

**Statement for the Record from the Sikh Coalition  
House Armed Services Committee  
Subcommittee on Military Personnel  
U.S. House of Representatives  
Hearing on Religious Accommodations in the Armed Services**

January 27, 2014

The Honorable Joe Wilson  
Chairman  
Military Personnel Subcommittee  
House Armed Services Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Susan A. Davis  
Ranking Member  
Military Personnel Subcommittee  
House Armed Services Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Wilson and Ranking Member Davis:

The Sikh Coalition respectfully submits this statement for the record in connection with the above-referenced hearing before the House Armed Services Committee, Subcommittee on Military Personnel. We request that this statement be included as part of the official hearing record.

By way of background, the Sikh Coalition is the largest Sikh American civil rights organization in the United States. We were constituted in the aftermath of 9/11 to address hate violence and discrimination against Sikhs throughout the United States. The Sikh religion was founded by Guru Nanak over five centuries ago in South Asia and is presently the fifth largest world religion, with more than 25 million adherents worldwide and approximately 500,000 followers in the United States. At core, Sikhs believe that there is one God and that all human beings are created equal, regardless of distinctions such as their religion, race, sex, or caste. Devout Sikhs are distinguished by visible religious articles, including religiously-mandated turbans and unshorn hair, including unshorn facial hair.

While the Sikh faith is committed to upholding freedom, justice, and dignity for all people, Sikhs in the United States have been subjected to unusually high rates of hate crimes, school violence, and employment discrimination. In addition, devout Sikhs are presumptively barred from service in the U.S. military.

For this reason, we welcome the U.S. Department of Defense's openness to revising Instruction Number 1300.17 to better accommodate the religious practices of its Service members.<sup>1</sup> Nonetheless, the Sikh American community is deeply concerned that the revisions – while recognizing the importance of religious liberty to our nation's Service members – still retain a presumptive ban on Sikh articles of faith in the U.S. Armed Services and will therefore continue to have a chilling effect on religious liberty for aspiring Sikh American Service members.

We respectfully request that the U.S. Armed Services fully demonstrate its commitment to religious freedom by further revising the Department of Defense Instruction and/or issuing implementing regulations to **presumptively allow Sikhs to serve with their articles of faith.**

In this statement, we provide information on Sikhs, the history of Sikh Service members and their achievements in the U.S. Armed Forces, the history of military policies regarding religious accommodations as applied to Sikhs, and our concerns about the amended Instruction.

## I. Sikh Articles of Faith

Sikhism is a monotheistic religion with over 25 million followers worldwide. It is the fifth largest religion in the world, founded by Guru Nanak over 500 years ago in Punjab, South Asia. Sikhism preaches a message of devotion, remembrance of God at all times, truthful living, equality between all human beings, and social justice.

Sikhs wear an external uniform to bind them to the beliefs of the religion. Unlike some other faiths, where only the clergy maintain religious articles on their person, all Sikhs are required to wear external articles of faith. These articles of faith, such as unshorn hair and the turban, distinguish a Sikh and have deep spiritual significance. Maintaining uncut hair, including an unshorn beard, is an essential part of the Sikh way of life; one cannot be a practicing Sikh without it. The Sikh Code of Conduct, called the Rehat Maryada, outlines the requirements for practicing the Sikh way of life. The text prohibits the removal of hair from the body as one of four major taboos, another being adultery. The fact that cutting one's hair is a moral transgression as serious as committing adultery speaks to the immense significance of uncut hair to the Sikh religion. The Rehat Maryada also mandates that Sikhs wear a turban.<sup>2</sup> Unlike a hat, a turban must always cover a Sikh's head. The turban reminds a Sikh of his or her duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard and honestly, sharing with the needy, and promoting equality and justice for all. When a Sikh ties a turban, the turban ceases to be simply a piece of cloth and becomes one and the same with the Sikh's head. It is a religious commitment without which the believer ceases to be a Sikh.

Historically, uncut hair and turbans have been central features of the Sikh identity. In the 18<sup>th</sup> century, Sikhs in South Asia were persecuted and forced to convert their religion; the method of conversion was to remove a Sikh's turban and cut off his hair. Since then, denying a Sikh the right to wear a turban and maintain unshorn hair have symbolized denying that person the right to belong to the Sikh faith, and is perceived by followers as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.

