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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ICE DETAINEE #1 through 74,

Case Nos. 3:18-cv-01279-MO through
3:18-cv-01365-MO

Petitioner,

v.

JOSIAS SALAZAR,
Warden, FCI Sheridan,

MOTION FOR EMERGENCY
INTERIM RELIEF IN THE FORM OF
AN ORDER REQUIRING RELIGIOUS
ACCOMMODATIONS FOR ICE
DETAINEES

ELIZABETH GODFREY,
Acting Field Office Director,
Seattle Field Office, ICE,

Expedited Consideration Requested

Respondents.

The petitioners, through their attorneys, respectfully move this Court for an order directing the government to accommodate religious beliefs and practices of ICE detainees forthwith pursuant to the First Amendment, the Religious Freedom Restoration Act (RFRA), sections

2000cc-2(b) and 2000cc-3 of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and Bureau of Prisons Program Statement 5360.09, *Religious Beliefs and Practices* (December 31, 2004). Specifically, the Court should direct that the custodians, as remedial measures for the prolonged violations of rights to religious accommodations for civil detainees: (1) provide religious headwear to detainees including turbans; (2) provide personal religious items of the types seized at the time detainees entered custody; (3) allow pastoral visits and religious services from clergypersons and representatives of the detainees' faiths; (4) provide access to religious writings in appropriate languages for the detainees' faiths, (5) provide appropriate locations for prayer and religious practices; and (6) provide reasonable and appropriate opportunities to observe their religious dietary practices in a culturally appropriate manner.

The punitive detention of immigrants in FDC Sheridan has betrayed ideals and protections that are basic to American freedom and that motivated many of the detainees to seek asylum in this country. For the first weeks after their arrival on May 31, 2018, the detainees were held virtually incommunicado at FDC Sheridan, out of touch with anyone in the outside world, under onerous conditions of confinement, without compliance with laws requiring religious accommodations. Upon being taken into custody, Sikhs had their turbans and other items essential to their religious practice confiscated. Upon arrival in FDC Sheridan, many detainees were unable to communicate with anyone in authority in their native languages. The custodians failed to advise detainees of what rights they had, how to seek religious accommodations, and what accommodations could be made. Although some punitive conditions have been ameliorated, the inability to fully practice their religions has been very distressful to the detainees. Currently, the detainees are being held without required religious accommodations, including that they are not

being permitted to wear required head coverings, not being given adequate time and space to pray, and not permitted to wear the sacred religious items in accordance with their faith. *See* Supplemental Declaration of William Teesdale.

The First Amendment guarantees that the federal government shall make no law prohibiting the free exercise of religion. U.S. Const. amend. I. “Putting substantial pressure on an adherent to modify his behavior and to violate his beliefs” infringes on the free exercise of religion. *Thomas v. Review Bd. Of the Ind. Employment Sec. Div.*, 450 U.S. 707, 718 (1981). In response to limitations on free exercise of religion in *Employment Division v. Smith*, 494 U.S. 872 (1990), Congress enacted RFRA in 1993 to require the government to establish a compelling interest to justify facially neutral laws that burden exercise of religious practices. 42 U.S.C. § 2000bb(a)(4) and (5). RFRA’s central provisions created the norm of not burdening free exercise of religion, with any narrow exception to be established by the government. The new general rule: “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general application[.]” 42 U.S.C. § 2000bb-1(a).

The only exception that permitted a substantial burden required that the government demonstrate the burden (1) “is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(b); *see also Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (“[t]he essence of all that has been said and written on the subject is that only those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion.”); *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (“Only the gravest abuses, endangering paramount interests,” may justify the restriction of “the

indispensable democratic freedoms secured by the First Amendment.”) (quoting *Thomas v. Collins*, 323 U.S. 516, 530 (1945)).

The term “government” in RFRA includes United States agencies, departments, and person acting under color of law. 42 U.S.C. § 2000bb-2(1). The “religious exercise protected by RFRA “includes any exercise of religion, whether or not compelled by, or central to a system of religious belief.” 42 U.S.C. §§ 2000bb-2(4) and 2000cc-5(7). The protections afforded to religious exercise in RFRA must be construed broadly. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2760 (2014) (“Congress enacted RFRA . . . in order to provide *very broad protection* for religious liberty”) (emphasis added). RFRA expressly contemplates judicial relief as sought in the present case: “A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.” 42 U.S.C. § 2000bb-1(c).

The protections for religious exercise were extended to the States in the RLUIPA in 2000. Although generally applicable to state facilities, the RLUIPA also bound the federal government in provisions related to the burden of persuasion, which falls on the government, and rules of construction. 42 U.S.C. 2000cc-5(4)(B) (The term “government” “for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.”). The rules of construction include that the statute “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g).

