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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SUKHJINDER S. BASRA AND UNITED STATES OF AMERICA	)	No. CV11-01676 SVW (FMOx)
Plaintiffs,	)	**UNITED STATES' BRIEF IN SUPPORT OF PLAINTIFF SUKHJINDER S. BASRA'S MOTION FOR A**
v.	)	

MATTHEW CATE, *et al.*,)	**PRELIMINARY INJUNCTION**
)	
Defendants.)	Honorable Stephen V. Wilson
)	
)	Hearing Date: June 6, 2011
)	Time: 1:30 p.m.
)	Courtroom: 6
_____)	

Table of Contents

Table of Authorities

Cases

Statutes

THE UNITED STATES OF AMERICA, by its undersigned attorneys, hereby files this brief in support of Plaintiff Sukhjinder S. Basra's Motion for a Preliminary Injunction.

I. INTRODUCTION

Plaintiff Sukhjinder S. Basra, an inmate at the California Men's Colony Correctional Facility ("CMC") in San Luis Obispo, California, is a lifelong practitioner of the Sikh faith. As an observant Sikh, he is religiously mandated to maintain unshorn hair, including facial hair. This fundamental requirement of his religion signifies his respect for the will of God. Adherents to the Sikh faith believe that cutting one's hair is a grievous sin. Pursuant to these beliefs, Mr. Basra always has maintained his hair and beard uncut and unshaved, including during his incarceration.

California Department of Corrections and Rehabilitation ("CDCR") policy prohibits facial hair longer than one-half inch, without providing any exception for those whose religious practices forbid cutting facial or other bodily hair ("Grooming Policy"). This rule was not enforced against Mr. Basra until after his transfer from Pleasant Valley State Prison ("PVSR"), a more restrictive, higher security CDCR facility, to the minimum security facility in CMC. Once at CMC, Defendants began enforcing this Grooming Policy against Mr. Basra, subjecting him to progressively more severe disciplinary sanctions for practicing his religion.

Mr. Basra is now compelled either to cut his beard and violate a central tenet of his religion, or suffer increasingly severe penalties, including the deprivation of privileges and the risk of longer confinement in prison, in violation of his rights under the Religious Land Use and Institutionalized Person Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.* (2000). Defendants contend that the Grooming Policy is justified by their interest in the security of California's prison facilities, but the security interests they assert do not justify perpetuating the substantial burden imposed on Mr. Basra's religious liberty, one of our society's most fundamental

rights. *See Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002) (RLUIPA is designed to "guard against unfair bias and infringement on fundamental freedoms"). As President Clinton said in signing RLUIPA, "[r]eligious liberty is a constitutional value of the highest order, and the Framers of the Constitution included protection for the free exercise of religion in the very first Amendment. This Act recognizes the importance the free exercise of religion plays in our democratic society." *See* Statement by President William J. Clinton Upon Signing S. 2869, 2000 U.S.C.C.A.N. 662 (September 22, 2000). Indeed, Congress enacted RLUIPA to combat "egregious and unnecessary" restrictions on religious exercise, "[w]hether from indifference, ignorance, bigotry, or lack of resources." 146 Cong. Rec. 16698-99 (2000).

Defendants' Grooming Policy is precisely the type of unnecessary restriction targeted by RLUIPA. The United States urges this Court to grant Mr. Basra's Motion for a Preliminary Injunction.

II. FACTUAL BACKGROUND AND STATEMENT OF THE CASE

Mr. Basra is an observant Sikh who is religiously mandated to maintain unshorn hair, including facial hair. Decl. of Professor Gurinder Sigh Mann in Supp. of Pl. Sukhjinder S. Basra's Mot. for Prelim. Inj., ¶ 7, ECF No. 7-4 (hereinafter "Mann Decl."). His unshorn beard is approximately six inches in length. Members of the Sikh religion have five articles of faith which are worn at all times. One of these five articles is the *kesh*, or unshorn hair. Adherents to the Sikh faith believe that cutting one's hair is a grievous sin and that uncut hair is required for a Sikh to be classified as pure. Basra Decl. in Supp. of Mot. for Prelim. Inj. ¶ 5, Jan. 26, 2011, ECF No. 7-2 (hereinafter "Basra Decl.").