## II. Sikhs in the U.S. Armed Services

The Sikh community has a long and robust tradition of military service, from the time of the religion's founding in the early 16<sup>th</sup> century to the present. Tales of Sikh courage and valor date back at least as far as their defeat of the Afghan Pathans in 1813 at the Battle of Attock.<sup>3</sup> Sikh soldiers famously defeated the British at the Battle of Chillianwala in 1849 before being overpowered six weeks later by superior British weapons.<sup>4</sup> Sikh soldiers soon became "among the sturdiest and trustiest men of the British army,"<sup>5</sup> with a group of 21 Sikhs famously repulsing an attack by thousands of Afghans for six hours at the Battle of Saragarhi in 1897,<sup>6</sup> and with approximately 100,000 Sikhs – a disproportionately high number among Indian

volunteer soldiers – fighting for the British in World War I.<sup>7</sup> More than 83,000 Sikh soldiers died, and over 109,000 were wounded for the Allied cause during both World Wars.<sup>8</sup> Five Sikhs were awarded the Victoria Cross for their bravery in these wars.<sup>9</sup> Observant Sikhs still serve with their articles of faith intact in militaries around the world, most notably in India, Canada, and the United Kingdom.

The first observant Sikh on record to serve in the U.S. Army, Bhagat Singh Thind, was recruited in 1918 to fight in World War I.<sup>10</sup> He was discharged honorably and given an “excellent” character rating.

Later in the 20<sup>th</sup> century, observant Sikhs served in the U.S. Armed Services in the Vietnam, Korean and Persian Gulf Wars.<sup>11</sup> Sergeant Kirinbir Grewal served from 1977 to 1984 at the E6 level as a Nuclear, Biological, and Chemical NCO and instructed companies on how to survive nuclear and biological attacks. Sergeant Sevak Singh Kroesen served from 1976 to 1991 with the Signal Company, 11<sup>th</sup> Special Forces Group, where he completed paratrooper, Radio Teletype Transmission Operator, and Special Forces Qualification training as well as serving overseas.

Major Parbhur Singh Brar is an ophthalmologist who served in the U.S. Army from December 1978 to October 1981. He was commissioned as a Reserve Officer, but then moved to Active Duty and was stationed at Ft. Eustis in Newport News, Virginia.

Colonel Gopal S. Khalsa joined the Army as a private in 1976 and continues serving in the Reserves. While on active duty, Colonel Khalsa served in the Special Forces Unit for 10 years on Parachute Status, and as a Battalion Commander overseeing an 800-person intelligence group. He received a Meritorious Service Medal with Silver Oak Leaf Cluster Award, among many other honors.

Colonel Gurbhajan Singh, a dentist, served from 1979 until 2007. During his 28-year tenure, Colonel Singh was stationed across the United States as well as in Korea. He was awarded several honors, including the “A” Prefix, the U.S. Army Medical Department’s highest award for professional excellence.

Colonel Arjinderpal Singh Sekhon, a medical doctor, served from 1984 until 2009. During his 25 years of commissioned service, Colonel Sekhon was stationed across the country. During the First Persian Gulf War, he was called to active duty and served stateside as a doctor at the United States Army Hospital in California. He rose through the ranks to Colonel and was given a Battalion Commander position, through which he oversaw a unit of 600-700 soldiers. Before retiring from service, he was decorated with various awards, including a Presidential Unit Citation, Joint Meritorious Unit Award, and an Army Flight Surgeon Badge.

In 1981, the Department of Defense changed its uniform and grooming policies, which effectively prohibited turbaned and bearded Sikhs from serving in our military. Despite this, in 2009, Major Kamaljeet Singh Kalsi, a physician specializing in emergency and disaster medicine, became the first Sikh to receive a religious accommodation for his articles of faith since the policy change. Major Kalsi joined the U.S. Army Reserves in 2001 and began active duty in July 2010 and then deployed to Afghanistan in 2011. He was awarded a Bronze Star Medal and promoted upon his return. In support of the award, an official recommendation

from Major Kalsi's superiors cited his resuscitation back to life of two patients who were clinically dead on arrival; his expert emergency care of over 750 soldiers and civilians; coordination of five mass casualty exercises; and his general "commitment and leadership above and beyond that of his general duties."<sup>12</sup> Upon returning stateside, Major Kalsi served as medical director to the largest stateside EMS directorate in the Department of Defense at Fort Bragg, North Carolina.