Both ICE and the BOP have fallen far short of the statutory requirements for religious accommodation and their own standards. The Performance-Based National Detention Standards, which ICE revised in 2016, call for pastoral care, services, and accommodation for religious headwear and other items, as stated in the FPD's letter to the custodians of July 9, 2018. CR 3 at 26-27. For religious headwear, the FPD placed the government on explicit notice that Sikh detainees had not received accommodation for the headwear they "consider a mandatory part of their religious practice and expression." *Id.* Within the context of institutional safety, the PBNDS state, "the facility must ensure that detainees are provided conforming religious headwear for free or at de minimum cost." *Id.* Similarly, the BOP program statement on religious headwear expressly authorizes Sikhs "to wear the following religious headwear throughout the institution," which is listed as "turban" and "white." BOP Program Statement 5360.09 at 12-13.

Despite the specific reference and request regarding headwear accommodation, the custodians have failed to provide turbans. The written request for accommodation includes pastoral care, services, and religious items. Firsthand reports from FDC Sheridan as of July 23 and 25, 2018, indicate that religious deprivations continue, as reflected in the Supplemental Declaration of William Teesdale. The only effective manner of assuring compliance with the law in the punitive custody that the detainees are experiencing is for the Court to take direct and immediate action to ameliorate the ongoing violations of religious freedom. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Mayweathers v. Newland*, 258 F.3d 930, 938 (9th Cir. 2001) ("inmates suffer irreparable harm when they are unable to attend religious services"); *Chalk v. United States Dist. Court Cent. Dist. Of Cal.*, 840 F.2d 701, 709 (9th Cir 1988) ("emotional stress,

depression and reduced sense of well-being” constitute irreparable injury). The custodians have already failed to adequately accommodate exercise of religious beliefs and practices for far too long.

In formulating an equitable response to violations that are ongoing, the Court should fully implement the concerns for speed, flexibility, and fairness that underlie the writ. *See McQuiggin v. Perkins*, 133 S.Ct. 1924, 1934 (2013) (“equitable principles have traditionally governed the substantive law of habeas corpus”); *Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (Habeas “is, at its core, an equitable remedy”) (quoting *Schlup v. Delo*, 513 U.S. 298, 319 (1995)); *Harris v. Nelson*, 394 U.S. 286, 291 (1969) (habeas corpus should “be administered with the initiative and flexibility essential to insure that miscarriages of justices within its reach are surfaced and corrected”). The Court’s exercise of its equitable powers should consider the history of violations and the inadequate response of authorities who control every aspect of the detainees’ lives.

First, the ICE detainees have been at FDC Sheridan eight weeks without the required religious accommodations. As explained in the declaration by Dr. Simran Jeet Singh, a leading expert on the Sikh faith, while Sikhs practice in many different ways, the basic tenants of the Sikh religion emphasize the wearing of turbans and other sacred religious objects, and the ability to pray at certain times of day in a respectful space. *See* Declaration of Dr. Simran Jeet Singh; *see also Thomas*, 450 U.S. at 714 (“Intrafaith differences . . . are not uncommon among followers of a particular creed, and judicial process is singularly ill equipped to resolve such difference in relation to the Religion Clauses.”). Some detainees have been traumatized by being exposed without headwear when, dating back centuries, “forcibly removing a Sikh’s turban, or cutting a Sikh’s hair has symbolized denying that person the right to belong to the Sikh faith, and has been

considered a humiliating and hurtful physical injury.” Singh Declaration at 3. For weeks, no religiously appropriate food was provided to those with dietary religious restrictions. The custodians’ failure to make full accommodations for religious practices requires this Court to take direct and compelling action.

Second, to the extent the custodians claim they lack the resources to accommodate religion, no such excuse is permissible under RFRA and RLUIPA. The government cannot create a chaotic situation, then force the detainees to subsidize governmental actions by sacrificing their religious freedoms. The Court should also reject any such claim because, in essence, the governmental agencies may be cutting corners by placing detainees in a federal prison under a contract at the bed rate (or cost per night of custody) of \$88.78, the BOP cost per-inmate, per-day, as opposed to the ICE costs of detention, which must consider the language, health, and special costs attributable to immigration detainees, of \$133.99. Department of Homeland Security, Immigration and Customs Enforcement, *Budget Overview, Fiscal Year 2019 Congressional Justification*, at 6.