Mr. Basra currently is incarcerated in a minimum security facility within CMC. He is kept in an unlocked, 90-person dormitory room. *Id.* ¶ 7. He initially was incarcerated at PVSP, where he lived in a locked, two-man cell. *Id.* After one

year of discipline-free incarceration at PVSP, CDCR transferred Mr. Basra to CMC on or about February 26, 2010. *Id.*

According to CDCR regulations, "facial hair, including short beards, mustaches, and sideburns are permitted for male inmates and shall not extend more than one-half inch in length outward from the face." Cal. Code Regs. tit. 15, § 3062(h) (2010). The regulations contain no provision for religious exemption. Moreover, they apply system-wide, regardless of the level of security at an individual facility.

When Mr. Basra was incarcerated in a more restrictive setting at PVSP, he kept his beard unshorn but suffered no disciplinary action during his incarceration there. Basra Decl. ¶ 9. While at PVSP, and during the initial portion of his confinement at CMC, CDCR never warned Mr. Basra his beard violated any law or policy, and never disciplined Mr. Basra for having his beard longer than one-half inch. *Id.* When Mr. Basra first entered the state system through the inmate reception center, he was asked to run his fingers through his beard in front of the guards. Since then, however, no CMC employee has ever searched Mr. Basra's beard or asked him to run his fingers through his beard in front of them. Mr. Basra has never been accused of hiding any contraband in his beard. No correctional officer has ever physically manipulated Mr. Basra's beard, run a metal detection wand over it, or asked Mr. Basra to part his beard or run his fingers through it in front of them, for any reason. *Id.* ¶ 10.

Beginning in March 2010, however, CDCR began disciplining Mr. Basra for maintaining his beard at longer than one-half inch in length. *Id.* ¶ 11. Since then, CDCR has subjected Mr. Basra to progressively more severe disciplinary action for failing to comply with the Grooming Policy. On April 3, April 30, and June 28, 2010, Mr. Basra was issued administrative Rules Violation Reports ("RVR") for violating Cal. Code Regs., tit. 15, §3062 (h), "Grooming Standards," for having a beard longer than one-half inch. Basra Decl. ¶¶ 12-14. At the administrative

hearings on each of these violations, Mr. Basra pled not guilty and informed the hearing official that he is unable comply with the grooming standard due to his religious beliefs. Nevertheless, after each hearing, Mr. Basra was found guilty of violating the Grooming Policy. *Id.* For these violations, Mr. Basra received various punishments, including over 40 hours of extra duty, loss of good time credits, and 10 days confinement to quarters. *Id.* During the confinement to quarters period, Mr. Basra was required to stay in his cell and was permitted to leave only to eat, use the rest room, and receive medical attention. He also lost his rights to visitation, phone calls, yard access, day room, canteen, quarterly packages, and accrual of excused time off. *Id*. ¶ 14, fn 1. Mr. Basra appealed each of these charge through all three levels of administrative review, arguing that the disciplinary action substantially burdened his religious exercise. *Id.* ¶¶ 12-14.

On July 19, 2010, Mr. Basra submitted to Defendant Gonzalez a request that he be exempted from the Grooming Policy and allowed to maintain his beard untrimmed. *Id.* ¶17. In this request, he informed the warden that maintaining unshorn facial hair is part of his religious belief and practice. In a letter dated July 28, 2010, CDCR denied Mr. Basra's request, stating in pertinent part:

> [Y]ou are not being discriminated against, as you allude to in your letter . . . . You are being treated the same as the other inmates at CMC . . . . You may have a beard, but you must keep it trimmed to no more than one-half inch in length. There is no provision in the CCR, Title 15 for the Warden to exempt the grooming standards.

Id. ¶ 14.