Captain Tejdeep Singh Rattan, a dentist, entered active duty in January of 2010 after receiving a religious accommodation. In 2011, he was deployed to Afghanistan where he volunteered to serve in a remote forward operating base. While deployed, he accounted for approximately 25% of all dental procedures performed throughout the 673<sup>rd</sup> Dental Company. He was awarded an Army Commendation Medal for his "outstanding performance, technical expertise, and unwavering commitment to mission accomplishment in a hostile environment," and a NATO Medal for defusing a tense confrontation with Afghan civilians.

Corporal Simran Preet Singh Lamba began active duty in August 2010. Fluent in Punjabi and Hindi, he was recruited for his cultural and language skills. He serves in a medical battalion as a Soldier Medic. Corporal Lamba is known for his dedication, enthusiasm, and initiative. One of his superiors noted that "he has been instrumental in helping others to accomplish their own personal and professional goals by setting the example for others to emulate." In recognition of his excellent service thus far, in September 2013, he received what the media called a "rare" promotion from Specialist to Corporal.<sup>13</sup>

All of these Sikhs served or are serving honorably in the U.S. Army with their articles of faith, including their turbans and unshorn hair and beards, intact. Their articles of faith did not in any way prevent them from accomplishing their military and professional objectives, nor did they interfere with the forging of strong bonds with their fellow soldiers and supervisors. To the contrary, these soldiers have been recognized for their superior service to their country.

### III. The Military's Approach to Religious Accommodations for Sikh Service Members

Sikhs were allowed to serve with their turbans and unshorn hair and beards through the 1970s in the U.S. Army<sup>14</sup> But in 1981, the Army reversed its policy and removed the exemption for Sikhs and other religions, citing "slippery slope" concerns with allowing exemptions to the uniform policy for multiple religious groups.<sup>15</sup>

The issue of religious exemptions to Army headwear and facial hair regulations was litigated at least twice after the 1981 policy change – one suit was brought by an Orthodox Jewish rabbi, and the other by a practicing Sikh. In *Khalsa v. Weinberger*, the Ninth Circuit Court of Appeals agreed that forcing a Sikh man to cut his hair constituted a significant burden on the free exercise of his religion.<sup>16</sup> However, the court determined that the question of Army appearance regulations was nonjusticiable, noting that "Appellant expresses understandable concern that if the Army prevents him from enlisting and the courts refuse to review that decision, he will be deprived of any means whatsoever of challenging the Army's appearance regulations. It is true that his only recourse may be through the political process..."<sup>17</sup>

The following year, the Supreme Court held in *Goldman v. Weinberger* that military policy prohibiting the wearing of a yarmulke under military headgear was not subject to strict

scrutiny, despite the First Amendment issue clearly raised by the prohibition.<sup>18</sup> Similar to the Army's current concerns with allowing observant Sikhs to serve, the Court expressed its concern with overriding the military's determination of what is necessary to "foster instinctive obedience, unity, commitment, and esprit de corps."<sup>19</sup>

Given that the judiciary has deferred the issue of religious exemptions to the other branches of the government, respect for religious freedom within the military must either come from within the military itself or be encouraged by congressional statute. In response to the decision in *Goldman v. Weinberger*, 10 U.S.C.A. § 774 was enacted into law, permitting military Service members to wear religious apparel that is "neat and conservative" and that does not "interfere with the performance of the member's military duties."

Following political pressure and congressional action that provided for the wearing of religious apparel with military uniforms, the Department of Defense issued a Directive in 1988 to ensure accommodation of religious apparel in all branches of the military.

The Directive, which has now been replaced by the Amended Instruction as of January 22, 2014, allowed members of some faiths to remain faithful to their religious practices while in uniform, but they did not allow observant Sikhs to serve with their articles of faith intact.<sup>20</sup> The former Directive allowed selected Service members to "wear visible items of religious apparel while in uniform, except under circumstances in which an item is not neat and conservative or its wearing shall interfere with the performance of the member's military duties."<sup>21</sup> "Religious apparel" was defined as "articles of clothing worn as part of the doctrinal or traditional observance of the religious faith practiced by the member."<sup>22</sup> However, the Directive did not include "[h]air and grooming practices required or observed by religious groups" in its definition of "religious apparel" or anywhere in the document.<sup>23</sup>

Under this former Directive, only three practicing Sikhs were granted revocable and limited religious accommodations to serve in the U.S. Army with their Sikh articles of faith – and only after significant advocacy, pro bono legal representation, and Congressional support.

