

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

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

PATRICK J. MURPHY,
in his official capacity as
Acting 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.

**COMBINED MEMORANDUM
IN SUPPORT OF
APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND
APPLICATION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	3
The Sikh Faith.....	3
Captain Singh’s Commitment to the Sikh Faith	5
Captain Singh’s Decision to Join the Military	6
Captain Singh’s Military Service.....	9
Captain Singh’s Decision to Become Fully Observant.....	11
Captain Singh’s Effort to Obtain an Accommodation.....	12
The Army’s Uniform and Grooming Regulations and their Exemptions.....	15
Other Sikhs in the Army	20
STANDARD FOR GRANTING TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF	22
ARGUMENT	23
I. Captain Singh is likely to succeed on his RFRA claim.	23
A. Captain Singh is sincerely compelled by his faith to remain an observant Sikh.....	25
B. The Army’s uniform and grooming regulations substantially burden Captain Singh’s religious expression.....	27
C. The Army has no compelling interest in forcing Captain Singh to abandon his articles of faith to continue serving his country.	28
1. Accommodating Captain Singh’s hair and turban does not further the Army’s interest in uniformity, unit cohesion, good order, discipline, or health and safety.	30
2. Army regulations provide broad categorical exemptions, and the Army has granted hundreds of thousands of individualized exceptions, to its uniform and grooming policies.....	32
3. The Army cannot identify anything unique about Captain Singh’s service assignment at Fort Belvoir that would compel cutting his hair or shaving his beard or removing his turban.....	35

D. Even if the Army did have a compelling interest here, forcing Captain Singh to violate his faith is not the least restrictive means of furthering that interest.	36
II. Captain Singh is likely to succeed on his Free Exercise Clause claim.	37
III. Captain Singh is likely to succeed on his Equal Protection claim.	38
IV. The remaining factors all weigh in favor of granting temporary and preliminary injunctive relief.	40
A. Captain Singh will suffer irreparable harm absent injunctive relief.	41
B. The balance of harms weighs in Captain Singh’s favor.	42
C. The public interest favors granting an injunction.	43
V. The Court should not require security	44
CONCLUSION.....	44

INTRODUCTION

Plaintiff Simratpal Singh, a Captain in the United States Army, seeks immediate relief from this Court to prevent Defendants from infringing his Constitutional rights. Specifically, Captain Singh seeks to enjoin Defendants from making his continued service in the military subject to unprecedented, non-standard testing requirements that target him solely because of his religious beliefs. Captain Singh is an adherent of Sikhism and currently has a temporary accommodation from the Army to wear unshorn hair, a beard, and a turban, as required by his faith. That temporary accommodation ends on March 31. But after months of suggesting the accommodation would likely be made permanent—as has routinely happened for Sikh soldiers in the past—on Wednesday, February 24, Defendants abruptly informed Captain Singh that, because of his Sikh religion, he must immediately undergo extraordinary, targeted, repetitive testing ostensibly to ensure he can properly wear a combat helmet and safety mask. *See* Compl. ¶ 15, 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”).

Captain Singh was initially instructed to schedule his own gas mask fit testing, which was scheduled to take place at Fort Belvoir, Virginia, (Captain Singh’s home base) consistent with the Army’s standard practices and procedures (as outlined in A.R. 350-1). 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. Then at 8:00 PM that same evening, he was ordered that after the helmet testing at Fort Belvoir on Tuesday morning, he would be required to report to Aberdeen Proving Grounds in Maryland, where he would undergo three days of intensive safety-mask testing. No other soldiers in the

Army have been treated in this manner or subjected to tests similar to those detailed in the Wada Memorandum as a condition for remaining in the Army. Soldiers routinely select their own helmets and determine for themselves whether they fit. And as for safety masks, soldiers who wear permanent beards for medical reasons or under separate rules for Special Forces are not subject to discriminatory testing like that being pushed on Captain Singh. Captain Singh is more than willing to undergo the same safety testing as all other soldiers, but he objects to Defendants treating him differently because of his Sikh religion. Under its own regulations, the Army is obligated to consider Captain Singh's request for a religious accommodation on the same terms it would consider any other accommodation, be it for medical, religious, or other reasons. But unless the Court enjoins the Army's proposed testing today, Defendants will instead be allowed to blatantly discriminate against Captain Singh tomorrow solely because of his religion. Captain Singh thus requests an immediate injunction against Tuesday's pretextual, discriminatory testing. Once the testing is enjoined, Captain Singh seeks a further injunction directing the Army to make his religious accommodation permanent.

The military's discriminatory treatment of Captain Singh because of his religion is entirely unlawful. The Religious Freedom Restoration Act (RFRA) forbids the military from suppressing a soldier's religious exercise unless it has a compelling interest that cannot be met in a less restrictive way. The Department of Defense's and the Army's own regulations likewise place "high value" on soldiers' right to exercise their religion, promising that religious accommodations "*will*" be granted, so long as mission readiness is not compromised. Here, there is no legitimate argument that Captain Singh's articles of faith could adversely impact his military service as an Assistant Operations Officer for the 249th Engineer Battalion at Fort Belvoir, a point that is underscored by his service *while observing his Sikh articles of faith* for

the past three months. Moreover, the Army essentially concedes that, at all times, it has roughly 100,000 soldiers—including officers—who are allowed for medical reasons to maintain beards and that those beards “should not ordinarily require any functional limitations” on soldiers’ performance of their duties.

To be clear, observant Sikhs have fought in the United States Army since World War I. It was only in the 1980s that the Army began strictly enforcing a beard ban. And even since that time, a number of Sikhs have continued serving—either by being grandfathered under the new policy or by obtaining individualized exceptions. Currently, at least three other Sikh-Americans serve in the Army Reserves with their articles of faith fully intact (all of which were previously on active duty). Considering that observant Sikhs are welcomed into the Indian, British, Canadian, and Australian armies, the U.S. Army’s refusal to grant Captain Singh an exception is inexplicable. Just eight months ago, in a similar case brought by an aspiring Sikh soldier, this Court held that the Army generally lacks any justification for preemptively barring Sikhs from maintaining their articles of faith while serving in the military.¹ Because the Army also lacks any specific reasons for barring Captain Singh, it should be enjoined from subjecting him to targeted safety testing or taking any action against him because of his religion.

BACKGROUND

The Sikh Faith

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

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

fifth largest faith tradition with nearly 25 million adherents.² There are approximately 500,000 Sikhs in the United States. *See* S. Con. Res. 74, 107th Cong. (2001). 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. Compl. ¶¶ 30-35.

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 clergy maintain religious articles on their person, all Sikhs are required to wear external articles of faith. *Id.* ¶ 36. These articles of faith, such as unshorn hair (*kesh*) and the turban, distinguish a Sikh and have deep spiritual significance. *Id.* ¶ 37. 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. *Id.* ¶ 38. Guru Nanak started the practice, regarding it as living in harmony with God’s will. *Id.* ¶ 39.

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).” *Id.* ¶¶ 40-41. 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

² *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*, at 9 n.1 (2012), <http://www.pewforum.org/files/2014/01/global-religion-full.pdf>.

adultery speaks to the immense significance of uncut hair in the Sikh religion. *Id.* ¶ 41. 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. *Id.* When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh's head. *Id.* ¶ 42.

Historically, uncut hair and turbans have been central features of the Sikh identity. For example, in the 18th century, Sikhs in South Asia were persecuted and forced to convert from their religion by the dominant leaders in the region. *Id.* ¶ 43. The method of forcing conversions was to remove a Sikh's turban and cut off their hair. *Id.* ¶ 44. 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. *Id.* ¶ 45.