Third, the Court should not accept promises of future action or claims that requests have been met. The initial weeks of detention at FDC Sheridan involved virtually no religious accommodations. Further, the context of these petitions includes the custodians’ failure to seriously deal with the pervasive language difficulties in communicating from the beginning of the Oregon detention. As with medical issues, the custodians appear to have made insufficient progress in assuring that individual detainees are instructed in the appropriate language on how to communicate their needs and to seek accommodations with appropriate privacy. Most basically, the FPD has communicated expressly with the custodians regarding the various ways in which the conditions are unconstitutionally punitive, including the range of failing to accommodate religious

beliefs and practices. The Court should require adherence to well-established statutory and constitutionally-based rights.

For the foregoing reasons and those stated in the petitions for habeas corpus and supporting documents, the Court should enter an order requiring the custodians to make the requested religious accommodations forthwith.

Respectfully submitted this 26th day of July, 2018.

/s/ Lisa Hay

Lisa Hay

/s/ Stephen R. Sady

Stephen R. Sady

Attorneys for Petitioner

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**JOSIAS SALAZAR,
Warden, FCI Sheridan,**

**SUPPLEMENTAL DECLARATION
OF CHIEF INVESTIGATOR
WILLIAM J. TEESDALE ON
RELIGIOUS ACCOMMODATIONS**

**ELIZABETH GODFREY,
Acting Field Office Director,
Seattle Field Office, ICE,**

Respondents.

I, William J. Teesdale, declare:

1. On July 18, 2018, I provided a declaration in support of the petitions for writs of habeas corpus for ICE Detainees 1 through 74 with attached exhibits that included letters from

Lisa Hay, the Federal Public Defender (FPD) for the District of Oregon, to the custodians of the ICE Detainees, who are immigration detainees being held in the Federal Detention Center (FDC) of the Federal Correctional Institution (FCI) in Sheridan, Oregon.

2. This declaration is intended to supplement my July 18, 2018, declaration to emphasize and update information related to the failure to adequately accommodate the detainees' religious practices. As in the earlier declaration, the statements in this declaration are the products of my own personal experience and the reports of FPD staff members who have met individually and in groups with the Sheridan immigration detainees. In addition to the June meetings referenced in paragraph 2 of my July 18, 2018 declaration, FPD staff members have met individually and in groups with detainees at Sheridan on July 6, 11, 16, and 23, 2018. I personally met with a group of detainees on July 25, 2018.

3. From May 31, 2018, until the last week of June 2018, the detainees were generally confined to triple-bunked cells for 22 hours a day or longer, with virtually no religious accommodations. During that time many south Asian immigrants had to go hungry because their religiously-based dietary restrictions were not accommodated. They were provided a meat-based diet much of which they could not eat, served in cells where they had to eat near the toilet. They also suffered distress because language barriers and prison regimentation prevented them from communicating their needs and determining whether food was religiously-permissible. FPD Hay's letter of June 15, 2018, attached to my initial declaration as Exhibit 1, identified the serious problem with inadequate food as follows:

I received reports that the meals provided are small portions and of poor nutritional quality. We have been receiving calls that people are hungry. The large number of detainees with religiously based dietary restrictions poses a special problem, as eggs and meat provide most of the protein in the offered meals but are not eaten by

many. I heard reports that some detainees, for example, ate only three slices of cucumber and a piece of bread for a meal. Detainees have asked that eggs not be added to their food but are uncertain if this request has been honored.

The FPD also pointed out the collateral effect of the all-day restriction to cells: “Because the detainees have not been given time for social visits, they are unable to receive support from the religious and cultural communities here in Oregon who are willing to meet with them.” During the most recent visits in July detainees have said that the food has improved and now report that the food is generally adequate.

4. At the end of June 2018, the detainees were moved from two units mixed in with criminally charged detainees to a separate unit of mostly immigration detainees. Because the detainees were no longer being triple bunked or held in their cells for 22 hours a day and a religiously appropriate diet was being provided, the FPD focused on access to immigration counsel, which was regarded as a high priority for all detainees because of the need for counsel in complex asylum cases and the risk of increased confinement resulting from delay. As a consequence, the FPD filed amicus curiae briefs in support of the temporary restraining order in *Innovation Law Lab et al. v. Nielsen*, 3:18-cv-01098-SI on June 24 and July 2, 2018.