#### IV. The Revised Department of Defense Instruction

The Department of Defense revised its Instruction with respect to religious accommodations on January 22, 2014. The revised Instruction addresses some of the gaps in its predecessor. For instance, under the revised Instruction, Service members may now officially request accommodations to religious grooming and appearance practices, including hair, unless the accommodation will "adversely affect military readiness, unit cohesion, good order, discipline, health and safety, individually and on the unit level."<sup>24</sup>

**While the amended Instruction indicates a new openness to accommodating religious articles of faith, it nevertheless fails to provide adequate accommodations to Sikh Service members and will continue to deter new Sikh recruits.**

For instance, the amended Instruction does not presumptively allow Sikh and many other types of religious headwear and beards, but instead provides that all religious accommodation requests be handled on a strict case-by-case basis. The new Instruction provides that if an accommodation request adversely affects military readiness, unit cohesion, good order,

discipline, health and safety – both individually and on the unit level – the government may deny the request if there is a compelling governmental interest, the policy, practice, or duty is the least intrusive means of furthering this compelling governmental interest, and the Service member has not demonstrated the accommodation request substantially burdens his rights.

The revised Instruction lists the following factors for consideration by the Secretary of the Military Department concerned:

- effect, if any, of approval or disapproval on any compelling governmental interest;
- the importance of uniformity and adhering to standards, of putting unit before self;
- unit cohesion (highlighted as particularly important and defined in part “as establishing and maintaining uniform military grooming and appearance standards”);
- unique facts of the request;
- nature of the requested religious accommodation;
- effect of approval or denial on the Service member’s exercise of religion; and
- effect of approval or denial on mission accomplishment, including unit cohesion.

Even if approved by the Secretary or his or her delegate, the accommodation will not be granted for the entire military service commitment. At the Secretary’s discretion, the Service member may have to re-apply for an accommodation if he receives a new assignment, is transferred to another duty station, and/or faces a significant change in circumstances, including deployment. The revised Instruction also requires that a Service member abide by military policy, practice, and duty while awaiting resolution of a religious accommodation request.

For the reasons outlined below, the amended Instruction simply fails to meet its objective of meeting the religious needs of its Service members or potential recruits.

#### A. Case by Case Accommodations Are Not Sufficient

Under the revised Instruction, Service members may only receive accommodations to changes in uniform and grooming standards on a strict case-by-case basis. These individual accommodations are highly problematic for Sikh Service members, however. Under this highly discretionary policy, Sikh Service members continue to lack certainty regarding how their accommodation will be handled and on what basis it will be decided. Accommodations may also be rescinded at any time, and a Service member is required to submit a new request for an accommodation every time he receives a different assignment. The amended Instruction simply provides no guarantee that a Service member will not be made to choose between his religion and his career at some point during his military service; therefore, the Instruction, instead of opening the doors to religious minorities, effectively deters new Sikh recruits.

Further, by making accommodations the exception instead of the presumptive rule, there is no guarantee that a turbaned and bearded Sikh soldier will be granted approval, even though past and current Sikh Service members have repeatedly proved that their religious articles of faith,

including turbans and beards, do not interfere with their ability to perform their military duties.

## B. The New Instruction Should Be Amended to Presumptively Allow Sikh Turbans and Beards

Under the revised Instruction, Sikh turbans and beards remain categorically prohibited, which is a significant deterrent for potential Sikh American Service members. Observant Sikhs who served in the U.S. Armed Services before 1981 – when Sikh articles of faith were presumptively allowed – and those who are currently serving with religious accommodations have posed no disruption to troop morale, esprit de corps, or unit cohesion and discipline. To the contrary, they have served alongside their fellow Americans and encouraged camaraderie and respect for the diversity of the U.S. Army. It is clear that the military’s need for uniformity has in no way been undermined by allowing observant Sikhs to serve with their turbans and unshorn hair and beards intact. As a matter of principle, allowing more Sikhs to serve – without having to request individualized accommodations – would not affect military interests any differently.<sup>25</sup>

As mentioned earlier, after the Supreme Court’s decision in *Goldman v. Weinberger*, Congress passed 10 U.S.C.A. § 774, which permits military Service members to wear religious apparel that is “neat and conservative” and that does not “interfere with the performance of the member’s military duties.”<sup>26</sup> Since the passage of this statute, observant Jewish Service members have been allowed to wear yarmulkes – indeed the Instruction specifically allows it – but Sikh turbans remain presumptively prohibited.<sup>27</sup>

