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VIA U.S. MAIL, FAX, AND EMAIL

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RE: Religious Accommodation for Muslim Air Force JAG Cadet

Dear Lt. Gen. Burne, Sec. Wilson, Maj. Hill, and Maj. Lambright:

The undersigned represent Maysaa Ouza, an attorney who has been selected to serve in the U.S. Air Force JAG Corps. This is a request for immediate religious accommodation allowing Ms. Ouza to wear hijab from the beginning of her accession into the Corps. Ms. Ouza is a practicing Muslim whose sincerely held religious beliefs require her to wear hijab—a covering for the hair and neck that is, for many Muslim women, an integral part of their religious exercise. As discussed further below, a refusal to accommodate Ms. Ouza’s hijab from the beginning of her accession not only runs afoul of Department of Defense (“DoD”) policy, but it also violates the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb et seq., a federal statute that provides heightened legal protections for religious exercise.

Ms. Ouza disclosed the requirement that she wear hijab at every stage of her application and interview process with the JAG Corps. Only after she was selected to serve was Ms. Ouza provided with a copy of DoDI Number 1300.17 Incorporating Change 1, Effective January 22, 2014, *Accommodation of Religious Practices Within the Military Services* (“DoDI 1300.17”) and told by Maj. Valyncia S. Hill that “the Air Force does not currently offer pre-accessions religious accommodation waivers.” Maj. Hill did not explain at that time that this meant that Ms. Ouza would have to actually begin boot camp without her hijab before she could apply for a religious accommodation. When Ms. Ouza wrote again earlier this month to inquire about a waiver for her hijab, she was given an ultimatum by Maj. Teah Lambright, who stated: “Please let us know at

your earliest convenience if you intend to accept our offer to serve and make the request for religious accommodation once you are on active duty or if you intend to decline the offer.” In short, the Air Force is compelling Ms. Ouza to choose between adhering to her sincerely held religious beliefs or serving her country.

Nothing in DoDI 1300.17 requires the Air Force to prevent Ms. Ouza from wearing hijab from the beginning of her accession. *See* DoDI 1300.17(4)(e) (“Requests for religious accommodation *will* be resolved in a timely manner and *will be approved* when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement.”) (emphasis added). Quite the contrary—under RFRA and the DoD’s own policy, Ms. Ouza’s request for religious accommodation must be granted.

For some Muslim women, such as Ms. Ouza, wearing hijab is a core tenet of their religious practice. Being forced to remove the hijab is humiliating, and for many Muslim women, it is no different than being compelled to strip in front of others. Thus, denying an accommodation here would effectively preclude many Muslim women from joining the Air Force. As the U.S. military appears to have recognized, enforcement of grooming and uniform rules in this manner, without allowing room for religious diversity, is untenable in our pluralistic nation, and it is out of step with the practices of armed forces worldwide—many of which authorize religious accommodations for women who wear hijab.¹

Indeed, the U.S. military has benefitted greatly from growing diversity—in terms of race, ethnicity, gender, gender identity, and sexual orientation—among its ranks. Increasingly, this diversity also has included soldiers of minority faiths, leading the military to grant a number of religious exemptions from its uniform and grooming standards to accommodate, among others, Muslim, Jewish, and Sikh soldiers. *See, e.g., Singh v. McHugh*, 109 F. Supp. 3d 72, 94 (D.D.C. 2015) (“[T]here is ample undisputed evidence that soldiers in all corners of the Army are

¹ *See, e.g.,* The British Army, *Diversity*, <http://www.army.mod.uk/join/Equality-and-diversity.aspx> (noting that “[a] hijab may be worn all with orders of dress, subject to safety and operational considerations”); Defence Jobs, *Guide to Religion & Belief in the Australian Defence Force* at 5, http://content.defencejobs.gov.au/pdf/triservice/Guide_to_Religion_and_Belief_in_the_ADF.pdf (“Commanders and supervisors may approve different types of head dress (such as turbans, hijabs or yarmulkes) or simply be more flexible with uniform requirements (such as allowing Muslim women to wear long sleeves and tracksuit pants during physical training.)”); *see also, e.g.,* Conor Gaffey, *Meet the Female Somalia Military Captain Fighting Al-Shabab*, Newsweek.com (Feb. 28, 2016), <http://www.newsweek.com/iman-elman-al-shabaab-somalia-430838>; Reza Sayah, *Pakistan’s Female Fighter Pilots Break Down Barriers*, CNN.com (Sept. 14, 2009), <http://www.cnn.com/2009/WORLD/asiapcf/09/14/pakistan.female.fighter.pilot/index.html?iref=24hours> (noting that “[s]ome of Pakistan’s female pilots wear hijabs”); Status of Women Canada, *Wafa Dabbagh* (Sept. 29, 2016), <http://www.swc-cfc.gc.ca/commemoration/whm-mhf/profile-portraits-12-en.html> (featuring a Canadian Armed Forces lieutenant who, in 1996, became first Muslim woman to wear hijab in the CAF).