Other than disciplinary procedures for violations of the grooming code, Mr. Basra has a positive disciplinary record. *Id.* ¶ 16. The penalties for the practice of his religion are becoming more severe, and he is in danger of having his security classification changed. *Id.* ¶8. As a result of the Grooming Policy, Mr. Basra has suffered and likely will continue to suffer disciplinary sanctions,

including but not limited to the following: (1) loss of visitation rights; (2) extra duties; (3) loss of assignment to particular duties; (4) extra restrictions or confinement; and (5) loss of Work Time Credit or risk of loss of credits in the future.

III. APPLICABLE LEGAL STANDARDS

A. Standard for Issuing a Preliminary Injunction

The Supreme Court has held that a "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, ___, 129 S. Ct. 365, 374 (2008). Prior to the Supreme Court's decision in *Winter*, a number of circuits had employed a sliding scale approach in determining whether to issue a preliminary injunction. Under this approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The Ninth Circuit had adopted a version of this sliding scale approach under which a preliminary injunction could issue where the likelihood of success is such that "serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor." *Id.* (quoting *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003)). In *Cottrell*, the court held that this approach survived the Supreme Court's decision in *Winter*. Under the Ninth Circuit test, then, "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Id.* at 1132.

Accordingly, to obtain a preliminary injunction, Mr. Basra "must show either (1) a likelihood of success on the merits and the possibility of irreparable

injury or (2) the existence of serious questions going to the merits and the balance of hardships tipping in [his] favor." *Warsoldier v. Woodford*, 418 F.3d 989, 993-94 (9th Cir. 2005) (quoting *Nike, Inc. v. McCarthy*, 379 F.3d. 576, 580 (9th Cir. 2004)). Mr. Basra has met the standards of both of these tests. Accordingly, his motion should be granted.

B. RLUIPA Prohibits the Government From Imposing a Substantial Burden on a Prisoner's Religious Exercise Unless the Government's Justification for Imposing the Burden Can Withstand Strict Scrutiny.

RLUIPA provides that no state or locally-owned institution, including correctional facilities, "shall impose a substantial burden on the religious exercise of a [prisoner]." 42 U.S.C. § 2000cc-1(a). "Religious exercise" includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A).

In order to overcome this prohibition on burdening religious exercise, a government must demonstrate that imposition of the burden is: (1) "in furtherance of a compelling governmental interest;" and (2) "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a). Under RLUIPA, Mr. Basra bears the initial "burden of going forward with evidence to demonstrate a prima facie claim thats [the Grooming Policy] and its punitive sanctions designed to coerce him to comply with that policy constitute a substantial burden on the exercise of his religious beliefs." *Warsoldier*, 418 F.3d. at 994. Once he has done so, Defendants must show that the substantial burden placed on Mr. Basra is the least restrictive means of furthering a compelling governmental interest. *Id*. at 995.

IV. ANALYSIS

The Grooming Policy substantially burdens Mr. Basra's religious exercise, and Defendants do not contest this point in the Opposition. Defendants attempt to justify the substantial burden by claiming that it serves a compelling governmental

interest—the need to quickly identify inmates and to prevent the introduction, use and distribution of weapons, drugs, and other contraband – and that the Grooming Policy is the least restrictive means of achieving those ends. Defendants' argument fails in light of the Ninth Circuit's decision in *Warsoldier*, 418 F.3d 989, in which the plaintiff challenged CDCR's Grooming Policy prohibiting long hair. Under almost identical facts, the Ninth Circuit rejected these arguments and held that the plaintiff had demonstrated a likelihood of success on the merits of his claim that California's grooming policy prohibiting long hair violated RLUIPA, 42 U.S.C. § 2000cc-1. *Id.*

A. Mr. Basra Is Likely To Succeed on the Merits Because the Substantial Burden Placed on His Exercise of Religion Is Not the Least Restrictive Means of Achieving a Compelling Governmental Interest.

