

July 10, 2022

House Committee on Oversight and Accountability
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Re: Outside Witness Testimony from the Sikh Coalition to the U.S. House Committee on Oversight and Accountability regarding the hearing titled “Ending Illegal Racial Discrimination and Protecting Men and Women in U.S. Employment Practices”

Dear Chairman Comer, Ranking Member Raskin, and Members of the Committee:

We are writing to you from the Sikh Coalition, the largest Sikh civil rights organization in the United States. As an organization that represents the U.S.-based Sikh community and was founded to address acts of hate and discrimination—both individual and institutional—against our community in the aftermath of the September 11, 2001, terrorist attacks, we write to share our perspective on persistent anti-Sikh discrimination in workplaces across the U.S. public and private sectors.

Sikh Americans’ Experiences with Workplace Discrimination

In light of the need for religious accommodations to decrease workplace discrimination experienced by Sikh Americans, it is important to delve into the specific practices Sikhs maintain and the unique challenges they face in the workplace.

Sikhs who keep *kesh*, an article of faith, maintain their hair (including facial and body hair) unshorn as it is considered a divine gift, reflecting harmony with the will of God. Sikh men, and some women, typically twist their long hair into a bun and wear it beneath a turban, with some men wearing their beards openly while others secure them with gels, hair pins, or beard nets. Maintaining unshorn hair and beards should not pose workplace issues for Sikh, but employers sometimes express hygiene, health, or safety concerns. Despite these concerns, solutions for allowing religious accommodations usually exist. For example, hygiene concerns in the foodservice industry can be addressed with beard nets, and alternative drug testing methods such as urinalysis or oral fluids can replace hair follicle testing—so long as employers are aware of their obligation to provide these religious accommodations. For safety equipment, federal regulations allow the use of loose-fitting PPE like Powered Air Purifying Respirators (PAPRs) for bearded employees, and bearded employees have successfully worn N95 respirations with a beard band.¹ Since Sikhi does not provide exemptions where religious practices conflict with health or safety requirements, employers must accommodate without compromising Sikh religious observance—and employers, unfortunately, must often be reminded of this obligation.

¹ See e.g., Prince, Steven E et al., *Assessing the effect of beard hair lengths on face masks used as personal protective equipment during the COVID-19 pandemic*, *J Expo Sci Environ Epidemiol.* 31, 953-960 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8130778/>.

Furthermore, it is also crucial to consider the implications of wearing religious headwear, such as turbans, in professional settings. For Sikhs, wearing a turban signifies sovereignty, dedication, self-respect, courage, and piety. Sikhs view the turban as a divine gift and perform a ritual of hand-washing before tying it. Both Sikh men and women wear turbans, while some women opt to wear a long scarf called a *chunni*. Generally, wearing religious headwear like a turban should pose few issues in the workplace, but again, concerns sometimes arise—including regarding the compatibility of protective gear, such as hard hats, with turbans. Though many employers are inclined to mandate hard hats without question, employers should actually assess whether such a mandate is truly necessary, considering whether there is a genuine safety hazard in the workplace rather than a perceived or speculative one. If a legitimate safety threat exists, employers should discuss alternatives with the employee while respecting individual beliefs within Sikhism regarding protective headgear. It is important to note that the Occupational Safety and Health Administration (OSHA) exempts employers from citations if they waive hard hat requirements for religious reasons, emphasizing accommodation over enforcement of federal regulations in such cases.²

Finally, Sikh Americans often face workplace discrimination due to so-called “neutral” appearance grooming policies that are rooted in Western cultural values. These policies typically require short haircuts, clean-shaven or neatly trimmed beards, and prohibit headwear, clashing with turbans, *kes*, or both. Consequently, some employers either fail to hire Sikhs, segregate them into roles with minimal client interaction, or even mandate that they adhere to certain appearance standards based on perceived “customer preferences” that are, again, rooted in Western notions of grooming. This segregation is a form of religious discrimination and fails to provide true accommodations for Sikh Americans, violating federal and state employment discrimination laws because they face no undue hardship to provide Sikhs accommodations to their uniform and grooming policies under these circumstances.³ Despite these challenges, Sikhs have demonstrated their ability to maintain their religious practices while excelling in a variety of career roles across the public and private sectors. The Sikh Coalition continues to believe that all private employers should adapt their policies to accommodate Sikh employees, ensuring a diverse and inclusive workforce and demonstrating their commitment to equality to clients and customers.

