi Goldstein’s accommodation, which “remain[ed] in effect as long as Rabbi Goldstein remains a member of his current religious community”).

137. Similarly, soldiers who maintain beards for other reasons, such as medical issues or deployment, are not subject to any special testing and are not restricted in their duties because of their beards. *See, e.g.*, Kalsi Decl. ¶¶ 11-14 (stating that the Special Forces soldiers at his Forward Operating Base in Afghanistan grew out their hair and beards but were not subject to non-standard protective mask testing).

138. Indeed, the Technical Bulletin for medical exceptions specifically provides that a soldier with a medical beard cannot be required to shave, unless his “unit is in, or about to enter, a situation where use of a protective mask is required and where inability to safely use the mask could endanger the Soldier and the unit.” Technical Bulletin Med. 287 § 2-6c(2), [http://armypubs.army.mil/med/DR\\_pubs/dr\\_a/pdf/tbmed287.pdf](http://armypubs.army.mil/med/DR_pubs/dr_a/pdf/tbmed287.pdf) (emphasis added).

139. The Bulletin emphasizes that the authority to force a shave cannot be used “for maneuvers and other tactical simulations. It should only be used when there is an *actual need* to wear the protective mask *in a real tactical operation*.” *Id.* § 2-6b(2).

The Army's regulations

140. The Army's 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) ([http://www.apd.army.mil/pdf/r600\\_20.pdf](http://www.apd.army.mil/pdf/r600_20.pdf)).

141. Captain Singh's turban would comply with all these requirements except that a matching turban would replace his standard issue headgear. Captain Singh will wear his unshorn hair neatly wrapped into his turban, well above the edge of his collar.

142. Allowing Captain Singh to wear his turban is consistent with Congressional intent as reflected in 10 U.S.C. § 774, which provides that "a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force" unless "the wearing of an item of religious apparel . . . would interfere with the performance of the member's military duties; or . . . the item of apparel is not neat and conservative."

143. In enacting this provision, Congress specifically contemplated protecting the right of Sikh service members to wear turbans. *See, e.g.*, 133 Cong. Rec. 11851 (1987) (Statement of Rep. Schroeder); 133 Cong. Rec. 25250 (1987) (Statement of Sen. Lautenberg).

144. 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), *available at* [http://www.apd.army.mil/pdf/r670\\_1.pdf](http://www.apd.army.mil/pdf/r670_1.pdf).

145. Although Captain Singh's sideburns, mustache, and beard cannot be trimmed, they would be kept neat and tidy, with his beard tied and tucked close to his face:

- a. In non-field garrison settings, Captain Singh will wear a turban made of ACU camouflage material to match his uniform.
- b. In field settings, Captain Singh will wear a field turban made of ACU camouflage material to match his uniform.
- c. Captain Singh will wear his Kevlar helmet using the field turban or an ACU-pattern “patka” (small turban).
- d. In settings where his Class A uniform is appropriate, Captain Singh will wear a black turban to match black standard-issue berets worn with Class A uniforms.

146. Department of Defense and Army regulations 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), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>.

147. 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, and health and safety.” Dep’t of Def. Instruction 1300.17(4)(e).

148. The actual process for obtaining an accommodation, however, is onerous.

149. In the Army, only a Deputy Chief of Staff at the G-1 level can grant a religious accommodation. Dep’t of Def. Instruction 1300.17(4)(f)(2)(a); AR 600-21, § 5-6i(1). The request, however, must first be submitted to the soldier’s immediate commander, who has no authority to grant or deny uniform and grooming requests, but has “ten working days” to make a recommendation to the G-1. Army Reg. 600-20, § 5-6i(2).

150. 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. § 5-6i(5)-(7). Each officer up the chain can again make recommendations, but has no authority to grant or deny the request. § 5-6i(1). Once the first appeal of the chain is submitted, the regulations allow thirty days for request to make its way up to the G-1. § 5-6i(11). The G-1 then has another thirty days to make a final decision. § 5-6i(10).

151. Thus, depending on how long it takes to obtain the endorsements of unit chaplain and legal officer, it can easily take ninety days or more for the accommodation to be approved.

152. The governing regulations also provide that “new requests for the same accommodation are necessary upon new assignment, transfer of duty stations, or other significant changes in circumstances, including deployment.” DoDI 1300.17(4)(j).

153. During the time an accommodation is pending, the person requesting it is required to comply with the uniform and grooming regulations, even if doing so violates their religious beliefs. Dep’t of Def. Instruction 1300.17(4)(g) (“Service members . . . will comply with the policy, practice, or duty from which they are requesting accommodation . . . unless and until the request is approved.”); Army Reg. 600-20, § 5-6i(1) (same).

154. Army policy and Congressional guidance, however, are trending toward eliminating the requirement that soldiers be forced to violate their faith while accommodation requests are pending. Exhibit 15 (USAREC Message 15-032) (policy allowing incoming soldiers and officers to maintain their articles of faith while awaiting accommodation determinations).

155. 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 § 2-6b(2) ([http://armypubs.army.mil/med/DR\\_pubs/dr\\_a/pdf/tbmed287.pdf](http://armypubs.army.mil/med/DR_pubs/dr_a/pdf/tbmed287.pdf)).

156. The Technical Bulletin for medical exceptions acknowledges that “[t]he existence of a beard does not prevent performance of most military duties.” *Id.* § 2-6c(1).

157. Therefore, the Technical Bulletin continues, “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.*

158. A soldier with a medical beard exception cannot be required to shave, unless his “unit is in, or about to enter, a situation where use of a protective mask is required and where inability to safely use the mask could endanger the Soldier and the unit.” *Id.* § 2-6c(2). This authority cannot be used “for maneuvers and other tactical simulations. It should only be used when there is an actual need to wear the protective mask in a real tactical operation.” *Id.*

159. Since 2007, the Army has authorized “at least 49,690 permanent shaving profiles and 57,616 temporary shaving profiles.” *Singh v. McHugh*, 109 F. Supp. 3d 72, 78 (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.*

160. 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.” *Singh*, 109 F. Supp. 3d at 96.

161. 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.

162. This flexible treatment is evident from the experience of many Special Forces soldiers who served in Afghanistan while growing and wearing full beards.

#### Other Sikhs in the Army

163. Captain Singh is not the first observant Sikh to serve in the military.

164. Indeed, Sikhs proudly served in the U.S. Army without impediment during the Vietnam War and prior conflicts dating back to World War I.

165. Around 1981, however, military policy was changed to prohibit exemptions to the uniform requirements for visible articles of faith. While some exceptions subsequently were made for the Jewish yarmulke, the general rule was that turban-wearing Sikhs maintaining unshorn hair and beards were disallowed from serving. *See* Dep’t of Def. Instruction of Feb, 3, 1988, 1330.17; Army Reg. 600-20 §§ 5-6 (4)(g) (2009) (“The Army does not accommodate exceptions to personal grooming standards for religious reasons . . .”).

166. On information and belief, many Sikhs who were already in the Army were grandfathered under the 1981 policy change and allowed to continue their service.

167. One of these soldiers, Colonel Gopal S. Khalsa, served in the Special Forces Unit for ten years on Parachute Status and as a Battalion Commander overseeing an 800-person intelligence group. Khalsa Decl. ¶¶ 12-13, 17. He received a Meritorious Service Medal and Silver Oak Leaf Cluster Award, among many other honors, and in 2004, was inducted into the Officer Candidate School Hall of Fame. Khalsa Decl. ¶¶ 8, 21.

168. Another Sikh soldier, Sergeant Sevak Singh Kroesen, was attached to the Signal Company, 11th Special Forces Group, after which he successfully completed airborne (paratrooper) and Radio Teletype Transmission Operator training. He then completed his Special Forces Qualification Courses and became a Special Forces Communications Sergeant. Sergeant Kroesen subsequently completed his schooling, training, and missions around the world, all with honor and distinction. He was honorably discharged from active duty in 1991.

169. Sergeant Kirnbir Singh Grewal served in the U.S. Army from 1977 to 1984. Throughout his time in the military, he used the same standard-issue gas mask and helmet as other members of the Army. Indeed, his responsibilities included teaching other soldiers to use protective gear to survive nuclear and biological warfare.

170. These and other Sikh soldiers served with distinction, all while maintaining their Sikh articles of faith.

171. In 2009 and 2010, three other Sikhs were granted religious accommodations, allowing them to serve in the Army with their articles of faith intact.

172. The first, Major Kamaljeet S. Kalsi received an accommodation in October 2009 and began active duty in June 2010. Kalsi Decl. ¶¶ 5-6. 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. His superiors have noted that he has “consistently demonstrated a strong commitment to improving Army Medicine,” “exceeded all expectations,” and “possesses absolutely unlimited potential as a leader.” Exhibit 14 at 2 (Major Kalsi Officer Evaluation Report from 2011). He is currently in the U.S. Army Reserve Officer Corps.

173. Major Tejdeep S. Rattan, a dentist, received an accommodation in December 2009 and entered active duty in January 2010. Rattan Decl. [Dkt. 37-1] ¶¶ 8-9. In 2011, he was deployed to Afghanistan where he volunteered to serve in a remote forward operating base. His superiors have noted that he “wears the uniform with pride”; has “[m]ilitary bearing” that is “beyond reproach”; is a “charismatic officer who leads from the front” and “serves as a great mentor for less experienced officers”; and “[i]nspires, motivates, and encourages subordinates.” Exhibit 13 (Major Rattan Officer Evaluation Report from 2014).

174. Corporal Simran Preet S. Lamba, received an accommodation in August 2010 and began active duty in September 2010. Lamba Decl. ¶¶ 8, 3. Fluent in Punjabi and Hindi, he was recruited through the MAVNI program for his cultural and language skills. He served in a medical battalion as a Soldier Medic and was recognized as a “tremendous Soldier” who “had an amazing impact on his peers and supervisors.” In June 2014, he received an Army Commendation Medal for his selfless service and dedication to duty. He is currently in the Individual Ready Reserve. Exhibit 12; *see also* Lamba Decl.

175. The Sikh articles of faith of these three recently accommodated U.S. Army soldiers in no way impeded their military service—even while deployed abroad in hostile territory.

176. The government thus has no interest in excluding Sikhs from the U.S. military, much less a compelling one.

177. Nevertheless, after Corporal Lamba’s accommodation was granted in August 2010, Defendants rejected efforts by multiple other Sikhs to enlist in the military because of their articles of faith.

178. Similarly, Sikh service members who had been granted accommodations were subjected to discriminatory treatment because of their articles of faith.

179. For example, 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 him to reapply for the religious accommodation that he had already received in 2009. *Id.* ¶ 18. And even though relocations require lengthy preparations—finding and purchasing a new home, arranging household moving, arranging travel, and so forth—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.

180. Even after Defendants revised their regulations in January 2014 to make religious accommodations more accessible, Sikh enlistees continued to be subjected to onerous conditions for obtaining an accommodation for their turbans and beards.

181. For example, one service member’s request for accommodation was delayed for nearly 240 days and another’s for nearly 180 days before both were granted on April 8, 2016, after they filed suit against the Army.

182. Defendants’ existing regulations, Captain Singh’s accommodation, and the Army’s policies and practices with respect to religious accommodations for Sikhs impose a substantial burden on Captain Singh’s religious exercise.

**CLAIMS**

**COUNT I**

**Violation of the Religious Freedom Restoration Act  
Substantial Burden**

183. Captain Singh incorporates by reference all preceding paragraphs.

184. Captain Singh's sincerely-held religious beliefs prohibit him from removing his turban, cutting his hair, or shaving his beard. Captain Singh's compliance with these beliefs is a religious exercise.

185. The Army's grooming and personal appearance regulations expose Captain Singh to serious consequences of military discipline and the loss of his career for his religious exercise.

186. The Army's accommodation regulations create government-imposed coercive pressure on Captain Singh to change or violate his religious beliefs by

(a) requiring him to re-apply for the same accommodation every time he has a "new assignment, transfer of duty stations, or other significant change in circumstances, including deployment";

(b) providing no reasonable limit on the time for resolving requests for accommodation; and

(c) requiring him to comply with grooming and personal appearance regulations that violate his religious beliefs while any of his requests for accommodation are pending.

187. These regulations chill Captain Singh's religious exercise.

188. The Army's regulations impose a substantial burden on Captain Singh's religious exercise.

189. The Army's regulations do not further a compelling governmental interest as applied to Captain Singh.

190. Applying the Army's grooming and personal appearance regulations to Captain Singh is not the least restrictive means of furthering any compelling governmental interest.

191. The Army's accommodation regulations in DoDI 1300.17 are not the least restrictive means of furthering any compelling governmental interest.

192. The temporary accommodation granted Captain Singh on March 31, 2016 is not the least restrictive means of furthering any compelling governmental interest.

193. The Army's enforcement of its grooming and personal appearance regulations thus violate rights secured to Captain Singh by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.*

194. The Army's extension of Captain Singh's temporary accommodation does not negate the need for injunctive and declaratory relief, absent which Captain Singh has been and will continue to be harmed.

## **COUNT II**

### **Violation of the First Amendment to the United States Constitution Free Exercise Clause Burden on Religious Exercise**

195. Captain Singh incorporates by reference all preceding paragraphs.

196. Captain Singh's sincerely held religious beliefs prohibit him from removing his turban, cutting his hair, or shaving his beard. Captain Singh's compliance with these religious beliefs is a religious exercise.

197. The Army's grooming and personal appearance regulations are not neutral.

198. The Army's grooming and personal appearance regulations are not generally applicable.

199. Defendants have created categorical exemptions and individualized exemptions from its grooming and personal appearance regulations.

200. The Army's regulations create government-imposed coercive pressure on Captain Singh to change or violate his religious beliefs.

201. The Army's regulations chill Captain Singh's religious exercise.

202. The Army's regulations expose Captain Singh to substantial consequences for his religious exercise, including military discipline and the loss of his career.

203. The Army's regulations burden Captain Singh's religious exercise.

204. The Army's regulations further no compelling governmental interest.

205. The Army's regulations do not further a compelling governmental interest and are not the least restrictive means of furthering Defendants' stated interests.

206. The Army's accommodation regulations in DoDI 1300.17 are not the least restrictive means of furthering any compelling governmental interest.

207. The temporary accommodation granted Captain Singh on March 31, 2016, is not the least restrictive means of furthering any compelling governmental interest.

208. The Army's enforcement of its grooming and personal appearance regulations thus violate Captain Singh's rights as secured to him by the Free Exercise Clause of the First Amendment of the United States Constitution.

209. Absent injunctive and declaratory relief against the Army's regulations, Captain Singh has been and will continue to be harmed.

### **COUNT III**

#### **Violation of the First Amendment to the United States Constitution Free Exercise Clause**

### **Intentional Discrimination**

210. Captain Singh incorporates by reference all preceding paragraphs.

211. Captain Singh's sincerely held religious beliefs prohibit him from removing his turban, cutting his hair, or shaving his beard. Captain Singh's compliance with these religious beliefs is a religious exercise.

212. Historically, the Army has allowed Sikhs to serve in the military with their articles of faith intact.

213. In the past six years the Army has admitted at least three other observant Sikhs, allowing them to serve in the military without violating their religious convictions.

214. Defendants subjected Captain Singh to rigorous testing that it has not subjected to any other soldiers, including other observant Sikhs instead of granting him an accommodation.

215. Defendants' written order granting Captain Singh an accommodation imposes conditions that are not imposed on other service members exercising protected civil rights while serving their country.

216. Defendants have no legitimate basis for denying Captain Singh a complete religious accommodation.

217. Defendants denied Captain Singh a complete accommodation because of his religion.

218. Defendants targeted Captain Singh for heightened scrutiny because he requested an accommodation for his religious beliefs.

219. The Army's regulations and the threatened enforcement of the regulations against Captain Singh thus violate his rights under the Free Exercise Clause of the First Amendment of the United States Constitution.

220. Absent injunctive and declaratory relief against the Mandate, Captain Singh has been and will continue to be harmed.

**COUNT IV**

**Violation of the First Amendment to the United States Constitution  
Freedom of Speech**

221. Captain Singh incorporates by reference all preceding paragraphs.

222. The Army's regulations prohibit Captain Singh from expressing his faith through wearing his turban, wearing uncut hair, and maintaining a beard.

223. The Army's regulations place a chilling effect on Captain Singh's speech.

224. The Army's regulations constitute content discrimination.

225. The Army's regulations constitute viewpoint discrimination.

226. As applied to Captain Singh, the Army's grooming and personal appearance regulations are not necessary for good order, discipline or national security and do not satisfy strict scrutiny.

227. The Army's enforcement of its grooming and personal appearance regulations against Captain Singh thus his rights under the Free Speech Clause of the First Amendment of the United States Constitution.

228. Absent injunctive and declaratory relief against the Army's regulations, Captain Singh has been and will continue to be harmed.

**COUNT V**

**Violation of the Fifth Amendment to the United States Constitution  
Due Process**

229. Captain Singh incorporates by reference all preceding paragraphs.

230. Free exercise of religion is a fundamental right.

231. Captain Singh's sincerely held religious beliefs prohibit him from removing his turban, cutting his hair, or shaving his beard. Captain Singh's compliance with these religious beliefs is a religious exercise.

232. Captain Singh's fundamental right to engage in religious exercise has been burdened by the Army's regulations and its denial of a religious accommodation.

233. The Army's enforcement of its grooming and personal appearance regulations against Captain Singh thus violate his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

234. Absent injunctive and declaratory relief against the Army's regulations, Captain Singh has been and will continue to be harmed.

## **COUNT VI**

### **Violation of the Fifth Amendment to the United States Constitution Equal Protection**

235. Captain Singh incorporates by reference all preceding paragraphs.

236. Other military service members similarly situated to Captain Singh have been granted accommodations for their religious exercise.

237. The Army accommodates other types of personal expression of other service members.

238. The Army accommodates the grooming and attire preferences or needs of other service members.

239. The Army's enforcement of its grooming and personal appearance regulations against Captain Singh thus violate his rights under the Equal Protection Clause of the Fifth Amendment to the United States Constitution.

240. Absent injunctive and declaratory relief against the Army's regulations, Captain Singh has been and will continue to be harmed.

### **COUNT VII**

#### **Violation of the Fifth Amendment to the United States Constitution Procedural Due Process**

241. Captain Singh incorporates by reference all preceding paragraphs.

242. Captain Singh's sincerely held religious beliefs prohibit him from removing his turban or cutting his hair or shaving his beard. Captain Singh's compliance with these religious beliefs is a religious exercise.

243. Enforcement of the Army's regulations against Captain Singh would result in the loss of his livelihood as a soldier and violate his procedural due process rights by wrongfully impairing his property and liberty interests.

244. Absent injunctive and declaratory relief against the Army's regulations, Captain Singh has been and will continue to be harmed.

### **PRAYER FOR RELIEF**

Wherefore, Captain Singh requests that the Court:

- a. Declare that the Religious Freedom Restoration Act requires the Army to accommodate Captain Singh's religious exercise in maintaining uncut hair and a beard and wearing a turban;
- b. Declare that the First Amendment of the United States Constitution requires the Army to accommodate Captain Singh's religious exercise in maintaining uncut hair and a beard and wearing a turban.

- c. Declare that the Fifth Amendment of the United States Constitution requires Defendants to accommodate Captain Singh's religious exercise in maintaining uncut hair and a beard and wearing a turban.
- d. Issue a permanent injunction (1) enjoining Defendants from enforcing the Army's grooming and personal appearance regulations against Captain Singh insofar as they require him to cut his hair, shave his beard, or cease wearing his turban; (2) ordering Defendants to permit Captain Singh to continuing serving in the Army without regard to his unshorn hair and beard and a turban; (3) ordering that the injunction will apply to all Army positions that Captain Singh will hold in the future, unless the Army makes an individualized showing with respect to a specific position that Captain Singh's articles of faith would impede military readiness or mission accomplishment; and (4) ordering that—should the Army make such a showing—Captain Singh may not be subjected to the Uniform Code of Military Justice or other disciplinary proceedings for maintaining his articles of faith without first being offered an alternative position or an honorable discharge from the Army.
- e. Nominal damages.
- f. Award Captain Singh the costs of this action and reasonable attorney fees; and
- g. Award such other and further relief as it deems equitable and just.

**JURY DEMAND**

Captain Singh requests a trial by jury on all issues so triable.

Respectfully submitted this 23d day of May, 2016.

s/ Eric S. Baxter

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

SIMRATPAL SINGH,

Plaintiff,

v.

ASHTON B. CARTER, *et al.*,

Defendants.

Civil Action No. 1:16-cv-00399-BAH

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**DECLARATION OF JACOB Z. GOLDSTEIN**

I, Jacob Z. Goldstein, pursuant to 28 U.S.C. § 1746, state and declare:

1. I am over twenty-one years of age and, if called to testify at a hearing in this matter, can and will competently testify to the following facts of which I have personal knowledge.
2. I currently serve as an Assistant Commissioner of Housing for the State of New York.
3. I am an Orthodox Jew. I was born in Paris, France, in a Displaced Persons Camp after World War II. My family immigrated to the United States shortly after my birth. I obtained my Masters of Divinity from Lubavitch Rabbinical Seminary and was ordained a Rabbi.
4. I served 38 years as a chaplain in the U.S. Army National Guard and the U.S. Army Reserves. I joined the New York Army National Guard in March 1977 and retired from the U.S. Army Reserve at the rank of Colonel in April 2015. To my knowledge, I am currently the longest-serving Jewish chaplain in U.S. military history.

5. My faith requires me not to shave my beard. When I joined the Army National Guard in 1977, I applied for a religious accommodation that would allow me to maintain my beard. In January of 1978, the U.S. Army Chief of Staff, General Bernard W. Rogers, granted my request.

6. A true and correct copy of the Army's letter granting my request is attached as Exhibit 1.

7. The only condition placed on the accommodation was that I must "remain[] a member of [my] current religious community."

8. I was never required to shave my beard in 38 years of service.

9. Three pictures accurately depicting me in uniform with my beard are attached as Exhibit 2.

10. Military chaplains are official faith group representatives who serve as officers of the U.S. military to provide for the free exercise of religion for all military personnel and their family members. To protect service members' free exercise rights as much as possible, chaplains go where service members go, including to deployed combat environments.

11. I was repeatedly called up to active duty and deployed during my military service.

12. In November 1983, I deployed to Granada for Operation Urgent Fury, serving with the 18th Airborne Corps.

13. In December 1990, I was deployed for Operation Desert Storm and served in Israel as the Task Force Chaplain for Joint Task Force Patriot Defender.

14. In July 1996, I was mobilized to serve as the Task Force Chaplain to support TWA Flight 800 recovery efforts.

15. On September 11, 2001, I was mobilized in response to the World Trade Center attack. I served at Ground Zero for five months as the Senior Chaplain for all components and branches of the military assigned to the World Trade Center mission.

16. In March 2002, I was deployed to Afghanistan for Operation Enduring Freedom. I provided religious support to Jewish personnel for Passover.

17. In September 2003, I was deployed to Iraq and Kuwait in support of Operation Iraqi Freedom.

18. In January 2005, I completed my assignment to the National Guard and was re-assigned to the Office of the Chief of Chaplains for the U.S. Army Reserve.

19. In September 2005, I was mobilized in the aftermath of Hurricane Katrina to serve as Joint Task Force Katrina (Forward) Staff Chaplain with the 1st United States Army in New Orleans, Louisiana.

20. In September 2007, I was deployed to Guantanamo Bay, Cuba, to provide religious support for Jewish military personnel on High Holy Days.

21. In October 2007, I was selected to serve as the Command Chaplain for the 1st Mission Support Command, Fort Buchanan, Puerto Rico, where I served until my retirement.

22. In September 2012, I was deployed again to Afghanistan in support of Operation Enduring Freedom, assigned to the International Security Assistance Force.

23. I have received numerous military awards, including the Legion of Merit Medal, which is awarded for exceptionally meritorious conduct in the performance of outstanding services and achievements. I have also received two Meritorious Service Medals; two Army Commendation Medals; two Army Achievement Medals; the Armed Forces Expeditionary

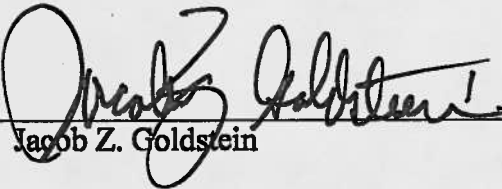
Medal, Granada; the Global War on Terrorism Expeditionary Medal; the Iraq Campaign Medal; the Afghanistan Campaign Medal with Star; the Israel Air Defense Combat Badge; and the Kuwait Liberation Medal.

24. In my 38 years of service, including numerous deployments and service in several forward operating environments, my beard never hindered my ability to perform my duties, nor was it ever a hazard to me or those who served with me. I passed the Army's standard gas-mask testing without difficulty.

25. I am aware of at least one other Orthodox Jewish rabbi, Rabbi Menachem Stern, who received a religious accommodation from the U.S. Army to wear his beard and serve as an Army chaplain. I am also aware that the U.S. Air Force recently accommodated Rabbi Elli Estrin to allow him to serve as an Air Force chaplain with his beard unshaven.

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

Executed this 11th day of April, 2016.



Jacob Z. Goldstein

# Exhibit 1

UNITED STATES ARMY  
THE CHIEF OF STAFF

31 January 1978

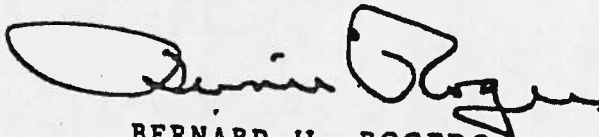
Dear Mr. Downey,

This is in response to your letter of 16 January 1978 in behalf of Rabbi Jacob Goldstein of the New York Army National Guard.

I am pleased to inform you that Rabbi Goldstein's request for exception to Army appearance policy has been approved. This exception will remain in effect as long as Rabbi Goldstein remains a member of his current religious community.

The Jewish Welfare Board, the official ecclesiastical endorsing agency for the Jewish religion, has provided us with clarification of this issue. The Board indicates that wearing of a beard is not generally a Jewish religious requirement, but that it is a common expression of piety. Notwithstanding the fact that there are other expressions of piety available to a Rabbi which would not conflict with Army appearance policy, we are granting the exception because of the specific circumstances present in Rabbi Goldstein's case.

Sincerely,



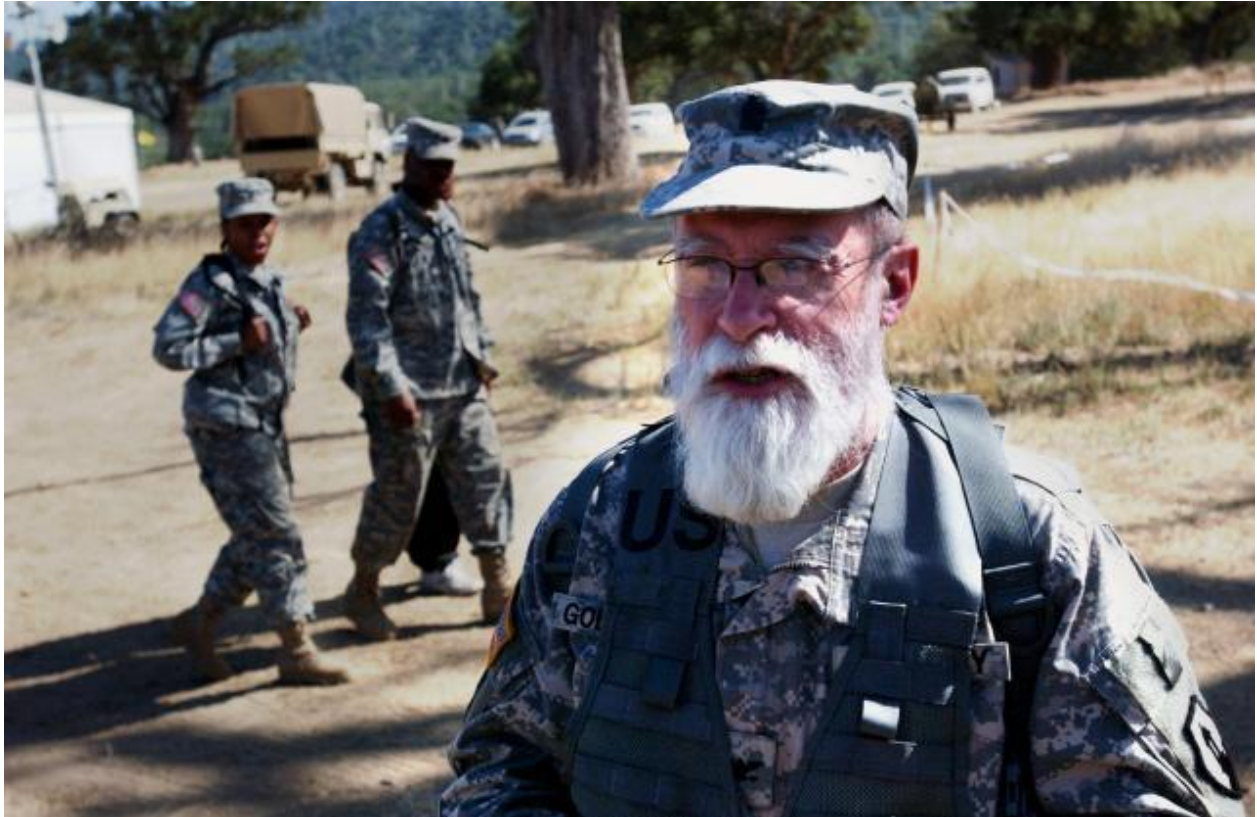
BERNARD W. ROGERS  
General, U.S. Army  
Chief of Staff

Honorable Thomas J. Downey  
House of Representatives  
Washington, D.C. 20515

## Exhibit 2



*Official Army photograph of Chaplain (COL) Jacob Z. Goldstein in his Army Service Uniform.*



*Chaplain (COL) Jacob Z. Goldstein in his Army Combat Uniform.*  
Photo Credit: Capt. Carlos Agosto, 361st Public Affairs, July 13, 2010,  
<http://www.army.mil/article/42219/rare-army-rabbi-serves-soldiers/>.



*Chaplain (COL) Jacob Z. Goldstein in his Army Combat Uniform.*  
Photo Credit: Spc. Joseph Bitet, 361st Public Affairs, July 13, 2010,  
<http://www.army.mil/media/137827>.

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

KANWAR BIR SINGH, *et al.*,

*Plaintiffs,*

v.

Civil Action No. 16-cv-581-BAH

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

*Defendants.*

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**DECLARATION OF TEJDEEP SINGH RATTAN IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

I, Tejdeep Singh Rattan, pursuant to 28 U.S.C. § 1746, state and declare:

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

2. I currently serve as a Major in the U.S. Army Reserve Officer Corps. I am also a dentist, and graduated from the New York University School of Dentistry.

3. I am a Sikh and am religiously mandated to wear a turban and maintain unshorn hair and an unshorn beard.

4. I attempted to enlist in the U.S. Armed Forces on three separate occasions and was denied because of my Sikh articles of faith. In 1998, I applied to join the U.S. Air Force Reserve Officers Training Corps (ROTC) and was denied because I am an observant Sikh.

5. While working towards my Master's Degree in Engineering at Wright State University, I tried to enlist with the U.S. Air Force and was denied for the same reason.

6. At the time, I believed the Army might be more accommodating because I had learned that observant Sikhs had previously served, including Colonel Gopal S. Khalsa. I applied for the Wright University Army ROTC program but was denied again because of my Sikh articles of faith.

7. I attempted to enlist with the U.S. Army again in 2005. I was accepted into the U.S. Army's Health Professional Scholarship Program in November 2005 while attending the New York University School of Dentistry. In April 2009, before graduation, the U.S. Army refused to let me attend the Officer Basic Leadership Program because of my Sikh articles of faith. I sought assistance from legal counsel at the Sikh Coalition and McDermott Will & Emery to obtain an Exception to Policy (ETP) / religious accommodation.

8. On December 1, 2009, I received a limited and revocable ETP / religious accommodation to serve with my Sikh articles of faith. This includes my turban, unshorn hair, and an unshorn beard. *See* Exhibit 1 (Letter from Major General Gina Farrissee, Acting Deputy Chief of Staff, G-1 & attachment (December 1, 2009)).

9. I entered active duty in the U.S. Army in January 2010.

10. On February 1, 2010, I reported to Fort Sam Houston, Texas to attend the Officer Basic Leadership Course.

11. At Fort Sam Houston, I safely wore a standard issue Kevlar helmet over my turban. I was not formally tested to fit into my standard issue helmet, nor was any other soldier in my training program.

12. At Fort Sam Houston, I passed the gas mask fit test using a standard issue Army gas mask over my unshorn beard. I was able to safely create a seal in the gas chamber and participate in exercises. I was also able to remove my gas mask at my commander's request

while inside the chamber, and then safely re-seal it. At all times, my gas mask functioned properly inside the gas chamber. During fit testing, I was the first soldier to enter the gas chamber, and the last soldier to exit.

13. I volunteered for deployment in Afghanistan as a General Dentist with the 673<sup>rd</sup> Dental Company (Area Support) and was locally attached as the Brigade Dentist to the 710<sup>th</sup> BSB, 3 BCT/10<sup>th</sup> Mountain Division at Forward Operating Base Pasab (formerly Wilson). There, I volunteered for four missions beyond the safe bounds of the forward operating base, providing much needed dental care to soldiers embedded in dangerous areas.

14. I was recommended for a Bronze Star Medal and was awarded the Army Commendation Medal and the NATO Medal for my service in Afghanistan, including helping to diffuse a tense situation with Afghan locals using my Urdu language skills. *See* Exhibit 2 (Statement of Wartime Service for CPT Tejdeep Rattan & attachment (September 25, 2011)). I also later received a Meritorious Service Medal for my contributions to the U.S. Army DENTAC. *See* Exhibit 3 (Recommendation for Reward and Meritorious Service Medal & attachment (April 27, 2015)).

15. At all times during my service and overseas deployment, I wore a turban and maintained unshorn hair and an unshorn beard. My Sikh articles of faith did not pose any threat to nor in any way hinder unit cohesion, morale, esprit de corps, health or safety, or the military's mission.

16. In my nomination for a Bronze Star Medal, my commanders reported that my "exemplary performance is a model for officers of all branches," and that my "technical expertise, and unwavering commitment to mission accomplishment in a hostile environment were vital to the sustainment of combat operations in Afghanistan." They also said that my

“tireless service and dedication to the mission are in keeping with the highest traditions and values of the 710<sup>th</sup> Brigade Support Battalion, the 3<sup>rd</sup> Brigade Combat Team, and the United States Army.” *See* Exhibit 2 (Statement of Wartime Service for CPT Tejdeep Rattan & attachment (September 25, 2011)).

17. After returning from deployment, I was accepted into a highly selective residency in oral and maxillofacial surgery at Fort Bragg, North Carolina, that was scheduled to begin in May 2012. At the time, I was at the rank of Captain, and I was concurrently selected for the Captain’s Career Course (a precursor to promotion to Major) at Fort Sam Houston, Texas, that was scheduled to take place from March 21 to May 23, 2012.

18. Before I was permitted to travel to Fort Bragg or Fort Sam Houston, I was required to go through the onerous process of requesting an extension of my December 2009 religious accommodation approval.

19. Through the aid of my legal counsel at the Sikh Coalition and McDermott Will & Emery, LLP, and with support from my Members of Congress, I submitted a request to the U.S. Army to extend my existing ETP / religious accommodation on December 27, 2011. *See* Exhibit 4, Letter of Support from U.S. Senators & attachment (March 16, 2012)).

20. The Army did not grant my request for an ETP / religious accommodation until March 16, 2012. *See* Exhibit 5 (Letter from Lieutenant General Thomas Bostick, Deputy Chief of Staff, G-1 & attachment (March 16, 2012)).

21. The March 2012 extension, signed by then Lieutenant General Deputy Chief of Staff G-1, Thomas Bostick, was also limited to the “USA Medical Department CCC” and my “assignment to the oral maxillofacial residency program at the U.S. Army Dental Activity Fort Bragg, NC.” Despite my dedicated service up to that point, including my deployment in

Afghanistan, the extended ETP / religious accommodation approval was revocable and required me to re-apply before any major re-assignment, including another deployment.

22. During this eighty-day waiting period, I experienced emotional, professional, and financial hardship. My oral and maxillofacial surgery residency at Fort Bragg and my slot in the Captain's Career Course at Ft. Sam Houston were in jeopardy of being canceled if I did not receive an extension of my religious accommodation. This placed an emotional and financial burden on my family and me.

23. The eighty-day waiting period also adversely impacted my family and delayed our relocation from Fort Drum to Fort Bragg, as the Army would not authorize the movement of my household goods until the extension was granted.

24. As a result, I had to delay the purchase of a new home in North Carolina, cancel multiple flights, and endure other hardships that are not imposed on non-Sikh service members.

25. Even after I received the March 2012 ETP / religious accommodation extension, I remained in a period of doubt, stress, and uncertainty as my accommodation was not permanent and did not apply to major changes, including deployment.

26. On August 6, 2013, former Lieutenant General Deputy Chief of Staff G-1, Howard B. Bromberg, granted me an indefinite ETP / religious accommodation. *See* Exhibit 6 (Letter from Lieutenant General Howard B. Bromberg, Deputy Chief of Staff, G-1 & attachment (August 6, 2013)).

27. However, the accommodation, which is in effect today, is limited to a Permanent Change of Station, travel on temporary moves, temporary orders, and to attend Department of the Army Schools and engage in field exercises. The indefinite religious accommodation does not apply to overseas deployment, and any request to deploy with my Sikh articles of faith must

be carefully scrutinized by my commander, because the August 2013 letter speculates that the “wearing of a beard renders gas masks unsafe.”

28. I do not agree with the Army’s conclusion about beards and gas masks in the August 2013 ETP / religious accommodation letter because it does not match my experiences as a decorated officer in the U.S. Army, the experiences of other decorated Sikh officers in the U.S. Army, or the accommodations provided by the Army for medical beards. I have passed the standard issue gas mask fit test with an unshorn beard, and have had successful deployment in Afghanistan with an unshorn beard. For these reasons alone, I, and any other Sikh soldier, should be granted a permanent and irrevocable religious accommodation.

29. I believe my service underscores that my religious accommodation for my Sikh articles of faith does not adversely impact the U.S. Army, my health or safety or that of other soldiers, or the Army’s mission. I can think of no legitimate reason why I was not granted a permanent ETP / religious accommodation without restriction and was instead required to undergo an onerous and burdensome administrative process, on multiple occasions, simply to serve in the U.S. Army and practice my religion.



# Department of Defense

## INSTRUCTION

NUMBER 1300.17

February 10, 2009

*Incorporating Change 1, Effective January 22, 2014*

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USD(P&R)

SUBJECT: Accommodation of Religious Practices Within the Military Services

- References:
- (a) DoD Directive 1300.17, "Accommodation of Religious Practices Within the Military Services," February 3, 1988 (hereby cancelled)
  - (b) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
  - (c) *DoD Instruction 1000.29 "DoD Civil Liberties Program," May 17, 2012*
  - (d) *Public Law 112-239, "National Defense Authorization Act for Fiscal Year 2013," December 18, 2012, as amended*
  - (e) *Section 2000bb-1 of Title 42, United States Code*
  - (f) *DoD Instruction 5025.01, "DoD Directives Program," September 26, 2012, as amended*
  - (g) Section 774 and chapter 47 of title 10, United States Code

1. PURPOSE. This Instruction:

- a. Reissues Reference (a) as a DoD Instruction in accordance with the authority in Reference (b).
- b. Prescribes policy, procedures, and responsibilities for the accommodation of religious practices in the Military Services.

2. APPLICABILITY AND SCOPE

- a. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the ~~Department of Defense DoD~~ (hereafter referred to collectively as the "DoD Components").
- b. The policies, *procedures, and definitions* prescribed herein apply solely to the accommodation of religious practices in the Military Services and in no other context.

### 3. DEFINITIONS

a. Neat and Conservative. In the context of wearing a military uniform, “neat and conservative” items of religious apparel are those that:

(1) Are discreet, tidy, and not dissonant or showy in style, size, design, brightness, or color.

(2) Do not replace or interfere with the proper wear of any authorized article of the uniform.

(3) Are not temporarily or permanently affixed or appended to any authorized article of the uniform.

b. Religious Apparel. Articles of clothing worn as part of the doctrinal or traditional observance of the religious faith practiced by the member. ~~Hair and grooming practices required or observed by religious groups are not included within the meaning of religious apparel. Jewelry bearing religious inscriptions or otherwise indicating affiliation or belief is subject to existing Service uniform regulations under the same standard that applies to jewelry that is not of a religious nature.~~

c. Grooming and Appearance. *Grooming and appearance practices, including hair, required or observed by religious groups.*

d. Religious Body Art. *Temporary or permanent tattoos, piercings through the skin or body part, or other modifications to the body that are of a religious nature.*

e. Substantially Burden. *In general, significantly interfering with the exercise of religion as opposed to minimally interfering with the exercise of religion.*

f. Exercise of Religion. *Includes any religious practice(s), whether or not compelled by, or central to, a system of religious belief.*

g. Compelling Governmental Interest. *In the DoD, a military requirement that is essential to accomplishment of the military mission.*

4. POLICY. ~~The U.S. Constitution proscribes Congress from enacting any law prohibiting the free exercise of religion. It is DoD policy that:~~

a. ~~The Department of Defense~~ *The DoD* places a high value on the rights of members of the Military Services to observe the tenets of their respective religions *or to observe no religion at all. It protects the civil liberties of its personnel and the public to the greatest extent possible, consistent with its military requirements, in accordance with DoD Instruction (DoDI) 1000.29 (Reference (c)).*

*b. In accordance with section 533(a)(1) of Public Law 112-239 (Reference (d)), as amended, unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Military Departments will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures in this instruction. This does not preclude disciplinary or administrative action for conduct by a Service member requesting religious accommodation that is proscribed by Chapter 47 of Title 10, United States Code (the Uniform Code of Military Justice), including actions and speech that threaten good order and discipline.*

*c. DoD has a compelling government interest in mission accomplishment, including the elements of mission accomplishment such as military readiness, unit cohesion, good order, discipline, health, and safety, on both the individual and unit levels. An essential part of unit cohesion is establishing and maintaining uniform military grooming and appearance standards.*

*d. In so far as practicable, a Service member's expression of sincerely held beliefs (conscience, moral principles, or religious beliefs) may not be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.*

*e. ~~It is DoD policy that r~~Requests for religious accommodation ~~shall~~ **will** be resolved in a timely manner and ~~should~~ **will** be approved when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, **health and safety**, or any other military requirement. For requests for religious accommodation when accommodation would adversely affect mission accomplishment:*

*(1) In accordance with section 2000bb-1 of Title 42, United States Code (Reference (e)), requests for religious accommodation from a military policy, practice, or duty that substantially burdens a Service member's exercise of religion may be denied only when the military policy, practice, or duty:*

*(a) Furthers a compelling governmental interest.*

*(b) Is the least restrictive means of furthering that compelling governmental interest.*

*(2) Requests for religious accommodation from a military policy, practice, or duty that does **not** substantially burden a Service member's exercise of religion should not be evaluated under the standard established in paragraph 4e(1). Under these circumstances, the needs of the requesting Service member are balanced against the needs of mission accomplishment. Only if it is determined that the needs of mission accomplishment outweigh the needs of the Service member may the request be denied.*

*f. Requests for accommodation of religious practices will be resolved as follows:*

*(1) Immediate commanders may resolve requests for accommodation of religious practices that do not require a waiver of Military Department or Service policies regarding the*

*wearing of military uniforms, the wearing of religious apparel, or Service grooming, appearance, or body art standards.*

*(a) Jewelry bearing religious inscriptions or otherwise indicating affiliation or belief is subject to existing Service uniform regulations under the same standard that applies to jewelry that is not of a religious nature.*

*(b) Grooming and appearance practices are not included within the definition of religious apparel; however, such practices are subject to consideration for accommodation when the request is based on religious beliefs.*

*(2) Requests that **do** require such a waiver will be forwarded to the Secretary of the Military Department concerned (known in this issuance as the “Secretary concerned”) for decision. The Secretary concerned may delegate authority to resolve these requests no lower than:*

*(a) Army: Deputy Chief of Staff, G-1.*

*(b) Air Force: Deputy Chief of Staff for Manpower, Personnel, and Services.*

*(c) Navy: Chief of Naval Personnel and Deputy Commandant, Manpower and Reserve Affairs.*

*g. Service members submitting requests for accommodation of religious practices will comply with the policy, practice, or duty from which they are requesting accommodation, including refraining from beginning unauthorized grooming and appearance practices, wearing unauthorized apparel, or applying unauthorized body art, unless and until the request is approved.*

*h. In resolving requests for accommodation of religious practices, careful consideration of the effect, if any, of approval or disapproval on any compelling governmental interest is essential. Because the military is a specialized community within the United States, governed by a discipline separate from that of the rest of society, the importance of uniformity and adhering to standards, of putting unit before self, is more significant and needs to be carefully evaluated when considering each request for accommodation of religious practices. It is particularly important to consider the effect on unit cohesion.*

*i. All requests for accommodation of religious practices will be assessed on a case-by-case basis. Each request must be considered based on its unique facts; the nature of the requested religious accommodation; the effect of approval or denial on the Service member’s exercise of religion; and the effect of approval or denial on mission accomplishment, including unit cohesion.*

*j. Service members whose requests for accommodation of religious practices are approved will be informed of the specific elements of that approval. Specific elements will include that such approval does not apply for their entire military service commitment and that, at the*

*discretion of the Secretary concerned, new requests for the same accommodation are necessary upon new assignment, transfer of duty stations, or other significant change in circumstances, including deployment.*

5. RESPONSIBILITIES

a. ~~Principal Deputy Under Secretary of Defense for Personnel and Readiness-Assistant Secretary of Defense for Readiness and Force Management.~~ The ~~Principal Deputy Under Secretary of Defense for Personnel and Readiness-Assistant Secretary of Defense for Readiness and Force Management~~, under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, shall be responsible for the administration of this Instruction and may issue guidance implementing this Instruction, as appropriate.

b. Secretaries of the Military Departments. The Secretaries of the Military Departments shall issue appropriate implementing documents and administer the rules thereunder within their respective Departments consistently with this Instruction. *This includes:*

*(1) Designation of appropriate approval and disapproval authority.*

*(2) Final review will take place within 30 days for cases arising within the United States and within 60 days for all other cases, with strict limitations on exceptions for exigent circumstances.*

6. PROCEDURES. The enclosure contains procedures for accommodating religious practices in the Military Services.


7. RELEASABILITY. **Unlimited.** This Instruction is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction ~~is effective immediately.:~~

*a. Is effective February 10, 2009.*

*b. Must be reissued, cancelled, or certified current within 5 years of its publication to be considered current in accordance with DoDI 5025.01 (Reference (f)).*

*c. Will expire effective January 22, 2024 and be removed from the DoD Issuances Website if it hasn't been reissued or cancelled in accordance with Reference (f).*



Michael L. Dominguez  
Acting Under Secretary of Defense  
(Personnel and Readiness)

Enclosure  
Procedures

ENCLOSURE

PROCEDURES

1. In accordance with rules prescribed by the Secretary of the Military Department of the individual making the request for accommodation *of a religious practice*, military commanders should consider the following factors, in addition to any other factors deemed appropriate, when determining whether to grant a request ~~for the accommodation of religious practices~~, as addressed in section 4 of the front matter of this Instruction:

a. The importance of military requirements in terms of mission accomplishment, *including* military readiness, unit cohesion, *good order*, ~~standards, and~~ discipline, *health, and safety*.

b. The religious importance of the accommodation to the requester.

c. The cumulative impact of repeated accommodations of a similar nature.

d. Alternative means available to meet the requested accommodation.

e. Previous treatment of the same or similar requests, including treatment of similar requests made for other than religious reasons.

*f. If a waiver of current Service policy is required to approve a request, the decision authority rests with the Secretary concerned, delegable only to levels defined in paragraph 4b above the signature of this instruction.*

2. The factors described in this enclosure are intended to promote standard procedures for resolving difficult questions involving the accommodation of religious practices. In view of the different mission requirements of each command, individual consideration of specific requests for accommodation is necessary.

3. When *a* request for accommodation ~~are~~ *is* not ~~in the best interest of the unit approved~~, and continued tension between the unit's requirements and the individual's religious ~~beliefs practices~~ is apparent, administrative actions should be considered. ~~Those Based on the needs of the Military Service, administrative action that may be considered~~ include ~~but not limited to;~~ assignment, reassignment, reclassification, or separation. ~~Nothing in this Instruction precludes action under chapter 47 of title 10, United States code (Reference (c)), in the appropriate circumstances.~~

4. The guidance in this Instruction shall be used by the Military Departments in the development of implementing documents on the exercise of command discretion concerning the accommodation of religious practices.

a. Worship practices, holy days, and Sabbath or similar religious observance requests ~~shall~~ *will* be accommodated *to the extent possible consistent with mission accomplishment.* ~~except when precluded by military necessity.~~

b. Religious beliefs shall be included as a factor for consideration when granting separate rations.

c. Religious beliefs shall be considered as a factor for the waiver of required medical practices, subject to military requirements *including and* medical risks to the unit.

d. Familiarization with religious accommodation policies shall be included in the training curricula for command, judge advocate, chaplain, and other appropriate career fields or assignments.

e. Applicants for commissioning, enlistment, and reenlistment shall be advised of their Military Department's specific religious accommodation policies.

5. In accordance with section 774 of Reference (*eg*), members of the Military Services may wear items of religious apparel while in uniform, except where the items would interfere with the performance of military duties or the item is not neat and conservative. The Military Departments shall prescribe regulations on the wear of such items. Factors used to determine if an item of religious apparel interferes with military duties include, but are not limited to, whether or not the item:

a. Impairs the safe and effective operation of weapons, military equipment, or machinery.

b. Poses a health or safety hazard to the Service member wearing the religious apparel and/or others.

c. Interferes with the wear or proper function of special or protective clothing or equipment (e.g., helmets, flak jackets, flight suits, camouflaged uniforms, *gas protective* masks, wet suits, and crash and rescue equipment).

d. Otherwise impairs the accomplishment of the military mission.

6. Religious items or articles not visible or otherwise apparent may be worn with the uniform provided they shall not interfere with the performance of the member's military duties, as discussed in paragraph 5 of this enclosure, or interfere with the proper wearing of any authorized article of the uniform.

7. A complete ban on wearing any visible items of religious apparel may be appropriate under circumstances in which the Service member's duties, the military mission, or the maintenance of discipline require absolute uniformity. For example, members may be prohibited from wearing visible religious apparel while wearing historical or ceremonial uniforms; participating in review formations, parades, honor or color guards, and similar ceremonial details and functions.

8. The standards in paragraphs 5, 6, and 7 of this enclosure are intended to serve as a basis for determining *whether* a member's ~~entitlement request~~ to wear religious apparel with the uniform *should be approved*. For example, unless prohibited by paragraph 5, 6, or 7 of this enclosure, a Jewish yarmulke may be worn with the uniform whenever a military cap, hat, or other headgear is not prescribed. A yarmulke may also be worn underneath military headgear as long as it does not interfere with the proper wearing, functioning, or appearance of the prescribed headgear, under paragraph 6 of this enclosure.

9. Notwithstanding any other provision in this Instruction, chaplains may wear any required religious apparel or accouterments with the uniform while conducting worship services and during the performance of rites and rituals associated with their religious faith.

~~10. The authority to approve the wearing of an item of religious apparel with the uniform, under the guidelines of this Instruction, shall be exercised at the command level specified by each Military Department. Denials of requests to wear religious apparel shall be subject to review at the Service Headquarters level. Final review shall occur within 30 days following the date of initial denial for cases arising in the United States, and within 60 days for all other cases. Exceptions to these deadlines shall be limited to exigent circumstances. Service members shall be obliged to comply with orders prohibiting wearing questionable items of religious apparel pending review of such orders under regulations issued by the Secretaries of the Military Departments. In evaluating religious accommodation requests for the wear of body art, whether or not the body art is neat and conservative, and the location of the body art, as it relates to being visible while wearing the military uniform, should be considered. When evaluating religious accommodation requests regarding grooming (e.g., hair length and styles) and body art, factors to consider include whether approving the accommodation would:~~

- ~~a. Impair the safe and effective operation of weapons, military equipment, or machinery.~~
- ~~b. Pose a health or safety hazard.~~
- ~~c. Interfere with the wear or proper function of special or protective clothing or equipment.~~
- ~~d. Otherwise impair discipline, morale, unit cohesion, or accomplishment of the unit mission.~~

11. Nothing in this guidance or in the Military Department documents authorized by section 4 of this enclosure (except when expressly provided therein) shall be interpreted as requiring a specific form of accommodation in individual circumstances.



**DEPARTMENT OF THE ARMY**  
**OFFICE OF THE ASSISTANT SECRETARY**  
**MANPOWER AND RESERVE AFFAIRS**  
111 ARMY PENTAGON  
WASHINGTON DC 20310-0111

SAMR

30 MAR 2016

MEMORANDUM THRU

Commanding General, United States Army Corps of Engineers, 441 G Street, NW  
Washington DC, 20314-1000

Commander, 249<sup>th</sup> Engineer Battalion, 9450 Jackson Loop, Fort Belvoir, VA 22060

FOR CPT Simratpal Singh

SUBJECT: Decision Regarding Request for Religious Accommodation –  
CPT Simratpal Singh

1. I have considered your request for a religious accommodation to permit you to wear a beard, turban, and uncut hair in observance of your Sikh faith, along with the recommendations of your chain of command. I grant your request for an exception to Army personal appearance and grooming standards, subject to the limitations described below. A copy of this accommodation will be placed in your Official Military Personnel File.

2. While assigned or performing non-hazardous duties, you may wear a beard, turban, and uncut hair in a neat and conservative manner that presents a professional and well-groomed appearance. The bulk of your hair, beard, or turban may not be such that it impairs your ability to wear the Army Combat Helmet (ACH) or other protective equipment or impedes your ability to operate your assigned weapon, military equipment, or machinery. A fully serviceable ACH including all of its component parts must be worn in accordance with its technical manual to ensure a proper fit for your safety.

3. Because of the Army's strong interest in maintaining good order and discipline, the Army intends to develop clear uniform standards applicable to Soldiers who have received a religious accommodation. Until such standards are published, you may wear a black turban (or under turban, as appropriate) with the Army Service Uniform (ASU), the Army Physical Fitness Uniform, and the Army Combat Uniform (ACU). While wearing ACU outdoors, you may wear a turban (or under turban, as appropriate) of a matching camouflage pattern. Unless your duties, position, or assignment require you to wear the Army Combat Helmet (ACH) or other protective gear, you are not required to wear military headgear in addition to your turban. Your beard must be rolled and tied to a length not to exceed two inches while in garrison and a length not to exceed one inch while in the field, during physical training, or in a deployed environment not covered by paragraph 5 below. Your hair may not fall over your ears or eyebrows or touch the

SAMR

SUBJECT: Decision Regarding Request for Religious Accommodation – CPT  
Simratpal Singh

collar of your uniform. You may display your rank on your turban, provided you remove the rank in circumstances where military headgear is not customarily worn.

4. Because of the Army's interest in mission accomplishment, which requires military readiness, unit cohesion, good order, discipline, health, and safety on both the individual and unit levels, I have requested that your command provide quarterly assessments of the effect of your accommodation, if any, on unit cohesion and morale, good order and discipline, health and safety, and individual and unit readiness.

5. I have been unable to confirm that your personnel protective equipment (to include ACH and protective mask) provide you with the intended degree of protection against the hazards they are designed to prevent. Should you be assigned or directed to perform hazardous duties (duties for which you would be entitled to receive incentive pay for hazardous duty, special pay for duty subject to hostile fire or imminent danger, hardship duty pay, special pay for service as a member of a Weapons of Mass Destruction Civil Support Team, or hazardous duty incentive pay for flying duty) or to operate in a hazardous environment, continuation of your accommodation will be evaluated by your chain of command. This evaluation will be expeditiously forwarded to me for decision whether to suspend the accommodation during your assignment to hazardous duties or areas.

6. I may withdraw or limit the scope of your accommodation for reasons of military necessity, including if I cannot confirm that Army protective equipment (to include ACH and protective mask) will provide you the intended degree of protection against the hazards presented by the duties or areas to which you will be assigned. Given our intent to gather additional information and develop additional standards, I intend to re-evaluate this accommodation in one year and may reevaluate it earlier based upon military necessity if you must be assigned to another unit. If circumstances require that you be directed to comply fully with AR 670-1, you should be prepared to do so.



Debra S. Wada  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

CF:  
Deputy Chief of Staff, G-1  
CDR, Human Resources Command



**DEPARTMENT OF THE ARMY**

249<sup>th</sup> ENGINEER BATTALION

10011 Middleton Road

Fort Belvoir, VA 22060-5837

21 October 2015

WNBFAA

**MEMORANDUM FOR LTC JULIE BALTEN, 249<sup>th</sup> ENGINEER BATTALION AND THE UNITED STATES ARMY CHAIN OF COMMAND**

**SUBJECT: Request for Religious Accommodation and Exception to Wear and Appearance Regulations Pursuant to AR 600-20 and AR 670-1**

I, CPT Simratpal Singh, respectfully request a religious accommodation and exception to the wear-and-appearance regulations for my Sikh articles of faith, so that I may continue to proudly serve my country in the U.S. Army while abiding by the tenets of my faith. My Sikh religion mandates (1) that I keep my hair and beard unshorn; and (2) that I wear a turban to cover my head. All devoted members of the Sikh religion keep their hair (including facial hair) unshorn because keeping it in a natural state is regarded as living in harmony with the will of God. The turban is part of the uniform of Sikhs because it has immense spiritual and temporal significance. Wearing a turban is a spiritual discipline signifying sovereignty, dedication, self-respect, courage and piety. All practicing Sikhs wear the turban out of love and as a mark of commitment to the faith. These articles of faith have deep spiritual significance to me. In short, to be a Sikh is to maintain these articles of faith.

I was a practicing Sikh for my entire life, and maintained these articles of faith until I joined the United States Military Academy at West Point in 2006. I sought admission to West Point because I greatly desired to serve my country through the U.S. Army. Since childhood, I have admired the Army and the principles governing it – such as discipline, self-sacrifice, and service to others, principles that are also intrinsic to the Sikh faith. In addition, I felt moved to serve my adopted country, which granted political asylum to my father and had provided so many opportunities to my family and me.

During the application process, I hoped that the U.S. Army would recognize the importance of my Sikh religious articles of faith. At an event at the Seattle Convention Center, I met with an Army officer from West Point. We discussed my turban and beard and he indicated that he would look into whether an accommodation would be possible. He later called me and conveyed that an accommodation was not possible. I was young and naïve and thought that once I arrived at West Point I would make inquiries in person and work out the issue.

On Reception Day at West Point, I separately asked two officers about the possibility of getting a religious accommodation—both officers indicated that they would look into

whether an accommodation would be possible, but I was sent to the barber and placed in the unenviable position of either practicing my faith or serving my country by attending West Point. Under pressure, I made the regrettable decision to remove my turban, cut my hair, and shave off my beard, all in violation of the requirements of the Sikh faith. I have regretted that decision ever since.

Historically, uncut hair and turbans have been the most central feature of the Sikh identity. For example, in the 18th century, Sikhs in South Asia were persecuted and forced to convert from their religion; the method of forcing conversions was to remove a Sikh's turban and cut off his hair. Since then, forcibly removing a Sikh's turban 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. Likewise, for a Sikh to relinquish their turban or cut their hair constitutes a most serious breach of the Sikh faith. It is regarded as an act which disgraces the honor of both the individual Sikh and the wider Sikh community. Thus, I felt shame and great disappointment in myself for relinquishing my Sikh articles of faith.

Despite the great burden on my conscience, I have given my all in service to my country through the Army. Since graduating from West Point, I have held a number of staff engineering positions, graduated from Ranger School, deployed to Afghanistan, and most recently earned a Master's Degree in Engineering Management. I look forward to continuing to serve my country when I report for duty on 16 November 2015 to FT Belvoir.

I am deeply, deeply grateful for all of the opportunities that the Army has given me – and I hope to serve a long and honorable career with the Army. However, I have come to an impasse with respect to my conscience. I must move forward in my life while abiding by the tenets of the Sikh faith by maintaining unshorn hair and a beard, and wearing a turban. For almost a decade, I have felt incomplete. I had given up a part of myself that I can no longer turn my back on. This is why I humbly submit this request for accommodation and exception to policy request. I plan to report for duty on November 16, 2015 to FT Belvoir with my Sikh articles of faith intact. I also ask that I be given an interim accommodation so that I may serve with my Sikh articles of faith while my request is pending in the Army's chain-of-command.

If provided with a religious accommodation I will conform my religious requirements in a way that ensures consistency with the Army's need to maintain uniformity and safety standards. In particular:

1. I will maintain my hair and beard in a neat and conservative manner at all times.
2. In non-field Garrison settings, I will wear a turban made of ACU camouflage material to match my uniform.
3. In field settings, I will wear a "field" turban made of ACU camouflage material to match my field ACUs.

4. I will wear a subdued black turban with the Class A uniform whenever required.
5. I will wear my Kevlar helmet using the ACU "field" turban or an ACU pattern "patka" (small turban).
6. I will adapt my "non-field" and "field" turbans to display a beret flash patch that can be removed when I enter buildings.
7. I am confident that I will be able to successfully seal my Army-issued gas mask without any issues, like the many Sikh soldiers who have preceded me in the Army.

These standards have most recently been followed without issue by MAJ Kamaljeet Singh Kalsi, MAJ Tejdeep Singh Rattan and CPL Simran Preet Singh Lamba, devout Sikhs who have served our nation in the Army with courage, valor and distinction over the past five years.

I would gladly sacrifice my life for my country and the Army. I only ask in return that my religious beliefs be respected and accommodated. I appreciate your thoughtful consideration in this regard.

If you, your staff, or anyone in the chain-of-command has any questions about Sikhs or Sikh practices, I am eager to provide any and all information you require. You may also contact my legal counsel, Amandeep Sidhu, of the law firm of McDermott Will & Emery LLP, at [asidhu@mwe.com](mailto:asidhu@mwe.com) or 202-756-8380; Harsimran Kaur, of the Sikh Coalition, at [harsimran@sikhcoalition.org](mailto:harsimran@sikhcoalition.org) or 510-565-7908; or Eric Baxter, of the Becket Fund for Religious Liberty, at [ebaxter@becketfund.org](mailto:ebaxter@becketfund.org) or 202-349-7221.

For your reference, I have enclosed two documents that you may find helpful in your consideration of my accommodation request and recommendation to the chain-of-command:

- Appendix 1. A memorandum from my legal counsel to the U.S. Army Chain of Command regarding my accommodation request entitled *Guidance Regarding Religious Accommodation of Sikh Soldiers*. This memorandum provides an overview of Sikh service in the U.S. Army, background on the Sikh faith, the religious accommodation process, and various legal issues for your consideration. Additionally, the Sikh Coalition's website at [www.sikhcoalition.org](http://www.sikhcoalition.org) provides a wealth of information about Sikhism and the accommodation of Sikh religious practices in the United States.
- Appendix 2. A white paper entitled *The Case for Ending the Presumptive Ban on Observant Sikhs in the U.S. Armed Forces* (Mar. 10, 2014). This comprehensive white paper includes extensive materials that

support my request for a religious accommodation, including a Field Manual for Sikh Soldiers in the U.S. Army, which is included as Exhibit 26 of the white paper.

Thank you for your consideration of my request; I eagerly await your response. I look forward to continuing to serve and defend our country while maintaining my Sikh religious articles of faith.

Encl.

Very Respectfully,

A handwritten signature in blue ink, appearing to read "Simratpal Singh". The signature is fluid and cursive, with a large initial "S" and "S".

CPT Simratpal Singh  
U.S. Army  
Email: simratpal.singh.mil@mail.mil  
Tel: 253-670-3581  
SSN: XXX-XX-8349

# **APPENDIX 1**

## MEMORANDUM

**Date:** October 21, 2015

**To:** LTC Julie Balten  
*249<sup>th</sup> Engineer Battalion*  
U.S. Army Chain-of-Command

**From:** Amandeep S. Sidhu, Esq.  
*McDermott Will & Emery LLP*  
Harsimran Kaur, Esq.  
*The Sikh Coalition*  
Eric S. Baxter, Esq.  
*The Becket Fund for Religious  
Liberty*

**Re:** CPT Simratpal Singh Religious Accommodation Exception Request  
*Guidance Regarding Religious Accommodation of Sikh Soldiers*

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On behalf of our client CPT Simratpal (“Simmer”) Singh, the law firm of McDermott Will & Emery LLP (“MWE”), the Sikh Coalition,<sup>1</sup> and the Becket Fund for Religious Liberty<sup>2</sup> submit this memorandum in support of CPT Singh’s request for a religious accommodation of his Sikh articles of faith. This memorandum is intended to illuminate the requirements of the Sikh faith and the successful accommodations of Sikh-American soldiers in the U.S. Army.

As a practicing Sikh, CPT Singh is religiously-mandated to maintain certain articles of faith—namely, a turban, unshorn hair, and an unshorn beard. Pursuant to Department of Defense Instruction 1300.17 and Army Regulation 600-20, §§ 5-6(i)(1)-(2), and consistent with USAREC Message 15-032, CPT Singh is submitting his Exception to Policy (“ETP”) religious accommodation request to his chain-of-command for final resolution by the Deputy Chief of

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<sup>1</sup> The Sikh Coalition is a community-based organization that defends civil rights and civil liberties in the United States, educates the broader community about Sikhs and diversity, and fosters civic engagement amongst Sikh-Americans. The Sikh Coalition owes its existence in large part to the effort to combat discrimination against Sikh-Americans after September 11, 2001. Since its inception, the Sikh Coalition has worked with government agencies and the private sector to achieve mutually acceptable solutions to the accommodation of Sikh religious practices.

<sup>2</sup> The Becket Fund for Religious Liberty is a non-profit, public-interest legal and educational institute with a mission to protect the free expression of all faiths. The Becket Fund has recently obtained landmark religious accommodation victories in the U.S. Supreme Court in *Holt v. Hobbs*, 135 S. Ct. 2751 (2015) (involving a Muslim prisoner seeking accommodation of a religiously-mandated beard) and *Burwell v. Hobby Lobby*, 135 S. Ct. 853 (2014) (involving religious objections to the Department of Health & Human Services’ contraception mandate).

Staff, Army G-1, LTG James McConville. This memorandum is enclosed as a supplement to CPT Singh's personal ETP religious accommodation memorandum.

## I. Background on Sikh Service in the U.S. Army

By way of introduction, MWE and the Sikh Coalition have worked cooperatively with the G-1's office and other Pentagon and Army officials since 2009 to ensure that Sikh soldiers in the U.S. Army are permitted to practice their religion—including keeping uncut hair and beards and wearing a turban—while maintaining the highest standards of neat and conservative uniformity, ensuring individual readiness, meeting all safety requirements, and contributing to esprit de corps and unit cohesion. In recent years, the Becket Fund has joined these efforts.

In our great nation, Sikh-Americans, like all other Americans, have First Amendment and, as per the Religious Freedom Restoration Act (“RFRA”), statutory rights to sincerely practice their religion and to serve our nation without violating their religious beliefs. Turbaned and bearded (*i.e.*, observant) Sikh soldiers have a long and storied history of military service, proudly defending the United States and her allies throughout the 20th century.<sup>3</sup> Since 2009, we have seen the successful *re-integration* of observant Sikh soldiers into the U.S. Army, starting with MAJ Kamaljeet S. Kalsi and MAJ Tejdeep S. Rattan and continuing with CPL Simranpreet S. Lamba in 2010. As has been extensively reported in both the military and mainstream media, all three of these Sikh soldiers have had exceptional careers in the U.S. Army and have proudly defended our country, including deployments to Afghanistan for MAJ Kalsi and MAJ Rattan. MAJ Kalsi (a Bronze Star Medal recipient) and MAJ Rattan (the recipient of an Army Meritorious Service Medal, Army Commendation Medal, and NATO Medal) were both recognized for their significant contributions to our military's mission while deployed. In addition to advancing our military's mission and promoting unit cohesion—while still practicing their faith—all three Sikh soldiers were able to comply with safety requirements. They successfully passed their fit tests using standard issue Army gas masks, wore helmets over their turbans, and were in a constant state of readiness. In short, their honorable service proves that Sikh articles of faith present no barriers to full and effective military service.

Our efforts for full inclusion of observant Sikhs in the U.S. Armed Forces have been widely supported. On March 10, 2014, 105 bipartisan Members of Congress, including members of the House and Senate Armed Services Committees, sent a letter to former Defense Secretary Chuck Hagel calling for equal opportunity for all Sikhs who wish to serve in the U.S. Armed Forces. See **Exhibit 1** (Letter from Members of Congress, Mar. 10, 2014). On April 2, 2014, over 21 interfaith and national organizations sent a letter to the Department of Defense urging it to close loopholes in its policies that presumptively ban observant Sikh service. See **Exhibit 2** (Letter from Interfaith Organizations, Apr. 2, 2014).

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<sup>3</sup> Starting with World War I, dozens of Sikhs served in the U.S. Army with turbans, unshorn hair, and beards. In addition, several Sikhs were grandfathered in under the pre-1981 policy and served honorably in the U.S. Army with their Sikh articles of faith intact—some even serving lifetime careers. This latter group includes COL Gopal S. Khalsa, COL Gurbhajan Singh, COL Arjinderpal S. Sekhon, SGT Sevak S. Kroesen, SGT Kirnbir S. Grewal, and MAJ Parbhur S. Brar. They will be discussed in greater detail in Section IV of this letter.

Our hope is to continue to work together with you and U.S. Army leadership to provide the necessary information and resources to efficiently resolve this matter so that CPT Singh can advance his goal of continuing his service in the U.S. Army. We hope you will consider CPT Singh's request for an accommodation in light of his exceptional and honorable service in the U.S. Army and the historical proof of concept that accommodation of Sikh soldiers is reasonable.

## II. CPT Simmer Singh

CPT Singh wanted to serve in the U.S. military his entire life. He achieved this goal when he was selected to attend the United States Military Academy at West Point in 2006. At that time CPT Singh wore a turban and maintained his hair and beard uncut in compliance with his Sikh faith—something he had done since childhood.

During the admission process, CPT Singh hoped that the U.S. Army would recognize the importance of his Sikh religious articles of faith. At an event at the Seattle Convention Center, CPT Singh met an Army officer from West Point. They discussed his turban and beard and the officer indicated that he would look into an accommodation. The officer later followed up with a phone call conveying that there was nothing he could do to help. On Reception Day at West Point, CPT Singh separately asked two officers about obtaining a religious accommodation. Both indicated that they would look into whether an accommodation might be possible, but CPT Singh was sent to the barber before he could get a further response. At that point, CPT Singh was forced into the untenable position of having to violate his Sikh religious requirements or lose the opportunity to attend West Point and serve his country. Pressured to comply with the Army's uniform and grooming policies, and believing he had no further options, CPT Singh made the difficult decision to remove his turban, cut his hair, and shave his beard in violation of his Sikh faith. Ever since, he has regretted not having pursued his religious rights more aggressively and has felt great shame and disappointment in himself that he relinquished his Sikh articles of faith. He has always intended to return to his articles of faith whenever the opportunity arose.

Notwithstanding the weight of his decision to compromise his Sikh religious practices, CPT Singh went on to serve his country with a deep commitment to service and excellence. He graduated from West Point in 2010, receiving his B.S. degree in electrical engineering with Honors. See Exhibit 3 (CPT Simratpal Singh Academic Record, United States Military Academy at West Point). After graduation, CPT Singh attended the Officer's Basic Course at FT Leonard Wood (MO). He was assigned to MOS 12A for engineering and was posted to FT Lewis (WA) as Assistant Brigade Engineer on the Brigade Combat Team. During this time, CPT Singh received high praise from his commanders. See Exhibit 4 (CPT Simratpal Singh Officer Evaluation Report for Period of Feb. 15, 2011 through Jan. 3, 2012). In particular, CPT Singh was noted to be "the best lieutenant in the Brigade S3 section and one of the top 3 on the Brigade Staff." *Id.* at 2. While posted at FT Lewis, CPT Singh "seized the opportunity to attend and graduate Ranger School" and his commander noted that "[h]e will be an extraordinary platoon leader" who should be promoted ahead of his peers. *Id.*

Upon successfully completing Ranger School, CPT Singh was assigned as platoon leader for a 24-soldier Route Clearance Platoon within the Stryker Brigade Combat Team. See Exhibit 5 (CPT Simratpal Singh Officer Evaluation Report for Period of Jan. 4, 2012 through Jan. 3,

2013). In that capacity, CPT Singh was forward-deployed to Operation Enduring Freedom in Kandahar Province from April 2012 to January 2013. *Id.* During his deployment, CPT Singh continued to receive the highest evaluations from his commanders:

1 LT Singh is the strongest engineer platoon leader in the battalion. Simmer deployed his Sapper platoon in a route clearance mission during OPERATION ENDURING FREEDOM in support of multiple battlespaces in Regional Command South clearing over 10,000 miles of road. He is an aggressive and meticulous leader who maintained high standards to impressive effect in combat. 1 LT Singh is a solid, unflappable performer who can be counted on in tough positions and arduous missions. . . .

*Id.* In a subsequent OER, CPT Singh was “ranked number one of out of seven Officers” by his Company Commander, who also noted that as a “top performer, Simratpal makes any team he is on better. I would fight to serve with Simratpal again.” See **Exhibit 6** (CPT Simratpal Singh Officer Evaluation Report for Period of Jan. 4, 2013 through Sept. 15, 2013), at 2. His LTC went on to note that CPT Singh’s performance “has been nothing short of superb through this rating period,” noting that his “ability to thrive in a dynamic and fluid situation make him a vital asset to any team.” *Id.*

Upon returning from his deployment, and as a result of his “exceptional and meritorious service,” CPT Singh was awarded a Bronze Star Medal (“BSM”). See **Exhibit 7** (Bronze Star Medal Awarded to then-1LT Simratpal Singh). Specifically, CPT Singh was nominated for the BSM for his leadership as patrol leader on “over 170 route clearance patrols throughout Kandahar Province in support of Combined Task Force Lancer,” “defense of FOB Frontenac during a coordinated and sustained enemy attack,” including leading his platoon to “suppress[] and eventually counterattack[] the heavily armed insurgents.” *Id.* at 3. CPT Singh also received an Army Achievement Medal in November 2013 for his performance during a joint training exercise with the South Korean Army. See **Exhibit 8** (The Army Achievement Medal Awarded to then-1LT Simratpal Singh (Nov. 5, 2013)).

CPT Singh’s exceptional performance continued following his return stateside, where he served as a Brigade Assistant S-4 for a rapidly deployable 4,100 Soldier Stryker Brigade Combat Team. In this role, he was recognized as “easily the best of four captains” that “has proven himself an invaluable asset to the team.” See **Exhibit 9** (CPT Simratpal Singh Officer Evaluation Report for Period of Sept. 15, 2013, through Sept. 14, 2014), at 1. CPT Singh is viewed as “a top 10% officer” who is a “fit, talented leader with unlimited potential and a bright future.” *Id.* at 2. At the same time, CPT Singh received an Army Commendation Medal for his service. See **Exhibit 10** (Army Commendation Medal (Nov. 17, 2014)).

In January 2015, CPT Singh attended and completed the Engineer Captain’s Career Course at FT Leonard Wood while simultaneously volunteering to obtain a Master’s Degree in engineering. See **Exhibit 11** (Certificate of Achievement, U.S. Army Engineer School, FT Leonard Wood, MO (June 26, 2015)). During this time period, he was noted to be a “highly skilled officer” who “displayed great leadership.” See **Exhibit 12** (CPT Simratpal Singh Service School Academic Evaluation Report for Period of Jan. 14, 2015, through June 26, 2015 (June 24, 2015)). It was

also noted that “his presence and intellect greatly influenced his peers” and that he is “ready to command a company and will excel in any position of responsibility.” *Id.*

Earlier this year, CPT Singh attended the Pentagon’s Second Annual Vaisakhi Celebration Event. See **Exhibit 13** (L. Ferdinando, *Pentagon celebrates Sikh new year, Vaisakhi*, Army News Service, May 4, 2015). This event, which celebrated one of the most significant holidays for Sikhs, included Sikh soldiers from various branches of the U.S. military. The Pentagon’s deputy chaplain, LTC Claude Brittain, noted that he “must stand up for the rights of others to celebrate in regards to their faith” and that Sikh soldiers in the U.S. military “who practice their faith should have the opportunity to share their faith.” At the Pentagon event, CPT Singh met several Sikh soldiers who maintain their uncut hair and beards and wear turbans. Further convicted by seeing his fellow U.S. Army soldiers fully practicing their Sikh faith, and for the first time seeing a viable path to obtaining an accommodation, CPT Singh began taking steps towards requesting an ETP through his chain-of-command.

CPT Singh completed his Master’s program just last week and is presently on one-month’s leave with orders to report to the 249th Engineer Battalion Prime Power at FT Belvoir (VA) on November 16. Realizing that he needs to return to being fully observant of his Sikh articles of faith, and after religious consideration and consultation, CPT Singh has concluded that now is the right time. CPT Singh will report for duty on November 16 wearing a turban and beard, in compliance with the requirements of his Sikh faith, and therefore is requesting expedited consideration of his religious accommodation request. He is also seeking assurances from the chain-of-command that he will not face disciplinary action as a result of his decision to maintain the Sikh articles of faith and submit this request.<sup>4</sup>

Due to CPT Singh’s report date of November 16, if the Army is unable to grant him timely interim relief, he may need to quickly seek a preliminary injunction from federal court protecting his right to exercise his religion while continuing his service in the Army.