1. <u>Defendants Have Placed a Substantial Burden on Mr. Basra's Exercise of Religion.</u>

A State places a substantial burden on religious exercise when it places "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Warsoldier*, 418 F.3d at 995 (quoting *Thomas v. Review Bd. of the Ind. Emp't Sec. Div.*, 450 U.S. 707, 717-18 (1981)) (internal quotation marks omitted) (holding that grooming policies requiring inmates to cut their hair intentionally impose a substantial burden); *see also Shakur v. Schriro*, 514 F.3d 878, 881 (9th Cir. 2008); *May v. Baldwin*, 109 F.3d 557, 563 (9th Cir. 1997) (finding substantial burden where important benefits were conditioned on conduct proscribed by a religious faith, a Rastafarian inmate undoing his dreadlocks). The Ninth Circuit has found a substantial burden when the action is "oppressive to a significantly great extent, such that it renders religious exercise effectively impracticable." *Sefeldeen v. Alameida*, 238 F. App'x 204, 205-06 (9th Cir. 2007) (quotation marks omitted) (quoting *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034-35 (9th Cir. 2004)).

In *Warsoldier*, the Court held that imposing discipline such as that imposed upon Mr. Basra for failing to comply with CDCR's grooming regulations is a substantial burden on religious exercise. *Warsoldier*, 418 F.3d at 996. Like the plaintiff in *Warsoldier*, Mr. Basra is not being physically forced to comply with the grooming standard, but he is being forced to choose between abandoning a core tenant of his religion and being subjected to a variety of increasing punishments. The court found such a Hobson's choice to be a substantial burden on religious exercise, noting that imposing such a dilemma "flies in the face of Supreme Court and Ninth Circuit precedent that clearly hold that punishments to coerce a religious adherent to forgo his . . . religious beliefs is an infringement on religious exercise." *Id.* The policy at issue here imposes a substantial burden on Mr. Basra's religious exercise, and Defendants do not contest that this prong of RLUIPA has been met.

2. Defendants Cannot Establish a Compelling Governmental Interest or Least Restrictive Means

Because imposition of the Grooming Policy on Mr. Basra amounts to a substantial burden on his religious exercise, CDCR must show that the imposition of the substantial burden on Mr. Basra serves a compelling governmental interest, and that the policy is the least restrictive means of advancing that interest. *See* 42 U.S.C. §§ 2000cc-1(a), 2000cc-2(b). Here, Defendants cite to prison safety and security to justify depriving Mr. Basra of his fundamental right to exercise his religion. In spite of evidence from other jurisdictions, and the holding in *Warsoldier*, Defendants claim, as they did in *Warsoldier*, that the Grooming Policy is the least restrictive means of achieving those goals. It is not, and the Ninth Circuit has previously rejected these same arguments.

In *Warsoldier*, Defendants argued that their policy prohibiting long hair allowed for the quick and accurate identification of inmates; prevented inmates from hiding contraband or weapons in their hair or on their bodies; and prevented prisoners from disguising their identity by cutting their hair upon escape.

Warsoldier, 418 F.3d at 997. They make the same arguments here. Defendants' Opp. to Mot. for Prelim. Inj., 3-9, ECF No. 32 (hereinafter "Opposition" or "Opp."). While prison safety and security are compelling interests, CDCR could achieve those goals through less restrictive means.

a. The Grooming Policy Is Not Necessary for Prisoner Identification and Prevention of Escape

The prohibition on long beards does not aid in the prevention of escapes or the capture of escapees because CDCR already must employ mechanisms to address the changing appearance of prisoners. In response to the Ninth Circuit's decision in *Warsoldier*, CDCR changed its grooming policy in 2006 to allow hair of any length. Decl. of Randolph Grounds in Supp. of Opp. to Mot. for Prelim. Inj., ¶ 2, ECF No. 32-1 (hereinafter "Grounds Decl."). In *Warsoldier*, the defendants had argued that removing the hair length prohibition would help prisoners escape and elude capture. *Warsoldier*, 418 F.3d at 997. Yet, Defendants have not cited to a single instance since the regulation changed where a prisoner escaped, attempted to escape, or eluded capture by changing his hair length. Indeed, the last instance of escape involving a change of hair length defendants cite to occurred almost fourteen years ago. Opp. Ex. 2, at 2, ECF No. 32-3. These fears either proved to be unfounded, or defendants have found other, less restrictive means, of addressing these dangers.[1]

