

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SUKHJINDER S. BASRA,)
UNITED STATES OF AMERICA,)

Plaintiffs,)

v.)

MATTHEW CATE, *et al.*)

Defendants.)

No. CV11-01676 SVW (FMOx)

SETTLEMENT AGREEMENT

Judge Steven J. Wilson

I. Introduction

1. This Settlement Agreement is entered into between Plaintiff Sukhinder S. Basra (“Plaintiff”) and Defendants Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation (“CDCR”); Terry Gonzalez, Warden of the California Men’s Colony (“CMC”); the State of California; Jerry Brown, Governor of the State of California; CDCR; and CMC (“Defendants”).

2. This Settlement Agreement addresses Mr. Basra’s Complaint, U.S. District Court for the Central District of California, No. CV11-01676 SVW (FMOx) (“lawsuit”), brought under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc, and resolves all claims brought by Mr. Basra against Defendants in this lawsuit.

3. Plaintiff contends that Defendants violated Mr. Basra’s right under RLUIPA to exercise his religion because Mr. Basra practices the Sikh faith, which requires its adherents to maintain unshorn hair (Kesh) on their bodies, a requirement that includes facial hair.

1 4. California Code of Regulations Title 15, Section 3062(h) (“Section
2 3062(h)”) prohibits inmates from wearing facial hair that extends more than one-
3 half inch in length from the face. Plaintiff contends that Section 3062(h) imposes a
4 substantial burden on Mr. Basra’s religious exercise. Plaintiff further contends
5 Defendants have disciplined Mr. Basra and he continues to face possible discipline
6 in accordance with prison regulations for violating Section 3062(h). All of the
7 allegations of wrongdoing made by Plaintiff in this lawsuit are denied by any and
8 all Defendants who are or ever were parties to this lawsuit.

9 5. Plaintiff and Defendants (“the Parties”) now desire and intend by this
10 Settlement Agreement to compromise and settle all disputes between them arising
11 out of or relating to the claims in this lawsuit, including any rights to appeal.

12 6. Therefore, in consideration of the covenants set forth in this
13 Settlement Agreement, the Parties agree to effect a compromise of their disputes
14 on the terms and conditions set forth below:

15 **II. Terms and Conditions**

16 7. The “Effective Date” of this Settlement Agreement shall mean the
17 date that the Court grants the stipulated stay of all proceedings in this matter (see
18 paragraph 15). Each term and condition is material to this Settlement Agreement,
19 and the absence of approval of the entirety of this Settlement Agreement, including
20 without limitation the provision contained in paragraph 15, below, or the failure of
21 the Court to enter the stipulated order of dismissal with every term agreed to by the
22 parties included, shall render this Settlement Agreement null and void, and the
23 Parties agree that any order approving anything other than the entirety of this
24 Settlement Agreement shall be unenforceable.

25 8. Beginning with the Effective Date of this Settlement Agreement,
26 Defendants agree that they will not discipline Mr. Basra for violations of Section
27 3062(h).

28 9. Within 30 days of the Effective Date of this Settlement Agreement,
CDCR shall issue a memorandum to all its prisons instructing prison staff that the
facial hair length restrictions set forth in Section 3062(h) will no longer be

1 enforced. This memorandum shall remain in effect until Section 3062(h) is
2 amended or repealed to remove the facial hair length restrictions.

3 10. Within 90 days of the Effective Date of this Settlement Agreement,
4 Defendants shall begin the process of initiating a change to Section 3062(h) in
5 accordance with the Administrative Procedures Act to eliminate the facial hair
6 length restrictions. The Parties acknowledge that compliance with the
7 Administrative Procedures Act can be a lengthy process, which typically takes
8 more than a year. Defendants will act in good faith in accordance with the
9 Administrative Procedures Act to change Section 3062(h) to eliminate the facial
10 hair length restrictions. Nothing in this Agreement shall prevent Defendants from
11 requiring that inmates maintain their facial hair in a neat and clean manner. Until
12 Defendants amend Section 3062(h), Defendants shall not discipline any inmate for
13 the length of his facial hair.

14 11. The provisions of this Settlement Agreement shall apply to Mr. Basra
15 while he is incarcerated under the jurisdiction of CDCR, whether in a prison in the
16 State of California or an out-of-state prison that contracts with CDCR.

17 12. CDCR shall expunge Mr. Basra's record of any reference to
18 violations of Section 3062(h).

19 13. CDCR shall permit Mr. Basra to wear a grey or white patka, not to
20 exceed 24" by 24," which he may acquire from an approved vendor, subject to the
21 same limitations CDCR or the specific institution where Mr. Basra is housed
22 places on other inmates permitted to wear religious headwear or coverings.

23 14. The State shall pay \$42,000 as complete resolution of all claims of
24 Mr. Basra to his counsel, the ACLU Foundation, Alston & Bird LLP and/or the
25 Sikh Coalition for attorneys' fees and costs arising from this litigation. No interest
26 shall accrue on this amount and no other monetary sum shall be paid to Plaintiffs.
27 Any amounts other than attorneys' fees or costs paid to Mr. Basra shall be subject
28 to his restitution obligations under California Penal Code Section 2085.5.