### III. The Sikh Articles of Faith

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

Consistent with the teachings of the Sikh gurus, Sikhs wear an external uniform to bind them to the beliefs of the religion. Unlike some other faiths, where only the clergy maintain religious articles on their person, all Sikhs are required to wear external articles of faith. These articles of

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<sup>4</sup> See DoDI 1300.17 (4) (d), which states that “[i]n so far as practicable, a Service member’s expression of sincerely held beliefs (conscience, moral principles, or religious beliefs) may not be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.”

faith, such as unshorn hair (*kes*) and the turban, distinguish a Sikh and have deep spiritual significance.

Maintaining uncut hair (including a beard) is an essential part of the Sikh way of life—one cannot be a practicing Sikh without abiding by this tenet of faith. Guru Nanak started the practice, regarding it as living in harmony with the will of God. The Sikh Code of Conduct, called the *Rehat Maryada*, outlines the requirements for practicing the Sikh way of life. All Sikhs must follow the guidelines set forth in this document. The *Rehat Maryada* explicitly instructs that if you are a Sikh, you must “[h]ave, on your person, all the time . . . the *kes* (unshorn hair).” See **Exhibit 14** (excerpt of *Rehat Maryada*). This document prohibits the removal of hair from the body as one of four major taboos. One of the other taboos on this list is adultery. Accordingly, the fact that cutting one’s hair is a moral transgression as serious as committing adultery speaks to the immense significance of uncut hair in the Sikh religion.

The *Rehat Maryada* also mandates that Sikhs wear a turban which must always cover a Sikh’s head. The turban reminds a Sikh of his or her duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard and honestly, sharing with the needy, and promoting equality and justice for all. When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh’s head.

Historically, uncut hair and turbans have been central features of the Sikh identity. For example, in the 18<sup>th</sup> century, Sikhs in South Asia were persecuted and forced to convert from their religion by the dominant leaders in the region. The method of forcing conversions was to remove a Sikh’s turban and cut off his hair. As resistance to such forced conversions, many Sikhs chose death over having their turbans removed and hair shorn.

Since then, denying a Sikh the right to wear a turban and maintain unshorn hair has symbolized denying that person the right to belong to the Sikh faith, and is perceived as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.

Sikh values and the Sikh articles of faith fully complement the values of Americans and the U.S. Army, including our country’s commitment to freedom, justice, and defending the oppressed.

#### IV. Sikhs’ Service in the U.S. Armed Forces

There are over 26 million Sikhs in the world and approximately 500,000 in the United States. For centuries, Sikh soldiers and officers have served in armies across the globe, fought bravely in wars, and achieved the highest levels of military distinction. As is the case for other American communities, including Irish Americans, Sikhs have an extensive and proud history of military service. Sikhs served as part of the Allied Forces in both World Wars. Sikhs currently serve in the militaries of Great Britain, Canada, Australia, New Zealand, India, the United Nations, and many other countries. In all cases, Sikh soldiers’ turbans, unshorn hair, and beards have never been an impediment to their service. In fact, Sikhs have frequently been renowned for their courageous behavior and military prowess. On December 5, 2013, the United States recognized the extensive service of General Bikram Singh, the Chief of Staff of the Indian Army, and awarded him the prestigious Legion of Merit. See **Exhibit 15** (*Indian Army Chief of Staff Visits with Gen. Ray Odierno*, U.S. Army webpage, December 6, 2013). In 2014, the Canadian

military awarded its highest military honor, the Order of Military Merit, to LTC Harjit S. Sajjan, an Afghanistan war hero and the first Sikh to command a Canadian Army regiment. See **Exhibit 16** (LTC Sajjan Awarded Order of Military Merit, June 20, 2014).

As you are no doubt aware, observant Sikh-Americans are markedly absent from the ranks of the U.S. Armed Forces due to a policy that excluded observant Sikhs and members of other minority faiths unless they relinquished the tenets of their faith. Although practicing Sikhs proudly served our country in the U.S. Army without impediment during the Vietnam War and prior conflicts dating back to World War I, military policy was changed around 1981 to prohibit exemptions to the uniform requirements for visible articles of faith. While some exceptions subsequently were made for the Jewish yarmulke, the general rule was that turban-wearing Sikhs maintaining unshorn hair and beards were disallowed from serving. See Feb, 3, 1988 Department of Defense Instruction (“DoDI”) of February 3, 1988, § 1330.17 (amended Jan. 2014); Army Regulation 600-20 §§ 5-6 (4)(g) (2009) (“The Army does not accommodate exceptions to personal grooming standards for religious reasons . . .”). This rule has barred practicing Sikhs from entering all branches of the U.S. Armed Forces for the past thirty-four years.

Nevertheless, despite the 1981 policy changes, a number of Sikhs were grandfathered in under the old military policy and have served honorably in the U.S. Army with their Sikh articles of faith intact—some even serving lifetime careers. For example:

- **COL Gopal S. Khalsa** joined the Army as a private in 1976 and continues serving in the Reserves. While on active duty, COL Khalsa served in the Special Forces Unit for 10 years on Parachute Status and as a Battalion Commander overseeing an 800-person intelligence group. He received a Meritorious Service Medal and Silver Oak Leaf Cluster Award, among many other honors. He is a graduate of the Army Officer Candidate School in Georgia, and was inducted into the Officer Candidate School Hall of Fame in 2004.
- **COL Gurbhajan Singh**, a dentist, served from 1979 until 2007. During his 28-year tenure, COL Singh was stationed around the United States, as well as in Korea. He was awarded several honors including the “A” Prefix, the U.S. Army Medical Department’s highest award for professional excellence.
- **COL Arjinderpal Singh Sekhon**, a medical doctor, served from 1984 until 2009. During his 25 years of commissioned service, COL Sekhon was stationed around the country. During the First Persian Gulf War, he was called to active duty and served stateside as a doctor at the United States Army Hospital in California. He rose through the ranks to COL and was given a Battalion Commander position through which he oversaw a unit of 600-700 soldiers. Before the end of his career in the U.S. Army, he was decorated with various awards including a Presidential Unit Citation, Joint Meritorious Unit Award, and an Army Flight Surgeon Badge.
- **Sergeant Sevak Singh Kroesen** enlisted in the U.S. Army reserves in 1976 and was attached to the Signal Company, 11<sup>th</sup> Special Forces Group after which he successfully completed airborne (paratrooper) and Radio Teletype Transmission Operator training. He then completed his Special Forces Qualification Courses and became a Special Forces

Communications Sergeant. His Sikh articles of faith were not a hindrance to his completion of this rigorous training, nor to his decade-plus of service. Sergeant Kroesen subsequently completed his schooling, training, and missions around the world all with honor and distinction. He was honorably discharged from active duty in 1991.

- **Sergeant Kirnbir Singh Grewal** served in the U.S. Army from 1977 to 1984. He entered the Army as a private and served both domestically and abroad in Germany. Sergeant Grewal, a turban-wearing Sikh, used the same standard-issue gas mask and helmet as other members of the Army. Indeed, his responsibilities included teaching other soldiers to use protective gear to survive nuclear and biological warfare. During his tenure, his Sikh articles of faith were never an impediment. The Army's actions in allowing Sergeant Grewal to serve in this capacity with his articles of faith intact reaffirmed that it accepted his faith as an inseparable part of his identity that was fully compatible with military readiness, unit cohesion, and good order and discipline.
- **MAJ Parbhur Singh Brar** is an ophthalmologist who served in the U.S. Army from December 1978 to October 1981. He was commissioned as a Reserve Officer, but then moved to Active Duty and was stationed at FT Eustis in Newport News, VA. MAJ Brar's Sikh articles of faith never stopped him from performing his duties, nor did they preclude him from creating strong relationships with his unit or supervisors during his tenure with the Army.

All of these men maintained their Sikh articles of faith during the entire length of their service. See **Exhibit 17** (Photographs of Sikh-American soldiers noted above). These Sikh-American soldiers' turbans, unshorn hair, and beards were never an impediment to their honorable service to their country.

In addition, as mentioned previously, over the past six years, McDermott Will & Emery and the Sikh Coalition have represented three Sikh-American men who have received religious accommodations to join the U.S. Army with their Sikh articles of faith intact:

- **CPL Simran Preet S. Lamba**, an enlisted soldier, began active duty in August 2010. Fluent in Punjabi and Hindi, he was recruited through the MAVNI program for his cultural and language skills. He served in a medical battalion as a Soldier Medic. CPL Lamba is known for his dedication, enthusiasm, and self-initiative. One of his superiors noted that he "has been a tremendous Soldier, an invaluable member of my team, and has had an amazing impact on his peers and supervisors." See **Exhibit 18** (CPL Lamba Letters for Commendation). He further noted that CPL Lamba "is not only a great role model for today's Soldiers, [but] his outstanding performance within our ranks can strengthen the bonds not only within the Army, but also between other countries who view this Warrior and see that the Army, and America, accepts all who can and are willing to perform for our Great Nation." *Id.* On June 14, 2014, CPL Lamba received an Army Commendation Medal for his selfless service and dedication to duty. CPL Lamba is currently in the Individual Ready Reserve.
- **MAJ Tejdeep S. Rattan**, a dentist, entered active duty in January 2010 after receiving a religious accommodation. In 2011, he was deployed to Afghanistan where he

volunteered to serve in a remote forward operating base. While deployed, MAJ Rattan performed approximately 25% of all dental procedures performed throughout the 673rd Dental Company. He was awarded an Army Commendation Medal for his “outstanding performance, technical expertise, and unwavering commitment to mission accomplishment in a hostile environment[.]” and a NATO Medal for defusing a tense confrontation with Afghan civilians. His superiors have noted that he “wears the uniform with pride”; has “[m]ilitary bearing” that is “beyond reproach”; is a “charismatic officer who leads from the front” and “serves as a great mentor for less experienced officers”; and “[i]nspires, motivates, and encourages subordinates.” See **Exhibit 19** (MAJ Rattan Officer Evaluation Report from 2014). After his deployment, MAJ Rattan was stationed at FT Bragg, NC, where he completed his active duty service as a General Dentist at the Joel Dental Clinic. On April 27, 2015, the Army awarded him a Meritorious Service Medal for his significant contributions to the U.S. Army DENTAC.

- **MAJ Kamaljeet S. Kalsi** is a physician specializing in emergency and disaster medicine. MAJ Kalsi began active duty in June 2010. He was also deployed to Afghanistan in 2011 and was awarded a Bronze Star Medal upon his return. In support of the award, an official recommendation from MAJ 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.” His superiors have noted that he has “consistently demonstrated a strong commitment to improving Army Medicine,” “exceeded all expectations,” and “possesses absolutely unlimited potential as a leader.” See **Exhibit 20** (MAJ Kalsi Officer Evaluation Report from 2011). He is currently in the U.S. Army Reserve Officer Corps.

Again, the Sikh articles of faith of these three recently accommodated U.S. Army soldiers have in no way impeded their service to our country—even while deployed abroad in hostile territory. Instead, all three have promoted unit cohesion, discipline, morale, and individual readiness.

#### V. The Army Religious Accommodation Process as Applied to Observant Sikhs, Including CPT Singh

On January 22, 2014, the U.S. Department of Defense published revisions to Instruction 1300.17, “Accommodation of Religious Practices Within the Military Services.” See **Exhibit 21**. Section 4(b) provides that the various military departments “will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures in this instruction.” Section 4(e) further provides that “[r]equests for religious accommodation . . . will be approved when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement.”

Under DoDI 1300.17 § 4(e)(1)(a)-(b), religious accommodation requests may be denied only when the “military policy, practice, or duty furthers a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” Further, DoDI 1300.17 § 4(f)(1)(b) invites religious accommodation requests from Sikhs and other visibly

religious minorities who require an exception to uniform and grooming policies by providing that, “[g]rooming and appearance practices . . . are subject to consideration for accommodation when the request is based on religious beliefs.” *Id.*

On November 6, 2014, the U.S. Army implemented the revised DoDI and promulgated its own regulations providing guidance for granting religious accommodations. *See* Army Reg. 670-1; Army Reg. 600-20. All religious accommodation requests that would require a waiver to Army uniform, grooming, and personal appearance policies must be submitted to an immediate commander and then forwarded up the chain-of-command to the Deputy Chief of Staff, Army G-1. Army Reg. 600-20, §§ 5-6(i)(1), (2). Each command level that receives the request may neither approve nor deny it, but must make recommendations to the Army G-1 as to whether the request should be granted or denied. *Id.*

In April 2015, the U.S. Army issued USAREC Message 15-032 regarding “Religious Accommodation Exceptions to Policy.” *See* **Exhibit 22**. Message 15-032 appears to correct the “Catch 22” provision that previously required service members to follow all rules, including ones that violate their religion, while a request for a religious accommodation is pending. While this guidance expressly applies to incoming soldiers and officers, we assume that the U.S. Army will work together with CPT Singh in a consistent manner to ensure that he is granted a temporary accommodation to avoid the imposition of disciplinary action related to uniform and grooming policies. It is further CPT Singh’s understanding that the U.S. Army now recognizes that removing his turban, cutting his hair, and/or shaving his beard—even for a short period of time—is simply not an option for him as a Sikh.

Finally, it is notable that on October 16, 2015, the United States Congress passed the 2016 National Defense Authorization Act. The House Armed Services Committee Report issued in support of the Act urges the Department of Defense to ensure that requests for religious accommodations are resolved “quickly” and “efficiently” and—wherever possible—without burdening the service member’s free exercise “while [the] accommodation request is pending.” H.R. Rep. No. 114-102, at 134 (2015). On October 20, 2015, the Act was sent to President Obama for his signature.

#### VI. The Religious Freedom Restoration Act and DoD Regulations Compel CPT Singh’s Religious Accommodation

The Religious Freedom Restoration Act (“RFRA”), passed in 1993, applies to the U.S. military. *See Singh v. McHugh*, Case No. 14-1906, 2015 WL 3648682 (D.D.C., June 12, 2015) (applying RFRA to U.S. Army regarding ROTC candidate’s request for religious accommodation to compete for commission) (a copy of Memorandum Opinion is enclosed as **Exhibit 23**); *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (applying RFRA to DoD and other branches of military on free exercise claim brought by military chaplains); *see also* DoDi 1300.17 (tracking RFRA’s language). RFRA provides that the federal government cannot substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability. 42 U.S.C. § 2000bb-1(a).

The only recognized exception requires the government to show that burdening the individual's religious exercise (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).

The "compelling interest" prong must be met "to the person." *Id.* This means that the government cannot rely upon "broadly formulated interests" as the basis for restricting an individual's religious exercise. *See Holt v. Hobbs*, 135 S. Ct. 853, 863 (2015) (interest in "prison safety and security" deemed overly broad for prohibiting individual Muslim prisoner's beard); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2779 (2014) (interest in "public health" and "gender equality" deemed overly broad for requiring specific family business to provide contraception to employees); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (concerns over "high potential for abuse" and "a lack of accepted safety" deemed overly broad for prohibiting sacramental use of a controlled substance). Rather, the government must show that its "*marginal* interest" in enforcing the asserted restriction against the "particular religious claimant" in "that particular context" rises to the level of "compelling." *Holt*, 135 S. Ct. at 863 (emphasis added).

The "least restrictive means" prong is similarly "exceptionally demanding" and requires the government "to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party." *Id.* at 864. "If a less restrictive means is available for the Government to achieve its goals, the Government must use it." *Id.*

There is no question that refusal to accommodate CPT Singh's Sikh articles of faith would constitute a substantial burden on his religious exercise. If denied an accommodation, CPT Singh would be forced to choose between his religious convictions and the benefit of pursuing a career in the U.S. Army to serve his country. *See, e.g., 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 such a choice unquestionably imposes a substantial burden on CPT Singh's religious exercise. *Holt*, 135 S. Ct. at 862 (grooming policy that subjected prisoner to "serious disciplinary action" for growing beard constituted a substantial burden); *Singh*, 2015 WL 3648682, at \*11 (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). Thus, under DoDI 1300.17, CPT Singh is entitled to an exception absent a showing that granting one would impair a compelling government interest that cannot be satisfied via a less restrictive means.

For several reasons, this standard cannot be met. As set forth in DoDI 1300.17, the only valid reason for denying a religious accommodation is if it would "adversely affect mission accomplishment such as military readiness, unit cohesion, good order, discipline, health and safety." DoDI 1300.17(4)(e). Alone, however, these "broadly formulated interests" are insufficient and must be considered in the specific context of CPT Singh's request. We are not aware of anything in CPT Singh's anticipated duties at FT Belvoir that would be compromised in any way by granting him a religious accommodation.

Moreover, as earlier outlined in great detail, many Sikhs have served honorably in the U.S. Armed Forces with their articles of faith intact—posing no threat to military readiness, unit cohesion, good order, discipline, or health and safety. Indeed, in *Singh v. McHugh*, the court relied on extensive evidence concerning the four most recent Sikh service members, concluding that “the praise heaped on each man’s service” in their military records stood “in stark contrast” to any assertion that the Sikh articles of faith would “undermine the quality of his training, unit cohesion and morale, military readiness, and the credibility of the officer corps.” *Singh*, 2015 WL 3648682, at \*22. Relying on the military’s own research, the court concluded that Sikh soldiers should have “the chance to prove themselves” like anyone else, without having to abandon their articles of faith. *Id.*

Further, it is our understanding that the Army has issued more than 300,000 waivers to its uniform and grooming policies, including for medical beards and tattoos, on both a permanent and temporary basis. In fact, earlier this year the U.S. Army announced revisions to its tattoo policy that will remove the limit on the number and size of soldiers’ tattoos.<sup>5</sup> Given that other Sikhs have served with religious accommodations and given the numerous waivers to uniform and grooming standards granted to service members for both religious and secular reasons, the U.S. Army cannot show that denying CPT Singh’s religious accommodation (1) furthers a compelling governmental interest; or (2) is the least restrictive means of furthering such an interest. *See Singh*, 2015 WL 3648682, at \*19 (“The fact that the Army is able to tolerate so many idiosyncratic deviations from its grooming regulations further undermines [its] assertion that ‘the even handed enforcement of grooming standards’ is critical to ‘instill[ ] the self-discipline necessary for the military member to perform effectively.’”)<sup>6</sup>

Outside of complying with the law, there are many other compelling reasons why the U.S. Army should allow CPT Singh to serve with his articles of faith intact. Religious freedom and respect for religious pluralism are bedrock principles of this country, principles that the U.S. Army is bound to protect and promote. As one of the country’s largest employers, we urge the Army to vigorously promote and embrace religious liberty and to send a clear message rejecting discriminatory policies and practices against religious individuals, just as it has done for African-Americans, women, gays and lesbians, and other minority communities. As our world becomes more complex and interconnected, our military leadership must reflect different cultural and religious backgrounds.

Finally, given Sikh-Americans’ long and distinguished military history in the United States and around the world, Sikhs would certainly embrace the opportunity to continue to enlist and serve as dedicated service members in the U.S. Army.

\* \* \* \* \*

For the reasons stated above, CPT Singh respectfully requests that the U.S. Army accommodate his Sikh articles of faith and allow him to continue his service to our country while complying

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<sup>5</sup> See Kathleen Curthoys, *Army announces big changes to the tattoo policy*, Army Times (Apr. 1, 2015), available at <http://www.armytimes.com/story/military/careers/army/2015/04/01/army-tattoo-policy-change/70783186/>.

<sup>6</sup> The *Singh v. McHugh* litigation revealed that hundreds of thousands of soldiers have received accommodations for facial hair and tattoos in recent years.

with the tenets of his faith. Please be reminded that, pursuant to DoDI 1300.17 § 5(b)(2) and Army Regulation 600-20, § 5-6(i)(10), a decision must be made within 30 days after the G-1 is in receipt of CPT Singh's request. However, in light of CPT Singh's order to report to FT Belvoir on November 16, we respectfully request that the review of this request be expedited and given urgent attention from the G-1.

We thank you for your consideration in this regard and look forward to continuing our cordial working relationship with you. Please do not hesitate to contact us via email or phone if you have any questions:

- Amandeep S. Sidhu, Esq., McDermott Will & Emery LLP, [asidhu@mwe.com](mailto:asidhu@mwe.com), 202-756-8380;
- Harsimran Kaur, Esq., The Sikh Coalition, [harsimran@sikhcoalition.org](mailto:harsimran@sikhcoalition.org), 510-565-7908;  
or
- Eric Baxter, Esq., The Becket Fund for Religious Liberty, [ebaxter@becketfund.org](mailto:ebaxter@becketfund.org), 202-349-7221.

cc (w/ enclosures):

CPT Simratpal Singh, U.S. Army (via email at [simratpal.singh.mil@mail.mil](mailto:simratpal.singh.mil@mail.mil))

# Know Your Rights: Sikhs in the U.S. Army

(Updated May 14, 2015)

**This document provides general information on uniform and grooming rules for Sikhs who are interested in serving in the U.S. Army. This information pertains *only* to the U.S. Army and is not intended as legal advice. To request specific legal assistance on your matter, please contact the Sikh Coalition’s Legal Program. (The Sikh Coalition does not have information about the rules of other branches of the military.)**

## 1. What is the current U.S. Army policy regarding Sikh religious headwear and grooming?

The U.S. Army’s uniform and grooming regulations do not allow soldiers, officers, or other Service members to wear turbans or keep unshorn hair and beards.<sup>1</sup> However, prospective or current Sikh Service members can apply for a religious exemption (an exception) to this policy. On January 22, 2014, the U.S. Department of Defense published revisions to Instruction 1300.17, titled “Accommodation of Religious Practices Within the Military Services.” According to Instruction 1300.17, the Military Departments will accommodate individual expressions of sincerely held beliefs – including grooming and appearance practices based on religious beliefs – unless the accommodation could have an adverse impact on military readiness, unit cohesion, safety, health, good order and discipline.<sup>2</sup> The U.S. Army has indicated<sup>3</sup> that it will consider exceptions to its policies on a case-by-case basis only – considering the unique facts of each case, mission accomplishment and military necessity. Thus, the general rule is that Sikhs still cannot serve with unshorn hair/beards and turbans.

## 2. What is the process for requesting a religious accommodation in the U.S. Army for Sikh recruits?

A Sikh recruit<sup>4</sup> who wishes to maintain their articles of faith while serving in the U.S. Army, including a turban and unshorn hair/beard, must first comply with initial U.S. Army requirements for enlistment. These requirements include passing military entrance examinations, such as the [ASVAB](#) test, and meeting all background, physical and medical requirements. If qualified, the U.S. Army rules require the Sikh recruit to first enlist with the Future Soldier Training Program (FSTP) or Delayed Entry Program (DEP).<sup>5</sup> After enlisting, a Sikh future soldier must submit a religious

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<sup>1</sup>See Army Regulation 670-10, *Wear and Appearance of Army Uniforms and Insignia*, available at [http://www.army.mil/usapa/epubs/pdf/r670\\_1.pdf](http://www.army.mil/usapa/epubs/pdf/r670_1.pdf) (updated Sept. 15, 2014).

<sup>2</sup>Department of Defense Instruction 1300.17 § 4(b), *Accommodation of Religious Practices Within the Military Services*, available at <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf> (updated Jan. 22, 2014).

<sup>3</sup>See Army Regulation 600-20, paragraph 5-6(i), *Army Command Policy*, available at [http://www.apd.army.mil/pdffiles/r600\\_20.pdf](http://www.apd.army.mil/pdffiles/r600_20.pdf) (updated Nov. 6, 2014).

<sup>4</sup>At this time, the accommodation process outlined in this section applies to prospective Sikh Service members only. Current Sikh Service members who wish to begin wearing their articles of faith and need to request a religious accommodation must comply with the procedures outlined in Army Regulation 600-20, paragraph 5-6(i), *Army Command Policy*, available at [http://www.apd.army.mil/pdffiles/r600\\_20.pdf](http://www.apd.army.mil/pdffiles/r600_20.pdf) (updated Nov. 6, 2014).

<sup>5</sup>See USAREC Message 15-032 Update, From Headquarters USAREC to All Recruiting Personnel, *Religious Accommodation Exceptions to Policy* (Released April 2015).

accommodation request to their immediate commander in order to serve with their articles of faith.<sup>6</sup> The request must contain a handwritten or typed statement from the future soldier requesting a religious accommodation and the reason for the request.

After the Sikh future soldier submits this religious accommodation request (also known as an Exception to Policy) to his/her commander, the U.S. Army will take the following steps in processing the request, and will include the below information in the accommodation packet, which will be submitted up the chain of command to the Army G-1, Deputy Chief of Staff, for a decision<sup>7</sup>:

- 1.) A Company Commander memorandum which will contain the future soldier's identifying information and the reason for the accommodation request;
- 2.) A Brigade Chaplain memorandum – addressing the religious basis and sincerity of the soldier's request after a one-on-one in person or phone conversation;
- 3.) A Battalion Commander endorsement of the request;
- 4.) A Brigade Commander endorsement of the request;
- 5.) The completed exception packet, titled "Religious Accommodation Exception," will be submitted to the U.S. Army Recruiting Command Headquarters for endorsement;
- 6.) The U.S. Army Recruiting Commander will complete an endorsement and submit the completed package to the TRADOC Commander for further endorsement;
- 7.) The TRADOC Commander will submit the final package, with endorsements, to the Army G-1, Deputy Chief of Staff, for final decision.
- 8.) Under Department of Defense Instruction 1300.17, a decision will be made by the G-1's office within thirty (30) days. However, a Sikh will be allowed to enlist in the Future Soldier Training Program or the Delayed Entry Program for a minimum of 180 days to allow for the processing of religious accommodation requests consistent with the procedures outlined above.

The Deputy Chief of Staff, Army G-1, has the sole authority within the U.S. Army to make decisions on a religious accommodation request to the U.S. Army's uniform and grooming policies. These decisions cannot be made by recruiters or commanders, although commanders can provide endorsements as the request moves up the chain of command to the G-1's office.

### **3. Can I maintain my religious articles of faith while my religious accommodation request is pending?**

Under recent policy changes within the U.S. Army only, future soldiers are no longer required to adhere to the U.S. Army's uniform and grooming requirements, as outlined in Army Regulation 670-10, while their religious accommodation requests are pending.<sup>8</sup> During this processing time, a Sikh recruit will enlist in the Future Soldier Training Program (FSTP) or Delayed Entry Program (DEP) for a minimum period of 180 days. While in the FSTP or DEP, a future Sikh soldier will not be shipped to training and/or an assignment, and can wear their turban and maintain unshorn hair (and a beard) while a decision is pending.

### **4. What happens if my religious accommodation request is denied?**

If the religious accommodation request is denied, the future soldier does not need to ship to basic

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<sup>6</sup>See *id.*

<sup>7</sup>See *id.*

<sup>8</sup>See *id.*

combat training and/or continue their service; rather, the applicant has the option to either ship to training as scheduled and comply with Army uniform and grooming requirements OR request a discharge.

An applicant may also appeal a denial to maintain/wear the Sikh articles of faith, but the U.S. Army rules provide that appeals will be considered only if they are not based upon substantially the same grounds or if they are not supported by substantially the same evidence as a previously disapproved application.<sup>9</sup>

#### **5. Can the Sikh Coalition represent me if I want to request a religious accommodation?**

The Sikh Coalition will not be able to represent every Sikh who wants to join the U.S. Army. The Sikh Coalition's goal is to end the thirty-year policy of excluding Sikhs from the U.S. Army. To do this, we need to present the strongest individual cases to the Army - a common civil rights technique. A strong case will force the Army (or a court) to focus on the heart of the issue – discrimination against Sikhs. A weaker case will allow the Army (or a court) to make a negative decision on a technicality and avoid the issue of discrimination. Thus, the Sikh Coalition will assess each case on its merits, and we will only move forward with the strongest cases. However, we are happy to provide information (such as this Know Your Rights document) to all interested community members about the process of requesting a religious accommodation and general information about Sikh religious practices and/or Sikh military history to include in an accommodation request.

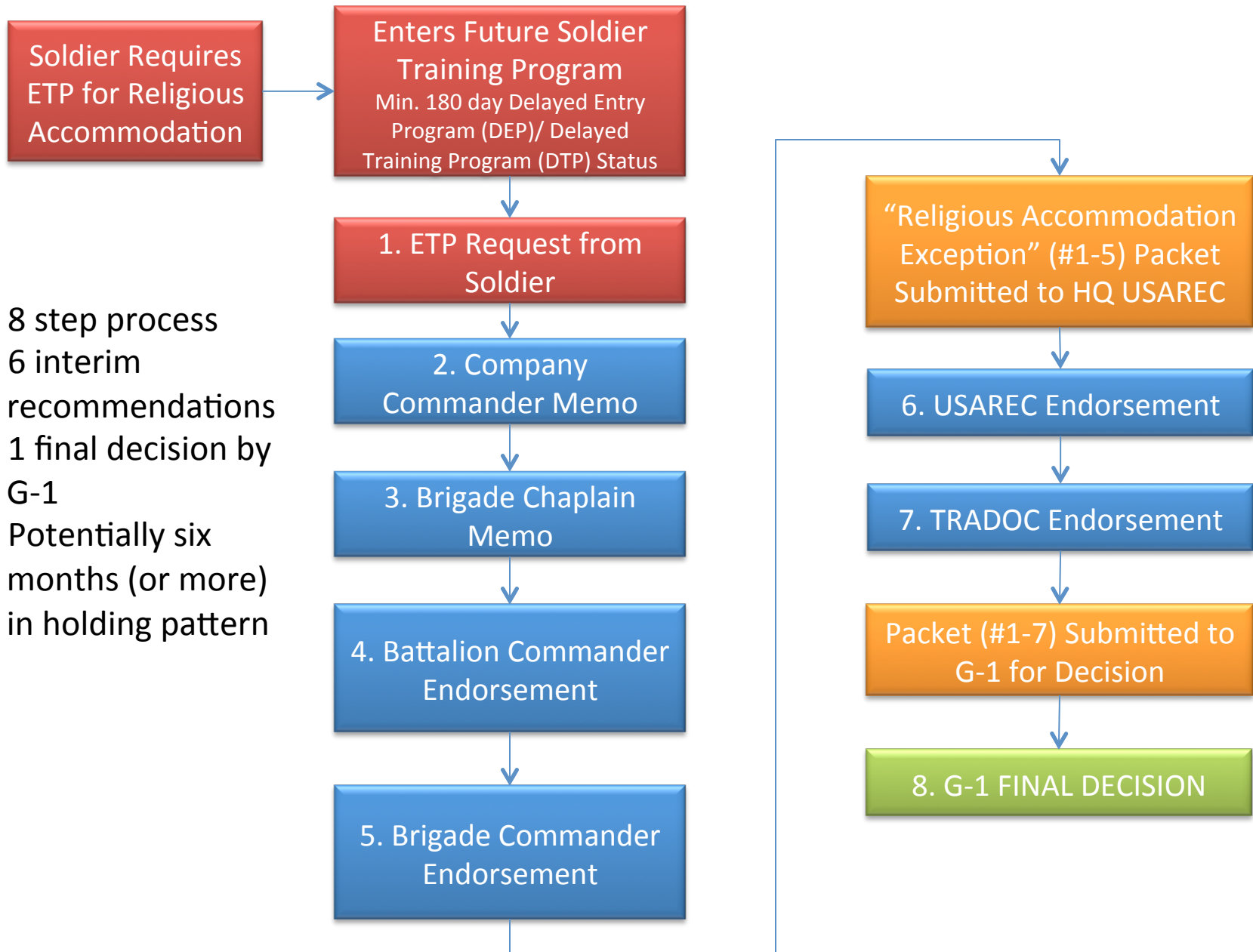
To request legal assistance, fill out our online form here: <http://www.sikhcoalition.org/request-legal-assistance>.

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<sup>9</sup>See Army Regulation 600-20, paragraphs 5-6i (12).

# U.S. Army Religious Accommodation Exception to Policy Workflow Process

Source: USAREC Message 15-032

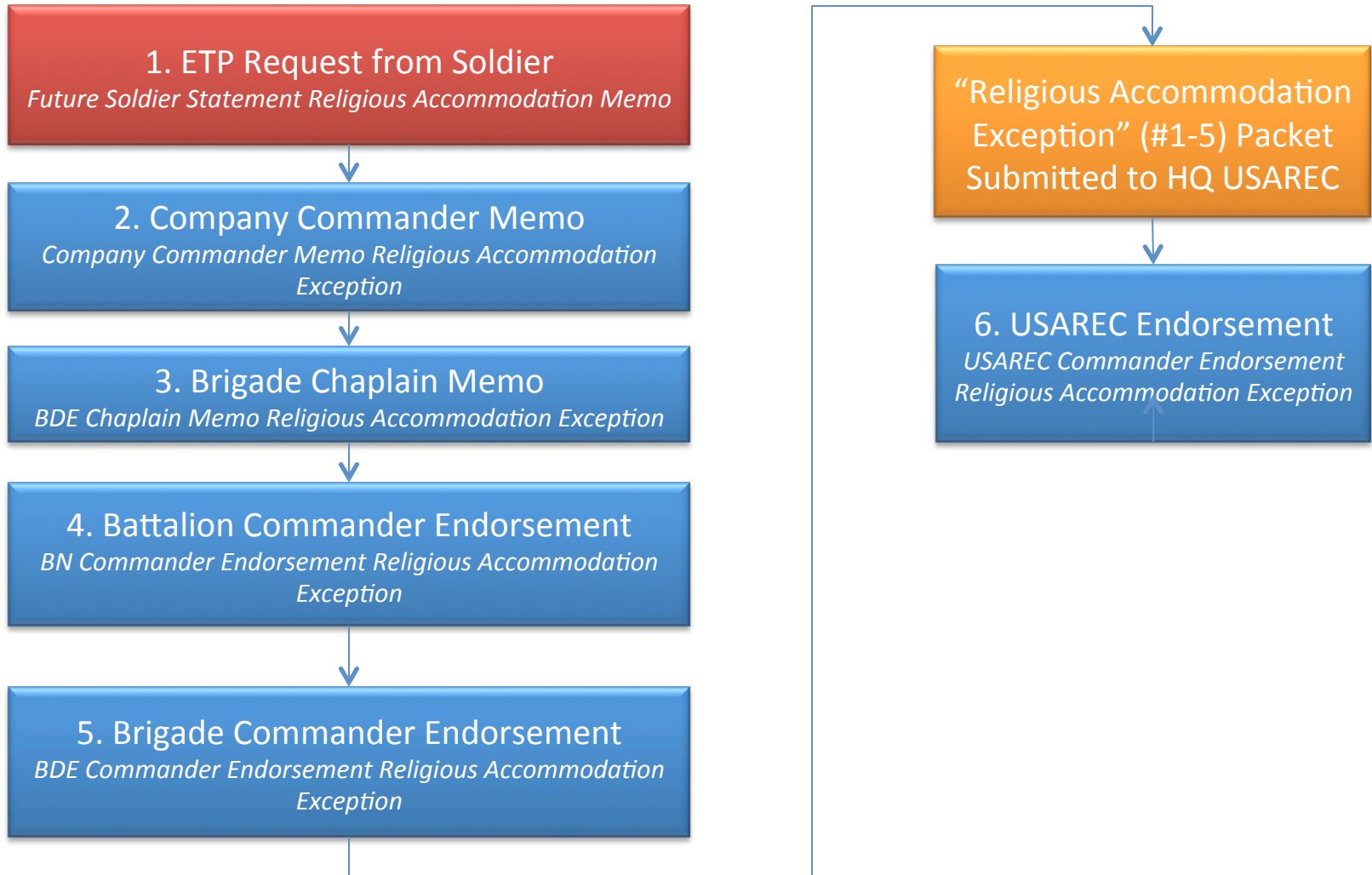


- 8 step process
- 6 interim recommendations
- 1 final decision by G-1
- Potentially six months (or more) in holding pattern

# U.S. Army Religious Accommodation Exception to Policy Workflow Process

Source: USAREC Message 15-032

## KEY DOCUMENTS



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

SIMRATPAL SINGH,

Plaintiff,

v.

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

Defendants.

Civil Action No. 16-399 (BAH)

Judge Beryl A. Howell

**MEMORANDUM OPINION**

Pending before the Court is a motion for a temporary restraining order to enjoin an order from the United States Army's senior command to the plaintiff, Captain Simratpal Singh, a decorated Sikh Army officer, requiring him to undergo several days of specialized testing, under expert supervision, at a cost of over \$32,000, with his "army combat helmet" and "army protective mask" for the purpose of ensuring that his Sikh articles of faith, namely a cloth head covering and unshorn hair and beard, will not interfere with the helmet's ability "to withstand ballistic and blunt forces" and the mask's ability "to provide protection from toxic chemical and biological agents." At first blush, the challenged order appears to reflect a reasonably thorough and even benevolent decision by the Army to fulfill its duty of protecting the health and safety of this particular Sikh officer.

Yet, that is far from the complete picture. Thousands of other soldiers are permitted to wear long hair and beards for medical or other reasons, without being subjected to such specialized and costly expert testing of their helmets and gas masks. Moreover, other Sikh soldiers have been permitted to maintain their articles of faith without such specialized testing. In fact, just this week, the plaintiff, who maintains the Sikh articles of faith, passed the standard

gas mask test administered to his unit and given routinely to soldiers. Nonetheless, the plaintiff has been ordered to undergo additional specialized testing as part of the Army's review of his request for a religious accommodation and exception to the Army's regulations regarding grooming and appearance. As the Supreme Court has stressed, in evaluating claims of discriminatory governmental action implicating the important First Amendment right to the Free Exercise of religion, "context matters." *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003)); see *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Sotomayor, J., concurring) ("Nothing in the Court's opinion calls into question our prior holding in *Cutter v. Wilkinson* that 'context matters' in the application of [statutes protecting religious exercise] . . .").

Courts should be reluctant, as the defendants point out, "to interfere with legitimate Army matters," *Kreis v. Sec'y of Air Force*, 866 F.2d 1508, 1511 (D.C. Cir. 1989) (quoting *Orloff v. Willoughby*, 345 U.S. 83, 93–94 (1953)), since "great deference" should be given "to the professional judgment of military authorities concerning the relative importance of a particular military interest," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quoting *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986)); see also *Chappell v. Wallace*, 462 U.S. 296, 300 (1983) ("Civilian courts must, at the very least, hesitate long before entertaining a suit which asks the court to tamper with the established relationship between enlisted military personnel and their superior officers; that relationship is at the heart of the necessarily unique structure of the military establishment."); *New v. Cohen*, 129 F.3d 639, 643 (D.C. Cir. 1997) ("[T]he military justice system must remain free from undue interference, because the military is a specialized society separate from civilian society with laws and traditions of its own developed during its long history." (internal quotation omitted) (quoting *Schlesinger v. Councilman*, 420 U.S. 738,

757 (1975)). At the same time, the Supreme Court “has never held . . . that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service,” *Chappell*, 462 U.S. at 304, and “military interests do not always trump other considerations,” *Winter*, 555 U.S. at 26. The context of this case raises such significant questions about the lawfulness of the Army command’s order to the plaintiff to undergo specialized testing that, pursuant to the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb, *et seq.*, judicial intervention is required.

## I. BACKGROUND

The plaintiff is an honors West Point graduate, with an advanced Master’s degree in engineering, a Ranger, and a Bronze Star recipient for his service while being forward-deployed to Operation Enduring Freedom in Kandahar Province, Afghanistan. Verified Compl. (“Compl.”) ¶¶ 76, 79, 82, 90, ECF No. 1; Compl. Ex. 2 (West Point academic record), ECF No. 1-1; Compl. Ex. 6 (Bronze Star Medal documentation), ECF No. 1-1. He is also a practicing Sikh, Compl. ¶¶ 46–56, a religion that requires him to wear external “articles of faith,” including unshorn hair (*kesh*), a beard, and a turban (*dastaar*) or smaller traditional cloth head covering (*patka*), *id.* ¶¶ 2–4, 36–42, 100. As a Captain in the United States Army, the plaintiff is bound by the Uniform Code of Military Justice, which requires hairstyle and grooming standards in conflict with his faith. *See generally* U.S. Dep’t of Army, Reg. 670–1, Wear and Appearance of Army Uniforms and Insignia (Apr. 10, 2015).

Throughout his youth, the plaintiff maintained the Sikh articles of faith, wearing a turban and never cutting his hair or shaving. Compl. ¶¶ 47–50. Upon graduation from high school, however, the plaintiff, who long desired to serve in the military, attained the opportunity to attend the United States Military Academy at West Point. *Id.* ¶¶ 67–70. Before his induction

into West Point, the plaintiff inquired about obtaining a religious accommodation for his articles of faith from Army personnel who “expressed doubt” and “gave vague responses.” Pl.’s Combined Mem. Supp. Appl. TRO & Appl. Prelim. Inj. (“Pl.’s Mem.”) at 8–9, ECF No. 2-1; *see* Compl. ¶¶ 69–70. During the induction process, “and before Captain Singh fully understood what was happening, he found himself in the barbershop with the other cadets to be trimmed and shaved.” Compl. ¶ 71. “[B]elieving he had no other option” but to risk losing the opportunity to attend West Point and serve this country, the plaintiff “succumbed under pressure and made the difficult decision to remove his turban, cut his hair, and shave his beard.” *Id.* ¶ 72.

Though “[e]xperiencing significant shame and disappointment in himself” for violating the Sikh religious requirements, *id.* ¶ 74, the plaintiff graduated from West Point in 2010 with a B.S. degree in electrical engineering with Honors, *id.* ¶ 76; *see* Compl. Ex. 2, and, thereafter, has continuously served this country with notable excellence. He has received high praise from his commanders, Compl. ¶¶ 78, 80–81, attended and graduated from Ranger School, *id.* ¶¶ 78–79, and served as platoon leader in a deployment to Afghanistan from April 2012 to January 2013, *id.* ¶¶ 79–80, for which “exceptional and meritorious service” the plaintiff was awarded a Bronze Star Medal, *id.* ¶ 82; *see* Compl. Ex. 6. In November 2013, the plaintiff received an Army Achievement Medal for his performance during a joint training exercise with the South Korean Army, Compl. ¶ 83; *see* Compl. Ex. 7 (Army Achievement Medal documentation), ECF No. 1-1, and, in November 2014, he received an Army Commendation Medal for his service as a Brigade Assistant for a “rapidly deployable . . . Combat Team,” Compl. ¶¶ 84–85; *see* Compl. Ex. 9 (Army Commendation Medal documentation), ECF No. 1-1.

In the Spring of 2015, the plaintiff met several Sikh soldiers who maintain their articles of faith at a celebration of the Sikh New Year hosted by the Pentagon and, “for the first time,” saw “a viable path” to obtaining a religious accommodation. Compl. ¶¶ 88–89.

Later that year, on October 16, 2015, around the time the plaintiff completed a Master’s degree in engineering and began a one-month leave, the plaintiff informed his new immediate commander, Lieutenant Colonel (“LTC”) Julie Balten, that he intended to report to his next-ordered post, the 249<sup>th</sup> Engineer Battalion Prime Power at Fort Belvoir, Virginia, on the date ordered, November 16, 2015, donning his articles of faith—wearing a turban, unshorn hair, and a beard. *Id.* ¶¶ 90–92. LTC Balten represented to the plaintiff that his articles of faith “would have no adverse impact on [his] ability to fulfill his responsibilities and promised to recommend that he be granted an accommodation.” *Id.* ¶ 92. Shortly thereafter, on October 21, 2015, the plaintiff submitted a “Request for Religious Accommodation and Exception to Wear and Appearance Regulations Pursuant to AR 600-20 and AR 670-1” (“Pl.’s Request”), Defs.’ Opp’n to Pl.’s Mot. TRO (“Defs.’ Opp’n”), Appendix (“Defs.’ App.”) at A19, Pl.’s Request at 1, ECF No. 9-1, pursuant to Army Regulation 600-20, which provides that “[i]n accordance with [RFRA] . . . , the Army will approve requests for accommodation of religious practices unless accommodation will have an adverse impact on unit readiness, individual readiness, unit cohesion, morale, good order, discipline, safety, and/or health,” U.S. Dep’t of Army, Reg. 600–20, Army Command Policy (Nov. 6, 2014), ch. 5–6(a). In his request, the plaintiff detailed how he would “conform [his] religious requirements in a way that ensures consistency with the Army’s need to maintain uniformity and safety standards,” including maintaining his “hair and beard in a neat and conservative manner at all times;” wearing a turban in non-field and field settings in a matching camouflage material to his uniform, or a “subdued black turban with the

Class A uniform whenever required;” and wearing a *patka* or small turban with his Kevlar helmet. Pl.’s Request at 2–3.

Due to delays in receiving any response to this religious accommodation request, the plaintiff twice used personal leave to extend his report date to December 14, 2015. Compl. ¶ 94. Finally, on or about December 9, 2015, Debra S. Wada, the Assistant Secretary of the Army (“ASA”) for Manpower and Reserve Affairs since October 2014, who is “responsible for overseeing the implementation and execution of the Army’s policy for accommodating religious practices and ensuring compliance with the law and DoD policy regarding religious practices,” Defs.’ App. at A1, Decl. of Debra S. Wada (Feb. 29, 2016) (“Wada Decl.”) ¶ 1, issued a temporary, “interim accommodation” to the plaintiff granting him permission to wear his articles of faith until January 8, 2016, at which time ASA Wada indicated she would provide the plaintiff with a final decision, Defs. App. at A18; *see* Compl. ¶ 95. On January 8, 2016, ASA Wada extended the plaintiff’s interim accommodation until March 31, 2016, “at which time [she] expect[s] to provide [the plaintiff] with [her] decision.” Defs.’ App. at A17; *see* Compl. ¶ 96.

On February 23, 2016, ASA Wada requested “additional information concerning the compatibility of [the plaintiff’s] turban, hair, and beard with U.S. Army protective equipment.” Defs.’ App. at A14, Mem. from Debra S. Wada (Feb. 23, 2016) (“Wada Mem.”) ¶ 2; Compl. Ex. 16 (Wada Mem.) ¶ 2, ECF No. 1-1. To gather the requested “additional information,” ASA Wada ordered the plaintiff, first, to be fitted with an Army Combat Helmet (“ACH”) “by a technical expert,” who “should evaluate whether CPT Singh can safely wear a *patka* under the ACH” and “determine whether and to what extent CPT Singh must modify the length, bulk, or placement of his hair in order to obtain a proper fit and to ensure the head protection coverage area is not reduced.” Wada Mem. ¶ 3. ASA Wada ordered the plaintiff then “to be fitted with a

protective mask by a technical expert” and evaluated using a corn oil aerosol test, *id.* ¶ 4(a), one of three types of mask evaluation procedures used by the Army, Defs.’ App. at A6, Decl. of Alex G. Pappas (Feb. 29, 2016) (“Pappas Decl.”) ¶ 3. ASA Wada ordered the plaintiff to undergo the corn oil aerosol test using four types of Army masks, each under two different types of conditions: first, “without any type of gel, oil, or lotion” in the plaintiff’s hair or beard and, if the plaintiff cannot achieve a certain level of protection “in three of five successive tests” with any mask, second, with “a personally-procured hair gel or product, such as Vaseline, to further conform his hair to the contours of his face.” Wada Mem. ¶ 4(a)–(b). ASA Wada requested the testing results be provided to her prior to March 15, 2016, “[t]o facilitate timely action” on the plaintiff’s religious accommodation request. *Id.* ¶ 6.

The plaintiff was advised of ASA Wada’s memorandum requiring him to undergo the specialized testing the following day. Decl. of Simratpal Singh Supp. TRO / Mot. Prelim. Inj. (Mar. 1, 2016) (“Pl.’s Decl.”) ¶ 3, ECF No. 16-2. On the afternoon of Friday, February 26, 2016, the plaintiff was ordered to report to his normal duty post for helmet testing on the morning of March 1, 2016, and for the “comprehensive individual gas mask testing” later this same week. *Id.* at ¶ 9; Compl. ¶ 103; Pl.’s Mem. at 13; Defs.’ Opp’n at 3. Later in the evening of February 26, 2016, the plaintiff was ordered by his immediate commanding officer, LTC Balten, to report, after the March 1, 2016 helmet testing, to Aberdeen Proving Ground in Maryland for three days of safety-mask testing, which LTC Balten indicated would cost approximately \$33,000. Pl.’s Decl. ¶ 10; Defs.’ Notice, Ex. at 3, ECF No. 13 (Feb. 26, 2016 email from Colonel (“COL”) Michael Peloquin to COL Peter Helmlinger, stating that the gas mask test “[i]nvolves 3 days of testing at a cost of \$32,925” and noting concern about completion date “if ECBC [the testing center] must conduct significant analysis in the

development of its test report”). She also told the plaintiff that her commanding officer wanted the plaintiff to be escorted to the Aberdeen Proving Ground from Fort Belvoir, a circumstance normally associated with “soldiers they mistrust.” Pl.’s Decl. ¶ 12; *see* Defs.’ Notice, Ex. at 2 (Feb. 26, 2016 email from COL Helmlinger to LTC Balten, stating “I recommend you also send a more senior escort from the 249th to travel with [plaintiff] and observe the training” and, if he is sent “on his own,” directing LTC Balten to “provide him with very clear written counseling/instructions as to the purpose of the protective mask testing and his requirements to comply with the experts”). LTC Balten was subsequently advised that her commanding officer had been advised by “USACE Chief Counsel” that verbal, rather than written instructions would be sufficient. Defs.’ Notice, Ex. at 1 (Feb. 26, 2016 email from COL Helmlinger to LTC Balten).

On the morning of February 29, 2016, the plaintiff participated with about 30 soldiers from his unit in a previously scheduled standard gas mask test, in which the soldiers put on their gas masks and then entered a chamber to perform exercises while noxious gas was released. Pl.’s Decl. ¶¶ 13–15. The plaintiff successfully completed the test with his gas mask sealed and resealed. *Id.* ¶¶ 16–17.

The same day that the plaintiff was participating in the standard gas mask test, he filed the Verified Complaint in this case along with an Application for Temporary Restraining Order (“TRO”), ECF No. 2, seeking to prohibit the defendants “from subjecting Captain Singh to the protective mask test or helmet test requirements set forth in the February 23, 2016 memorandum from Debra S. Wada or any other unusual or discriminatory testing,” Pl.’s Proposed TRO Order, ECF No. 2-5, and an Application for Preliminary Injunction, ECF No. 3, seeking to “direct Defendants to grant [plaintiff] a permanent religious accommodation that would allow him to

wear uncut hair, a beard, and a turban, as required by his Sikh faith, while serving in the Army,” Pl.’s App. for Prelim. Inj., ECF No. 3; *see also* Pl.’s Proposed Prelim. Inj. Order, ECF No. 3-1 (seeking to enjoin defendants “from enforcing against Plaintiff any Army regulations that would prohibit him from wearing unshorn hair, a beard, and turban as required by his Sikh faith”). Given that the specialized testing ordered by ASA Wada was to begin the following morning, the Court promptly held a hearing on the TRO application that afternoon. *See* Minute Entry (Feb. 29, 2016). At the hearing, the defendants agreed to postpone the specialized testing until March 4, 2016.

## II. LEGAL STANDARD

The standard for a temporary restraining order is the same as that for preliminary injunction. *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *see Experience Works, Inc. v. Chao*, 267 F.Supp.2d 93, 96 (D.D.C. 2003). Either type of injunctive relief “is an extraordinary and drastic remedy,” and “should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted) (quoting 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2948 (2d ed. 1995)). The plaintiff is required to show clearly four things: (1) that he is “likely to succeed on the merits,” (2) that he is “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “that the balance of equities tips in his favor,” and (4) “that an injunction is in the public interest.” *Glossip v. Gross*, 135 S. Ct. 2726, 2736–37 (2015) (quoting *Winter*, 555 U.S. at 20); *see also Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (quoting *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011)). The plaintiff must “show that all four factors, taken together, weigh in favor of the injunction.” *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quoting

*Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)). The Supreme Court in *Winter* made clear that a court may not issue “a preliminary injunction based only on a possibility of irreparable harm . . . [since] injunctive relief [i]s an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” 555 U.S. at 22.

### III. DISCUSSION

Two motions for injunctive relief are pending in this case, *see* Appl. for TRO, ECF No. 2; Appl. for Prelim. Inj., ECF No. 3, but only the motion for a temporary restraining order is fully briefed and, thus, ripe for review.<sup>1</sup> After considering the defendants’ justiciability concerns, the

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<sup>1</sup> At the oral hearing held on February 29, 2016, and throughout their papers, the defendants argue that the issue presented in the motion for preliminary injunction will not be justiciable until the defendants make a final determination on the plaintiff’s request for religious accommodation which, if granted, would render that motion moot. *See, e.g.*, Defs.’ Proposed Briefing Schedule at 1, ECF No. 17; Tr. of Hr’g for TRO (Feb. 29, 2016) (“Hr’g Tr.”) at 59–61, ECF No. 20. Additionally, the defendants argue that the specialized helmet and gas mask testing must be conducted in order for ASA Wada to make a final decision on the plaintiff’s request. *See, e.g.*, Defs.’ Opp’n at 10, ECF No. 9. The plaintiff, on the other hand, “strongly believes that this Court has the authority to immediately decide his requests for both” a temporary restraining order barring the specialized testing and a preliminary injunction granting the plaintiff’s request for a religious accommodation. Pl.’s Proposed Briefing Schedule at 1–2, ECF No. 14. Accordingly, the plaintiff proposed an accelerated briefing schedule that would have allowed the Court to resolve both motions this week. *Id.*

The defendants objected to the plaintiff’s proposed briefing schedule, proposing an alternative briefing schedule for the preliminary injunction motion to take place in April 2016, *see generally* Defs.’ Proposed Briefing Schedule, to which proposal the plaintiff does not object so long as “further emergency proceedings” are avoided, Pl.’s Resp. Defs.’ Proposed Briefing Schedule (“Pl.’s Resp.”) at 1, ECF No. 19. In support of their alternative proposed briefing schedule, and to address the Court’s concern expressed at the hearing about avoiding another rushed “fire drill” consideration of the weighty First Amendment issues at stake, the defendants assured the Court that, “should Plaintiff’s longer-term accommodation request not be granted when his temporary accommodation expires on March 31, 2016, Plaintiff will initially receive a 21-day extension of his current accommodation, prior to requiring Plaintiff to comply with Army grooming standards.” Defs.’ Proposed Briefing Schedule at 3. The defendants’ assurance is notably silent as to whether the 21-day extension would be granted regardless of the outcome of the TRO motion, raising the specter that the plaintiff’s request for religious accommodation may be denied and his temporary accommodation withdrawn at any time after resolution of the TRO motion against the defendants. Consequently, the plaintiff “agrees to extend the briefing schedule for the application for preliminary injunction only on condition that (1) Defendants confirm in writing that Captain Singh’s temporary accommodation is extended until a final decision is rendered on the pending application for preliminary injunction, including any appeals; and (2) Defendants confirm in writing that they will issue a final decision on Captain Singh’s request for a permanent accommodation by March 31, 2016, regardless of this Court’s ruling on the pending application for a TRO.” Pl.’s Resp. at 2. Despite the defendants’ silence, the 21-day extension of the plaintiff’s current accommodation is presumably not conditioned on the denial of TRO but would also apply if the TRO is granted, since the same conditions would exist in either circumstance. Indeed, otherwise, the defendants’ risk the perception that refusing to extend the plaintiff’s temporary accommodation, if the TRO is granted, during consideration of the preliminary injunction application is in some way retaliatory, and thereby coercive, against the plaintiff for his attempt to enforce his religious rights.

Court turns to analysis of whether the plaintiff has satisfied the four requisite elements for the TRO he seeks.

**A. Threshold Jurisdictional Question**

As a threshold matter, the defendants characterize the plaintiff's challenge to the order for him to undergo specialized helmet and gas mask testing procedures as a "disagreement with the orders of his superiors." Defs.' Opp'n at 4; *id.* at 5 ("[This] is nothing more than Plaintiff's disagreement about the wisdom of an order issued to him."). As such, the defendants contend that the specialized testing order is "a purely internal military affair" that "is outside the bounds of this court's jurisdiction," for two inter-related reasons. *Id.* at 5–6.

First, the defendants contend that the specialized testing order "implicates unique demands of military discipline – that an officer follow the lawful orders of his superiors." *Id.* at 6. Any judicial interference that "allow[s] a Soldier to second guess an order of his superior" may, "by design[,] effect[] the goals of discipline and obedience." *Id.* at 7 (internal quotation and citation omitted).

Second, the defendants point out that, due to the potential adverse effect of judicial intervention on critical military discipline and order, "absent a clearly defined right enforceable in a proceeding other than a court-martial—for example, an administrative proceeding to address a service member's conscientious objector status—the federal courts normally should not interfere with day-to-day operations of the military services as Plaintiff requests this Court to do." *Id.* (citing *New*, 129 F.3d at 647). In other words, the defendants urge the Court to abstain from reviewing the legality of the specialized testing order, leaving the plaintiff with the choice "to disobey the order" and be "subject to discipline," which would then enable him to "present

his arguments about the legality of his orders as a defense to the court-martial action” or bring claims in an administrative proceeding. *Id.* These arguments are not persuasive.

Indisputably, “the complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force” is vested “exclusively in the legislative and executive branches.” *Kreis*, 866 F.2d at 1511 (quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973)). These other two branches of the federal government are plainly responsible “for setting up channels through which . . . grievances” for complaints of “discrimination, favoritism or other objectionable handling of men” in the military “can be considered and fairly settled.” *Orloff*, 345 U.S. at 93–95 (holding the military had exclusive jurisdiction to determine the propriety of an Army inductee’s “specific assignments to duty”); *Kreis*, 866 F.2d at 1511 (holding Air Force major’s “request for retroactive promotion” was a “nonjusticiable military personnel decision[]” because “Congress has vested in the Secretary alone the authority to determine” the propriety of promotion decisions).

Yet, despite the sound reasons for limits on judicial review and requirements of administrative exhaustion of military personnel decisions generally, “resolving a claim founded solely upon a constitutional right is singularly suited to a judicial forum and clearly inappropriate to an administrative board.” *Adair v. England*, 183 F. Supp. 2d 31, 55 (D.D.C. 2002) (quoting *Downen v. Warner*, 481 F.2d 642, 643 (9th Cir. 1973)). Thus, in *Adair*, the Court rejected the military’s argument that plaintiffs, non-liturgical Naval chaplains, who brought claims “based on the First Amendment’s Establishment and Free Exercise Clauses and the Fifth Amendment’s Due Process Clause,” should have “first exhausted their administrative remedies by raising their personnel claims with the Board for Correction of Naval Records (‘BCNR’) before coming to federal court.” *Id.*

Indeed, “the Supreme Court and [the D.C. Circuit] have heard numerous [constitutional] challenges to military policies.” *Brannum v. Lake*, 311 F.3d 1127, 1130 (D.C. Cir. 2002). The D.C. Circuit has explained that the logic underlying nonjusticiability in military cases is “wholly inappropriate . . . when a case presents an issue that is amenable to judicial resolution,” recognizing that “courts have shown no hesitation to review cases in which a violation of the Constitution, statutes, or regulations is alleged.” *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979); *see id.* (“It is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful. . . . The military departments enjoy no immunity from this proscription.” (citation omitted)).<sup>2</sup>

The plaintiff here challenges whether the specialized testing order of his superiors is in fact “lawful,” Defs.’ Opp’n at 4, by pursuing his “clearly defined right enforceable in a proceeding other than a court-martial,” *id.* at 5, under RFRA. This statute was enacted “in 1993 in order to provide very broad protection for religious liberty,” in response to a 1990 Supreme Court decision—*Employment Division v. Smith*, 494 U.S. 872 (1990)—that limited religious liberty by “largely repudiat[ing]” the Court’s earlier “method of analyzing free-exercise claims.” *Burwell v. Hobby Lobby Stores, Inc. (Hobby Lobby)*, 134 S. Ct. 2751, 2760 (2014); *see Smith*, 494 U.S. at 888 (expressing concern about “open[ing] the prospect of constitutionally required

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<sup>2</sup> The defendants’ reliance on *New* and *Schlesinger* is misplaced. Both of those cases involved Army soldiers’ requests for collateral review, via a habeas petition, of a pending court-martial disciplinary proceeding. *See Schlesinger*, 420 U.S. at 748–49; *New*, 129 F.3d at 643–44. *New* even recognized that when a soldier chooses to obey an order he believes is unlawful, he can seek direct judicial review of the military’s policies. 129 F.3d at 647. It is only when a soldier chooses to disobey the order that he must “challenge the[] validity in the subsequent disciplinary proceedings.” *Id.* *New* further recognized that when a plaintiff has “a clearly defined right enforceable in a proceeding other than a court-martial” proceeding, federal courts may intervene. *Id.* *Cf. Schlesinger*, 420 U.S. at 758 (“hold[ing] that when a serviceman charged with crimes by military authorities can show no harm other than that attendant to resolution of his case in the military court system, the federal district courts must refrain from intervention, by way of injunction or otherwise”).

religious exemptions from civic obligations of almost every conceivable kind”). In enacting RFRA, Congress found, *inter alia*, that “governments should not substantially burden religious exercise without compelling justification” and rejected the Supreme Court’s elimination in *Smith* of “the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion,” concluding that “the compelling interest test as set forth in prior Federal Court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.” 42 U.S.C. § 2000bb(a). Congress expressly stated that the “purposes” of RFRA are to “guarantee [the] application” of “the compelling interest test . . . in all cases where free exercise of religion is substantially burdened” and “to provide a claim or defense to persons whose religious exercise is substantially burdened by government.” 42 U.S.C. § 2000bb(b) (emphasis added). RFRA, in fact, “provided even broader protection for religious liberty than was available” under the decisions it sought to restore. *Hobby Lobby*, 134 S. Ct. at 2761 n.3.

Thus, RFRA provides both broad protection of the free exercise right and a broad right of action for judicial relief. *See* 42 U.S.C. § 2000bb-1(c) (“A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.”). Notably, Congress nowhere inserted any exception for the U.S. Armed Forces from RFRA’s application or any exhaustion requirement, as it did, for example, in RFRA’s “sister statute,” the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc, *et seq.* *See Holt*, 135 S. Ct. at 859; *Cutter*, 544 U.S. at 723 n.12 (“[A] prisoner may not sue under RLUIPA without first exhausting all available administrative remedies.” (citing 42 U.S.C. §§ 1997e(a), 2000cc-2(e))); *see also Oklevueha Native Am. Church of Hawaii, 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, . . . and the Supreme Court has not imposed one.”).

Consequently, RFRA certainly provides no textual support for the defendants’ position that the plaintiff is required to exhaust administrative remedies in a court-martial proceeding before bringing his constitutional and RFRA claims before this Court.

Accordingly, the Court is satisfied that jurisdiction over the plaintiff’s claims is properly exercised here.

**B. Likelihood of Success on the Merits**

In his application for a TRO, the plaintiff contends that he has a likelihood of success on his claims that the specialized testing violates: (1) the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb, *et seq.*, (2) the Free Exercise Clause of the First Amendment of the United States Constitution, and (3) the Equal Protection Clause of the Fifth Amendment of the United States Constitution. Pl.’s Mem. at 23, 37–40. For the following reasons, the Court finds that the plaintiff has demonstrated a likelihood of success on his RFRA claim and, thus, does not address his likelihood of success on the other claims.

RFRA provides that the “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless “it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(a), (b). At the preliminary injunction stage, the parties’ burdens of proof and persuasion under RFRA “track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006).

Thus, the plaintiff bears the initial burden of showing that the government’s policy “implicates his religious exercise”—*i.e.*, that “the relevant exercise of religion is grounded in a sincerely held religious belief”—and that the government’s policy substantially burdens that exercise of religion. *Holt*, 135 S. Ct. at 862; *O Centro*, 546 U.S. at 428 (noting that the plaintiff’s *prima facie* case under RFRA is to show that the application of the government’s policy “would (1) substantially burden (2) a sincere (3) religious exercise”). The burden then shifts to the defendants to show that the policy “(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. § 2000cc-1(a); *Holt*, 135 S. Ct. at 863; *see* 42 U.S.C. § 2000bb-2(3) (“[T]he term ‘demonstrates’ means meets the burdens of going forward with the evidence and of persuasion.”); *O Centro*, 546 U.S. at 428–29 (explaining that it is the government’s burden (of proof and persuasion) at the preliminary injunction stage to “demonstrate that the application of the burden [of free exercise] to the [plaintiff] would, more likely than not, be justified by the asserted compelling interests” and that the plaintiff’s “proposed less restrictive alternatives are less effective” (citing *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)).

### 1. *The Plaintiff Has Established A Prima Facie Case*

The defendants do not dispute the sincerity of the plaintiff’s exercise of his Sikh religious beliefs. *See* Tr. of Hr’g for TRO (Feb. 29, 2016) (“Hr’g Tr.”) at 34:15–16, ECF No. 20. The defendants dispute that the specialized helmet and gas mask testing required of the plaintiff poses any burden on his free exercise right because all of the “testing would be completed with CPT Singh’s articles of faith intact.” Defs.’ Opp’n at 8–9. This view of the burden on the plaintiff is too myopic and ignores both the fact that the plaintiff is required to take these tests when other

soldiers granted exceptions to the Army regulations regarding grooming and appearance are not, and the fact that these tests directly affect whether the plaintiff receives a religious accommodation and, if granted, the scope of the accommodation. *See* Wada Decl. ¶ 5 (asserting that the Army must conduct the “individualized testing” on the plaintiff to “understand [safety] risks to the greatest extent possible before making a final decision on CPT Singh’s religious accommodation and, if he is granted an accommodation, the scope of that accommodation”).

The issue before this Court on the TRO application is not whether compliance with the Army grooming and appearance regulations would substantially burden the plaintiff’s religious exercise rights. In that regard, the plaintiff’s *prima facie* case may be “easily satisfied” since, absent an accommodation, the plaintiff would face serious disciplinary action by maintaining the Sikh articles of faith, *see Holt*, 135 S.Ct. at 862 (concluding that prison grooming policy on beard length “substantially burdens [prisoner plaintiff’s] religious exercise” because if he “contravenes that policy and grows his beard, he will face serious disciplinary action”), a finding conceded by the defendants, *see Hr’g Tr.* at 34:17–35:5 (conceding that, should the Army revoke the plaintiff’s interim religious accommodation, he would be substantially burdened and have a right of action under RFRA). Rather, the issue now is whether conditioning the processing of the plaintiff’s request for a religious accommodation on the specialized helmet and gas mask testing itself presents a substantial burden.

Generally, “[a] substantial burden exists when government action puts ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Priests for Life v. U.S. Dep’t of Health & Human Servs.*, 772 F.3d 229, 246 (D.C. Cir. 2014) (quoting *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008)). In considering whether the procedures for obtaining a religious accommodation are themselves burdens on the free exercise

rights, courts have looked to the precise nature of the procedures imposed. Mere inconveniences, inconsequential or *de minimis* government actions that burden religious exercise do not suffice to qualify as a “substantial burden.” See *Priests for Life*, 772 F.3d at 246 (“A burden does not rise to the level of being substantial when it places ‘[a]n inconsequential or *de minimis* burden’ on an adherent’s religious exercise.” (quoting *Kaemmerling*, 553 F.3d at 678)); *id.* at 248 (“Burdens that are only slight, negligible, or *de minimis* are not substantial.”); *Smith v. Allen*, 502 F.3d 1255, 1278 (11th Cir. 2007) (“[A]t a minimum the substantial burden test requires that a RLUIPA plaintiff demonstrate that the government’s denial of a particular religious item or observance was more than an inconvenience to one’s religious practice.”), *abrogated on other grounds by Sossamon v. Texas*, 563 U.S. 277 (2011); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (“[A] ‘substantial burden’ must place more than an inconvenience on religious exercise.”). At the same time, procedures that render a requested religious accommodation virtually impossible to achieve have been found to be substantially burdensome. See, e.g., *Nelson v. Miller*, 570 F.3d 868, 878–79 (7th Cir. 2009) (requiring prisoner to show that religion compelled the practice in question and verify compelled practice with documentation imposed substantial burden by making desired religious exercise “effectively impracticable”); *Koger v. Bryan*, 523 F.3d 789, 797 (7th Cir. 2008) (requiring prisoner to show preferred diet was compelled by religion and religious belief to be verified by clergy for entitlement to religious accommodation was substantial burden and contrary to RLUIPA).

The D.C. Circuit recently addressed this issue in *Priests for Life*. There, the plaintiffs challenged the “regulatory accommodation for religious nonprofit organizations that permits them to opt out of the contraceptive coverage requirement under the Patient Protection and

Affordable Care Act (‘ACA’), 42 U.S.C. § 300gg-13(a)(4)” on grounds that the procedure “itself imposes an unjustified substantial burden on Plaintiffs’ religious exercise in violation of” RFRA. 772 F.3d at 235; *see id.* at 245–46 (“Plaintiffs argue that a religious accommodation, designed to permit them to free themselves entirely from the contraceptive coverage requirement, itself imposes a substantial burden.”). The Court concluded that the challenged opt-out procedure did “not impose a substantial burden on Plaintiffs’ religious exercise under RFRA,” noting that “[a]ll Plaintiffs must do to opt out is express what they believe and seek what they want via a letter or two-page form,” which amounted to a “bit of paperwork [that] is more straightforward and minimal than many that are staples of nonprofit organizations’ compliance with law in the modern administrative state.” *Id.* at 237.

The specialized helmet and gas mask testing challenged in the TRO application involves far more than a *de minimis* administrative obligation of completing a one or two-page document but falls short of constituting an “effectively impracticable” requirement for obtaining a religious accommodation in the military. This makes this a close case. Nevertheless, the Court is persuaded that requiring the plaintiff to undergo the specialized testing for further processing of his religious accommodation request is a substantial burden when such testing is not required for soldiers to obtain exceptions from the Army uniform and grooming regulations on grounds other than adherence to the Sikh religious articles of faith.

The testing ordered in this case is not required of any other soldier, including soldiers who “use relaxed grooming standards” on military missions. *See Hr’g Tr.* at 16–18. With respect to helmets, the defendants explained at oral argument that, “[u]nder normal circumstances, the average soldier is fitted” for a helmet only once, during basic training or initial schooling. *Id.* at 19. After that, “the soldier is responsible for ensuring a proper fit in

conjunction with his chain of command.” *Id.*; *see also* Pl.’s Mem., Ex. A, Decl. of Kamaljeet Singh Kalsi (Feb. 27, 2016) (“Kalsi Decl.”) ¶ 15, ECF No. 2-2 (attesting, from personal experience and observations as an Army soldier, that “soldiers do not undergo evaluation for helmet fit” but are instead “left to choose a helmet that fits them based primarily on their own assessment” and “frequently adjust, remove, or add padding . . . on their own, with no external evaluation or validation”); Pl.’s Mem., Ex. B, Decl. of Simran Preet Singh Lamba (Feb. 27, 2016) (“Lamba Decl.”) ¶¶ 20–22, ECF No. 2-3 (same); Pl.’s Decl. ¶ 6 (same). Though safety concerns might warrant testing to evaluate the helmet and mask safety of Special Forces soldiers “deployed into environments where they[] . . . use relaxed grooming standards,” no safety tests on these soldiers are required. Hr’g Tr. at 18; *see also* Kalsi Decl. ¶¶ 6, 11–12, 14 (attesting, from personal experience and observations as an active duty officer deployed to Afghanistan in 2011, who was required to have “enhanced familiarity with the use of the Army’s standard-issue M-40 protective mask and Kevlar helmet” for his assignment, that Special Forces soldiers who “had beards and long hair” and “did not have to undergo specialized fitting for protective masks or helmets”).

The defendants proffer that helmet testing, or “fitting,” for Special Forces soldiers is not necessary because “it’s the way their hairstyle operates. In other words, they don’t wear a bun of hair on top of their head or any . . . material on top of their head that would change the geometrical shape of their head.” Hr’g Tr. at 19; *see also* Defs.’ App. at A10, Decl. of James Q. Zheng (Feb. 29, 2016) (“Zheng Decl.”) ¶¶ 5–6 (“express[ing] concern” about “some Sikh soldiers, following a religious accommodation” and wearing a helmet “with unshorn hair tucked under the helmet and a cloth headcovering” because performance of the helmet could be “degraded to a level that could compromise a soldier’s safety” from a “geometry deviation”).

Testing the plaintiff right now, however, may not allow the defendants to evaluate the fit of the plaintiff's helmet under the specific conditions that are the cause of concern. The plaintiff only received a religious accommodation this past October and, consequently, the unshorn hair on his head "is currently only about three inches long." Pl.'s Decl. ¶ 4.

Moreover, the defendants have provided no explanation as to why the plaintiff's beard is a potential safety hazard requiring specialized gas mask testing when the beards of Special Forces soldiers deployed in war zones with "relaxed grooming standards" are no such hazard and require no such testing. Similarly, the Army has granted medical exceptions to thousands of service members, allowing them to grow beards without any specialized gas mask testing. *See* Pl.'s Mem. at 34. The defendants contend that those medical exceptions are different because they allow for only a very small amount of facial hair growth. Hr'g Tr. at 23–24. An Army study conducted in 2009, however, indicated that even "the presence of facial hair . . . degrades the performance of protective masks." Pappas Decl. ¶ 3.

Not even soldiers subject to the Army's "Hard to Fit" protocol are subject to the level of specialized testing ordered for the plaintiff. The "Hard to Fit" protocol, which is used for individuals who have unusual "anthropomorphic features such as head size or facial feature composition" to ensure a "satisfactory fit with the standard issue protective mask," requires a "M41 protective assessment test system (PATS)." Pappas Decl. ¶ 3. PATS testing is "used at the unit level" and requires soldiers merely to perform "five exercises." *Id.* ¶ 4. While the Army deems this testing sufficient for "Hard to Fit" service members, the plaintiff is being required to undergo "corn oil aerosol" testing, "the most accurate of the three types of mask evaluation procedures used by the Army," *id.* ¶¶ 3–4, which will require a series of exercises and "trials" that will take up to three days, *id.* ¶¶ 5–6. This level of specialized testing is generally unheard

of, perhaps due to the costs. *See* Kalsi Decl. ¶ 13; Lamba Decl. ¶ 21; Khalsa Decl. ¶ 25; Pl.’s Decl. ¶¶ 5–7.

Lastly, despite the fact that the Army has “never tested the ACH [helmet] in the manner CPT Singh has requested to wear it,” Zheng Decl. ¶ 7, nor “evaluated whether the use of hair gels or Vaseline on an individual’s facial hair may affect the performance of the protective mask,” Pappas Decl. ¶ 3, the Army has granted permanent religious accommodations in the past to other Sikh soldiers without any specialized testing. *See* Kalsi Decl. ¶ 5; Lamba Decl. ¶¶ 8, 15; Khalsa Decl. ¶ 10. Each of these Sikh soldiers served with merit on active duty deployments, and one of them, like the plaintiff, was awarded a Bronze Star Medal, in part for his “coordination of five mass casualty exercises” in Afghanistan, which he performed adhering to his articles of faith. Kalsi Decl. ¶ 8.

Singling out the plaintiff for specialized testing due only to his Sikh articles of faith is, in this context, unfair and discriminatory. It is this singling out for special scrutiny—indeed, with the initial precaution of requiring an escort and observers for the plaintiff as he was subjected to the tests—that has a clear tendency to pressure the plaintiff, or other soldiers who may wish to seek a religious accommodation, to conform behavior and forego religious precepts. Even if not intended, such pressure and its concomitant coercive effects on a religious adherent amounts to a “substantial burden.” *See Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1316 (10th Cir. 2010) (recognizing a “‘coercion’ aspect to substantial burden”) (“[The Supreme] Court has repeatedly held that indirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to scrutiny under the First Amendment.” (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450 (1988))). Consequently, the Court finds that the

plaintiff has met his burden to show a likelihood of success in establishing a *prima facie* case under RFRA.

## 2. *Compelling Interest Test*

Given the plaintiff's likelihood of success in making out a *prima facie* case that the specialized testing, in the context of this case, violates RFRA, the defendants must show that the testing furthers a compelling government interest and does so by the least restrictive means. The government unquestionably has a compelling interest in ensuring the health and safety of military personnel, including the plaintiff, and by conducting these specialized helmet fitting and gas mask tests on the plaintiff—or, as plaintiff's counsel succinctly put it, using the plaintiff as a “lab rat for the military,” Hr'g Tr. at 51:23–24—the Army may obtain information useful to keeping soldiers safer, thereby furthering this compelling interest.

The proposed restriction on the plaintiff's right to free exercise by way of the individualized, intensive helmet and gas mask testing is not the least restrictive means of furthering the government's interest in helmet and gas mask safety, however. Indeed, conducting or commissioning a study of the efficacy of helmets and gas masks for soldiers donning a variety of unshorn hair, beards, and/or head coverings, which does not target one particular Sikh soldier merely because of his request for a religious accommodation, would be *more* effective in furthering the government's compelling interest in ensuring the health and safety of its soldiers. This is particularly true in light of the “relaxed grooming standards” and medical exceptions that the Army grants to thousands of soldiers. Conducting or commissioning such a study would not, unlike the testing ordered in this case, in-and-of-itself restrict or burden any one individual's right to free exercise, and the results of the study would likely provide more value to the government in ensuring the health and safety of military personnel generally.