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[1] Defendants cite heavily to an incident in 1997 in which an inmate escaped by shaving his beard, cutting his hair, fashioning an apparently realistic identification card, donning civilian clothing, and leaving through the front gates of the prison. One assumes that CDCR addressed this situation by resorting to the obvious less restrictive alternatives of preventing inmates from accessing printers, cameras, laminating machines, and civilian clothing, and restricting access to employee identification cards.

Because CDCR already effectively manages prisoners' changes in appearance, the beard length restriction is unnecessary. Changing hair length is just one of a number of ways in which prisoners may change their appearance. During a period of incarceration, prisoners may age, gain and/or lose weight, incur facial scars, get tattoos, lose teeth, and suffer receding hairlines. Decl. of John Clark ¶ 22 (hereinafter "Clark Decl."). Professional correctional management requires any facility to maintain safety and security in spite of these changes. *Id.* ¶ 24. One way to accomplish this task is to require a new photograph and inmate identification whenever these changes occur, and retention of all past inmate photos so the facility has a series of pictures of each inmate in every state of appearance. The Federal Bureau of Prisons ("BOP") manages to administer this practice while incarcerating 215,000 prisoners and facing severe budgetary limitations. *Id.* ¶¶ 10, 22, 27. CDCR likely already has policies and practices in place to maintain security in spite of these inevitable appearance changes, accounting for the lack of a single escape by an inmate who altered his appearance in the last fourteen years. If it does not, than it cannot credibly cite to appearance change as a compelling concern.

Moreover, Defendants' general citations to cost concerns in administering less restrictive alternatives are unpersuasive. Congress underlined the importance of eradicating burdens on religious exercise by explicitly providing that compliance with RLUIPA "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." 42 U.S.C. § 2000cc-3(c).

b. <u>The Grooming Policy Is Not the Least Restrictive Means of Preventing Prisoners From the Concealing Contraband.</u>

Defendants cite to the fear that prisoners will conceal contraband in a long beard. They cite to "numerous occasions" in which prisoners have concealed contraband "within beards and long hair," without offering any temporal or

quantitative specifics. They do not cite a single specific example of an inmate concealing contraband in a beard. Opp. at 4. Moreover, Defendants raised the same concern in *Warsoldier*, 418 F.3d at 997, but, since changing the regulation, CDCR has addressed this concern by searching prisoners' hair. Grounds Decl. ¶ 14. To the extent that concealment of contraband in beards also is a concern, CDCR may employ the same remedy. Any additional administrative burden would be minor, and that burden is outweighed by the interest in protecting a fundamental right. The BOP addresses this concern by regularly searching prisoners to prevent them from concealing contraband on their person. Clark Decl. ¶ 26. The search consists of requiring the prisoner to run his hands vigorously through his hair and through his beard, and then inserting his fingers in his mouth and pulling his cheeks back. Prisoners also are subjected to a handheld metal detection wand. The entire process takes only a few seconds. *Id*.

c. <u>The Grooming Policy Is Overly Restrictive Because It Applies to All Inmates, Regardless of Security Risk.</u>