Captain Singh's Commitment to the Sikh Faith

Captain Singh was born in the Punjab region of India into an observant Sikh family. Compl. ¶ 46. 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. *Id.* ¶ 47. When Captain Singh's beard came in, his father taught him how to properly wrap and wear the full turban. *Id.* ¶ 48. Throughout high school, he maintained the Sikh articles of faith, wearing the turban and never cutting his hair or shaving. *Id.* ¶ 49.

Growing up, Captain Singh regularly attended the Sikh temple or *gurdwara* to hear preaching and to partake in *langar*. *Id.* ¶ 50. *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, who serve participants sitting intermingled in rows on the floor. *Id.* ¶ 51. *Langar* serves as a continuous reminder of the Sikh ethics of equality, generosity, inclusiveness, and care for the poor. *Id.* ¶ 52.

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. *Id.* ¶ 53. On Sundays, he enjoyed listening to the preaching about Sikh scripture and history, and the musical recitations of Sikh scripture. *Id.* ¶ 54. Captain Singh frequently heard stories of Sikhs who chose to die rather than remove their turban when subjected to forced conversions, and this theme became particularly poignant to him. *Id.* ¶ 55.

While remaining deeply connected to his Sikh heritage, Captain Singh thrived at his high school in Bellevue, Washington, earning excellent grades and participating on the soccer team and wrestling squad. *Id.* ¶ 56. He participated in student government, serving as president of his sophomore class and as student-body treasurer the following year. *Id.* 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. *Id.* ¶ 57.

Through that point in his life, Captain Singh had never experienced any negative repercussions from anyone because of his religion. *Id.* ¶ 58. He never could have anticipated that the U.S. Army would be the first to pressure him to abandon his articles of faith. *Id.* ¶ 59.

Captain Singh's Decision to Join the Military

Captain Singh long desired to serve in the military. *Id.* ¶ 65. Service in armed forces has always been—and continues to be—a central part of the Sikh identity. The Sikh martial tradition

dates back to the late 17th century and Guru Gobind Singh’s creation of the Khalsa, a spiritual order and army comprised of initiated Sikhs, to resist persecution by the Mughal Empire. The Khalsa warrior-saint paradigm instructs Sikhs to take up arms against oppression as a religious duty.³ Renowned incidents of Sikh courage and valor include Sikh soldiers defeating the Afghan Pathans in 1813 at the Battle of Attock⁴ and their victory over the British at the Battle of Chillianwala in 1849. *Id.* Sikh soldiers soon became “among the sturdiest and trustiest men of the British army,” *id.*, with a group of twenty-one Sikhs famously repulsing an attack by thousands of Afghans for six hours at the Battle of Saragarhi in 1897, and with approximately 100,000 Sikhs—a disproportionately high number among Indian volunteer soldiers—fighting for the British in World War I.⁵ *Id.* ¶¶ 60-61. Observant Sikhs still serve with their articles of faith intact in militaries around the world, most notably in India, Canada, Australia, and the United Kingdom, and also as United Nations Peacekeepers, often working closely with American troops in troubled regions. In fact, Canada’s recently appointed Minister of Defense, Lieutenant Colonel Harjit Sajjan, supported the U.S.-led coalition in Afghanistan and served as a special advisor to U.S. Army Lieutenant General James Terry, commander of the 10th Mountain Division.⁶ *Id.* ¶ 62.

³ Sir Charles Gough & Arthur Donald Innes, *The Sikhs and the Sikh Wars*, 18-21 (1897); Arvind-Pal Singh Mandair, *Sikhism: A Guide for the Perplexed*, 4, 55 (2013).

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

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

⁶ *See* Christopher Guly, *Defense Minister Harjit Singh Sajjan: A Sikh Soldier's Climb to the Canadian Cabinet*, L.A. Times, Feb. 22, 2016, <http://www.latimes.com/world/mexico-americas/la-fg-canada-sajjan-profile-20160222-story.html>.

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. *Id.* ¶ 63. 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. *Id.* ¶ 64. 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 a natural way to repay his country. *Id.* ¶ 66.

Captain Singh always assumed he would enter the Army as an enlisted soldier until a friend one class ahead of him in school applied to the military academies. Learning for the first time about this opportunity, Captain Singh set his mind to attend West Point. *Id.* ¶ 67. He ultimately received endorsements from Congressman David Reichert and Senator Maria Cantwell. *Id.* ¶ 68.

Well into the application process, it had still never occurred to Captain Singh that the Army would have a problem with his religious beard and turban. *Id.* ¶ 69. 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 out one last time. *Id.* When Captain Singh explained that he wore his beard for religious reasons, the officer agreed to inquire with the Academy about an accommodation. *Id.* When the officer later expressed doubt that an exception would be granted, Captain Singh for the first time realized he faced a true religious dilemma. *Id.*

Still not comprehending he would be barred from serving his country because of his articles of faith, Captain Singh pressed forward with his application. Because so many other nations actively welcome observant Sikhs into their militaries, Captain Singh believed 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 Academy as a new cadet, Captain Singh continued to make inquiries about obtaining a religious accommodation. *Id.* ¶ 70. He separately approached two majors about it, and both gave vague responses, suggesting they would inquire and get back to him. *Id.* But as the induction process continued, and before Captain Singh fully understood what was happening, he found himself in the barbershop with the other cadets to be trimmed and shaved. *Id.* ¶ 71. 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. *Id.* ¶ 72.

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. *Id.* ¶ 73. He constantly worried he had not pursued his religious rights more aggressively. *Id.* While the demands of West Point forced him to focus on his training, his conscience never let him forget who he really was. *Id.* ¶ 74. Experiencing significant guilt and disappointment in himself, he committed to return to his articles of faith whenever the opportunity first arose. *Id.*

Captain Singh's Military Service

Notwithstanding the weight of his decision to compromise his Sikh religious practices, Captain Singh went on to serve his country with notable excellence. He graduated from West Point in 2010, receiving his B.S. degree in electrical engineering with honors. *See Compl.* ¶ 76. 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. *Id.* ¶ 77. During this time, Captain Singh received high praise from his commanders. *Id.* ¶ 78. 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.* 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.*

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. *Id.* ¶ 79. In that capacity, Captain Singh was forward-deployed to Operation Enduring Freedom in Kandahar Province from April 2012 to January 2013. *Id.* 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. ¶ 80. In a subsequent Officer Evaluation Report, Captain Singh was “ranked number one 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.” *Id.* ¶ 81. His LTC went on to note that Captain 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.*

Upon returning from his deployment, and as a result of his “exceptional and meritorious service,” Captain Singh was awarded a Bronze Star Medal. *Id.* ¶ 82. 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” and “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.* Captain Singh also received an Army Achievement Medal in November 2013 for his performance during a joint training exercise with the South Korean Army. *Id.* ¶ 83.

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. *Id.* ¶ 84. In this role, he was recognized as “easily the best of four captains” who “has proven himself an invaluable asset to the team.” *Id.* Captain Singh is viewed as “a top 10% officer” who is a “fit, talented leader with unlimited potential and a bright future.” *Id.* At the same time, Captain Singh received an Army Commendation Medal for his service. *Id.* ¶ 85.