The Supreme Court's decision in *Holt* is instructive. That case involved a prisoner's challenge under RFRA to the prison's grooming policy limiting the length of beards. 135 S. Ct. at 859. The Supreme Court credited the prison's compelling governmental interest in prison safety and security but concluded that the beard length policy at issue was not the least restrictive means of accomplishing those goals. *Id.* at 863 (finding it "hard to take seriously" that "staunching the flow of contraband . . . would be seriously compromised by allowing inmate to grow a ½-inch beard"). The Court bolstered this conclusion by finding, first, that the grooming policy was "substantially underinclusive" by permitting prisoners with dermatological conditions to grow longer beards and hair on their heads. *Id.* at 865–66. The fact that "[t]he proffered objectives are not pursued with respect to analogous nonreligious conduct," . . . suggests that "those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree." *Id.* at 866 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)). Second, the Court noted the fact that "many other prisons allow inmates to grow beards while ensuring prison safety and security," which also suggests that less restrictive means than a denial of the exemption would satisfy prison security and safety concerns. *Id.*

Similarly, here, the Army's policy of specialized testing for this plaintiff as a condition for granting his religious accommodation request, based solely on hair and beard growth required by Sikh articles of faith, is "substantially underinclusive." The defendants warn that "without information concerning the fit of the Advanced Combat Helmet (ACH) and protective mask, Defendants cannot ensure that Plaintiff's protective equipment provides appropriate protection" and that "[c]urrently available information indicates that the accommodation may present significant risks that the equipment would not work properly, and any such failure could place Plaintiff, his fellow soldiers, and the mission at risk." Defs.' Proposed Briefing Schedule at 2–3,

ECF No. 17. As discussed above, however, medical exceptions and “relaxed grooming standards” are granted without such specialized information, and even the Army’s most “Hard to Fit” soldiers may serve without undergoing the level of specialized tests ordered of the plaintiff. Indeed, the existence of the “Hard to Fit” program undermines the defendants’ argument that the specialized testing of the plaintiff is necessary for a determination on his accommodation. Additionally, as the plaintiff notes, even were the plaintiff to fail all of the specialized testing, “that could have no legitimate bearing on his accommodation” request because “[i]f the Army treats him like every other soldier, as it must, it would simply work with him to find a satisfactory solution through the existing ‘hard to fit’ program.” Pl.’s Resp. to Defs.’ Proposed Briefing Schedule at 2, ECF No. 19. In sum, the fact that health and safety “are not pursued with respect to analogous nonreligious conduct” to the degree in which those compelling interests are being pursued with respect to religious conduct “suggests that those interests could be achieved” by less burdensome means. *Holt*, 135 S. Ct. at 866.

The defendants argue that they are in a “Catch 22 position” where, under RFRA and, specifically, *Holt*, they must do an “individualized assessment” for the plaintiff’s accommodation request, but an unfavorable ruling on the plaintiff’s TRO application will prohibit them from “conduct[ing] the tests that [they] believe are necessary” to determine whether the plaintiff’s helmet and gas mask fit properly. Hr’g Tr. at 62. The defendants misinterpret *Holt*. The emphasis in *Holt* on a “more focused” inquiry into the “application of the challenged law to . . . the particular claimant,” 135 S. Ct. at 863, relates to how the government must best respond to a person’s particular belief system.

The defendants are correct that, should they deny the plaintiff’s religious accommodation request, they may “not merely . . . explain why” they denied it, but also must “prove that denying

the exemption is the least restrictive means of furthering a compelling governmental interest.” *Holt*, 135 S. Ct. at 864. This does not mean, however, that the defendants may infringe upon the very right RFRA protects in order to meet their burden of proof. Otherwise, the government would be able to end-run around RFRA.

As Justice Sotomayor suggests in her concurrence in *Holt*, courts should defer to “officials’ reasoning when that deference is due—that is, when . . . officials offer a plausible explanation for their chosen policy *that is supported by whatever evidence is reasonably available to them.*” *Holt*, 135 S. Ct. at 867 (Sotomayor, J., concurring) (emphasis added). Here, where the defendants must obtain evidence by substantially burdening the plaintiff’s free exercise rights (*i.e.*, as discussed *supra* in Part III.B.1, by subjecting him to testing required of no other soldier seeking a similar exemption from Army uniform and grooming rules) in order to support their policy that substantially burdens the plaintiff’s free exercise rights (*i.e.*, by prohibiting the plaintiff from wearing his articles of faith) that evidence is, by no means, “reasonably available to them.” In short, the defendants may not violate RFRA in an attempt to justify another potential violation of RFRA.

\* \* \*

The Court concludes that even if the defendants have a compelling interest in the execution of the specialized testing order challenged in this TRO application, the defendants have not met their burden to show it is the least restrictive means available to further their interest. Thus, the plaintiff has shown a likelihood of success on the merits and met the first prong for his TRO application.

### C. Irreparable Harm

The D.C. Circuit “has set a high standard for irreparable injury” to warrant preliminary injunctive relief. *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). In order to be considered “irreparable,” the injury “must be ‘both certain and great,’ ‘actual and not theoretical,’ ‘beyond remediation,’ and ‘of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.’” *Id.* (emphasis in original) (quoting *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297). Generally, however, “[w]hen an alleged deprivation of a constitutional right is involved, such as the right to . . . freedom of religion, most courts hold that no further showing of irreparable injury is necessary.” 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2948.1 (3d ed. 2013); *see also Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (“It has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion))).

The defendants argue that the plaintiff cannot show any harm for the same reason they argue the plaintiff cannot show substantial burden—because all of the “testing would be completed with CPT Singh’s articles of faith intact.” Defs.’ Opp’n at 8–9. The defendants ignore the fact that the plaintiff has been singled out to complete three days of helmet and gas mask testing simply because of his request for a religious accommodation. Whether intentional or not, this is discriminatory, and as the plaintiff notes, “being subjected to discrimination is by itself an irreparable harm.” Pl.’s Reply Mem. Supp. Appl. TRO at 13, ECF No. 16; *see also Smith v. City of Jackson*, 544 U.S. 228, 249 (2005) (O’Connor, J., concurring) (noting, in the

context of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623(a), that “discriminating against” an individual is “*inherently harmful* to the targeted individual” (emphasis in original)). Thus, the plaintiff has met the irreparable harm prong for injunctive relief.

#### **D. Balance of Equities**

The third factor for injunctive relief requires a showing that the balance of hardships warrants an equitable remedy. In making this assessment, the court may consider whether the requested injunctive relief would “substantially injure other interested parties.” *Ark. Dairy Co-op Ass’n, Inc. v. U.S. Dep’t of Agric.*, 573 F.3d 815, 821 (D.C. Cir. 2009) (framing the balance of harms factor as an inquiry into whether “an injunction would substantially injure other interested parties”); *see also Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (same).

In this case, the balance of harms weighs in the plaintiff’s favor. Aside from the harm discussed above, *see supra* Part III.C, denial of the injunctive relief sought in the plaintiff’s pending motion would sanction the defendants’ imposition of targeted, specialized testing requirements on a decorated officer simply because he requested a religious accommodation to the Army’s grooming and appearance regulations. This would likely have, as the plaintiff points out, a chilling effect on religious minorities, not only Sikhs, who desire lawfully to practice their religion while serving this country in the Armed Forces. As the plaintiff explains, “[i]f there is a perception that soldiers from minority religions who apply for a religious accommodation will then be ‘given the third degree’ as a penalty just for asking, the Army’s promise to provide religious accommodations will prove entirely illusory.” Pl.’s Mem. at 42.

The defendants make two arguments with respect to the equities.<sup>3</sup> First, they argue, as they do with respect to the substantial burden, that they will be harmed by the granting of the instant temporary restraining order because they will be unable to obtain important information relevant to a final decision on the plaintiff's accommodation request. *See* Defs.' Opp'n at 10. The granting of this TRO application, however, will not prevent the defendants from obtaining important information about the safety of Army helmets or gas masks. If the defendants want information about the safety of helmets and gas masks, such studies may be conducted in a controlled environment where one particular individual's religious freedom is not at stake.

Second, the defendants argue that a temporary restraining order "would be disruptive to affairs peculiarly within the jurisdiction of the military authorities," Defs.' Opp'n at 9 (citing *Orloff*, 345 U.S. at 94–95), and "interfere[] with the proper functioning of our military forces," *id.* They urge the Court to "consider the precedential effect that granting the injunction would have on the military as a whole" and "not [to] focus narrowly on this single case," warning the Court of the "harm to the Army from judicial intrusion into military affairs." *Id.* at 10. The defendants further assert that "[a] temporary restraining order, in this case, could have far-reaching effects on the military's ability to maintain discretion on the composition of the force and discipline of its soldiers" which are "weighty considerations." Defs.' Opp'n at 11.

These dire warnings are not taken lightly, but they are misplaced. The Court must focus on the particular case or controversy pending before it, and this particular case poses no risk of "far-reaching effects" on military discipline. In this case, a decorated officer seeks relief from an

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<sup>3</sup> Though the defendants contend that the balance of equities and public interest factors "merge when the Government is the opposing party," Defs.' Opp'n at 9 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)), the authority cited for that proposition does not apply to temporary or preliminary injunctive relief, but rather to stays of removal under the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. § 1252. *Nken*, 556 U.S. at 423–24. As the plaintiff notes in his reply, "[t]he Supreme Court's latest examination of the preliminary injunction factors in a case involving federal defendants treats the factors separately." Pl.'s Reply at 16 (citing *Winter*).

order to submit to nonstandard testing for which he has been singled out due to his request for the Army to accommodate his constitutional and statutory right to religious exercise. Thus, to the extent that the defendants claim harm from an injunction against application of an unlawful order that impinges upon a soldier's free exercise right, the scale of equities falls squarely on the plaintiff's side.

#### **E. Public Interest**

The public interest in this case weighs strongly in favor of the plaintiff, despite the defendants' argument to the contrary. The defendants argue that, "[t]he injunctive relief sought here would unduly interfere with the public's recognized interest in efficient administration of military personnel matters," and affect the public's undisputed "interest in maintaining an effective military." Defs.' Opp'n at 11. Again, the defendants' arguments are not taken lightly. "[C]ourts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction," *Winter*, 555 U.S. at 24 (quoting *Romero-Barcelo*, 456 U.S. 305, 312 (1982)), and an injunction's "adverse impact on the public interest in national defense" cannot be understated, *id.* Here, however, the granting of the requested injunctive relief would not have an impact on the national defense or the Army's ability to protect our nation's security.

This case is distinguishable from those military cases which directly implicate public safety or national security. For example, in *Winter*, the Supreme Court reversed a court's grant of "a preliminary injunction imposing restrictions on the Navy's sonar training," including "the use of modern sonar to detect and track enemy submarines." 555 U.S. at 12. Noting that the training exercises only allegedly harmed marine mammals, and that the extent of the harm, if any, was disputed, the Court found "that the balance of equities and consideration of the overall public interest" weighed "strongly in favor of the Navy." *Id.* at 14, 26. The Court explained that

the injunction would “forc[e] the Navy to deploy an inadequately trained antisubmarine force,” “jeopardize[] the safety of the fleet,” and undermine the President’s “determin[ation] that training with active sonar is ‘essential to national security.’” *Id.* at 26. The Court also recognized that the injunction would “hinder efforts to train sonar operators under realistic conditions, ultimately leaving strike groups more vulnerable to enemy submarines.” *Id.* at 31. The Court thus concluded, “[t]he public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs.” *Id.* at 26.

This case is simply not analogous. The Court’s grant of injunctive relief would prohibit specialized, nonstandard testing of a single officer currently based in Virginia. It would in no way jeopardize Army training or safety, nor would it undercut an Executive branch national security determination. One decorated officer’s attempt to vindicate his constitutionally and statutorily-protected religious rights does not “unduly interfere” with the “efficient administration of personnel matters.”

On the other hand, the public has a significant interest in having a diverse military, reflective of the composition of our country and accepting of religious minorities. Indeed, the Army recognized this interest in creating the “Military Accessions Vital to the National Interest (MAVNI) program,” under which individuals may enlist where they “possess cultural and linguistic skills,” including fluency in certain languages, which “are considered vital to our national interest.” *Lamba Decl.* ¶ 4. The specialized testing the Army seeks to conduct in this case is perceived as “discriminatory and demeaning,” *id.* ¶ 24; *Khalsa Decl.* ¶ 28; *Kalsi Decl.* ¶ 18, and it is likely to discourage Sikhs and other minorities from military service. Therefore, in

these circumstances, the public's best interest weighs heavily in favor of granting the plaintiff's TRO application.

#### **IV. CONCLUSION**

For the foregoing reasons, the plaintiff's Application for Temporary Restraining Order, ECF No. 2, is granted. Accordingly, the defendants are preliminarily enjoined from subjecting the plaintiff to any non-standard or discriminatory testing for his helmet and gas mask during the pendency of the litigation.

The parties are directed to confer and jointly submit, by 5:00 p.m. on March 4, 2016, a proposed briefing schedule to govern further proceedings in this case.

An appropriate Order accompanies this Memorandum Opinion.

Date: March 3, 2016

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BERYL A. HOWELL  
United States District Judge

<p><u>United States Code Annotated</u> <u>Title 42. The Public Health and Welfare</u> <u>Chapter 21B. Religious Freedom Restoration</u></p>
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42 U.S.C.A. § 2000bb-1

§ 2000bb-1. Free exercise of religion protected

Currentness

**(a) In general**

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

**(b) Exception**

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

**(c) Judicial relief**

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

**CREDIT(S)**

(Pub.L. 103-141, § 3, Nov. 16, 1993, 107 Stat. 1488.)

42 U.S.C.A. § 2000bb-1, 42 USCA § 2000bb-1

Current through P.L. 114-181. Also includes P.L. 114-183 to 114-186, 114-188, 114-189, and 114-191 to 114-194.

## MEMORANDUM

**Date:** July 8, 2016

**To:** U.S. Army Recruiting Command  
U.S. Army Chain-of-Command

**From:** Amandeep S. Sidhu, Esq.  
*McDermott Will & Emery LLP*<sup>1</sup>  
Harsimran Kaur, Esq.  
*The Sikh Coalition*<sup>2</sup>

**Re:** Religious Accommodation Exception Request  
*Guidance Regarding Religious Accommodation of Sikh Soldiers*

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### I. Background on Sikh Service in the U.S. Army

By way of introduction, McDermott and the Sikh Coalition have endeavored to work collaboratively with the G-1's office and other Pentagon and Army officials since 2009 to ensure that Sikh soldiers in the U.S. Army are permitted to practice their religion—including keeping uncut hair and beards and wearing a turban—while maintaining the highest standards of neat and conservative uniformity, preserving individual readiness, meeting all safety requirements, and contributing to esprit de corps and unit cohesion.

By denying Sikh service members the ability to practice their religion while serving, the military denies itself access to the important talents and abilities of individuals who are willing to fight and die for our nation. Observant Sikh-Americans will enrich the military's understanding of diverse cultures, languages, and religions, thereby allowing us to fully appreciate not only the

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<sup>1</sup> McDermott Will & Emery is a premier international law firm with a diversified business practice. Numbering more than 1,100 lawyers, McDermott has offices in Boston, Brussels, Chicago, Düsseldorf, Frankfurt, Houston, London, Los Angeles, Miami, Milan, Munich, New York, Orange County, Paris, Rome, Seoul, Silicon Valley and Washington, D.C. Further extending our reach in Asia, we have a strategic alliance with MWE China Law Offices in Shanghai. McDermott has over 75 years of experience serving a broad range of client interests, including the interests of our pro bono clients, like the Sikh Coalition. McDermott has served as pro bono counsel to the Sikh Coalition since 2007.

<sup>2</sup> The Sikh Coalition is the largest Sikh-American civil rights organization in the United States, with offices in New York, California, and Washington, DC. The Sikh Coalition was constituted on the night of September 11, 2001 in response to a torrent of hate crimes against Sikhs throughout the United States. Since that time, the Sikh Coalition has pursued its mission by: providing direct legal services to persons whose civil or human rights are violated; advocating for laws and policies that are respectful of fundamental rights; promoting appreciation for diversity through education; and fostering civic engagement in order to promote local community empowerment.

rich fabric of our own country but also the lands where we send our service members into harm's way.

In our great nation, Sikh-Americans, like all other Americans, have First Amendment and, as per the Religious Freedom Restoration Act ("RFRA"), statutory rights to sincerely practice their religion and to serve our nation without violating their religious beliefs. Turbaned and bearded (*i.e.*, observant) Sikh soldiers have a long and storied history of military service, proudly defending the United States and her allies throughout the 20th century.<sup>3</sup>

Since 2009, we have seen the successful *re-integration* of observant Sikh soldiers into the U.S. Army, starting with MAJ Kamaljeet S. Kalsi and MAJ Tejdeep S. Rattan, and continuing with CPL Simranpreet S. Lamba in 2010. On March 31, 2016, the U.S. Army granted a long-term religious accommodation to CPT Simratpal Singh to serve with his Sikh articles of faith intact.<sup>4</sup> See **Exhibit 1** (Long-Term Religious Accommodation Approval – CPT Simratpal Singh). CPT Singh had previously received a temporary accommodation to serve on December 14, 2015, which had been extended until March 31, 2016. See **Exhibit 2** (Interim Decision Regarding Request for Religious Accommodation – CPT Simratpal Singh); see also **Exhibit 3** (Extension of Interim Decision Regarding Request for Religious Accommodation – CPT Simratpal Singh). On April 8, 2016, the U.S. Army granted long-term religious accommodations to three additional Sikh soldiers: SPC Kanwar Bir Singh (Army National Guard); SPC Harpal Singh (U.S. Army Reserve – MAVNI); and PVT Arjan S. Ghotra (Army National Guard). See **Exhibit 4** (Long-Term Religious Accommodation Approval For Three Sikh Soldiers).

As has been extensively reported in both the military and mainstream media, MAJ Kalsi, MAJ Rattan, CPL Lamba, and CPT Singh have had exceptional careers in the U.S. Army and have proudly defended our country, including deployments to Afghanistan for MAJ Kalsi and MAJ Rattan with their Sikh articles of faith intact. MAJ Kalsi, a Bronze Star Medal recipient, and MAJ Rattan, the recipient of an Army Meritorious Service Medal, Army Commendation Medal, and NATO Medal, were both recognized for their significant contributions to our military's mission while deployed. Similarly, CPT Singh received a Bronze Star Medal for his exemplary service while deployed to Afghanistan in support of Operation Enduring Freedom.

In addition to advancing our military's mission and promoting unit cohesion—while still practicing their faith—MAJ Kalsi, MAJ Rattan, CPT Singh, and CPL Lamba are able to comply with safety requirements. All four Sikh soldiers successfully passed their fit tests using standard-issue Army gas masks, wore helmets over their turbans, and were (or in the case of CPT Singh, continue to be) in a constant state of readiness. The honorable service of these Sikh soldiers proves that Sikh articles of faith present no barriers to full and effective service in the U.S. military. Additionally, initial reports indicate that SPC Harpal Singh, SPC Kanwar Singh, and

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<sup>3</sup> Starting with World War I, dozens of Sikhs served in the U.S. Army with turbans, unshorn hair, and beards. In addition, several Sikhs were grandfathered in under the pre-1981 policy and served honorably in the U.S. Army with their Sikh articles of faith intact—some even serving lifetime careers. This latter group includes COL Gopal S. Khalsa, COL Gurbhajan Singh, COL Arjinderpal S. Sekhon, SGT Sevak S. Kroesen, SGT Kirnbir S. Grewal, and MAJ Parbhur S. Brar. They will be discussed in greater detail in Section V of this letter.

<sup>4</sup> See David Philipps, *Sikh Captain Says Keeping Beard and Turban Lets Him Serve U.S. and Faith*, NEW YORK TIMES, April 1, 2016, <http://www.nytimes.com/2016/04/02/us/sikh-army-captain-simratpal-singh.html>.

PVT Ghotra have also passed their gas mask fit tests in Basic Combat Training (“BCT”), further demonstrating that Sikh soldiers can meet rigorous safety standards.<sup>5</sup>

## II. Support for Ending the Presumptive Ban on Sikh Service in the U.S. Armed Forces

Our efforts for full inclusion of observant Sikhs in the U.S. Armed Forces have been widely supported and have indeed intensified in recent years. On March 10, 2014, 105 bipartisan Members of Congress—including members of the House Armed Services Committee and the Speaker of the House, Rep. Paul Ryan—sent a letter to former Defense Secretary Chuck Hagel calling for equal opportunity for all Sikhs who wish to serve in the U.S. Armed Forces. See **Exhibit 5** (Letter from Members of Congress, Mar. 10, 2014). This bipartisan group, which includes the Chairman and Ranking Member of the Defense Appropriations Subcommittee and several members of the House Armed Services Committee, “respectfully request[s] that the U.S. Armed Forces modernize their appearance regulations so that patriotic Sikh-Americans can serve the country they love while abiding by their articles of faith.” *Id.* Referring to the service of Sikh-Americans who “are also able to wear protective equipment, including helmets and gas masks, in conformity with safety requirement[s],” these 105 Members of Congress also recommended the following:

Given the achievements of these [Sikh] soldiers and their *demonstrated ability to comply with operational requirements while practicing their faith*, we believe it is time for our military to *make inclusion of practicing Sikh Americans the rule, not the exception.*

*Id.* (emphasis added). On April 2, 2014, over 21 interfaith and national organizations sent a letter to the Department of Defense pressing it to close loopholes in its policies that presumptively ban observant Sikh service. See **Exhibit 6** (Letter from Interfaith Organizations, Apr. 2, 2014).

On Veteran’s Day 2015, 27 retired U.S. generals sent a letter to Defense Secretary Ashton B. Carter urging him to remove obstacles to military service by Sikhs maintaining their articles of faith. See **Exhibit 7** (Letter from 27 Retired Generals Regarding Service of Observant Sikhs in U.S. Armed Forces, Nov. 11, 2015). On the same day, two of the 27 retired generals—MAJ GEN William Francis Ward, Jr. (who commanded the first fully desegregated tank unit in the state of Delaware in 1956) and MAJ GEN Steven Hashem—published opinion pieces in The Washington Post and CNN, in support of full integration of observant Sikhs into the military. See **Exhibit 8**<sup>6</sup> and **Exhibit 9**.<sup>7</sup> MAJ GEN Hashem noted:

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<sup>5</sup> Robert Timmons, ‘He is a Soldier’ Beard, turban exemption granted for Sikh enlistee, THE FORT JACKSON LEADER, June 23, 2016, <https://www.army.mil/article/170312/>.

<sup>6</sup> William Francis Ward, Jr., *US Army should let Sikhs serve, turban and all*, THE WASHINGTON POST, Nov. 11, 2015, [https://www.washingtonpost.com/national/religion/us-army-should-let-sikhs-serve-turban-and-all-commentary/2015/11/11/17d38136-88a2-11e5-bd91-d385b244482f\\_story.html](https://www.washingtonpost.com/national/religion/us-army-should-let-sikhs-serve-turban-and-all-commentary/2015/11/11/17d38136-88a2-11e5-bd91-d385b244482f_story.html).

<sup>7</sup> Steven Hashem, *The right to serve in military shouldn't be hindered by faith*, CNN.com, Nov. 11, 2015, <http://www.cnn.com/2015/11/11/opinions/hashem-sikhs-serve-u-s-military/>.

*The right to exercise the religion of one's own choosing is a core American value. It is enshrined in our First Amendment. No American should ever have to choose between following his or her religious tenets and serving the country with honor. That's not who we are as a nation.*

*Id.* In addition, there has been wide public support and coverage of our efforts to remove religious barriers to Sikh service.<sup>8</sup> Our hope is to continue to work together with U.S. Army leadership to provide the necessary information and resources to efficiently resolve this matter so that our client can advance his goal of service in the U.S. Army and serve our country with honor. We hope you will consider his request for an accommodation in light of his commitment to serve in the U.S. Army and the historical proof of concept that accommodation of Sikh soldiers is reasonable.

### III. The Sikh Articles of Faith

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

Consistent with the teachings of the Sikh gurus, Sikhs wear an external uniform to bind them to the beliefs of the religion. Unlike some other faiths, where only the clergy maintain religious articles on their person, all Sikhs are required to wear external articles of faith. These articles of faith, such as unshorn hair (*kesh*) and the turban, distinguish a Sikh and have deep spiritual significance.

Maintaining uncut hair (including a beard) is an essential part of the Sikh way of life—one cannot be a practicing Sikh without abiding by this tenet of faith. Guru Nanak started the practice, regarding it as living in harmony with the will of God. The Sikh Code of Conduct, called the *Rehat Maryada*, outlines the requirements for practicing the Sikh way of life. All Sikhs must follow the guidelines set forth in this document. 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).” See **Exhibit 10** (excerpt from *Rehat Maryada*). This document prohibits the removal of hair from the body as one of four major taboos. One of the other taboos on this list is adultery. Accordingly, the fact that cutting one's hair is a moral transgression as serious as committing adultery speaks to the immense significance of uncut hair in the Sikh religion.

The *Rehat Maryada* also mandates that Sikhs wear a turban which must always cover a Sikh's head. The turban reminds a Sikh of his or her duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard, honesty, sharing with the needy, and promoting equality

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<sup>8</sup> See, e.g., Change.org Petition to Secretary of Defense Ash Carter, *Remove Restrictions for Sikhs Wishing to Serve in the U.S. Military*, Truman National Security Project, <https://www.change.org/p/remove-restrictions-for-sikhs-wishing-to-serve-in-the-u-s-military>.

and justice for all. When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh's head.

Historically, uncut hair and turbans have been central features of the Sikh identity. For example, in the 18<sup>th</sup> century, Sikhs in South Asia were persecuted and forced to convert from their religion by the dominant leaders in the region. The method of forcing conversions was to remove a Sikh's turban and cut off his hair. As resistance to such forced conversions, many Sikhs chose death over having their turbans removed and hair shorn.

Since then, denying a Sikh the right to wear a turban and maintain unshorn hair has symbolized denying that person the right to belong to the Sikh faith, and is perceived as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.

Sikh values and the Sikh articles of faith fully complement the values of our fellow Americans and the U.S. Army, including our country's commitment to freedom, justice, and defending the oppressed.

#### IV. Service of Sikhs in the U.S. Armed Forces

There are over 26 million Sikhs in the world and approximately 500,000 in the United States. For centuries, Sikh soldiers and officers have served in armies across the globe, fought bravely in wars, and achieved the highest levels of military distinction. As is the case for other American communities, including Irish Americans, Sikhs have an extensive and proud history of military service. Service in armed forces has always been- and continues to be- an essential part of the Sikh identity. Sikhs served as part of the Allied Forces in both World Wars. Sikhs currently serve in the militaries of the United Kingdom, Canada, Australia, New Zealand, India, the United Nations, and many other countries. These countries have developed uniform and grooming policies to specifically address the Sikh articles of faith. *See, e.g.,* **Exhibit 11** (Canadian Forces Sikh Appearance Policy) and **Exhibit 12** (UK Army Religious Dress Policy).

The British policy acknowledges that a ban on headwear would be "indirect discrimination" against Sikh service members: "[a] 'no headwear' policy for all personnel may inadvertently impact on Sikh personnel who wish to wear a turban. In the British Armed Forces, Sikh personnel are allowed to wear turbans in all circumstances, except where there is a requirement, for health and safety reasons, for personnel to wear protective headgear, such as a live firing exercise." *Id.* Sikhs serving in the British Armed Forces are also allowed to maintain uncut hair, including beards. *Id.* In all cases, Sikh soldiers' turbans, unshorn hair, and beards have never been an impediment to their service.

The Canadian policy includes a detailed description of the Sikh articles of faith, details about the "method of wear," color requirements, and illustrations of Sikh soldiers and their articles of faith. For example, the Canadian policy describes the Sikh turban and kesh (uncut hair) as follows:

Turban. Worn in a low, Sikh conventional manner, with the final winding right over left on the forehead. If ribbons are worn, their lower edge shall be 2 cm (3/4 in.) from the lowest edge of the turban at the sides of the head, and crossed right over left at the centre of the forehead. The ribbons shall be secured on the turban by tucking their ends into the folds at the front and rear.

Patka. A traditional Sikh cloth head-covering worn when a turban is not suitable, such as under combat, flying or diving helmets, or during sports or strenuous physical activity . . . .

Kesh (Hair). Male members shall wear their hair tied in a knot at the crown of the head, and shall secure the hair of the beard under the chin, presenting a close-to-face, groomed appearance. Female members shall wear their hair styled in a bun at the rear of the head to facilitate the proper wearing of Standard CF headdress.

Excerpt from Canadian Forces Dress Instruction

A-AD-265-000/AG-001

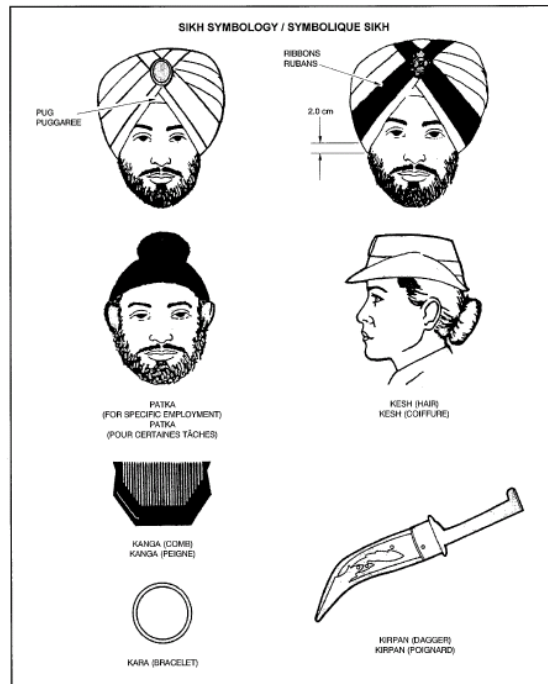


Figure 2-3-1 Authorized Sikh Items of Wear  
Figure 2-3-1 Articles sikh dont le port est autorisé

2-3-8

In fact, Sikhs have frequently been renowned for their courageous behavior and military prowess. On December 5, 2013, the United States recognized the extensive service of GEN Bikram Singh, the Chief of Staff of the Indian Army, and awarded him the prestigious Legion of Merit. See **Exhibit 13** (*Indian Army Chief of Staff Visits with Gen. Ray Odierno*, U.S. Army webpage, December 6, 2013). In 2014, the Canadian military awarded LTC Harjit S. Sajjan, an Afghanistan war hero and the first Sikh to command a Canadian Army regiment, its highest military honor, the Order of Military Merit. See **Exhibit 14** (*LTC Sajjan Awarded Order of Military Merit*, June 20, 2014). In November 2015, LTC Sajjan was appointed Canada's

Minister of National Defence, the equivalent to our nation's Secretary of Defense. See **Exhibit 15**.<sup>9</sup>

As you are no doubt aware, observant Sikh-Americans are markedly absent from the ranks of the U.S. Armed Forces due to a policy that excludes observant Sikhs and members of other minority faiths unless they relinquish the tenets of their faith. Although practicing Sikhs proudly served our country in the U.S. Army without impediment during the Vietnam War and prior conflicts dating back to World War I, military policy was changed around 1981 to prohibit exemptions to the uniform requirements for visible articles of faith, purportedly as a result of “an Army review of appearance exceptions and their impact on the mission, health and safety of the soldier.”<sup>10</sup> See **Exhibit 16** (Dept. of Army Memorandum re: Review of Present Army Policy Allowing Exceptions to Appearance Standards for Religious Reasons, April 10, 1981). While some exceptions subsequently were made for the Jewish yarmulke, the general rule was that turban-wearing Sikhs maintaining unshorn hair and beards were disallowed from serving. See Feb. 3, 1988 DoDI § 1330.17 (amended Jan. 2014); Army Regulation 600-20 §§ 5-6(4)(g) (2009) (“The Army does not accommodate exceptions to personal grooming standards for religious reasons . . .”). This rule has barred practicing Sikhs from entering all branches of the U.S. Armed Forces for the past thirty-five years.

Nevertheless, despite the 1981 policy changes, a number of Sikhs were grandfathered in under the old military policy and have served honorably in the U.S. Army with their Sikh articles of faith intact—some even serving lifetime careers. For example:

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

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<sup>9</sup> See Murray Brewster, *New Defence Minister Harjit Singh Sajjan proved mettle in Afghanistan*, THE GLOBE AND MAIL, Nov. 5, 2015, <http://www.theglobeandmail.com/news/politics/new-defence-minister-harjit-singh-sajjan-proved-mettle-in-afghanistan/article27114750/>.

<sup>10</sup> *Religious Exceptions in Army Uniform End*, NEW YORK TIMES (Aug. 22, 1981).

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

- **SGT Sevak Singh Kroesen** enlisted in the U.S. Army Reserves in 1976 and was attached to the Signal Company, 11<sup>th</sup> Special Forces Group after which he successfully completed airborne (paratrooper) and Radio Teletype Transmission Operator training. He then completed his Special Forces Qualification Courses and became a Special Forces Communications Sergeant with the Maryland National Guard. His Sikh articles of faith were neither a hindrance to his completion of this rigorous training, nor to his decade-plus of service. Sergeant Kroesen subsequently completed his schooling, training, and missions around the world all with honor and distinction. He was honorably discharged from active duty in 1991.
- **SGT Kirnbir Singh Grewal** served in the U.S. Army from 1977 to 1984. He entered the Army as a private and served both domestically and abroad in Germany. Sergeant Grewal, a turban-wearing Sikh, used the same standard-issue gas mask and helmet as other members of the Army. Indeed, his responsibilities included teaching other soldiers to use protective gear to survive nuclear and biological warfare. During his tenure, his Sikh articles of faith were never an impediment. The Army's actions in allowing Sergeant Grewal to serve in this capacity with his articles of faith intact reaffirmed that it accepted his faith as an inseparable part of his identity that was fully compatible with military readiness, unit cohesion, and good order and discipline.
- **MAJ Parbhur Singh Brar** is an ophthalmologist who served in the U.S. Army from December 1978 to October 1981. He was commissioned as a Reserve Officer, but then moved to Active Duty and was stationed at FT Eustis in Newport News, VA. MAJ Brar's Sikh articles of faith never stopped him from performing his duties, nor did they preclude him from creating strong relationships with his unit or supervisors during his tenure with the Army.

All of these men maintained their Sikh articles of faith during the entire length of their service. See **Exhibit 17** (Photographs of Sikh-American soldiers noted above). These Sikh-American soldiers' turbans, unshorn hair, and beards were never an impediment to their honorable service to their country.

In addition, as mentioned previously, over the past six years, McDermott and the Sikh Coalition have represented seven Sikh-American men who have received religious accommodations to join the U.S. Army with their Sikh articles of faith intact:

- **CPT Simratpal Singh**, a West Point graduate and Bronze Star Medal recipient who has served in the U.S. Army for almost a decade, was granted an interim religious accommodation on December 9, 2015. The accommodation allowed him to report for duty to a new staff operations assignment at FT Belvoir (Virginia) while maintaining his Sikh articles of faith. (During leave in October 2015 he had re-adopted the practice of maintaining unshorn hair, a beard, and wearing a turban). On January 8, 2016, the Army extended CPT Singh's interim accommodation until March 31, 2016, maintaining the

status quo of his service with his Sikh articles of faith intact. On March 31, 2016, the Army gave CPT Singh long-term religious accommodation.

- **CPL Simran Preet S. Lamba**, an enlisted soldier, began active duty in August 2010. Fluent in Punjabi and Hindi, he was recruited through the Military Accessions Vital to the National Interest (“MAVNI”) program for his cultural and language skills. He served in a medical battalion as a Soldier Medic. CPL Lamba is known for his dedication, enthusiasm, and initiative. One of his superiors noted that he “has been a tremendous Soldier, an invaluable member of my team, and has had an amazing impact on his peers and supervisors.” He further noted that CPL Lamba “is not only a great role model for today’s Soldiers, [but] his outstanding performance within our ranks can strengthen the bonds not only within the Army, but also between other countries who view this Warrior and see that the Army, and America, accepts all who can and are willing to perform for our Great Nation.” See **Exhibit 18** (CPL Lamba Letters for Commendation). On June 14, 2014, CPL Lamba received an Army Commendation Medal for his selfless service and dedication to duty. CPL Lamba is currently in the Individual Ready Reserve.
- **MAJ Tejdeep S. Rattan**, a dentist, entered active duty in January 2010 after receiving a religious accommodation. In 2011, he was deployed to Afghanistan where he volunteered to serve in a remote forward operating base. While deployed, MAJ Rattan performed approximately 25% of all dental procedures performed throughout the 673rd Dental Company. He was awarded an Army Commendation Medal for his “outstanding performance, technical expertise, and unwavering commitment to mission accomplishment in a hostile environment[,]” and a NATO Medal for defusing a tense confrontation with Afghan civilians. His superiors have noted that he “wears the uniform with pride”; has “[m]ilitary bearing” that is “beyond reproach”; is a “charismatic officer who leads from the front” and “serves as a great mentor for less experienced officers”; and “[i]nspires, motivates, and encourages subordinates.” See **Exhibit 19** (MAJ Rattan Officer Evaluation Report from 2014) and **Exhibit 20** (Rattan Awards). After his deployment, MAJ Rattan was stationed at FT Bragg (North Carolina) where he completed his active duty service as a General Dentist at the Joel Dental Clinic. On April 27, 2015, the Army awarded him a Meritorious Service Medal for his significant contributions to the U.S. Army DENTAC. He is currently in the U.S. Army Reserve Officer Corps.
- **MAJ Kamaljeet S. Kalsi** is a physician specializing in emergency and disaster medicine. MAJ Kalsi began active duty in June 2010. He was also deployed to Afghanistan in 2011 and was awarded a Bronze Star Medal upon his return. In support of the award, an official recommendation from MAJ 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.” His superiors have noted that he has “consistently demonstrated a strong commitment to improving Army Medicine,” “exceeded all expectations,” and “possesses absolutely unlimited potential as a leader.” See **Exhibit 21** (MAJ Kalsi Officer Evaluation Report from 2011) and **Exhibit 22** (Kalsi Bronze Star Medal). He is currently in the U.S. Army Reserve Officer Corps.

- **SPC Kanwar Bir Singh**, a recent dual MBA-MA graduate and financial services employee, enlisted with the Massachusetts Army National Guard on August 6, 2015 after being selected for the Massachusetts Army National Guard’s State Officer Candidate School. SPC Singh comes from a long line of military servicemen; his grandfather and great-grandfather served in the Sikh Regiment of the British Army during World Wars I and II. He received an accommodation to serve with his articles of faith intact on April 8, 2016 and began BCT at FT Jackson (South Carolina) in May 2016. *See **Exhibit 4*** (Long-Term Religious Accommodation Approval For Three Sikh Soldiers).
- **SPC Harpal Singh**, who speaks Hindi, Urdu, and Punjabi fluently, enlisted on November 3, 2015 with the U.S. Army Reserve through the MAVNI program for his cultural and language skills. After obtaining his degree in Electrical and Electronic Engineering in 2005, Specialist Singh spent several years building communications networks throughout Africa, Russia, and the Middle East. In 2010, he moved to California, where he currently works as a Telecommunications Engineering Specialist. SPC Singh received an accommodation to serve with his articles of faith intact on April 8, 2016 and began BCT in May 2016 at FT Jackson (South Carolina). *See id.*
- **PVT Arjan S. Ghotra**, a recent high school graduate, enlisted with the Virginia National Guard in December of 2015. As a member of the Civil Air Patrol, PVT Ghotra trained in radio operation and obtained an FCC Technician Class radio license. He was subsequently admitted to the Virginia Defense Force, where he was assigned to a civil support mission during the Apple Blossom Festival in Winchester, Virginia. His dedication and service was recognized by the commanding general of the Virginia Defense Force, who presented him with a Medal of Excellence during a Multi-Unit Training Assembly held at Fort Pickett. PVT Ghotra was granted an accommodation to serve with his articles of faith intact on April 8, 2016 and began BCT in May 2016 at FT Benning (Georgia). He plans to join the ROTC program when he enters college after completing BCT. *See id.*

Again, the Sikh articles of faith of Sikh U.S. Army soldiers have in no way impeded their service to our country—even while some were deployed abroad in hostile territory. Instead, all have promoted unit cohesion, discipline, morale, and individual readiness.

#### V. The Army Religious Accommodation Process as Applied to Observant Sikhs

On January 22, 2014, the U.S. Department of Defense published revisions to Instruction 1300.17, “Accommodation of Religious Practices Within the Military Services.” *See **Exhibit 23***. Section 4(b) provides that the various military departments “will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures in this instruction.” Section 4(e) further provides that “[r]equests for religious accommodation . . . will be approved when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement.”

Under DoDI 1300.17 § 4(e)(1)(a)-(b), religious accommodation requests may be denied only when the “military policy, practice, or duty furthers a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” Further, DoDI 1300.17 § 4(f)(1)(b) invites religious accommodation requests from Sikhs and other visibly religious minorities who require an exception to uniform and grooming policies by providing that, “[g]rooming and appearance practices . . . are subject to consideration for accommodation when the request is based on religious beliefs.” *Id.*

On November 6, 2014, the U.S. Army implemented the revised DoDI and promulgated its own regulations providing guidance for granting religious accommodations. *See* Army Reg. 670-1; Army Reg. 600-20. All religious accommodation requests that would require a waiver to Army uniform, grooming, and personal appearance policies must be submitted to an immediate commander and then forwarded up the chain-of-command to the Deputy Chief of Staff, Army G-1. *See* Army Reg. 600-20, §§ 5-6(i)(1), (2). Each command level that receives the request may neither approve nor deny it, but must make recommendations to the Army G-1 as to whether the request should be granted or denied. *Id.*

In April 2015, the U.S. Army issued USAREC Message 15-032 regarding “Religious Accommodation Exceptions to Policy.” *See* **Exhibit 24**. Message 15-032 appears to correct the “Catch 22” provision that previously required service members to follow all uniform, grooming, and personal appearance policies—including ones that violate their religion—while a request for a religious accommodation is pending.

Finally, it is notable that on October 16, 2015, the United States Congress passed the 2016 National Defense Authorization Act. The House Armed Services Committee Report issued in support of the Act urges the Department of Defense to ensure that requests for religious accommodations are resolved “quickly” and “efficiently” and—wherever possible—without burdening the service member’s free exercise “while [the] accommodation request is pending.” H.R. Rep. No. 114-102, at 134 (2015). On October 25, 2015, the Act was signed by President Obama.

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

As described in detail above, the many Sikh soldiers who have served honorably in the U.S. Army have demonstrated time and again that accommodation of the Sikh articles of faith, including the turban and unshorn hair and beard, in no way adversely affects the military’s interest in neatness, unit cohesion, safety, or mission accomplishment

### *I. Sikh Articles of Faith Comply With Neatness Standards*

MAJ Kalsi, CPT Rattan, CPL Lamba, and CPT Singh—while serving in the U.S. Army—have used camouflage patterned cloth to develop turbans that conform with Army uniform requirements, including mechanisms to display their Army flash (insignia patch) on their turbans. MAJ Kalsi has even had the opportunity to provide information to Army leadership on “the proper wear of the turban with the Army uniform.” **Exhibit 25** (Kalsi Presentation to Army

Leadership).<sup>11</sup> The Sikh service members currently serving in the U.S. Army have also been commended for adhering to the uniform standards of neatness and conservativeness.<sup>12</sup> Speaking of CPT Rattan, CPT John Lopez, Company A, 187th Medical Battalion, has said:

From day one, Captain Rattan has been an ideal individual . . . He has done everything in his power to keep within the regulation (AR 160-1), and I sometimes have a hard time getting other Soldiers to follow it . . . I wish some other Soldiers had the personal pride and willingness to go the extra mile as he does, so those young Soldiers have someone to look up to.

See **Exhibit 26** (Sikh Soldiers allowed to serve, retain their articles of faith).<sup>13</sup>

## 2. *Sikh Articles of Faith Do Not Adversely Affect Unit Cohesion or Morale*

The revised Instruction places heavy importance on “unit cohesion” in determining whether to grant accommodations. Unit cohesion is defined as “establishing and maintaining uniform military grooming and appearance standards.” See **Exhibit 27** (Statement for the Record from MAJ Kamal Kalsi for Hearing on Religion in the U.S. Military). While unit cohesion and morale are integral to the proper functioning of the military, these factors should not be used as reasons to restrict Army enlistment of members of a disfavored minority; similar concerns were historically cited to justify the exclusion of women, racial minorities, and LGBTQ individuals in the U.S. Armed Services.<sup>14</sup> The U.S. Army has made great progress in opening up its ranks to previously-excluded sections of American society. LGBTQ service members can now serve openly in the U.S. Armed Services.<sup>15</sup> Women can now serve in all Army units and in every military occupational specialty.<sup>16</sup> The U.S. Army has recognized that allowing these traditionally excluded demographic groups to serve does not negatively impact morale or esprit de corps. It should also recognize that presumptively allowing observant Sikhs to serve with their articles of faith intact will not lead to a breakdown in discipline, morale, or unit cohesion.

Any concerns about assimilation have been allayed by these Sikh service members’ performance during training and in the field. SFC Michael Hildebrand, who oversaw CPL Lamba’s training while he was a Specialist, noted that he not only integrated well into the unit and excelled in his training, but “the other Soldiers in the platoon actually love [then-Specialist] Lamba. Their

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<sup>11</sup> Steve Elliott, *Second Sikh Doctor Allowed to Wear Articles of Faith; Enlisted Soldier in Training*, Official Homepage of the United States Army, Sept. 9, 2010, <http://www.army.mil/article/44944>.

<sup>12</sup> See A.R. 670-1, Ch. 1-7(a).

<sup>13</sup> Steve Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, Official Homepage of the United States Army, Mar. 25, 2010, <http://www.army.mil/article/36339>.

<sup>14</sup> Dawinder S. Sidhu & Neha Singh Gohil, *CIVIL RIGHTS IN WARTIME: THE POST-9/11 SIKH EXPERIENCE* 140, Ashgate Publishing, Ltd., 2009.

<sup>15</sup> Tina Ray, *Fort Bragg Gay Soldiers Serve Openly*, Official Homepage of the United States Army, Feb. 8, 2013, [http://www.army.mil/article/96139/Fort\\_Bragg\\_gay\\_Soldiers\\_serve\\_openly](http://www.army.mil/article/96139/Fort_Bragg_gay_Soldiers_serve_openly).

<sup>16</sup> M. Rosenberg & D. Phillips, *All Combat Roles Now Open to Women, Defense Secretary Says*, New York Times, Dec. 3, 2016, [http://www.army.mil/article/105814/Army\\_describes\\_plans\\_for\\_integrating\\_women\\_into\\_combat](http://www.army.mil/article/105814/Army_describes_plans_for_integrating_women_into_combat).

family members have found out that we have a Sikh Soldier, and they have asked if they could write to SPC Lamba to find out more about where he comes from. There has been no negativity expressed by the Soldiers toward SPC Lamba.”<sup>17</sup> As has been demonstrated with the inclusion of women, racial minorities, and LGBT people in our nation’s armed forces, embracing diverse individuals within the military strengthens our military force, rather than weakening it. Similarly, in discussing CPT Rattan, COL Roger Fiedler, FT Drum DENTAC commander, noted that, “while his dental skills are the same as any other dentist, his unique status as a practicing Sikh U.S. Soldier and dental provider add to the diversity that makes our military so strong.”<sup>18</sup>

### 3. *Sikh Service Members Are Able to Comply With Protective Mask and Helmet Requirements*

Closely linked with unit cohesion is the question of combat readiness. Although concerns have been expressed about the ability of Sikh service members to comply with requirements relating to protective masks and helmets, both concerns have been disproved by Sikhs serving in militaries around the world, as well as in the preparedness tests that MAJ Kalsi, CPT Rattan, CPT Singh, and CPL Lamba underwent during training and their service.

The notion that an effective gas mask seal cannot be created without clean-shaven skin is a fallacy. The four observant Sikhs who currently serve in the U.S. Army have undergone rigorous safety testing, including being placed in a chamber filled with gas, to determine whether their protective masks form an effective seal with their beards and religious headwear intact. Not only did they pass these tests along with their fellow service members, but they have also demonstrated that helmets and other safety gear can be worn safely over a *patka* (a smaller turban). Additionally, SPC Harpal Singh, SPC Kanwar Singh, and PVT Ghotra all recently passed their fit tests during BCT.

When Undersecretary of the Army Joseph W. Westphal visited the Joint Readiness Training Center at Fort Polk in October, 2012 while MAJ Kalsi was participating in combat training, he specifically noted that he was “absolutely impressed with [the service members’] intellect, their knowledge, and their easy disposition” and that the Army was on “good footing” with its readiness training. See **Exhibit 28** (JRTC Rotation Demonstrates Force of Future).<sup>19</sup> CPT John Lopez, Company A, 187th Medical Battalion, who was CPT Rattan’s commanding officer during training, said that CPT Rattan “knows what he is doing and he’s doing a phenomenal job. *I’d go to battle with him.*”<sup>20</sup>

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

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<sup>17</sup> Susanne Kappler, *Keeping Faith: Sikh Soldier Graduates Basic Training*, Official Homepage of the United States Army, Nov. 10, 2010, <http://www.army.mil/article/47924/keeping-faith-sikh-soldier-graduates-basic-training>.

<sup>18</sup> Paul Steven Ghiringhelli, *Traditional Sikh Serves as Army Dentist on Fort Drum*, Official Homepage of the United States Army, May 20, 2010, <http://www.army.mil/article/39536>.

<sup>19</sup> C. Todd Lopez, *JRTC Rotation Demonstrates Force of Future*, Official Homepage of the United States Army, Oct. 20, 2012, <http://www.army.mil/article/89623>.

<sup>20</sup> Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, *supra* note 13 (emphasis added).

but can also do so in the most difficult of duty stations while courageously serving our nation in overseas deployment. Allowing other Sikh-Americans to make the same commitment to serve their country while keeping their articles of faith intact would demonstrate respect for the service of those who have already demonstrated their willingness to lay down their lives for their country.

4. *Sikh Service Members Promote the Military Mission in Overseas Deployment*

In units that serve overseas, having service members who are familiar with other languages and cultures—particularly those of South Asia—can only benefit the Army’s understanding of local context and engagement with local populations. This linguistic and cultural understanding has already proven to be an asset in the case of CPT Rattan, whose NATO Medal was granted specifically for his defusing a tense situation with Afghan locals. See **Exhibit 20** (Rattan Awards).

VII. The Religious Freedom Restoration Act and DoD Regulations Compel Religious Accommodation

RFRA, passed in 1993, applies to the U.S. military. See *Singh v. Carter*, No. 16-399, 2016 WL 837924, at \*8 (D.D.C. Mar. 3, 2016) (applying RFRA to enjoin U.S. Army’s conditioning of accommodation for observant Sikh officer on discriminatory testing) (a copy of the Court’s Memorandum Opinion is enclosed as **Exhibit 29**); *Singh v. McHugh*, No. 14-1906, 2015 WL 3648682 (D.D.C., June 12, 2015) (applying RFRA to U.S. Army regarding ROTC candidate’s request for religious accommodation to compete for commission) (a copy of the Court’s Memorandum Opinion is enclosed as **Exhibit 30**); *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (applying RFRA to DoD and other branches of military on free exercise claim brought by military chaplains); see also DoDI 1300.17 (tracking RFRA’s language). RFRA provides that the federal government cannot substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability. 42 U.S.C. § 2000bb-1(a).

The only recognized exception requires the government to show that burdening the individual’s religious exercise (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).

The “compelling interest” prong must be met “to the person.” *Id.* This means that the government cannot rely upon “broadly formulated interests” as the basis for restricting an individual’s religious exercise. See *Holt v. Hobbs*, 135 S. Ct. 853, 863 (2015) (interest in “prison safety and security” deemed overly broad for prohibiting individual Muslim prisoner’s beard); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2779 (2014) (interest in “public health” and “gender equality” deemed overly broad for requiring specific family business to provide contraception to employees); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (concerns over “high potential for abuse” and “a lack of accepted safety” deemed overly broad for prohibiting sacramental use of a controlled substance). Rather, the government must show that its “marginal interest” in enforcing the asserted restriction against the “particular religious claimant” in “that particular context” rises to the level of “compelling.” *Holt*, 135 at 863 (emphasis added).

The “least restrictive means” prong is similarly “exceptionally demanding” and requires the government “to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party.” *Holt*, 135 S. Ct. at 864. “If a less restrictive means is available for the Government to achieve its goals, the Government must use it.” *Id.*

There is no question that refusal to accommodate articles of faith would constitute a substantial burden on religious exercise. If denied accommodations, individuals would be forced to choose between their religious convictions and the benefit of pursuing a career in the U.S. Army to serve their country. *See, e.g., Aitor 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 such a choice unquestionably imposes a substantial burden on religious exercise. *Carter*, 2016 WL 837924, at \*9 (defendant Department of Defense conceding that compliance with Army grooming regulations would substantially burden Sikh officer such that he could “easily satisf[y]” prima facie RFRA claim); *Holt*, 135 S. Ct. at 862 (grooming policy that subjected prisoner to “serious disciplinary action” for growing beard constituted a substantial burden); *McHugh*, 2015 WL 3648682, at \*11 (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). Thus, under DoDI 1300.17, our Sikh soldiers are entitled to an exception absent a showing that granting one would impair a compelling government interest that cannot be satisfied via a less restrictive means.

For several reasons, this standard cannot be met. As set forth in DoDI 1300.17, the only valid reason for denying a religious accommodation is if it would “adversely affect mission accomplishment such as military readiness, unit cohesion, good order, discipline, health and safety.” DoDI 1300.17(4)(e). Alone, however, these “broadly formulated interests” are insufficient and must be considered in the specific context of our client’s request. We are not aware of anything in his anticipated duties in the Army that would be compromised in any way by granting him a religious accommodation.

Moreover, as earlier outlined in great detail, many Sikhs have served honorably in the U.S. Armed Forces with their articles of faith intact—posing no threat to military readiness, unit cohesion, good order, discipline, or health and safety. Indeed, in *Singh v. McHugh*, the court relied on extensive evidence concerning MAJ Kalsi, MAJ Rattan and SPC Lamba, concluding that “the praise heaped on each man’s service” in their military records stood “in stark contrast” to any assertion that the Sikh articles of faith would “undermine the quality of his training, unit cohesion and morale, military readiness, and the credibility of the officer corps.” *McHugh*, 2015 WL 3648682, at \*22. Similarly, in *Singh v. Carter*, the court noted that “these Sikh soldiers served with merit on active duty deployments, and one of them . . . was awarded a Bronze Star Medal, in part for his ‘coordination of five mass casualty exercises’ in Afghanistan, which he performed adhering to his articles of faith.” *Carter*, 2015 WL 3648682, at \*11 (Mar. 4, 2016). Relying on the military’s own research, the *Singh v. McHugh* court concluded that Sikh soldiers should have “the chance to prove themselves” like anyone else, without having to abandon their articles of faith. *McHugh*, 2015 WL 3648682, at \*22.

Further, it is our understanding that the Army has issued more than 300,000 waivers to its uniform and grooming policies, including for medical beards and tattoos, on both a permanent and temporary basis. In fact, last year the U.S. Army announced revisions to its tattoo policy that will remove the limit on the number and size of soldiers' tattoos.<sup>21</sup> Given that other Sikhs have served with religious accommodations and given the numerous waivers to uniform and grooming standards granted to service members for both religious and secular reasons, the U.S. Army cannot show that denying our client's religious accommodation (1) furthers a compelling governmental interest; or (2) is the least restrictive means of furthering such an interest. See *McHugh*, 2015 WL 3648682, at \*19 ("The fact that the Army is able to tolerate so many idiosyncratic deviations from its grooming regulations further undermines [its] assertion that 'the even handed enforcement of grooming standards' is critical to 'instill[] the self-discipline necessary for the military member to perform effectively.'").<sup>22</sup>

Outside of complying with the law, there are many other compelling reasons why the U.S. Army should allow Sikh soldiers to serve with their articles of faith intact. Religious freedom and respect for religious pluralism are bedrock principles of this country—principles that the U.S. Army is bound to protect and promote. As one of the country's largest employers, we urge the Army to vigorously promote and embrace religious liberty and to send a clear message rejecting discriminatory policies and practices against religious individuals, just as it has done for African-Americans, women, LGBTQ individuals, and other minority communities. In addition, a more inclusive military force will also promote the United States' national security interests, a point Secretary of Defense Ash Carter made in December of 2015 in deciding to open all combat roles to women.<sup>23</sup> Indeed, in the same month in response to a direct question by SPC Kanwar Bir Singh, Secretary Carter endorsed the right of observant Sikhs to serve by stating:

*Everyone who can contribute to our mission, who can meet what are high standards and contribute to our mission, we need them. It's not just a matter of giving them the opportunity; it's giving us the opportunity as a country to avail ourselves of their talent.*<sup>24</sup>

As our world becomes more complex and interconnected, our military leadership must reflect different cultural and religious backgrounds. For instance, as discussed previously, MAJ Rattan was awarded a NATO medal for successfully utilizing his foreign language skills and cultural knowledge to diffuse a tense situation involving Afghan locals while deployed overseas.

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<sup>21</sup> See Kathleen Curthoys, *Army announces big changes to the tattoo policy*, ARMY TIMES, Apr. 1, 2015, <http://www.armytimes.com/story/military/careers/army/2015/04/01/army-tattoo-policy-change/70783186/>.

<sup>22</sup> The *Singh v. McHugh* litigation revealed that hundreds of thousands of soldiers have received accommodations for facial hair and tattoos in recent years.

<sup>23</sup> See Andrew Tilghman, *All combat jobs open to women in the military*, MILITARY TIMES, Dec. 3, 2015, <http://www.militarytimes.com/story/military/pentagon/2015/12/03/carter-telling-military-open-all-combat-jobs-women/76720656/>.

<sup>24</sup> A *Conversation with Ashton B. Carter*, Harvard Univ. Institute of Politics at the Kennedy School (Dec. 1, 2015), <http://www.iop.harvard.edu/conversation-ashton-b-carter-0> (at 27:28) with a direct link to Secretary Carter's response to SPC Singh's question available at <https://www.youtube.com/watch?v=SECmR-r9Wwk>.

Finally, given Sikh-Americans' long and distinguished military history in the United States and around the world, Sikh-Americans will continue to embrace the opportunity to continue to enlist and serve as dedicated service members in the U.S. Army. We remain deeply appreciative of the DoD diligently working to safeguard the civil rights of all Americans who wish to serve or have served in the U.S. Armed Forces, including Sikh-Americans.

\* \* \* \* \*

For the reasons stated above, our client respectfully requests that the U.S. Army accommodate his Sikh articles of faith and allow him to continue his service to our country while complying with the tenets of his faith.

We thank you for your consideration in this regard and look forward to continuing our cordial working relationship with you. Please do not hesitate to contact us via email or phone if you have any questions:

- Amandeep S. Sidhu, Esq., McDermott Will & Emery LLP, [asidhu@mwe.com](mailto:asidhu@mwe.com), 202-756-8380; or
- Harsimran Kaur, Esq., The Sikh Coalition, [harsimran@sikhcoalition.org](mailto:harsimran@sikhcoalition.org), 510-565-7908.

# **EXHIBIT 1**



**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON DC 20310-0111**

SAMR

30 MAR 2016

**MEMORANDUM THRU**

Commanding General, United States Army Corps of Engineers, 441 G Street, NW  
Washington DC, 20314-1000

Commander, 249<sup>th</sup> Engineer Battalion, 9450 Jackson Loop, Fort Belvoir, VA 22060

FOR CPT Simratpal Singh

**SUBJECT: Decision Regarding Request for Religious Accommodation –  
CPT Simratpal Singh**

1. I have considered your request for a religious accommodation to permit you to wear a beard, turban, and uncut hair in observance of your Sikh faith, along with the recommendations of your chain of command. I grant your request for an exception to Army personal appearance and grooming standards, subject to the limitations described below. A copy of this accommodation will be placed in your Official Military Personnel File.

2. While assigned or performing non-hazardous duties, you may wear a beard, turban, and uncut hair in a neat and conservative manner that presents a professional and well-groomed appearance. The bulk of your hair, beard, or turban may not be such that it impairs your ability to wear the Army Combat Helmet (ACH) or other protective equipment or impedes your ability to operate your assigned weapon, military equipment, or machinery. A fully serviceable ACH including all of its component parts must be worn in accordance with its technical manual to ensure a proper fit for your safety.

3. Because of the Army's strong interest in maintaining good order and discipline, the Army intends to develop clear uniform standards applicable to Soldiers who have received a religious accommodation. Until such standards are published, you may wear a black turban (or under turban, as appropriate) with the Army Service Uniform (ASU), the Army Physical Fitness Uniform, and the Army Combat Uniform (ACU). While wearing ACU outdoors, you may wear a turban (or under turban, as appropriate) of a matching camouflage pattern. Unless your duties, position, or assignment require you to wear the Army Combat Helmet (ACH) or other protective gear, you are not required to wear military headgear in addition to your turban. Your beard must be rolled and tied to a length not to exceed two inches while in garrison and a length not to exceed one inch while in the field, during physical training, or in a deployed environment not covered by paragraph 5 below. Your hair may not fall over your ears or eyebrows or touch the

SAMR

SUBJECT: Decision Regarding Request for Religious Accommodation – CPT  
Simratpal Singh

collar of your uniform. You may display your rank on your turban, provided you remove the rank in circumstances where military headgear is not customarily worn.

4. Because of the Army's interest in mission accomplishment, which requires military readiness, unit cohesion, good order, discipline, health, and safety on both the individual and unit levels, I have requested that your command provide quarterly assessments of the effect of your accommodation, if any, on unit cohesion and morale, good order and discipline, health and safety, and individual and unit readiness.

5. I have been unable to confirm that your personnel protective equipment (to include ACH and protective mask) provide you with the intended degree of protection against the hazards they are designed to prevent. Should you be assigned or directed to perform hazardous duties (duties for which you would be entitled to receive incentive pay for hazardous duty, special pay for duty subject to hostile fire or imminent danger, hardship duty pay, special pay for service as a member of a Weapons of Mass Destruction Civil Support Team, or hazardous duty incentive pay for flying duty) or to operate in a hazardous environment, continuation of your accommodation will be evaluated by your chain of command. This evaluation will be expeditiously forwarded to me for decision whether to suspend the accommodation during your assignment to hazardous duties or areas.

6. I may withdraw or limit the scope of your accommodation for reasons of military necessity, including if I cannot confirm that Army protective equipment (to include ACH and protective mask) will provide you the intended degree of protection against the hazards presented by the duties or areas to which you will be assigned. Given our intent to gather additional information and develop additional standards, I intend to re-evaluate this accommodation in one year and may reevaluate it earlier based upon military necessity if you must be assigned to another unit. If circumstances require that you be directed to comply fully with AR 670-1, you should be prepared to do so.



Debra S. Wada  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

CF:  
Deputy Chief of Staff, G-1  
CDR, Human Resources Command

# **EXHIBIT 2**



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON DC 20310-0111

SAMR

MEMORANDUM THRU

09 DEC 2015

Commanding General, United States Army Corps of Engineers, 441 G Street, NW  
Washington DC, 20314-1000

Commander, 249<sup>th</sup> Engineer Battalion, 9450 Jackson Loop, Fort Belvoir, VA 22060

FOR CPT Simratpal Singh

SUBJECT: Interim Decision Regarding Request for Religious Accommodation –  
CPT Simratpal Singh

1. I received your request for a religious accommodation to permit you to wear a beard, turban, and uncut hair in observance of your Sikh faith, along with the recommendations of your chain of command, on December 4, 2015. This letter constitutes my interim decision on your request. I grant your request, subject to the limitations described below, until January 8, 2016, at which time I will provide you with my final decision.
2. You may wear a beard, turban, and uncut hair in a neat and tidy manner that presents a professional and well-groomed appearance. The bulk of your hair, beard, or turban may not be such that it impairs your ability to wear the Kevlar helmet or other protective equipment or impedes your ability to operate your assigned weapon, military equipment, or machinery. You may wear a black turban with the Army Service Uniform (ASU) and the Army Physical Fitness Uniform. While wearing the Army Combat Uniform (ACU), you may wear a black or matching camouflage patterned turban. Unless your duties, position, or assignment require you to wear the Kevlar helmet or other protective gear, you are not required to wear military headgear in addition to your turban. You may display your rank on your turban, provided you remove the rank in circumstances where military headgear is not customarily worn.
3. This religious accommodation may be revoked if required by military necessity. You should be prepared to comply fully with AR 670-1, if directed to do so.

A handwritten signature in black ink, appearing to read "Debra S. Wada".

Debra S. Wada  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

# **EXHIBIT 3**



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON DC 20310-0111

SAMR

08 JAN 2016

MEMORANDUM THRU

Commanding General, United States Army Corps of Engineers, 441 G Street, NW  
Washington DC, 20314-1000

Commander, 249<sup>th</sup> Engineer Battalion, 9450 Jackson Loop, Fort Belvoir, VA 22060

FOR CPT Simratpal Singh

SUBJECT: Extension of Interim Decision Regarding Request for Religious  
Accommodation – CPT Simratpal Singh

1. Reference. Assistant Secretary of the Army (Manpower and Reserve Affairs) Memorandum, subject: Interim Decision Regarding Request for Religious Accommodation – CPT Simratpal Singh, 9 December 2015.
2. I am extending the interim accommodation that I granted you in the referenced memorandum, subject to the limitations described in that memorandum, until 31 March 2016, at which time I expect to provide you with my decision.
3. This interim religious accommodation may be revoked at any time if required by military necessity. You should be prepared to comply fully with AR 670-1, if directed to do so.

*Debra S. Wada*

Debra S. Wada  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

# **EXHIBIT 4**



**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON DC 20310-0111**

SAMR

8 April 2016

**MEMORANDUM THRU**

Director, Army National Guard, 111 South George Mason Drive, Arlington, VA 22204  
The Adjutant General of Massachusetts, Massachusetts National Guard, 2 Randolph  
Road, Hanscom AFB, MA 01731

FOR SPC Kanwar Bir Singh, C Company, Massachusetts National Guard Recruiting  
and Retention Battalion, 25 Haverhill Street, Camp Curtis Guild, Reading, MA 01867

**SUBJECT:** Decision Regarding Request for Religious Accommodation – Specialist  
Kanwar Bir Singh, Massachusetts Army National Guard/Army National Guard of the  
United States

1. I have considered your request for a religious accommodation to permit you to wear a beard, turban, and uncut hair in observance of your Sikh faith, along with the recommendations of your chain of command. I grant your request for an exception to Army personal appearance and grooming standards, subject to the limitations described below. A copy of this accommodation will be filed with your enlistment contract in your Official Military Personnel File.
2. While assigned or performing non-hazardous duties, you may wear a beard, turban, and uncut hair in a neat and conservative manner that presents a professional and well-groomed appearance. The bulk of your hair, beard, or turban may not be such that it impairs your ability to wear the Advanced Combat Helmet (ACH) or other protective equipment or impedes your ability to operate your assigned weapon, military equipment, or machinery. A fully serviceable ACH including all of its component parts must be worn in accordance with its technical manual to ensure a proper fit for your safety.
3. Because of the Army's strong interest in maintaining good order and discipline, the Army intends to develop clear uniform standards applicable to Soldiers who have received a religious accommodation. Until such standards are published, you may wear a black turban (or under turban, as appropriate) with the Army Service Uniform (ASU), the Army Physical Fitness Uniform, and the Army Combat Uniform (ACU). While wearing ACU outdoors, you may wear a turban (or under turban, as appropriate) of a matching camouflage pattern. Unless your duties, position, or assignment require you to wear the Advanced Combat Helmet (ACH) or other protective gear, you are not required to wear military headgear in addition to your turban. Your beard must be rolled and tied to a length not to exceed two inches while in garrison and a length not to exceed one inch while in the field or during physical training. Your hair may not fall over

SAMR

SUBJECT: Decision Regarding Request for Religious Accommodation – Specialist Kanwar Bir Singh, Massachusetts Army National Guard/Army National Guard of the United States

your ears or eyebrows or touch the collar of your uniform. You may display your rank on your turban, provided you remove the rank in circumstances where military headgear is not customarily worn.

4. Because of the Army's interest in mission accomplishment, which requires military readiness, unit cohesion, good order, discipline, health, and safety on both the individual and unit levels, I have requested that your command provide periodic assessments of the effect of your accommodation, if any, on unit cohesion and morale, good order and discipline, health and safety, and individual and unit readiness.

5. I may withdraw or limit the scope of your accommodation for reasons of military necessity, including if I cannot confirm that Army protective equipment (to include ACH and protective mask) will provide you the intended degree of protection against the hazards presented by the duties or areas to which you will be assigned. Given our intent to gather additional information and develop additional standards, I intend to re-evaluate this accommodation at the conclusion of your Initial Military Training and may reevaluate it earlier based upon military necessity. If circumstances require that you be directed to comply fully with AR 670-1, you should be prepared to do so.



Debra S. Wada  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

CF:  
Deputy Chief of Staff, G-1  
CDR, Human Resources Command



**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON DC 20310-0111**

SAMR

8 April 2016

**MEMORANDUM THRU**

Commanding General, U.S. Army Training and Doctrine Command, 950 Jefferson Avenue, Fort Eustis, VA 23604

Commanding General, U.S. Army Recruiting Command, 1307 Third Avenue, Fort Knox, KY 40121-2726

FOR SPC Harpal Singh, U.S. Army Recruiting Company San Joaquin, 5759 Pacific Avenue, Suite 255, Stockton, CA 95207

**SUBJECT: Decision Regarding Request for Religious Accommodation – Specialist Harpal Singh, U.S. Army Reserve**

1. I have considered your request for a religious accommodation to permit you to wear a beard, turban, and uncut hair in observance of your Sikh faith, along with the recommendations of your chain of command. I grant your request for an exception to Army personal appearance and grooming standards, subject to the limitations described below. A copy of this accommodation will be filed with your enlistment contract in your Official Military Personnel File.

2. While assigned or performing non-hazardous duties, you may wear a beard, turban, and uncut hair in a neat and conservative manner that presents a professional and well-groomed appearance. The bulk of your hair, beard, or turban may not be such that it impairs your ability to wear the Advanced Combat Helmet (ACH) or other protective equipment or impedes your ability to operate your assigned weapon, military equipment, or machinery. A fully serviceable ACH including all of its component parts must be worn in accordance with its technical manual to ensure a proper fit for your safety.

3. Because of the Army's strong interest in maintaining good order and discipline, the Army intends to develop clear uniform standards applicable to Soldiers who have received a religious accommodation. Until such standards are published, you may wear a black turban (or under turban, as appropriate) with the Army Service Uniform (ASU), the Army Physical Fitness Uniform, and the Army Combat Uniform (ACU). While wearing ACU outdoors, you may wear a turban (or under turban, as appropriate) of a matching camouflage pattern. Unless your duties, position, or assignment require you to wear the Advanced Combat Helmet (ACH) or other protective gear, you are not required to wear military headgear in addition to your turban. Your beard must be rolled and tied to a length not to exceed two inches while in garrison and a length not to exceed one inch while in the field or during physical training. Your hair may not fall over

SAMR

SUBJECT: Decision Regarding Request for Religious Accommodation – Specialist Harpal Singh, U.S. Army Reserve

your ears or eyebrows or touch the collar of your uniform. You may display your rank on your turban, provided you remove the rank in circumstances where military headgear is not customarily worn.

4. Because of the Army's interest in mission accomplishment, which requires military readiness, unit cohesion, good order, discipline, health, and safety on both the individual and unit levels, I have requested that your command provide periodic assessments of the effect of your accommodation, if any, on unit cohesion and morale, good order and discipline, health and safety, and individual and unit readiness.

5. I may withdraw or limit the scope of your accommodation for reasons of military necessity, including if I cannot confirm that Army protective equipment (to include ACH and protective mask) will provide you the intended degree of protection against the hazards presented by the duties or areas to which you will be assigned. Given our intent to gather additional information and develop additional standards, I intend to re-evaluate this accommodation at the conclusion of your Initial Military Training and may reevaluate it earlier based upon military necessity. If circumstances require that you be directed to comply fully with AR 670-1, you should be prepared to do so.



Debra S. Wada  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

CF:  
Deputy Chief of Staff, G-1  
CDR, Human Resources Command



**DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
MANPOWER AND RESERVE AFFAIRS  
111 ARMY PENTAGON  
WASHINGTON DC 20310-0111**

SAMR

8 April 2016

**MEMORANDUM THRU**

Director, Army National Guard, 111 South George Mason Drive, Arlington, VA 22204  
The Adjutant General of Virginia, Joint Force Headquarters-Virginia, 5901 Beulah Road,  
Sandston, VA 23150

FOR PVT A [REDACTED] S [REDACTED] G [REDACTED], Charlie Company, 3-116<sup>th</sup> Infantry Battalion, 116<sup>th</sup>  
Infantry Combat Team, 101 116<sup>th</sup> Regimental Road, Staunton, VA 24401

**SUBJECT: Decision Regarding Request for Religious Accommodation – Private A [REDACTED]  
S [REDACTED] G [REDACTED] Virginia Army National Guard/Army National Guard of the United States**

1. I have considered your request for a religious accommodation to permit you to wear a beard, turban, and uncut hair in observance of your Sikh faith, along with the recommendations of your chain of command. I grant your request for an exception to Army personal appearance and grooming standards, subject to the limitations described below. A copy of this accommodation will be filed with your enlistment contract in your Official Military Personnel File.
2. While assigned or performing non-hazardous duties, you may wear a beard, turban, and uncut hair in a neat and conservative manner that presents a professional and well-groomed appearance. The bulk of your hair, beard, or turban may not be such that it impairs your ability to wear the Advanced Combat Helmet (ACH) or other protective equipment or impedes your ability to operate your assigned weapon, military equipment, or machinery. A fully serviceable ACH including all of its component parts must be worn in accordance with its technical manual to ensure a proper fit for your safety.
3. Because of the Army's strong interest in maintaining good order and discipline, the Army intends to develop clear uniform standards applicable to Soldiers who have received a religious accommodation. Until such standards are published, you may wear a black turban (or under turban, as appropriate) with the Army Service Uniform (ASU), the Army Physical Fitness Uniform, and the Army Combat Uniform (ACU). While wearing ACU outdoors, you may wear a turban (or under turban, as appropriate) of a matching camouflage pattern. Unless your duties, position, or assignment require you to wear the Advanced Combat Helmet (ACH) or other protective gear, you are not required to wear military headgear in addition to your turban. Your beard must be rolled and tied to a length not to exceed two inches while in garrison and a length not to exceed one inch while in the field or during physical training. Your hair may not fall over your ears or eyebrows or touch the collar of your uniform. You may display your rank

SAMR

SUBJECT: Decision Regarding Request for Religious Accommodation – Private A [REDACTED]  
S [REDACTED] G [REDACTED], Virginia Army National Guard/Army National Guard of the United States

on your turban, provided you remove the rank in circumstances where military headgear is not customarily worn.

4. Because of the Army's interest in mission accomplishment, which requires military readiness, unit cohesion, good order, discipline, health, and safety on both the individual and unit levels, I have requested that your command provide periodic assessments of the effect of your accommodation, if any, on unit cohesion and morale, good order and discipline, health and safety, and individual and unit readiness.

5. I may withdraw or limit the scope of your accommodation for reasons of military necessity, including if I cannot confirm that Army protective equipment (to include ACH and protective mask) will provide you the intended degree of protection against the hazards presented by the duties or areas to which you will be assigned. Given our intent to gather additional information and develop additional standards, I intend to re-evaluate this accommodation at the conclusion of your Initial Military Training and may reevaluate it earlier based upon military necessity. If circumstances require that you be directed to comply fully with AR 670-1, you should be prepared to do so.



Debra S. Wada  
Assistant Secretary of the Army  
(Manpower and Reserve Affairs)

CF:  
Deputy Chief of Staff, G-1  
CDR, Human Resources Command

# **EXHIBIT 5**

Congress of the United States  
Washington, DC 20515

March 10, 2014

The Honorable Charles Hagel  
Secretary of Defense  
Department of Defense  
Washington, DC 20301

Dear Secretary Hagel:

We respectfully request that the United States Armed Forces modernize their appearance regulations so that patriotic Sikh Americans can serve the country they love while abiding by their articles of faith.

As you know, three devout Sikh Americans have been granted individualized accommodations to serve in the U.S. Army. These patriotic soldiers wear turbans and maintain beards in a neat and conservative manner, both in accordance with operational requirements and their Sikh religious beliefs. They are also able to wear protective equipment, including helmets and gas masks, in conformity with safety requirements.

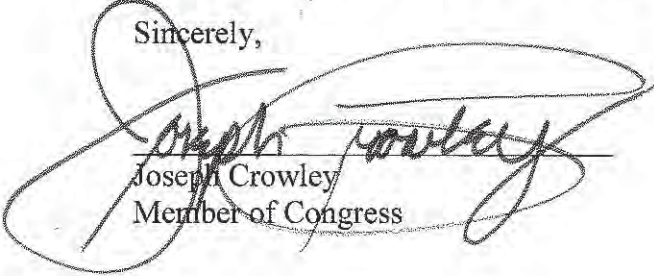
These Sikh soldiers have given their all in service of their country. Maj. Kamaljeet Singh Kalsi earned a Bronze Star Medal for his service in Afghanistan, which included treating multiple combat injuries and reviving two clinically dead patients back to life; Capt. Tejdeep Singh Rattan earned a NATO Medal for his service in Afghanistan; and Corporal Simran Preet Singh Lamba successfully graduated from the Military Accessions Vital to National Interest (MAVNI) program for his proficiency in Punjabi and Hindi.

Given the achievements of these soldiers and their demonstrated ability to comply with operational requirements while practicing their faith, we believe it is time for our military to make inclusion of practicing Sikh Americans the rule, not the exception.

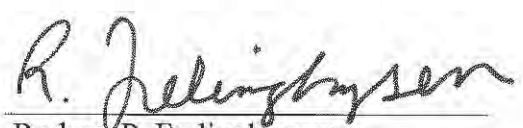
Devout Sikhs have served in the U.S. Army since World War I, and they are presumptively permitted to serve in the armed forces of Canada, India, and the United Kingdom, among others. Notably, the current Chief of Army Staff of the Indian Army is a turbaned and bearded Sikh, even though Sikhs constitute less than two percent of India's population. Throughout the world, and now in the U.S. Army, Sikh soldiers are clearly able to maintain their religious commitments while serving capably and honorably.

We look forward to working with you to end the presumptive ban on Sikh Americans in the U.S. military and extend opportunity to Sikh Americans who wish to serve and defend our nation.