CDCR has enforced the Grooming Policy against Mr. Basra despite its determination, evidenced by his transfer to a minimum security prison, that he poses a lower security risk. Defendants have the burden of showing that security, their asserted compelling interest, is actually furthered by banning this specific Plaintiff from having an unshorn beard. 42 U.S.C. § 2000cc-1(a) (prohibiting government imposition of a substantial burden on "religious exercise of a person" unless "the government demonstrates that imposition of the burden on *that person*" furthers a compelling government interest) (emphasis added); *see, e.g.*, *Jova v. Smith*, 582 F.3d 410, 415 (2d Cir. 2009) ("[T]he state may not merely reference an interest in security or institutional order in order to justify its actions."); *Washington v. Klem*, 497 F.3d 272, 283 (3d Cir. 2007) ("Even in light of the substantial deference given to prison authorities, the mere assertion of security or health reasons is not, by itself,

enough for the Government to satisfy the compelling governmental interest requirement. Rather, the particular policy must further this interest."); *Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 988-89 (8th Cir. 2004) ("[Officials] must do more than offer conclusory statements and offer post hoc rationalizations.") (citations omitted).

Defendants have not demonstrated how security is actually furthered by prohibiting Mr. Basra from keeping his beard unshorn. When Mr. Basra was housed in a medium security facility, Defendants did not require him to shorten his beard, nor did Defendants punish him for maintaining a long beard. Basra Decl. ¶ 9. Mr. Basra has since been transferred to a minimum security facility, where he has maintained a clean disciplinary record, other than discipline he has received for maintaining an unshorn beard in accordance with his religious beliefs. *Id.* ¶¶ 7, 16. Furthermore, Defendants have not pointed to any evidence in their Opposition that Mr. Basra is an escape risk or that he has attempted to conceal contraband in his beard. In *Warsoldier*, the Ninth Circuit found that CDCR's grooming policy prohibiting long hair likely was not the least restrictive means of furthering the proffered security interest, in part because Mr. Warsoldier, like Mr. Basra, was housed in a minimum security facility. The *Warsoldier* court found that the lowered security pressures at minimum security facilities may require policies that are correspondingly less restrictive, and criticized CDCR for failing to address this difference in its polices. 418 F.3d at 999. That same principle applies here. Defendants have made no showing that the burden imposed on Mr. Basra by the Grooming Policy furthers the asserted compelling government interest in security, and therefore have failed to meet their burden under RLUIPA.

d. Because the Federal Bureau of Prisons Is Able To Maintain Safety and Security Without Restricting Beard Length, CDCR's Policy Cannot Be the Least Restrictive Means.

The Federal Bureau of Prisons has a population of approximately 215,000 prisoners, Clark Decl. ¶ 10, in contrast to California's 160,000. Grounds Decl. ¶ 18. It incarcerates organized crime figures, gang leaders, international terrorists, and other violent offenders. Clark Decl. ¶ 10. It must deal with gang rivalries, as well as regional rivalries. *Id.* The BOP also must deal with constant budgetary limitations and shortfalls in the face of an ever-increasing prison population. *Id.* ¶ 27. The BOP does not tolerate escapes or the possession of contraband by prisoners. *Id.* ¶ 11.

The BOP does not place any restriction on the length of prisoners' beards or hair. *Id.* ¶ 9. To guard against the concealment of contraband, BOP staff search prisoners by running a metal detection wand over the prisoners' bodies, and/or by requiring prisoners to vigorously manipulate their hair, beards, and their mouths in the presence of staff. This procedure is not an undue administrative burden. It takes a matter of seconds, and much of it would need to be done even if BOP restricted beard length. *Id.* ¶ 26.

Despite incarcerating some of the most inventive and escape prone prisoners in American history, BOP has not found it necessary to restrict beard length to maintain security. Clark Decl. ¶¶ 18, 25. BOP must manage change of inmates' appearance regardless of any grooming policies, since a prisoner's appearance may change drastically and quickly over the course of an incarceration – they may age, gain or lose weight, get tattoos, receive scars, grow their hair, or lose their hair. *Id.* ¶ 22. The existence or length of one's beard is just one factor in this inevitable appearance change, and BOP must monitor this to ensure safety and security. Instituting a beard length restriction would not alleviate this burden. *Id.* ¶ 17.