Additional Sikh articles of faith are subject to workplace discrimination issues as well. The *kirpan*, a symbol of duty and justice, can become a point of contention in workplace settings due to its resemblance to a knife or sword and employers’ “no weapons” policies, despite the fact that *kirpans* are symbols of religious commitment rather than weapons.⁴ Governments,

² The exemption exists to ensure that OSHA policies comply with RFRA to the extent that they impact religious minorities. See OSHA Directive STD 01-06.005 §§G(4)-(6).

³ EEOC Compliance Manual on Religious Discrimination §§12-1, 12-2(A)(1) Ex. 9(c).

⁴ Large employers such as AT&T, Boeing, and the International Monetary Fund have provided kirpan accommodations to Sikhs. Also note that the U.S. Equal Employment Opportunity Commission has litigated and favorably settled at least two separate cases under Title VII of the Civil Rights Act of 1964 protecting the right of Sikhs to wear kirpans in the workplace. See *EEOC v. Heartland Employment Services, LLC d/b/a ManorCare Health Services-Citrus Heights*, Case No. 2:08-cv-00460-FCD-DAD (E.D.

employers, and schools often accommodate Sikhs' *kirpan*-wearing practices, recognizing that kirpans pose no greater threat than many common secular items like pens or kitchen knives,⁵ but this has required invoking legal perspectives that support accommodations, with courts consistently recognizing the *kirpan's* religious significance and dismissing charges under anti-weapons statutes based on Sikhs' benign intent.⁶ Additionally, the *kara*, a steel or iron bangle worn on the dominant wrist by Sikhs, serves as a reminder of their commitment to ethical conduct and moral living. In the food service industry, employers occasionally raise objections to employees wearing *karas* citing hygiene concerns, despite policies that often accommodate medical ID bracelets, necklaces, and wedding rings. Similarly, in sterile laboratory environments with "no jewelry" policies, Sikhs have had to fight for *kara* accommodations. In all of these cases and more, employers must respect and understand the specific religious practices of their Sikh employees regarding the maintenance of their articles of faith.

Beyond articles of faith, many Sikhs prioritize prayer and meditation as essential practices in their spiritual journey towards closeness with *Waheguru* (God). They dedicate time to meditative contemplation throughout the day, engaging in prayer three times: at dawn, evening, and before sleep, always covering their heads and removing their shoes during these moments. Like adherents of other faiths who require specific times for prayer or days off of work for religious observance, Sikhs may request workplace accommodations to observe these practices, which employers can often meet through flexible scheduling, voluntary substitutions, break swaps and other arrangements; as recently as 2023, however, the Supreme Court was still having to field legal cases regarding the obligation of employers to respect their employees' religiously-mandated calendar needs.⁷

In short, based on our more than 20 years of work providing pro bono legal aid to Sikhs who face discrimination with respect to all of these considerations and more, the Sikh Coalition believes the issue of employment discrimination is far from settled. It is imperative that employers create a diverse, equitable, and inclusive workplace where all employees' religious rights are respected. This can be achieved through understanding and accommodating a diverse, inclusive range of religious practices from among marginalized faith communities such as our own.

Cal. consent decree entered May 2010); *EEOC v. Healthcare and Retirement Corp. of America d/b/a Heartland Health Care Center - Canton*, Case No. 07-13670 (E.D. Mich. consent decree entered Dec. 2009).

⁵ In 2012, the U.S. Department of Homeland Security Federal Protective Service (FPS) instituted a kirpan accommodation policy that facilitates the entry of kirpan-wearing Sikhs into the 9,000+ federal buildings that FPS secures. See U.S. Department of Homeland Security Federal Protective Service Prohibited Items Program, Directive No. 15.9.3.1 (Dec. 10, 2012), available at <https://www.dhs.gov/sites/default/files/publications/foia/prohibiteditems-program-nppd-fps-directive-15.9.3.1.pdf>. In addition, the White House, the Hart Senate Building, the Federal Bureau of Investigation, the U.S. Department of Justice, and the California State Capitol Building in Sacramento have all provided accommodations to kirpan carrying Sikhs.