Sincerely,




Joseph Crowley  
Member of Congress




Rodney P. Frelinghuysen  
Member of Congress


  
David G. Valadao  
Member of Congress

  
Judy Chu  
Member of Congress


  
Peter J. Visclosky  
Member of Congress

  
Joseph J. Heck  
Member of Congress

  
Paul Ryan  
Member of Congress

  
Jim Costa  
Member of Congress

  
John Garamendi  
Member of Congress

  
Leonard Lance  
Member of Congress

  
Ted Poe  
Member of Congress

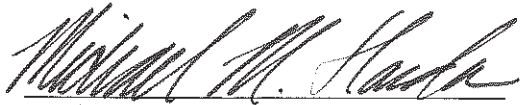
  
Paul Tonko  
Member of Congress

  
Karen Bass  
Member of Congress

  
Kerry L. Bentivolio  
Member of Congress

  
Frank R. Wolf  
Member of Congress

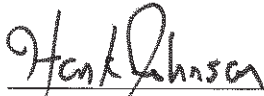
  
David E. Price  
Member of Congress



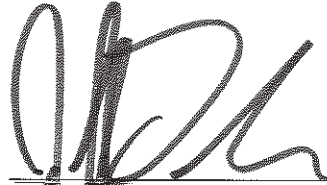
Michael M. Honda  
Member of Congress



Charles W. Dent  
Member of Congress



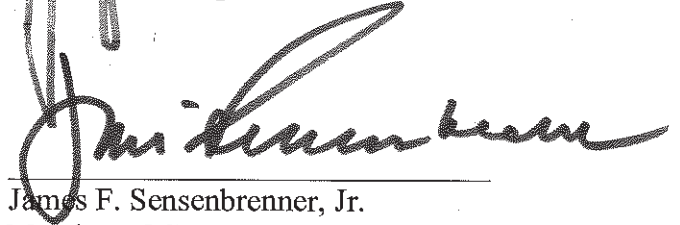
Henry C. "Hank" Johnson, Jr.  
Member of Congress



Jeff Denham  
Member of Congress



Rush Holt  
Member of Congress



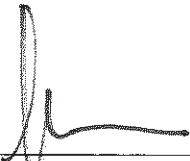
James F. Sensenbrenner, Jr.  
Member of Congress



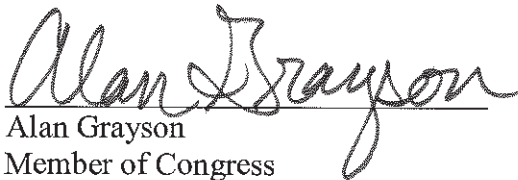
Pete Olson  
Member of Congress



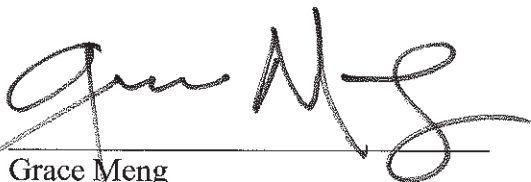
Eric Swalwell  
Member of Congress



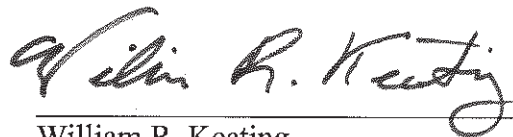
Ami Bera  
Member of Congress



Alan Grayson  
Member of Congress



Grace Meng  
Member of Congress



William R. Keating  
Member of Congress



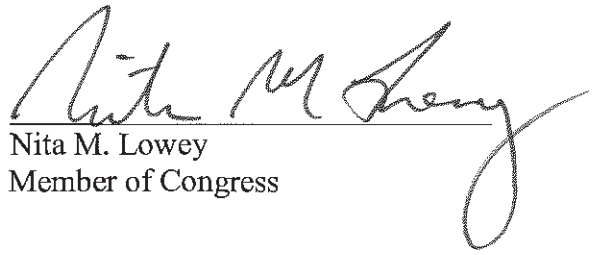
Alcee L. Hastings  
Member of Congress



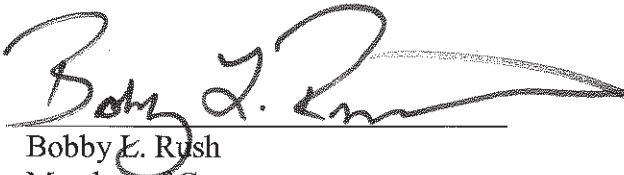
Niki Tsongas  
Member of Congress



Gregory W. Meeks  
Member of Congress



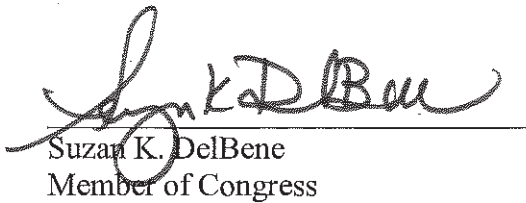
Nita M. Lowey  
Member of Congress



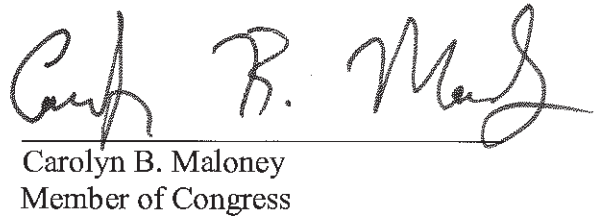
Bobby E. Rush  
Member of Congress



Gloria Negrete McLeod  
Member of Congress



Suzan K. DelBene  
Member of Congress



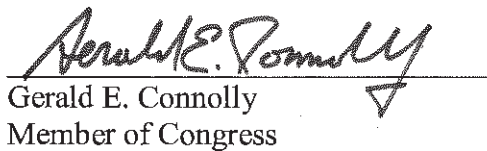
Carolyn B. Maloney  
Member of Congress



Ben Ray Lujan  
Member of Congress



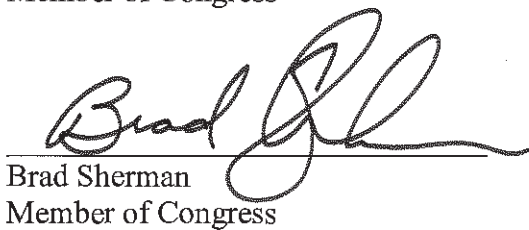
Barbara Lee  
Member of Congress



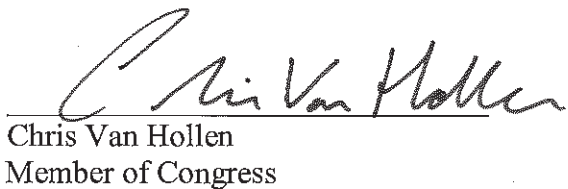
Gerald E. Connolly  
Member of Congress



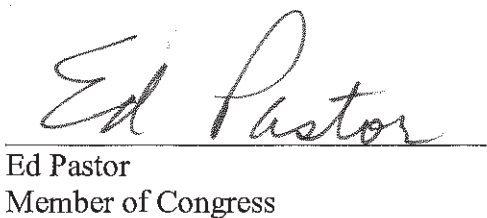
Ron Kind  
Member of Congress



Brad Sherman  
Member of Congress




Chris Van Hollen  
Member of Congress




Ed Pastor  
Member of Congress




Doris O. Matsui  
Member of Congress

  
Lucille Roybal-Allard  
Member of Congress

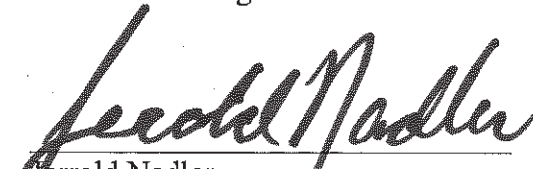
  
Mark Takano  
Member of Congress


  
John Lewis  
Member of Congress


  
Tammy Duckworth  
Member of Congress

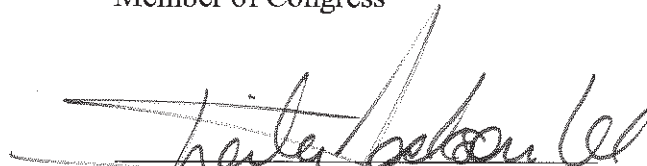
  
Donna F. Edwards  
Member of Congress


  
Wm. Lacy Clay  
Member of Congress

  
Errold Nadler  
Member of Congress

  
Steve Israel  
Member of Congress


  
Earl Blumenauer  
Member of Congress


  
Sheila Jackson Lee  
Member of Congress

  
James P. Moran  
Member of Congress

  
Gwen Moore  
Member of Congress

  
Adam B. Schiff  
Member of Congress

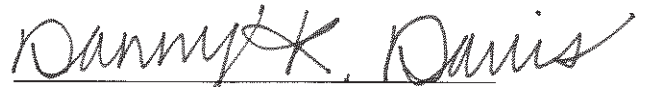
  
Anna G. Eshoo  
Member of Congress

  
Henry A. Waxman  
Member of Congress

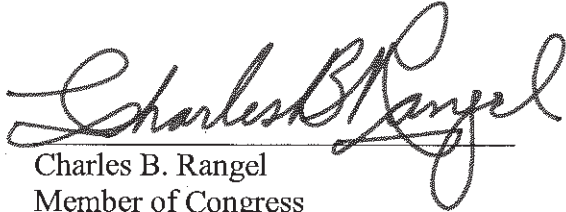
  
Jackie Speier  
Member of Congress



Eleanor Holmes Norton  
Member of Congress



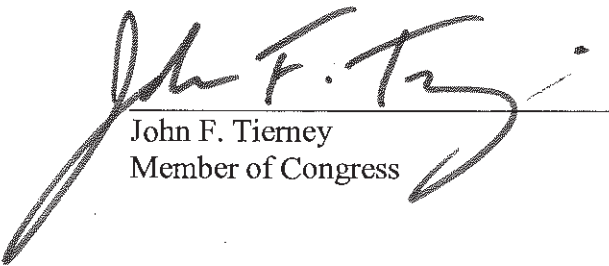
Danny K. Davis  
Member of Congress



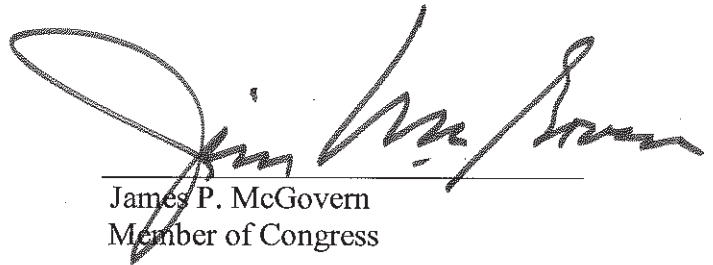
Charles B. Rangel  
Member of Congress



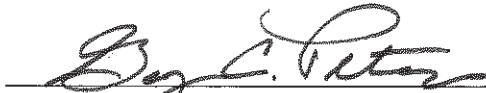
Zoe Lofgren  
Member of Congress



John F. Tierney  
Member of Congress



James P. McGovern  
Member of Congress



Gary C. Peters  
Member of Congress



Carolyn McCarthy  
Member of Congress



Tim Ryan  
Member of Congress




Pedro R. Pierluisi  
Member of Congress



William L. Owens  
Member of Congress



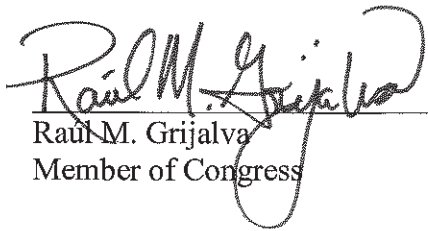
Luis V. Gutierrez  
Member of Congress




Bill Pascrell, Jr.  
Member of Congress




Ann McLane Kuster  
Member of Congress

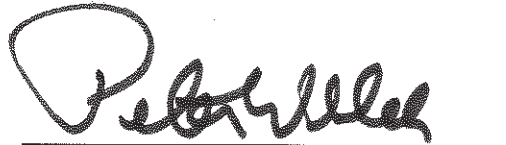
  
Raul M. Grijalva  
Member of Congress

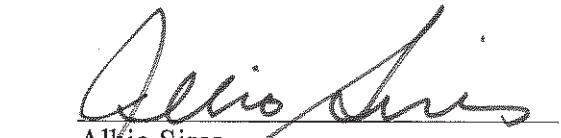
  
Julia Brownley  
Member of Congress

  
George Miller  
Member of Congress

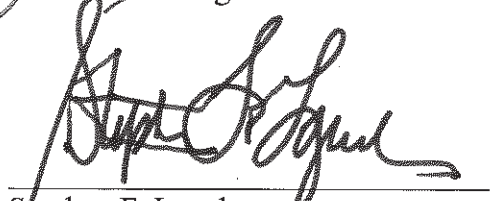
  
Rosa L. DeLauro  
Member of Congress

  
John K. Delaney  
Member of Congress


  
Peter Welch  
Member of Congress

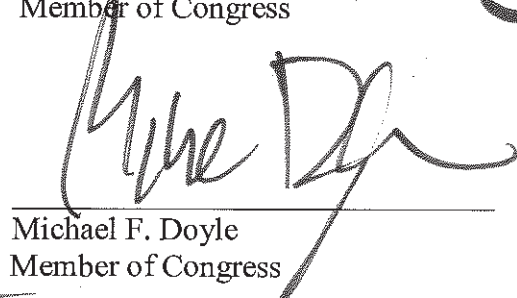
  
Albio Sires  
Member of Congress

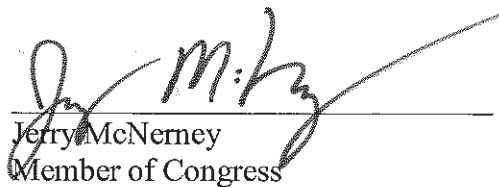
  
Theodore E. Deutch  
Member of Congress

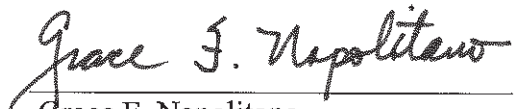
  
Stephen F. Lynch  
Member of Congress

  
Elijah E. Cummings  
Member of Congress

  
Tulsi Gabbard  
Member of Congress

  
Michael F. Doyle  
Member of Congress

  
Jerry McNerney  
Member of Congress

  
Grace F. Napolitano  
Member of Congress



Lois Capps  
Member of Congress



Yvette D. Clarke  
Member of Congress



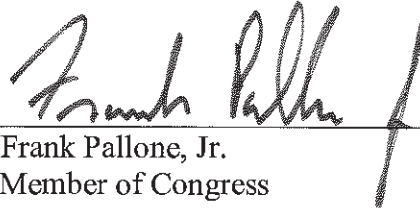
Robert C. "Bobby" Scott  
Member of Congress



André Carson  
Member of Congress



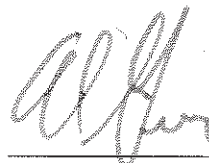
Joe Garcia  
Member of Congress



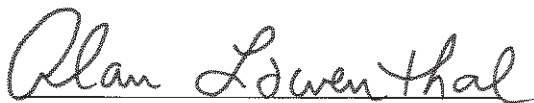
Frank Pallone, Jr.  
Member of Congress



Betty McCollum  
Member of Congress



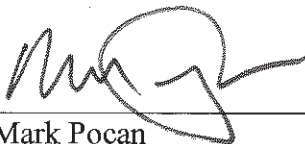
Al Green  
Member of Congress



Alan S. Lowenthal  
Member of Congress



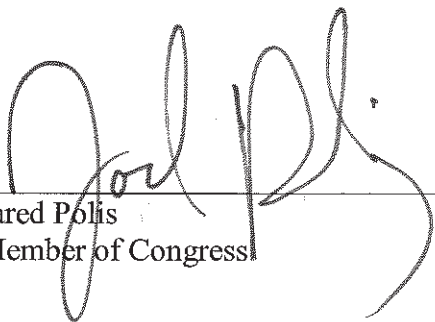
Joaquin Castro  
Member of Congress



Mark Pocan  
Member of Congress



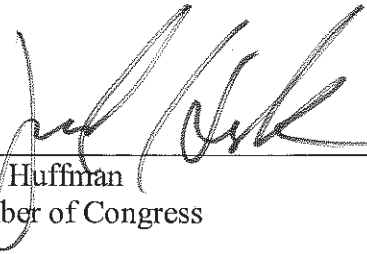
Eliot L. Engel  
Member of Congress



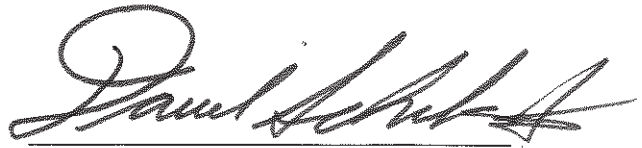
Jared Polis  
Member of Congress



Janice D. Schakowsky  
Member of Congress



Jared Huffman  
Member of Congress



David Schweikert  
Member of Congress



Susan Brooks  
Member of Congress

# **EXHIBIT 6**

April 2, 2014

The Honorable Jessica L. Wright  
Acting Under Secretary of Defense for Personnel and Readiness  
4000 Defense Pentagon  
Washington, DC 20301-4000

Dear Acting Under Secretary Wright:

On January 22, 2014, the Department of Defense released a revised version of its Instruction 1300.17 – *Accommodation of Religious Practices Within the Military Services*. We appreciate the fact that these revisions establish, for the first time, a formal process for requesting and granting accommodations for our men and women in uniform who seek to abide by the requirements of their faith – wearing, for instance, head coverings or neat beards. However, we are writing to express our concerns that these provisions still needlessly infringe on the rights of these religiously observant service members and prospective service members. As written, the revised Instructions will have the effect of limiting diversity in the ranks and preventing talented and patriotic Americans from serving in our nation’s military because of their religion.

As currently drafted, section 4(g) of the revised Instruction would require religiously observant service members and prospective service members to remove their head coverings, cut their hair, or shave their beards – a violation of their religious obligations – while their request to accommodate these same religious practices is pending. This is so, even if they are otherwise qualified to serve and an accommodation is unlikely to undermine safety or other necessary objectives. We urge you to reconsider this provision, which has the effect of forcing some religiously observant service members to make an impossible choice between their faith and their chosen profession.

Further, under Section 4(j) of the revised Instruction, even if an original accommodation request is approved, religiously observant service members would be required to submit a new request for the same accommodation every time they receive a new assignment, “transfer of duty station, or other significant change in circumstances.” The uncertainty associated with this requirement to repeatedly request an accommodation for the very same religious practices is stifling, and may needlessly limit career opportunities – or, in some cases, end careers.

Without further revisions, Instruction 1300.17 will have an unwelcome and unnecessary chilling effect on religious liberty – and will limit opportunities for talented individuals of faith to serve in our nation’s military. If service members can successfully perform their military duties, their religious practices, such as wearing head coverings or beards, should not be an obstacle to service.

We urge you to consider fine-tuning the revised Instruction to better accommodate these kinds of religious practices. We would be pleased to meet with you and members of your staff to discuss this matter further.

Thank you for your consideration of this important request.

Sincerely,

**American Civil Liberties Union  
American Jewish Committee (AJC)  
Americans United for Separation of Church and State  
Anti-Defamation League  
Baptist Joint Committee for Religious Liberty  
Becket Fund for Religious Liberty  
Chaplain Alliance for Religious Liberty  
Christian Legal Society  
The Church of Jesus Christ of Latter-day Saints  
The Episcopal Church  
Forum on the Military Chaplaincy  
General Conference of Seventh-day Adventists  
Interfaith Alliance  
Muslim Advocates**

**National Council of Jewish Women**  
**Sikh American Legal Defense and Education Fund (SALDEF)**  
**Sikh Coalition**  
**South Asian Americans Leading Together (SAALT)**  
**United Methodist Church, General Board of Church and Society**  
**Union of Orthodox Jewish Congregations of America**  
**Union for Reform Judaism**

# **EXHIBIT 7**

Boston Brussels Chicago Düsseldorf Frankfurt Houston London Los Angeles Miami  
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November 11, 2015

VIA FEDERAL EXPRESS

The Honorable Ash Carter  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Re: Letter from 27 Retired Generals Regarding Service of Observant Sikhs in U.S. Armed Forces

Dear Secretary Carter:

As you may know, McDermott Will & Emery LLP and The Sikh Coalition have been working tirelessly since 2009 to ensure that observant Sikh service members in the U.S. Armed Forces are permitted to practice their religion—including keeping uncut hair and beards and wearing a turban—while maintaining the highest standards of neat and conservative uniformity, ensuring individual readiness, meeting all safety requirements, and contributing to esprit de corps and unit cohesion.

Therefore, it is my distinct honor and privilege to share the enclosed letter from 27 retired generals urging you to take action to strengthen DOD Instruction 1300.17 and remove the obstacles that continue to prevent observant Sikh Americans from serving in our U.S. Armed Forces. These retired military leaders—hailing from the Army, Air Force, Navy, and Marine Corps—note that observant Sikhs who have recently been granted individual accommodations are able to “wear turbans and maintain beards in a neat and conservative manner, and all of them can wear helmets and protective gas masks, in conformity with safety requirements.” These retired generals simply request that observant Sikh Americans “be given an equal opportunity to serve in the U.S. Armed Forces without violating their religious obligations.”

As we honor all of our Veterans today, we respectfully request that you heed the call from 27 proven military leaders and end the presumptive ban on the service of observant Sikh Americans in the U.S. Armed Forces.

Sincerely,



Amandeep S. Sidhu  
*Counsel to The Sikh Coalition*

Enclosure

The Honorable Ash Carter, Secretary of Defense

November 11, 2015

Page 2

cc (via FedEx w/ encl.):

The Honorable John M. McHugh, Secretary of the Army  
The Honorable Deborah L. James, Secretary of the Air Force  
The Honorable Ray Mabus, Secretary of the Navy  
General Joseph F. Dunford, Jr., Chairman of the Joint Chiefs of Staff  
General Mark A. Milley, Chief of Staff of the U.S. Army  
General Mark A. Welsh III, Chief of Staff of the U.S. Air Force  
Admiral John Richardson, Chief of Naval Operations  
General Robert B. Neller, Commandant of the Marine Corps  
Admiral Paul F. Zukunft, Commandant of the Coast Guard  
General Frank J. Gass, Chief of National Guard Bureau

11 November 2015

The Honorable Ash Carter  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Carter:

Under your leadership, the U.S. Department of Defense has taken important steps toward recognizing the importance of religious faith to the lives of our service members. Nevertheless, obstacles remain for patriotic Sikh Americans who wish to serve in our nation's military while maintaining their articles of faith.

Devout Sikhs wear turbans and maintain unshorn hair, including beards, in accordance with their religious beliefs. They are admired throughout the world for their martial prowess and serve with distinction in the armed forces of Canada, India, and the United Kingdom. Although Sikhs have served honorably in the U.S. military since World War I, restrictive appearance regulations adopted in 1981 created barriers to their service. Revisions earlier this year to DOD Instruction 1300.17 make it possible for service members to request religious accommodations; however, the new guidelines presumptively exclude Sikh articles of faith, forcing Sikhs to repeatedly apply for waivers and even violate their religion while an accommodation request is pending.

Since 2009, the U.S. Army has granted individualized accommodations to three Sikh Americans, who wear turbans and maintain unshorn hair, including beards. All three of these service members wear turbans and maintain beards in a neat and conservative manner, and all of them can wear helmets and protective gas masks, in conformity with safety requirements. Two of them deployed to Afghanistan, earning a Bronze Star Medal and MSM NATO Medal for their service.

Given the success of these service members, we believe that Sikh Americans should be given an equal opportunity to serve in the U.S. Armed Forces without violating their religious obligations.

In 1948, President Harry Truman promised "that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin." We urge you to strengthen DOD Instruction 1300.17 and make this promise real for patriotic Sikh Americans who wish to serve in the U.S. Armed Forces.

Very Respectfully,

1. Brigadier General Clara Adams-Ender, U.S. Army (ret.), Former Commander of Ft. Belvoir and Former Chief of the Army Nurse Corps.
2. Brigadier General John Adams, U.S. Army (ret.), Former Deputy United States Military Representative to the North Atlantic Treaty Organization

3. Brigadier General Ricardo Aponte, U.S. Air Force (ret.), Former Director (J-7) of the U.S. Southern Command
4. Brigadier General Balan Ayyar, U.S. Air Force (ret.), Former Commanding General, Combined Joint Interagency Task Force 435 (Afghanistan)
5. Major General Paul L. Bielowicz, U.S. Air Force (ret.), Former Director of Operations & Director of Logistics, U.S. Strategic Command
6. Major General Roger W. Burg, U.S. Air Force (ret.), Former Commander Global Strike Command and Former Commander Task Force 215, U.S. Strategic Command
7. Major General George Buskirk, U.S. Army (ret.), Former Adjutant General of the State of Indiana
8. Brigadier General Julia Cleckley, U.S. Army (ret.), Former Chief, Human Resources Officer (G-1) for Army National Guard
9. Brigadier General John Douglass, U.S. Air Force (ret.), Former Assistant Secretary of the Navy
10. Major General Belisario D.J. Flores, U.S. Air Force (ret.), Former Assistant Adjutant General of the Texas Air National Guard
11. Lieutenant General Robert Gard, U.S. Army (ret.), Former Commanding General of the U.S. Army Military Personnel Center
12. Brigadier General Don Harvel, U.S. Air Force (ret.), Former ANG Advisor to Commander of Air Force Special Operations
13. Major General Steven Hashem, U.S. Army (ret.), Former Director U.S. Special Operations Command Center for Knowledge and Futures
14. Lieutenant General Mark Phillip Hertling, U.S. Army (ret.), Former U.S. Army Europe Commanding General
15. Major General James A. Kelley, U.S. Army (ret.), Former Chief of Staff of the U.S. Army Reserve and Former Deputy Commanding General for 3<sup>rd</sup> Army
16. Brigadier General Jeffrey Kendall, U.S. Air Force (ret.), Former Director Warfighter Systems Integration and Former Commander, Kandahar Airfield (NATO), Afghanistan
17. Lieutenant General Claudia Kennedy, U.S. Army (ret.), Former Deputy Chief of Staff for Intelligence

18. Brigadier General Douglas E. Lee, U.S. Army (ret.), Former Assistant Chief of Chaplains for Mobilization and Readiness
19. Brigadier General Carlos E. Martinez, U.S. Air Force (ret.), Former Mobilization Assistant to the Chief of Warfighting Integration and Chief Information Officer, Office of the Secretary of the Air Force
20. Brigadier General David L. McGinnis, U.S. Army (ret.), Former Assistant Secretary for Reserve Affairs, Department of Defense
21. Brigadier General Robert M. Murdock, U.S. Air Force (ret.), Former Commander, San Antonio ALC, Kelly Air Force Base, Texas
22. Lieutenant General Michael D. Rochelle, U.S. Army (ret.), Former Deputy Chief of Staff for Personnel
23. Major General Angela Salinas, U.S. Marine Corps (ret.), Former Director of Manpower Management Division, Manpower and Reserve Affairs, Headquarters Marine Corps
24. Major General Tony Taguba, U.S. Army (ret.), Former Commander of 2nd Brigade and Former Chief of Staff of the U.S. Army Reserve Command
25. Brigadier General Sue E. Turner, U.S. Air Force (ret.), Former Director Nursing Services, Office of the Air Force Surgeon General
26. Major General William F. Ward, U.S. Army (ret.), Former Chief of the Army Reserve
27. Brigadier General Marianne Watson, U.S. Army (ret.), Former Director of Manpower and Personnel (J-1) for Army National Guard

# **EXHIBIT 8**

## Religion

# US Army should let Sikhs serve, turban and all (COMMENTARY)

By William Francis Ward Jr. | Religion News Service November 12, 2015

(Twenty-seven retired U.S. generals delivered a letter to Secretary of Defense Ashton Carter on Wednesday (Nov. 11) asking that the military drop its ban on religious articles of faith, including the turban. This is one general's reasoning.)

(RNS) One of the greatest strengths of our U.S. military is that it is a diverse institution that strives to reflect and project the best of our core values as a nation.

As a company commander in 1956, I was tasked with overseeing and training the first fully desegregated tank unit in the state of Delaware.

While the executive order for desegregation had been issued eight years earlier, many Americans throughout the state were still deeply divided on the issue by the time it came to be implemented. For me, desegregation of the military was always a very simple decision. We're all equal in the eyes of God and under the law.

Sixty years later, Sikh Americans face a similar struggle. Despite the fact that Sikhs have contributed to the American fabric for generations, our nation's armed services ban Sikh Americans from serving because they do not cut their hair or shave their beards.

The Sikh religion is a faith that emphasizes service, love and justice. Sikhs display their commitment to these ideals by maintaining unshorn hair, which includes beards and uncut hair that is wrapped in a turban.

While militaries around the world have recognized and embraced the Sikh religious practices, since 1981 the U.S. military has had a ban in place that prohibits Sikhs from serving without abandoning their faith.

In the U.S., being forced to choose between one's faith and service to our country is a choice that no American should have to make.

There are three Sikh American soldiers — with turbans and beards — who are serving in the U.S. Army. These three individuals — Maj. Kamal Singh Kalsi, Capt. Tejdeep Singh Rattan and Spc. Simranpreet Singh Lamba — have deployed and served in operating positions, received awards and promotions, and have helped protect and save the

lives of fellow Americans.

However, each of these soldiers had to fight an incredibly arduous battle and seek special accommodations from the military to serve.

The Pentagon amended its religious accommodation policy last year, but rather than fix this problem the Pentagon exacerbated it. Now Sikhs must cut their hair and shave while waiting for the accommodation process to be approved. This process can take months and is determined on a case-by-case basis.

The core argument against Sikhs serving today is one that focuses on the disruption of unit cohesion. Sadly, this argument is similar to the dissent I heard in Delaware nearly 60 years ago. My fully desegregated unit had no problems with integration whatsoever and went on to successfully serve for years after I left the unit.

Based on my firsthand experiences and observations, desegregation did not threaten the esprit de corps, nor did it pose a threat to the stability of our military. The same logic applies today for our Sikh-American neighbors, classmates and colleagues, who deserve and rightfully demand the same opportunity.

Today, 27 generals, including me, signed a letter demanding that the Pentagon drop the ban. These letters add to the growing chorus, which was previously joined by 105 members of Congress, 15 senators and 20 national interfaith and civil rights organizations, all of whom also signed letters last year in support of American Sikhs' right to serve.

Not allowing minorities to serve in the military because of the color of their skin was simply the wrong thing to do, and disallowing minorities to serve today because of their faith is absolutely no better. It goes against the values that each and every American service member has fought to protect, and it runs counter to the ideals that we as Americans cherish most.

(Maj. Gen. William Francis Ward Jr. served as chief of the Army Reserve from 1986-1991.)

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# **EXHIBIT 9**

# Allow Sikhs to serve in U.S. military (Opinion) - CNN.com

 [www.cnn.com/2015/11/11/opinions/hashem-sikhs-serve-u-s-military/](http://www.cnn.com/2015/11/11/opinions/hashem-sikhs-serve-u-s-military/)

## Story highlights

- Steven Hashem says American Sikhs are barred from serving in the U.S. military because of their faith
- Military prevents service unless special accommodation is sought for turbans, he says

As a major general with more than 37 years' experience in the United States Army, I know firsthand the commitment required to serve in the greatest military on Earth. However, as we pay tribute to those who have served, it's also critical to recognize those who are still prohibited from serving the nation they love.

Steven Hashem

I am speaking of American Sikhs, who are currently barred from serving in the U.S. military because of their articles of faith. The tenets of the Sikh faith demand that Sikh men refrain from shaving their beards and require them to keep their unshorn hair tied neatly under a turban. This religious commitment, like our proud military service, is one that honors equality and justice for all.

The right to exercise the religion of one's own choosing is a core American value. It is enshrined in our First Amendment. No American should ever have to choose between following his or her religious tenets and serving the country with honor. That's not who we are as a nation.

Prior to the implementation of the current restrictive policy in 1981, Sikhs served honorably in the U.S. military from World War I through the Vietnam War.

Jatenderpal Singh Bhullar is the first Sikh in the UK's Scots Guard to wear a turban on duty.

Sikhs with turbans and unshorn hair have likewise served bravely in military forces throughout the world, including [the UK](#) and [Canada](#). These countries would be the first to point out how valuable Sikh service members are to the armed forces and how their articles of faith do not disrupt unit cohesion, uniformity or their ability to serve.

This distinguished history of service both in the U.S. and elsewhere contrasts sharply with the Pentagon's ongoing claim that Sikh articles of faith jeopardize safety and uniformity. In fact, similar arguments were employed in the previous century to keep African-Americans and women from integrating into our ranks.

Despite the overall policy, in recent years several Sikh soldiers have received special accommodations to serve in the U.S. Army, completed combat tours, and received promotions and medals for their distinguished service.

In January 2011, Maj. Kamal Singh Kalsi deployed to Afghanistan and served as the officer in charge of an expeditionary emergency room in Helmand province. During that deployment, Kalsi treated over 750 combat casualties under very austere conditions and resuscitated two patients who were clinically dead on arrival. For his commitment to duty and exceptional service, Kalsi [was awarded](#) the Bronze Star. (I formerly commanded the 404th Civil Affairs Battalion, in which Kalsi now serves.)

Although Kalsi was allowed to serve because he received a religious accommodation, it is unreasonable and unjust to ask every Sikh who wishes to serve to file such a request. Not only do these requests take weeks or even months to resolve, the process is inherently uncertain. Sikhs are allowed to file for a religious accommodation only if they abandon their identity while their request is pending. Asking an American Sikh to violate his or her religious beliefs while a decision is pending is not a solution and is fundamentally un-American.

The Sikh American community has been part of the American fabric for well over 100 years. They are doctors, farmers, engineers, entrepreneurs and public servants. The fact that they're not able to serve in the U.S. armed forces runs counter to what our military is designed to protect and what we believe in as a nation.

On Wednesday, Veterans Day, 27 U.S. generals, including myself, [signed a letter](#) demanding that the Pentagon drop the ban that forbids American Sikhs to serve in the U.S. military. This letter adds to the growing chorus, which was previously joined by [105 members of Congress](#), [15 U.S. senators](#), and 20 national [interfaith and civil rights organizations](#), all of whom also signed letters last year in support of American Sikhs' right to serve.

In the United States, people of all faiths should be able to both serve their country and practice their faith. This Veterans Day, as we honor the commitment to service, we must recognize that nobody should endure such barriers in their struggle to serve. American Sikhs have proven their ability to serve their country without being ordered to violate their religious beliefs.

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# **EXHIBIT 10**

You, being the sons of one father, are, inter-se yourselves and other baptized Sikhs, spiritual brothers. You have become the pure Khalsa, having renounced your previous lineage, professional background, calling (occupation), beliefs, that is, having given up all connections with your caste, descent, birth, country, religion, etc.. You are to worship none except the One Timeless Being - no god, goddess, incarnation or prophet. You are not to think of anyone except the ten Gurus and anything except their gospel as your savior. You are supposed to know Gurmukhi (Punjabi alphabet). (If you do not, you must learn it). And recite, or listen in to the recitation of, the under mentioned scriptural compositions, the daily repetition of which is ordained, every day:

1. The Japuji Sahib
2. The Jaap Sahib
3. The Ten Sawayyas (Quartrains), beginning "sarawag sudh"
4. The Sodar Rahriras and the Sohila.

Besides, you should read from or listen in to the recitation from the Guru Granth. Have, on your person, all the time, the five K's: **The Keshas** (unshorn hair), **the Kirpan** (sheathed sword) [The length of the sword to be worn is not prescribed.], **the Kachhehra** [The Kachhehra (drawers like garment) may be made from any cloth, but its legs should not reach down to below the shins.], **the Kanga** (comb), **the Karha** (steel bracelet) [The karha should be of pure steel.].

The under mentioned four transgressions (tabooed practices) must be avoided:

1. Dishonoring the hair;
2. Eating the meat of an animal slaughtered the Muslim way;
3. Cohabiting with a person other than one's spouse;
4. Using tobacco.

In the event of the commission of any of these transgressions, the transgressor must get rebaptised. If a transgression is committed unintentionally and unknowingly, the transgressor shall not be liable to punishment. You must not associate with a Sikh who had uncut hair earlier and has cut it or a Sikh who smokes. You must ever be ready for the service of the Panth and of the gurdwaras (Sikh places of worship). You must tender one tenth of your earnings to the Guru. In short, you must act the Guru's way in all spheres of activity.

You must remain fully aligned to the Khalsa brotherhood in accordance with the principles of the Khalsa faith. If you commit transgression of the Khalsa discipline, you must present yourself before the congregation and beg pardon, accepting whatever punishment is awarded. You must also resolve to remain watchful against defaults in the future.

**q.** The following individuals shall be liable to chastisement involving automatic boycott:

1. Anyone maintaining relations or communion with elements antagonistic to the Panth including the minas (reprobates), the masands (agents once accredited to local Sikh communities as Guru's representatives, since discredited for their faults and aberrations), followers of Dhirmal or Ram Rai, etc. users of tobacco or killers of female infants.
2. One who eats/drinks leftovers of the unbaptised or the fallen Sikhs
3. One who dyes his beard
4. One who gives off son or daughter in matrimony for a price or reward
5. Users of intoxicant (hemp, opium, liquor, narcotics, cocaine, etc.)
6. One holding, or being a party to, ceremonies or practices contrary to the Guru's way
7. One who defaults in the maintenance of Sikh discipline

**r.** After this sermon, one from among the five beloved ones should perform the Ardas.

**s.** Thereafter, the Sikh sitting in attendance of the Guru Granth Sahib should take the Hukam. If anyone from amongst those who have received the ambrosial baptism had not earlier been named in accordance with the Sikh naming ceremony, he should renounce his previous name and be given a new name beginning with the first letter of the Hukam now taken.

**t.** And finally, the karhah prashad should be distributed. All the newly launched Sikh men and women should eat the karhah prashad together off the same bowl.

# **EXHIBIT 11**

authorized to retain normal headdress on parade when others remove theirs to avoid drill complications.

## SIKHS

14. A CF member who is an adherent of the Sikh religion (Keshadharis) shall wear CF pattern uniforms and adhere to standard CF dress policy and instructions, with the following exceptions:

- a. Hair and beard shall remain uncut, provided that the operational mission and safety is not jeopardized when it is required that the member wear occupational and operational equipment such as gas masks, oxygen masks, combat/vehicle/flying helmets, hard hats, scuba masks, etc. When a hazard clearly exists, the hair and/or beard shall be modified to the degree necessary for wearing the required equipment.
- b. In addition to uncut hair, four other symbolic requirements of the Sikh religion are authorized for wear by both male and female members (see paragraph 16.), with all orders of dress. Should a conflict arise between the requirement to wear safety or operational items of clothing and equipment and these religious symbols, the manner and location of wearing these symbols shall be adjusted. Unit commanders retain the right to order the manner of this adjustment as necessary to meet valid safety and operational requirements.
- c. A turban shall be worn by male members with ceremonial, mess, service and base dress. Turbans shall also be worn with occupational and operational dress, subject to the safety and operational considerations noted in sub-paragraph a., above. When engaged in combat operations, operational training or when serving with peacekeeping or multinational contingents, adherents of the Sikh religion shall, when deemed essential, cover their head with a patka or other customary clothing item (see paragraph 21.), over which they shall wear the headdress (including combat helmets) and other items of military equipment as ordered by the commanding officer.

enlevé un autre couvre-chef (voir paragraphe 3.), peut être autorisé à garder son couvre-chef habituel durant un rassemblement alors que les autres enlèvent le leur pour éviter des complications dans l'exercice militaire.

## SIKHS

14. Les militaires des FC adeptes de la religion sikh (Keshadharis) doivent porter les uniformes des FC et observer les règles et instructions des FC en matière de tenue, avec les exceptions suivantes :

- a. Le militaire adepte de la religion sikh doit porter la barbe et les cheveux seront portés non taillés, à condition que cela n'entraîne aucun danger lorsqu'il porte certaines pièces d'équipement opérationnel ou de travail telles que le masque à gaz, le masque à oxygène, le casque de combat, le casque de conducteur de véhicule, le casque d'aviateur, le casque de construction, le masque de plongée, etc. En cas de danger réel, il doit modifier ses cheveux ou sa barbe, ou les deux, de façon à pouvoir porter l'équipement requis.
- b. En plus des cheveux non taillés, le personnel masculin et féminin de religion sikh est autorisé à porter quatre autres attributs symboliques (voir paragraphe 16.) avec toutes les tenues réglementaires. Dans l'éventualité d'un conflit entre la nécessité de porter des articles d'habillement opérationnels ou de sécurité et ces symboles religieux, la façon de porter ces symboles doit être modifiée. Les commandants d'unité conservent le droit de dicter le genre d'ajustement nécessaire pour satisfaire aux exigences opérationnelles et de sécurité.
- c. Les hommes peuvent porter le turban avec les tenues de cérémonie, de mess, de service et de base. Le turban peut se porter avec les tenues de travail spécialisées et opérationnelle si les impératifs opérationnels et de sécurité décrits au sous-paragraphe a. le permettent. Lors des opérations de combat, des exercices opérationnels ou lors du service au sein de troupes multinationales ou de maintien de la paix, les adeptes de la religion sikh doivent, si cela est essentiel, se couvrir la tête d'un patka ou autre article vestimentaire traditionnel (voir paragraphe 21.) par-dessus lequel ils doivent porter le couvre-chef (y compris le casque de combat) et autres articles militaires selon les ordres du commandant.

15. Except as otherwise provided by paragraph 14., the turban worn by male members and authorized headdress worn by female members shall not be removed while wearing uniform. Similarly, when on duty wearing civilian clothing, a civilian turban and an appropriate civilian woman's head covering shall not be removed. Specifically, such headdress shall not be removed:

- a. on parade;
- b. by a member of the bearer party at a military funeral;
- c. during the administration of the Oath of Allegiance by an attesting officer;
- d. when attending or being paraded as the accused before a trying officer at a summary trial or investigation;
- e. when attending or being paraded as the accused before a court martial;
- f. when entering a consecrated building;
- g. when entering a mess, canteen or dining room; and
- h. at formal or informal functions, when the removal of headdress might otherwise be considered appropriate.

16. Adherents of the Sikh religion shall, subject to the provisions of paragraph 14., observe the following five symbolic requirements:

- a. **Kesh** – leave hair on the head, face and body uncut;
- b. **Kanga** – wear a comb;
- c. **Kara** – wear an iron bangle (bracelet);
- d. **Kacha** – wear under-drawers of a specific design; and
- e. **Kirpan** – wear a symbolic dagger with an overall length (including handle and sheath) not exceeding 23 cm (9 in.).

15. Compte tenu des exceptions prévues au paragraphe 14., le personnel en uniforme ne doit pas retirer ni le turban, pour le personnel masculin, ni le couvre-chef autorisé, pour le personnel féminin. De même, le personnel en service portant des vêtements civils ne doit pas retirer le turban civil, dans le cas des hommes, ou une coiffure civile appropriée, dans le cas des femmes. Le personnel ne doit pas retirer ces types de coiffure, en particulier dans les occasions suivantes :

- a. lors d'un rassemblement;
- b. à des funérailles militaires, à titre de membre de l'équipe de porteurs;
- c. pendant l'administration du serment d'allégeance par un officier chargé de l'attestation;
- d. lors de la comparution devant un juge à titre d'accusé, lors d'un procès ou d'une enquête sommaires;
- e. lors de la comparution devant une cour martiale à titre d'accusé;
- f. en entrant dans un temple;
- g. en entrant dans un mess, une cantine ou une salle à manger; et
- h. lors d'activités officielles ou non officielles lorsque le retrait du couvre-chef est jugé à propos.

16. Les adeptes de la religion sikh doivent, conformément aux dispositions du paragraphe 14., observer les cinq exigences symboliques suivantes :

- a. **Kesh** – ne pas tailler les cheveux, la barbe ni aucun poil du corps;
- b. **Kanga** – porter le peigne;
- c. **Kara** – porter le bracelet de fer;
- d. **Kacha** – porter un caleçon d'un type particulier; et
- e. **Kirpan** – porter le poignard symbolique dont la longueur totale, y compris le manche, ne dépasse pas 23 cm (9 po).

17. The colour of turbans (see also Chapter 6, Section 1) worn by male members shall be:

- a. **navy** – white, or navy blue (black) when navy berets are ordered worn;
- b. **army** – rifle green or other authorized colour;
- c. **air force** – light blue;
- d. **field combat clothing** – olive drab; and
- e. **full dress and undress** – a colour which visually blends with the colour of the normal headdress. Full dress and undress items are noted in Chapter 5. Units shall obtain approval for adoption as noted in Chapter 2, Section 1, paragraphs 24. to 27., through normal channels, including branch advisers.

18. Crossed ribbons may be worn on the navy, army and air force turbans in accordance with branch/regimental customs as illustrated in Figure 2-3-1.

19. MPs shall wear two 3 cm (1-3/16 in. wide) scarlet ribbons.

20. The pug (see Figure 2-3-1) shall be the same colour as the turban.

21. **Method of Wear.** The following instructions are not intended to detail the method of styling and wearing hair on the head, of wearing the comb or of winding the turban. Instead they provide sufficient direction to ensure uniformity of dress amongst Sikh members. Accordingly, symbols and associated badges shall be worn as follows:

- a. **Turban.** Worn in a low, Sikh conventional manner, with the final winding right over left on the forehead. If ribbons are worn, their lower edge shall be 2 cm (3/4 in.) from the lowest edge of the turban at the sides of the head, and crossed right over left at the centre of the forehead. The ribbons shall be secured on the turban by tucking their ends into the folds at the front and rear.
- b. **Cap Badge.** Worn centred on the front of the turban and on the crossing point of any ribbons. The badge shall be locally modified to provide a brooch fastener to secure it to the cloth.

17. Les couleurs des turbans portés par les hommes sont les suivantes (voir également la section 1 du chapitre 6) :

- a. **marine** – blanc ou bleu marine (noir) lorsque le militaire doit porter le béret de la marine;
- b. **armée** – vert foncé ou autre couleur permise;
- c. **aviation** – bleu aviation;
- d. **tenues de combat** – vert olive; et
- e. **grande et petite tenues** – une couleur qui s'agence avec la couleur du couvre-chef normal. Les articles composant la grande et la petite tenues sont décrits au chapitre 5. Les unités doivent obtenir l'approbation par la voie réglementaire comme le décrivent les paragraphes 24. à 27., section 1, chapitre 2, y compris les conseillers de service.

18. Les militaires peuvent porter des rubans croisés sur le turban de la marine, de l'armée et de l'aviation conformément aux coutumes des services ou régiments, comme le montre la figure 2-3-1.

19. Les policiers militaires doivent porter deux rubans écarlates d'une largeur de 3 cm (1 3/16 po).

20. Le pugaree (voir figure 2-3-1) doit être de la même couleur que le turban.

21. **Directives de port.** Les directives ci-après n'ont pas pour objet d'indiquer en détail la façon de se coiffer, de porter le peigne ou d'enrouler le turban. Elles visent plutôt à garantir l'uniformité de la tenue chez les militaires sikhs des FC. Les symboles religieux et les insignes doivent donc se porter comme suit :

- a. **Turban.** Porté bas, à la manière sikh, et enroulé de telle sorte que le côté droit recouvre le côté gauche, sur le front. Le bord inférieur des rubans, s'il y a lieu, est placé à 2 cm (3/4 po) du bord inférieur du turban, sur les côtés de la tête, et les deux rubans se croisent au centre du front, le droit par-dessus le gauche. On fixe ces rubans en rentrant leurs extrémités dans les replis du turban, en avant et en arrière.
- b. **Insigne de coiffure.** Se porte centré sur le devant du turban, au point d'intersection des rubans. L'insigne doit être modifié sur place de telle sorte qu'on puisse le fixer par une agrafe aux rubans et au tissu du turban.

- c. **Patka.** A traditional Sikh cloth head-covering worn when a turban is not suitable, such as under combat, flying or diving helmets, or during sports or strenuous physical activity (see Figure 2-3-1).
- d. **Kesh (Hair).** Male members shall wear their hair tied in a knot at the crown of the head, and shall secure the hair of the beard under the chin, presenting a close-to-face, groomed appearance. Female members shall wear their hair styled in a bun at the rear of the head to facilitate the proper wearing of Standard CF headdress.
- e. **Kanga (Comb).** Worn concealed in the hair.
- f. **Kara (Bangle or Bracelet).** Worn on the right wrist.
- g. **Kirpan (Dagger).** Shall remain sheathed, except for religious occasions and for cleaning purposes. The sheathed kirpan, worn under the outer shirt or jacket, shall be supported by a black cloth sling, slung from the right shoulder to the left side. Should the kirpan interfere with the wearing of uniform accoutrements or equipment, it may be slung from the left shoulder and worn on the right side.
- c. **Patka.** Couvre-nuque traditionnel sikh en toile qui remplace au besoin le turban sous le casque de combat, de vol ou de plongée et durant la pratique des sports ou lors de travaux ardu (voir figure 2-3-1).
- d. **Kesh (cheveux).** Dans le cas du personnel masculin, les cheveux sont noués sur le sommet de la tête et la barbe est fixée sous le menton, de façon à donner une apparence soignée. Dans le cas du personnel féminin, les cheveux sont coiffés en chignon à l'arrière de la tête, pour faciliter le port du couvre-chef standard des FC.
- e. **Kanga (peigne).** Dissimulé dans la chevelure.
- f. **Kara (bracelet).** Se porte au poignet droit.
- g. **Kirpan (poignard).** Doit rester dans le fourreau sauf pour certains rites religieux et pour le nettoyer. Le kirpan dans son fourreau, porté sous la chemise ou la veste de dessus, est suspendu à une bretelle de tissu noir passant de l'épaule droite au côté gauche. Si le kirpan nuit au port de certains attributs ou articles de l'uniforme, il peut être porté du côté droit, la bretelle étant posée sur l'épaule gauche.

**MUSLIM**

22. TBD.

**ABORIGINAL**

23. TBD.

**MUSULMANS**

22. À déterminer.

**AUTOCHTONES**

23. À déterminer.

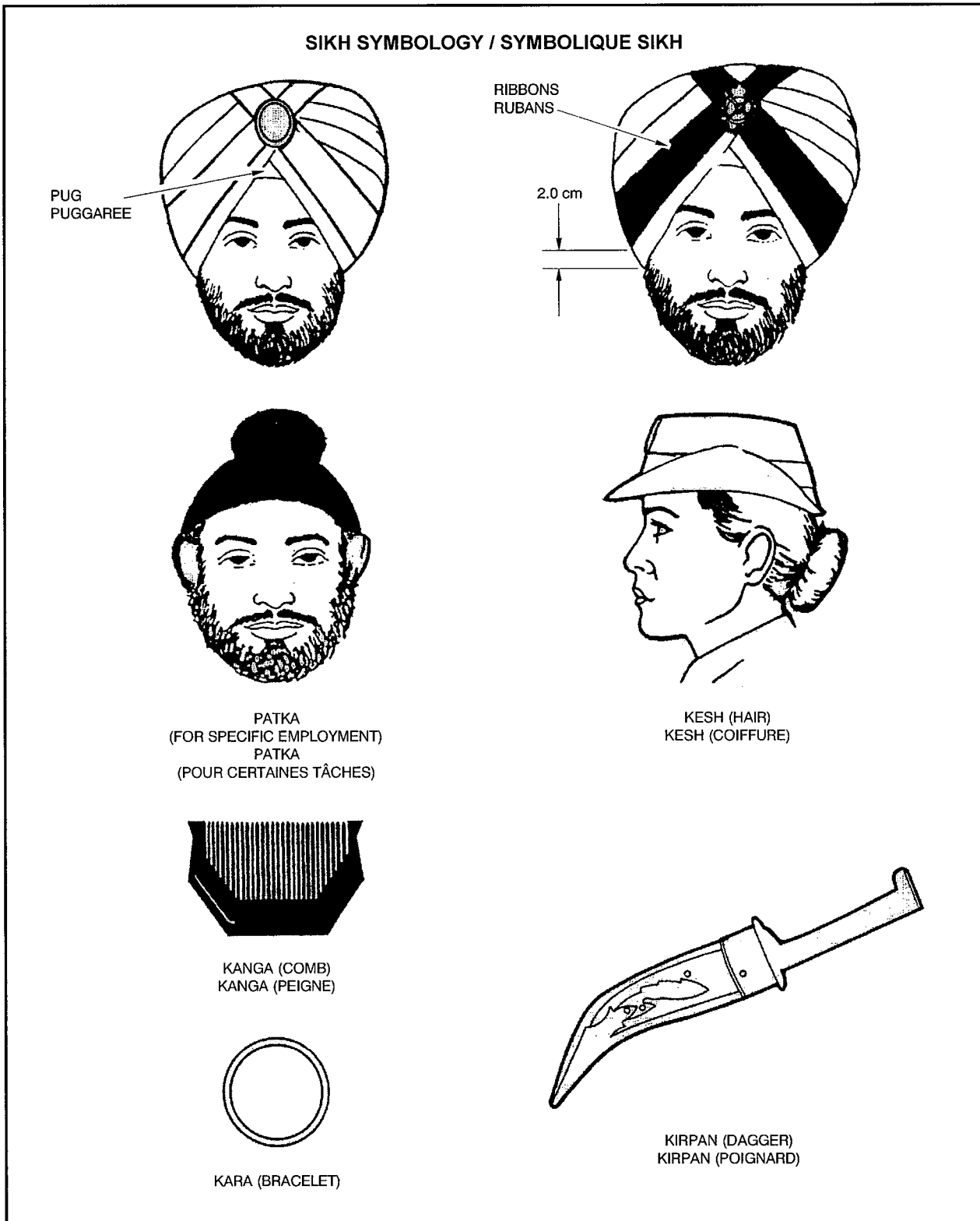


Figure 2-3-1 Authorized Sikh Items of Wear  
Figure 2-3-1 Articles sikh dont le port est autorisé

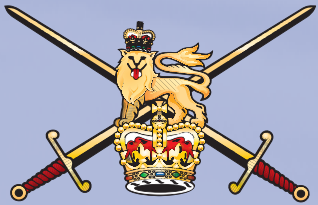
# **EXHIBIT 12**



MINISTRY OF DEFENCE



# GUIDE ON RELIGION AND BELIEF IN THE MOD AND ARMED FORCES





## Foreword

The Ministry of Defence is committed to creating a culture that:

- encourages and welcomes people throughout society to join us, and remain with us, to make their distinctive contributions and achieve their full potential;
- is free from harassment, intimidation and unlawful discrimination; and
- ensures each individual is treated fairly, with dignity and respect.

Our aim is to create an environment free from discrimination, prejudice, fear or misunderstanding, which can damage operational effectiveness.

This Guide shows how we put this into practice in relation to religion and belief. It also seeks to explain how the Employment Equality (Religion and Belief) Regulations 2003 apply to service in the Armed Forces and employment in the MOD Civil Service and to increase awareness of some of the most commonly practised religions and beliefs in the UK today.

The Guide is intended for use by personnel at all levels, whether Service or Civil Service, so that they are aware of, understand and comply with the new Regulations and with our diversity and equality policy.

While the information contained in it is as accurate as possible, it should not be seen as a definitive statement of law or as an authoritative or comprehensive guide on religions or beliefs. It should be read in conjunction with other Service and MOD Civil Service guidance and personnel/administrative instructions on diversity and equality and on dealing with complaints of discrimination, harassment or bullying. Further sources of information and advice can be found on page 12.



## CONTENTS

	Page
<b>Guidance on Religion and Belief in the Armed Forces</b>	
Our Diversity Policy	5
The New Regulations	5
How Religion and Belief are Defined in the Regulations	5
Unlawful Behaviour	6
Positive Action	7
Exception for National Security	7
Making a Complaint	8
Potential Conflict between Religion and Sexual Orientation Regulations	8
Religious Observances at Work	9
Handling Requests	9
Time off and Facilities for Prayer	9
Requests for Leave for Religious Festivals/Holidays	9
Time off for Bereavement	10
Dress	10
Dietary Needs	10
Fasting	10
Meeting the Spiritual Needs of Personnel	11
Conscientious Objection	11
Death in Service	11
Emergency Burial	11
Collection of Information on Religion and Belief	12
Further Information	12
<b>Annex A - Religious Dress in the Armed Forces</b>	13
<b>Annex B - Frequently Asked Questions</b>	15
<b>Annex C - Brief Introduction to Major Religions Practised in the UK:</b>	17
Baha'i	17
Buddhism	19
Christianity	21
Hinduism	24
Islam	26
Jainism	28
Judaism	29
Other Ancient Religions	31
Rastafarianism	32
Sikhism	33
Zoroastrianism (Parsi)	35
Non-Religious Beliefs and Non-Belief	36

Notes:



## Our Diversity Policy

1. The MOD's diversity policy is to create a working environment free from harassment, intimidation and unlawful discrimination in which every individual is not only valued and respected but is also encouraged to realise their full potential and to make the best use of their unique talents in contributing to defence capability. This is not just about compliance with equality legislation but about encouraging people from different backgrounds and cultures, and with different perspectives and abilities, to work together to their own and the organisation's benefit. In line with our diversity policy, everyone should be treated fairly, with dignity and respect, regardless of their religion or belief or if they have no religion or other belief. It is everyone's responsibility to ensure that this is put into practice.
2. Our policy is that religion is a private life matter. In order to recognise and harness individual difference and to remove any barriers which might prevent people from joining the Armed Forces or MOD Civil Service, we endeavour to give those who wish to do so the opportunity to practise their religious observances wherever possible subject to vital considerations of operational effectiveness, health and safety and business needs. It is important that in applying this policy the needs of individuals are balanced with those of their colleagues and the organisation as a whole.

## The New Regulations

3. The Employment Equality (Religion and Belief) Regulations 2003 and corresponding legislation in Northern Ireland, implement in UK legislation the religion and belief elements of the European Employment Framework Directive. These Regulations came into force on 2 December 2003 and make it unlawful to discriminate against personnel on the grounds of religion or belief.
4. The Regulations apply to employment, including recruitment, terms and conditions of service, promotions, transfers, dismissals and vocational training and also to the treatment of contract workers such as agency temps. They also make it unlawful to discriminate, harass or victimise an individual in relation to the provision of references.
5. The Regulations provide that an employer can be made responsible for the behaviour of its personnel towards an individual working for someone else but on their premises. An employer can also be responsible for discrimination or harassment of employees by third parties.
6. The Armed Forces and MOD Civil Service have been practising policies that respect individuals' religion or belief for some time. However, it is important to understand that, where in the past MOD as a matter of policy aimed not to discriminate, the new Regulations make discrimination on the grounds of religion or belief unlawful and give individuals a right to bring Employment Tribunal claims for breaches of the Regulations.

## How Religion and Belief are Defined in the Regulations

7. Religion or belief are defined in the Regulations as any religion, religious belief, or similar philosophical belief. This is likely to include less well-known religions such as Paganism and non-religious philosophical beliefs like Humanism. It will not include any philosophical or political beliefs unless they have similar attributes to religious beliefs. Characteristics such as collective worship, a clear belief system or a profound philosophical belief affecting an individual's way of life or view of the world are likely to be relevant in determining what constitutes a religion or belief. Ultimately, it will be for the Courts and Tribunals to consider which religions or beliefs are covered by the Regulations.

## Unlawful Behaviour

**8.** The MOD will not tolerate any form of harassment, victimisation or unlawful discrimination. The law has protected people from such treatment on the grounds of sex or race for many years. Under the new Regulations individuals now have similar protection on the grounds of religion and belief.

**9. Discrimination** can be direct or indirect, intentional or unintentional. It can apply to job applicants as well as Service and civilian personnel.

**10. Direct Discrimination** is unlawful except in very limited circumstances (see paragraph 11 below) and occurs when someone is treated less favourably than others because of their actual or perceived religion or belief or lack of it, whether the intention was to discriminate or not.

Example: a candidate for promotion with the required skills and qualifications is perceived to be a Muslim and is not recommended for promotion because of this assumption about his/her religion. This would be direct discrimination.

**11.** The Regulations recognise that there may be some very specific and limited circumstances in which direct discrimination would be justified. This is where there is a **genuine and determining occupational requirement** for a certain jobholder to be of a particular religion or belief and it is proportionate to apply such a requirement. This is likely to be of very limited application in the Armed Forces. Service Chaplains are an example of posts where being of a specific religion is a determining factor and constitutes a genuine occupational requirement.

**12. Indirect Discrimination**, which is unlawful unless justifiable, occurs when an apparently neutral provision, criterion or practice is applied which, although applied to all personnel, has the effect, or potential effect of disadvantaging people of a particular religion or belief compared with other persons. An example could be selection criteria which seem fair because they apply to all but which inadvertently disadvantage those of a particular religion or belief.

**13.** Indirect discrimination is lawful only where it can be objectively justified as a proportionate means of achieving a legitimate aim. To justify it, an employer must be able to show that there is a legitimate aim for the practice, policy etc (e.g. maintaining operational effectiveness or health and safety) **and** the practice is a proportionate means of achieving that aim (i.e. that it is necessary and there is no alternative means available).

Example - A "no headwear" policy for all personnel may inadvertently impact on Sikh personnel who wish to wear a turban. In the Armed Forces, Sikh personnel are allowed to wear turbans in all circumstances, except where there is a requirement, for health and safety reasons, for personnel to wear protective headgear, such as a live firing exercise. The protection of health and safety is a legitimate aim and the requirement that personnel wear protective headgear, although it indirectly discriminates against Sikhs, is a proportionate means of achieving that legitimate aim.

**14.** Care should be taken to ensure that policies and practices do not have an unintentional adverse impact on those of a particular religion or belief. If they do, commanding officers/line managers should consider whether reasonable changes might be made. The summary of the main features of some of the most commonly practised religions or beliefs in Annex C will aid understanding and help to avoid unintentional discrimination.

**15. Harassment** is unlawful. It occurs when a person engages in unwanted behaviour on the grounds of religion or belief, whether actual or perceived, which has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

**16.** Such behaviour as use of nicknames, teasing or name-calling relating to an individual's religion or belief may constitute harassment irrespective of the intention. Other examples of harassment include:

- physical or verbal threats or abuse, including derogatory or stereotypical remarks, use of offensive or inappropriate language when describing an individual's religion or belief.
- unwelcome, intrusive or persistent questioning about an individual's religion or belief (real or assumed).

**17.** Harassment in any form will not be tolerated and should be challenged. For many people religion is a private matter and seemingly innocuous comments or questions about an individual's religion or belief may be viewed as intrusive or offensive. It should not be assumed that, because an individual does not object to language or behaviour, they consent to it.

**18. Victimisation** is unlawful. It occurs when an individual is subjected to a detriment because they may have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to such a complaint. Labelling someone a troublemaker, denying them promotion or training opportunities or ostracising them would constitute victimisation.

## Positive Action

**19.** Positive discrimination is not permitted by the Regulations but they do allow employers to take steps in limited circumstances to redress the effects of previous inequality of opportunity. This is sometimes referred to as positive action and could include giving particular encouragement or providing specific training for individuals from religions or beliefs who are in a minority in the workplace. However, decisions on recruitment, career progression and selection for training and promotion must always be on merit, regardless of religion or belief. Positive action should not be confused with positive discrimination which is unlawful.

**20.** Examples of positive action in the Armed Forces and MOD Civil Service include outreach programmes and advertising aimed at encouraging applications from people from minority ethnic and faith communities while making it clear that selection will be on merit. The MOD Civil Service has also introduced the "New Horizons" development programme for ethnic minority staff.

## Exception for National Security

**21.** The Regulations contain an exception for anything done to protect national security provided this can be justified. This is likely to be very narrowly construed and legal advice should always be sought if it is thought that a discriminatory measure should be taken to preserve national security.

## Making a Complaint

**22. Internal grievance/redress of complaint** All personnel have a right to complain about any matter that affects them personally, without fear of victimisation and with confidence that their complaint will be taken seriously, investigated thoroughly and resolved as quickly as possible. They should ensure that they are aware of what steps they may take if they feel they have been discriminated against, harassed or victimised. The procedures are set out in the Personnel Manual for Civil Servants and single Service Acts and administrative instructions for Service personnel, and in various Service guidance booklets.

**23.** If individuals feel that they have been harassed or treated unfairly on the grounds of their religion or belief, they should if possible make it clear to the person concerned that his or her behaviour is unwelcome and should stop. Before making a formal complaint, individuals may wish to consider taking advice from their immediate superior/line manager or speaking to someone else such as the unit Equal Opportunities Adviser/Equality and Diversity Officer, Chaplain or Medical Officer or the local Welfare Officer/Families Service. Service personnel can also contact the appropriate Service Confidential Helpline for advice. Details of other contact/advice points will be available in the guidance or Regulations mentioned above and in unit admin orders. The right to redress is a statutory right for Service personnel.

**24. Access to Employment Tribunal** Under the Regulations, Armed Forces and MOD Civil Service personnel have the right to submit complaints of discrimination, harassment or victimisation on the grounds of religion or belief to an Employment Tribunal. Before a Serviceman or Servicewoman can make an application to an Employment Tribunal, a complaint covering the same issue must first have been submitted (and not withdrawn) using the internal Redress of Complaint procedures. Because of this requirement, a Service complainant has six months from the day on which the matter of complaint occurred to make a claim to an Employment Tribunal, as opposed to three months in the case of civilians. Further advice can be obtained from MOD Personnel Manual and Single Service administrative instructions and from Service guidance booklets.

**25.** An individual pursuing an Employment Tribunal claim can name their employer or the perpetrator or both as respondents to their claim. As such, culpable individuals as well as MOD can be held liable for discrimination and be required to pay compensation.

## Potential Conflict between Religion and Sexual Orientation Regulations

**26.** The Government also introduced Regulations covering discrimination and harassment on the grounds of sexual orientation at the same time as those on religion or belief. Potential conflicts may arise where the Regulations on religion appear to infringe the rights given to an individual under the Regulations on sexual orientation. The right for everyone to be treated with dignity and respect in the workplace applies irrespective of sexual orientation as well as of religion or belief. In cases where an individual claims that his or her behaviour towards a gay, lesbian or bisexual colleague is founded on religious conviction, the protection from discrimination and harassment afforded by the Regulations on sexual orientation would take precedence over the right to religious expression. This means that personnel of any religion cannot refuse to work with someone on the grounds of their sexual orientation (and vice versa) whatever their religion or belief.

## Religious Observances at Work

**27.** Religious belief is treated as a private matter but, recognising the unique and demanding circumstances of Service life, the Armed Forces aim to facilitate and support individuals' spiritual needs. Both the MOD Civil Service and Armed Forces make every effort to respect and accommodate religious or belief requirements subject to vital considerations of operational effectiveness and health and safety. However, we may need individuals to be flexible, particularly when this is in the interests of their own safety or that of their colleagues.

**28.** Commanding Officers and line managers should consider whether policies, rules or procedures indirectly discriminate against staff of particular religions or beliefs and, if so, whether changes might be made. Most needs will require little or no change.

**29.** Service personnel should not be compelled to attend religious services of a belief different to their own. Neither should those who indicate that they have no religious belief be compelled to attend.

## Handling Requests

**30.** The Regulations do not say that employers must provide time off or facilities to enable personnel to meet religious observances in the workplace. However, reasonable requests must be considered objectively and met wherever practical. Indeed, blanket policies or refusals may constitute indirect discrimination unless justifiable as a proportionate means of achieving a legitimate aim (e.g. where the granting of leave for a religious holiday would substantially impact on a unit's or department's needs).

## Time off and Facilities for Prayer During the Working Day

**31.** Some religions require their followers to pray at specific times during the day (see summary in Annex C). Although the Regulations do not specifically require the provision of time and facilities (such as a quiet room) for religious or belief observance in the workplace, it is MOD policy to make such provision where circumstances allow. Individuals should discuss their needs with their Commanding Officers or line managers and every effort should be made to accommodate such needs. Time off for religious observances such as a prayer session during exercises or operations may have to be delayed or deferred due to unit activities. Wherever practicable, areas for worship or contemplation should be made available in all MOD Buildings and Service establishments, including ships and submarines. Personnel will normally be expected to use break times for their religious observances.

## Requests for Leave for Religious Festivals/Holidays

**32.** Many religions or beliefs have special festivals or spiritual observance days and an individual may request annual leave to celebrate festivals or attend ceremonies. Commanding Officers and line managers should make every effort to allow individuals time-off to celebrate religious festivals or holidays (e.g. Yom Kippur, Vai Sakh, Eid Al-Fitr, Diwali, etc).

**33.** Requests for annual leave for religious festivals or holidays need to be considered objectively and Commanding Officers and line managers should bear in mind the need to avoid indirect discrimination. Care should be taken to ensure that, where there are numerous requests for leave

at the same time, decisions on who should or should not be allowed leave are made according to fair and objective criteria with a mind to the need not to indirectly discriminate. It is important not to make assumptions on the basis of an individual's religion or perceived religion (for example that non-Christians will be prepared to work during the Christmas holiday period).

**34.** The practice of operating a holiday system whereby the unit closes for specific periods when all personnel must take leave may be indirectly discriminatory in preventing individuals taking leave at times of specific religious significance. However, such indirect discrimination will not be unlawful if it can be justified as legitimate and proportionate for operational or business reasons.

**35.** Individuals should give as much notice as possible when requesting leave and bear in mind that a number of their colleagues may request leave at the same time.

### **Time off for Bereavement**

**36.** Normal compassionate leave arrangements will apply for attending funerals of close family.

### **Dress**

**37.** The Armed Forces and MOD Civil Service recognise that individuals with specific religions or beliefs generally welcome the opportunity to wear clothing with significance to their religion or belief. This is reflected in the Services' dress regulations that take account of cultural and religious differences such as permitting individuals to wear items of religious significance and Muslim women to cover their arms, legs and head in all aspects of their work. More detailed information on religious dress in the Armed Forces can be found at Annex A. For operational and health and safety reasons, members of the Armed Forces may have to be flexible in some circumstances. However, MOD's policy is to ensure that any such restrictions regarding clothing to be worn in an operational environment are genuine requirements on grounds of operational effectiveness or health and safety. General dress codes which conflict with religious or belief requirements may constitute indirect discrimination under the Regulations unless they can be justified.

### **Dietary Needs**

**38.** The Armed Forces make every effort to cater for all special religious dietary requirements, and vegetarian options or Halal or Kosher meals can be provided in Service Mess facilities. However, preparation of Kosher food, by Mess staff, in strict observance of the Jewish faith cannot be guaranteed. Vegetarian, Halal and Kosher Operational Ration Packs are normally readily available for operations and exercises. However, in some circumstances or operations it may not be possible to guarantee this.

### **Fasting**

**39.** Some religions require their followers to undergo extended periods of fasting (e.g. Muslims fast during Ramadan). In the Armed Forces fasting should normally be allowed although there may be some operational circumstances when the physical demands on an individual are high and fasting would be hazardous and inappropriate. Care should be taken to ensure that permitting an individual to undertake a fast does not place unreasonable burdens on other personnel.

Example: Two Muslim recruits at an Army Training Regiment asked if they would be permitted to fast while undertaking recruit training during Ramadan. Both recruits were counselled about the physical demands of recruit training and advised that fasting could be dangerous. After discussions with the recruits' families and a local Imam, one recruit decided to defer training until the end of Ramadan, while the other chose to start training immediately, waiving the requirement to fast but continuing with all other aspects of religious observance (the Qur'an allows Muslims to be exempted from fasting as long as missed days are made up afterwards).

## Meeting the Spiritual Needs of Personnel

**40.** Commissioned Armed Forces Chaplains are at present drawn from the main Christian denominations to which the majority of Service personnel belong. They have a dual responsibility to provide spiritual care for Service personnel, and their families, within their denomination as well as to provide practical pastoral care for personnel of all faiths or those who have no religious beliefs. Should non-religious personnel in the Armed Forces wish to discuss their beliefs or problems with someone other than chaplains, there are a wide range of non-religious organisations which provide support and advice, including social workers, doctors and other professionals. The Armed Forces have appointed religious leaders from the Buddhist, Hindu, Jewish, Muslim and Sikh faiths to act as advisers on matters specific to those faith groups. Action is being taken to appoint civilian Chaplains from the faiths other than Christian most represented within the Armed Forces. For further information contact the Royal Army Chaplains Department (see page 12) The Multi-Faith Directory of Local Religious Advisers listing local centres of prayer and religious advice for those faith groups has also been published and is available at all Service establishments. This will be periodically updated.

## Conscientious Objection

**41.** Armed Forces personnel have a liability to deploy with their units worldwide. There are well-established appeal procedures for Service personnel who, during their service, develop a genuine conscientious objection to further military service. A member of the Armed Forces who develops an objection to future military service should make that objection known to his or her commander.

## Death in Service

**42.** Visiting/Assisting Officers who provide assistance and advice to families in cases of death in service should take account of any specific requirements relating to the religion or belief of the bereaved and of any funeral, burial or cremation arrangements which may arise as a result. Advice should be sought from casualty staff, Service Chaplains or Service Religious Advisers where appropriate. In circumstances where death occurs in combat or operations, bodies of the deceased will normally be repatriated to the UK.

## Emergency Burial

**43.** Chaplains on front line duty carry an emergency order of prayers for the five main minority faith groups (Buddhism, Hinduism, Islam, Judaism and Sikhism) as well as Christianity. This is to permit the battlefield burial of deceased Service personnel in the extremes of a combat situation where repatriation may not be feasible. Advice on these procedures is contained in Service casualty manuals (BR8886 (Naval Service); AC12874 (Army); AP1933 (RAF)).

## Collection of Information on Religion and Belief

**44.** The Regulations do not require the collection of data on the religion or belief of personnel. However, they recognise that this may help organisations to understand individuals' needs and help them make provision for those needs. The Armed Forces record the religion of all personnel for this reason and for casualty reporting purposes.

### FURTHER INFORMATION

**45.** The main provisions of the Regulations were summarised in DCI Gen 37/04 which can be found at:

[http://www.defence.mod.uk/dci2004/gen2004/gen33-42\\_04.pdf](http://www.defence.mod.uk/dci2004/gen2004/gen33-42_04.pdf)

Guidance on the Regulations issued by the Advisory Conciliation and Arbitration Service (ACAS) is at:

<http://www.acas.org.uk/publications/pdf/religion.pdf>

and the full text of the Regulations can be found at:

<http://www.hms0.gov.uk/si/si2003/20031660.htm>

The MOD diversity and equality website is at:

[http://www.mod.uk/issues/equal\\_opportunities/intro.htm](http://www.mod.uk/issues/equal_opportunities/intro.htm)

The Armed Forces Chaplaincy Service have published a Directory of Local Religious Advisers which is available at all units.

Guidelines on flexible working arrangements for members of the Armed Forces can be found in DCI JS 33/04 at:

[http://www.defence.mod.uk/dci2004/js2004/js32-62\\_04.pdf](http://www.defence.mod.uk/dci2004/js2004/js32-62_04.pdf)

**If you would like any further advice on the Regulations on religion and belief then please contact:**

Royal Navy:	Diversity Policy Officer	9380 27624
Army:	DM(A) SO1 Emp	94344 5338
RAF:	PTC-COS-SO2ED	95471 5049
MOD Civil Service:	DGCP HR Ops – DWLB7	020 721(87633MB)

Specific religious advice can be provided by your unit Chaplain or through the Chaplains Department as follows:

Royal Navy:	Naval Chaplaincy Service	9380 27901
Army:	Royal Army Chaplains Department	94344 5808
RAF:	RAF Chaplaincy Service	95471 5032

## RELIGIOUS DRESS IN THE ARMED FORCES

1. All Service personnel are required to wear standard pattern uniforms and adhere to Service clothing policy and instructions. However, the Armed Forces recognise the need to observe specific codes of dress in accordance with particular religious beliefs. For operational and health and safety reasons, members of the Armed Forces may have to be flexible in some circumstances. More detailed information on religious dress can be found in single-Service Dress Regulations.

### Sikhs

2. In the Armed Forces Sikhs are permitted to wear the 5Ks: Kara (steel bangle), Kesh (uncut hair), Kanga (small comb), Kaccha (special design knee length underwear) and Kirpan (small sword); male Sikhs can also wear a turban. However, some constraints regarding the wearing of a turban and keeping facial hair uncut do exist:

Some trades require specialist headgear to be worn, especially in operational circumstances. Examples of this are Commander's helmets in armoured fighting vehicles, combat helmets, breathing apparatus (full hood) for fire fighters, and flying helmets for aircrew in some types of aircraft. Turbans are incompatible with such specialist headgear, which must be worn on health and safety grounds. Male Sikh personnel can normally wear a patka under specialist headgear, however, this is not possible under a flying helmet which must be closely fitted to the contours of the head. Aircrew with long hair, male and female, may be required to have their hair cut short in order to achieve a satisfactory fit of a flying helmet.

### Muslim and Sikh Men

3. Muslim and Sikh men are permitted to wear short neatly trimmed beards. However, for occupational or operational reasons, where a hazard clearly exists, personnel authorised to wear beards on religious grounds will have to be prepared to modify or remove their beards to such an extent as to enable the correct wearing of a respirator or breathing apparatus.

**a. Aircrew** It is unlikely that a male Muslim or Sikh would be able to obtain an effective seal on his oxygen mask without trimming his beard.

**b. Respirator** An effective seal on a respirator can only be achieved when the skin is clean shaven. In an operational environment (including training in preparation for operational deployment) where there is an NBC threat, Muslims, Sikhs and indeed all personnel with beards, would need to shave. However, when practising NBC drills, male Muslim and Sikh personnel will not be required to shave their beards.

### Muslim Women

4. Muslim women are allowed to wear uniform trousers, rather than a skirt and may wear a hijab except when operational or health and safety considerations dictate otherwise. Long sleeve shirts are also available with most forms of Service dress. Tracksuit bottoms may be worn for sport. All Service personnel are required to achieve a basic swimming standard as part of their training. Although every effort will be made to ensure that these tests take place in an all female environment, it should be stressed to female Muslim applicants that this will not always be possible.

## **Jewish Men**

**5.** A male member of the Jewish faith may wear a dark plain or patterned yarmulke whenever he removes other headress.

## FREQUENTLY ASKED QUESTIONS

### **Q1 Is it acceptable to discuss religion and belief in the workplace?**

**A1** Yes – provided personnel understand the distinction between reasonable discussion and offensive behaviour. Staff should be aware that if offence is reasonably taken, this may be considered to be harassment and therefore unlawful.