In *Warsoldier*, the Ninth Circuit criticized CDCR for failing to consider less restrictive grooming policies when other institutions with the same penological goals were able to accommodate the same religious practices. *See Warsoldier*, 418 F.3d at 999-1000. It held that failure of an institution to distinguish itself from these analogous institutions "may constitute a failure to establish that the defendant was using the least restrictive means." *Id*. at 1000. The court also noted that prison systems such as those run by Oregon, Colorado, Nevada and the BOP have all satisfied their penological interests with much broader policies or with religious exemptions. *Id*. at 999-1000. Here, Defendants have failed to distinguish themselves from the BOP.

Defendants' reliance on *Mayweathers v. Terhune*, 328 F. Supp. 2d 1086 (E.D. Cal. 2004), is misplaced. There, a group of Muslim state prisoners filed suit under RLUIPA challenging CDCR's grooming policy which, at that time, prohibited beards of any length. *Mayweathers*, 328 F. Supp. 2d at 1090-91. The plaintiffs asked for an injunction to allow them to wear half-inch beards, alleging that wearing this short beard was an exercise of their religion. *Id.* The court found CDCR's grooming standard violated RLUIPA, *id.* at 1096, because allowing inmates to wear one-half inch beards was a less restrictive alternative. *Id.* at 1102. The court did not find that allowing one-half inch beards was the least restrictive alternative, because that question was not before it, and the court received no evidence on that point. Defendants' assertion that the court made such a finding is incorrect.

The Ninth Circuit has made clear that grooming policies such as the one at issue here violate RLUIPA because there are less restrictive and equally effective alternatives to accomplish the goal of maintaining safety and security. Defendants cite to no contrary Ninth Circuit authority on this point, nor could they. The experience of the Federal Bureau of Prisons establishes that CDCR's approach is

overly restrictive and needlessly deprives California prisoners of a fundamental right.

B. The Public Interests Animating RLUIPA Favor Issuance of a Preliminary Injunction

As explained above, elimination of the Grooming Policy will not imperil public safety, contrary to Defendants' assertions. Moreover, it is well-settled that "the public has an interest in protecting the civil rights of all persons." *Edmisten v. Werholtz*, 287 F. App'x 728, 735 (10th Cir. 2008) (reversing denial of preliminary injunctive relief). The federal government's interest in protecting individual rights is particularly salient in the context of the religious protections afforded by RLUIPA, "the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens . . . ." *Cutter v. Wilkinson*, 544 U.S. 709, 713 (2005). RLUIPA passed both houses of Congress unanimously and was supported by more than seventy religious and civil rights groups representing a diversity of religious and ideological viewpoints. *See* 146 Cong. Rec. S7777-78. Its enactment followed a three year congressional investigation into free exercise violations involving the religious practices of institutionalized persons. *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 380 (7th Cir. 2010). As set forth in a joint statement by RLUIPA co-sponsors Orrin Hatch and Edward Kennedy, Congress found that "[w]hether from indifference, ignorance, bigotry, or lack of resources, some institutions restrict religious liberty in egregious and unnecessary ways." *See* 146 Cong. Rec. 16698-99 (2000).

Moreover, facilitating the religious exercise of incarcerated persons serves the important societal interest in rehabilitation of inmates. This interest in rehabilitation was one of the motivations for Congress's passage of RLUIPA. When introducing the bill that would become RLUIPA, Senator Kennedy specifically noted that restrictions on the practice of religion in the prison context

could be counter-productive: "[s]incere faith and worship can be an indispensible part of rehabilitation." *See* 146 Cong. Rec. S6689. Further, this interest has been repeatedly recognized by federal courts. In a decision affirming a district court's finding that a prison violated RLUIPA by denying prayer oils to a Muslim inmate, the Seventh Circuit explained that "RLUIPA's attempt to protect prisoners' religious rights and to promote the rehabilitation of prisoners falls squarely within Congress' pursuit of the general welfare . . . ." *Charles v. Verhagen*, 348 F.3d 601, 607 (7th Cir. 2003); *see also, e.g., Benning v. Georgia*, 391 F.3d 1299, 1310 (11th Cir. 2004) ("rehabilitation of prisoners is also a . . . purpose underlying RLUIPA").