Given that a yarmulke serves as a religious identifier to the same extent that a Sikh turban does, banning turbans while allowing yarmulkes both reflects inconsistency in military policy regarding respect for the religious practices of all service members, and indicates that claims of interference with uniformity and unit cohesion are unfounded. Additionally, given that grooming regulations allow for moustaches, and the U.S. Army, for instance, routinely allows exemptions to the facial hair policy for service men with pseudo-folliculitis barbae and other medical conditions that make shaving difficult, the presence of facial hair itself cannot be said to be so distracting as to warrant a categorical prohibition.<sup>28</sup>

The Instruction and other rules and regulations governing military uniform and grooming should be amended to presumptively allow Sikh turbans and beards, similar to yarmulkes, and only deny accommodations when an individual cannot comply with safety requirements or successfully perform their military duties.

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

Major Kalsi, Captain Rattan and Corporal Lamba, while serving in the U.S. Army, have used standard-issue Army cloth to develop turbans that conform with Army uniform requirements – including Army Combat Uniform (camouflage) headwear and turbans with their Army flash (insignia patch). Major Kalsi has even had the opportunity to provide information to Army leadership on “the proper wear of the turban with the Army uniform.”<sup>29</sup> The Sikh soldiers currently serving in the U.S. Army have also been commended for adhering to the uniform standards of neatness and conservativeness.<sup>30</sup>

Speaking of Captain Rattan, Capt. John Lopez, Company A, 187th Medical Battalion, has said, **“From day one, Captain Rattan has been an ideal individual... He has done everything in his power to keep within the regulation (AR 160-1), and I sometimes have a hard time getting other Soldiers to follow it... I wish some other Soldiers had the personal pride and willingness to go the extra mile as he does, so those young Soldiers have someone to look up to.”**<sup>31</sup>

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

The revised Instruction places heavy importance on “unit cohesion” in determining whether to grant accommodations. Unit cohesion is defined as “establishing and maintaining uniform military grooming and appearance standards.” While unit cohesion and morale are integral to the proper functioning of the military, these factors should not be used as reasons to restrict Army enlistment of members of a disfavored minority; similar concerns were historically cited to justify the exclusion of women, racial minorities, and homosexuals in the U.S. Armed Services.<sup>32</sup> The U.S. Army has made great progress in opening up its ranks to previously-excluded sections of American society. LGBT service members can now serve openly in the U.S. Armed Services.<sup>33</sup> By 2016, women will be able to serve in all Army units and in every military occupational specialty.<sup>34</sup> The Army has recognized that allowing these traditionally disfavored demographic groups to serve does not negatively impact morale or esprit de corps. It should also recognize that presumptively allowing observant Sikhs to serve with their articles of faith intact will not lead to a breakdown in discipline, morale, or unit readiness.

Although the Joint Service Study Group on Religious Practice, established by the Department of Defense in 1984, indicated that “it is possible that non-uniformity can ‘create an impression that [an] individual is unwilling to subordinate personal desires to traditional military values,’” the same Study Group also found that this impression is less likely when the individual is known to the other group members.<sup>35</sup> **The fact that a Sikh who is an integral member of an Army unit will not be perceived as ‘outside of regulations’ has been borne out by the careers of the Sikh Service members who served in previous generations, those who were grandfathered in after the policy change in 1981, and more recently by Major Kalsi, Captain Rattan and Corporal Lamba.**

Specifically, any concerns about assimilation have been allayed by these soldiers’ performance during training and in the field. Sgt. 1st Class Michael Hildebrand, who oversaw Corporal Lamba’s training while he was a Specialist, noted that not only did he integrate well into the unit and excel in his training, but “the other Soldiers in the platoon actually love [then] Spc. Lamba. Their family members have found out that we have a Sikh Soldier, and they have asked if they could write to Spc. Lamba to find out more about where he comes from. There has been no negativity expressed by the Soldiers toward Spc. Lamba.”<sup>36</sup> As has been demonstrated with the inclusion of women, racial minorities, and LGBT people in the armed forces, embracing diverse individuals within the military strengthens our military force, rather than weakening it. Similarly, in discussing Captain Rattan, Col. Roger Fiedler, Fort Drum DENTAC commander, noted that, “while his dental skills are the same as any other dentist, his unique status as a practicing Sikh U.S. Soldier and dental provider add to the diversity that makes our military so strong.”<sup>37</sup>

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

Closely linked with unit cohesion is the question of combat readiness. It is important to note that after the change of military policy in 1981, Sikhs who were already in the Army were grandfathered in.<sup>38</sup> The justification for the policy change, presumably, was that allowing religious accommodations in the U.S. Armed Forces would send the military down the “slippery slope” to excessive individualization and a breakdown of discipline within the ranks.<sup>39</sup> More recently, the Army has expressed concern that Sikh soldiers’ unshorn beards will prevent an effective seal from forming on gas masks, and that their turbans will not fit under helmets. Both of these concerns have been disproved by Sikhs serving in militaries around the world, as well as in the preparedness tests that Major Kalsi, Captain Rattan, and Corporal Lamba had to undergo during training and their service.