### **Q2 Does the law provide that a prayer room must be made available for those who ask for it?**

**A2** No – but the law does impose an obligation on an employer to give reasonable consideration to requests for facilities for religious observance. MOD's policy is to provide facilities for prayer wherever possible.

### **Q3 Do the Armed Forces rules on dress and personal appearance breach the Regulations?**

**A3** No. The Armed Forces regulations on dress are as flexible as possible and are designed to accommodate the religious dress requirements of all personnel. Personnel are normally allowed to dress in accordance with their religion but there are some circumstances when, for operational, occupational or health and safety reasons, some compromises may have to be made on the part of the individual.

### **Q4 Can personnel from other faiths be required to take time off for Christian festivals such as Christmas and Easter?**

**A4** Block annual leave is given primarily to coincide with school holidays and follows UK national practice, with the result that Christmas and Easter normally fall within block leave. Leave is also given for bank holidays on the basis of the days being national holidays and not religious festivals. The practice of operating a holiday system whereby the unit closes for specific periods when all personnel must take leave may be justifiable where the policy is a proportionate means of achieving a legitimate aim such as operational or business efficiency.

### **Q5 Why should personnel from other faiths be required to use annual leave for their religious festivals?**

**A5** With the exception of those festivals which fall within national public holidays, members of all faith groups, including Christian, are expected to use annual leave for religious festivals.

### **Q6 Would personnel be allowed time for prayer during the working day?**

**A6** Personnel would normally be expected to use break time for prayer, but this is a matter for discussion between the individual and their Commanding Officer/line manager.

**Q7 How does the MOD propose to reconcile its policy to accommodate different religious beliefs when the tenets of some religions appear to conflict with the MOD's diversity policy with regard to sexual orientation?**

**A7** The right for everyone to be treated with dignity and respect in the workplace applies irrespective of sexual orientation or religion or belief. In cases where an individual claims that his or her behaviour towards a gay, lesbian or bisexual colleague is founded on religious conviction, the protection from discrimination and harassment afforded by the Regulations on sexual orientation take precedence over the right to religious expression. This means that personnel of any religion or belief cannot refuse to work with someone on the grounds of their sexual orientation, and vice versa.

**Q8 How do we meet the needs of personnel from other faiths?**

**A8** Local religious contacts are available for members of non-Christian faith groups through the Multi-Faith Directory of Local Religious Advisors held by Commanding Officers and Chaplains. Action is being taken to appoint civilian Chaplains from the faiths other than Christian most represented within the Armed Forces. For further information contact the Royal Army Chaplains Department (see page 12)

**Q9 In meeting the needs of those with specific religious requirements, does this not disadvantage others who have no such requirements?**

**A9** No – In operating its diversity policy, the MOD, like any employer, will at times be required to balance the needs of different individuals. The MOD will always seek to provide the best outcome for individuals and the organisation in any situation whilst operating within the law.

## BRIEF INTRODUCTION TO MAJOR RELIGIONS AND BELIEFS PRACTISED IN THE UK

Listed below are some of the most commonly practised religions and beliefs in the UK. This list is not exhaustive and is intended for guidance only. Not all members of each religion follow all the practises and observances or will want time off for each and every festival or holiday. The information in this brief introduction has been drawn from a variety of sources including the guidance on the Regulations issued by the Advisory Conciliation and Arbitration Service (ACAS) (<http://www.acas.org.uk/publications/pdf/religion.pdf>).

### RELIGIONS

#### BAHA'I

The number of Baha'is in the UK is very small. Most are converts from other religions or are former agnostics or atheists.

#### Beliefs and Practices

At the heart of the Baha'i faith is the conviction that humanity is a single people with a common destiny. Baha'u'llah taught that there is one God who progressively reveals His will to humanity. Each of the great religions brought by messengers of God – Moses, Krishna, Buddha, Zoroaster, Jesus, Mohammed – represents a successive stage in the spiritual development in civilisation.

Baha'is believe that Baha'u'llah, as the most recent divine Messenger, has brought teachings that address the moral and spiritual challenges of the modern world. The goal is to develop the innate noble characteristics of every human being, and to prepare the way for an advancing global civilisation.

Baha'is should say one of three obligatory prayers during the day. Prayers need to be recited in a quiet place where the Baha'i will wish to face the Qiblah (the shrine of Baha'u'llah, near Akka, Israel). Baha'is are required to wash their hands and face before prayers.

#### Festivals

Baha'i festivals take place from sunset to sunset.

During the Baha'i Fast (2 March – 20 March), Baha'is refrain from eating or drinking from sunrise to sunset. There are exemptions from fasting for sickness, pregnancy, travel and strenuous physical work.

- The most important Baha'i festival is **Ridvan** (21 Apr – 2 May) which includes three holy days:
- 1st Day of Ridvan 21 April
- 9th Day of Ridvan 29 April
- 12th Day of Ridvan 2 May

Other festivals:

- **Naw-Ruz** (Baha'i New Year) 21 March
- **Declaration of the Bab** 23 May
- **Ascension of the Baha'u'llah** 29 May
- **Martyrdom of the Bab** 9 July
- **Birth of the Bab** 20 October
- **Birth of Baha'u'llah** 12 November

## Diet

As a matter of principle most Baha'is do not take alcohol. Otherwise there are no dietary restrictions.

## Dress

There are no specific dress regulations.

## Rites of Passage

Burial should take place as soon as possible after legal formalities and funeral arrangements can be put in hand. The body should be transported no more than one hour's journey from the place where the person died, so funerals take place relatively close to the place of death. Baha'is have no specific period of mourning.

## BUDDHISM

There are about 150,000 Buddhists in the UK according to the 2001 Census.

### Beliefs and Practices

Siddharta Gautama, who became known as "the Buddha" or "Enlightened One", founded Buddhism in India in the sixth century BC. Buddhist philosophy is based on a system of ethics. Buddhists see life as a process of birth, ageing, illness and death, in which nevertheless people can achieve enlightenment through understanding the roots/origins of suffering and in overcoming worldly attachments and grief. Buddhists believe in rebirth and that the life you lead has a direct effect on the next life. Buddhism stresses love for all living beings and respect for all forms of life. It emphasises generosity, hospitality and self-discipline. For most adherents, Buddhism represents a way of life informed by precepts, the practice of friendship and the establishment of good social relationships. Wisdom and compassion are the essence of the teachings.

The main traditions in Buddhism are Theravada (earliest form practised in Sri Lanka, Burma, Thailand, Laos and Cambodia), Mahayana (later form practised in China, Vietnam, Japan, Korea and Mongolia) and Vajrayana (practised in Tibet). All Buddhist traditions are represented in the UK. Buddhist temples are places of teaching, religious observance and meditation.

Meditation and chanting are practised in Buddhism with incense being burned during meditation. In some traditions, fasting is undertaken at each new and full moon.

### Festivals

There are many festivals, some of which are more important than others. They are celebratory in character rather than obligatory religious observances. Different traditions in Buddhism celebrate different festivals. Some do not celebrate any festivals. Festivals follow the lunar calendar and therefore do not take place on the same day each year.

The most important Buddhist festival is:

- **Vesak or Wesak** (Theravada tradition) between April/May (which celebrates Buddha's birth, enlightenment and death)

Other festivals include:

- **Parinirvana** (February) -The anniversary of Buddha's death.
- **Magha Puja Day** (February/March)
- **Honen Memorial Day** (March)
- **Hana Matsuri** (Mahayana tradition) - 8th April - celebrates Buddha's birthday.
- **Buddhist New Year** – varies according to tradition
- **Dharma Day** - Celebrates three events in the Buddhist's life, and is generally celebrated in a monastery in the presence of monks (July).
- **Abhidhamma Day** (October)
- **Kathina Day** (October)
- **Loy Krathong** (December)
- **Bodhi Day** (December)

## **Diet**

Some Buddhists are vegetarian or occasionally so at the time of certain festivals. Vegetarianism is held in high regard and considered to be consistent with the spirit of the teachings.

## **Dress**

There are no specific rules relating to dress but some Buddhists may prefer to wear clothing which conforms to their belief in non harm (e.g. not wearing leather clothing or shoes).

## **Rites of Passage**

Weddings are civil rather than religious ceremonies but services of blessing usually follow in the temple or elsewhere. Funerals usually focus on a reflection on the transitions of life. Bodies can be either buried or cremated.

## CHRISTIANITY

There are over 40 million people in the UK belonging to a Christian denomination according to the 2001 Census.

### Beliefs and Practices

Christianity is the largest and most widespread religion in the world. It is comprised of three main groupings: Roman Catholic, Orthodox and Protestant. As with other religions, these differences can amount to deep divisions, resulting in the growth of separate denominations. At the centre of Christianity is the belief in Jesus Christ as the Son of God and Saviour of the World, with followers modelling their lives on his teaching and example. Christianity is a faith with a great sense of mission.

Christianity's Holy Book is the Bible, made up of a collection of books, written over a thousand-year period. The first part is the Old Testament which covers the history of Judaism and Hebrew thought. The New Testament has twenty-seven books including four Gospels, describing the life and teachings of Jesus. Admission to full membership is marked by Baptism or Christening (a ceremonial washing with water) and Confirmation (a profession of faith).

The predominant Christian church in England and Wales is the Church of England, which is part of the Anglican Communion of Churches. It has two main traditions: one emphasising a Catholic 'High Church' style of worship and teaching, the other 'Low Church' evangelical teaching, having more in common with other Protestant denominations. The Church of England is the established Church in England only. In Scotland the national Church is the Church of Scotland which is Presbyterian in government and worship.

The Roman Catholic Church is characterised by a special devotion to the Mass which affirms the belief that the bread and wine become the body and blood of Jesus symbolizing his sacrificial death. The head of the Roman Catholic Church is the Pope and the leadership of the church is centred in Rome.

The Orthodox Churches have expanded from their largely national based origins to include a broad-based British membership. Their worship and liturgies are characterized by their ornate nature. They share similar major festivals with other Christian Churches but the dates may differ.

The different Protestant churches reflect the diverse ways in which the Scriptures have been interpreted over time. These churches include:

**Baptists** Baptism, by profession of faith, is a personal decision made on attaining adulthood. There is less ministerial hierarchy, and a methodical approach to Bible study and prayer meetings and the personal value and experience drawn from conversion.

**Methodists** Emphasis is placed on a methodical approach to life, based on scripture and on the preaching of John Wesley.

**Pentecostals** Emphasis is placed on Baptism and profession of faith, as a personal decision made on attaining adulthood. There is a methodical approach to Bible study and prayer meetings and the personal value and experience drawn from conversion. The gifts of the Holy Spirit, including the ability to speak in an unlearned spiritual language, and interpretation of tongues, healing, prophecy and other spiritual gifts are an important aspect of the faith.

**Plymouth Brethren** Committed to an urgent evangelism driven by the expectation of the Second Coming.

**Presbyterians** Great emphasis is placed on orderly, dignified worship and strong preaching led by the elders, who are ordained ministers or lay people. The Church of Scotland is Presbyterian in worship and organisation.

**Quakers** There is no clergy or set form of service. Worshippers stand up to speak, through the guidance of God's Spirit. There is a very strong sense of community amongst the believers.

**Salvation Army** An evangelical movement, respected for its social work. Organised on military lines, with joyful worship meetings often featuring lively and musical forms of worship.

**United Reformed Church** The union of the English Presbyterian and Congregational Churches. Presbyterian in worship and order.

#### **Other traditions derived from Christianity include:**

- **Unitarians** Affirmation of God as one person, rather than the Trinity doctrine of 'Three in One'. Tolerance, freedom and reason unite members.
- **Christian Scientists** Christian Scientists believe in redemption through positive thinking, faith healing and self-help. Jesus is viewed as one whose perfect obedience to God enabled him to transcend the illusion of sin and suffering. Through following Christ's example the individual can be released from death and suffering.
- **Church of Jesus Christ of Latter-Day Saints (Mormons)** Mormons believe that the Bible and the Book of Mormon are the word of God and that God reveals himself through prophets in the present day.
- **Jehovah's Witnesses** Dedicated to Jehovah (God) and his laws, and spreading the message through home visits. High moral standards based on Bible principles.

Christianity is probably the most diverse of faiths and it is practised throughout the world. For these reasons, no general customs can be identified outside the key Christian festivals.

## **Festivals**

There is great variation in the rituals and practice of the Christian Church, with all using prayer in private or public. There are a large number of Festivals and Holy Days in the Christian Year, of which the most important are:

- **Advent** This four week period leading to Christmas Day is a time of preparation for Christmas. It is regarded as the start of the Christian year.
- **Christmas Eve/Christmas Day** (24 & 25 December) Celebrates the birth of Jesus Christ. The giving of presents recalls the gift from God of his son, Jesus. The singing of carols in Church signifies peace and goodwill to all. Feasting is important and homes are decorated.

- **Ash Wednesday** Start of Lent – a day of fasting and abstinence for many Christians (February/March - date set by lunar calendar).
- **Lent** This period of forty days, from Ash Wednesday to Holy Saturday, is a period for fasting and restraint in preparation for the celebration of Easter. It recalls the period Jesus was tempted in the wilderness and the forty years the Jews spent as slaves before returning to their homeland.
- **Maundy Thursday** A day when Christians commemorate the Last Supper which Jesus shared with his disciples before his arrest and crucifixion (March/April – date set by lunar calendar).
- **Good Friday** This day, leading to Easter, recalls the anniversary of Jesus' crucifixion as the means of redemption and salvation for all believers. Jesus' sacrifice meant that all believers would be forgiven and reconciled to God (March/April – date set by lunar calendar).
- **Easter Sunday** This major festival commemorates the resurrection of Jesus Christ. It reflects the joy of the risen Christ, following the sadness of Good Friday (March/April - date set by lunar calendar).
- **Pentecost** Celebrates the Coming of the Holy Spirit upon Jesus' disciples. It is regarded as the birth of the Christian Church and represents the power of God in the life of believers. Special services may be held.

In addition, there are a number of "holy days of obligation" (e.g Ascension Day) when Christians may wish to attend a church service.

## Diet

There are no specific dietary rules. Fasting may be required during Lent as a form of spiritual discipline.

## Dress

There are no specific dress regulations.

## Rites of Passage

Funerals normally take place within a week or two of death. Christians may be either buried or cremated.

## HINDUISM

There are some 560,000 Hindus in the UK according to the 2001 Census. The majority of Hindus in the UK originate from India, East Africa, Fiji, Trinidad and other Caribbean islands.

### Beliefs and Practices

Hinduism is the dominant religion of India and one of the world's oldest. It is a mixture of beliefs, values and customs with many Gods. Brahma is the supreme being. Hindus can be monotheists, polytheists, atheists or pluralists. God is symbolised by the word Om or Aum. The Hindu temple is the Mandir where worship is individual and congregational.

Hindus pray either in a shrine or in their home. The scriptures fundamental to Hinduism are: the Veda (contains the life beliefs and customs); the Upanishads (contains the basic philosophical framework); and Bhagavad-Gita (The Lord's Song – probably Hinduism's most important single text).

Hindus believe that all living things have an eternal soul, which is born and re-born. A constant cycle of birth, death and rebirth (Samsara) is of central importance until such time as Samsara is broken and individual soul (atman) has achieved liberation (moksha).

There are three generally recognised paths to liberation (Moksha):

- Karma** - fulfilment of worldly duties and responsibilities
- Jnana** - path of knowledge and discipline including the yogo.
- Bhakti** - the path of inner direction

The four main aims in life are considered to be:

- Dharma** (each person's religious and moral duties)
- Artha** (to earn money for the betterment of the family)
- Kama** (control of your actions and enjoyment of the physical pleasures of life)
- Moksha/Atman** (continuous rebirth and liberation of the soul).

Hindus also believe the world is periodically recreated through the God Vishnu. There have been nine incarnations of this God and the seventh - Rama - and the eighth - Krishna - are the forms most worshipped by Hindus. Other popular Gods include Siva, his son Ganesha, Kali and Hanuman. Some devout Hindus pray at least twice daily.

Hinduism includes class (varna) distinction which puts people in different social groups. Historically, Hindus cannot change or leave their class or marry outside it, although some of the class rules have been relaxed. Hindu society is broken down into four main groups:

- Brahmin** - The priestly caste who teach and perform religious ceremonies, and encourage others to learn religious duties.
- Kshatriya** - The military caste, who protect society and govern, rule and administer a country towards a disciplined life.
- Valshiya** - Who engage in business, commerce and agriculture.
- Shudra** - The manual labourers.

## Festivals

Hinduism is a diverse religion and not all Hindus will celebrate the same festivals.

Main festivals are:

- **Holi** (Spring Festival) (March)
- **Diwali** (Diwali) (late October/early November) (five day celebration marking the start of the Hindu New Year)
- **Dusheshra** (aka **Vijayadashmi**) (September/October)

Others include:

- **Makar Sakranti** (14 January)
- **Maha Shiva Ratri** (February)
- **Ramnavami** (April)
- **Rakshabandham** (August)
- **Janmashtami** (August)
- **Ganesh Chaturthi** (August/September)
- **Navaratri** (September/October)
- **Karava Chauth** (October)

## Diet

The eating of meat is forbidden, particularly beef, since the cow is a sacred animal. Many Hindus are strictly vegetarian and will not eat fish or eggs. The drinking of alcohol is regarded as taboo.

## Dress

Traditional clothing for women includes the Sari, Shalwar (loose fitting trousers) and Kameez (a loose fitting trouser suit). Hindu men cover themselves from waist to knee and wear Kameez/Kurta/Dhuti (long tunic) on special occasions. Hindu women will often wear a bindi which is a red spot worn on the forehead. Many married Hindu women wear a necklace (mangal sutra) which is placed round their necks during the marriage ceremony and is in addition to a wedding ring.

A few orthodox Hindu men wear a small tuft of hair (shikha) similar to a ponytail but this is often hidden beneath the remaining hair. Some also wear a clay marking on their foreheads known as a talik.

## Rites of Passage

There are celebrations marking pregnancy, birth and the first haircut. The wedding ceremony is very colourful. The majority of adult Hindus are cremated. This takes place within 24 hours of death. Eldest sons may also shave their heads as a sign of grief. Several ceremonies take place before cremations and traditionally elder sons light funeral pyres. Prayers are conducted by Hindu priests in homes and at crematoriums. Sometime after cremations ashes are collected and scattered in sacred rivers. The family stays indoors for 10-13 days of mourning.

## ISLAM (MUSLIMS)

There are about 1.6 million Muslims in the UK according to the 2001 Census. The majority of Muslims in the UK have their origins in India, Pakistan or Bangladesh. Islam is a multi-racial faith and the main languages are Urdu, Punjabi, Bengali, Arabic, Swahili and Turkish.

### Beliefs and Practices

The word Islam means 'to submit to God' and followers of the religion are called Muslims – 'one who is faithful to God' or Allah. Islam is a way of life, governing not only religious practice and morality, but social relationships, marriage, divorce and kinship, besides economic and political relationships among Muslims.

Islamic beliefs and practises are based upon The Qur'an or Koran (the Holy book of Islam). Muslims believe that the Qur'an is the word of Allah revealed through the Prophet Mohammed. Muslims are guided by the Qur'an and the separately recorded sayings (haddith) and traditions (sunaah) of the Prophet Mohammed. Muslims believe that the Prophet Mohammed was as near to being perfect as any human being can be and in their daily lives and practices attempt to follow his example. The two main sects are Shi'a and Sunni.

The Mosque is the Muslim place of worship and community activity centre. All mandatory congregational prayers (such as Friday midday prayers and Eid prayers) are held in a Mosque. There is no hierarchy of ordained clergy in Islam. A person who leads prayers is called an Imam. In the Sunni sect of Islam, an Imam is one who is respected for his knowledge of Islam and any person in whom the congregation has trust can lead prayer and perform the role of Imam. Amongst Shi'as, the role of the Imam is more significant and carries greater authority than just leadership of prayer. Friday is the Muslim holy day.

Muslims adhere to five essential Islamic practices:

**The Profession of the faith (Shahada)** The words "There is no God but One God, and Mohammed is the Messenger of God" are known as a declaration of faith and recited with sincere 'intention' by the true believer.

**Prayer (Salat)** Devout Muslims are required to pray five times each day. Exact times vary but generally take place at dawn, midday, late afternoon, after sunset and late evening. Each prayer time takes about 15 minutes to recite and can take place anywhere clean and quiet. Muslims will cover their heads and require only a prayer mat and the Qur'an to pray; ritual washing of hands, face and feet in running water forms part of the preparation. Friday midday prayers are particularly important to Muslims and may take a little longer. Friday prayers must be said in congregation.

**Almsgiving (Zakat)** Islam stresses the moral obligation to share wealth with the less fortunate. This occurs during the Ramadan festival which gives Muslims the chance to share the pain of hunger and poverty.

**Fasting (Sawn)** During Ramadan, Muslims fast for thirty days between sunrise and sunset, and the Qur'an is read daily. During daylight hours Muslims are not allowed to eat or drink. All adult Muslims, except the infirm, very elderly and pregnant women, are required to fast. Fasting is seen as an expression of discipline and thanksgiving to Allah.

**The Pilgrimage (Haj)** Adult Muslims have to make a pilgrimage, known as the Haj, to Mecca at least once during their lifetime. When a Muslim undertakes a Haj, an absence of at least three weeks should be expected.

## Festivals

The dates of Muslim festivals are based on the lunar calendar and vary from year to year.

- **Ramadan**, which takes place in the ninth month of the lunar calendar, is a particularly significant time for Muslims. Fasting is required between dawn and sunset.

Muslims celebrate two main festivals of the lunar calendar:

**Eid-al-Fitir** - one day to mark the end of Ramadan

**Eid-al-Adha** - a three day festival which takes place two months and 10 days after Eid Al-Fitr.

## Diet

No alcohol, tobacco or drugs (other than those taken for medicinal purposes) are allowed. The Qur'an also forbids eating anything from a pig, which is considered an unclean animal. Any food derived from a carnivorous animal is also forbidden. Meat that is consumed must be slaughtered by the Halal method, cooked with separate utensils and not stored or cooked with non-Halal food.

## Dress

Modesty and correct behaviour between men and women are considered very important. Hence, men must be covered from the navel to the knee and only the faces and hands of women should be visible. Some Muslim women wear a form of headscarf known as a hijab.

## Rites of Passage

Muslims circumcise male children in infancy or when a little older. Marriage is a contract, not a sacrament. Burial must take place as soon as possible after death. Cremation is strictly forbidden. Prayers and ritual washing and shrouding of bodies are carried out at Mosques. Mourning periods of up to 3 days follows this.

## JAINISM

It has been estimated that there are between 25,000 to 30,000 Jains in the UK. The majority of the small Jain community in the UK can trace their historical and ethnic origin to the Gujarat and Rajasthan areas of India.

### Beliefs and Practices

Jainism is a religion without a belief in a creator god. Rather, there is akasha (infinite space) within which there is a finite area called loka (the universe). This is made up of an infinite number of jiva or atmas (sentient beings) and pudgalas (non-sentient material atoms). The key principle of Jainism is ahimsa, or non-violence, which covers the avoidance of all physical or mental harm to any living being.

Jains are required to worship three times daily, before dawn, at sunset and at night.

### Festivals

The main Jain spiritual festivals are:

- **Oli** - Eight days of semi-fasting twice a year when some take one bland meal during day time (April and October).
- **Mahavira Jayanti** - Birth anniversary of Lord Mahavira (April).
- **Paryusan** - For eight days Jains fast, observe spiritual rituals, meditate and live a pious life taking only boiled water during day time (August/September).
- **Samvatsari** - The last day of Paryusan when Jains ask for forgiveness and forgive one another (September).
- **Diwali (Diwali)** - Death anniversary of Lord Mahavira, includes a two-day fast and listening to the last message of Mahavira (October/November).

### Diet

Jains practice avoidance of harm to all life. They are, therefore, strict vegetarians although some may take milk products. Many also avoid root vegetables. Jains do not eat between sunset and sunrise, and do not drink alcohol.

### Rites of Passage

Cremation will take place as soon as practical after death (usually three to five days). There is no specified mourning period.

## JUDAISM

There are about 270,000 Jews living in the UK according to the 2001 Census, with the majority belonging to the Orthodox branch led by the Chief Rabbi.

### Beliefs and Practices

Judaism is over 4,000 years old and is the forebear of Christianity and Islam.

Jews believe there is only one God. Their most important sacred text is the Torah which is part of the Hebrew Bible, written and studied in Hebrew. The Torah is substantiated by "Oral Law" contained in the Talmud. Congregational prayers are said in the Synagogue. Saturday is the Sabbath day (from sunset on Friday until nightfall on Saturday). As the Sabbath represents God's rest from creation of the world, devout Jews may not perform "creative" work on that day, including activities such as travel (except by foot), commercial transactions, use of the telephone and writing. The progressive Jewish community is divided into Reform, Conservative and Liberal Judaism.

Devout Jews pray three times a day. Orthodox Jews wear a skullcap and a prayer shawl, along with Phylacteries which are small leather boxes holding quotations from the Torah.

### Festivals

Jewish festivals follow the lunar calendar. The most important are:

- **Passover** (Pesach) (March/April, 8 days, the first and last 2 of which are celebrated as festivals) - From 10am on the day before Passover until the end of the festival, no food or drink containing yeast or anything fermented may be eaten.
- **Pentecost** (Shavouth)(May/June, 2 days)
- **Rosh Hashanah** (September/October) – New Year festival.
- **Yom Kippur** (the Day of Atonement)(September/October) - The most important holy day of the year, observed by a day of fasting and prayer seeking atonement for past sins.
- **Tabernacles** (Sukkot)(September/October, 2 sets of 2 days)

### Diet

Orthodox Jews follow strict dietary laws. Food which has been treated and prepared in a particular manner and acceptable to the Jewish religion is known as Kosher. Food that is prohibited includes: fish without fins and scales, shellfish, pork, birds of prey and rabbit. Meat and milk are not eaten together, and separate utensils are used for meat and dairy produce.

### Dress

Except for a few orthodox minority groups, Jews in Britain dress in the same way as the wider community. Men may cover their heads at all times or only when praying. Any covering is acceptable but many wear a small skullcap and also Tzitzith, which is a tasseled garment. Orthodox Jewish men may also wear a beard and have sidelocks. During certain periods of the religious calendar, some Jews might not shave. Orthodox Jewish women will wish to dress modestly and may not want to wear trousers, short skirts or short sleeves; some may wish to keep their heads covered with a scarf or beret.

## Rites of Passage

Jewish boys are circumcised on the eighth day after birth if health permits. They become Bar-Mitzvah at the age of 13, with a ceremony held in a synagogue. A Bat-Mitzvah ceremony is also often held when a girl reaches the age of 12. Jewish marriage is both a civil ceremony and a holy covenant. A dying Jew should not be alone; wherever possible, a Rabbi or any practising Jewish leader should be asked to attend, so that the dying person may recite the appropriate prayers. Jews are buried as soon as possible after death in a simple ceremony. Reform Judaism does not object to cremation. Following a death, there is often a week of private mourning (Shiva). Following the death of a parent, an observant Jewish man may wish to go to the Synagogue to pray morning, afternoon and evening for 11 months of the Jewish calendar.

## OTHER ANCIENT RELIGIONS

These include religions covered by the Council of British Druid Orders and examples are Druidry, Paganism and Wicca. There are also other ancient religions such as Asatru, Odinism and Shamanism.

### Festivals

Examples of festivals include:

- **Candlemas** 2 February
- **Spring Equinox** \* 21/22 March
- **Beltaine** 30 April
- **Summer Solstice** \* 21/22 June
- **Lughnasadh** 2 August
- **Autumn Equinox** \* 21/22 September
- **Samhain** 31 October
- **Winter Solstice** \* 21/22 December

\*Dates moveable due to astronomical times set in accordance with GMT.

### Diet

Generally vegetarian or vegan, although not always.

### Dress

Some items of jewellery are associated with Pagan faiths such as ankh, pentagram, hammer and crystal.

### Rites of Passage

There is no set format laid down for bereavement. Some may prefer cremation or burial at a public institution, though a public or private ceremony may follow in the tradition of the deceased at a private home, grave or stone circle.

## RASTAFARIANISM

Rastafarianism originated in Jamaica in 1930 and it has been estimated that there are about 5,000 Rastafarians in the UK.

### Beliefs and Practices

Rastafarianism links with Judaism and early Christianity. Obedience to the Ten Commandments is very important and both the Bible and Ethiopian history are closely studied. The Nazarite Vow of Separation is followed closely and prohibits the cutting of hair. It also emphasizes the celebration of life, rather than death.

Many British Rastafarians belong to the Twelve Tribes of Israel movement, which seeks to educate youngsters in the advancement of black people. The crowned Lion of Judah, bearing the Ethiopian flag of red, gold and green, is a highly recognised symbol, as too are the Star of David and the Cross.

### Festivals

- **Birthday of Haile Selassie I** (23 July)
- **Ethiopian New Year** (11 September)
- **Anniversary of the Crowning of Hiale Selassie I** (2 November)
- **Christmas** (25 December)

### Diet

Rastafarians prefer natural food such as fruits and vegetables (called I-tal). Salt is avoided but spices and pepper are very popular. Most do not eat pork as it is seen as unclean and some refuse alcohol.

### Dress

Hair is worn uncut in dreadlocks often covered by a hat which is usually red, green and gold.

### Other Points of Note

Whilst the faith supports the smoking of ganga (marijuana) this practice remains unlawful in the UK, and is unaffected by the Employment Equality (Religion or Belief) Regulations.

## SIKHISM

There are 336,000 Sikhs in the UK according to the 2001 Census, many of whom have their origins in the Indian subcontinent.

### Beliefs and Practices

Sikhism was founded 500 years ago by Guru Nanak in the Punjab region of north-west India. Sikhs believe in one God and equality for all. The word 'Sikh' means a pupil or discipline. There are two stages of development of Sikhs: Sahajdhari and Amritdhari. The former are termed 'apprentices' who are working towards the second stage but may already be wearing one or more of the five symbols or 5 Ks (see below). Amritdharis are those who have been formally baptised and must, thus, keep rigidly to the disciplines and code of conduct enjoined upon them at the time of baptism. These Sikhs are called the Khalsa (the pure ones) and keep the 5 Ks.

The Sikh temple is known as the Gurdwara. Worshippers bow to the Scriptures which are on a platform or dias, and hymns from the Scriptures are sung. There are no priests, and men or women may lead worship. "Prasad" is shared as a sign of equality and worship is followed by a meal taken together. Prayers may also be said at home.

### Festivals

Main Sikh festivals are:

- **Vaisakhi** (or Baisakhi) (14 April)
- **Birthday of Guru Gobind Singh** (5 January)
- **Martyrdom of Guru Arjan Rev** (16 June)
- **Sri Guru Granth Sahib Day** (1 September)
- **Diwali (Diwali)** (October/November date set by lunar calendar)
- **Martyrdom of Guru Tegh Bahadur** (24 November)
- **Birthday of Guru Nanak** (November)

### Diet

Sikhs do not eat Halal meat. Some do not eat beef and many are vegetarian.

## Dress

Older children and adults initiated into the Khalsa are expected to wear five symbols (known as the 5 Ks), which can be called the uniform of their faith.

**Kesh** - uncut hair. Observant Sikhs will not cut or trim any body hair. The hair is tied in a knot under a turban for men or a Chunni or Dupatta (long scarf) for women.

**Kangha** - a wood comb usually worn in the hair.

**Kara** - a steel bracelet worn on the wrist.

**Kachhahera** - knee-length underpants.

**Kirpan** - a short sword worn under the clothing so that it is not visible.

## Rites of passage

Sikhs are cremated and have a preference for this to take place as soon as possible after death. Death to a devout Sikh is no cause of grief, as one must submit to God's will, and there is no specified mourning period.

## ZOROASTRIANISM (PARSI)

It has been estimated that there are between 5,000 to 10,000 Zoroastrians in the UK, the majority originating in Iran while some came from East Africa.

### Beliefs and Practices

Zoroastrianism was founded in ancient times by the prophet Zarathushtra. Zoroastrians believe that Zarathushtra identified, for the first time in human history, the importance of the Vohu Manah (Good Mind). His ethical monotheism taught human beings to think and reflect with a clear, rational mind in order to dispel ignorance and blind faith. Zoroastrians worship Ahura Mazda (the Wise Lord).

Zoroastrians are required to pray five times during the day, saying a special prayer for each part of the day.

**Hwab** (sunrise to midday)

**Rapithwin** (midday to mid-afternoon)

**Uzerin** (mid-afternoon to sunset)

**Aiwisruthrem** (sunset to midnight)

**Ushahin** (midnight to dawn)

Prayers should be said in front of a fire – or a symbolic replica of fire.

In addition, a ritual is performed each time a Zoroastrian washes his/her hands although the ritual is not always strictly performed in all its detail. When it is performed, the individual will stand on the same spot and must speak to no one during the ritual. No special facilities are required. A prayer will also be said before eating.

### Festivals

Dates follow the lunar calendar and will therefore vary from year to year.

- **Khordad Sal** – The Prophet's Birthday

### Diet

There are no dietary requirements for Zoroastrians although, through personal choice, some may abstain from beef and pork and some may be vegetarian.

### Dress

Devout Zoroastrians wear the sudreh, a sacred white shirt worn next to the skin, and the kushti, a sacred cord worn over the sudreh, passed three times around the waist and knotted at the front and back. The sudreh and kushti are meant to be worn at all times by Zoroastrians.

### Rites of Passage

Zoroastrians regard the body of the deceased as polluting and believe that human remains should be disposed of in a quick and ecologically sound manner. In the UK, the remains of deceased Zoroastrians are usually cremated or buried.

## FURTHER READING ON WORLD RELIGIONS

### Religions of the World (Collins Fact Books)

E. Breuilly

M. Palmer

ISBN: 0001983598

### Word Religions

J. Bowker

ISBN: 0789496763

## NON-RELIGIOUS BELIEFS AND NON-BELIEF

In the 2001 Census, 9.1 million people said they had no religion. This category included agnostics, atheists, heathens and those who wrote "Jedi Knight".

### Beliefs and Definitions

"Non-believers" have many beliefs, though not religious ones. They typically hold that morality is social in origin, rather than being the exclusive preserve of religion. They may describe themselves in various ways, the most common today being "agnostic", "atheist", "freethinker", "humanist", "rationalist", "sceptic", "secularist" - or simply "non-religious" or "nothing". These different terms, many of which overlap, generally reflect differences in emphasis. In practice, however the needs and requirements of non-believers do not vary greatly.

**Agnostic** in normal usage means "don't know" or open-minded about religious belief, but it can mean that nothing is known, or can possibly be known, about God or supernatural phenomena, and that it is wrong to claim otherwise.

**Atheist** includes those who reject a belief in the existence of God or gods and those who simply choose to live without God or gods. Along with this will usually go disbelief in the soul, an afterlife, and all other religious beliefs.

**Freethinkers** reject authority and tradition in matters of religious belief, preferring to think for themselves.

**Humanist** is used today to mean those who seek to live good lives without religious or superstitious beliefs. They reject the idea of any supernatural agency or afterlife. Humanists believe that moral values are founded on human nature and experience, and base their moral principles on reason, shared human values and respect for others. They believe that people can and will continue to solve problems, and should work together to improve the quality of life and make it more equitable.

**Non-religious** as well as those who are uninterested in religion or who reject it, this category may include the vague or unaffiliated, those who are only nominally or culturally affiliated to a religious tradition, and the superstitious.

**Rationalist** means someone who rejects religion on the grounds that it is unreasonable and lacks good evidence.

**Sceptic** means someone who doubts the truth of religious beliefs, probably on rationalist grounds.

**Secularists** believe that public life, the state and the education system should be neutral towards religion. They also call for freedom of belief, including the right to change belief and not to believe. Secularists seek to ensure that persons and organisations are neither privileged nor disadvantaged by virtue of their religion or lack of it. They believe secular laws - those that apply to all citizens equally – should be the product of a democratic process, and should not be determined, or unduly influenced, by religious leaders or religious texts. Most secularists are non-believers, but some believers also take a secularist position.

**Non-belief** only began to become publicly accepted or mainstream during the late 19th and 20th centuries. During this period non-religious beliefs became more structured, and organisations sprang up to serve and represent the interests of non-believers, in particular the British Humanist Association and its antecedents ([www.humanism.org.uk](http://www.humanism.org.uk)) and the National Secular Society ([www.secularism.org.uk](http://www.secularism.org.uk)).

## Festivals

The non-religious have no obligatory festivals, but are usually happy to celebrate traditional holidays in their own way. Many are aware of the pagan or seasonal origins of these holidays, which pre-date their adoption by more recent religions.

## Practices and Requirements

There are no obligatory practices, for example in dress or diet, or obligatory ceremonies for non-believers.

## Rites of Passage

Most non-believers recognise a need for and the value of ritual and ceremonies marking “rites of passage”. Secular humanist and non-religious ceremonies are becoming common, particularly to mark births, marriages and deaths.

Many will be content with civil registration of a marriage or partnership, though some will also have a non-religious or specifically humanist ceremony. Funerals are probably the ceremony that the majority consider most important, and there is an increasing demand for ceremonies with no prayers and no reference to an afterlife or other religious beliefs. Such ceremonies tend to have a short period for silent reflection, leaving those present to remember the deceased in the way they are most comfortable with. Humanist and other non-religious ceremonies are a celebration of the life that was lived, and are designed to meet the needs of those left behind rather than the deceased.





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# **EXHIBIT 13**

# Indian Army Chief of Staff visits with Gen. Ray Odierno

Page last updated Fri December 6th, 2013 at 00:00

December 6, 2013

By Sgt. Mikki L. Sprenkle



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Photo Credit: Sgt. Mikki L. Sprenkle  
United States Army Chief of Staff, Gen. Ray Odierno and Gen. Bikram Singh, Indian Army Chief of Staff, stand by for the reading of orders for the Legion Of Merit during a Full Honors Ceremony in honor of Gen. Bikram Singh, Chief of Army Staff of the Indian Army at Joint Base Myer-Henderson Hall, Va., on December 5, 2013. Gen. Bikram Singh helped the Indian Army to become the second largest trainer of Afghan national Security Forces following the United States. (U.S. Army photo by Sgt. Mikki L. Sprenkle/ Released)

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# **EXHIBIT 14**



His Excellency presented the Order of Military Merit at the Officer level (O.M.M.) to Lieutenant-Colonel Harjit Sajjan, O.M.M., M.S.M., C.D., The British Columbia Regiment (Duke of Connaught's Own), Vancouver, British Columbia.

# **EXHIBIT 15**

# THE GLOBE AND MAIL\*

POLITICS

## New Defence Minister Harjit Singh Sajjan proved mettle in Afghanistan

Murray Brewster

Ottawa — The Canadian Press

Published Thursday, Nov. 05, 2015 9:31AM EST

Last updated Monday, Nov. 09, 2015 3:57PM EST

When Harjit Singh Sajjan went to join the Canadian military 26 years ago, he was rejected by the first unit where he applied.

But he stuck it out – and now the retired reserve lieutenant-colonel, a veteran of three combat tours of Afghanistan, finds himself running the place.

Sajjan was sworn in Wednesday as Canada's new minister of defence, leapfrogging retired lieutenant-general and star Liberal candidate Andrew Leslie – Justin Trudeau's foreign affairs and defence adviser before last month's federal election.

In addition, Sajjan will sit on some of the new government's most powerful cabinet committees, including public safety and intelligence, which dovetails not only with his war-time experience, but the 11 years spent battling gangs as a Vancouver cop.

But if there ever was a proving ground for the complexities and murky choices of Ottawa, it was Kandahar province in 2006, when Sajjan was tasked as the intelligence liaison with notorious governor Asadullah Khalid and Ahmed Wali Karzai, the controversial head of the provincial council.

Khalid, who later became the head of Afghan intelligence, had a reputation for ruthlessness and was accused of assassinations, torture, and drug dealing. Karzai, the half-brother of the former president who was later murdered by a bodyguard, was accused of having a hand in the drug trade.

"Nobody should underestimate Harjit," said retired brigadier-general Dave Fraser, who gave Sajjan the job of dealing with the volatile Afghan power brokers at a time when the Taliban were on the offensive and Canadian casualties were on the rise.

"Some people in Ottawa are going to want to pick on him because he's new, but let me tell you, he is tough and smart, and determined."

Sajjan's determination to serve in the face of the blatant racism faced when he first joined speaks volumes about his character, Fraser added.

The Afghans had an affinity for Sajjan, a Sikh, because they believed he understood their struggle to be respected in the West, said Fraser, recalling how they hit it off over tea at the governor's palace.

In his official biography, the Liberals focus on Sajjan's medals and his time as the first Sikh regimental commander in the Canadian Army. Fraser prefers to describe him as a "true warrior," someone who thrives in the face of adversity.

"I'm a fan and I admit it," said Fraser, who was in charge of NATO's southern Afghan command during the difficult, bloody early months of the Kandahar campaign.

"I picked him because of his experience in dealing with gangs because the Taliban were nothing more than bunch thugs and gangs."

His only advice for his former subordinate is not to make the same mistake as Gordon O'Connor – Stephen Harper's first defence minister – who tried to run the military as well as the Department of National Defence.

"He has an immensely capable chief in (Gen.) Jon Vance. He should concentrate on policy" and straightening out the tangled mess that is the defence procurement file, Fraser said.

Some of the new government's hottest files will land on his desk, including the Liberal pledge to end the bombing campaign against militants in Iraq and Syria and possibly the promised transition to a beefed-up training mission.

Either Trudeau or Sajjan should have a serious conversation with the Americans about the over all direction of the war before committing additional troops to training, said retired colonel George Petrolekas of the Conference of Defence Associations Institute.

One of the thorny questions Sajjan will grapple with is whether Canada sticks with training Kurdish peshmerga fighters, or wades into the murky Shia-Sunni sectarian divide within the Iraqi military.

The other immediate consideration will be fulfilling the Liberal pledge to replace the country's CF-18 fighter fleet with something other than the F-35, which the air force has been lobbying for since 2006.

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# **EXHIBIT 16**



DEPARTMENT OF THE ARMY  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D.C. 20310

REPLY TO  
ATTENTION OF

10 APR 1981

MEMORANDUM FOR COLONEL WILLIAM K. MERRILL, OFFICE OF THE ASSISTANT  
SECRETARY OF THE ARMY (M&RA)

SUBJECT: Review of Present Army Policy Allowing Exceptions to  
Appearance Standards for Religious Reasons

This responds to your request that we review ODCSPER's proposed DECISION MEMORANDUM and related materials recommending that the Army end its present policy of granting exceptions to appearance standards to its uniformed members for religious reasons.

We agree with ODCSPER that the present policy regarding exceptions to the appearance standards embodied in Army Regulations 670-1 and 600-200 poses significant problems for the Army and is very undesirable. However, due to the thorny legal considerations involved in this area, and due to the Army's practice for a number of years of granting exceptions to its appearance standards for religious reasons (particularly for the Sikhs), we believe that any elimination of exceptions to appearance standards for religious reasons should be done only under the following conditions:

1. The rationale for elimination of the exceptions should be related to safety, health, or ability to perform the military mission as well as to a need for uniformity, discipline, and esprit.

2. The Army should develop a rationale with a justification why there is a compelling need in 1981 to enforce the appearance standards uniformly, while there was not such a need in the past.

3. The rationale for the policy on appearance standards should be equally applicable to all uniformed members to whom the appearance standards would be applied.

4. The continued retention of members presently serving in the Army under previously granted exceptions (e.g., Sikh soldiers who refuse to remove beards and turbans) but who refuse to conform to the revised appearance standards would undercut the rationale for the new policy. If permitted to remain on active duty for a limited period of time before their separation (e.g., until expiration of their present terms of service), their utilization would have to be limited so it is consistent with the safety or health rationale advanced for revising present Army policy.

We believe that only by complying with these conditions could the Army's elimination of the present exceptions to its policy be successfully defended against legal challenge.

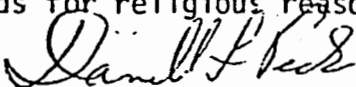
The few cases dealing with the question of the power of the services to infringe upon religious practices of their members demonstrate a reluctance by courts to uphold the services' appearance standards against challenges based on the first amendment right to free exercise of religion unless the standards are related to concerns for safety, health, or accomplishment of the military mission and are uniformly applied. In two cases, Geller v. Secretary of Defense, 423 F. Supp. 16 (D.D.C. 1976) and Kalinsky v. Secretary of Defense, C.A.No. 78-17 (D.C. Cir. June 25, 1979) (unpublished opinion), the Air Force experienced difficulties when it tried to apply its appearance standards to Orthodox Jewish Chaplains who wore beards. In both cases, the Air Force gave as a rationale for its appearance standards the need to create uniform appearance and to instill public confidence, military order and discipline. In both cases, the courts found or had grave doubts that the Air Force's rationale, when applied under the facts in those cases even met the minimum tests set out by the Supreme Court in Kelly v. Johnson, 425 U.S. 238 (1976) for determining the general validity of regulations dealing with appearance of members of the uniformed services. Although the unfavorable result in the Geller case could perhaps be explained by the strange circumstance that the Air Force waited seven years to enforce its standards against Rabbi Geller, the opinion in Kalinsky is much more disturbing for the Army. In Kalinsky the court had serious doubts that the Air Force's stated reasons for its appearance standards as applied to an Orthodox Jewish chaplain who wore a beard were rationally related to a government interest because of the Navy's policy permitting wear of beards by all members and the Army's policy permitting wear of beards by Sikhs. It is significant to us that these doubts raised in the Kalinsky case were expressed by one of the most conservative and pro-military members of the Federal bench in the District of Columbia and that he was using an extremely deferential standard of judicial review - whether the Air Force's justification was rational or arbitrary.

In contrast, in Sherwood v. Brown, 619 F.2d 47 (9th Cir. 1980), the U.S. Court of Appeals for the Ninth Circuit ruled in favor of the Navy's ban on turbans when challenged by a member of the Sikh religion on first amendment free-exercise-of-religion grounds. However, it is significant that in Sherwood the Navy advanced a safety rationale that was never disputed by the plaintiff (turbans preclude the wear of a helmet which is essential for safety and military effectiveness), and the plaintiff apparently did not point out that the Army, which apparently has the same safety need, allows wearing of turbans by Sikhs. It is also very significant that the court in Sherwood used an extremely strict test to evaluate the Navy's standard - whether the standard was the least restrictive means of furthering a compelling government interest. We believe that had the Navy advanced a rationale other than safety or had the plaintiff contested the Navy's safety rationale and pointed out the present Army policy on wear of turbans, the court in Sherwood using the strict test that it did probably would not have decided the case in the Navy's favor.

Although development of a suitable rationale for a change of policy regarding exceptions to the appearance standards is something best left to the Army staff, we would note briefly that one possible justification for the change is the need for all soldiers to be able to wear the protective mask as well as the helmet. We have been advised by Dr. Boyle of ODCSOPS-NC that any significant amount of facial hair prevents an effective seal of the mask, and that turbans and long hair could also interfere with the mask's wear. Further, a rationale involving the protective mask would offer a way of explaining why our policy on beards is justifiable even though the Navy currently allows beards. Army personnel, particularly those deployed in Europe or subject to deployment to Europe or another location where the potential adversaries are Soviet supported, are much more likely targets of immediate chemical attack than Navy personnel. In addition, we understand the Navy is reevaluating its policy on beards in light of the Soviet chemical threat. Another apparent advantage of the protective mask rationale is that it would permit continued retention for a limited time of the Sikh soldiers presently serving in the Army so long as their utilization and conditions for continued retention were appropriately restricted (e.g, assignment only where chemical attack unlikely and requirement of their agreement to conform to standards if their deployment became necessary). Finally, in light of the recent increased emphasis on the Soviet chemical threat and our ability to defend against or deter it, the Army's reevaluation of the present policy granting exceptions to appearance standards as they relate to the need to defend against chemical attack would seem justifiable. This or other possible justifications should be further explored by the Army staff.

We also would note that it may be possible to develop a rationale that allows limited exceptions to the appearance standards only for the chaplaincy. Such a rationale perhaps could be based on the chaplain's unique position of being precluded from serving a functional military role in combat and an obligation to accommodate the right of free exercise of religion of soldiers who otherwise might not have chaplains of their faith available. However, we have some reservations about such an exception, and any change of policy including such a proposed exception would have to be carefully scrutinized by The Judge Advocate General and the Chief of Chaplains as well as by our office. Of course, such an exception for the chaplaincy could give rise to some servicemembers, to avoid appearance standards, making insincere claims that they are ministers or priests of various sects that require an exception to the Army's standards.

We would like to review any further proposals or justifications the Army staff may develop regarding a change to present Army policy allowing exceptions to appearance standards for religious reasons.

  
Darrell L. Peck  
Deputy General Counsel  
(Military and Civil Affairs)

# **EXHIBIT 17**



Sergeant Kirnbir Singh Grewal and fellow soldiers pose after they were selected to participate in advanced nuclear, biological, and chemical training in Maryland in 1977.



Sergeant Kirnbir Singh Grewal dons his gas mask, hood, and full body suit and finishes the physical challenge test as part of the 11th Armored Cavalry Regiment in Germany, 1980. Notably, neither his beard nor his turban served as an impediment during the test.



In this image, Sergeant Kirnbir Singh Grewal is seen patrolling the ammunition dump in Germany, 1981.



Major Parbhur Singh Brar poses proudly in full uniform during his time of service in 1981.



Sergeant Sevak Singh Kroesen (fourth from right) stands with his unit in Portugal, 1984, as part of a special mission to train Portuguese soldiers as the first US soldiers to step foot in Portugal since World War II.



Here, Sergeant Sevak Singh Kroesen, displaying his articles of faith and in full combat uniform, participates in sniper training as part of the Special Forces in 1987.



Here, a dignified Colonel G.B. Singh poses in front of the United States Flag in May 2007 as he is set to deliver a keynote address for Asian and Pacific American Heritage Month.

Colonel Gopal Singh Khalsa receives a Meritorious Service medal from his Commanding general Paul Meok in late 2007 at Los Alamitos Joint Forces Training Base for his outstanding efforts in acting as Executive Agent for a training exercise involving approximately 4000 soldiers.





Colonel Arjinderpal Singh Sekhon took command of the 349th Combat Support Hospital on January 21, 2007 in Los Angeles.



Colonel Sekhon standing with his wife, diploma in hand, at his graduation ceremony from the Army War College at the Carlyle Barracks, Pennsylvania on July 27, 2007.



CPL Simranpreet Singh Lamba graduates from the U.S. Army's Basic Combat Training (BCT) in November 2010, the first observant Sikh to do so in almost 30 years. He had the honor of serving as his platoon's guidon bearer.



CPL Simranpreet Singh Lamba at his U.S. Army Basic Combat Training graduation in November 2010. He enlisted in the U.S. Army in December 2009 under the Military Accessions Vital to the National Interest (MAVNI) program.



CPL Simranpreet Singh Lamba participates in training exercises at Ft. Jackson, SC in fall of 2010. He established life-long friendships with his fellow soldiers and was respected both up and down the chain-of-command.



Simranpreet Singh Lamba is sworn in as a U.S. citizen in November 2010 at Ft. Jackson, SC.



CPT Tejdeep Singh Rattan donning his gasmask and checking the seal during the nuclear, biological and chemical training of his Officer Basic Leader Course at Ft. Sam Houston, TX in March of 2010. His unshorn beard did not prevent him from creating an airtight seal.



CPT Tejdeep Singh Rattan receiving an Army Commendation Medal on September 4, 2011 during his deployment to Afghanistan. He was awarded the medal for outstanding performance, technical expertise and unwavering commitment to mission accomplishment in a hostile environment.



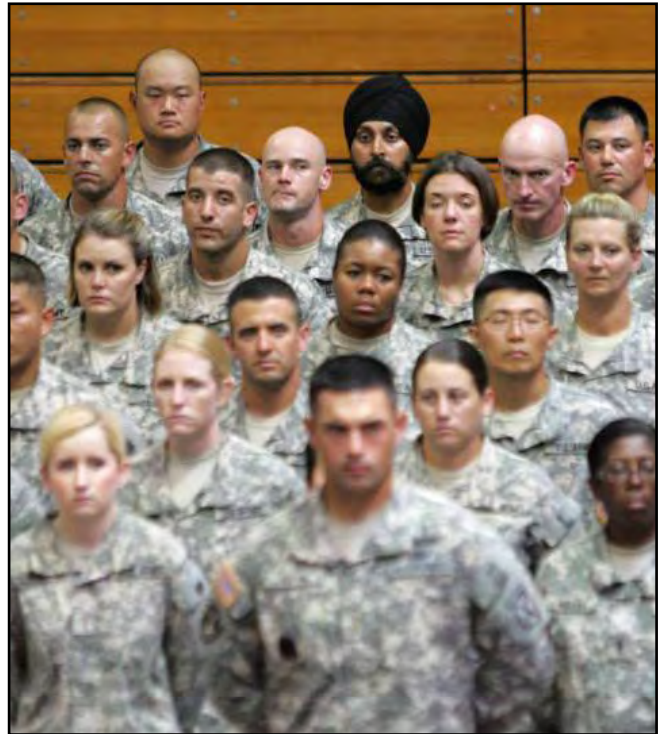
Tejdeep Singh Rattan during his deployment in Afghanistan in 2011. His ability to speak Urdu, Hindi and Punjabi helped to break down communication barriers with the local population.



CPT Tejdeep Singh Rattan proclaims "I am a Sikh warrior!" to the delight of his classmates after exiting the gas chamber during nuclear, biological and chemical training in March of 2010.



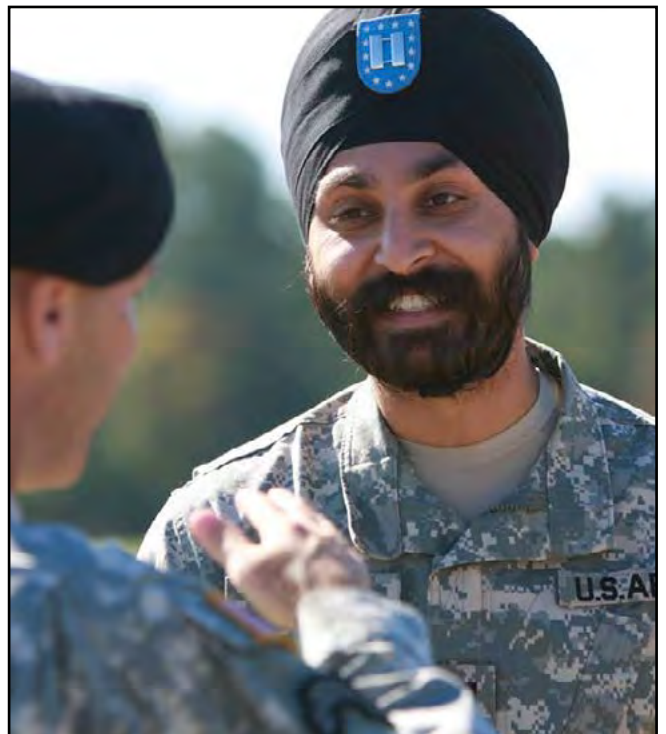
Major Kamaljeet S. Kalsi was deployed to Afghanistan in 2011. He was awarded the Bronze Star Medal for resuscitating two fellow soldiers, declared clinically dead, back to life, among numerous other achievements while deployed.



MAJ Kamaljeet Singh Kalsi graduating with his classmates from Officer Basic Leader Course in September of 2010 at Ft. Sam Houston, TX.



Major Kamaljeet S. Kalsi served as a U.S. Army physician from June 2010, specializing in emergency and disaster medicine. He was stationed at Fort Bragg, NC.



Major Kamaljeet S. Kalsi is deeply respected and well-liked up and down the chain of command, and described by his superiors as "truly exceptional," with "absolutely unlimited potential as a leader, military officer, and physician."

# **EXHIBIT 18**



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
BRIGADE SPECIAL TROOPS BATTALION (PROV)  
201st BATTLEFIELD SURVEILLANCE BRIGADE  
JOINT BASE LEWIS-McCHORD, WA 98433

AFZH-GJD-H

22 Aug 2011

MEMORANDUM FOR US Army Medical Recruiting Station, Seattle, Washington

SUBJECT: Letter of Recommendation for SPC Simran Lamba, [REDACTED], HHC 201<sup>st</sup> MI BfSB, Joint Base Lewis McChord, Washington

1. I highly recommend SPC Lamba for the direct commissioning program into the Medical Service Corps for Environmental Engineering. As his battalion commander, I have directly observed him demonstrate the personal attributes and skills vital to the Army officer ranks. SPC Lamba continuously impresses me with his technical knowledge and practical skills as a Health Care Specialist.
2. SPC Lamba's master's degree in Industrial Engineering provides a solid foundation for advancing his military career as an Army officer. I have full confidence that he will continue to outperform his peers within the Service Corps for Environmental Engineering.
3. SPC Lamba's dedication and loyalty to the Army will make him a great addition to the Officer Corps. I would seek him out to serve with me again as an officer in any organization I have the privilege to command.
4. Please contact the undersigned with any questions at [REDACTED] or email at [REDACTED]

*Roy A. Robbins*  
ROY A. ROBBINGS  
LTC, MI  
Commanding



DEPARTMENT OF THE ARMY  
HEADQUARTERS AND HEADQUARTERS COMPANY  
201ST BATTLEFIELD SURVEILLANCE BRIGADE  
JOINT BASE LEWIS MCCHORD, WA 98433

REPLY TO  
ATTENTION OF

AFZH-BFSB-BS

23 AUG 2011

MEMORANDUM FOR US Army Medical Recruiting Station, Seattle, Washington

SUBJECT: Letter of Recommendation for SPC Simran Lamba, [REDACTED] HHC 201<sup>st</sup> BfSB, Joint Base Lewis McChord, Washington

1. I strongly recommend SPC Lamba for the direct commissioning program into the Medical Service Corps. I am serving as SPC Lamba's Brigade Surgeon. He is one of the most motivated and dedicated medics in the Brigade.
2. SPC Lamba is an excellent candidate for the Environmental Engineer program. His education consisting of a Bachelor's of Engineering in Mechanical Engineering and Master's of Science in Industrial Engineering provide him with the foundation to build upon in this program.
3. SPC Lamba is an extremely talented individual with diverse talent. He is multi-lingual and the first enlisted Sikh soldier in the Army.
4. SPC Lamba is eager to use his education and talents as an asset to the Medical Service Corps and I fully support and highly recommend selection to enter this direct commissioning program.
5. Point of contact is the undersigned at [REDACTED]

A handwritten signature in black ink, appearing to read "David T. Armstrong".

DAVID T. ARMSTRONG  
MAJ, MC  
BDE SURGEON



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS AND HEADQUARTERS COMPANY  
201ST BATTLEFIELD SURVEILLANCE BRIGADE  
JOINT BASE LEWIS MCCORD, WA 98433

AFZH-GJD-H

8 August 2011

MEMORANDUM FOR US Army Medical Recruiting Station, Seattle, Washington

SUBJECT: Letter of Recommendation for SPC Simran Lamba [REDACTED] HHC 201<sup>st</sup> BfSB,  
Joint Base Lewis McChord, Washington

1. I strongly recommend SPC Lamba for the direct commissioning program into the Medical Service Corps. I am currently serving as SPC Lamba's Company Commander and he is easily one of the most impressive Soldiers in the company.
2. SPC Lamba is an ideally suited candidate for this program because of his extensive previous schooling and his current service. SPC Lamba has earned a Bachelor's of Engineering in Mechanical Engineering and a Master's of Science in Industrial Engineering. Despite having many opportunities and the knowledge that his religion would make acceptance difficult, SPC Lamba chose to enlist in the U.S. Army during a time of war. Since arriving to the 201<sup>st</sup> BfSB, SPC Lamba has been an exemplary Soldier. He has been enthusiastic in training while still balancing the attention that comes with being the first enlisted Sikh Soldier to serve in the U.S. Army. I am certain that he will be just as successful if he is allowed to enter the direct commissioning program.
3. Point of contact is the undersigned at [REDACTED]

A handwritten signature in black ink, appearing to read "John G. Wildt".

JOHN G. WILDT  
CPT, MI  
Commanding



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
BRIGADE SPECIAL TROOPS BATTALION (PROV)  
201st BATTLEFIELD SURVEILLANCE BRIGADE  
JOINT BASE LEWIS-McCHORD, WA 98433

AFZH-GJD-H

27 JUN 2011

MEMORANDUM FOR US Army Medical Recruiting Station, Seattle, Washington

SUBJECT: Letter of Recommendation for SPC Simran Lamba [REDACTED] HHC 201<sup>st</sup> MI BfSB, Joint Base Lewis McChord, Washington

1. SPC Lamba currently serves as part of the medical platoon of Headquarters and Headquarters Company 201st Battlefield Surveillance Brigade. As a junior medic and Soldier, he has proven to be an integral part of the medical section in a very short time.
2. SPC Lamba possesses great values and qualities that are invaluable to the unit's and the Army's overall mission. He always takes initiative and leads his peers in any task at hand. He seemingly completes any tasks meeting and exceeding the standard. He sets the standard for other Soldiers to follow by employing great perseverance and technical skills. He always demonstrates great dedication towards the mission's end state. He also concerns himself with the welfare of his peers. He genuinely cares and looks after his peers and subordinates when appropriate. His peers greatly value him for his caring attitude and kindness.
3. SPC Lamba displays great discipline by surpassing both the APFT and marksmanship score standards. He strives to remain tactically proficient at all times. He never settles for meritocracy which directly reflects in his outstanding performance as a medic and a Soldier.
4. For these reasons and many more, I highly recommend SPC Lamba for the direct commissioning program into the Medical Service Corps for Environmental Engineering. He exemplifies all Army values instinctively, leads from the front and strives for higher standards.
5. Please contact the undersigned with any questions at [REDACTED]  
[REDACTED]

FRANK S. SANTIAGO  
SGT, USA



**DEPARTMENT OF THE ARMY**  
232d Medical Battalion, 32d Medical Brigade  
3250 Koehler Road, Suite 1350  
Fort Sam Houston, Texas 78234-6115

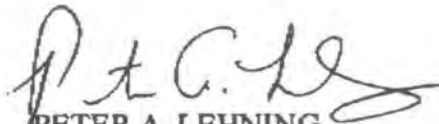
MCCS-AC

13 June 2011

MEMORANDUM FOR US Army Medical Recruiting Station, Seattle, Washington

SUBJECT: Letter of Recommendation for SPC Simran Lamba [REDACTED] HHC 201st MI BfSB, Joint Base Lewis McChord, Washington

1. I strongly recommend SPC Lamba for the direct commissioning program into the Medical Service Corps for Environmental Engineering. As his previous battalion commander and a 20 year Medical Service Corps Officer, I can certify that he is an exceptional Soldier and possess all the attributes and qualities I look for and are required to be an outstanding Army Officer.
2. SPC Lamba has proven to a true professional and driven to succeed in everything he attempts. He is completed the entire 68W program with a dedicated strong performance, he possesses impeccable bearing, embodies the Army Values and is a gifted communicator. I have every confidence he will do exceptionally well as an officer. SPC Lamba already posses the technical skills needed, proven through earning his masters degree in Industrial Engineering from New York University in January 2009.
3. The Army needs to fully utilize SPC Lamba by commissioning him as an officer and totally utilizing his Soldiering and technical skills. I totally endorse SPC Lamba for the direct commissioning program into the Medical Service Corps for Environmental Engineering.
4. Please contact the undersigned with any questions at [REDACTED]  
[REDACTED]

  
PETER A. LEHNING  
LTC, MS  
Commanding



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
3<sup>rd</sup> BATTALION, 34<sup>th</sup> INFANTRY REGIMENT,  
FORT JACKSON, SOUTH CAROLINA 29207

07 JUN 2011

MEMORANDUM FOR US ARMY MEDICAL RECRUITING STATION, SEATTLE,  
WASHINGTON

SUBJECT: Letter of Recommendation for Specialist Simran Lamba

1. I give my strongest recommendation for selection of Specialist Simran Lamba into the Army Officer Engineer Program.

2. SPC Lamba is an outstanding Soldier that clearly possesses the academic and intellectual rigor to succeed as a military officer and engineer. As his former Battalion Commander during Basic Combat Training, I had the opportunity to get to interact with SPC Lamba daily, and I was deeply impressed by his maturity and leadership. I can absolutely assure the Army that SPC Lamba will exceed in the Army Officer Engineer Program.

3. SPC Lamba's application to become an Army Officer is indicative of his great promise and his selection will make our Army stronger.

4. POC for this memorandum is the undersigned at [REDACTED]

  
BRYAN P. HERNANDEZ  
LTC, IN  
Commanding



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
COMPANY B, 232D MEDICAL BATTALION, 32D MEDICAL BRIGADE  
U.S. ARMY MEDICAL DEPARTMENT CENTER AND SCHOOL  
2950 KOEHLER ROAD  
FORT SAM HOUSTON, TEXAS 78234-6115

MCCS-ACB

24 May 2011

MEMORANDUM FOR The US Army Medical Recruiting Station, Seattle, WA.

SUBJECT: Letter of Recommendation for SPC Lamba, Simran P.

1. SPC Lamba, while in Bravo Company 232<sup>nd</sup> Medical Battalion, served and trained as a Soldier Medic, peer teacher, and junior leader. He has been a tremendous Soldier, an invaluable member of my team, and has had an amazing impact on his peers and supervisors.
2. SPC Lamba is a dedicated subordinate and has immeasurable potential as a leader. As a Soldier, he has proven to be a take-charge person who is able to successfully develop plans and implement them with little or no guidance. I have no doubt that he will continue to strive for this same excellence as an officer as he did as an enlisted Soldier.
3. SPC Lamba is able to successfully complete multiple tasks with favorable results despite deadline pressure. When given a task, regardless of its difficulty, he ensured its success by demonstrating leadership abilities that his peers both admired and respected. SPC Lamba is highly respected by his peers not only for his leadership abilities, but for his willingness to help anyone anytime he can. He has been instrumental in helping others to accomplish their own personal and professional goals by setting the example for others to emulate.
4. It is for these reasons that I offer high recommendations for SPC Lamba to continue to serve the United States Army as an Officer. His drive, dedication, and abilities will truly be an asset to any Army Unit he may be assigned to or eventually take command of. If you have any questions regarding this recommendation, please do not hesitate to contact me.
5. Point of Contact for this memorandum is SFC Amanda E. Dodd at [REDACTED]

AMANDA E. DODD  
SFC, USA  
AIT Platoon Sergeant

DEPARTMENT OF THE ARMY  
BRAVO COMPANY 3<sup>rd</sup>, BATTALION, 34<sup>TH</sup> INFANTRY REGIMENT  
FORT JACKSON, SOUTH CAROLINA 29207



REPLY TO  
ATTENTION OF


ATZJ-C-T-B

15 June 2011

MEMORANDUM FOR Commander, United States Army, Medical Recruiting Command,  
Seattle, Washington 98513

SUBJECT: Letter of Recommendation for SPC Simran P. Lamba,

1. I strongly recommend that SPC Lamba be immediately accepted into the Environmental Engineer Direct Commission Program.
2. During Basic Combat Training at Fort Jackson, South Carolina, as SPC Lamba's Drill Sergeant, I have witnessed firsthand the potential that this Soldier has to serve our Country as a Commissioned Officer. Despite any spoken or unspoken stereotypes surrounding his enlistment into the United States Army, SPC Lamba displayed the intelligence, courage, and inner strength; enabling him to push forward with his training in a manner that would make seasoned Soldiers proud to have him on their team. He also possesses a natural leadership ability, maturity and wisdom that make him an excellent choice for the future of our Army's Officer Corps.
3. In addition, SPC Lamba is not only a great role model for today's Soldiers, his outstanding performance within our ranks can strengthen the bond not only with in the Army, but also between other countries who view this Warrior and see that the Army, and America, accepts all who can and are willing to perform for our Great Nation.
4. Point of contact is the undersigned at [REDACTED]

  
MICHAEL J. HILDEBRAND  
SFC, USA  
First Sergeant

# **EXHIBIT 19**

**COMPANY GRADE PLATE (O1 - O3; WO1 - CW2) OFFICER EVALUATION REPORT**

For use of this form, see AR 623-3; the proponent agency is DCS, G-1.

**See Privacy Act Statement in AR 623-3.**

**PART I - ADMINISTRATIVE (Rated Officer)**

a. NAME (Last, First, Middle Initial) RATTAN, TEJDEEP, S		b. SSN [REDACTED]	c. RANK CPT	d. DATE OF RANK (YYYYMMDD) 20100201	e. BRANCH DC	f. COMPONENT (Status Code)
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND USA DENTAC FT BRAGG, FT BRAGG, 28310, MC			h. UIC W3ZS50	i. REASON FOR SUBMISSION 10   Extended Annual		
j. PERIOD COVERED FROM (YYYYMMDD) 20130606 THRU (YYYYMMDD) 20140724		k. RATED MONTHS 12	l. NON RATED CODES Q	m. NO. OF ENCLOSURES 0	n. RATED OFFICER'S EMAIL ADDRESS (.gov or .mil) [REDACTED]	

**PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)**

a1. NAME OF RATER (Last, First, Middle Initial) BODAI, CONRAD, F		a2. SSN [REDACTED]	a3. RANK GS14	a4. POSITION OIC, JOEL		
a5. EMAIL ADDRESS (.gov or .mil) [REDACTED]		a6. SIGNATURE BODAI.CONRAD.FRANK.1173866999 <small>Digitally signed by BODAI CONRAD FRANK 1173866999 DN: cn=BODAI, cn=CONRAD, cn=FRANK, 1173866999, ou=USA, ou=PM, ou=OSD, ou=US Government, cn=US Date: 2014.07.21 12:13:58 -0400</small>			a7. DATE (YYYYMMDD) 20140721	
b1. NAME OF INTERMEDIATE RATER (Last, First, Middle Initial)		b2. SSN (Optional)	b3. RANK	b4. POSITION		
b5. EMAIL ADDRESS (.gov or .mil)		b6. SIGNATURE			b7. DATE (YYYYMMDD)	
c1. NAME OF SENIOR RATER (Last, First, Middle Initial) APICELLA, MICHAEL, J		c2. SSN [REDACTED]	c3. RANK COL	c4. POSITION Deputy CDR		
c5. SENIOR RATER'S ORGANIZATION DENTAC FT BRAGG NC 28310	c6. BRANCH DC	c7. COMPONENT RA	c9. EMAIL ADDRESS (.gov or .mil) [REDACTED]			c11. DATE (YYYYMMDD) 20140725
c8. SENIOR RATER PHONE NUMBER [REDACTED]		c10. SIGNATURE APICELLA.MICHAEL.JOHN.1041750665 <small>Digitally signed by APICELLA MICHAEL JOHN 1041750665 DN: cn=APICELLA, cn=MICHAEL, cn=JOHN, 1041750665, ou=USA, ou=PM, ou=OSD, ou=US Government, cn=US Date: 2014.07.25 12:14:21 -0400</small>				
d. This is a referred report, do you wish to make comments? <input type="checkbox"/> Referred <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No		e1. SIGNATURE RATTAN.TEJDEEP.SINGH.1287301940 <small>Digitally signed by RATTAN TEJDEEP SINGH 1287301940 DN: cn=RATTAN, cn=TEJDEEP, cn=SINGH, 1287301940, ou=USA, ou=PM, ou=OSD, ou=US Government, cn=US Date: 2014.07.28 11:48:58 -0400</small>			e2. DATE (YYYYMMDD) 20140728	
f1. Supplementary Review Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		f2. NAME OF REVIEWER (Last, First, Middle Initial)				
f3. RANK	f4. POSITION		f5. Comments Enclosed <input type="checkbox"/> Yes <input type="checkbox"/> No			
f6. SIGNATURE		f7. DATE (YYYYMMDD)	g. MSAF Date (YYYYMMDD) 20140618			

**PART III - DUTY DESCRIPTION**

a. PRINCIPAL DUTY TITLE GENERAL DENTIST	b. POSITION AOC/BRANCH 63A00/DC
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES General dental officer serving in a 26 chair Dental Treatment Facility with responsibility for providing direct dental support to the over 7,600 active duty Soldiers of the 1st Sustainment Command (Theater), 44th MEDCOM, 82nd Combat Aviation Brigade, 82nd Sustainment Brigade, 189th Infantry Brigade, 406th Brigade Support, and the 900th Contracting Battalion. Dental support focuses on the dual mission of readiness, as reported in MEDPROS, and wellness as described in DENCOM's "Go First Class" initiative. Dental support also includes examinations, emergency and routine treatment, and specialty referral. Additional duties include serving as "Dental Officer of the Day" (managing after hours dental emergencies) on a rotating basis. Responsible for running 2 surgical suites both with capability for extracting simple, partial and full bony impacted third molars. Additional duties include medical emergency officer and laboratory officer.	

**PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM, COMPETENCIES, AND ATTRIBUTES (Rater)**

a. APFT Pass/Fail/Profile: PASS Date: 20140428 Height: 71 Weight: 204 Within Standard? YES  
 Comments required for "Failed" APFT, or "Profile" when it precludes performance of duty, and "No" for Army Weight Standards?

HQDA COMPARISON OF THE RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED  
 EXCELS

RO: RATTAN, TEJDEEP, S  
 SSN: [REDACTED]  
 DATE: 2014-07-28

R: BODAI, CONRAD, F  
 SSN: [REDACTED]  
 TOTAL RATINGS: 6

Comments: RATINGS THIS OFFICER: 1 I currently rate 5 Army Officers in this grade.  
 Very impressive performance during the rating period; CPT Rattan is consistently the top producer in our clinic. Extremely talented clinician who possesses advanced skills in oral surgery. Hard worker with a verve for Army dentistry. Totally supports DENCOM's Go First Class initiative; always focused on Soldier Readiness.

NAME: RATTAN, TEJDEEP, S		SSN: [REDACTED]	PERIOD COVERED: FROM (YYYYMMDD) 20130606	THRU (YYYYMMDD) 20140724
c. 1) <b>Character:</b> <i>(Adherence to Army Values, Empathy, and Warrior Ethos/ Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)</i>	Possesses in full measure all of the Army values and conducts himself with integrity both on and off duty. Lives the warrior ethos; serves as an example for others. Sets and enforces high standards for himself and others; a seasoned and disciplined professional. Fully supports SHARP, EO and EEO.			
c. 2) <b>Presence:</b> <i>(Military and Professional Bearing, Fitness, Confident, Resilient)</i>	Immediately impressive when he enters a room. Military bearing is beyond reproach; wears the uniform with pride. An effective communicator/speaker; has the "command voice".			
c. 3) <b>Intellect:</b> <i>(Mental Agility, Sound Judgment, Innovation, Interpersonal Tact, Expertise)</i>	Extremely intelligent officer who readily understands complex situations; a critical thinker. Possesses expertise on many fronts; an extremely well rounded individual with a wealth of information to share with superiors, peers and subordinates.			
c. 4) <b>Leads:</b> <i>(Leads Others, Builds Trust, Extends Influence beyond the Chain of Command, Leads by Example, Communicates)</i>	A charismatic officer who leads from the front; serves as a great mentor for less experienced officers about clinical and military matters. Thrives on challenges; a risk taker open to diverse ideas on how to advance the organization.			
c. 5) <b>Develops:</b> <i>(Creates a positive command/ workplace environment/Fosters Esprit de Corps, Prepares Self, Develops Others, Stewards the Profession)</i>	Inspires, motivates, and encourages subordinates in self improvement and personal advancement. Provides a positive workplace environment by allowing subordinates to exercise initiative and contribute to decisions affecting clinical operations.			
c. 6) <b>Achieves:</b> <i>(Gets Results)</i>	A mission focused "hard charger". Top producer in the clinic providing over \$440,000 worth of dentistry to Soldiers at Fort Bragg during the rating period. Improving access to care is his number one priority.			

**PART V - INTERMEDIATE RATER**

**PART VI - SENIOR RATER**

<p>a. <b>POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)</b></p> <p>HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED</p> <div style="border: 1px solid black; padding: 10px; text-align: center; margin: 10px 0;"> <p><b>MOST QUALIFIED</b></p> </div> <p>RO: RATTAN, TEJDEEP, S</p> <p>SR: APICELLA, MICHAEL, J</p> <p>DATE: 2014-07-28</p> <p>TOTAL RATINGS: 41</p> <p>RATINGS THIS OFFICER: 1</p>	<p>b. I currently senior rate <u>25</u> Army Officers in this grade.</p>
	<p>c. COMMENTS ON POTENTIAL:</p> <p>CPT Rattan ranks in the top 10% of junior officers I senior rate. Leadership skills and clinical acumen place him well above his peers. Exceptional potential for advancement in our system. Promote to MAJ immediately.</p>
	<p>d. List 3 future <b>SUCCESSIVE</b> assignments for which this Officer is best suited:</p> <p>Staff Dental Officer, BDE Dental Surgeon, Clinic OIC</p>

# **EXHIBIT 20**

**FACSIMILE TRANSMITTAL HEADER SHEET**

For use of this form, see AR 25-11; the proponent agency is OD18C4

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
FROM: USA MEDDAC Behavioral Health Department Fort Drum, NY		MCID-BHD	(315) 772-2778 (Option 3) DSN 772-2778 (Option 3)		(315) 772-9243	
TO:						
<i>Harsimran Kaur</i>						
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		8	12/16/11		2011	<i>Shuja, MD</i>

REMARKS

*8:30am*  
*Tejdeep S. Rattan's Documents*

*Space Below For Communications Center Use Only*

**ATTENTION**

Do not process, store or transmit classified information on unsecured telecommunications systems. Official DoD telecommunications systems including telephone, facsimile machines, computer networks and modems are subject to monitoring for telecommunications security purposes at all times. Use of official DoD telecommunications systems constitutes consent to purposed at all times. Use of official DoD telecommunications systems constitutes consent to telecommunications security monitoring.