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. *Id.* ¶ 86. During this time period, he was noted to be a “highly skilled officer” who “displayed great leadership.” *Id.* ¶ 87. 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.*

Captain Singh’s Decision To Become Fully Observant

Last spring, Captain Singh attended the “Second Annual Vaisakhi Event”—a celebration of the Sikh New Year hosted by the Pentagon. Compl. ¶ 88. The event included Sikh soldiers from various branches of the U.S. military. *Id.* The Pentagon’s deputy chaplain, Lieutenant Colonel Claude Brittan, 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.* At the event, Captain Singh met several Sikh soldiers who maintain their uncut hair and beards and wear turbans. Compl. ¶ 89. Further impacted by seeing

his fellow 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. *Id.*

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, by November 16, 2015. *Id.* ¶ 90. 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. *Id.* ¶ 91. 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, unshorn hair, and a beard. *Id.* ¶ 92. She expressly agreed that this would have no adverse impact on Captain Singh's ability to fulfill his responsibilities and promised to recommend he be granted an accommodation. *Id.* The following day, Captain Singh submitted a letter to the then-Secretary of the Army, John McHugh, and to the 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. *Id.* ¶ 93.

Captain Singh's Effort to Obtain an Accommodation

With the understanding that his request for an accommodation was being 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. *Id.* ¶ 94. On December 8, Defendants finally issued a thirty-day accommodation, allowing Captain Singh to return to work while the permanent accommodation was presumably being finalized. *Id.* ¶ 95. Then on January 8, noting that the decision-makers were still evaluating Captain Singh's accommodation request, Defendants extended the temporary accommodation

until March 31. *Id.* 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. *Id.* ¶ 97.

Defendants were well aware that Captain Singh could not wait until the March 31 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. *Id.* ¶ 98.

Then, on February 24, just over a month before his temporary accommodation expired, Defendants abruptly escalated matters by sending Captain Singh the Wada Memorandum, which outlined multiple levels of extraordinary, rigorous safety testing that he was required to undergo solely because of his religion and as a prerequisite to a final decision on his request for accommodation. *Id.* ¶ 99. With respect to his helmet, Captain Singh was told he had to be “evaluated” by a “technical expert” to determine if 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.* ¶ 100. With respect to his safety mask, Captain Singh was told he had 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.* ¶ 101.

Captain Singh was initially provided contact information to schedule the evaluations on his own through his command at Fort Belvoir. *Id.* ¶ 102. 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. *Id.* ¶ 102. 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 three days of intensified safety-mask evaluations. *Id.* ¶ 104.

No other soldiers in even remotely comparable circumstances have been treated in such a discriminatory fashion. No soldiers undergo evaluation for helmet fit. Kalsi Decl. ¶¶ 15-16; Lamba Decl. ¶¶ 21-23. Rather, soldiers are free to try on different helmets and make their own assessment of fit. Kalsi Decl. ¶¶ 15-16; Lamba Decl. ¶¶ 21-23. 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. Captain Singh and others who have served in the Army for years have never even heard of getting an “expert” evaluation of helmet fit. Compl. ¶ 108; Khalsa Decl. ¶¶ 24-25; Lamba Decl. ¶¶ 22-24. 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.

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.” Army Reg. 350-1, § G-27(*i*). In reality, soldiers may go long periods of time without being subjected to mask-fit evaluations. In his nearly ten years in the Army, before he received the Wada memo, Captain Singh had only undergone one mask exercise, and it was not a condition of his employment in the Army. Compl. ¶ 111. That exercise comprised sealing his mask, entering a gas chamber, removing the mask for one minute, and then replacing it. Compl. ¶ 112. This is consistent with the experience and observations of other soldiers. Lamba Decl. ¶¶ 11-12, 20-23; Kalsi Decl. ¶¶ 11-14; Khalsa Decl.

¶¶ 24-27. 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). None were ever subjected to extensive testing because of their religion. Lamba Decl. ¶¶ 21-23; Kalsi Decl. ¶¶ 11-14; Khalsa Decl. ¶¶ 24-26. Similarly, soldiers who maintain beards for medical or other reasons 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). Indeed, the Technical Bulletin for Medical Services 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. 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.* at § 2-6b(2) (emphasis added).

The Army’s Uniform and Grooming Regulations and their Exemptions

Captain Singh’s beard and turban are compatible with the Army’s uniform and grooming regulations. Its uniform regulations allow soldiers to wear religious headgear while in uniform if the headgear is (1) “subdued in color,” (2) “can be completely covered by standard military

headgear,” (3) “bears no writing, symbols, or pictures,” and (4) “does not interfere with the wear or proper functioning of protective clothing or equipment.” Army Reg. 600-20, § 5-6h(4)(g), http://www.apd.army.mil/pdffiles/r600_20.pdf. Captain Sikh’s turban would comply with these requirements except a matching turban would replace his standard issue headgear. Compl. ¶ 119.

With respect to facial hair, Army regulations allow sideburns and a mustache as long as they are “neatly trimmed, tapered, and tidy.” Army Reg. 670-1, § 3-2a(2)(a)-(b), http://www.apd.army.mil/pdffiles/r670_1.pdf. Although Captain Singh’s sideburns, mustache, and beard cannot be trimmed, they would be kept neat and tidy, with his beard tied and tucked under his chin and close to his face. Compl. ¶ 121. As the following pictures demonstrate, Sikhs have served with merit in the Army in a wide variety of capacities without compromising their faith *or* the military’s interests in unit cohesion, safety, decorum, or mission accomplishment.



Corporal Simran Preet Singh Lamba at an infantry training event.
Photo credit: Susanne Kappler, <http://www.army.mil/media/160236>.



Corporal Lamba wearing his Kevlar helmet, helping another soldier adjust his protective gear.
Photo credit: Susanne Kappler, <http://www.army.mil/media/160235>.



Major Tejdeep Singh Rattan dons a protective mask before entering the gas chamber.
Photo credit: Steve Elliott, <http://www.army.mil/media/115036>.



Corporal Lamba carrying the guidon for his platoon during Basic Combat Training graduation.
Photo credit: Susanne Kappler, <http://www.army.mil/media/160335>.



Major Kalsi serving in a tented emergency room in Helmand province, Afghanistan.
Photo credit: Sikh Coalition, <http://tinyurl.com/hggmpab>.

Department of Defense and Army regulations expressly contemplate religious exceptions to the grooming policy. Department of Defense Instruction 1300.17 expressly provides that “the DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions.” Dep’t of Def. Instruction 1300.17(4)(a), <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf>. Thus, it promises that “[r]equests for religious accommodation *will* be resolved in a timely manner and *will* be approved,” so long as they do not “adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement.” Dep’t of Def. Instruction 1300.17(4)(e) (emphasis in original).

The process for obtaining an accommodation, however, is onerous, and approval can easily take ninety days or more. Ironically, the person requesting the accommodation is required to comply with the uniform and grooming regulations while the request is pending, even if doing so violates his religious beliefs. Dep’t of Def. Instruction 1300.17(4)(g) (“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, § 5-6*i*(1). In contrast, soldiers who need a *medical* exception for a beard can get one by having their doctor enter a “permanent profile” in their file, which is only reassessed annually. Technical Bulletin Med. 287 § 2-6*b*(2), http://armypubs.army.mil/med/DR_pubs/dr_a/pdf/tbmed287.pdf. The Technical Bulletin for medical exceptions acknowledges that “[t]he existence of a beard does not prevent performance of most military duties.” Thus, it emphasizes that “the fact that a profile is awarded authorizing the growth of a beard should not ordinarily require any functional limitations requiring a change or limitation in the performance of military duties.” *Id.* § 2-6*c*(1).