The notion that an effective gas mask seal cannot be created without clean-shaven skin is a fallacy. The three observant Sikhs who currently serve in the U.S. Army have undergone rigorous safety testing, including being placed in a chamber filled with gas, to determine whether their protective masks form an effective seal with their beards and religious headwear intact. Not only did they pass these tests with flying colors along with their fellow soldiers, but they have also demonstrated that helmets and other safety gear can be worn safely over a *patka* (a smaller turban). This comports with the results of gas mask tests for firefighters, in which candidates with beards have been able to repeatedly create an effective seal, while many with clean-shaven faces were repeatedly unable to do so.<sup>40</sup> Sikhs serve in combat positions in armies around the world, including in the militaries of Great Britain, Canada, and India. Sikhs fought with the Allies in both World Wars, and they served in the U.S. Armed Services in Vietnam and Operation Desert Storm.<sup>41</sup> Sikhs have also recently served alongside the U.S. Armed Services as UN Peacekeepers in Iraq and Afghanistan.<sup>42</sup>

When Under Secretary of the Army Joseph W. Westphal visited the Joint Readiness Training Center at Fort Polk in October, 2012, where Major Kalsi was participating in combat training, he specifically noted that he was “absolutely impressed with [the soldiers’] intellect, their knowledge, and their easy disposition” and that the Army was on “good footing” with its readiness training.<sup>43</sup> **Capt. John Lopez, Company A, 187th Medical Battalion, who was Captain Rattan’s commanding officer during training, said that Captain Rattan “knows what he is doing and he’s doing a phenomenal job. I’d go to battle with him.”<sup>44</sup>**

Soldiers of the Sikh faith currently serving in the U.S. Army have proven that Sikhs not only can comply with all safety regulations with their turbans and unshorn hair and beards intact but can also do so in the most difficult of duty stations, and have served their country courageously in overseas deployment. Allowing other Sikh Americans to make the same commitment to serve their country while keeping their articles of faith intact would indicate the Army’s respect for the service of those who have already demonstrated their willingness to lay down their lives for their country.

### 4. *Sikh Service Members Promote Health and Safety in Overseas Deployment*

In units that serve overseas, having service members who are familiar with other languages and cultures – particularly those of South Asia – can only benefit the Army’s understanding of local context and engagement with local people. This cultural understanding has already

proven to be an asset in the case of Captain Rattan, whose NATO Medal was granted specifically for his defusing the situation with the Afghan locals.

### C. The Revised Instruction Creates a Catch-22 for Sikh Service Members

The Revised Instruction requires that a Service member abide by military policy, practice, and duty while awaiting resolution of a religious accommodation request. For a Sikh, who is unable to cut his or her hair and wears a religious turban instead of a uniform cap, this is an impossible request. This section literally requires Service members to put their religious practices on hold while their accommodation requests are pending. If Sikhs are asked to violate the very practices for which accommodations are being sought, we are concerned this will have a chilling effect on their ability to join the U.S. Armed Services in the first place.

This requirement is particularly alarming because a similar issue arose over twenty-five years ago with respect to the Jewish community.<sup>45</sup> When a previous version of the Instruction was issued by the Department of Defense, it contained a similar “Catch-22” that Jewish personnel could wear headcoverings (kippot/yarmulkes), but not for initial training, including boot camp for enlisted personnel and officer accession for officer candidates. An appeal was made to the Secretary of Defense, based on the exact issues that we raise in this section, and the Department of Defense immediately deleted this provision.<sup>46</sup> The appeal noted that allowing Jewish Service members to practice their religion at some points, but not others, “would undermine, if not eliminate, the effect of the religious apparel amendment.”<sup>47</sup>

Similarly, the new Instruction should be amended so that it does not serve as a barrier to Sikh Service members and other religious minorities.