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IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY TO ARRANGE FOR RETURN OF THESE DOCUMENTS.



DEPARTMENT OF THE ARMY  
710<sup>TH</sup> BRIGADE SUPPORT BATTALION, TASK FORCE SPARTAN  
FOB PASAB, AFGHANISTAN  
APO AE 09730

REPLY TO  
ATTENTION OF:

AFDR-SDA

25 September 2011

MEMORANDUM FOR RECORD

SUBJECT: Statement of Wartime Service for CPT Tejdeep Rattan

1. This is to certify the period of service while deployed to the Regional Command South area in support of Operation Enduring Freedom:

<u>NAME</u>	<u>RANK</u>	<u>SSN</u>	<u>DATES OF SERVICE</u>
Rattan, Tejdeep S.	CPT	[REDACTED]	1 April 2011 - 1 Oct 2011

2. The Officer listed above served with 673<sup>RD</sup> Dental Company and was attached in direct support of 710<sup>th</sup> Brigade Support Battalion, 3<sup>rd</sup> Brigade Combat Team with duty at FOB Pasab, Afghanistan and is thereby authorized to wear the SSI-FWTS of the 10<sup>th</sup> Mountain Division (LI) LAW AR 670-1, Appendix F and UNCLASS ALARACT 055/2007.


3. In addition, this Officer is entitled to the following LAW AR 670-1 and AR 600-8-22 for wartime service:

- a. Afghanistan Campaign Medal with Campaign Star (ACM-CS)
- b. The Overseas Service Bar (1) for service in CENTCOM Area of Operation from 1 April 2011 - 1 Oct 2011
- c. The North Atlantic Treaty Organization (NATO) Medal for participation with the International Security Assistance Force in Afghanistan
- d. Service Award (Army Commendation Medal)

4. This memorandum serves as verification of the deployment dates of the personnel listed above and will be used to update the military personnel records accordingly. This memorandum will also be used to verify service award eligibility as published.

5. Officer was not authorized Non-chargeable Rest and Recuperation during the course of this deployment.

6. The point of contact for this memorandum is CPT Lewin D. Pierce at [lewin.pierce@us.army.mil](mailto:lewin.pierce@us.army.mil).

  
JERED P. HELWIG  
LTC, LG  
Commanding

**RECOMMENDATION FOR AWARD**

For use of this form, see AR 600-8-22; the proponent agency is DCS, G-1.

For valor/heroism/wartime and all awards higher than MSM, refer to special instructions in Chapter 3, AR 600-8-22.

1. TO CDR, RC-SOUTH APO AE 09355	2. FROM CDR, C CO, 710TH BSB APO AE 09370	3. DATE (YYYYMMDD)
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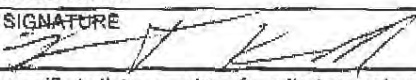
**PART I - SOLDIER DATA**

4. NAME (Last, First, Middle Initial) RATTAN, TEJDEEP S.	5. RANK CPT	6. SSN [REDACTED]
7. ORGANIZATION 673RD DENTAL COMPANY, 44TH MEDICAL BRIGADE BAGRAM AIR FIELD, APO AE 09354	8. PREVIOUS AWARDS NO AWARDS	
9. BRANCH OF SERVICE	10. RECOMMENDED AWARD BSM	11. PERIOD OF AWARD a. FROM 20110601 b. TO 20110915

## 12. REASON FOR AWARD

12a. INDICATE REASON SVC	12b. INTERIM AWARD IF YES, STATE AWARD GIVEN	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	12c. POSTHUMOUS YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	13. PROPOSED PRESENTATION DATE (YYYYMMDD) 20110915
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**PART II - RECOMMENDER DATA**

14. NAME (Last, First, Middle Initial) KIRKENDALL, PETER F.	15. ADDRESS C CO, 710TH BSB FOB PASAB APO AE 09370
16. TITLE/POSITION COMPANY COMMANDER	17. RANK CPT
18. RELATIONSHIP TO AWARDEE COMMANDER	19. SIGNATURE 

**PART III - JUSTIFICATION AND CITATION DATA** (Use specific bullet examples of meritorious acts or service)

20. ACHIEVEMENTS
ACHIEVEMENT #1 SEE ATTACHMENT
ACHIEVEMENT #2 SEE ATTACHMENT
ACHIEVEMENT #3 SEE ATTACHMENT
ACHIEVEMENT #4 SEE ATTACHMENT
21. PROPOSED CITATION SEE CITATION ATTACHMENT

**RECOMMENDATION FOR AWARD**

For use of this form, see AR 600-8-22; the proponent agency is DCS, G-1.


For valor/heroism/wartime and all awards higher than MSM, refer to special instructions in Chapter 3, AR 600-8-22.

1. TO CDR, RC-SOUTH APO AE 09355	2. FROM CDR, C CO, 710TH BSB APO AE 09370	3. DATE (YYYYMMDD)
--	---	--------------------

**PART I - SOLDIER DATA**

4. NAME (Last, First, Middle Initial) RATTAN, TEJDEEP S.	5. RANK CPT	6. SSN [REDACTED]
7. ORGANIZATION 673RD DENTAL COMPANY, 44TH MEDICAL BRIGADE BAGRAM AJR FIELD, APO AE 09354	8. PREVIOUS AWARDS NO AWARDS	
9. BRANCH OF SERVICE	10. RECOMMENDED AWARD BSM	11. PERIOD OF AWARD a. FROM 20110601 b. TO 20110915
12. REASON FOR AWARD		
12a. INDICATE REASON SVC	12b. INTERIM AWARD IF YES, STATE AWARD GIVEN	12c. POSTHUMOUS YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
		13. PROPOSED PRESENTATION DATE (YYYYMMDD) 20110915

**PART II - RECOMMENDER DATA**

14. NAME (Last, First, Middle Initial) KIRKENDALL, PETER F.	15. ADDRESS C CO, 710TH BSB FOB PASAB APO AE 09370
16. TITLE/POSITION COMPANY COMMANDER	17. RANK CPT
18. RELATIONSHIP TO AWARDEE COMMANDER	19. SIGNATURE 

**PART III - JUSTIFICATION AND CITATION DATA** (Use specific bullet examples of meritorious acts or service)

20. ACHIEVEMENTS
ACHIEVEMENT #1 SEE ATTACHMENT
ACHIEVEMENT #2 SEE ATTACHMENT
ACHIEVEMENT #3 SEE ATTACHMENT
ACHIEVEMENT #4 SEE ATTACHMENT
21. PROPOSED CITATION SEE CITATION ATTACHMENT

NAME (Last, First, Middle Initial) RATTAN, TEJDEEP S.	SSN [REDACTED]
--	-------------------

**PART IV - RECOMMENDATIONS/APPROVAL/DISAPPROVAL**

22. I certify that this individual is eligible for an award in accordance with AR 600-8-22; and that the information contained in Part I is correct.		22a. SIGNATURE 	22b. DATE (YYYYMMDD)
23. INTERMEDIATE AUTHORITY	a. TO CDR, 3D IBCT FOB PASAB, APO AE 09370	b. FROM CDR 710TH BSB FOB PASAB, APO AE 09370	c. DATE (YYYYMMDD)
d. RECOMMEND: <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO: <input type="checkbox"/>	
e. NAME (Last, First, Middle Initial) HELWIG, JERED P.		f. RANK LTC	
g. TITLE/POSITION BATTALION COMMANDER		h. SIGNATURE 	
i. COMMENTS DCR RATTAN IS THE BEST DENTIST I HAVE KNOWN; HE IS AN EXEMPLARY PROVIDER & EXACTLY THE TYPE OF MEDICAL PROFESSIONAL WE NEEDED IN OUR AO. WELL DESERVED!			

24. INTERMEDIATE AUTHORITY		a. TO Orders Issuing Authority	b. FROM CDR, 3D IBCT FOB PASAB, APO AE 09370	c. DATE (YYYYMMDD) 2010904
d. RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO: <input checked="" type="checkbox"/> ARCOM		
e. NAME (Last, First, Middle Initial) FRANK, PATRICK D.		f. RANK COL		
g. TITLE/POSITION BRIGADE COMMANDER		h. SIGNATURE 		
i. COMMENTS EXCEPTIONAL DENTAL SUPPORT - MAY BE THE #1 DENTAL TOTAL IN COMBAT / ODF; A WARRIOR				

25. INTERMEDIATE AUTHORITY		a. TO	b. FROM	c. DATE (YYYYMMDD)
d. RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL		UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO: <input type="checkbox"/>		
e. NAME (Last, First, Middle Initial)		f. RANK		
g. TITLE/POSITION		h. SIGNATURE		
i. COMMENTS				

26. APPROVAL AUTHORITY		a. TO	b. FROM	c. DATE (YYYYMMDD)
d. <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED		RECOMMEND UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO: <input type="checkbox"/>		
e. NAME (Last, First, Middle Initial)		f. RANK		
g. TITLE/POSITION		h. SIGNATURE		
i. COMMENTS				

**PART V - ORDERS DATA**

27a. ORDERS ISSUING HQ HQs, 3BCT ATIN S-1 FOB Pasab, APO AE 09370	27b. PERMANENT ORDER NO. 247-003	31. DISTRIBUTION 1-File 1-OMPF 1-Unit 3-Individual
28a. NAME OF ORDERS APPROVAL AUTHORITY DAILEY, WILLIAM	28b. RANK MAJ	
28c. TITLE/POSITION Brigade Adjutant	28. APPROVED AWARD ARCOM	
28d. SIGNATURE 	30 DATE (YYYYMMDD) 2010904	

## Narrative Page

Captain Tejdeep Singh Rattan distinguished himself by displaying exceptionally meritorious service while attached as Dental Officer in the Charlie Company 710th Brigade Support Battalion, 10th Mountain Division from 1 June 2011 to 15 September 2011 in support of OPERATION ENDURING FREEDOM XI.

CPT Rattan consistently performed as an example to all Dental Officers throughout the Army for the duration of his time attached to Charlie Company, 710th Brigade Support Battalion. While attached as the sole Dental Officer in AO SPARTAN, CPT Rattan volunteered to move forward into the Battle Space with a Mobile Treatment Facility, fabricated out of a 20 foot MILVAN, in order to provide first class dental care for more than 80 Soldiers deployed to the most remote regions of RC(S) and AO SPARTAN. His tireless service ensured that every Soldier within the Brigade had access to dental care. In addition to deploying forward in the Battle Space to provide health care, CPT Rattan treated over 640 patients at FOB Pasab for multiple injuries and illnesses including pulpectomies, third molar removal, crowns, fillings and screenings. His efforts have placed him far above his peers accounting for approximately 25% of all dental procedures performed throughout the 673rd Dental Company.

During a FOB Pasab Mass Casualty incident CPT Rattan further exemplified the role of a dental officer by acting as the triage officer for 18 local national casualties. His rapid action and technical knowledge ensured that all patients were categorized and treated accordingly and four urgent surgical patients were immediately treated and evacuated to KAF Role 3.

CPT Rattan played a key role in the development of the disease prevention education for the medical company of the 5th Kandak 203rd Corps ANA by volunteering to teach classes on dental and personal hygiene to the medics of the 5th Kandak. His ability to speak Urdu, Hindi and Punjabi helped in breaking down the communications barriers that plague US/ANA operations. CPT Rattan also volunteered to assist in the training of the Charlie Company 710th BSB medics by providing classes on local oral anesthetics in a field environment.

CPT Rattan's exemplary performance is a model for officers of all branches. His tireless service and dedication to the mission are in keeping with the highest traditions and values of the 710th Brigade Support Battalion, the 3rd Brigade Combat Team and the United States Army.

**Citation Page**

FOR EXCEPTIONALLY MERITORIOUS SERVICE WHILE ATTACHED AS THE DENTAL OFFICER OF CHARLIE COMPANY, 710TH BRIGADE SUPPORT BATTALION IN SUPPORT OF OPERATION ENDURING FREEDOM. CPT RATTAN'S OUTSTANDING PERFORMANCE, TECHNICAL EXPERTISE, AND UNWAVERING COMMITMENT TO MISSION ACCOMPLISHMENT IN A HOSTILE ENVIRONMENT WERE VITAL TO THE SUSTAINMENT OF COMBAT OPERATIONS IN AFGHANISTAN. HIS CONTRIBUTIONS AND DEDICATION TO DUTY ARE IN KEEPING WITH THE FINEST TRADITIONS OF THE ARMY AND BRING GREAT CREDIT UPON HIMSELF, THE 710TH BRIGADE SUPPORT BATTALION, THE 3RD BRIGADE COMBAT TEAM AND THE UNITED STATES ARMY.



# DEPARTMENT OF THE ARMY

**THIS IS TO CERTIFY THAT THE SECRETARY OF THE ARMY HAS AWARDED  
THE ARMY COMMENDATION MEDAL**

**TO**

**CAPTAIN TEJDEEP S. RATTAN  
CHARLIE COMPANY, 710<sup>TH</sup> BRIGADE SUPPORT BATTALION**

**FOR EXCEPTIONALLY MERITORIOUS SERVICE WHILE ATTACHED AS THE DENTAL OFFICER. CAPTAIN RATTAN MADE SIGNIFICANT CONTRIBUTIONS TO THE OVERALL MISSION SUCCESS OF COMBINED TASK FORCE SPARTAN DURING OPERATION ENDURING FREEDOM. HIS HARD WORK AND DEDICATION WILL HAVE A LASTING POSITIVE IMPACT ON THE SECURITY AND SAFETY OF THE AFGHAN PEOPLE. CAPTAIN RATTAN'S ACTIONS REFLECT DISTINCT CREDIT UPON HIMSELF, 710<sup>TH</sup> BRIGADE SUPPORT BATTALION, 3<sup>RD</sup> INFANTRY BRIGADE COMBAT TEAM, 10<sup>TH</sup> MOUNTAIN DIVISION (LI) AND THE UNITED STATES ARMY.**

**FROM 01 JUNE 2011 TO 15 SEPTEMBER 2011**

**ON THIS 4<sup>TH</sup> DAY OF SEPTEMBER 2011**

Permanent Order # 247-003  
HQ, 3-10 IBCT  
FOB Pasab, APO AE 09370



**PATRICK D. FRANK  
COL, IN  
Commanding**

# **EXHIBIT 21**

+

OFFICER EVALUATION REPORT

For use of this form, see AR 623-3; the proponent agency is DCS, G-1.

FOR OFFICIAL USE ONLY (FOUO) SEE PRIVACY ACT STATEMENT IN AR 623-3. +

PART I - ADMINISTRATIVE DATA

Administrative data fields including Name (KALSI, KAMALJEET S.), Rank (CPT), Date of Rank (20050607), Branch (MC), SSN, and Period Covered (20110106 to 20110717).

PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)

Authentication section with signatures and dates of Rater (ZAWACKI, CLORINDA K.), Senior Rater (DARNAUER, PATRICIA), and Rated Officer (KALSI, KAMALJEET).

PART III - DUTY DESCRIPTION

Duty description section detailing Principal Duty Title (Staff Emergency Physician) and a detailed paragraph of significant duties and responsibilities in an austere combat setting.

PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)

CHARACTER Disposition of the leader: combination of values, attributes, and skills affecting leader actions

Performance evaluation grid with sections for Army Values (Honor, Integrity, Courage, Loyalty, Respect, Selfless-Service, Duty), Leader Attributes/Skills/Actions (Mental, Physical, Emotional, Conceptual, Interpersonal, Technical, Tactical), and Actions (Leadership) (Communicating, Decision-Making, Motivating, Planning, Executing, Assessing, Developing, Building, Learning).

Summary fields including APFT (PASS), Date (20110420), Height (70), Weight (170), and Officer Development (Mandatory Yes or No entry for raters).

**+** PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

**OUTSTANDING PERFORMANCE, MUST PROMOTE**     **SATISFACTORY PERFORMANCE, PROMOTE**     **UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE**     **OTHER (Explain)**

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE, REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND PART Vb, DA FORM 67-9-1.

CPT Kalsi distinguished himself while serving as an Chief of Emergency Medicine, OIC of Disaster Medicine and a staff physician for Task Force 115 while deployed in support of Operation Enduring Freedom in Afghanistan, providing seamless and comprehensive medical care to over 750 patients and personally saving numerous coalition lives. As Officer-In-Charge of Disaster Medicine, CPT Kalsi conducted five Combat Support Hospital (CSH)-wide mass casualty (MASCAL) exercises which improved the efficiency and superior quality of care provided during several multi-casualty and MASCAL incidents during his deployment. He demonstrated a tireless commitment to providing world-class healthcare through the development and implementation of a CSH-wide initiative to provide critical combat casualty and MASCAL skills to over 200 Soldiers, the creation and presentation of over 20 emergency medical lectures to over 30 Emergency Medical Treatment (EMT) staff, serving as a primary investigator for eight CSH performance improvement projects, and through serving as the primary educator for a weekly trauma simulation exercise. He consistently displays the character, morals, ethics and poise expected of a military officer. CPT Kalsi is an outstanding officer and Emergency Medicine physician with a bright future.

c. COMMENT ON POTENTIAL FOR PROMOTION.

CPT Kalsi is exceptionally ambitious and has unlimited potential. Send to the Captain's Career Course immediately and promote above peers.

d. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

**PART VI - INTERMEDIATE RATER**

**PART VII - SENIOR RATER**

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

**BEST QUALIFIED**     **FULLY QUALIFIED**     **DO NOT PROMOTE**     **OTHER (Explain below)**

I currently senior rate 21 officer(s) in this grade  
 A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review  **YES**  **NO (Explain in c)**

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

**ABOVE CENTER OF MASS**  
 (Less than 50% in top box; Center of Mass if 50% or more in top box)

**CENTER OF MASS**

**BELOW CENTER OF MASS**  
 RETAIN

**BELOW CENTER OF MASS**  
 DO NOT RETAIN

**+**

c. COMMENT ON PERFORMANCE/POTENTIAL

Energetic, engaging, and clinically competent, CPT Kalsi designed and implemented five MASCAL exercises providing invaluable feedback resulting in modifications that improved the efficiency and quality of patient care at this deployed trauma hospital. He consistently demonstrated a strong commitment to improving Army Medicine through the development of a performance improvement project at the 115th CSH and service as an associate investigator for a study on the use of ultrasound in traumatic brain injury patients. CPT Kalsi exceeded all expectations and was elemental to the success of the 115th. He possesses absolutely unlimited potential as a leader, military officer and physician. Select for advanced military schooling of his choice. Promote ahead of peers.

d. LIST THREE FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

White House Staff Emergency Physician; Division Chief, Department of Emergency Medicine; Brigade Surgeon.

# **EXHIBIT 22**

**RECOMMENDATION FOR AWARD**

For use of this form, see AR 600-8-22; the proponent agency is DCS, G-1.

For valor/heroism/wartime and all awards higher than MSM, refer to special instructions in Chapter 3, AR 600-8-22.

1. TO DEPUTY COMMANDER, SUPPORT, USFOR-A APO AE 09356	2. FROM COMMANDER, B CO 115TH CSH FPO AE 09373	3. DATE (YYYYMMDD) 20110708
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**PART I - SOLDIER DATA**

4. NAME (Last, First, Middle Initial) KALSI, KAMAJEET S	5. RANK CPT	6. SSN [REDACTED]
7. ORGANIZATION B CO 115 CSH FPO AE 09373	8. PREVIOUS AWARDS AAM-2, ARCOM-2, JSAM-1	
9. BRANCH OF SERVICE ARMY	10. RECOMMENDED AWARD BSM	11. PERIOD OF AWARD a. FROM 20110104 b. TO 20110717
12. REASON FOR AWARD		
12a. INDICATE REASON -SVC	12b. INTERIM AWARD IF YES, STATE AWARD GIVEN YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	12c. POSTHUMOUS YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
		13. PROPOSED PRESENTATION DATE (YYYYMMDD) 20110715

**PART II - RECOMMENDER DATA**

14. NAME (Last, First, Middle Initial) ZAWACKI, CLORINDA K	15. ADDRESS HHD, 115TH CSH FPO AE 09373	
16. TITLE/POSITION TF 115 MED DCCS	17. RANK COL	19. SIGNATURE <b>ZAWACKI, CLORINDA, KAY, 112198694</b>
18. RELATIONSHIP TO AWARDEE SUPERVISOR		

**PART III - JUSTIFICATION AND CITATION DATA** (Use specific bullet examples of meritorious acts or service)

20. ACHIEVEMENTS

ACHIEVEMENT #1  
CPT Kalsi provided exceptional care as trauma team leader and Emergency Physician for the TF 115 Combat Support Hospital at Camp Dwyer from 4 Jan 2011 to 17 Jul 2011 in support of Operation Enduring Freedom. He provided expert emergent care to over 750 Soldiers and local nationals at the only expeditionary Role 3 in theater. CPT Kalsi successfully resuscitated back to life two patients that were clinically dead on arrival. He delivered world class care despite austere conditions to critically injured combat casualties.

ACHIEVEMENT #2  
As Officer-In-Charge for Disaster Medicine, CPT Kalsi conducted five MASCAL exercises and coordinated numerous triage responses during CSH MASCALs. He helped shape the FOB and CSH MASCAL plans with his vast knowledge and expertise in Disaster Medicine. He submitted formal reports with recommendations for each MASCAL incident and exercise which improved logistics and care with each subsequent multi-casualty event. His efforts helped train over 200 Soldiers in basic combat casualty care and mass casualty skills.

ACHIEVEMENT #3  
CPT Kalsi served as Chief of the EMT from 12 May 2011 to 15 Jul 2011. He worked closely with his NCOIC to improve the supply, organization and morale for the EMT. He also mentored cross training with medics and nurses from five other departments, including Dustoff and Fire Rescue to enhance both EMT and CSH preparedness, cohesiveness, and response. His creative curriculum and tireless efforts enabled the CSH to respond with skill, flexibility and efficiency, saving countless lives during an ever changing optempo.

ACHIEVEMENT #4  
CPT Kalsi demonstrated commitment and leadership above and beyond that of his primary duties towards improving the excellence and delivery of emergency care. He served as the leader for eight performance improvement projects and developed a hospital wide trauma statistics database that provides the CSH command team with local combat casualty data. He organized and implemented a solution to provide internet access to over 200 Soldiers at the CSH, improving communications, access to education content and overall morale.

21. PROPOSED CITATION

EXCEPTIONALLY MERITORIOUS SERVICE AS AN EMERGENCY MEDICINE PHYSICIAN WHILE DEPLOYED IN SUPPORT OF OPERATION ENDURING FREEDOM. HIS LEADERSHIP AND DEDICATION TO DUTY WERE INSTRUMENTAL TO THE UNIT'S MISSION DURING COMBAT OPERATIONS. CAPTAIN KALSI'S DISTINCTIVE ACCOMPLISHMENTS REFLECT GREAT CREDIT UPON HIMSELF, TASK FORCE 44 MEDICAL, AND THE UNITED STATES ARMY.

RCI/2 AUG 11

NAME (Last, First, Middle Initial) KALSI, KAMAJEET S	SSN 103-60-1407
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PART IV - RECOMMENDATIONS/APPROVAL/DISAPPROVAL

22. I certify that this individual is eligible for an award in accordance with AR 600-8-22; and that the information contained in Part I is correct.	22a. SIGNATURE REYES DANIEL JARDAN. 1367768	22b. DATE (YYYYMMDD) 20110708
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23. INTERMEDIATE AUTHORITY	a. TO CDR, TF 115 MED FPO AE 09373	b. FROM CDR, B CO 115TH CSH FPO AE 09373	c. DATE (YYYYMMDD) 20110709
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d. RECOMMEND:  APPROVAL  DISAPPROVAL  UPGRADE TO:  DOWNGRADE TO:

e. NAME (Last, First, Middle Initial) JACKSON, GARRION L.	f. RANK CPT
--	----------------

g. TITLE/POSITION COMPANY COMMANDER	h. SIGNATURE JACKSON.GARRION.LEVONE.126044288
--	--

i. COMMENTS  
Thank you for effectively and efficiently saving the lives of so many. You have truly influenced all of our lives through the positive example you set of your culture and of your ways of life.

24. INTERMEDIATE AUTHORITY	a. TO CDR, TF 44 MED APO AE 09354	b. FROM CDR, TF 115 MED FPO AE 09373	c. DATE (YYYYMMDD) 20110719
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d. RECOMMEND:  APPROVAL  DISAPPROVAL  UPGRADE TO:  DOWNGRADE TO:

e. NAME (Last, First, Middle Initial) DARNAUER, PATRICIA	f. RANK COL
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g. TITLE/POSITION TF 115 MED COMMANDER	h. SIGNATURE DARNAUER.PATRICIA.1022923079
---	--

i. COMMENTS  
Very talented officer who contributed positively to the success of not only the Emergency Department but also the entire Role 3 trauma hospital.

25. INTERMEDIATE AUTHORITY	a. TO COS, USFOR-A APO AE 09356	b. FROM CDR, TF 44 MED APO AE 09354	c. DATE (YYYYMMDD) 20110806
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d. RECOMMEND:  APPROVAL  DISAPPROVAL  UPGRADE TO:  DOWNGRADE TO:

e. NAME (Last, First, Middle Initial) WEST, DONALD R.	f. RANK COL
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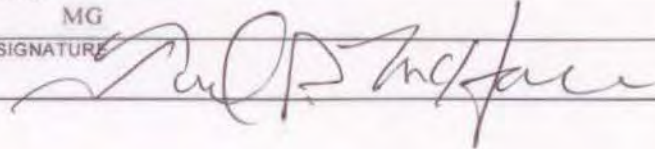
g. TITLE/POSITION TF 44 MED COMMANDER	h. SIGNATURE WEST.DONALD.RAY.1119678761
--	--

i. COMMENTS  
An outstanding leader!

26. APPROVAL AUTHORITY	a. TO ORDERS ISSUING AUTHORITY	b. FROM DCDR-S, USFOR-A APO AE 09356	c. DATE (YYYYMMDD) 2011/08/20
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d.  APPROVED  DISAPPROVED  RECOMMEND UPGRADE TO:  DOWNGRADE TO:

e. NAME (Last, First, Middle Initial) McHALE, TIMOTHY P.	f. RANK MG
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g. TITLE/POSITION DEPUTY COMMANDER, SUPPORT	h. SIGNATURE 
--	--

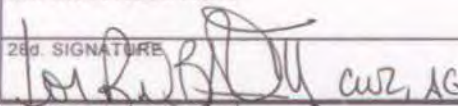
i. COMMENTS

PART V - ORDERS DATA

27a. ORDERS ISSUING HQ HQ, USFOR-A APO AE 09356	27b. PERMANENT ORDER NO. 219-003	31. DISTRIBUTION 1-File 1-OMPF 1-Unit 3-Individual
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28a. NAME OF ORDERS APPROVAL AUTHORITY GRANT, TOMASSINA	28b. RANK MAJ
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28c. TITLE/POSITION USFOR-A ADJUTANT	29. APPROVED AWARD BSM
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28d. SIGNATURE  CW2 AG	30. DATE (YYYYMMDD) 20110821
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NAME KALSI, KAMAJEET S	SSN 103-60-1407
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**ADDENDUM - INTERMEDIATE AUTHORITY**

25-A1. INTERMEDIATE AUTHORITY	a. TO DCDR-S USFOR-A APO AE 09356	b. FROM COS, USFOR-A APO AE 09356	c. DATE (YYYYMMDD) <b>18 AUG 2011</b>
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d. RECOMMEND: <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL <input type="checkbox"/> UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO:			
e. NAME (Last, First, Middle Initial) CHEVALLIER, JAMES H.		f. RANK COL	
g. TITLE/POSITION CHIEF OF STAFF		h. SIGNATURE 	
i. COMMENTS			

25-A2. INTERMEDIATE AUTHORITY	a. TO	b. FROM	c. DATE (YYYYMMDD)
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d. RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL <input type="checkbox"/> UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO:			
e. NAME (Last, First, Middle Initial)		f. RANK	
g. TITLE/POSITION		h. SIGNATURE	
i. COMMENTS			

25-A3. INTERMEDIATE AUTHORITY	a. TO	b. FROM	c. DATE (YYYYMMDD)
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d. RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL <input type="checkbox"/> UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO:			
e. NAME (Last, First, Middle Initial)		f. RANK	
g. TITLE/POSITION		h. SIGNATURE	
i. COMMENTS			

25-A4. INTERMEDIATE AUTHORITY	a. TO	b. FROM	c. DATE (YYYYMMDD)
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d. RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL <input type="checkbox"/> UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO:			
e. NAME (Last, First, Middle Initial)		f. RANK	
g. TITLE/POSITION		h. SIGNATURE	
i. COMMENTS			

25-A5. INTERMEDIATE AUTHORITY	a. TO	b. FROM	c. DATE (YYYYMMDD)
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d. RECOMMEND: <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL <input type="checkbox"/> UPGRADE TO: <input type="checkbox"/> DOWNGRADE TO:			
e. NAME (Last, First, Middle Initial)		f. RANK	
g. TITLE/POSITION		h. SIGNATURE	
i. COMMENTS			



# THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING: THIS IS TO CERTIFY THAT THE PRESIDENT OF THE UNITED STATES OF AMERICA AUTHORIZED BY EXECUTIVE ORDER, 24 AUGUST 1962 HAS AWARDED

## THE BRONZE STAR MEDAL

**TO** CAPTAIN KAMAJEET S. KALSI  
BRAVO COMPANY, 115 COMBAT SUPPORT HOSPITAL

**FOR** EXCEPTIONALLY MERITORIOUS SERVICE AS AN EMERGENCY MEDICINE PHYSICIAN WHILE DEPLOYED IN SUPPORT OF OPERATION ENDURING FREEDOM. HIS LEADERSHIP AND DEDICATION TO DUTY WERE INSTRUMENTAL TO THE UNIT'S MISSION DURING COMBAT OPERATIONS. CAPTAIN KALSI'S DISTINCTIVE ACCOMPLISHMENTS REFLECT GREAT CREDIT UPON HIMSELF, TASK FORCE 44 MEDICAL, AND THE UNITED STATES ARMY.

FROM 4 JANUARY 2011 TO 17 JULY 2011

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON  
THIS 7<sup>TH</sup> DAY OF AUGUST 2011

TIMOTHY P. McHALE  
Major General, United States Army  
Deputy Commander, Support  
United States Forces-Afghanistan  
Permanent Order # 219-003



SECRETARY OF THE ARMY

# **EXHIBIT 23**



# Department of Defense

## INSTRUCTION

NUMBER 1300.17

February 10, 2009

*Incorporating Change 1, Effective January 22, 2014*

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USD(P&R)

SUBJECT: Accommodation of Religious Practices Within the Military Services

- References:
- (a) DoD Directive 1300.17, "Accommodation of Religious Practices Within the Military Services," February 3, 1988 (hereby cancelled)
  - (b) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
  - (c) *DoD Instruction 1000.29 "DoD Civil Liberties Program," May 17, 2012*
  - (d) *Public Law 112-239, "National Defense Authorization Act for Fiscal Year 2013," December 18, 2012, as amended*
  - (e) *Section 2000bb-1 of Title 42, United States Code*
  - (f) *DoD Instruction 5025.01, "DoD Directives Program," September 26, 2012, as amended*
  - (g) Section 774 and chapter 47 of title 10, United States Code

1. PURPOSE. This Instruction:

- a. Reissues Reference (a) as a DoD Instruction in accordance with the authority in Reference (b).
- b. Prescribes policy, procedures, and responsibilities for the accommodation of religious practices in the Military Services.

2. APPLICABILITY AND SCOPE

- a. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the ~~Department of Defense DoD~~ (hereafter referred to collectively as the "DoD Components").
- b. The policies, *procedures, and definitions* prescribed herein apply solely to the accommodation of religious practices in the Military Services and in no other context.

### 3. DEFINITIONS

a. Neat and Conservative. In the context of wearing a military uniform, “neat and conservative” items of religious apparel are those that:

(1) Are discreet, tidy, and not dissonant or showy in style, size, design, brightness, or color.

(2) Do not replace or interfere with the proper wear of any authorized article of the uniform.

(3) Are not temporarily or permanently affixed or appended to any authorized article of the uniform.

b. Religious Apparel. Articles of clothing worn as part of the doctrinal or traditional observance of the religious faith practiced by the member. ~~Hair and grooming practices required or observed by religious groups are not included within the meaning of religious apparel. Jewelry bearing religious inscriptions or otherwise indicating affiliation or belief is subject to existing Service uniform regulations under the same standard that applies to jewelry that is not of a religious nature.~~

c. Grooming and Appearance. *Grooming and appearance practices, including hair, required or observed by religious groups.*

d. Religious Body Art. *Temporary or permanent tattoos, piercings through the skin or body part, or other modifications to the body that are of a religious nature.*

e. Substantially Burden. *In general, significantly interfering with the exercise of religion as opposed to minimally interfering with the exercise of religion.*

f. Exercise of Religion. *Includes any religious practice(s), whether or not compelled by, or central to, a system of religious belief.*

g. Compelling Governmental Interest. *In the DoD, a military requirement that is essential to accomplishment of the military mission.*

4. POLICY. ~~The U.S. Constitution proscribes Congress from enacting any law prohibiting the free exercise of religion. It is DoD policy that:~~

a. ~~The Department of Defense~~ *The DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all. It protects the civil liberties of its personnel and the public to the greatest extent possible, consistent with its military requirements, in accordance with DoD Instruction (DoDI) 1000.29 (Reference (c)).*

*b. In accordance with section 533(a)(1) of Public Law 112-239 (Reference (d)), as amended, unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Military Departments will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures in this instruction. This does not preclude disciplinary or administrative action for conduct by a Service member requesting religious accommodation that is proscribed by Chapter 47 of Title 10, United States Code (the Uniform Code of Military Justice), including actions and speech that threaten good order and discipline.*

*c. DoD has a compelling government interest in mission accomplishment, including the elements of mission accomplishment such as military readiness, unit cohesion, good order, discipline, health, and safety, on both the individual and unit levels. An essential part of unit cohesion is establishing and maintaining uniform military grooming and appearance standards.*

*d. In so far as practicable, a Service member's expression of sincerely held beliefs (conscience, moral principles, or religious beliefs) may not be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.*

*e. ~~It is DoD policy that r~~Requests for religious accommodation ~~shall~~ *will* be resolved in a timely manner and ~~should~~ *will* be approved when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, *health and safety*, or any other military requirement. For requests for religious accommodation when accommodation would adversely affect mission accomplishment:*

*(1) In accordance with section 2000bb-1 of Title 42, United States Code (Reference (e)), requests for religious accommodation from a military policy, practice, or duty that substantially burdens a Service member's exercise of religion may be denied only when the military policy, practice, or duty:*

*(a) Furthers a compelling governmental interest.*

*(b) Is the least restrictive means of furthering that compelling governmental interest.*

*(2) Requests for religious accommodation from a military policy, practice, or duty that does **not** substantially burden a Service member's exercise of religion should not be evaluated under the standard established in paragraph 4e(1). Under these circumstances, the needs of the requesting Service member are balanced against the needs of mission accomplishment. Only if it is determined that the needs of mission accomplishment outweigh the needs of the Service member may the request be denied.*

*f. Requests for accommodation of religious practices will be resolved as follows:*

*(1) Immediate commanders may resolve requests for accommodation of religious practices that do not require a waiver of Military Department or Service policies regarding the*

*wearing of military uniforms, the wearing of religious apparel, or Service grooming, appearance, or body art standards.*

*(a) Jewelry bearing religious inscriptions or otherwise indicating affiliation or belief is subject to existing Service uniform regulations under the same standard that applies to jewelry that is not of a religious nature.*

*(b) Grooming and appearance practices are not included within the definition of religious apparel; however, such practices are subject to consideration for accommodation when the request is based on religious beliefs.*

*(2) Requests that **do** require such a waiver will be forwarded to the Secretary of the Military Department concerned (known in this issuance as the “Secretary concerned”) for decision. The Secretary concerned may delegate authority to resolve these requests no lower than:*

*(a) Army: Deputy Chief of Staff, G-1.*

*(b) Air Force: Deputy Chief of Staff for Manpower, Personnel, and Services.*

*(c) Navy: Chief of Naval Personnel and Deputy Commandant, Manpower and Reserve Affairs.*

*g. Service members submitting requests for accommodation of religious practices will comply with the policy, practice, or duty from which they are requesting accommodation, including refraining from beginning unauthorized grooming and appearance practices, wearing unauthorized apparel, or applying unauthorized body art, unless and until the request is approved.*

*h. In resolving requests for accommodation of religious practices, careful consideration of the effect, if any, of approval or disapproval on any compelling governmental interest is essential. Because the military is a specialized community within the United States, governed by a discipline separate from that of the rest of society, the importance of uniformity and adhering to standards, of putting unit before self, is more significant and needs to be carefully evaluated when considering each request for accommodation of religious practices. It is particularly important to consider the effect on unit cohesion.*

*i. All requests for accommodation of religious practices will be assessed on a case-by-case basis. Each request must be considered based on its unique facts; the nature of the requested religious accommodation; the effect of approval or denial on the Service member’s exercise of religion; and the effect of approval or denial on mission accomplishment, including unit cohesion.*

*j. Service members whose requests for accommodation of religious practices are approved will be informed of the specific elements of that approval. Specific elements will include that such approval does not apply for their entire military service commitment and that, at the*

*discretion of the Secretary concerned, new requests for the same accommodation are necessary upon new assignment, transfer of duty stations, or other significant change in circumstances, including deployment.*

5. RESPONSIBILITIES

a. ~~Principal Deputy Under Secretary of Defense for Personnel and Readiness Assistant Secretary of Defense for Readiness and Force Management.~~ The ~~Principal Deputy Under Secretary of Defense for Personnel and Readiness Assistant Secretary of Defense for Readiness and Force Management~~, under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, shall be responsible for the administration of this Instruction and may issue guidance implementing this Instruction, as appropriate.

b. Secretaries of the Military Departments. The Secretaries of the Military Departments shall issue appropriate implementing documents and administer the rules thereunder within their respective Departments consistently with this Instruction. *This includes:*

*(1) Designation of appropriate approval and disapproval authority.*

*(2) Final review will take place within 30 days for cases arising within the United States and within 60 days for all other cases, with strict limitations on exceptions for exigent circumstances.*

6. PROCEDURES. The enclosure contains procedures for accommodating religious practices in the Military Services.


7. RELEASABILITY. **Unlimited.** This Instruction is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction ~~is effective immediately.:~~

*a. Is effective February 10, 2009.*

*b. Must be reissued, cancelled, or certified current within 5 years of its publication to be considered current in accordance with DoDI 5025.01 (Reference (f)).*

*c. Will expire effective January 22, 2024 and be removed from the DoD Issuances Website if it hasn't been reissued or cancelled in accordance with Reference (f).*



Michael L. Dominguez  
Acting Under Secretary of Defense  
(Personnel and Readiness)

Enclosure  
Procedures

ENCLOSURE

PROCEDURES

1. In accordance with rules prescribed by the Secretary of the Military Department of the individual making the request for accommodation *of a religious practice*, military commanders should consider the following factors, in addition to any other factors deemed appropriate, when determining whether to grant a request ~~for the accommodation of religious practices~~, as addressed in section 4 of the front matter of this Instruction:

a. The importance of military requirements in terms of mission accomplishment, *including* military readiness, unit cohesion, *good order*, ~~standards, and~~ discipline, *health, and safety*.

b. The religious importance of the accommodation to the requester.

c. The cumulative impact of repeated accommodations of a similar nature.

d. Alternative means available to meet the requested accommodation.

e. Previous treatment of the same or similar requests, including treatment of similar requests made for other than religious reasons.

*f. If a waiver of current Service policy is required to approve a request, the decision authority rests with the Secretary concerned, delegable only to levels defined in paragraph 4b above the signature of this instruction.*

2. The factors described in this enclosure are intended to promote standard procedures for resolving difficult questions involving the accommodation of religious practices. In view of the different mission requirements of each command, individual consideration of specific requests for accommodation is necessary.

3. When *a* request for accommodation ~~are~~ *is* not ~~in the best interest of the unit approved~~, and continued tension between the unit's requirements and the individual's religious ~~beliefs practices~~ is apparent, administrative actions should be considered. ~~Those Based on the needs of the Military Service, administrative action that may be considered~~ include ~~but not limited to;~~ assignment, reassignment, reclassification, or separation. ~~Nothing in this Instruction precludes action under chapter 47 of title 10, United States code (Reference (c)), in the appropriate circumstances.~~

4. The guidance in this Instruction shall be used by the Military Departments in the development of implementing documents on the exercise of command discretion concerning the accommodation of religious practices.

a. Worship practices, holy days, and Sabbath or similar religious observance requests ~~shall~~ *will* be accommodated *to the extent possible consistent with mission accomplishment.* ~~except when precluded by military necessity.~~

b. Religious beliefs shall be included as a factor for consideration when granting separate rations.

c. Religious beliefs shall be considered as a factor for the waiver of required medical practices, subject to military requirements *including and* medical risks to the unit.

d. Familiarization with religious accommodation policies shall be included in the training curricula for command, judge advocate, chaplain, and other appropriate career fields or assignments.

e. Applicants for commissioning, enlistment, and reenlistment shall be advised of their Military Department's specific religious accommodation policies.

5. In accordance with section 774 of Reference (*eg*), members of the Military Services may wear items of religious apparel while in uniform, except where the items would interfere with the performance of military duties or the item is not neat and conservative. The Military Departments shall prescribe regulations on the wear of such items. Factors used to determine if an item of religious apparel interferes with military duties include, but are not limited to, whether or not the item:

a. Impairs the safe and effective operation of weapons, military equipment, or machinery.

b. Poses a health or safety hazard to the Service member wearing the religious apparel and/or others.

c. Interferes with the wear or proper function of special or protective clothing or equipment (e.g., helmets, flak jackets, flight suits, camouflaged uniforms, *gas protective* masks, wet suits, and crash and rescue equipment).

d. Otherwise impairs the accomplishment of the military mission.

6. Religious items or articles not visible or otherwise apparent may be worn with the uniform provided they shall not interfere with the performance of the member's military duties, as discussed in paragraph 5 of this enclosure, or interfere with the proper wearing of any authorized article of the uniform.

7. A complete ban on wearing any visible items of religious apparel may be appropriate under circumstances in which the Service member's duties, the military mission, or the maintenance of discipline require absolute uniformity. For example, members may be prohibited from wearing visible religious apparel while wearing historical or ceremonial uniforms; participating in review formations, parades, honor or color guards, and similar ceremonial details and functions.

8. The standards in paragraphs 5, 6, and 7 of this enclosure are intended to serve as a basis for determining *whether* a member's ~~entitlement request~~ to wear religious apparel with the uniform *should be approved*. For example, unless prohibited by paragraph 5, 6, or 7 of this enclosure, a Jewish yarmulke may be worn with the uniform whenever a military cap, hat, or other headgear is not prescribed. A yarmulke may also be worn underneath military headgear as long as it does not interfere with the proper wearing, functioning, or appearance of the prescribed headgear, under paragraph 6 of this enclosure.

9. Notwithstanding any other provision in this Instruction, chaplains may wear any required religious apparel or accouterments with the uniform while conducting worship services and during the performance of rites and rituals associated with their religious faith.

~~10. The authority to approve the wearing of an item of religious apparel with the uniform, under the guidelines of this Instruction, shall be exercised at the command level specified by each Military Department. Denials of requests to wear religious apparel shall be subject to review at the Service Headquarters level. Final review shall occur within 30 days following the date of initial denial for cases arising in the United States, and within 60 days for all other cases. Exceptions to these deadlines shall be limited to exigent circumstances. Service members shall be obliged to comply with orders prohibiting wearing questionable items of religious apparel pending review of such orders under regulations issued by the Secretaries of the Military Departments. In evaluating religious accommodation requests for the wear of body art, whether or not the body art is neat and conservative, and the location of the body art, as it relates to being visible while wearing the military uniform, should be considered. When evaluating religious accommodation requests regarding grooming (e.g., hair length and styles) and body art, factors to consider include whether approving the accommodation would:~~

- ~~a. Impair the safe and effective operation of weapons, military equipment, or machinery.~~
- ~~b. Pose a health or safety hazard.~~
- ~~c. Interfere with the wear or proper function of special or protective clothing or equipment.~~
- ~~d. Otherwise impair discipline, morale, unit cohesion, or accomplishment of the unit mission.~~

11. Nothing in this guidance or in the Military Department documents authorized by section 4 of this enclosure (except when expressly provided therein) shall be interpreted as requiring a specific form of accommodation in individual circumstances.

# **EXHIBIT 24**

15-032 Update.txt

%%  
201700 April 2015 (EST) USAREC MESSAGE 15-032  
%%  
From: Headquarters USAREC  
To: All Recruiting Personnel

SUBJECT: Religious Accommodation Exceptions to Policy.

1. The religious practice accommodation language on the enlistment annex has been changed to allow for possible exceptions to policy to the wear and appearance of uniform, personal appearance, and personal grooming practices outlined in AR 670-1.

2. Applicants seeking an exception to policy (ETP) must enter into the DEP/DTP (Future Soldier Training Program-FSTP). The following criteria will be adhered to:

- a. DEP/DTP period will be a minimum of 180 days to allow for ETP processing time.
- b. Future Soldiers (FS) will not be shipped to training and or an assignment if the ETP is pending.
- c. Recruiting personnel will not promise that the ETP will be approved and will not advise applicants that they must ship to training if their ETP is not favorably approved.
- d. If ETP is not favorably approved, the FS has the option to ship as scheduled and agree to comply with AR 670-1 or request discharge from the DEP/DTP.

3. ETPs will contain and be routed as follows:

- a. Handwritten or typed statement from the FS requesting an ETP and their reason for the request.
- b. Company Commander memorandum which will contain the FS's identifying information and the reason the ETP is being requested.
- c. Brigade Chaplain memorandum; the BDE chaplain will talk face to face or via phone with the FS about the exception. The memorandum will address the religious basis and sincerity of the Soldier's request.
- d. Battalion Commander endorsement.
- e. Brigade Commander endorsement.
- f. The completed exception packet will be submitted to HQ USAREC via exception workflow titled "Religious Accommodation Exception".
- g. USAREC Commander will complete an endorsement and submit to TRADOC Commander for an endorsement before being submitted to Army G1 for decision.
- h. workflow approval/disapproval will serve as final proof of the status of the exception

4. Folders in ERM have been established, memorandums will be scanned in under CORE ADMIN as follows:

- a. Future Soldier Statement Religious Accommodation Exception

- b. Company Commander Memo Religious Accommodation Exception
  - c. BDE Chaplain Memo Religious Accommodation Exception
  - d. BN Commander Endorsement Religious Accommodation Exception
  - e. BDE Commander Endorsement Religious Accommodation Exception
  - f. USAREC Commander Endorsement Religious Accommodation Exception
5. HQ USAREC will contact the BDE with the results of the final decision. The BDE will be responsible to notify the BN and FS.
6. References:
- a. Department of Defense Directive 1300.17, incorporating change effective 22 January 2014, Accommodation of Religious Practices Within the Military Services.
  - b. AR 601-210, Active and Reserve Components Enlistment Program, dated 8 February 2011 with Rapid Action Revision (RAR) dated 12 March 2013.
  - c. AR 670-1, Wear and Appearance of Army Uniforms and Insignia, dated 20 April 2015.
  - d. AR 600-20, Army Command Policy, dated 6 November 2014.
  - e. AR 165-1, Army Chaplain Corps Activities, dated December 2009.
  - f. UR 601-210, Enlistment and Accessions Processing, dated 01 March 2015.
7. POC for this message through your chain of command is EEPD, Policy Branch, RCRO-EPP at (800) 688-9203 ext 3.

Jeffrey C. Denius, COL, GS, Assistant Chief of Staff, G-3  
%%%

# **EXHIBIT 25**

# A Preliminary Report on the wear and display of the Sikh Turban in the U.S. Army

July 2010

Captain Kamal S. Kalsi  
Doctor of Emergency Medicine  
Subspecialty: EMS / Disaster Medicine

[kamal.s.kalsi@us.army.mil](mailto:kamal.s.kalsi@us.army.mil)

# Sikh Turban Uniform Guidelines

- The purpose of this presentation is to share basic guidelines for the wear and display of Sikh turbans with Army uniforms.
- The information contained in this brief is compiled from general practices of Sikhs that have served in the U.S. Armed forces as well as well established Sikh military uniform guidelines from countries such as Canada, Britain, and India.
- We will also briefly review historical references of Sikhs serving in the military in order to establish some background for these guidelines.
- This is not meant to be a comprehensive overview, but additional details regarding any aspect of this brief are readily available.

# Sikhs in the Army

- ▶ Sikhism is one of the world's youngest major religions, approximately 300 years old, with roots in what is present-day India.
- ▶ Sikhs are monotheistic and are required to wear a turban and maintain unshorn hair by their faith.
- ▶ Over the next several slides, we will review photos and historical references of Sikh soldiers in the army.
- ▶ These photos depict the wear and use of turbans in a variety of settings.



## Bhagat Singh Thind – 1918, U.S. Army >>

Bhagat Singh Thind was recruited on July 22, 1918 by the US Army to fight in World War I. Months later he was promoted to the rank of an Acting Sergeant. Bhagat Singh maintained all of the required Sikh articles of faith, competently completing all duties of a soldier. Bhagat Singh received an honorable discharge on December 16th, 1918 with a character designation of "excellent".



## Sikh Soldiers, Paris, France – WWII >>

“In the last two world wars 83,005 turban wearing Sikh soldiers were killed and 109,045 were wounded. They all died or were wounded for the freedom of Britain and the world and during shell fire, with no other protection but the turban, the symbol of their faith.” - General Sir Frank Messervy KCSI, KBE, CB, DSO



Sikhs guarding the streets of Jerusalem >>



## Winston Churchill >>

Winston Churchill is seen above congratulating Sikh soldiers during WWII for a job well done.



## Sikh Soldiers, Monte Cassino, Italy – WWII >>

Sikhs seen marching in Italy during a grueling war effort.



Sikh soldiers serving with Allied Forces WW II



## Sergeant Kirnbir Grewal, U.S. Army

Army Sergeant Kirnbir Grewal served in the U.S. Army from 1977-1984. He entered the Army as a Private and left at the E6 level as a Nuclear, Biological, and Chemical NCO (Staff Sergeant). During his tenure, his Sikh articles of faith were never an issue. While in Germany, he taught companies how to survive a nuclear and biological warfare attack using protective gear.





## Sergeant Sevak Singh Kroesen, U.S. Army

Sergeant Sevak Singh Kroesen enlisted in the U.S. Army reserves in 1976 and was attached to the Signal Company, 11th Special Forces Group after which he successfully completed airborne (paratrooper) and Radio Teletype Transmission Operator training. He then completed his Special Forces Qualification Courses and became a Special Forces Communications Sergeant while maintaining his Sikh articles of faith. Sergeant Kroesen subsequently completed his training and missions around the world all with honor and distinction. He was honorably discharged from active duty in 1991.





## COL G.B. Singh, U.S. Army

Colonel G.B. Singh enlisted as a dentist in the U.S. Army in 1979 and served until 2007. During his 28 year tenure, he was awarded several honors including the (A) Prefix, the highest award a medical professional can receive while in the U.S. Army. Colonel Singh was stationed in several areas in the U.S. as well as Korea. Colonel Singh recalls the camaraderie and life-lasting bonds he forged with the members of his unit. He remains in contact with many of them. His articles of faith never precluded him from creating strong relationships within the Army, and his superiors never treated him differently.





## COL Gopal Singh Khalsa, U.S. Army Reserve

Colonel Gopal Singh Khalsa joined the U.S. Army in 1976 as a Private, and served in the Special Forces Unit for 10 years on Parachute Status, as a Battalion Commander overseeing an 800-person intelligence group, and also received a Meritorious Service Medal with Silver Oak Leaf Cluster Award, amongst many other honors. He is a graduate of the Army Officer Candidate School in Georgia, and was inducted into the Officer Candidate School Hall of Fame in 2004. Colonel Khalsa currently remains in the reserve command, and has therefore served in the U.S. Army for 33 years.





## COL Arjinderpal Singh Sekhon, U.S. Army

COL Arjinderpal Singh Sekhon, a medical doctor, served in the army from 1984 to 2009. During his 25 years of commissioned service, Colonel Sekhon was stationed in many posts around the country. During the First Persian Gulf War, he was called to active duty. He rose through the ranks to Colonel and was given a Battalion Commander position. He was decorated with various awards including a Presidential Unit Citation, Joint Meritorious Unit Award, and an Army Flight Surgeon Badge. During his time of service, COL Sekhon's articles of faith never impeded his success. His Sikh identity never interfered with his ability to create strong relationships with his fellow service members.



## CPT Tejdeep Singh Rattan, U.S. Army >>

Cpt. Tejdeep Rattan was recently promoted to Detachment Commander of U.S. Army Dental Activity at Ft. Drum in 2010. He is pictured here in his official chain-of-command photograph wearing a black turban and ACUs.

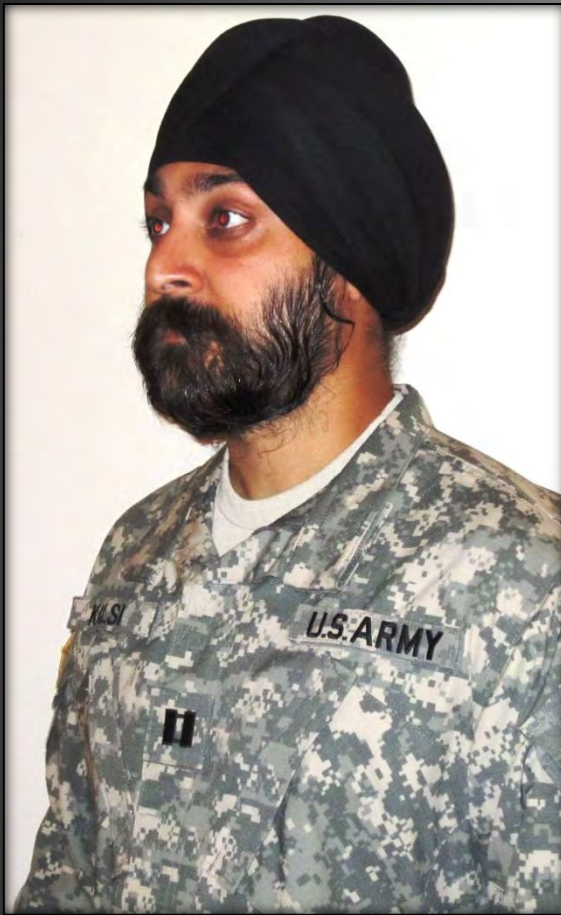
# Sikh Turban Uniform Guidelines

- ▶ Turbans and their appropriate wear with the following uniforms will be shown over the next several slides:
  - ACU
  - Dress Blues
  - Army Physical Fitness Uniform
  - ACU field uniform



## ACU uniform and Army Dress Blues. >>

The black turban is shown above for wear with the ACU uniform. The black turban is also the standard turban for wear with the Army's Dress Blue uniform as well. The beard is tied at the bottom to present a neat and clean appearance.



## ACU Garrison uniform under cover. >>

The material for the turban is a low-thread count, thin cotton material. This material is readily available. The cost of a standard turban can range anywhere from 10 to 25 dollars. Sikhs are also required to wear a steel/iron bracelet on their dominant arm as an article of their faith.



## ACU Garrison uniform under cover. >>

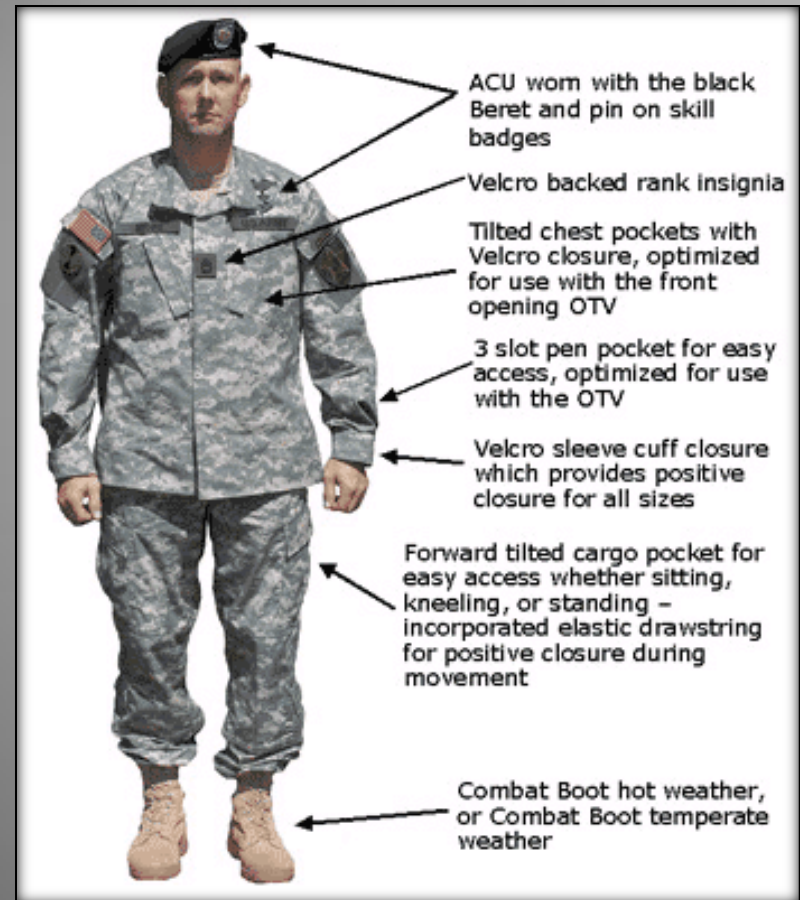
The actual turban length and width can vary from person to person depending on the size of their head - similar to different cap sizes. Typically, a turban is about 5 meters long and 1 to 2 meters wide.



## ACU Garrison uniform under cover.

The head hair is neatly tied at the top and completely covered by the turban as seen in the images above.





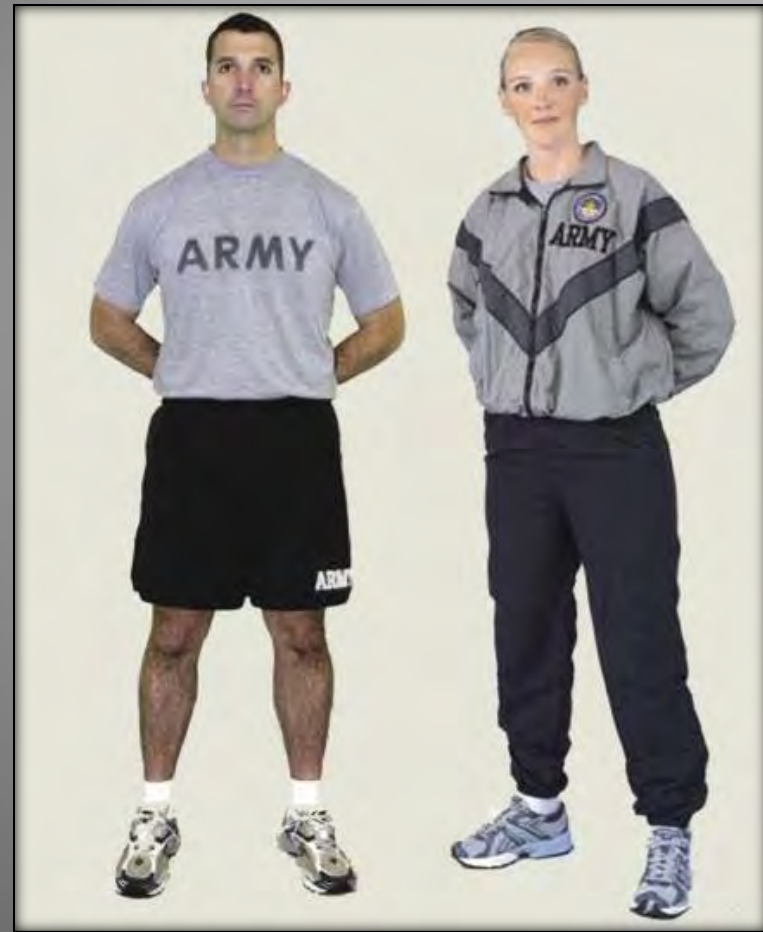
## ACU Uniform – outdoors. >>

The black turban with flash seen above is for wear that is consistent with wear of the Army black beret. The flash is easily and quickly applied to the turban or removed whenever necessary.



## ACU Uniform with black turban and flash >>

The flash is just as easily removed and tucked away in a pocket. The flash is essentially affixed in the middle of 3 pieces of cloth. One tucks in atop the turban, and the other two wrap around each side of the turban and tuck in around the back, blending in with the turban. This item is easily produced for about \$5



## Army Physical Fitness Uniform >>

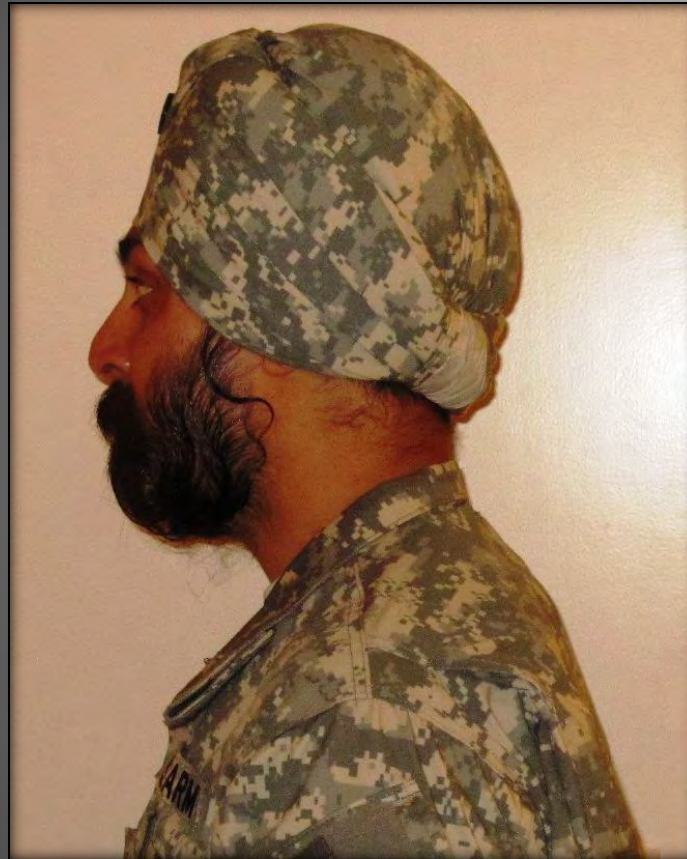
The Army Physical Fitness Uniform can be worn with either the full black turban as shown on prior pages or with a smaller, bandana-type turban known as a “patka.”



## ACU Uniform in the field setting.

Shown above is an ACU material patka designed for the field setting. This smaller design easily accomodates a helmet as well as a gas mask when needed. I have personally been fit tested with a gas mask and am able to form a tight seal. The subdued rank can be pinned or stitched to the front. ACU material can be purchased via special order from most posts at \$10 / yard. Based on this and stitching costs, the field patka would cost less than \$10 to produce.





## ACU field turban. >>

This is the field or tactical turban which is to be consistent with the wear and use of the field cap. It is also made of ACU material, but is significantly different from regular turbans in the shape and size of the material. The subdued rank can be pinned to the front as needed and removed easily as well.



## ACU field turban. >>

I can provide you with a sample turban and its design specifications. It is a diamond shape, tapering at the ends, and based on the \$10 / yard that I paid for the ACU material, costs about \$50 / turban to produce including the stitching.



## ACU field turban. >>

Sikhs have a strong warrior tradition that stems from their dedication to social service. The turban has served in battle for the Allied Forces in every major world war, including the conflicts of Korea and Desert Storm. This presentation is the first step towards a uniform guideline and policy that will help standardize the wear and display of Sikh turbans with Army uniforms. Please do not hesitate to contact me for further information. Thank you.

# **EXHIBIT 26**

# Sikh Soldiers allowed to serve, retain their articles of faith

March 25, 2010

By Steve Elliott



Like 31 people like this. Be the first of your friends.

### Story Highlights

- The Army does allow personnel to request waivers on a case-by-case basis
- Rattan completed the nine-week Basic Officer Leadership Course at Camp Bullis
- He'll report to Fort Drum in upstate New York, April 12 for an assignment as a dentist



FORT SAM HOUSTON, Texas (March 25, 2010) -- For the first time in 23 years, the U.S. Army is allowing a pair of Sikh Soldiers to keep their hair and beard intact and wear a turban.

More than 60 years ago, President Harry Truman desegregated the U.S. armed forces, declaring "there shall be equality of treatment and opportunity for all persons in the armed forces without regard to race, color, religion or national origin."

But during those same six decades, the Army's policy and how it was implemented changed from time to time.

From 1948 to 1984, men of the Sikh religion were permitted to serve while maintaining their articles of faith. In 1984, Gen. John A. Wickham Jr., then Chief of Staff of the Army, eliminated the exception for Sikhs and others who wore "conspicuous" items of faith.

Sikhs who were previously serving on active duty were grandfathered in by the Army. Two Sikhs in the medical field, Col. Arjinderpal Singh Sekhon, a doctor, and Col. G.B. Singh, a dentist, continued to serve until their retirements in 2009 and 2007, respectively, according to the Sikh News Network Web site (<http://www.sikhnn.com>).

Capt. (Dr.) Tejdeep Singh Rattan, a dentist, and Capt. (Dr.) Kamaljeet Singh Kalsi, a

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doctor, were assured by their recruiters at the time of enlistment several years ago that their articles of faith wouldn't pose a problem. But after completing four years of studies, both men were told to remove their turbans and cut their hair and beards for active duty.

It took action by several Sikh organizations and a letter to Defense Secretary Robert Gates, signed by 43 members of the House of Representatives and six U.S. senators, to change the Army's mind. A pair of special exceptions to Army Regulation 600-20 were allowed so Rattan and Kalsi could wear their dastaars (turbans) and keep their unshorn hair and beards as part of their uniform, and also retain their other articles of faith.

"Based on a review of these standards and the specific facts of your case, I am granting your appeal to wear a beard, uncut hair and turban in keeping with the tenets of your faith," wrote Maj. Gen. Gina Farrisee, acting deputy chief of staff for Army personnel, in a Dec. 1 letter to Rattan. "Your beard, uncut hair and turban will be neat and well maintained at all times."

The Army does allow personnel to request waivers for practices that may conflict with current Army regulations and policies and are considered on a case-by-case basis.

Considerations include the impact on the health, safety and welfare of all Soldiers; and impact on order and discipline of the force. The Army decided in these two cases that the Sikh articles of faith would not affect "unit readiness, individual readiness, unit cohesion, morale, discipline, safety and/or health," according to Farrisee's letter.

Rattan completed the nine-week Basic Officer Leadership Course at Camp Bullis, Texas, March 19, and graduated with his class at Fort Sam Houston, March 22. He'll report to Fort Drum in upstate New York April 12 for an assignment as a dentist. Kalsi, who attended Rattan's graduation begins the BOLC course in July, after completing an emergency medicine fellowship.

But the story behind Rattan's journey through the military Health Professions Scholarship Program and into the Army's corps of officers sheds light on a little-known change in Truman's promise that has virtually prevented an entire generation of Sikhs from serving in the United States armed forces.

Practicing Sikhs have served in the armed forces since World War I, and the ruling in 1984 which effectively disallowed Sikhs to join was due to alleged health and safety hazard of their turban and uncut hair.

Aided by the Sikh Coalition (<http://www.sikhcoalition.org>), Kalsi and Rattan appealed the Army policy because of religious convictions. They were joined by the Sikh Council on Research and Education, Sikh American Legal Defense and Education Fund and United Sikhs. Thousands of Sikhs and other sympathetic supporters signed petitions on their behalf.

To put their faith into perspective, there are 25 million Sikhs worldwide, making it the fifth largest religion after Christianity, Islam, Buddhism and Hinduism, and has been in existence for more than 500 years.

"History portrays Sikhs as warrior-saints and I believe that is what Sikhs are. That's what our life is all about," said Rattan, who proclaimed, "I am a Sikh warrior!" after he exited the gas chamber during nuclear, biological and chemical phase of his training. "It is what the Holy Book (the Sri Guru Granth Sahib) teaches us."

"There is a line in the Sri Guru Granth Sahib that translates to 'Good for all,' which means that all men are my brothers. If something happens to them, I must go and protect them," Rattan explained.

"That's what a lot of the Sikhs did after the events of Sept. 11, 2001. They left their jobs - many were doctors and dentists - and went to ground zero and they helped. But people looked down upon them because they thought they looked like Muslims. That's something which I am here to remedy, and to educate and to serve."

Organizations like the Sikh Coalition, which has offices in New York and San Francisco, were founded in response to bias and prejudice against Sikhs in the aftermath of 9/11.

Many Sikhs have been misidentified as Muslim extremists because their dress is similar to those who follow Osama bin Laden, according to the United Sikhs Web site (<http://www.unitedsikhs.org>).

Many Sikhs have been harassed, assaulted, or even killed, said Harsimran Kaur, the Sikh Coalition's legal director. Sikhism bears no resemblance to fanatical Islamic sects, and Sikhs believe in the equality of all human beings, regardless of gender, religion, race, or social status, she said. Many Muslims have also been victimized in North America and Sikhs strongly denounce any violence or discrimination towards others of different faiths, she added.

"We absolutely applaud the Army's decision to grant the exceptions. We look forward to the day all Sikhs can serve their country without any exceptions for their articles of

faith," Kaur said. "There have been instances of private and government law enforcement agencies justifying the refusal to hire Sikh applicants because the military didn't accept them."

"The exceptions are a step in the right direction. It's an indication that they are open to Sikhs to serve," she added. "The impact of this decision is huge. We hope we can turn things around and show that we're not second-class citizens."

Sikhs wear the articles of faith to unify and bind them to the beliefs of the religion and to remind them of their commitment to the Gurus at all times, according to the Sikh Coalition Web site.

"Sikhs have served in the Army in World War I and II, in Korea and Vietnam with incredible distinction," Kaur said. "The articles of faith have never been an issue before. The principles of our religion are democracy and freedom, just like those of the United States."

Observant Sikhs have a long history of serving in armed forces throughout the world, according to the Sikh News Network Web site. During World War I, Bhagat Singh Thind was the only Sikh Soldier in the U.S. Army to serve in combat duty. More than 80,000 Sikh soldiers died fighting for the Allied Forces during the World Wars. Today, Sikhs serve in the militaries of India, England, Canada, Austria and the United Nations, among others.

"In the recent history of the U.S. Army, there were two Sikh gentlemen - Cols. Sekhon and Singh - who were allowed to serve with their articles of faith, and just retired as full colonels last year," Rattan said. "These gentlemen were able to achieve some of the highest ranks in the U.S. Army. If they were able to do it for all this long time, I felt I should be able to as well."

While Rattan was in training, even instructors and classmates who were skeptical at first were won over by his drive and will to do his best.

"As a commander, I knew someone was coming to me with an exception. I was curious how it would fit with the standards of the regulation," said Capt. John Lopez, commander, Company A, 187th Medical Battalion. "From Day one, Captain Rattan has been an ideal individual. He has spent hundreds of dollars in finding or creating headgear that conforms with his exception."

"He has done everything in his power to keep within the regulation (AR 160-1), and I sometimes have a hard time getting other Soldiers to follow it," Lopez said. "Rattan is going leaps and bounds beyond what others have had to do to keep within the regulation. There have been other people here who have had to be counseled or threatened with being removed from the course to get them to comply."

"Officers should be the standard bearers for the regulation and the Army," Lopez added.

"Sometimes you get those in the medical field that think they are privileged and think they are above the regulation. But then you get officers like Rattan who try their hardest and go above and beyond. I wish some other Soldiers had the personal pride and willingness to go the extra mile as he does, so those young Soldiers have someone to look up to, rather than have someone they talk about behind their back."

"When I first got to Camp Bullis, I was quite anxious, but I was looking forward to this experience," Rattan added. "This is actually very important for the Sikh community. The reason I am here is to serve, as well as educate. When my little kids grow up, if they want to serve in the Army, they can and they will have the safety to serve. Maybe my elders won't be assaulted when they walk down the street."

"I was not born in the United States, but it is my home and I am an American," said Rattan, who was born in Amritsar, the home of the Sikh's sacred Golden Temple in the Punjab state of India.

"Our country was built by people like me, from different parts of the world, from different races and religions. I hope my desire to serve in the U.S. Army shows my commitment to my country. I am willing to lay down my life for America. I ask only that my country respect my faith, an integral part of who I am. My turban and beard are not an option, they are an intrinsic part of me."

"I already have a responsibility to my faith and I have taken on this additional responsibility of being an Army officer," the 31-year-old captain added. "I get up at 3 a.m. every morning - while others are sleeping until 5 a.m. - to try and groom myself so the standards of the military are being met."

During the BOLC course, the captain was easily able to wear his Kevlar helmet over a custom-made Army Camouflage Uniform turban with rank insignia he had created and paid for himself.

Rattan also worked with an Army tailor to create a flash, or insignia patch, which is worn on Soldiers' berets, and could be attached to his usual black turban with Velcro.

"I was told there were two challenges to allow Sikhs in the military. The first was that we could not put the Kevlar helmet on our heads, which I do every day," the captain said. "The second thing was fitting the gas mask properly."

My uncle, who was in the Indian Army, said he had no problem with that while was engaged in jungle warfare. He said he put some Vaseline in his beard, which kept the ticks away, and it sealed every single time."

Rattan said there are many Sikhs who strongly desire a chance to serve in the military.

"I recently went to the San Antonio temple, which is called a gurdwara, and the kids gathered around me because I was in my uniform," he said. "They were curious to know, 'How did you do it' Why did you do it'"

"Those kids wanted to do the same thing I did. They were curious, they wanted to see pictures, they wanted to see me dressed in my Army uniform, they wanted to see everything," Rattan said.

"That was a big motivation for me to come back and do the second week of training. These are not emotions talking, this is my goal. I would like to see a Sikh general someday in the U.S. armed forces."

"As soon as we have more and more Sikhs join the military, the citizens of this country will see us serving, they'll see us doing everything a Soldier does, and see our loyalty for this country," the captain said. "I think it'll improve over time as people get educated, ask questions. Information about Sikhs needs to trickle down to everyone, and by Sikhs being in the military and in other areas, we can do this."

Ending discrimination in the U.S. Army sends a message to all other employers, both private and public, that discrimination against Sikhs who maintain their articles of faith is not acceptable, said the Sikh Coalition.

Though Sikhs have approached several police and sheriff's departments for jobs, they are often told that if Sikhs cannot serve as U.S. Soldiers, they cannot serve as police officers either, the coalition said.

Most importantly, over the long term, the coalition added, equal participation of Sikhs in all of society's institutions, including the Army, will go a long way towards reducing the prejudice Sikhs often face in schools and on the streets.

"I've made a lot of friends here and this is home for me - home away from one home, which I definitely look forward to someday returning to," Rattan said. "I want to go to the Golden Temple since I was born near there, but the United States is my home."

"I am overjoyed to serve my country and work with my fellow Soldiers, and to have completed basic training," Rattan added.

"Most importantly, in preparation for my work as a Soldier, I was able to successfully complete all aspects of my initial training. I had an overwhelmingly positive experience. I am very thankful to the post command, Army leadership and my fellow Soldiers. I look forward to continuing to serve my country."

"During my several conversations with Captain Tejdeep Singh Rattan I have found him to be professional, enthusiastic and dedicated to his profession - as an Army Dental Corps officer and a Soldier," said Maj. Gen. (Dr.) Russell Czerw, commanding general of Fort Sam Houston and the Army Medical Department Center & School and also Chief of the Army Dental Corps. "I have no doubt of his passion for taking care of Soldiers and commend him for his desire to serve his country."

"I have the utmost confidence that Rattan, or someone like him, is going to go on to do great things, no matter where they go," Lopez said.

"The only struggle is that when some people get their first look, they are going to stereotype him. That is the good thing about having Rattan out there, to show that this is a proud individual, he knows what he is doing and he's doing a phenomenal job. I'd go to battle with him."

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Page last updated Thu March 25th, 2010 at 11:32

# **EXHIBIT 27**

**Statement for the Record from Major Kamaljeet Singh Kalsi**  
**House Armed Services Committee**  
**Subcommittee on Military Personnel**  
**U.S. House of Representatives**  
**Hearing on Religious Accommodations in the Armed Services**  
**January 29, 2014**

---

My name is Major Kamaljeet Singh Kalsi. I am grateful for the opportunity to submit this statement and respectfully request its inclusion in the official hearing record. In 2009, the U.S. Army made history by granting me an accommodation to maintain my religiously-mandated turban, unshorn hair, and beard while serving as a proud American Soldier. I am enclosing my written statement from a May 2013 hearing organized by the U.S. Commission on Civil Rights, where I discussed my successful deployment to Afghanistan; the successful accommodations and achievements of fellow Sikh American Soldiers Captain Tejdeep Singh Rattan and Corporal Simran Preet Singh Lamba; and our collective efforts to overcome the presumptive ban on Sikh articles of faith in the U.S. military.

On January 22, 2014, the U.S. Department of Defense issued revisions to Instruction Number 1300.17 (*Accommodation of Religious Practices Within the Military Services*). Although the revisions are a step in the right direction for recognizing the importance of religious liberty to our nation's Soldiers, the Instruction still retains a presumptive ban on Sikh articles of faith in the U.S. military and may therefore have a chilling effect on religious liberty for aspiring Sikh American Soldiers.

I hope that the Instruction is fine-tuned and implemented in ways that give Sikh Americans a fair chance to serve in the U.S. military. Sikhs are not asking for a blank check, but we believe the Instruction can be significantly improved in ways that respect both military necessity and religious liberty. My Sikh articles of faith did not prevent me from excelling as an American Soldier. If a Sikh American Soldier can graduate from boot camp; comply with requirements relating to helmets and protective masks; and promote unit cohesion by performing military duties with excellence, we should not force that American Soldier to choose between religious liberty and a military career. Thank you for your consideration.



