

1 THOMAS E. PEREZ  
 Assistant Attorney General  
 2 SAMUEL R. BAGENSTOS  
 Principal Deputy Assistant Attorney General  
 3 JONATHAN M. SMITH (DC Bar # 396578)  
 Chief, Special Litigation Section  
 4 TIMOTHY D. MYGATT (PA Bar # 90403)  
 timothy.mygatt@usdoj.gov  
 5 Special Counsel, Special Litigation Section  
 EMILY A. GUNSTON (SBN # 218035)  
 6 emily.gunston@usdoj.gov  
 Samantha K. Trepel (DC Bar # 992377)  
 7 samantha.trepel@usdoj.gov  
 Trial Attorneys  
 8 United States Department of Justice  
 Civil Rights Division  
 9 Special Litigation Section  
 950 Pennsylvania Avenue, N.W.  
 10 Washington, D.C. 20530  
 Telephone: (202) 514-6225  
 11 Facsimile: (202) 514-4883

12 ANDRÉ BIROTTE JR.  
 United States Attorney  
 13 LEON W. WEIDMAN  
 Assistant United States Attorney  
 14 Chief, Civil Division  
 ROBYN-MARIE LYON MONTELEONE  
 15 Chief, Civil Rights Unit  
 ERIKA JOHNSON-BROOKS (SBN 210908)  
 16 erika.johnson@usdoj.gov  
 Assistant United States Attorney  
 17 Federal Building, Suite 7516  
 300 North Los Angeles Street  
 18 Los Angeles, CA 90012  
 Telephone: (213) 894-0474  
 19 Facsimile: (213) 894-7819

20 Attorneys for the United States of America

21  
 22 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
 23

24	SUKHJINDER S. BASRA AND )	
	UNITED STATES OF AMERICA )	No. CV11-01676 SVW (FMOx)
25	)	
26	Plaintiffs, )	<b>UNITED STATES' BRIEF IN</b>
	)	<b>SUPPORT OF PLAINTIFF</b>
27	v. )	<b>SUKHJINDER S. BASRA'S</b>
28	)	<b>MOTION FOR A</b>

1 MATTHEW CATE, *et al.*,

2 Defendants.

) **PRELIMINARY INJUNCTION**

) Honorable Stephen V. Wilson

) Hearing Date: June 6, 2011

) Time: 1:30 p.m.

) Courtroom: 6

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

4 **I. INTRODUCTION**

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

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

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

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

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

## 15 **II. FACTUAL BACKGROUND AND STATEMENT OF THE CASE**

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

25 Mr. Basra currently is incarcerated in a minimum security facility within  
26 CMC. He is kept in an unlocked, 90-person dormitory room. *Id.* ¶ 7. He initially  
27 was incarcerated at PVSP, where he lived in a locked, two-man cell. *Id.* After one  
28

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

3 According to CDCR regulations, “facial hair, including short beards,  
4 mustaches, and sideburns are permitted for male inmates and shall not extend more  
5 than one-half inch in length outward from the face.” Cal. Code Regs. tit. 15,  
6 § 3062(h) (2010). The regulations contain no provision for religious exemption.  
7 Moreover, they apply system-wide, regardless of the level of security at an  
8 individual facility.

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

22 Beginning in March 2010, however, CDCR began disciplining Mr. Basra for  
23 maintaining his beard at longer than one-half inch in length. *Id.* ¶ 11. Since then,  
24 CDCR has subjected Mr. Basra to progressively more severe disciplinary action  
25 for failing to comply with the Grooming Policy. On April 3, April 30, and June  
26 28, 2010, Mr. Basra was issued administrative Rules Violation Reports (“RVR”)  
27 for violating Cal. Code Regs., tit. 15, §3062 (h), “Grooming Standards,” for having  
28 a beard longer than one-half inch. Basra Decl. ¶¶ 12-14. At the administrative

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

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

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

23 *Id.* ¶ 14.