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**In summary, despite the proven ability to comply with safety requirements and perform their military duties with excellence, Sikhs who maintain their religiously-mandated turbans, unshorn hair, and beards in a neat and conservative manner will nevertheless continue to experience significant difficulty obtaining highly discretionary and revocable accommodations under the new Instruction. Sikh Service members remain effectively barred as long as (1) Sikh articles of faith are presumptively disallowed; (2) the process for obtaining an accommodation is cumbersome and requires constant renewal and approval by the highest chains of military command; and (3) Sikhs have to violate their religion while accommodation requests are pending.**

\* \* \* \* \*

We respectfully request that the Department of Defense revise its new Instruction and uniform guidelines to presumptively allow observant Sikhs to serve in the U.S. Armed Services. Not only would this demonstrate the military’s commitment to upholding one of the most fundamental and precious values of this country – freedom of religion – but would demonstrate its commitment to abiding by the military policy established under President Truman, which demands “equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin.”<sup>48</sup> If the Department of Defense continues to disallow religious exemptions from certain aspects of the uniform policy, it perpetuates a

discriminatory mechanism inconsistent with the spirit of religious accommodation and will continue to preclude observant Americans of other faiths from serving their country. Where religious practices do not interfere with the service or safety of the individual or unit concerned, such prohibitions serve only as an invidious means of limiting the military participation of members of disfavored minorities.

The Department of Defense regulations should be revised to allow soldiers to presumptively wear and maintain Sikh articles of faith, which are tailored to conform with uniform style and color, and which do not interfere with the functioning of safety equipment such as a helmet and gas mask. In the case of observant Sikh soldiers, the military can look to the uniform standards of other militaries<sup>49</sup> in which Sikhs are presumptively allowed to serve for examples of how to provide for standard-issue, uniform turbans. The Sikh soldiers currently serving in the U.S. Army have already laid down the groundwork for such a uniform standard by developing headwear that closely resembles standard-issue Army headgear, thereby allowing them to comply with both their religious obligations and the Army's requirements for good order and discipline through established uniform requirements.

Our nation's military leadership should modernize its regulations without delay so that operational excellence becomes the principal criterion by which soldiers are judged.

We thank the Department of Defense for holding this important hearing and working diligently to safeguard the civil rights of all Americans who wish to serve or have served in the U.S. Armed Forces, including Sikh Americans.

Respectfully,

The Sikh Coalition  
50 Broad Street, Suite 1537  
New York, NY 10004  
Telephone: (212) 655-3095

## Endnotes

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<sup>1</sup> Department of Defense, Revised Instruction, “Accommodation of Religious Practices Within the Military Services,” available at <http://www.dtic.mil/whs/directives/corres/pdf/130017p.pdf> (Eff. Jan. 22. 2014).

<sup>2</sup> When engaging in physical activity, Sikhs may instead wear a patka, which is a smaller piece of cloth, to cover their heads. The intent of a turban is to ensure that Sikhs cover their heads at all times.

<sup>3</sup> Pico Iyer, *The Lions of Punjab*, TIME, Nov. 12 1984, at 53, *discussed in* Rajdeep Singh Jolly, *The Application of the Religious Freedom Restoration Act to Appearance Regulations That Presumptively Prohibit Observant Sikh Lawyers From Joining the U.S. Army Judge Advocate General Corps*, 11 CHAPMAN LAW REVIEW 155, 157 n.13 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Sikhs Prove Their Valor, Twenty-one Men Hold Sarhargarti Police Post Against 1,000 Orakzais Over Six Hours*, New York Times (Sept. 14, 1897), available at <http://query.nytimes.com/mem/archive-free/pdf?res=F60C1EFA355D11738DDDAD0994D1405B8785F0D3>.

<sup>7</sup> Jolly, *supra* note 1, at 157.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Sikh Coalition, *Sikhs in the U.S. Army*, <http://www.sikhcoalition.org/army-campaign/sikhs-in-the-us-army>.

<sup>11</sup> For more information, *see id.*

<sup>12</sup> *See id.*

<sup>13</sup> Adam Ashton, “Army’s only enlisted Sikh soldier earns rare promotion at JBLM,” The New Tribune (September 28, 2013) <http://www.thenewstribune.com/2013/09/28/2809640/sikh-earns-rare-promotion-to-corporal.html>.

<sup>14</sup> Captain Thomas R. Folk, *Military Appearance Requirements and Free Exercise of Religion*, 98 MIL. L. REV. 53, 62 (1982), *discussed in* Jolly, *supra* n. 1, at 158 n.21.

