



Arizona

August 1, 2022

Via Electronic Mail

Commissioner Chris Magnus
U.S. Customs and Border Protection
U.S. Department of Homeland Security
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RE: Yuma Border Patrol Sector's Practice of Confiscating Sikh Individuals' Turbans During Asylum Processing

Dear Commissioner Magnus,

We write to inform you of ongoing, serious religious-freedom violations in the Yuma Border Patrol Sector, where your agents are confiscating turbans from Sikh individuals during asylum processing. In the last two months alone, our organizational partners in Arizona have documented nearly 50 cases of asylees arriving from Yuma who reported that their religious headwear had been taken by U.S. Customs and Border Protection (CBP) and never returned or replaced.¹ These practices blatantly violate federal law. They are also inconsistent with CBP's own national standards and contrary to the agency's non-discrimination policy, which states that "CBP employees must treat all individuals with dignity and respect...with full respect for individual rights including...freedom of...religion."² We ask that you promptly investigate these civil-rights violations and direct agents in the Yuma Border Patrol Sector to immediately cease these unlawful practices. Furthermore, we respectfully request a meeting in the meantime to discuss your plan to remedy the situation.

¹ Between January 2022 and July 2022 there were a total of 65 reports that CBP removed religious headwear. Forty-seven of these incidents occurred in June and July 2022. These reports included one Muslim woman whose hijab was seized and never returned during Border Patrol processing. However, because the other recent instances of religious headwear removal involve Sikh individuals, this letter focuses on the confiscation of turbans. Nevertheless, our concern extends to Yuma Border Patrol Sector's practices with respect to all religious headwear.

² See U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention and Search (T.E.D.S) (Oct. 2015) Policy, 1.4 (Non-Discrimination) 1, 4, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

I. Factual Background

a. Sikhism and the Religious Importance of the Turban

The Sikh faith is the world's fifth largest organized religion. There are approximately 30 million Sikhs worldwide, and over 500,000 Sikhs reside in the United States. Many Sikhs wear an external uniform to unify and bind them to the beliefs of the religion and to always remind them of their commitment to Sikh teachings. These articles of faith have deep spiritual significance, as they signify an individual's commitment to Sikhism and its highest ideals of love and service to humanity. Unlike some other faiths, where only the clergy are in uniform, most initiated Sikhs believe they are required to wear external articles of faith. The Sikh Code of Conduct, called the Rehat Maryada, explicitly instructs that observant Sikhs wear a turban over their unshorn, uncut hair.³

Many Sikhs consider their turban to be a precious gift from their Guru, and many wash their hands before tying it. Unlike a hat, a turban must always cover a Sikh's head. The turban reminds a Sikh of their duty to maintain and uphold the core beliefs of the Sikh faith. When a Sikh ties a turban, the turban ceases to be just a piece of cloth and becomes one and the same with the Sikh's head. It is a religious commitment without which many Sikhs may feel that they have ceased to be a Sikh. Historically, uncut hair and turbans have been the most central feature of the Sikh identity. For example, in the 18th century, Sikhs in South Asia were persecuted and forced to convert from their religion. The method of forcing conversions was to remove a Sikh's turban and cut off their hair. Since then, forcibly removing or targeting a Sikh's turban or facial hair has symbolized denying that person the right to belong to the Sikh faith and is perceived by many as the most humiliating and hurtful physical and spiritual injury that can be inflicted upon a Sikh.

b. Confiscation of Turbans by Yuma Border Patrol Sector

The International Rescue Committee (IRC) of Arizona operates a reception site in Phoenix ("the Welcome Center") that receives a large proportion of asylees who are released from Department of Homeland Security (DHS) custody within Arizona. In the last two months, IRC has documented almost 50 cases of asylees arriving from Yuma who reported that their religious headwear—specifically, turbans—had been confiscated by CBP. While the Welcome Center has encountered cases of religious headwear being confiscated every month of this year, in June 2022, the number of reports rose sharply, prompting concern that border officials have ramped up their efforts to seize these sacred items.

In response to these increasing reports of confiscated turbans, volunteers at the Welcome Center have tried to source turbans from the local Sikh community to provide replacements. A generous advocate has supplied the Welcome Center with more than fifty turbans by soliciting them from

³ See Ch. 10, Art. 16(t), translated by W. H. McLeod: Textual Sources For the Study of Sikhism, Manchester University Press, 1984.

family, friends, and congregations. Unfortunately, this is not a long-term solution because of the sheer number of turbans needed.