permitted to maintain beards and to wear religious headgear while in uniform, as well as to deviate from the grooming standards in other ways.”)² Last year, for example, the Army approved several religious accommodations allowing Sikh soldiers to serve while wearing turbans, beards, and unshorn hair.³ And, in a lawsuit brought by the ACLU, a federal district court—pointing to the numerous grooming and dress waivers already granted to thousands of soldiers across the Army—held in 2015 that the Army was *required under RFRA* to provide a similar accommodation for a Sikh ROTC cadet prior to his enrollment in ROTC. *See Singh*, 109 F. Supp. 3d at 103 (ruling in favor of prospective cadet).

RFRA prohibits the federal government from imposing a substantial burden on a person’s religious exercise unless the burden is the least restrictive means of achieving a compelling government interest. *See* 42 U.S.C. § 2000bb-1. The DoD and all branches of the military must comply with RFRA’s religious-freedom protections. *See, e.g., id.* § 2000bb-2(1) (defining “government” as “a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States”); S. Rep. No. 103-111, at 12 (1993) (noting that, “[u]nder the unitary standard set forth in the act, courts will review the free exercise claims of military personnel under the compelling governmental interest test”); *see also, e.g., Singh*, 109 F. Supp. 3d at 87. Accordingly, in 2014, the DoD expressly incorporated RFRA’s legal standard into its religious-accommodation instructions. *See* DoDI 1300.17. These instructions affirm that “[t]he DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions . . . [and] protects the civil liberties of its personnel and the public to the greatest extent possible, consistent with military requirements.” *Id.*

The Air Force cannot circumvent RFRA’s protections by requiring Ms. Ouza to begin boot camp before seeking an accommodation. *See Singh*, 109 F. Supp. 3d at 87 (“Counsel for defendants conceded at the hearing that the Army is a government actor to which RFRA applies, and that the Army’s denial of the religious accommodation applies to plaintiff, whether or not the Army’s regulations do.”). As in *Singh*, the refusal to accommodate Ms. Ouza prior to beginning her service violates her rights under RFRA.

First, requiring Ms. Ouza to abandon her hijab so that she may serve in the JAG Corps places her in an untenable position because, upon enlistment, she would immediately be deemed in violation of the grooming and dress violations and face disciplinary action as a result of her hijab. *See, e.g., Koster v. Sharp*, 303 F. Supp. 837, 843-44 (E.D. Pa. 1969) (holding that a conscientious objector was not required to “commit[] a military crime by disobeying an order and facing the possibility of imprisonment, as well as having to bear the stigma and attendant prejudices that attach to one dishonorably discharged from the armed forces” before he could assert a claim for violation of his constitutional rights). The Air

² The district court subsequently issued an amended version of the opinion to fix a typographical error. 185 F. Supp. 3d 201 (D.D.C. 2016).

³ Kevin Lilley, *Army Allows 3 More Sikh Soldiers To Keep Beards, Turbans*, Army Times (Apr. 11 2016), <http://www.armytimes.com/story/military/careers/army/enlisted/2016/04/11/army-allows-3-more-sikh-soldiers-keep-beards-turbans/82886780/>.

Force's refusal to accommodate Ms. Ouza would thus significantly impede her ability to practice and carry out the key tenets of her faith, coercing her into conduct that is prohibited by her religious beliefs. *See Singh*, 109 F. Supp. 3d at 87-88 (finding a substantial burden because "there is no dispute that the Army's refusal to grant plaintiff the accommodation that would enable him to enroll in ROTC while maintaining his religious practice was a government action that required plaintiff 'to choose between following the tenets of [his] religion and receiving a governmental benefit'") (quoting *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1070 (9th Cir. 2008)).