C. Failure To Grant an Injunction Will Result in Irreparable Harm to Mr. Basra

Mr. Basra has been subjected to discipline for adhering to his religious beliefs. Basra Decl. ¶ 18. Because Defendants have denied his religious exemption, he continues to be in violation of the Grooming Policy. He is in immediate danger of being deemed a program failure. 15 Cal. Code Regs. tit. 15, § 3062(m). He already has received a referral to program review to determine if he should be deemed a program failure. Basra Decl. ¶ 14. This kind of "chilling effect" on the exercise of religion constitutes irreparable injury. *See Murphy v. Zoning Comm'n of the Town of New Milford*, 148 F. Supp. 2d. 173, 181 (D. Conn. 2001) (holding that a chilling effect on religious practice was enough to satisfy the irreparable harm requirement).

When evaluating irreparable injury in the context of RLUIPA, courts have determined that the concerns are the same as those in the First Amendment context. Indeed, Congress' expressed intent to protect the free exercise of religion led the court in *Murphy* to conclude the following:

> Since the statute ["RLUIPA"] was enacted for the express purpose of protecting the First Amendment rights of individuals, the allegation that defendants have violated this statute also triggers the same concerns that led

the courts to hold that these violations result in a presumption of irreparable harm.

Murphy, 148 F. Supp. 2d at 180-81.

The "'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Ch. of Scientology v. United States*, 920 F.2d 1481, 1488 (9th Cir. 1990) (quoting *Elrod v. Burns*, 427 U.S. 347 (1976)); *see Guru Nanak Sikh Soc'y v. Cnty of Sutter*, 326 F. Supp. 2d 1140, 1161 (E.D. Cal. 2003). Furthermore, Congress enacted RLUIPA to "protect the free exercise of religion from unnecessary government interference." *Murphy*, 148 F. Supp. 2d at 180 (citation omitted).

Under similar facts, the Ninth Circuit found a burden like the one being placed upon Mr. Basra constituted irreparable injury. *Warsoldier*, 418 F.3d at 1001-02 ("We have previously held that putting substantial pressure on an adherent to modify his behavior and to violate his belief infringes on the free exercise of religion . . . . Because Warsoldier has, at a minimum, raised a colorable claim that the exercise of his religious beliefs has been infringed, he has sufficiently established that he will suffer an irreparable injury absent an injunction barring enforcement of the grooming policy against him.") (internal quotation marks and citations omitted). Therefore, a preliminary injunction is necessary to ensure that Mr. Basra is not threatened with irreparable injury.

D. The Balance of Equities Sharply Favor Granting Issuance of a Preliminary Injunction.

Mr. Basra is being punished for practicing his religion. He is being deprived of a fundamental right. These facts alone merit the issuance of a preliminary injunction.

The interests asserted by Defendants do not alter this balance. Defendants assert that the deprivation of Mr. Basra's fundamental right is necessary to prevent inmate escape and the concealment of contraband, but enjoining Defendants from

enforcing this policy against Mr. Basra would place no burden upon them. For the initial period of Mr. Basra's incarceration – when he was at a more secure facility – Defendants did not feel compelled to enforce the Grooming Policy against him. To date, Defendants have not felt it necessary to search Mr. Basra's beard for contraband and, in fact, have housed him in minimum security facility where he sleeps in an unlocked dormitory. Defendants' past actions confirm they would not be burdened by an injunction against enforcing the Grooming Policy against Mr. Basra.

Mr. Basra has demonstrated he is likely to prevail on his claims. He has also demonstrated that irreparable injury would occur, and that the balance of hardships is sharply in his favor. Public safety will not be imperiled. Rather, the public interest will be served by such an injunction. Accordingly, the United States urges this Court to grant his Motion for a Preliminary Injunction.

V. CONCLUSION

The United States respectfully urges that this Court to grant Mr. Basra's Motion for a Preliminary Injunction.

Respectfully submitted,

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