**DEPARTMENT OF THE ARMY**  
WOMACK ARMY MEDICAL CENTER  
FORT BRAGG, NORTH CAROLINA 28310

REPLY TO  
ATTENTION OF

31 May 2013

MEMORANDUM FOR RECORD

**SUBJECT: Personal Statement<sup>1</sup> Before the United States Commission on Civil Rights**

I am thankful to the United States Commission on Civil Rights for providing me this opportunity to appear before you today.

I also applaud the Commission for seeking to protect the civil rights of those who like me proudly serve and have served the military of our great country.

My name is Major Kamaljeet Singh Kalsi. I was born into a family with three generations of military service before me and raised to cherish loyalty, duty, respect, service, honor, integrity and courage as a citizen in the United States of America. I began my career in the U.S. Army as a First Lieutenant in 2001, and continue to serve with tremendous pride. I am presently on active duty as the Emergency Medical Services Director at Fort Bragg in North Carolina. After two deployments, I am also the grateful recipient of the Bronze Star Medal for my service in Afghanistan.

While my experiences as a service member are among the most exhilarating and memorable experiences of my life, my journey to service had its share of challenges.

In 2009, the United States Army made history by granting me and another Sikh American soldier, Captain Tejdeep Singh Rattan, an accommodation to maintain our religiously-mandated turbans, unshorn hair, and beards while serving the country we love. It was the first-time in over a generation that a new Sikh American soldier had been granted such an accommodation.

<sup>1</sup> The views expressed herein represent only my personal view and not the views of the Department of Defense, the Department of the Army or Womack Army Medical Center. I am the point of contact for this memorandum.

At first, I was told that I could not serve my country unless I gave up my Sikh articles of faith pursuant to a US military policy that existed since 1981. Led by the Sikh Coalition, it took over 15,000 Americans to petition the Army and support from over 50 Members of Congress before my request for accommodation was granted.

Thankfully and wisely, our military looked to the military of our allies in Great Britain, Canada, and India, who all accommodate Sikh soldiers, for guidance. The military also reviewed the previous history of Sikh service in our military. Since the early 1900's, Sikhs have served honorably and with distinction in the U.S. military. In fact, more than 80,000 Sikh soldiers died fighting alongside allied forces during the World Wars before we reversed course as a country and closed the door on Sikh American service in 1981.

Army officials asked smart and pragmatic questions about the Sikh faith. They learned that Sikhs have a glorious and storied tradition of military service throughout the world that is tied uniquely to our articles of faith. They also learned that Sikh soldiers can wear helmets and make airtight seals with gas masks.

In short, as we all expect since its mission is so sacred, our military did their homework. As result in 2009, while our military did not open its doors to all patriotic Sikhs, it at least opened its doors to me and Captain Rattan, allowing us to maintain our Sikh articles of faith while serving the country we love.

I would humbly say that it was the right decision and I believe my fellow soldiers, as detailed in the over a dozen attached letters of support, would agree.

On my first day of active duty at Officer Basic Training in July 2010, the Sergeant Major assembled us in formation, pulled me out to stand beside him facing my fellow soldiers and told us that the Army comes in "many shades of green." He then asked if there was a single soldier amongst the hundreds that were there who did not feel the same way. This was the first real test of unit cohesion or *esprit de corps* that I had encountered. Everyone applauded in support.

After training, I deployed to Afghanistan in January 2011 as the Officer-in-Chief of a tented Emergency Room in Helmand province. I also served as the Chief of Disaster Medicine for our entire Forward Operating Base.

[Type here]

During my tour in Afghanistan, I personally treated over 750 combat casualties and local nationals who suffered from IED blasts, gunshot wounds, and other emergent conditions. I also successfully resuscitated back to life two patients that were clinically dead on arrival, but I remember one particular soldier whose story I would like to share with you.

Let's call him Joe. Our medics radio in that they are bringing in a Marine from an IED blast just outside our main gate. The insurgents had taken advantage of a recent dust storm to bury IEDs all around us. They rushed him into our Emergency Room tent. He was breathing, but was bleeding badly from multiple shrapnel wounds. He was dazed but was able to converse. We worked on him for the next two hours, ordering tests, removing shrapnel, suturing wounds, and stabilizing his vitals. When he was ready for transfer to the admitting wards, our medics began wheeling him away. Joe grabbed my hand with tears in his eyes and said "Thank you brother." That is one of many moments during my service in Afghanistan that I will never forget.

I can tell you with 100% assurance that none of my fellow soldiers or patients could care less that I was wearing a turban or had a beard while I was treating their wounds. All that mattered was whether I was an asset to our mission. Based on my Bronze Star Medal citation which commends my "leadership and dedication to duty" as being "instrumental to the unit's mission during combat operations," I would humbly submit that I was, in fact an asset to our mission.

Like me, Captain Rattan also served in Afghanistan. He received an Army Commendation Medal and a NATO Medal for his service. And in 2010, the US Army agreed to individually accommodate an enlisted Sikh soldier, Specialist Simran Preet Singh Lamba. Together the three of us are the only new Sikh Americans that our military has agreed to accommodate in a generation.

Both Captain Rattan and Specialist Lamba would agree with me that our Sikh articles of faith not only do not interfere with our duties, but are in fact an invaluable asset to our military because their accommodation projects our country's values of freedom and pluralism to the world.

[Type here]

I have been on active duty at Fort Bragg since September 2010. I am currently the Medical Director for the Department of Defense's largest stateside Emergency Medical Services (EMS) system, comprised of over 500 first responders, EMS, police, fire and dispatch agencies. While I'm a bit bashful with making this public, my latest Officer's Evaluation Report states that I have displayed:

“Truly exceptional performance from a tireless Emergency Medicine Physician, scholar, mentor and soldier. MAJ Kalsi works tirelessly to promote academic and clinical excellence. He has been published in premier literature and has lectured at national level conferences. His leadership as Chief of the busiest Ambulance Service in the DoD has been phenomenal, and led to dramatic improvements in the quality and standardization of prehospital care across DoD's largest troop concentration.”

While I am grateful for these generous words and even more grateful for the opportunity to serve, it troubles me that my accommodation and that of other Sikh soldiers are simply individual accommodations.

Despite the successful and patriotic service of myself, Captain Rattan, and Specialist Lamba, the rule remains that Sikh Americans cannot serve our military without giving up their articles of faith. I would add here that even the accommodations Captain Rattan, Specialist Lamba, and I have received are not permanent. Despite our service and loyalty, we must reapply for an accommodation every time we are assigned to a new unit or base.

The time has come and passed for our military to openly embrace those Sikhs who want to serve our country by removing the rules that presumptively exclude them.

By making this call to end the presumptive ban on Sikh military service, let me make clear that I would never advocate for anything that would put my fellow soldiers in harm's way. If Sikhs could not wear helmets or gas masks when required, I would never call on my military to accommodate Sikh American soldiers. But that is simply not the case. Sikh soldiers have served on special forces teams. They have jumped out of airplanes as paratroopers, and have deployed in far forward combat operations. We can serve our country and be Sikh at the same time.

[Type here]

To my military, I would say that your prospective Sikh American soldiers are waiting to be embraced by you. We are mindful that our military now fully allows LGBT soldiers to serve, and is beginning to allow female soldiers to serve in forward combat positions – and that the sky has not fallen because of it. In fact, the opposite is happening. We are increasing the pool of Americans willing serve our country, we are advancing our strategic missions, and we are staying to true to the core American principle that it matters not who you are, but what you do.

In closing I would like to quote from a letter that America's First General, General George Washington, wrote to a Jewish congregation in Newport, Rhode Island, in 1791. President Washington wrote that America:

“[G]ives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.”

Patriotic Sikh Americans are ready to give America its “effectual support.” I humbly plead for our military to accept it.

Thank you.

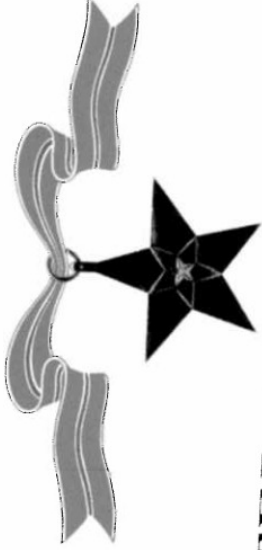
Encl: A1 – A21

Respectfully,



MAJ Kamal S. Kalsi, D.O., U.S. Army  
Medical Director to Ft. Bragg 911 Dispatch  
Center, Police and Fire  
081-68W10 Health Care Specialist (MOS-T)  
and HESD EMS Course Medical Director  
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925.570.1472

[Type here]



# THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING: THIS IS TO CERTIFY THAT THE PRESIDENT OF THE UNITED STATES OF AMERICA AUTHORIZED BY EXECUTIVE ORDER, 24 AUGUST 1962 HAS AWARDED

## THE BRONZE STAR MEDAL

TO

CAPTAIN KAMAJEET S. KALSI

BRAVO COMPANY, 115 COMBAT SUPPORT HOSPITAL

FOR

EXCEPTIONALLY MERITORIOUS SERVICE AS AN EMERGENCY MEDICINE PHYSICIAN WHILE DEPLOYED IN SUPPORT OF OPERATION ENDURING FREEDOM. HIS LEADERSHIP AND DEDICATION TO DUTY WERE INSTRUMENTAL TO THE UNIT'S MISSION DURING COMBAT OPERATIONS. CAPTAIN KALSI'S DISTINCTIVE ACCOMPLISHMENTS REFLECT GREAT CREDIT UPON HIMSELF, TASK FORCE 44 MEDICAL, AND THE UNITED STATES ARMY.

FROM 4 JANUARY 2011 TO 17 JULY 2011  
GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON  
THIS 7<sup>TH</sup> DAY OF AUGUST 2011

TIMOTHY P. McHALE  
Major General, United States Army  
Deputy Commander, Support  
United States Forces-Afghanistan  
Permanent Order # 219-003



SECRETARY OF THE ARMY

# **EXHIBIT 28**

# JRTC rotation demonstrates force of future

October 20, 2012

By C. Todd Lopez



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FORT POLK, La. (Army News Service, Oct. 19, 2012) -- Training bases like the Joint Readiness Training Center here will be central to preparing America's Army for future conflicts that could come up at a moment's notice, said Under Secretary of the Army Joseph W. Westphal, during a visit here, Oct. 19.

"One never knows when the president will need his Army to address an issue somewhere around the world," Westphal said. "We need to be trained and ready at all times, and that level of training, and that level of readiness that we will have to maintain into the future will require that we have places like Fort Polk ready to help us do that. What I saw here today is that we have good footing there."

Beginning Oct. 9, more than 4,800 Soldiers, many from the 2nd Brigade Combat Team of the 82nd Airborne Division, descended upon the training grounds at Fort Polk to participate in the Joint Readiness Training Center's 13-01 training rotation.

Many of the participating Soldiers entered the bare, unprepared training space via parachute. The training is a departure from past rotations at the JRTC which have focused on training Soldiers for deployments to Afghanistan and Iraq through counterinsurgency-based mission readiness exercises.

The most recent rotation at the center put an emphasis on "decisive action," which required Soldiers to exercise both wide-area security and combined arms maneuver and conduct offensive, defensive operations and stability operations.

Soldiers participating in the 13-01 rotation entered, via parachute, a location that was completely empty. They were required to secure an airstrip, bring in needed supplies and equipment via U.S. Air Force aircraft, conduct a noncombatant evacuation operation for American citizens who were already on the ground in a nearby town as part of the fictional scenario, defend their position, and then later conduct offensive operations against a "hybrid threat" that included "near-peer"

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<a href="#">Austin observes JRTC rotation, discusses health of force</a>
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forces, irregular forces, terrorist and criminal groups.

Westphal visited with the leadership of the units there to train and with the leadership of partner organizations who also participated in the exercise, including Army Special Operations Forces. He said he was "able to talk to them about the challenges they face both in the training area and integration area and get some real straightforward commentary on what we need to do at headquarters to make this continue to be a success down the road."

As the Army's under secretary, Westphal must stay abreast of the Army needs and work with other senior leadership to ensure continued support of the kinds of training that takes place at the JRTC.

"We need to keep an eye on the investment here and keep an eye on what is needed to make sure we sustain this kind of opportunity," Westphal said. "Training and readiness for our force of the future is absolutely critical."

While Westphal spoke with many of the senior leadership on the ground at JRTC, he also met with the young Soldiers and noncommissioned officers training there, and said he was impressed with their knowledge and professionalism.

"Every once in a while I'll go up to a private, a specialist, a sergeant and start asking them about what they are doing," he said. "I'm absolutely impressed with their intellect, their knowledge, and their easy disposition from which they are doing this. They don't have their hair on fire -- they are just professional people."

Westphal said that the talent he saw at JRTC is critical to America's future force, and that it must be preserved.

"What we need to do as a country is sustain that talent, and to invest in that talent, and to ensure this country's defense will always be absolutely the very best," he said. "It'll be the very best, not because of the equipment we have, but because of the people that manage that equipment and operate that equipment and sustain that equipment -- that's our Soldiers, Sailors, Airmen and Marines."

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Page last updated Sat October 20th, 2012 at 00:00

# **EXHIBIT 29**

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

SIMRATPAL SINGH,

Plaintiff,

v.

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

Defendants.

Civil Action No. 16-399 (BAH)

Judge Beryl A. Howell

**MEMORANDUM OPINION**

Pending before the Court is a motion for a temporary restraining order to enjoin an order from the United States Army's senior command to the plaintiff, Captain Simratpal Singh, a decorated Sikh Army officer, requiring him to undergo several days of specialized testing, under expert supervision, at a cost of over \$32,000, with his "army combat helmet" and "army protective mask" for the purpose of ensuring that his Sikh articles of faith, namely a cloth head covering and unshorn hair and beard, will not interfere with the helmet's ability "to withstand ballistic and blunt forces" and the mask's ability "to provide protection from toxic chemical and biological agents." At first blush, the challenged order appears to reflect a reasonably thorough and even benevolent decision by the Army to fulfill its duty of protecting the health and safety of this particular Sikh officer.

Yet, that is far from the complete picture. Thousands of other soldiers are permitted to wear long hair and beards for medical or other reasons, without being subjected to such specialized and costly expert testing of their helmets and gas masks. Moreover, other Sikh soldiers have been permitted to maintain their articles of faith without such specialized testing. In fact, just this week, the plaintiff, who maintains the Sikh articles of faith, passed the standard

gas mask test administered to his unit and given routinely to soldiers. Nonetheless, the plaintiff has been ordered to undergo additional specialized testing as part of the Army's review of his request for a religious accommodation and exception to the Army's regulations regarding grooming and appearance. As the Supreme Court has stressed, in evaluating claims of discriminatory governmental action implicating the important First Amendment right to the Free Exercise of religion, "context matters." *Cutter v. Wilkinson*, 544 U.S. 709, 723 (2005) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003)); see *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Sotomayor, J., concurring) ("Nothing in the Court's opinion calls into question our prior holding in *Cutter v. Wilkinson* that 'context matters' in the application of [statutes protecting religious exercise] . . .").

Courts should be reluctant, as the defendants point out, "to interfere with legitimate Army matters," *Kreis v. Sec'y of Air Force*, 866 F.2d 1508, 1511 (D.C. Cir. 1989) (quoting *Orloff v. Willoughby*, 345 U.S. 83, 93–94 (1953)), since "great deference" should be given "to the professional judgment of military authorities concerning the relative importance of a particular military interest," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quoting *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986)); see also *Chappell v. Wallace*, 462 U.S. 296, 300 (1983) ("Civilian courts must, at the very least, hesitate long before entertaining a suit which asks the court to tamper with the established relationship between enlisted military personnel and their superior officers; that relationship is at the heart of the necessarily unique structure of the military establishment."); *New v. Cohen*, 129 F.3d 639, 643 (D.C. Cir. 1997) ("[T]he military justice system must remain free from undue interference, because the military is a specialized society separate from civilian society with laws and traditions of its own developed during its long history." (internal quotation omitted) (quoting *Schlesinger v. Councilman*, 420 U.S. 738,

757 (1975)). At the same time, the Supreme Court “has never held . . . that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service,” *Chappell*, 462 U.S. at 304, and “military interests do not always trump other considerations,” *Winter*, 555 U.S. at 26. The context of this case raises such significant questions about the lawfulness of the Army command’s order to the plaintiff to undergo specialized testing that, pursuant to the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb, *et seq.*, judicial intervention is required.

## I. BACKGROUND

The plaintiff is an honors West Point graduate, with an advanced Master’s degree in engineering, a Ranger, and a Bronze Star recipient for his service while being forward-deployed to Operation Enduring Freedom in Kandahar Province, Afghanistan. Verified Compl. (“Compl.”) ¶¶ 76, 79, 82, 90, ECF No. 1; Compl. Ex. 2 (West Point academic record), ECF No. 1-1; Compl. Ex. 6 (Bronze Star Medal documentation), ECF No. 1-1. He is also a practicing Sikh, Compl. ¶¶ 46–56, a religion that requires him to wear external “articles of faith,” including unshorn hair (*kesh*), a beard, and a turban (*dastaar*) or smaller traditional cloth head covering (*patka*), *id.* ¶¶ 2–4, 36–42, 100. As a Captain in the United States Army, the plaintiff is bound by the Uniform Code of Military Justice, which requires hairstyle and grooming standards in conflict with his faith. *See generally* U.S. Dep’t of Army, Reg. 670–1, Wear and Appearance of Army Uniforms and Insignia (Apr. 10, 2015).

Throughout his youth, the plaintiff maintained the Sikh articles of faith, wearing a turban and never cutting his hair or shaving. Compl. ¶¶ 47–50. Upon graduation from high school, however, the plaintiff, who long desired to serve in the military, attained the opportunity to attend the United States Military Academy at West Point. *Id.* ¶¶ 67–70. Before his induction

into West Point, the plaintiff inquired about obtaining a religious accommodation for his articles of faith from Army personnel who “expressed doubt” and “gave vague responses.” Pl.’s Combined Mem. Supp. Appl. TRO & Appl. Prelim. Inj. (“Pl.’s Mem.”) at 8–9, ECF No. 2-1; *see* Compl. ¶¶ 69–70. During the induction process, “and before Captain Singh fully understood what was happening, he found himself in the barbershop with the other cadets to be trimmed and shaved.” Compl. ¶ 71. “[B]elieving he had no other option” but to risk losing the opportunity to attend West Point and serve this country, the plaintiff “succumbed under pressure and made the difficult decision to remove his turban, cut his hair, and shave his beard.” *Id.* ¶ 72.

Though “[e]xperiencing significant shame and disappointment in himself” for violating the Sikh religious requirements, *id.* ¶ 74, the plaintiff graduated from West Point in 2010 with a B.S. degree in electrical engineering with Honors, *id.* ¶ 76; *see* Compl. Ex. 2, and, thereafter, has continuously served this country with notable excellence. He has received high praise from his commanders, Compl. ¶¶ 78, 80–81, attended and graduated from Ranger School, *id.* ¶¶ 78–79, and served as platoon leader in a deployment to Afghanistan from April 2012 to January 2013, *id.* ¶¶ 79–80, for which “exceptional and meritorious service” the plaintiff was awarded a Bronze Star Medal, *id.* ¶ 82; *see* Compl. Ex. 6. In November 2013, the plaintiff received an Army Achievement Medal for his performance during a joint training exercise with the South Korean Army, Compl. ¶ 83; *see* Compl. Ex. 7 (Army Achievement Medal documentation), ECF No. 1-1, and, in November 2014, he received an Army Commendation Medal for his service as a Brigade Assistant for a “rapidly deployable . . . Combat Team,” Compl. ¶¶ 84–85; *see* Compl. Ex. 9 (Army Commendation Medal documentation), ECF No. 1-1.

In the Spring of 2015, the plaintiff met several Sikh soldiers who maintain their articles of faith at a celebration of the Sikh New Year hosted by the Pentagon and, “for the first time,” saw “a viable path” to obtaining a religious accommodation. Compl. ¶¶ 88–89.

Later that year, on October 16, 2015, around the time the plaintiff completed a Master’s degree in engineering and began a one-month leave, the plaintiff informed his new immediate commander, Lieutenant Colonel (“LTC”) Julie Balten, that he intended to report to his next-ordered post, the 249<sup>th</sup> Engineer Battalion Prime Power at Fort Belvoir, Virginia, on the date ordered, November 16, 2015, donning his articles of faith—wearing a turban, unshorn hair, and a beard. *Id.* ¶¶ 90–92. LTC Balten represented to the plaintiff that his articles of faith “would have no adverse impact on [his] ability to fulfill his responsibilities and promised to recommend that he be granted an accommodation.” *Id.* ¶ 92. Shortly thereafter, on October 21, 2015, the plaintiff submitted a “Request for Religious Accommodation and Exception to Wear and Appearance Regulations Pursuant to AR 600-20 and AR 670-1” (“Pl.’s Request”), Defs.’ Opp’n to Pl.’s Mot. TRO (“Defs.’ Opp’n”), Appendix (“Defs.’ App.”) at A19, Pl.’s Request at 1, ECF No. 9-1, pursuant to Army Regulation 600-20, which provides that “[i]n accordance with [RFRA] . . . , the Army will approve requests for accommodation of religious practices unless accommodation will have an adverse impact on unit readiness, individual readiness, unit cohesion, morale, good order, discipline, safety, and/or health,” U.S. Dep’t of Army, Reg. 600–20, Army Command Policy (Nov. 6, 2014), ch. 5–6(a). In his request, the plaintiff detailed how he would “conform [his] religious requirements in a way that ensures consistency with the Army’s need to maintain uniformity and safety standards,” including maintaining his “hair and beard in a neat and conservative manner at all times;” wearing a turban in non-field and field settings in a matching camouflage material to his uniform, or a “subdued black turban with the

Class A uniform whenever required;” and wearing a *patka* or small turban with his Kevlar helmet. Pl.’s Request at 2–3.

Due to delays in receiving any response to this religious accommodation request, the plaintiff twice used personal leave to extend his report date to December 14, 2015. Compl. ¶ 94. Finally, on or about December 9, 2015, Debra S. Wada, the Assistant Secretary of the Army (“ASA”) for Manpower and Reserve Affairs since October 2014, who is “responsible for overseeing the implementation and execution of the Army’s policy for accommodating religious practices and ensuring compliance with the law and DoD policy regarding religious practices,” Defs.’ App. at A1, Decl. of Debra S. Wada (Feb. 29, 2016) (“Wada Decl.”) ¶ 1, issued a temporary, “interim accommodation” to the plaintiff granting him permission to wear his articles of faith until January 8, 2016, at which time ASA Wada indicated she would provide the plaintiff with a final decision, Defs. App. at A18; *see* Compl. ¶ 95. On January 8, 2016, ASA Wada extended the plaintiff’s interim accommodation until March 31, 2016, “at which time [she] expect[s] to provide [the plaintiff] with [her] decision.” Defs.’ App. at A17; *see* Compl. ¶ 96.

On February 23, 2016, ASA Wada requested “additional information concerning the compatibility of [the plaintiff’s] turban, hair, and beard with U.S. Army protective equipment.” Defs.’ App. at A14, Mem. from Debra S. Wada (Feb. 23, 2016) (“Wada Mem.”) ¶ 2; Compl. Ex. 16 (Wada Mem.) ¶ 2, ECF No. 1-1. To gather the requested “additional information,” ASA Wada ordered the plaintiff, first, to be fitted with an Army Combat Helmet (“ACH”) “by a technical expert,” who “should evaluate whether CPT Singh can safely wear a *patka* under the ACH” and “determine whether and to what extent CPT Singh must modify the length, bulk, or placement of his hair in order to obtain a proper fit and to ensure the head protection coverage area is not reduced.” Wada Mem. ¶ 3. ASA Wada ordered the plaintiff then “to be fitted with a

protective mask by a technical expert” and evaluated using a corn oil aerosol test, *id.* ¶ 4(a), one of three types of mask evaluation procedures used by the Army, Defs.’ App. at A6, Decl. of Alex G. Pappas (Feb. 29, 2016) (“Pappas Decl.”) ¶ 3. ASA Wada ordered the plaintiff to undergo the corn oil aerosol test using four types of Army masks, each under two different types of conditions: first, “without any type of gel, oil, or lotion” in the plaintiff’s hair or beard and, if the plaintiff cannot achieve a certain level of protection “in three of five successive tests” with any mask, second, with “a personally-procured hair gel or product, such as Vaseline, to further conform his hair to the contours of his face.” Wada Mem. ¶ 4(a)–(b). ASA Wada requested the testing results be provided to her prior to March 15, 2016, “[t]o facilitate timely action” on the plaintiff’s religious accommodation request. *Id.* ¶ 6.

The plaintiff was advised of ASA Wada’s memorandum requiring him to undergo the specialized testing the following day. Decl. of Simratpal Singh Supp. TRO / Mot. Prelim. Inj. (Mar. 1, 2016) (“Pl.’s Decl.”) ¶ 3, ECF No. 16-2. On the afternoon of Friday, February 26, 2016, the plaintiff was ordered to report to his normal duty post for helmet testing on the morning of March 1, 2016, and for the “comprehensive individual gas mask testing” later this same week. *Id.* at ¶ 9; Compl. ¶ 103; Pl.’s Mem. at 13; Defs.’ Opp’n at 3. Later in the evening of February 26, 2016, the plaintiff was ordered by his immediate commanding officer, LTC Balten, to report, after the March 1, 2016 helmet testing, to Aberdeen Proving Ground in Maryland for three days of safety-mask testing, which LTC Balten indicated would cost approximately \$33,000. Pl.’s Decl. ¶ 10; Defs.’ Notice, Ex. at 3, ECF No. 13 (Feb. 26, 2016 email from Colonel (“COL”) Michael Peloquin to COL Peter Helmlinger, stating that the gas mask test “[i]nvolves 3 days of testing at a cost of \$32,925” and noting concern about completion date “if ECBC [the testing center] must conduct significant analysis in the

development of its test report”). She also told the plaintiff that her commanding officer wanted the plaintiff to be escorted to the Aberdeen Proving Ground from Fort Belvoir, a circumstance normally associated with “soldiers they mistrust.” Pl.’s Decl. ¶ 12; *see* Defs.’ Notice, Ex. at 2 (Feb. 26, 2016 email from COL Helmlinger to LTC Balten, stating “I recommend you also send a more senior escort from the 249th to travel with [plaintiff] and observe the training” and, if he is sent “on his own,” directing LTC Balten to “provide him with very clear written counseling/instructions as to the purpose of the protective mask testing and his requirements to comply with the experts”). LTC Balten was subsequently advised that her commanding officer had been advised by “USACE Chief Counsel” that verbal, rather than written instructions would be sufficient. Defs.’ Notice, Ex. at 1 (Feb. 26, 2016 email from COL Helmlinger to LTC Balten).

On the morning of February 29, 2016, the plaintiff participated with about 30 soldiers from his unit in a previously scheduled standard gas mask test, in which the soldiers put on their gas masks and then entered a chamber to perform exercises while noxious gas was released. Pl.’s Decl. ¶¶ 13–15. The plaintiff successfully completed the test with his gas mask sealed and resealed. *Id.* ¶¶ 16–17.

The same day that the plaintiff was participating in the standard gas mask test, he filed the Verified Complaint in this case along with an Application for Temporary Restraining Order (“TRO”), ECF No. 2, seeking to prohibit the defendants “from subjecting Captain Singh to the protective mask test or helmet test requirements set forth in the February 23, 2016 memorandum from Debra S. Wada or any other unusual or discriminatory testing,” Pl.’s Proposed TRO Order, ECF No. 2-5, and an Application for Preliminary Injunction, ECF No. 3, seeking to “direct Defendants to grant [plaintiff] a permanent religious accommodation that would allow him to

wear uncut hair, a beard, and a turban, as required by his Sikh faith, while serving in the Army,” Pl.’s App. for Prelim. Inj., ECF No. 3; *see also* Pl.’s Proposed Prelim. Inj. Order, ECF No. 3-1 (seeking to enjoin defendants “from enforcing against Plaintiff any Army regulations that would prohibit him from wearing unshorn hair, a beard, and turban as required by his Sikh faith”). Given that the specialized testing ordered by ASA Wada was to begin the following morning, the Court promptly held a hearing on the TRO application that afternoon. *See* Minute Entry (Feb. 29, 2016). At the hearing, the defendants agreed to postpone the specialized testing until March 4, 2016.

## II. LEGAL STANDARD

The standard for a temporary restraining order is the same as that for preliminary injunction. *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *see Experience Works, Inc. v. Chao*, 267 F.Supp.2d 93, 96 (D.D.C. 2003). Either type of injunctive relief “is an extraordinary and drastic remedy,” and “should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted) (quoting 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2948 (2d ed. 1995)). The plaintiff is required to show clearly four things: (1) that he is “likely to succeed on the merits,” (2) that he is “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “that the balance of equities tips in his favor,” and (4) “that an injunction is in the public interest.” *Glossip v. Gross*, 135 S. Ct. 2726, 2736–37 (2015) (quoting *Winter*, 555 U.S. at 20); *see also Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (quoting *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011)). The plaintiff must “show that all four factors, taken together, weigh in favor of the injunction.” *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quoting

*Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)). The Supreme Court in *Winter* made clear that a court may not issue “a preliminary injunction based only on a possibility of irreparable harm . . . [since] injunctive relief [i]s an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” 555 U.S. at 22.

### III. DISCUSSION

Two motions for injunctive relief are pending in this case, *see* Appl. for TRO, ECF No. 2; Appl. for Prelim. Inj., ECF No. 3, but only the motion for a temporary restraining order is fully briefed and, thus, ripe for review.<sup>1</sup> After considering the defendants’ justiciability concerns, the

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<sup>1</sup> At the oral hearing held on February 29, 2016, and throughout their papers, the defendants argue that the issue presented in the motion for preliminary injunction will not be justiciable until the defendants make a final determination on the plaintiff’s request for religious accommodation which, if granted, would render that motion moot. *See, e.g.*, Defs.’ Proposed Briefing Schedule at 1, ECF No. 17; Tr. of Hr’g for TRO (Feb. 29, 2016) (“Hr’g Tr.”) at 59–61, ECF No. 20. Additionally, the defendants argue that the specialized helmet and gas mask testing must be conducted in order for ASA Wada to make a final decision on the plaintiff’s request. *See, e.g.*, Defs.’ Opp’n at 10, ECF No. 9. The plaintiff, on the other hand, “strongly believes that this Court has the authority to immediately decide his requests for both” a temporary restraining order barring the specialized testing and a preliminary injunction granting the plaintiff’s request for a religious accommodation. Pl.’s Proposed Briefing Schedule at 1–2, ECF No. 14. Accordingly, the plaintiff proposed an accelerated briefing schedule that would have allowed the Court to resolve both motions this week. *Id.*

The defendants objected to the plaintiff’s proposed briefing schedule, proposing an alternative briefing schedule for the preliminary injunction motion to take place in April 2016, *see generally* Defs.’ Proposed Briefing Schedule, to which proposal the plaintiff does not object so long as “further emergency proceedings” are avoided, Pl.’s Resp. Defs.’ Proposed Briefing Schedule (“Pl.’s Resp.”) at 1, ECF No. 19. In support of their alternative proposed briefing schedule, and to address the Court’s concern expressed at the hearing about avoiding another rushed “fire drill” consideration of the weighty First Amendment issues at stake, the defendants assured the Court that, “should Plaintiff’s longer-term accommodation request not be granted when his temporary accommodation expires on March 31, 2016, Plaintiff will initially receive a 21-day extension of his current accommodation, prior to requiring Plaintiff to comply with Army grooming standards.” Defs.’ Proposed Briefing Schedule at 3. The defendants’ assurance is notably silent as to whether the 21-day extension would be granted regardless of the outcome of the TRO motion, raising the specter that the plaintiff’s request for religious accommodation may be denied and his temporary accommodation withdrawn at any time after resolution of the TRO motion against the defendants. Consequently, the plaintiff “agrees to extend the briefing schedule for the application for preliminary injunction only on condition that (1) Defendants confirm in writing that Captain Singh’s temporary accommodation is extended until a final decision is rendered on the pending application for preliminary injunction, including any appeals; and (2) Defendants confirm in writing that they will issue a final decision on Captain Singh’s request for a permanent accommodation by March 31, 2016, regardless of this Court’s ruling on the pending application for a TRO.” Pl.’s Resp. at 2. Despite the defendants’ silence, the 21-day extension of the plaintiff’s current accommodation is presumably not conditioned on the denial of TRO but would also apply if the TRO is granted, since the same conditions would exist in either circumstance. Indeed, otherwise, the defendants’ risk the perception that refusing to extend the plaintiff’s temporary accommodation, if the TRO is granted, during consideration of the preliminary injunction application is in some way retaliatory, and thereby coercive, against the plaintiff for his attempt to enforce his religious rights.

Court turns to analysis of whether the plaintiff has satisfied the four requisite elements for the TRO he seeks.

**A. Threshold Jurisdictional Question**

As a threshold matter, the defendants characterize the plaintiff's challenge to the order for him to undergo specialized helmet and gas mask testing procedures as a "disagreement with the orders of his superiors." Defs.' Opp'n at 4; *id.* at 5 ("[This] is nothing more than Plaintiff's disagreement about the wisdom of an order issued to him."). As such, the defendants contend that the specialized testing order is "a purely internal military affair" that "is outside the bounds of this court's jurisdiction," for two inter-related reasons. *Id.* at 5–6.

First, the defendants contend that the specialized testing order "implicates unique demands of military discipline – that an officer follow the lawful orders of his superiors." *Id.* at 6. Any judicial interference that "allow[s] a Soldier to second guess an order of his superior" may, "by design[,] effect[] the goals of discipline and obedience." *Id.* at 7 (internal quotation and citation omitted).

Second, the defendants point out that, due to the potential adverse effect of judicial intervention on critical military discipline and order, "absent a clearly defined right enforceable in a proceeding other than a court-martial—for example, an administrative proceeding to address a service member's conscientious objector status—the federal courts normally should not interfere with day-to-day operations of the military services as Plaintiff requests this Court to do." *Id.* (citing *New*, 129 F.3d at 647). In other words, the defendants urge the Court to abstain from reviewing the legality of the specialized testing order, leaving the plaintiff with the choice "to disobey the order" and be "subject to discipline," which would then enable him to "present

his arguments about the legality of his orders as a defense to the court-martial action” or bring claims in an administrative proceeding. *Id.* These arguments are not persuasive.

Indisputably, “the complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force” is vested “exclusively in the legislative and executive branches.” *Kreis*, 866 F.2d at 1511 (quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973)). These other two branches of the federal government are plainly responsible “for setting up channels through which . . . grievances” for complaints of “discrimination, favoritism or other objectionable handling of men” in the military “can be considered and fairly settled.” *Orloff*, 345 U.S. at 93–95 (holding the military had exclusive jurisdiction to determine the propriety of an Army inductee’s “specific assignments to duty”); *Kreis*, 866 F.2d at 1511 (holding Air Force major’s “request for retroactive promotion” was a “nonjusticiable military personnel decision[]” because “Congress has vested in the Secretary alone the authority to determine” the propriety of promotion decisions).

Yet, despite the sound reasons for limits on judicial review and requirements of administrative exhaustion of military personnel decisions generally, “resolving a claim founded solely upon a constitutional right is singularly suited to a judicial forum and clearly inappropriate to an administrative board.” *Adair v. England*, 183 F. Supp. 2d 31, 55 (D.D.C. 2002) (quoting *Downen v. Warner*, 481 F.2d 642, 643 (9th Cir. 1973)). Thus, in *Adair*, the Court rejected the military’s argument that plaintiffs, non-liturgical Naval chaplains, who brought claims “based on the First Amendment’s Establishment and Free Exercise Clauses and the Fifth Amendment’s Due Process Clause,” should have “first exhausted their administrative remedies by raising their personnel claims with the Board for Correction of Naval Records (‘BCNR’) before coming to federal court.” *Id.*

Indeed, “the Supreme Court and [the D.C. Circuit] have heard numerous [constitutional] challenges to military policies.” *Brannum v. Lake*, 311 F.3d 1127, 1130 (D.C. Cir. 2002). The D.C. Circuit has explained that the logic underlying nonjusticiability in military cases is “wholly inappropriate . . . when a case presents an issue that is amenable to judicial resolution,” recognizing that “courts have shown no hesitation to review cases in which a violation of the Constitution, statutes, or regulations is alleged.” *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979); *see id.* (“It is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful. . . . The military departments enjoy no immunity from this proscription.” (citation omitted)).<sup>2</sup>

The plaintiff here challenges whether the specialized testing order of his superiors is in fact “lawful,” Defs.’ Opp’n at 4, by pursuing his “clearly defined right enforceable in a proceeding other than a court-martial,” *id.* at 5, under RFRA. This statute was enacted “in 1993 in order to provide very broad protection for religious liberty,” in response to a 1990 Supreme Court decision—*Employment Division v. Smith*, 494 U.S. 872 (1990)—that limited religious liberty by “largely repudiat[ing]” the Court’s earlier “method of analyzing free-exercise claims.” *Burwell v. Hobby Lobby Stores, Inc. (Hobby Lobby)*, 134 S. Ct. 2751, 2760 (2014); *see Smith*, 494 U.S. at 888 (expressing concern about “open[ing] the prospect of constitutionally required

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<sup>2</sup> The defendants’ reliance on *New* and *Schlesinger* is misplaced. Both of those cases involved Army soldiers’ requests for collateral review, via a habeas petition, of a pending court-martial disciplinary proceeding. *See Schlesinger*, 420 U.S. at 748–49; *New*, 129 F.3d at 643–44. *New* even recognized that when a soldier chooses to obey an order he believes is unlawful, he can seek direct judicial review of the military’s policies. 129 F.3d at 647. It is only when a soldier chooses to disobey the order that he must “challenge the[] validity in the subsequent disciplinary proceedings.” *Id.* *New* further recognized that when a plaintiff has “a clearly defined right enforceable in a proceeding other than a court-martial” proceeding, federal courts may intervene. *Id.* *Cf. Schlesinger*, 420 U.S. at 758 (“hold[ing] that when a serviceman charged with crimes by military authorities can show no harm other than that attendant to resolution of his case in the military court system, the federal district courts must refrain from intervention, by way of injunction or otherwise”).

religious exemptions from civic obligations of almost every conceivable kind”). In enacting RFRA, Congress found, *inter alia*, that “governments should not substantially burden religious exercise without compelling justification” and rejected the Supreme Court’s elimination in *Smith* of “the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion,” concluding that “the compelling interest test as set forth in prior Federal Court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.” 42 U.S.C. § 2000bb(a). Congress expressly stated that the “purposes” of RFRA are to “guarantee [the] application” of “the compelling interest test . . . in all cases where free exercise of religion is substantially burdened” and “to provide a claim or defense to persons whose religious exercise is substantially burdened by government.” 42 U.S.C. § 2000bb(b) (emphasis added). RFRA, in fact, “provided even broader protection for religious liberty than was available” under the decisions it sought to restore. *Hobby Lobby*, 134 S. Ct. at 2761 n.3.

Thus, RFRA provides both broad protection of the free exercise right and a broad right of action for judicial relief. *See* 42 U.S.C. § 2000bb-1(c) (“A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.”). Notably, Congress nowhere inserted any exception for the U.S. Armed Forces from RFRA’s application or any exhaustion requirement, as it did, for example, in RFRA’s “sister statute,” the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc, *et seq.* *See Holt*, 135 S. Ct. at 859; *Cutter*, 544 U.S. at 723 n.12 (“[A] prisoner may not sue under RLUIPA without first exhausting all available administrative remedies.” (citing 42 U.S.C. §§ 1997e(a), 2000cc-2(e))); *see also Oklevueha Native Am. Church of Hawaii, 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, . . . and the Supreme Court has not imposed one.”).

Consequently, RFRA certainly provides no textual support for the defendants’ position that the plaintiff is required to exhaust administrative remedies in a court-martial proceeding before bringing his constitutional and RFRA claims before this Court.

Accordingly, the Court is satisfied that jurisdiction over the plaintiff’s claims is properly exercised here.

**B. Likelihood of Success on the Merits**

In his application for a TRO, the plaintiff contends that he has a likelihood of success on his claims that the specialized testing violates: (1) the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb, *et seq.*, (2) the Free Exercise Clause of the First Amendment of the United States Constitution, and (3) the Equal Protection Clause of the Fifth Amendment of the United States Constitution. Pl.’s Mem. at 23, 37–40. For the following reasons, the Court finds that the plaintiff has demonstrated a likelihood of success on his RFRA claim and, thus, does not address his likelihood of success on the other claims.

RFRA provides that the “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless “it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(a), (b). At the preliminary injunction stage, the parties’ burdens of proof and persuasion under RFRA “track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006).

Thus, the plaintiff bears the initial burden of showing that the government’s policy “implicates his religious exercise”—*i.e.*, that “the relevant exercise of religion is grounded in a sincerely held religious belief”—and that the government’s policy substantially burdens that exercise of religion. *Holt*, 135 S. Ct. at 862; *O Centro*, 546 U.S. at 428 (noting that the plaintiff’s *prima facie* case under RFRA is to show that the application of the government’s policy “would (1) substantially burden (2) a sincere (3) religious exercise”). The burden then shifts to the defendants to show that the policy “(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. § 2000cc-1(a); *Holt*, 135 S. Ct. at 863; *see* 42 U.S.C. § 2000bb-2(3) (“[T]he term ‘demonstrates’ means meets the burdens of going forward with the evidence and of persuasion.”); *O Centro*, 546 U.S. at 428–29 (explaining that it is the government’s burden (of proof and persuasion) at the preliminary injunction stage to “demonstrate that the application of the burden [of free exercise] to the [plaintiff] would, more likely than not, be justified by the asserted compelling interests” and that the plaintiff’s “proposed less restrictive alternatives are less effective” (citing *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)).

### 1. *The Plaintiff Has Established A Prima Facie Case*

The defendants do not dispute the sincerity of the plaintiff’s exercise of his Sikh religious beliefs. *See* Tr. of Hr’g for TRO (Feb. 29, 2016) (“Hr’g Tr.”) at 34:15–16, ECF No. 20. The defendants dispute that the specialized helmet and gas mask testing required of the plaintiff poses any burden on his free exercise right because all of the “testing would be completed with CPT Singh’s articles of faith intact.” Defs.’ Opp’n at 8–9. This view of the burden on the plaintiff is too myopic and ignores both the fact that the plaintiff is required to take these tests when other

soldiers granted exceptions to the Army regulations regarding grooming and appearance are not, and the fact that these tests directly affect whether the plaintiff receives a religious accommodation and, if granted, the scope of the accommodation. *See* Wada Decl. ¶ 5 (asserting that the Army must conduct the “individualized testing” on the plaintiff to “understand [safety] risks to the greatest extent possible before making a final decision on CPT Singh’s religious accommodation and, if he is granted an accommodation, the scope of that accommodation”).

The issue before this Court on the TRO application is not whether compliance with the Army grooming and appearance regulations would substantially burden the plaintiff’s religious exercise rights. In that regard, the plaintiff’s *prima facie* case may be “easily satisfied” since, absent an accommodation, the plaintiff would face serious disciplinary action by maintaining the Sikh articles of faith, *see Holt*, 135 S.Ct. at 862 (concluding that prison grooming policy on beard length “substantially burdens [prisoner plaintiff’s] religious exercise” because if he “contravenes that policy and grows his beard, he will face serious disciplinary action”), a finding conceded by the defendants, *see* Hr’g Tr. at 34:17–35:5 (conceding that, should the Army revoke the plaintiff’s interim religious accommodation, he would be substantially burdened and have a right of action under RFRA). Rather, the issue now is whether conditioning the processing of the plaintiff’s request for a religious accommodation on the specialized helmet and gas mask testing itself presents a substantial burden.

Generally, “[a] substantial burden exists when government action puts ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Priests for Life v. U.S. Dep’t of Health & Human Servs.*, 772 F.3d 229, 246 (D.C. Cir. 2014) (quoting *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008)). In considering whether the procedures for obtaining a religious accommodation are themselves burdens on the free exercise

rights, courts have looked to the precise nature of the procedures imposed. Mere inconveniences, inconsequential or *de minimis* government actions that burden religious exercise do not suffice to qualify as a “substantial burden.” See *Priests for Life*, 772 F.3d at 246 (“A burden does not rise to the level of being substantial when it places ‘[a]n inconsequential or *de minimis* burden’ on an adherent’s religious exercise.” (quoting *Kaemmerling*, 553 F.3d at 678)); *id.* at 248 (“Burdens that are only slight, negligible, or *de minimis* are not substantial.”); *Smith v. Allen*, 502 F.3d 1255, 1278 (11th Cir. 2007) (“[A]t a minimum the substantial burden test requires that a RLUIPA plaintiff demonstrate that the government’s denial of a particular religious item or observance was more than an inconvenience to one’s religious practice.”), *abrogated on other grounds by Sossamon v. Texas*, 563 U.S. 277 (2011); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (“[A] ‘substantial burden’ must place more than an inconvenience on religious exercise.”). At the same time, procedures that render a requested religious accommodation virtually impossible to achieve have been found to be substantially burdensome. See, e.g., *Nelson v. Miller*, 570 F.3d 868, 878–79 (7th Cir. 2009) (requiring prisoner to show that religion compelled the practice in question and verify compelled practice with documentation imposed substantial burden by making desired religious exercise “effectively impracticable”); *Koger v. Bryan*, 523 F.3d 789, 797 (7th Cir. 2008) (requiring prisoner to show preferred diet was compelled by religion and religious belief to be verified by clergy for entitlement to religious accommodation was substantial burden and contrary to RLUIPA).

The D.C. Circuit recently addressed this issue in *Priests for Life*. There, the plaintiffs challenged the “regulatory accommodation for religious nonprofit organizations that permits them to opt out of the contraceptive coverage requirement under the Patient Protection and

Affordable Care Act (‘ACA’), 42 U.S.C. § 300gg-13(a)(4)” on grounds that the procedure “itself imposes an unjustified substantial burden on Plaintiffs’ religious exercise in violation of” RFRA. 772 F.3d at 235; *see id.* at 245–46 (“Plaintiffs argue that a religious accommodation, designed to permit them to free themselves entirely from the contraceptive coverage requirement, itself imposes a substantial burden.”). The Court concluded that the challenged opt-out procedure did “not impose a substantial burden on Plaintiffs’ religious exercise under RFRA,” noting that “[a]ll Plaintiffs must do to opt out is express what they believe and seek what they want via a letter or two-page form,” which amounted to a “bit of paperwork [that] is more straightforward and minimal than many that are staples of nonprofit organizations’ compliance with law in the modern administrative state.” *Id.* at 237.

The specialized helmet and gas mask testing challenged in the TRO application involves far more than a *de minimis* administrative obligation of completing a one or two-page document but falls short of constituting an “effectively impracticable” requirement for obtaining a religious accommodation in the military. This makes this a close case. Nevertheless, the Court is persuaded that requiring the plaintiff to undergo the specialized testing for further processing of his religious accommodation request is a substantial burden when such testing is not required for soldiers to obtain exceptions from the Army uniform and grooming regulations on grounds other than adherence to the Sikh religious articles of faith.

The testing ordered in this case is not required of any other soldier, including soldiers who “use relaxed grooming standards” on military missions. *See Hr’g Tr.* at 16–18. With respect to helmets, the defendants explained at oral argument that, “[u]nder normal circumstances, the average soldier is fitted” for a helmet only once, during basic training or initial schooling. *Id.* at 19. After that, “the soldier is responsible for ensuring a proper fit in

conjunction with his chain of command.” *Id.*; *see also* Pl.’s Mem., Ex. A, Decl. of Kamaljeet Singh Kalsi (Feb. 27, 2016) (“Kalsi Decl.”) ¶ 15, ECF No. 2-2 (attesting, from personal experience and observations as an Army soldier, that “soldiers do not undergo evaluation for helmet fit” but are instead “left to choose a helmet that fits them based primarily on their own assessment” and “frequently adjust, remove, or add padding . . . on their own, with no external evaluation or validation”); Pl.’s Mem., Ex. B, Decl. of Simran Preet Singh Lamba (Feb. 27, 2016) (“Lamba Decl.”) ¶¶ 20–22, ECF No. 2-3 (same); Pl.’s Decl. ¶ 6 (same). Though safety concerns might warrant testing to evaluate the helmet and mask safety of Special Forces soldiers “deployed into environments where they[] . . . use relaxed grooming standards,” no safety tests on these soldiers are required. Hr’g Tr. at 18; *see also* Kalsi Decl. ¶¶ 6, 11–12, 14 (attesting, from personal experience and observations as an active duty officer deployed to Afghanistan in 2011, who was required to have “enhanced familiarity with the use of the Army’s standard-issue M-40 protective mask and Kevlar helmet” for his assignment, that Special Forces soldiers who “had beards and long hair” and “did not have to undergo specialized fitting for protective masks or helmets”).

The defendants proffer that helmet testing, or “fitting,” for Special Forces soldiers is not necessary because “it’s the way their hairstyle operates. In other words, they don’t wear a bun of hair on top of their head or any . . . material on top of their head that would change the geometrical shape of their head.” Hr’g Tr. at 19; *see also* Defs.’ App. at A10, Decl. of James Q. Zheng (Feb. 29, 2016) (“Zheng Decl.”) ¶¶ 5–6 (“express[ing] concern” about “some Sikh soldiers, following a religious accommodation” and wearing a helmet “with unshorn hair tucked under the helmet and a cloth headcovering” because performance of the helmet could be “degraded to a level that could compromise a soldier’s safety” from a “geometry deviation”).

Testing the plaintiff right now, however, may not allow the defendants to evaluate the fit of the plaintiff's helmet under the specific conditions that are the cause of concern. The plaintiff only received a religious accommodation this past October and, consequently, the unshorn hair on his head "is currently only about three inches long." Pl.'s Decl. ¶ 4.

Moreover, the defendants have provided no explanation as to why the plaintiff's beard is a potential safety hazard requiring specialized gas mask testing when the beards of Special Forces soldiers deployed in war zones with "relaxed grooming standards" are no such hazard and require no such testing. Similarly, the Army has granted medical exceptions to thousands of service members, allowing them to grow beards without any specialized gas mask testing. *See* Pl.'s Mem. at 34. The defendants contend that those medical exceptions are different because they allow for only a very small amount of facial hair growth. Hr'g Tr. at 23–24. An Army study conducted in 2009, however, indicated that even "the presence of facial hair . . . degrades the performance of protective masks." Pappas Decl. ¶ 3.

Not even soldiers subject to the Army's "Hard to Fit" protocol are subject to the level of specialized testing ordered for the plaintiff. The "Hard to Fit" protocol, which is used for individuals who have unusual "anthropomorphic features such as head size or facial feature composition" to ensure a "satisfactory fit with the standard issue protective mask," requires a "M41 protective assessment test system (PATs)." Pappas Decl. ¶ 3. PATs testing is "used at the unit level" and requires soldiers merely to perform "five exercises." *Id.* ¶ 4. While the Army deems this testing sufficient for "Hard to Fit" service members, the plaintiff is being required to undergo "corn oil aerosol" testing, "the most accurate of the three types of mask evaluation procedures used by the Army," *id.* ¶¶ 3–4, which will require a series of exercises and "trials" that will take up to three days, *id.* ¶¶ 5–6. This level of specialized testing is generally unheard

of, perhaps due to the costs. *See* Kalsi Decl. ¶ 13; Lamba Decl. ¶ 21; Khalsa Decl. ¶ 25; Pl.’s Decl. ¶¶ 5–7.

Lastly, despite the fact that the Army has “never tested the ACH [helmet] in the manner CPT Singh has requested to wear it,” Zheng Decl. ¶ 7, nor “evaluated whether the use of hair gels or Vaseline on an individual’s facial hair may affect the performance of the protective mask,” Pappas Decl. ¶ 3, the Army has granted permanent religious accommodations in the past to other Sikh soldiers without any specialized testing. *See* Kalsi Decl. ¶ 5; Lamba Decl. ¶¶ 8, 15; Khalsa Decl. ¶ 10. Each of these Sikh soldiers served with merit on active duty deployments, and one of them, like the plaintiff, was awarded a Bronze Star Medal, in part for his “coordination of five mass casualty exercises” in Afghanistan, which he performed adhering to his articles of faith. Kalsi Decl. ¶ 8.

Singling out the plaintiff for specialized testing due only to his Sikh articles of faith is, in this context, unfair and discriminatory. It is this singling out for special scrutiny—indeed, with the initial precaution of requiring an escort and observers for the plaintiff as he was subjected to the tests—that has a clear tendency to pressure the plaintiff, or other soldiers who may wish to seek a religious accommodation, to conform behavior and forego religious precepts. Even if not intended, such pressure and its concomitant coercive effects on a religious adherent amounts to a “substantial burden.” *See Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1316 (10th Cir. 2010) (recognizing a “‘coercion’ aspect to substantial burden”) (“[The Supreme] Court has repeatedly held that indirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to scrutiny under the First Amendment.” (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450 (1988))). Consequently, the Court finds that the

plaintiff has met his burden to show a likelihood of success in establishing a *prima facie* case under RFRA.

## 2. *Compelling Interest Test*

Given the plaintiff's likelihood of success in making out a *prima facie* case that the specialized testing, in the context of this case, violates RFRA, the defendants must show that the testing furthers a compelling government interest and does so by the least restrictive means. The government unquestionably has a compelling interest in ensuring the health and safety of military personnel, including the plaintiff, and by conducting these specialized helmet fitting and gas mask tests on the plaintiff—or, as plaintiff's counsel succinctly put it, using the plaintiff as a “lab rat for the military,” Hr'g Tr. at 51:23–24—the Army may obtain information useful to keeping soldiers safer, thereby furthering this compelling interest.

The proposed restriction on the plaintiff's right to free exercise by way of the individualized, intensive helmet and gas mask testing is not the least restrictive means of furthering the government's interest in helmet and gas mask safety, however. Indeed, conducting or commissioning a study of the efficacy of helmets and gas masks for soldiers donning a variety of unshorn hair, beards, and/or head coverings, which does not target one particular Sikh soldier merely because of his request for a religious accommodation, would be *more* effective in furthering the government's compelling interest in ensuring the health and safety of its soldiers. This is particularly true in light of the “relaxed grooming standards” and medical exceptions that the Army grants to thousands of soldiers. Conducting or commissioning such a study would not, unlike the testing ordered in this case, in-and-of-itself restrict or burden any one individual's right to free exercise, and the results of the study would likely provide more value to the government in ensuring the health and safety of military personnel generally.

The Supreme Court's decision in *Holt* is instructive. That case involved a prisoner's challenge under RFRA to the prison's grooming policy limiting the length of beards. 135 S. Ct. at 859. The Supreme Court credited the prison's compelling governmental interest in prison safety and security but concluded that the beard length policy at issue was not the least restrictive means of accomplishing those goals. *Id.* at 863 (finding it "hard to take seriously" that "staunching the flow of contraband . . . would be seriously compromised by allowing inmate to grow a ½-inch beard"). The Court bolstered this conclusion by finding, first, that the grooming policy was "substantially underinclusive" by permitting prisoners with dermatological conditions to grow longer beards and hair on their heads. *Id.* at 865–66. The fact that "[t]he proffered objectives are not pursued with respect to analogous nonreligious conduct," . . . suggests that "those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree." *Id.* at 866 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)). Second, the Court noted the fact that "many other prisons allow inmates to grow beards while ensuring prison safety and security," which also suggests that less restrictive means than a denial of the exemption would satisfy prison security and safety concerns. *Id.*

Similarly, here, the Army's policy of specialized testing for this plaintiff as a condition for granting his religious accommodation request, based solely on hair and beard growth required by Sikh articles of faith, is "substantially underinclusive." The defendants warn that "without information concerning the fit of the Advanced Combat Helmet (ACH) and protective mask, Defendants cannot ensure that Plaintiff's protective equipment provides appropriate protection" and that "[c]urrently available information indicates that the accommodation may present significant risks that the equipment would not work properly, and any such failure could place Plaintiff, his fellow soldiers, and the mission at risk." Defs.' Proposed Briefing Schedule at 2–3,

ECF No. 17. As discussed above, however, medical exceptions and “relaxed grooming standards” are granted without such specialized information, and even the Army’s most “Hard to Fit” soldiers may serve without undergoing the level of specialized tests ordered of the plaintiff. Indeed, the existence of the “Hard to Fit” program undermines the defendants’ argument that the specialized testing of the plaintiff is necessary for a determination on his accommodation. Additionally, as the plaintiff notes, even were the plaintiff to fail all of the specialized testing, “that could have no legitimate bearing on his accommodation” request because “[i]f the Army treats him like every other soldier, as it must, it would simply work with him to find a satisfactory solution through the existing ‘hard to fit’ program.” Pl.’s Resp. to Defs.’ Proposed Briefing Schedule at 2, ECF No. 19. In sum, the fact that health and safety “are not pursued with respect to analogous nonreligious conduct” to the degree in which those compelling interests are being pursued with respect to religious conduct “suggests that those interests could be achieved” by less burdensome means. *Holt*, 135 S. Ct. at 866.

The defendants argue that they are in a “Catch 22 position” where, under RFRA and, specifically, *Holt*, they must do an “individualized assessment” for the plaintiff’s accommodation request, but an unfavorable ruling on the plaintiff’s TRO application will prohibit them from “conduct[ing] the tests that [they] believe are necessary” to determine whether the plaintiff’s helmet and gas mask fit properly. Hr’g Tr. at 62. The defendants misinterpret *Holt*. The emphasis in *Holt* on a “more focused” inquiry into the “application of the challenged law to . . . the particular claimant,” 135 S. Ct. at 863, relates to how the government must best respond to a person’s particular belief system.

The defendants are correct that, should they deny the plaintiff’s religious accommodation request, they may “not merely . . . explain why” they denied it, but also must “prove that denying

the exemption is the least restrictive means of furthering a compelling governmental interest.” *Holt*, 135 S. Ct. at 864. This does not mean, however, that the defendants may infringe upon the very right RFRA protects in order to meet their burden of proof. Otherwise, the government would be able to end-run around RFRA.

As Justice Sotomayor suggests in her concurrence in *Holt*, courts should defer to “officials’ reasoning when that deference is due—that is, when . . . officials offer a plausible explanation for their chosen policy *that is supported by whatever evidence is reasonably available to them.*” *Holt*, 135 S. Ct. at 867 (Sotomayor, J., concurring) (emphasis added). Here, where the defendants must obtain evidence by substantially burdening the plaintiff’s free exercise rights (*i.e.*, as discussed *supra* in Part III.B.1, by subjecting him to testing required of no other soldier seeking a similar exemption from Army uniform and grooming rules) in order to support their policy that substantially burdens the plaintiff’s free exercise rights (*i.e.*, by prohibiting the plaintiff from wearing his articles of faith) that evidence is, by no means, “reasonably available to them.” In short, the defendants may not violate RFRA in an attempt to justify another potential violation of RFRA.

\* \* \*

The Court concludes that even if the defendants have a compelling interest in the execution of the specialized testing order challenged in this TRO application, the defendants have not met their burden to show it is the least restrictive means available to further their interest. Thus, the plaintiff has shown a likelihood of success on the merits and met the first prong for his TRO application.

### C. Irreparable Harm

The D.C. Circuit “has set a high standard for irreparable injury” to warrant preliminary injunctive relief. *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). In order to be considered “irreparable,” the injury “must be ‘both certain and great,’ ‘actual and not theoretical,’ ‘beyond remediation,’ and ‘of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.’” *Id.* (emphasis in original) (quoting *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297). Generally, however, “[w]hen an alleged deprivation of a constitutional right is involved, such as the right to . . . freedom of religion, most courts hold that no further showing of irreparable injury is necessary.” 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2948.1 (3d ed. 2013); *see also Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (“It has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion))).

The defendants argue that the plaintiff cannot show any harm for the same reason they argue the plaintiff cannot show substantial burden—because all of the “testing would be completed with CPT Singh’s articles of faith intact.” Defs.’ Opp’n at 8–9. The defendants ignore the fact that the plaintiff has been singled out to complete three days of helmet and gas mask testing simply because of his request for a religious accommodation. Whether intentional or not, this is discriminatory, and as the plaintiff notes, “being subjected to discrimination is by itself an irreparable harm.” Pl.’s Reply Mem. Supp. Appl. TRO at 13, ECF No. 16; *see also Smith v. City of Jackson*, 544 U.S. 228, 249 (2005) (O’Connor, J., concurring) (noting, in the

context of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623(a), that “discriminating against” an individual is “*inherently harmful* to the targeted individual” (emphasis in original)). Thus, the plaintiff has met the irreparable harm prong for injunctive relief.

#### **D. Balance of Equities**

The third factor for injunctive relief requires a showing that the balance of hardships warrants an equitable remedy. In making this assessment, the court may consider whether the requested injunctive relief would “substantially injure other interested parties.” *Ark. Dairy Co-op Ass’n, Inc. v. U.S. Dep’t of Agric.*, 573 F.3d 815, 821 (D.C. Cir. 2009) (framing the balance of harms factor as an inquiry into whether “an injunction would substantially injure other interested parties”); *see also Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (same).

In this case, the balance of harms weighs in the plaintiff’s favor. Aside from the harm discussed above, *see supra* Part III.C, denial of the injunctive relief sought in the plaintiff’s pending motion would sanction the defendants’ imposition of targeted, specialized testing requirements on a decorated officer simply because he requested a religious accommodation to the Army’s grooming and appearance regulations. This would likely have, as the plaintiff points out, a chilling effect on religious minorities, not only Sikhs, who desire lawfully to practice their religion while serving this country in the Armed Forces. As the plaintiff explains, “[i]f there is a perception that soldiers from minority religions who apply for a religious accommodation will then be ‘given the third degree’ as a penalty just for asking, the Army’s promise to provide religious accommodations will prove entirely illusory.” Pl.’s Mem. at 42.

The defendants make two arguments with respect to the equities.<sup>3</sup> First, they argue, as they do with respect to the substantial burden, that they will be harmed by the granting of the instant temporary restraining order because they will be unable to obtain important information relevant to a final decision on the plaintiff's accommodation request. *See* Defs.' Opp'n at 10. The granting of this TRO application, however, will not prevent the defendants from obtaining important information about the safety of Army helmets or gas masks. If the defendants want information about the safety of helmets and gas masks, such studies may be conducted in a controlled environment where one particular individual's religious freedom is not at stake.

Second, the defendants argue that a temporary restraining order "would be disruptive to affairs peculiarly within the jurisdiction of the military authorities," Defs.' Opp'n at 9 (citing *Orloff*, 345 U.S. at 94–95), and "interfere[] with the proper functioning of our military forces," *id.* They urge the Court to "consider the precedential effect that granting the injunction would have on the military as a whole" and "not [to] focus narrowly on this single case," warning the Court of the "harm to the Army from judicial intrusion into military affairs." *Id.* at 10. The defendants further assert that "[a] temporary restraining order, in this case, could have far-reaching effects on the military's ability to maintain discretion on the composition of the force and discipline of its soldiers" which are "weighty considerations." Defs.' Opp'n at 11.

These dire warnings are not taken lightly, but they are misplaced. The Court must focus on the particular case or controversy pending before it, and this particular case poses no risk of "far-reaching effects" on military discipline. In this case, a decorated officer seeks relief from an

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<sup>3</sup> Though the defendants contend that the balance of equities and public interest factors "merge when the Government is the opposing party," Defs.' Opp'n at 9 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)), the authority cited for that proposition does not apply to temporary or preliminary injunctive relief, but rather to stays of removal under the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. § 1252. *Nken*, 556 U.S. at 423–24. As the plaintiff notes in his reply, "[t]he Supreme Court's latest examination of the preliminary injunction factors in a case involving federal defendants treats the factors separately." Pl.'s Reply at 16 (citing *Winter*).

order to submit to nonstandard testing for which he has been singled out due to his request for the Army to accommodate his constitutional and statutory right to religious exercise. Thus, to the extent that the defendants claim harm from an injunction against application of an unlawful order that impinges upon a soldier's free exercise right, the scale of equities falls squarely on the plaintiff's side.

#### **E. Public Interest**

The public interest in this case weighs strongly in favor of the plaintiff, despite the defendants' argument to the contrary. The defendants argue that, "[t]he injunctive relief sought here would unduly interfere with the public's recognized interest in efficient administration of military personnel matters," and affect the public's undisputed "interest in maintaining an effective military." Defs.' Opp'n at 11. Again, the defendants' arguments are not taken lightly. "[C]ourts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction," *Winter*, 555 U.S. at 24 (quoting *Romero-Barcelo*, 456 U.S. 305, 312 (1982)), and an injunction's "adverse impact on the public interest in national defense" cannot be understated, *id.* Here, however, the granting of the requested injunctive relief would not have an impact on the national defense or the Army's ability to protect our nation's security.

This case is distinguishable from those military cases which directly implicate public safety or national security. For example, in *Winter*, the Supreme Court reversed a court's grant of "a preliminary injunction imposing restrictions on the Navy's sonar training," including "the use of modern sonar to detect and track enemy submarines." 555 U.S. at 12. Noting that the training exercises only allegedly harmed marine mammals, and that the extent of the harm, if any, was disputed, the Court found "that the balance of equities and consideration of the overall public interest" weighed "strongly in favor of the Navy." *Id.* at 14, 26. The Court explained that

the injunction would “forc[e] the Navy to deploy an inadequately trained antisubmarine force,” “jeopardize[] the safety of the fleet,” and undermine the President’s “determin[ation] that training with active sonar is ‘essential to national security.’” *Id.* at 26. The Court also recognized that the injunction would “hinder efforts to train sonar operators under realistic conditions, ultimately leaving strike groups more vulnerable to enemy submarines.” *Id.* at 31. The Court thus concluded, “[t]he public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs.” *Id.* at 26.

This case is simply not analogous. The Court’s grant of injunctive relief would prohibit specialized, nonstandard testing of a single officer currently based in Virginia. It would in no way jeopardize Army training or safety, nor would it undercut an Executive branch national security determination. One decorated officer’s attempt to vindicate his constitutionally and statutorily-protected religious rights does not “unduly interfere” with the “efficient administration of personnel matters.”

On the other hand, the public has a significant interest in having a diverse military, reflective of the composition of our country and accepting of religious minorities. Indeed, the Army recognized this interest in creating the “Military Accessions Vital to the National Interest (MAVNI) program,” under which individuals may enlist where they “possess cultural and linguistic skills,” including fluency in certain languages, which “are considered vital to our national interest.” *Lamba Decl.* ¶ 4. The specialized testing the Army seeks to conduct in this case is perceived as “discriminatory and demeaning,” *id.* ¶ 24; *Khalsa Decl.* ¶ 28; *Kalsi Decl.* ¶ 18, and it is likely to discourage Sikhs and other minorities from military service. Therefore, in

these circumstances, the public's best interest weighs heavily in favor of granting the plaintiff's TRO application.

#### IV. CONCLUSION

For the foregoing reasons, the plaintiff's Application for Temporary Restraining Order, ECF No. 2, is granted. Accordingly, the defendants are preliminarily enjoined from subjecting the plaintiff to any non-standard or discriminatory testing for his helmet and gas mask during the pendency of the litigation.

The parties are directed to confer and jointly submit, by 5:00 p.m. on March 4, 2016, a proposed briefing schedule to govern further proceedings in this case.

An appropriate Order accompanies this Memorandum Opinion.

Date: March 3, 2016



Digitally signed by Hon. Beryl A. Howell  
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Court for the District of Columbia,  
ou=United States District Court Judge,  
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**BERYL A. HOWELL**  
United States District Judge

# **EXHIBIT 30**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<hr/>		)	
IKNOOR SINGH,		)	
	Plaintiff,	)	
		)	
v.		)	Civil Action No. 14-1906 (ABJ)
		)	
JOHN MCHUGH, <i>et al.</i> ,		)	
	Defendants.	)	
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**MEMORANDUM OPINION**

Plaintiff Iknoor Singh is a rising junior at Hofstra University and an observant Sikh. In accordance with his religion, plaintiff does not cut his hair or beard, and he wears a turban. He has endeavored to enroll in the Reserve Officers’ Training Corps (“ROTC”) program run by the United States Army at his university, but his religious practices do not conform to Army uniform and grooming standards. Plaintiff sought a religious accommodation that would enable him to enroll in ROTC with his articles of faith intact, but the Army denied the request. Plaintiff contends that the Army’s refusal to accommodate his religious exercise violates the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb *et seq.*, and he brought this lawsuit against John McHugh, in his official capacity as Secretary of the United States Army; Lieutenant General James C. McConville, in his official capacity as Deputy Chief of Staff, G-1, United States Army; Brigadier General Peggy C. Combs, in her official capacity as Commanding General, United States Army Cadet Command; and Lieutenant Colonel Daniel L. Cederman, in his official capacity as Commander of the ROTC program at Hofstra University.

In their motion for summary judgment, defendants remind the Court of the doctrine that cautions judges to afford substantial deference to the judgment of military commanders and to decline to interpose their own views in matters involving the composition and training of military officers. In opposing defendants' motion and advancing his own, plaintiff points out that like all government agencies, the Armed Services are governed by the congressional determination – enshrined in RFRA – to tip the scale in favor of individual religious rights. He notes that even the military must be able to demonstrate that a policy that imposes a substantial burden upon an individual's ability to practice his religion furthers a compelling government interest, and is the least restrictive alternative available for furthering that interest. In other words, while the Court must accord the military a great deal of respect, particularly in its identification of the compelling interests involved, the defendants still bear the burden to come forward with sufficient evidence to satisfy the strict scrutiny inquiry: does the specific application of Army policy to this plaintiff further the asserted compelling interest and do so in the least restrictive manner?

The Court finds that defendants have failed to show that the application of the Army's regulations to this plaintiff and the denial of the particular religious accommodation he seeks further a compelling government interest by the least restrictive means. Therefore, and for the additional reasons set forth below, defendants' dispositive motions will be denied and judgment will be entered in favor of the plaintiff. The Court accords substantial deference to the Army's judgments concerning the essential role that uniformity plays in military training and effectiveness. But given the tens of thousands of exceptions the Army has already made to its grooming and uniform policies, its successful accommodation of observant Sikhs in the past, and the fact that, at this time, plaintiff is seeking only to enroll in the ROTC program, the Army's refusal to permit him to do so while adhering to his faith cannot survive the strict scrutiny that RFRA demands.

This decision is limited to the narrow issue presently before the Court – plaintiff’s ability to enroll in ROTC with his turban, unshorn hair, and beard – and it does not address plaintiff’s eventual receipt of a contract or an Army commission.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff Iknor Singh is a rising junior at Hofstra University and an adherent of the Sikh faith. Pl.’s Statement of Undisputed Material Facts in Supp. of Cross-Mot. for Summ. J. [Dkt. # 32-2] (“Pl.’s SOF”) ¶ 8; Defs.’ Resp. to Pl.’s SOF [Dkt. # 37-1] (“Defs.’ SOF Resp.”) ¶ 8. In accordance with his religion, plaintiff does not cut his beard or hair, and he tucks his unshorn hair under a turban. Pl.’s SOF ¶ 8; Defs.’ SOF Resp. ¶ 8. Plaintiff maintains the sincere belief that if he cut his hair, shaved his beard, or abandoned his turban, he would be “dishonoring and offending God.” Pl.’s SOF ¶ 8; Defs.’ SOF Resp. ¶ 8.

The Army operates an ROTC program at Hofstra University that plaintiff has sought to join. Pl.’s SOF ¶¶ 9, 13; Defs.’ SOF Resp. ¶¶ 9, 13. Plaintiff hopes to serve in Military Intelligence, and he speaks Urdu, Hindi, and Punjabi, as well as English. Ex. 7 to Decl. of Pl. in Supp. of Pl.’s Mot. for Prelim. Inj. [Dkt. # 3-2, 27–28]. Plaintiff has participated in ROTC as an auditing student but he has not yet enrolled in the program because the Army demands that he first agree to abide by its grooming and uniform regulations by removing his turban, cutting his hair, and shaving his beard. Pl.’s SOF ¶¶ 9, 13; Defs.’ SOF Resp. ¶¶ 9, 13. Plaintiff requested a religious accommodation that would permit him to enroll with his articles of faith intact, and that request has now been formally denied. Letter from Lieutenant General James C. McConville to Pl. (Dec. 19, 2014) [Dkt. # 18-1] (“McConville Letter”) at 1.

The Army initially took the position that the would-be soldier was bound to comply with the grooming and uniform policies before he could enroll in ROTC and that it could not even

consider a request for an accommodation until he did so. *See* Ex. C to Defs.’ Mot. to Dismiss and for Summ. J. [Dkt. # 21-2, 13–14]. On November 12, 2014, before the Army had agreed to consider plaintiff’s accommodation request, plaintiff filed this action and sought: (1) a preliminary injunction requiring the Army to process the accommodation request and ordering a temporary accommodation and “provisional enlistment” if the request was denied; (2) a declaratory judgment that defendants’ refusal to grant plaintiff a religious exemption to the Army’s grooming and uniform standards would violate RFRA; (3) a permanent injunction enjoining defendants from enforcing the Army’s standards insofar as they would require plaintiff to cut his hair, shave his beard, and remove his turban, and ordering defendants to allow plaintiff “to join” the Hofstra ROTC unit; and (4) attorney’s fees and costs. Compl., Request for Relief ¶¶ a–d. The next day, plaintiff filed a motion for a preliminary injunction seeking the preliminary relief identified in the complaint. Pl.’s Mot. for Prelim. Inj. [Dkt. # 3].

While the motion for a preliminary injunction was pending, defendants notified the Court that the Army had changed its position, and that it would process plaintiff’s accommodation request. Defs.’ Opp. to Pl.’s Mot. for Prelim. Inj. [Dkt. # 16] at 1. On December 19, 2014, the request was denied. Notice of Filing of Agency’s Decision on Pl.’s Accommodation Request [Dkt. # 18] (“Decision Notice”); McConville Letter. In light of defendants’ consideration and denial of plaintiff’s request, the Court consolidated the motion for a preliminary injunction with the merits pursuant to Federal Rule of Civil Procedure 65. Minute Order (Dec. 22, 2014).

Defendants filed a motion to dismiss or, in the alternative, for summary judgment on January 20, 2015. Defs.’ Mot. to Dismiss and for Summ. J. (mistakenly labeled “memorandum in support”) [Dkt. # 21] (“Defs.’ Mot.”); Defs.’ Mem. in Supp. of Defs.’ Mot. [Dkt. # 21] (“Defs.’ Mem.”). They took the position that the complaint should be dismissed under Federal Rule of

Civil Procedure 12(b)(6) because plaintiff, as a civilian, could not establish that the Army's decision substantially burdened his religious practice, and because requests for judicially-ordered enlistments are nonjusticiable.<sup>1</sup> Defs.' Mem. at 1, 3. In the alternative, defendants argued that they were entitled to summary judgment on all of plaintiff's claims. *Id.*

On January 27, 2015, plaintiff responded to defendants' motion with a motion to take discovery pursuant to Federal Rule of Civil Procedure 56(d). Pl.'s Mot. for Disc. [Dkt. # 22]. The matter was fully briefed, and the Court issued an order granting the motion in part and denying it in part. Order (Feb. 3, 2015) [Dkt. # 25]. After the discovery was completed, plaintiff filed an opposition to defendants' motion to dismiss and for summary judgment, combined with a cross-motion for summary judgment, on March 21, 2015. Pl.'s Cross-Mot. for Summ. J. [Dkt. # 33] ("Pl.'s Mot."); *see also* Pl.'s Mem. Opposing Defs.' Mot. and Supporting Pl.'s Mot. [Dkt. # 32]. Defendants filed a reply and cross-opposition on April 10, 2015, Defs.' Opp. to Pl.'s Mot. and Reply in Supp. of Defs.' Mot. [Dkt. # 37] ("Defs.' Reply"), and plaintiff filed a cross-reply on April 17, 2015. Pl.'s Reply Mem. in Supp. of Pl.'s Mot. [Dkt. # 43] ("Pl.'s Reply"). The Court heard argument on the motions on April 29, 2015.

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<sup>1</sup> Defendants initially requested that the portion of the complaint they contend is nonjusticiable be dismissed pursuant to Rule 12(b)(1), *see* Defs.' Mot., but noted in their reply brief that a recent opinion from another court in this District indicates that a motion to dismiss for nonjusticiability should be considered under Rule 12(b)(6) instead. *See* Defs.' Opp. to Pl.'s Cross-Mot. for Summ. J. and Reply in Supp. of Defs.' Mot. [Dkt. # 37] at 3 n.2, citing *Saint-Fleur v. McHugh*, No. 1:13-cv-01019 (APM), 2015 WL 1209908, at \*3 (D.D.C. Mar. 17, 2015).

## REGULATORY BACKGROUND

### I. Army Uniform and Grooming Regulations

#### A. Religious Headgear

The Army's uniform regulations permit soldiers to wear religious apparel while in uniform, including religious "headgear," if the apparel is "neat and conservative" and it will not "interfere with the performance of military duties." Army Regulation ("A.R.") 600-20 (Nov. 6, 2014), Regulatory App'x to Defs.' Mot. [Dkt. # 21-4, 26] ("A.R. 600-20") at A024. Soldiers in uniform may wear religious headgear if:

1. The religious headgear is subdued in color . . . .
2. The religious headgear is of a style and size that can be completely covered by standard military headgear.
3. The religious headgear bears no writing, symbols, or pictures.
4. Wear of the religious headgear does not interfere with the wear or proper functioning of protective clothing or equipment.

\* \* \*

6. Religious headgear will not be worn in place of military headgear under circumstances when the wear of military headgear is required (for example, when the Soldier is outside or required to wear headgear indoors for a special purpose).