5. After the transition away from the first month’s restrictive custody with virtually no religious accommodation, detainees continued to express concerns regarding the need for religious services and pastoral care, resulting in FPD Hay’s letter of July 9, 2018, attached to my initial declaration as Exhibit 3, which stated:

The detainees practice many faiths, and many have expressed concern regarding the lack of services and pastoral guidance. The [Performance-Based National Detention] Standards call for custodians to contract with volunteers and community groups to provide religious services to faith groups that the facility itself cannot personally deliver. The need for pastoral care is especially urgent given the individual and combined effect of the hardships and fear connected to leaving

home, the difficulties and stress of the journey, the punitive conditions suffered during detention, and the traumas of the recent incidents at Sheridan. We are aware that Christian and Sikh communities have made efforts to provide support to the detainee population, but have not be able to gain access. If the visiting room facilities at the FDC are not adequate to accommodate visits for both criminal detainees and immigration detainees, the FDC should acknowledge this structural impediment and act to end the punitive detention and find less restrictive means of supervision in the community.

The detainees also expressed urgent concerns regarding the failure to accommodate religious headwear, which was addressed in FPD Hay's letter of July 9, 2018, as follows:

Of special concern is the lack of accommodation of religious headwear. We understand that the turbans that Sikh detainees consider a mandatory part of their religious practice and expression have not been made available. Section 5.5 of the PBNB Standards outlines examples of acceptable religious headwear, which includes turbans worn by Sikhs. Although "facilities may restrict the color, size, or other features of religious headwear, as necessary to maintain the safety, security, and orderly operation of the facility," if such restrictions are in place, "the facility must ensure that detainees are provided conforming religious headwear for free or at de minimus cost." This issue should be addressed as soon as practicable either by returning religious headwear seized at the time custody commenced or by providing express and understandable instructions regarding alternative headwear.

6. In meetings as recently as July 23 and my meeting on July 25, 2018, detainees have expressed continuing concerns regarding the failure to accommodate religious practices and beliefs and their ability to practice their religion while detained at Sheridan. While detainees reported that many of the conditions had improved since the end of June, detainees continue to report significant limitations on their ability to practice their faith, especially for the members of the Sikh faith. The concerns are summarized to include:

a. For the entirety of June, detainees were served meals that contained meat without non-flesh options. Many of the immigration detainees who are Sikh, Hindu, or Muslim are not permitted to eat meat or particular kinds of meat as a part of their religious

practice. Since the end of June, the food has improved and a non-flesh diet is now being provided.

b. The Sikh detainees have not been allowed to wear turbans and instead have either been uncovered or forced to make do with towels, t-shirts, hats, or other inadequate coverings. The detainees reported that covering ones head with a turban is a sign of commitment to their faith that they want to be able to wear. Even when detainees use the inadequate substitutes of towels or t-shirts, Bureau of Prisons (BOP) employees have removed the towels and t-shirts from their heads during prayer. The detainees emphasized that the use of towels and t-shirts is not an adequate substitute for turbans because the head coverings are unclean and therefore disrespectful to Sikhism and that hats are prohibited in their religion.

c. The detainees have advised that they have not been allowed to pray in the manner that is required by their faith. The detainees expressed anguish in response to several significant limitations imposed by BOP staff and policies:

i. The detainees have reported that they have not been given an adequate space to pray. The detainees reported that those who practice Sikhism need a clean and respectful space to pray. The detainees have reported that their faith requires prayer in group settings. The detainees reported that they are unable to pray in their cell because the cell contains a toilet. The detainees expressed to us that praying in a room with a toilet is offensive and disrespectful. The detainees reported that in the evenings, they have had to pray in a room that is used as a barbershop during the day. The detainees expressed to us that praying in a room

that is used to cut hair is also offensive and disrespectful. On three or four occasions the barbershop has been in use so detainees have had to attempt prayer in a corridor or other improvised space, which is not appropriate for prayer. When they are able to use the barbershop, the detainees have to attempt to clean it before they can use it. Even after they have cleaned it, detainees report that the barbershop cannot be an appropriate place for them to pray.

ii. The detainees reported that they have not been given adequate time to pray. The detainees told us that those who practice Sikhism need to pray twice per day in a group: once in the morning before breakfast, and once in the evening after dinner. The detainees advised that they are unable to conduct their morning group prayers at FDC Sheridan because they are locked in the cells until 6:45 a.m. and then they are required to go to the cafeteria for breakfast. Sometimes detainees are not allowed out of their cells until 9:00 a.m. and do not then have time to pray.

iii. The detainees reported that they have been told by BOP employees that they are not allowed to remove their shoes when they pray. The detainees have expressed that praying with shoes on is a disrespectful practice in the Sikh religion. Detainees were admonished by BOP personnel if they attempted to pray without footwear and required to put on shoes.

d. Detainees have stated that their religious items were seized from them by Border Patrol when they were detained at border detention centers. The items seized included the five sacred items of Sikhism: (1) *kesh* (maintaining hair under a turban), (2) *kangha* (wooden comb), (3) *kara* (steel bracelet), (4) *kacha* (undergarment shorts), and (5)

kirpan (religious artifact resembling a knife). The detainees expressed concern that they were unable to wear items showing their faith, especially the *kara*.