⁶ See e.g., *State of Ohio v. Harjinder Singh*, 690 N.E.2d 917, 920 (Ohio Ct. App. 1996) (reversing trial court criminal conviction because the Sikh defendant carried his kirpan as a religious article and not a mere weapon); *New York v. Partap Singh*, 516 N.Y.S.2d 412 (1987) (sua sponte dismissing weapons charge against kirpan-wearing Sikh).

⁷ *Groff v. DeJoy*, 600 U. S. ____ (2023)

Case Study by Profession: Sikhs in the Military

For more than 15 years, the Sikh Coalition has built and led a sustained legal and advocacy campaign to address one persistent and significant area of workplace discrimination against Sikhs: employment in the U.S. military. As explained above, Sikhs' unshorn hair, beards, and turbans have clashed with outdated and largely subjective uniform and grooming standards across the various branches of our Armed Forces. These policies notably did not exist before a change in the mid-1980s; there are historical examples of turbaned and bearded Sikhs serving in military conflicts before then (e.g. Baghat Singh Thind's notable service in World War I).⁸

In 2017, following a lawsuit that built on years of advocacy, the U.S. Army revised its uniform and grooming policies to permit Sikhs to maintain their turbans and beards.⁹ The U.S. Air Force followed suit with a similar policy change in 2020.¹⁰ Since these changes were made, we estimate that more than 100 Sikh soldiers and airmen have been able to serve honorably and capably while maintaining their articles of faith. Progress, however, has been slower in other branches of the military. The U.S. Navy's current beard policy allows for accommodations in some circumstances, but notably not for sailors on sea duty—a significant constraint for Sikhs working towards a long-term career in that branch.¹¹ The Sikh Coalition, meanwhile, has been engaged with the U.S. Marine Corps (USMC) on this issue since 2021; a historic lawsuit in 2022 ultimately led to limited accommodations for current and pre-accession Sikh Marines, as well as the 2023 graduation of the first Sikh who maintained his articles of faith throughout Marine Recruit Training.^{12,13} Unfortunately, serious and discriminatory limits remain on those USMC accommodations, which is the subject of ongoing litigation at the time of writing.

In the Navy, USMC, and U.S. Space Force, this institutional discrimination against Sikhs and members of other minority faith groups remains an ongoing issue. We continue to believe that

⁸ Ella Wagner, "Bhagat Singh Thind," National Park Service, <https://www.nps.gov/people/bhagat-singh-thind.htm>.

⁹ David Alexander, "U.S. Army eases rules on beards, turbans for Muslim, Sikh troops," Reuters, Jan. 5, 2017, <https://www.reuters.com/article/world/us-army-eases-rules-on-beards-turbans-for-muslim-sikh-troops-idUSKBN14P2AX/>.

¹⁰ Stephen Losey, "Air Force officially OKs beards, turbans, hijabs for religious reasons," Air Force Times, Feb. 11, 2020, <https://www.airforcetimes.com/news/your-air-force/2020/02/11/air-force-officially-oks-beards-turbans-hijabs-for-religious-reasons/>.

¹¹ David Roza, "Navy OKs beards, turbans, and hijabs worn for religious reasons, though key questions remain," Task & Purpose, Mar. 23, 2020, <https://taskandpurpose.com/news/navy-approves-beards-turbans-hijabs/>.

¹² Derrick Bryson Taylor, "Court Rules Sikh Marine Recruits Can Wear Beards at Boot Camp," New York Times, Dec. 26, 2022, <https://www.nytimes.com/2022/12/26/us/sikh-beard-marine-corps.html>.

¹³ Irene Loewenson, "In 1st, Sikh man graduates from Marine boot camp with turban, beard," Marine Corps Times, Aug. 15, 2023, <https://www.marinecorpstimes.com/news/your-marine-corps/2023/08/15/in-1st-sikh-man-graduates-from-marine-boot-camp-with-turban-beard/>.

solving employment discrimination by the U.S. Department of Defense, the largest employer in the country, will have positive downwind effects for Sikhs and others across the public and private sectors.