Since 2007, the Army has authorized “at least 49,690 permanent ‘shaving profiles’ and at least 57,616 temporary ones.” *Singh v. McHugh*, 109 F. Supp. 3d 72, 95 (D.D.C. 2015). This includes “not only enlisted men but officers bound to ensure that the men who serve under them are clean-shaven.” *Id.* In the related *Singh v. McHugh* litigation, the Army did not “claim[] or show[] that even one of the more than 100,000 soldiers who have been permitted to grow a beard since 2007—including many who have served in deployed environments—have been ordered to shave it for any reason.” *Id.* at 96. Indeed, the Army admitted it “does not always enforce grooming policies pertaining to beards” even “when operational necessity requires.” *Id.* at 95 n.17.⁷

Other Sikhs in the Army

Captain Singh would not be the first observant Sikh to serve in the military. Indeed, Sikhs proudly served in the U.S. Army without impediment during the Vietnam War and prior conflicts dating back to World War I. Around 1981, however, military policy was changed to prohibit exemptions to the uniform requirements for visible articles of faith. While Congress subsequently enacted a statute protecting soldiers’ right to wear religious apparel that is “neat and conservative” and would not “interfere with . . . military duties,” 10 U.S.C. § 774, the statute did not address religious prohibitions against cutting hair and was construed narrowly by the military to continue barring turban-wearing Sikhs from serving. *See* Dep’t of Def. Instruction of February 3, 1988, 1330.17, <http://www.wood.army.mil/eop/EO%20FILES/regspubs/130017p.pdf> (amended Jan. 2014); Army Reg. 600-20 §§ 5-6g(4)(g), <http://www.gordon>.

⁷ This Court may take judicial notice of the facts presented in the public record of the *Iknoor Singh* case. *Spencer v. Islamic Republic of Iran*, 922 F. Supp. 2d 108, 109 (D.D.C. 2013) (courts may take judicial notice “of evidence presented in other related cases” without requiring “the presentment of such evidence”); *Covad Comm. Co. v. Bell Atl. Corp.*, 407 F.3d 1220, 1222 (D.C. Cir. 2005) (recognizing that courts may take “judicial notice of facts on the public record”).

army.mil/media/pages/Super_Users/documents/TMP_DOCUMENTS/samc/

[ArmyCommandPolicyAR600-20.pdf](#). This rule has precluded almost all practicing Sikhs from entering branches of the U.S. Armed Forces for the past thirty-four years.

Notably, however, many Sikhs who were already in the Army were grandfathered under the 1981 policy change and allowed to continue their service. One of these soldiers, Colonel Gopal S. Khalsa, served in Special Forces units, obtained a Masters Parachutist Badge, and was a Battalion Commander overseeing an 700-person intelligence group. Khalsa Decl. ¶¶ 12-13, 17. He received a Meritorious Service Medal, among many other honors, and in 2004, was inducted into the Officer Candidate School Hall of Fame. *Id.* at ¶¶ 8, 21. Colonel Khalsa and other Sikh soldiers served with distinction, all while maintaining their Sikh articles of faith. *Id.* ¶ 142.

Over the last six years, three other Sikhs have been granted religious accommodations, allowing them to serve in the Army with their articles of faith intact.



The first, Corporal Simran Preet S. Lamba, enlisted in August 2010. Lamba Decl. ¶ 3. Fluent in Punjabi and Hindi, he was recruited through MAVNI, a recruiting program for legal non-citizens, for his cultural and language skills. *Id.* at ¶ 4. He served in a medical battalion and was recognized as a “tremendous Soldier” who “had an amazing impact on his peers and supervisors.” *Id.* at ¶ 17. In June 2014, he received an Army Commendation Medal for his selfless service and dedication to duty. *Id.* at ¶ 16. He is currently in the Individual Ready Reserve. *Id.* at ¶ 3.



Major Tejdeep S. Rattan, a dentist, entered active duty in January 2010 after receiving a religious accommodation. *See, e.g., Singh*, 109 F. Supp. 3d at 99. In 2011, he was deployed to Afghanistan where he volunteered to serve in

a remote forward operating base. His superiors described his performance as “exemplary,” “tireless,” “in keeping with the highest traditions of the . . . United States Army,” “outstanding,” “extraordinary,” and “phenomenal.” *Id.* He received numerous awards, including a NATO Medal and the Army Commendation Medal. *Id.*



Finally, Major Kamaljeet S. Kalsi began active duty in June 2010. Kalsi Decl. ¶ 6. He was also deployed to Afghanistan in 2011 and was awarded a Bronze Star Medal upon his return for his exceptional service. *Id.* at ¶¶ 6-8. 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.” *Id.* at ¶ 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.” *Id.* at ¶ 9. Major Kalsi is currently in the U.S. Army Reserve Officer Corps. *Id.* at ¶ 2.

Again, 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.

STANDARD FOR GRANTING TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF

Captain Singh is entitled to both temporary and preliminary injunctive relief protecting his exercise of religion while the Army considers his request for an exception and while that request, if denied, is reviewed by the Court. Under Federal Rule of Civil Procedure 65, a plaintiff seeking interim injunctive relief must show (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm if injunctive relief is not granted; (3) that the balance of interest among the

parties favors injunctive relief; and (4) that injunctive relief would be in the best interest of the public generally. *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). The D.C. Circuit takes a “sliding scale” approach in evaluating these factors. If the party seeking injunctive relief “makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291–92 (D.C. Cir. 2009).⁸ Here, however, all factors weigh overwhelmingly in Captain Singh’s favor.

“The purpose of a temporary restraining order is to preserve the status quo for a limited period of time until the Court has the opportunity to pass on the merits of the demand for a preliminary injunction.” *Barrow v. Graham*, 124 F. Supp. 2d 714, 715–16 (D.D.C. 2000) (citations omitted). The four-part injunctive relief standard should be applied, but with a view to preserving the status quo. *Id.*

ARGUMENT

In his applications for temporary restraining order and preliminary injunction, Captain Singh raises three of the claims set forth in his verified complaint. For the reasons set forth below, Captain Singh is likely to succeed on the merits of each of those claims and is entitled to relief on the other injunctive relief factors as well.

I. Captain Singh is likely to succeed on his RFRA claim.

RFRA provides that “Government shall not substantially burden a person’s exercise of religion” unless the Government “demonstrates that application of the burden *to the person*— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means

⁸ Although a number of other circuits and several judges on the D.C. Circuit have questioned the validity of the sliding scale approach, it remains the law in the D.C. Circuit. *See Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 121 n.3 (D.D.C. 2013).

of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(a), (b) (emphasis added). The term “government” includes any “branch, department, agency . . . and official . . . of the United States,” 42 U.S.C. § 2000bb-2, including the Department of Defense, the Army, and their officers in their official capacities. *Singh*, 109 F. Supp. 3d at 87 (noting that the Army has conceded that it “is a government actor to which RFRA applies”); *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (applying RFRA against the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force); *see also* Dep’t of Def. Instruction 1300.17 (military regulation adopting RFRA standard).

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

A. Captain Singh is sincerely compelled by his faith to remain an observant Sikh.

Captain Singh's sincere desire to return to observing the Sikh articles of faith cannot reasonably be questioned. "Though the sincerity inquiry is important, it must be handled with a light touch, or 'judicial shyness.'" *Moussazadeh v. Tex. Dep't of Criminal Justice*, 703 F.3d 781, 792 (5th Cir. 2013) (quoting *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 262 (5th Cir. 2010)). Thus, courts should limit themselves "to 'almost exclusively a credibility assessment' when determining sincerity." *Id.* (citing *Kay v. Bemis*, 500 F.3d 1214, 1219 (10th Cir. 2007)). At the preliminary injunction stage, Captain Singh's undisputed sworn testimony is sufficient to establish his sincerity. *Love v. Reed*, 216 F.3d 682, 688 (8th Cir. 2000) ("It is not the place of the courts to deny a man the right to his religion simply because he is still struggling to assimilate the full scope of its doctrine.").