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



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

### 5 **III. APPLICABLE LEGAL STANDARDS**

#### 6 **A. Standard for Issuing a Preliminary Injunction**

7 The Supreme Court has held that a “plaintiff seeking a preliminary  
8 injunction must establish that he is likely to succeed on the merits, that he is likely  
9 to suffer irreparable harm in the absence of preliminary relief, that the balance of  
10 equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
11 *Natural Res. Def. Council*, 555 U.S. 7, \_\_\_, 129 S. Ct. 365, 374 (2008). Prior to  
12 the Supreme Court’s decision in *Winter*, a number of circuits had employed a  
13 sliding scale approach in determining whether to issue a preliminary injunction.  
14 Under this approach, the elements of the preliminary injunction test are balanced,  
15 so that a stronger showing of one element may offset a weaker showing of  
16 another. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.  
17 2011). The Ninth Circuit had adopted a version of this sliding scale approach  
18 under which a preliminary injunction could issue where the likelihood of success  
19 is such that “serious questions going to the merits were raised and the balance of  
20 hardships tips sharply in [plaintiff’s] favor.” *Id.* (quoting *Clear Channel Outdoor,*  
21 *Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003)). In *Cottrell*, the  
22 court held that this approach survived the Supreme Court’s decision in *Winter*.  
23 Under the Ninth Circuit test, then, “serious questions going to the merits’ and a  
24 hardship balance that tips sharply toward the plaintiff can support issuance of an  
25 injunction, assuming the other two elements of the *Winter* test are also met.” *Id.*  
26 at 1132.

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

1 injury or (2) the existence of serious questions going to the merits and the balance  
2 of hardships tipping in [his] favor.” *Warsoldier v. Woodford*, 418 F.3d 989, 993-  
3 94 (9th Cir. 2005) (quoting *Nike, Inc. v. McCarthy*, 379 F.3d. 576, 580 (9th Cir.  
4 2004)). Mr. Basra has met the standards of both of these tests. Accordingly, his  
5 motion should be granted.

6 **B. RLUIPA Prohibits the Government From Imposing a Substantial**  
7 **Burden on a Prisoner’s Religious Exercise Unless the Government’s**  
8 **Justification for Imposing the Burden Can Withstand Strict**  
9 **Scrutiny.**

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

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

26 **IV. ANALYSIS**

27 The Grooming Policy substantially burdens Mr. Basra’s religious exercise,  
28 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

1 interest—the need to quickly identify inmates and to prevent the introduction, use  
2 and distribution of weapons, drugs, and other contraband – and that the Grooming  
3 Policy is the least restrictive means of achieving those ends. Defendants’ argument  
4 fails in light of the Ninth Circuit’s decision in *Warsoldier*, 418 F.3d 989, in which  
5 the plaintiff challenged CDCR’s Grooming Policy prohibiting long hair. Under  
6 almost identical facts, the Ninth Circuit rejected these arguments and held that the  
7 plaintiff had demonstrated a likelihood of success on the merits of his claim that  
8 California’s grooming policy prohibiting long hair violated RLUIPA, 42 U.S.C. §  
9 2000cc-1. *Id.*

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

13 **1. Defendants Have Placed a Substantial Burden on Mr. Basra’s**  
14 **Exercise of Religion.**

15 A State places a substantial burden on religious exercise when it places  
16 “substantial pressure on an adherent to modify his behavior and to violate his  
17 beliefs.” *Warsoldier*, 418 F.3d at 995 (quoting *Thomas v. Review Bd. of the Ind.*  
18 *Emp’t Sec. Div.*, 450 U.S. 707, 717-18 (1981)) (internal quotation marks omitted)  
19 (holding that grooming policies requiring inmates to cut their hair intentionally  
20 impose a substantial burden); *see also Shakur v. Schriro*, 514 F.3d 878, 881 (9th  
21 Cir. 2008); *May v. Baldwin*, 109 F.3d 557, 563 (9th Cir. 1997) (finding substantial  
22 burden where important benefits were conditioned on conduct proscribed by a  
23 religious faith, a Rastafarian inmate undoing his dreadlocks). The Ninth Circuit  
24 has found a substantial burden when the action is “oppressive to a significantly  
25 great extent, such that it renders religious exercise effectively impracticable.”  
26 *Sefeldeen v. Alameida*, 238 F. App’x 204, 205-06 (9th Cir. 2007) (quotation marks  
27 omitted) (quoting *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024,  
28 1034-35 (9th Cir. 2004)).