<sup>15</sup> *See Khalsa v. Weinberger*, 759 F.2d 1411, 1412 (9th Cir. 1985).

<sup>16</sup> *Khalsa v. Weinberger*, 759 F.2d 1411, 1416 (9th Cir. 1985).

<sup>17</sup> *Id.* at 1417.

<sup>18</sup> *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986).

<sup>19</sup> *Id.*

<sup>20</sup> Department of Defense Directive Number 1300.17, Feb. 3, 1988 [hereinafter Former DoD Directive]; Army Regulation 670-20.

<sup>21</sup> Former DoD Directive; *see also* Jolly, *supra* note 1, at 165.

<sup>22</sup> Former DoD Directive.

<sup>23</sup> *Id.*

<sup>24</sup> Department of Defense Instruction Number 1300.17 (Eff. Jan. 22. 2014).

<sup>25</sup> Jolly, *supra* note 1, at 176.

<sup>26</sup> 10 U.S.C.A. § 774 (2006).

<sup>27</sup> Dawinder S. Sidhu & Neha Singh Gohil, CIVIL RIGHTS IN WARTIME: THE POST-9/11 SIKH EXPERIENCE 139, Ashgate Publishing, Ltd., 2009.

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- <sup>29</sup> Steve Elliott, *Second Sikh Doctor Allowed to Wear Articles of Faith; Enlisted Soldier in Training*, Official Homepage of the United States Army, Sept. 9, 2010, <http://www.army.mil/article/44944>.
- <sup>30</sup> Army Regulation 670-1, Ch. 1-7(a).
- <sup>31</sup> Steve Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, Official Homepage of the United States Army, Mar. 25, 2010, <http://www.army.mil/article/36339>.
- <sup>32</sup> Sidhu & Gohil, *supra* note 25, at 140.
- <sup>33</sup> Tina Ray, *Fort Bragg Gay Soldiers Serve Openly*, Official Homepage of the United States Army, Feb. 8, 2013, [http://www.army.mil/article/96139/Fort Bragg gay Soldiers serve openly](http://www.army.mil/article/96139/Fort_Bragg_gay_soldiers_serve_openly).
- <sup>34</sup> C. Todd Lopez & Julia Henning, *Army Describes Plans for Integrating Women into Combat*, Official Homepage of the United States Army, June 18, 2013, [http://www.army.mil/article/105814/Army describes plans for integrating women into combat](http://www.army.mil/article/105814/Army_describes_plans_for_integrating_women_into_combat).
- <sup>35</sup> Jolly, *supra* note 1, at 159 & n.38.
- <sup>36</sup> Susanne Kappler, *Keeping Faith: Sikh Soldier Graduates Basic Training*, Official Homepage of the United States Army, Nov. 10, 2010, <http://www.army.mil/article/47924/keeping-faith-sikh-soldier-graduates-basic-training>.
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- <sup>38</sup> Sidhu & Gohil, *supra* note 25, at 137.
- <sup>39</sup> *Id.*
- <sup>40</sup> *Id.* at 140.
- <sup>41</sup> *Id.* at 137.
- <sup>42</sup> *Id.*
- <sup>43</sup> C. Todd Lopez, *JRTC Rotation Demonstrates Force of Future*, Official Homepage of the United States Army, Oct. 20, 2012, <http://www.army.mil/article/89623>.
- <sup>44</sup> Elliott, *Sikh Soldiers Allowed to Serve, Retain Their Articles of Faith*, *supra* note 29.
- <sup>45</sup> "Pentagon Rescinds Directive Limiting of Yarmulkes," available at <http://www.jta.org/1988/10/06/archive/pentagon-rescinds-directive-limiting-wearing-of-yarmulkes> (Oct. 6, 1988).
- <sup>46</sup> *Id.*
- <sup>47</sup> *Id.*
- <sup>48</sup> President Harry Truman, Executive Order 9981, July 26, 1948, available at <http://www.trumanlibrary.org/9981a.htm>
- <sup>49</sup> United Kingdom and Canada Military Policies Regarding Sikhs, available at [http://salsa.wiredforchange.com/o/1607/images/Canadian Army Sikh Appearance Policy.pdf](http://salsa.wiredforchange.com/o/1607/images/Canadian_Army_Sikh_Appearance_Policy.pdf) and [http://salsa.wiredforchange.com/o/1607/images/UK Army Religious Dress Policy.pdf](http://salsa.wiredforchange.com/o/1607/images/UK_Army_Religious_Dress_Policy.pdf).