Captain Singh is clearly sincere in his desire to observe the articles of faith and other aspects of the Sikh religion. From his childhood and throughout high school, where he was generally the only Sikh in his school, Captain Singh always wore his turban and never cut his hair or shaved. Compl. ¶ 49. He regularly attended *gurdwara* and internalized the principles and history of the Sikh faith. *Id.* ¶¶ 50-55. Although Captain Singh succumbed to military pressure to give up the *kesh* and turban upon entering the Academy, he did so only after the military's vague responses to his requests left him believing an accommodation might be possible, only to find himself in the barbershop at the last minute, forced into the Hobson's choice of either maintaining the articles of faith or serving his country. *Id.* ¶¶ 69-73. This difficult and lamented decision to shave was perhaps the result of an inexperienced faith, but not of insincerity. *See Moussazadeh*, 703 F.3d at 791-92 ("[S]incerity does not require perfect adherence to beliefs expressed" as "even the most sincere practitioner may stray from time to time."); *see also Grayson v. Schuler*, 666 F.3d 450, 454 (7th Cir. 2012) ("[A] sincere religious believer doesn't forfeit his religious rights

merely because he is not scrupulous in his observance; for where would religion be without its backsliders, penitents, and prodigal sons?”).

For the last nine years, Captain Singh has borne a heavy moral burden for his decision as a relatively naïve eighteen-year-old to shave in order to serve his country. Compl. ¶ 74. He regrets not having pursued his rights more aggressively and was deeply shamed by the decision, even finding shaving each morning to be a more painful experience than the intense hazing that cadets experience during their first weeks at West Point. *Id.* ¶ 73. While Captain Singh ultimately resigned himself to the Army’s disregard of his religious beliefs, he has always maintained a desire to return to observing his articles of faith and, having now come to fully understand his options, is committed to obtaining an exception. *Id.* ¶ 74.

Captain Singh’s sincerity is further demonstrated by his continued observation of other aspects of his faith. For example, although vegetarianism is not universally required of Sikhs, Captain Singh was raised to be vegetarian as part of his faith. Compl. ¶ 53. He continues to believe that it is morally wrong to kill another creature solely for his own pleasure, including for food. *Id.* Captain Singh has remained a vegetarian even through the most grueling phases of his military career. In both Ranger School and Special Forces School, for example, when hunger and lack of sleep are the soldier’s biggest enemies, Captain Singh always gave the meat in his rations to other soldiers. *Id.* ¶ 78. He never requested a special vegetarian accommodation, because he wanted to show that he could survive on the same rations as everyone else. *Id.* And even though Captain Singh lost thirty pounds during Ranger School, he never compromised his religious beliefs. *Id.*

Considering all these facts, even without the deference that should be afforded on the question of sincerity, Captain Singh’s youthful failing when given the Hobson’s choice of

shaving or giving up his military service is insufficient to call into question the sincerity of his religious beliefs. Thus, it is likely that Captain Singh will prevail in any challenge to the sincerity of his desire to fully observe the Sikh articles of faith. *Colvin v. Caruso*, 852 F. Supp. 2d 862, 867-68 (W.D. Mich. 2012) (“One slip in following the tenets of a religion does not necessarily transform one into a nonbeliever.”).

B. The Army’s uniform and grooming regulations substantially burden Captain Singh’s religious expression.

There is also no question that refusal to accommodate Captain Singh’s Sikh articles of faith would constitute a substantial burden on his religious exercise. “A substantial burden exists when government action puts ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’” *Kaemmerling v. Lappin*, 553 F.3d 669, 677-78 (D.C. Cir. 2008) (quoting *Thomas v. Review Bd.*, 450 U.S. 707, 718 (1981)). It is well established that this standard is satisfied “when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit.” *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1070 (9th Cir. 2008) (citing *Sherbert v. Verner*, 374 U.S. 398 (1963)); *see also Autor v. Pritzker*, 740 F.3d 176, 182, (D.C. Cir. 2014) (finding a viable claim when lobbyists were forced to choose between their First Amendment right to petition the government and the benefit of serving on a federal advisory committee). Being put to the choice of giving up his religious beliefs or facing military discipline, including probable expulsion from his military career, unquestionably imposes a substantial burden on Captain 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*, 109 F. Supp. 3d at 87 (Army’s refusal to grant Sikh soldier an “accommodation that would enable him to enroll in ROTC while maintaining his religious practice” constituted a substantial burden). Because the Army’s regulations impose a substantial

burden on Captain Singh's religious beliefs, he 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. The Army cannot make this showing.

C. The Army has no compelling interest in forcing Captain Singh to abandon his articles of faith to continue serving his country.

Because the Army's regulations substantially burden Captain Singh's religious exercise, "the burden [of strict scrutiny] is placed squarely on the [Army]." *O Centro*, 546 U.S. at 429. The government thus must prove that coercing Captain Singh "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000bb-1(b); *Singh*, 109 F. Supp. 3d at 88 (noting that RFRA's strict scrutiny standard "plainly applies to the U.S. Army"). This is the "most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997), and a test that this Court recently ruled that the Army flunked in an almost perfectly analogous case. *Singh*, 109 F. Supp. 3d at 96-97.

In order to meet RFRA's demanding test, the Army must show that it has a compelling interest in imposing its uniformity requirement specifically *on Captain Singh*. The Army cannot meet its burden by citing some "broadly formulated interests" that, at a high level of generality, seem compelling. *Holt*, 135 S. Ct. at 863. RFRA demands a "'more focused' inquiry: It 'requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened.'" *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2779 (2014) (quoting *O Centro*, 546 U.S. at 430-31). This rule applies even to critically important interests such as enforcing the nation's drug laws, *O Centro*, 546 U.S. at 433; prison safety, *Holt*, 135 S. Ct. at 859; prevention of animal cruelty, *Church of the Lukumi Babalu Aye, Inc. v. City of*

Hialeah, 508 U.S. 520, 543-44, 546 (1993); traffic safety, *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1267-68 (11th Cir. 2005); protecting federal buildings, *Tagore v. U.S.*, 735 F.3d 324, 330-31 (5th Cir. 2013); controlling government costs, *Rich v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 525, 533 (11th Cir. 2013); and protecting public health, *Lukumi*, 508 U.S. at 544-45.

The Army cannot meet its heavy burden on “mere say-so.” *Holt*, 135 S. Ct. at 866. RFRA “demands much more,” *id.*—namely, specific evidence “prov[ing]” a compelling interest as against Captain Singh and his request for temporary accommodation. *Singh*, 109 F. Supp. 3d at 93 (inquiring whether “defendants have proven that the decision to deny *this plaintiff* a religious accommodation . . . actually furthers the compelling interests defendants have identified”). Thus, this Court must “scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants’ and . . . ‘look to the marginal interest in enforcing’ the challenged government action in that particular context.” *Holt*, 135 S. Ct. at 863 (citation omitted).

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

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

interests in four general interests: “[u]nit cohesion and morale,” “[g]ood order and discipline,” “[i]ndividual and unit readiness,” and the Sikh applicant’s “health and safety.” *Singh*, 109 F. Supp. 3d at 93-94.

Those justifications “d[id] not withstand scrutiny” then, *id.* at *18, and they do not now. As an initial matter, those interests are too broadly formulated to answer the question of whether the Army may force Captain Singh to violate his faith instead of granting a temporary accommodation. Further, Army policy and Congressional guidance has been trending toward eliminating the requirement that soldiers be forced to violate their faith while accommodation requests are pending. *See* Compl. ¶ 126; H.R. Rep. No. 114-102, at 134 (2015) (House Report to the 2016 National Defense Authorization Act urging DoD to quickly resolve accommodation requests without burdening service members’ free exercise “while [the] accommodation request is pending”). A wilting interest is not a compelling one.