Concerns about Border Patrol's confiscation of religious headwear are not new. In March of 2019, the American Civil Liberties Union sent a letter to the DHS Office for Civil Rights and Civil Liberties, the Office of the Inspector General, and CBP, among others, reporting that "many Sikh immigrants have had their turbans and sacred religious bracelets . . . confiscated at the border."⁴ The letter explained that these items are not returned "[d]espite repeated requests," and asked that officials investigate these and other religious-freedom violations. In a September 2020 follow-up letter to the same offices, the ACLU again noted that "religious attire, such as head coverings, and other religious articles . . . were confiscated and never returned."⁵

More recently, since May, advocates working with Yuma asylees have repeatedly raised this issue during government stakeholder meetings. IRC initially expressed its concern about the practice of confiscating turbans at one of its weekly Maricopa County Asylum Stakeholders Calls. These meetings are regularly attended by representatives of CBP, EOC Region IX SBCC, and occasionally, U.S. Immigration and Customs Enforcement (ICE). Since broaching the issue in May, IRC has continued to highlight it as an ongoing problem at every subsequent meeting. IRC also notified the Office of the Immigration Detention Ombudsman (OIDO) of its concerns during an in-person meeting on June 14, 2022.

Beginning in early June, advocates also have discussed the religious headwear issue with DHS officials at recurring stakeholder meetings with EOC Region IX SBCC. At the most recent meeting on July 8, 2022 (with the ACLU of Arizona in attendance), CBP representatives claimed that the agency confiscates turbans only when they pose a security risk and that agents decline to store the turbans only when they are wet or damaged. The reports received by IRC, however, indicate otherwise. During these meetings, officials seemed unaware of their obligations under CBP policy and federal law to protect asylees' religious-freedom rights and, when informed that the seizure of turbans had markedly increased in recent months, they had no viable explanation for it.

Despite numerous contacts about this issue, to our knowledge, no meaningful investigation has occurred.⁶ Only this week did Chief John Modlin (CBP Tucson), who has attended the Maricopa Asylum Stakeholders calls, finally reach out to IRC to state that he had raised the concern with the CBP Yuma Sector, who informed him that processing officials were being retrained. But IRC has yet to see any evidence of this. Indeed, as recently as this week, IRC has received additional reports of turban seizures by Yuma Border Patrol.

⁴ ACLU Letter, Investigating religious-freedom violations by Border Patrol and ICE (Mar. 19, 2019) https://www.aclu.org/sites/default/files/field_document/3-15-19_aclu_request_for_investigation_of_religious-freedom_violations_.pdf.

⁵ ACLU Letter, Investigating religious-freedom violations by DHS (Sept. 10, 2020), https://www.aclu.org/sites/default/files/field_document/follow-up_letter_to_dhs_oig_crel_9-10-20.pdf.

⁶ Because Yuma CBP has been almost entirely absent from stakeholders' calls pertaining to asylees in the Arizona region, we and other advocates have been unable to ask them directly about their policies and procedures regarding religious headwear.

II. Yuma Border Patrol Sector must immediately cease its unlawful practice of confiscating Sikh asylees' turbans.

CBP's own policy requires that officers "remain cognizant of an individual's religious beliefs while accomplishing an enforcement action in a dignified and respectful manner."⁷ And for good reason: Many individuals seeking asylum, particularly those who are Sikh, have fled their home countries due to religious persecution and should feel safe in practicing their faith in the United States. The Yuma Border Patrol's confiscation of Sikh individuals' turbans not only ignores CBP policy, but it also violates the Religious Freedom Restoration Act (RFRA), which prohibits the government from substantially burdening an individual's religious exercise unless the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."⁸

Federal courts have repeatedly held that denying a person of faith the right to wear religious headgear imposes a substantial burden on their religious exercise.⁹ By confiscating and failing to return Sikh individuals' turbans, CBP directly interferes with their religious practice and forces them to violate their religious beliefs. As discussed above, for many Sikhs, the turban is a central aspect of their religious identity; exposing their "naked" heads to others is considered sacrilegious and shameful.¹⁰ Those seeking asylum who have their religious headwear seized by border officials must proceed through processing and short-term detention without it.¹¹ They are then released from Border Patrol's custody without any means of obtaining a replacement.

This substantial burden is not the least restrictive means of furthering any compelling interest. Even assuming that officials have a compelling interest in inspecting turbans and religious headwear for contraband or for other safety reasons, confiscating the turbans and refusing to return them is an extreme and unnecessary approach. Rather than forcing Sikh individuals to remove their turbans, officers could gently pat down the turbans or use a security wand to check them. If

⁷ See T.E.D.S., Policy 1.5 (Religious Sensitivity) at 4.

⁸ 42 U.S.C. § 2000bb-1. RFRA applies to any "branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States." *Id.* § 2000bb-2(1). This includes border patrol. See, e.g., *United States v. Ramon*, 86 F. Supp. 2d 665, 677 (W.D. Tex. 2000) (holding that border patrol's policy of targeting and stopping vehicles displaying religious symbols violated RFRA).