*Id.* "Religious headgear that meets these criteria is authorized irrespective of the faith group from which it originates." *Id.*

Soldiers are not authorized to wear religious headgear that does not meet these requirements while in uniform unless they have received a religious accommodation. *See id.* at A022. It is the Army's policy to grant religious accommodation requests related to uniforms "unless accommodation will have an adverse impact on unit readiness, individual readiness, unit

cohesion, morale, good order, discipline, safety, and/or health,” the factors that constitute “military necessity.” *Id.*

### *B. Hair*

Under Army regulations, men’s hair “must present a tapered appearance,” and, when combed, may “not fall over the ears or eyebrows, or touch the collar, except for the closely cut hair at the back of the neck.” A.R. 670-1 (Sept. 15, 2015, revised Sept. 24, 2015), Ex. 5 to Pl.’s Mot. [Dkt. # 34, 105] (“A.R. 670-1”) at 5. “Males are not authorized to wear braids, cornrows, twists, dreadlocks, or locks while in uniform or in civilian clothes on duty,” although they may wear wigs “to cover natural baldness or physical disfiguration.” *Id.* Women are permitted to wear bangs and longer hair, subject to certain requirements, *id.*, and their “hair may be styled with braids, cornrows, or twists.” *Id.* at 6. Women, but not men, are permitted to use cosmetics, “provided they are applied modestly and conservatively.” *Id.*

Men are required to “keep their face[s] clean-shaven when in uniform, or in civilian clothes on duty.” A.R. 670-1 at 5. Sideburns are permitted as long as they do not “extend below the bottom of the opening of the ear” and the length of individual hairs does not exceed one-eighth of an inch. *Id.* Mustaches are permitted as long as they are “neatly trimmed, tapered, and tidy.” *Id.*

The Army makes exceptions to its hair-related grooming rules for medical reasons, *see* A.R. 670-1 at 5, and for “operational necessity.”<sup>2</sup> Defs.’ Objections and Resps. to Admiss. Propounded by Pl., Ex. 12 to Pl.’s Mot. [Dkt. # 34, 267] (“Defs.’ Admiss.”) at 4. Medical exemptions are usually related to dermatological conditions such as pseudofolliculitis barbae and

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<sup>2</sup> In addition, defendants acknowledge that “[t]he Army has approved religious grooming exceptions to wear beards for three other individuals . . . : an orthopedic surgeon, an anesthesiologist, and a chaplain.” Defs.’ Reply at 22 n.11.

acne keloidalis nuchae. Pl.’s SOF ¶ 41; Defs.’ SOF Resp. ¶ 41; *see also* Technical Bulletin 287, Pseudofolliculitis of the Beard and Acne Keloidalis Nuchae (Dec. 10, 2014), Ex. AA to Defs.’ Reply [Dkt. # 37-2, 38] (“TB MED 287”) at 4. A doctor may authorize a temporary or permanent “shaving profile,” which permits the affected soldier to wear a beard. TB MED 287 at 11–12. Medically authorized beards are generally limited to one-quarter of an inch, although Army regulations permit a physician to specify that a longer beard is necessary. *Id.* at 11.

Army records indicate that at least 49,690 permanent shaving profiles and 57,616 temporary shaving profiles have been authorized since 2007.<sup>3</sup> *See* Ex. 9 to Pl.’s Mot. [Dkt. # 34, 226–28]. Defendants state that these shaving profiles are subject to command review. *See* Stipulation in Lieu of R. 30(b)(6) Testimony, Ex. 10 to Pl.’s Mot. [Dkt. # 34, 230] (“Defs.’ Stip.”) at 1. Defendants do not dispute plaintiff’s contention that the Army has deployed soldiers with shaving profiles for operations in foreign countries and has allowed them to continue wearing their beards during deployment. Pl.’s SOF ¶ 54; Defs.’ SOF Resp. ¶ 54.

### *C. Tattoos*

Army regulations authorize soldiers to wear tattoos subject to limitations with respect to their size, placement, number, and content. Ex. 5 to Pl.’s Mot. [Dkt. # 34, 110] at 10. But the Army has granted numerous exceptions and waivers to its tattoo policy. For instance, when the Army tightened its tattoo guidelines on March 31, 2014, it grandfathered in 197,102 soldiers with

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<sup>3</sup> The shaving profile data comes from the Army’s “e-Profile” system. Pl.’s SOF ¶ 48. The total numbers of temporary and permanent shaving profiles authorized since 2007 is likely higher because e-Profile did not come into widespread use in the Army until 2011, and some temporary profiles may not be reflected in the database even after that time. Decl. of Philip M. Paternella, Ex. 8 to Pl.’s Mot. [Dkt. # 34, 223–24] ¶¶ 3–6.

non-conforming tattoos.<sup>4</sup> Defs.’ Stip. at 2. In addition, since November 2014, the Army has approved at least 183 exceptions to the tattoo policy, including for tattoos with religious themes (for example, images of crosses, biblical verses, and an image of Jesus Christ); tattoos related to aspects of popular culture, such as movies, cartoon characters, and cars (for example, an image of a vampire Mickey Mouse and a Star Wars caricature); tattoos that reflect cultural or ethnic heritage (a family crest, a grandmother’s surname, and Samoan tribal bands); and tattoos reflecting various personal interests (such as images of dragons, words, and symbols). Pl.’s SOF ¶¶ 63–67; Defs.’ SOF Resp. ¶¶ 63–67. Recipients of these tattoo waivers have included prospective Army enlistees, enlisted soldiers, and ROTC cadets. Pl.’s SOF ¶ 68; Defs.’ SOF Resp. ¶ 68.

## **II. The Reserve Officers’ Training Corps**

The mission of the ROTC “is to produce commissioned officers in the quality, quantity, and academic disciplines necessary to meet active Army and reserve component requirements.” A.R. 145-1, Regulatory App’x to Defs.’ Mot. [Dkt. # 21-4, 39] (“A.R. 145-1”) at A037. At Hofstra University, the ROTC program seeks to “recruit, retain, and ultimately commission Second Lieutenants in the US Army who are mentally, physically, and emotionally prepared to lead American Soldiers in order to deter our enemies and, when necessary, fight and win our Nation[’s] wars.” Decl. of Lieutenant Colonel Daniel Cederman, Ex. B to Defs.’ Mot. [Dkt. # 21-2, 7] (“Cederman Decl.”) ¶ 4.

ROTC classes include “enrolled” cadets and “participating students.” Defs.’ Statement of Material Facts [Dkt. # 21-1] (“Defs.’ SOF”) ¶ 6; Pl.’s Resp. to Defs.’ SOF [Dkt. # 32-14] (“Pl.’s SOF Resp.”) ¶ 6. Enrolled cadets participate in classroom instruction, as well as training outside

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<sup>4</sup> The Army revised and relaxed its tattoo guidelines on April 10, 2015. Notice of Revised Regulation on Grooming and Appearance Standards [Dkt. # 42] at 1.

the classroom. Defs.' SOF ¶ 6; Pl.'s SOF Resp. ¶ 6. They may wear military uniforms during training, and they are subject to Army grooming standards during ROTC activities. A.R. 145-1 at A067. Participating students are limited to attending ROTC classroom instruction. Cadet Command Pam 145-4, Regulatory App'x to Defs.' Mot. [Dkt. # 21-4, 111] ("C.C. Pam 145-4") at A109. They are not authorized to wear uniforms, nor are they subject to Army grooming standards. *See id.*; *see also* Defs.' SOF ¶ 7; Pl.'s SOF Resp. ¶ 7. Students who are not enrolled in ROTC may only attend Hofstra's military-science course during their first two years of college. Pl.'s SOF ¶ 7; Defs.' SOF Resp. ¶ 7.

Enrolled cadets are either "contracted" or "non-contracted." C.C. Pam 145-4 at A113. Non-contracted cadets are not members of the Army, Defs.' SOF ¶ 8; Pl.'s SOF Resp. ¶ 8, and they must contract with the Army as cadets before their junior year of college in order to continue participating in ROTC activities and to be eligible for ROTC benefits. Pl.'s SOF ¶ 7; Defs.' SOF Resp. ¶ 7. To be eligible to contract with the Army, enrolled cadets must either complete the "Basic Course," or they must attend the Leader's Training Course, or "Basic Camp," during the summer before their junior year of college. *See* Army Reg. 145-1 at A069; Cederman Decl. ¶ 5. Enrolled cadets compete for a limited number of contracts. *See* Cederman Decl. ¶ 7; 30(b)(6) Cederman Dep., Feb. 26, 2015, Ex. 1 to Pl.'s Mot. [Dkt. # 34, 31] ("Cederman Dep.") at 38.

Contracted cadets are members of the Army; they are required to enlist in the Army Reserve, and they agree to accept a commission in the Army if one is offered. Defs.' SOF ¶¶ 8, 10; Pl.'s SOF Resp. ¶¶ 8, 10. In addition, only contracted cadets may participate in the ROTC "Advanced Course," which includes the Military Science III and IV classes, and the Leadership Development and Assessment Course, a paid twenty-nine day session that "gives cadets the chance to practice what they have learned in the classroom, and introduces them to Army life 'in the

field.” Defs.’ SOF ¶ 9; Pl.’s SOF Resp. ¶ 9; *see also* Cederman Decl. ¶¶ 3, 5. Contracted ROTC cadets are also eligible to receive scholarships of up to \$1,200 annually for books and expenses, and a \$300–\$500 per month tax-exempt spending allowance. Pl.’s SOF ¶ 3; Defs.’ SOF Resp. ¶ 3.

### **III. The Religious Freedom Restoration Act and Department of Defense Instruction 1300.17**

“Congress enacted RFRA in 1993 in order to provide very broad protection for religious liberty.” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2760 (2014). To this end, RFRA provides that the “[g]overnment shall not substantially burden a person’s exercise of religion” unless it can “demonstrate[] 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).<sup>5</sup> RFRA further specifies that “the term ‘government’ includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States.” *Id.* § 2000bb-2(1).

Whether a government action substantially burdens a plaintiff’s religious exercise is a question of law for a court to decide. *Priests for Life v. U.S. Dep’t of Health & Human Servs.*, 772 F.3d 229, 247 (D.C. Cir. 2014). “The term ‘religious exercise’ includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A); *see also id.* § 2000bb-2(4). If a plaintiff demonstrates the substantial burden to his religious belief, then the government bears the burden of showing that its policy furthers a compelling government interest by the least restrictive means. *Id.* §§ 2000bb-1(b), 2000bb-2(3); *Hobby Lobby*, 134 S. Ct. at 2761.

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<sup>5</sup> Although the Supreme Court found RFRA unconstitutional as applied to the states, *City of Boerne v. Flores*, 521 U.S. 507, 533–36 (1997), the statute still applies to the federal government. *Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156, 167 (D.C. Cir. 2003); *Henderson v. Kennedy*, 265 F.3d 1072, 1073 (D.C. Cir. 2001).

The Department of Defense expressly incorporated RFRA into its own regulations effective January 22, 2010. It amended DoD Instruction (“DoDI”) 1300.17, which addresses “Accommodation of Religious Practices Within the Military Services,” as follows:

In accordance with section 2000bb-1 of Title 42, United States Code . . . requests for religious accommodation from a military policy, practice, or duty that substantially burdens a Service member’s exercise of religion may be denied only when the military policy, practice, or duty:

- (a) Furthers a compelling governmental interest.
- (b) Is the least restrictive means of furthering that compelling governmental interest.

DoDI 1300.17, Regulatory App’x to Defs.’ Mot. [Dkt. # 21-4, 6] (“DoDI 1300.17”) at A004.<sup>6</sup>

With respect to the Army, any requests that would require a waiver of grooming and appearance practices must be forwarded to the Secretary of the Army and must be resolved by an official no lower than the Deputy Chief of Staff, G-1. *Id.* at A005. Requests for accommodation of religious practices are to be “assessed on a case-by-case basis” and “considered based on [their] unique facts; the nature of the requested religious accommodation; the effect of approval or denial on the Service member’s exercise of religion; and the effect of approval or denial on mission accomplishment, including unit cohesion.” *Id.*

**THE DECISION AT ISSUE IN THIS CASE:  
The Denial of Plaintiff’s Request for a Religious Accommodation**

Plaintiff “has long dreamed of serving his country,” Pl.’s SOF ¶ 9, and he has explained that he wishes to enroll as a cadet in the Hofstra ROTC program so that he may compete for a

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<sup>6</sup> DoDI 1300.17 further provides that “[r]equests for religious accommodation from a military policy, practice, or duty that does **not** substantially burden a Service member’s exercise of religion” are evaluated by balancing “the needs of the requesting Service member . . . against the needs of mission accomplishment.” DoDI 1300.17 at A004. Requests for accommodation that fall under this balancing test may be denied “[o]nly if it is determined that the needs of mission accomplishment outweigh the needs of the Service member.” *Id.*

contract. Pl.'s Reply at 1–2. Plaintiff has participated in ROTC classes at Hofstra as an unenrolled student since his freshman year. Pl.'s SOF ¶ 13; Defs.' SOF Resp. ¶ 13. In April 2013, plaintiff requested a religious accommodation so that he could fully enroll in ROTC, and complete all of the training necessary to compete for a contract, while maintaining his unshorn hair, beard, and turban. *See* Ex. O to Defs.' Mot. [Dkt. # 21-2, 62] at 2. The Enrollment Officer of the Hofstra ROTC program denied plaintiff's request for an accommodation, stating that “[t]he Army whenever possible, makes all attempts to accommodate religious practices and belief but not when it has an adverse impact on readiness, unit cohesion, standards, health, safety or discipline.” *Id.* at 1.

After the initial denial, plaintiff continued to seek an accommodation. In June 2013, the organization UNITED SIKHS sent a letter on plaintiff's behalf to the ROTC Department Chair at the time, Lieutenant Colonel (“LTC”) David Daniel, urging him to approve a religious exemption for the plaintiff. Ex. N to Defs.' Mot. [Dkt. # 21-2, 54–59]. LTC Daniel denied the request on August 16, 2013, stating that “the contracting of Cadets into the ROTC program who cannot comply with the wear and appearance and personal grooming standards of Army Regulation (AR) 670-1 is not permitted under AR 145-1,” and that neither he nor U.S. Army Cadet Command had the authority to permit an exception to this policy. Ex. M to Defs.' Mot. [Dkt. # 21-2, 51] at 1. LTC Daniel further stated that it was “not legally permissible under AR 145-1 to grant religious exceptions to allow a Sikh Cadet to enroll in the ROTC program while maintaining his religious articles.” *Id.* at 1–2.

Plaintiff submitted a letter appealing LTC Daniel's decision on November 11, 2013. Ex. H to Defs.' Mot. [Dkt. # 21-2, 34–39]. Plaintiff learned that this request was denied by Major General (“MG”) Jefforey A. Smith in April 2014, Pl.'s SOF ¶ 17; Defs.' SOF Resp. ¶ 17, after the

amendments to DoDI 1300.17 took effect. MG Smith stated that “ROTC units should not permit a student to enroll (contracted or non-contract) unless the student is willing to comply with Army policies, including AR 670-1.” Ex. F to Defs.’ Mot. [Dkt. # 21-2, 30]. He added that “[s]tudents who are not enrolled as cadets in the program may not apply for a religious accommodation,” and that “[a]ny ROTC Cadet who applies for a religious accommodation must comply with Army policy unless and until the request is approved.” *Id.*

On August 5, 2014, plaintiff’s attorneys wrote again to MG Smith, and to defendants Lieutenant General (“LTG”) James C. McConville and LTC Daniel Cederman. Ex. E to Defs.’ Mot. [Dkt. # 21-2, 18–28]. On October 17, 2014, LTG McConville responded that he was “unable to approve or deny a waiver of Army uniform and grooming policy . . . because prospective cadets, applicants, and enlistees are not subject to the Army’s uniform and grooming policy.” Ex. C to Defs.’ Mot. [Dkt. # 21-2, 13] at 1. In other words, the Army took the position that it was unable to consider plaintiff’s request for a religious accommodation that would enable him to enroll in ROTC because plaintiff was not yet enrolled in ROTC.

After plaintiff filed this lawsuit, the Army decided to process his accommodation request. Defs.’ Opp. to Pl.’s Mot. for Prelim. Inj. at 1. On December 19, 2014, plaintiff received a letter from LTG McConville denying the religious accommodation on substantive grounds. Decision Notice; McConville Letter.

LTG McConville’s letter stated that, after balancing “the facts of [plaintiff’s] individual case” against considerations of “military necessity,” the Army was denying the accommodation request on several grounds. McConville Letter at 1. McConville explained that “Army ROTC is the primary means of generating the officer leaders of the Army,” and so “it is important that Cadets are inculcated into the Army and its values, training methods, and traditions in a way that

is reflective of what their future Soldiers will expect of them.” *Id.* at 1–2. Citing his “over thirty years of experience as a leader and commander of Soldiers,” he determined that “[p]ermitting an obvious deviation from these standards in an officer training program” by granting plaintiff’s requested accommodation “would, in the eyes of the Soldiers whom Cadets are being trained to lead, damage the esteem and credibility of ROTC and the officer corps in general.” *Id.* at 2. In the seven-page letter, McConville further explained that, in his view, granting plaintiff an accommodation would undermine the following critical interests:

- Unit Cohesion and Morale: McConville stated that accommodating plaintiff’s religious practices “will have an adverse impact on unit cohesion and morale because uniformity is central to the development of a bonded and effective fighting force that is capable of meeting the Nation’s ever changing needs.” *Id.* He explained that “[u]niformity is a primary means by which we convert individuals into members of the Army,” especially in ROTC. *Id.* Since “[h]air and clothing are a very visible way that individuals express their identity,” maintaining uniformity helps a soldier or cadet to develop “a willingness to submit his individuality to the larger organization.” *Id.* at 2–3. He further stated that uniformity “promotes cohesive bonds by instilling a common identity, provides visual evidence of mutual experience, and reinforces a sense of tradition.” *Id.* at 3. McConville concluded that granting an accommodation to plaintiff “would undermine the common Army identity we are attempting to develop in ROTC, and adversely impact efforts to develop cohesive teams,” and would also “detract from the heritage that [McConville] view[s] as a vital component of soldierly strength.” *Id.*
- Good Order and Discipline: According to McConville, “[o]ne of the key ways the Army develops disciplined leaders is through ritualistic enforcement of uniform grooming standards.” *Id.* He explained that “[d]iscipline is the backbone of an efficient, cohesive, and effective fighting force,” and that “[e]xperience has shown [him] that the even handed enforcement of grooming standards instills the self-discipline necessary for the military member to perform effectively.” *Id.* at 4. “Uniformity,” he continued, “is a readily available means of instilling the practice of inspection and compliance that not only sharpens Soldiers, but also leaders.” *Id.* “Granting [plaintiff] an exception in a military officer training program would undercut this fundamental component of our program, and dramatically change the nature of how we train officers for the future needs of the Army.” *Id.* McConville warned that “[i]f officer training does not reflect Army training, the credibility of the officer corps will be called into

question.” *Id.* at 5. According to McConville, uniformity also promotes discipline “in a more subtle way because it helps to infuse Soldiers with a code of professional conduct that they will adhere to in combat.” *Id.* at 4. “Uniformity helps to inhibit personal desires and impulses that may be antithetical to mission accomplishment.” *Id.* at 5. For all these reasons, McConville concluded that granting an accommodation to plaintiff “would drive a stark wedge between the officer corps, its training, and the standards and training methods that are employed by the enlisted Army.” *Id.*

- Individual and Unit Readiness: McConville stated that permitting plaintiff to enroll in ROTC with a religious grooming and uniform accommodation “would leave [him] unprepared to advance to the next phase of officer training by failing to emphasize uniformity.” *Id.* He stated that the accommodation “would have a detrimental impact on [plaintiff’s] individual readiness” because “allowing [plaintiff] to continue in officer training without any emphasis on uniformity would leave [him] generally unprepared to lead Soldiers, viewed as an outsider by [his] peers, and trained in a manner that is wholly inconsistent with how we develop strong military officers.” *Id.* In addition, he stated that because plaintiff’s accommodation would weaken “good order, discipline, the credibility of the officer corps, cohesion, and morale,” it would also “undermine the overall readiness of the Army.” *Id.* at 5–6.
- Health and Safety: Referring to research that “shows that facial hair significantly degrades the protection factor of all approved protective masks,” McConville stated that plaintiff’s “degraded ability to seal a protective mask in training would not only subject [him] to risk during training, but, were [he] to enter the military service, leave [him] untrained in the proper wear and function of these potentially life saving measures.” *Id.* at 6. McConville noted that “there are some protective masks that are capable of providing protection to individual[s] who wear beards,” but that those masks “are not standard Army issue.” *Id.* Given that “the Army operates on a premise of interchangeable parts,” he concluded that it “simply is not feasible to provide [plaintiff] a special protective mask without undermining the Army’s need for flexibility to meet operational contingencies.” *Id.* In addition, McConville noted that compliance with Army grooming standards is “[o]ne of the most important mechanisms for managing risk” because it facilitates “the ability to assess a Soldier’s competency and attention to detail.” *Id.* “Disparate grooming standards mean that deficiencies are less capable of being identified, because quick impressions of competency to follow directions cannot be as readily made.” *Id.*

In addition, McConville discussed “a number of individual factors” that were unique to plaintiff’s case. *Id.* First, he considered “the implication of this denial on [plaintiff’s] ability to

practice [his] religion,” and he concluded that since plaintiff was “not a member of the Army,” he was not subject to the Army’s grooming and uniform requirements, and so he “remain[ed] free to maintain [his] articles of faith.” *Id.* Second, McConville distinguished plaintiff’s case from the cases of other Sikhs who have been granted religious accommodations by the Army in the past, noting that “[t]hose exceptions were granted after consideration of the requests on a case by case basis based on the military necessity factors that existed at the time,” and that the exceptions were made for individuals who possessed “unique skills or professional credentials.” *Id.* Although McConville was “empathetic to” plaintiff’s desire to serve in Military Intelligence and was aware of plaintiff’s language skills, he “nonetheless [found] that military necessity in the ROTC training environment would be adversely impacted by permitting an exception based on the specific facts” of this case. *Id.* at 7.

Finally, McConville stated that he did “not view the issuance of temporary medical exceptions to grooming standards as undercutting the Army’s wholesale ability to enforce grooming and appearance policies,” noting that these exceptions are “subject to approval by military commanders” and often limited in duration, and that a soldier with a medical grooming exception is still “required to trim his beard as close to his face as possible.” *Id.* The medical exceptions, he concluded, “are very different from the long term exception” plaintiff “request[ed] for officer training.” *Id.* For all of those reasons, LTG McConville denied plaintiff’s request for a religious accommodation.

## STANDARD OF REVIEW

### I. Motion to Dismiss

“To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,

556 U.S. 662, 678 (2009) (internal quotation marks omitted); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In *Iqbal*, the Supreme Court reiterated the two principles underlying its decision in *Twombly*: “First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” 556 U.S. at 678. And “[s]econd, only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* at 679.

A claim is facially plausible when the pleaded factual content “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* A pleading must offer more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action,” *id.*, quoting *Twombly*, 550 U.S. at 555, and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

When considering a motion to dismiss under Rule 12(b)(6), the complaint is construed liberally in plaintiff’s favor, and the Court should grant plaintiff “the benefit of all inferences that can be derived from the facts alleged.” *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). Nevertheless, the Court need not accept inferences drawn by the plaintiff if those inferences are unsupported by facts alleged in the complaint, nor must the Court accept plaintiff’s legal conclusions. *See id.*; *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). In ruling upon a motion to dismiss for failure to state a claim, a court may ordinarily consider only “the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint, and matters about which the Court may take judicial notice.” *Gustave-Schmidt v. Chao*, 226 F. Supp. 2d 191, 196 (D.D.C. 2002) (citations omitted).

## II. Summary Judgment

“The rule governing cross-motions for summary judgment . . . is that neither party waives the right to a full trial on the merits by filing its own motion; each side concedes that no material facts are at issue only for the purposes of its own motion.” *Sherwood v. Washington Post*, 871 F.2d 1144, 1147 n.4 (D.C. Cir. 1989), quoting *McKenzie v. Sawyer*, 684 F.2d 62, 68 n.3 (D.C. Cir. 1982). In assessing each party’s motion, “[a]ll underlying facts and inferences are analyzed in the light most favorable to the non-moving party.” *N.S. ex rel. Stein v. District of Columbia*, 709 F. Supp. 2d 57, 65 (D.D.C. 2010), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the “initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation marks omitted). To defeat summary judgment, the non-moving party must “designate specific facts showing there is a genuine issue for trial.” *Id.* at 324 (internal quotation marks omitted). The existence of a factual dispute is insufficient to preclude summary judgment. *Anderson*, 477 U.S. at 247–48. A dispute is “genuine” only if a reasonable fact-finder could find for the non-moving party; a fact is only “material” if it is capable of affecting the outcome of the litigation. *Id.* at 248; *Laningham v. U.S. Navy*, 813 F.2d 1236, 1241 (D.C. Cir. 1987). In assessing a party’s motion, the court must “view the facts and draw reasonable inferences ‘in the light most favorable to the party opposing the summary

judgment motion.” *Scott v. Harris*, 550 U.S. 372, 378 (2007) (alterations omitted), quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (per curiam).

## ANALYSIS

### I. Defendants’ partial motion to dismiss on justiciability grounds is moot.

Defendants moved to dismiss the complaint in part, arguing that the Court does not have authority to grant some of the requested relief. Defs.’ Mem. at 1. Plaintiff originally asked the Court to grant him “a temporary accommodation and provisional *enlistment* pending the final outcome of this case” and to issue a permanent injunction “enjoining Defendants from enforcing the Army’s uniform and personal grooming standards” against him in a way that prevents him from “*enlist[ing]* and participat[ing] in ROTC.” See Compl., Request for Relief ¶¶ b–c (emphasis added). Defendants argue that the request for “enlistment” is nonjusticiable because it “extends beyond enrollment as a cadet in ROTC” by seeking to place plaintiff directly in the Army as a contracted cadet.<sup>7</sup> Defs.’ Mem. at 17–18; see also Defs.’ Reply at 3.

But the use of the term “enlistment” was somewhat ambiguous, and, in any event, the landscape of the case has shifted since the complaint was filed. Plaintiff made it clear in his reply brief and at the hearing that he is simply seeking an order requiring defendants to permit him to *enroll* in ROTC with his articles of faith intact. Plaintiff states that he “does not ask this Court to direct his enlistment in the Army or order the Army to make him a commissioned officer”; rather, “[h]e seeks only to compete, on an equal footing, with his peers for a contracted spot in ROTC.”

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<sup>7</sup> In support of this position, defendants cite numerous cases in which courts found that challenges to military decisions relating to the enlisting or commissioning of personnel were nonjusticiable, including *Orloff v. Willoughby*, 345 U.S. 83 (1953), *Khalsa v. Weinberger*, 779 F.2d 1393 (9th Cir. 1986), *West v. Brown*, 558 F.2d 757 (5th Cir. 1977), and *Kreis v. Sec’y of Air Force*, 886 F.2d 1508 (D.C. Cir. 1989). Defs.’ Mem. at 18–21.

Pl.'s Reply at 1; *see also* Motions Hr'g Tr., Apr. 29, 2015 ("Hr'g Tr.") at 9.<sup>8</sup> Furthermore, plaintiff concedes that if even he earned an ROTC contract, defendants "would be under no obligation to grant him a commission if his performance showed that he could not serve and lead." Pl.'s Reply at 4; *see also* Hr'g Tr. at 9.

Given that plaintiff does not seek enlistment in the Army, but only enrollment in ROTC, the Court finds – and defendants agree – that the justiciability objection is moot. *See* Hr'g Tr. at 28–31;<sup>9</sup> *cf. Larsen v. U.S. Navy*, 346 F. Supp. 2d 122, 127–28 (D.D.C. 2004) ("[T]he plaintiffs seek to compete for a position without the Navy subjecting them to an allegedly unconstitutional hiring practice. And the court is well within its authority to adjudicate that."). Therefore, defendants' partial motion to dismiss will be denied.

**II. Defendants have conceded that the Army's denial of plaintiff's accommodation request substantially burdens plaintiff's religious exercise.**

Defendants also moved to dismiss the complaint in full on the grounds that plaintiff could not carry his burden to show that the Army had imposed a substantial burden on his religious exercise. Defs.' Mem. at 14.

RFRA applies only to government actions that "substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(a); *Priests for Life*, 772 F.3d at 246. A RFRA plaintiff's "beliefs 'must be sincere and the practice[] at issue must be of a religious nature.'" *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008) (alteration in original), quoting *Levitan v. Ashcroft*, 281 F.3d 1313, 1320 (D.C. Cir. 2002). "A substantial burden exists when government action puts

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<sup>8</sup> Citations to the hearing transcript refer to an unofficial version of the transcript.

<sup>9</sup> In addition, the Court notes that any challenge by plaintiff relating to an ROTC contract or Army commission would not yet be ripe, and therefore would not be properly presented any event.

‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Id.*, quoting *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981); accord *Priests for Life*, 772 F.3d at 246.

There is no dispute that plaintiff’s religious beliefs are sincerely held. But defendants initially argued in response to the complaint that plaintiff’s religious practice was not burdened by any government action because he was still a civilian, and the Army’s regulations did not apply to him. Defs.’ Mem. at 16–17. Defendants further contended that a “substantial burden” is imposed under RFRA “only when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit . . . or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions.” Defs.’ Mem. at 15–16, quoting *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1070 (9th Cir. 2008).

But while this case was pending, the Army decided to process, and then to deny, plaintiff’s request for a religious accommodation. See McConville Letter. Thus, as plaintiff clarified at oral argument, the specific government action that is now at issue in this case is that denial. Hr’g Tr. at 12 (“MS. WEAVER: We’re saying that the denial of the accommodation is a violation of RFRA here.”). Counsel for defendants conceded at the hearing that the Army is a government actor to which RFRA applies, *id.* at 35, and that the Army’s denial of the religious accommodation applies to plaintiff, whether or not the Army’s regulations do. *Id.* at 31–32. And defendants’ counsel also conceded that enrollment in ROTC constitutes a government benefit.<sup>10</sup> *Id.* at 33–34 (“THE COURT: . . . [Do] you agree with me now that the denial of the accommodation has denied [plaintiff] a government benefit . . . ? MR. WILLIAMS: As to enrollment, yes, Your Honor.”).

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<sup>10</sup> Moreover, the record reflects numerous benefits that accompany enrollment in ROTC, such as the leadership training courses that are only available to enrolled cadets. See Cederman Decl. ¶ 5. For that reason, and because defendants have conceded the issue, the Court need not analyze this question under the “government benefit” standard that applies in this Circuit. See, e.g., *Autor v. Pritzker*, 740 F.3d 176, 182–83 (D.C. Cir. 2014).

Therefore, there is no dispute that the Army’s refusal to grant plaintiff the accommodation that would enable him to enroll in ROTC while maintaining his religious practice was a government action that required plaintiff “to choose between following the tenets of [his] religion and receiving a governmental benefit.” *Navajo Nation*, 535 F.3d at 1070. The denial thus constitutes a “substantial burden” under RFRA, *see id.*; *see also Priests for Life*, 772 F.3d at 246, and defendants’ motion to dismiss on that basis will be denied.

**III. Defendants have not shown that the denial of a religious accommodation to plaintiff furthers the Army’s compelling interests by the least restrictive means.**

**A. RFRA’s strict scrutiny standard applies to the Army.**

RFRA provides that the government “shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.” 42 U.S.C. § 2000bb-1(a). The government may impose a substantial burden “only if it demonstrates that application of the burden to the person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Id.* § 2000bb-1(b). Through RFRA, Congress overturned the interpretation of the First Amendment the Supreme Court announced in *Employment Division v. Smith*, 494 U.S. 872 (1990), *see* 42 U.S.C. § 2000bb(a)(4), and it codified and reinstated “the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972).”<sup>11</sup> *Id.* § 2000bb(b)(1); *see also Priests for Life*, 772 F.3d at 244.

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<sup>11</sup> In *Sherbert*, the Supreme Court held that, under this test, a state could not deny unemployment benefits to an employee who was fired for refusing to work on her Sabbath. 374 U.S. at 399, 408–09. In *Yoder*, the Court applied the test and upended a state law that required children to attend school until the age of sixteen as it applied to Amish children, whose religion “required them to focus on uniquely Amish values and beliefs during their formative adolescent years.” *Hobby Lobby*, 134 S. Ct. at 2760, citing *Yoder*, 406 U.S. at 210–11, 234–36.

RFRA claims must be considered on an individual basis. As the Supreme Court has emphasized, the statute “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.” *Hobby Lobby*, 134 S. Ct. at 2779, quoting *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 430–31 (2006). Accordingly, courts must “loo[k] beyond broadly formulated interests’ and . . . ‘scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants.’” *Id.* (alterations in original), quoting *O Centro*, 546 U.S. at 431.

RFRA applies to the “government,” which is defined to include “a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States.” 42 U.S.C. § 2000bb-2(1). So, on its face, the statute plainly applies to the U.S. Army. And defendants acknowledge that Congress specifically intended RFRA to apply to the military. Hr’g Tr. at 35; *see also* S. Rep. No. 103-111, at 12 (1993) (“Under the unitary standard set forth in [RFRA], courts will review the free exercise claims of military personnel under the compelling governmental interest test.”); H.R. Rep. No. 103-88 (1993) (“Pursuant to the Religious Freedom Restoration Act, the courts must review the claims of prisoners and military personnel under the compelling governmental interest test.”).

But the statute was enacted against a known backdrop of longstanding precedent involving judicial deference to military authorities charged with the management of military affairs. The Supreme Court has made it clear that “[t]he military constitutes a specialized community governed by a separate discipline from that of the civilian,” *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953), and “[t]he complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments.” *Gilligan v.*

*Morgan*, 413 U.S. 1, 10 (1973). *See also Orloff*, 345 U.S. at 93–94 (“[J]udges are not given the task of running the Army. . . . Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters.”); *and Gilligan*, 413 U.S. at 10 (“[I]t is difficult to conceive of an area of governmental activity in which the courts have less competence [than military affairs]. . . . The ultimate responsibility for these decisions is appropriately vested in branches of the government which are periodically subject to electoral accountability.”).

In enacting RFRA, Congress specifically acknowledged the importance of maintaining order and discipline within the military ranks, and it noted its expectation that courts would adhere to the tradition of judicial deference in matters involving both prisons and the armed forces. *See* S. Rep. No. 103-111, at 10, 12.<sup>12</sup> But it also expressed its clear understanding that the heightened standard of review would still apply in both contexts. The House Report stated:

Pursuant to the Religious Freedom Restoration Act, the courts must review the claims of prisoners and military personnel under the compelling governmental interest test. Seemingly reasonable regulations based upon speculation, exaggerated fears or thoughtless policies cannot stand. Officials must show that the relevant regulations are the least restrictive means of protecting a compelling governmental interest. However, examination of such regulations in light of a higher standard does not mean the expertise and authority of military and prison officials will be necessarily undermined. The Committee recognizes that religious liberty claims in the context of prisons and the military present far different problems for the operation of those institutions than they do in civilian settings. Ensuring the safety and orderliness of penological institutions, as

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<sup>12</sup> “The courts have always recognized the compelling nature of the military’s interest in these objectives in the regulations of our armed services. Likewise, the courts have always extended to military authorities significant deference in effectuating these interests. The committee intends and expects that such deference will continue under this bill.” S. Rep. No. 103-111, at 12. The Senate Report also stated: “[T]he committee expects that the courts will consider the tradition of giving due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with consideration of costs and limited resources.” *Id.* at 10.

well as maintaining discipline in our armed forces, have been recognized as governmental interests of the highest order.

H.R. Rep. No. 103-88. And the Senate Report observed that “[t]he committee is confident that the bill will not adversely impair the ability of the U.S. military to maintain good order, discipline, and security.” S. Rep. No. 103-111, at 12.

This case appears to be the first to squarely present the question of how a court is supposed to incorporate traditional deference to the military into the RFRA strict scrutiny analysis. But recently, the Supreme Court has applied the RFRA test in a situation where a similar sort of deference was due, and that opinion is instructive here.

In *Holt v. Hobbs*, 135 S. Ct. 853 (2015), the Court considered the grooming policy of the Arkansas Department of Corrections as applied to a Muslim inmate. *Id.* at 859. The policy prohibited inmates from growing beards for any reason other than medical necessity, *id.*, and an inmate sought and was denied a religious accommodation to grow a half-inch beard in accordance with his faith. *Id.* at 861. He brought a challenge under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc *et seq.*, contending that the policy substantially burdened his religious exercise without justification.<sup>13</sup> *Id.* at 859. The religious exercise provision of RLUIPA “mirrors RFRA,” and “allows prisoners ‘to seek religious accommodations pursuant to the same standard as set forth in RFRA.’” *Id.* at 860, quoting *O Centro*, 546 U.S. at 436.

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<sup>13</sup> RLUIPA is RFRA’s “sister statute.” *Holt*, 135 S. Ct. at 859; *accord Hobby Lobby*, 134 S. Ct. at 2781. It was enacted in response to *City of Boerne v. Flores*, 521 U.S. 507 (1997), where the Supreme Court held that Congress exceeded its powers under Section 5 of the Fourteenth Amendment when it applied RFRA to the states. *Holt*, 135 S. Ct. at 860. Congress enacted RLUIPA pursuant to its authority under the Spending and Commerce Clauses, and the statute governs, among other things, religious exercise by state prison inmates. *Id.*; *see also* 42 U.S.C. § 2000cc-1.

The prison officials did not dispute that growing a beard was “a dictate of [the petitioner’s] religious faith,” and the Court found that the prison grooming policy substantially burdened his religious exercise. *Id.* at 862. Nevertheless, the prison officials contended that the grooming policy was the least restrictive means of furthering a compelling interest in “prison safety and security,” *id.* at 863, because it prevented prisoners from concealing contraband in their beards, and from disguising their identities. *Id.* at 863–64. Citing the deference traditionally accorded to the judgments of prison officials, the District Court and the Eighth Circuit agreed. *Id.* at 861.

The Supreme Court unanimously rejected the prison officials’ contentions, reversing the courts below. *Id.* at 867. The Court noted first that the prison officials had asserted a “‘broadly formulated interest,’” but that “RLUIPA, like RFRA, contemplates a ‘more focused’ inquiry.” *Id.* at 863, quoting *Hobby Lobby*, 134 S. Ct. at 2779. The two statutes require the government “‘to demonstrate that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially burdened.’” *Id.*, quoting *Hobby Lobby*, 134 S. Ct. at 2779. Thus, the *Holt* Court reiterated that under RLUIPA and RFRA, a 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.” *Id.*, quoting *Hobby Lobby*, 134 S. Ct. at 2779 (alteration in original). In accordance with that test, the Department of Corrections needed to show that the grooming policy, as applied specifically to the petitioner, furthered its compelling interests in the least restrictive way. *Id.*

While it acknowledged the need to “respect [the] expertise” of prison officials, the Court concluded that it could not find “that denying petitioner a ½-inch beard actually furthers the Department’s interest in rooting out contraband” without according the prison officials “a degree

of deference that is tantamount to unquestioning acceptance.” *Id.* at 864. The Supreme Court underscored that RLUIPA “does not permit such unquestioning deference,” and that, like RFRA, it ““makes clear that it is the obligation of the courts to consider whether exceptions are required under the test set forth by Congress.”” *Id.*, quoting *O Centro*, 546 U.S. at 434. The Court went on to observe that even if the prison officials could show that the beard policy furthered an interest in curtailing the circulation of contraband, they had “offered no sound reason why hair, clothing, and [medically-authorized] ¼-inch beards can be searched but ½-inch beards cannot.” *Id.*

The *Holt* Court also found that, assuming the grooming policy advanced the assuredly compelling interest in “the quick and reliable identification of prisoners,” it “still violate[d] RLUIPA as applied in the circumstances present[ed]” because there were less restrictive means available. *Id.* at 864–65. The Court agreed with the petitioner that the Department of Corrections could require that inmates be photographed both with and without their beards so that guards could use both images when making an identification. *Id.* at 865. And it noted that the Department of Corrections “already ha[d] a policy of photographing a prisoner both when he enters an institution and when his appearance changes at any time during his incarceration.” *Id.* (citation and internal quotation marks omitted).

In addition, the Court observed that the Department of Corrections had failed to explain adequately why its grooming policy was “substantially underinclusive.” *Id.* at 865. The Court noted that “[a]lthough the Department [of Corrections] denied petitioner’s request to grow a ½-inch beard, it permits prisoners with a dermatological condition to grow ¼-inch beards . . . even though both beards pose similar risks,” and it found that this issue bore on the RLUIPA analysis. *Id.* at 865–66.

Finally, the Court emphasized that the courts below had incorrectly “deferred to these prison officials’ mere say-so that they could not accommodate petitioner’s request,” and that RLUIPA “demands much more.” *Id.* at 866. “Courts must hold prisons to their statutory burden, and they must not ‘assume a plausible, less restrictive alternative would be ineffective.’” *Id.*, quoting *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 824 (2000). The Court concluded by noting that while enforcement of RLUIPA “provides substantial protection for the religious exercise of institutionalized persons,” it still “affords prison officials ample ability to maintain security.” *Id.*

In the case before this Court, defendants contend that the heightened deference owed to military judgments requires the Court to grant their motion for summary judgment. *See* Defs.’ Mem. at 22–32; Hr’g Tr. at 36–37. They argue that “[e]ach of the classic areas involving professional military judgments deserving of deference are implicated” in this case, including the composition, training, and equipping of the fighting force. Defs.’ Reply at 14. They also assert that “[t]he Army’s decision here is inherently more complex than the prison official’s decision in *Holt*” because it relates to “a distinctly military matter, for which the Army’s leadership is undeniably in best position, by virtue of its experience and expertise, to decide.” *Id.* at 14–15.

Defendants direct the Court to the long line of cases predating RFRA that describe the nature of the deference that they contend is due here. *See, e.g., Orloff*, 345 U.S. at 93–94; *Gilligan*, 413 U.S. at 10. They point in particular to *Goldman v. Weinberger*, 475 U.S. 503 (1986), in which the Supreme Court declined to apply strict scrutiny in the case of an Orthodox Jewish serviceman who claimed that the Air Force’s prohibition on wearing “headgear,” including yarmulkes, while

in uniform violated his rights under the First Amendment. *Id.* at 504–07. Citing the deference owed to military judgments, the Court rejected his free exercise claim.<sup>14</sup> *Id.* at 507–10.

But all of those cases predate RFRA, and the Court is bound to follow the guidance of *Holt* when seeking to harmonize the necessary respect for military judgment with the dictates of the statutory regime. And here, when defendants urge the Court to look no further than the plain language of LTG McConville’s decision, *see, e.g.*, Defs.’ Mem. at 29, they are asking the Court to accord “a degree of deference that is tantamount to unquestioning acceptance,” *see Holt*, 135 S. Ct. at 864, which is not the proper function of a court in a RFRA case.<sup>15</sup> *See id.*

Defendants also encourage the Court to stay its hand on the grounds that the military will do a better job responding to social change on its own. *See* Defs.’ Reply at 15. They point to the fact that military commanders have been central to important policy changes that the services have implemented in recent years, including the repeal of the ban on openly gay service members, and voluntary changes to the policies on direct ground combat assignments for women. *Id.* at 15–16. “These examples,” they maintain, “counsel against bold judicial intervention, and most

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14 Defendants’ pleadings initially suggested that RFRA’s strict scrutiny standard did not even apply to the Army’s decision here. *See, e.g.*, Defs.’ Mem. at 27 (“RFRA was never intended to, and did not in fact, alter the standard of review applied by the Supreme Court . . . to cases involving the military.”); Defs.’ Reply at 12 (“Congress did not displace *Goldman* deference with RFRA.”). But defendants’ counsel acknowledged at the hearing that strict scrutiny does apply in this case. Hr’g Tr. at 35–36.

15 The *Goldman* case does not govern the Court’s analysis here for the additional reason that, in *Goldman*, the Supreme Court expressly declined to apply the strict scrutiny standard articulated in *Sherbert* and *Yoder*, and instead reviewed the petitioner’s Free Exercise claims under a “far more deferential” standard. *Goldman*, 475 U.S. at 506–07. But one of the “purposes” of RFRA is “to restore the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder* and to guarantee its application in all cases where free exercise of religion is substantially burdened . . . by government.” 42 U.S.C. § 2000bb(b)(1)–(2) (citations omitted). Thus, unlike the *Goldman* Court, this Court is bound to review defendants’ actions under the strict scrutiny standard.

importantly demonstrate that successful change requires military commanders to be central to the decision-making process.” *Id.* at 16.

But the approach must be different in this case, because even if it involves an important matter of public policy and evolving social norms, Congress has already placed a thumb on the scale in favor of protecting religious exercise, and it has assigned the Court a significant role to play. *See Holt*, 135 S. Ct. at 859–60 (“Congress enacted RFRA in order to provide greater protection for religious exercise than is available under the First Amendment.”), citing *Hobby Lobby*, 134 S. Ct. at 2760–61; *cf. Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005) (“RLUIPA is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens . . . .”).

In sum, while the Court must credit the Army’s assertions and give due respect to its articulation of important military interests, the Court may not rely on LTG McConville’s “mere say-so.” *Holt*, 135 S. Ct. at 866. Instead, it must consider whether an exception is required under the strict scrutiny test, and hold defendants to their burden of demonstrating that the denial of the limited accommodation sought in this case is the least restrictive means to advance the Army’s compelling interest. *See Holt*, 135 S. Ct. at 864; *see also* 42 U.S.C. § 2000bb-1(b).

***B. Defendants have not demonstrated that denying an accommodation to plaintiff furthers the government’s compelling interests.***

Defendants assert that “[t]he Army’s decision to deny Plaintiff’s request for a grooming accommodation while in an officer training program furthers compelling interests in maintaining a credible officer corps and an effective fighting force that is capable of meeting the Nation’s defensive needs.” Defs.’ Mem. at 32; *see also* McConville Letter at 1 (“I am denying your request to wear unshorn hair, a beard, and a turban as an enrolled cadet in Hofstra University Army ROTC because the requested accommodation will adversely impact individual and unit readiness, unit

cohesion, morale, good order, discipline, health and safety within the Army ROTC program.”). According to LTG McConville, “[u]niformity is a primary way the Army builds an effective fighting force” because “[i]t allows a strong team identity to be forged, distinguishes service members from the civilian population, reinforces notions of selfless service, and provides a routine that instills discipline in Soldiers and leaders, while connecting the Army to its past in a visible way.” McConville Letter at 1. Defendants assert that “[t]he interest in maintaining an effective Army by developing a disciplined, well trained, credible, cohesively bonded, and reliable corps of officers in ROTC is undeniably compelling.” Defs.’ Mem. at 32.

There can be no doubt that military readiness and the unit cohesion and discipline of the Army officer corps constitute highly compelling government interests. *See* Hr’g Tr. at 26 (“[MS. WEAVER:] We all agree that unit cohesion is a compelling interest . . . .”); *see also* S. Rep. No. 103-111, at 12 (“The committee is confident that [RFRA] will not adversely impair the ability of the U.S. military to maintain good order, discipline, and security. The courts have always recognized the compelling nature of the military’s interest in these objectives in the regulations of our armed services.”); H.R. Rep. No. 103-88 (“[M]aintaining discipline in our armed forces[] [has] been recognized as [a] government[] interest[] of the highest order.”).

But RFRA “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.” *O Centro*, 546 U.S. at 430–31, quoting 42 U.S.C. § 2000bb-1(b); *accord Hobby Lobby*, 134 S. Ct. at 2779; *Holt*, 135 S. Ct. at 863. Thus, the Court must determine whether defendants have proven that the decision to deny *this plaintiff* a religious accommodation that would enable him to enroll in ROTC actually furthers the compelling interests defendants have identified. Moreover, “[w]here a regulation already

provides an exception from the law for a particular group, the government will have a higher burden in showing that the law, as applied, furthers the compelling interest.” *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 472–73 (5th Cir. 2014), citing *Hobby Lobby*, 134 S. Ct. at 2781–82.

In this case, there is ample undisputed evidence that soldiers in all corners of the Army are permitted to maintain beards and to wear religious headgear while in uniform, as well as to deviate from the grooming standards in other ways. And the Army has allowed several Sikhs to serve – albeit, in different circumstances than plaintiff – with accommodations for their turbans, beards, and unshorn hair. So defendants cannot simply invoke general principles here – they must make the necessary heightened showing to justify the specific refusal to grant an exception to plaintiff.

The Court finds that defendants have not overcome this hurdle.

1. LTG McConville’s Decision

LTG McConville’s decision to deny an accommodation to plaintiff rested on his conclusion that permitting “an obvious deviation” from the uniform and grooming regulations in an officer training program would undermine:

- “Unit cohesion and morale,” because it would “undermine the common Army identity we are attempting to develop in ROTC, and adversely impact efforts to develop cohesive teams,” McConville Letter at 2–3;
- “Good order and discipline,” because “the even handed enforcement of grooming standards instills the self-discipline necessary for the military member to perform effectively”; “[g]ranting [plaintiff] an exception in a military officer training program would undercut this fundamental component of [the] program, and dramatically change the nature of how we train officers for the future needs of the Army”; and “[i]f officer training does not reflect Army training, the credibility of the officer corps will be called into question,” *id.* at 3–5;
- “Individual and unit readiness,” because “allowing [plaintiff] to continue in officer training without any emphasis on uniformity would leave [him] generally unprepared to lead Soldiers, viewed as an outsider by [his] peers,

and trained in a manner that is wholly inconsistent with how we develop strong military officers,” thereby weakening “good order, discipline, the credibility of the officer corps, cohesion, and morale,” as well as military readiness in general, *id.* at 5–6; and

- Plaintiff’s “health and safety,” based on an Army study that shows that “facial hair significantly degrades the protection factor of all approved protective masks,” and because compliance with Army grooming standards is “[o]ne of the most important mechanisms for managing risk” because it facilitates “the ability to assess a Soldier’s competency and attention to detail,” *id.* at 6.

McConville acknowledged that the Army had granted religious accommodations to Sikh soldiers in the past, but he differentiated those individuals because the exceptions were granted “based on the military necessity factors that existed at the time,” and the soldiers were “selected to serve in positions requiring unique skills or professional credentials to meet the Army’s operational needs.”<sup>16</sup> *Id.* McConville also offered his view that issuing temporary medical exceptions to grooming standards did not undercut the Army’s ability to enforce grooming and appearance policies in general because those exceptions are “subject to approval by military commanders” and often limited in duration, and still they require the recipient to “trim his beard as close to his face as possible.” *Id.* at 7.

Notwithstanding the undeniable importance of uniformity to military discipline, unit cohesion, and safety in general, these justifications for the Army’s decision do not withstand strict scrutiny.

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<sup>16</sup> Although plaintiff speaks multiple languages, defendants state that “the Army is not actively using ROTC as a means of aggressively filling the needs Plaintiff perceives it has for the languages he can speak.” Defs.’ Reply at 21; *see also* McConville Letter at 7 (noting that LTG McConville considered plaintiff’s language skills).

2. The Army has permitted numerous exceptions to its grooming and uniform policies.

Defendants' contention that denying plaintiff a religious accommodation furthers the stated compelling interests is undermined by the fact that the Army routinely grants soldiers exceptions to its grooming and uniform regulations. *See Hobby Lobby*, 134 S. Ct. at 2781–82.

First, since 2007, the Army has permitted more than 100,000 service members to grow beards for medical reasons; it has authorized at least 49,690 permanent “shaving profiles,” and at least 57,616 temporary ones.<sup>17</sup> *See* Ex. 9 to Pl.’s Mot. These soldiers with beards include not only enlisted men but officers bound to ensure that the men who serve under them are clean-shaven. *See id.*

Defendants argue that plaintiff’s request for a grooming accommodation for his unshorn beard is different because soldiers with medically-authorized beards are required to trim them as short as an eighth of an inch. Defs.’ Reply at 18 n.4; *see also* Hr’g Tr. at 48–49. Defendants also point out that commanders are empowered to require soldiers with medically-authorized beards to shave for reasons of operational necessity and safety. *See* TB MED 287 at 12 (“[A] unit commander has the authority to require that a Soldier’s beard be shaved if the unit is in, or about to enter, a situation where use of a protective mask is required.”); *see also* Defs.’ Mem. at 37. In addition, defendants note that medical shaving profiles are often temporary, and that soldiers whose skin conditions are “permanent in nature and interfere[] with military duties” may face separation from the Army on that basis. Defs.’ Mem. at 35–37. Finally, defendants argue that the Army’s policy of granting shaving profiles for medical purposes ultimately strengthens the

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<sup>17</sup> In addition, “the Army does not always enforce grooming policies pertaining to beards when operational necessity requires.” Defs.’ Admiss. at 4.

Army by increasing its diversity, given that the relevant skin conditions disproportionately affect African Americans. Defs.' Reply at 18–19.

It is undisputed that there are differences between the religious accommodation plaintiff seeks for his beard and the shaving profiles the Army has granted. But defendants have not carried their burden to show that permitting plaintiff's unshorn beard would undermine the Army's compelling interests any more than the medical beard accommodations the Army has provided, especially considering that the Army permits soldiers to grow beards longer than a quarter of an inch "if medically necessary." *See* Defs.' Reply at 18 n.4. And although some shaving profiles are classified as temporary, tens of thousands of them are "permanent," *see* Ex. 9 to Pl.'s Mot., and defendants have offered no evidence that any soldier has been separated on that basis.

Moreover, while soldiers who are granted shaving profiles may be required to shave by their commanders, the Army's own rules provide that this authority "should not [b]e used to require that a Soldier be clean shaven for maneuvers and other tactical simulations," but should be invoked only "when there is an actual need to wear the protective mask in a real tactical operation."<sup>18</sup> TB MED 287 at 12. Therefore, the fact that other shaving exceptions may be revocable does not support the outright denial of the accommodation sought here: as an ROTC enrollee, or even as a contracted cadet, plaintiff would never encounter the "real tactical operation" that would permit a commander to require a soldier with a medically-necessary beard to shave. *See* Hr'g Tr. at 40 ("MR. WILLIAMS: A ROTC cadet would not be able to be called up.").

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18 The Army Technical Bulletin on this issue also states that "[t]he existence of a beard does not prevent performance of most military duties" and 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." TB MED 287 at 12.

For the same reason, the concern about plaintiff's health and safety is misplaced, at least for the duration of his participation in ROTC.<sup>19</sup>

Finally, the Court notes that defendants have not claimed or shown 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.

In sum, it is difficult to see how accommodating plaintiff's religious exercise would do greater damage to the Army's compelling interests in uniformity, discipline, credibility, unit cohesion, and training than the tens of thousands of medical shaving profiles the Army has already granted. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (“It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.”) (citation and internal quotation marks omitted); *accord O Centro*, 546 U.S. at 433; *cf. Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366–67 (3d Cir. 1999) (Alito, J.) (“[T]he Department has provided no legitimate explanation as to why the presence of officers who wear beards for medical reasons does not have [the same] effect [as] the presence of officers who wear beards for religious reason would. . . . We are at a loss to understand why religious exemptions threaten important city interests but medical exemptions do not.”). Defendants have not claimed or shown that any of the soldiers and officers who have served with beards have been less disciplined, less credible, less socially integrated, or less well-trained than their clean-shaven colleagues. In addition, to the extent that the Army has also asserted an

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<sup>19</sup> The Court recognizes, of course, that ROTC is a training program designed to produce Army officers who might face “an actual need to wear the protective mask,” TB MED 287 at 12, but, again, the question of whether the Army must accommodate plaintiff at that point is not yet ripe.

interest in diversity, that interest would plainly be furthered by permitting plaintiff's enrollment in ROTC. *See* Defs.' Reply at 18–19; *see also* McConville Dep., Mar. 2, 2015, Ex. FF to Defs.' Reply [Dkt. # 37-3, 276–77] at 124–25 (noting previous statement by LTG McConville that “finding young minority officers now is key to diversi[ty] in the next generation of the Army's leaders”).

Medically-based shaving profiles are not the only large-scale exception the Army makes to its grooming policies. In March of 2014, the Army tightened its policies related to tattoos, but it grandfathered in nearly 200,000 soldiers with non-conforming tattoos – including officers who will be bound to enforce the policy in the future.<sup>20</sup> *See* Defs.' Stip. at 2; A.R. 670-1 at 11. The tattoos cover a wide range of personal expression, and they include religious iconography, symbols of cultural or ethnic heritage, images from popular culture, and more. *See* Pl.'s SOF ¶¶ 64–67 (citing examples); Defs.' SOF Resp. ¶¶ 64–67; *see also supra* Regulatory Background Part I(C). The fact that the Army is able to tolerate so many idiosyncratic deviations from its grooming regulations further undermines LTG McConville's assertion that “the even handed enforcement of grooming standards” is critical to “instill[] the self-discipline necessary for the military member to perform effectively.” McConville Letter at 4; *see also Church of the Lukumi Babalu Aye*, 508 U.S. at 547; *O Centro*, 546 U.S. at 433.

Neither LTG McConville's decision nor defendants' pleadings say much about plaintiff's request to maintain his turban and unshorn hair. LTG McConville's letter states that “[h]air and clothing are a very visible way that individuals express their identity,” and that “[b]y eliminating

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<sup>20</sup> As noted above, *see supra* note 4, the Army relaxed its tattoo guidelines on April 10, 2015, *see* Notice of Revised Regulation on Grooming and Appearance Standards at 1, opening the door to even more variation within the ranks.

the social distinctions that different civilian attire implies, uniforms emphasize the professional equality of all military people.” McConville Letter at 2. But it is undisputed that the Army’s own regulations permit soldiers to wear yarmulkes and other religious headgear, *see* Defs.’ Mem. at 7; A.R. 600-20 at A024; DoDI 1300.17 at A010; *see also supra* Regulatory Background Part I(A), and defendants do not contend that a turban would necessarily fail to satisfy the religious headgear rules.<sup>21</sup> Moreover, although Army regulations require male soldiers to keep the hair on their heads cut short, defendants do not – and cannot – contend that plaintiff’s unshorn hair, when tucked into a turban in accordance with religious precepts, would “fall over the ears or eyebrows, or touch the collar,” or present an appearance that is anything other than “neat and conservative.” *See* A.R. 670-1 at 5. In view of the vast number of exceptions to the grooming and uniform standards that the Army has granted, the Court finds that defendants have not shown that denying this plaintiff a religious accommodation would make him less credible, disciplined, or ready than the other officers and soldiers who similarly do not meet all of the requirements of uniformity.

Finally, defendants have not carried their burden to show that “the compelling interest test is satisfied through application of the challenged law ‘to the person.’” *See O Centro*, 546 U.S. at 430; *Hobby Lobby*, 134 S. Ct. at 2779; *Holt* 135 S. Ct. at 863. LTG McConville’s decision emphasizes the general importance of uniformity in cultivating and reflecting Army discipline. McConville Letter at 4–5. McConville explains that “[u]niformity is a key component of the learning process” for ROTC cadets because it is “a readily available means of instilling the practice of inspection and compliance that not only sharpens Soldiers, but also leaders.” *Id.* at 4. He insists that “[u]niformity helps to inhibit personal desires and impulses that may be antithetical to mission

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21 Indeed, the undisputed evidence in the record shows that Sikh servicemen have successfully adapted their turbans to meet the Army’s operational requirements. *See, e.g.*, Kalsi Dep., Mar. 4, 201[5], Ex. 7 to Pl.’s Mot. [Dkt. # 34, 174] at 51–53.

accomplishment,” noting that “[t]he obligations Soldiers undertake, risking life and well-being for the greater good, require[] dedication, selfless service, and discipline.” *Id.* at 5. And he notes that compliance with Army grooming standards facilitates “the ability to assess a Soldier’s competency and attention to detail.” *Id.* at 6.

But the accommodation this plaintiff seeks does not stem from any lack of self-control, dedication, or attention to detail. To the contrary: plaintiff seeks an accommodation because he faithfully adheres to the strict dictates of his religion. So even if, in some cases, a soldier’s failure to follow the Army’s standards might signal a rebellious streak or reflect a lack of impulse control or discipline, LTG McConville’s decision fails to grapple with the fact that any deviation from the rules on plaintiff’s part flows from a very different source. And therefore, the decision lacks the individual assessment that is fundamental under RFRA.

3. The Army has granted religious accommodations to other Sikh soldiers.

Defendants’ contention that denying this plaintiff an accommodation advances the Army’s compelling interests is further undermined by the undisputed fact that at least four Sikh men who served in the Army with tremendous success received similar accommodations.<sup>22</sup> Corp. Simran Preet Singh Lamba enlisted in 2009, served as a medic, received a promotion to Corporal, and currently serves in the U.S. Army Individual Ready Reserve. Decl. of Simran Preet Singh Lamba [Dkt. # 32-11] (“Lamba Decl.”) ¶¶ 4, 16, 19, 24. Maj. Kamaljeet Singh Kalsi is an Army doctor who served in Afghanistan, received a promotion to Major, and is currently serving in the Army Active Reserves. Kalsi Dep., Mar. 4, 201[5], Ex. 7 to Pl.’s Mot. [Dkt. # 34, 165, 184, 196] (“Kalsi Dep.”) at 14–15, 91, 138–41. Capt. Tejdeep Singh Rattan is an active duty Army dentist who

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<sup>22</sup> Defendants acknowledge that “the Army has approved six religiously based uniform, personal appearance, and personal grooming practice exceptions since 2000.” Defs.’ Stip. at 1.

served in Afghanistan. Rattan Dep., Mar. 3, 2015 [Dkt. # 32-7, 197, 208–09] at 43, 89–90, 93. And Col. (Ret.) Gopal Singh Khalsa enlisted in the Army as a private in 1976, served in Military Intelligence, served overseas, received numerous promotions, and eventually retired as a Colonel in 2009. Decl. of Gopal Singh Khalsa [Dkt. # 32-10] (“Khalsa Decl.”) ¶¶ 2, 6, 8, 10–11, 14–16, 18, 20. Each of these soldiers received an accommodation that permitted him to serve while maintaining unshorn hair, an unshorn beard, and a turban. And, notwithstanding the deviation from the uniformity that is undeniably a core aspect of military life, each of them has earned commendations and outstanding reviews:

- Corp. Lamba’s superiors described him as “easily one of the most impressive Soldiers in the company,” “an exceptional Soldier [who] possess[es] all the attributes . . . required to be an outstanding Army Officer,” and “a tremendous Soldier, an invaluable member of [the] team, and [someone who had] an amazing impact on his peers and supervisors.” Lamba Decl. ¶ 19. In addition, one of his Drill Sergeants noted that “[d]espite any spoken or unspoken stereotypes surrounding his enlistment in the United States Army, SPC Lamba displayed . . . intelligence, courage, and inner strength; enabling him to push forward with his training in a manner that would make seasoned Soldiers proud to have him on their team.” Ex. 5 to Lamba Decl. [Dkt. # 32-12, 38] at 8. Lamba also received an Army Commendation Medal in acknowledgment of his “exceptionally meritorious service,” his “selfless service and dedication to duty,” and the fact that “his actions [were in] keeping with the finest traditions of military service.” Lamba Decl. ¶ 23.
- Maj. Kalsi’s superiors described his performance as “[t]ruly exceptional,” stating that he “can be expected to excel in positions of leadership,” and that “[h]e possesses absolutely unlimited potential as a leader, military officer, and physician.” Ex. 33 to Pl.’s Mot. [Dkt. # 32-7, 184]; Ex. 56 to Pl.’s Mot. [Dkt. # 32-8, 80]. Kalsi was awarded a Bronze Star for his service in Afghanistan. Kalsi Dep. at 130.
- Capt. Rattan’s superiors believe that his “potential is unlimited as an Army Dental Officer and leader,” and have described his performance as “exemplary,” “tireless,” “in keeping with the highest traditions of the . . . United States Army,” “outstanding,” and “extraordinary.” Ex. 36 to Pl.’s Mot. [Dkt. # 32-7, 241] at 002405; Ex. 7 to Rattan Dep. [Dkt. # 32-7, 233] at 2. In addition, Rattan’s commander stated that he had “done everything within his power to keep within the [grooming and uniform] regulation” and had “[gone] leaps and bounds beyond what others have had to do.” Defs.’ Admiss. at 6. The

commander further noted that “[t]he only struggle is that when some people get a first look, they are going to stereotype him,” but “[t]hat is the good thing about having Rattan out there, to show that this is a proud individual, he knows what he is doing, and he is doing a phenomenal job.” *Id.* Capt. Rattan has received numerous awards, including a NATO Medal and the Army Commendation Medal for his service. Rattan Dep. at 87–88.

- During more than three decades of Army service, Col. (Ret.) Khalsa received an enormous volume of praise and numerous promotions. In training in 1977, he was selected from among 600 peers as the Outstanding Soldier of the Cycle, Ex. B to Khalsa Decl. [Dkt. # 32-10, 14]; in Officer Candidate School, he was named the Distinguished Leadership Graduate, and was later inducted into the school’s hall of fame, Khalsa Decl. ¶ 7; in 1998, after being promoted to Lieutenant Colonel, Khalsa was appointed Battalion Commander for the Reserves’ 368th Military Intelligence Battalion, a position in which he commanded 700 soldiers, including commissioned officers, warrant officers, and enlisted soldiers, *id.* ¶ 16; he was repeatedly rated “Best Qualified” for promotion, *see, e.g.*, Ex. B to Khalsa Decl. [Dkt. # 32-10, 56, 58]; in 2003, he was promoted to full Colonel and became the Deputy Chief of Staff, G7 for Training for the 63rd Regional Readiness Command, a position that charged him with coordinating and resourcing all individual, unit, and professional development training for all U.S. Army Reserve units in Arizona, California, and Nevada, Khalsa Decl. ¶ 18; and he delayed his retirement at the Army’s request to accept an appointment as Course Director for the Army’s Company Team Leader Development Course, *id.* ¶ 19. Khalsa was praised for being “a total soldier who demonstrates mental and physical readiness and sets the highest example for his troops to follow,” as having “unlimited potential,” as “our best battalion commander, bar none,” for being “held in the highest esteem by his superiors and subordinates alike,” “a highly disciplined officer,” “capable of commanding any brigade,” and the “[b]est of the best.” Ex. B to Khalsa Decl. [Dkt. # 32-10, 40, 50, 54, 56, 58].

Defendants point to undisputed facts that distinguish each of these soldiers from the plaintiff. *See* Defs.’ Reply at 20–22. They note that Maj. Kalsi, Capt. Rattan, and Corp. Lamba each “joined the military in response to specialized programs that actively sought the unique skills these individuals possessed during a time of growing conflict,” and all three served in medical roles in the Special Branches, which “focus on professional technical skills and less on the leadership of large teams of soldiers.” *Id.* at 20–21 & n.5. Plaintiff, by contrast, wishes to become a Military Intelligence officer in the Basic Branches of the Army. *Id.* at 20.

Faced with the fact that Col. (Ret.) Khalsa served in Military Intelligence in the Basic Branches and had a long and distinguished career as an Army officer, defendants note that he was “commissioned and grandfathered under the prior regulatory system” that permitted religious accommodations for Sikhs. *Id.* at 22 n.10; *see also* Khalsa Decl. ¶¶ 3, 9. Also, according to defendants, “[t]he needs of the Army now are also far different than when other exceptions were granted.” *Id.* at 22.

Finally, defendants argue that “[t]he relative professional success” of Corp. Lamba, Maj. Kalsi, Capt. Rattan, and Col. (Ret.) Khalsa “validates the Army’s decision-making process and its decision to grant accommodations in appropriate circumstances.” *Id.*

But despite the differences between plaintiff and Corp. Lamba, Maj. Kalsi, Capt. Rattan, and Col. (Ret.) Khalsa, the undisputed evidence in the record indicates that each of these men served – or are serving – with their articles of faith intact without any of the negative consequences that defendants predict would flow from granting a similar exception in this case. The praise heaped on each man’s service – including, in particular, for their discipline and leadership – stands in stark contrast to LTG McConville’s conclusion that permitting plaintiff to maintain his articles of faith would undermine the quality of his training, unit cohesion and morale, military readiness, and the credibility of the officer corps.

Furthermore, the Army’s own research stands in stark contradiction to LTG McConville’s opinion. The Army conducted an internal examination of the effect of Corp. Lamba’s religious accommodation on his service, and the study concluded that “the Soldier’s religious accommodations did not have a significant impact on unit morale, cohesion, good order, and discipline,” M. Glenn Cobb & Thomas Rhett Graves, *A Case Study of the Impact of Religious Accommodations on Initial Military Training* (Oct. 2011) at 10, Ex. 51 to Pl.’s Mot. [Dkt. # 32-8,

57], and that it “had no significant impact on his own, or any other Soldier’s, health and safety.” *Id.* at vi. The defendants point to no contrary empirical evidence.

Thus, instead of “validat[ing] the Army’s decision-making process,” Defs.’ Reply at 22, the exemplary service records of the four Sikh soldiers with religious accommodations serve to highlight the flaws in the Army’s analysis in this case. Those soldiers had the chance to prove themselves, and that is all plaintiff is seeking here. Defendants have no way of knowing whether plaintiff, too, might be qualified to serve because they have not yet even allowed him to enroll in ROTC.

In conclusion, defendants failed to come forward with any evidence to diminish the force of the evidence produced by plaintiff, as is their burden, *see Celotex*, 477 U.S. at 323–24, and they seem to suggest that LTG McConville’s say-so is sufficient to justify the decision here. *See Hr’g Tr.* at 56. Notwithstanding his thirty-four years of experience in the Army, *see id.*, and his superior judgment about military matters, adopting his conclusion without more would entail abdicating the role that RFRA requires the Court to play. Defendants have failed to sustain the heavy burden that applies when a governmental entity refuses to grant an exception to a policy already riddled with exceptions, and they have failed to satisfy their burden of demonstrating that the compelling government interests they cite are furthered by the unwavering application of Army policies to this plaintiff in this particular context. Under these circumstances, and in light of the evidence presented here, the Court finds that it would require “a degree of deference that is tantamount to unquestioning acceptance,” *Holt*, 135 S. Ct. at 864, to credit defendants’ assertion that denying a religious accommodation to plaintiff while he enrolls in ROTC advances the Army’s asserted compelling interests as applied to him.

***C. Defendants have not shown that denying an accommodation to plaintiff is the least restrictive means of furthering their interests.***

The Court must next go on to apply the second prong of the RFRA test. While the Court accords defendants a high level of deference in their identification of compelling military interests, it finds that it is well within its purview to hold that the Army's refusal to grant this plaintiff a religious accommodation is not the least restrictive means of advancing those interests.

“‘The least-restrictive-means standard is exceptionally demanding,’ and it requires the government to ‘sho[w] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].’” *Holt*, 135 S. Ct. at 864 (alterations in original), quoting *Hobby Lobby*, 134 S. Ct. at 2780. “[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it.” *Id.* (alterations in original), quoting *Playboy Entm’t Grp.*, 529 U.S. at 815. Moreover, “[t]he very existence of a government-sanctioned exception to a regulatory scheme that is purported to be the least restrictive means can, in fact, demonstrate that other, less-restrictive alternatives could exist.” *McAllen Grace*, 764 F.3d at 475–76, citing, *inter alia*, *Hobby Lobby*, 134 S. Ct. at 2781–82.

Defendants contend that “there is no less restrictive means to promote and maintain teamwork, motivation, discipline, esprit de corps and image, within the context of an officer development program,” than to deny a religious accommodation to plaintiff. Defs.’ Mem. at 43, citing *Bitterman v. Sec’y of Defense*, 553 F. Supp. 719, 725 (D.D.C. 1982). Plaintiff’s individual readiness, they argue, would be irretrievably undermined by allowing him “to continue in officer training without any emphasis on uniformity,” because he would be “trained in a manner that is wholly inconsistent with how we develop strong military officers.” McConville Letter at 5. Moreover, defendants point out that plaintiff, if qualified, would not receive a commission until 2017, and that “[t]he Army cannot decide now that it will simply find Plaintiff a branch within the

organization . . . where his accommodation may have some potentially lesser impact on the military necessity factors.” Defs.’ Mem. at 43; *see also* Defs.’ Reply at 23. Finally, according to defendants, “[t]he fact remains Plaintiff would subject himself, his fellow soldiers, and his unit to greater risk by virtue of his wearing a beard in an environment with chemical or biological weapons.” Defs.’ Mem. at 44; *see also* Defs.’ Reply at 23.

But the Court has already found that defendants have failed to show that if plaintiff’s religious exercise were to be accommodated, his individual readiness will be diminished any more than the readiness of the tens of thousands of soldiers and officers who have received grooming and uniform accommodations for other reasons. Nor have defendants demonstrated that plaintiff’s training would be devoid of “*any* emphasis on uniformity” by virtue of his accommodation, *see* McConville Letter at 5 (emphasis added), or that these concerns could not be advanced some other way. For example, the Army’s letter granting an accommodation to Corp. Lamba stated that it was “[then-]SPC Lamba’s responsibility to ensure his beard is well maintained and presents a neat and orderly appearance.” Ex. 8 to Lamba Decl. [Dkt. # 32-13, 32] at 2; *see also id.* (“The current unit commander and all subsequent unit commanders of SPC Lamba will counsel SPC Lamba in writing to ensure he understands expectations. . . . Grooming exceptions to policy will be neat and well maintained at all times, to present a disciplined Soldierly appearance.”).

Furthermore, although the Court does not doubt that the Army cannot anticipate at this time what its needs will be in 2017, that only serves to underscore the fact that a temporary accommodation is a less restrictive means here. As plaintiff points out, a temporary accommodation “would be especially workable” because it would give the Army “ample opportunity to determine whether [plaintiff’s] articles of faith *actually* interfere with his performance,” and would permit defendants to “observe Mr. Singh in action with his

accommodation as he competes with his peers for an ROTC contract.” Pl.’s Reply at 21. It would also permit defendants to troubleshoot any issues that might arise, including with respect to gas masks, as appropriate.<sup>23</sup>

Finally, the undisputed evidence shows that, in 2010, the Army granted Corp. Lamba a temporary accommodation that was virtually identical to the one sought by plaintiff here for the purpose of Lamba’s “attendance at basic military training and military occupational school.” Lamba Decl. ¶ 8. Lamba’s temporary accommodation included the proviso that the accommodation could not “be guaranteed at all times” and might “be revoked due to changed conditions,” which no doubt served to protect many of the interests that defendants have asserted in this case.<sup>24</sup> *Id.* Defendants have not shown that the less restrictive alternative of a temporary

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23 As LTG McConville himself acknowledged, “there are some protective masks that are capable of providing protection to individuals who wear beards,” even though those masks “are not standard Army issue.” McConville Letter at 6. In addition, plaintiff suggests that the Army could address any concerns related to gas masks by making use of the “Hard-to-Fit” program, an Army effort that has “provided masks to more than 1,150 warfighters and civilians (including a brigadier general and a command sergeant major)” who have not otherwise been able to “achieve a satisfactory fit.” Ex. 1 to 30(b)(6) Loudy Dep., Feb. 26, 2015, Ex. 1 to Pl.’s Mot. [Dkt. # 34, 75] (“Loudy Ex. 1”) at 12; *see also* Pl.’s Reply at 21. This program has created special masks for individuals, and in two cases, it obtained special masks from the United Kingdom. Loudy Ex. 1 at 12. Although, as an ROTC cadet, plaintiff would never encounter a real tactical situation in which a protective mask was required for his safety, *see* Hr’g Tr. at 40, LTG McConville’s statement and this evidence further indicate that less restrictive means are available. *See Hobby Lobby*, 134 S. Ct. at 2781 (“We do not doubt that cost may be an important factor in the least-restrictive-means analysis, but . . . [RFRA] may in some circumstances require the Government to expend additional funds to accommodate citizens’ religious beliefs.”).

24 Furthermore, in 2013, the Army converted Corp. Lamba’s temporary accommodation into an “indefinite” one, noting that the accommodation was still subject to revocation if required by military necessity, that Lamba should be prepared to comply with the Army’s uniform and grooming standards “if directed to do so,” and that any overseas deployment would “be scrutinized by [Lamba’s] commander, as the wearing of a beard renders gas masks unsafe.” Ex. 8 to Lamba Decl. [Dkt. # 32-13, 31] at 1.

accommodation with similar conditions would be insufficient to protect the Army's interests here.<sup>25</sup>

In sum, defendants have not carried the “exceptionally demanding” burden to “sho[w] that [the Army] lacks other means of achieving its desired goal without imposing a substantial burden on [plaintiff’s] exercise of religion.” *See Holt*, 135 S. Ct. at 864 (first alteration in original), quoting *Hobby Lobby*, 134 S. Ct. at 2780. The relief plaintiff seeks – an accommodation that would permit him to enroll in ROTC with his articles of faith intact – would not require the Army to guarantee him a commission, or even a contract, and it stops far short of the permanent relief the Army has granted to tens of thousands of soldiers for medical and religious reasons. Moreover, because providing plaintiff with a temporary religious accommodation for the purpose of enrolling in ROTC, which could be revocable if necessary, is an available less restrictive means, the Army must employ that alternative. *See Holt*, 135 S. Ct. at 864 (“[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it.”) (alteration in original), quoting *Playboy Entm’t Grp.*, 529 U.S. at 815.

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<sup>25</sup> It is true that, in 2013, the Army stated that Lamba’s initial accommodation was granted “during a period in which the Army insufficiently scrutinized such requests.” Ex. 8 to Lamba Decl. [Dkt. # 32-13, 31] at 1. Nevertheless, Corp. Lamba’s experience, as well as the experiences of the tens of thousands of soldiers with medical grooming accommodations and other religious accommodations, “demonstrate that other, less-restrictive alternatives could exist.” *See McAllen Grace*, 764 F.3d at 475.

**CONCLUSION**

For the foregoing reasons, the Court will deny defendants' motion to dismiss and for summary judgment, and it will grant plaintiff's cross-motion for summary judgment. A separate order will issue.

A handwritten signature in black ink that reads "Amy B. Jackson". The signature is written in a cursive style with a horizontal line underneath the name.

AMY BERMAN JACKSON  
United States District Judge

DATE: June 12, 2015