There are three more reasons that those interests fail as applied to Captain Singh. First, Captain Singh’s hair and turban will be neat and professional, just like those of other successful Sikh soldiers in the U.S. Army, so banning them will not further the Army’s interests. Compl. ¶¶ 121, 147. Second, an accommodation for Captain Singh certainly would not harm the Army’s interests any more than the categorical deviations in uniformity inherent in the regulations and the hundreds of thousands of exceptions to uniformity the Army has granted to individual soldiers. Third, there is nothing about Captain Singh’s assignment to Fort Belvoir that compels denying an exemption.

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

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

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

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

Captain Singh's turban, hair, and beard will be worn in a neat and conservative manner at all times. Compl. ¶ 121. Captain Singh will wear his unshorn hair neatly wrapped into his turban, well above the edge of his collar. *Id.*; *see, e.g.*, Army Reg. 670-1 § 3-2(a)(3)(c). He will wear his unshorn beard neatly tied up under his chin, maintaining a tidy appearance and ensuring he can maintain a gas-mask seal. Compl. ¶ 121; *see, e.g.*, Army Reg. 670-1 § 3-2(a)(2)(b). And he will wear his turban in the manner listed below to match his uniform and ensure that the turban does not interfere with the wear of protective clothing or equipment, just as other Sikhs in the military have done. *See, e.g.*, Army Reg. 600-20h(4)(c)(3).

- In non-field Garrison settings, Captain Singh will wear a turban made of ACU camouflage material to match his uniform. Compl. ¶ 121(a).
- In field settings, Captain Singh will wear a field turban made of ACU camouflage material to match his uniform. *Id.* ¶ 121(b).

- Captain Singh will wear his Kevlar helmet using the field turban or an ACU-pattern “patka” (small turban). *Id.* ¶ 121(c).
- 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. *Id.* ¶ 121(d).

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

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

The Army permits both categorical exemptions and individualized exceptions to its uniformity requirements. This creates “a higher burden” on the Army to “show[] that the law, as applied, furthers [its] compelling interest[s].” *Singh*, 109 F. Supp. 3d at 94 (quoting *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 472–73 (5th Cir.2014)). It also makes the existence of a compelling interest both more important (to guard against religious discrimination) and less likely. *Fraternal Order of Police v. Newark*, 170 F.3d 359, 365 (3d Cir. 1999) (Alito, J.). As a unanimous Supreme Court explained, “a law cannot be regarded as protecting an

interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Lukumi*, 508 U.S. at 547 (internal citation omitted). Here, because the Army’s regulations “presently do[] not apply” to hundreds of thousands of soldiers, the Army’s interests in denying a temporary accommodation to Captain Singh “cannot be compelling.” *Hobby Lobby*, 723 F.3d at 1143.

First, the Army provides broad categorical exemptions to its uniformity regulations. In a recent reversal of Army policy, soldiers may wear tattoos of unlimited size and number on their arms and legs; they are generally restricted only from wearing tattoos on the head, face, wrists, and hands (though they may have a ring tattoo on one hand). Army Reg. 670-1 § 3-3.⁹ Men are not required to be entirely clean-shaven. Instead, they may choose within certain guidelines to have sideburns and moustaches. *Id.* at § 3-2(a)(2)(a). Women are not required to keep their hair short. Instead, they may have long hair that “extends beyond the lower edge of the collar.” *Id.* at § 3-2(a)(3)(c). Women may also wear makeup and earrings. *Id.* at §§ 3-2(b)(1), 3-4(c). Pregnant soldiers may wear maternity uniforms. Dep’t of the Army Pamphlet 670-1 §§ 5-1, 15-1, http://www.ncoguide.com/files/da-pam-670_1.pdf. Further, women’s Class A uniforms are different in almost every respect from men’s. Women may wear a skirt, *id.* at §§ 14-15a, 14-18; a differently cut shirt, *id.* at § 14-19; different footwear, including heels, *id.* § at 20-23a; a neck tab (instead of a neck tie), *id.* at § 14-10c(1); different headgear, *id.* at §§ 14-20, 20-13; a shorter cape, *id.* at § 20-5b(2); a narrower belt, *id.* at § 20-2b(2); and carry a handbag, *id.* at § 20-12.

Second, the Army has granted hundreds of thousands of individual exceptions to its uniformity regulations. For instance, Army regulations permit a “large-scale exception . . . to its

⁹ See also C. Todd Lopez, *Army to Revise Tattoo Policy*, Army News Service, Apr. 2, 2015, http://www.army.mil/article/145780/Army_to_revise_tattoo_policy/ (last visited Nov. 23, 2015) (detailing permitted and banned forms of tattoos).

grooming policies” by allowing soldiers to grow beards where medically necessary. *Singh*, 109 F. Supp. 3d at 97, 77. Since 2007, “the Army has permitted more than 100,000 service members,” including officers, “to grow beards for medical reasons.” *Id.* at *18 (noting that the Army has authorized “at least 49,690 permanent ‘shaving profiles’ and at least 57,616 temporary ones.”). While the standard exception allows the beards to be grown to 1/8 of an inch, they can be grown longer if medically necessary. *Id.* The Army permits beard exceptions because, according to the Army’s Technical Bulletin on the beard exception, “[t]he existence of a beard does not prevent performance of most military duties” and “authorizing the growth of a beard should not ordinarily require a change or limitation in the performance of military duties.” Technical Bulletin Med. 287 § 2-6c(1). While a commander can order a beard be shaved for operational reasons, the Army did not “claim[] or show[] that even one of the more than 100,000 soldiers who have been permitted to grow a beard since 2007—including many who have served in deployed environments—has been ordered to shave it for any reason.” *Singh*, 109 F. Supp. 3d at 96.

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

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

3. The Army cannot identify anything unique about Captain Singh's service assignment at Fort Belvoir that would compel cutting his hair or shaving his beard or removing his turban.

Nothing about Captain Singh's upcoming service assignment provides special grounds for forcing him to violate his faith. At Fort Belvoir, Captain Singh is attached to the 249th Engineer Battalion. The mission of the 249th Engineer Battalion is to provide advice and technical assistance in electrical power and distribution systems, and to provide commercial-level power to military units. See <http://www.usace.army.mil/249thEngineerBattalion.aspx> (last visited Nov. 23, 2015). The 249th's services include power requirement assessments, power production, transformer inspection and test analysis, maintenance and repair of power plants and substations, and training for personnel to operate and maintain power distribution and generation equipment. *Id.* Captain Singh will support this mission by serving as a staff operations officer. Compl. ¶ 1. Nothing about Captain Singh's specific duties gives the government a compelling interest in denying him an accommodation.

Notably, Captain Singh's commander has expressed support for Captain Singh's accommodation, has recommended that the accommodation be granted because it would have no adverse impact on Captain Singh's service, and has not identified anything about his assignment that would justify denying the accommodation. Compl. ¶ 7.

* * * *

The uniformly successful experiences of several accommodated Sikh soldiers, the Army's own internal analyses that accommodation was not harmful, and the Army's broad categorical exemptions and "large scale" individualized exceptions to the uniformity standard all have led this Court to conclude the Army could not "satisfy the[] burden of demonstrating" that its uniformity interests "are furthered by the unwavering application of Army policies to this plaintiff in this particular context." *Singh*, 109 F. Supp. 3d at 101. The same is true here. While

some degree of judicial deference to Army experience is permissible, this Court rightly recognized that deferring to the Army in the face of its undisputed policies and practices would amount to “a degree of deference that is tantamount to unquestioning acceptance.” *Id.* (quoting *Holt*, 135 S. Ct. at 864). If the Army can grant permanent beard and tattoo exceptions for literally hundreds of thousands of soldiers, it does not need to force Captain Singh to violate his faith to continue serving in the Army.