Second, under RFRA, once an individual demonstrates that governmental action imposes a substantial burden on religious exercise, the government must demonstrate that this 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. § 2000bb-1(b). The Air Force's insistence that Ms. Ouza must comply with the grooming and dress regulations fails both prongs of this strict-scrutiny analysis.

The "compelling interest" prong of this test requires the Air Force to show that denying Ms. Ouza an immediate religious accommodation allowing her to enlist in the JAG Corps and wear hijab is necessary to further a compelling interest. *See Singh*, 109 F. Supp. 3d at 93-94 ("[T]he Court must determine whether defendants have proven that the decision to deny *this plaintiff* a religious accommodation that would enable him to enroll in ROTC actually furthers the compelling interests defendants have identified.") (emphasis in original); *see also* App'x, Memo. from U.S. Attorney Gen. to All Exec. Dep'ts and Agencies, Federal Law Protections for Religious Liberty 6a-7a (Oct. 6, 2017) (explaining that the military must show that its compelling interest "would justify denying a particular soldier's request for an accommodation from the uniform and grooming policy"). The Air Force has not met this exacting standard.

As the court recognized in *Singh*, there is no evidence that the grooming and uniform accommodations granted to soldiers or cadets have impeded the military's ability to achieve its overall mission or harmed the military's interests in unit cohesion and morale, good order and discipline, individual and unit readiness, or health and safety. *See Singh*, 109 F. Supp. 3d at 95 (holding that the "justifications for the Army's decision [denying an accommodation] do not withstand strict scrutiny"). Indeed, several Sikhs granted grooming and dress accommodations by the Army have "earned commendations and outstanding reviews" and were "praise[d] . . . for their discipline and leadership." *Id.* at 98-100 (internal quotation marks and citations omitted). The Army's own case study of one of those accommodations found that it "did not have a significant impact on unit morale, cohesion, good order, and discipline" or on the health and safety of the soldier himself or his fellow soldiers. *Id.* at 100-101 (internal quotation marks omitted). And, as the U.S. Attorney General noted in his recent memorandum regarding Federal Law Protections for Religious Liberty, the Army has recognized "successful examples of Soldiers currently serving with an accommodation for the wear of a hijab" and other religious practices. Memo. from U.S. Attorney Gen., *supra* (internal quotation marks omitted).

Moreover, even if the Air Force could demonstrate that denying Ms. Ouza a religious accommodation from the beginning of her accession actually furthers a compelling interest, the existing religious accommodations for other service members make clear that denying her an

immediate exemption from the dress and grooming regulations is not the least restrictive means of achieving that interest. RFRA’s “least-restrictive-means standard is exceptionally demanding.” *Burwell v. Hobby Lobby Stores, Inc.* 134 S. Ct. 2751, 2780 (2014). Thus, the Supreme Court rejected the government’s claim that healthcare regulations complied with RFRA, finding that “HHS has not shown that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases.” *Id.* The Court explained: “HHS itself has demonstrated that it has at its disposal an approach that is less restrictive HHS has already established an accommodation for nonprofit organizations with religious objections.” *Id.* at 2782. At a minimum, the Air Force could grant Ms. Ouza the same accommodations authorized for other members. *See Singh*, 109 F. Supp. 3d at 103.⁴

Ms. Ouza's desire to serve her country is rooted, in part, in her experience as the daughter of immigrants: Her family was able to live the American dream, and she wants to give back. She wants to be a part of defending the very freedoms and liberties that have afforded her so many opportunities in life. RFRA and the DoD’s own policy plainly support her requested accommodation. We respectfully ask that Ms. Ouza be allowed to serve her country through the Air Force JAG Corps while adhering to her religious beliefs.

Because Ms. Ouza is set to begin basic training in January 2018, we request that you notify us no later than November 29, 2017, of your decision. To the extent that an accommodation is required, we request that it be immediately granted so that she may wear her hijab on day one. Otherwise, we will be compelled to take legal action on her behalf. In the meantime, if you have any questions or concerns, please call the undersigned.

Sincerely,



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⁴ In *Singh*, the court observed that “Sikh servicemen have successfully adapted their turbans to meet the Army’s operational requirements.” 109 F. Supp. 3d at 97 n.21. So, too, would Ms. Ouza be willing to customize her hijab to address any Air Force concerns, such as color and fit.



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