

**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.¹

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

¹ 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.²

48. There are approximately 500,000 Sikhs in the United States.³

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.

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* 9 n.1 (2012).

³ 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.⁴

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

⁴ *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.⁵

77. Sikh soldiers famously defeated the British at the Battle of Chillianwala in 1849 before being overpowered six weeks later by superior British weapons.⁶ Sikh soldiers soon became “among the sturdiest and trustiest men of the British army,”⁷ with a group of twenty-one Sikhs famously repulsing an attack by thousands of Afghans for six hours at the Battle of Saragarhi in 1897⁸ and with approximately 100,000 Sikhs—a disproportionately high number among Indian volunteer soldiers—fighting for the British in World War I.⁹

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

⁵ 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).

⁶ *Id.*

⁷ *Id.*

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

⁹ 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 10th Mountain Division.¹⁰

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.

¹⁰ 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/ (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 (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/pdffiles/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/pdffiles/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).

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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