e. The detainees reported to us that they have recently been able to access Sikh prayer books. The detainees were concerned, however, because these books are stored inappropriately at FDC Sheridan. The books should be stored in a clean, respectful area and only touched by a person whose head is covered, is not wearing shoes, and has recently washed. The books are being kept in the general common area where they are often touched by people with uncovered heads, wearing footwear, and without having washed. The detainees expressed distress regarding this issue as offensive to the Sikh faith.

f. Detainees who practice Hinduism have not been given faith-based books in Hindi to use in their worship.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief and that this declaration was executed on this 26th day of July, 2018, in Portland, Oregon.



William J. Teesdale, Esq.

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DECLARATION OF DR. SIMRAN
JEET SINGH

I, Dr. Simran Jeet Singh, declare as follows:

1. I am the Senior Religion Fellow for the Sikh Coalition and Henry R. Luce Post-Doctoral Fellow for Religion in International Affairs at New York University's Center for

Religion and Media. The Sikh Coalition is the largest national organization addressing legal issues surrounding the practice of the Sikh religion. I earned graduate degrees in religion from Columbia University and Harvard University, and an undergraduate degree from Trinity University, where I taught courses on Islam and Sikhi from 2015-2017. I also helped teach courses on Buddhist, Hindu, and Islamic traditions at Columbia University, and received Columbia's Presidential Award for Outstanding Teaching in 2013. I am an expert in the Sikh experience in America, the challenges of discrimination, and the need for cultural literacy.

2. The Federal Public Defender for the District of Oregon has requested that I provide a declaration briefly describing religious practices of the Sikh religion, the potential accommodations of those practices, and the availability of resources to address the needs for accommodation where resources are scarce.

3. The Sikh faith is the world's fifth largest organized religion, with over 26 million Sikhs worldwide and over 500,000 Sikhs residing in the United States. The tenets of the Sikh faith include devotion to God, truthful living, and service to humanity. Sikhs wear five articles of faith, known as the Five K's: *kesh* (maintaining hair unshorn and covered with a turban), *kangha* (wooden comb), *kara* (steel bracelet), *kacha* (undergarment), and *kirpan* (emblem of justice). The five articles of faith signify an individual's commitment to the Sikh faith and form an external uniform that unifies and binds Sikhs to the beliefs of the religion. Unlike in some faiths where only the clergy are in uniform, all Sikhs wear external articles of faith.


4. Wearing a turban over unshorn hair (*kesh*) is a mandatory article of the Sikh faith. According to the individual religious practice of many Sikhs, a turban should always cover their head, although, as with any religion, individual religious practices may differ according to the sincerely held beliefs of the individual adherent. Sikhs consider the turban to be a precious gift

and many wash their hands before they begin to tie it. The turban reminds a Sikh of the duty to maintain and uphold the core beliefs of the Sikh faith, which include working hard and honestly, sharing with the needy, and promoting the equality of all humankind. A Sikh turban is not just a piece of cloth, but this article of faith is an integral part of Sikhs' identity and their expression of faith. For centuries, forcibly removing a Sikh's turban, or cutting a Sikh's hair has symbolized denying that person the right to belong to the Sikh faith, and has been considered a humiliating and hurtful injury. Head coverings like yarmulkes, beanies, caps, and other coverings are not adequate or acceptable substitutes.

5. Accommodations for Sikh articles of faith in institutional settings are regularly made so that Sikhs are able to practice their faith. Other requirements of Sikh religious practices besides the Five K's should also be accommodated, including prayer opportunities at set times (including in the morning before breakfast), group prayer in an appropriately respectful location (not in a room with a toilet, or where other activities are simultaneously occurring, or where hair is cut), appropriate washing facilities prior to prayer, prayer without wearing shoes, the option of vegetarian meals, and storage location in a clean and respectful location for *gutkas* (prayer books).

6. To the extent there are religious accommodations for which outside resources would be helpful, there are Sikh organizations, including the Sikh Coalition, which would provide assistance. For example, if the custodians of detained Sikhs do not have the headwear worn at the time of detention or appropriate alternative turbans to offer, the Sikh Coalition can help to arrange turbans appropriate for institutional wear to the custodians as soon as such a request is made. Similarly, if other articles of faith are needed, I believe Sikh organizations would readily assist in accommodating the religious practices of fellow Sikhs.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief and that this declaration was executed on this 26 day of July, 2018, in New York, New York.



Dr. Simran Jeet Singh