D. Even if the Army did have a compelling interest here, forcing Captain Singh to violate his faith is not the least restrictive means of furthering that interest.

Because the Army cannot show a compelling governmental interest as applied to Captain Singh, this Court need go no further. But if even if the Army had shown such an interest, it could not show that forcing Captain Singh to cut his hair, shave his beard, and remove his turban is the least restrictive means of furthering that interest.

Meeting the least-restrictive means standard is “exceptionally demanding.” *Holt*, 135 S. Ct. at 864. But that is the intent of the standard—ensuring that the government “must” use “a less restrictive means” if one “is available for the Government to achieve its goals.” *Id.* Where there are exceptions to a scheme that the government insists is the least restrictive, those exceptions defeat the government’s insistence by “demonstrat[ing] that other, less-restrictive alternatives could exist.” *Singh*, 109 F. Supp. 3d at 101 (quoting *McAllen Grace*, 764 F.3d at 476).

Applying the standard here yields the same outcome as it did in the *Singh* litigation: the Army flunks the test. A blanket ban on Captain Singh’s articles of faith simply *cannot* be the least restrictive means in light of the existing accommodations for medical beards, nonconforming tattoos, and gender-specific uniform variations. To the extent that the Army is concerned with ensuring a “neat and orderly” appearance, it is less restrictive for the Army to require Captain Singh, as it required for Corporal Lamba, to ensure his beard is “neat and well

maintained at all times.” *Singh*, 109 F. Supp. 3d at 102. And to the extent the Army is concerned with safety issues, it can follow its own rules for medical beards: “when there is an actual need” to shave a beard to protect safety “in a real tactical operation,” then shaving can be required. *Id.* at 96 (quoting TB MED 287 at 12). But here, there is no reason to expect that Captain Singh will face a “real tactical operation” any time soon—not least because the Army has not shown that any of the many soldiers wearing medical beards in “deployed environments” were ever “ordered to shave . . . for any reason.” *Id.*

II. Captain Singh is likely to succeed on his Free Exercise Clause claim.

Captain Singh is also likely to prevail on his Free Exercise claim and thus is entitled to an immediate restraining order against the religiously discriminatory testing ordered to take place beginning March 1. According to Supreme Court precedent, government action that burdens religious exercise is subject to strict scrutiny under the Free Exercise Clause if it is “not neutral or not of general application” *Lukumi*, 508 U.S. at 546. In *Lukumi*, the Supreme Court unanimously struck down an “extreme” example of government action as not neutral or generally applicable. *Lukumi* involved four municipal ordinances that restricted the killing of animals. When challenged, the city argued that the ordinances were neutral because they were written “in secular terms, without referring to religious practices.” *Id.* at 534. The Supreme Court explained that when determining whether a law is neutral and generally applicable, “[f]acial neutrality is not determinative.” *Id.* at 534. The Supreme Court explained that because the ordinances applied to “Santeria adherents but almost no others,” they prohibited Santeria sacrifice “even when it does not threaten the city’s interest in the public health,” and “selective[ly]” “impose[d] burdens only on conduct motivated by religious belief,” they were not neutral or generally applicable. *Id.* at 538, 543.

Like the City's treatment of Santeria worship, the Army's treatment of Captain Singh has clearly not been neutral or generally applicable. Beard exemptions are routinely granted for medical reasons. Technical Bulletin Med. 287 § 2-6b(2), *available at* http://armypubs.army.mil/med/DR_pubs/dr_a/pdf/tbmed287.pdf (procedure for medical beard accommodations). Captain Singh, on the other hand, has been forced to use up a significant amount of leave, left in limbo while waiting for a final answer from the Army, and now is suddenly being subjected to tests that are not imposed on any other soldier. Compl. ¶¶ 94-101; Lamba Decl. ¶¶ 21-23; Kalsi Decl. ¶¶ 11-14; Khalsa Decl. ¶¶ 24-26. By singling out Captain Singh for special testing that it has not imposed on any other soldier, including other Sikhs, and by refusing to grant him an accommodation to practice his faith, the Army has impermissibly "impos[ed] special disabilities on the basis of . . . [Captain Singh's] religious status," *Lukumi*, 508 U.S. at 532 (quoting *Smith*, 494 U.S. at 877). In light of the clearly different treatment that Captain Singh has received because of his request for a religious accommodation, the Army's conduct should be evaluated under strict scrutiny for a violation of the Free Exercise Clause. As explained above, the Army's regulations as enforced against Captain Singh are the least restrictive means of upholding a compelling government interest.

III. Captain Singh is likely to succeed on his Equal Protection claim.

Captain Singh is also likely to succeed on his Equal Protection claim under the Due Process Clause of the Fifth Amendment.¹⁰ "Strict scrutiny . . . is warranted if the restriction 'jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic.'" *Banner v. United States*, 428 F.3d 303, 307 (D.C. Cir. 2005) (quoting

¹⁰ The principles of the Equal Protection Clause apply with equal force to the federal government through the Due Process Clause of the Fifth Amendment. *See Bolling v. Sharpe*, 347 U.S. 497 (1954).

Nordlinger v. Hahn, 505 U.S. 1, 10 (1992)); *see also City of Cleburne v. Cleburne Living Ctr.* 473 U.S. 432, 440 (1985). The Army’s actions here both jeopardize the exercise of a fundamental right—Captain Singh’s religious exercise—and categorizes him on the basis of an inherently suspect characteristic—his religion.

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

The other trigger is the application of a suspect classification. The Army’s singling out of Captain Singh due to his religion also categorizes him on the basis of an inherently suspect class—religion. Discrimination on the basis of religious adherence “not only lacks a rational connection with any permissible legislative purpose, but is also inherently suspect. Such invidious discrimination violates the equal protection of the laws guaranteed by the Due Process Clause.” *King’s Garden, Inc. v. F.C.C.*, 498 F.2d 51, 57 (D.C. Cir. 1974) (citing *Bolling*, 347 U.S. 497). *See also United States v. Batchelder*, 442 U.S. 114, 125 n.9 (1979) (“The Equal Protection Clause prohibits selective enforcement ‘based on an unjustifiable standard such as race, religion, or other arbitrary classification.’”) (citation omitted); *Kolbe v. Hogan*, No. 14-

1945, --- F.3d. ---, 2016 WL 425829, at *30 (4th Cir. Feb. 4, 2016) (“suspect classification such as race, religion, or gender”) (citation omitted).

Here, as noted above, the Army has taken two actions that discriminate on the basis of Captain Singh’s religion. First, it has refused to extend to him the same kinds of exemptions from the uniformity requirements that it extends to other soldiers who seek those exemptions for a host of non-religious, including medical, reasons. And, second, now the Army now wants to subject Captain Singh to special beard and helmet testing that no other soldier is being subjected to. Even other Sikhs who have served in the Army within the last decade were never subjected to such treatment. None were ever evaluated for helmet fit, and neither were any other soldiers in their units. *Lamba Decl.* ¶¶ 20-22; *Kalsi Decl.* ¶¶ 11-16. Nor were they ever subjected to targeted evaluations for their safety masks. They underwent standard “fit” testing during basic training along with their units, and if they were ever subjected to fit testing again, it was also in the standard manner with others in their unit. *Lamba Decl.* ¶¶ 11-12; *Kalsi Decl.* ¶¶ 11-14. They were never subjected to the Olympic-level, targeted testing that Captain Singh is being subjected to, underscoring the discriminatory nature of Defendants’ present course of action.