1 15. The Parties agree to a stay of all proceedings in this action until the
2 enactment of changes to Section 3062(h) to eliminate the facial hair length
3 restrictions and will file a stipulation to stay the matter subject to the Court's
4 approval. This agreement shall be contingent upon the Court's agreement to stay
5 proceedings as requested by the Parties. Following the enactment of changes to
6 Section 3062(h) to eliminate the facial hair length restrictions, the Parties shall file
7 a stipulation of dismissal with prejudice of all claims against Defendants in the
8 case of *Basra v. Cate*, Case No. CV11-01676 SVW(FMOx) (C.D. Cal.).

9 16. By signing this Settlement Agreement, the Plaintiff agrees that it will
10 releases Defendants, and each of them, and Defendants will release Plaintiff from
11 all claims, past, present and future, known or unknown, arising from or potentially
12 arising from the facts alleged in the Complaint or Complaint in Intervention as
13 soon as Defendants have notified Plaintiff's counsel that the enactment of changes
14 to Section 3062(h) to eliminate the facial hair length restrictions have been
15 completed, but not before. It is the Parties' intention, in executing this Settlement
16 Agreement and in receiving and accepting the consideration referred to, that this
17 Settlement Agreement shall be effective as a full and final accord and satisfaction
18 and release of all claims Plaintiff may have against Defendants or Defendants may
19 have against Plaintiff in this lawsuit. In furtherance of this intention, Plaintiff and
20 Defendants acknowledge that they are familiar with, and expressly waive, the
21 provisions of California Civil Code section 1542, which provides as follows:

23 **A general release does not extend to claims which the creditor does**
24 **not know or suspect to exist in his or her favor at the time of**
25 **executing the release which if known by him or her must have**
26 **materially affected his or her settlement with the debtor.**

27 **III. Representations and Warranties**

28 17. This Settlement Agreement is the compromise of various disputed
claims and shall not be treated as an admission of liability by any of the Parties for
any purpose. The signature of or on behalf of the respective Parties does not

1 indicate or acknowledge the validity or merits of any claim or demand of the other
2 Party.

3 18. This Settlement Agreement is binding on the Parties and their
4 agencies, departments, successors, or independent contractors including agents
5 and/or assigns that have responsibility for implementation of the requirements of
6 this Settlement Agreement either currently or in the future.

7 19. This Settlement Agreement is not intended to impair or expand the
8 right of any person or organization to seek relief against the State, CDCR or its
9 officials, employees, or agents for their conduct or the conduct of CDCR
10 employees for issues not specifically enumerated in this settlement agreement.

11 20. If any Party believes that another Party has failed to fulfill any
12 obligation under this Settlement Agreement, the Party shall, prior to initiating any
13 court proceeding to remedy such failure, give written notice of the failure to the
14 lead counsel of record for the other Party and attempt in good faith to resolve any
15 such failure. If the Parties are unable to resolve their differences within sixty days
16 of the written notice, then any Party may request the Court to enforce compliance
17 with this Settlement Agreement. Each Party shall be responsible for his own
18 attorneys fees incurred under this paragraph except that should a motion to enforce
19 the Settlement Agreement be necessary, the prevailing party in that proceeding
20 shall be entitled to reasonable attorneys' fees associated with drafting and filing
21 any such motion or opposition to such motion.

23 21. The undersigned signatories represent that they have full authority
24 from their respective clients to execute this settlement agreement.

25 22. This Settlement Agreement may be executed by the Parties in
26 counterparts, each of which shall be deemed to be an original executed document
27 and all of which, together, shall constitute one and the same agreement.
28

1 23. This Settlement Agreement expresses the entire agreement of the
2 Parties. No recitals, covenants, agreements, representations, or warranties of any
3 kind have been made or have been relied upon by any Party, except as specifically
4 set forth in the Settlement Agreement. Nothing other than this Settlement
5 Agreement shall be relevant or admissible to supplement or vary any of its terms
6 and provisions. All prior discussions, agreements, and negotiations are superseded
7 by and merged and incorporated into this Settlement Agreement. This is an
8 integrated document.

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10 **FOR SUKHJINDER S. BASRA**

11 June ____, 2011
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15 CASSANDRA E. HOOKS
16 JONATHAN M. GORDON
17 LEIB MITCHELL LERNER
18 Alston & Bird LLP

19 June ____, 2011
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21 _____
22 PETER J. ELIASBERG
23 ACLU Foundation of Southern California

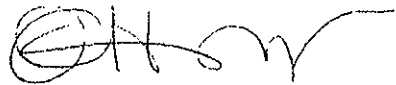
24 June ____, 2011
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26 _____
27 DANIEL MACH
28 American Civil Liberties Union
Program on Freedom of Religion and Belief

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11 **FOR SUKHJINDER S. BASRA**

12 June 3, 2011

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15 CASSANDRA E. HOOKS
16 JONATHAN M. GORDON
17 LEIB MITCHELL LERNER
18 Alston & Bird LLP

19 June 3, 2011

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22 PETER J. ELIASBERG
23 ACLU Foundation of Southern California

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25 June 4, 2011

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28 DANIEL MACH
American Civil Liberties Union
Program on Freedom of Religion and Belief

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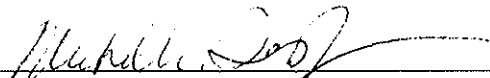
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June 4th, 2011

Harsimran Kaur Dang
HARSIMRAN KAUR DANG
The Sikh Coalition

1 **FOR DEFENDANTS**

2 June 3, 2011

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5 MICHELLE DES JARDINS
6 Supervising Deputy Attorney General

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