⁹ See, e.g., *Singh v. McHugh*, 185 F. Supp. 3d 201, 216-17 (D.D.C. 2016) (holding that Army's denial of religious accommodation constituted a substantial burden where Sikh plaintiff sincerely believed that not wearing his turban would dishonor and offend God); cf. *Singh v. Goord*, 520 F. Supp. 2d 487, 503 (S.D.N.Y. 2007) (prohibiting Sikh prisoner from wearing his turban during outside transports substantially burdened his religious exercise because his religious beliefs required him to wear it at all times); *Ali v. Stephens*, 69 F. Supp. 3d 633, 644 (E.D. Tex. 2014), *aff'd*, 822 F.3d 776 (5th Cir. 2016) (prison rule barring religious headwear outside of cells and religious services substantially burdened prisoner's sincere belief that he must wear a kufi at all times).

¹⁰ See Neha Singh Gohil & Dawinder S. Sidhu, *The Sikh Turban: Post-9/11 Challenges to This Article of Faith*, 9 Rutgers J. L. & Religion 10 (2008) (explaining that most Sikhs who wear turbans typically do so "pursuant to religious mandate" and that, for those individuals, "the turban is not a fashion trend or indicia of social standing—it is an essential part of their faith).

¹¹ "See T.E.D.S., Policy 4.1 (Duration of Detention) at 14 (Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.)."

there is a reason for a particular turban to be removed, the individual could be permitted to remove it himself for inspection and then allowed to immediately retie it once any concerns are resolved.

After an initial inspection, there is simply no excuse for refusing Sikhs the right to wear their turbans. Institutions with comparable (or even greater) security concerns explicitly authorize religious headwear, including turbans. The Federal Bureau of Prisons, for example, has long permitted yarmulkes, kufis, Native American headbands, Rastafarian crowns, and Sikh turbans, to be worn “throughout the institution.”¹² And ICE’s detention standards authorize the same, mandating that, where a facility adopts restrictions on the color, size, or other feature of such religious dress, it “must ensure that detainees are provided conforming religious headwear for free or at a de minimu[s] cost.”¹³ Moreover, ICE policy requires officials to “consult a religious authority before confiscation of a religious item that constitutes ‘soft’ contraband.”¹⁴ The standards direct that “[r]eligious headwear and other religious property shall be handled with respect at all times, including during the intake process.”¹⁵

As the Supreme Court has explained, “the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.”¹⁶ Because Yuma Border Patrol Sector cannot possibly justify its practice of confiscating and effectively prohibiting turbans while other institutions “with the same compelling interests . . . [have been] able to accommodate the same religious practices,” officials’ conduct fails strict scrutiny under RFRA.¹⁷

III. Conclusion

Robust protections for religious exercise are crucial in settings where individuals are in government custody. Yuma Border Patrol Sector’s actions against Sikh asylees are especially egregious because the ability to wear a turban is a core tenet of the Sikh faith and religious practice. Yuma officials must cease their practice of confiscating turbans or any other religious headwear. We request that you take immediate and concrete steps to end all such confiscations in Yuma and all other sectors. Lastly, we note that the permanent confiscation of religious headwear is but one

¹² BOP Religious Beliefs and Practices Program Statement, No. P5360.09 (Dec. 31, 2004), § 14(b)(1), https://www.bop.gov/policy/progstat/5360_009.pdf (Dec. 2004).

¹³ ICE Performance-Based National Detention Standards 2011 (Rev. Dec. 2016), App’x 5.5A (Religious Headwear, Garments, and Other Religious Property), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; *id.* § 5.5 (Religious Practices).

¹⁴ *Id.* § 2.3 (Contraband).

¹⁵ *Id.* § 5.5 (Religious Practices).

¹⁶ *See Holt v. Hobbs*, 574 U.S. 352, 368 (2015) (internal quotation marks omitted).

¹⁷ *See Warsoldier v. Woodford*, 418 F.3d 989, 1000 (9th Cir. 2005). To the extent that the Yuma Border Patrol Sector treats Sikh religious headwear less favorably than religious headwear worn by individuals of other faiths, this practice also violates the First Amendment. *See generally Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (singling out one faith for disfavorable treatment violates the Free Exercise Clause); *Larson v. Valente*, 456 U.S. 228 (1982) (holding that, under the Establishment Clause, the government must adhere to principle of denominational neutrality).

piece of a more universal, well-documented, and recurring practice by agents in the Yuma Border Patrol Sector of forcing apprehended migrants to discard nearly all of their personal property in advance of processing. We will be following up with you in coming weeks to address this broader problem, but we seek your immediate action to prevent the confiscation of turbans or religious headwear.

We look forward to hearing from you regarding this matter and to meeting to discuss next steps. In the meantime, please do not hesitate to contact us with any questions.

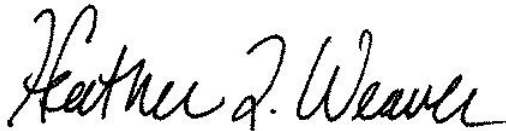
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