For the reasons cited in Sections I.C and I.D above, the Army cannot defend its regulations under strict scrutiny. Therefore Captain Singh is likely to succeed on his claims.

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

Captain Singh’s likelihood of succeeding on the merits of his RFRA claim is alone sufficient to justify a preliminary injunction on his behalf. *See Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013) (stating that in RFRA cases “the analysis begins and ends with the likelihood of success on the merits”); *Hobby Lobby*, 723 F.3d at 1145 (plurality opinion) (“[T]he likelihood of

success on the merits will often be the determinative factor.”) (citation omitted). The remaining relevant factors, however, also all support this outcome.

A. Captain Singh will suffer irreparable harm absent injunctive relief.

Defendants are actively discriminating against Captain Singh because of his religious beliefs and pressuring him to violate his faith. That is clear irreparable harm. However, in the context of constitutional and civil rights, “it has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Mills v. Dist. of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373). See also *Rigdon v. Perry*, 962 F. Supp. 150 (D.D.C. 1997) (violation of First Amendment religious expression rights constituted irreparable injury); *Simms v. Dist. of Columbia*, 872 F. Supp. 2d 90, 104 (D.D.C. 2012) (violation of Fifth Amendment rights constitutes irreparable harm); *Korte*, 735 F.3d at 666 (the loss of RFRA-protected freedoms “constitutes irreparable injury”); cf. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006) (“[W]here a movant alleges a violation of the Establishment Clause, this is sufficient, without more, to satisfy the irreparable harm prong for purposes of the preliminary injunction determination.”). Because Captain Singh has demonstrated above that his constitutional and civil rights are being violated, he has automatically demonstrated irreparable harm under *Mills*.

In addition, being subjected to blatantly discriminatory conditions also constitutes irreparable harm. This Court faced a similar situation in *Bonnette v. D.C. Court of Appeals*, 796 F. Supp. 2d 164 (D.D.C. 2011). In that case, the disabled plaintiff sought an accommodation in taking the Multistate Bar Examination. The Defendants “argue[d] that [the blind plaintiff] cannot show that she is likely to suffer irreparable harm because it is possible that she will pass the D.C. Bar Exam using either a human reader or an audio CD.” *Id.* at 187. This Court rejected that argument,

holding that “forcing Plaintiff to take the MBE under discriminatory conditions is itself a form of irreparable injury.” *Id.* Whether she might be able to pass the test despite the discriminatory conditions was beside the point.

Here, by repeatedly delaying Captain Singh’s accommodation request, subjecting him to discriminatory conditions, and conditioning his accommodation on testing that no other soldier has ever undergone, Defendants have created an atmosphere of mistrust and religious animosity. Defendants are sending a message to Captain Singh’s leaders and peers that he was “wrong” to ask for a religious accommodation and is somehow unfit to be in the military. Under the governing regulations, Captain Singh is fully entitled to a religious accommodation and to have his request assessed on the same terms as any other accommodation. As in *Bonnette*, it would constitute irreparable harm to subject him to testing under discriminatory conditions. And the damage to his reputation and career from being treated in a discriminatory fashion will be irreparable.

Finally, without this Court’s intervention, there will be a severe chilling effect on religious minorities within the Army. If there is a perception that soldiers from minority religions who apply for a religious accommodation will then be “given the third degree” as a penalty just for asking, the Army’s promise to provide religious accommodations will prove entirely illusory. *Lamba Decl.* ¶¶ 24 (stating that, as a Sikh, he perceives the Army’s targeted, unusual testing of Captain Singh as “demeaning” and “discriminatory”); *Kalsi Decl.* ¶¶ 18 (same); *Khalsa Decl.* ¶¶ 28 (same).

B. The balance of harms weighs in Captain Singh’s favor.

The Defendants will suffer no injury from a temporary restraining order against the discriminatory testing or a preliminary injunction allowing Captain Singh to act in accordance with his faith pending a final merits decision from this Court. As explained above, the Army has

not subjected any other soldiers with beards to discriminatory testing and has allowed other Sikhs to observe their faith in the service without incident. Moreover, the Army has not identified any legitimate reason why Captain Singh must undergo the heightened testing regime before his accommodation can be granted. Indeed, it has already given Captain Singh a temporary accommodation of his religious exercise—which has extended for nearly three months—and can demonstrate no harm whatsoever to its interests stemming from that accommodation.

On the other hand, Captain Singh has already demonstrated that he will suffer irreparable and severe injury if he is forced to violate his faith or is subject to military discipline. *See* Part IV.A. As in *Korte*, where there is a strong likelihood of success on the merits, “the balance of harms ‘normally favors granting preliminary injunctive relief’ because ‘injunctions protecting First Amendment freedoms are always in the public interest.’” *Korte*, 735 F.3d at 666 (quoting *ACLU of Illinois v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012)).

C. The public interest favors granting an injunction.

It is undoubtedly in the public interest for the military to avoid religious discrimination and accommodate religious exercise and expression. Indeed, the Army’s own regulations emphasize that “high priority” should be place on protecting soldier’s religious rights. “[T]here is undoubtedly also a public interest in ensuring that the rights secured under . . . RFRA are protected.” *Tyndale*, 904 F. Supp. 2d at 130. Indeed, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Hobby Lobby*, 723 F.3d at 1147; *O Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 1010 (10th Cir. 2004) (en banc), *aff’d* 546 U.S. 418 (2006) (“[T]here is a strong public interest in the free exercise of religion.”)). Moreover, the Army itself has extolled the public interest in diversity in the military. *See About Diversity, Army Diversity: Strength in Diversity,*

<http://www.armydiversity.army.mil/adoAbout/index.html> (last visited Nov. 2, 2015) (“a diverse Army benefits us all”); *see also* National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 528, 129 Stat. 726 (2015) (stating that having service members “from numerous religious traditions, including Christian, Hindu, Jewish, Muslim, [and] Sikh” traditions, “contributes to the strength of the Armed Forces.”).

V. The Court should not require security.

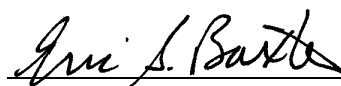
Captain Singh requests that the Court require no security. There is no prospect that Defendants would suffer damages even if it were later determined that they were wrongfully enjoined or restrained. Fed. R. Civ. P. 65(c). Thus the relevant “sum” required to preserve Defendants’ interests is zero. *Id.* In addition, “only a party seeking to change (not maintain) the status quo needs to post a bond.” *Laster v. Dist. of Columbia*, 439 F. Supp. 2d 93, 99 n.7 (D.D.C. 2006). Captain Singh seeks only to maintain the status quo.

CONCLUSION

For all the foregoing reasons, Captain Simratpal Singh respectfully urges the Court to grant his applications for a temporary restraining order and for a preliminary injunction.

Captain Singh also requests that the Court waive the posting of a bond.

Respectfully submitted this 29th day of February, 2016.



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

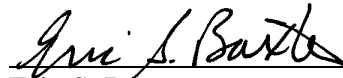
Amandeep S. Sidhu (D.C. Bar No. 978142)
Emre N. Iltter (D.C. Bar No. 984479)
McDermott Will & Emery LLP
500 North Capitol Street, N.W.
Washington , DC, 20001
(202) 756-8000 PHONE
(202) 756-8087 FAX
asidhu@mwe.com

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

Counsel for Plaintiff

RULE 65.1 CERTIFICATE OF COUNCIL

I hereby certify that actual notice of the time of making this application, and copies of all pleadings and papers filed in the action to date have been furnished to the adverse party.



Eric S. Baxter