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

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

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

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

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

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

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

21 \_\_\_\_\_  
22 <sup>1</sup> Defendants cite heavily to an incident in 1997 in which an inmate escaped by  
23 shaving his beard, cutting his hair, fashioning an apparently realistic identification  
24 card, donning civilian clothing, and leaving through the front gates of the prison.  
25 One assumes that CDCR addressed this situation by resorting to the obvious less  
26 restrictive alternatives of preventing inmates from accessing printers, cameras,  
27 laminating machines, and civilian clothing, and restricting access to employee  
28 identification cards.

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

18 Moreover, Defendants' general citations to cost concerns in administering  
19 less restrictive alternatives are unpersuasive. Congress underlined the importance  
20 of eradicating burdens on religious exercise by explicitly providing that  
21 compliance with RLUIPA "may require a government to incur expenses in its own  
22 operations to avoid imposing a substantial burden on religious exercise."  
23 42 U.S.C. § 2000cc-3(c).

24 b. The Grooming Policy Is Not the Least Restrictive Means of Preventing  
25 Prisoners From the Concealing Contraband.

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

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

14 c. The Grooming Policy Is Overly Restrictive Because It Applies to All  
15 Inmates, Regardless of Security Risk.

16 CDCR has enforced the Grooming Policy against Mr. Basra despite its  
17 determination, evidenced by his transfer to a minimum security prison, that  
18 he poses a lower security risk. Defendants have the burden of showing that  
19 security, their asserted compelling interest, is actually furthered by banning  
20 this specific Plaintiff from having an unshorn beard. 42 U.S.C. § 2000cc-  
21 1(a) (prohibiting government imposition of a substantial burden on “religious  
22 exercise of a person” unless “the government demonstrates that imposition of  
23 the burden on *that person*” furthers a compelling government interest)  
24 (emphasis added); *see, e.g., Jova v. Smith*, 582 F.3d 410, 415 (2d Cir. 2009)  
25 (“[T]he state may not merely reference an interest in security or institutional  
26 order in order to justify its actions.”); *Washington v. Klem*, 497 F.3d 272, 283  
27 (3d Cir. 2007) (“Even in light of the substantial deference given to prison  
28 authorities, the mere assertion of security or health reasons is not, by itself,

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

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



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

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

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

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

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

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

23 The Ninth Circuit has made clear that grooming policies such as the one at  
24 issue here violate RLUIPA because there are less restrictive and equally effective  
25 alternatives to accomplish the goal of maintaining safety and security. Defendants  
26 cite to no contrary Ninth Circuit authority on this point, nor could they. The  
27 experience of the Federal Bureau of Prisons establishes that CDCR’s approach is  
28

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

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

5 As explained above, elimination of the Grooming Policy will not imperil  
6 public safety, contrary to Defendants' assertions. Moreover, it is well-settled that  
7 "the public has an interest in protecting the civil rights of all persons." *Edmisten v.*  
8 *Werholtz*, 287 F. App'x 728, 735 (10th Cir. 2008) (reversing denial of preliminary  
9 injunctive relief). The federal government's interest in protecting individual rights  
10 is particularly salient in the context of the religious protections afforded by  
11 RLUIPA, "the latest of long-running congressional efforts to accord religious  
12 exercise heightened protection from government-imposed burdens . . . ." *Cutter v.*  
13 *Wilkinson*, 544 U.S. 709, 713 (2005). RLUIPA passed both houses of Congress  
14 unanimously and was supported by more than seventy religious and civil rights  
15 groups representing a diversity of religious and ideological viewpoints. *See* 146  
16 Cong. Rec. S7777-78. Its enactment followed a three year congressional  
17 investigation into free exercise violations involving the religious practices of  
18 institutionalized persons. *River of Life Kingdom Ministries v. Vill. of Hazel Crest*,  
19 611 F.3d 367, 380 (7th Cir. 2010). As set forth in a joint statement by RLUIPA  
20 co-sponsors Orrin Hatch and Edward Kennedy, Congress found that "[w]hether  
21 from indifference, ignorance, bigotry, or lack of resources, some institutions  
22 restrict religious liberty in egregious and unnecessary ways." *See* 146 Cong. Rec.  
23 16698-99 (2000).