Case Study by Job Requirement: Sikhs and Personal Protective Equipment

In the early surge of the COVID-19 pandemic, healthcare workers and first responders faced daily risks to provide necessary care to patients. Along with grappling with the uncertainty of the pandemic, many hospitals and medical offices implemented stringent personal protective equipment (PPE) policies based on Centers for Disease Control and Occupational Safety and Health Administration guidelines. These policies, however, often neglected employees' workplace rights, disproportionality affecting religious and racial minorities

Women and members of certain racial or ethnic groups, whose narrower face shapes often made traditional N95 respirators unsuitable, were adversely impacted by such regulations.¹⁴ So were Black men, up to 60 percent of whom suffer from Pseudofolliculitis barbae (PFB), which causes painful razor bumps and scarring due after repeated shaving, which some employers mandated based on unclear or inaccurate N95 mask fit requirements.¹⁵ And of course, many Sikhs and members of other faiths with religiously-mandated facial hair were told they would have to choose between their careers and their religious beliefs for that same shaving requirement. Employees from all of these groups who requested alternative PPE were frequently told to comply with N95 requirements or face termination, and new hires needing accommodations were often denied employment. This situation highlighted significant issues of discrimination based on job requirements that overlook religious practices and other aspects of identity, as well as emphasized how a lack of accommodations expose the implicit bias of many employers' policies—all because “standard” PPE does not actually work for many individuals.

There exist, of course, alternative PPE options for Sikhs and others who need them. PAPRs are reusable and provide protection equivalent to or better than an N95. Due to the extraordinary need of the pandemic, individuals also worked to innovate around the problem: a transplant surgeon from Manchester, Dr. Rajinder Pal Singh, devised a solution using an under-mask beard cover called 'Thattha' to wear an FFP3 respirator mask, successfully passing the NHS qualitative Fit Test.¹⁶ Despite these alternatives, however, the Sikh Coalition's ongoing legal work around this issue suggests that employers are often unaware of or fail to understand their obligation to supply PPE that keeps their employees safe and accommodates their immutable individual needs. This issue, moreover, persists beyond needs specific to the healthcare industry and the COVID-19 pandemic: Sikh pilots, for example, have been denied the

¹⁴ See App. B, Amrith Kaur, Written Testimony of Amrith Kaur, Legal Director, Sikh Coalition, Testimony Before Equal Employment Opportunity Commission (Apr. 28, 2021), available at <https://www.eeoc.gov/meetings/meeting-april-28-2021-workplace-civil-rights-implications-covid-19-pandemic/kaur>.

¹⁵ See *id.*

¹⁶ R. Singh, *Under-mask beard cover (Singh Thattha technique) for donning respirator masks in COVID-19 patient care*, U.S. National Library of Medicine National Institutes of Health (Oct. 3, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7532752/>.

opportunity to enroll in flight schools due to shaving requirements around gas masks, only to reverse such decisions in the face of legal intervention.¹⁷

Conclusion

Finally, as an organization founded to defend and expand the rights of a marginalized community, the Sikh Coalition wishes to note our deep disappointment with the Committee's use of this hearing as a platform to launch frivolous attacks on the very concept of diversity, equity, inclusion, and accessibility (DEIA). DEIA initiatives are essential for creating a fair and prosperous society, particularly benefiting religious and racial minorities like ours who have historically and currently experienced disparities within employment, education, health, housing, and in other sectors. DEIA encourages innovation, productivity, and economic growth, benefiting everyone by ensuring that no group is excluded from opportunities—which in and of itself promotes a just society.

Furthermore, DEIA initiatives are crucial because they not only prevent discrimination but also promote understanding and respect for diverse backgrounds and practices. As we highlighted above, Sikhs face ongoing challenges due to their articles of faith and other religious practices within the workplace, and this discrimination can only be combated through proactive education, accommodation, and policy reform. DEIA initiatives foster a culture of respect and belonging for all employees; abandoning such efforts would perpetuate existing inequities and create even more barriers for success. To support DEIA initiatives and programs, in and out of government, is to affirm that America's great strength is our diversity—and that we have an obligation under the law to ensure equality of opportunity for all.

Thank you for the opportunity to submit our statement into the congressional record. Please do not hesitate to reach our team at advocacy@sikhcoalition.org if you have any follow-up questions.

¹⁷ "Fateh! Another Workplace Accommodation Case Resolved," The Sikh Coalition, Apr. 8, 2024, <https://www.sikhcoalition.org/blog/2024/fateh-another-workplace-accommodation-case-resolved/>.