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

1 could be counter-productive: “[s]incere faith and worship can be an indispensable  
2 part of rehabilitation.” *See* 146 Cong. Rec. S6689. Further, this interest has been  
3 repeatedly recognized by federal courts. In a decision affirming a district court’s  
4 finding that a prison violated RLUIPA by denying prayer oils to a Muslim inmate,  
5 the Seventh Circuit explained that “RLUIPA’s attempt to protect prisoners’  
6 religious rights and to promote the rehabilitation of prisoners falls squarely within  
7 Congress’ pursuit of the general welfare . . . .” *Charles v. Verhagen*, 348 F.3d 601,  
8 607 (7th Cir. 2003); *see also, e.g., Benning v. Georgia*, 391 F.3d 1299, 1310 (11th  
9 Cir. 2004) (“rehabilitation of prisoners is also a . . . purpose underlying RLUIPA”).

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

12 Mr. Basra has been subjected to discipline for adhering to his religious  
13 beliefs. Basra Decl. ¶ 18. Because Defendants have denied his religious  
14 exemption, he continues to be in violation of the Grooming Policy. He is in  
15 immediate danger of being deemed a program failure. 15 Cal. Code Regs. tit. 15,  
16 § 3062(m). He already has received a referral to program review to determine if he  
17 should be deemed a program failure. Basra Decl. ¶ 14. This kind of “chilling  
18 effect” on the exercise of religion constitutes irreparable injury. *See Murphy v.*  
19 *Zoning Comm’n of the Town of New Milford*, 148 F. Supp. 2d. 173, 181 (D. Conn.  
20 2001) (holding that a chilling effect on religious practice was enough to satisfy the  
21 irreparable harm requirement).

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

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

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

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

4 The ““loss of First Amendment freedoms, for even minimal periods of time,  
5 unquestionably constitutes irreparable injury.”” *Ch. of Scientology v. United*  
6 *States*, 920 F.2d 1481, 1488 (9th Cir. 1990) (quoting *Elrod v. Burns*, 427 U.S. 347  
7 (1976)); see *Guru Nanak Sikh Soc’y v. Cnty of Sutter*, 326 F. Supp. 2d 1140, 1161  
8 (E.D. Cal. 2003). Furthermore, Congress enacted RLUIPA to “protect the free  
9 exercise of religion from unnecessary government interference.” *Murphy*, 148 F.  
10 Supp. 2d at 180 (citation omitted).

11 Under similar facts, the Ninth Circuit found a burden like the one being  
12 placed upon Mr. Basra constituted irreparable injury. *Warsoldier*, 418 F.3d at  
13 1001-02 (“We have previously held that putting substantial pressure on an adherent  
14 to modify his behavior and to violate his belief infringes on the free exercise of  
15 religion . . . . Because Warsoldier has, at a minimum, raised a colorable claim that  
16 the exercise of his religious beliefs has been infringed, he has sufficiently  
17 established that he will suffer an irreparable injury absent an injunction barring  
18 enforcement of the grooming policy against him.”) (internal quotation marks and  
19 citations omitted). Therefore, a preliminary injunction is necessary to ensure that  
20 Mr. Basra is not threatened with irreparable injury.

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

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

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

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

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

14  
15 **V. CONCLUSION**

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

18  
19 Respectfully submitted,

20  
21 **ANDRÉ BIROTTE, JR.**  
22 United States Attorney  
23 Central District of California

**THOMAS E. PEREZ**  
Assistant Attorney General  
Civil Rights Division

24 **LEON W. WEIDMAN**  
25 Assistant United States Attorney  
26 Chief, Civil Division

**SAMUEL R. BAGENSTOS**  
Principal Deputy Assistant  
Attorney General  
Civil Rights Division

1 /s/ Erika Johnson-Brooks

2 ROBYN-MARIE LYON MONTELEONE

3 Chief, Civil Rights Unit

4 ERIKA JOHNSON-BROOKS

5 Assistant United States Attorney

6 United States Attorney

7 Central District of California

8 312 North Spring Street

9 Los Angeles, CA 90012

JONATHAN M. SMITH

Chief

Special Litigation Section

TIMOTHY D. MYGATT

Special Counsel

Special Litigation Section

10 /s/ Samantha K. Trepel

11 EMILY A. GUNSTON

12 SAMANTHA K. TREPEL

13 Trial Attorneys

14 U.S. Department of Justice

15 Civil Rights Division

16 Special Litigation Section

17 950 Pennsylvania Avenue, N.W.

18 Washington, D.C. 20530

19 (202) 514-6255